ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN NEW ZEALAND
-- 2014 --

27-28 October 2015

This report is submitted by New Zealand to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2015.
TABLE OF CONTENTS

EXECUTIVE SUMMARY .................................................................................................................. 3

1. Introduction .............................................................................................................................. 4
   1.1 Background ......................................................................................................................... 4
   1.2 Scope of this report ............................................................................................................. 5

2. Changes to competition laws and policies, proposed or adopted ............................................ 6
   2.1 Summary of new legal provisions of competition law and related legislation ..................... 6
   2.2 Other relevant measures, including new guidelines ............................................................. 6
   2.3 Government proposals for new legislation ......................................................................... 6
   2.3.1 Commerce (Cartels and Other Matters) Amendment Bill ............................................... 6

3. Enforcement of competition laws and policies ...................................................................... 9
   3.1 Anti-competitive practices ................................................................................................. 9
   3.2 Mergers and acquisitions .................................................................................................. 10

4. The role of competition authorities in formulating and implementing other policies .......... 11

5. Resources of the NZCC ......................................................................................................... 12
   5.1 Human resources .............................................................................................................. 12
   5.2 NZCC Annual budget ....................................................................................................... 12

6. New reports and studies on competition policy issues .......................................................... 13
   6.1 Market studies ................................................................................................................... 13
EXECUTIVE SUMMARY

1. This report presents the key competition law and policy developments in New Zealand for the year ended 30 June 2015.

2. The report is concerned primarily with activities concerning two areas of the Commerce Act 1986, New Zealand’s competition legislation:
   a) restrictive trade practices (that is, coordinated behaviour involving anti-competitive agreements and conduct involving the unilateral misuse of market power); and
   b) business acquisitions and mergers.

3. As well as reporting on key activities and developments during the reporting period, the report includes information on the functions, organisational structure and resourcing of the New Zealand Commerce Commission (NZCC) – New Zealand’s principal competition and regulatory authority – in relation to the above areas.

4. The report excludes developments in relation to other functions for which the NZCC is also the enforcement agency. These are various consumer laws and regulatory arrangements in relation to natural monopolies or other markets where competition either is not possible or is limited, with the exception that the report briefly comments on developments affecting the regulatory regimes for the dairy and telecommunications sectors.

5. Section 1 of this report is an introduction to New Zealand’s competition legislation and its enforcement by the NZCC.

6. Section 2 begins by noting new draft NZCC Competitor Collaboration guidelines. It then provides an update on various government reviews of competition policy and legislation, including the Commerce (Cartels and Other Matters) Amendment Bill, the review of the misuse of market power prohibition and related matters, the review of the competition regime for international civil aviation, and various developments in the dairy and telecommunications sectors.

7. 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).

8. Section 6 outlines a paper prepared by former NZCC Commissioner Donal Curtin, which argues that the NZCC should be given the power to conduct market studies.
1. Introduction

1.1 Background

This report describes key competition law and policy developments in New Zealand during the period 1 July 2014 to 30 June 2015. This period corresponds with the New Zealand government’s fiscal year and the New Zealand Commerce Commission’s (NZCC’s) financial year.

10. The NZCC is New Zealand’s primary competition enforcement and regulatory authority. 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 laws that:

a) promote competitive markets (the Commerce Act 1986);

b) provide for economic regulation in markets where there is little or no competition and little or no likelihood of a substantial increase in competition (the Commerce Act 1986);

c) contribute to a trading environment that is fair (the Fair Trading Act 1986); and

d) protects consumers in relation to credit contracts (the Credit Contracts and Consumer Finance (CCCF) Act 2003).

11. 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 a substantial lessening of competition in a market.

12. Restrictive trade practices include anti-competitive coordinated behaviour and unilateral conduct. Coordinated behaviour refers to agreements between competitors not to compete with each other. Such agreements may relate to price fixing, restricting outputs, allocating customers, suppliers or territories, and bid rigging. Unilateral conduct includes a person or business taking advantage of their substantial degree of power in a market for an anti-competitive 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.

13. 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). It can also approve a business acquisition that is anti-competitive or a restrictive trade practice that involves an agreement (except one relating to price fixing) but which would ultimately benefit New Zealand consumers (known as an authorisation). The effect of clearance and authorisation determinations by the NZCC is to offer businesses protection from legal action under the Commerce Act.

14. The aim of the two pieces of consumer legislation – the Fair Trading and CCCF Acts – is to promote fair competition and help ensure consumers can be confident of the accuracy of the information they receive when making purchase choices. The Fair Trading Act prohibits false and misleading behaviour by businesses. It also specifies when consumers must be given information about certain products and promotes product safety. The CCCF Act covers consumer lending, consumer leases and buy-

1 The NZCC’s website address is: http://www.comcom.govt.nz/
back transactions. It includes a set of lender responsibility principles, requires lenders to disclose certain information to consumers when they enter into a credit contract, and sets out rules about interest, payments and credit fees.

15. With respect to its economic regulation functions, the NZCC is responsible for implementing several pieces of legislation aimed at regulating specified natural monopoly businesses and markets where competition either is not possible or is limited. Under Part 4 of the Commerce Act, the NZCC 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. The Telecommunications Act 2001 regulates the supply of telecommunications services in New Zealand. The Act is administered by the NZCC under the stewardship of a Telecommunications Commissioner, a statutory position under the Act. Finally, the Dairy Industry Restructuring Act 2001 provides for the regulation of certain aspects of the dairy sector in New Zealand.

16. 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.

17. The role of providing government with policy advice on competition matters belongs generally to the Ministry of Business, Innovation and Employment. 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.

18. Internationally, the NZCC is actively involved with its counterpart agencies through forums such as the Organisation for Economic Co-operation and Development (OECD) and the International Competition Network. In addition, the NZCC’s relationship with the Australian Competition and Consumer Commission is strengthened through Commissioner cross-appointments.

1.2 Scope of this report

19. With the above background in mind, the purpose of this report is to describe developments in competition law and policy for the year ended 30 June 2015. The report addresses key competition developments concerning restrictive trade practices and business acquisitions and mergers. This includes comments on the relevant activities and resourcing of the NZCC. The report therefore excludes coverage of any developments related to the consumer laws which the NZCC enforces. It also ignores developments in the economic regulation of goods or services under Part 4 of the Commerce Act.

20. The report does, however, provide brief updates on the regulation of the dairy and telecommunications sectors. These regulatory regimes are transitory in response to how the relevant markets evolve due to, for example, technological or market structure developments. Structural changes in the telecommunications and dairy sectors can affect competition in the relevant markets and have implications for economic regulation versus the application of general competition laws.
2. Changes to competition laws and policies, proposed or adopted

2.1 Summary of new legal provisions of competition law and related legislation

21. There have been no new legal provisions relating to competition law introduced in the 2014/15 year. Section 2.3 provides details of present Government proposals for new legislation.

2.2 Other relevant measures, including new guidelines

22. The NZCC has a statutory role to provide guidance about the provisions of the Commerce Act. As part of this role, the NZCC publishes various written material to inform its stakeholders, such as guidelines and fact sheets. NZCC guidelines set out its analytical approach to its enforcement and regulatory work and provide in-depth information and guidance to assist businesses and other stakeholders to understand the Commerce Act and how to comply with it.

23. In 2014/15 the Commission published a revised draft of its Competitor Collaboration Guidelines. The Guidelines outline the Commission’s approach to assessing collaborations between competitors and are designed to assist the business community with its preparation for the upcoming amendments to the Commerce Act, proposed in the Commerce (Cartels and Other Matters) Amendment Bill (see below).

2.3 Government proposals for new legislation

2.3.1 Commerce (Cartels and Other Matters) Amendment Bill

24. The Commerce (Cartels and Other Matters) Amendment Bill was introduced into the New Zealand Parliament on 13 October 2011, and is currently awaiting Committee stage in Parliament, with the intention of being passed in 2015. The Bill proposes a new exemption regime for collaborative activities, an associated clearance regime, and the criminalisation of hard-core cartel activities.

25. A key feature of the Bill is that it clarifies the definition of cartel conduct to include the forms of cartel behaviour as defined by the OECD: price fixing, output restriction, and market allocation. Cartel conduct is currently prohibited under section 30 of the Commerce Act only to the extent that there is an effect on the price for goods or services. The definition of cartel conduct in the Bill makes it clear that contracts, arrangements and understandings that contain, or give effect to, any of the specified forms of cartel conduct are prohibited.

26. As a counterbalance to this more inclusive definition of cartel conduct, the Bill focuses on the substance of collaborative conduct (rather than on the form) by introducing a collaborative activity exemption. The purpose of the exemption is to ensure that legitimate pro-competitive collaborations are not prohibited. The exemption applies to all pro-competitive, efficiency-enhancing collaborations and not only to structural joint ventures, as currently provided under the Commerce Act.

27. The Bill also introduces a clearance regime to enable firms to approach the NZCC for a ruling on whether a proposed arrangement entered into by parties involved in a collaborative activity would raise competition concerns. In order to grant a clearance, the NZCC would need to be satisfied that the arrangement would not have, or would not be likely to have, the effect of substantially lessening competition in a market, and that if the relevant activity contains a cartel provision, that the provision is reasonably necessary for the purpose of the collaborative activity.

28. The part of the Bill that has attracted the most attention is the proposed imposition of criminal sanctions for hard-core cartel offences. The Bill, however, sets high thresholds for “intent” and “beyond reasonable doubt” criteria which must be satisfied in order for criminal behaviour to be proven.
29. As recommended by the Commerce Select Committee, the Bill will repeal the out-dated competition regime for international shipping in the Shipping Act 1987. Under the Bill, competition in international shipping will be regulated under the Commerce Act.

2.3.2 Review of the misuse of market power prohibition and related matters

30. The Government’s Business Growth Agenda 2015 will, on 6 October 2015, repeat the previous year’s announcement that the Government will “review the misuse of market power prohibition and related matters” in the Commerce Act 1986. The main issues to be examined are taking advantage of market power for an anti-competitive purpose (sections 36 of the Act), the cease-and-desist regime (sections 74AA-74D) and the possibility of equipping the NZCC with a power to undertake market studies. An Issues Paper will likely be released in late 2015.

2.3.3 Review of Competition Regime for International Civil Aviation

31. Competition in the aviation sector is desirable to promote international aviation services at a cost, frequency, quality and range of destinations that meet New Zealand’s needs. Competition in international air services is currently regulated by both Part 9 of the Civil Aviation Act 1990 (CAA) and the Commerce Act. Certain international air services trade practices can be exempted from the Commerce Act if they meet criteria in the CAA and are authorised by the Minister of Transport.

32. In its 2012 International Freight Transport Services Inquiry, the New Zealand Productivity Commission (NZPC) recommended, subject to a review of passenger-specific impacts, that the Government should consider removing the Commerce Act exemption for regulating international air services. The NZPC considered that a process of authorising trade practices under a Commerce Act-only regime would be more effective. It would impart a stricter public benefit test that will maximise the likelihood that efficiency-enhancing trade practices are authorised, and minimise the chances that harmful forms of competition are authorised.

33. The New Zealand Ministry of Transport is currently reviewing the provisions of Part 9 of the CAA as part of a broader CAA review. It is considering whether the competition regime for international air services should remain under the CAA as a sector-specific regime, or be moved to the Commerce Act. It is expected to focus on two primary options:

   a) A revised CAA regime which increases the transparency of the process and clarifies the way in which benefits and detriments on any proposed arrangements are to be taken into account; or

   b) Removal of the exemption for aviation by repealing Part 9 of the CAA and providing for regulation under the Commerce Act.

2.3.4 Dairy sector

34. The Dairy Industry Restructuring Act 2001 (DIRA) provided for the formation of the dairy co-operative Fonterra — amalgamating New Zealand’s two largest dairy co-operatives and the New Zealand Dairy Board. Upon its creation, Fonterra collected 96 per cent of New Zealand’s milk production. In recognition of Fonterra’s dominant market position, the DIRA set up a unique regulatory regime with the purpose of promoting the efficient operation of New Zealand dairy markets.

35. Fonterra was still subject to the provisions of the Commerce Act prohibiting restrictive trade practices. However, while the Commerce Act provides for *ex-post* examination of whether or not a company has taken advantage of market power, the DIRA is designed to act as an *ex-ante* incentive regime — such that Fonterra does not have the incentive to act in an anti-competitive manner.
DAF/COMP/AR(2015)46

36. The DIRA promotes contestability in the market for farmers’ milk by requiring Fonterra to operate an “open entry and exit regime”. This means that Fonterra must accept all milk supply offers from dairy farmers in New Zealand and allow relatively costless exit from the co-operative. These requirements ensure that Fonterra cannot “lock in” its farmer-suppliers and, as a consequence, Fonterra faces commercial incentives to pay efficient prices for farmers’ milk and capital invested in Fonterra.

37. Amendments were made to the DIRA in July 2012 to further bolster the contestability of the market for farmers’ milk. The amendments require greater transparency of how Fonterra sets the price it pays farmers for milk and introduce a new farm gate milk price monitoring regime to be undertaken by the NZCC.

38. Section 150A of DIRA specifies that the purpose of the milk price monitoring regime is to promote the setting of the base milk price by Fonterra that: (a) provides an incentive for Fonterra to operate efficiently, while (b) providing for contestability in the market for the purchase of milk from farmers.

39. Under the 2012 amendments to the DIRA, the NZCC is required to carry out two statutory reviews of Fonterra’s base milk price-setting for each milk season. The first review requires the NZCC to report by 15 December each year on the extent to which Fonterra’s Farm Gate Milk Price Manual is consistent with the purpose of the milk price monitoring regime. The second requires the NZCC to review Fonterra’s calculation of the base milk price for each season and report by 15 September each year on the extent to which it is consistent with the purpose of the milk price monitoring regime.

40. Recognising that Fonterra’s market position may alter over time, the DIRA contains provisions which trigger a partial expiry process when Fonterra’s market share drops below a certain percentage in one or both of New Zealand’s main islands. In August 2015, the Government confirmed that Fonterra’s market share of milk solids collected from farmers in New Zealand’s South Island dropped below the 80% threshold for the 2014/15 season. This means that, absent Government intervention, Fonterra will no longer be required to operate an “open entry and exit regime” in the South Island by 31 May 2018.

41. At the request of the Government, the NZCC is preparing a report on the state of competition in New Zealand dairy markets. This report is due to be completed in late February 2016. This will help to inform the Government’s decision about whether to promote changes to the DIRA which reset the market share thresholds or promote a transition pathway to deregulation (or both).

2.3.5 Telecommunications sector

42. The Telecommunications Act 2001 created an industry-specific regulatory regime for telecommunications, overseen by the Telecommunications Commissioner within the NZCC.

---

2 The base milk price is the price paid by Fonterra to dairy farmers for raw milk. It is also known as the ‘farm gate’ milk price.


43. The NZCC can set comprehensive terms and conditions for regulated wholesale telecommunications services, such as interconnection, unbundled local loop services, unbundled bitstream services and mobile termination. The NZCC can also investigate and recommend to the Minister for Communications that wholesale telecommunications services be regulated. If the recommendation is accepted by the Minister, the service can then be added to the schedule of regulated services under the Telecommunications Act. Both price and non-price regulation are available as options. The NZCC produces regular reports on developments in competition in telecommunications markets under its general monitoring powers.

44. In the latter part of 2015, the Government commenced the second phase of a review of the Telecommunications Act, following an initial phase in 2013. The review is looking at market and technology developments, whether the current regulatory regime is the best means to achieve certain competition- and investment-related outcomes, and if not, what sort of changes should be made. The Government can support the sector by building greater predictability and transparency into the regulatory system, allowing all sector participants to act with confidence.⁵

45. To make broadband offerings easier for consumers to understand and compare across different providers, an industry code was introduced by the New Zealand Telecommunications Forum in March 2014. A broadband testing methodology that will sit under the code is currently being developed with input from the NZCC and the Government.

3. Enforcement of competition laws and policies

3.1 Anti-competitive practices

46. Table 1 shows the number of cases investigated by the NZCC in relation to anti-competitive practices in the three years ended 30 June 2013, 2014, and 2015.

<table>
<thead>
<tr>
<th>Table 1: NZCC investigations of anti-competitive practices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td><strong>2014/15</strong></td>
</tr>
<tr>
<td>-----------------------------------</td>
</tr>
<tr>
<td>Number of coordinated behaviour cases</td>
</tr>
<tr>
<td>Number of unilateral conduct cases</td>
</tr>
</tbody>
</table>

3.1.1 Significant investigation cases

47. In 2013 the Commission received two complaints about Winstone Wallboards’ rebates and pricing for its GIB plasterboard products. The complaints raised two potential ways in which Winstone may have breached the Commerce Act, either through agreements that shut out competitors or through predatory pricing. The NZCC interviewed and gathered information from a number of industry participants including Winstone, merchants, Winstone’s present and past competitors, builders, the Building Research Association of New Zealand and Christchurch City Council.

48. In December 2014, after thoroughly assessing the facts, the NZCC announced that it would not be taking any further action in this case. The NZCC’s investigation found that Winstone’s very high market share was driven by a number of factors, including brand recognition and product reputation. The NZCC found no evidence to suggest Winstone had breached the Commerce Act through exclusive agreements with merchants, rebates offered or an anti-competitive predatory strategy.

3.2 Mergers and acquisitions

49. Table 2 shows the number of merger clearance and authorisation applications received by the NZCC in the three years to 30 June 2015. It also shows any proposed or actual acquisitions or mergers for which clearances or authorisations were not sought but which were investigated by the NZCC to ascertain their effects on market structure and competition (market structure cases).

| Table 2: Merger clearance and authorisation applications |
|---------------------------------------------|------------------|------------------|
|                                             | 2014/15 | 2014/13 | 2013/12 |
| Number of clearance applications processed | 14      | 13      | 9       |
| Number of authorisation applications processed | 1       | 0       | 0       |
| Number of market structure cases investigated | 2       | 1       | 2       |

50. The number of merger applications continues to increase. The NZCC received 14 merger applications in 2014/15, the most since 2007/2008. All merger clearance applications received are assessed to determine whether competition would be substantially lessened in the markets involved as a result of the merger.

51. The NZCC declined two applications this year, its first declines since the 2012/13 year. Connor Healthcare Limited, the applicant for one of the declines, subsequently reapplied and was granted clearance subject to a divestment undertaking.

52. In 2014 Reckitt Benckiser, owners of Durex, sought clearance to buy Johnson & Johnson’s K-Y brand. The application presented a challenging set of issues as the proposed merger would mean the two leading personal lubricant brands would come under the same ownership. While this proposed merger had been approved in other jurisdictions where more brands had a footing in the market, the New Zealand market is unique due to its size and lack of suppliers. In the NZCC’s view, price increases in supermarkets and pharmacies could not be ruled out as a direct result of approving this merger. The NZCC ultimately declined the application for this reason and it was not appealed.

53. The NZCC also received two authorisation applications, the first for four years. Approval was granted for members of the Infant Nutrition Council (INC) to follow their Code of Practice that restricts advertising and marketing of infant formula for children under six months of age. One further authorisation application is yet to be decided.

54. Table 3 sets out the merger and acquisitions applications received by the NZCC in the year ended 30 June 2015, and their outcomes.
Table 3: Outcome of merger applications

<table>
<thead>
<tr>
<th>Case</th>
<th>Description</th>
<th>Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDC Pharmaceuticals Limited Pharmacy and Wholesalers (Central) Limited</td>
<td>Clearance</td>
<td>Cleared</td>
</tr>
<tr>
<td>Tuakau Proteins Limited, Graeme Lowe Protein Limited, and Taranaki By Products Limited</td>
<td>Clearance</td>
<td>Cleared</td>
</tr>
<tr>
<td>Expedia Inc and Wotif.com Holdings Limited</td>
<td>Clearance</td>
<td>Cleared</td>
</tr>
<tr>
<td>Connor Healthcare Limited and Acuracy Health Group Limited</td>
<td>Clearance</td>
<td>Declined</td>
</tr>
<tr>
<td>Reckitt Benckiser Group Plc and Johnson &amp; Johnson</td>
<td>Clearance</td>
<td>Declined</td>
</tr>
<tr>
<td>Atlas Copco South Pacific Holding Pty and Limited Ash Air Businesses (from Lancaster Group Limited)</td>
<td>Clearance</td>
<td>Cleared</td>
</tr>
<tr>
<td>Vector Limited and Arc Innovations Limited</td>
<td>Clearance</td>
<td>Cleared</td>
</tr>
<tr>
<td>GlaxoSmithKline Plc and Novartis AG</td>
<td>Clearance</td>
<td>Cleared</td>
</tr>
<tr>
<td>Mylan Inc and Abbott Laboratories Inc</td>
<td>Clearance</td>
<td>Cleared</td>
</tr>
<tr>
<td>Mayborn Group Limited and Jackel Pty Limited</td>
<td>Clearance</td>
<td>Cleared</td>
</tr>
<tr>
<td>Connor Healthcare Limited and Acuracy Health Group Limited</td>
<td>Clearance</td>
<td>Cleared subject to a divestment</td>
</tr>
<tr>
<td>Staples, Inc and Office Depot, Inc</td>
<td>Clearance</td>
<td>Cleared</td>
</tr>
<tr>
<td>Bledisloe New Zealand Limited, Cremation Society of Canterbury Limited and Harewood Memorial Gardens &amp; Crematorium Limited</td>
<td>Clearance</td>
<td>Cleared</td>
</tr>
<tr>
<td>Oji Oceania Management (NZ) Ltd and Carter Holt Harvey</td>
<td>Clearance</td>
<td>Cleared</td>
</tr>
<tr>
<td>Infant Nutrition Council</td>
<td>Authorisation</td>
<td>Authorised</td>
</tr>
</tbody>
</table>

55. The NZCC undertakes *ex-post* reviews of its merger decisions. Its new approach to reviews focuses on particular aspects of its original analysis to see which ones held true. In particular, it reviews whether certain market conditions developed as predicted. This is done with the aim of refining and improving the tools and techniques used in making those predictions.

56. The NZCC has recently reviewed 18 past mergers, involving 40 markets. The results were mostly as expected. The lessons it learned involved more testing of the sensitivities of imports to exchange rate fluctuations, understanding conditions that drive exports decisions, exit in duopoly markets, opportunity cost as a cost of entry, and the impact of low sunk costs.

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

57. As discussed in Section 1.1, the NZCC is an independent government entity responsible for enforcing various legislation. Although it may provide views on competition-related policy developments, this is usually restricted to commenting on operational matters. To ensure an appropriate 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 the Ministry of Business, Innovation and Employment. 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.
5. **Resources of the NZCC**

5.1 **Human resources**

58. 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 30 June 2015, the NZCC employed 79.97 full-time equivalent (FTE)\(^6\) staff in its Competition Branch. This compares with 82 FTE staff employed as at 30 June 2014.

59. The Competition Branch deals with both competition (Commerce Act) and consumer (Fair Trading Act and Credit Contracts and Consumer Finance Act) law issues. All staff employed in the Competition Branch can potentially work on either competition or consumer issues. However, personnel are generally divided into teams according to areas of specialisation. **Table 4** shows the numbers of FTE staff in the relevant teams.

<table>
<thead>
<tr>
<th>Table 4: Numbers of Competition Branch FTE employees(^7)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Support staff</td>
</tr>
<tr>
<td>Investigators</td>
</tr>
<tr>
<td>Lawyers</td>
</tr>
<tr>
<td>Economists</td>
</tr>
<tr>
<td>Other Professionals (including Advocacy)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

60. **Table 5** shows the human resources (FTEs) applied to enforcement activities against anti-competitive practices, merger reviews and enforcement and advocacy efforts.

<table>
<thead>
<tr>
<th>Table 5: Human resources applied to competition enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anti-competitive practices</td>
</tr>
<tr>
<td>Merger review and enforcement</td>
</tr>
<tr>
<td>Advocacy efforts</td>
</tr>
<tr>
<td>Lawyers</td>
</tr>
<tr>
<td>Economists</td>
</tr>
</tbody>
</table>

5.2 **NZCC Annual budget**

61. **Table 6** shows the NZCC’s annual budget for both general markets (which covers its competition enforcement activities) and for the organisation as a whole.

\(^6\) An FTE employee is equivalent to one employee working full time for a full year. There are likely to be fewer FTEs than actual people employed since some employees are hired on a part-time basis.

\(^7\) Note that Table 4 shows the number of staff in the Competition Branch only, and does not include the regulation and organisational performance branches. It also includes staff working on consumer protection issues.
Table 6: NZCC Annual budget

<table>
<thead>
<tr>
<th></th>
<th>General Markets⁸</th>
<th>Commerce Commission Overall¹⁰</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014/15</td>
<td>2013/14</td>
</tr>
<tr>
<td></td>
<td>$14.84 million NZD</td>
<td>$14.60 million NZD</td>
</tr>
<tr>
<td></td>
<td>$9.45 million USD⁹</td>
<td>$9.29 million USD</td>
</tr>
</tbody>
</table>

6. New reports and studies on competition policy issues

6.1 Market studies

Donal Curtin, a NZCC Commissioner from 2001 to 2013, presented a paper to the 2015 New Zealand Association of Economists Conference, in which he argued that the NZCC should be given the power to conduct market studies¹¹. Such studies would be proactive and broad-ranging investigations into the workings of a market which are not triggered by specific complaints of anti-competitive behaviour. Mr Curtin noted that the NZCC’s inability to conduct proactive studies looks increasingly anomalous compared to other countries, and that the competitiveness of New Zealand markets would be better served by enabling the NZCC to undertake market studies. He argued that such studies would help to deter poor policy responses based on mistaken competition concerns, and serve as an additional accountability measure for the NZCC’s performance.

---

⁸ The General Markets budget allocation includes enforcement of competition and consumer laws.

⁹ As at 21 September 2015 exchange rates.

¹⁰ The overall budget for the NZCC covers competition, consumer and regulatory functions in addition to organisational support.