



Submission to the Commerce Commission on the proposed competition law reforms in New Zealand

February 2025

“Antitrust law and competition policy should promote not welfare but competitive markets.

By refocusing attention back on process and structure...”- Lina Kahn

Dear MBIE,

Monopoly Watch NZ (MWNZ) is an evidence-based public policy analysis group which wishes to comment on Aotearoa New Zealand’s (NZ) Commerce Act and Commerce Commission (ComCom) performance as the MBIE conducts a one in 30-year review of its operation and effectiveness.

We want to promote a fundamental rethink of the role of the Commerce Commission and the Commerce Act in NZ. Capitalism needs to be saved, not tinkered with. A fundamental intergeneration distrust is emerging and fracturing social cohesion; privileged monopoly and oligopoly structures perpetuate inequality and squash innovation.

This year, the term “innovation deficit” will become front of mind for many, and the lack of international best practices and NZ will be exposed.

Since the original act was legislated, and the Dept Trade and Industry was reformed into the Commerce Commission, there have been substantial changes in NZ’s economy, demographics, and aspirations. Now is the time to fundamentally review the entire act from a greenfield perspective. The Internet, social media, the rise of China, work from home, the impact of Network effects and financial market liberation have meant that the economy's structure and legislation to protect consumers must be fundamentally changed.

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Part 1: Overview and Key Problems

I. Monopoly Watch NZ seeks to highlight:

1. The mistakes over the last 25 years in NZ have led to incredibly concentrated markets (e.g. banks, supermarkets, electricity, fuel, telco), and as such, the competition framework in NZ needs rebuilding:
 - a. The disestablishment of the ComCom and the establishment of a new organisation
 - b. 1/3 of the employees will have a financial background (e.g. CFA) to identify incumbents' hidden profits and monopoly rents, leading to better industry understanding and enforcement.
 - c. The *substantial lessening of competition test* has not led to competitive markets and thus needs to be reformed.
 - d. Increase the number of market studies. Why? It helps keep important competition issues at the forefront of the public's minds, and it can help build industry expertise within the ComCom.
2. Following international benchmarks, we should look beyond Australia. While they are an important partner, the EU has much stronger competition law frameworks from which we should draw inspiration.
3. Develop a capital framework that ensures start-ups have the funding to innovate and compete.
 - a. These are not *Mavericks* but rather greenfield initiatives.

This means examining:

- How Market Structure can be altered to give a better outcome for consumers,
- Tinkering and minor incremental reform will play into the hands of nasty oligopolists.¹

*“The economic **dead weight loss** of the top 6 utility monopolists **cost Kiwis** the quantum of NZD **18 billion pa** because of excessive profitability in Electricity, Supermarkets, Fuel, and Banking in NZ.” - Onehunga-based Economist James Dunn*

¹ Jan Polański, *The antitrust meme: intelligent design and the invisible hand of antitrust*, <https://academic.oup.com/antitrust/advancearticle/doi/10.1093/jaenfo/jnaf004/7998848?searchresult=>

I. A brief history of the economics, policy and jurisprudence that have influenced competition law

Before considering possible solutions to NZ's competition law framework, we must analyse the historical background and how that has contributed to our concentrated markets. Since the US heavily inspire NZ's competition law framework, this analysis will consider the development of competition law through an American lens.

Underpinning one of the most destructive paradigms in modern history was the shift away from the structuralist approach of the early 1900s to the now dominant Chicago school approach emerging from the 1970s to 1980s. Neoliberal economists such as Milton Friedman argued that markets were efficient, self-correcting, and therefore did not need government intervention. This would go on to influence Robert Bork and the development of the consumer welfare standard.² However, as discussed by Joseph Stiglitz, "One man's freedom is another man's unfreedom."³ Friedman's free market was free for those set ripe to benefit from the deregulation and lack of enforcement of antitrust (competition) policies and not very liberating for consumers and workers. This narrow focus, matched by a lack of enforcement, has undoubtedly led to the overwhelming concentration of markets and what Tim Wu describes as the "Curse of Bigness that represents a profound and dangerous threat to economic thriving for the broader public, [and] also to liberal democracy itself."

As exposed by leading antitrust (competition) enforcement officials, such as Lina Kahn, to adapt to the evolving business models of the 21st century, antitrust law (competition) needs to grow as well to make sure that it is equipped to deal with modern business which means going beyond the traditional price and quantity approach. This is only heightened by developments in AI and how it may exacerbate the ability of firms to use data and information to tighten their competitive moat in an anti-competitive manner. Furthermore, this neo-brandesian approach to anti-trust (competition) enforcement considers broader concerns beyond consumers, including workers, monopsony markets, and other stakeholders.⁴ Whilst still in its infancy, MWNZ would strongly advocate for the ComCom to

² See Robert Bork's influential piece the Antitrust Paradox: <https://www.jstor.org/stable/40705928>

³ See Joseph E. Stiglitz *The Road to Freedom Economics and the Good Society* (2024)

⁴ See Eric A. Posner: *How Antitrust Failed Workers* (2021); Also see: Jan Eeckhout: *The Profit Paradox* (2021)

keep this *neo-brandesain* approach at the forefront of policy changes and not wait 10+ years to see how it evolves overseas before adopting it too late.

II. What are the problems?

Problem	Comment	Evidence
<p>No definition of a critical industries list</p>	<p>Some industries are at greater risk naturally to competition issues and or of significant importance to consumers. Clearly defining these industries is the first step in establishing a clear and efficient solution.</p>	<p>Case study: High Fashion Market</p> <p>There are problems facing the Prada Handbag and Gucci shoe distribution market. Whilst important to some in the upper tax bracket this is not of high concern to the overwhelming majority of NZERS.</p> <p>Government officials must focus on key industries e.g. banks, supermarkets, electricity, etc</p>
<p>No power to divest or structurally separate business</p>	<p>One of the most significant remedy tools to have for MBIE and ComCom is the power to separate and divest businesses structurally</p>	<p>Most regimes have power with the regulator to intervene and break up and separate, NZ needs that.</p> <p>See USA, EU, UK</p>

<p>No significant market power (SMP) definition or rules</p>	<p>Basic competition law hygiene is to have an SMP regime and definition – it saves billions of dollars of cost and time</p>	<p>This is in accordance with OECD best practice.⁵</p>
<p>No ability to leverage up problems and resolve them without political intervention</p>	<p>Power of the ComCom and powers to the Commission to intervene in failed markets do not exist</p>	<p>A quick benchmarking of similar countries regimes will illustrate best practise</p>
<p>Historical decisions which would not pass today, have spent over 20 years building barriers to entry and moats</p>	<p>The problem is twofold:</p> <p>How do we prevent the consolidation of markets and anti-competitive behaviour going forward?</p> <p>AND</p> <p>How do we undo the previous 20 years of damage?</p>	<p>There is little utility in <i>ex-post</i> reviews of historical bad decisions such as the 3:2 supermarket merger or the Gentaillers stuff up, or the banks nonsense, it is time to fix them</p>
<p>Too much reliance on Australian precedents and laws</p>	<p>Australia won't help NZ; it's a different type of economy, and Kiwi's ineptitude is subsidising Aussie pension funds.</p> <p>Let's take notice of what Australia does, but its low achiever's sleaze over indulging in Australia, let's look to the OECD best practice for small 5–10-million-person economies.</p>	<p>It is worth looking at Dunn Economics review of how much excess profitability goes to Aussie</p>

⁵ OECD report: https://www.oecd.org/en/publications/standard-for-merger-review_4d67d71a-en.html

<p>Lobbyists are outrageously out of the control in NZ.</p>	<p>Any review in NZ suffers from lobbyists and corruption, which is a concept internationally called “influence swamping,” and a failed Transparency International Group has been unable to recognise its seriousness.</p>	
<p>The business case of competition needs to be published</p>	<p>More work must be done to set up a framework with incentives and capital support to allow international firms and start-ups to compete.</p>	<p>MWNZ is encouraged by the economic growth minister's recent comments.⁶ However, more concrete action must be taken to establish clear business cases of competition and fix NZ’s hyper-concentrated markets.</p>

⁶ Economic Growth Minister on supermarkets: <https://www.rnz.co.nz/news/business/541850/economic-growth-minister-nicola-willis-rules-nothing-out-in-supermarket-reform> (Feb 2025)

Part 2: Answering MBIE Questions

III. Substantial lessening of Competition Test

1. “What are your views on the effectiveness of the current merger regime in the Commerce Act?”

The current merger regime has not served consumers well. However, MWNZ thinks the market studies have been a significant positive and a step in the right direction – although there is still room for improvement here (see above).

Fundamentally, the Commission continually gets swamped with incumbents' and monopolists' rhetoric on these mergers, which creates significant roadblocks for an under-resourced commission to provide effective and accurate reviews of a merger. MWNZ notes that a challenge of mergers is identifying the future impact on the market and the likely success and market share of other firms, which is only bogged down by an overflow of dogmatic opinions of incumbents.

Furthermore, Consumer NZ is *missing in action*, earning its living by testing chocolate chip cookies, hairdryers, and potato crisps. Therefore, this does not leave much of a voice on the other side of the argument.

“It's a bloody sad day for New Zealand when it is only those plonkers from Monopoly Watch Fighting off Fletchers” - Senior Wellington Official (SWO) commented

Thus, we urge this review to look at the entire ComCom dynamic. They have a judicial style limited by the overflow of information by incumbents and industry lobbyists. Without a financed support group delivering EU-style consumer advocacy, the Commission will continue to be a toy of incumbent monopolies. A stronger consultation with consumers would help balance the perspectives and better show how a proposed merger may impact consumers.

2. “What is the likely impact of the Commission blocking a merger on consumers?”

This depends on what the case is. However, the successful blocking of a merger encourages a market based on meritocracy where incumbents are forced to innovate to succeed. As a result, consumers are left with lower prices, a better customer experience, more innovation, and ultimately more choice.

3. “Has the “Substantial lessening of competition test” been effective in practice in preventing mergers that harm competition?”

Not really (notwithstanding the 2024 Foodstuffs case). Foodstuffs, rebuttal in MWNZ’s perspective, were substantially helped by the Grocery Market Study⁷. However, mergers in the construction products business have failed to understand and address the productivity problems, and the banking consolidation is an example of where the substantial lessening of competition test has failed the NZ consumer. The failure to force the divestment of Payments NZ to a third party, in particular, has stalled investor appetite.⁸ More is needed that just designation of payments (Why ? because it’s a signal to capital providers of Neo Banks and FinTech’s !)

The big issue in NZ is the incumbents' lack of ambition and grooming to accept less competition. For this reason, the Brussels/ Stockholm office helps align NZ with international best practices and promotes further training of ComCom officials.

4. Should the substantial lessening of competition test be amended or clarified?

a. Creeping Acquisitions

We strongly advocate for creeping acquisitions – INCLUDING NEW SUPERMARKETS and Banks. It doesn’t pass the common-sense test that someone with market power can

⁷ See: https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf

⁸ See: <https://comcom.govt.nz/case-register/case-register-entries/payments-nz-limited>

leverage new growth and thwart the innovation of new players. MWNZ support reviewing the previous 10 years of acquisitions and adjacencies to assist in managing this test. We use TRADEME as an example of a regulator that is asleep, and incremental acquisitions have led to unassailable market power and the exploitation of network effects. Monopoly rents are extracted continuously, and 25 years after they were started, no important technology needs to be protected. It's time for the network effects to be neutralised and some categories to be divested.

Specifically, NZ should look to the recent *Illumina case*, which was brought and successfully won in both the US and EU, as inspiration for a successful framework for dealing with creeping acquisitions. They were able to argue against the merger under an NZ equivalent of s47 of the CA and then again under s36 of the CA for misuse of market power. NZ should draw inspiration from this and adopt a more nuanced framework that allows ComCom to challenge both *ex-ante* and *ex-post* decisions.⁹ Therefore, ComCom can use a more nuanced approach that would provide greater flexibility in addressing unforeseen competitive harms, deterring firms from engaging in strategic under-enforcement tactics and reinforcing a more robust competition framework.

b. Entrenchment of Market Power

This takes many forms, including real estate ownership and lease covenants, ownership and ridiculous sponsorship of industry associations.

We urge the MBIE officials reading this to review Kevin Van Heists Elephant board submission to ComCom's Go to the transcript of where Kevin (Head Prefect of Elephant board) reads out how many industry associations Fletcher Wallboards and Gib sponsors. Or take a peek at Bankers Association, a \$10m organisation sponsored by the big 4, pretending to speak for small banks. And INFINZ *(*Banking Cartel Forum*) runs low integrity awards for clients whom banks have ripped off. INFINZ pretends to be a professional services organisation. Still, essentially, it's dominated by the big four banks, stalling innovation and failing to participate in public policy - the banks pay for subscriptions, conferences, and

⁹ See https://www.oecd.org/en/publications/start-ups-killer-acquisitions-and-merger-control_dac52a99-en.html; also see (US) <https://www.ftc.gov/legal-library/browse/cases-proceedings/201-0144-illumina-inc-grail-inc-matter>; also see (EU) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62022CJ0611>

noise. It's in all bankers' personal and professional interests (except the Senior Exc, who have EVA remuneration) to promote open banking. The professional association INFINZ fails to submit to it or even has a view; they behave like the emperors' wearing clothes.

A similar approach outlined above could be successfully implemented to address the entrenchment of market power.

5. Alignment with Australia

NZ should not align with Australia so closely unless the NZ government wanted to cede power to Canberra and reverse the breakaway in July 1841, when NZ broke from New South Wales.

The economy is fundamentally different, and there is now a substantial conflict of interest because much of NZ is owned by Australian pensioners and investment funds. Australia milks NZ, and the investment deficit is almost 38% of GDP.¹⁰

Small countries are fundamentally different from large countries; mining is fundamentally different from agriculture and tourism. Australia has well-funded state-based consumer advocacy groups; NZ doesn't have them, so we need to have a different competition framework. Importantly, Aus themselves have struggled with competition. For example, in the 20 years that Aldi has been in Aus, they have failed to reach scale and done no more than collaborate with their competitors.

Therefore, NZ should focus on how effective the current merger regime is in balancing the risk of not enough versus too much intervention in markets. This is better aided by increased market studies and looking to Scandinavia as a better international competition benchmark.

¹⁰ Estimated by Onehunga-based Economist JB Dunn

IV. Substantial degree of influence

1. Do you consider that the current test of substantial degree of influence captures all the circumstances?

No, we urge the MBIE to review the industry lobby groups, professional associations financing, education & AMP, training programs, and upstream and downstream related business. Our working example of how professional associations (INFINZ and building industry federation) become toys of the dominant players is noteworthy. MWNZ would like to point out how this test failed to address supermarket industry land covenants. Ultimately, MWNZ would support the inclusion of an expressed criteria for the test of substantial degree of influence to be included in legislation

2. Should the Commerce Act be amended to provide further clarity?

Absolutely YES!!!

Why? Because there is no lobbyist legislation, every industry association and professional body should illustrate who is financing them on a look-through basis (ie if the bank sponsors something and the bank pays memberships, it should be illustrated as bank-controlled, etc.

Moreover, international best practice would include more specific definitions in competition law and related areas to reduce ambiguity. This is particularly important as competition laws are drafted generally and, therefore, are left open to a broad range of arguments which could adhere to parliamentary Interest. This creates an *invisible hand of antitrust enforcement, resulting in decentralised* decisions from enforcers (judges and agencies). Thus, on a dogmatic level, the ideological means of enforcement give way to the practical, which often relies on well-established (and often outdated precedent) and, therefore, does not provide the

most efficient outcomes.¹¹ Overall, the language in CA should be amended to provide clarity to ensure parliamentary intent is upheld and thus have better outcomes for consumers.

V. Anti-Competitive Concerted Practises

1. What are your views on whether the Commerce Act adequately deters forms of tacit collusion between firms that are designed to lessen competition between them?

Tacit collusion is out of control in NZ and very hard to stop.

In banking, there is tacit collusion all over the place. For example, in the ESG space, cost to income ratio, and control of payments NZ. The best example of tacit collusion is the earthworks operators for Kainga Ora - it's the MWNZ observations they meet in the carpark geographically after conferences to discuss pricing and costs (allegedly).

This is why market studies are important. They not only strengthen the understanding of an industry but also act as a deterrent to incumbents. This is important as tacit collusion is hard to spot out without insider information (whistleblowers). Therefore, having a market study can act as an extra layer to either encourage whistleblowers or reveal how an industry works and possible evidence of tacit collusion.

Moreover, rational behaviour is inevitable, which is why industries behave sensibly; it's sometimes the regulator's job to create distribution. Also, we need the Commerce Act to understand the incentives for HIGH COSTs and barriers to entry 15 years after a 3rd mobile operator has come to NZ; we still rank as having some of the most expensive wireless broadband. This cost sits with the historical gaming of the cost of infrastructure deployment and incumbents Vodafone and Telecom stalling co-location and ensuring that their towers were sold to 3rd parties at idiot-nonsense high valuations. Thereby a new capitalised valuation means higher costs and capital profits to old owners . Excellent work on

¹¹ As above, n1

Vodafone/One NZ's part & Spark ,Shareholder windfall ; the regulator completely missed it, and customers still suffer and will suffer for the next 20 years .

Another solution is asymmetric SMP rules, allowing challengers to do things incumbents can't. This mechanism , (particularly in Supermarkets could facilitate investment and competition.

2. Should concerted practices be explicitly prohibited, what would be the best way to do this?

The right market structure will prevent tacit collusion. It's why the Commission should worry about capitalising new banking entrants and not regulating incumbents. Its nonsense to consider a windfall tax , that legitimatises bad behaviour . Rather force the incumbents to capitalise the Fintechs and neo banks like they did in the UK .

It's why a wholesale regime is ineffective unless there are capitalised players to use it. MWNZ would strongly emphasise that a shift towards a more neo-brandesian approach, consistent with the US and EU, would stamp out tacit collusion rather than a consumer welfare-focused legislation/policy. Therefore, legislation should expressly address prohibited behaviour. This will improve the judicial process.

Tacit collusion will always be a problem its real solution is real competition!

VI. Appendix

Figure 1: Expanded Recommendations:

1. The Commerce Commission be de-established and renewed as an Aotearoa NZ Consumer and Competition Commission. ANZAC and a fundamental new Commerce Act be enacted.
2. Governance of the Commission includes a “fixing broken markets division” to deal with the 6 or 7 critical industries which suffer from monopoly or Oligopoly markets, and expertise is built in those departments as to the barriers to entry and moats built around existing monopolies.
3. Benchmarks are included again are not just Australia but also Scandinavian best practice.
4. The Commission’s independence from Government and political interference is strengthened, with more bi-partisan power to fix problems and act on consumers' behalf. It takes 20 years for a monopoly or oligopoly to be entrenched, and therefore it will take more than 3 years in the political cycle to fix anything
5. The MBIE must conduct further empirical research on how vested-interest lobbying groups distort consumer interests and clog up due process with filibuster-style government misinformation campaigns.
6. 1/3 of the Commission Governors come with fundamental Finance skills (CFA’s), banking or business case analyst capabilities. The Commission is swamped with lawyers and economists and needs DIB skills from business and financial analysis.
Flanker brands aren't competition, they increase the cost of capital for competitors.
7. Like other countries, sanction a definition of Significant market power (SMP) and force asymmetric behaviours, open access, accounting disclosures and an access regime for industries of strategic importance.
8. Prevent marginal creep in some areas and “Adjacencies” for those who have SMP in some critical industries.
9. Publish more vividly the checklist of banned behaviours from those with SMP , (eg, use of Flanker brands, bundling, pocket pricing, capital markets subterfuge, etc)

10. The reformed commission should continue to complete industry studies (Market Studies). In recent years, the NZ ComCom has substantially improved each new market study and kept old market studies alive with continued pressure on fuel and supermarket operators, respectively. *Maybe the name of the study process should change , but the general process should remain in place, they are an outstanding success and a bi partisan approach to them should be maintained .* They facilitate the hiring & Training of higher skilled people in the Commission also .

Figure 2: Review of Market Studies and suggestions for future ones

The benefits of this are huge, unexpected benefits that have been a huge investment by corporations into lobbyists, competition law firms, and ESG programs. MWNZ estimates that Market studies have kicked off approximately \$230 million in lawyers’ fees and lobbyists, which have subsequently created 28 new swimming pools and 82 new luxury car purchases.

A. Market Study Review

Industry	Comment	Outcome
Telecommunications ¹²	<p>A hodgepodge of ideas, and all ideas to create competition were lobbied out of the 2001 Telecommunications Reform Act</p> <p><i>It wasn't until there were 3 more changes to the act that a 3rd operator was able to secure a big enough block of capital to start operations</i></p>	<p>It took a long time for the ComCom to build expertise in Telecommunications. Thus, consumers will left with some of the most expensive telecommunication bills globally and a huge innovation deficit.</p>

¹² <https://comcom.govt.nz/regulated-industries/telecommunications/projects>

<p>Retail Fuel¹³</p>	<p>Sensible and slick review of real structure problems.</p> <p>The Gruff voice of the ComCom, mentioning this study moves prices down for consumers</p>	<p>Easy to understand results of the study, established a creditable start to market studies . This study has saved consumers billions</p>
<p>Grocery¹⁴</p>	<p>Encouraged better engagement with suppliers but did little to address the hyper concentration e.g. divestment, supporting an international third competitor</p> <p>A successful study project by the ComCom and continuing to provide benefits years later .</p>	<p>NZ consumers feel the pain at the till with expensive grocery bills. Customer experience in the store is far behind international standards. Supermarkets keep their monopoly rents.</p>
<p>Residential Building Supplies¹⁵</p>	<p>Professional, polished and sensible unit of work in a very complex multi-dimensional industry with lots of moving parts – But no one turned up to advocate for consumers except the monopoly watch plonkers</p>	<p>Consumer advocates needed to hold the Comcom and industry to the fire, as it costs 5x OECD benchmarks to build. Outrageous <i>Kianga ora</i> did not turn up. Outside the plasterboard, there is only a little downstream work.</p>

¹³ <https://comcom.govt.nz/about-us/our-role/competition-studies/fuel-market-study>

¹⁴ <https://comcom.govt.nz/about-us/our-role/competition-studies/market-study-into-retail-grocery-sector> and see <https://www.mbie.govt.nz/business-and-employment/business/competition-regulation-and-policy/market-studies/market-study-into-supermarkets>

¹⁵ <https://comcom.govt.nz/about-us/our-role/competition-studies/market-study-into-residential-building-supplies>

Personal Banking¹⁶	Polished report, and it became apparent to the legal community that the skills that the Commission had built up in other studies, facilitated a higher-quality review,	Open banking, but more work must be done to catch up to the 10/15 year gap with international standards. Capital issues for fintech are still present. Consumers are somewhat better off.
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B. Future Market Studies

Monopolistic shareholders hate Market Studies company boards hate them, but consultants love them; without them, economic development fries a slow death. *If Governments are serious about fertilising the use of private capital to create a fairer society, they are an inevitable and essential part of democracy.*

Industry	Comment
Aviation industry in NZ	Airports and Airlines in NZ. Why is there no 3rd player? Why does the airport have a history of being so under-invested and over dividend Ed?
Insurance industry	Nasty cartel makes excessive profits and hides behind climate change and ESG reporting .Lobbyist heaven , creates PR Adventures daily.
Generator and retailers of electricity	Excessive returns on capital but under-investment in generation. Consumers have high electricity bills, which harm the transition to 100% green energy, and retail competition is stifled by Gentailors. Its time for a SMP designation and a break up.
Digital markets	Review of the unprecedented dominance of TradeMe in all NZ digital commerce
Digital News & content provision	Confusing Green and carbon issues used to camouflage oligopoly , Its outrageous high quality independent journalists are forced to become lobbyists to feed their families , While Google and Facebook don't pay for news. NZ govt runs NZ not Google !

¹⁶ <https://comcom.govt.nz/about-us/our-role/competition-studies/market-study-into-personal-banking-services>

Residential construction industry	Kianga ora has been paying 5x OCED prices . the shameful cost of building quality entry level houses in NZ needs studying , We applaud PM Luxon “ <i>even Australia builds at 50% of the cost of NZ</i> “
Prada Handbag Luxury cars & Shoes distribution	This is not a problem for the public interest
Roading and civil engineering works in NZ	Price comparisons of NZ road works and tunnels don’t meet scrutiny on an international comparative basis . Infrastructure costs in NZ are out of control and “club housed “
Provision of Cell towers and cost of wireless broadband in NZ	Mobile broadband ranks amongst the world's most expensive because of the dysfunction of cell tower infrastructure. With only 2 & ½ mobile operators , this space needs a revisit , particularly with the lack of free cash flow in the 3 rd operator after 15 yrs
International water , wastewater and stormwater studies	Given the amount of infrastructure development that needs to take place the unit cost of assembly needs to be looked at in conjunction with the infrastructure commission
Kiwi saver	NZ is trillions of dollars behind Australia and 80% behind on a per capita basis, then entire savings reimagine, and fees need to be reviewed . But essentially a benchmarked study against international best practice would have NZ contributions at 12% not 6%
Wholesale interest rates	Bank mortgages are a scam on interest rates

Figure 4: Understanding Capital Markets

Capital market literacy needs to be improved by the refurbished ComCom . Time and time again, the Commission slip up in how to talk to capital markets and how to help competitive catalysts (new entrants and those without SMP) capitalised and alive. An example of this is asking for “Maverick banks “ (who wants to invest in a maverick with a unsustainable fly by

night position) versus a Green Field institutional competitor with a heavy capital balance sheet .

Figure 5: Adjacencies

MWNZ agrees with others that large firms moving into adjacent markets often are the only source of competition. But.. there is also a concern not mentioned in the ComCom competition review report of buying a firm in an adjacent market versus building one (Woolworth's annual report in 2021 discusses its strategy in adjacent markets)¹⁷, which reflected an almost quarantine on their market.

MWNZ note the dramatic case study of the Building industry where there has been consolidation in materials and in regulated labour delivery but *no use of scale in the assembly of houses*. This would mean a sensible competition regulator would / should have a difference approach to adjacencies in this industry than to one where large scalable group builders would build their own supply chain. We urge further research in this area .

¹⁷ https://www.woolworthsgroup.com.au/content/dam/wwg/investors/reports/2021/195984_annual-report-2021.pdf

Figure 3: What the OECD's report means for NZ and what is quotable

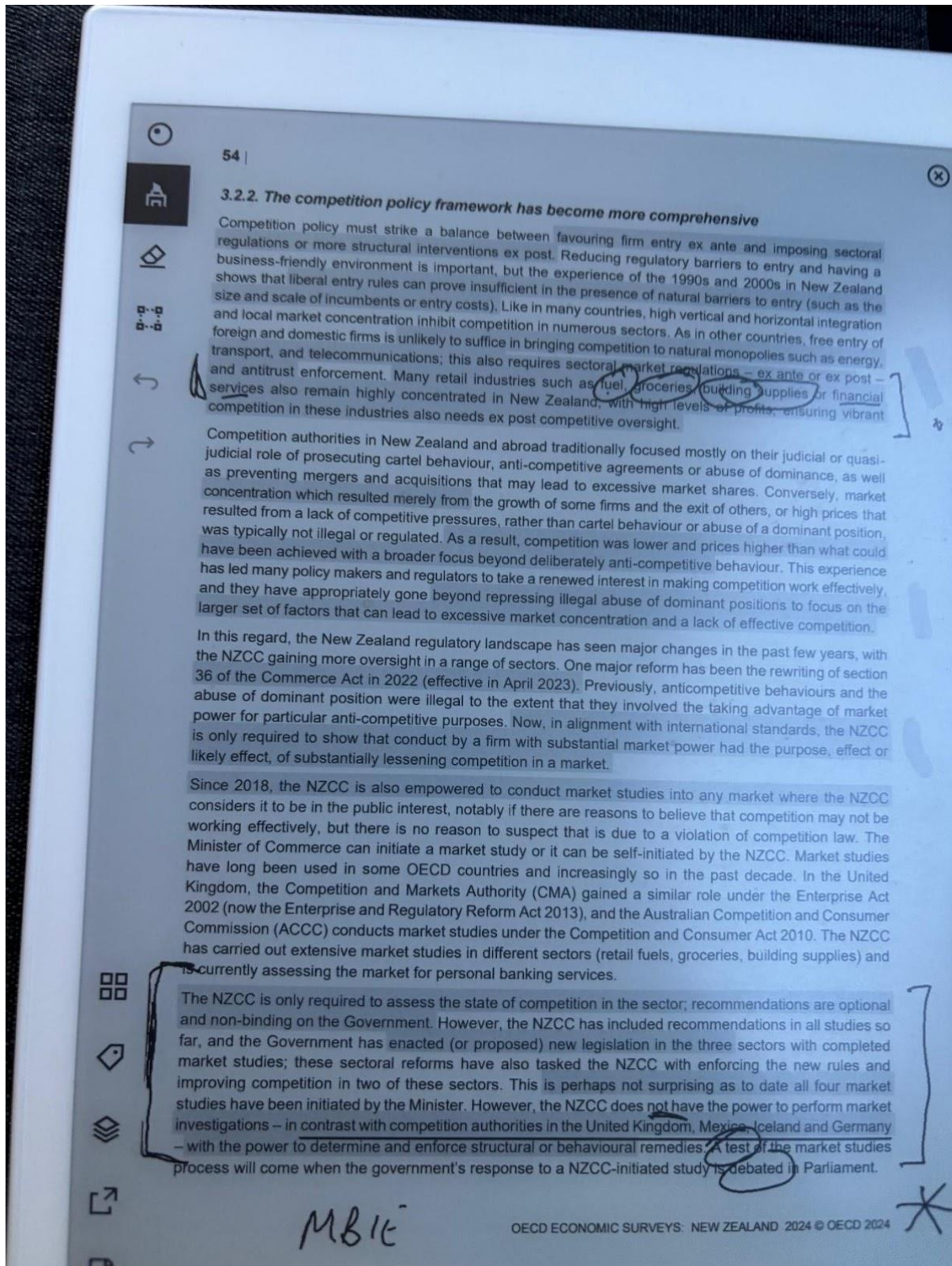


Figure 6: Suggested Cabinet Discussion items

Item for Cabinet	Comment	Impact on NZ
<p>Disestablish ComCom and rebrand and restructure entire organisation</p>	<p>The current ComCom organisation has a reformist, talented and hardworking professional team, however, they don't; have the power or the legal mandate.</p> <p>Governments expect the ComCom to behave like "Houdini" but don't give them the tool kit or mandate to fix things</p>	<p>Without independence, there are potential continuity issues for businesses, and little gets achieved as governments, policies, and agendas change every 3 years.</p> <p>This legislative change is as important as the RBNZ Banking Supervision Act of 1989, making the central banks independent.</p>
<p>Ensure new ComCom has fixing broken markets division</p>	<p>It is public record that the major problems with the competition are in a handful of capital-intensive businesses. The skills to break up deeply entrenched utility businesses are difficult. In some cases, they are globally unique because no other country has been as silly as NZ to have a plasterboard monopoly and a 3:2 supermarket merger. And 4 banks with a combined HHI ratio of 92%</p>	<p>The pathway back needs a unique environment and a <i>fixing broken markets division</i>, securing specialist skills and creditability around allowing embryonic businesses to grow.</p>

<p>Create a Significant Market power regime</p>	<p>Most similar markets in the EU have an SMP regime, which allows competition to grow. It enables those that have that designation to constrain their obliteration of competition.</p>	<p>This would be a huge tool in developing competition (and encouraging consumer utility adjacencies)</p>
<p>Set up a new ComCom office in Brussels or Copenhagen for 5 years</p>	<p>This review is taking place, because there is a problem. Other countries do it better than NZ . Australia is hurting NZ not helping in this legislative problem.</p>	<p>This would allow the ComCom to get experience from those who set the standard for international best practice.</p>
<p>Ensure 1/3 of new ComCom Commissioners have CFA qualifications, Investor, business and Game Theory experience</p>	<p>The supermarkets and banking market studies failed to really expose the real level of profit extraction. We applauded the commission digging into property leases, but it became obvious that there needed to be more skill in understanding capitalised property leases. More expertise in finding how incumbents hide profit and how this creates a barrier to entry is required</p>	<p>There is a lack of business experience and financial literature to find out where the money is hidden, how the profitability is camouflaged and what are the problems in attracting private capital to fix monopolies</p>
<p>Create Asymmetric behaviours legal regime so incumbents can't destroy competitors</p>	<p>Benchmarking with other OECD countries will expose this (EU, UK)</p>	<p>Increased competitions, startups can scale, and greater R&D investment to close the innovation deficit. Consumers get better prices and more choices.</p>

<p>Timetable abuse needs to be banned by transport operators who have monopoly routes</p>	<p>Example:</p> <p>Ferry A sails on the hour it's the most profitable ferry operation in the OECD.</p> <p>Ferry B sails on the ½ hour and gets nearly half of the business A, its 10% cheaper.</p> <p>Ferry A starts sailing on the ½ as well for the sole purpose of bankrupting the challenger.</p>	<p>Internationally, this is called timetable abuse and is illegal in most countries .</p> <p>In NZ its just another day at the office.</p>
<p>Is there an innovation deficit in NZ ?</p>	<p>Innovation deficit will be the theme of 2025</p>	<p>Review of Competition law will help fix the deficit .</p>

Figure 7: Sanctioned Corporate subsidies

Over the past 20 years, there has been a long list of governmental financial support for private corporations with an audit trail of large dividends. When the taxpayers want something done, they pay.

Its why a windfall profits tax is not a good idea; what should happen is that the incumbents should be made to make capital contributions to the challengers (like in the UK .)

Figure 8: Who finances the industry groups in NZ, and where is the misinformation being delivered?

- NZ Institute
- INFINZ
- Bankers Association
- NZ building Federation
- Financial Services Council
- Insurance Council of NZ
- Grocery Council

We ask MBIE to review the HHI Ratios of major controlling contributors

Figure 9: NZ is internationally famous (written up in the Oxford Press Walden and Angel) and widely regarded as a disaster for failing to quarantine competitive reactions which are widely regarded as illegal elsewhere these include the following

- Pocket pricing
- Bundling
- Geographic monopolisation
- Rebates
- Abuse of Market power with pricing into beach head products
- Sponsorship of the regulators
- Undisclosed payments to 3rd party influence groups
- Measurement of floor space and fridge space to competitors and payments for market share targets at retail outlets
- Hiring of politicians

Figure 10: Checklist of major public policy errors that have turned investors off from investing in competitive projects in NZ

ComCom Error	Consequences of ComCom Error
NZ 1988, sanctioned a globally unprecedented 2 to 1 merger in plasterboard	The Fletcher company used bespoke regulation and lobbying of the regulator to protect its business, monopolise the market and use it as a beachhead product to monitor construction. Not only did prices increase, but labour costs to install increased. International player Kanuf exited country , and elephant board quarantined by regulatory dysfunction
Failed to communicate impact of Pocket pricing being legitimised in 1996	In the mid-1990s, a series of really bizarre competition lawsuits entrenched monopolies and closed down NZ to new investment in challenger business. No challenger teleo operators got break through until 2011

Allowed Vodafone to purchase all 900mhz spectrum (now ONE NZ)	Globally unprecedented (CEO of Vodafone Global says he could retire early if every country were like NZ) . Delayed competition and fractured cost of capital for new competitors
Delayed number portability (telco)	It took 18 years to introduce made NZ look like a backwater and increased cost of capital for competition .
Allowed a 3 to 2 merger in supermarkets	Unbelievable decision a consequence of legislative change, difficult to peddle backwards
Unbelievable decision in Banking, a consequence of legislative change, challenging to peddle backwards	Lobbyists sleaze secures a banking merger which wouldn't have taken place elsewhere. HSBC , CCB ,BoFA , were candidates for a purchase *anyone other than a consolidator was the solution. A forced listing or sale to Kiwi bank was missed
1990s Failed to secure legislation change on pink batts abuse of power	Pocket pricing is entrenched in controversial insulation cases, where rebates and pocket pricing is used to screw over competition in insulation fractured competition in building materials for 2 decades
Data tails case failed	Failure of the incumbent to treat challengers somewhat closes new telecom investment down and creates a high dividend-paying monopoly. Eventually, taxpayer has to build infrastructure as all the capital goes to dividends
Failed to articulate geographic bundling in early 2000s	Geographic pricing is permitted by the regulator an incumbent, to prevent competition from coming
Lobbyist legislation x 3 since 2012	Lobbyists lobby out legislation to control them ... for the 3rd time . Increases incentives to invest in incumbents and prevents investment in competitors .

Figure 11: Nancy Edwards favourite Cookie Recipe

Ingredients¹⁸

- 120g butter, at room temperature
- 75g light brown sugar
- ½ tsp vanilla extract
- 1 egg
- 240g plain flour
- ½ tsp bicarbonate soda
- 170g dark chocolate chips
- Sea salt flakes (optional)

Method:

- 1) Using a wooden spoon, beat together the butter and sugars until just combined. Add the vanilla extract, then the egg and beat in well.
- 2) Sift together the flour and bicarbonate of soda, then use a spoon to add to the mixture, stirring until it just comes together into a dough. Fold in the chocolate pieces, then chill overnight, or for up to 72 hours.
- 3) Preheat the oven to 180C. Line two baking trays with greaseproof paper and divide the mixture into golf-ball-sized rounds, spacing them well apart. Bake for about 15 minutes until golden but not browned.
- 4) Sprinkle lightly with sea salt if using, and allow to cool on the tray for a couple of minutes, before moving to a wire rack to cool completely – or scoff immediately.

¹⁸ <https://grownups.co.nz/life/food-wine-beverages/perfect-chocolate-chip-biscuites/>

Thank you for Considering the position of Monopoly Watch NZ



Tex Edwards, Guy Grantham, James Dunn

Workers & Researchers

MWNZ

Privacy of natural persons

- *We have read the privacy statement and are happy for this material to be made public,*
- *Yes we are authorised to make a submission on behalf of our organisation*

Monopoly Watch is a New Zealand public policy group that studies and comments on competition issues in capital-intensive utility and commodity industries. Monopoly Watch draws upon wide and varied experience from game theory economists and captains of industry to millennials, centennials or adjacent workers, middle management, Māori, the

LGTBQ community, consumers, and suppliers. It is well-established that New Zealand has had one of the weakest competition legal frameworks in the OECD for many decades.

Monopoly Watch aims to provide evidence-based third-party commentary and policy solutions to failing and distorted market structures to advance the public interests of all Kiwis.