

## NEW ZEALAND

(September 1999 - August 2000)

### Executive Summary

1. This report summarises the major developments in New Zealand's competition law, the enforcement of that law, and in competition policy generally, over the period 1 September 1999 to 31 August 2000.

2. Recent reforms have been aimed at strengthening the core provisions of the Commerce Act (New Zealand's key competition statute) and the enforcement powers and resources of New Zealand's competition enforcement agency (Commerce Commission). Draft legislation is currently before the Parliament which seeks to amend the Act's:

- misuse of a dominant position prohibition (*section 36*);
- threshold for business acquisitions (*section 47*);
- penalties, remedies and associated court processes; and
- price control provisions.

3. During the year, the Commerce Commission opened 55 restrictive trade practice or Electricity Industry Reform Act enforcement cases for investigation. This compares with 49 for 1998/99 and 74 for 1997/98.

4. The government has recently initiated Ministerial Inquiries into the current regulatory arrangements for New Zealand's electricity and telecommunications industries. The inquiries are tasked with examining ways to improve the outcomes from these sectors in achieving governments objectives. The electricity inquiry has reported and government is currently considering its recommendation. The telecommunications will be reporting shortly.

### Changes to Competition Laws and Policies, Proposed or Adopted

5. The Commerce Act 1986 regulates the process of competition in New Zealand. Its purpose is to promote competition in markets within New Zealand. The Act covers anti-competitive conduct in markets within New Zealand, and also overseas business activity insofar as New Zealand markets are affected.

6. Draft legislation is currently before the Parliament that seeks to amend the Act's:

- misuse of a dominant position prohibition (*section 36*);
- threshold for business acquisitions (*section 47*);
- penalties, remedies and associated court processes; and
- Price control provisions.

### *Proposed changes to section 36*

7. Section 36 seeks to prevent dominant firms from using their market power to prevent or eliminate competition, while at the same time still allowing those dominant firms to compete. The problem with this

## NEW ZEALAND

section is that it has, through judicial interpretation, become considerably weaker than when the section first came into effect.

8. When the Parliament introduced this provision in 1986, it expected the courts to give an economic interpretation to the word “dominance”. Up until 1992 the courts did this, they interpreted “dominance” to mean “high market power”. However, in 1992 in *Telecom Corp of NZ Ltd. v Commerce Commission* the courts relied on the ordinary meaning of the word “dominance” and this approach raised the threshold for section 36. Then on appeal in 1994, the Privy Council added a new test to section 36 that required “use” of a dominant position to be proved. This further increased the difficulty to prove a section 36 contravention.

9. As well, during the 13 years that the Act has been in place, the courts have been inconsistent over whether “purpose” can be inferred from actions or circumstances (the plaintiff must prove “purpose” i.e. that the dominant firm intentionally used its market power to harm the competitive process). When purpose cannot be inferred, success in litigation becomes difficult as few firms document their intent to harm the competitive process.

10. A weak section 36 is of particular concern in the utilities markets. It is the key tool relied on by competitors of dominant firms to obtain access to essential facilities to enable effective competition to develop in particular markets. Although the importance of section 36 is not limited to utilities markets, this is where it is most important.

11. To address weaknesses of this section, draft legislation is before the House that will amend section 36 to better achieve the objectives of the Act and also bring it in line with our closest trading partner, Australia. That is:

- To ensure the threshold is “substantial degree of market power”;
- To replace “use” with “take advantage of”; and
- To ensure that “purpose” can be inferred from conduct or circumstance.

### ***Proposed changes to section 47***

12. Section 47 of the Act prohibits mergers and acquisitions that create or strengthen a dominant position in a market. The threshold in the prohibition is single firm dominance. The threshold’s role is to identify for scrutiny, by the Commerce Commission and the courts, those mergers that could be detrimental to the economy. However, the Act provides that such mergers can nevertheless be authorised if the merger is likely to generate public benefits that will outweigh the anti-competitive detriment.

13. The problem with the current threshold is that it does not allow the Commerce Commission and the courts to scrutinise mergers where market power can be obtained in differentiated product/cost situations. It also ignores mergers that may facilitate collusion. In response to these problems, legislation is before Parliament that will recast the threshold by replacing “dominance” with a new threshold that any merger shall not “substantially lessen competition”.

### ***Proposed Changes to the Act’s Penalties, Remedies and Court Processes***

14. A review conducted in 1998 indicated that the Commerce Act is not consistently providing an effective deterrent to anti-competitive behaviour because:

- its penalties and remedies are likely to have very little deterrent effect for the largest firms in the economy, and in instances of large scale offending; and
- its associated court processes are costly and subject to lengthy delay.

15. To ensure that all firms have incentives to comply with the Act, reforms are currently before the Parliament that will strengthen the deterrent effect of the Act's penalties and remedies. This will be achieved through:

- providing an alternative maximum penalty for firms based on three times the value of the illegal gain. This will supplement an increased maximum of \$10 million;
- strengthening the sanctions facing individuals by prohibiting firms from indemnifying their agents for any penalty imposed (for the per se offences only) and giving the courts the discretion to prohibit the worst offenders (e.g. price fixers) from being managers or directors of bodies corporate for up to five years;
- increasing the incentives for private actions to be taken by allowing for the consideration of the interests of consumers in interim injunctions and through clarifying that the courts can award exemplary damages;
- increasing detection, via changing the statutory limitation periods so they run from when the cause of action was reasonably discovered, rather than from when the cause of action arose; and
- responding to the cost and delay issues through empowering the Commerce Commission to issue "cease and desist" orders (these orders would be similar to those used by the United States Federal Trade Commission).

### ***Price Control Provisions***

16. Measures will be introduced this year which will modernise the price control provisions of the Commerce Act. The current provisions for price control are outdated and needed reforming to improve their administration and effectiveness, and bring them in line with current approaches to price control overseas. The proposed amendments will also act to promote competition by enhancing the credibility of the threat of price control, thereby deterring anti-competitive behaviour.

17. The proposed measures focus on the thresholds for imposing price control; modernising the methods of price control to allow for the adoption of a formula approach to price control, quality standards, etc; strengthening the investigation and audit powers of the Commission to administer the new price control provisions; increased penalties for contravention of price control provisions; and limiting rights of appeal for price control to questions of law.

### **Enforcement of Competition Laws and Policies**

#### ***Action against anti-competitive practices:***

##### ***A) Activities of the Commerce Commission***

18. The New Zealand Commerce Commission is the agency charged with enforcing the Commerce Act. Its key enforcement activities during the year to 30 June 2000 are outlined below. More information can be obtained from the Commission's website: <http://www.comcom.govt.nz>.

## NEW ZEALAND

### Investigation

19. During the year the Commerce Commission opened 55 restrictive trade practice or Electricity Industry Reform Act enforcement cases for investigation. This compares with 49 for 1998/99 and 74 for 1997/98. Some of the major cases investigated during the year included the following:

- Petrol Pricing

20. Commencing around 14 July 1999, the oil companies introduced a series of price increase for both grades of petrol and diesel, often by increments of 3 cents per litre. The similar timing and amount, of each of the price increases, led to questions as to whether there was any collusion between the companies. After investigation, the matter was closed on the basis that no breach of the Act was apparent.

- Holmes Packaging

21. It was alleged that a refusal by Carter Holt Harvey Pulp & Paper division to supply Holmes Packaging Limited with kraft linerboard, a paper product traditionally used in the manufacture of cardboard boxes was in breach of section 36 of the Commerce Act. Commission staff conducted a thorough investigation and concluded it is unlikely that Carter Holt Harvey was in a dominant position in the market and therefore there could be no breach of section 36 of the Act.

### Administrative Resolution

22. Many contraventions of the Commerce Act are more appropriately addressed by way of an administrative resolution. The Commission employs two broad types of administrative resolution: warnings and settlements. During the year the Commission issued eight warnings and three administrative settlements. These matters are summarised below.

### Warnings

- FIPIA

23. A complaint was received about conduct relating to a provision contained in agreements entered into between FIPIA New Zealand Limited (FIPIA), a 100%-owned subsidiary of ENZA Limited, and most fruit tree nurseries. The provision prohibited nurseries from entering into licence agreements with third parties in respect of plant material that was similar to that licensed by FIPIA, and which was being marketed to the detriment of sales of the FIPIA variety. The clause and the measures taken by FIPIA to secure compliance, were possibly at risk of breaching the Commerce Act. The provision was removed from the agreement.

- Auckland Liquor Accord

24. The Commission issued a warning to the members of the Auckland City Downtown Liquor Accord that they were at risk of breaching the price fixing provisions of the Commerce Act. The Accord Committee membership includes individual businesses as well as representatives from the New Zealand Police, the Auckland City Council and the Hospitality Association of New Zealand. An Accord document had been prepared whereby the competing owners of restaurants, cafes and hotels agreed not to offer cheap

drinks or happy hours. As a result of the investigation the Accord document was amended and each member of the Accord was advised of their obligations under the Commerce Act.

- Retail Today

25. A commentary in the August issue of *Retail Today* suggested that traders should not alter prices, either up or down, over the Christmas period. A warning letter was issued to *Retail Today* advising of the risks associated with any such joint decision amongst retailers not to alter prices.

- Subritzky Shipping

26. A complaint was received from a transport operator about the merger of the two companies providing freight services between Auckland and Waiheke Island, Subritzky Shipping and Tom Ryan Cartage ("TRC"). The complainant alleged that Subritzky Shipping was refusing the complainant access to its ferry, and so allowing TRC to take over the complainant's clientele. The complainant further alleged that entry is not feasible, as Subritzky effectively control access to berthing rights. This agreement provides TRC with a large discount for travel on the Subritzky barges while imposing a blanket cap on the discount that may be offered to any of TRC's competitors.

27. Commission staff issued both Subritzky and Tom Ryan Cartage Ltd with a warning that the agreement they had entered into is in breach of section 27 of the Act. Commission staff believe that the agreement has the purpose, and is likely to have the effect, of substantially lessening competition in the market for provision of freight services between Auckland and Waiheke Island.

#### Administrative Settlements

- Auckland Rescue Helicopter Trust

28. In the Commission's view Auckland Rescue Helicopter Trust ("the Trust") and the Order of St John ("St John") colluded over tenders for Accident Compensation Corporation (ACC) and Health Funding Authority contracts. The parties agreed that the Trust was to tender for ACC work, St John was to tender for HFA work and that they would not compete for the contracts. They also colluded to restrict the ability of a St John's competitor, EMT Ambulance New Zealand Limited (EMT), to get work. The Trust and St John entered an administrative Settlement with the Commission in which they agreed that they may have breached the Act; they will terminate their arrangement over tendering for ACC and HFA work; and they will not collude against EMT or anyone else.

- Livestock Improvement

29. In the Commission's view, Livestock Improvement Corporation (LIC) used its dominance in the dairy cattle database market to limit competitors' ability to get information from the database and through that, to restrict their ability to compete in other markets. LIC also offered discounts to dairy farmers who bought bundles of several services from LIC. The bundles included services for which LIC does not face competition and other services that competitors can provide. LIC entered an administrative settlement with the Commission in which it agreed details of how it will make access to the database easier; and that it will not offer discounts on products which combine contestable and non-contestable services once its existing contractual commitments end on 31 May 2000.

## NEW ZEALAND

- VTECH

30. Cordless Phones (NZ) Ltd held the New Zealand distribution rights for 'Voyager' branded cordless telephones. It sold the North Island distribution rights to VTECH Distributors Ltd, but retained the right to distribute into the Auckland and Northland regions. As a result, Cordless Phones (NZ) Ltd and VTECH Distributors Ltd competed in Auckland and Northland for the distribution of 'Voyager' branded cordless telephones. In a settlement with the Commerce Commission, the companies acknowledged that their distribution agreement, which included a pricing schedule with wholesale and retail prices for 'Voyager' brand cordless telephones, was a price fixing arrangement.

### B) *Summary of Court Action*

#### Cases Heard During the Year

31. **Caltex New Zealand Ltd, Mobil Oil New Zealand Ltd and Shell New Zealand Ltd** for price fixing by the co-ordinated removal of free car washes in the greater Auckland area. Liability Judgement delivered on 6 October 1999. Judgement was entered for the Commission with Justice Salmon finding that the three companies breached the Commerce Act by agreeing to remove a discount off the price of petrol at more than 50 petrol stations in Auckland. The discount was a free car wash for customers spending \$20 or more on fuel.

32. Caltex were fined \$450,000, Mobil Oil were fined \$350,000 and Shell were fined \$375,000. Mobil and Caltex were ordered to pay \$80,000 costs each and Shell was ordered to pay \$77,500 costs.

33. **Acer New Zealand Ltd** for resale price maintenance. Judgement entered for the Commission on 12 November 1999 following an admission of liability by Acer. Justice Salmon found that Acer had attempted to have two wholesalers sign an agreement limiting the prices the wholesalers would distribute computer scanners for. Salmon J directed Acer to pay \$82,000 in penalty and \$1,000 in costs.

34. The public version of the **Carter Holt Harvey Building Products Group Ltd** judgement was released on 11 May 2000. The Commission succeeded in its claim that Carter Holt's "2 or 1" special on its polyester wool insulation product breached Commerce Act 1986 section 36(1)(b)(c). In instituting and maintaining the "2 for 1", Carter Holt used its dominant position in the South Island regional market for the purpose – i.e. the object or aim – of preventing or deterring New Wool Products (the new entrant competition) from engaging in competitive conduct in that market or eliminating it from that market. The Commission was not successful with its section 27 claim. A penalty of \$525,000 was imposed on 31 July 2000.

#### Commerce Act Cases before the Courts on 30 June 2000

35. *Fletcher Challenge Limited, Fletcher Challenge Energy Ltd, the Electricity Corporation of New Zealand Ltd and Genesis Power Ltd* for the strengthening and acquiring of dominance over natural gas production and wholesaling; and arrangements relating to the Kupe gas field which substantially lessen competition in the gas wholesaling market.

36. *Ophthalmological Society of New Zealand* and five ophthalmologists for preventing two Australian ophthalmologists from performing cataract operations in the Invercargill area.

*Hoyts Cinemas (NZ) Ltd and Village Force Cinemas Ltd* for merging their cinema operations in New Zealand.

37. *Fuller Cruises Northland Ltd and Far North Maritime Ltd* for denying access to vehicle ferry ramps, preventing competition in the Bay of Islands. *Giltrap City Ltd* for agreeing with other Toyota dealers in the greater Auckland area to limit discounts offered to new car purchasers made by fleet buyers.

## Mergers and Acquisitions

### Surveillance

38. New Zealand has a voluntary pre-merger notification regime. The Commission identified a total of 254 un-notified business acquisitions during the year. The Commission initiated follow-up investigation on 35 of the non-notified business acquisitions identified during the year. Some of the major non-notified business acquisitions investigated during the year were:

- British American Tobacco/Rothmans

39. British American Tobacco plc and Rothmans International BV planned to merge. This merger raised concerns because it would combine the suppliers of about 96% of the tobacco products sold in New Zealand. The two companies subsequently proposed to divest some of their brands to an unrelated company, Imperial Tobacco Group plc. The adequacy of the proposed divestment to maintain competition is still the subject of a continuing investigation by the Commission.

- Time Warner/EMI

40. On 24 January 2000 Warner Music and EMI announced the global merger of their respective music recording businesses. The merged group will be the largest competitor in the global market. Both of these companies have subsidiaries in New Zealand who supply music to the wholesale market. EMI Music New Zealand Limited supplies music under the *EMI* and *Virgin* labels whilst Warner Music New Zealand Limited supplies music under the *Warner* and *Atlantic* labels.

41. The Commission conducted an investigation of this merger and concluded that it is not likely that the merger will result in the acquisition or strengthening of dominance in the market for licensing artists and manufacturing and distributing albums. This is because the supply market has a number of large multinational competitors, strong buyers and faces new competition from the internet.

- Glaxo Wellcome/SmithKline Beecham

42. Two major British pharmaceutical companies, Glaxo Wellcome plc and SmithKline Beecham plc, have agreed on the terms of a proposed merger. The merger, which is likely to be put into effect in mid-2000, has created the world's largest pharmaceutical company. The two companies distribute their products globally. In New Zealand they operate through their subsidiaries Glaxo Wellcome New Zealand Limited and SmithKline Beecham (NZ) Limited.

## NEW ZEALAND

43. The Commission began inquiries because, though overall, the market share of the combined entity is not high, there may be areas of strength with regard to particular grouping of medicines. A clearance application was subsequently received from the parties.

- News Corp/ Air NZ

44. The News Corporation Limited agreed to sell its half share in Ansett Holdings Limited to Air New Zealand Limited. The agreement provided for the issue of shares in Air New Zealand to News Corporation as part of the consideration for the sale. The shares would equal about 10.5% of Air New Zealand's shares. The agreement provides for the shares to be issued not earlier than two years after completion of the sale of the Ansett Holdings shares, and not later than four years after. In some circumstances cash could be paid instead of Air New Zealand shares.

45. As News Corporation owns Ansett New Zealand, the transaction would result in a link between Air New Zealand and Ansett New Zealand. This investigation was closed as News Corp sold its shares in Ansett New Zealand to independent investors who had no links to Air New Zealand.

- Telecom/INL

46. Telecom New Zealand Limited acquired 5.7% of the shares in Independent Newspapers Limited. INL owns several major newspapers, including the Evening Post, the Dominion and the Press. It also owns almost half of the shares in Sky Television. An investigation concluded that the equity interest of Telecom in INL is currently too small to pose a threat to competition. The Commission will continue to monitor Telecom's equity interests in INL.

### Clearance and Authorisation Applications

47. Under the Commerce Act, parties may lodge a notice with the Commission seeking clearance for a business acquisition, authorisation of a business acquisition, or authorisation of certain restrictive trade practices. Consideration of a *clearance* application requires the Commission to ascertain whether it is satisfied that the proposed acquisition will not result in a person acquiring or strengthening or being likely to acquire or strengthen a dominant position in a market. An application for *authorisation* of either a business acquisition or a restrictive trade practice requires the Commission to consider the benefit to the public of the acquisition or trade practice, and to weigh this against the resulting or likely detriment to competition.

### Clearance Applications

48. The Commission received 25 notifications during the year. This compares to 23 in 1998/99 and 26 in 1997/98. Major clearance applications include:

- Turners and Growers Ltd/United Flower Auction Ltd (Decision 364)

49. The Commission cleared Turners & Growers Limited (T&G) to acquire United Flower Auction Limited (UFA). The clearance excludes the export business of UFA. The Commission was satisfied that, should the acquisition go ahead, T&G would not acquire or strengthen a dominant position in the national market for the wholesale distribution of cut flowers. Existing competition from cut flower wholesalers, brokers and from growers selling directly to buyers would constrain a combined T&G and UFA. Further, the Commission considered that barriers to entry into this market are not onerous.

- Richmond Ltd/Waitotara Meat Co Ltd (Decision 371)

50. The Commission cleared Richmond Limited to acquire up to 100% of the shares in Waitotara Meat Company Limited (Waitotara). The Commission was satisfied that, should the acquisition go ahead, Richmond would not acquire or strengthen a dominant position in three particular markets: the North Island market for the procurement of sheep and lambs for slaughter and processing, the market for the wholesale supply of meat products in New Zealand, and the market for fellmongery services in the North Island. The Commission was satisfied that existing competition from participants in each of these markets would constrain a combined Richmond and Waitotara. Further, the Commission considered that barriers to entry into each of these markets were not onerous.

- Air Products and Chemicals Inc (USA) L'Air Liquide SA (France)/BOC Group Ltd (Decision 379)

51. The Commission cleared L'Air Liquide S.A. and Air Products and Chemicals Inc to acquire The BOC Group plc. The proposal is part of an international acquisition. Air Liquide and Air Products were to form a joint venture company to acquire the shares in BOC. Air Liquide is based in France, Air Products in the United States and BOC in Britain. The transaction was being negotiated in London. At the conclusion of the international acquisition, the joint venture company in New Zealand would divest the assets of BOC to Air Products.

52. The Commission was satisfied that the effect of the acquisition in New Zealand would be to replace BOC as a gas producer and supplier with Air Products, with no market aggregation resulting.

- United Networks Ltd/Orion New Zealand (Decision 380)

53. The Commission cleared UnitedNetworks Limited (United) to acquire the gas assets of gas and electricity distributor, Orion New Zealand Limited. The proposal involved United acquiring Orion's gas distribution networks, industrial gas trading business, the North Island activities of Orion's contracting business and a five percent interest in the Southdown co-generation power station joint venture.

54. The Commission considered that the effect of the acquisition in the gas wholesale market would be to replace Orion as a gas supplier with United, with no market aggregation resulting. The Commission was satisfied that, should the acquisition go ahead, United's dominant position in the electricity distribution markets would not be strengthened. The Commission was also satisfied that the acquisition would not result in Orion's current dominant position in the gas distribution markets being strengthened as a result of United acquiring the gas networks.

- New Zealand Seafood Investments Ltd/Basuto Investments Limited (Decision 388)

55. The Commission cleared New Zealand Seafood Investments Limited (NZSI) to acquire 100 percent of the shares in Basuto Investments Limited, which is owned by Brierley Investments Limited (BIL). Basuto owned 50 percent of the shares in Sealord Group Limited.

## NEW ZEALAND

56. NZSI was a special purpose company formed specifically for this proposed acquisition. Amalgamated Dairies Limited, Sanford Limited and Talleys' Fisheries Limited, which have substantial existing fishing interests, all also have interests in NZSI. In making its decision, the Commission considered the impact on competition of NZSI, Sealord, Amalgamated Dairies, Sanford and Talleys all being associated.

- EFG Services Ltd/Carter and Associates (1995) Ltd (Decision 389)

57. The Commission cleared EFG Services Limited, to acquire brewing and winemaking supplies distributor, Carter & Associates (1995) Limited. Carter is the major supplier of corks to winemakers in New Zealand. Distributors import the corks, grade them, treat them and, if required, brand or print them with the winemaker's name or logo. The Commission was satisfied that should a combined Carter/EFG try to increase prices or reduce quality, then barriers to a new competitor entering the market were low. In addition, large and medium-sized wine producers could readily bypass the combined entity and buy corks directly from the manufacturers.

- Polarcup (NZ) Ltd/Carter Holt Harvey Ltd (Decision 390)

58. The Commission declined an application from Polarcup (NZ) Limited to acquire Carter Holt Harvey Limited's (CHH) New Zealand and Australian plastic packaging business. Both companies produce a wide range of rigid and plastic packaging for fast food, butchery and supermarket products. The application was declined because of concern that the proposal might result in a person acquiring or strengthening a dominant position in the markets for the manufacture and supply of rigid plastic food containers in New Zealand; and the manufacture and supply of rigid plastic food trays in New Zealand.

- New Zealand Insurance/State Insurance (Decision 391)

59. The Commission cleared two of New Zealand's largest general insurance companies, New Zealand Insurance Limited (NZI) and State Insurance Limited (State), to merge. The clearance was part of a global merger between CGU Plc and Norwich Union Plc. State is owned by Norwich Union and NZI by CGU. In the markets for domestic house and contents insurance, the Commission determined that a combined NZI/State would have a market share outside the "safe harbours" published in the Commission's *Business Acquisitions Guidelines*.

60. Notwithstanding the market share, the Commission concluded that effective competition was currently provided by a number of other general insurers, and that this competition was likely to provide a competitive constraint if the acquisition were implemented. In addition, barriers to entry into domestic insurance are relatively low, particularly for established insurance companies looking to expand their product range to include domestic insurance products. Moreover, the Commission concluded that trading banks, as large purchasers of domestic insurance products, would provide a countervailing power and a competitive constraint on the merged NZI/State entity.

- BP Amoco plc/Burmah Castrol plc (Decision 394)

61. The Commission cleared BP Oil New Zealand Limited to acquire Burmah Castrol NZ Limited. This was part of an international acquisition by BP Amoco plc of Burmah Castrol plc. Both companies are British-based and operate throughout the world. In New Zealand BP and Castrol compete in the nationwide market for the manufacture, importation and supply of lubricant oils.

62. Effective competition would remain from the other multinational oil companies, Mobil, Shell and Caltex, from multinational lubricant producer and supplier Fuchs Petrolab AG, and from smaller suppliers of various brands, some of which are Valvoline, Glydol and Pennzoil. Barriers to large new suppliers

entering the market are not high, though new entry by small suppliers would be more difficult. In addition, large purchasers also have a degree of buying power that could constrain a merged BP/Castrol. Large purchasers include retail chains such as K mart, Deka and The Warehouse, service stations and speciality automotive stores including Repco and Appco. If unhappy with price or quality, they can switch to different suppliers.

#### Consideration of Business Acquisition Authorisation Applications

63. One business acquisition authorisation application was registered during the year.

#### TeamTalk/Telecom

64. On 18 February 2000, Team Talk applied for authorisation of its proposed acquisition of the trunked mobile radio and related equipment businesses of Telecom New Zealand Limited. Team Talk and Telecom, which operates in the market under the brand name "Fleetlink", are the only two nation-wide suppliers currently providing trunked mobile radio network services.

65. The Commission was satisfied that, on the basis of information available, public benefits from the proposal outweigh the detriments to competition by between \$6.072 million and \$11.301 million over five years. The Commission consequently granted an authorisation to the merger.

#### Essential facilities

66. New Zealand primarily relies on the Commerce Act to regulate access to essential facilities. The Act is complemented by information disclosure regulations designed to make transparent the performance of businesses with market power, and the threat of heavier handed regulation, such as price control, if monopoly power is abused. The government has recently initiated Ministerial Inquiries into the current regulatory arrangements for New Zealand's electricity and telecommunications industries. The inquiries are tasked with examining ways to improve the outcomes from these sectors in achieving governments objectives. The electricity inquiry has reported and government is currently considering its recommendation. The telecommunications will be reporting shortly.

### Resources of the Commerce Commission

#### *Resources overall*

Measure	As at 30 June 2000	As at 30 June 1999	As at 30 June 1998
Annual Budget	\$7.1 m	\$5.8 m	\$5.8 m
Number of employees (FTEs)	70.5	70	78
Economists	4	3	2
Lawyers	6	10	7
other professionals	38.5	35	47
Support	22	22	22

NEW ZEALAND

*Human resources (FTEs) applied to:*

	As at 30 June 2000	As at 30 June 1999	As at 30 June 1998
a) Enforcement against anti-competitive practices <sup>1</sup>	15	14	16
b) Merger review and enforcement	4	3	3
c) Advocacy efforts	7	7	7

**Publications relating to the Commerce Act 1986**

67. The Commission has published a series of free brochures on the provisions of the Act. These are available at the Commission's offices. They include the following:

- The Commerce Act: a General Guide (February 1999)
- Guidelines to the Analysis of Public Benefits and Detriments (October 1997)
- Business Acquisitions Guidelines (1999)
- Conference Procedures (September 1998)

68. The Commission publishes a newsletter, *Fair's Fair*, every two months. It provides topical information about the Commission's recent and current work. This includes education activities, investigations, decisions, enforcement, and appointments of senior staff. In the alternate months, the Commission publishes *Compliance*. Each issue of *Compliance* focuses in detail on one or two topics of long-term interest to business people, lawyers, advisers and others interested in the Commerce and Fair Trading Acts.

---

1. Note: Excludes unfair or misleading practices which fall under consumer protection provisions in the law, where these exist