

6 October 2025

Mr Michael Tony Vis  
Director  
Mike Vis Bricklaying Limited

[REDACTED]  
[REDACTED]

By email only: [REDACTED]

Dear Mr Vis

**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, Mike Vis Bricklaying Limited, for potential breaches of the Commerce Act 1986 (**the Act**).
2. We investigated whether you and Mike Vis Bricklaying Limited 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 Mike Vis Bricklaying Limited (through your conduct) may have breached section 30 of the Act by entering into an understanding with G J Marfell Limited (through Greg Marfell's conduct) that G J Marfell Limited would not compete for the customer [REDACTED] on or about 2 June 2021. This may have constituted market allocating and/or price fixing as defined in section 30A of the Act.
4. We note that, as detailed further below, you have maintained that you believe that you did not participate in cartel behaviour or any other anti-competitive conduct. The Commission accepts that your conduct contributed only to a relatively limited extent to the formation of the relevant understanding with G J Marfell Limited, and that the conduct of G J Marfell Limited appears to have played a considerably greater role in the formation of that understanding.
5. Despite this, in this instance, the Commission has decided the appropriate enforcement response is to issue Mike Vis Bricklaying Limited with a warning. The Commission notes that only a court can determine whether there has been a contravention of the Act.

6. 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**

7. The Commission investigated allegations that Mike Vis Bricklaying Limited 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.
8. During the investigation, the Commission obtained and considered the following information from you and Mike Vis Bricklaying Limited:
  - 8.1 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;
  - 8.2 information supplied to the Commission by Mike Vis Bricklaying Limited on 19 February 2024 after being compelled to do so by a statutory notice issued under section 98 of the Act;
  - 8.3 information supplied to the Commission by you during a voluntary interview on 1 August 2024;
  - 8.4 information supplied to the Commission by you on a voluntary basis on 1 August 2024; and
  - 8.5 information supplied to the Commission by you on a voluntary basis on 11 December 2024 and 16 December 2024, in response to new evidence obtained.
9. 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**

10. The Act aims to promote competition in markets within New Zealand for the long-term benefit of consumers.
11. 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

12. The Commission's view is that there is sufficient evidence to institute legal proceedings against Mike Vis Bricklaying Limited for a breach of section 30 of the Act. The reasons for the Commission's view are set out below.
13. The Commission's investigation established the following facts:
  - 13.1 On or about 29 May 2021, you were approached by [REDACTED] for a quote to undertake bricklaying work at [REDACTED], [REDACTED] (the project). On 29 May 2021, you supplied a Mike Vis Bricklaying Limited quote of \$25,461.00 to [REDACTED] to undertake the project.
  - 13.2 Information gathered by the Commission shows that on or about 2 June 2021, [REDACTED] also approached Mr Greg Marfell (**Mr Marfell**) of G J Marfell Limited with a request for a quote for the same project.
  - 13.3 On 2 June 2021 at 9:35 AM, you received the following text message from Mr Marfell: *"Hi mate are you pricing [REDACTED] for [REDACTED] ?"*.
  - 13.4 In response you confirmed *"Yep"* and *"Price them last week"*. Mr Marfell then texted you the following on 2 June 2021 at 9:39 AM: *"For some reason hes sent them to me."* and *"I dont want them so I'll quote dear"*. On 2 June 2021 at 9:41 AM, you texted Mr Marfell: *"Ok sweet"*.
  - 13.5 On 2 June 2021 at 9:41 AM, Mr Marfell texted you the rate he planned to charge for the project: *"I'm \$90 plus sills"* and in response, you texted *"\$\$\$\$\$"* to Mr Marfell at 9:43 AM on the same day.
  - 13.6 Mr Marfell then texted you 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, you texted *"Yep"* to Mr Marfell on 2 June 2021 at 9:46 AM.
  - 13.7 On 9 June 2021, Mr Marfell submitted a quote for G J Marfell Limited to [REDACTED] for \$28,499.12 (priced at \$90/m<sup>2</sup>) for the project.
  - 13.8 [REDACTED] awarded the project to Mike Vis Bricklaying Limited.
14. The text message communications between Mr Marfell and you on 2 June 2021 show that:
  - 14.1 you were aware of Mr Marfell being approached by [REDACTED] to undertake work on the same project that Mike Vis Bricklaying Limited had quoted earlier on 29 May 2021;
  - 14.2 Mr Marfell shared with you his proposal to deliberately quote a higher price for the project and then shared his pricing information with you;

- 14.3 in response to Mr Marfell's proposal, you responded with a positive message confirming the proposal; and
- 14.4 as a result of the communications, Mr Marfell and you commonly expected that Mike Vis Bricklaying Limited would be chosen by [REDACTED] to undertake the project.
- 15. When interviewed under compulsion, Mr Marfell stated that he was aware that you had previously done work for [REDACTED], and his intention was to let you win the project.
- 16. Based on the evidence gathered, the Commission considers that:
  - 16.1 Mike Vis Bricklaying Limited and G J Marfell Limited were in competition with each other to supply bricklaying services in the Blenheim region.
  - 16.2 You and Mr Marfell were aware that both of you were approached by [REDACTED] for a quote for the same project.
  - 16.3 Mike Vis Bricklaying (through your conduct) and G J Marfell Limited (through Mr Marfell's conduct) arrived at an understanding on or about 2 June 2021 which contained the provision that G J Marfell Limited would submit a higher priced quote to [REDACTED] so as to allow Mike Vis Bricklaying Limited to win the project.
  - 16.4 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.
  - 16.5 The purpose, effect and likely effect of the provision was also 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.
- 17. The Commission has also considered whether any defences would potentially be available to Mike Vis Bricklaying Limited. 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**

- 18. During the investigation, when asked for an explanation of all the relevant text messages sent between you and Mr Marfell on 2 June 2021, you advised that:
  - 18.1 it was your belief that you had not done anything wrong in your practice as a bricklayer;
  - 18.2 your pricing and work decisions are not controlled by other bricklayers; and

18.3 Mr Marfell and you “*did not exchange pricing information*”.

19. 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. The Commission received a response from Mike Vis Bricklaying Limited on 14 August 2025 that disputed the Commission’s findings and intention to issue a warning but did not supply additional information or evidence. In particular, you stated you firmly believed you did not participate in cartel behaviour or any other anti-competitive conduct. You expressed the view that in respect of the relevant project, you had already priced the job, and Mr Marfell’s decision to submit a higher bid was his alone.
20. Having considered the responses, the Commission’s final view remains that there is sufficient evidence to institute legal proceedings against Mike Vis Bricklaying Limited for a breach of section 30 of the Act. In particular, we note that:
  - 20.1 an “understanding” only requires a shared expectation between two or more parties as to what at least one of them will or will not do;
  - 20.2 Mr Marfell shared his proposal to deliberately quote a higher price for the project and shared his pricing information with you, and you responded positively; and
  - 20.3 ██████ thought it was receiving two independent quotes, and did not know it was only receiving one competitive quote.

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

21. Where the Commission considers that a person or business has likely breached the Act, there are a range of potential enforcement responses available.
22. 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.
23. 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.
24. 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**

25. This warning represents the Commission's view that the conduct in which Mike Vis Bricklaying Limited has engaged may have breached the Act and that legal action remains available to the Commission in future if the conduct continues or is repeated.
26. The Commission may draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Mike Vis Bricklaying Limited and/or you.
27. The Commission may also take this warning into account in the event of continued or repeated similar conduct by Mike Vis Bricklaying Limited and/or you.

### **Publication**

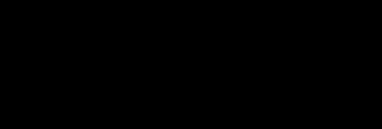
28. This warning is public information and will be published on the case register on the Commission's website. The Commission may decide to redact some details from the published version, such as personal information.
29. The Commission will be making public comment about our investigation and conclusions,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

### **Further information**

30. 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.
31. 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).
32. 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.
33. You can also view the Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).

**Review of our decision**

34. 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).



Andrew Riseley  
General Counsel