

Summary of Main Options and Analysis

Options	Benefits			Costs			Overall impact
	Detection	Deterrence	International co-operation	Chilling of pro-competitive behaviour	Administration costs	Business Compliance costs	
Option 1: Status quo plus additional enforcement							
Increased funding for Commerce Commission - additional resources for detection and advocacy	↑ Allows Commission to follow-up on non-leniency based leads	↑ Increased advocacy and detection should increase deterrence	■	■	↑	■	Any benefit from additional funding is likely to be directly related to costs
Rewarding confidential informants – financial rewards to people not directly involved who advise Commission of a cartel	↑ The potential pool of confidential informants likely to be small due to secret nature of cartels	↑ See impacts on detection	■	■	↑	■	Small benefit but only if it encourages confidential informants to come forward
Option 2: Amend legislation							
Clarifying the scope of prohibitions and exemptions	■	■	■	↓ Should decrease the risk of chilling pro-competitive activity by providing more clarity on what conduct is and is not prohibited	↑ May be a small increase in costs due to increased advocacy needed to explain the new regime	■ May be an initial cost to business to determine whether arrangements comply, however, over time they should have greater certainty therefore reduced cost	Net benefit as clarifying law should provide certainty to businesses that are contemplating engaging in legitimate collaborative activity
Providing a clearance regime to allow businesses to manage any residual risk prior to entering into collaborative arrangements	■	■	■	↓ Allows businesses to manage residual risk that collaborative activity may breach the Act	↑ May be an increase in costs due to an initial increase in clearance applications, however, costs likely to fall as businesses become familiar with the new regime	■ Businesses can assess whether there is value in seeking clearance from the Commission	Net benefit as it allows firms to manage any residual risk. Although there are likely to be some administration costs resulting from assessment of clearance applications
Update civil penalties	■	■ Unlikely to result in increased deterrence	■	■	■	■	Unlikely to affect behaviour/achieve objectives.
Option 3: Introduce criminal sanctions for hard-core cartel conduct Note that this option assumes that the legislation is clarified in accordance with option 2 As a result, option 3 considers the incremental costs and benefits associated with introducing criminal sanctions	↑ Increased detection - some evidence that use of leniency increases where criminal sanctions are introduced and leniency applicants prioritise co-operating with jurisdictions where there is a threat of criminal penalties	↑ Increased deterrence - fines in NZ do not provide for optimal deterrence, criminal sanctions provides additional deterrent Anecdotal evidence suggests cartels less likely to operate in countries where cartels are criminalised	↑ Increased co-operation – allows for processes such as extradition Criminal sanctions are consistent with OECD recs and SEM objectives	■ Risk of chilling pro-competitive behaviour but this can be managed by implementing changes under option 2 and sequencing implementation of criminalisation to reduce chilling effect	↑ Incremental increase in costs outlined in option 2, but increase is not anticipated to be significant	↑ Small increase in business compliance costs but these can be managed by clarifying the scope of the prohibition and exemptions and introducing the clearance regime	Net benefits from the introduction of criminal sanctions through increased detection, deterrence and international cooperation. Costs are not likely to be significant due to careful design of regime in option 2 and the prudent sequencing of the introduction of the regime