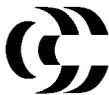


Report of the Commerce Commission

For the year ended 30 June 2001

Presented to the House of Representatives
pursuant to section 107 of the Commerce Act 1986
and section 8 of the Fair Trading Act 1986



COMMERCE COMMISSION

NEW ZEALAND

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Chair's Overview

This report sets out the range of activities undertaken and results achieved by the Commerce Commission in the year ending 30 June 2001.

Purpose of the Commission

The Commerce Commission's core role is to undertake adjudication and enforcement activities under the Commerce Act 1986, the Fair Trading Act 1986 and the Electricity Industry Reform (EIR) Act 1998. These Acts are designed to prevent or deter abuses of market power, collusion, anti-competitive mergers, and misleading and deceptive behaviour.

The work of the Commission is aimed at fostering healthy competition among businesses and informed choice by consumers. Stronger competition and fairer trading contribute positively to individual consumer wellbeing and economic prosperity.

Highlights of Work During the Year in Review

During 2000-2001 the Commission has managed a significant volume of business acquisition clearances in the lead up to amendments to the Commerce Act 1986. The Commission has also maintained and enhanced its level of fair trading enforcement activity, undertaken a range of preparatory work for new functions and, to support the associated changes and growth, began a significant change management process to enhance internal capability and systems.

The Highlights of the Commission's activities for the year include the following:

Commerce

- The Commerce Amendment Act 2001 came into effect on 26 May 2001.

The amendments included: a change in the key prohibitions against unilateral anti-competitive behaviour (section 36), from the previous test of misusing a dominant position, to one of taking advantage of a substantial degree of market power; and a change in the threshold for anti-competitive mergers (section 47) from acquiring a dominant position to a substantial lessening of competition.

- As part of the preparation for the change to a prohibition against mergers that substantially lessen competition, the Commission developed an analytical framework it would use for considering mergers under the new threshold. This framework was set out in Practice Note 4, which superseded the Commission's Business Acquisition Guidelines, and was promulgated shortly after the amendments came into effect.

- The business acquisition clearance workload represented a ten-year high and required the diversion of resources from other areas of the Commission. The temporary reallocation of staff to cover the increase impacted the level of enforcement activity that could be undertaken under the Commerce Act and on the number of Fair Trading Act cases filed.
- The reason for the large number of clearance applications received was likely due to the change in the threshold for considering business acquisitions and the concern of many parties to register applications before the change was enacted.
- Of the 42 clearance applications received, 33 were cleared, including one application received before the start of the year. In these cases, the Commission was satisfied that the merged entity would face sufficient constraint from existing or potential competition such that no dominance would be acquired or strengthened.
- No applications received prior to 30 June 2001 were determined under the new substantial lessening of competition test.
- Major adjudication matters during the year included applications by Southern Cross Medical Care Society to purchase all of the shares in Aetna Health (NZ) Ltd and an application from Shell to acquire Fletcher Challenge Energy Limited.
- The Commission dealt with one authorisation application. Ruapehu Alpine Lifts Limited applied for authorisation to acquire Turoa Ski Resort Limited (in receivership). The Commission held a conference to consider the public benefits of the acquisition. The Commission granted an authorisation in November 2000.
- The Commission conducted 50 enforcement investigations into restrictive trade practices, 45 enforcement investigations into business acquisitions, and one enforcement investigation under the EIR Act. The Commission filed two court actions under the Commerce Act.
- The Commission is required to report to the Minister of Commerce, by 1 August 2002, on whether there is a need for price controls on airfield activities at Auckland, Wellington and Christchurch International Airports. The Commission released a Critical Issues Paper and sought submissions. The submissions received were analysed and considered in the Commission's draft report.

Fair Trading

- An increase in investigations over previous years reflects the Commission's desire to focus on target areas where there has been a previous history of non-compliance and where there is significant consumer detriment. Thirty seven investigations resulted in decision by the Commission to initiate prosecutions.

CHAIR'S OVERVIEW continued

- The major industries to receive warnings and settlements included general retailing, trades and services, information technology, motor vehicle sales and real estate.
- The Commission maintained the lift in its criminal prosecution cases filed with 31 cases filed during the year, the same as in the year before and up from 13 in the year prior to that.
- Five of the 31 cases related to motor vehicle sales and four to the real estate industry. The standard of 35 was not reached because legal resources were diverted to the higher number of Commerce Act adjudication clearances and appeals.
- The Commission was successful in each of the 33 cases completed during the year. The penalties ranged from \$500 imposed on a travel agent for mis-describing the terms of a travel offer, to \$35,000 imposed on Weedons Poultry in Christchurch for claiming that battery eggs were free range.

New Functions: Preparatory Work

- During the year, the Commission commenced preparatory work for its new responsibilities under the Electricity Industry Bill. This work included releasing a preliminary Issues and Process paper in October 2000, receiving and analysing submissions, commencing the drafting of discussion papers on price control and asset valuation methodologies for consultation with interested parties.
- Following the completion of a Ministerial Inquiry into the telecommunications industry, the Government introduced a Telecommunications Bill in December 2000. To prepare for its likely new responsibilities under the Bill, the Commission undertook preparatory work which included initiating discussions with the industry to identify key issues and identifying major projects for which requests for proposals will be sought to enable the Commission to fulfil its obligations under the proposed legislation.

Corporate Issues

- Two Commissioners, Peter Taylor and Denese Bates QC, and two Associate Commissioners, Donal Curtin and Dr Donald Gilling, were appointed during the year. One Commissioner, Cathie Harrison, resigned during the year.
- A major change management process was initiated in the second half of the year, which included reviews of the organisational structure, the roles of senior managers and other managers and the nature and level of internal services required.
- This change process will continue into the next year to support the progressive implementation of the Commission's new responsibilities and the significant growth in the Commission's staffing and budget.

- One-off accommodation reinstatement costs of \$140,000, associated with the pending expiration of the Commission's head office lease in April 2002, account for the majority of the difference between the budget and actual results for the year.
- The Commission's operating deficit for 2000/2001 was \$591,000 compared to the budgeted deficit of \$442,000 and an actual surplus of \$522,000 in 1999/2000.
- Performance in the previous year reflected an under-spending of additional funds the Government provided for price control work in both airports and electricity sectors. These funds were expended this year drawing from that surplus.
- The Commission maintained a significant media and communication profile, releasing 166 media statements, and giving 56 public briefings and speeches.

Looking Ahead

In the period ahead, the Commission will take on a number of new functions in relation to telecommunications, electricity lines businesses, and the dairy industry. The Commission also expects to have a role under the proposed new consumer credit law and motor vehicle information standards.

The Commission will be looking to ensure that its resource allocation and focus across the spectrum of its work achieves the greatest competition and consumer benefits. In its own growth and development, the Commission seeks to build a strong professional team and to enhance its capability in order to deliver on both its existing work and the range of new responsibilities.

I would like to acknowledge the work of staff and members in contributing to the Commission's achievements in the last year. I am confident that their ongoing professionalism and commitment will enable the Commission to meet the major challenges ahead.



John Belgrave

Chair

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, Electricity Industry Reform Act 1998 and Fair Trading Act 1986. New legislation and responsibilities are anticipated in the telecommunications, electricity and dairy sectors. The Commission's enforcement activities cover investigations, adjudication, litigation and reporting.

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.

The appointments of a Telecommunications Commissioner and two Cease and Desist Commissioners are expected next year.

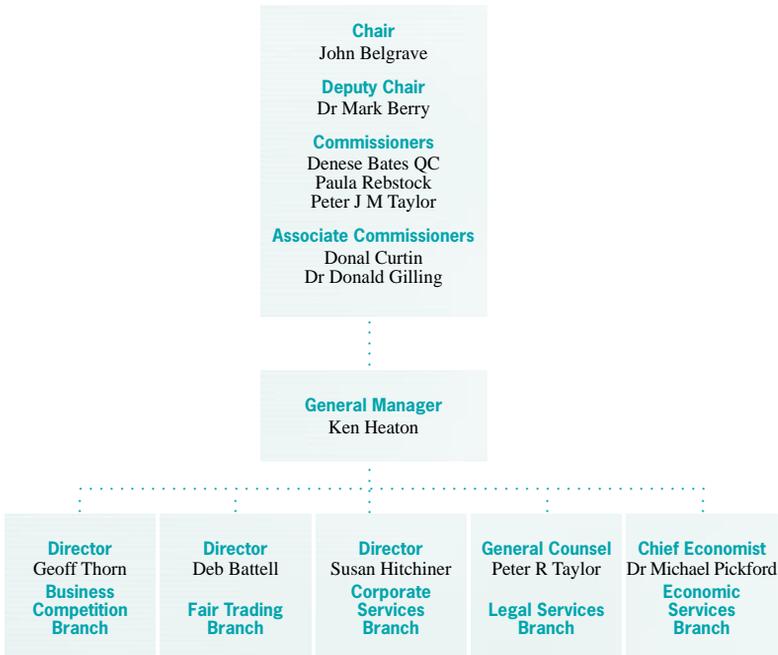
Each member's Warrant of Appointment sets out the start date and duration of the term for which the member is appointed. This term can be extended to deal with work still in progress.

The Chair convenes meetings of the Commission and has a deliberative and casting vote. The Chair 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.



As at 30 June 2001

Two Commissioners, Peter Taylor and Denese Bates QC, and two Associate Commissioners, Donal Curtin and Dr Donald Gilling, were appointed during the year.

One Commissioner, Cathie Harrison, resigned during the year.

In preparation for its major new responsibilities and significant increase in staff numbers, a new organisational structure was implemented, creating five senior management positions to lead the Commission's core branches, as shown above. These changes were part of an organisation-wide change management process that was commenced mid-year and will continue into next year.

As part of the change management process a new structure and management layer is being introduced within the Business Competition and Corporate Services Branches.

Commerce Act and Electricity Industry Reform Act Enforcement

Introduction

The Commission has an enforcement role under the Commerce Act 1986 and the Electricity Industry Reform (EIR) Act 1998.

Under the Commerce Act, the Commission investigates alleged breaches of restrictive trade practices and prohibited business acquisitions. The restrictive trade practices prohibited include collusive behaviour such as arrangements relating to price fixing, arrangements that substantially lessen competition, and exclusive boycotts. Resale price maintenance, which involves a supplier of goods setting a minimum retail price for those goods, is also prohibited.

Prior to the amendments to the Commerce Act in May 2001, a party with a dominant position in a market was prohibited from using that position for the purpose of impeding competition. The Act was amended to prohibit a party with a substantial degree of market power taking advantage of that market power for the purpose of impeding competition.

Also amended was the threshold for business acquisitions prohibited under Part III of the Act. Prior to the change, business acquisitions that resulted, or were likely to result, in a person acquiring a dominant position were prohibited. This threshold was amended to prohibit business acquisitions that would result, or would be likely to result, in a substantial lessening of competition.

The EIR Act prohibits cross involvement between electricity lines businesses with either electricity retail or generation activities.

During the year, the Commission conducted 50 enforcement investigations into restrictive trade practices, 45 enforcement investigations into business acquisitions, and one enforcement investigation under the EIR Act.

Pro-active Enforcement

Proactive enforcement activities in the business competition area includes:

- analysis of complaints and enquiries;
- surveillance of business acquisitions and merger activity; and
- monitoring and analysis of changes in industry structures and competition issues arising from those changes.

Complaints and Enquiries

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Number of complaints and enquiries	2,081	2,400	319	13%
Quality				
Average complaint assessment time	2.4 days	3 days	0.6 days	20%

During the year, 2,081 complaints and enquiries were recorded and answered, a 17% increase over the number received last year. An increasing number of complaints and enquiries were received by e-mail, although these are still a small proportion of the total. All matters are responded to, either immediately, in the case of telephone enquiries, or followed up by letter.

The average complaint assessment time of 2.4 days reflected a 33% improvement on the figure of 3.6 days last year.

The standard for the year is only an estimate of likely activity as the Commission cannot control the number of complaints it receives. The nature and number of complaints and enquiries received reflects various market and behavioural factors.

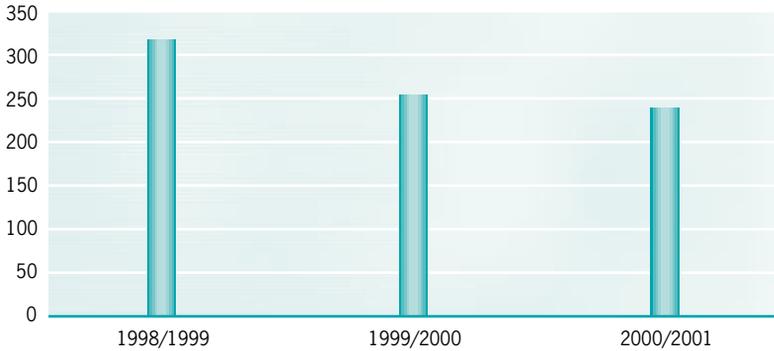
Surveillance

The Commission conducts a surveillance programme that concentrates on identifying non-notified business acquisitions and mergers.

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Number of non-notified business acquisitions	239	280	41	15%

COMMERCE ACT AND ELECTRICITY INDUSTRY REFORM ACT ENFORCEMENT continued

BUSINESS ACQUISITION SURVEILLANCE



The Commission’s surveillance involves collating and reviewing media clippings relating to business acquisitions and mergers, and information provided by the parties to the mergers and the general public.

The Commission attributes the lower than expected level of non-notified business acquisitions reviewed to a low level of merger activity generally for the year.

Industry Monitoring

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Number of proactive investigations commenced	9	12	3	25%

The Commission collates information relating to a range of industries in order to respond quickly to developing issues that have competition implications. Nine proactive investigations were opened during the year, the majority of which related to preparatory work the Commission identified as necessary for its proposed new roles in the electricity, telecommunications and dairy sectors.

During the year, the Commission conducted two proactive investigations identified in the Annual Plan, as discussed below:

Assessing the Impact of Commerce Act Amendments

On 26 May 2001 the Commerce Amendment Act 2001 came into effect with the exception of the cease and desist order provisions, which will come into effect by Order in Council. Key amendments included:

- a new purpose statement focused on promoting competition in markets for the long term benefit of consumers within New Zealand;
- a change in the key prohibitions against unilateral anti-competitive behaviour (section 36), from the previous test of misusing a dominant position, to one of taking advantage of a substantial degree of market power;
- a change in the threshold for anti-competitive mergers (section 47) from acquiring a dominant position to a substantial lessening of competition;
- 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 price control provisions to provide a wider range of means for implementing price control.

As part of the preparation for the change to a prohibition against mergers that substantially lessen competition, the Commission developed an analytical framework it would use for considering mergers under the new threshold. This framework was set out in Practice Note 4, which superseded the Commission's Business Acquisition Guidelines, and was promulgated shortly after the amendments came into effect. The application form for clearances and authorisations was also updated. The forms and Practice Note 4 are available on the Commission's website.

Determining International Jurisdiction

Issues of jurisdiction arise when such companies merge or engage in anti-competitive behaviour offshore. Although the activity does not occur within New Zealand, there is often an impact on New Zealand markets. The Commission has therefore begun considering the issues of jurisdiction that are raised when such activity occurs. A literature search and discussion with practitioners were undertaken during the year. The project will continue in the next year.

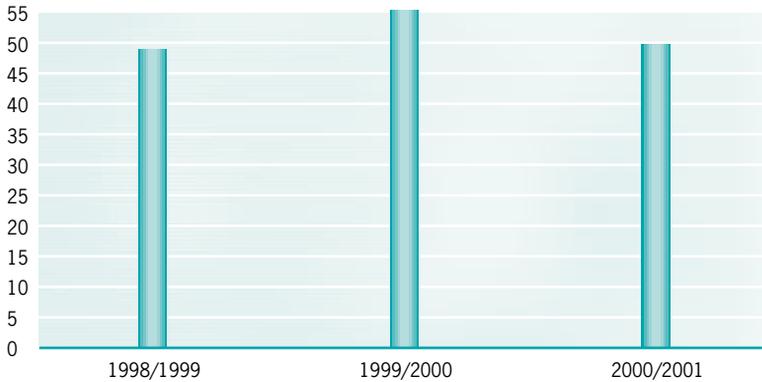
COMMERCE ACT AND ELECTRICITY INDUSTRY REFORM ACT ENFORCEMENT continued

Investigations

Restrictive Trade Practice Investigations

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Number of investigations of restrictive trade practices	50	60	10	17%
Quality				
Average time to complete an investigation	165 days	100 days	65	65%
Investigations meeting relevant quality standard	100%	100%	-	-

RESTRICTIVE TRADE PRACTICE INVESTIGATIONS



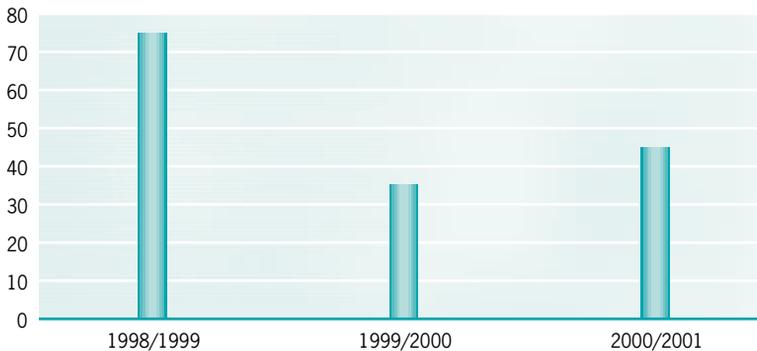
The Commission opened 50 restrictive trade practice enforcement cases for investigation during the year, compared with the standard of 60. Contributing factors to the lower number of investigations undertaken during the year included an influx of business acquisition clearance applications received prior to the change in the threshold and the requirement to undertake preparatory work for the Commission’s new functions and roles.

The Commission closed 48 restrictive trade practice enforcement cases during the year. The average time to complete a restrictive trade practice enforcement investigation was 165 days. This exceeds the standard 100 days, and is the result of the complexity of a number of the cases coupled with the diversion of resources to adjudication activities.

Business Acquisition Investigations

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Number of investigations of non-notified business acquisitions	45	60	15	25%
Quality				
Average time to complete an investigation	138 days	100 days	38	38%
Investigations meeting relevant quality standard	100%	100%	-	-

BUSINESS ACQUISITION INVESTIGATIONS



The Commission investigates all non-notified business acquisitions it identifies that are likely to be in breach of the Act. During the year, 45 such cases were investigated, compared with the standard of 60. The major reason for the difference is the lower than expected level of business acquisition activity occurring in the economy. The Commission closed 37 business acquisition enforcement cases during the year, with an average time to complete an investigation being 138 days. This average completion time exceeds the standard of 100 days and is the result of resources being diverted to other activities including adjudication matters and preparation for new responsibilities.

Electricity Industry Investigations (EIR Act)

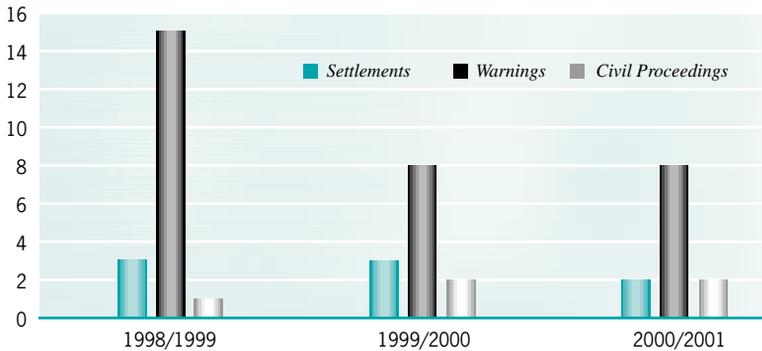
During the year the Commission conducted one investigation into an alleged breach of the EIR Act. This investigation resulted in a settlement with Southpark Corporation Ltd.

COMMERCE ACT AND ELECTRICITY INDUSTRY REFORM ACT ENFORCEMENT continued

Resolution of Investigations

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Warnings issued	8	15	7	47%
Settlements agreed	2	3	1	33%
Decisions to take civil proceedings	2	N/a	N/a	N/a
Quality				
Proportion of investigations resulting in enforcement action	26%	37%	11%	30%

RESOLUTION OF INVESTIGATIONS



Where, as the result of an investigation into an alleged breach of the Commerce or EIR Act, the Commission is able to establish that a breach has occurred, it has the discretion to elect to take civil proceedings with a view to seeking a penalty or to resolve the matter administratively. The Commission is unlikely to administratively resolve breaches of the business acquisition provisions of the Act, as it is likely that penalty action will be required to reverse a merger.

Warnings

The Commission closed eight cases by issuing warnings during the year, which is lower than the standard of 15. The number of warnings reflects the low number of cases opened and the diversion of resources away from enforcement cases during the year to adjudication cases and preparatory work for the Commission’s new responsibilities.

Administrative Settlements

The Commission closed two cases by negotiating settlements during the year. The critical condition for reaching a settlement is that the parties acknowledge that a breach of the respective legislation had occurred.

Honey Packers

The New Zealand Honey Packers Association (NZHPA) organised conference calls during which its members would state their prices for buying and selling honey. Honey packers buy raw honey from beekeepers, package it and sell it to supermarket chains and other retailers.

On 3 July 2000 the Commission settled with the NZHPA with the requirement and undertaking that association members would cease discussing and agreeing prices. The settlement does not prevent honey packers from discussing industry issues such as preventing the spread of the varroa mite, climate forecasts and crop predictions.

Southpark Corporation

Two companies associated with a Mr and Mrs Sax conveyed and sold electricity to consumers during 1999 and 2000, mostly in the Southpark Industrial Estate in Penrose, Auckland. The EIR Act prohibits such behaviour if the amount sold and conveyed is more than 2.5 gigawatt-hours per year (the electricity consumption of a small supermarket). In this case, the amount sold and conveyed was 6.5 gigawatt-hours per year.

On 21 February 2001 the Commission settled with Mr and Mrs Sax on the basis that they undertook not to be cross-involved in retailing and conveying electricity. In addition, they undertook to facilitate access to their lines by electricity retailers wishing to retail electricity to customers connected to lines they owned.

Civil Proceedings

The Commission decided to take civil proceedings in relation to two matters following completion of enforcement investigations. The proceedings were against Telecom New Zealand Limited in respect of its 0867 service and British American Tobacco Holdings (New Zealand) Ltd and WD & HO Wills New Zealand Limited for their merger in 1999.

Commerce Act and Electricity Industry Reform Act Adjudication

Introduction

The Commission has an adjudication role under the Commerce and EIR Acts.

Under the Commerce Act, parties may lodge a notice with the Commission seeking clearance for a business acquisition, authorisation of a business acquisition or authorisation of certain restrictive trade practices.

Prior to the change in the business acquisition threshold under the Commerce Act, when considering a clearance application, the Commission was required to ascertain whether it was satisfied that the proposed acquisition would not result in a person acquiring or strengthening, or being likely to acquire or strengthen, a dominant position in a market. Since the amendment, the Commission must be satisfied that the proposed acquisition would not have, or would be unlikely to have, the effect of substantially lessening competition in a market.

The clearance process has a statutory completion time of 10 working days. This time can be extended by agreement between the applicant and the Commission.

An application for authorisation of either a business acquisition or a restrictive trade practice requires the Commission to consider the benefit to the public of the acquisition or trade practice, and to weigh this against the likely detriment to competition. In the case of an application for authorisation of a business acquisition, the Commission may issue an authorisation if it is satisfied that the benefits outweigh the detriments.

The Commission is required to provide a determination of an application for authorisation of a business acquisition within 60 working days. (Although this time constraint does not apply to restrictive trade practices authorisation applications, the Commission aims to make those determinations within the same timeframe.)

The principal purpose of the EIR Act is to separate electricity distribution from generation and retail activities. The Commission is able to grant exemptions from the application of the EIR Act.

During the 2000/01 year, the Commission received one business acquisition authorisation application and 42 clearance applications. In addition to this, the Commission received three applications for EIRA exemptions.

Adjudications – Summary

	<i>Clearances</i> s66	<i>Business Acquisition Authorisations</i> s67	<i>Trade Practices Authorisations</i> s58	<i>Electricity Industry Reform Act</i>	<i>Total</i>
<i>On hand at 1 July 2000</i>	1	0	0	0	1
Received during the year	42	1	0	3	46
Total	43	1	0	3	47
Withdrawn	2	0	0	0	2
Total requiring Decision	41	1	0	3	45
Approved – no divestment	28	1	0	1	30
Approved – divestment undertakings	4	0	0	0	4
Declined	5	0	0	0	5
Total Adjudication Decisions	37	1	0	1	39
<i>On hand 30 June 2001</i>	4	0	0	2	6

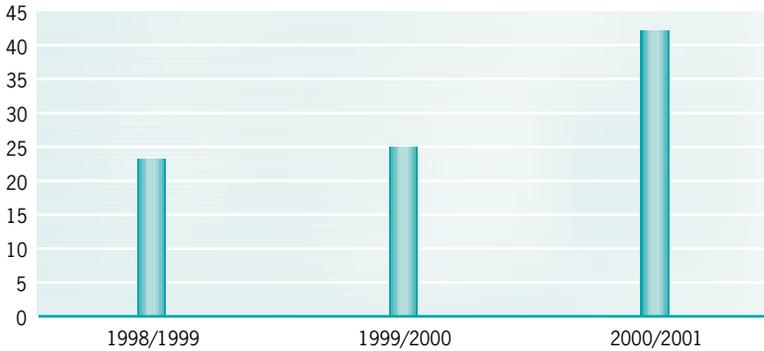
A list of the Commission's 39 adjudication decisions issued during the year is attached at Appendix 1.

Clearance Applications

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Number of clearance applications received	42	30	12	40%
Quality				
Adjudication decisions made within statutory time periods	100%	100%	-	-

COMMERCE ACT AND ELECTRICITY INDUSTRY REFORM ACT ADJUDICATION *continued*

CLEARANCE APPLICATIONS



The Commission received 42 clearance applications during the year. The reason for the high number was possibly due to the change in the threshold for considering business acquisitions and the concern of many parties to register applications before the change was enacted.

The high clearance workload required diversion of resources from other areas of the Commission.

Clearances

Two clearance applications were withdrawn before the investigations were completed.

Thirty-two applications were granted during the year, including one application received before the start of the year. In these cases, the Commission was satisfied that the merged entity would face sufficient constraint from existing or potential competition such that no dominance would be acquired or strengthened. In some cases, this assessment was made despite a high market share resulting from the merger in some.

No applications completed prior to 30 June 2001 were determined under the new ‘substantial lessening of competition’ test.

Of the remaining applications, in five cases the Commission was not satisfied that there would be sufficient constraints on the merged entity and therefore declined to grant a clearance. Four applications remained open at the end of the year.

Four of the clearances granted during the year included undertakings by the parties that certain assets were to be divested.

The Commission does not accept undertakings as to future behaviour as part of a clearance application as these cannot effectively be enforced.

The clearances involving divestment undertakings included:

[Southern Cross Medical Care Society/Aetna Health \(NZ\) Ltd](#)

Southern Cross and Aetna are currently the two largest providers of medical insurance in New Zealand.

Southern Cross Medical Care Society made three applications for a clearance to purchase all of the shares of Aetna Health (NZ) Ltd. The first application was declined, as the Commission was not satisfied that the merged entity would face effective constraint from existing or potential competitors in the event that it attempted to significantly raise prices, or reduce benefits or services. Moreover, the proposed acquisition would have had the effect of removing Southern Cross' principal competitor. Southern Cross appealed the Commission's decision to the High Court.

Notwithstanding its appeal, Southern Cross made a second application for a clearance, which included an undertaking that if the proposed acquisition went ahead, it would divest a number of medical insurance policies of insured members of Aetna. The Commission was not satisfied that the divestment undertaking offered addressed its concerns about dominance.

Southern Cross then made a third application for a clearance, which included undertakings to divest all of the medical insurance policies of insured members of Aetna, and to keep the Aetna medical insurance business separate from Southern Cross during the sale process. The undertakings also provided that Southern Cross would not have access to confidential and commercially sensitive information about Aetna policyholders. The Commission granted a clearance on 13 October 2000.

In March 2001, the High Court allowed Southern Cross' appeal. The Commission has appealed that decision to the Court of Appeal.

[Shell Exploration Company BV/Fletcher Challenge Energy Ltd](#)

Shell Overseas Holdings Limited (Shell) made two applications to acquire Fletcher Challenge Energy Limited (FCE). The first application included an undertaking by Shell to divest a range of assets owned by Shell and FCE. The Commission was not however, satisfied that the level of divestment offered was sufficient to allay its concerns about the competitive impact of the merger, and declined the application.

COMMERCE ACT AND ELECTRICITY INDUSTRY REFORM ACT ADJUDICATION *continued*

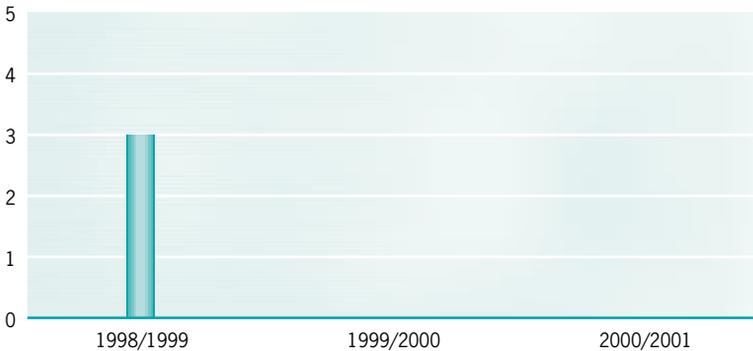
Shell’s second application included an undertaking to divest the assets listed in the first application, plus additional assets. The Commission granted a clearance to the second application on 17 November 2000.

Restrictive Trade Practice Authorisation Applications

Historically, the Commission does not receive a large number of applications for restrictive trade practice authorisations.

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Number of restrictive trade practice authorisation applications received	0	2	2	100%
Quality				
Adjudication decisions made within statutory time periods	N/a	100%	-	-

RESTRICTIVE TRADE PRACTICE AUTHORISATION APPLICATIONS



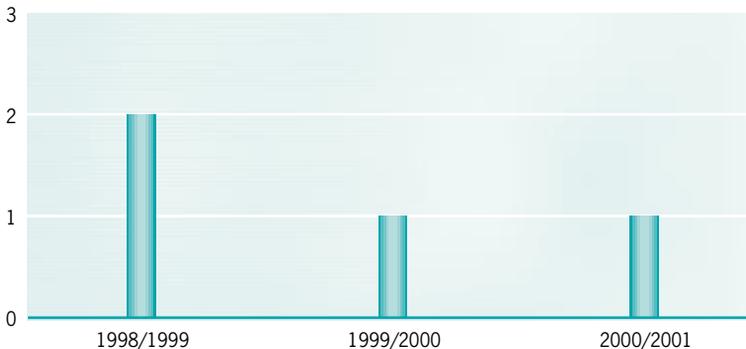
No applications for authorisation of a restrictive trade practice were received during the year.

Business Acquisition Authorisation Applications

Historically, the Commission does not receive a large number of applications for authorisations of business acquisitions.

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Number of business acquisition authorisation applications received	1	2	1	50%
Quality				
Adjudication decisions (BA authorisation) made within statutory time periods	100%	100%	-	-

BUSINESS ACQUISITION AUTHORISATION APPLICATIONS



The Commission received one application for a business acquisition authorisation.

Turoa/Ruapehu Alpine Lifts

On 31 July 2000, Ruapehu Alpine Lifts Limited (RAL), the owner of Whakapapa ski-field, applied for authorisation to acquire Turoa ski-field from Turoa Resort Limited, which was in receivership at the time. The effect of the acquisition would be that RAL would own both North Island commercial ski-fields.

The Commission conducted an investigation that included obtaining information from the South Island ski-fields, tourist operators and members of the skiing public. In addition, the Commission held a public conference in October 2000 to allow interested parties to make submissions. After considering the economic detriments and benefits, the Commission authorised the acquisition.

COMMERCE ACT AND ELECTRICITY INDUSTRY REFORM ACT ADJUDICATION *continued*

Electricity Industry Reform Act Exemption Applications

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Number of EIR Act exemption applications received	3	2	1	50%

The Commission received three applications for exemption from the EIR Act during the year, of which two are on hand at the end of the year.

Tower Limited and Newmarket New Zealand Ltd

In separate cases, the Commission exempted Tower Ltd and Newmarket New Zealand Ltd, as well as a subsidiary of each company, from the application of the cross-ownership rules of the EIR Act.

Both companies applied to the Commission for exemption to allow them to continue to own and operate electricity distribution networks in their respective commercial buildings and, as well, sell electricity to tenants of their properties. Commission investigations showed that continued ownership would mean that both companies, and their subsidiaries, had cross-involvements with electricity lines and electricity supply businesses that are prohibited by the Act.

The Commission granted the exemptions on the grounds that permitting each company to retain involvements in both electricity lines and supply businesses would not defeat the purposes of the legislation. Under the terms of the exemptions, both companies are prohibited from charging for distributing electricity.

Fair Trading Act Enforcement

Introduction

The Commission has an enforcement role under the Fair Trading Act 1986. The legislation covers:

- general fair trading issues, such as misleading and deceptive conduct, false or misleading representations, and unfair practices (such as bait advertising, referral selling and pyramid selling);
- consumer information standards – care labelling and fibre content labelling; and
- product safety standards – bicycles, cots, lead in candlewicks, cigarette lighters, children's toys and children's nightclothes.

The Commission considers enquiries and complaints that it receives to identify whether there is sufficient evidence of a potential breach of the legislation to support initiating an investigation. As the legislation enables individuals to take action in their own right, the Commission focuses its investigative work on matters that:

- show evidence of widespread consumer or trader detriment;
- are in an industry that the Commission has identified as a strategic target;
- involve traders that have a previous history of breaching the provisions of the legislation.

The Commission investigated 396 (360 general fair trading and 36 product safety) matters this year. About one third of the investigations were found not to indicate breaches of the legislation. The remaining two thirds resulted in further enforcement action.

Pro-active Enforcement

Proactive enforcement activity in the fair trading area includes:

- analysis of complaints and enquiries data to identify systemic issues with individual traders or industries;
- carrying out inspections of goods and services
- liaison with major traders and trade associations and conducting regional visits; and
- assessment of pyramid and referral selling schemes.

Complaints and Enquiries

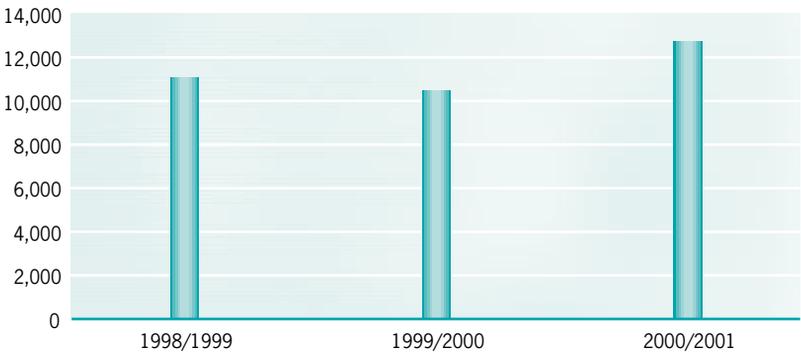
<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Number of complaints and enquiries received	12,748	12,000	748	6 %
Quality				
Average complaint assessment time	1.8 days	1.5 days	0.3 days	20%

FAIR TRADING ACT ENFORCEMENT continued

Complaints and enquiries were 21% up on the previous year. There was considerable growth in the number of e-mail enquiries.

The average complaint assessment time, while above the standard, was consistent with last year’s result. This result was achieved despite the increase in the numbers of complaints and enquiries received.

FAIR TRADING COMPLAINTS AND ENQUIRIES



The Commission received most complaints and enquiries in relation to finance, real estate, energy, general retail, distance selling (pyramid/scams/infomercial type selling) and transport and storage (motor vehicle sales). These sectors are consistent with the main areas of enquiry in recent years.

Inspections

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Number of inspections	74	40	34	85%

The standard for the number of inspections for the year was exceeded principally because of a special investigation into compliance with the new cot product safety standard.

Trade Liaison and Regional Programmes

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Number of major trader reviews and meetings	14	30	16	53%
Number of trade association reviews and meetings	3	4	1	25%
Number of town visits	1	4	3	75%

These standards were not achieved due to a Commission decision to focus its resources in the fair trading area on investigations and litigation activities. Where major traders have had sufficient time to become familiar with the Act and to introduce effective compliance programmes, the Commission is now more likely to take enforcement action. This focus is reflected in the Commission's investigation activities.

Pyramid Schemes

The number of enquiries being received about pyramid schemes is approximately half the number received in the previous year and the number of investigations begun (12) is similarly much lower than last year (32). There are a number of possible reasons for this fall, including increased publicity about scams in general and the Commission's action against pyramid sellers.

Ten pyramid schemes were assessed during the year. The schemes coming to the Commission's attention have generally become more sophisticated and therefore more complex to assess.

FAIR TRADING ACT ENFORCEMENT *continued*

Investigations

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Number of investigations	396	350	46	13%
Number of general investigations	360	300	60	20%
Number of product safety investigations	36	50	14	28%
Quality				
Proportion of investigations resulting in enforcement action	68%	67%	1%	1%
Average time to complete an investigation	55 days	50 days	5 days	10%
Investigations meeting relevant quality standard	N/a	100%	-	-

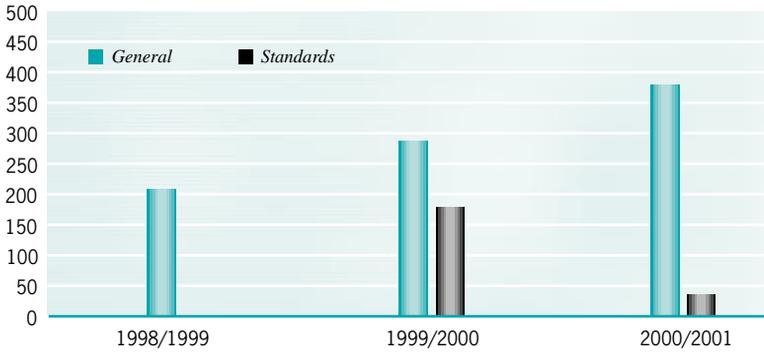
The number of investigations completed was 13% ahead of the standard. The increase in investigations, relative to the standard, reflected the Commission's decision to focus its resources on resolving a number of long-standing investigations.

Counter to the general increase, the Commission conducted fewer product safety investigations than envisaged, principally because it received fewer complaints in this area and inspections revealed a greater degree of compliance with product safety standards.

Due to the resolution of a number of long standing cases, which were either settled or approved for litigation, the average investigation time of 55 days was 10% greater than the standard. These were complex cases that related to pyramid selling and pro forma invoicing.

Investigations relating to real estate, motor vehicles, the energy sector and telecommunication issues increased this year over previous years. This change reflects both the increased number of complaints received and the increased priority given to these industries by the Commission.

FAIR TRADING INVESTIGATIONS



Resolution of Investigations

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Warnings issued	181	150	31	21%
Settlements agreed	48	50	2	4%
Decisions to take criminal prosecutions	37	35	2	6%

Warnings and Administrative Settlements

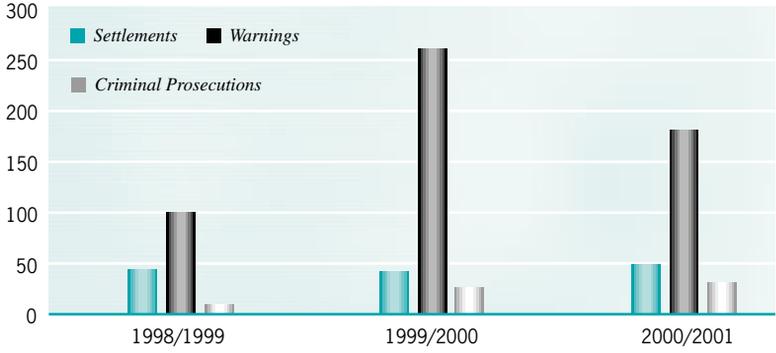
The Commission issued 31 more warnings to traders than envisaged this year. This is a reflection of the increased number of investigations undertaken during the period. The major industries to receive warnings and settlements included general retailing (43), trades and services (32), information technology (15), motor vehicle sales (14) and real estate (11).

Criminal Prosecutions

In addition, 37 investigations resulted in decisions by the Commission to initiate criminal prosecutions, which is an increase over previous years. The increase reflects the Commission's focus on target areas (real estate, motor vehicles, travel food, energy, telecommunications, and general retailing) where there has been a previous history of non-compliance and where traders refuse to acknowledge a breach.

FAIR TRADING ACT ENFORCEMENT *continued*

RESOLUTION OF INVESTIGATIONS



Economic Regulation

Introduction

The Commission undertook activity during the year in three areas relating to economic regulation. The first of these was a price control study of airfield activities in response to a ministerial request. In addition, the Commission commenced preparation for its proposed responsibilities in relation to electricity lines businesses and the telecommunications industry.

Airports

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Price control enquiries completed	N/a	N/a	-	-
Preparatory report on price control regime	0	1	1	100%
Quality				
Reporting meets Commission's quality standards	N/a	N/a	-	-

On 27 March 1998, the then Minister of Commerce requested, under s54(1) 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 International Airports. Subsequently, the report date was extended to 1 August 2002.

In March 2001, the Commission released a Critical Issues Paper and sought submissions. The submissions received were analysed and considered in the Commission's draft report, to be released in July 2001.

Electricity

The Commission commenced preparatory work under s54(3) of the Commerce Act for its proposed new responsibilities under this legislation including:

- releasing a preliminary Issues and Process paper in October 2000, and receiving and analysing submission; and
- commencing the drafting of discussion papers on price control and asset valuation methodologies for consultation with interested parties.

Telecommunications

In December 2000, following the completion of a Ministerial Inquiry into the telecommunications industry, the Government introduced a Telecommunications Bill that is currently at Select Committee stage. To prepare for its likely new responsibilities under the Bill, the Commission undertook preparatory work:

- initiating discussions with the industry to identify key issues; and
- identifying major projects for which requests for proposals will be sought next year to enable the Commission to fulfil its obligations under the proposed legislation.

Litigation

Introduction

The Commission initiates civil and criminal actions relating to the prosecution and defence of court actions arising out of its enforcement and adjudication functions. The primary focus is on actions relating to non-compliance with the relevant legislation arising out of the enforcement investigations.

The Commission will prosecute such actions where it contends that the parties have breached a provision of the legislation it is responsible for enforcing and there is a need to pursue court proceedings.

The Commission's litigation activities also focus on decisions by the Commission to defend appeals against its adjudication decisions under the Commerce Act or EIR Act, together with related judicial review cases.

Commerce Act and Electricity Industry Reform Act Litigation

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Number of cases and appeals filed (enforcement)	4	4	-	-
Quality				
Time between approval to proceed and filing – complex	48.5 days	42 days	6.5 days	15%
Time between approval to proceed and filing – routine	N/a	28 days	-	-
Judgements with no adverse comment on Commission's case	75%	100%	1	25%
Decisions upheld on appeal (adjudication)	67%	100%	2	33%

The standard of four cases and appeals to be filed under the Commerce Act was achieved. Two cases were filed: proceedings against Telecom New Zealand Ltd in respect of its 0867 service and proceedings against British American Tobacco Holdings (New Zealand) Limited and WD & HO Wills New Zealand Limited for their merger in 1999.

The two appeals were the appeal and cross appeal in respect of the High Court decision in the Commission's case against Carter Holt Harvey Building Products Ltd and the appeal to the Privy Council in the case against Fullers Bay of Islands Ltd (Fullers) and Far North Marine Ltd.

The Commission received adverse judicial comment from the Court of Appeal in the Fullers' proceedings. Although the Commission had sought to minimise its involvement while having regard to the need to preserve its position against the defendants, it supported the submission made by a private litigant, Opu Ferries Limited. The Court of Appeal questioned the Commission's involvement in the interpretation of the public register that contained the ferry registration, on the grounds that it was an issue best argued between Fullers and the private litigant.

Other Commerce Act Litigation

In addition to the litigation services discussed above, a number of other litigation activities were undertaken, primarily relating to cases and appeals previously filed or underway.

These are summarised below and grouped into restrictive trade practice and business acquisition cases.

Restrictive Trade Practice Cases

Telecom New Zealand Ltd

The Commission contends that Telecom breached s36 of the Commerce Act when it introduced its 0867 service for Internet Service Providers in June 1999. When Telecom introduced the service it required zero termination charging and introduced the Internet Dialup Charge. The Commission contends that the effect was to significantly reduce competition in the wholesale internet access market as it removed a source of profit otherwise available to competing carriers. In October 2000, Telecom applied to the High Court for an order that the Commission provide further particulars. The High Court refused that application in November 2000. Telecom appealed to the Court of Appeal and the appeal is due to be heard on 27 August 2001.

Giltrap Proceedings

This case involves proceedings against Giltrap City Limited and its dealer principal, Andrew McKenzie, for price fixing in breach of sections 27 and 30 of the Commerce Act. The Commission claims that in 1993 eight Toyota car dealers entered into an arrangement or understanding to fix the price of new Toyota motor vehicles. Proceedings were issued in 1994. In 1996 seven defendants admitted liability and each were fined \$50,000.

Giltrap City Limited and Mr McKenzie continued to defend the proceedings. After lengthy procedural challenges the case was part heard in September 2000 and recommenced in February 2001 with final submissions delivered in March 2001. The court is yet to deliver its judgement.

LITIGATION continued

Business Acquisition Cases

Hoyts Cinemas Ltd and Village Force Ltd

In early 1999, Hoyts and Village Force announced they were to merge. The companies did not seek a clearance from the Commission. The Commission considered that the merger would result in a breach of s47 of the Commerce Act, sought an injunction and obtained undertakings from Hoyts and Village Force to allow for separation of the businesses in due course. The proceedings were settled in December 2000 with Hoyts and Village Force undertaking not to proceed with the merger, by separation of the businesses, and paying to the Commission a substantial contribution to its costs.

British American Tobacco Holdings (New Zealand) Limited and W D and H O Wills (New Zealand) Limited (BAT/Rothmans).

In April 2001, the Commission issued proceedings against BAT/Rothmans following the New Zealand merger in September 1999 between BAT and Rothmans. The Commission contends that the merger in New Zealand breached the dominance threshold in s47. The proceedings raise important issues as to the ability of the Commission to take enforcement action against international mergers involving New Zealand subsidiaries. The key issue is whether the implementation in New Zealand of a merger that takes place overseas is subject to the Commerce Act. This question is revised as a preliminary question in the proceedings and will be heard later this calendar year.

Kupe Litigation

The Kupe litigation involved proceedings taken by the Commission in December 1997 against Fletcher Challenge Limited, Fletcher Challenge Energy Limited, Fletcher Challenge Energy Limited, Electricity Corporation of New Zealand Limited and Genesis Power Limited. The Commission alleged that the Fletcher companies and ECNZ had breached s47 of the Commerce Act when the Fletcher companies acquired control of the Kupe gas field through a series of transactions.

In November 2000, the Commission granted a clearance to enable Shell to acquire Fletcher's petroleum interests subject to an undertaking from Shell to divest certain assets. The divestment included Fletcher's interests in the Kupe gas field. Fletcher's had earlier divested its interest in the Kapuni treatment plant and NGC.

The Commission concluded that the relevant markets were competitive following an undertaking from Shell to divest the interests in the Kupe field. In a confidential full and final settlement in April 2001 the proceedings were discontinued.

Shell

Shell lodged two High Court Appeals in respect of the Commission's determinations for separate clearance applications. The first Commission determination declined a clearance sought by Shell. The second determination granted Shell clearance to acquire certain assets of Fletcher Challenge Ltd subject to Shell's undertaking, included in its application, to divest its interests in the Mangahewa field, along with other assets. In March 2001, Shell withdrew both appeals on the day of the court hearing.

Greymouth Petroleum Mining

Greymouth Petroleum Mining Co. Ltd (Greymouth) sought to appeal the Commission's decision to grant a clearance to Shell to acquire certain Fletcher Challenge Ltd interests. The Commission and Shell objected to Greymouth's application for leave to appeal on the grounds that Greymouth did not have standing under s92 of the Commerce Act. The High Court (Wild J) agreed and dismissed Greymouth's application for leave to appeal.

Southern Cross

Southern Cross appealed the Commission decision to decline its first application to acquire Aetna (NZ) Ltd. The Commission was not satisfied that the proposed acquisition would not result in dominance in the private health insurance market. The High Court (Williams J and lay member Dr Ralph Latimore) delivered its decision in March 2001. The High Court disagreed with the Commission and upheld the appeal.

The Commission appealed the High Court decision to the Court of Appeal. The hearing has been rescheduled to take place in November 2001.

Progressive and Foodstuffs

When the Commerce Amendment Act 2001 came into effect (26 May 2001), the Commission had registered but had not made decisions on eleven applications for clearance. Supported by external advice, the Commission determined that it should apply the dominance threshold to those applications rather than the new threshold of substantial lessening of competition.

One of the applications was by Progressive Foods Limited to buy certain assets of Woolworths NZ Ltd. A competitor, Foodstuffs (Auckland) Ltd, challenged the Commission decision to apply the dominance threshold and sought a declaration that the correct threshold was the new substantial lessening of competition test. In June 2001 a full court of the High Court upheld the Commission's approach. Foodstuffs appealed that decision to the Court of Appeal. The appeal is due to be heard in September 2001.

LITIGATION continued

Fair Trading Act Litigation

<i>Performance Measures</i>	<i>Full Year Actual</i>	<i>Full Year Standard</i>	<i>Variance – number</i>	<i>Variance – %</i>
Quantity				
Number of cases and appeals filed	31	35	4	11%
Quality				
Time between approval to proceed and filing – complex	43 days	21 days	22 days	105%
Time between approval to proceed and filing – routine	32 days	14 days	18 days	129%
Judgments with no adverse comment on Commission’s case	100%	100%	-	-

The Commission filed 31 of the 37 Fair Trading Act cases approved for action this year against the standard of 35. The variance reflects the developments during the year including the introduction of new legislation, the higher number of Commerce Act clearance applications, and the number and significance of the Commerce Act adjudication appeals.

The Commission was successful in all the cases completed during the year. Thirty-three cases were completed, either by hearing before the court or by settlement. Half of these cases were completed within nine months and all within 12 months. There was no adverse comment by the courts.

The penalties ranged from \$500 imposed on a travel agent for mis-describing the terms of a travel offer, to \$35,000 imposed on Weedons Poultry in Christchurch for claiming that battery eggs were free range. The court in that case sought to remove the gain from the false representation.

Of the 31 cases filed during the year, five related to motor vehicle sales and four to the real estate industry. The motor vehicle cases include proceedings issued against Daewoo where the Commission alleges that Daewoo claimed that two-year-old cars could be described as ‘new’.

Some of the real estate cases include misleading advertising by claiming that properties had the benefit of certain views when they did not. The case involving Morris Realty Limited is notable as it is the Commission's first case on the practice of price banding. Price banding refers to the practice of advertising a buyer inquiry range with a starting price well below the price that the person selling the house will accept. This practice can cause considerable consumer and trader detriment by wasting the prospective buyers' time and leading to pressure on the vendor to sell below their stated price.

Appendix 2 lists the fair trading cases heard and penalties imposed during the year, and those cases currently before the courts at 30 June 2001.

Corporate Matters

Human Resources

During the year a major change management process began, which included reviews of the organisational structure, the roles of senior managers and other managers and the nature and level of internal services required. This change process will continue into the next year to support the progressive implementation of the Commission's new responsibilities and the significant growth in the Commission's staffing and budget.

Although there was staff movement during the year, with fourteen people joining the Commission and fifteen people leaving, total staff numbers remained constant.

In July 2000, staff participated in an EEO survey to identify areas for improvement and development. Survey results plus several initiatives from the previous year's programme were consolidated into a revised 2000-2001 EEO Plan. The major focus of the programme was to improve communication and provide greater opportunities for staff to contribute to, and provide feedback on, EEO actions and outcomes. All staff received copies of the EEO plan, which was also placed on the Commission's intranet site.

The Commission's turnover for the year was 16%. The redundancies arose from structural changes at the senior management level and within the Legal Services Branch.

An occupational health and safety management system was implemented which included the formation of a work place environment group. The combination of these actions resulted in the Commission passing an ACC audit, reaching Secondary Level in the ACC Workplace Safety Management Practices.

Two work-related cases of occupational overuse syndrome were reported during the year. Routine occupational safety health issues were dealt with during the year, resulting in workstation assessments being conducted and equipment being provided as necessary.

There were no reported incidents that fell within the boundary of the Commission's Harassment Policy. One issue was dealt with under the Commission's Code of Conduct.

Processes and procedures were implemented in respect of the Employment Relations Act 2000 and the Protected Disclosures Act 2000.

Payroll and human resource management information systems were purchased and successfully implemented during the year, with the new independent payroll system in operation from 1 April 2001.

Direct professional development expenditure for the Commission as a whole was \$73,400, at an average \$1,065 investment in professional development for each staff member.

Finance

The Commission's original budget for the year allowed for total revenue of \$8,415,000 and total expenditure of \$8,637,000 to achieve a net deficit of \$442,000, once a transfer of \$220,000 to the Litigation Fund was taken into account.

This budgeted deficit reflected revenue for price control activities that was underspent in the 1999/2000 financial year.

Revenue and expenditure for the year were increased in the Supplementary Estimates. The Commission received an additional \$524,000 for electricity price control activities under Vote: Energy and an additional \$89,000 for preparatory work on telecommunications regulation under Vote: Communications.

The Commission's actual operating deficit for 2000/2001 was \$591,000 compared to the budgeted deficit of \$442,000 and an actual surplus of \$522,000 in 1999/2000.

One-off accommodation reinstatement costs of \$140,000 associated with the pending expiration of the Commission's Wellington lease, accounts for the majority of the difference between the budget and actual results for the year.

Information Technology

During the period the Commission's computer network was fully operational for 99% of the time during working hours.

With the Commission's hardware and software scheduled for replacement or upgrade during the calendar year, the Commission evaluated the current status of its computer systems and replacement work completed to date, to assist in developing a systematic replacement programme, including development of an information systems strategy.

Work completed during the year includes:

- Desktop and Server Hardware – servers were purchased to replace the four core servers purchased in 1998. By June 2001 some core network services had been migrated and a schedule of further migration was in place.

CORPORATE MATTERS *continued*

- Network Upgrade – the speed of network links between regional offices improved significantly by replacing the existing regional network with a frame relay wide area network. The local area network segments on some floors in the Wellington office were upgraded, and a new central network switch installed.
- Helpdesk Service – the Commission's helpdesk facility was restructured to create a single point of contact for all helpdesk requests, which improved response times and manageability of issues.
- Risk Management – the Commission negotiated a support contract with an external supplier under which the Commission is guaranteed a specified number of on-site hours each month, which significantly decreased hardware maintenance costs for the new core servers.
- Financial System – the financial system was successfully migrated to new hardware and upgraded to the current version.

Accommodation

During the year, in preparation for increased numbers of staff to support its new responsibilities, the Commission entered into a lease for the occupation of additional space in its existing Wellington premises.

The Commission's leases for its current premises in Wellington expire in April 2002. The Commission has established a project to secure a long-term accommodation solution that meets its business needs.

Promotion of Public Awareness

Under the Commerce and Fair Trading Acts, the Commission is required to provide public information, both general and specific, to businesses and consumers. The Commission uses a variety of media to promote public awareness including publications, regular newsletters, seminars, briefings and speeches, access to public versions of Commission documents and material through its Web site, and media releases. Appendix 3 lists the Commission's publications.

The Commission issued 166 media releases in the year ending 30 June 2001. It published four issues of the newsletter *Fair's Fair*, and two issues of *Compliance*. The subjects for *Compliance* were "Corrective Advertising Guidelines" and "Likely Changes to Business Acquisition Process."

The Commission presented 56 public briefings and speeches during the year, which exceeded the standard of 40. The themes of these presentations included the changing role of the Commerce Commission with the proposed new responsibilities in the electricity and telecommunications industries.

Financial Statements

For the year ended 30 June 2001

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Statement of Responsibility

In terms of section 42 of the Public Finance Act 1989, the management of the Commerce Commission was responsible:

- for the preparation of the annual financial statements and the judgements made in the process of producing those statements;
- for establishing and maintaining a system of internal control procedures designed to provide reasonable assurance as to the integrity and reliability of financial reporting.

In the opinion of the management of the Commerce Commission, the annual financial statements fairly reflect the financial position, service performance and operations of the Commerce Commission for the year ended 30 June 2001.



M J Belgrave

Chair

25 October 2001



K J Heaton

General Manager

25 October 2001

COMMERCE COMMISSION

Statement of Financial Performance*For the year ended 30 June 2001*

	Notes	Actual 2001 \$000	Final Budget 2001 \$000	Original Budget 2001 \$000	Actual 2000 \$000
Operating Revenue					
Revenue from the Crown		7,563	7,563	6,950	7,650
Notification/Application Fees		124	133	140	113
Interest		299	290	206	237
Miscellaneous		64	54	67	304
Net Gain on Sale of Fixed Assets		0	0	0	11
Total Operating Revenue		8,050	8,040	7,363	8,315
Revenue for Litigation Fund Matters		603	1,052	1,052	250
Total Revenue		8,653	9,092	8,415	8,565
Operating Expenditure					
Personnel		4,383	4,249	4,224	4,186
Accommodation – Operating Lease		735	598	592	588
Consultancy		411	363	325	144
Depreciation		334	355	481	446
Other Operating Expenses	1	2,778	2,917	2,183	2,428
Total Operating Expenditure		8,641	8,482	7,805	7,792
Expenditure on Litigation Fund Matters		193	832	832	646
Total Expenditure		8,834	9,314	8,637	8,438
Net Surplus/(Deficit) for the year before transfer from/(to) Litigation Fund	2	(181)	(222)	(222)	127
Transfer from/(to) Litigation Fund	4	(410)	(220)	(220)	395
Net Surplus/(Deficit) for the year after Transfer to Litigation Fund		(591)	(442)	(442)	522

The accompanying accounting policies and notes form an integral part of the financial statements.

COMMERCE COMMISSION

Statement of Movement in Equity

For the year ended 30 June 2001

	Notes	Actual 2001 \$000	Final Budget 2001 \$000	Original Budget 2001 \$000	Actual 2000 \$000
Opening Balance as at 1 July 2000		3,456	3,404	3,404	3,329
Net Surplus/(Deficit) for the year		(181)	(222)	(222)	127
Total recognised revenues and expenses for the year		(181)	(222)	(222)	127
Equity as at 30 June 2001		3,275	3,182	3,182	3,456
<i>Comprising:</i>					
– Accumulated Funds	3	1,594	1,682	1,682	2,185
– Litigation Fund	4	1,681	1,500	1,500	1,271
Equity as at 30 June 2001		3,275	3,182	3,182	3,456

The accompanying accounting policies and notes form an integral part of the financial statements.

COMMERCE COMMISSION

Statement of Financial Position

As at 30 June 2001

	Notes	Actual 2001 \$000	Final Budget 2001 \$000	Original Budget 2001 \$000	Actual 2000 \$000
Equity					
Accumulated Funds	3	1,594	1,682	1,682	2,185
Litigation Fund	4	1,681	1,500	1,500	1,271
Total Equity		3,275	3,182	3,182	3,456
<i>Represented by:</i>					
Current Assets					
Bank	5	20	34	34	187
Short Term Investments					
– Litigation Fund	4	1,681	1,500	1,500	1,271
– Others		2,119	1,368	1,368	2,179
Accounts Receivable		120	146	146	193
		3,940	3,048	3,048	3,830
Non Current Assets					
Fixed Assets	6	441	922	922	444
Total Non Current Assets		441	922	922	444
Total Assets		4,381	3,970	3,970	4,274
Current Liabilities					
Accounts Payable and Accruals	7	1,106	788	788	818
Net Assets		3,275	3,182	3,182	3,456


M J Belgrave*Chair*

25 October 2001


K J Heaton*General Manager*

25 October 2001

The accompanying accounting policies and notes form an integral part of the financial statements.

COMMERCE COMMISSION

Statement of Cash Flows

For the year ended 30 June 2001

Notes	Actual 2001 \$000	Final Budget 2001 \$000	Original Budget 2001 \$000	Actual 2000 \$000
Cash Flows from Operating Activities				
<i>Cash was provided from:</i>				
– Revenue from the Crown	7,563	7,563	6,950	7,650
– Notification/Application Fees	123	133	140	112
– Miscellaneous	73	35	48	295
– Interest Received	302	292	208	233
– Litigation Fund Matters	603	1,052	1,052	250
	8,664	9,075	8,398	8,540
<i>Cash was applied to:</i>				
– Payments to Suppliers	3,788	4,477	3,699	3,977
– Payments to Employees	4,363	4,448	4,423	4,214
	8,151	8,925	8,122	8,191
Net Cash Inflow/(Outflow) from Operating Activities	513	150	276	349
	2			
Cash Flows from Investing Activities				
<i>Cash was provided from:</i>				
– Investments	0	582	582	0
– Sales of Fixed Assets	0	0	0	11
	0	582	582	11
<i>Cash was applied to:</i>				
– Investments	350	0	0	40
– Purchases of Fixed Assets	330	885	1,011	139
	680	885	1,011	179
Net Cash Inflow/(Outflow) from Investing Activities	(680)	(303)	(429)	(168)
Cash Flows from Financing Activities				
	0	0	0	0
Net Increase/(Decrease) in Cash Held	(167)	(153)	(153)	181
Add Opening Cash	187	187	187	6
Closing Cash	20	34	34	187

COMMERCE COMMISSION

Statement of Accounting Policies

For the year ended 30 June 2001

Reporting Entity

The Commerce Commission, established under section 8 of the Commerce Act 1986, has operational responsibilities for the Commerce, Electricity Industry Reform, and Fair Trading Acts. The Commerce Act 1986, enacted to promote competition in markets within New Zealand, provides mechanisms to prevent restrictive trade practices, scrutinise business acquisitions and facilitate price control in some circumstances. The Electricity Industry Reform Act 1998 requires that businesses that sell more than a specified amount of electricity cannot also own power lines or generators. The Fair Trading Act 1986 prohibits deceptive or misleading conduct and false representations about the provision of goods and services and prohibits certain unfair trading practices.

These financial statements have been prepared pursuant to section 22 of the Commerce Act 1986 and section 41 of the Public Finance Act 1989.

Measurement System

The financial statements have been prepared on a historical cost basis.

Particular Accounting Policies

The following particular accounting policies, which materially affect the measurement of financial performance and financial position, have been consistently applied.

(a) Accounts Receivable

Accounts receivable are stated at their estimated net realisable value, after providing for doubtful and uncollectible debts.

(b) Employee Entitlements

Provision is made in respect of the Commission's liability for annual leave. Employee entitlements to salaries, wages and annual leave are calculated on an actual entitlement basis at current rates of pay.

(c) Fixed Assets and Depreciation

All fixed assets, or groups of assets forming part of a network, costing more than \$2,000 are capitalised and recorded at historical cost.

Depreciation is provided on a straight-line basis so as to allocate the cost of the assets over their economic lives. Leased assets are depreciated over the shorter of the unexpired period of the lease and the estimated useful life.

STATEMENT OF ACCOUNTING POLICIES continued

The estimated economic useful lives are:

- Computers and Software 3 years
- Furniture and Fittings 5 years
- Leasehold Improvements 10 years or period of lease
- Motor Vehicles 5 years
- Office and Telephone Equipment 4 years

(d) Taxation

The Commission is exempt from the payment of income tax in terms of the Income Tax Act 1994. Accordingly, no charge for income tax has been provided for.

(e) Budgets

The Original Budget was approved by the Commission at the beginning of the financial year. This was adjusted during the year to establish the Final Budget, which reflects additional Crown funding provided to carry out preparatory work in relation to Outputs Five (Monitoring and Price Control of Electricity Line Businesses) and Six (Telecommunications Commissioner). These budgets have been prepared in accordance with generally accepted accounting practice and are consistent with the accounting policies adopted by the Commission for the preparation of the financial statements.

(f) Revenue

The Commerce Commission derives revenue through the provision of outputs for the Crown, for services to third parties and income from its investments. Such revenue is recognised when earned and is reported in the financial year to which it relates.

(g) Leases

Leases under which all the risks and benefits of ownership are effectively retained by the lessor are classified as operating leases. Operating leases are expensed in the period in which they are incurred.

(h) Litigation Fund

The litigation fund was established to provide funds for major litigation activities. Actual costs are identified and an equivalent amount is transferred from the litigation fund to accumulated funds.

(i) Goods and Services Tax (GST)

The Statement of Financial Performance and Statement of Cash Flows have been prepared so that all components are stated exclusive of GST. All items in the statement of financial position are stated net of GST, with the exception of Accounts Receivable and Accounts Payable and Accruals. The amount of GST owing to/from the Inland Revenue Department at balance date, being the difference between Output GST and Input GST, is included either in Accounts Payable or in Accounts Receivable.

(j) Financial Instruments

The Commerce Commission is party to financial instrument arrangements including cash and bank, short-term deposits and accounts receivable as part of its everyday operations. All financial instruments are recognised in the Statement of Financial Position and all revenue and expenditure in relation to all financial instruments are recognised in the Statement of Financial Performance.

(k) Pecuniary Penalties from Commerce Act and Fair Trading Act Proceedings

All pecuniary penalties received are deposited into the Commerce Commission Trust Account, and then transferred to the Ministry of Commerce. Any costs awarded are transferred to the Commerce Commission Current Account.

(l) Cost Allocation

Direct costs are charged directly to outputs. Indirect costs are charged to outputs based on specified cost drivers, including depreciation which is charged is charged on the basis of asset utilisation. Personnel costs are charged on the basis of the number of staff in each operating unit. Overhead costs are allocated by the number of staff in each operating unit.

Changes in Accounting Policies

There have been no changes in accounting policies during the year. All policies have been applied on bases consistent with those used in previous years.

Notes to the Financial Statements

	Notes	2001 \$000	2000 \$000
1. Other Operating Expenditure			
Audit fees to auditors for audit of financial statements		17	17
Remuneration paid to Commissioners		640	649
Legal and investigation costs		978	604
Other operating expenditure		1,143	1,158
		2,778	2,428
2. Reconciliation of Net Surplus/(Deficit) for the year with cash flows from operating activities			
Net surplus/(deficit) for the year		(181)	127
Add non cash items:			
– Depreciation		334	446
Movement in working capital items:			
– Plus (increase)/decrease in Accounts Receivable		72	(72)
– Plus increase/(decrease) in Accounts Payable		288	(141)
Items classified as Investing Activities:			
– Net (gain) on sale of assets		0	(11)
Cash Flow from Operating Activities		513	349
3. Accumulated Funds			
Accumulated funds as at 1 July 2000		2,185	1,663
Net surplus/(deficit) for the year before transfer from Litigation Fund		(181)	127
Transfer from Litigation Fund	4	(410)	395
Net surplus/(deficit) for the year after transfer from Litigation Fund		(591)	522
Accumulated Funds as at 30 June 2001		1,594	2,185
4. Litigation Fund			
Balance at 1 July 2000		1,271	1,666
Transfer from/(to) Accumulated Funds	3	410	(395)
Balance as at 30 June 2001		1,681	1,271

This fund was established to provide funds for major litigation activities. The Commission has an investment balance that equates to the balance in the litigation fund.

	Notes	2001 \$000	2000 \$000
5. Bank			
Included in this figure is a Trust Account			
Trust Account Balance as at 1 July 2000		1	1
Penalties Received		1,557	3,009
Penalties Paid to:			
– Ministry of Commerce		1,557	3,009
– Others		1	0
Trust Account Balance as at 30 June 2001		0	1
Court imposed compensation awards and pecuniary penalties imposed under the Commerce Act are paid into the Commission's Trust Account. These amounts are then paid to the Crown through the Ministry of Economic Development.			
6. Fixed Assets			
<i>Computers and Software</i>			
Cost		1,376	1,100
Accumulated Depreciation		1,101	885
Net Book Value		275	215
<i>Furniture and Fittings</i>			
Cost		621	580
Accumulated Depreciation		571	543
Net Book Value		50	37
<i>Leasehold Improvements</i>			
Cost		566	566
Accumulated Depreciation		518	468
Net Book Value		48	98
<i>Motor Vehicles</i>			
Cost		40	40
Accumulated Depreciation		12	4
Net Book Value		28	36
<i>Office and Telephone Equipment</i>			
Cost		378	364
Accumulated Depreciation		338	306
Net Book Value		40	58
<i>Total Assets</i>			
Cost		2,981	2,650
Accumulated Depreciation		2,540	2,206
Net Book Value		441	444

NOTES TO THE FINANCIAL STATEMENTS continued

Notes	2001 \$000	2000 \$000
7. Accounts Payable and Accruals		
Trade creditors	132	191
Employee entitlements	260	242
Other creditors and accruals	714	385
	1,106	818
8. Commitments		
Operating Lease Commitments		
Lease Commitments under non-cancellable operating leases:		
– Not later than one year	570	591
– Later than one year and not later than two years	46	591
– Later than two years and not later than five years	6	642
– Later than five years	0	0
Total Commitments	622	1,824

9. Contingent Liabilities

As at 30 June 2001 there were no contingent liabilities (2000 Nil).

10. Financial Instruments

Credit risk

Financial instruments, which potentially subject the Commerce Commission to risk, consist of cash and bank, short-term deposits and accounts receivable. The Commerce Commission invests funds only with registered banks with satisfactory credit ratings.

Concentration of credit risk

The Commerce Commission is not exposed to any concentrations of credit risk.

Fair values

There were no differences between the fair value and carrying amounts of financial instruments as at 30 June 2001.

Credit facilities

The Commerce Commission did not have bank overdraft facilities as at 30 June 2001. (2000 Nil).

The Commerce Commission has the following letters of credit with the Bank of New Zealand:

– Business Visa	\$8,000
– Cheque Encashment (payroll facility)	\$160,000

11. Employees Remuneration

The number of employees who received remuneration and other benefits of \$100,000 or more per annum, shown in \$10,000 brackets.

<i>Dollars in thousands</i>	2001	2000
100- 110		One
110- 120	One	
120- 130		One
160- 170	One	

12. Commissioners' Remuneration

		2001		2000	
		Daily		Daily	
		Total	Rate	Total	Rate
		(\$)	(\$)	(\$)	(\$)
M J Belgrave	Chair	181,307	1,076	99,425	1,025 <i>(appointed August 1999)</i>
M N Berry	Deputy Chair	205,130	934	153,146	890
K M Brown	Commissioner	-	-	102,295	850
E M Coutts	Commissioner	-	-	90,701	850
E C Harrison	Commissioner	39,394	892	88,387	850 <i>(resigned January 2001)</i>
P R Rebstock	Commissioner	129,786	892	115,351	850
P J Taylor	Commissioner	27,653	892	-	- <i>(appointed February 2001)</i>
D R Bates	Commissioner	16,502	892	-	- <i>(appointed April 2001)</i>
D F Curtin	Associate	21,854	892	-	- <i>(appointed January 2001)</i>
	Commissioner				
D M Gilling	Associate	18,286	892	-	- <i>(appointed January 2001)</i>
	Commissioner				

Commissioners are paid a daily rate of remuneration set by the Higher Salaries Commission. The total fees paid reflect the time spent on Commission business.

13. Related Party Information

The Commerce Commission is a Crown entity. The Government is the Commission's major source of revenue. The Commission has entered into a number of transactions with other public sector entities on an arm's-length basis. These transactions are not considered to be related party transactions.

14. Foreign Exchange Risk

The Commerce Commission does not undertake any foreign exchange transactions.

Interest Rate Risk

The interest rate risk is limited due to the short-term nature of the investments.

15. Indemnity – Provided by the Crown

Under a Deed of Indemnity dated 12 November 1991, the Minister of Finance agreed to indemnify the Commission when it gives an undertaking as to damages when seeking injunctions under the Fair Trading and Commerce Acts, and subsequently the Court orders the Commission to pay damages. The sum payable under this Deed is limited to an amount up to \$40,000,000 per case taken to Court. The Commerce Act was amended with effect from 26 May 2001 by Section 88A, which removed the need for the Commission to provide undertakings as to damages when seeking an interim injunction in respect of cases under the Commerce Act 1986.

Statement of Service Performance

Quality Statement

The Commission has established a number of quality review stages as part of the overall procedures it follows in meeting its output delivery obligations.

These stages include peer review, manager review, and review by a sub-committee of Commissioners before being approved by the full Commission or a Division of Commissioners.

Critical performance indicators provide measures of quantity and quality, including timeliness.

Cost of Service Performance

	Actual 2001 \$000	Final Budget 2001 \$000	Original Budget 2001 \$000	Actual 2000 \$000
Vote: Commerce				
Output 1: Commerce Act and EIRA Enforcement	3,539	3,731	3,731	3,866
Output 2: Commerce Act and EIRA Adjudication	1,170	579	515	492
Output 3: Fair Trading Act Enforcement	3,295	3,384	3,384	3,146
Output 4: Commerce Act Price Monitoring and Control	23	175	175	288
Vote: Energy				
Output 5: Monitoring and Price Control of Electricity Line Businesses	524	524	-	-
Vote: Communications				
Output 6: Telecommunications Commissioner	90	89	-	-
	8,641	8,482	7,805	7,792

Critical Performance Indicators

Commerce Act and Electricity Industry Reform Act Enforcement

Pro-active Enforcement

<i>Performance Measures</i>	<i>Full Year Standard</i>	<i>Full Year Actual</i>	<i>Variance – number</i>	<i>Variance – %</i>	<i>Prior Year Actual</i>
Quantity					
Number of complaints and enquiries	2,400	2,081	319	13%	1,776
Number of non-notified business acquisitions	280	239	41	15%	254
Number of pro-active investigations commenced	12	9	3	25%	21
Quality					
Average complaint assessment time	3 days	2.4 days	0.6 days	20%	3.6 days

Investigations

<i>Performance Measures</i>	<i>Full Year Standard</i>	<i>Full Year Actual</i>	<i>Variance – number</i>	<i>Variance – %</i>	<i>Prior Year Actual</i>
Quantity					
Number of investigations of restrictive trade practices	60	50	10	17%	55
Number of investigations of non-notified business acquisitions	60	45	15	25%	35
Quality					
Average time to complete a restrictive trade practice investigation	100 days	165 days	65	65%	147 days
Average time to complete a business acquisition investigation	100 days	138 days	38	38%	147 days
Investigations meeting relevant quality standard	100%	100%	-	-	N/a

CRITICAL PERFORMANCE INDICATORS continued

Resolution of Investigations

<i>Performance Measures</i>	<i>Full Year Standard</i>	<i>Full Year Actual</i>	<i>Variance – number</i>	<i>Variance – %</i>	<i>Prior Year Actual</i>
Quantity					
Number of warnings issued	15	8	7	47%	8
Number of settlements agreed	3	2	1	33%	3
Quality					
Proportion of investigations resulting in enforcement action	37%	26%	11%	30%	22%

Commerce Act and Electricity Industry Reform Act Adjudication

Applications

<i>Performance Measures</i>	<i>Full Year Standard</i>	<i>Full Year Actual</i>	<i>Variance – number</i>	<i>Variance – %</i>	<i>Prior Year Actual</i>
Quantity					
Number of clearance applications received	30	42	12	40%	25
Number of restrictive trade practice authorisation applications received	2	0	2	100%	0
Number of business acquisition authorisation applications received	2	1	1	50%	1
Number of EIR Act exemption applications received	2	3	1	50%	6
Quality					
Adjudication decisions made within statutory time periods	100%	100%	-	-	100%

Fair Trading Act Enforcement

Pro-active Enforcement

<i>Performance Measures</i>	<i>Full Year Standard</i>	<i>Full Year Actual</i>	<i>Variance – number</i>	<i>Variance – %</i>	<i>Prior Year Actual</i>
Quantity					
Number of complaints and enquiries received	12,000	12,748	748	6 %	10,477
Number of inspections	40	74	34	85%	449
Number of major trader reviews and meetings	30	14	16	53%	34
Number of trade association reviews and meetings	4	3	1	25%	25
Number of town visits	4	1	3	75%	4
Quality					
Average complaint assessment time	1.5 days	1.8 days	0.3 days	20%	1.7 days

Investigations

<i>Performance Measures</i>	<i>Full Year Standard</i>	<i>Full Year Actual</i>	<i>Variance – number</i>	<i>Variance – %</i>	<i>Prior Year Actual</i>
Quantity					
Number of investigations	350	396	46	13%	466
Number of general investigations	300	360	60	20%	286
Number of product safety investigations	50	36	14	28%	180
Quality					
Proportion of investigations resulting in enforcement action	67%	68%	1%	1%	72%
Average time to complete an investigation	50 days	55 days	5 days	10%	36 days
Investigations meeting relevant quality standard	100%	N/a	-	-	N/a

CRITICAL PERFORMANCE INDICATORS continued

Resolution of Investigations

<i>Performance Measures</i>	<i>Full Year Standard</i>	<i>Full Year Actual</i>	<i>Variance – number</i>	<i>Variance – %</i>	<i>Prior Year Actual</i>
Quantity					
Number of warnings issued	150	181	31	21%	262
Number of settlements agreed	50	48	2	4%	43
Number of prosecutions approved	35	37	2	6%	31

Economic Regulation

Airports

<i>Performance Measures</i>	<i>Full Year Standard</i>	<i>Full Year Actual</i>	<i>Variance – number</i>	<i>Variance – %</i>	<i>Prior Year Actual</i>
Quantity					
Price control enquiries completed	N/a*	N/a*	-	-	N/a
Preparatory report on price control regime	1	0	1	100%	1
Quality					
Reporting meets Commission's quality standards	N/a*	N/a*	-	-	100%

* The Commission is required to complete its price control study of airfield activities and report to the Government by 1 August 2002.

Litigation

Commerce Act and Electricity Industry Reform Act Litigation

<i>Performance Measures</i>	<i>Full Year Standard</i>	<i>Full Year Actual</i>	<i>Variance – number</i>	<i>Variance – %</i>	<i>Prior Year Actual</i>
Quantity					
Number of cases and appeals filed (enforcement)	4	4	-	-	3
Quality					
Time between approval to proceed and filing – complex	42 days	48.5 days	6.5 days	15%	6 days
Time between approval to proceed and filing – routine	28 days	N/a	-	-	46 days
Judgements with no adverse comment on Commission's case	100%	75%	1	25%	100%
Decisions upheld on appeal (adjudication)	100%	67%	1	33%	N/a

Fair Trading Act Litigation

<i>Performance Measures</i>	<i>Full Year Standard</i>	<i>Full Year Actual</i>	<i>Variance – number</i>	<i>Variance – %</i>	<i>Prior Year Actual</i>
Quantity					
Number of cases and appeals filed	35	31	4	11%	31
Time between approval to proceed and filing – complex	21 days	43 days	22 days	105%	21 days
Time between approval to proceed and filing – routine	14 days	32 days	18 days	129%	21 days
Judgments with no adverse comment on Commission's case	100%	100%	-	-	93%

CRITICAL PERFORMANCE INDICATORS continued

Corporate Services

<i>Performance Measures</i>	<i>Full Year Standard</i>	<i>Full Year Actual</i>	<i>Variance – number</i>	<i>Variance – %</i>	<i>Prior Year Actual</i>
Accountability					
Annual Plan published by 31 July	Yes	Yes	-	-	Yes
EEO Plan Published by 31 July	Yes	Yes	-	-	Yes
Annual Report for previous year completed by 31 October	Yes	Yes	-	-	Yes
Financial, output and activity reporting					
Monthly financial statements available within seven days of end of month	100%	92%	1	8%	75%
Quarterly reports available within 28 days of end of quarter	100%	50%	2	50%	100%
Information requests from the Ministry of Economic Development met within 14 days	100%	100%	-	-	100%
Internal reports completed within agreed timeframes	100%	100%	-	-	100%
Human Resources and Health and Safety					
Performance reviews for previous year completed by 31 July	100%	100%	-	-	90%
Conflict of interest disclosures completed by staff by 31 July	100%	100%	-	-	N/a
Annual health and safety audit completed	Yes	Yes	-	-	Yes
Time lost to workplace accidents	0 days	20 days	20	100%	0 days

Corporate Services continued

<i>Performance Measures</i>	<i>Full Year Standard</i>	<i>Full Year Actual</i>	<i>Variance – number</i>	<i>Variance – %</i>	<i>Prior Year Actual</i>
Information Technology					
Availability of computer systems during normal business hours	100%	99%	-	1%	99%
Communications					
Issues of <i>Compliance</i> published	4	2	2	50%	4
Issues of <i>Fair's Fair</i> published	4	4	-	-	4
Speeches and Presentations	45	56	11	24%	51
Media statements needing no correction	100%	100%	-	-	N/a

Report of the Audit Office

To the Readers of the Financial Statements of the Commerce Commission for the year end 30 June 2001

We have audited the financial statements on pages 43 to 61. The financial statements provide information about the past financial and service performance of the Commerce Commission and its financial position as at 30 June 2001. This information is stated in accordance with the accounting policies set out on pages 47 to 49.

Responsibilities of the Commission

The Public Finance Act 1989, the Commerce Act 1986 and the Fair Trading Act 1986 require the Commission to prepare financial statements in accordance with generally accepted accounting practice which fairly reflect the financial position of the Commerce Commission as at 30 June 2001, the results of its operations and cash flows and the service performance achievements for the year ended 30 June 2001.

Auditor's responsibilities

Section 43(1) of the Public Finance Act 1989 requires the Audit Office to audit the financial statements presented by the Commission. It is the responsibility of the Audit Office to express an independent opinion on the financial statements and report its opinion to you.

The Controller and Auditor-General has appointed H C Lim, of Audit New Zealand, to undertake the audit.

Basis of opinion

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

- the significant estimates and judgements made by the Commission in the preparation of the financial statements; and
- whether the accounting policies are appropriate to the Commerce Commission's circumstances, consistently applied and adequately disclosed.

We conducted our audit in accordance with generally accepted auditing standards, including the Auditing Standards issued by the Institute of Chartered Accountants of New Zealand. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming our opinion, we also evaluated the overall adequacy of the presentation of information in the financial statements.

Other than in our capacity as auditor acting on behalf of the Controller and Auditor-General, we have no relationship with or interests in the Commerce Commission.

Unqualified opinion

We have obtained all the information and explanations we have required.

In our opinion the financial statements of the Commerce Commission on pages 43 to 61.

- comply with generally accepted accounting practice; and
- fairly reflect:
 - the financial position as at 30 June 2001;
 - the results of its operations and cash flows for the year ended on that date; and
 - the service performance achievements in relation to the performance targets and other measures adopted for the year ended on that date.

Our audit was completed on 25 October 2001 and our unqualified opinion is expressed as at that date.



H C Lim

Audit New Zealand

On behalf of the Controller and Auditor-General

Wellington, New Zealand

APPENDIX 1 – Adjudication Decisions

All adjudication decisions made in 2000/2001 related to business acquisition clearances, except for decisions 402 (EIR Act exemption) and 410 (business acquisition authorisation).

Decision Number	Parties	Outcome
397	The acquisition by Solid Energy New Zealand Limited of the domestic retail customer base of Francis Mining Limited	Cleared 4/08/2000
398	Glaxo Wellcome and SmithKline Beecham to merge, by way of a scheme of arrangement between the companies	Cleared (with divestment) 1/09/2000
399	The Southern Cross Medical Care Society (or a direct or indirect subsidiary) to acquire all the issued share capital in Aetna Health (NZ) Limited	Declined 25/08/2000
400	The acquisition by Reindeer Investments Pty Ltd, or any of its interconnected bodies corporate, of a 51% equity interest in the business of Harding Licensing Systems	Cleared 17/08/2000
401	The acquisition by Montana Group (NZ) Limited of up to 100% of Corban Wines Limited	Cleared 6/09/2000
402	Tower Limited and two of its subsidiaries, under section 81 of the EIR Act, to be exempt from the application of section 17 of the EIR Act.	Exempted 18/01/2001
403	The acquisition by the Cremation Society of Canterbury Limited of the remaining 55.14% in Harewood Memorial Gardens & Crematorium Limited	Cleared 8/09/2000
404	The Southern Cross Medical Care Society (or a direct or indirect subsidiary) to acquire all the issued share capital in Aetna Health (NZ) Limited	Declined 13/09/2000
405	Etex Holding BV for the indirect acquisition of Keyplas Limited	Cleared 11/09/2000
406	The acquisition by Lion Nathan Limited through its wholly owned subsidiary Lion Nathan Enterprises Limited, of all of the shares of Montana Group (NZ) Limited	Cleared 8/12/2000
407	The Southern Cross Medical Care Society (or a direct or indirect subsidiary) to acquire all the issued share capital in Aetna Health (NZ) Limited	Cleared (with divestment) 13/10/2000

Decision Number	Parties	Outcome
408	Shell Exploration Company BV (or an interconnected body corporate) to acquire 100% of the shares of Fletcher Challenge Limited associated with its Energy Division and 100% of the shares in Zurich Holdings (No.7) Limited, the holding company for Fletcher Challenge Energy	Declined 13/10/2000
409	The acquisition by Portacom New Zealand Limited of the business assets of Portable Buildings Limited	Cleared 2/11/2000
410	The acquisition by Ruapehu Alpine Lifts Limited of the assets and operations of Turoa Ski Resorts Limited (in receivership).	Authorised 14/11/2000
411	Shell Overseas Holdings Limited sought clearance to acquire 100% of the shares of Fletcher Challenge Limited associated with Fletcher Challenge Energy	Cleared (with divestment) 17/11/2000
412	The acquisition by James Hardie New Zealand Limited of the assets of Long International Limited	Cleared 15/12/2000
413	The acquisition by Vodafone Mobile NZ Limited of Radio Frequency Spectrum management rights and licences in the 2GHz band being auctioned by the New Zealand Government	Cleared 8/12/2000
414	The acquisition by BOC Gases New Zealand Limited of various business assets of ASCO Carbon Dioxide Limited	Declined 2/02/2001
415	Paperlinx Limited to acquire the remaining 58% of the shares in Spicers Paper Limited	Cleared 21/12/2000
416	The acquisition by Milburn New Zealand Limited of 100% of the shares of Isaac Concrete Limited	Cleared 26/01/2001
417	Zuellig Pharma Limited to acquire all of the assets of Sigma New Zealand Limited	Cleared 2/02/2001
418	The acquisition by P&O Cold Logistics (NZ) Ltd of all or some of the business and assets of Eskimo Logistics Group Limited and its wholly owned subsidiary ELG Properties Limited but excluding Eskimo's Perishables Air Freight Forwarding business	Cleared 16/02/2001
419	The acquisition by Armourguard Security Limited of all the shares in Inacro Limited	Cleared 22/02/2001
420	Television and Media Services Limited to acquire all the issued capital of Media Entertainment Group Limited	Cleared 6/04/2001
421	The acquisition by Fletcher Steel Limited of up to 100% of the shares in Steel And Tube Holdings Limited	Cleared 21/03/2001

APPENDIX 1 – ADJUDICATION DECISIONS *continued*

Decision Number	Parties	Outcome
422	The acquisition by Pacific Dunlop Holdings (NZ) Ltd of certain businesses and assets from Sara Lee Apparel (NZ) Ltd	Cleared 13/03/2001
423	The acquisition by Telecom New Zealand Limited of Radio Frequency Spectrum management rights and licenses in the 2GHz band auctioned by the New Zealand Government	Cleared 15/03/2001
424	The acquisition by Carter Holt Harvey Limited of the business assets of Norske Skogindustrier ASA	Cleared 21/03/2001
427	The acquisition by Steel And Tube Limited of up to 100% of the shares of Fletcher Steel Limited	Cleared 27/04/2001
428	The acquisition by Mainland Products Limited of up to 100% of the shares or assets of Southern Fresh Milk Company Limited	Declined 18/05/2001
429	The acquisition by McCain Foods (NZ) Ltd of Heinz Wattie's Limited	Cleared 11/05/2001
430	The acquisition by Fletcher Building Products Limited of the business assets of Carter Holt Harvey Doors	Cleared 31/05/2001
431	Nelson Pine Industries Limited to acquire up to 100% of the shares in Rayonier MDF New Zealand	Cleared 31/05/2001
432	The acquisition by Solid Energy New Zealand Ltd of Todd Coal Energy	Cleared 28/06/2001
433	The acquisition by Howard Smith Limited of up to 100% of the shares in OPSM Protector Limited	Cleared 28/06/2001
434	Caltex New Zealand Limited to acquire up to 100% of the shares in Challenge Petroleum Limited	Cleared (with divestment) 28/06/2001
435	Natural Gas Corporation Holdings Limited to acquire the assets owned by AGL NZ Energy Limited	Cleared 8/06/2001
436	The acquisition by NEWCO of the assets carried on by Merino New Zealand Limited and the procurement carried on by Wrightson Limited	Cleared 7/06/2001
437	The acquisition by Computershare Registry Services Limited to acquire the shares or assets of BT Portfolio Services (NZ) Limited	Cleared 28/06/2001

APPENDIX 2 – Fair Trading Litigation

The following lists set out key information about the parties and the nature of the Fair Trading Act cases heard during the year, and the cases before the courts at 30 June 2001.

Fair Trading Act Cases Heard during 2000/2001

Case	Penalty
Cases with Penalties in excess of \$20,000	
<i>Weedons Poultry</i> – for putting “free range” stickers on egg packs when they were not free range eggs	Fined \$35,000 with court costs
<i>Enterprise Motor Group</i> – for advertising a \$4000 trade-in on all vehicles regardless of conditions, which was not paid in all cases	Fined \$25,000
<i>1999 Gateway Pty Limited</i> – for misrepresentations in computer advertisements	Fined \$21,000
Cases with Penalties between \$10,000 and \$20,000	
<i>ABC Motor Group</i> – for advertising motor vehicles at \$6,000 off their normal price or \$6,000 minimum trade-in, with small print that stated the special terms did not apply to pictured vehicles	Fined \$13,500
<i>Mitre 10</i> – for nationwide advertising of goods at reduced prices when the advertised price was the normal selling price	Fined \$13,500
<i>Signature Security Systems</i> – for advertising fully monitored alarms and not disclosing either additional costs or that the alarm hardware was leased only	Fined \$10,500
Cases with Penalties between \$5,000 and \$10,000	
<i>Avery Motors Ltd</i> – for advertising discounted car prices that did not apply to the cars pictured in the advertisements	Fined \$8,000
<i>Enterprise Motor Group (Panmure) Ltd</i> – for balloon payments not disclosed in print car advertisements	Fined \$8,000
<i>Freedom Mobile</i> – for advertising that prepaid cell-phone calls from 7.00pm to midnight would be 5c per minute when calls were charged at normal rates due to technical difficulties	Fined \$8,000
<i>Harvey Norman</i> – for advertising a Compaq Presario 1245 computer as having an ‘HPA active matrix display’ when it did not	Fined \$7,500
<i>Cogent Communications Ltd</i> – for advertising on a website prepaid phones without stating that the phones must have a minimum \$20 top up every 60 days and that if they are not topped up every 6 months the phone number is lost	Fined \$7,000

APPENDIX 2 – FAIR TRADING LITIGATION continued

Case	Penalty
<i>Greymouth Cars</i> – for advertising cars for sale at ‘Wholesale Direct’ special with a free two year warranty but the free two year warranty was not available for cars sold at wholesale price	Fined \$7,000
<i>Christchurch Auctions</i> – for advertising part leather/part PVC leatherette lounge suites as leather	Fined \$6,500
<i>Homeworld Tauranga</i> – for advertising part leather/leatherette lounge suites as leather	Fined \$6,500 with court and solicitors’ costs
<i>Stevens Ford Motors Ltd</i> – for advertising discounted car prices that did not apply to the cars pictured in the advertisements	Fined \$6,000
<i>ANZ Banking Group (NZ) Ltd</i> – for advertising an interest rate of 8.40% p.a. which was incorrect as certain fees were added to the cost of the loan	Fined \$5,000
<i>Haven’s of Nelson</i> – for advertising interest free finance on all of their cars when there were undisclosed conditions	Fined \$5,000
<i>Redpaths International Ltd</i> – for an interest free finance promotion that failed to adequately explain its terms and for purporting to contract out of the Consumer Guarantees Act	Fined \$5,000
Cases with Penalties up to \$5,000	
<i>ASB Bank Ltd</i> – for advertising in prominent print a 7.1% interest rate that was corrected in very small print at the bottom of the advertisement by adding a monthly loan fee, ASB insurance and a 1% fee	Fined \$4,000
<i>Chisholm Livestock</i> – for falsifying stock invoices	Fined \$4,000 with court costs
<i>Deco Fashion Limited</i> – for supplying two teddy bears that did not comply with NZS 5822:1992	Fined \$4,000 with court and solicitors’ costs
<i>Freedom Air</i> – for use of small print in advertisements which failed to disclose that air fares to Australia were not available at the advertised prices	Fined \$4,000
<i>Orewa Property Shop Limited</i> – for advertising properties for sale in newspapers with photographs of beach views, when those views were not obtainable from the properties	Fined \$3,600
<i>Y2000 Websales</i> – for creating a website of an existing company without that company’s approval and then attempting to sell that website to the company	Fined \$3,600
<i>Landseer Motor Investments Ltd trading as Donnithorne Simms</i> – for not adequately disclosing the cost of the final hire purchase payment in car advertisements	Fined \$3,000 with court costs

Case	Penalty
<i>Gumkhor Clothing Stall</i> – for selling clothes without the required country of origin and care labels	Fined \$1,000
<i>Michael Hill Jeweller</i> – for advertising Cartier watches on its website when the watches were no longer available	Fined \$1,000
<i>United Travel</i> – for advertising cheap air fares without disclosing special conditions that included paying for several nights accommodation to get the cheap fare	Fined \$500

Fair Trading Act Cases before the Courts at 30 June 2001

Case	Alleged Breach
<i>Alpha Club New Zealand Ltd</i> and 12 individuals	- for promoting a pyramid scheme
<i>Bionax</i>	- for advertising a product called Cellasene as being able to reduce cellulite
<i>Browns of Barrington Ltd</i>	- for selling surimi as scallops
<i>Cut Price Rentals</i>	- for advertising in the Christchurch 1999 Yellow Pages car hire from \$25 per day and not disclosing conditions
<i>Daewoo Direct</i>	- for advertising motor vehicles manufactured in 1997 as 'new' or as 1999 models
<i>Edward Robin Field</i>	- for promoting World Net, which involved four different pyramid schemes
<i>Fastlane Auto Limited</i>	- for advertising cars for sale with finance available for three years at \$49.00 per week when finance was only available over two years at higher cost
<i>Francais Imports Ltd</i> and its directors <i>Michael Knight</i> and <i>Warren Lee</i>	- for selling New Zealand manufactured cosmetics as discounted European cosmetics
<i>Garden of Eden</i>	- for produce described as being organically grown when most of the produce was not organically grown
<i>John Monk Trading Co Ltd</i>	- for importing plastic toy tambourines that did not comply with the Toy Safety Standard
<i>Julian's Electrical and Energy Ltd</i>	- for marketing Powermax, which is a magnetic water treatment system, with misleading claims as to its effectiveness

APPENDIX 2 – FAIR TRADING LITIGATION *continued*

Case	Alleged Breach
<i>Leisure Rentals Ltd</i>	- for advertising in Christchurch Yellow Pages rental car hire 'from \$19 per day' and not disclosing conditions.
<i>Maximus Intermediaries Ltd</i> and 2 individuals	- for promoting 5 different pyramid schemes
<i>Morris Realty Ltd</i>	- for advertising a house for sale at 'buyer enquiry range \$70,000 to \$98,000' when the vendor would not consider offers under \$93,000
<i>Myriad Marketing Limited</i>	- for distributing a toy baby bottle that failed the product safety standards
<i>Olsen-Eversen Ltd</i>	- for an advertisement that depicted a view that could not be seen from the property for sale
<i>Pacific Dunlop Holdings Limited</i> trading as <i>RepcO</i>	- for failing to disclose that advertised mobile phones were reconditioned models, and with misleading terms and conditions
<i>Sails Realty</i>	- for advertising properties for sale with photographs of views that were not in fact available from the properties
<i>Star Corporation Limited</i>	- for representing that their business directory would be available from The Warehouse and Cellphone City when only the advertisers received the directory
<i>WorldNet, Focus International, Dragon Slayer and Rapido</i> and three individuals	- for promoting four different pyramid schemes
<i>Z-Free</i>	- for advertising free Internet access when consumers who lived outside local free calling areas had to pay toll charges to access the service

APPENDIX 3 – 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 into 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)
- *Practice Note 2* – Informal Approach and Supply of Information to Commission: Practice and Procedures (October 1997)
- *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), will be 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

APPENDIX 3 – PUBLICATIONS continued

- *Safety Standards for Bicycles* (August 1995), is being revised, 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)