

Quarterly Snapshot

January–March 2023

The Commerce Commission is New Zealand’s primary competition, fair trading, consumer credit and economic regulatory agency.

This quarterly snapshot provides a high level overview of work underway at the Commission.

This is our second snapshot. Future snapshots will continue to build year-to-date information.

For more information about us and about our work, please go to www.comcom.govt.nz.

Note: numbers may have small variances from time to time due to delays in entering data.



Enquiries to the Commission

Consumers and businesses contact the Commission to raise concerns about activities and behaviours that may be against the laws we enforce. All contacts are important to us and directly and indirectly inform our investigation, enforcement and other regulatory work. The following tables indicate how many enquiries the Commission has received this quarter and in which regulatory area. This snapshot also refers to the total number of enquiries we received in 2021/2022.

Enquiries received Q3 2022/2023

Legislation	Fair Trading Act 1986	2847
	Credit Contracts and Consumer Finance Act 2003	95
	Commerce Act 1986	71
	Fuel Industry Act 2020	8
	Total (including enquiries from other Acts)	2998

Enquiries received July 2021–June 2022

Legislation	Fair Trading Act 1986	7014
	Credit Contracts and Consumer Finance Act 2003	333
	Commerce Act 1986	209
	Fuel Industry Act 2020	97
	Total	7837

Quarterly comment on enquiries to the Commission

We received 2,998 enquiries across our main regulatory responsibilities during the quarter. This is a higher number than Q3 2022/2023.

The Commission has also received in Q3 January–March 2023, 121 enquires that are not linked to a specific act, making a total of 329 year to date.

As in previous quarters, most of the enquiries related to the Fair Trading Act and were concerns about false or misleading behaviour. Key issues included disputes relating to refunds, cancellations of services, pricing issues, and problems with faulty products.



Investigations and Compliance

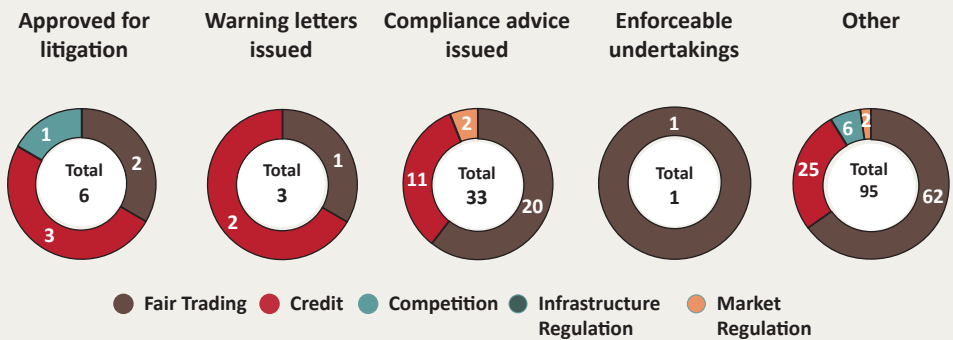
The Commission has a large number of investigations and compliance activities underway at any one time.

We use our enforcement response guidelines in deciding whether to open an investigation and what compliance and enforcement action to take during and at the end of an investigation.

The table to the right indicates how many active investigations the Commission has underway. The outcomes of completed investigations are also indicated.

Investigation outcomes		Active investigations Q3	Completed investigations YTD
	Fair Trading	106	199
	Credit	46	41
	Competition	28	15
	Infrastructure Regulation	4	2
	Market Regulation	18	1

Investigations outcomes Q3 2022/2023



*The outcomes of other investigations were concluded utilising the full range of responses under our enforcement response guidelines.

Quarterly comment on investigations and compliance

The Commerce Commission has filed 13 representative charges against The TV Shop (Brand Developers Limited), that focus on marketing and promotional practices it believes are likely to mislead Kiwi consumers. The case involves three different kinds of representations made to consumers which the Commission alleges were misleading. This enforcement action emphasises for businesses the importance of making sure that all promotional and marketing activities are accurate, unambiguous and not misleading.



Litigation

The Commission is able to take enforcement action under legislation. The Commission can prosecute businesses and individuals.

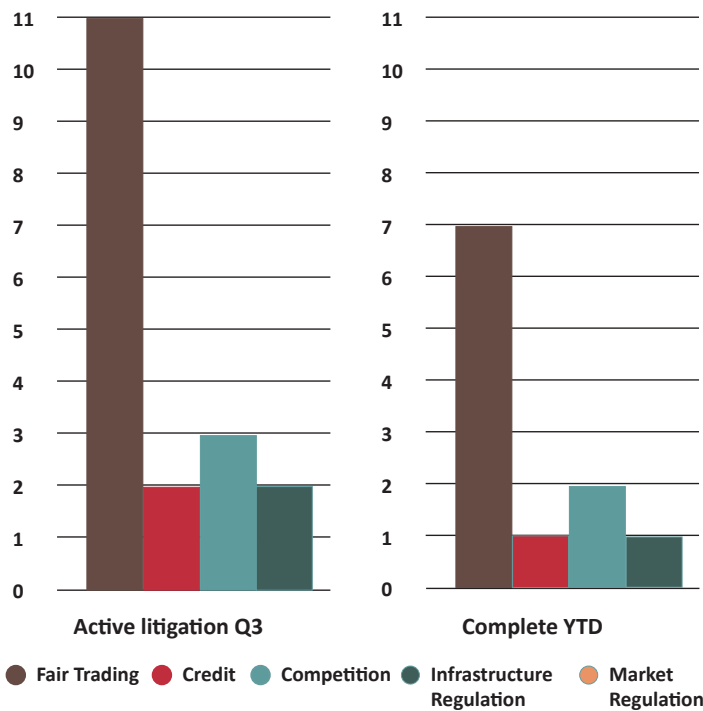
The graphs to the right indicate the litigation that the Commission has underway.

Quarterly comment on litigation

The substantive trial against Viagogo was completed on 9 March 2023. The Commission had filed proceedings against Viagogo AG, a Swiss-based online ticket reseller, seeking declarations in the High Court in relation to allegations that Viagogo AG had breached the Fair Trading Act by inadequately disclosing its status as a resale platform, by making misleading and deceptive representations about its ticket ‘Guarantee’, about the scarcity of tickets, about the price of tickets, about its status as an ‘Official’ seller of tickets, and by using a term that the Commission says is an Unfair Contract Term. The judgment has been reserved.

The Vodafone FibreX appeal hearing was held in mid-March. The Commerce Commission filed an appeal in the High Court against a record \$2.25 million fine imposed on Vodafone NZ Limited (Vodafone) for its offending under the Fair Trading Act during its FibreX advertising campaign. The Commission argued that the fine did not appropriately reflect the seriousness of the offending, and the size and financial resources of Vodafone. The Commission also argued that Vodafone’s conduct was wilful (rather than grossly careless) and allowed Vodafone to make significant commercial gains. The decision has been reserved.

Litigation overview Q3 2022/2023





Projects of Significance

The Commission has significant programmes of regulatory work underway. Our regulatory role in infrastructure regulation includes aspects of the New Zealand supply chain for essential services; such as electricity, gas, fibre and airports. Regulated markets include; telecommunications, fuel, groceries and dairy.

Highlighted on the right is a selection of the pieces of work that the Commission is currently involved in. The list is not exhaustive.

Further information on each piece of work, and many other pieces, is available on our website, including how you can engage with us.

Feedback from New Zealand businesses, consumers, and sectors we regulate is important to us in relation to that work.

Previous milestones	Input methodologies for energy and airports review	Electricity distribution targeted information disclosure review	Market studies 3 – Residential building supply	Grocery Industry Competition Bill	New retail payment system legislation	Telecommunications retail service quality
	Emerging views phase. November 2022: Workshops on wider electricity issues.	Reviewing submissions. 25 November 2022: Tranche 1 final decisions published.	6 December 2022: Final submissions and final report published.	Grocery Industry Competition Bill introduced.	Interchange fee limits applied and issue compliance guidance; initial market monitoring (information requests).	October 2022: Product disclosure: Emerging Views paper published for consultation. December 2022: TDRS membership and non-membership list published. Customer service: Monitoring consultation paper to be published for consultation.
	Emerging views phase. March 2023: Publish submissions in response to the expert report on the cost capital and the options for maintaining investment incentives in the context of declining demand. Notice of Intention publication.	March 2023: Tranche 2 – Technical elements workshop. Non-material amendment Determination 2023 and Issues and Guidance Register.		8 January 2023: Submissions on the Bill close. March 2023: Bill was considered by the Select Committee.	March–April 2023: Initial observations. March 2023: Update on programme of work.	January–March 2023: Final decision for Product Disclosure: Emerging Views paper.
Future milestones	June 2023: Decisions due in Q2. December 2023: Final decision due.	Mid 2023: Tranche 2 draft decisions paper. November 2023: Tranche 2 final decision.	Government reponse to final report.	May 2023: Bill second reading. Bill present to the house by the Committee. Bill third reading.	May 2023: Monitoring compliance with the initial pricing standard. Late 2023: Assess impact of interchange fee regulation.	Final decision for Customer service: Monitoring consultation paper.

Quarterly comment on projects of significance

Competition Branch

- On 22 March 2023, the Commerce Commission issued new guidance to help businesses understand how and when they can collaborate in response to an emergency – such as working together in regions impacted by Cyclone Gabrielle.
- On 29 March 2023, the Commerce Commission launched our Misuse of Market Power Guidance, ahead of a law change on 5 April 2023 that will make it easier to take action against businesses with market power whose conduct stifles competition.

Water services reform programme

- Two weeks ago, the Minister of Local Government, Hon Kieran McAnulty announced changes to water services reforms, now known as the affordable water reforms. The changes are designed to strengthen the connection between local communities and their water services provider while ensuring affordability of services for households.
- It proposes ten water service entities, instead of four, which will be grouped roughly in-line with the geographic areas of regional councils. There will be a staggered six-month to two-year delay to entities being stood up, to avoid all ten becoming operational at the same time. The first water service entity will be stood up from early 2025, with all 10 being operational by 1 July 2026 at the latest.

Chorus’ price-quality path that will apply revenue limited and quality standards from 2025

- This will be the second regulatory period for which we have set a price-quality path for Chorus. Chorus’ price-quality path will be reset in 2024 to take effect from 1 January 2025. January 2023 Submissions on draft decision for length of period published, and Cross-submissions on draft decision for length of period published. February 2023 Final decision for the length of Chorus’ fibre price-quality path from 2025 published.



Competition clearances and authorisations

The Commission administers a voluntary clearance regime for mergers and acquisitions. We take enforcement action to prevent anti-competitive transactions if prior clearance is not sought.

We also grant an authorisation for an acquisition that would result in a substantial lessening of competition if the public benefits from the acquisition and are found to outweigh the competitive harm.

The data indicates the number of mergers, acquisitions clearances and authorisations that are underway or have been decided year to date.



Q3: 1 January–31 March 2023		Merger clearances s66	Merger authorisations s67	Collaborative activity clearances s65A	Trade practices authorisations s58
	Decided	0	0	0	0
	Undecided at end of quarter	4	0	0	0
YTD: Outcomes 2022/2023		Merger clearances s66	Merger authorisations s67	Collaborative activity clearances s65A	Trade practices authorisations s58
	Cleared unconditionally	4	0	0	N/A
	Authorised	N/A	0	N/A	2
	Cleared with divestment	1	N/A	N/A	N/A
	Declined	0	0	0	0
	Withdrawn	0	0	0	0
	Sol/SoUI issued	4	N/A	0	N/A

Quarterly comment on competition clearances and authorisations

The Commission received one new application for merger clearance in Q3 relating to pet supplies. There are four merger clearance applications undecided at the end of the quarter. Current merger applications involve video gaming, telecommunication tower assets and construction additives.



Official Information Act

The Official Information Act (OIA) gives New Zealand the right to request official information. The Commission proactively publishes selected official information responses on our website to improve transparency. We publish responses that do not compromise confidentiality, privacy or ongoing investigations.

Quarterly comments on OIA

This quarter, we received a number of OIA requests about complaints made to the Commission.

Many of these requests were from law firms on behalf of their clients who are being investigated or helping with our inquiries. The Commission also received requests for complaint information from the media, and from businesses themselves wanting to know if the Commission had received complaints about them.

Q3 2022/2023

54 OIA requests received

146 OIAs completed (including received from previous quarters)

