

# Commerce Commission performance update

1 JULY to 31 OCTOBER 2015



## COMPETITION AND CONSUMER

### COMPLAINTS TO US

	Jul – Oct
Fair Trading including product safety	1763
Consumer credit	70
Competition	60
<b>Total</b>	<b>1893</b>

### ENFORCEMENT

	Jul – Oct	SPE full year target
Investigations completed	130	327-505
% decided within 12 months	91%	95%

#### Enforcement outcome

Compliance advice	74	
Warnings	2	
Infringement notices	7	
Settlements	1	
Court judgments	0	
Information passed to traders	8	
No further action	38	

#### Ongoing investigations (as at 31 Oct)

Fair Trading	121	
Product safety	14	
Consumer credit	27	
Competition <sup>1</sup>	9	
<b>Total</b>	<b>171</b>	

1. Includes market structure, coordinated behaviour and unilateral conduct investigations

### MERGERS

	Jul – Oct	SPE full year target
Clearance applications processed	4	10-22
Average time to process	40.75 days	40 days
Authorisation applications processed	0	0-4

#### Clearance outcome

Cleared	4	
Declined	0	
Ongoing (31 Oct)	5	

#### Authorisation outcome

Cleared	0	
Declined	0	
Ongoing (31 Oct)	1	

### ADVOCACY

	Jul – Oct	SPE full year target
Guidelines and fact sheets	1	2-10
Advice to Government	4	2-10
Presentations	105	

### Complaints to us

Complaints that we receive from the public about issues under the Fair Trading Act, such as misleading or deceptive behaviour by traders have increased on the same period last year. In contrast complaints that we receive about anti-competitive behaviour under the Commerce Act have decreased significantly on last year. In 2014 we had two Commerce Act cases that attracted a large number of complaints from the public (the investigation into Countdown supermarkets and the Lumley/IAG merger), we have not had any similar cases in 2015.

While complaints relating to instore purchases are static, complaints about online purchases are up 30%. These complaints suggest general concern around representations made online about the quality and capability of products offered for sale. The four biggest contributors to online purchases complaints are sellers on Trade Me, appliance retail, telcos and airlines.

### Enforcement

Our enforcement highlights this period have included;

- Yuan Rong Yang, former owner of Sunway Finance Limited and money lender to Auckland's Chinese community, has been fined \$22,500 and banned from lending indefinitely for failing to provide key information to customers about their loans. Action against Sunway Finance Limited is continuing
- A formal warning was issued to manufacturing firm Consolidated Alloys (N.Z.) Limited (CA) over the inclusion of an anti-competitive clause in a negotiated settlement with roofing products competitor Edging Systems (NZ) Limited (ESL)
- We achieved a successful prosecution of Brand Developers Limited with a \$153,000 fine for charges relating to the sale and advertising of the Transforma brand of multipurpose ladders – the first time we have prosecuted a company for selling or advertising a product covered by an Unsafe Goods Notice. This was still subject to appeal as at 31 October
- Administration of the payment funds established by the settlements in the interest rate swaps investigations was completed, with over \$22 million now paid to complainants and rural charities.

We also filed proceedings in court against:

- Three companies for alleged price fixing in connection with the introduction of the National Animal Identification Tracing Act 2012
- Enviro Waste Services Limited and one individual for attempted anti-competitive conduct in relation to the collection of waste oil in the upper South Island
- A mobile trader for obtaining money from customers by deception and accepting payment from customers without intending to supply the goods.

Ensuring that lenders are complying with lender responsibility principles that were introduced earlier this year is a focus for our credit team. Two of our key credit projects (mobile trader and pay day lender) include a component related to lender responsibility. Our mobile trader project started last year and was initially focused on understanding the industry and encouraging compliance with existing and new laws. We released our report on the first phase of the project in September. Now in the second stage, we are focused on enforcement and have already filed charges against one mobile trader and we are in the process of re-visiting all mobile traders to assess whether they are complying with their obligations. Where they are not we will take the appropriate enforcement action which in some cases is likely to involve prosecution. We intend to complete this project by July 2016.

Similar to our mobile trader project, our payday lender project is focused on identifying all payday lenders, visiting them and collecting information about their lending practices. We will then assess that information and recommend appropriate enforcement action. We think these lenders have had sufficient opportunity to understand the new laws and how those laws apply to their businesses, so this project is focused on enforcement rather than education.

### Mergers

Applications for merger clearance continue to be strong with four completed so far this year and another five being processed by our Competition team as at 31 October. The largest and most complex of those being processed is Z Energy's proposed merger with Caltex, involving many different markets throughout the supply chain.

### Advocacy

Part of our role is to assist businesses and consumers to understand how the law affects them. To do this we run a number of education programmes for different sectors and groups. One of our areas of focus is the construction industry and we continued our work in this area presenting to a number of different industry associations and updating our dedicated construction website. We also provided advice and submissions to other government agencies on proposed legislation changes and new legislation, such as the targeted review of the Commerce Act, the review of the Financial Advisors Act and the Financial Services Providers Act and the Digital Interactions Bill.

## REGULATION

### DETERMINATIONS

	Jul – Oct	SPE full year target
Telecommunications	1	4-5
Average time to complete <sup>2</sup>	1.45 months	6 months
Electricity	4	5-11
Gas	0	6-10
Airports	0	2-5
% completed in statutory deadlines	100%	100%
Dairy	0	0-1
Average time to complete	n/a	120 working days
<b>Total</b>	<b>5</b>	<b>17-32</b>

2. Excludes the UBA and UCLL FPP determinations.

### PUBLIC REPORTS

	Jul – Oct	SPE full year target
Telecommunications	0	3
Electricity	1	2-3
Gas	0	1-2
Airports	1	1
Dairy	1	2-3
<b>Total</b>	<b>3</b>	<b>9-12</b>
% completed in agreed timeframes	66%	100%

### COMPLIANCE ASSESSMENTS

	Jul – Oct	SPE full year target
Telecommunications	0	0-1
Electricity	0	48
Gas	0	10
Airports	0	3
<b>Total</b>	<b>0</b>	<b>61-62</b>
% completed in agreed timeframes	n/a	100%

### Determinations

We completed five determinations since July, including the amount Transpower is allowed recover from consumers for its overspend on the North Island Upgrade Project. Our decision will result in \$17.7 million being returned to consumers through revenue reductions.

We have also continued our work on the Final Pricing Principle (FPP) cost modelling for the Unbundled Copper Local Loop (UCLL) and (UBA) services. These are wholesale prices that Chorus charges retail telecommunications companies for use of its local copper lines and broadband service, and make up roughly half of the average household's broadband bill. We are on track to release our final decision before Christmas.

In June 2015 we began a review of input methodologies (IMs) – the upfront rules, requirements, and processes which apply to the regulation, or proposed regulation, of goods or services under Part 4 of the Commerce Act. The purpose of input methodologies is to promote certainty for suppliers and consumers. The review is on track to release our draft decisions in mid-2016.

We are actively consulting with stakeholders on the IMs review and are pleased with the constructive engagement so far. In July we held a stakeholder forum to hear directly from suppliers and consumers on the main topics for review. The aim of the forum was to allow open discussion and exchange of information between all parties, assist stakeholders to identify and define potential problems with the IMs, and inform their submissions to our problem definition paper.

### Public reports

We have completed two public reports this period and are working on a number of other reports due to be concluded in 2015/16.

In July 2015 we published our final report on Christchurch International Airport Limited's (CIAL) disclosure of revised pricing information. CIAL has not changed its pricing for the second price-setting event as we previously assessed pricing for this period as being within an acceptable range. However CIAL did take steps to improve the transparency of its pricing.

In September 2015 we completed our statutory review of Fonterra's 2014/15 base milk price calculation and published our final report. Our overall conclusion was that Fonterra's calculation of the 2014/15 base milk price is largely consistent with both the efficiency and contestability purposes of the Dairy Industry Restructuring Act.

We are working on a review of the state of competition in the Dairy market, as requested by the Minister for Primary Industries. The final report is due by March 2016.

### Compliance assessments

We have continued to make progress in our compliance and enforcement work, and remain on track to meet our output targets before the end of the financial year.