

Quarterly Snapshot

July - September 2023

The Commerce Commission is New Zealand's primary competition, fair trading, consumer credit and economic regulatory agency.

This quarterly snapshot provides a high level overview of work underway at the Commission.

This is our fourth snapshot. Future snapshots will continue to build year-to-date information.

For more information about us and about our work, please go to www.comcom.govt.nz.

Note: numbers may have small variances from time to time due to delays in entering data.



Enquiries to the Commission

Consumers and businesses contact the Commission to raise concerns about activities and behaviours that may be against the laws we enforce. All contacts are important to us and directly and indirectly inform our investigation, enforcement and other regulatory work. The following tables indicate how many enquiries the Commission has received this quarter and in which regulatory area. This snapshot also refers to the total number of enquiries we received in 2022/2023 in comparison of year to date for 2023/2024.

Enquiries received Q1 2023/2024

Legislation	Enquiries
Fair Trading Act 1986	2885
Credit Contracts and Consumer Finance Act 2003	113
Commerce Act 1986	92
Fuel Industry Act 2020	14
Total (including enquiries from other Acts)	3173

Enquiries received July 2022–June 2023

Legislation	Enquiries
Fair Trading Act 1986	10558
Credit Contracts and Consumer Finance Act 2003	396
Commerce Act 1986	287
Fuel Industry Act 2020	45
Total (including enquiries from other Acts)	11407

Quarterly comment on enquiries to the Commission

We received 3,173 enquiries across our main regulatory responsibilities during the quarter. This is similar to the number received in Q4 2022/23.

The Commission has also received in Q1 July to September 2023, 99 enquiries that are not linked to an act, making a total of 99 year to date.

As in previous quarters, most of the enquiries related to the Fair Trading Act and were concerns about false or misleading behaviour. Key issues included disputes relating to refunds, promotional representations, pricing issues, delivery issues and issues with contracts.



Investigations and Compliance

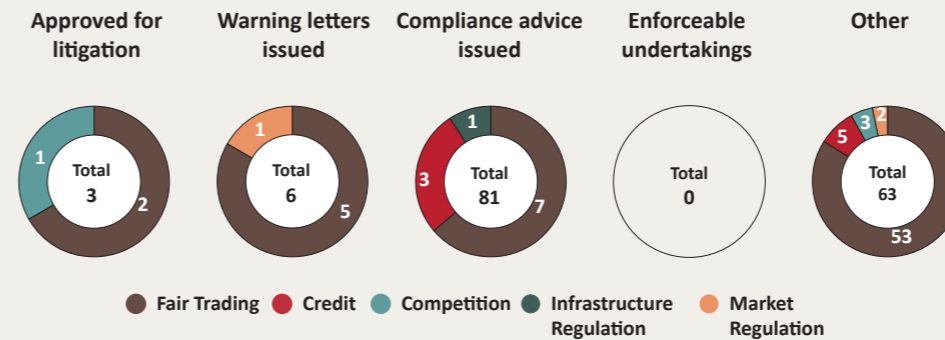
The Commission has a large number of investigations and compliance activities underway at any one time.

We use our enforcement response guidelines in deciding whether to open an investigation and what compliance and enforcement action to take during and at the end of an investigation.

The table to the right indicates how many active investigations the Commission has underway. The outcomes of completed investigations are also indicated.

Investigation outcomes	Active investigations Q1	Completed investigations YTD Q1
Fair Trading	125	67
Credit	51	8
Competition	21	4
Infrastructure Regulation	2	1
Market Regulation	10	3

Investigations outcomes Q1 2023/2024



Quarterly comment on investigations and compliance

In July, the Commission issued a Stop Now Letter to One NZ (formerly Vodafone NZ) for representations made in its campaign promoting "100% mobile coverage Launching 2024". In quarter one the Commission opened three investigations related to payment interchange fees being in excess or incorrect.

Canterbury Regional Council trading as Environment Canterbury has been warned by the Commission for likely breaches of its obligations under the Credit Contracts and Consumer Finance Act 2003 in relation to its Healthier Homes Canterbury loan scheme (the scheme). The likely breaches relate to the responsible lending provisions (sections 9C and 9K) and disclosure obligations (sections 17 and 18). Environment Canterbury has now closed the Scheme to new applications and is refunding interest payments made by borrowers.

The Commission issued a compliance advice letter to Horizon Energy in August following investigation of a possible price-quality regulation breach due to a disclosed error in its annual price-setting compliance statement for 2023.



Litigation

The Commission is able to take enforcement action under legislation. The Commission can prosecute businesses and individuals. The graphs to the right indicate the litigation that the Commission has underway.

Quarterly comment on litigation

A judgement investigation and subsequent High Court proceedings has resulted in more than 2,600 customers being refunded a total of nearly \$480,000 after three companies, part of the Vocus Group, breached the Fair Trading Act. For six years broadband and power companies CallPlus Services, Orcon and Switch Utilities, trading under the Slingshot and Orcon brands, inadequately disclosed that a fee ranging between \$130 to \$250 would apply if customers cancelled their fixed-term contracts early.

As a result of the High Court's finding, the companies have now entered into a settlement agreement to refund affected customers the fees they have paid. The companies will provide the Commission with interim and final reports to demonstrate delivery of their refund commitments.

The record \$3.675 million fine imposed on One NZ (formerly Vodafone NZ) for misleading consumers in the marketing of its FibreX broadband service is a significant win for Kiwi consumers. The penalty is the highest ever handed down by a court under the Fair Trading Act – reflecting the seriousness of the company's conduct between 2016 and 2018 – and will serve as a strong deterrent to other large businesses.

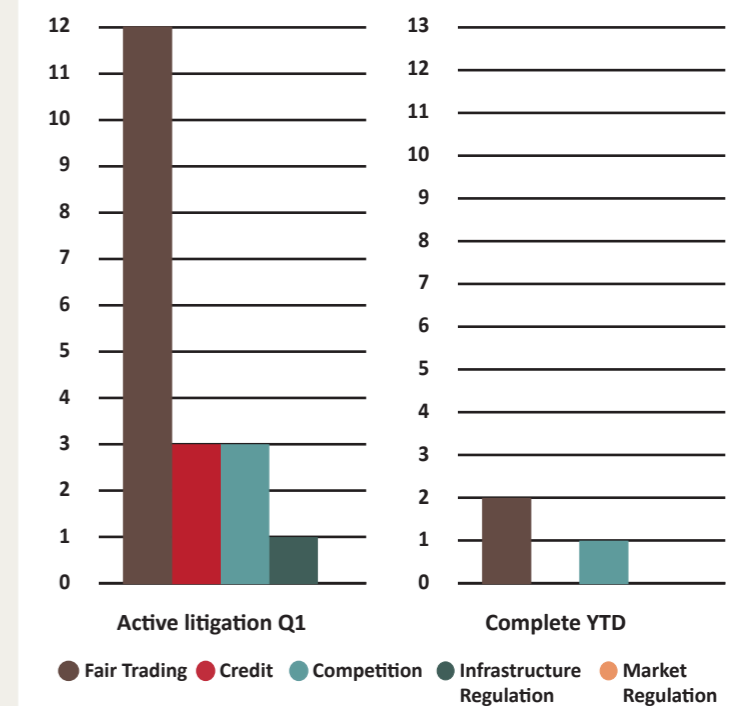
In July, NGB Properties Limited (NGB) was penalised \$500,000 by the High Court after the Commerce Commission took court action over an anti-competitive covenant (a land covenant is an agreement or promise to do, or not do, something in relation to a piece of land) that it placed on a site close to Mitre 10 MEGA Tauranga, for the purpose of preventing competitor Bunnings from opening a store in the area, which would deprive Kiwis in Tauranga of the benefits that might have come from a more competitive local market for DIY and building supplies.

The Commission has filed civil proceedings in the High Court against Eagle M.A.N Group Limited (Eagle M.A.N) alleging breaches of the Credit Contracts and Consumer Finance Act 2003 in relation to high-cost lending and disclosure rules. This enforcement action came out of the Commission's monitoring project throughout 2021-2022 which focused on lenders offering high-cost consumer loans, i.e. loans with an interest rate greater than 50% pa. Eagle M.A.N is a small to medium sized lending business based in Christchurch.

The Commerce Commission has filed an appeal in the Auckland High Court against the sentence imposed on NZME Advisory Limited (NZME) for its offending under product safety laws, when it supplied magnetic puzzle toys through its previously owned online store GrabOne.co.nz. The Commission originally submitted that an end sentence of \$140,000 - \$168,000 was appropriate (after discounts for mitigating factors) and is appealing the \$87,750 sentence handed down in May 2023. The case has been heard and we are awaiting judgment.

Three further competition matters are approved for litigation but not yet filed.

Litigation overview Q1 2023/2024





Projects of Significance

The Commission has significant programmes of regulatory work underway. Our regulatory role in infrastructure regulation includes aspects of the New Zealand supply chain for essential services; such as electricity, gas, fibre and airports. Regulated markets include; telecommunications, fuel, groceries and dairy.

Highlighted on the right is a selection of the pieces of work that the Commission is currently involved in. The list is not exhaustive.

Further information on each piece of work, and many other pieces, is available on our website, including how you can engage with us.

Feedback from New Zealand businesses, consumers, and sectors we regulate is important to us in relation to that work.

	Input Methodologies for energy and airports	Electricity distribution targeted information disclosure review	Market study 4 – Personal banking services	Grocery Industry Competition Bill	Retail Payment System	Telecommunications retail service quality
Previous milestones	Emerging views phase. October 2022: Decision-making framework published. November 2022: Workshops on wider electricity issues. March 2023: Publication of submissions in response to the expert report on the cost capital and the options for maintaining investment incentives in the context of declining demand. Updated notice of intention published. June 2023: Draft decisions published. This includes, summary and context paper, four topic papers, report on the review and six draft determinations.	Reviewing submissions. 25 November 2022: Tranche 1 final decisions published. April 2023: Non-material amendment Determination 2023 and Issues and Guidance Register published. May 2023: Consolidated information disclosure determination. Targeted Information Disclosure Review (2024) process paper published. June 2023: Non-material Amendment Determination published.	20 June 2023: Terms of reference published in the Gazette. 22 June 2023: Statement of Process paper published.	<ul style="list-style-type: none"> • Bill second reading. • Bill present to the house by the Committee. • Bill third reading. 	<ul style="list-style-type: none"> • Approach to monitoring compliance with the initial pricing standard published. • Materials published to support appropriate merchant surcharging, including guidance for merchants and an open letter to payment service providers on how they are expected to assist merchants. • RPS Merchant research observations & Kantar merchant research report published. 	April 2023: Customer service: Monitoring consultation paper published. June 2023: <ul style="list-style-type: none"> • 2022 Annual Monitoring Report published. • Improving Retail Service Quality Product Disclosure Q3 update published.
July - September 2023	August – September 2023 Invited cross-submission on specific matters.	August 2023: Draft decision reasons paper, draft ID amendment determination and updated Issues Register published. September 2023 Invited cross-submission on specific matters.	10 August 2023: Preliminary Issues paper published.	July 2023: <ul style="list-style-type: none"> • The Grocery Industry Competition Act came into force on 10 July 2023. • Appointment of Grocery Commissioner. • Open letter published in July addressing the Act. September 2023: <ul style="list-style-type: none"> • Grocery supply code came into force on 28 September 2023. • Open letter published in September addressing the Grocery Supply Code. • Grocery supply code factsheet published. • Initial compliance assessments on wholesale access completed. 	<ul style="list-style-type: none"> • Observations on the impact of interchange fee regulation. • Payments between Bank Accounts – request for views paper. • Merchant surcharging update. 	<ul style="list-style-type: none"> • Customer Service: Industry update and dashboard. • Product Disclosure Bundles guidelines Consultation. • Billing research report published.
Future milestones	December 2023: Final decision on the Input Methodology review due.	February – March 2024: Final decisions published.	4 March 2024: Draft report published. 20 August 2024: Final report published.	October 2023: <ul style="list-style-type: none"> • First statutory assessment of wholesale regime conducted. • Issue RFI for data for annual review of competition. Early 2024 <ul style="list-style-type: none"> • Guidance on Unit Pricing to be issued. January 2024 <ul style="list-style-type: none"> • Second statutory assessment of wholesale regime will be conducted. March 2024 <ul style="list-style-type: none"> • Grace period for Supply Code finishes. 	<ul style="list-style-type: none"> • Next steps for payments between bank accounts. 	<ul style="list-style-type: none"> • Transparency Review with Consumer NZ. • Product Disclosure coverage map – next steps for industry. • Measuring success of Marketing Alternative Services Guidelines. • Product Disclosure Bundles Guidelines. • Product Disclosure total price/cost guidelines consultation.

Quarterly comment on projects of significance

Collaboration and Sustainability Guidelines

In July 2023, the Commerce Commission published draft Collaboration and Sustainability Guidelines for feedback. The Guidelines have been developed to assist businesses to understand when collaboration with competitors for sustainability objectives may raise competition issues under the Commerce Act. The Guidelines also include steps businesses can take to comply with the law. The guidance is aimed at collaboration between businesses who would usually be expected to compete. The Commerce Commission will consider feedback and aims to publish the final Guidance later this year.

Targeted information review for electricity businesses

In September 2023, the Commerce Commission published the draft decisions on its review of the information disclosure requirements for Electricity Distribution Businesses.

Under Information Disclosure regulation, the Commerce Commission set requirements for Electricity Distribution Businesses to regularly disclose information publicly about how they are performing, including how they are responding to changing consumer demands and planning for the future. The Commerce Commission is reviewing the current Information Disclosure requirement to ensure that they remain fit for purpose in a changing environment, including increasing decarbonisation.

The Commerce Commission will consider feedback on its draft decision and make its final decision by March 2024.



Competition clearances and authorisations

The Commission administers a voluntary clearance regime for mergers and acquisitions. We take enforcement action to prevent anti-competitive transactions if prior clearance is not sought.

We also grant an authorisation for an acquisition that would result in a substantial lessening of competition if the public benefits from the acquisition and are found to outweigh the competitive harm.

The data indicates the number of mergers, acquisitions clearances and authorisations that are underway or have been decided year to date.



	Merger clearances s66	Merger authorisations s67	Collaborative activity clearances s65A	Trade practices authorisations s58
Q1 1 July - 30 September 2023				
Decided	5	0	0	0
Undecided at end of quarter	3	0	0	1
YTD: Outcomes 2023/2024				
Cleared unconditionally	5	0	0	N/A
Authorised	N/A	0	N/A	0
Cleared with divestment	0	N/A	N/A	N/A
Declined	0	0	0	0
Withdrawn	0	0	0	0
Varied	N/A	N/A	N/A	0
Sol/SoUI issued	3	N/A	0	N/A

Quarterly comment on competition clearances and authorisations

The Commission received two new applications for merger clearance in Q1, both relating to the tourism sector. The Commission granted clearance to five merger applications in Q1. These applications involved the supply of day-old chicks, home ventilation systems, hospitality products and commercial kitchen fit-outs, video gaming, and commercial inshore fishing. There are three merger clearance applications undecided at the end of the quarter which two involve Queenstown tourism and one commercial offshore fishing. In Q1, the Commission received an application from the Infant Nutrition Council Limited (INC) seeking an authorisation for an arrangement allowing the INC to restrict its members from advertising and marketing formula products for infants aged up to 12 months old. The Commission's decision is due on 1 March 2024.



Official Information Act

The Official Information Act (OIA) gives New Zealand the right to request official information. The Commission proactively publishes selected official information responses on our website to improve transparency. We publish responses that do not compromise confidentiality, privacy or ongoing investigations.

Quarterly comments on OIA

This quarter, we received a number of OIA requests about complaints made to the Commission. Half of these requests were from members of the public and the other half were from law firms on behalf of their clients who are being investigated or helping with our inquiries.

The Commission also received requests for complaint information from the media, and from businesses themselves wanting to know if the Commission had received complaints about them.

Q1 2023/2024 July - September 2023

69 OIA requests received

69 Year to date requests answered

