

Quarterly Snapshot

The Commerce Commission is New Zealand’s primary competition, fair trading, consumer credit and economic regulatory agency.

This quarterly snapshot provides a high level overview of work underway at the Commission.

This is our eighth snapshot. Future snapshots will continue to build year-to-date information.

For more information about us and about our work, please go to www.comcom.govt.nz.

Note: numbers may have small variances from time to time due to delays in entering data.

Foodstuffs NI merger proposal

The Commerce Commission has declined to give clearance for Foodstuffs North Island Limited and Foodstuffs South Island Limited to merge to become a single national grocery entity. The Commission is only permitted to grant clearance to a transaction when it is satisfied it will not result in a substantial lessening of competition. The Commission was not satisfied that the proposed merger would not have the effect of substantially lessening competition in multiple acquisition and retail markets. We considered that the proposed merger would result in a permanent structural change to the New Zealand grocery industry. We were concerned about the impact this could have on competition and New Zealand consumers. As well, we considered that the proposed merger increases the risk of coordination between the merged entity and Woolworths. We were concerned that the reduction in the number of major grocery retailers from three to two and the creation of a national Foodstuffs entity could make price coordination between the merged entity and Woolworths more likely, complete, or sustainable.

Market study into personal banking

Personal banking services are hugely important to New Zealanders and the broader economy – with almost every household having a bank account and debit card, nearly 60% having a credit card, and a residential mortgage market of around \$340 billion. The Commerce Commission’s Final Report into competition in the personal banking sector points to the potential of a stronger Kiwibank as a disruptor to the four major retail banks, and open banking as a “game-changer,” unlocking competition and revolutionising choice for Kiwi consumers. We recommended a raft of regulatory and structural changes to drive more competition for the benefit of Kiwi consumers – after the 14-month market study found “a stable, highly profitable, two-tier oligopoly with no disruptive maverick and a lack of obvious or aggressive price competition.

Concerns to the Commission

Consumers and businesses contact the Commission to raise concerns about activities and behaviours that may be against the laws we enforce. All contacts are important to us and directly and indirectly inform our investigation, enforcement and other regulatory work.

The following tables indicate how many enquiries the Commission has received this quarter and in which regulatory area. This snapshot also refers to the total number of enquiries we received in 2022/2023 in comparison of year to date for 2023/2024.

| Act | Concerns from Oct 2023 – Sept 2024 |
|---------------------------------|------------------------------------|
| Fair Trading Act 1986 | 10278 |
| CCCFA 2003 | 458 |
| Commerce Act 1986 | 434 |
| Retail Payments System Act 2022 | 348 |
| Fuel Industry Act 2020 | 96 |
| Telecommunications Act 2001 | 15 |
| Total | 11,227 |

| Act | Concerns Q1 |
|----------------------------------|-------------|
| Fair Trading Act 1986 | 2,394 |
| CCCFA 2003 | 118 |
| Commerce Act 1986 | 121 |
| Retail Payments Systems Act 2022 | 83 |
| Fuel Industry Act 2020 | 43 |
| Telecommunications Act 2001 | 2 |
| Total | 2,592 |

Commentary

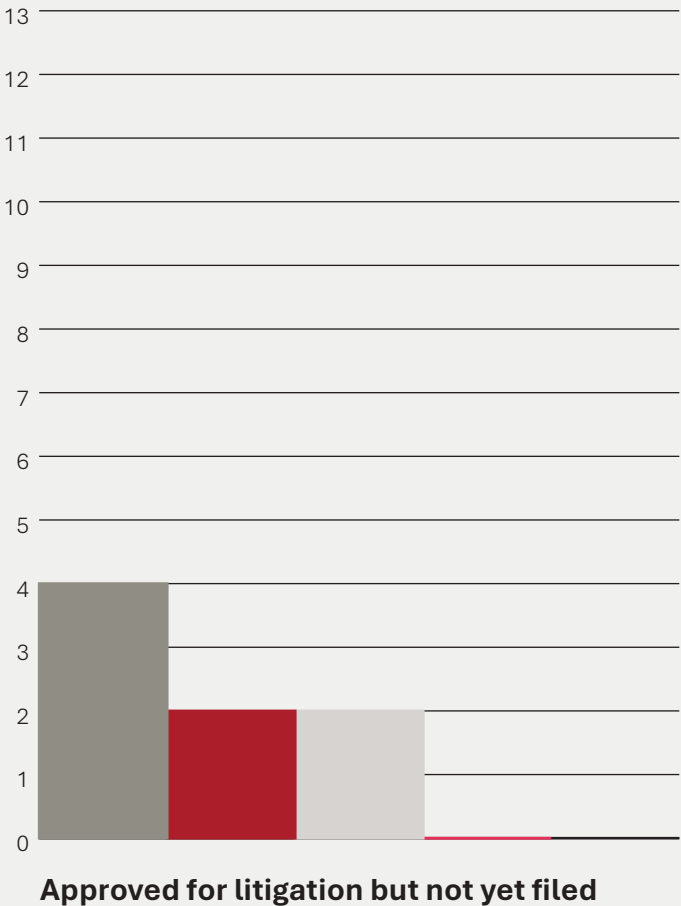
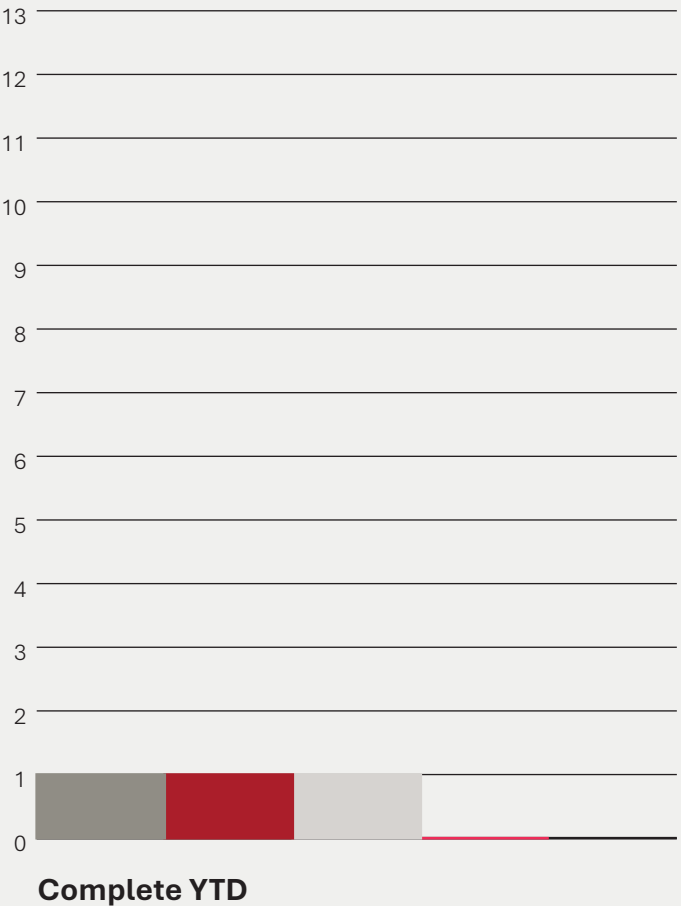
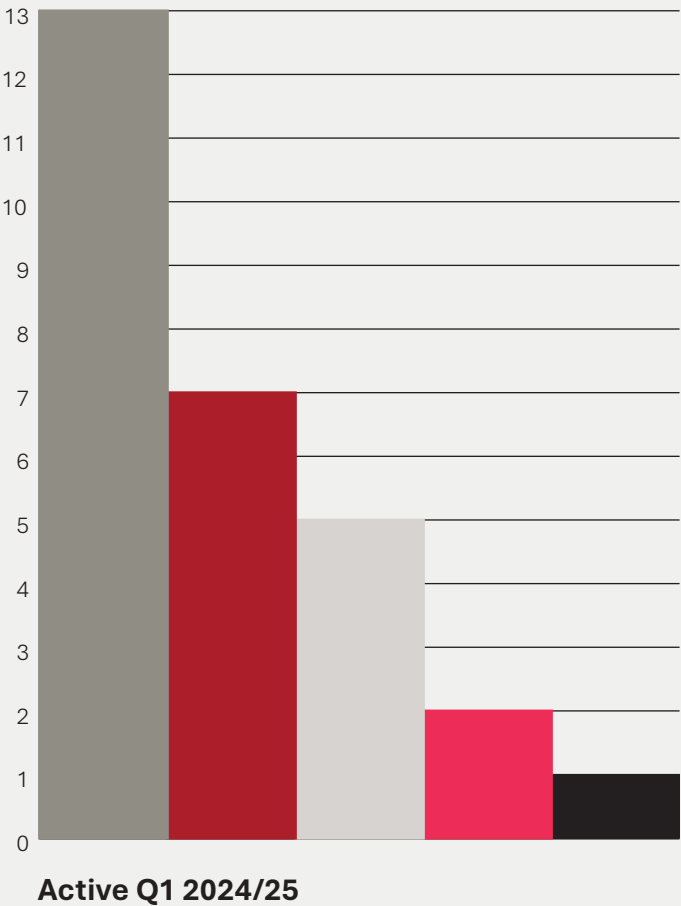
- The Commission received 2,592 concerns across our regulatory responsibilities in Q1 2024/25. This is in line with long-term trends.
- As in previous quarters, most of the concerns related to the Fair Trading Act were about false or misleading behaviour. Key issues included promotional representations, product characteristics, contractual issues undisclosed charges, and delivery issues.
- The top 5 brands with the most reported concerns were **Woolworths New Zealand Limited, Air New Zealand, One New Zealand, Pak’nSave and New World.**

Litigation Q1

The Commission is able to take enforcement action under legislation. The Commission can prosecute businesses and individuals. The graphs to the right indicate the litigation that the Commission has underway.

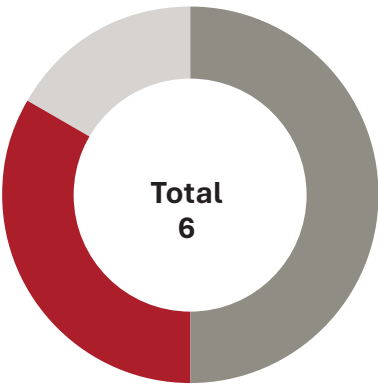
* including 1 matter where the Commission is intervening as a non-party to a litigation.

- Fair Trading
- Credit
- Competition
- Infrastructure Regulation
- Market Regulation

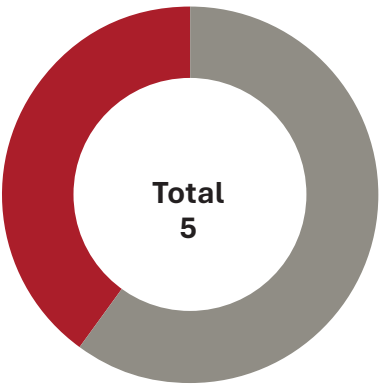


Investigation outcomes Q1 2024/2025

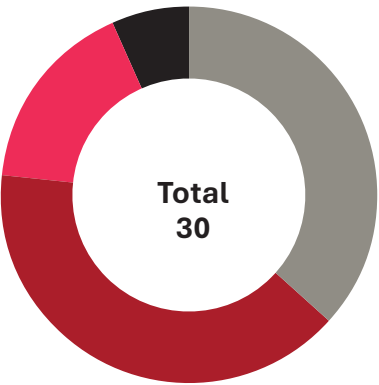
- Fair Trading
- Credit
- Competition
- Infrastructure Regulation
- Market Regulation



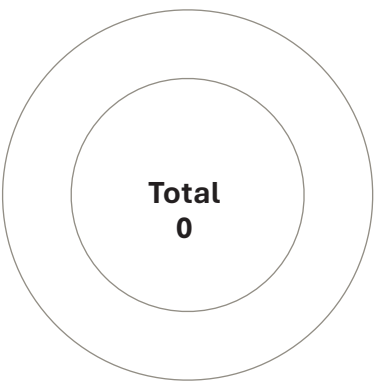
Approved for litigation



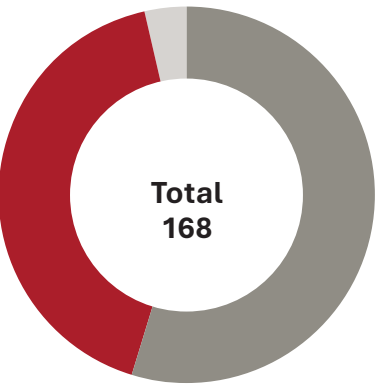
Warning letters issued



Compliance advice issued



Enforceable undertakings



Other

Commentary

- Warning issued to **Amazing Trading** for the supply of non-compliant children’s nightwear and to **Navy Baby** for the supply of children’s teethingers that failed toy safety tests.
- Eleven Infringement Notices were issued for lenders that failed to file an Annual Return by 30 June 2024.
- Five compliance advice letters were issued to **Electricity Distribution Businesses** in the last quarter. Recipients included **Vector** for contravening its 2023 Assessment Period (AP) quality standards, **Aurora**, and **Nelson** for errors in the calculation of actual allowable revenue, **Firstlight** for misstatements in its annual compliance statement for the 2023 AP and **Transpower** for misstatements in its annual compliance statements for the 2020 and 2021 disclosures years.

Investigations and Compliance

The Commission has a large number of investigations and compliance activities underway at any one time. We use our enforcement response guidelines in deciding whether to open an investigation and what compliance and enforcement action to take during and at the end of an investigation. The table to the right indicates how many active investigations the Commission has underway. The outcomes of completed investigations are also indicated.

| | Active Q1 2024/25 | Complete YTD Q1 2024/25 |
|---------------------------|-------------------|-------------------------|
| Fair Trading | 97 | 63 |
| Credit | 34 | 51 |
| Competition | 25 | 4 |
| Infrastructure Regulation | 6 | 5 |
| Market Regulation | 10 | 12 |

Judgements

Commentary

- The Commerce Commission has concluded legal action against **TSB Bank Limited** and secured a \$2.47 million penalty from the bank for historic breaches of the Credit Contracts and Consumer Finance Act (CCCFA). The bank charged customers approximately \$3.6 million more than was lawful through unreasonable credit and default fees.
- Hamilton-based dairy company, **Milkio Foods Limited** has been fined \$420,000 for misleading customers about the origin of some of their dairy products with claims like “100% Pure New Zealand” despite importing the core ingredient from India. The global value of New Zealand’s export brand made this an important case for the Commission to prosecute.
- The Wellington High Court has penalised **Foodstuffs North Island** \$3.25 million for lodging anti-competitive land covenants with the purpose of blocking competitors.
- The court action by the Commerce Commission followed an investigation into historical conduct which became known during the market study into the grocery sector completed in 2022. The study identified that the use of covenants on land had limited the number of sites available to competitors.

Filings

Commentary

- The Commission has filed charges against Walond Limited t/a Looksharp for pricing integrity issues and making false/misleading representations to consumers about their rights under the Consumer Guarantees Act.
- The Commission has filed five charges against Bed, Bath & Beyond for supplying goods that did not comply with Nightwear Standard and Unsafe Goods Notice (HWB). Bed, Bath & Beyond have pled guilty to all charges and sentencing is scheduled in late December.

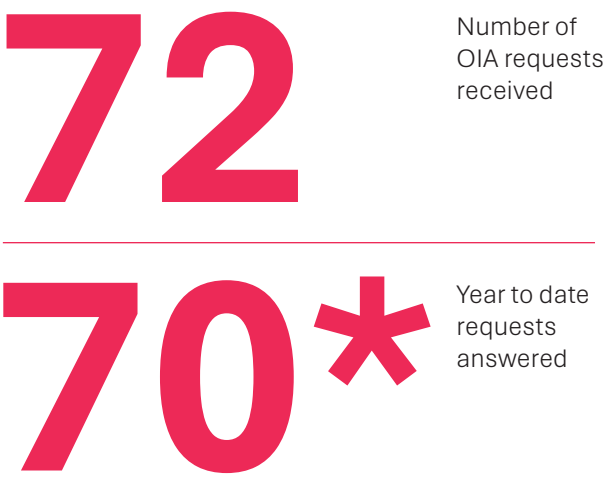
Official Information Act 1982 requests

The Official Information Act (OIA) gives New Zealand the right to request official information. The Commission proactively publishes selected official information responses on our website to improve transparency. We publish responses that do not compromise confidentiality, privacy or ongoing investigations.

Commentary

- This quarter the Commission received several requests focussed on the organisation. This included requests regarding spending on restructures, staff cuts / redundancy payouts, spending on training modules, and information about staff makeup. We also received a number of requests about our processes, such as how we manage complaints / numbers of complaints received etc.
- The Commission received a few requests about the grocery industry. The topics of requests included recent merger decisions, supermarket pricing errors, and how many times the grocery commissioner has met with supermarkets. Other topics of interest were the electricity market and queries about the banking sector.
- Most requests were made by members of the public or businesses, with the remainder mainly received from journalists, legal professionals, or organisations / consultancies. We received one request from an opposition party and accepted transfer of a request from the Office of the Minister of Commerce and Consumer Affairs.

Q1 2024/25



*This total includes 13 responses to requests made in the 2023/24 fiscal year.

Competition clearances and authorisations

The Commission administers a voluntary clearance regime for mergers and acquisitions. We take enforcement action to prevent anti-competitive transactions if prior clearance isnot sought.

We also grant an authorisation for an acquisition that would result in a substantial lessening of competition if the public benefits from the acquisition and are found to outweigh the competitive harm.

The data indicates the number of mergers, acquisitions clearances and authorisations that are underway or have been decided year to date.

Q1

| | Mergers clearances s66 | Merger Authorisations s67 | Collaborative activity clearances s65A | Trade practices authorisations s58 |
|---------------------------------|------------------------|---------------------------|--|------------------------------------|
| Decided | 2 | 0 | 0 | 1 |
| Undecided at the end of quarter | 2 | 1 | 0 | 0 |

YTD: Outcome 2024/2025

| | Mergers clearances s66 | Merger Authorisations s67 | Collaborative activity clearances s65A | Trade practices authorisations s58 |
|-------------------------|------------------------|---------------------------|--|------------------------------------|
| Cleared unconditionally | 0 | 0 | 0 | N/A |
| Authorised | N/A | 0 | N/A | 1 |
| Cleared with divestment | 0 | N/A | N/A | N/A |
| Declined | 2 | 0 | 0 | 0 |
| Withdrawn | 0 | 0 | 0 | 0 |
| Varied | N/A | N/A | N/A | 0 |
| Sol/SoUI issued | 2 | N/A | 0 | N/A |

Commentary

- The Commission declined two merger applications for clearance in Q1 – AlphaTheta Corporation/Serato Audio Research Limited (DJ hardware and software) and Foodstuffs North Island/Foodstuffs South Island (grocery). In both cases, the Commission was not satisfied that the proposed merger would not have the effect of substantially lessening competition in relevant markets.
- The Commission received two applications for merger clearance in Q1, relating to liquid petroleum gas (LPG) and electricity, which both remain undecided at the end of Q1.
- On 1 July 2024, the Commission issued a draft determination on Payment New Zealand’s application to further develop its open banking framework. Payments New Zealand is seeking authorisation to work with current and future API providers (ie, banks) and third parties (eg, fintechs) to develop and apply a partnering framework relating to the provision of API services by API providers to third parties. On 20 August 2024, the Commission granted final authorisation subject to a number of conditions.

Projects of Significance

The Commission has significant programmes of regulatory work underway. Our regulatory role in infrastructure regulation includes aspects of the New Zealand supply chain for essential services; such as electricity, gas, fibre and airports. Regulated markets include; telecommunications, fuel, groceries and dairy.

Highlighted on the right is a selection of the pieces of work that the Commission is currently involved in. The list is not exhaustive.

Further information on each piece of work, and many other pieces, is available on our website, including how you can engage with us.

Feedback from New Zealand businesses, consumers, and sectors we regulate is important to us in relation to that work.

On 20 June 2023, the Government asked the Commission to carry out a 14-month long study into whether competition for personal banking services in New Zealand is working well and, if not, what can be done to improve it. We published our final report on 20 August 2024. We found that New Zealand’s four largest banks – ANZ, ASB, BNZ and Westpac – do not face strong competition and we made a suite of recommendations for improving competition, designed to work together to support new entry and expansion, reduce the regulatory barriers to competition and empower consumers to get better prices and services. The reports and papers produced, public versions of submissions received throughout the study, and other material are available on our website.



| | Market study 4 – Personal banking services | Grocery | Retail Payment System | Telecommunications |
|-----------------------------|---|---|---|---|
| Previous Milestones | <p>March 2024</p> <ul style="list-style-type: none">Draft report on personal banking published <p>April 2024</p> <ul style="list-style-type: none">Submissions on draft report close <p>May 2024</p> <ul style="list-style-type: none">Consultation conferencePost-conference cross-submissions close | <p>April 2024</p> <ul style="list-style-type: none"><u>Open letter to grocery sector</u> published alongside <u>correspondence between the Commission and the RGRs</u> on their draft grocery supply agreements<u>Second grocery newsletter</u> published <p>May 2024</p> <ul style="list-style-type: none">Guidance on Unfair Contract Terms published <p>June 2024</p> <ul style="list-style-type: none">Second statutory assessment of wholesale regime completed | <p>May – June 2024</p> <ul style="list-style-type: none">Analysing submissions received on our proposal to recommend designation of the interbank payment network <p>June 2024</p> <ul style="list-style-type: none">Development of a consultation paper on whether costs to businesses of accepting Mastercard and Visa card payments could be reduced and simplified, which could also see surcharges reduced | <p>April 2024</p> <ul style="list-style-type: none">Publication of <u>Measuring Broadband NZ Quarterly Report</u> (report 19)Publication of <u>RealSpeed report</u>Publication of <u>Telecommunications Dispute Resolution Scheme Review letter</u> with subsequent consultation <p>June 2024</p> <ul style="list-style-type: none">Publication of <u>111 Contact Code Review - Final Decision and amended Code</u>Publication of <u>Telecommunications Development Levy specified information and assurance instructions</u>Publication of <u>Mobile Billing transparency review letter</u>Publication of <u>Measuring Broadband NZ Quarterly Report</u> (report 20) |
| Jul–Sept 2024/25 Milestones | <p>20 August 2024</p> <ul style="list-style-type: none"><u>Final report published</u> | <p>August 2024</p> <ul style="list-style-type: none">Publication of a <u>Request for Views paper</u> for consultation on the Grocery Supply Code review (1 August 2024)Instore requirements for unit pricing come into effect (31 Aug) <p>September 2024</p> <ul style="list-style-type: none">Publication of the <u>Annual Grocery Report</u>Publication of <u>Wholesale Supply Inquiry Terms of Reference</u>Publication of <u>Wholesale Supply Inquiry</u> Preliminary Issues paper for consultationPublication of <u>submissions on request for views paper</u> for the Grocery Supply Code review | <p>July 2024</p> <ul style="list-style-type: none">Publication of <u>Consultation paper</u> on costs to businesses and consumers of card payments <p>August 2024</p> <ul style="list-style-type: none">Publication of <u>the recommendation to designate the interbank payment network and our reasons to support our recommendation to the Minister, including submissions</u> received | <p>July 2024</p> <ul style="list-style-type: none">Publication of <u>Final report on Customer Service rankings design and contents</u> <p>August 2024</p> <ul style="list-style-type: none">Publication of the <u>Telecommunications Annual Monitoring Report (AMR)</u> including the analysis for the <u>rural connectivity study</u>Publication of the <u>Telecommunications Consumer Satisfaction Monitoring report covering January to June 2024</u> <p>September 2024</p> <ul style="list-style-type: none">Publication of <u>Product Disclosure: Mobile Coverage Map update letter</u> with actions for industryPublication of the <u>Measuring Broadband New Zealand quarterly report</u> (report 21) |
| Future Milestones | <p>Ongoing</p> <ul style="list-style-type: none">Monitoring and reporting to Ministers on implementation of the recommendations | <p>October 2024</p> <ul style="list-style-type: none">Cross submissions on Grocery Supply Code request for views paper close with subsequent information gathering and analysis to inform development of the draft reportGrocery Newsletter #3 published (22 October 2024) <p>November 2024</p> <ul style="list-style-type: none">Submissions on the Wholesale Supply Inquiry Preliminary Issues Paper close 8 November 2024 | <p>October–December 2024</p> <ul style="list-style-type: none">Engaging with and monitoring progress of sector to advance open banking <p>December 2024</p> <ul style="list-style-type: none">Publish draft decision on proposed regulations relating to costs to businesses of accepting Mastercard and Visa card payments | <p>October 2024</p> <ul style="list-style-type: none">Publication of Marketing Alternative Service / Broadband Marketing Report on the revised guidelines.Publication of the draft Telecommunications Development Levy liability allocation determinationPublication of the Mobile Termination Access Service (MTAS) Preliminary Views <p>November 2024</p> <ul style="list-style-type: none">Publication of draft Telecommunications Disputes Resolution review report.Annual mobile transparency review with ConsumerNZPublication of the Wi-Fi router/modem testing buyers guide |