

COMMERCE COMMISSION

# 2010-2013 STATEMENT OF INTENT





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<b>ABBREVIATIONS</b>	
Commerce Commission	Commission
Ministry of Economic Development	MED
Ministry of Consumer Affairs	MCA
Ministry of Agriculture and Forestry	MAF
Australian Competition and Consumer Commission	ACCC
<b>LEGISLATION ENFORCED BY THE COMMERCE COMMISSION</b>	
Commerce Act 1986	Commerce Act
Credit Contracts and Consumer Finance Act 2003	CCCF Act
Dairy Industry Restructuring Act 2001	DIR Act
Electricity Industry Reform Act 1998	EIR Act
Fair Trading Act 1986	Fair Trading Act
Telecommunications Act 2001	Telecommunications Act

# CHAIR'S OVERVIEW

During 2009/10, Commissioners and staff have taken time to reflect on the Commerce Commission's role in the New Zealand economy and the approach we should take to our work.

The Commission has reassessed the outcomes we influence and the impacts we seek to have. The result of this and our revised statement of organisational purpose are outlined in this Statement of Intent.

We aim to achieve the best possible outcomes in our assessment of both competitive and regulated markets. This translates into various long-term benefits for New Zealand consumers including:

- the competitive supply of goods and services (based on both price and quality considerations);
- fair competition on the basis of accurate information being provided to consumers; and
- regulatory outcomes which seek to mimic or facilitate competitive terms of supply for goods and services.

## HOW WE DO BUSINESS

The Commission has also taken some time over the last year to reflect on how we do business. We are in the process of building on organisational changes and are developing and implementing strategies and work programmes to ensure we achieve the impacts we desire. Some key themes emerge:

### → *Influencing role*

As the Commission moves to increase its influencing role, we are committed to prioritising the issues we will intervene in. We also intend to use a wider range and mix of tools in our intervention. The Commission will increase investment in educating businesses and consumers about the benefits of competition and the rights of consumers under the Fair Trading and CCCF Acts to encourage pro-competitive conduct.

### → *Consultative approach*

The Commission has taken steps over the last year to adopt a more consultative approach, including more conferences and workshops, which encourage interested parties to present their views in a balanced and supportive setting in order to inform the Commission's decision making. This approach has been well received and will continue in the future.

### → *Stakeholder engagement*

During 2009/10, we have invited and received valuable stakeholder feedback. In light of this feedback, we have appreciated all the more the need for the Commission to prioritise our work challenges and to respond to these challenges in a timely manner. Additionally, we will, to the extent possible, endeavour to engage with stakeholders to better understand their views and better explain our own. This has particular importance in the regulatory arena given our clear mandate to incentivise investment and innovation.

### → *Whole of government*

The Commission will continue to work closely with the government to provide advice on the operational implications of any government proposals for change in the commerce and regulatory areas within our remit.

Over the coming three years, the Commission has a full and challenging work programme.

## REGULATION

The Commission is aware of the cost that regulation can have on businesses and, consistent with the Government's 2009 Statement on Regulation, seeks to act responsibly by ensuring that these costs are minimised relative to the wider benefits to the economy derived from regulatory activity and compliance. Where the Commission makes regulatory interventions, we carefully and explicitly consider the proportionality of such interventions as part of our deliberations.

### **Part 4 of the Commerce Act**

Much of the Commission's current regulatory work relates to development and implementation of new arrangements under Part 4 of the Commerce Act. The year 2010/11 will be critical in developing that regime. Input methodologies, which underpin these new arrangements, are on track to be determined by December 2010. In the medium term, the Commission will ensure that appropriate information disclosure regimes are in place for airports, gas distribution and electricity lines businesses, and price-quality regulation is advanced for gas distribution and electricity lines

businesses. In addition, the Commission will work with officials on the proposed transfer of responsibilities from the Electricity Commission for the approval of transmission investment by Transpower and the associated funding implications.

### **Telecommunications regulation**

Our focus for the next three years is on the Ultra-fast Broadband Initiative, the ongoing review of the existing regulatory regime, and on enhancing our market monitoring processes. The Ultra-fast Broadband Initiative provides a unique opportunity to develop the regulatory regime before investment is made, and we will be providing advice to the relevant agencies on appropriate open access principles. We will be conducting ongoing reviews of competitive conditions in telecommunications markets, consistent with our view that where competition is effective, regulation can be removed. This work will be facilitated by increasing and improving our market monitoring activities.

### **ENFORCEMENT**

#### **Restrictive trade practices**

The two areas where the law has the potential to develop in 2010/11 are monopolisation and the criminalisation of cartels. The Supreme Court has been asked to rule on the 'counterfactual' test under section 36 in the 0867 case against Telecom. The outcome of this case will be important, and the Commission may, as appropriate, develop section 36 guidelines once this decision is delivered. In the case of the criminalisation of cartels, the Commission will make operational submissions and undertake planning in relation to this proposed legislation.

The Commission also expects a significant upturn in work on authorisations, with a number already signalled to the Commission for consideration in 2010/11.

#### **Business acquisitions**

The Commission has recently received the first two clearance applications in eight months. We are anticipating an increase in clearance applications as the economy recovers.

#### **Fair Trading Act**

The Commission currently receives around 10,000 complaints under the Fair Trading Act each year, and this level of activity is likely to continue. Inevitably, this demand poses some prioritisation challenges. Significant enforcement action can be expected in this area. Additionally, the Commission is committed

to the continuation of its low-level inquiry unit, which deals with a large number of routine cases at lower cost and allows more focus on complex, high detriment investigations. This innovation has already delivered significant outcomes in terms of helping businesses to be compliant with the Fair Trading Act and achieving resolution of issues for consumers.

#### **Credit Contracts and Consumer Finance Act**

The Commission's goal is to work with the industry in order to give certainty as to our understanding of the obligations imposed under this legislation. This will involve seeking precedents through litigation as well as refining our draft credit fee guidelines during 2010/11.

### **GLOBAL TRENDS**

The Commission will continue to pay close attention to global trends and developments in competition and consumer law. We will continue to cooperate closely with other jurisdictions, particularly the Australian Competition and Consumer Commission (ACCC). We will seek greater consistency in our respective approaches, in terms of competition cases we have in common and of greater alignment of our operational policies and procedures. This matter is of importance in the context of the Government's pursuit of a single economic market with Australia.

### **PERFORMANCE IMPROVEMENT**

Given the need to operate within significant funding constraints, greater emphasis will be placed on performance improvement and prioritisation of work streams. We continue to focus on maximising impact, reviewing productivity and delivering efficiency gains – in essence, doing more with less.

The demands placed upon the Commission in the years ahead will be significant. The Commission members and staff are dedicated to achieving the best possible outcomes in competitive and regulated markets for the long-term benefit of New Zealanders.



**Dr Mark Berry**  
Chair

# NATURE AND SCOPE OF FUNCTIONS

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

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

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

The Commission is an independent Crown entity, with some quasi-judicial functions, established under the Commerce Act. We are primarily accountable to the Associate Minister of Commerce (with the delegation for oversight of the Commerce Commission as ownership Minister) for our performance. This independence requires the Commission to be an impartial promoter and enforcer of the law. We use our experience to also provide operational input to policy development and legislative reviews.

The Commission's outputs are delivered under an Output Agreement with the Associate Minister of Commerce and the Minister for Communications and Information Technology, funded through Vote Commerce and through Vote Communications.

## MARKETS ARE COMPETITIVE

The Commission enforces, adjudicates and provides information and guidance relating to competition law that prohibits anti-competitive behaviour and structures in markets (Commerce Act 1986). Following the passage of the Electricity Industry Bill, the responsibility for the enforcement of the Electricity Industry Reform Act will move to the Electricity Authority; this is expected in 2010.

## CONSUMERS ARE INFORMED

The Commission enforces and provides information and advice about consumer legislation that prohibits false and misleading behaviour by traders (Fair Trading Act 1986), and requires the disclosure of certain information to consumers entering into consumer credit contracts and provides rules that relate to interest, payments and credit fees (Credit Contracts and Consumer Finance Act 2003).

## REGULATION IS TARGETED AND EFFECTIVE

The Commission has regulatory responsibility for electricity lines businesses, gas pipeline businesses and named international airports under Part 4 of the Commerce Act. The responsibilities as defined under this legislation are listed below:

## INPUT METHODOLOGIES

The Commission is required to determine a range of input methodologies in order to promote certainty for suppliers and consumers in relation to the rules, requirements and processes applying to the regulation, or proposed regulation, of goods or services under Part 4 of the Commerce Act.

### **ELECTRICITY LINES SERVICES**

The Commission will continue the implementation of a price-quality control regime for specified electricity lines services, along with a complementary information disclosure regime. The recent ministerial review of electricity market performance concluded that the approval of transmission investment by the national grid operator, Transpower, should be transferred from the Electricity Commission to the Commerce Commission. The Electricity Industry Bill contains provisions to implement the transfer and, at the time of writing this Statement of Intent, this was being considered by the Finance and Expenditure Select Committee.

### **GAS PIPELINE SERVICES**

The Commission will continue the implementation of a price-quality regime for certain gas pipeline services, including both distribution and transmission, along with a complementary information disclosure regime.

### **AIRPORT SERVICES**

The Commission will implement an information disclosure regime for specified airport services. This relates to aircraft and freight activities, airfield activities and specified passenger terminal activities.

### **PART 4 INQUIRIES**

The Commission can conduct a regulatory inquiry to determine whether to recommend that particular goods or services should be controlled. Should the Minister accept the Commission's recommendation, it will be recommended to the Governor-General that regulation be made by Order in Council. The Commission is then required to make a determination about how this regulation should apply.

The Commission regulates the telecommunications and dairy industries under industry-specific legislation:

### **TELECOMMUNICATIONS**

The Commission monitors and reports on developments and trends, determines access terms to networks, determines and allocates the cost of telecommunications service obligations, reports to the Government on the desirability of regulating or deregulating telecommunications services, and monitors and enforces Telecom's compliance with its operational and accounting separation obligations (Telecommunications Act 2001).

### **DAIRY**

The Commission makes determinations on disputes with Fonterra about the application of subpart 5 of Part 2 of the Dairy Industry Restructuring Act (DIR Act) 2001 and the Dairy Industry Restructuring (Raw Milk) Regulations 2001 and has a statutory investigation and enforcement role.

# OPERATING ENVIRONMENT

The Commission's ability to be effective, now and in the future, depends on our understanding of our operating environment. There are a number of factors that currently stand out as particularly important. These include:

- *the Government's strong focus on improving New Zealand's economic performance.* This underscores the importance of the Commission's work in ensuring markets work well to help foster economic performance;
- *appropriate infrastructure investment.* Infrastructure industries are often the subject of the Commission's work. There is significant focus on ensuring infrastructure investment supports New Zealand's economic performance;
- *increasing complexity and technology.* Many markets, whether on the demand and/or supply side, are becoming increasingly complex due to changing technology and other factors. This makes the detection and proof of inappropriate market conduct more difficult;
- *the Government's pursuit of a single economic market with Australia.* This, together with closer cooperation with the ACCC and the possible criminalisation of cartels, are priorities that will have implications for the Commission's work;
- *businesses striving for international competitiveness.* Many businesses or groups of businesses want to improve their international competitiveness, sometimes requiring scale that risks adverse implications for competition in domestic markets; and
- *attracting and retaining the right people.* This may, given small markets for some specialised skills, become more challenging for the Commission, particularly as economic conditions improve and competition in the labour market increases.

The Commission's performance and success will depend on our ability to take these and other important operating factors into account, and to anticipate changes or new factors.

Our operating environment also necessitates working effectively with others. We have an important role, but

the Commission is only one of many players focused on helping markets work better. Market effectiveness depends on, for example, the actions of both consumers and businesses, relevant policy and regulatory settings, and the activities of other relevant government agencies. This underscores the importance of the Commission understanding the wider competition and regulatory landscape, and fostering strong links with a wide range of parties. This includes monitoring international developments in competition and regulatory matters and further building international connections.

We are also mindful of others' expectations of the Commission. For example, consumer expectations of the Commission as a competition and fair trading 'watch-dog' are likely to further increase, combined with higher expectations of effective consumer engagement and the quality, type and form of information consumers can access through different media.

Also there is an expectation by Government of all government agencies that they will work within significant funding constraints, to place greater emphasis on performance improvement in relation to cost-effective delivery of services, prioritisation of activity for maximum impact, and increased value for money.

We are also aware of the desire of businesses for the Commission to act faster, improve our understanding of business operations, promote greater certainty in relation to our processes and analytical approaches, be more transparent, promote and influence compliance (not just enforcement), and choose interventions that are proportional and fit for the purpose at hand.

The Commission is focused on better understanding others' perspectives and better explaining our own. Given different roles and incentives, the Commission and its stakeholders will not always agree. The Commission is committed to further improving our engagement and communication, consulting with interested parties and better understanding their respective views before reaching decisions.

# STRATEGIC CONTEXT

The Commission places a strong emphasis on looking ahead to identify future challenges and opportunities, and to proactively plan our future success. This section sets out our enhanced strategic framework, and our impact measurement framework, introduces our strategic performance improvement intentions (including our funding arrangements and key risks), and provides a high-level overview of key work programmes for both enforcement and regulation activities.

Understanding our strategic context includes understanding our operating environment (previously discussed), and proactively managing our organisational capability. The *Managing Organisational Health and Capability* section of this Statement of Intent sets out the five development programmes that will guide the Commission's business improvement initiatives over the next three years.

## STRATEGIC FRAMEWORK

An important starting point for determining any organisation's strategic direction is a clear understanding of what the organisation does, and why. At a high level, we seek to do this through our strategic framework (see pages 8–9), with further details set out in our internal business plans.

During 2009/10, we further developed our strategic framework to better describe the Commission's approach. We think of this strategic framework as a critical foundation to effective performance, now and in the future. The key changes are:

- *clarification of our outcomes.* We have clarified the outcomes that we contribute to and seek to influence. We have removed the "Knowledgeable New Zealanders" outcome because it is not an outcome in itself. Raising general awareness of our activities, enhancing New Zealanders' knowledge about competition and regulation, and our focus on public information and education are included in each of our three remaining outcome areas;
  - *importance of external focus.* We recognise the importance of the Commission maintaining a strong outward focus by being cognisant of the wider competition and regulatory landscape. Our outcomes are influenced by a wide range of consumer, business, government and other activity. Our awareness of such activity, and factoring it into our work choices and decisions, is critical to achieving our organisational purpose;
  - *amended impacts.* We have clarified the direct impacts the Commission has. Our previous set of impacts was a mix of our own impacts, others' impacts and their outcomes. One focus for the Commission is to ensure that our interventions overall achieve the greatest impact, at the least cost; and
  - *clarity of future focus.* We have retained reference to our key internal strategies, and have strengthened the explanation of how we expect to have the biggest impact through our activities over the next three years. It is important to recognise, however, that we will ultimately have the biggest impact by prioritising our activity effectively as circumstances change and new circumstances arise.
- *a new purpose.* We have adopted a new organisational purpose statement: "Achieve the best possible outcomes in competitive and regulated markets for the long-term benefit of New Zealanders". In making this change, we are clear that our success depends on choosing the right mix, type and nature of activity to achieve the best possible outcomes;

## STRATEGIC FRAMEWORK

**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

### IMPACTS THE COMMISSION SEEKS TO HAVE

- Businesses and consumers are aware of the benefits of competition
- Businesses are aware of competition laws, particularly the Commerce Act
- Businesses and consumers act consistently with competition laws, including resolution of any issues themselves (avoiding or reducing the need for the Commission's intervention)
- Businesses and consumers advise the Commission of any concerns about anti-competitive issues (for the Commission to consider investigating and taking further action)
- Changes in market structure (e.g. mergers) that promote competition occur and/or are permitted
- Market arrangements that could breach competition law but benefit New Zealanders are authorised
- Anti-competitive conduct is deterred or challenged in the best possible way by the Commission

- Businesses and consumers are aware of the benefits of fair and accurate information
- Businesses and consumers are aware of fair trading laws, particularly the Fair Trading and CCCF Acts
- Businesses and consumers act consistently with fair trading laws, including to resolve any issues themselves (avoiding or reducing the need for the Commission's intervention)
- Businesses and consumers advise the Commission of any concerns about fair trading (for the Commission to consider investigating and taking further action)
- Businesses and consumers are confident that products meet mandatory safety standards
- Unfair market dealings are deterred or challenged in the best possible way by the Commission

Underpinned by:

- Awareness and understanding of our external environment, and the wider competition and regulatory landscape
- Prioritisation to choose the right mix of activity; and the right nature of activity (e.g. influencing, investigation, litigation) – considering the costs and benefits of all options
- A focus on conducting work in ways that maintain and enhance public confidence in the Commission

### HOW DO WE HAVE THE BIGGEST IMPACT IN THE NEXT 3 YEARS?

- A targeted engagement programme
- Issuing of guidelines that promote compliance
- Use of a wide range of approaches, with effective prioritisation of choices, that are fit for purpose
- Meaningful measures of impact/success

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- Issuing of guidelines that promote compliance
- Use of a wide range of approaches, with effective prioritisation of choices, that are fit for purpose
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### OUTPUTS 2010/11

#### MARKETS ARE COMPETITIVE

- \$8.2m Vote Commerce
- \$3.5m Major Litigation (external)
- \$1.6m Major Litigation (internal)
- Market structure cases
- Coordinated behaviour cases
- Unilateral conduct cases
- Determinations
- Framework development
- Public information/education
- Reports to Ministers

#### CONSUMERS ARE INFORMED

- \$5.6m Vote Commerce
- \$2m Major Litigation (external)
- \$0.9m Major Litigation (internal)
- Fair Trading Act cases
- Product safety and information standards cases
- CCCF Act cases
- Fair Trading and Framework development
- Fair Trading and CCCF public information/education

### 5 STRATEGIES TO DEVELOP THE COMMISSION AND ITS CAPABILITIES

Simplify our business

Better understand our value

Better connect

Stronger future focus

Better investment in people

**OUTCOMES THE COMMISSION INFLUENCES**

**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**

- Businesses and consumers are aware of the benefits of targeted regulation
- Businesses and consumers are aware of the details of specific regulatory regimes and clear regulatory principles
- Businesses and consumers act consistently with regulatory regimes, principles and rules, including the resolution of any issues by themselves (avoiding or reducing the need for the Commission's intervention)
- Businesses and consumers advise the Commission of any concerns about regulated market activity (for the Commission to consider investigating and taking further action)
- Regulatory rules are set, changed or modified when needed to best promote regulated market outcomes
- Inappropriate regulated market activity is deterred or challenged in the best possible way

Underpinned by:

- Awareness and understanding of our external environment, and the wider competition and regulatory landscape
- Prioritisation to choose the right mix of activity and the right nature of activity (e.g. influencing, investigation, litigation) - considering the costs and benefits of all options
- A focus on conducting work in ways that maintain and enhance public confidence in the Commission

**HOW DO WE HAVE THE BIGGEST IMPACT IN THE NEXT 3 YEARS?**

**OVERALL**

- Meaningful measures of impact/success

**DAIRY**

- Contestability in dairy markets through expansion and entry of efficient independent processors

**TELECOMMUNICATIONS**

- Full and valuable contribution to Next Generation Networks market development
- Monitoring and analysis of sector data to appropriately inform interested parties
- Sound and timely completion of investigations, calculations, clarifications and reviews under the Telecommunications Act

**ELECTRICITY, GAS AND AIRPORTS**

- Sound and timely completion and implementation of the Part 4 regulatory arrangements
- Development and integration of appropriate electricity transmission capital expenditure assessment processes
- Sound and timely compliance and assessment of arrangements under Part 4

**OUTPUTS 2010/11**

**REGULATION IS TARGETED AND EFFECTIVE**

Dairy	Telecommunications	Input Methodologies	Electricity	Gas	Airports
\$0.7m Vote Commerce	\$7.4m Vote Communications	\$2.6m Vote Commerce	\$3.2m Vote Commerce	\$1.1m Vote Commerce	\$0.9m Vote Commerce
→ Investigations	\$0.5m Major Litigation (external)	\$0.5m Major Litigation (external)	→ Electricity distribution determinations	→ Determination of price-quality paths (including consultation papers)	→ Information disclosure
→ Determinations	→ Access determinations	→ Determinations - Airports, Gas and Electricity	→ Electricity distribution compliance	→ Compliance with existing authorisations and determinations	→ Public information/ education
→ Framework development	→ TSO cost determinations	→ Public information/ education	→ Electricity distribution information disclosure	→ Information disclosure	
→ Public information/ education	→ Monitoring and reporting		→ Electricity distribution framework development	→ Framework development	
	→ Enforcement cases		→ Transpower determinations	→ Public information/ education	
	→ Industry Code approvals		→ Transpower compliance		
	→ Reports to Ministers		→ Transpower information disclosure		
	→ Framework development		→ Transpower framework development		
	→ Public information/ education		→ Public information/ education		
	→ Information disclosure				

Simplify our business

Better understand our value

Better connect

Stronger future focus

Better investment in people

## IMPACT MEASUREMENT

Building on the work done on our performance measures in 2009/10, and the enhancements to our strategic framework, during 2010/11 we will further focus on the development of impact measures – an important test of our performance over time. We are retaining the measures set out in last year’s Statement of Intent, with some limited refinements. These are set out below. The Commission expects the number of both measures and targets to reduce in the future as we better understand and focus on what truly demonstrates the Commission’s effective performance.

### IMPACT MEASURES FOR ENFORCEMENT

Impact measurement is, by its very nature, focused on the medium term. The measures will continue to develop over time and demonstrate that the Commission is effectively promoting competition and fair trading law for the long-term benefit of New Zealanders. Ongoing evaluation of the impact and quality of the Commission’s decisions informs value for money assessments, and assists with decisions on how to best operate in order to achieve optimal outcomes in competitive markets in New Zealand.

#### Markets are competitive

In 2009/10, the Commission made good progress in developing a methodology for evaluating the economic benefits resulting from direct intervention in markets, where merger applications were declined or successful enforcement was taken through the courts. The Commission developed its draft impact measurement methodology by reviewing assessments undertaken by selected overseas authorities and assessing the suitability of their methodologies in the New Zealand context. Input was sought from the United Kingdom’s Office of Fair Trading (OFT), widely seen as a world leader in this field, together with the European Commission Director-General of Competition, United States Federal Trade Commission and United States Department of Justice. In 2010/11, the draft methodology will be reviewed and refined. The results will be reported internally in 2010/11 (while the methodology is still being refined) and reported externally from 2011/12.

In 2009/10, the Commission also undertook its first ex-post evaluation of two pilot studies to test the quality of our assessments over time. For example, by reviewing a decision to clear a merger several years after the decision was made, we will be able to find out whether the Commission’s expectation that competition in that market would not be lessened as a result of the merger was borne out by the actual effects of the merger. The results of these pilot market studies will be reported internally towards the end of 2009/10. In 2010/11, this case study methodology will be reviewed, refined and used to assess the quality of other Commission decisions. Results will be reported externally from 2011/12.

#### Consumers are informed

In 2009/10, the Commission engaged with its stakeholders, particularly across the Fair Trading Centres of Excellence, to further establish its impact measurement targets and methods of collection, to assess the degree to which the rights and obligations of consumers and businesses are understood, and the level of compliance with the Fair Trading and CCCF Acts.

The Commission placed particular emphasis on the Telecommunications Centre of Excellence in 2009/10, with the establishment of regular meetings with industry players and the piloting of impact measurement methods. These included surveying major businesses on the perceived compliance of competitors and observing changed behaviour as a result of the Commission’s engagement. In 2010/11, we will further refine this work, as we better understand our impact and advance our impact measurement methods and targets. As a consequence of the work done in 2009/10, the impact measures have evolved to those set out below.

IMPACT MEASURE	METHOD OF COLLECTION	TARGET
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	<ul style="list-style-type: none"> <li>→ 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</li> <li>→ 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</li> </ul>	<ul style="list-style-type: none"> <li>→ Actual benefit realised is greater than the cost of the Commission's intervention</li> </ul>
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	<ul style="list-style-type: none"> <li>→ 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</li> <li>→ 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</li> </ul>	<ul style="list-style-type: none"> <li>→ Commission's market predictions in specific cases are tested and validated</li> </ul>
Businesses and consumers are aware of the benefits of fair and accurate information, thereby improving market outcomes	<ul style="list-style-type: none"> <li>→ Evaluation of questionnaires and production of case studies for Centres of Excellence:               <ul style="list-style-type: none"> <li>→ Telecommunications</li> <li>→ Financial products</li> <li>→ Sustainability</li> </ul>               [Note: the case study method will be developed and piloted in the Telecommunications Centre of Excellence in 2010/11]             </li> <li>→ Baseline development in 2010/11</li> </ul>	<ul style="list-style-type: none"> <li>→ Improved compliance levels over time</li> </ul>
Market outcomes are improved through promoting compliance with the Fair Trading and CCCF Acts	<ul style="list-style-type: none"> <li>→ Drawing on data<sup>1</sup> 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</li> <li>→ The Commission will obtain feedback from stakeholders, including through regular meetings and market intelligence activities</li> </ul>	<ul style="list-style-type: none"> <li>→ Number of complaints indicating prima facie breaches in selected areas will increase initially as a result of increased public information and education</li> <li>→ Improved compliance levels over time</li> </ul>

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

## 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 Dairy Industry Restructuring Act and the obligation to supply raw milk under the Raw Milk Regulations. As a consequence of the work done in 2009/10, the impact measures have evolved to those set out below.

IMPACT MEASURE	METHOD OF COLLECTION	TARGET
Contestability in dairy markets is achieved through expansion and entry of efficient, independent processors	<ul style="list-style-type: none"> <li>→ Observation of farmers switching between dairy processors</li> <li>→ Observation of new processors entering and expanding in the industry</li> </ul> Monitoring changes in the volume and share of milk collected by dairy processors in the industry, with statistics provided by MAF	→ Greater contestability in dairy markets

### REGULATION IS TARGETED AND EFFECTIVE – TELECOMMUNICATIONS

The Commission promotes competition in telecommunications markets for the long-term benefit of end-users by regulating and monitoring telecommunication services.

The current regulatory framework has been successful in delivering results to consumers. There has been significant private sector investment in both the fixed and mobile sectors since the 2006 amendments to the Telecommunications Act. Investment in local loop unbundling has resulted in greater choice for consumers. The price of residential broadband services in New Zealand, and the growth in broadband subscribers, has improved since the 2006 amendments. The entry of a third network operator has led to increased competition in the mobile market.

The Government has announced that it will invest \$1.5 billion in telecommunications infrastructure through its Ultra-fast Broadband Initiative. The Commission will be providing advice to the relevant agencies on appropriate open access principles to ensure that competition continues to be promoted in telecommunications markets with the transition to next generation networks.

In 2010/11, the Commission will increase its monitoring activity in the telecommunications market. The Commission's focus is on collecting data, undertaking analysis and publishing information that assists interested parties in assessing the extent to which competition is increasing. Enhanced monitoring activities will provide a baseline to measure the effectiveness of actions undertaken by the Commission, as well as providing guidance as to how the telecommunications market has developed and will continue to develop over time, and how consumers benefit in the long term.

In 2010/11, the Commission will establish a series of benchmarks against which the impact of competition can be measured. As a consequence of the work done in 2009/10, the impact measures have evolved to those set out below.

IMPACT MEASURE	METHOD OF COLLECTION	TARGET
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)
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 Herfindahl-Hirschman Index (HHI) → Baseline: → Fixed line (2007): 7,933 → Broadband (2007): 5,067 → Mobile (2007): 4,950
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
Uptake of core regulated services (UCLL <sup>2</sup> and UBA <sup>3</sup> ) 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
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

2. UCLL: Unbundled Copper Local Loop.

3. UBA: Unbundled Bitstream Access.

**REGULATION IS TARGETED AND EFFECTIVE – ELECTRICITY, GAS AND AIRPORTS**

The Commission is required under Part 4 of the Commerce Act to put in place regulations for electricity lines businesses, gas pipeline businesses and specified airport services that will promote the long-term benefit of consumers by promoting outcomes that are consistent with outcomes in competitive markets such that the suppliers of regulated goods or services:

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

The Commission’s outputs in this area are currently associated with putting in place and monitoring core elements of this regime including:

- input methodologies (setting the upfront rules for the regime);
- price-quality paths (for some businesses); and
- information disclosure requirements.

The impacts of the regime are expected to be felt broadly over the five-year regulatory period. Key impact measures will be derived from information disclosure, which is specifically required to ensure that there is sufficient information available to enable interested persons to assess whether the outcomes outlined above are being achieved. The electricity regime currently has some elements of the impact measures in place.

Baseline impact measures will be put in place for gas and airports following consultation with affected parties and the setting of information disclosure determinations. In the last year, the Commission has made significant progress in developing a full range of information requirements for airports and is on track to complete its determination in December 2010, with full reporting to begin in 2012. The information disclosure regime for gas is expected to be in place by December 2011.

Last year the Commission included impact measures for electricity industry investment derived from measures of compliance with asset management plan requirements in our Statement of Intent. The review was completed in 2009/10, showing that, in general, compliance has remained relatively static between 2007 and 2009, although there are comparability issues between years. Details of this review are available at [www.comcom.govt.nz/electricity-information-disclosure-requirements](http://www.comcom.govt.nz/electricity-information-disclosure-requirements). The Commission is consequently reconsidering the usefulness and value of this measure in 2010/11 and is likely to move to a more targeted approach on a biennial basis.

IMPACT MEASURE	METHOD OF COLLECTION	TARGET
Electricity industry investment is optimal	<ul style="list-style-type: none"> <li>→ Information disclosure regime requirements: targeted asset management plan (AMP) reviews</li> <li>→ The next review will take place in 2011/12</li> <li>→ The focus for 2010/11 is on the development and implementation of the customised price-quality path regulatory instrument</li> </ul>	<ul style="list-style-type: none"> <li>→ Biennial improvement in targeted AMP compliance ratings</li> </ul>

IMPACT MEASURE	METHOD OF COLLECTION	TARGET
No material deterioration in the quality of electricity distribution and transmission	<ul style="list-style-type: none"> <li>→ Information disclosure regime</li> <li>→ SAIDI<sup>4</sup></li> <li>→ SAIFI<sup>5</sup></li> <li>→ Baseline development as part of first-year reporting under the default price-quality path (i.e., 2010/11)</li> </ul>	→ Quality does not deteriorate materially over time
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

### IMPACT MEASURES FOR STAKEHOLDER ENGAGEMENT

The Commission recognises that our ability to achieve our outcomes is greatly assisted by a good understanding among New Zealanders of the benefits of competition, and the benefits of targeted regulation. In our last Statement of Intent we had a fourth outcome, Knowledgeable New Zealanders, which was designed to capture the sentiment of promoting a general understanding of these benefits.

This year, having reviewed our strategic framework, we have removed Knowledgeable New Zealanders as a stand-alone outcome. This recognises that engagement and knowledge building are Commission-wide activities across all outcomes.

During the development of this Statement of Intent, the Commission wrote to a range of stakeholders asking for input on our strategic direction. This proved to be a very useful initiative, in terms of both general feedback on the Commission's performance, and suggestions on what we should focus on in the future. This information was carefully considered in developing this Statement of Intent and the Commission intends to continue with this initiative in the future.

During 2009/10, we also undertook survey work, focused on consumers and small-to-medium sized businesses. This was with a view to better understanding perceptions of the Commission, and of our role. This work, combined with further engagement initiatives, will culminate in a new external engagement strategy for the Commission, which will create a more purposeful focus for the Commission's engagement. Performance measurement in this area is important and this requires further focus in 2010/11.

IMPACT MEASURE	METHOD OF COLLECTION	TARGET
The degree to which stakeholders understand the benefits of competition and regulation and the Commission's role	→ Stakeholder surveys and targeted engagement	<ul style="list-style-type: none"> <li>→ Baseline to be established in 2010/11</li> <li>→ Understanding increases over time</li> </ul>
The number of published media articles that result from Commission media releases and communicate key messages	→ Analysis of media clippings	→ Increases over time

4. SAIDI: System average interruption duration index.

5. SAIFI: System average interruption frequency index.

## PERFORMANCE IMPROVEMENT

The Commission is building on internal organisational changes from 2009/10, and proactively managing performance within existing baseline funding. We continue to focus on maximising impact, reviewing productivity and delivering efficiency gains – in essence, doing more with less. Our continued work on our performance measures at all levels, including outcomes, impacts and outputs, results in the ongoing improvement of targets that are actively monitored.

## FUNDING

The Commission is funded through a number of appropriations within Vote Commerce and Vote Communications. There are a large number of outputs to deliver within each appropriation. These are set out in the *Forecast Service Performance* section of this Statement of Intent. In 2009/10, we expect to deliver results at 11 per cent below budget. We are further reducing expenditure in 2010/11, while maintaining or increasing our actual levels of delivery compared with previous years. The following table shows the future three-year funding horizon for the Commission.

APPROPRIATION \$000	2009/10 BASELINE FUNDING	2009/10 FORECAST EXPENDITURE	2010/11 FORECAST EXPENDITURE	2011/12 BASELINE FUNDING	2012/13 BASELINE FUNDING
<b>VOTE COMMERCE</b>					
General Market	16,935	16,136	16,261	16,435	16,435
Dairy	905	521	688	905	905
Input Methodologies	5,224	5,113	2,612	0	0
Electricity	3,167	2,969	3,167	2,667	2,667
Gas	2,700	1,657	1,100 <sup>6</sup>	1,300	1,600
Airports	791	786	875	400	400
Major Litigation Fund	7,500	6,088	6,500 <sup>7</sup>	8,000 <sup>7</sup>	8,000
Vote Communications	7,790	6,914	7,400	7,790	7,790
<b>TOTAL</b>	<b>45,012</b>	<b>40,184</b>	<b>38,603<sup>8</sup></b>	<b>38,497</b>	<b>37,797</b>

In both the short and medium terms, the Commission faces a number of funding pressures:

### Part 4

During 2009/10 and 2010/11 in particular, the Commission has a significant work programme to develop the new regulatory regime under Part 4. The Commission expects that its activity will continue at elevated levels as the regime beds in and regulated businesses begin to operate with the new instruments. Some of the issues that will require the Commission's attention will be transitional, while others reflect the Commission's role in assessing and enforcing compliance, monitoring and reporting. Overall, the new regime will continue to make significant claims on Commission time and resources and during 2010/11 the Commission will work with officials on the funding implications for future years.

6. The Minister of Finance has approved an 'in principle' transfer of the 2009/10 surplus (up to \$1.3 million) which is not reflected in this table. The final amount to be transferred will be confirmed after the presentation of the 2009/10 audited financial statements.
7. \$0.5 million will also be transferred to cost reserves. The Commission is working with officials on the phasing of Major Litigation funding to manage the risk of merits review in future years. Current baseline funding is \$8 million and we anticipate transferring \$1 million from 2010/11 to 2011/12, which will increase funding to \$9 million in that year.
8. The 2010/11 forecast expenditure does not match the 2010/11 budget for Major Litigation, nor the Statement of Prospective Comprehensive Income, as set out in the *Prospective Financial Statements*; this is further explained in Major Litigation fund pressure detailed on page 17.

### **Merits review**

Under section 52Z of the Commerce Act, input methodology determinations are subject to merits review appeal to the High Court. Such appeals must be brought within 20 working days after the date on which the input methodology is determined. Given that input methodology determinations will be made in the second quarter of 2010/11, any merits review appeal would be lodged in the same year.

While the scope of potential appeals is unknown, it is possible that the appeal process could create a significant workload for the Commission over the coming two years. Input methodology issues are complex and inter-related and it is likely to take the court some time to consider any appeal or appeals. The cost of such a process for the Commission (including court costs and potential cost awards against the Commission) beyond 2010/11 is unknown but could be significant and exceed current funding and reserves.

### **Major Litigation Fund**

The annual baseline funding for the Major Litigation Fund is \$8 million. Our Output Agreement permits, with the approval of both the Ministers of Finance and Commerce, a lesser amount to be drawn down and the unspent portion to be transferred to the next financial year. To address the merits review risk detailed above, we propose calling down \$7 million in 2010/11 and transferring \$1 million to 2011/12, which will increase baseline funding to \$9 million in that year.

### **Electricity Commission**

The Finance and Expenditure Select Committee is currently considering the proposed transfer of some of the work of the Electricity Commission to the Commerce Commission. The Commission is currently unfunded for these functions. Funding implications are being dealt with as part of the implementation of decisions from the ministerial review of the electricity market, as are any changes to the associated levy arrangements.

### **Cartel criminalisation**

If there is a change from a civil to a criminal regime for cartels, the Commission will need to invest in capability enhancement. This would include the updating of investigative and evidence management policies and procedures, and training staff accordingly. The Commission is planning to deliver any required changes within current baseline funding and will look to lower costs by engaging with and learning from the ACCC, which has already effected such changes.

### **Further considerations**

Given the initiatives we are undertaking, we plan to achieve efficiencies in our core activities over time. In parallel, the Commission will need to accommodate new responsibilities and/or demands. The implications are unknown at this stage, but they may have material resource implications.

In addition, through a series of internal and external steps, the Commission is seeking to improve flexibility in both its funding arrangements and use of resources over a three-year horizon. This will assist the Commission to absorb new costs and achieve greater efficiency.

## HIGH-LEVEL OVERVIEW OF OUR WORK PROGRAMME

REGULATION		2010/11		2011/12		2012/13	
PART 4	INPUT METHODOLOGIES	Input methodologies determinations					
	ELECTRICITY	Transpower - determination of price-quality path Implement Transpower grid upgrade proposals	Refinement of electricity default price path (DPP) Electricity summary and analysis Electricity DPP compliance assessment Transpower compliance assessment	Electricity information disclosure determinations Transpower capital expenditure input methodology determination	Electricity summary and analysis Electricity DPP compliance assessment Transpower compliance assessment	Summary and analysis of information disclosure	Assess compliance with price-quality paths Information disclosure summary and analysis
	GAS			Gas information disclosure determinations	Gas default price-quality paths determination		
	AIRPORTS	Airports information disclosure determinations			Report to Minister on airports information disclosure		
	OPERATIONAL FOCUS	Establish regulatory instruments		Refine regulatory instruments Engage with interested parties		Monitor and analyse sector performance Promote effective compliance Assess customised price-quality proposals	

REGULATION		2010/11		2011/12		2012/13	
TELECOMMUNICATIONS	OPERATIONS	UBA and UCLL backhaul competition tests UBA competition test Resale Schedule 3 investigation	National Roaming investigation Telecommunications Service Obligations Cost Calculations Standard Terms Determination (STD) clarifications and reviews	Review of regulated services Competition tests	STD clarifications and reviews	Assessing and reviewing regulatory settings in light of Ultra-fast Broadband Take appropriate action to ensure competition is being promoted	

REGULATION		2010/11		2011/12		2012/13		
TELECOMMUNICATIONS (cont'd)	CONVERGED NETWORKS	Ultra-fast Broadband Numbering	IP Interconnection Regulatory principles Section 9A study	Section 9A study	Section 9A study			
	MONITORING AND INFORMATION DISCLOSURE	Review of existing monitoring reports Release half-year monitoring report	Release annual monitoring report 2010 Release summary and analysis 2010 of separated accounts of Telecom	Release half-year monitoring report	Release annual monitoring report 2011 Release summary and analysis 2011 of separated accounts of Telecom	Release half-year monitoring report	Release annual monitoring report 2012 Release summary and analysis 2012 of separated accounts of Telecom	
	OPERATIONAL FOCUS	Monitor market (conduct and performance)		→ Assess outcomes of monitoring (effective or limited competition)	→ Take appropriate action			
DAIRY	OPERATIONAL FOCUS	Demand-driven determinations Review and update frameworks for any change to the regulatory regime Monitor impact of regime changes on the Commission's workload and focus of ongoing work programme		→ Adjusting the work programme to cater for any changes in demand				
ENFORCEMENT		2010/11		2011/12		2012/13		
COMPETITIVE MARKETS AND INFORMED CUSTOMERS	OPERATIONAL FOCUS	Likely increase in demand-driven determinations						
		Increased investment in education and framework development outputs Better selection of cases; wider range and mix of intervention tools More efficient management of enforcement cases		→	More effective assessment of harm and opportunities for intervening Using a mix of intervention tools to achieve greatest impact for least cost			
		Improve impact measurement methodology and measure impact of interventions		→	Measure and report the impact of interventions			
		Cases in litigation						

# MANAGING ORGANISATIONAL HEALTH AND CAPABILITY

Maximising the value that the Commission delivers requires working in more focused and innovative ways.

In 2009/10, the Commission established a new Senior Leadership Team (reporting to the Chief Executive) and brought its operational functions together under the two branches – Enforcement and Regulation. An Organisation Performance Branch was established to support business performance and improvement, and the Legal and Economics Service Branches were reviewed to ensure optimal delivery of these critical services. Building from this base, five development programmes (below) will guide the Commission's development over 2010-2013 to provide the processes, systems and people capabilities, and the culture required to support significant and ongoing business improvement.

## **SIMPLIFY OUR BUSINESS**

We want it to be easier to do business within the Commission. We will focus on ensuring the Commission's business processes, decision making and operating policies are clear, streamlined and efficient, with significant activity planned for 2010/11. This includes building on the work done in 2009/10 on our project management approach.

## **BETTER UNDERSTAND OUR VALUE**

We want to ensure that the Commission's chosen mix of activities offers the most value for money. By enhancing our capabilities in prioritisation, information and market monitoring, the Commission will be better able to target resources, and streamline performance measures and reporting to focus on what really matters. In 2010/11, we will be paying particular attention to our prioritisation approaches, our performance measurement framework and gathering market intelligence.

## **BETTER CONNECT**

The Commission and its stakeholders see mutual benefits from better engagement. Externally, we will focus on how the Commission works with stakeholders so that they feel their perspectives are heard and understood, and that the Commission's perspectives are also better understood. Internally we are working on building stronger interactions between branches. In 2010/11, we will update our external engagement strategy and strengthen our organisational culture.

## **STRONGER FUTURE FOCUS**

The Commission continues to seek greater efficiencies across the organisation. Currently many of our business support processes and systems do not meet our needs. We will focus on instilling a culture of business improvement that is well considered, planned and executed over the next three years, with significant activity planned for 2010/11.

## **BETTER INVESTMENT IN PEOPLE**

Commission staff are highly committed to their work and making a difference. Recognising that people are our biggest asset, the Commission will further invest in initiatives that promote the attraction and retention of high-calibre staff. This includes work on improving management and leadership capability, improved professional development and identifying ways that the Commission's work environment can be improved.

# FORECAST SERVICE PERFORMANCE

## MEASURING THE COMMISSION'S PERFORMANCE

### PERFORMANCE MEASUREMENT FRAMEWORK

A set of performance measures has been developed to provide the Commission and our stakeholders with a better understanding of whether the Commission is performing effectively and achieving the desired impact. These measures are both externally and internally focused and are reviewed annually.

External measures, for the purpose of accountability to Parliament, are set out in this Statement of Intent. Internal measures, contained in the Commission's business plan, are used by Commission management to manage day-to-day operations. The performance measurement framework is fully integrated into the Commission's quarterly and annual reporting to relevant Ministers.

In 2010/11, the Commission will continue the enhancement of its performance measurement framework, to better define and measure the impact of its work. We continue to set challenging output targets that require our organisation to perform at a high level. In the main, the targets for 2010/11 represent maintenance of, or increase in, targets and/or actual levels of delivery in 2009/10. This is being achieved in a static funding environment through productivity and efficiency gains. For each area of activity, an indication of expected performance trends in 2011/12 and 2012/13 is also provided.

## OUTPUT MEASURES

The following tables reflect the measures of performance for 2010/11. Comparative quantity measures (i.e. estimated actual standards) for 2009/10 have also been included. Where quality and timeliness are significant for an output and measurement is cost-effective, these are provided.

In the Enforcement area (i.e. Markets are Competitive and Consumers are Informed), we have made timeliness measures consistent across competition and consumer investigations, and amended some of the quality measures to better demonstrate success. We have also amended the quality measures for Framework Development and Public Information/Education activities across all outputs.

## MARKETS ARE COMPETITIVE

The purpose of the Commerce Act 1986 is to promote competition in markets for the long-term benefit of New Zealand consumers. The Commission enforces this Act, which prohibits conduct that impedes competition and the acquisition of a business's shares or assets if that acquisition leads to a substantial lessening of competition in a market. The Commission investigates potential breaches of the Act and also plays an adjudicative role, considering applications for clearance of mergers and acquisitions and applications for authorisation of mergers and restrictive trade practices.

In 2010/11, with the strong likelihood that merger activity will increase, the Commission expects the number of clearance applications to increase from the low levels experienced in 2009/10. The Commission also expects to determine a number of authorisation applications in 2010/11.

The Commission will ensure that we focus on the right issues at the right time, using a greater range and mix of enforcement options. We will be improving prioritisation and applying our enforcement criteria in selecting which matters to pursue and deciding what enforcement resolution is most appropriate. This recognises that our stakeholders desire our early engagement and for the Commission to employ interventions that are both proportional to the matter at hand and fit for purpose.

The Commission plans to significantly increase investment in educating businesses and consumers about competition law to encourage pro-competitive conduct. We expect this, coupled with initiatives such as the recently revised Cartel Leniency Policy and Process Guidelines and investment in improved intelligence gathering and analysis capability, to result initially in increased detection of existing anti-competitive behaviour and longer term in a reduction in anti-competitive behaviour.

We will also continue to work closely with government to provide advice on the operational impact of proposed changes to competition policy.

**OUTPUT MEASURES 2010/11**

OUTPUT	QUANTITY		QUALITY	TIMELINESS <sup>9</sup>
	2009/10 ESTIMATED ACTUAL	2010/11		
<b>ENFORCEMENT - MARKET STRUCTURE, COORDINATED BEHAVIOUR AND UNILATERAL CONDUCT CASES</b>				
Enforcement cases resolved without further enforcement action: <sup>10</sup>			→ No successful legal challenges of the Commission's processes	→ 90% of routine <sup>11</sup> coordinated and unilateral investigations decided within 9 months
→ Market structure	2-7	4-5	→ No orders to pay indemnity costs	→ 90% of complex <sup>11</sup> coordinated and unilateral investigations decided within 24 months
→ Coordinated behaviour	6-13	3-5		
→ Unilateral conduct	6-10	3-6		
Enforcement cases resolved through further enforcement action: <sup>10</sup>	Numbers above also include			
→ Market structure	cases resolved	0-1		
→ Coordinated behaviour	through	5-9		
→ Unilateral conduct	further action	1-3		

9. The Commission is committed to improving the efficiency of its enforcement cases. Although the external accountability targets for timeliness of coordinated and unilateral investigations are the same in 2010/11 as they were in 2009/10, the Commission intends to work to internal targets of:

- 90 per cent of routine coordinated and unilateral investigations decided within six months
- 90 per cent of complex coordinated and unilateral investigations decided within 18 months.

The Commission intends to review these timeliness measures during 2010/11 and include revised timeliness targets in its next Statement of Intent.

10. Enforcement action includes issuing a compliance advice letter, issuing a formal warning, entering into a settlement, or prosecuting a person or business through the courts.

11. Routine and complex investigations are defined by the complexity score in the Commission's current prioritisation tool.

OUTPUT	QUANTITY		QUALITY	TIMELINESS <sup>9</sup>
	2009/10 ESTIMATED ACTUAL	2010/11		
<b>DETERMINATIONS</b>				
Clearances	6-11	15-23	→ No successful legal challenges of the Commission's processes → 80% success over 5 years in defending appeals of determinations	→ 75% of decisions on applications for clearance made within 50 working days → 90% of reasons for declined clearances published within 10 working days
Authorisations	0-2	0-3		
EIR Act exemptions <sup>12</sup>	4-5	0-2		
<b>FRAMEWORK DEVELOPMENT</b>				
Development or review of guidelines	2-4	2-4	→ Internal peer review and approval processes → External review and consultation, as appropriate	n/a
Provision of advice to inform Government policy and law reform processes	3-5	2-7		
International information exchange and liaison	6-12	7-14		
<b>PUBLIC INFORMATION/EDUCATION</b>				
Media releases:			→ Internal peer review and approval processes	n/a
→ Commerce Act	39-51	50-80		
→ EIR Act <sup>12</sup>	3-6	0-4		
Presentations	4-8	12-18		
Publications	2-4	3-5		
<b>REPORTS TO THE MINISTER</b>				
Reports to the Minister <sup>13</sup>	0	0	→ Internal peer review and approval processes → External review and consultation, as appropriate	n/a

### SERVICE PERFORMANCE TRENDS 2011-2013

The Commission intends to make better use of the full suite of enforcement tools to both detect and deter anti-competitive behaviour, ensuring our effort is directed to the most cost-effective interventions.

Specific plans for future years include:

- reviewing the impact of the increased investment in educative work that the Commission is making in 2010/11, and using the results to help define the future educative work programme;
- embedding a new intelligence-gathering and analysis capability (which will be developed in 2010/11), and training staff accordingly;
- if there is a change from a civil to a criminal regime for cartels, updating the Commission's investigative and evidence management policies and procedures, and training staff accordingly.

12. Following the passage of the Electricity Industry Bill, the responsibility for the enforcement of the EIR Act will move to the Electricity Authority; this is expected in 2010.

13. The Commission may undertake an inquiry under Part 4 of the Commerce Act either if required to by the Minister or on its own initiative.

The Commission's determination work programme is demand driven and will continue to be treated as a high priority. The Commission anticipates a rise in the level of merger activity (and, related to that, the number of clearance applications) over the coming years compared with 2009/10 levels. We also expect that the economic recovery will see further consolidation in some markets, where concentration is already high. We consider that this is likely to increase the number of applications for authorisation, and businesses are likely to make use of the Commission's new streamlined authorisation process.

As indicated above, the Commission is committed to improving the efficiency of its enforcement cases and intends to reduce the time taken to make decisions on unilateral and coordinated investigations. The Commission plans to reduce the target timeframe for these cases in the future. Increased efficiency will allow the Commission to resolve similar numbers of these cases as in previous years despite a projected decrease in funding for these outputs. At present, it is hard to predict the relative split in future years between unilateral and coordinated investigations as the outcome of the Supreme Court's ruling on the 0867 Telecom case is likely to influence the Commission's approach to future unilateral matters.

## CONSUMERS ARE INFORMED

The Commission enforces and provides information on two key pieces of consumer legislation, the Fair Trading Act 1986 and the Credit Contracts and Consumer Finance Act 2003. Annually the Commission receives approximately 10,500 complaints under these two Acts. We proactively review, prioritise and take appropriate action to ensure that consumers are informed and businesses comply with their obligations. The Commission uses past data to forecast the number of cases, which we expect to remain steady in 2010/11. We will continue to focus on our three target areas, i.e. our Centres of Excellence in telecommunications, financial products, and sustainability. However, we expect that the range of actions taken will change, reflecting our focus on ensuring that we use the appropriate enforcement tool for each case.

In 2010/11, key precedent or deterrent cases will progress in each of these target areas along with greater educative work and a range of non-litigation enforcement outcomes. As a result, we expect to see measurable improvement in compliance levels in these areas, which in turn will provide significant benefits to the relevant markets.

## OUTPUT MEASURES 2010/11

OUTPUT	QUANTITY		QUALITY	TIMELINESS
	2009/10 ESTIMATED ACTUAL	2010/11		
<b>ENFORCEMENT - FAIR TRADING ACT, PRODUCT SAFETY AND INFORMATION STANDARDS, AND CCCF ACT CASES</b>				
Enforcement cases resolved without further enforcement action:				
→ Fair Trading Act	313-338	60-80	→ No successful legal challenges of the Commission's processes	→ 90% of routine Fair Trading and product standards investigations decided within 45 days
→ Product safety and information standards	40-52	2-8	→ No orders to pay indemnity costs	→ 90% of substantial/complex Fair Trading and product standards investigations decided within 9 months
→ CCCF Act	40-47	8-10		→ 90% of routine CCCF investigations decided within 90 days
Enforcement cases resolved through further enforcement action:	Numbers above also include cases resolved through further action			→ 90% of substantial/complex CCCF investigations decided within 9 months
→ Fair Trading Act		200-270		
→ Product safety and information standards		25-35		
→ CCCF Act		23-37		

OUTPUT	QUANTITY		QUALITY	TIMELINESS
	2009/10 ESTIMATED ACTUAL	2010/11		
<b>FRAMEWORK DEVELOPMENT</b>				
Development or review of guidelines, industry codes or frameworks:			→ Internal peer review and approval processes → External review and consultation, as appropriate	n/a
→ Fair Trading Act	10-15	10-15		
→ CCCF Act	0-1	1-3		
Provision of advice to inform government policy and law reform processes:				
→ Fair Trading Act	8-12	8-12		
→ CCCF Act	2-3	1-3		
International information exchange and liaison:				
→ Fair Trading Act	30-40	30-40		
→ CCCF Act	1-2	1-3		
<b>PUBLIC INFORMATION/EDUCATION</b>				
Media releases:			→ Internal peer review and approval processes	n/a
→ Fair Trading Act	35-40	35-40		
→ CCCF Act	2-4	1-3		
Presentations:				
→ Fair Trading Act	10-15	10-15		
→ CCCF Act	2-3	1-3		
Publications:				
→ Fair Trading Act	5-10	5-10		
→ CCCF Act	1-3	1-3		

### SERVICE PERFORMANCE TRENDS 2011-2013

With an investment in improved intelligence-gathering and analysis capability, the Commission will be better placed to identify trends and act more quickly and in a more cost-effective manner to promote compliance with the Fair Trading and CCCF Acts.

The Commission has experienced significant success with our low-level inquiry unit, which has dealt with a large number of routine cases at lower cost and freed up senior investigators to focus on complex, high-detriment investigations. This unit will continue and will allow the Commission to maintain the widest possible presence, given current resource constraints. The overall number of enforcement outcomes is expected to remain at a similar level over the next three years. We will continue to apply our enforcement criteria in deciding what resolution is most appropriate for each enforcement case.

In CCCF Act enforcement, the Commission will continue to focus on unreasonable credit fees, while still being mindful of disclosure issues. Following publication of the draft credit fee guidelines and related education, as well as precedent cases before the courts, it is expected that improvements in the market will be observed over the next two to three years. No change is expected in the number of enforcement outcomes over the next three years as enforcement action is still required across the breadth of the Act to promote compliance by the industry.

## REGULATION IS TARGETED AND EFFECTIVE – DAIRY

The Commission has 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. The determination work stream is less discretionary than for investigations as the criteria for rejecting determination applications are specified in the DIR Act.

### OUTPUT MEASURES 2010/11

OUTPUT	QUANTITY		QUALITY	TIMELINESS
	2009/10 ESTIMATED ACTUAL	2010/11		
<b>ENFORCEMENT - DAIRY INVESTIGATIONS</b>				
Enforcement cases			→ No successful legal challenges of the Commission's processes	n/a
→ Resolved without further enforcement action	0-2	0-2	→ No orders to pay indemnity costs	
→ Resolved through further enforcement action	Numbers above also include cases resolved through further action	0-2		
<b>DETERMINATIONS</b>				
Determinations	0-2	0-2	→ No successful legal challenges of the Commission's processes	→ 90% of determinations completed within 9 months
<b>FRAMEWORK DEVELOPMENT</b>				
Framework development	0-1	0-2	→ Internal peer review and approval processes	n/a
			→ External review and consultation, as appropriate	
<b>PUBLIC INFORMATION/EDUCATION</b>				
Media releases	0-4	0-4	→ Internal peer review and approval process	n/a

### SERVICE PERFORMANCE TRENDS 2011-2013

Given the changing and uncertain status of the regulatory regime at this time, it is difficult to predict changes in service trends with any degree of certainty. The Government is currently reviewing the prospective expiry of the DIR Act's pro-competitive regime as the regime's competition thresholds are forecast to be reached as early as 2012.

Further, the Dairy Industry Restructuring (Raw Milk Pricing Methods) Act 2010 was passed in April. This will lead to changes in how the regulated milk price is calculated starting in the 2010/11 dairy season. These changes could materially affect the Commission's workload in this area.

## REGULATION IS TARGETED AND EFFECTIVE - TELECOMMUNICATIONS

The Commission promotes competition in telecommunications markets by supporting an environment where service providers have incentives to invest efficiently and to share their efficiency gains with consumers. Given the scope for competition in the sector, the Commission's role is, where appropriate, to promote competition, by lowering barriers to entry for new competitors.

Our focus for the next three years is on the Ultra-fast Broadband Initiative, ongoing review of the existing regulatory regime, and enhancing our market-monitoring processes. The Ultra-fast Broadband Initiative provides a unique opportunity to develop the regulatory regime before investment is made, and we will be providing advice to the relevant agencies on appropriate open access principles. We will be conducting ongoing reviews of competitive conditions in telecommunications markets, consistent with our view that where competition is effective, regulation can be removed. This work will be facilitated by increasing and improving our market monitoring activities.

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

- the extent to which competition is improving in the market segments that have been regulated;
- how unregulated segments of the telecommunications market are performing and evolving and whether there are any signs of 'bottleneck-type' competition problems;
- whether certain markets are effectively competitive and such that they can be deregulated.

We will also identify the priorities for further investigation, regulation or deregulation of relevant markets.

### OUTPUT MEASURES 2010/11

OUTPUT	QUANTITY		QUALITY	TIMELINESS
	2009/10 ESTIMATED ACTUAL	2010/11		
Access determinations → Determinations → Reviews → Clarifications	15 in total	0-2 0-2 0-5	→ No successful legal challenges of Commission's processes	→ Determinations and reviews completed within an average of 10 months → Clarifications completed within an average of 2 months
TSO cost determinations	5	2-3	→ No successful legal challenges of Commission's processes	→ Completed within an average of 12 months from the end of the TSO period
Monitoring and reporting	6	4	→ Performance impact on telecommunications markets shows increased competition year on year → No significant errors in reports	n/a

OUTPUT	QUANTITY		QUALITY	TIMELINESS
	2009/10 ESTIMATED ACTUAL	2010/11		
Enforcement cases closed	0	0-2	<ul style="list-style-type: none"> <li>→ No successful legal challenges of the Commission's processes</li> <li>→ No orders to pay indemnity costs received for any enforcement action</li> </ul>	n/a
Industry Codes approved	1	0-1	<ul style="list-style-type: none"> <li>→ Internal peer review and approval processes</li> <li>→ External review and consultation, as appropriate</li> </ul>	n/a
Reports to the Minister	1	1-2	<ul style="list-style-type: none"> <li>→ No significant errors in reports</li> <li>→ Internal peer review and approval processes</li> <li>→ External review and consultation, as appropriate</li> </ul>	→ Completed within an average of 12 months from the commencement of the investigation
Framework development			<ul style="list-style-type: none"> <li>→ Above average feedback received from key stakeholders</li> <li>→ Internal peer review and approval processes</li> <li>→ External review and consultation, as appropriate</li> </ul>	n/a
→ Advice to officials on regulation matters	n/a	2-5		
→ Development or review of guidelines, industry codes or frameworks	1	1-3		
→ International information exchange and liaison	3	5-10		
Public information/education			→ Internal peer review and approval processes	n/a
→ Media releases	35	10-20		
→ Presentations (including 20-30 stakeholder engagement meetings, 2 consumer panels)	30	25-40		
Information disclosure reports	1	1-2	→ No successful legal challenges of the Commission's processes	n/a

### SERVICE PERFORMANCE TRENDS 2011-2013

In the medium term, the Commission will maintain a focus on targeted communication with key stakeholders, continuation of our industry engagement strategy, and monitoring and gathering market intelligence both locally and internationally.

Increased competition in telecommunications markets will result in a reduction in regulation. The Commission recognises that it is the operation of competitive forces that provide the best allocation of economic resources, and delivers optimal prices, quality and consumer choice. Regulation is used to attempt to replicate competitive outcomes in markets where competitive pressures are weak or nonexistent.

## REGULATION IS TARGETED AND EFFECTIVE - ELECTRICITY, GAS AND AIRPORTS

In markets where there is little or no competition and there is little or no likelihood of a substantial increase in competition, the Commission aims to promote the long-term benefits of consumers through regulation. This is achieved by promoting outcomes consistent with those that would be achieved in competitive markets such that the suppliers of regulated goods and services:

- have incentives to innovate and invest;
- have incentives to improve efficiency and provide quality services that reflect customer demand;
- share with consumers the benefits of efficiency gains; and
- are limited in their ability to extract excessive profits.

In 2010/11, our focus will be on meeting statutory deadlines for input methodologies, ensuring that information disclosure requirements are in place for airports, and appropriate price-quality regulation is in place for electricity lines businesses. Further refinements will be made to price-quality regulation for electricity distribution businesses (put in place in December 2009) and the development of the price-quality path for gas pipeline businesses will be progressed. Significant progress will also be made in gas and electricity information disclosure regimes.

The Commission will ensure that there is effective engagement with interested parties throughout the development of the regulation, and that robust high-quality analysis supports our determinations.

### OUTPUT MEASURES 2010/11

OUTPUT	QUANTITY		QUALITY	TIMELINESS
	2009/10 ESTIMATED ACTUAL	2010/11		
<b>INPUT METHODOLOGY DETERMINATIONS</b>				
Airports	0	1	<ul style="list-style-type: none"> <li>→ Compliance with legislative requirements for consultation</li> <li>→ No successful legal challenge of the Commission's processes</li> </ul>	→ 30 December 2010
Gas distribution and transmission	0	2	<ul style="list-style-type: none"> <li>→ Compliance with legislative requirements for consultation</li> <li>→ No successful legal challenge of the Commission's processes</li> </ul>	→ 30 December 2010
Electricity distribution and transmission	0	2	<ul style="list-style-type: none"> <li>→ Compliance with legislative requirements for consultation</li> <li>→ No successful legal challenge of the Commission's processes</li> </ul>	→ 30 December 2010

OUTPUT	QUANTITY		QUALITY	TIMELINESS
	2009/10 ESTIMATED ACTUAL	2010/11		
<b>ELECTRICITY DISTRIBUTION SERVICES</b>				
Price-quality path determinations (including amendments)	1	0-1	→ Compliance with legislative requirements for consultation → No successful legal challenge of the Commission's processes	→ 30 June 2011
Compliance (including consumer-owned status)	30	20-29	→ No successful legal challenge of the Commission's processes	→ 30 June 2011
Information disclosure determinations	0	1	→ Compliance with legislative requirements for consultation → No successful legal challenge of the Commission's processes	→ 31 December 2011
Information disclosure - summary and analysis	2 <sup>14</sup>	1-2	→ No successful legal challenge of the Commission's processes	→ 30 June 2011
Framework development (advice to officials)	0	0-2	→ Internal peer review process → External review and consultation, as appropriate → Internal approval process	n/a
<b>ELECTRICITY TRANSMISSION (TRANSPOWER)</b>				
Price-quality determination → Consultation papers → Workshop	4 1	1	→ Compliance with legislative requirements for consultation → No successful legal challenge of the Commission's processes	→ 30 June 2011
Compliance assessment (Administrative Settlement)	n/a	1	→ Compliance with legislative requirements for consultation → No successful legal challenge of the Commission's processes	→ 30 June 2011
Information disclosure - summary and analysis	1 <sup>14</sup>	1	→ No successful legal challenge of the Commission's processes	→ 30 June 2011
Framework development (advice to officials)	1	0-3	→ Internal peer review process → External review and consultation, as appropriate → Internal approval process	n/a

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

OUTPUT	QUANTITY		QUALITY	TIMELINESS
	2009/10 ESTIMATED ACTUAL	2010/11		
<b>NATURAL GAS SERVICES</b>				
Price-quality path determinations	0	0-2	→ Compliance with legislative requirements for consultation → No successful legal challenge of the Commission's processes	→ 30 June 2012
Price-quality path consultation papers	3	1-2	→ Compliance with legislative requirements for consultation	→ 30 June 2011
Compliance with existing authorisations and determinations	2	2-4	→ Compliance with legislative requirements for consultation → No successful legal challenge of the Commission's processes	→ 30 June 2011
Information disclosure	0	0-2	→ Compliance with legislative requirements for consultation → No successful legal challenge of the Commission's processes	→ 31 December 2011
Framework development	0	0-2	→ Internal peer review and approval processes → External review and consultation, as appropriate	n/a
<b>REGULATED AIRPORTS SERVICES</b>				
Information disclosure	0	1	→ Compliance with legislative requirements for consultation → No successful legal challenge of the Commission's processes	→ 1 January 2011
<b>PUBLIC INFORMATION/EDUCATION</b>				
Media releases			→ Internal peer review and approval processes	n/a
→ Input methodologies	2-12	2-6		
→ Electricity	3	2-6		
→ Gas	1	1-5		
→ Airports	2-3	2-3		
Presentations				
→ Input methodologies	3	3		
→ Electricity	1	1-3		
→ Gas	1	1-4		
→ Airports	1-2	1-2		
Publications				
→ Electricity	0	2-6		
→ Gas	2	1-4		

### **SERVICE PERFORMANCE TRENDS 2011-2013**

The medium-term priority for the Commission will be to work with businesses delivering regulated services to ensure effective compliance and implementation of price-quality paths. In addition there will be an increased focus on promoting greater understanding of the performance of suppliers of regulated services through the summary and analysis of information disclosed as part of the information disclosure regime.

When regulated airports services set prices (on or after 2012) the Commission will deliver a report to the Ministers of Commerce and Transport on the effectiveness of information disclosure regulation for regulated airport services.

# PROSPECTIVE FINANCIAL STATEMENTS

## STATEMENT OF RESPONSIBILITY

Pursuant to the Crown Entities Act 2004, the Commission must prepare a Statement of Intent including prospective financial statements at or before the start of each financial year to promote public accountability. The prospective financial statements may not be appropriate for any other purposes and are unaudited.

The prospective financial statements have been prepared on the basis of best estimates and assumptions as to expected future events. As the financial statements are prospective, actual results are likely to vary from the information presented. All material variations are required to be disclosed in the subsequent Annual Report.

The Commerce Commission accepts responsibility for:

- the preparation of the prospective financial statements in accordance with generally accepted accounting practice in New Zealand and the judgments made therein; and that
- those prospective financial statements fairly reflect the forecast financial position of the Commission expected as at 30 June 2011 and the results of its operations, cash flows and service performance for the period ending on that date; and
- the establishment and maintenance of a system of internal controls designed to provide reasonable assurance as to the integrity and reliability of financial and non-financial reporting.

In the opinion of the Commerce Commission, the prospective financial statements fairly reflect the forecast financial position of the Commission expected as at 30 June 2011 and the results of its operations, cash flows and service performance for the period ending on that date.



**Dr Mark Berry**  
Chair – Commerce Commission



**Anita Mazzoleni**  
Convenor – Audit, Finance and Risk Management  
Committee

**STATEMENT OF PROSPECTIVE COMPREHENSIVE INCOME** FOR THE YEAR ENDED 30 JUNE 2011

	2009/10 BUDGET \$000	2009/10 FORECAST \$000	2010/11 BUDGET \$000
<b>OPERATING REVENUE</b>			
Crown revenue	44,396	45,012	40,884
Interest income	420	420	450
Fees and recoveries	35	892	50
Other revenue	60	60	60
Gains on disposals	0	2	0
<b>TOTAL OPERATING REVENUE</b>	<b>44,911</b>	<b>46,386</b>	<b>41,444</b>
<b>OPERATING EXPENSES</b>			
Personnel	23,108	20,195	19,130
Personnel - Training	355	482	920
Personnel - Other	797	2,033	1,718
Occupancy	322	329	323
Rent and leasing	1,515	1,486	1,500
Legal and other professional fees	13,317	12,001	12,292
Depreciation and amortisation	1,177	927	973
Computer, information and IT related	639	642	763
Phones/telecommunications	394	432	432
Travel	863	891	790
Postage/photocopy/stationery	273	298	290
Expenses - Other	429	426	429
Audit fees	42	42	43
<b>TOTAL OPERATING EXPENSES</b>	<b>43,231</b>	<b>40,184</b>	<b>39,603</b>
<b>TOTAL COMPREHENSIVE INCOME FOR THE YEAR</b>	<b>1,680</b>	<b>6,202</b>	<b>1,841</b>

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

	2009/10 FORECAST \$000	2010/11 BUDGET \$000
<b>BALANCE AT 1 JULY</b>	<b>6,883</b>	<b>8,556</b>
Operating surplus for the year	6,202	1,841
<b>TOTAL COMPREHENSIVE INCOME FOR THE YEAR</b>	<b>6,202</b>	<b>1,841</b>
Repayment of surplus to the Crown	(4,529)	(607)
<b>BALANCE AT 30 JUNE</b>	<b>8,556</b>	<b>9,790</b>

## STATEMENT OF PROSPECTIVE FINANCIAL POSITION AS AT 30 JUNE 2011

	2009/10 FORECAST \$000	2010/11 BUDGET \$000
<b>EQUITY</b>		
Accumulated general funds	5,556	6,290
Litigation cost reserve	1,500	2,000
Litigation Fund	1,500	1,500
<b>TOTAL EQUITY</b>	<b>8,556</b>	<b>9,790</b>
<b>CURRENT ASSETS</b>		
Cash and equivalents	13,120	9,955
Debtor Crown	1,550	1,500
Prepayments	15	15
Other receivables	29	29
<b>TOTAL CURRENT ASSETS</b>	<b>14,714</b>	<b>11,499</b>
<b>NON-CURRENT ASSETS</b>		
Property, plant and equipment	1,609	1,608
Intangibles	362	575
<b>TOTAL NON-CURRENT ASSETS</b>	<b>1,971</b>	<b>2,183</b>
<b>TOTAL ASSETS</b>	<b>16,685</b>	<b>13,682</b>
<b>CURRENT LIABILITIES</b>		
Creditors and other payables	1,853	1,600
Employee entitlements	1,562	1,500
Surplus repayable to the Crown 2009/10	4,529	
Surplus repayable to the Crown 2010/11		607
<b>TOTAL CURRENT LIABILITIES</b>	<b>7,944</b>	<b>3,707</b>
<b>NON-CURRENT LIABILITIES</b>		
Reinstatement of accommodation lease	185	185
<b>TOTAL NON-CURRENT LIABILITIES</b>	<b>185</b>	<b>185</b>
<b>TOTAL LIABILITIES</b>	<b>8,129</b>	<b>3,892</b>
<b>NET ASSETS</b>	<b>8,556</b>	<b>9,790</b>

**STATEMENT OF PROSPECTIVE CASH FLOWS** FOR THE YEAR ENDED 30 JUNE 2011

	2009/10 FORECAST \$000	2010/11 BUDGET \$000
<b>CASH FLOW FROM OPERATING ACTIVITIES</b>		
Receipts from Crown	45,420	40,928
Receipts from fees and recoveries	928	110
Receipts from settlements to be repaid	0	0
Receipts from interest	420	450
Payments to members and employees	(22,591)	(21,830)
Payments to suppliers	(17,250)	(17,086)
Goods and services tax (net)	3	(23)
<b>NET CASH INFLOW/(OUTFLOW) FROM OPERATING ACTIVITIES</b>	<b>6,930</b>	<b>2,549</b>
<b>CASH FLOW FROM INVESTING ACTIVITIES</b>		
Investments receipts/(deposits)	0	0
Receipts from sale of property, plant and equipment	0	0
Purchase of property, plant and equipment	(120)	(685)
Purchase of intangible assets	(464)	(500)
<b>NET CASH INFLOW/(OUTFLOW) FROM INVESTING ACTIVITIES</b>	<b>(584)</b>	<b>(1,185)</b>
<b>CASH FLOW FROM FINANCING ACTIVITIES</b>		
Capital contribution	0	0
Repayment of surplus	(2,345)	(4,529)
Payment of finance leases	0	0
<b>NET CASH INFLOW/(OUTFLOW) FROM FINANCING ACTIVITIES</b>	<b>(2,345)</b>	<b>(4,529)</b>
<b>NET INCREASE/(DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>4,001</b>	<b>(3,165)</b>
Opening cash and cash equivalents	9,119	13,120
<b>CLOSING CASH AND CASH EQUIVALENTS</b>	<b>13,120</b>	<b>9,955</b>

## VOTE COMMERCE – ENFORCEMENT OF GENERAL MARKET REGULATION

	2009/10 BUDGET \$000	FULL YEAR FORECAST \$000	2010/11 BUDGET \$000
<b>REVENUE</b>			
Crown Revenue - General Market	13,935	13,935	13,935
Crown Revenue - Major Litigation (Internal)	3,000	2,500	2,500
Interest	420	420	450
Fees and recoveries	35	892	50
Miscellaneous income	60	62	60
<b>TOTAL REVENUE</b>	<b>17,450</b>	<b>17,809</b>	<b>16,995</b>
<b>EXPENDITURE</b>			
<b>COMPETITIVE MARKETS</b>			
Market structure cases	256	94	105
Coordinated behaviour cases	2,952	3,926	2,613
Unilateral conduct cases	1,050	1,247	836
Determinations	2,869	1,660	2,926
Framework development	1,140	854	1,115
Public information/education	177	148	592
Reports to Ministers	0	0	0
<b>TOTAL COMPETITIVE MARKETS</b>	<b>8,443</b>	<b>7,929</b>	<b>8,187</b>
<b>INFORMED CONSUMERS - FAIR TRADING ACT</b>			
Fair Trading Act cases	3,193	3,563	3,135
Product safety and information standards cases	189	177	279
Fair Trading Act framework development	423	217	209
Fair Trading Act public information/education	382	160	418
<b>SUBTOTAL FAIR TRADING ACT</b>	<b>4,187</b>	<b>4,117</b>	<b>4,041</b>
<b>INFORMED CONSUMERS - CCCF ACT</b>			
CCCF Act cases	1,292	1,350	1,254
CCCF Act framework development	192	194	105
CCCF Act public information/education	119	49	174
<b>SUBTOTAL CCCF ACT</b>	<b>1,603</b>	<b>1,593</b>	<b>1,533</b>
<b>TOTAL INFORMED CONSUMERS</b>	<b>5,790</b>	<b>5,710</b>	<b>5,574</b>
<b>TOTAL GENERAL MARKET EXPENDITURE</b>	<b>14,234</b>	<b>13,639</b>	<b>13,761</b>

cont'd

## VOTE COMMERCE – ENFORCEMENT OF GENERAL MARKET REGULATION cont'd

	2009/10 BUDGET \$000	FULL YEAR FORECAST \$000	2010/11 BUDGET \$000
<b>MAJOR LITIGATION (INTERNAL)</b>			
Competitive markets	2,873	2,606	1,603
Fair Trading Act	6	141	512
CCCF Act	336	343	385
Telecommunications	0	6	0
Gas	88	1	0
Input methodologies	0	0	0
<b>TOTAL MAJOR LITIGATION (INTERNAL)</b>	<b>3,303</b>	<b>3,097</b>	<b>2,500</b>
<b>TOTAL EXPENDITURE</b>	<b>17,537</b>	<b>16,136</b>	<b>16,261</b>
<b>RESULT</b>	<b>(87)<sup>15</sup></b>	<b>1,673</b>	<b>734</b>

## VOTE COMMERCE – ENFORCEMENT OF DAIRY SECTOR REGULATION

	2009/10 BUDGET \$000	FULL YEAR FORECAST \$000	2010/11 BUDGET \$000
<b>REVENUE</b>			
Crown Revenue	905	905	905
<b>TOTAL REVENUE</b>	<b>905</b>	<b>905</b>	<b>905</b>
<b>EXPENDITURE</b>			
Dairy investigations	167	180	91
Dairy determinations	276	282	453
Dairy framework development	189	21	100
Dairy public information/education	5	38	45
<b>TOTAL EXPENDITURE</b>	<b>637</b>	<b>521</b>	<b>688</b>
<b>RESULT</b>	<b>268</b>	<b>384</b>	<b>217</b>

15. Vote Gas transferred \$0.087 million to Major Litigation in 2009/10 budget.

### VOTE COMMUNICATIONS – ENFORCEMENT OF TELECOMMUNICATIONS SECTOR REGULATIONS

	2009/10 BUDGET \$000	FULL YEAR FORECAST \$000	2010/11 BUDGET \$000
<b>REVENUE</b>			
Crown Revenue	7,790	7,790	7,790
<b>TOTAL REVENUE</b>	7,790	7,790	7,790
<b>EXPENDITURE</b>			
Access determinations	1,021	785	856
TSO cost determinations	538	480	273
Monitoring and reporting	945	1,194	1,270
Enforcement cases	491	295	390
Industry code approvals	23	30	390
Reports to Ministers	1,023	1,356	779
Framework development	786	712	1,947
Public information/education	420	207	195
Information disclosure	1,630	1,855	1,300
<b>TOTAL EXPENDITURE</b>	6,877	6,914	7,400
<b>RESULT</b>	913	876	390

### VOTE COMMERCE – INPUT METHODOLOGIES

	2009/10 BUDGET \$000	FULL YEAR FORECAST \$000	2010/11 BUDGET \$000
<b>REVENUE</b>			
Crown Revenue	4,899	5,224	2,612
<b>TOTAL REVENUE</b>	4,899	5,224	2,612
<b>EXPENDITURE</b>			
Input Methodologies determinations (all)	4,844	5,087	2,586
Input Methodologies public information/education	0	0	26
Input Methodologies principles and guidelines (all)	0	13	0
Input Methodologies framework development (all)	55	13	0
<b>TOTAL EXPENDITURE</b>	4,899	5,113	2,612
<b>RESULT</b>	0	111	0

## VOTE COMMERCE – REGULATION OF ELECTRICITY LINES BUSINESSES

	2009/10 BUDGET \$000	FULL YEAR FORECAST \$000	2010/11 BUDGET \$000
<b>REVENUE</b>			
Crown Revenue	3,167	3,167	3,167
<b>TOTAL REVENUE</b>	3,167	3,167	3,167
<b>EXPENDITURE</b>			
Electricity determinations	1,040	1,171	0
Electricity framework development	855	928	0
Electricity public information/education	17	11	10
Electricity information disclosure	937	582	0
Electricity authorisation and determination compliance	114	44	0
Electricity threshold inquiries	204	233	0
Electricity distribution determinations	0	0	1,235
Electricity distribution compliance	0	0	126
Electricity distribution information disclosure	0	0	404
Electricity distribution framework development	0	0	25
Transpower determinations	0	0	792
Transpower compliance	0	0	142
Transpower information disclosure	0	0	404
Transpower framework development	0	0	29
<b>TOTAL EXPENDITURE</b>	3,167	2,969	3,167
<b>RESULT</b>	0	198	0

## VOTE COMMERCE – REGULATION OF NATURAL GAS SERVICES

	2009/10 BUDGET \$000	FULL YEAR FORECAST \$000	2010/11 BUDGET \$000
<b>REVENUE</b>			
Crown Revenue	2,700	2,700	1,100
<b>TOTAL REVENUE</b>	2,700	2,700	1,100
<b>EXPENDITURE</b>			
Gas determination of price-quality paths	1,897	1,247	742
Gas compliance with existing authorisations and determinations	121	37	34
Gas information disclosure	563	342	300
Gas framework development	16	22	19
Gas public information/education	16	9	5
<b>TOTAL EXPENDITURE</b>	2,613	1,657	1,100
<b>RESULT</b>	87	1,043	0

## VOTE COMMERCE – REGULATION OF AIRPORT SERVICES

	2009/10 BUDGET \$000	FULL YEAR FORECAST \$000	2010/11 BUDGET \$000
<b>REVENUE</b>			
Crown Revenue	500	791	875
<b>TOTAL REVENUE</b>	500	791	875
<b>EXPENDITURE</b>			
Airports information disclosure	500	608	870
Airports public information/education	0	178	5
<b>TOTAL EXPENDITURE</b>	500	786	875
<b>RESULT</b>	0	5	0

## VOTE COMMERCE – MAJOR LITIGATION FUND

	2009/10 BUDGET \$000	FULL YEAR FORECAST \$000	2010/11 BUDGET \$000
<b>REVENUE</b>			
Crown Revenue	7,500	8,000	8,000
<b>TOTAL REVENUE</b>	7,500	8,000	8,000
<b>EXPENDITURE</b>			
Competitive markets	5,565	4,626	4,550 <sup>16</sup>
Fair Trading Act	465	543	1,130
CCCF Act	465	584	850
Telecommunications	253	184	485
Gas	252	151	0
Input methodologies	0	0	485
<b>TOTAL EXPENDITURE</b>	7,000	6,088	7,500
<b>RESULT</b>	500	1,912	500
Transfer to reserves	(500)	(500)	(500)
<b>NET RESULT</b>	0	1,412	0

16. Pending Ministerial approval, we intend for any underspend to be transferred to 2011/12, as allowed for in the Output Agreement.

## SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES FOR THE YEAR ENDING 30 JUNE 2011

### REPORTING ENTITY

The Commerce Commission (the Commission) is a Crown entity, established under the Commerce Act 1986 (operating solely within New Zealand) with responsibilities for the Commerce Act 1986 and the Fair Trading Act 1986, the Electricity Industry Reform Act 1998, the Dairy Industry Restructuring Act 2001 and the Telecommunications Act 2001, and the Credit Contracts and Consumer Finance Act 2003.

### 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 October 2008.

The financial statements comply with New Zealand equivalents to International Financial Reporting Standards (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.

The prospective financial statements comply with FRS-42 – Prospective Financial Statements. The Commission must prepare a statement of intent including prospective financial statements at or before the start of each financial year to promote public accountability. The prospective financial statements may not be appropriate for any other purposes.

The prospective financial statements have been prepared on the basis of best estimates and assumptions as to future events expected to occur. Revenue is based on the estimates included in the Crown's 2009/10 budget. As the financial statements are prospective, inherently actual results are likely to vary from the information presented. All material variations are required to be disclosed in the subsequent annual report.

### 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 financial performance, 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. 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 income statement 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 income statement 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 income statement 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 income statement over the term of the lease. At balance date, any unamortised incentive and outstanding obligation for reinstatement is recognised as a liability in the balance sheet.

**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 income statement 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

**Taxation** – The Commission is exempt from income tax under section CW 38 of the Income Tax Act 2004.

**Service performance outputs** – 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.

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

of the Fund are laid down in the Output Agreement between the Commission and the Ministry of Economic Development.

**Cash and cash equivalents** – Cash and cash equivalents comprise cash on hand, transactional cash balances and call deposits held with New Zealand registered banks which are highly liquid 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 income statement in the period in which they are first identified.

**Investments** – Investments comprise debt securities (term deposits) issued by New Zealand registered banks 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 income statement in the period in which they are first identified.

**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 income statement 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 income statement 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 income statement 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 balance sheet and charged to the income statement. 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 engaged in litigation activity which inherently 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 income statement 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 only accounting policy change is to the overhead allocation process under the policy for Service Performance Outputs. There have been three changes aimed at simplifying and improving cost allocation:

- the overhead costs of Legal Services and Economic Services branches will now be treated as corporate overhead and allocated across all outputs. Previously these costs were allocated proportionally to only the outputs that those Branches worked on; an allocation the Commission considers was too narrow given the overhead costs in question relate to all organisation activity;
- the output of internal major litigation will now directly pick up a fixed percentage of corporate overhead (as is the case for Appropriations), as opposed to an uncertain level of allocation as an output within the Vote Commerce – Enforcement of General Market Regulation Appropriation. Whereas output expenditure can ordinarily fluctuate within an Appropriation, internal major litigation has strict expenditure limits imposed by the Commission's Output Agreement. To increase the predictability of overhead allocation to internal major litigation, the Commission decided it was more appropriate to treat it like an appropriation for the purpose of cost allocation; and
- the overhead costs of each operating Branch (Enforcement and Regulation) will only be allocated to the outputs of that Branch, even if staff work on projects in other Branches. This change allows for each operating Branch to have clear and full responsibility for its own overhead costs. This also avoids the uncertainty (and consequent output management difficulty) of one Branch's overheads affecting another Branch's outputs.



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**CONTACT DETAILS**

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