

COMMERCE COMMISSION

Annual Plan 2000-2001

**Commerce Commission
PO Box 2351
Wellington
New Zealand**

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Chair's Foreword—Adapting to Change

This year is likely to see the biggest changes to the Commerce Commission's responsibilities since its inception as a stand-alone agency in 1986.

The key challenge facing us is to balance our resources, not only across the activities we already carry out but also to allow for significant amendments to the legislation we enforce and possible new functions. The Government has indicated that there are likely to be changes to both the Commerce and Fair Trading Acts. The ministerial inquiries into telecommunications and electricity may also lead to the Government making changes to the ways those industries are regulated, possibly involving the Commission. If so, we will need to determine as soon as possible how we will handle these changes in the interests of business and consumers.

We will work closely with business and consumer groups as we develop new processes and guidelines. We want to make the change to the new Commerce Act regime as smooth as possible to keep compliance costs down for businesses and consumers, and to minimise uncertainty. We will actively communicate how we propose to handle legislative change and what our new processes will be.

There are also likely to be legislative changes to the Fair Trading Act and additional responsibilities for the Commission in relation to standards of and bans on unsafe goods. Here too the Commission will work closely with business and consumer groups.

However, there is a need for education and communication to be backed up with the ability to take enforcement action if necessary. One consequence of changes to the Commerce Act may well be more enforcement action as the business community and the Commission test the boundaries of the new regime. The Government has recognised this, and in its Budget has provided for the Commission to receive up to \$1.5 million annually for its Litigation Fund.

In addition to legislative change, the business environment is constantly changing in response to international pressures, social changes and technological development. To be effective the Commission must, and does, continuously gather and assess information so that it keeps abreast of change and can develop and adapt its education as well as its enforcement priorities.

How we handle these major changes will be an important part of our accountability to the Government—we spend public money and are obliged to do so in ways that best achieve compliance with the Acts that we enforce. The Commission supports this and has in place

procedures to act on the Government's accountability requirements of Crown entities.

To achieve success, the ongoing professionalism and commitment of our staff is vital. I appreciate the quality, dedication and achievements of the staff, who have shown their willingness to meet new challenges. The Commission is committed to doing its very best to support and develop its people, who are its greatest resource.

I concluded my foreword to last year's Annual Plan with the words "the Commission looks forward to a challenging and busy year". This year, that is doubly true.

A handwritten signature in black ink, appearing to read 'John Belgrave', written in a cursive style.

John Belgrave
Chair

General Manager's Overview

The Commerce Commission's 2000-2001 Annual Plan sets out the activities the Commission intends to undertake during the year, together with the way in which its resources will be allocated and performance measured.

Promoting healthy competition and informed choice

The Commission is a Crown entity funded by the Government. The Commission's role is to promote awareness and acceptance of, and compliance with, the Commerce, Electricity Industry Reform (EIR) and Fair Trading Acts. The work of the Commission is designed to ensure healthy competition amongst businesses and informed choice by consumers, with benefits for the wider economy and the wellbeing of New Zealanders.

Challenges and priorities

The overall challenge for the Commission is to apply its resources to best effect across a broad range of commercial activity and behaviour.

The Commission's responsibilities have been extended over time. It has obtained new functions, such as adjudication under the EIR Act, and enforcement of new product safety standards. Further, the reduction and removal of industry-specific regulation has placed more weight on the Commission to deal effectively with anti-competitive conduct and unfair trading.

As there are many more potential problem areas than the Commission could ever investigate, priority setting is critical. The Commission must achieve a balance in effort and outcomes between the three Acts it enforces, and give priority to issues involving major detriment to consumers, major detriment to the competitive process, or deliberate breaching of the law.

Current challenges facing the Commission include changes in the trading environment, specific issues with network utilities, possible changes in legislation, general enforcement, and strengthening organisation capability. During the course of the year, as in previous years, the Commission may need to reprioritise its activities in the light of changing demands and resources.

Business and consumer environment

The trading environment is constantly evolving while anti-competitive and unfair trading behaviours are becoming more sophisticated. The rewards and risks are high, and so traders are vigorous in developing new approaches and in defending them. Technology advances including electronic commerce, more contestable markets, and increasingly mobile capital and global trading arrangements reinforce this trend.

Within the bounds of its statutory framework, the Commission must focus on practices that most impede competition and informed choice. The task is to anticipate and target competition and fair trading practices in the major areas of the economy. There will be greater demands on the Commission in its staffing and management to integrate information and insights from a number of critical perspectives, and to bring high-quality strategic, investigative, economic and legal skills to bear. Commission sub-committees focus specifically on major sectors like telecommunications, energy and health. They provide forums for additional scrutiny and discussion of industry developments. They also enable more strategic approaches to be developed to priority setting.

Changes to the Commerce Act

Changes to the Commerce Act have been proposed that will affect the work of the Commission. For example, changes to the Act in critical areas such as competition definitions and thresholds will likely affect the volume and complexity of cases, particularly until new case law develops, and potentially on an ongoing basis.

Other possible changes (e.g. to remedies and penalties; the creation of cease and desist powers for the Commission; limitation periods; arbitration arrangements) will likely impact on the effectiveness of deterrence and therefore levels of compliance, the feasibility and merits of prosecuting some cases, and the costs of achieving compliance.

The specific implications for the Commission will depend on the final legislation. It is very hard to predict how businesses will respond to the legislative changes, and the period of uncertainty might extend for some time. The Commission will need to retain the flexibility to switch resources and priorities as necessary.

Network issues, ministerial inquiries

The major network utilities include telecommunications and electricity. As in other countries, these networks are economically significant and their complexity poses a specific challenge for competition enforcement. In particular, full access to many of the markets in

these sectors depends on access to facilities that cannot be economically duplicated, such as the telecommunications local loop and electricity transmission lines. Competition assessments in these areas can require considerable engineering, accounting and economic expertise, and judgement in selecting the appropriate framework for analysis.

The Government set up a Ministerial Inquiry into the Electricity Industry, which completed its report in June 2000, and a Ministerial Inquiry into Telecommunications, which is to complete its final report in September 2000.

The nature and extent of any new functions for the Commission will depend on the Government's decisions on the recommendations of the inquiries, and subsequent legislative change. The Commission will undertake preparatory work as appropriate, which will be funded from Commission reserves, and will liaise closely with officials as required.

General enforcement

In 2000-2001 the Commission expects to receive approximately 14,000 inquiries and complaints from consumers and traders concerning competition and fair trading issues. These are an important source of information for the Commission, revealing patterns of conduct, emerging issues and statutory breaches.

Anti-competitive conduct has significant and adverse economic impacts. For this reason it is important that the Commission focus on such matters and pursue such cases even though they are costly in time and resources. For example, price fixing and predatory pricing cases can span several years, from the time of initial investigation through to the final outcome, and entail significant legal costs.

Fair Trading Act enforcement will be strengthened with a focus on more prosecutions and on selected industries. The Act has been in force for a number of years and major businesses have had time to become familiar with its requirements. The centralisation of the Commission's fair trading inquiries system last year has resulted in an increase in the amount and quality of information, which should assist with the targeting of investigations and the taking of more prosecutions. A particular challenge will be to achieve the appropriate balance in resourcing between general fair trading and product information and safety (i.e. between competition/choice and health/safety objectives).

Resources and litigation fund

The Government has maintained the Commission's baseline funding at \$6.950 million (GST exclusive) in 2000-2001. Last year the Commission received additional one-off funding of \$0.700 million (GST exclusive) for price control work. The adjustment back to the

baseline funding level is partially reflected in the budgeted operating deficit for the year, which can be met satisfactorily by the use of Commission reserves.

To enable the Commission to undertake major Commerce Act litigation, the Government has approved the payment to the Commission of up to \$1.5 million (GST exclusive) in 2000-20001 so that the Commission can maintain its Litigation Fund, initially established 10 years ago from Commission surpluses. By comparison, the Commission received funding of \$0.250 million (GST exclusive) from the Government last year for this purpose.

Use of the Fund will continue to be restricted to cases taken pursuant to parts II and III of the Commerce Act 1986. Such cases will involve major companies or issues affecting a particular industry, require the use of specialist external legal and other input, and have total direct costs of at least \$200,000. The Fund ensures that the Commission can effectively and without delay initiate major litigation involving expenditure that would be difficult to accommodate within normal budgetary provisions.

Organisational development

The Commission must ensure that it has the staff and systems in place to manage and respond to existing and new demands. Most essential for this purpose is high-quality internal support including human resource, information and budgeting systems.

Over the last year the Commission has moved to improve its ability to recruit, reward and retain staff with essential skills, alongside some enhancements to working conditions and equipment. Further opportunities will be taken over the next year to strengthen performance expectations and performance management.

Reliable and user-friendly information and budgeting systems are also critical, not only for day-to-day management but also for higher-level priority setting and resource decisions. The Commission will therefore upgrade its time-recording and job-costing processes during the year as part of a broader information and IT systems upgrade.

The Commission's measures of performance have also been developed and refined over the last year. They will need to be kept under review to ensure they are realistic yet challenging, and updated for any changes in the Commission's role and responsibilities.



Ken Heaton
General Manager

Role and Structure of the Commission

Role

The Commerce Commission exists to bring about awareness and acceptance of, and compliance with, the Commerce, EIR and Fair Trading Acts, so that consumers and producers benefit from healthy competition.

The Commission

The Commission comprises up to five members (including a Chair and Deputy Chair) and an additional number of Associate Members, appointed for their knowledge of, or experience in, industry, commerce, economics, law, accountancy, public administration or consumer affairs.

John Belgrave – Chair

John Belgrave was appointed Chair of the Commission in August 1999 for a term of three years. He is also Chair of the Standards Council of New Zealand. John has been the Chief Executive of four government departments including the Ministries of Commerce and Justice. He has also been the Executive Director of the New Zealand Bankers Association and the Electricity Supply Association of New Zealand.

Mark Berry – Deputy Chair

Mark Berry was appointed Deputy Chair in March 1999 for a term of five years. He is a former partner of Bell Gully Buddle Weir and was senior lecturer at the faculty of law at the University of Otago from 1994-98. Mark is also a Research Principal at the NZ Institute for the Study of Competition and Regulation at Victoria University.

Cathie Harrison – Commissioner

Cathie Harrison was an Associate Commissioner from May 1996 to July 1998. She was then appointed as a Commissioner for three years in July 1998. Cathie is a barrister and solicitor and a principal of the law firm, Harrisons. She has a particular interest in intellectual property and telecommunications law.

Paula Rebstock – Commissioner

Paula Rebstock was appointed as an Associate Commissioner for three years from August 1998. She was appointed as a Commissioner for a further four years in July 2000. Paula was formerly the General Manager Policy at the Department of Labour, an Economic

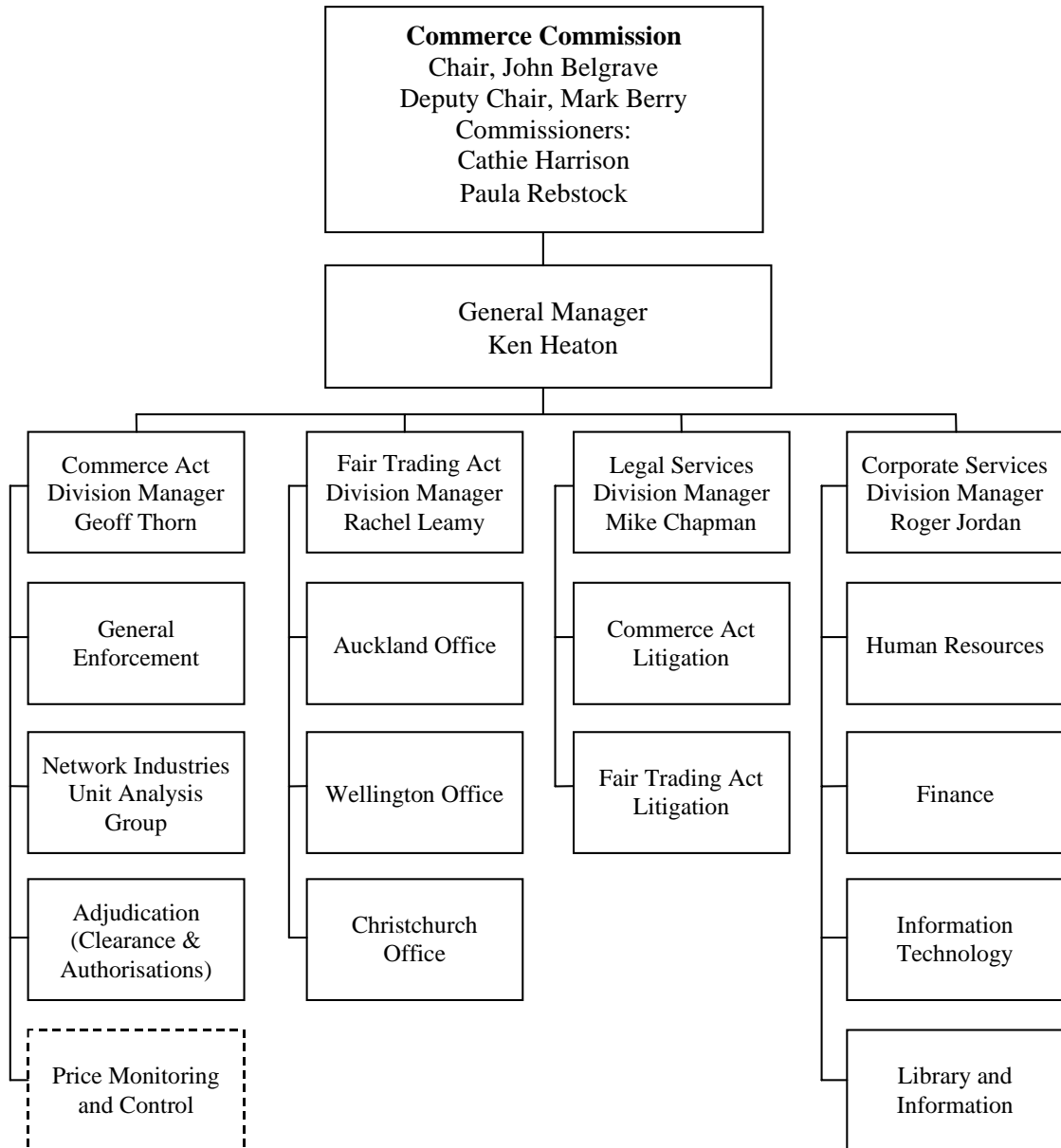
Advisor in the Department of the Prime Minister and Cabinet, and an Economic Analyst at The Treasury. Paula is a Director of the Foundation for Research, Science and Technology and is an economic consultant.

Dr Kate Brown and Liz Coutts – Commissioners

Dr Kate Brown and Liz Coutts stood down as Commissioners when their warrants expired in July 2000. Their replacements will be announced in due course.

Organisation structure

In addition to Commissioners, the Commission has a General Manager, four divisional managers and a complement of 66 full-time equivalent staff organised as follows:



Outputs

Outputs

The Commission undertakes activities in four output categories:

- Output 1: Commerce Act and Electricity Industry Reform (EIR) Act Enforcement
- Output 2: Commerce Act and EIR Act Adjudication
- Output 3: Fair Trading Act Enforcement
- Output 4: Price Monitoring and Control.

Output 4 was added in 1998-1999 to complete an inquiry into prices for airfield services. In 1999-2000 the Commission was also funded for work relating to price control of electricity lines businesses. In 2000-2001 work on both airfield services and electricity will be undertaken.

Communication

Communication is an important means of promoting an understanding of the law and compliance with it. The Commission maintains an active programme of communication with trader groups and the community generally so that they are aware of the requirements of the Commerce, EIR and Fair Trading Acts, and the role and activities of the Commission.

Screening process and criteria

The Commission expects to receive about 14,000 complaints and inquiries about the Commerce, EIR and Fair Trading Acts during 2000-2001. The details of all complaints and inquiries are recorded and screened. Complaints that meet the Commission's criteria are investigated further. In general terms, cases are investigated under the Commerce, EIR and Fair Trading Acts where:

- there is a major market problem
- there is blatant disregard for the law, or
- the case will establish a legal precedent.

Enforcement criteria

After an investigation has been concluded, the Commission may:

- issue a warning
- administratively settle with the parties, or
- commence litigation.

Each contravention of the legislation involves different circumstances. In each case, the Commission's primary goal is to achieve compliance with the Commerce, EIR and Fair Trading Acts. This includes compliance across industry groups as well as compliance by individual companies.

Warnings

The purpose of a warning is to advise a person that, based on the facts known to the Commission, their behaviour is at risk of breaching the legislation. A warning will be given where the behaviour does not appear to be significant or deliberate.

Administrative settlement

A settlement is a method of dealing with an identified contravention of the legislation where the parties who have contravened agree to modify their behaviour and provide signed undertakings to this effect.

Litigation

The key factors taken into account by the Commission when considering whether court action is appropriate include:

- the sufficiency of the available evidence
- whether statutory defences are available
- the impact of the behaviour on the affected markets
- whether the behaviour appears to represent a conscious breach
- the number of previous complaints about the parties
- the educational and deterrent effect of taking such action, and
- whether there would be precedent value in taking court action.

Commerce Act & Electricity Industry Reform Act Enforcement

Introduction

Competitive markets benefit the New Zealand economy through more efficient businesses, higher quality of goods and services, greater choice and competitive prices. Competition is promoted in New Zealand markets generally by the Commerce Act 1986, and specifically in the electricity sector by the EIR Act.

The Commission will develop awareness and acceptance of, and compliance with, the Commerce and EIR Acts by investigating conduct that may be in breach of those statutes. Where necessary, the Commission will take enforcement action, proactively monitor business behaviour and business acquisitions, and provide education.

Proposed changes in the Commerce Act will affect the Commission's workload and the analytical framework it uses to carry out investigations. The Commission expects the most significant change to occur in the business acquisitions area where the existing "dominance" test for prohibition of acquisitions is likely to be replaced with a lower threshold, a "substantially lessening competition" test. This change will be likely to increase the number of business acquisition enforcement investigations and adjudication applications. These increases in activity will clearly reduce the resources available for other enforcement activities.

In addition, two ministerial inquiries are under way. Their findings may result in changes for the Commission.

The Electricity Industry Inquiry has made recommendations to the Government. The Inquiry addressed whether the current regulatory regime meets the Government's objective of ensuring electricity is delivered in an efficient, reliable and environmentally sustainable manner.

The Telecommunications Inquiry is examining potential regulatory change with a view to ensuring "that the regulatory environment delivers cost efficient, timely and innovative telecommunications services on an ongoing, fair and equitable basis to all existing and potential users".

The Commission continues to face new challenges brought about by a number of market

reconfigurations resulting from rapid changes in technology. These changes are resulting in the convergence of a number of previously discrete markets. A further factor is the globalisation of commercial activity. These challenges have added to the complexity of the cases being investigated by the Commission, and this complexity will increase the need to use external expert assistance.

Complaints and inquiries

The Commission expects to receive and deal with 2,400 complaints relating to the Commerce Act and the EIR Act during 2000-2001. This expectation is based on consideration of trends in complaint numbers over the last three years and changes to the process used for fielding complaints, which ensures that they are all responded to in person (i.e. not through a voicemail system).

The Commission will respond to all complaints and inquiries received. It will receive, respond to, record and analyse all complaints and inquiries in a professional and timely manner.

Proactive enforcement

The Commission acts proactively to monitor market behaviour and, where possible, take early action in a number of ways:

- surveillance of business acquisitions and merger activity
- collation of industry-related material to monitor changes in industry structures, and
- specific proactive projects to identify competition issues arising from specific market developments.

Business acquisitions surveillance

The Commission conducts a surveillance programme which focuses on identifying un-notified business acquisitions and mergers. The number of business acquisitions occurring in the economy is driven by a number of factors, including the level of economic activity generally. Although the change in threshold might be a factor taken into account when firms consider potential acquisitions, the impact of the change on the number of business acquisitions which will occur is uncertain. The Commission expects that 280 un-notified business acquisitions and mergers will be identified in 2000-2001.

Industry monitoring

The Commission will continue to develop its understanding of specific industries and collate material relating to industry structures and market behaviour in order to respond quickly to developing issues which have competition implications. Work will be commenced on 10 industry proactives, to be decided as issues arise during the year.

Specific proactive projects

In addition two specific proactive projects will be undertaken during the year. These are:

- assessing the impact of proposed changes in the Commerce Act, and
- determining international jurisdiction.

Assessing the impact of proposed changes in the Commerce Act

The Commission recognises that business community uncertainty about the impact of the lowering of the threshold for business acquisitions is likely to impact on the Commission's workload. In an effort to reduce this uncertainty, the Commission is planning public consultation on its approach to the acquisitions threshold change and will publish its final view prior to the implementation of the change.

Determining international jurisdiction

There are an increasing number of mergers that are global in nature (e.g. when off-shore parent companies merge and both have subsidiaries operating in New Zealand). This raises issues of jurisdiction for both enforcement and adjudication. The Commission will work through issues of jurisdiction and the means of determining jurisdiction when this is not readily apparent.

Promotion of public awareness, acceptance and compliance

In order to promote awareness, acceptance and compliance with the Commerce and EIR Acts, the Commission will:

- prepare articles for its newsletters *Fair's Fair* and *Compliance*
- write and present speeches at conferences, for industry-specific groups and other organisations
- contribute papers to various academic journals, publish articles in edited works, and produce papers as part of the Commission's Occasional Paper series

- conduct research in industrial economics and competition policy
- publish and update publications as required
- organise seminars on particular Commerce Act issues as required
- provide presentations to visiting representatives from other governments and international organisations as required, and
- meet and liaise with academics in the field of industrial economics and competition policy as well as with individual foreign students and academics interested in New Zealand's competition law, where appropriate.

Investigation

The Commission collates information from complaints and inquiries, its business acquisitions surveillance programme and from proactive investigations. From this information, cases are selected for investigation in accordance with the Commission's investigation and enforcement criteria.

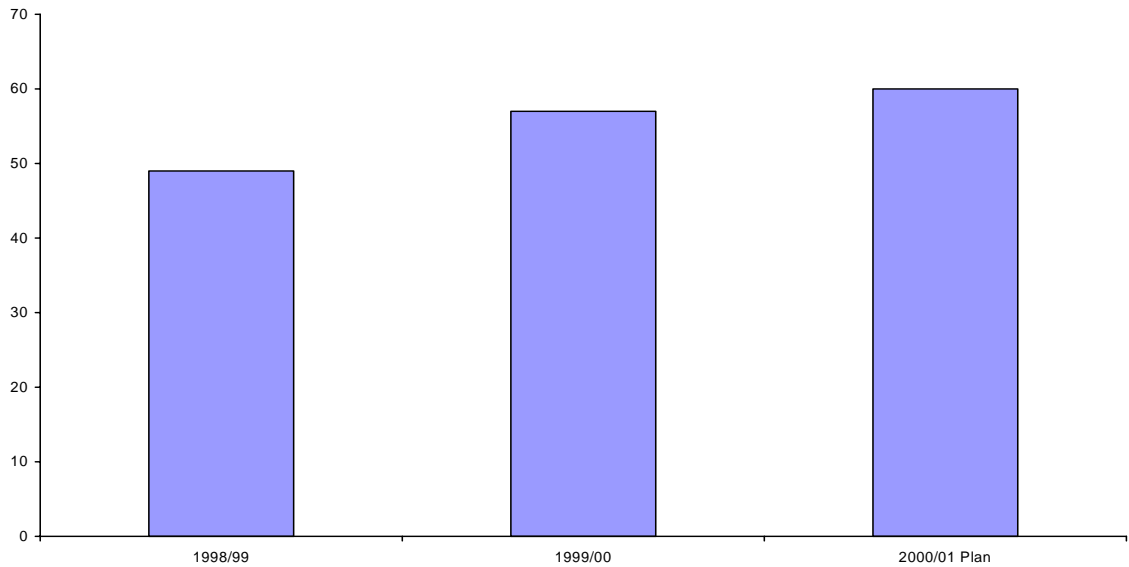
The Commission investigates behaviour relating to:

- restrictive trade practices that are anti-competitive arrangements between competitors
- restrictive trade practices that involve the use of a dominant position in a market to hinder competition, and
- un-notified business acquisitions which are likely to result in a person acquiring or strengthening a dominant position in a market.

It should be noted that the estimate of the total expected number of restrictive trade practice, un-notified business acquisition and adjudication investigations (for adjudication see pages 21-24) is unlikely to change. However, the spread of investigations over these three areas may change. When the legislative changes are made and business responds to them, the Commission will review its priorities and may reallocate its resources.

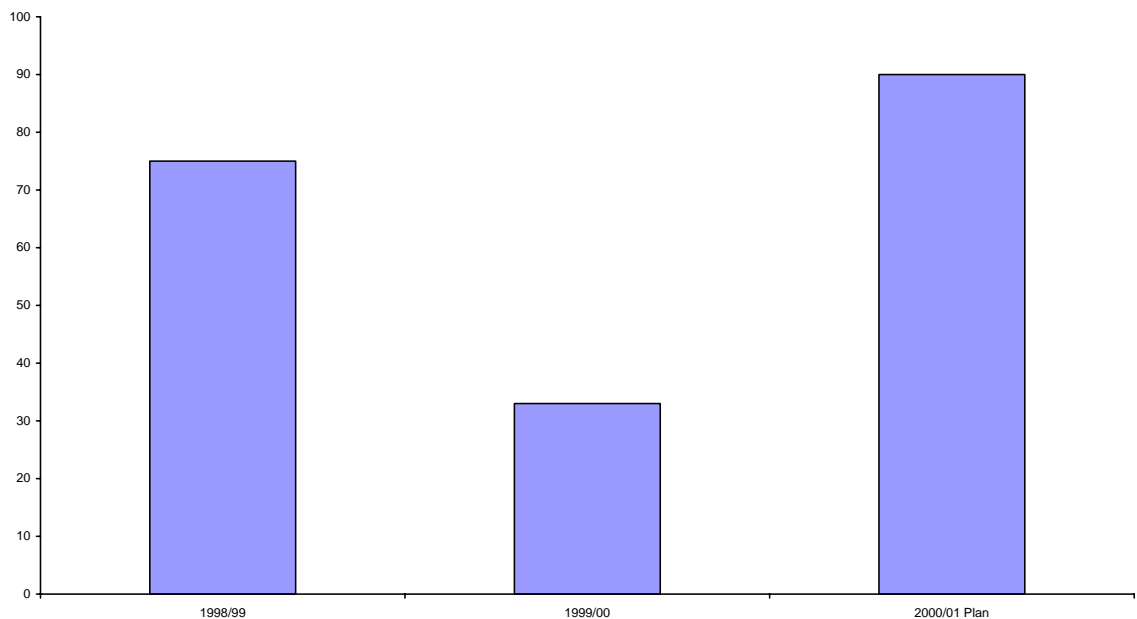
During 2000-2001 the Commission expects to conduct 60 restrictive trade practice investigations. These investigations will be a mix of complex and smaller cases. The complexity of some cases will result in a need to engage external experts to assist with some issues.

Restrictive Trade Practices and EIR Act Investigations



The Commission expects to conduct 60 investigations into un-notified business acquisitions, comparable with historical levels (the level last year was unusually low). The lowering of the threshold for business acquisitions is not likely of itself to affect the number of acquisitions requiring investigation, as many firms will seek a formal clearance. However, the change is likely to increase the resources required for those investigations, particularly while some uncertainty about the threshold exists.

Number of Investigations of Un-notified Business Acquisitions

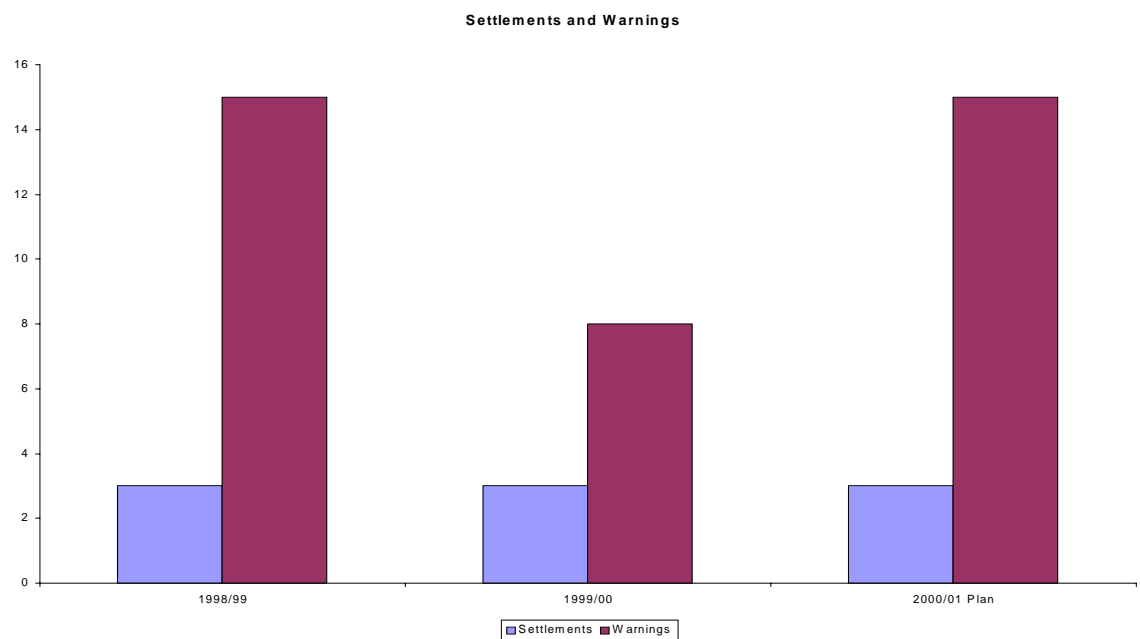


Administrative resolution

Where, as the result of an investigation into an alleged restrictive trade practice or an alleged breach of the EIR Act, a breach can be established, the Commission has the option of either administrative resolution or penalty action. Investigations into business acquisitions are an exception in that administrative resolution is rarely an option.

Administrative resolution involves issuing a warning to the parties, or entering into an administrative settlement. The particulars of warnings and settlements are decided on a case-by-case basis. The emphasis is on ensuring that problems are rectified and that competition is effective.

This year, the Commission expects to issue 15 warnings and accept three settlements.



Litigation

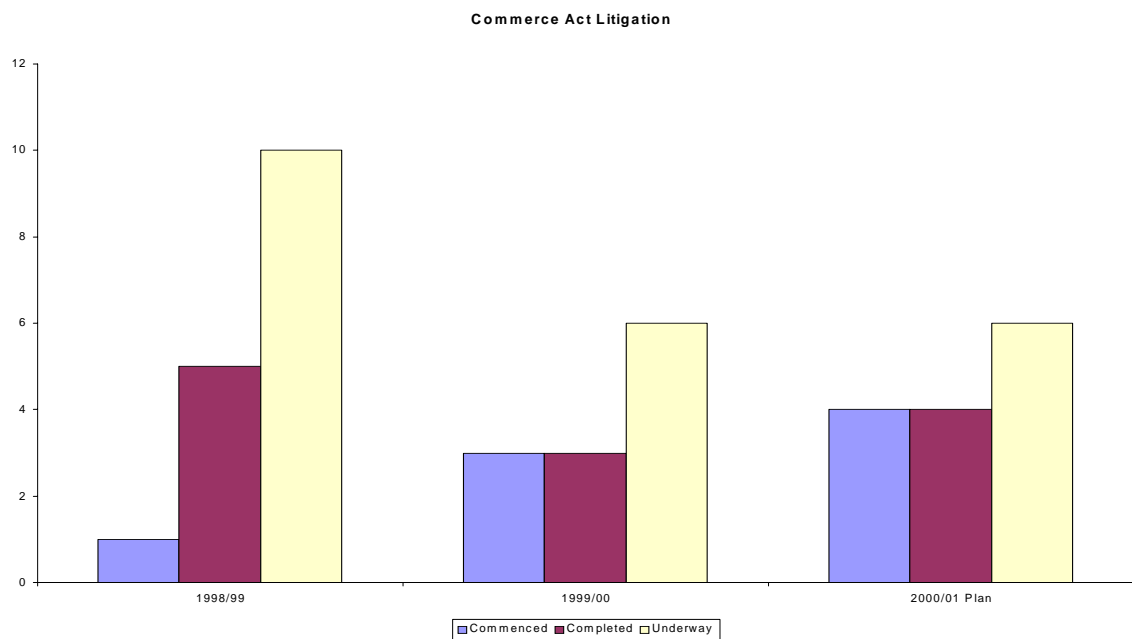
The Commission undertakes litigation in order to achieve compliance in the market. Court outcomes include penalties (or other appropriate relief) and precedents for business conduct. The Commission expects to initiate four cases, including one appeal, in the current year.

The Commission expects that, including cases on hand, there will be:

- three substantive trials heard
- one penalty hearing
- one Court of Appeal hearing, and
- one preliminary question heard.

Commerce Act litigation is resource intensive, as it often requires external economic and accounting experts plus senior counsel to bring a matter to a successful conclusion.

Settlement options are explored and taken where appropriate.



Commerce Act & Electricity Industry Reform Act Adjudication

Introduction

In order to obtain protection from legal challenge, parties to a business acquisition may apply for a clearance from the Commission. The Commission also has the power to grant authorisations to parties for certain restrictive trade practices or business acquisitions where the Commission is satisfied that the public benefit outweighs the detriment.

The proposed changes to the Commerce Act will particularly influence the workload of, and analytical framework used in, the Commission's adjudication processes. The Commission anticipates that the changes will result in an increase in the number of applications for clearance and authorisation of business acquisitions. The publication of the Commission's *Business Acquisitions Guidelines* clarified the Commission's position on acquisitions and mergers under the current legislation. The Commission plans to publish its view on its approach to the change in the business acquisitions threshold prior to the enactment of the proposed changes.

The Electricity Industry Reform Act 1998 (the EIR Act) was enacted to promote effective competition in generation and retail markets and curtail the natural monopoly powers of local distribution networks. The Commission is able to grant exemptions from the EIR Act. This year the Commission expects the number of exemption applications under the EIR Act to decrease, as much of the electricity industry restructuring in response to the Act is complete.

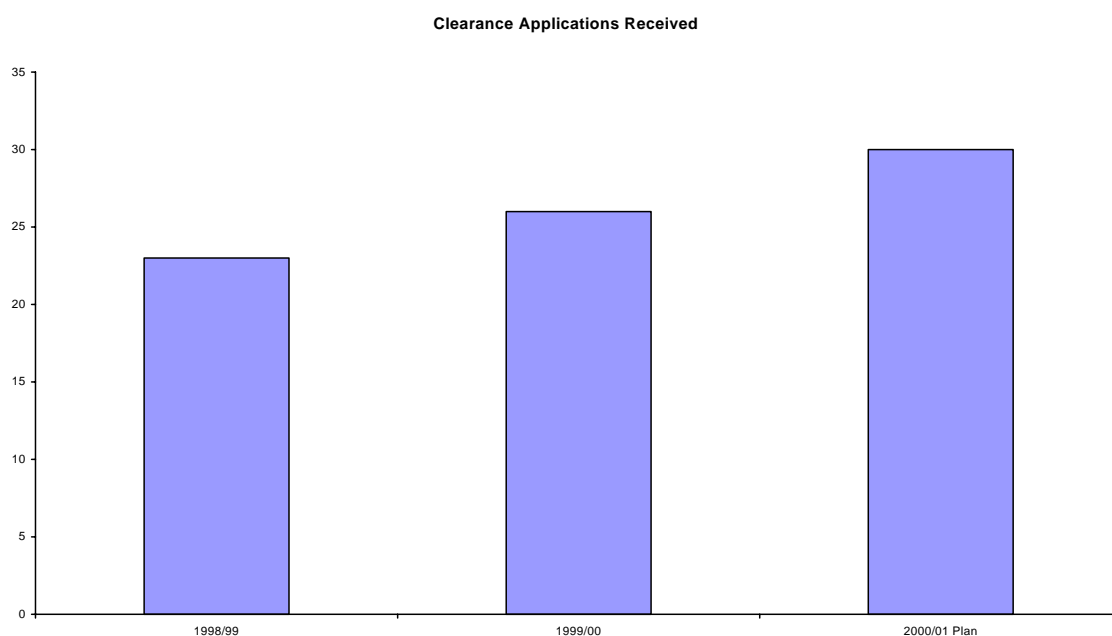
It should be noted that the estimate of the total expected number of adjudication, restrictive trade practice and un-notified business acquisition investigations (for restrictive trade practice and un-notified business acquisition investigations see pages 14 - 20) is unlikely to change. However, the spread of investigations over these three areas may change. When the legislative changes are made and business responds to them, the Commission will review its priorities and may reallocate its investigative resources.

Clearance applications

A clearance is given if the Commission is satisfied that an acquisition will not or will not be likely to result in the acquiring or strengthening of a dominant position in a market.

The Commission has 10 working days, or a longer period as agreed between the Commission and the applicant, to decide whether to give a clearance. To be protected by a clearance, an acquisition must be made within 12 months of the Commission making its decision.

If passed, the proposed changes to the Commerce Act would require the Commission to be satisfied that an acquisition will not substantially lessen competition in a market. The Commission expects the threshold changes for business acquisitions to occur during the 2000-2001 year. If the level of business acquisition activity remains constant during the year, it is likely that, despite the Commission publishing its approach to the new threshold, business community uncertainty about the threshold will result in an increase in the number of clearance applications received. On this basis, the Commission expects that 30 clearance applications will be received during the 2000-2001 year.

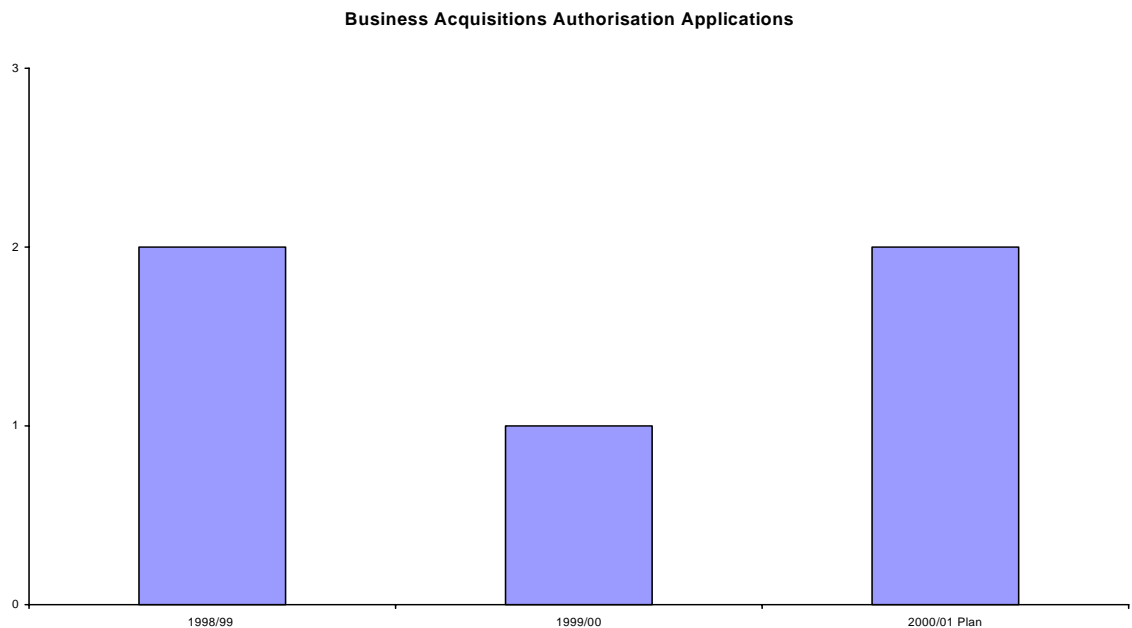


Business acquisitions authorisation applications

The Commission will register, process and determine applications for authorisation of business acquisitions in accordance with the provisions of the Commerce Act and Commission procedures.

Authorisation applications must be determined within 60 working days, or a longer period as agreed between the Commission and the applicant. If the Commission is satisfied that the acquisition would not result in the acquiring or strengthening of a dominant position, it must give a clearance. If it is not satisfied on the dominance issue but is satisfied that the acquisition has such a benefit to the public that it should be permitted, then the Commission must grant an authorisation.

The proposed changes in the Commerce Act, if implemented, are not expected to have a large effect on the number of authorisation applications received. These applications are resource intensive, frequently involve a public conference to examine the issues with the applicant and interested parties, and have a statutory time frame of 60 working days. The Commission therefore expects that two business acquisition authorisation applications will be received this year.

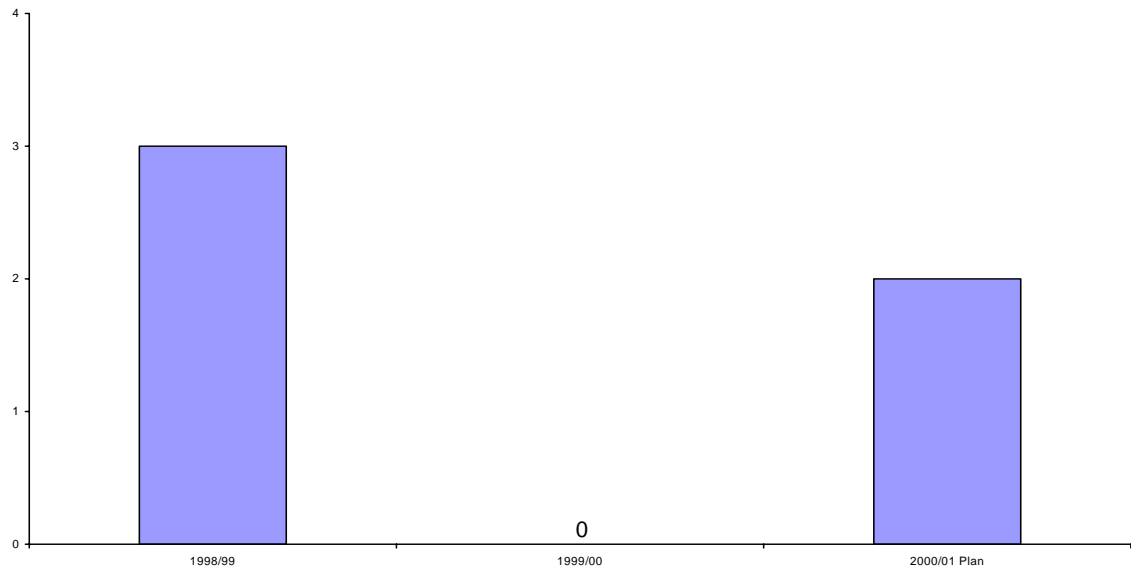


Restrictive trade practice authorisation applications

The Commission will register, process and determine applications for authorisation of restrictive trade practices (except use of a dominant position, which cannot be authorised) in accordance with the provisions of the Commerce Act and Commission procedures.

Authorisation applications are usually determined, by Commission practice, within 60 working days. An authorisation is granted if the Commission finds that the public benefits of a practice outweigh the detriments resulting from any loss of competition. Authorisation is thereby given to some practices that would otherwise be at risk under the Commerce Act. The Commission expects that two applications will be received this year.

Restrictive Trade Practice Authorisation Applications



Electricity Industry Reform Act Exemption applications

Section 81 of the EIR Act provides that the Commission may grant exemptions from provisions of that Act. The Commission also has responsibilities to advise on class exemptions and designating extensions to the EIR Act.

The Commission granted 16 exemptions in 1998-1999 and five in 1999-2000. As most of the electricity industry reconfiguration is now complete, the Commission expects to receive two applications for exemptions during 2000-2001.

Promoting awareness and compliance

In order to bring about awareness and acceptance of, and compliance with, the Commerce and EIR Acts, the Commission will:

- publish articles in its newsletters *Fair's Fair* and *Compliance*
- work closely with business and consumer groups to explain changes to the Act
- update publications where necessary, and
- make presentations at conferences and to industry-specific groups.

Reviews and appeals

Both the Commission and the courts give the resolution and hearing of these matters high priority.

The Commission does not anticipate that proposed changes to the Commerce Act will have an effect on the number of court cases this year. It is expected that one judicial review action will be completed and one new appeal or judicial review will be filed.

Fair Trading Act Enforcement

Introduction

Over the past year the Commission has centralised its inquiry-handling resources by establishing a call centre. The centre is giving better quality information to identify industries or emerging issues of concern. Throughout the year information will be gathered to build knowledge of business practices within those industries and the Commission will target its enforcement and education effort accordingly. Increased emphasis will also be placed on identifying emerging consumer issues and trends, and developing strategies for dealing with them. This will be done by evaluating and analysing information from research on target industries, surveillance by Commission officers and inquiry data.

This year the Commission will target investigations in the following industries:

- real estate
- food/supermarkets
- information technology
- pyramid schemes
- energy/telecommunications
- health/weightloss/cosmetics
- motor vehicles
- trade and services
- travel
- furniture/home appliances, and
- general retailing.

The Commission is aware that the response to its educational programmes is greatest in terms of increased compliance after successful court actions. Therefore the Commission will increase the number of court actions this year from 30 to 35.

The Commission will take opportunities as appropriate to deal with emerging cross-border and e-commerce issues by liaison with industry and overseas regulatory agencies, participation in seminars, and court action to ensure consumer protection.

New responsibilities will include enforcement of new product safety standards, new consumer information standards, and new bans of unsafe goods.

Investigations will be managed in two categories, general investigations and standards investigations. As new product safety standards and consumer information standards are

introduced by the Government, this separation will make it easier to prioritise and meet targets.

Proactive enforcement

The Commission will develop programmes to deal with the proposed new product safety standard for cots, any other new standards which are introduced, amendments to or replacements of existing standards, and any product bans. These programmes will include:

- a product safety seminar in Auckland
- brochures and fact sheets to explain new product safety standards and consumer information standards, and
- factsheets to explain product bans.

Inspections

The Commission will carry out 40 inspections covering all product safety standards and unsafe goods banned by the Minister of Consumer Affairs. Additional follow-up inspections will be carried out as required.

Major Trader Programme

The Major Trader Programme is designed for individual companies. Companies go on the programme because the Commission receives a significant number of inquiries about them, which appear to show breaches of the Fair Trading Act. All inquiries received about these traders are assessed against the investigation criteria, and companies are subject to enforcement action, including court action. In addition, the Commission monitors all these inquiries closely, and regularly meets with the traders to discuss the issues raised. Companies are expected to take responsibility for improving their compliance with the Act.

Changes to the programme this year will include the development of a formal agreement for those companies that join the programme. The programme will also be expanded to include one-off reviews following enforcement action against a trader, as this provides an opportune time to review all inquiries that have come to the Commission's attention about that trader. Additionally, reviews will be carried out at a trader's request as resources allow, and review data will be supplied to traders that have graduated from the programme.

Trade Association Programme

The Trade Association Programme is designed for trade associations that represent significant business groups in industries where compliance with the Fair Trading Act should be improved. Inquiry data for that industry is comprehensively reviewed on a six-monthly basis and discussed with the trade association to encourage it to aid its members to improve compliance with the Act. Like the Major Trader Programme this programme is backed up by enforcement action including court action, and companies are expected to take responsibility for improving their compliance with the Act.

Under the programme this year the Commission will produce educational resources jointly or in co-operation with the trade associations.

The programme has been in existence for two years and it is timely to evaluate its effectiveness and efficiency. A review will be carried out by the Commission this year.

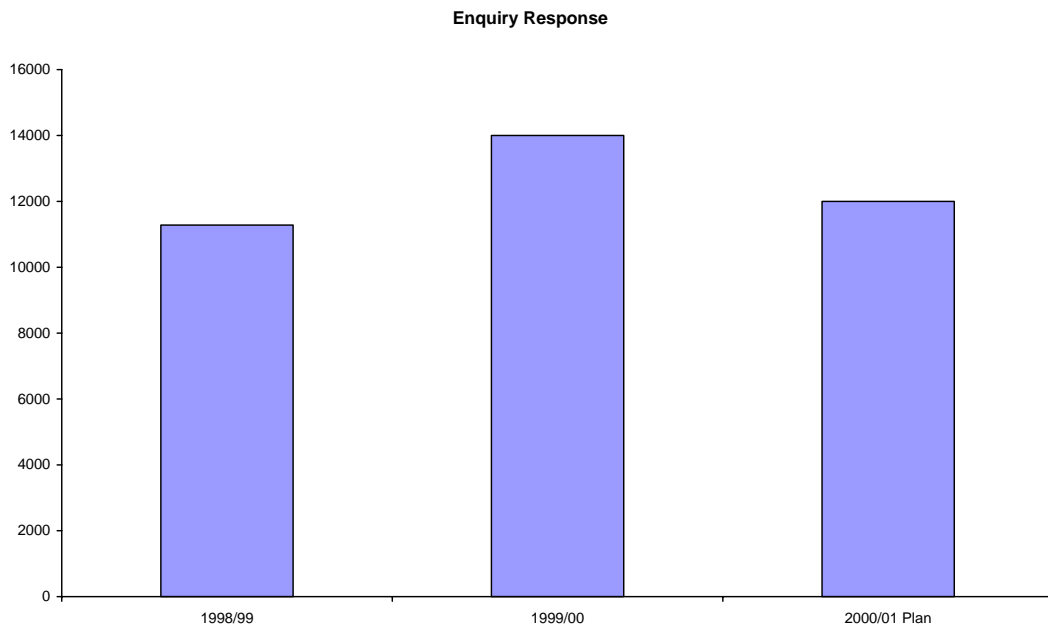
The Commission will continue working with the Real Estate Institute and the Motor Vehicle Dealers Institute. A house and motor vehicle are usually the two biggest purchases that consumers will make. The Commission will consider one-off meetings with other associations as resources allow.

Inquiry response

It is expected that the Commission will receive 12,000 Fair Trading Act inquiries this year. Most are received by telephone but the figure also includes written and e-mail inquiries. All inquiries are recorded and responded to. It is expected that the average response time will be 1.5 days.

Information from inquiries will be analysed and used for mapping trends, enforcement planning and education purposes.

The centralised call centre will have been operational for a year in March 2001. It will be evaluated after this date to measure its effectiveness.



Promotion of public awareness, acceptance and compliance

Regional visits

The regional visit programme will be evaluated to ensure it is meeting its objectives in an efficient and effective manner compared with other educational work the Commission currently carries out or could carry out. Visits are conducted with the Ministry of Consumer Affairs.

Visits will be made to:

- Dunedin
- Hutt Valley
- St Luke's (as the pilot for a possible programme of visits to shopping malls), and
- West Auckland.

Seminars and speeches

Thirty speeches and seminars will be given. Seminars about the Fair Trading Act in general will be held in Dunedin, Hutt Valley and West Auckland as part of the regional visits.

Seminars about product safety standards for advertising and media organisations will be held in Auckland.

Seminars for furniture retailers will be held in conjunction with the Retail Merchants Association in Auckland, Wellington and Christchurch.

Publications

New guidelines will be published about:

- furniture retailing and the Fair Trading Act, and
- the new product safety standard for cots.

The existing publications that will be revised are:

- *The Fair Trading Act: A Guide for Advertisers and Traders* to take into account developments in the law, new standards and changes to current standards
- those about the care labelling, fibre content and bicycle standards to take into account proposed changes to the standards, and
- *Travel Promotions and the Fair Trading Act*, which is now out of print, to take into account developments in case law.

Pyramid selling

The Commission has become concerned that pyramid selling schemes are often actively promoted in Maori and Pacific Island communities. Large numbers of people in these communities buy into the schemes, often borrowing money from banks and other commercial lenders to do so. Most people in a pyramid scheme must lose money. All pyramid selling schemes are illegal in New Zealand.

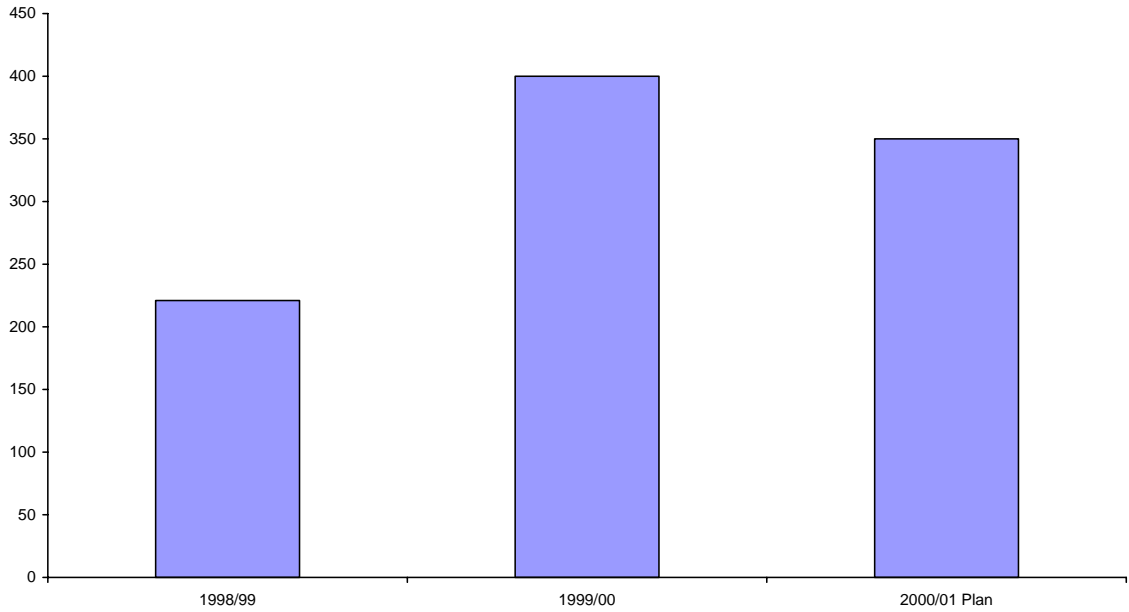
The Commission will develop links with Maori and Pacific Island organisations as part of its action against pyramid selling.

Investigations

The Commission expects to carry out 350 investigations under the Fair Trading Act, 300 relating to general issues and 50 to standards and banned goods.

Of the 350 investigations undertaken, 235, or 67 percent, are expected to result in enforcement action. These figures are lower than for last year when an extensive inspection programme was carried out after the cigarette lighter product safety standard was introduced. Although other standards and bans may come into force this year, the Commission believes they are not likely to generate the large number of inspections and investigations that came out of the lighter standard.

Fair Trading Investigations



Surveillance targets

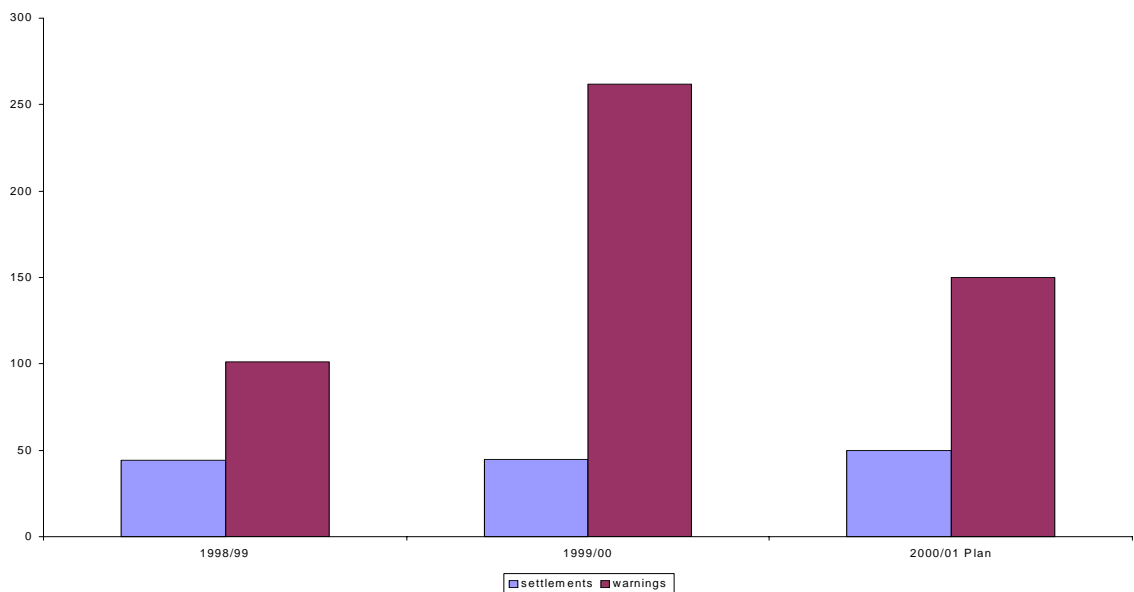
The following industries have been targeted for surveillance:

- security firms
- e-commerce, and
- rental cars.

Administrative resolution

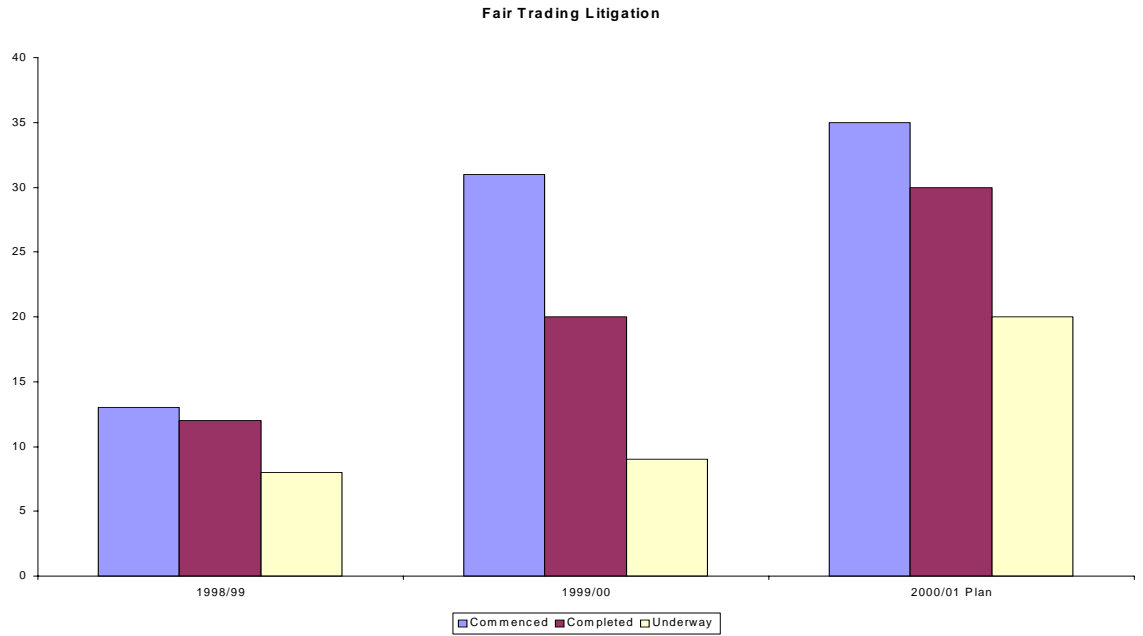
This year the Commission expects to accept 50 settlements and issue 150 warnings.

Settlements and Warnings



Litigation

The Commission expects to initiate 35 court actions under the Fair Trading Act, and that 30 cases will be completed in the year.



Price Monitoring and Control

Price control study of airfield activities

On 27 March 1998, the then Minister of Commerce requested under section 54 of the Commerce Act that the Commission report to him on whether there is a need for price controls on airfield activities at Auckland, Wellington and Christchurch.

The Commission was originally asked to report to the Minister by 14 December 1999; however, on 29 July 1999, the then Minister for Commerce and Enterprise extended the reporting date to 1 August 2002.

The formal phase of the inquiry commences this financial year. Key dates are:

Due in	Action
December 2000	Commission releases critical issues paper
February 2001	Interested parties make initial submissions
March 2001	Commission releases its draft report
April 2001	Interested parties make submissions on draft report
June 2001	Conference

The Commission is aiming to complete its report by 1 August 2001.

Ministerial inquiries into electricity and telecommunications

The Government set up a Ministerial Inquiry into the Electricity Industry, which completed its report in June 2000, and a Ministerial Inquiry into Telecommunications, which is to complete its final report in September 2000.

The nature and extent of any new regulatory functions for the Commission will depend on the Government's decisions on the recommendations of the inquiries, and subsequent legislative change. The Commission will undertake preparatory work as appropriate, which will be funded from Commission reserves, and will liaise closely with officials as required.

Operational Initiatives

Introduction

In order to ensure that the outputs specified in this Plan are produced in an effective and efficient manner, the following activities will be undertaken and objectives achieved.

In particular, the Commission will:

- submit a complete and accurate Annual Report of its activities and performance for 1999-2000 no later than 31 October 2000
- in co-operation with the Ministry of Economic Development, provide a draft Memorandum of Understanding to the Minister of Commerce for the 2001-2002 year by 1 June 2001.

The Commission is committed to ensuring its governance arrangements are in line with best practice. The Audit and Finance Committee helps the Commission to discharge its responsibilities with respect to financial reporting and internal controls, and monitoring and managing organisational risks. Other governance committees help to identify strategic priorities and allocate resources in the areas of Commerce Act, Fair Trading Act and Legal Services.

Human resources

The Commission provides a working environment based on the values and principles of equal employment opportunities. An Annual EEO Plan is published by the Commission, confirming objectives and setting specific targets for the coming year. This Plan covers such areas as recruitment and selection procedures, training and promotion opportunities, and working arrangements.

In 2000-2001 enhancements to the Commission's performance management system will be implemented. The improvements will be made to ensure its performance management systems allow the Commission to recruit and retain high-performing staff, create incentives for appropriate training and development, and reflect good practice relative to organisations of a comparable size and nature.

The Commission's health and safety programme will be maintained. This programme includes regular assessments of workplace safety and training for staff as well as provision for an annual health check for all employees.

The Commission invests in training and development to ensure that staff are equipped with the skills and knowledge to maintain the Commission's effectiveness and credibility. Training needs will be identified during the performance appraisal process. Each year, a Commission annual training plan is developed, establishing priorities for the year.

The training programme includes both in-house and external courses covering economics, competition law and policy, communication, investigation, research, negotiation, communication and technology skills.

Information and technology

The Commission's computer systems and equipment are due for replacement in March 2001. Prior to this, a review will be conducted to identify the Commission's ongoing business needs and to define a strategy for information technology as a proactive management tool.

The review will focus on how information and data technology can help the Commission to:

- enhance communication with stakeholders
- plan and manage projects
- capture and report information on enforcement and education activities, including costs, and
- ensure most efficient and effective resource allocation.

The Commission's library provides up-to-date and relevant information and advice to support staff in their work. The library provides publications, books and database searching.

Finance

The Commission will be provided with timely and accurate financial and management information. The Audit and Finance Committee will supplement the system of financial governance and control.

A major initiative in 2000-2001 will be the implementation of a job-costing and updated time-recording system. This system will enable management to identify total costs of all inquiries, investigations, litigation and other activities in order to help prioritise the Commission's resources.

Building services/security/safety

The Commission will provide staff with secure, efficient and safe working conditions. All statutory guidelines on working conditions will be adhered to and priority given to health and safety.

During 2000-2001 a review will be commenced into the Commission's future accommodation needs, in advance of the expiry of the existing lease in Wellington in May 2002.

Publications programme

The Commission will continue to publish *Fair's Fair* and *Compliance* bi-monthly. The Commission distributes approximately 1,000 copies of each issue of *Fair's Fair* and *Compliance*, and expects to respond to 1,100 media inquiries and issue 120 media releases this year.

Two issues of *Compliance* will focus on Fair Trading Act subjects and two will focus on the Commerce or Electricity Industry Reform Acts.

The range of newsletters and brochures will be maintained to ensure the public is kept well informed of the implications of any amendments to the Acts that the Commission enforces. All information will also be included on the Commission's website [www.comcom.govt.nz].

Consolidated Budget and Equity Summary

All amounts are GST exclusive

	Estimated Actual 1999-2000 \$000	Budget 2000-2001 \$000
Operating Revenue		
Government grant	7,650	6,950
Notification fees	117	140
Interest	228	206
Other income	307	68
Total Operating Revenue	8,301	7,363
Operating Expenditure		
Personnel	4,793	4,738
Consultancy	61	105
Staff development	135	121
Information and communication	166	160
Travel	172	173
Legal and investigation costs	988	995
Accommodation and lease costs	662	666
Depreciation	448	481
Administration costs	415	366
Total Operating Expenditure	7,841	7,805
Operating Surplus/(Deficit)	461	(442)
Litigation expenditure on major Commerce Act cases	853	832
Total Expenditure	8,694	8,637
Transfer from Litigation Fund	853	832
Net Surplus/(Deficit) after Transfer to/(from) Litigation Fund	461	(442)
Plus opening equity	3,330	3,187
Plus Government contributions to Litigation Fund	250	1,052
Less transfers from Litigation Fund	853	832
Closing Equity	3,187	2,965

Consolidated Output Report

All amounts are GST exclusive

	Estimated Actual 1999-2000 \$000	Budget 2000-2001 \$000
OUTPUT 1 - Commerce Act and EIR Act Enforcement		
- Operating income	3,957	3,512
- Operating expenditure*	3,749	3,555
Surplus/(deficit)	208	(44)
OUTPUT 2 - Commerce Act and EIR Act Adjudication		
- Operating income	536	509
- Operating expenditure	510	515
Surplus/(deficit)	26	(6)
OUTPUT 3 - Fair Trading Act Enforcement		
- Operating income	3,109	3,343
- Operating expenditure	3,216	3,384
Surplus/(deficit)	(108)	(41)
OUTPUT 4 - Price Monitoring and Control		
- Operating income	700	
- Operating expenditure	365	350
Surplus/(deficit)	335	(350)
TOTAL OUTPUT		
- Operating income	8,301	7,363
- Operating expenditure	7,841	7,805
NET OPERATING SURPLUS/(DEFICIT)	461	(442)

* Excluding expenditure of \$853,000 (estimated) in 1999/2000 and \$832,000 (budgeted) in 2000/2001 on major Commerce Act litigation financed from the Litigation Fund.

Critical Performance Indicators

Introduction

The Commission has established the following Critical Performance Indicators (CPIs) in order to signal priorities and to motivate performance.

The CPIs are designed to be comprehensive and challenging, and to provide a framework for assessing actual levels of performance and for developing new targets as necessary. It is recognised, however, that the achievement of some targets is influenced by factors outside of the Commission's control.

Last year, the target CPIs were revised significantly so as to provide for a better mix of quantity, quality and timeliness measures.

The target CPIs for 2000-2001 have been revised only slightly. For example, as foreshadowed last year:

- The CPI measuring the time between the filing and completion of cases has now been removed because the Commission has very limited control over the length of hearings.
- With respect to enforcement of the Fair Trading Act, a separate CPI has now been established for product safety activity because of important differences between this activity and general enforcement activity.

The other main changes include some additional CPIs for Corporate Services (i.e. conflict of interest disclosures; a changed quality standard for media statements). Accordingly, the 1999-2000 target column includes some "N/A" entries, highlighting the extent to which CPIs have been altered or introduced in 2000-2001.

	Notes	Target 1999/00	Estimated Actual 1999/00	Target 2000/01
Commerce Act & Electricity Industry Reform Act Enforcement				
<i>Information received</i>				
Number of complaints and inquiries	(1)	4,000	1,776	2,400
Average complaint assessment time	(2)	3 days	3.6 days	3 days
<i>Promotion of public awareness</i>				
Number of speeches and presentations		15	27	15
Client rating of presentation as satisfactory or better		100%	100%	100%
<i>Proactive enforcement</i>				
Number of proactive investigations commenced	(3)	20	21	12
Number of non-notified business acquisitions reviewed	(4)	320	254	280
<i>Investigations commenced</i>				
Number of investigations of restrictive trade practices		60	55	60
Proportion of investigations resulting in enforcement action	(5)	40%	22%	37%
Number of investigations of non-notified business acquisitions	(4)	90	35	60
Average time to complete an investigation	(6)	100 days	147 days	100 days
Investigations meeting relevant quality standard	(7)	100%	N/A	100%
<i>Administrative resolution</i>				
Number of warnings issued		15	8	15
Number of settlements agreed		3	3	3
<i>Litigation</i>				
Number of cases and appeals filed		6	3	4
Time between approval to proceed and filing – complex	(8)	42 days	6 days	42 days
Time between approval to proceed and filing – routine	(8)	28 days	46 days	28 days
Judgments with no adverse comment on Commission's case	(9)	100%	100%	100%

Commerce Act & Electricity Industry Reform Act Adjudication

Number of clearance applications received		28	25	30
Number of business acquisitions authorisation applications received		2	1	2
Number of restrictive trade practice authorisation applications received		2	0	2
Number of EIR Act authorisation applications received	(10)	6	6	2
Adjudication decisions made within statutory time periods		100%	100%	100%
Decisions upheld on appeal	(11)	100%	N/A	100%

	Notes	Target 1999/00	Estimated Actual 1999/00	Target 2000/01
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Fair Trading Act Enforcement

Information received

Number of complaints and inquiries	(12)	14,000	10,477	12,000
Average complaint assessment time	(2)	1.5 days	1.7 days	1.5 days

Promotion of public awareness

Number of town visits		5	4	4
Number of speeches and seminars	(13)	36	24	30
Client rating of presentation as satisfactory or better		100%	100%	100%

Proactive enforcement

Number of major trader reviews and meetings		30	34	30
Number of trade association reviews and meetings	(13)	20	25	4
Number of inspections	(14)	444	449	40

Investigations commenced

Number of investigations	(15)	400	466	350
Number of general investigations	(15)	N/A	286	300
Number of product safety investigations	(15)	N/A	180	50
Proportion of investigations resulting in enforcement action	(16)	75%	72%	67%
Average time to complete an investigation		50 days	36 days	50 days
Investigations meeting relevant quality standard	(7)	100%	N/A	100%

Administrative resolution

Number of warnings issued	(14)	200	262	150
Number of settlements agreed		70	43	50

Litigation

Number of cases and appeals filed	(13)	30	31	35
Time between approval to proceed and filing – complex		21 days	24 days	21 days
Time between approval to proceed and filing – routine		14 days	21 days	14 days
Judgments with no adverse comment on Commission's case	(9)	100%	93%	100%

Price Monitoring and Control

Price control inquiries

Price control inquiries completed	(17)	N/A	N/A	N/A
Reporting meets Commission's quality standards		100%	N/A	100%

Operation of price control

Preparatory report on price control regime	(18)	1	1	1
Reporting meets Commission's quality standards		100%	100%	100%

	Notes	Target	Estimated	Target
		1999/00	1999/00	2000/01

Corporate Services

Accountability

Annual Plan published by 31 July	(19)	Yes	No	Yes
EEO Plan published by 31 July	(20)	Yes	No	Yes
Annual Report for previous year completed by 31 October		Yes	Yes	Yes

Financial, output and activity reporting

Monthly financial reports prepared within 7 days	(21)	100%	75%	100%
Quarterly reports prepared within 28 days		100%	100%	100%
Information requests met within 14 days		100%	100%	100%
Internal reports completed within agreed time frames		100%	100%	100%

Human resources

Performance review for previous year completed by 31 July		100%	90%	100%
Conflict of interest disclosures completed by staff by 31 July (22)		N/A	N/A	100%

Health and safety

Annual health and safety audit completed		Yes	Yes	Yes
Time lost to workplace accidents		0 days	0 days	0 days

Information technology

Availability of computer systems during normal business hours		100%	99%	100%
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Communications

Media statements needing no correction	(22)	N/A	99%	100%
Number of issues of <i>Compliance</i> published	(13)	6	4	4
Number of issues of <i>Fair's Fair</i> published	(13)	6	4	4

Notes

- 1 A target of 4,000 complaints and inquiries has been in place for a number of years. The Commission has limited control over the number of complaints and inquiries it receives about breaches of the Commerce and EIR Acts, but needs to forecast such numbers for planning purposes. The actual level of complaints and inquiries received has been significantly lower than target in recent years. The revised target for 2000-2001 is based on the most recent pattern of complaints and inquiries received, particularly in the latter half of 1999-2000.
- 2 All references to days are to actual days elapsed rather than working days.
- 3 In 1999-2000 the Commission significantly increased (from two to 20) the number of its proactive investigations into potential breaches of the Commerce and EIR Acts, and put more emphasis on information gathering. A key objective was to ensure that sufficient cases were coming on stream. Now that the information base has been strengthened, the Commission is revising the target for the number of proactive investigations to be commenced in 2000-2001 to a level commensurate with the ongoing level required to sustain the target for cases to be filed.
- 4 The Commission has limited control over the number of business acquisitions that occur in the economy. It is important, however, that the Commission monitors and investigates as appropriate those acquisitions that the parties themselves do not bring to its attention. In light of the proposed changes to the Commerce Act, it has been assumed for planning purposes that, for 2000-2001, the level of un-notified business acquisitions (and the proportion that should be investigated) will be slightly higher than the actual level (and proportion) achieved in 1999-2000.
- 5 Enforcement action refers to administrative resolution or litigation arising out of restrictive trade practice investigations. It excludes litigation outcomes (which are very few) for investigations of un-notified business acquisitions (which are numerous).
- 6 For this purpose, investigation is defined to include investigations of restrictive trade practices and investigations of un-notified business acquisitions. The average time taken to complete an investigation increased from 112 days in 1998-1999 to 147 days in 1999-2000, partly explained by the greater complexity of the cases investigated and the greater number investigated in 1999-2000. The Commission is seeking to maintain and improve the quality of its investigations while reducing the average time taken. For this purpose, the Commission intends to target to a greater extent the use of its information powers and the use of economic and legal expertise at earlier stages of investigations.
- 7 The Commission is developing a more robust and meaningful way in which to assess quality standards for investigations. Current systems do not enable reliable estimates to be made for 1999-2000.
- 8 The distinction between complex and routine reflects the Commission's assessment, at the time approval is given to file proceedings, of the degree of difficulty involved in proving the Commission's case in court. Appeals are not classified as complex or routine and are excluded from these figures. There can be significant fluctuation from year to year in filing times, particularly when there are few cases. In 1999-2000 there was only one case filed in each category.

- 9 This measure takes into account judgments arising from hearings as well as from interlocutory applications and appeals. The Commerce/EIR Acts actual figure for 1999-2000 reflects no adverse judgment out of nine judgments, and the Fair Trading Act actual figure reflects two adverse judgments out of 27 judgments.
- 10 The electricity industry reconfiguration in response to the EIR Act is now largely complete. The Commission therefore expects to receive a small number of applications for exemptions during 2000-2001 and in future years.
- 11 There were no appeals heard in 1999-2000.
- 12 The Commission has limited control over the number of complaints and inquiries it receives about breaches of the Fair Trading Act but needs to forecast such numbers for planning purposes. The revised target for 2000-2001 is based on the recent pattern of complaints and inquiries received, particularly in the latter half of 1999-2000.
- 13 The level of the Commission's total planned trade association, speech and seminar, and general education activity in 2000-2001 has been revised downwards to reflect the greater effort that will be committed to prosecuting cases. Note that for 2000-2001, trade association seminars will be included in the speeches and seminars CPI.
- 14 Last year's target and actual figures reflect the one-off effect of the introduction of the cigarette lighter safety standard.
- 15 There has been an increase in the number of product safety standards and bans for the Commission to enforce. For 2000-2001, the CPI for investigations has been split to reflect this development. Last year's actuals reflect the one-off investigative impact of the introduction of the cigarette lighter safety standard.
- 16 Enforcement action refers to administrative resolution or litigation.
- 17 The Commission is required to complete its price control study of airfield activities and to report to the Government by 1 August 2002.
- 18 The Commission will undertake preparatory work in relation to its potential role in relation to price monitoring and control of electricity lines businesses.
- 19 The Annual Plan for 1999-2000 was published in October 1999. The target date of 31 July was first established in that Plan (i.e. with retrospective effect for 1999-2000).
- 20 The EEO Plan for 1999-2000 was published in September 1999.
- 21 Except for the June month in which case the quarterly report time applies.
- 22 A new CPI for 2000-2001.