

Quarterly Snapshot

Quarter 4 April - June 2024

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 seventh 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 2022/2023 in comparison of year to date for 2023/2024.

Concerns received Q4 2024

Legislation	
Commerce Act 1986	110
CCCFA 2003	118
Fair Trading Act 1986	2492
Fuel Industry Act 2020	21
Retail Payments System Act 2022	91
Telecommunications Act 2001	7
Total (including enquires from other Acts)	2684

Some concerns can be attributed to multiple Acts – which means the total number of concerns is not equal to the sum attributed to each Act.

Concerns received July 2023–June 2024

Legislation	
Commerce Act 1986	409
CCCFA 2003	451
Fair Trading Act 1986	10731
Fuel Industry Act 2020	65
Retail Payments System Act 2022	308
Telecommunications Act 2001	13
Total (including enquires from other Acts)	11497

Some concerns can be attributed to multiple Acts – which means the total number of concerns is not equal to the sum attributed to each Act.

Quarterly comment on enquiries to the Commission

The Commission received 11,497 concerns across our regulatory responsibilities during the 2023/24 year. This is similar to the number received in the 2022/23 year. The Commission also received 333 concerns that were not linked to an Act in the 2024 year. As in previous quarters, most concerns related to the Fair Trading Act and were about false or misleading behaviour. Key issues included promotional representations, contractual issues, products not being delivered, pricing inaccuracies and refund issues. The top 5 organisations with the most reported concerns were Woolworths New Zealand Limited, Kogan Australia PTY Ltd, One New Zealand Group Limited, New World (New Zealand) Limited, and PAK'nSave.



Investigations and Compliance

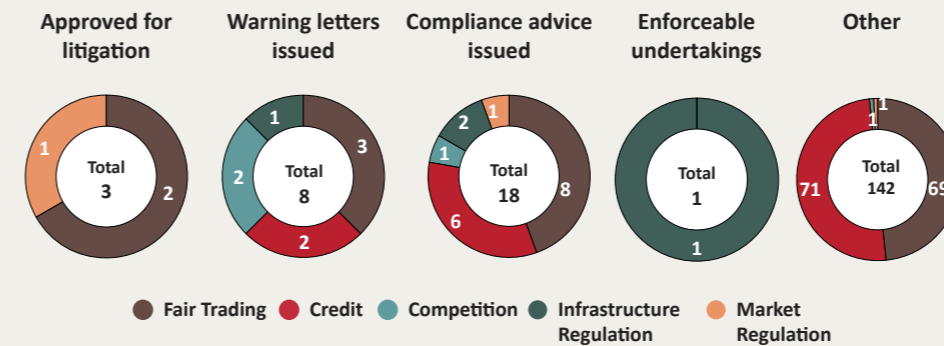
The Commission has a large number of investigations and compliance activities underway at any one time.

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 Q4
	Fair Trading	126
Credit	37	125
Competition	23	16
Infrastructure Regulation	8	3
Market Regulation	11	13

Investigations outcomes Q4 2023/2024



*The outcomes of other investigations were concluded utilising the full range of responses under our enforcement response guidelines.

Quarterly comment on investigations and compliance

- Davie Clothing Pty Ltd (aka 'Oodie') - warning issued for the likely breach of s30(1) of the FTA, for the supply of wearable towels that did not comply with the product safety standard for children's nightwear and limited daywear. Children's wearable towels with a sleeve opening must have fire hazard information attached to the product and displayed online. Davie clothing supplied six different styles of the towel, 174 in total, without providing any of the required hazard information.
- StraitNZ t/a Bluebridge Cook Strait Ferries - warning issued for a likely breach of section 13(i) of the Fair Trading Act 1986 due to representations it made to consumers about their rights to compensation when a ferry service had been delayed or cancelled. This is because until at least June 2023, Bluebridge's terms and conditions purported to exclude Bluebridge's liability to affected passengers for loss or damage occurring from ferry delays or cancellations in circumstances where rights to compensation may be available in law.
- During Q4 the Credit Branch completed a proactive monitoring project reviewing lender compliance with the CCCFA Advertising Regulations, resulting in 44 Information Passed to Trader letters being sent to lenders identifying issues with their website advertising.
- As the Certification regime (under Part 5A of the CCCFA) has now been in place for almost three years, we have shifted our enforcement approach in respect of non-notification of prescribed changes. During April – June 2024, this resulted in 16 traders being sent an Information Passed to Trader letter.
- A compliance advice letter was issued to Horizon Energy Distribution Limited for a misstatement in its price-setting compliance statement for 2022. This error had no effect on charges to consumers due to Horizon noticing the error and correcting it prior to submitting the annual price-setting compliance statement for the 2024 assessment period.



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 Judgements

The Commerce Commission has achieved a hard-fought legal victory over global ticket reseller, Viagogo, after the company repeatedly misled customers about its authenticity as an official ticket seller, its status as a resale platform, and the price, scarcity, and validity of tickets. The High Court has ordered that Viagogo correct the misleading information on its website and update its terms and conditions in contracts with Kiwi consumers to allow for customer disputes to be dealt with through the New Zealand courts. Viagogo has appealed the judgment. Shelly Cullen was prosecuted under the Fair Trading Act on five charges relating to her promotion of the pyramid scheme 'Lion's Share.' Ms Cullen has been ordered by the Auckland District Court to pay \$5.9m - this is a combination of a \$600,000 fine - the largest ever criminal fine issued to an individual under the Fair Trading Act - and an order to pay over \$5.3m to reflect the value of the commercial gain she made through the scheme. The significant sentence reflects the level of harm caused by pyramid schemes - 83% of participants in 'Lion's Share' worldwide lost money.

In April the Commerce Commission filed proceedings under the Commerce Act against industrial cleaning company Canterbury Industrial Scrubbing Limited (CI Scrubbing) and its director, Daniel Jamieson, alleging that it engaged in cartel conduct with a competitor to allocate customers. The Christchurch High Court has now imposed penalties against CI Scrubbing for longstanding cartel agreements with a competitor.

In a scheme that ran virtually uninterrupted for nearly two decades, CI Scrubbing and another industrial cleaning company agreed that CI Scrubbing would only offer industrial scrubbing services, while the other would only offer industrial sweeping services, and the two would not compete. When the other company tried to exit the scheme, CI Scrubbing's director, Daniel Jamieson, threatened to target their customer base in an attempt to induce them to continue. After the cartel broke down, some customers of industrial scrubbing and sweeping services saw an immediate benefit, with prices dropping by up to 30% in some cases.

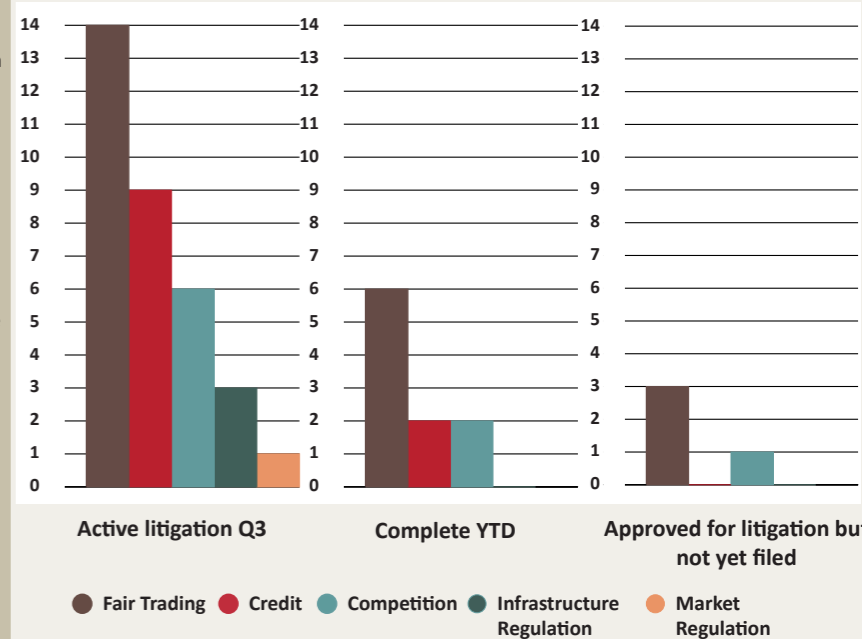
Filings

The Commerce Commission has filed proceedings in the Wellington High Court against Foodstuffs North Island, alleging that anti-competitive land covenants were lodged by the supermarket operator with the purpose of blocking competitors from opening rival supermarkets at particular sites and developing existing ones at several locations across the lower North Island.

The Commission and the defendants have entered into a settlement to resolve the proceedings on terms acceptable to both parties. The High Court will determine any orders to be made in relation to Foodstuffs North Island in due course.

The Commerce Commission has filed criminal charges against Kiwibank Limited (Kiwibank), alleging systemic breaches of the Fair Trading Act. The breaches relate to issues that resulted in more than \$7 million being incorrectly charged to over 36,000 customers for fees and interest rates in relation to home loans, credit cards and overdrafts, over a period of several years.

Litigation overview Q4 2024



*Including 1 matter where the Commission is intervening as a non-party to a litigation.





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.

	Market study 4 – Personal banking services	Grocery	Retail Payment System	Telecommunications
Previous Milestones	20 June 2023: Terms of reference published in the Gazette. 22 June 2023: Statement of Process paper published. 10 August 2023: Preliminary Issues paper published. 21 March 2024: Draft report published.	January 2024 <ul style="list-style-type: none"> Anonymous reporting channel launched – 14 January 2024. Second statutory assessment of wholesale regime commenced. February 2024 <ul style="list-style-type: none"> Grocery newsletter published – 15 February 2024. Grocery supply code checklist published - 29 February 2024. March 2024 <ul style="list-style-type: none"> Unit pricing guidance published – 18 March 2024. 	February 2024 <ul style="list-style-type: none"> Update on our payments between bank accounts work and expectations for Payments NZ and largest banks published. March 2024 <ul style="list-style-type: none"> Consultation on our proposal to recommend designation of the interbank payment network published. Compliance information received on interchange fee regulation (Visa and Mastercard). 	January 2024 <ul style="list-style-type: none"> Measuring Broadband NZ Spring Report published. February 2024 <ul style="list-style-type: none"> Copper Withdrawal Code: Final Decisions and Reasons paper published. Annual update to industry letter published. March 2024 <ul style="list-style-type: none"> Telecommunications Consumer Satisfaction Monitoring Report July - December 2023 published. Draft Product Disclosure submissions published.
	18 April 2024: Submissions on draft report close. 13 -16 May: Consultation conference. 30 May 2024: Post-conference cross-submissions close.	April 2024 <ul style="list-style-type: none"> Open letter to grocery sector published alongside correspondence between the Commission and the RGRs on their draft grocery supply agreements. Second grocery newsletter published. May 2024 <ul style="list-style-type: none"> Guidance on Unfair Contract Terms published. June 2024 <ul style="list-style-type: none"> Second statutory assessment of wholesale regime completed. 	<ul style="list-style-type: none"> Analysing submissions received on our proposal to recommend designation of the interbank payment network. Development of a consultation paper on whether costs to businesses of accepting Mastercard and Visa card payments could be reduced and simplified, which could also see surcharges reduced. 	April 2024 <ul style="list-style-type: none"> Measuring Broadband NZ Quarterly Report published (report 19). RealSpeed report published. Telecommunications Dispute Resolution Scheme Review letter published with subsequent consultation. June 2024 <ul style="list-style-type: none"> 111 Contact Code Review - Final Decision and amended Code published. Telecommunications Development Levy specified information and assurance instructions published. Mobile Billing transparency review letter published. Measuring Broadband NZ Quarterly Report published (report 20).
	20 August 2024: Final report published.	July 2024 <ul style="list-style-type: none"> Publication of a call for views paper for consultation on the Grocery Supply Code review by the end of July. August 2024 <ul style="list-style-type: none"> Publication of Review of the Grocery Supply Code: Request for views paper. Publication of the Annual Grocery Report. Instore requirements for unit pricing come into effect (31 Aug). 	July 2024 <ul style="list-style-type: none"> Publication of a Consultation paper on whether costs to businesses of accepting Mastercard and Visa card payments could be reduced and simplified, which could also see surcharges reduced. August 2024 <ul style="list-style-type: none"> Submissions due on consultation paper addressing cost of card payments. Concluding the process on whether to progress with a recommendation to designate the interbank payment network. 	July 2024 <ul style="list-style-type: none"> Publication of Final report on Customer Service rankings design and contents. August 2024 <ul style="list-style-type: none"> Publication of the Telecommunications Annual Monitoring Report (AMR) including the analysis for the rural connectivity study. Publication of the Telecommunications Consumer Satisfaction Monitoring report covering January to June 2024. Publication of Marketing Alternative Service / Broadband Marketing Report on the revised guidelines. Customer Service rankings quarterly update – April to June 2024. September 2024 <ul style="list-style-type: none"> Publication of the Wi-Fi router/modem testing buyers guide. Publication of Research report on issues consumer’s experience when switching providers issues research. Publication of the draft Telecommunications Dispute Resolution Scheme (TDRS) review. Publication of the final Mobile Billing Transparency review report. Publication of the Measuring Broadband New Zealand quarterly report (report 21).
Future Milestones				

Quarterly comment on projects of significance Market studies
 On 20 June 2023, the Government asked the 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. We held a consultation conference in central Auckland and online 13-15 May 2024. Transcripts of the public sessions at the conference and post-conference submissions have been published on our website. Our final report is required to be published by 20 August 2024. After that, the Government will decide how to respond to our findings and recommendations.



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 April - June 2024		Merger clearances s66	Merger authorisations s67	Collaborative activity clearances s65A	Trade practices authorisations s58
	Decided	3	0	0	0
Undecided at end of quarter	2	1	0	1	

YTD: Outcomes 2023/2024		Merger clearances s66	Merger authorisations s67	Collaborative activity clearances s65A	Trade practices authorisations s58
	Cleared unconditionally	12	0	0	N/A
	Authorised	N/A	0	N/A	1
	Cleared with divestment	0	N/A	N/A	N/A
	Declined	0	0	0	0
	Withdrawn	1	0	0	0
	Varied	N/A	N/A	N/A	0
	Sol/SoUI issued	7	N/A	0	N/A

Quarterly comment on competition clearances and authorisations

The Commission granted clearance to three merger applications in Q4 which involved animal nutrition, courier services, and telecommunications. The Commission received one application for merger authorisation in Q4, relating to cash-in-transit services, which remains undecided at the end of Q4. The Commission did not receive any new applications for merger clearance in Q4. There are two merger clearance applications undecided at the end of the quarter, which involve the grocery and DJ hardware and software sectors. In Q4, the Commission decided to issue a Statement of Unresolved Issues for the application from Foodstuffs North Island Limited and Foodstuffs South Island Limited seeking clearance to merge, which was published on 16 July 2024. The Commission also published a statement of Unresolved Issues on AlphaTheta’s application for clearance to acquire Serato.

On 1 July 2024, the Commission issued a draft determination on Payment New Zealand’s application to further develop its open banking framework. Submissions by interested parties close on 19 July, with cross-submissions due on 29 July. The Commission is currently scheduled to make a decision on the application by 22 August 2024.



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

Around 31% of OIA requests this quarter concerned complaints that had been submitted to the Commission about the conduct of particular traders and the Commission’s response to those complaints. More than half of the OIA requests in this category were from individual members of the public, and law firms on behalf of clients being investigated or involved in the Commission’s investigations. The Commission also received requests for complaint information from the media, and from businesses wanting to know if the Commission had received complaints about them.

Q4 2024 April - June 2024

81 OIA requests received

298* Year to date requests answered

*69 are from Q1, 78 from Q2, 75 from Q3 and 76 from Q4.

