

Commerce Commission set to carry out market studies

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The Commerce Commission has a new power to carry out competition (or 'market') studies, following the enactment of the Commerce Amendment Act 2018 in late October.

It is widely anticipated that the first market study will be a study into fuel markets and that supermarkets could also be a target. Based on overseas experience, other potential target industries include electricity, dairy, communications, digital platforms, new car retailing, and banking (although the funding allocated to the Commission to undertake the new function means that only one study may be able to be carried out at a time).

Key features of the new market study process are:

KEY FEATURES OF THE NEW MARKET STUDY PROCESS



Commencement of study



The Commission has the power to self-initiate a study if it considers it to be in the public interest. It may also be required to undertake a study by the Minister of Commerce and Consumer Affairs. Official commencement will be through publication of a notice and terms of reference describing the scope of the study in the *Gazette*.



Information gathering



The Commission can require businesses to provide information for the purposes of a market study, using the same information gathering powers that it uses in investigations into breaches of competition law.



Draft report consultation



The Commission is required to publish and consult on a draft report.



Final report and recommendations



The Commission's findings from a study, which will be made publicly available, may include recommendations that businesses within an industry change their behaviour, as well as recommended changes to legislation, policies, and practices. Investigations into potential breaches of competition or consumer law could also result.

While a market study is not the same as an investigation into a potential breach of the law, the Commission's ability to use its compulsory information gathering powers and the potential outcomes of a study mean that similar skills and resources will need to be applied by businesses involved in a market study. For example:

- Effective engagement in a market study process will require an understanding of the Commission's powers and processes, and resources to participate in Commission consultation
- Commission requests for information will need to be assessed for validity and reasonableness
- In collating material to respond to a Commission request, material will need to be reviewed for relevance, competition/consumer law risk, and confidentiality issues. The potential compliance burden is highlighted by a recent study into retail electricity pricing in Australia, in which the Australian competition regulator reportedly issued over 110 notices to 45 businesses and received over 48,000 documents in response.

If you have any questions about the Commission's new powers or would like to be updated when the first market study is commenced, please get in touch with a member of our competition law team.

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