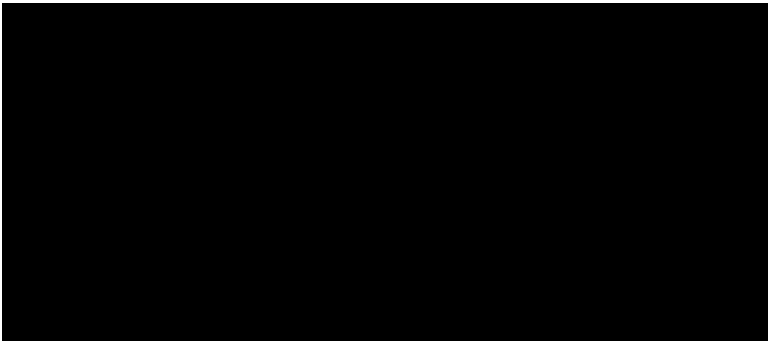


28 September 2023



#### **Official Information Act #23.051 – Response**

1. We refer to your request received on 12 September 2023 for information relating to our response in OIA 22.193, specifically footnote 4 describes why ‘No Further Action (NFA)’ may be taken. You have requested the following:
  - 1.1 If the Commerce Commission (the Commission) can advise, of the 186 complaints where NFA is recorded, how many of those complaints were viewed as a subject of jurisdiction of another agency and were actually referred to another agency?
  - 1.2 If the Commission can advise what agencies had complaints referred to them?
  - 1.3 If there were multiple agencies, can the Commission provide the number of complaints to the different agencies?
2. We have treated this as a request for information under the Official Information Act 1982 (OIA).

#### **Our response**

3. Of the 235 complaints noted in OIA 22.193, 62 complaints were tagged as “Q – Appropriate for other agency or private action” in the relevant period. This information is in **Appendix A** below.
4. Please note that this category is not broken down further into “other agency” or “private action”, and enquiries or complaints can have multiple tags (such as G – conduct is unclear/unlikely breach or B – One off behaviour or appear accidental).

5. In response to your requests at [1.2] and [1.3], we can confirm that none of the No Further Action (NFA)<sup>1</sup> complaints were referred to another agency.

*The Commission's screening process*

6. To provide context on how complaints are assessed, we have outlined the Commission's screening process below.
7. The Commission receives thousands of complaints every year. Each complaint is initially assessed by the Screening and Enquiries Team on the basis of the information available at the time. When conducting this initial assessment, the Screening and Enquiries Team considers:
  - 7.1 the likelihood of a breach of the relevant legislation (the Fair Trading Act 1986, Credit Contracts and Consumer Finance 2003, and the Commerce Act 1986);
  - 7.2 the Commission's Enforcement Response Guidelines;<sup>2</sup> and
  - 7.3 the Commission's strategic priorities and resourcing constraints.
8. The Commission has the power to act on complaints but is not required to take action in relation to all possible breaches of the legislation that we enforce.
9. If a complaint is appropriate for further consideration, it is reviewed by a panel of managers and subject matter experts from within the Competition, Fair Trading and Credit Branches. The panel decides which complaints are to be prioritised for further assessment by the Branch with reference to our Enforcement Response Model.<sup>3</sup>
10. This process enables us to identify complaints that best reflect our current enforcement priorities.<sup>4</sup> The outcomes of the process are not final and we may revisit any complaint at a later stage, should we wish to reconsider the issues it presents.

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<sup>1</sup> The Commission may decide not to take further action in relation to a complaint for a number of reasons. These reasons include, but are not limited to, circumstances where we consider the complaint is better suited to private action by the complainant, the complaint is subject to the jurisdiction of another agency, or where there is no clear breach of the law. However, each complaint and enquiry provides information that is valuable to the Commission. This contributes to future priorities, potential issues for us to watch closely or emerging issues to refer to our policy agency, MBIE. In this regard, we will monitor complaints on information we receive as we look to future prioritisation.

<sup>2</sup> Available at: <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>

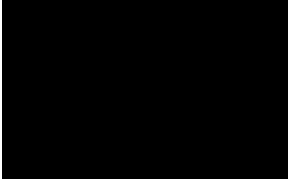
<sup>3</sup> Our Enforcement Response Model is discussed in more detail from page 3 of the Commission's Enforcement Response Guidelines, available here: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf).

<sup>4</sup> For further information, see: <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-criteria/>

**Further information**

11. 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.
12. Please do not hesitate to contact us at [oiacomcom.govt.nz](mailto:oiacomcom.govt.nz) if you have any questions about this response.

Yours sincerely



OIA and Information Coordinator

Appendix A							
Other agency or Private Action	2018	2019	2020	2021	2022	2023	Grand total
Yes	3	11	12	23	8	5	62
No	16	42	22	30	46	17	173
Grand total							235