

29 April 2024

Hon Andrew Bayly
Minister of Commerce and Consumer Affairs
Parliament Building
WELLINGTON

Dear Minister Bayly

Re: Annual Letter of Expectations 2024/25

Thank you for your recent letter setting out your strategic and performance expectations of the Commerce Commission (the Commission) for the 2024/25 financial year. This letter sets out how we are meeting, and will meet, your expectations.

We are an independent Crown entity, with our management overseen by the Board. Our board members are also Commissioners and, along with our Associate Commissioners, are responsible for making a variety of regulatory decisions.

Contribution to the Economy

The Commission, and the commerce and consumer regulatory system we operate in, enable economic growth and innovation. We help to guide outcomes in New Zealand's markets by promoting competition, informing and protecting consumer interests in those markets, and regulating markets with little or no competition. This keeps consumers and businesses informed and confident, which leads to lower prices and higher quality goods and services.

Your expectations for the Commission

1 Driving competition and fair trading in the grocery sector

We will continue to identify and address issues in the grocery sector using all of the tools available to us, including under:

- The Grocery Industry Competition Act (GICA) 2023, with its purpose of promoting competition and efficiency in the grocery industry for the long term benefit of consumers in New Zealand;
- The Commerce Act 1986, with its enforcement and information gathering tools and powers in relation to mergers, cartels, and dominant market behaviour; and
- The Fair Trading Act 1986, with its focus on fair trading, including representations.

We gather intelligence and evidence by creating an environment that enables sector participants and consumers to safely raise issues with us. We act decisively when we identify unlawful actions. We will closely monitor Regulated Grocery Retailer compliance

with the Grocery Supply Code and new Unit Pricing Consumer Standard. In July 2024, we will deliver our first annual report on the state of competition in the sector.

The information we gather will allow us to enforce the relevant laws and advise you on the effectiveness of the regime and options (including legislative changes) to improve competition.

Our draft Statement of Performance Expectations 2024/25 (the draft SPE), provided to you separately, contains measures that we will use to assess our performance under GICA and the impact the new regime is having on competition in the sector. We have added a new impact indicator to the draft SPE that signals how effective the regime is:

Key performance indicator

The national retail grocery market share concentration of regulated grocery retailers reduces over time.

A decrease in concentration over time indicates a structural increase in competition and would provide evidence of the success of the regime. Similar changes to our KPIs, based on your expectations, are highlighted throughout this letter.

2 Promote competition and long-term consumer welfare across other sectors

Personal Banking Market Study

We are consulting on our draft banking market study report and will publish our final report by 20 August 2024. The report will consider the impact that regulation has in creating barriers to entry and expansion. We will support the implementation of any competition interventions the Government chooses to make in response to the study.

Key performance indicator

We will deliver our final market study report in August 2024.

Fuel

We support competition in land transport fuel markets through monitoring and oversight of the sector to give New Zealanders confidence they are getting a fair deal at the pump. Our reports will continue to pinpoint areas of concern, as well as where competition has improved. This reporting will provide information that can be used to assess the retail price effect of removing the Auckland Regional Fuel Tax.

Recent improvements in retail competition stem from our first market study and the subsequent Fuel Industry Act 2020, which has stimulated a wholesale market in fuel. The Fuel Industry Act was designed to promote competition by making it easier for distributors who resell fuel to compete with the major retailers. This included ensuring that resellers were not tied to exclusive arrangements with a single wholesaler. We have added a new impact indicator to the draft SPE that signals how effective this element of the regime is:

Key performance indicator

The percentage of wholesale volume of fuel that is multi-sourced will be at least 70%.

A greater proportion of supply volume sourced through non-exclusive supply relationships means a more competitive wholesale market. This creates an environment where resellers can offer competitive pricing at the pump.

Telecommunications

We promote competition for the long-term benefit of end-users of telecommunications services by regulating the supply of copper and fibre services at the wholesale level, monitoring and reporting on the development of the industry and competitive landscape, monitoring and enforcing compliance with relevant legislative and regulatory obligations, improving retail service quality and the ability of consumers to compare the performance of different technologies, plans and providers.

Our governing legislation is focused on areas where competitive pressures are absent or weak including fibre infrastructure (where we set price-quality and information disclosure requirements), retail service quality (where we have been tasked with addressing systemic market failure), and empowering consumer comparison and choice as a key driver of competition.

Later this year, we will publish the findings from our rural connectivity study. This study will paint a detailed picture of the options currently available to rural communities and businesses, and how these are performing. This information will support the Government to consider options to better support connectivity in rural community. Our subsequent copper regulation review will also consider whether changes are required to regulation.

We have added a new impact indicator to our draft SPE that signals how effective the regime is in supporting competition:

Key performance indicator

Herfindahl-Hirschman Index (which measures market concentration) reduces over time for broadband and mobile markets.

A reduction in concentration in the broadband and mobile markets indicates a structural increase in competition. While we have monitored HHI in these markets for many years, we are including this as a public KPI in our draft SPE for the first time this year.

3 Support efficient, resilient and sustainable infrastructure services

Capital considerations

We will support the development of advice on legislative amendments to deliver better regulation of natural monopolies. We note your expectations in relation to weighted average cost of capital (WACC) considerations and assessment of capital plans.

Electrification

We regulate the price and quality of transmission and distribution services, to maintain downward pressure on prices and ensure appropriate quality service. We will work alongside the Electricity Authority (EA) to support delivery of Electrify New Zealand, ensuring connection costs are appropriate and promoting visibility of distribution network capacity to assist with lifting electrification of New Zealand. We are conscious of the need for resilience, particularly in the face of extreme weather events. We have added a new impact indicator which assesses whether service quality is maintained:

Key performance indicator

Electricity reliability measures are maintained.

The EA is a critical partner for our work across the electricity sector. We have refreshed our memorandum of understanding with the EA and we are contributing competition expertise into their Market Risk Review - work we see as crucial to harness competitive forces to drive electrification. The Board and I, along with Commission senior leaders, engage closely with our EA counterparts to coordinate on these matters.

We look forward to engaging with you, and the Minister for Energy, on opportunities to deliver more vigorous competition.

4 Be a brave, efficient and effective regulator

We share your ambition for the Commission to be world leading. Being brave, efficient, and making a difference for the better aligns perfectly with our attitude, vision and values. We have applied these principles when deciding how to measure our performance – set out in our draft SPE.

We are bold across the scope of our enforcement functions. In December 2023, less than two years after the legislation passed, we filed charges in New Zealand’s first ever criminal cartel prosecution. You will see an increase in the amount of enforcement activity under the Commerce Act 1986 over the coming months resulting from enforcement decisions we have taken.

We also have substantial enforcement work planned and underway under the Fair Trading Act 1986 and will report to you monthly on progress on these cases. However, we would appreciate the opportunity to discuss the current level of penalties that can be obtained under the Fair Trading Act 1986. These are at serious risk of failing to deter conduct that harms consumers and should be reviewed urgently.

We value commercial expertise in our people recruitment and retention. Our Board has significant commercial experience within its membership, and we look forward to showcasing this for you in your forthcoming meetings with Commissioners. This commercial experience will be particularly valuable as we consider structural changes to deliver on the Government’s savings expectations.

We propose the following key performance indicators:

Key performance indicator

Commerce Commission Public Sector Reputation Index

Key performance indicator

Perceptions of openness as measured through consumer and business surveys

Key performance indicator

Perceptions of our engagement as measured through our stakeholder survey

These KPIs allow us to understand how we are seen by a variety of stakeholders. We expect to see an increase in positive perceptions across all three as we continue to pro-actively engage with stakeholders about the work we do.

General Good Governance Expectations

Effective Board

We look forward to discussing our work with you, including our governance structure, performance and approach. We welcome an independent assessment of our performance and consider this type of review is best led by a world-class expert in competition agency performance and design.

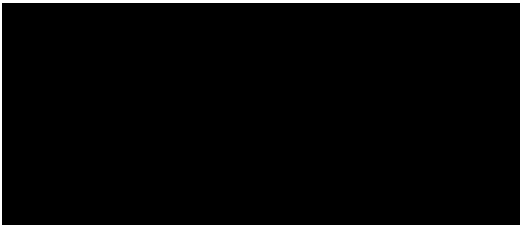
Accountability documents

We are making improvements to how we measure our performance in almost every output class, with a focus on measuring the impact we have made in the economy. These are contained in our draft SPE. This is part of a significant evolution in our performance measurement, with the addition of a range of new expectations for cross-organisation functions such as strategy implementation, people capability development, information technology investment, risk management and prioritisation, and Rautaki Māori | Māori Strategy implementation. The draft SPE also contains several important changes to improve transparency and strengthen accountability.

Reporting

To provide you with greater visibility of our current and future work we are also introducing regular monthly reporting to you on our enforcement and operational activities.

Yours sincerely | Nāku noa nā



Dr John Small
Chairperson, Commerce Commission | Te Komihana Tauhokohoko