

# COMMUNIQUE



## Unreasonable credit fees in Commission's spotlight

1	Unreasonable credit fees in Commission's spotlight
4	Farewell to Geoff Thorn, General Manager
5	Unbundling the local loop
6	Fight the scammers. Don't respond.
8	2007 in review
10	Adjudication update
12	Commission settlements and warnings
14	From the Courts
14	Media update

Finance companies and banks have been warned that the Commerce Commission is taking a close interest in the reasonableness of credit fees in the industry. The Commission is actively pursuing litigation with regard to credit fees considered to be unreasonable under the Credit Contracts and Consumer Finance Act (CCCF Act).

The CCCF Act came fully into force on 1 April 2005. The Act repealed the Credit Contracts Act and Hire Purchase Act. One aspect of the Act imposes a requirement that credit fees cannot be unreasonable.

Taking action on the reasonableness of credit fees has been the primary focus in the CCCF Act area over the past year and will be for the next two years. Over the last 12 months the Commission has commenced over 40 credit fees investigations and obtained detailed information from a range of finance companies and banks.

Graham Gill, Auckland Manager responsible for CCCF Act matters said, "Ensuring fees are reasonable and disclosed will reduce an area of significant detriment for consumers as well as encouraging competition. Certainty on the acceptable components of various categories of fees will enable creditors to compete on the level of fees, or on interest rates, or on both. Creditors who fail to comply with the Act and are currently over-recovering fees will be exposed so that consumers are able to accurately compare creditors on the fees and interest rates charged."

During the early stages of its enforcement of the Act, the Commission took an educative approach to its compliance activities, presenting at a nationwide industry-run road show, and producing two guides specifically for credit providers. These publications are still available and can be downloaded directly from the Commission website [www.comcom.govt.nz](http://www.comcom.govt.nz) under Consumer Credit.

Mr Gill said, "The Commission's initial enforcement actions focused heavily on encouraging voluntary compliance and giving feedback to credit providers where it identified issues indicating potential breaches of the CCCF Act."

...> CONTINUED ON PAGE 2

....> CONTINUED FROM PAGE 1

“We recognise that we need to take litigation to clarify the law, especially around reasonableness of fees.”

The objective was to educate creditors so that they would voluntarily comply with the Act.

During this initial stage the Commission also focused on developing its monitoring and surveillance capability. This was so that the Commission would have good knowledge of credit industry processes and practices. It also implemented an information and education strategy to raise consumer awareness and encourage the reporting of alleged breaches of the Act, especially from consumer advocate organisations.

The Commission took its first prosecutions under the Act in 2006 and has clearly signalled it expects compliance to be ‘the norm’.

“Litigation is a priority for the Commission,” said Mr Gill. “The Commission intends to use civil and criminal proceedings to address contraventions of the Act where the Commission considers creditors are charging unreasonable fees. This action will promote greater compliance and provide further guidance about the obligations imposed under the Act. The development of a body of case law will reinforce the messages provided by the Commission and further deter unlawful fees.”

The Commission has communicated its position on credit fees to the industry, however, there are some creditors who have not accepted those views. This may not be unexpected given the revenue creditors generate through charging credit fees. Therefore, the Commission must take litigation to ensure creditors comply with the Act.

Anecdotally, the Commission is aware that some creditors have increased the fees they charge, some have matched their competitors, and some appear to have simply selected a dollar value for their fees, without reference to their cost structures.

The Commission is also aware of creditors attempting to justify the recovery of 100% of their business overheads by attributing those costs to various fees. This approach fails to recognise activities that support the business structure, its maintenance and effective functioning. Examples of these costs may be general administration costs and costs relating to human resources, marketing

### List of Terms/Abbreviations

Commerce Commission	Commission
Legislation enforced by the Commerce Commission	
Commerce Act 1986	Commerce Act
Credit Contracts and Consumer Finance Act 2003	CCCF Act
Dairy Industry Restructuring Act 2001	DIR Act
Electricity Industry Reform Act 1998	EIR Act
Fair Trading Act 1986	Fair Trading Act
Telecommunications Act 2001	Telecommunications Act

## Case study – unreasonable fees

### GALISTAIR ENTERPRISES LIMITED

Galistair charged an establishment fee of between \$300 and \$500 on each loan. During the course of the Commission’s investigation it became clear that Galistair had recovered the cost of processing unsuccessful applications, and that this cost had been incorporated into the establishment fees.

Section 42 of the CCCF Act places limits on the recovery of costs in the establishment fee to those “in connection with the application for credit, processing and considering that application, documenting the consumer credit contracts and advancing the credits”.

The costs are therefore limited in that they can only be those applying to the specific consumer credit contract in

question (or the average reasonable costs in relation to the appropriate class of consumer credit contract section 42(b)). They must also be costs falling within one of the four limbs – application for credit, processing/considering the application, documenting the application and advancing the credit.

The Commission’s view is that any costs that do not fall within one of these four limbs should not be recovered through the charging of establishment fees.

Galistair pleaded guilty to 98 charges of breaching the CCCF Act, including charging unreasonable credit fees. More information about the case can be found on the Commission’s website [www.comcom.govt.nz](http://www.comcom.govt.nz) under Consumer Credit – Media Releases – West Auckland pawn broker ordered to repay loan customers.

and activities related to investors, raising funds or securing lines of credit.

The Commission has interpreted the costs that can be recovered through establishment fees strictly and creditors who attempt to include pre-establishment or post-establishment activities within the costs recovered under their establishment fees can expect the Commission to challenge the recovery of those costs.

“Credit fees must be based on cost. The Commission would not expect to see a profit component charged on fees. Creditors should consider the relevant provisions under the Act when setting or reviewing fees and assess whether the fees are likely to be allowable in light of the provisions of the Act, and the specific rules set for different types of fees,” said Mr Gill.

“As a general rule, if a creditor is recovering business costs through credit fees, the Commission would expect to see a clear relationship between the business costs recovered and services offered or provided to debtors.”

In addition to considering the types of costs recovered through fees, the Commission is also likely to look closely at the use of business structures that perpetuate the charging of unreasonable costs and whether those structures are consistent with reasonable standards of commercial practice.

While the Commission recognises that justifying fees under the CCCF Act can be a complex process involving consideration of accounting, economic and commercial issues, Mr Gill said, the Commission still expects this process to be undertaken adequately if creditors elect to charge fees, rather than recovering their costs through interest rates.

“The consumer detriment in unreasonable fees cases can be considerable, impacting adversely on the debtor’s ability to repay the loan and their subsequent credit opportunities.”

The Court is able to order refunds or reductions of unreasonable fees, so Mr Gill said the potential impacts of breaching the Act in this area can be significant. “While the competitive process presumes that those businesses responding to market signals will thrive and others will fail, the reality is that failure can have significant personal impacts on employees, debtors and investors alike.

“The Commission strongly encourages creditors to consider carefully how they would justify their fees before they are required to do so and to establish effective compliance systems for reviewing fees, in order to decrease their likelihood of breaching these provisions,” Mr Gill concluded.

# Farewell to Geoff Thorn, General Manager

---



*Geoff Thorn,  
General Manager*

In February 2008, Geoff Thorn left the Commerce Commission, after 14 years, to take up the position of General Manager, Parliamentary Services.

Mr Thorn joined the Commission as an investigator with the Commerce Act team in January 1994.

The experience Mr Thorn brought with him from his previous role with the Military Police helped him achieve Chief Investigator status within just a few months.

In this role he was involved in some very important early cases for the Commission – including price-fixing in the petrol company carwash industry, and in the North Island meat industry. The meat industry case was, at the time, the Commission's biggest investigation, and had a hugely successful outcome, with all the meat companies pleading guilty.

In December 1996, Mr Thorn was appointed Manager of Corporate Services. However, his 14 years with the Commission were not quite continuous – in August 1998 Mr Thorn resigned as the Commission's Corporate Services Manager to take up a role in management at the National Bank. But by then the Commission was well and truly in his blood, and in October 1998 he was back as the Manager of the Commerce Act division.

Mr Thorn then stayed with the Commission for the next nine years, rising through the role of Director of the then Business Competition Branch to General Manager of the Commission.

As General Manager he was known for his extensive institutional knowledge, and his in-depth understanding of investigative practices. Mr Thorn also found time to study for a Master of Management in Economics and during his time with the Commission gained an MBA with Distinction.

Mr Thorn was an unflappable front-man for the Commission and believed passionately in the Commission's goals. He talked the Commission talk at every opportunity.

When Mr Thorn started with the Commission in 1994 there were 68 staff. Today there are over 160. He has left the Commission in a stronger, more focused state than when he arrived. The Chair, Paula Rebstock, Commissioners and staff pay tribute to Geoff Thorn's achievements and contributions during his outstanding career at the Commerce Commission.

## Unbundling the local loop

---

The Commerce Commission believes that unbundling the local loop is an important component in achieving its objective of promoting competition for the long term benefits of end users.

On 7 November 2007 the Commerce Commission released its decision on unbundling the local loop. The Commerce Commission is responsible for setting terms and conditions for giving competitors access to the 'local loop' – the copper telephone wire that runs from a Telecom telephone exchange to the customer's premises. This is known as 'unbundling the local loop' – it means that competitors can install their own broadband equipment in the exchange, and provide broadband services to their customers which are different from Telecom's. The Commission developed these regulated terms and conditions after considering a proposal submitted by Telecom, and after consulting with industry. Prices for the unbundled loop – which are faced by the competitors who want to install their equipment in the exchanges – were set by the Commission through benchmarking against prices set by regulators in other countries.

The Commission's determinations are complete commercial arrangements that will allow competitors to take the services from Telecom without the need for any separate agreements. The determination contains a 15-month implementation plan commencing from the determination date. This involves a soft launch at up to five exchanges during January to April 2008, and up to 15 further exchanges per quarter for the next year. This will result in up to 75 unbundled exchanges by April 2009.

The Commerce Commission believes that unbundling the local loop is an important step in achieving its objective of promoting competition for the long-term benefits of end users. It expects that consumers will benefit from better prices, greater choice, and access to more innovative products. In many OECD countries local loop unbundling has changed the competitive landscape.

Orcon was the first telecommunications company to take advantage of the unbundled local loop. In March this year it began offering internet and voice connections using its own broadband equipment in Telecom exchanges. Initially, only those connected via five exchanges in Auckland – Glenfield, Browns Bay, Ellerslie, Mt Albert and Ponsonby – will be able to take advantage of the new service, but Orcon plans to have 15 exchanges connected by June, and will begin to offer the service in Wellington towards the end of 2008.

# Fight the scammers. Don't respond.

---

## Fraud Awareness Week 3-10 March 2008

As part of an international initiative, the Commerce Commission and the Ministry of Consumer Affairs run Fraud Awareness Week to raise New Zealanders' awareness about scams, how they can spot and report them and how they can protect themselves and others from scams.

"Fraud Awareness Week provides an opportunity to educate New Zealanders and remind people that the scammers work year round. Scammers use every trick in the book to get you to part with your money and personal details," said Adrian Sparrow, Director, Fair Trading.

**Seduction scams involve great offers that will never deliver what they promise, whether it's easy money, great prizes or true love. They look too good to be true, and they are.**

Deception scams work because scammers pretend to be from legitimate banks or businesses, asking for personal information, so they can steal your money and your identity.

"Scams work because they look like the real thing and they can be hard to spot. Scammers are manipulative – they push your buttons to get the response they want," said Liz MacPherson, General Manager, Ministry of Consumer Affairs.

By using new technology and clever techniques scammers are constantly finding new ways to contact and deceive consumers.

"Never give a scammer a chance. Consumers can protect themselves. If in doubt, don't respond," said Ms MacPherson.

Every year thousands of New Zealanders are targeted by scammers. Most scams originate from outside New Zealand and target millions of consumers worldwide. They often use spam tactics, sending their offers by email, text, phone or letters, to target widely and globally.

Fraud awareness initiatives are part of a worldwide effort by the International Consumer Protection and Enforcement Network.

In Australia and New Zealand, initiatives are run under the umbrella of the Australasian Consumer Fraud Taskforce (ACFT). The ACFT comprises 19 trans-Tasman government regulatory agencies and departments. The Ministry of Consumer Affairs and the Commerce Commission are members of the ACFT and coordinate the New Zealand initiative. A number of other organisations undertake their own action in parallel.

Fraud Awareness Week 2008 was supported by a number of agencies including the:

- » Banking Ombudsman;
- » Department of Internal Affairs;
- » Inland Revenue Department;
- » New Zealand Police;
- » Ministry of Economic Development;
- » Privacy Commissioner;
- » Securities Commission; and
- » Serious Fraud Office.

In 2008, a number of private organisations also supported Fraud Awareness Week, by undertaking fraud awareness activities and action to coincide with the week. These organisations were:

- » Telecommunications:  
Telecom, Telstra Clear, Vodafone New Zealand;
- » Banking:  
New Zealand Bankers' Association, Visa New Zealand;
- » Other sectors:  
NetSafe, Symantec, TradeMe, Western Union.

## What can consumers do to protect themselves from scams?

### THERE ARE MANY WAYS THAT YOU CAN PROTECT YOURSELF FROM FALLING VICTIM TO SCAMS:

DON'T respond to offers, deals or requests for your details. Stop. Take time to check the offer independently.

NEVER send money or give credit card, account or other personal details to anyone who makes unsolicited offers or requests for information.

DON'T rely on glowing testimonials: find solid evidence from independent sources (not those provided with the offer).

NEVER respond to out-of-the-blue requests for your personal details.

NEVER click on a link provided in an unsolicited email as it will probably lead to a fake website designed to trap you.

ALWAYS type in the address of a website of a bank, business or authority that you want to access.

NEVER use phone numbers provided with unsolicited requests or offers; they will probably connect you to fakes who will try to trap you with lies.

ALWAYS look up phone numbers in an independent directory when you wish to check if a request or offer is genuine.

You can find out more about scams and report scams at Scamwatch – [www.scamwatch.govt.nz](http://www.scamwatch.govt.nz)

## 2007 in review

---

2007 was another successful year for the Commerce Commission with a wide range of cases and decisions across all of the Commission's adjudication and regulatory responsibilities, from unsafe toys to global cartels.

### January. Retailer prosecuted for selling unsafe toys.

In January, a Christchurch retailer was fined \$12,000 for selling unsafe soft toy dogs, whose eyes presented a serious choking risk to small children. Southern Gold Limited, trading as Just \$2, breached the product safety requirements of the Fair Trading Act by selling toys in 19 of its stores that did not comply with the Product Safety (Children's Toys) Regulations 2005.

### February. Car buyers refunded \$49,000 by Ford's finance company.

In February, Primus Financial Services, trading as Ford Credit, refunded \$49,000 to 391 customers as a result of a warning from the Commission. When a customer repaid their loan early, Ford Credit, a wholly owned subsidiary of Ford Motor Company, charged them interest for the whole month in which the loan was repaid. By law, customers should only have paid interest up to the day their loan was repaid. Interest cannot be charged once a loan is paid off in full.

### March. Ribena vitamin C claims false and misleading.

In March, GlaxoSmithKline pleaded guilty to making misleading claims about the vitamin C content of Ribena. A Commission investigation was initiated after a complaint from two college students who had tested the drink for a science project.

GlaxoSmithKline was fined \$227,500 by the Court and ordered to undertake a nationwide campaign of corrective advertising in newspapers to explain that some forms of Ribena contain no detectable level of vitamin C.

### April. Number portability makes it easy to change phone providers.

On 1 April, number portability was introduced, following an earlier Commission ruling. Number portability enables landline and mobile phone users to keep the same phone number when switching companies. By making it easier to switch providers, number portability should increase competition and result in better services and prices.

### May. Commission alleges global cartel affected New Zealand electricity industry.

In May, the High Court granted the Commission leave to serve proceedings against three European companies, Alstom Holdings SA, Schneider Electric Industries SA, and Siemens AG, for an alleged global cartel that affected the New Zealand electricity industry.

The alleged cartel supplied gas insulated switchgear, which is used to control the flow of electricity in substations. It is alleged that the defendants implemented the price-fixing and bid-rigging cartel through their wholly-owned subsidiaries in New Zealand. Because the defendants in this case are all based overseas, the Commission was required to seek and obtain leave from the Court to serve the proceedings abroad.

### June. Commission declines applications from Foodstuffs and Woolworths to acquire The Warehouse.

In June, the Commission declined to grant clearance to Foodstuffs and Woolworths Limited for either of them to acquire up to 100% of the shares in The Warehouse Group Limited, on the basis that New Zealand's supermarket retail market is already highly concentrated, and a reduction of operators from three to two would be likely to substantially lessen competition, to the detriment of New Zealand consumers.

The decision was subsequently overturned by the High Court. The Commission is currently appealing the High Court's decision, raising questions of law, including the application of competition law to mergers and acquisitions, and the impact of the proposed acquisitions on competition in supermarket markets.

#### **July. Car traders prosecuted for lack of SINs.**

Following the successful prosecution in January of six upper North Island car dealers, in July six car dealers in the lower North Island were prosecuted for failing to display Supplier Information Notice (SIN) cards with used motor vehicles for sale. SIN cards show important information about the motor vehicle, such as the car's total cash price, age and odometer reading, together with the trader's registration number and information about buyers' legal rights.

#### **August. Commission settles with coffee machine distributors over anti-competitive conduct.**

In August, Espresso Engineers Limited and Valente Coffee Machinery Limited admitted breaching the Commerce Act by preventing a reseller from advertising their coffee machines for sale below a specified minimum price.

The Commission took action against the companies because of the serious impact resale price maintenance can have on price competition in a market. The companies admitted the breach and agreed to supply their goods and services to the reseller without specifying a minimum price.

#### **September. Companies warned over bacon and ham labelling.**

In September, the Commission issued formal warnings to Goodman Fielder New Zealand Limited and Premier Bacon Company Limited that their Kiwi Bacon and Premier Bacon and Ham products, respectively, were at risk of breaching the Fair Trading Act.

In the Commission's view, the overall impression created by the labelling on the products was that they were made in New Zealand from New Zealand produced pork, when in fact imported pork was used in both products.

#### **October. Commerce Commission proposes further price reductions for controlled gas distribution businesses.**

In October the Commission released a draft authorisation proposing to further control prices for the supply of Powerco Limited and Vector Limited's gas distribution services which would represent reductions of 42% and 15%, respectively, if implemented. These are further to preliminary price reductions of 9% and 9.5%, respectively, under a Provisional Authorisation issued in 2005.

#### **November. Credit card users get over \$24m back.**

Three years of action by the Commission to expose and seek redress for undisclosed and inadequately disclosed overseas transaction fees was brought to a close in November when American Express International (NZ) Limited became the ninth financial institution to plead guilty to failing to properly disclose its currency conversion fees.

During the three years, the Commission has obtained more than \$24 million in compensation to customers with the parties to the proceedings paying more than \$29,214,305 in total including fines and costs. The other financial institutions were ANZ National Bank, The Bank of New Zealand, Westpac, Kiwibank, ASB, The Warehouse Financial Services, TSB and Diners.

#### **December. Some 'all day protection' sunscreens fail to live up to claims.**

In December, the Commission released test results obtained during an investigation into 'all day protection' claims made for certain sunscreen products. While it found that some live up to their claims, others – including Hawaiian Tropic's SPF 15 Plus Sunblock, SPF 30 Sunblock and Kids Splash SPF 30 Sunblock, Once Sunscreen, and Daylong Sunscreen SPF 15 – failed.

The Commission has settled with the sunscreen companies. The companies were required to ensure that full public disclosure was made and that steps were taken immediately to correct the alleged misconduct.

# Adjudication update

## MARKET STRUCTURE CLEARANCES DECIDED OVER THE PERIOD OCTOBER – DECEMBER 2007

PARTIES	DESCRIPTION	DECISION
Schering-Plough Corporation/Organon BioSciences N.V. (Akzo Nobel N.V.)	Clearance was sought for Schering-Plough Corporation to acquire 100% shares in, or assets of, Organon BioSciences N.V. a wholly-owned subsidiary of Akzo	Clearance granted with divestments
Transpacific Industries Group (NZ) Limited/Enviro Waste Services Limited (Blenheim/Nelson)	Clearance was sought for Transpacific Industries Group (NZ) Limited to acquire the business and assets of Enviro Waste Services Limited's solid waste collection businesses in Blenheim and Nelson	Clearance granted with divestments
Transpacific Industries Group (NZ) Limited/Enviro Waste Services Limited (Timaru/Oamaru)	Clearance was sought for Transpacific Industries Group (NZ) Limited to acquire the business and assets of Enviro Waste Services Limited's solid waste business in Timaru and Oamaru	Clearance granted with divestments
Transpacific Industries Group (NZ) Limited/Enviro Waste Services Limited (Dunedin)	Clearance was sought for Transpacific Industries Group (NZ) Limited to acquire the business and assets of Enviro Waste Services Limited's solid waste collection business in Dunedin	Clearance granted with divestments
Transpacific Industries Group (NZ) Limited/Enviro Waste Services Limited (Christchurch)	Clearance was sought for Transpacific Industries Group (NZ) Limited to acquire the business and assets of Enviro Waste Services Limited's solid waste collection business in Christchurch	Clearance granted with divestments
A&R Whitcoulls Group Holdings Pty Limited/Borders New Zealand Limited	Clearance was sought for A&R Whitcoulls Group Holdings to acquire 100% of the shares in Borders New Zealand	Clearance granted
Cavalier Corporation Limited/Norman Ellison Holdings Limited	Clearance was sought for Cavalier International Limited and Norman Ellison Holdings Limited (NEHL), on behalf of the shareholders in NEHL (NE Shareholders), for a proposal under which a new joint venture company (owned by all parties) will acquire the carpet business of NEHL and subsidiaries (Norman Ellison) and the NE Shareholders acquire shares in Cavalier Corporation Limited	Clearance granted
Pacific Radiology Limited/Wellington Radiology Limited	Clearance was sought for Pacific Radiology Limited to acquire all of the assets of Wellington Radiology Limited	Clearance granted

---

**MARKET STRUCTURE AUTHORISATIONS DECIDED OVER THE PERIOD  
OCTOBER – DECEMBER 2007**

<b>PARTIES</b>	<b>DESCRIPTION</b>	<b>DECISION</b>
Lloyd Morrison	Pursuant to section 81 of the EIR Act, in relation to Lloyd Morrison, who is involved in two electricity supply businesses (WIAL and TrustPower) and two electricity lines businesses (AIAL – if appointed to the board – and WIAL)	Exemption granted with conditions
The Lines Company Limited	Pursuant to section 81 of the EIR Act, an exemption is sought, in particular from Arm's Length Rules 7-10 requiring separate management of electricity lines and generation businesses	Exemption granted with conditions

# Commission settlements and warnings

## SETTLEMENTS FOR THE PERIOD OCTOBER – DECEMBER 2007

The Commission entered into settlements with four businesses over alleged breaches of the Fair Trading Act:

- » Alt TV Limited for alleged misleading representations regarding the nature of the prize on offer, as well as failing to disclose the cost of entering the competition.
- » Ezibuy Limited for alleged misleading representation as to a mohair throw being pure mohair when it was 62% acrylic.
- » Geneva Finance Limited – refinance for alleged misleading representation as to the debtor’s rights under the Credit Repossession Act in that the creditor was adding interest and fees to unpaid balances when it was prohibited from doing so.
- » Kiwibank Limited/New Zealand Post Limited – Prezzy Card for alleged misleading representations as to the currency conversion rates charged on overseas transactions.

## WARNINGS FOR THE PERIOD OCTOBER – DECEMBER 2007

The Commission issued warnings to 24 businesses over alleged breaches of the Fair Trading Act:

- » Old Fashioned Foods New Zealand Limited for alleged misleading representation as to the fat content of rice bran oil.
- » Coles Group New Zealand Holdings Limited t/a Kmart New Zealand (Botany Downs) for alleged misleading representation as to the availability of goods on sale, in that the trader allegedly had none of the goods in stock on the first day of a sale.
- » Goodman Fielder New Zealand Limited t/a Kiwi Bacon and Premier Bacon for alleged misleading representation as to the country of origin of bacon in that the use of the Kiwi brand and ‘taste of New Zealand’ may be misleading given that the bacon is made from imported pork.
- » DSE (New Zealand) Limited for alleged misleading advertising in not disclosing that advertised DVD players were reconditioned.
- » Mitre 10 New Zealand Limited t/a Mitre 10 Mega Henderson for alleged misleading representation that a heater was a 2400 watt model with three heat settings when allegedly the heater was a 2000 watt heater with only two heat settings.
- » Electronics Boutique Limited for alleged misleading representation that the trader would match competitor’s price but did not disclose that it would not match prices of products offered on the internet.
- » Vodafone (New Zealand) Limited for alleged misleading representation as to the cost of ‘free’ broadband in that additional charges related to the ‘Free Broadband with Home Phone’ promotion were not disclosed in advertising.
- » New Zealand Post for allegedly applying a 15% authorisation hold on Prezzy Cards without disclosing this to the cardholder.
- » Nova Gas Limited for allegedly advertising a free delivery service that actually cost \$20.00.
- » Pak ‘n’ Save Limited for allegedly having a price in store that was higher than the advertised price.

- » Lamiv Limited, trading as Barry Roberts Chemist, for allegedly misrepresenting possible savings by having a permanent sale.\*
- » Smith and Smith for alleged false or misleading representations in that they advertised ‘call us for free windscreen repair’, however, they requested consumers use their insurance to cover it, and therefore it was not free.
- » Panmure Furniture City (1983) Limited t/a Furniture City for alleged misleading representations as to availability of sale items in catalogue ‘Up to 60% off Spring Sale’.
- » Sun Way Trading Limited for alleged breach of the Product Safety Standard for baby walkers.
- » JVI Limited for alleged breach of the Consumer Information Standard in that Supplier Information Notices were not being displayed.
- » Choice \$2 Plus Limited for allegedly selling hot water bottles that did not comply with Unsafe Goods Notice.
- » Kok Sheng Low Price for allegedly selling baby walkers that did not comply with the Product Safety Standard.
- » E-Thing for allegedly selling hot water bottles that did not comply with Unsafe Goods Notice.
- » lunarzhang (TradeMe) for allegedly selling cots on TradeMe that did not comply with the Product Safety Standard.
- » Sportz Swimwear NZ for allegedly selling clothing where the care labelling of clothing did not comply with the Consumer Information Standards.
- » Premier Books Limited for allegedly selling children’s blocks that did not comply with the Product Safety Standard.
- » Pagani Clothing Limited for allegedly breaching the Consumer Information Standards in that the country of origin label was false.
- » New Zealand Geographical Shop Limited for allegedly selling clothing that did not comply with the labelling requirement under Consumer Information Standards. Also misleading as to country of origin.
- » Torpedo 7 Limited for allegedly selling a bike that failed the safety standard in that the brakes were mounted incorrectly.

The Commission also warned six businesses for alleged breaches of the Credit Contracts and Consumer Finance Act:

- » Natasha Finance for alleged breach of disclosure provisions in that the creditor’s contracts failed to disclose some of the required information.
- » Mr Rental (NZ) Limited t/a Invercargill Appliance Rentals for allegedly misleading debtors as to their rights under the Credit Repossessions Act and Consumer Guarantees Act by attempting to contract out of its obligations and charging debtors an unreasonable estimate of the creditor’s loss on full prepayment.
- » Advantage Finance Limited for allegedly charging unreasonable credit fees, namely an establishment fee of \$540 and a brokerage fee of \$720. The company was also allegedly charging an unreasonable estimate of creditor’s loss upon full prepayment.
- » Pay Day Finance Limited for alleged incorrect disclosure of applicable interest rates.
- » UDC Finance Limited for allegedly charging an unreasonable brokerage fee.
- » Property Equity Finance Limited for allegedly charging unreasonable credit fees, namely a deposit finance fee.

\* This is a correction to the originally published version which incorrectly named the trader as Barry Roberts (Chemist) Ltd.

# From the Courts

## FAIR TRADING ACT LITIGATION UPDATE: CRIMINAL PROSECUTIONS RESOLVED OVER THE PERIOD OCTOBER – DECEMBER 2007

TSB Bank Limited	Alleged misleading representations as to the currency conversion rates charged on overseas transactions	Fined \$280,000 and \$151,000 in compensation to affected customers
Diners Club (NZ) Limited	Alleged misleading representations as to the currency conversion rates charged on overseas transactions	Fined \$67,000 and \$140,000 in compensation to affected customers
Probitas Limited	Alleged false/misleading representation in relation to fertiliser product which does not have benefits claimed for it	Fined \$200,000. The company's Director was fined \$60,000
Carrera Benz Diamond Industrie	Alleged misleading representations as to the value, quality and price of jewellery being sold by the company and that the jewellery had been valued by a qualified and independent valuer	Fined \$49,500

# Media update

## MEDIA RELEASES PUBLISHED OVER THE PERIOD OCTOBER – DECEMBER 2007

Electricity Industry Reform Act: Commission grants exemption to Vector	1 October 07
Review of 2006/07 electricity asset management plans	1 October 07
Commission reports to Minister on Sprint's compliance with Service Quality Measures for Relay Service	2 October 07
Commerce Commission proposes further price reductions for controlled gas distribution businesses	4 October 07
Schering-Plough cleared to acquire Organon BioSciences	4 October 07
Commerce Commission consults on its draft decision to accept an administrative settlement offer from Transpower	5 October 07
Diners Club eighth to plead guilty over currency conversion fees	12 October 07
Cavalier and Norman Ellison apply for clearance to form a joint venture	12 October 07
Pacific Radiology applies for clearance to acquire Wellington Radiology	19 October 07
Geneva Finance refunds customers after Commerce Commission investigation	29 October 07
Draft Determinations released	30 October 07
Transpacific Industries cleared to acquire parts of EnviroWaste Services provided assets are divested	1 November 07
Electricity Industry Reform Act: Commission grants exemption to The Lines Company	1 November 07
Commission receives application for EIR Act exemption from Lloyd Morrison	2 November 07
Commission receives application for EIR Act exemption from Babcock & Brown International Limited	2 November 07
Final determinations for unbundled local loop	7 November 07
Cavalier and Norman Ellison cleared to form joint venture	15 November 07
Court of Appeal confirms that NZ Bus acquisition of Mana Coach shares breached Commerce Act	15 November 07
Electricity Industry Reform Act: Commission grants exemption to Lloyd Morrison	19 November 07
Commission selects Epiro to monitor broadband quality	20 November 07
Whitcoulls cleared to acquire Borders	21 November 07

Discharge without conviction overturned	21 November 07
Cadmus and Provenco apply for clearance to merge	21 November 07
Reasons for Transpacific Industries being cleared (with divestments) to acquire parts of EnviroWaste Services	21 November 07
Commerce Commission initiates legal action against alleged cartel	22 November 07
Credit card users get over \$24m back	22 November 07
DFS Group Limited applies for clearance to acquire The Nuance Group	23 November 07
ALT TV settles with Commerce Commission over text and competitions	26 November 07
Sumitomo Forestry applies for clearance to acquire Carter Holt Harvey MDF assets in Rangiora	28 November 07
Court injunction granted against Discount Premium Holidays	28 November 07
The Warehouse High Court decision	29 November 07
Hill & Stewart guilty of 14 charges under Fair Trading Act	30 November 07
Commission releases September quarterly report on telecommunications markets	5 December 07
Second convictions for false and misleading claims about Probitas fertiliser	7 December 07
West Auckland pawn broker ordered to repay loan customers	11 December 07
"Buyer enquiry over" should not mislead	12 December 07
Final determinations for unbundled bitstream access	13 December 07
Final report issued on the regulation of co-location services	14 December 07
Commerce Commission consults on Vector's proposed settlement offer to rebalance prices	14 December 07
Air Liquide New Zealand Limited applies for clearance to acquire ASCOGAS Limited	14 December 07
Commerce Commission seeks to appeal Warehouse decision	18 December 07
Voluntary admission saves Kiwibank and New Zealand Post from prosecution	19 December 07
Court grants interim stay on Warehouse judgment	19 December 07
Commission publishes discussion document on resetting thresholds for electricity distribution businesses from 2009	19 December 07
Some "all day protection" sunscreens fail to live up to claims	20 December 07
Oaks Hotels fined for 'grossly misleading' advertising campaign	20 December 07
Reasons for A&R Whitcoulls Cleared to Acquire Borders New Zealand	20 December 07
Commission clarifies Number Portability Determination	20 December 07
Pacific Radiology cleared to acquire Wellington Radiology	20 December 07
Standard terms determination processes initiated for the sub-loop related services	21 December 07
Standard terms process for co-location on cellular transmission sites	21 December 07
Final Determinations released	21 December 07
Commission closes investigation into Telecom	21 December 07

Commission media releases are available on the Commission's website at [www.comcom.govt.nz](http://www.comcom.govt.nz)

Would you prefer to receive *Communique* and other Commerce Commission publications electronically?

If you would like to receive your quarterly issue of *Communique* electronically (in pdf format), send an email to [uli.trute@comcom.govt.nz](mailto:uli.trute@comcom.govt.nz)

Please include your current contact details in the body of the email, so we can remove those details from the mailing list.

You can also receive the Commission's Statements of Intent and Annual Reports electronically.

Email your request to [uli.trute@comcom.govt.nz](mailto:uli.trute@comcom.govt.nz)

Did you know that all back issues of *Communique* are available in pdf format on the Commission's website? Visit <http://www.comcom.govt.nz/publications/index.cfm>

If you would like to receive Commerce Commission media releases by email, please email [uli.trute@comcom.govt.nz](mailto:uli.trute@comcom.govt.nz). Please state whether you would prefer to receive all media releases or only releases concerning:

- » Telecommunications;
- » Energy;
- » Consumer issues; or
- » Mergers and acquisitions.

Please also email [uli.trute@comcom.govt.nz](mailto:uli.trute@comcom.govt.nz) if you would like your details to be removed from our database.

## CONTACT DETAILS

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

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

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