

6 October 2025

Mr Benjamin Robertson
[REDACTED]
[REDACTED]
[REDACTED]

By email only: [REDACTED]

Dear Mr Robertson

Commerce Act 1986: Warning from the Commerce Commission for cartel conduct and non-compliance with compulsory notice

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**). We investigated whether you had:
 - 1.1 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; and
 - 1.2 failed to comply with a compulsory section 98 notice that was issued to you on 18 January 2024 in breach of section 103 of the Act (**together the investigated matters**).
2. After fully considering the relevant information received, the Commission considers that you may have breached:
 - 2.1 section 30 of the Act by entering into an understanding with G J Marfell Limited through Mr Greg Marfell that you would submit an inflated price to customer [REDACTED] on or about 21 September 2021 which may have constituted price fixing and/or market allocating as defined in section 30A of the Act; and
 - 2.2 section 103(1)(a) of the Act by not complying with a compulsory notice issued to you pursuant to section 98(1)(a) and (b) of the Act on 18 January 2024 (**the Notice**).
3. In this instance, the Commission has decided the appropriate enforcement response is to issue you with a warning, rather than issue legal proceedings in relation to the

investigated matters. The Commission notes that only a court can determine whether there has been a contravention of the Act.

4. 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

Cartel conduct

5. The Commission investigated allegations that you entered into and gave effect to 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.
6. During the investigation, the Commission obtained and considered the following information from you:
 - 6.1 information supplied to the Commission by you on 21 February 2024 after being compelled to do so by the Notice;
 - 6.2 information supplied to the Commission by you during a voluntary interview on 31 July 2024;
 - 6.3 information supplied to the Commission by you voluntarily on 1 August 2024;
 - 6.4 information supplied to the Commission by you voluntarily on 7 November 2024; and
 - 6.5 information supplied to the Commission by you on 7 November 2024 at a compulsory interview conducted under section 98 of the Act.
7. In addition to the above, the Commission has also obtained information from other parties including other bricklayers and customers in the Blenheim region.

Non-compliance with compulsory notice

8. As part of the investigation, the Commission issued you the Notice on 18 January 2024. The Notice contained five questions which required you to provide information and documents by 19 February 2024. The relevant time period for the information and documents sought in the Notice was from 1 June 2021 to 18 January 2024 inclusive.
9. On 21 February 2024, the Commission received a signed handwritten response to the Notice from you, which provided some limited information but did not provide any documents. You stated in your response that you did not find any messages of relevance in your possession.

10. However, during the course of the investigation, it became clear that there were relevant communications and relevant information that should have been provided by you in response to questions 2 and 5 of the Notice. These questions concerned communications about customers and the investigation, respectively.
11. We have previously provided you with copies of the relevant communications that were available to you and should have been provided in response to the Notice. These included copies of text message communications between you and other bricklayers about rates charged, customers, projects, and the investigation.
12. The Commission acknowledges that you supplied some of the required information and documents at your voluntary interview on 31 July 2024 and a number of further texts on 7 November 2024 (both well after the 19 February 2024 deadline for responding to the Notice). However, the Commission remains concerned as to why you failed to supply these in response to the Notice, while also stating that you had checked your phone and found no messages of relevance.

Details of the relevant law

13. The Act aims to promote competition in markets within New Zealand for the long-term benefit of consumers.
14. 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.
15. Section 103(1)(a) of the Act prohibits non-compliance with a compulsory notice issued by the Commission without a reasonable excuse.

The Commission's view

Cartel conduct

16. 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.
17. The Commission's investigation established the following facts:
 - 17.1 On or about 21 September 2021, Mr Marfell and you were contacted by [REDACTED] for a quote to undertake bricklaying work in relation to the construction of [REDACTED] which also included [REDACTED].
 - 17.2 On 21 September 2021 at 12:07 PM, you made a call to Mr Marfell which was not successful. You then received a text message from Mr Marfell at 12:07

PM on 21 September 2021: *"Hi mate I'm in and out of reception today, Whats up?"*.

- 17.3 You texted Mr Marfell in response on 21 September 2021 at 12:08 PM: *"Are you pricing [REDACTED]?"*.
- 17.4 In response, Mr Marfell texted you on 21 September 2021 at 12:09 PM: *"Yep It just came through today. I'll price then I might get you to put a dearer one in"*. You responded to Mr Marfell at 12:10 PM on the same day: *"Good shit"*.
- 17.5 On 22 September 2021, you submitted a quote to [REDACTED] totalling \$16,000 excluding GST to undertake [REDACTED].
- 17.6 The Commission understands that on 23 September 2021, Mr Marfell submitted a quote for G J Marfell Limited to [REDACTED] totalling \$26,000 (excluding GST of \$3,900) to [REDACTED]. You were unsure whether you had submitted a quote for [REDACTED].
- 17.7 On 24 September 2021 at 4:11 PM, Mr Marfell texted you: *"Looks good mate"*. You responded to Mr Marfell on the same day: *"Cheers mate"*.
- 17.8 On 26 October 2021 at 5:09 PM, Mr Marfell texted you: *"Hi mate did you price blocks for [REDACTED]?"*. You responded on the same day at 5:12 PM: *"Priced the the blocks but not the bricks went in at \$14 a block?"*. Mr Marfell texted you at 5:22 PM on the same day: *"Just to lay ?"*.
- 17.9 Mr Marfell and you continued to message about works in relation to [REDACTED] on 26 October 2021, and you disclosed to Mr Marfell that the price per block you had quoted to [REDACTED] was *"\$14 a block"*.
- 17.10 On 26 October 2021 at 5:46 PM Mr Marfell texted you: *"Bro 🤔 [REDACTED] is my work mate 🤔"*. On 26 October 2021 at 5:47 PM, Mr Marfell then also texted you: *"I think you mightve snaked me on price ."*
- 17.11 On 3 November 2021 at 11:15 AM, Mr Marfell texted you: *"I'll fogive you if you can help me out with stainless brick tires 🤔🤔. Do you have any spare?"*. You responded to Mr Marfell on the same day at 11:22 AM: *"Have a 3/4 bag in Rara we down the queen Charlotte today"*.
18. The text message communications between Mr Marfell and you between 21 September 2021 and 3 November 2021 show that:
 - 18.1 At your instigation, you were aware that Mr Marfell was also contacted to provide a quote to [REDACTED] for the works in relation to the construction of [REDACTED].

- 18.2 Mr Marfell communicated to you his expectation that you should submit a higher priced quote than his for the proposed work, and in response to that text message, you made a positive response indicating your agreement with Mr Marfell's proposal.
- 18.3 Based on the communications, Mr Marfell believed he would win the work from [REDACTED] over you because you would submit a non-competitive quote.
19. When interviewed under compulsion, Mr Marfell stated that:
- 19.1 he expected to win work from [REDACTED] because he had previously done work for them; and
- 19.2 he expected you to submit a price that was higher than his so as to allow G J Marfell Limited to win work from [REDACTED].
20. Based on the evidence gathered, including from an interview of Mr Marfell, the Commission considers that:
- 20.1 G J Marfell Limited and you were in competition with each other to supply bricklaying services in the Blenheim region.
- 20.2 You and Mr Marfell were aware that both of you were approached by [REDACTED] for a quote for the same project.
- 20.3 G J Marfell Limited (through Mr Marfell) and you arrived at an understanding on or about 21 September 2021 which contained the provision that you would submit a higher priced quote to [REDACTED] so as to allow G J Marfell Limited to win the project.
- 20.4 The purpose and likely effect of the provision in the understanding was to allocate the project to G J Marfell Limited, which may have been a breach of section 30 of the Act.
- 20.5 The purpose, effect and likely effect of the provision in the understanding was to fix your price at a level above G J Marfell Limited's price, thereby controlling the price of the winning quote, which may have been a breach of section 30 of the Act.
- 20.6 Mr Marfell complained to you when he found out that you had submitted a price that was lower than his for the [REDACTED] project. Mr Marfell then requested you sell him some of your hard-to-source building materials that he needed. You agreed and sold Mr Marfell some of those building materials.

21. 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.

Non-compliance with a Notice

22. The Commission's view is that there is sufficient evidence to institute legal proceedings against you for a breach of section 103(1)(a) of the Act. The reasons for the Commission's view are set out below.
23. The Commission considers that you have may have breached section 103(1)(a) of the Act by failing to supply relevant information and documents in response to the Notice. In reaching this view, the Commission considered the following:
- 23.1 at the time of the Notice being issued to you on 18 January 2024, you had access to the relevant information and documents that were not provided;
 - 23.2 you have not advised the Commission of having any difficulty accessing the relevant information and documents;
 - 23.3 in your response to the Notice, you advised that you had looked through your phone messages and had not found any of relevance;
 - 23.4 at your compulsory interview with the Commission on 7 November 2024, you also stated that Mr Marfell and you had discussed the text messages between you two that occurred on 21 September 2021 (in regard to the [REDACTED] project) sometime between October 2023 and November 2023 when Mr Marfell met you in person. Based on this statement, the Commission believes that you ought to have known the relevancy of those messages when the Notice was issued to you on 18 January 2024; and
 - 23.5 after being given the opportunity, you have not supplied the Commission with a reasonable excuse as to why you failed to supply the relevant information and documents.
24. The Commission considered whether any defences would potentially be available to you in the facts and circumstances of this case but formed the view that none had a reasonable prospect of succeeding.

Your response

Cartel conduct

25. During the investigation, you stated that:
- 25.1 you would engage in a courtesy call when approached by a prospective customer who previously used to work with another competing bricklayer;

- 25.2 it was your understanding that you and other bricklayers were not allowed to compete with Mr Marfell;
 - 25.3 you were aware of Mr Marfell's expectation that you should not compete with Mr Marfell for work sourced from [REDACTED]; and
 - 25.4 based on the text messages you received from Mr Marfell, it was your understanding that you were supposed to submit a higher price in comparison to Mr Marfell so as to allow Mr Marfell to win the project from [REDACTED].
- 26. The Commission's letter dated 16 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.
 - 27. Having considered the responses, the Commission's final view remains that there is sufficient evidence to institute legal proceedings against you for a breach of section 30 of the Act.

Non-compliance with Notice

- 28. When provided with an opportunity to provide a reasonable excuse for failing to provide the relevant information and documents, on 6 August 2025 you stated that you did not "realise [you] were a part of anything quite as serious at that time" and apologised for not disclosing the information at the time. We note in this respect that the Commission communicated the seriousness of non-compliance with the Notice on several occasions during its investigation. This included cautions in the Notice itself and the cover letter that accompanied it.
- 29. The Commission's letter dated 1 September 2025 also provided you with a final opportunity to comment on the Commission's intention to issue a warning for non-compliance with the Notice, and to provide any additional relevant information or identify incorrect information.
- 30. In response, on 12 September 2025, you accepted our decision to issue a warning. You said that you did not fully appreciate the seriousness of the matter and therefore did not respond as thoroughly as you should have. You further apologised and said that you now recognise the significance of the Notice and its obligations.
- 31. Having considered these responses, the Commission's final view remains that there is sufficient evidence to institute legal proceedings against you for a breach of section 103(1)(a) of the Act.

Enforcement action for breaching the Act

- 32. Where the Commission considers that a person or business has likely breached the Act, there are a range of potential enforcement responses available.

33. 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.
34. 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 to 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.
35. A person who breaches section 103(1)(a) of the Act commits a criminal offence and can be fined up to \$100,000 and in the case of a company, up to \$300,000.
36. 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).

Consequences of this warning

37. 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.
38. The Commission may draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against you.
39. The Commission may also take this warning into account in the event of continued or repeated similar conduct by you.
40. The Commission will take down a published warning letter if it has been issued to an individual for a possible breach in respect of which, if they had been convicted of that offence, they would be eligible for the clean slate scheme under the Criminal Records (Clean Slate) Act 2004.¹

Publication

41. This warning is public information and will be published on the case register on the Commission website. The Commission may decide to redact some details from the published version, such as personal information.

¹ This means that, provided there has been no further enforcement action taken against you following a period of seven years from this warning being issued, the warning will be removed from publication but remain on the Commission's internal files permanently.

42. 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).

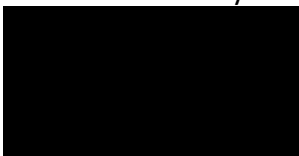
Further information

43. 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 the about the application of the Act to your business.
44. 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).
45. 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). The Commission encourages you to visit the Commission website to better understand your obligations and the Commission's role in enforcing the Act.
46. You can also view the Act and other legislation at www.legislation.co.nz.

Review of our decision

47. 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.

Yours sincerely



Andrew Riseley
General Counsel