

Quarterly Snapshot

Quarter 2 October - December 2023

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 fifth 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.

Enquiries received Q2 2023/2024

Legislation	Enquiries
Commerce Act 1986	96
Credit Contracts and Consumer Finance Act 2003	105
Fair Trading Act 1986	2810
Fuel Industry Act 2020	16
Retail Payments System Act 2022	71
Telecommunications Act 2001	1
Total (including enquiries from other Acts)	3153

Enquiries received July 2022–June 2023

Legislation	Enquiries
Fair Trading Act 1986	10558
Credit Contracts and Consumer Finance Act 2003	396
Commerce Act 1986	287
Fuel Industry Act 2020	45
Total (including enquiries from other Acts)	11407

Quarterly comment on enquiries to the Commission

We received 3,099 enquiries across our main regulatory responsibilities during Q2 2023/24 (Q2). This is similar to the number received in Q1 2023/24 (Q1).

The Commission has also received 54 enquires that are not linked to an act in Q2, making a total of 152 year to date.

As in previous quarters, most of the enquiries related to the Fair Trading Act and were concerns about false or misleading behaviour. Key issues included promotional representations, refunds, pricing issues, and issues with representations about the characteristics or features of the product and/or service.



Investigations and Compliance

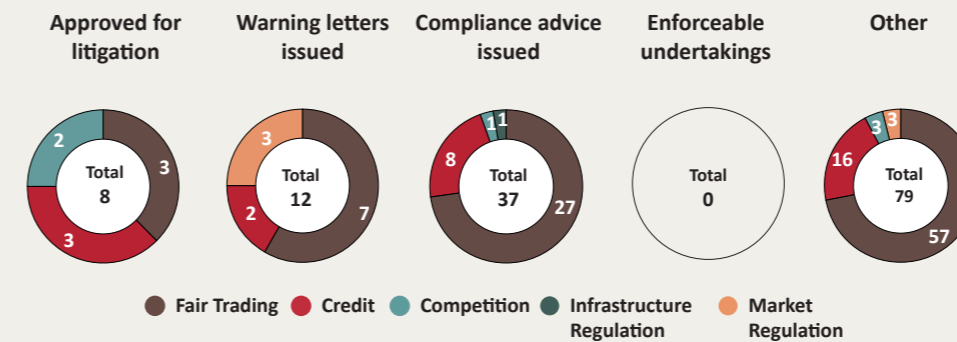
The Commission has a large number of investigations and compliance activities underway at any one time.

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 Q2	Completed investigations YTD
Fair Trading	80	151
Credit	44	29
Competition	24	6
Infrastructure Regulation	3	1
Market Regulation	7	9

Investigations outcomes Q2 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

Warnings were issued to the following for likely breaches of the Fair Trading Act:

- Avis Rent a Car Limited for making demands for payment for damage to a rental car, where the cost had already been met by the third party responsible for the damage.
- Kalkine NZ Limited because they did not comply with disclosure requirements for uninvited direct sales, and misleading consumers about their right to cancel the subscription services contract.
- 2degrees and Call Plus for supply of wire maintenance services to fibre customers who were likely misled as to the use, benefit or need for it.
- Intercol Holdings Limited (IHL) in relation to representations made to debtors that may have misled them into believing that IHL had right to pursue and recover a debt, when the debt was owed by someone else.



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

Geneva Distributors Limited were fined \$38,500 for supplying a toy that did not comply with the Product Safety Standard for toys intended for use by children under the age of three.

The Commerce Commission has successfully argued the original fine imposed on NZME Advisory Limited (NZME) was "manifestly inadequate" and did not appropriately reflect the presence of harm – with the High Court increasing the penalty to \$195,000, more than double the original fine.

Filings

The Commerce Commission filed charges against Zoono Limited (Zoono), alleging it made unsubstantiated representations about the performance of its hand and surface sanitiser products. The Commission alleges that between July 2019 to August 2023 Zoono made various claims about its products, for example that Zoono hand sanitiser would protect users against 99.9% or 99.99% of germs, including salmonella, for up to and for 24 hours, and the Zoono Microbe Shield surface would kill 99.9% or 99.99% of germs for up to and for 30 days. The Commission is alleging that testing obtained by Zoono did not back up claims it made about how long the products would last and be effective in real world conditions, and Zoono had not tested the hand sanitiser against salmonella at the time the claim was made.

The Commerce Commission filed criminal charges against two construction companies and two directors for alleged bid rigging of publicly funded construction contracts, in the country's first-ever criminal prosecution for cartel conduct. The charges follow a Commission investigation into allegations that the companies and their directors colluded to rig bids for infrastructure projects in Auckland.

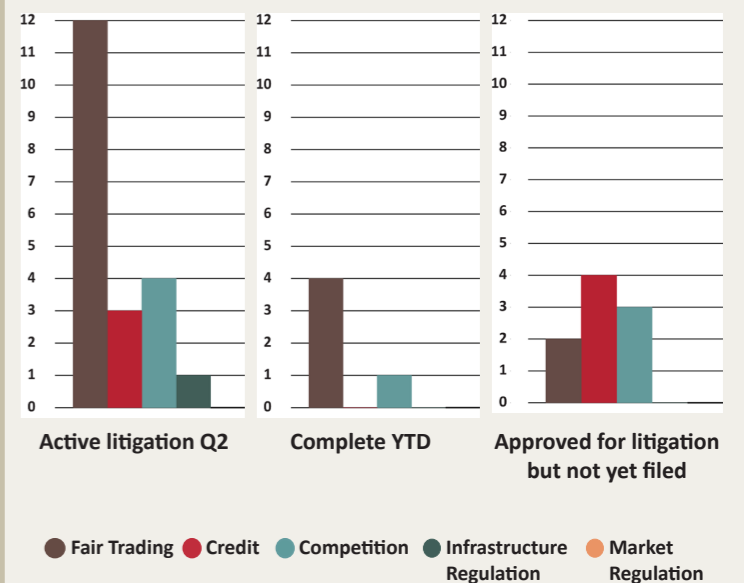
The Commerce Commission filed proceedings in the Auckland High Court against Alderson Logistics Limited and related company Supa Shavings (2022) Limited under section 47 of the Commerce Act, which prohibits mergers likely to substantially lessen competition.

The proceedings relate to the 2022 acquisitions by Alderson Logistics Limited of rival businesses, Supa Shavings and Mooreys. The Commission alleges that the merger of the businesses substantially lessened competition for the supply of chicken and goat bedding in the Waikato region.

Other

The Commission's Gas Default Price-Quality Path and changes to the Input Methodologies underpinning it has been appealed by Major Gas Users Group (MGUG), and this appeal has been joined by various regulated suppliers. MGUG seeks to modify or reverse aspects of the DPP and IMs that increased the prices gas distributors could charge consumers to address the forecast economic stranding of gas distribution assets. MGUG submitted that the Commission's decisions were wrong variously on their merits or in law. The proceeding was heard by the High Court in October, but there has been no judgment to date.

Litigation overview Q2 2023/2024





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.

	Input Methodologies for energy and airports	Electricity distribution targeted information disclosure review	Market study 4 – Personal banking services	Grocery Industry Competition Bill	Retail Payment System	Telecommunications retail service quality
Previous milestones	<p>Emerging views phase October 2022: Decision-making framework published. November 2022: Workshops on wider electricity issues. March 2023: Publication of submissions in response to the expert report on the cost capital and the options for maintaining investment incentives in the context of declining demand. Updated notice of intention published. June 2023: Draft decisions published. This includes, summary and context paper, four topic papers, report on the review and six draft determinations. August – September 2023 Invited cross-submission on specific matters.</p>	<p>Reviewing submissions. 25 November 2022: Tranche 1 final decisions published. April 2023: Non-material amendment Determination 2023 and Issues and Guidance Register published. May 2023: Consolidated information disclosure determination. Targeted Information Disclosure Review (2024) process paper published. June 2023: Non-material Amendment Determination published. August 2023: Draft decision reasons paper, draft ID amendment determination and updated Issues Register published. September 2023: Invited cross-submission on specific matters.</p>	<p>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.</p>	<ul style="list-style-type: none"> The Grocery Industry Competition Act came into force (10 July 2023). Appointment of Grocery Commissioner. Open letter addressing the Act published. Grocery supply code came into force (28 September 2023). Open letter addressing the Grocery Supply Code published. Grocery supply code factsheet published. Initial compliance assessments on wholesale access completed. 	<ul style="list-style-type: none"> Observations on the impact of interchange fee regulation published. Payments between Bank Accounts – request for views paper published. Progress updates in relation to merchant surcharging work published. 	<ul style="list-style-type: none"> Customer Service: Update to industry published.
October - December 2023	<p>December 2023: Final decision on the Input Methodology review published.</p>	<p>December 2023: Framework paper published on Part 4 Information Disclosure Reviews, this sets out the legal framework applied when setting or amending ID requirements that will apply to electricity distribution businesses. Meeting notes published from meetings with electricity distribution businesses and field service providers.</p>		<p>October 2023:</p> <ul style="list-style-type: none"> First statutory assessment of wholesale regime conducted. Media release of Grocery Commissioner's 'Top 3' fix it list. <p>November 2023:</p> <ul style="list-style-type: none"> Grocery Commissioner resented at Food & Grocery Council (NZFGC) annual conference to suppliers and other key stakeholders in the grocery industry. Began engagement with wholesale access customers. <p>December 2023:</p> <ul style="list-style-type: none"> RFI issued for data for annual review of competition. 	<ul style="list-style-type: none"> Progressing next steps for payments between bank accounts work. Compliance and enforcement of the interchange fee regulation (ongoing). System monitoring (ongoing). 	<p>October: Product disclosure: Transparency review with Consumer NZ published.</p> <p>November: Billing Clarity research published.</p> <p>Product Disclosure: Retail Service Bundling Final Guidelines (Energy and Telecommunications Bundles) published.</p> <p>Monitoring: Telecommunications Consumer Satisfaction Monitoring Report Jan 2023 - Jun 2023 published.</p> <p>December: Final Telecommunications Development Levy liability allocation determination for 1 July 2022 to 30 June 2023 published.</p>
Future milestones	<p>N/A The review has now been completed.</p>	<p>February – March 2024: Final decisions published.</p>	<p>March 2024: Draft report to be published. 20 August 2024: Final report to be published.</p>	<p>Early 2024:</p> <ul style="list-style-type: none"> Guidance on Unit Pricing to be issued. <p>January 2024:</p> <ul style="list-style-type: none"> Anonymous reporting channel launched to support grocery industry participants providing information to the Commission about potential misconduct without disclosing their identity. Second statutory assessment of wholesale regime will be commenced. <p>March 2024:</p> <ul style="list-style-type: none"> Grace period for Supply Code finishes. 	<ul style="list-style-type: none"> Next steps for payments between bank accounts. 	<ul style="list-style-type: none"> Customer Service Rankings (update monthly). Annual Update to Industry letter published. Copper Withdrawal Code: Final Decisions and Reasons paper published. 111 Contact Code Review: Final Code and Decisions and Reasons paper published. Monitoring: Telecommunications Consumer Satisfaction Monitoring Report Jul 2023 - Dec 2023 published.

Quarterly comment on projects of significance Collaboration and Sustainability Competition Guidelines

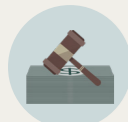
In December 2023, the Commission issued new guidance to help businesses working together to pursue sustainability goals, with a focus on distinguishing between illegal collusion and legitimate collaboration. The Collaboration and Sustainability Guidelines will help businesses understand how they can work together to realise shared sustainability goals without breaking the law. The guidelines set out the factors the Commission considers when assessing collaboration between businesses for sustainability purposes and provide practical examples to help organisations understand whether their initiatives are compatible with competition law.

Input methodology review

In December 2023, the Commerce Commission published the final decision on its regulatory rules governing energy networks and the three main New Zealand international airports.

The rules, known as input methodologies, provide certainty about how the Commerce Commission will approach the regulation of these entities, which are not subject to competition from rival participants. The rules are reviewed every seven years and play a crucial role in ensuring consumers get value for money from essential infrastructure.

The Commerce Commission has published a [recorded stakeholder presentation](#) on its website which provides information on the review and its outcomes.



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.



	Merger clearances s66	Merger authorisations s67	Collaborative activity clearances s65A	Trade practices authorisations s58
Q2: 1 October - December 2023				
Decided	4	0	0	1
Undecided at end of quarter	6	0	0	0
YTD: Outcomes 2023/2024				
Cleared unconditionally	8	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	4	N/A	0	N/A

Quarterly comment on competition clearances and authorisations

The Commission received seven new applications for merger clearance in Q2. The Commission granted clearance to three merger applications in Q2. These applications involved construction, commercial offshore fishing, and Queenstown tourism. There are six merger clearance applications undecided at the end of the quarter which involve the grocery, medical alarm, courier services, telecommunications, DJ hardware and software, and animal nutrition sectors. In Q2, the Commission granted authorisation to Infant Nutrition Council's (INC's) application for current and future members of the INC to restrict their advertising and marketing of formula products for infants aged up to 12 months old.



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 20% 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 a further quarter were from 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.

Q2 2023/2024 October - December 2023

78 OIA requests received

147* Year to date requests answered

*69 are from Q1, 78 from Q2

