

Submission

to the

Transport and Infrastructure Committee

on the

Commerce Amendment Bill

15 June 2018

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following seventeen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - MUFG Bank, Ltd
 - China Construction Bank
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank, N.A.
 - Kiwibank Limited
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Background

3. NZBA welcomes the opportunity to provide feedback to the Transport and Infrastructure Committee (**Committee**) on the Commerce Amendment Bill (**Bill**) and commends the work that has gone into developing the Bill.
4. If you would like to discuss any aspect of the submission further, please contact:

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Introduction

5. NZBA generally supports enhancing the Commerce Commission's ability to carry out its functions under the Commerce Act 1986. NZBA is of the view that if a formal market or competition studies power is required, however, then objective criteria should be included.

Competition studies powers

6. If such studies are introduced, NZBA recommends that the Committee consider legislating objective criteria to assess whether a study is required.
7. In particular, NZBA is concerned about the proposed s 50 which provides that "the [Commerce] Commission may carry out a competition study if the Commission considers it to be in the public interest to do so". We are concerned that what is in the "public interest" is difficult to define and that there is no threshold requirement in s 50 as to the level of public interest required. The effect being that s 50 could be construed overly broadly.
8. To mitigate that concern, NZBA suggests that one option would be to introduce a two-stage test to determine what is in the "public interest":
 - (a) First, the Commerce Commission must publicly notify its intention to conduct a market study and seek feedback from the relevant industry and the public in order to determine whether the public interest requirement is met. Feedback may address:
 - (i) anticipated market participant costs vs benefits (as proposed by the Commerce Commission or others); and
 - (ii) scope of review, including consideration of the Commerce Commission's proposed definition of relevant 'market'.
 - (b) Second, the Commerce Commission must engage with the relevant industry regulator or regulators and seek official advice regarding whether a competition study is necessary.
9. NZBA considers that an exploratory and consultative process, like the one proposed above, is necessary, particularly given the time, resource and cost involved for both the Commerce Commission and affected industry participants of such studies. Such a process is also likely to aid the process of properly defining the scope of any study.