



**Commerce Commission**

**Briefing for Incoming Minister**

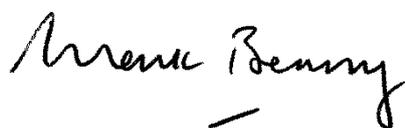
**November 2017**

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## Foreword from the Chairman

1. The Commerce Commission (Commission) works to make New Zealanders better off. Our vision is that New Zealanders are better off because markets work well and consumers and businesses are confident market participants. The Commission has a proven track record in ensuring businesses comply with the law, consumers know their rights, and there is effective competition between businesses. This is confirmed by the recent Global Competition Review (GCR) Rating Enforcement 2017 which describes the Commission as a “rock-solid enforcer in the Asia-Pacific region, one that earns praise for its consistency and ambition”.<sup>1</sup>
2. Our consumer work has expanded in recent years following changes to consumer legislation. We work carefully to balance the use of education and enforcement to help protect consumers, prevent and stop unlawful conduct, deter future breaches and remedy any harm. In enforcing the law, we use a range of enforcement options from compliance advice through to court action, taking into account the extent of the harm, seriousness of the conduct and public interest.
3. Our competition work has seen an increase in quantity and complexity in the last three years with mergers increasingly involving multiple markets and rapidly changing technologies. Our role in this area is also set to expand, with recent changes to the Commerce Act that put in place a collaborative activity clearance regime and other rules around anti-competitive behaviour.
4. The regulatory regime the Commission oversees is now well established across a number of different regulated sectors. In particular the Part 4 regime, involving energy networks and major airports, is seen as offering stability, predictability and incentives to invest in long-lived infrastructure for suppliers and consumers alike. We have recently reviewed the underlying rules and processes around the regime and are working to better understand the risks that regulated sectors face. With our input into the review of the Telecommunications Act we are preparing for the establishment of a regulatory regime similar to that in place for energy networks and airports under Part 4.



Dr Mark Berry  
Chairman

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<sup>1</sup> GCR Rating Enforcement 2017 – New Zealand’s Commerce Commission (21 July 2017)

## **Purpose**

5. The purpose of this briefing is to give you an overview of the Commission.
6. More detail about the Commission can be found in our 2017-22 Statement of Intent, 2017/18 Statement of Performance Expectations and 2016 Annual Report (copies attached). Our 2017 Annual Report will be available in November this year.
7. Full details of our current work programme are not included in this briefing. We plan to update you in person on these, where appropriate, at future meetings. In addition to the accountability documents mentioned above the Commission has published a five year strategy and vision. This strategy, and our 2017/18 priorities that deliver on this strategy, are also attached to this briefing.
8. The briefing is structured in four parts:
  - 8.1 Who we are – organisation overview
  - 8.2 Competition and Consumer overview
  - 8.3 Regulation overview
  - 8.4 Capability and resourcing
9. Attachments include profiles of Commission Board members and the Senior Leadership Team and a summary of the Commission's appropriation structure, revenue and expenditure for 2017/18.
10. We are happy to provide additional briefings and further information as required.

## Who we are – organisation overview

### Introduction

11. The Commerce Commission is New Zealand’s primary competition, consumer and regulatory agency. We are responsible for enforcing laws relating to competition, fair trading and consumer credit contracts. We also have regulatory responsibilities in the electricity lines, gas pipelines, airports, telecommunications and dairy sectors.
12. We are an Independent Crown Entity established in 1986 under the Commerce Act.

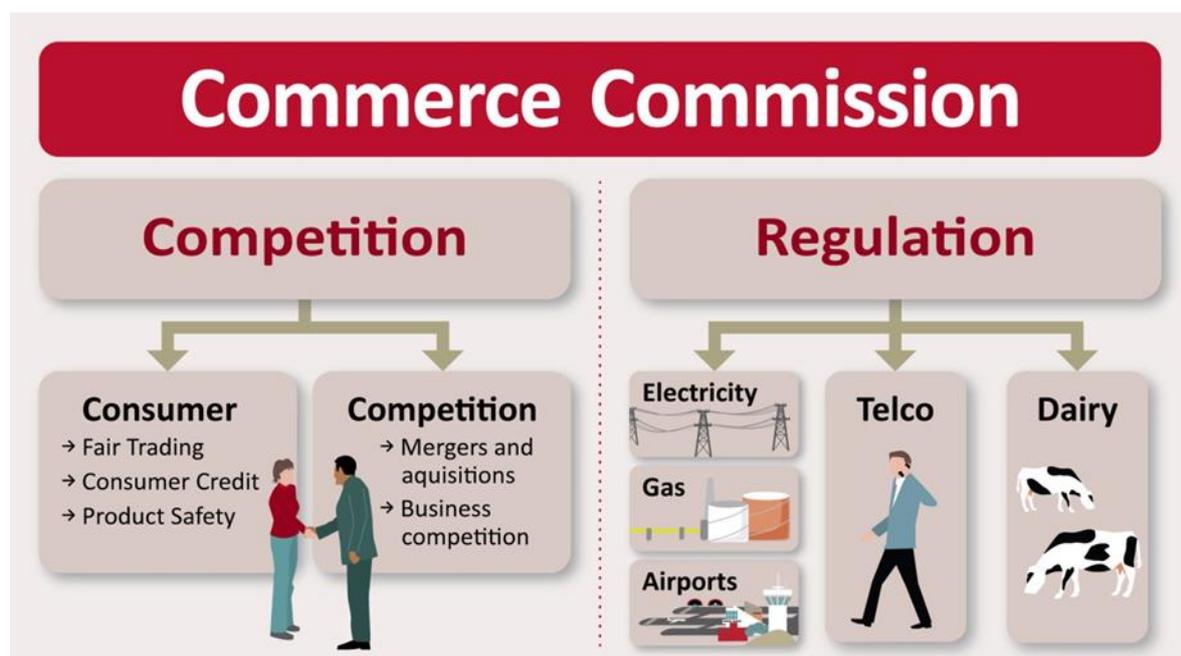


Figure 1: Overview of Commerce Commission

### Our role

13. Our role takes in three main workstreams – competition, consumer protection and regulation. These workstreams are outlined further below.

#### Competition

14. Competition is a key driver for delivering greater productivity and growth in the New Zealand economy for all consumers. Effective competition creates an incentive for firms to innovate, improve efficiency, and produce products and services at a price and quality demanded by consumers. Competition laws and a strong competition regulator ensure there is more choice for consumers and that businesses follow the rules. Effective competition can also have an effect on investment by boosting business and investor confidence through reduced corruption and anti-competitive behaviour.

#### Consumer protection

15. The wider economy benefits from strong, appropriately enforced consumer protection. New Zealand’s consumer laws are designed to help protect the interests

of consumers and promote fair competition. Businesses need to know how to comply with the law and consumers need to be aware of their rights.

### *Regulation of strong and sustainable infrastructure*

16. Strong, sustainable and efficient infrastructure that benefits New Zealanders is also central to this country's future economic prosperity. Infrastructure plays a critical role in connecting consumers with services that are essential to everyday life, including electricity, gas, and telecommunications. It also plays a critical role for producers of goods and services as the cost of these inputs affects their international competitiveness.
17. Economic regulation is designed to ensure that suppliers of regulated goods and services have similar incentives and pressures to suppliers operating in competitive markets. Effective regulation ensures profits are sufficient to sustain investment and innovation, service quality reflects consumer demands and excessive profits are limited.

### **Our strategic framework**

18. In the last year the Commission has developed a five year strategy aimed at making New Zealanders better off which is illustrated in the diagram below:



Figure 2: Commerce Commission Strategic Framework

19. Our vision is that New Zealanders are better off because markets work well and consumers and businesses are confident market participants.

20. To achieve this vision, we have two strategic objectives:
  - Markets work well
  - Consumers and businesses are confident market participants.
21. These strategic objectives reinforce each other. Well-functioning markets help to provide confidence for consumers and businesses to participate in them. At the same time, the more confidence participants have, the better markets are likely to function.
22. To have an impact and contribute to the achievement of our strategic objectives, we have three overarching strategies that drive our work. We will:
  - 22.1 seize opportunities to have the greatest impact
  - 22.2 protect, inform and empower consumers and businesses
  - 22.3 be trusted, influential and high-performing.
23. The first two strategies determine what we are going to do and how we will do it. The third sets out how we must shape our organisational health and capability to deliver on the other strategies. Our values form the foundation of our strategic framework and guide the way we operate.

#### **Relevant legislation**

24. To support well-functioning markets and confident market participants, the Commission has responsibility under five key pieces of legislation.
  - 24.1 Fair Trading Act 1986 (FT Act)
  - 24.2 Credit Contracts and Consumer Finance Act 2003 (CCCF Act)
  - 24.3 Commerce Act 1986 (Commerce Act)
  - 24.4 Telecommunications Act 2001 (Telecommunications Act)
  - 24.5 Dairy Industry Restructuring Act 2001 (DIR Act)
25. We have responsibilities relating to business competition, fair trading and consumer credit contracts. We play an important part in ensuring businesses compete fairly, consumers are not misled by traders and are protected when they borrow money. As an enforcement agency we also make sure those that do not play by the rules are held to account.
26. In sectors where competition is limited our regulatory responsibilities ensure that consumers are protected from the lack of competition. These sectors include electricity lines, gas pipelines, telecommunications, dairy and our three major airports. When competition is limited, there is the risk that consumers are

overcharged or do not receive the appropriate quality of service they would expect in a competitive market.

27. As an effective competition agency and regulator we help to ensure:
  - 27.1 consumers are protected when buying goods or services, taking out a loan or entering into a consumer credit contract;
  - 27.2 there is effective competition between businesses;
  - 27.3 traders understand and operate according to the rules;
  - 27.4 market power is not abused;
  - 27.5 mergers do not substantially lessen competition;
  - 27.6 regulated businesses are incentivised to deliver strong, sustainable and efficient infrastructure that supports competition; and
  - 27.7 accurate information is available to both consumers and businesses and they are empowered to act on it.
28. More specific information on our role in each area of responsibility is included under the Competition and Consumer, and Regulation sections below.

### **Our structure**

29. The Commission is made up of three branches: the Competition and Consumer and Regulation operational branches, supported by the Organisation Performance branch. Each branch is led by a General Manager who reports to the CEO, who is accountable to the Board.
30. The Commission has offices in Wellington and Auckland and at the end of 2016/17 had 189 employees (full-time equivalent). The chief executive is responsible for managing the Commission's operations, supported by the senior leadership team.

### **Governance – accountability and independence**

31. We are primarily accountable to the Minister of Commerce and Consumer Affairs for our performance. We are also accountable to the Minister of Broadcasting, Communications and Digital Media for the regulation of telecommunications, and the Ministers for Energy and Resources, Transport and Agriculture have an interest in our regulatory work relating to the energy, airports and dairy sectors.
32. As an Independent Crown Entity, we are not subject to direction from the government in carrying out our enforcement and regulatory control activities. This independence requires us to be an impartial promoter and enforcer of the law.

33. Where relevant, we use our experience to provide advice on policy development and legislative reviews. The Commission provides independent advice to Government about implementation issues that arise from any proposed legislative changes to the Acts it has responsibility for. It also provides advice to the Minister of Broadcasting, Communications and Digital Media about the scope of regulation of telecommunications.
34. The Commission provides performance reports to our monitoring department tri-annually.

#### *The Board*

35. The Board is made up of Commission Members, appointed by the Governor-General on the recommendation of the Minister of Commerce and Consumer Affairs. The Telecommunications Commissioner is appointed on the recommendation of the Minister for Communications. Associate Commissioners are appointed by the Minister of Commerce and Consumer Affairs. At least one Commission Member must be a barrister or solicitor.
36. There are currently two members of the Commission cross-appointed to the Australian Competition and Consumer Commission (ACCC) and one member cross-appointed from the ACCC to the Commerce Commission in New Zealand.
37. Profiles of Commissioners and the senior leadership team are included in Attachments A and B.

#### **Who we work with**

38. While we are an Independent Crown Entity, we work with other agencies and organisations both domestically and internationally to achieve our strategic objectives and get the best possible outcome for New Zealanders.

#### *Domestic*

39. Within New Zealand we have a key relationship with the Ministry of Business, Innovation and Employment (MBIE), which has a major role in monitoring our performance. We also work closely with the Electricity Authority (EA), the Financial Markets Authority and Serious Fraud Office, to ensure that collectively we deliver better outcomes for consumers without duplication or inconsistency in markets where we are both active.
40. At a grass roots level we work closely with community agencies, and consumer advocacy and advice groups providing them with information they can use with their clients to help avoid harm, and to enable us to detect and prosecute unlawful behaviour.

## *International*

41. Internationally, we are part of a global network of similar competition law enforcement and regulatory agencies. We are a member of the International Competition Network (ICN) and the International Consumer Protection and Enforcement Network (ICPEN), both of which are associations of enforcement agencies from around the world. We also participate in the work of the Organisation for Economic Co-operation and Development's (OECD) Competition Committee and related Working Parties and contribute to competition related development activities. We have formal agreements with several regulatory or competition bodies in Australia, Canada, Taiwan and the United Kingdom. In particular we have a strong relationship with the ACCC to enhance trans-Tasman co-operation.

## Competition & consumer – overview

42. Our competition and consumer work involves enforcement of, and the provision of information and guidance on, three key pieces of legislation:

<b>Commerce Act 1986 (Parts 2, 3 and 5)</b>	<b>Fair Trading Act 1986</b>	<b>Credit Contracts and Consumer Finance Act 2003</b>
<p>Prohibits anti-competitive behaviour (including cartels) and acquisitions that substantially lessen competition.</p> <p>Under the Commerce Act, the Commission can approve a merger that does not substantially lessen competition (known as a clearance). We can also approve a merger or a restrictive trade practice that lessens competition but would ultimately benefit New Zealanders (known as an authorisation). Clearances and authorisations offer businesses protection from legal action under the Commerce Act.</p>	<p>Prohibits false and misleading behaviour by traders and a range of other unfair business practices. It also requires that consumers are given specified information about certain products and promotes product safety.</p> <p>The Commission is also responsible for enforcing laws relating to a range of sales methods and the bans on unsubstantiated representations and the use of unfair contract terms in standard form consumer contracts.</p>	<p>Protects the interests of consumers in relation to consumer credit contracts, consumer leases and buy-back transactions of land. It includes provisions relating to disclosure, unforeseen hardship and repossession, requirements for responsible lending, and sets out rules about interest, payments and credit fees.</p>

*Note: An additional piece of legislation, the Consumer Guarantees Act (CG Act) protects consumers by making repairs, replacements or refunds part of law and by setting minimum standards that businesses have to meet. The CGA is not enforced by the Commission but we can take enforcement action where traders misrepresent consumers' rights under the CGA.*

43. Through our work, we seek to improve compliance with competition and consumer laws. This ensures businesses undertake fewer anti-competitive mergers and trade practices, allowing markets to function more competitively. It also encourages businesses to represent goods and services more accurately, allowing consumers to make better-informed purchasing decisions. We also work to ensure that consumers have the right combination of information, capability and knowledge so that they are better able to assert their own rights and influence the behaviour of businesses, in particular when accessing consumer credit or goods and services.
44. We use advocacy and education to ensure that both traders and consumers are aware of their obligations and rights under the Acts we enforce. We investigate potential breaches of the Acts and utilise a range of enforcement tools including compliance advice letters, warnings and prosecutions through the courts. We aim to

detect and stop non-compliant conduct as early as possible so that we can minimise harm to consumers.

45. We work closely with national and international agencies, industry and consumer groups and other stakeholders to understand the issues arising in NZ markets for businesses and consumers and to develop best practice across our functions.

### Prioritisation and enforcement criteria

46. To make the most effective use of our resources and address the greatest harm we make regular prioritisation decisions in relation to our work.
47. We receive approximately 9,000 enquiries from calls and emails each year, of which approximately 7,000 are complaints about conduct which has the potential to fall under the Acts which we enforce. In 2016/17 we received 7,270 complaints in total (6,789 relating to the FT Act, 242 to the CCCF Act and 230 to the Commerce Act).<sup>2</sup> We prioritise our work based on our published enforcement criteria (shown below). In making these prioritisation decisions we also take into account specific factors such as whether the conduct complained of has been identified as a strategic priority for the Commission or involves vulnerable consumers or public safety.

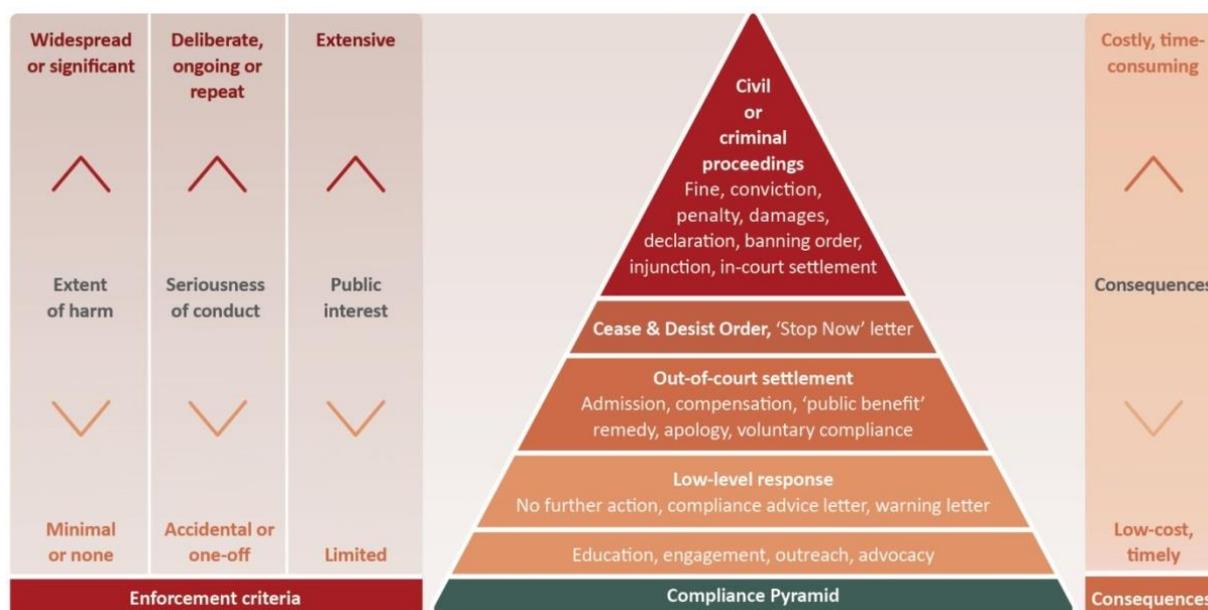


Figure 3: Commerce Commission Enforcement Criteria

48. Over the last three years we have obtained penalties of approximately \$29 million and compensation for affected consumers of over \$34 million.

<sup>2</sup> Source: [www.comcom.govt.nz/consumer-issues-report](http://www.comcom.govt.nz/consumer-issues-report)

## Competition – Commerce Act

49. Anti-competitive behaviour can raise barriers to entry for new market participants, decrease innovation or quality in a market, or increase prices. Under the Commerce Act we consider three main areas of behaviour in order to assist markets in remaining competitive:
  - 49.1 structural changes to a market which may result in an anticompetitive outcome (such as a merger or a business agreement which requires authorisation);
  - 49.2 coordinated conduct: cartel behaviour or anti-competitive agreements; and
  - 49.3 unilateral conduct by a single market participant which may result in an anti-competitive outcome.
50. Our resource in this area is roughly split between merger and other work and needs to be flexible to allow us to respond to clearance and authorisation applications. We also carry out proactive education work with businesses, trade associations, local government and other entities to assist them in understanding how their activities may impact competition and how they can comply with the Commerce Act.

### *Mergers and authorisations*

51. Our merger clearance and authorisation work is non-discretionary and must be completed in all instances. This can impact on our other work, for example, if a large scale authorisation is received it will significantly affect other work in the Competition and Consumer branch, potentially meaning other work is put on hold or completed more slowly.
52. Merger control rules operate to prevent anti-competitive mergers occurring which would potentially lead to higher prices and/or decreased quality or innovation.
53. Merger parties can voluntarily seek clearance or authorisation for a merger under Part 5 of the Commerce Act:
  - 53.1 where organisations wish to enter into an acquisition or merger, the Commission can grant a clearance. This will only be granted where we are satisfied that the proposed acquisition will not have or would not be likely to have the effect of substantially lessening competition in a market; and
  - 53.2 where organisations wish to enter into an agreement or merger that leads to anti-competitive outcomes, the Commission can grant an authorisation. Authorisations will be granted if the transaction could lead to sufficient public benefits that outweigh the competitive harm. The Commission will only grant this where we are satisfied that it will likely benefit New Zealand.
54. We can also review mergers under s47 where they are not notified to us for clearance or authorisation.

55. When analysing a merger we consider the change to competition in a market which would result from a merger. For example, in the Connor Healthcare/Acurity Health Group acquisition (December 2014) we considered the impact of three of the four private hospitals in the Wellington region – Boulcott, Bowen and Wakefield – coming under common ownership, leaving only Southern Cross Hospital independent of Connor Healthcare. We declined this acquisition because we were not satisfied that the proposed acquisition would not be likely to substantially lessen competition in respect of a number of medical procedures performed in private hospitals in the greater Wellington region.
56. We liaise closely with our international counterparts on cross-border mergers and work with other jurisdictions, including via the ICN and OECD, to ensure we are operating best practice standards in our merger review.
57. Over the last year we have faced particularly high demands with a number of complex merger cases. These cases, in particular Vodafone/Sky, NZME/Fairfax and Vero/Tower, have been amongst the most challenging we have ever had. We declined all three applications as we were not able to exclude the real chance that they would substantially lessen competition in their respective markets. NZME and Fairfax, and Vero and Tower have appealed our decisions to the High Court.

#### *Coordinated and unilateral conduct*

58. Under Part 2 of the Commerce Act the Commission investigates:
  - 58.1 coordinated conduct where individuals or organisations have entered into agreements that substantially lessen competition in a market, for example to fix, maintain or control prices (often referred to as cartels). If the Commission finds sufficient evidence we may take legal proceedings against those involved.
  - 58.2 unilateral conduct where a person or business takes advantage of their substantial market power in a market for an anti-competitive purpose.
59. Cartels occur when competitors agree on price in a way that removes competitive tension from markets resulting in higher prices or reduced quality for consumers. Cartel behaviour remains a focus of our investigation work and comes to our attention either through our cartel leniency programme (when businesses provide information to us about anti-competitive conduct), complaints or through our own detection. We have seen an increase in leniency requests seeking immunity from prosecution for domestic cartel conduct in the last few years. We expect this trend to continue, particularly with continued education and the publicity around high-profile domestic cases.
60. Two of our recent cartel investigations have led to enforcement action for price fixing. During 2016/2017 we agreed settlements with a number of real estate agents obtaining penalties of more than \$17 million. The real estate agents had agreed that each of them would pass on the cost of listing on Trade Me to vendors. Cases against

other defendants have been before the Court and we are awaiting the final judgment.

61. In another recent case we filed proceedings against three livestock companies and a number of individuals alleging price fixing in connection with the introduction of the National Animal Identification Tracing Act 2012. Two companies and five employees/former employees settled the cases against them with collective penalties of \$3.3 million. The case against the remaining defendant concluded in October with a declaration from the Court that there had been a breach, and an agreement reached to pay \$200,000 towards the Commission's investigation costs.
62. The GCR Rating Enforcement 2017 for the Commission made the following observation about these cases: the Commission "punished two domestic cartels that observers suggest could have slipped under the enforcer's radar ... The cases ... received their fair share of criticism from the local competition bar when first announced, as some felt neither was a true per se price-fixing arrangement. But the courts have so far backed the commission's [sic] cases."<sup>3</sup>
63. We believe that a joint educative and enforcement approach is the most appropriate way in which to provide consumer and business confidence in relation to the competitiveness of markets and we intend to build on our recent success in these cases with outreach work.

#### *Changes to the Commerce Act*

64. Involvement with potential changes to the Commerce Act will continue to be an important focus for the Commission in the year ahead.
65. On 15 August 2017, the Commerce (Cartels and Other Matters) Amendment Bill was passed into law. The key changes include an express prohibition for cartel provisions (fixing prices, restricting output or allocating markets), and a tenfold increase in penalties for misleading the Commission. The Bill also introduced a suite of exceptions for specified types of agreements, including a clearance regime enabling parties involved in a collaborative activity to seek clearance from the Commission for that arrangement.
66. We also continue to work with MBIE on further changes to the Commerce Act following the previous Government's targeted review of the Act. The proposed changes from the review include the ability for the Minister of Commerce and Consumer Affairs to direct the Commerce Commission to undertake market studies, the establishment of an enforceable undertakings regime, and the repeal of the cease-and-desist regime.
67. Work also continues to look at ways of improving Section 36, which makes it illegal for any business with a substantial degree of market power to take advantage of that power to deter or prevent rival businesses from competing effectively. The Commission supports changes to Section 36 as our enforcement programme

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<sup>3</sup> GCR Rating Enforcement 2017 – New Zealand's Commerce Commission (21 July 2017)

continues to be constrained by practical difficulties in applying the legal tests set down by the courts. We note that the equivalent misuse of market power provision in the Australian Competition and Consumer Act 2010 (Section 46) has been amended (and came into effect in October this year), ostensibly to overcome similar issues and limitations encountered by the ACCC with 'market power' cases.

### **Consumer protection – Fair Trading Act**

68. The FT Act prohibits false and misleading behaviour by traders and a range of other unfair business practices (including unfair contract terms). Consumers need to be able to rely on accurate information when deciding whether to buy products or services and we investigate a range of conduct which may breach the FT Act. In 2016/17 the Commission received 6,798 complaints and completed 237 investigations about FT Act matters.
69. In addition the Commission is responsible for enforcing a number of mandatory product safety requirements such as children's nightwear and cots.

### *Focus Areas*

70. We identify priority areas to ensure we target known compliance issues and prioritise to achieve the greatest impact. We have a number of enduring priorities as well as priority focus areas that we identify each year. Further information on some of these areas is set out below, including some detail on a few key cases from 2016/17.

### Retail telecommunications

71. We have made retail telecommunications a priority for 2017/18. This sector generates a high level of complaints and we continue to see problematic conduct occurring. Combined with our concerns about service quality this indicates that there is still work to be done.
72. Almost every New Zealander uses a mobile or fixed-line phone and broadband. Purchases in this sector are a significant part of household costs and choices and contracts can be complex for consumers. We have done a lot of compliance work with the sector and taken a number of FT Act cases (including in the last year against Trustpower for misleading consumers over the price and terms of a bundle offer and Vodafone for false representations on invoices).
73. We will continue to work with industry, using our enforcement tools where appropriate, to address conduct which we think may be in breach of the FT Act, in order to drive a step change in behaviour. We issued warning letters to the industry in August this year for practices we view as in breach of the FT Act and will continue to focus closely on representations made in advertising, invoicing and contracts.
74. We will also be reviewing the clauses in standard form telecommunications consumer contracts, following our report on unfair contract terms in the industry.
75. We are preparing for the proposed changes to the Telecommunications Act which, if they proceed, will provide us with greater powers to assist us in addressing issues

and protecting consumers. We continue to work with MBIE on this programme change. In addition we are in the process of procuring a provider to measure broadband service performance in the sector.

76. We continue to consider how we can assist consumers in making complex purchasing decisions in the telecommunications sector. An example of this type of consumer outreach is our recent infographic about purchasing broadband services, and we have more to follow.

#### Substantiation/ credence

77. Increasingly products are marketed to consumers as having some performance characteristics or qualities that cannot be independently assessed or verified ('credence' claims). It is difficult for consumers to verify credence claims, including country of origin. Consumers rely on traders' representations to make an informed choice. In our credence work we have focussed on reducing misleading claims about country of origin and product composition.
78. In recent years we have taken cases over yoghurt that wasn't yoghurt, alpaca products that did not contain alpaca, and 'made in New Zealand' bee pollen that was made in China.
79. Credence is one of our areas of focus this year. In our credence work we will continue to focus on reducing misleading claims about country of origin and product composition.

#### Construction

80. We have a number of ongoing FT Act investigations in relation to conduct in the construction sector. The most high-profile of these is our investigation into steel mesh and whether ductile grade 500E mesh meets the required standard. We have filed criminal proceedings against a number of companies in relation to this conduct and issued a warning and a compliance letter to other companies.
81. We have also filed charges against four individuals associated with Cavan Forde Group alleging that they misrepresented the autoclaved aerated concrete products they were supplying as an internationally renowned brand known as Hebel, when consumers were getting a Chinese substitute. In October this year one of the individuals pleaded guilty to nine charges under the FT Act for misrepresentations to staff and customers and was fined almost \$152,000.

#### Product safety and consumer information standards

82. The Commission monitors and enforces a range of product safety and consumer information standards as well as unsafe goods notices under the FT Act. The product safety standards cover baby walkers, children's nightwear, children's toys (intended for children under three), cigarette lighters, household cots and pedal bicycles.
83. During 2016/17 we prioritised inspections relating to cots and toys, taking a range of enforcement action against sellers of both new and second-hand items. We

increased the number, scope and visibility of our proactive product safety inspections to ensure that retailers and suppliers understand this legislation and to drive compliance.

84. In addition, we issued infringement notices to traders who failed to comply with consumer information standards. The majority of these were motor vehicle dealers who did not display compliant Consumer Information Notices.

#### Pricing

85. One of our most common areas of complaints is the manner in which prices are advertised by businesses. We have focussed on cases in relation to opt-out pricing (with an investigation into pre-selection of terms on airline websites), clarity of bundled price offerings, invoicing, and misleading 'was/now' pricing. Our investigation into Bike Barn led to the joint operators of the company being fined \$800,000 for using exaggerated discounting strategies that gave the impression to customers that they were purchasing bikes at significant mark-downs from the normal retail price. Earlier this year we published an open letter to retailers on pricing and have followed this up with a pricing video for retailers on discounting claims and the usual selling price.

#### Unfair contract terms

86. New provisions prohibiting the use of unfair contract terms in standard form consumer contracts came into force in March 2015. These seek to protect consumers from contract terms that create a significant imbalance of rights or obligations between them and the business. We are reviewing standard form contract terms in a range of industries and have published reports on the telecommunications, energy retail and gym sectors. We identified a number of terms which we considered potentially unfair and traders were willing to change or remove these.

#### Extended warranties

87. In 2014 new FT Act provisions imposed specific obligations on the sale of extended warranty agreements. We recently took action against Godfreys for failing to provide consumers with the required information including how the extended warranty compared with CG Act rights and that it could be cancelled within five days of purchase.

#### **Consumer protection – Credit Contracts and Consumer Finance Act**

88. Under the CCCF Act the Commission enforces minimum standards for credit contracts and related protections for consumers.
89. The CCCF Act provides for the clear disclosure of key information to borrowers about credit contracts so that they can make informed decisions as to whether to agree to particular loan offers. It also provides important protections for consumers by:
  - 89.1 prohibiting unreasonable credit fees;
  - 89.2 prohibiting lending that does not comply with responsible lending principles;

- 89.3 prohibiting illegal repossession practices; and
- 89.4 providing for consumers to make hardship applications where, due to unforeseen hardship, they are facing repayment difficulties.
90. We have a dedicated team in our Auckland office to work on investigations in this area and to increase our outreach with budget advisors to obtain better quality information regarding the practices affecting consumers. This has enabled us to get greater visibility of issues arising in the credit area and prioritise particular areas of harm. As a result of our enforcement in these areas our workload has significantly increased.
91. The Supreme Court ruled on the long running MTF/Sportzone credit fee case in 2016, making it clear that credit fees should only cover costs that are closely related to the particular loan transaction. The Court also ruled that the purpose of the CCCF Act is to protect borrowers, ensuring the costs of borrowing are transparent. This clarified the CCCF Act requirement that lenders charge credit fees that are reasonable. We have revised our credit fees guidance as a result of this matter.
92. Another important consumer protection case involves peer-to-peer lender Harmony Ltd (Harmony). The Commission filed proceedings in the High Court in August 2017 alleging that Harmony's platform fee is a credit fee under the CCCF Act and is unreasonable. The Commission is seeking a declaration that the companies have breached the Act, as well as orders to compensate affected borrowers.

#### *Mobile trader project*

93. In 2014/15 we initiated a project which reviewed the mobile trader industry and identified widespread non-compliance with the CCCF Act. Mobile traders (often referred to as truck shops) usually sell goods door-to-door or from a truck. They operate primarily in vulnerable communities and offer consumer goods such as clothes, electronics and shoes on credit. Goods are often priced significantly higher than at traditional retail stores. This report also found low levels of compliance with other important consumer protection laws such as the FT Act and CG Act.
94. We have prosecuted 13 truck shop operators leading to fines totalling nearly \$1.1 million to date, with one individual also being imprisoned, a first in a Commission case.

#### *Consumer advocacy and education*

95. The Commission has a targeted reporting tool for the consumer advisory sector called Red Flags. It is designed to help advisors like budget advisors and community lawyers better identify lender conduct that may be unlawful (such as in the areas of mobile traders and repossession) and make a complaint to us. We value the contribution from the consumer advisory sector, who are in a position to alert us to market practice that may not come to our attention otherwise. The initiative has resulted in a number of successful enforcement cases through the courts.
96. We have now released two seasons of our 'It's All Good' animations. The second series was released in June this year and focuses on consumer issues such as

extended warranties, mobile traders, and door-to-door sales. The episodes have been viewed more than 500,000 times. Our next step is to roll this out further in schools.

### *Responsible lending*

97. In 2016, we initiated a project on high cost short term loans (HCSTL)<sup>4</sup>. Our work in this area focusses on the new Responsible Lending Principles. Following a review of participants in the industry, we are investigating the disclosure and/ or responsible lending practices of a number of lenders.
98. This work is a priority for us in 2017/18 as our monitoring indicates there are lenders failing to comply with responsible lending principles, putting people at risk of hardship.
99. In addition, we intend to offer further information to lenders on complying in an online environment.

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<sup>4</sup> A HCSTL is one that is unsecured (other than an assignment of wages), for a term not more than 12 months and subject to an annual interest rate of 50% or more. Payday loans are typically HCSTLs.

## Regulation

100. In common with most OECD countries, we also provide oversight of markets with limited competition in infrastructure industries that are essential to everyday life and the economy. Economic regulation of these markets can be viewed as a response to the risks that arise when competition is limited.
101. In the absence of effective competition, consumers may question the quality of service they receive and whether it represents good value for money. For example, monopoly providers of critical infrastructure:
- 101.1 may seek to earn excessive profits;
  - 101.2 may have less of an incentive to keep costs under control;
  - 101.3 are less likely to invest at appropriate levels; and (as a consequence)
  - 101.4 may not provide services at a quality that reflects consumer demands.
102. In addition, with critical infrastructure so integral to New Zealand society, significant disruptions can be caused when problems arise. In times of hardship, critical infrastructure arguably becomes more important; for example, immediately after a natural disaster.
103. As a result, we are entrusted with three pieces of legislation that empower us to better understand and influence the performance of targeted markets in certain infrastructure industries. Our specific powers vary under each piece of legislation.

<b>Commerce Act 1986 (Part 4)</b>	<b>Telecommunications Act 2001</b>	<b>Dairy Industry Restructuring Act 2001</b>
Part 4 applies to specified gas pipelines, electricity lines, and major international airports, as well as providing a mechanism for investigating the need for regulation of other markets in which there is little or no competition, and little or no likelihood of a substantial increase in competition	The Telecommunications Act regulates the supply of certain wholesale telecommunications services in New Zealand, including: fixed line services provided over the national copper network, and access to mobile network infrastructure	Promotes the efficient operation of dairy markets in New Zealand by regulating the activities of Fonterra to ensure New Zealand markets for dairy goods and services are contestable

## Part 4 of the Commerce Act—Energy Networks and Major Airports

104. In recent years, there has been a significant increase in predictability for investors, suppliers, and consumers in the gas pipeline, electricity lines, and airport sectors. This follows reforms to Part 4 in 2008 that were designed to bring economic regulation in New Zealand more into line with practice overseas.
105. As a consequence of these reforms, the Part 4 regime currently consists of two main types of regulation:
- 105.1 Information disclosure regulation - requiring monopoly providers to disclose information that will help to facilitate greater public understanding about the performance of critical infrastructure.
- 105.2 Price-quality regulation - requiring us to set price-quality paths that limit the amount of revenue that monopoly infrastructure providers can recover, and establish the standards for minimum service quality.<sup>5</sup>
106. The table below shows which of these types of regulation apply to each sector. Notably, information disclosure regulation applies to all 29 regional electricity distributors, Transpower New Zealand, four gas pipeline businesses, and the airports in our three major cities.

<b>Types of regulation by sector</b>		<b>Information Disclosure</b>	<b>Price-Quality Regulation</b>
Electricity	Transmission	✓	✓
	Distribution	✓	17 out of 29 distributors
Gas	Transmission	✓	✓
	Distribution	✓	✓
Major International Airports		✓	✗

### *Input methodologies—the up-front rules, requirements and processes of regulation*

107. As part of the changes to Part 4, we have set the up-front rules, requirements, and processes of regulation (collectively known as ‘input methodologies’). Input methodologies cover the matters that have historically proven to be amongst the most contentious aspects of regulatory decision making.<sup>6</sup>
108. We are required to review input methodologies at least every seven years, and our first review was completed in December 2016 (with the exception of a few minor areas). We focussed on prioritising the issues that best promoted the long-term

<sup>5</sup> These requirements remain in place for up to five years before being reset. [note: incentive effects]

<sup>6</sup> For example, in the gas sector, we consulted for a number of years on the appropriate asset valuation methodology to be applied to our decision making for the Gas Authorisation. We consulted for a further two years on the same topic before input methodologies for asset valuation were first determined in December 2010.

benefit of consumers, including, where possible, reducing compliance costs and complexity for the sectors we regulate.

109. Amongst other things, our review resulted in an update to the calculation of the rate of return that is used to assess profitability and set limits on revenue. As part of that process, we considered a range of views on the impacts that new technologies will have in the energy sector. This is an ongoing issue with MBIE now taking the lead on this topic from a policy perspective.

#### *Electricity transmission*

110. Transpower New Zealand is the state owned enterprise that owns and operates the high voltage national grid. Auckland is the largest energy demand centre, and much of the electricity generation capacity is in the South Island. Transpower's 12,000 route kilometres of lines includes a 350kV DC circuit and undersea cables that connect the main hydro generators in the South Island to the North Island.
111. Transpower is subject to a form of price-quality regulation known as 'individual price-quality regulation'. Each individual price-quality path provides a revenue allowance to manage the transmission network over a five year period. It is up to Transpower to decide which individual projects it will progress in light of its allowance and quality standards, using its own processes and investment criteria.
112. Major development projects on the core grid are treated differently. Funding for these projects is approved by the Commission on a case-by-case basis where certain criteria in our input methodologies are met. For example, in June we published a decision to allow Transpower to spend \$10.6m on its Central Park/Wilton B project, which was around \$15m less than Transpower had initially requested.
113. The individual price-quality path applying to Transpower runs until 31 March 2020 at which time it will be reset for another 5 years. In the interim, we will continue to monitor Transpower's compliance with the existing path. We will also review disclosed information to monitor Transpower's performance against the other expectations we formed when the last price-quality path was determined.

#### *Electricity distribution*

114. New Zealand has 29 electricity distributors of varying size that each provide services to geographically distinct regions, as shown in the diagram below. Buller Electricity serves less than 5,000 connections; Vector serves over 100 times more.<sup>7</sup>

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<sup>7</sup> By network length, Powerco is the largest, servicing nearly 30,000km of network across large parts of the lower North Island.

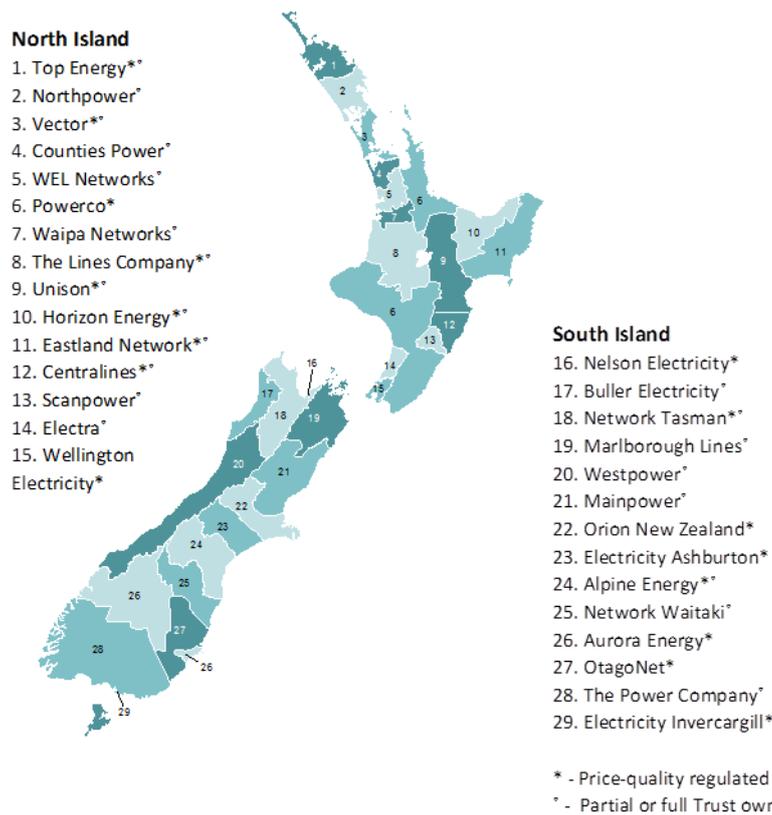


Figure 4: Location and ownership of 29 electricity distributors

115. Unlike most other countries, many of these distributors are owned, in whole or in part, by the consumers they serve. These consumers can vote for ‘Trustees’ that act on their behalf.<sup>8</sup>
116. For this reason, 12 of the 29 distributors have been exempted from price-quality regulation. This is because the ownership arrangements are such that profits are returned directly to almost all consumers (in the form of rebates). Parliament considered that the risk of these distributors seeking to earn excessive profits is therefore relatively limited.<sup>9</sup>
117. The remaining 17 of the 29 distributors are subject to price-quality regulation. This group includes a number of distributors (like Vector) that are part owned by the consumers they serve, but that also have a significant proportion of consumers that do not have shares or voting rights. Likewise, distributors under council ownership are subject to price-quality regulation because consumers are not able to vote for Trustees directly.
118. The specific form of price-quality regulation that applies to these 17 distributors is called ‘default/customised price-quality regulation’. This sets the revenue that can

<sup>8</sup> Notably, the election of the Trustees that oversee Vector in Auckland is the third largest election in New Zealand, after the general election, and Auckland city council elections.

<sup>9</sup> However, profits may be redistributed in a way that does not reflect electricity usage, eg, residential consumers may receive a similarly sized rebate as large scale industrial users.

be earned and the quality of delivery that must be achieved. Under this type of regulation, we set a default price-quality path for each and every distributor, but individual distributors may later seek a customised price-quality path instead if they believe their circumstances warrant it.<sup>10</sup>

119. The current default price-quality paths for electricity distributors run until 31 March 2020. In the intervening period, individual distributors are able to apply for a customised path that better reflects their particular circumstances. To date, a customised path has only been determined for Orion New Zealand (following the Canterbury Earthquakes).
120. Recently however, Powerco Limited has applied for a customised price-quality path in light of the age and condition of the network, and we are therefore considering this application alongside the issues being caused for other distributors by ageing assets.<sup>11</sup> Aurora Energy, for example, has also signalled an intention to apply for a customised price-quality path to apply from 2020.
121. Other areas of focus over the coming year are likely to include the resilience of infrastructure (including to natural disasters), the likely impact of emerging technology (such as battery storage), the rules for transactions involving related parties, and the performance of Trust owned distributors. We will also continue to work closely with the EA, which has responsibility for overseeing distribution tariff structures and Transpower's pricing methodology.

#### *Gas pipelines*

122. New Zealand is self-sufficient in natural gas, which is processed on and off the west coast of the North Island and transported via two transmission pipelines owned by First Gas. The transmission pipelines deliver the gas to a number of distributors and direct users, such as power plants.
123. We have recently determined the default price-quality paths that will apply to providers of gas pipeline services from 1 October 2017. Like electricity distributors, individual providers of gas pipeline services will also be able to apply for a customised price-quality path if the default path is not suitable.

#### *Major international airports*

124. Information disclosure regulation applies to specified services at the three major international airports in Auckland, Wellington and Christchurch. Specified airport services include aircraft, freight, airfield, and specified passenger terminal activities, but exclude other services such as car parks and retail facilities.

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<sup>10</sup> This type of regulation is cost effective given the size and number of distributors in New Zealand. We are required to set the default price-quality paths for all 17 distributors in a relatively low cost way. More costly customisation for individual distributors is then only required on application.

<sup>11</sup> We expect to issue our draft decision on Powerco's proposal in November 2017.

125. We have previously been required to report to Ministers on the effectiveness of information disclosure regulation for airports. Although we generally found that information disclosure was effective, Wellington Airport was found to have targeted excessive profits. Wellington Airport subsequently reset prices in June 2014 which reduced expected revenue by around \$30m.
126. The price setting events for Auckland Airport and Christchurch Airport were completed midway through 2017.<sup>12</sup> In the year ahead, we expect to report back on whether the price-settings events are consistent with the purpose statement contained in 52A of the Commerce Act.<sup>13</sup> The profitability targeted by each airport is likely to remain the main area of focus for stakeholders (such as the Board of Airline Representatives New Zealand).

### **Telecommunications Act—Fixed line and mobile markets**

127. The main purpose of the Telecommunications Act is to promote competition in telecommunications markets, for the long-term benefit of end-users. In combination with our consumer protection work (page 16), our regulatory responsibilities encompass both the access of fixed line services provided over the national copper network owned by Chorus and access between mobile networks.<sup>14</sup>
128. One of the key priorities for us recently in telecommunications regulation has been to support the introduction of the Telecommunications (New Regulatory Framework) Amendment Bill led by MBIE. The Bill is intended to ensure the regulatory regime takes into account the changing market structure following the deployment of the ultrafast broadband fibre networks.
129. The changes being proposed to the regulation of fixed line services would require the Commission to develop input methodologies, establish information disclosure requirements, and put in place price-quality regulation. This would establish a regime similar to that currently in place for energy networks and airports.
130. Other changes to the Telecommunications Act are expected to strengthen the Commission's mandate to monitor and intervene in retail markets.
131. Outside of any changes to the Telecommunications Act, we have existing obligations to monitor the performance and development of markets, including competition and the performance of retailer service offerings. We also produce an annual monitoring report and undertake regular broadband monitoring for which we have recently gone out to tender. We also initiated a study into how mobile markets are

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<sup>12</sup> Following the reset in 2014, the next price setting event for Wellington Airport is not due until 2019.

<sup>13</sup> Draft reports on our assessment of these events are to be issued in March 2018 for Auckland Airport and May 2018 for Christchurch Airport.

<sup>14</sup> In December 2015, we provided a five-year period of pricing certainty in the fixed line, wholesale broadband market for two key products when we set a limit on the price that Chorus can charge retailers for certain telecommunication services. We have also determined the level of service that Chorus is required to provide for one of those products.

developing and performing in October this year and continue to consider what to do in light of the changing role of telecommunications in consumers' lives.

## **Dairy**

132. When Fonterra was established, it had a substantial degree of market power in a number of domestic markets. The DIR Act was implemented to mitigate the risks of Fonterra's market power. The DIR Act applies to the raw milk market (which is expected to become more competitive over time) and also provides for access to other dairy goods or services supplied by Fonterra to be regulated if necessary.
133. Amongst other things, the DIR Act required the Minister of Primary Industries, in consultation with the Minister of Commerce and Consumer Affairs, to request a report into the state of competition when the Minister was satisfied that independent processors collect 20% or more of milk solids in a season in either island.
134. In 2015, the 20% threshold was met in the South Island and the following year we completed a review of the state of competition in the dairy industry that included considering the impact of existing regulation on efficiency. There was not found to be sufficient competition and therefore we did not recommend full deregulation. Instead, we proposed a pathway to deregulation that may facilitate the development of a functioning factory gate market.
135. As required under the DIR Act on an annual basis we review and report on the manual and calculation that Fonterra uses to set the price that farmers receive for the milk they produce (and which influences what others pay in the supply chain). Our recent report sets out our conclusions on the extent to which Fonterra's manual and calculation are consistent with the purpose of the milk price monitoring regime.<sup>15</sup>

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<sup>15</sup> The purpose of the milk price monitoring regime is set out in s 150A of the Act: The purpose of this subpart is to promote the setting of a base milk price that provides an incentive to Fonterra to operate efficiently while providing for contestability in the market for the purchase of milk from farmers.

## **Capability and Resourcing**

### **Our people**

137. We know we can only achieve our outcomes if we have the right people, leadership and tools to do our jobs. We aim to attract, develop and retain the highest quality staff possible who are capable of performing at a high level, driven to achieve goals, and aligned with the Commission's five year vision and strategy and values. Having capable people is vital to our ability to be an effective competition authority and regulatory agency so it is important that we are focused on updating our skills to remain current, efficient and effective.
138. We have a positive work culture and have a high level of employee engagement. The Commission team includes people with backgrounds in economics, finance, engineering, business and law, and with a mix of both private and public sector experience.
139. We invest in programmes that develop our people and organisational capability. We use feedback from employee surveys to inform development and business improvement opportunities. We take an integrated approach to recruitment and development, including promoting equal employment opportunities and ensuring business improvement in this area is consistent with the seven key elements of being a good employer (as set out by the New Zealand Human Rights Commission).
140. At an organisation-wide level we provide learning and development opportunities to keep developing our people capability. In this context we continue to develop more tailored professional development and knowledge sharing opportunities linked to the sectors we work with and the specialist skills and knowledge we require (eg, economics, law, finance, engineering, investigations).
141. We run an annual employee engagement survey to gather feedback from our employees and ensure we continue to improve. In our most recent survey in 2017 we maintained an engagement score well above the State Sector Benchmark. We are committed to continuing to improve by working with our employees to identify and respond to opportunities to make the Commission a great place to work.

### **Financial resourcing for 2017/2018**

142. The Commission is focused on using sound financial management to deliver on its objectives and to ensure that we have the resources to deliver outcomes that are the most important to New Zealanders.

### *Funding*

143. The Commission is funded in 2017/18 through nine different appropriations under Vote: Business, Science and Innovation.

144. Attachment C details the Commission's Crown funding for each appropriation for 2017/18. Further financial information is contained in the Commission's 2017/18 Statement of Performance Expectations and 2016 Annual Report.<sup>16</sup>
145. In the 2016/17 year we received approximately 58% of our income from the Crown (general taxes), 37% ultimately funded by regulated industries through levies, and 5% of our income came from interest revenue, determination applications, and cost recoveries.
146. The Commission's operating expenditure budget for 2017/18 included in the Statement of Performance Expectations is \$45.801 million (GST exclusive). The Commission is funded primarily by the Crown (\$42.685 million), through a combination of general taxes and industry levies. The remaining revenue is made up of interest on cash that we hold, court cost awards from litigation, and application fees and recoveries paid by businesses seeking clearances and other determinations.
147. The Crown revenue budget for 2017/18 differs to the total appropriation funding of \$43.967 million set out in the Estimates of Appropriations due to forecast changes. The Estimates of Appropriations are prepared in advance of the Commission's detailed annual planning processes. Our estimates are updated in the Supplementary Estimates of Appropriations each year.

#### *Funding reviews*

148. Funding reviews have been completed for many of our areas of activity in recent years. Budget 2016 provided an additional \$3.55 million in the General Markets appropriation per annum to better protect consumers and to promote competition, and a one-off \$1 million allocation of funding for conducting Part 4 inquiries. In addition, an extra \$0.75 million per financial year has been made available to implement the new functions and responsibilities arising from the passing of the Commerce (Cartels and Other Matters) Amendment Act.
149. We will continue to work with MBIE to consider the appropriate level of funding for our Telecommunications responsibilities that are expected to result from the review of the Telecommunications Act. We will also work with MBIE on the appropriate level of funding in relation to proposed changes to the Commerce Act (including the introduction of market studies) should the proposals to give the Commission additional responsibilities proceed.

#### *Sustainable operations*

150. As discussed above, additional General Markets funding effective 1 July 2016 has ensured that financial deficits are no longer forecast over the medium-term and that the Commission is better placed to deliver on its responsibilities, particularly in the Competition and Consumer space.

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<sup>16</sup> Our 2017 Annual Report is currently undergoing audit and is due for publication in late-October 2017.

151. We will continue to find efficiencies and ensure that our operations remain financially sustainable over the medium term. We have taken a number of steps over recent years to manage our costs and improve efficiency – restructuring the organisation, standardising and streamlining processes, and providing shared services. The Commission has also invested in information systems infrastructure and modern and appropriate accommodation in our Wellington and Auckland offices.

#### *Reserves*

152. The Commission actively manages its reserves to minimise risk to the Crown. We ensure that we maintain reserves at a level which allows us to manage our litigation and other financial risks. These risks are diverse and often involve a large amount of unanticipated expenditure in a relatively short timeframe. In particular, large litigation cases can create significant potential risks, so we must hold enough reserves to allow us to take cases we believe are important for the long-term benefit of New Zealanders.

#### **Efficiency**

153. In carrying out our work the Commission continues to look for ways to operate more efficiently and effectively. We carefully monitor our work programme to anticipate any significant pressures on our operating budget, and manage our costs within current appropriation levels. We achieve savings by reviewing and streamlining our structure and activities, and by making process and systems improvements.
154. In 2017 we implemented a number of information systems improvements aimed at increasing our efficiency. In terms of the wider state sector we also take opportunities to use or provide shared services with other agencies where it makes good business sense to do so.
155. We have put in place a number of shared service arrangements with the EA and the Tertiary Education Commission (TEC) to realise service improvements and cost efficiencies. These improvements include the provision of IT and disaster recovery services (EA) and use of shared reception facilities (TEC). We continue to explore other possible back-office shared services arrangements and seek out opportunities to use or provide shared services with other agencies where it makes good business sense to do so. We will also continue to adopt All-of-Government contracts to achieve value-for-money improvements.
156. We work cooperatively with other government agencies to ensure we achieve our goals without duplication and to share information and expertise where it is possible to increase value for money for the taxpayer. Also as part of building our overall intelligence capability, we collect data from other government agencies and NGOs to inform our knowledge of emerging issues and risks to consumers.

*Benchmarking our administration and support costs*

157. In order to monitor our efficiency, we benchmark our human resources, finance, procurement, information and communications technology, and corporate and executive services functions and identify strengths and areas for improvement.
158. We continue to use Treasury's Benchmarking Administrative and Support Services (BASS) framework, although we are not one of the agencies directly involved in the programme. We aim to keep our administration and support costs as a proportion of our total organisation running costs in line with the median for the BASS small agency cohort.

## Attachment A – The Board



Dr Mark Berry  
CHAIRMAN

Dr Mark Berry was appointed Chairman in April 2009 and his term expires in March 2019. He is a former partner of law firm Bell Gully and former consultant with Chapman Tripp. Mark has been in practice as a barrister sole since 2002 and holds a doctorate from Columbia University, New York. He is a former member of the faculty at Otago University Law School, and is a member of the International Advisory Board at the Institute for Consumer Antitrust Studies at Loyola University Chicago School of Law. Mark is also an Associate Member of the ACCC, a position he will hold until 31 March 2019.



Sue Begg  
DEPUTY CHAIR

Sue Begg was appointed as a Commissioner in June 2009 and Deputy Chair in July 2010. Her term was renewed for a further 5 years in June 2014. She was also appointed as an Associate Member of the ACCC in April 2016. Sue is an economist, whose previous roles include director of the consultancy company Impetus Group Limited, Vice-President and head of the economic advisory unit of the investment banking division of Credit Suisse First Boston NZ Limited (and its predecessor companies) and manager of the Macroeconomic Policy section at the Treasury.



Dr Stephen Gale  
TELECOMMUNICATIONS  
COMMISSIONER

Stephen Gale was appointed as the Telecommunications Commissioner in July 2012 and his term was renewed for a further 3 years in June 2017. Prior to July 2012, he was an Associate Commissioner for 2 years. Stephen has specialised for some years in infrastructure economics (energy, telco and transport) and competition proceedings at the consulting firm Castalia. Before that he was at the New Zealand Institute of Economic Research. He holds a PhD from the University of Cambridge.



Anna Rawlings  
COMMISSIONER

Anna Rawlings was appointed as a Commissioner in June 2014. She was previously a partner in the dispute resolution division of Minter Ellison Rudd Watts, where she specialised in contentious and non-contentious aspects of competition, regulatory and consumer law. Anna holds a BA/LLB (Hons) from the University of Auckland and an LLM from the University of Toronto, where her work focused on law and economics.



Elisabeth Welson  
COMMISSIONER

Elisabeth Welson was appointed in September 2012 as Associate Commissioner and as a Commissioner on 19 August 2013. Before joining the Commission, she was a senior commercial partner at Simpson Grierson, where she co-led the competition and regulatory group and headed the energy, natural resources and utilities market group. Elisabeth holds an LLB (Hons) from the University of Auckland and has practised as a barrister and solicitor in New Zealand as well as a solicitor of the Supreme Court of Queensland and solicitor of the Supreme Court of New South Wales.



Dr Jill Walker  
COMMISSIONER

Jill Walker began her term as a Commissioner on 1 December 2015, following her appointment as an Associate Commissioner in November 2010. She was a Commissioner of the ACCC in Australia from September 2009 to April 2016. Before joining the ACCC, Jill was a Member of the Australian Competition Tribunal and worked as an economic consultant. She holds a BA in economics and a PhD in land economy from the University of Cambridge. She also holds a Masters degree in economics from the University of Massachusetts.



Graham Crombie  
ASSOCIATE COMMISSIONER

Graham Crombie was appointed in July 2015 as an Associate Commissioner for a five-year term. Graham is a Fellow of Chartered Accountants ANZ and a Chartered Fellow of the Institute of Directors. He is a previous President and Chairman of the New Zealand Institute of Chartered Accountants. Graham has a Bachelor of Commerce from Otago University and was awarded a Master of Design Enterprise. He has 30 years' experience in professional services firms specialising in audit and consulting. Since 2013 he has been acting as an independent director to a range of organisations in both the private and public sector.



Sarah Court  
ASSOCIATE COMMISSIONER

Sarah Court was cross-appointed from the ACCC as an Associate Commissioner in December 2015. She has been a Commissioner of the ACCC since April 2008, being reappointed for a further five-year term in 2013. She is a former senior executive lawyer and director with the Australian Government Solicitor. She has extensive experience in Commonwealth legal work, including restrictive trade practices, consumer protection and law enforcement litigation. As Chair of the ACCC's Enforcement Committee, Sarah oversees the agency's enforcement and litigation programme. She also sits on the ACCC's Merger Review Committee, Adjudication Committee and Infrastructure Committee.

*We also have an external convenor for our Audit, Finance and Risk Management Committee – Fred Hutchings. Fred was a partner with PricewaterhouseCoopers and was formerly President of New Zealand Institute of Chartered Accountants.*

## Attachment B – Senior Leadership Team



Brent Alderton  
CHIEF EXECUTIVE

Brent Alderton has held the role of Chief Executive since January 2011. He joined the Commission in 2009 and held the role of General Manager Regulation immediately prior to becoming Chief Executive. Before joining the Commission, he gained a broad range of business experience in both the private and public sector in New Zealand. This includes a variety of finance, strategy, policy and analysis roles at organisations such as New Zealand Oil and Gas Limited, Deloitte, the Electricity Corporation, the Treasury and the Department of Social Welfare. Brent has a BA (Hons) in economics and an MA in political studies from the University of Otago.<sup>17</sup>



Nick Russ  
GENERAL MANAGER REGULATION

Nick Russ is General Manager Regulation and manages the Commerce Commission's regulatory functions across a number of sectors including electricity lines, gas pipelines, major airports, telecommunications and dairy. He was previously Head of Part 4 and Dairy. Nick joined the Commission in November 2010 as a Chief Adviser in the regulation branch working across a range of regulatory issues. Before joining the Commission he spent a number of years working for energy regulators in the UK and Australia. Nick has BE (Hons) in electrical engineering and is a chartered engineer.



Antonia Horrocks  
GENERAL MANAGER COMPETITION

Antonia Horrocks is General Manager Competition and manages the Competition and Consumer functions. She joined the Commission in August 2016 and was previously a Project Director at the UK Competition & Markets Authority, managing competition and consumer cases. She held a similar role at the UK Competition Commission. Before joining the regulator, Antonia worked as an antitrust lawyer in London for nearly a decade, most recently as Counsel in the Antitrust Group of Shearman & Sterling (LLP) in London. She started her career in New Zealand and has a law degree, a BA (Hons) in English and a Postgraduate Diploma in EU Competition Law.



Geoff Williamson  
GENERAL MANAGER ORGANISATION  
PERFORMANCE

Geoff Williamson joined the Commission in July 2011 and leads the organisation performance functions. He was previously Director Corporate Services at the Tertiary Education Commission and his previous work experience includes as Chief Financial Officer at the National Library of New Zealand and a range of roles at Deloitte. Geoff has a BCA from Victoria University of Wellington and an Executive Master of Public Administration through the Australia and New Zealand School of Government, and is a Chartered Accountant.

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<sup>17</sup> At the time of preparation of the briefing Brent Alderton has resigned from the Commission, finishing in January 2018. The Board has commenced a recruitment process to identify and appoint a new Chief Executive.

## Attachment C – Commerce Commission appropriation funding 2017/18

Appropriation	Funding Method	Scope of Appropriation	Estimates Appropriation 2017/18 (\$000)	Appropriation Type: MYA, MCA, AA <sup>18</sup>
<b>Non-Departmental Output Expenses</b>				
<b>VOTE: BUSINESS, SCIENCE AND INNOVATION: Commerce and Consumer Affairs</b>				
Economic Regulation Inquiries	Levy	This appropriation is limited to economic regulation inquiries undertaken by the Commerce Commission in accordance with Part 4 of the Commerce Act.	1,000	AA
Review of Input Methodologies for Economic Regulation	Levy	This appropriation is limited to the review of input methodologies for economic regulation under Part 4 of the Commerce Act	0	AA
Economic Regulation of Electricity Lines Services 2014-2019 (MYA)	Levy	This appropriation is limited to the regulation of electricity lines services under Part 4 of the Commerce Act 1986 for the period 2014-2019	5,280	MYA (full 5 year appropriation: \$28,311)
Economic Regulation of Gas Pipeline Services 2014-2019 (MYA)	Levy	This appropriation is limited to the regulation of gas pipeline services under Part 4 of the Commerce Act 1986 for the period 2014-2019	1,430	MYA (full 5 year appropriation: \$9,684)
Economic Regulation of Specified Airport Services 2014-2019 (MYA)	Levy	This appropriation is limited to the regulation of specified airport services under Part 4 of the Commerce Act 1986 for the period 2014-2019	677	MYA (full 5 year appropriation: \$2,763)
Enforcement of Dairy Sector Regulation and Auditing of Milk Price Setting	Crown Revenue / Levy	This appropriation is limited to funding for reviewing Fonterra's milk price setting arrangements, dispute resolution, enforcement and reports under the Dairy Industry Restructuring Act 2001 and related regulations	757	AA
Enforcement of General Market Regulation	Crown Revenue	This appropriation is limited to the administration, education, enforcement and adjudication activities of the Commerce Commission in relation the Commerce Act 1986, The Fair Trading Act 1986, and the Credit Contracts and Consumer Finance Act 2003.	17,823	AA
<b>VOTE: BUSINESS, SCIENCE AND INNOVATION: Communications</b>				
Enforcement of Telecommunications Sector Regulation	Levy	This appropriation is limited to the regulation and monitoring of telecommunication services in accordance with the Telecommunications Act 2001	6,500	AA
<b>Total Non-Departmental Output Expenses</b>			<b>33,467</b>	
<b>Non-Departmental Other Expenses</b>				
<b>VOTE: BUSINESS, SCIENCE AND INNOVATION: Commerce and Consumer Affairs</b>				
Commerce Commission Litigation Funds (MCA)	Crown revenue	The single overarching purpose of this appropriation is to meet the costs of litigation activity undertaken by the Commerce Commission arising from its general market or sector specific activities		MCA
<i>Externally-Sourced Litigation</i>		This category is limited to meeting the external direct costs of major litigation activity undertaken by the Commerce commission arising from its general market or sector specific activities	7,000	
<i>Internally-Sourced Litigation</i>		This category is limited to meeting the internal costs of major litigation activity undertaken by the Commerce commission arising from its general market or sector specific activities	3,500	
<b>Total Litigation Funds MCA</b>			<b>10,500</b>	
<b>Total</b>			<b>43,967</b>	

<sup>18</sup> MYA: multi-year appropriation; MCA: Multi-category appropriation; AA: Annual Appropriation