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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN NEW ZEALAND

-- 2009 --

This report is submitted by New Zealand to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 27-28 October 2010.

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OECD ANNUAL REPORT ON COMPETITION POLICY IN NEW ZEALAND

1 September 2009 – 31 August 2010

Executive summary

1. The New Zealand Commerce Commission (NZCC) is the primary competition authority and the Ministry of Economic Development (MED) is the primary competition policy adviser to the Government. New Zealand's key competition statute is the Commerce Act 1986, and this is accompanied by industry specific competition legislation for the electricity, telecommunications, and dairy industries.

2. A number of competition laws and policies have been adopted and proposed in the past 12 months. The Electricity Industry Act 2010 has amended the Electricity Act 1992, introducing changes such as creating a new Electricity Authority to replace the Electricity Commission and shifting some regulatory responsibilities to the Commerce Commission. Pro-competitive provisions have been extended in the Dairy Restructuring Act 2001, which also introduced a new pricing formula for regulated milk. In the telecommunications industry, the Government is planning to reform the Telecommunications Service Obligation (TSO), and introduce regulatory forbearance for local fibre companies. A decision has also been made to regulate mobile termination access services.

3. The Government is also progressing work on the criminalisation of cartels – considering the question of whether to criminalise as well as optimal legislative design. Legislation is being progressed to enable information sharing between the NZCC and other competition and consumer authorities.

4. The NZCC continued to enforce a range of regulatory regimes, both general and industry specific. During the period, the NZCC prioritised work on cartels with a record number of co-ordinated behaviour investigations. By contrast, there were a record low number of merger clearance applications. The NZCC has also continued to develop and publish guidelines, such as an updated cartel leniency policy.

5. A number of investigations have been conducted, some resulting in successful outcomes without resorting to litigation. The NZCC was also involved in various litigation matters. One of these was a High Court finding that the Telecom used its substantial market power to prevent and deter competition in markets involving high-speed data transmission.

6. The NZCC is also implementing a new price-quality and information disclosure regulatory regime for natural monopolies. In telecommunications, the NZCC has recommended the regulation of mobile termination access services and enforced the operational separation of the incumbent fixed line telecommunications company.

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

7. The Commerce Act 1986 is the central pillar of New Zealand's competition law. Its purpose is to promote competition in markets for the long-term benefit of consumers within New Zealand. The Commerce Act applies broadly across the economy, including the public sector. It is supplemented by industry-specific competition legislation for the electricity industry (the Electricity Industry Reform Act

1998), the telecommunications industry (the Telecommunications Act 2001), and the dairy industry (the Dairy Industry Restructuring Act 2001).

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

1.1 Summary of new legal provision of competition law and related legislation

1.1.1 Electricity

- Electricity Industry Act

The Electricity Industry Act 2009 (EIA) implements many of the decisions from the Electricity Market Review.

- Replacing the Electricity Commission with an Electricity Authority

The EIA disestablishes the Electricity Commission (EC) (effective 31 October 2010), and establishes the Electricity Authority (EA) (effective 1 November 2010). The EA will have a narrower set of functions than the EC and greater statutory independence.

The EA will be responsible for:

- developing and administering market rules in the form of a Code;
- market facilitation through education, guidelines, model contracts and the like;
- monitoring compliance with the code and taking enforcement action through an independent Rulings Panel;
- contracting for market operations, including pricing, reconciliation, registry, and system operations; and
- undertaking reviews on written request of the Minister.

Regulatory oversight of all transmission grid expenditure will be transferred to the Commerce Commission, instead of being split between the Electricity Commission and the Commerce Commission. The Act does this by adding the following functions to the Commerce Act:

- approving grid upgrade plan proposals by Transpower (the national grid operator); and
- determining a methodology for the review of Transpower's capital expenditure proposals.

- Asset swaps between state-owned enterprises

The EIA gives shareholding Ministers power to direct state-owned generator-retailers (Meridian Energy Limited, Mighty River Power Limited, and Genesis Energy Limited) to undertake a limited reconfiguration of their assets. The objective is to improve the level of market competition, particularly in the retail sector, and potentially to help improve security of supply.

This includes physical asset swaps between Meridian Energy Limited and Genesis Energy Limited, and the sale of Whirinaki power station (currently owned by the Crown and contracted to the Electricity Commission as reserve energy).

The EIA also requires Meridian Energy Limited, Mighty River Power Limited, and Genesis Energy Limited to enter into one-off, long-term (up to 15 years) contracts for financial hedges. This can be regarded as a virtual asset swap, as it has the effect of providing each of the SOEs with access to energy at fixed prices in the island (North or South) where they currently have little or no generation capacity. The aim is to facilitate and encourage the SOEs to be more active in retailing nation-wide.

- Provisions carried over from the Electricity Industry Reform Act

The EIA replaces the Electricity Industry Reform Act 1998 (*EIRA*). EIRA required the ownership separation of distribution (lines) businesses, which are natural monopolies, from generation and retailing, which are contestable or competitive activities. The aim of EIRA was to facilitate competition in the retailing and generation markets by removing the incentive and ability of the then integrated supply authorities to discriminate against competing retailers and generators. EIRA also sought to remove the ability to cross-subsidise retailing and generation activities from captive line customers. EIRA has largely succeeded in achieving its objectives (in particular, achieving open access to lines), and the introduction of price control under Part 4 of the Commerce Act 1986 and additional regulatory powers under the Electricity Act 1992 has reduced the need for ownership separation.

Part 3 of the EIA allow lines businesses back into retailing without any quantity restrictions to encourage further retail competition (and to remove a residual 50MW cap on the quantity of thermal generation a lines business may build), with the following restrictions:

- the existing requirements in EIRA requiring corporate separation and compliance with arms-length rules between lines and generation and retailing are retained. The specifications relating to when these rules apply, and the arms-length rules, are carried over in *Schedules 2 and 3*;
- retention of the existing requirements in EIRA for distributors to put in place transparent and non-discriminatory use-of-system agreements with their own retailer and generation businesses;
- retention of ownership separation between lines businesses and generators with more than 250MW of grid-connected generation. The aim is to prevent large-scale vertical integration between generator-retailers and lines businesses. This could have seriously negative effects on competition, especially where the generator-retailer is the incumbent retailer;
- prohibiting lines businesses buying the customer bases of an existing retailer. This is a new provision. The reason for allowing lines businesses to retail is to benefit consumers by increasing the level of competition. This objective is not met if lines businesses buy-out an incumbent retailer (indeed the overall competitive situation could worsen; other new entrant retailers may be discouraged from entering if they have to deal with a lines businesses which is also an established retail competitor).

The enforcement provisions are largely carried over from the existing legislation, although some provisions that are no longer required are not retained. However, the EIA provides for the Electricity Authority to enforce the provisions, not (as currently) the Commerce Commission. This is part of the overall rationalisation of regulatory functions in the EIA, with the Electricity Authority focusing on pro-competitive rules and requirements, and the Commerce Commission focusing on economic regulation (price control) under Part 4 of the Commerce Act 1986.

1.1.2 Dairy industry

9. Regulations were introduced that created a new pricing formula for regulated milk, in September 2009. The Dairy Industry Restructuring (Raw Milk) Amendment Regulations replace the current pricing formula by:

- Creating a new definition for the ‘total cost of milk’
- Creating a new definition for the ‘farm gate milk price’
- Removing the current formula and inserting the ‘farm gate milk price + \$0.10’

10. There was also an extension of the pro-competition provisions in the Dairy Industry Restructuring Act 2001. The pro-competition provisions set market share thresholds for a minimum percentage of milk-solids that must be collected by independent processors in a season. The provisions were subject to expiry thresholds and have subsequently been reset.

1.1.3 Telecommunications: Mobile Termination Access Services (MTAS)

11. In August 2010 the Minister for Communications and Information Technology decided that the termination of voice-calls and SMS on mobile networks should be subject to regulation. The Commerce Commission will now be responsible for determining the precise price and non-price terms on which these termination services can be demanded by access seekers. These terms are likely to be determined by mid 2011.

1.2 Government proposals for new legislation

1.2.1 Generic competition law

- Commerce Commission (International Cooperation, and Fees) Bill

This bill authorises the NZCC to provide investigative assistance to share information it holds with competition and consumer protection authorities in other jurisdictions, subject to appropriate safeguards. It is currently under consideration by a Parliamentary Select Committee. Key features of the bill are:

- a requirement for a governmental cooperation arrangement to be in place before assistance or information can be provided. The bill sets out considerations for the relevant Minister before entering into an arrangement and also specifies things to be included in the arrangement.
- specific matters for the NZCC to take into account on a case by case basis when considering a request for assistance.
- provisions which protect privileged material that the NZCC may provide to an overseas regulator, by specifying that the NZCC should not be deemed as waiving its privilege by doing so. Similarly, privileged material that may be provided by an overseas regulator to the NZCC will be deemed as if privileged in the hands of the NZCC, under New Zealand law.

The Bill should be passed in 2011.

1.2.2 *Criminalisation of cartels*

12. The Ministry of Economic Development issued a discussion document on cartel criminalisation. The discussion document canvassed the question of whether or not to criminalise as well as the optimal legislative design. Submissions were received and policy decisions are pending. The discussion document and submissions can be accessed at: http://www.med.govt.nz/templates/ContentTopicSummary_42449.aspx

1.2.3 *Telecommunications*

- Telecommunications Service Obligations (TSO) policy

The Government is currently drafting a Bill to amend the Telecommunications Act 2001 to reform the Telecommunications Service Obligations. The Bill essentially does two things. Firstly it reforms the compensation mechanism for Universal Services. Secondly it establishes the industry funded Telecommunications Development Levy which will be used to develop telecommunications infrastructure in rural areas. This funding will be used under the Rural Broadband Initiative to roll out broadband infrastructure to rural areas in New Zealand. It is anticipated that the Bill will be introduced in November 2010.

- Ultra-fast broadband policy

The Government is also proposing to amend the Telecommunications Act 2001 to give operators of fibre to the premise (FTTP) networks a regulatory forbearance in return for accepting an information disclosure regime and an undertakings regime. These changes will also be included in the Bill that is anticipated to be introduced in November 2010.

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

2.1 *Action against anticompetitive practices*

13. The NZCC continued to prioritise its work on cartels, completing a record number of coordinated behaviour investigations (18). By contrast, the Commission received a record low number of merger clearance applications in the period (6). The Commission also completed 7 investigations into unilateral behaviour.

14. The NZCC continued to increase transparency and certainty for external stakeholders by developing and publishing a number of guidelines, including an updated cartel leniency policy, merger divestment guidelines and guidelines on failing firms.

15. At the end of the period (31 August 2010) the NZCC had 17 investigations open (including three international cartels, and one trans-Tasman), and 10 before the Courts.

16. In the relevant period the NZCC received four leniency applications, two of which were declined.

17. In the relevant period, the NZCC has taken the following action against anti-competitive practices:

- Issued 5 compliance advice letters.
- Issued 2 warnings (Electricity Collusive Investigation (Cobb), LED Lights)
- Entered into 2 administrative settlements (Gisborne Farmers Market, PPNZ)
- Made a decision to litigate in relation to one international cartel, but has not yet filed papers.

- Been involved in the following litigation matters:
 - Interchange Fees – The NZCC signed agreements with various banks and credit card companies settling the NZCC's claims that credit card scheme rules providing for the payment of multilateral interchange fees, together with related rules, breached the restrictive trade practices provisions of the Commerce Act. Pursuant to these settlements the banks have made commitments on interchange that will lower the cost of doing business. The package of reform introduced through these settlements will introduce real competition into credit card services.
 - Waikato Pathology – The High Court approved agreed penalties relating to anti-competitive arrangements by pathology providers in the Waikato.
 - Freight Forwarding – Proceedings were recently filed in the High Court against a number of companies accused of anti-competitive conduct in the freight forwarding market. This is an international cartel. The EU has completed its investigation into the same cartel and has sent statements of objection to a number of respondents. A number of other regulators are about to conclude their investigations.
 - 0867 – During this period the Court of Appeal delivered its decision in this case against Telecom New Zealand Limited. Whilst agreeing that Telecom had market power in the wholesale market, in applying the counterfactual test the Court did not agree that Telecom had taken advantage of its market power for an anticompetitive purpose. The NZCC appealed this decision to the Supreme Court which appeal was heard in the period.¹
 - Datatails – The High Court found that Telecom Corporation of New Zealand and Telecom New Zealand Limited used its substantial market power to prevent and deter competition in markets involving high-speed data transmission in breach of section 36 of the Commerce Act. Telecom has appealed the judgment.
 - GIS – The High Court heard proceedings against Siemens for its participation in the global gas insulated switchgear cartel. The parties await the Court's decision.
 - Wood chemicals – the NZCC discontinued proceedings in this long running cartel matter against the last remaining individual defendant. This action was taken following the April 2010 decision of the Supreme Court in relation to another individual, in respect of jurisdiction. The Supreme Court ruled that the Commerce Act only applies to conduct by any person resident in New Zealand or carrying on business in New Zealand. The Act does not extend jurisdiction in the same way as the common law does for conspiracies, despite reference to conspiracy in the penalty section (s80(1)(f)).
 - International Air Cargo – interlocutory matters have been heard. A preliminary hearing on the issue of market definition is to be heard in May 2011.

2.2 Mergers and acquisitions

18. As noted above, only six merger clearance applications were received in the period. Three were classified as straight forward/routine, and three classified as moderately complex. There were no significant cases in the period.

19. All five applications that were decided in the period were cleared. They were as follows:

¹ A decision in favour of Telecom was delivered after the relevant period of this report, and will be included in the report for next year.

2.2.1 *Straight forward/routine*

- Hoyts Corporation Holdings (NZ) Limited/Berkely Cinema Group - cinema
- Novartis AG/Alcon inc – eye care products
- Preformed Line Products Company/Electropar Limited – electricity transmission and distribution equipment

2.2.2 *Moderately complex*

- Tomorata Sand Limited/Coastal Resources Limited - sand
- AMP Limited/AXA Pacific Holdings Limited – wealth protection and wealth management products
- Also on the books but not yet decided is Scandinavian Tobacco/Swedish Match - tobacco products.

3. **The role of competition authorities in the formulation and implementation of other policies: regulatory reform, trade and industrial policies**

3.1 *Part 4 of the Commerce Act*

20. Part 4 provides for the regulation of markets that exhibit natural monopoly characteristics. In particular, provisions are specified for electricity distribution and transmission services, gas pipeline services and specified services of the major international airports of Auckland, Wellington and Christchurch.²

21. The NZCC has responsibility for setting input methodologies for suppliers of services regulated under Part 4. The purpose of input methodologies is to promote certainty for suppliers and consumers in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation of goods and services under Part 4.

22. Input methodologies cover topics that are core to the setting of price-quality paths for these services and include methodologies for the allocation of common costs to regulated services, the valuation of assets, the treatment of tax, and estimating the cost of capital and pricing. In addition, the NZCC will be setting methodologies covering a range of rules and processes for how regulation under Part 4 will operate. The NZCC is required to set the input methodologies by 31 December 2010.

3.1.1 *Electricity distribution*

23. The Act gives the NZCC responsibilities for the regulation of 29 electricity distribution businesses.³

² There are also ongoing transitional regulatory obligations that the NZCC is responsible for associated with the previous regulatory provisions of the now repealed Part 4A and Part 5.

³ In addition, the electricity and gas industry sectors are subject to general regulation under both the Commerce and Fair Trading Acts.

24. Under default and/or customised price-quality regulation provided for under Part 4⁴, the parameters of the price path are generally reset every regulatory period, which is often five years.⁵ To ensure the regulated supplier does not reduce service levels below those that consumers demand, quality standards are provided for.

25. Non-exempt electricity distribution businesses have the option of applying for a customised price-quality path to better suit their particular circumstances, however, applications cannot be made until the necessary input methodologies have been published.

26. Those non-exempt distribution businesses that do not comply with either the price or quality elements (disclosed via an annual compliance statement) of the default price-quality path will be considered to be in breach. The NZCC may pursue any breaches under Part 6 of the Act, including pecuniary penalties

27. The NZCC is required to set new information disclosure requirements for electricity distribution businesses under Part 4. The purpose of these requirements will be to ensure there is sufficient information publicly available to enable interested persons to assess whether the outcomes that are sought under Part 4 are being achieved. The NZCC intends to set new information disclosure requirements after applicable input methodologies are set.

28. Until these new requirements are set, the NZCC continues to administer information disclosure requirements issued in October 2008. This includes publishing an annual summary and analysis of the information publicly disclosed.

3.1.2 *Electricity transmission*

29. Transpower is regulated by way of an administrative settlement⁶ with the NZCC in respect of breaches of the thresholds set under Part 4A of the Act.⁷ The settlement governs Transpower's revenues for each financial year until 30 June 2011. After that, Transpower will be subject to an individual price-quality path.

30. The NZCC is required to set new information disclosure requirements for Transpower after applicable input methodologies are set. Until that time, the current information disclosure requirements for Transpower⁸ continue to apply.

⁴ The new regime replaces the targeted control regime which was previously provided for under Part 4A of the Act.

⁵ The main features of the default price-quality path for the period 1 April 2010 to 31 March 2015 are that all electricity distribution businesses which are not consumer-owned: have starting prices as the actual prices that were in place 31 March 2010; be subject to an X-factor of 0% per annum; and have quality standards based on reliability and expressed as annual System Average Interruption Duration index (SAIDI) and System Average Interruption Frequency Index (SAIFI) limits.

⁶ Commerce Commission, Decision and Reasons for Not Declaring Control of Transpower New Zealand Limited & Decision to Reset Transpower's Thresholds, 13 May 2008.

⁷ Although Part 4A was repealed by the Commerce Amendment Act 2008, section 54M under the new Part 4 of the Act provides that the administrative settlement continues to apply to Transpower until its expiry date.

⁸ The Electricity (Information Disclosure) Requirements 2004).

3.1.3. *Gas*

31. The gas distribution businesses of Powerco Limited and Vector Limited (Auckland distribution network only) are currently directly subject to price/quality regulation. Final Authorisations were announced by the NZCC on 31 October 2008 and will apply through to 1 July 2012, or such other earlier timeframe as is agreed by the NZCC. These services will then transition to default/customised price-quality regulation (which will be similar to that applying to electricity distribution businesses).

32. In addition, all gas transmission and distribution services (except those explicitly exempted by the legislation) are subject to default/customised price-quality regulation. The NZCC is currently in the process of setting the initial default price-quality paths.

33. The Commission is required to set new information disclosure requirements for gas pipeline services. Gas (Information Disclosure) Regulations 1997, administered by MED apply until the NZCC makes a determination setting out how the new regime will apply. The NZCC plans to make this determination in 2011/12

3.1.4. *Airport Services*

34. Part 4 regulates specified airport services supplied by Auckland International Airport Limited, Wellington International Airport Limited and Christchurch International Airport Limited.

35. In addition to setting input methodologies the NZCC is required to set information disclosure requirements for the regulated services. The NZCC is required to complete the information disclosure determinations by 1 January 2011.

36. Once the information disclosure requirements are in place, Part 4 requires that the NZCC undertake an annual summary and analysis of the information disclosed.

37. See <http://www.comcom.govt.nz/regulated-industries> for more information on the NZCC' work relating to Part 4 of the Act.

3.1.5. *Telecommunications*

38. The NZCC is responsible for enforcing the sector-specific Telecommunications Act 2001 with the objective of promoting competition for the benefits of end-users in New Zealand. Where competition is limited or not possible, the NZCC aims to promote competitive outcomes through regulatory interventions using the remedies under the Act.

39. The NZCC plays an active role in ensuring barriers to competition in telecommunication markets are reduced, investment incentives promoted, and as a result consumers benefit from better service, prices and choice

40. Based on the NZCC's annual sector monitoring report, overall competition in telecommunications markets has increased in a number of areas over time leading to more consumer choice and an improved service quality while prices have fallen. However, when compared to other countries such as Australia and the United Kingdom, the market shares of incumbent suppliers remains high and markets remain concentrated.

3.1.6 *Broadband*

41. Over the 2009/10 year the NZCC has witnessed increased competition across a number of telecommunications markets. In particular, alternative providers of broadband services on Telecom New Zealand's network have increased their market share from 24 per cent in 2007/08 to 37 per cent in 2009/10.

42. Over the same period broadband uptake doubled and New Zealand has improved its position in broadband uptake from 22 in 2006 to 18 in 2009 when compared with the 30 OECD countries.

43. In terms of public investment initiatives, the New Zealand government has announced its plans to accelerate the rollout of ultra fast broadband to 75% of New Zealanders over 10 years. The government has committed to investing up to NZ\$1.5 billion into fibre-to-the-home (FTTH) open access networks. It is expected that private sector investment will equal or exceed that of the government.

44. The proposal involves establishing a government owned investment arm (Crown Fibre Holdings) to co invest, alongside the private sector companies (Local Fibre Company), in dark fibre. In June 2010, the Cabinet agreed to a number of refinements to the Government policies and the agreed key changes were:

- layer 2 fibre access services must be provided by LFC, including a specified "multi-service provider" open access layer 2 service;
- layer 1 point to point fibre access services must be provided by LFCs on a non-discriminatory basis;
- LFCs will be required to provide unbundled layer 1 services on an equivalent basis by 31 December 2019; and
- the NZCC's power to recommend regulation of wholesale FTTH access services will be restricted until 31 December 2019.

3.1.7 *Mobile services*

45. During 2009/10 a third mobile network, 2degrees launched commercial services competing with the two incumbents Vodafone and Telecom New Zealand (Telecom NZ). This has had an impact in terms of consumer choice and competitive offerings.

46. Though there has been an increase in mobile voice usage since the launch of Telecom NZ's XT (3G) network and 2degrees' network during 2009, New Zealand remains low by international standards⁹. Another recent development is the upgrading of Telecom NZ and Vodafone's 3G network capability plus there are currently seven individually branded mobile virtual network operators operating in the mobile market.¹⁰ On 4 August 2010, 2degrees launched its 3G network in cities where it has its own cell sites, roaming on Vodafone's network outside of its own cell coverage

47. Mobile broadband has been gaining popularity in recent years due to the deployment of higher speed data technologies and devices able to be used for bandwidth intensive applications as well as data cards for PC/laptops. However, NZ is still only in the early stages in mobile broadband take up with 150,000 mobile broadband connections using data cards as of June 2009.¹¹

48. In February 2010 the NZCC completed its investigation into Mobile Termination Access Services (MTAS) rates and provided its Final Report to the Minister for Communications and Information

⁹ Annual Telecommunications Monitoring Report 2009 (April 2010) pg 59 Figure 41.

¹⁰ Ibid pg. 59 & 65.

¹¹ Ibid pg 65.

Technology, recommending that regulated cost-based mobile termination rates will best promote competition in mobile markets, and will be in the long-term interests of end-users.

49. The Minister has accepted the NZCC's recommendation and mobile termination is set to become a regulated service.

50. The Commission is currently going through the process of implementing the accepted recommendation to the Minister by setting MTAS cost-based prices using international benchmarks.

3.1.8 Accounting separation

51. The accounting separation of Telecom NZ was introduced under the amended Telecommunications Act in 2006, providing greater transparency to Telecom NZ's operationally separated business activities. Telecom NZ delivered its first set of regulatory accounts for the financial year 2008/09.

52. The NZCC published a summary and analysis of these accounts, which provided information to interested parties about the operation and behaviour of Telecom NZ's network, wholesale and retail businesses and services. The NZCC also issued revised requirements for the preparation of product statements for 2010/11.

53. The NZCC is committed to continue refining requirements as necessary to produce useful and accurate information that will support the promotion of competition.

54. The NZCC reached an out of court settlement with Telecom in July 2010, which involved the payment of \$1.6m compensation to the wholesale competitors who were affected by Telecom Wholesale's "loyalty offers". The settlement follows a NZCC investigation launched after receiving complaints from the industry alleging that Telecom Wholesale's "loyalty offers" breached Telecom's Operational Separation Undertakings. The NZCC considered that the breaches had the potential to seriously harm competition in telecommunications markets and undermine or deter efficient investment in telecommunications infrastructure

4. Resources of competition authorities

4.1 Resources overall

4.1.1 Annual budget (in NZD and USD)

- Total Annual Budget for Enforcement Branch (excluding major litigation) 2009/10: \$NZ14.45 million (\$US10.43 million)
- Total Annual Competition Law Enforcement Budget (excluding major litigation) 2009/10: \$NZ 8.444 million (\$US6.093 million)
(conversion rate @ 0.7216 cents)

4.1.2 Number of employees

55. The NZCC has recently undergone a restructure. It is now separated into two operational branches, Enforcement and Regulation. The previously separate legal and economics branches have been incorporated into the two operational branches.

56. The Enforcement branch covers two areas of work – competition and consumer law. Accordingly, the staff in the Enforcement branch, listed in the table below, work potentially on both competition and informed consumer issues.

Category	Numbers	FTE
Economists	5	5
Lawyers	15	14.7
Other professionals	56	55
Support staff	14	14
All staff combined	90	88.7

57. The information collated in the above table relates to NZCC resources as at 31 August 2010.

4.2 Human resources (person-years) applied to

Category	FTE
Enforcement against anticompetitive practices	18.19
Merger review and enforcement	2.58
Advocacy efforts	4.17

58. The information in the above table relates to the period 1 September 2009 – 31 August 2010. It has been calculated by reference to actual hours worked in the period.

5. Summaries of or references to new reports and studies on competition policy issues

59. In this period the NZCC commissioned two pieces of research with a view to better understanding public knowledge and perception of the NZCC and the laws that they enforce.

60. The first was carried out in early 2010. The aim of the research was to establish perceptions and understandings about what the NZCC does, and how effective it is.

61. The research included:

- A telephone survey of 500 members of the general public, undertaken during March by Research New Zealand.
- A telephone survey of 350 businesses, undertaken during April by Research New Zealand.
- An analysis of three months of media coverage (1 Oct to 31 December 2009) prepared by Media Monitors.

62. The research shows that the NZCC enjoys a very high profile. The general public and businesses know about the NZCC, in large part due to its high media profile. However there is very limited understanding of what the NZCC actually does, and importantly, what it does not do, and this has an impact on its perceived effectiveness. The results of this research will guide the NZCC's External Engagement Strategy, and help to measure the success of the strategy in future years.

63. The second piece of research related to the non-residential construction industry, a sector that had been identified as being likely to be susceptible to cartel behaviour. The NZCC commissioned an independent research company (Research New Zealand) to undertake confidential qualitative research with twelve companies in the sector (four companies in each of Auckland, Wellington and Christchurch). The purpose of the research was to test the sector's awareness and understanding of the relevant provisions of the Commerce Act, and to ascertain what tools and resources they would find useful to increase compliance.

64. The results of this research (to be published shortly) will guide the NZCC's advocacy efforts in the sector.