AI and the Commerce Act
Factsheet for businesses

November 2026

COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

Businesses are responsible for ensuring that their use of artificial intelligence complies with competition law.

The Commerce Act applies regardless of whether decisions are made by people, algorithms, or AI systems and agents.

Artificial intelligence (AI) is transforming the way businesses operate by improving efficiency, supporting decision-making, and enabling new products and services. The Commerce Commission's role is to make sure that, as technology changes, competition is promoted and businesses have a fair opportunity to compete.

This fact sheet explains how the Commerce Act 1986 may apply to businesses using AI and identifies some key compliance risks, and outlines suggested guardrails to help businesses comply with the Act.

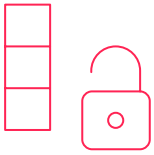
Competition law and AI

AI can increase the speed and scale of business decision making. It can also create new competition law risks where systems influence pricing, market behaviour, customer targeting, access to data, or strategic business decisions. While AI presents significant opportunities, its use does not change business obligations under the Commerce Act.

Businesses are responsible for ensuring that their use of AI complies with the Commerce Act. The same legal principles apply whether decisions are made by people, algorithms, or AI systems and agents. Businesses should ensure they understand how AI systems are used within their organisation and implement appropriate governance, oversight and compliance measures.

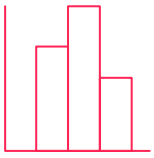
Risks

Cartel conduct:
The Commerce Act prohibits cartel conduct between competitors, including price-fixing, market allocation, and restricting output. AI can lead to cartel conduct without the need for any communication between humans, for example by collusion through algorithms or AI agents. More detailed guidance available.



Misuse of market power:
The Commerce Act prohibits businesses with substantial market power from engaging in conduct that has the purpose, effect, or likely effect of substantially lessening competition. This includes market power that is accumulated through data.

AI-enabled conduct can give rise to misuse of market power concerns through for example:





Self-preferencing:
Digital platforms using algorithms, recommendation systems, or search rankings to favour their own products or services over those of rivals, and disadvantaging competing businesses.



Tying and bundling:
Providers of essential digital infrastructure, such as cloud computing services, requiring customers to purchase or use their AI products or services as part of a bundled offering, potentially foreclosing competing AI providers from the market.



Predatory pricing:
Businesses using AI-driven analytics to monitor consumer behaviour and market conditions, enabling targeted pricing strategies to exclude rivals and new entrants from the market, or otherwise undermine competition.

Anti-competitive mergers and acquisitions:
The Commerce Act prohibits mergers and acquisitions that are likely to substantially lessen competition. This includes 'killer acquisitions' where a business acquires an innovative startup to eliminate future competition and innovation. This prohibition covers the acquisition of both shares and assets of a business, including assets such as critical technologies, data assets, and key AI capabilities.



Businesses should:

Understand how AI systems operate and are used within their organisation.

Monitor pricing and automated decision-making systems regularly, including to assess whether AI systems may create risks of coordination with competitors.

Seek legal advice where competition impacts from AI-enabled conduct, or any commercial arrangement, may be significant.

Implement appropriate governance, monitoring, and risk-management processes for AI systems.

Train staff on Commerce Act obligations relating to AI.

Penalties

If the courts find an individual or body corporate has breached the Commerce Act, penalties may be heavy:

for an individual, a maximum of $500,000, and also up to 7 years in prison for cartel conduct.

$500,000

for a body corporate, the greater of: $10 million, or three times the commercial gain, or, if this cannot be easily established, 10% of turnover.

$10 million

Every separate breach of the Act (even if done by the same person or business) may incur a penalty.

This fact sheet provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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