

9 February 2016

Targeted Commerce Act Review
Competition and Consumer Policy
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington

By email: commerceact@mbie.govt.nz

Issues paper: targeted review of the Commerce Act 1986

1. The New Zealand Law Society welcomes the opportunity to comment on the *Targeted review of the Commerce Act 1986* Issues Paper. The Issues Paper addresses three key issues:
 - a. the prohibition against misuse of market power in section 36 of the Commerce Act 1986 (Act);
 - b. alternative enforcement mechanisms, including the cease and desist regime; and
 - c. the possibility of a new 'market studies' function for an appropriate agency.
2. The Law Society does not have a view on what the appropriate policy position should be for these issues but makes the following general comments.

Prohibition against the misuse of market power in section 36

3. The difficulty in enforcing section 36 of the Act has been well documented and the challenges of applying the law in this area are clear from the case law. It is appropriate that the wording of the section is carefully considered and amended in order to achieve greater certainty. If this can be achieved through alignment with similar provisions in other jurisdictions, that is supported.

Alternative enforcement mechanisms

4. The Law Society supports the conclusions at paragraph 3.6 in respect of the cease and desist regime.
5. It is not aware of any issues with the settlements regime, which offers benefits in terms of efficiencies and flexibility of result under court supervision.

Market studies power

6. The gap in relation to market studies is accurately described at paragraph 4.5. The Law Society supports the Commerce Commission having the ability to carry out market studies with a view to promoting competition.

Conclusion

7. This submission was prepared by the Law Society's Commercial and Business Law Committee. If you have any questions please do not hesitate to contact the committee convenor via the committee secretary

Yours sincerely