

Quarterly Snapshot

Quarter 3 January - March 2024

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 sixth 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 Q3 2023/2024

Legislation	
Commerce Act 1986	99
CCCFA 2003	114
Fair Trading Act 1986	2531
Fuel Industry Act 2020	14
Retail Payments System Act 2022	96
Telecommunications Act 2001	5
Total (including enquires from other Acts)	2807

Enquiries received July 2022–June 2023

Legislation	
Commerce Act 1986	287
CCCFA 2003	396
Fair Trading Act 1986	10558
Fuel Industry Act 2020	45
Total (including enquires from other Acts)	11407

Quarterly comment on enquiries to the Commission

We received 2,713 enquiries across our main regulatory responsibilities during Q3 2023/24 (Q3). This is similar to the number received in Q2 2023/24 (Q2).

The Commission has also received 94 enquires that are not linked to an act in Q3, making a total of 244 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, contractual issues, products not being delivered, pricing inaccuracies and refund issues.



Investigations and Compliance

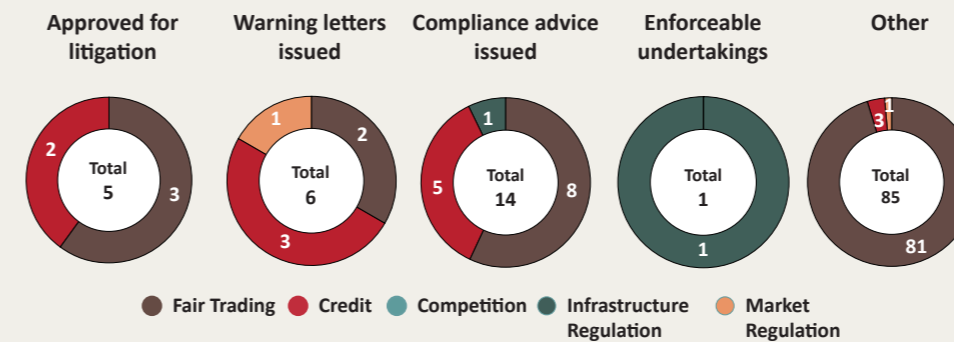
The Commission has a large number of investigations and compliance activities underway at any one time.

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 Q3	Completed investigations YTD Q3
	Fair Trading	151
Credit	56	43
Competition	23	12
Infrastructure Regulation	6	2
Market Regulation	8	10

Investigations outcomes Q3 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

A warning letter was issued to Ezibuy Ltd and Mosaic Brands Ltd (an Australian public company) for likely breaching the Fair Trading Act by making misleading representations in relation to sales promotions. Ezibuy used inclusive language in the primary messaging of a promotion, such as "Everything", "Almost Everything" and "Almost All" when there were several significant exclusions to a promotion. A warning was appropriate taking into account that the main trader, Ezibuy Limited had recently entered into liquidation.

Twelve education letters were sent to Retirement Village operators concerning potentially unfair contract terms or potentially misleading website claims about continuum of care. Subsequently changes to websites and occupational rights agreements have been made by some of the operators contacted.

On 29 February 2024, following multiple outages and the failure to meet minimum quality standards, we issued a formal warning letter to The Lines Company. The Lines Company connects 18,000 electricity customers throughout the King Country, Ruapehu, and Central Plateau. The Lines Company have accepted enforceable undertakings that require them to have its network reviewed by an independent engineer, with that information forming the basis of a recovery plan that the company must deliver and report to us on.



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

Mr Halafihi was charged with the alleged breach of s 471 of the Fair Trading Act by failing to attend a compulsory interview and supply documents pursuant to a s47G(1)(c) notice without a reasonable excuse. He failed to appear at his trial, so the matter proceeded to formal proof on 9 February 2024. The Court found charge proved and sentenced Mr Halafihi to a \$9,000 fine.

Filings

The Commission has filed civil proceedings in the High Court against Go Car Finance Limited (Go Car) alleging breaches of the Credit Contracts and Consumer Finance Act 2003 for failing to sufficiently assess whether borrowers could make payments under consumer credit contracts without suffering substantial hardship. This enforcement action came after a two-year investigation into Go Car's responsible lending practices. The Commission is seeking pecuniary penalties, statutory damages for named borrowers and orders waiving any outstanding amounts owed by named borrowers where their vehicles have been repossessed.

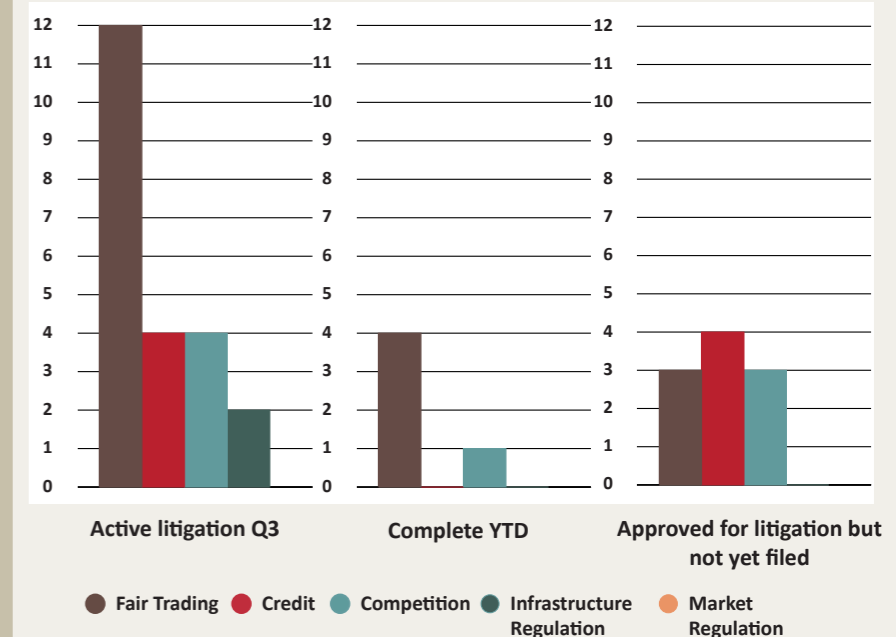
The Commerce Commission has filed seven charges against Beau Ideal Limited, formerly trading as Beaufair, under the Fair Trading Act for allegedly selling non-compliant extended warranties without customers' knowledge or consent. Beaufair, now trading as Advantage Tyre Solutions, sold extended warranties called "Road Hazard Cover" that provided tyre care and repairs for the first 12 months after the tyres were purchased.

Other

The Commission is currently defending five merit appeals against the final determinations in the 2023 review of the Part 4 input methodologies made by Major Gas Users Group 2024, Auckland International Airport Ltd, Wellington International Airport Ltd, NZ Airports Associations and First Gas Ltd.

The Commission is awaiting judgment from the High Court on the Major Gas User Group 2022 appeal against the gas input methodologies amendments (Gas IM Determinations) and price-quality path determinations for gas pipeline businesses (Gas DPP Determinations).

Litigation overview Q3 2023/2024



*Including 1 matter where the Commission is intervening as a non-party to a litigation.



COMMERCE COMMISSION
NEW ZEALAND
Te Komihana Tauhokohoko



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	Retail Payment System	Telecommunications
Previous Milestones	Emerging views phase 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. December 2023: Final decision on the Input Methodology review published.	Reviewing submissions. August 2023: Draft decision reasons paper, draft ID amendment determination and updated Issues Register published. September 2023: Invited cross-submission on specific matters. 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.	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.	October 2023: First statutory assessment of wholesale regime conducted. November 2023: Grocery Commissioner presented at Food & Grocery Council (NZFGC) annual conference to suppliers and other key stakeholders in the grocery industry. Began engagement with wholesale access customers.	Submissions on the Payments between bank accounts - Request for views paper published.	October: Product disclosure: Transparency review with Consumer NZ published. November: Billing Clarity research published. Product Disclosure: Retail Service Bundling Final Guidelines (Energy and Telecommunications Bundles) published. SFA annual assessment completed. December: Final Telecommunications Development Levy liability allocation determination for 1 July 2022 to 30 June 2023 published.
January – March 2024	N/A The review has now been completed.	February 2024: Final decisions published including reasons paper, determination and related information disclosure schedules.	21 March 2024: Draft report published.	January 2024: Anonymous reporting channel launched – 14 January 2024. Second statutory assessment of wholesale regime commenced. February 2024: Grocery newsletter published – 15 February 2024. Grocery supply code checklist published – 29 February 2024. March 2024: Unit pricing guidance published – 18 March 2024.	Update on our payments between bank accounts work and expectations for Payments NZ and largest banks published. Consultation on our proposal to recommend designation of the interbank payment network published. Compliance information received on interchange fee regulation (Visa and Mastercard).	January: Measuring Broadband NZ Spring Report published. February: Copper Withdrawal Code: Final Decisions and Reasons paper published. Annual update to industry letter published. March: Telecommunications Consumer Satisfaction Monitoring Report Jul 2023 - Dec 2023 published. Draft Product Disclosure submissions published.
Future Milestones	N/A	N/A The review has now been completed	18 April 2024: Submissions on draft report close. 13 -16 May: Consultation conference. 30 May 2024: Post-conference cross-submissions close. 20 August 2024: Final report published.	April 2024 Open letter to grocery sector to be published alongside correspondence between the Commission and the RGRs on their draft grocery supply agreements. Second grocery newsletter to be published. May 2024 Guidance on Unfair Contract Terms to be issued. June 2024 Second statutory assessment of wholesale regime completed.	Progressing next steps for payments between bank accounts work – submissions due 10 May.	April Measuring Broadband NZ published. RealSpeed report published. TDR Review letter and consultation. 111 Contact Code Review - Final Decision and amended Code. Wi-Fi Router Testing buying guide and article. Mobile Billing transparency review letter. Telecommunications Development Levy specified information and assurance instructions.

Quarterly comment on projects of significance

Market studies
On 20 June 2023, the Government asked the Commission to carry out a 14-month long study into whether competition for personal banking services in New Zealand is working well and, if not, what can be done to improve it. On 21 March 2024, we published the draft report which sets out our preliminary findings on the factors affecting competition for personal banking services and draft recommendations to improve competition. The preliminary findings and draft recommendations in our draft report are subject to consultation, further analysis and deliberation. Our final report is required to be published by 20 August 2024. After that, the Government will decide how to respond to our findings and recommendations.

Ex-post review of NZCC merger decisions
On 29 February 2024, we released a report of our findings following a review of thirteen merger applications assessed between 2014 and 2019. Merger clearance decisions require a forward-looking assessment of the risk that competition will be substantially lessened. This review sought to determine whether specific aspects of a decision – such as the likelihood of new entry – had played out as expected, rather than whether specific decisions were correct or not. Reviews of past merger decisions are undertaken by competition authorities around the world to identify meaningful lessons and insights, which can help to improve merger investigation efficiency and decisions.

Electricity distribution targeted information disclosure review
We completed our targeted review into the information disclosure requirements for electricity distribution businesses in February 2024 with the publishing of a reasons paper, determination and related information disclosure schedules. The Commission requires all 29 lines companies that distribute electricity locally in New Zealand to publish information each year on aspects of their performance. New Zealand's commitment to a low carbon future, together with resilience expectations, has prompted the Commission to review current disclosure requirements, in particular as they relate to decarbonisation, asset management and quality of service. The February 2024 decisions focus on obtaining better information on visibility of network capacity and constraints, risks to infrastructure from trees, work and investment on flexibility resources, and reliability.



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.



Q3 January - March 2024		Merger clearances s66	Merger authorisations s67	Collaborative activity clearances s65A	Trade practices authorisations s58
	Decided	1	0	0	0
Undecided at end of quarter	5	0	0	1	

YTD: Outcomes 2023/2024		Merger clearances s66	Merger authorisations s67	Collaborative activity clearances s65A	Trade practices authorisations s58
	Cleared unconditionally	9	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 granted clearance to one merger application in Q3 which involved medical alarms. The Commission did not receive any new applications for merger clearance in Q3. There are five merger clearance applications undecided at the end of the quarter which involve the grocery, courier services, telecommunications, DJ hardware and software, and animal nutrition sectors. In Q3, the Commission received an application from Payments NZ Limited seeking authorisation to work with API providers and third parties to further develop its open banking framework. In February, we published a statement of preliminary issues, outlining the key competition issues that the Commission considers important in deciding whether or not to grant authorisation for Payment NZ's proposed arrangement. The Commission is currently scheduled to make a decision on the application by 10 July 2024.



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 40% 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 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.

Q3 2023/2024 January - March 2024

74 OIA requests received

213* Year to date requests answered

*69 are from Q1, 78 from Q2, 66 from Q3.

