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# Navigating the rise of AI

**PERSPECTIVES FROM A COMPETITION AND CONSUMER  
REGULATOR**

7 July 2025

# Topics covered

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1. What is AI and its potential impact on the New Zealand economy?
2. Key concerns regarding competition and AI, and our approach
3. Key concerns regarding consumer protection and AI, and our approach
4. International approaches
5. Q&A panel discussion

# Welcome and introduction

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Dr John Small, Chair, Commerce Commission

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# What is AI and its potential impact on the New Zealand economy?



# What is AI and its potential impact on the New Zealand economy?

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- AI is being rapidly adopted by NZ businesses, but perhaps not as rapidly as other advanced, highly skilled economies.
- Current focus of NZ businesses appears to be on using AI to increase efficiency, innovation, and productivity within organisations.

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# Key concerns regarding competition and AI and our approach



# Key competition concern - Algorithmic collusion

- AI algorithms could potentially facilitate anti-competitive collusion amongst competitors.
- Possible anti-competitive conduct from the use of pricing algorithms that has been identified in literature include:
  - hub and spoke cartels
  - predictable agent
  - autonomous algorithms
- **Key takeaway:** Businesses should be mindful of the potential for their algorithms, particularly price-setting algorithms, to coordinate with competitors and/or their algorithms.

# Algorithmic collusion - *RealPage action in US*

- Enforcement action has been taken by the DOJ against property management software-maker RealPage, accusing it of facilitating price-fixing amongst landlords.
- The algorithmic software enables landlords to share non-public, confidential data amongst themselves to charge similar rents.
- Private class action against RealPage in Canada, and there is legislative reform across the US to prohibit landlords from setting rents based on algorithmic recommendations.



# Key competition concern – Abuse of market power

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- There is concern that global core AI service provider markets will become dominated by a small number of firms. In particular, there is concern around market power that is accumulated through data.
- Powerful AI firms or AI-driven firms might exploit their market power to exclude competitors.
- **Key takeaway:**
  - We consider that ‘substantial market power’ could be acquired through data accumulation for the purposes of section 36 (misuse of market power).
  - Firms should be mindful of the competitive effects of any agreement or arrangement, especially any exclusive arrangement, or tying and bundling arrangement.

# Abuse of market power – *European Commission cases*

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- **Google shopping case:** In June 2017 the European Commission imposed €2.42 billion on Google for abusing its dominance as a search engine by giving an illegal competitive advantage to its own comparison shopping service.
- **Amazon data-use commitments:** In December 2022 the European Commission accepted commitments from Amazon prohibiting Amazon from using data gathered from its platform to help create competing products or unfairly favour its own retail businesses.

# Key competition concern - Anti-competitive mergers and acquisitions

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- Recent trends of ‘killer acquisitions’ and ‘acqui-hires’ in the AI space have come into the focus of competition agencies.
- **Key takeaways:**
  - We consider that ‘killer acquisitions’ can be captured by section 47 (anti-competitive business acquisitions).
  - Firms should be mindful of the competitive effects of ‘acqui-hires’ on a market and the potential for them to be caught by New Zealand’s merger regime.

# Anti-competitive mergers and acquisitions - *CMA inquiry into Microsoft / Inflection for 'acqui-hires'*

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- The UK CMA investigated Microsoft's hiring of former Inflection AI employees in March 2024. This included the co-founders and AI engineers, researchers, and builders.
  - 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.

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# Key concerns regarding consumer protection and AI and our approach



# Key consumer protection concern - Production of fake content

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- 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'.
- AI is being used to create fake testimonials, reviews or ratings to boost a product's attractiveness.
- "Ghost shops" are becoming more frequent. This involves online businesses mimicking the appearance of a legitimate, physical store with a storefront
- **Key takeaway:** Businesses should be mindful of the potential for AI to create fake content, that is misleading in breach of the Fair Trading Act.

# Key consumer protection concern - Dark patterns and hyper-nudging

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- We are concerned about consumer harm caused by dark patterns.
- AI has the potential to exacerbate hyper-nudging techniques.
- Businesses should ensure that products are correctly marketed so as to not mislead or oversell AI capability.
- **Key takeaway**: Businesses should be mindful of the potential for AI to engage in conduct that misleading, deceptive or unconscionable in breach of the Fair Trading Act.

# Deceptive marketing and manipulation – *US FTC action against Rytr*

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- In September last year the FTC settled a case against Rytr, a company operating an AI-enabled writing assistant, which would craft false online testimonials and reviews for businesses.
- The FTC alleged that at least some of Rytr's subscribers used these services to produce hundreds, and in some cases, tens of thousands, of reviews potentially containing false information.



# Deceptive marketing and manipulation - *Moffatt v Air Canada*

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- In February last year a Canadian 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. Air Canada refused a partial refund sought by the passenger based on the chatbot's information.
- The Tribunal found that Air Canada bore responsibility for all the information on its website, whether it came from a static page or a chatbot.

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# International approaches



# International developments

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## *UK and Europe*

- UK CMA Data Unit
- Digital Markets, Competition and Consumers Act (UK)
- Artificial Intelligence Act (EU)

## *United States*

- DOJ and FTC have increased their focus on AI
- FTC has used its rule-making powers to address concerns

# Conclusion and next steps

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- We will make materials from this webinar available on our website, including a paper summarising our discussion and our answers to some of your questions.
- Our website: [www.comcom.govt.nz](http://www.comcom.govt.nz)
- If you would like us to present on AI to a specific industry or group, please contact our engagement team: [engagement@comcom.govt.nz](mailto:engagement@comcom.govt.nz)
- Sign up for our regular newsletter by emailing: [media@comcom.govt.nz](mailto:media@comcom.govt.nz)
- Please complete our pop-up survey!

***Ka kite anō - see you at our next webinar!***



