

COMMUNIQUE



Commerce Commission rings the changes

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Ensuring that the Commerce Commission is in good shape to deliver its objectives in a rapidly changing environment is a priority for Chief Executive Nicholas Hill. The Commission is facing new challenges both in terms of the economic environment and internal productivity pressures. The Statement of Intent for 2009-2012 reflects the Commission's response to these challenges.

Earlier in the year an organisational review identified areas where improvements could be made to the Commission's structure and processes, in order to enable it to be more effective. As a result of the review the Commission's branch structure is changing. At present the organisation is split into the Competition, Fair Trading, Networks and Telecommunications branches. In the new structure, which will be in place from January 2010, the Competition and Fair Trading branches will combine under one General Manager, and will be known as Enforcement branch. Likewise, the Networks and Telecommunications branches will combine under one General Manager, and will be known as Regulation branch.

"The change creates a smaller, more strategically focused senior management team. Importantly, it also recognises the synergies and similarities in the way our two regulatory teams work and the scope for more resource flexibility and efficiency within the enforcement teams. It will ensure a consistent approach across the regulatory work streams and recognises the different ways in which the Commission engages with business in regulation and enforcement," said Mr Hill.

The Corporate Services branch, which provides the support functions of Finance, IT, Information Service, Human Resources and Communications, will be renamed Organisation Performance. Along with the new name, there will be a greater emphasis on improving the overall performance of the Commission. The change has also involved some downsizing.

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In a business world that is facing the pressures of an economic downturn, the Commission recognises that it needs to be both swift and transparent in its decision-making.

“The Commission-wide changes will offer economies of scope and scale, enabling us to expend more effort in our enforcement and regulatory programmes. Combined with new internal systems, such as a new approach to project management, our staff will be more tightly focused on addressing the issues of highest impact or detriment,” said Mr Hill.

The Commission is also placing greater emphasis in the coming year on how it engages with business. “Through improving the level of understanding between the Commission and stakeholder industries and business we can be more effective. Increased engagement will help us to set priorities, limit areas for dispute and improve the quality of our work through taking advantage of industry expertise. Ultimately it makes the whole process run more smoothly if those we engage with understand what’s expected of them and what they can expect from us,” said Mr Hill.

In a business world that is facing the pressures of an economic downturn, the Commission recognises that it needs to be both swift and transparent in its decision-making. “Businesses need to know that we can resolve matters in a timely way wherever possible. In the case of merger applications the ‘failing firm guidelines’ we have produced are aimed at helping a business under threat of collapse to understand the information necessary for the Commission to quickly decide the application and provide certainty for the owners and employees.”

Finally, the Commission has been re-examining the ways it measures its performance. “Meaningful measures are necessary to drive better performance. We have focused on ensuring the performance measures are useful in determining our effectiveness and efficiency,” said Mr Hill. The new measures will better enable the Commission to monitor and report on its work and identify the areas in which it can place more effort. The new measures are in place for 2009/10 year and will be reported against in the 2009/10 Annual Report.

As we went to press the Ministerial Electricity markets review had recommended to the Minister of Energy a change that would see the Commerce Commission take on further responsibilities for the national grid operator Transpower. This is under consultation.

List of Terms/Abbreviations

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|---|------------------------|
| 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 Dr Mark Berry – the Commission’s new Chair



Dr Mark Berry
Chair

In April 2009 Dr Mark Berry became the Commerce Commission’s tenth Chair. Dr Berry took over the reins from Paula Rebstock who had led the Commission for the previous five years.

The role of Chair of the Commerce Commission is a challenging one. The Chair runs the governance meetings of the Commission members, which oversee the overall direction of the Commission. In addition, the Chair heads most of the Commission’s divisions. The role of these divisions is to meet and discuss the Commission’s enforcement and regulatory cases and make decisions on recommendations from staff. The Chair is also the most visible face of the Commission, often undertaking media engagement and public speaking roles.

The Chair needs to understand a huge range of subject matter, complex economic issues, and read reports that make the Old Testament look like a child’s learner book.

After just over five months in the job, *Communique* catches up with Dr Berry to see how he’s enjoying this challenging role.

WHAT ATTRACTED YOU TO THE ROLE OF CHAIR AT THE COMMERCE COMMISSION?

I had previously served as Deputy Chair of the Commission from 1999 to 2001, and Acting Chair in 1999 so I had a good idea of what the job entailed. I have spent most of my legal career in the field of competition law and am committed to the Commission’s objective of creating dynamic, competitive markets, so this seemed a very logical step.

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

I have come into the role at a time of great change. We have new responsibilities as a result of the Commerce Amendment Act, which has provided a very challenging work programme in the area of economic regulation. With significant economic change, we have also been challenged to continue to deliver the Commission’s work programme within constrained funding. Since I took over the role of Chair the significant achievements of the Commission have included the completion of the wholesale electricity market report, the issuing of a discussion paper on input methodologies, which in itself is a significant piece of work, and out-of-court settlements with Visa and Mastercard in relation to price-fixing proceedings over interchange fees charged by credit card companies.

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In the Fair Trading and Credit Contracts and Consumer Finance Act area we are placing a high priority on industry engagement to encourage greater compliance.

WHAT ARE YOUR TOP PRIORITIES FOR 2009/2010?

We have a number of very tight deadlines for the work programme on input methodologies and development of the information disclosure regimes for electricity lines businesses, gas distribution businesses and airports.

Our cartel programme remains a priority because of the harm cartels may cause the economy both at the level of business and consumers. Our leniency programme is proving effective in revealing cartel conduct, so it is important we keep resourcing this area to progress what are usually very complex investigations.

In the Fair Trading and Credit Contracts and Consumer Finance Act area we are placing a high priority on industry engagement to encourage greater compliance. Areas of particular focus under the Fair Trading Act at present are sustainability claims, retail telecommunications and financial products and services.

WHAT HAS BEEN THE HIGHLIGHT OF YOUR CAREER SO FAR?

There has been no single highlight I would identify, however there have been a number of defining moments. In my academic career it was a privilege to have the opportunity to study at Columbia University. The achievement that has given me the most personal satisfaction was being one of the co-founders of the commercial chambers Barristers.Comm which has flourished since its inception in 2003. And of course a current highlight is the opportunity to lead the Commerce Commission and work with fellow Commissioners and staff on a very busy work programme.

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

I have a passion for the visual arts and a background and interest in classical music. I pursue both of these interests when time permits.

The Commission also has two new Commissioners, Susan Begg and Patrick Duignan (Associate Commissioner) who will be profiled in future editions of Communique.

New Fair Trading Act compliance resources

The idea behind making these resources available is that organisations ranging from corner dairies to multinationals would be able to adapt these templates to their business.

The Commerce Commission has developed a new set of resources to help businesses understand their obligations under the Fair Trading Act and to assist them in achieving compliance with the Act. These resources include a new DVD about the Fair Trading Act and a sample organisational policy for Fair Trading Act compliance that can be adapted by any business trading in goods or services. Other resources include a sample complaints handling register and a set of three self-testing check sheets which a business can use to determine whether it is complying with its Fair Trading Act compliance policy.

“In the course of our investigations we often find that even large organisations do not have any Fair Trading Act compliance programmes in place,” said Commerce Commission Director of Fair Trading Adrian Sparrow. “The idea behind making these resources available is that organisations ranging from corner dairies to multinationals would be able to adapt these templates to their business. This gives them a free, sound foundation upon which to build a compliance programme.”

The DVD is intended to be used as part of a staff training programme and uses commonly encountered situations to highlight how best to comply with the Fair Trading Act.

“It is important to note that these compliance resources are guides only and reflect the Commerce Commission’s view. Use of these compliance resources does not in itself guarantee compliance with the Act,” said Mr Sparrow. “However, an effective compliance programme, properly implemented, should mitigate the risk of contravening the Act.”

Only the courts can make an authoritative ruling on breaches of the Fair Trading Act. These compliance resources are not intended to be definitive and should not be used instead of legal advice.

The sample policy, complaints handling register and check sheets are all available for download from the Commission’s website www.comcom.govt.nz under Fair Trading.

The DVD can be requested free of charge by emailing contact@comcom.govt.nz with Fair Trading Act DVD in the subject line or by calling 0800 94 3600.

Commission develops guidelines on business competition and the Commerce Act

These guidelines have been produced to help achieve robust and timely decisions by providing information about the process and the kinds of information the Commission requires, as well as indicative timelines.

The Commission is committed to improving its certainty and transparency for external stakeholders. One of the most effective means of achieving this is to publish guidelines which set out the Commission's analytical approach and processes. A specialist competition policy team, established in 2008, is responsible for producing these guidelines in relation to the Commerce Act.

The Commission has recently published two new guidelines. These are the Mergers and Acquisitions Clearance Process Guidelines and the Streamlined Authorisation Process Guidelines. A third guideline, relating to failing firms, is currently in the consultation phase and is expected to be released shortly.

MERGER PROCESS GUIDELINES

Mergers perform an important role in the market and can bring benefits to the economy such as enabling businesses to achieve economies of scale and scope. Many are subject to commercial time constraints. However, some mergers may alter the structure of markets in such a way as to lessen competition. The Commission balances the desire for quick decisions against the need to ensure that it has the best information, in order to make sound decisions that will ultimately benefit consumers in New Zealand.

The Commission is responsible for assessing applications for clearance from businesses seeking to acquire or merge with competitors. These applications are voluntary. If clearance is given, the merger is protected from proceedings for breach of sections 27 or 47 initiated by the Commission and/or any other parties under the Commerce Act 1986 provided it occurs within one year of the clearance being granted (or confirmed by a court), and proceeds in accordance with the clearance.

These guidelines have been produced to help achieve robust and timely decisions by providing information about the process and the kinds of information the Commission requires, as well as indicative timelines.

STREAMLINED AUTHORISATION GUIDELINES

The Commission may grant authorisations for restrictive trade practices or business acquisitions that may otherwise breach certain provisions of the Commerce Act, on application by a person or business involved in such a practice or acquisition. In general, the Commission is empowered to grant an authorisation for a practice or acquisition if it is satisfied that the public benefit of the practice or acquisition outweighs the detriment arising from the loss of competition.

These guidelines set out a streamlined process that will enable the Commission to make a decision on straightforward authorisation applications as quickly as possible. In cases where the streamlined process can be used the benefits to applicants will be:

- **Timely decisions** – the streamlined process is designed to provide greater certainty as to the timetable and the timeframe required for the Commission to decide on authorisation applications.
- **Cost-effectiveness** – the streamlined authorisation process is designed to help ensure that applicants' costs are kept to a minimum.
- **Transparency** – the streamlined authorisation guidelines are designed to clarify the Commission's processes so that applicants are fully informed of the Commission's progress towards a determination.

One of the aims of this new streamlined process is to ensure that businesses do not perceive the Commerce Act as a barrier to implementing practices or acquisitions that have clear public benefits.

Future Guidelines

The Commission will publish guidelines in a number of other areas including:

- Leniency Policy and Processes Guidelines;
- Divestment Remedies Guidelines; and
- Section 36 Guidelines.
- Guidelines relating to business competition can be downloaded from the Commission's website www.comcom.govt.nz under Business Competition/Publications.

Commission hears mobile termination rate arguments

The MTAS conference focused on the elements where the Commission wanted to deepen its understanding, and to clarify the differences between the parties.

In June 2009, the Commission released a draft report for the Mobile Termination Access Services (MTAS) investigation. The draft report set out the Commission's preliminary views on whether to recommend to the Minister that MTAS should be made a regulated access service or whether Undertakings put forward by telecommunication companies should be accepted instead of regulation.

As most New Zealanders own at least one mobile phone, the possible impact on the retail prices that consumers pay to use their mobile phones of the Commission's investigation has garnered a high level of interest in the mainstream media.

As part of the investigation, a Commission conference on MTAS was held in Wellington on 2-3 September.

Over the two days, the Commission heard from Vodafone, Telecom, 2degrees, TelstraClear, CallPlus, Orcon, Kordia, Telecommunications Users Association (TUANZ) and the Business Roundtable.

Conferences are held by the Commission as part of the consultation in a decision-making process. They allow Commissioners, staff and the Commission's experts to seek additional information on particular aspects of submissions. Conferences also provide an opportunity for parties to give a brief overview of their positions in opening and closing oral submissions.

The MTAS conference focused on the elements where the Commission wanted to deepen its understanding, and to clarify the differences between the parties.

The final decision needs to strike an appropriate balance between the incentives for different parties to undertake efficient investment in telecommunications infrastructure, including new entrants such as 2degrees, incumbent carriers such as Vodafone and Telecom, and fixed carriers such as Orcon and CallPlus.

At the conference, the Commission determined that there will now be the opportunity for telecommunications companies to submit revised Undertakings before the Commission makes its final recommendation to the Minister in mid-December.

Parties will be able to submit revised Undertakings by Friday 2 October, with submissions on the Undertakings due by 16 October. Submissions should concentrate on issues directly related to the revised Undertakings and there will be no opportunity for cross-submissions.

In their closing statements at the conference, delegates indicated that although there were still areas of disagreement, the two days had been helpful and informative, and that it had been constructive to engage on an industry-wide basis, allowing a fair degree of consensus to be achieved.

Transcripts from the conference will be available on the Commission's website www.comcom.govt.nz under Industry Regulation/Telecommunications/Investigations/Mobile to mobile termination

New regulatory framework for airports

The purpose of the regulation is to ensure that sufficient information is readily available to be able to assess whether the purpose of Part 4 of the Commerce Act is being met.

The Commerce Amendment Act 2008 brought in a new regulatory framework for Auckland, Wellington and Christchurch airports. The new framework focuses on information disclosure and relates only to Specified Airport Services which are defined in section 55A of the Act.

The Commission is currently working on a determination which will set out what information the airports will need to disclose as part of the new regime. The Commission's determination may require the airports to disclose certain specified information relevant to their performance (such as financial statements, prices and quality performance measures), including forward-looking information (such as forecasts and asset management plans).

The purpose of the regulation is to ensure that sufficient information is readily available to be able to assess whether the purpose of Part 4 of the Commerce Act is being met. Part 4 focuses on ensuring that the long-term benefit of consumers in markets where there is little or no competition is maintained by promoting outcomes that are consistent with outcomes produced in competitive markets.

Under the amendment the Commission must make its determination about how the information disclosure regulation will apply to each airport company no later than 1 July 2010. Until the Commission makes this determination, the information disclosure requirements made under the Airport Authorities Act 1966 continue to apply.

Under the new framework, the Commission is also required to report to the Ministers of Commerce and Transport on the effectiveness of the new information disclosure regime. This reporting will take place as soon as practicable after 2012.

Adjudication update

MARKET STRUCTURE CLEARANCES DECIDED OVER THE PERIOD JULY 2008 – JUNE 2009

| PARTIES | SECTION | DESCRIPTION |
|---|---------|--------------------|
| CSR Building Products (NZ) Limited/ Ross Roofing | s66 | Clearance granted |
| Southern Cross Health Trust/Aorangi Hospital | s66 | Clearance declined |
| Tegel Foods Limited | s66 | Clearance declined |
| Shell New Zealand Limited | s66 | Clearance granted |
| Salmon Smolt New Zealand Limited | s66 | Clearance granted |
| ISS Holdings NZ Limited | s66 | Clearance granted |
| Fullers Group/Kiwi Kat | s66 | Clearance granted |
| Coca-Cola Amatil NZ Limited | s66 | Clearance granted |
| Fletcher Building Limited | s66 | Clearance granted |
| Media Monitors Pty Limited | s66 | Clearance granted |
| David Ferrier/NZ Woolscourers Limited | s66 | Clearance granted |

MARKET STRUCTURE AUTHORISATIONS DECIDED OVER THE PERIOD JULY 2008 – JUNE 2009

Nil

Commission settlements and warnings

SETTLEMENTS FOR THE PERIOD JULY 2008 – JUNE 2009

| PARTIES | SECTION | DESCRIPTION |
|---|---------------------------|--|
| Confidential | Commerce Act ss27/30 | Alleged attempted price-fixing |
| Mi Woollies Limited t/a as New Zealand Natural Classics | Fair Trading Act s13(j) | Alleged misleading representations in that footwear available in store lacked country of origin labelling |
| Geneva Finance Limited | CCCF Act ss17, 41, 42, 51 | Alleged that creditor is charging default fees that have not been disclosed, charging unreasonable establishment fees and not providing rebates of insurance premiums on full prepayment |
| Equality Finance Limited | CCCF Act ss41, 45 | Alleged that creditor is charging unreasonable credit fees by including an up-front Veripay charge for a vehicle de-activation system within the unpaid balance when the creditor pays this monthly and charging an unreasonable level of commission on a compulsory mechanical warranty |
| GE Finance and Insurance Limited t/a GE Money | Fair Trading Act s13(g) | Alleged misleading representations about interest being due from the inception of a credit contract when in fact the contract included a 17 month interest free period, during which no interest should have accrued |

WARNINGS FOR THE PERIOD JULY 2008 – JUNE 2009

| PARTIES | SECTION AND ACT | DESCRIPTION |
|--|-------------------------|--|
| Schindler Lifts New Zealand Limited | Commerce Act ss27/30 | Alleged cartel arrangement involving market-sharing of elevator installation contracts |
| Real Estate Network | Commerce Act ss27/30 | Alleged price-fixing of commissions paid between real estate agents |
| Tourism Bay of Plenty | Commerce Act s27 via 30 | Alleged agreement for prices of land tours sold via two i-site offices to cruise ship passengers at Tauranga. This investigation resulted from an application for leniency |
| Auckland International Airport Limited | Commerce Act s36 | Alleged plan to reduce the number of duty free retailers from two to one |
| Marco Boats | Commerce Act s37 | Alleged resale price maintenance |
| Trustpower | Commerce Act ss36, 27 | Alleged use of market power or of collusion in the wholesale and/or retail markets |
| British American Tobacco | Fair Trading Act s13(e) | Alleged that trader's use of mild and light descriptors gives the misleading impression this may be better for consumers' health |

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| PARTIES | SECTION AND ACT | DESCRIPTION |
|---|-----------------------------------|---|
| Imperial Tobacco New Zealand Limited | Fair Trading Act s13(e) | Alleged that trader's use of mild and light descriptors gives the misleading impression this may be better for consumers' health |
| Philip Morris (New Zealand) Limited | Fair Trading Act s13(e) | Alleged that trader's use of mild and light descriptors gives the misleading impression this may be better for consumers' health |
| Auckland Home Loans Limited | Fair Trading Act ss13(g), (b), 11 | Alleged misleading representation that the trader is providing a free loan brokerage service but has charged the complainant \$11,300 to arrange a loan |
| Agra Developments Limited | Fair Trading Act s14 | Alleged that misrepresentation made concerning resource consent being issued |
| European Profile Company Limited t/a EPC Sheerframe Limited | Fair Trading Act s13(a) | Alleged that product supplied does not meet the stated quality as per test NZS4211 |
| The Bone Art Place | Fair Trading Act s13(e) | Alleged that trader is selling stone and bone carvings that are not made by the claimed artists and are not made of the claimed materials |
| Chrysalis Recruitment | Fair Trading Act s12 | Alleged misleading representation as to the intention to supply recruitment service for immigrants from the UK |
| Resene Paints Limited | Fair Trading Act s13(a) | Alleged misleading representation that a paint is Volatile Organic Compound (VOC) free when in fact it contains low levels of VOC |
| The Warehouse Group Limited | Fair Trading Act s19(b) | Alleged that trader distributed a catalogue and screened television advertisements including product which was not available in stores |
| Resene Paints Limited | Fair Trading Act s13(g) | Alleged misleading representation about the price of paint in that the price advertised does not include a paint disposal levy that is not optional |
| New Zealand Green Health Limited | Fair Trading Act s13(a) | Alleged misleading representation that the trader is manufacturing health products to good manufacturing practice (GMP) standards when it is alleged that most goods made by the trader do not comply with the GMP standard |
| Foreno Tapware (NZ) Limited | Fair Trading Act s13(a) | Alleged misleading representation that brass used in tap ware prevents the migration of lead so the use of their product is beneficial to health when in fact there is no evidence to support the claim |
| Mouton Noir t/a Macpac and Fairydown | Fair Trading Act s13(g) | Alleged that trader is misleading about the amount of savings made in its sales |
| STA Travel (NZ) Limited | Fair Trading Act s13(g) | Alleged that trader did not include fuel surcharge in quote, allegedly misleading about price |
| The Studio of Tableware Limited | Fair Trading Act s13(g) | Alleged that trader is misrepresenting recommended retail price of knives |
| Trents Wholesale Limited - Greymouth Branch | Fair Trading Act s13(g) | Alleged misleading representations in that shelf prices are lower than cash register prices |

| PARTIES | SECTION AND ACT | DESCRIPTION |
|--|------------------------------|---|
| Action Demolition & Firewood Limited | Fair Trading Act s13(g) | Alleged that trader charges more than represented on website |
| Mitsubishi Motors NZ Limited | Fair Trading Act s13(g) | Alleged false representation regarding price. Vehicle used in advertisement was superior model to that priced |
| Bond and Bond Limited | Fair Trading Act s13(a), (d) | Alleged that trader sold second hand product as new |
| Norsewear Brands Limited | Fair Trading Act s13(j) | Alleged that trader is misrepresenting country of origin |
| P&O Cruises | Fair Trading Act s13(g) | Alleged misleading representation about the availability of a child's fare of \$99 |
| T.V. Shop Limited | Fair Trading Act s13(g) | Alleged that trader has not disclosed the full price of a product advertised |
| Aroma NZ Limited, NZ Bethal Health Limited, World Mart Limited | Fair Trading Act s13(a) | Alleged that trader has misrepresented the contents of mussel extracts |
| Kiwi Mortgage Market Limited | Fair Trading Act s13(f) | Alleged that trader is misrepresenting individual staff affiliation of industry body |
| Products from New Zealand Limited | Fair Trading Act ss10, 13(f) | Alleged that some goods that are described as product of NZ are manufactured overseas |
| Roadshow Entertainment (NZ) Limited | Fair Trading Act s17 | Alleged misleading representations in that offered prize which was advertised as being \$1 million was only a 1 in 100 chance to win \$1 million |
| Ezibuy Limited | Fair Trading Act s13(a) | Alleged that trader is making false and misleading claims regarding content in clothing |
| Progressive Enterprises Limited | Fair Trading Act s13(j) | Alleged that trader is misrepresenting a product's country of origin |
| All Seasons Air Conditioning Limited | Fair Trading Act s13(a) | Alleged that trader is misrepresenting the cooling and heating capabilities of air conditioning units |
| Colliers International NZ Limited | Fair Trading Act s13(e) | Alleged that trader is misrepresenting 2008 success rate for selling properties by auction |
| TS14+ | Fair Trading Act s13(g) | Alleged misleading prices, advertising is in Australian, not New Zealand dollars |
| Carnival PCL t/a Princess Cruises | Fair Trading Act s13(g) | Alleged that trader is advertising return airfares as included in cruise price when they were not included for the majority of cruises advertised |
| Toshiba (Australia) Pty Limited t/a PB Technologies Limited | Fair Trading Act s13(a) | Alleged that trader is misrepresenting central processing unit (CPU) specifications |

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| PARTIES | SECTION AND ACT | DESCRIPTION |
|---|------------------------------------|--|
| Accent Architectural Housing Limited | Fair Trading Act s13(b) | Alleged misleading representation in that business represents it is Master Build registered when it is not |
| S J Purton Limited t/a New World Birkenhead | Fair Trading Act s13(g) | Alleged trader overcharged consumers on advertised sale items |
| Whenuapai Garden and Orchards Limited | Fair Trading Act s13(g) | Alleged that trader is rounding prices on electronic transactions |
| Davie Motors Holden | Fair Trading Act s13(g) | Alleged misleading representation about price in that the trader is advertising lower vehicle prices on its website than it charges on its yard for the same vehicle |
| Avanti Finance Limited | Fair Trading Act s13 | Alleged that creditor is misleading debtors about their rights under the Credit Repossessions Act in that the creditor is representing it can continue to charge interest and fees after repossession when this is not correct |
| China Travel Services | Fair Trading Act s13 | Alleged misleading representation about the price of air flights in that the advertised price does not include compulsory additional charges |
| DSE (NZ) Limited - Power House Manukau | Fair Trading Act s19(1) | Alleged misleading representation about the availability of Panasonic plasma televisions for sale in that allegedly there was insufficient stock to meet demand at the sale price |
| Electronic Boutique Australia Pty Limited | Fair Trading Act ss13(g), 19(1)(a) | Alleged that trader is failing to honour advertised price promise ("See it cheaper? We'll match it") |
| Dominion Toy Company Limited | Fair Trading Act s13(a) | Alleged misrepresentation in relation to fibre content labelling of '100% pashmina' scarves |
| KLM Royal Dutch Airlines | Fair Trading Act s13(g) | Alleged misrepresentation about the price of flights |
| The Money Factory Furniture Limited | Fair Trading Act s13(g) | Alleged that trader has been advertising a closing down sale for over seven months |
| Travel Shop | Fair Trading Act s13(g) | Alleged misleading representation about the price of air tickets in that additional taxes were not disclosed |
| Hyundai Motors NZ Limited | Fair Trading Act s13(a) | Alleged that trader advises its i30m/v used less fuel and emitted less carbon in 2007 World Solar Challenge when the vehicle was driven in a different way from others in same class |
| Flight Centre (NZ) Limited | Fair Trading Act s13(g) | Alleged that trader is not honouring its 'price beat' offer |
| Trade Me traders (75 sellers) ¹ | Fair Trading Act ss13(a), 16(1)(a) | Alleged that sellers on auction site may be misrepresenting that fake brand items for sale are genuine |

1. Trade Me was the vehicle used by traders. Trade Me itself was not investigated in relation to these matters.

| PARTIES | SECTION AND ACT | DESCRIPTION |
|---|-----------------------------------|---|
| Professional NZ Limited | Fair Trading Act s13(g) | Alleged that trader has a continuous sale |
| Digi Parallel Imports Limited | Fair Trading Act s13(i) | Alleged that trader is misleading consumers in relation to rights under the Consumer Guarantees Act |
| Nationwide Cars | Fair Trading Act s13(a) | Alleged that trader is advertising used vehicles as being repossessed and the purchase price being just what is owed the finance company when in fact the vehicles are recent imports not previously owned in New Zealand |
| I. C. Clear Limited t/a Gates Optometrists | Fair Trading Act s11 | Alleged misleading advertising about a subsidy through student vision scheme |
| Jin Fashion Limited t/a Blueberry | Fair Trading Act s13(g) | Alleged misrepresentations of savings on clothing |
| Seasoned and Dressed Limited | Fair Trading Act ss10, 13(a), (i) | Alleged that trader falsely claims it is Wellington's only sustainable caterer |
| Everard Entertainment Limited t/a Berkeley Cinemas - Hibiscus Coast | Fair Trading Act s13(g) | Alleged misrepresentation concerning price of admittance |
| Kimbyer Investments Limited t/a Peter Alexander | Fair Trading Act s13(g) | Alleged misrepresentation of price, displayed in Australian Dollars only |
| Strandbags Group Pty Limited (Aus) | Fair Trading Act s13(g) | Alleged misrepresentation of price, displayed in Australian Dollars only |
| American Express International (NZ) Inc | Fair Trading Act s13(e) | Alleged that trader is misrepresenting benefits of a product |
| Auckland Movers Limited | Fair Trading Act s13(i) | Alleged misleading representation about the trader providing free transit insurance when in fact the cover only applies if a removal truck is in a traffic accident |
| Sky Network Television Limited | Fair Trading Act s13(g) | Alleged that trader is advertising a one-off \$49 installation fee plus \$15 per month to access the mysky HDI service which does not include HD programmes, which cost an additional \$10 per month |
| Coles Group NZ Holdings Limited t/a Kmart New Zealand | Fair Trading Act s19 | Alleged that trader is advertising products that are not currently available for sale |
| Great Getaways Limited | Fair Trading Act s13(a), (e) | Alleged that trader misrepresented the nature of the product and had no intention to supply |
| Health Gate Limited | Fair Trading Act s13(j) | Alleged misleading representations on the labelling of the products about country of origin |

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| PARTIES | SECTION AND ACT | DESCRIPTION |
|--|-------------------------|--|
| 1-Day Online Limited | Fair Trading Act s13(g) | Alleged that trader is representing inflated recommended retail price on discounted product |
| Online Vehicle Auctions Limited | Fair Trading Act s13(i) | Alleged that trader is making misleading claims about warranties of used motor vehicles advertised for sale on its website camstain1 on Trade Me |
| Envroreel Plastics NZ Limited | Fair Trading Act s13(a) | Alleged misrepresentation regarding product passing test for safety |
| Tourism Holdings Limited | Fair Trading Act s13(g) | Alleged misleading representations in respect of pricing of services |
| Danske Mobler Limited | Fair Trading Act s13(j) | Alleged misleading representations that outdoor furniture was New Zealand made, when the extent of New Zealand manufacture was insufficient to support that claim |
| Noel Leeming Group Limited | Fair Trading Act s13(g) | Alleged misleading representation that a sale was in progress. Nationwide advertising stated that the sale ran until 9 January; however, stores had ceased the sale on 6 January |
| Cool Mobile | Fair Trading Act s13(i) | Alleged breach of the Consumer Guarantees Act by limiting the warranty period on new mobile phones to 3 months |
| APN Holdings NZ Limited | Fair Trading Act s17 | Alleged that the terms and conditions of a competition significantly alter the impression of the advertisement |
| Craig Gilbert Motors Limited | Fair Trading Act s28 | Alleged misleading representations in that trader sold a car without Supplier Information Notice (SIN); vehicle was imported as damaged |
| AVF Imports Limited | Fair Trading Act s29 | Alleged that cots are being imported and sold on TradeMe, but they do not comply with Product Safety Regulations |
| The Great Wall International Trade Limited | Fair Trading Act s28 | Alleged that trader has failed to comply to display Consumer Information Notices (CIN) on vehicles being offered for sale at his warehouse and also advertised on TradeMe without CINs or without providing a link to CINs |
| Wayne Hill Motors Limited t/a Wayne Hill Cars | Fair Trading Act s28 | Alleged misleading representation on CIN that listed 'Nil' on security interest but security interest was registered |
| Price Busters | Fair Trading Act s30 | Alleged that trader is selling cigarette lighters that do not comply with standard |
| Top International Trading Limited t/a Best for Less Wanganui | Fair Trading Act s30 | Alleged that trader is selling children's pyjamas without the required fire safety labelling |
| Wanan Limited t/a Coin Save Wanganui | Fair Trading Act s30 | Alleged that trader is selling children's pyjamas without the required fire safety labelling |

| PARTIES | SECTION AND ACT | DESCRIPTION |
|---------------------------------------|---|--|
| Falanisi Fonokalafi | CCCF Act ss17, 41 | Alleged that creditor is not providing initial disclosure and is charging unreasonable weekly fees |
| Capricorn Limited | CCCF Act ss17, 99, Fair Trading Act s13(i) | Alleged that creditor failed to provide initial disclosure and made misleading representations about the enforceability of the contract |
| General Finance Limited | CCCF Act ss41, 42 | Alleged that the establishment fee charged in respect of an application for finance was unreasonable |
| Dorchester Finance (Central) Limited | CCCF Act ss54, 41 | Alleged that creditor is charging debtors an unreasonable estimate of its loss on full prepayment, an unreasonable hardship application fee when debtors have the right under the CCCF Act to apply for relief under the hardship provisions, and an unreasonable fortnightly account administration fee |
| Broadlands Finance Limited | CCCF Act s41 | Alleged that creditor is charging unreasonable credit fees |
| Gold Band Finance Limited | CCCF Act s41 | Alleged that creditor is charging unreasonable credit fees |
| Hopscotch Money NZ Securities Limited | CCCF Act ss17, 412, 42, Fair Trading Act s13(i) | Alleged that creditor has not disclosed credit fees that apply to a credit contract, is charging unreasonable establishment fees and contracting out of the CCCF Act in its terms and conditions |
| Cantwait.com Limited | CCCF Act s17 | Alleged that creditor is not providing full initial disclosure |
| South Pacific Loans Limited | CCCF Act s41 | Alleged that creditor is charging unreasonable credit fees |
| Pacific Loans Limited | CCCF Act s41 | Alleged that creditor is charging unreasonable credit fees |
| Stop 2 Shop | CCCF Act ss17, 48 | Alleged that creditor has not provided initial disclosure and has not refunded overpaid repayments |
| Auto Finance and Leasing Limited | CCCF Act s41 | Alleged that creditor is charging an unreasonable establishment fee |
| Paalelei Finance | CCCF Act s17 | Alleged that creditor is not providing initial disclosure |
| Mac Warranties Limited | CCCF Act ss41, 42, 44 | Alleged that the creditor is charging unreasonable default and establishment fees together with an unreasonable administration fee upon full prepayment |
| Basecorp Finance Limited | CCCF Act ss51, 54 | Alleged that creditor is charging an unreasonable estimate of its loss upon full prepayment by including a 90-day period as time to re-lend the repaid funds |

From the Courts

CRIMINAL AND CIVIL PROSECUTIONS RESOLVED OVER THE PERIOD JULY 2008 – JUNE 2009

| PARTIES | SECTION AND ACT | DESCRIPTION | DECISION |
|---|---|---|---|
| NZ Bus Limited | Commerce Act s47 | Alleged breach of s47 of Commerce Act in relation to the acquisition of NZBL by Mana Coach Services | Leave to appeal accessory liability of Infratil for breach of s47 refused by Supreme Court. Costs of \$2,500 against the Commission |
| New Zealand paper industry | Commerce Act ss27/30 | Alleged agreements or understandings by paper producers. Conduct had no effect on New Zealand market | Discontinued |
| Bay of Plenty Electricity | Commerce Act s36 | Alleged a substantial degree of power in the metering services market and taking advantage of that market power | Commission abandoned appeal. Costs and disbursements awarded against the Commission |
| Knight Business Furniture Limited | Fair Trading Act s13(j) | Misleading representations about the country of origin of office chairs | Fined \$5,000, costs \$2,500 |
| Parallel Imported Limited | Fair Trading Act ss10, 13(g) | Advertising a product which is either unavailable or not available at the advertised price | Fined \$15,000 |
| ANZ Investment Services (NZ) Limited | Fair Trading Act s17 | Misleading advertising in that advertising a competition to win \$1 million and \$500,000 for a bach, however, fine print stated winner selects prize from 100 envelopes, one envelope contains promoted prize and other 99 contain \$10,000 each | Fined \$80,000 |
| Andrew Marks t/a Mobile Electronic Services | Fair Trading Act ss11, 13(e)(f) (h) (i) | Trader made misleading representations regarding existence of call-out fee and also misrepresented the need, cost and quality of repairs to televisions and videos | Fined total of \$4,500 and court costs \$650 |
| Ezibuy Limited | Fair Trading Act ss10, 13(a) | Misleading representation as to the silk and pashmina content of a shawl when in fact the shawl contained neither and was made of cotton and polyester | Fined \$9,500 and court costs \$130 |
| Dawell Furniture Limited | Fair Trading Act s13(j) | Misleading representations about the country of origin of office chairs | Fined \$5,000, solicitors' costs \$2,500 and court costs \$130 |
| Celestine Realty Limited | Fair Trading Act s14(b) | Advertising a buyer enquiry over price that they knew would not be acceptable to seller, thus misleading potential purchasers that they may be able to get a house well below what the seller would accept | Fined \$7,500 |

| PARTIES | SECTION AND ACT | DESCRIPTION | DECISION |
|--|-----------------------------------|--|---|
| Damba Furniture Limited | Fair Trading Act s13(j) | Misleading representations about the country of origin of office chairs | Convicted and fined \$5,000, and ordered to pay \$2,500 towards Commission costs |
| Erdic (NZ) Limited | Fair Trading Act s13(a), (e) | False claims concerning a product for enhancing breasts | Convicted and fined \$80,000, court costs \$130, solicitor costs \$6,479, video link costs \$2,626. Allan Mitchell fined \$20,000, court costs \$130. |
| Big Blue Limited | Fair Trading Act ss10, 13(a)(e) | Misleading representations about water being 'energised mineral water' and 100% pure New Zealand mineral water when in fact water cannot be energised and the trader is allegedly using normal tap water and adding minerals | Convicted and fined \$25,000 and \$130 court costs |
| Ingrid and John Godwin t/a Healing World | Fair Trading Act s13(e) | False claims that their homeopathic remedies could cure diseases such as bird flu, SARS and herpes | Convicted and fined \$11,450, \$1,950 court costs, \$10,000 costs to commission |
| David Barrowclough (Vero) | Fair Trading Act ss17(a), 13(e) | Offering power insurance and, with it, the right to be entered into a draw to win a prize of 'free power'. Offer made between September 1999 and December 2001. No draws were held. | \$55,000 costs awarded to Vero and \$50,000 to each of the power companies |
| The Warehouse Limited | Fair Trading Act ss10, 13(a) | Misleading representation about the down content percentage in a duvet, bait advertising, and other false advertising | Fines total of \$99,600 |
| Xtra Limited | Fair Trading Act s13(e), (i), (g) | Misleading representations that Xtra's pricing or billing systems or conditions attached to its services had been approved by the Commerce Commission | Fined \$45,000, costs \$10,000 |

Annual Report

The Commission's Annual Report for 2008/09 will be available from November for download from the Commission's website www.comcom.govt.nz under Publications/Annual Report

If you would like a copy of the Annual Report for 2008/09 sent to you as a pdf by email when it is available, please email felicity.connell@comcom.govt.nz with 'Annual Report' in the subject line.

You can also join a list to receive the Commission's Statement of Intent by emailing felicity.connell@comcom.govt.nz with 'Statement of Intent' in the subject line.

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- consumer issues – Fair Trading Act and Credit Contracts and Consumer Finances Act;
- telecommunication regulation;
- energy regulation;
- mergers and acquisitions;
- anti-competitive behaviour under the Commerce Act; and
- input methodologies.

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

For media releases, Commission adjudication decisions, submissions, Annual Reports, plans, publications and more, visit the Commission's website at www.comcom.govt.nz