

Regulatory Affairs

Privacy of natural persons

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Ministry of Business Innovation & Employment
Competition Policy Team
Building, Resources and Markets
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Dear Sir or Madam

Bank of New Zealand's response to the MBIE discussion document: Promoting Competition in New Zealand - A Targeted Review of the Commerce Act 1986

1 - Introduction

- 1.1 Bank of New Zealand (BNZ) welcomes the opportunity to contribute to the discussion document "Promoting Competition in New Zealand – A Targeted Review of the Commerce Act 1986". BNZ acknowledges the importance of legislation effectively facilitates beneficial collaboration whilst preventing anti-competitive behaviour.
- 1.2 As a bank, we believe our knowledge is best served to contribute to the following areas of the discussion document
 - Issue 6 - Facilitating beneficial collaboration
 - Issue 7 - Anti-competitive concerted practices
 - Issue 8 - Industry Codes or Rules
 - Issue 10 - Protecting confidential information

2 - Issue 6 – Facilitating beneficial collaboration

- 2.1 BNZ believes adding further options to the Commerce Act 1986 (the Act) will help facilitate beneficial collaboration. We support safe harbour provisions and believe this option would give businesses greater confidence in collaborating on initiatives such as financial crime prevention, cybersecurity and fraud detection without inadvertently breaching competition law. BNZ also supports the Commission's ability to issue class exemptions as they can help to provide clarity in particular areas. For example, a class exemption might allow financial institutions to collaborate on industry-wide security initiatives to ensuring a higher level of safety for our customers.
- 2.2 BNZ submits that a statutory notification regime for specified classes of arrangements could shift the burden onto the Commission to object to a collaboration. However, the mandatory nature of such a regime may create additional compliance burdens. We believe that the regime should be added and made optional.
- 2.3 BNZ submits that judiciary retain discretion in interpreting the law. We believe elevating the status of the Commerce Commission guidance risks constraining judicial decision-making and could be seen as a fetter the Courts' ability to make determinations.

3 - Issue 7: Anti-competitive concerted practices

- 3.1 BNZ does not believe that deliberate coordinated conduct occurs as an issue in the banking sector. We would observe that banks independently monitor market conditions and make individual decisions based on their own strategies and business models.
- 3.2 BNZ has concerns about aligning with Australian law. The Australian framework prohibits “concerted practices” that substantially lessen competition. However, this term lacks a clear definition. We believe that if New Zealand were to adopt a similar approach, this could increase regulatory uncertainty and compliance costs, as organisations may be required to justify routine interactions with the Commission.

4 - Issue 8: Industry Codes or Rules

- 4.1 BNZ believes that if the Commerce Act is amended to introduce code and/or rule making powers, the banking sector is highly likely to become subject to such a code. BNZ submits that the financial services regulation is complex, with rules and codes that have similar objectives sit across multiple regimes and regulators. We strongly suggest that any code-making powers under the Act require the Commission to consult other relevant regulators to prevent regulatory overlap. We believe this requirement should also ensure those other regulators views are considered in any final code or rules.

5 - Issue 10: Protecting Confidential Information

- 5.1 BNZ agrees that businesses must have confidence that commercially sensitive information provided to regulators will remain protected. The Commerce Commission has stated that the Official Information Act (OIA) strikes the right balance. While on the whole we agree, we believe further review into the adequacy of protections offered by the OIA should be undertaken. We support the strengthening of confidentiality order powers. However, we submit that these orders should be permanent as opposed to temporary. This ensures that critical commercial data does not become publicly accessible, particularly where disclosure could distort competition.

Should the Ministry have any questions in relation to this submission, please contact Paul Hay.

Yours sincerely

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Paul Hay
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Bank of New Zealand