



11 April 2024

Dr John Small  
Chair  
Commerce Commission  
PO Box 2351  
Wellington 6140  
Email: [REDACTED]

Dear John

## **ANNUAL LETTER OF EXPECTATIONS 2024/25**

I write to convey my expectations for the Commerce Commission (the Commission) for the 2024/25 financial year. I have consulted with other Ministers with an interest in the Commission, being the Ministers for Agriculture, Media and Communications, and Energy. You can also expect to receive a new enduring letter of expectations from the Minister of Finance/ Minister for the Public Service in due course.

### **Contributing to the Government's economic priorities**

New Zealand currently faces significant long-term economic, social, and environmental challenges. The National/ ACT/ New Zealand First Coalition Government (the Government) has agreed to a programme of work which will contribute to the Government's overarching aim to improve outcomes for all New Zealanders, improve productivity and grow the economy.

We are focused on addressing the high cost of living, restoring discipline to Government spending, enabling private enterprise, and reducing core Crown expenditure as a proportion of the overall economy. We will make regulatory change that creates the conditions for investment and improve our regulatory settings to encourage competition and attract investment.

Of particular relevance to the Commission, the Government intends to:

- Rewrite the Credit Contracts and Consumer Finance Act 2003 (CCCFA) to protect vulnerable consumers without unnecessarily limiting access to credit, and transfer the CCCFA functions to the Financial Markets Authority.
- Explore options to strengthen the powers of the Grocery Commissioner and improve competition in the grocery sector.

- Reform market studies to focus on reducing regulatory barriers to new entrants to drive competition.
- Repeal Labour's Three Waters legislation and establishing a replacement regime for the economic regulation of water services consistent with 'Local Water Done Well'.
- Support improved competition in the banking sector, including by establishing a Select Committee inquiry into banking.
- Remove the Auckland Regional Fuel Tax in June 2024, with the expectation that fuel companies will pass on these savings to consumers through lower prices at the pump.

Additional policies may be added from time to time.

I expect the Commission will contribute to achieving results for these policies and the Government's overall economic priorities. This includes expediting the transfer of the CCCFA function as quickly as possible and, consistent with the terms of reference for any market study, considering the impact that regulation has in creating barriers to entry and expansion.

### **Specific expectations for the Commission**

In 2024/25, I have the following specific expectations of the Commission:

#### *1. Drive competition and fair trading in the grocery sector*

Addressing the cost of living is one of the Government's top priorities. Increasingly, high grocery prices are contributing to this. The Government wishes to ensure the market is working effectively to enable existing competitors to expand or new competitors to enter the market. The Commission should:

- Ensure the role of the Grocery Commissioner is active, high-performing and respected in monitoring the grocery sector and in exploring ways to drive greater competition and appropriate market behaviour in grocery sector.
- Actively engage with stakeholders, and make full use of its enforcement, investigation and information gathering powers to identify and address issues in a timely fashion.
- Support greater transparency in the sector, by continuing to investigate and report on competition issues, including investigating margins made by regulated grocery retailers through their retail and wholesale offerings. In support of Coalition Agreement Commitments, I expect you to inform me, and work with MBIE officials on areas where legislative changes (such as stronger enforcement powers) may be required to address competition issues.

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

I also expect the Commission to continue to promote competition, or outcomes consistent with competition, for the long-term benefit of consumers across all sectors of the economy. This spans sectors subject to competition regulation such as groceries, land transport fuel, retail payments, telecommunications and dairy, and other sectors such as building supplies and everyday goods and services. For 2024/25, this includes:

- Building on the findings from the final report on the market study into the personal banking sector to achieve better outcomes for consumers of banking services, including assisting the government in any competition interventions it may take in that sector.
- Keeping a close eye on competition in land transport fuel markets so that New Zealanders can have confidence they are getting a fair deal at the pump.
- Supporting rural connectivity in broadband and mobile telecommunications services so that New Zealanders in rural and peri-urban areas may fully participate in an increasingly digital society. The Minister for Media and Communications and I see the completion of the Commission's rural connectivity study as a particular priority to help inform future policy work to address rural connectivity challenges, including decisions on any future Government investment. More generally, we also expect to see the effective use of tools in the regulatory framework to promote competition, improve retail service quality and empower consumer choice.

## *3. Support efficient, resilient and sustainable infrastructure services*

There is a need for significant investment in infrastructure in New Zealand to ensure efficient, resilient and sustainable services. I expect the Commission to:

- Ensure its approach to assessing capital projects by regulated industries supports appropriate investment over time and advise if further regulatory amendments are desirable to achieve this. This includes the assessment of capital plans, the ability to undertake targeted investments, and any WACC considerations.
- Support investment in electric vehicle infrastructure to underpin electrification of the transport sector by ensuring that connection costs are shared in a way that promotes electrification, that there is good visibility of distribution network capacity, and that connection costs to distribution networks for large customers are reasonable. The Minister for Energy and I expect that you will work closely with the Electricity Authority to coordinate your priorities and direction and ensure your regulatory initiatives are not siloed or duplicative, or providing misaligned investment signals.

## *4. Be a brave, efficient and effective regulator*

I expect the Commission to carry out a review of its approach to regulation, informed by the following objectives:

- Be brave – I expect the Commission to be an active regulator that is confident in using all the tools in its regulatory arsenal to achieve real impacts in Competition and Fair Trading that delivers better outcomes for consumers. I emphasise the importance of effective enforcement, and the value of its use for the development of case law. I also expect the Commission to be efficient and commercial in its thinking and decision making as a regulator and enforcer. I expect that your ambition is for the Commission to be a world leading competition and consumer protection authority.
- Be efficient – I expect the Commission to search for continuous improvement in carrying out its role and functions. This includes being open, transparent and responsive to its stakeholders and ensuring the Commission’s interventions are timely and proportionate. I also expect the Commission to adopt an organisational approach that reflects commercial realities by operating in a responsive and agile manner that limits duplication and inefficiencies.
- Make a difference for the better – I expect the Commission to be clear on its regulatory approach and work programme and be able to demonstrate the impact it is having to promote well performing markets that benefit all New Zealanders. I would like a clear line of sight from the time the Commission receives complaints through to decisions on enforcement actions, and the use of the litigation fund.

With these three objectives in mind, the Commission should vigorously pursue harmful conduct under Competition and Fair Trading laws, using the litigation fund to its full effect.

In addition, I expect these three objectives will inform the Commission’s performance measures, and the KPI’s required as part of the Statement of Performance Expectations. My officials at MBIE will work with you on these measures.

## **Good governance and reporting expectations**

### *Effective Board*

I want to ensure a high-performing Board that ensures the Commission is a quality organisation in which New Zealanders can have trust and confidence. To support this:

- I will be looking at ways to ensure the Board has a strategic and independent governance perspective, and I expect you to work with MBIE on options to achieve this.
- Over the medium term, I propose to request an independent assessment of the Board’s performance. I look forward to discussing this proposal with you further.

### *Preparation of accountability documents and KPIs*

As you will be aware, the Crown Entities Act 2004 mandates the requirements for the accountability documents of Crown entities. The Commission’s 2023-2027 Statement of Intent sets out the Commission’s strategic intentions and its contribution to markets working well for all New Zealanders.

Please arrange for the Commission to prepare a draft Statement of Performance Expectations and provide this by 1 May 2024 for my consideration. I look forward to being consulted in ample time to ensure the three principles set out earlier in this letter inform these measures.

In line with the Government's expectation of demonstrating accountability for public money, I expect that you will include sufficient performance measures and KPI's in your statutory accountability documents to demonstrate, and enable measurement of, the outcomes that will be achieved across all the Commission's functions with the funding the Commission receives.

#### *General governance and reporting expectations*

MBIE's publication *Monitoring arrangements for MBIE-monitored Crown entities*, published in October 2020 sets out general monitoring and governance arrangements for Crown entities.<sup>1</sup> This is supplemented by the *Funding Agreement between MBIE and the Commission*, effective from 1 November 2021.

Generally, I expect the Commission to:

- Maintain a strong organisational capability with a focus on delivery.
- Demonstrate a strict fiscal management and value for money.

I expect to meet regularly with you and the Commission Chief Executive to discuss the Commission's progress in achieving its performance expectations and KPIs. Please provide me with an organisational update on the Commission's operations and performance prior to these meetings.

Under the 'no surprises' principle, I also expect you to inform me promptly of matters of significance within my or other interested Ministers' portfolio responsibilities, particularly where these matters may be controversial or may become the subject of public debate.

#### **Other matters**

The Government expects all Crown entity boards to operate with a high standard of integrity and to have procedures in place to appropriately manage conflicts of interest, should any arise. I expect the Commission to have systems in place to ensure appropriate management of information, consistent with statutory obligations, and remain alert to cybersecurity risks. I also expect you to have a collaborative and constructive working relationship with your departmental monitor at MBIE.

Thank you in advance for your contribution to the successful operation of the Commission and for its contribution to the Government's wider objectives. Should you have any questions about any of the above, please do not hesitate to contact my officials at MBIE.

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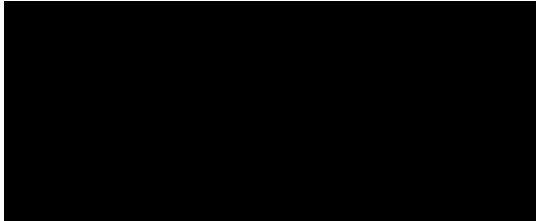
<sup>1</sup> MBIE, *Monitoring arrangements for MBIE-monitored Crown entities*, dated October 2020, available here: <https://www.mbie.govt.nz/dmsdocument/12638-monitoring-arrangements-for-mbie-monitored-crown-entities>.

## **Response**

Your advice on how you propose to respond to the expectations set out in this letter would be appreciated. Could you please provide your response by 24 April 2024.

I look forward to having a good working relationship with you and the Commission over the coming year.

Yours sincerely,



Hon Andrew Bayly  
**Minister of Commerce and Consumer Affairs**

Copy to: Adrienne Meikle  
Chief Executive, Commerce Commission



Andrew Hume  
General Manager, Small Business, Commerce and Consumer Policy  
Branch, MBIE

