

# Briefing to the Incoming Minister

## Commerce and Consumer Affairs

28 November 2023



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## Introduction

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Tēnā koe e te Minita hou o te Kōmihana Tauhokohoko - Greetings from Commissioners and staff of the Commerce Commission.

As New Zealand's independent competition, fair trading, consumer credit and economic regulator we look forward to working constructively with you in your new capacity as the Minister of Commerce and Consumer Affairs.

Thank you for this opportunity to introduce our organisation and our mahi. This document sets out, at a high level, the role of the Commerce Commission within your Ministerial portfolio, and the relationship our work has to other portfolios.

The past year has been one of significant milestones and evolution for the Commission, with major achievements in our traditional areas of activity and in undertaking new responsibilities. Across the Commission we have maintained an unwavering focus on our vision and priorities – helping make New Zealanders better off.

Some of our newer responsibilities are of immediate priority to the many Kiwis who are currently facing cost-of-living pressures. These responsibilities include promoting competition in the fuel and grocery sectors, along with the retail payment system, where our mahi is more directly relevant to New Zealanders' lives and livelihoods than ever before. At the same time, we remain focused on our regulatory roles under the Commerce Act, Fair Trading Act and Credit Contracts and Consumer Finance Act.

Our newer roles and evolving legislative framework have given the Commission's work a new level of everyday prominence and relevance, which we have welcomed as an opportunity to connect more Kiwi consumers with what we are doing, and why. We want people to be aware of, and see value in, our work – both the short-term impacts and the outcomes over longer timeframes. A key part of our regulatory toolkit is building awareness and understanding of our work with New Zealanders, so that they can help promote and drive competition. This also helps ensure fairness for businesses, by providing a level-playing field.

The Commission Board and Leadership Team have placed a strong emphasis on the outcomes we are seeking to achieve and on measuring our impacts, while also ensuring we operate as efficiently as possible. We are conscious of public expectations and the need to work as quickly as we can, balanced with the need to ensure a sufficiently robust process that gives as much certainty as possible to businesses and consumers.

This briefing provides the strategic context for our work, as well as some of the more immediate matters that we want to draw to your attention. The information is set out in two sections:

- Section A – The Role of the Commission
- Section B – Matters for your consideration.

We look forward to meeting with you as your diary allows and working with you to help make New Zealanders better off.

Dr John Small  
Chair

Vanessa Horne  
Chief Executive (Acting)

## Section A – The Role of the Commission

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### Our role

1. We are an independent Crown Entity. Our vision is to make New Zealanders better off because markets work well and consumers and businesses are confident market participants. This vision is consistent with our statutory roles, which are focused on the long-term benefit of consumers. We focus on ensuring minimum standards are complied with and the interests of consumers and competitors are protected.
2. Factors that are critical to our ability to deliver include:
  - ensuring our independence and impartiality
  - maintaining an understanding and knowledge of the sectors we regulate
  - striking a balance between stakeholder engagement, education, and enforcement
  - retaining a big picture focus.
3. Our key responsibilities are set out in the legislation we implement, which is outlined below. The common thread through this legislation is a focus on the long-term interests of all New Zealanders, the promotion of competition where that is feasible and efficient, and the regulation of commerce where it is not. This is why we maintain a focus on making New Zealanders better off across all our responsibilities.
4. How well markets function affects the affordability of goods and services, the incentives that businesses have to innovate and improve efficiency and the speed with which the economy recovers from external shocks. These issues all have a real impact on New Zealanders as business owners and consumers.
5. Effective competition creates incentives for businesses to innovate, improve efficiency and produce products and services that are attractive to consumers. Consumers contribute directly to competition when they buy things and are better off when they have confidence to participate in markets. Consumers should have access to accurate, truthful information that helps them make informed purchasing choices and feel that the system is working to protect their interests.
6. Similarly, businesses need to be confident that the rules of trade are clear, that competitors are playing by them and that there is a reliable system for ensuring respect for the law. Businesses also need to have confidence that the regulatory regimes we are responsible for are predictable, so that they can continue to invest and innovate.
7. We will work towards our vision by targeting four outcomes – Kaitiaki | Stewardship, Māketē whakataetae | Competitive markets, Tauhokohoko tōkeke | Fair trade and Ngā tino ratonga | Essential services. These outcomes are described in our [Statement of Intent \(SOI\) 2023-2027](#), which sets out our strategic objectives and details how we intend to achieve our purpose. The SOI is complemented by our Statement of Performance Expectations (SPE), which focuses on the current year work programme and sets out our annual performance measures and forecast financial statements.

### Outcomes that support competitive markets

When appropriate we will pursue improved competition and better performance by market players through the court process. Recent cases where the Commission has had results include a record \$3.675 million fine against Vodafone NZ (now One NZ) in 2022 for misleading advertising (increased after an appeal by the Commission), and a \$500,000 penalty against a Mitre 10 franchise in 2023 for the use of anti-competitive land covenants.

### Our responsibilities

8. The legislative framework we operate under is outlined below:

<p><b>Commerce Act 1986 (Parts 2, 3 and 5)</b></p>	<p><b>Fair Trading Act 1986</b></p>	<p><b>Fuel Industry Act 2020</b></p>
<p>Promotes competition by preventing anti-competitive behaviour and acquisitions that substantially lessen competition. It also provides for a clearance and authorisation regime for mergers and restrictive trade practices and enables the Commission to carry out competition (or market) studies.</p>	<p>Promotes fair trading by prohibiting false and misleading behaviour by traders and a range of other unfair business practices. It also requires that consumers are given specified information about certain products and promotes product safety.</p>	<p>Promotes competition in engine fuel markets for the long-term benefit of fuel users. It establishes rules governing wholesale contracts, an information disclosure regime and requirements for the display of price information at retail fuel sites.</p>
<p><b>Commerce Act 1986 (Part 4)</b></p>	<p><b>Retail Payment System Act 2022</b></p>	<p><b>Grocery Industry Competition Act 2023</b></p>
<p>Promotes the long-term benefit of consumers in certain monopoly infrastructure markets by promoting incentives for suppliers to innovate, invest, improve efficiency and provide services at a quality that reflects consumer demand, and by limiting excessive profits. It provides for information disclosure, and regulation of price and quality of some suppliers.</p>	<p>Promotes competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers. It establishes a monitoring regime for the sector, puts in place an initial pricing standard to regulate the interchange fees of Visa and Mastercard networks and provides a range of other tools to regulate fees, prices and access to networks.</p>	<p>Establishes a monitoring and reporting regime for the grocery sector, provides for the making and enforcement of a Grocery Supply Code to promote fair conduct between grocery retailers and suppliers and includes a range of default and backstop regulatory tools to promote the availability of reliable and cost-effective wholesale supplies of groceries.</p>

<p><b>Telecommunications Act 2001</b></p>	<p><b>Dairy Industry Restructuring Act 2001</b></p>	<p><b>Credit Contracts and Consumer Finance Act 2003</b></p>
<p>Regulates the supply of certain wholesale telecommunications services (including the price and quality of fibre networks) and the quality of retail services. It also empowers the Commission to regulate the withdrawal of copper services by Chorus and require providers to ensure vulnerable users can access the 111-emergency service.</p>	<p>Subpart 5A provides for an annual review of the base milk price manual and calculation and a limited disclosure regime with the purpose of providing an incentive for Fonterra to operate efficiently while providing for contestability in the market for the purchase of milk from farmers.</p>	<p>Protects the interests of consumers in relation to consumer credit contracts, consumer leases and buy-back transactions of land.</p> <p>It includes provisions relating to disclosure and unforeseen hardship and sets out rules about interest payments, credit fees, responsible lending and lender certification.</p>
<p><b>Water Services Entities Act 2022</b></p>	<p><b>Water Services Economic Efficiency and Consumer Protection Act 2023*</b></p>	
<p>Establishes water services entities (suppliers) and provides for initial economic regulation during the entity establishment period, including the provision for scrutiny of entity initial asset management and funding and pricing plans.</p>	<p>Promotes the long-term interests of consumers of water infrastructure services through economic regulation and a consumer protection regime.</p> <p>It provides for the disclosure of information, the regulation of service quality, and limits on prices charged by monopoly service providers. It also provides for the setting and enforcement of a service quality code to improve the quality of water services.</p>	

\*We note that our work in relation to this legislation for water services will be subject to the Government's policy commitments for water. We discuss this further in paragraphs 22 – 25.

9. In recent years, our regulatory responsibilities have grown as each piece of legislation that we are responsible for has either been amended or reviewed, and additional legislation has been introduced. Key changes are detailed below:
- **The Fuel Industry Act 2020** required us to stand-up a new regulatory function. Our functions and powers relate to terminal gate pricing, wholesale contracts for supply, and the provision of clear and transparent pricing information for consumers. In July 2023 an amendment to the Act provided the Commission a pathway for regulating terminal gate prices if the Commission finds them to be above competitive levels. Under this process, the Commission may recommend that the relevant Minister imposes regulation on terminal gate prices, in which case the Commission would then be required to make a price determination.
  - In 2021, amendments to the Commerce Act meant that **cartel conduct** became a criminal offence. Individuals engaging in cartel conduct can now be sentenced to up to seven years in prison.
  - **The Retail Payment System Act 2022** put in place new regulatory responsibilities for the Commission in respect of the retail payment system (including credit and debit cards). The new regulatory regime requires reductions in interchange fees via an

initial pricing standard which took effect in November 2022 and is estimated to have reduced costs for merchants by around \$105 million per annum. It also enables direct intervention by the Commission to regulate different participants, or classes of participants, in the retail payment system. This is to ensure the regime is flexible enough to promote competition and innovation in the retail payments sector.

- In 2023 further amendments to the Commerce Act came into effect making it easier for the Commission to **act against businesses with market power whose conduct stifles competition**. The conduct of these firms can now be assessed against its effect on competition allowing us to more successfully pursue conduct that was previously beyond our reach. We educated businesses and their advisers about the change in focus from the intent of conduct to its effect or likely effect on competition, including by publishing our *Misuse of Market Power Guidelines* in March.
- Also in 2023, legislation came into force establishing **our regulatory role in the water and grocery sectors**. This is detailed further in Section B.

10. With our expanding role in the last few years, alongside our other work, we have been able to successfully reprioritise to focus and stand up these new functions. This has required an increase in our total number of staff.

### Who we work with

11. Within New Zealand, we are a member of several multi-agency networks which help to ensure consistency and knowledge sharing across the public sector. These include the Council of Financial Regulators, Council of Energy Regulators, Government Regulatory Practice Initiative (G-REG), Independent Crown Entities Forum, and the Consumer Protection Partnership Forum.
12. We have a strong relationship with the Australian Competition and Consumer Commission (ACCC) and are well connected with the United States Federal Trade Commission and Department of Justice Antitrust Division, the Competition Bureau Canada and the United Kingdom Competition and Markets Authority. We also work with competition agencies in the Asia-Pacific region and with wider global counterparts, including through our Multilateral Mutual Assistance and Cooperation Framework. We participate in international groups and networks such as the OECD's Competition Committee. We are founding members of the Pacific Island Network of Competition, Consumer and Economic Regulation (PINCCER). PINCCER has been established as a forum for cooperation, knowledge sharing and capacity building between relevant regulators in the Pacific region.

### Relationship to Ministerial portfolios

13. You are responsible for the Crown's interests in, and relationship with, the Commerce Commission under the Crown Entities Act 2004. The Ministry of Business, Innovation and Employment is responsible on your behalf for monitoring our performance and supporting you to ensure good governance in our organisation. This includes through effective succession planning and appointments of Members and Associate Members to the Board.



14. We set out the Ministerial responsibilities and interests related to our work below:

- You, as the Minister for Commerce and Consumer Affairs, are responsible for our activities under the Commerce Act 1986, Fair Trading Act 1986, Credit Contracts and Consumer Finance Act 2003, Retail Payment System Act 2022, Grocery Industry Competition Act 2023, Water Services Entities Act 2023 and the Water Services Economic Efficiency and Consumer Protection Act 2023.
- The Minister for Media and Communications is responsible for our work under the Telecommunications Act 2001.
- The Minister of Energy is responsible for our work under the Fuel Industry Act 2020 and has an on-going interest in our work with electricity and gas networks under Part 4 of the Commerce Act 1986.
- The Minister of Agriculture is responsible for our role under the Dairy Industry Restructuring Act 2001.
- The Minister of Finance has an interest in our work under the Credit Contracts and Consumer Finance Act 2003 through our membership of the Council of Financial Regulators, and our work under the Retail Payment System Act 2022.
- The Minister for Infrastructure has an interest in our work with infrastructure industries under Part 4 of the Commerce Act 1986, the Telecommunications Act 2001, the Fuel Industry Act 2020, and the Water Services Economic Efficiency and Consumer Protection Act 2023.
- The Minister of Transport has an interest in our work with airports under Part 4 of the Commerce Act 1986, and in our work under the Fuel Industry Act 2020.
- The Ministers of Health and Local Government have an interest in our work under the Water Services Economic Efficiency and Consumer Protection Act 2023.

#### **Engagement with Ministers**

In the past we have found regular reporting and bi-monthly meetings to be a helpful way of maintaining open communication and keeping Ministers informed. Please let us know how frequently you would like to meet. We will also need to work with your office to organise the tabling of the Commission's Annual Report 2022/23.

#### **Financial Overview**

15. Most of our funding comes from revenue from the Crown, provided to us from appropriations under Vote Business, Science and Innovation. Revenue from the Crown is sourced from both general taxes and industry levies. Other sources of revenue include interest on cash we hold, court cost awards from litigation, cost recoveries for our staff on external secondments, and application fees paid by businesses seeking clearances and other determinations.

**Budget funding for 2023/24: \$108.2m**

<b>General taxes: \$69.9m</b>	<b>Industry levies: \$36.0m</b>	<b>Other revenue: \$2.3m</b> <i>Fees, interest cost recoveries, Court cost awards</i>
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16. Our budgeted expenditure for each output class in 2023/24 is shown below. Industry-funded activities are funded from levies charged to businesses in regulated industries.

**Budget expenditure for 2023/24: \$109.9m**

<b>Activity funded from general taxes</b>	
<b>Competition: \$12.8m</b>	<b>Consumer: \$22.0m</b> <i>(includes Fair Trading and Credit Contracts and Consumer Finance Act activities)</i>
<b>Market Studies: \$3.5m</b>	<b>Fuel: \$5.2m</b>
<b>Retail Payments: \$5.2m</b>	<b>Water Services: \$4.5m</b>
<b>Grocery sector: \$7.3m</b>	<b>Major Litigation: \$12.7m</b>

<b>Activity funded from industry levies</b>	
<b>Telecommunications and Fibre: \$16.1m</b> <i>(Including Fibre \$6.2m and Telecommunications \$9.9m)</i>	<b>Electricity: \$12.1m</b>
<b>Gas: \$3.7m</b>	<b>Dairy: \$1.7m</b>
<b>Input Methodologies: \$1.9m</b>	<b>Specified airport services: \$1.0m</b>

17. There is a budgeted deficit of \$1.7m in this financial year. This relates to transitional work in relation to Water services and will be funded from the Commission's reserves.

## Section B – Matters for Your Consideration

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19. Outlined below are the key matters the Commission understands that the Government is likely to have a focus on. More detail will be provided in upcoming briefings and meetings. Information on any other matters can be provided at your request.

### **The role of economic regulation**

20. The Commission plays a key role in ensuring that consumers receive services that reflect the quality they demand, and that suppliers are not able to extract excessive profits in sectors where there is little or no competition, and little or no likelihood of a substantial increase in competition. We operate sector-specific regimes for telecommunications, energy infrastructure, airports, groceries, the retail payment system, fuel, dairy and water infrastructure.
21. Economic regulation promotes long-term benefits for consumers by:
- incentivising innovation and investment
  - incentivising improved efficiency and service quality that reflects consumer demand
  - sharing with consumers the benefits of efficiency gains through lower prices
  - limiting infrastructure service providers' ability to extract excessive profits
  - promoting greater accountability for infrastructure service quality and reliability through public information disclosure requirements.

### ***Our role in regulating water***

22. The infrastructure deficit in the water sector (drinking, waste and storm water) is well understood. We understand from National Party statements that economic regulation, with the Commission as the regulator, will be a key aspect of its approach to water reform. We consider that economic regulation in the water sector can deliver benefits to customers, the environment and wider society, by ensuring there is sufficient investment in infrastructure and improvements to services, and assurance of better value for money for New Zealanders.
23. As New Zealand's main economic regulator, we are well positioned to work with other agencies to provide our expertise in how best to apply economic regulation to help the government achieve its objectives for water reform. We anticipate that there will be changes in this area and await further instructions.
24. The approach to economic regulation provided for in the Water Services Economic Efficiency and Consumer Protection Act 2023 (WSEEC Act) provides considerable flexibility in how we carry out our regulatory role compared with our regulatory roles under Part 4 of the Commerce Act and Part 6 of the Telecommunications Act. This includes the ability to regulate quality only. We consider this flexibility is likely to be helpful in regulating a diverse range of water service suppliers, with different capabilities and issues. This will be an important consideration in policy and legislative changes and we look forward to engaging on these changes and working with you and your colleagues.

25. The tools of economic regulation in the WSEEC Act include the following (\* indicates tools not currently available in Part 4 of the Commerce Act):
- requiring public disclosure of certain information to understand the performance of the Water Service Entities (suppliers)
  - benchmarking, monitoring, analysing and reporting publicly on supplier performance
  - regulating the revenues and quality of supplier service, including the ability to require ringfencing of revenue\* for specific services
  - setting minimum standards for service quality that suppliers must meet<sup>1</sup>
  - reviewing asset management plans and funding and pricing plans\*
  - setting and enforcing a service quality code to improve the quality of water services\*
  - approving suppliers' development codes and ensuring compliance\*
  - enforcing and monitoring consumer complaints processes and monitoring the consumer dispute resolution service.\*

Revised legislation that includes the tools above (particularly those not currently available in Part 4 of the Commerce Act) will enable us to deliver improved outcomes for New Zealanders at pace.

**No funding for economic regulation of water past 2023/24**

An initial \$4.5million (which includes the use of Commission reserves up to \$1.7million) has been appropriated for 2023/24 for the transition and implementation of economic regulation of water. This funding ends on 30 June 2024. While the final cost of economic regulation will depend on the policy design, our ability to get any function up and running quickly relies, in large part, on our ability to plan for implementation ahead of time. [REDACTED] We look forward to discussing this further with you in due course.

***Energy networks and airports***

26. The Commission plays a key role in ensuring that residential, commercial and industrial infrastructure consumers receive services that reflect the quality they demand, and that network suppliers are not able to extract excessive profits. Introduced in 2008, Part 4 of the Commerce Act 1986 sets out our role in regulating the monopoly infrastructure aspects of specific essential services, currently electricity, gas and airports.
27. The electrification of the New Zealand economy will require significant investment in energy networks. As a result, we expect a material increase in electricity transmission and distribution prices in the second half of this decade. These prices are one component of total consumer prices for energy which we note is a focus of the coalition agreement between National and NZ First. A key outcome the Commission must promote through our regulation of these suppliers is incentives for them to innovate and invest. A stable regulatory regime and a predictable approach to assessing revenue limits is a cornerstone to maintaining these incentives through the process of increasing electrification in New Zealand.

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<sup>1</sup> Note that service and infrastructure quality is distinct from Taumata Arowai's responsibility for water quality

28. While our core approach to the regulation of electricity networks remains robust, we are currently considering some changes to reflect both the context of uncertain (but increasing) investment to meet demand for electrification, and to maintain resilience in the face of more frequent climate events.
29. Some of these changes will be made in the input methodologies which describe the key rules and processes that we use to set revenue limits and other regulation of energy and airport infrastructure. Our input methodologies review will be completed in December 2023. We will provide you with a separate briefing on our final decisions closer to the publication date.
30. We have also commenced our work to establish new revenue limits and quality standards for Transpower and for the group of 16 price-regulated electricity distribution businesses. These 'resets' provide an opportunity for suppliers to put forward their investment plans. The Commission will consider how well justified these are and how best to promote the long-term benefit of electricity consumers in the current economic and climate context.
31. Information disclosure regulation enables interested parties to assess whether the purpose of regulation is being met. It is a relatively low-cost approach to regulation. Information disclosure is the key tool for regulation of specified airport services and has been effective in that sector at limiting excessive profits and encouraging consultation with consumers. For airports we undertake a specific review of information that must be disclosed when each of the three regulated airports resets its prices.
32. We undertake periodic reviews of disclosure obligations for electricity distributors. Our aim is to ensure that consumers and other sector stakeholders have the information they need to understand supplier performance. Recently we have focused on information about new connections (including costs) and how suppliers will work with consumers (including addressing complaints). We aim to publish the next stage of updated disclosure requirements focusing on management of asset risk and network capacity in February 2024.

### **Credit**

33. The Credit Contracts and Consumer Finance Act 2003 (CCCF Act) came into force in April 2005 and the Commission now has 18 years of experience in conducting investigations, industry compliance monitoring, taking enforcement proceedings, engaging with industry and consumer advocates, and producing educational guidance for lenders and consumers. We welcome any rewrite of the CCCF Act and our experience in the regulatory system means we are well placed to support MBIE and you, as the Minister, in a review process.
34. Our observation is that there are a number of areas where the CCCF Act is working well and achieving the Act's purposes, but that there are also areas where there is scope for improvement.
35. Areas where the Commission observes the CCCF Act to be well understood and to be working well include:
  - Disclosure provisions – these require lenders to provide important information to borrowers in writing at different points in the loan. This is essential to support

informed decision making by borrowers. We have seen a marked improvement in compliance by lenders (including banks) with these provisions over time.

- Fees provisions – these prohibit a lender from charging unreasonable fees (i.e. fees that exceed a lender’s costs). We have observed that several lenders have reduced and/or simplified fees charged since the provisions have been in place and lenders who have not complied with the CCCF Act have been required to refund overcharged fees. This has directly benefited consumers. Ensuring the credit fees are cost based also makes it easier for consumers to compare competing credit offers, which is pro-competitive.

36. Areas where in our observation there is scope for improvement include:

- Affordability regulations – the revised affordability regulations are giving rise to interpretation challenges, for lenders and the Commission alike. We would support any review of the obligations, including the role that robust benchmarking could more usefully play in streamlining the affordability assessment process. In the meantime, we are continuing our engagement and education activity with lenders and consumer advocates in relation to affordability requirements, and taking enforcement action where we see clear breaches of the requirements causing consumer harm. We have 15 open investigations into finance companies (particularly motor vehicle lenders) for potential breaches of obligations to assess that loans are affordable.
- Penalties and enforcement regime – as result of the way the regime has developed there are often multiple remedies available where a lender breaches their obligations. This complexity can affect the timeliness and certainty of enforcement outcomes. We would support a review to consider how the penalties and enforcement regime can be simplified for the Commission and lenders alike and made more fit for purpose.

37. The Act has also prescribed recent rules relating to high-cost loans, which are consumer credit contracts where the interest rate exceeds 50%. High-cost lending was an area where we saw significant consumer harm due to non-compliance with the CCCF Act. Enforcement action from the Commission in relation to these new rules has substantially reduced this harm.

### **Market study function and outcomes**

38. The ability to conduct market studies (also referred to as competition studies) was added to the Commission’s functions in 2018. The current study, our fourth, is into the factors affecting competition for the supply or acquisition of personal banking services. The study commenced in June 2023 and is well underway. Our final report is due by 20 August 2024.
39. We note there is a coalition agreement to establish a select committee inquiry into banking competition. We look forward to discussing how our insights and analysis from the current market study could be used to support this inquiry.
40. Market studies are a well-established feature of competition agency toolkits in several OECD economies, including the UK and Australia. They enable us to look at the structure,

conditions, and performance of a market to assess whether competition is working well and, if not, to make recommendations for improving competition for the long-term benefit of consumers in New Zealand. Market studies in New Zealand have previously tackled wider sector issues compared to market studies in other economies.

41. Recommendations are, in effect, proposed remedies that we consider would bring about meaningful change with sustainable and enduring benefits to competition and outcomes for consumers. Any recommendations we make are non-binding although, under the Commerce Act, the Government must respond to our findings and recommendations within a reasonable period.

**There is flexibility in the size and scope of market studies**

There is considerable flexibility in the size and scope of our market studies and they can be initiated by you or by the Commission (all market studies to date have been ministerially-initiated). We maintain awareness of sectors and markets where future studies may be of benefit. We would be happy to discuss your thoughts on possible future topics.

42. Regardless of the size and scope, in our experience to date, market studies are not a quick fix. Often significant regulatory reform is recommended and legislative change may be required. Further, while our focus is on competition and the positive outcomes that healthy competition can bring for consumers, other policy objectives may need to be taken into consideration.
43. The type of factors found to be affecting competition has directed our market study recommendations. For example, in the residential building supplies study, the primary barriers to competition we found were aspects of the building regulatory system that incentivised designers, builders and building consent authorities to favour familiar building products over new or competing products, so we recommended changes to that regulatory system.
44. Regulatory barriers to competition, which are noted in the coalition agreement between National and Act, are of real concern to the Commission. We can see that there will be synergies between our work and that of the new department that will support the Minister for Regulation. This includes in the sectors (primary industries, finance, early childhood education, and healthcare occupational licensing) that will be the subject of regulation sector reviews. We look forward to discussing this further with you.

***New Grocery Function***

45. Following on from the recommendations of our second market study, published in 2022, the Grocery Industry Competition Act 2023 (GICA) came into force on 10 July 2023. It gives the Commerce Commission powers to monitor and regulate the grocery sector, with the aim of supporting improved competition that will lead to more convenient shopping, more choice and better prices for consumers.
46. To deliver on our obligations under the GICA the Commission has established a grocery team over the past year. The team is comprised of three functions: Monitoring and Market Performance; Wholesale Access; and Compliance and Enforcement. We have designed this function to take advantage of synergies with the Commission's broader Fair Trading and Competition teams.

47. Key deliverables for the team in the first year are:
- making assessments of the functioning of the wholesale regime at 3, 6 and twelve months
  - collecting information to inform the first annual review of competition in the grocery sector
  - implementing the Grocery Supply Code and the Unit Pricing Consumer Standard.
48. The Grocery Commissioner has recently communicated three key issues in the sector that need attention right now. These cover a range of grocery sector issues that span several Commission functions. The issues are:
- ensuring pricing is accurate so that consumers are not overcharged or misled
  - encouraging suppliers to engage with the wholesale regime so that alternative retailers (including potential new market entrants) have access to more products at better prices
  - addressing the barriers to entry and expansion in the grocery sector.
49. We have identified several ways in which the GICA could be enhanced to further promote competition. These changes would support the commitment to strengthening the powers of the Grocery Commissioner, as set out in the coalition agreement with NZ First. We are able to provide you with advice on this as required and will work closely with your officials at MBIE as they develop advice for you.

#### **Fair Trading Act could benefit from improvements**

50. The way that consumer goods and services are offered and sold is constantly changing – many methods of conducting business that are commonplace now, such as online shopping (both from New Zealand and international jurisdictions), the prevalence of online platforms, buy-now-pay-later, and social media marketing, were not anticipated at the point at which the Fair Trading Act was drafted. The legislation is approaching 40 years old, and many elements are now substantially out of date. You may wish to consider policy options for futureproofing the Act by ensuring it has the agility to accommodate this.
51. In particular, we are concerned that the level of penalties provided for under the Fair Trading Act is seen by some larger traders as a ‘cost of doing business’ rather than a meaningful deterrent that drives better performance. Penalties are also significantly lower than those imposed by the courts in Australia through enforcement action by the Australian Competition and Consumer Commission. We also consider that improvements could be made to settings that: have an impact on consumer choice and outcomes (such as Unfair Contract Terms and online platforms<sup>2</sup>); ensure that compliant businesses aren’t unfairly disadvantaged by non-compliant businesses; and ensure we have the right tools to mitigate and address consumer harms.

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<sup>2</sup> These platforms have a significant role in consumer markets but it is not always clear where liability sits



**Next steps**

52. We would welcome a chance to meet with you or Ministerial colleagues and discuss the matters raised above in more detail, as well as any matters you wish to raise with us.
53. Your office staff are welcome to contact Raj Krishnan or Lachlan Cartwright (contact details outlined in Appendix C) to organise a meeting.

## Appendix A – Commission Members and Associate Members

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### The Board

54. The Commission’s Board is responsible for governing the entity and exercising its statutory powers and functions. The Board's actions must be consistent with the Crown entity's objectives, functions, Statement of Intent, and Statement of Performance Expectations.
55. The Governor-General, on the recommendation of the Minister of Commerce and Consumer Affairs, appoints Commission members for their knowledge of, and experience in, areas relevant to the Commission's interests. The Telecommunications Commissioner is appointed on the recommendation of the Minister for Media and Communications.
56. The Board has a strong focus on:
- clearly setting the direction of the Commission
  - ensuring that the Commission achieves its objectives, as expressed in legislation and/or the entity’s Statement of Intent
  - managing any risks to the Crown.
57. The Board delegates the day-to-day management of the Commission to the Chief Executive. Our Chief Executive, with support of the senior leadership team, is the key point of accountability between the Board and the organisation.
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**Dr John Small**  
**Chair**

John is the Founding Director of economic consultancy firm, Covec, and was also the former Head of the University of Auckland's Economics Department. He has extensive experience undertaking complex competition analysis in a wide range of sectors, including energy, transport, agriculture, telecommunications, payment systems, and construction.

John was also previously a lay member of the High Court of New Zealand, frequently called as an expert witness before courts, tribunals and commissions.

*Term began: 8 June 2020 (first appointed: 17 Dec 2018)*

*Term ends: 7 June 2025*



**Anne Callinan**  
**Deputy Chair**

Anne was appointed Deputy Chair in July 2023.

Anne is a commercial litigation lawyer with deep experience in competition and consumer law. Prior to joining the Commission she worked for Simpson Grierson – becoming a Partner in 1997 and the firm’s Chair from 2018 to 2023.

*Term began: 10 July 2023*

*Term ends: 9 July 2028*

**Tristan Gilbertson****Telecommunications Commissioner**

Tristan is a corporate and commercial lawyer with extensive international experience in telecommunications law and regulation. After an early career in private practice, Tristan was appointed Legal and Regulatory Director – Asia-Pacific at Vodafone Group Plc, where he was closely involved in the expansion and diversification of Vodafone’s business. He then joined Telecom New Zealand Ltd where he was Group General Counsel and played a leading role in the structural separation of Telecom and the re-set of the regulatory framework. Most

recently, he was Group General Counsel of Digicel Group Ltd, where he focused on transformation and change across Digicel’s 32 global markets.

*Term began: 8 June 2020*

*Term ends: 7 June 2025*

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**Pierre van Heerden****Grocery Commissioner**

Pierre van Heerden was appointed Grocery Commissioner in July 2023.

Most recently, he was the Chief Executive Officer of Mojo Coffee, General Manager Commercial Development of Zealandia, and Executive General Manager of Farrah’s Breads. Prior to this, van Heerden was Managing Director of Southern Sky Associates, a business consultancy. He has also been the Chief Executive Officer of Brancourts Dairy Group, Australia and Executive

General Manager of Sanitarium Health and Wellbeing New Zealand for 10 years, Managing Director of Dick Smith Foods in Australia, as well as having held various executive roles with Sanitarium in Australia.

Pierre has also held roles as Chair and Deputy Chair of the Food and Grocery Council of New Zealand, New Zealand Representative of APEC’s Policy Partnership on Food Security, a member of expert advisory groups – Front of Pack Labelling as well as Health Star Rating advisory groups (on behalf of the Minister of Food Safety), and industry advisor on the Food and Beverage Information project. He has also been Chair of Life Health Foods Limited and director of New Zealand Health Association Limited, SoSoy (Pty) Ltd and the International Health Food Association.

*Term began: 13 July 2023*

*Term ends: 8 July 2028*

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**Dr Derek Johnston****Commissioner**

A commercial lawyer, Derek has extensive experience and knowledge of competition law coupled with significant mergers and transactional experience and familiarity with many of the regulated sectors. His past roles include being the independent Chair of NZX's Regulatory Governance Committee and the Chair of the NZ Markets Disciplinary Tribunal. For many years Derek

was a corporate partner with Russell McVeagh and most recently has been practising as a barrister and arbitrator at Thorndon Chambers. In December 2022, Derek was appointed as an Associate Member of the Australian Competition and Consumer Commission until October 2024.

*Term began: 1 November 2019*

*Term ends: 31 October 2024*

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**Vhari McWha****Commissioner**

Vhari is an experienced economist and has advised on public policy and regulation, including competition analysis and market design. She has a background in quantitative analysis, including cost benefit, modelling and forecasting work. Vhari has specific expertise in the energy sector. Prior to joining the Commission, Vhari was a Director at Sapere. Her earlier roles include Deputy Director at the economic consultancy NZIER and as the Regulatory Affairs Manager at Meridian Energy.

*Term began: 5 June 2023 (first appointed 14 September 2020)*

*Term ends: 2 June 2028*

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**Bryan Chapple****Commissioner**

Bryan is an experienced economist and senior public sector leader, with a deep understanding of the New Zealand economy and the role of regulation.

Prior to joining the Commission, he was Deputy Secretary (Growth and Macroeconomics) at the New Zealand Treasury. In that role, Bryan led the Treasury's work on micro and macro-economic policy, including the Treasury's work on regulatory strategy.

*Term began: 5 June 2023 (first appointed 29 August 2022)*

*Term ends: 2 June 2028*

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## Associate Commissioners

Alongside Commissioners, the Minister of Commerce and Consumer Affairs may also appoint Associate Commissioners to the Commission. Associate Commissioners are appointed for specific classes of matters and are deemed to members of the Commission only for the matters they are appointed for. Associate Commissioner are not members of the Commission's Board.



**Joseph Liava'a**

**Associate Commissioner**

Prior to joining the Commission, Joseph worked as the Community Liaison Manager for Nirvana Health Group.

Before that he was a consumer law advisor for the former Ministry of Consumer Affairs and also worked as a private secretary for the Minister. Joseph has also given consumer law training to budget advice services and community law centres. He has been involved with a variety of boards and panels, including Pacific Health and Welfare Inc, Vaiola Pacific Island Budgeting Service Trust (Mangere),

Otara Health Charitable Trust, as well as the board of Consumer New Zealand.

*Term began: 16 May 2022 (first appointed 8 April 2019)*

*Term ends: 7 June 2025*



**Nathan Strong**

**Associate Commissioner**

Nathan is a qualified economist, with over 20 years of experience focusing on applied competition and regulatory economics, including at senior management levels in regulated companies. Prior to joining the Commission, he was the General Manager (Commercial) at Unison Networks having first been appointed to the executive team at Unison in 2010.

Nathan was also the Chair of the Electricity Networks Associations' Regulatory Working Group, a Member of the Electricity Authority's

Security and Reliability Council and has previously been a member of several Electricity Authority Advisory Groups

*Term began: 29 August 2022*

*Term ends: 27 August 2027*



**Sue Begg**

**Associate Commissioner**

Sue Begg was appointed as a Commissioner in June 2009, Deputy Chair in July 2010 and Associate Commissioner in July 2023.

Sue is an economist, whose previous roles include director of the consultancy company Impetus Group Limited, Vice-President and head of the economic advisory unit of the investment banking division of Credit Suisse First Boston NZ Limited (and its predecessor companies) and manager of the Macroeconomic Policy section at the Treasury.

*Term began: 10 July 2023 (first appointed 17 June 2009)*

*Term ends: 31 December 2023*

**Loretta Lovell****Associate Commissioner / Alternate Water Services Commissioner<sup>3</sup>**

Loretta Lovell is a Solicitor, Independent Environmental Commissioner and Professional Director.

For over 20 years Loretta has specialised in public, commercial, energy and resource management law, advising clients as they develop their resources and negotiate and progress large scale infrastructure projects. As an environmental commissioner and chairperson, she has considered and decided many complex plan

and consent applications often involving large scale infrastructure for telecommunications, electricity grid, lines and generation, and drinking, storm and wastewater.

Loretta is also a Board member of the Independent Crown Regulator Taumata Arowai which regulates water quality for New Zealand, providing a common conduit between the economic and quality regulators at governance level. She is also a Board member of The Charities Registration Board and until recently served on the board of the Energy Efficiency and Conservation Authority and the Environmental Legal Assistance Advisory Panel.

*Term began: 31 May 2023*

*Term ends: 30 May 2028*

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**Rakihiu Tau****Associate Commissioner**

Rakihiu brings knowledge of industry, commerce and economics, and extensive experience working with Māori rights and commercial interests. His experience with Māori/Crown relationships dates back to Ngāi Tahu's original Treaty settlement negotiations, and he has an ongoing involvement in various Māori businesses and organisations at both executive and board level.

Rakihiu's experience includes managing Ngāi Tahu Holdings' strategic policy, litigation, and external relations, as well as providing business advisory services, and having a range of governance roles.

*Term began: 26 June 2023*

*Term ends: 23 June 2028*

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<sup>3</sup> Loretta has been designated by the Commission Chair as the Alternate Water Services Commissioner under s.132 of the Water Services Economic Efficiency and Consumer Protection Act 2023 in the absence of an appointment of a Water Services Commissioner

## Appendix B – Commission Senior Leadership Team

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**Vanessa Horne**  
**Acting Chief Executive**

Vanessa Horne is the acting Chief Executive of the Commission until the end of January 2024, while Adrienne Meikle is on secondment to Toitū Te Whenua | Land Information NZ as Chief Executive. Vanessa's substantive role with the Commission is as General Manager Fair Trading.

Vanessa joined the Commission in April 2021 from a role as Group Manager, Overseas Investment Office at Land Information New Zealand. Her regulatory and legal background spans several

regulatory systems, including overseas investment, intellectual property, health and safety, emergency management, occupational regulation, rural broadband and energy safety.

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**Adrienne Meikle**  
**Chief Executive (on secondment)**

Adrienne is currently on secondment to Toitū Te Whenua | Land Information New Zealand where she is acting Secretary for Land Information / Chief Executive until the end of January 2024.

Adrienne joined the Commission in May 2018 from MBIE, where she was the Deputy Chief Executive, Corporate, Governance and Information group. Adrienne has held senior management roles in the Market Services and Dispute Resolution areas in MBIE, Acting Deputy Secretary, Tourism, Events and Consumer Affairs, Director of

Legal in the Ministry of Economic Development, Chief Legal Adviser in the New Zealand Food Safety Authority and Parliamentary Counsel. She has also worked for the Department of Corrections and the Ministry of Education.

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**PJ Devonshire**  
**Pou Ārahi**

PJ is of Ngāti Kahungunu ki Wairarapa and Rangitāne o Wairarapa descent and joined the Commission in August 2021. He has held roles as Pouārahi with the Ministry of Social Development and General Manager of his iwi Ngāti Kahungunu ki Wairarapa and represented his iwi on the National Iwi Chairs Forum. In 2021/22, he held dual Pouārahi roles with the Commerce Commission and the Office of the Privacy Commissioner. He is a Board Member of Ngāti Kahungunu ki Wairarapa Charitable Trust and is an honorary member of the Māori Women's Welfare League.

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**Andy Burgess**  
**General Manager Infrastructure Regulation**

Andy joined the Commission in December 2019 after a number of years in economic regulation in the UK and internationally.

Andy joined the Commission from Ofgem in the UK where he led part of the Energy System Transition team. He was also the UK representative on the Board of the European Energy Agency (ACER) and the Council of European Energy Regulators (CEER) and acted as the Vice-Chair of CEER's Distribution Systems Working Group.



**Andrew Riseley**  
**General Counsel**

Andrew joined the Commission in January 2017 after 20 years in competition law and economic regulation across five jurisdictions, including Singapore, the UK and Australia.



**Antonia Horrocks**  
**General Manager, Competition**

Antonia joined the Commission in August 2016 after four years at the UK Competition and Markets Authority. She has over two decades experience in competition enforcement, merger control and competition policy matters, having worked as an antitrust lawyer for international law firms prior to joining the regulators. She started her career in New Zealand and has a BA (Hons) in English, an LLB (Hons) and a Postgraduate Diploma in EU Competition Law.



**Douglas Rathbun**  
**Chief Economist**

Douglas joined the Commission in 2023 after working for regulators and leads the economics function. He has over 20 years of experience in government, including competition enforcement, policy, and legislative and judicial functions. His experience includes competition enforcement and policy in currently and formerly regulated industries. He also has industry experience in technology, including internet and payment platforms, in regions around the globe.





**Geoff Williamson**  
**General Manager Organisation Performance**

Geoff joined the Commission in July 2011 and was previously Director Corporate Services at the Tertiary Education Commission and Chief Financial Officer at the National Library of New Zealand and had roles at Deloitte.



**Kirsten Mannix**  
**General Manager Fair Trading**

Kirsten is acting General Manager of the Commission's Fair Trading Branch until the end of January 2024. In her substantive role, Kirsten is Fair Trading Investigations and Compliance Manager.

Kirsten joined the Commission in October 2012, after returning to Wellington from the UK where she worked in legal roles in-house at GlaxoSmithKline and Sainsbury's Supermarkets.



**Louise Unger**  
**General Manager Credit**

Louise joined the Commission in April 2021 from international firm Lawyers On Demand, where she specialised in risk and compliance. She has expertise in providing legal, risk and compliance services to a range of Aotearoa New Zealand and international organisations, including banks and electricity companies. She led the Bank of New Zealand's Retail legal team, which included advising on the Credit Contracts and Consumer Finance Act.



**Raj Krishnan**  
**General Manager Strategy, Governance and Engagement**

Raj joined the Commission in 2021 from the Department of Internal Affairs where he held several leadership positions, including General Manager Policy and General Manager Regulatory Services. He brings extensive leadership experience in policy and regulation and a strong background in governance and stakeholder relations. Raj has previously held roles with the Department of the Prime Minister and Cabinet, Department of Corrections and ACC.

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**Simon Thomson**  
**General Manager Market Regulation**

Simon is the acting General Manager of the Commission’s Market Regulation Branch until the end of August 2024.

Simon first joined the Commission in 2011 and has held a range of roles – including Head of Telecommunications, Manager of the Commission’s Strategy, Policy and Performance function and the inaugural Implementation Director of Water, responsible for implementing the Commission’s role in the Government’s water reforms. He has also spent time at the Commission for Communications Regulation in Ireland.

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## Appendix C – Key Contacts

Contact	Role and Details	Note
Dr John Small	Chair [REDACTED]	Auckland-based, but makes frequent trips to Wellington
Vanessa Horne	Chief Executive [REDACTED]	
Raj Krishnan	General Manager Strategy, Governance and Engagement [REDACTED]	Raj leads the Strategy, Governance and Engagement branch, which includes lead responsibility for engagement with MBIE and Ministers offices
Lachlan Cartwright	Head of Strategy, Policy and Performance [REDACTED]	Lachlan leads the team responsible for engagement with MBIE and Ministers offices
John McLaren	Head of Communications and Engagement [REDACTED]	John leads the team responsible for a key part of our regulatory toolkit in building awareness and understanding of our work with New Zealanders, so that they can help promote and drive competition