

20 April 2023

Hon Dr Duncan Webb
Minister of Commerce and Consumer Affairs
Parliament Building
WELLINGTON

Dear Minister Webb

Re: Annual Letter of Expectations 2023/24

Thank you for your recent letter setting out your strategic and performance expectations for the Commerce Commission (the Commission) for the 2023/24 financial year.

This letter responds to your request for information on how we propose to address these expectations. Consistent with our approach in recent years, we have focused on drawing your attention to key matters rather than responding to each individual listed expectation. Our Statement of Performance Expectations for 2023/24 (SPE) will include performance targets that address the detailed elements you have outlined in your letter.

Commission's Role in Contributing to the Government's Priorities

The Commission is conscious of the overarching objectives of the Government and its economic plan. Recovery from COVID-19 and Cyclone Gabrielle remain front-of-mind for us, as well as investment to support resiliency against future adverse events.

We work to encourage competition in New Zealand's markets; inform and protect the interests of consumers; and regulate sectors with little or no competition. We recognise the role of competition in encouraging innovation, economic growth, and lifting productivity. As such, competition plays an important role in supporting New Zealanders to manage cost of living pressures and support the economy to transition toward reducing greenhouse gas emissions.

This year, in carrying out our functions we intend to put particular emphasis on delivering and implementing our refreshed Statement of Intent that includes:

- implementing our Rautaki Māori | Māori Strategy;
- engaging more broadly and deeply with consumers and firms to learn more about consumer preferences and competitive conditions; and
- becoming a more data-led and evaluative organisation, so we can get deeper insights, make better decisions, and deliver even more public value for New Zealanders.

Expectations Relating to Ministerial Portfolios

Our intentions are fully consistent with the expectations outlined in your letter. We have noted your expectations for the Commission in regard to driving competitive markets for the long-term interests of consumers, acting with confidence to stop and deter anti-competitive behaviour and unfair trading practices, and acting to protect consumers and particularly those in a vulnerable position. We will keep you informed on these matters through our regular meetings with you.

Commerce and Consumer Affairs Portfolio

We intend to continue to promote an environment where:

- consumers are confident they are getting great choices and fair deals; and
- businesses are competitive, fair-dealing, and can innovate and thrive.

We will achieve this through, for example, considering and deciding applications for mergers and acquisitions, developing guidance for businesses to assist them to understand their obligations, and undertaking investigations into anti-competitive conduct, including cartel conduct. We will consider the desirability of developing case-law when prioritising enforcement action, and the opportunity to reduce harm to vulnerable consumers and communities.

We have published Misuse of Market Power Guidelines that explain how the Commission will assess conduct under the amended section 36 of the Commerce Act 1986 regarding misuse of market power. We consider that this provides a strong signal to the market about our expectations in relation to unilateral conduct by firms with market power.

The Commission intends to continue its work on market studies, including the timely execution of studies, background work on the selection and design of future studies, and ongoing engagement with the Ministry of Business, Innovation, and Employment.

We are preparing to take on new functions in relation to the regulation of the groceries market and the Government's affordable water programme. Both these areas involve recruitment, planning, preparation (including development of systems and processes), and input into policy and legislative development. We look forward to further discussions with you as to how these new functions will be funded over the short and long-term horizons.

We will continue to undertake investigations and prosecutions in relation to unfair trading practices. With regard to consumer credit markets, the Commission intends to continue its work to encourage lenders to act responsibly, including by educating lenders on their obligations under the Credit Contracts and Consumer Finance Act 2003, and responding to breaches.

We intend to promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers, including by supporting merchants and consumers to pay no more than reasonable fees.

In regulated sectors where competition is not possible the Commission will continue to focus on achieving long-term benefits for consumers within New Zealand. We are considering the effects of changes in technology and consumer preferences in these markets, including increasing electrification and impacts on resilience. We are currently reviewing and updating the Input Methodologies that underpin regulation of energy and airport infrastructure. We have commenced work on the price-path reset for electricity distribution, and continue to review major capital project proposals from Transpower as they are received. We will also continue to receive disclosures from regulated entities and publish information and analysis based on what we receive, and review asset management practices, revenues and service quality metrics.

Digital Economy and Telecommunications Portfolio

We intend to promote the long-term interests of end-users of telecommunications services through education and enforcement, as well as ongoing monitoring, oversight and regulatory activities. This includes through the maintenance of codes and promoting improvements to telecommunications service quality.

Agriculture, and Energy and Resources Portfolios

The Commission intends to carry out engagement, monitoring, oversight, and reporting on relevant aspects of the fuel sector and farmgate dairy markets, to promote competition, and contestability in the market for purchase of milk from farmers respectively.

General Good Governance Expectations

Our governance intentions are fully consistent with the expectations outlined in your letter. We intend to update you on the self-review process for Board performance later in 2023, including a 360-degree review process for members. With several members retiring, a partial refresh of the Commissioner cohort is well-advanced and we are currently preparing to onboard the new Commissioners.

We continue to refine the Commission's governance processes, including conflict of interest management and implementing a convenor model for Divisions. The Commission continues to manage its information and cybersecurity risks, nurture emerging talent, and increase the diversity of its workforce.

In support of a good faith and collaborative approach to Māori-Crown relationships the Board has recently approved the Commission's Rautaki Māori | Māori Strategy and the Commission has begun implementation. The Rautaki Māori focusses on building cultural capability, bringing a te ao Māori perspective to our work, and engaging with Māori to build enduring relationships. We look forward to updating you on progress in due course.

The Commission is in the process of developing the new 2023 -2027 Statement of Intent (SOI) that will be tabled in Parliament in July 2023. The SOI articulates the Commission's strategic direction for the next four years. The newly developed Outcomes Framework forms the basis of the new SOI, supplemented by refreshed organisational values. The SOI also signals our intention to invest further in specific capabilities such as data analytics and evaluation. A draft of the SOI will be sent to you for feedback on 1 May 2023.

Evolution of the Commission

We continue to maintain strong relationships with our international regulatory counterparts to ensure we keep abreast of global and jurisdiction issues as they arise, particularly in competition, consumer and infrastructure regulation, and to support the ongoing development of our regulatory system and practice.

The Commission is continuously evolving in response to our changing operating context. We look forward to continuing work with you and with MBIE as our monitoring agency to meet your expectations.

Yours sincerely



Dr John Small
Chair