

# COMMUNIQUE



## Greenwashing in the spotlight

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Caring for the environment – it is a noble and worthy goal. But how many businesses really are what they claim to be when they say they are carbon neutral, eco-friendly, environmentally sustainable, or even just “green”? The Commerce Commission will be providing some clarity for businesses and consumers around sustainability claims as part of a new key focus.

“The central premise of the Fair Trading Act is ensuring consumers can make informed choices about products and services, based on accurate information,” says the Director of Fair Trading Adrian Sparrow.

“We have decided to add sustainability claims to our focus areas over the coming three years because our monitoring and surveillance, as well as international experience, indicates this is an area of growing concern.”

The Commission is working with sister organisations overseas to compare the types of green claims being made in different countries. For example, the US Federal Trade Commission is undertaking a review of its environmental marketing guidelines, and the Australian Competition and Consumer Commission is monitoring the effect of its enforcement action against Goodyear Tyres, GM Holden Limited, and De Longhi.

In the Goodyear Tyres case the company is offering consumers partial refunds as part of court-enforceable undertakings, after claiming its Eagle LS2000 tyre was environmentally friendly. Goodyear acknowledged it could not substantiate the environmental claims.

A quick scan of products on the supermarket shelves and advertising on TV here in New Zealand quickly illustrates the burgeoning of sustainability claims. “Consumers are being influenced to purchase products or services by these claims. We want to ensure consumers are being provided with accurate information and are not being misled,” says Mr Sparrow.

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## Businesses risk their brand reputation if they make misleading green claims.

“The Commission is signalling early that it intends to take a no-nonsense approach to this, and I would encourage all people in business who make sustainability claims to check the Fair Trading Act and satisfy themselves that they are not breaching it.”

“Businesses risk their brand reputation if they make misleading green claims, which can affect consumer confidence in their products or services,” says Mr Sparrow. He says businesses need to be specific so that consumers can verify claims, and they should be prepared and able to justify the claims.

The Commission has already begun to receive complaints about businesses making sustainability claims that may be misleading. In May the Commission warned Wellington Combined Taxi Company Limited that claims it was making on its website may be misleading under the Fair Trading Act. The company agreed to change the claims, which related to the carbon emissions of its fleet of cars.

The Commission has two other current investigations in this area.

“We will publicise any cases we prosecute and any warnings that we issue, as a tool to educate businesses about their obligations. But we also expect consumers to take a more active interest in what it is they are purchasing,” says Mr Sparrow.

“If a product has a logo purporting some kind of sustainability endorsement, check it out. Ask the person selling the product or service to verify the claims. And if you doubt the claims, don’t buy the product.”

But Mr Sparrow says that often it can be hard for the average consumer to verify such claims. “We’ve seen this also in the area of health and nutrition claims. Without access to scientific testing consumers simply have to rely on the labels and advertising. This is why the truthfulness of such claims is so important.”

Businesses wanting more information about the Fair Trading Act can download a copy of ‘The Fair Trading Act – A General Guide’ from the Commission’s website [www.comcom.govt.nz](http://www.comcom.govt.nz) under Fair Trading – Fair Trading Publications.

### List of Terms/Abbreviations

Commerce Commission	Commission
Legislation enforced by the Commerce Commission	
Commerce Act 1986	Commerce Act
Credit Contracts and Consumer Finance Act 2003	CCCF Act
Dairy Industry Restructuring Act 2001	DIR Act
Electricity Industry Reform Act 1998	EIR Act
Fair Trading Act 1986	Fair Trading Act
Telecommunications Act 2001	Telecommunications Act

# Meet Adrian Sparrow – the man leading the charge in Fair Trading



*Adrian Sparrow,  
Director of Fair Trading*

Adrian Sparrow is a man on a mission. As the Director of Fair Trading at the Commerce Commission he is determined to use every tool at his disposal to ensure traders and consumers understand their obligations and rights under the Fair Trading Act. And given he has experience in a combat martial art and has gone nose-to-nose with triads, it would not be wise to underestimate him.

Adrian joined the Commission in December 2007, filling the shoes of Deborah Battell, who moved into the role of Director, of Competition Branch. After his first six months in the job *Communique* checks in on how he is going.

## WHAT ATTRACTED YOU TO THE ROLE OF DIRECTOR OF FAIR TRADING?

I was initially attracted to the role because it is one in which I can make a difference. I was also motivated by the very high standing in which the Commission is held, and the knowledge that it has earned this high standing through high quality enforcement work. It is also an opportunity for me to get back to my roots to a certain extent, as the roles I have most enjoyed in the past have been as an investigator, both as a Detective Inspector in Hong Kong and with Income Support in the area of Benefit Crime.

## WHAT PROGRESS HAVE YOU MADE SINCE YOU STARTED IN THE ROLE?

I was fortunate that Deborah Battell left a good team, which was already performing at a very high level. So I have been focusing on consolidating what she left, and setting the platform for what we will be doing over the next five years.

## WHAT ARE YOUR TOP PRIORITIES FOR 2008/2009?

The Fair Trading Branch will be focusing on magnifying the impact of what we do. This will in part involve making the most of the educative opportunities that arise from enforcement actions. There is always a lesson for other traders from the successful cases we take, and if traders can learn from those cases we will achieve a greater impact.

We will also be creating centres of excellence in each office, drawing on and enabling growth of expertise in particular fields. The Auckland office is already a centre of excellence in enforcement of the Credit Contracts and Consumer Finance Act. We'd like to extend that across other financial areas, particularly retirement products. The Wellington office will develop a centre of excellence around sustainability claims. And the Christchurch office is developing a focus as a centre of excellence in telecommunications issues.

## WHAT HAS BEEN THE HIGHLIGHT OF YOUR CAREER SO FAR?

My career has taken me to many interesting places. A highlight though, would be surviving a triad fight when I was a Detective Inspector in Hong Kong. In a similar vein, dealing with wharfies while running a stevedoring company was also an interesting challenge. And of course, now I have a new challenge as Director of Fair Trading, which I hope will become a new highlight.

## WHAT DO YOU DO TO MAINTAIN A WORK/LIFE BALANCE?

Having hung up my rugby referee's whistle I've taken up the Korean martial art of Hapkido. I also moonlight as weekend taxi driver for my children.

*Our next issue of Communique will feature a profile on the new Chief Executive Nicholas Hill.*

## Fair Trading explained

If your organisation would like to hear more about our enforcement of the Fair Trading Act and Credit Contracts and Consumer Finance Act the Commerce Commission has experts who may be available to speak at conferences and events.

Contact the Communications team at [communications@comcom.govt.nz](mailto:communications@comcom.govt.nz) or on 04 924 3708.

# Consultation on new approach to mergers and acquisitions

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The Commission aims to make robust decisions on clearance applications as quickly as possible in order to improve business certainty.

A consultation process is underway to seek feedback on process guidelines and a revised application form for businesses seeking clearance for a merger or acquisition.

The Commerce Commission regards the merger and acquisition clearance regime as a top priority work area, because of its importance to the structure of the New Zealand economy.

The merger and acquisition clearance regime is voluntary. It is administered by the Commission under section 47 of the Commerce Act which prohibits the acquisition of assets of a business or shares if that acquisition would have, or would be likely to have, the effect of substantially lessening competition in a market.

Competition Branch Director Deborah Battell says, “Clearance applications are becoming more complex, and often as a result, more time-consuming. This is due to the complexity of the nature of the markets, the number of different markets in one application, and, often a reduction in competitors from three to two or from two to one.”

She says that the trend towards more complex applications is international.

The Commission has carried out an external review of its approach to assessing clearance applications and is now moving to expedite clearances by streamlining the process. An improved methodology and new process guidelines for submissions have been developed. A revised application form has also been developed to make it clearer what information the Commission requires and to generally simplify the process for clearance applicants.

“The Commission aims to make robust decisions on clearance applications as quickly as possible in order to improve business certainty. These guidelines have been produced to help achieve robust and timely decisions by providing information about the process, the kinds of information that the Commission requires and indicative timelines,” says Ms Battell.

The draft process guidelines and revised application form can be viewed at [www.comcom.govt.nz](http://www.comcom.govt.nz) under Business Competition – Mergers and Acquisitions.

# Commerce Commission conference to focus on Next Generation Networks

In March 2008, Telecommunications Commissioner Dr Ross Patterson announced the commencement of a study into Next Generation Networks (NGN).

The study is focusing on raising the level of understanding of industry and the wider community of key technological developments that will emerge during the next five years, and their impact on the commercial and competitive environment for telecommunications services.

Dr Patterson says, "The overall aim of the study is to facilitate a common understanding of the technical, commercial and regulatory issues and challenges of Next Generation Networks. The study is the first under the Commission's new sector monitoring powers. The section 9A powers allow the Commission to take a more strategic view on any Telecommunications issue."

"The Commission is entering into this process with no assumptions about the requirement for, or scope of, likely regulation and will be guided by information and submissions that arise during the process. The response to the study from the industry has been very positive and industry submissions assisted to develop our terms of reference," says Dr Patterson. "In particular, the submissions identified Voice over Internet Protocol (VoIP) as an urgent priority. The submissions also indicated that the study should not focus solely on Telecom's cabinetisation plans and should be technology-neutral," Dr Patterson says.

As well as helping to identify the issues where there is consensus on NGN, and where and how views diverge, the Commission expects that the study will assist in providing a strategic assessment of the likely impact of technological change on market structure and competition in the telecommunications market.

To further explore the issues raised by NGN, the Commission will be hosting an NGN conference at the Langham Hotel Auckland on 26 and 27 February, 2009.

The conference will be open to the public and feature both international and local speakers. Topics covered in the conference will include:

- » International perspectives
- » Internet versus telecommunications model
- » Challenges posed by convergence and transition towards NGN
- » Interest group perspectives
- » Supplier perspectives on different access technologies.

More information on the conference will be available in the near future. Information about the Commission's NGN study, including a consultation questionnaire and the terms of reference for the study, can be found on the Commission's website [www.comcom.govt.nz](http://www.comcom.govt.nz) under Industry Regulation – Telecommunications Inquiries, Reviews and Studies – Next Generation Networks.

To receive more information about the study, provide your views or to be put onto an interest list for the conference, e-mail [ngn@comcom.govt.nz](mailto:ngn@comcom.govt.nz)

## WHAT ARE NEXT GENERATION NETWORKS?

NGN is an attempt to take the best from both the telephony world and the internet world, giving an 'order to the chaos' by keeping the level of complexity low for users while increasing user value. From the internet community standpoint, NGN is in contrast with some of the basic principles of the internet structure, based on a dumb '*cheap and cheerful*' core technology, allowing constant and spontaneous innovation at the edges.

Source: OECD Next Generation Network: Evolution & Policy Considerations, October 2006

# New Project Launched to Promote Regulatory Certainty and Transparency

These principles and guidelines will be used by the Commission in a number of ways, including price controls and defining information disclosure requirements.

The Commerce Commission launched the Regulatory Principles and Guidelines project at the start of the year to further enhance certainty and transparency in the regulation of some energy businesses.

The project will develop economic regulatory principles and guidelines for electricity transmission and distribution and gas distribution businesses. The guidelines will assist the Commission in promoting outcomes comparable to competitive markets in regulated industries where competition does not exist. For regulated businesses this means facing incentives to invest and limiting of excessive returns over time. For consumers this means sharing in efficiency gains, for example, through lower prices.

These principles and guidelines will be used by the Commission in a number of ways, including price controls and defining information disclosure requirements.

While the Commission has commenced this work under its existing powers, the Commerce Amendment Bill 2008 seeks to promote a similar set of guidelines for the Commission to regulate businesses that provide essential services. These are referred to as input methodologies. The Commission will review the scope of the project, should the Bill pass, to ensure that the Commission's work is consistent with any new legislation.

One of the first steps undertaken by the Commission for this project is the release of the Draft Process Paper in May 2008 which outlined the main steps in developing the guidelines. This is available on the Commission's website.

The project has three stages to be performed over the next two years:

- 1) Generic cross-industry economic regulatory principles will be developed. At this stage, the Commission will provide the framework for the regulatory guidelines and methodologies through the regulatory principles;
- 2) Detailed guidelines specific to the cost of capital, valuation of assets, allocation of common costs, taxation, regulatory specifications and pricing principles; and finally
- 3) The application of these guidelines to the regulated industries to develop sector-specific methodologies. These will consist of a set of rules for the application of the guidelines to each regulated sector.

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The discussion paper for stage one of the project will be released this quarter.

Michael Clark, Director of Network Performance Branch, which has responsibility for the project, says “The Commission acknowledges that a fruitful engagement of stakeholders is imperative to the success of the project. Stakeholders are encouraged to have their say through the consultation the Commission will hold for each of the work stages lined up for the project. Consultation will be in the form of discussion papers and submissions, workshops or a formal conference.”

Since the publication of the Draft Process Paper the Commission has decided to also release the Cost of Capital, Taxation and Asset Valuation guidelines. This means that stakeholders will be able to make submissions on all of the interdependencies between the guidelines at the same time.

The Commission initially released draft guidelines for the estimation of the cost of capital October 2005. An expert panel has been providing advice to the Commission since the submissions were received. The new project will now incorporate the Cost of Capital Guidelines (although the Cost of Capital Guidelines will apply to all regulated sectors, not just the energy sector).

Producing the guidelines is a major process in itself. The Commission intends to involve stakeholders at each significant step of the process. This means circulating relevant documents (i.e. transcripts of workshops; trade-offs, if any, between the Regulatory Principles), communicating regularly with stakeholders and giving sufficient time to all for considering the documents.

The Regulatory Principles and Guidelines project team will also be liaising closely with other sections of the Commission working on related projects such as the threshold reset and enhancements to information disclosure for electricity distribution businesses.

Details on how stakeholders can take part in the project are available on the Commission’s website [www.comcom.govt.nz](http://www.comcom.govt.nz) under Industry Regulation. You can also subscribe to the project’s email list by emailing your contact details to [methodologies@comcom.govt.nz](mailto:methodologies@comcom.govt.nz)

# Adjudication update

## MARKET STRUCTURE CLEARANCES DECIDED OVER THE PERIOD JANUARY – MARCH 2008

PARTIES	SECTION	DESCRIPTION	DECISION
Air Liquide New Zealand Limited/ ASCOGAS Limited	s66	Clearance was sought for Air Liquide New Zealand Limited to acquire 100% of the shares in ASCOGAS Limited	Clearance granted
Vodafone Mobile New Zealand Limited/The Crown	s66	Clearance was sought for Vodafone Mobile New Zealand Limited to acquire the management rights from the New Zealand Government for the radio frequency range between 889.8 and 915 MHz, together with the corresponding natural pair management rights in the 944.8-960 MHz range	Clearance granted
Telecom Leasing Limited/ The Crown	s66	Clearance was sought for Telecom Leasing Limited to acquire the management rights from the New Zealand Government for the radio frequency range between 2520 and 2540 GHz, together with the corresponding natural pair management rights in the 2640-2660 GHz range.	Clearance granted
DFS Group Limited (Auckland)/ The Nuance Group	s66	Clearance was sought for DFS Group Limited to acquire 100% of the shares in The Nuance Group	Clearance declined
Cadmus Technology Limited/ Provenco Group Limited	s66	Clearance was sought for Cadmus Technology Limited and Provenco Group Limited for a merger transaction through which Cadmus and Provenco will amalgamate pursuant to Part XIII of the Companies Act 1993	Clearance granted
Sumitomo Forestry Co Limited/ Carter Holt Harvey (Building Supplies Division) Rangiora	s66	Clearance was sought for Sumitomo Forestry Co Limited to acquire all of the medium density fibre board (MDF) assets and business operations of Carter Holt Harvey Limited (Building Supplies Division) situated in Rangiora	Clearance declined
Crane Group Limited/RX Plastics Limited	s66	Clearance was sought for Crane Group Limited to acquire 100% of the shares in, or assets of RX Plastics Limited	Application withdrawn

## MARKET STRUCTURE AUTHORISATIONS DECIDED OVER THE PERIOD JANUARY – MARCH 2008

Nil

# Commission Settlements and Warnings

## SETTLEMENTS FOR THE PERIOD JANUARY – MARCH 2008

PARTIES	SECTION	DESCRIPTION	DECISION
CSL Biotherapies New Zealand Limited	s13(e)	Alleged that claims about the product providing at least eight hours of protection are false in the New Zealand context	Administrative Resolution – Settlement
BDM Grange Limited	s13(e)	Allegedly misrepresenting level of protection offered on a sunscreen	Administrative Resolution – Settlement
Tanning Research Labs Inc t/a Hawaiian Tropic	s13(e)	Allegedly misrepresenting level of protection offered on a sunscreen	Administrative Resolution – Settlement
Once Sunscreen Limited	s13(e)	Alleged false or misleading advertising concerning the duration of sunscreen's effectiveness	Administrative Resolution – Settlement
Team Wellington Limited and John Stuart Willcox	s14(1)(b)	Alleged that advertising misrepresented resource consent as provisional resource consent when no application had been made	Administrative Resolution – Settlement
Allied Nationwide Finance Limited	s51	Allegedly charging unreasonable credit fees	Administrative Resolution – Settlement

## WARNINGS FOR THE PERIOD JANUARY – MARCH 2008

PARTIES	SECTION	DESCRIPTION	DECISION
Skills New Zealand Limited	s13(f)	Alleged misleading representation that company was a registered immigration agent when, at the time of the advertising, there was no registration system in place	Administrative Resolution – Warning
Richmastery Limited	s13(g)	Allegedly misrepresenting the true interest rate of a mortgage to consumers	Administrative Resolution – Warning
LMC Lawn Mower Company Limited	s13(j)	Alleged false or misleading representations as to place of origin of lawnmowers, being advertised as designed in New Zealand, however only colour, coatings and logos are New Zealand specific	Administrative Resolution – Warning
The Suite Centre	s19(1)	Allegedly accepting orders and deposits for lounge suites without intention to supply	Administrative Resolution – Warning
Slingshot Limited	s13(b)	Allegedly misleading consumer as to the disconnection process for broadband	Administrative Resolution – Warning
H & I Kareko	s24	Alleged promotion of pyramid selling scheme	Administrative Resolution – Warning

## WARNINGS (CONTINUED)

PARTIES	SECTION	DESCRIPTION	DECISION
Noel Leeming Group Limited	s19(1)	Allegedly bait advertising using picture of laptop not available under promotion	Administrative Resolution – Warning
Kiwi Mortgage Market Limited	s13(e)	Alleged that not all trader's brokers are accredited as claimed	Administrative Resolution – Warning
Table Pride Limited	s13(g)	Allegedly misrepresenting recommended retail price (RRP) of knives	Administrative Resolution – Warning
Healtheries of New Zealand Limited	s13(a)	Allegedly making an MSG Free claim on product which contains MSG	Administrative Resolution – Warning
Multiple Online Motor Vehicle Traders	s28	Alleged various motor vehicle traders, trading through TradeMe, are not displaying Supplier Information Notices as required by the Regulations	Administrative Resolution – Warning
The \$2 Shop Limited	s28	Alleged breach of product safety standards in that a lighter is not child proof	Administrative Resolution – Warning
Earthwalk Limited	s28	Allegedly selling footwear that did not display country of origin labels	Administrative Resolution – Warning
Nature Baby Limited t/a Nature Baby	s28	Alleged breach of the product safety standard for children's nightwear	Administrative Resolution – Warning
Petone Finance Limited	s32	Allegedly providing disclosure that is not of the required standard and may be likely to mislead the debtor with regard to material particulars of the contract	Administrative Resolution – Warning

# From the Courts

## FAIR TRADING ACT LITIGATION UPDATE: CRIMINAL AND CIVIL PROSECUTIONS RESOLVED OVER THE PERIOD JANUARY – MARCH 2008

PARTIES	SECTION	DESCRIPTION	DECISION
Oaks Hotels & Resorts New Zealand Limited	s13(g), s11	Alleged misleading representation as to the price of a hotel room in that the trader is advertising from \$79 when in fact this price is only available for bookings of 28 days or more	Litigation Resolved
American Express International Limited	s13(g), 11	Allegedly misrepresenting currency conversion fees charged on overseas credit card transactions	Litigation Resolved
Hill & Stewart Appliances Limited	s10, 13(a), 17(a)	Allegedly misleading representation that goods can be purchased interest free when in fact customers can negotiate a cash discount, meaning that the difference is in effect interest	Litigation Resolved
230 Marua Limited	s13(a)	Alleged misleading representations as to the price of leather lounge suites in that the representation as to 'save' and 'was' prices are false	Litigation Resolved
Advek Holdings Limited	s13 (g)	Alleged misleading representations as to price savings on beds	Litigation Resolved
Galistair Enterprises Limited t/a XtraCASH Finance	s17, 39, 41, 51	Allegedly failing to make initial disclosure, charging interest in advance, charging an unreasonable credit fee and charging an unreasonable estimate of the creditor's loss upon full prepayment	Litigation Resolved

# Statement of Intent

The Commission's Statement of Intent for 2008-2011 is now available for download from the Commission's website under Publications/Statement of Intent.

If you would like a copy of the latest Statement of Intent sent to you as a pdf by email, please email [uli.trute@comcom.govt.nz](mailto:uli.trute@comcom.govt.nz) with Statement of Intent in the subject line.

You can also join a list to receive the Commission's Annual Report by emailing Uli with Annual Report in the subject line.

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All Commerce Commission media releases are available on the Commission's website at [www.comcom.govt.nz](http://www.comcom.govt.nz) under Media Centre. You can also join a list to receive the Commission's media releases by email – send an email to [uli.trute@comcom.govt.nz](mailto:uli.trute@comcom.govt.nz) with Media Release in the subject line.

## CONTACT DETAILS

To contact the Commission with information about unfair or misleading trading practices, or anti-competitive behaviour by businesses:

- » Call the Contact Centre on 0800 94 3600;
- » Write to Contact Centre, Commerce Commission, PO Box 2351, Wellington; or
- » Email [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)

For media releases, Commission adjudication decisions, submissions, Annual Reports, plans, publications and more, visit the Commission's website at [www.comcom.govt.nz](http://www.comcom.govt.nz)