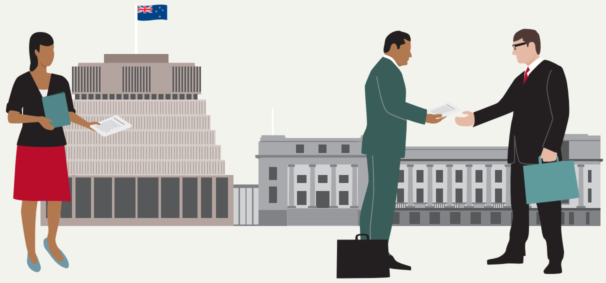
QUICK GUIDE

Competition Assessment Guidelines



Why consider competition?

Competition creates incentives for businesses to reduce costs and prices, improve the quality of goods and services and develop and introduce new products, services and technologies. Competition in markets is a key driver for greater value, innovation and productivity, and therefore of better outcomes for New Zealanders.

Government policy and action in markets can affect the incentives of businesses to compete. Sometimes it may be necessary to reduce competition to implement a particular policy.[1] This can create a tension between meeting the policy goal and maintaining competition in markets.

The Commerce Commission is responsible for promoting and enforcing laws that ensure businesses retain strong incentives to compete and regulating sectors with limited competition. The Ministry of Business, Innovation and Employment (MBIE) has primary responsibility for maintaining, monitoring and improving the competition system.

This quick guide and the full Competition Assessment Guidelines explain the importance of considering the effects of government policy and actions on competition, and help public officials take these into account when formulating initiatives which change markets.[2]

For more information on these guidelines please contact the Commerce Commission's Competition Branch by email, competition@comcom.govt.nz, or MBIE at competition.policy@mbie.govt.nz.

When should competition be a factor in decision making?

Competition can be described as the process of rivalry between businesses to win and retain customers. While some initiatives may stimulate competition, others may have an adverse effect on competition and could undermine many of the benefits the initiative is trying to achieve. For example, initiatives that may affect competition and which warrant close consideration of their competitive effects include those that:

- affect the ability or incentives of businesses to enter, expand and exit from markets, such as the granting of exclusive licences or licence and permit requirements
- affect the ability and incentive for businesses to compete, such as minimum standards, requirements for businesses to publish commercially sensitive information or regulatory schemes
- affect the ability of consumers to choose between options, such as lengthy contract terms, high cancellation fees and other restrictions preventing switching
- deliberately or inadvertently favour certain businesses, such as clauses that allow an old rule to apply to some existing businesses ("grandparent" clauses), quotas or subsidies, particularly if they apply only to some businesses in a sector.

Tools to assist public officials

We encourage public officials to follow the process below to carry out an initial competition assessment to determine whether restrictions on competition are necessary to achieve the policy goal. More detail on each step is set out in our full Competition Assessment Guidelines.

Step 1: Identify the policy goals

Identify the policy goals to be achieved to inform the assessment process. In most cases, the goals will already be decided.

Step 2: Assess the likely impact of the policy options on competition

Identify whether any elements of the policy options are likely to impact competition in a negative way and whether there is an opportunity for the policy to actively promote competition. See the quick reference guide on the following page for some examples of policies that may affect competition and less restrictive or mitigating options.

Step 3: Identify alternative approaches, if necessary

If any parts of the policy negatively impact competition, consider whether there are less restrictive alternatives or other mitigating measures that could be put in place.

Step 4: Implement the best alternative

Recommend the option that achieves the policy goal while minimising negative competition impacts or distortions.

Step 5: Monitor and review

Monitor the effect of a policy for unintended consequences on competition, and make amendments if necessary.

COMMERCE COMMISSION NEW ZEALAND Te Komihana Tauhokohoko

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT HĪKINA WHAKATUTUKI

[1]*Reference to "policies" in this guide refers to initiatives which may or may not involve legislation, formal or informal, which public officials are considering to change structures of, or behaviour in, markets.*

[2]*The full Competition Assessment Guidelines are available at https://comcom.govt.nz/about-us/our-policies-and-guidelines/competition-assessment-guidelines.*

Quick reference guide

The table below can help to identify competition considerations early on and identify less restrictive options to mitigate competitive harms in the achievement of policy goals. The table is not exhaustive and further assessment may be necessary.

Competition consideration	How policy can restrict/ distort competition	Examples of less restrictive alternatives and/or ways to mitigate competitive harms
The ability to enter, exit and expand into a market	Granting of an exclusive licence/ contract to supply a good or service limits the number of participants in a market.	Consider a competitive bidding process for the exclusive licence/contract. Consider splitting the licence/contract between multiple businesses where possible, especially if economies of scale/ scope are not important. Consider limiting the duration of an exclusive licence/contract to allow for the possibility of future competition.
	Licence or permit requirements make it harder for new businesses to enter the market.	Ensure licence and permit requirements are not more onerous than required. Ensure licences and permits are awarded in a competitive and transparent manner and reviewed frequently.
The ability and incentive for businesses to compete	Minimum standards or service levels/product testing requirements reduce the potential for product differentiation.	Ensure standard/quality/product testing levels are no stricter than required. Consider information or product disclosure requirements, rather than requiring adherence to strict standards, where appropriate. Alternatively, consider promoting the use of voluntary standards and codes of practice.
	Required publication of prices/output/ sales information increases the amount of information available about competitors and their strategies.	Publish aggregated information in place of disaggregated information and only make public what is necessary to achieve policy goals.
	Establishing a regulatory regime that can impose restrictions on the ability of businesses to compete, such as advertising restrictions, rules that prevent discounting or qualifications that may restrict entry to the market.	Consider establishing or retaining an oversight function that provides the right to approve, refuse and/or substitute rules that promote anti-competitive behaviour.
Consumer choice and ability to switch between options	Regulation that affects the ability of consumers to choose, or switch, between options.	Ensure any switching barriers, such as lengthy contract terms, cancellation fees, exist only to the extent required. Consider reducing barriers to switching to the extent possible. In addition, consider alternative measures that increase the availability of information to consumers.
Competitive neutrality in markets	"Grandparent" clauses that reward existing businesses, by allowing them to operate under old rules, at the expense of new entrants.	Ensure "grandparent" clauses are time-limited rather than permanent and their duration is proportionate to the underlying rationale for the clause being granted in the first place. Where possible, avoid the need for the transition periods requiring "grandparent" clauses.
	Subsidies to some, but not all businesses.	Where subsidies are aimed at maintaining jobs in declining industries, consider worker or regional adjustment programmes to support individuals and businesses adapting to changing market conditions instead.