

Quarterly Snapshot

October–December 2022

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 Q2 2022/2023

Legislation	Fair Trading Act 1986	2701
	Credit Contracts and Consumer Finance Act 2003	97
	Commerce Act 1986	56
	Fuel Industry Act 2020	18
	Total (including enquiries from other Acts)	2929

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 2,817 enquiries during the quarter. This is a higher number than Q2 2021/2022.

As in previous quarters, most of the enquiries we received related to the Fair Trading Act and were concerns about false or misleading behaviour. Key issues included disputes relating to refunds, problems with goods not being delivered, promotions, customer service and contractual issues.



Investigations and Compliance

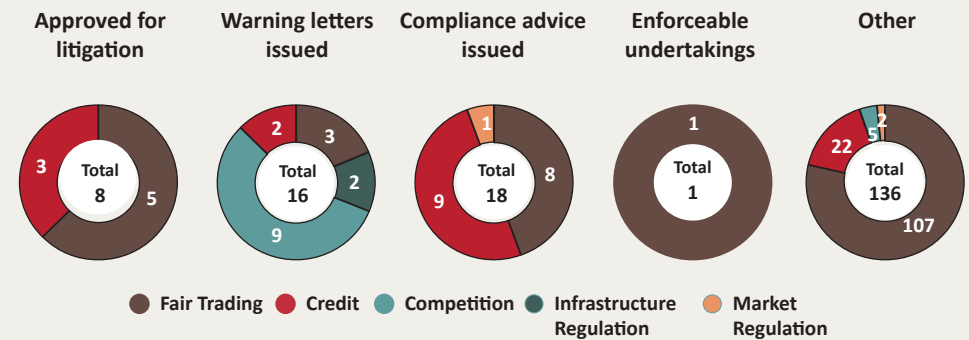
The Commission has a large number of investigations and compliance activities underway at any one time.

We use our enforcement response guidelines in deciding whether to open an investigation and what compliance and enforcement action to take 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 Q2	Completed investigations YTD
	Fair Trading	136	124
	Credit	60	36
	Competition	25	8
	Infrastructure Regulation	3	2
	Market Regulation	19	3

Investigations outcomes Q2 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 Commission warned electricity and gas distribution company Vector Limited for its regulatory treatment of sale and leaseback transactions; Vector’s approach to valuing those transactions was inconsistent with the Commission’s regulatory rules. This would have enabled the company to significantly increase charges to consumers, without providing any service improvements or infrastructure investment. In October 2022, Vector reversed its treatment of the transactions.

The outcome of a large number of investigations this quarter included specific individual trader compliance engagement including a focus on the product safety standard for sunscreen and a broad range of sustainability claims. Eight investigations were approved for litigation – resulting litigation and outcomes will be included in future snapshots.



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.

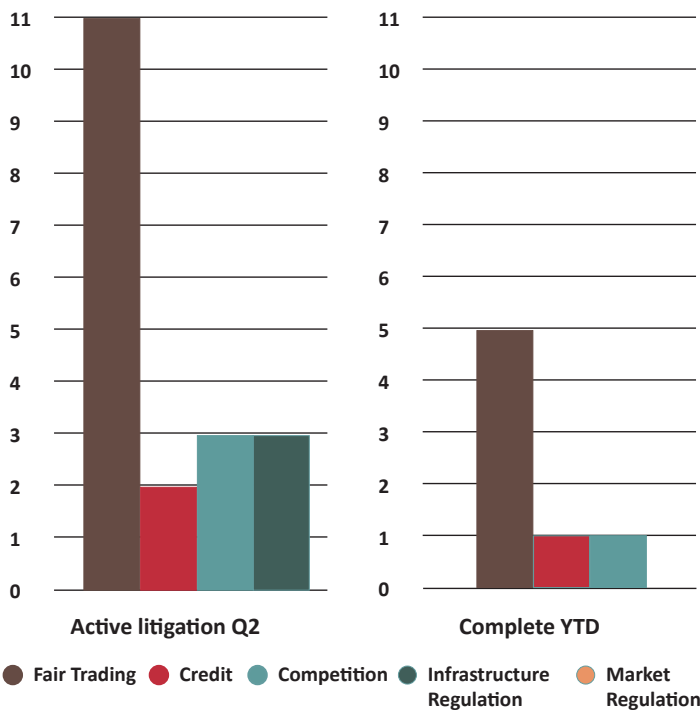
Quarterly comment on litigation

Ashley & Martin (NZ) Limited has been fined \$367,500 after pleading guilty to 10 charges under section 12A of the Fair Trading Act 1986 for making unsubstantiated representations between 2016 and 2021. The representations related to the success rate of its medical hair loss treatment programmes however, Ashley & Martin (NZ) Limited did not have reasonable grounds to make those representations.

Strandbags Pty Limited has been fined \$780,000 after pleading guilty to seven representative charges under section 10 of the Fair Trading Act. Between 2018 and 2020, Strandbags engaged in conduct which was liable to mislead consumers about the price (and savings available) of the goods it sold, by advertising products as if they were significantly discounted when that was not true.

The Commission has filed proceedings against NGB Properties Limited (NGB) for allegedly contravening section 28 of the Commerce Act. The Commission alleges NGB acquired a property in central Tauranga and placed a covenant on it that would have prevented a hardware store from being built on the property.

Litigation overview Q2 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
	July–August 2022: Submissions and cross-suibmissions due on process and draft framework.	February–April 2022: Review commenced. May–August 2022: Tranche 1 draft decision paper and submissions.	August–September 2022: Draft report, submissions and consultation conference.	March 2022: Final report issued for the market study into the grocery sector. July 2022: Government response to the final report.	May 2022: Legislation takes effect. September 2022: Draft compliance guidance for interchange fee regulation.	May 2022: Open letter addressing transparency and inertia issues in the residential mobile market published July 2022: Open letter increasing consumer awareness of TDRS non-membership published. September 2022: Response to submissions and next steps published.
	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.
Future milestones	Mid 2023: Draft decisions due 22 December 2023: Final decision due.	Mid 2023: Tranche 2 draft decisions paper. November 2023: Tranche 2 final decision.	Government reponse to final report.	8 January 2023: Submissions on the Bill close.	March–April 2023: Initial observations Late 2023: Assess impact of interchange fee regulation.	January–March 2023: Final decision for Product Disclosure: Emerging Views paper. Final decision for Customer service: Monitoring consultation paper.

Quarterly comment on projects of significance

In November 2021, the Government asked the Commission to carry out a year-long study into whether competition for residential building supplies in New Zealand is working well and, if not, what could be done to improve it. We published our final report on 6 December 2022. We found that competition for the supply and acquisition of key building supplies is not working as well as it could if it was easier for building products to be introduced and for competing suppliers to expand their businesses. We made a suite of recommendations that aim to provide tangible improvements to competition for key building supplies, without undermining the essential policy objectives of the building regulatory system.

On 8 December 2022, we released our final decision on the allocation of payments for the Government’s \$10.484 million Telecommunications Development Levy (TDL) for 2021/22.

On 14 December 2022, we launched a consultation on our proposal to publish customer service rankings as well as underlying performance information for retail telecommunications providers. These proposals are part of the Commission’s ongoing drive to improve retail service quality for consumers as required by the most recent amendments to the Telecommunications Act 2001.



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.



Q2: 1 October–31 December 2022		Merger clearances s66	Merger authorisations s67	Collaborative activity clearances s65A	Trade practices authorisations s58
	Decided	1	0	0	1
	Undecided at end of quarter	3	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	3	N/A	0	N/A

Quarterly comment on competition clearances and authorisations

The Commission concluded one application for merger clearance, and one trade practices authorisation in Q2. There are four merger clearance applications undecided at the end of the quarter. Current merger applications involve video gaming, telecommunication tower assets, pet supplies 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 are from law firms on behalf of their clients who are either being investigated or helping with our inquiries.

We also received requests for complaint information from the media, and from businesses themselves wanting to know if the Commission had received complaints about them.

Q2 2022/2023

48 OIA requests received

101 OIAs completed (including received from previous quarters)

