

# Communique



## Commission rejects proposed airline Alliance as not in the interests of New Zealanders

The Commerce Commission declined to authorise a proposed Alliance between Qantas Airways Limited and Air New Zealand Limited in October. The Commission considers that a proposed Alliance between the two airline carriers would damage competition and harm consumers and is therefore not in the interests of New Zealanders.

Commission Acting Chair Paula Rebstock said that the Commission considered the proposed alliance would result in a substantial lessening of competition in a number of markets.

“For the travelling public that could mean airfares that were, on average, up to 19 percent higher, as well as reduced quality of service, and fewer flights.

“That can be justified in circumstances where there are sufficient economic benefits overall to New Zealand. The Commission is not satisfied, however, that there would be such benefits to outweigh the detriment resulting from the loss of competition.

“Although Virgin Blue’s entry on Tasman and New Zealand main routes, and the presence of other international airlines on the Tasman route, have some impact on the relevant markets, the competition provided by these carriers is not sufficient to allay all of the Commission’s concerns,” she said.

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COMMERCE COMMISSION

NEW ZEALAND

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Ms Rebstock said that the Commission could not agree with the airlines' submission that there would be a tourism benefit to New Zealand.

“The Commission agrees with the airlines that the increase in the price of airfares would result in a net decrease of foreign tourists, despite proposed increased tourism efforts of both Air New Zealand and Qantas.”

“In addition, the Commission found that 190,000 New Zealanders would be deterred from travelling overseas due to the increases in airfares. The Commission cannot accept the airlines' case that there is a net benefit to New Zealand as a result of New Zealanders having to holiday at home each year because they can't afford to travel overseas,” Ms Rebstock said.

In its final determination, the Commission's view is that the overall detriment expected to result from the proposed alliance would clearly outweigh the expected benefits. The detriments are likely to be \$195 million, and the benefits \$40.5 million in Year 3 largely due to cost savings.

“With a total net loss to the public of \$154.5 million in Year 3 if the proposed alliance were to proceed, the Commission has determined to decline both the application by the two airlines to enter into a strategic alliance and the application by Qantas to acquire up to 22.5 percent of Air New Zealand's enlarged share capital,” said Ms Rebstock.

More details on this decision can be found on the Commission's website, [www.comcom.govt.nz](http://www.comcom.govt.nz).



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### List of Terms/Abbreviations

Commerce Commission	Commission
<b>Legislation Enforced by the Commerce Commission</b>	
Commerce Act 1986	Commerce 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



## Commission joins forces with Australia and UK to address global competition and consumer issues



**Paula Rebstock,**  
Acting Chair

The Commerce Commission has signed a Memorandum of Understanding with its competition counterparts in Australia and the United Kingdom with the aim of achieving greater global co-operation in combating cross-border breaches of competition and consumer legislation.

The memorandum recognises the advantages of co-operation arrangements and information exchange for enforcement liaison and treatment of confidential material among the agencies in relation to the competition and consumer laws they enforce. For the Commission, this includes the Commerce and Fair Trading Acts.

“As businesses are becoming increasingly globalised, the benefits from co-operation and co-ordination of competition and consumer law internationally are increasing,” said Commission Acting Chair Paula Rebstock.

“This agreement will continue to build on existing relationships to tackle cross-border scams and to increase the information available to each agency when dealing with international corporates and global mergers,” she said. ■

The Memorandum of Understanding, signed in October this year, is between the Commission, the Australian Competition and Consumer Commission (ACCC) and Her Majesty’s Secretary of State for Trade and Industry and the Office of Fair Trading in the United Kingdom.

The Commission has had a co-operation and co-ordination agreement with the ACCC since 1994, and has a tripartite co-operation agreement with the Canadian Competition Commission and the ACCC. The Commission also has a tripartite co-operation agreement with the Chinese Taipei regulatory authority and the ACCC on the application of competition and consumer legislation.

The Commission is currently in negotiation with the United States Federal Trade Commission in relation to a similar memorandum.



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## Commission draft report recommends unbundling



Douglas Webb,  
Telecommunications  
Commissioner

The Commerce Commission considers there would be substantial net benefits from unbundling Telecom New Zealand's local loop network. In its draft report released in September, the Commission's preliminary view is to recommend unbundling of Telecom's local loop and its fixed Public Data Network.

Unbundling of telecommunications networks is a means of allowing competitors to use parts of the network on a wholesale basis in order to build up a competitive offering of retail services.

The local loop network is the copper wire network that links homes and businesses to a national telephone network. Through obtaining access to Telecom's copper wire network, other carriers will be able to compete more vigorously with Telecom in the delivery of broadband and voice services both to residential and business users.

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Unbundling the Public Data Network will encourage further competition in the supply of data transmission and other data services to businesses.

Telecommunications Commissioner Douglas Webb said the Commission's preliminary view, based on extensive investigation and the results of the cost-benefit analysis and the findings on competition, is:

- to designate unbundling of Telecom's local loop network;
- to designate unbundling of Telecom's fixed Public Data Network;
- to designate access to co-location and backhaul services;
- to apply benchmarking as the Initial Pricing Principle; and
- to apply cost-based pricing as the Final Pricing Principle.

"The Commission has evaluated evidence from a range of sources, including conducting a cost-benefit analysis and evaluating the state of competition in the relevant markets and in overseas jurisdictions.

"While the overseas experience has not been conclusive, the Commission's cost-benefit analysis shows substantial net benefits from unbundling. The Commission would, however, welcome input and comments to refine this analysis further," Mr Webb said.

The Commission received submissions on its draft report and held a five day conference in October. Under the Telecommunications Act, the Commission will deliver its final recommendation to the Minister of Communications by 20 December.

The draft report is available on the Commission's website, [www.comcom.govt.nz](http://www.comcom.govt.nz), select Telecommunications Regulation. ■



## ‘Everyone Love’ baby walkers put children at risk

Buyers of an imported brand of baby walker were warned by the Commerce Commission in September this year that the walkers did not meet the required safety standard regulations and could put children at risk of injury.

The baby walkers, which were imported from China in April were on sale in three retail outlets in Auckland – Early Bird Imports in Panmure, and Payless King in both New Lynn and Otahuhu. The baby walkers may also have been sold in some South Auckland markets.

The baby walkers had no clear branding but were identifiable by their brightly coloured plastic frames and stickers attached to the frame with the wording ‘Everyone Love’. The baby walkers retailed for \$29.95 to \$49.95.

Director of Fair Trading Deborah Battell said the baby walkers were in breach of the product safety standards regulations because they had no permanent safety labelling and no device to stop them tumbling down stairs. In addition, they had no instructions as to assembly or maintenance.

“Children are not safe in these walkers, particularly in potentially dangerous situations when close to stairs or heaters,” Ms Battell said.

“As a result of the Commission investigation, the importer removed the baby walkers from sale in the three retail outlets and endeavoured to locate those baby walkers that had been purchased. He also posted recall signs in store and recall notices in local newspapers,” she added.

“It is vital that importers are aware of their responsibilities under New Zealand’s Fair Trading Act to comply with the product safety standards regulations.” ■

Under the Fair Trading Act, the Commerce Commission has the responsibility for enforcing six product safety standards regulations. They are for:

- baby walkers;
- pedal bicycles;
- flammability of children’s night clothes;
- toys for children aged up to three years (prohibits toys that can be a choking hazard);
- cigarette lighters; and
- household cots.

The Product Safety Standards (Baby Walker) Regulations 2001 require that baby walkers are sold with product information and safety warnings on them. In addition, manufacturers have to ensure safety features that help prevent them from tipping over or toppling downstairs are included.

There is no single feature that can be identified as making a baby walker compliant. Design features that have been used to meet the safety outcomes (such as preventing the product from falling down steps) include:

- recessed wheel mouldings;
- rubber friction grips/strips on the base; and
- rubber grips round corners.

A product that complies with the American standards (ASTM F977-00) and/or carries a JPMA logo (Juvenile Product Manufacturers Association) would also indicate compliance with our standards.

The regulations apply to any person involved in the importing, manufacture, distribution or retail of baby walkers and covers both retail and private supply (including second-hand), exchange, lease, hire and hire-purchase of baby walkers.

Retailers, manufacturers and importers who sell non-compliant walkers can be fined up to \$200,000, private individuals up to \$60,000.



## TelstraClear guilty of misleading its customers

In February 2003, TelstraClear Limited was fined \$5,000 plus costs in the North Shore District Court, having pleaded guilty to misleading its customers as to the nature of a Sky TV promotional offer.

A Commission investigation followed several customer complaints about a promotional flyer and magazine insert that offered all its 30,000 Saturn TV customers an opportunity to subscribe to certain Sky channels. The offer was not, however, available to the approximately 1300 customers who only subscribed to Saturn TV, and required them to sign up to additional phone and/or internet services to be eligible.

TelstraClear Limited was fined \$3,000 plus costs in the Auckland District Court in September after pleading guilty to breaching the Fair Trading Act.

The Commerce Commission alleged that TelstraClear had misled its own customers in the advertising of its Chat 'n Surf promotion.

TelstraClear's Chat 'n Surf offer of 30 hours 'free' internet access per month if a minimum of \$30 was spent on toll calls was not available to approximately 53,000 of its customers with existing phone line and/or paradise.net plans. The promotion was advertised on television in September 2002 and aired a total of 86 times nationally.

Commission Acting Chair Paula Rebstock said the terms and conditions of the offer appeared in small print for four seconds towards the end of the advertisement.

"In the Commission's view, the disclosure of the terms and conditions was inadequate and would not have been seen by viewers."

"Businesses need to remember to clearly disclose important terms and conditions, especially where these alter the original offer. Failing to do so not only breaches the Fair Trading Act, but may put relationships with existing customers at risk," she said.

"This is the second time in less than a year that TelstraClear has pleaded guilty to similar charges but the Commission is pleased to note that its prosecutions have prompted TelstraClear to thoroughly review and overhaul its compliance procedures.

"The telecommunications sector as a whole will remain a strategic priority for the Commission and we will be keeping a close watch on the behaviour of all players," Ms Rebstock added. ■

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### Commerce Commission's enforcement criteria

The Commerce Commission has recently reviewed its enforcement criteria to make it more relevant and consistent. The criteria are such that they can be applied across the Commission's range of enforcement responsibilities and at each stage of its enforcement processes.

The criteria assist the Commission in its discretionary activities when making decisions on whether to open an investigation, and what enforcement action it will take at the end of an investigation.

This month, a *Communique Special* has been published detailing the Commission's enforcement criteria and responses. The criteria are also available in the Commission's *Annual Plan 2003/2004* and *Annual Report 2002/2003*. The publications are all available on the Commission's website [www.comcom.govt.nz](http://www.comcom.govt.nz), or for a copy, call (04) 924 3600.



## Case against itinerant bicycle trader concluded

Itinerant trader Stuart Connell and his company King Cargo Limited have been fined a total of \$5,750 plus costs for selling bicycles that failed to comply with the bicycle safety standard. King Cargo was fined \$5,000 in May this year, and Mr Connell was fined a further \$750 in the Porirua District Court in August, concluding the Commission's case.

A Commission investigation in December 2001 found that 34 *Trans* brand BMX and mountain bikes on sale by King Cargo in its temporary shop in Masterton did not meet the required safety standards. Failure to comply with the standards is a breach of the Fair Trading Act.

At the time, Mr Connell undertook to recall the bicycles, and to replace or repair any bicycles that did not comply with the safety standards. His failure to do so resulted in the Commission taking legal action against the company and Mr Connell.

Mr Connell subsequently left New Zealand for Australia. His company was prosecuted in his absence and Mr Connell was personally summonsed to appear in court upon re-entering the country. He failed to appear in Court, so the matter proceeded by way of formal proof.

Director of Fair Trading Deborah Battell said that the Commission took proceedings against Mr Connell because it was important for business people to understand that they were personally liable for their actions and could not hide behind their companies.

"The Commission also wanted to send a message to itinerant traders that they could not expect to escape prosecution by leaving New Zealand," she said. ■

### SECOND-HAND BIKE ISSUE RESOLVED

In September 2003, the Pedal Bicycle Product Safety Standard Regulations were amended to exempt the sale of second-hand bicycles.

Minister of Consumer Affairs Judith Tizard said this amendment reflected a good balance between consumers' rights to safe products, the realities of selling second-hand bikes and the 'not-for-profit' transactions that take place, such as hand-me-downs and fund-raising activities.

The amendment removed the uncertainty for a lot of people, including the Police, about their ability to sell second-hand bikes.

A second-hand bicycle is expected to be roadworthy and to meet minimum performance standards unless otherwise agreed between the buyer and trader.

Families will also be able to gift or on-sell second-hand bicycles on an 'as is where is' basis without the risk of acting outside the law.

Consumers can be assured that when they buy second-hand bikes from a trader the general safety provisions of the Consumer Guarantees Act will still cover these bikes.

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## Wizard Home Loans' advertising misleading – Chinese community targeted



**Deborah Battell,**  
Director, Fair  
Trading Branch

A company named New Aussie Finance Pty Limited, licensed to trade as Wizard Home Loans to the Chinese and Korean communities in the greater Auckland region, admitted its advertising was misleading and in breach of the Fair Trading Act in a settlement with the Commerce Commission in July this year.

The advertising, which appeared in an Auckland Chinese language publication Property Overview in February, included the representations (translated from Chinese) 'Floating rate 3.22% p.a.\* from' and '\*No application fee \*No monthly fee \*No annual fee'.

A Commission investigation revealed that the 3.22% p.a. interest rate was only available for the first month of the loan, that the offer was only available on loans of \$300,000 or more and that the loan was subject to a \$600 application fee.

In addition, pictures and contact details of 14 employees featured in the advertising implied that all were Auckland based, when in fact 12 were based in Australia at the time the advertising was published.

Director of Fair Trading Deborah Battell said that while the advertising included a disclaimer 'terms and conditions apply' the offer was misleading in the Commission's view.

"All important terms and conditions should match the offer and must be clearly and accurately disclosed. Small print cannot be used to substantially change or qualify the impression given by advertising," she said.

"The Fair Trading Act has wide application and is not limited to claims made in English – it also applies to claims made in any other language.

"People are encouraged to call the Commission's Contact Centre on 0800 943 600 if they are concerned that they or others may have been misled," Ms Battell added. ■

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### Commission Annual Plan and Report

The Commission recently published its annual accountability documents. Copies of the Commission's *Annual Report 2002/2003* and *Annual Plan 2003/2004* are available on the Commission's website, [www.comcom.govt.nz](http://www.comcom.govt.nz) or by request from reception, (04) 924 3600.

A companion document to the Annual Report, entitled *Regulatory Control and Enforcement Activities of the Commission 2002/2003*, is also available on request or from the website. This publication includes descriptions of significant cases.



## 'No antibiotics' claim costs chicken producer \$10,000

Misleading claims that its chickens were fed 'no antibiotics' cost Medallion Trading Limited over \$10,000 after it pleaded guilty to breaching the Fair Trading Act in the Palmerston North District Court.

The Commission laid charges against the company following an investigation into claims made from October 2001 to April 2002, when it was trading as Rangitikei Game Birds Limited, that its chickens were not fed any antibiotics. The chickens had in fact been fed coccidiostats, a type of antibiotic, and some had also been fed a mix of other antibiotics.

Earlier this year the company changed its name to Medallion Trading Limited and sold the assets of its business including the trading name 'Rangitikei Game Birds'. The company now using that product name was not implicated in these breaches of the Fair Trading Act.

Director of Fair Trading Deborah Battell said that the Commission considered the offending to be serious because it was very difficult for consumers to verify the claims being made.

"People are prepared to pay a premium for chicken with special characteristics and in this case were utterly reliant on the claims being made by the company that the chicken was antibiotic-free."

"Whether there were issues relating to the classification of coccidiostats as antibiotics, or systems failures relating to the feed formula used, the company failed to accurately represent to consumers the characteristics of the chicken they were buying.

"This is inconsistent with the aims of the Fair Trading Act which requires and promotes an informed market place." Ms Battell added, "the simple message is inform consumers, don't mislead them." ■

### Previous prosecutions taken by the Commission in the industry:

- In October 2002, Willem Klaas Stolte, owner/operator of Masterton Poultry Farm, was fined \$10,000 in the Masterton District Court after pleading guilty to breaching the Fair Trading Act in relation to the sale of free-range eggs sold under the Hen House brand.

A Commission investigation revealed that Stolte was selling barn eggs as free-range over a period of seven months in 2001. During that period over 17,000 dozen more 'free-range' eggs were sold, at a price premium, than were actually produced.

- In March 2001, Weedons Poultry Farm was fined \$35,000 in the Christchurch District Court for breaching the Fair Trading Act in relation to the sale of free-range eggs sold under the 'Bowenvale Valley' brand. Over 22,000 dozen 'free-range' eggs were sold through Christchurch supermarkets during a 12 month period, the vast majority of which had come from battery hens.

Weedons Poultry doubled the price of its eggs from \$1.75 to \$3.50 a dozen when it marketed them to supermarkets as free-range.

■ ■ ■  
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## The Commerce Commission's view on Economic Modelling



**David Peters,**  
Commission Senior  
Economist

The Commerce Commission regularly draws on economic models in its decision making.

The use of models tends to attract two types of attention; some seize upon the results as they would a lifesaver in rough seas, others criticise those who use them, maintaining that it is impossible to usefully reduce an aspect of real life to a mathematical abstraction. The best approach is likely to be somewhere between these extremes.

The Commission views a model as a simple way of focusing on important elements and considering how they relate to one together and work together.

Models are useful tools provided their limitations are recognised. Remember the old saying: garbage in, garbage out? Well, the same is true of models.

By necessity most models simplify the real world. So how can they be useful? They are useful because they isolate certain elements of reality in order to better understand those elements. Models incorporate certain assumptions about aspects of the real world. Key assumptions in using models usually relate to the decisions about the data to include in the variables. All assumptions must be carefully examined. The usefulness of a model, in a given situation, depends on the degree to which these assumptions reflect what we see in the real world.

The Commission's use of models is often an attempt to work out the effect of some specific change in a market such as, in the case of a merger, the effect of an increase in market concentration on the price or output in that market.

In Decision 482 (Cendent Corporation and Budget Group Inc, 7 November 2002), for example, the Commission made use of a merger simulation model. That model assumed oligopolistic price competition in a differentiated product market and generated price and share changes that result from the post-merger Bertrand-Nash equilibrium – an equilibrium where no supplier in a market can increase its profit by unilaterally changing its prices.

In that case, the Commission summarised the use of the model in this way:

*The use of merger simulation in the Commission's deliberations is still under development. In this instance the model was useful for its ability to focus the parties' attention on key assumptions regarding characteristics of the market. The Commission anticipates that its value will be in its ability not to produce 'proof' of a substantial lessening of competition, nor to supplant the Commission's exercise of judgement, but rather in providing support to the Commission's deliberations by:*

- *focusing parties' attentions on verifiable economic arguments;*
- *making transparent the values of the key parameters and assumptions in the Commission's analysis; and*
- *producing quantitative estimates of the results of a given transaction.*

The Commission's view is that models can be a useful way of clarifying assumptions and capturing the possible effects of the assumptions we make. Economic models are a complement to analysis and judgement, not a substitute.

By David Peters, Commission Senior Economist



## New Zealand Dental Association makes changes as a result of Commission investigation

The New Zealand Dental Association (NZDA) will make a number of changes to how it conducts its annual national price survey in the future as a result of Commerce Commission enforcement action.

The NZDA has agreed several changes to its process, including making pricing information available to all members of the industry and to the public. In addition, any future surveys will include information which reminds recipients of the prohibition in the Commerce Act of the price fixing and other anti-competitive arrangements.

Commission Acting Chair Paula Rebstock said the Commission acknowledges the NZDA's willingness to amend the survey in order to minimise the risk of anti-competitive arrangements or understandings being formed by the dentists.

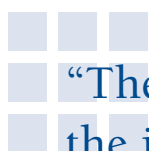
She said the Commission had completed its investigation into the NZDA and found no apparent breach of the Act.

"While the survey provides an annual range of dentistry prices, there is no indication that the survey sets specific and exact pricing that members must adhere to," said Ms Rebstock.

"The NZDA has advised the Commission that the investigation itself has significantly raised the awareness of the Commerce Act amongst dentists, and the Commission acknowledges the co-operation it has received from the NZDA."

As part of its investigation, the Commission wrote to every member of the NZDA, and asked a number of questions concerning the survey. More than 650 dentists responded to the Commission's questions – 38 percent of its membership.

The matter came to the Commission's attention after it received information relating to concerns about a survey run by the Auckland Dental Association. Further investigation revealed that the NZDA had been running annual surveys, including surveys on pricing information from its members, for many years. The Commission's investigation focused on the national association, although the changes to the survey process will also be made by the Auckland Dental Association. ■



"The NZDA has advised the Commission that the investigation itself has significantly raised the awareness of the Commerce Act amongst dentists, and the Commission acknowledges the co-operation it has received from the NZDA."

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## Regulatory control study on gas pipelines

The Commerce Commission is considering detailed submissions received on its draft framework paper on its regulatory control study on gas pipelines. The Commission released its framework paper in July, which was followed by a four day conference in September.

In April this year, the Commission received a formal request from the Minister of Energy, pursuant to Part IV of the Commerce Act 1986, to undertake an inquiry into the supply of gas pipeline (transmission and distribution) services. The Minister has requested the Commission to complete the inquiry by 1 November 2004.

The draft framework paper proposes legal and analytical frameworks to be used in the inquiry. The paper also includes details on the Commission's two stage consultative process for the inquiry, with stage one focusing on defining the Commission's framework and stage two focusing on the application of the framework and interpretation of the associated findings.

The Minister has asked the Commission in reaching its view on whether control should be introduced for specific advice on:

- whether gas services may be controlled in terms of section 52 of the Commerce Act;
- the methodology that the Commission considers appropriate for valuation of pipeline assets for the purposes of its advice on the matters covered in the Minister's letter;
- the net benefits to the public of control; and
- any other matter that the Commission may think relevant to a decision on whether control should be introduced.

For more information on the Commission's inquiry, visit the Commission's website at [www.comcom.govt.nz](http://www.comcom.govt.nz), and select Regulatory Control Inquiry on Gas Pipelines. ■

## High Court rules on Brambles appeal

In October the High Court ruled in favour of Brambles New Zealand Limited's appeal of the Commerce Commission's decision to decline Brambles' application to acquire the business assets of GE Capital Returnable Packaging Systems Limited.

This was the first time the High Court had considered an appeal from a s 66 determination since the mergers threshold under the Commerce Act was changed from a dominance test to one of substantial lessening of competition.

Peter R Taylor, Commission General Counsel, said that although the Court had taken a different view of the facts, it had generally upheld the Commission's approach in its business acquisition guidelines, *Practice Note 4*, to the substantial lessening of competition threshold at the time of the decision.

"At the time, the Commission could not be satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition in the market for the hire of reusable plastic crates for the transport and storage of fresh New Zealand produce," he said.

"The Court, after the benefit of further evidence and four days assessment, has taken a different view of the facts and the Commission accepts that another expert tribunal could reach this different view."

Mr Taylor said that given this was the first case before the High Court on the substantial lessening of competition threshold, the Commission was pleased that the overall approach had received judicial support.

"The Commission is not going to appeal the High Court's decision, as there are no substantial issues of principle and the decision turns mainly on the facts of the case."

Following the High Court ruling, Brambles now has clearance to acquire GE Capital Returnable Packaging Systems. ■



## From the courts...

### Fair Trading litigation update

#### CRIMINAL PROSECUTIONS RESOLVED DURING THE PERIOD

CASE	DESCRIPTION	RESOLUTION
<b>Cases with penalties in excess of \$20,000</b>		
Medallion Trading Limited (formerly trading as Rangitikei Game Birds Limited)	False representation relating to 'antibiotic free' chickens	Fined \$10,000 plus \$1,750 costs
<b>Cases with penalties less than \$5,000</b>		
TelstraClear Limited	Alleged misleading representations relating to 'Chat n Surf' promotion	Fined \$3,000 plus \$630 costs
<b>Cases withdrawn</b>		
Roger Peter Bremner and Christopher Simon Gordon (trading as Garden of Eden)	Produce described as being organically grown when the majority of the components were not organically grown	Withdrawn

#### GRENADIER

The Commerce Commission has appealed a High Court decision that a Christchurch based real estate company has breached the Fair Trading Act for its use of vendor bidding at property auctions.

The Commission investigated Grenadier Real Estate Limited for alleged misleading representations about the price payable for a Lyttleton property. Auction advertising stated 'bidding from \$110,000' but the vendors bottom line price was in fact \$230,000. The property failed to sell at auction, and all bids made were vendor bids. Advertising after the auction stated 'bidding reached \$190,000'.

The appeal was heard in the Court of Appeal in Wellington on 2 and 3 December 2003. The Court reserved its decision.

### Commerce Act litigation update

#### INZCO

The Privy Council in London is yet to confirm a date when it will hear an appeal by Carter Holt Harvey Building Products Group Limited against a Commerce Commission investigation into alleged anti-competitive behaviour.

In November 2001, the Court of Appeal upheld a High Court judgment that INZCO, the insulation division of Carter Holt, breached the Commerce Act by trying to deter competition from a small Nelson company, New Wool Products Limited.

#### OPHTHALMOLOGICAL SOCIETY

A Commerce Commission case against five ophthalmologists for alleged anti-competitive behaviour was part heard in the High Court in Wellington in September/October. Three weeks were set aside for the case to be heard but this proved insufficient time for the hearing of all of the evidence, and the case has now been adjourned until 15 December.

The case involved allegations that five ophthalmologists and the Ophthalmological Society of New Zealand entered into arrangements or understandings preventing two Australian ophthalmologists from carrying out cataract survey in Invercargill in 1997.



## Commission settlements and warnings

The Commission entered into settlements with eight businesses and issued warnings to 61 businesses for alleged breaches of the Fair Trading Act over the three month period from July – September 2003. The following settlements and warnings related to priority areas for the Commission.

### Industry-specific: Financial Services

The Commission issued a warning to New Aussie Finance Pty Limited, trading as Wizard Home Loans, for misleading representations in relation to the availability of mortgage interest rates.

### Misleading representations about the content, value, benefit of food products

The Commission issued a warning to Just Garlic Limited for misleading representations about the content of garlic contained in its product.


### Misleading representations about the size of discounts

The Commission issued warnings to the following companies in relation to alleged misleading price representations:

- nzwebit.co.nz;
- Robertson Holden;
- Spotlight Stores (NZ) Limited; and
- Trustpower Limited.

### Hidden conditions

The Commission issued separate warnings to Sports and Events Marketing Limited and Plastic Box (Group) Limited for misleading representations relating to a prize draw. ■



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## Resolution options – settlements and warnings

The Commission will enter into a **settlement** with a business when, on the basis of evidence gathered over the course of an investigation, there is a likely and serious breach of the relevant legislation, which the business acknowledges.

The aim of this option is to modify the behaviour of the business in question, inform others and, where appropriate, seek redress for affected parties through the terms and conditions of the settlement. Settlements are entered into in circumstances where the Commission holds the view that the benefits obtained through the terms of the settlement provide a more appropriate outcome.

The Commission will issue a business with a **warning** when, on the basis of evidence gathered over the course of an investigation, there is a likely breach of the relevant legislation.

The aim of this option is to inform, stop the behaviour in question, and deter the business from repeat or new illegal behaviour. ■

## Adjudication update

During the July – September 2003 period, the Commission's adjudication activities included:

### MARKET STRUCTURE CLEARANCES DECIDED DURING THE PERIOD

DECISION NO.	DATE RECEIVED	PARTIES/DESCRIPTION	DECISION DATE
<b>Granted</b>			
504	4 July 2003	The acquisition by Bungy NZ Limited of the business referred to as Pipeline Bungy in Queenstown New Zealand Limited.	24 July 2003
506	19 September 2003	The acquisition by Todd Petroleum Mining Company Limited of a 9.86195 percent interest in Petroleum Exploration Permit 38459 (Pohokura) and the joint venture between Shell Exploration NZ Limited, Shell (Petroleum Mining) Company Limited, Todd Petroleum Mining Company Limited and OMV New Zealand Limited.	22 September 2003
507	14 August 2003	The acquisition by ANZ Banking Group New Zealand Limited or a related company nominated by ANZ of all the shares in NBNZ Holdings Limited and its subsidiary, The National Bank of New Zealand Limited, from Lloyds TSB Bank plc.	25 September 2003
508	22 August 2003	The acquisition by South Pacific Seeds Pty Limited of the assets and business that comprise the New Zealand vegetable seed sales division of Yates Limited.	25 September 2003
<b>Withdrawn</b>			
N/A	19 August 2003	The acquisition by Westpac Banking Corporation the shares in NBNZ Holdings Limited and its of all subsidiary, The National Bank of New Zealand Limited, from Lloyds TSB Group plc	12 September 2003
N/A	2 September 2003	The acquisition by MiTek New Zealand Limited of the assets and liabilities of Pryda New Zealand and Reid New Zealand (being the operating divisions of Nylex (New Zealand) Limited).	12 September 2003

### MARKET BEHAVIOUR AUTHORISATIONS DECIDED DURING THE QUARTER

DECISION NO.	DATE RECEIVED	PARTIES/DESCRIPTION	DECISION
505	23 December 2003	OMV New Zealand Limited (originally Preussag Energie), Shell Exploration NZ Limited and Todd (Petroleum Mining Company) Limited – application for authorisation for a restrictive practice relating to a proposed arrangement.	Authorisation granted with conditions 1 September 2003

### MARKET STRUCTURE AUTHORISATIONS DECIDED DURING THE QUARTER

DECISION NO.	DATE RECEIVED	PARTIES/DESCRIPTION	DECISION
503	11 March 2003	Eastland Network Limited seeking an exemption under s 81 of the EIR Act to operate its standby generation in a peaking role to overcome network constraints.	Exemption granted with conditions 24 July 2003.

## Commission clears ANZ to acquire National Bank



**Geoff Thorn, Acting  
General Manager**

In September 2003, the Commerce Commission cleared ANZ Banking Group (New Zealand) Limited to acquire NBNZ Holdings Limited, the New Zealand holding company of The National Bank of New Zealand Limited and its controlled subsidiaries from Lloyds TSB Bank plc.

Commission Acting General Manager Geoff Thorn said, “the Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition in the relevant markets due to the competition provided by the other major banks.”

The Commission concluded that the merger would be unlikely to substantially lessen competition in: interbank trading in the foreign exchange, domestic money and bond markets; and in the supply of financial planning services, managed funds, insurance services, personal loans, corporate banking, mortgages, rural banking, credit cards, merchant acquiring services and savings accounts.

“The merger would have led to reduction in choice and quality of service in the supply of transaction accounts and in the supply of small medium enterprise banking, however, any loss of competition in these markets was not considered to be substantial because of competition provided from the three other main competitors, and in particular ASB,” Mr Thorn added.

A public version of the Commission’s decision is available from the Commission’s website, [www.comcom.govt.nz](http://www.comcom.govt.nz). ■

### CONTACT DETAILS

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

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

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