



Results of an international survey of competition regulators: how do the Australian Competition and Consumer Commission and the New Zealand Commerce Commission rate?

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- 🔗 **Decision making abilities**
- 🔗 **Speed of handling**
- 🔗 **Security of information**

A survey of world competition authorities has been undertaken by the Global Competition Review, based in the United Kingdom. It is not possible here to set out all aspects of this survey but readers will, no doubt, be interested in how the Australian Competition and Consumer Commission (the 'ACCC') and the New Zealand Commerce Commission have rated.

The survey was made up of leading practitioners who deal with their regulatory authorities around the world. The review states in the introduction to its survey that there is deep dissatisfaction with some older, established authorities. The survey also suggests that some younger authorities are setting standards for speed, expertise and independence.

The Australian Competition and Consumer Commission

As regards the ACCC, the following observations are made:

GCR SURVEY

The ACCC's speed of merger handling is well regarded and its leadership is given an unusually strong endorsement. The authority also boasts good scores for security of information and speed of non-merger handling. Scores for ease of access to third-party claimants, informal guidance and consistency in decision-making are only marginally satisfactory. Dissatisfaction with the ACCC is concerned in three areas: transparency,

interdependence, and expertise in handling legal and economic issues. Of these, transparency receives the lowest score.

GCR COMMENT

In general, lawyers see the lack of pre-merger enforcement as a positive aspect of Australia's competition regime. Parties may approach the ACCC for 'comfort' letters if they wish, and the authority rarely goes back on a letter suggesting that the merger or acquisition will not be challenged. There are, however, serious procedural concerns when the ACCC suggests that the parties obtain authorisation for a complex transaction. 'In difficult matters it may delay the matter rather than make a decision which will either be unpopular or which they do not believe that they can justify', comments a top practitioner. Such tactics, which can result in parties becoming frustrated and discontinuing discussions, are seen to be a problem in the oil sector, or in new and deregulated areas. In addition, say lawyers, appeals can be delayed before the tribunal for four months or more while the Commission pursues obscure lines of reasoning. 'You have to disclose all the information to the Commission, but they don't always tell you of the logic behind the argument they are following', comments a respected practitioner. Many in the Australian competition community feel that the Chairman's experience and his ability to come across as both erudite and populist have served the ACCC well. The overall impression is that he has been highly successful in convincing the business community to make consumer protection a high priority.

The New Zealand Commerce Commission

Observations on the New Zealand Commerce Commission are as follows:

GDR SURVEY

The Commerce Commission earns its highest score for its ability to keep information secure but it also receives an excellent result for speed of merger handling and a good mark for speed of non-merger handling. In addition, respondents see the Commission as adequately independent, transparent and consistent in its decision making. There are, however, low scores for expertise in economic and legal analysis, and a poor set of results for ease of access to those seeking informal guidance or making third party complaints. A dissatisfactory result for leadership helps to rob the Commission of a far better overall rating.

GCR COMMENT

The Commerce Commission's voluntary notification system is regarded as fast and efficient in simple merger cases. In complex cases,

however, lawyers tend to steer clear of the 10-day post-notification clearance period, fearing that staff will not have long enough to give elaborate transactions sufficient attention. 'This problem means there is reluctance to file formal clearance applications in respect of complicated merger briefs', says a senior partner in a top New Zealand firm. In terms of technical expertise, the staff's legal abilities receive high praise but lawyers are quick to point out lacklustre performance in other areas. 'The quality of the staff in terms of economics of business is average', comments another lawyer, adding that this restricts decision-makers' ability to apply creative modes of analysis in certain transactions. A lower rate of staff turnover might allow for greater expertise in this area, say a number of commentators. There are mostly favourable reviews for Chairman John Belgrave, but leadership is still seen as one of the authority's weakest areas.

Lawyers explain that the Commission has not done enough to raise its public profile, to rid itself of a reputation for being rather aloof and out of touch with business practices, and to adopt a proactive rather than reactive attitude to investigations. Public awareness campaigns are starting to modify this image, but practitioners say that the Commission still needs to do a great deal more to set the parameters for debate in murky jurisdictional areas, such as in the oil exploration sector.

Tables 1 and 2 following set out the comparative ratings of the various international competition authorities. In order, however, to obtain the complete comparative picture, it is, of course, necessary to read the individual comments on each authority and the Tables must be read with this caveat in mind.

Table 1: Competition regulators overall rating

Argentina	[1]	**	Italy	[15]	****
Australia	[2]	***	Japan	[16]	*
Austria	[3]	**	Netherlands	[17]	***
Belgium	[4]	**	New Zealand	[18]	***
Brazil	[5]	***	Portugal	[19]	*
Canada	[6]	**	Portugal	[20]	*
Denmark	[7]	**	Spain	[21]	***
European Union	[8]	***	Spain	[22]	***
Finland	[9]	****	Sweden	[23]	****
France	[10]	**	Switzerland	[24]	****
Germany	[11]	****	United Kingdom	[25]	**
Greece	[12]	**	United Kingdom	[26]	***
Ireland	[13]	**	United States	[27]	****
Israel	[14]	****	United States	[28]	***

1. Argentine Comision Nacional de Defensa de la Competencia
2. Australian Competition and Consumer Commission
3. Austrian Kartellgericht
4. Belgian Competition Council
5. Brazilian Economic Defence Administrative Council
6. Canadian Competition Bureau
7. Danish Competition Council
8. European Union Competition Directorate General
9. Finnish Kilpailuvirasto
10. French Competition Council
11. German Bundeskartellamt
12. Greek Competition Committee
13. Irish Competition Authority
14. Israel Antitrust Authority
15. Italian Antitrust Authority
16. Japanese Fair Trade Commission
17. Competition Authority of the Netherlands
18. New Zealand Commerce Commission
19. Portugese Directorate-General for Trade and Competition
20. Portugese Competition Council
21. Spanish Servicio de Defensa de la Competencia (SDC)
22. Tribunal de Defensa de la Competencia (TDC)
23. Swedish Konkurrensverket
24. Swiss Competition Commission
25. U.K. Office of Fair Trading
26. U.K. Competition Commission
27. U.S. Antitrust Division of the Department of Justice
28. U.S. Federal Trade Commission

Table 2: Competition regulators ratings in specific areas

(In original survey ratings are star ratings based on a five star maximum rating. Numbers below represent star ratings)

		Merger handling	Non Merger handling	Technical Expertise	Procedure	Independence	Leadership
Argentina	[1]	3	2.5	2	3	2	3
Australia	[2]	3.5	3	2.5	3	2.5	4.5
Austria	[3]	3.5	1.5	2.5	3	2	3.5
Belgium	[4]	3.5	1	1	2.5	4	2
Brazil	[5]	3	3	3	3	1.5	5
Canada	[6]	2.5	2.5	3	3	3	2.5
Denmark	[7]	n/a	2	2.5	3.5	3	3.5
European Union	[8]	4	1	3.5	3	2	3.5
Finland	[9]	5	2.5	3.5	4	3.5	4.5
France	[10]	3.5	1	3	3.5	2.5	2.5
Germany	[11]	5	3.5	3.5	4	4.5	3
Greece	[12]	2.5	2	3	3.5	2.5	2
Ireland	[13]	2	1	3.5	3	4	3
Israel	[14]	3.5	2.5	3.5	3	4.5	5
Italy	[15]	3.5	3	3.5	3.5	2	4
Japan	[16]	2.5	2	2.5	2.5	2.5	2.5
Netherlands	[17]	3.5	2	2	3.5	4.5	3
New Zealand	[18]	4	3.5	2.5	3.5	3.5	2.5
Portugal	[19]	2.5	1	2	2	1	1.5
Portugal	[20]	2	1	3	2.5	2	1.5
Spain	[21]	4	1.5	2.5	3	4	3.5
Spain	[22]	3.5	2	3.5	3	3	3
Sweden	[23]	5	2.5	2.5	3.5	4.5	3.5
Switzerland	[24]	4.5	3	3	3.5	3.5	3.5
United Kingdom	[25]	3	1	3	3	2	3
United Kingdom	[26]	3.5	1.5	3.5	2	3.5	3.5
United States	[27]	3	2.5	3.5	3.5	4	4.5
United States	[28]	2.5	1.5	3.5	3	3v	4

