

19 July 2023



Official Information Act #22.211 Response
Your Ref: Commerce Commission OIA 20-6-23

1. We refer to your Official Information Act 1982 (OIA) request received on 20 June 2023 for information about the Commerce Commission's (the Commission) market study into personal banking services (the study).
2. You requested the following:
 - 2.1 "What guidance the Commerce Commission has received from the relevant minister, government departments, other state entities or consultants for the purposes of the investigation into the banking sector as announced on 20/6/23?
 - 2.2 A detailed breakdown of what criteria are being assessed by the Commerce Commission during this investigation into the banking sector, including for each of these criteria what would be considered a positive, what would be considered a negative, and how each of these stated criteria will be weighted during the Commerce Commission's analysis (i.e. which criteria will be prioritised)?
 - 2.3 What internal criteria the Commerce Commission is using to assess whether its investigation into the banking sector has been a success or not?
 - 2.4 An indication of whether the Commerce Commission recommended to the relevant minister that an investigation into the banking sector was necessary, or whether the relevant minister instead made this recommendation to the Commerce Commission.

- 2.5 Any guidance (internal or external) which either has or will be provided to those employees (or consultants) who are investigating the banking sector for the purposes of this investigation.
- 2.6 Will the Commerce Commission be making policy recommendations to the relevant minister and/or departments following its investigation into the banking sector, or simply providing data to the aforementioned?
- 2.7 If the Commerce Commission is to be producing policy recommendations as mentioned above, what rules, criteria and/or guidance has the Commerce Commission received in relation to its drafting of policy recommendations and what is the process the Commerce Commission will be following to produce these recommendations?
- 2.8 The expected budget of this investigation into the banking sector (all costs, including costs to make the results of your investigation publicly available) and the total anticipated staffing hours which will be dedicated to this investigation.
- 2.9 A timeline and expected timescales for this investigation into the banking sector, including when the Commerce Commission is expecting for the results of this investigation to be made public?"

Our response

3. By notice in the *Gazette* published on 20 June 2023, the Government required us to carry out a 14-month long market study into whether competition for personal banking services in New Zealand is working well and, if not, what can be done to improve it.
4. A market study, referred to as a "competition study" in Part 3A of the Commerce Act 1986 (the Act), is a study of factors that may prevent competition from working well in a market.
5. Unlike our competition enforcement and merger investigations, market studies look at whether markets are working well for consumers and how they could work better, rather than considering whether there could be a specific breach of the Act or whether a merger creates a substantial lessening of competition.¹ A market study is different in nature from an investigation.
6. We respond to each of your questions about the study below.

¹ Commerce Commission [Market Studies Guidelines](#) 19 November 2020 at [13].

Guidance received by the Commission

7. In response to your request at [2.1], the Commission is guided in its study by the Terms of Reference issued by the Minister of Commerce and Consumer Affairs.² The Cabinet paper requesting a market study provides some additional context.³
8. As set out in the Terms of Reference, matters to be considered in the study may include, but are not restricted to:
 - 8.1 The structure of the industry and the nature of competition.
 - 8.2 The conditions for entry by potential competitors and the conditions for expansion.
 - 8.3 Any barriers to consumers comparing bank offers or switching banks, including the extent to which products or services may be tied or bundled.
 - 8.4 Any impediments to new or innovative banking products or services.
 - 8.5 Comparative indicators of bank financial performance (including profitability).
9. While not guidance in the sense you have asked about, the Minister of Finance, and the Minister of Commerce and Consumer Affairs issued a media release setting out their expectations for the study, which you may find has useful context.

What criteria are being assessed by the Commission during the study

10. The Commission published a statement of process on 22 June 2023 which sets out the process we intend to follow over the course of the study and how stakeholders can remain informed and contribute to the study.
11. In response to your request at [2.2], we intend to discuss our proposed approach to responding to the Terms of Reference and the key issues that we may consider as part of the study in a preliminary issues paper to be released for consultation in late July/August 2023.
12. The preliminary issues paper will set out the areas the study will consider including the structure of the industry and the nature of competition in personal banking, the conditions of market entry and expansion, and consumer behaviours and preferences.
13. It will also set out other areas that might be explored and it will invite feedback from interested parties, including bank customers.
14. Market studies allow us to examine whether markets are working well for consumers and how they could work better. We do this by analysing the features of the market,

² The Terms of Reference published in the *Gazette* are available [here](#).

³ The Cabinet paper requesting a market study into personal banking services by the Commission is available [here](#).

including regulatory and competition features and patterns of consumer and supplier behaviour.⁴

15. Examples of features that could affect competition include:
 - 15.1 market concentration;
 - 15.2 conditions for entry and exit;
 - 15.3 cost structures;
 - 15.4 degree of differentiation in products or offerings;
 - 15.5 availability of substitutes;
 - 15.6 search and switching costs;
 - 15.7 applicable laws and regulation;
 - 15.8 market growth and technological development;
 - 15.9 consumer and business behaviour; and
 - 15.10 access to information.

Internal criteria used by the Commission to assess the success of the study

16. In response to your request at [2.3], the Act requires the Commission to prepare a competition report that records our findings from the study.⁵
17. We are required by the Terms of Reference to make the final report from the study publicly available by 20 August 2024. Outcomes of our work may range from a 'clean bill of health' for the sector to recommendations to enhance market performance. For example, the final report may (but is not required to) include recommendations that identify ways to improve competition in the sector for the long-term benefit of New Zealand consumers.
18. While the Minister must respond to the final report within a reasonable time after the report is made publicly available,⁶ any recommendations the Commission may make in its final report are not binding on the Government.
19. The Government deciding to implement any recommendations the Commission might make to improve competition could be one measure of success, beyond completion of the study and delivering a final report to the Minister. Another could be increasing understanding of an industry in a way that enables consumers to make better choices, or the detection and response to conduct that may breach the law. Industry responses to a study's findings and/or recommendations may also result in

⁴ Commerce Commission [Market Studies Guidelines](#) 19 November 2020 at [20].

⁵ Section 51B(1) of the Commerce Act 1986.

⁶ Section 51E of the Commerce Act 1986.

improvements to competition or outcomes for consumers, which would also be a measure of the success of a study.

Who recommended the personal banking services study?

20. In response to your request at [2.4], under the Act, either the Commission or the Minister can initiate a market study.
21. In this case the topic of personal banking services was developed in discussions with the Commission and the Minister. Cabinet then agreed to a market study into competition in the banking sector for personal banking services to ensure the market is working well for New Zealanders.
22. Prior to issuing the notice requiring the Commission to carry out the study, as is required under the Act, the Minister consulted the Commission on a draft of the notice. The Minister then issued a notice in the [Gazette](#), requiring the Commission to carry out a personal banking services market study.

Any guidance issued to those working on the study

23. In response to your request at [2.5], the market studies team at the Commission is made up of trained economists, lawyers, investigators and analysts, and they bring a wealth of skills and experience to the project.
24. Our [Market Studies Guidelines](#) provide guidance to any consultants working or engaging with the study, so they know how we run a study and what to expect.

Will the Commission make policy recommendations and what is the process?

25. In response to your requests at [2.6] and [2.7], the Commission may make recommendations, but it is not required to do so.⁷ These recommendations may include policy recommendations, but at this stage of the study it is unclear whether this will be the outcome.
26. As noted in the [Market Studies Guidelines](#),⁸ the Commission may recommendations that include, without limitation:
 - 26.1 changes to the law or policies or practices of central or local government;
 - 26.2 changes to policies or practices of a person or organisation responsible for the oversight or regulation of a specific industry;
 - 26.3 changes to behaviour of persons within the industry;
 - 26.4 changes to the amount or type of information made available by people or organisations in relation to an industry; or
 - 26.5 further research or monitoring of specified matters related to the industry.

⁷ Section 51B(2) of the Commerce Act 1986.

⁸ Commerce Commission [Market Studies Guidelines](#) 19 November 2020 at [22].

27. [The Statement of Process](#) sets out the steps that will be taken during the study, which include as noted above, releasing a preliminary issues paper by late July/August 2023, and releasing a draft report around March 2024.
28. The draft report will include our preliminary findings on factors that may affect competition in personal banking and outline any options we may consider for recommendations.

Cost of the study

29. In response to your request at [2.8], we can advise that the study is expected to cost around \$3 million.
30. As discussed above, a dedicated market studies project team is working full time on the study, supported by a range of other staff and Commissioners.

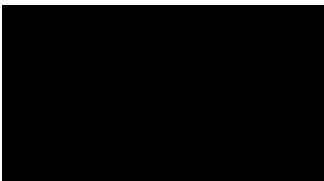
Timeline for the study

31. In response to your request at [2.9], the [Statement of Process](#) on page 6 sets out the steps that will be taken during the study, and the anticipated timeline. We are required to publicly release the final report on 20 August 2024, following which the Minister will respond.

Further information

32. Please note the Commission will be publishing this response to your request on its website. Your personal details will be redacted from the published response.
33. Please do not hesitate to contact us at oja@comcom.govt.nz if you have any questions about this response.

Yours sincerely



OIA and Information Coordinator