

Hon Dr David Clark

MP for Dunedin

Minister of Commerce and Consumer Affairs
Minister for the Digital Economy and Communications
Minister for State Owned Enterprises
Minister of Statistics
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Dear Anna

ANNUAL LETTER OF EXPECTATIONS FOR 2022/23

I write to convey my strategic and performance expectations for the Commerce Commission (the Commission) for the 2022/23 financial year.

I would like to take this opportunity to thank the Board for its ongoing work to ensure the Commission strives to be a high-performing organisation, especially in light of additional regulatory functions given to the Commission and in the context of helping to mitigate the impact of the COVID-19 pandemic, which brings with it significant challenges for our economy, for businesses and for New Zealanders.

Contributing to Government priorities

The Labour Government has three overarching objectives:

- To keep New Zealanders safe from COVID-19
- To accelerate New Zealand's economic recovery
- To lay the foundations for a better future.

An integral part of achieving these objectives is the Government's plan for the economy to be more productive, sustainable, and equitable. The plan includes substantial investment in infrastructure (including in energy and a shift to a new low-carbon future), support for small businesses and entrepreneurs to grow and thrive (including tackling barriers to innovation and growth), and policies that help to combat climate change and future-proof New Zealand's economy by making the most of our competitive advantage in renewable energy and waste reduction.

The Commission plays an important role in the economy through its strategic objectives that *markets work well and consumers and businesses are confident market participants*. I look forward to the Commission actively supporting and contributing to the Government's overarching objectives and economic plan. In particular, I expect the Commission to do what it can to support businesses and New Zealanders during the pandemic and the longer-term recovery and future-proofing of the economy.

The Government is committed to strengthening the Māori Crown relationship to ensure that the Crown can grow to be a better Treaty Partner and work in true partnership with Māori. Te Ao Māori plays a large part not just in defining who we are as a nation, but in setting us apart from the rest of the world.

I expect the Commission to support the Government's good-faith and collaborative approach to Māori Crown relationships, both in the Commission's approach to carrying out its functions and as a good employer.

Consistent with the above, I expect you to follow the advice provided in the *Enduring Letter of Expectations* from the Minister of Finance and the Minister of State Services communicated to the Chairs of statutory Crown entities in October 2019.¹

Commerce and Consumer Affairs portfolio

As Minister of Commerce and Consumer Affairs, I expect our competition, fair trading, consumer credit, and economic regulation policy settings and laws to be robust, fit for purpose and effectively implemented and enforced. I will continue to focus my attention on those areas that will most benefit the current and future wellbeing of New Zealanders, and especially the wellbeing of the more vulnerable members of our society.

I have the following key expectations of the Commission in relation to the competition, consumer, and economic regulation systems within the Commerce and Consumer Affairs portfolio:

Competition, Fair Trading and Consumer Credit

- a. To promote understanding of the competition, fair trading, and consumer credit laws and the Commission's approach to its role and functions in these areas. This includes education initiatives and engagement with both consumers and the business community, including engagement with specific sectors where there is evidence of significant potential benefits from such engagement (for example, waste management). These initiatives should have the goal of ensuring that markets work well and there is confident participation in markets, taking into account the diversity of businesses and consumers and the effects of COVID-19. In particular, I expect the Commission to continue to support and empower vulnerable consumers.

¹ The 2019 Enduring Letter of Expectations to Statutory Crown Entities is available here: <https://www.publicservice.govt.nz/resources/enduring-letter-of-expectations-to-statutory-crown-entities-2019/>.

- b. To enhance confidence and trust in the Commission and its work by developing and maintaining constructive and productive relationships with stakeholders across the Competition, Fair Trading, and Credit regulatory systems. This should include taking into account the views of consumers and businesses.
- c. To effectively enforce the competition, fair trading and consumer credit laws, including the new requirements recently introduced into the *Fair Trading Act 1986* and *Credit Contracts and Consumer Finance Act 2003*, and any new requirements in the *Commerce Act 1986* that may result from the *Commerce Amendment Bill*.
- d. To carry out market studies under the *Commerce Act 1986*, according to their terms of reference and within budget and timeframe, having regard to the impact of the study on affected businesses and consumers.
- e. To develop and maintain effective relationships with overseas competition, fair trading and consumer credit law regulators and institutions to enhance the integrity of New Zealand's Competition, Fair Trading and Credit regulatory systems.
- f. To contribute to the effective and efficient stewardship of the Competition, Fair Trading and Credit regulatory systems.
- g. To look for opportunities for ongoing improvement in the efficiency and effectiveness of the Commission's work and demonstrate that the Commission is a learning organisation which is continually seeking to meet the expectations of a modern and credible regulator able to adopt a proactive and pragmatic approach to regulation. In particular, I expect the Commission to continue strengthening its data and analytics capability and encourage it to ensure its investigation and determination processes do not impose unnecessary costs on businesses and deliver quality outcomes in a timely manner.
- h. To collaborate constructively with other regulators where matters of common interest exist, particularly where there may be competing regulatory objectives, gaps or overlaps in regulatory mandate.
- i. To contribute to policy discussions with the Ministry of Business, Innovation and Employment (MBIE) by assisting MBIE in the Commission's areas of expertise and providing information and practical guidance on the workability and resource requirements for any proposed legislative amendments or regulatory changes impacting the Commission's functions, powers and duties.
- j. To provide expert input to policy discussions led by other government agencies where the Commission has expertise and to collaborate constructively with those agencies, where the policy intersects with the Commission's functions.

Economic regulation

- k. To ensure that the form and style of economic regulation implemented by the Commission enables new technology and services which can offer better value

for consumers and makes available and accessible high-quality data and information.

- l. To develop and maintain strong and trusted relationships with stakeholders with interests in the sectors regulated under Part 4 of the *Commerce Act 1986* (Part 4) to understand their needs and constraints planning ahead. This includes taking into account the views of consumers, small businesses and the Consumer Advocacy Council.
- m. To promote the effective and efficient stewardship of, and innovation and investment in, infrastructure assets regulated under Part 4, to help improve their resilience (including their resilience to significant natural disaster events), reliability and ability to meet the challenges of new technology and transitioning to a low-carbon economy.
- n. To effectively enforce the *Fuel Industry Act 2020* and any new requirements that may result from the *Retail Payment System Bill*.
- o. To look for opportunities for ongoing improvement in the efficiency and effectiveness of the Commission's economic regulation work and demonstrate that the Commission is a learning organisation which is continually seeking to meet the expectations of a modern and credible economic regulator able to adopt a proactive and pragmatic approach to regulation. In particular, I expect the Commission to continue strengthening its data and analytics capability and encourage it to ensure its investigation and determination processes do not impose unnecessary costs on businesses and deliver quality outcomes in a timely manner.
- p. To collaborate constructively with other regulators where matters of common interest exist, particularly where there may be competing regulatory objectives, gaps or overlaps in regulatory mandate.
- q. To contribute to policy discussions with MBIE by providing expert assistance in the Commission's areas of expertise and information and practical guidance on the workability and resource requirements for any proposed legislative amendments or regulatory changes impacting the Commission's functions, powers and duties.
- r. To provide expert input into policy discussions led by other government agencies where the Commission has expertise (for example, the Three Waters Reform Programme). If such need arises, I will discuss the form, nature and funding for any analysis required with the Commission.

Digital Economy and Communications portfolio

As Minister for Digital Economy and Communications, I want to help improve New Zealand's economic performance, recovery from the impact of COVID-19, and the current and future wellbeing of New Zealanders through the provision of high-quality communications infrastructure to both urban and rural regions. I want to see a robust and effective telecommunications regulatory regime with settings able to support the

proposed Digital Strategy for Aotearoa's goals of trust, inclusion and growth, and incentivise investment in new technologies.

My expectation within the Digital Economy and Communications portfolio is that the Commission will continue to deliver on its regulatory responsibilities under the *Telecommunications Act 2001* by:

- a. Being proactive in educating and supporting the telecommunications industry to comply with the rules the Commission sets and taking a proactive, responsive and timely approach to compliance and enforcement action where appropriate.
- b. Promoting, monitoring and reporting on competition in the supply of mobile services, so that consumers enjoy the price, quality and innovation benefits over the longer term.
- c. Providing incentives to ensure that the currently strong state of fibre telecommunications infrastructure is maintained through effectively administering the new fibre regulatory framework, promoting efficient investment in growth and maintenance, and increasing the overall understanding of network asset health.
- d. In addition to implementing and operationalising the fibre regime, meeting pre-existing and continuing responsibilities for regulating copper and mobile services.
- e. Ensuring that consumers are supported through the transition from copper to fibre.
- f. Providing independent high-quality information, via the broadband speed testing system, on broadband performance across different providers, plans and technologies, to help consumers choose the best broadband for their household and also to encourage telecommunications providers to compete on performance and not just price.
- g. Developing user-friendly consumer-orientated reports and services that allow telecommunication end-users to make informed choices on retail service quality.
- h. Implementing measures to improve retail service quality, including engaging with consumers on retail service quality issues, to support the demands of end-users.
- i. Promoting an effective and responsive disputes resolution scheme.

Agriculture portfolio

The Minister of Agriculture and I want to ensure that the regulatory regimes that apply to our primary sector support the sector to achieve its economic potential. This is particularly important as our economy recovers from the impacts of COVID-19.

Our dairy industry is one of New Zealand's largest export revenue earners and accounts for around 3 percent of GDP. A high-performing Fonterra underpins a well-functioning dairy industry. Given its size, Fonterra's successes and any opportunity losses of unrealised potential are not only borne by its farmer-shareholders, but also by rural communities and the wider New Zealand economy.

Our expectation is that, in performing its enforcement and base milk price monitoring functions under the *Dairy Industry Restructuring Act 2001*, the Commission will:

- Engage early with Fonterra, where practicable, on any potential concerns that the Commission has in relation to the base milk price.
- Contribute to policy discussions with the Ministry for Primary Industries (MPI) by assisting MPI in the Commission's areas of expertise, and provide MPI with information and practical guidance on the workability and resource requirements for any proposed legislative amendments or regulatory changes impacting the Commission's functions, powers and duties.

General good governance expectations

I expect you to follow monitoring and governance expectations contained in the MBIE publication *Monitoring arrangements for MBIE-monitored Crown entities*, published in October 2020.

I expect you to follow general good governance practices. In particular, as part of your role in governing a high-performing Commission, I expect you to:

- maintain an effective Board
- ensure the Board understands its role as governor of the Commission and primary monitor of the Commission's performance
- maintain effective and productive working relationships with my officials at MBIE and other agencies
- operate a 'no surprises' policy.

Effective Board

Ensuring the Board is, and remains, effective and high performing is essential. I expect the Board to advise me of its approach to ensuring the governance of the Commission remains high performing.

The Board is undergoing significant change, with changes in leadership expected in the coming year, including the appointment of new members. I expect the Board to ensure it provides appropriate induction for new members.

I expect the Board to periodically employ robust and effective self-review processes. I understand that the last Board self-review was performed five years ago, in 2017. Since that time, the Commission has grown significantly and the demands on the Board have increased. I invite the Board to advise me of its plans to undertake the next self-review.

Your input, as Chair, into recruitment of new members or reappointment of existing members, including succession planning for the Board, is sought. I expect you to keep my officials at MBIE informed of your view of the competency and experience mix you need to work well as a board, along with your thoughts on upcoming appointments and any candidate attributes to target.

I expect the Board to ensure it focuses on maintaining strong organisational capability, health and culture, open lines of communication with its stakeholders, and a focus on delivery.

Effective monitoring of Commission performance by the Board

In setting and driving its strategy and considering wider expectations, including the Government's priorities, the Board is the most important monitor of the Commission's performance.

I expect the Board to regularly and transparently provide high-quality information and analysis (including through meetings with and reporting to my officials at MBIE and in meetings with me) on the Commission's organisational capability, performance against its strategic and operational plans, risks and opportunities facing the Commission and how it is responding to them, and implications for future performance.

As you are aware, all Crown entities must prepare an annual Statement of Performance Expectations (SPE) and have an approved Statement of Intent (SOI) under the *Crown Entities Act 2004*.

I expect the Commission's SOI to drive its overall direction and performance. I understand the Commission issued a new SOI in 2020 covering the five-year period 2020–2024.

I expect the annual SPE to provide a clear performance framework and support excellent reporting to Parliament and the public on the results.

I understand the Board is reviewing the Commission's current strategic framework and identifying how the Commission will transition to working in an Outcomes Framework environment. I expect the Commission will keep my officials at MBIE updated on the review's progress.

While the Commission is not included in the Carbon Neutral Government Programme, I am pleased to be informed that it is voluntarily reporting on its environmental sustainability annually in its annual report.

Relationship with MBIE and other agencies

I expect you to have a collaborative and constructive working relationship with your departmental monitor at MBIE. This relationship should include active engagement with my officials in the process of the Commission's setting of its strategic direction and its review of existing strategies, priorities and plans, and data systems.

I expect you to work with and across government to integrate the work of the Commission with the role and work of other agencies.

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 important initiatives and issues that may be of significance in their portfolio areas, controversial or discussed in the public arena or require a ministerial response, preferably ahead of time or otherwise as soon as possible
- inform the responsible Minister in advance of any major strategic initiatives.

I expect to hear about any important or significant 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.

Response

I would appreciate your response to this letter by **16 April 2022**, outlining how you propose to address the expectations above.

I look forward to having a good working relationship with the Commission over the coming year.

Yours sincerely



Hon Dr David Clark
Minister of Commerce and Consumer Affairs

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