

2009/2010 ANNUAL REPORT



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ABBREVIATIONS	
Commerce Commission	Commission
Ministry of Economic Development	MED
LEGISLATION ENFORCED BY THE COMMERCE COMMISSION	
Commerce Act 1986	Commerce Act
Credit Contracts and Consumer Finance Act 2003	CCCF Act
Dairy Industry Restructuring Act 2001	DIR Act
Electricity Industry Reform Act 1998	EIR Act
Fair Trading Act 1986	Fair Trading Act
Telecommunications Act 2001	Telecommunications Act

CHAIR'S FOREWORD

This year has been one of significant internal change at the Commission. We restructured the organisation to reflect our core areas of activity, namely enforcement and regulation. Key senior leadership positions have been created and filled, and decisions have been made to reposition our legal and economic support services into the enforcement and regulation branches. These changes reflect our determination to enhance the organisation's performance.

In addition to these organisational changes, the Commission has continued to deliver on the various responsibilities imposed under the Commerce Act, Fair Trading Act, Credit Contracts and Consumer Finance Act, Telecommunications Act, Dairy Industry Restructuring Act and Electricity Industry Reform Act.

During the year, the Commission has shown that it can achieve highly effective outcomes in the interest of consumers and competitive markets without needing to resort to litigation in every case. Following an investigation into credit card interchange fees, we reached a settlement with Visa, MasterCard and seven card issuing banks. This settlement addressed the competition issues in a forward looking way and has attracted worldwide attention; it also secured benefits for consumers and retailers. In addition, we ended the financial year with a record consumer compensation settlement, in which ANZ and ING agreed to refund \$45 million to investors who had invested in two funds which the Commission believed had been misrepresented as to the degree of risk.

The Commission has continued a busy litigation programme. We achieved a conviction and \$500,000 fine under the Fair Trading Act against Telecom in relation to misrepresentation to customers of the Go Large broadband plan. We also concluded an out of court settlement with Telecom, which involved the payment of \$1.6 million compensation to the wholesale competitors who were affected by the wholesale discount 'loyalty offers' for certain broadband services. In the same sector, we laid a raft of charges (yet to be heard) against Vodafone for a range of alleged misrepresentations relating to broadband and mobile phone products and services.

We were granted leave to appeal to the Supreme Court in the 0867 internet access case against Telecom. At issue is the application of the so-called counterfactual test that has been developed by the Privy Council as the sole test for determining whether, under the Commerce Act, conduct by a dominant player in the market is competition on the merits, or an unlawful use of market power.

The Commission continues to focus on acting in the best interests of consumers. Our low level inquiry unit has proven very successful in achieving quick results in straightforward Fair Trading matters. In addition, this year we acted to protect monies paid by consumers for tickets to the failed Wings and Wheels over Waikato airshow, and cooperated with the Police to achieve both Fair Trading and Crimes Act convictions against the airshow's organiser. In another win for consumers, we secured \$9.5 million in refunds for broadband customers of Telecom and Xtra following settlement in relation to misleading representations.

As we had foreshadowed in our Statement of Intent, we did experience a downturn in merger activity this year. However, by year end an increased trend for merger clearance applications was beginning to emerge. In the interim, resources in the merger team were deployed into progressing cartel investigations and some Fair Trading Act cases.

The Commission's regulatory work streams have been extremely busy. The most significant tasks for the Commission this year were as a result of the new requirements under Part 4 of the Commerce Act. We achieved some key milestones, including publication of the draft reasons and decisions on the input methodologies to be applied to electricity lines businesses, gas pipeline services and airports. The Commission also released draft decisions and reasons for the application of individual price-quality regulation to Transpower. One area of particular satisfaction was the success of workshops and conferences held with regulated industries as we worked our way through the issues. We are on track to implement the new regime in accordance with the statutory deadlines.

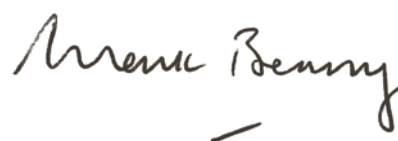
A major piece of work for the Telecommunications team ended this year with the final report to the Minister for Communications and Information Technology on mobile termination rates. The final recommendation, that regulation will better promote competition in the mobile market and will be in the best long-term interests of end-users, was accepted by the Minister.

The Commission has also dedicated resources to provide guidance to industry sectors and law firms to assist compliance and understanding of our processes. This included compliance advice to the credit card industry on exception fees and the publication of guidelines on failing firms, mergers and acquisitions, divestment remedies, and revised draft guidelines on credit fees. We also issued a revised cartel leniency policy, which introduced a significant change to our approach to cartels.

In terms of our financial performance for the year, the Commission drew down approximately \$1 million less Crown funding than we budgeted for and we received \$2 million unbudgeted recovery of costs from settling the ANZ/ING and the credit card interchange fees cases. In addition, we carefully managed our costs, with total operating expenditure being approximately \$4.6 million below budget, and \$1.1 million below expenditure for last year. Our cost savings are largely in the competitive markets area due to the downturn in merger activity, and savings are also reflected in our chosen litigation approach. We finished this year repaying a surplus to the Crown of \$3.7 million. We are taking \$3.6 million to reserves to manage future risks, important in a time of fiscal constraint across the public sector.

We have some variances in the delivery of outputs, such as the number of determinations in competitive markets, but also in the Regulation Branch specifically within input methodologies and gas. While there has been significant spending (nearly \$5 million) on input methodologies, delivery of budgeted outputs has been extended into the next financial year. This extension has also resulted in the deferral of setting information disclosure requirements for gas and electricity.

This has been a year in which significant demands have been placed on the Commission. We have endeavoured to achieve high-quality standards of decision making. We have also focused on how we can achieve efficiency gains, particularly given the current economic climate. The Commission's achievements this year would not have been possible without the dedicated effort of our staff and Commissioners. It has been a real team effort, and the end results are a very positive reflection on the quality of the people within the Commission.



Dr Mark Berry
Chair

OVERVIEW OF THE COMMISSION

ROLE

The Commerce Commission is New Zealand's competition authority and an economic regulator. We are responsible for enforcing competition, Fair Trading and consumer credit contract laws and have regulatory responsibilities in the electricity, gas, telecommunications, dairy and airport industries.

New Zealand businesses benefit from a competitive environment that encourages innovation and investment and provides greater regulatory certainty. New Zealand consumers benefit from optimal prices, quality and choice. Consumers can also have greater confidence in their transactions through the enforcement of Fair Trading and consumer credit laws and product safety regulations.

The Commission seeks to limit the harm caused by anti-competitive behaviour and ensure that consumers can make informed choices. Where competition is not possible or is limited, the Commission is responsible for regulation that aims to provide consumers with the benefits that would ensue if there was workable competition in the market.

In addition, the Commission has a wide range of specific functions under the legislation we enforce. For example, the Commission may investigate business acquisitions, and prohibited behaviours such as agreements containing provisions that substantially lessen competition, prevent or limit dealings with a rival or fix prices among competitors. The Commission monitors trade practices in credit, consumer lease and buy-back transaction markets and may investigate unfair, false or misleading trade practices and non-compliance with product safety and consumer information standards. The Commission must also monitor competition in, and the performance and development of, the telecommunications markets, and conduct inquiries, reviews and studies into matters relating to the telecommunications industry for the long-term benefit of end-users of telecommunications services.

The Commission is an independent Crown entity under the Crown Entities Act 2004. All decisions about the operation of the Commission are made by or under the authority of the Board.

BOARD

The Board is made up of Commission Members, appointed by the Governor-General on the recommendation of the Minister of Commerce (or, in the case of the Telecommunications Commissioner, by the Minister for Communications and Information Technology); Associate Commissioners are appointed by the Minister of Commerce. Commission members have both a governance and a decision-making role in the exercise of the Commission's powers and functions. At least one Commission member must be a barrister or solicitor.

The Board, as a governance body, is required to comply with the duties and requirements of the Crown Entities Act, as well as requirements in other legislation the Commission is responsible for, and provide high-quality, effective governance.

GOVERNANCE

The Board discharges the functions and requirements of the Commission in a number of ways, including:

- holding regular Board meetings, which include monitoring the Commission's performance, considering performance improvements, managing risks and planning the Commission's direction;
- using delegations to assist the efficiency of the Commission's work. This includes sub-groups of the Board (Commission Divisions) which specialise in markets and/or particular issues, and delegated authority to the Chief Executive;
- using advisory committees to the Board, such as the Audit, Finance and Risk Management Committee (AFRM);
- managing any conflicts through robust procedures; and
- overseeing a broad variety of strategies, policies, processes, systems, frameworks and analytical approaches that help ensure effective decision making.

MANAGEMENT

The Chief Executive is responsible for managing the Commission's operations, supported by a senior leadership team. Commission staff have a wide range of skills and experience to ensure the organisation's effective functioning, including people with backgrounds in economics, finance, engineering, business and law and with a mix of both private and public sector experience.

MINISTERIAL DIRECTIONS

The Commission acts independently from the Government. This independence requires the Commission to be an impartial promoter and enforcer of the law. We are primarily accountable to the Associate Minister of Commerce for our performance (with the delegation for oversight of the Commerce Commission as ownership minister).

Under the Commerce Act and the Telecommunications Act, Ministers can communicate statements of economic policy to the Commission. The Commission is required to have regard to such statements when exercising its statutory functions under the Commerce Act and Schedule 3 of the Telecommunications Act. The Commission is currently required to give regard to statements relating to the electricity industry and New Zealand's international commitments in relation to telecommunications.

ACHIEVING OUR OUTCOMES

The Commission's role is to promote competition in New Zealand markets, administer economic regulation in industries specified by parliament, and prohibit misleading and deceptive conduct by traders. In doing this, we support the Government's goal of growing the New Zealand economy in order to deliver greater prosperity, security and opportunities to all New Zealanders.

STRATEGIC PRIORITIES

The Commission is an organisation evolving to meet changes and challenges in markets and the wider economy. In the Statement of Intent 2009-2012, against which this Annual Report measures the Commission's success, we set out three medium-term strategic priorities: Maximising Impact, Leadership, and Capability. We made progress across all three areas.

In order to deliver on the Maximising Impact priority, we said that we would maintain our established role and influence in areas such as Fair Trading, mergers and the telecommunications regime, while looking to further develop our role and influence in areas such as the Credit Contracts and Consumer Finance Act (CCCF Act), network regulation, and cartels. This relied on tighter prioritisation, higher productivity and efficiency gains – in effect, doing more with less. This focus has resulted in the Commission maintaining, and in some cases exceeding, outputs while at the same time undertaking some considerable programmes of internal change and improvement, thereby laying the foundations for further improved processes and effectiveness in the future.

Over the past year we developed a new strategic framework that strengthens our focus on priority setting for the Commission. We agreed on a new purpose statement as set out in our Statement of Intent 2010-2013: "To achieve the best possible outcomes in competitive and regulated markets for the long-term benefit of New Zealanders". We also clarified the outcomes that we contribute to and seek to influence.

In line with the changes to our strategic framework, we advanced our impact measurement framework during 2009/10. Impact measures will be further refined during 2010/11, as we better understand and focus on what truly demonstrates the Commission's effective performance.

As noted in the Statement of Intent 2010-2013, we separately report impact measurement through our formal accountability reporting process in consultation with our monitoring departments. This will also be reviewed during 2010/11.

The remainder of this Achieving Our Outcomes section sets out our achievements across agreed outputs in competitive markets, informed consumers and sound regulatory regimes.

With regard to the Leadership and the Capability priorities, we said that we would focus on achieving effective external leadership by promoting the benefits of competition and engaging more with our stakeholders, and also focus on ensuring we have the right people, processes and systems to achieve our outcomes in the most cost-effective and productive way. The Commission's progress and achievements are set out in the Enhancing Organisational Capability and Performance section of this report.

COMPETITIVE MARKETS

2009/10 HIGHLIGHTS

The Commission continued to prioritise its work on cartels, completing a record number of coordinated behaviour investigations and bringing to resolution a number of longstanding investigations. The Commission also reached a significant settlement in relation to the credit card interchange fees price-fixing proceedings and concluded long-running cartel proceedings in the wood chemicals industry following significant civil and criminal penalties being imposed against companies and individuals.

By contrast, we received a record low number of merger clearance applications (seven), consistent with the impact of the global economic downturn. The Commission has worked to manage the peaks and troughs of clearance applications, transferring resource to other enforcement areas – particularly coordinated behaviour cases, Fair Trading cases, and developing guidelines for stakeholders. There has been a noticeable increase in the overall efficiency of processing applications and releasing written reasons compared with previous years.

We continued to increase transparency and certainty for external stakeholders by developing and publishing a number of guidelines, including an updated cartel leniency policy, merger divestment guidelines and guidelines on failing firms. Consistent with our drive for greater engagement, the Commission sought constructive ways of engaging with stakeholders, for example participating in New Zealand Post's consultation process on their proposed access regime for addressed mail. We also discussed proposed changes to the Commission's policies and practices with competition law firms.

Work began this year on scoping the development of a coordinated intelligence function, to achieve more effective and efficient interventions from a better use of information and knowledge. We have undertaken research into an industry sector to test that sector's awareness and understanding of the relevant provisions of the Commerce Act and to ascertain what tools and resources the sector would find useful to increase compliance. In 2010/11 we intend to use the results of this pilot study to inform our outreach approach to this sector and then extend and/or modify the approach as appropriate for other sectors.

The Commission has continued to be an active participant in the international sphere, particularly through membership of the International Competition Network, sharing information with counterpart enforcement agencies and through sharing best practice. We maintained close contact with overseas counterparts, particularly the Australian Competition and Consumer Commission, on specific enforcement cases as well as more general enforcement strategies and practice.

DETERMINATIONS

Under the Commerce Act, parties may seek formal clearance of a proposed merger or acquisition. In considering an application, the Commission's role is to determine whether the merger or acquisition has, or is likely to have, the effect of substantially lessening competition in any market. The Commission also determines applications for exemption from the Electricity Industry Reform Act (EIR Act).

The global economic downturn has been reflected in the lower number of merger clearance applications received this year. During the first three-quarters of the year, the Commission received only two clearance applications, and in the last quarter a further five, considerably fewer than historical levels and fewer than our Statement of Intent target. Indications are that the upward trend experienced in the final quarter will continue in 2010/11.

The Commission did not decline any of the clearance or EIR Act applications that it considered. Two of the clearance applications considered related to mergers of global pharmaceutical companies, which affected competition in multiple jurisdictions. During consideration of these applications we consulted with our counterparts in the United States and Australia. Because of an increase in global mergers, it is likely that such liaison will increase in the future.

There has been a noticeable increase in the overall efficiency of processing applications and releasing written reasons compared with previous years. This is possibly linked to the release of the clearance process guidelines in 2008/09, which have helped ensure we receive better information at the start of an investigation.

The reduction in the number of clearance applications has resulted in a significant underspend in this output and has enabled reallocation of resources into progressing other General Markets outputs, particularly coordinated behaviour cases, Fair Trading cases and framework development projects.

Regarding our timeliness targets, significant improvements have been made in the time it takes to release written reasons for clearance decisions. We decided four routine and four complex applications, and one of each exceeded timeliness targets by five working days. However, having received less than half the average number of clearance applications compared with more typical years, the overall percentages were disproportionately affected. We have adjusted the timeliness targets for 2010/11 to a more realistic level in light of the anticipated workload.

DETERMINATIONS (TABLE 1)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Clearances decisions	8	15-23	11
Authorisations	0	0-2	1
EIR Act exemptions	4	2-4	10
Litigation resolved (appeals)	0	0-1	1
TIMELINESS (AVERAGE)			
90% of routine clearance applications decided within (ave)	75% ¹	30 days	Not measured
90% of complex clearances decided within (ave)	75% ²	60 days	Not measured
QUALITY			
Successful legal challenges of the Commission's processes	0	0	0
Percentage of success over 5 years in defending appeals of determinations	100%	80%	N/A
COST (\$000)			
Expenditure on output class	761	2,869	1,534

1. One routine clearance decision took 35 days.
2. One complex clearance decision took 65 days.

ENFORCEMENT ACTION

The Commission's enforcement programme includes investigations and any subsequent enforcement action in relation to coordinated behaviour, unilateral conduct and changes in market structure not notified to the Commission through the clearance, authorisation or exemption regimes.

COORDINATED BEHAVIOUR

Coordinated behaviour includes both cartel behaviour and organised or collusive behaviour which limits competition. Anti-cartel enforcement activity has, for the past five years, been a priority area for the Commission. We introduced a leniency programme in 2004 (which was updated in 2009/10) to encourage cartel participants to expose the conduct.

Of the 17 coordinated behaviour investigations completed this year, seven were completed with no further action, eight were resolved through enforcement action of varying types (four compliance advice, two warnings and two settlements) and two decisions to litigate were made (details are confidential until proceedings are filed). This record number of completed coordinated behaviour investigations (considerably more than envisaged in the Statement of Intent 2009-2012) was due to a combination of improved efficiency, making use of resources not required in the mergers area, and the profile of the cases undertaken.

Of the 17 completed investigations, 15 related to actual or alleged domestic collusive agreements. Four leniency applications were received, all in relation to domestic or trans-Tasman cartels; by contrast, four of the five leniency applications received in 2008/09 related to international cartels.

One of the more complex domestic coordinated behaviour cases, which was resolved through settlement, was an investigation into exclusive royalty arrangements between owners of music copyright and Phonographic Performance NZ Limited (PPNZ). As a consequence of this investigation, the four major recording companies in New Zealand (Sony, Warner, EMI and Universal) agreed to amend the royalty agreements that had previously restricted direct negotiations between buyers and the owners of copyright music.

Two litigation matters were resolved this year – credit card interchange fees and wood chemicals:

- The credit card interchange fees proceeding was resolved by agreement in October 2009, on the eve of a 12-week trial. We signed agreements with each of the nine defendants, settling the Commission's claims that the Visa and Mastercard credit card scheme rules providing for the payment of multilateral service fees, together with related rules, breached the restrictive trade practices provisions of the Commerce Act. The package of commitments obtained by the Commission through these settlements will introduce real competition into credit card services. The Commission also recovered costs from the defendants totalling \$6.6 million.
- Long-running cartel proceedings in the wood chemicals industry were concluded with the Commission discontinuing the proceedings against the remaining individual defendant. The discontinuance was filed following the April 2010 decision of the Supreme Court, overturning decisions of the High Court and Court of Appeal relating to the Commission's jurisdiction under the Commerce Act to bring enforcement action in respect of anti-competitive conduct occurring overseas. During the life of the proceedings, the wood chemicals case achieved civil penalties exceeding \$7.4 million, and criminal penalties of \$53,000 for obstruction of our investigation.

There were also significant developments in relation to several other litigation matters:

- The Commission filed proceedings in December 2008 against 13 international airlines and a number of executives in respect of an alleged cartel in the international air cargo market. The allegation is that airlines throughout the world colluded to raise the price of freighting cargo by imposing fuel and/or security surcharges. An interlocutory hearing into these proceedings was held in May 2010 to decide an application by a number of defendants for a preliminary question (whether the markets involved are markets within New Zealand) to be dealt with by the High Court before the main trial. The application was resolved by agreement, and a split hearing of the case will be held. The first phase, over six weeks from May 2011, will determine the market issue; the

second phase, in late 2012, will determine the balance of the case. The High Court also issued a judgment in respect of Air New Zealand's judicial review of the Commission's use of section 100 confidentiality orders in the air cargo cartel investigation, determining that the continuation of the confidentiality orders after filing the cartel proceedings was unlawful. Both Air New Zealand and the Commission have appealed the decision, which is scheduled for hearing by the Court of Appeal in October 2010.

- The Commission's case against Siemens AG in respect of alleged price fixing in the Gas Insulated Switchgear market was heard in the High Court at Auckland in March 2010. Judgment is pending.
- A penalty hearing was held in June 2010 in the High Court at Auckland in respect of agreed penalties related to anti-competitive arrangements by pathology providers in the Waikato region. Judgment is pending.³

At 30 June 2010 the Commission had 20 coordinated behaviour cases on hand, including a significant number of cartel cases in the litigation phase. Overall, timeliness in this area of work has been either steady or improving, although the Statement of Intent timeliness target was not met. This is due to two key factors: the volume of cases from previous years and efforts to bring these to resolution, and investigations being delayed due to evidence being provided to the Commission later than desired.

COORDINATED BEHAVIOUR CASES (TABLE 2)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Screening investigations	4	3-5	N/A
Full investigations	11	1-4	9
Litigation resolved	2	3-4	1
TIMELINESS (AVERAGE)			
90% of routine coordinated behaviour investigations completed within (ave)	70%	9 months	Not measured
90% of complex coordinated behaviour investigations completed within (ave)	67%	24 months	Not measured
Litigation - proceedings filed (ave)	None filed	20 days	17.3 days
QUALITY			
Successful legal challenges of the Commission's processes	0 ⁴	0	0
Orders to pay indemnity costs	0	0	0
Penalties and settlements achieved in coordinated behaviour cases	0	Establish baseline in 2009/10	N/A
COST (\$000)			
Expenditure on output class	3,364	2,952	3,679

UNILATERAL CONDUCT

Of the eight unilateral conduct investigations completed this year, only one resulted in enforcement action (in the form of compliance advice). This investigation resulted in the Commission engaging with New Zealand Post and industry participants, and contributing a submission as part of New Zealand Post's consultation process on proposed changes to its access regime for addressed mail.

3. The Commission received judgment in July 2010. New Zealand Diagnostic Group was ordered to pay a penalty of \$65,000 and Pathology Associates Limited \$35,000. They will each pay \$10,000 towards the Commission's costs.

4. Not counted until all appeals have been exhausted.

Although no litigation matters were resolved, there were significant developments in relation to two Commission matters – ongoing proceedings in relation to 0867 and Datatails:

- In June 2010 the Supreme Court heard the Commission’s appeal in the 0867 proceeding. The Commission alleges that Telecom abused its dominance, in contravention of section 36 of the Commerce Act, when it introduced its 0867 internet dial-up package. The High Court dismissed the Commission’s case and the Commission appealed that decision. In August 2009 the Court of Appeal upheld the High Court’s decision, accepting that it was bound by Privy Council precedent mandating that the counterfactual test was the exclusive test for determining whether a firm has ‘used’ its dominant position. The Commission was granted leave to appeal to the Supreme Court to, among other things, challenge the application of the counterfactual test as the sole method for determining use of dominance. The Attorney-General intervened to support the Commission’s challenge on this particular legal ground given the importance of the statutory interpretation issues involved. The Supreme Court heard the appeal in June 2010. (The Commission received judgment on 1 September 2010 and is considering the implications.)
- In the Datatails proceedings, the Commission alleged that Telecom’s access pricing breached section 36 of the Commerce Act by charging anti-competitive access prices for data services. In October 2009, after a lengthy trial, the High Court found that Telecom had used its substantial market power to prevent and deter competition in markets involving high-speed data transmission services in breach of section 36. Telecom has appealed the judgment. Following the High Court finding on liability, timetabling directions have been sought for a hearing to determine an appropriate penalty.

There was one successful legal challenge of the Commission’s processes (as reported in Table 3). In 2008 AstraZeneca challenged the Commission’s use of the section 98 Commerce Act power to compel information on the basis that its conduct was exempted by section 53 of the Public Health and Disability Act 2000. The Commission was initially successful in the High Court and the Court of Appeal in resisting the challenge. However, in August 2009 the Supreme Court allowed AstraZeneca’s appeal. The Supreme Court found that a section 98 notice cannot be issued where the subject of the notice is clearly covered by a statutory exemption. The Supreme Court disagreed with the Court of Appeal and High Court and found that section 53 of the Public Health and Disability Act clearly covered AstraZeneca’s conduct, and that the section 98 notice was therefore invalid.

UNILATERAL CONDUCT (TABLE 3)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Screening investigations	6	3-5	N/A
Full investigations	2	3-8	13
Litigation resolved	0	1-2	1
TIMELINESS (AVERAGE)			
90% of routine unilateral conduct investigations completed within (ave)	100%	9 months	Not measured
90% of complex unilateral conduct investigations completed within (ave)	100%	24 months	Not measured
Litigation – proceedings filed (ave)	None filed	20 days	2 days
QUALITY			
Successful legal challenges of the Commission’s processes	1	0	0
Orders to pay indemnity costs	0	0	0
COST (\$000)			
Expenditure on output class	1,343	1,050	2,056

MARKET STRUCTURE CASES

The Commission continues to conduct ongoing market monitoring and surveillance by identifying any non-notified mergers that are of concern. We only open an investigation where a risk of a substantial lessening of competition has been identified. If real concern about substantial lessening of competition resulting from a non-notified merger arises, the Commission will act pre-emptively to encourage the parties to apply for a clearance, or will consider the use of powers such as a cease and desist order to address the matter in a timely manner. Three market structure screening investigations were completed this year with each being concluded with no further action required.

MARKET STRUCTURE CASES (TABLE 4)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Screening investigations	3	4-5	N/A ⁵
Mergers - full investigations	0	0-2	3
EIR Act investigations	0	0-1	2
Litigation resolved	0	0-2	1
TIMELINESS (AVERAGE)			
Litigation - proceedings filed (ave)	None filed	20 days	N/A
QUALITY			
Successful legal challenges of the Commission's processes	0	0	0
Orders to pay indemnity costs	0	0	0
COST (\$'000)			
Expenditure on output class	41	256	227

FRAMEWORK DEVELOPMENT

Consistent with our efforts to act in a transparent way and give stakeholders clarity about our focus and processes, we produce guidelines on how we undertake our functions, respond to external consultations (where appropriate) and improve branch operations to achieve the best possible enforcement outcomes. We continued to increase activity in this area in 2009/10. In particular, the Commission developed and published a number of guidelines, including an updated leniency policy, merger divestment guidelines and guidelines on failing firms.

The revised cartel leniency policy introduced a significant change to our approach to leniency in order to further destabilise cartels and maximise the opportunities for the Commission to stop the harmful effects of cartels. The revised policy provides for applications for conditional immunity even after the Commission has knowledge of the cartel, provided that we do not have sufficient evidence to launch court proceedings. The updated policy also provides for the granting of a marker which preserves the applicant's place while they collect information for provision to the Commission. When the revised policy was released we held seminars with law firms to ensure there was a clear understanding of the operation of the guidelines and practitioners were fully engaged with them. We are continuing to progress a sentencing framework and the publication of guidelines will follow in due course.

The Commission decided that it was appropriate to defer work on producing guidelines on unilateral conduct until the Supreme Court issues judgment in our proceedings against Telecom in the 0867 case. The decision could provide significant guidance on the future application of section 36 of the Commerce Act.

5. Screening investigations for all Competitive Market outputs were introduced in 2009/10.

The target for advice to government agencies is demand driven. Demand in 2009/10 has been lower than envisaged when targets were set and we also changed the way we count this measure. In order to be consistent with Informed Consumers, we now count all advice provided on each piece of legislation as one output. A key focus for the year has been providing advice to the Ministry of Economic Development (MED) on the operational implications of the Government's proposal to criminalise cartels.

We have developed an impact measurement methodology and undertaken a pilot study into two of the Commission's decisions not to intervene. This methodology will be reviewed and refined in 2010/11. We also reviewed and amended our quality measures for framework development during the year; the new (more appropriate) measures are set out in the Statement of Intent 2010-2013.

We have continued to increase our level of international information exchange, with contributions to the International Competition Network and the OECD. We maintained close contact with overseas counterparts including the Australian Competition and Consumer Commission on specific enforcement cases as well as more general enforcement strategies and practice.

FRAMEWORK DEVELOPMENT – COMPETITIVE MARKETS (TABLE 5)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Development or review of guidelines, industry codes or frameworks - Commerce Act	4	2-4	2
Development or review of guidelines, industry codes or frameworks - EIR Act	0	0-1	0
Advice to government agencies - Commerce Act	2	7-12	6
International information exchange and liaison - Commerce Act	12	6-10	19
QUALITY			
Feedback ratings from government agencies, business, professional services and international bodies on Commission contribution/advice	Positive	Above ave	N/A
Breadth of impact of framework development activities - number and size of markets affected	N/A ⁶	Establish baseline in 2009/10	N/A
COST (\$000)			
Expenditure on output class	821	1,140	776

PUBLIC INFORMATION/EDUCATION

Consistent with our drive for greater stakeholder engagement, we aim to ensure that we make greater use of intelligence and advocacy tools in order to detect, prevent and fix competition problems that are not currently coming to our attention but which may be causing significant harm. We have undertaken research into a sector to test their awareness and understanding of the relevant provisions of the Commerce Act and to ascertain what tools and resources they would find useful to increase compliance. In 2010/11 we intend to use the results of this research to inform our outreach approach to this sector and then extend and/or modify the approach as appropriate for other sectors.

We issued considerably fewer media releases than the Statement of Intent target, largely because of the downturn in clearance applications.

6. The framework development projects completed this year were not market specific and have impact across the economy.

PUBLIC INFORMATION/EDUCATION – COMPETITIVE MARKETS (TABLE 6)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Media releases	35	44-50	53
Media releases – EIR Act	3	2-6	4
Presentations	9	6-14	10
Publications	1	3-4	2
COST (\$000)			
Expenditure on output class	187	177	298

REPORTS TO THE MINISTER

As expected, there was no activity in this area during 2009/10.

REPORTS TO THE MINISTER – COMPETITIVE MARKETS (TABLE 7)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Reports to Ministers	0	0-1	0
COST (\$000)			
Expenditure on output class	0	0	16

INFORMED CONSUMERS

2009/10 HIGHLIGHTS

During this year we used a wide range of enforcement tools to achieve the best possible outcomes for consumers. This included agreements to return almost \$64 million dollars in compensation to consumers for proven or likely breaches of the Fair Trading Act and the Credit Contracts and Consumer Finance Act. We strengthened our enforcement expertise in our three current centres of excellence (telecommunications, financial services, and sustainability claims). In particular, in the telecommunications area we developed an outreach programme to assist businesses in developing compliance regimes.

To assist in achieving its objective of improving compliance with the Fair Trading Act, the Commission produced a DVD to explain the Act, and provided guidelines to businesses via its website. The Commission also continued to build on the success of the low level inquiry unit, which produces quick results in straightforward Fair Trading matters. In the CCCF Act area, we published revised Draft Guidelines for Credit Fees, following industry consultation, aimed at providing creditors with guidance on complying with the legislation.

FAIR TRADING

In the Commission's largest ever settlement, ANZ National Bank Limited and ING (NZ) Limited agreed to pay \$45 million back to investors in two frozen ING funds, the Diversified Yield Fund and the Regular Income Fund. In an approach demonstrating the range of enforcement options available to the Commission, it was decided that the best possible outcome for the affected investors was to enter into a negotiated settlement, rather than commence lengthy and uncertain litigation. Under the settlement, the parties acknowledged that some of their conduct may have breached the Fair Trading Act. We are now working to determine the payments methodology⁷ to be applied by ANZ/ING to disburse the \$45 million. Payments to investors are expected to be made by November 2011. The investigation commanded

considerable resource over the year, requiring review of over 300,000 pages of documentation, and interviews with affected investors up and down the country.

The low level inquiry unit has had considerable success over the year, with 159 investigations completed. This was significantly higher than our target and was achieved as a result of efficiencies within the team. The low level inquiry unit enables the Commission to take action at the lowest level necessary to correct alleged breaches in the most cost-effective manner. We are very pleased with the impact this unit is having on both consumers and businesses, and positive feedback has been received from both of these groups.

TELECOMMUNICATIONS

The Commission receives a steady flow of complaints under the Fair Trading Act involving telecommunications providers. A range of prosecutions, settlements, warnings and outreach have been undertaken to achieve the best outcomes for telecommunications consumers and the market.

Telecom New Zealand pleaded guilty to breaches of the Fair Trading Act and was fined \$500,000 in relation to an extensive nationwide campaign promoting its Go Large broadband plan. The investigation resulted in \$8.437 million being paid back to 97,000 consumers.

In a later settlement, Telecom and Xtra Limited admitted breaching the Fair Trading Act by wrongly billing over 130,000 new broadband customers, and \$9.5 million in refunds was paid to the affected customers.

The Commission also commenced a prosecution of Vodafone in relation to various mobile and broadband promotions. This case is significant as it covers a number of discrete issues in relation to mobile and broadband promotions.

Outreach to telecommunications companies remains an important part of the work completed this year, with the Commission proactively outlining to the larger companies a number of compliance issues identified. We also produced draft guidelines for the advertising of bundled telecommunications products, which have been finalised and will be formally released in the first quarter of 2010/11.

7. The payments methodology was determined in July 2010.

LITIGATION

The Commission has continued to take successful prosecutions, which benefit consumers and competition in markets. Some of the more significant cases included:

- Juice manufacturer Simply Squeezed pleaded guilty to breaching the Fair Trading Act and was fined \$45,000. The charges relate to a television advertising campaign that ran from March to May 2008 for Simply Squeezed's 'Chilled Orange Juice'. The advertising campaign gave the impression that the product was predominantly made from New Zealand squeezed orange juice; however, just over 50 per cent of the product was from squeezed New Zealand juice and the remainder was imported reconstituted juice made from concentrate. This was the second time Simply Squeezed had been prosecuted by the Commission and demonstrates that the Commission will take enforcement action against those traders who continue to breach their obligations under the Fair Trading Act.
- The Commission worked with other agencies to achieve appropriate resolutions in several cases. Ticket holders to the failed Wings and Wheels over Waikato airshow received refunds of \$500,000 after Commission action. The defended hearing against Ken Ross, the organiser of the show, was a combined Police/Commission prosecution that demonstrated excellent inter-agency cooperation and resulted in convictions under the Fair Trading Act and the Crimes Act. At the time of this report, Mr Ross has appealed his conviction and sentence on all charges. This will not affect the funds returned to ticket holders.
- In another case involving cooperation between the Commission and Police, Stewart Brown and Robert Parr were successfully prosecuted by the Police on Crimes Act charges of obtaining by false pretences and obtaining by deception in relation to two franchise companies.
- A Palmerston North man, Peter Linton, who ran an op shop and was claiming that proceeds went to women's refuge groups, was ordered to pay Palmerston North Women's Refuge and Te Roopu Whakaruruhau o Nga Wahine Māori \$4,000 and \$6,000 respectively. At the time of this conviction he was serving a term of imprisonment for defrauding Work and Income New Zealand as a result of information that came to light during the Commission's investigation.
- The Commission successfully tackled Fair Trading issues involving Australian-based companies in two cases.
 - Discount Premium Holidays was convicted and fined \$209,000 for breaches of the Fair Trading Act and a director of the company (Devang Parikh) was fined \$7,000 for two charges under the Commerce Act for attempting to deceive or knowingly mislead the Commission during its investigation. Discount Premium Holidays sold memberships over the phone for a travel programme. As part of their sales pitch, the telemarketers made an extensive number of false claims about the membership scheme.
 - TMG Asia Pacific Pty Limited was fined \$125,000 for operating 14 text trivia competitions without adequately disclosing that, by sending a text to answer the initial question, participants were entering into a premium SMS subscription service at a minimum cost of \$15 per month.
- Three companies were charged in relation to an instalment property scheme, run by Invercargill Property Management, in which people were led to believe they were buying their own homes when in fact it was a rent-to-buy scheme which would not give them ownership for 30 years. The Court imposed fines of \$102,500 and reparation of \$83,225.
- In a case that demonstrates the importance of protecting the 'made in New Zealand' claim, two companies were convicted and fined a total of \$21,000 for representing royal jelly imported from China as being New Zealand made. Royal jelly is a secretion from honey bees which is claimed to have a variety of health benefits. New Zealand royal jelly is believed to be of a higher quality and is likely to command a premium price. Consumers who bought the product had no way of knowing that it was not what the label said it was.
- Mainfeeds Limited, formerly trading as PCL Industries Limited, was convicted and fined \$125,000 for producing a calf feed that did not comply with the nutritional specifications on the packaging. Arising out of this investigation, four other traders were warned and more than 70 were issued with compliance advice regarding how they represent the crude protein content in calf feed.

- A Wellington real estate agent, Timothy Whitehead, unsuccessfully appealed to the High Court against convictions entered in November 2007. Mr Whitehead had been convicted of misleading potential buyers in the way he marketed a home using a 'buyer enquiry over' figure. However, Mr Whitehead did successfully appeal against the sentence imposed and was discharged without conviction on the basis that a conviction would lead to consequences that were out of proportion to the offending. If the sentence had stood, the enactment of the Real Estate Agents Act in 2008 meant that he could no longer hold a real estate licence. The judge noted that this was a unique case brought about by a legislative change following the offending and that it should not serve as a precedent for any other case involving future contraventions of the real estate provisions of the Fair Trading Act.

The timeliness measures relating to proceedings filed has improved in 2009/10. However, it remains above target and is an indication of the complexity of our litigations and the number of charges that proceeded.

FAIR TRADING ACT CASES (TABLE 8)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Investigations completed	370	265-320	284
Litigation resolved	14	15-20	14
TIMELINESS (AVERAGE)			
Investigations completed - proceedings filed (ave)	59 days	20 days	73 days
QUALITY			
Successful legal challenges of the Commission's processes	0	0	0
Orders to pay indemnity costs	0	0	0
Actual level of penalties and settlements achieved in Fair Trading cases	\$19,878,745 ⁸	Establish baseline in 2009/10	N/A
COST (\$000)			
Expenditure on output class	3,876	3,193	3,561

8. This does not include the ANZ/ING settlement. Although agreement has been reached, the matter has not yet been closed and therefore is not counted as a completed investigation.

PRODUCT SAFETY AND INFORMATION STANDARDS CASES

There was no litigation on product safety or information standards matters, as none was warranted by the issues dealt with.

PRODUCT SAFETY AND INFORMATION STANDARDS CASES (TABLE 9)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Investigations completed	50	40-52	35
Litigation resolved	0	5-7	0
TIMELINESS (AVERAGE)			
Investigations completed - proceedings filed (ave)	N/A	20 days	N/A
QUALITY			
Successful legal challenges of the Commission's processes	0	0	0
Orders to pay indemnity costs	0	0	0
COST (\$000)			
Expenditure on output class	149	189	82

CCCF ACT CASES

The Commission has continued to enter into settlements under the CCCF Act to achieve refunds for debtors. During this year notable cases included:

- Cash Converters admitted charging unreasonable establishment fees by including default recovery and bad debt costs in these fees. The company (and associated companies) made donations to consumer charity groups totalling \$60,000 as part of the settlement.
- Beneficial Insurance admitted misleading customers about the terms and conditions of its consumer credit indemnity policy and thus limiting payments to customers who lodged claims. The company changed its practices during the Commission's investigation and refunded 44 customers around \$37,000.
- An investigation into bank mortgage full prepayment fees (bank break fees) concluded with warnings to Kiwibank and HSBC for technical deficiencies in their formulae. Kiwibank made payments of around \$689,000 to customers, while HSBC made payments totalling approximately \$113,000. The Commission decided to take no further action with regard to break fees charged by ANZ, Westpac and GE Money. The Commission was of the view that bank break fees based on wholesale rates, rather than retail rates used under the safe harbour formula, were likely to be a reasonable estimate of loss. The Commission has also investigated break fees charged by a number of non-bank lenders. Medical Mortgages Limited admitted misleading debtors by representing that it used the safe harbour formula for calculating full bank break fees, when in fact it used a formula based on wholesale interest rates. The company refunded debtors \$88,270. The Commission's investigation into break fees includes actions which are expected to be finalised in 2010/11 and is expected to return in excess of \$2 million to customers through a number of settlements and warnings.
- The Commission issued compliance advice letters to eight banks and credit card providers (issuers) following an investigation into the reasonableness of late payment fees. As a result of the investigation, we concluded that it is likely that some of the late payment fees currently being charged (ie, those being charged in the range of \$20 to \$25) are unreasonable. We advised the issuers that a late payment fee of \$15 or less is likely to be reasonable and justifiable on a cost recovery basis. During our investigation, a number of issuers had already reduced their late payment fees to below this level or indicated they intended to do so.

- Dolbak Finance Limited pleaded guilty to failing to properly disclose the interest rates applicable to its contracts. Dolbak also pleaded guilty to breaches of the Fair Trading Act for making representations about the enforceability of its contracts. The company was fined \$2,000. This prosecution followed a related prosecution of two directors of Dolbak in 2007. The fine of \$2,000 took into account that the directors were still paying fines totalling \$100,000 and statutory damages of \$46,600 imposed in the first case.

Three proceedings were filed this year. With the complexity of cases being litigated, it is taking longer to formulate charges and have them finalised for swearing than the timeliness target allowed for.

CCCF ACT CASES (TABLE 10)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Investigations completed	45	29-42	43
Litigation resolved	1	4-7	0
TIMELINESS (AVERAGE)			
Investigations completed – proceedings filed (ave)	207 days ⁹	20 days	N/A
QUALITY			
Successful legal challenges of the Commission's processes	0	0	0
Orders to pay indemnity costs	0	0	0
COST (\$000)			
Expenditure on output class	1,141	1,291	963

FRAMEWORK DEVELOPMENT – FAIR TRADING ACT AND CCCF ACT

The Commission issued revised Draft Guidelines for Credit Fees in May, after considering industry submissions. These guidelines set out our enforcement approach to the credit fee provisions of the CCCF Act and provide guidance to the credit industry. We have also signalled an intention to work with the industry to provide further guidance on interpreting reasonable standards of commercial practice.

A compliance training DVD, 'An Evening with the Fair Trading Act', was launched and has gained significant interest from retailers seeking to improve their compliance. The DVD is now also able to be viewed via YouTube, allowing visitors to our website to read information about particular aspects of the Fair Trading Act and view the related DVD clip. The outreach programme continued through face-to-face industry meetings, including for the telecommunications and financial services focus (centres of excellence). Fewer industries have submitted guidelines/codes for Commission review in 2009/10.

Fair Trading continues to play an active role in cross-border activities, through the informal network of the International Consumer Protection Enforcement Network (ICPEN). We participated in a number of international initiatives through ICPEN and have built strong relationships with fellow enforcement agencies around the world. This interaction has lifted New Zealand's profile internationally, as is evidenced by the higher level of international requests for information that have been either facilitated or responded to this year.

We reviewed and amended our quality measures for framework development. The new (more appropriate) measures are set out in the Statement of Intent 2010-2013.

9. Three proceedings were filed this year, taking 46 days, 112 days and 463 days respectively.

FRAMEWORK DEVELOPMENT – FAIR TRADING ACT (TABLE 11)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Development or review of guidelines, industry codes or frameworks	4	10-15	13
Advice to government agencies	13	8-12	14
International information exchange and liaison	72	30-40	19
QUALITY			
Feedback ratings from government agencies, business, professional services and international bodies on Commission contribution/advice	N/A ¹⁰	Above average	N/A
Breadth of impact of framework development activities - number and size of markets affected	N/A ¹⁰	Establish baseline in 2009/10	N/A
COST (\$000)			
Expenditure on output class	175	423	182

FRAMEWORK DEVELOPMENT – CCCF ACT (TABLE 12)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Development or review of guidelines, industry codes or frameworks	1	0-1	13
Advice to government agencies	2	1-3	14
International information exchange and liaison	3	0-1	19
QUALITY			
Feedback ratings from government agencies, business, professional services and international bodies on Commission contribution/advice	N/A ¹⁰	Above average	N/A
Breadth of impact of framework development activities - number and size of markets affected	N/A ¹⁰	Establish baseline in 2009/10	N/A
COST (\$000)			
Expenditure on output class	254	192	226

10. We reviewed and amended our quality measures for framework development during the year. The new (more appropriate) measures are set out in the Statement of Intent 2010-2013.

PUBLIC INFORMATION/EDUCATION

Consistent with our drive for greater stakeholder engagement, we completed 46 outreach engagements. These promoted compliance with the Fair Trading and CCCF Acts, covering a range of businesses, industry groups, non-governmental organisations and government agencies. We completed fewer presentations than planned, as we found that our face-to-face meetings, tailored to meet specific needs and discuss relevant compliance issues, delivered greater impact. The Commission also completed a number of Fair Trading Act and CCCF Act publications.

PUBLIC INFORMATION/EDUCATION – FAIR TRADING (TABLE 13)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Media releases	36	35-40	27
Presentations	4	5-10	7
Publications	12	20-30	2
COST (\$000)			
Expenditure on output class	118	382	391

PUBLIC INFORMATION/EDUCATION – CCCF (TABLE 14)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Media releases	5	0-1	5
Presentations	4	0-2	1
Publications	8	5-10	1
COST (\$000)			
Expenditure on output class	46	119	40

VOTE COMMERCE – ENFORCEMENT OF GENERAL MARKET REGULATION (TABLE 15)

Financial results for the year ended 30 June 2010

	ACTUAL 2009/10 \$000	BUDGET 2009/10 \$000	ACTUAL 2008/09 \$000
Total revenue	15,907	14,450	15,033
Total expenditure	12,276	14,234	14,031
SURPLUS/(DEFICIT)	3,631	216	1,002

SOUND REGULATORY REGIMES

SOUND REGULATORY REGIMES - TELECOMMUNICATIONS

2009/10 HIGHLIGHTS

Industry-specific regulation of the telecommunications sector was introduced in 2001 and competition has developed significantly in the telecommunications market since then. The Commission plays an active role in ensuring barriers to competition in telecommunication markets are reduced, and consumers benefit from better service, prices and choice.

We released our annual monitoring report for 2009. The Commission reported that alternative providers of broadband services on Telecom's network had increased their market share from 24 per cent in 2007/08 to 37 per cent in 2009/10. Over the same period, broadband uptake doubled and New Zealand has improved its position from 22 in 2006 to 18 in 2009 when compared with the 30 OECD countries. Total sector investment increased from \$0.9 billion in 2005/06 to \$1.7 billion in 2008/09.

The Commission finalised the backlog of telecommunications service obligation (TSO) determinations. We also provided input to the Government's proposed changes for the TSO regime.

The Commission considers that regulatory intervention should be scaled back in areas where it is no longer necessary to promote competition, nor should regulation impose or maintain burdens that are unnecessary. To that end, we commenced an investigation into whether resale services could be deregulated and also commenced reviews of the competition conditions for the Unbundled Bitstream Access (UBA) service, and the Unbundled Copper Local Loop (UCLL) and UBA Backhaul services.

There have been some significant developments in the mobile services markets and investment in the industry remains high. During 2009/10 a third mobile network, 2degrees, launched commercial services.

The Commission completed an investigation into Mobile Termination Access Services (MTAS) rates and made a recommendation to the Minister that regulated cost-based mobile termination rates will better promote competition in the mobile market, and will be in the long-term interests of end-users, as against the undertakings offered by Telecom and Vodafone.

The accounting separation of Telecom was introduced, as required by the amendments made to the Telecommunications Act in 2006, thereby providing greater transparency to Telecom's business activities. Telecom delivered its first set of regulatory accounts during the year. The Commission published a summary and analysis of these accounts, which provided valuable information to interested parties about the operation and behaviour of Telecom's network, wholesale and retail businesses and services. We also issued revised requirements for the preparation of product statements for 2010/11.

During the year, the Commission reached the view that wholesale discount 'loyalty offers' for certain broadband services offered by Telecom Wholesale were likely to be in breach of the Operational Separation Undertakings. The Commission concluded an out-of-court settlement with Telecom in July 2010, which involved the payment of \$1.6 million compensation to the wholesale competitors who were affected by the offers. We considered that the breaches had the potential to seriously harm competition in telecommunications markets and undermine or deter efficient investment in telecommunications infrastructure.

The Commission also provided advice and input to a number of projects undertaken by the Ministry of Economic Development, including the Government's ultra-fast broadband initiative.

DETERMINATIONS

The Commission received no applications for determinations during 2009/10. However, we made 13 statutory clarifications of existing access determinations. This included six requests this year and clearing a backlog of seven from previous years.

The Commission has recently commenced reviewing whether the competition Telecom faces is not limited in the markets in which the three services are provided and which are also the subject of standard terms determinations. The services are: the Unbundled Bitstream Access (UBA) service; the UBA Backhaul service; and the Unbundled Copper Local Loop (UCLL) Backhaul service. The areas where the three regulated services are provided will change if the Commission determines that the competition conditions set out in the Act in relation to these services are not satisfied. These reviews will be completed in the first half of 2010/11.

DETERMINATIONS (TABLE 16)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Access determinations made	13 ¹¹	2-4	6
TIMELINESS (AVERAGE)			
Access determinations completed	4.3 months	10 months	16.7 months
QUALITY			
Successful legal challenges of the Commission's processes	0	0	0
Success over five years in defending appeals of determinations	N/A	80%	N/A
Applications for statutory clarifications	6	0-2	4
COST (\$000)			
Expenditure on output class	615	1,021	1,504

TELECOMMUNICATIONS SERVICE OBLIGATIONS (TSO) COST ALLOCATION

The Commission cleared the backlog of TSO decisions up to the TSO period of 2007/08. In February 2011 the Supreme Court will hear an appeal on Vodafone's successful appeal to the High Court against the 2004/05 and 2005/06 determinations, and their unsuccessful appeal to the Court of Appeal in respect of the 2003/04 determination. After consultation with industry participants, the Commission suspended finalisation of the 2008/09 determination until all the judicial proceedings in relation to the TSO periods of 2003/04 through to 2005/06 have been resolved by the courts.

11. These include statutory clarifications; no access determinations were made during 2009/10.

TELECOMMUNICATIONS SERVICE OBLIGATIONS COST ALLOCATION (TABLE 17)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
TSO determinations made	6	5-6	6
TIMELINESS (AVERAGE)			
Determinations completed	5.7 months	12 months	18.5 months
QUALITY			
Successful legal challenges of the Commission's processes	0	0	0
Success over five years in defending appeals of determinations	60%	80%	N/A
COST (\$000)			
Expenditure on output class	244	538	466

MONITORING AND REPORTING

The Commission published the Annual Telecommunications Monitoring Report for the financial year 2008/09, which focused on developments since the introduction of the current regulatory framework from 2006/07 through to 2008/09. Key findings were that total sector investments increased from \$0.9 billion in 2005/06 to \$1.7 billion in 2008/09. The number of fixed broadband connections increased from 480,000 in 2005/06 to 1 million in 2008/09. New Zealand improved its ranking of broadband penetration among the 30 OECD countries measured, from 22 in 2006 to 18 in 2009. Total revenues of telecommunication industry players have remained stable, while the quality of services has improved and prices for consumers have fallen.

We also published our Broadband Quality Report for the first two quarters of the 2009/10 financial year. The report noted that the quality of broadband performance in New Zealand has increased over time despite regional differences being observed regarding performance.

Under the Telecommunications Act, the Commission is charged with monitoring and enforcing Telecom's compliance with the Operational Separation Undertakings (the Undertakings). During 2009/10 Telecom asked for three variations to the Undertakings. We analysed Telecom's proposed variations and made three submissions to the Minister.

MONITORING AND REPORTING (TABLE 18)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Monitoring and reporting	5	9-13	8
QUALITY			
Retrospective corrections	0	0	0
COST (\$000)			
Expenditure on output class	1,636	945	2,055

ENFORCEMENT CASES CLOSED

The level of compliance across the whole industry has been high and consequently very little activity has been required in this area.

The Commission was advised of two complaints received by the Independent Oversight Group (IOG) regarding Telecom Wholesale's compliance with the Operational Separation Undertakings. Following investigations by the IOG, the Commission subsequently received one formal complaint, regarding a claim that certain Telecom Wholesale broadband 'loyalty offers' were a breach of Telecom's obligation not to discriminate. The Commission found that Telecom had likely breached the Undertakings and announced its intent to seek enforcement action. In early July 2010 we finalised a settlement with Telecom and the payment of compensation to the two wholesale competitors who were harmed by Telecom's activity, thereby avoiding the need for litigation.

ENFORCEMENT CASES CLOSED (TABLE 19)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Enforcement action	0	0-3	1
QUALITY			
Successful legal challenges of the Commission's processes	0	0	0
Orders to pay indemnity costs received for any enforcement action	0	0	0
COST (\$000)			
Expenditure on output class	137	491	72

CODE APPROVAL DEVELOPMENT

This area of work is typically demand driven. The industry, through the Telecommunications Carriers' Forum (TCF), develops codes for regulated services that are submitted to the Commission for approval. No codes were received by the Commission for approval in 2009/10. We conducted regular monitoring activities and participated in TCF meetings and working groups.

CODE APPROVAL DEVELOPMENT (TABLE 20)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Industry codes approved	0	0-1	0
COST (\$000)			
Expenditure on output class	2	23	2

REPORTS TO THE MINISTER

The Commission undertook a significant amount of work in this area during 2009/10, particularly with regard to mobile services. Given the anticipated entry of a third network in New Zealand (2degrees), in late 2008 we commenced an investigation into mobile termination rates. These are the rates mobile telecommunications carriers charge each other to complete voice and SMS (text) calls on their networks. In June 2009 the Commission released a draft report recommending that mobile termination rates be regulated. After consultation and the submission of revised undertakings, we recommended in 2010 that the Minister accept the undertakings put forward by Vodafone and Telecom in lieu of regulation. The Minister subsequently requested that the Commission reconsider the recommendation in light of a new retail plan offered by Vodafone, which had significantly lower on-net rates than previously considered during the investigation. After reconsidering the issue, the Commission recommended that the Minister regulate mobile termination rates and not accept the undertakings proffered by Vodafone and Telecom.¹²

In 2009, after seeking industry views, the Commission commenced a Schedule 3 investigation into whether retail services offered by means of Telecom's fixed network should be removed from the schedule of regulated services or amended. We expect to complete this investigation in the first half of 2010/11.

REPORTS TO THE MINISTER (TABLE 21)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Reports to Minister	2	2-3	0
TIMELINESS (AVERAGE)			
Reports completed	8.4 months	12 months	N/A
COST (\$000)			
Expenditure on output class	1,437	1,023	726

12. The Minister accepted the recommendation to regulate in August 2010.

FRAMEWORK DEVELOPMENT

The Commission provided input to a number of policy development processes being considered by the Ministry of Economic Development, including in relation to the Government's ultra-fast broadband initiative, the TSO regime, spectrum caps for the 2.1 GHz range and processes to improve the management of numbering.

We continue to have regular meetings with the Australian Competition and Consumer Commission to exchange views on telecommunication regulation.

Although we have not implemented a formal feedback measurement system, we have received feedback from key stakeholders. In general, this feedback has been positive in relation to our contributions and advice.

FRAMEWORK DEVELOPMENT – TELECOMMUNICATIONS (TABLE 22)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Development or review of guidelines, industry codes or frameworks	0	2	N/A
International information exchange and liaison	5	2	3
QUALITY			
Feedback ratings from government agencies, business, professional services and international bodies on Commission contribution/advice	Positive ¹³	Above average	N/A
Breadth of impact of framework development activities - number and size of markets affected	N/A ¹⁴	Establish baseline in 2009/10	N/A
COST (\$000)			
Expenditure on output class	503	786	332

13. Although the Commission has not implemented a formal feedback measurement system, feedback has been received from key stakeholders. In general, this feedback has been positive in relation to the Commission's contributions and advice.

14. We reviewed and amended our quality measures for framework development during the year; the new (more appropriate) measures are set out in the Statement of Intent 2010-2013.

INFORMATION DISCLOSURE

In December 2009 Telecom New Zealand published its regulatory accounts for the 2008/09 financial year. This is the first time that this was required. The Commission assessed and released a summary and analysis of the regulatory accounts. In May 2010 we published the new information disclosure requirements that Telecom must follow when preparing its regulatory financial statements for the 2009/10 financial year, requiring the disclosure of costs and revenues associated with individual services (product statements). The requirements were revised following a period of consultation with the industry.

INFORMATION DISCLOSURE – TELECOMMUNICATIONS (TABLE 23)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Information disclosure reports	2	1-4	1
QUALITY			
Successful legal challenges of the Commission's processes	0	0	0
COST (\$000)			
Expenditure on output class	1,808	1,630	1,845

PUBLIC INFORMATION/EDUCATION – TELECOMMUNICATIONS (TABLE 24)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Media releases	37	10-20	42
Presentations (includes 20-30 stakeholder engagement meetings, 2 consumer panels)	29	24-37	52
Publications	0	0-2	0
COST (\$000)			
Expenditure on output class	176	420	132

VOTE COMMUNICATIONS – ENFORCEMENT OF TELECOMMUNICATIONS SECTOR REGULATION (TABLE 25)

Financial results for the year ended 30 June 2010

	ACTUAL 2009/10 \$000	BUDGET 2009/10 \$000	ACTUAL 2008/09 \$000
Total revenue	7,790	7,790	7,820
Total expenditure	6,558	6,877	7,134
SURPLUS/(DEFICIT)	1,232	913	686

SOUND REGULATORY REGIMES - ELECTRICITY, GAS AND AIRPORTS

2009/10 HIGHLIGHTS

Implementation of the new requirements under Part 4 of the Commerce Act has been a high priority for the Commission and has required elevated levels of resourcing. The purpose of the work under Part 4 is to promote outcomes consistent with outcomes in workably competitive markets in relation to businesses where there is little or no competition.

We completed a key phase of the development of Input Methodologies for the regulated sectors with the publication of draft decisions and reasons on the input methodologies to be applied to electricity lines services, gas pipeline services and specified airport services. Input methodologies will promote certainty for consumers and suppliers of regulated services in relation to the rules, requirements and processes applying to the regulation of these services.

In November 2009 the Commission met its first statutory deadline under Part 4 when we reset the default price-quality path to apply to electricity distribution businesses from 1 April 2010.

We also released draft decisions and reasons on the application of individual price-quality regulation to Transpower, which complemented a paper setting out our draft decisions and reasons on the input methodologies to be applied to Transpower. Both Transpower papers were based on the Recommendation to the Minister of Commerce that Transpower, at the expiry of the current administrative settlement, be subject to individual price-quality regulation.

In May 2010 the Commission also released the Information Disclosure (Airport Services): Draft Reasons Paper, and draft airports information disclosure determination.

The Commission is on track to implement the new requirements that seek to promote the long-term benefit of consumers of regulated services. We have been systematically building our capability to ensure that this work is appropriately resourced to achieve these outcomes, and there has been an ongoing process of consultation and engagement with interested parties.

INPUT METHODOLOGIES

The Commission is required to set Input Methodologies for all regulated services under Part 4 of the Commerce Act (electricity lines, gas pipelines and specified airport services). Input methodologies promote certainty for suppliers and consumers of regulated services in relation to the rules, requirements and processes applying under the regulation.

The Minister of Commerce granted an extension of six months to the statutory deadline for setting these requirements, to 31 December 2010. This means that the determinations expected for the 2009/10 financial year will now be delivered in the 2010/11 financial year. The Commission requested this extension in response to requests from submitters for more opportunity for further engagement with interested parties. We are well on track to meet this new deadline. The Commission held conferences for interested parties in September, released our emerging views on key issues in December, held a series of workshops in late 2009 and early 2010, and released the draft reasons and draft determinations for each sector in late June and early July 2010.

DETERMINATIONS – INPUT METHODOLOGIES (TABLE 26)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Determinations - Airports	0	1	N/A
Determinations - Gas/Electricity	0	2-4	N/A
TIMELINESS			
Determinations - Airports completed by	N/A - revised	30/06/2010	N/A
Determinations - Gas/Electricity completed by	to 31/12/2010	30/06/2010	N/A
QUALITY			
Successful legal challenges of the Commission's processes	0	0	0
Compliance with legislative requirements for consultation	100%	100%	N/A
COST (\$000)			
Expenditure on output class	4,910	4,844	0

PUBLIC INFORMATION/EDUCATION – INPUT METHODOLOGIES (TABLE 27)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Media releases	4	2-12	3
Presentations	3	3	3
Publications	0	0	2
COST (\$000)			
Expenditure on output class	0	55	0

VOTE COMMERCE – INPUT METHODOLOGIES (TABLE 28)

	ACTUAL 2009/10 \$000	BUDGET 2009/10 \$000	ACTUAL 2008/09 \$000
Total revenue	5,224	4,899	3,400
Total expenditure	4,910	4,899	3,075
SURPLUS/(DEFICIT)	314	0	325

ELECTRICITY

The priority for the Commission in relation to electricity has been the implementation of the new Part 4 regime, including default price-quality paths and the form of regulation to apply to Transpower. In addition, we focused on assessing compliance with the existing information disclosure requirements. We concluded our assessments of the final threshold compliance statements for the year ended 31 March 2009 under Part 4A of the Commerce Act, setting the default price-quality paths to apply from 1 April 2010; we also assessed the statutory declarations of the 12 electricity distribution businesses that considered they met the 'consumer-owned' criteria.

PRICE-QUALITY PATHS

The Commerce Amendment Act 2008 deemed the existing thresholds for large electricity distribution businesses to be default price-quality paths for one year commencing 1 April 2009 and ending on 31 March 2010. The determination and decisions paper for default price-quality paths to apply from 1 April 2010 was published on 30 November 2009. We also did significant work in 2009/10 on the process for the resetting of prices for electricity distribution businesses following the setting of input methodologies.

DETERMINATION OF PRICE-QUALITY PATHS (TABLE 29)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Price-quality paths	1	1	N/A
TIMELINESS (AVERAGE)			
Price-quality paths - completed by	30/11/2009	01/12/2009	N/A
QUALITY			
Compliance with legislative requirements for consultation	100%	100%	N/A
COST (\$000)			
Expenditure on output class	1,089	1,040	1,143

THRESHOLD INQUIRIES

Under Part 4A of the Commerce Act, when businesses breached their price path or quality thresholds, the Commission could conduct an inquiry to consider whether to exercise control over the regulated business. We completed our assessments for the year ended 31 March 2009 and decided not to exercise control over any electricity distribution business.

THRESHOLD INQUIRIES (TABLE 30)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Threshold inquiries	0	0-4	0
Compliance assessment	30	30	66
TIMELINESS			
Threshold inquiries - completed by	N/A	30/06/2010	N/A
Compliance assessment - completed by	16/02/2010	30/06/2010	N/A
QUALITY			
Successful legal challenges of the Commission's processes	0	0	N/A
COST (\$000)			
Expenditure on output class	282	204	523

AUTHORISATION AND DETERMINATION COMPLIANCE

The Commission assessed the statutory declarations of 12 electricity distribution businesses that considered they met criteria for 'consumer-owned' status and hence were exempt from price-quality regulation for the period 1 April 2009 to 31 March 2010.

AUTHORISATION AND DETERMINATIONS COMPLIANCE – ELECTRICITY (TABLE 31)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Authorisations	0	0-2	0
Compliance with existing authorisations and determinations	12	2	0
TIMELINESS			
Authorisations - completed by	N/A	30/06/2010	N/A
Compliance with existing authorisations and determinations - completed by	30/06/2010	30/06/2010	N/A
QUALITY			
Successful legal challenges of the Commission's processes	0	0	N/A
COST (\$000)			
Expenditure on output class	34	114	0

INFORMATION DISCLOSURE

Transparency of information allows interested parties to understand the performance of electricity lines businesses. A discussion document on the approach to setting new information disclosure requirements under Part 4 of the Commerce Act was published in July 2009. However, we deferred further work on new electricity information disclosure determinations until after the input methodologies are set (by December 2010). The decision to defer this work was in response to submissions on the July discussion paper.

In 2009/10 the Commission published a summary of information disclosed by all electricity lines businesses under existing requirements, and completed our fourth review of asset management plans.

INFORMATION DISCLOSURE – ELECTRICITY (TABLE 32)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Information disclosure determinations	0	0-2	1
Information disclosure – summary and analysis (including asset management review)	2	1-2	N/A
TIMELINESS			
Information disclosure determinations – milestones completed to ensure delivery by	N/A	30/06/2011	N/A
Information disclosure – summary and analysis (including asset management review)	11/11/2009 and 22/12/2009	30/06/2010	N/A
QUALITY			
Compliance with legislative requirements for consultation	100%	100%	N/A
COST (\$000)			
Expenditure on output class	472	937	780

FRAMEWORK DEVELOPMENT

In accordance with the new statutory provisions relating to Transpower, the Commission consulted on the appropriate form of price-quality regulation to apply to the national grid operator. We made a recommendation to the Minister of Commerce on 13 April 2010 that Transpower be subject to individual price-quality regulation. Once an Order in Council that implements the Minister's decision has been made, we will publish a determination applying the regulation and setting which input methodologies will apply. In June 2010 we published the draft reasons on matters relevant to the regulation of Transpower.

FRAMEWORK DEVELOPMENT – ELECTRICITY (TABLE 33)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Recommendation on controls	1	1	N/A
Advice to government on law reform of the electricity sector	8	N/A	2
TIMELINESS			
Recommendations on control – milestones completed to ensure delivery by	13/04/2010	30/12/2010	N/A
QUALITY			
Compliance with legislative requirements for consultation	100%	100%	N/A
COST (\$000)			
Expenditure on output class	884	855	1,014

PUBLIC INFORMATION/EDUCATION

The Commission issued a number of media releases in relation to key milestones or determinations. In addition, presentations were made to industry or consumer groups. The costs for this activity are included in other outputs within the electricity appropriation.

PUBLIC INFORMATION/EDUCATION – ELECTRICITY (TABLE 34)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Media releases	7	2-6	3
Presentations	3	1-3	3
Publications	0	2-6	8
COST (\$000)			
Expenditure on output class	0	17	100

VOTE COMMERCE – REGULATION OF ELECTRICITY LINES BUSINESSES (TABLE 35)**Financial results for the year ended 30 June 2010**

	ACTUAL 2009/10 \$000	BUDGET 2009/10 \$000	ACTUAL 2008/09 \$000
Total revenue	3,167	3,167	3,631
Total expenditure	2,761	3,167	3,560
SURPLUS/(DEFICIT)	406	0	71

GAS

The Commission sets price-quality regulation for suppliers of gas pipeline services and assesses compliance with the terms of existing authorisations. The passing of Part 4 of the Commerce Act, in 2008, expanded the Commission's responsibilities to include all gas distribution and transmission businesses.

In 2009/10 the Commission's key achievement was the release of a discussion document on setting the default price-quality path for gas pipeline businesses. The initial default price-quality path deadline was deferred to 30 June 2012 following submissions from regulated parties. Customised price-quality path requirements are being developed as part of input methodologies.

We published a discussion document in July 2009 on information disclosure requirements for all suppliers of regulated services (including gas pipeline businesses). However, as a result of submissions from regulated parties, who indicated that they would prefer to consider information disclosure implications after input methodologies have been set, work on gas information disclosure has been deferred until the 2010/11 financial year.

DETERMINATIONS

Gas transmission businesses and gas distribution businesses are subject to default price-quality regulation, which will specify the maximum prices that may be charged, or maximum revenues that may be recovered, and the quality standards that must be met by suppliers. The Commission intends to make a determination giving effect to the initial default price-quality path (DPP) from 1 July 2012. A comprehensive Issues Paper that discusses setting the initial DPP was released in the last quarter of the year.

DETERMINATIONS – GAS (TABLE 36)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Determination of price-quality paths	0	1-2	N/A
TIMELINESS			
Determination of price-quality paths - milestones completed to ensure delivery by	N/A - revised to 30/06/2012	01/03/2010	N/A
QUALITY			
Successful legal challenges of the Commission's processes	0	N/A	0
Compliance with legislative requirements for consultation	100%	100%	N/A
COST (\$000)			
Expenditure on output class	1,118	1,897	1,178

COMPLIANCE WITH EXISTING AUTHORISATIONS AND DETERMINATIONS

On 31 October 2008 the Commission published authorisations for the control of the supply of natural gas distribution services by Powerco Limited and Vector Limited. These authorisations set the price and other conditions under which the companies must supply gas distribution services, and expire on 1 July 2012. Assessment of the 2009/10 compliance statements in respect of the authorisations received on 30 April from Powerco and Vector will be completed in the first quarter of 2010/11.

COMPLIANCE WITH EXISTING AUTHORISATIONS AND DETERMINATIONS – GAS (TABLE 37)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Compliance with existing authorisations and determinations	0	2-4	7
TIMELINESS			
Compliance with existing authorisations and determinations - completed by	N/A - revised to 30/09/2010	30/06/2010	N/A
QUALITY			
Successful legal challenges of the Commission's processes	0	0	0
COST (\$000)			
Expenditure on output class	112	121	0

FRAMEWORK DEVELOPMENT

The Commission has not been required to provide substantial comment or advice on regulatory issues in this area in 2009/10.

FRAMEWORK DEVELOPMENT – GAS (TABLE 38)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Framework development	0	N/A	0
COST (\$000)			
Expenditure on output class	12	16	326

PUBLIC INFORMATION/EDUCATION – GAS (TABLE 39)

Following the deferral of the deadline for price-quality regulation and information disclosure, less activity was required in this area in 2009/10. Costs associated with this activity are included in the determinations output above.

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Media releases	1	1-5	3
Presentations	0	1-4	0
Publications	0	1-4	3
COST (\$000)			
Expenditure on output class	0	16	0

INFORMATION DISCLOSURE

Transparency of information allows interested parties to understand the performance of gas pipelines businesses. A discussion document on the approach to setting new information disclosure requirements under Part 4 of the Commerce Act was published in July 2009. However, we deferred further work on information disclosure requirements for gas pipeline businesses until after we have set the input methodologies (by December 2010). The decision to defer this work was in response to submissions on the July discussion paper.

INFORMATION DISCLOSURE – GAS (TABLE 40)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Information disclosure determinations	0	0-2	N/A
TIMELINESS			
Information disclosure determinations – milestones completed to ensure delivery by	N/A – revised to 30/06/2012	30/06/2011	N/A
QUALITY			
Compliance with legislative requirements for consultation	N/A	100%	N/A
COST (\$000)			
Expenditure on output class	199	563	0

VOTE COMMERCE – REGULATION OF NATURAL GAS SERVICES (TABLE 41)

Financial results for the year ended 30 June 2010

	ACTUAL 2009/10 \$000	BUDGET 2009/10 \$000	ACTUAL 2008/09 \$000
Total revenue	2,700	2,700	1,750
Total expenditure	1,441	2,613	1,504
SURPLUS/(DEFICIT)	1,259	87	246

AIRPORTS

The Commission is required to set information disclosure requirements for specified airport services delivered by Auckland International Airport Limited, Wellington International Airport Limited and Christchurch International Airport Limited. Transparency of information allows interested parties to understand the performance of these airports in supplying services regulated under Part 4.

The Minister of Commerce has granted an extension to the statutory deadline for setting these requirements, to 1 January 2011. We are well on track to meet this new deadline.

We released our preliminary views on a range of matters relating to information disclosure for specified airport services in July 2009. We followed this up with workshops with the sector on quality and forecast information leading to the release of the draft reasons paper and draft determination on 28 May 2010.

INFORMATION DISCLOSURE – AIRPORTS (TABLE 42)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Information disclosure determinations	0	0-1	N/A
TIMELINESS			
Information disclosure determinations - completed by	N/A - revised to 01/01/2011	01/07/2010	N/A
QUALITY			
Compliance with legislative requirements for consultation	100%	100%	N/A
COST (\$000)			
Expenditure on output class	687	495	0

PUBLIC INFORMATION/EDUCATION – AIRPORTS (TABLE 43)

Costs associated with this activity are included in the Information Disclosure output above.

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Media releases	1	2-3	N/A
Presentations	0	1-2	N/A
Publications	0	0	N/A
COST (\$000)			
Expenditure on output class	0	5	0

VOTE COMMERCE – REGULATION OF AIRPORT SERVICES (TABLE 44)

Financial results for the year ended 30 June 2010

	ACTUAL 2009/10 \$000	BUDGET 2009/10 \$000	ACTUAL 2008/09 \$000
Total revenue	791	500	401
Total expenditure	687	500	110
SURPLUS/(DEFICIT)	104	0	291

DAIRY

The Commission plays a key role in facilitating workably competitive dairy markets in New Zealand through administering the Dairy Industry Restructuring Act 2001 (DIR Act). A major purpose of this Act is to promote the efficient operation of dairy markets in New Zealand. Our role includes determining disputes between Fonterra and other parties over entry and/or exit of shareholders, and disputes under the Dairy Industry Restructuring (Raw Milk) Regulations 2001 relating to the supply and pricing of raw milk to independent processors. We also conduct investigations into behaviour that appears to breach the conditions for entry and exit of shareholders or any regulations made under the DIR Act.

During the year the High Court issued its decision in the appeal of the Commission's June 2009 determination that Fonterra had been in breach of its supply obligation under the DIR (Raw Milk) Regulations 2001. The High Court agreed with the Commission that The Grate Kiwi Cheese Company Limited and Kaimai Cheese Company Limited were independent processors for the purposes of the DIR (Raw Milk) Regulations 2001, and Fonterra was obliged to supply them with raw milk. Fonterra has appealed this decision. Independent of the appeal we have been progressing two separate applications to determine the level of compensation payable to Grate Kiwi and Kaimai. We expect to make decisions on these applications in 2010/11.

We also made two submissions to the Government in respect of proposed changes to the DIR Act and the DIR (Raw Milk) Regulations 2001 during the year. One submission was made to the Primary Production Select Committee on proposed changes to the pricing of regulated milk. Another submission was made on the Ministry of Agriculture and Forestry-led review on the DIR Act's pro-competition regime.

Regular monitoring and screening were undertaken during the year, including providing low-level advice to the Ministry of Agriculture and Forestry.

ENFORCEMENT ACTION – DAIRY (TABLE 45)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Enforcement action	1	0-2	0
TIMELINESS (AVERAGE)			
Enforcement action - investigation phase completed (ave)	2 months	6 months	N/A
Administrative resolutions completed (ave)	N/A	45 working days	N/A
QUALITY			
Successful legal challenges of the Commission's processes	0	0	0
Orders to pay indemnity costs	0	0	0
COST (\$000)			
Expenditure on output class	7	167	13

ADJUDICATION – DAIRY (TABLE 46)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Adjudications – determinations completed	0	0-2	2
TIMELINESS (AVERAGE)			
Adjudications – determinations completed (ave)	N/A	6 months	10.9 months
QUALITY			
Successful legal challenges of the Commission's processes	0	0	0
COST (\$000)			
Expenditure on output class	469	276	468

FRAMEWORK DEVELOPMENT – DAIRY (TABLE 47)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Framework development	0	0-1	1
QUALITY			
Feedback ratings from government agencies and industry on usefulness of advice/guidelines produced	N/A ¹⁵	Above average	N/A
COST (\$000)			
Expenditure on output class	1	189	0

PUBLIC INFORMATION/EDUCATION – DAIRY (TABLE 48)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Media releases	0	0-4	5
COST (\$000)			
Expenditure on output class	7	5	24

VOTE COMMERCE – ENFORCEMENT OF DAIRY REGULATION (TABLE 49)**Financial results for the year ended 30 June 2010**

	ACTUAL 2009/10 \$000	BUDGET 2009/10 \$000	ACTUAL 2008/09 \$000
Total revenue	905	905	907
Total expenditure	484	637	505
SURPLUS/(DEFICIT)	421	268	402

15. No feedback was sought or received. We have reviewed and amended our quality measures for framework development; the new (more appropriate) measures are set out in the Statement of Intent 2010-2013.

KNOWLEDGEABLE NEW ZEALANDERS

An important aspect of the Commission's role is to promote the benefits of competition, and explain our role in encouraging competition and applying regulation where competition doesn't naturally exist.

In addition to the work carried out during the year (key items detailed below), we clarified the outcomes that we contribute to and seek to influence.¹⁶

STAKEHOLDER ENGAGEMENT

New Zealanders benefit when they understand how consumer protection and competition laws work for them. The Commission also recognises that we can intensify the impact of enforcement actions by publicising the issues, and promoting awareness among businesses and consumers of the competition and consumer-related laws that we enforce.

During the year the Commission undertook research bringing together the views of the public and businesses, and messages portrayed in the media, to gain a greater understanding of perceptions about the Commission and our work. This research has been valuable and will help us improve our future communications, outreach and stakeholder engagement.

WEBSITE

Another important piece of engagement with our stakeholders involved our website. The old website was the subject of frustration for many stakeholders, and it was felt that a fresh approach could provide a better window on the organisation. A new website was launched in April 2010 and provides a more user-friendly experience for visitors, based on feedback from

stakeholders on what they needed. We continued to develop web-based publications that are easy reference tools for consumers and businesses, to help them understand our work.

CONTACT CENTRE

An integral communication channel for the Commission is our contact centre. The contact centre records complaints and enquiries under the Acts we enforce, and as such is often the genesis of investigations the Commission undertakes. During the year, the contact centre received approximately 11,500 complaints and enquiries, which is on a par with previous years. The vast majority (approximately two-thirds) of issues raised fell under the Fair Trading Act.

MEDIA ACTIVITY

A number of significant Commission outcomes created high media coverage during the year. In particular, issues involving banks received a great deal of attention as a result of enforcement actions. The settlement the Commission reached with Visa and Mastercard, and a number of banks, over the anti-competitive nature of interchange fees received both national and international coverage.

A separate settlement with ANZ and ING, following an investigation into the way two investment funds were represented, was also the subject of a huge amount of media coverage as it was the largest consumer compensation settlement under the Fair Trading Act.

Coverage of the Commission's decision making in the telecommunications industry included mobile termination rates, the conclusion of a number of Fair Trading Act investigations involving Telecom, and the laying of charges against Vodafone for alleged Fair Trading Act breaches.

16. As noted in our Statement of Intent 2010-2013, we have removed the Knowledgeable New Zealanders outcome because it is not an outcome in itself. Raising general awareness of our activities, enhancing New Zealanders' knowledge about competition and regulation, and our focus on public information and education are included in each of our remaining outcome areas, ie, markets are competitive, consumers are informed and regulation is targeted and effective.

MEDIA IMPACT (TABLE 50)

QUARTER	NO. OF MEDIA RELEASES	NO. OF MEDIA ITEMS ¹⁷	% OF ITEMS POSITIVE/NEUTRAL	KEY MESSAGE CARRIED ¹⁸
1	32	396	87%	239
2	35	268	88%	218
3	19 ¹⁹	236	81%	149
4	45	266	90%	195
Total	131	1,166	87%	801

KNOWLEDGABLE NEW ZEALANDERS (TABLE 51)

	ACTUAL 2009/10	BUDGET 2009/10	ACTUAL 2008/09
QUANTITY			
Media releases - number of published/broadcast media articles that result from Commission media releases, and which communicate key messages	801	Increasing over time	N/A
QUALITY			
Publications - feedback ratings from government agencies and industry on usefulness of advice/guidelines produced	Reported under specific outputs	Above average	N/A
Presentations - number of requests for Commission speakers increases over time	30	Establish baseline 2009/10	N/A

17. No. of media items – means number of items generated by the releases (does not count those unrelated to the Commission's media releases but quoting or mentioning the Commission). Print only.

18. Key message carried – means the key message in the release repeated in the news item. Commentary on this impact measure will grow over time as we observe and compare each quarter. However, as a benchmark, our success would be reflected in the percentage of stories that carried the key message and were positive/neutral.

19. This includes two non-output-related media releases.

ENHANCING ORGANISATIONAL CAPABILITY AND PERFORMANCE

There has been considerable activity during 2009/10 to enhance the Commission's performance through improved capability. We consider that these activities have made, or will make, the Commission a stronger and more effective organisation and we are strongly focused on developing our capability to deliver greater benefits to New Zealanders.

GOVERNANCE

The relatively recent appointment of a new Chair (April 2009) and several new Commissioners, along with a new senior leadership team, made it timely to begin a review of the Commission's governance arrangements. This work will conclude during 2010/11.

STRATEGIC DIRECTION

During 2009/10 the Commission developed a new strategic framework that strengthens our focus on priority setting for the Commission. We agreed on a new purpose statement as set out in our Statement of Intent 2010-2013: "To achieve the best possible outcomes in competitive and regulated markets for the long-term benefit of New Zealanders".

We are clear that our success in achieving the best possible outcomes depends on choosing the right mix, type and nature of activity. For this, a strong focus on resource allocation and prioritisation of work is required. In developing this work, we sought input from key stakeholders to better understand perspectives on the Commission's performance and what was important for the future – an initiative that was well received.

FIVE STRATEGIC PROGRAMMES

As part of developing our strategic direction for 2010-2013, we established five programmes to focus organisation improvements: simplify our business, better understand our value, better connect, stronger future focus and better investment in people. Each programme contains a series of projects that will be implemented over the next three years and will guide the Commission to further develop our processes, systems and people capabilities, and the culture required to support business improvement.

STRUCTURE

Organisation structure is an important foundation of effective organisation performance. In 2009/10 the Commission established a new, smaller senior leadership team, including grouping operational functions into two branches – Enforcement and Regulation. In addition to improved coordination of similar activities (increasing scope for efficiency gains), the creation of distinct branches also sought to address some stakeholder perceptions of a potential conflict between the Commission's functions. An Organisation Performance Branch was established to support business performance and improve capability. The Legal and Economic Service branches were also reviewed to ensure optimal delivery of these professional services, with the outcome being the embedding of these services within the Enforcement and Regulation branches. Some further refinements of the three new branches will occur during 2010/11.

EXTERNAL ENGAGEMENT

To achieve the best possible outcomes, and make the right project choices, we need to have a strong outward focus and be highly cognisant of the wider competition and regulatory landscape. This includes understanding the views of consumers, business and other stakeholders on specific issues and about the Commission's performance generally. As noted in the Strategic Direction section above, we sought input to our strategic direction and increased our internal emphasis on effective communication and engagement. As noted in the Knowledgeable New Zealanders section, we also launched a new website to improve transparency and accessibility of information. Further improvements in our external engagement are planned for 2010/11.

PLANNING, BUDGETING AND REPORTING

We improved our strategic and business planning processes through better engagement with the Minister of Commerce, the Ministry of Economic Development and Audit New Zealand. The Commission understands the Government's resource pressures, and has responded to these by both reducing expenditure (requiring a stronger focus on the relative merit of project choices) and improving productivity. We have increased resource flexibility (people working across issues and areas where possible). We have also paid greater attention to a multi-year financial outlook for the Commission to more effectively manage changeable expenditure levels. We developed, and agreed with the Ministry of Economic Development, a new approach to reporting on the Commission's performance in 2010/11, reducing to three triannual (four-monthly) reports instead of four quarterly reports. While maintaining a strong focus on performance reporting, we will achieve lower compliance costs and lessen the impact of reporting on operational activity.

LEADERSHIP

The Commission's new senior leadership team is taking a stronger strategic focus by identifying and implementing strategies (including effective change management) to address future challenges and increase the Commission's future effectiveness.

DEVELOPING OUR PEOPLE

Developing our people is important to build capability and assist in career development. Progress has been made on a management and leadership development initiative, as well as the establishment of a managers' forum to facilitate improved engagement across all Commission managers.

Staff benefit from professional development, which includes both generic and tailored technical training, and coaching. The Commission provides career development opportunities for staff, including opportunities for secondment or acting in a more senior position. Our people capability review programme provides clear descriptions of expectations and performance standards and encourages regular and appropriate feedback and communications on performance.

PROJECT MANAGEMENT

To support productivity, we introduced a Commission-wide approach to project management in July 2009 and trained all staff. While still in its infancy, the tools are improving work planning and the efficiency of delivery (including pace and the quality of management decision making), as well as increasing transparency of project resourcing, and the costs and benefits of different work choices. Project management also provides staff with the opportunity to lead projects and work in project teams to make the best use of their capabilities. The project management approach will be further refined during 2010/11.

THE ATTRACTIVENESS OF OUR ENVIRONMENT

The Commission offers a challenging and rewarding work environment, where staff can be at the forefront of competition and regulation issues. We continue to look for innovative ways of recruiting staff with specialist skills. This includes attracting appropriately skilled staff from overseas. New staff receive a comprehensive induction and orientation programme when they join the Commission.

We promote and support our organisational values of integrity, respect and responsibility. We continue to develop and maintain policies and processes that value diversity, provide a workplace free from harassment and discrimination, and provide equal employment opportunities.

The Commission takes a proactive approach to staff well-being and we are committed to providing a healthy and safe work environment. Initiatives have included well-being advice, and access to confidential counselling, financial and legal advice services. The Commission's health and safety committee ensures that staff receive advice on keeping themselves safe at work. The Commission also provides creative solutions to support a balance between work, family and personal needs.

Our effectiveness critically depends on the skills and competencies of our staff. The Commission has a strong focus on attracting, developing and retaining the right people, which will further improve through our 'better investment in people' strategy. The Commission's permanent headcount at the end of 2009/10 was 189, compared with 182 for 2008/09. The new Part 4 regime has necessitated additional full-time equivalent (FTE) positions to establish the regime and meet the high workload.

INFORMATION SYSTEMS AND PROCESSES

In 2009/10 we improved internal management reporting and improved a range of processes across branches that provide efficiency gains. We upgraded our project management system to provide greater system stability, performance and functionality to meet the Commission's needs. We replaced and improved a range of Commission infrastructure and systems, providing higher-quality and more reliable services, together with increased functionality and efficiency gains.

The Records Management Policy was revised, improving efficiency in the capture and management of records and a more explicit alignment with the Public Records Act 2005. We are in the process of transferring electronic records from our litigation support system to Archives New Zealand, which will provide a greater level of Public Records Act compliance and, in doing so, provide a model for use by other public sector agencies.

BOARD AND MANAGEMENT OVERVIEW

COMMISSION MEMBERS



DR MARK BERRY - CHAIR

Dr Mark Berry was appointed Chair in April 2009; initially for a term of 18 months, this was subsequently extended to five years. He previously held the position of Deputy Chair between 1999 and 2001. Mark has specialised in competition law and economic regulation. He is a former partner in the law firm Bell Gully and former consultant with Chapman Tripp. Since 2002 he has been in practice as a barrister sole. Mark holds a doctorate from Columbia University, New York. He has taught Contract Law, Competition Law and Securities Regulation at Otago University Law School, and is a member of the International Advisory Board at the Institute for Consumer Anti-trust Studies at Loyola University Chicago School of Law.



SUSAN BEGG - DEPUTY CHAIR (FROM JULY 2010)

Susan Begg was appointed a Commissioner in June 2009 for a term of five years; in July 2010 she was appointed as deputy chair for a four-year term. Susan is an economist, and Director and co-founder of the consultancy company Impetus Group Limited. Her previous roles include Vice-President and head of the economic advisory unit of the investment banking division of Credit Suisse First Boston NZ Limited (and its predecessor companies) and manager of the Macroeconomic Policy section at the Treasury. In her consultancy roles Susan has provided regulatory advice to government and to regulated industries. She was an advisor to the Commerce Commission from 2002 until 2005 on the development of the threshold regime and the Gas Control Inquiry.



DONAL CURTIN - COMMISSIONER

Donal Curtin was appointed as an Associate Commissioner in January 2001, became a full member of the Commission in November 2002 and was Deputy Chair between July 2008 and March 2009. He resigned as Deputy Chair in March 2009, returning to the role of full Commission member until his term expires in July 2013. Donal is a business economist with wide experience of applying economics to commercial decisions. He currently runs a consultancy, Economics New Zealand. His previous roles include as Bank of New Zealand's Chief Economist and head of its national private banking unit.



PATRICK DUIGNAN - COMMISSIONER

Patrick Duignan was appointed an Associate Commissioner in June 2009, becoming a full member of the Commission in June 2010, until June 2014. He is an economist and corporate financier, who has undertaken a wide range of financial and economic analyses in both the public and private sectors. Patrick's previous roles include General Manager Finance for Telecom Corporation, Director in the Investment Banking Division of Credit Suisse First Boston NZ Limited, Treasurer of the New Zealand Debt Management Office, and Director Policy Coordination and Development at the Treasury. He is currently an expert (non-board) member of the ACC Investment Committee.



ANITA MAZZOLENI - COMMISSIONER

Anita Mazzoleni was appointed a Commissioner in April 2009 for a term of five years, having previously been an Associate Commissioner since 2005. She is an independent corporate finance adviser and company director. Anita's commercial career has been in industry and finance, particularly the evaluation and funding of infrastructure. She is also currently a director of companies owned by Ngāti Whātua o Orakei, and a board member of the Civil Aviation Authority.



DR ROSS PATTERSON - TELECOMMUNICATIONS COMMISSIONER

Dr Ross Patterson was appointed Telecommunications Commissioner in July 2007 for a period of five years. Ross has a PhD in competition law. He has practised extensively in New Zealand and Australia, specialising in competition and regulatory law, most recently as head of Minter Ellison's competition and regulation practice in Australia.



PETER JM TAYLOR - COMMISSIONER (UNTIL FEBRUARY 2010)

Peter Taylor was appointed in February 2001 for five years and reappointed in 2006 for a further four years, ending his term in February 2010. Peter is a retired chartered accountant with experience in Africa, the United Kingdom, Australia and Asia. He was a consulting partner of a major New Zealand accountancy business for 14 years. From 1994 to 1996 he was seconded to the Crown Company Monitoring Advisory Unit as its Chief Executive. He is a director of a number of private companies.



DAVID CAYGILL - ASSOCIATE COMMISSIONER

David Caygill was appointed as an Associate Commissioner in January 2008. He had previously been the Deputy Chair of the Commerce Commission, appointed in December 2003, but stood down from the role when he took up the role of Chair of the Electricity Commission. David is a lawyer and former Minister of the Crown. His previous governance experience includes Chair of the Grid Security Committee, the Electricity Governance Establishment Committee and ACC.



GOWAN PICKERING - ASSOCIATE COMMISSIONER

Gowan Pickering was appointed in May 2005 and reappointed in 2008 for a further four years. Gowan spent more than 30 years with IBM, where he was IBM New Zealand Chief Executive Officer and Chairman from 1991 to 1998. He was Chief Executive of the Foundation for Research, Science and Technology for four years from 2000. He is currently a director of a number of technology companies and, until June 2010, was a trustee of the Capital Primary Health Organisation.



THE HONOURABLE SIR IAN BARKER QC - CEASE AND DESIST COMMISSIONER

The Honourable Sir Ian Barker QC was appointed in October 2007 for five years. He is a retired Senior Judge of the High Court of New Zealand and a past President of the Arbitrators' and Mediators' Institute of New Zealand.



HELEN CULL QC - CEASE AND DESIST COMMISSIONER

Helen Cull QC was appointed in October 2007 for five years. She has extensive experience in a range of litigation and in public law and has chaired several national inquiries.

Dr Stephen Gale was appointed as a Commissioner in July 2010. His biography is available on the Commerce Commission website.

SENIOR LEADERSHIP TEAM



NICHOLAS HILL - CHIEF EXECUTIVE

Nicholas Hill was appointed to the new role of Chief Executive of the Commerce Commission in June 2008. Nicholas has degrees in politics and law and began his career with the State Services Commission in an advisory role, before moving to the Treasury as an economic and financial analyst. He has experience in industries regulated by the Commission, having worked at the Electricity Corporation of New Zealand (ECNZ), and later at Fletcher Challenge Energy as General Manager, Commercial. Nicholas has held a diverse range of senior roles in the public and private sectors, all of which have involved significant change management.



KATE MORRISON - GENERAL MANAGER ENFORCEMENT

Kate Morrison heads the new Enforcement Branch. She joined the Commission as the first General Manager Enforcement in December 2009. Before her appointment to the Commission, Kate had a London-based career in financial services compliance. Most recently she was Executive Director, and Global Head of Compliance for Mergers and Acquisitions, Equity Capital Markets and Global Control Room at ABN AMRO and previously was in a similar role at Deutsche Bank. Kate has a law degree and a BA in English Literature from Wellington's Victoria University and a Masters degree in International Economic Law from Edinburgh.



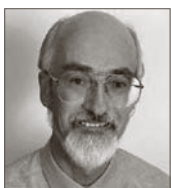
BRENT ALDERTON - GENERAL MANAGER REGULATION

Brent Alderton is General Manager Regulation at the Commerce Commission. He joined the Commission in early 2009. Before that, he was Commercial Manager for New Zealand Oil and Gas Limited. Brent's work experience also includes time in Corporate Finance at Deloitte, Corporate Strategy at the Electricity Corporation and in policy and analysis roles at the New Zealand Treasury and the Department of Social Welfare. Brent has a BA (Hons) in Economics and an MA in Political Studies.



PETER ALSOP - GENERAL MANAGER ORGANISATION PERFORMANCE

Peter Alsop was appointed to the new role of General Manager Organisation Performance in December 2009. Peter has a background in policy and regulatory management, having moved between public and private organisations. He broadened his focus into a general management role at Pharmac, where he was the Manager, Corporate and External Relations, before joining the Commerce Commission. Peter's academic background is in mathematics with calculus, and following that a Masters in Economics, both from Waikato University.



DR MICHAEL PICKFORD - CHIEF ECONOMIST

Dr Michael Pickford joined the Commission as Chief Economist in 1996 from Massey University, where he was a Senior Lecturer in the Economics Department. Before that, Michael held research and lecturing positions in economics at various universities in the United Kingdom and has undertaken consultancy work for the United Kingdom's Overseas Development Administration and also the World Bank. He has written or edited four books, and published a number of articles on industrial economics and competition policy, mainly in the New Zealand context. Michael's qualifications include a PhD in Economics from the University of Bradford.



PETER TAYLOR - GENERAL COUNSEL

Peter Taylor joined the Commission in December 2000 as General Counsel. Before that, he was a Senior Associate with Simpson Grierson in Wellington, where his focus was on commercial litigation and arbitration. His clients included a wide range of major corporates in the electricity, property and financial services sectors. Peter was a partner with the international law firm Denton Wilde Sapte, based in London, where he led a large team of lawyers specialising in commercial property litigation. He completed his LLB at Canterbury University.

The Senior Leadership Team was restructured and, from 16 August 2010, the roles of Chief Economist and General Counsel are disestablished.

FINANCIAL STATEMENTS

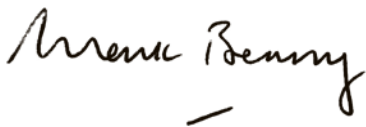
STATEMENT OF RESPONSIBILITY

In accordance with the Crown Entities Act 2004, the Board is responsible for the preparation of the Commerce Commission's financial statements and statement of service performance, and for the judgements made in them.

The Board of the Commerce Commission has the responsibility for establishing, and has established, a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting.

In the Board's opinion, these financial statements and statement of service performance fairly reflect the financial position and operations of the Commerce Commission for the year ended 30 June 2010.

Signed on behalf of the Board:



Dr M Berry
Chair – Commerce Commission
20 September 2010



A Mazzoleni
Convener – Audit, Finance and Risk Management
Committee
20 September 2010

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AUDIT REPORT

TO THE READERS OF THE COMMERCE COMMISSION'S FINANCIAL STATEMENTS AND STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 2010

The Auditor-General is the auditor of the Commerce Commission (the Commission). The Auditor-General has appointed me, Clare Helm, using the staff and resources of Audit New Zealand, to carry out the audit on her behalf. The audit covers the financial statements and Statement of Service Performance included in the annual report of the Commission for the year ended 30 June 2010.

UNQUALIFIED OPINION

In our opinion:

- The financial statements of the Commission on pages 52 to 76:
 - comply with generally accepted accounting practice in New Zealand; and
 - fairly reflect:
 - the Commission's financial position as at 30 June 2010; and
 - the results of its operations and cash flows for the year ended on that date.
- The statement of service performance of the Commission on pages 7 to 42:
 - complies with generally accepted accounting practice in New Zealand; and
 - fairly reflects for each class of outputs:
 - its standards of delivery performance achieved, as compared with the forecast standards outlined in the statement of forecast service performance adopted at the start of the financial year; and
 - its actual revenue earned and output expenses incurred, as compared with the forecast revenues and output expenses outlined in the statement of forecast service performance adopted at the start of the financial year.

The audit was completed on 20 September 2010, and is the date at which our opinion is expressed.

The basis of our opinion is explained below. In addition, we outline the responsibilities of the Commissioners and the Auditor, and explain our independence.

BASIS OF OPINION

We carried out the audit in accordance with the Auditor-General's Auditing Standards, which incorporate the New Zealand Auditing Standards.

We planned and performed the audit to obtain all the information and explanations we considered necessary in order to obtain reasonable assurance that the financial statements and statement of service performance did not have material misstatements, whether caused by fraud or error.

Material misstatements are differences or omissions of amounts and disclosures that would affect a reader's overall understanding of the financial statements and statement of service performance. If we had found material misstatements that were not corrected, we would have referred to them in our opinion.

The audit involved performing procedures to test the information presented in the financial statements and statement of service performance. We assessed the results of those procedures in forming our opinion.

Audit procedures generally include:

- determining whether significant financial and management controls are working and can be relied on to produce complete and accurate data;
- verifying samples of transactions and account balances;
- performing analyses to identify anomalies in the reported data;
- reviewing significant estimates and judgements made by the Commissioners;
- confirming year-end balances;
- determining whether accounting policies are appropriate and consistently applied; and
- determining whether all financial statement and statement of service performance disclosures are adequate.

We did not examine every transaction, nor do we guarantee complete accuracy of the financial statements and statement of service performance.

We evaluated the overall adequacy of the presentation of information in the financial statements and statement of service performance. We obtained all the information and explanations we required to support our opinion above.

RESPONSIBILITIES OF THE COMMISSIONERS AND THE AUDITOR


The Commissioners are responsible for preparing the financial statements and statement of service performance in accordance with generally accepted accounting practice in New Zealand. The financial statements must fairly reflect the financial position of the Commission as at 30 June 2010 and the results of its operations and cash flows for the year ended on that date. The statement of service performance must fairly reflect, for each class of outputs, the Commission's standards of delivery performance achieved and revenue earned and expenses incurred, as compared with the forecast standards, revenue and expenses adopted at the start of the financial year. The Commissioners' responsibilities arise from the Crown Entities Act 2004.

We are responsible for expressing an independent opinion on the financial statements and statement of service performance and reporting that opinion to you. This responsibility arises from section 15 of the Public Audit Act 2001 and the Crown Entities Act 2004.

INDEPENDENCE

When carrying out the audit we followed the independence requirements of the Auditor-General, which incorporate the independence requirements of the New Zealand Institute of Chartered Accountants.

Other than the audit, we have no relationship with or interests in the Commission.



Clare Helm
 Audit New Zealand
 On behalf of the Auditor-General
 Wellington, New Zealand

AUDIT NEW ZEALAND
 Mana Arotake Aotearoa

MATTERS RELATING TO THE ELECTRONIC PRESENTATION OF THE AUDITED FINANCIAL STATEMENTS AND STATEMENT OF SERVICE PERFORMANCE

This audit report relates to the financial statements and statement of service performance of the Commerce Commission for the year ended 30 June 2010 included on the Commerce Commission's website. The Members of the Commission are responsible for the maintenance and integrity of the Commission's website. We have not been engaged to report on the integrity of the Commission's website. We accept no responsibility for any changes that may have occurred to the financial statements and statement of service performance since they were initially presented on the website.

The audit report refers only to the financial statements and statement of service performance named above. It does not provide an opinion on any other information which may have been hyperlinked to or from the financial statements and statement of service performance. If readers of this report are concerned with the inherent risks arising from electronic data communication they should refer to the published hard copy of the audited financial statements and statement of service performance and related audit report dated 20 September 2010 to confirm the information included in the audited financial statements and statement of service performance presented on this website.

Legislation in New Zealand governing the preparation and dissemination of financial information may differ from legislation in other jurisdictions.

STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 30 JUNE 2010

	NOTES	ACTUAL 2009/10 \$000	BUDGET 2009/10 \$000	ACTUAL 2008/09 \$000
OPERATING INCOME				
Crown revenue	3	43,299	44,396	42,195
Fees and recoveries		2,184	35	83
Interest		387	420	866
Sundry income		1	60	183
TOTAL OPERATING INCOME		45,871	44,911	43,327
OPERATING EXPENDITURE				
Members and personnel	4	23,168	24,260	21,757
Direct output costs	5	11,038	13,317	13,354
Occupancy		1,846	1,837	1,698
Depreciation and amortisation		897	1,177	1,098
Other expenditure		1,575	2,640	1,807
TOTAL OPERATING EXPENDITURE	6	38,524	43,231	39,714
TOTAL COMPREHENSIVE INCOME	7	7,347	1,680	3,613

STATEMENT OF CHANGES IN EQUITY FOR THE YEAR ENDED 30 JUNE 2010

	ACTUAL 2009/10 \$000	BUDGET 2009/10 \$000	ACTUAL 2008/09 \$000
BALANCE AT 1 JULY	6,883	6,218	5,615
Total comprehensive income	7,347	1,680	3,613
TOTAL RECOGNISED INCOME AND EXPENSE	7,347	1,680	3,613
Crown funding not repayable	4	0	0
Repayment of surplus to the Crown	(3,801)	(1,180)	(2,345)
BALANCE AT 30 JUNE	10,433	6,718	6,883

The accompanying Statement of Service Performance, Statement of Accounting Policies and Notes to the Financial Statements on pages 55 to 76 form part of the financial statements.

STATEMENT OF FINANCIAL POSITION AS AT 30 JUNE 2010

	NOTES	ACTUAL 2009/10 \$'000	BUDGET 2009/10 \$'000	ACTUAL 2008/09 \$'000
EQUITY				
General funds	8	7,433	3,718	4,383
Litigation costs reserve	9	1,500	1,500	1,000
Litigation Fund	10	1,500	1,500	1,500
TOTAL EQUITY		10,433	6,718	6,883
CURRENT ASSETS				
Cash and cash equivalents	11	13,964	3,507	9,119
Fees and recoveries receivable		1,160	100	0
Crown revenue receivable	3	1,302	0	2,009
Prepayments		139	0	57
Investments		0	5,000	0
TOTAL CURRENT ASSETS		16,565	8,607	11,185
NON-CURRENT ASSETS				
Property, plant and equipment	12	1,484	1,423	1,920
Intangibles	13	560	1,053	394
TOTAL NON-CURRENT ASSETS		2,044	2,476	2,314
TOTAL ASSETS		18,609	11,083	13,499
CURRENT LIABILITIES				
Creditors and other payables		1,539	2,000	1,361
Accrued expenses		927	0	1,281
Provision for Crown funding to be repaid	7	3,801	1,180	2,345
Employee entitlements		1,724	1,000	1,444
TOTAL CURRENT LIABILITIES		7,991	4,180	6,431
NON-CURRENT LIABILITIES				
Provision for reinstatement of lease occupancy	14	185	185	185
TOTAL NON-CURRENT LIABILITIES		185	185	185
TOTAL LIABILITIES		8,176	4,365	6,616
NET ASSETS		10,433	6,718	6,883

The accompanying Statement of Service Performance, Statement of Accounting Policies and Notes to the Financial Statements on pages 55 to 76 form part of the financial statements.

STATEMENT OF CASH FLOWS FOR THE YEAR ENDED 30 JUNE 2010

	NOTES	ACTUAL 2009/10 \$000	BUDGET 2009/10 \$000	ACTUAL 2008/09 \$000
CASH FLOWS FROM OPERATING ACTIVITIES				
Government funding received		43,927	44,396	42,264
Fees and recoveries received		1,154	94	254
Interest received		387	420	866
Member and employee payments		(22,967)	(23,207)	(21,428)
Goods and services tax (net)		494	0	(303)
Supplier payments		(15,185)	(19,274)	(18,387)
NET CASH INFLOW FROM OPERATING ACTIVITIES	15	7,810	2,429	3,266
CASH FLOWS FROM INVESTING ACTIVITIES				
Investments receipts/(deposits)		0	0	5,000
Property, plant and equipment sale proceeds		1	0	0
Property, plant and equipment purchases		(221)	(467)	(484)
Intangible asset purchases		(404)	(293)	(254)
NET CASH INFLOW/(OUTFLOW) FROM INVESTING ACTIVITIES		(624)	(760)	4,262
CASH FLOWS FROM FINANCING ACTIVITIES				
Government funding repaid		(2,341)	(662)	(4,335)
NET CASH INFLOW/(OUTFLOW) FROM FINANCING ACTIVITIES		(2,341)	(662)	(4,335)
NET INCREASE/(DECREASE) IN CASH AND CASH EQUIVALENTS				
Opening cash and cash equivalents		9,119	2,500	5,926
CLOSING CASH AND CASH EQUIVALENTS	11	13,964	3,507	9,119

The GST (net) component of operating activities reflects the net GST paid and received from the Inland Revenue Department. The GST (net) component has been presented on a net basis, as the gross amounts do not provide meaningful information for financial statement purposes.

The accompanying Statement of Service Performance, Statement of Accounting Policies and Notes to the Financial Statements on pages 55 to 76 form part of the financial statements.

STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 2010

	ACTUAL 2009/10 \$000	BUDGET 2009/10 \$000
VOTE COMMERCE - ENFORCEMENT OF GENERAL MARKET REGULATION		
REVENUE		
Crown revenue	13,335	13,318
Other revenue	2,572	1,132
TOTAL REVENUE	15,907	14,450
OPERATING EXPENDITURE		
COMPETITIVE MARKETS		
Market structure cases	41	256
Coordinated behaviour cases	3,364	2,952
Unilateral conduct cases	1,343	1,050
Determinations	761	2,869
Framework development	821	1,140
Public information/education	187	177
INFORMED CONSUMERS		
FAIR TRADING ACT		
Fair Trading Act cases	3,876	3,193
Safety and standards cases	149	189
Framework development	175	423
Public information/education	118	382
CREDIT CONTRACTS AND CONSUMER FINANCE ACT		
Credit Contracts and Consumer Finance Act cases	1,141	1,291
Framework development	254	192
Public information/education	46	119
TOTAL OUTPUT EXPENDITURE	12,276	14,234
VOTE COMMERCE - GENERAL MARKET OPERATING SURPLUS	3,631	216
VOTE COMMERCE - LITIGATION FUND		
Operating revenue	9,387	10,500
Major litigation	9,407	10,303
TOTAL OUTPUT EXPENDITURE	9,407	10,303
VOTE COMMERCE - LITIGATION FUND OPERATING (DEFICIT)	(20)	197

STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 2010 (CONTD)

	ACTUAL 2009/10 \$000	BUDGET 2009/10 \$000
VOTE COMMUNICATIONS		
OPERATING REVENUE	7,790	7,790
EXPENDITURE		
Access determinations	615	1,021
TSO cost allocations	244	538
Monitoring and reporting	1,636	945
Enforcement	137	491
Code approval	2	23
Reports to Ministers	1,437	1,023
Framework development	503	786
Public information/education	176	420
Information disclosure	1,808	1,630
TOTAL OUTPUT EXPENDITURE	6,558	6,877
VOTE COMMUNICATIONS OPERATING SURPLUS	1,232	913
VOTE COMMERCE - REGULATION OF ELECTRICITY LINES BUSINESSES		
OPERATING REVENUE	3,167	3,167
EXPENDITURE		
Determinations of price-quality paths	1,089	1,040
Threshold inquiries	282	204
Framework development	884	855
Public information/education	0	17
Authorisation and determination compliance	34	114
Information disclosure	472	937
TOTAL OUTPUT EXPENDITURE	2,761	3,167
VOTE COMMERCE - ELECTRICITY LINES OPERATING SURPLUS	406	0
VOTE COMMERCE - REGULATION OF NATURAL GAS SERVICES		
OPERATING REVENUE	2,700	2,700
EXPENDITURE		
Determinations	1,118	1,897
Assessment of compliance with authorisations	112	121
Framework development	12	16
Public information/education	0	16
Information disclosure	199	563
TOTAL OUTPUT EXPENDITURE	1,441	2,613
VOTE COMMERCE - GAS REGULATION OPERATING SURPLUS	1,259	87

STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 2010 (CONTD)

	ACTUAL 2009/10 \$000	BUDGET 2009/10 \$000
VOTE COMMERCE - ENFORCEMENT OF DAIRY SECTOR REGULATION		
OPERATING REVENUE	905	905
EXPENDITURE		
Investigations	7	167
Adjudications	469	276
Framework development	1	189
Public information/education	7	5
TOTAL OUTPUT EXPENDITURE	484	637
VOTE COMMERCE - DAIRY OPERATING SURPLUS	421	268
VOTE COMMERCE - INPUT METHODOLOGIES (GAS, ELECTRICITY AND AIRPORTS)		
OPERATING REVENUE	5,224	4,899
EXPENDITURE		
Determinations	4,910	4,844
Public information/education	0	55
TOTAL OUTPUT EXPENDITURE	4,910	4,899
VOTE COMMERCE - INPUT METHODOLOGIES OPERATING SURPLUS	314	0
VOTE COMMERCE - REGULATION OF AIRPORT SERVICES		
OPERATING REVENUE	791	500
EXPENDITURE		
Information disclosure	687	495
Public information/education	0	5
TOTAL OUTPUT EXPENDITURE	687	500
VOTE COMMERCE AND AIRPORTS OPERATING SURPLUS	104	0

STATEMENT OF ACCOUNTING POLICIES FOR THE YEAR ENDED 30 JUNE 2010

REPORTING ENTITY

The Commerce Commission is a Crown entity as defined by the Crown Entities Act 2004, established under the Commerce Act 1986, and operating solely within New Zealand. The ultimate parent of the Commission is the New Zealand Crown.

The Commission's primary objective is to provide public services to the New Zealand public, as opposed to making a financial return. The Commission provides public services in accordance with its responsibilities under the Commerce Act 1986 and the Fair Trading Act 1986, the Electricity Industry Reform Act 1998, the Dairy Industry Restructuring Act 2001 and the Telecommunications Act 2001, and the Credit Contracts and Consumer Finance Act 2003.

The Commission has designated itself as a public benefit entity for the purposes of New Zealand equivalents to International Financial Reporting Standards (NZ IFRS).

MEASUREMENT BASE AND STATEMENT OF COMPLIANCE

These financial statements have been prepared in accordance with the Crown Entities Act 2004. The financial statements have been prepared on a historical cost basis for a going concern in accordance with New Zealand Generally Accepted Accounting Practice (GAAP) and were authorised for issue by the Commission on 20 September 2010.

The financial statements comply with NZ IFRS and other applicable Financial Reporting Standards as appropriate for public benefit entities. All available reporting exemptions allowed under NZ IFRS for public benefit entities have been adopted.

FUNCTIONAL AND PRESENTATION CURRENCY

The Commission's functional currency is the New Zealand dollar and, accordingly, these financial statements are presented in New Zealand dollars (rounded to the nearest thousand).

SIGNIFICANT ACCOUNTING POLICIES

The significant accounting policies which materially affect the measurement of comprehensive income, financial position and cash flows have been applied consistently for all reporting periods covered by these financial statements including the comparative information. The significant accounting policies are:

Revenue – Revenue is measured at the fair value of consideration received or receivable. Revenue is derived through the provision of outputs for the Crown, for services to third parties, court cost award recoveries and investment income.

Crown revenue – The Commission receives appropriations from the Crown. These are restricted in their use to the purpose of meeting the Commission's objectives, as outlined in the Statement of Intent. Appropriations received but not spent are refunded to the Crown after year end for all appropriations except Vote Commerce – General Markets, for which the unspent funds are retained by the Commission. Appropriations from the Crown are recognised as revenue when received. Appropriations received but not spent are treated as a Crown creditor and shown in the Statement of Financial Position as a provision for refund of appropriation to the Crown.

Expenditure – All expenditure incurred in the provision of outputs for the Crown is recognised in the Statement of Comprehensive Income when an obligation arises on an accruals basis.

Foreign currency transactions – Transactions in foreign currencies are translated into the Commission's functional currency at exchange rates at the dates of the transactions. Monetary liabilities denominated in foreign currencies at the reporting date are translated to the functional currency at the exchange rate at that date. Any gain or loss on monetary liabilities is the difference between the cost in the functional currency at the beginning of the period and payments during the period and are recognised in the Statement of Comprehensive Income during that period.

Leases – The Commission is party to various operating leases as a lessee. As the lessors retain substantially all of the risk and rewards of ownership of the leased property, plant and equipment, the operating lease payments are recognised in the Statement of Comprehensive Income only in the period in which they are incurred. Any lease incentives received or obligations to make good on the condition of leased premises are recognised in the Statement of Comprehensive Income over the term of the lease. At balance date, any unamortised incentive and outstanding obligation for reinstatement is recognised as a liability in the Statement of Financial Position.

Depreciation and impairment – Depreciation is provided on a straight-line basis on all asset components to allocate the cost of the asset (less any estimated residual value) over its useful life. The residual values and remaining useful lives of property, plant and equipment components are reviewed at least annually. All property, plant and equipment are subject to an annual test of impairment to test the recoverable amount. Any impairments losses are charged to the Statement of Comprehensive Income in the period in which they are first identified. The estimated useful lives of the major asset classes are:

Computer and office equipment	3 – 4 years
Furniture and fittings	up to 5 years
Leasehold improvements	for the period of lease
Motor vehicles	up to 5 years

Taxation – The Commission is exempt from income tax under section CW 38 of the Income Tax Act 2007.

Cost allocation – Direct costs are charged directly to outputs. Personnel costs are allocated to outputs based on the time records. The indirect costs of support groups and overhead costs are charged to outputs based on the relative time records of each output.

Goods and Services Tax (GST) – All items in the financial statements are presented exclusive of GST, except for receivables and payables, which are presented on a GST-inclusive basis. Where GST is not recoverable as input tax then it is recognised as part of the related asset or expense. The net amount of GST recoverable from, or payable to, the Inland Revenue Department (IRD) is included as part of receivables or creditors

in the Statement of Financial Position. The net GST paid to, or received from, the IRD, including the GST relating to investing and financial activities, is classified as an operating cash flow in the Statement of Cash Flows. Commitments and contingencies are disclosed exclusive of GST.

Equity – Equity is the Crown's interest in the Commission and is measured as the difference between total assets and total liabilities. Equity is disaggregated and classified into components to enable clearer identification of the specified uses that the Commission has for its accumulated surpluses. The components of equity are accumulated funds and restricted funds. Restricted funds are those reserves subject to specific conditions of use binding on the Commission which may not be altered without reference to other counterparties. The Litigation Fund was established as a restricted fund to provide funds for major litigation activities. The criteria for operation of the Fund are laid down in the Output Agreement between the Commission and the Ministry of Economic Development.

Cash and cash equivalents – Cash and cash equivalents comprises cash on hand, transactional cash balances, and term deposits held with New Zealand registered banks which are highly liquid, with original maturities of three months or less, and are used as part of the Commission's day-to-day cash management.

Receivables – Receivables are stated at their estimated net realisable value, after providing for doubtful and uncollectible debts. All known bad debts are written off and charged to the Statement of Comprehensive Income in the period in which they are first identified.

Investments – Investments comprise debt securities (term deposits) issued by New Zealand registered banks with terms greater than three months, and are classified as loans and receivables. Loans and receivables are initially measured at fair value plus any transaction costs. After initial recognition, loans and receivables are re-measured at amortised cost using the effective interest rate method. Any gains or losses arising from impairment or de-recognition are recognised in the Statement of Comprehensive Income in the period in which they are first identified.

STATEMENT OF ACCOUNTING POLICIES FOR THE YEAR ENDED 30 JUNE 2010 (CONTD)

Property, plant and equipment – All items of property, plant and equipment owned are recorded at historical cost less accumulated depreciation and any impairment losses. An item of property, plant and equipment acquired in stages is not depreciated until the item of property, plant and equipment is in its final state and ready for its intended use. Subsequent expenditure that extends the useful life or enhances the service potential of an existing item of property, plant and equipment is capitalised. All other costs incurred in maintaining the useful life or service potential of an existing item of property, plant and equipment are recognised in the Statement of Comprehensive Income as expenditure when incurred. Gains or losses arising from the sale or disposal of an item of property, plant and equipment are recognised in the Statement of Comprehensive Income in the period in which the item of property, plant and equipment is sold or disposed of.

Intangible assets – Computer software that is not integral to the operation of the hardware is recorded as an intangible asset. Software is amortised on a straight-line basis over its estimated useful life to a maximum of three years.

Financial instruments – The Commission is inherently a party to financial instruments as part of its day-to-day operations. Financial instruments are monetary assets and liabilities and are initially recognised at their fair value and subsequently measured at their amortised cost less any impairment losses. All revenue and expenditure arising from the financial instruments are recognised in the Statement of Comprehensive Income when earned or an obligation exists.

Employee entitlements – At balance date, any unpaid employee entitlements earned by employees for salaries, bonuses and annual leave are recognised as a liability in the Statement of Financial Position and charged to the Statement of Comprehensive Income. Entitlements are calculated on an actual entitlement basis at current rates of remuneration.

Cash flows – Operating, investing and financing cash flows are prepared using the direct method subject to the netting of certain cash flows. The cash flows in respect of bank deposits that have been rolled over under arranged banking facilities have been netted in order to ensure meaningful disclosures. Operating cash flows include all cash received from all operating revenue sources and all cash payments for all operating expenditure items. Investing cash flows reflect the payments for property, plant and equipment purchases, proceeds from the sale of property, plant and equipment, and the net movement in bank deposits.

Contingencies – As the Commission is a quasi-judicial body, it is inherently engaged in litigation activity which may result in costs being ordered against or in favour of the Commission. The outcome of an order for costs may not be certain until all appeal processes are completed. Accordingly, the possibility of a costs award being incurred or received is disclosed firstly as either a contingent liability or contingent asset respectively. An award for costs, whether for or against the Commission, is only recognised in the Statement of Comprehensive Income when it is probable that there will be a future outflow or inflow of resources.

Comparatives – To ensure consistency with the current year, all comparative information including the Budget (Statement of Intent) has been restated or reclassified where appropriate. The budget comparatives are those approved by the Commission at the beginning of the year for inclusion as prospective financial statements in the Statement of Intent. The budget was prepared in accordance with Generally Accepted Accounting Practice and is consistent with the accounting policies governing the preparation of these financial statements.

CHANGES IN ACCOUNTING POLICIES

The accounting policies adopted are significantly consistent with the previous year. The definitions of investments and cash equivalents have been amended so as to clarify the treatment of term deposits according to maturity. Further disclosure has been added regarding the treatment of surpluses from appropriations, and the treatment of GST.

The Commission has adopted the following revisions to accounting standards during the financial year, which have had only a presentational or disclosure effect:

- Amendments to NZ IFRS 7 Financial Instruments: Disclosures. The amendments introduce a three-level fair value disclosure hierarchy that distinguishes fair value measurements by the significance of valuation inputs used. A maturity analysis of financial assets is also required to be prepared if this information is necessary to enable users of the financial statements to evaluate the nature and extent of liquidity risk. The Commission has not prepared a maturity analysis of financial assets, as it does not believe such an analysis provides further meaningful information.

Standards, amendments, and interpretations issued but not yet effective that have not been early adopted and are relevant to the Commission are:

- NZ IFRS 9 Financial Instruments will eventually replace NZ IAS 39 Financial Instruments: Recognition and Measurement. NZ IAS 39 is being replaced through the following three main phases: Phase 1 Classification and Measurement, Phase 2 Impairment Methodology, and Phase 3 Hedge Accounting. Phase 1 on the classification and measurement of financial assets has been completed and has been published in the new financial instrument standard NZ IFRS 9. NZ IFRS 9 uses a single approach to determine whether a financial asset is measured at amortised cost or fair value, replacing the many different rules in NZ IAS 39.

The approach in NZ IFRS 9 is based on how an entity manages its financial instruments (its business model) and the contractual cash flow characteristics of the financial assets. The new standard also requires a single impairment method to be used, replacing the many different impairment methods in NZ IAS 39. The new standard is required to be adopted for the year ended 30 June 2014. The Commission has not yet assessed the effect of the new standard and expects it will not be early adopted.

- NZ IAS 24 Related Party Disclosures (Revised 2009) replaces NZ IAS 24 Related Party Disclosures (Issued 2004). The revised standard simplifies the definition of a related party, clarifying its intended meaning and eliminating inconsistencies from the definition. The Commission has not yet assessed the effect of the new standard, and intends to adopt this standard for the year ended 30 June 2011.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2010

1. CRITICAL ACCOUNTING JUDGEMENTS AND ESTIMATES

In authorising these financial statements for issue, the Members of the Commission have ensured that the specific accounting policies necessary for the proper understanding of the financial statements have been disclosed and that all accounting policies adopted are appropriate for the Commission's activities and have been applied consistently throughout the year.

In applying the accounting policies, the Members of the Commission are required to make certain judgements and estimates. The Audit, Finance and Risk Management Committee and the Members of the Commission have considered the following critical judgements and estimates to be appropriate.

CONTINGENCIES

The Commission is party to several significant litigation cases and appeals as a result of its enforcement and quasi-judicial role. In undertaking significant litigation the Commission is faced with the risk of losing, and having to meet a multi-million dollar cost award. The possible awards can range from \$0.5 million to \$6 million.

The Commission has assessed the likelihood of the appeals being successful and the likelihood of costs being awarded against, or in favour of, the Commission.

Cost awards that are likely to result in a future inflow or outflow of resources have been recognised as at 30 June 2010 in the Statement of Comprehensive Income. The Commission has also disclosed its contingent liabilities as a result of cost awards that may possibly result in a future outflow of resources as at 30 June 2010 (refer note 2).

The cases currently under appeal are funded through a non-departmental expense appropriation for major litigation. The Litigation Fund was established as a restricted fund to provide funds for major litigation activities. The criteria for operation of the Fund are laid down in an annual Output Agreement executed between the Commission and the Crown. Only actual and direct operating costs of Litigation Fund cases are charged against the Fund.

The Ministry of Economic Development monitors the performance of the Litigation Fund on behalf of the Crown and authorises the payment of government grants quarterly in arrears to reimburse the Litigation Fund for expenditure incurred (net of interest and court costs received).

The government grants for the Litigation Fund were increased for the financial year ending 30 June 2010 and subsequent years and include additional funding of \$0.5 million to establish a contingency reserve to manage the impact of adverse cost awards that may be awarded against the Commission in the future. The additional funding will be rolled over to subsequent years up to a cap of \$3.0 million.

2. CONTINGENT LIABILITIES AND ASSETS

Contingent liabilities at both June 2010 and 2009

In July 2000 the Commission filed proceedings against Telecom New Zealand Limited (Telecom) alleging a breach of section 36 of the Commerce Act 1986 in that Telecom used its dominant position in the market for fixed line rental telephone services to residential customers or had an anti-competitive purpose when it introduced the 0867 package in 1999.

In April 2008 the High Court ruled in favour of Telecom with an award for costs. The Commission appealed the judgment in May 2008. The Court of Appeal ruled in favour of Telecom in August 2009. In October 2009 the Supreme Court granted the Commission leave to appeal. The Supreme Court heard the appeal in June 2010 and a decision was pending at year end. On 1 September 2010 the Supreme Court dismissed the Commission's appeal and ordered the Commission to pay costs of the appeal in the amount of \$50,000 plus disbursements to be fixed if necessary (this is included within the estimate of contingent liabilities provided on page 63). The Supreme Court judgment also means that the Commission faces liability for Telecom's costs in the High Court (the costs at the Court of Appeal having already been paid), the total amount of which is uncertain at this time but is captured within the estimate of contingent liabilities provided on page 63. The Supreme Court judgment is therefore a material non-adjusting event after the reporting period is terms of NZIAS 10.

In the case of Koppers Arch, the Supreme Court allowed an appeal by one of the defendants, Andrew Poynter. As a result of that decision the Commission's case against Mr Poynter was dismissed and the Commission must pay Mr Poynter's costs. The amount of those costs is yet to be determined.

Air New Zealand Limited successfully sought judicial review of confidentiality orders made by the Commission in its Air Cargo investigation. The High Court ordered the Commission to pay Air New Zealand's costs of the proceedings. The Commission has filed an appeal against the High Court decision and the appeal is pending.

While it is difficult to accurately estimate the possible cost awards, we have reviewed each case and made a reasonable assessment of the potential costs.

The estimated range of contingent liabilities is between \$60,000 and \$2,124,000. Our central estimate of the total value of contingent liabilities is \$1,600,000. Any eventuating liability is expected to be covered by the Litigation Costs Reserve.

Contingent assets as at both June 2010 and 2009

The Commission succeeded in its action against Telecom in the proceedings known as the Datatails case, and the High Court awarded costs to the Commission in its judgment issued 9 October 2009. Telecom appealed this decision. The appeal is pending and the amount of any costs award is yet to be determined.

In proceedings brought against a party, the Commission has reached an in-principle settlement. The details remain confidential at this time. The case is likely to settle with a significant award of costs to the Commission.

In proceedings brought against New Zealand Diagnostic Group Limited, Hamilton Medical Laboratory Holdings Limited and Pathology Associates Limited, the parties admitted contraventions of the Commerce Act. The Commission and the parties made joint submissions to the court on 25 June 2010 as to penalty and costs. The Commission received judgment on 19 July 2010. The judgment awards the Commission costs of \$20,000 and there will not be any appeal of the decision.

While it is difficult to accurately estimate the possible cost awards, we have reviewed each case and made a reasonable assessment of the potential costs.

The only contingent asset at 30 June 2009 was the Telecom Datatails case. Given the level of uncertainty at that time, no estimate was provided.

At 30 June 2010 the possible value of contingent assets is in the range between \$400,000 and \$1,920,000. Our central estimate of the total value of contingent assets is \$1,430,000.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2010 (CONTD)

3. CROWN REVENUE

	2009/10 \$000	2008/09 \$000
CROWN REVENUE		
Vote Commerce - Enforcement of general market regulation	13,335	13,935
Litigation Fund	8,887	9,885
Litigation costs reserve	500	500
Vote Communications	7,790	7,791
Vote Commerce - Regulation of electricity lines businesses	3,167	3,630
Vote Commerce - Regulation of natural gas services	2,700	1,749
Vote Commerce - Dairy	905	905
Vote Energy - Input Methodologies (electricity lines)	0	2,386
Vote Energy - Input Methodologies (gas pipeline regulation)	0	437
Vote Commerce - Input Methodologies (airports)	0	577
Vote Commerce - Input Methodologies	5,224	0
Vote Commerce - Regulation of airport services	791	400
TOTAL CROWN REVENUE	43,299	42,195
CROWN REVENUE RECEIVABLE		
Litigation Fund	1,302	2,009
TOTAL CROWN REVENUE RECEIVABLE	1,302	2,009

The Crown and the Commission are related parties. The Members (Commissioners) of the Commission are appointed by the Crown. The Commission has specific regulatory responsibilities in the dairy processing, electricity lines and telecommunications industries which are ultimately funded by industry levies payable to the Crown.

The Commission's major source of revenue is Crown revenue. The Commission must repay any excess revenue received relating to this Crown revenue. Amounts are owed to and from the Crown with respect to Crown revenue due or repayable as at each balance date as recognised in the Statement of Financial Position.

The Commission is also a party to transactions with other entities within the Crown as part of its day-to-day operations. As these transactions are conducted on an arm's length basis, within the normal course of operation, further disclosure of the details of the transactions is exempted under NZ IFRS.

4. MEMBERS AND PERSONNEL

	2009/10 \$000	2008/09 \$000
Members' remuneration	1,858	1,465
Senior management	1,885	1,952
TOTAL KEY MANAGEMENT PERSONNEL SHORT-TERM EMPLOYEE BENEFITS	3,743	3,417
Redundancy and other cessation payments	96	0
TOTAL KEY MANAGEMENT PERSONNEL REMUNERATION	3,839	3,417
All other employees	16,349	15,693
TOTAL SHORT-TERM EMPLOYEE AND TERMINATION BENEFITS	20,188	19,110
Redundancy and other cessation payments	0	35
Recruitment	701	535
Professional development	207	487
Other employment-related costs	2,072	1,590
TOTAL MEMBERS AND PERSONNEL	23,168	21,757
MEMBERS' REMUNERATION COMPRISES:		
M Berry (Chair from 1 April 2009)	400	100
PR Rebstock (Chair 1 July 2008 - 31 March 2009)	30	442
DR Bates (Commissioner)	1	156
DF Curtin (Commissioner)	67	53
PJM Taylor (Commissioner until 28 February 2010)	184	192
S Begg (Commissioner)	324	2
D Caygill (Associate)	0	14
A Mazzoleni (Commissioner)	207	231
G Pickering (Associate)	125	126
P Duignan (Associate until 31 May 2010, Commissioner from 1 June 2010)	157	5
R Patterson (Telecommunications Commissioner)	363	144
TOTAL MEMBERS' REMUNERATION	1,858	1,465

Senior management includes the Chief Executive Officer and the remaining members of the Senior Leadership Team.

Personnel costs include specified employer contributions to defined contribution plans. These costs are recoverable quarterly in arrears by the Commission from the State Services Commission. At balance date the only defined contribution payments were contributions to KiwiSaver. The recovery of costs relating to the period 1 April 2010 to 30 June 2010 was receivable at balance date.

The Chair, Dr Mark Berry, and the Telecommunications Commissioner, Dr Ross Patterson, are in full-time positions. All other Commissioners are remunerated for service on a daily rate set by the Remuneration Authority as follows:

MEMBERS' DAILY RATES	2009/10	2008/09
Chair	0	1,680
Commissioners and Associates	1,380	1,380
Cease and Desist Commissioners	1,400	1,400

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2010 (CONTD)**Members' additional remuneration**

Additional remuneration of up to 50 per cent of the daily rate is payable if the number of hours worked on any day has exceeded eight hours. The daily rate includes any annual and sick leave entitlement and no additional payments are made on account of annual leave or sick leave.

Employee annual remuneration bands over \$100,000

EMPLOYEES WITH TOTAL ANNUAL REMUNERATION OVER \$100,000 (IN BANDS OF \$10,000):	2009/10 NUMBER	2008/09 NUMBER
\$100,000 - \$110,000	11	8
\$110,001 - \$120,000	16	9
\$120,001 - \$130,000	11	9
\$130,001 - \$140,000	12	11
\$140,001 - \$150,000	6	6
\$150,001 - \$160,000	3	6
\$160,001 - \$170,000	1	1
\$170,001 - \$180,000	4	2
\$180,001 - \$190,000	0	1
\$190,001 - \$200,000	0	0
\$200,001 - \$210,000	0	1
\$210,001 - \$220,000	1	1
\$220,001 - \$230,000	2	1
\$230,001 - \$240,000	1	2
\$240,001 - \$250,000	0	1
\$250,001 - \$260,000	0	1
\$310,001 - \$320,000	0	0
\$340,001 - \$350,000	0	1
\$370,000 - \$380,000	1	0

Redundancy and other cessation payments – the payment of \$96,000 relates to three employees. (2008/09: \$35,000, four employees).

5. DIRECT OUTPUT COSTS

	2009/10 \$000	2008/09 \$000
Computer, information, and information technology	584	746
Cost awards	61	3
Legal consultants	4,927	5,188
Other consultants and experts	4,626	6,824
Specialist support services	722	487
Other expenses	118	106
TOTAL DIRECT OUTPUT COSTS	11,038	13,354

Direct output costs include expenditure on legal consultants, other consultants, and other expenses recovered through the Litigation Fund appropriation, totalling \$5,787,000 (2008/09: \$7,385,000).

Direct output costs comparative figures have been restated to better reflect the true nature and comparison of the expenditure incurred.

6. TOTAL OPERATING EXPENDITURE

	2009/10 \$000	2008/09 \$000
TOTAL OPERATING EXPENDITURE INCLUDES:		
Auditor's remuneration	36	36
Operating leases	1,489	1,453
AUDITOR'S REMUNERATION COMPRISES:		
Audit fees	36	36
TOTAL AUDITOR'S REMUNERATION	36	36

7. TOTAL COMPREHENSIVE INCOME PROVISION TO REPAY THE CROWN OR TO BE RETAINED

	2009/10 \$000	2008/09 \$000
PROVISION TO REPAY THE CROWN BY APPROPRIATION INCLUDES:		
Vote Commerce - Airports	104	290
Vote Commerce - Dairy	421	401
Vote Energy - Electricity lines	471	70
Vote Energy - Gas pipeline regulation	1,259	572
Vote Commerce - Input Methodologies	314	0
Vote Energy - Input Methodologies (Electricity lines)	0	229
Vote Energy - Input Methodologies (Gas pipeline regulation)	0	42
Vote Commerce - Input Methodologies (Airports)	0	55
Vote Communications	1,232	686
TOTAL PROVISION TO REPAY THE CROWN	3,801	2,345
COMPREHENSIVE INCOME TO BE RETAINED BY APPROPRIATION INCLUDES:		
Vote Commerce - General markets	3,631	1,002
Vote Energy - Electricity lines	(65)	1
Vote Energy - Gas pipeline regulation	0	(326)
Major Litigation - Internal	(520)	91
Transfer to litigation cost reserve	500	500
COMPREHENSIVE INCOME TO BE RETAINED	3,546	1,268
TOTAL COMPREHENSIVE INCOME	7,347	3,613

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2010 (CONTD)

8. ACCUMULATED FUNDS

	2009/10 \$000	2008/09 \$000
Balance at 1 July	4,383	3,615
Operating surplus for the year	7,347	3,613
Provision for repayment of surplus to the Crown	(3,801)	(2,345)
Transfer to litigation costs reserve	(500)	(500)
Crown funding not required to be repaid	4	0
BALANCE AT 30 JUNE	7,433	4,383

Crown funding not required to be repaid is the result of rounding discrepancies in the 2008/09 annual accounts compared with the final figures agreed by the Commission and Ministry of Economic Development.

9. LITIGATION COSTS RESERVE

	2009/10 \$000	2008/09 \$000
Balance at 1 July	1,000	500
Transfer from accumulated funds	500	500
BALANCE AT 30 JUNE	1,500	1,000

10. LITIGATION FUND

	2009/10 \$000	2008/09 \$000
Balance at 1 July	1,500	1,500
Transfers to the Litigation Fund	6,287	7,885
Transfers from the Litigation Fund	(6,287)	(7,885)
TOTAL LITIGATION FUND	1,500	1,500
TRANSFERS TO THE LITIGATION FUND COMPRISE:		
Crown revenue	6,287	7,885
TOTAL TRANSFERS TO THE LITIGATION FUND	6,287	7,885

11. CASH AND CASH EQUIVALENTS

	2009/10 \$000	2008/09 \$000
Cash on hand and at bank	7,964	9,119
Cash equivalents term deposits	6,000	0
TOTAL CASH AND CASH EQUIVALENTS	13,964	9,119

The carrying value of short-term deposits with maturity dates of three months or less approximates their fair value.

12. PROPERTY, PLANT AND EQUIPMENT

	COMPUTER AND OFFICE EQUIPMENT \$'000	FURNITURE AND FITTINGS \$'000	LEASEHOLD EQUIPMENT \$'000	MOTOR VEHICLES \$'000	TOTAL \$'000
COST OR VALUATION					
Balance at 1 July 2008	2,038	1,081	1,680	44	4,843
Additions	343	68	70	0	481
Disposals	0	0	0	0	0
Transfers	95	(33)	94	0	156
BALANCE AT 30 JUNE 2009	2,476	1,116	1,844	44	5,480
Balance at 1 July 2009	2,476	1,116	1,844	44	5,480
Additions	151	61	64	0	276
Disposals	(451)	(3)	0	0	(454)
Transfers	(54)	0	(88)	0	(142)
BALANCE AT 30 JUNE 2010	2,122	1,174	1,820	44	5,160
ACCUMULATED DEPRECIATION AND IMPAIRMENT LOSSES					
Balance at 1 July 2008	1,203	934	587	31	2,755
Depreciation expense	432	86	313	5	836
Eliminate on disposal	0	0	0	0	0
Transfers	105	(136)	0	0	(31)
Impairment losses	0	0	0	0	0
Reversal of impairment losses	0	0	0	0	0
BALANCE AT 30 JUNE 2009	1,740	884	900	36	3,560
Balance at 1 July 2009	1,740	884	900	36	3,560
Depreciation expense	398	83	173	5	659
Eliminate on disposal	(450)	(3)	0	0	(453)
Transfers	0	0	(90)	0	(90)
Impairment losses	0	0	0	0	0
Reversal of impairment losses	0	0	0	0	0
BALANCE AT 30 JUNE 2010	1,688	964	983	41	3,676
CARRYING AMOUNTS					
At 1 July 2008	835	147	1,093	13	2,088
At 30 June and 1 July 2009	736	232	944	8	1,920
AT 30 JUNE 2010	434	210	837	3	1,484

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2010 (CONTD)

13. INTANGIBLES (COMPUTER SOFTWARE)

	ACQUIRED SOFTWARE \$000	TOTAL \$000
COST		
Balance at 1 July 2008	1,189	1,189
Additions	254	254
Disposals	0	0
BALANCE AT 30 JUNE 2009	1,443	1,443
Balance at 1 July 2009	1,443	1,443
Additions	404	404
Disposals	0	0
BALANCE AT 30 JUNE 2010	1,847	1,847
ACCUMULATED DEPRECIATION AND IMPAIRMENT LOSSES		
Balance at 1 July 2008	759	759
Amortisation expense	262	262
Disposals	0	0
Impairment losses	0	0
Transfers	28	28
BALANCE AT 30 JUNE 2009	1,049	1,049
Balance at 1 July 2009	1,049	1,049
Amortisation expense	238	238
Disposals	0	0
Impairment losses	0	0
Transfers	0	0
BALANCE AT 30 JUNE 2010	1,287	1,287
CARRYING AMOUNTS		
At 1 July 2008	430	430
At 30 June and 1 July 2009	394	394
AT 30 JUNE 2010	560	560

The Commission holds licenses for use of certain software applications for which it does not hold a title. For other software applications, there is no restriction over the title of the Commission's assets. No intangible assets are pledged as security for liabilities.

14. REINSTATEMENT PROVISION

	2009/10 \$000	2008/09 \$000
Balance at the beginning of the year	185	185
Charge for the year	0	0
COST AT THE END OF THE YEAR	185	185

The Commission has entered into leases on its premises in Auckland, Wellington and Christchurch. As part of the lease agreements, the Commission has some reinstatement obligations at the termination of the leases.

15. RECONCILIATION OF OPERATING SURPLUS FOR THE YEAR TO NET CASH INFLOWS FROM OPERATING ACTIVITIES

	2009/10 \$000	2008/09 \$000
OPERATING SURPLUS FOR THE YEAR	7,347	3,613
NON-CASH ITEMS:		
Depreciation and amortisation	897	1,098
Loss/(gain) on sale of property, plant and equipment	(1)	0
Employee entitlements	280	329
TOTAL NON-CASH ITEMS	1,176	1,427
CHANGE IN WORKING CAPITAL ITEMS:		
Fees and recoveries receivable	(1,160)	79
Crown revenue receivable	707	(14)
Prepayments	(82)	97
Creditors	339	(401)
Accrued expenses	(517)	(1,535)
TOTAL CHANGE IN WORKING CAPITAL ITEMS	(713)	(1,774)
NET CASH INFLOWS FROM OPERATING ACTIVITIES	7,810	3,266

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2010 (CONTD)

16. FINANCIAL INSTRUMENTS

	2009/10 \$000	2008/09 \$000
THE CARRYING AMOUNTS OF EACH CLASS OF FINANCIAL ASSETS AND LIABILITIES ARE:		
MONETARY ASSETS		
LOANS AND RECEIVABLES		
Cash and cash equivalents	13,964	9,119
Fees and recoveries receivable	1,160	0
Crown revenue receivable	1,302	2,009
TOTAL MONETARY ASSETS	16,426	11,128
MONETARY LIABILITIES		
OTHER LIABILITIES		
Creditors	1,539	1,361
Crown revenue repayable	3,801	2,345
TOTAL MONETARY LIABILITIES	5,340	3,706
NET MONETARY ASSETS	11,086	7,422

Financial instruments include cash and cash equivalents, receivables, investments and payables resulting from day-to-day operations. There are risks inherent with all financial instruments and risk management policies are used to mitigate the exposure to market risk comprising liquidity risk, credit risk, interest rate risk and currency risk.

Liquidity risk

Liquidity risk is the risk arising from unmatched cash outflows and maturities of financial instruments leading to difficulty in settling obligations as they fall due. As Crown funding is received quarterly in advance, the Commission does not have a material risk in meeting its day-to-day obligations as they fall due. The Commission's ratio of monetary assets to liabilities as at 30 June 2010 is 3.1:1 (2008/09: 3.0:1). The Commission is not permitted any form of debt borrowings and has credit card facilities with an aggregate limit of \$44,000 (2008/09: \$44,000).

The table below analyses the Commission's financial liabilities into relevant maturity groupings based on the remaining period at the Statement of Financial Position date to the contractual maturity date.

	LESS THAN 6 MONTHS \$000	BETWEEN 6 MONTHS AND 1 YEAR \$000	GREATER THAN 1 YEAR \$000
2009			
Creditors	1,361	0	0
Crown revenue repayable	2,345	0	0
2010			
Creditors	1,539	0	0
Crown revenue repayable	3,801	0	0

Credit risk

Credit losses result from a counterparty defaulting on its obligations owed to the Commission resulting in a financial loss to the Commission. Financial instruments which potentially subject the Commission to risk consist of cash and bank balances, receivables and investments (bank deposits). The maximum credit risk exposure is represented by the carrying amount of each monetary asset on the Statement of Financial Position.

The Commission does not have a material credit risk with respect to receivables due from third parties. All other receivables are due from the Crown. Cash not immediately needed to settle obligations as they fall due is invested with New Zealand registered banks with appropriate credit ratings. Limits are in place restricting deposit terms, individual deposit amounts, currency and the level of deposits with any one registered bank. The Commission is not exposed to any concentrations of credit risk, other than an exposure to the New Zealand banking sector. No collateral is required to be held as security against amounts owed to the Commission.

Interest rate risk

As interest rates change, the fair value of interest-bearing bank deposits may change and future cash inflows will fluctuate. In accordance with the Commission's cash management policy, there are limits on the terms of all interest-bearing deposits, ensuring that deposits mature within six months (short-term). There are no other market risks.

The financial instruments' carrying amount closely approximates their fair values as at 30 June 2010 and 30 June 2009. The average interest rate on interest-bearing deposits over the year was 3.82 per cent (2008/09: 6.76 per cent). A 1 per cent change in interest rates, with all other factors unchanged, would change interest earnings by \$30,000 (2008/09: \$112,000).

Currency risk

Currency risk results from fluctuations in the value of future cash outflows because of changes in foreign exchange rates. The Commission engages overseas experts, requiring payment in a range of foreign currencies. The transactions are not hedged and are translated into New Zealand dollars at the exchange rate (spot) obtained when the invoices are paid. A 10 per cent change in exchange rates, with all other factors unchanged, would change expenditure by \$172,000 (2008/09: \$258,000).

17. OPERATING (NON-CANCELLABLE) LEASES

	2009/10 \$000	2008/09 \$000
LEASE PAYMENTS DUE:		
Within one year	1,111	1,477
Within one to two years	170	1,111
Within two to five years	0	183
After five years	0	0
TOTAL OPERATING (NON-CANCELLABLE) LEASES	1,281	2,771

The future operating (non-cancellable) lease payments comprise contractual amounts due for leased office equipment and premises. The Commission leases three offices, with most leases expiring in 2010/11. At the time these financial statements were prepared, the lease of the Commission's Auckland office was subject to renewal and negotiation regarding rent payments. No estimate of the future rent is provided due to uncertainty.

Under each lease, there are rights of renewal of up to six years. The Commission is required to reinstate certain premises to their original condition at the end of the lease and is providing for these costs over the lease period (see note 14).

18. CAPITAL EXPENDITURE COMMITMENTS

The Commission had entered into capital expenditure contracts as at 30 June 2010 to the value of \$Nil (2008/09: \$37,500).

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2010 (CONTD)

19. TRUST FUNDS

	2009/10 \$000	2008/09 \$000
TRUST ACCOUNT		
Trust account at the beginning of the year	0	55
Receipts	0	0
Payments	0	(55)
TRUST ACCOUNT AT THE END OF THE YEAR	0	0

The Trust account receipts reflect awards of compensation and any pecuniary penalties imposed under the Commerce Act 1986, collected on behalf of and paid/payable to the Crown. The Commission has no ownership rights in or future benefits arising from the trust monies.

20. RELATED PARTY TRANSACTIONS AND CONFLICTS OF INTEREST

The Commission is an independent Crown entity, primarily monitored by the Ministry of Economic Development on behalf of the Minister of Commerce.

The Commission enters into transactions with government departments, state-owned enterprises, and other Crown entities. Those transactions that occur within a normal supplier or client relationship on terms and conditions no more or less favourable than those which it is reasonable to expect the Commission would have adopted if dealing with that entity at arm's length in the same circumstances have not been disclosed as related party transactions.

The following transactions were carried out with related parties other than those described above

The Commission engaged the services of specific consultants at Martin Jenkins and Associates Limited to conduct a review of priority settings and some advice on cost allocation. This entity is a related party as Peter J M Taylor is a director of the company, in addition to his role as Commissioner at the time. Peter J M Taylor had a standing disclosure of his relationship with Martin Jenkins and Associates Limited in accordance with the Commission's policy regarding potential conflicts of interest. Martin Jenkins and Associates Limited was selected as the most appropriate provider of services, and payments were negotiated at a rate corresponding to general market rates for the provision of the relevant services. Contracting for the relevant services was a matter for the management of the Commission, not the Commissioners. As the matter involved a related party, approval was sought and granted by the Chief Executive Officer of the Commission for this transaction to occur. The total cost of the services provided to the Commission for this work was \$31,000.

As specific consultants were contracted, Peter J M Taylor was not involved in provision of services to the Commission for Martin Jenkins and Associates Limited. Likewise, Peter J M Taylor (or any other Commissioner) was not involved in discussions or negotiations related to the services provided.

There is no outstanding balance for this transaction, and no provision has been required.

Commissioner conflicts of interest with related parties of the Commission

Commissioners and Associates are appointed by the Crown. In addition to their role with the Commission, Commissioners and Associates may serve as consultants, directors, or members of other entities, including Crown Entities to which the Commission is related. A conflict of interests register is updated monthly which lists the entities Commissioners are involved with.

Other potential conflicts of interest

A number of Commissioners and Associates also serve in positions for corporate and private sector bodies, or have other interests in bodies. These bodies' actions may come under investigation by the Commission, or their services may be employed by the Commission. Section 68(6) of the Crown Entities Act 2004 requires the Commissioners and Associates to disclose where they are involved in investigations or transactions, despite being interested parties. Under the agreed policy of the Commission, where a conflict of interest is apparent for a Commissioner or Associate, they recuse themselves from decisions relating to that body, including involvement in those investigations.

21. CAPITAL MANAGEMENT

The Commission's capital is its equity, which comprises accumulated funds and other reserves as disclosed in notes 8 to 10 above. Equity is represented by net assets.

The Commission is subject to the financial management and accountability provisions of the Crown Entities Act 2004, which impose restrictions in relation to borrowings, acquisition of securities, issuing guarantees and indemnities and the use of derivatives.

The Commission manages its equity as a by-product of prudently managing revenues, expenses, assets, liabilities, investments and general financial dealings to ensure the Commission effectively achieves its objectives and purpose, while remaining a going concern.

22. SIGNIFICANT EVENTS AFTER BALANCE DATE

The only significant event after the balance date was the settlement of the Telecom Loyalty case. This agreement was reached prior to balance date but only signed on 9 July 2010. As this event relates to the 2009/10 year, we have accrued the full \$100,000 as receivable, recognising \$48,000 of revenue, and \$52,000 payable to the Crown in accordance with the output agreement.

23. EXPLANATION OF SIGNIFICANT VARIANCES AGAINST BUDGET

Explanations for significant variations from the budgeted figures in the Statement of Intent are as follows:

Statement of Comprehensive Income

Fees and recoveries

Fees and recoveries income exceeded the budgeted figure by \$2.149 million due to unanticipated settlements during the year. In particular, the major fees and recoveries relate to the settlements in the ANZ/ING case, the Visa/Mastercard interchange case, and Powerco/Vector proceedings, totalling \$1.93 million.

Direct output costs

Direct output costs were \$2.279 million under budget primarily due to reduced expenditure on external litigation, and expenditure on external consultants.

Other expenditure

Other expenditure was \$1.065 million less than budgeted due to decreased expenditure, notably on travel (domestic and foreign) and the hire of equipment and venues.

Statement of Financial Position

Cash and cash equivalents

Cash and cash equivalents were \$10.457 million greater than budgeted due to reduced payments to suppliers, resulting in unexpected surpluses in various appropriations, and the classification of investment deposits as cash equivalents.

Fees and recoveries receivable

Fees and recoveries receivable were \$1.06 million greater than expected due to settlement of the ANZ/ING case, and a settlement with Telecom at year end.

Crown revenue receivable

Crown revenue receivable is \$1.302 million greater than budget. This relates to Litigation Fund expenditure, reclaimable from the Crown at year end, which was not budgeted due to uncertainty in timing and claim on the appropriation.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2010 (CONTD)**Investments**

Investments were \$5 million less than budgeted. This is due to term deposits being classified as cash equivalents, as their terms were less than three months. The budgeted total assumed term deposits being held on terms between three and six months.

Repayment of surplus

The repayment of surplus was \$2.621 million greater than budgeted due to surpluses across all appropriations.

Statement of Cash Flows**Fees and recoveries received**

The Commission received fees and recoveries of \$1.06 million greater than budgeted, due to various unanticipated settlements during the year.

Supplier payments

Payments to suppliers were \$4.089 million less than budgeted, due to reduced expenditure on external litigation.

Government funding repaid

The Commission budgeted (in its Statement of Intent 2009-2012) to repay a surplus of \$662,000 relating to the 2008/09 year. However, the surplus across various appropriations in the 2008/09 year was \$2.341 million. As a result, the Commission paid an additional \$1.679 million to the Crown.

Statement of Service Performance**Vote Commerce – Enforcement of general market regulation**

Operating revenue was \$1.457 million greater than budget, primarily due to court cost recoveries of \$2.108 million.

Total output expenditure was \$1.958 million less than budget, primarily due to an under-spend in the determinations output relating to the low level of clearance applications.

Vote Commerce – Regulation of natural gas services

Total output expenditure was \$1.172 million less than budget due mainly to the deferral of the setting of a default price path and a decision to defer setting information disclosure requirements until after input methodologies are set in the 2010/11 financial year. An 'in-principle' expense transfer to 2010/11 of up to \$1.3 million was approved by the Minister of Finance.

Vote Commerce – Regulation of electricity lines businesses

Total output expenditure was \$0.406 million below budget due to the reprioritisation of work to prepare for the implementation of the Electricity Industry Bill. An 'in-principle' expense transfer to 2010/11 of up to \$0.450 million was approved by the Minister of Finance.



CONTACT DETAILS

To contact the Commission with information about false or misleading trading practices or anti-competitive behaviour by businesses
CALL the Contact Centre on 0800 943 600 WRITE to Contact Centre, PO Box 2351, Wellington or EMAIL contact@comcom.govt.nz

ISSN: 1179-4941