

## **Competition Matters 2019**

### **Opening Remarks – Anna Rawlings, Chair**

25 July 2019

#### **Introduction**

Tena koutou, tena koutou, tena koutou katoa  
Nga mihi nui ki a koutou

Good morning and welcome to the 2019 Competition Matters conference, our first in Auckland.

I would like to acknowledge our many international guests, including speakers and colleagues from around the world. We are fortunate to have such a wide range of high calibre speakers sharing their knowledge and perspectives with us over the next two days as we highlight and debate topics that affect markets, consumers and businesses throughout New Zealand and around the world.

#### **Fit for the future**

The programme for the conference reflects important issues facing us no matter where in the world we are from. And no matter whether we are regulators, legal or economic advisers, businesses or consumers.

We all face significant change in the world around us and at the Commission we continue to face change within our organisation. I want to talk a little bit about both and then provide some insight into our work priorities for the next year.

First, our operating context. It has become somewhat rhetorical to say that- the world that we all live in is in a constant stream of change – technological, societal, environmental and political. With radical transformation in some sectors we see businesses appearing and disappearing at an unprecedented rate. The digital age has transformed our lives, personally and professionally. My seven year old daughter recently asked me what we did if we wanted to learn something before Google? She looked incredulous – possibly even disgusted - when I told her that when most of us in this room were children looking for information we asked our teachers or our parents or we went to the library to find the answer in a book. Even Google is becoming old hat for her and no doubt shortly she will prefer to ask an AI device like Alexa and receive an instant answer to any question she chooses to ask.

No longer do we worry about catching the news in the form of a daily printed newspaper, on the radio on the hour or on the television at 6pm. Neither do we find ourselves rushing to the bricks and mortar store before closing time. Now the news is delivered instantly, and

on the go, on a handheld device and we can shop online at thousands of retailers around the world and have our goods delivered to our door steps in a few days if not hours.

It feels spectacular. In fact, if it feels like much of it is tailored specifically to meet your needs and your needs alone, that's because it probably is.

But behind the rhetoric of change a number of surveys are showing that people seem to feel less than spectacular about all of this. Instead, many are feeling vulnerable. Vulnerable to having their personal information harvested, their choices manipulated and to paying more than they feel they should. Others observe a marked shift in economic inequality - in this country focusing on income levels, poverty rates, and housing prices. This might reflect a wider international trend in which some people are losing faith in markets and institutions.

In this context, competition remains especially important. As does the role of agencies like ours entrusted with a role in maintaining competitive markets in the long-term interests of all consumers. The effective enforcement of competition laws and our proactivity in tackling anti-competitive conduct are vital to addressing New Zealand's productivity and to fostering innovation, growth and employment, as well as business and consumer confidence. And it is increasingly important that people can see the extent to which healthy competition can contribute to the well-being of consumers and the broader economy.

We need to be conscious of this changing context and the changing expectations that it places upon us and ensure that we are properly equipped to rise to the challenge as an organisation.

Against this backdrop, over the past twelve months or more the Commission has faced a number of changes as an organisation. We have a reasonably new Chief Executive and a much newer Chair. Every piece of legislation that we enforce is either currently being amended or has had changes proposed. We have taken on a number of new functions, powers and duties in recent years which have seen our organisation grow from a village to a town. We now have around 250 staff members, up from 180 five years ago and with current legislation amendments we expect that this will grow further.

This changing landscape – both environmental and internal - brings with it challenges as well as opportunities which we are keen to harness.

This is why we have launched a piece of work we call Fit for the Future. It looks at how well we are positioned to deliver on our vision and objectives in the future and how we will meet future challenges. We need to ensure that we have the infrastructure to operate as a town, not a village. Our needs are different as a medium-sized and more complex organisation. We need to make sure we are well positioned to deliver on our functions, powers and duties

into the future in a changing world. We want to purposefully look at where we are heading rather than just reacting to what comes in the door as it arrives.

We have hired an external consultant to help us with this work and they will be engaging with staff and stakeholders. It is important to us that we consider these issues for ourselves, but also that we hear from those with whom we work, and whose interests are affected by what we do. If you would like to provide feedback to us as part of this project please contact us at the email address on screen. I look forward to sharing where we get to with this work in the next 6-12 months.

### **Communicating better and increased engagement**

Being new to the role of Chair many people have asked me what I would like to achieve in the role or what changes I have planned.

As you will appreciate after I talk through our priorities for the coming year, the Commission has a very full dance card. So our immediate focus is on ensuring that we deliver all of our core work, the market study, the implementation of fibre regulation, price resets and accommodate all the legislative change coming our way and the Fit for the Future work. But as the year progresses and we do get a bit more room on the dance card, we will be starting a piece of work designed to improve our communication and increase our engagement. We want more New Zealanders to understand who we are and what we are doing to serve their interests.

The Commission has made significant progress in recent years in our transparency and in the way we communicate but there is still work to be done. We want to get to a place where we are much clearer about who we are and what that means for others. This will help us to be much better about telling our story cohesively as an organisation. We deal with a world of highly technical information and sometimes we struggle to pull ourselves out of the detail and tell the story in a way that stakeholders and the general public can understand and relate to. We are going to change that.

We will also look carefully at who we engage with, when and how so that we can be confident that we are using the right channels to reach the right people to collect information that will help us to identify harm and potential harm faster and to be more targeted in our actions. While at the same time this will help us to better target our advocacy and education work for consumers and for businesses across all of the work that we do.

We have undertaken work of this type related to consumer credit for some time. We will be expanding it. We have started some other work in this area, recently establishing a fibre 'consumer focus group' made up of representatives of interested groups that tend not to

have the resources available to make detailed submissions on our consultation documents. The idea is to take that burden off them and get together, discuss issues, hear their views then write up the discussion which forms a submission. We are also starting conversations with different groups to get a greater understanding of needs and how our regulation work impacts them and their members, so far this includes organisations like Age Concern, Rural Women and the Dairy Women's Network. We hope that this will help us to understand how we can better engage with them and their members in meaningful ways.

I look forward to starting this work and to you seeing the results in the future.

### **2019/20 Priorities**

Of course, we also need to have an eye to what we do, as well as how we do it. As part of a commitment to greater transparency and increasing understanding of what we do, two years ago we started publishing our priorities. We have published our 2019/20 priorities and hard copies are available today. I want to share some key features with you.

This year we have four broad groups of priorities. Our enduring priorities are areas we will always prioritise due to their potential to have a significant impact on consumers, businesses and markets in New Zealand or because they are a core part of our statutory role. This includes credit issues, product safety, merger clearances and authorisations and our functions in critical infrastructure industries like energy and telecommunications.

The next group is the priority focus areas that we have identified to target this year which are important to everyday life and the economy. There are eight focus areas across the business. The first three are areas in our consumer and credit work where we will be looking to understand the issues, identify current and potential harm, educate traders, empower consumers and take enforcement action where needed. Importantly, the identification of these focus areas will not preclude us from engaging in advocacy, undertaking investigations or taking enforcement action in other areas affecting consumers where we consider that our involvement can benefit consumers.

The first relates to motor vehicle financing and related add-ons – after a house, a car is generally the biggest purchase a consumer will make. We focused on work in this area last year and we will be looking to follow that up by looking at financing and related add-ons such as insurance and mechanical warranties. This is an area where overseas studies and our own complaint data indicate there are some potential compliance issues.

Environmental claims are a renewed area of focus for the Commission – environmental issues are increasingly important to consumers and to the economy. Products touting environmental claims often attract price premiums and it can be difficult for the claims to be verified by consumers. Traders making false or unverified claims also gain an unfair

competitive advantage over traders who tell the truth and have the evidence to back up their claims.

Online retail was a priority focus area last year but it is one that will continue in the year ahead. New Zealanders spent more than \$5 billion last year online at retailers domestically and offshore. It is a massive industry and it is getting bigger. Companies continue to innovate to reach consumers and technological developments can have a real impact on consumer choice such as pressure-selling. Given that when it comes to the internet the world is a village we also want to increase our engagement with relevant domestic and overseas agencies in this area to address cross border issues to the greatest extent that we can.

Through our competition work we want to increase trader awareness about conduct that may contravene cartel laws. This is particularly important ahead of the introduction of criminalisation in 2021 so we will be undertaking a programme of targeted outreach in this area and working on ensuring that we are equipped and ready for the implementation of this law when it takes effect.

Right now we are working hard to deliver our first market study on factors affecting competition in the retail fuel market in New Zealand. Many of you involved in market studies will know that a year with a small team on a study like this is a challenging time frame but we are confident that we are on track and look forward to delivering the draft report next month, and to discussing its content with interested parties in the weeks that follow before we finalise the report later this year.

Our regulation branch is focused on delivering two electricity resets this year – the price quality paths that set revenue limits and quality standards for many electricity networks including Transpower and regional distribution networks. Both will be completed in November and come into effect in April next year.

In telecommunications we have two focus areas. We will be monitoring and reporting on telecommunications retail service quality to help consumers choose the best services and providers for them, taking into account factors such as customer service, billing, speed and performance. This includes seeking feedback from consumers to help us identify what information we should collect and publish to help them compare the quality of services from different providers.

We will be consulting on and finalising decisions on the new input methodologies for fibre broadband services, which will ultimately affect the price and quality services for homes and businesses across New Zealand.

The third high level group of priorities are those based on 'connecting'. As I have mentioned already, connecting with others is an important part of increasing our understanding and effectiveness as a regulator and as one small part of a wider New Zealand and global regulatory system. Connecting means more than finding a voice that our stakeholders can hear and relate to, it also means finding the right ways to ensure that stakeholders have a voice to tell us what they would like from us and how we can best serve their interests – within the scope of the mandate granted to us under the laws that we enforce of course.

In addition, we are refreshing a number of our publications including our enforcement response guidelines. We will ensure that these guidelines are properly applicable to the compliance and enforcement work of the regulation branch as well as explaining how we enforce New Zealand's fair trading, competition and credit contract laws.

Another aspect of our work on building connections will involve working with others across the regulatory system both here in New Zealand and overseas. We will continue to collaborate with other regulators, provide advice to government, participate in cross-Government initiatives and in global networks. Our global networks and relationships with our overseas counterparts, many of whom are represented here today, help us to share in important conversations about issues affecting consumers, competition and regulation that impact outcomes for all New Zealanders.

The last high-level group of priorities identified for 2019/2020 relates to legislative change. With all of the legislation we enforce either being currently amended or proposed to be amended we will be focusing on making appropriate policy related submissions and ensuring that we have the right resources, people, processes and systems in place to affect those changes. We will also be working on engagement plans to ensure consumers know their rights and businesses know their obligations as a result of the changes. We are getting ready for cartel criminalisation, most likely a new and enhanced consumer credit regime which currently includes a requirement for us to undertake a fit and proper person test and we continue to implement changes to the Telecommunications Act. In addition, we will maintain an eye on the final findings of the Electricity Price Review when it is released and provide input on proposed changes to the Fair Trading Act.

### **2018/19 Priorities – how did we do?**

That has been a lot about what we have on and where we are going. However, measuring and reporting on performance against our priorities and on the impact we are having in New Zealand markets is also important. I'd now like to take a few moments to reflect on some of the highlights of the work we did on some of our priorities last year.

### *Retail telecommunications*

If you're a telco, or read the news, you will probably be aware that retail telecommunications has been a focus for us over the past two years. It is our most complained about industry and it affects the vast majority of New Zealanders. Over the two years we have issued 10 warnings to six different companies and taken three prosecutions. Notable among these cases are those that may have impacted low levels of individual consumers, but in aggregate have a more significant effect. Issues of this nature are not unique to this industry, but systems based issues and aggregate consumer harm of this nature can not, and should not, go unaddressed. We have also spent a lot of time engaging with the telcos in the context of compliance meetings. Outreach to consumers has also been a focus, we have produced a series of guides and our videos titled 'Beginner's Guide to Broadband' which have been viewed by almost 700,000 people.

### *Motor vehicle sales*

As I noted earlier, we have spent a lot of time visiting motor vehicle dealers, checking for compliance and providing materials to help them comply with the law. In the last month we have run a campaign in motor trade publications with the simple message "Tell it like it is" encouraging dealers to accurately represent the vehicles they sell to consumers. We also took a number of enforcement cases over the year including the prosecution of 2 Cheap Cars which was fined \$438,000 earlier this month for misleading advertising about a liquidation sale and misleading conduct related to a warranty waiver and consumer guarantees.

### *Online retail*

We have been active here and overseas in engagement to help us better understand issues arising in online commerce. Earlier this year we held an online retail forum with representatives from Google, Trade Me, Shopify, Netsafe, the Privacy Commission and many others. We continue to liaise with the International Consumer Protection and Enforcement Network in relation to online work and we participated in an online sweep coordinated through that organisation. Our staff reviewed 73 websites for pressure selling tactics. Separate to this we reviewed 174 websites and issued advice to 41 businesses resulting in many changes to websites. We also took a range of enforcement cases this year such as those against Viagogo and more recently against Bachcare. Online reviews are a source of continued interest for us.

### *Credit matters*

Responsible lending has been an area of significant work for us in the last year. We have 11 credit cases currently in litigation or approved for litigation. This includes some that seek precedent setting declarations of breach of responsible lending obligations. This work also includes challenges to excessively high interest rates. The issues in the credit sector are widespread and by no means simple to address. Proposed changes to legislation will bring

us an opportunity to review our approach and to enhance it, including through enhanced advocacy initiatives.

#### *Non-notified mergers*

The success of our voluntary merger regime relies on the credible threat of enforcement when businesses do not apply for clearance or authorisation and the merger substantially lessens competition. In the last year we have opened a number of investigations in this space including into First Gas' acquisition of Bay of Plenty gas distribution assets of GasNet. This resulted in a \$3.4 million penalty for First Gas who admitted engaging in anti-competitive conduct.

#### *Quality of service provided by electricity distributors*

A large part of work on the quality of service provided by electricity distributors focus area has been the price quality path resets that I mentioned earlier. We have also been focused on enforcement action – Vector was ordered to pay a penalty of \$3.5 million for breaching quality standard, Alpine Energy received a warning and we announced our intention to file proceedings against Aurora. Separate to this we also released an open letter about our proposed programme of work in reviewing the asset management practices of electricity distributors.

#### *Improving our understanding*

On the emerging technology front following an open letter and information requests sent to lines companies across the country we published information on the type and level of investment electricity lines companies are making in emerging technologies. This has helped us to develop a better understanding of what emerging technologies EDBs are investing in, what effect they are having on the sector, and how these investments are being accounted for within the Part 4 regime.

### **Conclusion**

The Commission has been a busy place in recent times and will continue to be so. We have more cases before the courts than ever before, a significant programme of work, lots of legislative change and we are getting fit for the future.

Our operating environment continues to change and we are getting ready to change with it so that we truly can make New Zealanders better off.

I want to finish by acknowledging briefly the staff throughout the organisation who bring a diverse range of technical skills and commercial and regulatory perspectives to all of this work. They share a strong commitment to the achievement of our vision of making New Zealanders better off with well-functioning markets in which businesses and consumers can transact with confidence. Many are here at the conference and look forward, with

Commissioners and with me, to discussing our work and sharing thoughts on the issues raised in conference sessions with all of you. We hope that you enjoy that opportunity too.

We should work together for the wellbeing of everyone.

Me mahi tahi tatou mo te oranga o te katoa.