

RETAIL FUEL MARKET STUDY ANNOUNCEMENT – Q&A

1. What is a market study?

A market study helps determine whether there are any factors that may be impeding competition in a market or markets for goods or services.

Market studies focus on the structure and behaviour of the market itself, not the actions of any specific company. In this way, a market study is not an enforcement investigation of suspected unlawful conduct. Rather, market studies allow for the identification of any factors that are preventing, restricting or distorting competition. Examples of such factors may include costly out-dated regulations, restricted access to key infrastructure, significant imbalances in bargaining power between market participants, or lack of good information for consumers when making purchasing decisions.

Market studies are performed by more than 40 competition agencies worldwide. They provide governments and the public with an in-depth understanding of how sectors and markets work.

The findings of a market study are generally published in a report. A report might dispel views competition is restricted or distorted. Alternatively, it might confirm that there are competition problems and make recommendations as to how competition could be improved.

2. Who can undertake market studies?

The Commerce Amendment Act 2018 amended the Commerce Act 1986 (the Act) to give the Commerce Commission the ability to undertake market studies to determine whether there are any factors that may be impeding competition in a market. A study may only be undertaken if it is in the public interest.

In conducting a study, the Commerce Commission will have access to its existing information gathering powers under the Act.

Other agencies, such as government departments, can also undertake informal market studies from time to time but they generally do not have access to information gathering powers or have the same competition expertise as the Commerce Commission.

3. How long does a market study typically take?

Recognising the need to follow a thorough, robust process, an 'average-sized' market study will take around one year to complete. At the beginning of a study, the focus is on obtaining complete and reliable information from industry participants, which can require a significant amount of time.

The Commerce Commission is required to publish and consult on a draft competition report prior to the completion of a study, which will provide a strong indication of the Commission's conclusions at the earliest opportunity.

4. How much does a market study cost?

The cost of a market study will depend on the size of the market under consideration and the terms of reference for the study.

The Commerce Commission has a dedicated appropriation of \$1.5 million per annum to carry out market studies.

5. Why has the retail fuel market been chosen for the first market study?

The Commerce and Consumer Affairs Minister considers it is in the public interest to require a study into this market, given factors such as:

- the more than doubling of petrol and diesel importer margins over the past decade which could not be explained by any significant increase in capital expenditure
- the size of the market (around 6 billion litres of petrol and diesel are consumed for land transport use annually)
- the inability of previous studies to definitively conclude whether or not there is a competition problem in the market.

6. How do you determine what is in the public interest?

A study is considered to be in the public interest if it promotes the purpose of the Commerce Act – to promote competition in markets for the long-term benefit of consumers within New Zealand.

Some or all of the following (non-exhaustive) criteria may be relevant:

- there are existing indications of competition problems in the market (such as high prices or low levels of innovation)
- the market is of strategic importance to the New Zealand economy or consumers
- it is likely that there will be viable solutions to any issues that are found
- a formal Commerce Commission study would add value above work that could be done by other government agencies.

7. What will the retail fuel market study look at?

The Terms of Reference for the market study is focused on factors that may affect competition for the supply of retail petrol and diesel used for land transport throughout New Zealand.

Matters to be considered in the study may include, but are not restricted to:

- the structure of the industry
- the extent of competition at the refinery, wholesale and retail levels, including the role of imports
- any factors that may hinder competition between industry participants
- the conditions for entry by potential competitors, including independent suppliers, and/or the conditions for expansion
- whether wholesale and retail price and service offerings of petrol and diesel are consistent with those expected in workably competitive markets
- features of retail petrol and diesel markets that are not in the long-term interests of consumers.

8. What is the process for selecting and initiating a study?

The Commerce Amendment Bill sets out a statutory process that must be followed before a market study can be initiated. Before the Commerce and Consumer Affairs Minister can ask the Commerce Commission to initiate a market study, the Bill requires that the Minister must consult with the

Commission on a draft terms of reference. The Minister also must be satisfied that carrying out the study is in the public interest.

9. What is the timeframe for completing the study?

The length of time to complete a market study will depend on the specifics of the study, the terms of reference and the information and analysis required.

For the fuel market study, the Commerce Commission has been given 12 months to complete the study. The Commission must publish a final report on competition in the retail fuel sector by 5 December 2019.

10. What are the next steps?

The terms of reference for the study into retail fuel markets are expected be published in the Gazette on Wednesday 5 December, following which time the Commerce Commission will have the ability to commence the study.

11. What could be the outcome of a market study?

The Commerce Commission must prepare and publish a final report for each study setting out its findings.

The final report may include a range of outcomes, such as:

- Providing the market a 'clean bill of health' by clearing up misconceptions about the operation of the market
- Recommending changes to legislation or government procedures
- Recommending changes to industry practices
- Leading to further Commission work in advocacy or enforcement to promote changes in industry behaviour.

The Commission recommendations are non-binding, but the Government will be required to publicly respond to the recommendations in a reasonable timeframe.

In overseas jurisdictions, these studies have been successful in changing behaviour and promoting competition.