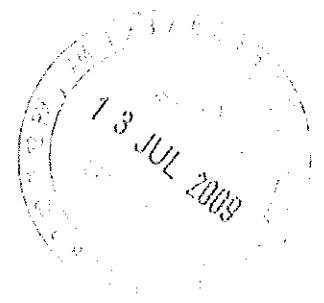


# **OUTPUT AGREEMENT**



- between -

**THE ASSOCIATE MINISTER OF COMMERCE**  
**THE MINISTER FOR COMMUNICATIONS AND**  
**INFORMATION TECHNOLOGY**

- and -

**THE COMMERCE COMMISSION**

- for the period -

**1 JULY 2009 - 30 JUNE 2010**

# Contents

## SECTION 1.0

1.1	PARTIES TO THE OUTPUT AGREEMENT .....	5
1.2	OBJECTIVE .....	5
1.3	SCOPE AND CONTENT .....	5
1.4	TERM AND ALTERATION.....	6

## SECTION 2.0

2.1	BACKGROUND .....	7
2.2	ACCOUNTABILITY FOR OUTPUTS .....	8
2.3	MINISTERS' ADVISERS.....	8
2.4	FUNDING .....	9
2.4.1	APPROPRIATIONS .....	9
2.4.2	PAYMENT.....	10
2.4.3	FINANCIAL PERFORMANCE .....	10
2.4.4	OTHER REVENUE .....	11
2.4.5	FINANCIAL PLANNING.....	11
2.5	MAJOR LITIGATION .....	12
2.5.1	BACKGROUND .....	12
2.5.2	INTERNAL CAPACITY TO UNDERTAKE MAJOR LITIGATION.....	12
2.5.3	LITIGATION FUND OTHER EXPENSE APPROPRIATION .....	13
2.5.4	CRITERIA .....	13
2.5.5	APPLICATION OF THE CRITERIA.....	14
2.5.6	COURT COSTS AND INTEREST .....	14
2.5.7	PAYMENT.....	15
2.5.8	REPORTING REQUIREMENTS .....	15
2.6	INFORMATION .....	17
2.6.1	PERFORMANCE REPORTS .....	17
2.6.2	ADMINISTRATION OF DAIRY INDUSTRY LEVY.....	18
2.6.3	MINISTERIAL CORRESPONDENCE, SPEECHES AND PARLIAMENTARY QUESTIONS.....	18
2.6.4	MEETINGS WITH THE MINISTER OF COMMERCE .....	19
2.7	VALUES .....	19
2.8	OUTPUT AGREEMENT FOR 2010/2011 .....	19

## SCHEDULES

<b>SCHEDULE ONE: VOTE COMMERCE – GENERAL MARKET REGULATION.....</b>	<b>20</b>
OUTPUT 11.1 MARKET STRUCTURE CASES.....	21
OUTPUT 11.2 CO-ORDINATED BEHAVIOUR CASES .....	22
OUTPUT 11.3 UNILATERAL CONDUCT CASES .....	22
OUTPUT 11.4 DETERMINATIONS .....	22
OUTPUT 11.5 FRAMEWORK DEVELOPMENT.....	22
OUTPUT 11.6 PUBLIC INFORMATION / EDUCATION.....	22
OUTPUT 11.7 REPORTS TO THE MINISTER.....	23
OUTPUT 12.1 FAIR TRADING ACT CASES .....	23
OUTPUT 12.2 PRODUCT SAFETY AND INFORMATION STANDARDS CASES .....	23
OUTPUT 12.3 CREDIT CONTRACT AND CONSUMER FINANCE ACT CASES.....	23
OUTPUT 12.4 & 12.6 FRAMEWORK DEVELOPMENT.....	23
OUTPUT 12.5 & 12.7 PUBLIC INFORMATION / EDUCATION.....	23
<b>SCHEDULE TWO: VOTE COMMERCE - DAIRY.....</b>	<b>24</b>
OUTPUT 16.1 DAIRY INVESTIGATIONS.....	24
OUTPUT 16.2 DAIRY ADJUDICATION .....	24
OUTPUT 16.3 DAIRY FRAMEWORK DEVELOPMENT.....	24
OUTPUT 16.4 PUBLIC INFORMATION / EDUCATION.....	25
<b>SCHEDULE THREE: VOTE COMMUNICATIONS.....</b>	<b>26</b>
OUTPUT 13.1 DETERMINATIONS.....	27
OUTPUT 13.2 DETERMINATIONS OF TSO COST.....	27
OUTPUT 13.3 MONITORING AND REPORTING .....	27
OUTPUT 13.4 ENFORCEMENT.....	27
OUTPUT 13.5 CODE APPROVAL DEVELOPMENT.....	27
OUTPUT 13.6 REPORTS TO MINISTERS .....	27
OUTPUT 13.7 FRAMEWORK DEVELOPMENT.....	28
OUTPUT 13.8 PUBLIC INFORMATION / EDUCATION.....	28
OUTPUT 13.9 INFORMATION DISCLOSURE .....	28
<b>SCHEDULE FOUR A: VOTE COMMERCE – ELECTRICITY .....</b>	<b>29</b>
OUTPUT 14.1 DETERMINATION OF PRICE-QUALITY PATHS .....	30
OUTPUT 14.2 THRESHOLD INQUIRIES .....	30
OUTPUT 14.3 FRAMEWORK DEVELOPMENT.....	30
OUTPUT 14.4 PUBLIC INFORMATION/EDUCATION .....	30
OUTPUT 14.5 AUTHORISATION & DETERMINATION COMPLIANCE .....	30
OUTPUT 14.6 INFORMATION DISCLOSURE .....	30
<b>SCHEDULE FOUR B: VOTE COMMERCE – GAS .....</b>	<b>31</b>
OUTPUT 15.1 DETERMINATION OF PRICE-QUALITY PATHS .....	31
OUTPUT 15.2 COMPLIANCE WITH EXISTING AUTHORISATIONS AND DETERMINATIONS .....	32
OUTPUT 15.3 FRAMEWORK DEVELOPMENT.....	32
OUTPUT 15.4 PUBLIC INFORMATION / EDUCATION.....	32
OUTPUT 15.5 INFORMATION DISCLOSURE .....	32

<b>SCHEDULE FOUR: VOTE COMMERCE – INPUT METHODOLOGIES.....</b>	<b>33</b>
OUTPUT 17.1 DETERMINATIONS .....	33
OUTPUT 17.2 PRINCIPLES AND GUIDELINES .....	33
OUTPUT 17.3 FRAMEWORK DEVELOPMENT .....	33
OUTPUT 17.4 PUBLIC INFORMATION/EDUCATION .....	33
<b>SCHEDULE FOUR D: VOTE COMMERCE – AIRPORTS .....</b>	<b>35</b>
OUTPUT 18.1 INFORMATION DISCLOSURE .....	35
OUTPUT 18.3 PUBLIC INFORMATION / EDUCATION.....	35

## SECTION 1.0

### 1.1 PARTIES TO THE OUTPUT AGREEMENT

This Output Agreement ("the Agreement") is a composite accountability document:

BETWEEN

Responsible Minister:

- the Associate Minister of Commerce, in respect of the overall ownership performance of the Commission (including the purchase of major litigation activity on behalf of all Purchase Ministers);

Purchase Ministers:

- the Minister of Commerce, in respect of outputs to be provided through Vote Commerce. In this capacity, the Minister of Commerce is also purchasing services on behalf of the Ministers of Agriculture and Consumer Affairs and Energy;
- the Minister for Communications and Information Technology, in respect of outputs to be provided through Vote Communications;

AND

- the Commerce Commission (the "Commission").

### 1.2 OBJECTIVE

The objective of the Agreement is to establish expectations of performance for the outputs to be provided by the Commission in which the respective Minister has an interest, and to establish expectations of the Commission's ownership performance. The Agreement enables the respective Ministers to monitor the Commission and hold it to account for its output delivery and performance.

### 1.3 SCOPE AND CONTENT

The Agreement is made up of two sections in the body of the Agreement, and a number of schedules.

Section One sets out the parameters of the agreement.

Section Two of the Agreement sets out the understanding of the Responsible Minister and the Commission on:

- the level of funding each Minister will provide to the Commission for the provision of outputs;
- the administration of funding available to the Commission through the Non-departmental Other Expenses appropriation *Commerce Commission Litigation Fund*;

- the ways in which each Minister will monitor the delivery of those outputs; and
- other matters relevant to the relationship between the Responsible Minister and the Commission.

The schedules to the Agreement set out the understanding of each Purchasing Minister and the Commission on:

- the outputs to be supplied by the Commission, including performance attributes and aggregate costs; and
- any other matters relevant to the relationship between each Purchasing Minister and the Commission.

The outputs contained in this agreement directly reflect those contained in the Commission's 2009-12 Statement of Intent. They are the outputs considered most likely to lead to achievement of the Commission's impacts and outcomes as defined in the Statement of Intent.

#### **1.4 TERM AND ALTERATION**

The Agreement commences on 1 July 2009 and ends on 30 June 2010.

The Agreement may be amended at any time during its term by agreement between the Responsible Minister and the Commission, in respect of the body of the Agreement, or agreement between the respective Purchase Minister and the Commerce Commission, in respect of a particular Schedule. Any such amendments by a Minister and the Commission will be in writing.

## **SECTION 2.0**

### **2.1 BACKGROUND**

The Commission was established by the Commerce Act 1986, and is an independent Crown Entity as defined in section 7 of the Crown Entities Act 2004.

The services of the Commission are purchased primarily through appropriations of public money under an Act of Parliament.

The Commission has enforcement and regulatory control responsibilities under a number of general and specific regulatory regimes set out in the:

- Commerce Act 1986 (the Commerce Act);
- Credit Contracts and Consumer Finance Act 2003 (the CCCF Act);
- Dairy Industry Restructuring Act 2001 (the DIR Act);
- Electricity Industry Reform Act 1998 (the EIR Act);
- Fair Trading Act 1986 (the Fair Trading Act); and
- Telecommunications Act 2001 (the Telecommunications Act).

The Commerce Commission is responsible for enforcing New Zealand's competition, fair trading and consumer credit contract laws. It also has regulatory responsibilities in the electricity, gas, telecommunications, dairy and airport industries.

#### **Relationship between the Crown and the Commission**

The parties to the Agreement note that section 26 of the Commerce Act provides for the Minister of Commerce to formally communicate statements of the economic policy of the Government to the Commission. The Commission is required to have regard to such statements in exercising its statutory functions under the Commerce Act.

The parties also note that Section 19A of the Telecommunications Act provides for the Minister for Communications and Information Technology, as Responsible Minister, to formally communicate statements of the economic policy of the Government to the Commission. The Commission is required to have regard to such statements in exercising its statutory functions under Schedule 3 of the Telecommunications Act.

Apart from the requirement to have regard to such statements, under section 8(2) of the Commerce Act the Commission must act independently in performing its statutory functions and duties and in exercising its statutory powers. Ministers recognise that the Commission is required to act independently in carrying out its functions and exercising its statutory powers and nothing in this Agreement is to limit that independence.

The Commission in turn recognises that it is a government agency and as such is accountable to the Responsible Ministers for the efficient and effective delivery of its functions.

Under the Crown Entities Act 2004 section 107 the Commission is required to comply with government directions, for the purpose of:

- supporting a whole of government approach; and
- either directly or indirectly, improving public services.

## **2.2 ACCOUNTABILITY FOR OUTPUTS**

The Commission will deliver the outputs specified in the Schedules to the Agreement in accordance with the specified performance undertakings.

The Commission will maintain systematic measurement and verification of performance against the standards specified.

The performance measures for appeals and reviews that are shown within this agreement is an indication of possible activity that could occur during the year that the Commission has been funded for.

The Responsible Minister recognises that during the course of the year the Commission may need to modify priorities, within appropriations to reflect changes in commercial conduct. The Commission will advise the affected Ministers and the Responsible Minister of any such reprioritisation through the monitoring regime.

## **2.3 MINISTERS' ADVISERS**

The Commission recognises that the Responsible Minister and Purchase Ministers have appointed the Ministry of Economic Development ("the Ministry") to:

- advise the Ministers on issues arising from their responsibilities in relation to the Commission;
- monitor the delivery by the Commission of outputs against the performance measures and standards set out in the schedules to the Agreement; and
- administer the setting and collection of levies on the gas, telecommunications, electricity lines and airport sectors relating to costs incurred by the Commission.

The Ministry will liaise with the Commission in a timely manner to facilitate and support the efficient operation of this Agreement, consistent with a whole-of-government approach. The Ministry will also, whenever appropriate to do so:

- provide the Commission with a meaningful opportunity to comment on policy and legislative proposals that materially impact the Commission's interests, resources or budgets;
- provide the Commission with a meaningful opportunity to comment on any non-confidential draft papers it has prepared in its role as the Ministers' adviser, to provide the Commission with final copies of such papers as early as possible; and
- inform the Commission of the requirements of budgetary processes relating to it, and provide opportunity for the Commission to request adjustments through the Supplementary Estimates process. This process is a key mechanism for managing uncertainty in the funding requirements for the four levy-based regulatory areas for which the Commission has responsibility.

The Commission will liaise with and provide information to the Ministry to enable it to fulfil these roles.

## 2.4 FUNDING

### 2.4.1 Appropriations

Parliament has approved the following appropriations for the Commission's functions:

- **Vote Commerce: \$26,106,000** (GST exclusive) to produce the outputs set out in Schedules One and Two under six appropriations:
  - Non-departmental Output Expense – *Enforcement of General Market Regulation* – \$16,435,000<sup>1</sup> (GST exclusive);
  - Non-departmental Output Expense – *Enforcement of Dairy Sector Regulation*<sup>2</sup> – \$905,000 (GST exclusive);
  - Non-departmental Output Expense – *Regulation of Electricity Lines Businesses*<sup>3</sup> – \$3,167,000<sup>4</sup> (GST exclusive)
  - Non-departmental Output Expense – *Regulation of Natural Gas Services*<sup>5</sup> – \$2,700,000 (GST exclusive)
  - Non-departmental Output Expense – *Regulation of Airport Services*<sup>6</sup> – \$500,000 (GST exclusive)
  - Non-departmental Output Expense – *Input Methodologies*<sup>7</sup> – \$4,899,000<sup>8</sup> (GST exclusive)
- **Vote Commerce: \$8,000,000**<sup>9</sup> (GST exclusive) to fund the direct costs of major litigation activity under the appropriation Non-departmental Other Expenses *Commerce Commission Litigation Fund*. In addition, the Ministers of Finance and Commerce have the delegated joint authority to transfer any unspent litigation fund appropriation in one year to the next financial year.
- **Vote Communications: \$7,790,000** (GST exclusive) to produce the outputs set out in Schedule Three under the appropriation;
  - Non-departmental Output Expense – *Enforcement of Telecommunications Sector Regulation*<sup>10</sup>

<sup>1</sup> This figure comprises \$13,935,000 for the General Market work, and \$2,500,000 for major litigation. The figure will increase to \$16,935,000 on approval of an additional \$500,000 transfer from the funding for litigation activity, which will correspondingly decrease to \$7,500,000. The transfer requires a formal request from the Commission and approval by the Minister.

<sup>2</sup> Part funded (\$605,000) through level on Fonterra

<sup>3</sup> Funded through levy on regulated electricity lines businesses.

<sup>4</sup> This figure includes \$500,000 transferred from 2008/09's Vote Energy – *Enforcement of Electricity Sector Regulation*, to Vote Commerce – *Regulation of Electricity Lines Businesses*.

<sup>5</sup> Funded through levy on regulated gas pipeline businesses.

<sup>6</sup> Funded through levy on regulated airport businesses.

<sup>7</sup> Funded through level on regulated electricity, gas and airport businesses.

<sup>8</sup> This figure is made up of \$1,399,000 previously approved funding, a further \$1,600,000 of funding sought through the budget 2009/10 process and a \$1,900,000 surplus from 2008/09 includes \$1,900,000 carried forward from 2008/09 Vote Energy appropriations *Enforcement of Electricity Sector Regulation*

<sup>9</sup> This figure includes \$500,000 of ring-fenced funding, to cover the costs of court cost awards against the Commission.

<sup>10</sup> Funded through levy on regulated telecommunications businesses.

### 2.4.2 Payment

The Purchase Ministers, on behalf of the Crown, will pay the Commission up to the amount of the appropriations. The Ministry (acting as the administering department of the two Votes through which relevant appropriations have been made to the Commission) will action payments to the Commission on a quarterly basis in accordance with this Agreement.

The amounts appropriated under Vote Commerce (excluding the Commission Litigation fund) and Vote Communications – Enforcement of Telecommunications Sector Regulations will be paid in advance to the Commission. The Ministry will prepare a schedule for the quarterly payments in consultation with Commission prior to the commencement of the 2009/10 financial year.

If during the financial year the Commission is forecast to spend less than the appropriation in relation to any of these activities with the exception of Vote Commerce General Market which shall be paid in full, the Ministry, with the prior agreement of the Commission, may withhold or amend the payments to reflect the forecast expenditure.

If the Commission has received more appropriation than it has spent in the previous financial year in respect of any activities for which costs are recoverable by the Crown through an industry levy, this amount will be returned to the Crown<sup>11</sup>. To facilitate the return of the money, the Ministry, with the prior agreement of the Commission, may deduct the balance from the cash disbursed for the second, third and/or fourth quarters of the year under the relevant appropriation.

The amounts under Vote Commerce for the external component of the Non-departmental Other Expenses appropriation *Commerce Commission Litigation Fund* will be paid in arrears as reimbursement of actual costs, as discussed later in this Agreement. Litigation Fund payments will be made on the basis of the expenditure recorded in the Commission's quarterly reports.

### 2.4.3 Financial Performance

The Commission will apply funds to deliver outputs within the intention of each of the appropriations. The Commission, as a Crown Entity, may retain operating surpluses that result from its activities, other than those for which costs are recoverable by the Crown through an industry levy<sup>4</sup>.

The Responsible Minister expects the Commission to manage its activities within its total resources, including prudent management of its equity.

The Commission will not incur expenses in excess of the appropriation for the following appropriations without the prior approval of the relevant Purchasing Minister, provided seeking such approval is consistent with the Commission's ability to act independently:

<sup>11</sup> Except in the case of the Cabinet directive to transfer of a forecast under spend of \$2.9million from Vote Energy - *Enforcement of Electricity Sector Regulation*, into Vote Commerce – *Regulation of Electricity Lines businesses* in the 2009/10 and 2010/11 years.

- Vote Commerce, Non-departmental Output Expense – *Enforcement of Dairy Sector Regulation*;
- Vote Commerce, Non-departmental Output Expense – *Regulation of Electricity Lines Businesses*;
- Vote Commerce – Non departmental Output Expense – *Regulation of Natural Gas Services*;
- *Vote Commerce*, Non-departmental Output Expense – *Regulation of Airport Services*;
- Vote Commerce, Non-departmental Output Expense – *Input Methodologies*; and
- Vote Communications, Non-departmental Output Expense – *Enforcement of Telecommunications Sector Regulation*.

Equity held by the Commission may only be used in ways that are consistent with the Commission's statutory functions.

The Minister may seek a capital contribution appropriation for the Commission through the Budget process, or make a capital withdrawal from the Commission under the Public Finance Act, in order that the Commission maintains an equity level that provides an appropriate platform from which it can meet its foreseeable operational needs.

#### **2.4.4 Other Revenue**

In addition to revenue from the Crown, the Commission will receive an estimated **\$515,000** (GST exclusive) from application fees, cost-recovery for adjudications under the Telecommunications Act, interest, and Court costs awarded to the Commission in relation to civil cases under each output appropriation. Full cost-recovery applies to *Access Determinations* under Vote Communications.

Cost recovery fees and charges under legislation will be calculated in a manner consistent with the Treasury and the Auditor-General's guidelines on costing and charging for public sector goods and services. Charges under legislation will be applied in accordance with the legislation.

Cost awards made by the court or agreed as part of a settlement will be apportioned between the Crown and the Commission on the basis of the proportional contributions to costs from the Litigation Fund (returned to the Crown) and the output appropriation (retained by the Commission).

#### **2.4.5 Financial Planning**

The Commission will also support the Government's financial planning process in accordance with the following schedule:

The dates in the schedule below are estimates only. The dates specified may be subject to change based on timetables issued by Treasury. These changes may be agreed between the Ministry and the Commission and will not require amendment to this agreement:

- By 13 October 2009, the Commission advises the Minister of the amount that the Commission considers it will need to spend on its functions in the next financial year. This is also the deadline for submissions for any increase in the amount allocated for the current year's expenditure.
- By 22 January 2010, the Minister advises the Commission of the response to its requests. That is, approval in principle may be given to a level of expenditure for the next financial year and a response given to any proposed increase in the current financial year.
- By 12 February 2010, the Commission confirms to the Ministry the baseline data to be included in both Supplementary Estimates for the current year and the Estimates process for the next financial year.
- By 26 February 2010, the Ministry finalises draft submissions to the Minister of Finance concerning the Supplementary Estimates and Estimates processes, for the consideration of the Minister.

## **2.5 MAJOR LITIGATION**

### **2.5.1 Background**

The Commission is required to undertake or be party to major litigation under the full range of legislation for which it has enforcement responsibility. This litigation is unpredictable in regard to both timing and size. Such litigation may extend beyond the level of litigation activity the Commission is able to manage within its routine litigation functions and resourcing. Thus funding is set aside to directly meet this need, provided specific criteria is met for its use (refer to 2.5.4 and 2.5.5 below).

### **2.5.2 Internal Capacity to Undertake Major Litigation**

Since 2007/08, a programme of funding transfers between the Other Expense appropriation Commerce Commission Litigation Fund, to Vote Commerce, Enforcement of General Market Regulation, has been undertaken in order that the Commission build permanent internal capacity for the purposes of major litigation. This process will be completed in 2009/10.

For this purpose a permanent \$2.5 million funding transfer has already occurred, reducing the Litigation Fund appropriation to \$8,000,000. There is one further potential transfer, of \$500,000 in the 2009/10 year. This will bring the total of the permanent transfer to \$3 million.

Funding that is transferred to General Market appropriation for internal capacity may be used for:

- i. salary costs of internal capacity and capability, including support staff associated with major litigation; and
- ii. overhead or indirect costs associated with major litigation.

The Minister of Finance and Minister of Commerce also have joint delegated authority to further transfer a portion of the overall funding that is transferred

above, to other output expense appropriations, if necessary, to meet the costs of major litigation within these output classes.

Should the \$3 million in funding allocated in 2009/10 not be fully used on expenses that meet the criteria in i and ii above, this funding may remain in the General Market appropriation and be used for expenses that would meet the Litigation Fund criteria set out in 2.5.4 below.

Otherwise, funding for internal capacity and capability will not be able to be used on other output expenses within output appropriations.

### 2.5.3 Litigation Fund Other Expense Appropriation

The Litigation Fund Other Expense appropriation reflects the Responsible Minister's risk management approach on behalf of all Purchasing Ministers and the Ministers of Agriculture and Consumer Affairs, and provides the means to support the Commission in meeting its responsibilities.

#### Direct and indirect Costs

Direct costs associated with major litigation activity undertaken under the respective output appropriations will be met as charges against the Non-departmental Other Expenses appropriation *Commerce Commission Litigation Fund* in Vote Commerce. Salary and indirect (overhead) costs will be met within each output appropriation other than that set out in 2.5.2.

### 2.5.4 Criteria

The Commission will access the Other Expenses appropriation only in relation to litigation that it has assessed as meeting the criteria set out below. Access to the appropriation will be restricted to eligible cases, being cases:

- i with total costs estimated to be not less than \$200,000 (GST exclusive), such costs:
  - to exclude Commission overheads;
  - to be calculated as follows, as the case may be:
    - from the time when the Commission instructs legal counsel with a view to possible litigation, until the completion of the case; or
    - for the period from the decision of the initiating party to take legal process involving the Commission, until the completion of the case, and;
- ii relating to any regulatory regime the Commission is responsible for enforcing; or
- iii involving international, national, major network, or other major companies, or a major issue affecting a particular industry; or
- iv requiring the use of:
  - senior external legal counsel;
  - consultants and expert witnesses (eg, economic, accounting, engineering, scientific); or
- v where there is a risk of costs of the order of \$100,000 (GST exclusive), being awarded by the Courts for or against the Commission.

Where the criteria apply and a decision is taken to use the Litigation Fund, then the Fund may be used, regardless of whether litigation eventuates, or the matter is settled, or a decision is taken not to proceed.

### **2.5.5 Application of the Criteria**

The above criteria for the Litigation Fund are designed so that the Commission is always in a position where it can effectively (and without delay) commence or continue with major or complex proceedings involving expenditure that would be difficult to accommodate within normal budgetary provisions.

The Commission must have regard to the above criteria in assessing and approving eligible cases.

If circumstances change, cases that have not been eligible may subsequently be assessed as being eligible. For such cases, only forward costs, incurred after the Commission has assessed a case as meeting the criteria, may be charged against the Other Expenses appropriation. Costs incurred prior to the assessment cannot be charged to the Other Expenses appropriation retrospectively.

Prior to filing proceedings, the Commission incurs preparatory costs. Provided the criteria are met and on the basis that it envisages undertaking litigation, the Commission may transfer the case to the Fund to cover such costs.

### **2.5.6 Court Costs and Interest**

#### *Cost awards against the Commission*

Costs awarded by the court against the Commission in relation to Litigation Fund cases will be a charge to the Litigation Fund appropriation.

To help ensure that the Commission can cover the cost of any adverse cost awards the Commission will set aside \$0.5 million from the Litigation Fund appropriation each year, to a maximum of \$3.0 million, to cover court costs awarded by the court against the Commission<sup>12</sup>. This contingency funding for cost awards will be appropriated to the Commission along with any reimbursement of expenditure for major litigation, at the end of quarter one.

The Commission will report on the balance of this contingency fund separately, in each quarterly report.

#### *Cost awards in favour of the Commission*

Costs awarded by the court in favour of the Commission (and any out of court settlements involving the payment of costs to the Commission) will be apportioned between the Crown and the Commission. This apportionment will occur on the

<sup>12</sup> It is noted that in 2009/10 Ministry and the Commission will resolve an agreed process for how to manage a potential scenario where costs are awarded against the Commission in excess of its available reserves.

basis of the proportional contribution to costs made between the Litigation Fund and the appropriation.

The Commission will record costs awards in favour of the Commission in each quarterly report.

The court cost awards attributed to the Crown (i.e. the Litigation Fund) will remain in the Litigation Fund and be offset against the reimbursement due to the Commission for litigation expenditure, at the end of each quarter.

The receipt of cost awards by the Commission will not increase the sum which the Commission is entitled to spend in any year, without Cabinet approval.

#### *Interest earned*

Interest earned on the Litigation Fund balance will also remain within the Fund and serve to offset the reimbursement required from the Crown, at the end of each quarter.

The Commission will record the interest earned on the fund each quarter in each quarterly reports.

Interest earned will be offset against the litigation fund appropriation and will not increase the sum which the Commission is entitled to spend in any year, without Cabinet approval.

### **2.5.7 Payment**

The Minister of Commerce, on behalf of the Crown, will pay the Commission each quarter in arrears such sums that are requested by the Commission to reimburse the quarter's major litigation expenditure, so as to maintain the level of the Litigation Fund at \$1.5 million (GST exclusive). The total for 2009/10 to fund major litigation activity is not to exceed the level of the appropriation.

The Ministers of Finance and Commerce have the delegated joint authority to transfer any unspent non-transferred litigation fund appropriation in one year to the next financial year. There is no planned expense transfer of litigation expenditure from 2008/09 to 2009/10.

### **2.5.8 Reporting Requirements**

In its quarterly reports, the Commission will report on actual expenditure activity for the quarter and for the year to date, on a case by case basis, from the Litigation Fund. Reporting will continue to reflect revised forecast expenditure on a case by case basis.

To support requests for reimbursement of the Litigation Fund Other Expense appropriation, in its quarterly reports the Commission will provide to the Ministry a statement on the actual expenditure against the Other Expenses appropriation,

including an assurance that it has been operated in accordance with the criteria set out above.

For all matters attributed to the Fund, the Commission will also show the costs not covered by the Fund, but rather covered by the litigation sub-output in the Non-Departmental Output Expense. This will enable the Purchasing Minister to assess the total costs of litigation activity related to that Minister's area of interest.

In its description of activity under each Non-Departmental Output Expense the Commission will disclose the total costs of litigation, broken down into costs attributed to the Fund and costs attributed to the Non-Departmental Output Expense. Where relevant the costs attributable to the Non-Departmental Output Expense will be itemised as levy recoverable or Crown payable.

The Commission will advise the Minister at the earliest opportunity if the Other Expenses appropriation is likely to be insufficient and of the reasons for the greater than expected expenditure.

The quarterly reports will also reflect actual expenditure against the \$3 million in funding allocated to build Commission's internal capacity and capability to undertake major litigation. The Commission will also include an assurance that the use of this funding has been in accordance with the criteria set out in 2.5.2 above, details on the nature of any expenditure in this area and how the expense transfer is being utilised.

The Commission will disclose all expenditure on major litigation, that is, on cases that meet the fund criteria.

The Commission and MED will jointly assess the effectiveness of the above reporting requirements after the delivery of each quarterly report over the 2009/10 year, and work together to enhance the reporting if necessary, so that reporting reflects the transparency and accountability objectives intended.

## 2.6 INFORMATION

### 2.6.1 Performance Reports

The Commission will supply the Ministry and the Ministries of Consumer Affairs and Agriculture and Forestry, quarterly reports on the Commission's output delivery performance. The quarterly reports are not intended to be public documents. Any request for release of the quarterly reports will be dealt with under the Official Information Act 1982. These quarterly reports will contain:

- a summary of the relevant output delivery activities of the Commission to date, including reporting against planned progress in relation to the projects set out in the respective Schedules to this Agreement;
- the projected level of operations for the rest of the financial year. This will primarily relate to any anticipated variations in activity or performance from that specified in the Schedules to this Agreement;
- an assessment by the Commission of the extent to which its activities have been undertaken in accordance with the specified performance standards in the respective Schedules to the Agreement;
- where the Commission considers that a performance undertaking has not been or is projected not to be fulfilled, an explanation of the action which the Commission proposes to take to address that matter or of the changes in commercial conduct that in the Commission's view necessitated a change in its priorities;
- any other matter which the Commission considers is relevant to the responsibilities of the respective Purchase Minister in relation to the Commission.

In respect of the Responsible Minister's ownership interest, the Commission will also include in its quarterly performance reports, information on:

- the Commission's overall output delivery performance and expenditure;
- expenditure against the Non-departmental Other Expenses appropriation for major litigation as set out in 2.5; and
- any other matter which the Commission considers is relevant to the responsibilities of the Responsible Minister in relation to the Commission's performance in ownership matters.

The Commission will provide the quarterly reports to the relevant Ministries no later than 30 working days after the end of the quarter. The report for the fourth quarter may be a summarised report, focusing primarily on overall expenditure against each Vote and performance against the specified performance standards.

The Commission will provide early advice to the Ministry of any risks for delivery of outputs and will support its formal reporting with regular meetings with the Ministry.

Under the Crown Entities Act, the Commission must complete its Annual Report for 2009/10 by 31 October 2010.

### **2.6.2 Administration of Dairy Industry Levy**

The Commission will provide the Ministry of Agriculture and Forestry, on request, an estimate of costs for performing functions under section 134 of the DIR Act. More generally, the Commission will provide information to assist the Ministry of Agriculture and Forestry in administering the setting and collection of dairy industry levies.

### **2.6.3 Ministerial Correspondence, Speeches and Parliamentary Questions**

The Commission will provide, on request, information consistent with its role and responsibilities to enable:

- the relevant Ministry to prepare Ministerial briefings and draft speech notes in relation to the Commission (normally within 7 working days of request);
- the respective Purchase Minister or the Responsible Minister or the Ministers of Agriculture or Consumer Affairs to respond to Parliamentary questions in relation to the Commission within required timeframes;
- the respective Purchase Minister or the Responsible Minister or the Ministers of Agriculture or Consumer Affairs (normally within 7 working days of request):
  - to deal with Ministerial correspondence in relation to the Commission;
  - to deal with Select Committee inquiries in relation to the Commission.

Notwithstanding the above, the Commission will provide such information unless such provision would be:

- likely to prejudice the maintenance of the law, including the prevention, investigation and detection of offences and the right to a fair trial; or
- contrary to the need to:
  - protect the privacy of persons; or
  - maintain confidentiality; or
  - maintain legal privilege; or
  - protect the commercial position of a person who supplied or is the subject of the information,

subject to the need to have information to discharge the Minister's duties or consistent with the Official Information Act 1982. In such cases, the Commission may withhold, or aggregate as appropriate, the information requested.

All such information requests will be co-ordinated through nominated persons covering each of the four areas of interest in the Ministry and a nominated person in the Ministry of Agriculture and Forestry, and a nominated person in the Commerce Commission.

In all instances, the Commission will endeavour to provide information requested within shorter timeframes.

#### 2.6.4 Meetings with the Responsible, Ownership and Purchase Ministers

The Commission will meet monthly with the Responsible Minister and quarterly with the Ministers of Commerce and for Communications and Information Technology to discuss the Commission's performance described in the quarterly report.

The Commission will keep the Responsible Minister and all Purchase Ministers informed about the Commission's performance as necessary and appropriate, and will inform the Minister of any significant information arising from the work of Audit New Zealand subsequent to the Commission's consideration of the information.

### 2.7 VALUES

Informed by the Government's Statement of Expectations of the State Sector and Commitment by the Government to the State Sector (dated 11 March 2001), the Commission maintains a values statement in its annual Statement of Intent. This statement of values provides that The Commission is committed to acting with:

- Integrity
- Responsibility
- Respect

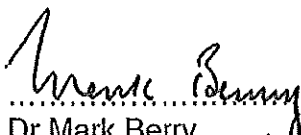
The Commission is also committed to the following operating principles, which underpin its core values:

- Maintaining its independence
- Acting professionally
- Using transparent processes
- Setting standards of excellence
- Employing a principled approach
- Looking for commercially realistic solutions.

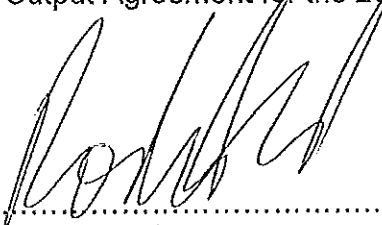
The Commission will maintain policies and procedures that comply with the standards set out in the code of conduct (section 57A(1)) *Standards of Integrity and Conduct* as developed by the State Services Commission.

### 2.8 OUTPUT AGREEMENT FOR 2010/2011

The Commission will, in co-operation with the Ministry, provide the Purchase Ministers and Responsible Minister with a draft Output Agreement for the 2010/11 financial year by 1 June 2010.

  
 .....  
 Dr Mark Berry  
 Chair  
 Commerce Commission

Date: 9 June 2009

  
 .....  
 Hon Rodney Hide  
 Associate Minister of Commerce  
 - as Responsible Minister

Date: 21/7/09

## SCHEDULE ONE: VOTE COMMERCE – GENERAL MARKET REGULATION

### NON-DEPARTMENTAL OUTPUT EXPENSE 03 – ENFORCEMENT OF GENERAL MARKET REGULATION

The Commission will produce the following outputs for the Minister of Commerce purchased through the appropriation of **\$13,935,000** (GST exclusive) for Non-departmental Output Expense 03 – *Enforcement of General Market Regulation*.

Performance Measure	Performance Standards	
	2009/10	2008/09
<b>Quantity Competition</b>		
11.1 Market Structure Cases	4-8	2-8
• EIRA investigations	0-2	0-1
11.2 Coordinated Behaviour Cases	7-13	10-14
11.3 Unilateral Conduct Cases Closed	7-15	9-16 <sup>13</sup>
11.4 Determinations		
• RTP authorisations	0-1	0
• Merger Authorisations	0-1	0
• EIRA exemptions	2-4	5-6
• Clearances	15-23	17-23
• Appeals	0-1	0-1
11.5 Framework Development		
• Commerce Act	15-27	11-18
• EIRA	0-1	
11.6 Public Information/Education		
• Commerce Act	53-68	53-68
• EIRA	2-6	6-10 <sup>14</sup>
11.7 Reports to the Minister	0	0-1
<b>Quantity Fair Trading</b>		
12.1 Fair Trading Cases	280-340	257-312
12.2 Safety and Standards Cases	45-59	45-67
12.3 CCCF Cases	33-49	39-52
12.4 Framework Development – Fair Trading	48-67	48-67
12.6 Framework Development - CCCF	1-5	1-5
12.5 Public Information & Education – Fair Trading	60-80	60-80
12.7 Public Information & Education - CCCF	5-13	5-13
<b>Quality</b>		
Successful legal challenges of the Commission's processes or orders to pay indemnity costs	Nil	N/A
Actual level of penalties and settlements achieved in Fair Trading and Coordinated Behaviour cases	Establishing baseline	N/A
Percentage of success over 5 years in defending appeals of determinations	80%	N/A

<sup>13</sup> Target as per 2008-11 SOI and Output agreement. Target contained in 2008/09 Estimates = aggregate 21-39 for 11.1, 11.2 and 11.3.

<sup>14</sup> Note – this target was not included in the 2008/09 public information/education budget standard figures in the 2009/10 estimates document.

Performance Measure	Performance Standards	
	2009/10	2008/09
Feedback from government agencies, business, professional services and International bodies on Commission framework development activities	Above Average Ratings received	N/A
Breadth of impact of framework development activities	Number and size of markets affected	N/A
<b>Timeliness</b>		
Percentage of complex unilateral and coordinated conduct cases completed within two years	90%	N/A
Percentage of routine unilateral and coordinated conduct cases completed within 9 months	90%	N/A
Percentage of complex clearances determined by the Commission within 60 working days	90%	N/A
Percentage of routine clearances decided within 30 days	90%	N/A
Time from decision to prosecute to proceeding filed for enforcement action taken	Within 20 working days	N/A

COST		2009/10	2008/09
		\$'000	\$'000
Competition	<u>Competitive Markets</u>		
	Market Structure Cases	256	209
	Co-ordinated Behaviour Cases	2,952	3,642
	Unilateral Conduct Cases	1,050	1,893
	Determinations	2,869	3,205
	Framework Development	1,140	502
	Public Information / Education	177	22
Consumer	<u>Informed Consumers</u>		
	Fair Trading Cases	3,193	4,222
	Safety and Stds cases FT	189	290
	Framework Development FT	423	20
	Public Information / Education FT	382	5
Consumer	<u>CCCF</u>		
	CCCF Cases	1,291	1,330
	Framework Development CCCF	192	67
	Public Information / Education	119	88
Total Expenditure (GST exclusive)		14,234	15,495
Total Other Revenue (GST exclusive)		(515)	(1,260)
Transfer to Major Litigation		216	
Total output expense to be provided within (GST exclusive)		13,935	13,935
Surplus/Deficit to be retained		0	(300)

### Output 11.1 Market Structure Cases

Provision of enforcement services to investigate and resolve cases in relation to Part III of the Commerce Act and Parts I – IV of the EIR Act, including compliance with determinations, settlements or court orders relating to those Parts.

Major cases resulting in litigation may be partially funded from the Commission's Litigation Fund in accordance with the terms of this Agreement.

#### **Output 11.2 Co-ordinated Behaviour Cases**

Provision of enforcement services to investigate and resolve coordinated behaviour cases in relation to Part II of the Commerce Act, including compliance with determinations, settlements or court orders relating to coordinated behaviour under Part II. Coordinated behaviour cases will primarily relate to arrangements in relation sections 27, 28, 29 and 30 of the Act.

Major cases resulting in litigation may be partially funded from the Commission's Litigation Fund in accordance with the terms of this Agreement.

#### **Output 11.3 Unilateral Conduct Cases**

Provision of enforcement services to investigate and resolve unilateral conduct cases in relation to Part II of the Commerce Act, including compliance with determinations, settlements or court orders relating to unilateral conduct under Part II. Unilateral conduct cases will primarily relate to sections 36 and 37 of the Act.

Major cases resulting in litigation may be partially funded from the Commission's Litigation Fund in accordance with the terms of this Agreement.

#### **Output 11.4 Determinations**

This output involves the provision of adjudication (and supporting litigation) services under the Commerce Act and the EIR Act in relation to:

- authorisations (market structure, market behaviour and EIRA exemptions);
- clearances (section 66 of the Commerce Act); and
- authorisations or undertakings in relation to controlled goods or services (sections 70 to 74 of the Commerce Act).

Major cases resulting in litigation may be partially funded from the Commission's Litigation Fund in accordance with the terms of this Agreement.

#### **Output 11.5 Framework Development**

Contribute to the development and maintenance of the regulatory framework (in particular, the Commerce Act and EIR Act) through producing guidelines for businesses and stakeholders, review of industry codes, provision of information to inform Government policy and law reform processes, and international cooperation. Leadership by the Commission in terms of guidelines and the further development of responsive, low cost processes for the application of its responsibilities under the Commerce Act has been identified as a key focus for 2009/10. The resources allocated to these activities have been more clearly allocated to the framework development output in 2009/10 resulting in an increase in expenditure in this area.

#### **Output 11.6 Public Information / Education**

Provision of advice and information to sectors, industries, businesses and consumers, relating to the Commerce Act and EIR Act as an element of the Commission's overall enforcement approach and regulatory control activities in the form of media releases, publications and presentations.

**Output 11.7 Reports to the Minister**

This output involves the preparation and provision of reports on particular matters to the Minister of Commerce, under Part IV of the Commerce Act. The Minister may request the Commission to prepare a report on the control of certain goods or services in specified markets. The Commission may also conduct an inquiry on its own motion and prepare a report to the Minister.

**Output 12.1 Fair Trading Act Cases**

Provision of enforcement services to investigate and resolve alleged breaches of the Fair Trading Act.

Major cases resulting in litigation may be partially funded from the Commission's Litigation Fund in accordance with the terms of this Agreement.

**Output 12.2 Product Safety and Information Standards Cases**

Provision of enforcement services to investigate and resolve alleged breaches of the Fair Trading Act through non-compliance with a Product Safety Standard or Consumer Information Standard.

**Output 12.3 Credit Contract and Consumer Finance Act Cases**

Provision of enforcement services to investigate and resolve alleged breaches of the Credit Contracts and Consumer Finance Act.

Major cases resulting in litigation may be partially funded from the Commission's Litigation Fund in accordance with the terms of this Agreement.

**Output 12.4 & 12.6 Framework Development**

Contribute to the development and maintenance of the regulatory framework (in particular, the Fair Trading Act and CCCF Act) through producing guidelines for businesses and stakeholders, review of industry codes, provision of information to inform Government policy and law reform processes, and international cooperation.

**Output 12.5 & 12.7 Public Information / Education**

Provision of advice and information to sectors, industries, businesses and consumers, relating to the enforcement of the Fair Trading Act and CCCF Act as an element of the Commission's overall enforcement approach and regulatory control activities in the form of media releases, publications and presentations.

## SCHEDULE TWO: VOTE COMMERCE - DAIRY

### NON-DEPARTMENTAL OUTPUT EXPENSE 05 – ENFORCEMENT OF DAIRY SECTOR REGULATION

The Commission will produce the following outputs for the Minister of Commerce purchased through the appropriation of \$905,000 (GST exclusive) for Non-departmental Output Expense 05 – *Enforcement of Dairy Sector Regulation*.

Performance Measures	Performance Standards	
	2009/10	2008/ 2009
<b>Quantity</b>		
16.1 Dairy Investigations	0-2	0-3
16.2 Dairy Determinations	0-2	0-2
16.3 Framework Development	0-1	0-1
16.4 Public Information/Education	0-4	0-4
<b>Quality</b>		
Successful legal challenges of the Commission's processes or orders to pay indemnity costs	Nil	N/A
Feedback from government agencies, business, professional services and international bodies on Commission framework development activities	Above Average Ratings received	N/A
<b>Timeliness</b>		
Time for completion of investigation phase from commencement of investigation	Average 6 months	Average 6 months
Time for completion of administrative resolutions completed from the decision to pursue administrative resolution	Average 45 days	Average 45 days
Time to complete determination from receipt of application	Average 6 months	Average 6 months

COST	2009/10 \$'000	2008/09 \$'000
Vote Commerce Investigations (Dairy)	167	300
Determinations	276	-
Framework Development	189	-
Public Information / Education	5	-
Total Expenditure (GST exclusive)	637	300
Total output expense to be provided within (GST exclusive)	905	905
Surplus to be repaid	(268)	(605)

#### Output 16.1 Dairy Investigations

Enforcement action in response to alleged breaches of the Dairy Industry Restructuring Act (DIR Act) or of regulations made pursuant to the DIR Act.

#### Output 16.2 Dairy Determinations

Adjudication in relation to parties in dispute with Fonterra under the DIR Act or any associated regulations.

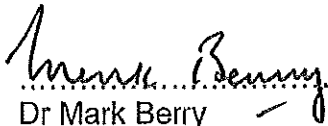
#### Output 16.3 Dairy Framework Development

Contribute to the development and maintenance of the regulatory framework through producing guidelines for businesses and stakeholders, review of industry codes,

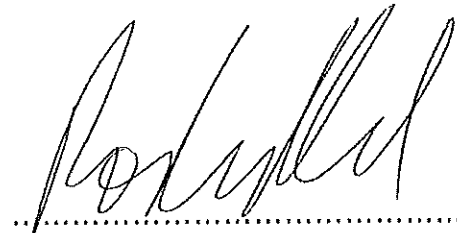
provision of information to inform Government policy and law reform processes, and international cooperation.

**Output 16.4 Public Information / Education**

Provision of advice and information to sectors, industries, businesses and consumers, relating to the enforcement of the DIR Act as an element of the Commission's overall enforcement approach and regulatory control activities in the form of media releases, publications and presentations.

  
.....  
Dr Mark Berry  
Chair  
Commerce Commission

Date: 9 June 2009

  
.....  
Hon Rodney Hide  
Associate Minister of Commerce  
- as Purchase Minister

Date: 2/7/09

### SCHEDULE THREE: VOTE COMMUNICATIONS

#### NON-DEPARTMENTAL OUTPUT EXPENSE – ENFORCEMENT OF TELECOMMUNICATIONS SECTOR REGULATION

The Commission will produce the following outputs for Minister of Communications and Information Technology purchased through the appropriation of **\$7,790,000** (GST exclusive) for Non departmental Output Expense – *Enforcement for Telecommunications Sector Regulation*.

Performance Measures	Performance Standards	
	2009/10	2008/ 2009
<b>Quantity</b>		
13.1 Access Determinations	2-4	6-9
13.2 Telecommunications Service Obligation Determinations	5-6	5-7
13.3 Monitoring and reporting	9-13	11-13
13.4 Enforcement Cases	0-3	0-10
13.5 Code approval development	0-1	0-2
13.6 Reports to Ministers	2-3	1-2
13.7 Framework Development	2-4	4-8
13.8 Public Information/Education	44-70	47-74
13.9 Information Disclosure	1-4	2-4
<b>Quality</b>		
Applications received for statutory clarifications of access determinations	0-2	Nil
Successful legal challenges of the Commission's processes or orders to pay indemnity costs	Nil	Nil
Percentage of success over 5 years in defending appeals of determinations	80%	N/A
Retrospective corrections of outputs of monitoring and reporting activity	Nil	Nil
Feedback from government agencies, business, professional services and international bodies on Commission framework development activities	Above Average Ratings received	N/A
Breadth of Impact of framework development activities	Number and size of markets affected	N/A
<b>Timeliness</b>		
Access determinations completed within an average agreed time from commencing the investigations	10 months	10 months
TSO determinations completed within an average agreed time from commencing the investigation	12 months	12 months
Reports to Minister completed within an average agreed time from commencing the investigation	12 months	12 months

<b>COST</b>	<b>2009/10 \$'000</b>	<b>2008/09 \$'000</b>
Vote Communications		
Access Determinations	1,022	1,333
Telecommunications Service Obligations	538	740
Monitoring & Reporting	945	2,361
Enforcement Cases	491	568
Code Approval	23	191
Reports to Ministers	1,023	718
Framework Development	786	317
Public Information	420	147
Information Disclosure	1,630	1,665
Total expenditure (GST exclusive)	6,877	8,040
Total Other Revenue (GST exclusive)	0	(250)
Total output class to be provided within (GST exclusive)	7,790	7,790
Surplus to be repaid	913	0

#### **Output 13.1 Determinations**

Determinations of terms and conditions for the supply of regulated telecommunications services under Part 2 of the Telecommunications Act 2001.

#### **Output 13.2 Determinations of TSO cost**

Determinations of the cost to TSO providers of complying with Telecommunications Service Obligations and the allocation of these costs across the telecommunications industry.

#### **Output 13.3 Monitoring and Reporting**

Inquiries, reviews and studies on competition in telecommunications markets and on the performance and development of markets. There will be a reduction in activity in 2009/10 in relation to this output due to the completion of a number of key reports in 2008/09.

#### **Output 13.4 Enforcement**

Enforcement action in response to alleged breaches of the Telecommunications Act 2001.

#### **Output 13.5 Code Approval Development**

Develop or approve industry codes dealing with technical and operational aspects of regulated services as an alternative to regulation of terms and conditions for the supply of telecommunications services.

#### **Output 13.6 Reports to Ministers**

Reports to the Minister for Communications and Information Technology making recommendations for or against regulation of telecommunications services, as well as recommendations as to whether to accept undertakings lodged by access providers in lieu of regulation.

**Output 13.7 Framework Development**

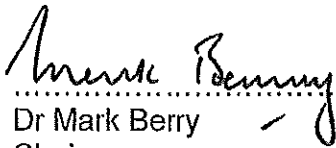
Contribute to the development of the regulatory framework through provision of information to inform government policy and through international cooperation.

**Output 13.8 Public Information / Education**

Provision of advice and information to sectors, industries, businesses and consumers, relating to the enforcement of the Telecommunications Act as an element of the Commission's overall enforcement approach and regulatory control activities in the form of media releases, publications and presentations.

**Output 13.9 Information Disclosure**

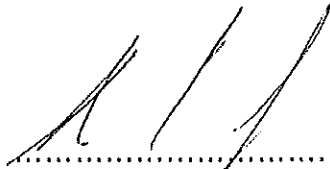
Increasing transparency of the activities of regulated telecommunications firms through the disclosure of financial information and performance against undertakings. Includes the Commission's responsibilities for overseeing the adoption of accounting and operational separation of Telecom.



Dr Mark Berry  
Chair

Commerce Commission

Date: 9 June 2009



Hon Steven Joyce  
Minister for Communications and  
Information Technology  
- as Purchase Minister

Date: 7/7/09

## SCHEDULE FOUR A: VOTE COMMERCE – ELECTRICITY

### NON-DEPARTMENTAL OUTPUT EXPENSE – REGULATION OF ELECTRICITY LINES BUSINESSES

The Commission will produce the following output for the Minister of Commerce purchased through the appropriation of \$3,167,000 (GST exclusive) for Non-departmental Output Expense – *Regulation of Electricity Lines Businesses*.

Performance Measures	Performance Standards	
	2009/10	2008/ 2009
<b>Quantity</b>		
14.1 Determination of price quality paths	1	N/A
14.2 Threshold inquiries		
• Compliance assessments	30	37-59
• Threshold inquiries	0-4	
• Decisions to control - authorisations	0-2	0-5
14.3 Framework Development (including recommendations on control – Electricity Transmission)	1	2-5
14.4 Public Information/Education	5-15	27-48
14.5 Compliance with Existing Authorisations and Determinations	2	N/A
14.6 Information Disclosure	0-2	1-3
<b>Quality</b>		
Level of compliance with legislative requirements for consultation	Full compliance	N/A
Successful legal challenges of the Commission's processes	Nil	Nil
<b>Timeliness</b>		
Delivery of determinations of price-quality path	Completion by 1 December 2009	N/A
Delivery of recommendations on control	Milestones completed to ensure delivery by 30 December 2010	N/A
Delivery of information disclosure determination	Milestones completed to ensure delivery by 30 June 2011	N/A

COST		2009/10	2008/09
		\$'000	\$'000
Vote Commerce (Electricity)	Determination of price quality paths <sup>15</sup>	1,040	1,089
	Threshold Inquiries	204	1,556
	Framework Development	856	1,472
	Information Disclosure	937	1,513
	Public Information	17	-
	Authoris to reg ELBs	114	-
Total Expenditure (GST exclusive)		3,167	5,629
Total output class to be provided within (GST exclusive)		3,167	5,630

<sup>15</sup> Note that this category is incorrectly listed in the SOI as "Electricity Assessment of Perf Threshold Compl".

**Output 14.1 Determination of price-quality paths**

Determination of price-quality paths for electricity distribution businesses in order to constrain excess profits and to incentivise efficiency in regulated electricity lines businesses over time.

**Output 14.2 Threshold Inquiries**

Complete compliance assessments for electricity lines business, publishing a summary and analysis of the information. Conduct inquiries into large electricity lines businesses that are identified as likely to be in breach of one or more of the performance thresholds. Make authorisations or accept undertakings in relation to businesses that are under regulatory control for price and quality thresholds.

**Output 14.3 Framework Development**

In 2009 this output pertains to preparation of draft recommendations on the type of control for electricity transmission under Part 4.

**Output 14.4 Public Information/Education**


Provision of advice and information to sectors, industries, businesses and consumers, relating to the enforcement of Part 4 of the Commerce Act as an element of the Commission's overall enforcement approach and regulatory control activities in the form of media releases, publications and presentations.

**Output 14.5 Authorisation & Determination Compliance**

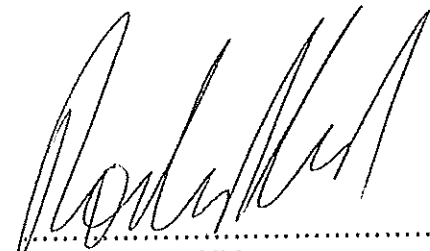
Assessment of compliance with terms of authorisations and determinations – includes administrative resolutions (Transpower and Vector).

**Output 14.6 Information Disclosure**

Increasing transparency of the activities of regulated electricity firms through the disclosure of annual financial and performance information by way of published reports on the Commission's website.

  
 .....  
 Dr Mark Berry  
 Chair  
 Commerce Commission

Date: 9 June 2009

  
 .....  
 Hon Rodney Hide  
 Associate Minister of Commerce  
 - as Purchase Minister

Date: 2/7/09

## SCHEDULE FOUR B: VOTE COMMERCE – GAS

### NON-DEPARTMENTAL OUTPUT EXPENSE – REGULATION OF NATURAL GAS SERVICES

The Commission will produce the following outputs for the Minister of Commerce purchased through the appropriation of \$2,700,000 (GST exclusive) for Non-departmental Output Expense – *Regulation of Natural Gas Services*.

Performance Measures	Performance Standards	
	2009/10	2008/2009
<b>Quantity</b>		
15.1 Determination of price-quality paths	1-2	N/A
15.2 Compliance with Existing Authorisations and Determinations	2-4	0-3
15.3 Framework Development	0	1-3
15.4 Public Information/Education	3-13	3-13
15.5 Information Disclosure	0-2	N/A
<b>Quality</b>		
Level of compliance with legislative requirements for consultation	Full compliance	N/A
Successful legal challenges of the Commission's processes	Nil	Nil
<b>Timeliness</b>		
Delivery of determination of price-quality path	Completion by 1 March 2010	N/A
Delivery of information disclosure determination	Milestones completed to ensure delivery by 30 June 2011	N/A

	2009/10 \$'000	2008/09 \$'000
<b>COST</b>		
Vote Commerce (Gas) Determinations	1,897	266
Authorisations – Compliance Assessment	121	34
Framework Development	16	-
Public Information	16	-
Information Disclosure	563	-
Total expenditure (GST exclusive)	2613	300
Transfer to Vote Major Litigation	(87)	-
Total output appropriation to be provided within (GST exclusive)	2,700	300
Surplus to be repaid	0	0

#### Output 15.1 Determination of price-quality paths

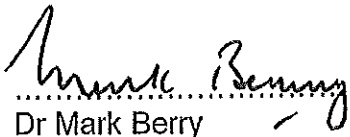
Determination of price-quality paths for gas distribution and transmission businesses in order to constrain excess profits and to incentivise efficiency in regulated gas distribution and transmission businesses over time.

**Output 15.2 Compliance with Existing Authorisations and Determinations**  
Assessment of compliance with terms of authorisations and determinations – includes administrative resolutions.

**Output 15.3 Framework Development**  
Contribute to the development of the regulatory framework through provision of information to inform government policy and through international cooperation.

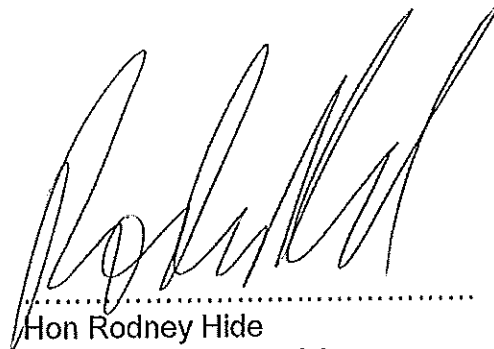
**Output 15.4 Public Information / Education**  
Provision of advice and information to sectors, industries, businesses and consumers, relating to the enforcement of Part 4 of the Commerce Act as an element of the Commission's overall enforcement approach and regulatory control activities in the form of media releases, publications and presentations.

**Output 15.5 Information Disclosure**  
Establish an information disclosure regime to increase transparency of the activities of regulated gas businesses through the disclosure of annual financial and performance information by way of published reports on the Commission's website.



Dr Mark Berry  
Chair  
Commerce Commission

Date: 9 June 2009



Hon Rodney Hide  
Associate Minister of Commerce  
- as Purchase Minister

Date: 2/7/09

## SCHEDULE FOUR: VOTE COMMERCE – INPUT METHODOLOGIES

### NON-DEPARTMENTAL OUTPUT EXPENSE – INPUT METHODOLOGIES

The Commission will produce the following outputs for the Minister of Commerce purchased through the appropriation of **\$4,899,000** (GST exclusive) for Non-departmental Output Expense – *Input Methodologies*..

Performance Measures	Performance Standards	
	2009/10	2008/2009
<b>Quantity</b>		
17.1 Determinations	1 (Airports) 2-4 (Gas Electricity)	N/A
17.2 Principles and Guidelines	0	1-3 (Airports) 1-5 (Gas/Electricity)
17.3 Framework Development	0	1-3
17.4 Public Information and Education	5-15	5-23
<b>Quality</b>		
Level of compliance with legislative requirements for consultation	Full compliance	N/A
<b>Timeliness</b>		
Delivery of input methodologies determination	Completion by 30 June 2010	N/A

COST	2009/10	2008/09
	\$'000	\$'000
Vote Commerce Determinations (All)	4844	-
(Input Methodologies) Principles & Guidelines (All)	-	3,000
Public Information/Education (All)	55	-
Total expenditure (GST exclusive)	4,899	3,000
Total output appropriation to be provided within (GST exclusive)	4,899	3,000
Surplus to be repaid	0	0

#### Output 17.1 Determinations

Determinations of binding input methodologies for the suppliers of regulated services in order to enhance regulatory transparency and certainty.

#### Output 17.2 Principles and Guidelines

Development of the high-level guidelines and discussion documents to underpin decisions regarding input methodologies.

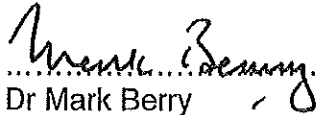
#### Output 17.3 Framework Development

Contribute to the development of the regulatory framework through provision of information to inform government policy and through international cooperation.

#### Output 17.4 Public Information/Education

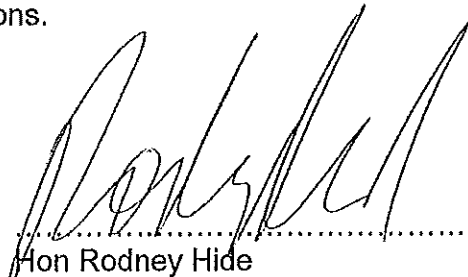
Provision of advice and information to sectors, industries, businesses and consumers, relating to the enforcement of Part 4 of the Commerce Act as an element of the

Commission's overall enforcement approach and regulatory control activities in the form of media releases, publications and presentations.

  
.....

Dr Mark Berry  
Chair  
Commerce Commission

Date: 9 Jun 2009

  
.....

Hon Rodney Hide  
Associate Minister of Commerce  
- as Purchase Minister

Date: 2/7/09

**SCHEDULE FOUR D: VOTE COMMERCE – AIRPORTS****NON-DEPARTMENTAL OUTPUT EXPENSE – REGULATION OF AIRPORT SERVICES**

The Commission will produce the following outputs for the Minister of Energy purchased through the appropriation of **\$500,000** (GST exclusive) for Non-departmental Output Expense – *Regulation of Airport Services*.

Performance Measures	Performance Standards	
	2009/10	2008/2009
<b>Quantity</b>		
18.1 Information Disclosure	0-1	N/A
18.3 Public Information and Education	3-5	
<b>Quality</b>		
Level of compliance with legislative requirements for consultation	Full compliance	N/A
<b>Timeliness</b>		
Delivery of information disclosure determination	Completion by 1 July 2010	N/A

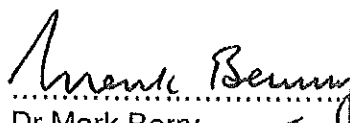
COST	2009/10	2008/09
	\$'000	\$'000
Vote Commerce (Airports)		
Information Disclosure	495	-
Principles & Guidelines	-	400
Framework Development	-	-
Public Information	5	-
Total expenditure (GST exclusive)	500	400
Total output appropriation to be provided within (GST exclusive)	500	400
Surplus to be repaid	0	0

**Output 18.1 Information Disclosure**

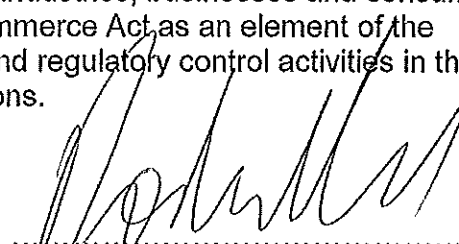
Establish an information disclosure regime to increase transparency of the activities of regulated airports businesses through the disclosure of annual financial and performance information by way of published reports on the Commission's website.

**Output 18.3 Public Information / Education**

Provision of advice and information to sectors, industries, businesses and consumers, relating to the enforcement of Part 4 of the Commerce Act, as an element of the Commission's overall enforcement approach and regulatory control activities in the form of media releases, publications and presentations.

  
 .....  
 Dr Mark Berry  
 Chair  
 Commerce Commission

Date: 9 June 2009

  
 .....  
 Hon Rodney Hide  
 Minister of Commerce  
 - as Purchase Minister

Date: 2/7/09