

COMMUNIQUE



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New faces and a fresh approach

The Commerce Commission has adopted a new internal structure, with some fresh faces heading the senior leadership team. The new structure brings together the Competition and Fair Trading branches under a new Enforcement branch, while Telecommunications and Networks combine under a Regulation branch.

Kate Morrison, with a background in investment banking regulatory compliance, has taken up the role of General Manager, Enforcement, while Brent Alderton, previously the Acting Director of Networks at the Commission, has taken up the role of General Manager, Regulation.

Peter Alsop has been appointed General Manager, Organisation Performance, a role he took up in December 2009. This role is expanded from that of the previous Director, Corporate Services.

“I believe these three appointments bring together a mix of experience and dynamism that will help drive the Commission forward in 2010 and in years to come. Each of these three, along with Dr Mike Pickford (Chief Economist) and Peter Taylor (General Counsel) on the senior leadership team, has a key role in providing sound leadership for staff, but also in delivering improved performance,” says Commission CEO Nicholas Hill.

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Kate Morrison

Kate Morrison has a law degree, a BA in English literature and a Masters degree in International Economic Law. Her most recent role was in London as Executive Director, Global Head of Compliance for ABN Amro for three years, and prior to that she was in a similar position at Deutsche Bank.

Kate says she is looking forward to leading the development of a long-term strategy for the Enforcement branch. “I have a career-long passion for effective regulation in markets, a background in financial services regulation and a sound knowledge of the workings of international regulatory bodies. This role is a fantastic opportunity to utilise my existing competencies while playing a leadership role in fulfilling the Commission’s purpose of promoting confidence and certainty in markets and enabling consumers to make informed choices.”

The challenging job of leading the Telecommunications and Networks teams under the regulatory umbrella is what faces Brent Alderton in 2010. Brent has a BA (Hons) in Economics and an MA in Political Studies. He comes to the role of General Manager, Regulation with a year’s experience of leading the Networks team as the Acting Director. Prior to this he was Commercial Manager for New Zealand Oil and Gas Ltd. Other previous experience includes stints in Deloitte Corporate Finance, the Electricity Corporation and the Treasury.



Brent Alderton

Brent says he has enjoyed working with the Networks team over the past year on the complex work associated with implementing changes required under Part 4 of the Commerce Act. Brent will be continuing this focus, at the same time as working closely with Telecommunications Commissioner Dr Ross Patterson. “The industries which fall within the responsibility of the Regulation branch are fundamental contributors to the performance of the New Zealand economy. Getting the regulatory decisions right is critically important, both for businesses to be able to invest with confidence and for consumers to receive quality service at a competitive price.”

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

“I will be thinking about our organisation’s success in broad terms, including enhancing a great work environment, and continuing to build the respect of stakeholders.”

Peter Alsop has the job of driving the Commission’s Organisation Performance branch at a time when organisation performance in taxpayer-funded entities has never been under greater scrutiny. Peter comes to the Commission directly from almost four years as Manager Corporate and External Relations at PHARMAC.

Peter has a balance of public and private sector experience, including having worked for TelstraClear and Vector as regulatory manager, and a previous role as Manager, Network Performance at the Commerce Commission. “I very much enjoyed my first stint at the Commission and am looking forward to contributing to its important work again,” says Peter.

“I will be thinking about our organisation’s success in broad terms, including enhancing a great work environment, and continuing to build the respect of stakeholders. I also want to ensure that the Commission has clear strategic priorities and enhances its capability to meet future challenges.”

With the three new appointments to the senior leadership team, at the end of 2009 the Commission said goodbye to Adrian Sparrow, formerly Director of Fair Trading; Osmond Borthwick, formerly Director of Telecommunications and Glen Maguren, formerly Director, Corporate Services.

“The departing directors made significant contributions to the development of the Commission,” says Nicholas Hill. “Osmond, as the first Director of the Telecommunications branch, led the Commission’s work programme under the Telecommunications Act amendments in 2006. Adrian introduced a number of successful new initiatives in the Commission’s approach to Fair Trading issues, while Glen championed a strong service ethic from the organisation’s support services branch.”



Peter Alsop

Supreme court provides guidance on discovery based limitation provisions

*By Brett Carter, Senior Legal Counsel,
Commerce Commission*

The issue in this appeal was whether an application under section 43(1) of the Fair Trading Act by the Commission, on behalf of affected consumers and competitors, should be struck out as time barred...

How much must a person know before he or she can be said to have discovered something? Enough to know that it is merely a possibility? That it may well have occurred? That it was more probable than not? A near certainty? These were among the issues recently considered by the Supreme Court in its decision in *Commerce Commission v Carter Holt Harvey Limited* [2009] NZSC 120.

THE FACTS

The Commerce Commission's claim relates to an allegation that Carter Holt Harvey (CHH) contravened section 10 of the Fair Trading Act 1986 by virtue of misleading representations that timber it sold was of a certain grade when in fact it was of a lesser grade. The Commission alleged, amongst other things, that consumers have suffered loss or damage by virtue of this misleading conduct as they had paid more for the timber than they would have had they been aware of the timber's true properties.

The issue in this appeal was whether an application under section 43(1) of the Fair Trading Act by the Commission, on behalf of affected consumers and competitors, should be struck out as time barred by section 43(5) of the Act on the grounds that the Commission had discovered the relevant loss or damage more than three years before it filed its claim. Section 43(5) of the Act provides that an application for orders under section 43(1) must be made within three years after the date on which the loss or damage, or the likelihood of loss or damage, was discovered or ought reasonably to have been discovered.

CHH applied to have the Commission's claim struck out, alleging that the Commission had discovered the loss or damage, or alternatively, the likelihood of loss or damage, more than three years before it filed its claim.

The Supreme Court decision follows judgments of the High Court and Court of Appeal. CHH was previously unsuccessful in the High Court, but succeeded on appeal in the Court of Appeal. In considering the Commission's appeal against that Court of Appeal decision, the Supreme Court addressed three particular questions of law.

THE THREE QUESTIONS DETERMINED BY THE COURT

The first question considered by the Court was whose knowledge is relevant to when time commences under the limitation period in section 43(5); the Commission's or the person who suffered the loss or damage?

The second was whether the phrase "likelihood of loss or damage" in section 43(5) referred only to the discovery of loss or damage that has not yet occurred but is likely to occur in the future and not the discovery of loss or damage that has already occurred?

The third question was what it means to 'discover' loss or damage.

In answering these questions, the Supreme Court has provided guidance as to the approach New Zealand Courts may now take when assessing whether or not a party has discovered the threshold fact (eg, the matter giving rise to the contravention, loss or damage) which commences time running, not only under the Fair Trading Act, but also under other statutes containing discovery based limitation provisions.

THE SUPREME COURT DECISION

The Supreme Court's decision was delivered in two judgments; the majority judgment delivered by Tipping J on behalf of Blanchard, McGrath and Anderson JJ; and a minority judgment of Elias CJ.

First question – whose knowledge?

Tipping J recognised that the lower courts had taken three different views as to the question of whose knowledge was relevant to when time begins to run under section 43(5). Asher J, in the High Court, held that it was the knowledge of the person who suffered the loss that was relevant. The Court of Appeal was divided on this point. Hammond J held that the relevant knowledge was that of the person making the application for relief. Baragwanath and Chambers JJ considered that the knowledge of either the applicant or the loss sufferer commenced time running under section 43(5).

In the Supreme Court, Tipping J considered the approach taken by Hammond J to be correct, in that it is the applicant's (in this case the Commission's) knowledge that is relevant and that time commences running under section 43(5) once the applicant possesses the requisite knowledge. Elias CJ, on the other hand, agreed with the approach taken by Baragwanath and Chambers JJ.

Second question – "likelihood of loss"

On the second question, the Supreme Court was unanimous in holding that the phrase "likelihood of loss" in section 43(5) referred only to the discovery of loss or damage that has not yet occurred but is likely to occur in the future. The Court held that the discovery that loss or damage is likely to occur sometime in the future will be relevant to an application for relief on account of that likelihood. Where an application is made for relief regarding loss or damage that has already occurred, the Court held that time starts running when the applicant has discovered, or ought reasonably to have discovered, that the loss or damage has already occurred.

Third question – discovery

The Supreme Court's finding on the second question inevitably led to consideration of what it means to discover something, as much of the discussion before the Supreme Court concerned whether the Commission's knowledge of the facts was sufficient to conclude that it had discovered the loss or damage more than three years before filing its claim.

Tipping J defined discovery as "finding something out, in the sense of becoming aware of it" and considered that a person discovers a fact when he or she acquires knowledge of it. Where there is any uncertainty as to whether the person was actually aware of the loss or damage, Tipping J considered that the enquiry should then shift to whether that person ought reasonably to have discovered the loss or damage.

Despite taking the view that "it is neither necessary nor desirable to attempt some qualitative description of the knowledge inherent in the concept of discovery", Tipping J did consider it necessary to determine "how likely the occurrence of loss should be before it could be said to have

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...the majority concluded that the appropriate test under section 43(5) was whether the “Commission knew or ought reasonably to have known... that some person or persons were likely to have suffered loss or damage...”

been discovered or ought reasonably to have been discovered”. Tipping J, in considering the degree of knowledge necessary to constitute discovery, identified four possibilities – being either the discovery of the mere possibility of loss, the likelihood of loss in the sense that loss may well have occurred, the likelihood of loss in the sense that loss is more probable than not, or near certainty of loss.

The majority favoured the ‘more probable than not’ option and considered that adopting this test was consistent with the competing interests of applicants and defendants. In doing so, the majority disagreed with the approach taken by the House of Lords in *Hawards v Fawcett (a firm)* [2006] 1 WLR 682, which the Supreme Court considered set the threshold for discovery too low and did not reflect the consumer protection purposes of the Fair Trading Act.

While agreeing with the majority’s finding as to the outcome of the appeal, Elias CJ stated that she did not “wish to be taken to agree ... with [Tipping J’s] further views as to the interpretation of section 43(5) and in particular his view ... that the concept of likelihood is a useful standard against which to assess discoverability”. Instead, Elias CJ considered that discovery is a question of fact which turns on what was known or what ought to have been known. She could find no reason to use ‘likelihood’ as a standard for discovery and considered that doing so “may well be confusing”.

Notwithstanding these comments by the Chief Justice, the majority considered that implying a likelihood standard into the legislative test for discovery was permissible. As a result, the majority concluded that the appropriate test under section 43(5) was whether the “Commission knew or ought reasonably to have known ... that some person or persons were likely to have suffered loss or damage as a result of a probable contravention by CHH”.

As a result, the Supreme Court ultimately found that the material before the Court did not establish that the Commission had discovered, or ought reasonably to have discovered, the loss or damage more than three years before filing its claim. Therefore, the Supreme Court allowed the Commission's appeal and dismissed CHH's application to strike out the Commission's claim.

CONCLUSION

The Supreme Court's decision seems to have introduced a new test for discovery into limitation jurisprudence. There may be some uncertainty as to whether this "likelihood test" will apply to all discovery based limitation provisions, or whether its application is to be limited to cases involving section 43(5) of the Fair Trading Act. However, given the similarity of the wording of, and concepts inherent in, discovery based limitation provisions, it seems probable that the likelihood test will be applied across the board to all discovery based limitation provisions. This includes, in the absence of any subsequent amendments, the proposed Limitations Bill currently before the Justice and Electoral Committee.

If this likelihood test is broadly applied, a discovery based limitation provision will not be triggered until the date the party became aware that the occurrence of the threshold fact was more probable than not, or at the date that they ought reasonably to have become aware that the occurrence of that threshold fact was more probable than not.

This conclusion may well have implications for the three pieces of legislation enforced by the Commission that contain discovery based limitation provisions. Precisely how those implications manifest themselves over time in the enforcement of the Fair Trading Act, the Commerce Act 1986 and the Telecommunications Act 2001 will undoubtedly be subject to further comment by New Zealand's courts.

Low Level Inquiry Unit makes an impact

Each year
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Each year the Commerce Commission receives almost 10,000 complaints alleging breaches of the Fair Trading Act. The Commission applies its enforcement criteria in deciding which complaints warrant further scrutiny. In essence the Commission looks for those issues causing the greatest detriment to consumers and other businesses.

But often consumers bring issues to the Commission's attention which could very quickly and easily be resolved, preventing a small problem from becoming a bigger one. In 2009, the Fair Trading branch (now Enforcement) established the Low Level Inquiry Unit to ensure quick, simple resolution of straightforward Fair Trading Act complaints.

The Low Level Inquiry Unit helps the Enforcement branch to deal with issues before they become widespread. It also assists the Commission's engagement with businesses and supplies consumers and traders with compliance information.

The unit has closed approximately 50 cases each quarter since its inception. It also acts as a screening unit to provide information to the Fair Trading teams about cases where more serious enforcement action might be appropriate.

To date the unit has provided compliance advice to 55 businesses in cases arising from complaints and issued warnings to five traders in situations where the Commission considered a breach of the Act to be likely and egregious. Representatives of the unit have also attended trader meetings and provided support to some of the Commission's outreach activities.

The unit operates under the watchful eye of the Fair Trading Wellington Manager Greg Allan. "Since its inception the unit has exceeded expectations in terms of turnover and outcomes. The feedback from consumers and businesses is also very good," said Mr Allan.

"The unit's interventions are as much about education as they are about enforcement. They result in win-win outcomes where the aggrieved consumer has confidence that the Commission has acted on their complaint, and the business has avoided more serious enforcement action but has learnt at the same time about the importance of compliance," said Mr Allan.

Stop press : Commerce Commission Chair reappointed

“I’m pleased that Dr Berry will continue to serve as Chair of the Commerce Commission to complete a full five year term until 31 March 2014.”

As this issue of Communique was going to press the Minister of Commerce, Simon Power announced the reappointment of Dr Mark Berry as Chair of the Commerce Commission.

Dr Berry was appointed Chair of the Commerce Commission in April 2009, initially for a period of 18 months, following the departure of Paula Rebstock at the end of her five year term in the role. Dr Berry had previously served as the Commission’s Deputy Chair from 1999 until 2001.

In announcing the reappointment Mr Power expressed his full confidence in Dr Berry’s leadership and recognised “the outstanding job” that Dr Berry has done at the Commission.

“I’m pleased that Dr Berry will continue to serve as Chair of the Commerce Commission to complete a full five year term until 31 March 2014,” Mr Power said.

“In Dr Berry’s time in office, the Commission has undergone considerable change. Amongst other things, Dr Berry has successfully managed an organisational restructuring of the Commission and the ongoing delivery of an extensive work programme to implement the new requirements for electricity, gas, and major airport businesses under Part 4 of the Commerce Act.”

“The Government is committed to ensuring the Commission remains a strong and effective regulatory body, and Dr Berry’s reappointment is a key part of this objective,” Mr Power said.

Meet Patrick Duignan - Associate Commissioner



Patrick Duignan
Associate Commissioner

Patrick Duignan is one of two new Commissioners who joined the Commerce Commission in 2009. Pat was appointed an Associate Commissioner in June 2009 for a period of five years.

An economist and corporate financier with experience and knowledge of regulatory economics including cost of capital analysis and network economics, Pat joined the Commission at a time when there is a very large work programme underway to implement the changes required under Part 4 of the Commerce Act. The development of input methodologies is the most consuming aspect of this work.

Communique checks in to see how Pat is enjoying the work.

WHAT ATTRACTED YOU TO THE ROLE OF ASSOCIATE COMMISSIONER?

For most of my career I have worked as an economist and as a corporate finance manager. As an economist I have been interested in the work of the Commission for many years. In working on economic policy in the Treasury I recognised that the Commission has a major role to play and its decisions have a wide influence on the economy. When the opportunity to assist in the implementation of the new Part 4 of the Commerce Act came to my attention, I was interested to take it up. I knew I would be working with a group of very capable professionals which made the prospect attractive. I enjoy applying the insights that economics and corporate finance theory provide.

WHAT PROGRESS HAVE YOU MADE SINCE YOU STARTED IN THE ROLE?

I have been on a steep learning curve regarding the work programme required to implement Part 4, in particular the development of input methodologies. I have been impressed with the planning and energy that the Network Performance branch (now Regulation) team have brought to these tasks. I found the Input Methodologies and Cost of Capital conferences were very interesting and useful. The format, in which the main participants sit together and each has their turn at answering questions posed by the Commission, worked well. There may never be a consensus but it appears that the parties who will be affected by the new Part 4 do feel reassured that the Commission hears their views. The feedback regarding the conferences and indeed the input methodologies process to date has been positive.

I have also enjoyed my participation in the Telecommunications Division. I have past experience of the sector and the technological issues and speed of development are fascinating. The Commission's telecommunications team need to be masters of the detail of the regulatory framework but also need to be up with the play regarding new developments, including the implications of the Government's ultra-fast broadband initiative.

WHAT ARE YOUR TOP PRIORITIES FOR 2010?

My top priority is to help progress the input methodologies work programme to achieve the revised timetable that has been approved by the Minister of Commerce as envisaged in the legislation.

In the Telecommunications area I look forward to contributing to the development of the Commission's role in the ultra-fast broadband initiative.

WHAT HAS BEEN THE HIGHLIGHT OF YOUR CAREER SO FAR?

I have been fortunate to serve in a number of interesting roles in the public and private sectors during my career. One early highlight was helping to set up the state-owned enterprises, which achieved major improvements in efficiency compared to the government departments that they took over from. Highlights during my term as Treasurer of the New Zealand Debt Management Office included managing the fallout from the collapse of the Development Finance Corporation, persuading the rating agency Standard and Poor's not to downgrade New Zealand's rating by two grades, and overseeing the development of the government bond market. The highlight of my private sector career was the negotiation of the US\$1 billion financing for the Southern Cross Cable.

WHAT DO YOU DO TO MAINTAIN A WORK/LIFE BALANCE?

I enjoy time with my family – my wife Sally Munro, our four children and their partners, and our extended family many of whom live in Wellington. Our first grandchild, now nine months old, is the latest addition to the family and we enjoy seeing and looking after her. Sally and I enjoy walking in the hills around Wellington and we live close to Mt Kaukau. The view from the top includes the Makara wind turbines – a spectacle that feels like a reward after the climb. I enjoy photography and so have many shots of Wellington, particularly the harbour in different weather and lighting conditions. Sally and I also enjoy Wellington's abundant cultural opportunities, particularly the number of excellent concerts, plays and operas.

Input methodologies emerging views and workshops

Papers released at the end of 2009 outlined the Commission's emerging views on input methodologies for electricity distribution services, gas pipeline services and specified airport services supplied by Auckland, Wellington and Christchurch International Airports.

The papers, available on the Commission's website, allow the Commission to share its latest thinking with interested parties following the Input Methodologies conference in September 2009 and the subsequent cross submissions.

"This additional step in the consultation process has been made possible by the extension granted by the Minister of Commerce. The papers detailing the Commission's emerging views are not intended to be exhaustive or provide full reasons. They are intended to provide key context for the workshops due to be held in February and March 2010," said Dr Mark Berry, Commerce Commission Chair.

At the end of 2009, the Commission called for initial views of interested parties on the proposals and submitters will have

an opportunity to elaborate on the key points they raise in pre-workshop submissions both at the workshops and in post-workshop submissions.

Participation in the workshops is open to all interested parties who submitted their initial views on the proposals. With the exception of the workshop on tax, the workshops will also be open to attendance by any other stakeholders who wish to observe the proceedings. The Commission will also invite more detailed written submissions from any interested parties after the workshops, and these post-workshop submissions will be due in late February and March 2010. All workshops will be transcribed and the transcripts will be made available on the Commission's website as soon as possible after each workshop.

The papers are available on the Commission's website www.comcom.govt.nz under Industry Regulation/Part 4/Reports and documents.

The timetable for workshops is as follows:

SECTOR	WORKSHOP TOPIC	INDICATIVE DATE
Electricity Distribution/ Gas Pipelines	Regulatory Tax	8 February 2010
Airports	Regulatory Asset Base, Cost Allocation, Information Disclosure	17-18 February 2010
Electricity Distribution/ Gas Pipelines	Regulatory Asset Base, Cost Allocation, Rules and Processes under a Customised Price-Quality Path	24-26 February 2010
Electricity Distribution/ Gas Pipelines	Opex/Capex Information Requirements for Customised Price-Quality Path Proposals	11-12 March 2010

For more information on the workshops email npb@comcom.govt.nz

Commission settlements and warnings

SETTLEMENTS FOR THE PERIOD JULY-SEPTEMBER 2009

PARTIES	SECTION	DESCRIPTION
The Pawn Shop	CCCF Act, s17 and s42	Alleged that creditor is charging unreasonable credit fees and not providing initial disclosure on payday loans

WARNINGS FOR THE PERIOD JULY-SEPTEMBER 2009

PARTIES	SECTION AND ACT	DESCRIPTION
E-Gas Limited	Fair Trading Act s13(g), (j)	Alleged that E-Gas misrepresented to consumers their rights to change gas suppliers and reasons for price increases in the gas supply
Harvey Norman Stores (NZ) Pty Limited; Noel Leeming Group Limited t/a Noel Leeming; Leeming Group Limited t/a Bond and Bond	Fair Trading Act s13(g)	Alleged misleading representation that goods can be purchased interest free when in fact customers can negotiate a cash discount meaning that the difference is in effect interest
The Stop Smoking Clinic	Fair Trading Act s13(b)	Alleged misleading representations as to the effectiveness and characteristics of a treatment for stopping smoking
Evergreen Life (NZ) Limited	Fair Trading Act s13(j)	Alleged misleading representations on the labelling of the products about country of origin
Warehouse Stationery Limited, Samsung Electronics Pty Limited	Fair Trading Act s11 and s13(g)	Alleged misrepresentation in relation to the availability of a free return airfare to Australia via redemption process
Hampsta NZ Limited	Fair Trading Act s17	Alleged misleading representations in relation to a competition in that there was only a very small chance that advertised \$1 million prize would be won by anyone
Canterbury Tours Limited t/a Five Dollar Bus	Fair Trading Act s13(g)	Alleged that advertising headlines misrepresent the true cost
ANZ National Bank Limited t/a New Zealand Financial Advisory Service	Fair Trading Act s13(b), (e)	Alleged misrepresentations in relation to the characteristics of goods arising from claims that the trader's credit card product is a low interest product however the interest rate applicable to cash advances is the same as standard credit cards available
Armenian Imports Limited	Fair Trading Act s13(a)	Alleged misrepresentation that a product is blackcurrant juice
New Image International Limited	Fair Trading Act s13(j)	Alleged misrepresentation that a product is New Zealand made, when 30% comes from overseas

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PARTIES	SECTION AND ACT	DESCRIPTION
Nga Uri O	Fair Trading Act s13(b), (e)	Alleged misleading representation as to the traders' ability to help consumers facing mortgagee sales in that all the trader does is place a caveat over a property thus slowing the process, not stopping it or helping the consumer
Westpac NZ Limited	Fair Trading Act s11 and s13(i)	Alleged that bank represented that fixed term deposits of up to five years were covered by the New Zealand deposit guarantee scheme when in fact the scheme expires in October 2010
Professional New Zealand Limited	Fair Trading Act s13(g)	Alleged that trader is advertising a continuous sale
Cuisine Market Limited	Fair Trading Act s13(j)	Alleged that trader is misleading as to country of origin on olive oil product
Urban Living Carpet	Fair Trading Act s13(g)	Alleged misleading representations of prices, in that prices have been inflated to cover the represented discounts
Camera House Limited	Fair Trading Act s13(g)	Alleged that trader is misleading consumers about price of goods
The Best Souvenirs Company Limited	Fair Trading Act s10 and s13(a)	Alleged that IgG level and colostrum in its products, sold under the Midas Health brand, are falsely represented on label
Comvita New Zealand Limited	Fair Trading Act s10 and s13(j)	Alleged that trader's international brand is heavily built on New Zealand's image as the unspoilt source of nature health products; trader claims that products are manufactured in their plant located in the Bay of Plenty region in New Zealand, while the product 'Olive Leaf Complex' is grown and produced near Brisbane, Australia
Lion Rock Ventures Limited	Fair Trading Act s30	Alleged that trader's Mary-Lou Doll has parts which dislodge creating a choking hazard; product recalled
Cristiano Alves Dos Santos	Fair Trading Act s30	Alleged that a cot was offered for sale that failed to comply with Product Safety Standard
Mizpah Trading Company	CCCF Act s17	Alleged that creditors are not providing initial disclosure
Kaitia Second Hand Mart	CCCF Act s17	Alleged that creditor had not provided initial disclosure
Park Developments Limited	CCCF Act s17	Alleged that creditor had not provided initial disclosure for rent to buy contracts

From the Courts

PROSECUTIONS RESOLVED OVER THE PERIOD JULY-SEPTEMBER 2009

PARTIES	SECTION AND ACT	DESCRIPTION	DECISION
Eden Office Seating	Fair Trading Act s13(j)	Misleading representations concerning the place of origin of goods	Fine \$5,000, costs \$2,500, court costs \$130
Farmers Trading Company Limited	Fair Trading Act s10	Misleading conduct that a television was new when in fact it had been returned for repair by a previous customer a year earlier	Fine \$10,000, costs \$130
Redpaths Furniture Limited	Fair Trading Act s13(g)	Represented 'was' price was not true and had not been charged for six months or more. Recent price established, before sale, was less than represented 'was' price.	Fine \$28,000 (\$1,000 per charge), court costs \$3,640 (\$130 per charge)
Interchange: Visa International Service Association and Visa Worldwide Pte Limited, MasterCard International Incorporated, ANZ National Bank Limited, ASB Bank Limited, Bank of New Zealand, Kiwibank Limited and New Zealand Post Limited, TSB Bank Limited, The Warehouse Financial Services Limited, Westpac New Zealand Limited	Commerce Act s27 and s30	Agreements between banks and card schemes to set the amount of the interchange fee, provide the rules of operation of card schemes, limiting entry into the card services market and other related provisions, thereby controlling the level of the merchant service fee paid by retailers	Settlements

Adjudication update

MARKET STRUCTURE CLEARANCES DECIDED OVER THE PERIOD JULY-SEPTEMBER 2009

Nil

MARKET STRUCTURE AUTHORISATIONS DECIDED OVER THE PERIOD JULY-SEPTEMBER 2009

Nil

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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, New Zealand, or
- » Email contact@comcom.govt.nz

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