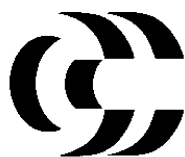


Annual Plan

2001 – 2002



COMMERCE COMMISSION

NEW ZEALAND

Purpose

The overriding purpose of the Commerce Commission is to promote market efficiency by enforcing and fostering:

- healthy competition amongst businesses
- informed choice by consumers
- sound economic regulation

Commitment to Government Expectations

The Commerce Commission recognises the values and principles communicated by the Government through its Statement of Government Expectations for the State Sector. The Commission has adopted the values and will act with:

- integrity
- responsibility; and
- respect.

In relation to the principles set out by the Government, and consistent with its independence from the Executive, the Commission will conduct its day-to-day business in a manner that:

- is responsive to the community;
- is performance-oriented;
- demonstrates its accountability;
- demonstrates the practices of a good employer; and
- is free, frank and comprehensive.

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Chair's Foreword

The Commission is now entering the most challenging period in its 15-year history.

It faces new regulatory and enforcement responsibilities within several major New Zealand markets. Expectations of performance, transparency and accountability will increase accordingly. As anticipated, the Commission is now required to implement regulatory regimes in the electricity and telecommunications markets. We have commenced specific preparatory work in these areas so that the regimes can be put in place as soon as practicable following enactment. This work has included consultation with industry and consumer groups.

Further legislation has been passed relating to the regulatory and structural reform of the dairy industry. Here, too, we have initiated discussions with industry groups to assist with the implementation of the new regime. The goal is compliance by the parties backed up as necessary by enforcement by the Commission.

In these new areas, the overall task of the Commission is to make decisions in accordance with the statutes to promote efficient markets. How consumer and business interests come together has a major influence on prosperity and wellbeing. Applying the new regimes in accordance with the law, while achieving credible, durable and positive outcomes, is the regulatory challenge. The Commission recognises that the way in which it handles its new responsibilities will have a wide-reaching impact within the New Zealand economy.

Another key task is to complete the current study into airfield services at the three major airports. A draft report has been released and a nine-day public hearing has been held. The Commission is required to present a final report to the Government by August 2002.

In May 2001 the Government amended the Commerce Act. The changes included:

- refining the thresholds relating to anti-competitive behaviour (section 36) and mergers (section 47);
- increasing deterrence to anti-competitive behaviour by strengthening the penalties, remedies and associated court processes;
- giving the Commerce Commission new cease and desist order powers; and
- updating the means by which price control may be implemented.

The Commission has set out how it will apply the new thresholds, and the period ahead will be important in consolidating the application of the changes. New cease and desist Commissioners are expected to be appointed by the end of the calendar year.

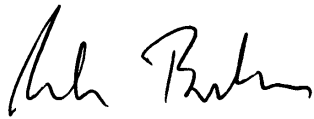
The Commission will seek to continue to balance the use of resources across the breadth of its activities in order to achieve the greatest benefit for competition, choice and efficiency. During this period we are strengthening our reporting mechanisms in order to provide the necessary performance and resource information.

CHAIR'S FORWARD continued

The Commission is now in a significant growth phase and we must continue to attract skilled staff and expertise, and enhance our staff development to meet the higher demands. The professionalism and commitment of our staff has been, and will continue to be, critical to the Commission's success.

The Government has recognised the additional resource implications for the Commission in implementing its new responsibilities. The Commission's budget for 2001/2002, significantly enhanced, reflects the value the Government has placed on this new work.

In turn, the Commission seeks to fully embrace its responsibilities and is committed to delivering on and being accountable for them.



John Belgrave

Chair

General Manager's Overview

The Commerce Commission's 2001/2002 Annual Plan sets out the activities the Commission intends to undertake during the year, together with information on the way in which its resources will be allocated and its performance measured.

The Commission is a Crown entity funded by the Government. Its traditional enforcement and adjudication role under the Commerce and Fair Trading Acts has expanded. The Commission is now also required to contribute specifically to sound regulation in the major markets of dairy, electricity and telecommunications.

These new functions represent some significant changes in the scope and nature of the Commission's activities. However, the new functions align well with the underlying role of the Commission to contribute to healthy competition amongst businesses and informed choice by consumers, with benefits for wider economic wellbeing.

Restructured Outputs

The Commission has restructured its outputs in order to provide for a more coherent and effective base for managing its increasingly diverse activities. From the current year, the Commission's services will be reported as:

- *Enforcement Investigations*, which involve discretionary enforcement activities in which the Commission initiates investigations, based on its initial analysis of information gathered from a range of sources including directly from businesses and from complaints and enquiries and media monitoring. Enforcement investigations begin with the decision to conduct a formal investigation and may end with a decision to take no further action, resolve with the parties through a warning or a negotiated settlement, issue a cease and desist order to compel or prohibit particular behaviour or pursue litigation.
- *Adjudication Services*, where the Commission fulfils its quasi-judicial functions in response to applications from parties for Commission rulings. The Commission must generally conduct these investigations and make its rulings within statutory timeframes. Most forms of adjudication have fees set by regulation that the applicants must pay when they register their application.
- *Litigation Services*, where the Commission initiates legal action against parties identified through enforcement investigations as being in breach of particular legislative provisions. Litigation is required where the Commission has determined that prosecution is the most appropriate option for promoting business competition, fair trading and compliance with legislation. Litigation services also involve the Commission's response to actions taken against its adjudication decisions.
- *Reports to the Minister*, where the Commission provides reports on particular matters to a Minister of the Crown. The Commission's activities under this output are limited to reporting permitted or required under specific legislative provisions. The current airports price control study is an example of a report requested by the Minister of Commerce under the Commerce Act. Under the Telecommunications Bill, the Commission will be required to provide reports on the compliance of telecommunications service providers with certain obligations, and on changes to designated or specified services under the legislation. The Bill is scheduled to come in to force during the planning period.
- *Provision of Public Information*, where the Commission provides public information to promote awareness of and compliance with the legislation, as specifically required under the Commerce and Fair Trading Acts. As part of its new responsibilities in the electricity sector, the Commission will also publish an annual summary and analysis of certain information each electricity lines business is required to disclose.

GENERAL MANAGER'S OVERVIEW *continued*

The Commission's services and associated performance measures and standards are explained in more detail in this plan in the section Services to be Provided.

Capability Building

The Commission has initiated a number of major development projects and is planning further projects for commencement during 2001/2002. These projects are designed to enable the Commission to:

- meet its output delivery obligations in the short-term, in enforcing new regulatory regimes in the dairy, electricity and telecommunications markets;
- strengthen its infrastructure and capability to enable it to continue to meet these new responsibilities in the medium-term; and
- manage the risks that exist given the nature of the Commission's business and that arise due to the degree of change and development the Commission is experiencing in the current period, which is likely to continue into the next period.

The Commission's major capability building and risk management projects are described briefly later in this plan.

New Regulatory Challenges and Responsibilities

Electricity Lines Businesses

Under the Commerce Act, the Commission is given powers to impose price control on electricity lines businesses, carry out a re-calibration of the values of the fixed assets of line owners, conduct a review of the asset valuation methodology, and administer the information disclosure regime.

The recalibration project, which must be completed by 31 March 2002, is underway. In addition, the Commission will publish its approach to electricity lines business performance thresholds and the regime itself, and commence the review of asset valuation methodologies, during the planning period.

Telecommunications

The Telecommunications Bill designates some services and provides that certain additional telecommunication services may be regulated if that will or will likely result in net economic benefits to New Zealand. The provider of regulated services will be required to provide that service to persons seeking access. If the parties are unable to reach agreement on the terms of that access, the Commission is empowered to resolve disputes by specifying the access terms.

A new Telecommunications Commissioner is expected to be appointed in the second quarter.

The Commission recently issued four requests for proposals seeking responses from industry experts to assist the Commission prepare for its new telecommunications functions.

Dairy Industry

The Commission has both enforcement and adjudication roles under the Dairy Industry Restructuring Act 2001. The Act provides for the Commission to undertake enforcement action and requires the Commission to issue determinations to resolve disputes between the new dairy organisation and other parties about the application of the legislation.

The Commission will have powers under the Act to assist it to carry out these functions. Although other parties could take legal action, the Commission is the only party able to seek pecuniary penalties.

The Commission's intended approach will draw from its experience with its current enforcement and adjudication responsibilities. In the second quarter, the Commission will publish information about how it will fulfil its role and responsibilities under the Dairy Industry Restructuring Act.

Ongoing Competition and Fair Trading Activities

The Commission will continue to prioritise its enforcement activity in the areas where our information gathering about business and trader behaviour shows that breaches of legislation and standards are the most serious and most common.

An important focus in the area of business acquisitions, given the recent change in the threshold, will be non-notified business acquisitions. Weight will also be given to alleged anti-competitive behaviour concerning major infrastructure assets – specifically whether any party is taking advantage of unilateral market power in setting access terms. In fair trading, target industries for the Commission this year include travel, motor vehicle sales, real estate, food and telecommunications.

The Commission has new government information and safety standards to enforce during the year relating to motor vehicles and baby-walkers, respectively. In addition, we are preparing for the introduction of new consumer credit legislation.

International Liaison

As our role within New Zealand expands, a growing international dimension is also beginning to emerge. The Commission is increasingly called upon to contribute to international workshops, conferences and other fora. The Commission has existing bi-lateral and multi-lateral cooperation agreements with counterpart agencies in Australia, Canada and Taiwan. Further requests to contribute beyond our borders are likely in the next twelve months.

Financial

This year the Commission's budget has increased significantly to \$18.317 million, from \$9.314 million last year, reflecting its new responsibilities.

The Commission's revenue is derived mainly from the Crown, supplemented by fees from the parties seeking adjudication decisions. In addition, the Commission receives some revenue from Court costs awarded and from interest. Our new responsibilities in the electricity, telecommunications and dairy industries are, for the most part, ultimately funded by government-imposed industry levies. The greater expectations for transparency relating to our overall performance created by the increase in the Commission's budget, and by the new stakeholder arrangements, will be met through enhanced reporting.

The operational implications of the new responsibilities mean that we will allocate resources during the year, within appropriations, balanced between statutory adjudication services, discretionary enforcement and information provision services, and investment in capability building and risk management projects.

GENERAL MANAGER'S OVERVIEW *continued*

The findings of an external review of the Commission's resourcing levels and strategic capability building, to be completed in the first half of the year, will be an important contribution to further consideration by the Government of the Commission's resources and capability.

Accountability

There are two particular accountability challenges for the Commission in meeting its new responsibilities (and, indeed, possible further responsibilities that may arise).

The first challenge is the greater diversity of outputs. Here, the new output structure will assist the Commission to demonstrate its accountability through improved performance reporting. The second challenge is the greater number of stakeholders who have an interest in the Commission's performance.

The way we will respond to these challenges is to make our approaches and organisational arrangements robust not only for the current environment but also for an environment in which outputs and stakeholder interests might continue to evolve. In this way, the Commission intends that it would need only modify, rather than overhaul, its systems and reporting in the future.

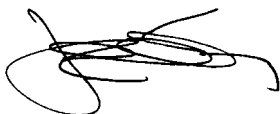
Management

We are a small organisation taking a significant step up in the size, diversity and complexity of our business. The need to invest in the Commission's infrastructure including management and internal systems and structures is vital.

Considerable change management has taken place within the Commission over the last year and will continue in the year ahead. We have recently completed a review of our arrangements for providing internal support services and are putting in place a new organisational structure to manage in the new environment. Recruiting, retaining and developing professional staff is a critical challenge, as is the task of strengthening our quality control systems.

Given the progress already made, and the work streams in train, I am confident the Commission will have the capacity and capability to implement our new responsibilities and management arrangements well, while continuing to deliver on our core business and to prepare for possible further new responsibilities.

We look forward to the year as a time of change and challenge, despite the associated risks. The Commission has been given a major opportunity to build a stronger organisation and to contribute more significantly to business and consumer outcomes. We are committed to meeting that challenge.



Ken Heaton

General Manager

Functions and Structure

The Commerce Commission was established under the Commerce Act 1986 and is a Crown entity under Schedule Four of the Public Finance Act 1989.

The Commission exists to enforce a number of general and specific regulatory regimes set out in the Commerce Act 1986, Fair Trading Act 1986, Electricity Industry Reform Act 1998 and Dairy Industry Restructuring Act 2001. The Commission's enforcement activities cover investigations, adjudication, litigation and reporting. New responsibilities are anticipated in the electricity and telecommunications sectors.

The Commission comprises up to five Members, including a Chair and Deputy Chair. In addition, Associate Members may be appointed. The Governor-General, on the recommendation of the Minister of Commerce appoints Commission Members, who are appointed for their knowledge of, and experience in areas relevant to the Commission's interests. At least one Commission member must be a barrister or solicitor. The Minister of Commerce appoints Associate Members.

Each member's Warrant of Appointment sets out the start date and duration of the term for which the member is appointed. This term can be extended with the Chair's approval to deal with work still in progress.

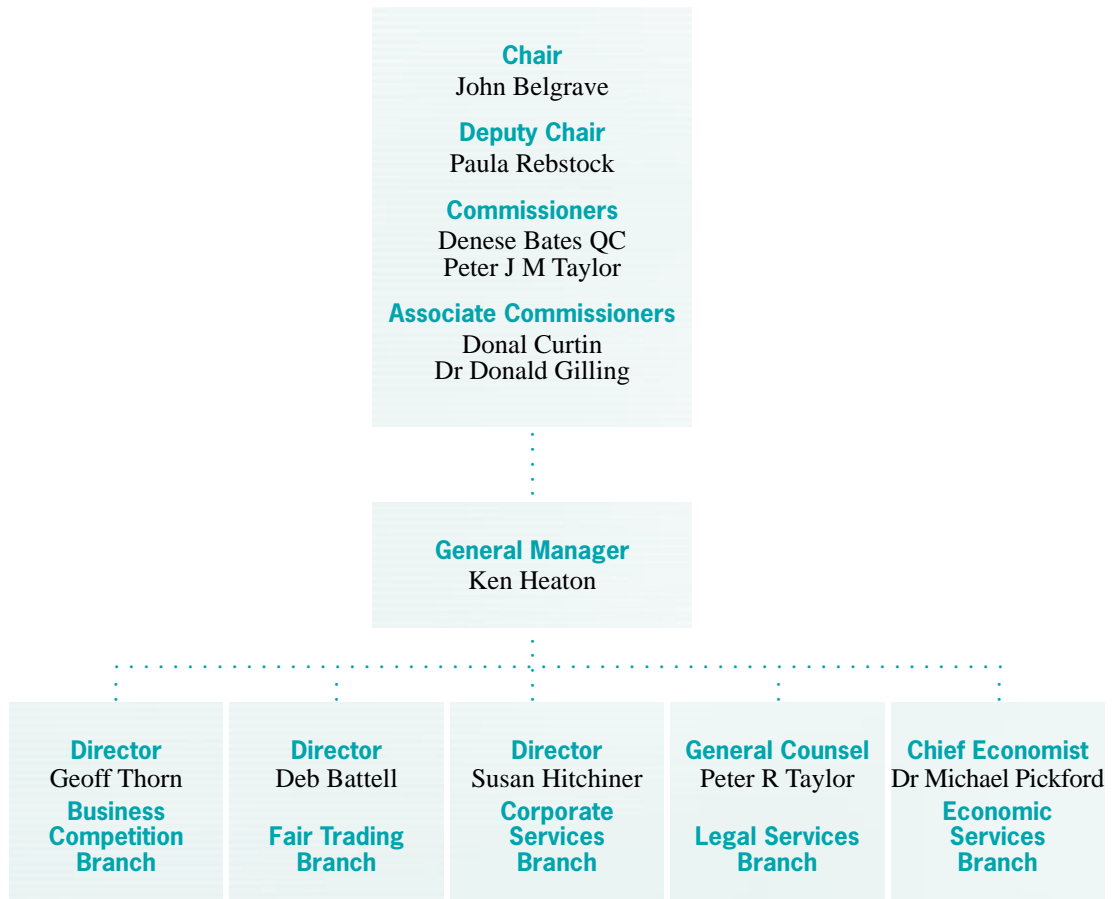
The Chair convenes meetings of the Commission and may direct the Commission to sit in divisions in relation to certain matters. The Deputy Chair may exercise all the powers, functions and duties of the Chair, in the event the Chair is unable or considers it improper to act.

The Commission may delegate its powers to any member, except for the power of delegation and the power to grant, revoke or vary an authorisation.

In exercising its functions, the Commission may carry out investigations, in the course of which it is able to require companies and individuals to provide information and to appear before the Commission at a specified time and place to give evidence, which may be taken on oath. The Commission also has the power to obtain search warrants from the District Court, and to make confidentiality orders.

Members must be alert to, and disclose all actual or perceived conflicts of interest. If in any doubt, members exempt themselves from the item under discussion, disclose the conflict to a Commission meeting, and discuss the issue with the Chair. A register is maintained of the conflicts disclosed by members.

FUNCTIONS AND STRUCTURE OF THE COMMISSION continued



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 Ministry of Commerce and the Department of Justice. He has also been the Executive Director of the New Zealand Bankers Association and the Electricity Supply Association of New Zealand

Paula Rebstock – Deputy Chair

Paula Rebstock was appointed as Deputy Chair in October 2001 for a term of four years. She was initially appointed as an Associate Commissioner for three years from August 1998, and 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.

Denese Bates QC – Commissioner

Denese Bates was appointed in April 2001 for three years. She has been practising as a barrister since 1981 and was appointed as a Queens Counsel in 1996. Her practice has encompassed a wide range of litigation before Courts and Tribunals and she has been counsel in a number of major cases. Denese recently ended a long involvement as a council member of both the Auckland District Law Society and the New Zealand Law Society. Over the past two years she has been convenor of the New Zealand Law Society's Ethics Committee.

Peter Taylor – Commissioner

Mr Taylor was appointed in February 2001 for five years. He is a New Zealand trained chartered accountant, with overseas experience in Africa, the United Kingdom, Australia and Asia. He was a consulting partner of Ernst & Young for 13 years, managed that firm's Wellington office and was a director for six years. From 1994-96 he was on secondment to the Crown Company Monitoring and Advisory Unit as Chief Executive. He is currently Chairman of the Public Trust, Gas Investments New Zealand Limited and a director of a number of other companies.

Donal Curtin – Associate Commissioner

Donal Curtin was appointed in January 2001 for a period of three years, with principal responsibilities in network industries. He is a business economist with wide experience of applying economics to commercial decisions. Born in Ireland, Donal worked there and in the United Kingdom in a variety of roles, including economic development research and policy work. He came to New Zealand in 1985 and during a career with the Bank of New Zealand was its Chief Economist and head of its national private banking unit. He set up the Auckland-based economic consultancy, Economics New Zealand, in 1999.

Dr Donald Gilling – Associate Commissioner

Dr Gilling was appointed in January 2001 for three years, with principal responsibility for Fair Trading Act issues. He is a consultant specialising in public finance and the economics of education. He taught for 25 years at Universities in Australia, England and New Zealand, and for nine years was Professor of Accounting and Finance at the University of Waikato. For seven years he was a member of the Public Sector Accounting Committee of the Institute of Chartered Accountants in New Zealand.

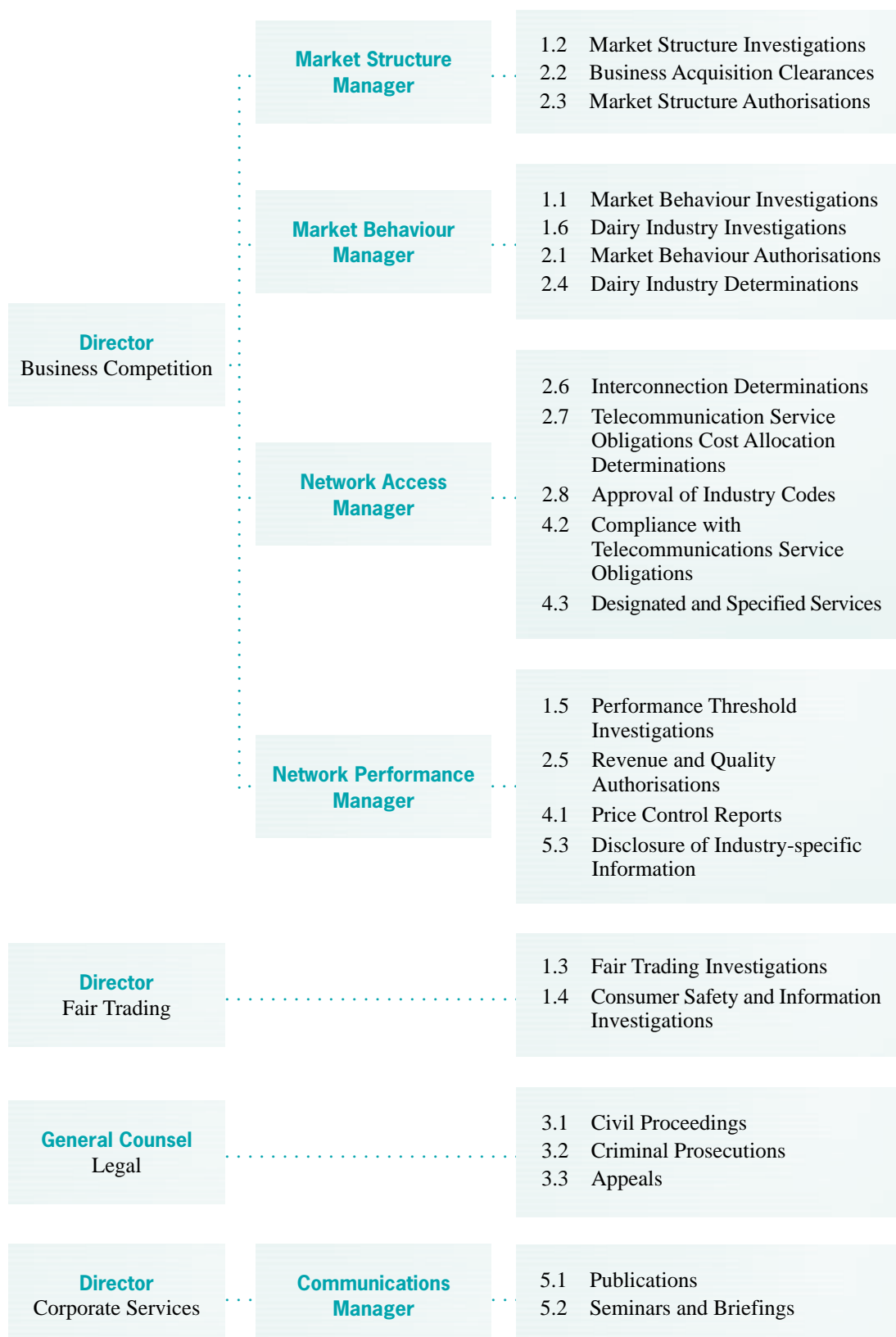
New Commissioners

During the year appointments are expected to the new positions of Telecommunications Commissioner and Cease and Desist Commissioners.

Services to be Provided – Summary

<i>Code</i>	<i>Output</i>	<i>Vote</i>
1.0	Enforcement Investigations	
1.1	Market Behaviour Investigations	Commerce
1.2	Market Structure Investigations	Commerce
1.3	Fair Trading Investigations	Commerce
1.4	Standards Investigations	Commerce
1.5	Performance Threshold Investigations	Energy
1.6	Dairy Industry Investigations	Commerce
2.0	Adjudication Services	
2.1	Market Behaviour Authorisations	Commerce
2.2	Business Acquisition Clearances	Commerce
2.3	Market Structure Authorisations	Commerce
2.4	Dairy Industry Determinations	Commerce
2.5	Price, Revenue and Quality Authorisations	Commerce Energy
2.6	Interconnection Determinations	Communications
2.7	Telecommunication Service Obligations Cost Allocation	Communications
2.8	Industry Code Approvals	Communications
3.0	Litigation Services	
3.1	Civil Proceedings	Commerce Communications Energy
3.2	Criminal Prosecutions	Commerce Communications Energy
3.3	Appeals	Commerce Communications Energy
4.0	Reports to the Minister	
4.1	Price Control	Commerce
4.2	Compliance with Telecommunications Service Obligations	Communications
4.3	Designated and Specified Services	Communications
5.0	Provision of Public Information	
5.1	Publications	Commerce
5.2	Seminars and Briefings	Commerce
5.3	Disclosure of Industry-specific Information	Energy

Primary operational responsibility for the delivery of services



Services to be Provided – Performance Dimensions

Output 1 – Enforcement Investigations

This output involves the provision of discretionary enforcement activities in which the Commission initiates investigations, from the decision to begin a formal investigation up to the decision to take no further action, resolve with the parties, issue a cease and desist order or pursue litigation.

Enforcement investigations are undertaken under the Commerce Act 1986, Fair Trading Act 1986, Electricity Industry Reform Act 1998 and the Dairy Industry Restructuring Act 2001.

When deciding whether to conduct an enforcement investigation, the Commission considers whether the available information meets the criteria for different investigation types and determines, on a case-by-case basis, whether and how to proceed.

Where, as the result of an investigation, the Commission establishes that a breach or prohibited behaviour has occurred, it may seek an administrative resolution, seek an injunction, issue a cease and desist order or take penalty action. Administrative resolution involves issuing a warning to the parties or entering into an administrative settlement that would generally require that the parties acknowledge the breach and take corrective action. The particulars of warnings and settlements are decided on a case-by-case basis with a view to rectifying the problems and maintaining healthy competition. In the case of electricity lines businesses, the Commission may make a declaration of price control over the goods or services supplied.

The Commission supports its enforcement investigations by information gathering and surveillance to identify behaviour that potentially breaches the legislation.

Enforcement investigations cover:

- market behaviour
- market structure
- fair trading
- consumer safety and information standards
- performance thresholds
- dairy industry behaviour.

Output 1.1 – Market Behaviour Investigations

Under the Commerce Act, the Commission conducts investigations of restrictive trade practices covering, in particular, behaviour relating to anti-competitive arrangements, including price fixing, resale price maintenance and exclusionary boycotts, and firms taking advantage of a substantial degree of market power with a purpose of impeding competition.

Output 1.2 – Market Structure Investigations

Under the Commerce and Electricity Industry Reform Acts, the Commission conducts investigations of market structure arrangements. Market structure investigations primarily involve business acquisitions that have not been notified for clearance or authorisation, to ascertain whether the new structural arrangements breach the prohibition on acquisitions that result, or are likely to result, in a substantial lessening of competition in a market. Market structure investigations also involve

structural arrangements in the electricity sector to ascertain whether those arrangements are consistent with the requirements to maintain structural / ownership separation of the lines function from electricity retail and generation functions.

Output 1.3 – Fair Trading Investigations

Under the Fair Trading Act, the Commission conducts investigations of trader practices and behaviours that appear to involve misleading and deceptive conduct, false representation and unfair practices in relation to consumers.

Output 1.4 – Consumer Safety and Information Standards Investigations

Under the Fair Trading Act, the Commission conducts investigations of trader practices and behaviours that appear to fail to comply with consumer information standards, product safety standards and general safety standards in respect of goods and services.

Output 1.5 – Performance Threshold Investigations

Under the Commerce Act, the Commission will conduct investigations of electricity lines businesses that do not perform within the performance thresholds defined by the Commission, to determine whether the business should be placed under price control. Decisions to conduct such investigations are informed by prior assessments of the performance of electricity lines businesses.

During the financial year the Commission will conduct a comprehensive audit of the valuations of the line business system, that is, of the fixed assets of all large electricity lines businesses. This asset valuation re-calibration task is a one-off project to be undertaken this financial year. As part of the project, the Commission will approve or revise, for publication, reports prepared by each electricity lines business on the valuation of its fixed assets once the Commission has audited them.

The Commission will also conduct a review of valuation methodologies of lines businesses system fixed assets. This project will not be completed during the financial year, although work will commence during the year.

Output 1.6 – Dairy Industry Behaviour Investigations

Under the Dairy Industry Restructuring Act, the Commission will conduct investigations of those aspects of the behaviour of the new dairy organisation that appear to breach the conditions for the entry and exit of potential and existing farmer shareholders or breach any regulations made pursuant to the Act.

SERVICES TO BE PROVIDED – PERFORMANCE DIMENSIONS *continued*

<i>Performance Measures</i>	<i>Performance Standards</i>	
	2001/2002	2000/2001
Quantity		
Market behaviour investigations commenced	60	60
Market structure investigations commenced	60	60
Fair trading investigations commenced	330	300
Consumer safety and information standards investigations commenced	55	50
Performance threshold investigations commenced	Nil	N/a
<ul style="list-style-type: none"> • Development and maintenance of performance thresholds, including public consultation 	1	N/a
<ul style="list-style-type: none"> • Assessments of large electricity lines businesses against the performance thresholds 	Nil	N/a
<ul style="list-style-type: none"> • Complete a re-calibration of valuations of large electricity lines businesses, including dissemination of process and approval requirements. 	30	N/a
<ul style="list-style-type: none"> • Review and determine the appropriate ongoing asset valuation methodology (to be commenced in the period for completion in the next period) 	Nil	N/a
Dairy industry behaviour investigations commenced	20	N/a
Quality		
Proportion of enforcement investigations meeting relevant quality standard, including compliance with procedural requirements	100%	100%
Timeliness		
Average elapsed time to complete fair trading and consumer safety and information standards investigations	50 days	50 days
Average elapsed time to complete all other enforcement investigations	100 days	100 days
Cost	<i>\$000</i>	
Vote Commerce	5,156	N/a
Vote Energy	3,436	N/a
Total output cost (GST exclusive)	\$8,592	N/a

Output 2 – Adjudication Services

This output involves the provision of adjudication services, in response to applications for Commission rulings and as referrals from enforcement investigations in the case of price control imposed by the Commission. Adjudication services are provided under the Commerce Act, Electricity Industry Reform Act, Dairy Industry Restructuring Act and the Telecommunications Bill, which is scheduled to come in to force during the planning period.

In some dairy and telecommunications matters, the Commission may exercise its discretion to reject applications or to decide not to continue the adjudication investigation.

In all cases, the Commission publishes public versions of its adjudication decisions on its website.

Adjudication services comprise:

- market behaviour authorisations
- business acquisition clearances
- market structure authorisations
- dairy industry behaviour determinations
- price, revenue and quality authorisations
- interconnection determinations
- telecommunication service obligations cost allocation determinations
- industry code approvals.

Output 2.1 – Market Behaviour Authorisations

Under the Commerce Act, the Commission considers applications to authorise co-ordinated market behaviour that might breach the restrictive trade practice provisions of the Act. Where a party considers that they have entered into, or wish to enter into, an arrangement that might be prohibited by the restrictive trade practice provisions, that party may apply for the arrangement to be authorised. The Commission grants an authorisation if it finds that an arrangement has a direct causal net economic benefit.

Output 2.2 – Business Acquisition Clearances

Under the Commerce Act, the Commission considers clearance applications from parties to a proposed business acquisition who wish to obtain protection from legal challenge. The Commission must give a clearance for a business acquisition where it is satisfied that the acquisition will not result, or is not likely to result, in a substantial lessening of competition in a market.

To be protected by a clearance, the parties must complete the acquisition within twelve months of the date the Commission granted the clearance.

Output 2.3 – Market Structure Authorisations

Under the Commerce and Electricity Industry Reform Acts the Commission considers applications for authorisation of market structure arrangements. Market structure authorisations primarily involve business acquisitions where the parties consider that a proposed acquisition will result, or is likely to result, in a substantial lessening of competition in a market. The Commission must grant an

SERVICES TO BE PROVIDED – PERFORMANCE DIMENSIONS *continued*

authorisation if it is satisfied that the public benefit directly attributable to the acquisition outweighs any detriment.

To be protected by an authorisation, the parties must complete the acquisition within twelve months of the date the Commission granted the authorisation.

Market structure authorisations also involve consideration of the cross-ownership or involvement of an electricity lines business with electricity retail and generation assets. The Commission may grant exemptions from the provisions of the legislation if it is satisfied that the cross-ownership or involvement would not inhibit competition in the industry or permit cross-subsidisation of generation activities or energy retailing from electricity lines businesses. The Commission may also grant exemptions if it is satisfied that the involvement would not result in relationships between lines and supply businesses that are not at arms length.

Output 2.4 – Dairy Industry Behaviour Determinations

Under the Dairy Industry Restructuring Act, the Commission will consider applications for determinations from parties in dispute with the new dairy organisation concerning the entry and exit provisions, or any regulations made pursuant to the Act. The Commission's determination must specify the actions required of any party, or actions from which a specified party is required to refrain. The Commission has a statutory discretion to reject any such application.

Output 2.5 – Price, Revenue and Quality Authorisations

Under the Commerce Act, the Commission considers matters that have been declared to be under price control. These matters may arise from performance threshold investigations in relation to electricity lines businesses in output 1.5 or, in respect of other markets, from matters declared by the Governor-General. The Commission will make price, revenue and quality authorisations for the goods or services declared to be under price control.

Output 2.6 – Interconnection Determinations

Under the Telecommunications Bill, the Commission will consider applications for determinations to resolve disputes relating to interconnection terms and conditions where a designated or specified service is involved. An access seeker or a provider of a designated or specified service may apply to the Commission for a determination. The Commission will issue determinations setting the terms and conditions of access in each case. The Commission has a statutory discretion, in some circumstances, to reject an application.

Output 2.7 – Telecommunication Service Obligations Cost Allocation Determinations

Under the Telecommunications Bill, the Commission will be required to each year to determine the allocation of specified telecommunications service obligation costs between telecommunications service providers. Liable parties will be required to provide the Commission with certain information to enable it to make a determination. As the allocation of costs is required to be determined within 120 working days of the end of the provider's financial year (June), the first such determination will not occur this financial year. The Commission will however, be preparing for this on-going annual function in the current year.

Output 2.8 – Industry Code Approvals

Under the Telecommunications Bill, the Commission may approve telecommunications industry codes drafted by the telecommunications industry forum of its own volition, or at the request of the Commission. The Commission will approve those draft codes that it considers consistent with the purpose of the legislation, comply with the Commerce Act and do not directly relate to specified access pricing principles. The Commission is required to decide if it is necessary to consult with the industry before approving a code.

<i>Performance Measures</i>	<i>Performance Standards</i>	
	<i>2001/2002</i>	<i>2000/2001</i>
Quantity		
Market behaviour authorisation applications received	2	2
Business acquisition clearance applications received	40	32
Market structure authorisation applications received	8	2
Dairy industry determination applications received	13	N/a
Price, revenue and quality authorisation declarations received	Nil	1
Interconnection determination applications received	2 – 10	N/a
Telecommunication service obligation cost allocation determinations	Nil	N/a
Industry code approval applications received	1	N/a
Quality		
Proportion of adjudication investigations meeting relevant quality standards, including procedural requirements	100%	100%
Timeliness		
Adjudication decisions made within statutory time limits	100%	100%
Revenue from Fees		
	<i>\$000</i>	
Vote Commerce	147	N/a
Vote Communications	801	N/a
Total revenue from fees (GST exclusive)	\$948	N/a
Cost		
	<i>\$000</i>	
Vote Commerce	2,109	N/a
Vote Communications	2,078	N/a
Total output cost (GST exclusive)	\$4,189	N/a

SERVICES TO BE PROVIDED – PERFORMANCE DIMENSIONS *continued*

Output 3 – Litigation Services

This output involves the provision of legal services relating to the prosecution and defence of court actions arising out of the Commission's enforcement and adjudication functions, and actions against parties that fail to comply with information disclosure obligations and parties who obstruct authorised persons. The primary focus is on decisions to take penalty action against parties arising out of the Commission's enforcement investigations where the Commission contends that the parties have breached a provision of legislation it is responsible for enforcing and there is a need to pursue court proceedings. Litigation services also focus on decisions by the Commission to defend appeals against its adjudication decisions under the above Acts, together with related judicial review cases.

Litigation services are provided under the Commerce, Dairy Industry Restructuring, Electricity Industry Reform and Fair Trading Acts and the Telecommunications Bill, which is scheduled to come in to force during the planning period. Litigation services comprise:

- civil proceedings
- criminal prosecutions
- appeals against Commission adjudications.

Output 3.1 – Civil Proceedings

Civil proceedings involve the Commission initiating civil enforcement actions in the High Court under the Commerce, Fair Trading and Electricity Industry Reform Acts. Actions under the Commerce and Electricity Industry Reform Acts involve restrictive trade practices and prohibited business acquisitions and other ownership arrangements. Actions under the Fair Trading Act involve the Commission seeking declaratory orders and other relief for a variety of unfair trading practices.

The Commission initiates civil proceedings by filing a statement of claim in the High Court and completes the necessary procedural steps leading up to trial. Once proceedings have been filed actions can be resolved through negotiation, alternative dispute resolution or trial in the High Court. Certain cases will also involve the Commission seeking to appeal rulings of the High Court to the Court of Appeal, and continuing the case in the event of appeals initiated by the other party.

At times the Commission's activities in prosecuting major or complex civil cases may involve the commitment of significant expenditure. Individual cases, assessed against a set of criteria on a case-by-case basis, may be transferred to the Litigation Fund in order to manage the commitment of expenditure separately from the more routine actions taken in the other categories of litigation services.

Output 3.2 – Criminal Prosecutions

Criminal prosecutions involve the Commission initiating criminal proceedings in the District Court principally to prosecute offences under the Fair Trading Act. The Commission may also prosecute other offences such as the failure to provide information to the Commission as provided by s103 of the Commerce Act. Provisions similar to s103 are included in the Telecommunications Bill and the Dairy Industry Restructuring Act.

The Commission initiates prosecutions by filing charges in the District Court. The cases then follow a process of call-overs in the District Court allowing the defendants to plead guilty or not guilty. On guilty pleas the Commission appears before the Court to make submissions on sentencing. Not guilty pleas are referred to status hearings. On confirmation of the not guilty plea the cases are listed for trial. If the defendant is found guilty the case proceeds to sentencing. Certain cases will also involve

the Commission seeking to appeal rulings of the District Court to the High Court, and in continuing the case in the event of the defendant appealing the District Court ruling.

Output 3.3 – Appeals against Commission Determinations

The Commission will appear before the High Court and, at times, the Court of Appeal, to defend appeals against its adjudication decisions.

The Commerce and Dairy Industry Restructuring Acts provide statutory rights of appeal and the proposed legislation for the telecommunications market also provides for statutory appeal rights. Certain persons, as parties to a Commission adjudication matter, are entitled to appeal to the High Court with the Commission as a defendant. The Commission or the applicant may, with leave, also appeal to the Court of Appeal.

The statutory appeal rights are limited. Parties unable to establish standing and therefore without appeal rights may nonetheless challenge the Commission’s determinations through judicial review or declaratory proceedings in the High Court. This category excludes judicial review proceedings related to alleged breaches of administrative law by the Commission.

<i>Performance Measures</i>	<i>Performance Standards</i>	
	<i>2001/2002</i>	<i>2000/2001</i>
Quantity		
Civil proceedings filed and yet to be heard	7-9	N/a
Civil proceedings resolved or heard and awaiting judgement	2-4	N/a
Criminal prosecutions filed and yet to be heard	35-40	35
Criminal prosecutions resolved or heard and awaiting judgement	30-35	N/a
Appeals against Commission determinations filed and yet to be heard	5-7	N/a
Appeals against Commission determinations resolved or heard and awaiting judgement	3-4	N/a
Quality		
Successful resolution of litigation actions	100%	N/a
Relevant quality standards are met, including compliance with procedural requirements	100%	N/a
No adverse judicial comment on the Commission’s conduct of the litigation	100%	100%
Timeliness		
Time between the Commission decision and filing of proceedings for enforcement cases	30 working days	28 and 42 working days
Cost		
Vote Commerce	3,310	N/a
Vote Communications	59	N/a
Vote Energy	57	N/a
Total output cost (GST exclusive)	\$3,426	N/a

SERVICES TO BE PROVIDED – PERFORMANCE DIMENSIONS continued

Output 4 – Reports to the Minister

This output covers the preparation and provision of reports on particular matters to a Minister of the Crown, required or permitted under specific legislative provisions. Reports to the Minister are provided under the Commerce Act and the Telecommunications Bill, which is scheduled to come in to force during the planning period. Reports to the Minister comprise:

- price control reports
- compliance with telecommunications service obligations
- designated and specified (telecommunications) services.

Output 4.1 – Price Control Reports

Under the Commerce Act, the Minister of Commerce may require the Commission to prepare a report on price control matters in specified markets. The Commission may also conduct an investigation of its own volition and prepare a report to the Minister. These reports contain a recommendation as to whether the Minister should recommend to the Governor-General that the specified services should be placed under price control.

Output 4.2 – Compliance with Telecommunications Service Obligations

Under the Telecommunications Bill, the Commission will prepare a report each year to the Minister of Communications on any non-compliance of telecommunication service providers with the conditions contained in the telecommunication service obligations. The Commission will also provide a copy of the report to the relevant telecommunication service provider. This report will form part of the Commission’s consideration for the allocation of costs of the telecommunications service obligations to all liable persons under output 2.7.

Output 4.3 – Designated and Specified (Telecommunications) Services

Under the Telecommunications Bill, the Minister of Communications may request the Commission to prepare a report, or the Commission may of its own volition prepare a report, to the Minister on whether additional telecommunication services should be designated or specified, or whether existing classifications should be amended.

Performance Measures

Performance Standards

	2001/2002	2000/2001
Quantity		
Airports price control study	1	N/a
Telecommunication Service Obligation compliance reports (to be commenced in the period for completion in the next period)	Nil	N/a
Designated or specified services reports	1 – 4	N/a
Cost	\$000	
Vote Commerce	633	N/a
Vote Communications	529	N/a
Total output cost (GST exclusive)	\$1,162	N/a

Output 5 – Provision of Public Information

This output involves the provision of public information, both general and specific, to businesses and consumers. The Commission will provide information using a variety of media including publications, regular newsletters, seminars, briefings and speeches, access to public versions of Commission documents and material through its Web site, and published summaries of information disclosed by electricity lines businesses. The information provided relates to the parties' rights and obligations under the Commerce and Fair Trading Acts, and is intended to promote compliance with the legislation.

The information provided relates to the parties rights and obligations under the Commerce and Fair Trading Acts and the Telecommunications Bill, which is scheduled to come into force during the planning period, and is intended to promote compliance with the legislation.

Output 5.1 – Publications

Under the Commerce and Fair Trading Acts the Commission provides information to businesses and consumers through a series of general guides, practice notes and information booklets. Guides and practice notes provide an overview of rights and obligations under the particular Act and general information on the Commission's interpretations and the procedures the Commission will follow in enforcing the legislation, including examples of enforcement action and decisions. Practice notes, which relate to new responsibilities or significant changes in ongoing functions, are also explicitly intended to encourage feedback from interested parties in order to assist the Commission confirm its approaches. Information booklets provide more detail than guides and are intended to explain how an Act or regulation, such as a product safety standard, applies to particular business practices or industries, or how the Commission interprets particular sections of an Act for the benefit of both traders and consumers.

In addition, the Commission publishes two regular newsletters – Compliance, which focuses in detail on one or two topics of long-term interest to businesses and their advisors, and Fair's Fair, which is a summary of the major work undertaken by the Commission in the previous period.

Output 5.2 – Seminars and Briefings

Under the Commerce and Fair Trading Acts the Commission conducts seminars and briefings and delivers speeches on a wide range of matters affecting the Commission's interpretation of its obligations under the Acts. The Commission initiates these activities and responds to requests for them. Seminars, briefings and speeches may relate to the role and functions of the Commission at a general level or focus on the Commission's procedures in specific areas of its statutory responsibilities. Briefings are also aimed at providing traders with information that encourages them to improve their individual and industry-wide compliance systems.

Output 5.3 – Disclosure of Industry-Specific Information

Under the Commerce Act, the Commission must require electricity lines businesses to disclose reliable and timely information about the operation and performance of their businesses each year. The Commission will provide a brief description of the nature of the requirements in a notice in the

SERVICES TO BE PROVIDED – PERFORMANCE DIMENSIONS continued

New Zealand Gazette. As soon as practicable after the required information has been disclosed, the Commission will publish a summary and analysis of the collated information.

<i>Performance Measures</i>	<i>Performance Standards</i>	
	<i>2001/2002</i>	<i>2000/2001</i>
Quantity		
Production or revision of publications comprising:		
• guides and practice notes	3-5	3-5
• information booklets	3-5	3-5
• <i>Fair's Fair</i>	4	4
• <i>Compliance</i>	4	4
Presentation of seminars and briefings	20-25	45
Summary of information disclosed by electricity lines businesses	Nil	N/a
Cost	<i>\$000</i>	
Vote Commerce	468	N/a
Vote Energy	483	N/a
Total output cost (GST exclusive)	\$951	N/a

Capability Building

Development Projects

A number of major development projects are underway or planned for commencement during 2001/2002 in order to support the Commission's ongoing service delivery capability and to prepare for and implement the new functions for which it becomes responsible during the year. The projects presented below are firstly those that directly contribute to the Commission's output delivery obligations, and secondly, those that support the Commission's internal management, infrastructure and general capabilities. Collectively, these capability building projects represent a significant element of the Commission's risk management strategies.

The capability building projects directly contributing to output delivery obligations include:

- **Electricity Sector Services**
 - *Information disclosure* – the Commission is now responsible for both determining the information disclosure requirements of electricity lines businesses and the collation and summarising of the information under the Commerce Amendment Act (No 2). The open date for the revocation of the existing regulations will allow a managed transition of responsibility from the Ministry of Economic Development to the Commission.
- **Telecommunications Sector Services**
 - *Application of the TSLRIC pricing methodology* – the Commission is undertaking a project to define acceptable parameters and assumptions in the application of TSLRIC (total service long run incremental costs). TSLRIC is a forward-looking cost based methodology that may be used by the Commission when conducting pricing review determinations in the telecommunications industry. The project will also include an assessment of bill and keep, an alternative interconnection arrangement that may be specified by the Commission.
 - *International benchmarking review* – the Commission will conduct a review of both interconnection and retail-minus prices in comparable countries with similar regulatory regimes. The Commission is required to conduct a benchmarking comparison of interconnection prices in comparable countries when it receives an application for a determination of the terms of supply of designated services between an access seeker and an access provider.
 - *Validating and allocating TSO costs* – the Commission is examining options for validating the cost of the TSO (Telecommunications Service Obligations) and how it is derived, both by customer and service. Measurement of compliance to the specified standard will also be required. The Commission is also required to define a method of allocating the amount payable by each of the liable parties.
 - *Wholesale (retail-minus) pricing regime* – the Commission is examining the establishment of framework to assist in identifying those costs that the access provider could be expected to avoid on services, or bundled services that are non price-capped, which may be the subject of a wholesaling arrangement with an access seeker. This project will require the analysis of various cost and pricing models in order to determine what the cost for such services might be, under a retail-minus arrangement.

CAPABILITY BUILDING continued

The capability building projects that support the Commission's internal management, infrastructure and general capabilities include:

- *Recruitment* – new manager positions in the Business Competition Branch and possibly in the Fair Trading and Corporate Services Branches depending on decisions arising from New Initiatives projects; economist positions in the Economics Branch, senior lawyers in the Legal Branch, and analytical and investigative staff in the Business Competition Branch.
- *Internal Services* – strengthening the nature and level of human resources, information, communications, finance and administrative services provided by both the Corporate Services Branch and within the operational branches, including development of strategy and policy statements in all areas.
- *Information systems strategy review* – reviewing and upgrading the Commission's information technology and support services, including computer-based and hard copy forms of information storage and provision.
- *Business processes and methodologies* – developing and documenting operational policies and procedures for new and existing functions, including articulating a stronger set of qualitative performance dimensions, and developing comprehensive quality management systems at all stages of the output delivery processes.
- *Operational control environment* – developing a comprehensive and documented set of expectations relating to the Commission's control environment including developing meaningful performance dimensions addressing output delivery obligations, financial and non-financial ownership matters and corporate and administrative activities, and systems for measuring and recording actual performance. Revising financial, staff management and operational delegations, and developing quality management processes in respect of corporate activities, including specific policies and arrangements for risk management and internal audit.
- *Strengthening management and operational information* – reviewing and improving management information systems including measurement, storage and interrogation across the wide range of management information needs, and both internal and external reporting.
- *Long-term accommodation solution* – reviewing options for a long-term accommodation solution for the Commission, for its Wellington base, including reinstatement of existing premises and fit-out of and furniture for the "new" premises (even if the current location is selected as the preferred option); and office equipment necessary for projected numbers of staff.
- *Risk management* – reviewing and improving the preparatory work already completed on disaster recovery and business continuity policies and procedures, and development of a risk management programme.

There is significant overlap between many of these capability-building projects.

Risk Management

Implementation of the Commission’s new functions, as well as expectations relating to ongoing responsibilities, will place considerable pressure on the Commission during the year, which will have associated control risks. The following key risks have been identified. Mitigation strategies have been developed for each risk area, frequently involving the capability building projects discussed above. The risk areas and mitigation strategies are summarised in the following table.

<i>Risk Area</i>	<i>Mitigation Strategy</i>
Successful integration and implementation of new responsibilities, with no loss of quality in existing services	All capability-building development projects contributing directly to external outputs and to internal management, infrastructure and general capability
Maintaining the resource base from which to respond to increased legal activity as the new regulatory regimes come into effect	Constructive participation in the external review of the Commission, its resourcing levels and strategic capability. Identifying the risk to Ministers through the Memorandum of Understanding and raising concerns during the year at an early stage.
Maintaining the integrity, confidentiality and functionality of information and information systems	Specific capability-building development projects, in particular information systems, management information and business process projects, and operational control environment development
Maintaining the Commission’s reputation with government and across the wider marketplace	Specific capability-building development projects, in particular strengthened quality control arrangements, recruitment and strengthening of management systems. Upgraded management capability and adoption of planned management responses Improved communications strategy, policies and practices.
Recruitment and retention of people with high levels of the skills, knowledge and experience required	Improved human resource management policies, systems and practices in key areas, namely remuneration, performance management and professional development. Use of external assistance when required.

CAPABILITY BUILDING continued

<i>Risk Area</i>	<i>Mitigation Strategy</i>
Managing a significant and complex change programme with multiple capability-building projects	<p>Specific capability-building development projects, in particular strengthened management systems.</p> <p>Upgraded management capability (organisational structure and recruitment).</p> <p>Greater use of strategy setting and planning.</p> <p>Use of external assistance when required.</p>
Maintaining high quality operational spending and probity in an environment of uncertainty	<p>Greater use of output-based planning and budgeting and strengthening of the control environment.</p>
Managing conflicts of interest	<p>Continued use and development of the Commission's policies and practices introduced in 2000/2001.</p>
Managing physical risks	<p>Development of disaster recovery and business continuity plans, policies and practices.</p>

Projected Financial Statements

Statement of Projected Financial Performance 2001/2002

all amounts are GST exclusive

	Budget 2001/2002 \$000	Estimated Actual 2000/2001 \$000
Revenue		
Revenue Crown	17,155	8,166
Fees	948	124
Interest	227	299
Other Income	10	64
	18,340	8,653
Expenditure		
Personnel	7,971	4,383
Accommodation	687	735
Depreciation	526	334
Other Operating Expenses	9,133	3,382
	18,317	8,834
Surplus/(Deficit)	23	(181)

FORECAST FINANCIAL STATEMENTS continued

Statement of Projected Financial Position 2001/2002

all amounts are GST exclusive

	Budget 2001/2002 \$000	Estimated Actual 2000/2001 \$000
Equity	3,298	3,275
Represented by:		
Bank	750	20
Short Term Investments	1,722	3,800
Fixed Assets	1,808	441
Accounts Receivable	150	120
Total Assets	4,430	4,381
Accounts Payable and Accruals	1,132	1,106
Total Liabilities	1,132	1,106
Net Assets	3,298	3,275

Equity includes a litigation reserve of \$1.5 million. This reserve provides funds for major litigation activity.

Statement of Projected Output Costs 2001/2002 *

all amounts are GST exclusive

	Vote Commerce Budget 2001/2002 \$000	Vote Communications Budget 2001/2002 \$000	Vote Energy Budget 2001/2002 \$000	Total Budget 2001/2002 \$000
Revenue				
Revenue Crown	11,110	1,956	4,089	17,155
Fees	147	801	-	948
Other	181	18	38	237
Total Revenue	11,438	2,775	4,127	18,340
Expenditure				
Output 1: Enforcement Investigations	5,156	-	3,436	8,592
Output 2: Adjudication Services	2,109	2,078	-	4,187
Output 3: Litigation Services	3,310	59	57	3,425
Output 4: Reports to the Minister	633	529	-	1,162
Output 5: Provision of Public Information	468	-	483	951
Total Expenditure	11,676	2,665	3,976	18,317
Surplus/(Deficit)	(238)	110	152	23

Actual deficits relating to outputs purchased by Ministers will be met from the Commission's reserves.

Actual surpluses relating to outputs for which an industry levy will be set will either be repaid to the Crown or held by the Commission to reduce revenue required in the next period.

** 2000/2001 comparative figures have not been included as the output structure has changed to such an extent that the provision of comparative figures would be uninformative.*

Appendix – Publications

Guides and Practice Notes

- The Commerce Act 1986 – A General Guide (February 1999), has been withdrawn and will be updated as the information it contained is now out of date.
- The Commerce Act and the Health Sector (January 1998), has been withdrawn and will be incorporated in the revised General Guide.
- Business Acquisition Guidelines (1999), has been withdrawn and replaced by Practice Note No. 4.
- Conference Procedures (September 1998)
- Guidelines to the Analysis of Public Benefits and Detriments (December 1997), has been withdrawn and will be updated.
- The Fair Trading Act – A Guide for Advertisers and Traders (October 1997)
- The Fair Trading Act – Guidelines for the Real Estate Industry (February 1994)
- Practice Note 1 – Divestment Undertakings and Business Acquisitions: Practice and Procedures (June 1997) (To be reviewed)
- Practice Note 2 – Informal Approach and Supply of Information to Commission: Practice and Procedures (October 1997) (To be reviewed)
- Practice Note 3 – Electricity Industry Reform Act: Commission’s Role and Processes (August 1999)
- Practice Note 4 – Commission’s Approach to Adjudicating on Business Acquisitions under Changed Threshold in Section 47 – a Test of Substantially Lessening Competition (May 2001)

Product Safety and Consumer Information Standards

- Car Sales and the Fair Trading Act (April 1999)
- Care Labelling and the Fair Trading Act (January 2001)
- Comparative Pricing and the Fair Trading Act (November 1998)
- Compliance Programmes and the Fair Trading Act (April 1999)
- Debt Collecting and the Fair Trading Act (November 1997)
- Deceptive Packaging and the Fair Trading Act (December 1994)
- Fibre Labelling and the Fair Trading Act (July 1996), is being reviewed following changes to the Standard
- Food Labelling, Promotion and Marketing and the Fair Trading Act (March 1998)
- Free Offers – Avoiding Conflict with the Fair Trading Act (September 1997)
- Place of Origin and the Fair Trading Act (March 1999)
- Pyramid Selling and the Fair Trading Act (June 1997), is being revised in order to better target potential readers
- Safety Standards for Bicycles (August 1995), is being reviewed following changes to the Standard
- Safety Standards for Children’s Night Clothes (November 2000)
- Safety Standards for Cigarette Lighters (May 1999)
- Safety Standards for Cots (March 2001)
- Safety Standards for Toys (January 1995)

Fact Sheets about Safety Standards

- Bicycles (1999)
- Children’s Night Clothes (1999)
- Cigarette Lighters (1999)
- Toys for Children up to Three Years Old (1999)

