

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

This report is submitted by New Zealand to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

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## *New Zealand*

### **Executive Summary**

1. This report presents the key competition law and policy developments in New Zealand for calendar year 1 January to 31 December 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 Amendment Act 2018 was enacted, which empowers the NZCC to undertake market studies, accept enforceable undertakings in relation to enforcement matters, and strengthens the economic regulation regime for major airports. The government introduced the Commerce Amendment (Criminalisation of Cartels) Amendment Bill to Parliament. The review of the misuse of market power prohibition and related matters is progressing.
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, including vertical mergers relating to payment systems and online classified advertising and motor vehicle dealer management software. Its merger work has also been in the courts, with the NZCC taking enforcement action for an alleged anticompetitive merger in relation to gas networks 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 new reports on competition policy issues, which include a market study into retail fuel markets and a review of electricity prices.

## 1. Introduction

9. The NZCC is New Zealand's primary competition enforcement and regulatory authority.<sup>1</sup> 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.

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.

### 1.1. 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 between likely competitors that relate to price fixing, restricting outputs, and allocating customers, suppliers or territories are *per se* prohibited. 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). There is also has 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 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.

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

## 1.2. 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:

1. 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.
2. 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.
3. 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.

## 1.3. 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.

## 2. 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 2018.

21. The current government commenced on 26 October 2017, with a 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.

### 2.1. New competition law provisions and guidelines

#### *2.1.1. Commerce Amendment Act 2018*

22. The Commerce Amendment Act 2018 (the Amendment Act) received Royal assent on 25 October 2018, and came into force the next day.

23. The Amendment Act:

1. introduces a market studies power for the NZCC
2. repeals the little used Cease and Desist regime
3. empowers the NZCC to accept enforceable undertakings to resolve competition concerns
4. 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*

24. The Amendment Act empowers the NZCC to undertake competition studies (market studies) into the competitive conditions relating to goods or services in a particular sector if it is in the public interest. The Minister or the NZCC can initiate a study.

25. Before initiating a study, the Minister or NZCC must have reason to believe that a study is likely to be in the public interest, or in the long-term interests of consumers.

26. The NZCC must issue a draft and final report on its analysis of the relevant markets and may make recommendations for changes to enhance competition. The responsible Minister is required to respond to any recommendations in that report within a reasonable time after it is released.

27. The NZCC has been provided with an additional NZ\$1.5 million per financial year to undertake competition studies.

*Alternative enforcement mechanisms*

28. The other amendments are repealing the rarely-used cease-and-desist regime, and allowing settlements relating to an enforcement investigation 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.

29. Some submitters during the Select Committee stage recommended that the NZCC should be able to accept behavioural undertakings in relation to merger clearances, but this was not considered as part of the Bill as it was determined that this broader issue would benefit from a fuller policy review.

*Airport regulation*

30. 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.

31. This means the airports must disclose financial information annually and at ‘price-setting events’ required to occur at least once every five years. The NZCC then reports publicly on this information in “summary and analysis” reports.

32. The Amendment Act makes changes to strengthen the regulatory regime for major airports. These changes are to:

- 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.

33. In addition, the Amendment Act clarifies the process for imposing regulation on other airport services at the regulated airports, and clarifies that a full ‘Part 4 inquiry’ can be used to impose economic regulation on other airports.

***2.1.2. Competitor Collaboration Guidelines***

34. In January 2018, the NZCC published Competitor Collaboration guidelines to provide an overview of its proposed approach to enforcing the new cartel provisions which came into effect in August 2017. The Guidelines are not law and not intended to be legally binding.

35. 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.

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

### *2.1.3. Telecommunications (New Regulatory Framework) Amendment Act 2018*

37. A review of the Telecommunications Act was carried out between 2013 and 2017.<sup>2</sup> 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 and 2017 Annual Reports. The Amendment Act was passed on 6 November 2018.

## **2.2. Proposals for new legislation**

### *2.2.1. Commerce (Criminalisation of Cartels) Amendment Act 2019*

38. The government 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 received its Royal assent on 8 April 2019, and will come into effect after a two-year transitional period.

39. The new Amendment Act implements a criminal regime for cartel conduct that will run parallel to the current civil regime.

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

#### *Criminal offence*

41. To commit an offence the defendant must have entered into or given effect to an arrangement containing a cartel provision in contravention of the Act and have ‘intended’ to fix prices, restrict output or allocate markets. It will focus the offence on those parties that meant to engage in cartel conduct.

42. 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*

43. The four exceptions in the Act that currently apply to civil cartel conduct are also extended to apply to the new criminal offence. 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.

44. It also provides a defence for defendants who “believed on reasonable grounds” that one or more of the specific exceptions to cartel liability applied. Ignorance or mistake of the law is expressly excluded as a justification.

#### *The criminal prosecution process*

45. 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.

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<sup>2</sup> Further information is available here: <https://www.mbie.govt.nz/science-and-technology/it-communications-and-broadband/our-role-in-the-ict-sector/a-new-regulatory-framework-for-the-ict-sector/>.

46. The Amendment Act includes a transition period of two years before the criminal offence comes into effect.

## 2.3. Other policy reviews

### 2.3.1. *Prohibition on misuse of market power*

47. The government is consulting on possible changes to section 36 of the Commerce Act, which prohibits the misuse of market power. Alongside this, the government is also considering removing an exemption from the Act for certain intellectual property licences.

48. The options being explored to amend section 36 include adopting a simplified version of the Australia's new prohibition:

- A person that has a substantial degree of market power must not engage in conduct that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.

49. The release of the options paper 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.<sup>3</sup> In particular, the current test of 'taking advantage of market power' requires a complicated hypothetical counterfactual test, rather than focusing the inquiry on the effect of the firm's conduct in the affected market. Final policy decisions are expected in late 2019.

### 2.3.2. *Review of the Dairy Industry Restructuring Act 2001*

50. 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.

51. The DIRA promotes contestability in the market for farmers' milk by requiring an "open entry and exit regime" that minimises barriers to farmers switching supply of raw milk to independent processors and imposes access obligations on Fonterra for supply of raw milk in certain circumstances. The DIRA initially required 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.

52. 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.

53. In December 2017, the government announced a comprehensive review of the DIRA and its impact on the dairy industry. The review will take a 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

<sup>3</sup> 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>.

- more sustainable environmental practices on and off-farm.

54. Public consultation took place between November 2018 and February 2019. It is expected policy decisions will be made in mid-2019, followed by legislative changes to implement the review's findings.

### 3. Enforcement of competition laws and policies

#### 3.1. Anticompetitive practices

##### 3.1.1. Summary of activities

55. **Table 1** shows the number of investigations completed by the NZCC in relation to anticompetitive practices in the three years ended 31 December 2016, 2017 and 2018. This includes investigations closed with no or low-level enforcement actions.

**Table 1. NZCC completed investigations of anticompetitive practices**

	2018	2017	2016
Number of coordinated behaviour investigations	2 <sup>4</sup>	6	8
Number of unilateral conduct investigations	1	1	2

##### 3.1.2. Significant cases

###### *Real estate agencies in court for price fixing*

56. 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.

57. 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 NZ\$12 million. In the Manawatu case the four defendants were collectively fined NZ\$4 million. The Hamilton case saw collective fines of nearly NZ\$3 million. These fines were imposed by consent, after the defendants pleaded guilty. Four of the defendants in the Hamilton case elected to go to trial. In November 2017, the Judge dismissed the case. The Judge found that the parties had entered into an understanding, but determined that it did not 'fix, control or maintain' price in contravention of the cartel prohibition in the Act. This conclusion turned on the Judge's finding that the defendants retained a discretion, in respect of any particular case, to depart from the agreed "vendor funding" position.

58. The NZCC appealed against the finding the understanding did not amount to a contravention, and the defendants challenged the Court's finding that an undertaking had been reached. In December 2018 the Court of Appeal allowed the Commission's appeal, finding that there was an understanding and that it fixed prices in contravention of the cartel prohibition. The Court found that the existence of some pricing discretion did not prevent

the understanding from contravening the Act. The defendants have obtained leave to appeal to the Supreme Court. The appeal will be heard in August 2019.

## 3.2. Mergers and acquisitions

### 3.2.1. Statistics

59. 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 2 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**

	2018	2017	2016
Number of clearance applications processed	9	8	9
Number of authorisation applications processed	2	3	1
Number of market structure <sup>5</sup> cases investigated	4	4	0

60. **Table 3** sets out the merger and acquisitions applications decided by the NZCC in the year ended 31 December 2018 and their outcomes.

**Table 3. Outcome of merger applications**

Application	Resolution
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
OMV NZ Ltd and Shell Investments NZ Ltd	Cleared
Goodman Fielder NZ Limited and Lion Dairy & Drinks (NZ) Limited	Cleared
Ingenico SA and Paymark Limited	Cleared
Thales and Gemalto	Cleared
Infant Nutrition Council Limited	Granted
Tennex Capital Limited and San-i-pak Limited	Granted

### 3.2.2. Significant cases

#### *First Gas Ltd*

61. In late 2018 the NZCC filed proceedings against gas network operator First Gas Ltd in relation to its acquisition of assets of another gas network operator, GasNet Ltd. In late 2015 GasNet, a new entrant based in Whanganui, had begun offering gas network

services to new property developments in the Bay of Plenty, where Vector owned the existing gas network and was the sole provider. First Gas acquired Vector's network in April 2016. First Gas then threatened to overbuild GasNet's network, and ultimately convinced GasNet to sell its Bay of Plenty assets to First Gas. As part of the sale, a five-year restraint of trade was imposed on GasNet.

62. In February 2019 the High Court imposed an agreed pecuniary penalty of NZ\$3.4 million on First Gas for the anticompetitive acquisition. This is the largest penalty imposed in New Zealand in relation to a merger. The Judge noted that the penalty was appropriate for a serious breach of the Act where no divestment was appropriate. The Judge considered that the penalty, which was more than the purchase price for the assets, would be sufficient to deter First Gas and other firms like it.

#### *Ingenico Group SA and Paymark Limited*

63. In November 2018 the NZCC granted clearance to Ingenico Group SA to acquire 100% of the shares of Paymark Limited. Ingenico and Paymark both provided services that allowed merchants to accept electronic payments. Ingenico is a global provider of payment terminals and digital payment services. However, Paymark's primary business was to provide processing services that route EFTPOS, ecommerce, and debit and credit card payment transactions to the appropriate financial institution (commonly referred to as a payment switch). Paymark was not active in the supply of payment terminals. In considering the acquisition, the NZCC focused mainly on whether the combination of Paymark's switch with Ingenico's terminal business might reduce competition for the supply of payment terminals. The NZCC was satisfied that Paymark would be unlikely to have the incentive to foreclose rival suppliers of payment terminals and hence the acquisition would not be likely to substantially lessen competition in any of the markets it assessed. The NZCC also concluded that the acquisition would not affect competition in the supply of digital payment services.

#### *Trade Me and Limelight Software*

64. 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.

65. 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. The merger could entrench the market power of the merged entity in the markets for the supply of online classified advertising to motor vehicle dealers and DMS services. It also found it could not exclude the real chance that, absent the merger, Trade Me could become a stronger competitor to Motorcentral through further development of its Dealerbase product.

#### *Appeal of NZME and Fairfax*

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

67. 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.

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

#### *Platinum Equity*

69. 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.

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

70. 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. Since 5 December 2018, the NZCC also has a role in conducting market studies, which is in-depth research to inform policy development.

71. The NZCC contributed to a considerable amount of legislative reform throughout 2018. 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.

## 5. Resources of the NZCC

### 5.1. Human resources

72. 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 31 December 2018, the NZCC employed 45 staff who work on

competition enforcement activities against anticompetitive practices, merger reviews, enforcement and advocacy efforts and market studies

73. **Table 4** shows the numbers of staff who work on Competition enforcement activities.

**Table 4. Human resources applied to competition enforcement**

Competition investigations	22
Competition legal	8
Economists	8
Market Studies	6
Advocacy	1
<b>Total</b>	<b>45</b>

74. The NZCC has 242 staff across its various functions.

## 5.2. NZCC Annual budget

75. Table 5 shows the NZCC's annual budget for both general markets (which covers its competition enforcement activities) and for the organisation as a whole. The NZCC budget numbers are calculated on a financial year to date basis.

**Table 5. NZCC Annual budget**

Competition and Consumer Branch		
2017/18	2016/17	Change
\$12.45 million NZD	\$10.08 million NZD	\$2.41million NZD
\$8.37 million USD <sup>6</sup>	\$6.77 million USD <sup>7</sup>	\$1.60 million USD <sup>7</sup>
Commerce Commission Overall <sup>7</sup>		
2017/18	2016/17	Change
\$45.80 million NZD	\$45.85 million NZD	-\$0.05 million NZD
\$30.74 million USD <sup>7</sup>	\$30.77 million USD <sup>7</sup>	-\$0.03 million USD <sup>7</sup>

## 6. New reports and studies on competition policy issues

### 6.1. NZCC market study into retail fuel markets

76. The government has requested the NZCC to undertake a market study into retail fuel markets.

<sup>6</sup> As at 18 April 2019 exchange rates.

<sup>7</sup> The overall budget for the NZCC covers competition, consumer and regulatory functions in addition to organisational support.

77. In December 2018 the NZCC commenced a market study looking into the factors that may affect competition for the supply of retail petrol and diesel used for land transport throughout New Zealand.

78. The purpose of the study is to consider and evaluate whether competition in the retail fuel market is promoting outcomes that benefit New Zealand consumers over the long-term. Over the course of the study the NZCC will be engaging with, and gathering evidence from, a wide range of stakeholders.

79. The final report of the NZCC's findings will be published by 5 December 2019. Outcomes of this work may range from a 'clean bill of health' for the sector to recommendations to enhance market performance.

## **6.2. Electricity Price Review – options paper**

80. In 2018, the government commissioned a review led by an independent expert advisory panel 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 objective of the review is to ensure that New Zealand's electricity market delivers efficient, fair and equitable prices as technology evolves and there is a transition to a lower emissions future. The review also takes into account environmental sustainability and security of supply considerations.

82. In February 2019, the review published an options paper setting out possible solutions to strengthen the consumer voice, reduce energy hardship, increase retail competition and reinforce wholesale market competition, among other issues. The options being put forward include establishing a consumer advisory council, making it easier to access electricity usage data, making distributors offer retailers standard terms for network access and introducing mandatory market-making obligations.

83. The review's final report is expected to be delivered to the government in May 2019.