

# Hon Dr Duncan Webb

MP for Christchurch Central

Minister of Commerce and Consumer Affairs

Minister for State Owned Enterprises



30 March 2023

Dr John Small  
Chair  
Commerce Commission  
PO Box 2351  
Wellington 6140  
Email: [REDACTED]

Dear John,

## **ANNUAL LETTER OF EXPECTATIONS 2023/24**

I write to convey my strategic and performance expectations for the Commerce Commission (the Commission) for the 2023/24 financial year.

### **Contributing to the Government's economic plan and priorities**

The Government has three goals for its term: to keep New Zealanders safe from COVID, to accelerate the economic recovery and rebuild, and to lay the foundations for a better future. Cyclone Gabrielle and the unprecedented flooding in the North Island has recently added to the importance of promoting economic recovery.

The Government remains focused on its economic plan to create a high-wage, low-emissions economy, helping New Zealanders to face the global cost of living spike, and consolidating our fiscal position.

The Commission's role in the promotion of competitive markets is essential in achieving the Government's economic plan. Competition brings innovation, economic growth, and lifts productivity.

### **Commerce and Consumer Affairs portfolio**

I acknowledge the Commission's role has expanded significantly over recent years especially in newly regulated sectors. This letter conveys my main objectives for the Commission in relation to the Commerce and Consumer Affairs portfolio. I expect that that the Commission will:

- a. Drive competitive markets for the long-term interests of consumers,

- b. Act with confidence to stop and deter anti-competitive behaviour and unfair trading practices, and
- c. Act to protect consumers and particularly those in a vulnerable position

*Drive competitive market outcomes for the long-term interests of consumers*

Above all, I expect the Commission's actions will promote an environment where consumers are confident that they are getting great choices and fair deals and businesses are competitive, fair-dealing and can innovate and thrive.

The most effective actions are those that deter breaches of competition and consumer law before they arise. I expect the Commission will actively promote the benefits of competition to New Zealand businesses and consumers and provide the guidance and information businesses need to ensure they understand their obligations to compete and treat consumers fairly.

In regulated sectors where competition is not possible, I expect the Commission will set and implement any sector-specific regulation in a way that benefits consumers and Government's objectives for a high-wage, low-emissions economy that helps New Zealanders to face the global cost of living spike.

I also expect the Commission will work to ensure the successful implementation of the Commission's expected new responsibilities, including those in the grocery and water services sectors. I also expect the Commission to work closely with MBIE in advising on the selection of candidates for future market studies, and continue to conduct market studies in a robust and comprehensive manner.

*Act with confidence to stop and deter cartels, anticompetitive conduct, and unfair trading practices*

An essential part of promoting competition and protecting consumers is through robust enforcement when misconduct occurs.

This Government has strengthened key provisions of New Zealand's competition law and notably, section 36 of the Commerce Act 1986 on the misuse of market power. Other recent reforms include criminalisation of the most egregious forms of cartel conduct.

I expect the Commission will ensure it is well placed to identify where misconduct has occurred and take swift and robust enforcement action in a cost effective and proportionate manner. I also expect the Commission will have regard to the development of case law when prioritising enforcement action and especially where significant points of law are involved.

*Act to protect consumers and particularly those in a vulnerable position*

The economic effects of COVID and Cyclone Gabrielle have increased the number of consumers in vulnerable positions and those facing economic hardship. I expect the Commission to pay close regard to consumers in vulnerable positions when prioritising its competition and consumer protection work.

For this purpose, it is essential that the Commission closely engages with stakeholders to understand the needs of consumers who are vulnerable including those who experience:

- Economic hardship and disruptions in the supply of essential goods and services, particularly in times of crisis
- Emerging or increasing unfair trading practices such as online scams
- Difficulty accessing or navigating markets to get a fair deal

I expect the Commission to continue its work in consumer credit markets to encourage lenders to act responsibly when lending to consumers, and especially vulnerable consumers.

I also expect the Commission to support merchants and consumers to pay no more than reasonable fees for use of retail payment methods and to take early action to ensure merchants and consumers benefit from reduced fees for such payments.

### **Digital Economy and Communications portfolio**

The Minister for the Digital Economy and Communications, Hon Ginny Andersen's expectations within the Digital Economy and Communications portfolio is that the Commission will continue to deliver on its regulatory responsibilities under the Telecommunications Act 2001 and promote good consumer outcomes by:

- a. Being proactive in educating and supporting the telecommunications industry to comply with the rules the Commission sets and taking a proactive, responsive and timely approach to compliance and enforcement action where appropriate.
- b. Promoting, monitoring and reporting on competition in the supply of telecommunications services, so that consumers enjoy the price, quality and innovation benefits over the longer term.
- c. Providing incentives to ensure that the currently strong state of fibre telecommunications infrastructure is maintained through effectively administering the new fibre regulatory framework, promoting efficient investment in growth and maintenance, and network resilience and increasing the overall understanding of asset management practices.
- d. Ensuring that consumers are supported through the transition from copper to fibre.
- e. Helping consumers choose the best broadband and mobile plan for their household and encouraging telecommunications providers to compete on performance and not just price.
- f. Implementing measures to improve retail service quality and promoting an effective disputes resolution scheme.

## **Agriculture portfolio**

The Minister of Agriculture, Hon Damien O'Connor, and I want to ensure that the regulatory regimes that apply to our primary sector support the sector to achieve its economic potential.

Our expectation is that, in performing its enforcement and base milk price monitoring functions under the Dairy Industry Restructuring Act 2001, the Commission will:

- a. engage early with Fonterra, where practicable, on any potential concerns of, or raised with, the Commission in relation to the base milk price
- b. prepare for and implement the Commission's new responsibilities under the Dairy Industry Restructuring (Fonterra Capital Restructuring) Amendment Act 2022
- c. work effectively with Ministry for Primary Industries (**MPI**) by assisting MPI on matters relating to the Commission's areas of expertise.

## **Energy and Resources portfolio**

Engine fuel is a significant expense for many households and businesses. The Minister for Energy and Resources, Hon Dr Megan Woods, and I want to ensure that the regulatory regime contained in the Fuel Industry Act 2020 operates effectively to promote competition in engine fuel markets for the long-term benefit of consumer.

Our expectation is that, in performing its enforcement and monitoring functions under the Fuel Industry Act 2020, the Commission will:

- a. continue to publish summaries and analysis of information disclosed under the Act, which provides transparency on the performance of engine fuel markets and promotes competition
- b. take appropriate compliance action where the Commission considers fuel companies may not be complying with their obligations under the Act
- c. continue to contribute to policy discussions with MBIE by assisting it in relation to matters in the Commission's areas of expertise especially in relation to the effect, workability and resource requirements of the Fuel Industry Act 2020.

## **General good governance expectations**

I expect you to follow monitoring and governance expectations contained in the MBIE publication Monitoring arrangements for MBIE-monitored Crown entities, published in October 2020<sup>1</sup>.

I expect you to also follow general good governance practices.

---

<sup>1</sup> MBIE, *Monitoring arrangements for MBIE-monitored Crown entities*, dated October 2020, available here: <https://www.mbie.govt.nz/dmsdocument/12638-monitoring-arrangements-for-mbie-monitored-crown-entities>.

### *Effective Board*

Ensuring the Board is, and remains, effective and high-performing is essential.

I expect the Board to periodically employ robust and effective self-review processes. I understand that a process for self-review was prepared in 2022 and will now be implemented in 2023 following the appointment of new Commissioners and your appointment as Chair in late 2022. I look forward to an update on its findings and any actions in response. I also expect further updates on the performance of the Board as the new members get their feet under the table.

The Government expects all Crown entity boards to operate with a high standard of integrity and to have procedures in place to appropriately manage conflicts of interest, should any arise.

I also expect the Commission to have systems in place to ensure appropriate management of information, consistent with statutory obligations, and remain alert to cybersecurity risks.

### *Building capacity and diversity in public sector governance by mentoring and including emerging talent in board activities.*

I expect you to be a good employer and actively promote and develop the diversity of your Board and workforce for the long term to encompass a broad spread of experience, culture, perspective and lifestyle of those who live in New Zealand.

I expect the Board to individually and collectively mentor and encourage emerging talent and encourage diversity of Board appointments. New talent should be developed through succession planning activities such as through including emerging talent in Board activities and/or providing appropriate induction for new members.

In addition, I expect the Commission to support the Government's good-faith and collaborative approach to Māori-Crown relationships, both in the Commission's approach to carrying out its functions and as a good employer. I understand that the Commission is developing a Rautaki Māori | Māori Strategy and I look forward to hearing about its implementation.

### *Effective monitoring of Commission performance by the Board*

I expect the Board to provide high-quality information and analysis regularly and transparently (including through meetings with and reporting to my officials at MBIE and in meetings with me) on the Commission's organisational capability, performance against its strategic and operational plans, risks and opportunities facing the Commission and how it is responding to them, and implications for future performance.

As you are aware, the Crown Entities Act 2004 mandates the requirements for the Accountability Documents of Crown entities. Could you please ensure the Commission prepares a new draft Statement of Intent and new annual draft Statement of Performance Expectations and provides these to me by 1 May 2023 for my consideration.

I understand the Board is reviewing the Commission's current strategic framework.

I look forward to hearing about how the Commission will transition to working under a new strategic framework once it is developed.

*Relationship with MBIE and other agencies*

I expect you to have a collaborative and constructive working relationship with your departmental monitor at MBIE. This relationship should include active engagement with my officials in the process of the Commission's setting of its strategic direction and its review of existing strategies, priorities and plans, and data systems.

I expect you to work with and across government to integrate the work of the Commission with the role and work of other agencies.

*No surprises*

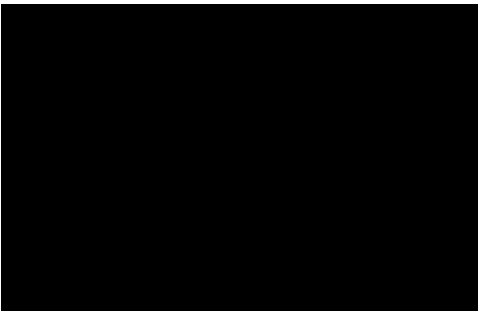
The Government has a 'no surprises' policy. As noted in the Enduring Letter of Expectations to Statutory Crown Entities, I expect you to inform me promptly of matters of significance within my or other interested Ministers' portfolio responsibilities, particularly where these matters may be controversial or may become the subject of public debate.

**Response**

I would appreciate your response to this letter by 17 April 2023, outlining how you propose to address the expectations above.

I look forward to having a good working relationship with you and the Commission over the coming year.

Yours sincerely,



Hon Dr Duncan Webb  
**Minister of Commerce and Consumer Affairs**

Copy to: Adrienne Meikle  
Chief Executive, Commerce Commission

Andrew Hume  
General Manager, Small Business, Commerce and Consumer Policy,  
MBIE