

21 July 2016

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

By email: commerceact@mbie.govt.nz

**CROSS SUBMISSION on
“Targeted Review of the Commerce Act 1986” Issues Paper**

1. Introduction

Thank you for the opportunity to make a cross submission on the Targeted Review of the Commerce Act 1986 Issues Paper. This submission is from Consumer NZ, New Zealand’s leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

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2. General comments

Consumer NZ supports the Commerce Commission’s submission on the Issues Paper.

3. Section 36 of the Commerce Act

We support reform of section 36 of the Commerce Act as we believe it is overly complex and does not effectively ensure the long-term benefit of consumers.

We do not accept the view that the benefits of reform are outweighed by the costs. We agree with the Harper Review Panel’s view that any transitional costs will be outweighed by the benefits of reform the Act.

As stated in our earlier submission, we would like to see a more in-depth analysis of the following options proposed in the Issues Paper:

- removing the taking advantage requirement (option two);
- adding an effects test (option three); and
- removing the taking advantage requirement and adding an effects test (option four).

All options will need to take into account the over-arching principle of assuring the long term benefit of consumers.

4. Alternative enforcement mechanisms

Consumer NZ supports the development of further alternative enforcement mechanisms that are designed to resolve competition issues in a more efficient manner.

We agree with the Commerce Commission that injunctions provide a more cost effective and efficient method of stopping harmful conduct than the cease and desist regime. Therefore, in our view, the cease and desist regime either needs to be modified or it needs to be repealed and the settlements regime modified.

We agree with the Commerce Commission's view that enforceable undertakings would be a useful addition to the commission's enforcement toolkit.

5. Market studies

As stated in our earlier submission, Consumer NZ agrees with the Productivity Commission's views on market studies.¹ We would therefore support a new market studies power being granted to the Commerce Commission.

The ability of the commission to undertake independent investigations, without necessarily having to act on a complaint, would enhance its knowledge of business practices generally and of the marketplace. That must, in the long term, benefit consumers and businesses.

In our view the Commerce Commission should have mandatory information-gathering powers to enable it to gather enough information to effectively conduct market studies.

Finally, where a response is relevant, legislative reform is required, or the commission has made a recommendation which requires a response, we agree the government should be required to respond. We also agree with the commission's views that there should be a statutory requirement for the government to respond within a certain timeframe.

Thank you for the opportunity to make a cross submission on the submissions received on the Issues Paper. If you require any further information, please do not hesitate to contact me.

Yours sincerely



Sue Chetwin
Chief Executive

¹ *Boosting Productivity in the Services Sector*, New Zealand Productivity Commission, May 2014, pp 140 - 151