

Competition co-operation and enforcement

INVENTORY OF CO-OPERATION AGREEMENTS



TRANS-TASMAN ECONOMIC CO-OPERATION

This document contains the text of the agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement (2008). The Trans-Tasman Economic Co-operation is taken from the 2015 Inventory of Co-operation Agreements prepared by the OECD Competition Committee.

The full inventory, the OECD Recommendation and accompanying documents can be found online at www.oecd.org/competition/inventory-competition-agreements.htm.

Australia and New Zealand have developed a close Trans-Tasman economic co-operation based on the close geographical and economic relationship between the two jurisdictions. The effort has culminated in various economic co-operation agreements concluded between the two jurisdictions, such as Australia-New Zealand Closer Economic Relations Trade Agreement in 1983, Memorandum of Understanding on the Harmonisation of Business Law between Australia and New Zealand in 1998.

Although the economic co-operation is not competition-specific, this extensive relationship involves some unique and innovative co-operation instruments related to competition law enforcement, such as cross-appointments of commissioners between the competition authorities of the two jurisdictions and recognition and enforcement of civil court judgements across Tasman.

Cross-appointments of commissioners. Cross-appointments between the Australian Competition and Consumer Commission (ACCC) and the New Zealand Commerce Commission (NZCC) is committed in the Trans-Tasman Single Economic Market Outcomes Framework with an aim to further enhance co-operation between the two regulators and improve the alignment in administration of competition law between the two countries. The Framework itself was agreed between the Prime Ministers of Australia and New Zealand on 20 August 2009 to support the single economic market agenda and accelerate regulatory harmonisation and alignment. The range of shared outcome covers not only competition policy but also other economic laws and policies, such as insolvency law, financial services policy and corporations law. The cross-appointment system is one of the three policy outcomes proposed under the competition stream of the Framework.¹

¹ The three competition policy outcomes in the Framework are (1) firms operating in both markets are faced with the same consequences for the same anti-competitive conduct, (2) competition and consumer law regulators in both jurisdictions are able to share confidential information for enforcement purposes and (3) cross-membership between the ACCC and the New Zealand Commerce Commission at associate member level.

Based on the framework, ACCC and NZCC started cross-appointments of commissioners in December 2010. Under the cross-appointments, they routinely consider merger applications received on both sides of the Tasman and cross-appointed commissioners are given a full access to confidential information. They also consider the revision of relevant guidelines.

Recognition and enforcement of civil judgements. Between Australia and New Zealand, a special arrangement for recognition and enforcement of foreign judgments has been put in place. Its legal basis is the Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement on 24 July 2008, but it came into effect in October 2013 when the necessary enabling regulations were introduced in both jurisdictions.² Once a judgment of a court of one jurisdiction is registered in a court of the other country, the judgment has the same effect, and may be enforced, as if the judgment had been issued by the court in which the judgment is registered. This applies to a wide range of judgments, including a final and conclusive judgment given in a civil proceeding, certain criminal judgments, and interim relief in support of civil proceedings in the other jurisdiction. In competition law enforcement, for example, this allows the competition authority in one jurisdiction to enforce its decisions in civil penalty and criminal cartel cases in the other jurisdiction.

Box 1. Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement (2008)

Part 2 Service of Process and Recognition and Enforcement of Judgments in Civil Proceedings

Article 3 Application

1. This Part shall apply to civil proceedings before courts within the territory of either Party, except civil proceedings in relation to the following matters:

- a) dissolution of marriage;
- b) enforcement of maintenance obligations; and
- c) enforcement of child support obligations.

2. The Parties may, by mutual arrangement, exclude statutory cooperative arrangements and matters covered by existing or proposed bilateral or multilateral arrangements and agreements from the operation of this Part.

3. [...]

4. The following judgement shall be capable of recognition and enforcement under Article 5:

- a) final money judgments, and
- b) final non-money judgments, except for the following:
 - i) orders about probate, letters of administration or the administration of an estate;
 - ii) orders about the guardianship or management of property of someone who is incapable of managing their personal affairs or property;
 - iii) orders about the care, control or welfare of a child; and
 - iv) orders that, if not complied with, may lead to conviction for an offence in the place where the order was made.

5. The Parties may, by mutual arrangement, exclude other non-money judgments from recognition and enforcement under Article 5.

² The relevant domestic implementing legislation is the Australian Trans-Tasman Proceedings Act 2010 (ss 65-66), and the New Zealand Trans-Tasman Proceedings Act 2010 (ss 52-54, 74-77).

6. A judgment shall be deemed to be final even though an appeal may be pending against it, or it may still be subject to appeal.

Article 5 Recognition and Enforcement of Judgments

1. On application by the plaintiff, a judgment to which this Article applies issued by a court within the territory of one Party shall be registered by a court within the territory of the other Party (hereinafter “the registering court”).

2. A judgment registered under this Article shall have the same force and effect, and may be enforced, as if the judgment had been issued by the registering court.

3. The defendant shall receive notice where a judgment is registered under this Article.

4. Subject to paragraph 6 and 8 of this Article, a judgment registered under this Article shall only be varied or set aside by the court in which it was issued, and shall only be the subject of appeal before the court within the territory of the Party in which it was issued.

5. The registering court may grant a stay of enforcement proceedings in order for an application for variation or setting aside to be made in the court in which the judgment was issued, or in order for an appeal against the judgment to be lodged in the courts within the territory of the Party in which the judgement was issued.

6. The registration of a judgment pursuant to this Article may only be set aside in the registering court, and the judgment refused recognition and enforcement in the country of registration, if registration of the judgment would be contrary to the public policy of that country.

7. Judgments registered under this Article shall not be refused recognition and enforcement on the grounds that to do so would involve the direct or indirect enforcement of a foreign public or revenue law.

8. Registration of the following judgments may be set aside in the registering court on the basis that the property in question was not, at the time of the proceedings before the court which issued the judgment, situated within the territory of the Party in which the court which issued the judgment is located:

- a) judgments given in an action where the subject matter is immovable property; and
- b) judgments in an action in rem where the subject matter is movable property.

9. For the purposes of this Article, registering court means:

a) in the case of Australia:

- i) the Federal Court of Australia;
- ii) the Family Court of Australia; or
- iii) the Supreme Court of a State or Territory.

b) in the case of New Zealand:

i) the High Court.

c) in addition, any other court within the territory of either Party that could have granted the relief contained in the judgment.

Article 7 Interim relief in support of proceedings in the territory of the other Party

1. Each Party shall nominate courts within its territory to grant interim relief in support of proceedings commenced in the courts with in the territory of the other Party.

2. Courts nominated under paragraph 1 shall have the ability to grant the same types of interim relief in support of proceedings initiated in the courts within the territory of the other Party as they are able to grant in domestic proceedings.