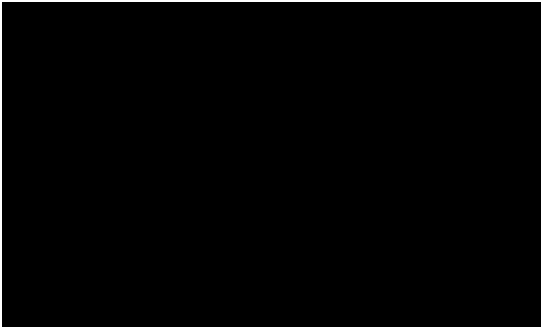


9 August 2022



Official Information Act #21.157 - Response

1. We refer to your Official Information Act 1982 (**OIA**) request received on 21 March 2022 for the following information:
 - 1.1 What number of complaints has the Commerce Commission (**Commission**) received since 2000 in respect of restrictive trade practice matters under Part 2 of the Commerce Act 1986 (**CA**), other than cartel cases? How can you analyse and break down this data? Are there, for example, non-meritorious complaints that are open to instant rejection?
 - 1.2 What funding has been allocated to the Part 2 CA work stream, other than for cartels, since 2000? To what extent has there been an underspend on this allocation?
 - 1.3 How do delegations to staff work in respect of these complaints? Can staff screen out complaints without reference to the Commerce Act Division? If so, how is this done and what criteria is used? Is there strategic planning over investigations that are to be given priority?
 - 1.4 How many matters have been referred to the Commerce Act Division by staff for Part 2 CA enforcement, other than cartels, over the last 20 years?
 - 1.5 To what extent have the Commissioners audited or kept under review the approach taken by staff to the exercise of this delegation?
 - 1.6 Can the Commission share some significant case studies of what it considers have been the most material Part 2 CA investigations it has undertaken, other than for cartels, for the 20-year period under review?

- 1.7 To what extent have other work demands imposed on the attention that is given to Part 2 matters, other than cartels?
2. On 12 April 2022, the Commission extended the time limit by which we must communicate our decision on your request to 20 June 2022.
3. On 20 June 2022, we communicated our decision to grant your request and advised that, to the extent that the information you have requested is held by the Commission, we would provide it without undue delay.

Our response

4. We have undertaken a substantial exercise to collate and, in part, create the information you have requested.
5. We are very happy to arrange a meeting with staff to talk you through the information we have provided. Our Chair is also willing to meet with you to discuss our process at a higher level if that would assist.

Paragraph [1.1] - Complaints

What number of complaints has the Commission received since 2000 in respect of restrictive trade practice matters under Part 2 of the CA, other than cartel cases? How can you analyse and break down this data? Are there, for example, non-meritorious complaints that are open to instant rejection?

6. The Commission has received 2,632 complaints since 1 January 2012 about restrictive trade practice matters under Part 2 of the CA, excluding cartel matters. A breakdown of these complaints is provided at **Appendix A** below.
7. We have collated information for you by searching our database for complaints received under sections 27, 28, 36, 37 and 38 of the CA at the date of your request. Please note the information is subject to the following limitations:
 - 7.1 The Commission's current complaints database was implemented in 2017. At the time of implementation, complaint records from 1 January 2012 onwards were transferred to our current database.
 - 7.2 Limited complaint records from before 2012 were transferred to the current database. These do not reflect a complete picture of the complaints received by the Commission before 2012 and we have not included them in our response.
 - 7.3 Other than complaints transferred to the current database, we are not able to access complaint records from our previous database(s).
 - 7.4 Our Retention and Disposal Schedule, approved by the Chief Archivist, authorises the Commission to dispose of complaint records after five years where, at the screening stage (discussed in further detail in our response to paragraph [1.3] of your request below), we have decided not to take further

action in relation to a complaint and after ten years where we have recommended further action in relation to a complaint.

- 7.5 During the screening process, our Screening and Analysis team adds information about the Act(s) and section(s) of the Act(s) relevant to each complaint. The most appropriate Act(s)/section(s) are selected based on the information available to our Analysts at the time.
8. Further information about the Commission's complaint screening process, including whether there are non-meritorious complaints that are open to instant rejection, is provided in our response to paragraph [1.3] of your request below.
9. Over the relevant time period you are asking about, the Commission has published documents on our website which include summaries and analysis of the Commerce Act complaints received. More recently, the Commission has started to publish a snapshot of the complaints received each year which identifies the major themes of consumer complaints submitted to the Commission. To assist, we have provided links to these documents on our website below:
- 9.1 [Consumer Issues report - 2014](#) (The commercial environment, pages 7-8, paragraphs [19] to [26]);
- 9.2 [Consumer complaints infographic 2015](#) & [Consumer Issues Report 2015](#) (The commercial environment, pages 13-15, paragraphs [45] to [55] & Section 2 - Commerce Act complaints, pages 27-29);
- 9.3 [Consumer complaints infographic 2016](#) & [Consumer Issues 2016](#) (Section 4 - Competitive Markets pages 42-44);
- 9.4 [Consumer Issues Report 2016/17 - at a glance](#) & [Consumer Issues Report 2016/17](#) (Section 3 - Competitive markets - pages 40-43);
- 9.5 [Consumer Issues 2017/18 – At a glance](#) & [Consumer Issues Report – 2017/18](#) (Section 3 - Competitive markets - pages 21-23);
- 9.6 [Complaints snapshot 2018/19](#);
- 9.7 [Complaints snapshot 2019/20](#), and
- 9.8 [Complaints snapshot 2020/21](#).

Paragraph [1.2] - Funding

What funding has been allocated to the Part 2 CA work stream, other than for cartels, since 2000? To what extent has there been an underspend on this allocation?

10. We note the Commission does not receive funding specific to Part 2 of the CA.
- 10.1 Until 2018, funding for work under Part 2 of the CA formed part of the Vote Commerce - Enforcement of General Market Regulation appropriation for

enforcement of the Commerce, Fair Trading, Credit Contracts and Consumer Finance¹ and Electricity Industry Reform Acts, and adjudication of applications made under those Acts.

- 10.2 Since 2019, the General Market appropriation has been broken down into competition and consumer, with Part 2 CA funding forming part of the allocation to competition.
11. A breakdown of the relevant revenue and expenses since 2000, of which Part 2 CA forms part, is provided at **Appendix B**.

Paragraph [1.3] - Delegations

How do delegations to staff work in respect of these complaints? Can staff screen out complaints without reference to the Commerce Act Division? If so, how is this done and what criteria is used? Is there strategic planning over investigations that are to be given priority?

12. The Commission operates a complaints function to provide the public with a method of raising concerns directly with the Commission. It is also one of the ways the Commission identifies matters that it may choose to investigate, and assists the Commission with prioritisation decisions and identifying sectors and industries that may require education and outreach. When a consumer or business contacts the Commission, either through our call centre or direct to one of our staff, with a complaint about a trader, this is logged in the Commission's complaint database.
13. The Commission receives thousands of complaints every year across the legislation we enforce. Each complaint is initially assessed by the Screening and Analysis Team on the basis of the information available at the time.
14. When conducting an initial assessment, the Screening and Analysis Team considers:
- 14.1 the likelihood of a breach of the relevant legislation;
 - 14.2 the Commission's Enforcement Response Guidelines, and;
 - 14.3 the Commission's strategic priorities.
15. The Commission's Enforcement Response Guidelines² outline that we cannot give priority to all the complaints that we receive. While we consider all complaints carefully some complaints may be screened out because they:
- 15.1 do not identify a breach of the law;
 - 15.2 are factually or legally incorrect;

¹ From 2003.

² <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-response-guidelines> page 3.

- 15.3 are outside our jurisdiction;
 - 15.4 are out of date for us to action;
 - 15.5 do not identify any real harm;
 - 15.6 are not in the public interest to pursue;
 - 15.7 may be more effectively dealt with by other agencies; or
 - 15.8 involve private parties who are able to try to resolve their own dispute.
16. Our Enforcement Response Guidelines provide that the Commission has the power to act on complaints but is not required to take action in relation to all possible breaches of the legislation that we enforce.
17. This process enables us to identify complaints that best reflect our current enforcement priorities.³ The outcomes of the process are not final and we may revisit any complaint at a later stage, should we wish to reconsider the issues it presents.
18. The process for screening Commerce Act complaints has changed over the last 20 years. Our current process is described below.
19. Each week, the Screening and Analysis team sends Commerce Act complaints that have been logged and processed at our “front door” through to a panel of Competition Branch managers, including the managers of the investigation teams. The Competition managers provide screening comments. The result of screening can be that further information is sought to analyse the complaint, a low-level investigation is opened, or a matter is closed. If a matter is closed the complaints continue to be used as intelligence for future prioritisation decisions, particularly if a pattern of complaints about a particular entity or conduct type emerges over a series of complaints.
20. When complaints require further information before a decision can be made on whether or not to prioritise it, enquiries may be made by either the Enquiries and Screening team with guidance from subject matter experts or by members of the Commerce Act investigations teams.
21. A proportion of Commerce Act complaints are investigated and ultimately recorded as no further action. An outcome of no further action after investigation could be for a range of reasons, including no evidence of a breach, prioritisation grounds, or because a change in behaviour means enforcement action is no longer the best use of the Commission’s resources.

³ <https://comcom.govt.nz/about-us/our-priorities>,
<https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-criteria>

22. The Commerce Act Division does not review every complaint received. However, the Commerce Act Division approves enforcement criteria and an annual business plan which informs prioritisation of complaints received and matters investigated. The Commission updated its Commerce Act prioritisation criteria in 2021 to give greater and more specific Commerce Act guidance. The revised criteria are attached at **Appendix C** for your information.
23. Alongside updating our Commerce Act prioritisation criteria in 2021, we also updated our process for Commerce Act low-level (preliminary) investigations⁴ and how they are prioritised for further investigation. Some of the changes included:
- 23.1 all matters from low-level through to in-depth investigations must have a clear theory of harm from the outset that will continue to be developed if an investigation progresses.
 - 23.2 a more structured and clearly delineated investigation system where low-level or preliminary investigations are opened and reviewed within a specified timeframe. These low-level investigations are then assessed within that timeframe and may be prioritised for further investigation after consideration of a range of factors such as available resourcing and the nature of other existing and potential in-depth investigations. This prevents low-level or preliminary investigations remaining open for long periods without focussed resource or timeframes for reassessment or completion.
 - 23.3 clearer engagement with Commissioners around the prioritisation factors that have led to case selection and resourcing decisions.
24. A key decision stage for prioritisation occurs when it is decided whether or not to elevate a matter to an in-depth investigation. There are two key decisions built into this stage:
- 24.1 The first is the assessment of the evidence on a particular low-level investigation and breach of the Commerce Act may be made out. The decision on the **merits** of opening an in-depth investigation is made by the relevant investigations manager with advice from other managers e.g., Chief Legal Counsel and Chief Economist.
 - 24.2 If a matter progresses beyond the initial merits decision, then the Competition Branch leadership team discusses **prioritisation** of the matter. This includes consideration of such things as the merits of undertaking further work, particularly investigative work, and other work across the Competition Branch. This process ensures greater visibility and ability to shift resources as needed (particularly investigative resources) between different matters depending on their prioritisation.

⁴ Categorisation of a matter as “low-level” indicates the early stage of the investigation, it is not an indication of the type of potential enforcement outcome.

25. The extent to which low-level matters are brought to the Commerce Act Division has changed over time. Currently, an update is provided to the Commerce Act Division three times a year on all of the low-level investigations opened and closed during the previous period. If a matter goes to in-depth investigation, an update is also provided to Division.
26. Every two months, the Competition Branch provides reporting to the Commerce Act Division, including an update on the matters being investigated.
27. Finally, the Competition Branch operates regular strategic planning in relation to which matters in our investigation portfolio are to be given priority and the resources applied.
28. The Competition Branch has three frontline areas - mergers, cartels and competition investigations, which are supported by Legal and Economics teams. The competition investigations team also carries out authorisation work.
29. Each of the frontline areas has around ten investigative staff. At any one time, the competition investigations team supports one to two matters in litigation; carries out approximately 2-5 in-depth investigations; and manages around 5 low-level investigations. The balance depends on the stage of litigation a matter is at, and the scale of investigations and cases underway.
30. The creation of three dedicated front-line teams for mergers, cartel and competition Investigations took place in 2021. Prior to that, approximately 20 investigative staff worked to respond to all merger, authorisation, competition investigation and cartels work. The new structure reflects the ambition of the Commission to focus more resource on a wider range of cases.

Paragraphs [1.4] & [1.5] - Commerce Act Division

How many matters have been referred to the Commerce Act Division by staff for Part 2 CA enforcement, other than cartels, over the last 20 years?

31. We have provided at **Appendix D** the number of Part 2 matters (other than cartels) completed since 2005 which have been considered by the Commerce Act Division, including the relevant industry and the matter outcome. We note that we have created this information for the purpose of responding to your request from records held on wider competition investigations since 2005. We do not hold full records of all competition investigations for the remaining years covered by your request, 2002 - 2004.
32. Our Retention and Disposal Schedule requires us to retain investigation material for seven to ten years, depending on whether a matter proceeds to litigation. Registers of enforcement case responses are required to be retained for one year.
33. Appendix D contains the year each matter commenced, the relevant section(s) of the CA and industry, whether the matter went to Commerce Act Division for an

enforcement decision or update, and the outcome. Further detail about outcomes is provided at the end of Appendix D.

34. We note that Part 2 of the CA matters can go before the Commerce Act Division in a number of different ways:
- 34.1 As part of our regular monthly two monthly branch dashboard reporting or the portfolio updates provided three times a year;
 - 34.2 as an update; or
 - 34.3 as an investigation report recommending an enforcement outcome.
35. As set out in our Enforcement Response Guidelines,⁵ enforcement outcomes can range from:
- 35.1 taking no further action (which as noted above, could be for a range of reasons, including no evidence of a breach, prioritisation grounds, or because a change in behaviour means enforcement action is no longer the best use of the Commission's resources).
 - 35.2 issuing compliance advice, or a warning to the parties involved; or
 - 35.3 issuing court proceedings.
36. Decisions in relation to taking no further action or issuing compliance advice can be made by staff. In some instances, depending on such things as the complexity, or public interest in a matter, the Commerce Act Division may be consulted in relation to staff decisions or a decision may be sought from the Commerce Act Division.
37. The Commerce Act Division makes all decisions to bring proceedings against parties under investigation, and generally decisions to issue warnings to parties.

To what extent have the Commissioners audited or kept under review the approach taken by staff to the exercise of this delegation?

38. In response to paragraph [1.5] of your request, as noted above, staff report to Commissioners regularly about Commerce Act matters under investigation through regular two monthly branch dashboard reporting, portfolio updates and specific investigation updates as required. As noted in our answer to paragraph [1.3] above the Board of Commissioners has also been involved in reviews of the screening process over the years.

⁵ <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-response-guidelines> pages 7-11.

Paragraph [1.6] - Case studies

Can the Commission share some significant case studies of what it considers have been the most material Part 2 CA investigations it has undertaken, other than for cartels, for the 20-year period under review?

39. We have highlighted in the list of investigations at **Appendix D** the cases we consider have been the most material and provided copies of, or links to reports and judgements, where they are publicly available. We are happy to discuss this case list with you further should you wish. We consider that many cases deliver significant outcomes without necessarily involving court proceedings.

Paragraph [1.7] - Prioritisation

To what extent have other work demands imposed on the attention that is given to Part 2 matters, other than cartels? You note, for example, the competing and growing demands that must impact on Commissioners on this Division. These Commissioners have demands imposed them on other subject matters which will take priority because of legislative time frames (eg, the vast array of regulatory matters, market studies and clearance and authorisation applications).

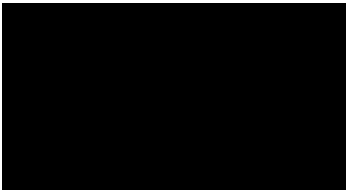
40. In response to paragraph [1.7] of your request, the Commerce Act Division meets fortnightly to consider Commerce Act Part 2 of the CA matters. Five Commissioners sit on the Commerce Act Division. This provides assurance that a quorum of at least three Commissioners is always available for decision-making purposes if one or more is unavailable due to leave, illness, or other Commission work priorities. Each of these Commissioners also sits on other Divisions within the Commission. The allocation of Commissioner responsibilities is at the discretion of the Chair in consultation with individual Commissioners and the mix of other work undertaken within the Commission by Commissioners on the Commerce Act Division varies. We consider that experience across a range of work of the Commission enhances the perspective that each Commissioner is able to bring to their work in each Division. All matters that need to be considered by Commerce Act Division are given appropriate consideration.
41. As noted above, increased resourcing has been allocated to the Competition Branch since 2021 to enable it to focus on competition investigations. In addition to the MetService/NIWA information access case (referred to at Appendix D below and report provided), other investigations during this period include our first resale price maintenance investigation for some years⁶ and an investigation into a restrictive covenant in the building supplies industry.

⁶ https://comcom.govt.nz/_data/assets/pdf_file/0025/96181/Resale-price-maintenance-Fact-sheet-June-2022.pdf

Further information

42. Please note the Commission will be publishing this response to your request in the OIA register on our website.⁷ Your personal details will be redacted from the published response.
43. Please do not hesitate to contact us at uia@comcom.govt.nz if you have any questions about this request.

Yours sincerely



OIA and Information Coordinator

⁷ <https://comcom.govt.nz/about-us/requesting-official-information/oia-register>

Released Under Official Information Act 1982

Appendix A: Number of Part 2 complaints received by year	
Year	Number of Part 2 complaints received
2012	282
2013	229
2014	344
2015	216
2016	232
2017	262
2018	349
2019	267
2020	264
2021	151
2022 (to 21 March 2022)	36

Appendix A⁸					
Screening of complaints into sections under Part 2 of the CA					
Year	Section 27	Section 28	Section 36	Section 37	Section 38
2012	140	0	156	28	26
2013	121	0	133	14	13
2014	236	1	174	14	12
2015	122	1	126	11	7
2016	128	1	166	10	6
2017	119	0	185	10	3
2018	148	2	254	8	2
2019	113	0	176	11	0
2020	86	2	199	6	0
2021	76	0	82	11	0
2022 (to 21 March 2022)	14	0	25	2	0

During the screening process, our Screening and Analysis team adds information about the Act(s) and section(s) of the Act(s) relevant to each complaint. The most appropriate Act(s)/section(s) are selected based on the information available to our Analysts at the time.

⁸ Please note that some complaints are allocated to more than one section of the CA.

Appendix B:			
A breakdown of the relevant revenue and expenses since 2000, of which Part 2 CA forms part			
Year	Revenue (in thousands)	Expenses	Notes from our Annual Reports⁹
2000 (total Commission)	\$8,565	\$8,438	
2001 (total Commission)	\$8,653	\$8,834	
2002 (General Market)	\$8,099	\$8,422	
2003 (General Market)	\$8,540	\$8,821	
2004 (General Market)	\$9,417	\$9,290	
2005 (General Market)	\$10,324	\$10,536	<p>During the year, \$100,000 was transferred from Vote Commerce - General Market to Vote Energy - Gas Pipeline Inquiry to fund litigation that arose from the Gas Pipeline Inquiry which finished in 2005.</p> <p>The media releases/briefing figures were previously reported as an aggregate of Vote Commerce - General Market. These figures have now been separated into the relevant sections and include all media releases/briefings over the period, not just those not relating to a single specific matter.</p>
2006 (General Market)	\$13,534	\$13,411	
2007 (General Market)	\$14,663	\$14,663	
2008 (General Market)	\$15,292	\$15,318	
2009 (General Market)	\$15,033	\$14,031	

⁹ <https://comcom.govt.nz/about-us/strategic-planning-and-accountability-reporting/annual-report>

Appendix B:			
A breakdown of the relevant revenue and expenses since 2000, of which Part 2 CA forms part			
Year	Revenue <small>(in thousands)</small>	Expenses	Notes from our Annual Reports⁹
2010 (General Market)	\$15,907	\$12,276	Major Litigation - Internal is now recorded as a part of Vote Commerce - Enforcement of general market regulation
2011 (General Market)	\$17,502	14,287	Total expenditure was less than forecast in the SOI. This is largely a consequence of reduced headcount during the year and preceding years across the Enforcement Branch. This reduction has been made through natural attrition and targeted recruitment. We have been able to operate effectively on this reduced headcount because of the unusually low levels of activity in the Coordinated Conduct and Determinations outputs.
2012 (General Market)	\$18,881	\$15,520	<p>The surplus for our general market appropriation was \$2.357 million greater than budgeted, owing to several factors.</p> <p>Determinations expenditure is market driven and, while we completed more authorisations than anticipated, we received fewer clearance applications and were under budget as a result.</p> <p>Expenditure on enforcement cases varied against budget. We completed only two unilateral conduct investigations and other coordinated behaviour matters brought to our attention required limited resources to investigate and resolve.</p> <p>In the CCCF Act area, while we exceeded the 2011/12 target for investigations, we came in under budget. This was partly a result of very effective lower level resolutions (for example, within the lower tier lender work). The CCCF Act litigation cost was also lower than expected owing to changes in the timing of expenditure and ongoing settlement discussions.</p> <p>The downturn in the expected work flows in other areas meant we were able to apply more resource to the Fair Trading Act area during the year. Although Fair Trading Act expenditure was 42% over budget, the enforcement area for general market remained overall 6% under budget.</p> <p>Our expenditure on advocacy and development was broadly in line with what we anticipated.</p>
2013	\$18,496	\$15,875	The surplus for our general market appropriation was \$3.361 million greater than budgeted. The appropriation recorded

Appendix B:			
A breakdown of the relevant revenue and expenses since 2000, of which Part 2 CA forms part			
Year	Revenue <small>(in thousands)</small>	Expenses	Notes from our Annual Reports⁹
(General Market including major litigation)			<p>\$1.427 million in additional revenue, mainly from unbudgeted cost award receipts and settlement of our Christchurch earthquake insurance claim.</p> <p>Expenditure on determinations is market driven, and so fewer clearance applications received than anticipated along with no authorisation applications received resulted in a significant underspend against our budget for determinations</p> <p>The majority of underspending in internal major litigation results from settlements achieved in various cases, such as Air cargo, Credit SaLS, and Bluestone. We also benefited from less preparation work than expected for the Input methodologies merits appeals, as the court hearings occurred earlier in the year than we expected. The enforcement of general market regulation appropriation funds all our internal litigation cost.</p>
2014 (General Market including major litigation)	\$18,007	\$16,551	<p>The surplus for the General Markets output class was significantly higher than budget.</p> <p>The output class received higher than expected other revenue, mainly as a result of unbudgeted cost awards received.</p> <p>Determinations expenditure is demand driven, and overall expenditure over the last few years is significantly greater as the economic recovery has flowed through to increased business merger and collaboration activity. However, because fewer clearance applications were completed than we anticipated when setting our budget, and no authorisation applications were received, there was a significant underspend against budget for this year.</p> <p>Internal major litigation expenditure was also lower than budget. This was as a result of being able to secure settlements in several cases which reduced the amount of litigation expenditure required.</p>
2015 (General Market)	\$15,651	\$14,865	<p>The competition and consumer output class surplus was higher than budget mainly as a result of unbudgeted cost awards received and higher interest income (other revenue). The budget also allowed \$673,000 for the commencement of a Part 4 inquiry (contained within reports to ministers output category) which did not eventuate. Part 4 inquiries are one-</p>

Appendix B:			
A breakdown of the relevant revenue and expenses since 2000, of which Part 2 CA forms part			
Year	Revenue <small>(in thousands)</small>	Expenses	Notes from our Annual Reports⁹
			<p>off reviews which we are not separately funded for, and must be funded from the Commission's general reserves if our funding for this output class is insufficient.</p> <p>Expenditure on determinations and enforcement cases needed to be carefully managed and finished the year close to budget.</p>
2016 (General Market)	\$15,183	\$15,460	<p>The deficit for the General Markets output class was less than budgeted. The output class received higher than expected other revenue, mainly as a result of unbudgeted cost awards received and higher application fee income. Determinations expenditure was higher than budget but within our expected target range. This was due to increased staff activity caused by the complexity of some authorisations and clearances received.</p> <p>Enforcement expenditure was more than budget due to higher than anticipated activity in this area. Reports to ministers expenditure was lower than budget due to no Part 4 inquiries taking place.</p>
2017 (General Market)	\$18,358	\$17,547	<p>The \$811,000 surplus for the competition and consumer output class was higher than budget, as we recruited staff and made appropriate long-term resourcing decisions following the Cabinet decision to increase funding. Other revenue was lower than budget, mainly as a result of lower interest and application fee income.</p> <p>Determinations expenditure was higher than budget due to increased staff activity that resulted from the number and complexity of authorisations and clearances received.</p> <p>This overspend was offset by lower staff salary costs in the enforcement and advocacy areas as staff vacancies and turnover were higher than in previous years.</p>
2018 (General Market)	\$19,500	\$18,579	<p>The \$921,000 surplus for the competition and consumer output class was higher than budget.</p> <p>Revenue - Crown was more than budgeted as the enactment of the cartels bill resulted in an additional \$750,000 of funding occurring after the budget was completed. The</p>

Appendix B:			
A breakdown of the relevant revenue and expenses since 2000, of which Part 2 CA forms part			
Year	Revenue <small>(in thousands)</small>	Expenses	Notes from our Annual Reports⁹
			<p>output class received lower than expected other revenue, mainly as a result of lower interest income.</p> <p>Enforcement expenditure was higher than budget due to increased staff activity that resulted from higher than anticipated activity in the market structure and coordinated behaviour areas. This overspend was offset by lower staff salary costs in the determinations and advocacy areas.</p>
2019 (Competition)	\$8,541	\$8,070	Expenditure in the Competition output class was less than budget. The under-spend was mainly due to lower than expected external consultant costs. Higher than anticipated activity in the enforcement work stream was offset by lower mergers expenditure. Advocacy expenditure was also less than budget.
2020 (Competition)	\$8,544	\$8,451	Expenditure in the Competition output class was less than budgeted. The under-spend was mainly due to lower than expected external consultant costs. Higher than anticipated activity in the enforcement work stream was offset by lower mergers expenditure.
2021 (Competition)	\$10,678	\$10,295	Expenditure in the Competition output class was less than budgeted, primarily because of lower-than-expected internal resourcing and external consultancy costs.

Appendix C: Prioritisation Criteria for Investigations

CONDUCT
Are there characteristics of the party's behaviour that make the conduct more, or less, of a concern.
Seriousness of conduct: Is the behaviour deliberate, reckless, careless or inadvertent?
Have we provided guidance to the parties in the past?
Does the evidence suggest that they knew what they were doing was in breach of the Act?
Are senior staff within the organisation aware of, or engaged in, the conduct?
Has there been a history of similar conduct in the past?
Have we previously engaged with the parties or undertaken some form of enforcement action in the past?
Attitude to future compliance: Have we seen an improvement in the attitude of the parties towards compliance?
Is there a willingness to change behaviour to ensure compliance with the law?
Do the parties continue to indicate a disregard for the law?
Have the parties taken steps to address harm?
Have the parties been obstructive towards our investigation?
Have the parties refused to provide evidence and information?
Is the conduct overt or secret?
Have the parties knowingly concealed the conduct or been transparent about what they are doing?
DETRIMENT
The nature and extent of harm arising from the conduct.
What is the nature of the conduct and the harm to competition?
Does the conduct involve: <ul style="list-style-type: none"> • Cartel conduct – agreements to fix prices, allocate markets/customers. • Exclusionary conduct that prevents rivals from competing on their merits– eg. Has an innovative new competitor been foreclosed from a very concentrated market? • Non-cartel coordinated conduct that softens rivalry between competitor
What is the likely effect of the conduct – eg. Higher prices, less choice, lower quality, less innovation?
Are there any pro-competitive rationales for the conduct?
The size of the affected commerce:
What is the turnover of the relevant business?
Do any of the parties to the conduct individually or collectively have market power?
What is the value of the relevant market
What is the impact on consumers in total dollar terms from the conduct eg price increases?
Significance of the market:
Is the market important to New Zealand's economic success?
Does the conduct relate to essential, or widely used, goods or services?
Duration of the conduct:
Has the conduct been occurring over a number of years?
Is the conduct ongoing?
Urgency or ongoing conduct/harm.
Do we need to act to stop ongoing harm?
Can the harm be undone?

PUBLIC INTEREST
<p>Is there a public expectation that we would act to prevent and deter such conduct? Would a failure to act undermine public confidence in our role under the Commerce Act.</p>
<p>Are other regulators taking action, or able to take action, to address the conduct?</p> <p>Is it more appropriate that the affected parties take action themselves?</p> <p>How likely is it that there is a breach of the Act?</p> <p>Is this a new Law?</p> <p>Is this within a publicly announced priority?</p> <p>Is non-compliance common within the relevant sector?</p> <p>Is there a value in obtaining a precedent or clarifying the law?</p> <p>Is action required to maintain the effectiveness of our clearance regime?</p> <p>Is there an imbalance in bargaining power?</p>

Released Under Official Information Act 1982

Appendix D: Part 2 matters (other than cartels) completed since 2005 which have been considered by the Commerce Act Division

Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
2005/2006	Yes	Yes	s36	Financial Services	Warning
	Yes	Yes	s27 & 36	Construction & Building Materials	NFA
	Yes	Yes	s36	Transport (including Aviation, Parking, Public Transport)	NFA
	Yes	Yes	s37	Online Retail	Litigation
	No		s27 & 36	Other	NFA
	No		s36 & 27	Other	NFA
	No		s36	Other	NFA
	No		s36 & 27	Other	NFA
	No		s36 & 27	Other	NFA
No		s36	Other	NFA	

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Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
	No		s36	Entertainment, Media & Broadcasting	NFA
	No		s37	Online Retail	NFA
	No		s36 & 27	Health Service Providers	NFA
	No		s36	Other	NFA
	No		s36	Agriculture	NFA
	Yes		s37	Entertainment, Media & Broadcasting	Warning
	No		s36	Entertainment, Media & Broadcasting	NFA
	No		s36	Other	Warning

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Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
	No		s36	Other	NFA
	No		s37 & 30	Supermarkets, including Wholesale Supply of Food & Drink	NFA
2006/2007	Yes		s27 and 36	Energy	Litigation Judgment attached (Bay of Plenty Electricity (BOPE))
	Yes		s27 and 36	Other	Settlement Public version of investigation report attached (Tourism Milford)
	Yes		s36	Energy	NFA
	No	Yes	s27 and 36	Freight	NFA

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Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
	No	Yes	s27 and 36	Freight	NFA
	No	Yes	s27 and 36	Agriculture	NFA
	No	Yes	s36	Pharmaceuticals	NFA
	No	Yes	s27	Transport (including Aviation, Parking, Public Transport)	NFA
	No	Yes	s27	Telecommunications	NFA
	No		s36	Other	NFA
	No	Yes	s36	Agriculture	NFA
	Yes		s27 and 36	Freight	Cease and Desist

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Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
					Media release: https://comcom.govt.nz/news-and-media/media-releases/archive/first-ever-cess-and-desist-order-issued-against-northport (Northport)
2007/2008	Yes		s36	Agriculture	NFA
	No		s27	Other	NFA
	No	Yes	s37	Banking & Finance	Warning
	No	Yes	s36	Other	NFA
	Yes		s36	Other	Guidelines
	No	Yes	s27 & s36	Other	NFA
	No	Yes	s27	Other	Compliance Letter
	No	Yes	s37	Other	Compliance Letter

Appendix D: Part 2 matters (other than cartels) completed since 2005 which have been considered by the Commerce Act Division					
Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
	Yes		s 37 and s103	Supermarkets, including Wholesale Supply of Food & Drink	Settlement
	No	Yes	s37	Supermarkets, including Wholesale Supply of Food & Drink	Compliance Letter
	Yes		s36	Energy	NFA
	Yes		s27 & s36	Telecommunications	NFA Public version of investigation report attached (Telecom Bundling)
2008/2009	Yes		s36	Agriculture	NFA
	Yes		s27, 30 and 36	Energy	NFA

Appendix D: Part 2 matters (other than cartels) completed since 2005 which have been considered by the Commerce Act Division					
Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
	No	Yes	s36	Energy	NFA
	Yes		s27 and 36	Online Retail	Settlement https://comcom.govt.nz/news-and-media/media-releases/archive/auckland-international-airport-drops-single-duty-free-concessionaire-plans (Auckland Airport Duty Free)
	No	Yes	s36	Energy	NFA (Change of behaviour)
	Yes		s27 and 36	Online Retail	NFA
	No	Yes	s27 and 36	Other	NFA
	No	Yes	s37	Other	Compliance Advice Letter
	Yes		s36	Pharmaceuticals	NFA
	No	Yes	s27	Pharmaceuticals	NFA

Appendix D: Part 2 matters (other than cartels) completed since 2005 which have been considered by the Commerce Act Division					
Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
	No	Yes	s27 and 36	Supermarkets, including Wholesale Supply of Food & Drink	NFA
	No	Yes	s36	Telecommunications	NFA
2009/2010	Yes		s27 & s36	Telecommunications	NFA - because considered under Telecommunications Act instead. https://comcom.govt.nz/news-and-media/media-releases/archive/telecom-settles-over-wholesale-loyalty-offer-\$1.6-million-to-be-paid-in-compensation (Telecom bundled wholesale broadband)
	No		s36	Health Service Providers	NFA
	No		s36	Construction & Building Materials	NFA
	Yes		s27 and 36	Public Services	NFA

Appendix D: Part 2 matters (other than cartels) completed since 2005 which have been considered by the Commerce Act Division					
Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
	Yes		s36	Public Services	CAL Public version of paper provided to Postal Access committee attached (NZ Post New Access Regime)
	No		s37	Online Retail	NFA
	No	Yes	s36	Other	NFA
	No	Yes	s27 & s36	Telecommunications	NFA
	Yes		s27, s30	Financial Services	Settlement: https://comcom.govt.nz/news-and-media/media-releases/archive/commerce-commission-and-visa-reach-agreement-to-settle-credit-card-interchange-fee-proceedings (Interchange Fees)
2010/2011	Yes		s36	Telecommunications	Media release: https://comcom.govt.nz/news-and-media/media-releases/archive/commerce-commission-seeks-leave-to-appeal-0867-case-to-supreme-court

Appendix D: Part 2 matters (other than cartels) completed since 2005 which have been considered by the Commerce Act Division					
Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
					<p>Judgments:</p> <p>https://www.courtsofnz.govt.nz/assets/cases/2010/sc-76-2009-the-commerce-commission-v-telecom-corporation-of-new-zealand-ltd-and-anor-civil-appeal.pdf</p> <p>Telecom v Commerce Commission Court of Appeal Judgment NZCA 278 – 27 June 2012pdf - 761 KB Published on June 27 2012</p> <p>Commerce Commission v Telecom Corporation of New Zealand Limited and Telecom New Zealand Limited – High Court Judgment – 19 April 2011pdf - 169 KB Published on April 19 2011</p> <p>Commerce Commission v Telecom Corporation of New Zealand Limited and Telecom New Zealand Limited – High Court Judgment – 9 October 2009pdf - 191 KB Published on October 09 2009</p> <p>(0867 - Telecom New Zealand Limited)</p>
	Yes		s36	Public Services	NFA
	No		s27, 30 & s36	Financial Services	NFA

Appendix D: Part 2 matters (other than cartels) completed since 2005 which have been considered by the Commerce Act Division					
Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
	No		s27	Transport (including Aviation, Parking, Public Transport)	NFA
	No	Yes	s37	Pharmaceuticals	Compliance Advice
	No		s37	Online Retail	Compliance Advice
	No		s27 and/or s27 via s30	Agriculture	NFA
	No	Yes	s27 s29 and s36	Other	Compliance Advice
	No	Yes	s37	Online Retail	Compliance Advice
	Yes		s27 and s30	Telecommunications	NFA

Appendix D: Part 2 matters (other than cartels) completed since 2005 which have been considered by the Commerce Act Division					
Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
	Yes		s27 and s30	Entertainment, Media & Broadcasting	NFA
	No	Yes	s37	Online Retail	Compliance Advice
	No	Yes	S27 and S36	Energy	NFA
	No	Yes	s27, s36, s47	Agriculture	NFA
	No	Yes	s27 and s36	Other	NFA
	Yes		s27 and/or s36	Transport (including Aviation, Parking, Public Transport)	NFA
2011/2012	Yes		s37	Online Retail	Out of Court Settlement

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Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
	No		s27 and/or s36	Online Retail	NFA
	No		s27 and s27 via s30 and s30	Public Services	NFA
	Yes		s27 and s29	Telecommunications	NFA
2012/2013	Yes		s36	Telecommunications	Judgment (Following Settlement) Media release: https://comcom.govt.nz/news-and-media/media-releases/archive/commerce-commission-welcomes-court-of-appeal-judgment-in-data-tails-case Judgment: https://comcom.govt.nz/data/assets/pdf_file/0024/94803/Telecom-v-Commerce-Commission-Data-tails-NZCA-344-Court-of-Appeal-penalty-judgment-3-August-2012.pdf

Appendix D: Part 2 matters (other than cartels) completed since 2005 which have been considered by the Commerce Act Division					
Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
					(Data Tails)
	No		s27, s30, s37 and s38	Other	CAL
	Yes		s27, s27 via s30 and s36	Energy	NFA
	No	Yes	s27 and/or s30	Other	NFA
		Yes	s27 and/or 30	Agriculture	NFA
	No	Yes	s37	Pharmaceuticals	CAL
2013/2014	No	Yes	s36	Other	NFA

Appendix D: Part 2 matters (other than cartels) completed since 2005 which have been considered by the Commerce Act Division					
Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
	Yes		s27 and/or s36	Entertainment, Media & Broadcasting	Warning Public version of investigation report: https://comcom.govt.nz/_data/assets/pdf_file/0033/94776/Investigation-report-on-Sky-TV-contracts-public-version-8-October-2013.pdf Warning letter: https://comcom.govt.nz/_data/assets/pdf_file/0033/67884/Warning-letter-Sky-Network-Television-Limited-8-October-2013.pdf (Sky Contracts)
	No	Yes	s36	Financial Services	NFA
2014/2015	No	Yes	s27 and s27 via 30	Transport (including Aviation, Parking, Public Transport)	NFA
	No		s30 and s36	Public Services	Compliance Advice

Appendix D: Part 2 matters (other than cartels) completed since 2005 which have been considered by the Commerce Act Division					
Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
	No		s27 and s27 via s30	Energy	NFA
	Yes		s27 s36	Construction & Building Materials	NFA Public version of investigation report: https://comcom.govt.nz/_data/assets/pdf_file/0028/94393/Winstone-Wallboards-Limited-Investigation-closure-report-22-December-2014.pdf (Winstone Wallboards Ltd)
	Yes		s27 and s36	Supermarkets, including Wholesale Supply of Food & Drink	NFA Public closure report: https://comcom.govt.nz/_data/assets/pdf_file/0033/94767/Progressive-Enterprises-Limited-Investigation-closure-report-20-November-2014.pdf (Woolworths Supermarkets)
2015/2016	Yes		s27, s36	Online Retail	NFA (Change of behaviour), Both Expedia and Booking.com voluntarily agreed to make the same changes agreed in Australia with the ACCC, in

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Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
					New Zealand not to enter into or enforce a number of contractual commitments that were of concern with accommodation providers.
	No		s27 and s36	Other	NFA
2016/2017	Yes		s36	Energy	Compliance Advice
	No		s27, s27 via s30 or s36	Transport (including Aviation, Parking, Public Transport)	NFA
2017/2018	No	Yes	s36	Construction & Building Materials	NFA
	No		s27 and s36	Financial Services	NFA
2018/2019	No	Yes	s36	Agriculture	NFA
	No		s27 and s36	Health Service Providers	NFA

Appendix D: Part 2 matters (other than cartels) completed since 2005 which have been considered by the Commerce Act Division					
Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
	No	Yes	s30 and s36	Transport (including Aviation, Parking, Public Transport)	NFA
2019/2020	Yes		s27 and s36	Transport (including Aviation, Parking, Public Transport)	NFA
	Yes		s27 and/or s36	Public Services	NFA
	Yes		s27, S27 via s30	Energy	NFA
	Yes		s27, s31 s 44	Health Service Providers	NFA
2021/2022	Yes		s27, 47, 28	Other	This is a completed investigation, in relation to a restrictive covenant in the building supplies industry likely to result in court proceedings. We cannot comment further at this time.

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Year investigation completed	To Commerce Act Division for enforcement decision	To Commerce Act Division for update	Section(s)	Industry	Outcome
	No	Yes	s27 and s36	Agriculture	NFA
	No	Yes	s27	Agriculture	NFA
	Yes		s37 and/or s30 s38	Online Retail	Litigation (obstruction) & Warnings https://comcom.govt.nz/news-and-media/media-releases/2022/commission-issues-warning,-puts-consumer-electronics-sector-on-notice-over-resale-price-maintenance
	Yes		s27 and s36	Public Services	NFA (Change of behaviour) Closed investigation because it appears there has been a change in conduct and commercial access arrangements between MetService and privately owned WeatherWatch. Report attached (Metservice/NIWA)
	No	Yes	s27, s30 and s36	Financial Services	This investigation is still in progress

Outcome	Explanation
Compliance Advice	Compliance advice issued, as outlined at page 7 of our Enforcement Response Guidelines
Judgment (following hearing)	Judgment of the Court following Court hearing
Judgment (following settlement)	Judgment of the Court following Commission settlement with a party (or parties)
NFA	No further action, as outlined at page 7 of our Enforcement Response Guidelines.
Settlement	Settlement with a party (or parties)
Warning	Warning issued, as outlined at page 8 of our Enforcement Response Guidelines

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