

# NZ Competition Law Year in Review 2019

## Evolution and Revolution

### LOOKING BACK



#### Business as usual at NZCC

Anna Rawlings took over as the Chair of the NZCC in June 2019. Despite the change at the top, it is very much a case of business as usual.



#### Everyone gets a clearance

The NZCC remains on track to complete a year without declining a single clearance application – the first time since 2011.



#### Just can't beat the Mad Butcher's restraint

Back to the future as the High Court suggests the common law approach to restraint of trade clauses remains appropriate for assessing reasonable necessity under the collaborative activities exception.



#### The times they're a changing

In a timely reminder that the cartel prohibition applies irrespective of the technology used, NZCC warned Christchurch maintenance firm Quik-Shot Ltd for discussing prices for a quote with its rival Pipeworks via WhatsApp.

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#### NZCC puts pressure on at the pump

The NZCC completed its retail fuel market study. Recommendations included the introduction of a terminal gate pricing regime, regulation of wholesale contracts, and petrol stickers for cars. The Government is expected to respond in early 2020.

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#### Buyer beware

The NZCC has made it a priority to investigate non-notified mergers. First Gas was fined \$3.4M for buying competitor Gas Net and for including an unreasonable restraint of trade clause. The NZCC also closed two investigations into non-notified mergers this year (one requiring a divestment), and still has two open investigations.



#### Copy & paste law reform

NZ set to follow Australia and amend s 36 to prohibit any conduct by a firm with a substantial degree of market power that has the purpose, effect or likely effect of substantially lessening competition.

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### LOOKING AHEAD



#### Lodge awaits fate from Supreme Court

Supreme Court is set to deliver its much-anticipated judgment on whether Hamilton real estate agents collectively agreed to pass on to vendors cost increases from listing on TradeMe and, if so, whether that was illegal price fixing. The High Court said no. The Court of Appeal said yes.



#### IP exception on the chopping block

NZ set to repeal its IP exception that gave IP owners the comfort and confidence they needed to license IP.

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#### Is this the beginning of the end for competition law?

Doubts have been raised overseas about the efficacy of traditional competition law. Politicians (particularly in France, Germany and the US) are questioning whether it needs a reset. 2020 should go a long way to confirming whether this is just political posturing or whether a fundamental shake up is on the cards.



#### Do not pass go. Do not collect \$200.

It may have taken the best part of a decade, but cartel conduct will become a criminal offence with up to 7 years imprisonment from 8 April 2021.

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#### Market studies... who's next?

Government set to announce the NZCC's next market study in February.



#### NZCC 2019/2020 priorities

- Environmental claims
- Online retail
- Motor vehicle financing and add-ons
- Educating traders about cartel laws
- Resetting 5 year revenue limits and quality standards for electricity networks
- Monitoring and reporting on telecommunications retail service quality
- New up-front regulatory rules for fibre broadband services