

3 April 2020

Hon Kris Faafoi
Minister of Commerce and Consumer Affairs
Parliament Building
WELLINGTON

Dear Minister

RE: ANNUAL LETTER OF EXPECTATIONS FOR 2020/21

1. Thank you for your letter dated 12 March 2020 in which you outlined your strategic and performance expectations for the Commerce Commission in 2020/21. This letter provides our response, as requested, within a slightly extended timeframe agreed with your office.
2. We received your letter close to the start of the outbreak of the COVID-19 pandemic in New Zealand, and prior to the introduction of restrictions designed to delay the spread of the disease. The outbreak has inevitably created significant challenges for our economy, for businesses and for New Zealanders.
3. Before addressing the expectations outlined in your letter, I would like to acknowledge some of our new and immediate areas of focus directed at COVID-19. These areas of focus include maintaining confidence in markets for essential goods and services, tackling businesses that seek to illegitimately exploit the current situation, and, where we can, relieving pressure on businesses that are adapting to the restrictions. We recently notified our stakeholders about these areas of focus and further information is attached to this letter.
4. We recognise that it is of utmost importance that no business in New Zealand feels constrained from doing the right thing at this time: for customers, the safety of staff and New Zealanders. The Commission therefore plans to take a pragmatic approach in relation to enforcement across all of the laws that we enforce when current circumstances require it.
5. In addition, and consistent with your enduring letter of expectations, we are committed to working as part of a unified government to support all New Zealanders. For example, responding to the pandemic has included COVID-19 related work with agencies on the Council of Financial Regulators, as well as with MBIE, MPI, and MedSafe, amongst others.

Responding to your expectations for 2020/21 in relation to your portfolios

6. In relation to your portfolios, our intentions are in line with your expectations. The Commission seeks to maintain a good understanding of the overarching aims and specific priorities of your Government, and we recognise that we have a significant role in contributing to the success of the economy and the quality of lives of all New Zealanders. Everything we do is focussed on making New Zealanders better off.
7. All three of our main functions will support the well-being of all New Zealanders during the pandemic, the recovery and over the longer term:
 - Tackling consumer harm to protect them from unfair trade practices and irresponsible lending;
 - Enhancing competition between businesses to stimulate productivity, innovation, employment, and growth; and
 - Influencing infrastructure industries such as fuel, energy, and telecommunications (including broadband) for reliable and resilient services at reasonable prices.
8. Your letter identifies opportunities for us to strengthen our impact and we have started to prepare high level plans reflecting the options considered as part of the baseline review requested last year. The areas identified for strengthening include:
 - Seeking opportunities for on-going improvement in the efficiency and effectiveness of our work and demonstrating that we are a learning organisation;
 - Working collectively across our regulatory systems to improve outcomes, including providing practical guidance on the workability and resourcing requirements of ongoing legislative reform;
 - Improving our engagement with consumers to better understand their needs, to strengthen their voice in regulatory proceedings, and to improve their understanding of their rights;
 - Enhancing our engagement with businesses to improve compliance with the existing law and educate in relation to legislative change while also avoiding adverse effects on legitimate business conduct; and
 - Maintaining effective relationships with domestic and overseas regulatory agencies for the purpose of promoting the integrity of New Zealand's competition, consumer protection and regulatory regimes.

9. We will continue to reflect on our organisation's priorities for 2020/21, consistent with your expectations, and as the longer-term consequences of the pandemic become clearer and New Zealand enters a recovery phase. For example, we may need to adapt our approaches to consumer and business engagement in light of social distancing, we may see an increase in merger applications involving failing firms, and other areas of focus may start to emerge. We will have particular regard to maintaining flexibility to modify our priorities and redirect our focus if circumstances require in coming months.

Responding to your expectations for our work as a Board

10. We are also confident that our intentions are consistent with your expectations in relation to our role as a Board, including for our relationship with MBIE and other agencies, the 'no surprises' policy of the Government, and for succession planning. In light of recent Commissioner appointments, we welcome the clarity that is provided through the annual and enduring Letters of Expectation for our work as a Board.

Effective board

11. In February this year, we held a Board workshop on organisation governance that was also attended by senior managers at the Commission. This two-day workshop included training from the Institute of Directors on Crown Entity governance, to help induct new Commissioners and re-establish common expectations across the group. We are committed to a continued focus on our role as governor of the Commission and primary monitor of the Commission's performance.

Effective monitoring of Commission performance by the Board

12. We are continuing to progress a new Statement of Intent ahead of the 2020/21 financial year. As part of its development, we are reflecting on how to best demonstrate our commitment to working in a way that reflects changing system, societal and Ministerial expectations. For example, those reflected in your latest annual, enduring, and Electricity Price Review-specific letters of expectations, as well as the Government Policy Statement while it remains in effect.
13. I trust that this response provides you with the information that you are seeking in relation to your Letter of Expectations. I am happy to discuss this with you further or to provide more information on any of the areas outlined.

Yours faithfully



Anna Rawlings
Chair

Attachment: Our new and immediate priorities in light of the pandemic

1. In light of the pandemic, and while working as part of a unified government to support all New Zealanders, the Commission's new and immediate areas of focus are:
 - Maintain confidence in markets for essential goods and services;
 - Tackle businesses that seek to illegitimately exploit the current situation;
 - Relieve pressure on businesses that are adapting to the restrictions;
 - Engage effectively with consumers and other stakeholders during the restrictions;
 - Make timely decisions on mergers especially those involving failing firms; and
 - Provide expert input and practical guidance on the workability of urgent legislation.
2. In advancing our work we are mindful of our responsibilities to protect the health and safety of our own staff, who are adapting to remote working and school closures.

Maintain confidence in markets for essential goods and services

3. As a result of the Government Policy Statement issued on 22 March 2020, at this unprecedented time the Commission is required to have particular regard to the objective of maintaining confidence in markets for essential goods and services by ensuring broad and fair access for consumers. This Government Policy Statement had a specific focus on our work under the Commerce Act.
4. Consistent with our longstanding objective to improve the confidence of consumers and businesses participating in markets, the Commission's current activities relating to essential goods and services are:
 - in relation to our Commerce Act responsibilities, we recently provided assurances that we have no intention of taking enforcement action if essential businesses are cooperating to ensure broad and fair access for consumers during the restrictions, eg, sharing staff or distribution networks to supply groceries;
 - in the credit sector, working with government and business and consumer stakeholders to help facilitate responsible lending to consumers that are facing a period of temporary financial hardship, where usual lender approaches to compliance may need to be varied;
 - in the telecommunications and energy sectors, we will relax the burden imposed by aspects of our sector-specific regulatory regimes to allow the providers of infrastructure to focus on the supply of essential services; and

- in the telecommunications sector specifically, we will be working with SamKnows to provide transparency about the performance of the broadband network given increased demand from remote working.

5. In addition, across all industry sectors, some legitimate arrangements and collaborations between competitors that businesses may contemplate as a consequence of the pandemic may be exempt from the Commerce Act. Businesses can also apply to us for authorisation or clearance to collaborate.

Tackle businesses that seek to illegitimately exploit the current situation

6. The Commission will not tolerate businesses that seek to illegitimately exploit the current situation and will tackle any unscrupulous conduct of this nature. We are devoting resources to monitoring the conduct of businesses and building our understanding of what is going on around the country under changed circumstances.

7. We are in discussions with other agencies (such as MBIE, MPI and MedSafe) to ensure fast and co-ordinated action wherever possible. The types of activities we will be looking out for include:

- businesses using COVID-19 as an excuse for non-essential collusion or anti-competitive behaviour (including sharing information on pricing or strategy where it is not necessary in the current situation);
- business practices and scams including misleading or deceptive COVID-19 claims about products or services, and where consumers are being misled about their rights;
- telecommunications providers that are using unsubstantiated claims to take advantage of consumers looking to improve their connectivity; and
- irresponsible lending in times of heightened anxiety and stress for borrowers.

8. An important aspect of our approach is ensuring consumers and borrowers understand their rights, to empower them to take action:

- We have published guidance on consumer rights in relation to a range of potential COVID-19 topics and will continue to update this guidance as topics emerge to assist consumers; and
- We intend to provide guidance to borrowers to help them to understand their rights when they seek credit, are facing hardship or dealing with debt collectors.

Relieve pressure on businesses that are adapting to the restrictions

9. We also recognise that we have a role to play in helping to relieve pressure on businesses that are adapting to the restrictions on human contact. Businesses are having to quickly adjust to travel constraints, working from home arrangements, school closures, and physical distancing – and some may be more directly affected by COVID-19 than others. All of these factors could create significant business continuity issues.
10. For businesses working in critical infrastructure industries that are subject to our sector specific regulatory regimes, we are:
 - seeking to pro-actively ease reporting requirements on airports and energy networks in light of the pressure they face at this time;
 - being pragmatic in our approach to enforcement where companies can demonstrate that any compliance issues have arisen as a consequence of prioritising efforts to protect customers, security of supply and safety, or as a consequence of factors entirely outside of the company's control; and
 - reviewing our work programmes for our sector-specific regulatory regimes being mindful of the ability of industry to engage in consultation processes.
11. Although our current investigations into competition and consumer matters will continue, we will be liaising with parties that require additional time to provide information to us. We will manage each investigation on its own merits and continue to evaluate all information that comes to us on a case-by-case basis. In addition, although outside our control, some court cases are likely to be suspended due to the disruptions.

Engage effectively with consumers and other stakeholders during the restrictions

12. It is not just businesses that face difficulties at the current time, and we recognise that we must take steps to ensure we are able to engage effectively with everyone we deal with. Fortunately, our systems are set up for digital communication. We generally have all the right technology to keep working and connect with our stakeholders from home, and we will make extensive use of it whenever necessary.

13. We are specifically seeking to engage more effectively with consumers by:
- engaging with vulnerable communities at a grassroots level through citizen media and increased social media engagement;
 - inviting consumers to participate in processes that are more time critical using virtual communication tools (which may potentially include workshops for Aurora Energy's application to increase prices to facilitate network improvements); and
 - deferring any work that is scheduled to occur at an inopportune time for the people we are connecting with (such as our work on the 111 contact code with vulnerable consumers and representative organisations).
14. We will also keep stakeholders informed of changes to our processes and timelines using our normal electronic channels, where relevant.

Make timely decisions on mergers especially those involving failing firms

15. Businesses are still able to file any new merger applications at any time, and we will seek to prioritise any requests for merger approvals where the financial viability of a firm is in jeopardy because of the current economic circumstances. We will continue to assess each application on a case-by-case basis, taking into account the current environment, and the longer-term impact on competition from any change in the structure of markets.
16. We are still aiming to assess current merger applications within the timeframes agreed with the applicants. We may need extensions if there are delays in receiving responses to information requests due to COVID-19 and its associated challenges. Any changes to the due dates will be reflected in the case register on our website.

Provide expert input and practical guidance on the workability of urgent legislation

17. Finally, we will continue to provide expert input and practical guidance on the workability of any legislation that is being prioritised at the current time. In some cases, for example, legislative change may be required to enable activities during the pandemic that would otherwise be unlawful. We will contribute to processes to identify amendments to legislation that may be necessary under urgency.