



# The Role of the Commerce Commission



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Empirical Analysis of Mergers  
by Competition Authorities  
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## Today's presentation

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- The numerical nature of the Commerce Commission's adjudication work
- Recent merger cases using empirical analysis
- Empirical analysis in current work, and in the future



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# Merger adjudication: our role

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- Two strands: clearances and authorisations
- Clearance to merge
  - no “substantial lessening of competition”
- Authorisation to merge
  - lessening of competition
  - but public benefits outweigh detriments



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# The move to quantification

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- Two factors
  - Amendment to Commerce Act
  - Guidance by Courts



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# Commerce Act Amendment

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- Commerce Act amended May 2001
- Threshold changed from “dominance” to “substantial lessening of competition”
- Factual vs Counterfactual
- Model simulations assist in predicting possible outcomes



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## AMPS-A judgement

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- Court of Appeal decision in *Telecom v Commerce Commission & Ors*
- “...responsibility of regulatory body to attempt, so far as possible, to quantify detriments and benefits rather than rely on a purely intuitive judgement.” Richardson J
- Commission took comment to heart
- Emphasis placed on numerical analysis



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## Recent cases – supermarkets

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- Supermarkets merger considered under both thresholds
- cleared under “dominance”, declined under “substantial lessening of competition”



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## Merger simulation model

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- In 2002 developed more sophisticated version of Bertrand model
- AIDS model a starting point
- Simplification inherent in approach



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## Recent cases - Avis

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- Bertrand merger model first used
- Predicted post-merger price rises of 2% to 7%
- Model added rigour to decision making



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## Recent cases – Qantas / Air NZ

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- Large amount of modelling
- Modelling treated harshly by Court:
  - “...notwithstanding the best efforts of experts of international standing... the revised model has failed to provide a reliable guide to the quantification of allocative inefficiency.”
- Court’s decision implied models were useful



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## Usefulness of models

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- Quantitative estimates not only benefit
- Focus thinking on key market characteristics
- Not “proof” of substantial lessening of competition
- Balance in approach to use of modelling