

Navigating the rise of AI: Perspectives from a competition and consumer regulator

New Zealand Commerce Commission

This paper has been published by the New Zealand Commerce Commission and outlines the issues discussed at the webinar “Navigating the rise of AI: Perspectives from a competition and consumer regulator” hosted by the NZCC on 7 July 2025.¹

Introduction

We are all aware of the rapid rise in artificial intelligence (AI), including the uptake in use and development of AI technology by businesses. While some of this AI technology comes in the form of stand-alone products, much of it is being embedded into already-familiar products, such as search engines and meeting software.

The macroeconomic impacts of AI are uncertain but expected to be large. In 2024, Datacom found that 66% of New Zealand businesses already use some form of AI.² AI is predicted to contribute \$76 billion to New Zealand’s annual gross domestic product (GDP) by 2038, which is about 18% of today’s GDP.³

AI has the potential to deliver improvements for consumers and businesses alike, bringing lower costs, increased efficiencies, and greater innovation, as well as highly personalised services. Benefits like these are already being realised, for example through digital assistants and chatbots.

However, it has been widely recognised that AI also brings risks to competition that need to be carefully managed through the application of competition law. Some features of AI may also increase the imbalance between businesses and consumers, and risk harming consumers through conduct that consumer protection laws aim to combat.

This has prompted the Commission to assess our approach to some of the known concerns around AI, which are outlined in this paper. Our international counterpart agencies have also been doing a lot of thinking in this space.

AI is a fast-moving space, including the rate of change of technology, and changes in thinking around its application to competition and consumer protection law. Therefore, our approach and views will evolve as AI technology and international thinking develops further.

¹ A recording of the webinar is available at: https://comcom.govt.nz/news-and-media/events/webinar-navigating-the-rise-of-ai/_nocache

² <https://datacom.com/nz/en/solutions/experience/insights/ai-attitudes-research-report>. Although this proportion is much less than Australia, where Datacom research show that 72% of Australian organisations currently use AI.

³ <https://www.beehive.govt.nz/release/government-unlocking-potential-ai>

This paper, and our webinar, are designed to start the conversation and get us all thinking about the issues.

This paper firstly briefly describes AI's potential impact on the New Zealand economy. It then discusses concerns regarding AI and competition regulation, followed by concerns regarding AI and consumer protection regulation. Finally, it outlines some recent global developments relating to AI regulation.

What is AI and its potential impact on the NZ economy?

AI is the science of making data-based machines that can learn like humans. AI products vary in their sophistication – from simple problem-solving algorithms to large language models. There has been a big rise in the use of generative AI products recently.

Recent reports have highlighted the potentially large impact of AI in New Zealand but tempered this with doubts about the pace with which New Zealand businesses will adopt AI relative to the rest of the world.⁴ As recognised in a Treasury report, New Zealand is traditionally slow to adopt new technology relative to other advanced, highly skilled economies.⁵

In 2024, we conducted a small piece of outreach to see how some businesses plan to use AI. We heard that these businesses are looking to use AI to increase efficiency, innovation, and productivity within organisations, rather than using it to develop commercial/pricing strategies or to undermine competition. These businesses were feeling pressure to adopt AI given their competitors are very likely to start using it.

The most prevalent domestic examples of the use of AI we heard about were around intelligent chatbot development, content creation, document summarisation, knowledge retrieval, and insights.

At the time of this paper, we had not seen any evidence that would raise concerns around the use of pricing algorithms amongst New Zealand businesses, or that businesses are at risk of colluding through algorithms. However, we are continuing to monitor this space.

Key concerns regarding competition and AI and our approach

Internationally there is acceptance that there are three main ways competition enforcement may intersect with AI development and uptake. These are algorithmic collusion; abuse of market power; and anti-competitive mergers and acquisitions.

⁴ See, for example: <https://news.microsoft.com/en-nz/2024/08/21/generative-ai-expected-to-more-than-double-new-zealands-productivity-report/>

⁵ <https://www.treasury.govt.nz/sites/default/files/2024-07/an24-06.pdf>

Algorithmic collusion

Businesses should be mindful of the potential for their algorithms, particularly price-setting algorithms, to coordinate with competitors.

We suggest businesses make sure they understand how their pricing algorithms work in practice, and set clear limitations on their deployment, including self-learning functions.

The use of AI and pricing algorithms has the potential for more transparent and predictable pricing, which may benefit consumers to some extent. However, there are risks with the use of such technology.

AI will likely make it easier for businesses to engage in collusion, both explicitly and implicitly. Algorithms can lead to coordinated pricing or other anti-competitive conduct, potentially in breach of cartel laws, without the need for any direct communication between firms.

Possible anti-competitive conduct from the use of pricing algorithms includes:

- Hub and spoke cartels – This is not a new area of concern. Two companies were prosecuted in the US for entering into a bilateral agreement, as early as 2013, to use a certain pricing algorithm to set the minimum price of posters sold on Amazon.⁶ But with the development of AI and far greater use of pricing algorithms, the risk of coordination around using pricing algorithms to control pricing patterns is no doubt greater.
- Predictable agent – These are pricing algorithms that react predictably to market conditions, such as 'lowest price matching'. They can lead to transparent and predictable pricing resulting in tacit collusion amongst firms.
- Autonomous algorithms – Where sophisticated algorithms can learn independently and could potentially coordinate prices.

Algorithmic collusion also raises questions around detection, enforcement, liability, and regulation. For example, can liability under the Commerce Act be attributed to the designer or manufacturer of an algorithm? Can firms be liable if they were unaware the algorithm was capable of engaging in anti-competitive conduct?

⁶ <https://www.justice.gov/archives/opa/pr/e-commerce-exec-and-online-retailer-charged-price-fixing-wall-posters>

Competitors who enter into agreements or arrangements to use pricing algorithms which lead to cartel conduct will be liable under section 30 of the Commerce Act (the cartel prohibition) in the usual way.

In situations where firms are unaware that the pricing algorithm is facilitating cartel conduct, it is arguable that they remain liable under the attribution provisions in section 90 of the Commerce Act, on the basis that the algorithm is the agent of the firm which enters into the relevant arrangements on their behalf.

Designers or manufacturers of the algorithm could also be liable under section 30.

Algorithmic collusion: RealPage action in US

In January 2025, the US DOJ sued six of the US's largest landlords, as well as property management software-maker RealPage, for using a pricing algorithm to fix rental prices across the country. The software enables landlords to share confidential data and charge similar rents.

A White House report found that as many as 1 in 4 rentals nationwide in the US are influenced by a RealPage pricing algorithm, and researchers found that the algorithmic pricing used by RealPage could be costing individual renters on average \$70 more a month, or 4% of rent. In six major metro areas, the cost may exceed \$100 a month.

Therefore, businesses should be mindful of the potential for their algorithms, particularly price-setting algorithms, to facilitate cartel conduct. We suggest businesses make sure they understand how their pricing algorithms work in practice and set clear limitations on their deployment, including self-learning functions.

Abuse of market power

'Substantial market power' can be acquired through data accumulation and exacerbated by the position of the firm in other essential layers of the supply chain, for the purposes of section 36 of the Commerce Act (the misuse of market power provision).

Businesses should be mindful of the competitive effects of any agreement or arrangement, especially any exclusive arrangement or tying and bundling arrangement.

Another concern that has been identified around the rise of AI in competition regulation is abuse of market power. Here, we are talking about competition to supply AI services.

In terms of AI service providers, there is concern that global markets for core AI services will become dominated by a few firms. We have already seen this in some digital markets, and a similar group of big tech companies are now supplying core AI services (these being

Alphabet, Amazon, Apple, Meta, and Microsoft). These core services include hardware, cloud services, data sources, foundation models, and applications.

A high concentration of AI foundation model providers was identified by the UK's CMA as one of its strongest competition concerns in relation to foundation providers.⁷

We are particularly concerned about market power that is accumulated through data.

As we know, AI relies heavily on data, making it a critical asset for a business looking to use AI. Companies with access, ownership or control of vast amounts of data can develop and train more sophisticated AI models and capabilities, providing a significant competitive advantage and potentially leading to market dominance. As we have learned from digital platform markets, the risks to competition are particularly serious where markets exhibit strong network effects and 'tipping', leading to one or two dominant firms.

Another potential concern is if firms present in multiple core AI service markets start tying or bundling AI products. For example, the cloud computing sector is dominated by three

"hyper-scalers" all of which are also developers of AI models. Self-preferencing conduct by cloud providers, by tying or bundling their cloud services with their AI models, has the potential to damage competition at either of these layers.

In these ways, firms that already have significant market power may be able to misuse their market power by using AI to exclude competitors.

Abuse of market power: European Commission cases

In June 2017, the European Commission imposed EUR 2.42 billion in fines on Google for abusing its dominance as a search engine by giving illegal advantage to its own comparison-shopping service. The Commission held that Google illegally favoured its own comparison-shopping service by displaying it more prominently in its search results than other comparison-shopping services.

In December 2022, the European Commission accepted commitments by Amazon regarding Amazon's use of non-public data relating to sellers' activities on Amazon marketplace. The Commission found that Amazon was using sellers' non-public data from Amazon's platform to inform Amazon's own retail decisions.

⁷ https://assets.publishing.service.gov.uk/media/661941a6c1d297c6ad1dfeed/Update_Paper__1_.pdf

Anti-competitive mergers and acquisitions

‘Killer acquisitions’ can be captured by section 47 of the Commerce Act (the anti-competitive business acquisition provision).

Businesses should be mindful of the competitive effects of non-standard transactions, such as acquiring expert employees from another business (known as ‘acqui-hires’), and the potential for them to be caught by New Zealand’s merger regime.

Finally, in terms of AI and competition, a key concern is ‘killer acquisitions’. This is where an incumbent firm acquires, or heavily invests in, an innovative AI startup to eliminate a potential competitor or stifle innovation. Moreover, the acquisition also prevents other competitor incumbents from acquiring the target.

Several agencies have publicly noted their intention to actively monitor acquisitions in AI markets, with special attention to killer acquisitions.

A recent talking point internationally is how the five big-tech companies appear to have found a novel way of bypassing the traditional strategy of acquiring potential competitor firms in AI markets. This is through what is known as ‘acqui-hires’.

To explain this, AI scientists are a scarce resource in building AI foundation models. Therefore, big-tech companies have been hiring AI employees from a target firm, and compensating founders and investors with generous licensing terms for their technology which would be of little value without these employees. These are acquisitions of businesses in all but name.

Anti-competitive mergers and acquisitions: CMA inquiry into Microsoft/Inflection for ‘acqui-hires’

In March 2024, the UK CMA investigated Microsoft's hiring of former Inflection AI employees, who were top experts in the AI field, and other related arrangements. The CMA focused on whether this constituted a merger situation that could harm competition.

The investigation centred on the potential impact of these hirings on competition in the development and supply of AI foundational models and consumer chatbots. The CMA considered that acquiring a team with relevant know-how – even without further assets – may fall within the CMA’s merger control jurisdiction.

Key concerns regarding consumer protection and AI and our approach

Businesses should be mindful of the potential for AI to breach of the Fair Trading Act by:

- **Producing fake content that is misleading or deceptive e.g. through deepfakes and fake reviews.**
- **Engaging in conduct that is misleading, deceptive or unconscionable e.g. through dark pattern and hyper-nudging behaviour.**

AI is increasingly being used in advertising, marketing and consumer interactions. AI products use big data and algorithms to create very granular pictures of individual consumers and to give businesses different - far more powerful - marketing tools to exert influence.

New Zealand does not have any specific legislation regulating the use of AI, like the AI Act in the EU. So, in this paper, we assess the consumer harms caused by AI through the lens of the Fair Trading Act.

AI has the potential to ‘supercharge’ conduct that is already occurring and already at risk of breaching the Fair Trading Act. AI can be used to facilitate conduct that is plainly misleading or deceptive, such as producing fake reviews on a mass scale. AI also enables businesses to engage in marketing that is very personalised and potentially manipulative. This could lead to conduct that crosses the line from being merely persuasive to misleading and deceptive (and even unconscionable) in breach of the Fair Trading Act.

Production of fake content

One of the main benefits of AI, particularly generative AI, is that it can efficiently and expediently create original content for businesses, which is often used in advertising or marketing. However, there is a rise in AI-generated content that is fake.

With AI, businesses can digitally manipulate videos, images and audio clips to make genuine looking and sounding media product which is fake. Such techniques are known as ‘deepfakes’.

A common example of deepfakes is using celebrities to endorse or advertise products. This conduct puts businesses at risk of breaching section 9 of the Fair Trading Act, which prohibits misleading and deceptive conduct, and section 13, which prohibits false or misleading representations that a person has endorsed or sponsored a product.

As part of its anti-scam work, the ACCC has instituted proceedings against Meta alleging that they aided and abetted or was knowingly concerned in false or misleading conduct and representations by advertisers on Facebook. This action is currently before the courts, and alleges that the ads, which promoted investment in cryptocurrency or money-making

schemes, misled users into believing the schemes were associated with famous people. However, those famous people had never approved or endorsed the schemes.⁸

Another deception technique that's becoming more frequent are "ghost shops". This involves online businesses mimicking the appearance of a legitimate, physical store with a storefront. However, they are actually online retailers without a physical presence or inventory. Such shops are often portrayed as boutique, local bricks-and-mortar stores, and commonly with a "closing down sale" or similar marketing tactic. Often photographs purporting to be of real people outside physical shops (e.g. in front of a 'closing down sale' sign) are AI-generated deepfakes, or manipulated with AI tools. On 3 July 2025, the ACCC issued Public Warning Notices warning consumers about the operators of four websites allegedly misrepresenting themselves as local bricks-and-mortar businesses, who were really only online stores.⁹

We are also concerned about AI being used to create fake testimonials, reviews or ratings to boost a product's attractiveness. This conduct was the cause of recent action by the US FTC (see below). This appears to be increasingly prevalent in reviews of hotels and restaurants. TripAdvisor expects increased attempts from businesses and individuals to use tools like ChatGPT to manipulate content on its platform.¹⁰

AI may also be *inadvertently* used to produce content that is false or misleading. Therefore, businesses should monitor AI-generated content from their business to ensure it is accurate. AI inadvertently producing misleading content was the subject of a Canadian tribunal hearing last year (see below).

⁸ <https://www.accc.gov.au/media-release/accc-takes-action-over-alleged-misleading-conduct-by-meta-for-publishing-scam-celebrity-crypto-ads-on-facebook>

⁹ <https://www.accc.gov.au/media-release/consumers-warned-about-ghost-stores-imitating-australian-businesses>

¹⁰ <https://www.tripadvisor.co.uk/TransparencyReport2023>

Fake testimonials and reviews: US FTC action against Ryter

In September 2024, the FTC settled a case against Ryter, a company operating an AI-enabled “writing assistant” service. The service would craft online testimonials and reviews for businesses. But these reviews would almost certainly be false for the businesses who copy the generated content and publish it online.

The FTC alleged that at least some of Rytr’s subscribers used the service to produce hundreds, and in some cases, tens of thousands, of reviews potentially containing false information.

Inadvertent false and misleading conduct: Moffatt v Air Canada

In February 2024, the Canadian British Columbia Civil Resolution Tribunal found Air Canada liable for misinformation given to a passenger by an AI chatbot on its website and awarded damages. The AI chatbot provided a passenger with incorrect information about the airline’s policy for discounted bereavement fares, which the passenger relied upon.

While this is not a court decision, the Tribunal’s decision has been described in Canada as a reminder that companies in Canada can be liable for the actions of their AI tools, even if the AI tool is faulty, and should put into place adequate internal policies to ensure their accuracy.

Dark patterns and hyper-nudging

Agencies like ours are also concerned about consumer harm caused by dark patterns. ‘Dark patterns’ refer to the design of user interfaces intended to confuse consumers, and make it difficult for them to express their actual preferences, or manipulate users into taking certain actions that are not in their best interests. An example of dark patterns is nagging, where a website repeatedly prompts users to take actions they have already declined. Another common example is making it very difficult for a consumer to completely cancel all engagement with a product or service, including subscription traps.

Although dark pattern behaviour existed prior to AI, AI has the potential to exacerbate this behaviour. Businesses using dark patterns risk this conduct crossing the line from merely persuasive, to misleading, deceptive or unconscionable, in breach of the Fair Trading Act.

Generative AI frequently replicates these dark patterns due to the extent to which they are embedded in training data scraped from the internet. Therefore, businesses that use generative AI in their marketing or web pages should monitor whether their generative AI is adopting dark patterns.

Hyper-nudging is a term used to describe a highly advanced and personalised form of digital nudging, where algorithms and AI systems use large amounts of personal data to influence consumer behaviour. Through hyper-nudging, the designer of an online choice environment

aims to target the right user, with the right message, by the right means, at the right time, as many times as needed to influence their behaviour in a predictable manner.

A recent European Consumer Organisation report highlighted a recent type of hyper-nudging relating to the purchase of digital products in video games and gaming apps using virtual currency. This is especially concerning as it targets children and young people. The report found that game developers are increasingly using techniques to encourage players to buy more digital products, and make it difficult for them to convert the price of digital products into real currency. By leaving out important information to enable players to make informed decisions about price, the game producers are potentially misleading players about price in breach of EU consumer law.¹¹

In a similar vein, businesses that are marketing products as having AI technology or being “AI enabled” should ensure that such products are correctly marketed so as to not mislead or oversell AI capability. Apple is currently facing a lawsuit in the US for allegedly misleading consumers by advertising advanced Siri AI features on the iPhone 16 that were not present on the phone’s release date.

Recent international law and policy developments relating to AI regulation

Here are some recent global law and policy developments relating to AI regulation.

UK and Europe

The UK’s competition regulator, the CMA, appears to be a global thought leader on competition and AI. It has published research papers in recent years on algorithms¹² and foundation models.¹³ It has also worked with other UK regulators to assess areas where there is perceived risk. This is driven by its Data Unit of 80 people, including data scientists and data engineers, technologists, behavioural scientists, and digital forensics specialists.

The UK has recently enacted the Digital Markets, Competition and Consumers Act, which will enhance the CMA’s ability to address competition concerns in AI. The Act allows the CMA to set targeted conduct requirements on firms designated as having strategic market status in respect of a digital activity. This Act also introduces new consumer protection laws, including provisions relating to subscription contracts, drip pricing, and fake reviews. It enables the CMA to take direct enforcement action when finding companies in breach of consumer laws, and directly impose penalties on those companies, instead of having to go through the courts.

In the EU, the European Union’s Artificial Intelligence Act came into force in August 2024, and is the world's first comprehensive legal framework for regulating AI. The primary focus of the Act is to promote a safe, transparent, and ethical environment for AI. It sets out a risk-based approach, assigning applications of AI to three risk categories: ‘Unacceptable risks’ which are banned, ‘high-risk applications’ which are subject to specific legal

¹¹ https://www.beuc.eu/sites/default/files/publications/BEUC-X-2024-061_Monetising_play_Regulating_in_game_and_in_app_premium_currencies.pdf

¹² <https://www.gov.uk/government/publications/algorithms-how-they-can-reduce-competition-and-harm-consumers>

¹³ <https://www.gov.uk/cma-cases/ai-foundation-models-initial-review>

requirements, and all other applications which are largely left unregulated. Despite not being competition-specific, the Act aims to ensure consumer rights are safeguarded and AI applications are ethical, without placing undue burden on businesses.

In September 2024, the European Commission was directed to begin work on a new Digital Fairness Act to tackle unethical techniques and commercial practices related to dark patterns, marketing by social media influencers, the addictive design of digital products, and online profiling. The European Commission is currently consulting on the proposed Act.

United States

Over the past couple of years, both the FTC and DOJ have increased their focus on AI.

The FTC has used its rule-making powers to target AI. For example, in 2024 the FTC introduced a new rule banning fake reviews and testimonials which, for instance, prohibits companies from buying bots or fake followers in order to trick consumers.¹⁴ It also introduced a rule prohibiting impersonation scams like AI-generated deepfakes.¹⁵

In September 2024, the FTC announced Operation AI Comply. This operation is in response to the potential misuse of AI for deceptive or unfair conduct. As part of this operation, the FTC announced five enforcement actions against businesses that have allegedly used AI or sold AI for use in deceptive and unfair ways. One of these actions was against Rytr, which sold an AI-enabled software that generated fake reviews, as noted above.¹⁶

Australia

The Digital Platform Services Inquiry, being led by the ACCC, has considered the impact of AI. On 23 June 2025, the ACCC released the final report of the Inquiry.¹⁷ The report considered, amongst other things, the potential and emerging competition and consumer issues in generative AI.

The report found that evolving digital markets and emerging technologies (like generative AI) may exacerbate existing risks to competition and consumers or give rise to new ones. It also found that generative AI developers and deployers generally require access to significant cloud computing power to train and deploy their products. Cloud providers may be incentivised to anti-competitively bundle, tie or self-prefer their own generative AI products above those of competitors.

The Australian Treasury is also conducting a review of AI and Australian consumer law.¹⁸

¹⁴ <https://www.ftc.gov/news-events/news/press-releases/2024/08/federal-trade-commission-announces-final-rule-banning-fake-reviews-testimonials>

¹⁵ <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-impersonation-rule-goes-effect-today>

¹⁶ <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-announces-crackdown-deceptive-ai-claims-schemes>

¹⁷ <https://www.accc.gov.au/about-us/publications/serial-publications/digital-platform-services-inquiry-2020-25-reports/digital-platform-services-inquiry-final-report-march-2025>

¹⁸ <https://treasury.gov.au/consultation/c2024-584560>

Conclusion

AI is a fast-changing space and our approach, and the approach of our international counterpart agencies, will likely evolve over time. This paper, and our webinar, was designed to start a conversation, and get us all thinking about the current issues that are emerging with the rise of AI.

In addition to drawing on overseas experience, it is important to build on our own thinking and continue the discussion here in New Zealand. So please feel free to reach out to us if you have any comments or questions on AI. Likewise, if you have any concerns about the way businesses may be using AI, please let us know. We are always keen to hear from you. The various ways we can be contacted are on our website.¹⁹

¹⁹ <https://comcom.govt.nz/>