

2010/2011 ANNUAL REPORT



OUR VALUES

EXCELLENCE

- WE PRODUCE EXCELLENT WORK THAT STANDS UP TO SCRUTINY.
- WE CONTINUALLY LOOK FOR WAYS TO IMPROVE.
- WE RECRUIT AND RETAIN EXCELLENT PEOPLE AND SUPPORT THEIR DEVELOPMENT.

INTEGRITY

- OUR INDEPENDENCE INSPIRES THE TRUST AND CONFIDENCE OF NEW ZEALANDERS.
- WE ARE FAIR, HONEST AND IMPARTIAL.

ACCOUNTABILITY

- WE ANSWER TO NEW ZEALANDERS FOR THE WORK WE DO AND THE MONEY WE SPEND.
- WE TAKE INDIVIDUAL RESPONSIBILITY TO DELIVER WHAT WE SAY WE WILL.

RESPECT

- WE WORK TOGETHER, SUPPORT AND RESPECT EACH OTHER.
- WE VALUE THE DIVERSITY OF PEOPLE AND THEIR OPINIONS.

GOOD JUDGEMENT

- WE UNDERSTAND THE ENVIRONMENT IN WHICH WE OPERATE AND THE IMPACT OF OUR ACTIONS.
- WHAT WE DO IS RELEVANT AND USEFUL.
- WE ARE PROACTIVE AND FLEXIBLE AND LOOK FOR COMMONSENSE SOLUTIONS.

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ABBREVIATIONS	
2010-2013 Statement of Intent	SOI
Australian Competition and Consumer Commission	ACCC
Commerce Commission	Commission
Ministry of Agriculture and Forestry	MAF
Ministry of Economic Development	MED
Ministry of Foreign Affairs and Trade	MFAT
Organisation for Economic Co-operation and Development	OECD
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 (until November 2010)	EIR Act
Fair Trading Act 1986	Fair Trading Act
Telecommunications Act 2001	Telecommunications Act

CHAIR'S OVERVIEW

New Zealand consumers and businesses rely on the Commerce Commission to protect competition in markets to ensure prices are appropriate and improve the quality and choice of products and services. In markets that are regulated we aim to deliver similar benefits.

Over the 2010/11 year we have delivered a substantial programme of work under budget and have recorded many successes.

OUR KEY ACHIEVEMENTS

During the past year we have shifted our focus to helping businesses to comply with competition law. We have published guidelines for trade associations on issues such as recognising and deterring bid rigging, and we have begun a programme of speaking directly to industry and trade associations about anti-competitive conduct. For example, we have spent time getting an understanding of competitive processes in the construction sector and then advised businesses in the sector on how to avoid breaching the Commerce Act. We have also focused on advising traders of their obligations under both the Fair Trading and Commerce Acts in the lead-up to the Rugby World Cup 2011. The intent of this is to support RWC tourists to have a good experience in our country and benefit New Zealand as a whole.

A significant and longstanding programme of cartel investigations is coming to a close. At the start of the year we had 20 cartel cases under investigation and 10 in litigation. By the end of the year we had resolved all of these cases except for four that will still be in litigation for some time yet. As mentioned, we are now putting effort into detecting and deterring cartel conduct through more continuous engagement with the business sector.

This year the Commission received its first application for a merger authorisation under the Commerce Act since 2002. The decision was in favour of an acquisition by Cavalier Wool Holdings of the wool scouring assets of New Zealand Wool Services International, creating a single wool scourer in New Zealand. We took 83 days to investigate and decide on this relatively complex matter. This reflects the Commission's intent to process authorisation applications as promptly as possible, taking into account the complexities. The Cavalier decision is under appeal.

Consumer credit contracts have been in the spotlight this year. Behind the scenes we have been probing problems in the industry and taking steps to increase understanding by lenders of their obligations under the Credit Contracts and Consumer Finance Act. For example we advised the gym industry that gym contracts payable by instalment are credit contracts and must comply with the disclosure requirements of the legislation. At the end of the year we were beginning a new project aimed at third tier lenders, to address the myriad of problems in this area of lending to vulnerable consumers.

In December 2010, we met the statutory deadline for the delivery of input methodologies (the rules and processes for regulation) under Part 4 of the Commerce Act. These apply to electricity and gas transmission and distribution businesses and to regulated airports. This was a major piece of work which was delivered to a tight timeframe and followed extensive consultation. The input methodologies are now subject to 15 separate appeals. The regulatory certainty intended by publishing input methodologies will not be achieved until these appeals are complete.

We also reset the price and service quality controls for Transpower, and implemented a new information disclosure regime for airports. We made significant progress in defining the default future price path for gas distribution businesses, and in resetting the default future price paths for electricity distribution businesses. Each of these has involved extensive consultation with affected parties.

It was also an important year for our telecommunications teams. The Commission now regulates the price and non-price terms for mobile termination services in response to competition problems affecting new entrant mobile providers and consumers. We are now monitoring the effect of regulation, and expect to see changes in this market over time. In particular we are monitoring cross-network traffic to determine whether further intervention will be required.

We achieved a \$1.6 million settlement with Telecom over a loyalty offer that breached their separation undertakings. The settlement avoided lengthy litigation while achieving compensation for the complainants, Vodafone and Orcon.

The proposed regulatory regime for the Ultra-Fast Broadband and Rural Broadband initiatives was also a key area of work for us, with the Commission providing advice and analysis on related amendments to the Telecommunications Act.

THE CURRENT ENVIRONMENT

The current fiscal environment has raised many challenges, and we have worked to respond to those challenges. As we are spending taxpayer and levy-payer money, I believe that being able to demonstrate our value is very important. During 2010/11, we carefully managed our costs and increased productivity across the organisation. We spent \$4 million less than was budgeted and returned \$5.3 million in levy-based funding to the Crown. \$3.175 million of this is subject to an in-principle agreement to transfer to the 2011/12 financial year due to reprioritisation in the Electricity, Gas and Input Methodologies work programme.

We have retained surpluses to build up reserves in order to manage future risks, such as significant litigation activity. A surplus of \$3.2 million in General Markets resulted from a combination of a downturn in merger activity, streamlined processes and our organisational restructure.

Having restructured and rationalised the organisation over the past two years, we have now reached a steady maximum number of staff positions of 178. During peak activity periods, for example when delivering Input Methodology Determinations, we supplemented our staff with temporary contractors. In the coming year we will continue to closely manage recruitment to meet business needs.

While the Commission does not undertake litigation to raise revenue, our major litigation programme returns more to the Crown than the cases cost to complete. 2010/11 was a particularly significant year, with penalties awarded being more than three times the year's \$8.331 million expenditure on major litigation.¹ Major penalties in both the Air Cargo and Freight Forwarding cases contributed to this. Over the five-year period from 2006/07 to 2010/11, penalties and cost awards have exceeded the total cost of the Commission's major litigation.

We continue to look for better and more efficient ways to carry out our work in order to ensure that the funding we receive is used in the most cost-effective way. The management of low-level Fair Trading Act cases is an area where we have seen significant efficiency improvements over time. Since we introduced the low level inquiry unit in 2008/09, we have reduced the average cost of these investigations by a third and completed more investigations in a more timely manner.

The results of the past year, in terms of both our achievements and endeavouring to do more with less, have been made possible by a dedicated and motivated workforce. I would like to take this opportunity to thank staff and Commissioners, who have worked so hard during the year. I also thank the many agencies we have collaborated with, and businesses we have engaged with, for their cooperation.



Dr Mark Berry
Chair

1. Excluding the \$12 million penalty awarded against Telecom in respect of the Datatails litigation, which is under appeal.

OVERVIEW OF THE COMMISSION

ROLE

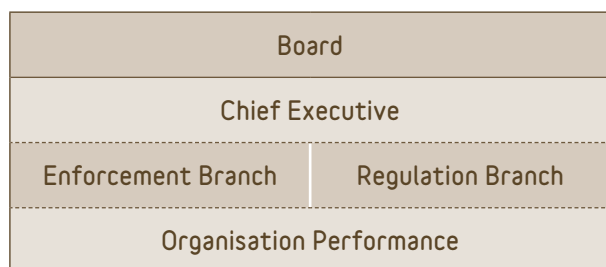
The Commerce Commission is New Zealand's competition enforcement and regulatory agency. We are responsible for enforcing laws relating to competition, fair trading, and consumer credit contracts, and have regulatory responsibilities in the electricity lines, gas pipelines, telecommunications, dairy and airport sectors. Our purpose is to achieve the best possible outcomes in competitive and regulated markets for the long-term benefit of New Zealanders.

We are an independent Crown entity, with some quasi-judicial functions established under the Commerce Act. We are primarily accountable to the Minister of Commerce for our performance. We are not subject to direction from the government in carrying out our enforcement and regulatory control activities. This independence requires us to be an impartial promoter and enforcer of the law. Where relevant, we use our experience to provide advice on policy development and legislative reviews.

Our outputs are delivered under an Output Agreement with the Minister of Commerce and the Minister for Communications and Information Technology. We report to these Ministers on our outputs through Triannual Reports. These outputs are funded through Vote Commerce and Vote Communications.

OUR STRUCTURE

The Commission has two operational branches – Enforcement and Regulation – supported by the Organisation Performance Branch. Each branch is led by a General Manager who reports to the CEO, who is accountable to 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, on the recommendation of the Minister for Communications and Information Technology) and Associate Commissioners are appointed by the Minister of Commerce. Commission Members have both a governance and a decision-making role in exercising 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 we are 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 our direction;
- using delegations to assist the efficiency of our 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.

DECISION MAKING

The Commission's functions and powers are conferred and limited by legislation. In performing our functions, we have a wide range of formal decision-making powers that we exercise. As a body with quasi-judicial functions, the Board makes decisions that determine or otherwise significantly affect the legal rights, duties and interests of others. This includes formal decisions made by the Board or Commission Division, which are specifically set out in statute, such as:

- regulating the supply of electricity lines services, gas pipeline services (distribution and transmission) and specified airport services under Part 4 of the Commerce Act;
- making determinations in respect of designated access and specified services under the Telecommunications Act;
- giving a clearance or authorising a business acquisition under the Commerce Act;
- adjudicating enforcement under the Commerce, Fair Trading and Credit Contracts and Consumer Finance (CCCF) Acts; and
- taking enforcement action and issuing determinations to resolve disputes under the Dairy Industry Restructuring Act (DIR Act).

The Board or Commission Division also makes decisions about whether to commence (or discontinue or settle) legal proceedings or to take other action in relation to matters before them.

MANAGEMENT

The Chief Executive is responsible for managing the Commission's operations, supported by a senior leadership team. Our 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 us 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. We are required to have regard to such statements when exercising our statutory functions under the Commerce Act and Schedule 3 of the Telecommunications Act. We are currently required to give regard to statements relating to New Zealand's international commitments in relation to telecommunications.

MARKET ACTIVITY AND ECONOMIC ENVIRONMENT

Our work is influenced by the external environment. The state of the economy and changes to the legislative framework can have a significant impact on what we do and how consumers and businesses operate. For example, the number of merger clearance applications that businesses submit during a year affects the amount of resource we can use to progress other competition and consumer work. Similarly, the focus of our enforcement work varies depending on the specific issues that arise during any period, and changes to the regulatory framework direct our focus (such as the transmission investment approval function taken over from the former Electricity Commission). In this demand-driven environment, we use our best estimates of the level and type of business activity we expect to see for our work planning.

The Christchurch earthquakes significantly affected our operations in Christchurch, where we have 10 staff. However, we are successfully operating from temporary premises. We continue to work with Christchurch electricity distribution business Orion to provide short-term relief from compliance obligations and to determine its appropriate future regulatory environment.

Like all government agencies, we are mindful of the constrained fiscal environment and during 2010/11 we found ways to achieve better outcomes at lower cost. We will continue to build on the efficiency gains we have already made, such as streamlining our organisational structure and simplifying our processes.

LITIGATION ENVIRONMENT

Our litigation workload varies considerably from year to year according to a number of factors, including the number and complexity of matters we decide to litigate, appeals of Commission determinations that we decide to defend, and court timetables.

During 2010/11, we experienced unprecedented levels of litigation, resulting from several long-running pieces of litigation coming to critical court phases and a number of appeals of our input methodology determinations that were published in December 2010. We expect that the appeal process will create a significant workload over the coming two years and into the future. Input methodology issues are complex and inter-related and it is likely to take the court some time to consider any appeals.

WORKING WITH OTHER AGENCIES

We work cooperatively with relevant government agencies to ensure that we achieve our goals without duplication or conflict, and that we share information and expertise where required. Internationally, we are actively involved with our counterpart agencies through forums such as the Organisation for Economic Co-operation and Development (OECD) and the International Competition Network (ICN). Our relationship with the Australian Competition and Consumer Commission (ACCC) has been strengthened recently with Commissioner cross-appointments.

ACHIEVING OUR OUTCOMES

Our purpose is to achieve the best possible outcomes in competitive and regulated markets for the long-term benefit of New Zealanders.

We are here to:

- improve the welfare of New Zealanders;
- promote competition and outcomes consistent with competition;
- promote voluntary compliance by business with competition laws and regulations;
- choose the best possible interventions and approaches to improve market outcomes; and
- operate efficiently and effectively.

OUR STRATEGIC DIRECTION

We continuously adapt to the changing market and our wider operating environment. During 2010/11, we further evolved our strategic direction, which uses a mix of:

- **advocacy** – ensuring that businesses and consumers are aware of the law and the benefits of competition;
- **facilitation** – encouraging and enabling businesses to comply with the law;
- **enforcement** of the law for those whose conduct does not comply;
- **regulation** – where competition does not exist or is ineffective and where regulation is necessary to promote statutory objectives; and
- **sector monitoring and information disclosure** – to provide an increased understanding of business and market performance.

In those matters where litigation is the appropriate enforcement response, we note increasing penalty sums awarded by the courts under the relevant Acts. In the Enforcement Branch over the period, penalties of more than \$35 million have been awarded for breaches of the Commerce, Fair Trading and CCCF Acts.²

Our work programme is aligned with our strategic direction. We think carefully about the best mix of activities to achieve our purpose and give effect to the impacts that we are looking for as a competition agency and economic regulator. It is important to make sure that we prioritise our activities in order to maximise the impact of our expenditure.

2. This sum excludes a record \$12 million penalty against Telecom for a breach of section 36 of the Commerce Act – the largest ever penalty under the Commerce Act. This is currently under appeal.

Underpinning our strategy is a business improvement programme aimed at enhancing our organisation and capabilities. In 2010/11, we started five medium-term strategic change programmes – Simplify our business; Understand our value; Better connect; Stronger future focus; and Better investment in people. These are further explained in the *Enhancing Organisational Capability and Performance* section of this report.

OUR STRATEGIC AND PERFORMANCE MEASUREMENT FRAMEWORKS

Our Strategic Framework is set out in the 2010-2013 Statement of Intent (SOI), against which this Annual Report measures our performance. Underpinning our Strategic Framework is our Performance Measurement Framework, comprising outcome, impact and output measures. The three outcomes that we seek to influence are:

- **Markets are competitive.** New Zealanders benefit from competition in the supply of goods and services, which generates price, quality and choice benefits for consumers.
- **Consumers are informed.** New Zealanders benefit and competition is enhanced by businesses providing fair and accurate information to consumers.
- **Regulation is targeted and effective.** New Zealanders benefit from targeted regulation of goods and services in markets where, given their characteristics, competition and competition laws cannot be relied on for optimal outcomes for consumers.

We monitor a range of impact and output measures to support these outcomes.

During 2010/11, we further enhanced our strategic and performance measurement frameworks. These enhancements reflect our priorities and what we want to achieve in the longer term. In particular, we refined our outcome and impact statements, and developed a new set of outcome indicators and impact measures for monitoring our performance. We also reviewed our output measures and continue to refine these to select a balanced set of measures that best reflect our business. This work will continue during 2011/12.

As part of the review of our measures, we considered the external environment in which we operate and the stakeholders we work with. We also looked at what other competition and economic regulation agencies are doing to measure their performance. It continues to be a challenging exercise to isolate and measure the impact that an agency like ours has on the economy.

While our strategic direction has not changed, we now have a clearer and more succinct understanding of the outcomes we seek to have as an organisation, and how the activities we undertake contribute to the achievement of our impacts. The results of this work are set out in our 2011-2014 Statement of Intent.

OUR IMPACTS AND OUTPUTS

The framework below will help you follow how our outcomes, impacts and outputs relate to each other. In the rest of the *Achieving Our Outcomes* section we set out our progress in achieving the impacts we seek to have over time together with the outputs achieved in 2010/11. This is presented in the context of the three outcomes we seek to influence.

PURPOSE				
Achieve the best possible outcomes in competitive and regulated markets for the long-term benefit of New Zealanders				
OUTCOMES THE COMMISSION INFLUENCES				
MARKETS ARE COMPETITIVE New Zealanders benefit from competition in the supply of goods and services, which generates price, quality and choice benefits for consumers	CONSUMERS ARE INFORMED New Zealanders benefit and competition is enhanced by businesses providing fair and accurate information to consumers	REGULATION IS TARGETED AND EFFECTIVE New Zealanders benefit from targeted regulation of goods and services in markets where, given their characteristics, competition and competition laws cannot be relied on for optimal outcomes for consumers		
IMPACTS THE COMMISSION SEEKS TO HAVE				
Impact measures for ENFORCEMENT (pages 9 - 13)		Impact measures for REGULATION (pages 14 - 17)		
Impact measures for STAKEHOLDER ENGAGEMENT (pages 18 - 19)				
OUTPUTS 2010/11				
MARKETS ARE COMPETITIVE Output measures (pages 20 - 28)	CONSUMERS ARE INFORMED Output measures (pages 29 - 36)	REGULATION IS TARGETED AND EFFECTIVE Output measures for Dairy, Telecommunications, Input Methodologies, Electricity, Gas and Airports (pages 37 - 58)		
5 STRATEGIES TO DEVELOP THE COMMISSION AND ITS CAPABILITIES (PAGES 59 - 62)				
Simplify our business	Understand our value	Better connect	Stronger future focus	Better investment in people

IMPACT MEASUREMENT

IMPACT MEASURES FOR ENFORCEMENT

We are committed to measuring the impact of our work. Evaluating the impact and quality of our decisions enables us to achieve the best possible outcomes in competitive markets and ensure we are providing the best value for money.

The key highlights in 2010/11 include:

- We applied a new methodology³ to estimate the savings to the economy resulting from our successful interventions. We then compared these savings with the costs of all our interventions for competitive markets (including litigation). While a number of caveats⁴ apply to this methodology, the estimated savings indicate that, taken over the five years to 30 June 2010, the average yearly savings from these interventions were 3.7 times greater than the cost of all our interventions.
- We carried out two reviews of the state of competition in markets where we decided a) to clear a merger and b) not to intervene in a market conduct case. These reviews are designed to test our decisions either to clear the merger or not to take enforcement action in a market conduct case. We selected the two cases for review based on the following criteria:
 - a significant market with potentially significant detriment from the alleged conduct;
 - the decision not to intervene occurred between two years and five years ago;
 - the case required significant investigation and analysis; and
 - there was no ongoing competition inquiry into the market when the review was undertaken.
- We consider that the learning from these reviews will be useful in terms of improving our analytical frameworks in the future. We will also continue to refine and review our case selection methodology, as appropriate.
- We analysed a number of measures to assess the impact of our combined advocacy and enforcement programme for telecommunication companies. Consumer complaints relating to the Fair Trading Act in the telecommunications sector have decreased, indicating that compliance is improving.

3. It should be noted that this impact measure is not intended as a precise estimate of consumer savings, but, rather, as an indication of general magnitude. It is a conservative measure and does not include benefits from deterrent effects of our work, including consumer protection work.

4. A number of caveats apply to the methodology used to estimate consumer savings as a result of our interventions. They are:

- A more precise estimate based on case-specific information will be used whenever possible.
- Consumer savings are measured using the consumer welfare standard; it relies on a set of assumptions about consumer savings as a proportion of the market turnover and interventions are assumed not to have a negative impact.
- External factors, such as level of merger activity, and internal ones, such as the duration of non-merger court action, may cause an annual estimate to fluctuate significantly from year to year. This measure is therefore calculated as the average of the previous five years.
- The use of a volume of sales performance measure does not mean that we will only investigate and take enforcement action in markets with large sales volumes. We will continue to investigate and take enforcement action as necessary in all markets where significant detriment is likely.

IMPACT MEASURE	METHOD OF COLLECTION AS SET OUT IN SOI	TARGET AS SET OUT IN SOI	PROGRESS AS AT 30 JUNE 2011
<p>Economic benefit realised as a result of the direct effect of preventing anti-competitive clearances and authorisations and as a result of taking successful enforcement action</p>	<ul style="list-style-type: none"> → A proposed methodology for assessing detriment has been developed in 2009/10 based on internationally accepted processes for defining proxies for estimating detriment and consumer benefit. This methodology will be reviewed and refined in 2010/11 and then used to measure the benefit from the Commission's intervention, with results reported externally from 2011/12 → This methodology will be applied to estimate the economic benefit realised from 1. each decision to decline clearance or authorisation and 2. each enforcement case successfully resolved through the courts 	<ul style="list-style-type: none"> → Actual benefit realised is greater than the cost of the Commission's intervention 	<ul style="list-style-type: none"> → The methodology for assessing detriment has been peer reviewed and refined → We applied the methodology in 2010/11 to estimate both the economic benefit realised from each decision to decline a clearance and authorisation and each enforcement case successfully resolved through the courts → The results as at 30 June 2011 indicate that the average estimated yearly savings for the 5 years to 30 June 2010 was \$38.8m. For the same period, the average yearly costs were \$10.5m → This shows a benefit/cost ratio of 3.7:1. This demonstrates that the actual benefit realised from our intervention is greater than the cost of carrying out all our interventions in competitive markets
<p>Competitive market conditions are achieved in terms of price, quality, range and/ or service where the Commission has granted a clearance/ authorisation or decided not to take enforcement action</p>	<ul style="list-style-type: none"> → The methodology was developed and 2 pilot studies undertaken in 2009/10. This methodology will be reviewed and refined in 2010/11 and results reported externally from 2011/12 → 1-2 market structure (specifically cleared merger) cases and 1-2 market behaviour (specifically unilateral and coordinated behaviour) cases will be assessed each year to test whether the market effects predicted by the Commission actually occurred 	<ul style="list-style-type: none"> → Commission's market predictions in specific cases are tested and validated 	<ul style="list-style-type: none"> → In 2010/11, we reviewed the methodology and completed 2 ex post evaluations (1 market structure case and 1 market behaviour unilateral case) to assess if the market conditions were achieved as a result of our intervention → The review of the market structure case of the PGG/Wrightson clearance (decision 556) in 2006 showed that several companies had entered this market within 2 years. This suggests that our assessment of relatively low barriers to entry and expansion in this industry was correct → In the review of the market behaviour case the levels of competition in the burnt lime market suggest that the Commission's decision not to intervene in 2005 was appropriate

IMPACT MEASURE	METHOD OF COLLECTION AS SET OUT IN SOI	TARGET AS SET OUT IN SOI	PROGRESS AS AT 30 JUNE 2011
Businesses and consumers are aware of the benefits of fair and accurate information, thereby improving market outcomes	<ul style="list-style-type: none"> → Evaluation of questionnaires and production of case studies for Centres of Excellence: <ul style="list-style-type: none"> – Telecommunications – Financial products – Sustainability (Note: The case study method will be developed and piloted in the Telecommunications Centre of Excellence in 2010/11) → Baseline development in 2010/11 	<ul style="list-style-type: none"> → Improved compliance levels over time 	<ul style="list-style-type: none"> → In 2010/11, we evaluated questionnaires and analysed complaints data to assess the impact of our targeted programme of advocacy and enforcement in the Telecommunications Centre of Excellence → We ran regular feedback meetings with telecommunications firms and surveyed their perceptions of the compliance levels of their competitors for the last two financial years. Firms were asked to give each other a rating between 0 and 5, with 5 being fully compliant. The average rating of 3.1 for 2010/11 has not changed since the baseline of 3.1 was established in 2009/10 → In relation to planned work in the financial products and sustainability Centres of Excellence, in 2010/11 we reprioritised our targeted sectors work programme and focused only on the Telecommunications Centre of Excellence
Market outcomes are improved through promoting compliance with the Fair Trading and CCCF Acts	<ul style="list-style-type: none"> → Drawing on data⁵ currently gathered by our contact centre and our investigation and market intelligence activities, in 2010/11 the Commission will implement an analysis and reporting method for complaints indicating prima facie breaches received → The Commission will obtain feedback from stakeholders, including through regular meetings and market intelligence activities 	<ul style="list-style-type: none"> → Number of complaints indicating prima facie breaches in selected areas will increase initially as a result of increased public information and education → Improved compliance levels over time 	<ul style="list-style-type: none"> → Since 2006, our contact centre has gathered data for complaints assessed by contact centre staff as prima facie breaches → In 2010/11, we developed a system for analysing and reporting this data in general and targeted sectors. A pilot was run in the targeted telecommunications sector to analyse prima facie breaches → In 2008/09, we established a baseline of 624 complaints of prima facie breaches against telecommunications firms → In 2010/11, we received 588 complaints related to telecommunications which were assessed as likely to indicate a breach of the Fair Trading Act. This represents a 13% decrease from the 2009/10 total of 676 complaints. The reduction in the number of complaints indicates that compliance levels in the telecommunications sector have improved → To promote compliance with the CCCF Act, we held regular meetings to obtain feedback with stakeholders in the finance sector including banks, finance companies and pan-industry bodies. In relation to the Fair Trading Act we met regularly with stakeholders including industry associations, major traders, self-regulatory bodies and consumer groups. We also obtain feedback from informal market intelligence activities

5. Data for complaints on prima facie breaches is available from 2006.

CASE STUDIES

EX POST REVIEWS OF COMPETITION CASES

SUMMARY OF EX POST REVIEW OF THE BURNT LIME MARKET

We undertook an ex post review of competition in the burnt lime market as part of our impact measurement project. The purpose of the review was to establish whether our decision not to intervene was appropriate.

In October 2002, we began an investigation into the conduct of McDonald's Lime Ltd in response to entry by Perry Lime Limited into the burnt lime market. The investigation identified potential issues under both sections 27 and 36 of the Commerce Act 1986. It was alleged that McDonald's was engaging in predatory pricing, bundling, exclusive dealing, targeted price-cutting or reputational predation in contravention of sections 27 and/or 36.

In May 2006, after completing a major investigation, we concluded that:

- McDonald's likely had a substantial degree of market power in the market for the production and sale of burnt lime in New Zealand; and
- there was insufficient evidence of a breach of sections 27 and/or 36.

The review focused on whether:

- the market definition was appropriate;
- the conclusion that McDonald's had a substantial degree of market power was appropriate; and
- our view that there was insufficient evidence that McDonald's had taken advantage of its substantial degree of market power was appropriate.

In relation to market developments since the investigation, the review found that Perry and Websters had remained competing with McDonald's in the market. Pricing levels for major customers of burnt lime indicated that Perry and/or Websters were exerting a material level of constraint on McDonald's. Customers indicated that the level of constraint in the North Island, where Perry and Websters are based, was greater than that experienced in the South Island.

The review suggested that it may have been more appropriate to define separate geographic markets for the North and South Islands, rather than the national market adopted in the 2006 report. However, we note that such a change to the market definition would not have affected our conclusions in 2006 that:

- McDonald's had a substantial degree of market power in the relevant market(s); and
- there was insufficient evidence of a use of market power in breach of section 36 or of agreements in breach of section 27 of the Act.

As a result of the review, we consider that our conclusion in 2006 that McDonald's had a substantial degree of market power was appropriate. This conclusion would hold whether or not separate markets for the North and South Islands had been defined. It is our view that nothing has emerged from the review to indicate that our decision not to intervene was inappropriate in the circumstances.

SUMMARY OF EX POST REVIEW OF CLEARED MERGER - PYNE GOULD GUINNESS LIMITED/WRIGHTSON LIMITED (DECISION 556)

We also conducted an ex post review of a market affected by a merger. The review focused on:

- whether the market definition was appropriate; and
- whether market developments that occurred after the merger were consistent with our expectations.

One of the markets affected by the Pyne Gould Guinness Limited (PGG)/Wrightson Limited merger was reviewed. The merger was cleared by us on 31 August 2005.

The review focused on the brassica seeds, which are used as a supplementary feed crop for farm animals. In deciding to clear the merger, we considered that the combined entity would face some degree of competition from existing competitors in the brassica seed market. We also considered that it was likely that the combined entity would face some constraint from the threat of potential competition.

The review found that the relevant market had been correctly identified as the national market for the production or importation, and wholesale or retail supply, of brassica seed.

The review also found that since the merger, one company had entered the market, and one had expanded its operations in the seed industry to include brassicas. These firms had been able to do this within a two-year timeframe, and are now prominent suppliers. We therefore concluded that these market developments were consistent with our assessment that there were relatively low barriers to entry and expansion.

IMPACT MEASURES FOR REGULATION

REGULATION IS TARGETED AND EFFECTIVE - DAIRY

Monitoring contestability in dairy markets through the entry and expansion of efficient, independent processors will indicate compliance with the entry and exit provisions for shareholding farmers in the DIR Act and the obligation to supply raw milk under the Raw Milk Regulations. In 2010/11, we observe that some new entry has occurred as detailed in the table below. However, some existing independent processors are concerned that Fonterra's ability to pay a high milk price as a proportion of the total payout has made it difficult for them to compete for supply from farmers. The Ministry of Agriculture and Forestry (MAF) is currently reviewing the effectiveness of the DIR Act.

IMPACT MEASURE	METHOD OF COLLECTION AS SET OUT IN SOI	TARGET AS SET OUT IN SOI	PROGRESS AS AT 30 JUNE 2011
Contestability in dairy markets is achieved through expansion and entry of efficient, independent processors	<ul style="list-style-type: none"> → Observation of farmers switching between dairy processors → Observation of new processors entering and expanding in the industry Monitoring changes in the volume and share of milk collected by dairy processors in the industry, with statistics provided by MAF⁶ 	→ Greater contestability in dairy markets	<ul style="list-style-type: none"> → We have observed farmers switching supply between processors → New Zealand Dairy Processing Limited commissioned a plant in January 2011. Miraka Limited will commence operations in the 2011/12 season

REGULATION IS TARGETED AND EFFECTIVE - TELECOMMUNICATIONS

We promote competition in telecommunications markets for the long-term benefit of end-users. Competition in telecommunications markets has increased between 2006 and 2009 with consumer choice and service quality improving, while prices have fallen.

In 2010/11, we saw a continued improvement in New Zealand's performance in the telecommunications area across a number of key indicators:

- New Zealand improved its international rankings related to the delivery of broadband services since the baseline of 22nd was established in 2006. As at 31 December 2010, New Zealand is positioned 17th out of 31 OECD countries in the level of fixed line broadband penetration. This represents no change from our position in 2009/10.
- Levels of competition in fixed line, mobile, and broadband services continued to increase (as shown by decreases in the HHI index⁷).
- While there is evidence that competition in the mobile market is increasing following the launch of 2degrees, mobile voice usage remains low by international standards. There are ongoing market concerns associated with price and usage varying significantly depending on whether calls or texts were being made to callers on the same or different networks.
- Quality of broadband service is positive. As of June 2010, 82 per cent of working copper lines had potential speeds of over 10MB/s.
- Uptake of core regulated services continued to grow significantly (particularly UCLL⁸ and UBA⁹ services).
- Because of increased competition, we were able to remove regulation in relation to resale services and some backhaul links.

6. The method of collection was reviewed during 2010/11. Due to the confidential nature of the statistics information held by MAF, it was decided that this method of collection was not appropriate and it was discontinued.

7. The Herfindahl-Hirschman Index (HHI) is a commonly accepted measure of market concentration and is calculated by squaring the market share of each market participant that has a material number of subscribers and adding these together. The maximum possible score is 10,000.

8. UCLL: Unbundled Copper Local Loop.

9. UBA: Unbundled Bitstream Access.

IMPACT MEASURE	METHOD OF COLLECTION AS SET OUT IN SOI	TARGET AS SET OUT IN SOI	PROGRESS AS AT 30 JUNE 2011
New Zealand's position in the OECD ranking for broadband services improves over time	→ OECD reports	→ New Zealand is positioned in top half of OECD countries by 2013 → Baseline (2006): 22nd position (out of 30 countries)	→ New Zealand's position improved to 17th in OECD (out of 31 countries) for fixed line broadband penetration as at 31 December 2010. This represents no change from our position in 2009/10
Levels of market concentration in the mobile and fixed line markets reduce over time	→ Annual sector monitoring report (based on annual industry data questionnaire)	→ Increasing competition is reflected by reduced market concentration as measured by the HHI index → Baseline: – Fixed line (2007): 7,933 – Broadband (2007): 5,067 – Mobile (2007): 4,950	→ The levels of market concentration in most markets reduced, as shown by a decline in the HHI indices. HHI measures as at 30 June 2010 were: – Fixed line: 5,222 – Broadband: 3,867 – Mobile: 4,237 Note: the 2010/11 results will be included in the Annual Telecommunications Monitoring Report 2011, which is due to be published in March 2012
The number of fixed broadband lines with potential speeds >10MB/s is increased	→ Annual sector monitoring report (based on annual industry data questionnaire) → Baseline development in 2010/11	→ The percentage of fixed broadband lines with potential speeds of >10MB/s increases over time	→ We have established the baseline this year. As at June 2010, 82.3% of working copper lines had potential speeds >10MB/s → As at January 2011, 87.8% of working copper lines had potential speeds of >10MB/s, indicating the continuing upgrade of the copper network
Uptake of core regulated services (UCLL and UBA) is increased over time	→ Annual sector monitoring report (based on annual industry data questionnaire)	→ Uptake for core regulated services is increased → Baseline: – UCLL (2008): 3,000 – UBA (2008): 3,937	→ Uptake of core regulated services as at March 2011 is: – UCLL: 81,000 – UBA: 222,260
Regulation of telecommunications markets is simplified and reduced as effective competition develops	→ Assessment of the state of competition in regulated markets to determine whether amendments are required to elements of the regulatory regime → Priorities are determined on an annual basis. In 2010/11, the focus will be on resale, backhaul and bitstream services	→ Amendments to elements of the regulatory regime, in consultation with interested parties, reflect the competition assessment	→ We completed our investigation into resale services in December 2010. We found that there were alternative products for wholesale broadband and data services and so there was no need for the resold broadband and data services to be regulated → We completed our assessment of competition in backhaul markets and where competition had developed, we removed regulation from those backhaul links

REGULATION IS TARGETED AND EFFECTIVE - ELECTRICITY LINES, GAS PIPELINES AND AIRPORTS

Under Part 4 of the Commerce Act we are required to administer regulation for electricity lines services, gas pipeline services and specified airport services that will contribute to the long-term benefit of consumers. We do this by promoting outcomes that are consistent with outcomes in competitive markets to ensure that the suppliers of regulated goods or services:

- have incentives to invest;
- have incentives to promote efficiency and provide services that reflect consumer demands;
- share the benefits of efficiency gains with consumers; and
- are limited in their ability to extract excessive profits.

The impacts of Part 4 regulation have not yet been fully felt. This is because the regulatory tools are still being put in place for most sectors. Significant progress has been made in this area and the impacts of the new regulatory arrangements will be seen over the next three years.

There have been some positive impacts associated with existing regulation of electricity distribution businesses. In particular:

- improvements in asset management planning for electricity distribution businesses, shown by improved compliance with asset management planning requirements; and
- some improvement in quality performance overall for electricity distribution businesses.

During 2009/10, however, there was a relatively high number of price breaches by electricity distribution businesses under the default price-quality path (9 out of 17 businesses). We considered these breaches carefully but concluded that, in most instances, above-normal returns would not have been earned even if the input methodologies (set in December 2010) had applied. Any price levels found to be too high under the default price-quality path will be best addressed through the starting price adjustments in 2011/12.

IMPACT MEASURE	METHOD OF COLLECTION AS SET OUT IN SOI	TARGET AS SET OUT IN SOI	PROGRESS AS AT 30 JUNE 2011
Electricity industry investment is optimal	<ul style="list-style-type: none"> → Information disclosure regime requirements: targeted asset management plan (AMP) reviews → The next review will take place in 2011/12 → The focus for 2010/11 is on the development and implementation of the customised price-quality path regulatory instrument 	→ Biennial improvement in targeted AMP compliance ratings	→ The next targeted AMP review will take place during 2011/12
No material deterioration in the quality of electricity distribution and transmission	<ul style="list-style-type: none"> → Information disclosure regime → SAIDI¹⁰ → SAIFI¹¹ → Baseline development as part of first-year reporting under the default price-quality path (i.e. 2010/11) 	→ Quality does not deteriorate materially over time	<ul style="list-style-type: none"> → Quality improved from 2008/09 to 2009/10. SAIDI and SAIFI scores for electricity distribution businesses on average showed increased reliability (shown by the reduced number of interruptions)¹² – 2008/09 SAIDI: 236 minutes (204 weighted) – 2009/10 SAIDI: 187 minutes (150 weighted) – 2008/09 SAIFI: 2.74 occurrences (2.20 weighted) – 2009/10 SAIFI: 2.18 occurrences (1.81 weighted) <p>Note: All 2010/11 SAIDI and SAIFI figures are disclosed on 31 August 2011</p>
Reduction in the number of electricity distribution business and Transpower price breaches	→ Information disclosure regime requirements and default price-quality compliance statements	→ Reduction in number of price breaches over time	<ul style="list-style-type: none"> → A baseline measure of 9 price breaches of the electricity distribution default price-quality path was established in 2009/10 → As at 30 June 2011, the completed compliance statements are being assessed for breaches. As planned, this information is not released to the public until 2011/12

10. SAIDI: System average interruption duration index.

11. SAIFI: System average interruption frequency index.

12. Averages are weighted by the number of EDB connection points. SAIDI and SAIFI figures are based on the total number of interruptions. Lower scores indicate increased reliability of service to consumers.

IMPACT MEASURES FOR STAKEHOLDER ENGAGEMENT

The ability to achieve our outcomes is made easier by having a good understanding of our stakeholders, their businesses and how we can best engage with them.

Over the past year, we reviewed how we engage with our stakeholders. Following this review, we included stakeholder engagement as part of our *Better Connect* strategic programme (refer to the *Enhancing Organisational Capability and Performance* section later in this report) and in the 2011-2014 Statement of Intent this has been removed as a standalone impact. This shift recognises that stakeholder engagement is closely aligned with our outcomes, so from July 2011 we will be measuring our engagement with stakeholders at an output level.

Another change we made during 2010/11 was to redesign how we seek feedback from our stakeholders. In 2009/10, we undertook a survey of our stakeholders, focusing on consumers and small-to-medium sized businesses, to inform our strategic planning for the 2010/11 year. We did not repeat this survey in 2010/11, as we were refining our impact and output measures. It made sense to wait until that process was completed so in future the survey can provide the information needed for these new measures.

We continued the initiative to directly ask key stakeholders annually about our performance. In the 2010/11 stakeholder feedback, stakeholders noted that they had seen several improvements in how we engaged with them, in particular the new website, more user-friendly information (factsheets and guidance) and a view that we are more willing to engage with them. Some stakeholders also indicated that they are interested in our work programme, the reasons for our interest in an issue and clarity about our objectives. We used this feedback to help us shape our approach to stakeholder engagement.

An integral communication channel for us 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 we undertake. During the year, we received approximately 10,572 complaints and enquiries, which is fewer than previous years (2009/10: 11,500). The majority (approximately two-thirds) of issues raised relate to the Fair Trading Act.

Our key achievements for 2010/11 were:

- A new external engagement strategy was developed and approved in early 2011. Work towards embedding the strategy has begun and will continue into 2011/12. The strategy provides a more purposeful focus for our engagement with stakeholders and interested parties.
- We carried out a review of our new website to ensure it is meeting the needs of our stakeholders and interested parties. A website that is easy to search for relevant information helps increase the transparency of our work. Enhancements to the website will continue over the coming year, for example, the introduction of a regulatory calendar on our website in mid-2011. The calendar will make finding key deadlines and timelines for regulated industry projects easier. It is hoped this will help our regulated industries stakeholders plan ahead.
- We also reviewed the way we deal with complaints from members of the public – consumers and businesses alike. We have improved our complaints form on our website and now provide more information to complainants about our process for assessing the issue they have raised. We are also providing more information to increase complainants' understanding of our role, the laws we enforce and the reasons why we might or might not carry out an investigation.
- We recently re-engaged with the Ministry of Consumer Affairs over work in the area of consumer law education. In 2011/12, we will work closely with them in ensuring that the information provided to consumers is clear, consistent and presented with no repetition. With the Rugby World Cup 2011 approaching and an influx of visitors to New Zealand, we published a new brochure called *Know your rights* about consumer rights and protection under the law. The brochure covers rights under the Fair Trading Act and also the Consumer Guarantees Act. It has been distributed to iSites and Citizens Advice Bureaus across the country and has been met with very positive feedback from these and other community groups.

We recognise the importance of our work being clear and understandable – it is fundamental to fulfilling our education role, and, in turn, increasing compliance. We have adopted a plain English programme and will continue over the coming months to train staff to present their documents in language that is more accessible to readers. In line with this programme, a number of factsheets on our website have been reviewed and re-written in plain English.

Media are a key stakeholder for the Commission, as without them we could not reach the ears of the consumers of New Zealand and the many businesses affected by our decisions. Media continue to show a high level of interest in all of the work we carry out. There have been some particular issues in the past year that have attracted a lot of media attention. In late 2010, we reached a \$45 million settlement with ANZ/ING over the way certain funds were represented to investors. This story received high coverage. In early 2011, we released the new mobile termination access service (MTAS) rates, which determine how much mobile providers can charge each other for mobile calls and texts to their network. There was huge public interest in the MTAS rates and what they might mean for consumers in terms of the retail price they pay for mobile calls and texts. Another issue that has dominated in the media, and generally public comment, has been the price of milk. The outcome of the Commission's review of the dairy markets, focused on whether a Part 4 price control inquiry is warranted, remains of high media interest as the year ends.

IMPACT MEASURE	METHOD OF COLLECTION AS SET OUT IN SOI	TARGET AS SET OUT IN SOI	PROGRESS AS AT 30 JUNE 2011
The degree to which stakeholders understand the benefits of competition and regulation and the Commission's role	→ Stakeholder surveys and targeted engagement	→ Baseline to be established in 2010/11 → Understanding increases over time	→ During 2010/11, we developed a new external engagement strategy → The implementation of this strategy during 2011/12 will provide more robust measures that will give a more accurate indicator of success → Measures will be reported in 2011/12
The number of published media articles that result from Commission media releases and communicate key messages	→ Analysis of media clippings	→ Increases over time	→ For 2010/11, 63% of media items that resulted from Commission media releases carried the key message ¹³ → For 2009/10, 69% of media items that resulted from Commission media releases carried the key message ¹⁴

13. The measure is assessed by counting only those media articles that were prompted by Commission media releases, and checking if the key message of the media release was carried. In 2010/11, there were 137 media releases, which generated 1,139 media articles. Of these, 714 media articles carried the key message.

14. The measure is assessed by counting only those media articles that were prompted by Commission media releases, and checking if the key message of the media release was carried. In 2009/10, there were 131 media releases, which generated 1,166 media articles. Of these, 801 media articles carried the key message.

MARKETS ARE COMPETITIVE

2010/11 HIGHLIGHTS

During the year we focused on using the appropriate enforcement or educative tools to get the best outcome for specific competition problems. Across all of our investigations we considered what intervention would achieve the best possible outcome in the most cost-effective way.

We worked with individual businesses and business groups in a variety of ways to achieve increased levels of compliance. We published guidelines, and started a programme of advocacy, speaking directly to industry and trade associations about the harm of anti-competitive conduct, how to spot it, and how to stop it. In a first for Competitive Markets, we embarked on a specific programme of work in a particular sector – the non-residential construction sector – to understand the practices and dynamics of the sector and to educate builders and other sector participants (including government and non-government procurers) about the benefits of competition and the prohibitions in the Act.

Alongside this work, we have had a significant programme of litigation, in relation to those matters where we have considered that litigation is the appropriate enforcement response. The courts have imposed increasingly significant monetary penalties against parties who have breached the Commerce Act.

Across the Branch we have received a total of \$35.4 million in penalties, as well as reparation and/or compensation of \$2.9 million.

We considered how we articulate our enforcement philosophy, to ensure that we are consistent and so that stakeholders understand our approach. We have also published (in our SOI) a statement and description of our enforcement philosophy.

This year we established an intelligence unit to help prioritise our compliance and enforcement work. We have already seen some benefits from using tactical intelligence in investigations to make more informed decisions about which cases to open. The intelligence unit also started work on developing an early alert system for consumer issues and towards the end of the year extended this to competition issues more broadly. The unit is forging new and stronger relationships with intelligence teams in other domestic law enforcement agencies and international competition agencies. This work, in partnership with advocacy work and deeper understanding of the dynamics in specified sectors, has helped us move from reactive enforcement of those matters that complainants place before us to proactive consideration of where we should be addressing anti-competitive practices.

In line with our commitment to ensure we are attending to the right matters at the right time, we created a systematic governance approach to prioritisation of our investigations. This will ensure that we allocate resource into the right mix of investigation and other work such as advocacy. We will continue to develop this approach during 2011/12.

This year decisions have been made on all of the investigations across coordinated and unilateral behaviour that were in hand at the start of the year.

MARKET STRUCTURE CASES

We may choose to proactively investigate a merger if an application for clearance is not received and there is potential for that merger to result in a substantial lessening of competition. Reflecting the general low level of merger activity, the number of these investigations completed during 2010/11 was considerably lower than forecast in the SOI.

MARKET STRUCTURE CASES (TABLE 1)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Resolved without further enforcement action	1	4-5	3 ¹⁵	6 ¹⁶
Resolved through further enforcement action	0	0-1		
QUALITY				
Successful legal challenges of the Commission's processes	0	0	0	0
Orders to pay indemnity costs	0	0	0	0
COST (\$000)				
Expenditure on output class	41	105	41	227

COORDINATED BEHAVIOUR

Coordinated behaviour includes both cartel behaviour and organised or collusive behaviour which limits competition. In previous years, we prioritised cartel enforcement and as a result have a large number of longstanding investigations and cases in litigation to work on this year.

At the start of the year, we had 20 cartel cases under investigation and 10 in litigation. We aim to bring investigation matters to resolution and to be proactive in advancing matters in litigation.

A number of complex longstanding investigations were completed this year and a number of new investigations were commenced and completed within the year. The new cases have generally been smaller and more confined than in previous years. These two factors have meant that the number of coordinated behaviour investigations undertaken this year exceeded our forecast.

The profile of the coordinated behaviour cases also shifted during the year from international matters to an increased domestic focus. No investigations were commenced as a result of a leniency application during the year.

In line with our stated intention, we also increased our advocacy efforts. We talked to business groups about what collusive behaviour is, what the Commerce Act prohibits and what to do if you observe it in your line of business. During the year we made 50 presentations to a variety of associations across New Zealand.

We seek to make best use of our enforcement tools to reach good outcomes.

In some cases, such as the High Voltage Cables case, we completed our investigation and advised the companies involved that we would not be proceeding any further with the matters. Where we made decisions during the year to take No Further Action (NFA), we communicated the reasons for that decision to the parties and their advisers.

15. In 2009/10, the measure was split on the basis of the stage (screening, investigation or litigation) at which the matter was resolved rather than the nature of the resolution itself. It is useful to compare the total number of investigations completed in 2009/10 with the total completed in the 2010/11 year and so it is the total number of investigations completed which is recorded here.

16. In 2008/09, the measure was split on the basis of the stage (investigation or litigation) at which the matter was resolved rather than the nature of the resolution itself. It is useful to compare the total number of investigations completed in 2008/09 with the total completed in the 2010/11 year and so it is the total number of investigations completed which is recorded here.

In the Trade Me Tyres case, we reached an administrative settlement with two sellers on Trade Me who acknowledged having fixed prices for tyres they sold on the auction site. In line with our approach to use the most appropriate enforcement tool, we sought a settlement that included requiring the parties to get training about the requirements of the Commerce Act. We used this as an opportunity to remind buyers and sellers alike that fixing prices results in consumers paying higher prices. We took a similar warning and education approach in other investigations where we assessed this to be the best and most cost-effective outcome.

The timeliness target for coordinated behaviour cases has not been met. In line with our aim to work in partnership with competition agencies overseas, in one instance we delayed our investigation to enable an overseas agency to progress with their investigation.

Because of a decrease in work on large-scale investigations in this portfolio we have spent significantly less in this area than planned in our SOI. This reflects a decrease in the number of staff working in the Branch, and redeployment of investigators' time to work on Informed Consumer matters.

CARTEL LITIGATION

In respect of cartel cases that are in litigation, we have had a record number of settlements and the courts have this year imposed \$23 million in penalties in relation to breaches of the collusive behaviour prohibitions in the Act. Alongside the trend of increased penalties for such breaches, there are continued high levels of early admissions and agreed penalty recommendations that help to limit what would otherwise be lengthy and costly court proceedings. In these cases the courts have approved the settlement proposals.

We have received mixed results in the judgments delivered in 2010/11. Significant decisions during the year include:

- In the Air Cargo price-fixing proceedings, the first phase of trial was heard in the High Court in May and June to determine whether the Commission is able to bring proceedings under the Commerce Act in respect of air cargo inbound to New Zealand. In August 2011, the High Court decided that there is a "market in New Zealand" for inbound air cargo services and that the Commission's price-fixing allegations in regard to those cargo services could be heard in the second phase of trial, scheduled to commence in July 2012. There is no dispute as to the Court's jurisdiction to hear the Commission's allegations in relation to outbound air cargo. This case continues to be a significant investment.
- The Freight Forwarding cartel proceedings, filed in September 2010, are the next largest contributor to Major Litigation Fund expenditure. Settlements with five of the parties were reached during the year, and the penalties awarded stand at \$8.85 million as at year end.
- In Gas Insulated Switch Gear, the High Court dismissed our claims against Siemens. We have not appealed this decision.
- Our claim against Visy was narrowed by a High Court judgment, limiting the claims. All parties are appealing the decision.
- In October 2010, the Court of Appeal heard our appeal – and Air New Zealand's cross-appeal – in the judicial review proceedings brought by Air New Zealand to challenge orders made under section 100 of the Commerce Act. Our appeal was successful and has not been subsequently appealed by other parties.

COORDINATED BEHAVIOUR CASES (TABLE 2)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Resolved without further enforcement action	9	3-5	17 ¹⁷	10 ¹⁸
Resolved through further enforcement action	13	5-9		
TIMELINESS (AVERAGE)				
Percentage of routine investigations decided within 9 months	69%	90%	70%	Not measured
Percentage of complex investigations decided within 24 months	67%	90%	67%	Not measured
QUALITY				
Successful legal challenges of the Commission's processes ¹⁹	0	0	0	0
Orders to pay indemnity costs	0	0	0	0
COST (\$000)				
Expenditure on output class	1,759	2,613	3,364	3,679

Expenditure on this output was considerably lower than forecast, reflecting the change in size and scale of investigations in this output. We have redeployed resources into other priority areas across both competitive markets and informed consumers.

UNILATERAL CONDUCT

During the year we investigated a number of allegations that parties had taken advantage of a substantial degree of power in a market. A breach of the Commerce Act was not established in any of these cases. Given the cost, complexity and uncertainty associated with unilateral conduct investigations, we continue to carefully consider allegations of this nature. We will prioritise unilateral conduct investigation where clear detriment can be established.

A number of resale price maintenance complaints were also considered. Warnings and compliance advice letters were deemed the most appropriate outcome given the low level of detriment resulting from the behaviour in these matters. The volume of these investigations resulted in a higher than anticipated number of investigations resolved through further enforcement action.

In October 2010, the Supreme Court dismissed our appeal in the Telecom 0867 unilateral conduct proceeding. The case was the first opportunity for the Supreme Court to consider and determine the appropriate legal analysis under section 36 of the Commerce Act. This dismissal has brought the proceedings to an end and reaffirmed the counterfactual test in deciding when a firm has unlawfully used or taken advantage of its dominance under section 36.

In April 2011, the High Court imposed a \$12 million penalty against Telecom for breaching section 36 of the Commerce Act in the Datatails case. The penalty is the highest imposed under the Commerce Act, which was amended in 2001 to increase the fines available for anti-competitive conduct. In 2009, the High Court determined that from 2001 to 2004 Telecom unlawfully leveraged its market power to charge downstream competitors disproportionately high prices for wholesale access to its network, preventing them from offering retail end-to-end high-speed data services on a competitive basis. In the Court's penalty judgment, Justice Rodney Hansen recognised that the behaviour "would

17. In 2009/10, the measure was split on the basis of the stage (screening, investigation or litigation) at which the matter was resolved rather than the nature of the resolution itself. It is useful to compare the total number of investigations completed in 2009/10 with the total completed in the 2010/11 year and so it is the total number of investigations completed which is recorded here.

18. In 2008/09, the measure was split on the basis of the stage (investigation or litigation) at which the matter was resolved rather than the nature of the resolution itself. It is useful to compare the total number of investigations completed in 2008/09 with the total completed in the 2010/11 year and so it is the total number of investigations completed which is recorded here.

19. Not counted until all appeals have been exhausted. This is true for this measure across all outputs.

preclude price competition between Telecom and other [telecommunications service providers]” and was “injurious to competitors”. This matter is under appeal.

UNILATERAL CONDUCT CASES (TABLE 3)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Resolved without further enforcement action	5	3-6	8 ²⁰	14 ²¹
Resolved through further enforcement action	6	1-3		
TIMELINESS (AVERAGE)				
Percentage of routine investigations decided within 9 months	89%	90%	100%	Not measured
Percentage of complex investigations decided within 24 months	0% ²²	90%	100%	Not measured
QUALITY				
Successful legal challenges of the Commission’s processes	0	0	1	0
Orders to pay indemnity costs	0	0	0	0
COST (\$000)				
Expenditure on output class	328	836	1,343	2,056

Expenditure on this output was significantly lower than forecast. This reflects improved screening and ongoing management of investigations to ensure that resources are focused only on matters with clear detriment.

DETERMINATIONS

Under the Commerce Act, parties may seek formal clearance of a proposed merger or acquisition. In considering an application, our role is to determine whether the merger or acquisition has, or is likely to have, the effect of substantially lessening competition in any market. Until November 2010, we also determined applications for exemptions from the Electricity Industry Reform Act (EIR Act).

All of our clearance work is market driven and we have no discretion or ability to influence the number and scope of mergers and acquisitions that we are asked to consider.

This year we made 10 clearance decisions under the Commerce Act, less than we had anticipated but more than in the previous year. We gave clearance to all of the matters considered. One of these, the Scandinavian Tobacco and Swedish Match merger, involved the first divestment undertaking since the Divestment Remedies Guidelines were published in June 2010. We were pleased that this process proved effective. We cleared one matter, PMP Print and APN Print NZ, on the basis that APN Print was a failing firm.

We also revoked a restrictive trade practice authorisation in relation to the New Zealand Rugby Football Union salary caps.

We completed one exemption decision under the EIR Act.

20. In 2009/10, the measure was split on the basis of the stage (screening, investigation or litigation) at which the matter was resolved rather than the nature of the resolution itself. It is useful to compare the total number of investigations completed in 2009/10 with the total completed in the 2010/11 year and so it is the total number of investigations completed which is recorded here.

21. In 2008/09, the measure was split on the basis of the stage (investigation or litigation) at which the matter was resolved rather than the nature of the resolution itself. It is useful to compare the total number of investigations completed in 2008/09 with the total completed in the 2010/11 year and so it is the total number of investigations completed which is recorded here.

22. Only one complex investigation was completed during 2010/11. The timeliness measure for complex investigations was not met. This complex investigation was put on hold for a period of time while the investigation of a related matter was resolved.

During the year we received two applications for authorisation under the Commerce Act. In the Cavalier Wool authorisation, we determined that the benefits of the merger would outweigh the detriment of the creation of a monopoly wool scourer in New Zealand. This authorisation is subject to an appeal by one of the parties. The second application had not been resolved by the end of the year.

Mindful that delays to our clearance of mergers and acquisitions can be detrimental to the parties involved, and the economy, we agreed the target of ensuring that 75 per cent of our decisions were made within 50 working days. We exceeded this target by giving decisions in 90 per cent of the clearances in 50 working days or less. Our efforts to increase efficiency ensured no increase in the number of staff required to do this work, and we spent less than we budgeted for the period.

The robustness of our decision-making process is indicated by the limited number of appeals over the last five years and our success in defending any appeals that have arisen. For all determinations work, although we received fewer applications than expected, expenditure was close to budget because of the scale of the Cavalier authorisation.

DETERMINATIONS (TABLE 4)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Clearances decisions	10	15-23	8	11
Authorisations	2	0-3	0	1
EIR Act exemptions ²³	1	0-2	4	10
TIMELINESS (AVERAGE)				
Percentage of decisions on applications for clearance made within 50 working days	90%	75%	75% ²⁵	Not measured
Percentage of reasons for declined clearances published within 10 working days	N/A ²⁴	90%	75% ²⁶	Not measured
QUALITY				
Successful legal challenges of the Commission's processes	0	0	0	0
Percentage of success over 5 years in defending appeals of determinations	100%	80%	100%	N/A
COST (\$000)				
Expenditure on output class	2,726	2,926	761	1,534

23. Responsibility for the enforcement of the EIR Act moved to the Electricity Authority from 1 November 2010.

24. There were no declined clearances during 2010/11.

25. One routine clearance decision took 35 days.

26. One complex clearance decision took 65 days.

FRAMEWORK DEVELOPMENT

Over the year, we made a concerted effort to educate businesses and consumers about competition law to encourage compliance with the Commerce Act.

We produced, and published on our website, a series of fact sheets and guidelines in plain English, for example, guidelines explaining how to recognise and deter a particular practice, such as bid rigging. After publishing the bid rigging guidelines, we held a number of meetings and gave presentations to entities with significant procurement business, including government agencies. To promote understanding of our guidelines, we used new channels to get our message into the public domain. For example, we submitted a number of articles to trade associations for inclusion in their newsletters to members.

In a first for Competitive Markets, we focused on a specific industry – the non-residential Construction sector – for targeted advocacy. We commissioned an independent research company to test this sector’s awareness and understanding of the Competition provisions of the Commerce Act. The results indicated that most construction businesses are not aware of competition law and this may be affecting competition for non-residential building projects. In particular, the research indicates that a practice known as ‘cover pricing’ is occurring. Cover pricing involves builders talking with each other to come up with a believable, but not genuine, bid for a job. There are a variety of ways in which cover pricing happens and reasons for the practice, but the common feature is that a cover price is not meant to win the tender, but is meant to look like a genuine bid.

We used this knowledge to begin a targeted education campaign to help builders and those seeking tenders for construction jobs to understand competition laws, and the importance of compliance with the Commerce Act. During the year some of our planned meetings were delayed because of the September and February Christchurch earthquakes. We are continuing this work, and using our learnings, particularly to do with procurement processes, to encourage pro-competitive behaviour in the sector. In addition we told the industry that if we become aware of specific likely breaches of the Commerce Act, we will investigate fully. We will assess the impact of this work in the coming year.

In October 2010, we announced that we no longer intend to develop guidelines on section 36 of the Commerce Act, in light of the Supreme Court’s decision in the Telecom 0867 case. During the year we contributed operational feedback on aspects of the draft Cartel Criminalisation Exposure Bill. We began to update the Mergers and Acquisitions Guidelines and the Benefits and Detriment Guidelines, and expect to complete those in the coming year.

We sought to assist in the Christchurch rebuild efforts by providing operational advice on Commerce Act implications to officials, Ministers and groups such as BusinessNZ, and Christchurch Building and Infrastructure. We have contributed significant resource and expertise to the whole-of-government training project developing the National Compliance Qualifications and assessment frameworks for the compliance sector.

During the year we developed an international engagement strategy. The strategy reflects the value of maintaining good working relationships with overseas agencies, and domestic agencies such as the Ministry of Foreign Affairs and Trade (MFAT). The strategy also reflects the benefit to us of knowledge gained through membership of international organisations such as the OECD. As part of the strategy, we developed criteria for determining our involvement in, or contribution to, any international event. By applying consistent criteria, we can ensure the best use of limited resources to maximise the benefits of our international engagement. We presented at the International Cartel Network (ICN) Cartel workshop and at an Association of Southeast Asian Nations (ASEAN) capacity-building workshop in Brunei, and attended a formal meeting of the Japan Fair Trading Commission with MFAT to help progress the competition chapter of a proposed free trade agreement. We attended a small number of targeted ASEAN and OECD Pacific workshops, where we were able to contribute to the programme and build connections with competition agencies in our region. We consult with MFAT as part of our international engagement strategy.

We exceeded the quantity targets for every aspect of framework development. This is in part because previously all our advice on one piece of legislation counted as one completed output but we now count any significant piece of advice as one completed output.

International information exchange is now counted in the same way as for Informed Consumer framework outputs.

Expenditure for framework development and public information/education outputs was significantly less than forecast in the SOI. There are many reasons for this under-spend. We have a new approach to our public information work and engage with our stakeholders in different ways. We were able to deliver our planned outputs more cost effectively. In addition, some of our framework development work, such as advice to government, is dependent on external factors that often change.

FRAMEWORK DEVELOPMENT (TABLE 5)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Development or review of guidelines	6	2-4	4	2
Provision of advice to inform Government policy and law reform processes	7	2-7	2	6
International information exchange and liaison	36	7-14	12	19
QUALITY				
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
External review and consultation, as appropriate	Fully achieved	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	790	1,115	821	776

PUBLIC INFORMATION/EDUCATION (TABLE 6)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Media releases	58	50-80	35	53
Media releases - EIR Act ²⁷	0	0-4	3	4
Presentations	50	12-18	9	10
Publications	8	3-5	1	2
QUALITY				
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	317	592	187	298

27. Responsibility for the enforcement of the EIR Act moved to the Electricity Authority from 1 November 2010.

REPORTS TO MINISTERS

Expenditure on this output relates to our preliminary work in respect of milk prices. This work was not completed by year end so no actual output has been completed during 2010/11. A report to the Minister will only arise if we consider that a price control inquiry is warranted during 2011/12. Early in 2011/12, we completed our preliminary work in respect of milk prices and found that a full pricing inquiry was not warranted.

REPORTS TO MINISTERS (TABLE 7)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Reports to Ministers	0	0	0	0
QUALITY				
Internal peer review and approval processes	N/A	Fully achieved	N/A	N/A
External review and consultation, as appropriate	N/A	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	122 ²⁸	0	0	16

28. The cost arises from our internal milk review.

CONSUMERS ARE INFORMED

2010/11 HIGHLIGHTS

During the year we focused on using the appropriate mix of enforcement or educative tools to get the best outcome for specific problems faced by consumers.

We used a variety of educative resources to assist traders in key sectors to comply with their obligations under the Fair Trading Act. In preparation for the Rugby World Cup we provided information to individual businesses and business groups. The overall focus is to ensure businesses comply with the legislation and are in a position to reap the economic benefits of the event.

We produced guides aimed at consumers and these are being distributed widely, including advertorials in travel magazines and in-flight magazines. We expect to inform upwards of 20,000 travellers to New Zealand during the period about their rights under the Fair Trading and Consumer Guarantees Acts, and where they can make a complaint. The aim is for these consumers to have an enjoyable experience – while contributing to our economy – and hopefully encourage them to return to New Zealand.

We also participated in a number of consumer rights days, where there were presentations to community groups on our role in the consumer area.

We produced a number of guidelines on consumer issues such as debt collecting, special offers, competitions and jargon, exaggeration and puffery.

We worked with individual businesses and business groups in a variety of contexts to achieve increased levels of compliance. This work targeted those businesses and sectors of greatest economic significance or where compliance issues had been identified. Over the past two years in the telecommunications area, we initiated a programme with several major companies where complaints to us are reviewed in order to identify common themes and ways of improving their compliance levels. It has been pleasing to note a significant reduction in the number of telecommunications consumer complaints we have received, compared with 2009/10.

Having a dedicated intelligence unit and a systematic and governance approach to prioritisation of investigations is also improving decision making for our Informed Consumers work.

FAIR TRADING

The overall number of enforcement cases completed during the year exceeded the original estimate in Fair Trading. The high completion rate of the cases was due to the significant number completed by the low level inquiry unit and additional staff being drawn from the competition area. This deployment of staff is reflected in the budget variance, which shows that we spent \$104,392 more than set out in the SOI in this area of our work.

The timeliness measures were not met for either routine or substantial/complex cases. Given the higher than expected volume of consumer investigations completed during the year, these targets proved to be unrealistic. We have since reviewed our measures for this area and have set more meaningful targets. Some of the complex cases in particular have required more detailed investigation than had been anticipated and because parties have not wished to participate in voluntary interviews with the Commission.

There were a number of important enforcement outcomes during the year:

IMPROVING THE WELFARE OF NEW ZEALANDERS

In a significant settlement, Contact Energy agreed to refund over \$280,000 to around 25,000 customers. These were customers who, on closing their accounts with the company, had not received their prompt payment or dual fuel discounts which were due to them.

Alongside the advocacy work in the telecommunications sector, we continued to take enforcement action, where appropriate. A prosecution of Vodafone involving six discrete issues remains before the court. Also before the court are prosecutions of two companies marketing phone cards.

In two other important prosecutions we obtained significant court orders against three individual defendants, despite the fact that each had been declared bankrupt. We had put before the court evidence that, despite their personal bankruptcies, the defendants could afford to meet appropriate penalties and reparation. In one case the judge commented, "The Court has no hesitation in concluding that Mr Ashenden is one of those people whose affairs are deliberately kept complicated to the point where it is exceedingly time consuming and expensive to unravel them, but who will come up with funds (and for that matter new companies and projects) if and when it suits – but not otherwise. In those circumstances Mr Ashenden's bankruptcy in New Zealand cannot sensibly be regarded as more than a ploy, certainly not as an indication of his true worth." In total over \$170,000 in penalties and costs and over \$160,000 in reparation was ordered against the three defendants.

Reflecting the variety of enforcement tools available to us, a court injunction was obtained to stop a company, Love Springs Limited, from making false claims in relation to household water supply.

PROTECTING NEW ZEALAND'S REPUTATION

A number of enforcement outcomes were also completed which have been relevant to New Zealand's reputation as a tourist destination. These cases are of particular importance as New Zealand prepares to host increased numbers of visitors during the Rugby World Cup.

Two rental car companies and their directors were convicted of misrepresenting to tourists that they had been responsible for damage to the rental cars they had hired while in New Zealand. The rental companies were ordered to pay fines and costs totalling \$37,960 as well as \$5,750 in reparation to affected customers.

In another case, a company supplying souvenir and gift shops at airports and major tourist destinations was fined \$48,000 for packaging its products in a way likely to mislead customers into thinking the items were made in New Zealand. Four traders were also convicted and fined in relation to claims that imported royal jelly had been made in New Zealand. These products were being sold in souvenir stores.

A number of warnings were also issued which involved breaches of the country of origin provisions of the Fair Trading Act. In some cases publicity about these warnings provided advice to affected consumers about ways they could be refunded. Spazio Casa Limited was an example where we required the company to advertise an apology and instructions on how consumers could obtain a refund. These actions were reinforced by a Commission media release.

Expenditure on this output is higher than forecast, reflecting the movement of resources from outputs such as Coordinated Behaviour and Determination where activity has been lower than anticipated.

FAIR TRADING ACT CASES (TABLE 8)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Resolved without further enforcement action	108	60-80	384 ²⁹	298 ³⁰
Resolved through further enforcement action	264	200-270		
TIMELINESS (AVERAGE)				
Percentage of routine investigations decided within 45 days	76%	90%	N/A	N/A
Percentage of substantial/complex investigations decided within 9 months	59%	90%	N/A	N/A
QUALITY				
Successful legal challenges of the Commission's processes	0	0	0	0
Orders to pay indemnity costs	0	0	0	0
COST (\$000)				
Expenditure on output class	3,240	3,135	3,876	3,561

PRODUCT SAFETY AND INFORMATION STANDARDS

The overall number of enforcement cases completed during the year exceeded the original estimate in product safety and information standards. The high completion rate of the cases was a result of the significant number completed by the low level inquiry unit. Although the number of cases increased, the actual spend is approximately \$30,000 less than budget because of efficiencies gained in handling these types of investigations.

The timeliness measures were not met for either routine or substantial/complex cases. Given the higher than expected volume of consumer investigations completed during the year, these targets proved to be unrealistic. We have since reviewed our measures for this area and have set more meaningful targets. In addition, some of the investigations have taken longer because we lack formal power to interview traders in the Fair Trading area.

A number of traders offering vehicles for sale on Trade Me failed to display Consumer Information Notices as required by legislation. Voluntary compliance was obtained from these traders without the need to take prosecution. We completed one prosecution during the year, which resulted in Sunrise Motor Group Limited and the director of the company, Surya Kumar, being convicted and fined a total of \$26,100 for placing false information on Consumer Information Notices relating to motor vehicles sold or offered for sale. This sent a clear message to those in the motor trade that individuals are also accountable for their actions.

29. In 2009/10, the measure was split on the basis of the stage (investigation or litigation) at which the matter was resolved rather than the nature of the resolution itself. It is useful to compare the total number of investigations completed in 2009/10 with the total completed in the 2010/11 year and so it is the total number of investigations completed which is recorded here.

30. In 2008/09, the measure was split on the basis of the stage (investigation or litigation) at which the matter was resolved rather than the nature of the resolution itself. It is useful to compare the total number of investigations completed in 2008/09 with the total completed in the 2010/11 year and so it is the total number of investigations completed which is recorded here.

PRODUCT SAFETY AND INFORMATION STANDARDS CASES (TABLE 9)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Resolved without further enforcement action	13	2-8	50 ³¹	35 ³²
Resolved through further enforcement action	63	25-35		
TIMELINESS (AVERAGE)				
Percentage of routine investigations decided within 45 days	89%	90%	N/A	N/A
Percentage of substantial/complex investigations decided within 9 months	67%	90%	N/A	N/A
QUALITY				
Successful legal challenges of the Commission's processes	0	0	0	0
Orders to pay indemnity costs	0	0	0	0
COST (\$'000)				
Expenditure on output class	250	279	149	82

CCCF ACT

During the year we used a mix of enforcement tools to achieve the best outcomes for both consumers and businesses.

EFFICIENT ENFORCEMENT

Since 2005, we have generated CCCF Act fines, refunds and statutory damages of \$10 million, with \$9.77 million being refunded to debtors. The CCCF Act funding for this period was approximately \$7.2 million (approximately \$1.2 million per year).

We also sought to influence behaviour in the credit industry with more educative methods:

- An investigation into whether gym contracts payable by instalment are consumer credit contracts concluded that they are. We are finalising compliance advice to a number of the gyms who cooperated with our investigation as well as providing general advice to the wider gym industry.
- Given the uncertainty around the interpretation of the credit fee provisions, we have provided compliance advice to credit card issuers regarding the following points:
 - that overseas transaction fees are credit fees and therefore need to be reasonable; and
 - that over limit fees applied when card holders exceed their credit limit must also be reasonable and suggested that their practice be amended so that card holders can 'opt in' to exceed their card credit limit.

In June, we commenced a project addressing non-compliance among lower-tier money lenders which causes harm to vulnerable debtors. It is intended that this project will join up a number of government agencies to take a coordinated approach to enforcement, as well as a second stage of information and education. A market intelligence gathering phase, involving our new intelligence unit, will enable enforcement action to be directed in the most effective manner – with the likelihood of a pilot project in a particular area or region. It is anticipated that the enforcement work from this project will form the cornerstone of our CCCF Act work for the next 12 to 18 months.

31. In 2009/10, the measure was split on the basis of the stage (investigation or litigation) at which the matter was resolved rather than the nature of the resolution itself. It is useful to compare the total number of investigations completed in 2009/10 with the total completed in the 2010/11 year and so it is the total number of investigations completed which is recorded here.

32. In 2008/09, the measure was split on the basis of the stage (investigation or litigation) at which the matter was resolved rather than the nature of the resolution itself. It is useful to compare the total number of investigations completed in 2008/09 with the total completed in the 2010/11 year and so it is the total number of investigations completed which is recorded here.

PUTTING THINGS RIGHT

We met the target for CCCF Act enforcement cases completed with enforcement action. The number of cases requiring no further action was slightly below target. The CCCF Act timeliness measure for routine investigations is below target at 74 per cent. This is a reflection of some of the complexity involved in resolving CCCF Act matters – a matter first considered as routine may not be on further analysis. Also, given the lower volume of cases, missing the timeliness target on a handful of cases can cause a bigger impact against the overall target. Of note, the average for those investigations that met the timeliness target was 37 days – well below the 90-day target. With regard to the substantial/complex investigations, we were well below target at 42 per cent. Of the 12 substantial/complex investigations two were investigations into the reasonableness of certain credit card fees. These involved complex legal issues and at least six issuers. The timeliness of substantial/complex investigations is recognised as an area for improvement.

This period we achieved refunds of \$1.1 million for over 1,000 debtors in three investigations (break and establishment fees). This means that in the last two years our investigations into break fees charged by banks and other lenders have resulted in approximately \$1.4 million being returned to consumers in settlements and ex gratia payments, all achieved without litigation.

In litigation, Budget Loans Limited pleaded guilty to 34 charges of making misleading representations that it was entitled to recover certain interest and fees from its debtors. In addition to being fined \$30,750, Budget Loans agreed to reverse or refund approximately \$500,000 of overcharged interest and fees. During the investigation Budget Loans Limited also voluntarily reversed or refunded an additional \$571,000 to its debtors in relation to credit fees that were not the subject of the charges.

CCCF ACT CASES (TABLE 10)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Resolved without further enforcement action	6	8-10	46 ³³	43 ³⁴
Resolved through further enforcement action	33	23-37		
TIMELINESS (AVERAGE)				
Percentage of routine investigations decided within 90 days	74%	90%	N/A	N/A
Percentage of substantial/complex investigations decided within 9 months	42%	90%	N/A	N/A
QUALITY				
Successful legal challenges of the Commission's processes	0	0	0	0
Orders to pay indemnity costs	0	0	0	0
COST (\$000)				
Expenditure on output class	1,263	1,254	1,141	963

33. In 2009/10, the measure was split on the basis of the stage (investigation or litigation) at which the matter was resolved rather than the nature of the resolution itself. It is useful to compare the total number of investigations completed in 2009/10 with the total completed in the 2010/11 year and so it is the total number of investigations completed which is recorded here.

34. In 2008/09, the measure was split on the basis of the stage (investigation or litigation) at which the matter was resolved rather than the nature of the resolution itself. It is useful to compare the total number of investigations completed in 2008/09 with the total completed in the 2010/11 year and so it is the total number of investigations completed which is recorded here.

FRAMEWORK DEVELOPMENT AND PUBLIC INFORMATION/EDUCATION - FAIR TRADING ACT AND CCCF ACT

The initial quantity targets for framework development for the Fair Trading Act and CCCF Act were based on previous years' estimates of what was expected to be completed. During 2010/11, we changed the way in which we count these outputs to more appropriately include smaller pieces of advice to government and international information exchanges. The development or review of guidelines, industry codes, or frameworks under both the Fair Trading and CCCF Acts is either self generated (when being completed by us), or reactive (if they are supplied to us from external sources for review).

In Fair Trading, a number of the planned internally-generated guides were completed earlier than expected and included in 2009/10 results.

We have not received the expected level of referrals to us during the year, so the target in the 2011-2014 SOI has been reduced to a more likely forecast result.

In the area of provision of advice to inform Government policy and law reform processes, we supplied advice relating to proposed reforms to the Fair Trading Act and the review of the CCCF Act to ministry officials. We also ensured Ministers have been informed of significant matters and issues.

During the period, we finalised our guidelines on the disclosure of product bundling in telecommunications. The guidelines have been well received by industry as providing clear guidance in the difficult area of the advertising of product bundles. Industry representatives have indicated that they have found the guidelines helpful and have expressed a wish that we actively enforce them. Two complaints received about possible breaches of the guidelines were promptly investigated and resolved.

We continue to have a high level of engagement in the international arena, in particular through the International Consumer Protection Enforcement Network (ICPEN). We co-chair the ICPEN Intelligence Working Group, and have taken a leadership role in organising the international conference this year, which has further enhanced our reputation. This is reflected in the high number of contacts made. Our international engagement work enables us to contribute to, and learn from, international best practice and share information about investigations, issues and emerging trends.

We met or exceeded all our framework development output targets for Fair Trading Act and CCCF Act outputs. There are variances in expenditure for these outputs compared with the SOI forecasts. This is because decisions were made during the year to maximise our impact by taking a different mix of projects across these outputs. Overall, however, the combined expenditure for framework development and public information, for both the Fair Trading Act and CCCF Act, is broadly within the SOI budget.

FRAMEWORK DEVELOPMENT – FAIR TRADING ACT (TABLE 11)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Development or review of guidelines, industry codes or frameworks	13	10-15	4	13
Provision of advice to inform Government policy and law reform processes	25	8-12	13	14
International information exchange and liaison	80	30-40	72	19
QUALITY				
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
External review and consultation, as appropriate	Fully achieved	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	357	209	175	182

FRAMEWORK DEVELOPMENT – CCCF ACT (TABLE 12)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Development or review of guidelines, industry codes or frameworks	4	1-3	1	13
Provision of advice to inform Government policy and law reform processes	17	1-3	2	14
International information exchange and liaison	2	1-3	3	19
QUALITY				
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
External review and consultation, as appropriate	Fully achieved	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	216	105	254	226

PUBLIC INFORMATION/EDUCATION – FAIR TRADING (TABLE 13)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Media releases	25	35-40	36	27
Presentations	29	10-15	4	7
Publications	9	5-10	12	2
QUALITY				
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	319	418	118	391

PUBLIC INFORMATION/EDUCATION – CCCF (TABLE 14)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Media releases	4	1-3	5	5
Presentations	5	1-3	4	1
Publications	0	1-3	8	1
QUALITY				
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	85	174	46	40

VOTE COMMERCE – ENFORCEMENT OF GENERAL MARKET REGULATION (TABLE 15)**Financial results for the year ended 30 June 2011**

	ACTUAL 2010/11 \$000	SOI 2010/13 \$000	ACTUAL 2009/10 \$000	ACTUAL 2008/09 \$000
Total revenue	17,502	16,995	15,907	15,033
Total expenditure	14,287	16,261	12,276	14,031
SURPLUS/(DEFICIT)	3,215	734	3,631	1,002

Total expenditure was less than forecast in the SOI. This is largely a consequence of reduced headcount during the year and preceding years across the Enforcement Branch. This reduction has been made through natural attrition and targeted recruitment. We have been able to operate effectively on this reduced headcount because of the unusually low levels of activity in the Coordinated Conduct and Determinations outputs.

REGULATION IS TARGETED AND EFFECTIVE

DAIRY

We have an enforcement and adjudication role in relation to subpart 5 of the Dairy Industry Restructuring Act 2001, the key purpose of which is to promote the efficient operation of dairy markets in New Zealand. The bulk of our work in this area has consisted of determining disputes between Fonterra and independent processors.

Two separate applications to determine the level of compensation payable to The Grate Kiwi Cheese Company Limited and Kaimai Cheese Company Limited (as a result of the June 2009 determination that Fonterra was in breach of its supply obligations under the Dairy Industry Restructuring (Raw Milk) Regulations 2001) were being considered through the year. However, the Court of Appeal issued its decision on the substantive matter finding that Fonterra had not breached the Raw Milk Regulations. As a consequence there was no need for us to determine any compensation. The timeliness measure, which relates to the determination of the compensation issue for the two parties mentioned above, was not met. There were a number of issues that resulted in delays in progressing this determination.

ENFORCEMENT INVESTIGATIONS (TABLE 16)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Enforcement cases resolved without further enforcement action	1	0-2	1 ³⁵	0 ³⁶
Enforcement cases resolved through further enforcement action	0	0-2		
QUALITY				
Successful legal challenges of the Commission's processes	0	0	0	0
Orders to pay indemnity costs	0	0	0	0
COST (\$000)				
Expenditure on output class	19	91	7	13

DETERMINATIONS (TABLE 17)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Determinations	2	0-2	0	2
TIMELINESS (AVERAGE)				
Percentage of determinations completed within 9 months	0%	90%	N/A	10.9 months
QUALITY				
Successful legal challenges of the Commission's processes	0	0	0	0
COST (\$000)				
Expenditure on output class	402	453	469	468

35. In 2009/10, we measured total enforcement outcomes and did not separate those that required further enforcement action from those that did not.

36. In 2008/09, we measured total enforcement outcomes and did not separate those that required further enforcement action from those that did not.

FRAMEWORK DEVELOPMENT (TABLE 18)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Framework development	0	0-2	0	1
QUALITY				
Internal peer review and approval processes	N/A	Fully achieved	N/A	N/A
External review and consultation, as appropriate	N/A	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	16	100	1	0

PUBLIC INFORMATION/EDUCATION (TABLE 19)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Media releases	0	0-4	0	5
QUALITY				
Internal peer review and approval processes	N/A	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	0	45	7	24

VOTE COMMERCE – ENFORCEMENT OF DAIRY REGULATION (TABLE 20)**Financial results for the year ended 30 June 2011**

	ACTUAL 2010/11 \$000	SOI 2010/13 \$000	ACTUAL 2009/10 \$000	ACTUAL 2008/09 \$000
Total revenue	905	905	905	907
Total expenditure	437	688	484	505
SURPLUS/(DEFICIT)	468	217	421	402

The variations between what was intended in the SOI and the actual result for 2010/11 reflect the fact that our dairy work is not constant and can vary significantly each year. Our forecasts were made on the basis that at least one or two moderately complex dairy investigations will commence during the year. This did not occur during 2010/11. Dairy expenditure does not include our costs that relate to the review of milk markets. These costs are included in the Reports to Ministers output. The Markets are Competitive determination work variance reflects the fact that the compensation determination was not ultimately required. Because of the review of the DIR Act and Raw Milk Regulations, the planned review of our guidelines was not progressed and the result is lower than forecast.

TELECOMMUNICATIONS

2010/11 HIGHLIGHTS

In 2010/11, we placed a greater emphasis on monitoring telecommunications markets to promote competition in those markets for the long-term benefit of end-users.

Significant outputs included:

- completion of a standard terms determination on the price and non-price terms for mobile termination services in response to competition problems in the mobile markets;
- advice to the Ministry of Economic Development (MED) and submissions to the parliamentary select committee on how to establish effective regulatory arrangements for Ultra-Fast Broadband; and
- a report to the Minister recommending significant deregulation of some retail services offered through Telecom's fixed network.

DETERMINATIONS

We completed two determinations (mobile termination access services (MTAS) and number portability), and achieved these well within the anticipated timeframes. This result was achieved because we gave high priority to the delivery of the MTAS determination. Additional work required on the MTAS determination resulted in an increase in expenditure in this output.

MOBILE TERMINATION ACCESS SERVICES (MTAS)

The MTAS Standard Terms Determination (STD) addresses significant competition problems that we had been monitoring in the mobile market, particularly the difference between the on-net/off-net prices. The STD sets price and non-price terms for mobile termination services and will go a long way to resolving these competition problems. We are monitoring the effect of the MTAS STD on cross-network traffic to determine whether further intervention is required.

NUMBER PORTABILITY

We extended our number portability determination for a further six years in December 2010. This determination enables customers to continue to switch service providers while maintaining their existing telephone numbers within the same Local Calling Area.

COMPETITION TESTS

We completed two reviews and exceeded timeliness targets for these. The two reviews were the competition tests for the unbundled bitstream access backhaul and unbundled copper local loop backhaul services. We found that more UCLL backhaul links were competitive. However, competition had not developed for UBA backhaul services. We are still assessing competition for UBA services.

ACCESS DETERMINATIONS (TABLE 21)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Determinations	2	0-2	13 ³⁷	6
Reviews	2	0-2	N/A	N/A
Clarifications	3	0-5	N/A	N/A
TIMELINESS (AVERAGE)				
Determinations completed within an average of	4.9 months	10 months	4.3 months	16.7 months
Reviews completed within an average of	8.9 months	10 months	N/A	N/A
Clarifications completed within an average of	2.7 months	2 months	N/A	N/A
QUALITY				
DETERMINATIONS				
Successful legal challenges of the Commission's processes	0	0	0	0
REVIEWS				
Successful legal challenges of the Commission's processes	0	0	N/A	N/A
CLARIFICATIONS				
Successful legal challenges of the Commission's processes	0	0	0	0
COST (\$000)				
Expenditure on output class	1,292	856	615	1,504

TELECOMMUNICATIONS SERVICE OBLIGATIONS (TSO) COST ALLOCATION

We released our final decision on TSO cost allocation for the 2009/10 financial year in December 2010. We also completed our TSO cost calculation for the Telecommunications Relay Service in December 2010.

We exceeded our timeliness targets for TSO determinations (average completion of 4.1 months against a target of 12 months). This was primarily because we put on hold the completion of the more complex TSO cost calculations for the local residential telephone service, pending the outcome of litigation in the Supreme Court.

TELECOMMUNICATIONS SERVICE OBLIGATIONS COST ALLOCATION (TABLE 22)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
TSO cost determinations	2	2-3	6	6
TIMELINESS (AVERAGE)				
TSO cost determinations completed within an average of 12 months from the end of the TSO period	4.1 months	12 months	5.7 months	18.5 months
QUALITY				
Successful legal challenges of the Commission's processes	0	0	0	0
COST (\$000)				
Expenditure on output class	228	273	244	466

37. In 2008/09 and 2009/10, the Determinations output also incorporated any reviews and clarifications.

MONITORING AND REPORTING

We completed the annual Telecommunications Monitoring Report in April 2011. We also completed our report on broadband quality, and a benchmarking report on retail prices for fixed line and mobile services. We were able to produce these reports at a significantly reduced cost compared with previous years and 18 per cent less than budget as a result of internal efficiency gains.

MONITORING AND REPORTING (TABLE 23)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Monitoring and reporting	3	4	5	8
QUALITY				
Performance impact on telecommunications markets shows increased competition year on year ³⁸	N/A	N/A	N/A	N/A
Significant errors in reports	0	0	N/A	N/A
COST (\$000)				
Expenditure on output class	1,036	1,270	1,636	2,055

ENFORCEMENT CASES

In September 2010, we reached a \$1.6 million settlement with Telecom over its loyalty offer. Our investigation concluded that Telecom's loyalty offers were likely to constitute a breach of Telecom's Separation Undertakings. The settlement meant that the complainants, Vodafone and Orcon, were compensated, and expensive and lengthy litigation was avoided.

ENFORCEMENT CASES CLOSED (TABLE 24)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Enforcement cases closed	1	0-2	0	1
QUALITY				
Successful legal challenges of the Commission's processes	0	0	0	0
Orders to pay indemnity costs received for any enforcement action	0	0	0	0
COST (\$000)				
Expenditure on output class	307	390	137	72

38. This measure was reviewed and discontinued in 2010/11, as it was agreed that it was more suitable as an impact measure.

INDUSTRY CODES

No industry codes were submitted for approval during this period.

INDUSTRY CODES (TABLE 25)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Industry codes approved	0	0-1	0	0
QUALITY				
Internal peer review and approval processes	N/A	Fully achieved	N/A	N/A
External review and consultation, as appropriate	N/A	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	8 ³⁹	390	2	2

REPORTS TO THE MINISTER

RESALE SERVICES

We completed one major report to the Minister under this output (the final report on resale services). This report took three months longer than anticipated because of the complexity of this matter. The report to the Minister recommended substantial deregulation of some retail services offered through Telecom's fixed network. The Minister accepted this recommendation.

REPORTS TO THE MINISTER (TABLE 26)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Reports to the Minister	1	1-2	2	0
TIMELINESS (AVERAGE)				
Reports to the Minister completed within an average of 12 months from the commencement of the investigation	14.9 months	12 months	8.4 months	N/A
QUALITY				
Significant errors in reports	0	0	N/A	N/A
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
External review and consultation, as appropriate	Fully achieved	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	482	779	1,437	726

39. Expenditure in this output relates to attendance at relevant committees and overhead costs.

FRAMEWORK DEVELOPMENT

ULTRA-FAST BROADBAND (UFB)

The Government's UFB policy development has been a high priority for us. When requested, we provided advice and analysis to MED covering a range of regulatory issues including the implications of structural separation for Telecom and approaches to pricing principles. We also made submissions to the select committee on amendments to the Telecommunications Act to establish an effective regulatory regime for the UFB and Rural Broadband initiatives.

The essential elements for a competitive market remain in place, and we will be able to continue with our role of promoting competition for the long-term benefit of end-users in the new regulatory environment.

DEMAND-SIDE STUDY

On 31 March 2011, we initiated a demand-side study into identifying issues that might affect the uptake of high-speed broadband in New Zealand.

FRAMEWORK DEVELOPMENT (TABLE 27)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Advice to officials on regulation matters	8	2-5	N/A	N/A
Development or review of guidelines, industry codes or frameworks	5	1-3	0	N/A
International information exchange and liaison	14	5-10	5	3
QUALITY				
ADVICE TO OFFICIALS ON REGULATION MATTERS				
Feedback received from key stakeholders	Above average	Above average	Positive	N/A
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
External review and consultation, as appropriate	Fully achieved	Fully achieved	N/A	N/A
DEVELOPMENT OR REVIEW OF GUIDELINES, INDUSTRY CODES OR FRAMEWORKS				
Feedback received from key stakeholders	Above average	Above average	N/A	N/A
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
External review and consultation, as appropriate	Fully achieved	Fully achieved	N/A	N/A
INTERNATIONAL INFORMATION EXCHANGE AND LIAISON				
Feedback received from key stakeholders	Above average	Above average	N/A	N/A
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
External review and consultation, as appropriate	Fully achieved	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	1,688	1,947	503	332

PUBLIC INFORMATION/EDUCATION

We continued a very active programme of stakeholder engagement (including 37 presentations) to improve understanding of the benefits of targeted regulation, and to ensure that we are fully aware of developments in telecommunications markets. We also continued a programme of international information exchange.

PUBLIC INFORMATION/EDUCATION (TABLE 28)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Media releases	33	10-20	37	42
Presentations (including 20-30 stakeholder engagement meetings, 2 consumer panels)	37	25-40	29	52
QUALITY				
MEDIA RELEASES				
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
PRESENTATIONS (including 20-30 stakeholder engagement meetings, 2 consumer panels)				
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class - Telecommunications	78	195	176	132

INFORMATION DISCLOSURE

We published our annual accounting separation summary and analysis report for 2009/10 and draft requirements for 2010/11. We increased the efficiency of our delivery in this area, resulting in a 26 per cent reduction in cost compared with budget.

INFORMATION DISCLOSURE (TABLE 29)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Information disclosure reports	2	1-2	2	1
QUALITY				
Successful legal challenges of the Commission's processes	0	0	0	0
COST (\$000)				
Expenditure on output class	960	1,300	1,808	1,845

VOTE COMMUNICATIONS – ENFORCEMENT OF TELECOMMUNICATIONS SECTOR REGULATION (TABLE 30)**Financial results for the year ended 30 June 2011**

	ACTUAL 2010/11 \$000	SOI 2010/13 \$000	ACTUAL 2009/10 \$000	ACTUAL 2008/09 \$000
Total revenue	7,814	7,790	7,790	7,820
Total expenditure	6,079	7,400	6,558	7,134
SURPLUS/(DEFICIT)	1,735	390	1,232	686

We continued to improve our efficiency in the delivery of telecommunications regulation. This resulted in a 7 per cent reduction in expenditure in this output compared with 2009/10. This efficiency was achieved through a significant reduction in costs associated with information disclosure and monitoring and reporting outputs. These reductions were offset partially by the higher than anticipated costs of access determinations (particularly the Mobile Termination Access Services Determination).

INPUT METHODOLOGIES, ELECTRICITY, GAS AND AIRPORTS

2010/11 HIGHLIGHTS

Major progress was made in delivering the Part 4 work programme and we were able to meet the tight statutory deadlines.

- Input methodologies have been determined for electricity lines services, gas pipeline services and specified airport services.
- The individual price-quality path has been set for Transpower. This ensures that appropriate regulation is in place for a business that anticipates capital expenditure of up to \$3 billion over the next five years.
- Information disclosure requirements have been determined for specified airport services. This will promote improved understanding of the performance of suppliers of airport services.
- We have made significant progress in implementing default price-quality paths for gas pipeline services, resetting starting prices for electricity distribution services, and setting information disclosure requirements for electricity lines services and gas pipeline services.

INPUT METHODOLOGIES

We achieved a major milestone with the release of five input methodology determinations and related reasons papers on 23 December 2010. This significant project was completed within tight statutory timeframes. Input methodologies set up-front rules and process for regulation, particularly those related to the setting of prices.

Twelve parties had filed appeals of our input methodologies in the High Court by 17 February 2011 (i.e. the legislative timeframe for bringing such appeals). One party has since abandoned its appeal. Proceedings seeking judicial review and a declaratory judgment – focusing on the Commission's process in determining input methodologies – have also been filed since February. Neither the appeals nor the proceedings had been heard by the High Court as at 30 June 2011.

We are not surprised that regulated parties and consumer groups have sought merits reviews of the input methodology determinations as this was anticipated by the legislation. We have established an external legal team and will work with the Court to assist it in its decision making. We have decided that these applications should be treated as major litigation so they will be funded from the Major Litigation Fund.

During the year we took on the new legislative assignment for developing a Transpower capital expenditure input methodology. To this end, we released a discussion paper in December 2010 and submissions on the discussion paper were the focus of a workshop held in April 2011. This input methodology must be completed before 1 February 2012.

DETERMINATIONS (TABLE 31)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Airports	1	1	0	N/A
Gas distribution and transmission	2	2	0	N/A
Electricity distribution and transmission	2	2	0	N/A
Transmission capital expenditure ⁴⁰	0	N/A	N/A	N/A
TIMELINESS				
Airports completed by	22/12/2010	30/12/2010		N/A
Gas distribution and transmission completed by	22/12/2010	30/12/2010	N/A - revised to 31/12/2010	N/A
Electricity distribution and transmission completed by	22/12/2010	30/12/2010		N/A
Transmission capital expenditure completed by	N/A	N/A	N/A	N/A
QUALITY				
AIRPORTS				
Compliance with legislative requirements for consultation	100%	100%	100%	N/A
Successful legal challenges of the Commission's processes	0	0	0	0
GAS DISTRIBUTION AND TRANSMISSION				
Compliance with legislative requirements for consultation	100%	100%	100%	N/A
Successful legal challenges of the Commission's processes	0	0	0	0
ELECTRICITY DISTRIBUTION AND TRANSMISSION				
Compliance with legislative requirements for consultation	100%	100%	100%	N/A
Successful legal challenges of the Commission's processes	0	0	0	0
TRANSMISSION CAPITAL EXPENDITURE				
Compliance with legislative requirements for consultation	100%	N/A	N/A	N/A
Successful legal challenges of the Commission's processes	0	N/A	N/A	N/A
COST (\$000)				
Expenditure on Airports, Gas and Electricity output classes	2,666	2,586	4,910	0
Expenditure on Transmission Capital Expenditure output class (new)	576	0	N/A	N/A
Expenditure on output class (TOTAL)	3,242	2,586	4,910	0

40. This is a new function for us introduced during the 2010/11 financial year following the passage of the Electricity Industry Act 2010.

PUBLIC INFORMATION/EDUCATION (TABLE 32)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Media releases	5	2-6	4	3
Presentations	3	3	3	3
QUALITY				
MEDIA RELEASES				
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
PRESENTATIONS				
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	0 ⁴¹	26	0	0

VOTE COMMERCE (TABLE 33)

	ACTUAL 2010/11 \$000	SOI 2010/13 \$000	ACTUAL 2009/10 \$000	ACTUAL 2008/09 \$000
Total revenue	3,443	2,612	5,224	3,400
Total expenditure	3,242	2,612	4,910	3,075
SURPLUS/(DEFICIT)	201	0	314	325

There was a 33 per cent reduction in expenditure in this output compared with 2009/10. This reduction reflects the completion of the input methodologies project by December 2010 (and is reflected in the reduction in revenue). However, additional baseline funding was provided for the new function (i.e. the setting of a capital expenditure input methodology for Transpower) to cover the expenditure incurred.

41. Expenditure in this output was primarily recorded against the Determinations output.

ELECTRICITY

ELECTRICITY DISTRIBUTION

PRICE-QUALITY PATH DETERMINATIONS

On 30 November 2010, we published an amendment to the 2010-2015 Electricity Distribution Default Price Paths (DPP). We have also made significant process in resetting the starting prices for the electricity distribution default price-quality paths. The resetting of the starting prices will take into account the effect of the input methodologies set in December 2010. Consultation papers in relation to the starting price adjustments for non-exempt electricity distribution businesses were published in August 2010 and April 2011. Requests for information needed to determine starting prices were issued in March 2011 and follow-up requests issued in June 2011. We issued draft decisions in July 2011 and are on track to make a final determination by the statutory deadline of 20 October 2011.

ELECTRICITY DISTRIBUTION PRICE-QUALITY PATH DETERMINATIONS (INCLUDING AMENDMENTS) (TABLE 34)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Price-quality path determinations (including amendments)	1	0-1	1	N/A
TIMELINESS (AVERAGE)				
Price-quality path determinations completed by	30/11/2010	30/06/2011	30/11/2009	N/A
QUALITY				
Compliance with legislative requirements for consultation	100%	100%	100%	N/A
Successful legal challenges of the Commission's processes	0	0	N/A	N/A
COST (\$000)				
Expenditure on output class	1,006	1,235	1,089	1,143

ELECTRICITY DISTRIBUTION COMPLIANCE (INCLUDING CONSUMER-OWNED STATUS)

We completed our compliance assessments for all regulated electricity distribution businesses and decided not to take any further action on the price path breaches. Our analysis suggested that in most instances above-normal returns would not have been earned had the input methodologies applied during the 2009/10 assessment period. We also indicated that if price levels are found to be too high under the default price-quality path applying from 1 April 2010 these prices could be addressed through the starting price adjustment process due to be completed in 2011/12.

A new statutory declaration on consumer-owned status and accompanying explanation was published on our website to reflect recent legislative changes to the Commerce Act.

ELECTRICITY DISTRIBUTION COMPLIANCE (INCLUDING CONSUMER-OWNED STATUS) (TABLE 35)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Compliance (including consumer-owned status)	29	20-29	30	66
TIMELINESS				
Compliance (including consumer-owned status) completed by	29/06/2011	30/06/2011	16/02/2010	N/A
QUALITY				
Successful legal challenges of the Commission's processes	0	0	0	N/A
COST (\$000)				
Expenditure on output class	149	126	282	523

INFORMATION DISCLOSURE

We have made good progress in setting new information disclosure requirements for electricity lines services under Part 4 of the Commerce Act. We expect to issue new requirements by December 2011. A process and issues paper on information disclosure for electricity lines and gas pipeline services was released for consultation in February 2011. An updated process that took account of submissions was issued in April 2011.

A series of workshops was held over May and June with stakeholders to discuss various aspects of asset management plans, pricing, and financial disclosures. The feedback from these workshops will assist us in making our draft decisions, which are scheduled for release in September 2011.

ELECTRICITY DISTRIBUTION INFORMATION DISCLOSURE DETERMINATIONS AND SUMMARY AND ANALYSIS (TABLE 36)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Information disclosure determinations	0	0 ⁴²	0	1
Information disclosure - summary and analysis	1	1-2	2	N/A
TIMELINESS				
Information disclosure determinations completed by	N/A	31/12/2011	N/A	N/A
Information disclosure - summary and analysis completed by	18/02/2011	30/06/2011	11/11/2009 and 22/12/2009	N/A
QUALITY				
Compliance with legislative requirements for consultation	100%	100%	100%	N/A
Successful legal challenges of the Commission's processes	0	0	N/A	N/A
COST (\$000)				
Expenditure on output class	489	404	472	780

42. There was an error in the 2010-2013 SOI – the deadline for the information disclosure determination is 31/12/2011, so this should be 0 for 2010/11.

ELECTRICITY DISTRIBUTION FRAMEWORK DEVELOPMENT (ADVICE TO OFFICIALS) (TABLE 37)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Framework development (advice to officials)	0	0-2	N/A	N/A
QUALITY				
Internal peer review process	N/A	Fully achieved	N/A	N/A
External review and consultation, as appropriate	N/A	Fully achieved	N/A	N/A
Internal approval process	N/A	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	0	25	884	1,014

TRANSPOWER

We achieved a major milestone in implementing Part 4 regulation with the publication of the Individual Price-Quality Path for Transpower in December 2010. In June 2011, we released our draft decision setting Transpower's operational and capital expenditure allowances from 1 July 2012 to 30 June 2015. Final decisions will be made in August 2011.

ELECTRICITY TRANSMISSION (TRANSPOWER) PRICE-QUALITY PATH DETERMINATIONS (TABLE 38)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Price-quality path determinations	1	1	N/A	N/A
→ Consultation papers	2	N/A	N/A	N/A
→ Workshop	0	N/A	N/A	N/A
TIMELINESS (AVERAGE)				
Price-quality paths – completed by	22/12/2010	30/06/2011	N/A	N/A
QUALITY				
Compliance with legislative requirements for consultation	100%	100%	N/A	N/A
Successful legal challenges of the Commission's processes	0	0	N/A	N/A
COST (\$000)				
Expenditure on output class	1,011	792	N/A	N/A

ELECTRICITY TRANSMISSION (TRANSPOWER) COMPLIANCE ASSESSMENT (ADMINISTRATIVE SETTLEMENT)

We completed our assessment of Transpower's 2009 and 2010 compliance statements in November 2010. No further action was required.

ELECTRICITY TRANSMISSION (TRANSPOWER) COMPLIANCE ASSESSMENT (ADMINISTRATIVE SETTLEMENT) (TABLE 39)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Compliance assessment (Administrative settlement)	2	1	30	66
TIMELINESS				
Compliance assessment (Administrative settlement) completed by	30/11/2010	30/06/2011	16/02/2010	N/A
QUALITY				
Compliance with legislative requirements for consultation	100%	100%	N/A	N/A
Successful legal challenges of the Commission's processes	0	0	0	N/A
COST (\$000)				
Expenditure on output class	65	142	282	523

ELECTRICITY TRANSMISSION (TRANSPOWER) INFORMATION DISCLOSURE

The focus of work in this output was on the development of information disclosure determinations for Transpower, which is due 30 December 2012.

ELECTRICITY TRANSMISSION (TRANSPOWER) INFORMATION DISCLOSURE – SUMMARY AND ANALYSIS (TABLE 40)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Information disclosure - summary and analysis ⁴³	0	1	2	N/A
TIMELINESS				
Information disclosure - summary and analysis completed by	N/A	30/06/2011 ⁴⁴	11/11/2009 and 22/12/2009	N/A
QUALITY				
Successful legal challenges of the Commission's processes	0	0	N/A	N/A
COST (\$000)				
Expenditure on output class	174 ⁴⁵	404	472	780

43. Electricity Distribution Information Disclosure also includes Electricity Transmission Information Disclosure.

44. The development of information disclosure determinations for Transpower is due on 30 December 2012.

45. The expenditure on this output was in respect of progressing a new Transpower Information Disclosure. It was not related to summary and analysis.

ELECTRICITY TRANSMISSION (TRANSPower) FRAMEWORK DEVELOPMENT (ADVICE TO OFFICIALS)

The focus of the work in this area was on providing advice to officials on regulatory aspects of the Electricity Industry Bill. The focus of our advice was on the implications for us of proposed changes to Part 4 of the Commerce Act. In addition, work on this output involved transitional implementation work to take on the new functions once the Electricity Industry Act 2010 was passed into law.

**ELECTRICITY TRANSMISSION (TRANSPower) FRAMEWORK DEVELOPMENT (ADVICE TO OFFICIALS)
(TABLE 41)**

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Framework development (advice to officials)	1	0-3	N/A	N/A
QUALITY				
Internal peer review process	Fully achieved	Fully achieved	N/A	N/A
External review and consultation, as appropriate	Fully achieved	Fully achieved	N/A	N/A
Internal approval process	Fully achieved	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	127 ⁴⁶	29	N/A	N/A

TRANSPower GRID UPGRADE PLANS

We took over the Transpower Grid Upgrade Plan (GUP) approval function on 1 November 2010 (as a result of the Electricity Industry Act 2010 amendments). We received two Grid Upgrade Plans (GUPs) from Transpower (against a forecast of 8 to 10), one of which has been approved (a minor claim for over-recovery of expenditure on a GUP previously approved by the Electricity Commission). The other (an application received in June 2010) is now under consideration. While the number of formal GUP applications has been significantly lower than anticipated when we took on the new functions, we have been providing feedback to Transpower on draft GUPs that have yet to be formally submitted to us. The aim of this approach is to ensure that the formal approval process is as efficient as possible.

TRANSPower GRID UPGRADE PLAN (TABLE 42)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Transpower Grid Upgrade Plan	1	N/A	N/A	N/A
QUALITY				
Compliance with legislative requirements for consultation	100%	N/A	N/A	N/A
Successful legal challenges of the Commission's processes	0	N/A	N/A	N/A
COST (\$000)				
Expenditure on output class	359	N/A	N/A	N/A

46. This includes expenditure for transitional implementation work which we took on following the passage of the Electricity Industry Act 2010. This was after the SOI budget was set.

**ELECTRICITY DISTRIBUTION AND ELECTRICITY TRANSMISSION (TRANSPOWER)
PUBLIC INFORMATION/EDUCATION (TABLE 43)**

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Media releases	8	2-6	7	3
Presentations	4	1-3	3	3
Publications	0	2-6	0	8
QUALITY				
MEDIA RELEASES				
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
PRESENTATIONS				
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
PUBLICATIONS				
Internal peer review and approval processes	N/A	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	1	10	0	100

VOTE COMMERCE – REGULATION OF ELECTRICITY LINES BUSINESSES (TABLE 44)

Financial results for the year ended 30 June 2011

	ACTUAL 2010/11 \$000	SOI 2010/13 \$000	ACTUAL 2009/10 \$000	ACTUAL 2008/09 \$000
Total revenue	5,246	3,167	3,167	3,631
Total expenditure	3,381	3,167	2,761	3,560
SURPLUS/(DEFICIT)	1,865	0	406	71

Total revenue exceeded the SOI amount by \$2.079 million. The difference arises from the transfer of the 2009/10 surplus (mainly reflecting deferred expenditure on Transpower-related projects) and increased baseline funding for establishing and operating the GUP approval function, which was taken over from the Electricity Commission from 1 November 2010.

Expenditure on these new outputs largely resulted in total expenditure exceeding the SOI by 7 per cent and 22 per cent higher than 2009/10. However, greater efficiency in assessment processes resulted in lower costs for Electricity Distribution Businesses (EDBs) and Transpower compliance compared with the previous year.

The surplus for the year was the result of fewer than expected GUP approval applications and the deferral of expenditure on the DPP and on Transpower projects.

GAS

DETERMINATIONS

We have made good progress in setting the default price-quality paths for gas pipeline businesses. In April 2011, we released a discussion paper on an initial default price-quality path for gas pipeline businesses. Submissions are being considered and work is on track to deliver the default price-quality path by the end of February 2012 in order for it to apply from 1 July 2012. The discussion paper on starting price adjustments for Default Price Paths (referred to in the *Electricity* section) also applied to gas pipeline businesses.

PRICE-QUALITY PATH DETERMINATIONS (TABLE 45)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Price-quality path determinations	0	0-2	0	N/A
Price-quality path consultation papers	2	1-2	N/A	N/A
TIMELINESS				
Price-quality path determinations completed by	N/A	30/06/2012	N/A - revised to 30/06/2012	N/A
Price-quality path consultation papers completed by	1/04/2011	30/06/2011	N/A	N/A
QUALITY				
Compliance with legislative requirements for consultation	100%	100%	100%	N/A
Successful legal challenges of the Commission's processes	0	0	0	0
COST (\$000)				
Expenditure on output class	1,060	742	1,118	1,178

COMPLIANCE WITH EXISTING AUTHORISATIONS AND DETERMINATIONS

Assessments of Vector's and Powerco's compliance with the Gas Authorisations in 2010/11 have been completed with no further action required.

COMPLIANCE WITH EXISTING AUTHORISATIONS AND DETERMINATIONS (TABLE 46)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Compliance with existing authorisations and determinations	4	2-4	0	7
TIMELINESS				
Compliance with existing authorisations and determinations completed by	30/06/2011	30/06/2011	N/A - revised to 30/09/2010	N/A
QUALITY				
Compliance with legislative requirements for consultation	100%	100%	N/A	N/A
Successful legal challenges of the Commission's processes	0	0	0	0
COST (\$000)				
Expenditure on output class	69	34	112	0

INFORMATION DISCLOSURE

We are on track to determine information disclosure requirements for gas pipeline services under Part 4 of the Commerce Act by December 2011. A process and issues paper on information disclosure for electricity lines and gas pipeline services was released for consultation in February 2011. An updated process that took account of submissions was issued in April 2011.

A series of workshops was held over May and June with stakeholders to discuss various aspects of asset management plans, pricing, and financial disclosures. The feedback from these workshops will assist us in making our draft decisions, which are scheduled for release in September 2011.

INFORMATION DISCLOSURE (TABLE 47)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Information disclosure	0	0-2	0	N/A
TIMELINESS				
Information disclosure completed by	N/A	31/12/2011	N/A - revised to 30/06/2012	N/A
QUALITY				
Compliance with legislative requirements for consultation	100%	100%	N/A	N/A
Successful legal challenges of the Commission's processes	0	0	N/A	N/A
COST (\$000)				
Expenditure on output class	419	300	199	0

FRAMEWORK DEVELOPMENT

Two consultation papers were released over the period proposing recommendations to the Minister that respectively the Rimu pipeline (in February 2011) and TAG Oil's sidewinder pipeline (in June 2011) be added to Schedule 6 of the Commerce Act 1986. The effect of adding the pipelines to Schedule 6 would be to exempt them from regulation under Part 4. No negative submissions were received for either paper. The recommendation to the Minister on the Rimu pipeline was made in March and a recommendation for TAG Oil's sidewinder pipeline was made in July.

FRAMEWORK DEVELOPMENT (TABLE 48)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Framework development	2	0-2	0	0
QUALITY				
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
External review and consultation, as appropriate	Fully achieved	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	0	19	12	326

PUBLIC INFORMATION/EDUCATION (TABLE 49)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Media releases	1	1-5	1	3
Presentations	0	1-4	0	0
Publications	0	1-4	0	3
QUALITY				
MEDIA RELEASES				
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
PRESENTATIONS				
Internal peer review and approval processes	N/A	Fully achieved	N/A	N/A
PUBLICATIONS				
Internal peer review and approval processes	N/A	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	0	5	0	0

VOTE COMMERCE – REGULATION OF NATURAL GAS SERVICES (TABLE 50)**Financial results for the year ended 30 June 2011**

	ACTUAL 2010/11 \$000	SOI 2010/13 \$000	ACTUAL 2009/10 \$000	ACTUAL 2008/09 \$000
Total revenue	2,359	1,100	2,700	1,750
Total expenditure	1,548	1,100	1,441	1,504
SURPLUS/(DEFICIT)	811	0	1,259	246

The deferral of the date for determining the Gas DPP from 1 July 2010 to 1 July 2012 resulted in the 2009/10 surplus being carried forward to 2010/11. Consequently, total revenue for the year exceeds the amount recorded in the SOI by \$1.259 million.

Increased expenditure on the DPP explains the 40 per cent increase over total expenditure in the SOI and the 7 per cent increase over the previous year. Deferred expenditure on the DPP is carried forward as a surplus for the year.

AIRPORTS

We met another of our major statutory deadlines in December 2010 with the release of our determination on how information disclosure regulation should apply for suppliers of airport services. The disclosure requirements are consistent with the input methodologies for airports that were also determined in December 2010.

This is an important step in promoting a better understanding of the performance of airports. The first full disclosures under the new requirements will be made in 2012.

INFORMATION DISCLOSURE (TABLE 51)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Information disclosure	1	1	0	N/A
TIMELINESS				
Information disclosure completed by	22/12/2010	01/01/2011	N/A - revised to 01/01/2011	N/A
QUALITY				
Compliance with legislative requirements for consultation	100%	100%	100%	N/A
Successful legal challenges of the Commission's processes	0	0	N/A	N/A
COST (\$000)				
Expenditure on output class	695	870	687	0

PUBLIC INFORMATION/EDUCATION (TABLE 52)

	ACTUAL 2010/11	SOI 2010/13	ACTUAL 2009/10	ACTUAL 2008/09
QUANTITY				
Media releases	2	2-3	1	N/A
Presentations	0	1-2	0	N/A
QUALITY				
MEDIA RELEASES				
Internal peer review and approval processes	Fully achieved	Fully achieved	N/A	N/A
PRESENTATIONS				
Internal peer review and approval processes	N/A	Fully achieved	N/A	N/A
COST (\$000)				
Expenditure on output class	0	5	0	0

VOTE COMMERCE – REGULATION OF AIRPORT SERVICES (TABLE 53)**Financial results for the year ended 30 June 2011**

	ACTUAL 2010/11 \$000	SOI 2010/13 \$000	ACTUAL 2009/10 \$000	ACTUAL 2008/09 \$000
Total revenue	875	875	791	401
Total expenditure	695	875	687	110
SURPLUS/(DEFICIT)	180	0	104	291

We delivered this output 20 per cent below budget. This efficiency was able to be achieved as a result of less than anticipated reliance on external consultants. We also leveraged off airport and airline work on quality.

ENHANCING ORGANISATIONAL CAPABILITY AND PERFORMANCE

There has been considerable activity during 2010/11 to enhance our performance through improved capability. We established five strategic programmes of business improvement. The focus for 2010/11 was *One Team*.

STRATEGIC BUSINESS IMPROVEMENT PROGRAMMES

In our 2010-2013 Statement of Intent we signalled five strategic programmes (*Simplify our business, Understand our value, Better connect, Stronger future focus, and Better investment in people*) to guide the enhancement of our capability. In 2010/11, we established these five programmes and made significant progress in defining and developing a 'one team' culture for our staff, and in improving processes, systems and people capabilities across the Commission. Three key achievements were the launch of our organisational values, the development of our learning and development strategy, and the establishment of our external engagement strategy. We also implemented a new programme governance approach to ensure that we focus on the right initiatives and the benefits of these initiatives are realised.

SIMPLIFY OUR BUSINESS

This programme focuses on making it easier to do business within the Commission. During 2010/11, we completed our first Commission Challenge, aimed at making meetings more efficient and effective. We introduced a stronger governance approach, including a new Board cycle and greater clarity about our different roles. We delivered a three-year financial model and took a fresh look at the core requirements for measuring and monitoring our work.

UNDERSTAND OUR VALUE

With good information we can make better decisions about how we use our resources (people and money) to ensure we offer the best value for money for New Zealanders. During 2010/11, we successfully piloted a new approach to prioritising our work in the Enforcement Branch. We also established an intelligence unit within the Enforcement Branch. The unit was charged with setting up a framework to develop and use intelligence to allow us to keep up to date with market developments and innovations, improve how we investigate cases, proactively detect and deal with issues, and identify our strategic priorities. We reviewed and refined our performance measures to demonstrate

our value and impact, and built a philosophy around the approach we take to influencing and dealing with business conduct as well as businesses' approach to compliance. We continued to refine how we manage our Major Litigation Fund, gaining Cabinet approval to widen the scope of our internal litigation capability to be used Commission-wide (previously this was restricted to our General Markets work programme).

BETTER CONNECT

We recognise that we can be a more effective enforcer and regulator by building good relationships with those who are affected by our decisions. By listening to the needs of our stakeholders we are also more likely to communicate in ways our stakeholders understand. We aim to work more efficiently and effectively as one team through communicating better, sharing information and learning from each other. In 2010/11, we developed an external engagement strategy, implemented a Managers' Forum to enhance the relationships between senior staff, updated our internal communications strategy and reviewed the way we communicate with people who complain to the Commission through our Contact Centre. We also started to implement a plain English programme across the Commission.

STRONGER FUTURE FOCUS

We know that having long-term plans and processes to continually improve the way we work will make us more effective. We are clear about how we fund current and future needs and ensure we make good investment decisions. We have made good progress in ensuring that any changes to our systems and processes are well-planned, well-managed and delivered efficiently. During 2010/11, we established a management group, chaired by the CEO, to govern the delivery of our five strategic programmes. We also developed a Capability Assessment Framework (based on the State Services Commission's Performance Improvement Framework) to inform our business improvement priorities. We completed an analysis of the current state of our information systems as the first step to developing a new Information Systems Strategic Plan (ISSP) and delivered an Information Systems ownership framework. We became involved in 'all-of-government' initiatives where this makes sense.

BETTER INVESTMENT IN PEOPLE

We invest in our people in order to attract, develop and retain great staff. We are committed to ongoing investment and will continue to provide programmes that develop our people and organisational capability.

In 2010/11, we completed the organisational restructure started in 2009/10, agreed an approach to management development and delivered initial training modules. We also developed a learning and development framework and policy, and rolled out an online training portal.

In addition, we developed the new values for the Commission and started redevelopment of a human resources strategy.

LEADERSHIP AND GOVERNANCE

During 2010/11, we worked to distinguish between the roles of statutory decision making and governance of the Commission. Commissioners now meet as a Board when operating in a governance capacity. This helps to give a focus to responsibilities, for example, under the Crown Entities Act. The Board and the Senior Leadership Team are committed to driving organisational performance.

Midway through the year, we had a change in Chief Executive. Nick Hill has been replaced by Brent Alderton, our former General Manager Regulation, and Dr John Hamill is the new General Manager Regulation. Peter Alsop, General Manager Organisation Performance, left the Commission in March and in July 2011 was replaced by Geoff Williamson.

STRUCTURE, ROLES AND RESPONSIBILITIES

We underwent major structural change in 2009/10 with the creation of our Regulation, Enforcement and Organisation Performance branches. In 2010/11, we embedded our separate legal and economics branches into the two operational branches, Enforcement and Regulation. This has resulted in a more cohesive approach to our work, better connectivity between the different elements of analysis and a more streamlined approach to the completion of our work.

OPPORTUNITIES FOR OUR PEOPLE

Two of the Commission's five Strategic Programmes, *Better Connect* and *Better Investment in People*, have provided an excellent focus on leadership, workforce development, management of people and performance,

and engagement with staff. In addition, our promotion of Equal Employment Opportunities (EEO) maximises the benefit of the diverse talent pool currently at the Commission. This has been done through an integrated strategy which includes:

- attracting and retaining capable employees with specialist skills both locally and globally;
- implementing of a new set of Commission values of excellence, integrity, accountability, respect and good judgement; and
- providing flexible working arrangements to suit personal needs and circumstances.

We are focused on attracting, supporting and developing our people, in line with the following seven key elements of being a good employer (as set out by the New Zealand Human Rights Commission):

1. Leadership, accountability and culture

We acknowledge that our people are our biggest asset. Ongoing work in our leadership development area demonstrates our commitment to developing people and people-focused capability and practices. Our new organisational values were developed by a team of employees, ensuring Commission-wide input and ownership.

2. Recruitment, induction and selection

We have a number of initiatives in place to attract and retain high-calibre employees, improve management and leadership capability, enhance professional development, and improve the general work environment. We attract highly motivated employees that are committed to making a difference. A robust recruitment process ensures selection decisions are based on competencies, skills and experience. The recruitment process is supported by comprehensive induction to ensure both the generic and branch-specific aspects of the Commission are covered.

3. Employee development, promotion and exit

We develop talent internally through training, onsite learning, and mentoring, coaching and internal/external secondments. We have further invested in learning and development initiatives during 2010/11, which has been integral to the development of the new leadership strategy and framework. In addition to annual individual development plans, we have a Progression Policy

and new Learning and Development Policy to ensure development and promotion follow a fair and transparent process across the organisation. We have refreshed our learning and development programme, and the Commission-wide career development programme.

4. Flexibility and work design

Flexible working arrangements are accommodated where possible, including the transferring of employees between offices nationally. Optimisation and Organisational reviews throughout the year have maintained a focus on efficiency gains, and relevant position descriptions have been redesigned to support this focus.

5. Remuneration, recognition and conditions

We adhere to the Government's Expectations for Pay and Employment Conditions in the State Sector. Our remuneration strategy is reviewed annually and we balance the need to recognise and reward individual contributions, while taking into account business objectives, affordability, fairness, market factors, recruitment and retention.

6. Harassment and bullying prevention

Our generic competencies and new values provide a focus on the appropriate behaviours expected for all staff. Standard policies dealing with code of conduct, harassment and discrimination, and disciplinary matters reflect our zero tolerance of harassment and bullying.

7. Safe and healthy work environment

We have staff trained as Health and Safety representatives, who work with staff to ensure a healthy and safe working environment. The induction programme, and ongoing education, ensures all staff are well-informed to take all practicable steps to remain safe and are aware of their health and safety responsibilities.

PROFILE OF OUR PEOPLE

FTE: We tracked below our 2010/11 business plan establishment of 189 full-time equivalents.

Ethnic profile: We continue to employ staff from a wide variety of ethnic backgrounds. The number of staff from Pacific Island origin remains the same while the number of Māori staff has increased.

Disability profile: We are currently supporting staff with disabilities and a disability register is held in case of emergency.

Gender profile: 51 per cent of our employees are male and 49 per cent are female.

Age profile:

YEARS	20s	30s	40s	50s	60s	NOT KNOWN
Percentage	7.6	39.9	28.5	10.8	6.3	6.9

FINANCIAL AND RESOURCE MANAGEMENT

In 2010/11, we focused on establishing more robust and more efficient frameworks in which to provide systems and services to the business, while continuing to improve their quality and cost effectiveness.

An Information Systems Current State Analysis report was completed in January 2011. This report documented the current state of the business systems currently used within the Commission and the various Information System (IS) services required to support them.

Following this report, significant pieces of work have been completed aimed at ensuring that IS services are being delivered robustly and consistently. One of these pieces of work was the development and establishment of an Information Systems Governance framework. The framework will enable better support for business owners and their use of systems, develop individual system strategies and better identify system improvements. We have also designed and implemented a formal change control process, and a more structured and documented testing regime, and implemented more rigorous system security auditing procedures.

In order to improve the quality and cost effectiveness of our IS services, we also implemented a significant number of technical projects. We aligned ourselves with the all-of-government procurement and shared services offerings. During 2010/11, we took advantage of public sector initiatives (being driven by the Department of Internal Affairs), to provide better quality and more standardised services at lower cost. The first of the shared services we used was a migration of our inter-office network to the One.Govt Shared Services offering. We also signed a memorandum of understanding for the ongoing purchasing of desktop and printer hardware.

A server virtualisation project was completed providing greater efficiencies around administration of our servers and a need for less capital expenditure in future to maintain the same level of capacity. A number of other operational systems were upgraded and refreshed, such as payroll, time recording/project register and financial systems, to provide better stability and performance.

Other projects of note included:

- the mitigation of potential security risk through the use of USB and mobile data devices;
- the replacement and modernisation of the Commission's investigative recording equipment; and
- the request for proposal and design of a new telephony system.

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

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 adviser 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 in April 2009 for five years. Anita is an independent corporate finance adviser and company director. She has a BCom and LLB and is a CA and Solicitor (NZ). Anita has had a commercial career in industry and finance, particularly the evaluation and funding of infrastructure. She has previously held senior positions in the public and private sector, including as General Counsel of Contact Energy, director of Industrial Research Limited, and director of Ngāti Whātua o Orakei companies. Anita is currently a Board Member of the Civil Aviation Authority and Aviation Security Services.



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.



DR STEPHEN GALE - ASSOCIATE COMMISSIONER

Dr Stephen Gale was appointed as an Associate Commissioner in July 2010. He has specialised for some years in energy economics and competition proceedings at the infrastructure consulting firm Castalia, and before that at the New Zealand Institute of Economic Research. Stephen has worked on a variety of competition topics including the design of the electricity market, radio spectrum auctions and port pricing. He has advised on mergers in a variety of sectors including forestry, supermarkets, newspapers, dairy products, ready mix concrete, farming hardware, building materials and snack foods.



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.



DR JILL WALKER - ASSOCIATE COMMISSIONER

Dr Jill Walker was appointed as Associate Commissioner in November 2010. She is also a Commissioner of the Australian Competition and Consumer Commission and Chair of the International Air Services Commission in Australia. Before joining the ACCC, Jill was a member of the Australian Competition Tribunal and worked as an economic consultant for LECG Limited, advising both regulatory agencies and private sector clients on competition and regulatory issues. She holds a BA in Economics and a PhD in Land Economy from the University of Cambridge. She also holds a Master's degree in Economics from the University of Massachusetts.



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.

SENIOR LEADERSHIP TEAM



BRENT ALDERTON - CHIEF EXECUTIVE

Brent Alderton was appointed as Chief Executive of the Commerce Commission in January 2011. He joined the Commission in early 2009 and later was the General Manager Regulation. 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.



NICHOLAS HILL - CHIEF EXECUTIVE (UNTIL DECEMBER 2010)

Nicholas Hill was appointed to the new role of Chief Executive of the Commerce Commission in June 2008 and left the Commission in December 2010. 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, 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.



DR JOHN HAMILL - GENERAL MANAGER REGULATION

Dr John Hamill has been the General Manager Regulation at the Commerce Commission since January 2011. John had been the Manager for Airports and Input Methodologies in the Commission's Regulation Branch for the previous two years. John is an experienced manager with a strong public sector background. He previously worked at the Ministry of Justice and has demonstrable experience in strategy, policy development and organisational/sector performance. John has a PhD in English Literature from Victoria University of Wellington.



PETER ALSOP - GENERAL MANAGER ORGANISATION PERFORMANCE (UNTIL MARCH 2011)

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. Peter left the Commission in March 2011 and was replaced by Geoff Williamson in July 2011.

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 2011.

Signed on behalf of the Board:



Dr Mark Berry
Chair – Commerce Commission
31 August 2011



Anita Mazzoleni
Convener – Audit, Finance and Risk Management
Committee
31 August 2011

INDEPENDENT AUDITOR'S REPORT

TO THE READERS OF THE COMMERCE COMMISSION'S FINANCIAL STATEMENTS AND STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 2011

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 of the financial statements and statement of service performance of the Commission on her behalf.

We have audited:

- the financial statements of the Commission on pages 69 to 97, that comprise the statement of financial position as at 30 June 2011, the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year ended on that date and notes to the financial statements that include accounting policies and other explanatory information; and
- the statement of service performance of the Commission on pages 20 to 58.

OPINION

In our opinion:

- the financial statements of the Commission on pages 69 to 97:
 - comply with generally accepted accounting practice in New Zealand; and
 - fairly reflect the Commission's:
 - financial position as at 30 June 2011; and
 - financial performance and cash flows for the year ended on that date.
- the statement of service performance of the Commission on pages 20 to 58:
 - complies with generally accepted accounting practice in New Zealand; and
 - fairly reflects, for each class of outputs for the year ended 30 June 2011, the Commission's
 - service performance compared with the forecasts in the statement of forecast service performance for the financial year; and
 - actual revenue and output expenses compared with the forecasts in the statement of forecast service performance at the start of the financial year.

Our audit was completed on 31st August 2011. This 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 our responsibilities, and we explain our independence.

BASIS OF OPINION

We carried out our audit in accordance with the Auditor-General's Auditing Standards, which incorporate the International Standards on Auditing (New Zealand). Those standards require that we comply with ethical requirements and plan and carry out our audit to obtain reasonable assurance about whether the financial statements and statement of service performance are free from material misstatement.

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 accompanying Statement of Service Performance, Statement of Accounting Policies and Notes to the Financial Statements on pages 72 to 97 form part of the financial statements.

An audit involves carrying out procedures to obtain audit evidence about the amounts and disclosures in the financial statements and statement of service performance. The procedures selected depend on our judgement, including our assessment of risks of material misstatement of the financial statements and statement of service performance, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Commission's preparation of the financial statements and statement of service performance that fairly reflect the matters to which they relate. We consider internal control in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control.

An audit also involves evaluating:

- the appropriateness of accounting policies used and whether they have been consistently applied;
- the reasonableness of the significant accounting estimates and judgements made by the Commissioners;
- the adequacy of all disclosures in the financial statements and statement of service performance; and
- the overall presentation of the financial statements and statement of service performance.

We did not examine every transaction, nor do we guarantee complete accuracy of the financial statements and statement of service performance. We have obtained all the information and explanations we have required and we believe we have obtained sufficient and appropriate audit evidence to provide a basis for our audit opinion.

RESPONSIBILITIES OF THE COMMISSIONERS

The Commissioners are responsible for preparing financial statements and a statement of service performance that:

- comply with generally accepted accounting practice in New Zealand;
- fairly reflect the Commission's financial position, financial performance and cash flows; and
- fairly reflect its service performance.

The Commissioners are also responsible for such internal control as is determined necessary to enable the preparation of financial statements and a statement of service performance that are free from material misstatement, whether due to fraud or error.

The Commissioners' responsibilities arise from the Crown Entities Act 2004.

RESPONSIBILITIES OF THE AUDITOR

We are responsible for expressing an independent opinion on the financial statements and statement of service performance and reporting that opinion to you based on our audit. Our 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 (the Commission) for the year ended 30 June 2011 included on the Commission's website. The Commissioners 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 as well as the related audit report dated 31 August 2011 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 2011

	NOTES	ACTUAL 2010/11 \$000	BUDGET 2010/11 \$000	ACTUAL 2009/10 \$000
OPERATING INCOME				
Crown revenue	3	42,943	40,884	43,299
Fees and recoveries		429	50	2,184
Interest		623	450	387
Sundry income		168	60	1
TOTAL OPERATING INCOME		44,163	41,444	45,871
OPERATING EXPENDITURE				
Members and personnel	4	22,118	21,768	23,168
Direct output costs	5	9,058	13,055	11,038
Occupancy	6	1,855	1,823	1,846
Depreciation and amortisation		785	973	897
Other expenditure	7	1,709	1,984	1,575
TOTAL OPERATING EXPENDITURE		35,525	39,603	38,524
SURPLUS/(DEFICIT)		8,638	1,841	7,347
TOTAL COMPREHENSIVE INCOME	8	8,638	1,841	7,347

STATEMENT OF CHANGES IN EQUITY FOR THE YEAR ENDED 30 JUNE 2011

	ACTUAL 2010/11 \$000	BUDGET 2010/11 \$000	ACTUAL 2009/10 \$000
Balance at 1 July	10,433	8,556	6,883
COMPREHENSIVE INCOME			
Surplus/(Deficit)	8,638	1,841	7,347
TOTAL COMPREHENSIVE INCOME	8,638	1,841	7,347
TRANSACTIONS WITH OWNER			
Crown funding not repayable	0	0	4
Repayment of surplus to the Crown	(5,342)	(607)	(3,801)
TOTAL TRANSACTIONS WITH OWNER	(5,342)	(607)	(3,797)
BALANCE AT 30 JUNE	13,729	9,790	10,433

The accompanying Statement of Service Performance, Statement of Accounting Policies and Notes to the Financial Statements on pages 72 to 97 form part of the financial statements.

STATEMENT OF FINANCIAL POSITION AS AT 30 JUNE 2011

	NOTES	ACTUAL 2010/11 \$000	BUDGET 2010/11 \$000	ACTUAL 2009/10 \$000
EQUITY				
General Funds	9	10,540	6,290	7,433
Litigation costs reserve	9	1,689	2,000	1,500
Major Litigation Fund	9	1,500	1,500	1,500
TOTAL EQUITY		13,729	9,790	10,433
CURRENT ASSETS				
Cash and cash equivalents	10	32,396	9,955	13,964
Fees and recoveries receivable	11	89	29	1,160
Crown revenue receivable	12	3,241	1,500	1,302
Prepayments		103	15	139
TOTAL CURRENT ASSETS		35,829	11,499	16,565
NON-CURRENT ASSETS				
Property, plant and equipment	13	1,492	1,608	1,484
Intangibles	14	337	575	560
TOTAL NON-CURRENT ASSETS		1,829	2,183	2,044
TOTAL ASSETS		37,658	13,682	18,609
CURRENT LIABILITIES				
Creditors and other payables	15	2,180	1,600	1,539
Accrued expenses		1,507	0	927
Provision for Crown funding to be repaid	8	5,342	607	3,801
Penalties held in trust	16	13,140	0	0
Employee entitlements		1,575	1,500	1,724
TOTAL CURRENT LIABILITIES		23,744	3,707	7,991
NON-CURRENT LIABILITIES				
Provision for reinstatement of lease occupancy	17	185	185	185
TOTAL NON-CURRENT LIABILITIES		185	185	185
TOTAL LIABILITIES		23,929	3,892	8,176
NET ASSETS		13,729	9,790	10,433

The accompanying Statement of Service Performance, Statement of Accounting Policies and Notes to the Financial Statements on pages 72 to 97 form part of the financial statements.

STATEMENT OF CASH FLOWS FOR THE YEAR ENDED 30 JUNE 2011

	NOTES	ACTUAL 2010/11 \$000	BUDGET 2010/11 \$000	ACTUAL 2009/10 \$000
CASH FLOWS FROM OPERATING ACTIVITIES				
Government funding received		41,257	40,928	43,927
Fees and recoveries received		1,559	110	1,154
Receipts of penalties to be paid		13,140	0	0
Interest received		588	450	387
Member and employee payments		(22,313)	(21,830)	(22,967)
Supplier payments		(11,077)	(17,086)	(15,185)
Goods and Services Tax (net)		(103)	(23)	494
NET CASH INFLOW FROM OPERATING ACTIVITIES	18	23,051	2,549	7,810
CASH FLOWS FROM INVESTING ACTIVITIES				
Property, plant and equipment sale proceeds		0	0	1
Property, plant and equipment purchases		(709)	(685)	(221)
Intangible asset purchases		(109)	(500)	(404)
NET CASH INFLOW/(OUTFLOW) FROM INVESTING ACTIVITIES		(818)	(1,185)	(624)
CASH FLOWS FROM FINANCING ACTIVITIES				
Government funding repaid		(3,801)	(4,529)	(2,341)
NET CASH INFLOW/(OUTFLOW) FROM FINANCING ACTIVITIES		(3,801)	(4,529)	(2,341)
NET INCREASE/(DECREASE) IN CASH AND CASH EQUIVALENTS				
Opening cash and cash equivalents		13,964	13,120	9,119
CLOSING CASH AND CASH EQUIVALENTS	10	32,396	9,955	13,964

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 72 to 97 form part of the financial statements.

STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 2011

	ACTUAL 2010/11 \$000	BUDGET 2010/11 \$000
VOTE COMMERCE - ENFORCEMENT OF GENERAL MARKET REGULATION		
OPERATING REVENUE		
Crown revenue	16,435	16,435
Other revenue	1,067	560
TOTAL REVENUE	17,502	16,995
OPERATING EXPENDITURE		
COMPETITIVE MARKETS		
Market structure cases	41	105
Coordinated behaviour cases	1,759	2,613
Unilateral conduct cases	328	836
Determinations	2,726	2,926
Framework development	790	1,115
Public information/education	317	592
Reports to Ministers	122	0
INFORMED CONSUMERS		
FAIR TRADING ACT		
Fair Trading Act cases	3,240	3,135
Product safety and information standards cases	250	279
Framework development	357	209
Public information/education	319	418
CREDIT CONTRACTS AND CONSUMER FINANCE ACT		
Credit Contracts and Consumer Finance Act cases	1,263	1,254
Framework development	216	105
Public information/education	85	174
TOTAL GENERAL MARKETS EXPENDITURE	11,813	13,761
INTERNAL FUNDING OF MAJOR LITIGATION		
Competitive Markets	1,933	1,603
Fair Trading Act	330	512
Credit Contracts and Consumer Finance Act	211	385
TOTAL INTERNAL FUNDING OF MAJOR LITIGATION EXPENDITURE	2,474	2,500
TOTAL OUTPUT EXPENDITURE	14,287	16,261
VOTE COMMERCE - GENERAL MARKETS OPERATING SURPLUS	3,215	734

The accompanying Statement of Service Performance, Statement of Accounting Policies and Notes to the Financial Statements on pages 72 to 97 form part of the financial statements.

STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 2011 (CONTD)

	ACTUAL 2010/11 \$000	BUDGET 2010/11 \$000
VOTE COMMERCE - MAJOR LITIGATION FUND		
OPERATING REVENUE	6,019	8,000
EXPENDITURE		
General Markets - Competitive Markets	4,738	4,550
General Markets - Fair Trading Act	155	1,130
General Markets - Credit Contracts and Consumer Finance Act	298	850
Telecommunications	85	485
Input Methodologies	580	485
TOTAL OUTPUT EXPENDITURE	5,856	7,500
VOTE COMMERCE - MAJOR LITIGATION FUND OPERATING SURPLUS	163	500
VOTE COMMUNICATIONS		
OPERATING REVENUE		
Crown revenue	7,790	7,790
Other revenue	24	0
TOTAL REVENUE	7,814	7,790
EXPENDITURE		
Access determinations	1,292	856
TSO cost allocation	228	273
Monitoring and reporting	1,036	1,270
Enforcement cases closed	307	390
Industry codes	8	390
Reports to the Minister	482	779
Framework development	1,688	1,947
Public information/education	78	195
Information disclosure	960	1,300
TOTAL OUTPUT EXPENDITURE	6,079	7,400
VOTE COMMUNICATIONS OPERATING SURPLUS	1,735	390

The accompanying Statement of Service Performance, Statement of Accounting Policies and Notes to the Financial Statements on pages 72 to 97 form part of the financial statements.

STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 2011 (CONTD)

	ACTUAL 2010/11 \$000	BUDGET 2010/11 \$000
VOTE COMMERCE - REGULATION OF ELECTRICITY LINES BUSINESSES		
OPERATING REVENUE		
Crown revenue	5,117	3,167
Other revenue	129	0
TOTAL REVENUE	5,246	3,167
EXPENDITURE		
Distribution determinations	1,006	1,235
Distribution compliance	149	126
Distribution information disclosure	489	404
Distribution framework development	0	25
Transpower determinations	1,011	792
Transpower compliance assessment	65	142
Transpower information disclosure	174	404
Transpower framework development	127	29
Transpower Grid Upgrade Plan	359	0
Public information/education	1	10
TOTAL OUTPUT EXPENDITURE	3,381	3,167
VOTE COMMERCE - ELECTRICITY LINES OPERATING SURPLUS	1,865	0
VOTE COMMERCE - REGULATION OF NATURAL GAS SERVICES		
OPERATING REVENUE	2,359	1,100
EXPENDITURE		
Determinations	1,060	742
Compliance with existing authorisations and determinations	69	34
Information disclosure	419	300
Framework development	0	19
Public information/education	0	5
TOTAL OUTPUT EXPENDITURE	1,548	1,100
VOTE COMMERCE - GAS REGULATION OPERATING SURPLUS	811	0

The accompanying Statement of Service Performance, Statement of Accounting Policies and Notes to the Financial Statements on pages 72 to 97 form part of the financial statements.

STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 2011 (CONTD)

	ACTUAL 2010/11 \$000	BUDGET 2010/11 \$000
VOTE COMMERCE - ENFORCEMENT OF DAIRY SECTOR REGULATION		
OPERATING REVENUE	905	905
EXPENDITURE		
Enforcement investigations	19	91
Determinations	402	453
Framework development	16	100
Public information/education	0	45
TOTAL OUTPUT EXPENDITURE	437	688
VOTE COMMERCE - DAIRY OPERATING SURPLUS	468	217
VOTE COMMERCE - INPUT METHODOLOGIES (GAS, ELECTRICITY AND AIRPORTS)		
OPERATING REVENUE	3,443	2,612
EXPENDITURE		
Determinations	3,242	2,586
Public information/education	0	26
TOTAL OUTPUT EXPENDITURE	3,242	2,612
VOTE COMMERCE - INPUT METHODOLOGIES OPERATING SURPLUS	201	0
VOTE COMMERCE - REGULATION OF AIRPORT SERVICES		
OPERATING REVENUE	875	875
EXPENDITURE		
Information disclosure	695	870
Public information/education	0	5
TOTAL OUTPUT EXPENDITURE	695	875
VOTE COMMERCE - AIRPORTS OPERATING SURPLUS	180	0

The accompanying Statement of Service Performance, Statement of Accounting Policies and Notes to the Financial Statements on pages 72 to 97 form part of the financial statements.

STATEMENT OF ACCOUNTING POLICIES FOR THE YEAR ENDED 30 JUNE 2011

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, the Fair Trading Act 1986, the Electricity Industry Act 2010, the Dairy Industry Restructuring Act 2001, 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 31 August 2011.

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 Major 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 Crown.

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 2011 (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 consistent with the previous year.

CHANGES TO APPLICABLE REPORTING STANDARDS AND INTERPRETATIONS

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

- 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 effect of adoption of the revised standard is:
 - More information is required to be disclosed about transactions between the Commission and entities controlled, jointly controlled, or significantly influenced by the Crown.
 - Commitments with related parties require disclosure.
 - Information is required to be disclosed about any related party transactions with Ministers of the Crown.

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.

- FRS 44 *New Zealand Additional Disclosures* consolidates the additional disclosure requirements to IFRS in New Zealand. The disclosures under this standard are not new, but were relocated to a separate standard as part of the Harmonisation Amendments programme between Australian and New Zealand GAAP. The standard also amends the disclosure of audit fees to include auditor ‘network firms’. The new standard is required to be adopted for the year ended 30 June 2012, and will not be early adopted.
- *Approval of Amendments to New Zealand Equivalents to IFRS to Harmonise with International Financial Reporting Standards and Australian Accounting Standards (Harmonisation Amendments)* amends the suite of IFRSs as adopted in New Zealand. The amendments harmonise NZ IFRS with source IFRSs to eliminate many of the differences between standards in Australia and New Zealand, particularly relating to application by for-profit entities applying NZ IFRS. Amendments to ‘All Entity’ paragraphs by the Harmonisation Amendments may impact on the Commission. The amendments are effective for the year ended 30 June 2012. The Commission has not yet assessed the effect of the new standard and has determined not to early adopt.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2011

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 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 of such a nature 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 2011 in the Statement of Comprehensive Income. The Commission has also disclosed its contingent liabilities and assets as a result of cost awards that may possibly result in a future inflow or outflow of resources as at 30 June 2011 (refer note 2). The Commission continues to monitor all current litigation cases and assess whether they give rise to contingent liabilities or assets.

The cases currently under appeal are funded through a non-departmental expense appropriation for major litigation. The Major 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 Major Litigation Fund cases are charged against the Fund.

The Ministry of Economic Development monitors the performance of the Major Litigation Fund on behalf of the Crown and authorises the payment of government grants quarterly in arrears to reimburse the Major Litigation Fund for expenditure incurred.

The Major Litigation Fund includes additional funding of \$0.5 million to establish a contingency reserve to manage the impact of adverse costs 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. At 30 June 2011 the balance of the fund was \$1.689 million, with the fund expected to reach a balance of \$3.0 million in 2014 (subject to any adverse cost awards reducing the balance of the fund).

2. CONTINGENT LIABILITIES AND ASSETS

Contingent liabilities at 30 June 2011:

Telecom 0867

The Supreme Court dismissed the Commission's appeal in a judgment delivered 1 September 2010. Supreme Court costs of \$50,000 plus disbursements were awarded against the Commission (in favour of Telecom) and were paid. Costs for the High Court have not yet been agreed or fixed. If the Commission and Telecom cannot agree on costs, the High Court will be asked to fix costs.

Visy Board Pty Ltd

In a judgment dated 20 April 2011 the High Court upheld a number of protests regarding jurisdiction of the Commission to prosecute Visy Board Pty Ltd, though it set aside protests to jurisdiction in relation to other matters. The Commission has filed a notice of appeal, and Visy has cross-appealed. If the Commission's appeal is unsuccessful then the Commission will face costs.

The estimated range of contingent liabilities for these cases is expected to be managed within the existing balance of the Litigation Costs Reserve (\$1.689 million). No further disclosure of the range of costs is made due to uncertainty and confidentiality.

Contingent liabilities at 30 June 2010:

The Commission disclosed contingent liabilities for a number of litigation cases at that point, including Telecom 0867, Koppers Arch, and Air New Zealand (Air Cargo Confidentiality Orders Judicial Review).

Contingent assets as at 30 June 2011:**Telecom Datatails**

The Commission succeeded in its action against Telecom in relation to this proceeding, and was awarded costs at the High Court. Appeals against both liability and the pecuniary penalty awarded against Telecom are expected to be heard in September 2011. If the Commission is successful, it will be entitled to costs in relation to both the High Court and Court of Appeal hearings.

Air New Zealand Limited (Air Cargo Confidentiality Orders)

In 2009/10, Air New Zealand sought a judicial review of confidentiality orders made by the Commission in its Air Cargo investigation. The High Court agreed with Air New Zealand's position. The Commission appealed the High Court decision during 2010/11, and was successful in its appeal. In addition, the Court of Appeal awarded the Commission its costs on appeal. Negotiations on the costs consequences before the High Court continue and are confidential at this time.

Carter Holt Harvey misgrading

In November 2009, the Commission succeeded in resisting strike-out of its civil damages claim against Carter Holt Harvey in the MGP10 timber misgrading matter brought under the Fair Trading Act. The Supreme Court granted the Commission's appeal against the Court of Appeal decision to strike-out the Commission's application for compensation orders. Costs are accordingly payable by Carter Holt Harvey in respect of its unsuccessful strike-out. Negotiations on the amount payable continue and are confidential at this time.

Christchurch earthquake insurance claims

Due to the February and June 2011 Christchurch earthquakes, the Commission has lodged claims with its insurer for lost goods and interruption of business. At this stage the Commission is uncertain what proceeds it will receive on its policies, so no proceeds are recognised. The maximum proceeds receivable under both Business Interruption and Contents Insurance for costs arising from the Christchurch earthquake are \$500,000 in total.

The estimated range of contingent assets is not disclosed due to uncertainty and in the case of Telecom Datatails and Air New Zealand Confidentiality Orders, and Carter Holt Harvey timber misgrading, confidentiality.

Contingent assets as at 30 June 2010:

The Commission disclosed contingent assets for a number of litigation cases at that point, including Telecom Datatails; a case against New Zealand Diagnostic Group Limited, Hamilton Medical Laboratory Holdings Limited, and Pathology Associates Limited; and a case against another party.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2011 (CONTD)**3. CROWN REVENUE**

	2010/11 \$000	2009/10 \$000
CROWN REVENUE		
Vote Commerce - Enforcement of general market regulation	16,435	13,335
Vote Commerce - Major Litigation Fund	6,019	9,387
Vote Communications	7,790	7,790
Vote Commerce - Regulation of electricity lines businesses	5,117	3,167
Vote Commerce - Regulation of natural gas services	2,359	2,700
Vote Commerce - Dairy	905	905
Vote Commerce - Input Methodologies	3,443	5,224
Vote Commerce - Regulation of airport services	875	791
TOTAL CROWN REVENUE	42,943	43,299

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, gas pipelines, airports, 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, except for Crown revenue received for Enforcement of General Market regulation. 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. Further disclosure of the details of the transactions to the extent required by NZ IFRS is disclosed in note 22 – Related Party Transactions and Conflicts of Interest.

4. MEMBERS AND PERSONNEL

	2010/11 \$000	2009/10 \$000
Key management personnel remuneration and termination benefits	3,544	3,839
All other employees' remuneration	15,385	16,349
All other employees - redundancy and other cessation payments	185	0
TOTAL SHORT-TERM EMPLOYEE AND TERMINATION BENEFITS	19,114	20,188
Recruitment	176	701
Professional development	232	207
Other employment-related costs	2,596	2,072
TOTAL MEMBERS AND PERSONNEL EXPENDITURE	22,118	23,168

Key management personnel comprise all Commissioners, the Chief Executive Officer, and the remaining three members of the Senior Leadership Team. Further details regarding compensation of key management personnel are disclosed in note 22 – Related Party Transactions and Conflicts of Interest. Further details regarding compensation of Commissioners are disclosed in note 23 – Members' Remuneration.

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 2011 was receivable at balance date.

The Commission has paid redundancy and other cessation payments of \$338,000 during the year, being \$153,000 relating to key management personnel (refer to note 22), and \$185,000 relating to all other employees. Nine employees received those payments (2009/10: \$96,000, three employees, all key management personnel).

Employee annual remuneration bands over \$100,000

EMPLOYEES WITH TOTAL ANNUAL REMUNERATION OVER \$100,000 (IN BANDS OF \$10,000):	2010/11 NUMBER	2009/10 NUMBER
\$100,000 - \$110,000	12	11
\$110,001 - \$120,000	12	16
\$120,001 - \$130,000	8	11
\$130,001 - \$140,000	11	12
\$140,001 - \$150,000	10	6
\$150,001 - \$160,000	6	3
\$160,001 - \$170,000	2	1
\$170,001 - \$180,000	5	4
\$180,001 - \$190,000	1	0
\$190,001 - \$200,000	2	0
\$200,001 - \$210,000	0	0
\$210,001 - \$220,000	1	1
\$220,001 - \$230,000	0	2
\$230,001 - \$240,000	1	1
\$240,001 - \$250,000	0	0
\$280,001 - \$290,000	1	0
\$300,001 - \$310,000	1	0
\$310,001 - \$320,000	1	0
\$370,000 - \$380,000	0	1

5. DIRECT OUTPUT COSTS

	2010/11 \$000	2009/10 \$000
Computer, information, and information technology	714	584
Cost awards	311	61
Legal consultants	5,177	4,927
Other consultants and experts	2,337	4,626
Specialist support services	399	722
Other expenses	120	118
TOTAL DIRECT OUTPUT COSTS	9,058	11,038

Direct output costs include expenditure on legal consultants, other consultants, and other expenses recovered through the Major Litigation Fund appropriation, totalling \$5,856,000 (2009/10: \$5,787,000).

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2011 (CONTD)

6. OCCUPANCY

	2010/11 \$000	2009/10 \$000
Operating leases – rent	1,515	1,489
Other occupancy expenses	340	357
TOTAL OCCUPANCY	1,855	1,846

7. OTHER EXPENDITURE

	2010/11 \$000	2009/10 \$000
Telecommunications	346	367
Staff travel	591	668
Operating leases – photocopiers and printers	85	87
Postage, photocopying, and stationery	92	136
Loss on disposal of assets	248	0
Other expenses	307	281
AUDITOR'S REMUNERATION:		
Audit fees for financial statement audit	40	36
TOTAL OTHER EXPENDITURE	1,709	1,575

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

	2010/11 \$000	2009/10 \$000
PROVISION TO REPAY THE CROWN BY APPROPRIATION INCLUDES:		
Vote Commerce – Regulation of airport services	180	104
Vote Commerce – Dairy	468	421
Vote Commerce – Regulation of electricity lines businesses	1,865	471
Vote Commerce – Regulation of natural gas services	811	1,259
Vote Commerce – Input Methodologies	283	314
Vote Communications	1,735	1,232
TOTAL PROVISION TO REPAY THE CROWN	5,342	3,801
COMPREHENSIVE INCOME TO BE RETAINED BY APPROPRIATION INCLUDES:		
Vote Commerce – Enforcement of general market regulation	3,215	3,631
Vote Commerce – Regulation of electricity lines businesses	0	(65)
Major Litigation – Internal	0	(520)
Vote Commerce – Major Litigation Fund	163	500
Vote Commerce – Input Methodologies	(82)	0
COMPREHENSIVE INCOME TO BE RETAINED	3,296	3,546
TOTAL COMPREHENSIVE INCOME	8,638	7,347

Major Litigation – Internal is recorded as returning a \$Nil surplus in 2010/11 due to a change in the presentation of internal major litigation to align with the Commission's Output Agreement with the Crown. Major Litigation – Internal is now recorded as a part of Vote Commerce – Enforcement of general market regulation.

The Commission decided that it would cover the staff and salary costs in relation to Merits Appeals of its Input Methodologies for 2010/11 from reserves, rather than require this cost to be funded by the appellant levy payers. This coverage is recognised above as an \$82,000 reduction in the Comprehensive Income to be Retained.

9. EQUITY

Accumulated Funds

	2010/11 \$000	2009/10 \$000
Balance at 1 July	7,433	4,383
Total Comprehensive Income	8,449	6,847
Provision for repayment of surplus to the Crown	(5,342)	(3,801)
Crown funding not required to be repaid	0	4
BALANCE AT 30 JUNE	10,540	7,433

The Commission's Accumulated Funds are funds held in reserve as a result of past surpluses in certain appropriations. The Commission is allowed to retain surpluses from appropriations it receives where the funds are not levied from industries. The surpluses the Commission may not keep are recognised as a provision for repayment to the Crown, and are offset against items of Total Comprehensive Income attributable to Accumulated Funds.

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 during the 2009/10 year.

Litigation Costs Reserve

	2010/11 \$000	2009/10 \$000
Balance at 1 July	1,500	1,000
TOTAL COMPREHENSIVE INCOME	189	500
BALANCE AT 30 JUNE	1,689	1,500

As a quasi-judicial body, the Commission undertakes major litigation for alleged breaches of legislation, and also defends regulations and rulings it sets under the Acts it administers. The Litigation Costs Reserve is a contingency fund established by the Commission's Output Agreement with the Crown, to manage the impact of adverse cost awards from these cases. The Commission receives \$0.5 million in funding per year to build a contingency fund of up to \$3.0 million to help meet adverse cost awards. The Commission offsets this funding against any adverse cost awards it must pay to other parties during the year.

During the 2010/11 year, the Commission offset adverse cost awards of \$0.311 million against the adverse cost award contingency funding (2009/10: \$Nil), resulting in an increase in the Litigation Costs Reserve of \$0.189 million (2009/10: \$0.5 million).

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2011 (CONTD)**Major Litigation Fund**

	2010/11 \$000	2009/10 \$000
Balance at 1 July	1,500	1,500
Transfers to the litigation fund recognised in Comprehensive Income	6,019	6,287
Transfers from the litigation fund recognised in Comprehensive Income	(6,019)	(6,287)
TOTAL LITIGATION FUND	1,500	1,500
TRANSFERS TO THE LITIGATION FUND RECOGNISED IN COMPREHENSIVE INCOME COMPRISE:		
Crown revenue	6,019	6,287
TOTAL TRANSFERS TO THE LITIGATION FUND	6,019	6,287

The Major Litigation Fund is an operating balance retained by the Commission on its Statement of Financial Position. The Major Litigation Fund balance allows for the Commission to cover in advance costs for litigation under Vote Commerce – Major Litigation Fund, which is appropriated quarterly in arrears from the Crown. Under the Commission's Output Agreement, the Commission must maintain the balance of the Major Litigation Fund reserve at \$1.5 million.

10. CASH AND CASH EQUIVALENTS

	2010/11 \$000	2009/10 \$000
Cash on hand and at bank	28,396	7,964
Term deposits with maturities less than three months	4,000	6,000
TOTAL CASH AND CASH EQUIVALENTS	32,396	13,964

The carrying value of short-term deposits with maturity dates of three months or less approximates their fair value. The total of cash on hand and at bank includes a \$12 million penalty held in trust pending the outcome of an appeal in the Telecom Datatails case.

11. FEES AND RECOVERIES RECEIVABLE

	2010/11 \$000	2009/10 \$000
Recoveries receivable	53	59
Cost awards and settlements receivable	0	1,100
Accrued interest	36	1
TOTAL FEES AND RECOVERIES RECEIVABLE	89	1,160

The carrying value of receivables approximates their fair value.

As at 30 June 2011 and 30 June 2010, all overdue recoveries receivable have been assessed for impairment and appropriate provisions, with no provisions applied. The ageing profile of recoveries receivable at year end is detailed below:

	GROSS \$000	IMPAIRMENT \$000	NET \$000
AS AT 30 JUNE 2011			
Current (1-30 days)	53	0	53
Outstanding 31-60 days	0	0	0
Outstanding 61-90 days	0	0	0
Outstanding > 91 days	0	0	0
TOTAL AS AT 30 JUNE 2011	53	0	53
AS AT 30 JUNE 2010			
Current (1-30 days)	50	0	50
Outstanding 31-60 days	0	0	0
Outstanding 61-90 days	9	0	9
Outstanding > 91 days	0	0	0
TOTAL AS AT 30 JUNE 2010	59	0	59

As at 30 June 2011, all debtors receivable were expected to be fully recovered (2009/10: all debtors receivable were expected to be fully recovered).

12. CROWN REVENUE RECEIVABLE

	2010/11 \$000	2009/10 \$000
Vote Commerce - Major Litigation Fund	3,241	1,302
TOTAL CROWN REVENUE RECEIVABLE	3,241	1,302

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2011 (CONTD)

13. 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 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
Balance at 1 July 2010	2,122	1,174	1,820	44	5,160
Additions	614	2	2	0	618
Disposals	(267)	(61)	(166)	0	(494)
Transfers	91	0	0	0	91
BALANCE AT 30 JUNE 2011	2,560	1,115	1,656	44	5,375
ACCUMULATED DEPRECIATION AND IMPAIRMENT LOSSES					
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
Balance at 1 July 2010	1,688	964	983	41	3,676
Depreciation expense	324	80	178	3	585
Elimination on disposal	(249)	(55)	(74)	0	(378)
Transfers	0	0	0	0	0
Impairment losses	0	0	0	0	0
Reversal of impairment losses	0	0	0	0	0
BALANCE AT 30 JUNE 2011	1,763	989	1,087	44	3,883
CARRYING AMOUNTS					
At 1 July 2009	736	232	944	8	1,920
At 30 June and 1 July 2010	434	210	837	3	1,484
AT 30 JUNE 2011	797	126	569	0	1,492

Property, Plant and Equipment not yet commissioned at 30 June 2011 totalled \$326,000 (2009/10: \$Nil).

Transfers recorded in 2010/11 are for items of Property, Plant and Equipment that were not commissioned as at 30 June 2010, recorded as part of intangible assets, and were subsequently commissioned as tangible assets in 2010/11.

The Commission wrote off \$116,000 of computer and office equipment, furniture and fittings, and leasehold improvements, as a direct result of the February and June 2011 Christchurch earthquakes. These assets were contained in the Commission's (leased) Christchurch office, which was damaged in the February and June earthquakes,

and condemned by the Canterbury Earthquake Recovery Authority in June 2011. The Commission was prohibited from recovering these assets before the building's demolition, and expects to receive insurance proceeds for replacement items.

14. INTANGIBLES (COMPUTER SOFTWARE)

	ACQUIRED SOFTWARE \$000	TOTAL \$000
COST		
Balance at 1 July 2009	1,443	1,443
Additions	404	404
Disposals	0	0
BALANCE AT 30 JUNE 2010	1,847	1,847
Balance at 1 July 2010	1,847	1,847
Additions	200	200
Disposals	(132)	(132)
Transfers	(91)	(91)
BALANCE AT 30 JUNE 2011	1,824	1,824
ACCUMULATED DEPRECIATION AND IMPAIRMENT LOSSES		
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
Balance at 1 July 2010	1,287	1,287
Amortisation expense	200	200
Disposals	0	0
Impairment losses	0	0
Transfers	0	0
BALANCE AT 30 JUNE 2011	1,487	1,487
CARRYING AMOUNTS		
At 1 July 2009	394	394
At 30 June and 1 July 2010	560	560
AT 30 JUNE 2011	337	337

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.

Intangible assets not yet commissioned at 30 June 2011 totalled \$75,000 (2009/10: \$223,000). Transfers recorded in 2010/11 are for assets that were not yet commissioned as at 30 June 2010, recorded as part of intangible assets, and subsequently commissioned as tangible assets in 2010/11.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2011 (CONTD)**15. CREDITORS AND OTHER PAYABLES**

	2010/11 \$000	2009/10 \$000
Creditors	1,678	889
PAYE and other taxes withheld for payment to the Crown	185	231
Goods and Services Tax payable to the Crown	317	419
TOTAL CREDITORS AND OTHER PAYABLES	2,180	1,539

Creditors and other payables are non-interest bearing and are normally settled within 30 days. Therefore, the carrying value of creditors and other payables approximates their fair value.

16. PENALTIES HELD IN TRUST

	2010/11 \$000	2009/10 \$000
Telecom penalty held in trust	12,000	0
Interest on Telecom penalty held in trust	40	0
Other penalties held in trust	1,100	0
TOTAL PENALTIES HELD IN TRUST	13,140	0

Penalties held in trust are penalties received by the Commission but payable to another party. The Commission has received \$12 million in penalties from Telecom as a result of the Datatails case. As the matter is subject to appeal, the Commission is holding the funds in trust. Once the appeal is settled, the penalty will be paid with interest either to the Crown or to Telecom if their appeal is successful. In general, penalties received by the Commission must be paid to the Crown within seven days of receipt.

17. REINSTATEMENT PROVISION

	2010/11 \$000	2009/10 \$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. Although the Christchurch office was demolished due to the Canterbury earthquakes, the Commission now has new leased premises in Christchurch.

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

	2010/11 \$000	2009/10 \$000
OPERATING SURPLUS FOR THE YEAR	8,638	7,347
NON-CASH ITEMS:		
Depreciation and amortisation	785	897
Loss/(gain) on sale of property, plant and equipment	248	(1)
Employee entitlements	(149)	280
TOTAL NON-CASH ITEMS	884	1,176
CHANGE IN WORKING CAPITAL ITEMS:		
Fees and recoveries receivable	1,071	(1,160)
Crown revenue receivable	(1,939)	707
Prepayments	36	(82)
Creditors	641	339
Accrued expenses	580	(517)
Penalties held in trust	13,140	0
TOTAL CHANGE IN WORKING CAPITAL ITEMS	13,529	(713)
NET CASH INFLOWS FROM OPERATING ACTIVITIES	23,051	7,810

19. FINANCIAL INSTRUMENTS

	2010/11 \$000	2009/10 \$000
THE CARRYING AMOUNTS OF EACH CLASS OF FINANCIAL ASSETS AND LIABILITIES ARE:		
MONETARY ASSETS		
LOANS AND RECEIVABLES		
Cash and cash equivalents	32,396	13,964
Fees and recoveries receivable	89	1,160
Crown revenue receivable	3,241	1,302
TOTAL MONETARY ASSETS	35,726	16,426
MONETARY LIABILITIES		
OTHER LIABILITIES		
Creditors	2,180	1,539
Penalties and interest held in trust	13,140	0
Crown revenue repayable	5,342	3,801
TOTAL MONETARY LIABILITIES	20,662	5,340
NET MONETARY ASSETS	15,064	11,086

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.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2011 (CONTD)**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 2011 is 1.7:1 (2009/10: 3.1:1). Excluding the penalties held in trust at 30 June 2011, the Commission's ratio is 3:1. The Commission is not permitted any form of debt borrowings and has credit card facilities with an aggregate limit of \$44,000 (2009/10: \$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
2010			
Creditors	1,539	0	0
Crown revenue repayable	3,801	0	0
2011			
Creditors	2,180	0	0
Penalties and interest held in trust	13,140	0	0
Crown revenue repayable	5,342	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 2011 and 30 June 2010. The average interest rate on interest-bearing deposits over the year was 4.10 per cent (2009/10: 3.82 per cent). A 1 per cent change in interest rates, with all other factors unchanged, would change interest earnings by \$69,000 (2009/10: \$30,000).

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 \$80,300 (2009/10: \$172,000).

20. OPERATING (NON-CANCELLABLE) LEASES

	2010/11 \$000	2009/10 \$000
LEASE PAYMENTS DUE:		
Within one year	1,385	1,206
Within one to two years	1,022	265
Within two to five years	737	40
After five years	0	0
TOTAL OPERATING (NON-CANCELLABLE) LEASES	3,144	1,511

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 renewing in 2010/11. At the time these financial statements were prepared, the rental level on the Commission's Wellington office lease was under negotiation. The lease commitments disclosed above assume the existing rental level continues unchanged over the period of the renewal term.

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 17).

21. CAPITAL EXPENDITURE COMMITMENTS

The Commission had entered into capital expenditure contracts as at 30 June 2011 to the value of \$Nil (2009/10: \$Nil).

22. 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.

Significant transactions with government-related entities

The Commission has been provided with funding from the Crown of \$42.943 million (2009/10: \$43.299 million) for specific purposes as set out in the relevant applicable legislation, the scope of the relevant government appropriations, and the Output Agreement between the Commission and the Crown. In addition, the Commission has received \$0.153 million in cost recoveries from the Ministry of Economic Development for additional services provided outside of the scope of the relevant government appropriations.

Collectively, but not individually, significant transactions with government-related entities

In conducting its activities, the Commission is required to pay various taxes and levies (such as GST, PAYE, and ACC levies) to the Crown and entities related to the Crown. The payment of these taxes and levies, other than income tax, is based on the standard terms and conditions that apply to all tax and levy payers. The Commission is exempt from paying income tax under section CW 38 of the Income Tax Act 2007.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2011 (CONTD)

The Commission purchases goods and services from entities controlled, significantly influenced, or jointly controlled by the Crown. Purchases from these government-related entities for the year ended 30 June 2011 totalled \$0.760 million (2009/10: \$0.656 million). These purchases included electricity from Genesis and Meridian Energy, air travel from Air New Zealand, and postal and courier services from New Zealand Post.

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

2010/11: There were no other related party transactions during the year.

2009/10: 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 at a total cost of \$31,000. This entity was related as Peter JM Taylor is a director of the company, in addition to his role as Commissioner at that time. The transaction received appropriate approval. Peter JM Taylor's conflict was managed in accordance with Commission policy, and he was not involved in the selection of provider, negotiations, or provision of services.

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.

Key management personnel

Remuneration of key management personnel is disclosed below. No other transactions than those recorded below occurred with key management personnel or their close family members (2009/10: None). No transactions with the responsible Crown Ministers or their close family members occurred during the year (2009/10: None).

	2010/11 \$000	2009/10 \$000
Members' salary and other short-term employee benefits	1,981	1,858
Senior management salary and other short-term employee benefits	1,410	1,885
TOTAL KEY MANAGEMENT PERSONNEL SHORT-TERM EMPLOYEE BENEFITS	3,391	3,743
Redundancy and other cessation payments	153	96
TOTAL KEY MANAGEMENT PERSONNEL REMUNERATION	3,544	3,839

Key management personnel comprise all Commissioners, the Chief Executive Officer, and the remaining three members of the Senior Leadership Team.

23. MEMBERS' REMUNERATION

	2010/11 \$000	2009/10 \$000
M Berry (Chair from 1 April 2009)	432	400
PR Rebstock (Commissioner until October 2009)	0	30
DR Bates (Commissioner)	0	1
DF Curtin (Commissioner)	76	67
PJM Taylor (Commissioner until February 2010)	61	184
S Begg (Commissioner)	329	324
A Mazzoleni (Commissioner)	202	207
G Pickering (Associate)	151	125
P Duignan (Associate until 31 May 2010, Commissioner from 1 June 2010)	166	157
R Patterson (Telecommunications Commissioner)	374	363
Stephen Gale (Associate)	190	0
TOTAL MEMBERS' REMUNERATION	1,981	1,858

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	2010/11	2009/10
Deputy Chair	1,530	0
Commissioners and Associates	1,400	1,380
Cease and Desist Commissioners	1,420	1,400

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.

Other payments in respect of Members

There have been no payments made to committee members appointed by the Board who are not Board members during the year.

The Commission has provided a Deed of Indemnity to Members for certain activities undertaken in the performance of the Commission's functions.

The Commission has effected Directors' and Officers' Liability and Professional Indemnity insurance cover during the financial year in respect of the liability or costs of Members and employees.

No Members received compensation or other benefits in relation to cessation (2009/10: \$Nil).

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2011 (CONTD)**24. CAPITAL MANAGEMENT**

The Commission's capital is its equity, which comprises accumulated funds and other reserves as disclosed in note 9 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.

25. SIGNIFICANT EVENTS AFTER BALANCE DATE

There were no significant events after balance date.

26. 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**Crown revenue**

Crown revenue exceeded budget by \$2.059 million due to expense transfers from 2009/10 that were not incorporated into the budget (as they had not been finalised at that point), baseline updates (particularly in Electricity and Input Methodologies), and less expenditure than budgeted for within Major Litigation resulting in less revenue called upon.

Direct output costs

Direct output costs were \$3.997 million under budget primarily due to reduced expenditure on external litigation, and expenditure on external consultants.

Total comprehensive income

Total comprehensive income was \$6.797 million greater than budget due to the additional Crown Revenue and lower Direct output costs noted above, as well as additional other revenue received and overall cost savings which were greater than budgeted.

Statement of Financial Position**Total equity**

Total equity was \$3.939 million greater than budget due to greater than expected surpluses in the 2009/10 year, increasing opening equity, and a greater than budgeted surplus in 2010/11.

Cash and cash equivalents

Cash and cash equivalents were \$22.441 million greater than budgeted due to reduced payments to suppliers, resulting in unexpected surpluses in various appropriations, and the unbudgeted receipt and holding of \$13.1 million in penalties (including \$12 million from Telecom held in trust until appeals are settled).

Crown revenue receivable

Crown revenue receivable is \$1.741 million greater than budget. This relates to Major Litigation Fund expenditure, reclaimable from the Crown at year end, which is difficult to estimate due to fundamental uncertainties of case load and timing of court hearings.

Repayment of surplus

The repayment of surplus was \$4.735 million greater than budgeted due to surpluses across all appropriations.

Penalties held in trust

Penalties held in trust are \$13.140 million greater than budgeted due to the receipt of penalties that were not budgeted for due to fundamental uncertainty about the receipt of penalties.

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

Fees and recoveries received were \$1.449 million greater than budgeted due to the receipt of settlements of a size that was not anticipated.

Supplier payments

Payments to suppliers were \$6.0 million less than budgeted, due to lower than budgeted expenditure as reflected in the Statement of Comprehensive Income.

Statement of Service Performance

Vote Commerce – Enforcement of general market regulation

Operating revenue was \$0.507 million greater than budget, primarily due to greater than budgeted interest revenue received.

Total output expenditure was \$1.974 million less than budget, primarily due to under spends in the coordinated behaviour and unilateral conduct cases outputs as a result of lower headcount and a decrease in large-scale investigations in these areas compared with prior years.

Vote Communications

Total output expenditure was \$1.321 million less than budget, due to greater than expected efficiency gains from cost reductions in the information disclosure and monitoring and reporting outputs.

Vote Commerce – Regulation of electricity lines businesses

Crown revenue was \$1.95 million greater than budget due to an additional \$1.5 million in funding from a baseline update in relation to additional responsibilities under the Electricity Industry Act, and an expense transfer from 2009/10 of \$0.450 million.

Vote Commerce – Regulation of natural gas services

Operating revenue was \$1.259 million greater than budget due to an expense transfer from 2009/10 of \$1.259 million.

Vote Commerce – Input Methodologies (Gas, Electricity and Airports)

Operating revenue was \$0.831 million greater than budget due to additional baseline funding of the same amount to develop an input methodology for Transpower Capital Expenditure.

APPENDICES

Appendices with supporting detail for outputs reported are available on the Commission's website:

www.comcom.govt.nz/accountability

- Competitive Markets
- Informed Consumers
- Dairy
- Communications
- Input Methodologies
- Electricity
- Gas
- Airports

GLOSSARY

Cartel	A cartel involves illegal agreements between competitors not to compete with each other, such as price fixing; the restriction of outputs; the allocation of customers, suppliers or territories; and bid rigging.
CCCF Act cases	Investigations into possible breaches of the Credit Contracts and Consumer Finance Act by creditors. Potential breaches include a creditor failing to provide the debtor with adequate disclosure of the terms of the consumer credit contract, consumer lease or buy-back transaction; and a creditor charging consumer credit contract fees that may be unreasonable.
Coordinated behaviour cases	Investigations into agreements between competitors not to compete with each other, such as price fixing; the restriction of outputs; the allocation of customers, suppliers or territories; and bid rigging.
Default Price-Quality Path	Under Part 4 of the Commerce Act 1986 (subparts 9 and 10), non-exempt suppliers of electricity lines services, and suppliers of gas pipeline services are subject to default/customised price-quality regulation.
Fair Trading Act cases	Investigations into possible breaches of the Fair Trading Act. Potential breaches include traders providing consumers with false, misleading or incomplete information relating to the supply of goods and services. Investigations under the FTA may also involve employment advertising, pyramid selling, and the supply of products covered by Product Safety and Consumer Information Standards.
Herfindahl-Hirschman Index (HHI)	A commonly accepted measure of market concentration calculated by squaring the market share of each market participant that has a material number of subscribers and adding these together. The maximum possible score is 10,000.
Information disclosure	Under Part 4 of the Commerce Act 1986 (subpart 4), sufficient information is to be readily available to interested persons so that they can assess whether the purpose of Part 4 is being met.
Input Methodologies	This involves setting upfront regulatory methodologies, rules, processes, requirements and evaluation criteria for services that are regulated under Part 4, and for undertaking Part 4 inquiries.
Market definition	The process of identifying the relevant market for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, is substitutable for them. The market so defined will be the area of close competition between firms.
Market structure cases	Investigations into mergers that might substantially lessen competition in a market and that do not have the protection of a clearance.
Merger	A merger is a combination of two or more business enterprises into a single enterprise. Colloquially, mergers also include business acquisitions which involve the acquisition of assets or shares of a business.
Mobile Termination Access Service (MTAS)	The hand-over of calls or text messages to a mobile service provider. For the purposes of the Commission's recent MTAS investigation, MTAS included mobile-to-mobile termination, fixed-to-mobile termination and termination of SMS messages.
Product safety and information standards cases	Investigations of products such as bikes, cots and children's toys that might be unsafe, as well as the incorrect labelling of footwear and clothing, and failure to display required information on motor vehicles offered for sale.
Substantially lessening competition	Substantial lessening of competition concerns a real or substantial impact on a market in the way of a lessening, hindering or preventing of the process of workable or effective competition.
System Average Interruption Duration Index (SAIDI)	This is the average outage duration for each customer served, and is calculated as the sum of all customer duration interruptions divided by the total number of customers served.
System Average Interruption Frequency Index (SAIFI)	This is the average number of interruptions that a customer experiences and is calculated as the total number of customer interruptions divided by the total number of customers served.
Telecommunications Service Obligations (TSO)	This is an obligation to supply certain telecommunications services to groups of end-users who may not otherwise be supplied on a commercial basis or at a price that is considered to be affordable.
Ultra-Fast Broadband Initiative (UFB)	The Government has contracted with Chorus, WEL Networks, Northpower and Enable Networks to build and operate Fibre-to-the-premises networks in 75 per cent of New Zealand.
Unbundled Bitstream Access (UBA)	This is a regulated service giving wholesale access to Telecom's DSL full speed broadband service. Commercial variants are also available.
Unbundled Copper Local Loop (UCLL)	This is wholesale access to the copper line connecting a phone user to the local exchange.
Unilateral conduct cases	Investigations into prohibited conduct by a person or a business, including taking advantage of their dominant position in a market for an anti-competitive purpose, or specifying a minimum price at which its goods or services can be sold by another.

www.comcom.govt.nz

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

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