



MP for Mana

Minister of Civil Defence

Associate Minister of Immigration

Minister of Commerce and Consumer Affairs

13 APR 2018

Dr Mark Berry
Chairman
Commerce Commission
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Dear Mark

ANNUAL LETTER OF EXPECTATIONS FOR 2018/19

I am writing to convey my portfolio priorities and your role in achieving these priorities, along with my strategic and performance expectations for the Commerce Commission in relation to the 2018/19 financial year.

The goal of the Government's economic strategy is to improve the well-being and living standards of all New Zealanders through sustainable and inclusive growth. This means moving beyond narrow economic indicators and measures of success, and instead putting the well-being of our people and the environment at the centre.

This government will build an economy focussed on delivering shared prosperity and sustainable economic growth. To improve well-being we will focus on initiatives that deliver improvements across a range of areas, including economic, social and environmental targets.

It is this vision that will drive the work in my portfolios, including the Commerce and Consumer Affairs portfolio which is of relevance to you.

Commerce and Consumer Affairs priorities and what this means for the Commerce Commission

This Government's social and economic priorities are different from what we have seen in the past nine years. As such, the Government's work programme will reflect this change as we work towards a more inclusive and prosperous nation. The work of the Commission is immensely important for achieving positive results for New Zealanders. While acknowledging the Commission's statutory independence, it is my expectation the Commission will contribute to achieving results that are consistent with the goal of the Government's economic strategy, where appropriate and possible.

As Minister of Commerce and Consumer Affairs, I am committed to the portfolio playing a significant part in supporting a more competitive, confident and productive business environment that delivers positive outcomes for all New Zealanders. Consumers should be at the heart of competition and consumer policy for 2018/19. In particular, my attention will be focused on areas that can have an impact on 'every day' New Zealanders, especially the more vulnerable members of society.

My priorities in regards to competition law and policy include reviewing the abuse of market power prohibition in section 36 of the Commerce Act to promote a more competitive and fairer business environment. In addition, I am aware of the importance of the Commission having appropriate tools and resources for upholding compliance with the law. This includes advancing a Commerce Amendment Bill to provide the Commission with the ability to undertake market studies into particular industries or markets in the economy to ensure that the selected markets are delivering better outcomes for all New Zealanders. Furthermore, I have progressed a Bill to introduce a criminal offence for cartels into the Commerce Act.

In the area of consumer policy, notwithstanding the very significant reform in recent years that has strengthened consumer law, I consider there is still much more that can be done to support disadvantaged and vulnerable consumers. Accordingly, this will be an area I want to focus on in the coming year. To this end, amongst other things, I will be reviewing the Credit Contracts and Consumer Finance Act with a view to exploring options for better addressing predatory and irresponsible lending.

I look forward to the Commission making an important contribution in relation to my portfolio in 2018/19, including the priorities outlined above. Some work within the competition and consumer policy area will continue 'business as usual' into 2018/19 while other work will be seeking a change of the status quo. My expectations of the Commission in relation to the policy work in this portfolio are as follows:

Competition

- i. To work with and provide your expert views to the Ministry of Business, Innovation and Employment (**MBIE**) on changes to the Commerce Act, including in regards to the Commission having the ability to undertake market studies, the criminalisation of cartels, the establishment of an enforceable undertakings regime, and the repeal of the cease-and-desist regime.
- ii. To receive the Commission's expert views in regards to the review of the abuse of market power prohibition in section 36 of the Commerce Act. However, whatever the outcome of this review, I expect that the Commission will be as committed to enforcing section 36 as it is to enforcing any other provision in the Commerce Act.
- iii. To identify and give priority to areas that have the greatest impact on supporting competition in markets for the benefit of consumers.
- iv. To recognise the benefits and direct and indirect costs of the Commission's actions on consumers, businesses and the wider economy, including by carrying out ex-post evaluations to assess and continuously improve the Commission's interventions.
- v. To maintain and strengthen the Commission's communication and timeliness in relation to its determinations work. This includes clearly communicating to applicants for determinations about information required and theories of harm, providing clear

signals on likely timeframes and factors relevant to these and communicating early any pressures on timeliness to me and my advisors at MBIE.

- vi. To provide targeted advocacy and education initiatives as appropriate, and in particular, when the power to carry out market studies comes into effect, to prepare guidance information on the Commission's approach to carrying out market studies into particular industries or markets and to constructively engage with Ministers and government officials on the selection of markets for study and the scoping of any study.
- vii. To maintain effective relationships with overseas competition regulators to promote the integrity of New Zealand's competition regime.

Consumer

- viii. Undertaking a proactive consumer focused approach to consumer law education, engagement and enforcement by:
 - a. Proactively identifying issues facing consumers in New Zealand in particular the most vulnerable consumers by engaging in direct and culturally appropriate ways.
 - b. Identifying and giving priority to areas of greatest impact on consumers, including especially with respect to disadvantaged and vulnerable consumers.
 - c. Recognising the benefits and direct and indirect costs of the Commission's actions on consumers, businesses and the wider economy, including by carrying out ex-post evaluations to assess and continuously improve the Commission's interventions.
 - d. Undertaking targeted advocacy and education initiatives, with a focus on extending engagement with and support to disadvantaged and vulnerable consumers, communities and groups.
 - e. Undertaking engagement with lenders and consumer groups at all levels in the consumer credit sector to build on previous work to develop a community of interest in credit markets.

Economic regulation under Part 4 of the Commerce Act

- f. To constructively engage with MBIE, suppliers of regulated services and other stakeholders on options within the established regulatory framework to meet Government expectations on resilience of infrastructure (including resilience to significant natural disaster events).
- g. To promote greater understanding of the performance of individual regulated services by publishing summary and analysis of information publicly disclosed by suppliers of regulated services.
- h. To fine tune, where opportunities to do so are identified, the implementation of Part 4 to increase business certainty and improve the efficiency of the regulatory system.
- i. To monitor emerging market trends to ensure the regulatory regime currently implemented remains appropriate;

Telecommunications industry-related expectations

In relation to the telecommunications industry, the Minister of Broadcasting, Communications and Digital Media expects the Commission to continue its regulatory responsibilities under the Telecommunications Act 2001. The Minister's particular expectations for the Commission in 2018/19 are:

- xiii. To improve broadband speed testing to provide an accurate and accessible source of high-quality information, which is widely available to inform and support consumers.
- xiv. To support the roll-out of Ultra-Fast Broadband services by working to implement reforms resulting from the Telecommunications (New Regulatory Framework) Amendment Bill.
- xv. To develop use-friendly consumer-oriented reports and services to ensure telecommunications end-users have a readily understandable and fair way to make informed choices on retail service quality.

Dairy industry-related expectations

The Minister of Agriculture recently announced his intent for a comprehensive policy review of the Dairy Industry Restructuring Act 2001 (**DIRA**) to be carried out as a matter of priority. While the review will be led by the Ministry for Primary Industries, some elements of the review may benefit from the Commission's expert analysis. If such need arises, I and the Minister of Agriculture would discuss the form, nature and funding for the analysis with the Commission and would expect the Commission's support.

During the review, we expect the Commission to continue to monitor Fonterra's milk price setting arrangements, and to ensure it has the capability to undertake its adjudication and enforcement functions under DIRA.

General expectations and good governance

As part of your role in governing a high-performing entity, I expect you to:

- maintain an effective board
- be the primary monitor of the entity's performance and maintain effective relationships with my advisors in MBIE
- operate a no surprises policy.

These expectations are set out in more detail in the Annex to this letter.

Strategy and performance information

All Crown entities must prepare an annual Statement of Performance Expectations (**SPE**) and have an approved Statement of Intent (**SoI**). The annual SPE should provide a clear performance framework and support excellent reporting to Parliament and the public on results.

I do not expect a new SoI for the three years from 2018/19. However, I do wish to signal my expectation that a new SoI be prepared for the three years commencing 2019/20 given the change in Government and the likely to changes to the Commission's board, legislation, and funding over the next 12 months.

Response

Your advice by 27 April 2018 on how you propose to respond to the expectations set out in this letter and its Annex would be appreciated. I would be happy to consider approaches that best achieve our collective aims and work well for the Commission. In the first instance, please discuss your proposed response with MBIE.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Kris Faafoi', written over a faint, illegible printed name.

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs

Copy to: Geoff Williamson

Acting Chief Executive, Commerce Commission

Brad Ward

General Manager, Commerce, Consumers and Communications branch, MBIE

Annex 1: General expectations and good governance

Effective board

Ensuring the board is, and remains, high-performing is essential. There are many tools to help boards self-assess and improve performance. I expect you to use a robust process, and advise me and MBIE of the result of this self-assessment by 30 September 2018, including what steps the board is taking to respond to the findings of your annual self-review. MBIE can provide support for the board in undertaking this work.

Your input into succession planning for the board is also sought. I expect you to provide MBIE with your view of the competency mix you need to work well as a board, along with your thoughts on upcoming appointments and any candidate attributes to target.

Effective monitoring of entity performance by the board and relationship with MBIE

In addition to setting and driving a strategy that delivers on government priorities, your board is the most important monitor of entity performance. I expect the board to provide me with high-quality information and analysis on entity performance against your strategic plan, implications for future performance, and risks and opportunities facing the entity.

I also expect you to have a constructive working relationship with your monitor at MBIE.

No surprises

The Government has a 'no surprises' policy. No surprises means that the Government expects a board to:

- be aware of any possible implications of their decisions and actions for wider government policy issues
- advise the responsible Minister of issues that may be discussed in the public arena or that may require a ministerial response, preferably ahead of time or otherwise as soon as possible
- inform the Minister in advance of any major strategic initiatives.

I also ask you to avoid 'pre-judging' my potential responses to risks and opportunities. I expect to hear about emerging issues and what major actions the board is considering. My reactions will be based on a range of factors, including the benefits of new initiatives and of taking different approaches to achieve our goals.