

Effective competition through innovation and collaboration, and market design – Address by Dr John Small

Chair of the Commerce Commission, at Competition Matters Conference



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E ngā mana, e ngā reo, e ngā rau rangatira, tēnā koutou, tēnā koutou, tēnā tātou katoa – the prestigious ones, the respected ones, the chiefly ones, greetings to you all.

A special mihi also to Ngāti Whātua Ōrākei. Tēnā koutou, and thank you for welcoming us all here today with that beautiful whakataū.

I'd also like to extend a warm welcome to the Minister of Commerce and Consumer Affairs, Cameron Brewer, who will join us this morning, and to the Minister of Finance, Minister for Economic Growth and Minister for Social Investment, Nicola Willis, who will share a message with us this afternoon. And finally, to our counterparts from Australia's ACCC, Commissioners Anna Brakey and Philip Williams, thank you for making the trip – we're looking forward to engaging with you.

And to you all, a very warm welcome to this Competition Matters Conference, where our theme is *Driving Competition for a Prosperous Future*. We've got a great programme lined up, and I'm really looking forward to hearing from everyone here today, whether you're a business leader driving hard in crucial markets, an international expert, a consumer advocate, or a policy advisor.

The programme itself includes leaders from across New Zealand's banking, payments, energy, water, infrastructure, retail, and technology sectors. We have international experts from the fintech sector in Brazil and the OECD in Paris, and we also look forward to what Ministers Brewer and Willis have to say. It's a speaker group that reflects the scale and diversity of the issues we're tackling, and the value of hearing directly from those shaping markets here and overseas.

The attendees are the making of any great conference, though, so I really want to acknowledge the deep and diverse expertise of all of you who have shown up today.

As I look out into this room, I see people who work directly in the markets we're talking about – people at the coalface of the economy, in the advisor community, and in policy or regulatory roles. That matters, because good decisions come from understanding real-world experience and hearing a wide range of views. We are looking forward to hearing from you in the Q&A parts of the sessions, and chatting in the breaks.

This conference is about stepping back and thinking big. Like our *State of Competition report* released earlier this week, providing an evidence-based assessment of how competition is functioning across New Zealand's economy, we curated this conference as a forum to kick-start robust conversations about the state of competition and where it can be improved.

To deliver on that successfully, I can't stress how important it is that these conversations don't stay in this room. I urge and encourage you to take the ideas generated today back to your teams, your sectors, and your networks, because the value of today's conference isn't limited to this beautiful space we share today at the International Convention Centre. It's in how the insights are tested, challenged, and built on once we are back in our own environments.

Background

This is the first conference the Commission has run for quite a while, and you have probably noticed that the programme for this conference is quite different from our previous ones. Today, we are looking at the big picture – competition with a “big C,” as we call it – rather than just focusing on regulatory matters. We got out of the conference game during COVID, so there’s some irony in this event happening as the next economic crisis really starts to hit home.

Indeed, the current fuel crisis exemplifies how global pressures can ripple quickly through our own markets. Geopolitical tensions, production shifts, and uncertainty around key trading routes have created shocks that have flowed straight into what New Zealanders pay at the pump. That is giving us a new perspective on the strength of domestic competition, most obviously in the fuel sector, and so far it seems to be working. We are not seeing the types of competition risks that are concerning the ACCC, for example. In due course, it will be interesting to assess whether the wholesale market reforms enacted after the Commission’s first market study have helped us during this crisis.

Meanwhile, the role of industry policy and its connection to competition policy has become a major topic internationally, and in New Zealand. There is keen interest in economic strategies that can help deliver better outcomes for New Zealand consumers by promoting particular business activities. Dr David Haugh, Head of the NZ Desk at the OECD, will shortly provide deeper context for this, but a couple of things have already become obvious:

- 1 Energy security is paramount, and
- 2 Careful regulation of competition is a key success factor for energy security and, more generally, for our economic prosperity.

The energy security point needs little explanation. The Iran war has exposed just how dependent New Zealand (and the rest of the world) is on importing fossil fuels from an increasingly unstable external world. And liquid fuels are just the start of that dependence. These are upstream inputs into transport-related economic activity, which then feeds into an even wider set of downstream markets. And fuel is not the end of the disrupted upstream market list – think urea and plastics, for example. In a happy coincidence:

- New Zealand is blessed with abundant sources of renewable energy, and
- The cost of harnessing these renewable sources is falling rapidly.

So we have huge potential in this area and in many others. But realising this potential is easier said than done. When future historians are (hopefully) living in a thriving, sustainable New Zealand, earning high wages and confident their kids will come back from their OE to raise their families here, their minds will turn to the drivers of our success. They’ll already know that success has many parents (while failure is an orphan).

One of those drivers will be that we deliberately chose top-quality competition settings. We’re going to discuss some of those choices today as we seek to *Drive Competition for a Prosperous Future*, and in these opening remarks I’ll try to set the scene in a few ways:

- First, a rearview mirror look at New Zealand’s performance over the last 20 – plus years, drawing on findings from the Commission’s first *State of Competition report*.
- Then I want to discuss the roles of competition and collaboration in driving economic prosperity – you’ll have noticed that two of our sessions today have a collaboration theme, so I’ll outline the rationale for those programme choices.
- Finally, I want to acknowledge how difficult it is to choose top-quality competition settings, and seek your cooperation and support in that process.

Looking Back

As mentioned earlier, we released our first *State of Competition* report this week.

This work sets a baseline for monitoring competition trends over time, using firm-level data in the Longitudinal Business Database (LBD). One of the challenges of competition policy is that understanding the effects of changes can be tricky, since everyone sees the economy from their own unique perspective.

So this report sets out a systematic way of assessing how, as a nation, we are going when it comes to competition. It is evidence-based, using raw firm-level data to establish objective measures. Competition is a multidimensional concept, so we have used a range of indicators, including structural measures, indicators of dynamism, and some outcome indicators like margins. This is a very rich data set, and we claim no monopoly on its analysis, so we have made the underlying data available for others to explore.

Our assessment of how competition has functioned across the New Zealand economy since 2001 (when the LBD data series begins) reveals a mixed picture:

- There is less concentration, and major players in each sector have lost some market share.
- However, smaller and newer businesses appear to be finding it harder to gain traction and grow. While incumbent firms may be losing some market share around the edges in many industries, as a group they tend to be retaining their market position.
- The goods-producing sector is under more competitive pressure and has lower margins than the service and primary sectors. By far the largest part of our GDP is in the service sector, which is growing in importance. With a few notable exceptions, services are not exposed to international competition. It is a very diverse group, so these aggregates conceal a lot of interesting detail. For example, competition has been improving in rental, hiring, and real estate services, but weakening in wholesale trade services, and since COVID some price-cost margins in the service sector have started increasing.
- Some industries that face little competition are also the ones that supply essential goods or services to other industries. These include electricity, gas, water and waste services, and financial and insurance services. Weak competition in those sectors can flow through and affect many parts of the economy, potentially causing greater harm to consumers. We need to keep an eye on the size of the bubbles on this chart, and how they shift over time, as another lens to focus our competition policy efforts.

These are very high-level observations, reflecting weighted averages of weighted averages. We at the Commission have a lot more detail to dig into over the coming months, as do the data scientists among you and in your organisations.

Setting a baseline for future monitoring complements this conference, where we are exploring opportunities for improving our competition settings to meet current and future challenges.

Competition and Collaboration

I don't need to remind this audience of all the great benefits that flow from effective competition: the decentralised allocation of resources to their best use, the innovation and productivity benefits, and, most crucially, the passing through of those benefits to workers and customers.

What is sometimes missed in this recital, however, is that competition is a means to an end. The end goal is public benefit, broadly defined. That end goal matters to the Commerce Commission: our statutory purpose is to promote the long-term interests of residents in New Zealand, not to blindly seek more competition everywhere.

Because there are situations when less competition is better than more competition, when certain activities should have fewer customers, not more, and when collaboration between firms is highly desirable.

This is not just common sense and sensible economics – it is also the law. The Commerce Act contains exemptions for cartel conduct in situations where collaboration is reasonably necessary for certain trade practices. A much wider range of practices and structures can also be authorised even if they substantially lessen competition, provided there are sufficiently large offsetting public benefits. For example, last year the Commission authorised an agreement between the four large gentailers so they could join forces on the refurbishment of a coal-fired turbine at Huntly. In that example, the offsetting public benefit was greater energy security.

Collaboration to promote competition is a theme for the first panel session today, which is about banking and payments. These are sectors where technological innovation has cut the cost of entry and expansion, raising the prospect of significantly greater competition. Market forces alone won't enable this stronger competition, though. As we'll see, the extra ingredients required include judicious policy initiatives, careful regulation, and collaboration between competing firms.

In the second panel session, our panellists will explore how collaboration can help promote economic prosperity in the building and operation of infrastructure. In sectors like electricity and water distribution, there are such strong scale economies at the infrastructure layer that only one network serves each location (they are "natural monopolies"). Competition can still benefit these organisations, for example in the procurement of contracting services. But there is also potential for collaboration between distributors on a range of ancillary services.

Before we leave this collaboration theme, let me address any potential confusion that might be lurking as a result of listening to a cartel law enforcer promote collaboration. To be super clear: cartel conduct is illegal, cartel members stand a high chance of being caught, and the maximum penalties are severe, including imprisonment. So don't do that – and if you are already doing it, then get your leniency application in immediately before your co-conspirators beat you to it.

But equally, if you genuinely believe that collaborating with a rival will be better for New Zealand, then give us a call, and we'll be genuinely delighted to help test your thinking and keep you safe.

The final panel session for today goes back to our competition roots to look at barriers to, and opportunities for, innovative and disruptive competition. We are delighted to have panellists who are taking on powerful incumbents in several important sectors: finance, fuel, electricity, and groceries. They are all brave challengers who, like the Commission, can see a better and more competitive future in these sectors. I'll be listening closely.

Making difficult choices

I hope that today's programme will challenge everyone here (very much including ourselves at the Commission) to reflect on how we work, what we're aiming for, and whether we are missing opportunities to go further and faster.

When it comes to driving competition for a prosperous future, challenges are everywhere – in the conceptual and design phases, and right through the execution processes. This is as true for the policy and action choices of government and regulators as it is for the strategic choices of firms.

In the policy area, most of the difficulties arise from divergent commercial interests. When one firm's opportunity is another's threat, there are no Pareto improvements¹. There is always a loser when firms capture market share from each other. But we don't just accept this in everyday competition – we embrace it as a powerful driver of prosperity.

Some say we should think differently, though, when the competition occurs at a meta level – over ideas and policies rather than goods and services. I'm talking, of course, about the competitive processes in the market for ideas that lead to changes to competition law and regulatory decision-making processes. Current examples include those in the Commerce Act Amendment Bill and the Fair Trading Act amendments that were announced just yesterday by the two Ministers who will be with us today.

Like the regulatory decisions the Commission makes, these changes affect the ground rules for business activity, constraining some activities and liberating others. So again, they create winners and losers – and no Pareto improvements.

It is sometimes suggested that the losers from "idea competition" of this type should be financially compensated for their loss. This position was put to me about 25 years ago when I was advocating for regulation of Telecom (the suggested compensation figure was in the billions). I didn't agree then, and I don't agree now. This is not how competition works for goods and services, and meta – contests over New Zealand's competition settings are even more important.

I know that all leaders in this country, whether wearing community, government, or business hats, want long-term, sustainable prosperity for New Zealand, and we at the Commission also see ourselves as contributing to that. But in public settings we often self-censor, don't we? Our own authorising environments inhibit our ability to say what we really think.

As we head into this day of conferring and discussing, my request is that you push the boundaries of these inhibitions. Tell us what you really think. You are among friends. We've all signed up to the Chatham House Rule.

David Haugh from the OECD will help us get into the open discussion zone. He knows that weak competition in non-tradable sectors is a drag on productivity and innovation, especially compared with OECD frontier economies, as does our friend Luke Woodward from the ACCC, whose recent Bannerman Competition Lecture touched on similar themes.

I hope that sets the scene for the day. But before this part ends, I'm delighted to acknowledge, introduce, and welcome to the stage our new Chief Executive, Suzanne Stew, who just started last week and is exactly the person we need to drive the Commerce Commission forward.

¹ A change in resource allocation that makes at least one person better off without making anyone else worse off.