

6 October 2025

Mr Greg Marfell
Director
G J Marfell Limited trading as Greg Marfell Bricklaying

[REDACTED]
[REDACTED]
[REDACTED]

By email only: [REDACTED]

Dear Mr Marfell

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, G J Marfell Limited, for potential breaches of the Commerce Act 1986 (**the Act**). We investigated whether G J Marfell Limited and you (in your personal capacity) 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 G J Marfell Limited on 18 January 2024 in breach of section 103(1)(a) of the Act (together **the investigated matters**).
2. After fully considering the relevant information received, the Commission considers G J Marfell Limited (through your conduct) may have breached:
 - 2.1 section 30 of the Act by entering into and giving effect to an understanding with Mr Andrew Dwyer to not compete for a customer [REDACTED] on or about 16 August 2020, which may have constituted market allocating and/or price fixing as defined in section 30A of the Act;
 - 2.2 section 30 of the Act by entering into and giving effect to an understanding with Mike Vis Bricklaying Limited (through Mike Vis' conduct) to not compete for the customer [REDACTED] on

or about 2 June 2021 which may have constituted market allocating and/or price fixing as defined in section 30A of the Act;

- 2.3 section 30 of the Act by entering into an understanding with Mr Benjamin Robertson where it was agreed that Mr Robertson 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
 - 2.4 section 103(1)(a) of the Act by not complying with a compulsory notice issued to G J Marfell Limited 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 G J Marfell Limited 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 G J Marfell Limited (and you personally) 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.
6. During the investigation, the Commission obtained and considered the following information from you and G J Marfell Limited:
 - 6.1 information supplied to the Commission by you on a voluntary basis on 31 August 2023 about your alleged involvement in any cartel;
 - 6.2 information supplied to the Commission by you on 19 February 2024 after G J Marfell Limited was compelled to do so by the Notice;
 - 6.3 information supplied to the Commission by you during a voluntary interview on 30 July 2024;
 - 6.4 information supplied to the Commission by you voluntarily on 6 November 2024;

- 6.5 information supplied to the Commission by you on 8 November 2024 during a compulsory interview conducted under section 98 of the Act; and
 - 6.6 information supplied to the Commission by you voluntarily between 16 November 2024 and 6 February 2025.
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 G J Marfell Limited the Notice on 18 January 2024. The Notice contained five questions which required G J Marfell Limited 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 19 February 2024, you responded to the Notice for G J Marfell Limited and provided some information and documents.
- 10. However, during the course of the investigation, the Commission has obtained from other sources (including from you at a later date) information and documents that the Commission considers fell within the scope of the Notice and were required to be produced in relation 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 customers, prices, a quote adjustment, and the investigation, as well as information about in-person visits you made to other bricklayers to discuss the investigation.

Details of the relevant law

- 12. The Act aims to promote competition in markets within New Zealand for the long-term benefit of consumers.
- 13. 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.
- 14. 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

15. The Commission's view is that there is sufficient evidence to institute legal proceedings against G J Marfell Limited for a breach of section 30 of the Act. The reasons for the Commission's view are set out below.

Understanding with Mr Andrew Dwyer

16. The Commission's investigation established the following facts:
 - 16.1 On or about 11 August 2020, Mr Andrew Dwyer was approached by [REDACTED] for a quote to undertake bricklaying work at [REDACTED] [REDACTED] at [REDACTED]. Mr Dwyer supplied a quote to undertake this work to [REDACTED] on or about the same day.
 - 16.2 On or about 16 August 2020, you were approached by [REDACTED] for a quote to undertake the same bricklaying work at [REDACTED].
 - 16.3 On 16 August 2020 at 2:13 PM, you sent a text message to Mr Dwyer: "*Hi mate did you quote [REDACTED] ?*". Mr Dwyer responded at 2:14 PM: "*Sure did*".
 - 16.4 On 16 August 2020 at 2:15 PM, you sent a text message to Mr Dwyer: "*Are you still going to do it as he wants me to price it ? If not, what was your price? There looks like [REDACTED]*".
 - 16.5 On 16 August 2020 at 8:40 PM, Mr Dwyer texted you: "*25500 plus gst [REDACTED] [REDACTED] includes steel bars*".
 - 16.6 In response, you texted Mr Dwyer at 8:40 AM on 17 August 2020: "*I did 30k including. But I didn't supply lintels*". Mr Dwyer then responded to you at 8:41 AM on 17 August 2020: "*Great stuff. Makes me look cheap*".
 - 16.7 On or about 17 August 2020, you submitted a quote for G J Marfell Limited to [REDACTED] which totalled \$30,820 including GST.
 - 16.8 On 19 August 2020 at 8:14 AM, you texted Mr Dwyer the following: "*Slight problem.... [REDACTED] came and saw me this morning and said I've got the job*". Mr Dwyer texted in response at 8:16 AM on 19 August 2020: "*You are joking*".
17. The text message communications between Mr Dwyer and you between 16 August 2020 and 19 August 2020 show that:
 - 17.1 you were aware of the fact that Mr Dwyer had already provided a quote to [REDACTED] to undertake work on the same project that you were also asked to quote by [REDACTED];

- 17.2 Mr Dwyer shared with you the price that he had submitted for the project before you had submitted your price to [REDACTED];
 - 17.3 you shared with Mr Dwyer G J Marfell Limited's price that you had submitted for the project; and
 - 17.4 as a result of the information exchanged, Mr Dwyer and you commonly expected that Mr Dwyer would be chosen by [REDACTED] to undertake this project.
18. On 8 November 2024, the Commission interviewed you under compulsion pursuant to section 98(1)(c) of the Act. In this interview, you stated that:
- 18.1 your intention behind contacting Mr Dwyer was to find out if there have been any issues between Mr Dwyer and [REDACTED]; and
 - 18.2 as you were busy at the time with work on other projects (which was not discussed in the text messages), you did not want the proposed work from Mr [REDACTED] and submitted a quoted price based on the price submitted (and then communicated to you) by Mr Dwyer to [REDACTED].
19. Based on the evidence gathered, the Commission considers that:
- 19.1 G J Marfell Limited and Mr Dwyer were in competition with each other to supply bricklaying services in the Blenheim region.
 - 19.2 You and Mr Dwyer were aware that both of you were approached by [REDACTED] for a quote for the same project.
 - 19.3 G J Marfell Limited (through your conduct) and Mr Dwyer arrived at an understanding on or about 16 August 2020 which contained the provision that you would submit a quote to [REDACTED] that was higher than the quote Mr Dwyer had supplied to [REDACTED] so that Mr Dwyer would be chosen by [REDACTED] to undertake the project. You and Mr Dwyer shared an expectation that Mr Dwyer would win the project.
 - 19.4 The purpose and likely effect of the provision in the understanding was to allocate the project to Mr Dwyer, which may have been a breach of section 30 of the Act.
 - 19.5 The effect of the provision was also to fix G J Marfell Limited's price at a level above Mr Dwyer's price, which may have been a breach of section 30 of the Act.
 - 19.6 G J Marfell Limited gave effect to the cartel provision by submitting a higher price to [REDACTED].

Understanding with Mike Vis Bricklaying Limited

20. The Commission's investigation established the following facts:
 - 20.1 On or about 29 May 2021, Mike Vis Bricklaying Limited through Mr Mike Vis (**Mr Vis**) supplied a quote totalling \$25,461.00 to undertake bricklaying work at [REDACTED].
 - 20.2 On or about 2 June 2021, [REDACTED] also approached you with a request for a quote to undertake bricklaying work for the same project.
 - 20.3 On 2 June 2021 at 9:35 AM, you sent a text message to Mr Vis: *"Hi mate are you pricing [REDACTED] for [REDACTED]?"*.
 - 20.4 In response, Mr Vis confirmed to you that he had quoted for the project the prior week. You then texted Mr Vis the following on 2 June 2021 at 9:39 AM: *"For some reason hes sent them to me . I dont want them so I'll quote dear"*. On 2 June 2021 at 9:41 AM, Mr Vis texted you: *"Ok sweet"*.
 - 20.5 On 2 June 2021 at 9:41 AM, you texted Mr Vis the rate you planned to quote for the project: *"I'm \$90 plus sills"*. Mr Vis texted you in response at 9:43 AM on the same day: *"\$\$\$\$\$"*.
 - 20.6 You then texted Mr Vis at 9:44 AM on 2 June 2021: *"Now's the time to do it otherwise it will stay low"* and *"\$22/lm for sills"*. In response, Mr Vis texted *"Yep"* to you on 2 June 2021 at 9:46 AM.
 - 20.7 On 9 June 2021, you submitted a quote to [REDACTED] for \$28,499.12 (priced at \$90/m²) for the project.
 - 20.8 [REDACTED] awarded the project to Mike Vis Bricklaying Limited.
21. The text message communications between you and Mr Vis on 2 June 2021 show that:
 - 21.1 you were aware that Mr Vis had already been approached by [REDACTED] to undertake work on the same project, and that he had provided a quote to undertake work for that project to [REDACTED] before [REDACTED] had approached you;
 - 21.2 you texted Mr Vis your intention to quote a higher price;
 - 21.3 you then texted Mr Vis the rates you planned to charge for the project; and
 - 21.4 as a result of the communications, Mr Vis and you commonly expected that Mike Vis Bricklaying Limited would be chosen by [REDACTED] to undertake the project.

22. In your compulsory interview on 8 November 2024, when asked for an explanation of the text messages, you stated that:
- 22.1 you were aware that Mr Vis had previously done work for [REDACTED]; and
 - 22.2 your intention was to let Mr Vis win the project.
23. Based on the evidence gathered, the Commission considers that:
- 23.1 G J Marfell Limited and Mike Vis Bricklaying Limited were in competition with each other to supply bricklaying services in the Blenheim region.
 - 23.2 You and Mr Vis were aware that both of you were approached by [REDACTED] for a quote for the same project.
 - 23.3 You explicitly stated to Mr Vis your intention to quote a higher price for the project.
 - 23.4 G J Marfell Limited (through your conduct) and Mike Vis Bricklaying Limited (through Mr Vis's conduct) arrived at an understanding on or about 2 June 2021 which contained the provision that you would submit a higher priced quote to [REDACTED] so as to allow Mike Vis Bricklaying Limited to win the project.
 - 23.5 The purpose, effect, and likely effect of the provision in the understanding was to allocate the project to Mike Vis Bricklaying Limited, which may have been a breach of section 30 of the Act.
 - 23.6 The purpose, effect, and likely effect of the provision was to fix G J Marfell Limited's price at a level above Mike Vis Bricklaying Limited's price, thereby controlling the price of the winning quote, which may have been a breach of section 30 of the Act.
 - 23.7 G J Marfell Limited gave effect to the cartel provision by submitting a higher price to [REDACTED].

Understanding with Mr Benjamin Robertson

24. The Commission's investigation established the following facts:
- 24.1 On or about 21 September 2021, Mr Benjamin Robertson and you were contacted by [REDACTED] seeking a quote to undertake bricklaying work in relation to the construction of [REDACTED] which also included [REDACTED].
 - 24.2 On 21 September 2021 at 12:07 PM, you missed a call from Mr Robertson. In response, you sent a text message to Mr Robertson at 12:07 PM on 21 September 2021: "Hi mate I'm in and out of reception today, Whats up?".

- 24.3 Mr Robertson texted you in response on 21 September 2021 at 12:08 PM: *"Are you pricing [REDACTED]?"*.
- 24.4 In response, you texted Mr Robertson 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"*. Mr Robertson responded at 12:10 PM on the same day: *"Good shit"*.
- 24.5 On 22 September 2021, Mr Robertson submitted a quote to [REDACTED] totalling \$16,000 excluding GST to undertake [REDACTED].
- 24.6 On 23 September 2021, you submitted a quote for G J Marfell Limited to [REDACTED] totalling \$26,000 (excluding GST of \$3,900) to [REDACTED].
- 24.7 On 24 September 2021 at 4:11 PM, you texted Mr Robertson: *"Looks good mate"*. Mr Robertson responded on the same day *"Cheers mate"*.
- 24.8 On 26 October 2021 at 5:09 PM, you texted Mr Robertson: *"Hi mate did you price blocks for [REDACTED]?"*. Mr Robertson responded on the same day at 5:12 PM: *"Priced the the blocks but not the bricks went in at \$14 a block?"*. You texted Mr Robertson at 5:22 PM on the same day: *"Just to lay ?"*.
- 24.9 Mr Robertson and you continued to message about works in relation [REDACTED] on 26 October 2021, and Mr Robertson disclosed the price per block he had quoted.
- 24.10 On 26 October 2021 at 5:46 PM you texted Mr Robertson: *"Bro 🤔 [REDACTED] is my work mate 🤝"*. On 26 October 2021 at 5:47 PM, you also texted Mr Robertson: *"I think you mightve snaked me on price ."*
- 24.11 On 3 November 2021 at 11:15 AM, you texted Mr Robertson: *"I'll fogive you if you can help me out with stainless brick tires 🤔🤔. Do you have any spare?"*. Mr Robertson responded on the same day at 11:22 AM: *"Have a 3/4 bag in Rara we down the queen Charlotte today"*.
25. The text message communications between you and Mr Robertson between 21 September 2021 and 3 November 2021 show that:
- 25.1 You were aware that Mr Robertson was also contacted to provide a quote to [REDACTED] for the works in relation to the construction of [REDACTED].
- 25.2 You communicated to Mr Robertson your expectation that he would submit a higher priced quote than yours for the proposed work, and Mr Robertson responded positively.

- 25.3 Based on the communications, you expected G J Marfell Limited to win the work from [REDACTED] over Mr Robertson.
26. In the aforementioned compulsory interview held with you on 8 November 2024, you stated that:
- 26.1 you expected to win work from [REDACTED] because you had previously done work for them; and
- 26.2 you expected Mr Robertson to submit a price that was higher than yours so as to allow you to win work from [REDACTED].
27. The Commission also interviewed Mr Robertson under compulsion pursuant to section 98(1)(c) of the Act on 7 November 2024. Mr Robertson stated that:
- 27.1 it was his understanding that you completed prior work for [REDACTED];
- 27.2 given that you had completed prior work for [REDACTED], Mr Robertson felt there was a need for him to alert you to the approach he received from [REDACTED]; and
- 27.3 based on the text messages he received from you, it was his understanding that you wanted him to submit a higher price so as to allow you to win the work from [REDACTED] given your relationship with that company.
28. Based on the evidence gathered, the Commission considers that:
- 28.1 G J Marfell Limited and Mr Robertson were in competition with each other to supply bricklaying services in the Blenheim region.
- 28.2 You and Mr Robertson were aware that both of you were approached by [REDACTED] for a quote for the same project.
- 28.3 G J Marfell Limited (through your conduct) and Mr Robertson arrived at an understanding on or about 21 September 2021 which contained the provision that Mr Robertson would submit a higher priced quote to [REDACTED] so as to allow G J Marfell Limited to win the project.
- 28.4 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.
- 28.5 The purpose, effect and likely effect of the provision in the understanding was to fix Mr Robertson's 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.

28.6 You complained to Mr Robertson when you found out he had in fact priced the work for [REDACTED] lower than you, and he then agreed to sell you some hard-to-source building materials.

29. The Commission has also considered whether any defences would potentially be available to you in relation to the potential breaches of section 30 outlined in this letter. However, based on the facts and circumstances of this case we have formed the view that none had a reasonable prospect of succeeding in relation to any of the three instances listed above.

Non-compliance with a Notice

30. The Commission's view is that there is sufficient evidence to institute legal proceedings for a breach of section 103(1)(a) of the Act. The reasons for the Commission's view are set out below.

31. The Commission considers that G J Marfell Limited 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:

31.1 at the time of the Notice being issued to G J Marfell Limited on 18 January 2024, it had access to the relevant information and documents that were not provided;

31.2 G J Marfell Limited has not advised the Commission at the time of the Notice being issued, or in its response to the Notice, of having any difficulty accessing the relevant information and documents that were not provided; and

31.3 after being given the opportunity, G J Marfell Limited has not supplied the Commission with a reasonable excuse as to why it failed to supply the relevant information and documents.

32. The Commission considered whether any defences would potentially be available to G J Marfell Limited to the potential breach of section 103(1)(a) in the facts and circumstances of this case but formed the view that none had a reasonable prospect of succeeding.

Your response

Cartel conduct

33. As part of our investigation, the Commission interviewed you under compulsion pursuant to section 98(1)(c) of the Act. In this interview, you stated that:

33.1 In relation to the conduct with Mr Dwyer:

- 33.1.1 your intention behind contacting Mr Dwyer was to find out if there have been any issues between Mr Dwyer and [REDACTED]; and
- 33.1.2 as you were busy at the time with work on other projects (which was not discussed in the text messages), you did not want the proposed work from [REDACTED] and submitted a quoted price based on the price submitted (and then communicated to you) by Mr Dwyer to [REDACTED].
- 33.2 In relation to the conduct with Mike Vis Bricklaying Limited:
 - 33.2.1 you were aware that Mr Vis had previously done work for [REDACTED]; and
 - 33.2.2 your intention was to let Mr Vis win the project.
- 33.3 In relation to the conduct with Mr Robertson:
 - 33.3.1 you expected to win work from [REDACTED] because you had previously done work for them; and
 - 33.3.2 you expected Mr Robertson to submit a price that was higher than yours so as to allow you to win work from [REDACTED].
- 34. 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. The Commission received a response that G J Marfell Limited accepted the Commission's findings and intention to issue a warning. You also advised us that you engaged in the abovementioned conduct out of ignorance and that you were sorry for your actions.
- 35. Having considered the responses, the Commission's final view remains that there is sufficient evidence to institute legal proceedings for a breach of section 30 of the Act.

Non-compliance with Notice

- 36. When provided with an opportunity to provide a reasonable excuse for G J Marfell Limited failing to provide the relevant information and documents, your response received 17 August 2025 did not provide any excuse.
- 37. 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. Your response received 9 September 2025 reiterated that your actions were done in ignorance and you were very sorry for what happened.

38. Having considered the responses, the Commission's final view remains that there is sufficient evidence to institute legal proceedings for a breach of section 103(1)(a) of the Act.

Enforcement action for breaching the Act

39. Where the Commission considers that a person or business has likely breached the Act, there are a range of potential enforcement responses available.
40. 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.
41. 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.
42. 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.
43. 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

44. This warning represents the Commission's view that the conduct in which G J Marfell Limited and 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.
45. The Commission may draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against G J Marfell Limited and/or you in your personal capacity.
46. The Commission may also take this warning into account in the event of continued or repeated similar conduct by G J Marfell Limited and/or you in your personal capacity.
47. 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

48. 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.
49. 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

50. 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.
51. 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).
52. 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.
53. You can also view the Act and other legislation at www.legislation.co.nz.

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.

Review of our decision

54. 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