MARKETING BOARDS AND ANTI-TRUST POLICY

E McCann
Department of Economics
University of Canterbury

and

R G Lattimore
Department of Economics & Marketing
Lincoln University

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Agribusiness and Economics Research Unit
P O Box 84
Lincoln University
Canterbury
NEW ZEALAND
Telephone: (64)(3)252-811
Fax. No.: (64)(3)252-099

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This Discussion Paper presents some views on the relationship between the Acts under which the producer boards operate and the Commerce Act, 1986. In particular, the discussion reviews the interpretation of the powers contained in the Apple & Pear Marketing Act, 1948 in conjunction with the Commerce Act, 1986. While the Apple & Pear Marketing Act provides for monopsony power to be held by the N.Z. Apple & Pear Marketing Board, the Commerce Act provides for the promotion of "competition in markets in New Zealand" (Cooke, 1989). This apparent conflict has been addressed in a recent court action involving the N.Z. Apple & Pear Marketing Board and Apple Fields Ltd.

This Discussion Paper presents an economic perspective of the case and its outcome and raises a number of questions which should be addressed. In particular, the ruling provides for the Apple & Pear Marketing Act to take priority over the more recent Commerce Act. Was this Parliament's intention? This case also raised the question of the appropriate representation for people and organisations involved in particular industries. While the democratic system entitles each participant to one vote, should there be some form of weighting where the participants are far from equal in their involvement in the industry, eg. should the 10 hectare apple producer have the same "voting power" as a 10,000 hectare producer? A further question of importance is the relationship between existing industry participants and new entrants. While freedom of entry and exit is a basic economic principle necessary for maximisation of returns, there appear to be grounds for justifying some constraints on new entrants. However, such constraints would be unnecessary were a "free market" to operate in terms of grower rights associated with access to export channels.

Such issues are raised in this Discussion Paper. Further examination and review of these points is clearly necessary.

R L Sheppard
Assistant Director
1. INTRODUCTION

Agricultural marketing boards are important institutions in Australia, Canada, France, New Zealand, the United Kingdom and many African countries. Most were established earlier this century as a counterbalance to the perceived market power of processing and exporting corporations and to provide a mechanism for the co-ordination of production by producers. Marketing boards have also been used extensively as a vehicle for administering government policies to agricultural producers.

The Closer Economic Relations (CER) free trade agreement between Australia and New Zealand raises some interesting issues between marketing boards in each country. The new Commerce Act in New Zealand has pro-competitive elements which were modelled on the counterpart Australian Act. However, in Australia marketing boards are exempt from these provisions whereas in New Zealand they are not exempt. Potential trans-Tasman trade in products like dairy products and apples and pears accordingly involve some legal as well as economic concerns.

Some aspects of the operations of marketing boards have been controversial in most countries because they are thought to involve social costs to the nation or even to the industry itself. The research work contained in Hoos (1979) and that of Martin and Zwart (1987), Seiper (1982), Barichello (1982), Veeman (1987), Forbes, Hughes and Warley (1982), Saint-Louis and Proulx (1987), Institute for Policy Studies (1988) and Treasury (1984) address these issues.

However, there is a competing set of criticisms. Marketing Boards have come under scrutiny by the OECD and the GATT from time to time on the grounds that they are instruments of export subsidisation and therefore represent unfair international competition. On balance both positions mentioned above cannot be correct in the Paretian sense, so it is important to examine empirical information on the performance of marketing boards when such information becomes available.

Recently in New Zealand, a series of court cases have provided some insights into the behaviour of a statutory marketing board, the New Zealand Apple and Pear Marketing Board (the Board) with respect to domestic market operations. The cases involve an alleged conflict between legislation supporting the Board and the more general anti-trust legislation, the Commerce Act. This paper documents the legal and economic issues involved and offers some suggestions on how the apparent conflicts might be resolved.
2. STRUCTURE OF THE INDUSTRY

Apples are an important export crop in New Zealand and the industry has experienced a marked increase in the growth of output since 1983 (54 percent from 1983 to 1987). This rate of growth is expected to continue for some years yet as new plantings grow to maturity. Since much of the growth in tree plantings has occurred in non-traditional areas like Canterbury and in new varieties that are fetching price premia on world markets, there have been two important effects. The capital requirements for storage facilities have increased rapidly but largely in the non-traditional growing areas. Furthermore, the profitability of apple production in traditional areas is significantly lower than for new growers in the non-traditional areas.

The New Zealand apple industry is characterised by about 1500 family organised smaller units and a small number of corporate organised large growers who are recent entrants to the industry. Apple production technology is generally more advanced for the latter group who tend to grow the higher valued varieties, though data is difficult to find on this point. This creates a tension between existing growers who benefit from policies which cross-subsidise the production of lower priced varieties of apples and growers of new high priced varieties who have received lower prices from the statutory authority and who thereby fund the crops' subsidies.

The industry is strongly export oriented and is continually changing varieties to keep up with changing market preferences. Fifty five percent of fresh apples produced are exported, 10 percent are consumed domestically and the remainder are processed into juice and other products. New Zealand has about 5 percent of world trade in apples and there is no evidence that New Zealand is able to influence the world price in the long run. This is not to argue, however, that quasi rents do not exist in the short run associated with particular new varieties in particular markets.

3. THE ORGANISATION OF THE INDUSTRY

The New Zealand Fruit Growers' Federation (Fruit-Fed) is a 70 year old association of fruit producers including apple growers. It has a pip fruit section which holds regular regional meetings and is democratically dominated by the small growers. Attendances at regional and national meetings are high and debate between old and new growers is sometimes intense.

Fruit-Fed has very close connections with the New Zealand Apple and Pear Marketing Board. It recommends the
appointment of six of the Board's members, the other two being government appointed to represent consumer interests. Under the Apple and Pear Marketing Act, 1948, the Board has monopsony powers over the acquisition of domestic supply and the terms of supply at the farm gate. Once apples pass into the Board's hands, it decides how and where to store the fruit. It is argued that this policy is necessary to support the exporting process. The Board also has (and exercises) monopoly export and import rights for apples. These grew out of the Government's practice of buying and disposing of the whole crop during the Second World War when exporting and some importing was seen as a Government wartime responsibility. The predecessor to the Board was the New Zealand Fruit Export Control Board established under a 1926 Act of Parliament, (Richardson, p5). The industry therefore has a long history of regulation.

Growers are subject to the legal obligation to sell all applies and pears grown for human consumption to the Board which on-sells them. Tight restrictions on growers' gate sales are enforced but they do not curtail an illegal market between some supermarkets and some growers. Figures on the black market are not available and the Board stopped publishing the number of prosecutions after they had started to increase. The source of profit in the black market is the avoidance of levies which the Board imposes on fruit. Since local consumption of pip fruit is less than ten percent of the crop, the black market is important more as an indicator of strain in the system than as an illegal outlet.

4. LEGISLATION

The Apple and Pear Marketing Act grants the Board powers to set prices to be paid to the growers of apples and pears. Those prices are required to be set in consultation with Fruit-Fed. Payouts to growers were based on a practice of averaging the prices received for different varieties so that producers of high priced fruit were subsidising orchards producing low priced fruit. There have been recent modifications to this practice. Until tax laws changed in 1988 the Board also operated a price stabilization fund.

The Board regulates the quantity of imports of foreign-grown apples. It may and does set quality standards and levies on fruit. Inspectors enforce various packing, timing and quality requirements. Levies are set by the Board after consultation with Fruit-Fed. It will be apparent that the apple and pear industries are subject to an unusual amount of regulation. A symbiotic relation exists between the grower organisation and the regulatory authority (Holland, p29). All of the practices described appear to be legal under the Apple and Pear Marketing Act.
The Commerce Act, 1986 can be seen as a part of an enthusiasm which existed in 1984/85 for the deregulation of the New Zealand economy, (Cooke, pp 17, 18). Its object is "to promote competition in markets within New Zealand." The act establishes a Commerce Commission which conducts investigations based on complaints to it of uncompetitive activities and it rules on those complaints. It holds hearings to permit or prohibit mergers which in its view affect the degree of competition. More specifically, practices which substantially lessen competition in general, or fix prices or restrict supply or abuse a dominant position in a market are outlawed under the act. "Competition" means "workable competition". The Act requires that a particular purpose must be established before some of its sections apply. Purpose, in the event, was to be important in the case under consideration.

5. THE ISSUES

Prior to 1984 the Board, from time to time, had received heavily subsidised loans from the Reserve Bank of New Zealand and its profits were non-taxable. Both of those subsidies have been discontinued and the Board has had to replace those sources of funds.

In the early 1980's as the need for new Board storage facilities increased, consideration was initiated on how to finance the required investment. In 1983 an additional levy of 50 cents per carton, on each annual increase in output was introduced. It was called the "Second Tier Levy" (2TL). The 2TL was increased in 1988 to $1.35 per carton. The Board claimed that the purpose was to raise capital to allow the Board to provide the coolstores which the new output would require.

The longrun effect of the second tier levy may be gauged from its effect in 1988. The levy essentially shifts the supply curve for apples upwards and to the left by the interest cost (say 5 percent real) on the levy ($1.35 per carton) beyond the current level of output. That is, the supply steps at this point. If the long run supply elasticity is 2, the export function for increased output shifted leftward by 4 percent at each price (assuming the self sufficiency ratio is 2.0).

Accordingly, the Board levy system is reducing NZ exports below that which a competitive domestic apple market would achieve. This reduces New Zealand's exports vis a vis her competitors (Chile, Argentina, Australia, South Africa, US, etc). The levy system of the Board does not enhance competitiveness internationally as critics sometimes claim marketing boards do.
In 1988, the Board then proposed to introduce a "Transferable Crop Certificate" (TCC) scheme with the ostensible purposes of providing existing growers with an asset which would give them "an identifiable interest in the Board", and to finance the expansion of the Board's facilities in the face of rapidly rising output. This scheme would replace the second tier levy. A grower was to be required to hold one TCC for each carton of fruit. Each TCC could be used again in subsequent years. Existing growers would be issued them free of charge, one for each carton of fruit produced on an average of past seasons' output. The TCC's could be sold and new growers would obtain their TCC's either on the open market or from the Board at a pre-announced price. The Board's argument was that by selling TCC's a retiring grower received a capital sum which was compensation for a portion of the Board's assets built up in the past from levies or otherwise lower payouts on the grower's fruit. Similarly, new growers purchasing TCC's would pay for the use of the facilities of the Board which their fruit would require and the Board if it was the seller would obtain a part of this finance to expand those facilities, principally coolstores. The Board had received legal advice (from Buddle Findlay) that the Apple and Pear Marketing Act permitted the operation of the TCC scheme.

6. THE CASE

Apple Fields Ltd, one of the large new corporate growers, brought an action in the High Court in 1989 against the Board and Fruit-Fed claiming that the TCC proposal was in breach of various sections of the Commerce Act. Dr Young, appearing for Apple Fields, used some strictly legal arguments but the main thrust of his case was based upon an economic analysis that the TCC's would substantially lessen competition, that they would be discriminatory against new growers in their application and that their introduction would be an abuse of a dominant position in the apple market by the Board and by Fruit-Fed. These issues are at the heart of the Commerce Act and Court's decision helps to define the interpretation of the act.

The Board argued that the market of relevance to the case was the market for all types of fruit in which it had little monopolistic power (Bollard, para 57). It was further claimed that in a functional sense, because of the legal restrictions of the Apple and Pear Marketing Act, there was no market for apples in New Zealand since the Board was the agent of the growers (Bollard, para 62). The Commerce Act Section 3 states that the market is to be defined "as a matter of commercial sense" and the Court agreed with Apple Fields that the wholesale market for apples was the appropriate market definition for the case.
The Apple and Pear Marketing Act gives the Board legal monopsony and monopoly powers. The question then is how far a Statutory Board may go in the use of that power? The Board approached this matter by claiming that the APMB Act prevented workable competition so that, by implication, the Board does not have to act in a competitive fashion, (Bollard, para 95).

Apple Field's attacked the TCC proposal by showing that in being forced to buy TCC's when existing firms did not, TCC's were a barrier to the entry of new firms to the market. They added to long run marginal costs of production since each carton of output had to meet the interest cost of a TCC so that the left shift in the supply curve constituted a restriction in supply. Though a firm could buy them on the open market, doing so would result in a vertical supply curve of apples. This is because an orchard would buy them on the open market when their market price was below their price from the Board. In that case no new TCCs would result so industry output would be constrained to the initial level of TCCs. In the case where the market price of TCCs was below the Board's selling price the TCCs would be a quota on the industry's production. It was also pointed out that TCCs would not add to the wealth of existing growers who did not have to pay for them. The reason for this is that the capital value of an orchard which does not pay for TCCs is fixed by the present value of the profit stream. So in selling an orchard the value of trees, the assets specific to orcharding, falls by the market value of the TCC's. Apple Fields argued that the TCC scheme was an attempt at uncompetitive rent seeking by the existing members of Fruit-Fed to allow them to benefit at the expense of new entrants to the industry.

The Board denied the validity of the above arguments at various points in Bollard's evidence. The High Court's decision was to strike down the TCC proposal as a violation of the Apple and Pear Marketing Act rather than of the Commerce Act. The reason was that it is not a part of the Board's function to create assets in the hands of growers (Holland, Judgement p28). The judgement found that the TCC proposal was a rent seeking device (Holland Judgement p42). The Judge went on, however, very specifically to say that the Apple and Pear Marketing Act is subject to the provisions of the Commerce Act (Holland, Judgement p41). In effect, the ruling means that the statutory producer boards are subject to the pro-competitive Commerce Act.

Apple Fields' contention that there was a restriction of supply failed (in the High Court) because the Commerce Act requires proof that, whatever the effects, the purpose of the arrangement is to restrict supply. It was found that the Board occupies a dominant position in the apple market but again the purpose behind its actions was not to restrict supply. (Holland, Judgement p42,43,44). Apple Fields were
awarded costs and damages against the Board. These decisions were not appealed by the Board.

"Purpose" was re-examined in the Court of Appeal. With respect to the second tier levies, the Board's position was that all output would not be charged the same price for storage in a competitive market mainly for the obscure reasons that storage is not a constant cost process nor a perfectly competitive industry. (Bollard, p39). Apple Field's argued that the 2TL was a barrier to entry and that it restricted supply. It was also claimed to be an uncompetitive and discriminatory charge on new output. In a competitive market all output would pay the same price for equivalent storage.

The High Court ruled that the 2TL was a breach of the Commerce Act but the Board took this aspect of the case to the Court of Appeal.

7. COURT OF APPEAL

Justice Cooke in the majority judgement from the Court of Appeal considered the matter of purpose. It will be recalled that it had not been shown to the High Court's satisfaction that the purpose was to restrict supply. Cooke noted that the High Court had concluded that

"... the Board's purpose was not to restrict entry or deter competitive conduct in the market, but to recover from those entering the market or increasing production a fair proportion of the capital costs created by such entry or increase." (Cooke, J. p8)

In a telling passage Justice Cooke wrote that entry deterrence and cost recovery and supply restriction were one and the same thing, viz;

"The difficulty, as I see it is, that those two ways of analyzing the Board's purpose are not really different. They are in contrast but alternative ways of saying the same thing. The Board had set out to ensure that newcomers would not be attracted to the industry partly by the prospect of establishment cost seen by the Board as unrealistically low. Similarly the Board thought that established growers would be less likely to make new plantings if faced with a levy."

(Cooke, J. p9)
"... I cannot avoid the conclusion that the arrangement for the levy between the Board and the Federation, however well motivated, has had the substantial purpose of deterring entry into the apple-growing industry of increasing production." (Cooke, J. p9)

It would seem, though it is not explicitly stated, that the Court of Appeal accepted the economic analysis advanced by Apple Fields. In any event, that Court determined that the actions of the Board were uncompetitive and in that sense a violation of some sections of the Commerce Act.

The minority Appeal Court judgement of Justice Richardson still has authority in lower courts. He made the point that "Public regulation is provided for because of dissatisfaction with market results. Those laws are part of the legal framework within which competition law is to operate." (Richardson p3). He quotes p128 from Areeda and Kaplow:

"The relation of regulatory policies to the antitrust laws will vary from industry to industry; the tighter the regulatory control, the less room there is for antitrust policy."

Justice Richardson repeated the view, which has not received objective verification,

"... that it is in the public interest to provide an orderly marketing system under the control of the Apple and Pear Marketing Board."

In essence Richardson (p4) argues that the APMB Act places the Board beyond the reach of the Commerce Act in many respects. For example, he (p8) concludes that the Board's price fixing authority is intended to allow the Board to use its monopsonistic power. Accordingly,

"Accountability is thus seen to exist not through the ordinary process of market competition and contestability for the sale and purchase of apples and pears in New Zealand, but through two means." (Richardson p8)

The first method is by the consultative process between Fruit-Fed and the Board which is enshrined in the extremely detailed legislation on consultation. The second is by the function of the Auditor General who audits the Board's accounts. The first constraint is problematic since the voting power in Fruit-Fed and the Board lies with existing growers. New entrants being small in number have negligible voting power. In any event they were seen by the High Court as being the target of rent seeking by existing growers. The second constraint is really a constraint on accounting
practices as the Auditor-General is not generally regarded to be competent in economic affairs which lie at the heart of this issue.

8. EXEMPTIONS FROM THE COMMERCE ACT

The Commerce Act contains exception clauses (Sections 43-45) which release certain activities from the application of the Act. Richardson cited an intention of the Australian Trade Practices Act, 1974 upon which "... the (New Zealand) Commerce Act 1986 was substantially based." (Richardson p16). The Australians had specifically exempted their producer boards from their Trade Practices Act. A 1980 New Zealand case involving the Wool Board had allowed an exclusive, and therefore uncompetitive, shipping arrangement that was explicit in the Wool Board's empowering act (ABC Container Line v New Zealand Wool Board [1980] 1 NZLR 372). In Richardson's view the legislators intended that the Producer Boards should come within the ambit of the exemptions clauses of Section 43 of the Commerce Act. The issue then for the whole Court became one of whether the uncompetitive levy system met the Section 43 criteria for exemption from the Commerce Act. This is an important point of antitrust law, viz which activities are to be outside the application of the Commerce Act?

"In all the circumstances it seems to me that we have to interpret and apply S43 of the New Zealand Act largely unaided in principle by prior cases." (Cooke, p15)

Exemptions from the Commerce Act can arise only from Acts of Parliament. If a statute grants what is called a specific authority to undertake some activity, that will be protected from attacks which use the Commerce Act. But a general authority in a statute is not so protected.

The legislation does have to be fairly precise for an activity to be sheltered by Section 43 of the Commerce Act.

"If the terms of the authorising enactment leave no doubt that anti-competitive measures were in contemplation, it will fall within the exception to the general regime of the Commerce Act intended to preserve competition."

(Cooke, p15)

Section 31 of the Apple and Pear Board Marketing Act, 1986 is as follows:

31. Levies. The Board, with the approval of the Fruitgrowers' Federation..., may impose on growers levies of such nature and incidence as the Board thinks fit.
The language of S31 is precise. It would seem that the coverage of S31 is very broad, allowing any and all types of levies, and that it is therefore a general provision and not of the specific type required to qualify for protection from the Commerce Act. For example, even a charge on a single grower could be allowed under S31. To put the point in another way, how could S31 be altered to expand the types of charges the Board may impose? No charge is excluded by S31 so it would seem to be a general provision for charges. The Board could apparently impose levies on the basis of area, number of employees or profits.

It was ruled by the Appeal Court that S31 is not a general provision, that it is specific and does specifically allow the Board to impose levies which discriminate between growers, in this case between new production and old. "Such a policy will inevitably or is highly likely to lessen competition." (Cooke p16) Nevertheless, the act establishing the producer board overrides the Commerce Act on this point though not in general. In the end the Court of Appeal preferred the laws of the land to the laws of economics.

What the Court of Appeal appears to have implicitly done is focus upon levies as charges related to production instead of interpreting "levy" as synonymous with "charge". The phrase "of such nature... as the Board thinks fit" in S31 allows charges of any description. S31 allows a general category of charges. The Court has therefore, in our opinion, erred in deciding that the section is specific when it should have concluded that it was general and therefore not sheltered from the Commerce Act.

9. REVISION OF THE MARKETING ACT

Justice Holland (p44) has called for a revision of the Apple and Pear Marketing Act requesting clarification of its relation to the Commerce Act. This is surely overdue given the changes in thinking about government regulation that have occurred. Other industries would find the degree of supervision exercised by the Apple and Pear Board costly. Perhaps one reason the level of intervention has been sustained for 41 years is because of the simplicity of the product. Less processing of apples occurs than of most commodities so that regulations, while costly, are less costly to conform to than they would be with more complex commodities. Consequently, the resistance to controls is greater in those other industries.

Justice Richardson, in his views summarised above stated that the aim of regulation is to serve the public interest. He did not discuss the rent seeking nature of regulation. Advances in the public interest, a slippery concept in itself, are not likely to occur when rent seekers are
developing the regulations. The High Court recognised rent seeking in its discussion of TCCs.

The question to be addressed here, if the act is to be revised, is "What commercial purpose does the Apple and Pear Board serve that the market could not do more cheaply?"

There is a received wisdom on the usefulness of the Board which has achieved acceptance in New Zealand more through reiteration of the view than by objective demonstrations of it.

The New Zealand apple crop is less than five percent of world trade in apples so the amount of long run world market power which the Board has is likely to be minimal. Other producer boards in New Zealand do not always have the compulsory acquisition rights, import and export monopolies and the other privileges enjoyed by the Board. The Dairy Board, does not have monopoly import rights for dairy products. One thing that the market might not do cheaply is to collect and disseminate information.

One transitional problem may emerge if the Board's privileges were to be withdrawn. There may be difficulties short term in establishing export outlets, storage, transport and shipping facilities. These difficulties should not be overstated because the existing providers of them would still have a profit incentive to continue doing so. The reorganised Board could for example continue its role in these areas with a basis in cost effectiveness rather than in legislative compulsion. Cheaper providers of the services would have the opportunity to establish themselves in competition with the Board whose activities would shrivel in an efficient way.

10. CER IMPLICATIONS

New Zealand has a common market agreement called CER with Australia. There are mutual tariff concessions (though not a common external tariff), complete factor mobility, some harmonisation of commercial law and the New Zealand Prime Minister has raised the possibility of a common currency. Rationalisation of industries has occurred within the common market and is continuing. These arrangements have developed over the past twenty years. They will cause difficulties for the apple marketing boards in each country in a number of respects. New Zealand agricultural industries operate with virtually no protection or direct assistance from the government. This is not the case in Australia. In dairy products the problem was resolved with a tacit agreement between the Dairy Boards in each country not to compete in each other's markets.

CER covers horticultural products and significant quantities of Australian fruit enters New Zealand, though no apples,
because apple imports are controlled by the New Zealand Board. This seems to be a direct violation of the CER agreements. The CER agreements appear to allow firms in each country to export freely to the other on their own account, i.e. not through producer boards where they exist. There thus appears to be another conflict between regulations which is further complicated in law since the Australian producer boards are exempt from Australian Trade Practice legislation while the New Zealand Boards are subject to the Commerce Act. CER could be seen as a breach of the monopolistic/monopsonistic power of the New Zealand Apple and Pear Marketing Board. An Australian firm, not necessarily in the apple industry could use the CER agreement, it would seem, to buy apples in New Zealand and sell them where it will. A New Zealand grower could own the Australian company and bypass the straight jacket of the New Zealand Apple and Pear Marketing Act whether it is revised or not.

11. SUMMARY AND FUTURE DEVELOPMENTS

It is clear that the second tier levy imposes cost distortions on the industry and social costs on the nation in the form of reduced supply and exports. This is true from an economic perspective in spite of the fact that it appears to be legal to differentially levy producers. Transferable crop certificates could have the same effect and certainly would not result in social or industry benefits.

This economic conclusion rests on two propositions. First that the long run elasticity of export demand for apples facing New Zealand is nearly infinite. Given New Zealand's world market share, the elasticity is highly likely to be of that order. If the elasticity is finite in the long run, then an export tax of some form might be optimal. However differential levies or TCC's are not a first best export tax and more efficient means are available to the Board to exploit such gains where they exist. The second proposition is that in a small country, the theory of the second best apart, a Paretian improvement in welfare would result from a competitive wholesale market for apples - one which does not discriminate between old and new growers. That is, when the marketing board does not use its monopsonistic market powers.

The storage financing issue might easily be overcome by the Board withdrawing from the ownership of new storage facilities or charging competitive storage prices in traditional areas. Storage could be left to the private sector. Growers in new or expanding regions could then be made responsible for financing new facilities directly or indirectly.
Why hasn't the Board chosen to withdraw from the storage business? One possible reason is that if new large corporate growers provided their own storage facilities, the "value" of the Board structure might be seen to be lessened in some way. Another way to view this is that perhaps the Board believes its support is derived from the ownership of storage assets as well as its control of standards, shipping and marketing. Such beliefs might be important as the economic union (ANZCERTA Agreement) between Australia and New Zealand develops. Increasingly it might be argued that Australasia is a common market and that Australia is not a foreign market for the legal interpretation of monopoly export powers.

The conflict over levies might be resolved if the APMB Act was amended to specify Board asset ownership directly to particular growers. However, this change might raise an additional set of legal and equity concerns. From a political point of view, how could the state justify relinquishing ownership of a State organisation to private individuals without going through a sale process? Furthermore, if the Board was to be converted to an essentially privately owned body, it might prove difficult to justify the continuance of the powers currently specified in the APMB Act itself. In short, a change of ownership might also require rescinding the APMB Act.

There are a wide range of speculative possibilities. Nevertheless, it is important to recognise that marketing boards have wide powers that potentially can be used to advance an industry or to retard it. The courts in New Zealand have ruled that general anti-trust legislation cannot always be used as a check on the implementation of such powers.
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