
20 November 2017**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in New Zealand****-- 2016 --****4-5 December 2017**

This report is submitted by New Zealand to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-6 December 2017.

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1. Introduction

1. The report addresses key competition developments concerning restrictive trade practices, business acquisitions and mergers, as well as developments in sector-specific regulation in the past year. This includes comments on the relevant activities and resourcing of the New Zealand Commerce Commission (NZCC).

2. The NZCC is New Zealand's primary competition enforcement and regulatory authority.¹ Its purpose is to achieve the best possible outcomes in competitive and regulated markets for the long-term benefit of New Zealanders. The NZCC is responsible for enforcing the following Acts:

- the Commerce Act 1986;
- the Fair Trading Act 1986;
- the Credit Contracts and Consumer Finance Act 2003;
- the Telecommunications Act 2001; and
- the Dairy Industry Restructuring Act 2001.

3. The Fair Trading Act 1986 and Credit Contracts and Consumer Finance Act 2003 are consumer laws, and will not be discussed in this report.

4. This report also presents the key competition law and policy developments in New Zealand for the year ended 30 June 2017 and, where appropriate, significant developments since then.

5. New Zealand's main competition legislation is the Commerce Act 1986. The Act prohibits conduct that restricts competition. It also prohibits the acquisition of assets or shares of a business if the acquisition leads to a substantial lessening of competition in a market. This legislation is enforced by the NZCC.

6. A significant legislative amendment to competition law was enacted in the past year. The Commerce (Cartels and Other Matters) Amendment Act was officially passed into law in August 2017, which will provide greater certainty for firms to collaborate and compete.

7. Several other competition-related Bills have also been introduced to Parliament:

- the Dairy Industry Restructuring Act Amendment Bill was introduced in March 2017;
- the Telecommunications (New Regulatory Framework) Amendment Bill was introduced in August 2017.

8. Several reviews related to the Commerce Act were completed in the past year, and proposals for change were recommended by the previous New Zealand government. These include:

- the targeted review of the Commerce Act; and
- the review of the effectiveness of the economic regulation regime for major airports.

9. The above proposals will be subject to the new government's priorities for the Commerce and Consumer Affairs portfolio.

10. Finally, the report outlines the key findings of an MBIE study into fuel market financial performance, the NZCC's Consumer Issues 2016/17 report, and a telecommunications pass-through study.

¹ The NZCC's website address is: <http://www.comcom.govt.nz/>

1.1. Competition law

11. With respect to competition law, the purpose of the Commerce Act is to promote competition in markets for the long-term benefit of consumers within New Zealand. The Act prohibits conduct that restricts competition (restrictive trade practices). It also prohibits the acquisition of assets of a business or shares if the acquisition leads to a substantial lessening of competition in a market.

12. Restrictive trade practices include anticompetitive co-ordinated behaviour and unilateral conduct. Co-ordinated behaviour refers to contracts, arrangements, or understandings that have the purpose, or have or are likely to have the effect, of substantially lessening competition in a market. Such agreements may relate to price fixing, restricting outputs, and allocating customers, suppliers or territories. Unilateral conduct includes a person or business taking advantage of their substantial degree of power in a market for an anticompetitive purpose, or specifying a minimum price at which their goods or services can be sold by another (resale price maintenance). The NZCC is responsible for enforcing the provisions of the Commerce Act relating to restrictive trade practices.

13. In addition to its enforcement functions, the NZCC has some quasi-judicial functions under the Commerce Act. It can approve a business acquisition or merger that does not substantially lessen competition (known as a clearance). It can also authorise a business acquisition that is anticompetitive, or a restrictive trade practice that involves an agreement, but which would ultimately benefit the New Zealand economy (using a public benefit test). The effect of clearance and authorisation determinations by the NZCC is to offer businesses protection from legal action under the Commerce Act.

1.2. Sectoral regulation

14. In addition to economy-wide competition law, the NZCC is also responsible for implementing several pieces of legislation aimed at regulating specified sector-specific services supplied in markets where competition is either not possible or limited:

- Under Part 4 of the Commerce Act, the NZCC is responsible for regulating specified businesses with natural monopoly characteristics. It currently regulates electricity lines businesses, gas pipeline services, and specified airport services supplied at the three major international airports located in the cities of Auckland, Wellington and Christchurch.
- The Telecommunications Act 2001 primarily regulates access to specified telecommunications services in New Zealand. The Act is administered by the NZCC under the stewardship of a Telecommunications Commissioner, a statutory position under the Telecommunications Act.
- Finally, the Dairy Industry Restructuring Act 2001 provides for the regulation of New Zealand's largest dairy company, Fonterra Co-operative Group, to mitigate its market power in certain domestic dairy markets.

15. The majority of this report focusses primarily on competition law. However, key developments in sectoral regulation will be discussed briefly.

1.3. Institutional design

16. The NZCC is an independent government entity. Whilst it is primarily accountable to the Minister of Commerce and Consumer Affairs for its performance and outputs, it is not subject to direction from the government in carrying out its enforcement, adjudication and regulatory control activities. The NZCC is, however, required to have regard to statements of government economic policy communicated by Ministers under

the Commerce Act or the Telecommunications Act. The NZCC's independence requires it to be an impartial promoter and enforcer of the law.

17. The role of providing government with policy advice on competition matters belongs generally to the New Zealand Ministry of Business, Innovation and Employment (MBIE). The demarcation of roles between the NZCC and the Ministry ensures a clear separation and independence between the operational and policy functions respectively within New Zealand's competition regime. That being said, whilst the primary role of the NZCC is an operational one, where relevant, the NZCC uses its experience to provide advice on policy developments and sectoral and legislative reviews, with particular focus on the operational aspects of a regime.

18. Internationally, the NZCC is actively involved with its counterpart agencies through fora such as the Organisation for Economic Co-operation and Development (OECD) and the International Competition Network. The NZCC has co-operation agreements with Australian Competition and Consumer Commission (ACCC), the Canadian Competition Bureau, and the Taiwan Fair Trade Commission. In addition, the NZCC's relationship with the ACCC is strengthened through Commissioner cross-appointments.

2. Changes to competition laws and policies, proposed or adopted

2.1. Summary of new legal provisions of competition law and related legislation

19. There have been several substantive legal provisions relating to competition law introduced or enacted in the 2016/17 year.

20. The Commerce (Cartels and Other Matters) Amendment Act was passed by the New Zealand Parliament and came into force on 14 August 2017. The key amendments are described in the next section below.

21. There have also been several substantive changes that were recommended by the previous government in the 2016/17 year. These proposals are subject to the priorities of the new government, which commenced on 26 October 2017. See below for details of proposed legislation.

22. *Targeted review of the Commerce Act 1986* – the previous government announced policy decisions on this review in June 2017. These included a significant new power for the Commerce Commission to undertake market studies. Other proposed changes include repealing the cease-and-desist regime, and establishing an enforceable undertakings regime. MBIE will continue to look at the misuse of market power prohibition ("section 36") and report back to the Minister in early 2018.

23. *Review of the effectiveness of the regulatory regime for major airports* – the previous Cabinet made recommendations in June 2017 to amend the Commerce Act to ensure the regulatory regime for airports continues to operate effectively in the future. This was in response to a review begun by MBIE in 2014 on the effectiveness of the information disclosure regime for major international airports. MBIE undertook two rounds of targeted consultation in 2014 and 2016, and provided final policy advice in early 2017.

2.2. New competition law provisions and guidelines

2.2.1. Commerce (Cartels and Other Matters) Amendment Act

24. The Commerce (Cartels and Other Matters) Amendment Act came into force after receiving its royal assent on 14 August 2017. This amends the Commerce Act to allow

pro-competitive collaboration between firms, while deterring hard-core cartel conduct, and clarifies the scope of the prohibition against cartels. Other key changes include retargeting the extraterritorial jurisdiction provisions and transitioning the competition regime for shipping into the Commerce Act. These key amendments are set out below.

25. The NZCC is in the process of updating the Competitor Collaboration Guidelines following the passage of the Commerce (Cartels and Other Matters) Amendment Act. The updated guidelines will be published online in due course.

26. This Amendment Act redefines the prohibition against cartels to include three out of the four forms of cartel behaviour as defined by the OECD: price fixing, output restriction, and market allocation. Cartel conduct was previously prohibited under section 30 of the Commerce Act only to the extent that a provision had the purpose, effect or likely effect of fixing, controlling or maintaining the price of goods or services. The definition of cartel conduct in the Amendment Act makes it clear that contracts, arrangements and understandings that contain, or give effect to, any of the specified forms of cartel conduct are prohibited.

27. As a counterbalance to this more inclusive definition of cartel conduct, the Amendment Act recognises that collaboration between firms can also increase productivity and growth. It introduces two new exceptions: a collaborative activity exception (which replaces the previous joint venture exemption) and an exception for vertical supply contracts.

28. This has redefined the collaborative activity exception to focus on the substance of the arrangement and not its form. The purpose of these exceptions is to ensure that legitimate procompetitive collaborations that are efficiency-enhancing are not prohibited.

29. The Amendment Act introduces a voluntary clearance regime to enable firms to approach the NZCC for a ruling on whether a proposed arrangement entered into by parties involved in a collaborative activity would raise competition concerns. If the relevant arrangement contains a cartel provision that is not “reasonably necessary” for the collaborative activity, then the NZCC may decline the clearance application without having to assess if the arrangement would substantially lessen competition.

30. The Amendment Act also clarifies jurisdiction of the Commerce Act in relation to overseas mergers and better provides for enforcement of remedies against the New Zealand subsidiary of an overseas company. If an overseas person acquires a controlling interest in that New Zealand business via an overseas acquisition, the NZCC may seek a declaration from the High Court that the acquisition is likely to substantially lessen competition in a market in New Zealand. In such a case the court may make orders enforceable against the New Zealand business, including divestment.

31. The Amendment Act also transitions the competition regime for international shipping from the Shipping Act 1987 into the Commerce Act. In addition, it includes a new targeted exception for specified international liner shipping activities, such as vessel sharing and co-ordination of sailing timetables. The exception should reduce the compliance costs for ocean carriers by providing greater certainty, but continue to provide protection against anticompetitive conduct. It will come into effect after a two-year transitional period.

32. The Amendment Act initially proposed to introduce criminal sanctions for hard-core cartel offences. In December 2015, the previous government removed the criminal offence for cartels from the Bill. MBIE was directed to monitor domestic and international developments to better assess the potential effects of cartel criminalisation and whether such an offence should be adopted in New Zealand.

2.3. Government proposals for new legislation

33. On 26 October 2017, the new government was appointed by the Governor-General of New Zealand. The proposals below that have been recommended by the previous government are therefore subject to the decisions of the new government.

2.3.1. Review of the misuse of market power prohibition and related matters

34. On 27 June 2017, the previous Minister of Commerce and Consumer Affairs announced that the government was recommending changes to the Commerce Act to better promote competition in New Zealand.

35. This follows the Targeted Review of the Commerce Act by MBIE, which began in 2015.

36. The previous government's recommendations were to:

- Empower the Commerce Commission to undertake in-depth market studies following transmission of a market reference from the Minister of Commerce and Consumer Affairs;
- Repeal the cease-and-desist regime;
- Establish an enforceable undertakings regime; and
- Invite the Minister of Commerce and Consumer Affairs to report back by 30 June 2018 before making final decisions on whether to proceed to a section 36 options paper.

37. These recommendations have yet to be considered by the new government.

Market studies

38. The previous government recommended that before initiating a market study, the Minister must have reason to believe that a study is likely to be in the public interest, or in the long-term interests of consumers.

39. The previous government has also recommended providing the Commerce Commission an additional \$1.5 million in each financial year to fund the market studies power.

40. Consultation on an exposure draft of the Commerce Amendment Bill is expected to take place once a draft Bill has been prepared and released for public consultation, subject to the new government's decisions.

Alternative enforcement mechanisms

41. The other proposed changes are repealing the rarely-used cease-and-desist regime, and allowing settlements with the NZCC to be registered as enforceable undertakings. This will give the NZCC the ability to seek remedies from the court if a settlement agreement is breached.

Prohibition on misuse of market power

42. While the consultation process has demonstrated that the prohibition on misuse of market power (section 36 of the Commerce Act) does not work perfectly for some types of conduct, the government considers it is not yet clear whether an alternative test would benefit competition or consumers.

43. MBIE will continue to look into this, and subject to the new government's priorities, will report back to the Minister with recommendations on whether to proceed with an options paper on section 36 by mid-2018.

2.3.2. Airports sector

44. The three major international airports in New Zealand (Auckland, Christchurch and Wellington) are regulated by the information disclosure regime under Part 4 of the Commerce Act.

45. This means the airports must disclose financial information annually and at price-setting events every five years. The NZCC then reports publicly on this information in “summary and analysis” reports.

46. In 2014, MBIE began a review looking at how well the airports regime under Part 4 was working. This followed a long history of debate over whether airports should be regulated by the light-handed information disclosure regime or the more heavy-handed negotiate/arbitrate regime.

47. Following consultation, it was found that the regime was largely working well to date, and there was no need to change the type of regulation that applied. However MBIE considered there could be improvements to ensure the information disclosure regime could remain fit for purpose in the future and strengthen the threat of further regulation if airports are not promoting the long-term interests of consumers.

48. In June 2017, the previous government considered the outcomes of the review and proposals to strengthen the regulatory regime for airports. These proposals may form part of the Commerce Amendment Bill 2017, subject to the new government’s priorities.

2.3.3. Dairy sector

49. The Dairy Industry Restructuring Act 2001 (DIRA) provided for the formation of the dairy co-operative Fonterra. This entity amalgamated New Zealand’s two largest dairy co-operatives and the New Zealand Dairy Board. Upon its creation, Fonterra collected 96 per cent of New Zealand’s milk production. In recognition of Fonterra’s dominant market position, the DIRA set up a unique regulatory regime with the purpose of promoting the efficient operation of New Zealand dairy markets.

50. The DIRA is administered by the Ministry of Primary Industries (MPI) and the NZCC has both an enforcement and adjudication role under the Act.

51. Fonterra is still subject to the provisions of the Commerce Act prohibiting restrictive trade practices, but the DIRA is designed as an ex-ante regime that regulates the activities of Fonterra to ensure that New Zealand markets for dairy goods and services are contestable.

52. The DIRA promotes contestability in the market for farmers’ milk by requiring an “open entry and exit regime”. This means that, subject to a limited number of exceptions, Fonterra must accept all applications by dairy farmers in New Zealand to become shareholding farmers and accept all milk supply offers from such farmers. Fonterra must also allow relatively costless exit from the co-operative. The DIRA also provides for a farm gate milk price monitoring regime to be undertaken by the NZCC and the ability for independent processors to access regulated volumes of raw milk at the ‘factory gate’.

53. The DIRA requires that when independent processors’ market share of milk collected at the farm gate exceeds 20 per cent in either the North or South Island, a report into the state of competition must be conducted. That threshold was met in the 2014/15 season. On 1 March 2016 the NZCC released its report on the state of competition in the New Zealand dairy industry. The report found that, on balance, there was not yet sufficient competition to warrant full deregulation, but recommended a staged approach to deregulation.

54. Following consultation, in October 2016, the Government decided on a package of changes which would retain the regulatory regime, determine the timing of the next review, and smooth the pathway towards future deregulation.

55. On 16 March 2017, the Minister for Primary Industries introduced the Dairy Industry Restructuring Amendment Bill 2017 to Parliament. The main changes will:

- Retain the DIRA regime for the time being, by preventing it from expiring;
- Require a review of the need for the DIRA legislation during 2020/21; and
- Allow Fonterra the discretion to accept or decline applications to become shareholders from new dairy conversions from 2018/19.

2.3.4. Telecommunications sector

56. The Telecommunications Act 2001 created an industry-specific regulatory regime for telecommunications, overseen by the Telecommunications Commissioner within the NZCC.

57. The Act provides that the NZCC can set comprehensive terms and conditions for access to regulated wholesale telecommunications services, such as interconnection, unbundled local loop services, unbundled bitstream services and mobile termination. The NZCC can also investigate and recommend to the Minister for Communications that wholesale telecommunications services be regulated. If the recommendation is accepted by the Minister, the service can then be added to the schedule of regulated services under the Telecommunications Act. The NZCC also produces regular reports on developments in competition in telecommunications markets under its general monitoring powers.

58. The previous government has completed a review of the Telecommunications Act². The Telecommunications (New Regulatory Framework) Amendment Bill was introduced to Parliament in August 2017. These changes are intended to ensure the regulatory settings continue to be fit-for-purpose. This Bill establishes a new regulatory framework that will:

- introduce 'building blocks' economic regulation for Ultra-Fast Broadband (UFB) fibre;
- remove regulation of copper lines where fibre is available;
- streamline regulatory processes to enable a rapid response to any competition problems, particularly in the mobile communications market; and
- include measures that will improve the quality of service for consumers by increasing regulatory oversight.

59. The Bill also introduces new regulatory arrangements to support consumer service quality across the sector and improve responsiveness to consumer needs. These arrangements enable the Commission:

- to collect information and report on the quality of retail service delivery in a way that is accessible to consumers;
- to establish regulatory codes to improve retail service quality, if industry self-regulation is inadequate; and
- to undertake periodic reviews of industry-led dispute resolution schemes.

60. The NZCC has also stated in its *Priorities for 2017/18* that retail telecommunications will be a priority focus area, given the potential impact of the sector, and the high level of complaints from consumers generated by the sector. The proposed changes to the Telecommunications Act are expected to give the NZCC greater powers to assist in addressing these issues.

² Further information is available here: <http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector>.

3. Enforcement of competition laws and policies

3.1. Anticompetitive practices

3.1.1. Summary of activities

61. **Table 1** shows the number of cases investigated by the NZCC in relation to anti-competitive practices in the three years ended 30 June 2015, 2016, and 2017.

Table 1. NZCC investigations of anti-competitive practices

	2016/17	2015/16	2014/15
Number of co-ordinated behaviour cases	6	7	8
Number of unilateral conduct cases	1	1	3

3.1.2. Significant cases

Real estate agencies in court for price fixing

62. Last year the NZCC filed proceedings against 13 national and regional real estate agencies relating to price fixing and anti-competitive agreements. The agencies agreed to all pass on the cost of listing on Trade Me to vendors in response to Trade Me changing its fees for listing properties for sale.

63. There are three separate groups of cases relating to different companies and individuals – National, Hamilton and Manawatu. In the National case fines against the head offices of Barfoot & Thompson, Harcourts, LJ Hooker, Ray White and Bayleys totalled more than \$12 million. In the Manawatu case the four defendants were collectively fined \$4 million. Some of the defendants in the Hamilton case elected to go to trial, which took place in September 2017. In November 2017, the Judge dismissed the case. The Commission is considering appealing the decision.

Livestock companies fined over \$3 million for price fixing

64. In October 2017 the last of the Livestock cases was concluded. A settlement was reached with Elders Rural Holdings Limited in a price fixing case arising from the livestock industry's response to the introduction of the National Animal Identification and Tracing Act 2012. Although Elders Rural Holdings Limited ceased trading in 2014, its parent company Elders Limited has agreed to pay \$200,000 towards the NZCC's investigation costs. The settlement reflects the fact that Elders Rural Holdings Limited is no longer trading.

65. In 2012 the NZCC launched an investigation into livestock price fixing after receiving a complaint from a Northland farmer. In December 2015, PGG Wrightson and Rural Livestock were fined \$2.7 million and \$475,000 respectively after admitting their conduct in this case. In December 2016 four current or former employees of PGG Wrightson and one former employee of Elders Rural Holdings Limited were order to pay penalties totalling \$105,000 for their roles in the price fixing agreements. They also each paid \$5,000 towards the NZCC's investigation costs.

3.2. Mergers and acquisitions

3.2.1. Statistics

66. Merger and authorisation work is a key part of the NZCC's competition law activity. This work is demand driven and as a result there can be peaks in merger cases from time to time. The merger work is prioritised as it has the potential to have a

significant impact on markets and the New Zealand economy. The NZCC decided 6 merger clearance applications and 1 merger authorisation during the year, and also initiated a number of section 47 investigations into merger activity which was not notified for clearance. The workload in this area was significant due to the complexity of applications received, in particular – Sky Network Television Limited and Vodafone Europe B.V and NZME Limited and Fairfax.

Table 2. Merger clearance and authorisation applications

	2016/17	2015/16	2014/15
Number of clearance applications processed	6	12	14
Number of authorisation applications processed	1	1	1
Number of market structure cases investigated	1	1	2

67. **Table 3** sets out the merger and acquisitions applications decided by the NZCC in the year ended 30 June 2017 and their outcomes.

Table 3. Outcome of merger applications

Application	Resolution
Sky Network Television Limited and Vodafone Europe B.V.	Declined
NZME Limited and Fairfax Limited	Declined (under appeal)
Wallace Group and Wallace Corporation Limited, Farm Brands	Cleared
Boehringer Ingelheim International and Merial (Sanofi SA)	Cleared
Aon New Zealand and Fire Protection Inspection Services Limited	Declined
Spark New Zealand Trading Limited and TeamTalk Limited	Withdrawn
Fletcher Building Holdings New Zealand Limited and Higgins Group Holdings Limited	Cleared

3.2.2. Significant cases

68. Over the last year there have been a number of major complex merger cases. These cases, in particular Vodafone/Sky and NZME/Fairfax, have been amongst the most challenging the NZCC has ever had. The applications were both declined. NZME and Fairfax have appealed the decision, and the case is currently before the High Court.

Appeal of wool scouring authorisation

69. In 2015, the NZCC authorised Cavalier Wool Holdings Limited to acquire New Zealand Wool Services International Limited's wool-scouring business and assets. The NZCC found that Cavalier's acquisition of New Zealand Wool Services was likely to substantially lessen competition, but that it was likely to result in such a benefit to the public that it should be permitted. This was because the rationalisation of the wool scouring industry was likely to lead to lower administration and production costs, the freeing up of industrial sites, and lower ongoing capital expenditure requirements. Godfrey Hirst appealed the decision to the Court of Appeal after their appeal to the High Court was unsuccessful. In November 2016, the Court of Appeal dismissed their appeal upholding our decision to authorise the merger.

70. Authorisation applications follow a two-step process. The NZCC must first assess whether the merger would be likely to substantially lessen competition in a market. If the NZCC is satisfied that it will not, then the merger can be cleared at the first step. If the NZCC is not satisfied, then the second step is to determine whether the merger should be authorised applying the public benefit test. The merger must be authorised if the NZCC is satisfied that the merger will result in such a benefit to the public that it should be permitted.

Vodafone and Sky Television

71. In June 2016, the NZCC received applications from Vodafone and Sky proposing acquisitions that would have resulted in Vodafone Group directly or indirectly owning 51% of the shares in Sky, which in turn would own 100% of Vodafone NZ. The applications were considered together and in February 2017, the NZCC declined to grant clearance for the proposed mergers, as it was not possible to exclude the real chance that the merger would substantially lessen competition.

72. The proposed merger would have created a vertically integrated pay-TV and full service telecommunications provider in New Zealand owning the rights to all premium sports content. Around half of all households in New Zealand have Sky TV and a large number of those are Sky Sport customers. The Commission was concerned that the merged entity would be in a position to leverage its control over premium live sports content to foreclose competition in telecommunications markets. The merged entity would have been able to bundle its pay TV and telecommunications services in a way that rivals could not match at a critical time during the UFB roll out, when many consumers were likely to be open to switching service providers. The consequent loss of scale for key third players in the supply of fixed and mobile telecommunications, such as Vocus and 2degrees, could undermine their ability to provide an effective competitive constraint on the merged entity, and consumers would be less likely to switch back to those rivals once on bundles with the merged entity and following the UFB rollout window.

73. In March 2017, Sky and Vodafone filed an appeal with the High Court. This appeal was withdrawn in June and the merger agreement terminated.

3.2.3. NZME and Fairfax

74. In May 2016, NZME and Fairfax sought authorisation to merge their respective New Zealand media operations.

75. The NZCC's final decision was issued in May 2017 and declined to grant authorisation. In the NZCC's view the merger would be likely to substantially lessen competition in advertising and reader markets – specifically Sunday newspapers, online news and community newspapers in 10 regions. In looking at the second step of the authorisation process, the NZCC was not satisfied the benefits to New Zealanders outweighed the detriments. The merger would have created extremely concentrated media ownership and influence as well as providing the scope to control a large share of the news consumed by the majority of New Zealanders. This level of influence by a single media organisation creates a risk of causing harm to New Zealand's democracy and to the public. There was also a concern that this merger would be likely to reduce both the quality of news produced and the diversity of voices (plurality) available for New Zealanders to consume.

76. NZME and Fairfax have appealed the decision, and this case was still before the High Court at the time of writing.

4. The role of competition authorities in formulating and implementing other policies

77. As discussed above, the NZCC is an independent government entity responsible for enforcing a range of legislation. To ensure an appropriate separation of policy and operational functions, the competition regime in New Zealand operates on the basis that responsibility for advising government on policy development issues is assigned to MBIE. However, the NZCC may provide advice on, or information relevant to, policy developments or legislative change when it has relevant expertise or it considers the situation warrants public comment.

5. Resources of the NZCC

5.1. Human resources

78. The NZCC's personnel have a wide range of skills and experience to ensure the organisation's effective functioning. This includes people with backgrounds in economics, finance, engineering, business and law, and with a mix of both private and public sector experience. As at 30 June 2017, the NZCC employed 86.65 full-time equivalent (FTE)³ staff in its Competition Branch. This compares with 88.11 FTE staff employed as at 30 June 2016.

79. The Competition Branch deals with both competition (Commerce Act) and consumer (Fair Trading Act and Credit Contracts and Consumer Finance Act) law issues. All staff employed in the Competition Branch can potentially work on either competition or consumer issues. However, personnel are generally divided into teams according to areas of specialisation. **Table 4** shows the numbers of FTE staff in the relevant teams.

Table 4. Numbers of Competition Branch FTE employees

Support staff	10.68
Investigators	49.76
Lawyers	16.21
Economists	5
Advocacy	5.60
Total	86.65

Note: Table 4 shows the number of staff in the Competition Branch only, and does not include the regulation and organisational performance branches. It also includes staff working on consumer protection issues.

80. **Table 5** shows the human resources applied to enforcement activities against anticompetitive practices, merger reviews and enforcement and advocacy efforts.

Table 5. Human resources applied to competition enforcement

Anticompetitive practices	8
Merger review and enforcement	10
Advocacy efforts	2
Lawyers	8
Economists	5

5.2. NZCC Annual budget

81. Table 6 shows the NZCC's annual budget for both general markets (which covers its competition enforcement activities) and for the organisation as a whole.

³ An FTE employee is equivalent to one employee working full time for a full year. There are likely to be fewer FTEs than actual people employed since some employees are hired on a part-time basis.

Table 6. NZCC Annual budget

General Markets		
2016/17	2015/16	Change
\$18.49 million NZD	\$14.99 million NZD	\$3.5 million NZD
\$12.84 million USD	\$10.86 million USD	\$1.98 million USD
Commerce Commission Overall		
2016/17	2015/16	Change
\$45.85 million NZD	\$43.74 million NZD	\$2.11 million NZD
\$31.84 million USD8	\$31.68 million USD8	\$0.16 million USD

6. New reports and studies on competition policy issues

6.1. Consumer Issues 2016/17 report

82. The Consumer Issues 2016/17 report provides participants in New Zealand's consumer environment and members of the public with insight into issues presently facing consumers and markets relevant to the legislation the Commerce Commission enforces. This report is based on analysis of information from a wide range of sources, including the NZCC's own data as well as information from other government and community agencies.

83. Section 3 of the report focuses on competitive markets, which provides an overview of Commerce Act complaints to the NZCC, as well as patterns and trends observed in merger clearances and authorisations, and investigations and compliance.

84. The report found that the sectors generating the most complaints were: utilities and infrastructure, followed by construction and property, and then retail. Overall 230 Commerce Act complaints were received in 2016/17.

85. While the number of merger clearance applications has decreased, the complexity of these applications has increased; the number of investigations the NZCC has undertaken relating to non-notified mergers and the number of authorisation applications have also increased.

6.2. Fuel market financial performance study

86. In June 2017, MBIE concluded a three-month study into the financial performance of the retail fuel market. A group of external consultants carried out the study on MBIE's behalf. The study was undertaken following concern that a trend of steadily increasing importer petrol and diesel margins since 2008 may indicate that retail customers in New Zealand are not paying reasonable prices for petrol and diesel. The study was also prompted by the emergence of significant variations in price between different regions.

87. The study found that there are outcomes in the industry that may not be consistent with a workably competitive market:

- Gross retail margins had increased significantly in the last five years.
- Retail gross margins in the South Island and Wellington have increased at a faster rate than margins in the rest of the North Island.

88. The study also made a number of recommendations for further action. The main recommendation is that the government should carry out further inquiry into parts of the market that may be helping margins rise, but could not be examined in the study; and the

reasonableness of prices, using data that companies should be able to provide on a consistent basis.

6.3. Telecommunications wholesale pass-through study

89. This study, published in June 2017, was undertaken by the Commerce Commission to understand how retailers of telecommunications services have passed through price changes in regulated wholesale copper prices to retail prices charged to residential consumers purchasing fixed-line services.

90. The study looked at a sample of approximately 80,000 residential consumer bills between March 2012 and June 2016.

91. Overall, the study provided evidence that residential consumers of copper broadband services are benefiting from the pass-through of a reduction in regulated wholesale copper prices as a result of the NZCC's copper pricing decisions.