

Terms of Reference

Governance and effectiveness review of the Commerce Commission

Background

The Commerce Commission | Te Komihana Tauhokohoko (**the Commission**) is New Zealand's competition, fair trading, and economic regulatory authority.

The Commission is an independent Crown entity, established under section 8 of the Commerce Act 1986. It must act independently in performing its statutory functions and duties and in exercising its powers under the legislation it is responsible for enforcing.

Competition has been identified as having a core role in a government economic strategy, given its potential to lift productivity and efficiency and promote innovation and investment. The OECD New Zealand economic survey 2024, OECD Product Market Regulation indicators and World Bank Business Ready Survey 2024 all highlighted that competition is an area where New Zealand could lift its performance to increase productivity and overcome the barriers of small size and distance.

Over recent years, the role for competition regulators has become more challenging, with digital technologies driving new business models and theories of harm. A review underway in Australia is also examining Australia's competition laws policies and institutions to ensure they remain fit for purpose for the modern economy.

The Minister of Commerce and Consumer Affairs, Hon Andrew Bayly, (**the Minister**) has requested MBIE to commission a review to examine the Commission's organisational capability and performance to ensure it is meeting the needs of New Zealanders.

Since 2015, the Commission has undertaken or commissioned several reviews (set out at **Annex 1**) of its performance or organisational services, including baseline reviews. These reviews will be made available to the lead reviewers and information provided will help inform the reviewers' areas of focus together with meetings with the Minister, the Commission and external stakeholders.

These previous reviews sit within a broader context of change and evolution of the Commission's roles and functions. The Commission's regulatory mandate has expanded, and the organisation has grown - from an annual revenue of \$47.8 million and 247 staff in 2019 to annual revenue of over \$106 million and 447 staff in 2024. The expanded responsibilities include:

- implementing the new competition studies power, and the Commission has completed four competition studies into the retail fuel, retail groceries, residential building supplies and personal banking sectors.
- implementing new functions under the Fuel Industry, Retail Payment System, Grocery Industry Competition, Telecommunications (New Regulatory Framework) Amendment and Local Government (Water Services Preliminary Arrangements) Acts, and in relation to the criminalisation of cartel conduct, the certification of lenders and other

reforms of consumer credit and fair-trading laws (e.g. credit registration and unfair contract terms).

Further changes are expected, including from 1 July 2025 moving responsibility for the Credit Contracts and Consumer Finance Act to the Financial Markets Authority, and bringing local government water services infrastructure under economic regulation in Part 4 of the Commerce Act (as amended).

Scope, Product and Principles

Scope

The purpose of the review is to lift the performance of the Commission to meet future challenges and deliver ongoing benefits for New Zealanders. It will take a forward-looking approach to identify what is expected from the Commission over the next four to 10 years to deliver its existing role and purpose (as set out in the Commerce Act 1986), and the capability required to meet current and future challenges.

The review will focus on the following matters:

- The Commission's capability to apply commercial nous and savvy to its engagements, investigations and decision-making.
- Whether the convention for the Board to operate in Divisions achieves the best outcomes including supporting Board accountability and collegiality.
- How to ensure the Board has the capacity to develop and deliver an overarching strategy, informed by a clear mission statement.
- Ensuring the Commission has a clear measurable basis for prioritising its resources and activity, informed by its strategy.
- Whether there are opportunities for the Commission to operate more efficiently and effectively to deliver value for money.

Without limiting the above, the review will consider:

- international experience with similar agencies and the small, remote economic nature of New Zealand.
- timeliness of the Commission's decision-making, and its action-orientation.
- transparency of statutory decisions and strategy (including case prioritisation).
- management of commercially sensitive information.

Views are also invited (if any) on whether the Commission's current role and purpose are well positioned to meet future challenges.

Product

The outcome of the review will be a set of initial findings followed by a formal report to the Minister. The report will assess the governance and decision-making processes of the board, the board's ability to develop and deliver on strategy, and how the Commission is placed to

deliver greater value to meet the Government's expectations and have a positive impact for New Zealanders.

The report will also provide an assessment of and recommendations for the Commission's organisational capabilities, with a particular focus on its governance, and areas where it can improve.

The report will set the foundation for assessing:

- the case for organisational or governance change, including any legislative amendments that may be desirable to support this.
- the Commission's level and mix of resources in the context of the Government focus on fiscal sustainability and value for money.

Principles

The review process will be:

- Open and transparent – ensuring that there are 'no surprises' for the Commission, MBIE or the Minister.
- External lead driven – to ensure relevant external expertise is brought to the review.
- Responsive – to exploring areas identified by the Minister, MBIE, Commission board and Commission Chief Executive (CEO) as needing further consideration.
- Evidence based – where possible, conclusions are supported by evidence including targeted stakeholder engagement.
- Efficient – ensure the compliance cost for gathering information is minimised and that the review uses existing material, including other recent reviews, to avoid duplication.
- Alert to the need to ensure appropriate protection of sensitive information.

Scope exclusions

The review will:

- Not make specific findings or recommendations regarding the position of Telecommunications Commissioner, unless requested by the Minister of Media and Communications
- Ensure that its recommendations are consistent with and subject to any existing legal or contractual obligations regarding any member or associate member of the Commission, the Commission CEO and Commission staff.

Process for the review

Review process

The review phases and indicative timetable are outlined in the following table.

IN CONFIDENCE

Phase	Purpose	Description	Duration or completion date
Initiation	Setting the review up for success	<ul style="list-style-type: none"> External reviewers appointed Confirm budget and timeline 	By 6 December 2024
Scoping	Determine what matters for the review	<ul style="list-style-type: none"> Key documents collated and provided as sources of insight and evidence Meetings with Minister, central agencies, MBIE, Commission Chair and CEO on areas of focus Areas of focus identified 	By 14 December 2024
Review	Analysis	<ul style="list-style-type: none"> A period of desk analysis and internal Commission interviews undertaken by external reviewers 	Completed by 21 February 2025
		<ul style="list-style-type: none"> Interviews with key external stakeholders 	By 21 March 2025
		<ul style="list-style-type: none"> Sharing insights of findings with Minister, MBIE and the Commission for response 	By 04 April 2025
		<ul style="list-style-type: none"> Prepare draft report with findings and draft of next steps on how the Commission may be readied to meet future challenges and opportunities. 	By 25 April 2025
		<ul style="list-style-type: none"> Consider MBIE and the Commission views on draft report, before finalising report. 	By 16 May 2025
		<ul style="list-style-type: none"> The final report includes a response from the Commission and MBIE. 	By 30 May 2025
Close out	Final stages of the review	<ul style="list-style-type: none"> Final report provided to Minister. Lead reviewers debrief the Minister and Commission. 	By 30 May 2025

Administration

MBIE will establish a project team to recruit and provide support for the external lead reviewers throughout the process. The project team may include secondees from the Commission and/or contractors with relevant experience.

MBIE project team, with the cooperation of the Commission, will collate and, if required, develop background material to inform the review, and book internal interviews and key stakeholder meetings. The MBIE project team will also provide support for the drafting of the report.

The Commission will meet the costs of the external lead reviewers as well as its own costs of participating in the review. MBIE will meet its own costs of supporting the review.

The Official Information Act 1982 (**OIA**) will apply to information held and produced by the external lead reviewers. The final report will be released publicly, with any sensitive information redacted consistent with MBIE's policy on proactive release.

Annex 1: Reviews carried out or commissioned by the Commerce Commission since 2015

2015	Commerce Commission PIF Self-Assessment
2017	Boardworks Governance Review
2019	Fit for the Future Final Report and Transformation Programme (Dec)
2020	PWC Baseline Review (Nov)
	Organisational Design Decisions (Nov)
	Review of ComCom funding for Telco Act (Dec)
2021	New structure and operating model live (Apr)
	Economic Regulation Review (Dec)
2022	Roles and Responsibilities – Commission working arrangements
	Economics Function Review (Oct)
2023	Convenor model implementation (Governance)
2024	2024 Organisational Change Programme
	2024 Boardworks Governance Review (Oct)