

# COMMUNIQUE



## Certainty for regulated industries in Commerce Amendment Act

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The role of the Commerce Commission as a sectoral regulator in New Zealand has been broadened through a significant change in legislation. The Commerce Amendment Act, which came into effect on 14 October 2008, replaces the prior Parts 4 and 4A of the Commerce Act relating to economic regulation with a new Part 4. In this article we explore what the changes mean for the Commission and the industries it regulates.

The new Part 4 is designed to create greater certainty for regulated industries and a broader range of regulatory instruments. It also provides for increased regulation applying to all electricity distribution and transmission services, all gas pipelines services and the specified services of the major international airports of Auckland, Wellington and Christchurch.

The changes in legislation stem from a government review of the Commerce Act undertaken between May 2006 and December 2007. One of the more fundamental changes is the addition of a new regulatory-specific purpose statement to Part 4 of the Act that offers guidance for the regulation of monopoly businesses. It focuses on the long-term benefits of consumers in markets where there is little or no competition by promoting outcomes that are consistent with outcomes produced in competitive markets. Suppliers of regulated goods and services will have incentives to innovate and invest, to improve efficiency and provide services at a quality that reflects consumer demands. They will have incentives to share the benefits of efficiency gains with consumers and will be limited in their ability to extract excessive profits.

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Input methodologies are intended to be applicable across regulated sectors. Appeal mechanisms have been included to provide additional accountability...

A key element of the new regime will be the introduction of input methodologies that will inform the rules, processes and methods to be used by the Commission when defining and setting regulatory mechanisms. This way the Commission can define a number of regulatory inputs including how cost of capital is determined and how assets are valued in order to improve clarity, certainty and predictability by increasing transparency. This is expected to help improve the climate for investment in infrastructure. Input methodologies are intended to be applicable across regulated sectors. Appeal mechanisms have been included to provide additional accountability for the determinations that the Commission makes on input methodologies.

Of particular note is the inclusion of the services of Auckland, Wellington and Christchurch international airports. These services include passenger terminal, aircraft and freight, and airfield activities and will be subject to an information disclosure regime. The Commission will monitor and analyse the regulated airport services and report on the effectiveness of this regime to the Minister following the next pricing rounds for the regulated services in 2012.

The responsibility for information disclosure for all gas transmission and distribution businesses has been transferred from the Ministry for Economic Development to the Commission. The Commission's role is further widened in the gas sector with the inclusion of a default/customised price-quality path regime to be applied in conjunction with this information disclosure regime. In October the Commission released the Final Authorisation for the Control of Supply of Natural Gas Distribution Services by Vector Limited and Powerco Limited.

These services will be transitioned to default/customised price-quality regulation following the expiry of the authorisations in July 2012 or earlier.

#### 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

Another notable change to the sectors which the Commission has regulatory responsibility for is the exemption of consumer-owned trusts and cooperative society-owned small electricity distribution businesses from price-quality regulation. Any business meeting the exemption criteria will be regulated solely through information disclosure. Of 29 distribution businesses, 16 are likely to be defined as meeting the exemption criteria.

The changes to legislation have also provided the Commission with greater flexibility in the way it approaches regulation with the addition of new options to the existing set of regulatory tools. Previously the Commission administered a targeted control regime involving price path and quality thresholds and a complementary information disclosure regime for electricity transmission and distribution with control possible following an inquiry. The new control regime provides for a range of forms of regulation as well as for conventional price control allowing regulation to better meet the circumstances of specific suppliers and sectors. The forms of regulation provided for by the regime include:

→ **Default/customised price-quality paths:** these are designed to build on and replace the thresholds regime for electricity lines businesses. The default paths will be universal across all businesses in the sector with the option for customisation at a later date.

→ **Negotiate/arbitrate:** this requires suppliers and their customers to negotiate a settlement on matters such as investments, quality of service and prices according to rules set by the Commission. If the parties fail to agree within a specified time frame an arbitrator may be appointed to resolve the matter.

→ **Information disclosure:** this is a relatively light-handed form of regulation, although it can be quite powerful in setting standards on what is acceptable and for early identification of trends that may raise concerns. The powers in the Act include the ability to require forward-looking information such as asset management plans, investment intentions, prices, and quality standards, and the ability to monitor compliance and outcomes.

→ **Individual price-quality paths:** these allow for tailored regulatory regimes including price control for particular businesses.

The changes have increased the Commission's scope of responsibility and altered its regulatory role significantly by extending it within sectors. To meet these changes the Commission is currently developing business plans to deliver on expectations in these areas. The Commission intends to consult on a regulatory framework discussion paper this month. The Commission is focused on developing regulatory regimes that improve transparency and certainty for regulated businesses.

## Meet Nicholas Hill – the Commission’s new Chief Executive



Nicholas Hill,  
Chief Executive

(SPARC) he knows how to lead from the front and, in light of the Olympic medal haul this year, has a good idea of what success looks like.

So apart from the obvious similarity between the two organisations (level playing fields) what relevant experience and skills does Nicholas Hill bring to the Commerce Commission?

Nicholas has a double degree in politics and law and began his career with the State Services Commission in an advisory role, before moving to Treasury as an economic and financial analyst. He has experience in industries regulated by the Commission, having worked at the Electricity Corporation of New Zealand (ECNZ), and later at Fletcher Challenge Energy as General Manager, Commercial.

*Communique* checked in with Nick for a match report on how he is going so far.

### WHAT ATTRACTED YOU TO THE ROLE OF CHIEF EXECUTIVE AT THE COMMERCE COMMISSION?

I have a strong personal belief in the importance of world class business to New Zealand. A vigorously competitive environment promotes the best people and businesses. I regard the Commission’s role as an intelligent referee and promoter of competition as being crucial to ensuring business and consumers are well-served by markets. With my personal interest and background in economics and law and my

Nicholas Hill has taken on a big job, leading the Commerce Commission team as its first Chief Executive. The role, which he took up in June 2008, is expanded from that of General Manager, which was vacated by Geoff Thorn in February this year.

His track record has prepared him well for the challenges ahead. Having headed up Sport and Recreation New Zealand

experience of working in both the public and private sector, it is a role that presents a complete package of personal interest and professional challenge.

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

I have been very focused on the future. I have been leading discussion throughout the Commission about the need to be relevant to the world which is emerging which means being engaged with business, professional advisers, consumers and government. One of the key things I have recognised since starting in this role has been the need to constantly evolve the Commission to keep pace with the changing dynamics of markets, which are particularly challenging at this time. I am excited about leading that change.

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

I have been spending time pulling together the threads of what will be woven into a new vision for the Commission. Once that has been developed I will be focused on developing a comprehensive three year plan to pursue that vision. We have also experienced significant change to one of the major pieces of legislation we enforce. As a result of the Commerce Act Amendment I will be overseeing the bedding in of new systems, processes, team and streams of work under the changes to Part 4 of the Act.

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

As the inaugural CEO of SPARC I was proud to be involved from the beginning in creating a new platform to promote and fund participation and excellence in sport. It was particularly rewarding to observe the contribution SPARC has made to our elite athletes, reflected in the results in Beijing, and to persuading New Zealanders to ‘push play.’

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

The weekends are sacrosanct, as are good family holidays. I also enjoy keeping fit.

## Commission’s Legal Services makeover

Legal advice is provided across all areas of the Commission’s activities, and throughout each business day.

The Commerce Commission has continual demand for legal services. The Commission has always had a Legal Services Branch, but in recent years the Branch has undergone significant development to better match the Commission’s own evolution.

The Branch this year has been again nominated for the New Zealand Lawyer magazine awards for ‘best in-house legal team’ and is increasingly developing its expertise in competition, consumer and regulatory law.

### WHAT THE LAWYERS ADD

The Commission is tasked with regulatory or enforcement activities under a range of statutes across all industries including telecommunications, electricity, dairy, airports and gas. The Commission takes enforcement action under the Commerce Act 1986, the Fair Trading Act 1986, the Telecommunications Act 2001 as well as under the more recent Credit Contracts and Consumer Finance Act 2003.

As well as being the initiator of complex enforcement actions under those and other statutes, the Commission’s regulatory decisions in mergers, authorisations, telecommunications and electricity or gas are sometimes appealed or the subject of other Court proceedings, including judicial review. Many of the Commission’s areas of activity are controversial, take time for consideration and have many stakeholders with differing perspectives.

These elements combine to ensure that the Commission’s need for legal advice and legal input is met. Legal advice is provided across all areas of the Commission’s activities and throughout each business day. It is provided formally and informally to the operational branches as well as to the members of the Commission sitting on Divisions that operate across all of the Commission’s activities and at other Commission meetings.

The Legal Services Branch also has a strong role in matters of statutory and policy design and in the Commission’s educative activity, for example by giving or contributing to speeches and panel discussions. The Legal Services Branch seizes the opportunities that arise to liaise with its counterparts at equivalent agencies internationally to share information and ideas.

### HOW THE LAWYERS OPERATE

The Legal Services Branch now stands at around 38 staff. The majority of these staff are located in Wellington, with several in the Commission’s satellite offices in Auckland and Christchurch.

The Branch has a General Counsel, Peter R Taylor, and three legal groups: the Legal Regulatory Group and two Legal Enforcement Groups. Each group is managed by an Assistant General Counsel.

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The Branch works closely with the Commission's Economic Services Branch to deliver accurate, reliable and strategic advice to the Commission.

The Commission's lawyers undertake their work in accordance with the legal and professional obligations of solicitors. In addition, the Commission acts as a model litigant in the conduct of its litigation.

### INCREASED DEMAND FOR LEGAL SERVICES

There has been Commission-wide staffing growth within the last decade to reflect the Commission's ever-increasing portfolio of statutory responsibilities. Just as the Commission has developed its staffing and capability, so too has the Legal Services Branch.

At the same time the issues dealt with by the Commission's lawyers are increasingly complex. The traditional areas of fair trading, competition, mergers and acquisitions law and matters like the handling of official information remain. But these have been supplemented by some evolving areas of great technical complexity, such as the telecommunications access determinations, the development of input methodologies under the Commerce Amendment Act 2008, increasingly complex clearance appeals, Cease and Desist Orders and compensation claims on behalf of consumers.

Even within the traditional areas of the Commission's activities, such as cartel enforcement and merger work, matters are becoming factually more complex and demanding greater ability for lawyers to acquire and apply an understanding of economic, accounting and technology principles.

It has been an evolving process for the Commission to increase its internal legal capability so as to better address such issues. Skilled staff can be difficult to recruit and sometimes difficult to retain while competing in a global legal marketplace. But the Commission's ability to deliver a daily diet of challenging and fast-moving work outside the traditional firm culture is a competitive advantage over many other legal employers.

### THE MAJOR LITIGATION PROGRAMME

A particular feature of the legal services redesign has been an increase in the Commission's ability to manage its major litigation internally.

The Commission issues, and defends itself against, a range of very significant litigation matters. In many areas of its work the Commission finds itself in opposition to the major law firms and their clients. The Commission's work is very specialised and available resources are limited. In addition to which, the Commission's major litigation programme has increased significantly. As well as some of the well-known cases such as the Qantas and Air New Zealand alliance, and the supermarket merger challenge, the Commission is handling very large civil litigation against the major banks on interchange fees.

Prior to 2007 the Commission's funding arrangements required it largely to resource its major litigation through use of external lawyers so major litigation was seen as outside of the Commission's core work. The Commission has recently achieved a change to that approach and has begun increasing its ability to deliver many of those litigation services through its own Legal Services Branch.

There are many advantages to doing so. It enables the Commission to build its internal capability on its significant cases, manage its costs, and increase all-round efficiency and effectiveness. The strategic focus and commitment of its internal lawyers often bring great benefits to the litigation programme. In addition, it enables the Commission to offer its lawyers challenging work handling cutting-edge cases in competition, consumer and regulatory law.

These changes are gradual and the Commission is building its capability by steady steps that will ensure that the Commission continues to be able to deal with some of the largest civil cases in New Zealand and to match the capability of its well-resourced opponents. The Commission will still use the skills of top senior counsel at the independent bar. But it is to be hoped that the institutional legal capability of the Commission is developing in a way that mirrors and supports the enhancements across the organisation, for the benefit of New Zealand markets.

## AIAL Settlement - utilising another tool in the toolkit

The Commission is actively seeking to widen the range of ways it resolves breaches of the Acts it enforces so that competition is more quickly restored. This was signaled in the Commission's Statement of Intent for 2008-2011. While prosecution will always remain a key tool in the Commission's toolkit, especially for cases that cause significant economic harm and where the Commission is unable to reach agreement with the parties, other means such as settlements and warnings accompanied by voluntary undertakings can be useful. The resolution of a potential competition issue with Auckland International Airport Limited (AIAL) is a good example of this.

In 2007 the Commission became aware that AIAL intended to reduce the number of duty free retail concessions at the airport from two to one. This reduction was to take effect from August 2009. While the Commission was continuing its enquiries into this matter, one of those concessionaires, DFS Galleria, applied in November 2007 for clearance to acquire the other, The Nuance Group.

The clearance application was declined in March this year because the Commission considered that the acquisition would lead to a substantial lessening of competition. The Commission considered that the proposed acquisition would see the removal of the competition posed by Nuance. Duty free consumers would no longer have a choice of duty free retailers, and no longer have the ability to compare prices between competing retailers at Auckland International Airport.

The Commission considered there was likely to be very limited competition from high street duty free retailers and duty free retailers located at route-paired airports, and that this competitive constraint would be likely to fall well short of the competition posed by Nuance if the merger were not to go ahead.

The Commission was also concerned that Auckland International Airport Limited (AIAL) would have little reason to constrain the combined entity's duty free prices. Further, it considered that AIAL would be unlikely to create an additional duty free concession, as AIAL had a stated policy of only having one duty free concessionaire at Auckland International Airport.

Immediately after the Commission's decision, AIAL reduced the space available to the unsuccessful tenderer in the arrivals area, Nuance. This led to the Commission advancing its investigation of the wider competition issues. The Commission's concern was that AIAL may have been using its market power or entered into a contract or arrangement that had the effect of substantially lessening competition for duty free retail concessions by restricting entry and/or preventing competitive conduct.

During the investigation, AIAL proactively sought to resolve the issues so that it could proceed with its wider business plans with greater certainty. AIAL undertook to drop plans to reduce the number of duty free retailers from two to one. The Commission agreed to accept this undertaking and resolved the matter by issuing a warning. Commission Chair Paula Rebstock said, "It is important to have resolved the competition concerns promptly." She also acknowledged AIAL's co-operation in ensuring that airport travellers could benefit once again from effective competition in duty free retailing.

## Keeping our eyes on the prize

Many consumers are influenced in their purchasing decisions by promotions and competitions.

Did you ever buy something so you could enter a competition and get the chance to win prizes like a holiday, cash or a new holiday home? Many businesses use competitions and prizes as marketing tools to persuade consumers to choose their product over another – but three recent Commerce Commission cases show that businesses need to ensure that no aspect of a competition can mislead consumers.

In July 2008 ANZ Investment Services (New Zealand) Limited, a wholly owned subsidiary of ANZ National Bank Limited, pleaded guilty to two charges of breaching the Fair Trading Act. They were fined \$80,000 plus costs in the Wellington District Court for running a misleading television campaign.

During November and December 2006 an extensive advertising campaign, promoting a ‘Money and the Bach Summer Bonus Draw’ screened across the major television channels. The advertising represented that people buying bonds before the end of December 2006 and retaining them until 31 January 2007 would be placed in a draw to win the major prize valued at \$1.5 million.

However, ANZ Investments Services intended to run a two tier prize draw. Eligible consumers would only be placed in an initial draw, the winner of which would go on to be placed in a second draw. The second draw, held at a later date, involved the winner of the first draw choosing from 100 envelopes – with only one envelope containing the major prize of \$1million and a further \$500,000 to go towards a bach. The other 99 envelopes contained a cheque for \$10,000.

The television advertising strongly implied that \$1 million and a bach was a prize which would be won. However there was only a 1% chance that the major prize would be struck. The company had provided the true terms of the offer in small print for a short time at the end of the commercial but this was insufficient to correct the misleading impression created.

“Many consumers are influenced in their purchasing decisions by promotions and competitions, and consumers may have chosen to invest money in Bonus Bonds rather than other options, based on the possibility of winning a substantial prize,” said Commerce Commission Director of Fair Trading, Adrian Sparrow.

“This case emphasises that gifts and prizes must always be described accurately, and the description must not mislead people into thinking that an advertised prize will be won if, in fact, this is highly unlikely,” said Mr Sparrow.

Two other recent Commission cases also highlight the pitfalls of running competitions. In 2007 ALT TV, an independently owned television station based in Auckland, run a competition where viewers could text the word ‘winner’ to enter a draw to win \$10,000. However the actual prize offered by ALT TV was an Instant Kiwi Ticket, costing \$1, with a potential prize of \$10,000.

In a settlement, reached with the Commission in November 2007, Alt TV undertook to ensure that the promotion of any future competitions would meet the requirements of the Fair Trading Act.

In another high profile case Progressive Enterprises Limited was found guilty of breaching section 17 of the Fair Trading Act by misleading consumers over the dates of a competition closure. The company was fined \$17,000 in the Manukau District Court in May 2008.<sup>1</sup>

Progressive Enterprises ran a promotion on selected Signature Range cereals offering customers the opportunity to ‘Win one of 5 uplifting trips to the Hunter Valley in Australia’. This offer was made on a sticker on cereal packets. However the closing date of the promotion, 31 August 2006, was only disclosed in the terms and conditions of entry contained inside the sealed packet of cereal. Consumers who purchased the cereal after 31 August 2006 would not have known before they purchased the cereal that they had no chance of participating in the competition as offered.

Despite the competition closing on 31 August 2006, the Commission found that the promotional packets of cereal were still being sold in at least 12 stores nationwide at various times up until early December 2006, whilst Progressive Enterprises’ own records show that the cereal was being sold in over 70 locations nationwide. Despite being made aware of the issue by customers and on a number of occasions by the Commission, Progressive Enterprises’ supermarkets did not take adequate steps to remove the promotional packets of cereal from shelves.

“Both consumers and businesses can benefit when competitions are run correctly but these cases emphasise that to avoid the possibility of breaching the Fair Trading Act, businesses need to ensure that all aspects of their competitions are clear and transparent”, said Mr Sparrow.

### SECTION 17(A) OF THE FAIR TRADING ACT STATES:

“No person shall, (a)

In connection with the supply or possible supply of goods or services...;

offer gifts, prizes or other free items with the intention of not providing them or not providing them as offered.”

Court penalties for breaching the Fair Trading Act can include fines of up to \$200,000 for a company and \$60,000 for an individual. Only the courts can decide if a representation has breached the Act.

*1. In November 2008 Progressive Enterprises went to the Auckland High Court to appeal against their conviction and fine in this case. At time of publication this was still before the court.*

## Next Generation Networks Conference

The study aims to facilitate a broad and informed discussion of the potential implications and opportunities of next generation networks.

**BROADBAND AT THE CROSSROADS:  
CONVERGENCE, NGN AND THE FUTURE**

**LANGHAM HOTEL, AUCKLAND**

**26 AND 27 FEBRUARY 2009**

The Next Generation Networks (NGN) conference is a unique opportunity to share international and local perspectives on facilitating and stimulating both innovation and investment in converged telecommunications markets.

The conference is part of the Commerce Commission's NGN study. The study aims to facilitate a broad and informed discussion of the potential implications and opportunities of next generation networks. More information about the study can be found on this page [www.comcom.govt.nz/events/NGNconference](http://www.comcom.govt.nz/events/NGNconference)

To encourage the widest possible range of interest groups and people to take part in the discussion, the Commission will not be charging a conference attendance fee. Early registration of interest in attending is essential, as conference numbers are limited and the number of attendees per organisation will be initially restricted to five. Attendance will be on a first come first served basis.

For more information about the NGN conference, including how to register to attend or express in interest in going onto a waiting list visit [www.comcom.govt.nz/events/NGNconference](http://www.comcom.govt.nz/events/NGNconference)

## Commission adds to portfolio of guidelines

The Commerce Commission issues guidelines on a variety of topics to assist the business and legal communities. While not a substitute for legal advice, the Commission's guidelines provide useful pointers to either the Commission's processes or outline its views on particular issues.

The recent release of the Commission's guidelines to assist businesses and their advisers when applying to the Commission for a clearance to merge with or acquire assets of a business or shares adds to the Commission's existing portfolio of guidelines.

The Commission will shortly be releasing two further guidelines to clarify aspects of the Fair Trading and the Commerce Act.

- Guidelines to schools on arrangements for the supply of school uniforms, to avoid potential breaches of the Commerce Act. The Commerce Act prohibits conduct that restricts competition. These guidelines were produced following an investigation prompted by numerous complaints about the limited supplier choice and high prices charged for school uniforms.
- Guidelines to businesses that make environmental, or 'green', claims in their marketing. These guidelines are intended to educate businesses about avoiding making misleading or untrue claims about their products or services under the Fair Trading Act.

A guideline on carbon zero claims and the Fair Trading Act is planned for 2009.

To receive notification of when these guidelines are released, email [felicity.connell@comcom.govt.nz](mailto:felicity.connell@comcom.govt.nz) with the name of the guideline in the subject line.

The Commission's guidelines can be downloaded from [www.comcom.govt.nz](http://www.comcom.govt.nz) under Publications/Guidelines.

Other titles in the current suite of guidelines include:

- Guidelines – The Interrelationship between Part 2 of the Commerce Act 1986 and the Telecommunications Act 2001
- Guidelines for broadband suppliers
- Mergers and Acquisitions Clearance Process Guidelines
- Mergers and Acquisitions Guidelines

## Adjudication update

### MARKET STRUCTURE CLEARANCES DECIDED OVER THE PERIOD APRIL – JUNE 2008

PARTIES	SECTION	DESCRIPTION
Telecom New Zealand Limited/ The Crown	s66	Clearance was sought for Telecom New Zealand Limited to renew its 800MHz spectrum for a further 20 years from 2012
Flint Group Holdings/Siegwerk New Zealand Limited	s66	Clearance was sought for Flint Group Holdings to acquire up to 100% of the assets of Siegwerk New Zealand Limited
Redeal Limited/Egley Electrical Co Limited and Egley Electrical Petone Limited	s66	Clearance was sought for Redeal Limited to acquire 100% of the assets and business of Egley Electrical Co Limited and Egley Electrical Petone Limited
New Zealand Investment Holdings Limited/RX Plastics Limited	s66	Clearance was sought for New Zealand Investment Holdings Limited to acquire the shares or assets and business of RX Plastics Limited
Vita New Zealand Limited/Pacific Brands Holdings (NZ) Limited	s66	Clearance was sought for Vita New Zealand Limited to acquire the assets of Pacific Brands Holdings (NZ) Limited

### MARKET STRUCTURE AUTHORISATIONS DECIDED OVER THE PERIOD APRIL – JUNE 2008

Nil

## Commission Settlements and Warnings

### SETTLEMENTS FOR THE PERIOD APRIL – JUNE 2008

PARTIES	SECTION	DESCRIPTION
Fletcher Distribution Limited t/a Placemakers	s13(a)	Alleged misleading representations in marketing T1.2 timber framing in such a way as to lead consumers to believe it is equivalent to H1.2 timber
European Apparel Co Limited	s13(j)	Alleged failure to display country of origin labels on clothes

### WARNINGS FOR THE PERIOD APRIL – JUNE 2008

PARTIES	SECTION	DESCRIPTION
Holidays Expo Limited - Fiji Travellers Club	Fair Trading Act s13(g)	Alleged misleading representations as to the price of travel packages
Direct Holdings NZ Pty Limited t/a Time Life	s13(c)	Alleged misleading conduct in that trader is representing customers have agreed to acquire goods when that is not the case
TelstraClear Limited	ss13(g), 11	Alleged misleading representation as to the price of dial-up internet access in that the complainant signed up to a flat rate plan but has now been charged a non-disclosed 'voice charge' of 4.5 cents per minute
Sir Communications Pty Limited	s13(g)	Alleged failure to adequately disclose cost of using telephone card
TelstraClear Limited	s13(a)	Alleged misleading representations in that business calls advertised as being 'unlimited' are in fact limited/capped
H & J Smith Limited t/a H & J's Outdoor World	s13(g)	Alleged misleading advertising with inflated RRP so therefore implied savings are incorrect
NZECOBIKES Limited	s13(f)	Alleged misrepresentation of affiliation to service agents around the country
Vastsea International Limited	s13(a)	Alleged misleading representation that sheepskin boots it sold are in fact sheepskin when testing indicates the boots are made from synthetic materials
Gascoigne Furniture NZ Limited	s13(j)	Alleged misleading representations as to place of origin
Dick Smith Electronics - Sylvia Park	s13(g)	Alleged misleading price representations as to the savings to be had over sale period
Chrysalis Recruitment	s12	Alleged misleading representation as to the intention to supply recruitment service for immigrants from the UK
Wellington Combined Taxis Limited	s13(b)	Alleged misleading representations with regard to the car fleet being 'green' and eco-friendly
Wilson Parking NZ Limited	s13(g)	Alleged misleading advertising of \$10 all day early bird parking when the onsite machine does not allow for such parking tickets
The Goldsmith	s13(g)	Alleged misleading representation as to the sale price of an emerald and diamond ring in that the saving was off a valuation that was alleged to be over-inflated
Urban Leathergoods Limited t/a Kingston Leathergoods Limited	s13(g)	Alleged misleading representations about the nature and duration of 'sale'

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#### WARNINGS (CONTINUED)

PARTIES	SECTION	DESCRIPTION
Sime Darby Motor Group (NZ) Limited t/a City Nissan	s13(a)	Alleged misleading representation as to the characteristics of an advertised Nissan Navara in that the advertisement stated that the model available was a 4WD double cab when in fact the offer related to a 2WD two door model
Lochores Real Estate Limited t/a The Professionals	s14	Alleged misleading representation in an advertising flyer that trader was responsible for selling the complainant's property when this is not correct
Lou Borg Painters	s13(b)	Allegedly claimed to be a member of the Master Painters Association when trader has been ejected from that organisation
Cheap Cars NZ Limited	s28	Alleged non-compliance with Consumer Information Standards (Used Motor Vehicles) Regulation 2003 for failing to display Supplier's Information Notices on vehicles being offered for sale
Baby Best Buy Limited	s29	Alleged that trader sold cots that do not comply with the product safety standard for cots
2046 International Limited	s29	Alleged intentional non-compliance with product safety standards
Nature Baby Limited	s13(j)	Alleged that trader sold clothing that does not display country of origin labels
Instant Finance Limited	CCCF Act	Alleged non-disclosure of credit fees and charges which have been applied to a consumer credit contract
Dealer Finance Limited	CCCF Act	Alleged that creditor has not provided full initial disclosure by incorrectly disclosing the total amount of payments, and the amount of interest to be paid and disclosure was illegible
East Bay Finance Limited	CCCF Act	Alleged that creditor charged unreasonable credit fees, namely default and settlement fees, charged an unreasonable estimate of its loss upon full prepayment, failed to provide disclosure on additional 'top up' loans to existing debtors and charged an unreasonable commission on credit related insurance
Numeria Finance Limited and Vero Insurance New Zealand Limited	CCCF Act	Alleged that creditor has not been passing insurance premium rebates on to debtors when credit contracts are fully prepaid
Abcom Finance Limited	CCCF Act	Alleged that creditor charged unreasonable establishment fees and broker fees and is not providing full initial disclosure of fees
Mutual Finance Limited	CCCF Act	Alleged that creditor charged an unreasonable establishment fee, an unreasonable estimate of loss upon full prepayment, an unreasonable administration fee upon full prepayment and not providing full initial disclosure
South Canterbury Finance Limited	CCCF Act	Alleged that creditor charged unreasonable establishment, administration, default and full prepayment fees without providing full initial disclosure with regard to fees charged to debtors

## From the Courts

#### FAIR TRADING LITIGATION UPDATE: CRIMINAL AND CIVIL PROSECUTIONS RESOLVED OVER THE PERIOD APRIL – JUNE 2008

PARTIES	SECTION	DESCRIPTION
Timothy Whitehead	s14	False claim of a 'Buyer Enquiry Over' price that he knew would not be acceptable thus misleading potential purchasers that they may be able to get house well below what the seller would accept
OM Petroleum (NZ) Limited t/a Challenge Service Station Milford	s13(g)	Misrepresentation as to the price of petrol in that the trader is adding two cents per litre to cover the cost of 'full forecourt service' but this is not disclosed to customers
Marketing Direct Limited	s13(a)	Promoting a product, Celluslim, claiming that the capsules will melt fat fast, without exercise or diet
Effluent Services Limited	ss13(f), (g)	Misleading representations as to the reasons for increased costs above what was originally estimated
Inch McLellan Motors Limited	ss13(a), 28	Misleading representations in that trader has represented on a SIN card that a vehicle was not imported as a damaged vehicle, when in fact it was
On Line Vehicle Auctions Limited	s28	Non-display of SIN cards as required by regulations
Lelei Finance Limited	CCCF Act	Alleged that creditor did not provide full initial disclosure and made false representations as to its right to enforce contracts

# Annual Report

The Commission's Annual Report for 2007/08 will shortly be available for download from the Commission's website under Publications/Annual Reports

If you would like a copy of the 2007/08 Annual Report sent to you as a pdf by email, please email [felicity.connell@comcom.govt.nz](mailto:felicity.connell@comcom.govt.nz), with Annual Report in the subject line.

You can also join a list to receive the Commission's 2008-2011 Statement of Intent, by emailing [felicity.connell@comcom.govt.nz](mailto:felicity.connell@comcom.govt.nz) with Annual Report in the subject line.

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## 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)

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