



Developments in New Zealand's competition settings and opportunities for trans-Tasman cooperation

Synopsis

Over recent decades, New Zealand and Australia have worked to align competition settings to create a more seamless trans-Tasman business environment.

This paper begins by setting out drivers New Zealand and Australia share for updating and modernising competition settings. Revitalising Australia's National Competition Principles can serve as a helpful framework for how New Zealand identifies and prioritises competition reforms. The paper covers initiatives underway in New Zealand to update competition settings and areas for further trans-Tasman cooperation.

Background and context

Competitive and dynamic markets are critical to economic productivity and the welfare of New Zealanders. Effective competition settings are particularly important in a small, geographically isolated economy like New Zealand, which can mean markets are less subject to competition from overseas firms. Lower levels of competition mean that firms can face weaker incentives to innovate, improve efficiency, and provide better services at lower prices to consumers.

There is a strong history of regulatory cooperation between New Zealand and Australia to support the Single Economic Market. Several key initiatives are underway in New Zealand to update competition settings, partly informed by Australia's competition policy reforms.

New Zealand's competition settings are gaining increasing interest in the context of:

- A recent period of elevated inflation, and low productivity.
- Concerns about increasing market concentration, increases in price-cost margins and declines in business dynamism that may be attributable to declines in competition.
- Recent Commerce Commission market studies which have identified markets dominated by a few large businesses as being a contributing factor to a reduction in competition, and which have resulted in costly sector-specific interventions.
- The 2024 OECD Economic Survey of New Zealand, which recommended strengthening the merger regime in the Commerce Act, and monitoring reforms underway in Australia. Regulatory alignment between Australia and New Zealand can promote certainty for businesses operating across the trans-Tasman market.
- The Australian Government initiating a Competition Policy Review. The concerns raised in Australia about markets becoming increasingly concentrated and merger reform being a priority issue reflect a similar focus in New Zealand.

Competition as a driver to lift productivity

Like elsewhere, productivity has slowed in New Zealand since the 2008 Global Financial Crisis and labour productivity remains weak compared to other OECD countries. The large gap in income per capita between New Zealand and other comparable countries is due to lower labour productivity

(GDP per hour worked) and slower productivity growth compared to higher productivity OECD countries.

The 2024 OECD Economic Survey found insufficient competition is an important contributor to poor productivity. The small number of competitors in New Zealand markets tends to further increase market concentration. Ensuring competition policy is best in class is important for offsetting these geographic handicaps, and to foster innovation and support higher living standards.¹

Market-based studies provide the most robust assessment of competition. The Commerce Commission's market studies in the land transport fuel, residential building supplies, retail groceries and personal banking sectors have found that markets in these sectors were not working well for consumers. Mergers in these sectors are likely to have contributed to concentrated markets, and a heightened risk of coordination.

Single Economic Market - Alignment with Australia

There is a strong history of regulatory cooperation between New Zealand and Australia to support the Single Economic Market. Australia is New Zealand's most important trading partner, with two-way trade of goods and services accounting for \$29 billion in 2022.² Australia is typically the first export market New Zealand companies look to grow and expand into. For Australia, New Zealand is a top export destination for Australian small and medium enterprises.

There can be benefits in aligning our competition settings, where practical, to support the Single Economic Market. Regulatory alignment can reduce the compliance burden for businesses operating in both jurisdictions, facilitate cooperation between regulators to address problematic conduct such as anti-competitive behaviour that crosses borders, and enabling institutions in each jurisdiction to learn from each other to promote better regulatory outcomes.

National Competition Principles – revitalising our approach to competition policy

Australia's initiative to revitalise the National Competition Principles (**NCPs**), developed following the Hilmer review in 1993, offers a helpful framework for approaching competition policy and prioritising reform.

The existing principles remain relevant today. For example, the principles emphasise the need to ensure competitive neutrality in government interventions in markets. This aligns with the 2024 OECD Economic Survey, which recommended New Zealand review its approach to ensuring competitive neutrality of government interventions.

The 'legislation review' principle of the NCPs is also topical in New Zealand.³ The Commerce Commission together with the Ministry of Business, Innovation and Employment (**MBIE**) have jointly developed Competition Assessment Guidelines that can be used to develop impact assessments for all proposed legislation that impacts markets.

The new principles proposed by the Australian Competition Taskforce raise issues that are topical in New Zealand. The relevance of these proposed principles to New Zealand are discussed below.

¹ OECD. (May 2024). *OECD Economic Surveys: New Zealand 2024*. https://www.oecd-ilibrary.org/economics/oecd-economic-surveys-new-zealand-2024_603809f2-en, Page 47.

² <https://www.beehive.govt.nz/release/40-years-closer-economic-relations-australia>

³ The legislation review principle seeks to ensure that legislation does not restrict competition for example regulation that unnecessarily restricts new businesses entering a market.

A new principle to guide government approach to market design and stewardship to facilitate competition

Like Australia, New Zealand is interested in adopting a more cohesive approach to the competition system i.e. extending beyond the current competition framework to include sectoral regulation and government interventions that impact on competition.

While core competition settings can prevent existing market structures and features becoming worse (such as further market concentration) or punish and deter anti-competitive conduct, regulations and other government action across the economy can have a significant impact on markets.

A new data sharing principle to foster competitive outcomes

Digital markets offer particular challenges and opportunities for competition policy. One opportunity to unlock competition in concentrated markets is through facilitating data sharing, including in financial sectors.

On 30 March 2025, the Customer and Product Data Act 2025 came into force. The Act establishes an economy-wide Consumer Data Right (**CDR**) framework to enable greater access to and sharing of customer and product data between businesses. CDR will make it easier for customers to switch from one provider to another for different products and services provided in the relevant sector. This will encourage innovators to create new products and services as the competition for customers increases. In financial services, CDR will facilitate open banking enabling FinTech companies to develop innovative, cost-effective products and services.

CDR is already active in banking in Australia. As it grows over time, more providers join, and the legislation comes into effect in New Zealand more competition can spread across the trans-Tasman markets.

Applying the National Competition Principles - areas of potential trans-Tasman cooperation

New Zealand government agencies are increasingly coming together to identify what actions to prioritise to lift competition across the economy. Australia's approach to revitalising NCP is helpful for determining what objectives and outcomes we want to achieve and including:

- taking an evidence-based approach to identifying competition issues and prioritising actions that have the most impact on markets to lift competition, and
- leveraging existing reforms underway to promote competition and cooperate across government agencies.

Set out below are workstreams underway in New Zealand where regulatory cooperation is already occurring with Australia or where there is potential for cooperation for the purpose of lifting competition across the Single Economic Market.

Trans-Tasman standards re-alignment work

At the Australia-New Zealand Leaders' Meeting on 16 August 2024, Prime Ministers noted our economies are two of the most integrated in the world, underpinned by the Australia-New Zealand Closer Economic Relations Trade Agreement and the Single Economic Market. Prime Ministers committed to reinvigorating the Trans-Tasman Mutual Recognition Arrangement to ensure a seamless market for goods and the mutual recognition of occupational registration across the Tasman.

A key part of this work is looking at opportunities to maintain and support trans-Tasman alignment of standards to enable trade, competition, and market access across our key sectors. Work is underway to re-align key dejointed standards in the building and construction sector. More work is planned to support standards development in other key sectors before June 2025 to prevent more dejointing and mitigation of impacts where dejointing has already occurred.

Digital markets and access to data – banking

New Zealand's work to develop a consumer data right lends itself to cooperation with Australia and particularly in the financial services area to lift competition in markets dominated by a few large players. More generally, digital markets were identified by OECD as an area where New Zealand should look to align laws with Australia to promote a single digital market.

Labour market regulation

Rules around employment can affect the degree of competition in labour markets. New Zealand is currently funding an OECD survey into non-competes and other restraints in labour markets.

Currently, there is no good evidence on the nature and extent of the problem in New Zealand and this survey could fill an important gap. We are aware that overseas evidence, including in Australia, has shown that non-competes and other restraints in labour markets restrict labour mobility, labour productivity, and dispersion of innovation.

Transition to a net zero economy

Trans-Tasman alignment of domestic measures for the transition to net zero economies will contribute to the Single Economic Market's aim to identify innovative, low-cost actions to reduce discrimination and costs arising from different, conflicting or duplicate regulations or institutions in either country.

At the 2+2 Climate and Finance Dialogue in July 2024, the New Zealand Minister of Finance and Minister for Climate Change agreed with their Australian counterparts to collaborate on many emissions reduction initiatives, including reviewing regulatory barriers to the net zero transformation (focused on battery and EV charging infrastructure standards).

Ensuring core competition law settings are fit for purpose

The 2024 OECD Economic Survey made several recommendations where New Zealand should look to strengthen its core competition settings including the merger regime. Merger reforms in Australia have sparked interest in New Zealand given the common issues across trans-Tasman markets, including a pattern of increasing market concentration in key sectors.

In September 2024, Cabinet agreed to review the Commerce Act 1986. Public consultation ran from 5 December 2024 through to 17 February 2025.⁴ The proposed reforms to New Zealand's settings were partly informed by Australia's recent reforms enacted by the Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024 and other existing tools in the Australian competition regime.

⁴ <https://www.mbie.govt.nz/dmsdocument/29866-discussion-document-promoting-competition-in-new-zealand-a-targeted-review-of-the-commerce-act-1986-pdf>

The Substantial Lessening of Competition test for mergers

The 'substantial lessening of competition test' (**SLC test**) was introduced to New Zealand in 2001, replacing the previous test of 'creating or strengthening a dominant position' (the dominance test). The policy intent for introducing the test included to align with Australia's merger test to support a single economic market.

MBIE consulted on whether reforms Australia has recently made to its merger regime through Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024, could also strengthen the effectiveness of New Zealand's merger regime. These reforms included enhancing the ability of the merger regime to deter harms arising from certain creeping acquisitions and mergers that increase an entrenchment of market power. New Zealand has also seen serial or roll-up strategies in some sectors, such as veterinary and funeral-related services. Such strategies can result in supply efficiencies and benefits for consumers, but there is a risk that over time an unchecked series of consolidation will harm competition.

We are also interested in how the SLC test considers entrenchment of market power. The Commerce Commission has successfully blocked mergers involving nascent (i.e. potential future) competition, such as Woolworths and Foodstuffs proposed acquisition of the Warehouse (a 'big box' discount retailer) in the grocery sector. In addition, it has successfully blocked vertical mergers where the parties operate in related markets (e.g. SkyTV and Vodafone and, more recently, Alpha Theta Corporation and Serato, suppliers of DJ equipment and software). The proposed Australian reforms may codify what the New Zealand position is in this regard, but it may be useful to explicitly clarify this in the Commerce Act.

Mergers outside the clearance process

The Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024 also provides for a formal mandatory and suspensory clearance regime administered by the Australian Competition and Consumer Commission (**ACCC**). New Zealand is one of the few OECD countries with a voluntary merger regime, which appears to be working well.

We are however interested in options to catch mergers that are potentially problematic but may currently avoid the regime. We consulted on whether the Commerce Commission should have powers to suspend the completion or implementation of a potentially anti-competitive merger without having to apply for a court injunction, and call-in powers for the Commerce Commission to require parties to apply for clearance if it becomes aware of a potentially anti-competitive merger.

Behavioural undertakings

Unlike the ACCC, the Commerce Commission cannot accept behavioural undertakings from merging parties to resolve competition concerns. Without this tool, the Commerce Commission may need to oppose mergers outright, even where competition concerns could be effectively addressed through behavioural undertakings. Our consultation asked stakeholders whether the Commerce Commission should have powers to accept behavioural undertakings, where appropriate, to mitigate or eliminate any harm to competition created by a merger that otherwise benefits consumers.

Other potential reforms that will align competition settings across the Single Economic Market

Other reforms being considered that align with Australia's competition settings include introducing a code-making power where competition in markets could be facilitated by establishing an industry code that could for example, under certain terms, provide access to essential infrastructure

controlled or owned by competitors, correct imbalances in bargaining power, and/or increase transparency about price and quality of products.

We also sought stakeholder feedback on the potential benefit of enabling the Commerce Commission to seek performance injunctions to enable the Court to require a person to perform an action to rectify a contravention of the Commerce Act. Modernising these injunction powers could standardise enforcement tools, simplify the Commerce Commission's activities and promote business compliance. It could also align New Zealand with Australia, as the ACCC can seek performance injunctions under the Competition and Consumer Act 2010.

Conclusion

There is much common ground in trans-Tasman approaches to competition policy and a current shared interest in reforming wider regulatory settings to lift competition. Revitalising the NCPs recognises the continued relevance of the principles and the importance of taking a system-wide approach to competition. Further cooperation can serve to promote competition and business activity across the Single Economic Market, lifting economic growth and productivity.

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