



12 February 2016

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Targeted Commerce Act Review
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Targeted Review of the Commerce Act 1986

We appreciate the opportunity to provide feedback on the above Review. We have confined our submission to consideration of the reform of s36 of the Commerce Act and specifically to the potential option of removing the taking advantage requirement from s36 of the Act.

Westpac is not convinced about the necessity for any significant change to be made to s36 but, to the extent that it is considered to be justified, would not support an option that proposes removal of the taking advantage requirement.

Westpac considers that the taking advantage requirement is an essential component of s36. This causal connection is important as otherwise there is a risk that a firm's size or market power alone will put them at risk of being in breach of competition laws. This could have the undesirable and unintended effect of stifling innovation. A large firm may be more cautious about launching a new product or service if there is a risk that the success of the product or service could have the effect of putting competitors out of business and consequently result in anti-competitive proceedings being brought against it. This would have a negative effect on competition and would be to the detriment of consumers. Actions which reflect competition on the merits rather than market power should not result in a breach of competition law just because a person has a substantial degree of power in a market.

Yours faithfully