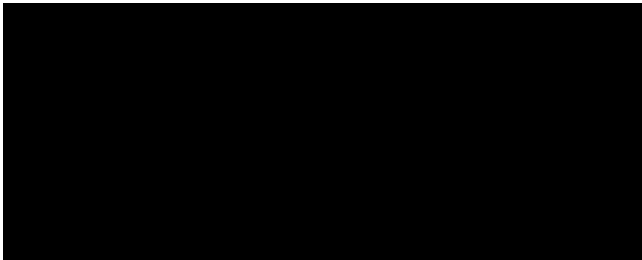


16 January 2023



Official Information Act #22.088 Pixelmon

1. We refer to your request received on 30 November 2022 for information about Pixelmon. Specifically, you asked:
 - 1.1 Is the Commission intending to commence legal proceedings against the head of the Pixelmon project?
 - 1.2 If not, using the publicised enforcement guidelines for the Commission, can the Commission clarify why the Commission is not intending to do so?
 - 1.3 Further, would the Commission be able to clarify why this has not already occurred?
 - 1.4 Does the Commission see any differences between the normal legislative requirements for businesses, and requirement for businesses utilising crypto/NFTs (or any new technology)?
 - 1.5 Is the Commission intending to issue any releases surrounding this, or surrounding cryptocurrencies in general?
2. We have treated this as a request for information under the Official Information Act 1982 (OIA).

Our response

3. We have decided to grant your request.

Legal proceedings

4. The Commerce Commission (the Commission) has not opened an investigation into Pixelmon and/or its agents and therefore the Commission is not intending to commence legal proceedings in this instance.

The Commission's complaint process

5. Every complaint that comes into the Commission is valuable to us. These are the insights we need from New Zealanders to highlight potential issues for us to watch closely and help us prioritise resources. We assess everything that we receive. However, we have to make some hard choices as we are unable to investigate everything. In considering whether to investigate issues that come to its attention, the Commission considers the available information for its relevance to the Commission's responsibilities and current work programme, our enforcement criteria and priority areas for new enforcement work. Our enforcement criteria include a consideration of the extent of detriment arising from the conduct, its seriousness, and the public interest in conducting an investigation.
6. In considering whether to investigate an issue, the Commission applies discretion over a wide range of matters. This includes the potential strength of a case that the Commission could bring, the availability of resourcing and funds, and assessments of the comparative importance of the various cases in which the Commission is involved. There is more information on the processes we follow and considerations on our website at <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-criteria>
7. In this particular instance, the Commission received a total of four complaints about Pixelmon (all were received in March 2022). We assessed these complaints for potential Fair Trading Act concerns and against our enforcement criteria. The matter was not prioritised for an investigation as the complaints appeared to be better suited for private action for a breach of contract. Please note that although the Commission has chosen not to open an investigation in this instance, we may reconsider this matter on receiving any further complaints / new information.

Legislative requirements

8. The Commission is responsible for enforcing competition, fair trading and consumer credit contracts laws in New Zealand and encourages all businesses who offer products/services in New Zealand to comply with all legislative requirements regardless of the nature of the products/services they offer.

Releasing guidance

9. The Commission has not issued any specific guidance for businesses who utilise or sell cryptocurrencies but as noted above, the Commission encourages all businesses who offer any products/services in New Zealand to comply with all legislative requirements of New Zealand. The Financial Markets Authority (FMA) have published information for investors considering purchasing cryptocurrencies and/or

NFTS— see <https://www.fma.govt.nz/consumer/investing/types-of-investments/cryptocurrencies/> and <https://www.fma.govt.nz/library/articles/spotlight-on-nfts/>.

10. 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.
11. Please do not hesitate to contact us at oya@comcom.govt.nz if you have any questions about this response.

Yours sincerely



OIA and Information Coordinator