OECD Economics Department Working Papers No. 1817

Revamping competition in New Zealand

Charles Dennery

https://dx.doi.org/10.1787/8bbbad04-en

OECD

OECD Economics Department Working Papers

Revamping competition in New Zealand

No. 1817

OECD Working Papers should not be reported as representing the official views of the OECD or of its member countries. The opinions expressed and arguments employed are those of the author(s).

Working Papers describe preliminary results or research in progress by the author(s) and are published to stimulate discussion on a broad range of issues on which the OECD works.

Comments on Working Papers are welcomed and may be sent to the OECD Economics Department.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

© OECD 2024

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at https://www.oecd.org/termsandconditions.

Unclassified - Non classifié

ABSTRACT/RÉSUMÉ

Revamping competition in New Zealand

New Zealand's productivity level remains markedly below the OECD frontier. Insufficient competition is an important contributor to this performance, as the relatively small number of competitors in New Zealand's small market contributes to market concentration. Ensuring adequate competition policy settings is important for offsetting these geographic handicaps, fostering innovation and supporting higher living standards. This paper reviews the competition landscape and the recent reforms in several concentrated markets and network sectors and provides recommendations for additional sectoral reforms or inquiries. It also provides recommendations for improving the overall regulatory landscape, including the prerogatives of the Commerce Commission and other government regulators and regulations on business entry and conduct. Finally, it addresses the question of competition enforcement in digital markets, where New Zealand faces some of the same challenges that other OECD economies have to tackle.

This Working Paper relates to the 2024 Economic Survey of New Zealand
https://www.oecd.org/economy/new-zealand-economic-snapshot/

JEL codes K2, L4, L7, L8, L9

Keywords: education, primary, secondary, early childhood, New Zealand.

****

Réorganiser la concurrence en Nouvelle-Zélande

La Nouvelle-Zélande reste bien loin de la tête du classement de la zone OCDE en termes de niveau de productivité. L'insuffisance de la concurrence joue pour beaucoup dans cette situation puisque le nombre relativement faible de concurrents présents sur le marché néo-zélandais, qui est de petite taille, contribue à la concentration du marché. Une politique efficace de concurrence est donc essentielle pour compenser ces handicaps géographiques, favoriser l'innovation et permettre l'élévation du niveau de vie. Ce document passe en revue le paysage de la concurrence et les réformes récemment mises en œuvre pour plusieurs marchés concentrés et industries de réseau, et recommande d'autres réformes ou enquêtes sectorielles. Il propose également des recommandations pour améliorer le paysage réglementaire dans son ensemble, notamment les prérogatives de la Commission du commerce et d'autres organismes réglementaires publics, ainsi que les réglementations relatives à l'entrée sur le marché et à la conduite des entreprises. Enfin, il aborde la question de l'application du droit de la concurrence sur les marchés du numérique, où la Nouvelle-Zélande fait face à certains des défis observés dans d'autres pays de l'OCDE.

Ce document de travail concerne l'Étude économique de la Nouvelle Zélande de 2024
https://www.oecd.org/economy/nouvelle-zelande-economic-snapshot/

Codes JEL : K2, L4, L7, L8, L9

Mots clés : politiques de concurrence, entrée sur les marchés, oligopoles, Nouvelle-Zélande.

Unclassified - Non classifié

Table of contents

Revamping competition in New Zealand 5
Introduction 5
Despite great strides, policy settings can be made more pro-competitive 6
Regulatory barriers are uneven in New Zealand 6
The competition policy framework has become more comprehensive 11
Using competition policy to offset the tyranny of size and distance 13
Bringing more competition to the retail, dairy and financial sectors 14
Making competition work in network sectors: transport, utilities and telecoms 19
Adapting the regulatory framework to new challenges 25
Giving more power and a stronger mandate to the Commerce Commission 26
Fostering growth and competition in digital markets 29
Corruption is low in New Zealand but ethics rules could be further strengthened 31
Findings and recommendations 33
References 35

Tables

Table 1. Past OECD recommendations on market contestability and actions taken 8
Table 2. Number of daily flights by airlines on medium-large domestic routes and Trans-Tasman 21
Table 3. Past OECD recommendations on antitrust enforcement and actions taken 26

Figures

Figure 1. Economy-wide PMR indicators, breakdown by major components, 2018 7
Figure 2. The regulatory landscape in New Zealand displays a mixed picture 7
Figure 3. Business entry and exit rates are high in international comparison 8
Figure 4. Main factors that make it difficult for firms to effectively bid for government contracts 9
Figure 5. The inward FDI stock is small, especially for a small open economy 10
Figure 6. Large New Zealand banks are very profitable 18
Figure 7. Banks make a significant margin on deposits 19
Figure 8. Illustrative comparison between standard and low-use plans before the phase-out 24
Figure 9. New Zealand is one of the leaders in fibre broadband but mobile data usage remains low 25
Figure 10. Corruption is low in New Zealand 32
Figure 11. New Zealand actively cooperates against worldwide tax evasion and money laundering 32

Unclassified - Non classifié

Revamping competition in New Zealand

By Charles Dennery[1]

Introduction

International experience shows that competition is one of the most important drivers of long-term growth in productivity (Nickell, 1996) and living standards (Nicoletti, Scarpetta and Lane, 2003). Since policy reforms in the mid-1980s and the gradual privatisation of numerous state-owned enterprises (SOEs), ensuring robust competition in New Zealand's markets has been given a pivotal role for lifting innovation, firm performance and economic growth, while lowering prices. An initially very "light-handed" approach to regulating competition has evolved into a more complex system of economy-wide competition rules.

Size and geographic remoteness may reduce New Zealand's per capita GDP by up to 10% (Boulhol and de Serres, 2010). Entering the New Zealand market often proves unprofitable for foreign firms, as the small market size is not enough to offset the effect of distance. Conversely, for domestic firms, the limited size of the home market and the difficulty to leap from a small market to compete abroad only allow for a few market players in many sectors. As a result, many markets in New Zealand are characterized by a limited number of large firms that often face weaker competitive pressures to innovate, seek efficiencies, and provide better services and lower prices to consumers. Ensuring market contestability ex ante and the free entry and exit of firms is key, but experience has shown that this is not always sufficient, and that ex post enforcement of antitrust and business conduct rules is often also warranted.

The recent bout of high inflation, accompanied by high profits in some sectors, has renewed interest in competition policy. At the same time, digitalisation and globalisation are bringing new challenges to competition policy, as digital markets and multinationals based overseas are often harder to regulate. This paper starts with an overall assessment of the current state of competition, market contestability and the competition policy and regulatory framework in New Zealand. Building on recent market and price studies carried out by the Commerce Commission and other bodies, the paper then studies the main factors that are hindering competition – notably in retail distribution and in network sectors – and provides sectoral recommendations for improvement as well as suggesting areas for further investigation. Finally, the paper analyses options for improving the wider legislative and regulatory framework for promoting competition in New Zealand, with recommendations to foster enforcement and competitive entry.

[1] The author would like to thank David Haugh, Vincent Koen, Isabell Koske and Luiz de Mello for their guidance and suggestions, and Axel Purwin for research assistance. Cristiana Vitale (OECD Economics Department), Richard May (OECD Directorate for Financial and Enterprise Affairs) as well as members from the New Zealand Treasury, Commerce Commission and Ministry for Business, Innovation and Employment also provided very useful comments. Finally, Sisse Nielsen's editorial assistance was greatly appreciated.

Unclassified - Non classifié

Despite great strides, policy settings can be made more pro-competitive

Competition and regulatory enforcement are primarily carried out by the NZ Commerce Commission (NZCC) complemented by sector-specific regulators (e.g., the Electricity Authority for electricity markets) with specific regulations or codes of conduct. The NZCC is responsible for enforcing the Commerce Act 1986, which contains provisions on restrictive trade practices as well as mergers and acquisitions. Some sectors (typically natural monopolies or former state-owned enterprises) are directly regulated by the NZCC or subject to information disclosure requirements under part 4 of the Commerce Act (electricity lines and gas pipelines, as well as the three largest airports) or other sectoral legislation. Under the Telecommunications Act 2001 and the Dairy Industry Restructuring Act 2001, the NZCC is also responsible for regulating the wholesale and retail telecommunications market and the domestic dairy sector.

The enactment of the Commerce Act in 1986, along with the gradual privatisation of numerous state-owned enterprises in the 1980s and 1990s, was the result of a decisive policy push towards pro-competition market liberalisation. The Commerce Act 1986 replaced a series of ad-hoc price control and anti-profiteering rules in different sectors. The Government took a much more "light-handed" approach by allowing network sectors to run like private businesses and relying on competition rather than price regulations to discipline market forces. Over time, while the Government did not move back to more direct involvement in the economy, experience showed that low regulatory barriers are not always enough to stimulate market entry and prevent oligopolies from forming. As a result, this initially very light-handed approach to regulating competition has evolved into a more comprehensive system of economy-wide competition rules and sector-specific regulators and regulation to encourage or substitute for competition.

This more comprehensive approach appears to have paid off, and important policy strides have been made to overcome the tyranny of size and distance poses for robust competition. The NZCC, sector regulators and other public sector agencies are strongly committed to delivering competitive conditions. Despite ongoing issues, great progress has been made for example in network industries, such as telecommunications and electricity. However, competition in other important markets including retail distribution and banking needs to be improved, and New Zealand is falling behind other OECD economies in tackling competition issues arising from digitalisation – as highlighted in the previous *Economic Survey of New Zealand* (OECD, 2022a).

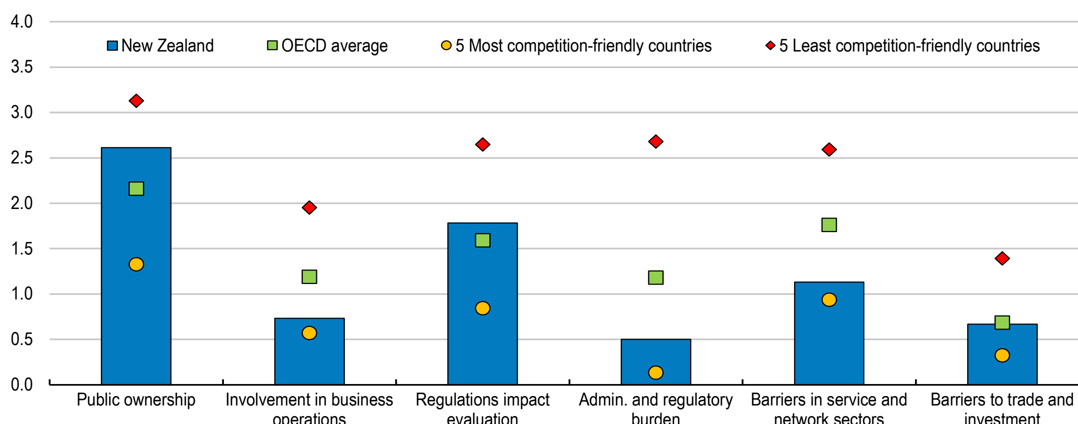
Regulatory barriers are uneven in New Zealand

The ease of doing business for domestic and foreign entrant firms is a powerful driver of market contestability and hence the effectiveness of competition ex ante; conversely, excessively restrictive rules can prevent entry and entrench the dominant position of incumbents, thus calling for stronger ex post antitrust enforcement. The OECD's 2018 Product Market Regulation (PMR) indicators paint a mixed picture of regulatory barriers to competition in New Zealand (Figure 1). While the administrative burden on new firms and startups is one of the lowest among OECD countries, New Zealand is not at the frontier of international best practice in regulating the involvement of stakeholders (notably lobbying), and the New Zealand's foreign investment screening regime remains one of the most restrictive in the OECD according to the OECD's FDI Regulatory Restrictiveness Index.

Unclassified - Non classifié

Figure 1. Economy-wide PMR indicators, breakdown by major components, 2018

Index from 0 (most) to 6 (least) competition-friendly regulation

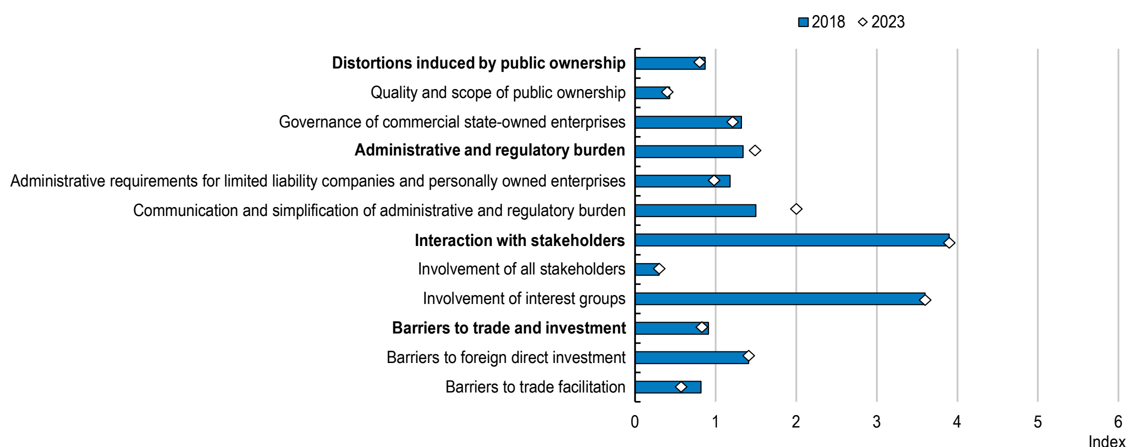


Note: All the averages include only OECD countries. Information refers to laws and regulation in force on 1 January 2018.
Source: OECD 2018 PMR database.

The OECD's 2023 PMR indicators provide a more granular summary of the regulatory landscape than the previous 2018 methodology. For example, while the State owns a share in a relatively high number of companies, the involvement of the Government in their business operations remains limited, as opposed to other countries where business and management decisions are often more politically influenced. As a result, New Zealand will appear closer to international best practice for SOEs in the new version of PMR indicators, with a finer methodology, to be released in June 2024 – though SOEs still carry other risks for competition. While the ranking of New Zealand among OECD peers is not yet available under the new methodology, New Zealand's evolution between 2018 and 2023 can already be assessed (Figure 2). Some of the reforms recommended in past surveys have been implemented, but many have not (Table 1).

Figure 2. The regulatory landscape in New Zealand displays a mixed picture

Selected PMR components and subcomponents for New Zealand, Index from 0 (most) to 6 (least) competition friendly



Source: OECD 2023 Product Market Regulation indicators for New Zealand.

Unclassified - Non classifié

Table 1. Past OECD recommendations on market contestability and actions taken

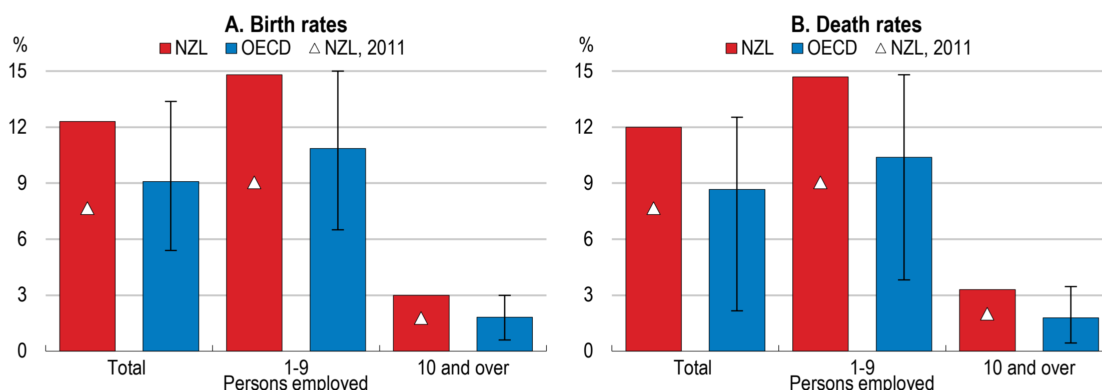
Recommendations in past Surveys	Actions taken since the previous *Survey*
Progressively narrow screening of foreign investment. Continue to reduce compliance costs and boost predictability for investors.	Since the partial streamlining in July 2021, no further action taken.
Move towards privatisation of SOEs and consider reducing local government ownership of port assets to bring more market discipline to the sector.	No action taken.

Business dynamism, the regulatory burden and access to public procurement

The OECD's 2023 PMR indicators paint a mixed picture regarding red tape in New Zealand. On the one hand, the administrative requirements for setting up and running limited liability companies and sole traders are low in international comparisons; as a result, business dynamism is vibrant, with high entry and exit rates by international standards (Figure 3).

Figure 3. Business entry and exit rates are high in international comparison

Birth and death rates of employer enterprises, 2020[1] or latest



1. 2019 for New Zealand death rates.
Source: OECD (2024), Structural and Demographic Business Statistics (database).

On the other hand, New Zealand is not close to the frontier of international best practice in terms of regulating lobbying and/or cooling off periods between the public and the private sector, which does not foster a level playing field; there is some scope to enhance lobbying and other regulations on public officials and ensure that they are applied evenly. Also, while the involvement of interested parties in public decisions does bring certain advantages in terms of local democracy or social cohesion, it can nevertheless carry a risk of excessive politicisation, nimbyism, and inaction, or even regulatory capture. This is notably true for land use rules or other local regulations, which can compound barriers to entry locally (see below). As such, a review of the overall settings for impact assessments and stakeholder engagement is warranted.

New Zealand is characterised by a high share of the population working in micro, small and medium enterprises. This hints at a difficulty for these firms to grow into larger businesses. While this is probably partly due to the relatively small size and low density of the New Zealand market, more can be done to help them grow. The regulatory regime for insolvencies remains relatively restrictive in New Zealand, notably for small firms (André and Demmou, 2022; Adalet-McGowan and Andrews, 2018) and has seen little change over the past years. New Zealand's capital markets also remain relatively underdeveloped. Improving the insolvency framework, and more broadly the access to financing and capital, would help small firms grow into larger businesses.

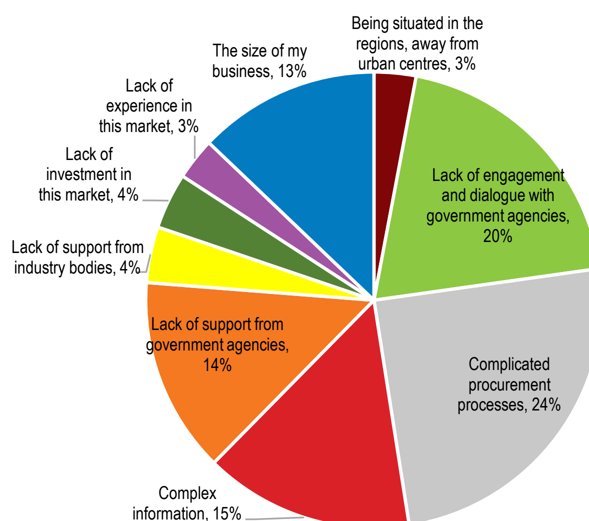
Small businesses also face difficulties in winning government procurement contracts (Figure 4). Under Rule 17 of the Government Procurement Rules, "agencies must consider how they can create opportunities for New Zealand businesses […] including Māori, Pasifika and regional businesses, as well as social

Unclassified - Non classifié

enterprises". According to a 2021 survey, only 51% of businesses with five employees or less, and 63% of those with six and 19 employees, felt that they can effectively bid for government contracts, as opposed to 80% of businesses with more than 50 employees (NZ Government Procurement, 2021). Poorly written tenders with complex information and processes, and limited conversation between agencies and businesses are some of the barriers felt when tendering for government contracts. Ensuring a level playing field in government procurement and improving the ability for large and small businesses to bid, increases competition and provides growth opportunities for local communities and new competitors. By helping small businesses have a viable business model, they are then better able to offer new products and services to households and businesses; this can also help them become more competitive on the export market.

Figure 4. Main factors that make it difficult for firms to effectively bid for government contracts

2021



Source: NZ Government Procurement Business Survey; Ministry of Business, Innovation and Employment (2021).

There is potential to increase foreign direct investment

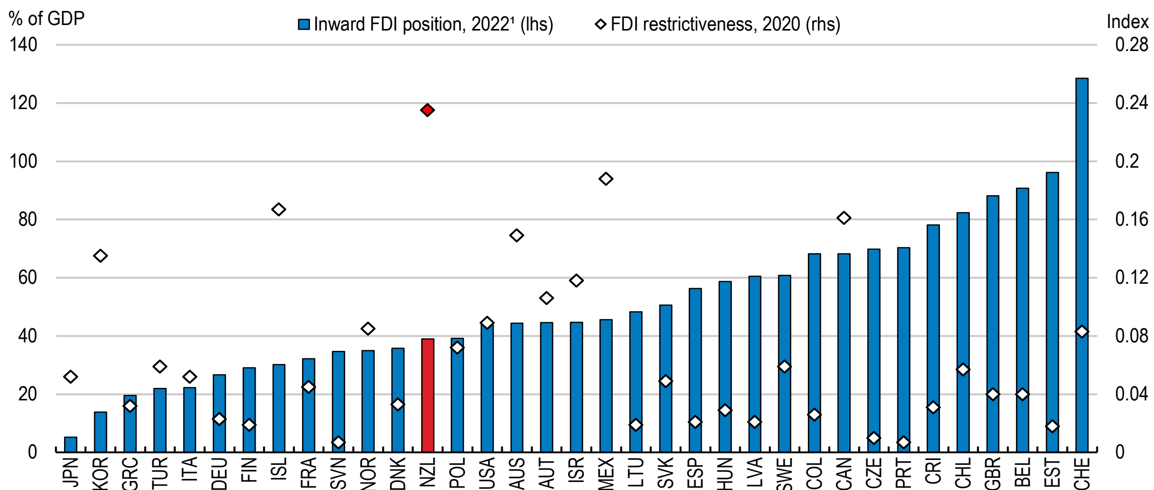
While geographical barriers to trade are high in New Zealand, New Zealand policy settings remain trade friendly. Tariffs are low in international comparison, and other trade costs remain reasonable compared to other islands or outside single markets like the European Union – especially given the need to impose tight biosecurity controls to protect New Zealand's native flora and fauna from introduced diseases and pests. Nevertheless, non-tariff barriers such as product standards remain prevalent in New Zealand, as in Australia. Like Australia (OECD, 2023a), New Zealand could improve efficiency, while meeting other policy goals, by further recognising standards of relevant foreign jurisdictions such as the European Union, where these exceed domestic requirements, to boost competition and lower prices.

Foreign direct investment (FDI) has historically been low in New Zealand, partly due to stringent controls on foreign ownership of core assets, natural resources and scenic reserves (Figure 5). The Overseas Investment Act (OI Act) 2005 sets out a consent regime for investments above a value threshold or in certain types of land. In the past, only few formal consent applications were rejected, but this partly resulted from investors withdrawing applications before a final decision was made (White & Case, 2023). An additional temporary screening for strategically important businesses was introduced during the pandemic and stabilised into a new national security and public order (NSPO) clearance regime in 2021. At the same time, the government decided to exclude lower-risk transactions from consent requirements. Consent under the OI Act is required for overseas persons seeking to directly or indirectly acquire a 25% or more interest in a sensitive New Zealand asset. Sensitive New Zealand assets include sensitive land, significant

Unclassified - Non classifié

business assets (broadly assets worth more than NZD 100 million), and fishing quotas. The NZD 100 million monetary threshold is increased for investors from certain countries, and transactions involving foreign government investors are subject to heightened scrutiny. Under the NSPO regime, clearance is mandatory in some critical industries (intelligence, military, dual-use), and non-notified transactions can be called in for review before or after completion of the transaction. In addition to character screening (fines, convictions, etc.), the consent regime requires the net benefits (economic, environmental, etc.) of the transaction to be proportionate to the sensitivity of the land and the nature of the transaction. Depending on its complexity, a land application can take five to seven months (White & Case, 2023).

Figure 5. The inward FDI stock is small, especially for a small open economy



1. 2021 values for Australia, Belgium, Denmark, Finland, Greece, Korea, Latvia and Norway.
Source: OECD (2023) Foreign Direct Investment Statistics.

While New Zealand's focus on protecting natural resources from foreign ownership is unusual among OECD economies, it reflects fears that foreigners would acquire and export natural resources at a basic level to be processed elsewhere, with little transformation and value added for New Zealand. On the one hand, the potential for additional efficiency gains through greater FDI is probably limited in primary agriculture and forestry activities – such as producing and processing dairy, growing and cutting logs – where New Zealand has a strong technical capacity. On the other hand, greater FDI in downstream processing and other industries could bring more benefits. The low level of FDI is likely in part due to the size of the domestic market and distance to other markets, as well as the very high effective rate of corporate taxation. The effects of the recent reforms on FDI should be monitored; if they have failed to increase investment, the government should streamline the procedures further – at least in sectors where national security is not at risk. This streamlining should focus on the specific sectors where FDI is likely to be particularly beneficial in terms of technology diffusion, expertise and access to foreign capital. In this regard an investigation into the influence of the regulatory system on FDI overall and in specific sectors of focus, as the OECD has recently carried out for Australia (OECD, 2018), Finland (OECD, 2021a) and Portugal (OECD, 2023b), could be beneficial.

State ownership remains high in New Zealand and SOE performance is mixed

High state-ownership in several key sectors carries risks for competition. By international comparison, the Crown and local authorities still own an unusually high share of the capital of New Zealand's network companies, through majority or minority voting rights in listed or non-listed companies. In part, this might reflect a cultural preference to keep the 'crown jewels' partly in public hands, or fear of foreign investors 'gaining control' of the economy and critical infrastructure – especially since savings have historically been low in New Zealand, making it dependent on foreign savings. It is also a product of history, with a high

Unclassified - Non classifié

initial level of state ownership that was only partly reduced though privatisation, some privatised firms that had to be bailed out or recapitalised with public funds in the past, and the small size of New Zealand's capital markets making it harder to find suitable domestic private market alternatives to public ownership, given the reluctance towards foreign investment and control in different sectors.

These risks to competition are not classic ones of politically-driven inefficient monopoly companies. The public sector does not seem, overall, to be too involved in the day-to-day management of these companies, and their governance structure is often aligned with private sector practices, especially for listed firms. In companies where it holds a minority stake, the State does not enjoy special voting rights, or the ability to appoint the management directly. Overall, state ownership does not seem to be a tool for politicised decisions based on the desires of politicians or unions. State ownership has not led to inefficient corporate governance, so far, for publicly-listed firms, although some state-owned companies such as Solid Energy (formerly Coal Corporation) and New Zealand Rail have failed or had significant difficulties in the past. Nevertheless, several risks arise from significant state ownership, which makes guidelines and safeguards useful (OECD, 2015). SOEs remain more fragile to political interference, especially if one of these sectors were to become politicised again. The NZCC has a statutory duty to act independently and has acted against SOEs in the past. It adheres to the OECD's Recommendations on Competitive Neutrality (OECD, 2021b) to ensure there is no special treatment of SOEs in merger or other collaboration deals and could further explore how to minimize the distortions that SOEs are susceptible to cause in markets. It should also have a legal duty to advise Parliament on whether deals involving a SOE will substantially reduce competition, perhaps by making the Chair of the Commerce Commission an Officer of Parliament.

Avoiding politicisation and inefficient governance may prove more difficult for council-controlled-organisations and other local-owned assets where the links between councillors and the company could be particularly strong. The NZCC does regulate council-controlled-organisations such as electricity line businesses (see below) but does not specifically regulate ports. Of the country's eleven major ports, seven are 100% council-owned and four have mixed ownership with a majority council stake. Mixed-ownership ports have been more profitable than council-owned ports over the past eight years, and the profitability of Ports of Auckland declined markedly after its delisting in July 2005 (TDB Advisory, 2023). Consolidation and privatisation (in part or in full) may increase accountability, profitability and efficiency.

The competition policy framework has become more comprehensive

Competition policy must strike a balance between favouring firm entry ex ante and imposing sectoral regulations or more structural interventions ex post. Reducing regulatory barriers to entry and having a business-friendly environment is important, but the experience of the 1990s and 2000s in New Zealand shows that liberal entry rules can prove insufficient in the presence of natural barriers to entry (such as the size and scale of incumbents or entry costs). Like in many countries, high vertical and horizontal integration and local market concentration inhibit competition in numerous sectors. As in other countries, free entry of foreign and domestic firms is unlikely to suffice in bringing competition to natural monopolies such as energy, transport, and telecommunications; this also requires sectoral market regulations – ex ante or ex post – and antitrust enforcement. Many retail industries such as fuel, groceries, building supplies or financial services also remain highly concentrated in New Zealand, with high levels of profits; ensuring vibrant competition in these industries also needs ex post competitive oversight.

Competition authorities in New Zealand and abroad traditionally focused mostly on their judicial or quasi-judicial role of prosecuting cartel behaviour, anti-competitive agreements or abuse of dominance, as well as preventing mergers and acquisitions that may lead to excessive market shares. Conversely, market concentration which resulted merely from the growth of some firms and the exit of others, or high prices that resulted from a lack of competitive pressures, rather than cartel behaviour or abuse of a dominant position, was typically not illegal or regulated. As a result, competition was lower and prices higher than what could have been achieved with a broader focus beyond deliberately anti-competitive behaviour. This experience

Unclassified - Non classifié

has led many policy makers and regulators to take a renewed interest in making competition work effectively, and they have appropriately gone beyond repressing illegal abuse of dominant positions to focus on the larger set of factors that can lead to excessive market concentration and a lack of effective competition.

In this regard, the New Zealand regulatory landscape has seen major changes in the past few years, with the NZCC gaining more oversight in a range of sectors. One major reform has been the rewriting of section 36 of the Commerce Act in 2022 (effective in April 2023). Previously, anticompetitive behaviours and the abuse of dominant position were illegal to the extent that they involved the taking advantage of market power for particular anti-competitive purposes. Now, in alignment with international standards, the NZCC is only required to show that conduct by a firm with substantial market power had the purpose, effect or likely effect, of substantially lessening competition in a market.

Since 2018, the NZCC is also empowered to conduct market studies into any market where the NZCC considers it to be in the public interest, notably if there are reasons to believe that competition may not be working effectively, but there is no reason to suspect that is due to a violation of competition law. The Minister of Commerce can initiate a market study or it can be self-initiated by the NZCC. Market studies have long been used in some OECD countries and increasingly so in the past decade. In the United Kingdom, the Competition and Markets Authority (CMA) gained a similar role under the Enterprise Act 2002 (now the Enterprise and Regulatory Reform Act 2013), and the Australian Competition and Consumer Commission (ACCC) conducts market studies under the Competition and Consumer Act 2010. The NZCC has carried out extensive market studies in different sectors (retail fuels, groceries, building supplies) and is currently assessing the market for personal banking services.

The NZCC is only required to assess the state of competition in the sector; recommendations are optional and non-binding on the Government. However, the NZCC has included recommendations in all studies so far, and the Government has enacted (or proposed) new legislation in the three sectors with completed market studies; these sectoral reforms have also tasked the NZCC with enforcing the new rules and improving competition in two of these sectors. This is perhaps not surprising as to date all four market studies have been initiated by the Minister. However, the NZCC does not have the power to perform market investigations – in contrast with competition authorities in the United Kingdom, Mexico, Iceland and Germany – with the power to determine and enforce structural or behavioural remedies. A test of the market studies process will come when the government’s response to a NZCC-initiated study is debated in Parliament.

Market studies and other sectoral inquiries have identified some of the common anti-competitive factors discussed above (high market concentration or vertical integration, excessive use of land covenants locally, insufficient protection for customers or suppliers and the difficulty to move to a competitor, etc.). The extent of differentiation in products, services or business models also interacts with competition. Competition allows firms to differentiate and offer new innovative products to satisfy consumer preferences. At the same time, excessive product diversity and complexity can make it hard for customers to know and choose what is best for them. As such, regulations and market inefficiencies can lead to either too much or too little standardisation, compared to a competitive or efficient outcome. Both phenomena, too much standardisation (e.g., retail electricity offers until recently) and potentially excessive differentiation (e.g., grocery discounts and loyalty programmes) are present in New Zealand, although the former is more prevalent.

Competition authorities face a dilemma when addressing these market features, which are pervasive and risk being anticompetitive. One approach is to have a preventive prohibition in the Commerce Act and allow them on a case-by-case basis if the NZCC is satisfied of their innocuity. This might however be considered too heavy-handed and lead to excessive bureaucracy and oversight. So far, New Zealand has appropriately taken the alternative, more cautious approach of first identifying and analysing the sectors where lack of competition appears to be most egregious, and adapting the sectoral regulation through specific legislation, to impose restrictions on the anticompetitive factors that have been identified in this sector. The NZCC can also recommend cross-economy reviews are carried out as part of its recommendations following a market study and has done so in the case of restrictive land covenants, which led to the Ministry

Unclassified - Non classifié

for Business, Innovation and Employment conducting a review in 2023. As the market studies process matures and more studies are completed, the NZCC and MBIE should keep reporting to the government periodically on cross-sector themes arising from the studies and opportunities for wider cross-economy reforms.

Perhaps more importantly, competition policy must strike a balance between favouring firm entry and imposing sectoral regulations or more structural interventions. Reducing regulatory barriers to entry and having a business-friendly environment is important (see above), but the experience of the 1990s and 2000s in New Zealand shows that liberal entry rules can prove insufficient in the presence of natural barriers to entry (such as the size and scale of incumbents or entry costs). If a light-handed approach is insufficient, this warrants efficient regulation or structural interventions to eliminate or reduce anticompetitive factors, or at least to mitigate their effect on competition. In theory, efficient regulation can help to mimic a competitive outcome, even in a non-competitive market, with possibly less market disruption than through vertical or horizontal breakups. However, in practice this often requires more complex regulations or codes of trading conduct to avoid the risk of larger players gaming the system and the regulations.

More significant structural interventions such as breakups may then sometimes be preferable, though they must be balanced against the likely ensuing fixed costs. One of the strengths of market studies is to go beyond the mere enforcement of existing statutes and consider the full range of policy options, including structural interventions. In some countries where the competition authority conducts market investigations, it can order structural interventions as a result. One notable example was the 2009 breakup of the British Airports Authority in the United Kingdom, mandated by the CMA (Sunderland, 2016). Nevertheless, markets are small in New Zealand, and structural interventions are likely to involve property rights and may require balancing the interests of competition against the risk of failing a business, or other considerations, including investor confidence. Furthermore, the implementation of structural separation can be complex in some sectors. Even in the absence of market investigation powers, a market study by the NZCC can provide a decisive impetus for government-led structural interventions. Market studies thus remain crucial.

International experience shows that limited local competition in a market can also be worsened by anti-competitive behaviour and rules in other markets. In New Zealand, as is seen in other OECD countries, abuse of the planning system and the terms of land management is prevalent in some sectors. In labour markets, non-compete clauses might compound competition issues, even if they are not always enforceable. In digital markets, regulators and policymakers in New Zealand and elsewhere are facing new challenges to protect consumers and businesses from exploitative practices, and foster growth and competition.

Using competition policy to offset the tyranny of size and distance

Because New Zealand's economy is small and remote, competition policy in New Zealand needs to be at the international frontier of best practice to counteract these disadvantages and improve the level of economic performance and long-term growth. Competition policy has a pivotal role to play in rooting out anti-competitive and cartel behaviours that are illegal, but also in addressing market concentration, which left to its own devices will deliver poorer quality goods and services at higher prices. This requires a forensic approach to regulation and competition as the source of insufficient competition varies markedly by sector and changes with global trends. In some sectors – notably network industries – regulation is necessary to ensure reasonable prices for consumers, while maintaining efficient incentives to firms to keep innovating and investing. In others, more structural solutions (i.e., the break-up of dominant players) may be the most efficient solution. This section discusses the acute market concentration challenges to competition that New Zealand's small market has created, as well as problems and recommendations in the network sectors, where fostering competition and preventing market dominance or its abuse is a perennial issue.

The evidence summarised below suggests there is a prima facie case for further analysis of barriers to competition in several key industries. These encompass dairy, retail electricity, ports, airports and relatedly airlines, domestically and on Trans-Tasman routes, and retail financial services. Varying indicators across

Unclassified - Non classifié

industries suggest competition is too weak, including high prices and excessive profits by international standards, very high vertical integration, weak product innovation, poor corporate performance and stubbornly high market shares of incumbents. There is also a need to revisit competition issues in retail building supplies, retail fuel and groceries. The issues are complex and an assessment of the competition policy framework in light of these three market studies findings is warranted. The Treasury and MBIE should jointly review the policy framework for market studies to evaluate how it serves New Zealand's overall economic performance and consumer welfare. The review could consider whether the framework should be more directive and require, for example, regular NZCC evaluation reports on whether a markets study intervention or other interventions are working to raise competition. The review could also consider imposing an explicit escalation path from the light-handed regulatory approach, that is currently being employed in these sectors, to heavier regulation and structural separation (i.e., break-up of dominant players) in the case the intervention is judged as not working, even if it remains a solution of last resort.

Bringing more competition to the retail, dairy and financial sectors

Market concentration and profitability remain high in New Zealand in the retail and financial sector, where economies of scale largely shield incumbents from the emergence of new players. This warrants extensive ex post investigations on the factors that are preventing entry or exacerbating market dominance. While profitability is not as high in the dairy sector, it remains very concentrated, which yields significant economies of scale in terms of productive efficiency and competitiveness abroad, but is likely to slow innovation in a sector that plays a very large role for the New Zealand domestic economy and foreign trade.

Market studies have revealed common factors behind a lack of competition in the retail sector

The market studies that the NZCC has conducted have highlighted a lack of competition in different retail sectors, notable fuels, residential building supplies and groceries. While there is no ex ante regulatory barriers that prevents the entry of new players, market concentration is high nationally and locally. The different market studies have documented the interaction of vertical integration and abuse of land use rules locally that prevents the emergence of new players and increases the market power of incumbents. While these market studies did not advocate a structural breakup of some of these oligopolies, they have suggested improvements aimed at easing market entry ex ante and limiting market dominance ex post.

Five companies import fuel into New Zealand, three of which are colloquially regarded as "the majors" in the downstream fuel industry. Since the country's only refinery's closure in 2022, they only import refined fuel products, including petrol. The three majors supply more than 90% of the retail fuel, through their retail sites, those of their franchisee dealers and those of independent distributors. While 60% of petrol stations are not affiliated with the majors, they are often located outside of major metropolitan areas, and only sell about 20% of fuel volumes. Land use restrictions (covenants or regulations) likely compound this issue. In 2019, the NZCC's Fuel market study found that an active wholesale fuel market did not really exist in New Zealand (Commerce Commission, 2019). Based on the Study's recommendations, the Fuel Industry Act of 2020 increased transparency, through a terminal gate price regime and mandatory price boards at retail sites. It also included data disclosure rules, a dispute resolution scheme between suppliers and resellers, and regulations to reduce restrictive or dependent supply relationships. The study and new legislation, along with the rewriting of section 36 of the Commerce Act regarding the abuse of dominant position (see above) have improved competition. In July 2023, a 'regulatory backstop' was added, with the NZCC being able to investigate terminal gate prices and recommend that they are regulated if they are deemed excessive. The effect of the new legislation should be monitored, and remaining barriers to entry and expansion for independent retailers should be investigated (vertical integration and retailer access to supply, land use rules). If competition in fuels continues to be deemed inefficient, the Government might need to investigate the option of forcing some of the majors to exchange or divest from some of their assets.

Unclassified - Non classifié

Prices and profitability are high by international standards in the retail grocery sector (Commerce Commission, 2022a), along with limited product range and innovation. Two major retailers dominate the market through their portfolio of different brands. As a result, they can extract higher prices from consumers (oligopoly power), but also exert 'oligopsony power' on their suppliers, passing on costs and uncertainty to them, with the threat of removing products from shelves if suppliers disagree (OECD, 2022b). This oligopsony power, and the associated economies of scale also make it difficult for new competitors to have a good access to wholesale supplies. In response, the Grocery Industry Competition Act 2023 was enacted in June 2023. It introduces a new regulator role for the NZCC in the grocery sector and improves access to the wholesale market for independent retailers. A new Grocery Supply Code of Conduct sets standards for the relationship between major grocery retailers and their suppliers. While an increase in the price paid to suppliers can sometimes be detrimental to consumer prices in the short run, it can still be beneficial in the long run, if it allows for more innovation by suppliers and more entry from new retailers that can compete with incumbents, as the playing field has been levelled (OECD, 2022b).

It is unclear whether these reforms will be sufficient. Stronger measures, such as a break-up of the duopoly through a forced sell-up of brands or a separation of the wholesale and retail branches of these companies, as well as the upstream growers and manufacturers they own, could eventually prove warranted, but are intrusive and complex. A cost-benefit analysis commissioned by MBIE on the behalf of the Government found that the total effects of divesture were uncertain, possibly leading to net benefits or net losses (MBIE, 2023). This analysis should be furthered and refined and could be used in the absence of measurable improvement. Restrictive land covenants (when a retailer imposes restrictions when selling a physical site) and local land use rules also prevent new entrants from setting up stores in the most relevant locations. A specific prohibition on grocery-related land covenants has been added to section 28 of the Commerce Act in 2022; the NZCC should carry out an evaluation of this reform, and whether land use rules or other local regulations are acting as a barrier to entry in the sector, with potential avenues for reform. Besides, pricing strategies, promotions and loyalty programmes can make it difficult for consumers to compare prices; new regulations relating to unit pricing have been enacted in 2023 to make price comparison easier for consumers. A shift towards digital shopping – where New Zealand has room for progression as argued in the previous OECD Economic Survey (OECD, 2022a) – would probably reduce fixed costs for new competitors, but algorithms and buying habits may weaken product comparison (OECD, 2023c).

The residential buildings supplies sector is dominated by five major merchants, who compete for national customers like group home builders, and regional customers, often local builders. According to the NZCC's 2022 market study (Commerce Commission, 2022b), competition seems to be working overall at the national level, but is sometimes lacking at the local level, with fewer competing distributors in less populated areas. Indeed, prices in New Zealand have been 20 to 30% higher than in Australia (NZ Productivity Commission, 2012a) pointing to competition issues. Market concentration in smaller markets is compounded by restrictive land covenants that prevent competitors from opening stores in the direct vicinity of an incumbent. Merchants also sometimes benefit from preferential rights to quote for certain housing developments, on land designated for residential building developments. While the NZCC identified vertical integration in some of the suppliers, it did not seem to have a major detrimental effect on competition from non-integrated merchants and suppliers, who have a good access to the market.

The market study identified two factors that limit the entry and use of new products. First, the regulatory environment incentivises designers, builders and building consent authorities (BCAs) to favour building products that they know and understand. It can be too slow, costly and uncertain to get new products approved; or, at least, this is how builders, designers and regulators often behave, and they prefer to stick with known products. Offsite manufacturing (OSM), where parts of a house are built remotely and assembled directly, is one such example where the regulatory environment has been slow to adapt, despite its potential for lowering costs and increasing supply (MacAskill et al., 2021). The market study also noted that the consenting and regulatory process was proving challenging for Māori consumers and businesses. Local authorities, regulators and suppliers can at times fail to understand their needs and aspirations,

Unclassified - Non classifié

pushing them towards a ‘one-size-fits-all’ model that does not suit them. The report contained recommendations to facilitate the approval of building supplies, notably by creating clearer compliance pathways for a broad range of building supplies, to provide a faster and more uniform approach to new products; some of these recommendations remain to be actioned. It also suggested a government strategy regarding OSM. A broader strategy regarding consenting and regulations by local authorities may be warranted.

The second roadblock to the entry of new products is the tendency of established suppliers to pay quantity-based rebates to retail merchants, incentivising them to stick with existing products. Combined with the status quo bias of the whole regulatory system, this can lead to a lack of product variety for consumers and builders, and also limit the ability of new products to enter and compete in the market. The NZCC study recommended greater scrutiny of such rebates under the Commerce Act’s new abuse of dominance provisions, in case of excessively anti-competitive effects. Similarly, it suggested a better monitoring of the use of land covenants, and exclusive leases that tend to hamper competition at the local level. Time will tell if this monitoring approach is sufficient to increase competition in an industry where prices remain high by international standards and market dominance egregious. More structural interventions may prove warranted, but would require significant political and policy support from the government. A fast-track process for foreign supplies approved abroad could also help to improve entry and competition.

Favouring the emergence of new players in the dairy industry

Dairy is a major industry in New Zealand – employing around 50 000 workers – and the largest export sector, accounting for about 28% of total export revenue. To boost industry performance, a “national champion”, Fonterra, was created in 2001 by merging New Zealand’s largest two dairy cooperatives, together with the export marketing arm of the New Zealand Dairy Board, whose export monopoly was removed. Fonterra, cooperatively owned by around 8 300 farmers-shareholders, remains by far the largest dairy processor in New Zealand, the country’s largest company, and a major dairy exporter. Its share of the New Zealand farmers’ milk market has fallen but it still collects and processes around 79% of New Zealand’s raw milk. Local processing capability is important, giving Fonterra extensive market power, and it is regulated under the Dairy Industry Restructuring Act (DIRA) 2001.

Given Fonterra’s market share, there is no workable, supply-and-demand market process to derive a competitive price that would be paid to farmers. To strengthen productive efficiency incentives, Fonterra is required to calculate a base milk price, that is, a reference price that a notionally efficient processor of Fonterra’s size and scale could pay for farmers’ milk. The base milk price is calculated in accordance with a Milk Price Manual which is maintained by Fonterra’s Milk Price Group, which also manages the calculation of the base milk price in accordance with the Manual. The Manual and calculation are monitored by the Commerce Commission to ensure consistency with the purpose of the Dairy Industry Restructuring Act. The Commerce Commission publishes its findings and since the 2022 amendments to DIRA, can issue binding directions on Fonterra’s use of assumptions, inputs and processes, as well as on the disclosure of information pertaining to the Manual and the calculation. Fonterra is not required to pay the base milk price to farmers for their milk. It is free to set an actual farmgate milk price and terms of supply as it sees fit. The key regulatory requirement is that it must disclose the reasons for any difference between the notional base milk price and the actual farmgate milk price set by the Fonterra Board. The farmgate milk price paid by Fonterra largely determines the price other processors must pay to attract milk supply from farmers, because farmers are able to switch their milk supply to other dairy processors.

However, Fonterra’s corporate performance has been mixed and growth forecasts made at the time of its creation have been missed by a large margin (Northington Partners, 2018). A lack of access to share capital (Barry and Pattullo, 2020) as well as past investment decisions appears to have constrained its business and overseas expansion into consumer products. Given its cooperative status, Fonterra’s capital is owned by farmers, and they were originally obliged to hold one share for every kilogram of milk-solid sold to Fonterra. In 2022, Fonterra changed its capital structure to introduce more flexibility in shareholding

Unclassified - Non classifié

requirements for farmers. Fonterra changed the shareholding requirement for milk supply so that farmers are now required to hold one share for every three kilograms of milk-solid (rather than, as before, one share per kilogram of milk-solid). This is intended to make entry to the cooperative and supply of milk to Fonterra less costly for farmers and to ensure a sustainable milk supply for the future. Farmers can also own shares that are not linked to supply (dry shares), up to four times their milk supply, entrants have a longer time to purchase the shares they need to own, and farmers retiring or moving to a competitor have more time to sell their shares. However, the size of the Fonterra Shareholders Fund – which allowed outside investors to buy economic rights similar to shares (dividend, ability to sell) but without voting rights – has been capped, reducing the buyer pool for farmers' dry shares. Taken together, these changes bring more flexibility for farmers looking to join or continue with Fonterra, while arguably making it less attractive for farmers to leave Fonterra because the value of their shares has been reduced due to less demand for the shares. The cooperative organisation remains, with the risk of insufficient access to outside capital markets to fund innovation.

Fonterra has also pulled back from international expansion and acquisition of milk access in other countries to concentrate on processing New Zealand milk with a focus on business-to-business export sales of ingredients. This has turned around its financial performance and appears more compatible with the cooperative structure and the expertise of the board, the majority of whom are farmer-shareholders. Indeed, Fonterra has proven successful at generating profits in part of the dairy value chain and especially in ingredients, and the cooperative model by and large serves its farmer-shareholders well. However, the experience over the past 20 years suggests that, irrespective of its capital structure, it is not realistic to expect a large dairy processor like Fonterra to substantially increase its presence in the fast-moving consumer goods markets. New Zealand will likely need to rely on other dairy processors and food companies, operating quite differently from Fonterra and most other existing dairy processors, for the industry to become more diverse and secure greater presence in the downstream parts of the dairy value chain. The government should give greater attention to independent players, notably when discussing international trade deals.

Experience shows that, when the government has deregulated and allowed more competition, the industry has grown. Since the 2001 reforms and disestablishment of the New Zealand Dairy Board, several new and sometimes very successful processing companies with varying business strategies have entered the market and Fonterra's market share has fallen albeit only to 79% after more than two decades. As part of DIRA, the Ministry for Primary Industries will conduct a statutory review of the dairy market in 2025, to determine whether the regulatory regime should be retained, repealed or amended. This review should be conducted in concert with the NZCC, notably to investigate what barriers are possibly preventing other companies from growing New Zealand's dairy revenues in areas where Fonterra cannot or will not.

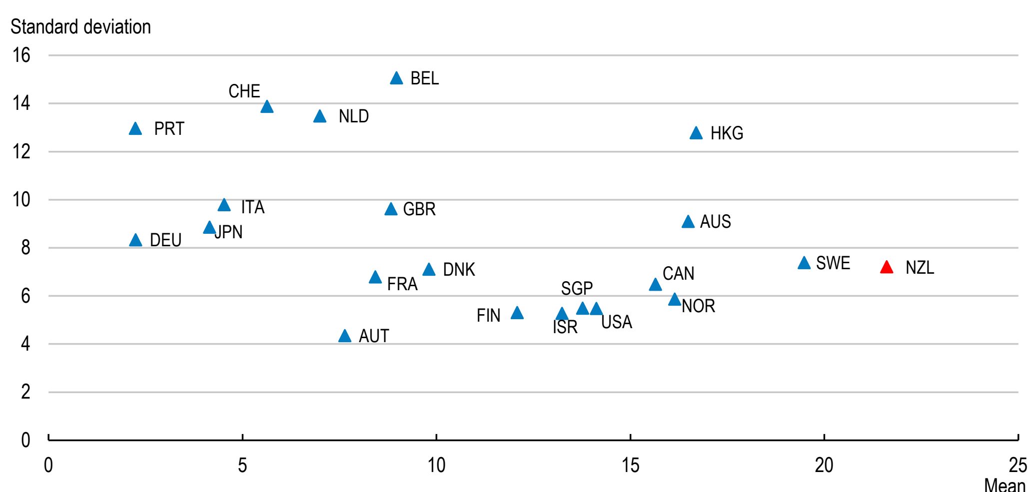
Bank profitability is high in New Zealand

High bank profitability in international comparison suggests that there is a prima facie case to answer of a lack of competition in this industry. The New Zealand banking industry is dominated by four large Australian-owned banks who hold about 90% of total bank assets. In 2022, they recorded combined profits of about 3% of GDP – more than the electricity market, supermarkets and the construction sector together (in Australia, the four large Australian banks recorded profits of 1.2% of GDP in FY 2022/23). These four large New Zealand banks generated an average shareholder return of 15% over 2018-2022, compared to 7% for small New Zealand banks, 13% for large banks in Australia, and 11% for their counterparts overseas (RBNZ, 2023); the risk-adjusted return gap appears to be even higher. These high levels of profitability are unlikely to be explained solely by the riskiness of conducting a banking business in a small market like New Zealand, as the standard deviation of pre-tax returns is relatively low, suggesting low risk taking among banks (Figure 6). The fact that New Zealand banks are less engaged in investment banking can partly explain a lower level of risk but then their profits should be lower than overseas, too.

Unclassified - Non classifié

Figure 6. Large New Zealand banks are very profitable

Mean and standard deviation of pre-tax return on equity across selected countries, 2000-2021



Source: Reserve Bank of New Zealand (RBNZ, 2023).

Transaction fees for retail payments are also very high. EFTPOS (electronic fund transfer at point of sale) is popular in New Zealand and allows for consumers to make free in-person contacted debit transactions; merchants typically pay to rent the equipment and a fixed network access fee for each terminal. This also covers 'scheme' debit cards that are swiped or inserted (switch-to-issuer card transaction), but not contactless and/or credit card payments (switch-to-acquirer transaction). For such payments, payment service providers in the Mastercard and Visa networks set interchange fees between the card issuing banks and merchant acquiring banks which are recovered through relatively high fees to merchants, that are then often passed on to consumers through payment surcharges: a 2022 Kantar survey conducted on behalf of the NZCC showed that 22% of surveyed merchant respondents impose a surcharge (Kantar, 2022). A 2016 study found fees to be significantly higher in New Zealand than in Australia or the European Union (MBIE, 2016). The MBIE study found that the absence of fees on EFTPOS and (non-contactless) debit card transactions in New Zealand was relatively unusual in international comparison. It might lead to inefficient cross-subsidisation by other activities of the card-issuing bank and by the non-free segment of the market.

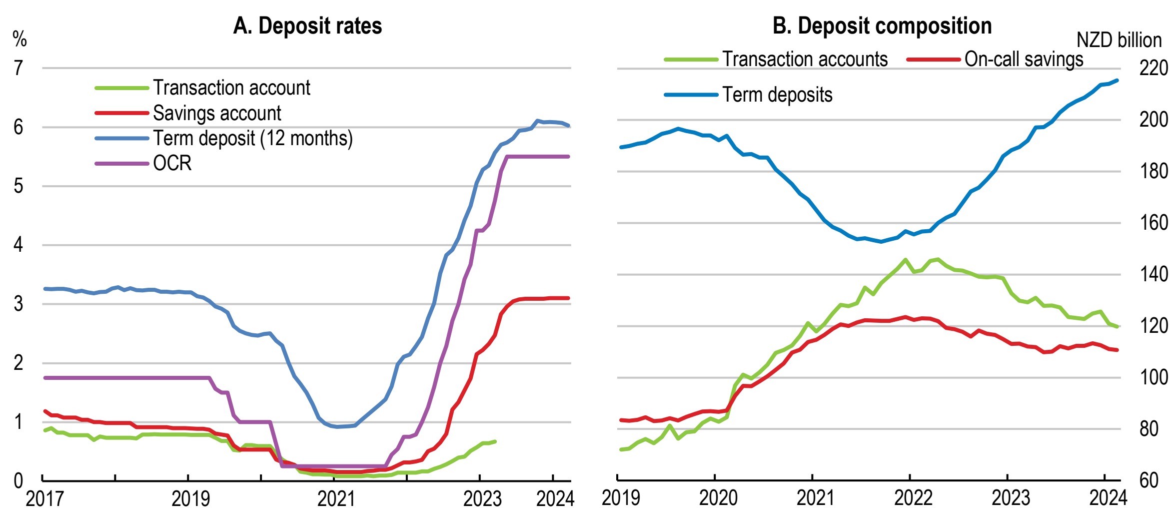
Regulatory reforms have been introduced to mitigate some of these problems. The Retail Payment System Act 2022 requires the NZCC to monitor competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers. Designated payment networks may be subject to price, access or information disclosure regulation; currently Visa and Mastercard debit and credit networks are designated with pricing limits placed on interchange fees. The Commission can also issue standards to ensure surcharges reflect the actual cost of providing that payment option. By the NZCC's latest estimate, the interchange fee regulation introduced in November 2022 will save New Zealand's merchants around NZD 105 million annually. Businesses are encouraged to pass these savings through to customers, though this will require a better understanding of their payment related fees. Digital payment systems (such as payment apps or fintechs) could be a way to lower surcharges further, if they prove to be more cost-effective than the current payment infrastructure (OECD, 2020b). The Commission has started work to understand the barriers to their expansion and how new payment methods between bank accounts can be promoted.

However, a more thorough investigation of competition in banking services is warranted if one aims to improve competition, not just mitigate poor competition outcomes, and the NZCC is currently undertaking a competition study of the sector. High interest rates are one of the explanations for the substantial bank profits. The Official Cash Rate is at 5.50% since August 2023 – and was at high levels before –, but substantial amounts of deposits are held on 0%-interest transaction accounts, or savings accounts with low interest rates, allowing for a very significant lending margin (Figure 7). The low degree of variability in profits across

Unclassified - Non classifié

banks should also be investigated: it seems to partly reflect the fact that they have had little incentives to differentiate from one another in the service they offer and/or the way they are funded. As noted by the draft NZCC report (Commerce Commission, 2024), the way they are funded in turn seems in part due to very strict prudential supervision by the Reserve Bank, which is efficient at preventing systemic risk, but possibly at the cost of weaker differentiation and innovation by limiting non-systemic risk. This warrants further investigation, and the NZCC's ongoing competition study is looking into some of these issues.

Figure 7. Banks make a significant margin on deposits



Note: the data for transaction account deposit rates only goes until March 2023.
Source: The Reserve Bank of New Zealand (RBNZ, 2023).

Furthermore, the low level of digitalisation in New Zealand might prevent disruption by fintechs: if most customers need access to physical branches and a dedicated advisor, disruption can only go so far. Nevertheless, facilitating mortgage switching further, or digital savings accounts could prove beneficial. Banking was expected to be the first sector to apply a consumer data right (OECD, 2019a) under the draft CDR regime of the previous Government, aimed at enabling data portability and switching between firms (see next section). The CDR regime is likely to help third party fintechs in offering services to customers, including budgeting and comparison tools; the new Government plans to go forward in its implementation. As noted in the previous *Economic Survey of New Zealand* (OECD, 2022a), and as illustrated by the experience in various countries, regulatory sandboxes can serve to promote fintech growth.

Making competition work in network sectors: transport, utilities and telecoms

Network sectors such as transport, utilities and telecommunications rely on infrastructure that is commonly considered to be a natural monopoly (high infrastructure costs and economies of scale). As such, these natural monopolies have historically been run as monopolies by government agencies or state-owned enterprises in New Zealand and other countries. Efficiency concerns have led New Zealand to corporatise and privatise (in part or in full) most of these assets over the past four decades while opening the sectors to competition. The large market size of previously public incumbents as well as natural barriers to entry are nevertheless a brake on competitive pressures. This calls for active oversight as well as sectoral regulation, because broad competition principles are unlikely to suffice. As in the oligopolistic markets discussed above, the interaction between market size and vertical integration deserves special attention.

Unclassified - Non classifié

New Zealand is highly reliant on air transport

Given New Zealand's geographic isolation and relatively low population density, efficient transport systems, both on domestic and foreign routes, are key to increase market size and help businesses grow, compete and innovate, at home and abroad (OECD, 2013). Competition in the transport sector not only drives down prices and trade costs for freight and passengers; it can also improve the speed and reliability of service. As in other countries, most infrastructures (ports, airports, rails, roads) enjoy a natural monopoly or considerable market power, nationally or locally: few businesses and consumers are potentially able and willing to substitute one port or airport with another, unless they are reasonably close to each other. Transport services (freight or passenger), on the other hand, feature more competition, though some actors enjoy a large degree of market dominance that needs to be regulated.

In 2012, the Productivity Commission examined New Zealand's international freight transport system and concluded that the sector is satisfactory overall, though certain areas could be improved (NZ Productivity Commission, 2012b). The Commission was satisfied with the performance of New Zealand's ports and airports, with variation across sites. However, the recent poor performance of New Zealand's largest container port, Auckland, due to an implementation failure of a major automation investment, illustrates the need for natural monopolies to be run efficiently. While Port of Tauranga has been able to compete and attract a fraction of Auckland's freight flows, competition alone cannot overcome all geographic obstacles, and the efficiency of ports requires good corporate governance of council subsidiaries and adequate planning.

One of the recommendations of this Productivity Commission inquiry was to remove the exemption of international shipping services – in particular rate-making agreements and capacity limitation – from normal competition law. Agreements that fix prices, or limit capacity with the intent of raising prices, used to be allowed in international shipping worldwide, but their net benefits have proved elusive. Following these recommendations and the example of many countries, the Commerce Act was amended in 2017 to limit the exception to certain liner shipping service agreements. The law also allows an exception for "collaborative activities" whose dominant purpose is not anti-competitive. Such agreements do not need to be registered with the Commerce Commission, though the NZCC can provide clearance for them. In November 2022 eight freight forwarding companies were warned – and two were fined – for illegal "cover pricing" behaviour (knowingly submitting uncompetitive bids to give the impression of more competition than there really is).

The three major airports (Auckland, Christchurch and Wellington) are subject to regulation by the Commerce Commission, through "information disclosure" on pricing and spending decisions. Overall, the threat of additional regulation in case of excessive returns has exerted effective discipline, though additional regulation – if needed – can only be imposed on the three airports together, not one by one. Whether this oversight should be extended to Queenstown airport, which also serves domestic as well as Trans-Tasman routes, should be investigated. Auckland is by far New Zealand's largest airport, and it plays a dominant role as a connecting hub between New Zealand and the rest of the world. Auckland Airport's 2023-2027 prices have proved controversial; Auckland Airport justifies them by important investments needs in infrastructure. Currently, airports in NZ operate under the dual-till principle, where only aeronautical activities are directly regulated, while commercial activities (parking, shops) are run freely by the airport.

In contrast, under the single-till principle, airports are seen as a two-sided market (Malavolti, 2016) where the two activities are regulated together, to reflect the externalities that they enjoy (Czerny, Guiomard and Zhang, 2016): airport shops or parking would be less profitable outside of an airport. Airlines and airports have widely differing views on the two till systems. On the one hand, airlines tend to favour the single till model: they insist on externalities between the two activities, and the risk of 'gold-plating' if airports can charge prices based on full infrastructure costs (OECD, 2010). On the other hand, airports tend to downplay these externalities and insist that their commercial ventures are facing competition from outside the airport; according to them, single till leads to under-investment in infrastructure as airports do not have the right incentives to invest (ACI Europe, 2018). Nevertheless, there is also some scope for a 'hybrid till' model where externalities are partially accounted for, while keeping the operation of the activities separate

Unclassified - Non classifié

with their own incentives. This could take the form of a well calibrated lump-sum subsidy between commercial and aeronautical (security, traffic control) activities. The feasibility of a hybrid till – or the scope of activities covered by the regulated till – should be investigated by the NZCC.

The degree of competitive pressures in air passenger transport is mixed (Table 2). Air New Zealand (Air NZ), the country's flag carrier, faces strong competition on large domestic routes from Jetstar, the low-cost arm of the Australian-based Qantas, but it enjoys a monopoly or market dominance on some smaller domestic routes. This domestic dominance is not unusual in comparison to other small countries that also feature one flag carrier and limited entry from low-cost carriers on smaller domestic routes with low profitability, though the limited availability of high-speed rail or road transport alternatives might make it more acute. New competitors have at times tried to enter the market for these smaller routes but have failed to stay. This exit was perhaps sometimes due to the small size of the market but predatory-like pricing from the incumbent may have also played a role. The same divide between smaller and larger routes holds for the Trans-Tasman market: while Air NZ faces competition from Qantas and Jetstar on the larger routes (in particular to Sydney, Brisbane or Melbourne), it is the only airline to offer direct flights from Auckland to Adelaide, Hobart or Perth. This reflects the commitment that Air NZ kept to these routes during the pandemic, and probably provides only a limited competitive advantage: a passenger from Christchurch to Adelaide or from Perth to Wellington needs to connect either in Auckland or in an Australian hub, with other competing airlines. Air New Zealand and Qantas entered a code-sharing agreement in 2018, but only on their respective domestic flights. Since Air NZ and Qantas were unlikely to enter each other's domestic market, this likely increases competition and flexibility on the Trans-Tasman leg by making it easier to bundle flights together.

Table 2. Number of daily flights by airlines on medium-large domestic routes and Trans-Tasman

	WLG	CHC	ZQN	DUD	PMR	HLZ	SYD	BNE	MEL	OOL
AKL	NZ (13-19) J (3-5)	NZ (13-16) J (3-6)	NZ (7-8) J (2-3)	NZ (3-4) J (1)	NZ (7-10)		Q (4-6), NZ (4-5) A (1), L (1), J (1-2)	Q (2-3), NZ (2-3) C (1), J (1)	Q (4), NZ (2-3) J (1-2)	NZ (1-2) J (1-2)
WLG		NZ (6-11) J (1-2)	NZ (2-3) J (1)	NZ (2-3)		NZ (4-6)	Q (2), NZ (1-2)	NZ (1)	Q (1), NZ (1)	J (1)
CHC			NZ (3-4)	NZ (5-7)	NZ (3-5)	NZ (3-5)	Q (1-2), NZ (1) E (1)	Q (1) NZ (1-2)	Q (1), J (1) NZ (1)	NZ (1) J (1)
ZQN							Q (1-2), NZ (1) J (1), V (1)	Q (1) V (1)	Q (1), NZ (1) J (1), V (1)	J (1)

Note: number of daily flights by Air New Zealand (NZ), Jetstar (J), Qantas (Q), China Airlines (C), AirAsia (A), Latam Airlines (L), Emirates (E), Virgin Australia (V) between Auckland (AKL), Wellington (WLG), Christchurch (CHC), Queenstown (ZQN), Dunedin (DUD), Palmerston North (PMR), Hamilton (HLZ), Sydney (SYD), Brisbane (BNE), Melbourne (MEL) and Gold Cost (OOL).
Source: www.flightsfrom.com

Increasing airline competition on Trans-Tasman routes is also a way to reduce the dominance of Auckland airport in New Zealand. The challenge is to bring new players into new routes starting from airports outside Auckland. While Christchurch, Wellington and Queenstown are directly connected to Sydney and the rest of Australia, the number of these Trans-Tasman connections remains limited or not evenly spread during the day, which can sometimes hinder connections in Sydney or other Australian airports. More Trans-Tasman flights from airports other than Auckland would make Sydney or Brisbane a more attractive hub alternative to Auckland for transcontinental travel and reduce Auckland's natural advantage.

Air NZ has a larger lead on competitors on other international routes, but this does not necessarily reflect a fundamental lack of competition. For most destinations served by Air NZ from Auckland Airport, there are alternative flights by an airline from that country and foreign airlines are re-expanding their flights to New Zealand post-Covid-19. In addition, even if loyalty programmes provide an incentive for New Zealand consumers to stick with one company for different destinations, airline alliances and code-sharing agreements can make foreign airlines almost as attractive. The effect of code-sharing agreements on

Unclassified - Non classifié

competition is normally ambiguous, as it limits competition on the shared routes while improving it for other routes that can be bundled with the shared route. They may well be beneficial for Air NZ and New Zealand consumers on long haul routes by effectively expanding the Air NZ network globally. However, code-sharing agreements between Air NZ and Australian airlines are likely to reduce the probability that Australian airlines will fly and compete in New Zealand. Competition in Australia and New Zealand would be better served by ensuring there are no barriers to airlines from both countries flying on domestic routes in the other as envisaged by the Air Services Agreement 2002. The responsibility of approving airline code-sharing agreements could be transferred from the Minister of Transport to the NZCC.

Competition issues have also arisen in air cargo and other air travel related services calling for continued vigilance by the NZCC. In 2015 the NZCC issued a warning about how travel insurance was sold on an 'opt-out' instead of an 'opt-in' basis. Between 2008 and 2011, the NZCC prosecuted and fined a cartel of 13 international airlines for imposing cargo fuel surcharges. This prosecution was part of a larger international effort involving the European Union, the United States, Australia and Canada, among others.

Maintaining a level playing field between the different actors in the electricity market

New Zealand's electricity system can be decomposed into a competitive segment where generators and retailers compete to produce and sell electricity to households and businesses, and transmission and distribution where one operator (nationally or locally) manages the infrastructure (International Energy Agency, 2023). The larger generators were created in the late 1990s by breaking up the Electricity Corporation of New Zealand, the state-owned monopoly and corporatised successor of the NZ Electricity Department. These four larger generators have since been partially privatised and publicly listed, but the Crown still owns a 51% share in three of them. They are also active on the retail market as they were the incumbent retailers – hence their designation as "gentailers", or integrated generators-retailers. Since 2021 there is also a fifth large generation-only company created after it sold its retail arm. The four gentailers have kept a large share in electricity generation and retail, though independent retailers have had more success in entering the retail market. The Electricity Authority (EA), an independent Crown entity, was established in 2010 to operate the electricity market and promote competition and reliable supply for the long-term benefit of consumers. It replaced the previous Electricity Commission, with a clearer and narrower set of objectives.

High electricity prices in New Zealand over the past two decades have raised the suspicion that the large gentailers had been exercising unilateral market power. While the abnormality of profits has been disputed, high concentration has remained a cause of concern, which different reforms have tried to address. Electricity in New Zealand is sold by generators and bought by retailers and large consumers on a half-hourly spot market. Generators and retailers also engage in long-term supply contracts, and there is a hedge market for contracts for difference operated by the Australian Securities Exchange. The Electricity Authority has regularly introduced reforms to improve competition and efficiency in the market. Since November 2022, spot prices became available with a half-hour delay, instead of at least two days after, as was the case previously. This will increase transparency and visibility for large energy users who will more easily adjust demand, and for smaller retailers when trading with larger gentailers; in the long run, it might also facilitate demand response from consumers choosing 'smart pricing' contracts.

The Electricity Authority implemented a new trading conduct rule in 2021, which requires generators to submit bids as if they were constantly facing competitive pressure; the maximum fine for firms breaching the code has been increased to NZD 2 million. A 2022 formal review of this reform noted positive changes in participants' conduct. This should, in theory, allow more entry from independent generators, as they will have better access to long-term contracts with larger retailers. Forcing some of the larger gentailers to divest from some of their generator assets or swap them could reduce further market concentration or its impact – especially at the local level where gentailers are often even more dominant. However, it might come at the cost of reduced risk diversification and other efficiency or transaction costs.

Unclassified - Non classifié

Transpower, a state-owned enterprise, operates the national grid. Its transmission revenues are regulated by the NZCC. A new grid pricing methodology was adopted by the EA and implemented in April 2023: Transpower will now recover transmission costs from customers as well as generators. In particular, the cost of North-South power transmission will be shared by North Island customers and South Island generators, instead of South Island generators only. This will put South Island generation (largely hydro and wind) on a more equal footing with the North Island, where generators rely more on fossil energy sources such as gas and coal.

New Zealand has 29 electricity distribution businesses (EDBs) that generally sell their services to retailers, who in turn manage the electricity supply agreements with end consumers. They are regulated by the NZCC via price-quality regulation and/or information disclosure. While distribution ownership was originally strictly separated from generation and retail to avoid vertical integration, this restriction has been partly removed to allow local EDBs to act as competitors in smaller remote areas. Most distributors are very small, and efficiency gains could be made through mergers, though this is complicated by the variety of ownership statuses (fully or partially private, consumer trusts, local authorities or municipalities). The allocation of the cost of network upgrades to new users is currently scrutinised by the Electricity Authority, as electrification and distributed generation will require significant upgrades.

Transparency efforts in the wholesale market have lowered the barriers to entry for independent retailers. In 2021, 43 retailers were active in the market, with a combined market share of 74% for the five larger retailers, down from 95% in 2003 (International Energy Agency, 2023). Gentailers and retailers have recently agreed on a voluntary memorandum of understanding. This voluntary code of conduct is likely to further improve the functioning of the electricity market, but independent retailers have complained about access to supply. If the voluntary code is judged as insufficient and competition appears to remain inefficient in the electricity market, this might call for a vertical separation of generators and retailers. The development of electricity storage might reinforce the need for such a remedy. Overall, the question of the effectiveness of competition in the wholesale market warrants further investigation.

Progress has been made in improving retail competition but there is more to do. While the market share of the large gentailers in the retail market has decreased in the past two decades, consumer switching remains low: the 2019 Electricity Price Review estimated that between 23% and 42% of all consumers had never switched suppliers since 2002 when records began, and that consumers would on average save about NZD 240 each year by switching to the cheapest available plans (Electricity Price Review, 2019). Consumers that never switch not only lose by not having the best and cheapest plan available for them, but also because retailers tend to offer better deals to new customers that switch. Following the 2019 Electricity Price Review, “win back” deals – which historic gentailers tended to use to keep their customers by offering them a special discount if they joined back – have been outlawed.

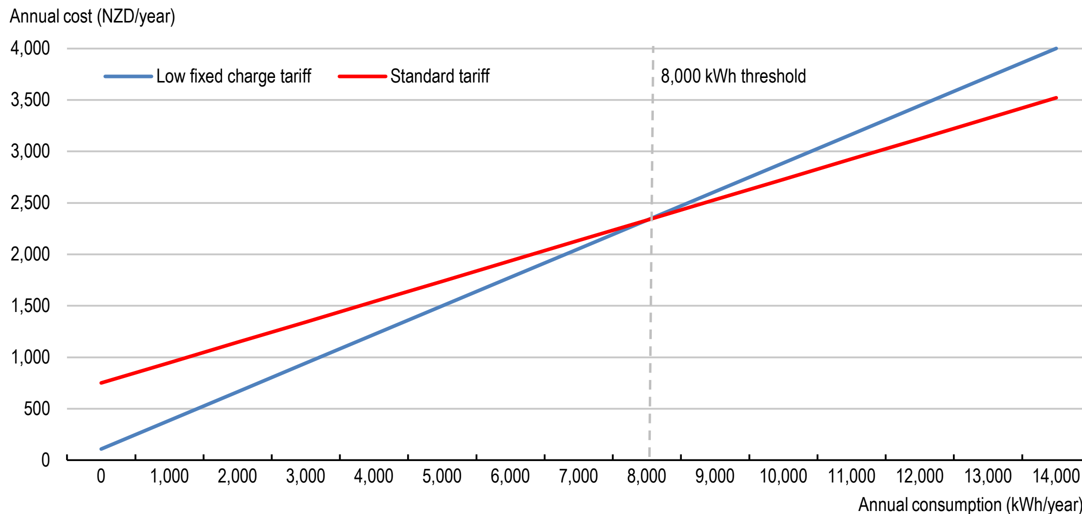
The Electricity Authority also funds Powerswitch, the online tool of the consumer advocacy group Consumer NZ, where domestic consumers can compare electricity and gas deals and start the switching process. 75% of Powerswitch funding is provided by the EA, the rest coming from a NZD 50 “success” fee per switch, levied on retailers. Not all retailers are listed on Powerswitch though, in part due to the difficulty of modelling the effect of complex pricing plans on consumers – for example when rates vary between peak and off-peak hours or if smart meters can restrict usage at different moments of the day. This is likely to become more prevalent in the future as ‘smart pricing’ gains ground. One partial solution would be to require, as in Australia, retailers to signal to consumers if they have other pricing plans better suited to their needs, or if they have conditional discounts in their plans (for example, discounts for paying on time or setting up a direct debit). To complement this requirement, the EA could provide a standard model of how different pricing plans affect a consumer that smaller retailers could use and adjust. The extent of consumer services that retailers are mandated to offer might also bring a limit to low-cost alternatives.

On the demand side of the market, following the Electricity Price Review, a 2022 reform will phase out the ‘Low Fixed Charge Tariff’ regulations over a period of five years. These regulations were introduced in 2004 to provide electricity plans with a discounted fixed charge but a higher rate per kWh. The regulation

Unclassified - Non classifié

not only imposed retailers a cap on the fixed rate they could set; it also mandated that users consuming less than 8 000 kWh annually should be better off with the retailer low fixed charge offer than with the normal offer (Figure 8). As such, it imposed a sizable constraint on what retailers could offer.

Figure 8. Illustrative comparison between standard and low-use plans before the phase-out



Source: Ministry of Business, Innovation and Employment.

While they were supposed to benefit low-use households, they were poorly targeted, with unintended consequences. First, not all low-income families benefited, as larger families or poorly insulated homes ended up paying more, while smaller or more energy-efficient families were able to benefit. As this tariff structure proved highly popular – 68% of households were low users in 2021 and benefitted from the scheme – the cost of infrastructure still had to be recouped through a higher fixed charge for standard consumers and/or prices per kWh for everyone. This regulation encouraged consumers to underheat their house with potential health risk or rely on alternative heating such as gas; it also had the potential of slowing down the uptake of electric vehicles. Hence this attempt to screen between low- and high-use customers generated too many inefficiencies, and appropriately will be phased out over a period of five years, by increasing gradually the maximum low fixed tariff that retailers can set. This will remove an important barrier that prevented retailers from using smart meters to offer a much wider range of retail options including for EV users.

Mobile telecommunications remain expensive and underutilised

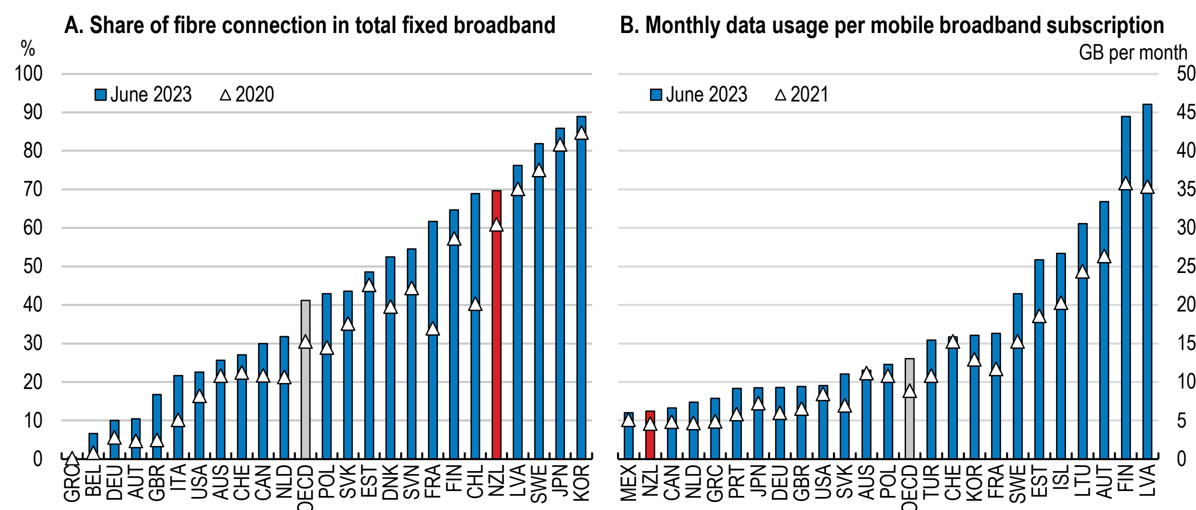
Fixed-line telephone and internet also follow a vertical wholesale-retail separation in New Zealand. Following 'local loop unbundling' in 2006, the network infrastructure division of Telecom New Zealand was split in 2011 and became Chorus; the rest of the company was renamed Spark New Zealand in 2014. Chorus owns most historic telephone copper lines, but it does not serve customers directly; instead it is required to allow multiple Telco operators to use them and provide phone and internet access to customers.

This split was a condition for Chorus' participation in the Government's 'Ultra-Fast Broadband' fibre network development. Chorus won about 70% of tenders for this public-private partnership, along with three local fibre companies. The rollout of the fibre network is subsidised by concessional financing from the Crown. Chorus is subject to price-quality regulations and information disclosures, while local fibre companies are subject to information disclosure only. This strong and successful government push towards optic fibre (OECD, 2022a) has allowed New Zealand to become a leader in the fibre coverage ratio (Figure 9) without duplicating costs as some other countries have done. This is an example where a well-regulated public-private partnership has not only delivered good prices and services on existing infrastructure (the copper network), but also enabled a strategic push towards innovation. The automatic

Unclassified - Non classifié

deregulation and eventual decommissioning of the copper network once optic fibre is rolled out has been key to spurring consumers and businesses towards the superior alternative. This is also a case of a successful vertical breakup delivering efficiency and competition.

Figure 9. New Zealand is one of the leaders in fibre broadband but mobile data usage remains low



Source: OECD, Broadband Portal, http://www.oecd.org/digital/broadband/broadband-statistics/

Competition in mobile phone services, however, appears to be behind the international frontier. Mobile phone services are dominated by Spark (ex-Telecom NZ, the original incumbent) and One NZ (ex-Vodafone), who each serve around 40% of the market; 2degrees is a distant third with around 20%, and mobile virtual network operators make up for a little over 1% of customers. All operators provide 5G access (covering 18% of the population), while 3G/4G coverage is 98% on average. This extensive coverage gives most New Zealanders a full choice in their provider; the annual switching rate is about 3–5%. The NZCC's 2022 Annual Telecommunication report found that post-paid charges – either SIM-only or bundled with a subsidised new device – were on average more expensive in New Zealand than in the OECD, while the opposite is true for pre-paid contracts (Commerce Commission, 2023). Mobile phone data usage is one of the lowest in the OECD (Figure 6). While it is possible that New Zealanders simply prefer to rely on Wi-Fi connectivity and good broadband (see above) instead of mobile data, there appears to be an excessive use of market segmentation, low data limits and expiring data allowances. While the range of cheaper low-data contracts might suit some customers with little use, unlimited or high-data contracts remain relatively expensive; this is possibly an inefficient screening of users that tends to limit the full use of mobile digital innovation. The NZCC or MBIE should investigate the causes of the low mobile data usage in New Zealand and means to address it. For example, the regulator could consider requiring mobile operators to offer both pre-paid and monthly subscribers a higher quality standard monthly price offer of phone calls, text and data with higher data limits benchmarked against similar offers in other advanced OECD countries.

Adapting the regulatory framework to new challenges

Fostering competition in New Zealand markets not only requires specific efficient sectoral regulation and/or structural intervention. It would also benefit from a clearer and reinforced overall policy framework, including more central agency competition policy analysis with a wider perspective, as well as greater cooperation between competition policymakers, regulators and consumer protection agencies and sometimes greater coherence of legislation and case law. This is particularly true for digital markets, which require new and better regulations. Furthermore, the abolition of the Productivity Commission leaves an

Unclassified - Non classifié

important gap in the analysis of the drivers of economic performance including competition. The Productivity Commission had a sectoral review role alongside its generalist functions. While the new Ministry for Regulation will look at the efficiency of regulation in different areas, it may turn out that this does not fully replace sectoral reviews with a broader competition and productivity perspective, in which case consideration should be given to whether more broadly scoped sector reviews should be reinstated. The Treasury, as the government's lead economic policy advisor, needs to re-expand its competition policy work and championing role for ensuring that overall competition and regulatory policy is boosting the overall growth performance of the New Zealand economy. Progress has been made on ex-post antitrust enforcement and some of the reforms recommended in past Economic Surveys have taken place (Table 3), but there is room for additional reforms. This section discusses the current competition policy framework, competition challenges and directions for future investigation and policy change.

Table 3. Past OECD recommendations on antitrust enforcement and actions taken

Recommendations in past Surveys (key ones in bold)	Actions taken since the previous *Survey*
Review the merits of refocusing competition law on the effects of potentially anti-competitive conduct, as opposed to its intent.	The Commerce Amendment Act 2022 amended the prohibition in section 36 of the Act to allow consideration of the effects of potentially anticompetitive conduct by firms with substantial market power.
Provide the Commerce Commission with the power and resources to undertake market studies.	After a market study of fuels (2019) and retail groceries (2022), the NZCC has conducted a study into residential building supplies (2022) and currently studies personal banking services. All the completed market studies have been followed by legislative reforms (or reviews in progress).
Expand the use of ex post evaluations of Commerce Commission decisions to assess performance.	The NZCC periodically reviews its merger decisions internally to improve decision-making processes, and additional resources have been allocated to strengthen effective evaluation. There may be a case for more independent ex-post evaluations.
Equip the NZ Commerce Commission with powers to order merger parties to apply for its clearance. Also endow it with the powers to halt integration between parties during its investigation and order merger parties based overseas to produce information for its investigation.	No action taken

Giving more power and a stronger mandate to the Commerce Commission

The NZ Commerce Commission (NZCC) is the main competition regulator and enforces the Commerce Act 1986, which contains provisions on restrictive trade practices as well as mergers and acquisitions. Restrictive trade practices include anticompetitive behaviour, coordinated behaviour and unilateral conduct. The Act prohibits contracts, arrangements, or understandings that have the purpose, the effect or likely effect, of substantially lessening competition in a market. Agreements between likely competitors that relate to price fixing, restricting outputs, and allocating customers, suppliers or territories are per se prohibited. Unilateral conduct includes a person or business with substantial market power engaging in conduct that has the purpose, the effect or the likely effect, of substantially lessening competition in a market. Historically, some exemptions and carveouts were specifically provided in the Commerce Act, preventing the NZCC from regulating certain activities (notably international shipping, intellectual property, and labour contracts). Many of these exemptions have been appropriately removed or narrowed down in the past few years, though labour contracts are still exempt from normal competition law and subject to labour laws.

In addition to its enforcement functions, the NZCC is tasked with providing clearance or authorisation to business acquisitions or mergers as well as collaborative activities under a voluntary notification system. The NZCC must provide clearance to a business acquisition or merger if it is satisfied that the transaction would not be likely to substantially lessen competition in any New Zealand market. The same clearance applies to collaborative activities. A collaborative activity is defined as two or more people carrying on an enterprise, venture, or other activity in trade in cooperation. The collaboration must not be for the dominant purpose of lessening competition between the parties, and every cartel provision in the agreement must

Unclassified - Non classifié

be reasonably necessary for the purpose of the collaboration. For the NZCC to grant clearance for a collaborative activity, it must be satisfied that the arrangement will not be likely to substantially lessen competition in a market. The NZCC can also authorise a business acquisition that is anticompetitive, or a restrictive trade practice, if it is satisfied that it would be likely to result in such a benefit to the public that it should be permitted. Cleared or authorised transactions are protected from legal action.

There is a strong case for extending the NZCC's powers in several domains. The regulatory framework and competition-related jurisprudence have an important influence on the impact the Commerce Commission can have. The applicable burden of proof that the NZCC is required to meet seems at times too high, but the NZCC would likely benefit from the ability to accept behavioural undertakings along with structural undertakings. Additionally, the Commerce Act provided explicit carveouts in the past where the NZCC cannot intervene (labour market aspects, intellectual property). Some of these carveouts have been narrowed down recently and narrowing other carveouts could also prove beneficial. This would allow the NZCC to support private complaints from firms or workers against unfair or anticompetitive business practices.

Revising merger control, the consumer benefit test and 'call-in' powers

Merger control has been the subject of intense international cooperation for the past two decades with substantial work carried by the OECD under the recommendations of its Council (OECD, 2005). Since the antitrust revolution in the United States (Bork, 1978), courts and antitrust authorities around the world have extensively relied on the "consumer benefit test" when assessing the impact of mergers and acquisition; as such, they were likely to be approved if they led to a net welfare gain for the consumer. Faced with the balance of decreasing competitive pressures but increased economies of scale passed on to consumers, courts have approved mergers somewhat easily. However, this approach and the consumer benefit test have been questioned in recent years. Alternative standards have been proposed (OECD, 2023e): a "total welfare" standard reflecting better consumers and producers – which the NZCC can already apply as part of its authorisation procedures (but not for clearance); a "citizen's welfare" standard that would also better take into account their interest as workers; or a "protecting competition" standard that would favour competition for its own sake, above and beyond social welfare to tackle corporate power.

These standards each have advantages and drawbacks in terms of predictability, ability to enhance total social welfare, administrative and political capacity to implement them, and the risk of making errors (OECD, 2023e). The consumer welfare standard is easy to implement and predictable but misses a range of welfare effects and might lead to underenforcement. The total and citizen welfare standards encompass more welfare effects but at the risk of using value judgements and unpredictability. Protecting competition appears to be reasonably predictable but could lead to overenforcement and a lack of economic efficiency. While there is no unique solution for all countries and situations, the government should investigate whether New Zealand's competition legislation would be better served under alternative standards, or a different balance of the considerations behind these standards. In particular, the burden of proof for firms applying for having a merger or agreement approved based on public benefits could be set higher. Australia is currently conducting such a review on merger reform; maintaining alignment will be important.

During court proceedings regarding unnotified mergers and acquisitions – including injunctions to block the transaction – the burden of proof lies with the NZCC: it needs to convince the court of the anti-competition effects of the merger. However, anticompetitive impacts of mergers are often hard to assess in dynamic markets with complex business models; this requires a thorough scrutiny from the NZCC well in advance. As argued in the previous *OECD Economic Survey of New Zealand*, this provides a case for giving the NZCC a "call-in" power to order merger parties to apply for its clearance, whenever it sees a risk of substantially lessened competition (OECD, 2022a). Such a prerogative has been discussed in the United Kingdom and Germany, and Australia is currently considering it as one option for its new merger regime (Australian Treasury, 2023). This call-in power should be complemented with power to halt the integration of merger parties and require businesses to be run separately until the NZCC completes its investigation.

Unclassified - Non classifié

The 2022 Survey also recommended to grant the NZCC the powers to order merger parties based overseas to produce information or documents for its investigations (OECD, 2022a).

The available remedies – for preliminary clearing or court injunctions – could also be amended regarding "killer acquisitions" (OECD, 2020d), where larger firms acquire nascent startups that pose a remote and future risk to their more traditional model, to close the activity rather than develop it. The Commerce Act could be amended to ensure that acquisitions that are likely to kill an economic activity would be made illegal, even without a significant effect on competition. As such, the acquirer could, through voluntary clearance or a court injunction, be forced to keep developing the acquired business, with subsequent monitoring by the NZCC. This would require giving the NZCC the power to accept behavioural undertakings, which it currently lacks. This would not prevent startups from being acquired by a larger firm – which is often a viable business model – but merely put restrictions on the acquirer subsequently. Such a restriction on 'destructive acquisitions' has notably been proposed in the EU and Australia (OECD, 2020d), and could also apply to traditional business lines and products. Additionally, the burden of the proof could be reversed in sectors that are already concentrated (OECD, 2020d): in the United States, market concentration creates a rebuttable presumption of anti-competitiveness, and merging parties must demonstrate the lack of anticompetitive effects (Hovenkamp and Shapiro, 2018).

Many mergers and acquisitions involve one or more multinationals with a presence in different markets, which generates a risk that a transaction would be cleared abroad, but not in New Zealand. In that case, it is difficult to maintain the two firms separated only in New Zealand, or to get another jurisdiction to block the merger. For transactions that are already scrutinised abroad, but at risk of being more detrimental in New Zealand, the NZCC could focus more on the differential impact of the merger on the New Zealand market, and potential New Zealand-specific remedies to implement along with foreign decisions. Again, the NZCC would in that case benefit from the ability to accept behavioural undertakings. The NZCC's cooperation arrangements with the ACCC could also be used more often and extended to other jurisdictions.

Narrowing exceptions and carveouts to the prerogatives of the Commerce Commission

The Commerce Act does provide some explicit carveouts where normal competition law does not apply, and where the NZCC cannot intervene. This was done historically to protect some activities that were deemed legitimate and beneficial for society but at risk of infringing upon competition jurisprudence. International shipping was an area where ratemaking and capacity limitation agreements were allowed, until this exemption was narrowed down by a 2017 amendment to the Commerce Act (see above). To come within the current exception, international shippers must, amongst other things, ensure that their cooperation improves the service supplied to owners or consignors of goods carried at sea. This is also likely to facilitate private enforcement from affected consumers if they go to court over unfair trading practices.

Intellectual property (IP) is another domain where exemptions have been removed. The Commerce Act originally contained three limited exceptions for certain conduct in relation to IP. In line with the global trend to enforce competition law on IP cases (OECD, 2019c), these exemptions have been removed in New Zealand by a 2022 amendment: all anti-competitive IP-related conduct is now prohibited and subject to scrutiny by the NZCC and judicial courts. The full scope of the Commerce Act will be applicable to the IP space, but the NZCC has produced some guidelines to identify the type of conduct that is most at risk of breaching the Commerce Act. This includes refusals to license IP or restrictive licensing, as well as practices that extend market power beyond the expiry of the patent and settlement of IP disputes.

Labour contracts are also currently exempted from the Commerce Act, so as not to interfere with wage bargaining. However, anti-competitive behaviour in the labour market (such as abusive non-compete clauses) has come under greater scrutiny (OECD, 2020e). Many non-compete clauses are too broad and would be unenforceable if the worker were to challenge them in courts, but they may nevertheless have a chilling effect on workers if they are uncertain about the law. Allowing unions to challenge the most egregious and unenforceable boilerplate non-compete clauses could be a way to limit this chilling effect.

Unclassified - Non classifié

And while some conduct by large employers in small local labour market might not be illegal or abusive per se, it might nevertheless be a form of monopsony or oligopsony power, due to their dominance in that market (Hovenkamp, 2019). While this problem is likely not as prevalent in New Zealand as in other countries such as the United States (OECD, 2020a), there might nevertheless be a case for allowing the NZCC to delve into these issues when conducting a market study into one sector or another. As such, the NZCC would not intervene in labour contracts directly, but it could publish sector-specific findings and recommendations if labour contracts strongly affect product or service competition in the sector.

While restrictive land covenants were already illegal under section 28 of the original Commerce Act, the NZCC's recent market studies demonstrated that restrictive land covenants (in particular with retail distribution companies selling sites on the condition that no competitor would be allowed) had significant anticompetitive effects in New Zealand. Section 28 has been broadened in 2022 to deem certain grocery-related covenants as prohibited and unenforceable. The NZCC now provides guidelines over acceptable land covenants, which will give businesses greater legal certainty in case of disputes over enforceability. These guidelines should be updated regularly. Additionally, the NZCC and MBIE should further study the effect of land use rules and local regulations on market entry, and suggest possible improvements.

Giving more voice to consumer protection in the legal system

Delivering lower prices and higher quality to consumers is one of the most important roles that competition policy, supported by consumer protection organisations, can play. Ombudsmen and advocacy groups could cooperate more with the NZCC or other sectoral regulators in bringing the voice of consumers to competition policy and regulation. This was the motivation for the 2019 Electricity Price Review – and the Consumer Advocacy Council was established in the electricity market following this review. Other sectors can probably also benefit from such inputs. Cooperation can also be enhanced between public and private enforcement of competition law, if the NZCC, other sectoral regulators and ombudsmen gain the ability to support private litigants in courts, in matters related to anticompetitive or abusive business practices. While these administrative bodies should not necessarily act as co-plaintiffs themselves, they could nevertheless provide guidance to litigants or expertise to courts when assessing the effect of certain activities. For example, the NZCC or the Employment Relations Authority could provide guidelines and support to workers or unions that wish to challenge anticompetitive or unfair clauses in work contracts.

To increase deterrence and provide more remedies against cartel and other abusive behaviours, lawmakers could also introduce class actions and litigation funding – where the litigation is funded by a person who is not a plaintiff himself in exchange for a commission in case of success –, as argued by the New Zealand Law Commission in 2020 (NZ Law Commission, 2020). Some class actions have been accepted in the past – notably in a 2017 Court of Appeal lawsuit on natural disaster insurance – but New Zealand lacks comprehensive rules in how to deal with them (McKechnie, 2018). While the previous Government had agreed in principle to the recommendation, no progress has been made in implementation. Since 2021, individuals found guilty of illegal cartel provisions can face a criminal penalty of up to seven years in prison, and a fine of NZD 500 000. Until then, the NZCC could only bring civil proceedings under the Commerce Act. A Cartel Leniency and Immunity Policy had already been introduced in 2004, where a cartel participant can collaborate with the NZCC in exchange for civil immunity; the NZCC can now make a recommendation of criminal immunity to the Solicitor General, who retains the discretion to grant immunity or not. As with class actions, this is likely to increase deterrence.

Fostering growth and competition in digital markets

New Zealand has much to gain from digitalisation. It can lower effective distance from foreign markets and help exporters and importers trade more effectively, both services and goods. Businesses can attract customers from abroad with lower fixed costs if a physical market presence is no longer required. Digitalisation can also spur competition at home, insofar as it enables foreign or domestic entrants to

Unclassified - Non classifié

compete despite smaller or missing distribution networks. Finally, digitalisation has the potential to diffuse technology across sectors, making workers and firms more productive (OECD, 2022a). Artificial intelligence has also made sizable progress since the pandemic (OECD, 2023d). AI can help New Zealand businesses, especially SMEs in creative industries, to boost their effective scale and productivity, allowing them to find international partners and export more.

Assessing market power and market dominance in digital markets

One of the challenges that OECD countries are facing is adapting competition policy to the rapid expansion of digital markets including how to measure market power. As in most markets, digital market shares are an essential measure of market power, but static market shares provide only incomplete information about potential supply-side entry in nascent industries and how these industries will evolve. This is particularly true in digital markets (OECD, 2022c). Some competition authorities have looked not only at the level but also the stability of digital market shares as a proxy for the lack of competitive pressures. Others have looked at the symmetry of market shares, favouring a merger between smaller players to create a larger competitor against the dominant player. Whether market shares should be assessed in terms of revenue, or number of users, active users or transactions, is also debated.

Internationally, to complement market share analysis, many competition authorities have also looked at price levels, profit stability, and entry patterns to assess the overall level of competitive pressures in different digital markets. Network effects such as interoperability and externalities, multi-homing (using several platforms in parallel), economies of scope, ecosystem effects, brand effects and consumer inertia may also contribute particularly to digital market power. Other relevant factors assessed by authorities include economies of scale, fixed costs and product differentiation. Market power in multisided markets will affect the overall set of prices and parameters across the platform, so each side of the platform should not be assessed in isolation. Competition authorities around the world (OECD 2019b, 2020c; Fletcher, 2020) have grappled with several core characteristics and issues in digital markets when assessing market power:

- a price of zero, and consumer reluctance to pay, is no evidence of a lack of market power;
- competition dynamics may be insufficient to discipline market power, in particular if consumers are locked-in to a service for extended periods and multi-homing is limited;
- patterns of past entry in a market do not necessarily imply future competitive pressures, and temporarily high market power can become entrenched given the uncertainty faced by competitors.

An important challenge is that the risk of market dominance is much higher in digital markets where economies of scale allow a “winner-takes-all” phenomenon. This calls for a tougher implementation of antitrust legislation than in other markets. The NZCC has taken successful action in cases related to digital advertising (Commerce Commission v Moola.co.nz Ltd., 2021), retail platforms (2018) as well as two-sided markets with a price of zero (2017). As argued previously, there also is scope to move the burden of proof in antitrust cases regarding killer acquisitions, by being stricter on acquisitions aimed at shutting down a business, even if the overall impact on the state of competition remains uncertain. It may also call for ex-ante legislation to address some of structural issues that characterise these markets, which cannot be addressed in a timely and effective manner only through ex-post enforcement of competition law.

In 2020 the Australian government tasked the ACCC to conduct a series of inquiries into markets for the supply of digital platform services over a period of 5 years, which will culminate with a final report that shall provide recommendations on how to address the competition issues identified. There can be some scope for engaging with Australia and consider more legislative alignment between this country and New Zealand, and cooperation between the NZCC and the ACCC on digital competition matters. This could be seen as the foundation of a future ‘single digital market’ across the Tasman, as is the case in the European Union where the Digital Market Act (2022) has introduced harmonised legislation to foster contestability in digital markets between member countries. Intellectual property could also benefit from similar Trans-Tasman

Unclassified - Non classifié

legislation and competition enforcement. While New Zealand indirectly benefits from studies and interventions carried in other larger markets, the NZCC could nevertheless conduct a market study of various digital markets (connected devices and vehicles, application stores, online advertising and marketplaces, cloud computing, etc.), as in Australia and many EU Member Countries, and whether a dedicated legislation, similar to the EU Digital Markets Act (2022) would be warranted; this would likely require additional resources.

Data access and portability

Digital markets require strong enforcement of antitrust legislation, as well as dedicated legislation to ensure that economies of scale and scope as well as network effects do not limit access to digital markets and reduce contestability and hence competition at the detriment of consumers and smaller businesses (Nicoletti, Vitale and Abate, 2023). One significant structural barrier to competition in the digital space is the access to data. Data portability – where a firm that collected an individual's data provides data through third-party accessible interfaces to the individual, or to a third party he or she has chosen – is thus a promising way to improve competition in digital markets (OECD, 2019a). Data portability can reduce switching costs, allowing consumers and businesses to change more easily to new data-driven services and platforms. A consumer data right (CDR) gives individuals or businesses stronger control of their data and ensures that their data are only shared for their benefit, with their consent. Australia enacted a CDR legislation in 2019, where consumers in designated sectors can have certain information disclosed to them or accredited third parties. First applied to banking, it will be extended progressively to energy and telecommunications.

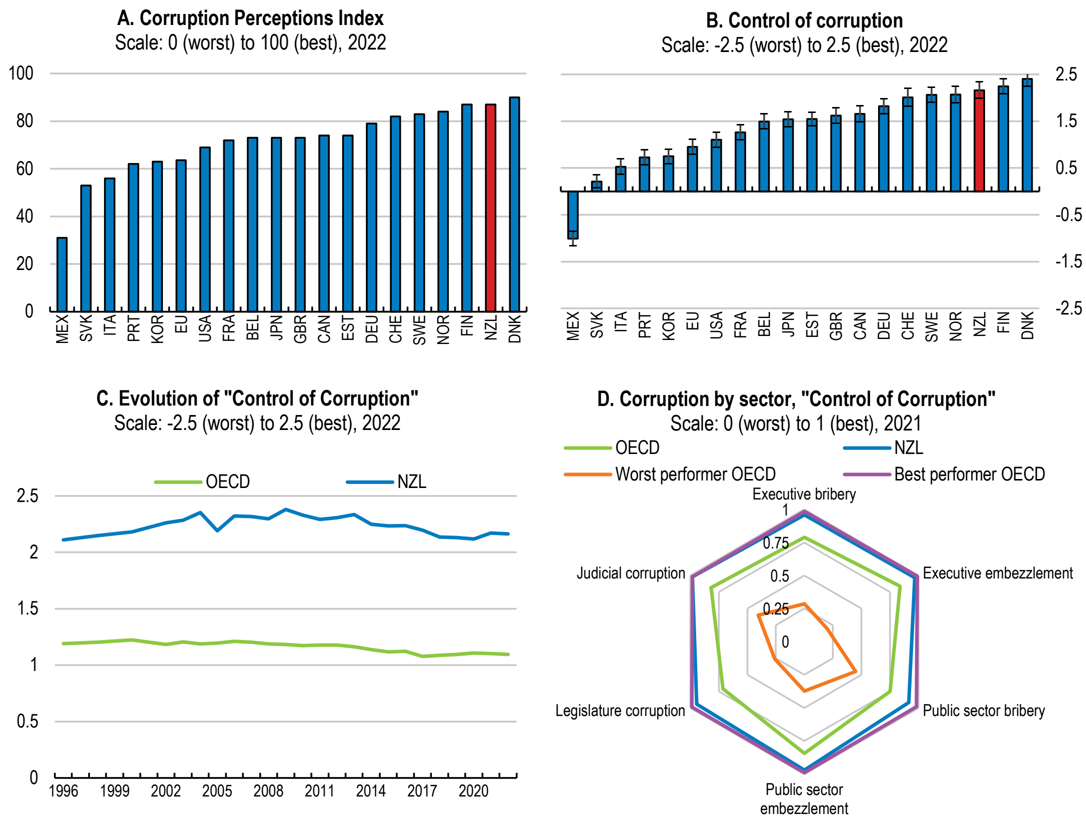
In New Zealand, following a 2020 consultation and decisions in 2021, the previous Government released a draft bill in June 2023 that would cover the banking sector initially, and subsequently other sectors such as telecommunication, insurance, energy and health. Under the proposed CDR regime, data holders within a designated sector will be required to put in place systems and processes that enable customer data to be shared via application programming interfaces, to facilitate the transfer to accredited requestors. Requestors would be required to meet certain criteria, including character screening of directors and senior managers, detailed security requirements, and potential new insurance obligations. Significantly, the draft Bill allows authorised third parties to take steps and make decisions on the customer's behalf, if directed to do so by the customer. This is referred to as "action initiation" or "write access" (as opposed to "read access" which would simply allow customers to view data across multiple accounts). Action initiation is also currently considered in Australia under the equivalent CDR regime, and is expected to have various benefits, such as facilitating applications for new products or services. The current Government has indicated an intention to progress legislation to provide a Consumer Data Right framework.

Corruption is low in New Zealand but ethics rules could be further strengthened

While corruption can be highly corrosive for competition, perceived corruption in New Zealand is one of the lowest in the OECD (Figure 10), tax transparency is high and anti-money laundering enforcement is effective (Figure 11). New Zealand's policy settings to control corruption are generally best practice. To address foreign bribery, New Zealand collaborates with the International Anti-Corruption Coordination Centre (IACCC), which was set up in 2017. The Serious Fraud Office has increased international engagement with overseas agencies and joined the International Public Sector Fraud Forum. Investigations have been carried out where there is suspicion of serious or complex fraud (including corruption) but none has resulted in a corruption charge. New Zealand may not face the same risks as other jurisdictions owing to the size and make-up of its economy; it is also rarely involved in cases identified overseas and receives few requests for assistance from foreign agencies other than the IACCC. Keeping corruption low, nevertheless, requires constant vigilance. There have been cases of conflict of interest not being declared in the past. Therefore, it is important that all politicians, national or local, and senior public officials strictly adhere to the rule of law and the highest ethical standards in their official duties, including always pro-actively declaring potential conflict of interest and recusing themselves where a conflict exists.

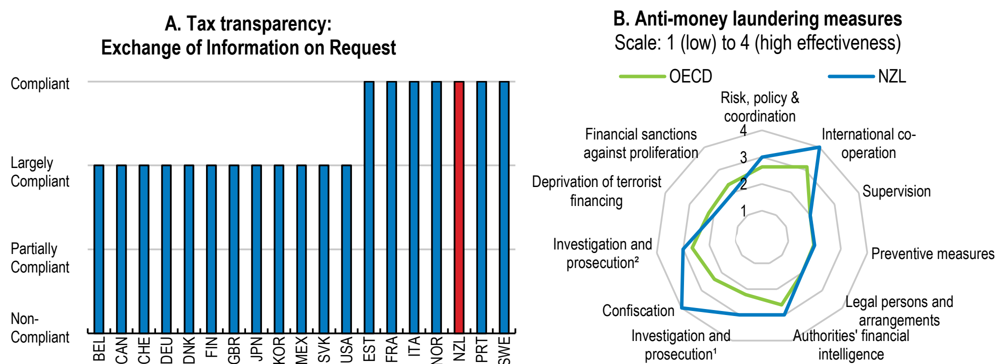
Unclassified - Non classifié

Figure 10. Corruption is low in New Zealand



Note: Panel B shows the point estimate and the margin of error. Panel D shows sector-based subcomponents of the "Control of Corruption" indicator by the Varieties of Democracy Project.
Source: Panel A: Transparency International; Panels B & C: World Bank, Worldwide Governance Indicators; Panel D: Varieties of Democracy Project, V-Dem Dataset v12.

Figure 11. New Zealand actively cooperates against worldwide tax evasion and money laundering



Note: Panel A summarises the overall assessment on the exchange of information in practice from peer reviews by the Global Forum on Transparency and Exchange of Information for Tax Purposes. Peer reviews assess member jurisdictions' ability to ensure the transparency of their legal entities and arrangements and to co-operate with other tax administrations according to the internationally agreed standard. The figure shows results from the ongoing second round when available, otherwise first round results are displayed. Panel B shows ratings from the FATF peer reviews of each member to assess levels of implementation of the FATF Recommendations. The ratings reflect the extent to which a country's measures are effective against 11 immediate outcomes. "Investigation and prosecution[1]" refers to money laundering, "Investigation and prosecution[2]" to terrorist financing.
Source: OECD Secretariat's own calculation based on the materials from the Global Forum on Transparency and Exchange of Information for Tax Purposes; OECD, Financial Action Task Force (FATF).

Unclassified - Non classifié

Findings and recommendations

FINDINGS	RECOMMENDATIONS (key ones in bold)
Overall state of competition policy and related regulation	
The policy framework has become more sophisticated, adding more sector-specific analysis, regulatory tools and competent regulatory institutions to broad economy-wide competition laws. Low regulatory barriers to entry will not always be sufficient to ensure vigorous competition in New Zealand's small and distant market.	**Retain market studies and adopt a strategy of gradual escalation of intervention, from reducing barriers to entry to light-handed regulatory approaches, and structural solutions such as break-up of dominant players.**
Fuels	
The market for fuels is dominated by three vertically-integrated majors. Transparency and competition have improved recently, a 'regulatory backstop' to the terminal gate pricing has been added in 2023, and the NZCC will be able to investigate terminal gate prices.	The effect of the new legislation should be monitored, and remaining barriers to entry and expansion for independent retailers should be investigated (vertical integration and retailer access to supply, land use rules). If competition in fuels remains insufficient, consider forcing some of the majors to exchange or divest from some of their assets.
Residential building supplies	
Prices for building supplies are high in New Zealand, and competition remains limited, especially locally. The regulatory system does not favour the use of new products or processes like off-site manufacturing, and incumbents aggressively use land covenants and quantity forcing rebates.	If insufficient competition persists, task the NZCC and MBIE with advising on whether stronger interventions are warranted. Consider a fast-track process for foreign supplies approved abroad.
Retail grocery	
New Zealand's grocery sector is effectively a duopoly. Following the NZCC's market study, a reform was enacted in July 2023. It introduces a new regulator, improves access to the wholesale market for independent retailers, and regulates conduct between supermarkets and suppliers.	Continue MBIE's analysis of the costs, benefits and policy options for national or local structural divesture, as well as other remedies.
Banking services and payment systems	
Banks' profits and transaction fees are high in New Zealand, in international comparison. These profits are partly due to the high lending margin, and the limited extent of competition might be partly due to regulation.	Investigate the impact of prudential regulation on competition in banking**.** Facilitate switching further and introduce a consumer data rights regime for banking to facilitate digital innovation and competition.
Dairy	
Insufficient transparency in the milk price methodology is introducing unnecessary uncertainty for investors in independent dairy companies. Fonterra is successful at generating profits in part of the dairy value chain but the dairy industry needs new competitors to reach its full potential for innovation and growth.	A study into the barriers to expansion for new processing companies – especially those that want to move into the fast-moving consumer goods business – should be conducted, either as part of the 2025 statutory review of the dairy market, or as part of a market study by the NZCC. This study could also investigate whether the transparency of the price manual could be further improved.
Air transport	
Given its hub status for long distance international travel, Auckland airport enjoys a dominant position especially as the international gateway. The vision of a Single Australia and New Zealand aviation market is not complete with insufficient presence and competition of the airlines of the other country in the domestic market and at "second-tier airports". Airline code-sharing agreements are cleared by the Minister of Transports, for whom competition may not be the primary consideration	Investigate 'hybrid till' alternatives to the current dual till airport model, or the scope of activities that fall into the regulated till. Consider treating the three larger airports differently if remedies are needed only for one. To increase the frequency of non-Auckland Trans-Tasman flights and give greater connection choices for long distance flights, facilitate entry of New Zealand and Australian firms into each other's domestic markets and consider negotiating 7th freedom rights with Australia (direct Australian flights from NZ to the rest of the world, and vice versa). Subject code-sharing agreements to NZCC clearance.
Electricity markets	
Consumer switching remains low, and consumers who do not switch pay significantly more than those who switch regularly.	Require retailers to signal to consumers if they have other pricing plans better suited to their needs, or if they have conditional discounts available. Encourage the Electricity Authority to also provide a standard model of how different pricing plans affect a consumer that smaller retailers could use and adjust.
The large integrated generator-retailers still largely dominate the market.	If the recent reforms do not prove sufficient, consider forcing some of them to swap some of their assets or divest from retail assets.

Unclassified - Non classifié

Increase the take-up of mobile broadband	
While New Zealand is a leader in high-speed fibre broadband, mobile phone data usage is one of the lowest in the OECD, and unlimited or high-data contracts remain relatively expensive.	Encourage the NZCC or MBIE to investigate the reasons behind low mobile phone data usage and whether or not data and pricing plans should be benchmarked against other OECD countries.
Revisiting the law and jurisprudence around competition	
Market studies and other sectoral inquiries have identified some common anti-competitive factors (market concentration or vertical integration, excessive use of land covenants, insufficient protections for customers or suppliers and the difficulty to move to a competitor, etc.).	As the market studies process matures, the NZCC and MBIE should keep reporting to the government periodically on cross-sector themes arising from the studies and opportunities for wider cross-economy reforms. The NZCC and MBIE should further study the effect of land use rules and local regulations on market entry, and suggest possible improvements.
Preventing anti-competitive mergers has at times proved difficult for the NZCC.	Consider inverting the burden of proof for unnotified mergers or when the market is already concentrated, and for killer acquisitions. Follow up on Australia's upcoming review to maintain legislative alignment. Consider further narrowing exemptions in the Commerce Act. Consider giving the NZCC the ability to accept behavioural undertakings.
New Zealand is lagging behind other OECD countries in recognizing and addressing the challenges that digital markets pose to competition.	**Ensure the NZCC has the tools and capability it needs to address digital platforms' market power and the associated risks to competition. Consider alignment of laws with Australia to promote a single digital market.** Introduce a consumer data rights regime in different sectors.
The articulation between the NZCC and criminal prosecution has improved in cartel cases, with the NZCC advising on criminal clemency rules.	Further investigate the articulation of competition policy, consumer protection, and criminal or civil enforcement (class actions for example).
Improving the regulation on businesses and trade	
Foreign investment remains low in international comparison.	While maintaining the national security component of the current screening regime, review the foreign investment regime with a view to reducing barriers to foreign entry. Continue to reduce compliance costs and boost predictability for investors. Carry out a review of the broader regulatory environment affecting FDI sector by sector.
Corruption is low in New Zealand but there are fewer restrictions on moving from politics into lobbying roles than in other countries.	Introduce tighter standards against lobbying and conflicts of interest.
SOEs are not overly politicised but public ownership does carry some risks. Council-controlled organisations are more at risk of being inefficient.	Move towards greater privatisation of SOEs, including considering reducing local government ownership of port assets. Explore measures to strengthen competitive neutrality in markets.

Unclassified - Non classifié

References

André, C. and L. Demmou (2022), "Enhancing insolvency frameworks to support economic renewal", OECD Economics Department Working Papers, No. 1738, OECD Publishing, Paris.

Adalet McGowan, M. and D. Andrews (2018), "Design of insolvency regimes across countries", OECD Economics Department Working Papers, No. 1504, OECD Publishing, Paris.

ACI Europe (2018), *Behind the Regulatory Till Debate*, Airports Council International Europe.

Australian Treasury (2023), *Merger Reform – Consultation paper*.

Barry, P. and H. Pattullo (2020), *The Dairy Sector in New Zealand: Extending the Boundaries*, TDB Advisory report for the NZ Productivity Commission.

Bork, R. (1978), *The Antitrust Paradox*, Free Press.

Boulhol, H. and A. de Serres (2010), "Have Developed Countries Escaped the Curse of Distance?", *Journal of Economic Geography*, Vol. 10/1.

Commerce Commission (2024), *Market Study into Personal Banking Services – Draft Report*

Commerce Commission (2023), *2022 Telecommunications Monitoring Report*.

Commerce Commission (2022a), *Market Study into the Retail Grocery Sector – Final Report*.

Commerce Commission (2022b), *Market Study into Residential Building Supplies – Final Report*.

Commerce Commission v Moola.co.nz Ltd. (2021), New Zealand High Court 3423, 13 December.

Commerce Commission (2019), *Market Study into Retail Fuel – Final Report*.

Commerce Commission (2018), Trade Me Ltd. and Limelight Software Ltd., NZCC merger determination.

Commerce Commission (2017), NZME Ltd. and Fairfax New Zealand Ltd., NZCC merger determination.

Czerny, A., C. Guiomard and A. Zhang (2016), "Single-till Versus Dual-till Regulation of Airports", *Journal of Transport Economics and Policy*, Vol. 50/4.

Electricity Price Review (2019), *Electricity Price Review of New Zealand – final report*.

Fletcher, A. (2020), *Digital competition policy: Are ecosystems different?*, OECD Background Note DAF/COMP/WD(2020)96

Hovenkamp, H. (2019), *Competition Policy for Labour Markets,* OECD Background Note DAF/COMP/WD(2019)67

Hovenkamp, H. and C. Shapiro (2018), "Horizontal Mergers, Market Structure, and Burdens of Proof", *Yale Law Journal*, Vol. 127/7.

International Energy Agency (2023), *Energy Policy Review of New Zealand*, IEA Publications, Paris.

Kantar (2022), *Retail Payment System Research*, Research report for the NZ Commerce Commission.

MacAskill et al. (2021), "Offsite construction supply chain strategies for matching affordable rental housing demand: A system dynamics approach", *Sustainable Cities and Society*, Vol. 73.

Malavolti, E. (2016), "Single Till or Dual Till at Airports: A Two-sided Market Analysis", *Transportation Research Procedia*, Vol. 14.

MBIE (2023), Provisional supermarket divestment cost benefit analysis and proposed next steps, July.

MBIE (2016), *Retail payment systems in New Zealand*.

Nickell, S. (1996), "Competition and Corporate Performance", *Journal of Political Economy*, Vol. 104/4.

Nicoletti, G., S. Scarpetta and P. Lane (2003), "Regulation, Productivity and Growth: OECD Evidence", *Economic Policy*, Vol. 18/36.

Nicoletti, G., C. Vitale and C. Abate (2023), "Competition, regulation and growth in a digitized world", *OECD Economics Department Working Papers*, No. 1752, OECD Publishing, Paris.

Unclassified - Non classifié

Northington Partners (2018), Independent Assessment of Fonterra's Financial Performance Since Inception, report for Fonterra Shareholders' Council, Nov 2018.

McKechnie, F. (2018), *Dispute resolution following natural disasters*, Government Centre for Dispute Resolution.

NZ Government Procurement (2021), *NZ Government Procurement Business Survey 2021*.

NZ Law Commission (2020), *Class Actions and Litigation Funding*, NZ Law Commission Issue Paper 45.

NZ Productivity Commission (2012a), *Housing Affordability Inquiry – Final Report*.

NZ Productivity Commission (2012b), *International Freight Transport Services inquiry*.

OECD (2023a), *Economic Survey of Australia*, OECD Publishing, Paris.

OECD (2023b), *The impact of regulation on international investment in Portugal*, OECD Publishing, Paris.

OECD (2023c), *OECD Employment Outlook 2023: Artificial Intelligence and the Labour Market*, OECD Publishing, Paris.

OECD (2023d), *Algorithmic Competition*, OECD Competition Policy Roundtable Background Note.

OECD (2023e), *The Consumer Welfare Standard – Advantages and Disadvantages Compared to Alternative Standards*, OECD Competition Policy Roundtable Background Note.

OECD (2022a), *Economic Survey of New Zealand*, OECD Publishing, Paris.

OECD (2022b), *Purchasing power and buyers' cartels*, OECD Competition Policy Roundtable Background Note.

OECD (2022c), *The Evolving Concept of Market Power in the Digital Economy*, OECD Competition Policy Roundtable Background Note.

OECD (2021a), *The impact of regulation on international investment in Finland*, OECD Publishing, Paris.

OECD (2021b), *Recommendation of the Council on Competitive Neutrality*, OECD Legal Instruments, OECD Publishing, Paris.

OECD (2020a), *Economic Survey of the United States*, OECD Publishing, Paris.

OECD (2020b), *Digital Disruption in Banking and its Impact on Competition*, OECD Publishing, Paris.

OECD (2020c), *Abuse of dominance in digital markets*, OECD Publishing, Paris.

OECD (2020d), *Start-ups, killer acquisitions and merger control*, OECD Publishing, Paris.

OECD (2020e), *Competition in Labour Markets*, OECD Publishing, Paris.

OECD (2019a), *Enhancing Access to and Sharing of Data*, OECD Publishing, Paris.

OECD (2019b), Practical approaches to assessing digital platform markets for competition law enforcement, OECD Competition Policy Background Note.

OECD (2019c), *Licensing of IP Rights and Competition Law*, background note for the Competition Committee OECD (2018), *Australian Services Trade in the Global Economy*, OECD Publishing, Paris.

OECD (2015), *Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition*, OECD Publishing, Paris.

OECD (2013), *Economic Survey of New Zealand*, OECD Publishing, Paris.

OECD (2010), *Airport Regulation Investment and Development of Aviation*, OECD Publishing, Paris.

OECD (2005), *Recommendation of the Council on Merger Review*, OECD Legal Instruments, OECD Publishing, Paris.

RBNZ (2023), *Financial Stability Report for May 2023*, Reserve Bank of New Zealand Publishing, Wellington.

Sunderland, J. (2016), *Evaluation of the 2009 Competition Commission's BAA airports market investigation remedies*, ICF Consulting Services.

TDB Advisory (2023), *Ports: What Role for Mixed Ownership*, TDB Advisory.

White & Case (2023), *Foreign Direct Investment Reviews 2023: New Zealand*.

Unclassified - Non classifié