ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN NEW ZEALAND

-- 1 September 2006-31 August 2007 --

This report is submitted by the Delegation of New Zealand to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 17-18 October 2007.
**TABLE OF CONTENTS**

Executive Summary .................................................................................................................................... 3

1. Changes to competition laws and policies, proposed or adopted......................................................... 4

2. Enforcement of competition laws and policies .................................................................................. 10

3. The role of competition authorities in the formulation and implementation of other policies............ 14

4. Resources of Competition Authorities ............................................................................................... 23
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 2006 - 31 August 2007.

2. New Zealand’s key competition statute is the Commerce Act 1986 which is enforced by the New Zealand Commerce Commission (NZCC). The purpose of the NZCC is to promote dynamic and responsive markets so that New Zealanders benefit from competitive prices, better quality and greater choice.

3. A major review of the telecommunications regulatory regime and telecommunications policy settings was conducted in 2005/2006. As a result, the Telecommunications Amendment Act (No 2) 2006 was passed during the reporting period, which includes provisions for local loop unbundling and gives the NZCC more specific monitoring powers and an enhanced enforcement role. In the new environment, the NZCC’s strategic focus is on broadband and mobile services, which are the key growth areas for service providers and consumers.

4. New Zealand and Australia continue to make progress towards implementing the recommendations of a 2004 study on long term issues relating to the harmonisation of competition law between Australia and New Zealand. The NZCC and the Australian Competition and Consumer Commission signed a new cooperation agreement and legislative proposals are being developed to enhance the ability of the NZCC to assist overseas competition regulators.

5. In May 2006, the Minister of Commerce announced a Review of Parts 4 and 5 of the Commerce Act, which relate to regulatory control and to authorisations and clearances. Final policy proposals regarding Part 4 are expected to be recommended to Cabinet in late 2007 and final proposals regarding Part 5 are expected in mid 2008.

6. The NZCC completed 28 investigations into suspected anti-competitive market behaviour over the year to 30 June 2007. Cartels have been a major focus for the NZCC because of the detrimental impact they have on competition. A High Court ruling, which confirmed that unlawful agreements entered into overseas – but aimed at New Zealand markets – can be the subject of legal action here, will greatly assist the NZCC’s enforcement activities against internationally coordinated cartel activities.

7. Credit card interchange fees were the subject of a significant investigation which concluded during the year. The NZCC filed proceedings alleging that various members of the credit card schemes breached the Commerce Act by fixing, or being parties to fixing, the level of interchange fees.

8. The NZCC also completed 4 merger or acquisition investigations, and decided on 18 clearance applications.

9. The NZCC enforces the Fair Trading Act which prohibits misleading representations made in trade. Recent high profile cases include civil and criminal actions against all the major banks for non disclosure of currency conversion fees and the prosecution of two airlines for add-on fees that were additional to headline prices.

10. The NZCC has a statutory role in four industry-specific competition or regulation regimes – dairy, electricity, telecommunications and gas. Each of these regimes is different, but the aim of regulation is consistent: to deliver the outcomes that would occur if the companies face competition - efficient prices, efficient investment and the provision of innovative products and services.
11. In dairy regulation the main activity this year was the resolution of a long-running dispute before the courts involving the calculation of components of the default milk price used in the supply of raw milk to independent processors by the Fonterra Co-operative Group Limited.

12. In electricity regulation the NZCC continued to develop the targeted control thresholds regime and complementary information disclosure regime. Three post-breach inquiries were initiated, including an intention to declare control of Vector Limited’s distribution services. A long-running post breach inquiry was completed with the NZCC accepting an administrative settlement proposal from Unison Networks in preference to bottom up building blocks control.

13. In telecommunications the NZCC continued to administer the access regime for regulated telecommunications services and to monitor and report on compliance with the telecommunications service obligations and to allocate the costs of these obligations to all liable parties. The NZCC has initiated the process for developing standard terms determinations for unbundled copper local loop and co-location services, unbundled bitstream access, and associated backhaul services.

14. In gas the NZCC continued to progress the gas control authorisation process for Powerco Limited and Vector Limited’s gas distribution businesses, involving bottom up building blocks control.

1. Changes to competition laws and policies, proposed or adopted

15. The Commerce Act 1986 is the central pillar of New Zealand’s competition legislation. Its purpose is to promote competition in markets for the long-term benefit of consumers in New Zealand. It therefore prohibits various types of conduct that substantially lessen competition in New Zealand markets. There is specific competition legislation for the electricity industry (the Electricity Industry Reform Act 1998 and Part 4A of the Commerce Act), the telecommunications industry (the Telecommunications Act 2001), and the dairy industry (the Dairy Industry Restructuring Act 2001). However, the general competition law set out in the Commerce Act applies to all industries, including those with industry-specific competition legislation, and both the public and private sectors.

16. The NZCC continues to be the primary competition authority in New Zealand. It is an independent statutory body with predominantly adjudicative and public enforcement functions. The NZCC is also the industry-specific regulator for electricity (along with the Electricity Commission), telecommunications and dairy markets.

1.1 Summary of new legal provisions for competition law and related legislation

1.1.1 Telecommunications Act

17. Two new statutes relating to the telecommunications sector regulatory regime were enacted in the reporting period – The Telecommunications Amendment Act (No 1) 2006 and the Telecommunications Amendment Act (No 2) 2006.

18. The Telecommunications Act (No 1) extended the term of regulation on 10 telecommunications services by 2 years. This was necessary due to the potential risk that the regulator would be unable to complete the required process for extension of these regulations prior to their statutory expiry date.

19. The latter Amendment Act introduced significant changes to the telecommunications regulatory regime in New Zealand. The main amendments include:

- regulation of unbundled local loops and sub-loops (including supporting backhaul and co-location services);
removing performance constraints on the unbundled bitstream service and clarifying that it can be purchased without a requirement to also purchase an analogue phone service;

- introduction of operational and accounting separation regimes for Telecom New Zealand;

- enhancing the processes for enforcing terms and conditions of supply; and

- enhancements to the ability of the regulator to monitor sector developments.

20. The Telecommunications Amendment Act (No 2) also introduced new regulatory processes to ensure that service providers can get effective and timely access to regulated services. In particular the Amendment Act:

- empowers the Commissioner to set standard access terms and conditions for all access seekers at once, rather than on an individual basis, in response to disputes, as previously required; and

- enables access seekers to obtain access to regulated services notwithstanding existing commercial agreements for supply of the regulated service.

21. This Amendment Act also addresses a number of implementation issues that have been identified through past experience with the processes under the Act by:

- replacing automatic expiry of regulated services with a periodical review of the need for continued regulation of services;

- empowering the Commissioner and the Minister of Communications to consider binding undertakings from access providers as an alternative to regulation of additional services in the future;

- streamlining the processes for calculating and allocating the Telecommunications Service Obligations (TSO) net cost; and

- streamlining the process for adding, amending or removing the regulation of telecommunications services under the Act.

1.2 Other relevant measures, including new guidelines

1.2.1 Electricity Act

22. New regulations to facilitate the use of distributed generation by ensuring that it does not face undue barriers in connecting to lines came into force in August 2007. The regulations specify the process under which generators may apply to distributors for approval to connect distributed generation (covering the information to be exchanged and the criteria for approval); regulated terms that apply to the connection of distributed generation in the absence of agreed terms; a dispute resolution process; pricing principles; and prescribed fees.

1.2.2 Government policy statements

policy. The NZCC is required to have regard to the content of the GPS when making regulatory decisions. The GPS was designed to ensure that balanced consideration is given to regulated businesses having incentives to invest in replacement, upgraded and new infrastructure and in related businesses for the long term benefit of consumers.

24. In October 2006 an updated GPS on Electricity Governance was released, which was designed to improve the quality and timeliness of decision-making on transmission. It emphasised the importance of security of supply in transmission, and is designed to ensure that the grid facilitates competition in general and minimises transmission constraints, and that transmission planning supports the Government’s goal of facilitating renewable energy. The Electricity Commission is required to give effect to the policy statement.

1.2.3 Telecommunications

25. In April 2007, the NZCC released a discussion document in relation to the telecommunications sector entitled *The Interrelationship Between Part 2 of the Commerce Act 1986 and the Telecommunications Act 2001*. The discussion document outlines the NZCC’s proposed approach to managing the interface between the generic restrictive trade practice prohibitions and the regulated access regime in the Telecommunications Act. Section 63 of the Telecommunications Act exempts from the Commerce Act any conduct authorised by, or necessary to give effect to, an NZCC determination made under the access regime in the Telecommunications Act. The NZCC considered that there might be some ambiguity as to the interface between the regimes in relation to ancillary conduct not specifically covered in any NZCC determination, and consequently it called for submissions, which the NZCC is currently considering.

1.2.4 Co-ordination with Australia

26. In August 2003, CER\(^1\) Ministers approved a joint work programme for further co-ordination of competition law, enforcement and institutions. Some aspects of the work programme have already been delivered - for example, co-ordination on leniency programmes, and the appointment of Australian lay members to New Zealand’s High Court to sit on Commerce Act cases.

27. Under the agreed work programme, the Australian Productivity Commission conducted a study on competition and consumer policy co-ordination between Australia and New Zealand and released its final report in January 2005. The purpose of the study was to examine options for greater cooperation, coordination and integration of the two countries’ general competition and fair trading regimes, and to assess whether the expected benefits will outweigh the costs. The Productivity Commission noted that there was already a high degree of convergence between Australian and New Zealand competition laws and that any continued differences were not acting as a significant impediment to the development of a single economic market between the two countries. Both governments accepted the Productivity Commission’s recommendations, which included:

- Regular meetings between Australian and New Zealand competition policy officials;
- Cross appointments between competition agencies to consider transactions which apply to both jurisdictions;

\(^1\) CER is a series of agreements and arrangements that began with the entry into force on 1 January 1983 of the New Zealand Australia Closer Economic Relations Trade Agreement.
• Working towards a ‘single track’ process for mergers that have competition impacts in New Zealand and Australia; and
• Amending competition legislation to provide for enhanced information sharing powers between competition agencies.

28. Both countries have made significant progress towards implementing all of these recommendations. During the reporting period:

• The NZCC and the Australian Competition and Consumer Commission (ACCC) held their second formal joint annual meetings to discuss strategic issues of mutual interest in July 2007. At this meeting, the two agencies signed a cooperation agreement, replacing the previous 1994 protocol. The new agreement sets out the objectives and principles that govern cooperation between the two agencies;
• New Zealand and Australian policy officials held their third formal annual meeting on competition issues in September 2007; and
• Government officials are developing legislative proposals to enhance the ability of the NZCC to share information with overseas competition regulators. The Government aims to introduce these legislative proposals into the House in late 2007 and it is anticipated that legislation will be passed by mid 2008.

1.3 Government proposals for new legislation

1.3.1 Information Sharing Bill

29. Government officials are currently working on proposals to amend the Commerce Act to authorise the NZCC to provide investigative assistance to, and share information it holds with, overseas competition authorities, subject to specified safeguards. The main impetus for the amendment is to facilitate increased enforcement cooperation with the ACCC consistent with promoting a single economic market for Australia and New Zealand.

30. Under legislative proposals currently being developed, the NZCC will be able to use its statutory powers (including its power to search) under the Commerce Act to provide investigative assistance to overseas regulators and share information it holds with an overseas competition regulator if it is likely to assist the overseas regulator to perform or exercise any of its functions or powers.

31. The NZCC will be able to provide such investigative assistance and information sharing only pursuant to a formal agreement between governments, government departments, or competition regulators (as the case may be). The Commerce Act will specify matters to be considered prior to entering into any formal cooperation agreements to ensure that the public interest is protected. The legislation will also specify the consideration the NZCC must have regard to when it receives a request for assistance.

32. The Commerce Act will also be amended to allow the NZCC to share information with other domestic regulators if the information would assist the regulator to perform or exercise any of its functions or powers.

33. Legislative proposals are currently in development and a Bill is expected to be introduced to the House in late 2007. Legislation is likely to be passed in 2008.
1.3.2 Review of Parts 4, 4A and 5 of the Commerce Act 1986

34. In May 2006, the Minister of Commerce announced a Review of Parts 4 and 5 of the Commerce Act, which relate to the processes for regulatory control and to authorisations and formal merger clearances. In August 2006, the Minister of Energy announced the inclusion in this review of Part 4A of the Commerce Act which relates to the targeted control of large electricity lines businesses. There are two streams to the Review:

- Stream one examines the regulatory control provisions of the Commerce Act (Part 4, Part 4A and sections 70-74 of Part 5). Part 4 of the Commerce Act allows for goods or services to be placed under price, revenue, or quality control (regulatory control) subject to specific tests being met. Once a decision has been made to impose control under Part 4, the controlled good or service may not be supplied unless an authorisation to supply has been made under Part 5.

Part 4A of the Commerce Act took effect by amendment in 2001. This Part provides for specific targeted control provisions for large electricity lines businesses, being businesses with more than 25 kilometres of lines; or lines conveying greater than 20 gigawatt hours; or conveyance to more than 500 consumers that are connected to the national transmission grid. The Review was extended to consider the effectiveness of the targeted control regime when considered against the Review’s overarching objective.

The overarching objective, in reviewing the regulatory control provisions of the Commerce Act, is to ensure that the imposition of regulatory control is consistent with providing for the long-term benefit of consumers within New Zealand. The Review will look to ensure: there is clarity around the policy intent of imposing control; there is appropriate guidance for businesses and regulators on when control is likely to be imposed; there is appropriate guidance for businesses and regulators on how regulatory control should be imposed; and there are effective and efficient processes to determine when and how control is imposed.

- Stream two examines the processes relating to the authorisation and clearance of restrictive trade practices and business acquisitions (sections 58-69B of Part 5 of the Commerce Act). Authorisation is able to be sought for most types of practices and business acquisitions that substantially lessen competition, if sufficient benefits to the public are shown that outweigh any detriments arising from the practice. Clearance can be sought for business acquisitions that may or may not substantially lessen competition.

It is generally accepted that New Zealand’s clearance and authorisation processes are of a high standard. The Review is drawing on the experiences of regulators and practitioners to further improve the authorisation and clearance processes. In particular, the Review will look to ensure that the authorisation and clearance processes within the Commerce Act provide the appropriate degree of: accountability and transparency of decision making; participation by interested parties; analytical rigour and due process; and timeliness of decision making.

35. The discussion documents on both streams of the Review were released for full public consultation in early 2007. Copies of the submissions received are located on the Ministry of Economic Development (MED) website www.med.govt.nz. Final policy proposals on Stream one of the Review are expected to be recommended to Cabinet in late 2007, and by mid 2008 for Stream two. Any legislative amendments resulting from the Review are expected from 2008 onwards.
1.3.3 Electricity

36. The Government has decided to amend the Electricity Industry Reform Act 1998 to relax the rules restricting cross-involvement between electricity lines business and supply business. A draft Bill has been prepared and consultation on the draft is currently being undertaken. The purpose of the amendment Bill is to address the issues that discourage line companies from investing in renewable generation while retaining key restrictions on cross-involvement. (The 1998 Act required ownership separation between lines and supply in order to facilitate competition.)

37. A draft New Zealand Energy Strategy was released in December 2006 for consultation, and the final Energy Strategy is due in October 2007. It is a national strategy for energy that will set out the long-term direction of New Zealand's energy system, so that the energy sector and consumers can respond with more certainty and confidence to the energy challenges and opportunities of the future. It is designed to put New Zealand on the path to a sustainable, low emissions energy future.

38. As noted above, the regulation of electricity lines businesses under Part 4A of the Commerce Act has been included in a review of the regulatory control provisions in the Commerce Act.

1.3.4 Gas

39. The Minister of Energy has announced plans to review the Government Policy Statement on Gas Governance. The Gas Industry Company, the industry co-regulatory body, is required to have regard to the objectives and requirements included in the policy statement when developing improved gas market arrangements.

40. In April 2003, the Minister of Energy asked the NZCC to make recommendations on whether or not the supply of gas pipeline (transmission and distribution) services should be controlled under Part 5 of the Commerce Act.

41. The NZCC’s Final Report was released by the Minister of Energy in December 2004. The NZCC recommended to the Minister that:

- Control under Part 5 should be imposed on the gas pipeline services of two gas distribution companies (Vector Limited and Powerco Limited); and
- A targeted (thresholds) control regime akin to the electricity targeted control regime should be introduced for all gas (distribution and transmission) pipelines.

42. In July 2005, the Minister of Energy accepted the NZCC’s recommendations and announced that the gas pipeline services operated in respect of the gas pipelines owned by Powerco Ltd and Vector Ltd will be subject to control under Part 5 of the Commerce Act. The Order in Council took effect on 25 August 2005 for a period of 11 years.

43. The NZCC was required, in the month preceding the Order in Council taking effect, to establish provisional authorisations to enable each of the controlled businesses to continue to trade and provide the relevant services. The provisional authorisations reduced the average prices for controlled services as at 1 October 2005 to be at least 9% lower that the average price charged on 30 June 2005 by Powerco and 9.5% lower than the average price charged on 30 June 2005 by Vector.

44. Final authorisations are due to be completed by April 2008. For more information, refer: www.comcom.govt.nz/RegulatoryControl/Gas Pipelines/Overview.aspx
1.3.5 Dairy Industry

45. On 8 August 2007, the Government directed officials, led by the Ministry of Agriculture and Forestry, to undertake a review of the Raw Milk Regulations. The Review of the Raw Milk Regulations aims to ensure that the Raw Milk Regulations are achieving their policy intent, pricing milk fairly, and promoting a vibrant and innovative dairy industry.

46. The review is being undertaken in two stages. Stage one will involve clarifying the intent of the Raw Milk Regulations, and canvassing the full range of industry concerns about the current operation of the Regulations. Stage two will involve developing options to address concerns. The Review will report to the Minister of Agriculture by July 2008.

47. When it announced the Review, the Government also announced interim changes to the Raw Milk Regulations, which will apply only to the 2007/08 and 2008/09 dairy seasons. The changes increase the maximum volumes of raw milk that Fonterra Co-operative Group Limited (Fonterra) is required to supply to other dairy processors under the Regulations. For the 2007/08 season, Fonterra can be required to supply up to 500 million litres (100 million litres more than the previous requirements). For the 2008/09 season, Fonterra can be required to supply up to 600 million litres.

48. In August 2007, the Minister of Agriculture introduced the Dairy Industry Restructuring Amendment Bill (No 2) to Parliament. This Bill amends the Dairy Industry Restructuring Act 2001 (DIR Act). The Bill predominantly deals with access to eleven "designated" export markets (generally country specific tariff quota markets). Under the DIR Act, Fonterra held exclusive access to these markets for fixed periods, but these access rights expire progressively between 2007 and 2010.

49. The Bill removes all export restrictions to some of these markets. For other markets, the Bill provides for export licences to be allocated to multiple dairy industry participants, on the basis of the proportion of milk solids they collect from New Zealand dairy farmers.

2. Enforcement of competition laws and policies

50. The NZCC is charged with enforcing a range of regulatory regimes, both general and industry specific. Its key enforcement activities during the year to 30 June 2007 are outlined below. More information about the NZCC’s functions can be obtained from the NZCC’s web site: www.comcom.govt.nz

2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1 Anti-competitive Behaviour Investigations

51. Part 2 of the Commerce Act prohibits:

- arrangements that have the purpose, effect or likely effect of substantially lessening competition (including both horizontal and vertical arrangements); and

- taking advantage of a substantial degree of market power for an anticompetitive purpose.

52. In addition, it contains three per se prohibitions relating to price fixing, exclusionary arrangements and minimum resale price maintenance.
During 2006/07, the NZCC completed 28 investigations under Part 2 of the Commerce Act and, as at 30 June 2007, had 14 investigations on hand. Of the 28 investigations closed, five resulted in enforcement action, with one warning issued, one administrative settlement reached, and court proceedings filed against two alleged cartels and one collusive arrangement.

The NZCC’s focus during the year has been to complete a number of long standing investigations and to be more selective about its choice of new cases to investigate. The intention is to open fewer cases, but to focus resources on cases where the NZCC can have greatest impact. Factors taken into account in prioritising the selection of cases include the value of commerce likely to be affected, the duration and nature of the conduct, the characteristics of the parties involved and the availability of evidence. Once the backlog of long standing investigations is cleared, the NZCC anticipates maintaining a targeted mix of anticompetitive agreement and unilateral conduct cases, and a higher proportion of cases resulting in enforcement action.

A priority for the NZCC is the promotion of its leniency and cooperation policies to facilitate the detection and investigation of cartels. This has been particularly successful in relation to international cartels, where companies may apply for leniency to multiple jurisdictions of which New Zealand is but one. These investigations have raised particular challenges in relation to matters of jurisdiction, cooperation with other competition agencies and ensuring the ongoing cooperation of the leniency applicant.

Given this international focus, a critical court finding during 2006/07 related to an interlocutory challenge to the jurisdiction of New Zealand courts. The case related to proceedings against three individuals allegedly involved in the NZCC’s largest cartel case, relating to wood chemicals. Two of the individuals concerned reside in Australia and the third currently resides in France.

The High Court judgement found jurisdiction in relation to the three defendants and also made helpful comments regarding substantive jurisdiction of the Commerce Act to the conduct. These comments supported the application of the Commerce Act to:

- conduct by a defendant residing overseas where, as part of that conduct, the defendant has directed communications to New Zealand, for example by sending letters or faxes or emails to a person in New Zealand, or holding telephone conversations with a person in New Zealand;

- an overseas defendant on whose behalf an agent, employee or representative (innocent or otherwise) has engaged in conduct in New Zealand that amounts to, or forms part of, a breach; and

- conduct outside New Zealand by a defendant who is a party to a conspiracy to breach the Act, provided that any party to that conspiracy has engaged in conduct in New Zealand in connection with the formation or implementation of the conspiracy.

The Court also found that there was an arguable case for finding accessory liability by the defendants in relation to failing in their legal duty to stop conduct by their subordinates in breach of the Act. It is the first time that accessory liability for inaction, as opposed to actively facilitating a breach, will be considered under the Commerce Act.

---

2 Commerce Commission v Koppers Arch Wood Protection (NZ) Limited [March 2007], 2 NZLR 805
59. While the judgement has been appealed, the implications for Commerce Act enforcement if this judgement is upheld are potentially significant. Increasingly, the NZCC’s experience is that executives and managers that are resident overseas (particularly in Australia) have responsibilities or involvement with New Zealand businesses or carry on business that affects New Zealand markets. Anticompetitive conduct by these persons may be directed to New Zealand, or it may take place when they visit New Zealand, or take place abroad but still affect a market in New Zealand.

60. The judgement will mean that where overseas executives have made an anticompetitive agreement about a New Zealand customer, and they direct a New Zealand agent to put the anticompetitive agreement into affect, even if the persons involved in New Zealand were completely innocent and did not have knowledge of what was agreed overseas, the conspiratorial behaviour of the overseas executives is within the jurisdiction of the Commerce Act.

61. The accessory liability factor is also a strong warning to executives, both domestic and residing overseas, that if they have the requisite authority to stop conduct that they know may contravene the Commerce Act and they do not act, they are themselves liable. This may help to bring in leniency applications where senior executives discover that their subordinates have been behaving anti-competitively.

62. A significant investigation concluded during the year related to credit card interchange fees. The NZCC filed proceedings alleging that various members of the Visa and MasterCard credit card schemes breached the Commerce Act by fixing, or being parties to fixing, the level of interchange fees. The interchange fees form a major component of the merchant service fees charged by banks to merchants for processing credit card transactions in the merchant acquiring market. The NZCC alleges that fixing the interchange fees along with the associated rules of the credit card schemes is anticompetitive. A court date has yet to be set for the proceedings.

2.1.2 Authorisations of Anti-competitive Behaviour

63. Under the Commerce Act, the NZCC may authorise an anticompetitive arrangement if the public benefits of the arrangement outweigh the associated competition detriments. In considering public benefits and detriments, the NZCC must have regard to efficiency.

64. During 2006/07, the NZCC received one application for variation of an existing authorisation. The New Zealand Rugby Union applied for variation in relation to the salary cap specified in its authorisation for the Air New Zealand Cup premier division competition. The variation was to allow for the All Blacks to be released for the 2007 Rugby World Cup and for payments for replacement players. The variation was granted and applies for the 2007 season only.

2.2 Mergers and acquisitions

2.2.1 Investigations of Mergers and Acquisitions

65. The NZCC completed four business acquisition investigations into non-notified mergers or acquisitions during the year, and as at 30 June 2007, had two investigations on hand. The four investigations were closed with no further enforcement action. The NZCC’s resources continued to be focused on its non-discretionary work under the voluntary formal clearance regime.

2.2.2 Clearance of Mergers and Acquisitions

66. Under the Commerce Act, parties may lodge a notice with the NZCC seeking a formal clearance of a proposed merger or acquisition. In considering a clearance application, the NZCC’s role is to
determine whether the merger or acquisition has, or is likely to have, the effect of substantially lessening
competition in any market. The clearance process has a statutory completion time of ten working days. This
time can be extended by agreement between the applicant and the NZCC. The average time taken to
make clearance decisions in 2006/07 was 45 working days.

67. The NZCC determined 18 clearance applications during the financial year, and as at 30 June
2007, had one undecided application on hand. Fifteen applications were granted, one of which was
conditional on divestment undertakings by the parties. The NZCC declined clearance for the remaining
three applications, all of which have been appealed to the High Court.

68. The following is a brief summary of key points relating to the three applications that were
denied clearance.

69. Decision No. 604 Transpacific Industries Group (NZ) Ltd / Ironbridge Capital Pty Limited\(^3\)
relates to the waste management industry. The New Zealand waste management industry has an estimated
annual turnover of between $400 and $550 million, and comprises a range of different services, including
solid waste collection, transfer and handling stations, treatment and processing, recycling, disposal, and a
range of specialist activities and services. The total volume of waste disposed of in New Zealand’s landfills
is approximately three million tonnes per annum.

70. The industry has been characterised by rapid concentration in recent times with a movement to
two main national participants, Transpacific Industries Group (TPI) and Ironbridge Capital Pty Limited
(Ironbridge). Ironbridge operates through its subsidiaries EnviroWaste Services Ltd and Manawatu Waste
Limited. TPI and the Ironbridge subsidiaries are vertically integrated in both waste collection and disposal
of waste through their interests in refuse transfer stations and landfills. The proposed acquisition by TPI of
EnviroWaste and 50 percent of Manawatu Waste would result in the removal of one of those two
participants from the whole of the South Island and part of the North Island.

71. The application was particularly interesting in relation to the NZCC’s approach to market
definition. The NZCC revised its previous 1999 determination of a broad waste collection market based on
an analysis of demand- and supply-side substitutability for different types of waste collections. The NZCC
found very little substitutability in relation to local authority collection contracts and privately contracted
collections from wheelie bins, front-end loaded bins and gantry bins. Specialised vehicles were required
for each of these types of waste collection and local authority contracts, in particular, required large-scale
operations. The services generally related to regional markets. In addition, the NZCC identified a separate
national market for customers that have sites in multiple regions, as these customers required services
additional to waste collection.

72. Consequently, the NZCC defined over 60 markets as a basis for assessing the competition effects
of the proposed acquisition. Significant barriers to entry arising from economies of scale and route density
were found in the regional collection markets for wheelie bins and front-end-loaded bins for commercial
customers. In addition increased vertical integration arising from ownership in refuse transfer stations and
landfills enhanced barriers to entry in two of the regional markets. The national market for waste
management services to national customers was also subject to significant barriers to entry. The NZCC
declined the clearance, which has subsequently been appealed to the High Court.

\(^3\) Commerce Commission, Decision No. 604 Transpacific Industries Group (NZ) Ltd / Ironbridge Capital
73. Decision Nos. 606 & 607 related to applications by both Woolworths Limited and Foodstuffs (consisting of three regional cooperatives) to acquire The Warehouse. The acquisition related to supermarket retailing in New Zealand. Until recently, consumers’ choice of supermarkets was limited to one or other of the businesses controlled by Foodstuffs or Woolworths. In the larger population centres, consumers may have had the choice of stores of both groups, but in lower population areas there may only have been a banner of one group represented.

74. The Warehouse is a major general merchandising chain in New Zealand with 85 stores nationwide. In 2006, The Warehouse introduced the supercentre concept to New Zealand in two North Island shopping centres. Modelled on supercentres operating overseas, the Warehouse ‘Extra’ stores provides shoppers with the convenience of shopping at one store for general merchandise, apparel, and a wide range of grocery and food items commonly found in supermarkets. The Warehouse stated it intended to run this format for some time to see if it would succeed. If it was successful, it would roll it out in other centres.

75. The competition effects of the proposed acquisition were particularly interesting, as the competitive constraint imposed by The Warehouse in the supermarket retailing sector mainly related to the competitive threat that was created by its future potential to roll out its Warehouse ‘Extra’ stores to other centres rather than a constraint from existing competition. The NZCC considered that the proposed acquisition by Foodstuffs or Woolworths would result in The Warehouse ceasing to be an existing supermarket retailer in a small number of regions, and a potential supermarket retailer in a number of other regions. A consequence of the acquisition would be that the benefits of the innovative supercentre concept introduced by a third maverick player would be lost. In addition, the acquisition would foreclose the potential for The Warehouse to be used by any other independent party as a springboard to entering the supermarket markets.

76. Consequently, the NZCC’s case rested on the significant competitive effects of supercentres or hypermarkets overseas. Given the high barriers to entry to the supermarket sector, the loss of existing and potential competition from an innovative firm in circumstances where it was seen as the only likely entrant for the foreseeable future, the NZCC concluded that it could not be satisfied that the proposed acquisition would not be likely to substantially lessen competition. Foodstuffs, Woolworths and The Warehouse have appealed this decision, with a hearing to be held later this year.

2.2.3 Authorisation of Mergers and Acquisitions

77. The NZCC may grant authorisation to proposed mergers and acquisitions if it is satisfied that the public benefits directly attributable to the proposed acquisition outweigh any competition detriment. The NZCC did not receive or determine any applications for authorisation of mergers in 2006/07.

3. The role of competition authorities in the formulation and implementation of other policies

3.1 Consumer legislation

78. The NZCC enforces the Fair Trading Act which prohibits misleading representations made in trade. The NZCC considers that this role effectively complements its responsibilities in the area of competition law. It is vital that consumers receive clear and accurate information about the nature and

---

prices of goods and services being offered to them if markets are to send the correct signals to the participants and if competition is to work effectively.

79. Recent high profile Fair Trading Act cases taken by the NZCC include civil and criminal actions against all the major banks for non disclosure of currency conversion fees and a prosecution of two major airlines for add-on fees which were additional to headline prices. While these fees remained hidden from consumers the traders had no incentive to lower them.

80. As a result of the NZCC’s actions, the existence and level of these fees are now being disclosed much more clearly. The cases against the banks have also resulted in total compensation payments to consumers of over $23 million in addition to the criminal penalties imposed. The NZCC is also currently involved in litigation against a major timber supplier, which over several years falsely labelled timber as being of a higher grade. The NZCC has been successful in a prosecution of the company, has taken criminal proceedings against some company executives and is also pursuing civil litigation to achieve compensation for affected consumers. In another high profile case, GlaxoSmithKline was convicted of making false and misleading claims about the vitamin C level in its ready-to-drink Ribena product.

81. The NZCC has a statutory role in relation to a number of other industry-specific competition or regulatory regimes.

3.2 Dairy Industry

82. The NZCC has both enforcement and adjudicative functions under the Dairy Industry Restructuring (DIR) Act 2001 in relation to certain dairy markets. The DIR Act was enacted following the formation of Fonterra Co-operative Group Limited (Fonterra) to promote the efficient operation of dairy markets through ensuring contestability in those markets.

83. Under the DIR Act, Fonterra has obligations to its farmer suppliers to ensure it does not foreclose competition in the raw milk market by preventing its farmer suppliers from switching milk supply to independent processors. In addition, Fonterra has obligations to supply up to 500 million litres of raw milk to independent processors at prices that may be negotiated or determined by default in regulation. The NZCC has a role to both enforce and adjudicate on disputes relating to these obligations.

84. During 2006/07, the NZCC completed three investigations resulting in no further enforcement action. The NZCC did not receive any applications to resolve disputes. The main activity in relation to the DIR Act this year was the resolution of the long running dispute before the courts of the calculation of components of the default milk price used in the access regime for raw milk to be supplied to independent processors. The outstanding issue was the choice of discount rate to be used to calculate the annualised share value, which represents the return on invested capital that is deducted from Fonterra’s bundled payout to calculate a raw milk price.

85. Fonterra had used a weighted average cost of capital but the NZCC argued that a cost of equity capital should be used to be consistent with the purpose of the regulations. In the previous financial year, the Court of Appeal held that reading ‘cost of capital’ as ‘cost of equity capital’ would be straining the words of the regulations. The NZCC appealed this decision, and in May 2007, the Supreme Court ruled in the NZCC’s favour. The decision will require Fonterra to charge independent processors a price for milk that more accurately reflects the price it pays its own farmer suppliers for their raw milk. This will enable independent processors to compete with Fonterra on a level playing field.

---

3.3 Electricity Lines Industry

86. The NZCC has responsibility for electricity sector regulation under the Electricity Industry Reform (EIR) Act and the regulatory control provisions (Parts 4A and 5) of the Commerce Act. The electricity sector is also subject to general market regulation under the Commerce and Fair Trading Acts.

3.3.1 Electricity Industry Restructuring Act

87. The EIR Act restricts relationships between electricity lines businesses and electricity supply businesses. Under the EIR Act, the NZCC enforces the structural separation rules and, on application, may grant exemptions if it is satisfied that the proposed cross-ownership or involvement would not inhibit or foreclose competition in upstream or downstream markets for electricity generation or retailing. The NZCC may also grant exemptions if it is satisfied that the involvement would result in relationships between lines and supply businesses that are at ‘arms length’.

88. During 2006/07, the NZCC completed two investigations resulting in no further enforcement action and, as at 30 June 2007, had four investigations on hand. The NZCC also determined two applications for exemption under the EIR Act, and as at 30 June 2007, had nine applications on hand. Both exemptions were granted with conditions.

3.3.2 Regulatory control of Electricity Lines Businesses

89. Part 4A of the Commerce Act provides the NZCC with regulatory responsibility over the one transmission business (Transpower) and 28 distribution businesses that make up the large electricity lines businesses. This regulatory responsibility allows the NZCC to:

- Assess lines businesses against thresholds set by the NZCC and determine whether these thresholds have been breached;
- Develop and administer an electricity information disclosure regime for disclosure of financial and other performance information; and
- Ensure that the valuation of lines businesses’ system fixed assets reflects the correct application of the optimised deprival valuation (ODV) method, and undertake a review of the valuation methodologies for the fixed assets of lines businesses.

3.3.3 Performance Thresholds

90. The NZCC assessed compliance statements for the 31 March 2006 assessment date. In 2006, twelve businesses indicated that they had breached the price path threshold. Three related to businesses that had previously breached these price paths and were subject to post-breach inquiries. Ten businesses also reported breaches of the quality threshold set for electricity lines businesses. Three of the businesses are currently under post-breach inquiries. Two new post breach inquiries were opened as a result of price-path and quality breaches increasing the number of post breach inquiries to eight. The NZCC is currently assessing compliance for the year ended 31 March 2007.

91. In June 2007, the NZCC gazetted the Commerce Act (Transpower Thresholds) Notice 2007 to take effect from 1 July 2007. By this Notice, the NZCC reset Transpower’s existing price path and quality thresholds for a further year or until such time as an administrative settlement proposal, acceptable to the
NZCC, had been consulted on and determined that set different thresholds for that business. Transpower is the sole transmission business responsible for the operation of the national transmission grid.

3.3.4 Regulatory Control Declarations

Unison Networks

92. On 24 August 2005, the New Zealand Court of Appeal dismissed an appeal from Unison Networks Limited that sought to prevent the NZCC from deciding whether to publish an intention to declare control of that company’s electricity lines business activities. In dismissing the appeal, the Court noted that regulatory processes could be distorted if the Courts insisted that a challenge to one step of the statutory process was required to be fully resolved before the NZCC could complete any subsequent procedural steps.

93. On 9 September 2005 the NZCC published its intention to control the electricity distribution services of Unison Networks Limited. This was the first time since the regime commenced in August 2001 that the NZCC had done so. The NZCC subsequently held a public consultative process during November and December to determine whether to control Unison’s electricity distribution services assets. During this time the NZCC held public conferences in each of the major towns associated with the networks owned by Unison. Subsequently in March 2006, Unison sought to enter into an administrative settlement offer with the NZCC and in an interim move confirmed that from 1 April 2006 it would reverse its most recent distribution price increases that applied to two of its three networks. Unison consequently prepared an administrative settlement offer that was consulted on during the month of November 2006.

94. On 1 December 2006, consistent with its offer and an earlier public announcement, Unison carried out the first stage of price rebalancing which was a key plank of the administrative settlement proposal.

95. In February 2007, the NZCC determined that before an administrative settlement could be finally accepted and determined by the NZCC, the parties would be required to enter into a Deed of Settlement that reflected the terms of the settlement proposed. On 1 April Unison completed its price rebalancing as proposed in its administrative settlement offer.

96. On 11 May 2007 the NZCC issued its first final determination of a post breach inquiry indicating that it considered that Unison’s administrative settlement proposal was preferable to control in the long-term benefit of consumers. The NZCC also established a clear framework for assessing administrative settlement proposals, which had been earlier consulted on as part of the Unison consultative process.

Transpower

97. On 22 December 2005 the NZCC published an intention to declare control of the electricity transmission services supplied by Transpower New Zealand Limited, the sole owner operator of the national transmission grid. Transpower was in breach of its price path thresholds and had announced an intention to increase prices by 19% as from 1 April 2006.

98. On 31 January 2006 the written reasons for the decision to declare control were released. This was followed by expanded reasons following consultation with Transpower on confidentiality issues. Subsequently on 31 March, Transpower made an interim commitment that the proposed price increase would not go ahead on 1 April whilst it prepared an administrative settlement offer to present to the NZCC.

99. In December 2006, as negotiations continued, the NZCC agreed that Transpower’s proposed pricing for the 2006/07 and 2007/08 years, which substantially reduced earlier proposed increases,
appeared reasonable. It is expected that a full administrative settlement proposal will be made by Transpower on 31 August 2007.

Vector

100. An intention to declare control was published in August 2006. This followed a price breach of the initial price path, breach of the quality and threshold and a subsequent breach of the quality threshold. During the course of initial investigations into the price and quality breaches it became clear to the NZCC that there were significant concerns relating to the pricing strategies employed by Vector that apparently favoured certain consumer classes as between and across its three networks resulting in considerable price imbalances between customer classes.

101. Vector initially undertook voluntarily to resolve the issue but subsequent assessments in 2006 revealed that for some classes the imbalance was worsening rather than improving.

102. In September 2006, Vector approached the NZCC to make a formal offer of administrative settlement. A final updated offer was received in January 2007. A key component of the offer was a commitment to rebalance tariffs by region and customer class in two tranches. The first rebalancing adjustment took effect on 1 April 2007.

103. A consultative package is being developed to enable consultation in the third quarter of 2007.

3.3.5 Information Disclosure and Asset Valuation

104. The NZCC has been reviewing the information disclosure regime to ensure the quality and availability of reliable and timely information supplied by electricity lines businesses. This is important information for consumers. Two key papers were published, the Valuation of the Regulatory Asset Base paper and the Review of the Information Disclosure Regime paper, outlining what the NZCC believed needed to be disclosed under the regime and how system fixed assets should be valued. These decisions will help inform the drafting of the revised disclosure requirements.

105. Information disclosure workshops were also held with auditors and representatives from the electricity lines industry. The aim of the workshops was to develop specifications for regulatory financial statements and financial performance measures, enabling new financial information disclosure requirements to be issued in the first half of 2006/2007.

106. Sound asset management planning is essential for electricity lines businesses and to assist in this process, the NZCC published its Asset Management Plans: Revised Information Disclosure Requirements and Handbook Decision Paper on 31 March 2006. This outlined the NZCC’s final decisions on revisions designed to implement best practice for asset management planning as well as requirements to improve interpretation and consistency of the disclosures.

107. Under the targeted control regime, there is no prior approval of investments, unlike that required in many regulatory environments overseas. The new asset management planning key decisions are that asset management plan disclosures must be approved by the Board of the disclosing entity and will be disclosed at the same time as the financial information disclosures by those entities. Asset Management Plans will be reviewed by the NZCC annually and forecast capital expenditures must be disclosed, with any forecast variances explained as part of the disclosures. It is intended that this will assist in identifying the increasing investment needs at an earlier stage, addressing many of the issues that have arisen in the past around investment planning.
108. The first assessments of the Asset Management Plans under the new requirements were released in August 2006. This revealed a considerable range in the quality and robustness of asset management planning. The summary and analysis did indicate positive progress towards best practice asset management planning.

109. During the course of the first half of 2007 substantial work was undertaken to shape the next consultative packages following on from the 2006 initial draft decisions. The key areas are focused on the regulatory asset base roll forward and return on investment performance measures, along with drafting information disclosure requirements that align with these issues.

110. This has also required the NZCC to reconsider the principles of regulatory asset base valuation that underpin these performance measures. This resulted in the NZCC determining in July 2007 that the current ODV valuation methodology would continue in place until such time as the outcomes of the government’s current review became clearer. For more information, refer: www.comcom.govt.nz/IndustryRegulation/Electricity/Overview.aspx

3.4 Telecommunications Industry

111. The Telecommunications Act 2001 provides for an access regime for regulated telecommunications services, which is administered by a Telecommunications Commissioner and the NZCC. In addition, the NZCC is required to report on compliance with the telecommunications service obligations, and allocate the costs of these obligations to all liable parties. The NZCC also has a role under the Telecommunications Act in recommending to the Minister of Communications whether the scope of regulation should be expanded to include new services, or altered to amend or remove existing services.

112. In December 2006 Parliament passed the Telecommunications Amendment Act (No 2) 2006 which made significant changes to the New Zealand telecommunications regulatory regime. This Amendment Act introduced new regulated services, in particular local loop unbundling. A number of other changes have been made to the Telecommunications Act that strengthen and change the way the NZCC regulates access to the incumbent networks.

3.4.1 Access Determinations

Interconnection

113. In September 2006, the NZCC issued a final determination on Vodafone's application for interconnection with Telecom's fixed PSTN. The determination required Vodafone and Telecom to exchange local voice calls at a reciprocal price of zero, in accordance with the 'pure bill and keep' pricing method. This determination relates to calls between the carriers' local numbers (which can include local numbers on Vodafone’s mobile handsets) and does not include calls to or from mobile numbers.

Wholesale Services

114. CallPlus and Ihug applied to the NZCC for a reconsideration of the NZCC’s bistream determination. The NZCC finalised the reconsideration shortly after the end of the final quarter. The reconsideration set a new price for the service of $26.35 for the service, and a new method for updating the price to reflect changing retail conditions.

Standard Terms Determinations

115. Standard Terms Determinations are a new form of access regulation. Previously the NZCC could only intervene in access disputes if a party to the dispute sought a ruling. The Standard Terms process
allows the NZCC to initiate a process for setting regulated terms and conditions if it considers it necessary to promote competition.

116. The NZCC has initiated the standard terms development process for the following services:

- unbundled copper local loop
- unbundled bitstream access
- services unbundled copper local loop co-location
- unbundled copper local loop backhaul
- unbundled bitstream access backhaul

117. The NZCC will complete determinations of terms and conditions for the first three services by the end of 2007.

Number Portability

118. The industry launched full local and mobile number portability on 1 April 2007.

Telecommunications Service Obligations

119. On 23 March 2007 the NZCC issued the final determination of the local residential telephone service TSO for 2003/04. The NZCC determined the cost of Telecom’s service obligations for that period to be $63.8 million.

120. The cost will be apportioned between Telecom, TelstraClear Limited, WorldxChange Communications Limited, Vodafone New Zealand Limited, CallPlus Limited, Compass Communications Limited, Teamtalk Limited, and The Internet Group Limited (ihug) in proportion to their share of qualifying industry revenue.

121. The NZCC’s calculation of the TSO net cost involved two key factors:

- the NZCC determined that the number of commercially non-viable customers was approximately 61,000 of the 1.3 million residential customer lines covered by the TSO obligation; and
- the net cost includes a reasonable return on capital to service the non-viable customers. The NZCC concluded this is a low risk business and that an after tax return of 6.4 percent was reasonable.

Mobile Termination

123. In December 2006, Communications Minister David Cunliffe delegated power to make the decision on mobile termination, which the NZCC had recommended be regulated, to Economic Development Minister Trevor Mallard.

124. On 30 April 2007 Economic Development Minister Trevor Mallard accepted binding commitments by Vodafone and Telecom to reduce mobile termination rates over 4-5 years as an alternative to the regulation of mobile termination services.

Mobile Services Review

125. On 10 October 2006 the NZCC launched an investigation into:

- amending the terms of the national roaming service;
- changing the regulation of the national roaming service to include price as well as non-price terms; and
- changing the regulation of the co-location service to include price as well as non-price terms.

126. For the first time, the NZCC considered an undertaking by Vodafone as an alternative to regulation. The NZCC will complete the review by the end of 2007.

Sector Monitoring

127. As part of its enhanced monitoring obligations, the NZCC has released telecommunications key statistics quarterly monitoring reports for the quarters ending 31 December 2006, 31 March 2007 and 30 June 2007. For more information, refer:


3.5 Regulatory Control Gas Pipeline Services

128. Part IV of the Commerce Act provides that goods and services may be controlled where competition is lessened and the imposition of control would be in the interests of acquirers. The NZCC can initiate its own study into whether control should be imposed or alternatively, a study may be requested by the responsible Minister.

129. During 2004, the NZCC worked on an inquiry into the supply of gas pipeline (transmission and distribution) services at the request of the Minister of Energy. The NZCC delivered its findings in the Gas Control Inquiry Final Report to the Minister of Energy in November 2004. In the report the NZCC recommended control of both Powerco Limited and Vector Limited.

130. In August 2005, the Minister of Energy accepted the NZCC’s recommendations contained in its Gas Control Inquiry Final Report and, pursuant to Part 4 of the Commerce Act, announced the imposition of control over the gas pipeline services of Powerco Limited and Vector Limited. On 24 August, the NZCC issued a Provisional Authorisation in respect of the prices and quality of the gas pipeline services for these companies to take effect the next day. The Provisional Authorisation also enabled the companies to continue providing these services. The Provisional Authorisation requires Powerco to ensure its average price for controlled services as at 1 October 2005 was at least 9% lower than the average price charged at
30 June 2005. For Vector the average price was required to be at least 9.5% lower than the average price charged at 30 June 2005.

131. The release of the Provisional Authorisation followed a decision of the New Zealand High Court rejecting applications by both Powerco Limited and Vector Limited for urgent interim orders directing the form of control that the NZCC could implement.

132. Powerco and Vector both separately applied to the Wellington High Court for judicial review seeking orders quashing the NZCC’s finding in the Gas Control Inquiry Final Report itself. The High Court has determined that the two claims will be heard at the same time. A hearing date is set for November 2006.

133. On 24 January 2006, the NZCC published its Authorisation for the Control of Supply of Natural Gas Distribution Services by Vector Ltd and Powerco Ltd Process Paper. This paper described the NZCC’s proposed approach for issuing the final determination for the authorisation of the supply of gas distribution services of the companies.

134. In September 2006 an additional round of consultation on asset valuation was considered appropriate following an August Government Policy Statement that the NZCC was required to have regard to that related to ensuring that in its decisions the NZCC ensured that the investment incentives of regulated businesses, in the long-term interests of consumers, were taken account of in its regulatory decisions.

135. On 3 October 2006, the NZCC issued a Letter of Instruction and a methodology decisions paper for the gas pipelines businesses. Extensive work continued on developing replacement cost schedules for the regulated businesses. This resulted in a further round of consultation commencing 17 November 2006. The result of this consultation was a move away from a standard replacement cost schedule to a schedule for each of the businesses that more transparently covered the business-specific issues that the two regulated businesses faced when installing new capital assets. Final decisions on these schedules and the associated multipliers were released in February 2007.

136. The regulated businesses were then required to complete regulatory asset valuations by April 2007. This resulted in provisional asset valuations by the Companies that were substantially higher than those under consideration at the gas control inquiry under Part 4 of the Commerce Act that resulted in the Minister’s Order-in-Council.

137. On 7 July 2006 the NZCC issued a discussion paper seeking submissions on the form of control to advance the process towards the issuance of final authorisations. This then was followed by a substantive conference held over three days that resulted in an additional round of consultation and further submissions being sought on form of control issues. This work will form part of the draft decisions paper to be released later in 2007.

138. In July 2006 the NZCC consulted on whether to amend the Provisional Authorisations set in August 2005. It was determined shortly after year end that the Provisional Authorisations would not be amended but would stay in place as determined in August 2005 until such time as the Final Authorisation takes effect or, alternatively the NZCC decides to amend the authorisations, at which point it would consult again.

139. In May 2007, following the outcome of the asset valuations of the regulated businesses, applying the approved methodologies and instructions of the NZCC, the NZCC reassessed whether the terms of the Provisional Authorisations remained appropriate, in the light of the revaluations. The NZCC determined that this was the case and reaffirmed with the regulated businesses that the Provisional Authorisations
would remain, as determined in August 2005, until such time as Final Authorisations took effect, unless later amended by the NZCC, following consultation.

140. The authorisation process is a very new process for the NZCC and other interested parties. This fact, coupled with difficulties in obtaining the relevant information resulted in the original timetable being amended and extended so that the final authorisations would take effect no later than April 2008. For more information, refer:


4. Resources of Competition Authorities

4.1 Resources overall (current numbers and change over previous year):

Annual budget (in your NZD and USD)

<table>
<thead>
<tr>
<th>Description</th>
<th>NZD</th>
<th>USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Annual Budget 2006/07:</td>
<td>11.6</td>
<td>7.8</td>
</tr>
<tr>
<td>Total Annual Competition Law Enforcement Budget 2006/07:</td>
<td>10.3</td>
<td>7.0</td>
</tr>
</tbody>
</table>

(conversion rate @ 0.68 cents)

Number of employees (person-years)

<table>
<thead>
<tr>
<th>Category</th>
<th>Numbers</th>
<th>FTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economists</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Lawyers</td>
<td>6.5</td>
<td>6.5</td>
</tr>
<tr>
<td>Other professionals</td>
<td>17.5</td>
<td>16</td>
</tr>
<tr>
<td>Support staff</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>All staff combined</td>
<td>32</td>
<td>30.5</td>
</tr>
</tbody>
</table>

4.2 Human resources (person-years) applied to:

<table>
<thead>
<tr>
<th>Category</th>
<th>Numbers</th>
<th>FTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enforcement against anticompetitive practices</td>
<td>20</td>
<td>18.5</td>
</tr>
<tr>
<td>Merger review and enforcement</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Advocacy efforts(^6)</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

4.3 Period covered by the above information:

141. The information collated in the above tables relates to NZCC resources as at 30 June 2007.

\(^6\) The NZCC does not advocate. These figures are litigation efforts for the period