

CONSUMER ISSUES 2016/17



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- Citizens Advice Bureau (CAB)
- Consumer NZ (CNZ)
- Insolvency and Trustee Service
- Ministry of Business, Innovation and Employment (MBIE) – Consumer Protection
- New Zealand Federation of Family Budgeting Services (NZFFBS) – Please note that the NZFFBS was absorbed into a new entity, the National Building Financial Capability Charitable Trust (NBFCCT), on 1 July 2017
- Telecommunication Dispute Resolution (TDR).

The Commission would like to acknowledge insights from the work of the following organisations that contributed to the analysis in this report:

Australian Competition and Consumer Commission (ACCC), Australian Securities and Investments Commission (ASIC), Banking Ombudsman, Commission for Financial Capability (CFFC), Competition Bureau Canada, Fairway Resolutions, Financial Markets Authority (FMA), Financial Services Complaints Limited, Financial Services Federation (FSF), Insurance and Financial Services Ombudsman (IFSO), International Consumer Protection and Enforcement Network (ICPEN), Retail NZ, United Kingdom Competition and Markets Authority (CMA), United Kingdom Financial Conduct Authority, United States Consumer Financial Protection Bureau (CFPB).

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This report has been reviewed for external release, including review against our guidelines for quantitative analysis.

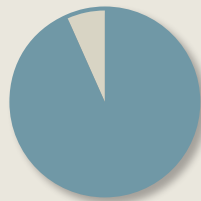
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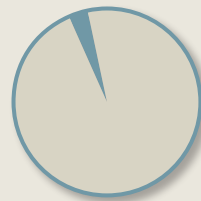
Overview of consumer complaints

(1 July 2016 – 30 June 2017)

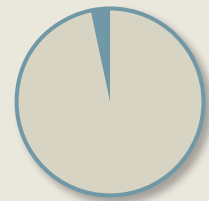
Total complaints
7,270



Fair Trading Act
6,798



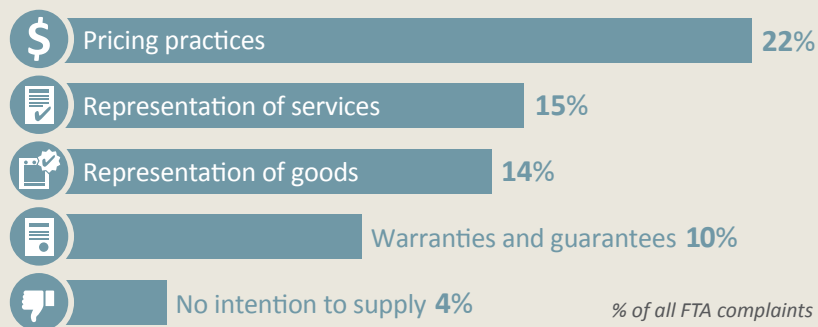
Credit Contracts and Consumer Finance Act
242



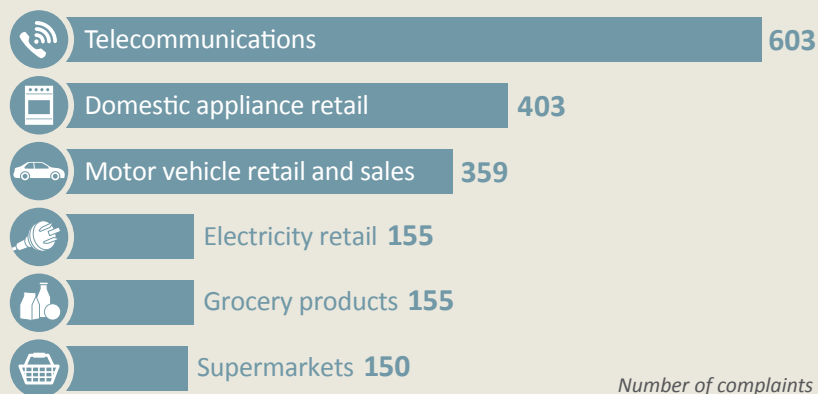
Commerce Act
230

Fair Trading Act

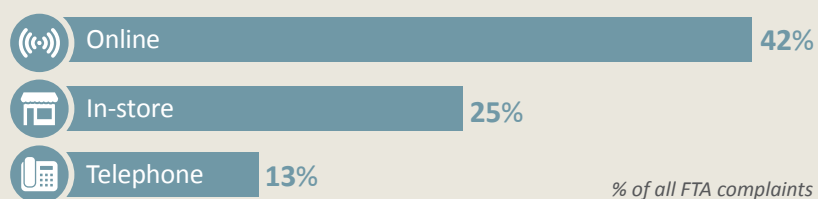
What consumers complained about



Most complained about industries

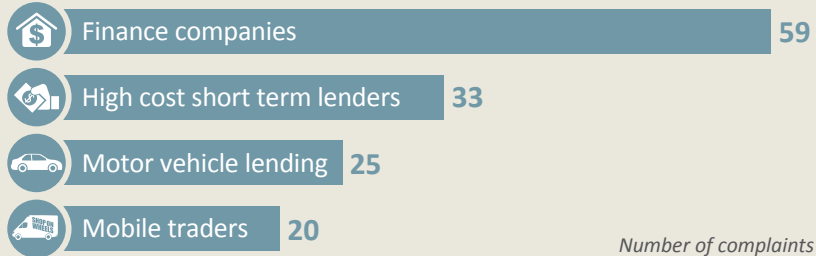


Most complained about sales methods

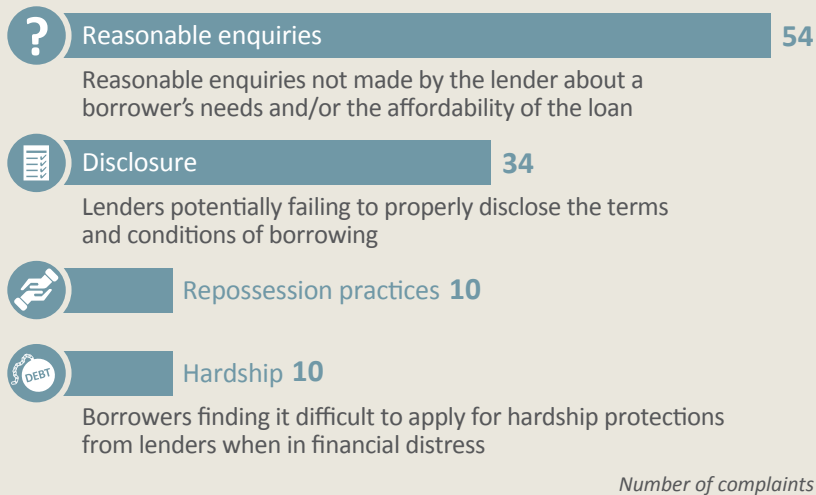


Credit Contracts and Consumer Finance Act

Types of credit providers complained about

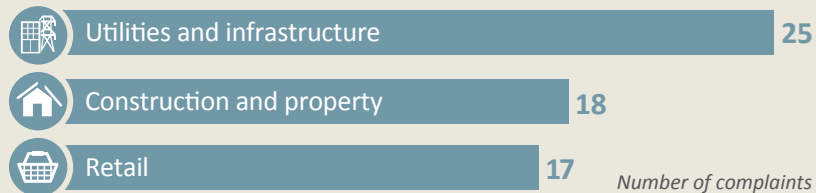


Lender conduct most complained about



Commerce Act

Sectors generating most complaints

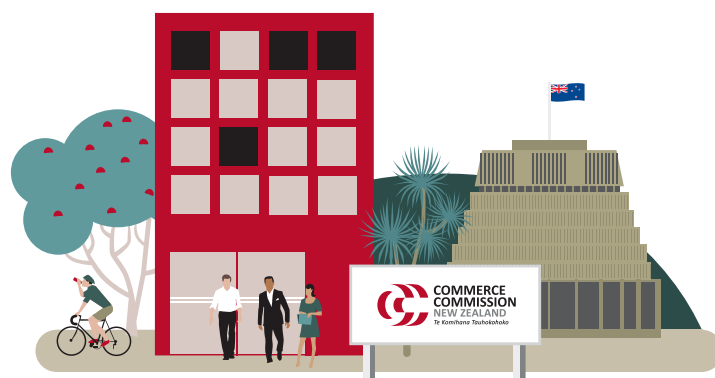


4 Domestic and international applications for leniency

8 Merger clearance and authorisation applications

Why Consumer Issues?

- 1 Our vision is that New Zealanders are better off because markets work well and consumers and businesses are confident market participants. All New Zealanders participate in markets as consumers, while some also participate as business owners, employees or regulated businesses. They all benefit from commerce, are better off when markets work well and are able to participate with confidence.
- 2 The Commerce Commission Vision and Strategy for 2017 to 2022 states that we will “seize opportunities to have the greatest impact”.¹ This strategy is focused on ensuring that we identify the areas that most need our attention and make the most of the opportunities we have to address them. This involves being even smarter with our resources and knowing the right times, places and ways to act. Understanding the consumer environment is an important step in identifying those opportunities. Our strategy states that we will increase this understanding by:
 - 2.1 being attuned to the environment we live in
 - 2.2 being open and receptive to information provided by consumers and businesses on the issues affecting them
 - 2.3 being attuned to the needs of, and trade-offs made by, consumers
 - 2.4 partnering with other government agencies and businesses and consumer stakeholders to gain market insight and identify areas where we can have the greatest impact
 - 2.5 looking for patterns of harm.
- 3 The Consumer Issues report is one of the initiatives undertaken by the Commission to better understand the potential issues that New Zealand consumers face and where there is likely to be the greatest harm. We are pleased to share our findings publicly.



1. The Commerce Commission Vision and Strategy 2017-2022 is available at: <http://www.comcom.govt.nz/the-commission/about-us/>

Summary of potential consumer issues

Our key findings for consumers

Consumers purchasing in an online environment

- 4 New Zealand consumers' online spend continues to grow in double digit percentages year by year.² In the month of May 2017 New Zealanders spent approximately \$350 million shopping with both domestic and international online stores.³ Online shopping provides consumers with access to new markets and goods and services and can be a convenient way to shop. For businesses, the internet can support innovative and alternative business models and offer cost effective solutions to getting goods and services to market.
- 5 We have observed an increase in Fair Trading Act (FT Act) complaints related to purchases considered or made online. Consumers complain about difficulty in determining (often after a purchase has been made) whether the trader had represented price, goods or services accurately, especially as online pricing can appear substantially cheaper when compared to traditional bricks and mortar retail stores. It is evident from some complaints that consumers have subsequently had doubts about whether they purchased from a legitimate trader, particularly if the trader is based abroad and the consumer has been unable to make contact with the trader to resolve concerns about product delivery or quality.
- 6 We also note an increase in complaints about traders failing to deliver products at all, or consumers being 'scammed' by online traders. There is a degree of trust required on the part of the consumer when making purchases online. Consumers' 'trust in trade' online may decrease if more consumers are 'burned' by negative experiences.

Consumers can have difficulty ascertaining whether they are getting value for money

- 7 We want consumers to have access to accurate information that helps them to make informed purchasing choices. This gives consumers the confidence to shop around, drives competition and innovation and assists consumers in making choices which will give them value for money. The Commission enforces the trader's obligation under the FT Act not to mislead or deceive consumers about the price of goods or services to a New Zealand consumer.



2. The Bank of New Zealand Online Retail Sales Report shows that New Zealanders' total online spend grew by 14% in May 2017 compared to May 2016. The report is available at: <https://www.bnz.co.nz/assets/business-banking-help-support/online-retail-sales-index/pdfs/NZ-Online-Retail-Sales-in-May-2017.pdf>
3. In May 2011 this figure was approximately \$150 million. The report is available at: <https://www.bnz.co.nz/assets/business-banking-help-support/online-retail-sales-index/pdfs/NZ-Online-Retail-Sales-in-May-2017.pdf>

- 8 Complaints to us indicate that the misrepresentation of price and the quality or nature of goods or services to New Zealanders may be a common occurrence.⁴ Consumers have told us that they feel misled about the recommended retail price of goods and the associated discount in sales advertised by traders. Other complaints indicate that the price of goods can be easily misrepresented by online traders using a non-specific currency at check-out, subscribing consumers to monthly subscriptions which are hidden in fine print, or adding unexpected additional costs such as booking fees. Other complaints relating to both online and traditional sales channels reflect consumers' disappointment when goods or services purchased do not meet expectations. Goods may be faulty or counterfeit, or fail to meet the quality expected, while services may not deliver the benefits the consumer wanted. Such experiences can dampen consumers' confidence in markets and cause them to question whether they can make good choices with the information available.

Consumers find it difficult to exercise their rights

- 9 Complaints to us indicate that most consumers in New Zealand are aware that there is legislation protecting consumers (such as the FT Act and Consumer Guarantees Act (CG Act)). Similarly, the National Consumer Survey found that consumers are aware that there are laws to protect their rights but they have mixed understanding of specific laws.⁵
- 10 The FT Act prohibits businesses from misrepresenting the nature of the protections available to consumers under the CG Act. Complaints to us indicate that consumer's rights under the CG Act are not always being accurately represented to consumers, both in-store and when purchasing online. Statements by traders about the availability of refunds or how long the consumer has to report problems with the product are not always consistent with consumers' rights under the CG Act.

Consumers' experience of the consumer credit environment

Responsible lending issues

- 11 Irresponsible lending can cause significant consumer detriment, especially to consumers who are in a vulnerable position. The Responsible Lending Principles set out in the Credit Contracts and Consumer Finance Act (CCCF Act) apply to all consumer credit contracts entered into on and after 6 June 2015. The onus rests with the lender to make reasonable inquiries so as to be satisfied that likely lending to borrowers is affordable and meets the needs of the borrower (among other obligations). This means that lenders must obtain information about the financial situation and needs of borrowers before they enter into a credit contract.

4. The Ministry of Business, Innovation and Employment National Consumer Survey 2016 found that nearly a quarter of consumers surveyed who reported a problem to a trader in the past two years said their problem related to being provided with insufficient or misleading information (page 2). Available at: <https://www.consumerprotection.govt.nz/news-and-media/national-consumer-survey-2016/>

5. The National Consumer Survey is undertaken by the Ministry of Business, Innovation and Employment Consumer Protection Unit. Further information is available at <https://www.consumerprotection.govt.nz/news-and-media/national-consumer-survey-2016/>

- 12 Our intelligence suggests some lenders are still failing to comply with the Responsible Lending Principles. Consumer and budgeting advisors have told us that some lenders, including finance companies, mobile traders and lenders offering high-cost short-term loans, are not lending responsibly. This is consistent with the Commission’s complaints analysis, as many complaints under the CCCF Act relate to whether the lender undertook reasonable inquiries about borrowers’ circumstances. Consumer complaint narratives indicate that lenders using text and/or online forms for loan applications do not always reassess the circumstances of the borrower for repeat borrowing and ‘top-ups’. This is consistent with feedback from budgeting advisors.
- 13 We are aware from complaint narratives that some consumers in a vulnerable position have had difficulty applying for hardship protections from their lenders. Some budgeting advisors have suggested that it was inevitable that their clients would end up in hardship given their clients circumstances at the time they entered into the loan – suggesting that the lender had not complied with the principles.

Credit and other fees

- 14 By law, a credit fee must relate to a lenders cost and a lender cannot profit from fees. When engaging unassociated third parties, lenders are also not permitted to add a margin onto fees for the services provided. Consumers complain that they feel that some fees set by lenders, such as application fees or automatic payment failure fees, appear unreasonable. We receive the most complaints about the various fees set by lenders for motor vehicle financing.
- 15 The CCCF Act requires lenders to provide clear and correct disclosure of the terms and conditions of borrowing, including information about fees and interest. We continue to receive complaints from consumers that lenders are not sufficiently disclosing the terms and conditions of borrowing before consumers sign loan documents. The majority of these complaints concern finance companies.



Purpose and structure

Purpose

- 16 The Consumer Issues 2016/17 report provides participants in New Zealand’s consumer environment and members of the public with insight into issues presently facing consumers and markets relevant to the legislation the Commerce Commission enforces.

Structure

- 17 The Consumer Issues 2016/17 report is divided into three sections:
 - 17.1 Section 1: Consumers – contains an analysis of issues we have identified that relate to the Fair Trading Act (FT Act).
 - 17.2 Section 2: The consumer credit environment – contains an analysis of credit issues we have identified that relate to the Credit Contracts and Consumer Finance Act (CCCF Act), and credit-related issues related to the FT Act.
 - 17.3 Section 3: Competitive markets – provides an overview of Commission Commerce Act (CA) complaints.

Methodology

- 18 The Consumer Issues 2016/17 report identifies potential issues in New Zealand’s consumer environment. These issues have been identified through an analysis of Commission complaints data,⁶ the analysis of consumer data from other agencies, structured workshops and discussions with subject matter experts, and a review of selected research and government reports relevant to the 2016/17 financial year (1 July 2016 to 30 June 2017).
- 19 The Consumer Issues report published in 2016 was based on data for the year 1 January 2015 to 31 December 2015. This report (Consumer Issues 2016/17) is based on financial year data from 1 July 2016 to 30 June 2017. This change is intended to provide more timely insight into New Zealand’s consumer environment.
- 20 Consumer data analysed, and incorporated into this report, includes data from:
 - 20.1 Citizens Advice Bureau (CAB)
 - 20.2 Consumer NZ (CNZ)
 - 20.3 Insolvency and Trustee Service
 - 20.4 Ministry of Business, Innovation and Employment (MBIE) – Consumer Protection
 - 20.5 New Zealand Federation of Family Budgeting Services (NZFFBS) – please note that the NZFFBS was absorbed into a new entity, the National Building Financial Capability Charitable Trust (NBFCT), on 1 July 2017
 - 20.6 Telecommunication Dispute Resolution (TDR).

6. Commerce Commission complaints data is collected through consumer contacts with the Competition Branch Enquiries and Intelligence Team, and stored in a structured database. The Commission complaints data, which constitutes the substantial basis of this report, is then extracted and analysed to identify patterns and trends. It should be noted that, with the introduction of a new complaints database on 1 May 2017, the definition of complaints has been adjusted. Complaints referred on to other agencies, which still refer in some way to the Acts the Commission enforces, and complaints awaiting further information are now counted in the complaint numbers presented.

- 21 The Commission identifies complaints as potential breaches of the law but this does not necessarily mean that the law has been broken. A complaint can indicate something of potential concern to consumers, especially when complaints are compiled by theme for the analysis of patterns and trends.
- 22 We also receive enquiries from members of the public, for example about Commerce Commission guidelines or fact sheets; these enquiries are not discussed in this report.

Limitations on complaints information

- 23 The Commission receives enquiries from the public about matters related to its role in enforcing competition and consumer laws. As a subset of enquiries, the Commission also receives complaints about individuals or businesses that may not be acting in accordance with these laws.
- 24 Where this assessment refers to the volume of complaints against a particular trader, or identifies a particular type of complaint, readers should note the following caveats:
 - 24.1 The complaints data on its own does not itself indicate that any law has been breached. Rather, complaints relate to alleged conduct by the trader that, if proven, risks breaching the legislation
 - 24.2 The complaints data also does not establish that any harm has been caused to any consumer or competitors
 - 24.3 Larger traders are likely to generate more complaints as a function of their scale; we have not adjusted for this
 - 24.4 An orchestrated complaints campaign against a trader can produce high complaint numbers
 - 24.5 Where the public is aware that the Commission is unable to act on a matter, this can discourage complaints from the public
 - 24.6 Complaint volumes for a trader can be about a single matter or multiple matters. Some matters that attract a high level of publicity can generate a large volume of complaints
 - 24.7 The complaints data only reflects what consumers have chosen to report to the Commission or to other organisations that have in turn provided information to the Commission. Some complaints on the same matter are likely to have reached other complaint bodies instead of the Commission.
- 25 The data is, however, indicative of a level of public concern about a trader or matter, and we use it for that purpose.



Section 1 – Consumers

Key points

- Pricing representations generated the most FT Act complaints to the Commission in the 2016/17 financial year
- Total FT Act complaints to the Commission have increased, as have complaints about telecommunications service providers
- We are receiving more complaints about warranties and guarantees
- We are receiving more complaints about traders' intention to supply the goods purchased

- 26 This section provides an overview of Commission Fair Trading Act (FT Act) complaints data, incorporating data and research from other agencies. Potential consumer issues and trends observed in Commission complaints are presented alongside changes of note in the consumer environment.

The changing consumer environment

- 27 Consumer spending in New Zealand has been increasing steadily since 2009, reaching a historic high in the first quarter of 2017 of \$35,681 million in the three months to 31 March 2017.⁷ The Australia New Zealand (ANZ) Bank Roy Morgan Consumer Confidence survey published in July 2017 notes that present consumer confidence has eased slightly, yet is still running above the long-run average.
- 28 Technology continues to transform the consumer experience, with online shopping by New Zealanders from both domestic and international online traders experiencing double digit growth year on year. Wider accessibility to a greater range of products available online can be beneficial to consumers, yet it is noted that it can be more difficult for consumers to judge the legitimacy of traders online. It is apparent that consumers undertaking due diligence on the online traders they are considering purchasing from is an important aspect of the modern shopping experience.
- 29 An increasing number of goods are being marketed and sold through social media platforms, and associated applications such as Instagram. The amount of online shopping being undertaken by consumers on mobile devices is also increasing.
- 30 The technological disruption of industries such as travel booking, personal transportation and accommodation continues at pace, posing challenges for regulators in monitoring compliance with consumer legislation in innovative business models. These challenges are most apparent where a business trades exclusively online, and is based abroad.

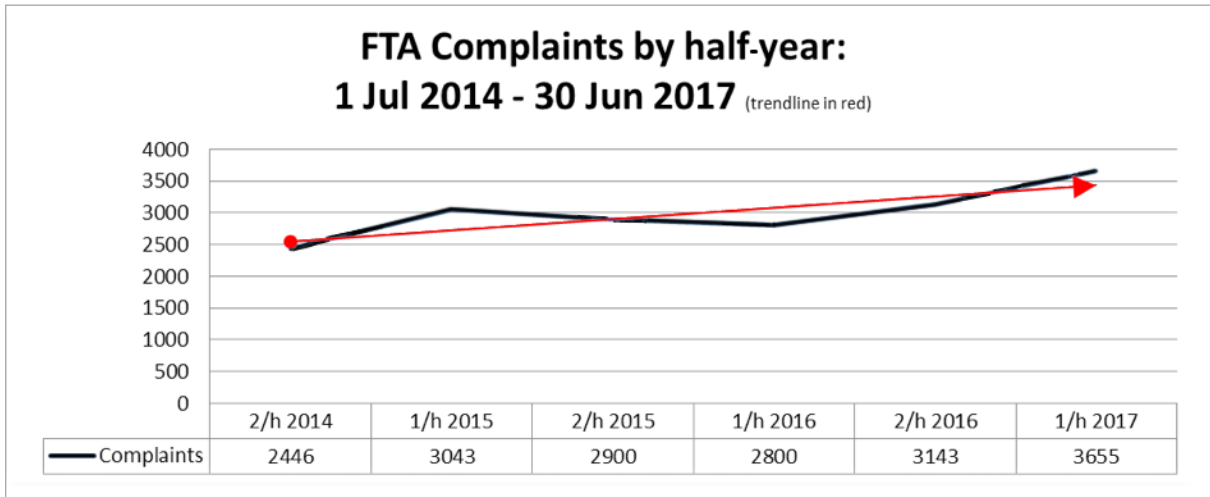
7. Statistics available from Statistics NZ Index of key New Zealand statistics: Consumer expenditure available at: http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/index-key-statistics/consumer-expenditure.aspx

Fair Trading Act complaints

2016/17 Fair Trading Act complaints

6,798

Table 1: Fair Trading Act complaints July 2014 to June 2017 by half-year



- 31 Monthly complaint numbers show a moderate increase across the 2016/17 financial year when compared to the 2015 calendar year.

What did consumers complain about in the 2016/17 financial year?

- 32 As in 2015, pricing practices remain the area under the FT Act that generated the most consumer complaints to us. This is followed by complaints about the representation of services and the representation of goods, in that order. Representations about goods were previously more complained about than the representation of services.
- 33 These three areas accounted for 51% of FT Act complaints in 2016/17. This is a decrease from 2015, when they accounted for 71% of FT Act complaints. We have received increasing numbers of complaints concerning warranties and guarantees, and traders not supplying the goods purchased.



Pricing practices⁸ (22% of FT Act complaints)

2016/17 Pricing practice complaints

1,492

- 34 Pricing representations were the most complained about fair trading conduct in the 2016/17 financial year. The Commission received an increasing number of complaints about pricing practices through the first half of 2017, yet the proportion of FT Act complaints about pricing practices has decreased to 22% in the 2016/17 year, down from 26% in 2015.
- 35 We received the most complaints about pricing practices in industries that process a large number of daily transactions (such as supermarkets) and industries that often have more complicated products on offer (such as telecommunications service providers).
- 36 Consumer complaints show a diverse range of circumstances where consumers feel that the price of goods or services may have been in some way misrepresented. These circumstances include consumers:
- 36.1 feeling misled about the recommended retail price of goods, and therefore the advertised discount on products in sales
 - 36.2 not being charged the price advertised (both in-store and in media advertising) at check-out
 - 36.3 feeling misled about the total cost of purchases made online due to unclear currency of purchase or unclear additional costs such as booking fees and shipping.

Retail Pricing Practices

The Commerce Commission published an open letter to retailers in May 2017, highlighting pricing practices which might breach the law, and offering guidance on how to avoid them. The letter alerted traders to the recent \$800,000 fine handed down to Bike Barn for misleading discount claims.

More information can be found at: <http://www.comcom.govt.nz/the-commission/media-centre/media-releases/detail/2017/retailers-put-on-alert-about-using-misleading-pricing>



8. Issues relating substantively to the provisions of section 13(g) of the FT Act.

The representation of services⁹ (15% of FT Act complaints)

2016/17 Representation of services complaints

1,030

- 37 Telecommunications service providers generated almost 20% of complaints to the Commission about the availability and quality of purchased services, with 197 complaints in the 2016/17 financial year. A large proportion of the remaining complaints about services were single complaints about small traders, including self-employed tradespeople.
- 38 Travel and tourism booking agents (mostly trading exclusively online) generated an increasing number of complaints in 2016/17; consumers complain about being misled about the quality and/or nature of travel services such as accommodation booked online.
- 39 Summary findings from the National Consumer Survey indicate that just over half of New Zealand consumers surveyed have experienced a problem with a product or service within two years of purchase.¹⁰ The top three categories where consumers experienced problems were related to services as opposed to goods. Those categories were:
- 39.1 Fixed-line telecommunication services, such as landline or internet (35% of respondents who had purchased experienced a problem)
 - 39.2 mobile telecommunication services, such as mobile voice or data (24% of respondents who had purchased experienced a problem)
 - 39.3 building, repairs, renovations or home maintenance services (23% of respondents who had purchased experienced a problem).



9. Issues relating substantively to the provisions of section 13(b) of the FT Act.

10. The National Consumer Survey is undertaken by the Ministry of Business, Innovation and Employment Consumer Protection Unit. Further information is available at <https://www.consumerprotection.govt.nz/news-and-media/national-consumer-survey-2016/>

The representation of goods¹¹ (14% of FT Act complaints)

2016/17 Representation of goods complaints

925

- 40 The potential misrepresentation of the quality and/or nature of goods was the third most complained about fair trading matter in the 2016/17 financial year.
- 41 Industries such as motor vehicle retail and domestic appliance retail generate the most complaints about the potential misrepresentation of goods. The high value and importance of goods such as cars and domestic appliances makes the accurate representation of these goods paramount when choosing what to purchase. This in turn can cause greater consumer detriment when the quality of goods purchased is not satisfactory.
- 42 The National Consumer Survey notes that, while most New Zealand consumers trust businesses not to mislead them, 35% of respondents stated they generally did not trust businesses in the motor vehicle retail sector.¹²
- 43 We received a number of complaints about the representation of goods sold primarily through television infomercials on 'risk-free trials' (47 FT Act complaints). The number of complaints is disproportionate to the comparatively small range of goods offered by traders marketing through infomercials, especially when compared to retailers selling thousands of product lines.
- 44 Our analysis of complaint narratives indicates that it can be difficult for consumers to evaluate whether a representation is misleading before purchasing goods online.
- 45 Online ticketing platforms are generating increasing numbers of goods complaints (73 complaints in the 2016/17 financial year), including allegations that consumers have been unable to use tickets for events purchased through these platforms. Excluding major events designated by the Ministry of Business, Innovation and Employment, it is not illegal in New Zealand to resell an event ticket for a higher price than the face value. However, the FT Act requires that the representation of goods (including event tickets) is accurate.



11. Issues relating substantively to the provisions of section 13(a) of the FT Act.

12. The National Consumer Survey is undertaken by the Ministry of Business, Innovation and Employment Consumer Protection Unit. Further information is available at <https://www.consumerprotection.govt.nz/news-and-media/national-consumer-survey-2016/>

- 46 Complaints about warranties and guarantees for goods and services increased by 160% in the 2016/17 financial year (694), when compared to the 267 complaints received in the 2015 calendar year. Consumers report more concerns about warranties and guarantees offered by domestic appliance retailers and motor vehicle retailers than they report about any other industry. This could be due to the high-value, technical goods that traders in these sectors sell.
- 47 We do not directly enforce the Consumer Guarantees Act (CG Act). However, under section 13(i) of the FT Act, no person in trade may make a false or misleading representation about a consumer's rights under the CG Act, bringing this issue under the Commission's remit. The potential misrepresentation of a consumer's rights regarding the CG Act is a theme in complaints about consumer purchases made both online and in-store.
- 48 In complaints to us, consumers continue to tell us that it can be difficult to obtain refunds, repairs or replacements for faulty goods. Narratives also indicate that some traders offering insurances or extended warranties on high-value goods are not adequately explaining the benefits additional to the consumer's protection under the CG Act, as required by the FT Act.
- 49 We continue to hear from consumers that traders, often domestic appliance retailers, refer them to the manufacturer if they report a potentially faulty product. We first observed this trend in 2015.



13. Issues relating substantively to the provisions of section 13(i) of the FT Act.

- 50 We have seen a 150% increase in complaints about traders not delivering the goods purchased, or delivering goods following unreasonable delays in the 2016/17 financial year when compared to 2015.
- 51 It can be difficult to differentiate between a trader that has no intention to supply goods, and poorly run legitimate traders. Some online traders appear to run their online sales reasonably well before becoming over-stretched and overwhelmed by an increase in demand.
- 52 Most complaints related to this matter are about businesses that trade exclusively online. Furthermore, many of the online traders consumers complain about are based abroad, making it more difficult for consumers to obtain satisfactory redress when purchases are not delivered, or the product is not to the quality represented.
- 53 Given the ease with which an individual can now establish a retail business online and consumers' interest in purchasing an increasing amount online, we expect this issue to generate further complaints throughout 2017.



14. Issues relating substantively to the provisions of section 21 of the FT Act.

Which methods are most complained about?

- 54 Consumers complained to the Commission about being misled through the following methods:¹⁵
- 54.1 Online (42%)
 - 54.2 In-store (25%)
 - 54.3 Telephone (13%).
- 55 The proportion of FT Act complaints relating to both online and in-store sales have increased when compared to the 34% and 14% they respectively generated in the 2015 calendar year. Other methods of contact and trade, such as print, appear to be producing fewer trader compliance concerns, as 67% of FT Act complaints are now about online or in-store matters.

Online (42% of FT Act complaints)

- 56 The proportion of FT Act complaints made to us about consumer experiences online is increasing, as is the monthly spend of New Zealand consumers purchasing online from domestic and international businesses.¹⁶
- 57 In keeping with 2015 complaints data, approximately 85% of complaints about online traders related to traders based in New Zealand.
- 58 The four online traders (including those based overseas) that generated the most complaints to the Commission in the 2016/17 financial year are shown in Table 2 below.

Table 2: The four online traders that generated the most complaints to the Commission in the 2016/17 financial year.

Online trader	Complaints
Viagogo	57
LuxStyle Aps	51
Trade Me Limited (auction site) ¹⁷	45
Deal Man	20

15. These figures were extracted from the analysis of 300 complaints, as the information is not available as recorded in Commerce Commission databases.

16. The Bank of New Zealand Online Retail Sales Report shows that New Zealanders' total online spend grew by 14% in May 2017 compared to May 2016. The report is available at: <https://www.bnz.co.nz/assets/business-banking-help-support/online-retail-sales-index/pdfs/NZ-Online-Retail-Sales-in-May-2017.pdf>

17. It is noted that the majority of complaints about the Trade Me auction site related to a single point of consumer concern: an increase in charges made by Trade Me for Trade Me sellers to use their sales platform.

59 A review of complaints identified the following common issues consumers have experienced with traders who operate exclusively online:

- 59.1 Consumers complain that some traders marketing on social media platforms do not deliver on time, send lower-quality (or the wrong) product or do not supply goods. Some traders marketing on social media platforms are difficult to contact when consumers seek redress for unsatisfactory purchases
- 59.2 New Zealand consumers often assume a trader is based in New Zealand due to a .co.nz web address. Approximately 20% of .co.nz websites are registered to individuals based abroad
- 59.3 Consumers complain that coupon and one-day deal sites are not providing sufficient after-sales support for the products or services supplied
- 59.4 Some online traders' websites operate a subscription model, taking credit card details for the purchase of a specific product and subsequently deducting membership fees. Consumers complain that these terms and conditions are often not clearly disclosed by the trader online
- 59.5 Consumers complain that discount offers on services such as accommodation are misrepresented, though these circumstances are often difficult to evidence.

Which industries are the most complained about?

60 The industries which generated the most FT Act complaints in the 2016/17 financial year were:

- 60.1 telecommunications service providers (603 complaints)
- 60.2 domestic appliance retail (403 complaints)
- 60.3 motor vehicle retail and sales (359 complaints)
- 60.4 electricity retail (155 complaints)
- 60.5 grocery products (155 complaints)
- 60.6 supermarkets (150 complaints).

61 The five most complained about industries accounted for 25% of FT Act complaints.

62 The list of 21 traders that generated 20% of FT Act complaints between 1 July 2016 and 30 June 2017 can be found at page 29. Our analysis shows that the concentration of complaints around specific traders is reducing; for example, in 2015, 21 traders generated 25% of complaints.



- 63 The provision of telecommunications services continues to generate more complaints to the Commission than any other industry; the number of complaints received increased by 31% in the 2016/17 financial year over 2015, continuing an upswing in complaints observed since 2014.
- 64 The four most complained about TSPs in 2016/17 were:¹⁸
- 64.1 Vodafone (186 complaints)
 - 64.2 Spark (180 complaints)
 - 64.3 2degrees (88 complaints)
 - 64.4 Vocus (68 complaints).
- 65 Themes observed through complaint narratives about TSPs include:
- 65.1 Some TSP customers are being invoiced incorrectly, including invoicing for services that have never been purchased or supplied. Twenty-four percent of complaints about TSPs (143 complaints) referenced incorrect billing issues, with all four large TSP companies generating complaints. The Telecommunication Dispute Resolution Service (TDR) also received more complaints about billing issues than other themes in the 2016/17 financial year.
 - 65.2 Twenty-one percent of TSP complaints (128 complaints) were about the various charges levied by TSPs. Termination fees on fixed-term contracts were the most complained about charges. We also continue to receive complaints about:
 - 65.2.1 late payment fees
 - 65.2.2 credit card fees
 - 65.2.3 paper invoice fees.
 - 65.3 Consumers complain that they believe the performance of their broadband connection is poor when compared to the speeds and capabilities advertised by the retailer.
 - 65.4 We have observed that offers of 'free' mobile phones or other electronic goods such as televisions are becoming more prominent in the marketing of long, fixed-term TSP contracts for home phone and broadband services. Circumstances surrounding the delivery and quality of these 'free' goods are now a theme of complaint, especially where contracts are prematurely terminated by the customer.

Split-pricing

Between March and July 2015 Trustpower promoted a \$49 a month for 12 months unlimited data broadband plan. The \$49 price was, however, only available to customers who signed up for a bundle package of power and broadband at the same address on a 24-month contract. For the second 12-month period the cost of broadband then increased up to \$79 a month and if customers wanted to cancel during the 24-month contract they would have to pay a termination fee of \$195. These important terms were hidden in the small print.

In September 2016 Trustpower was fined \$390,000 after acknowledging consumers had been misled over the price and terms of its bundled electricity and unlimited data broadband offer.

18. Subsidiary entities and alternative brands are included when considering companies. The total number of complaints for 2degrees includes Snap!; Spark includes Spark, Skinny Mobile and Big Pipe; Vocus includes Flip, M2 Telecommunications, Orcon, and CallPlus trading as Slingshot; Vodafone also includes WXC Communications.

- 66 The number of complaints about domestic appliance retailers has been constant throughout the 2016/17 financial year. Complaints have declined, however, in comparison to 2015 (457 complaints). This means that the proportion of FT Act complaints that are about domestic appliance retailers is decreasing even as the industry remains the second most complained about.
- 67 The three most complained about domestic appliance retailers (including appliance manufacturers) were:
- 67.1 Noel Leeming (82 complaints)
 - 67.2 Harvey Norman (45 complaints)
 - 67.3 PB Technologies (32 complaints).
- 68 Themes observed through complaint narratives about domestic appliance retailers include consumers complaining that:
- 68.1 pricing practices among domestic appliance retailers, especially during advertised sales, sometimes appear misleading. Some consumers also complain about a lack of availability of well-priced sale items, making some suspect that certain sale offers on highly desirable products are bait advertising to bring customers into the store
 - 68.2 they have run into difficulties when seeking redress for potentially faulty products from in-store traders, and that some retail staff have misrepresented the provisions of the CG Act during sales conversations.
- 69 The National Consumer Survey shows that consumer trust in purchasing goods from domestic appliance retailers is high, with 76% of those surveyed stating that they generally trust that they will not be misled or treated unfairly. The number of respondents extending this trust to the purchase of extended warranties was much lower at only 41%.¹⁹



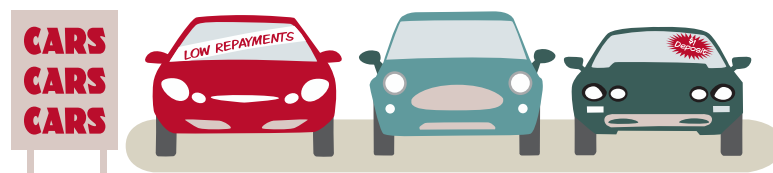
19. The National Consumer Survey is undertaken by the Ministry of Business, Innovation and Employment Consumer Protection Unit. Further information is available at <https://www.consumerprotection.govt.nz/news-and-media/national-consumer-survey-2016/>

Motor vehicle retail and sales

2016/17 Motor vehicle retail and sales complaints

359

- 70 As an industry, motor vehicle retail and sales generated the third most complaints under the FT Act in 2016/17. Consumers complain that:
- 70.1 the quality (and in some cases the specifications) of motor vehicles is being misrepresented by motor vehicle dealers, generating 110 complaints
 - 70.2 warranties and guarantees that accompany motor vehicle purchases (such as manufacturer's warranties, automotive insurances and the consumer's rights under the CG Act) may be misrepresented, generating 60 complaints in the 2016/17 financial year.
- 71 Complaints about motor vehicle dealers are widespread across traders, indicating issues are present across the country and the industry. Unlike telecommunications service providers, or domestic appliance retailers, for example, 55% of motor vehicle complaints are single complaints about different traders. Consumers complain to us about new and second-hand car dealers, dealers based online and dealers concentrating on selling imported vehicles.
- 72 Historically, it has been noted that approximately 85% of FT Act motor vehicle complaints pertain to non-Motor Trade Association (MTA) members.²⁰
- 73 A review of complaint narratives shows that consumers tend to raise multiple issues in a single complaint (such as absent Consumer Information Notices, or CCCF Act concerns such as perceived coercion to sign financial documents).



20. Finding from Consumer Issues 2016.

Electricity retail

2016/17 Electricity retail complaints

155

- 74 The number of complaints to the Commission generated by electricity retailers is increasing, with 29 more complaints received in 2016/17 than in 2015. Pricing practices are the predominant theme in complaints about electricity retailers. Specific points raised by consumers include:
- 74.1 unexpected or poorly disclosed price increases on fixed-term contracts
 - 74.2 the potential misrepresentation of electricity as a component of bundles including telecommunications services
 - 74.3 the representation of special offers for new customers
 - 74.4 incorrect invoicing and unexpected additional fees and charges.
- 75 In the year to 30 March 2017, Utilities Disputes, the dispute resolution service for electricity and gas customers, received over 5,500 enquiries.²¹ Of those enquiries, over 90% were eventually settled between the parties. Utilities Disputes notes that the most common issue in complaints is 'billing', including circumstances where customers suspect they have been overcharged for the services used.

Groceries

2016/17 Grocery complaints

155

- 76 FT Act complaints about grocery items are varied, and are about many products, manufacturers and traders.²² Consumers complained that they felt that:
- 76.1 some food and toiletry product labelling may be potentially misleading
 - 76.2 some product labelling and in-store representation of country of origin may be potentially misleading.
- 77 It can be difficult for consumers to judge the accuracy of the claims made on some products (including health and nutritional supplements).



21. Utilities Disputes Annual Report 2016-17 available at: <http://media.utilitiesdisputes.org.nz/media/Annual%20Reports/2017%20Annual%20Report.pdf>

22. Complaints about the conduct of supermarkets are not included in this category.

Supermarkets

2016/17 Supermarket complaints

150

- 78 Supermarkets within the Foodstuffs brands (such as PAK'nSAVE and New World) and Progressive Enterprises stores (such as Countdown and SuperValue) are the subject of approximately 95% of complaints about supermarkets in New Zealand. In the 2016/17 financial year we received 98 complaints about Foodstuffs brand supermarkets, and 66 complaints about Progressive Enterprises stores.²³
- 79 Consumer concern about the pricing practices of supermarkets is the main theme observed in complaints. Most of these complaints relate to advertised special prices on products which appear to have been incorrectly priced on in-store shelves or charged incorrectly at check-out. A variety of stores, sales and products are referenced in complaints.

Other

- 80 Other industries that generated over 130 complaints to the Commission in the 2016/17 financial year include:
 - 80.1 airlines (140 complaints)
 - 80.2 online services (133 complaints).
- 81 The number of FT Act complaints received about airlines in the 2016/17 financial year is very similar to 2015. While the number of complaints about Air New Zealand has fallen to 77 (down from 88 in 2015), it remains the most complained about airline operating in the New Zealand market, followed by Jetstar.
- 82 Complaints about airlines tend to be more case specific than other industries, with consumers complaining about circumstances that range from airlines not supplying accommodation for cancelled services to general pricing errors. We stopped receiving complaints about 'opt-out' product offers during online booking once Air New Zealand and Jetstar adjusted their online offers. We are beginning to receive more complaints about the international carriers entering the New Zealand market.
- 83 Online services include web-hosting, web design, search engine optimisation and computer malware scans and fixes. Consumers complain that it is often difficult to judge the legitimacy or likely quality of these services when they are presented and sold online, especially from traders based abroad.
- 84 Other consumers have complained about being 'cold-called' by online services salespeople and have questioned the representations of the services offered. Some of these services have not been supplied to the consumer as purchased. Especially when traders are based abroad, making contact with the trader and putting things right can be difficult.

23. Please note that complaints that specifically reference the behaviour of two or more traders have been counted separately on this occasion.

Other sectors and areas of interest

Construction

2016/17 Construction complaints

73

- 85 In the 2016/17 financial year we received 73 complaints that specifically related to the construction industry, including construction materials.
- 86 Thirty of these complaints were specifically about the services of builders. In addition, concerns around the design, development and construction of new builds generated 23 complaints in 2016/17. Themes observed in these complaints include:
 - 86.1 building services not being completed to the quality expected, in the timeframe agreed, and/or at the price agreed
 - 86.2 warranties and guarantees, including building quality insurances, not being met as expected by the consumer
 - 86.3 tradespeople not having the trade association membership and/or qualifications represented.
- 87 Fifteen of the remaining complaints were about construction products which consumers believed may not meet treatment or safety specifications as advertised.

Unfair contract terms

- 88 The Commission presently reviews standard form consumer contracts on an industry-by-industry basis, while also reviewing contracts that generate complaints as resources allow.
- 89 In the review of standard form consumer contracts over the past two years, we have observed recurring concerns across industries about:
 - 89.1 variation clauses
 - 89.2 liability clauses
 - 89.3 provisions relating to the termination of contracts
 - 89.4 the transparency of contracts' terms and conditions.



Product safety

2016/17 Product safety complaints

57

- 90 In the 2016/17 financial year we received 57 complaints about product safety standards, an increase of 18 complaints over 2015.²⁴
- 91 The Commission is responsible for the product safety standards of 13 specific products. Of those 13, the three most complained about were:
- 91.1 household cots (13)
 - 91.2 children's toys (12)
 - 91.3 children's nightwear (5).
- 92 The proportion of product safety complaints about products sold by private sellers on Trade Me or a social media platform, has decreased to 25% in the 2016/17 financial year, down from approximately 60% in 2015.

Scams and similar representations

2016/17 Scams and similar representations complaints

184

- 93 The number of complaints we receive about scams and similar misrepresentations is increasing, a trend observed in complaints to the Commission since 2013.²⁵
- 94 In the 2016/17 financial year we received 31 complaints about potential scams and misrepresentations by people purporting to represent government agencies. While the Commission is one of several agencies in New Zealand with a role to identify and disrupt scams and similar misrepresentations, our remit only extends to those who have represented themselves as being in trade. We have advised consumers of the most appropriate agency to take their concerns to when required.
- 95 Prominent points from complaints include:
- 95.1 The most complained about entity was the Corporate Portal pro-forma invoicing scheme (31 complaints)²⁶
 - 95.2 We continue to receive complaints about unsolicited letters to New Zealand trademark holders. Many consumers have stated that on first impression they believed these letters to be official invoices issued by the Intellectual Property Office of New Zealand (IPONZ)
 - 95.3 Complaint narratives and conversations with consumer advisors suggest that New Zealanders are becoming victims of scams and similar misrepresentations through internet advertising, on search engine keyword searches and through 'pop-up' advertising on unrelated websites. Targeting by cold-calling and unsolicited post continues to be observed in complaint narratives.

24. This number includes general product safety complaints under section 29 of the FT Act, and all product safety complaints about the 13 products the Commission has a specific responsibility over.

25. 144 complaints were received about scams and similar misrepresentations in 2015, 88 in 2014 and 50 in 2013.

26. The Commission has issued two specific media releases in the past two years warning consumers about this trader. The Commission's warning concerning this trader issued in August 2015 remains relevant and can be accessed at <http://www.comcom.govt.nz/the-commission/media-centre/media-releases/2015/small-businesses-targeted-by-corporate-portal-invoicing-scam/>

Traders that generate high levels of complaints

- 96 The 21 most complained about traders under the FT Act generated 20% of complaints in the 2016/17 financial year.
- 97 Many of these traders are large retailers with a national presence and a high volume of sales. While a higher volume of sales might reasonably be expected to generate a higher number of complaints, this is not always the case. Comparing similar traders within the same markets can identify imbalances in complaint numbers, suggesting that trader practices may also be a cause.

The 21 traders that generated 20% of FT Act complaints from 1 July 2016 to 30 June 2017

- 98 As the following table refers to the volume of complaints against a particular trader, readers should note the following caveats which are also stated at paragraph 24:
 - 98.1 The complaints data on its own does not itself indicate that any law has been breached. Rather, complaints relate to alleged conduct by the trader that, if proven, risks breaching the legislation
 - 98.2 The complaints data also does not establish that any harm has been caused to any consumer or competitors
 - 98.3 Larger traders are likely to generate more complaints as a function of their scale; we have not adjusted for this
 - 98.4 An orchestrated complaints campaign against a trader can produce high complaint numbers
 - 98.5 Where the public is aware that the Commission is unable to act on a matter, this can discourage complaints from the public
 - 98.6 Complaint volumes for a trader can be about a single matter or multiple matters. Some matters that attract a high level of publicity can generate a large volume of complaints
 - 98.7 The complaints data only reflects what consumers have chosen to report to the Commission or to other organisations that have in turn provided information to the Commission. Some complaints on the same matter are likely to have reached other complaint bodies instead of the Commission.



Table 3: The 21 traders that generated 20% of FT Act complaints from 1 July 2016 to 30 June 2017

Trader	FT Act complaints
Vodafone New Zealand ²⁷	186
Spark New Zealand Trading ²⁸	180
Foodstuffs (NZ) ²⁹	98
2degrees Mobile ³⁰	88
Noel Leeming Group	82
Air New Zealand	77
Vocus Communications ³¹	68
Progressive Enterprises ³²	66
Wilson Parking ³³	62
Viagogo	57
Sky Network Television	56
Brand Developers ³⁴	51
LuxStyle Aps	51
Harvey Norman	45
Trade Me ³⁵	45
Fitlink New Zealand	43
The Warehouse	40
PTMO Limited	37
Trustpower	36
Contact Energy	33
PB Technologies	32

27. Including complaints received about WXC Communications.

28. Including complaints received about Skinny Mobile and Bigpipe.

29. Including complaints received about New World, PAK'nSAVE and Four Square franchise stores.

30. Including complaints received about Snap Internet.

31. Including complaints received about CallPlus trading as Slingshot, Orcon, M2 Telecommunications and Flip.

32. Including complaints received about Countdown, Fresh Choice and SuperValue stores.

33. Including complaints received about Parking Enforcement Services.

34. Trading as TV Shop.

35. Specific complaints concerning the Trade Me auction site, not Trade Me users.

Section 2 – The consumer credit environment

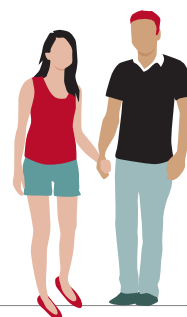
Key points

- Lending practices that may be irresponsible are generating an increasing number of complaints
- Finance companies continue to generate a level of complaint disproportionate to their share of the New Zealand credit market. However, this proportion is decreasing
- We are receiving an increasing number of complaints about lenders of high-cost short-term loan products. These products are often available online or through text

- 99 This section provides an overview of Commission Credit Contracts and Consumer Finance Act (CCCF Act) and credit-related FT Act complaints data presented through our Red Flags advocacy initiative.³⁶ Data and research from other agencies, such as the New Zealand Federation of Family Budgeting Services (NZFFBS; now NBFCC³⁷) and the Insolvency and Trustee Service at MBIE, is incorporated.

The changing consumer credit environment

- 100 Budgeting advisors have told us that New Zealand remains a country with a culture of personal debt. While New Zealand has one of the lowest levels of public debt in the western world, on average, New Zealand households carry private debts totalling 168% of disposable income (including mortgages). This is one of the highest levels of private debt observed internationally. New Zealanders presently hold \$250.1 billion dollars of household debt, an increase of more than 60% in the past decade.³⁸
- 101 The Responsible Lending Code, which guides lenders on how they can meet the requirements of the Responsible Lending Principles, was released on 17 March 2015. The Principles and Code signify a new approach to the responsibilities of lenders in the New Zealand credit market. Lender compliance with the Responsible Lending Principles helps to ensure that borrowers are capable of servicing the debts they undertake and lenders do not act oppressively.
- 102 Budgeting advisors tell us that easy access to credit, especially through application online or by text, is a feature of New Zealand's consumer credit environment. As online and text-based lending becomes ever more popular, the financial literacy, especially of new or vulnerable borrowers, will continue to be an important factor in preventing circumstances of financial distress.



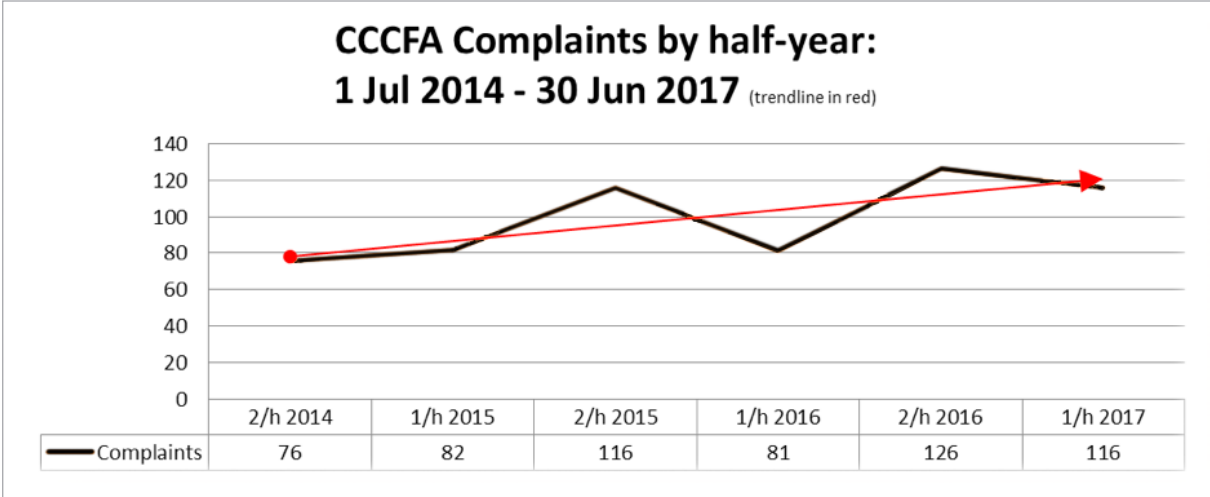
36. Further information about the Commission's Red Flags initiative can be accessed at: <http://www.comcom.govt.nz/consumer-credit/red-flags/>

37. National Building Financial Capability Charitable Trust.

38. Reserve Bank of New Zealand, Household debt figures available at: <http://www.rbnz.govt.nz/statistics/key-graphs/key-graph-household-debt>

Credit Contracts and Consumer Finance Act and credit-related Fair Trading Act complaints³⁹

Table 4: Credit Contracts and Consumer Finance Act complaints July 2014 to June 2017 by half-year



- 103 CCCF Act complaints in 2016/17 increased by 22% over 2015; this increase appears to have been fuelled in part by an increase in the number of CCCF Act complaint referrals from other consumer agencies such as the New Zealand Federation of Family Budgeting Services and Citizens Advice Bureau. We are working with these stakeholders to encourage the submission of evidenced complaints through our Red Flags initiative.
- 104 The four most complained about areas of lender conduct in the 2016/17 financial year were:
 - 104.1 reasonable enquiries being made by the lender about a borrower’s needs and/or ability to pay, as prescribed by the Responsible Lending Principles (54 complaints)
 - 104.2 lenders potentially failing to properly disclose the terms and conditions of borrowing prior to the borrower agreeing to lending (34 complaints)
 - 104.3 repossession practices (10 complaints)
 - 104.4 consumers finding it difficult to apply for hardship protections from their lender when in financial distress (10 complaints).⁴⁰
- 105 Together these four areas of lender conduct accounted for 45% of CCCF Act complaints in the 2016/17 financial year.

39. Please note all complaint numbers in this section refer to CCCF Act complaints unless otherwise stated.

40. Complaints recorded by the Commission as potentially breaching section 55 of the CCCF Act.

What type of credit providers do consumers complain about to the Commission?

106 In keeping with our observations in 2015, only one CCCF Act complaint was received about lending by banks in 2016/17. The four most complained about categories of lender under the provisions of the CCCF Act in the 2016/17 financial year were:

106.1 finance companies (59 complaints, 24%)

106.2 high-cost short-term lenders (33 complaints)

106.3 motor vehicle lending⁴¹ (25 complaints)

106.4 mobile traders (20 complaints).

107 It is noted that mobile traders also generate a number of complaints relating to provisions of the FT Act. Commentary on all complaints made to us about mobile traders (under both the FT Act and the CCCF Act) is provided on page 35.

Finance companies

2016/17 Finance company complaints

CCCF Act **59** FT Act **62**

108 Finance companies represent a proportion of credit (CCCF Act) complaints to the Commission (24%) greater than their share of New Zealand's credit market (approximately 2%).⁴² However, the proportion of CCCF Act complaints about finance companies has decreased from 43% in 2015. CCCF Act complaints about finance companies in the 2016/17 financial year were predominantly about:

108.1 reasonable enquiries being made by the lender about a borrower's needs and/or ability to pay, as prescribed by the Responsible Lending Principles

108.2 lenders potentially failing to properly disclose the terms and conditions of borrowing prior to the borrower agreeing to lending

108.3 consumers finding it difficult to apply for hardship protections from their lender when in financial distress.⁴³

109 Budgeting advisors have told us that some lenders, including finance companies, may be considering borrowers' KiwiSaver balances as a repayment source for consumer debt. It is noted that borrowers' KiwiSaver funds may be withdrawn if the individual can provide evidence that they are suffering significant financial hardship, including inability to meet minimum living expenses.

41. This number includes specialist automobile lenders and vehicle retailers arranging finance products for purchasers. Please note, the Commission is not always able to discern when a personal loan has been taken specifically to purchase a vehicle, so this number is an approximation.

42. Non-bank lending institutions, Reserve Bank of New Zealand Overview of the New Zealand Financial System available at: <https://www.rbnz.govt.nz/financial-stability/overview-of-the-new-zealand-financial-system/non-bank-lending-institutions>

43. Complaints recorded by the Commission as potentially breaching section 55 of the CCCF Act.

Motor vehicle lending

2016/17 Motor vehicle lending complaints

CCCF Act 25

- 110 Continuing the trend observed in 2015,⁴⁴ lending for motor vehicles generates a consistent number of complaints under the CCCF Act, with 25 complaints in the 2016/17 financial year.⁴⁵ Complaint narratives are diverse and relate to new car finance offered by brand name financiers, credit arranged by car dealers from third party lenders and specialist third-tier lenders.
- 111 Of the 25 complaints specifically recorded as relating to the purchase of motor vehicles, 11 were about the lender not making reasonable enquiries about the circumstances of the borrower and/or the borrower not having received the required information from the lender before agreeing to the credit contract.
- 112 Budgeting advisors have told us that vulnerable consumers are often being provided with vehicle loans that they are unable to repay.
- 113 Consumers have complained that some of the many fees (such as application fees or account balance requests) charged by some motor vehicle lenders are unreasonable.



44. The Commission received 14 specific complaints about motor vehicle lending under the CCCF Act in 2015.

45. Please note that complaint narratives do not always indicate the specific purpose of personal loans, meaning this number is indicative. The complaints in this sum include vehicle brand finance companies, car dealers arranging finance for vehicle purchase, lenders whose core lending is for vehicle purchase and complaint narratives where vehicle purchase from any lender is conclusively stated.

Consumer credit advisory roundtables

- 114 The Commerce Commission holds consumer credit advisory roundtables to engage with advisors who represent consumers. These consumer groups are experienced in addressing consumer debt and we greatly value the information provided and the discussions held at these meetings.⁴⁶
- 115 We asked budget advisors to identify the issues they had observed through their interactions with borrowers in financial distress. Points of interest from budget advisors are included in the following sub-sections.

Red flags for the consumer advisory sector

- 116 The Commission's Red Flags initiative seeks to support the consumer advisory sector in submitting complaints on behalf of borrowers. The initiative helps advisors better identify lender conduct that may be unlawful. We have identified seven Red Flag areas where non-compliant lender conduct may cause borrowers harm. The Red Flags help advisors identify these areas in borrower cases before submitting evidenced complaints to us.⁴⁷
- 117 This section of the report provides commentary on each of the seven Red Flag themes.



46. The latest roundtables were held in Auckland, Christchurch and Wellington in May 2017.

47. Further information about the Commission's Red Flags initiative can be accessed at: <http://www.comcom.govt.nz/consumer-credit/red-flags/>.

Mobile traders and door-to-door sellers RED FLAG ONE

2016/17 Mobile trader complaints

CCCF Act **20** FT Act **63**

- 118** We have received complaints about mobile traders⁴⁸ (and door-to-door sellers) under both the FT Act (63 complaints) and CCCF Act (20 complaints). This level of complaint about mobile traders under the provisions of both Acts is higher than levels observed in 2015.⁴⁹
- 119** Under the CCCF Act, the most complained about behaviour observed among mobile traders was:
- 119.1** reasonable enquiries being made by the lender as expected by the Responsible Lending Principles.
- 120** Under the FT Act, the most complained about behaviours observed among mobile traders were:
- 120.1** uninvited direct sales⁵⁰
- 120.2** potential misrepresentation of the quality and/or nature of goods
- 120.3** the sale of products on lay-by.⁵¹
- 121** Consumers also complained that contract terms offered by some mobile traders may be unfair; terms referenced include liability and variation clauses.
- 122** Budgeting advisors tell us that some mobile traders may not be presently complying with responsible lending and initial disclosure provisions.
- 123** It is noted that many mobile traders have ceased trading since 2014, when the Commission began to focus on non-compliance in the industry. Fines totalling \$1,116,082 have been imposed on non-compliant mobile traders as of 18 August 2017. A recent scan of mobile traders presently active has identified several mobile traders that were not previously known to us.
- 124** Budgeting advisors tell us there is a continuing level of demand for the services of mobile traders, especially in lower-socioeconomic urban areas.



Flexi Buy prosecution

Flexi Buy sold household and electronic goods door to door around the North Island between late 2012 and early 2014. Flexi Buy told customers that their goods would be supplied once they had made a set number of payments, when it knew they would not be. Between late 2012 and early 2014 Flexi Buy entered into over 300 consumer credit contracts, but only nine customers received their goods.

In September 2015 the Commission filed charges under the Crimes Act 1961 against Vikram Mehta as a party to Flexi Buy's conduct for obtaining money from customers by deception and accepting payment from customers without intending to supply the goods they contracted to purchase. In 2017 Mr Mehta was sentenced in the Auckland District Court to two years' imprisonment after taking money from customers without intending to supply goods as promised.

48. Also referred to colloquially as 'truck shops'.

49. The Commerce Commission received 60 complaints about mobile traders and door-to-door sales in 2015: 14 under the CCCF Act and 46 under the FT Act.

50. Categorised as potential breaches of section 36(k) of the FT Act.

51. Categorised as potential breaches of sections 36(c) and (d) of the FT Act.

High cost short term loans, including 'payday' loans RED FLAG TWO

2016/17 High cost short term loan complaints

CCCF Act **33** FT Act **9**

- 125 Historically, we have received few complaints about lenders offering high-cost short-term loan products.⁵² In 2017 this changed, with a growing number of complaints about lenders offering these high-interest loans.
- 126 Budgeting advisors have told us that the widespread availability of high cost short term loans can make it particularly easy for borrowers to borrow beyond their capabilities to repay. They are concerned that it also reduces the likelihood that lenders make reasonable enquiries about the financial circumstances and needs of the borrower. The complaints we are now receiving reflect these concerns.
- 127 The nature of high-cost short-term lending has given rise to substantial issues with non-compliance in similar markets to New Zealand.⁵³ Risks associated with high-cost short-term lending include:
- 127.1 targeted advertising to vulnerable or financially distressed individuals with promises of easy, fast borrowing with minimal restrictions
 - 127.2 the availability of loan application via text, telephone or online form
 - 127.3 interest rates presented over days or weeks as opposed to a comparable annual rate
 - 127.4 a reduced probability of full initial disclosure and/or reasonable enquiries by the lender as to the financial position of the borrower
 - 127.5 the possibility that individuals who diligently pay back loans will be pursued by the lender as a preferred customer for future borrowing.



52. The Commission defines a high-cost short-term loan as a loan which is unsecured (other than an assignment of wages) for a term of not more than 12 months and subject to an annual interest rate of 50% or more.

53. Issues have been observed in countries such as Australia, the United States of America and the United Kingdom. An overview of regulatory action in the United Kingdom 'Changes in payday lending since Financial Conduct Authority (FCA) regulation', is available at <https://www.fca.org.uk/media/changes-payday-lending-fca-regulation>

Irresponsible lending practices RED FLAG THREE

2016/17 Irresponsible lending complaints

CCCF Act 70

- 128 The Responsible Lending Principles (and the Code guiding lenders in how to meet the Principles) apply to all consumer credit contracts entered into on or after 6 June 2015.⁵⁴ Complaints to us alleging that lenders have not complied with the Principles now outnumber complaints relating to any other section of the CCCF Act (70 complaints in 2016/17).
- 129 The Principles (among other points) place the onus on lenders to ensure both that a borrower is able to repay the loan without substantial hardship and that the loan is appropriate to the borrower's stated need and circumstances. Consumers complain that some lenders may not be adequately undertaking these reasonable enquiries before offering credit to prospective customers. Budgeting advisors have told us that it is likely that some lenders, including lenders offering loan products through text and/or online, are not always re-evaluating the borrower's personal circumstances before lending again.
- 130 Consumers complain that it can be difficult to convince lenders that they are in hardship. This potentially breaches the lender's commitment under the Principles to act reasonably and ethically when a borrower suffers unforeseen situations placing them in financial distress.

Unreasonable credit fees and default fees RED FLAG FIVE

2016/17 Credit fee complaints

CCCF Act 31⁵⁵

- 131 A consumer credit contract cannot provide for a credit fee or a default fee that is unreasonable. This means that a lender may not make a profit from fees, and likewise may not add a margin onto fees passed on from an unrelated third party.
- 132 We received 31 complaints about credit-related fees that consumers felt may be unreasonable in the 2016/17 year, with fees related to lending for motor vehicles generating the most complaints.

54. Further information is available at:
<http://www.comcom.govt.nz/consumer-credit/consumer-credit-fact-sheets-post/changes-to-the-cccf/>

55. This number is an aggregate of the nine separate sections of the CCCF Act concerning credit fees.

Debt collection practices RED FLAG SIX

2016/17 Debt collection complaints

CCCF Act **14** FT Act **84**

- 133 As observed in complaints to us about debt collection in 2015, in 2016/17 debt collection generated more complaints under the FT Act (84 complaints) than the CCCF Act (14 complaints).
- 134 Complaint narratives include collectors potentially misrepresenting:
 - 134.1 their right to collect
 - 134.2 the debt amount
 - 134.3 the individual elements contributing to the total debt claimed.
- 135 Budgeting advisors have told us that inappropriate collection practices, such as placing pressure on a debtor's relatives or collecting without the required paperwork, persist in the industry. Advisors have also told us that they believe some debt collection situations escalate in seriousness due to the low financial literacy of debtors, who do not understand their rights and obligations under the law.

Repossession practices and prohibited items taken as security RED FLAGS SEVEN & FOUR

2016/17 Repossession practices complaints

CCCF Act **10**

- 136 Repossession rules were introduced to the CCCF Act on 6 June 2015, and these rules apply to any credit contract entered into on or after this date.⁵⁶ These rules include restrictions on lenders taking security over, or repossession of, specific household necessities such as refrigerators. Additionally, after 6 June 2015 lenders were prevented from securing a borrower's 'all present and after-acquired property' through an APAAP clause. A lender may now only repossess goods specifically identified as security interests in the credit contract.
- 137 We received 10 complaints concerning repossession practices and prohibited items being taken as security in the 2016/17 financial year. Budgeting advisors in the three major centres have told us that they believe that repossession is decreasing, with lenders often preferring to recover debt in arrears through the courts. However, budgeting advisors also told us that motor vehicles remained a common item for repossession by lenders and isolated instances of household necessities being repossessed have been observed in the past year.



56. Further information is available at: <http://www.comcom.govt.nz/consumer-credit/guidelines-post/repossession-guidelines/>

New Zealand Federation of Family Budgeting Services (now NBFCCCT)⁵⁷ and Insolvency and Trustee Service client data

- 138 When someone approaches a budgeting service in New Zealand for advice, they usually provide a list of the debts they presently hold itemised by agency, trader or individual. NBFCCCT provides anonymised aggregates of this data to the Commission, which we analyse to provide insights into the circumstances of consumers experiencing financial difficulties and/or seeking budgeting advice. The NBFCCCT data analysed in this report covers the 2016 calendar year.
- 139 In 2016 budgeting advice clients collectively owed over \$250 million on home mortgages, though only 1,757 mortgages were recorded. Following mortgages, clients collectively owed the most money to:
- 139.1 bank loans and credit cards: \$95,522,779 (12,396 instances recorded)
 - 139.2 government departments: \$76,195,076 (20,768 instances recorded; 14,289 of these instances were debts to Work and Income NZ)
 - 139.3 finance company loans and cards: \$73,856,437 (15,385 instances recorded).
- 140 Other debt categories of note include:
- 140.1 retail goods and store cards: \$24,930,525 (14,221 instances recorded)
 - 140.2 family and friends: \$11,387,515 (3,263 instances recorded).
- 141 The Insolvency and Trustee Service provides the Commission with an anonymised summary of bankruptcy, no asset procedures and summary instalment orders. We analyse this information to provide insights into the circumstances of individuals who have accumulated unmanageable debt. The insolvency data analysed in this report covers the 2016 calendar year.
- 142 In 2016, following the main centres, the largest notified debt values were processed through the High Courts of Palmerston North, Rotorua and Tauranga.



57. As of 1 July 2017 the NZFFBS was assimilated into a new entity: the National Building Financial Capability Charitable Trust (NBFCCCT).

Section 3 – Competitive markets

Key points

- While the number of merger clearance applications has decreased, the complexity of these applications has increased; the number of investigations we have undertaken relating to non-notified mergers and the number of authorisation applications have increased
- The utilities and infrastructure sector generated the most CA complaints in the 2016/17 financial year

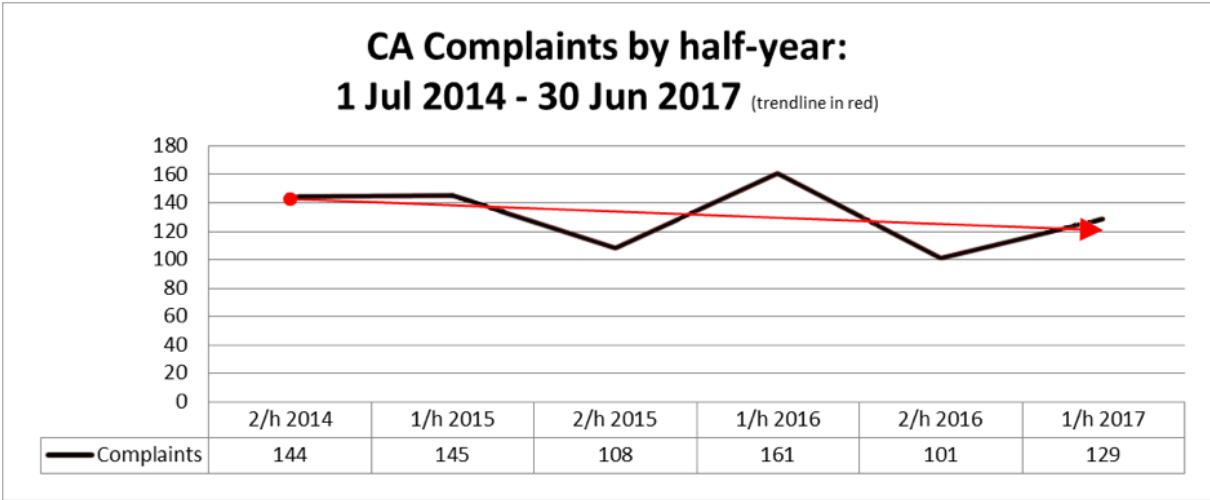
143 This section provides an analysis of Commission Commerce Act (CA) complaints as well as patterns and trends observed in merger clearances and authorisations, and investigations and compliance.

Commerce Act complaints

2016/17 Commerce Act complaints **230**

144 Complaints to the Commission concerning provisions of the CA numbered 230 in the 2016/17 financial year. Historically, CA complaint numbers have spiked due to multiple complaints about the same conduct, but no such matters emerged in the 2016/17 financial year CA complaints data.

Table 5: Commerce Act complaints July 2014 to June 2017 by half-year



- 145** In the 2016/17 financial year, the themes which generated the most complaints to the Commission under the CA were:
- 145.1** 30% of complaints related to traders allegedly taking advantage of their market power⁵⁸ (68 complaints)
 - 145.2** 26% of complaints related to arrangements that may have substantially lessened competition in markets⁵⁹ (60 complaints); a further 18 complaints related to arrangements between competitors that potentially limited supply to, or acquisition of, goods and services⁶⁰
 - 145.3** 16 complaints were received related to the potential fixing of prices through contract provisions.⁶¹
- 146** Together, these four sections generated 70% of complaints under the CA.

Sectors generating Commerce Act complaints to the Commission

- 147** The following sectors drew the most complaints in 2016/17:
- 147.1** Utilities and infrastructure (25 complaints): Consumers complain that retail fuel prices in specific regions appear anti-competitive. The Commission also received multiple complaints relating to consumer concerns over competition in regional waste management services
 - 147.2** Construction and property (18 complaints): Many CA complaints in the construction and property sector are made by small businesses (including tradespeople) believing that their competitors may be engaged in anti-competitive behaviour. Exclusive supply agreements for particular construction products are also complained about
 - 147.3** Retail (17 complaints): CA complaints about the retail sector cover a broad range of traders, products and agreements including parallel importing, and exclusive supply agreements for imported goods. Some traders perceive large suppliers (especially of niche products) as being in a position to take advantage of their power in the market.
- 148** As noted in Consumer Issues 2016, exclusive supply contracts continue to be perceived by the general public as anti-competitive and therefore generate a high number of complaints to the Commission. However, whether this kind of conduct breaches the CA depends on the facts of each situation and, in particular, the impact of the restriction of competition overall in the relevant market.



58. Complaints relating to section 36 of the CA: taking advantage of market power.

59. Complaints relating to section 27 of the CA: contracts, arrangements, or understandings substantially lessening competition.

60. Complaints relating to section 29 of the CA: contracts, arrangements, or understandings containing exclusionary provisions.

61. Complaints relating to section 30 of the CA: certain provisions of contracts, etc, with respect to prices deemed to substantially lessen competition.

Mergers

2016/17 Merger clearance and authorisation applications

8

Table 6: Merger clearance and authorisation applications 2008 to 30 June 2017⁶²

2008	2009	2010	2011	2012	2013	2014	2015	2016	2017 ⁶³
17	5	14	12	12	11	16	12	10	4

- 149 The number of applications made to the Commission by traders seeking clearance decreased in the 2016/17 financial year, a trend we first observed from the beginning of 2016. However, the complexity of applications in this time has increased, as has the number of investigations the Commission has undertaken into mergers which were undertaken without notification or application being made to us by the merging parties.⁶⁴
- 150 In the 2016/17 financial year the Commission declined clearance for the mergers of Vodafone Europe B.V. and Sky Network Television Limited, and Aon New Zealand and Fire Protection Inspection Services Limited. While we have declined more merger applications in the last year or so than we have in previous years, it is not a sign of a change in process or view from the Commission. We continue to apply the CA in the same way we always have. We take merger applications as they come in and make a decision on the individual facts and market situations of each one.
- 151 The Commission can authorise a transaction which is considered to be anti-competitive if we are satisfied that it will likely benefit New Zealand. Applications to the Commission for authorisation are rare, and the analysis in the consideration of these applications is often complex.⁶⁵
- 152 In the past decade only four merger authorisations have been registered by the Commission, the most recent received from NZME Limited and Fairfax New Zealand Limited seeking authorisation to merge. The application for the two major media companies to merge was declined on 2 May 2017.⁶⁶
- 153 Under section 58 of the CA, traders and entities can apply for authorisation to undertake an anti-competitive practice in the public interest (as opposed to an actual merger of two entities). These applications are also relatively rare, with only six received by the Commission in the past decade. Of these six applications, two were determined in the 2016/17 financial year.
- 154 The Nelson City and Tasman District Councils applied to rationalise their landfill arrangements in October 2016. The Commission authorised this application, subject to conditions, in April 2017.⁶⁷ A further section 58 authorisation allowing arrangements between the New Zealand Racing Board and Australian entity Tabcorp Wagering Manager (Vic) Pty Limited was determined on 29 August 2016.⁶⁸

62. These figures include the registration of merger clearance, merger authorisation and authorisation to undertake an anti-competitive practice.

63. To 30 June 2017.

64. These investigations relate to section 47 of the CA which prohibits the acquisition of business assets or shares where that acquisition is likely to lessen competition.

65. The Commission's register of applications for authorisation is available at: <http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/authorisations/>

66. This decision is available at: <http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/authorisations/merger-authorisation-register/detail/940>

67. This authorisation decision is available at: <http://www.comcom.govt.nz/business-competition/anti-competitive-practices/anti-competitive-practices-authorisations-register/detail/981>

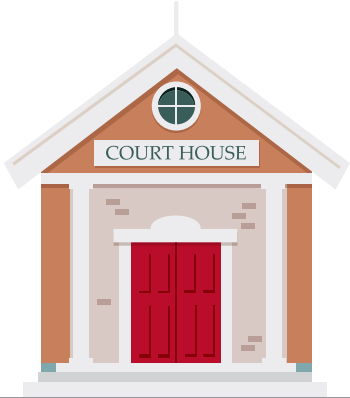
68. This authorisation decision is available at: <http://www.comcom.govt.nz/business-competition/anti-competitive-practices/anti-competitive-practices-authorisations-register/detail/981>

Commerce Act investigations (including domestic and international requests for leniency)

Table 7: Domestic and international leniency requests 2010 to 30 June 2017

	2010	2011	2012	2013	2014	2015	2016	2017 ⁶⁹
Domestic	1	1	1	5	3	3	4	3
International	2	4	1	2	1	0	0	1

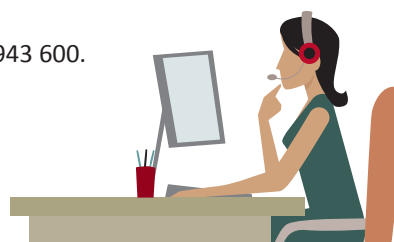
- 155 As can be seen in the table above, since 2013 the Commission has received a relatively consistent number of domestic applications for leniency related to a trader’s undertaking of arrangements that are potentially anti-competitive such as bid rigging, price fixing and/or market sharing.
- 156 Requests for leniency are not the sole basis upon which the Commission initiates investigations into potentially anti-competitive conduct by individuals and traders. Investigations may be commenced on our own initiative. Our work, and the work of partner agencies, has identified issues in specific markets which make anti-competitive behaviour more likely. The Commission’s advocacy efforts in this area have recently concentrated on encouraging fair and competitive procurement practices in New Zealand.



69. To 30 June 2017.

Making a complaint to the Commerce Commission

- 157 The Commerce Commission is New Zealand's primary competition regulatory agency. We are responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the Commerce Act, the Fair Trading Act and the Credit Contracts and Consumer Finance Act. We act in the public good to stop and prevent misleading and anti-competitive conduct by businesses.
- 158 Complaints made to the Commission about businesses and people are an important component of the work we do to protect, empower and inform New Zealand consumers. To make a complaint about a business or person you can:
- 158.1 complete an online complaint form, available at <http://www.comcom.govt.nz/the-commission/making-a-complaint/online-complaint-form/>
 - 158.2 email your complaint to contact@comcom.govt.nz
 - 158.3 call the Commission toll-free within New Zealand on 0800 943 600.
- 159 More information on making a complaint to the Commission, the work we do and the legislation we are responsible for enforcing and promoting compliance with is available on the New Zealand Commerce Commission website www.comcom.govt.nz



Attachment A – Key observations from complaints to the Commission (1 July 2016 to 30 June 2017)

Fair Trading Act: key observations from Commission complaint narratives

Consumers complain that the recommended retail price of goods and the associated discount in advertised sales can be misleading

Consumers complain that additional costs (such as booking and shipping fees) are not always adequately disclosed when buying online

Consumers complain that the performance of broadband services does not always meet expectations

Consumers complain that some online traders do not sufficiently disclose that regular subscription payments are required to complete purchases and/or obtain free trials

Consumers complain that the disclosure of termination fee terms and conditions on fixed, long-term service contracts can be inadequate

Fair Trading Act: key observations from our analysis

Complaints about the quality of vehicles sold by motor traders is widespread across the country and industry

The Commission receives a disproportionate number of complaints about the quality of goods advertised on television infomercials and/or offered on 'risk-free trials'

The Commission receives complaints alleging that sales representatives in the domestic appliance retail and the motor vehicle retail industries misrepresent consumer rights under the Consumer Guarantees Act

Most 'no intention to supply' complaints received by the Commission are about online traders, often based abroad

The Commission is receiving more complaints about traders selling on social media platforms, indicating that these platforms provide opportunities for non-compliant traders to reach more buyers than other mediums

Complaint narratives indicate that not all motor vehicle traders display CIN notices

The Commission receives a number of complaints about pricing practices in supermarkets; however, consumers make a lot of purchases at supermarkets and may find it difficult to recall the pricing of individual products

Pro-forma invoicing schemes continue to target New Zealand small business through unsolicited post

Credit Contracts and Consumer Finance Act: key observations from Commission complaint narratives

Consumers complain that it can be difficult to adequately demonstrate hardship to lenders, including finance companies

Consumers complain that lenders, including finance companies, are not making reasonable enquiries as to the financial position and/or needs of borrowers when providing credit

Consumers complain that lenders, including finance companies, do not adequately disclose the total cost of borrowing to borrowers

Consumers complain that motor vehicle lenders charge unreasonable fees

Consumers complain that mobile traders are not making reasonable enquiries as to the financial position and/or needs of borrowers when providing credit

Credit Contracts and Consumer Finance Act: key observations from our analysis

The Commission receives a disproportionate number of complaints about finance companies compared to their share of the New Zealand credit market

Complaints to the Commission indicate that lenders offering loans via text, telephone or online are less likely to make reasonable enquiries as to the financial position and/or needs of the borrower

Complaints to the Commission indicate that lenders offering loans via text, telephone or online are less likely to meet initial disclosure provisions

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Phone: 0800 943 600

Write: Contact Centre, PO Box 2351, Wellington 6140

Email: contact@comcom.govt.nz

www.comcom.govt.nz