

Hon Dr David Clark

MP for Dunedin

Minister of Commerce and Consumer Affairs
Minister for the Digital Economy and Communications
Minister for State Owned Enterprises
Minister of Statistics
Minister Responsible for the Earthquake Commission



Anna Rawlings
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Commerce Commission
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Dear Anna

RETAIL GROCERY SECTOR COMPETITION: MINISTERIAL EXPECTATIONS

The Government has now responded to the Commerce Commission's (the Commission's) recommendations in its market study report into competition in the retail grocery sector. The Government's response was announced publicly on Monday 30 May 2022.

The recommendations accepted by the Government include certain roles and expectations that relate to the Commission's mandate. I am writing to bring these expectations to you for your consideration.

Establishing a Grocery Sector Regulator and interim arrangements

As you will be aware, recommendation 13 of the final report recommended that a grocery sector regulator be established. The grocery sector regulator would provide general oversight of the retail grocery sector and monitoring and reporting – both publicly and to government – on its performance.

Cabinet has accepted this recommendation and intends to establish a grocery sector regulator. Officials are currently considering options for the institutional arrangements and design of this grocery sector regulator.

However, I am keen to ensure that we are ready to regulate the sector when the Grocery Industry Competition Bill – which will be introduced later this year – comes into force. This will ensure that these important roles and functions will be carried out even if further work is needed to establish the permanent grocery sector regulator.

As you will be aware, availability of affordable groceries is a significant concern for many New Zealanders. The average New Zealand household is spending more on food each year,

and the weekly food bill makes up a high proportion of weekly expenses. I ask that the Commission maintain a focus on this sector.

Cabinet has agreed that the Commission act as an interim grocery regulator while the design and establishment of the permanent grocery sector regulator function is completed. I expect the Commission immediately commence work to prepare for taking on these new functions.

While work is still underway to develop the roles, functions and powers of the regulator (and interim regulator) in legislation, I encourage the Commission to engage with the Ministry of Business, Innovation and Employment (MBIE) to understand the proposed roles and functions of the interim regulator role and actively consider how to implement these. I also encourage you to engage with MBIE on the funding implications of taking on the interim regulator role.

In the meantime, I request that the Commission have particular regard to using its existing functions and powers to take compliance and enforcement action on any matters outlined in the market study final report and prioritise bringing these matters to a close. This includes:

- Restrictive and exclusive covenants, and land banking
- Refusals to supply due to low retail pricing
- Pricing and promotional practices

Enforcement of prohibitions on covenants

On 19 May 2022, I introduced the Commerce (Grocery Sector Covenants) Amendment Bill to the House. The Bill is now before Select Committee. This Bill arises from the Commission's recommendation that covenants on land titles and leases be prohibited where they inhibit retail grocery store development and operation. Prohibiting these covenants is a first step in the package of reforms to improve competition in the retail grocery sector that the Government has accepted.

As this Bill introduces specific prohibitions on covenants under the Commerce Act 1986, these provisions will be enforced by the Commission. I ask that you prepare to enforce these prohibitions as part of the Commission's role in administering the Commerce Act 1986.

Links to the Commission's Annual Letter of Expectations

This letter supplements my annual letter of expectations, which presents my expectations and priorities for the Commerce and Consumer Affairs and Digital Economy and Communications portfolios, as well as other general expectations.

I thank you for your response of 6 May 2022 setting out how you propose to address those expectations. In many respects, the matters set out in this letter complement those expectations, and I do not see any conflict. If there are conflicts or concerns regarding the implementation and funding of any of these expectations, please inform me in line with the Government's 'no surprises' policy.

Response

I would appreciate your response to this letter by **8 June 2022** outlining how you propose to address the expectations above.

Yours sincerely



Hon Dr David Clark

Minister of Commerce and Consumer Affairs

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