

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in New Zealand****-- 2017 --****27-28 November 2018**

This report is submitted by New Zealand to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 27-28 November 2018.

JT03439241

Table of contents

1. Executive Summary	3
2. Introduction	3
2.1. Competition law	4
2.2. Sectoral regulation	4
2.3. Institutional design	5
3. Changes to competition laws and policies, proposed or adopted	6
3.1. New competition law provisions and guidelines	6
3.2. Proposals for new legislation	7
3.3. Other policy reviews	10
4. Enforcement of competition laws and policies.....	11
4.1. Anticompetitive practices	11
5. Mergers and acquisitions	12
5.1. Statistics	12
5.2. Significant cases	12
6. The role of competition authorities in formulating and implementing other policies.....	13
7. Resources of the NZCC.....	14
7.1. Human resources.....	14
7.2. NZCC Annual budget	15
8. New reports and studies on competition policy issues.....	15
8.1. Electricity Price Review – first report.....	15

Tables

Table 1. NZCC investigations of anticompetitive practices	11
Table 2. Merger clearance and authorisation applications	12
Table 3. Outcome of merger applications	12
Table 4. Numbers of Competition and Consumer Branch FTE employees	14
Table 5. Human resources applied to competition enforcement	14
Table 6. NZCC Annual budget.....	15

1. Executive Summary

1. This report presents the key competition law and policy developments in New Zealand for the year ended 30 June 2018 and, where appropriate, significant developments since then.
2. The report relates primarily to activities concerning two areas of the Commerce Act 1986, New Zealand's competition legislation:
 - Restrictive trade practices (that is, coordinated behaviour involving anticompetitive agreements and conduct involving the unilateral misuse of market power); and
 - Business acquisitions and mergers.
3. The report also includes brief comments on developments affecting the sector-specific competition or regulatory regimes for the dairy, airports and telecommunications sectors.
4. **Section 1** of this report is an introduction to New Zealand's competition legislation and its enforcement by the New Zealand Commerce Commission (NZCC).
5. **Section 2** provides an update on various government reviews of competition policy and legislation. During the reporting period, the Commerce (Cartels and Other Matters) Amendment Act 2017 and the Electronic Interactions Reform Act 2017, which includes amendments to the Commerce Act, were enacted. The government introduced two new amendment bills to Parliament relating to criminalising cartels and empowering the NZCC to undertake market studies and accept enforceable undertakings in relation to enforcement matters. The review of the misuse of market power prohibition and related matters is progressing, and there have been various developments in the airports, dairy and telecommunications sectors.
6. The next three sections of the report concentrate, for the reporting period, on: the NZCC's key activities (**Section 3**); its role in the formulation of competition-related policies (**Section 4**); and the NZCC's resourcing (**Section 5**).
7. The NZCC made determinations in a number of high profile merger cases, such as in the insurance sector and relating to the motor vehicle dealer management software sector. Its merger work has also been in the courts, with the NZCC taking enforcement action for an alleged anticompetitive merger and being a party to appeal from its determination to decline authorisation of a major media merger it considered was likely to harm plurality. The NZCC's cartel enforcement work includes a case before the courts which will test the law relating to price fixing.
8. **Section 6** outlines the release of a report looking into electricity pricing.

2. Introduction

9. 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:

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

- 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.
10. The Fair Trading Act 1986 and Credit Contracts and Consumer Finance Act 2003 are consumer laws, and will not be discussed in this report.
11. New Zealand's main competition legislation is the Commerce Act 1986.

2.1. Competition law

12. 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 or would be likely to lead to a substantial lessening of competition in a market.

13. Restrictive trade practices include anticompetitive coordinated behaviour and unilateral conduct. Coordinated 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. Agreements that relate to price fixing, restricting outputs, and allocating customers, suppliers or territories are deemed to substantially lessen competition. 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.

14. 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). NZCC also have a clearance regime for collaborative activities. A collaborative activity is defined as two or more people carrying on an enterprise, venture or other activity in trade in cooperation and not be doing so for the dominant purpose of lessening competition between them. It can also authorise a business acquisition that is anticompetitive, or a restrictive trade practice that involves an agreement, but which would ultimately benefit New Zealand consumers. The effect of clearance and authorisation determinations by the NZCC is to offer businesses protection from legal action under the Commerce Act.

2.2. Sectoral regulation

15. 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 created an industry-specific regulatory regime for specified telecommunications services. The Act is administered by the NZCC under the stewardship of a Telecommunications Commissioner, a statutory position under the Telecommunications Act. The Act currently provides that the NZCC can set comprehensive terms and conditions for access to regulated wholesale telecommunications services. The NZCC can also investigate and recommend to the Minister for Communications that wholesale telecommunications services be regulated.
- Finally, the Dairy Industry Restructuring Act 2001 provides for the regulation of New Zealand's largest dairy company, Fonterra Cooperative Group, to mitigate its market power in certain domestic dairy markets. 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.

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

2.3. Institutional design

17. 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. In New Zealand, the general courts are responsible for determining contraventions of competition law and imposing sanctions. The courts also determine appeals from NZCC determinations.

18. 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.

19. 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 cooperation agreements with the 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.

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

20. There have been several substantive legal provisions relating to competition law introduced or enacted in the 2017/18 year.

21. The current government commenced on 26 October 2017, and has an ambitious programme of competition law reform. This includes the criminalisation of cartel conduct, introduction of a market studies power, and a review of the misuse of market power prohibition.

3.1. New competition law provisions and guidelines

3.1.1. Commerce (Cartels and Other Matters) Amendment Act 2017

22. The Commerce (Cartels and Other Matters) Amendment Act was passed by the New Zealand Parliament and largely came into force on 14 August 2017. The transitional period for arrangements entered into before the Act commenced ended on 15 May 2018. This was the previous government's legislation and does not include criminalisation of cartel conduct.

23. It 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. It also introduces new provisions enabling businesses to apply to the NZCC for clearance for collaborative activity arrangements.

24. Other key changes include retargeting the extraterritorial jurisdiction provisions and transitioning the competition regime for shipping into the Commerce Act. These amendments were set out in more detail in New Zealand's 2016-17 annual report.

3.1.2. Competitor Collaboration Guidelines

25. In January 2018, the NZCC published Competitor Collaboration guidelines to provide an overview of its proposed approach to these new provisions. The Guidelines are not law and not intended to be legally binding.

26. The purpose of the Guidelines is to explain: the cartel prohibition and the consequences of engaging in cartel conduct; the three exceptions to the cartel prohibition for collaborative activities, vertical supply contracts, and joint buying agreements; and the clearance regime for collaborative activities.

27. To date the NZCC has not received any applications for clearance of a collaborative activity.

3.1.3. Electronic Interactions Reform Act 2017

28. The Electronic Interactions Reform Act 2017 came into force on 15 December 2017 and amended the Commerce Act 1986 to update its provisions to deal with electronic interactions. In particular, the amendments provide for the NZCC:

- To use audio or audio-visual links to interview parties under its compulsory information gathering powers; and
- To have the option to serve notices on parties by email in addition to delivering a notice in person or by post.

3.2. Proposals for new legislation

3.2.1. Commerce (Criminalisation of Cartels) Amendment Bill

29. The government has committed to amend the Commerce Act to introduce a new criminal offence for cartel behaviour. On 15 February 2018, the Commerce (Criminalisation of Cartels) Amendment Bill was introduced to the House to give effect to this policy. The Bill is currently awaiting its second reading.

30. The new criminal regime in this Bill is closely based on the regime in the previous government's Cartels Bill (which was subsequently removed). This Bill implements a criminal regime for cartel conduct that will run parallel to the current civil regime.

31. There are three main elements to the proposed criminal regime which are intended to promote certainty and confidence:

Criminal offence

- To commit an offence the defendant must have 'intended' to fix prices, restrict output or allocate markets. It will focus the offence on those parties that meant to enter into and give effect to a cartel provision.
- A penalty for an individual would be up to seven years' imprisonment; a fine up to NZ\$500,000; or both. The penalty for bodies corporate would be the same as those for the civil prohibition, being up to NZ\$10 million, or more in some cases.

Defences and exceptions

- The four exceptions in the Act that currently apply to civil cartel conduct would also be extended to apply to the new criminal offence under the Bill. In particular, competitors that are involved in a collaborative activity (e.g. a joint venture), collective buying, vertical supply contracts or specified international shipping arrangements are not subject to the criminal offence.
- This Bill also provides a defence for defendants who were mistaken in fact as to whether elements of some of the exceptions were 'reasonably necessary'. In particular, it provides a defence if a defendant involved in a collaborative activity believes that a cartel provision was reasonably necessary for the purpose of that collaborative activity.

The criminal prosecution process

- A criminal prosecution for cartel conduct would, as a result of the seriousness of criminal conduct, involve a higher burden of proof, requiring the prosecution to prove beyond reasonable doubt that the firm or individual entered into or gave effect to a cartel provision. The criminal prosecution would be the responsibility of a Crown prosecutor acting independently of the NZCC.
- The NZCC is expected to produce guidelines outlining criteria for when it would proceed to initiate criminal proceedings as opposed to taking civil proceedings.

32. If passed, the Bill includes a transition period of two years before the criminal offence would come into effect.

3.2.2. Commerce Amendment Bill

33. The Commerce Amendment Bill was introduced to Parliament on 28 March 2018. The Bill was referred to the Transport and Infrastructure Committee after its first reading on 1 May 2018 for consideration and public submissions.

34. On 12 September 2018, the Transport and Infrastructure Committee reported the Bill back to the House after four months' consideration. The Committee recommended by majority that the Bill be passed with certain amendments. The Bill is expected to be passed by the end of 2018.

35. The Bill includes a number of proposals that reflect the outcomes of a targeted review of the Commerce Act (which looked at the need for a market studies power for the NZCC, alternative enforcement mechanisms and the misuse of market power prohibition) and a 2014 review of the effectiveness of the regulatory regime for major airports.

36. The Bill:

- Introduces a market studies power for the NZCC
- Repeals the little used Cease and Desist regime
- Empowers the NZCC to accept enforceable undertakings to resolve competition concerns
- Strengthens the regulatory regime for major airports to include a new inquiry process that may lead to further regulation being imposed on those airports.

Market studies

37. The previous government made decisions to introduce a market studies regime (referred to in the Bill as 'competition studies') under which only the Minister could initiate a study. Before initiating a 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.

38. The previous government also recommended providing the NZCC an additional \$1.5 million in each financial year to fund the market studies power.

39. In February 2018, the current government agreed to introduce a market studies regime, but also to allow the NZCC to initiate market studies.

40. The Bill empowers the NZCC to undertake studies into the competitive conditions relating to goods or services in a particular sector if it is in the public interest.

41. In addition, the majority of the Select Committee made recommendations to allow the NZCC to issue confidentiality orders over sensitive information obtained in the course of a market study, and require the responsible Minister to respond to a final report within a reasonable time after it is released.

42. Although not part of the Bill, the NZCC will also be required to carry out and publish in its annual report an ex post evaluation of each market study.

Alternative enforcement mechanisms

43. The other proposed changes in the Bill 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 an undertaking is breached.

44. Following Select Committee consideration of the Bill, the Committee recommended allowing the NZCC to accept undertakings to divest assets or shares as a remedy to an anticompetitive merger following an enforcement action. This would align the merger enforcement regime with the merger clearance regime.

45. Some submitters recommended that the NZCC should be able to accept behavioural undertakings in relation to mergers, but this was not considered as part of the Bill as it was determined that this broader issue would benefit from a fuller policy process.

Airport regulation

46. 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.

47. 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.

48. In June 2017, the previous government considered the outcomes of the review of the effectiveness of airport regulation and agreed to proposals to strengthen the regulatory regime for airports.

49. These proposals are included in the Commerce Amendment Bill. They will:

- Clarify the NZCC’s ability to carry out analysis of the effectiveness of information disclosure regulation
- Introduce a truncated inquiry process for imposing additional regulation on airports
- Clarify that an Order in Council process can be used to impose additional regulation.

50. In addition, the majority of the Select Committee made recommendations to clarify the process for imposing regulation on other airport services at the regulated airports, and clarify that a full ‘Part 4 inquiry’ can be used to impose economic regulation on other airports.

3.2.3. Telecommunications (New Regulatory Framework) Amendment Bill

51. A review of the Telecommunications Act was carried out between 2013 and 2017.² The Telecommunications (New Regulatory Framework) Amendment Bill was introduced to Parliament in August 2017. The details of these amendments were set out in the 2016/17 Annual Report.

52. This Bill was reported back from Select Committee in May 2018 with some proposed amendments and is currently awaiting its second reading. It includes changes to include broadcasting transmission services in the definition of ‘telecommunication’ and new consumer codes for retail service quality and dispute resolution schemes. It is expected to be passed by the end of 2018.

² Further information is available here: <https://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001>.

3.3. Other policy reviews

3.3.1. Prohibition on misuse of market power

53. The government has signalled its intention to review section 36 of the Commerce Act, which prohibits the misuse of market power. The government has publicly stated that it will consult on changing section 36 to prohibit any conduct by firms with a substantial degree of market power that is anticompetitive, rather than relying on a complicated 'counterfactual' test as at present.

54. This follows earlier analysis by MBIE which concluded that the current provision of the Act has the potential to under-capture anticompetitive conduct, is costly and complex to enforce, and may lack predictability of outcomes.³

55. This was initially part of the targeted review of the Commerce Act, which found strong stakeholder views both for and against reform of the section.

3.3.2. Review of the Dairy Industry Restructuring Act 2001

56. The Dairy Industry Restructuring Act 2001 (DIRA) is administered by the Ministry of Primary Industries (MPI) and the NZCC has both an enforcement and adjudication role under the Act.

57. The DIRA promotes contestability in the market for farmers' milk by requiring an "open entry and exit regime". 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, and in 2016, the NZCC released a report that found that there was not yet sufficient competition to justify full deregulation, but recommended a staged approach to deregulation.

58. The Dairy Industry Restructuring Amendment Act (No 2) was enacted in February 2018 to prevent the DIRA's efficiency and contestability provisions from expiring in the South Island to allow time for a comprehensive review.

59. The previous government had proposed changes related to competition in the sector. However, these were not considered by Parliament and were therefore not implemented.

60. In December 2017, the new government announced a comprehensive review of the DIRA and its impact on the dairy industry. The review will take a more strategic focus and look at the effectiveness and impact of the DIRA across a range of areas. This will include incentives or disincentives it might create for the dairy industry to transition to:

- Higher-value dairy production and processing
- More sustainable environmental practices on and off-farm.

61. This review is currently at the stage of considering options for change, with a public consultation document to be released in late 2018. It is expected policy recommendations for regulatory change will be made in early 2019.

³ The initial issues paper can be found here: <https://www.mbie.govt.nz/info-services/business/competition-policy/targeted-review-of-the-commerce-act/phase-one/targeted-commerce-act-review/issues-paper.pdf-1>.

4. Enforcement of competition laws and policies

4.1. Anticompetitive practices

4.1.1. Summary of activities

62. **Table 1** shows the number of cases investigated by the NZCC in relation to anticompetitive practices in the three years ended 30 June 2016, 2017 and 2018.

Table 1. NZCC investigations of anticompetitive practices

	2017/18	2016/17	2015/16
Number of coordinated behaviour cases	6	6	7
Number of unilateral conduct cases	2	1	1

4.1.2. Significant cases

Real estate agencies in court for price fixing

63. In 2015 the NZCC filed proceedings against 13 national and regional real estate agencies relating to price fixing and anticompetitive 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.

64. 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. The Hamilton case saw collective fines of nearly \$3 million. These fines were imposed by consent, after the defendants pleaded guilty. 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 Judge determined that the agreement entered into by the defendants did not ‘fix, control or maintain’ price in contravention of the cartel prohibition in the Act. The NZCC filed an appeal against this decision, with the Court of Appeal hearing concluding in the last week of September 2018.

Filed charges

65. The NZCC has filed charges alleging cartel conduct in the supply of milk testing products, services and herd management systems, and against a Nelson pharmacy and its directors for price fixing. The NZCC is also taking a section 103 (obstruction of the NZCC) prosecution against an individual with name suppression, in relation to another investigation that remains before the NZCC, with a two day hearing set down for February 2019.

5. Mergers and acquisitions

5.1. 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. New Zealand has a voluntary merger notification regime. 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 9 merger clearance applications and 1 authorisation application during the year, and also initiated a number of section 47 investigations into merger activity which was not notified for clearance.

Table 2. Merger clearance and authorisation applications

	2017/18	2016/17	2015/16
Number of clearance applications processed	9	6	12
Number of authorisation applications processed	1	3	1
Number of market structure ⁴ cases investigated	5	1	1

67. **Table 3** sets out the merger and acquisitions applications decided by the NZCC in the year ended 30 June 2018 and their outcomes.

Table 3. Outcome of merger applications

Application	Resolution
Vero Insurance New Zealand Limited and Tower Limited	Declined
Tronox Limited and National Titanium Dioxide Company Limited	Cleared
Healthcare NZ Holding Ltd and Geneva Healthcare Ltd	Cleared
Essilor International and Luxottica Group	Cleared
Trade Me Limited and Limelight Software Limited	Declined
Daiken New Zealand Limited and Dongwha New Zealand Limited	Cleared
H.J. Heinz and Cerebos Pacific	Cleared
MYOB Group Limited and Reckon Limited	Withdrawn
Rhone Capital LLC and Fluidra S.A.	Cleared
Waikato – Bay of Plenty Chicken Growers Association Incorporated	Granted

5.2. Significant cases

5.2.1. Trade Me and Limelight Software

68. In July 2017, Trade Me, an online marketplace and classified advertising platform, sought clearance to buy Motorcentral (Limelight Software Limited), a Christchurch-based supplier of motor vehicle dealer management software (DMS). In March 2018 the NZCC declined to grant clearance for the proposed merger stating it could not be satisfied that the merger would not be likely to substantially lessen competition in the relevant markets.

⁴ Market structure cases are non-notified mergers.

69. The merger would combine Trade Me, which is the most popular online classified advertising platform for motor vehicle dealers, and Motorcentral, which is the largest provider of DMS products to independent motor vehicle dealers in New Zealand. Based on the evidence received, the NZCC could not exclude the real chance that this could result in a substantial lessening of competition in these markets, including by deterring new entry. It found it also could not exclude the real chance that, absent the merger, Trade Me could become a stronger competitor to Motorcentral. The merger could also entrench the market power Trade Me holds for online classified advertising to motor vehicle dealers.

5.2.2. Appeal of NZME and Fairfax

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

71. 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 a concern that the merger would be likely to reduce both the quality of news produced and the diversity of voices (plurality) available for New Zealanders to consume.

72. NZME and Fairfax appealed the decision, and in December 2017 the High Court upheld the decision to decline to authorise the merger. The appeal was heard in the Court of Appeal in June 2018 and in September 2018 the Court of Appeal again upheld the decision.

5.2.3. Platinum Equity

73. The NZCC achieved a successful outcome in its injunction proceedings against Platinum Equity's acquisition of OfficeMax. This was resolved by Platinum agreeing to divest Winc NZ to satisfy the NZCC's competition concerns in the markets for the supply of stationery and office supplies to corporate and government customers.

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

74. As discussed above, the NZCC is an independent government entity responsible for enforcing a range of legislation. In New Zealand there is a 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.

75. The NZCC contributed to a considerable amount of legislative reform throughout 2017/18. It provided written and oral submissions to the Select Committee on the

Commerce Amendment Bill covering the application of enforceable undertakings, airport regulation and market studies and the Select Committee on the Commerce (Criminalisation of Cartels) Amendment Bill covering the criminalisation of cartel conduct.

7. Resources of the NZCC

7.1. Human resources

76. 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 2018, the NZCC employed 94.01 full-time equivalent (FTE)⁵ staff in its Competition and Consumer Branch. This compares with 86.65 FTE staff employed as at 30 June 2017.

77. The Competition and Consumer Branch deals with both competition (Commerce Act) and consumer (Fair Trading Act and Credit Contracts and Consumer Finance Act) law 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 and Consumer Branch FTE employees

Support staff	10.68
Investigators	49.15
Lawyers	22.00
Economists	6.85
Advocacy	5.33
Total	94.01

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

78. **Table 5** shows the numbers of staff who work on Competition enforcement activities against anticompetitive practices, merger reviews and enforcement and advocacy efforts (i.e. rather than Consumer protection work).

Table 5. Human resources applied to competition enforcement

Anticompetitive practices	10.65
Merger review and enforcement	10.90
Advocacy efforts	2.00
Lawyers	8.00
Economists	6.85

⁵ 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.

7.2. NZCC Annual budget

79. 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.

Table 6. NZCC Annual budget

General Markets*		
2017/18	2016/17	Change
\$18.94 million NZD	\$18.49 million NZD	\$0.45 million NZD
\$12.71 million USD	\$12.41 million USD ⁷	\$0.30 million USD ⁷
Commerce Commission Overall		
2017/18	2016/17	Change
\$45.80 million NZD	\$45.85 million NZD	-\$0.05 million NZD
\$30.74 million USD ⁷	\$30.77 million USD ⁷	-\$0.03 million USD ⁷

*: The General Markets budget allocation includes enforcement of competition and consumer laws.

** : As at 29 August 2018 exchange rates

***: The overall budget for the NZCC covers competition, consumer and regulatory functions in addition to organisational support

8. New reports and studies on competition policy issues

8.1. Electricity Price Review – first report

80. The government has commissioned a review into electricity prices to investigate whether the electricity market, as it exists at present, is delivering a fair and equitable price to end-consumers.

81. The review will consider whether the current electricity market and its governance structures will continue to be appropriate with rapidly changing technology and new innovations in the sector. This includes examining the sector using measures of competition and efficiency, reliability, fairness and affordability.

82. A first report has been released setting out the review panel’s initial findings and inviting public feedback. The report notes that some stakeholders consider retail competition is stronger here than in Australia and the United Kingdom, based on measures such as switching rates and savings available from switching. However, some stakeholders consider that, like Australia and the United Kingdom, a two-tier retail market is developing, in which those who actively shop around enjoy the benefits of competition, and those who don’t pay higher prices.

83. Another key issue the report has highlighted is the ambiguity of regulatory boundaries regarding the regulation of access to distributors’ networks, especially for distributed energy services. The report concludes that the regulatory framework is generally fit for purpose, but it does need to find a balance between ensuring access to distributors’ networks to promote competition for distributed energy related services, and

ensuring distributors have appropriate incentives and opportunities to exploit those services.

84. The next phase of the review will look at potential options to address the issues raised in the first report. The review's final report is expected to be delivered to the government in May 2018.