



Annual Plan

1998-1999

Commerce Commission

PO Box 2351

Wellington

New Zealand

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Foreword

An effective competition policy is an important part of the economic policy environment in New Zealand and almost every other developed economy. Competition laws are an essential element of that policy.

If anything the role of competition law is more important in New Zealand than most economies, given the breadth of its application and the absence of sector specific competition regimes.

New Zealand's principal competition laws are the Commerce and Fair Trading Acts. These Acts are about ensuring a healthy competitive environment underpins and promotes efficiency and informed choice to the benefit of consumers and producers.

As the agency responsible for enforcement of the Commerce and Fair Trading Acts the, Commerce Commission has a central role in promoting awareness and acceptance of, and compliance with, those Acts. The Commission also has a role in testing the boundaries of the legislation by establishing legal precedent through the court action it takes. Through its adjudication role is instrumental in preserving competitive industry structures where business acquisitions are contemplated.

The Commission has been in operation in its current form for over twelve years and is now entering the third year of operation under the Strategic Plan 1996-2001. However it is constantly reviewing its operations to maximise effectiveness.

The Commission has a strong culture of self review - aiming to ensure priorities remain relevant and operating processes are efficient, while at the same time striving to offer the consistency in decision making and approach which businesses and others rightly expect from an organisation such as this.

This year's Annual Plan continues many of activities undertaken in the past. It also incorporates new approaches and responsibilities, and responds to the changing environment.

The Commission's responsibilities continue to broaden as more economic sectors come through regulatory reform. In recent years the health and energy sectors have been included within the ambit of the Commerce Act. Certain activities undertaken by local and regional government have also come in for Commission scrutiny. This year the Commission will be adding a major new set of responsibilities under the electricity reforms. New product safety and consumer information standards are proposed and the Commission is expected to enforce these. Over this year and the next the Commission will conduct its first formal price control inquiry, examining airfield activities at Auckland, Wellington and Christchurch airports. At the same time, complaint and enquiry numbers, investigation activity, demands for more detailed information and the Commission's portfolio of litigation and prosecution activity are all growing.

All these factors require that the Commission continues to carefully prioritise

its work and maximise the efficiency with which it uses its resources.

The reliance placed on the Commission as a central part of effective competition policy also suggests that the Government needs to ensure the Commission is resourced to a level that meets the Government's aims. The Government can be confident that it will get an appropriate return from the resources made available to the Commission. An examination of the Commission's operations by independent consultants engaged by the Treasury and Ministry of Commerce earlier this year confirms that. The real question for the Government is what level of output does it want from the Commission.

The membership of the Commission is undergoing a period of change. It is pleasing to see the high level of interest in appointment as Commissioners from a range of well qualified and experienced people. During this financial year I will complete my time with the Commission and hand over to a new Chairperson. Inevitably a change in Chair heralds some change in approach emphasis. The Commission is however bound by the statutes under which it operates under and no major directional changes should be expected.

It is important that the statutory basis for the Commission's activities and decisions is acknowledged. From time to time the Commission is criticised for an action or decision. Some of these criticisms, to the extent that they are valid, should more appropriately be directed towards the statutory tests contained in the Commerce or Fair Trading Acts or to established precedents. The Commission can only reasonably act where it believes the law and established precedent suggest a breach has or will occur.

If particular outcomes are unacceptable or the thresholds or bases for intervention seem inappropriate then by all means this should be said, but these are policy issues for Parliament to consider shifting them, not the Commission. That consideration must also extend to whether the change is one for the Commerce Act or whether more direct intervention is called for.

There are calls for some changes. Some have come from the Commission – for example: changes to the limitation period in the Fair Trading Act and for higher penalties for Commerce Act contraventions.

Overall the calls for change have been relatively limited and have focussed on an important but quite narrow set of issues. The Commerce and Fair Trading Acts have generally served New Zealand consumers and producers well. These Acts and the Commission can be expected to do so again in 1998-99.

Peter Allport
Chairman

Overview

The Commerce Commission's Annual Plan 1998-99 sets out the activities the Commission intends to undertake during the year to advance achievement of its purpose.

The Plan also incorporates details of performance measures and levels adopted in the Commission.

Activities

Many of the Commission's activities for this year build on strategies which have been developed over a number of years. The Commission will continue to focus on selected issues arising under the Commerce and Fair Trading Acts in a way which is most likely to promote compliance effectively.

Proactive Enforcement

The emphasis on proactive enforcement will continue. Output 2 (Fair Trading Enforcement) contains a rounded portfolio of activities designed to promote compliance through education, information, and trader liaison. This portfolio is expanded this year with the introduction of a Trade Association Programme to complement the highly successful Major Trader Programme which has operated for several years. During this year the Commission will seek to further expand its proactive enforcement activities in relation to the Commerce Act.

Focus

The strategy of focusing Commission resources to maximise achievement will also continue. The Commission will continue to identify the most significant contraventions of the Acts we enforce and to employ a range of remedies designed to achieve compliance in the most effective manner.

In order to do so the Commission has streamlined its approach to responding to complaints and enquiries from traders and consumers. The Commission values the information it receives from traders and consumers through the requests for information and advice it gets. However, the Commission does not seek to investigate all such matters. In fact, a relatively small proportion of the complaints received are investigated. Rather, the information gathered from complaints and enquiries is used to target enforcement activities. Individual complaints are only pursued when they meet the Commission's investigation criteria, set out on page 11 of this Plan.

Enquiries Centre

The Commission has developed an Enquiries Centre using voice mail technology. This provides automated responses to common Fair Trading and Commerce Act enquiries, referrals to other agencies better suited to deal with some consumer complaints, and mechanisms for requesting additional information. This system complements the work of the Commission's enquiries officers. It is not an ideal system but represents a necessary response to the ever growing number of complaints and enquiries received.

This year's Plan also incorporates a range of new functions and activities for the Commission.

Electricity Industry Reform Act

The Electricity Industry Reform Act 1998 (EIRA) introduced additional responsibilities and functions for the Commission. The Commission's roles are of two types – enforcement and adjudication. The Commission will approach enforcement under the EIRA using similar criteria and processes to those

relating to the Commerce Act. The Commission will seek to employ the remedies provided in the EIRA in response to specific competition issues that are identified as a result of the Commission's investigations. This work will be undertaken along-side other competition law enforcement as a part of Output 1.

Under the EIRA the Commission is empowered to issue exemptions for relationships and arrangements which might otherwise be prohibited by the Act. The EIRA also provides for the Commission to extend the application of the Act. The Commission may also advise on the exemption of, and extension to, classes of arrangement by way of regulation. These activities are incorporated, with other adjudication activities, under Output 3.

In April 1998 the Minister of Commerce required the Commission to report to him on the necessity and desirability of introducing price control in relation to airfield activities. This report is to be completed by December 1999. Preliminary work on this report will be conducted during this year with the more substantive parts of the reporting process occurring during the next financial year. In order to accommodate this activity, and any other work in relation to price monitoring, a new Output 4 has been added to this Plan.

*Airfield
Activities Price
Inquiry*

In last year's Annual Plan the Commission noted that it was running a further deficit which would deplete its accumulated reserves. The Commission foreshadowed a requirement for additional resources to sustain current activity levels, and a requirement of additional funding attaching to any additional responsibilities. In the run up to the 1998-99 appropriations and the preparation of this Plan, the Commission sought additional funding. The Commission has received limited additional funding for the 1998-99 year and specific funding in relation to the airfield services inquiry.

*Commission
Resources*

In relation to the EIRA Government has provided funding for one year, and introduced application fees, which are intended to provide funds to the Commission for its operations under that Act. The Commission faces a further deficit this year. This is being accommodated from funds freed up by the establishment of the Commerce Act litigation fund at a level of \$1.5 million. The Commission has no further resources to provide for any future deficits. During this year the Commission will review priorities and expenditure with a view to tailoring activities and costs to a level which can be sustained by the income it receives.

John Feil
General Manager

Purpose and Values

Purpose

The Commerce Commission exists to bring about Awareness and Acceptance of, and Compliance with, the Commerce and Fair Trading Acts, so that consumers and producers benefit from healthy competition.

Values

In the Commission we are committed to:

- professionalism
- excellence
- focusing on end results
- independence
- integrity

Structure and Organisation

The Commission

The Commission is made up of up to five members (including a Chairman and Deputy Chairman) and an additional number of Associate Members, appointed for their knowledge of, or experience in, industry, commerce, economics, law, accountancy, public administration or consumer affairs.

The Commission comprises:

Peter Allport - Chairman (term completed 31 March 1999)

Peter Allport was appointed to the Commission in June 1992 and became deputy chairman in July 1995. He was appointed as chairman for a one year term commencing 1 April 1998.

Peter is the former Managing Director of the New Zealand cereal foods division of Goodman Fielder Limited. He has his own business consultancy company, Alpega Management and is Chairman of New Zealand Institute for Crop and Food Research, Chairman of Partnership Wellington Trust Inc., director of TransAlta (New Zealand) and a trustee of the Crown Forestry Rental Trust.

Mark Berry Deputy Chairman

Mark Berry was appointed Deputy Chairman from March 1 1999.

Mark is a former partner of Bell Gully Buddle Weir and former lecturer in competition law at Victoria University. He was senior lecturer at the faculty of law at the University of Otago from 1994-98.

Dr Kate Brown - Commissioner

Dr Brown was first appointed as a Commissioner in July 1995. She was reappointed for a further three years on 13 July 1997.

Kate is a senior lecturer in finance at the University of Otago. Her particular teaching and research interests relate to corporate finance and entrepreneurship.

Cathie Harrison - Commissioner

Cathie Harrison was as Associate Commissioner from May 1996 to July 1998. She was then appointed as a Commissioner for three years from 11 July 1998.

Cathie is barrister and solicitor and a principal of the law firm, Harrisons. She has a particular interest in intellectual property and telecommunications law.

Liz Coutts - Commissioner

Liz Coutts was appointed as a Commissioner on 2 July 1998 for a two year term. Liz is a chartered accountant. She is the former Chief Executive of the Caxton group of companies and has worked with a number of New Zealand corporates including Carter Holt Harvey and Fletcher Challenge.

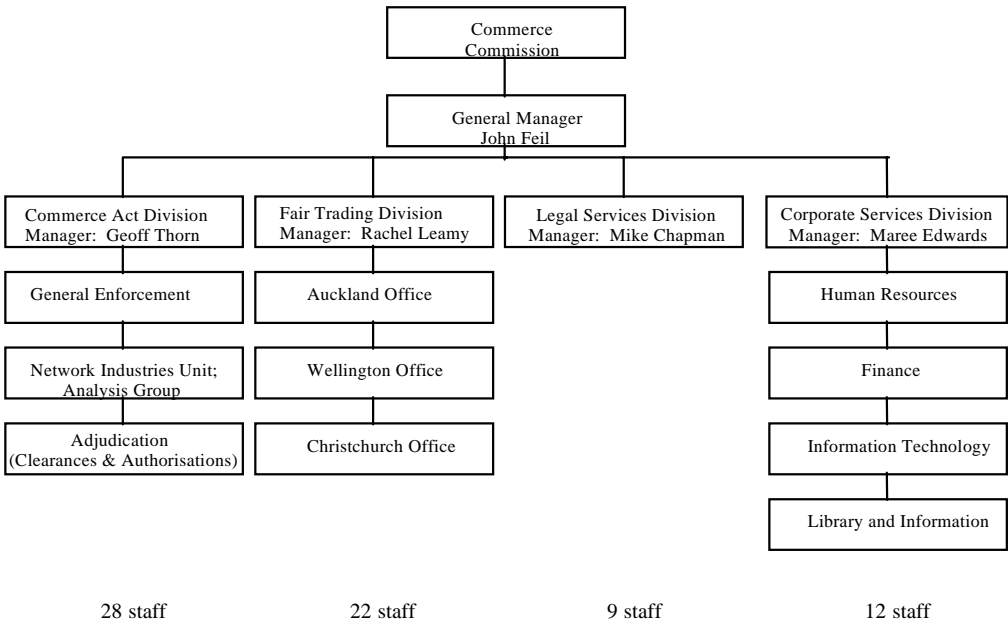
Liz is a member of the Earthquake Commission and a director of the Viking Pacific Holdings Limited, Worley Group Limited, Industrial Research Limited and the establishment unit for MAF Quality Management (MQM). She was previously a director of Trustbank New Zealand Limited.

Paula Rebstock - Associate Commissioner

Paula Rebstock was appointed as an Associate Commissioner for a period of three years from 6 August 1998. Paula is a consultant economist specialising in micro and labour market economics.

The Commission has a staff of 72 led by the General Manager, John Feil. It is organised into four operating divisions: Commerce Act, Fair Trading, Legal Services, and Corporate Services. The organisation’s structure and key personnel are illustrated in the chart:

Staff



Strategies and Outputs

Strategies

There are five key strategies employed by the Commission to achieve its purpose.

Measuring Success

During 1998-99 the Commission will continue to work to develop effective and relevant measures of success. That is, to identify measures of levels of awareness, acceptance and compliance and the contribution to raising those levels from various Commission activities.

People

The Commission will endeavour to recruit, reward, retain and recognise the people in the Commission. We will also build skills through careful recruitment and continuation of an extensive training programme

Focus and Selection

As noted elsewhere the Commission will continue its focus and case selection strategies so that resources are deployed to maximise achievement of its purpose.

Operational

Operating processes will be further streamlined and information technology employed to enhance productivity and quality.

Communication

The Commission will continue to positively communicate with trader groups and the community generally so that they are aware of the requirements of the Commerce and Fair Trading Acts and the role and activities of the Commission.

Outputs

The Plan is divided into four Outputs:

Output 1: Commerce Act Enforcement

Output 2: Fair Trading Act Enforcement

Output 3: Adjudication

Output 4: Price Monitoring and Control

Outputs 1 to 3 are similar to previous years, although they have been renumbered and the past division into Output classes has been removed. Output 4 is an addition to the Commission's Annual Plan and follows the Minister of Commerce's request for an Inquiry into prices for airfield services.

The budgeted allocation of Commission resources between these Outputs is shown in the accompanying pie-chart.



Investigation Criteria

The Commission expects to receive about 18,000 complaints and enquiries during 1998-99. The details of all complaints and enquiries are collated and this information is used for identifying trends in market behaviour which could be the subject of investigation. The Commission is unable to investigate every complaint received and cases for investigation are selected according to predetermined criteria. These criteria focus on the cases that will have the maximum impact towards promoting awareness, acceptance and compliance with the legislation.

In general terms, cases are investigated under both the Commerce Act and Fair Trading Act where:

- there is a major market problem;
- there is blatant disregard for the law; or
- the case will establish a new legal precedent.

Enforcement criteria

Once an investigation has been concluded, the Commission has a number of enforcement options to assist it achieve compliance. The Commission may:

- issue a warning;
- administratively settle with the parties; or
- commence litigation.

Every contravention of the legislation will involve different circumstances. In each case, the Commission's primary goal is to achieve compliance with the Commerce and Fair Trading Acts. This includes compliance across industry groups as well as compliance in an individual company.

The purpose of a warning is to advise a person that certain behaviour, based on the facts known to the Commission, is at risk of breaching the Act. A warning will be given where the behaviour is not significant or deliberate.

Warnings

A settlement is a method of dealing with an identified contravention of the Act where the parties involved agree to modify their behaviour and provide signed undertakings (sometimes in the form of a deed) to this effect. The conditions of the undertaking or deed will depend on the facts of the case.

Administrative settlement

A settlement will generally not be offered where the Commission considers the case to be significant or the behaviour is deliberate. In general terms, the Commission will not offer an administrative settlement unless it is prepared to commence litigation on the case.

Litigation

Litigation involves either criminal prosecution in the District Court for contraventions of the Fair Trading Act or High Court action under the Commerce Act or in relation to some contraventions of the Fair Trading Act.

Significant penalties of up to \$5 million in the High Court and \$500,000 in the District Court may be imposed. In addition, the Courts may make a range of other orders to prevent future contraventions, mitigate the effects of contravention or to compensate affected parties.

Some of the factors taken into account by the Commission when considering whether court action is appropriate include:

- the sufficiency of the available evidence;
- whether statutory defences are available;
- the impact of the behaviour on the affected markets;
- whether the behaviour is a conscious breach;
- the extent of previous complaints about the parties;
- the educational and deterrent effect of taking such action; and
- whether there might be precedent value in taking court action.

Introduction

This Output covers the promotion of competitive markets in New Zealand through the administration and enforcement of the Commerce Act 1986. This includes enforcement of the Act's provisions relating to restrictive trade practices and business acquisitions under Part II of the Commerce Act. The Commission's enforcement activities in relation to the Electricity Industry Reform Act 1998 (EIRA) are also contained in this Output.

The promotion of public, and in particular trader, awareness of the requirements of, and remedies available under, the Commerce Act is incorporated into this Output.

The Commerce Act aims to promote competition in New Zealand markets. This will benefit the economy through:

- more efficient businesses;
- a wider choice and higher quality of goods and services; and
- competitive prices.

In order to develop awareness, acceptance and compliance with the Commerce Act and (where appropriate) the EIRA, the Commission will:

- investigate conduct which may breach the business acquisition and restrictive trade practice provisions of the Act or the provisions of the EIRA, and take enforcement action where necessary;
- maintain surveillance of merger and takeover activity to ensure that business acquisitions that result in dominance, or a strengthening of dominance, do not proceed;
- provide information and guidance to the business community and other groups on the requirements and effects of the Act.

Proactive Enforcement

Following on from the previous year's study into local authorities, a further proactive programme investigating connections and maintenance contracts for water and sewerage networks will be undertaken.

*Local
Authorities*

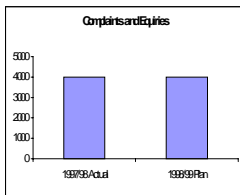
Health

The Commission's health pro-active during the 1997-98 year has increased the awareness and acceptance of the application of the Commerce Act to this sector. The Commission also considers that the action against the Ophthalmological Society will further raise awareness. The publication of guidelines for the health sector participants has been well received.

During the 1998-99 the Commission will:

- liaise with the health sector on an on-going basis to increase compliance with the Commerce Act; and
- continue to focus on developments in provider organisations and "fund-holding" type arrangements.

Complaints and Enquiries



Complaints and enquires relating to a wide range of industries are being continually received. The Commission anticipates receiving 4,000 complaints in the 1998-99 year, related to the Commerce Act.

One factor likely to contribute to the continuing trend of increased enquiry numbers is an increase in public awareness of the Commission's functions and effectiveness, largely due to deliberate efforts to raise the Commission's public profile.

During the 1998-99 year the Commission will:

- receive, record, analyse and respond to all complaints and enquiries received in a professional and timely manner; and
- analyse, allocate and investigate selected complaints to appropriate standards and outcomes

Business Acquisition Surveillance

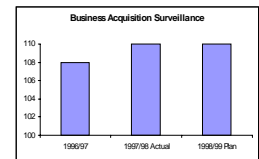
The Commission will continue to operate its surveillance of business acquisitions which are proposed, or which have been implemented, and which have not been the subject of clearance or authorisation notices.

Similar levels of activity are expected in 1998-99 to those in recent years. These levels are, however, dependent upon the strength of the economy.

During the 1998-99 year the Commission will:

- quickly identify un-notified acquisition proposals which raise dominance concerns; and
- initiate appropriate action.

The surveillance programme has been expanded to detect expansions of cross-involvement between line and supply business within the electricity industry to maintain compliance with the EIRA. Various notification requirements under the EIRA will also be dealt with under this activity.

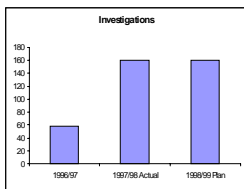


Promotion of Awareness and Compliance

In order to promote awareness, acceptance and compliance with the Commerce Act the Commission will:

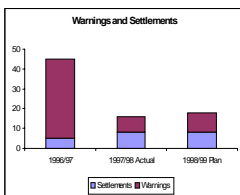
- prepare articles in its publications- *Fair's Fair* and *Compliance*;
- write speeches, which are presented at conferences, to industry-specific groups and other organisations;
- contribute papers to various academic journals, publish articles in edited works and produce papers as part of the Commission's Occasional Paper series;
- conduct research in industrial economics and competition policy;
- make policy submissions;
- produce new publications as required;
- organise seminars on particular Commerce Act issues as required;
- provide presentations to visiting representatives from other governments and international organisations as required;
- meet and liaise with academics in the field of industrial economics and competition policy as well as with individual foreign students and academics interested in New Zealand's competition law.

Investigation



Cases will be investigated in accordance with the Commission’s investigation and enforcement criteria and priorities. Investigations will focus on issues of strategic substance and will represent a balance of reactive and proactive work. It is expected that 60 investigations will be undertaken.

Administrative resolution

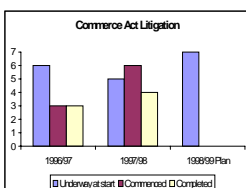


Issuing warnings and engaging in settlements are integral parts of the Commission’s enforcement activity. The particulars of the warnings and settlements are decided on a case-by-case basis, and the emphasis is on ensuring that problems are rectified and action is taken to promote competition effectively. The Commission expects to issue 10 warnings and eight settlements during this year.

Litigation

The initiative, commenced last year, of increasing the number of Commerce Act cases taken to court to produce precedents and to establish court-made guidelines for business conduct in terms of the Commerce Act, is being continued. It is anticipated that six cases will be initiated this year for breaches of the Commerce Act and that there will be two appeals, either taken by the Commission or against the Commission, arising out of matters already underway in the courts. It is expected that six major cases will come to trial in the current year.

Commerce Act litigation is resource-intensive as it often requires both external economic and accounting experts plus senior counsel to bring a matter to a successful conclusion. Where possible resource savings are made, and in all appropriate cases settlement options are explored and taken when appropriate.



Fair Trading Act Enforcement

Output 2

Introduction

This Output covers the prohibition of certain misleading or deceptive conduct and unfair practices, the disclosure of consumer information relating to the supply of certain goods and services, and the promotion of product safety, through enforcement of the Fair Trading Act 1986.

This also includes the promotion of public, and in particular trader, awareness of the requirements of, and remedies available under, the Act.

The Fair Trading Act prohibits misleading and deceptive conduct, and certain unfair trading practices, and establishes consumer information and product safety standards.

In the 1998-99 year, the Commission will continue to address issues arising under the Fair Trading Act in a systematic way. In order to do this more efficiently it has reviewed investigation criteria so that the issues focussed on will be the issues that have the greatest impact in the overall market.

During the 1998-99 year, the Commission will:

- Introduce a programme called “The Trade Association Programme”. This programme aims to deal with widespread industry practice and systemic breaches of the Fair Trading Act, through education programmes with trade associations. Work in this area will take into account the principles of consumer protection and ensuring fair competition.
- Examine the areas where charging for services it provides is appropriate. Services being looked at will include the Major Trader and Trade Association programmes, seminars and speeches.
- Continued contact with Australia through the Fair Trading Operations Advisory Committee and the Standing Committee of Officials on Consumer Affairs will be maintained. The main emphasis is dealing with cross-border fair trading issues.

Proactive enforcement

Proactive enforcement complements the Commission’s other Fair Trading work. It is structured to maximise the benefit from the information collated from complaints and market information the Commission receives. The programme also aims to prevent unsafe goods from being sold, and to raise awareness amongst retailers of the requirements of the Standards established under the Act.

Product Safety Inspections

The Commission will conduct a total of 30 product safety inspections, 10 in relation to each of the Product Safety Standards:

- children's night clothes;
- toys;
- bicycles.

These inspections will take place at retail outlets throughout the country, with the knowledge of the retailers involved. Any breaches of the relevant Product Safety Standard will be dealt with by way of warning, settlement, or court action.

In addition to these initial inspections, four follow-up inspections will take place. These inspections will be targeted at retailers who have previously been identified as breaching the Product Safety Standard. The objective is to ensure that the retailer has put in place systems to prevent breaches. These follow-up inspections will not be announced.

A product safety database has been developed, and this has aided the Commission in deciding what enforcement action is appropriate, and where to target the inspection programme.

Major Trader Programme

This programme aims to ensure that participants comply with the Fair Trading Act by identifying systemic breaches of the Act within companies. The Commission uses the information received from complaints, and also surveillance, to discuss with the traders systems that can be put in place to prevent regular breaches of the Fair Trading Act. Traders on the programme receive an assessment every six months, and the Commission meets with each trader at least once a year to discuss problem areas.

One-off assessments and meetings may be held with traders who are not participants in the programme, if the issues identified do not justify them coming on to the programme. As at 1 July 1998, there were 10 participants on the Major Trader Programme. There will be no new entries to the programme, unless companies graduate, or extra funding becomes available.

If traders on the programme fail to put in place systems to prevent breaches, or a significant number of issues arise in an area identified as a problem, then court action will ensue. During the year there will be:

- 18 assessments;
- 10 meetings.

The Commission anticipates that several traders will graduate from the programme in the 1998-99 year. They will be replaced as positions become available.

As mentioned earlier, this will be a new initiative for this year. Its aim is to reach a significant number of traders within an industry about key areas of non-compliance with the aim of improving the overall level of compliance of that industry.

*Trade
Association
Programme*

Two trade associations will be chosen for the programme. Two meetings will be held with each of them. These will follow analysis of the industry issues.

The Commission will continue to assess “get rich quick” schemes brought to its attention. If those schemes breach the pyramid or referral selling provisions of the Act and meet the Commission’s investigation criteria, further action will be taken in the form of warnings, settlements or court action.

Pyramid Selling

There are no industry studies planned for the Fair Trading Act for the 1998-99 year. However, if time and resources permit, an evaluation of the Fair Trading Act surveillance programme will be conducted.

Studies

Enquiry response

All enquiries will be screened using the investigation criteria designed to identify the issues that focus on the areas of greatest detriment to the market. The Commission expects to receive 14,000 enquiries related to the Fair Trading Act in the coming year. Information from enquiries will be used to identify issues in need of attention and to direct investigative resources to those areas.

The Commission will monitor operation of its Enquiries Centre with a view to maintaining a good match between caller requirements and responses provided.

Surveillance

In the 1998-99 year the Commission will again focus on a mix of issues and industries. Surveillance will be conducted throughout the year, with each office taking responsibility for several targets. Surveillance of participants of the Major Trader Programme will be included, as the information gained supplements the information received from complaints and enquiries, and provides the Commission with a better knowledge of the behaviour of major traders.

The targets for this year will be:

- food and nutritional claims;
- major traders;
- computers;
- small print;
- extended warranties;
- care labelling;
- rental cars; and
- the tyre industry.

Breaches identified from surveillance will result in action by the Commission. Breaches by major traders may also be dealt with as part of the Major Trader Programme.

Promotion of awareness and compliance

Visit Programme

The visit programme involves Commission staff visiting locations where the Commission does not have an office. These visits are primarily educational and not enforcement focused.

During the visits, staff meet with individual traders, speak to community and trade groups, and contact the media, with the aim of raising awareness, acceptance and compliance with the Fair Trading Act.

In the 1998-99 year, the programme will include visits to:

- Blenheim;
- Whangarei
- Hawke's Bay; and
- Manukau City.

Where possible, these will be joint visits with the Ministry of Consumer Affairs, and will focus on a range of consumer protection law issues.

Seminars

In the 1998-99 year, the Commission plans to hold six seminars, which will be conducted on a cost recovery basis:

- four of these seminars will be run in conjunction with town visits and will be joint seminars with the Ministry of Consumer Affairs; and
- two additional seminars will be run, one of which will be aimed at the advertising industry.

New brochures will be produced on new product safety or consumer information standards introduced during 1998-99, should they come into force during the year.

Publications

Current titles will be reviewed and brochures will be updated when reprinting is necessary. Articles for *Fair's Fair* and *Compliance* will also be prepared.

The Commission will continue to respond to requests for speeches on the Fair Trading Act when the:

Speeches

- request is from a reasonably sized group;
- audience is drawn from a target industry; and
- speech is likely to build on a recent court case or settlement.

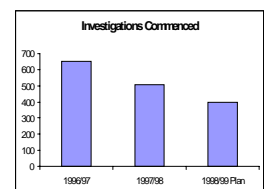
The Commission expects to make 30 speeches on Fair Trading topics during the year.

Investigation

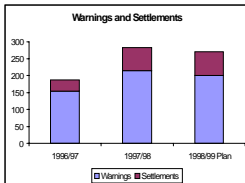
The Commission will investigate those matters which have passed the investigation criteria. Investigations will arise from proactive work as well as enquiry information. Areas that will be targeted have been identified as problems under the Fair Trading Act, or in need of precedent to clarify the law. These include:

- all surveillance targets;
- pyramid/referral selling;
- product safety;
- the cellphone industry;
- employment advertising;
- contraventions by individuals as parties or principals;
- intentional contraventions of the law;
- real estate; and
- financial services.

The Commission expects to carry out 400 investigations in the 1998-99 year.



Administrative resolution



The Commission expects that investigations will result in:

- 70 Settlements; and
- 200 Warnings.

All settlements, and 10 per cent of warnings, will be followed up.

Litigation

As with previous years it is anticipated that up to 30 Fair Trading Act cases will be taken. This is broken down into 22 criminal prosecutions being commenced in the District Court, four civil actions in the High Court being commenced, and four appeals being commenced either by the Commission itself, or by the convicted defendant.

Generally speaking, case law has established precedent in the major areas of the Fair Trading Act which provides certainty for traders and consumers alike. However, there are still some areas where present law needs to be clarified and precedent developed. Further development work also needs to be done in relation to pyramid selling, referral selling and employment advertising. Contraventions by individuals, and issues related to the use of small print, are other areas where case law needs extending and clarifying.

It is expected that about half the matters will be resolved by a guilty plea or consent to judgment. This results in significant resource savings. It is notable that, as the law further develops in this area, and the boundaries of the Fair Trading Act jurisdiction are increased, defendants are more defending the complex cases and pleading jurisdictional and technical defences. This added length and complexity of defended hearings has increased the average time of hearings. This trend is expected to continue in ground breaking and complex cases. The Commission is well placed to deal with this increase.

Introduction

This Output relates to the clearance and authorisation of business acquisitions, and the authorisation of restrictive trade practices under Part V of the Commerce Act.

The Commission's role in approving exemptions from certain requirements of the Electricity Industry Reform Act (EIRA) and in extending the application of that Act in some situations is also included in this Output.

The Commerce Act provides for the Commission to consider and adjudicate on applications for clearance or authorisation of business acquisitions, and for authorisation of restrictive trade practices.

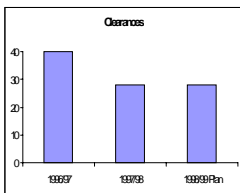
The general acceptance of the Commission's "*Business Acquisitions Guidelines*" (released during the 1996-97 year) by the commercial sector and the legal fraternity has very much clarified the Commission's position on acquisitions and mergers. The clarification of the Commission's position is possibly the reason the number of "comfort" applications has decreased. On average, the applications received by the Commission in recent months have required many more staff hours than previously required.

The Commission has continued to operate an "open door policy" for discussions between Commission staff and parties involved in proposed acquisitions. This has involved a significant time commitment by both senior staff and management. The benefits, however, have been:

- the Commission receives advance warning of applications, enabling better resource planning and significant preparation work can be completed prior to receiving the application;
- necessary information can be requested and potential problems identified by the Commission as a result of the discussions, saving time once the application has been officially registered.

During the 1998-99 year the Commission aims to enhance its performance within the statutory timeframes imposed for clearances and authorisations.

Clearance applications

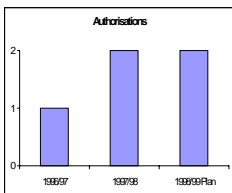


A clearance application is made under section 66 of the Commerce Act and is granted if the Commission is satisfied that an acquisition will not result, or will not be likely to result, in the acquisition or strengthening of a dominant position in a market.

The Commission has 10 working days (or such a longer period as agreed between the Commission and the applicant) to decide whether to give a clearance. A clearance is valid for 12 months.

Clearance applications usually involve less complex acquisitions and do not involve a conference. It is expected that 28 clearance applications will be received this year.

Business acquisition authorisation applications



The Commission will register, process and determine applications for authorisation of business acquisitions in accordance with the provisions of the Commerce Act and Commission procedures.

Authorisation applications are made under s 67 of the Commerce Act and must be determined within 60 working days (or such longer period as agreed between the Commission and the applicant). If the Commission is satisfied that the acquisition would not result in the acquisition or strengthening of a dominant position, it must give a clearance to it. If it is not satisfied on the dominance issue but is satisfied that the acquisition has such a benefit to the public that it should be permitted, then the Commission must grant an authorisation.

These applications are very resource intensive and will frequently involve a Commission conference to examine the issues with the applicant and interested parties. It is expected that two applications will be received this year.

Restrictive trade practice authorisation applications

The Commission will register, process and determine applications for authorisation of restrictive trade practices in accordance with the provisions of the Commerce Act and Commission procedures.

Authorisation applications are made under s 58 of the Commerce Act and are usually determined, by Commission practice, within 60 working days. An authorisation is granted if the Commission finds that the public benefits of a practice outweigh the detriments resulting from the loss of competition resulting from the practice. Immunity is thereby given to a practice which otherwise would be at risk under the Act. It is expected that two applications will be received this year.

EIRA Exemption applications

Section 81 of the EIRA provides that the Commission may grant exemptions from provisions of that Act. The Commission also has responsibilities in relation to advising on class exemptions and designating extensions to the Act. These are new areas of work for the Commission which will be funded by fees charged to applicants. This method of funding and the fee levels are decisions of the Government.

The Commission anticipates receiving five to seven applications in this financial year.

In order to assist applicants and their advisers, the Commission intends to issue a Practice Note outlining its procedures and approach as soon as practical.

Promotion of awareness and compliance

In order to bring about awareness, acceptance and compliance with the Commerce Act, the Commission will:

- prepare articles for its publications *Fair's Fair* and *Compliance*;
- organise seminars on specific Business Acquisition issues;
- continue to review and update its existing publications;
- write and make presentations at particular conferences and to industry-specific groups;
- organise seminars on particular Business Acquisition issues as required;

Reviews and appeals

Judicial review and appeals arising from the Commission's decisions are accorded the highest priority. Judicial review and appeals from authorisations and clearances are taken by applicants or by affected parties who do not believe that the Commission's decision is sustainable in terms of the Commerce Act. The High Court expedites hearing of these matters and generally they come to trial within four to eight months from the filing of the appeal. Where parties to the transaction request urgency, and where the commercial realities demand early hearing, the High Court will set the hearing down within weeks of the judicial review application or appeal being lodged. The Commission anticipates three such cases during the year.

Price Monitoring and Control

Introduction

This Output includes the inquiry and report to the Minister of Commerce into the necessity and desirability of price control for certain airfield activities. Any other enquiries into price control under Part IV of the Commerce Act and any other monitoring of prices under the Act will be undertaken as part of this Output.

The Commerce Act allows the Commerce Commission to recommend to the Minister of Commerce that goods or services be subject to price control.

Control can only be imposed where:

- there is limited competition in the market for particular goods and services; and
- control is seen as necessary or desirable in the interests of users, consumers, or suppliers.

Goods or services subject to control may only be sold at the price authorised by the Commission.

At present no goods or services are subject to price control under the Commerce Act. If required this Output would include the determination of prices for goods and services under price control.

Airfield activities price control review

The Minister of Commerce has requested that the Commission investigate whether there is a need for him to recommend that price control be imposed over airfield activities at Auckland, Wellington and Christchurch airports. The Commission is to report back to the Minister by no later than 14 December 1999.

The Commission's process will be similar to that used for determining authorisations under the Commerce Act. Preliminary work has commenced and the formal process will commence in August 1999 and will involve the collation of submissions, followed by a draft report being released. Further submissions will then be sought, including expert submissions. Following a conference, a final report will be made to the Minister of Commerce. Preparations for this process will be completed during the reporting year.

Operational Outputs

Introduction

In order to ensure that the Outputs specified in this plan are produced in an effective and efficient manner, during 1998-1999 the following activities will be undertaken and objectives achieved.

Governance

The Commission will maintain its relationships with Ministers, their advisers, and with Parliament so that the Commission is appropriately accountable, but its independence is maintained.

In particular, the Commission will:

- submit a complete and accurate Annual Report of its activities and performance during 1997-1998 no later than 31 October 1998; and
- agree a Memorandum of Understanding (Purchase Agreement) with the Minister of Commerce for the 1999-2000 year no later than 30 June 1999.

Quality Assurance

The quality assurance programme will continue to be developed to ensure that the work performed at the Commission is of the highest possible standard. To measure compliance with Quality Standards, a regular Quality Audit will be undertaken.

Commission Secretariat

High quality secretariat services will continue to be provided.

Human Resources

Equal Employment Opportunities

Staffing policies which meet statutory obligations and ensure the operational efficiency of the Commission and the commitment of employees, will be maintained. The Commission will also maintain a working environment based on the values and principles of equal employment opportunities.

The concept of acknowledgment by recognising individual contribution to the Commission's work will be encouraged. Staff awareness and contribution to workplace safety will continue to be developed. All performance appraisals will be carried out thoroughly, fairly, honestly and in a manner that will help the individual realise his or her full potential.

An annual training plan will be agreed to by the Commission and implemented. The performance of the individual and organisation will be developed through competency based training and development. In-house and external training programmes will be implemented to produce a stable well trained workforce and improve the Commission's effectiveness and credibility. Individual training plans will continue to operate and current investigative training will be expanded.

Training and Development

Information and Technology

Information services will continue to be provided using the most cost effective means. The library collection will be well-maintained, and materials purchased to keep it relevant to staff needs. Information will also be obtained from on-line databases, the Internet and other outside suppliers as required and within agreed time-frames.

Development of the Commission's information technology will continue during the 1998-1999 year to ensure that the technology employed by the Commission continues to support other strategies set out in the Strategic Plan. The implementation of Matai (the Commission Intranet) has set a firm base on which to continue development of the Commission's technology. Ongoing development will include better access to a corporate knowledge base and computer generated reporting facilities. The Commission's web site will continue to be developed.

The Commission will develop and implement a plan to ensure that the information technology used by itself and its prime vendors is year 2000 compliant. The Matai Intranet and associated hardware was required to be compliant as part of the Commission's contract with its vendor. Consequently, the main area of concern is compliance by external systems.

Year 2000 Compliance

Finance

The Commission will produce timely and accurate financial and management information. Further refinements of the Financial System and management training in the new Executive Information System will take place.

Building Services/Security/Safety

The Commission will provide staff with secure, efficient, attractive and safe working conditions. All statutory guidelines on working conditions will be adhered to and priority given to health and safety.

Publications Programme

The Commission will continue to publish *Fair's Fair* and *Compliance* bi-monthly. Brochures will continue to be reviewed and reprinted as necessary, but no new brochures are planned for 1998-1999.

There will be six issues of *Compliance*. Three will focus on Fair Trading subjects, the proposed topics for 1998/99 being:

- financial services;
- real estate;
- small print qualifiers.

Another three will focus on Commerce Act subjects:

- Electricity Industry Reform Act;
- approaches to price control;
- a third topic to be determined.

Budget Summary

Budgeted statement of operating financial performance for the year ended 30 June 1999

	Budget 1998-99	1997-98
	(\$000)	(\$000)
Operating Revenue		
Government Grant	6,144	5,757
Notification fees	166	72
Interest	190	325
Miscellaneous	<u>124</u>	<u>99</u>
Total Operating Revenue	6,624	6,253
Operating Expenditure		
Personnel	4,172	4,132
Consultancy	4	29
Staff Development	100	191
Information and Publicity	175	204
Travel	187	105
Legal and Investigation Costs	832	594
Accommodation and Lease Costs	668	666
Depreciation	462	413
Office Costs	242	203
Communications	<u>142</u>	<u>171</u>
Total Operating Expenditure	6,984	6,708
Net Surplus/(Deficit) for operations for the period	<u>(360)</u>	<u>(455)</u>
Capital Expenditure	146	963

Critical Performance Indicators

Introduction

Over several years the Commission has developed a series of quantitative indicators relating to critical areas of performance. These critical performance indicators are reviewed regularly and revised to enhance performance reporting. This year several additional measures have been added. These are identified with an * in the following table. Target performance levels represent levels of performance which the Commission believes are appropriate and can be achieved in the short or medium term. A number of targets have been amended this year to reflect a change in recording systems which record elapsed days (days) rather than the working day (“w days”) measures previously applied.

Commerce Act Enforcement

	1997-98 Target	1997-98 Actual	1998-99 Target	Expected number
<i>Proactive Enforcement</i>				
Number of studies completed on time and within budget	-	0		
Proportion of Business Acquisition Surveillance Reports completed within 5 days	100%	78%	75%	
Proportion of Business Acquisition follow-up reports completed within 20 days	n/a	n/a	100%	
* Surveyed satisfaction rate of seminars/speeches	-	-	80%	
<i>Complaint & Enquiry Response</i>				
Average complaint assessment time	5 w days	5 w days	7 days	
Proportion of matters outstanding for more than 10 days	10%	11.8%	10%	
<i>Investigation</i>				
Proportion of investigations which meet relevant quality standard	100%	100%	100%	60
<i>Administrative Resolution</i>				
Proportion of administrative settlements followed up	100%	100%	100%	
Proportion of warnings followed up	100%	100%	100%	
<i>Litigation</i>				
* Number of cases where adverse judicial comment made	-	-	0	
<i>Complex</i>				
Average time between Commission agreeing to proceeding and initiation of court action	30 w days	44 days	42 days	3
Proportion of cases where hearing has commenced 18 months from initiation of court action	50%	25%	50%	
Proportion of cases where hearing has commenced 24 months from initiation of court action	100%	25%	100%	
<i>Routine</i>				
Average time between Commission agreeing to proceeding and initiation of court action	20 w days	42 days	28 days	3
Proportion of cases where hearing has commenced 12 months from initiation of court action	50%	50%	50%	
Proportion of cases where hearing has commenced 18 months from initiation of court action	100%	50%	100%	
<i>Appeals</i>				
Proportion of appeals where hearing has commenced 12 months from when appeal filed	50%	100%	50%	2
Proportion of appeals where hearing has commenced 18 months from when appeal filed	100%	n/a	100%	

Commerce Act Adjudication

	1997-98 Target	1997-98 Actual	1998-99 Target	Expected number
<i>Consideration of Business Acquisition Clearance Applications</i>				
Proportion of decisions issued within statutory time-frames or agreed extensions	100%	100%	100%	28
<i>Consideration of Business Acquisition Authorisation Applications</i>				
Proportion of decisions issued within statutory time-frame or agreed extensions	100%	100%	100%	2
<i>Consideration of Restrictive Trade Practice Authorisation Applications</i>				
Proportion of decisions issued within 60 days or properly required extensions	100%	none received	100%	2
<i>Reviews and Appeals</i>				
* Proportion of decisions upheld on appeal	-	100%	100%	4
Proportion of appeals where hearing has commenced 12 months from when appeal filed	50%	100%	50%	
Proportion of appeals where hearing has commenced 18 months from when appeal filed	100%	n/a	100%	

Commerce Act Prices Monitoring

* Proportion of price review reports produced by the required deadline	-	-	100%	1
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Fair Trading Act Enforcement

<i>Proactive Enforcement</i>				
* Number of inspections completed in accordance with agreed programme	-	-	34	
* Number of major trader assessments completed in accordance with agreed programme	-	-	18	
* Number of surveillance studies completed on time and within budget	-	-	8	
<i>Complaint & Enquiry Response</i>				
Average complaint assessment time	5 w days	2.7 w days	7 days	
Proportion of complaints over 10 days old	10%	2.9%	10%	
<i>Promotion of Public Awareness and Compliance</i>				
* Number of town visits conducted within budget	-	-	4	
* Number of seminars completed within budget	-	-	6	
* Surveyed satisfaction rate for seminars	-	-	80%	
<i>Investigation</i>				
Proportion of investigations which meet specified quality standard	100%	100%	100%	400
<i>Administrative Resolution</i>				
Proportion of administrative settlements followed up	100%	81%	100%	70
Proportion of warnings followed up	10%	16%	10%	20
<i>Litigation</i>				
* Number of cases where adverse judicial comment made	-	-	0	
<i>Complex</i>				
Average time between Commission agreeing to proceeding and initiation of court action	30 w days	49 days	42 days	10
Proportion of cases where hearing has commenced 12 months from initiation of court action	50%	70%	50%	
Proportion of cases where hearing has commenced 18 months from initiation of court action	100%	90%	100%	

	1997-98 Target	1997-98 Actual	1998-99 Target	Expected number
<i>Routine</i>				
Average time between Commission agreeing to proceed and initial court action	20 w days	26 days	28 days	16
Proportion of cases where hearing has commenced 9 months from initial court action	75%	86%	75%	
Proportion of cases where hearing has commenced 12 months from initiation of court action	100%	100%	100%	
<i>Appeals</i>				
Proportion of cases where hearing has commenced 12 months from when appeal filed	50%	100%	50%	4
Proportion of cases where hearing has commenced 18 months from when appeal filed	100%	N/A	100%	

Operational Support

<i>Governance</i>				
* Proportion of quarterly reports provided within 20 days	-	75%	100%	4
Annual plan published by 31 July 1998	Yes	No	No	1
* Annual Report published within Statutory requirements -	-	-	Yes	1
<i>Finance</i>				
Proportion of monthly financial reports available by third day (except at year-end)	100%	100%	100%	11
<i>Human Resources (including EEO)</i>				
Proportion of 1997 performance reviews completed by 31 July 1997	95%	90%	95%	
EEO Plan for 1997-98 is completed and promulgated by 31 July 1997	Yes	Yes	Yes	
<i>Occupational Safety and Health</i>				
Number of days lost due to accidents	0	0	0	
<i>Information Technology</i>				
* Availability of Document Management System for use during normal business hours	-	-	100%	
* Availability of Commission's Intranet for use during normal business hours	-	-	100%	
<i>Publications</i>				
* Surveyed satisfaction rate for all publications	-	-	80%	