

6 October 2025

Andrew Dwyer  
[REDACTED]  
[REDACTED]  
[REDACTED]

By email only: [REDACTED]

Dear Mr Dwyer

**Commerce Act 1986: Warning from the Commerce Commission for cartel conduct**

1. The Commerce Commission (**Commission**) has completed its investigation into you and your bricklaying business for potential breaches of the Commerce Act 1986 (**the Act**).
2. We investigated whether you had engaged in cartel conduct with other bricklayers in the Blenheim region which involved price fixing and market allocation of customers in breach of section 30 of the Act (**the investigation**).
3. After fully considering the relevant information received, the Commission considers that you may have breached section 30 of the Act by entering into an understanding with G J Marfell Limited (through Greg Marfell's conduct) to not compete for a customer named [REDACTED] on or about 16 August 2020 which may have constituted price fixing and/or market allocating as defined in section 30A of the Act.
4. In this instance, the Commission has decided the appropriate enforcement response is to issue you with a warning, rather than issue legal proceedings. The Commission notes that only a court can determine whether there has been a contravention of the Act.
5. The purpose of this warning is to inform you of the reasons for the Commission reaching this view and to encourage future compliance. Legal action remains available to the Commission in the future if the conduct continues or is repeated.

**Details of the Commission's investigation**

6. The Commission investigated allegations that you entered into and gave effect to cartel understandings with other bricklayers not to compete for each other's customers (market allocation) and to fix or maintain prices or price levels (price fixing). This conduct was alleged to have been occurring over a long period of time.

7. During the investigation, the Commission obtained and considered the following information from you:
  - 7.1 information supplied to the Commission by you on a voluntary basis on 5 September 2023 about your alleged involvement in any cartel;
  - 7.2 information supplied to the Commission by you on a voluntary basis on 3 December 2023 in response to a request for information from the Commission;
  - 7.3 information supplied to the Commission by you on 19 February 2024 after being compelled to do so by a statutory notice issued under section 98 of the Act;
  - 7.4 information supplied to the Commission by you during a voluntary interview on 31 July 2024;
  - 7.5 information supplied to the Commission by you on a voluntary basis on 1 August 2024 and 2 August 2024; and
  - 7.6 information supplied to the Commission by you on a voluntary basis on 17 December 2024, in response to new evidence obtained.
8. In addition to the above, the Commission has also obtained information from other parties including other bricklayers and customers in the Blenheim region.

#### **Details of the relevant law**

9. The Act aims to promote competition in markets within New Zealand for the long-term benefit of consumers.
10. Section 30 of the Act contains a prohibition on competitors entering into or giving effect to a contract, arrangement or understanding containing a cartel provision. A cartel provision is defined in section 30A of the Act as a provision that has the purpose, effect, or likely effect of price fixing, restricting output, or market allocating in relation to supplying or acquiring goods or services in New Zealand. Section 80 provides for civil pecuniary penalties for breaches of section 30.

#### **The Commission's view**

11. The Commission's view is that there is sufficient evidence to institute legal proceedings against you for a breach of section 30 of the Act. The reasons for the Commission's view are set out below.
12. The Commission's investigation established the following facts:
  - 12.1 On or about 11 August 2020, you were approached by [REDACTED] for a quote to undertake further bricklaying work at [REDACTED]

██████████ (the project). You supplied a quote to ██████████ on or around the same day.

- 12.2 On or about 16 August 2020, ██████████ also approached Mr Greg Marfell of G J Marfell Limited with a request for a quote for the same project.
- 12.3 On 16 August 2020 at 2:13 PM, you received the following text message from Mr Marfell: *"Hi mate did you quote ██████████ ?"*. You confirmed by text message at 2:14 PM: *"Sure did"*.
- 12.4 Mr Marfell then texted you the following on 16 August 2020 at 2:15 PM: *"Are you still going to do it as he wants me to price it ? If not, what was your price ? There looks like ██████████"*.
- 12.5 On 16 August 2020 at 8:40 PM, you texted Mr Marfell: *"25500 plus gst ██████████ includes steel bars"*.
- 12.6 On or about 17 August 2020, G J Marfell Limited via Mr Marfell submitted a quote of \$30,820 including GST for the project to ██████████.
- 12.7 In response, Mr Marfell texted you the following at 8:40 AM on 17 August 2020: *"I did 30k including. But I didn't supply lintels"*. You responded to Mr Marfell at 8:41 AM on 17 August 2020: *"Great stuff. Makes me look cheap"*.
- 12.8 On 19 August 2020 at 8:14 AM, Mr Marfell texted you the following: *"Slight problem.... ██████████ came and saw me this morning and said I've got the job"*. You texted Mr Marfell in response at 8:16 AM on 19 August 2020: *"You are joking"*.
13. The text message communications between Mr Marfell and you between 16 August 2020 and 19 August 2020 show that:
  - 13.1 you were aware of Mr Marfell being approached by ██████████ to undertake work on the same project that you had quoted earlier on 11 August 2020;
  - 13.2 you shared with Mr Marfell the price that you had submitted for the project;
  - 13.3 Mr Marfell shared with you the price that he had submitted for G J Marfell Limited (after being told the price you had submitted) for the project to which you responded *"Great stuff. Makes Me look cheap"*; and
  - 13.4 you were both surprised that G J Marfell Limited was awarded the project despite quoting a higher price because, as a result of the information exchanged, Mr Marfell and you had commonly expected that you would be chosen by ██████████ to undertake the project.
14. When interviewed under compulsion, Mr Marfell stated that:

- 14.1 he contacted you because he was aware of the fact that you had previously done the bricklaying work on [REDACTED] property;
  - 14.2 he wanted to find out if there may have been issues between you and [REDACTED] about the job and that he was busy at the time with work on other projects (but we note none of this was conveyed to you in the text messages and Mr Marfell actually completed the work); and
  - 14.3 as such, he did not want the proposed work from [REDACTED], and he created his quote based on the price you texted to him and deliberately submitted a higher price than you.
15. Based on the evidence gathered, including interview evidence from Mr Marfell, the Commission considers that:
- 15.1 You and G J Marfell Limited were in competition with each other to supply bricklaying services in the Blenheim region.
  - 15.2 You and Mr Marfell were aware that both of you were approached by [REDACTED] for a quote for the same project.
  - 15.3 You and G J Marfell Limited (through the conduct of Mr Marfell) arrived at an understanding on or about 16 August 2020 which contained the provision that G J Marfell Limited would submit a quote to [REDACTED] that was higher than the quote that you supplied to [REDACTED] so that you would be chosen by [REDACTED] to undertake the project. You and Mr Marfell shared an expectation that you would win the project.
  - 15.4 The purpose and likely effect of the provision in the understanding was to allocate the project to you, which may have been a breach of section 30 of the Act.
  - 15.5 The effect of the provision was also to fix G J Marfell Limited's price at a level above your price, which may have been a breach of section 30 of the Act.
16. The Commission has also considered whether any defences would potentially be available to you. However, based on the facts and circumstances of this case we have formed the view that none had a reasonable prospect of succeeding.

### **Your response**

- 17. During the investigation, after being asked for an explanation of the text messages, you advised that:
  - 17.1 you do not know why Mr Marfell contacted you, but you assumed that he had become aware that your only employee had resigned and therefore wanted to enquire if you would still be proceeding with the project;

- 17.2 you could not recall what you meant by “*Great stuff. Makes me look cheap*”, but it was probably an attempt at humour given the difference between the prices; and
- 17.3 in your view, there was no collusion or discussion before the prices were submitted and these were limited comments after the fact.
- 18. The Commission’s letter dated 17 July 2025 also provided you with a final opportunity to comment on the Commission’s intention to issue a warning and to provide any additional relevant information or identify incorrect information. In response, you accepted the Commission’s findings and intention to issue a warning.
- 19. Having considered your explanation and responses, the Commission’s view remains that there is sufficient evidence to institute legal proceedings against you for a breach of section 30 of the Act.

#### **Enforcement action for breaching the Act**

- 20. Where the Commission considers that a person or business has likely breached the Act, there are a range of potential enforcement responses available.
- 21. The Commission reiterates that its view is based on the information collected during the investigation, and that only a court can determine whether there has been a breach of the Act.
- 22. The court can impose penalties where it finds the law has been broken. Where the Commission brings civil proceedings, an individual who breaches section 30 of the Act can be fined up to \$500,000, and a body corporate can be fined the greater of \$10 million or three times the commercial gain from the breach (or, if this cannot be easily established, 10% of turnover). Every separate breach of the Act may incur a penalty.
- 23. In deciding on the appropriate enforcement response in this case, the Commission has considered the extent of the harm, the seriousness of the conduct, and the public interest. Further detail on the Commission’s approach to making enforcement decisions is contained in the Commission’s ‘Enforcement Response Guidelines’, available on the Commission website ([www.comcom.govt.nz](http://www.comcom.govt.nz)).

#### **Consequences of this warning**

- 24. This warning represents the Commission’s view that the conduct in which you have engaged may have breached the Act and that legal action remains available to the Commission in future if the conduct continues or is repeated.
- 25. The Commission may draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against you.

26. The Commission may also take this warning into account in the event of continued or repeated similar conduct by you.

### **Publication**

27. This warning is public information and will be published on the case register on the Commission's website. The Commission may decide to redact some details from the published version, such as personal information.
28. The Commission will be making public comment about our investigation and conclusions, including issuing a media release, making comment to media or otherwise publicising the outcome (such as on our media forums).

### **Further information**

29. Please note that this letter is not legal advice. The Commission encourages you to be aware of and understand your obligations under the Act, particularly in regard to section 30. If you are ever not sure, you should seek legal advice about the application of the Act to your business.
30. The Commission recommends that you are mindful of the Act when you are interacting with competitors, particularly if topics of discussion include customers, quotes or pricing. For clarity, not every interaction with your competitors will raise potential issues under the Act – for example, providing labour services to a competitor at agreed hourly rates to help them complete a project is unlikely to breach the Act (as long as there is no agreement between you about quotes for that project or any other projects).
31. The Commission has published a series of fact sheets and other resources to help businesses comply with section 30 and the other legislation we enforce. These are available on the Commission website at [www.comcom.govt.nz](http://www.comcom.govt.nz). The Commission encourages you to visit the Commission website to better understand your obligations and the Commission's role in enforcing the Act.
32. You can also view the Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).

**Review of our decision**

33. You are entitled to request a review of our decision to issue this warning only if you identify relevant material that was not considered as part of our decision. You must request a review within 1 month of this warning being issued. Any review will be handled in accordance with the Commission's complaints process. Please submit any review request to [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz).

Yours sincerely



Andrew Riseley  
General Counsel