

This guide outlines the key changes to the Commerce Act 1986 from 5 April 2023 and what steps your business should take to prepare.



### New misuse of market power test

- Under the new misuse of market power test, a business with a substantial degree of market power is prohibited from engaging in any conduct that has the purpose, effect or likely effect of substantially lessening competition in a market.
- It will no longer be sufficient for a business to self-assess its conduct on the basis that (a) it would have done the same in a competitive market, or (b) it does not have an anti-competitive purpose.
- Businesses with market power must now consider both the purpose of the conduct and the potential effects on any relevant market.

The Commerce Commission Misuse of Market Power Guidelines are available [here](#).



### Repeal of IP exception

- The specific exceptions for the granting and enforcing of intellectual property rights will be repealed.
- Intellectual property arrangements will now be assessed just like any other arrangement.

The draft Commerce Commission Guidelines on the Application of Competition Law to Intellectual Property Rights are available [here](#).



### Expansion of the cartel provision to land covenants

- Land covenants that fix prices, allocate markets, or restrict output between competitors will be considered cartel provisions under the Commerce Act.
- We recommend obtaining specific Commerce Act advice:
  - before giving, or requiring the giving, of a covenant in the context of a sale of land to a competitor; and
  - if land that is subject to a covenant is subsequently purchased by a competitor, or potential competitor, before taking any steps to enforce adherence to the terms of the covenant against that competitor.

See the Commerce Commission's recent guidance on anti-competitive land covenants [here](#).

## Steps for your business to take

- Identify markets where the business has a significant market share (say, larger than 30 – 40%), and review key strategies in these markets.
- Review licensing agreements with actual or potential competitors.
- Review the business's land covenants, and leases.
- Run compliance programmes and staff training.

### Any questions? Talk to one of our experts



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