BusinessNZ
The voice of business

Lumley House
3-11 Hunter Street
PO Box 1925
Wellington 6001
New Zealand

Tel: 04 496-6555
Fax: 04 496-6550
www.businessnz.org.nz

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Nicholas Hill
Chief Executive
Commerce Commission
PO Box 2351
WELLINGTON 6140

Dear Nicholas

Re: Input to our Strategic Planning

I am writing in response to your letter dated 18 October that asks for input into the Commerce Commission's planning for 2011 and beyond, with feedback to be considered in the Commission's 2011/14 Statement on Intent (SOI).

BusinessNZ welcomes the opportunity to provide comments/feedback. We are New Zealand's largest business advocacy body, encompassing four regional business organisations (Employers' & Manufacturers' Association, Employers' Chamber of Commerce Central, Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), 60-member Major Companies Group comprising New Zealand's largest businesses, and 76-member Affiliated Industries Group, which comprises most of New Zealand's national industry associations.

BusinessNZ have submitted on various issues to the Commission over the last decade, often involving recurring themes we believe the Commission needs to take into account to ensure outcomes that provide New Zealand with the best chance for productivity and growth. Given you have asked for brief comments, we have outlined four broad issues that we believe the Commission should examine and incorporate into their SOI.

Continuation of reduction in expenditure

The 2010-2013 SOI outlines funding for the Commission through to 2012/13. The 2009/10 baseline funding was $45.0 million, decreasing to $37.8 million by 2012/13. While this is a step in the right direction, we note total funding for the Commission was around $10.0 million in 2000. We accept that the Commission has taken on new responsibilities over the last decade; therefore, some increase in funding is required. However, even taking into account additional responsibilities, as well as expected and actual inflation between 2000 and 2013, this still represents an extraordinary funding increase compared with GDP growth and total government expenditure over the time period.

Therefore, BusinessNZ supports ongoing moves by the Commission to find ways to reduce total expenditure out to the 2011/14 period.

Recommendation: That the Commerce Commission continues to reduce overall annual expenditure through to the 2011/14 period.

Shift in staff requirements

In relation to the section above, pages 16-17 of the 2010-13 SOI outline funding pressures that the Commission believes will have "*material resource implications*". The Commission also states that it is *"seeking to improve flexibility in both its funding arrangements and use of resources over a three-year horizon".* One area we believe flexibility could be enhanced is in relation to staff.

We note that a speech by the Commission's Chairman Dr Mark Berry to the Trans-tasman Business Circle in August discussed the efficiency gains made by the Commission, including structural change at the top to improve commissioners' efficiency and effectiveness. We support such moves, given funding for the Commission comes from taxpayers dollars, as well as funding from certain industry levies. However, in the same speech, Dr Berry also mentioned the overall increase in staff levels over recent years, without any associated mention of improving staff efficiency and effectiveness. From BusinessNZ's point of view, these two statements seem at odds with each other. While some increase in staffing numbers within the Commission over the last decade is completely justified given the additional responsibilities undertaken, we note that in 2000/01 total staff numbers stood at 72. In 2009/10, this rose to 189 (an increase from 182 in 2008/09 despite the global recession and cuts in government expenditure). This represents an increase of over 260% over a ten year period.

One way in which expenditure can be reduced and further efficiency gained is by looking to establish staffing requirements based on issues as they arise, as opposed to having large numbers of permanent staff. In almost all cases, a business or organisation requires a core set of staff to be employed on a permanent basis. This can be for various reasons such as undertaking regular tasks, competency to meet day-to-day objectives and consistent contact points for external stakeholders. However, an organisation that retains permanent staff in case of potential investigations/reviews can easily fall into the trap of needing to find work for them, instead of assessing whether such work needs to be carried out in the first place.

Therefore, BusinessNZ recommends that beyond a core set of staff retained to undertake the day-to-day duties of the Commission, additional staff members are brought in on a short or fixed-term basis as and when required.

Recommendation: That the Commerce Commission looks to outsource staffing requirements on a short or fixed-term as and when required basis.

Engagement with the New Zealand Productivity Commission

The New Zealand Productivity Commission (NZPC) will formally begin its work on 1 April 2011. BusinessNZ has long supported the NZPC's establishment, and in time we anticipate it will be on par with the Australian Productivity Commission (APC).

Given the scope the NZPC will have for investigations via determination by the responsible Minister(s), there will be times when the investigations undertaken by the NZPC will involve areas of interest to the Commerce Commission. This may include instances when the Minister requests studies into regulatory/competition areas that the Commission is either currently investing, or has made recommendations on but Ministers have requested another view on the matter.

BusinessNZ believes it is important for the Commerce Commission to think holistically about its relationship with the NZPC, including times when it may be preferable for the Commission to effectively outsource research and/or reports to the NZPC upon agreement by the relevant Minister(s).

Therefore, BusinessNZ believes the Commerce Commission needs to recognise and develop a relationship with the NZPC, especially regarding future instances where matters may be analysed in a joint venture, or outsourced to the NZPC.

Recommendation: That the Commerce Commission establishes an ongoing dialogue/relationship with the New Zealand Productivity Commission.

Work towards successful undertaking regimes

BusinessNZ is disappointed that undertakings regimes available to the Commerce Commission have proved completely unsuccessful. We believe such undertakings represent a commercial answer to the government in response to the prospect of blanket regulation.

The most prominent example of failure this the mobile termination access services deeds of agreement signed in 2007 between government, Vodafone and Telecom. Despite signing a five year deed, the Commission decided in 2008 to investigate the situation further, essentially wiping an agreement barely 19 months into its existence. In short, we believe the Commission failed to be conscious of, for want of a better term, 'the bigger picture', and the need to carefully consider the risks of regulatory opportunism.

The example above highlights to us the need for the Commission to change its mindset and to demonstrate a degree of pragmatism and understanding of issues beyond those prescribed in order to see both future signals and the ramifications of the investigations it decides to undertake.

Recommendation: That the Commerce Commission investigates ways in which the undertakings regime can become a successful alternative to regulation.

Thank you again for the opportunity to comment.

Regards,

Phil O’Reilly
Chief Executive
BusinessNZ