

# CONSUMER ISSUES

## 2017/18

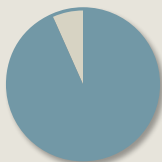


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# Consumer Issues 2017/18 AT A GLANCE

Total complaints  
**7,452**



Fair Trading Act  
**6,770**



Credit Contracts and Consumer Finance Act  
**318**



Commerce Act  
**364**

## Year on year



## Consumer Credit

### Conduct most complained about

**Debt collection** 125

Debt collection agents making misrepresentations about the terms and conditions of collection constitute the majority of complaints. These complaints are normally considered under the Fair Trading Act

**Responsible lending** 84

Lenders potentially not meeting their obligations to the borrower under the Responsible Lending Principles

**Disclosure** 65

Lenders potentially failing to properly disclose the terms and conditions of borrowing to the borrower

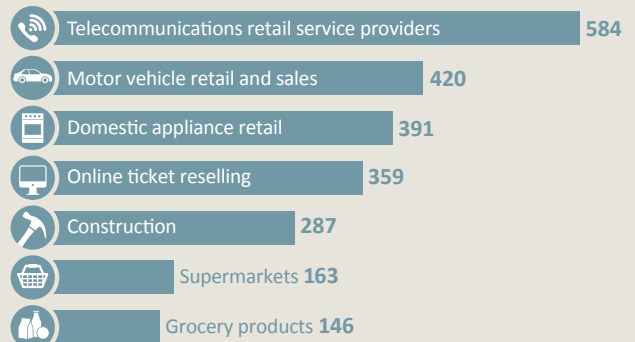
**Fees** 54

Lenders potentially charging unreasonable credit or default fees

Number of complaints

## Fair Trading

### Most complained about industries



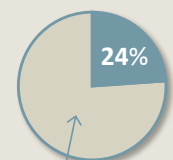
Number of complaints

### Product safety



Number of complaints

### Complaints about online retail



Other sales channels such as in-store, telephone and print

## Competitive Markets

### Sectors generating most complaints



Number of complaints

**3** Leniency applications (covering domestic and international conduct)

**9** Merger clearance and authorisation applications

**6** Non-notified acquisition investigations undertaken

Source: [www.comcom.govt.nz/business/consumer-issues-report](http://www.comcom.govt.nz/business/consumer-issues-report)

# Consumer issues

- 1 Our vision is that New Zealanders are better off because markets work well and consumers and businesses are confident market participants. All New Zealanders participate in markets as consumers, while some also participate as business owners, employees or regulated businesses. They all benefit from commerce, and are better off when markets work well and they are able to participate with confidence.
- 2 The Commerce Commission Vision and Strategy for 2017 to 2022 states that we will “seize opportunities to have the greatest impact”.<sup>1</sup> The strategy is focused on ensuring we identify the areas that most need our attention and make the most of the opportunities we have to address them. This involves being smart with our resources and knowing the right times, places and ways to act. Understanding the consumer environment is an important step in identifying those opportunities. The strategy states that we will increase this understanding by:
  - 2.1 being attuned to the environment we live in
  - 2.2 being open and receptive to information provided by consumers and businesses about the issues affecting them
  - 2.3 being attuned to the needs of, and trade-offs made by, consumers
  - 2.4 partnering with other government agencies and businesses and consumer stakeholders to gain market insight and identify areas where we can have the greatest impact
  - 2.5 looking for patterns of harm.
- 3 The Consumer Issues report is one of the initiatives the Commerce Commission undertakes to improve our understanding of the issues of concern to New Zealand consumers. We are pleased to share our findings publicly.



1. The Commerce Commission Vision and Strategy 2017-2022 is available at: <https://comcom.govt.nz/about-us/our-vision-and-strategy>

## Limitations on complaints information

- 4 The Commerce Commission receives enquiries from the public about matters related to our role in enforcing competition and consumer laws. As a subset of enquiries, the Commerce Commission also receives complaints about individuals or businesses that may not be acting in accordance with these laws. We have analysed those complaints for the purposes of this report.
- 5 Where this assessment identifies a particular type of complaint, readers should note the following caveats:
  - 5.1 The complaints data on its own does not itself indicate that any law has been breached. Rather, complaints relate to alleged conduct by the trader that we assess against the legislation we enforce. The fact that a complaint has been received does not necessarily mean that a trader has done anything wrong or any harm has been caused to any consumer or competitor
  - 5.2 The complaints data only reflects what consumers have chosen to report to the Commerce Commission or to other organisations that have in turn provided information to the Commerce Commission. Some complaints on the same matter are likely to have reached other complaint bodies instead of the Commerce Commission
  - 5.3 Larger traders are likely to generate more complaints as a function of their scale; we have not adjusted for this
  - 5.4 Complaint volumes 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.
- 6 The data is, however, indicative of a level of public concern about a matter, and we use it for that purpose.



## Key emerging themes in complaints

- 7 In this section we present a high-level overview of key emerging themes seen in complaints received by the Commerce Commission in the year to 30 June 2018. The themes raised in this section provide context for our more specific identification of the issues that consumers complain about to the Commerce Commission. In the sections that follow, we describe those issues in more detail and group them by industry as well as by the type of conduct where relevant. This means that we may report on the same complaint information in different sections of the report.

### Consumers' experience buying goods and services

#### Purchasing online is both beneficial and risky for consumers

- 8 New Zealand consumers' online spend continues to grow in double-digit percentages year by year.<sup>2</sup> In the 2017 calendar year New Zealanders spent approximately \$4 billion shopping in both domestic and international online stores.<sup>3</sup>
- 9 Technological change has transformed the way we learn about, consider and decide to buy goods and services. Shopping from mobile devices, buying goods from traders based overseas, and considering the online reviews posted by other consumers before making a purchase decision have all become normal parts of the consumer experience.
- 10 When shopping online works well, consumers can benefit from increased choice, competitive prices, secure and efficient payment systems and prompt delivery services. Consumers should be able to trust the information that is presented to them online. This includes the representations online traders make about the products or services on offer, and the reviews of fellow online shoppers.
- 11 Twenty-four percent of the Fair Trading Act (FT Act) complaints the Commerce Commission received in the year to 30 June 2018 were about purchases considered or made online.
- 12 Complaints show that some consumers have trusted the legitimacy of an online trader and then felt let down. This includes consumers complaining that they have not received products at all, along with other issues such as allegations of counterfeit and poor quality goods, delivery delays and purchases costing the consumer more than expected. These are similar to the types of complaints the Commerce Commission received in 2016/17. A common theme in complaints we received involves consumers being unable to make contact with overseas-based traders to resolve concerns about product delivery or quality. We also hear from consumers who thought they were buying from a New Zealand based trader and were surprised to discover that it was based overseas.

#### Consumers are faced with increasingly sophisticated marketing techniques

- 13 Consumers now have the ability to purchase 24 hours a day, 365 days a year, with purchases made on smartphones and tablets increasing year on year. Through targeted advertising and price discrimination online, traders are more able to appeal to the wants and needs of the individual than ever before.

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2. The Bank of New Zealand Online Retail Sales Report shows that New Zealanders' total online spend grew by 10% in May 2018 compared with May 2017. The report is available at: <https://www.bnz.co.nz/assets/business-banking-help-support/online-retail-sales-index/pdfs/NZ-Online-Retail-Sales-in-May-2018.pdf?v=1>

3. IBISWorld Online Shopping Report; the report summary is available at: <https://www.ibisworld.com.au/industry-trends/nz-market-research-reports/thematic-reports/online-shopping.html>

- 14 Some traders, especially those selling online, have developed marketing techniques that some consumers tell us have caused them to make hurried, spontaneous purchases. For example, an accommodation site may state that only one discounted room remains available, introduce a price-hold for only a few minutes or represent constant purchases by other consumers. Consumers report feeling pressured by these tools into making a quick purchase before they have completed the due diligence they might otherwise have carried out. Consumers describe finding it difficult to verify the accuracy of these representations. These techniques are also used on some travel sites and ticket reselling sites.
- 15 Complaint narratives about in-store purchases suggest that consumers find the complexity of some technologies (such as smartphones) and/or contract offers (such as smartphone plans) makes it difficult for them to decide on the goods and services that best meet their needs. This also makes it more difficult for consumers to make confident choices when they are faced with 'upselling' by sales representatives.

### **Traders do not always fulfil their guarantee and warranty obligations**

- 16 The FT Act prohibits businesses from misrepresenting the nature of the protections available to consumers under the Consumer Guarantees Act (CGA). Where a product or service displays a minor or major fault, the trader must properly consider the fault and is obliged to provide satisfactory redress under the CGA and/or any additional warranty or guarantee in appropriate cases.
- 17 Consumers complain, especially in the motor vehicle retail and domestic appliance retail industries, that traders are not always accurately representing their rights to refunds or other remedies. We continue to receive complaints that traders are refusing to provide refunds or are misrepresenting how long the consumer has to report problems with the product in order to access a remedy under the CGA.

## **Consumers' experience of the consumer credit environment**

### **Responsible lending issues**

- 18 The Credit Contracts and Consumer Finance Act (CCCF Act) requires lenders to comply with the Responsible Lending Principles set out in the CCCF Act. These principles (and the Code guiding lenders that accompanies it) apply to all consumer credit contracts entered into from 6 June 2015. Among other things, lenders must make reasonable enquiries so they are satisfied that lending is affordable and meets the needs of the borrower. This means that lenders must obtain information about the financial situation and needs of borrowers before they enter into a consumer credit contract. Irresponsible lending can cause significant consumer detriment.
- 19 Our intelligence continues to suggest that some lenders are failing to comply with the Responsible Lending Principles. For example, consumer advisors and financial mentors tell us that they consider that some lenders, including finance companies, mobile traders and lenders offering high-cost short-term loans, are not lending responsibly. Many complaints received by the Commerce Commission also relate to whether the lender undertook reasonable enquiries about borrowers' circumstances and/or specific needs.
- 20 Consumer complaint narratives also allege that lenders using text and/or online forms for loan applications do not always reassess the circumstances of the borrower for repeat borrowing and 'top-ups'. This is consistent with feedback from financial mentors. We are told that some online lenders proactively contact borrowers via text and email to extend existing loans or suggest that they enter into new loans.

## Credit and other fees

- 21 By law, a credit fee must relate to a cost incurred by the lender that is closely connected to the transaction for which the fee is charged, and a lender cannot profit from fees charged to borrowers. However, there are no limitations on the interest a lender can charge provided that the interest is disclosed to the borrower and is not set at an oppressively high level. When engaging unassociated third parties, lenders are also not permitted to add a margin on to fees for the services provided by those third parties.
- 22 Consumers complain that they feel that some fees set by lenders, such as application fees or automatic payment failure fees, appear unreasonable. We continue to receive complaints about the various fees set by lenders for motor vehicle financing.
- 23 In a recent review (Lender Website Review) of a group of non-bank consumer lenders operating online in New Zealand,<sup>4</sup> we found more than 500 names used for fees ranging from \$5 to \$5,000. The review provided an insight into the information being provided to consumers and the difficulties consumers may face in trying to compare lenders and make informed borrowing decisions. We receive the most complaints about the various fees set by finance companies, a subset of non-bank consumer lenders.
- 24 The CCCF Act requires lenders to provide clear and correct disclosure of the terms and conditions of borrowing, including information about fees and interest. We continue to receive complaints from consumers that lenders are not sufficiently disclosing the terms and conditions of borrowing before consumers sign loan documents. The majority of these complaints concern finance companies.
- 25 The CCCF Act also requires that any lender operating a website must make their disclosure of the terms and conditions of borrowing accurate, concise and accessible. Our Lender Website Review<sup>5</sup> identified 46 lenders who may have failed to meet one or more of their obligations on their websites to:
  - 25.1 clearly and prominently display the costs of borrowing (including interest rates)
  - 25.2 clearly and prominently display standard form contract terms
  - 25.3 accurately represent borrowers' cancellation rights.
- 26 As part of the Lender Website Review we also recorded the fees and interest rates disclosed by lenders on their websites and aggregated these to provide an overview of the fees and interest rates charged by lenders in New Zealand. We found a wide range of stated interest rates for lending, with five lenders displaying a maximum interest rate above 500% per annum.

## Dynamic technology markets and competition

- 27 We have seen an increase in mergers involving digital platforms or markets that are experiencing technological change, a trend which has also been observed overseas.
- 28 The Commerce Commission has committed in its priorities to understanding these markets and the risks and opportunities they offer for competition and consumers.

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4. Commerce Commission Lender Website Review 2017/18, available at: <https://comcom.govt.nz/business/consumer-reports/lender-website-review>

5. As footnote 4.



## Section One – Consumers

- 29 This section provides an overview of issues raised in complaints made to the Commerce Commission related to the FT Act.

### Industries that feature in our complaints

- 30 We received 6,770 complaints relating to the FT Act in the 2017/18 financial year. The industries that generated the most FT Act complaints were:

30.1 telecommunications retail service providers (584 complaints; 9% of FT Act complaints)

30.2 motor vehicle retail (420 complaints; 6%)

30.3 domestic appliance retail (391 complaints; 6%)

30.4 online ticket reselling (359 complaints; 5%)

30.5 construction (287 complaints; 4%)

30.6 supermarkets (163 complaints; 2%)

30.7 grocery (146 complaints; 2%).<sup>6</sup>

### Telecommunications retail service providers (TRSPs)

2017/18 TRSP complaints

584 (9%)

- 31 TRSPs generated 584 complaints in 2017/18. This represents a decrease from the 603 complaints received about TRSPs in the year ended 30 June 2017.<sup>7</sup> The industry accounted for 9% of all FT Act complaints in the 2017/18 year, the same as in 2016/17. TRSPs continue to generate a higher volume of complaints under the FT Act than other industries, a trend observed since the end of the 2014 calendar year.<sup>8</sup>
- 32 Consistent with this, a recent survey of 28 countries found that in 2017 TRSPs were among the top three most complained about industries.<sup>9</sup> Consumers in overseas countries complained about issues like accurate billing, closely resembling the complaints reported by New Zealand consumers.
- 33 There are many providers of telecommunication products and services, all competing for consumers' business with a range of offers and contracts of varying lengths. Consumers report that it can be a challenge to understand and compare the range and complexity of these offers in terms of price, quality (for instance, broadband speed) and what is included in, or excluded from, a contract.
- 34 In addition, a key feature in this industry is that many providers create 'bundles' of products and services, which consumers say can be difficult to compare. These bundles may combine broadband with a home phone and/or mobile; telecommunications products with non-telecommunications products such as electricity; or broadband with power or with music or video streaming subscription services.

6. Grocery complaints are about the representations of products by manufacturers and suppliers; supermarket complaints are specific to representations made by supermarkets.

7. As noted in the 2016/17 Consumer Issues report, available at: <https://comcom.govt.nz/business/consumer-reports/consumer-issues-report>

8. In the 2013 calendar year, the Commerce Commission received more complaints about the domestic appliance retail industry than about telecommunications retail service providers.

9. As noted in the 2018 ICPEN Combined Annual Intelligence Survey, produced by the International Consumer Protection and Enforcement Network. Please note, this report is not publicly accessible.

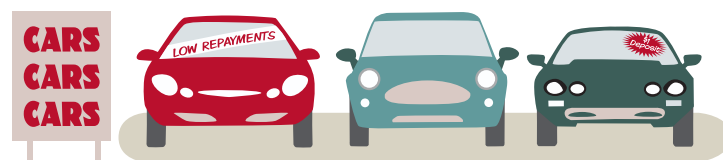
- 35 Consumers tell us that they consider representations about price in some TRSP advertising are misleading. Some of these complaints relate to TRSPs offering split price deals where the price presented does not apply to the full length of the contract. Other complaints concern TRSPs making potentially misleading comparisons with competitors' offers in advertising.
- 36 Many consumers report feeling that the claims TRSPs make about the quality or features of their offers may not be easily substantiated. For instance, consumers have explained that they were not sure about a trader's offer of the 'best price' or 'best deal' in the market. Other complainants allege that a trader promised a speed and quality of broadband that the consumer did not believe they received.<sup>10</sup>
- 37 Consumers complain about fees, such as fees for paper invoicing and the processing of credit card payments, added by some traders. They tell us that they believed the amount to be unfair and that they felt misled by how the fees were represented.
- 38 Termination fees on fixed-period contracts continue to generate complaints to the Commerce Commission. Consumers complain that broadband retailers have attempted to charge contract termination fees in questionable circumstances, including after the retailer has not been able to connect the service.
- 39 Some consumers allege they have been billed incorrectly by their TRSP. Some affected consumers have had difficulties resolving this issue conclusively with the trader. Consumers also allege that they have been billed repeatedly for services they do not believe they purchased.

## Motor vehicle retail

2017/18 motor vehicle retail complaints

420 (6%)

- 40 In 2017/18 the motor vehicle retail industry generated 420 complaints to the Commerce Commission, an increase of almost 17% over the 2016/17 period.
- 41 As noted in previous Consumer Issues reports, complaints about the motor vehicle retail industry remain spread across a wide range of traders. In the year ended June 2018, 262 motor vehicle traders<sup>11</sup> generated one or more complaints to the Commerce Commission.
- 42 The average age of a light passenger car in New Zealand is 14 years,<sup>12</sup> significantly higher than that of Australia (10 years), the United States (11 years) and Canada (9 years). On a per capita basis, New Zealanders own more vehicles than any country apart from the United States.<sup>13</sup> Approximately 80% of complaints we receive about motor vehicle retail are about the sale and purchase of second-hand vehicles, with the remainder relating to new vehicle sales.



10. The Commerce Commission is presently working with internet performance measurement company SamKnows to monitor the broadband services of 6,000 New Zealand consumers; measurements of broadband speed and service quality will be an important part of this initiative.

11. This includes sellers using the Trade Me platform.

12. New Zealand's Vehicle Fleet, available at: <https://www.nzta.govt.nz/roads-and-rail/highways-information-portal/technical-disciplines/air-quality-climate/vehicles/new-zealands-vehicle-fleet/>

13. Ministry of Transport Vehicle Fleet Statistics, available at: <https://www.transport.govt.nz/resources/vehicle-fleet-statistics/>

## Motor vehicle dealer fined for misrepresenting consumers' rights and failing to provide access to Consumer Information Notices

In October 2018, 1 Dollar Reserve Cars Limited and its owner were fined a combined \$12,000 for misrepresenting consumers' rights under the CGA and failing to display or provide access to Consumer Information Notices (CINs) for 94 vehicles listed on Trade Me. Trade Me listings for three complete vehicles sold 'for parts' included the wording "As this is an auction for a complete

package of second hand parts the Consumer Guarantee's [sic] Act does NOT apply."

Following the court's decision, the Commission noted that "the basic protections offered by the CGA applied automatically to the motor vehicles on offer and this conduct was an attempt to deny consumers their basic protections."

- 43 Consumers allege that car dealers have provided misleading information about the cars they are selling. This issue was mentioned in 242 complaints made to the Commerce Commission in 2017/18.<sup>14</sup> Allegations include that:
- 43.1 traders neglected to mention that major mechanical work was required on a vehicle, or denied work was required when the consumer raised a problem with the vehicle
  - 43.2 a trader stated that a specific part had been repaired or replaced when it had not.
- 44 The CGA applies to both new and second-hand goods that consumers purchase from traders (but not to purchases from private sellers). Under the CGA, consumers are protected by guarantees including that the vehicle is of acceptable quality, taking into account its nature, type and price, and also that the vehicle matches its description.
- 45 Notwithstanding these protections, complainants report that some traders are misleading potential vehicle buyers about their CGA rights. For example, consumers tell us about motor vehicle dealers advertising roadworthy cars for sale 'as is where is', as an 'end of life' vehicle or similar. A vehicle can be sold with work needed or defects, as long as the trader describes the condition of the vehicle accurately. Statements such as 'as is where is' and 'end of life' can misrepresent the CGA protections applying to the vehicle, by suggesting that the CGA does not apply at all and that the buyer has no recourse against the trader for undisclosed problems with the vehicle.
- 46 Many consumers also report that they have experienced a problem with a car they purchased. They allege that when they tried to claim a remedy from the seller, they were given misleading information about their right to a possible remedy under the CGA.
- 47 Misrepresentation of price is a prevalent theme in complaints made about new car sales. Consumers allege that:
- 47.1 traders have used misleading recommended retail prices to overstate the associated discount
  - 47.2 they have arrived at dealerships to find that prices were higher than what was displayed online
  - 47.3 traders have advertised a price '+ on road costs', which makes it difficult to work out the total price of the car.
- 48 Misrepresentation of the nature of goods on offer is another theme that is prevalent in complaints made about new car sales, although the nature of the information allegedly misrepresented differs from similar allegations made relating to used motor vehicles. Consumers allege that traders have:
- 48.1 overstated the characteristics and features of new vehicles, including optional accessories
  - 48.2 passed off last year's model as the latest available.

14. Complaints were allocated to more than one issue where applicable.

## Domestic appliance retail

### 2017/18 Domestic appliance retail complaints

391 (6%)

- 49 The number of complaints about domestic appliance retailers has decreased slightly in the 2017/18 financial year compared with the previous period (403 complaints), and is lower still than the 2014 figure of 457 complaints.
- 50 Consumers complain that they:
  - 50.1 felt misled about price, for instance, when an item had been advertised as being on sale
  - 50.2 felt they were enticed into the store, for instance, through price or some other offer, but once in the store they were unable to obtain the item or offer
  - 50.3 believed some retail staff have misrepresented the provisions of the CGA during sales conversations
  - 50.4 have had difficulty seeking redress from the trader for potentially faulty products.

## Online ticket reselling

### 2017/18 Online ticket reselling complaints

359 (5%)

- 51 The section 'Buying online' later in this report notes that the Commerce Commission has received a large number of complaints from consumers who had bought tickets to events from an online reseller. In the 2017/18 financial year to 30 June 2018, complaints about online ticket resellers totalled 359. This is a 406% increase on the number of complaints received about online ticket reselling in the previous period. A single trader based in Switzerland, Viagogo AG, generated 94% of these complaints. Further commentary on the consumer issues identified in the online ticket reselling industry, as well as issues relating to other purchases made exclusively online, can be found at paragraphs 73 to 83.

## Construction

### 2017/18 Construction complaints

287 (4%)

- 52 In the 2017/18 financial year we received 287 complaints related to the construction industry, including complaints about construction materials. This is higher than the number of construction complaints received in the previous financial year.
- 53 Construction materials and the testing and certification of building materials (such as steel mesh) were prominent themes in complaints in the year to 30 June 2018.

### Commission addresses misleading representations about steel mesh

The Commerce Commission has brought a series of prosecutions alleging that sellers have made false and misleading representations about earthquake-grade steel mesh. Five sellers have been accused of misrepresenting that mesh was "500E" earthquake grade when,

due to deficiencies in production and testing of the mesh, it was not. We have obtained convictions in three cases, with fines against Brilliance Steel (\$540,000), Timber King (over \$400,000) and Steel & Tube (\$1.8m, under appeal). The case against Euro Steel is ongoing.

- 54 Seventy-seven construction complaints were specifically about the services of builders. In addition, concerns about the design, development and construction of new builds generated 35 complaints in 2017/18. Themes observed in these complaints include consumers alleging that:
- 54.1 building services were not completed to the quality expected or in the timeframe agreed
  - 54.2 they had been misled by tradespeople about the final price of their service
  - 54.3 warranties and guarantees, including building quality insurances, had not been met as expected
  - 54.4 tradespeople did not have the trade association membership and/or qualifications represented.
- 55 Ten of the remaining complaints were about construction products that consumers believed may not meet treatment, safety and/or fire safety specifications as advertised.

## Supermarkets

2017/18 Supermarket complaints

163 (2%)

- 56 New Zealand is the most 'discount strategy' heavy nation among comparable economies when it comes to grocery items.<sup>15</sup> Approximately 60% of consumer spending on grocery items purchased in New Zealand supermarkets is reportedly on items priced on special.<sup>16</sup>
- 57 Consumer complaints about supermarkets commonly allege misleading pricing practices. The narratives in these complaints relate primarily to:
- 57.1 advertised special prices on products being incorrectly priced in-store
  - 57.2 pricing system errors, including where prices charged at the checkout differed from prices displayed on the shelves.

## Grocery

2017/18 Grocery complaints

146 (2%)

- 58 FT Act complaints about representations of grocery items (on the manufacturers' packaging or in the manufacturers' advertising) are varied, and include many products, manufacturers and traders. Complaint narratives indicate that many consumers find it difficult to judge the accuracy of the claims made on some products, including health and nutritional supplements.
- 59 Consistent with the themes observed in the 2016/17 Consumer Issues report, consumers complained that:
- 59.1 some food and toiletry product labelling could be misleading (for example, eco-friendly labelling or purported health benefits)
  - 59.2 they felt misled by the representation of some products' country of origin.

15. Nielsen, 16 May 2018, The \$470M Opportunity: Changing the Game with Price and Promotions, available at: <https://www.nielsen.com/nz/en/insights/news/2018/the-470m-opportunity-changing-the-game-with-price-and-promotions.html>

16. Nielsen, 16 May 2018, The \$470M Opportunity: Changing the Game with Price and Promotions, available at: <https://www.nielsen.com/nz/en/insights/news/2018/the-470m-opportunity-changing-the-game-with-price-and-promotions.html>

## Complained about conduct

### The misrepresentation of rights and obligations arising under the Consumer Guarantees Act

- 60 The 2016 National Consumer Survey undertaken by the Ministry of Business, Innovation and Employment (MBIE) states that most consumers understand that the CGA provides some protection for them when goods or services are faulty. However, the survey results also show many consumers lack knowledge of the full extent of their rights and how to exercise them.<sup>17</sup>
- 61 Consumers complain to us when something has gone wrong with a product or service and they feel they have not been able to get sufficient redress.
- 62 In the year to 30 June 2018, complaints alleging that some traders may have misrepresented consumer rights under the CGA were more numerous in the motor vehicle and domestic appliance retail industries than other industries. The nature of complaints related to motor vehicles is described in more detail earlier in this report.

#### PB Tech fined for non-compliant extended warranties

PB Tech sold over 4,000 of its 'PB Care' extended warranties between 11 May and 30 November 2017. The company sold these products without providing consumers with the required

information to enable them to make an informed choice about the value provided by the extended warranty and whether any additional protections were worth the cost.

### Misleading representations about price

- 63 Consistent with our 2016/17 report, we continue to receive complaints about traders' pricing practices. For example, complainants allege that:
  - 63.1 they have expected to pay a certain price but at the end of the buying process fees and charges were added on that were unexpected or absent from the traders' advertising
  - 63.2 they have been enticed into a store by a sale only to find that just a single item was available at the maximum discount advertised. For example, a trader offering 'up to 70% off' had just one product with a 70% discount
  - 63.3 traders have exaggerated the discount on offer with the use of a misleading or inaccurate 'recommended retail price'.
- 64 We receive complaints about this conduct in a variety of industries including:
  - 64.1 telecommunications retail service providers: consumers complain that they have incurred unexpected mandatory charges, that they have been charged for a service that they thought had been represented as free, and that the monthly charge on a fixed term contract has been changed
  - 64.2 supermarkets: consumers complain that they have not been charged the correct price at the checkout

17. Ministry of Business, Innovation and Employment, National Consumer Survey 2016, available at: <https://www.consumerprotection.govt.nz/news-and-media/national-consumer-survey-2016/>

- 64.3 domestic appliance retailers: consumers complain that they feel misled by the use of a recommended retail price, for example, where a trader advertised a discount from a recommended retail price, and the recommended retail price was never in fact available at any store. Consumers feel that this could overstate the savings available to the consumer. There are also some complaints that traders have told consumers that delivery would be free but they have been charged.

## The misrepresentation of goods and services to consumers

- 65 Complainants allege that traders have misrepresented the nature of the goods and services that they sell.
- 66 We receive the most complaints about the motor vehicle retail industry regarding this issue. Consumers allege that motor vehicle traders have misrepresented the characteristics of the cars offered for sale.
- 67 Complaints about this type of conduct also frequently relate to the grocery industry. Consumers allege that some traders have misused terms such as 'fresh', 'organic', or 'free range'. Consumers also feel that some traders have inaccurately used phrases such as 'Made in New Zealand' or have otherwise misrepresented products' country of origin, for example, by using prominent pictures or other imagery that give the impression products were made in New Zealand.
- 68 Complaints regarding domestic appliance retailers include consumers feeling that traders have not clearly represented the price and/or nature of the products they sell. Some consumers also complain about traders overstating the features of certain products, for example, a phone's resistance to water damage.
- 69 Consumers often complain about receiving goods that have not matched the descriptions seen online. This is particularly prevalent on overseas websites that use a 'drop shipping' business model. These websites do not maintain their own inventories of goods but instead arrange for the manufacturer to deliver the goods direct to the consumer.

## Product safety

### 2017/18 Product safety complaints

91

- 70 In the 2017/18 financial year we received 91 complaints about product safety standards the Commerce Commission enforces, an increase of 34 complaints over 2016/17.<sup>18</sup>
- 71 The Commerce Commission is responsible for enforcing the product safety standards relating to six products and unsafe goods notices relating to seven products.<sup>19</sup> Of those 13 products, the three most complained about are:
- 71.1 children's toys (40)
  - 71.2 household cots (20)
  - 71.3 children's nightwear (6).<sup>20</sup>
- 72 The proportion of product safety complaints about products sold by private sellers on Trade Me, or a social media platform, decreased to 18% in the 2017/18 financial year, down from around 60% in 2015.

18. This number includes general product safety complaints under section 29 of the FT Act, and all product safety complaints about the 13 products the Commerce Commission has a specific responsibility over.

19. There are currently six product safety regulations. They cover children's toys for children up to 36 months; household cots; cigarette lighters; baby walkers; children's nightwear and limited daywear; and pedal bicycles. Additionally, there are currently seven unsafe goods notices in place. These relate to the supply of small high-powered magnets; chainsaws without a chain brake; multi-purpose ladders; lead in children's toys; certain hot water bottles; candle wicks containing lead; and pistol crossbows.

20. These themes of complaints mirror our findings for the 2016/17 financial year.

## Buying online

- 73 Purchases made online generated 24% of the FT Act complaints made to the Commerce Commission in the 12 months to 30 June 2018.<sup>21</sup> The majority of these complaints were about traders who trade exclusively online.

### Online retail (24% of FT Act complaints)

2017/18 Online retail complaints

1,640

- 74 As a nation we now spend an average of 18 hours online per week and shop online more regularly than the past.<sup>22</sup> The profile of our online purchasing has changed, with New Zealanders moving to purchasing a greater number of small value items per year as opposed to more expensive goods and services.<sup>23</sup>
- 75 The total value of goods purchased online by New Zealand consumers continues to increase.<sup>24</sup> Of the approximately \$4 billion spent by New Zealand consumers annually online, 45% is spent with traders based overseas.<sup>25</sup>
- 76 A recent survey of 28 countries found that the majority of emerging issues consumers experienced in the retail sector are related to goods and services purchased online.<sup>26</sup> Consumers in these countries reported pricing, quality and other issues with online retail, which aligns with the issues prominent in complaints received by the Commerce Commission.

### The Commerce Commission is to commence civil proceedings in the High Court against Viagogo

The Commerce Commission has alleged that Viagogo made false or misleading statements when stating that it was an 'official' seller (when it was not) and that specific tickets were limited (when they were not).

The Commerce Commission has also alleged that Viagogo made false or misleading statements when saying that consumers were 'guaranteed'

to receive valid tickets (when they were not) and when displaying a 'headline' price that was unobtainable because of the addition of GST and other fees throughout the purchasing process.

Court action against Viagogo is also underway in Switzerland, Germany, France, Spain, the UK and Australia.

21. Some of these complaints are considered further in this report under specific industries.

22. Nielsen, 8 June 2018, Screen Time Skyrocketing, available at: <http://www.nielsen.com/nz/en/insights/news/2018/screen-time-skyrocketing.html>

23. Nielsen, 2018, The Nielsen New Zealand Connected Consumers Report.

24. Bank of New Zealand Online Retail Sales May 2018, available at: <https://www.bnz.co.nz/assets/business-banking-help-support/online-retail-sales-index/pdfs/NZ-Online-Retail-Sales-in-May-2018.pdf?v=1>

25. Bank of New Zealand Online Retail Sales May 2018, available at: <https://www.bnz.co.nz/assets/business-banking-help-support/online-retail-sales-index/pdfs/NZ-Online-Retail-Sales-in-May-2018.pdf?v=1>

26. As noted in the 2018 ICPEP Combined Annual Intelligence Survey, produced by the International Consumer Protection and Enforcement Network.



- 77 New Zealand consumers report a range of issues with buying online, reflecting the large number of online traders and the different online sales platforms traders use.<sup>27</sup> The issues identified also reflect the range of goods and services on offer to New Zealand consumers. Some of the online issues reported by consumers are specific to purchasing online, for example, where the consumer considers a trader has not adequately displayed, or has misrepresented, the currency of purchase.
- 78 In the year to 30 June 2018, the Commerce Commission received 647 complaints about the pricing practices of traders online. Consumers allege that:
- 78.1 recommended retail prices for goods have been inflated and that this distorted the true value of any advertised discount on the product
  - 78.2 traders have not disclosed additional charges and fees (such as credit card charges or booking fees) until late in the purchase process, if at all
  - 78.3 the currency of trade was unclear
  - 78.4 they have been enticed onto the trader's site with misleading representations about sales and offers, for example, through social media advertising
  - 78.5 they have unwittingly signed up to an ongoing subscription with a trader, which has required them to make regular, ongoing payments.
- 79 The potential misrepresentation of goods is prevalent in complaints about online retail, as consumers are unable to verify the quality or nature of the product they are purchasing. Consumers allege that:
- 79.1 online traders have misrepresented goods online in both written descriptions and associated images
  - 79.2 traders have sent counterfeit goods.
- 80 Consumers tell us that they have felt pressured to purchase goods and services when shopping online. Some retail websites give the consumer a deadline to complete their transaction before the item they are interested in is released back to the market. Others are designed so that once a consumer has begun viewing items for sale, various messages appear to convey that time is of the essence, for instance:
- 80.1 'limited stock at this price'
  - 80.2 'other customers are viewing this item'
  - 80.3 '[name] from [place] just bought one of these'.
- 81 Consumers report that, as a result of such representations, they have made hasty purchase decisions that they regret. Some consumers have questioned whether the representations were true and noted that it would be difficult for them to assess their authenticity.
- 82 Traders are prohibited from offering goods or services for purchase that they cannot, or do not intend to, provide to the customer. The majority of complaints about payment made for goods that were not received relate to online traders.
- 83 Analysis of our complaints shows that many New Zealand consumers are unaware that a '.co.nz' domain does not necessarily mean that the business is based in New Zealand. It can be more difficult for consumers to obtain redress from online traders based overseas when things go wrong.

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27. Such as Trade Me, Facebook Marketplace or specific sales websites.

## Section Two – The consumer credit environment

- 84 This section provides an overview of issues raised in complaints made to the Commerce Commission related to the credit environment.

### Consumer credit issues

#### Irresponsible lending practices

##### 2017/18 Irresponsible lending complaints

84

- 85 The Responsible Lending Principles (and the Code guiding lenders on how to meet their responsibilities) apply to all consumer credit contracts entered into on or after 6 June 2015.<sup>28</sup> Complaints to us alleging that lenders have not complied with the Responsible Lending Principles outnumber complaints relating to any other section of the CCCF Act (84 complaints in 2017/18) and have increased from the 70 complaints received in 2016/17.
- 86 The Responsible Lending Principles place the onus on lenders to undertake reasonable enquiries so they are satisfied that:
- 86.1 a borrower is able to repay the loan without substantial hardship
  - 86.2 the loan is appropriate to the borrower's stated need and their circumstances.
- 87 We receive complaints about lenders from consumers who have taken out loans, from borrowers' family members or friends, and from financial mentors.<sup>29</sup>
- 88 Consumers complain that some lenders may not be adequately undertaking reasonable enquiries to meet the Responsible Lending Principles before offering credit. Financial mentors have told us that some lenders, including lenders offering loan products through text and/or online,<sup>30</sup> may not always re-evaluate the borrower's personal circumstances before lending again. They also allege that borrowers are being pursued, sometimes aggressively, to agree to more borrowing once loans are repaid.
- 89 We note a FinCap submission to MBIE on prospective CCCF Act reform alleging that high-cost short-term lenders sometimes offer borrowers more money than they had requested. It is also alleged that high-cost short-term lenders have not allowed realistic amounts for essential items when assessing borrowers' ability to repay the loan.<sup>31</sup>
- 90 We receive complaints from consumers and financial mentors alleging that some lenders may be aware that lending could cause the borrower significant financial hardship but that they proceed to lend despite this. Examples include borrowers taking out high-cost short-term loans so they can reinstate their power or other utilities. It is alleged that this could have an adverse impact on the borrower as they attempt to pay the loan; for example, it may reduce the amount available for other necessities such as food.

28. Further information is available at:

<http://www.comcom.govt.nz/consumer-credit/consumer-credit-fact-sheets-post/changes-to-the-ccfa/>

29. The term 'financial mentor' is now used by FinCap (formerly the National Building Financial Capability Charitable Trust) to describe a budgeting advisor and budgeting mentor.

30. The Commerce Commission has prepared guidance for lenders on 'Things to think about when lending online', available at: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0034/85957/Things-to-think-about-when-lending-online-June-2018.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0034/85957/Things-to-think-about-when-lending-online-June-2018.pdf)

31. See FinCap's submission on the Consumer Credit Regulation Review, available at: <https://www.mbie.govt.nz/info-services/consumer-protection/review-of-consumer-credit-law/submissions/submissions-folder/National-Building-Financial-Capability-Charitable-Trust.pdf>

- 91 Complainants also allege that lenders are offering pre-approved loans over text or email. Complainants have raised with us their concern that some of these loans target borrowers at a specific time of year when they need extra money, for example, at Christmas or for 'back to school' items.
- 92 We are also told that lenders are taking consumers' word on their income or expenses, without taking steps (as required) to meaningfully verify these amounts. We have been told of instances where expensive electronic goods have been sold on credit without the necessary credit checks.
- 93 We also receive complaints from concerned family members or friends that vulnerable beneficiaries, superannuitants or the disabled have been provided with loans. In some instances loans have been promoted to these consumers directly via a phone call or door to door.

## Unreasonable credit fees and default fees

### 2017/18 Credit fee complaints

54<sup>32</sup>

- 94 A consumer credit contract cannot provide for a credit fee or a default fee that is unreasonable. This means that a lender may not make a profit from fees; and they may not add a margin on to fees passed on from an unrelated third party.
- 95 The Commerce Commission has seen an increase in complaints from consumers alleging that fees are unreasonable, with fees charged by finance companies generating almost half of the 54 complaints. In 2016/17 we received 31 complaints about credit-related fees that consumers felt may be unreasonable, with fees related to lending for motor vehicles generating the most complaints.
- 96 In June 2018 we published the results of a review of 215 non-bank lenders' websites.<sup>33</sup> We found that the lenders reviewed displayed an average of six fees per lender, with lenders displaying many differently named fees.<sup>34</sup>
- 97 As part of the review we also recorded the fees and interest rates disclosed by lenders on their websites and aggregated these. The full report can be found on our website.<sup>35</sup>
- 98 Concerns relating to cancellation fees are a recurring theme in complaints passed on to the Commerce Commission by financial mentors.



32. This number is an aggregate of the nine separate sections of the CCCF Act concerning credit fees.

33. The Lender Website Review is available at: <https://comcom.govt.nz/business/consumer-reports/lender-website-review>

34. The CCCF Act does not prescribe how lenders should name fees and does not impose a limit on the number of fees that a lender may apply. These fees may cover loan establishment fees, default fees and general fees that relate broadly to the administration and maintenance of a loan.

35. <https://comcom.govt.nz/business/consumer-reports/lender-website-review>

## Disclosure

### 2017/18 Disclosure complaints

65

- 99 Lenders must provide certain documents and disclose rates and fees to borrowers. This includes initial disclosure before signing the loan contract and continuing disclosure during the loan term.
- 100 Of the 65 complaints, 44 allege that lenders did not provide sufficient initial disclosure to borrowers, with the number of these complaints increasing by 29% compared with 2016/17. Of these complaints, 12 related to finance companies, six to mobile traders and a further five complaints related to high-cost short-term lenders. No single trader generated more than four non-disclosure complaints.
- 101 Where a lender has a website, they must display 'prominently and clearly' a copy of their standard form contract terms. Credit fees, default fees and annualised interest rates must also be clearly displayed. In our review of 215 lenders' websites, we found that 46 potentially did not comply with one or both of these obligations.

## Debt collection practices

### 2017/18 Debt collection complaints

125

- 102 We have observed an increase in complaints related to the collection of debt during 2017/18.
- 103 Complaint narratives relating to the FT Act include collectors potentially misrepresenting:
  - 103.1 their right to collect
  - 103.2 the debt amount
  - 103.3 the individual elements contributing to the total debt claimed.
- 104 Complaints related to the CCCF Act include added fees and a lack of disclosure.
- 105 Financial mentors continue to report allegations of inappropriate collection practices, such as placing pressure on a debtor's relatives or collecting without the required paperwork. Financial mentors have also told us that they believe some debt collection situations escalate in seriousness as a result of the low financial literacy of vulnerable debtors, who do not understand their rights and obligations under the law.
- 106 Financial mentors have told us that at times they find it difficult to obtain evidence of the affordability assessments carried out by the initial lender once the debt has been passed on to debt collectors.

### Fine for lender misrepresenting rights to repossession

In May 2018, finance company Budget Loans was fined \$720,000 on 125 charges under the Fair Trading Act. Over six years from 2009 until 2014 the company misrepresented its right to repossess goods and recover interest and costs from borrowers. The company also misrepresented

: amounts borrowers were required to pay under attachment orders and the benefits of refinancing existing loans. Budget Loans was ordered to pay a total of \$53,000 in emotional harm reparations to nine victims, and approximately \$38,000 in refunds and credits to borrowers.

## Section Three – Competitive markets

- 107 This section analyses Commerce Act complaints as well as identifying patterns and trends observed in merger clearances and authorisations, and investigations and compliance.
- 108 In the 2017/18 financial year, the themes which generated the most complaints to the Commerce Commission under the Commerce Act were:
- 108.1 the perceived taking advantage of market power (section 36), with almost 40% of complaints (144 complaints)
  - 108.2 contracts, agreements and understandings that may substantially lessen competition (section 27), with 27% of complaints (98 complaints)
  - 108.3 potential fixing of prices of goods and services (section 30), with 8% of complaints (29 complaints).

### Sectors generating Commerce Act complaints to the Commerce Commission

- 109 The following sectors drew the most complaints in 2017/18:
- 109.1 online auctions (38 complaints)<sup>36</sup>
  - 109.2 retail (30 complaints)
  - 109.3 insurance (27 complaints)
  - 109.4 utilities and infrastructure (25 complaints).
- 110 Consistent with the themes observed in our Consumer Issues Report 2016/17, exclusive supply contracts continue to be perceived by the general public as anti-competitive and therefore generate a high number of complaints to the Commerce Commission. However, whether this kind of conduct breaches the Commerce Act depends on the facts of each situation and, in particular, the overall impact the restriction of competition has in the relevant market.



36. Thirty-four of these complaints all related to a single perceived issue concerning the exercise of market dominance to encourage sellers to offer free delivery on an online platform. This issue was not considered a breach of the Commerce Act.

# Mergers (including non-notified mergers)

2017/18 Merger clearance and authorisation applications	9 <sup>37</sup>
Non-notified acquisition investigations undertaken in 2017/18	6

**Table 1:** Merger clearance and authorisation applications 2016/17 and 2017/18.<sup>38</sup>

2016/17	2017/18
8	9

- 111 The number of applications made to us by traders seeking clearance to merge was relatively static in the 2017/18 financial year compared with the previous year to 30 June 2017 (eight applications).<sup>39</sup> The complexity of applications has continued to increase, as has the number of investigations we have made into mergers undertaken without the merging parties notifying us or applying for clearance.<sup>40</sup>
- 112 During the financial year to 30 June 2018, we undertook six investigations into non-notified acquisitions.<sup>41</sup>
- 113 Under section 58 of the Commerce Act, traders and entities can apply for authorisation to undertake an anti-competitive practice in the public interest (as opposed to an actual merger of two entities). We received an application for such an authorisation from the Waikato-Bay of Plenty Chicken Growers Association on behalf of its members on 20 September 2017. The Association was seeking permission to collectively bargain with Inghams Enterprises (NZ) Pty Limited. Authorisation to collectively negotiate the terms and conditions of supply was granted on 21 December 2017.<sup>42</sup>

## Mergers involving dynamic technology markets

- 114 We have seen an increased focus on mergers involving digital platforms or markets that are experiencing technological change, a trend which has also been observed overseas.
- 115 We consider that markets involving dynamic technology will continue to feature in our mergers work. The Commerce Commission has committed in its priorities to understanding these markets and the risks and opportunities they offer for competition and consumers.

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37. This figure includes the registration of merger clearance, merger authorisation and authorisation to undertake an anti-competitive practice.

38. These figures include the registration of merger clearance, merger authorisation and authorisation to undertake an anti-competitive practice.

39. Seven merger decisions were made in the 2016/17 financial year.

40. These investigations relate to section 47 of the Commerce Act, which prohibits the acquisition of business assets or shares where that acquisition is likely to lessen competition.

41. Further details are available on the Commerce Commission’s public case register at: <https://comcom.govt.nz/case-register>

42. The decision is available at: <https://comcom.govt.nz/case-register/case-register-entries/waikato-bay-of-plenty-chicken-growers-association-incorporated-on-behalf-of-its-members/media-releases/commission-grants-collective-bargaining-authorisation-for-waikato-bay-of-plenty-chicken-growers-association>

## The proposed Trade Me/Limelight (Motorcentral) merger and dynamic technology markets

This merger concerned markets for online motor vehicle classified advertising and dealer management system (DMS) software. DMS software is the main tool that dealers use to upload and manage motor vehicle listings on online advertising classified platforms. We declined this application because Trade Me

is the most popular advertising platform for motor vehicle dealers and we were concerned that the merger could result in Trade Me creating barriers for dealers who do not use Motorcentral's DMS. Also, we were concerned that Motorcentral could create barriers for dealers who want to list on rival advertising sites.

### Complaints about alleged anti-competitive conduct by ports

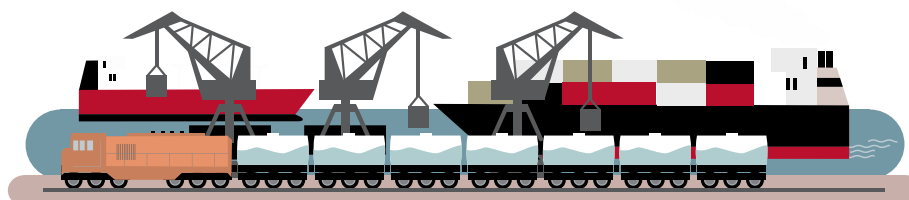
- 116 The Commerce Commission received seven Commerce Act complaints about alleged anti-competitive conduct by ports in New Zealand in the 2017/18 financial year. A number of these complaints raised potential issues about various ports taking advantage of their market power in markets for the supply of services.

### Commerce Act investigations (including domestic and international requests for leniency)

Table 2: Leniency applications 2016, 2017 and 2018 to 30 June 2018.<sup>43</sup>

2016	2017	2018
4	4	3

- 117 As can be seen in the table above, since 2016 the Commerce Commission has received a relatively consistent number of applications for leniency concerning potentially anti-competitive conduct such as bid rigging, price fixing and/or market sharing.
- 118 Requests for leniency are not the sole basis upon which the Commerce Commission initiates investigations into potentially anti-competitive conduct by individuals and traders. Investigations may be commenced on our own initiative, for example, as a result of our own surveillance of markets or through a complaint.



43. These figures include the registration of merger clearance, merger authorisation and authorisation to undertake an anti-competitive practice.

# Making a complaint to the Commerce Commission

- 119** The Commerce Commission is New Zealand's primary competition regulatory agency. We are responsible for enforcing, and promoting compliance with, a number of laws that promote competition and protect consumers in New Zealand, including the Commerce Act, the Fair Trading Act and the Credit Contracts and Consumer Finance Act. We act in the public good to stop and prevent misleading and anti-competitive conduct by businesses.
- 120** Complaints made to the Commerce Commission about businesses and people are an important component of the work we do to protect, empower and inform New Zealand consumers. To make a complaint about a business or person you can:
- 120.1** complete an online complaint form, available at:  
<https://comcom.govt.nz/make-a-complaint/complaint-form>
  - 120.2** email your complaint to [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)
  - 120.3** call the Commerce Commission toll-free within New Zealand on 0800 943 600. We provide multiple language options for callers whose language of choice may not be English. Language options include Māori, Samoan, Tongan, Korean, Cantonese, Mandarin and Spanish.
- 121** More information on making a complaint to the Commerce Commission, the work we do and the legislation we are responsible for enforcing, and promoting compliance with, is available on the New Zealand Commerce Commission website <https://comcom.govt.nz/>





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