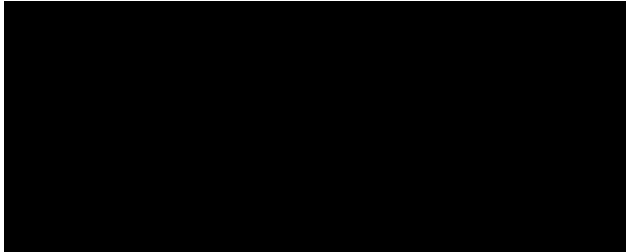


8 December 2023



### **Official Information Act #23.109 – Response**

1. We refer to your request received on 10 November 2023 for information about takeaway food prices concealing delivery costs.
2. Specifically, you requested information on the following:
  - 2.1 If the Commerce Commission (the Commission) has investigated inflated takeaway food prices concealing delivery costs;
  - 2.2 Whether these investigations have been remedied; and
  - 2.3 Whether a decision has been made on the fairness of this practice.
3. We have treated this as a request for information under the Official Information Act 1982 (OIA).

### **Our response**

4. We have decided to grant your request.
5. We have retrieved the following information from the complaints database in which all complaints received by the Commission are stored. This information reflects the period between 10 November 2022 and 10 November 2023.
6. The Commission has received 20 complaints relating to takeaway food prices concealing delivery costs over the past year. This number includes your request ENQ0587197 made on 10 November 2023. No investigations were opened or active during this time period.
7. This number does not include the additional complaints that we received regarding high food delivery costs and how traders represent and disclose these delivery fees.

8. Out of the 20 complaints, the outcomes are as follows:
  - 8.1 1 complaint is yet to be assessed;
  - 8.2 18 complaints had a final outcome of No Further Action (NFA);<sup>1</sup> and
  - 8.3 1 complaint is recommended for investigation.<sup>2</sup>
9. Your complaint was assessed by the Screening and Analysis team and the recommendation made not to take any further action on the basis that the conduct is unlikely to be a breach of the legislation enforced by the Commission.

*The Commission's screening process*

10. To provide context on how complaints are assessed, we have outlined the Commission's screening process below.
11. The Commission receives thousands of complaints every year. Each complaint is initially assessed by the Screening and Enquiries Team on the basis of the information available at the time. When conducting this initial assessment, the Screening and Enquiries Team considers:
  - 11.1 the likelihood of a breach of the relevant legislation (the Fair Trading Act 1986, Credit Contracts and Consumer Finance 2003, and the Commerce Act 1986);
  - 11.2 the Commission's Enforcement Response Guidelines;<sup>3</sup> and
  - 11.3 the Commission's strategic priorities and resourcing constraints.
12. The Commission has the power to act on complaints but is not required to take action in relation to all possible breaches of the legislation that we enforce.
13. If a complaint is appropriate for further consideration, it is reviewed by a panel of managers and subject matter experts from within the Competition, Fair Trading and

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<sup>1</sup> The Commission may decide not to take further action in relation to a complaint for a number of reasons. These reasons include, but are not limited to, circumstances where we consider the complaint is better suited to private action by the complainant, the complaint is subject to the jurisdiction of another agency, or where there is no clear breach of the law. However, each complaint and enquiry provides information that is valuable to the Commission. This contributes to future priorities, potential issues for us to watch closely or emerging issues to refer to our policy agency, MBIE. In this regard, we will monitor complaints on information we receive as we look to future prioritisation.

<sup>2</sup> We may add an enquiry to an existing project. The Fair Trading branch currently has several open projects which focus on certain areas, such as product safety and consumer information standards, credence claims, egregious conduct, rights and obligations and retail pricing and promotion activities.

<sup>3</sup> Available at: <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>

Credit Branches. The panel decides which complaints are to be prioritised for further assessment by the Branch with reference to our Enforcement Response Model.<sup>4</sup>

14. This process enables us to identify complaints that best reflect our current enforcement priorities.<sup>5</sup> The outcomes of the process are not final and we may revisit any complaint at a later stage, should we wish to reconsider the issues it presents.

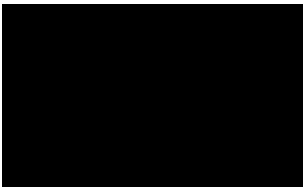
### Pricing

15. In response to your request at [2.3], the Commission's guidance on pricing products or services can be found here: <https://comcom.govt.nz/business/pricing-your-products-or-services>.
16. Businesses must take care that consumers are not misled or deceived. The Fair Trading Act 1986 covers all aspects of the promotion and sale of goods and services, and this includes representations about pricing. Any representations a business makes about price must be clear, accurate and unambiguous.

### Further information

17. Please note the Commission will be publishing this response to your request on its website. Your personal details will be redacted from the published response.
18. Please do not hesitate to contact us at [oya@comcom.govt.nz](mailto:oya@comcom.govt.nz) if you have any questions about this response.

Yours sincerely



OIA and Information Coordinator

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<sup>4</sup> Our Enforcement Response Model is discussed in more detail from page 3 of the Commission's Enforcement Response Guidelines, available here: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0030/62589/Enforcement-Response-GuidelinesOctober-2013.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0030/62589/Enforcement-Response-GuidelinesOctober-2013.pdf).

<sup>5</sup> For further information, see: <http://www.comcom.govt.nz/the-commission/commissionpolicies/enforcement-criteria/>