

This article was first published in the *Otago Daily Times* on 13 March 2009

### **Competition Law Zealotry Damaging Economy**

In the current global financial crisis, New Zealand is dangerously exposed to the risk that access to credit from overseas sources might become severely constrained.

A current imperative is to shift resources to export and import-competing industries to reduce the current account deficit and New Zealand's reliance on overseas borrowing.

This requires minimising all barriers to the necessary adjustments and puts a premium on such things as greater labour market flexibility and a more streamlined Resource Management Act.

Another barrier to adjustment and the retention of jobs is the Commerce Act and its administration.

Recently the Commerce Commission approved a bid by Fletcher Building to buy assets of construction firm Stevenson Group but only after blocking an earlier bid and at a point where Stevenson was facing major job losses.

The essential purpose of the Commerce Act is valid: to stop businesses exercising monopoly power.

As markets in New Zealand have been opened up to international competition and deregulated, the problem of monopoly has been greatly reduced.

Paradoxically, however, the Commerce Commission is playing a more intrusive role than ever.

Just how much effort should go into anti-monopoly administration?

Even corner dairies have some monopoly power (in that they could raise prices somewhat for a time without losing all their customers). However,

they are constrained by competition and it makes no sense to waste resources policing them.

But consider what many people would regard as a hard core monopoly, Transpower, the high voltage electricity network. (In fact it is not entirely a monopoly: the grid can be bypassed and consumers can use other forms of energy.)

Suppose Transpower could raise its prices and hold them indefinitely above some hypothetical competitive level by, say, 10%. How much economic damage would that do?

The answer essentially depends on what economists call the elasticities of demand and supply for Transpower's services.

Simple calculations suggest that if the level of demand is not greatly affected by price changes whereas supply is, the annual loss to the economy is likely to be less than \$1 million.

Even if quite extreme assumptions are used, the loss is likely to be well below 0.1% of GDP.

Yet to deal with these monopoly risks, resources costing millions of dollars annually are employed in the Commerce Commission, the Electricity Commission, senior management levels in Transpower and the wider electricity industry.

Monopoly issues in network industries like electricity transmission warrant attention but the question is how much, recognising that regulation is costly and that there is no such thing as perfect regulation.

In the markets of the economy open to international competition, and in most domestic industries with relatively low barriers to entry like finance, retailing, construction and property, it is hard to see significant monopoly problems. Barriers to entry are what matter: a small economy will not have large numbers of firms in many industries.

My preference would be to shrink the scope of the Commerce Act and exclude such markets entirely.

Other features of the Act need to be reviewed.

Its general purpose statement has become blurred. What should be a focus on economic efficiency in the long-term interests of consumers is being interpreted by the Commission as a licence to weigh short-term benefits to producers and consumers arbitrarily.

Antitrust policy is not an effective or transparent way of pursuing income redistribution objectives.

Part 4 of the Act, which was intended as a residual price control power unlikely to be used, has become a vehicle for heavy-handed regulation and in practice is a shambles.

Because practitioners have lost faith in the rigour and objectivity of the Commission's approach to investigations, many now support a provision in the Act to provide for appeals to the courts on the merits of Commission decisions to be full rehearings.

Unlike the situation 10 years ago, the Commerce Commission today is viewed negatively by many in the private sector.

Criticisms of its 'guilty until proven innocent' attitudes, delays and costly processes are widespread. (The Commission is taking all this year to review mobile termination rates, an issue that was apparently resolved two years ago.)

Its recent fixation with cartels is difficult to understand. Cooperation between firms is often a good thing, and cartels usually break down of their own accord.

With the government seeking expenditure savings, the ballooning staff numbers of the Commission (approaching 200 including about 40 lawyers: what do they all do?) and the costs of its failed court actions should be a concern. But of course the costs to the economy of ill-considered decisions and delays to commercial transactions are much larger.

The Commerce Act and the Commission should be on the government's regulatory reform agenda, along with statutory monopolies like ACC which are arguably the main source of monopoly problems in the economy today.

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