



MP for Mana

Minister of Broadcasting, Communications and Digital Media

Minister of Civil Defence

Minister of Commerce and Consumer Affairs

Minister of Customs

Associate Minister of Immigration

28 FEB 2019

Dr Mark Berry
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Commerce Commission
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Dear Mark

ANNUAL LETTER OF EXPECTATIONS FOR 2019/20

The purpose of this letter is to inform you of the Government's priorities, to the extent they are relevant to the role of the Commerce Commission, and to set out expectations for the Commission's role in contributing to the achievement of those priorities.

I also set out my expectations for the Commission's strategic and operational accountability and performance (in my capacity as the Minister responsible for overseeing and managing the Crown's interests in, and relationship with, the Commission).

In March 2018 the Government agreed that its overarching aims are *building a productive, sustainable and inclusive economy, improving the wellbeing of New Zealanders and their families, and providing new leadership by government*. Within the overarching aim of *building a productive, sustainable and inclusive economy*, two priority outcomes sought are relevant to the Commission's role. They are:

- *Grow and share more fairly New Zealand's prosperity, and*
- *Support thriving and sustainable regions.*

Commerce and Consumer Affairs portfolio priorities and what this means for the Commission

As Minister of Commerce and Consumer Affairs, my objective is to improve the wellbeing of all New Zealanders by ensuring our competition, consumer and economic regulation policy settings and laws are robust and fit for purpose, and being effectively implemented and enforced. In this regard I am focusing my energy in areas that will have the biggest effect on everyday New Zealanders, and particularly committed to seeing that the more vulnerable members of our society are looked after.

There is significant work going on or planned in the Commerce and Consumer Affairs portfolio that will contribute to the priority outcome *Grow and share more fairly New Zealand's prosperity*. My expectation is that the Commission will contribute to this outcome by, in accordance with the Commission's strategic objectives, continuing to contribute to ensuring that markets are well-functioning and consumers and businesses are able to participate in markets confidently.

My specific expectations of the Commission in relation to the Commerce and Consumer Affairs portfolio are as follows:

Competition and consumer

- i. To promote understanding of competition, fair trading and consumer credit laws and the Commission's approach to its activities in these areas, by developing and implementing innovative advocacy and education initiatives and guidance materials for businesses and consumers. I would particularly like to see a strong presence by the Commission in communities supporting vulnerable consumers, in advance of enactment of the forthcoming consumer credit law reforms. I also encourage the Commission to educate businesses on its approach to enforcement of the Commerce (Criminalisation of Cartels) Amendment Act to minimise any adverse effects on legitimate business conduct.
- ii. To look for opportunities for ongoing improvement in the efficiency and effectiveness of the Commission's work and to demonstrate that the Commission is a learning organisation. In particular, I encourage the Commission to ensure that its investigations and determinations processes do not impose unnecessary costs on businesses and continue to deliver quality outcomes in a timely manner. In addition, I invite the Commission to evaluate its processes for the competition study into retail fuel markets and look for learnings for any future studies.
- iii. To maintain strong relationships with stakeholders across the competition, fair trading and consumer credit regimes, to enhance their confidence and trust in the Commission and its work. I expect the Commission to be open and transparent in dealing with businesses and consumers. I also encourage the Commission to continue engaging with agencies, lenders and consumer groups to develop a community of interest in credit markets.
- iv. To carry out the competition study into retail fuel markets in accordance with the terms of reference, within budget and timeframe, and having regard to the impact of the study on affected businesses and consumers.
- v. To contribute to policy discussions with the Ministry of Business, Innovation and Employment (MBIE) by providing expert assistance in its areas of expertise and practical guidance on the workability of proposed policy impacting the Commission's functions, powers and duties/jurisdiction, including in regards to the current reviews of the fair trading and consumer credit laws and section 36 of the *Commerce Act 1986*. I also expect the Commission to provide expert input to policy discussions led by other government agencies, as appropriate (for example, the Ministry of Transport's review of the *Civil Aviation Act 1990*, as it impacts on competition and the operations of the Commission).
- vi. To maintain effective relationships with overseas competition and consumer law regulators for the purpose of promoting the integrity of New Zealand's competition and consumer regimes.

Economic regulation (Part 4 of the Commerce Act)

- vii. To contribute to policy discussions with MBIE by providing expert assistance in its areas of expertise and practical guidance on the workability of proposed policy impacting the Commission's functions, powers and duties/jurisdiction, for example, with respect to monitoring emerging market trends, such as new technologies, in the regulated sectors to ensure that the Part 4 regime as designed and implemented remains fit for purpose.
- viii. To provide expert economic regulation input into policy discussions led by other government agencies (for example, the Department of Internal Affairs' Three Waters Review). If such need arises, I would discuss the form, nature and funding for any analysis required with the Commission.
- ix. To maintain strong and trusted relationships with stakeholders across the regulated sectors. This should include, in implementing Part 4, consulting with stakeholders and seeking out opportunities to enhance the confidence of regulated suppliers and investors by increasing predictability around the Commission's regulatory interventions, and therefore increasing business certainty with respect to the operation of the Part 4 regime. In addition, consumers' confidence in the efficacy of regulation can be enhanced by making available in an accessible form, and promoting, comprehensible information about the performance of regulated suppliers.
- x. To promote the effective management of, and investment in, regulated infrastructure assets, and thereby contribute to ensuring their resilience (including their resilience to significant natural disaster events).
- xi. To work constructively with other regulators where matters of common interest exist, particularly where there may be competing regulatory objectives, gaps or overlaps in regulatory mandate.

Broadcasting, Communications and Digital Media portfolio priorities and what this means for the Commission

The Government's priority outcomes *Grow and share more fairly New Zealand's prosperity* and *Support thriving and sustainable regions* are both relevant to my Broadcasting, Communications and Digital Media portfolio.

I am seeking to improve New Zealand's economic performance and the lives of all New Zealanders by providing high-quality communications infrastructure to both urban and rural regions, ensuring appropriate settings exist to incentivise investment in new technologies and give consumers confidence, and providing an appropriate telecommunications regulatory regime.

My expectation is that the Commission will continue to deliver on its regulatory responsibilities under the *Telecommunications Act 2001* by:

- i. Supporting the roll-out of Ultra-Fast Broadband services by working to implement the revised regulatory regime resulting from the Telecommunications (New Regulatory Framework) Amendment Bill.
- ii. Providing independent high-quality information, via the broadband speed testing system, on broadband performance across different providers, plans and technologies, to help consumers choose the best broadband for their household and also encourage telecommunications providers to compete on performance and not just price.

- iii. Developing user-friendly consumer-orientated reports and services that allow telecommunication end-users to make informed choices on retail service quality.

Agriculture portfolio priorities and what this means for the Commission

With the primary sector making up over 75 percent of New Zealand's merchandise sector, the primary sector is pivotal to the Government's priority outcomes *Grow and share more fairly New Zealand's prosperity* and *Support thriving and sustainable regions*. The Commission has an important part to play in the achievement of these outcomes through its role under the *Dairy Industry Restructuring Act 2001* (DIRA).

The Minister of Agriculture and I expect the Commission will continue promoting contestability of dairy markets in New Zealand by performing its enforcement and base milk price monitoring functions under DIRA.

We also expect the Commission, where required, will provide input to the review of DIRA – initiated in May 2018 and led by the Ministry of Primary Industries – on specific questions relevant to the Commission's jurisdiction.

Review of baseline funding

I am aware the higher expectations of the Commission in recent years within the existing baseline funding may be stretching the Commission's resources. Following your discussions with myself and MBIE last year, I expect the Commission to carry out a baseline funding review to assess whether the Commission is currently funded to perform and deliver at the level expected and also assess the wider impacts of cumulative incremental growth on the organisation.

General expectations and good governance

As part of your role in governing a high-performing Commission, I expect you to:

- maintain an effective board;
- ensure the Commission Board understands its role as governor of the Commission and primary monitor of the entity's performance;
- maintain effective relationships with my officials at MBIE; and
- operate a 'no surprises' policy.

Effective Board

Ensuring the Commission Board is, and remains, effective and high performing is essential. To assist with this, I expect the Board to periodically employ effective self-review and assessment processes.

In this regard, I was pleased to be informed that during 2017 the Board had undertaken a comprehensive self-assessment process in relation to its governance role, which was independently facilitated and supported by Boardworks International.

I understand that as a result of this self-assessment process, the Board has committed to making improvements in boardroom performance, including taking steps to spend more time on organisation-wide strategic dialogue and contextualising strategic risks and opportunities

that impact on the Commission. I expect that accountability, performance and strategic information from the Board's new cycle of strategic discussions and considerations will, where appropriate, feed through in the Commission's periodic reporting to MBIE (as the monitoring department) and myself (as the Minister responsible for the Commission).

Your input into succession planning for the Board is also sought. I expect you to provide MBIE with your view of the competency and experience mix you need to work well as a board, along with your thoughts on upcoming appointments and any candidate attributes to target.

Effective monitoring of Commission performance by the Board, and relationship with MBIE

In addition to setting and driving a strategy that delivers on the Government's priorities, the Board is the most important monitor of the Commission's performance. I expect the Board to provide me with high-quality information and analysis (including through reporting to MBIE and in meetings with me) on the Commission's ongoing performance against its strategic plan and performance expectations, and any implications for future performance, and risks and opportunities facing the Commission and how it is responding to them. As indicated above, I expect that the Board's new cycle of strategic discussions will usefully input into this process.

I also expect you to have a constructive working relationship with your monitor at MBIE.

No surprises

The Government has a 'no surprises' policy. No surprises means that the Government expects a board to:

- be aware of any possible implications of their decisions and actions for wider Government policy issues;
- advise the responsible Minister of issues that may be discussed in the public arena or that may require a ministerial response, preferably ahead of time or otherwise as soon as possible; and
- inform the responsible Minister in advance of any major strategic initiatives.

In addition, I ask you to avoid 'pre-judging' my potential responses to risks and opportunities. I expect to hear about emerging issues and what major actions the Commission Board is considering. My reactions will be based on a range of factors, including the benefits of new initiatives and of taking different approaches to achieve our goals.

Strategy and performance information

All Crown entities must prepare an annual Statement of Performance Expectations (SPE) and have an approved Statement of Intent (SOI). The Commission should ensure that the SOI drives its performance. The annual SPE should provide a clear performance framework and support excellent reporting to Parliament and the public on results.

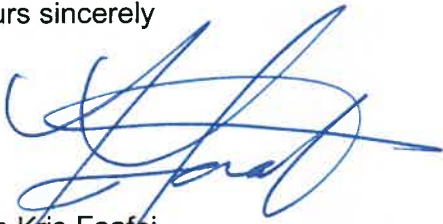
In my annual Letter of Expectations to the Commission for 2018/19, I signalled my expectation that the Commission would be required to provide a new SOI with effect from the commencement of the 2019/20 financial year.

However, given the pending appointment of a new Chairperson of the Commission, I now consider it would be appropriate if the new Chairperson were able to effectively participate in the preparation of a new SOI. To enable this to happen, the new Chairperson will obviously need a reasonable period of time to familiarise themselves with the Commission's current priorities and give consideration to the Commission's strategic intentions and undertakings for the period of several years covered by a new SOI. For this reason, I do not expect the Commission to provide a new SOI in time for the start of the 2019/20 financial year. My expectation instead is that a new SOI will be prepared in 2019/20 after the appointment of a new Chairperson, following discussions with me around the exact timing. The new SOI will relate to the remainder of the 2019/20 financial year in addition to the 2020/21 financial year and at least the following three financial years.

Response

Your advice by 15 March 2019 on how you propose to respond to the expectations set out in this letter would be appreciated. I would be happy to consider approaches that best achieve our collective aims and work well for the Commission. In the first instance, please discuss your proposed response with MBIE.

Yours sincerely



Hon Kris Faafoi

Minister of Commerce and Consumer Affairs

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