

8 June 2022

Hon Dr David Clark
Minister of Commerce and Consumer Affairs
Parliament Building
WELLINGTON

Dear Minister Clark

Re: Supplementary Annual Letter of Expectations 2022/23

Thank you for your letter, received on 30 May 2022, setting out your supplementary expectations relating to establishing a Grocery Sector Regulator and interim arrangements, and the enforcement of new prohibitions against the use of covenants.

This letter provides you with information about how we propose to address these expectations.

Establishing a Grocery Sector Regulator and interim arrangements

Thank you for advising that Cabinet has accepted our recommendation to establish a grocery sector regulator and that further work is underway in relation to options for its institutional arrangements and design.

We note your desire to be ready to regulate the sector when the Grocery Industry Competition Bill becomes law. We also note that Cabinet has agreed that the Commission should act as an interim regulator while the design and establishment of a permanent grocery sector regulator is concluded.

We will, as you suggest, continue to work with MBIE to understand the proposed roles and functions of the interim regulator, including how they might be implemented. Alongside this we will progress work to prepare for the role of interim regulator. We will also work with MBIE on the funding arrangements for this new role.

Compliance and enforcement action

During the market study into competition in the grocery sector we collected information which merited further consideration under the Fair Trading Act 1986 or the Commerce Act 1986. Following completion of our study we have initiated programmes of work to consider potential compliance and enforcement action, including in relation to restrictive and

exclusive covenants, refusals to supply due to low retail pricing, and pricing and promotional practices. This work is already a priority area for the Commission. We will continue with this work under our established protocols and processes, which have been developed to reflect our role as an independent enforcement agency focused on best practice. They are informed by our published enforcement response guidelines.

We will update you as appropriate and through the usual channels (e.g. our bi-monthly meetings and one-off updates under the no-surprises principle), on the status of our activity in relation to the grocery sector.

Enforcement of prohibitions on covenants

We are currently undertaking work relating to the prohibition against the use of certain covenants entered into by major grocery retailers, which is being introduced by the Commerce (Grocery Sector Covenants) Amendment Bill. We have made a written submission to the Select Committee on the Bill. Planning is also underway on our approach to implementation and enforcement of the prohibition, subject to the legislation coming into force. Unlike the new areas of work of the interim regulator, we expect implementation for this aspect of the changes will be delivered within baseline funding alongside our other competition compliance and enforcement work.

Evolution of the Commission

In our previous letter to you we outlined that our focus is on the delivery of our core functions, powers and duties. We will also operationalise recent changes to the laws that we are required to operate under and enforce.

We remain committed to quality delivery in all our work and will continue to focus on strategies that enable the Commission to efficiently accommodate each new function within its existing operating frameworks and an evolving external context, including a challenging labour market.

Yours sincerely,



Anna Rawlings
Chair