

CONSUMER ISSUES 2016



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This paper follows the international risk standard ISO 31000.

It has been reviewed for external release, including review against our guidelines for quantitative analysis.

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Key findings



Consumers

Telecommunications providers remain the most complained about industry to the Commission, followed by domestic appliance retail, and motor vehicle retail.

Complaints about contracts have doubled since 2013.

Complaints to other consumer organisations show similar patterns to Commission reports.

Consumers complain most about price (26%), goods (23%), and services (22%).

Seven industries are the subject of 35% of Fair Trading Act (FTA) complaints to the Commission.

Non-Commission evidence suggests that the misrepresentation of Consumer Guarantees Act (CGA) rights and the misrepresentation of extended warranties continue to be issues in domestic appliance retail.

The Commission receives twice as many complaints about online trading as store-based trading.

One-quarter of Fair Trading Act complaints to the Commission were about 21 traders.

Complaints about motor vehicle retail have increased by 70% from 2013.



Non-bank lenders are represented disproportionately to their market share in complaints to the Commission and in insolvency data.

Motor vehicle loans continue to be a significant contributor to complaints to the Commission.

Insolvency data identifies some geographic locations are over-represented in debt-owed figures.

Consumer credit

Non-disclosure is the most complained about consumer credit conduct to the Commission.

Debt collection is now in the top four most complained about financial services to the Commission, and a significant issue for some consumer organisations.

There has been a 60% decrease in Credit Contracts and Consumer Finance Act (CCCFA) related complaints to the Commission about mobile traders since becoming a Commission focus in 2014.

Potential non-compliance with responsible lending provisions is the second most complained about conduct.

Consumer advocates have told us irresponsible lending continues to occur.

Recent consumer credit law changes appear to be improving how some lenders conduct their business.



Complaints are down 18% from last year's level.

Local government approved service providers may enjoy a competitive advantage over non-approved providers in certain situations.

Most Commerce Act complaints are single complaints about individual traders.

Domestic applications for leniency from potential cartel behaviour continue to feature in our cases.

There appears to be a gap between public perception of anti-competitive conduct, and what is illegal under the law.

Industry associations remain of interest in cartel investigations.

Markets



The highest rated issues¹

Consumers feel misled by telecommunications providers and complain to the Commission. This may be in part due to the complexity of providers' offerings.

The misrepresentation of products in the building industry as fit for purpose, safe, or compliant with standards can cause significant detriment to consumers and markets.



A small number of traders potentially cause a high degree of aggregated harm to consumers eg, a small overcharge on a popular item available nationally can add up to a significant sum.

The misrepresentation of consumers' rights by traders can significantly disadvantage consumers, by, for example:

- Misrepresenting CGA obligations
- Referring consumers to manufacturers for redress
- Misrepresenting warranty coverage.

Practices by some traders in domestic appliance/retail result in consumers being misled or disadvantaged.



Continued growth in online trading increases the potential for consumers to be misled, for example:

- In-app purchases
- Misrepresentations about quality, specifications, currency and price
- Misrepresentations about delivery time
- Misrepresentations about redress
- Unsubstantiated claims.

The continued importation of unsafe products (eg, baby walkers and cots) potentially exposes consumers to harm.

Reports to the Commission about non-bank lenders, due to their practices, are at a disproportionate level compared to their market share.

The most complained about conduct under the CCCFA is related to non-disclosure of lending terms and conditions.

Communities of vulnerable consumers can be harmed by non-compliant traders and lenders targeting them, for example:

- Mobile traders
- Payday lenders
- Ethnicity-focussed traders
- Lower-tier lenders
- Motor vehicle sales and finance.

Participation in industry associations, while often beneficial for participants, can enable anti-competitive conduct.



Source: Commerce Commission Consumer Issues Report 2016

1. The issues on this page are those identified as currently affecting, or having the potential to affect, consumers the most. In total, we identified and rated 35 current issues and 6 emerging risks that might impact consumers; these are listed at the conclusion of the Consumer, Consumer Credit Environment and Competitive Market sections of this report.

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Purpose and structure

Purpose

- 1 This assessment is part of an annual process that looks at trading activities and identifies the issues currently affecting consumers, and potential risks which could affect consumers in the 2016/17 business year.² This is the third year the assessment has been completed and it draws upon 2015 calendar year data.
- 2 The assessment contributes to the Commerce Commission's internal planning by identifying issues that may affect markets or consumers, or provide opportunities for protecting consumers and promoting competition.
- 3 As the Consumer Issues Report is one of several inputs to the Commission's internal planning, this assessment does not set out the issues that the Commission has agreed to commit resources to. Rather, it is one of a number of tools which help us understand the consumer environment and prioritise our work against other organisational priorities.
- 4 While this report is primarily an internal planning tool for the Commission, we have elected to share publicly the findings of this assessment as we believe the information may be of wider interest and benefit to consumers, traders, their advisors and advocates, and other community groups especially those interested in competition and consumer matters.³
- 5 An explanation of the methodology used in this report, including a section on how the potential harm to consumers is assessed, can be found in Appendix B from page 46 on.

Limitations on complaints information

- 6 The Commission receives enquiries from the public about matters related to its role in enforcing competition and consumer laws. As a subset of enquiries, the Commission also receives complaints about individuals or businesses that may not be acting in accordance with these laws.
- 7 Where this assessment refers to the volume of complaints against a particular trader, or identifies a particular type of complaint, readers should note the following caveats:
 - 7.1 Complaints indicate a level of public concern about a trader or matter and only reflect what consumers have chosen to complain about to the Commission (or to other organisations that have provided information to the Commission). The complaints data on its own does not itself indicate that any law has been breached. Rather complaints relate to the alleged conduct by the trader that, if proven, may breach the legislation.
 - 7.2 The complaints data also does not establish that any harm has been caused to any consumer or competitors.
 - 7.3 Larger traders are likely to generate more complaints as a function of their scale. We have not adjusted for this.
 - 7.4 An orchestrated complaints campaign against a trader can produce high complaint numbers.

2. In this context an issue is a relevant event that is impacting consumers or the consumer environment. A risk is an uncertain event that, should it eventuate, will impact consumers or the consumer environment.

3. Readers are asked to note that we are not publishing this report externally for the purpose of obtaining feedback on its content.

- 7.5 Where the public is aware that the Commission is unable to act on a matter, this can discourage complaints from the public.
- 7.6 Complaint volumes for a trader can be about a single matter or multiple matters. Some matters that attract a high level of publicity can generate a large volume of complaints.
- 7.7 Some complaints on the same matter are likely to have reached other complaint bodies instead of the Commission.

8 Complaint data assists the Commission to understand the concerns of the public and we use it in that capacity.

Structure

9 The assessment is broken into four sections:

- 9.1 Section 1 Context and outlook. This section briefly discusses aspects of the economy that impact, or may have the potential to impact, consumers and their behaviour. We scanned the consumer environment and identified two key aspects that are most likely to have an impact on consumers and markets. They are the current financial environment, including the economic outlook, and the increasing influence of technology on retail markets.
- 9.2 Section 2 Consumers. This section provides an analysis of Commission Fair Trading Act (FTA) complaints data, incorporating data and aggregated numbers from other agencies. Section 2 also describes our Trader Compliance Programme. Lastly, the issues currently impacting consumers, from a fair trading perspective, are identified, assessed, and ranked as inputs contributing to 2016 business year planning.
- 9.3 Section 3 The consumer credit environment. This section provides an analysis of Commission Credit Contracts and Consumer Finance Act (CCCFA) complaints data and Insolvency and Trustee Service data. The section draws on Citizens Advice Bureau (CAB) and Community Law (CL) aggregated contact numbers where relevant, and provides analysis of data received from the New Zealand Federation of Family Budgeting Services (NZFFBS). The consumer credit issues that are currently affecting consumers are also identified, assessed, and ranked as inputs contributing to 2016 business year planning.
- 9.4 Section 4 Competitive markets. This section analyses our Commerce Act (CA) data (complaints, merger clearances, and leniency requests). The issues currently impacting markets are also identified, assessed, and ranked for consideration for 2016 business year priorities.



Using the information to inform our work planning

- 10 Like all regulators, the Commission has limited resources, so we must focus our efforts where we can have the maximum impact. This report helps us to prioritise and target our resources to greater effect, meaning we can select the cases that are likely to have the greatest impact for consumers and have more meaning for businesses.
- 11 The assessment also provides the Commission with another way to help assess how effective we have been. Monitoring the issues and emerging risks year to year tells us what is changing, whether our work has had an impact, and what we need to focus on next.
- 12 For the purposes of this report we have identified and rated 35 issues and 6 emerging risks which are currently causing harm, or have the potential to cause harm, to consumers or markets. These issues and emerging risks are listed at the conclusion of the Consumer, Consumer credit environment and Competitive market sections of this report.

2014 report

- 13 Our first Consumer Issues assessment in 2014 was completed solely as a contributing input for internal planning and we found that we already had work programmes in place to address some of the issues raised in that report. For other key issues identified we developed new responses.

2015 report

- 14 Some of the issues identified in the 2014 report were raised again in the 2015 report and some new issues were identified. This means that some of the work we established in 2014 continued through 2015. However, not all issues justified Commission attention or intervention. We assessed and balanced the issues identified together with all of our organisational commitments to determine our priorities.

Our priorities

- 15 Following our planning process in 2015, the following issues which were emphasised in the Consumer Issues Report gained prominence in our internal planning:
 - Unlawful credit practices, particularly those that impact on the vulnerable
 - Product safety
 - Construction (including the Canterbury rebuild)
 - Telecommunications
 - Motor vehicle sales
 - Food, particularly credence and origin claims.
- 16 These issues were prioritised in the investigation of complaints of alleged misconduct, and in our work with traders to improve compliance. We took enforcement action, where it was warranted, against traders who were non-compliant in these areas, as in other areas which were investigated during the year. We worked proactively to identify non-compliance and bring it to the traders' attention, and we provided information and advice to consumers on these issues. A list of our enforcement actions can be found on our enforcement register and through media releases made by the Commission, all of which are available on our website. A number of compliance materials are also published on our website and are available on request in hard copy.

Section 1 – Context and outlook

- 17 This section briefly discusses aspects of the economy that impact, or may have the potential to impact, consumers and their behaviour. We scanned the consumer environment, established a broad contextual overview, and then identified two key aspects that are most likely to have an impact on consumers and markets. They are the current financial environment, including the economic outlook, and the increasing influence of technology on retail markets.
- 18 The discussion of these themes in Section 1 informs the analysis of related matters in the sections following. We have drawn upon the work of other government agencies to do this, alongside quantitative reports from business and academic research. This information is also useful in anticipating emerging risks early so the Commission can monitor their possible occurrence.

The current financial environment

Economic outlook

- 19 The Treasury reported in the 2016 Budget Economic and Fiscal Update (BEFU) published on 26 May 2016 that the outlook for the economy is positive. The BEFU also states that economic growth of around 2.8% is expected over the next five years, potentially reducing the unemployment rate to below 5% in 2018. Inflation is currently low but was forecast by the Reserve Bank in August 2016 to reach 1.6% in December 2017.ⁱ

Household income

- 20 The 2015 Ministry of Social Development (MSD) report Household Incomes in New Zealand, which uses disposable household income (after tax) to provide information on the material wellbeing of New Zealanders, noted that:
- median household income has risen 3% pa above inflation in the post-Global Financial Crisis recovery phase
 - over the last two surveys, incomes for the top two-thirds of households rose in real terms while the lower third were flat
 - outgoings for housing costs relative to income (OTIs) increased strongly from the mid-2000s
 - the proportion with high OTIs has now stopped rising for the lower two quintiles (bottom 40%) albeit the rates are at an historical high
 - households with incomes just above the low-income line are much more impacted by changes in the economy (average wage rates, employment rates) and some can slip in and out of lesser hardship very easily, as at the best of times they are “only just getting by”
 - the issue of the working poor remains a significant problem for New Zealand, as it does for most other OECD countries.ⁱⁱ
- 21 MSD reports that, as at the end of March 2016, there were 279,891, or 9.9% of, working age people receiving a main benefit.^{4 5 iii} The number of working age people receiving a main benefit has continued to decrease from 2010 and is now approximately 70,000 recipients fewer than in 2010.

4. Working age is defined as 18-64 years.

5. Main benefits include, but are not exclusive to, Unemployment benefits, Sickness benefits, Widow's benefits and Invalid's benefits.

Household debt

- 22 The Reserve Bank of New Zealand reported in the May 2016 Financial Stability Report that average household debt-to-income (DTI) multiples remain elevated, and now exceed 160% of household disposable income. This is now beyond its pre-GFC peak. Household credit continues to grow strongly, increasing by 7.7% in the year to March 2016. Credit growth is expected to exceed income growth in the near term.
- 23 In 2015, the Reserve Bank noted that the high degree of average household debt in New Zealand increases the vulnerability of consumers to market fluctuations, lending practices, and external factors such as the increasing cost of housing. A relatively small increase in mortgage interest rates could put pressure on some borrowers.^{iv}

The retail environment and the impact of technology on retail markets

- 24 There are approximately 20,000 physical retail outlets in New Zealand, as identified by the business demography statistics published by Statistics New Zealand.^{6 v} Core retail sales are now worth approximately \$58 billion per annum.^{7 vi}
- 25 Retail New Zealand⁸ considers that physical retail is changing in the face of competition from online retail. They see:
- increasing consolidation (economies of scale to combat online pricing)
 - decreasing physical shop size
 - consumers trying in-store before buying online (also known as showrooming)
 - goods purchased off-shore being presented to domestic retailers for redress
 - increasing consumer expectations
 - increasing experiential shopping experiences (eg, espresso while shopping)
 - a move to a more service economy.^{vii}



6. 14,000 geographic units with zero employees (eg, shelf companies) were removed from the total count to provide a more accurate count of actual retailers.
7. Statistics NZ describes the core retailing industries as excluding motor vehicle parts, sales, and fuel. Retail is also separated from the wholesaling industry.
8. Retail NZ is a retail trade association with a membership representing over half of retail turnover in New Zealand. Retail NZ is not an agency of the New Zealand Government.

26 Statistics NZ notes the key contributors to core retail sales by value are:⁹

- supermarket and grocery stores (30%)
- food and beverage services (15%)
- hardware, building, and garden supplies (10%)
- pharmaceutical and other store-based retailing (8%)
- department stores (6%)
- clothing, footwear, and accessories (5%)
- accommodation (5%)
- electrical and electronic goods (5%).^{viii}

27 Online retailing continues to grow, offering New Zealand consumers access to a broader marketplace. The BNZ Online Retail Sales Report identified that annual online sales (spending to 30 April 2015) had reached \$3.0 billion or 6.4% of core retail spending (as defined by Statistics NZ), excluding GST.^{10 ix} The BNZ Online Retail Sales Index notes domestic retailers account for around 58% of online sales.^x

28 The BNZ Online Retail Sales Report identifies the goods most purchased online as being:¹¹

- variety, department, and other 26%
- groceries and liquor 14%
- recreation, toys, and games 14%
- electrical and electronic 14%
- fashion and accessories 12%
- furniture, housewares, and hardware 9%
- daily deals (group buying) 5% (daily deal sales have decreased 16% over the last year).



9. Bricks and mortar retailers with an online sales component have the value included as total sales. Purely online retailers are recorded in the survey as non-store-based retailing, the value of which is too low to be included in this list.

10. The BNZ Online Retail Sales Report is a quarterly publication that tracks retail spend online. The report has been published for a number of years and is the definitive source used by other commentators, including Retail NZ, when reporting on online sales in New Zealand.

11. By percent of total online spend.

The online market environment

- 29 International research shows that the online environment continues to evolve, offering opportunities and challenges to retailers:^{xi}
- Consumers can shop from anywhere (21% of tablet use occurs in bed).
 - The offers made to consumers are often personalised (35% of shoppers are willing to share information in return for deals).
 - Consumers have increased options (44% of shoppers use their smartphones to look for the best price while in-store).
 - Consumers are able to publicly voice their views on the product or service (50% of users have created content online).
 - Local retailers are facing increasing competition from international retailers enabled by the internet.
 - In addition, research presented by Google suggests that consumers are increasingly mobile, with mobile searches on Google now surpassing desktop-based searches. In recognition of this, Google has demoted non-mobile-friendly websites from search results on mobile devices.^{xii}
- 30 The rapidly evolving internet-enabled consumer environment is forcing retailers to be innovative and creative in how they market their products to consumers.

Social media

- 31 Increasingly retailers are using social media to market their products and engage with consumers.
- 32 International research notes that today's consumers tend to regard reviews and ratings on social media as more transparent and trustworthy than traditional advertising. Surveys in the UK and USA estimate that 80% of consumers use and trust online reviews and endorsements.¹² Fake and misleading reviews are a priority for partner agencies in Canada, the UK, and the USA.¹³
- 33 Facebook remains the preeminent social media site in New Zealand, with two million New Zealanders each visiting the site an average of 15 times per day. Facebook claims that 80% of the two and a half million New Zealanders who use Facebook every month discover brands and products there, and more than half choose to learn more about that product.
- 34 Nationally there has been the increased adoption of selling goods on social media sites like Facebook. While community-specific sites can benefit local consumers and communities, they also potentially expose consumers to an unregulated marketplace. Complaints to the Commission about sales made through Facebook have risen steadily from 52 in 2011 to 158 in 2015 and now comprise just fewer than 3% of complaints.

The sharing economy and digital disruption

- 35 The online services and platforms that coordinate the sharing economy and online trading are often referred to as digital disruptive intermediaries (DDIs) due to the way their innovation disrupts established ways of creating value within or across markets, social interactions, and, more generally, society's understanding and thinking.¹⁴ While it is apparent that DDIs can bring significant benefits to consumers, the effect of DDIs on markets in the long term is less certain.

12. For example, Deloitte Consumer Review 2014.

13. The Commerce Commission's partner agencies referenced are: Canada, Canadian Competition Bureau; UK, Competition and Markets Authority; USA, Federal Trade Commission.

14. Sharing economy is an umbrella term with a range of meanings, often used to describe online transactions. Originally used to refer to peer-to-peer based sharing of access to goods and services, the term is now often used in a broader sense. The term can include the sale of goods and services via online marketplaces, including ones that are business to consumer (B2C), rather than peer to peer.

Section 2 – Consumers

Key points

- Telecommunications providers remain the most complained about industry
- Complaints about online trading are more than twice the level of complaints about store-based trading
- Complaints about contracts have doubled since 2013
- Seven industries are the subject of 35% of FTA complaints to the Commission
- Complaints to other consumer organisations show similar patterns to Commission complaints

- 36 This section provides an analysis of Commission FTA complaints data, incorporating data and aggregated numbers from other agencies. It also describes our Trader Compliance Programme. Lastly, the issues currently impacting consumers, from a fair trading perspective, are identified, assessed, and ranked for consideration for 2016 business year priorities.

Fair Trading Act complaints

- 37 Complaints to the Commission about potential breaches of the FTA from members of the public are a subset of all contacts with the Commission.¹⁵ Complaints are identified as potential breaches of the law but do not necessarily mean that the law has been breached. However, a complaint can indicate something of potential concern to consumers.

Table 1: The number of FTA enquiries and complaints, 2009 to 2015.¹⁶

	2009	2010	2011	2012	2013	2014	2015
Enquiries¹⁷	8,344	7,552	6,311	5,726	4,859	6,039	6,698
Complaints	5,822	4,863	4,353	4,360	3,425	4,377	5,073

- 38 Monthly complaint numbers are consistently up across the year when compared to 2014. A 50% increase in referrals from other organisations accounts for 18% of the overall increase.



15. Contacts include requests for information or fact sheets, whereas the complaints subset contains contacts that are more likely to be potential breaches.

16. See 'Limitations on complaints information' at paragraphs 6 to 8.

17. Enquiries include complaints, which are a subset of enquiries.

What do consumers complain about?

39 Consumer complaints about pricing concerns (26%), the quality of the goods provided (23%), and the quality of services provided (22%) account for 71% of 2015 FTA complaints.¹⁸ This proportion of complaints has remained constant for the last five years.

39.1 25% of complaints about pricing were generated by seven traders. Only three of these are retailers with physical stores.¹⁹

39.2 Complaints about goods were the cumulative result of a small number of complaints against many traders.

39.3 Telecommunications providers were the most complained about service provider.

Which methods are the most complained about?

40 Consumers complained about being misled through the following mediums:

- Online 34% (1,830)
- Contract (terms and conditions)/invoice 30% (1,618)
- In-store 14% (604).²⁰

41 The number of complaints relating to store-based trading has remained largely static for the 2013 to 2015 calendar years, whereas the number of complaints for contracts and invoices has doubled over the same period.²¹

Online (34% of complaints)

42 Online trading continues to generate about a third of FTA complaints to the Commission.^{22 23}

43 Analysing complaints to the Commission about online trading in 2015 shows:

- 26% related to goods (eg, quality of product or advertised specification)
- 25% were for price (eg, drip pricing or price increases before discounts)
- 20% related to the provision of online services²⁴
- 5% were for no intention to supply (eg, non-delivery or delivery timeframe)
- 86% of complaints were about domestic traders.²⁵



18. The remaining 30% are spread across another 36 categories (such as warranties and guarantees, no intention to supply, or conduct of services).

19. Approximately a third, 36% (470), of FTA pricing (section 13g of the Fair Trading Act) complaints related to pricing on a trader's website, and less than a fifth, 18% (229), related to in-store pricing. As an example, Harvey Norman had the highest volume of FTA pricing (section 13g) complaints in 2015, with 96% of these about pricing on its website.

20. Complaints about online trading, and contracts/invoices, increased slightly over 2014 levels.

21. Complaints about trading online have increased by 50% over the same period.

22. For the 2013 calendar year, online complaints accounted for 32% of all FTA complaints (30% in 2012).

23. The online component of domestic retail sales is likely to be higher than 6% as Statistics NZ does not include internet sales made by domestic stores with an online presence within the online sales figures.

24. For example, Trade Me, Colosseum Sports, ChocoPrice, Google, gaming sites.

25. This is based on sampling 60% of Commission online complaint narratives for the 2015 calendar year.

- 44 The Commission continues to receive complaints from consumers who felt misled by foreign-based traders using New Zealand domain names. The Domain Name Commissioner advised in January 2015 that 108,000 (18%) web addresses linked to domestic domains (eg, .nz and .kiwi) are registered to a non-New Zealand address in the registrant's contact details.^{xiii}
- 45 Complaints to the Commission, particularly in the product safety area, suggest that foreign companies who rely on the internet (and in particular use intermediary websites) to market their product in New Zealand do not always invest in complying with New Zealand laws and regulations.
- 46 Trade Me commented in February 2016, in a submission to Inland Revenue on the levying of GST on off-shore sales into New Zealand, that 12% of off-shore-based companies failed its vetting programme. These companies could not demonstrate that they could comply adequately with New Zealand consumer law.^{xiv}

Contract (terms and conditions)/invoice 30% (1,618)

- 47 Complaints about contracts and invoicing have doubled since the 2013 calendar year (846).
- 48 Complaints about the provision of services were the largest subcategory of complaint within contracts.²⁶ Disagreements over contract terms for insurance, phone, power, and pay TV were significant contributors, along with parking signage.
- 49 Analysing complaints about service by trader identified a high volume of complaints about telecommunications providers. Other traders generating a high volume of complaints about the potentially non-compliant provision of services included Ticketmaster, Auckland Academy of Learning, Air New Zealand, and Wilson Parking.
- 50 Retail electricity providers and telecommunications providers enforcing contract cancellation notice periods have recently generated a number of complaints.

In-store 14% (604)

- 51 The number of complaints to the Commission about store-based trading has remained largely static for the last three calendar years. They have also decreased as a percentage of total FTA complaints to the Commission. This is despite increases in the annual consumer spend and number of transactions.
- 52 We have observed patterns in the nature of complaints for specific industries within the retail sector; for example, many complaints about supermarkets are about special pricing not coming through at the tills on checkout. Yet in domestic appliance retail it is complaints about warranties and guarantees that feature prominently.
- 53 Electrical and electronic goods are the most complained about products in Commission complaints, despite comprising only 5% of the value of core retail sales according to Statistics NZ.

26. Complaints about contracts comprised: services (483), price (371), goods (200), and warranties (107).

Which industries are the most complained about?

- 54 Approximately a third (35%) of FTA complaints were about seven industries:
- Telecommunications providers and carriers 459 (9%)
 - Domestic appliance/electronics/phones 457 (9%)
 - Motor vehicle retail 304 (6%)
 - Airlines 134 (3%)
 - Online retail 127 (3%)²⁷
 - Electricity retail 126 (3%)
 - Supermarkets (118) (2%).
- 55 While a high volume of sales can influence complaint numbers, comparable participants in some of these industries generate different levels of complaints, suggesting that trader practice, in some cases, may be the cause of the imbalance.

Telecommunications (9%)

- 56 FTA complaints about telecommunications providers have increased by 20% (79 complaints) from 2014, and have doubled from 2013 levels (from 234 to 459).
- 57 Spark was the most complained about trader in 2015 (140), and Vodafone the second most complained about (133), with complaints about charges generating a third of related complaints against both telecommunications providers.
- 58 Analysis of complaints to the Commission about telecommunications providers identified that Spark was named in the majority of complaints about charges, and Vodafone was named in the majority of complaints about inaccurate invoicing.
- 59 Complaint levels to the Commission indicate that differences in the number and type of connections provided by telecommunications providers may have influenced the types of complaints received about them. For example, Spark, which has a higher landline market share, had more complaints about contract termination fees. Vodafone, which has more mobile customers, attracted more mobile-specific complaints (particularly about confusion over mobile plans).
- 60 Termination fees were a new theme in 2015 complaints. Consumers made 104 complaints about electricity providers' and telecommunications providers' termination practices. Complaints were about the perceived introduction of termination fees without disclosure to consumers, or about having service terminated prior to the agreed termination date despite being charged for the whole notice period.
- 61 Telecommunication Dispute Resolution (TDR) received 1,938 complaints for the 2014/15 year. This was an increase of 18% over the preceding business year and similar to the 20% increase in complaints experienced by the Commission.^{xv} TDR accepts complaints from consumers where a resolution has been unable to be reached with the supplier. TDR estimates that this may be as low as 5% of complaints overall.^{xvi}

27. Online retail only covers those traders who solely trade online and not those who also trade through other mediums.

62 TDR identified three systemic issues in its complaints:^{xvii}

62.1 Charging for paper invoices. TDR found that its member was entitled to charge customers for the administrative costs of posting the invoices, as covered by the terms and conditions of the contract.²⁸ However, TDR also decided that imposing new charges during a fixed-term contract was not fair.²⁹ It is important to note that TDR reached this conclusion prior to the introduction of unfair contract term provisions to the FTA; these provisions came into force on 17 March 2015.

62.2 Non-availability of broadband. Essentially, complainants had been told that broadband was available in their area, but were not told that this was dependent on the availability of a port in the 'cabinet'.³⁰

62.3 TDR noted that transfers between telecommunications providers often involve:

- the customer receiving further unanticipated costs once the transfer has been completed
- the customer receiving an invoice for early termination fees
- a disconnected transfer between providers.³¹

63 CAB received 5,083 enquiries about telecommunications issues for the 2014/15 business year, while CNZ received 144 enquiries for the 2015 calendar year.

Domestic appliances (9%)

64 Complaints to the Commission about domestic appliance retail increased by 143 complaints (44%) to 457.³² One sale by Harvey Norman generated 84 complaints.³³

65 The issues raised in these complaints relate to the misrepresentation of consumer rights for redress under the CGA, including:

65.1 increasing incidences of retailers referring consumers to manufacturers for redress, rather than addressing issues at the retail level;³⁴

65.2 the continuing practice of charging sometimes non refundable deposits on goods returned to the retailer for warranty repairs; and

65.3 the continuing practice of convincing consumers of the need to purchase additional warranties, potentially through the misrepresentation of warranty coverage and/or the CGA. The Commission received 25 complaints about extended warranties in 2015.



28. This is in line with the Commission screening decision on the \$1.50 paper invoice fee.

29. This decision was independently reviewed and confirmed by the Banking Ombudsman.

30. TDR scheme members thought this was no longer an issue and should now only occur in rural areas or new property developments on the fringes of urban areas.

31. TDR is currently considering the option to hear service transfer complaints between the consumer and multiple providers involved.

32. Up from 314 in 2014.

33. The most complained about companies for domestic appliance retail were: Harvey Norman (117), Brand Developers (44), DSE (43), DrGrab (36), and Noel Leeming (33).

34. This is particularly prevalent in, but not limited to, domestic appliance retail.

66 A mystery shopper exercise, conducted by CNZ in early 2015, in the appliance retail sector noted that appliance retailers continue to offer extended warranties in conjunction with the statutory rights afforded consumers by the CGA.^{35 xviii} The mystery shop also identified that appliance stores continue to misrepresent the level of cover afforded by the CGA.

67 A 2015 CNZ faulty goods survey of 9,555 members identified that 35% had returned a product in the last two years due to a perceived fault or poor performance.^{xix}

68 Approximately 15% of that 35% complained that they did not get the remedy they were entitled to under the CGA. In approximately half of those cases, the retailer claimed it could not do anything because the product was out of warranty or told the consumer they had to contact the manufacturer.

69 The 2015 CNZ faulty goods survey noted that 50% of respondents who had purchased an extended warranty in the preceding 12 months had not been advised of the cooling-off period.^{36 37} The survey also noted very high numbers of respondents were offered extended warranties at the following retailers:

- Harvey Norman 77%
- Noel Leeming 68%
- Powerstore 64%
- Smiths City 64%
- LV Martin 62%

Motor vehicle retail (6%)³⁸

70 Complaints to the Commission about motor vehicle retail increased by 48 complaints (20%) to 304 from 2014 levels (this is a 70% increase from 2013 levels). This increase has been driven by complaints of misrepresentations about the quality of vehicles sold, and the coverage of warranties and guarantees.

71 Single complaints about individual traders accounted for 180 (60%) of the reports.

72 The most complained about trader was 2 Cheap Cars, with 13 complaints.

73 Consumer Information Notices (CINs) were mentioned in 97 complaints. Failure to supply a CIN notice is often included as a matter additional to the main issue(s) raised in the complaint.³⁹

74 CAB advises it received approximately 3,800 enquiries about motor vehicles in the 2014/15 business year.

Example of some of the conduct used in-store to sell extended warranties

(taken from a complaint to the Commission)

...the sales representative went on to say the additional warranty, which only cost \$30, provided additional benefits over the CGA in that it did not incur the \$75 government assessment fee when making a claim under the CGA.

The representation by the sales representative of a non-existent \$75 government assessment fee appears to misrepresent the provisions of the CGA, and the additional benefits the extended warranty may provide.

35. The mystery shop focused on eight stores from three national appliance chains.

36. The faulty goods survey, undertaken by Consumer NZ, was drawn from responses from 9,555 Consumer members.

37. There is a five-day cooling-off period in the FTA (section 36U(3)).

38. Note, this does not include private motor vehicle sales.

39. A CIN provides information about a used motor vehicle's history and must be attached to any commercially sold vehicle.

- 75 The Motor Vehicle Disputes Tribunal (MVDT) received 258 applications and ruled on 154 complaints in the 2014/15 year. Of the complaints heard, 130 were decided upon under the CGA, and 20 under the FTA. Twelve percent of applications were for motor vehicle purchases made sight unseen or inspected over the internet.^{xx}
- 76 The Motor Trade Association (MTA) advises that of the approximately 3,300 registered motor vehicle traders about 600 are MTA members.
- 77 Of the 304 complaints received by the Commission in 2015, 85% related to non-MTA members.⁴⁰
- 78 Thirty-five complaints to the Commission alleged the seller was 'in-trade' when selling online, but had not disclosed their in-trade status.
- 79 The MTA chief executive was quoted in Autotalk, in February 2016, as saying "despite industry participation now being very easy, the temptation to be a 'private' seller remains because it brings with it the financial advantages of being outside the coverage of consumer law".^{xxi} The Ministry of Business, Innovation and Employment's (MBIE's) National Enforcement Unit, which polices the Motor Vehicle Sales Act, obtained 11 convictions for unregistered motor vehicle trading in 2015.⁴¹
- 80 Currently the MTA believes that approximately 70% of sales from within the existing New Zealand vehicle fleet are in a private-to-private capacity.^{xxii} Conversely, dealers handle all new vehicle sales, almost all 'fresh' used imports, and only about 30% of the sales from within the existing fleet.

Online retail (3%)

- 81 Online retail analysis includes those traders who only trade online and not those who trade through a number of mediums. Online retail was the subject of 127 complaints to the Commission. Of those, complaints about subscription traps, delivery times for drop shippers, quality or specifications of the goods supplied, and no intention to supply were the dominant themes.
- 82 The most complained about online traders were:⁴²

Table 2: The number of complaints about online traders to the Commission in 2015.

NZ Business Funding Centre/NZ Small Business Assistance Centre	68
Costume Imports Limited T/A The Costume Shop	44
Dr Grab NZ	36
ChocoPrice	30
Top Shelf Liquor Online Limited	29
GrabOne Limited	26
NZ Sale Limited	19
The Corporate Portal New Zealand/New Zealand – Companies	18
Glotech Services Limited T/A MobiCity	15
Groupon New Zealand Limited	15

40. 48 complaints (15%) related to 37 MTA members.

41. Sales in excess of six motor vehicles per annum require the seller to be licensed.

42. Sellers on Trade Me who do not solely trade online have not been included here.

Airlines (3%)

- 83 Airlines were the subject of 134 complaints to the Commission. Air New Zealand (88), Jetstar (22), and Qantas (7) accounted for 117 of those complaints.
- 84 Complaints identifying public concerns about possible misrepresentations about the availability of seats, the difference between the advertised price and the booking price, opt-out of travel insurance, fees per leg of a trip, and general pricing errors were the main contributors.

Electricity retail (3%)

- 85 Electricity retail was the subject of 126 complaints to the Commission. Six energy retailers generated 77% (97) of those complaints.
- 86 The most complained about retailers were:
- Genesis Energy (21)
 - Trustpower (21)
 - Meridian Energy (16)
 - Contact Energy (15)
 - Mercury (12)
- 87 Regional electricity distributor The Lines Company (TLC) generated 12 complaints to the Commission in 2015.
- 88 Contracts were the subject of 70 (55%) of those 126 complaints. Complaints were generally about specific practices by the individual traders. Perceived billing inaccuracies by all the energy retailers were the subject of 46% of consumer complaints.⁴³
- 89 The Electricity and Gas Complaints Commissioner Scheme (EGCC) received 3,655 complaints (plus an additional 4,401 enquiries) in the 2014/15 business year. Of these complaints and enquiries, it is reported that:
- 89.1 approximately 500 were considered to be in deadlock, and suitable for consideration by the Commissioner.⁴⁴ The majority of deadlocked cases were about retail electricity suppliers, with 44% of cases about billing issues;^{xxiii}
- 89.2 one electricity distributor was noted as generating complaints significantly above its market share. TLC, with 1.01% of assets, generated 25.53% of supply complaints.^{45 xxiv} TLC also was the subject of 12 complaints to the Commission;
- 89.3 Contact Energy, with a 22.74% market share, generated 63.52% of considered deadlocked cases. Of note was that Contact Energy also failed to advise 1,640 consumers of their right to take their complaint to the EGCC; and^{xxv}
- 89.4 Hunet Energy and Prime Energy were both identified as persistently breaching the scheme's requirements relating to consumer contracts.^{xxvi}
- 90 CAB received 1,805 enquiries about electricity providers in the 2014/15 business year.

43. Examples of overcharging included: meter reading inaccuracies, fixed-rate offers higher than the standard price, signing up to a fixed-term contract and the rate rising a month later, 3% credit card fee, charging running costs on a smart meter (\$10 per month).

44. The EGCC only considers complaints that have first been considered by the individual EGCC members, are considered to be in deadlock between the member and complainant, and are within the ambit of the EGCC to consider.

45. TLC is noted as being the only lines company that bills consumers separately rather than combining its charges within the retailer's bill, which may have influenced complaint numbers.

Supermarkets (2%)

- 91 Two supermarket chains were the subject of almost 92% of the 118 complaints about supermarkets to the Commission. Foodstuffs, including New World, PAK'nSAVE, and Four Square brands,⁴⁶ attracted 59 complaints. Progressive Enterprises attracted 51 reports under its Countdown, FreshChoice and SuperValue stores.
- 92 Complaints about pricing generated 78 complaints (66%). These were predominantly about advertised specials not being charged correctly at the checkout.

Other areas of Commission interest for 2015

Construction

- 93 The Commission received 169 construction FTA-related complaints in 2015. Of these, 37% were about activities in Auckland.
- 94 Builders and handymen were the most complained about business type (36). Complaints were singular and about individual traders.
- 95 Complaints to the Commission about construction products identify three main areas of concern:
 - 95.1 The quality of some goods used in the construction industry. Some of these goods, although not all, may be misrepresented as meeting relevant building standards. The Commission can investigate allegations relating to defective building products if the allegation is of misrepresentation, for example that the product complies with a particular building standard which it may not. The Commission does not administer building standards.
 - 95.2 There have been some complaints about the passing-off of some products as higher-quality well-known products. This may involve intellectual property issues as well as potential fair trading questions. The Commission has investigated some cases which appear to give rise to significant consumer detriment.
 - 95.3 Potential misrepresentations about building services, for example regarding the availability or provision of building guarantees.
- 96 Media reported in March 2016 that existing rules for plumbing products were enabling the importation and installation of plumbing fixtures without documentation to support code compliance. The sources cited in the article estimated that 50% of new builds contained plumbing products that would fail Australian standards.^{47 xxvii}

Product safety complaints

- 97 Product safety complaints to the Commission have decreased slightly from 2014 levels (from 41 to 39). Children's cots, with 21 complaints, accounted for 53% of complaints. The balance of complaints was mostly single complaints about the other 12 products subject to product safety regulation.⁴⁸
- 98 Approximately 60% of complaints related to products sold by sellers on Trade Me. This is because sellers are potentially unaware of their regulatory obligations. Trade Me continues working to prevent this by providing prompts to sellers looking to list goods covered by product safety requirements, and links to Commission fact sheets.

46. For the purposes of this report, we have aggregated all complaints about Foodstuffs, New World, PAK n' SAVE and Four Square under the Foodstuffs brand.

47. Master Electricians' CEO echoed similar sentiments about the electrical industry approximately a week after the plumbing publicity (NBR 16/03/2016).

48. There are 13 products in total that are required to meet specific safety standards or are identified as unsafe goods.

- 99 It is likely that non-compliant items are also sold through the increasing number of social media community groups.
- 100 MBIE advises that there are two new international standards for cigarette lighters and for utility lighters (eg, BBQ lighters) that have been recently produced. MBIE is reviewing both these standards with a view to possible adoption in relation to improving the safety of these types of products. MBIE is also presently considering products used in the wider baby sleeping environment (cots, portable cots, capsules), which may result in changes to the current legislation that presently applies only to household cots.^{xxviii}

Scams and similar misrepresentations

- 101 Scams and similar complaints to the Commission increased by 60% (56 complaints) to 144 complaints. Three scams were responsible for approximately 60% of incoming complaints, with the balance being single complaints about single traders.
- 102 We have seen scams evolve over the last year and the incorporation of a subscription trap component has become more common. Scams reported to the Commission have gone as far as setting up fake newsfeeds, and web addresses piggy-backing off legitimate company names to convey legitimacy.⁴⁹
- 103 We have also seen increasing numbers of scams offering some form of limited service or product. It can be difficult to differentiate between a legitimate trader and someone deliberately engaging in fraudulent behaviour while purporting to be in-trade.⁵⁰
- 104 A Malaysian travel scam⁵¹ that the Commission reported to the public in 2015 tried to ‘hook’ the consumer through phone conversations claiming a winning cash prize ticket was issued to the consumer by mistake but would be honoured if the consumer paid administrative fees. They also offered to go ‘halves’ on the ‘fee’, asked if they could use the consumer’s photo in their travel magazine, and invited the consumer to a fictitious hotel opening in New Zealand. Inevitably in these cases where the consumer pays the administration fees requested, no cash prize is supplied by the trader.
- 105 The most complained about scams or similar misrepresentations were the New Zealand Business Funding Centre (68), Corporate Portal (18), Global Map Index (8), and travel scams (6).
- 106 Proforma invoicing (four complaints) has started to return from the non-existent levels that followed the multi-agency operation targeting the principals of a number of these scams which commenced in 2008.⁵²

49. The ability to create fake newsfeeds, etc., is enhanced by software such as ‘clone zone’, which enables anyone to clone and change a website for free.

50. The Corporate Portal and Global Map Index both offered a pricey subscription to a website well below the level of utility they billed companies for.

51. Malaysian travel scams are an advance fee fraud that mails a glossy brochure with scratch tickets. Invariably the recipient wins a large prize that can only be redeemed through the payment of some tax or fee.

52. Proforma invoicing is the invoicing of services never provided or requested. Operation Edit was the multi-agency operation that prosecuted six people for offending totalling \$1.6 million and reaching back to 2008.

Contacts data from other agencies

- 107 Other consumer agencies receive a large number of contacts from the public over a range of topics, and their aggregated client information provides additional visibility of the issues impacting consumers. This information often further informs the ‘picture’ obtained from Commission data, sometimes corroborating our information and sometimes identifying issues yet to manifest as complaints to the Commission.
- 108 It is important to note, however, that consumers contact other agencies for a range of reasons which may often be unrelated to the work of the Commission and the Commission has no visibility of the specific circumstances around each contact (eg, what has motivated the consumer to contact an organisation or if it was a potential breach of Commission legislation).

Citizens Advice Bureau (CAB)

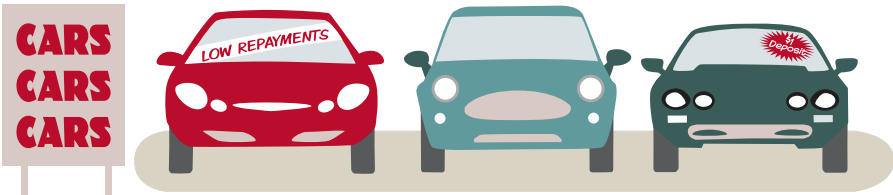
109 The CAB network received 537,000 enquiries in the 2014/15 financial year about a wide range of issues.^{xxix} Of relevance to the Commission are its complaints about:

• CGA (goods and services)	10,668
• Telecommunications services	5,083
• Motor vehicle disputes	2,531
• Insurance	2,266
• Electricity	1,805
• Buying and selling motor vehicles	1,276
• Direct selling and telemarketing	1,117
• Other consumer law	1,069
• Postal and courier service	670
• Frauds and scams	627
• FTA	425
• Lay-by	74

110 The pattern of CAB contacts is consistent with the Commission complaints patterns, with telecommunications, motor vehicle purchases, and electricity retail featuring prominently in complaints.

Consumer New Zealand (CNZ)

111 CNZ received approximately 3,000 contacts, with telecommunications and domestic appliance retail featuring prominently in its 30 most complained about companies.^{xxx}



International partners' priorities

ICPEN (International Consumer Protection Enforcement Network)

- 112 The April 2015 ICPEN conference nominated the following priorities for the 2015/16 year:
- Online selling
 - Airline, and flight selling sites
 - Accommodation and hotel sites
 - Bundled tourism packages.

The ACCC consumer focus areas for 2016

- 113 The Australian Competition and Consumer Commission (ACCC) focus areas for 2016 include:
- improving product safety, particularly by focusing on good practice in the manufacture, importing, and quality assurance of consumer products⁵³
 - concentrating on issues affecting indigenous consumers, older consumers, and recent migrant consumers
 - a return to focusing on consumer guarantees, particularly representations made by big business about express or extended warranties⁵⁴
 - new car retailing, particularly a focus that the vehicles are fit for purpose, free from defects, and as durable as a reasonable consumer would expect
 - scams, particularly relationship scams
 - competition and consumer issues in the health sector, which remain a priority from 2015, particularly incomplete policy information that is confusing or misleading.

Traders that generate high levels of complaints

- 114 Twenty-five percent of FTA complaints to the Commission in 2015 were generated by 21 traders.
- 115 Many of these traders are large retailers with a national presence and a high volume of sales. While a higher volume of sales might reasonably be expected to generate a higher number of complaints, this is not always the case. Comparing similar traders within the same markets can identify imbalances in complaint numbers, suggesting that trader practices may also be a cause.
- 116 Focusing on this group of traders provides the Commission with the opportunity to reduce consumer harm by working with specific traders to monitor and improve their levels of compliance. One of the ways we work with traders to improve compliance is through our Trader Compliance Programme, which is outlined in the next section.

53. It is noted that Australia maintains a different product safety regime from New Zealand.

54. Big business is seen as a priority, as misconduct by larger companies is likely to cause greater detriment, and larger companies can be seen as the benchmark for behaviour and compliance.

The traders that generated 25% of FTA complaints in 2015

- 117 As the following table refers to the volume of complaints against a particular trader, readers should note the following caveats:
- 117.1 Complaints indicate a level of public concern about a trader or matter and only reflect what consumers have chosen to complain about to the Commission (or to other organisations that have provided information to the Commission). The complaints data on its own does not itself indicate that any law has been breached. Rather complaints relate to the alleged conduct by the trader that, if proven, may breach the legislation.
 - 117.2 The complaints data also does not establish that any harm has been caused to any consumer or competitors.
 - 117.3 Larger traders are likely to generate more complaints as a function of their scale. We have not adjusted for this.
 - 117.4 An orchestrated complaints campaign against a trader can produce high complaint numbers.
 - 117.5 Where the public is aware that the Commission is unable to act on a matter, this can discourage complaints from the public.
 - 117.6 Complaint volumes for a trader can be about a single matter or multiple matters. Some matters that attract a high level of publicity can generate a large volume of complaints.
 - 117.7 Some complaints on the same matter are likely to have reached other complaint bodies instead of the Commission.

Table 3: The 21 traders that generated 25% of FTA complaints in 2015.

2015	No. of complaints
Spark New Zealand Trading Limited	140
Vodafone New Zealand Limited	133
Sellers using the Trade Me website	121
Harvey Norman Stores (NZ) Pty Ltd T/A Harvey Norman ⁵⁵	117
Air New Zealand Limited	88
New Zealand Business Funding Centre/New Zealand Small Business Assistance Centre	68
Auckland Academy of Learning Limited	67
Foodstuffs (NZ) Limited	59
Wilson Parking NZ Limited (including Parking Enforcement Services)	50
Progressive Enterprises Limited T/A Countdown	48
Ticketmaster	44
Costume Imports Limited T/A The Costume Shop	44
Brand Developers Limited T/A TV Shop	44
DSE (NZ) Limited T/A Dick Smith Electronics	43
DrGrab NZ	36
CallPlus Services Limited T/A Slingshot Communications	35
Chorus New Zealand Limited	35
Noel Leeming Group Limited T/A Noel Leeming	33
ChocoPrice	30
Two Degrees Mobile Limited T/A 2degrees	29
TopShelf Liquor Online Limited	29

55. Eighty-four of the complaints about Harvey Norman related to one event: online pricing errors for items offered for sale on 1 October 2015.

Trader Compliance Programme

- 118 One of the ways the Commission protects consumer interests is to encourage businesses to comply with the law through its various compliance activities. The goal of the Trader Compliance Programme (the programme) is to work with a few chosen traders or industries to encourage compliance. The industry sectors currently identified as priorities for the programme are domestic appliance retail and supermarkets.
- 119 The programme uses targeted education and cooperation to encourage trader compliance, rather than relying solely on enforcement. Formal enforcement action always remains an option when pursuing compliance outcomes with these traders, taking into account the same enforcement criteria we apply to all trader compliance.

The selection process

- 120 Candidates for the programme are selected based on a range of factors, such as high complaint numbers, the candidate's presence in the marketplace, previous compliance history, the business model or structure, any current compliance activity, and identified issues and risks affecting consumers. When considering candidates who have high complaint numbers, the complaint narratives are reexamined to help establish the nature and validity of complaints.⁵⁶

Selected traders

- 121 There are currently four traders in the programme:
- Foodstuffs (NZ) Ltd
 - Harvey Norman Stores (NZ) Limited
 - Noel Leeming Group
 - Progressive Enterprises Ltd T/A Countdown.

The current issues and emerging risks to consumers

- 122 The following paragraphs list the current issues identified from both the environmental study and our analysis of complaints and other data. The level of potential harm to consumers from each issue is also rated through using the same information.
- 123 Drawing from our study of the consumer environment, along with our data analysis, and incorporating themes from the issues and risks identified last year, we identified 22 issues, and one emerging risk, that are impacting consumers to varying degrees.
- 124 The rating of each issue and risk is assessed by considering frequency of occurrence and the likely degree of detriment to consumers. In some instances the rating is based on limited evidence. This is particularly so for emerging risks, or where an activity occurs covertly. All issues and risks were reviewed by a panel of senior Commission staff and the issues and risks with a preliminary rating of Medium, High, and Very High were validated qualitatively by that panel.

56. Considering candidates on complaint numbers alone would result in an unbalanced selection process. For example, it is not unknown for complaints to the Commission to be motivated by an orchestrated campaign about a matter not considered to breach the legislation we enforce. In some cases a trader may generate a high number of complaints about a single event, which would not in itself mean participation in the Trader Compliance Programme would be appropriate.

125 Not all issues will justify Commission attention or intervention. The Commission considers the issues and risks assessment in this report as part of its internal planning and prioritisation processes. Those issues not addressed through specific projects are often dealt with on a case-by-case basis as complaints are received and investigated.

126 See ‘How we assess the potential harm to consumers’ on page 47 for more information on how the issues and emerging risks were rated and ranked.

Telecommunications providers, in part due to the complexity of their offerings, can cause consumers to feel misled and complain to the Commission (the most complained about industry to the Commission in 2015).	
The misrepresentation of products in the building industry as fit for purpose, safe, or compliant with standards can cause significant detriment to consumers and markets.	
A small number of traders can cause a high degree of aggregated harm to consumers (eg, a small overcharge on a popular item available nationally can add up to significant sums cumulatively).	
The misrepresentation of consumers’ rights by traders can significantly disadvantage consumers by: <ul style="list-style-type: none"> • misrepresenting CGA obligations • referring consumers to manufacturers for redress under the CGA when retailers may also have obligations to consumers • misrepresenting warranty coverage. 	
Practices by some domestic appliance retailers can result in consumers being misled or disadvantaged.	
Online sales will continue to grow and increase the potential for consumers to be misled through: <ul style="list-style-type: none"> • in-app purchases • misrepresentations about quality, specifications, currency, and price • misrepresentations on delivery time and/or non-delivery • misrepresentations on redress • unsubstantiated claims. 	
The importation of unsafe products (eg, baby walkers and cots) potentially exposes consumers to harm.	

<p>Unfair contract, and varied contract, terms disadvantage and/or mislead consumers, for example the:</p> <ul style="list-style-type: none"> • use of contracts that are difficult or costly to terminate • introduction of termination clauses. 	
<p>Extended warranties, and other add-ons, are actively marketed and sometimes misrepresented, and can cause consumers unnecessary costs.</p>	
<p>High numbers of faulty or substandard goods and services cause cumulative consumer detriment.</p>	
<p>Some pricing practices may mislead or confuse consumers when purchasing goods or services; these may include non-compliant:</p> <ul style="list-style-type: none"> • drip pricing • was/now pricing • subscription traps • continual sales • opt-out requirements. 	
<p>Practices by some traders within the motor vehicle industry (third most complained about industry) result in consumers being misled or disadvantaged, for example:</p> <ul style="list-style-type: none"> • fuel consumption • seeking redress under the CGA and CGA misrepresentation • pricing • quality • in-trade • CIN • credit contracts. 	
<p>Warranty claim processes can disadvantage or dissuade consumers from seeking redress, for example:</p> <ul style="list-style-type: none"> • unfair, non-refundable or high-cost deposits for claim assessment • referring to manufacturer for remedy • falsely claiming water damage (outside warranty) in mobile phones • some manufacturers choosing to replace phones under warranty with reconditioned rather than new. 	
<p>Frauds and scams undertaken by those purporting to be in-trade cause financial detriment to affected consumers, for example:</p> <ul style="list-style-type: none"> • Malaysian holidays • misleading investment scams • proforma invoicing • forex trading scams. 	

<p>Some utility providers mislead consumers by introducing unexpected costs and/or consequences when switching service providers, for example:</p> <ul style="list-style-type: none"> • termination of services prematurely when switching • unexpected charges stemming from incorrect meter reading by power companies • unexpected termination fees added to contracts without notification • misrepresentations of product quality or service availability • non-provision of services while being charged for them. 	
<p>Supermarket misrepresentations cause low individual but high aggregate detriment.</p>	
<p>Some motor vehicle traders pose as private sellers to manoeuvre away from fulfilling consumer protection obligations.</p>	
<p>The facilitation of commercial transactions through social media can limit consumer redress.</p>	
<p>Continuous payment authorities and 'subscription traps' can cause consumers higher costs than anticipated.</p>	
<p>Lack of oversight and independent validation of content price comparison websites misleads some consumers.</p>	
<p>False, misleading, and inauthentic reviews and testimonials, and purchased 'likes', mislead consumers into making ill-informed purchases/choices.</p>	
<p>The use of .NZ domain addresses by foreign traders can mislead consumers about their options for redress.</p>	

Emerging risk

<p>The introduction of fees, such as termination, or additional charges by service providers, sometimes during fixed-term contracts, imposes additional costs on consumers.</p>	
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Section 3 – The consumer credit environment

Key points

- Non-bank lenders are represented disproportionately to their market share in complaints to the Commission and in insolvency data
- Recent consumer credit law changes appear to be changing how some lenders conduct their business
- Consumer advocates see irresponsible lending continuing to occur
- Methods of debt collection are a significant issue with some consumer advocate organisations, and a growing issue in complaints to the Commission
- Insolvency data identifies some geographic locations as being over-represented

127 This section provides an analysis of Commission CCCFA complaints data, incorporating data and aggregated numbers from other agencies. The issues currently impacting consumers, from a credit perspective, are identified, assessed, and ranked for consideration for 2016 business year priorities.

CCCFA complaint numbers

128 Complaints are a subset of all contacts with the Commission. Complaints are identified as potential breaches of the law but do not necessarily mean that the law has been breached. However, a complaint can indicate something of potential concern to consumers.

Table 4: The number of CCCFA enquiries and complaints, 2009 to 2015.⁵⁷

	2009	2010	2011	2012	2013	2014	2015
Enquiries ⁵⁸	827	480	435	265	270	183	203
Complaints	330	255	266	151	191	146	164

129 CCCFA-related complaint numbers have increased from last year but remain approximately half of what they were six years ago.⁵⁹

130 Referrals by Commission staff, other government agencies, and consumer advocates have increased by 25% from 2014. Referrals account for 21 complaints in total.

57. See 'Limitations on complaint information' at paragraphs 6 to 8.

58. Enquiries include complaints, which are a subset of enquiries.

59. We have not analysed CCCFA complaint data to identify the cause of the decrease in enquiry and complaint numbers. However, potential causes could include increased uptake of budgeting services or financial resolution service providers' services, increased use of social media, or lack of awareness to report conduct to the Commission.

What type of conduct do consumers complain about to the Commission?

- 131 Non-compliance with disclosure obligations, with 39 complaints, was the most complained about conduct. Of those complaints, initial disclosure, with 30 complaints, was the most complained about lender behaviour. However, initial disclosure complaints have decreased 33% from 2014. Almost all of the lenders in the 2015 complaints were not present in the 2014 complaints.
- 132 Fees, with 31 complaints (fees, cancellation, establishment, default, other, early pre-payment, and third party), was the second most complained about conduct.
- 133 Potential non-compliance with responsible lending provisions (advertising, reasonable enquiries, treating the borrower reasonably, other), with 27 complaints, was the third most complained about conduct.

What type of credit providers do consumers complain about?

- 134 Approximately 67% of complaints were about four types of credit provider:
- Finance companies, 70 complaints (43%) – an increase of 20 complaints
 - Mobile traders and direct sales with 14 complaints (9%)⁶⁰
 - Motor vehicle sales and financing with 14 complaints (9%)
 - Debt collection and credit services with 10 complaints (6%).

Finance companies are the most complained about lenders

- 135 Finance companies are the lender named in 43% of credit-related complaints to the Commission and have increased by 20 complaints from 50 in 2014. This is despite finance companies comprising 3% of the credit market.
- 136 A similar pattern is noted in 2015 calendar year Insolvency and Trustee Service data, which identifies finance companies as claiming to be owed approximately \$70 million. In comparison, trading banks, with 97% of the lending market, were claiming \$235 million (approximately three times as much as finance companies).⁶¹
- 137 Approximately 40% of complaints to the Commission about finance companies were generated by seven lenders:
- GE Finance (5)
 - Harmony (4)
 - Aotea Finance (4)
 - Avanti Finance (4)
 - GE Credit Line (4)
 - Payday Advance Limited (3)
 - Finance Now Limited (3)

60. Mobile trader complaints have decreased from 34 in 2014.

61. This amount includes the provision of credit card debt by the trading banks.

138 Approximately 70% of 2015 complaints about finance companies were generated by 30 lenders that were not present in 2014 complaints.⁶² The majority of these new lenders appear to be smaller, lower-tier lenders.⁶³

139 The main issues raised in complaints about finance companies were:

- fees (15)
- responsible lending provisions (13)
- disclosure (11)
- hardship (6).

Mobile traders generated 9% of CCCFA complaints⁶⁴

140 Complaints against mobile traders have decreased from 34 in 2014 to 14 in 2015.

141 Mobile traders, due to the nature of their business, feature in both CCCFA and FTA complaints. Combining FTA and CCCFA mobile trader complaints similarly shows a decline from 77 to 60. Key contributors to mobile trader complaints (CCCFA and FTA combined) are:

- Uninvited direct sales have increased from 5 complaints in 2014 to 10 complaints in 2015.
- Complaints about the quality of service decreased from 10 to 8.
- Complaints about the quality of the goods provided decreased from 11 to 7.
- Complaints about pricing remained the same with 5 in both years.
- Complaints about initial disclosure decreased from 11 to 5.

142 The three most complained about mobile traders (FTA and CCCFA combined) accounted for 50% of complaints and were:

- Ace Marketing (15)
- Layaway Depot (8)
- UBuy Ltd (7).

143 CAB received 1,117 contacts concerning direct selling and telemarketing (this category includes mobile traders). This was their highest finance-specific category.⁶⁵ The high number of CAB contacts is consistent with Commission complaints.

144 Comparing Insolvency and Trustee Service 2015 personal insolvencies data with the mobile traders identified in the Commission's mobile trader report identified that four mobile traders were owed \$226,000 cumulatively.

62. This equates to 30 of the 43 finance companies.

63. The main complaint themes about these finance companies were initial disclosure, responsible lending provisions in relation to advertising, the calculation of interest, and hardship.

64. Traditional truck shops operate mobile shops selling goods on credit. Nowadays, we use the term to describe a wide range of (usually door-to-door) traders using catalogues, brochures, or the internet, to target consumers unable to obtain credit from other suppliers. The areas targeted by truck shops are generally low-socioeconomic areas. The customers are often vulnerable, may have a poor credit history, and are unable to obtain credit from other sources. These consumers may be financially illiterate, at home without transport, or perhaps desperate for the goods on offer.

65. The aggregated complaints provided did not provide opportunity to specifically identify the number of mobile trader-specific contacts.

Motor vehicle sales and financing (9%)

- 145 Complaints about motor vehicle-specific lending have decreased from 23 in 2014 to 14 in 2015.
- 146 Including personal loans used for motor vehicle purchases increases motor vehicle complaints to 32 (20% of complaints). This is down from 30% in 2014.
- 147 The most complained about lender was Aqua Cars, with four complaints.
- 148 The complaints were generally specific to each lender's practices, with the exception of six complaints about advertising perceived to be in conflict with the responsible lending provisions.
- 149 Insolvency and Trustee Service 2015 personal insolvencies data showed car finance as being an identifiable contributor to insolvent debt (particularly once debt owed to government and the four main trading banks is removed).⁶⁶
- 150 CAB received approximately 3,800 enquiries about motor vehicle purchases or disputes in the 2014/15 business year (not including any possible enquiries around repossession). However, we could not identify the credit-specific complaints within this aggregated total.

Debt collection (6%)

- 151 Debt collection CCCFA complaints have risen from 2 in 2014 to 10 in 2015.
- 152 When we include FTA complaints, the number of complaints increases to 92. This tells us that misrepresentations are a significant concern in this industry. The nature of misrepresentations reported to the Commission includes misleading consumers about the right to collect, incorrect debt amounts, and inability to substantiate debt amount.⁶⁷
- 153 In one case a consumer filed to defend a disputed debt claim and the collection agency acknowledged prior to proceedings that there was no actual debt.⁶⁸ In another instance a consumer disputed a \$2,000 debt as they had never been a client of the company that was alleging an owed debt.⁶⁹
- 154 When the debt is being collected by a party who has purchased a debt book from another party, we often see a particular pattern of complaints to the Commission. Such complaints are often about disclosure (who now owns the debt), the right to collect the debt, and the ability to substantiate the amount actually owed.
- 155 Complaints about debt collection and repossession, with 1,919 contacts, are the most complained about area of consumer finance to CAB.
- 156 The increase in complaints about debt collection methods in New Zealand suggests it is an area of growing concern. Observations from a number of other jurisdictions suggest that this is also a growing concern internationally. The Australian Consumer Action Law Centre and Financial Rights Legal Centre have endorsed, through an experts roundtable on debt collection, the introduction of a regulatory framework for debt management firms, including licensing and rules to regulate business behaviours, conduct standards, and membership to external dispute resolution schemes.
- 157 In the United States the Fair Trading Commission and the Consumer Finance Protection Bureau (CFPB) reported in 2016 that debt collection is their most complained about category of complaints.

66. Not all car-related lending is readily identifiable from Insolvency and Trustee Service data, which impacts on the ability to provide precise figures.

67. Collection agencies have been unable to substantiate the exact amount claimed when questioned by consumers. This is particularly so for purchased debt books.

68. Commission complaint 307040.

69. Commission complaint 307534.

158 The themes reported by the CFPB were:⁷⁰

- continued attempts to collect debt not owed
- disclosure verification of debt
- communication tactics
- taking or threatening an illegal action
- false statements or misrepresentations
- improper contact or sharing of information.

159 The themes reported by the CFPB are very similar to those reported in our complaints.

Contacts information and statistics from other agencies

160 Other agencies and consumer organisations receive a large number of contacts from the public over a range of topics, and their aggregated information provides additional visibility around the issues impacting consumers. This information often further informs the ‘picture’ obtained from Commission data: sometimes corroborating our information, and sometimes identifying issues yet to manifest as complaints to the Commission.

161 It is important to note, however, that their contacts information was not initially intended for this use and the Commission has no visibility of the specific circumstances around each contact (eg, what has motivated the consumer to contact an organisation or if it was a potential breach of Commission legislation).

Insolvency and Trustee Service personal insolvencies information

162 Insolvency and Trustee Service information was analysed to ascertain if there were any useful patterns. However, it is important to note there is no visibility of the specific circumstances of the insolvency or the circumstances under which the debt was acquired.

163 Identifying traders, geographic areas, or types of credit with high levels of insolvency relative to other similar traders, geographic areas, or types of credit potentially indicates a risk of non-compliance and identifies areas for further enquiry.⁷¹

164 Personal insolvencies, including no asset procedures and bankruptcies, continue to trend downward from their 2009/10 peak, and totalled 3,418 for the 2013/14 year.^{xxxii}

165 Insolvency and Trustee Service data for the 2015 calendar year identifies just over \$1 billion was owed by personal insolvents in that year alone.^{72 73} Key findings of interest are:

- Rotorua debtors declaring insolvency owed finance companies and credit unions \$17 million. This was \$7 million above Auckland. Christchurch and Invercargill recorded the third and fourth highest amounts respectively.
- Napier debtors declaring insolvency owed the second highest amount to banks and credit cards (\$18.5 million). This was below Auckland but higher than all the other metropolitan areas.

70. The CFPB reported these issues in March 2016.

71. Other factors, such as the closure of a large employer in a province, could contribute to high levels of insolvency.

72. The data provided by the Insolvency and Trustee Service was limited to personal insolvencies as best as could be identified.

73. Debt owed to government agencies has been removed from the analysis.

New Zealand Federation of Family Budgeting Services (NZFFBS) client information

- 166 NZFFBS client information was analysed to ascertain if patterns in this data could be a potential indicator of non-compliance.⁷⁴
- 167 However, it is important to note that there is no visibility of the specific circumstances around each debt (eg, what has motivated the consumer to approach NZFFBS) or the circumstances under which the debt was acquired.
- 168 Debt presented to NZFFBS for budgeting assistance does not necessarily evidence wrongdoing by the consumer or the lender.⁷⁵
- 169 In 2015, clients presented with approximately 101,000 debts owed to 5,897 institutions (including government departments, family members, lenders, etc.), with a combined value of \$546,868,323.
- 170 Government departments, such as MSD, Police, and WINZ, were owed 26% of the debts, but only 15% of the total amount owed.
- 171 Removing government departments identifies that 13 companies accounted for 35% of the number of debts, and were owed 56% of the value:

NZFFBS statistics for the 2014/15 business year showed:

Of over 45,000 clients
 44% were Māori
 11% were Pasifika
 37% were European

• Baycorp	3,907	\$11,300,851	(2%)
• ANZ	3,672	\$78,886,209	(17%)
• Westpac	2,505	\$55,481,813	(12%)
• Home Direct	2,411	\$1,611,048	(0.4%)
• Dun and Bradstreet	2,095	\$2,913,442	(1%)
• BNZ	1,872	\$44,054,987	(10%)
• ASB	1,607	\$41,322,732	(9%)
• Consumer Finance	1,580	\$6,211,583	(1%)
• GE Finance	1,349	\$7,083,037	(2%)
• Contact Energy	1,205	\$1,255,828	(0.3%)
• Spark	1,195	\$748,414	(0.2%)
• DTR	1,169	\$2,687,652	(1%)
• Finance Now	1,101	\$2,413,519	(1%)



74. NZFFBS is New Zealand's largest budget advisory service, covering 164 sites nationwide with approximately 960 volunteer and paid advisors.

75. The figures quoted here must be considered as approximate only, due to coding inconsistencies across the NZFFBS network.

Type of debt

- 172 Considering the presented debt by type identifies that:
- bank loans and credit cards account for 32% by value (12% by number of debts)
 - mortgages account for 23% by value (1% by number of debts)
 - finance companies account for 17% by value (18% by number of debts)
 - government departments account for 15% by value (26% by number of debts).

Bank loans and credit cards (not mortgages)

- 173 Considering bank loans and credit cards (but not including mortgages) by the number of debts held identifies:
- Westpac \$55,481,813 / 2,505 = average debt of \$22,148
 - BNZ \$36,964,131 / 1,808 = average debt of \$20,444
 - ANZ \$18,439,996 / 3,178 = average debt of \$5,802
 - ASB \$17,267,102 / 1,451 = average debt of \$11,900
 - Kiwibank \$14,578,598 / 766 = average debt of \$19,032
- 174 These banks account for 91% of the credit market.

Finance company lending

- 175 Considering finance company lending by the number of debts presented identifies a wide variance in the average debt of customers. Some of this could be explained by lending to different demographics, and/or different loan purposes:
- GE Money \$7,185,221 / 830 = average debt of \$8,656
 - GE Finance \$7,083,036 / 1,349 = average debt of \$5,250
 - Consumer Finance \$6,211,563 / 1,580 = average debt of \$3,931
 - Instant Finance \$4,854,505 / 985 = average debt of \$4,928
 - MTF \$4,755,993 / 764 = average debt of \$6,225

Considering debts by region⁷⁶

- 176 The regions with the highest presented debt:
- Wellington \$52,401,349 (11%)
 - Poverty Bay/Hawke's Bay \$43,772,691 (10%)
 - Far North \$35,656,533 (8%)
 - Manukau \$34,693,847 (8%)
 - Tauranga \$32,882,157 (7%)

76. Considering total debt presented less debt owed to government departments and courts.

177 The regions with the highest number of debts were:

- Wellington 5,965
- Poverty Bay/Hawke's Bay 5,775
- Far North 5,686
- Tauranga 5,475
- Manukau 5,431

178 The regions with highest average debt per client were:

- Auckland Northwest \$10,314
- Wellington \$8,784
- Auckland Central \$8,462
- Poverty Bay/Hawke's Bay \$7,579
- Canterbury \$7,503

179 Comparing Statistics NZ population data to NZFFBS regional debt data identifies that:⁷⁷

- Poverty Bay and Hawke's Bay have approximately 5% of the population but 10% of the debt
- Wellington has 7% of the population and 11% of the debt
- Far North has 4% of the population and 8% of the debt
- Manukau is approximately on par with debt to population levels.

Citizens Advice Bureau

180 Aggregated CAB client information provides additional visibility around the financial issues impacting consumers.

181 The CAB network received 537,000 enquiries in the 2014/15 financial year about a wide range of issues.^{xxxii} Of relevance to the Commission are CAB's finance-related complaints about:

- | | |
|-------------------------------------|-------|
| • debt recovery and repossession | 1,919 |
| • direct selling and telemarketing | 1,117 |
| • general banking services | 792 |
| • loans (cash) | 547 |
| • financial complaints and disputes | 417 |
| • financial services | 407 |
| • mortgages and equity schemes | 275 |
| • consumer credit contracts | 271 |
| • other consumer credit | 144 |
| • lay-by | 74 |

182 CAB contacts identify a different story from Commission complaints patterns. Some of this is due to the differing categorisation of contacts. However, debt recovery and repossession, and direct selling and telemarketing, appear as more prominent issues in CAB data.

77. NZFFBS regions and Statistics NZ regions are not identical. This required removing some areas from the Statistics NZ data to compare to NZFFBS regions. Tauranga was unable to be compared because of the way the boundaries have been created.

Credit roundtables – the consumer experience

- 183 The Commerce Commission holds annual consumer credit roundtables to engage with advocates who represent consumers. These consumer groups have valuable experience in dealing with debt-related issues and the Commission values the information provided and the discussions held at these meetings.⁷⁸
- 184 There is near universal agreement among advocates of a debt culture in New Zealand created by easy access to credit. The use of comparatively expensive options such as payday loans and mobile traders has become a part of life for some clients of budgeting services.
- 185 It was noted that cultural obligations continue to drive some families to incur debt. While unplanned events may create an urgent need for credit, some advocates note that credit requests may be denied through compliance with the lender responsibility principles.
- 186 Budget advisors report that a number of clients, whose budgets are in deficit, have still been given loans which put them further into hardship. There is a concern that efforts made by some lenders to assess the suitability of a loan for a borrower may fall short of the Responsible Lending Code and their obligations under the principles. The Code suggests lenders make more extensive enquiries into a borrower's means to pay when vulnerability is identified.
- 187 Default on a loan often incurs a missed payment fee with the creditor and the bank. Advocates note that many clients do not understand the full implications of missing a payment and can increase their debt through the accumulation of additional fees on default.
- 188 Motor vehicle lending continues to be perceived as a significant problem. The universally complained about issue appears to be the loan to value ratio of older second-hand vehicles bought on credit. The most common scenario is when the borrower falls behind in payment and is unable to rectify the default, the vehicle gets sold for its true value, and the borrower is left with no vehicle and in many instances owing a significant sum. While cars are often a much needed asset, alternative methods of purchase are often explored by budget advisors, such as offers of micro-finance for qualifying clients.
- 189 Debt collection activity complaints tend to fall into three main categories: conduct, misrepresentation, and disputes. Consumer advocates report that the areas of concern with debt collection are:
- threatening court action on statute-barred debt
 - pursuing clients for debt without providing documentation that supports the amounts claimed
 - harassing clients for payment, including behaving in an aggressive and coercive manner
 - not acknowledging or properly dealing with legitimate disputes
 - pursuing the wrong person.

Complaint to the Commission

It has been reported that when borrowers seek a top-up on an existing loan, a particular lender will refinance the entire contract. This attracts a loan processing fee of \$180 plus \$245 for a payment protection plan (the borrowers are beneficiaries with a secure income).

In a three-month period the borrowers have sought top-ups of \$300 each time they have had the loan refinanced and the fees added.

The loan repayment amount has remained constant at \$80 per week. However, the term of the loan continues extending.

The contract also contains an APAAP clause that appears to be inconsistent with the guidance published by the Commission (appears to include prohibited items).

The borrowers' budget is in deficit by \$33 per week.

78. The latest roundtables were held in Mangere, Porirua, and Christchurch in late 2015.

- 190 There was a general consensus among consumer advocates attending the credit roundtables that the introduction of the lender responsibility principles was a significant and positive improvement to the CCCFA. While there are reports of a noticeable improvement in some lenders' practices in response to the principles, there are also indications that some lenders' practices have remained unchanged.⁷⁹
- 191 At the credit roundtables we were told about lenders providing top-up loans within months of a loan draw-down, consolidating loans and providing additional lending on the 'spare repayment capacity', and budgeting services clients having multiple simultaneous low-value loans. Some advocates noted that these practices are evident with clients whose budgets are already in deficit. Consumer advocates attending the credit roundtables were concerned that lenders may not be making enquiries before entering into agreements with a borrower or assisting the borrower to be reasonably aware of the full implications of entering into the agreement. These practices cause concern in light of the lender responsibility principles.
- 192 It was reported at the credit roundtables that banks are declining hardship applications as they do not consider changing the loan repayments to a longer repayment period is in the best interests of the consumer as they will be paying more interest overall.
- 193 Attendees at the credit roundtables told us that:
- mobile traders have become more prevalent in Christchurch over the last two years
 - mobile traders frequent Porirua and Naenae in Wellington
 - some mobile traders ignore 'do not call' stickers
 - selling food has become more common among mobile traders.

The current consumer credit issues and emerging risks

- 194 The following paragraphs list the current issues identified from both the environmental study and our analysis of complaints and other data. The level of potential harm to consumers from each issue is also rated using the same information.
- 195 Drawing from our study of the consumer credit environment, along with our data analysis, and incorporating themes from issues and risks identified last year, we identified eight issues, and five emerging risks, currently impacting consumers to varying degrees.
- 196 The rating of each issue and risk is assessed by considering frequency of occurrence and the likely degree of detriment to consumers. In some instances the rating is based on limited evidence. This is particularly so for emerging risks, or where an activity occurs covertly. All issues and risks were reviewed by a panel of senior Commission staff and the issues and risks with a preliminary rating of Medium, High, and Very High were validated qualitatively by that panel.
- 197 Not all issues will justify Commission attention or intervention. The Commission considers the issues and risks assessment in this report as part of its internal planning and prioritisation processes. Those issues not addressed through specific projects are often dealt with on a case-by-case basis as complaints are received and investigated.

79. Consumer advocates conceded that it may be some time before the full effect of the lender responsibility principles and the new provisions of the reformed CCCFA begin to change the credit culture in our communities. There was recognition of considerable progress in the way some lenders dealt with budgeters, particularly in trying to renegotiate credit contracts for clients in hardship and processing hardship applications.

198 See 'How we assess the potential harm to consumers' on page 47 for more information on how the issues and emerging risks were rated and ranked.

Complaints to the Commission about the practices of non-bank lenders are disproportionate to their market share.	
The most complained about CCCFA-related conduct is non-disclosure due to the way it can disadvantage, and places financial strain and additional costs on, consumers.	
Communities of vulnerable consumers may be targeted by some traders and lenders, further increasing their vulnerable position, for example by: <ul style="list-style-type: none"> • mobile traders • payday lenders • ethnicity-focussed traders • lower-tier lenders • providers of motor vehicle sales and finance. 	
Practices linked to some motor vehicle-related lending result in consumers being misled, facing increased costs, or being financially disadvantaged.	
Vulnerable consumers can pay higher costs (such as fees and interest rates) for lending.	
Some lenders continue to lend irresponsibly despite recent law changes.	
Misrepresentations by debt collection agencies financially disadvantage consumers.	
Practices by some mobile traders (second most complained about industry) result in consumers being misled, facing increased costs, and being financially disadvantaged, for example: <ul style="list-style-type: none"> • multiple direct debits, which can expose consumers to multiple dishonour fees • misrepresentations about the quality of products • inadequate disclosure • high cancellation fees. 	

Emerging credit risks

Unarranged bank overdrafts can place additional financial strain on vulnerable consumers by generating additional fees.	
Consumer credit risk may be calculated inconsistently in different geographic locations.	
Some lenders are using responsible lending provisions to decline hardship applications, affecting vulnerable consumers.	
Responsible lenders following the Responsible Lending Code may make vulnerable borrowers obtain credit from non-compliant lenders.	
High levels of presented debt may suggest individuals are having difficulty repaying debt.	

Section 4 – Competitive markets

Key points

- Most Commerce Act (CA) complaints are singular complaints about individual traders
- There appears to be a gap between a public perception of fairness and the legality of business practices under the CA
- Local government approved service providers may enjoy a competitive advantage over non-approved providers

199 This section considers our analysis of CA data (merger clearances, leniency requests, and complaints) to identify matters that may impact consumers. The issues are then ranked in order of potential harm.

Table 5: The number of merger clearance applications, 2006 to 2015.

2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
19	21	17	5	13	8	12	11	14	12

200 Domestically, merger clearance application numbers (12 in 2015) remain relatively static, decreasing from 2014 levels (14), yet, on average, rising across the past four years. However, merger clearance application numbers remain lower than pre-GFC conditions.

201 The complexity of clearance applications remains a prevalent theme in the Commission’s merger work, especially where cases concern markets which are already concentrated and/or global transactions are involved.

Commerce Act complaints

202 Complaints of alleged breaches of the CA from the public are a subset of all contacts with the Commission. Complaints are identified as potential breaches of the law but do not necessarily mean that the law has been breached. However, a complaint can indicate something of potential concern to consumers.

Table 6: The number of Commerce Act complaints, 2009 to 2015.⁸⁰

	2009	2010	2011	2012	2013	2014	2015
Complaints	128	90	71	123	260	503 ⁸¹	228

203 The Commission received 228 complaints about CA matters in the 2015 calendar year. Of those, 218 related to the actions of specific traders, while 10 were general complaints about competition in industries or sectors.

204 Unlike complaints in 2014, no single trader-specific issue generated more than five complaints to the Commission in 2015.

80. See ‘Limitations on complaints information’ at paragraphs 6 to 8.

81. 224 complaints about three single issues (the IAG/Lumley merger, the Progressive Enterprises enquiry, and Monteith’s Radler beer) that did not breach our legislation are incorporated in this figure.

- 205 Complaint numbers have decreased by 18% from the 2014 total of 279 (this is the balance after 224 complaints about the three single issues that were investigated and considered not to breach our legislation are removed).
- 206 The following sectors drew the most complaints in 2015:
- Government (central, regional and local government) was the subject of 28 complaints. These included concerns over new restrictions on the performing of immigration medicals, council-run gymnasiums charging below cost, and councils reserving council-owned premises for the exclusive use of council-owned entities such as swim schools.
 - Utilities and Infrastructure (automotive fuel, gas and electricity distribution, airports, and waste and recycling services) attracted 26 complaints.
 - Information Technology and Services (telecommunications providers and carriers) attracted 17 complaints. Many of these complaints related to the court action undertaken by New Zealand's largest telecommunications providers against Slingshot's 'global mode' ISP service.
- 207 Exclusive supply contracts continue to be perceived by the general public as anti-competitive and therefore generate complaints to the Commission. However, whether this kind of conduct breaches the Commerce Act is dependent on the facts of each situation and, in particular, the impact of the restriction of competition overall in the relevant market.
- 208 The most complained about entity (overall) was Queenstown Lakes District Council, with five complaints. Each of these complaints supported a swim school teacher's right to continue running a swim school in competition to the council school at the council-owned swimming pool.
- 209 No other entity drew more than three specific complaints in 2015.⁸²
- 210 Electricity distributors were consistently complained about in 2013 and 2014. CA complaints about this group halved in 2015 (6).

Insights from investigations

- 211 Industry associations, ranging from the formally structured to the informal, continue to be a prominent feature in investigations into price-fixing agreements and/or agreements that substantially lessen competition both domestically and internationally, particularly where an external shock or cost has affected members.⁸³
- 212 Recent domestic cases indicate that common price shocks are often associated with the emergence of collusive behaviour. If all companies are hit by cost increases that require a response, they may be motivated to find out how competitors are responding and to take the next step of coordinating responses, particularly if competitors in a market are well known to each other.
- 213 Our investigations where industry associations have been involved have included many parties due to the large numbers of industry members involved. Membership of an industry association is not necessarily a precursor to cartel behaviour as there are many instances in New Zealand of industry associations assisting members to improve compliance with the provisions of the Commerce Act.

82. This is in marked contrast to 2014, where 224 complaints were generated by three single issues. It is noted that each of those related Commerce Commission investigations did not find against the entity in question.

83. Domestically, it has been noted that these price-fixing agreements have often resulted from carelessness rather than hard-core cartel conduct.

Domestic leniency requests

214 The Commission received three requests for leniency, stemming from cartel behaviour. These requests related to two suspected domestic arrangements. No international requests were received by the Commission in 2015.

The current issues and emerging risks to consumers from markets

215 The following paragraphs list the current issues identified from the environmental study, our analysis of complaints, and other data. The level of potential harm to consumers from each issue is also rated through using the same information.

216 Drawing from our consideration of the market and consumer environments, along with our data analysis, and incorporating themes from the issues and risks identified last year, we identified five current issues that are impacting markets, and therefore consumers, to varying degrees.

217 The rating of each issue and risk is assessed by considering frequency of occurrence and the likely degree of detriment to consumers. In some instances the rating is based on limited evidence. This is particularly so for emerging risks, or where an activity occurs covertly. All issues and risks were reviewed by a panel of senior Commission staff and the issues and risks with a preliminary rating of Medium, High, and Very High were validated qualitatively by that panel.

218 Not all issues will justify Commission attention or intervention. The Commission considers the issues and risks assessment in this report as part of its internal planning and prioritisation processes. Those issues not addressed through specific projects are often dealt with on a case-by-case basis as complaints are received and investigated.

219 See ‘How we assess the potential harm to consumers’ on page 47 for more information on how the issues were rated and ranked.

Participation in industry associations, while often beneficial for participants, can enable anti-competitive conduct.	
Exclusive supply contracts in certain circumstances can limit competition and create artificially high prices in some markets.	
Exclusive dealing under certain circumstances can enable anti-competitive conduct. New Zealand as a small economy with concentrated markets may be more susceptible in this regard.	
New Zealand concentrated markets may result in more frequent competitor interaction increasing the risk of collusion.	
Creeping acquisitions can be harmful to market structures.	

Attachment A – Enquiries and complaints for 2013, 2014 and 2015

Complaints are a subset of all contacts with the Commission.

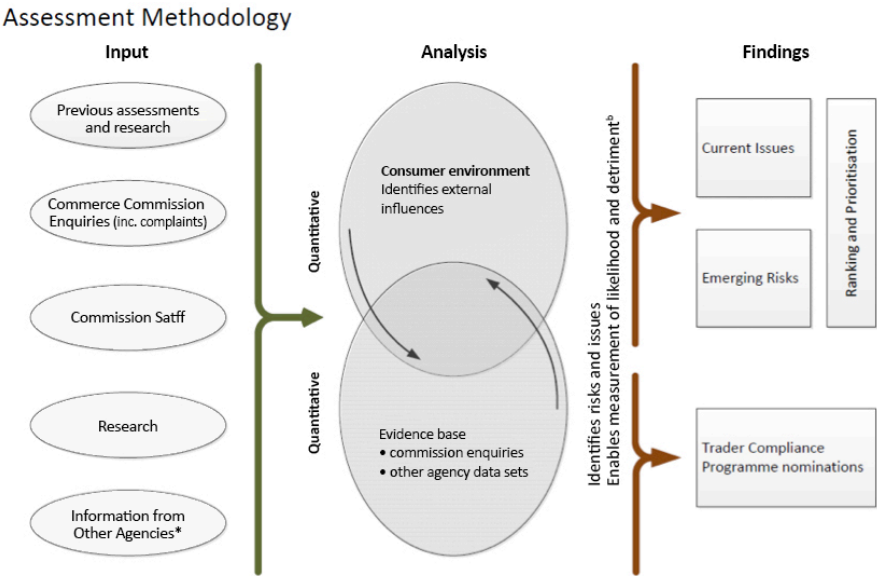
Complaints are identified as potential breaches of the law but do not necessarily mean that the law has been breached.

Also see 'Limitation on complaints information' at paragraphs 6 to 8.

	2015	2014	2013
Total enquiries to the Commission	8,912	9,610	8,261
Competition Branch	7,171	6,707	5,281
Commerce Act			
Enquiries	270	485	412
<i>Complaints only</i>	218	414	260
Credit Contracts and Consumer Finance Act			
Enquiries	203	183	270
<i>Complaints only</i>	164	146	191
Fair Trading Act			
Enquiries	6,698	6,039	4,859
<i>Complaints only</i>	5,073	4,377	3,425
Regulation Branch	4	9	18
Dairy/Electricity/Telecommunications Acts			
Enquiries	4	9	18
<i>Complaints only</i>	0	1	0
Contacts not a Commission issue	1,737	2,894	2,962
Enquiries	1,737	2,894	2,962

Attachment B - Methodology

- 220 The assessment draws on 2015 data and information from a number of sources including: consumer organisations and advocates, industry organisations, Commission complaints data for 2015, experience of Commission staff, and open source research.
- 221 Further information was gathered during a series of credit roundtables with consumer advocates to document their experiences and knowledge of the current consumer credit environment.⁸⁴
- 222 We also undertook an environmental scan and examined Commission complaints data to gain insight into the main concerns raised by consumers and businesses in relation to the relevant law – the Commerce Act 1986 (CA), Fair Trading Act 1986 (FTA), and Credit Contracts and Consumer Finance Act 2003 (CCCFA).
- 223 Using insights from the environmental scan, Commission complaints data, and data provided by other organisations, we established a broad contextual overview of the consumer environment, and identified current issues and emerging risks that may impact consumers. Each issue and risk was assessed and rated according to the level of potential harm to consumers. To do this, the Intelligence Team undertook a preliminary assessment of each issue and risk. All issues and risks were reviewed by a panel of senior Commission staff and the issues and risks with a preliminary rating of Medium, High, and Very High were validated qualitatively by that panel.
- 224 All of the quantitative analysis contained in this assessment has been conducted in line with Commission guidelines for quantitative analysis and has been subjected to an internal quality assurance process adhering to these guidelines to maximise robustness, replicability, and accuracy.⁸⁵
- 225 All of the content contained in this assessment has been reviewed by internal subject matter experts and/or the contributing organisations to ensure robustness and accuracy.
- 226 Within the text, footnotes provide supplementary commentary and are identified by numbers at the end of sentences, whereas endnotes provide information sources and are identified by Roman numerals.



Key: a Information from other agencies includes those listed in Acknowledgements, page 2.
 b How we determine likelihood and detriment is discussed below.

84. The workshops were held in Mangere, Porirua, and Christchurch and focused on consumer credit issues.

85. The guidelines for quantitative analysis can be viewed in full at this web address: <http://www.comcom.govt.nz/the-commission/commission-policies/guidelines-for-quantitative-analysis/>.

How we assess the potential harm to consumers

- 227 Drawing from our study of the consumer environment and our data analysis, we identified and rated 35 current issues, consisting of:⁸⁶
 - 22 FTA issues
 - 8 CCCFA issues
 - 5 CA issues
 and 6 emerging risks consisting of:
 - 1 FTA risk
 - 5 CCCFA risks.

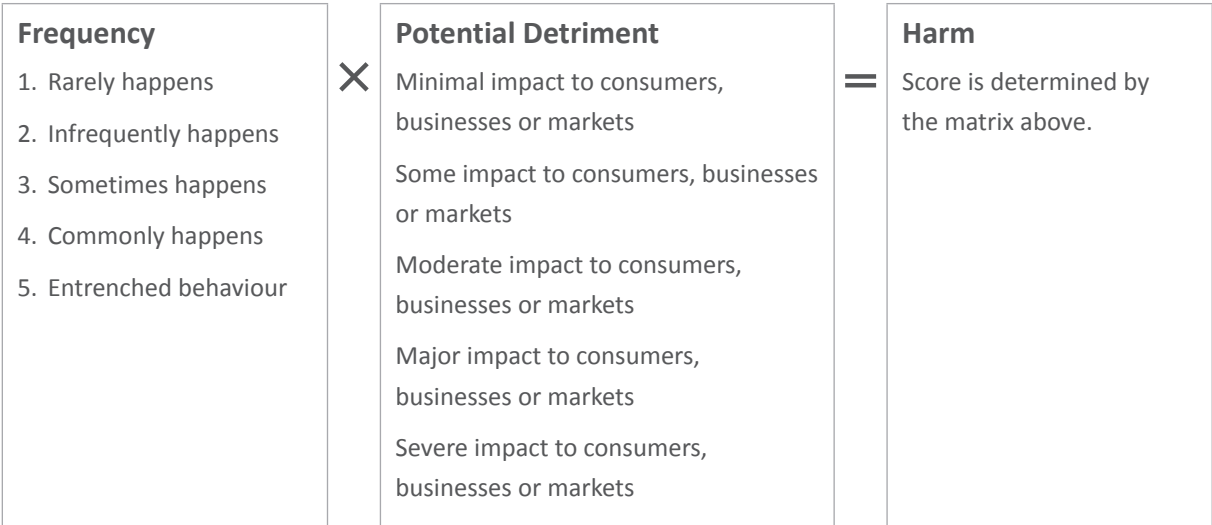
- 228 The harm rating of each issue and risk is assessed by considering frequency of occurrence and the likely degree of potential detriment to consumers. In some instances the harm rating is based on limited evidence. This is particularly so for emerging risks, or where an activity occurs covertly.

- 229 In addition, not all matters fit comfortably into the harm assessment matrix and our internal screening and prioritisation process for complaints has been adjusted to account for this. For example, product safety matters, while having the potential to cause injury or death (a severe potential impact), happen infrequently. However, the potential harm to consumers is such that all product safety matters are treated as a priority.

The Harm Assessment Matrix

	<i>Minimal</i>	<i>Some</i>	<i>Moderate</i>	<i>Major</i>	<i>Severe</i>
<i>Rare</i>	Low	Low	Low	Medium	Medium
<i>Infrequent</i>	Low	Low	Medium	Medium	High
<i>Sometimes</i>	Low	Medium	Medium	High	High
<i>Common</i>	Medium	Medium	High	High	Very high
<i>Entrenched</i>	Medium	High	High	Very high	Very high

Potential detriment to consumers



86. Unlike in the Consumer Issues Report 2015, this year a number of similar issues have been consolidated into a single issue where they relate to each other. The consolidated issues contain examples of the types of conduct encountered by consumers. Not all issues identified in the initial environmental scan have been incorporated into this report.

How we assess potential detriment

Minimal impact to consumers, businesses or markets

→ Consumers or businesses are unlikely to have been affected.

Some impact to consumers, businesses or markets

→ Consumers or businesses are likely to have incurred little:

- physical harm
- increased prices or adverse effects on non-price elements (eg, quality)
- loss of property, or
- impaired choice.

→ Vulnerable consumers have not been targeted.

Moderate impact to consumers, businesses or markets

→ Consumers or businesses are likely to have incurred some:

- physical harm
- increased prices or adverse effects on non-price elements (eg, quality)
- loss of property, or
- impaired choice.

→ There is limited potential impact on indirectly-related consumers or businesses (eg, through decreased consumer confidence).

→ Competition in the relevant markets has not been affected.

→ Vulnerable consumers have not been targeted.

Major impact to consumers, businesses or markets

→ Consumers or businesses have incurred:

- physical harm or are likely to incur physical harm
- increased prices or adverse effects on non-price elements (eg, quality)
- loss of property, or
- impaired choice.

→ Vulnerable consumers have been targeted.

→ Many consumers or businesses have potentially been directly adversely affected.

→ Competition in relevant markets is likely to have been affected.

Severe impact to consumers, businesses or markets

- Death or severe injury has occurred or could occur (non-discretionary).
- There is likely to be a significant impact on related consumers or businesses through:
 - increased prices or adverse effects on non-price elements (eg, quality)
 - loss of property, or
 - impaired choice.
- Competition in the relevant markets has potentially been significantly affected.
- There is likely to be significant regional or national impact.
- Vulnerable consumers have been targeted.

Analysis notes

- 230 The quantitative analysis contained in this report is drawn from all 2015 Commission Competition Branch-related contact data (11,156, which includes enquiries and complaints). All Consumer NZ (CNZ) consumer-related contact data (3,050), debt information provided by the New Zealand Federation of Budgeting Services (NZFFBS) (101,380), and Insolvency and Trustee Service data (7,694) are for the 2015 calendar year.⁸⁷
- 231 The Commission's complaint data is used in this assessment at face value. While a complaint does not necessarily mean that there is a breach of law, it can indicate something of potential concern.
- 232 Records have been analysed at an aggregate level to identify patterns showing the industries, traders, and issues causing the most concern to consumers.
- 233 Comparing data from multiple systems across multiple organisations includes an unknown degree of inconsistency and data error. Where possible we have standardised data for comparison to minimise this impact.⁸⁸
- 234 The number of complaints received about potentially non-compliant trading may not represent the true extent of an issue affecting consumers. Conversely, a large number of complaints on a single matter may not necessarily be an indication of non-compliance. For example, the Commission sometimes receives multiple complaints on matters that do not breach the legislation.
- 235 Further refining of the datasets used in this assessment, and the use of additional data, may have affected some numbers reported last year or influenced year-on-year changes reported in this year's assessment.

87. NZFFBS data reflects the number of presented debts, rather than the number of families using NZFFBS services.

88. This included standardisation of trader names and categorisation by sector and industry.

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