

A snapshot of markets studied

With the Commerce Amendment Bill having passed a third reading, the Commerce Commission is poised to gain a “competition studies” (or market studies) power. So which industries have been looked at overseas? We compare the experience in the United Kingdom and Australia.

The United Kingdom’s Competition and Markets Authority (CMA) can conduct market studies to address competition or consumer issues. This can result in range of possible outcomes, including referral to an even more detailed market investigation with the prospect of a range of remedies.

Energy

- The CMA implemented a ‘package’ of over 30 remedies, including seeking undertakings from companies and making recommendations to other regulators.
- The Government is currently implementing the majority of the CMA’s recommendations, and the study has prompted the introduction of new legislation.

Care homes

- The CMA concluded that significant reform was needed and made policy recommendations to government departments.
- Recommended an independent body take on the functions of overseeing the industry and facilitating transparency.
- The CMA’s recommendations will feed into a green paper to be published by the Department of Health and Social Care.

Digital price comparison tools

- Resulted in a lengthy final report and five supporting papers.
- Advised the Government to introduce civil pecuniary penalties for breaches of consumer protection law.
- Prompted a wider CMA investigation into breaches of British and EU law in relation to the use of most favoured nation clauses by a price comparison website.

Retail banking

- The final report spans nearly 3,000 pages.
- The CMA implemented wide-reaching orders and undertakings, including requiring banks to prompt customers to consider switching banking providers, and to give automatic warnings to customers if they go into overdraft.

Private healthcare

- The CMA implemented a number of remedies, including requiring the largest private hospital operator in Central London to sell one or two of its hospitals.
- This decision was taken to the Competition Appeal Tribunal, but the CMA later announced that, due to the imminent entrance of more companies, divestiture was no longer proportionate.

Legal services

- Recommendations were made in consultation with eight legal regulators.
- Recommendations included requiring publishing price information online.
- The CMA will re-evaluate progress in 2019, and intervene further if necessary.
- The Government accepted the need, in the long term, for reviewing the current regulatory framework.

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The Australian Competition and Consumer Commission (ACCC) can undertake market studies and make recommendations to address any obstacles identified.

Energy

- Recommendations following the Electricity Supply and Prices Inquiry include:
- introducing a mandatory code for comparator websites; and
 - limiting companies with 20 per cent or more market share from acquiring more generation capacity.

Communications

- The ACCC held a two-day stakeholder forum, with representatives from telecommunication service providers, consumer groups and Government.
- The ACCC made 8 recommendations and personally agreed to take 20 actions, relating to continued monitoring of the industry.

New car retail

- The ACCC commissioned four independent reports to inform its study.
- It recommended changes to the Australian Consumer Law around consumer guarantees, and introducing regulation to allow sharing of technical information with independent repairers.

East Coast gas

- The Inquiry received over 73,000 documents and held 32 public and private hearings.
- The 4th interim report recognised gas prices remain much higher than historical levels.
- The ACCC published a liquefied natural gas price assessment to create price indications and transparency.
- ACCC will continue to publish information on supply and pricing until 2020.

Dairy

- The ACCC received 82 written submissions, held eight public forums and directly contacted market participants to request certain information.
- Recommended that the Government introduce a mandatory code of conduct for the industry, enforceable by the ACCC.

Residential mortgages

- The March 2018 interim report outlined the lack of transparency in pricing, and the effects of macroprudential and prudential measures on interest rates.
- The final report will be published in November 2018.

Northern Australian insurance

- The ACCC received over 280 submissions, including from residents, consumer groups, councils and the insurance industry.
- The ACCC intends to issue notices compelling insurers to provide information, enabling it to access information past reviews have been unable to obtain.
- The inquiry is lengthy, and will span three and a half years.