

27 April 2018

Hon Kris Faafoi
Minister of Commerce and Consumer Affairs
Parliament Building
WELLINGTON

Dear Minister

RE: ANNUAL LETTER OF EXPECTATIONS FOR 2018/19

Thank you for your letter of 13 April 2018 setting out your portfolio priorities and strategic and performance expectations for the Commerce Commission (the Commission) for the 2018/19 financial year.

In your letter you asked for advice from the Commission as to how we propose to respond to the expectations in your letter and the attached Annex to that letter. I set out our advice below. For ease, I have used the headings that were used in your letter.

Commerce and Consumer Affairs priorities and what this means for the Commission

The Commission is committed to playing its part in supporting a more competitive, confident and productive business environment that delivers positive outcomes for all New Zealanders. We recognise improving the well-being and living standards of all New Zealanders through sustainable and inclusive growth as a key driver for economic strategy. We aim to put consumers at the centre of our competition, consumer and regulatory work, including 'every day' consumers and especially more vulnerable members of society.

We note your priorities in relation to competition and consumer law and policy and remain committed to supporting the ongoing reviews of the Commerce Act 1986 (Commerce Act), and the Credit Contracts and Consumer Finance Act 2003 (CCCF Act).

Portfolio expectations for the Commission

Competition

We will continue to provide our expert views to the Ministry of Business, Innovation and Employment (MBIE) on changes to the Commerce Act including the ability to undertake competition studies, criminalisation of cartels, establishment of an enforceable undertakings regime and the repeal of the cease and desist regime. We have published a final version of our Competitor Collaboration Guidelines describing our approach to the updated provisions of the Commerce Act contained in the Commerce (Cartels and Other Matters) Amendment Act, and our process for considering clearances relating to

collaborative activities. As the Commerce (Criminalisation of Cartels) Amendment Bill progresses we will review this guidance to reflect the final form of that legislation.

We continue to support the review of the abuse of market power prohibition in section 36 of the Commerce Act. In small and isolated economies abuse of market power provisions play an important role in ensuring that markets are competitive. For this reason, we will continue to prioritise the investigation of such conduct in accordance with our published enforcement criteria.

In terms of our operational settings we will continue to use our operational intelligence, stakeholder relationships and enforcement criteria to identify areas where we can have the greatest impact in supporting markets for the benefit of consumers. We recognise the importance of evaluating the impact of our work and making improvements to strengthen our communication and timeliness around our determinations work. We will continue to engage with businesses and consumers to ensure that they understand the issues involved with our enforcement decisions and determinations and provide targeted advocacy and education initiatives as appropriate.

We are committed to establishing and maintaining effective relationships with overseas competition regulators to promote the integrity of New Zealand's competition regime.

Consumer

We will ensure that our consumer law enforcement and education and engagement activity is visible and proactive. We will continue to use our intelligence and prioritisation processes to ensure that we are targeting those areas where we can have the greatest impact and in particular where vulnerable consumers are involved. We also recognise the importance of evaluating the impact of our consumer work on consumers, businesses and the wider economy and making improvements around our range of interventions and how we communicate.

We continue to use the tools and laws introduced under the strengthened Fair Trading Act 1986 (FT Act) and CCCF Act. These tools and laws form a key part of our enforcement strategy in areas like mobile traders, and high cost short term loans, where we are focused on protecting vulnerable and disadvantaged consumers. Our active enforcement, including litigation, increases consumer and trader awareness of consumer law obligations and the consequences of non-compliance.

Targeted advocacy and education initiatives are an important part of our consumer work. The target audience for consumer education is diverse and we are committed to looking for innovative ways to reach our audience including how best to support and engage with disadvantaged and vulnerable consumers, communities and groups. We value our engagement with consumer credit lender and consumer groups in order to develop a community of interest in credit markets. We will continue to work across government, domestic partner agencies and with the advisory community to achieve outcomes in this area.

Economic Regulation under Part 4 of the Commerce Act

We note Government's priority regarding resilience of infrastructure. We are committed to constructively engaging with MBIE, suppliers of regulated services and other stakeholders to promote appropriate resilience investment and processes. We are encouraging regulated suppliers to better assess and respond to resilience risks through their asset management planning. We will engage constructively with any providers of energy infrastructure that seek an alternative to their existing default price paths that better facilitates resilience investments (as reflected in the recent customised price path we set for Wellington Electricity).

We share your view about the importance of improving understanding about the performance of regulated businesses. In the year ahead, we will continue to publish summary and analysis of publicly disclosed information, including our reviews of recent prices setting events by Auckland and Christchurch airports, and our reviews of the 2018 asset management plans published by all electricity distributors. We will also publish our priorities for future pieces of work in this area.

The Part 4 regime is now well established, but we recognise the importance of continuing to look for further ways to increase business certainty and improve the efficiency of the regulatory system. The Commission notes a recent report from Standard & Poors Global that assigns a regulatory advantage score of 'strong' for New Zealand regulated utilities (up from 'strong/adequate') on the basis of our recent regulatory decisions and consistent track record of regulatory resets. This is an endorsement of the work we have done to establish a stable and predictable Part 4 regime. In assigning the rating the report notes:

In our view, the New Zealand regulatory landscape and framework have strengthened for electricity and gas network businesses in the country. We now consider the framework to be more mature and predictable, as well as being stable, supportive, and transparent. The regulatory regime is in line with the strong regulatory landscape in Australia and the UK. New Zealand's Commerce Commission, an independent body, regulates the network entities under Part IV of the Commerce Act. As a result, we have revised the regulatory advantage score to strong for New Zealand regulated utilities from strong/adequate.¹

We recognise the importance of evolving the regime in light of emerging trends, particularly with reference to technology developments in the electricity sector. As well as seeking further disclosure of relevant information about technology investments by regulated parties, we will continue to work closely with the Electricity Authority and MBIE in this area, and will provide constructive input into the Government's electricity pricing review.

¹ *Regulatory Framework Score For New Zealand Regulated Utilities Revised to Strong; Ratings on Three Entities Affirmed*, Melbourne (S&P Global Ratings) April 23 (p.2)

Telecommunications industry-related expectations

The Commission is committed to fulfilling its current, and proposed new, regulatory responsibilities under the Telecommunications Act 2001.

Independent and trustworthy information is key to informing and empowering consumer decision making. We are now in the final stages of appointing a new provider to undertake broadband speed testing. The new testing will enable us to provide an accurate and accessible source of high-quality information, which can be used widely to inform and support consumers.

We are well-placed to implement the new regulatory regime resulting from the Telecommunications (New Regulatory Framework) Amendment Bill and support the roll-out of Ultra-Fast Broadband services. Drawing on our experience with the Part 4 regime, we have begun the up-front planning for the reforms involved including resourcing and capability commitments. This planning is essential for successful implementation within statutory timeframes. We continue to work with MBIE and Treasury officials to confirm funding for this work-stream.

We welcome the proposed increased focus on improving retail service quality for consumers. Retail telecommunications is a priority for the Commission due to our ongoing concerns about service quality and the large volume of consumer complaints. We are committed to helping consumers make informed choices on retail service quality by ensuring they have access to information in an understandable and usable format. Our monitoring powers will ensure we are able to look into, and provide information on, a broad range of telecommunications issues.

Dairy

We note the intention to carry out a comprehensive policy review of the Dairy Industry Restructuring Act 2001 (DIR Act) and look forward to supporting the review process as needed. In the meantime we will continue to efficiently carry out annual reviews of Fonterra's milk price manual and farm gate milk price calculation, and undertake adjudication and enforcement functions under the DIR Act.

General expectations and good governance

High performing Board

The Commission shares your view of the importance of having a high-performing Board. We have recently carried out an assessment of Board performance using BoardWorks International. The self-assessment process is aimed at providing independent advice and assistance based on the best thinking internationally on board accountability and boardroom performance improvement opportunities. The Commission intends to advise you and MBIE officials of the result of this assessment including how we intend to respond to the findings.

In terms of succession planning the Commission is committed to working with MBIE around the competency and capability of candidates and having input into any upcoming appointment processes.

Effective monitoring of entity performance by the board and relationship with MBIE

The Commission's Board is focussed on effective monitoring and building constructive relationships with MBIE officials. At an agency level the Board monitors performance against the Commission's vision and strategy as well as the commitments in our 2017-2022 Statement of Intent (SOI) and our Statement of Performance Expectations (SPE).

No Surprises

I believe that we have an effective 'no surprises' regime in place that recognises the Commission's independence and the constraints of the investigatory or determination processes. We will continue to meet with you regularly and will update you on key matters, as appropriate. That said, if you have any concerns with current arrangements, we are happy to discuss this with you further.

Strategy and performance information

The Commission continues to implement its five year strategy and vision for the organisation to make New Zealanders better off. Our SOI and SPE show how we intend to deliver on our strategic objectives:

- Markets work well; and
- Consumers and businesses are confident market participants.

Our SPE provides a clear framework for assessing performance including the re-categorisation of measures as a result of the introduction of a Multi Category Appropriation for competition and consumer regulation. We note your expectation that the Commission will prepare a new Statement of Intent for the three years commencing in 2019/20, and we will incorporate this into our planning processes.

I trust that this response provides you with the information that you are seeking in relation to your Letter of Expectations. I am happy to discuss this with you further or to provide more information on any of the areas outlined, if you wish.

Yours faithfully



Dr Mark Berry
Chairman