

Memorandum of Understanding

between

the Commerce Commission

and

Land Information New Zealand



This memorandum of understanding

Between the Commerce Commission (the Commission)

And the Sovereign in right of New Zealand acting by and through the Chief Executive of Land Information New Zealand or her authorised delegate (LINZ)

together, the **"Parties"**

Background

1. The Commission is an independent Crown entity established under section 8 of the Commerce Act 1986 with statutory functions under that and other statutes including the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003, the Telecommunications Act 2001, the Fuel Industry Act 2020, and the Dairy Industry Restructuring Act 2001.
2. LINZ administers New Zealand's overseas investment laws through the Overseas Investment Office (OIO). The OIO operates under the Overseas Investment Act 2005 (OIA).
3. Both Parties collect a wide range of information in order to give effect to the responsibilities they have to protect people, information and places and to ensure regulatory compliance, and in the case of the Commission to detect and prevent criminal offending.
4. The Parties work together including where they are considering matters in which they both have an interest. In particular, both Parties may be required to consider acquisitions by overseas investors under their respective regulatory regimes.
5. The Parties wish to record the operational protocols in regard to cooperation and information sharing.
6. The Parties understand that how they collect and share information is fundamental to fostering trust and confidence in the public service. Each party's policy on the collection use and sharing of information is in accordance with the "Information Gathering and Public Trust" Model Standards issued by the Public Service Commission on 18 December 2018 (as may be updated from time to time).
7. This Memorandum of Understanding (MOU) may be published on the Parties' websites.

Purpose

8. The purpose of this MOU is to provide a framework for a formal relationship of cooperation and information sharing between the Commission and LINZ to enable effective and efficient performance of each agency's regulatory functions, particularly in respect of matters where the Parties have a joint interest.
9. This MOU sets out the framework for cooperation and information sharing. Schedules that accompany this MOU set out the protocols relating to specific activities.

Cooperation principles

10. Where, and to the extent, appropriate, practicable and permitted by law the Parties will:
 - 10.1 Communicate in an open, honest and timely manner.
 - 10.2 Raise issues promptly and respond promptly to requests by or other contact from the other.
 - 10.3 Share information about matters such as investigative processes and timing of matters in which the Parties both have an interest.
 - 10.4 Provide information and advice where it will assist the other party in the performance of its statutory functions, powers or obligations, and as contemplated by this MOU, including but not limited to as described in **Schedule 2** for transactions that are of national interest under the Overseas Investment Amendment Act but may not be separately considered by the Commission.
 - 10.5 Share staff training and development opportunities and provide mutual operational support.
 - 10.6 Work together to avoid duplication of expenditure of taxpayer-funded resources.
 - 10.7 Advise each other in advance of actions to be taken, or proposed to be taken, of which the other might reasonably expect to be advised.
 - 10.8 Where either party identifies a risk or potential risk falling within the jurisdiction of the other, pass relevant information to the other party.
 - 10.9 Advise each other's Relationship Manager of any operational or policy concerns.
 - 10.10 Implement policies, procedures and systems as appropriate to support the operation of this MOU.
 - 10.11 Consult with the other, where and to the extent practicable, before publishing information or comment regarding transactions described in **Schedule 2**.
11. Where, and to the extent, appropriate, practicable and permitted by law, having regard to regulatory policy and legislative development, the Parties will:
 - 11.1 Advise the other of any material proposed changes in legislation, regulatory policy, guidance or decisions on regulation that may materially impact on the objectives and/or functions of the other.
 - 11.2 Notify the other if the implementation of legislation, regulatory policy, guidance or decisions on regulation by one party may impact on the objectives and/or functions of the other.

Information sharing protocols

12. The Parties acknowledge the importance of sharing information where practicable and to the extent permitted by law. However, the Parties will also be mindful of their obligations

under the Privacy Act 2020, including principle 11(1)(e) of that Act, and other relevant legislation and published guidelines, when seeking to share information.

13. Requests for information from the other party should be made in writing to the Relationship Manager. Oral requests must be followed up by a written request as soon as practicable, or as agreed at the time of the request.
14. A party may request information from the other for the purpose of facilitating the effective and efficient performance of that party's powers and regulatory functions. Requests for information will specify:
 - 14.1 the information requested (identifying the type of documents or information sought) and, where applicable, the statutory authority for requesting that information;
 - 14.2 the purpose for which the information is sought, including any background information necessary to understand and respond to the request;
 - 14.3 the timeframe in which the information is needed, and the reasons for any urgency requested;
 - 14.4 any risks identified as part of any risk assessment, and any risk mitigation measures to be adopted;
 - 14.5 the names and contact details of the relevant individuals or case team of the requesting party; and
 - 14.6 any other relevant matters.
15. The Parties will respond to requests for information as soon as is practicable or within the timeframe requested. In the case of an urgent request, LINZ and the Commission will endeavour to consult to ensure a response to the request is expedited if possible.
16. Where a party holds the information requested but declines to provide it to the other party, it will (to the extent it is able to do so) inform the other party of the reason for declining the request.
17. Before requesting information, a party should consider whether the information is already in the public domain and can be obtained without the need for a formal request.
18. The Parties may share confidential information where permissible by law and in accordance with the providing party's policies.
19. Obligations regarding the use, storage and retention of any information shared between the Parties are set out in **Schedule 1** to this MOU.
20. The Parties may add further schedules to the MOU from time to time as they develop further specific procedures or matters of joint interest.

Representatives and reviews

21. Each party will appoint a "Senior Representative" and a "Relationship Manager" to assist with the implementation of this MOU and the continuing relationship between the Parties. The initial Senior Representative and Relationship Manager for each party are:

<p>Commerce Commission</p> <p>Senior Representative General Manager, Competition 44 The Terrace Wellington Telephone: (04) 924 3720</p> <p>Relationship Manager: Mergers Manager, Competition Branch 44 The Terrace Wellington Telephone: (04) 924 3720</p>	<p>Land Information New Zealand</p> <p>Senior Representative Head of Regulatory Practice and Delivery Overseas Investment Office 155 The Terrace Wellington Telephone (04) 474 0912</p> <p>Relationship Manager: Manager, Monitoring and Intelligence, Overseas Investment Office 155 The Terrace Wellington Telephone (04) 460 0308</p>
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22. Relationship Managers will:
- 22.1 be the first point of contact between the Parties with respect to the day to day implementation of this MOU;
 - 22.2 meet every three months, unless otherwise agreed, to discuss the progress of activities undertaken pursuant to this MOU, activity that could constitute current or future matters of joint interest, and any other matters relevant to the relationship between the Parties;
 - 22.3 develop or amend protocols relating to specific procedures and activities, as required; and
 - 22.4 notify each other of any changes to their representatives under this MOU.
23. The Parties' Senior Representatives will meet every three years, or as otherwise agreed by the Parties, to review this MOU and schedules.
24. Either party may terminate the MOU by giving three months' notice in writing to the other party.
25. Any modification of this MOU, including modification or termination of the Schedules, shall first be discussed by the Senior Representatives, and then agreed in writing between the Parties.

Issue or dispute resolution

- 26. All issues, disputes and differences between the Parties about the interpretation or performance of this MOU will be resolved at the earliest opportunity between the Relationship Managers themselves, wherever possible.
- 27. Only when matters remain unresolved or require further adjudication should they be referred to the Parties' Senior Representatives.

28. Each party will raise any operational or policy concerns through appropriate internal channels at the other party.

Costs

29. Unless the Parties mutually determine otherwise, the cost of meeting the commitments of this MOU shall be met by the party incurring the cost.

Legal

30. This MOU is non-binding and nothing in this MOU shall make either party liable for the actions of the other or constitute any legal relationship between the Parties.
31. The provisions in this MOU are to be read subject to any Chief Executive, Public Service Commission or Cabinet directives, and any enactment, regulations, rules or applicable case-law. For the avoidance of doubt, nothing in this MOU should be interpreted or applied inconsistently with either party's statutory functions, powers or obligations.
32. Where there are changes to Government policy or legislation which affect the purpose and functions of this MOU, each party agrees to inform the other of those changes at the earliest possible time thereafter and both Parties agree to meet to re-negotiate, if necessary, any aspects of the MOU.

Signed by the Commerce Commission



Adrienne Meikle
Chief Executive Officer
Commerce Commission

Date: 22/4/22 .

Signed by Land Information New Zealand



Jan Pierce
Kaitiaki Customer Deliver

Date: 27/5/2022

Schedule 1: Use, storage and retention of information

1. Any information shared between the Parties will:
 - 1.1 be used and kept by the receiving party for legitimate purposes and in line with the law and that party's policies, processes and systems,
 - 1.2 be held in accordance with any stated sensitivity, terms or restrictions requested in writing by the party at the time that the information is shared;
 - 1.3 be stored with appropriate security measures, whether the information is in electronic form, hard copy or otherwise.
2. Each party will upon request by the other party provide the first party with the other party's internal guidelines and policies relating to the use, storage and retention of information, together with any other information required to verify that the other party is meeting its obligation in paragraph 1 above.
3. The Parties will retain any information shared in accordance with this MOU as required by the Public Records Act 2005.
4. The Parties agree that shared information may be disclosed by the receiving party to a third party only where the receiving party has first obtained the consent of the other party, or where the receiving party is legally required to disclose that information and has informed the other party of this requirement prior to disclosing the information.
5. The Parties acknowledge that:
 - 5.1 If any criminal proceedings are initiated, the Criminal Disclosure Act 2008 will apply in relation to all relevant information held by the prosecuting party.
 - 5.2 If any civil proceedings are initiated, the High Court Rules 2016 will apply in relation to all relevant information held by either party.

Schedule 2: Commission assistance

Purpose

1. The purpose of this Schedule 2 is to facilitate, where appropriate and practicable, the provision of assistance by the Commission for the LINZ's assessment of competition aspects of a transaction that:
 - 1.1 is a transaction of national interest or a transaction under assessment in the national security public order regime under the OIA, but
 - 1.2 may not be separately considered by the Commission.

Principles

2. The Commission agrees to assist LINZ upon request to the extent practicable in a timely and efficient manner:
 - 2.1 where such assistance is consistent with the objectives and purpose of this MOU;
 - 2.2 where such assistance is appropriate, bearing in mind the Commission's independent statutory functions and obligations; and
 - 2.3 subject to any specific legislative requirements.
3. This Schedule is subject to the usage, storage and retention of information protocols set out in **Schedule 1** to this MOU.

Process and format of requests

4. LINZ may request assistance from the Commission in writing to the Ministry of Business, Innovation and Employment (MBIE), copied to the Commission's Relationship Manager.
5. Requests will specify:
 - 5.1 the name and contact details of the Commission's Relationship Manager;
 - 5.2 the assistance required (identifying the details of the transaction and particular competition aspects in respect of which assistance is sought);
 - 5.3 the timeframe in which the assistance is needed, and the reasons for any urgency requested;
 - 5.4 any risks identified as part of any risk assessment, and any risk mitigation measures to be adopted;
 - 5.5 the relevant names and contact details of the relevant individuals or case team of the requesting party; and
 - 5.6 any other relevant matters.

Timing, provision and format of Commission response

6. The Commission agrees to respond to requests for assistance as soon as practicable or within the timeframe requested. In the case of an urgent request, the Parties will endeavour to consult to ensure a response to the request is expedited if possible.
7. The Commission will provide its response in writing to MBIE as soon as practicable.

