

# Quarterly Snapshot

April-June 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 fourth 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](http://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 in comparison of year to date for 2022/2023

### Enquiries received Q4 2022/2023

Legislation	Fair Trading Act 1986	2663
	Credit Contracts and Consumer Finance Act 2003	97
	Commerce Act 1986	92
	Fuel Industry Act 2020	3
	Total (including enquiries from other Acts)	2942

### Enquiries received July 2021–June 2022

Legislation	Fair Trading Act 1986	7055
	Credit Contracts and Consumer Finance Act 2003	336
	Commerce Act 1986	211
	Fuel Industry Act 2020	97
	Total (including enquiries from other Acts)	7837

#### Quarterly comment on enquiries to the Commission

We received 2, 855 enquiries across our main regulatory responsibilities during the quarter. This is similar to the number received in Q3 2022/23.

The Commission has also received in Q4 April - June 2023, 87 enquires that are not linked to an act, making a total of 416 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

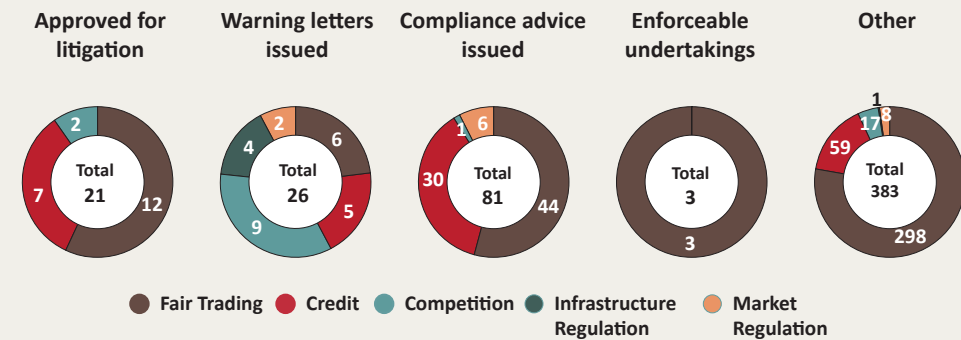
The Commission has a large number of investigations and compliance activities underway at any one time.

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 Q4	Completed investigations YTD
	Fair Trading	164	321
	Credit	49	55
	Competition	23	20
	Infrastructure Regulation	3	3
	Market Regulation	15	9

### Investigations outcomes Q4 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

In May the Auckland High Court released a judgment imposing a penalty of \$1,158,400 against Vector Lines for breaches of network quality standards relating to excessive power outages from 2017 to 2020. The penalty amount imposed by the High Court was jointly recommended by the Commission and Vector.

The Commerce Commission has filed an appeal in the Auckland High Court against the sentence imposed on NZME Advisory Limited (NZME) last month for its offending under product safety laws, when it supplied magnetic puzzle toys through its previously owned online store GrabOne.co.nz. The Commission originally submitted that an end sentence of \$140,000 - \$168,000 was appropriate (after discounts for mitigating factors) and is appealing the \$87,750 sentence handed down in May 2023. The Commission will argue the fine imposed is manifestly inadequate.

The Commission has filed civil proceedings under the FTA against Bachcare Limited (Bachcare), alleging that a number of its contract terms are unfair and liable to cause financial detriment to Kiwis and other tourists booking holiday accommodation through the website. This is the second time the Commission has taken Bachcare to Court. In 2019 Bachcare was fined for misleading consumers by altering and withholding publication of online reviews posted by users of its accommodation services.



## 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 Commission’s action against Auckland electricity lines company Vector has resulted in the Auckland High Court imposing a penalty of \$1,158,400 for breaches of network quality standards – relating to excessive power outages from 2017 to 2020.

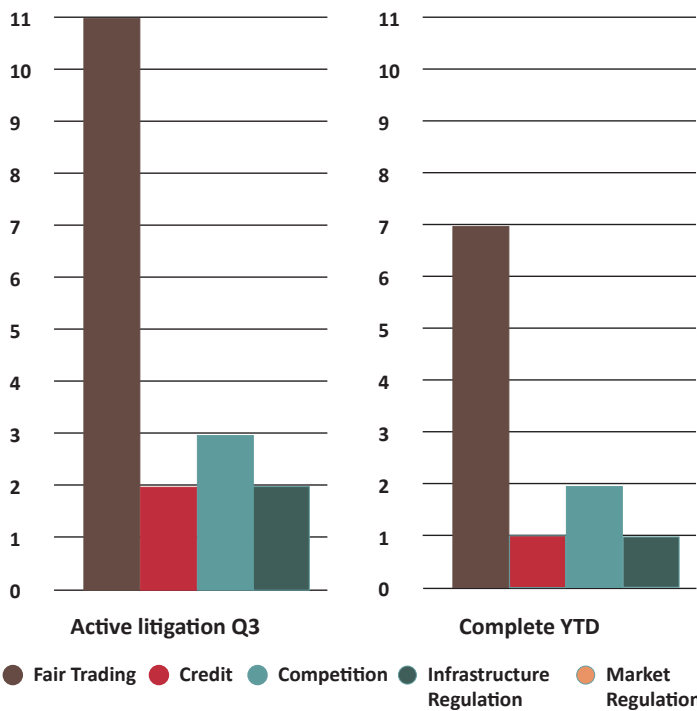
Mercury NZ Limited (Mercury), has been fined \$279,500 for communicating to approximately 2,000 customers that they were required to pay an early termination fee when they were not, breaching the Fair Trading Act.

The Commission entered into a \$11 million settlement agreement with Kookmin Bank for failing to ensure that it provided compliant initial disclosure about its home and personal loans between 2015 and 2021, breaching obligations under the CCCF Act across nearly 500 contracts. The failures were found by the Commission checking Kookmin’s disclosure documents displayed on their website.

The Commission prosecuted Mr Brent Andrews, a former director of Promodealz (a mobile trader company that is no longer trading), for failing to comply with two statutory notices. Mr Andrews was required to provide information and attend a compulsory interview, but failed to do both. Mr Andrews was convicted and fined in the Wellington District Court on 7 July 2023.

HSBC received a Warning Letter for potential breaches of the CCCF Act’s disclosure obligations following a self-report. The Commission considered that a Warning letter was appropriate in all of the circumstances, including that the conduct dated back to April 2005, potential limitation issues and the low number of affected borrowers. We also considered that the delays in providing the disclosure were small; that steps had been taken to address the errors; that HSBC had appropriately remediated borrowers; and also that HSBC had co-operated fully with our investigation, including complying with voluntary requests for information made by the Commission.

### Litigation overview Q4 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	Electricity distribution targeted information disclosure review	Market study 4 – Personal banking services	Grocery Industry Competition Bill	Retail Payment System	Telecommunications retail service quality
	Emerging views phase. <b>October 2022:</b> Decision-making framework published. <b>November 2022:</b> Workshops on wider electricity issues. <b>March 2023:</b> Publication of submissions in response to the expert report on the cost capital and the options for maintaining investment incentives in the context of declining demand. Updated notice of intention published.	Reviewing submissions.  <b>25 November 2022:</b> Tranche 1 final decisions published.	<b>20 June 2023:</b> Terms of reference published in the Gazette	<b>8 January 2023:</b> Submissions on the Bill close. <b>March 2023</b> Bill was considered by the Select Committee.	<b>March–April 2023:</b> Initial observations  <b>March 2023</b> Update on programme of work	<b>December 2023:</b> Product Disclosure: Emerging Views paper submissions published.  <b>February 2023:</b> Improving Retail Service Quality for Consumers – 2023 update published
	<b>June 2023:</b> Draft decisions published. Including, summary and context paper, four topic papers, report on the review and six draft determinations.	<b>April 2023</b> Non-material amendment Determination 2023 and Issues and Guidance Register published. <b>May 2023:</b> Consolidated information disclosure determination. Targeted Information Disclosure Review (2024) process paper published. <b>June 2023:</b> Non-material Amendment Determination published.	<b>22 June 2023:</b> Statement of Process paper published.	<b>May – June 2023</b> Bill second reading Bill present to the house by the Committee Bill third reading.	<b>May 2023</b> Approach to monitoring compliance with the initial pricing standard published.  Materials published to support appropriate merchant surcharging, including guidance for merchants and an open letter to payment service providers on how they are expected to assist merchants.  RPS Merchant research observations & Kantar merchant research report published.	<b>April 2023:</b> Customer service: Monitoring consultation paper published.  <b>June 2023:</b> 2022 Annual Monitoring Report published.  Improving Retail Service Quality Product Disclosure Q3 update published
Future milestones	<b>December 2023:</b> Final decision on the Input Methodology review due.	<b>August 2023:</b> Draft reasons paper, draft ID amendment determination and updated Issues Register published. <b>February – March 2024:</b> Final decisions published.	<b>17 July 2023:</b> Preliminary Issues paper published. <b>4 March 2024:</b> Draft report published. <b>20 August 2024:</b> Final report published	<b>July 2023</b> The Grocery Industry Competition Act came into force 10 July 2023 Appointment of Grocery Commissioner  <b>Late 2023</b> Initial compliance assessments on wholesale access	<b>August 2023:</b> Observations on the impact of interchange fee regulation  Payments between Bank Accounts – request for views paper	<b>July – September 2023:</b> Customer Service: Industry update and dashboard Product Disclosure Transparency Review with Consumer NZ  <b>Late 2023:</b> Annual RSQ Monitoring Report

### Quarterly comment on projects of significance

**Personal Banking Services market study**  
On 20 June 2023, the Government asked the Commerce Commission to carry out a 14-month long study into whether competition for personal banking services in New Zealand is working well, and if not, what can be done to improve it. The study will consider any factors that may affect competition for the supply or acquisition of personal banking services. Personal banking services, for the purposes of this study, are banking services ordinarily acquired for personal, domestic or household use. These services include current account, deposit, and overdraft account services, personal loans, and mortgage and credit card lending. This study provides an opportunity to consider and evaluate whether competition in personal banking is promoting outcomes that benefit New Zealand consumers over the long term. Competition drives businesses to innovate and be more efficient, and to offer New Zealanders greater value and more choice. It is an effective competitive process that ensures prices and profits are not too high for too long. The terms of reference for the study have been published in the Gazette.

### Input Methodologies for energy and airports

In June 2023, the Commerce Commission published the draft decisions on its regulatory rules governing energy networks and major international airports for feedback. The rules, known as input methodologies, provide certainty about how the Commerce Commission will approach the regulation of these entities, which are not subject to competition from rival participants. The rules are reviewed every seven years and play a crucial role in ensuring consumers get value for money from essential infrastructure.

### The Grocery Industry Competition Act

The Grocery Industry Competition Act (GICA) came into force 10 July 2023, and we welcomed the Grocery Commissioner on 13 July. The Commission is well set up to take on our powers, duties and functions under the GICA. The Commission sent an open letter to the grocery sector, upon appointment of the Commissioner which sets out what the Grocery Industry Competition Act means for the sector and signals some of the



## 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.



Q4: 1 April – 30 June 2023		Merger clearances s66	Merger authorisations s67	Collaborative activity clearances s65A	Trade practices authorisations s58
	Decided	4	0	0	1
	Undecided at end of quarter	5	0	0	0
YTD: Outcomes 2022/2023		Merger clearances s66	Merger authorisations s67	Collaborative activity clearances s65A	Trade practices authorisations s58
	Cleared unconditionally	8	0	0	N/A
	Authorised	N/A	0	N/A	2
	Cleared with divestment	2	N/A	N/A	N/A
	Declined	0	0	0	0
	Withdrawn	0	0	0	0
	Varied	N/A	N/A	N/A	1
	Sol/SoUI issued	5	N/A	0	N/A

### Quarterly comment on competition clearances and authorisations

The Commission received five new applications for merger clearance in Q4. There are five merger clearance applications undecided at the end of the quarter. Current merger applications involve video gaming, hospitality and food service, poultry, home ventilation systems, and commercial fishing.



## 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.

Half of these requests were from law firms on behalf of their clients who are being investigated or helping with our inquiries whereas the other half of the requests were from member of the public for complaints information. 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.

### Q4 2022/2023

69 OIA requests received

205 OIAs completed (including received from previous quarters)

