
COMMERCE COMMISSION

2008-2009 ANNUAL REPORT



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LIST OF ABBREVIATIONS	
Commerce Commission	Commission
Telecommunications Service Obligations	TSO
LEGISLATION ENFORCED BY THE COMMERCE COMMISSION	
Commerce Act 1986	Commerce Act
Credit Contracts and Consumer Finance Act 2003	CCCF Act
Dairy Industry Restructuring Act 2001	DIR Act
Electricity Industry Reform Act 1998	EIR Act
Fair Trading Act 1986	Fair Trading Act
Telecommunications Act 2001	Telecommunications Act

CHAIR'S FOREWORD

The Commerce Commission's role is to foster competition - this impacts the lives of all New Zealanders.

Specifically, the Commission's goal is to promote dynamic and responsive markets so that all New Zealanders benefit from competitive prices, better quality and greater choice. These issues take on even greater importance to the economy in a time of economic downturn. Businesses thrive through innovation when they are required to compete. Consumers, ever more dollar-conscious due to the recession, reap the benefits of that innovation and competition.

The past year has been a time of significant change for both the economy and the Commerce Commission. We have seen the impacts of the economic downturn result in a decline in the number of applications for clearance of mergers or acquisitions. We have responded to financial pressure on businesses by producing guidance for using the 'failing firm argument' and by streamlining processes for clearances.

We have also, like all other government departments and Crown agencies, been required to cut our cloth to fit the times. Just as businesses become more innovative in a downturn, we too have taken a fresh look at how we work, and we are tailoring our approach to ensure we achieve the maximum impact, in the most timely and cost-efficient manner.

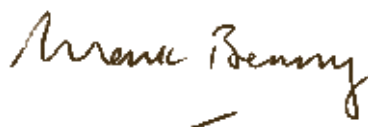
A significant challenge over the past year has been the need to adapt our work programmes to reflect changes to the Commerce Act in the regulatory area. Our regulatory team faces some new and demanding challenges to develop the regimes under which electricity lines businesses and gas pipeline businesses will be regulated in the future. This work stream is also required to develop information disclosure regimes for airports, in addition to the electricity and gas sectors just mentioned.

In the competition area, we have continued to prioritise cartel investigations as the flow of leniency applications grows. Cartels harm downstream businesses and consumers, by colluding to fix or raise prices. In the largest and highest-profile of these cases, the Commission commenced proceedings against 13 airlines in December last year for alleged price-fixing in the air cargo market. We have also continued to pursue the case involving credit card interchange fees.

Our work in enforcing the Fair Trading Act and the Credit Contracts and Consumer Finance Act remains a high priority. These two Acts attract the majority of complaints the Commission receives through our contact centre. Significantly, we achieved refunds, totalling more than \$3 million, for several thousand customers who had bought items on 'interest free' terms but had been charged interest by GE Money. In other high-profile cases, The Warehouse was fined just over \$200,000 for multiple breaches of the Fair Trading Act, and a Tauranga company was fined \$100,000 for promoting a pill that was falsely claimed to act as a natural alternative to breast implants.

Finally, this year has also marked a changing of the guard in Commission membership. In March, we bade farewell to Paula Rebstock, who served for five years as Chair of the Commission. Paula made a remarkable contribution to the Commission over her total 11 years' service to the organisation. We also bade farewell to Denese Bates QC, who had been a Commissioner since 2001.

As we look back on the past 12 months and forward to the next 12, the Commission will continue to strive to promote competition and innovation, and compliance with statutory fair trading standards, for the benefit of the New Zealand economy and all New Zealand consumers.



Dr Mark Berry
Chair

CEO'S OVERVIEW

In a year during which the Commission faced a leadership change, an ever-growing programme of work and a tightening fiscal position, against the background of the world credit crunch, we have achieved the majority of our output targets with a small surplus at year end. In addition, we have taken a hard look at our performance, adopting changes that are already beginning to deliver results and will continue to do so over coming years.

We have focused on finding ways to streamline our enforcement work and develop new and innovative enforcement tools and interventions. These allow us to resolve some issues more quickly and at a lower cost. Meanwhile, we have made real progress in advancing and resolving some difficult long-term cases, redirecting resources to new priorities.

The Competition branch completed a number of longstanding investigations, and has a considerable programme of cartel cases in the investigation or litigation phases. Here, the emphasis is on early cooperation and resolution. A downturn in clearance applications, due to the recession, has enabled resources to be moved to the cartel programme.

Under the Informed Consumers output we have focused on expanded engagement with traders. Guidelines we produced on greenwashing and carbon neutral claims have assisted compliance with the Fair Trading Act, whilst increased work on raising awareness about the CCCF Act continues to result in more complaints about alleged breaches. These cases are also increasingly complex, with one topical example being the ongoing investigation into mortgage break fees.

The Commission plays an active role in ensuring barriers to entry in the telecommunications market are broken down, and we have seen improvements in these markets this year. There have been positive developments in the mobile services market with the launch of Telecom's XT mobile network and the entry of newcomer 2degrees. We continue to work towards a recommendation on whether to regulate mobile termination access services.

We have prioritised the implementation of new requirements under Part 4 of the Commerce Act; the release of a discussion paper on Input Methodologies was a major milestone. The Commission ends the year on track to implement the new regime. The organisation has moved quickly to meet the challenging implementation timetable.

The economic slowdown and the government's fiscal position have made this year a good time to rethink some of the Commission's priorities and practices. The baseline review conducted in 2008 was also helpful in identifying how we could improve. As a result, we have taken a close look at our organisational structure, introduced new systems and processes and improvements to the way we prioritise work. The introduction of a systematic project management approach allows us to better track our use of resources and the delivery of results.

Against a background of significant change, the Commission has moved to transform the way it works so that it is well placed to support New Zealand's future economic development, delivering benefits to consumers now and over time.



Nicholas Hill
CEO

ACHIEVING
OUR
OUTCOMES

The Commerce Commission is constantly adapting to changing markets to ensure it is effective in promoting and encouraging competition. As the environment changes and new challenges arise, the Commission examines its priorities, the tools it uses to achieve results, and the effectiveness of its interventions, to ensure it continues to have maximum impact on promoting competitive markets.

The Commission strives to achieve four strategic outcomes:

- Markets are dynamic and all goods and services are provided at competitive prices;
- Consumers are confident of the accuracy of information they receive when making choices;
- Participants in regulated industries are constrained from earning excess profits, face incentives to improve efficiency, invest appropriately and share efficiency gains with consumers; and
- New Zealanders understand the benefits of competition and regulation in a market economy.

STRATEGIC PRIORITIES

During 2008/09 the Commission identified three strategic priorities to assist in delivering these outcomes:

- Strategic Priority 1 – Maximising impact
- Strategic Priority 2 – Leadership
- Strategic Priority 3 – Capability.

As well as these areas of strategic priority, the Commission identified focus areas within each of the outcomes. The progress made against these priorities and areas of focus is reported in this Annual Report along with analysis of the Commission's performance over time.¹

The analysis is focused on the output-based measures the Commission used in its Statement of Intent 2008-2011. Impact measures for all outcomes have been developed during this year and will be captured in the 2009/10 Annual Report, providing a more complete picture of the Commission's impact.

MAXIMISING IMPACT (SP1)

The Commission will maximise its impact by setting clear priorities based on the extent of public detriment.

In 2008/09 the Commission focused on two key initiatives to improve its ability to maximise impact. The first, developing intervention options and engaging with stakeholders, has progressed on multiple fronts. Increased engagement with stakeholders has in part been achieved through the high number of guidelines published by the Commission in this financial year. In addition the Commission is working to increase the impact of its external engagement, including through more speaking engagements with industry and other relevant stakeholders.

The Commission also seeks every opportunity to use different intervention options to maximise impact at the lowest cost; examples of this are provided in this Annual Report. Related to this is the Commission's second key initiative, managing major litigation cases to maximise impact by achieving effective outcomes with reduced costs. There have been a number of cases in 2008/09 where the Commission has been able to seek settlement and early resolution rather than advancing to full trial. It is expected that the ratio of major litigation cases resolved in this way will increase as the Commission further develops its capability in this area.

The Commission has also completed a review of its performance measurement framework to improve the way in which it measures impact, as well as to streamline and improve the performance measures under which it is accountable. It is expected that the newly developed measures will provide for better understanding of the Commission's achievements. The measures are reflected in the Commission's 2009-2012 Statement of Intent.

1. Data is provided for the year 2007/08 where comparative performance measures are used. If the measures are not comparable, N/A (not applicable) is entered in the relevant table.

LEADERSHIP (SP2)

The Commission will focus on achieving effective leadership by promoting the benefits of competition to the wider community, by developing an organisation committed to excellence in performance, and by giving confidence to our stakeholders.

Another of the Commission's strategic priorities for 2008/09 has been to develop leaders and enhance external leadership. The enhancement of external leadership is closely linked with the work on increasing engagement with stakeholders. External leadership is a key component of the external communications strategy. Considerable progress has also been made on developing leaders as part of the Commission's broader capability development strategy. Notable in 2008/09 was the Commission's highly successful internal conference in September 2008 that helped the Commission to define good leadership and get all staff thinking and talking about how to be better leaders both internally and externally. For example, externally, the Commission initiated a conference on Next Generation Networks (NGN) to provide leadership in this fast-evolving area of telecommunications.

Personal leadership training has now been completed by 88 Commission staff. This represents a significant proportion of the organisation that has had this high-quality training focused on self-awareness, interpersonal and influencing skills. The Commission will now progress to embed good leadership principles in our organisational environment.

CAPABILITY (SP3)

The Commission will ensure that it is able to attract the best people and retain them longer by providing career path opportunities. The Commission will be recognised for its expertise by stakeholders and international agencies. It will act as a learning organisation.

As well as the broader organisational health and capability programme, we focused on a number of key initiatives in 2008/09 to effect change in the organisation to ensure the right people, processes and systems are in place to help the Commission achieve its aims.

Significant progress was made in the development of an integrated project management approach. This has resulted in a project management methodology that is specifically designed to help the Commission manage its diverse and complex projects. Training of all senior managers, managers and project managers was commenced in June 2009. It is expected that this change in process and tools will greatly improve the Commission's productivity in coming years. Project management provides staff with the opportunity to lead and/or work in project teams that make the best use of their capability and will enable the Commission to more effectively use its resources in areas of priority and need.

The Commission has largely completed its work to establish its own major litigation team. The legal team grew during 2008/09 from 19 to 24 staff. There have been a number of process and system improvements to ensure that the new team is able to operate effectively.

The Ministry of Economic Development completed a baseline review of the Commission in 2008. The review recommended further investment in both capability and capacity, due to the increased size of the organisation over recent years and the demands and challenges that are being placed upon us. Although the review recommended that the Commission would need more resources to fully achieve its outputs, due to the changing economic conditions the funding recommendations made in the review were not presented to Ministers. Nevertheless, the Commission is attempting to address the review recommendations, especially in relation to improving effectiveness and efficiency. This is being achieved through improvements to operational and strategic decision making and within our existing baseline funding. The strategies in response to the baseline review are included in the Statement of Intent 2009-2012.

COMPETITIVE MARKETS

Consumers benefit from markets that are dynamic and efficient with the result that goods and services are provided at competitive prices.

2008/09 HIGHLIGHTS

The Commission's Competition branch had a focus in 2008/09 on improving efficiency and increasing transparency of the decision-making process. We have developed a number of guidelines with this aim in mind, including the merger process guidelines. These guidelines are expected to result in a higher quality of application, enabling more efficient, transparent decision making.

A new, streamlined authorisation process was introduced to ensure that in appropriate cases the Commission could consider applications for authorisation in a shorter timeframe. The Commission has also improved its prioritisation processes through more robust screening of investigations. In addition, the number of longstanding investigations has been significantly reduced. At the end of the financial year there were only two current investigations open for longer than one year and both of those are now at the stage of preparation for final decision.

The Commission has continued to prioritise its work on cartels in 2008/09 due to the serious nature of this conduct and the impact it has on competitive markets. The leniency programme has gained momentum with an increasing number of cases being brought to the Commission. The Commission now has a considerable programme of cartel cases in both the litigation and investigation phases.

At the same time, the Commission has maintained its high level of activity in its other output areas, completing a number of significant long-running cases. An investment in framework development activities has allowed the Commission to make significant improvements in transparency, prioritisation and timely resolution of cases.

MARKET STRUCTURE CASES

The Commission continues to dedicate resources to ongoing market monitoring and surveillance by identifying any non-notified mergers that are of concern. The Commission will only open an investigation where a risk of a substantial lessening of competition has been identified. If real concern about substantial lessening of competition resulting from a non-notified merger arises, the Commission will act pre-emptively to encourage the parties to apply for a clearance, or will consider the use of powers such as cease and desist to address the matter in a timely manner. Three market structure investigations involving acquisitions were completed this year with each being concluded with no further action required.

As a result of the economic downturn there has been a decline in the number of clearance applications received. This has enabled the Commission to reallocate some resources in order to complete several long-running and complex EIR Act investigations. An investigation relating to customer networks was completed. Where a property, such as an airport, apartment block or shopping mall, uses a customer network, there is limited ability for customers on the network to switch electricity retailers. The Commission concluded that the application of the EIR Act does not directly address the issue of customers' inability to switch suppliers on these networks and therefore the enforcement of the EIR Act is unlikely to materially improve the position of these customers. A related investigation involving a customer network at Botany Town was also closed.

The nature of market structure cases creates a high degree of unpredictability with regard to the length of time decisions take. The measure of timeliness therefore has been quite variable in previous years, and again this year. In 2008/09 this measure reflects the completion of the long-running EIR Act investigations. For 2009/10 this measure has been removed as it does not provide useful information for assessment of the Commission's performance.

There was one market structure litigation case resolved in 2008/09 (Table 1). This was a merger enforcement action in which the Commission was successful in the High Court and Court of Appeal against the principal defendant, NZ Bus Limited. As a result of the decision of the Court of Appeal, however, the Commission sought to clarify the law as to accessory liability under the Commerce Act and therefore sought leave from the Supreme Court to appeal on that issue. The Supreme Court declined the Commission's application, but indicated that on the orthodox test it is necessary for the accessory to have sufficient knowledge of the facts establishing a substantial lessening of competition.

MARKET STRUCTURE CASES (TABLE 1)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Administrative resolutions	0	0-1	0
Litigation resolved	1	0-1	0
No further action required	5	2-6	3
TIMELINESS (AVERAGE)			
Administrative resolutions – investigation phase	N/A	6 months	N/A
Administrative resolutions – subsequently completed	N/A	45 days	N/A
Litigation resolved – investigation phase completed	N/A	6 months	N/A
Litigation resolved – statement of claim filed	N/A	30 days	N/A
Trial held or pre-trial resolution achieved	N/A	12 months	N/A
No further action required – reports completed	39 months	6 months	4.7 months
QUALITY			
Successful legal challenges of the Commission's processes during the course of investigations	0	0	0
Judgments with adverse comments about the Commission	0	0	0
COST (\$000)			
Expenditure on output class	227	209	694

COORDINATED BEHAVIOUR

Anti-cartel enforcement activity has, for the past four years, been a priority area for the Commission. Cartels have grown worldwide. In addition to consumers having to pay more for their goods, and businesses having to pay more for input products and services, cartels undermine New Zealand's international competitiveness. A leniency programme introduced in 2004 encourages cartel participants to expose the conduct.

Cartel investigations, commenced as a consequence of the Commission's leniency programme, have continued to increase in size and complexity over time. Many of these investigations involve multiple parties and activity overseas that affects markets in New Zealand. In one case, the Commission filed proceedings in December 2008 against 13 international airlines and a number of executives in respect of an alleged cartel in the international air cargo market. The allegation is that airlines throughout the world colluded to raise the price of freighting cargo by imposing fuel surcharges. Some airlines are cooperating with the Commission and an early resolution may be possible in these cases.

In 2008/09 the Commission closed the same number of cases as in 2007/08 and had 21 investigations on hand at the end of the year, including a significant roster of cartel cases currently in the litigation phase. Of the total 15 leniency applications received since the Commission started the leniency programme in 2004, five were received in 2008/09.

Significant resource continues to be dedicated to these cases, with funding in 2008/09 and 2009/10 increased, as compared with 2007/08, to allow the Commission to progress longstanding cases. Overall, timeliness in this area of work has been either steady or improving. The measure of the length of time taken for administrative resolutions, as shown in Table 2, is skewed by a single case that involved the consideration of complex jurisdictional issues.

In order to progress these cases as quickly and efficiently as possible, it is important to encourage parties under investigation to cooperate with the Commission and where appropriate to settle the matter as early as possible. With this in mind the Commission commenced a review of the leniency and cooperation policies along with development of sentencing guidance. These initiatives are designed to ensure parties are aware of the benefits of early cooperation. The Commission is also developing a new protocol which seeks to improve timeliness in cartel cases in the initial investigation phase.

There were a number of key results in litigation cases through the year. A case involving a leniency application which was resolved during this year involved a bid-rigging allegation against Schneider Electric SA. Schneider was ordered to pay a \$1.050 million penalty. The court recognised the seriousness of parties entering into a cartel, and the likely harm caused, notwithstanding that a party may not have received any direct benefit.

The Court of Appeal issued a significant judgment in 2008/09 relating to the wood chemicals cartel case (Koppers Arch), which will have wide application to international cartel cases. The judgment confirmed that New Zealand courts have jurisdiction over conduct by overseas residents if that conduct contributes to proscribed conduct in New Zealand. One of the defendants has appealed the decision to the Supreme Court.

Increased publicity resulting from a rise in the number of cartel cases in litigation has the potential to further undermine existing cartel behaviour. The opportunity exists for the Commission to increase the advocacy aspects of the leniency programme in order to increase the potential for existing cartel members to break ranks and apply for leniency.

Increasingly, the Commission is taking action under section 103 of the Commerce Act for misleading the Commission. Actively pursuing obstruction cases is an important aspect of the cartel enforcement programme.

In line with the Commission's stated objective of achieving timely resolution of cases, where possible avoiding litigation, we note two cases where alternatives to litigation were used in coordinated behaviour cases. These were an administrative settlement with a subsidiary of a large international elevator company and a warning to the Real Estate Network Limited about a risk of breaching the Commerce Act.

COORDINATED BEHAVIOUR CASES (TABLE 2)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Administrative resolutions	6	2-4	3
Litigation resolved	1	4-6	0
No further action required	3	4-6	7
TIMELINESS (AVERAGE)			
Administrative resolutions - investigation phase	7.9 months	10 months	1.5 months
Administrative resolutions - subsequently completed	119 days	45 days	4 days
Litigation resolved - investigation phase completed	35 months	10 months	N/A
Litigation resolved - statement of claim filed	17.3 days	50 days	N/A
Trial held or pre-trial resolution achieved	16.4 months	36 months	N/A
No further action required - reports completed	4.6 months	10 months	18.5 months
QUALITY			
Successful legal challenges of the Commission's processes during the course of investigations	0	0	0
Judgments with adverse comments about the Commission	0	0	0
COST (\$000)			
Expenditure on output class	3,679	3,644	2,991

UNILATERAL CONDUCT

This year saw the completion of some significant long-term investigations, into New Zealand Post and the wholesale electricity market, as well as a high level of overall completion of cases compared with previous years. This is due to improvements made in prioritising those cases that are likely to be in breach of the Act and result in clear detriment, and the early closure of cases that are found following initial investigation not to meet these criteria.

A significant investigation under section 36 of the Commerce Act was the high-profile wholesale electricity market investigation. The ultimate finding was of no breach of the Commerce Act, although a warning was issued in respect of one particular incident. The Commission's investigation found significant concerns with the structure and operation of the electricity market. The investigation found that the reason for high prices was not anti-competitive behaviour but was due to firms lawfully maximising profits and taking advantage of the particular market characteristics.

This year saw an increase in the use of alternatives to litigation to address unilateral issues. In one such case, Auckland International Airport Limited (AIAL) was planning to reduce the number of duty free retailers at the airport from two to one. Following an investigation by the Commission, AIAL denied its conduct was unlawful but undertook to change its approach and maintain two retail operations. The Commission, recognising the significant change by AIAL, closed its investigation with a formal warning. The Commission also acted to clarify issues in the market for the supply of school uniforms by issuing guidelines for schools. There had been many complaints from parents and uniform suppliers about exclusive supply contracts.

UNILATERAL CONDUCT (TABLE 3)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Administrative resolutions	4	4-6	6
Litigation resolved	1	1-2	0
No further action required	9	4-8	4
TIMELINESS (AVERAGE)			
Administrative resolutions – investigation phase	26.1 months	12 months	10 months
Administrative resolutions – subsequently completed	10 days	45 days	24 days
Litigation resolved – investigation phase completed	N/A	12 months	N/A
Litigation resolved – statement of claim filed	2 days	50 days	N/A
Trial held or pre-trial resolution achieved	N/A	36 months	N/A
No further action required – reports completed	14.8 months	12 months	27 months
QUALITY			
Successful legal challenges of the Commission's processes during the course of investigations	0	0	0
Judgments with adverse comments about the Commission	0	0	0
COST (\$000)			
Expenditure on output class	2,056	1,893	1,526

DETERMINATIONS

Under the Commerce Act, parties may seek formal clearance of a proposed merger or acquisition. In considering an application, our 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 Commission also determines applications for exemption from the EIR Act.

This year there has been a significant downturn in the number of applications for clearance received. The lower number of merger applications is consistent with the experience of other international jurisdictions as the business community reacts to the economic downturn.

Also relevant to the current economic climate was the consideration of an application that relied on a 'failing firm argument'. The Commission sometimes receives applications for clearance that claim an otherwise anti-competitive merger or acquisition should be given clearance because one or more of the parties is failing, and its assets will otherwise leave the market. This is commonly called the 'failing firm argument'.

In this case, Fletcher Building Limited applied to acquire Stevenson Group Limited's masonry business. There was time pressure on this application, because Stevenson had already set a date on which it would close the doors. Jobs hung in the balance. And yet it was important the Commission vigorously undertook its analysis according to its analytical framework, and made the right decision for the markets affected. The clearance was granted.

It is expected there may be more applications using the failing firm argument as the recession continues. In order to provide the business community with more clarity, the Commission developed draft Supplementary Guidelines on Failing Firms. These provide the Commission's views on when a failing firm argument can be considered, and will ensure applicants are aware of the information the Commission requires in order to consider such an application promptly.

While decisions in this area are mostly being reached within or close to timeliness targets, some complex cases continue to take longer. Under the Commerce Act, sections 58 and 67, parties may seek formal authorisation for proposed restrictive practices or mergers that would lead to a lessening of competition, and this is granted if it can be shown that the practice or acquisition would lead to a net public benefit. One such case was completed during the year, taking 733 days, which reflects the complex analysis in such cases, and the difficulty experienced in this case of accessing information from the relevant parties.

There is an ongoing focus on improving timeliness of clearance decisions. During the year, the Commission issued a set of clearance process guidelines that is expected to help ensure the delivery of better information at the start of an investigation, and a new, streamlined authorisations process. Both of these initiatives should assist with increasing the speed of decisions.

A significant court decision in this area during the year involved the high-profile clearance application relating to The Warehouse. The Court of Appeal overturned the earlier High Court decision that had set aside the Commission's decision declining clearance for the potential acquisition of The Warehouse by Foodstuffs or Woolworths. This case was important as it clarified that the Commission should assess the competitive effect against all likely counterfactuals. It also clarified the scope for the Commission to decline a merger if in real doubt as to its effect.

The reduction in clearance applications has enabled the Commission to put significant effort into completing outstanding EIR Act applications and this has contributed to a higher number of authorisations completed than anticipated. This increase in authorisations completed has meant that overall the determinations output has been met. An under-spend in this area this year reflects the downturn in clearance applications considered. Resources from this area were reallocated during the year to support unilateral and coordinated behaviour cases as well as framework development projects. It is not expected that the downturn in determinations will continue in the medium term.

DETERMINATIONS (TABLE 4)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Authorisations determined (includes EIR Act exemptions)	11	5-6	5
Clearances determined	11	17-23	26
Litigation resolved	1	1	1
TIMELINESS (AVERAGE)			
s58 and s67 determinations completed	733 days	100 days	N/A
EIR Act determinations completed	492 days	60 days	117 days
Clearances determined	45 days	40 days	38 days
Written reasons published	38 days	20 days	47days
Proceedings filed	N/A	20 days	N/A
Trial held or pre-trial resolution achieved	N/A	12 months	N/A
QUALITY			
Successful legal challenges of the Commission's processes during the course of the clearance determination	0	0	0
Judgments with adverse comments about the Commission	0	0	0
COST (\$000)			
Expenditure on output class	1,534	3,205	2,952

FRAMEWORK DEVELOPMENT

We have significantly increased activity in this area in 2008/09, resulting in increased expenditure and resources used. In particular the Commission has developed guidelines, such as those for the merger process and for streamlined authorisations. Initiatives such as these aim to improve our efficiency and the transparency of our processes and will directly contribute to the Commission's ability to continue to improve its productivity, timeliness of decisions, quality of results and the costs of achieving those results. Such guidelines also provide stakeholders with more clarity about our approach.

The level of activity in international information exchange has also increased, with contributions to forums such as the International Competition Network and the OECD. Close contact with the Australian Competition and Consumer Commission was also maintained, with constructive discussions being held on a number of common competition issues.

FRAMEWORK DEVELOPMENT – COMPETITION (TABLE 5)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Advice to officials on proposed law reform	6	2-4	7
International information exchange and liaison	19	6-10	12
Development of framework and guidelines	2	3-4	N/A
COST (\$000)			
Expenditure on output class	776	502	504

REPORTS TO THE MINISTER – COMPETITION (TABLE 6)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Reports to Ministers	0	0	0
Litigation resolved (appeals and s103 prosecutions determined)	0	0	0
COST (\$000)			
Expenditure on output class	16	0	13

PUBLIC INFORMATION/EDUCATION – COMPETITION (TABLE 7)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Media releases	53	44-50	67
Media releases – EIR Act	4	6-10	
Presentations	10	6-14	17
Publications	2	3-4	0
QUALITY			
Media releases consistent with media release protocols	100%	100%	100%
Publications conform to brand guidelines/standards	100%	100%	N/A
COST (\$000)			
Expenditure on output class	298	22	113

INFORMED CONSUMERS

Consumers are confident of the accuracy of information they receive when making choices.

2008/09 HIGHLIGHTS

The Commission has invested a lot of time and resource this year into expanding its engagement with traders with a view to ensuring compliance, and decreasing the need for enforcement action in the long term under the Fair Trading and Credit Contracts and Consumer Finance Acts. We increased our ability to quickly resolve lower-detriment issues with the establishment of a low level inquiry unit. The establishment this year of Centres of Excellence focused on sustainability claims, financial products and services, and telecommunications had significant impact. In particular, the sustainability team achieved targets 18 months ahead of schedule, achieved strong industry acceptance of the Commission's lead, and produced guidelines on greenwashing and carbon neutral claims which inform traders and marketers of the Commission's expectations under the Fair Trading Act.

The Commission enforces and provides information about consumer legislation that prohibits false and misleading behaviour by persons in trade (Fair Trading Act) and requires the disclosure of certain information to consumers entering into consumer credit contracts (Credit Contracts and Consumer Finance Act (CCCF Act)).

In 2008/09 the Commission put significant effort into greater involvement with its stakeholders as part of a strategy to leverage the success the Commission has had in recent years enforcing the Fair Trading Act. An outreach programme has been developed to further this approach.

The strategy, outlined in the Statement of Intent 2008-2011, of focusing enforcement action on specific areas of complaint has been further refined during the year to identify three areas to develop as Centres of Excellence. The Commission is building capability and focusing resources and compliance efforts to ensure we make progress in influencing behaviour in these key target areas. These Centres of Excellence cover financial products, retail telecommunications and sustainability claims.

In addition, a low level inquiry unit was successfully piloted. The unit will be used to ensure quick, simple resolution of straightforward Fair Trading Act complaints. This initiative will increase our output by 50 cases a year. Simultaneously, it frees up senior investigators to focus on complex, high-detriment investigations.

The Commission continues to prioritise resources to support investigations and enforcement under the CCCF Act. This has been especially important in the past year due to the deterioration in consumer confidence in the financial sector. Alongside this, we have focused on alleged Fair Trading Act breaches by providers of financial services including the launch of an investigation into ING and ANZ over representations made about two ING investment funds.

Overall, the Commission has completed significantly more Fair Trading Act cases in 2008/09 compared with the previous year. This is an impressive achievement considering that at the same time the Commission also maintained its levels of activity under the CCCF Act as well as a continuing number of large, complex investigations. This reflects the ability of the Commission to achieve greater efficiencies in the Fair Trading area to cover more cases with the same resource using a variety of tools to maximise impact. For example, we have increased the use of warnings and compliance advice.

The timeliness targets set for 2008/09 were considered a significant stretch, yet the results are close to target. In particular, we resolved some long-running litigation cases. We took no further action on more cases than anticipated in the Statement of Intent. This reflects the prioritisation of cases to focus resources on those involving litigation or administrative resolution. It was also a result of some substantial investigations taking longer than expected and tying up resources.

In addition to the overall number of cases dealt with under the Fair Trading Act during the year, the Commission also achieved a high level of penalties in the 14 prosecutions taken, and a high media profile on these issues. The wide level of awareness of these Fair Trading Act breaches as a result of the publicity further amplifies the effect of the enforcement action, which is a key component of the 'maximising impact' strategic objective.

Cases of high interest included court rulings related to office chair manufacturers' New Zealand-made claims and the conviction of a Tauranga couple who claimed their homeopathic remedies could cure or protect against bird flu, SARS and herpes. We also acted when we detected an emerging issue with cashback offers made by computer and printer manufacturers. Although we had not detected an obvious breach of the Fair Trading Act, a warning issued via the media drew the problems to the attention of retailers and the public, resulting in a decline in the number of complaints in this area.

FAIR TRADING ACT CASES (TABLE 8)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Administrative resolutions	199	180-220	174
Litigation resolved	14	15-20	13
No further action required	85	62-72	65
TIMELINESS (AVERAGE)			
Administrative resolutions – investigation phase – high level	6 months	9 months	3.85 months
Administrative resolutions – investigation phase – low level	48 days	45 days	77 days
Administrative resolutions – Commission settlement	N/A	30 days	16 days
Litigation resolved – investigation phase completed	15.9 months	12 months	14.2 months
Litigation resolved – proceedings filed	73 days	30 days	48 days
Trial held or pre-trial resolution achieved	16.2 months	18 months	16.5 months
No further action required – reports completed	100 days	60 days	79 days
QUALITY			
Successful legal challenges of the Commission's processes during the course of investigations	0	0	0
Judgments with adverse comments about the Commission	0	0	0
COST (\$000)			
Expenditure on output class	3,561	4,222	3,790

PRODUCT SAFETY AND INFORMATION STANDARDS CASES

The number of product safety and information standards cases is decreasing over time. This is due to the Commission having focused on issuing product safety guidelines that have increased industry awareness of the standards. We continue to focus on rapid resolution of those cases that are notified to the Commission's contact centre or by referral from the Ministry of Consumer Affairs. As a result we have reduced the length of time taken to resolve these cases.

Expenditure in this area was below forecast due to the number of product safety standards cases being lower than anticipated.

PRODUCT SAFETY AND INFORMATION STANDARDS CASES (TABLE 9)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Administrative resolutions	28	35-45	38
Litigation resolved	0	5-7	8
No further action required	7	5-15	8
TIMELINESS (AVERAGE)			
Administrative resolutions – investigation phase	29 days	45 days	42 days
Administrative resolutions – Commission settlement	1 day	30 days	19 days
Litigation resolved – investigation phase completed	N/A	6 months	3.8 months
Litigation resolved – proceedings filed	N/A	30 days	3.8 days
Trial held or pre-trial resolution achieved	N/A	18 months	3.5 months
No further action required – reports completed	22 days	60 days	14 days
QUALITY			
Successful legal challenges of the Commission's processes during the course of investigations	0	0	0
Judgments with adverse comments about the Commission	0	0	0
COST (\$000)			
Expenditure on output class	82	290	201

CCCF ACT CASES

The number of complaints about alleged breaches of the CCCF Act has increased five-fold since June 2006, primarily because close working relationships have raised awareness of the issues. To address this rise in complaints, the Commission is targeting those cases with the largest potential detriment to consumers, which often directly correlates with the complexity and size of the case.

Overall, the complexity of cases under the CCCF Act continues to increase. This is reflected in the longer duration of cases during this year. In particular, we have found that investigations of credit fees under the CCCF Act are complex and require substantial investigation, even if only to prove there is no breach of the Act. This explains the length of time taken for investigations where no further action is required (Table 10).

Substantial refunds have been provided to customers as a result of the Commission's activities in this area. One case alone generated \$3.1 million in refunds to 3,600 affected customers. Although the breach, in the end, was established under the Fair Trading Act, the investigation was carried out by the CCCF Act enforcement team, and the success was due to their expertise in this area. The profile of CCCF Act cases has also been high this year due to the pressures of the economic recession. In particular, there was keen public and media interest in our investigation into the reasonableness of mortgage 'break fees'. This investigation has so far cleared the ASB, SBS Bank, BNZ and National Bank, but continues in regard to ANZ, Kiwibank and Westpac.

Based on the experience the Commission has now gained in applying the CCCF Act and the precedent set by several court findings, we are developing credit fee guidelines in consultation with the industry. The guidelines are intended to provide clarity and transparency to the industry on how the Commission will interpret the CCCF Act and apply its enforcement criteria.

CCCF ACT CASES (TABLE 10)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Administrative resolutions	33	30-35	38
Litigation resolved	0	4-7	2
No further action required	10	5-10	5
TIMELINESS (AVERAGE)			
Administrative resolutions - investigation phase	12.6 months	6 months	6.1 months
Administrative resolutions - Commission settlement	32 days	30 days	28 days
Litigation resolved - investigation phase completed	N/A	12 months	14 months
Litigation resolved - proceedings filed	N/A	30 days	33 days
Trial held or pre-trial resolution achieved	N/A	18 months	12.6 months
No further action required - reports completed	227 days	60 days	91 days
QUALITY			
Successful legal challenges of the Commission's processes during the course of investigations	0	0	0
Judgments with adverse comments about the Commission	0	0	0
COST (\$000)			
Expenditure on output class	963	1,330	1,442

FRAMEWORK DEVELOPMENT - FAIR TRADING ACT AND CCCF ACT

Development of guidelines under these two Acts continues to be an important focus. In addition, we have liaised with government agencies on matters such as revisions to the Commerce Commission (Information Disclosure and Fees) Bill, proposals to enact an Unsafe Goods Notice for lasers, reviewing the Energy Efficiency and Conservation Amendment Bill and input to the CCCF Act review and Fair Trading Act Amendments. Sharing of information with international agencies continues to be important to the Commission. In particular, the Commission benefited from overseas research and experience in the key priority areas of telecommunications, financial products and services, and sustainability claims.

The way financial data is captured in this area has changed this year, to more realistically reflect the resources expended. As a result the budget for framework development in 2009/10 will provide a more accurate forecast of activity.

FRAMEWORK DEVELOPMENT – FAIR TRADING ACT AND CCCF ACT (TABLE 11)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Review of industry codes	13	10-15	11
Advice to officials on proposed law reform	14	8-12	25
International information exchange and liaison	19	30-40	20
TIMELINESS (AVERAGE)			
Review of industry codes	30 days	30 days	30 days
COST (\$000)			
Expenditure on output class	408	87	292

PUBLIC INFORMATION/EDUCATION – FAIR TRADING ACT AND CCCF ACT (TABLE 12)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
FAIR TRADING ACT			
- Media releases	27	25-30	40
- Presentations	7	5-7	4
- Publications	2	1-4	1
CCCF ACT			
- Media releases	5	0-1	8
- Presentations	1	5-10	10
- Publications	1	0-2	0
QUALITY			
Media releases consistent with media release protocols	100%	100%	100%
Publications conform to brand guidelines/standards	100%	100%	100%
COST (\$000)			
Expenditure on output class	431	93	286

VOTE COMMERCE (TABLE 13)

Financial results for the year ended 30 June 2009

	ACTUAL 2008/09 \$000	SOI 2008/09 \$000	ACTUAL 2007/08 \$000
Total revenue	15,033	15,195	15,292
Total expenditure	14,031	15,497	14,804*
SURPLUS/(DEFICIT)	1,002	(302)	(488)

* The 2007/08 total expenditure by output in the Annual Report was reported at \$15.318 million. This included \$0.514 million relating to major litigation.

SOUND REGULATORY REGIMES

The Commission's goals in this area are to:

- ensure markets operate efficiently and businesses are prevented from abusing market power;
- ensure competition occurs for the long-term benefit of consumers; and
- ensure businesses face strong incentives to improve efficiency and invest appropriately.

TELECOMMUNICATIONS

2008/09 HIGHLIGHTS

The year has been marked by a number of notable achievements for the Telecommunications branch. These include the conference Broadband at the Crossroads, which was held as a part of the Commission's study of the implications of Next Generation Networks for the New Zealand market. In conducting this conference, the Commission showed leadership in the development of an industry understanding of how market dynamics are likely to be changed by this ground-breaking new technology. The release of the sub-loop unbundling determination, which regulates the unbundling of the copper pairs between cabinets and customers in Telecom's network, along with the closely related co-location and backhaul determinations, moves the focus of regulation towards a broadband future. The investigation into mobile termination rates has been another significant area of work. This investigation has made a clear impact on public awareness of competition issues, receiving a good deal of media attention.

The Commission plays an active role in ensuring barriers to competition in the telecommunications market are broken down, and consumers benefit from better service, better prices and more choice. In 2008/09 the Commission has witnessed increased competition across a number of telecommunications markets. In particular, the market for broadband services has grown rapidly, and new entrants were able to secure a significant portion of that growth. The number of broadband connections grew by 18 per cent for the year ended March 2009. The unbundled local loop service, used by new entrants to deliver innovative broadband services, achieved rapid initial growth in Auckland.

There were a number of positive developments in the mobile services markets including the launch of Telecom's new XT mobile network, the completion of Vodafone's 3G network roll-out, the planned launch of 2degrees and the emergence of a more vibrant wholesale market. Investment in the industry remains high in mobile and fixed infrastructure, driving technology upgrades which will enable the delivery of innovative services to customers.

The Commission is reaching the end of the early phase of the regulatory regime under the Telecommunications Act, in which the focus was on setting terms and conditions for regulated services. The Commission is now moving into a consolidation phase, where the emphasis will shift towards monitoring existing interventions and assessing new market developments.

During 2008/09 the Commission focused on completing the work programme for setting terms and conditions for regulated services, and finalising the backlog of Telecommunications Service Obligation (TSO) determinations, while continuing to develop its monitoring programmes.

The Commission also explored the challenges of Next Generation Networks, and hosted an important conference about the likely changes in technology, markets and regulation in this developing area. This work programme has been supported by increased interaction with stakeholders and by responsiveness to the needs of industry.

ACCESS DETERMINATIONS

Access determinations for sub-loop services (which promote the competitive delivery of broadband services from Telecom's roadside cabinets) and mobile co-location were completed during the year, and will support competition in mobile and broadband markets. More efficient co-location outcomes will lower costs for entrants rolling out new networks, and the sub-loop services will give some opportunities to deliver advanced broadband services as Telecom continues to deploy new roadside cabinets.

Work in this resource-intensive area is expected to wind down in 2009/10, subject to the outcome of the Commission's regulatory reviews under Schedule 3 of the Act. Increased expenditure for 2008/09 compared with budget reflects the additional consultation required in the sub-loop determination process to set prices in the absence of adequate benchmarking information. The additional time required to complete the consultation is also reflected in the timeliness measure.

The Commission often receives requests for statutory clarification of its determinations. This has been used in the past as an indicator of the quality of access determinations. However, typically a range of issues arises when implementing access determinations that are difficult to anticipate by industry participants as well as the regulator. As a result a more realistic target for clarifications has been set for 2009/10.

ACCESS DETERMINATIONS (TABLE 14)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Access determinations made	6	3-4	8
Monitoring implementation plans completed	0	3-4	N/A
Litigation resolved	0	0-1	0
TIMELINESS (AVERAGE)			
Access determinations completed	16.7 months	10 months	10.7 months
Trial held or pre-trial resolution achieved	N/A	12 months	N/A
QUALITY			
Applications for statutory clarification of Commission determinations	4	0	4
Successful legal challenges of processes during the course of investigations	0	0	0
Judgments with adverse comments about the Commission	0	0	0
COST (\$000)			
Actual expenditure on output class	1,504	1,333	2,663

TELECOMMUNICATIONS SERVICE OBLIGATIONS (TSO) COST ALLOCATION

The TSO outputs have tracked ahead of output commitments as the Commission has focused on reducing the backlog of outstanding decisions. The Commission expects to have completed the backlog of TSO decisions by early 2009/10. However, legal challenges to the Commission's decisions, going back to 2003/04, are still outstanding.

TELECOMMUNICATIONS SERVICE OBLIGATIONS COST ALLOCATION (TABLE 15)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
TSO cost calculations made	4	3-4	2
TSO compliance reports	2	2	2
Litigation resolved	0	0-1	0
TIMELINESS (AVERAGE)			
Determinations completed	18.5 months	12 months	9.2 months
TSO reports completed	58 days	60 days	57 days
Trial held or pre-trial resolution achieved	N/A	12 months	N/A
QUALITY			
Successful appeals against cost allocation determinations	0	0	0
Successful legal challenges of processes during the course of investigations	0	0	0
Judgments with adverse comments about the Commission	0	0	0
COST (\$000)			
Expenditure on output class	466	740	624

MONITORING AND REPORTING

Monitoring of industry trends is an increasingly significant aspect of the Commission's regulatory work in telecommunications. The monitoring function allows the Commission to assess the effectiveness of its current interventions, and allows it to anticipate problems that may affect competition before they become entrenched.

We have developed two regular series, focusing respectively on key industry trends and the quality of broadband services delivered by internet service providers in New Zealand. Both series have attracted high public interest, as reflected in media coverage. The Commission continues to refine the series. We expect that the reports on industry trends will be expanded to include a wider range of information. The series on broadband performance will be refined to highlight the aspects of broadband performance that are of most interest to consumers.

The Commission undertook a major work stream during the year on Next Generation Networks – networks that deploy new technologies such as Internet Protocol (IP) and fibre-based services to deliver new functionality for the customer. This included a successful public conference that attracted a number of notable international speakers and was attended by more than 200 key industry players. The cost of this work stream was lower than budgeted. In addition, there was a cost saving in relation to the quarterly monitoring reports, as the scheduled publication of the December report coincided with the release of the annual sector monitoring report. This meant that the December quarter's data was folded into the annual sector monitoring report.

MONITORING AND REPORTING (TABLE 16)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Annual sector monitoring reports	1	1	5 sector monitoring reports
Quarterly sector monitoring reports	2	4	
Broadband monitoring reports	3	4	
Section 9a reports	2	2-4	
TIMELINESS (AVERAGE)			
Annual sector monitoring report completed	94 days	50 days	N/A
Quarterly sector monitoring report completed	88 days	50 days	
Broadband monitoring reports completed	56 days	50 days	
Section 9a reports completed	20 months	10 months	
QUALITY			
Monitoring and reporting retrospective corrections	0	0	N/A
Successful legal challenges of section 9a reports	0	0	
COST (\$000)			
Expenditure on output class	2,055	2,361	1,387

ENFORCEMENT CASES CLOSED

The scope for enforcement action arises from a number of the Commission's functions. Breaches of the Standard Terms Determinations or the Operational Separation Undertakings are the areas where there is the most potential for commitment of substantial resources.

The Commission undertook one investigation during this period, which resulted in a finding that Telecom had breached the Operational Separation Undertakings. The Commission did not undertake enforcement action as Telecom remedied the breach promptly.

Otherwise the level of compliance has been high. Aside from trivial breaches, Telecom has met its commitments under the Undertakings, and has delivered on its obligations under the Commission's Standard Terms Determinations in a timely way. As a result very little activity has been required in this area.

ENFORCEMENT CASES CLOSED (TABLE 17)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Administrative settlements	1	0-6	0
Litigation resolved	0	0-2	0
No further actions required	0	0-2	0
TIMELINESS (AVERAGE)			
Administrative resolution - investigation phase completed	11 days	60 days	N/A
Litigation resolved - investigation phase completed	N/A	6 months	N/A
Litigation resolved - proceedings filed	N/A	20 days	N/A
Litigation resolved - trial or pre-trial resolution achieved	N/A	18 months	N/A
No further action required - investigation completed	N/A	60 days	N/A
QUALITY			
Successful legal challenges of processes during the course of investigations	0	0	0
Judgments with adverse comments about the Commission	0	0	0
COST (\$000)			
Expenditure on output class	72	568	100

CODE APPROVAL DEVELOPMENT

This area of work is typically demand driven. The industry, through the Telecommunications Carriers' Forum (TCF), develops codes for regulated services that are submitted to the Commission for approval. In recent years, the focus of the TCF has been on supporting the Commission's work on access determinations, and no codes have been developed for regulated services. The Commission expects there to be a low but positive level of activity in this area during 2009/10.

CODE APPROVAL DEVELOPMENT (TABLE 18)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Industry codes approved	0	0-2	0
TIMELINESS (AVERAGE)			
Industry codes approval processes completed	N/A	70 days	N/A
COST (\$000)			
Expenditure on output class	2	191	2

REPORTS TO THE MINISTER

The Commission undertook a significant amount of work in this area during 2008/09, particularly with regard to mobile services. Given the imminent new entry of a third network in New Zealand through the company 2degrees, it was important for the Commission to provide certainty about the regulatory framework in the way that would best promote competition.

In 2009 the Commission commenced an investigation into mobile termination rates. These are the rates mobile telecommunications carriers charge each other to complete voice and SMS (text) calls on their networks. We undertook significant industry consultation prior to commencing the investigation, and found that there were reasonable grounds to investigate. The Commission released a draft report in June 2009 recommending that mobile termination rates be regulated. We will consult with the industry on our preliminary view before making a final recommendation to the Minister for Communications and Information Technology by the end of 2009.

At the request of the Minister, we considered whether the Commission should undertake a fresh investigation into price regulation of mobile roaming (recently reviewed in 2007/08). Mobile roaming allows subscribers to use their mobile phone on a different mobile network. It allows a new entrant to offer nationwide services while it builds its own network. The Commission deferred consideration of the issue during the year, given changing market conditions and new information, but made a decision in June 2009 to commence such an investigation. The Commission has sought industry views about commencing an investigation into whether the resale of Telecom's fixed retail services should be deregulated. We expect to reach a view in early 2009/10 on whether there are reasonable grounds to do so.

We have also consulted as to whether the Commission should commence an investigation into the regulation of IP interconnection, an interconnection service for next generation technology.

REPORTS TO THE MINISTER (TABLE 19)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Schedule 3 reports	0	1-2	2
TIMELINESS (AVERAGE)			
Schedule 3 reports completed	N/A	12 months	14.4 months
COST (\$000)			
Expenditure on output class	726	718	430

FRAMEWORK DEVELOPMENT

Most of the effort in framework development this year went towards the development of the Commission's Guidelines on the Weighted Average Cost of Capital (WACC). This is an important aspect of the cost of providing telecommunications services. The draft guide was released in June 2009.

The Commission has provided support to policy development processes in relation to the Government Broadband Initiative and Telecommunications Service Obligations.

We have regular meetings with the Australian Competition and Consumer Commission (ACCC) to exchange views on telecommunication regulation. The Commission also attended the 9th Annual European Competitive Telecommunications Association Regulatory Conference, the Oceania Telecommunications Conference and the ACCC Annual Regulatory Conference.

FRAMEWORK DEVELOPMENT – TELECOMMUNICATIONS (TABLE 20)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Advice to officials on proposed law reform	0	2-4	3
International information exchange and liaison	3	2-4	3
COST (\$000)			
Expenditure on output class	332	317	1,083

INFORMATION DISCLOSURE

The Commission's work in this area relates largely to the operational and accounting separation of Telecom. Taken together, these regulatory tools limit Telecom's scope to discriminate in favour of its own operations in a way that limits competition. Under the Operational Separation Undertakings, Telecom has set up business units responsible for the fixed access network (Chorus), and for wholesale and retail functions.

The Commission has liaised with Telecom and the Independent Oversight Group (IOG) to monitor compliance by Telecom with the Undertakings. Compliance has involved the development of staff training and key performance indicators, as well as meeting deadlines for the delivery of equivalent services to wholesale customers and to Telecom's business units. The Commission has developed an effective working relationship with the IOG. In light of the availability of a significant amount of information from the IOG, we have not prepared a public report on operational separation as originally anticipated.

The Commission has invested significant resources in the development of accounting separation. Over time, this will provide stakeholders in the industry with a high degree of transparency over Telecom's costs. During 2008/09 the Commission finalised its requirements for Telecom's accounting separation reporting. We will continue to refine these requirements as necessary to produce useful and accurate information that will support the promotion of competition for the long-term benefit of consumers.

INFORMATION DISCLOSURE – TELECOMMUNICATIONS (TABLE 21)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Information disclosure reports – compliance access principles	0	0-1	N/A
Operational separation report	0	1	N/A
Framework specification report for accounting separation	1	1	N/A
Accounting separation reports	0	0-1	0
TIMELINESS (AVERAGE)			
Information disclosure reports – publication of summaries	N/A	90 days	N/A
Operational separation report	N/A	3 months	N/A
Framework specification report for accounting separation	11 months	18 months	N/A
Accounting separation reports – publication of summaries	N/A	90 days	N/A
COST (\$000)			
Expenditure on output class	1,845	1,665	0

PUBLIC INFORMATION/EDUCATION – TELECOMMUNICATIONS (TABLE 22)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Stakeholder engagement meetings	44	20-30	N/A
Industry forum on NGN issues	1	2	N/A
Media releases	42	20-30	41
Presentations	8	5-10	7
Publications	0	0-2	0
QUALITY			
Media releases consistent with media release protocols	100%	100%	100%
Publications conform to brand guidelines/standards	N/A	100%	N/A
COST (\$000)			
Actual expenditure on output class – Telecommunications	132	147	157

VOTE COMMUNICATIONS (TABLE 23)

Financial results for the year ended 30 June 2009

	ACTUAL 2008/09 \$000	SOI 2008/09 \$000	ACTUAL 2007/08 \$000
Total revenue	7,820	8,040	6,446
Total expenditure	7,134	8,040	6,446
SURPLUS/(DEFICIT)	686	0	0

ENERGY

2008/09 HIGHLIGHTS

In this area in 2008/09 the Commission has prioritised the implementation of the new requirements under Part 4 of the Commerce Act. The Commission completed the guidelines and principles phase of the development of input methodologies for the regulated sectors with the publication of the Input Methodologies Discussion Paper. In addition, the Commission released discussion documents on options for regulating Transpower and resetting price-quality paths for electricity distribution businesses. The completion of these pieces of work means that the Commission is on track to implement the new requirements seeking to promote the long-term benefit of consumers of electricity lines, gas pipeline businesses and airports. The Commission has been systematically building its capability to ensure that this work is appropriately resourced to achieve its outcomes, and there has been an ongoing process of consultation and engagement with interested parties. The Commission also completed the authorisation for the control of supply of natural gas services by Powerco and Vector Limited.²

The Commission aims to ensure that providers of services in markets where there is little or no competition (at present regulated gas distribution, electricity transmission and distribution, and certain airports) face strong incentives to improve efficiency, share benefits with consumers and invest appropriately.

This year has seen significant change in this area of work for the Commission. The majority of the provisions of the Commerce Amendment Act 2008 (Amendment Act) took effect on 14 October 2008. The Amendment Act changes the regulatory regime for electricity lines businesses and expands the sectors regulated to include all gas distribution and transmission businesses and three major international airports. A key focus for the Commission in 2008/09 was therefore the planning for, and implementation of, the new regime. At the same time, the Commission has had to maintain delivery of the legacy or transitional aspects of the regime.

Due to the significant changes experienced in the regime during the year, the output classes and targets that were established for 2008/09 are in several cases no longer relevant and a substantial proportion of the Commission's work in this area is therefore not able to be formally measured.

ELECTRICITY

The priority for the Commission in relation to electricity has been on implementing aspects of the new Part 4 regime, including default price-quality paths, and information disclosure requirements and also further developing the criteria by which suppliers can assess whether they are consumer-owned in terms of the definition under the Act. Prior to the amendment of the Act the Commission had also set information disclosure requirements under Part 4A. Due to the workload associated with the establishment of the new regime, the Commission has had to keep its other work in this area to a minimum, while ensuring it meets its statutory obligations. The Commission has largely achieved its targets in these areas, including closing a large number of threshold inquiries.

Significant under-expenditure in this area reflects the changing nature of the regime through the year. Following the introduction of Part 4 of the Commerce Act, the government agreed to transfer \$2.9 million from 2008/09 to future years to support the implementation of the new regime.

ASSESSMENTS OF PERFORMANCE THRESHOLD COMPLIANCE STATEMENTS

Due to the passing of the Amendment Act, work on the reset of price path and quality thresholds under the Part 4A regime that the Commerce Commission had forecast for completion in 2008/09 was halted. Instead, the Amendment Act deemed the existing thresholds for large electricity lines businesses to be default price-quality paths for one year commencing 1 April 2009 and ending on 31 March 2010. Work commenced during 2008/09 on the default price-quality paths to apply from 1 April 2010. Expenditure incurred in this area relates to significant work that had already been carried out in the first three months of 2008/09 towards completion of the reset thresholds prior to the passing of the Amendment Act.

2. Applies to Vector's natural gas services in Auckland only.

ASSESSMENTS OF PERFORMANCE THRESHOLD COMPLIANCE STATEMENTS (TABLE 24)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Threshold reset	1	0-1	0
Litigation resolved	0	0-2	1
TIMELINESS (AVERAGE)			
Litigation resolved – proceedings filed	N/A	20 days	N/A
Litigation resolved – trial held or pre-trial resolution achieved	N/A	12 months	N/A
QUALITY			
Successful legal challenges of processes during the course of reset	0	0	0
Judgments with adverse comments about the Commission	0	0	0
COST (\$000)			
Expenditure on output class	1,143	1,089	116

THRESHOLD INQUIRIES

Where businesses breach their price path or quality thresholds the Commission may conduct an inquiry to consider whether to exercise control over the regulated service. In particular we focus on those businesses having the most impact on consumers.

The Commission completed a high number of threshold inquiries in 2008/09 as we worked to clear a backlog from previous years. This backlog directly contributed to the comparatively longer time taken to complete these inquiries.

Expenditure was \$1.032 million less than forecast in this area, as work planned under the previous legislation was not progressed following the introduction of Part 4 of the Commerce Act.

THRESHOLD INQUIRIES (TABLE 25)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
No further action	66	35-50	31
Administrative resolutions	0	2-5	0
Decision to control	0	0-3	0
Litigation resolved	0	0-1	0
TIMELINESS (AVERAGE)			
No further action – assessments completed	82 days	60 days	N/A
Decision to control – determinations completed	N/A	9 months	N/A
Litigation resolved – proceedings filed	N/A	20 days	N/A
Litigation resolved – trial held or pre-trial resolution achieved	N/A	12 months	N/A
QUALITY			
Successful legal challenges of processes during the course of reset	0	0	0
Judgments with adverse comments about the Commission	0	0	0
COST (\$000)			
Expenditure on output class	523	1,556	663

CONTROL – AUTHORISATION OF PRICE, REVENUE OR QUALITY

The Commission did not issue any authorisations for electricity lines businesses during 2008/09.

INFORMATION DISCLOSURE

Transparency of information allows interested parties, particularly consumers, to understand the performance of their lines business. In 2008/09 the Commission continued its work to reset updated performance measures resulting from the review of information disclosure requirements that commenced in late 2004 for large electricity lines businesses. These requirements were made under the previous Part 4A and remain in force until a determination is made under the new Part 4 of the Commerce Act. Under the new requirements, the quality and transparency of the information disclosed is expected to increase over time.

Expenditure was \$0.733 million less than forecast in this area because significant pieces of work planned under the previous regime were stopped following the introduction of Part 4 of the Commerce Act.

INFORMATION DISCLOSURE – ELECTRICITY (TABLE 26)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Publish requirements	1	0-2	N/A
Dissemination of industry information	0	1	1
TIMELINESS			
Gazetted requirements published (average)	56 months	12 months	N/A
COST (\$000)			
Expenditure on output class	780	1,513 ³	N/A

FRAMEWORK DEVELOPMENT

Expenditure on framework development in 2008/09 reduced significantly compared with the previous year. The high level of expenditure in the previous year was due to work contributing to the development of the Commerce Amendment Act. This year the effort in framework development was largely focused on development of the new Part 4 regime. For example, the Commission developed preliminary views on the type of price-quality regulation that should apply to Transpower following the expiry of the existing settlement agreement on 30 June 2011. We also prepared a consultation paper on Regulatory Provisions of the Commerce Act that apply to electricity, gas and airports.

FRAMEWORK DEVELOPMENT – ELECTRICITY (TABLE 27)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Advice to officials on proposed law reform	2	1-3	3
International information exchange and liaison	1	1-3	3
COST (\$000)			
Expenditure on output class	1,014	1,472	2,481

3. This number was erroneously recorded as 0 in the SOI.

PUBLIC INFORMATION/EDUCATION – ELECTRICITY (TABLE 28)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Media releases	3	12-18	10
Presentations	3	5-10	9
Publications	8	10-20	14
QUALITY			
Media releases consistent with media release protocols	100%	100%	100%
Publications conform to brand guidelines/standards	100%	100%	100%
COST (\$000)			
Actual expenditure on output class	100	0 ⁴	983

VOTE ENERGY – ELECTRICITY LINES (TABLE 29)

Financial results for the year ended 30 June 2009

	ACTUAL 2008/09 \$000	SOI 2008/09 \$000	ACTUAL 2007/08 \$000
Total revenue	3,631	5,630	4,243
Total expenditure	3,560	5,630	4,243
SURPLUS/(DEFICIT)	71	0	0

GAS

In this sector, the Commission authorises prices, revenues and quality of regulated companies and assesses compliance with the terms of any authorisations. The expansion of the Commission's scope to include all gas distribution and transmission businesses has required significant effort to begin determining the gas default price-quality paths and information disclosure requirements under Part 4 of the Act.

At the same time, the Commission maintained existing regulatory requirements for gas regulation during the transitional period. In 2008/09 the Commission's key achievements in this area were the determinations of authorisations, and the rejection of proposed alternative undertakings, for the regulated gas distribution pipeline services supplied by Powerco and Vector. The Commission released these determinations in October 2008 setting out the terms of control for both businesses pursuant to Part 5 of the Commerce Act. The authorisations were aimed at minimising the ability of the monopoly providers to abuse their market power in circumstances where competition is limited. The immediate effect of the authorisations was to reduce prices for the regulated services.

DETERMINATIONS

The Commission sets the price and other conditions under which the companies must supply gas distribution services (authorisation). Work in this area has been a lengthy and complex project for the Commission but is now complete and this output will not continue in 2009/10. The length of time taken to complete the final authorisation (Table 31) reflects the time between the initial gas inquiry being completed in 2002 and the final authorisations being put in place in late 2008. Significant cost was incurred during 2008/09 due to the work required to put the authorisations in place.

One litigation matter was resolved during the year. Powerco discontinued its appeal and judicial review proceedings.

4. This number was erroneously recorded as \$1,513 million in the SOI.

Powerco had alleged that the authorisation decision of the Commission was an error of law and that there were challengeable errors of process in a judicial review context.

DETERMINATIONS – GAS (TABLE 30)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Provisional authorisations	0	0	0
Final authorisations/undertakings	4	2	0
Litigation resolved	1	0-2	0
TIMELINESS (AVERAGE)			
Final authorisations determined	50 months	24 months	NA
Litigation resolved – proceedings filed	N/A	20 days	N/A
Litigation resolved – trial held or pre-trial resolution achieved	5.3 months	12 months	N/A
QUALITY			
Successful legal challenges of the Commission's processes during the course of considerations/provisional/final authorisations/undertakings/assessments	0	0	0
Company under control experiences a hiatus between authorisations	0	0	0
Judgments with adverse comment about the Commission	0	0	0
COST (\$000)			
Expenditure on output class	1,178	207	1,784

COMPLIANCE WITH TERMS OF AUTHORISATIONS

The Commission undertook more compliance assessments in 2008/09. This was due to the need to undertake initial review of compliance reports under the authorisations completed during the year, for Powerco and Vector. With this work complete, in 2009/10 activity in this area is expected to return to previous levels.

COMPLIANCE WITH TERMS OF AUTHORISATIONS (TABLE 31)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
No further action	7	0-1	4 all
Administrative resolution	0	0-1	
Litigation	0	0-1	
TIMELINESS (AVERAGE)			
Assessments completed	26 days	90 days	22 days all
Litigation resolved – proceedings filed	N/A	20 days	
Litigation resolved – trial held or pre-trial resolution achieved	N/A	12 months	
QUALITY			
Judgments with adverse comment about the Commission	0	0	0
COST (\$000)			
Expenditure on output class	0 ⁵	93	0

5. Costs associated with compliance with the terms of authorisations are captured in the Determinations costs set out in Table 30.

FRAMEWORK DEVELOPMENT

The Commission has put in significant effort this year in order to begin development of the default price-quality paths and a new information disclosure regime for regulated suppliers. Due to the mid-year change in legislation, outputs in this area are not an accurate reflection of the effort.

This year, \$0.326 million more than forecast was expended, following the introduction of new requirements to set default price-quality paths for regulated gas services under Part 4 of the Commerce Act.

Significant activity in this area is forecast until such time as the new regime is fully established.

FRAMEWORK DEVELOPMENT – GAS (TABLE 32)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Advice to officials on proposed law	0	0	0
International information exchange and liaison	0	1-3	0
COST (\$000)			
Expenditure on output class	326	0	141

PUBLIC INFORMATION/EDUCATION – GAS (TABLE 33)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Media releases	3	1-3	1
Presentations	0	1-5	1
Publications	3	1-5	2
QUALITY			
Media releases consistent with media release protocols	100%	100%	100%
Publications conform to brand guidelines/standards	100%	100%	100%
COST (\$000)			
Actual expenditure on output class	0	0	0

VOTE ENERGY – GAS PIPELINE REGULATION (TABLE 34)

Financial results for the year ended 30 June 2009

	ACTUAL 2008/09 \$000	SOI 2008/09 \$000	ACTUAL 2007/08 \$000
Total revenue	1,750	300	1,925
Total expenditure ⁶	1,504	300	1,925
SURPLUS/(DEFICIT)	246	0	0

6. \$0.326 million of the total expenditure of \$1.504 million was expended on framework development. The cost was met from Commission financial reserves. The net surplus of \$0.572 million will be returned to the Crown.

AIRPORTS

The Commerce Amendment Act confirmed the requirement for the Commission to establish an information disclosure regime for specified airport services by 1 July 2010. Funding for this stream of work was only approved in March 2009, so progress was constrained. However, a discussion paper, for release in July 2009, on information disclosure requirements has been developed in conjunction with work on gas pipeline and electricity lines services. The Commission intends to make a determination on information disclosure for airports prior to the end of 2009/10, to take effect from 1 July 2010.

VOTE COMMERCE – AIRPORTS (TABLE 35)

Financial results for the year ended 30 June 2009

	ACTUAL 2008/09 \$000	SOI 2008/09 \$000	ACTUAL 2007/08 \$000
Total revenue	401	N/A	N/A
Total expenditure	110	N/A	N/A
SURPLUS/(DEFICIT)	291	N/A	N/A

REGULATORY PRINCIPLES AND GUIDELINES

This is a new area of work for the Commission that was established as an output in January 2008. The project aims to provide enhanced transparency and certainty within the regulatory regimes administered under the Commerce Act. At the time that the Statement of Intent 2008-2011 was written there was a degree of uncertainty about the exact nature of the implementation of the new regime following the passing of the Commerce Amendment Act. In future this output will be referred to as input methodologies.

The development of principles and guidelines was a significant piece of work for the Commission requiring a high level of resourcing. The approach taken was to release a single Input Methodologies Discussion Paper in June 2009 that applies to electricity transmission and distribution, gas and airport services.⁷ The input methodologies are the building blocks for regulation under Part 4 and set upfront rules, requirements and processes for regulation to provide certainty to regulated suppliers and consumers.

REGULATORY PRINCIPLES AND GUIDELINES (TABLE 36)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Determinations made	0	0	N/A
Development of principles and guidelines (gas, electricity, airports)	4	1-8	N/A
Framework development	0	0	N/A
TIMELINESS			
Determinations made	N/A	12 months	N/A
Principles and guidelines completed – gas and electricity	12 months	12 months	N/A
Principles and guidelines completed – airports	N/A	12 months	N/A

7. In Table 37 this is counted as four outputs.

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUALITY			
Determinations – successful legal challenges of the Commission’s processes during the course of the consideration	0	0	N/A
Development of principles and guidelines – successful legal challenges of the Commission’s processes during the course of the consideration	0	0	N/A
COST (\$000)			
Total revenue	3,400	3,000	N/A
Expenditure on output class	3,075	3,000	N/A

PUBLIC INFORMATION/EDUCATION – REGULATORY PRINCIPLES AND GUIDELINES (TABLE 37)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Media releases	3	3-13	N/A
Presentations	3	1-7	N/A
Publications	2	1-3	N/A
QUALITY			
Media releases consistent with media release protocols	100%	100%	N/A
Publications conform to brand guidelines/standards	100%	100%	N/A
COST (\$000)			
Actual expenditure on output class	0	0	N/A

VOTE ENERGY – ELECTRICITY – INPUT METHODOLOGIES (TABLE 38)

	ACTUAL 2008/09 \$000	SOI 2008/09 \$000	ACTUAL 2007/08 \$000
Total revenue	2,386	2,100	N/A
Total expenditure	2,158	2,100	N/A
SURPLUS/(DEFICIT)	228	0	N/A

VOTE ENERGY – GAS – INPUT METHODOLOGIES (TABLE 39)

	ACTUAL 2008/09 \$000	SOI 2008/09 \$000	ACTUAL 2007/08 \$000
Total revenue	437	390	N/A
Total expenditure	395	390	N/A
SURPLUS/(DEFICIT)	42	0	N/A

VOTE COMMERCE – AIRPORTS – INPUT METHODOLOGIES (TABLE 40)

	ACTUAL 2008/09 \$000	SOI 2008/09 \$000	ACTUAL 2007/08 \$000
Total revenue	577	510	N/A
Total expenditure	522	510	N/A
SURPLUS/(DEFICIT)	55	0	N/A

DAIRY

The Commission plays a key role in facilitating workably competitive dairy markets in New Zealand through administering the Dairy Industry Restructuring Act 2001 (DIR Act). A key purpose of this Act is to promote the efficient operation of dairy markets in New Zealand.

Our role includes determining disputes between Fonterra and other parties over entry and/or exit of shareholders, and/or disputes under the Dairy Industry Restructuring (Raw Milk) Regulations 2001 relating to the supply and pricing of raw milk to independent processors. We also conduct investigations into behaviour that appears to breach the conditions for entry and exit of shareholders, or any regulations made under the DIR Act.

The Commission has completed more work than forecast in this area in 2008/09. This was due to two applications for determination of disputes with Fonterra received in June/July 2008. The Commission addressed these two determinations together due to the related nature of the disputes. The disputes related to two companies that argued they were independent processors under the Raw Milk Regulations, and therefore entitled to be supplied with raw milk by Fonterra. Fonterra argued that as they both contracted a third party to perform all or some of the production process, including the initial processing of the raw milk, they should not qualify as independent processors. The Commission determined in June 2009 that both companies did meet the definition as independent processors and ordered Fonterra to supply them.

The process of consideration required draft determinations and further consultation documents to assist the Commission in considering the complex issues the cases raised. This extended the time taken to deliver the decision. Fonterra filed notice of appeal of the Commission's decision on 3 July 2009.

The Commission's view is that its interpretation places the least constraint on entry into dairy markets and this is desirable as it stimulates competition, efficiency and innovation in these markets. The determination in these two disputes gave the Commission the opportunity to clarify to stakeholders its approach and give effect to one of the key purposes of the DIR Act.

DAIRY (TABLE 41)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
INVESTIGATIONS			
→ Administrative resolutions	0	0-1	0
→ Litigation resolved	0	0-1	0
→ No further action required	0	0-1	0
DETERMINATIONS			
→ Determinations made	2	0-1	0
→ Litigation resolved	0	0-1	0
→ Framework development	1	0-1	1

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
TIMELINESS (AVERAGE)			
Administrative resolutions – investigation phase	N/A	6 months	N/A
Administrative resolutions completed	N/A	45 days	N/A
Litigation resolved – investigation phase completed	N/A	6 months	N/A
Litigation resolved – proceedings filed	N/A	20 days	N/A
Trial held or pre-trial resolution achieved	N/A	24 months	N/A
No further action – report completed	N/A	6 months	N/A
Determinations made – determination completed	10.9 months	6 months	N/A
Determinations – proceedings filed	N/A	20 days	N/A
Trial held or pre-trial resolution achieved	N/A	18 months	N/A
QUALITY			
Successful legal challenges of the Commission's processes during the course of an investigation	0	0	0
Judgments made with adverse comments about the Commission	0	0	0
COST (\$000)			
Expenditure on output class	481	300	224

PUBLIC INFORMATION/EDUCATION – DAIRY (TABLE 42)

	ACTUAL 2008/09	SOI 2008/09	ACTUAL 2007/08
QUANTITY			
Media releases	5	0-2	1
Presentations	0	0-1	0
Publications	0	0-1	0
QUALITY			
Media releases consistent with media release protocols	100%	100%	100%
Publications conform to brand guidelines/standards	N/A	100%	N/A
COST (\$000)			
Actual expenditure on output class – Dairy	24	0	135

VOTE COMMERCE – DAIRY (TABLE 43)

Financial results for the year ended 30 June 2009

	ACTUAL 2008/09 \$000	SOI 2008/09 \$000	ACTUAL 2007/08 \$000
Total revenue	907	300	300
Total expenditure	505	300	224
SURPLUS/(DEFICIT)	402	0	76

SUPPORTING
OUR
ORGANISATION
AND
OUTCOMES

The Commission recognises that the experience and skills of our people make it possible to achieve our goals. Our people-related strategies and reputation as being a 'good employer' ensure we are able to attract and retain high-performing staff, who are motivated to achieve the Commission's goals, and are committed to our vision and values. Promoting the Commission as an exciting and rewarding environment, where staff can be at the forefront of competition law and regulation, is an ongoing feature of our employment branding.

MAINTAINING AND ENHANCING EXISTING CAPABILITY

Like all employers, as labour market restrictions have lessened due to the global economic downturn, we have continued to experience a reduction in our annual turnover. Turnover this year has been 14.36 per cent, down from 16.02 per cent and 17.65 per cent in the previous two years respectively. While staff are generally less mobile and placements are fewer than in previous years, we are still finding it challenging to recruit in some specialist skill sets that are required to meet the complexity of the Commission's work.

Inducting new staff members into the Commission continues to be important in ensuring they quickly learn the requirements of working in our environment. Our existing programme, which is rated well by staff, provides a solid foundation and from this staff are actively encouraged to seek opportunities to grow and develop in their roles, principally through on-the-job learning. Rotation and secondment opportunities are also routinely provided to enhance career development and this is evidenced through our active secondment programme, which has seen up to nine placements each year over the past two years.

A further important priority for the Commission is continuing our focus on developing our current and future leadership talent. As well as the initiatives outlined in the Achieving Our Outcomes section, the Commission has implemented a management development programme that provides an opportunity for individuals to undergo a structured and rigorous assessment of their leadership style. The outcome of this process is incorporated into an individual development plan.

We have also continued to place a priority on investing in the professional development of all staff. Staff routinely benefit from an extensive training and professional development programme which includes both generic and tailor-made technical training. Staff also attend relevant conferences and are encouraged to keep abreast of international developments and expertise. In order to ensure that the investment we make in our people is maximised, and to assist in clarifying potential opportunities, a career development framework will continue to be developed for implementation in 2009/10.

The Commission takes a proactive approach to staff well-being. An active health and safety committee ensures staff are kept up to date with developments relating to keeping themselves safe at work, wellness, and identification and management of hazards.

CHANGING ORGANISATION STRUCTURE AND STAFFING

In early 2009 the Commission initiated a review of its internal management and support structures to identify ways in which the Commission could lift its performance to a higher level. The review recommended:

- a reduction in the size of the Commission's senior management team with a corresponding increase in the seniority and strategic focus of this team;
- consolidation of the Commission's branch structure to create a regulatory/enforcement split;
- creation of a more strategic Corporate Services function – to be renamed the Organisation Performance branch; and
- assessing the appropriate level of resourcing for the Organisation Performance branch. This has primarily affected the human resources team, which has reduced in size.

There will be further reviews in specified areas once senior management positions have been confirmed later in 2009.

These changes will be implemented in the first quarter of 2009/10 with consequent organisational change anticipated within the proposed branch structure throughout 2009/10.

Due to the requirements of the new Part 4 regime, a key focus for the Commission in developing its capability has been the recruitment of sufficient resources to enable it to meet the high workload expected in 2009/10. Up to an additional 15 full-time equivalent (FTE) positions will be required, although most of these will be contractors due to the short-term nature of the work to establish the regime. The strategy of establishing an in-house major litigation team for the Commission has also lifted our total FTE numbers.

Staff numbers in the core areas of Competition, Fair Trading and Corporate Services have remained largely static.

STAFF NUMBERS (TABLE 44)

	2008/09	2007/08
Commission FTEs	182.64	167.44

CREATING KNOWLEDGEABLE NEW ZEALANDERS

The Commission's goal in this area is to ensure that New Zealanders understand the benefits of competition and regulation in a market economy. The Commission's ability to deliver on its outcomes is, in many respects, reliant on being successful in increasing New Zealanders' knowledge on these issues through our public information and education activities. Increased public knowledge can directly impact on the competitive and regulatory environment.

The Commission expends considerable effort engaging with media, making public presentations, and producing information via publications and our website to assist New Zealanders in understanding our goals and how we work to achieve them.

In each area of the Commission's work there are specific targets for activity defined as public information and education. These are reported in the Achieving Our Outcomes section.

In addition to the standard output measures, the Commission has developed a specific impact measure. We want to know that the effort we put into communicating our work via media releases is useful to improving knowledge. Through analysis of the extent of coverage each media release receives, and the extent to which the key messages have been related by media, we gain some understanding of the impact our engagement through media is having. The data collected this year will create a baseline for comparisons of performance in future years. In general the current baseline data reflects a high degree of impact from the Commission's current media activities.

MEDIA IMPACT (TABLE 45)

QUARTER	NO. OF MEDIA RELEASES	NO. OF MEDIA ITEMS ⁸	% OF PRINT ITEMS WITH KEY MESSAGE CARRIED
1	41	227	66%
2	45	321	67%
3	34	278	60%
4	32	370	61%

8. This refers to media items generated by media releases.

COMMISSION STRUCTURE

The Commerce Commission is an independent Crown entity under section 7 and Part 3 of Schedule 1 of the Crown Entities Act 2004, and a body corporate established under section 8 of the Commerce Act.

The Commission is an independent, quasi-judicial body responsible for a number of general and specific regulatory regimes set out in the Commerce, CCCF, DIR, EIR, Fair Trading and Telecommunications Acts.

The Commission is not subject to direction in its enforcement and regulatory control activities. Under section 26 of the Commerce Act the Minister of Commerce can communicate to the Commission statements of economic policy to which the Commission must have regard in its decisions under this Act.

The Governor-General, on the recommendation of the Minister of Commerce, appoints Commission members for their knowledge of, and experience in, areas relevant to the Commission's interests. At least one Commission member must be a barrister or solicitor. Under the Telecommunications Act a Telecommunications Commissioner, who is a member of the Commission, is appointed by the Governor-General on the recommendation of the Minister for Communications and Information Technology. The Minister of Commerce may appoint associate members.

The Governor-General must also appoint two Cease and Desist Commissioners who must be barristers or solicitors. These Commissioners are appointed for the sole purpose of hearing and determining applications for cease and desist orders.

Commission members have both a governance and a decision-making role in the exercise of the Commission's powers and functions.

GOVERNANCE

The Chair is responsible for convening meetings of the Commission, but may also direct the Commission to sit in Divisions to exercise any powers of the Commission in relation to a matter or class of matter. A division decision has the full weight of a Commission decision.

The Chair convenes monthly meetings of members to deal with governance issues or to agree on policy that will have an impact on the governance role of the Commission.

The Commission has three standing governance committees which are appointed to assist the Commission to discharge its responsibilities. They are the Audit, Finance and Risk Management Committee (AFRM), the Legal Services Committee and Remuneration Committee. In 2008/09 the AFRM committee met nine times, the Legal Services Committee nine times and the Remuneration Committee four times.

DECISION MAKING

The Chair directs divisions to consider particular matters on behalf of the Commission. Standing divisions are directed to deal with a particular class of matter. Current standing divisions are responsible for dealing with enforcement matters arising under the Commerce Act, the Fair Trading Act and the Credit Contracts and Consumer Finance Act, and the regulated parts of the electricity, gas and airport sectors. There is a division solely devoted to the development of Input Methodologies.

Ad hoc divisions may also be formed for specific adjudicative matters and undertaking specific investigations and inquiries.

Under the Telecommunications Act the Telecommunications Commissioner can decide certain matters. In other cases the Telecommunications Commissioner must involve two Commission Members appointed by the Chair, and together they act as a division.

CONFLICTS OF INTEREST

The Commission operates a conflicts of interest policy. Commission Members must be alert to and disclose all actual or perceived conflicts of interest as defined by the Crown Entities Act 2004. A register of conflicts is maintained and continually updated.

COMMISSION MEMBERS



PAULA REBSTOCK - CHAIR (UNTIL MARCH 2009)

Paula Rebstock was appointed an Associate Commissioner in 1998, then Commissioner and Deputy Chair, before she was appointed Chair in 2003. Paula stepped down as Chair at the end of that term in March 2009. Paula is an economic consultant and company director with a BSc (Economics) from the University of Oregon and an MSc (Economics) from the London School of Economics. She completed further postgraduate studies at the Kiel Institute of World Economics. In previous roles Paula has been an economic adviser with the Department of Prime Minister and Cabinet, and General Manager Policy with the Department of Labour.



DR MARK BERRY - CHAIR (FROM APRIL 2009)

Dr Mark Berry was appointed Chair in April 2009 for a term of 18 months. He previously held the position of Deputy Chair of the Commerce Commission between 1999 and 2001. Mark has specialised in competition law and economic regulation. He is a former partner of law firm Bell Gully and former consultant with Chapman Tripp. Since 2002 he has been in practice as a barrister sole. Mark holds a doctorate from Columbia University, New York. He has taught Contract Law, Competition Law and Securities Regulation at Otago University Law School, and is a member of the International Advisory Board of the Institute for Consumer Anti-trust Studies at Loyola University Chicago School of Law.



DR ROSS PATTERSON - TELECOMMUNICATIONS COMMISSIONER

Dr Ross Patterson was appointed Telecommunications Commissioner in July 2007 for a period of five years. Ross has a PhD in competition law. He has practised extensively in New Zealand and Australia specialising in competition and regulatory law. His previous roles included heading Minter Ellison's competition and regulation practice in Australia.



DENESE BATES QC - COMMISSIONER (UNTIL JUNE 2009)

Initially appointed in 2001 and reappointed in April 2004 for five years, Denese Bates left the Commission in April 2009. A barrister, Denese was appointed a Queen's Counsel in 1996. She has a wide-ranging civil law practice which includes general civil cases and commercial cases. Denese was for a number of years a council member of both the Auckland District Law Society and the New Zealand Law Society.



PETER JM TAYLOR - COMMISSIONER

Peter Taylor was appointed in February 2001 for five years and reappointed for a further four years in February 2006. Peter is a retired chartered accountant with experience in Africa, the United Kingdom, Australia and Asia. He was a consulting partner of a major New Zealand accountancy business for 14 years. From 1994 to 1996 he was seconded to the Crown Company Monitoring Advisory Unit as its Chief Executive. He is a director of a number of private companies.



DONAL CURTIN - COMMISSIONER

Donal Curtin was appointed an Associate Commissioner in 2001, then Commissioner, and was reappointed for a further three years in 2005. He was again reappointed a Commissioner in July 2008, for a further five years. Donal is a business economist with wide experience of applying economics to commercial decisions. He currently runs Economics New Zealand, a consultancy. His previous roles include the Bank of New Zealand's Chief Economist and head of its national private banking unit.

**ANITA MAZZOLENI - COMMISSIONER**

Anita Mazzoleni was appointed a Commissioner in April 2009 for a term of five years, having previously been an Associate Commissioner since 2005. She is an independent corporate finance adviser and company director. Her commercial career has been in industry and finance, particularly the evaluation and funding of infrastructure. She has previously been General Counsel of Contact Energy, Director of Deloitte Corporate Finance and General Manager at Citibank.

**SUSAN BEGG - COMMISSIONER (FROM JUNE 2009)**

Susan Begg was appointed a Commissioner in June 2009 for a term of five years. She is an economist whose previous roles include Vice-President and head of the economic advisory unit of the investment banking division of Credit Suisse First Boston NZ Limited (and its predecessor companies) and manager of the macroeconomic policy section at the Treasury. In her consultancy roles Susan has provided regulatory advice to government and to regulated industries.

**GOWAN PICKERING - ASSOCIATE COMMISSIONER**

Gowan Pickering was appointed in May 2005 and reappointed in 2008 for a further four years. Gowan spent more than 30 years with IBM, where he was IBM New Zealand Chief Executive Officer and Chairman from 1991 to 1998. He was Chief Executive of the Foundation for Research, Science and Technology for four years from 2000. He is currently a director of a number of technology companies and a trustee of Capital Primary Health Organisation.

**DAVID CAYGILL - ASSOCIATE COMMISSIONER**

David Caygill was appointed an Associate Commissioner in September 2007. He had previously been the Deputy Chair of the Commerce Commission, appointed in December 2003, but stood down from that role when he took up the role of Chair of the Electricity Commission. David is a lawyer and former Minister of the Crown. His previous governance experience includes Chair of the Grid Security Committee, the Electricity Governance Establishment Group and ACC.

**PATRICK DUIGNAN - ASSOCIATE COMMISSIONER (FROM JUNE 2009)**

Patrick Duignan was appointed in June 2009 for a term of five years. He is an economist and corporate financier, who has undertaken a wide range of financial and economic analyses in both the public and private sectors. Patrick's previous roles include General Manager Finance for Telecom Corporation, Director in the Investment Banking Division of CS First Boston NZ Limited, Treasurer of the New Zealand Debt Management Office, and Director Policy Coordination and Development at the Treasury. He is currently an expert (non-board) member of the ACC Investment Committee.

**THE HONOURABLE SIR IAN BARKER QC - CEASE AND DESIST COMMISSIONER**

The Honourable Sir Ian Barker QC was appointed in October 2007 for five years. He is a retired Senior Judge of the High Court of New Zealand and a past President of the New Zealand Arbitrators' and Mediators' Institute.

**HELEN CULL QC - CEASE AND DESIST COMMISSIONER**

Helen Cull QC was appointed in October 2007 for five years. She has extensive experience in litigation and public law and has chaired several national inquiries.

FINANCIAL STATEMENTS

STATEMENT OF RESPONSIBILITY

Pursuant to the Crown Entities Act 2004, the Commerce Commission accepts responsibility for:

- the preparation of the financial statements in accordance with Generally Accepted Accounting Practice in New Zealand and the judgments made therein; and that
- those financial statements fairly reflect the financial position of the Commerce Commission as at 30 June 2009 and the results of its operations, cash flows and service performance for the period ended on that date; and
- the establishment and maintenance of a system of internal controls designed to provide reasonable assurance as to the integrity and reliability of financial and non-financial reporting.

In the opinion of the Commerce Commission, the financial statements for the year ended 30 June 2009 set out on pages 53 to 74 fairly reflect the financial position of the Commerce Commission as at 30 June 2009 and the results of its operations, cash flows and service performance for the period ended on that date.



M Berry
Chair – Commerce Commission
2 November 2009



P J M Taylor
Chair – Audit, Finance and Risk Management Committee
2 November 2009

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AUDIT REPORT

TO THE READERS OF THE COMMERCE COMMISSION'S FINANCIAL STATEMENTS AND STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 2009

The Auditor General is the auditor of the Commerce Commission (the Commission). The Auditor General has appointed me, Clare Helm, using the staff and resources of Audit New Zealand, to carry out the audit. The audit covers the financial statements and statement of service performance included in the annual report of the Commission for the year ended 30 June 2009.

UNQUALIFIED OPINION

In our opinion:

- The financial statements of the Commission on pages 55 to 57 and 60 to 74:
 - comply with generally accepted accounting practice in New Zealand; and
 - fairly reflect:
 - the Commission's financial position as at 30 June 2009; and
 - the results of its operations and cash flows for the year ended on that date.
- The statement of service performance of the Commission on pages 11 to 43 and 58 to 59:
 - complies with generally accepted accounting practice in New Zealand; and
 - fairly reflects for each class of outputs:
 - its standards of delivery performance achieved, as compared with the forecast standards outlined in the statement of forecast service performance adopted at the start of the financial year; and
 - its actual revenue earned and output expenses incurred, as compared with the forecast revenues and output expenses outlined in the statement of forecast service performance adopted at the start of the financial year.

The audit was completed on 2 November 2009, and is the date at which our opinion is expressed.

The basis of our opinion is explained below. In addition, we outline the responsibilities of the Commissioners and the Auditor, and explain our independence.

BASIS OF OPINION

We carried out the audit in accordance with the Auditor General's Auditing Standards, which incorporate the New Zealand Auditing Standards.

We planned and performed the audit to obtain all the information and explanations we considered necessary in order to obtain reasonable assurance that the financial statements and statement of service performance did not have material misstatements, whether caused by fraud or error.

Material misstatements are differences or omissions of amounts and disclosures that would affect a reader's overall understanding of the financial statements and statement of service performance. If we had found material misstatements that were not corrected, we would have referred to them in our opinion.

The audit involved performing procedures to test the information presented in the financial statements and statement of service performance. We assessed the results of those procedures in forming our opinion.

AUDIT PROCEDURES GENERALLY INCLUDE:

- determining whether significant financial and management controls are working and can be relied on to produce complete and accurate data;
- verifying samples of transactions and account balances;
- performing analyses to identify anomalies in the reported data;
- reviewing significant estimates and judgements made by the Commissioners;
- confirming year-end balances;
- determining whether accounting policies are appropriate and consistently applied; and
- determining whether all financial statement and statement of service performance disclosures are adequate.

We did not examine every transaction, nor do we guarantee complete accuracy of the financial statements and statement of service performance.

We evaluated the overall adequacy of the presentation of information in the financial statements and statement of service performance. We obtained all the information and explanations we required to support our opinion above.

RESPONSIBILITIES OF THE COMMISSIONERS AND THE AUDITOR

The Commissioners are responsible for preparing the financial statements and statement of service performance in accordance with generally accepted accounting practice in New Zealand. The financial statements must fairly reflect the financial position of the Commission as at 30 June 2009 and the results of its operations and cash flows for the year ended on that date. The statement of service performance must fairly reflect, for each class of outputs, the Commission's standards of delivery performance achieved and revenue earned and expenses incurred, as compared with the forecast standards, revenue and expenses adopted at the start of the financial year. The Commissioners' responsibilities arise from the Crown Entities Act 2004.

We are responsible for expressing an independent opinion on the financial statements and statement of service performance and reporting that opinion to you. This responsibility arises from section 15 of the Public Audit Act 2001 and the Crown Entities Act 2004.

INDEPENDENCE

When carrying out the audit we followed the independence requirements of the Auditor General, which incorporate the independence requirements of the Institute of Chartered Accountants of New Zealand.

In addition to the audit we have carried out a review of the Litigation Fund, which is compatible with those independence requirements. Other than the audit and this assignment, we have no relationship with or interests in the Commission.


Clare Helm

Audit New Zealand

On behalf of the Auditor General

Wellington, New Zealand

MATTERS RELATING TO THE ELECTRONIC PRESENTATION OF THE AUDITED FINANCIAL STATEMENTS AND STATEMENT OF SERVICE PERFORMANCE

This audit report relates to the financial statements and statement of service performance of the Commerce Commission for the year ended 30 June 2009 included on the Commerce Commission's website. The Members of the Commission are responsible for the maintenance and integrity of the Commission's website. We have not been engaged to report on the integrity of the Commission's website. We accept no responsibility for any changes that may have occurred to the financial statements and statement of service performance since they were initially presented on the website.

The audit report refers only to the financial statements and statement of service performance named above. It does not provide an opinion on any other information which may have been hyperlinked to or from the financial statements and statement of service performance. If readers of this report are concerned with the inherent risks arising from electronic data communication they should refer to the published hard copy of the audited financial statements and statement of service performance and related audit report dated 2 November 2009 to confirm the information included in the audited financial statements and statement of service performance presented on this website.

Legislation in New Zealand governing the preparation and dissemination of financial information may differ from legislation in other jurisdictions.

STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 30 JUNE 2009

	NOTES	ACTUAL 2008/09 \$000	BUDGET 2008/09 \$000	ACTUAL 2007/08 \$000
OPERATING REVENUE				
Crown revenue	3	42,195	41,455	37,649
Fees and recoveries		83	550	250
Interest		866	900	1,047
Sundry income		183	60	0
TOTAL OPERATING REVENUE		43,327	42,965	38,946
OPERATING EXPENDITURE				
Members and personnel	4	21,757	22,119	17,665
Direct output costs	5	13,354	13,733	16,822
Occupancy		1,698	1,766	1,415
Depreciation and amortisation		1,098	853	881
Other expenditure		1,807	4,294	1,613
TOTAL OPERATING EXPENDITURE	6	39,714	42,765	38,396
OPERATING SURPLUS FOR THE YEAR		3,613	200	550

STATEMENT OF CHANGES IN EQUITY FOR THE YEAR ENDED 30 JUNE 2009

	ACTUAL 2008/09 \$000	BUDGET 2008/09 \$000	ACTUAL 2007/08 \$000
BALANCE AT 1 JULY	5,615	5,065	5,065
Surplus/(Deficit) for the year	3,613	200	550
TOTAL RECOGNISED INCOME AND EXPENSE	3,613	200	550
Repayment of surplus to the Crown	(2,345)	0	0
BALANCE AT 30 JUNE	6,883	5,265	5,615

The accompanying Statement of Service Performance, Statement of Accounting Policies and Notes to the Financial Statements on pages 58 to 74 form part of the financial statements.

STATEMENT OF FINANCIAL POSITION AS AT 30 JUNE 2009

	NOTES	ACTUAL 2008/09 \$000	BUDGET 2008/09 \$000	ACTUAL 2007/08 \$000
EQUITY				
Accumulated funds	7	4,383	3,265	3,615
Litigation costs reserve	8	1,000	500	500
Litigation fund	9	1,500	1,500	1,500
TOTAL EQUITY		6,883	5,265	5,615
CURRENT ASSETS				
Cash and cash equivalents		9,119	4,076	5,926
Fees and recoveries receivable		0	155	136
Crown revenue receivable	3	2,009	3,000	1,995
Prepayments		57	0	97
Investments		0	0	5,000
TOTAL CURRENT ASSETS		11,185	7,231	13,154
NON-CURRENT ASSETS				
Property, plant and equipment	10	1,920	1,734	2,244
Intangibles	11	394	790	430
TOTAL NON-CURRENT ASSETS		2,314	2,524	2,674
TOTAL ASSETS		13,499	9,755	15,828
CURRENT LIABILITIES				
Creditors		1,361	1,292	1,762
Accrued expenses		1,281	1,326	2,816
Repayment of surplus	3	2,345	605	0
Crown revenue in advance		0	0	4,335
Employee entitlements		1,444	307	1,115
TOTAL CURRENT LIABILITIES		6,431	3,530	10,028
NON-CURRENT LIABILITIES				
Employee entitlements		0	775	0
Reinstatement provision	12	185	185	185
TOTAL NON-CURRENT LIABILITIES		185	960	185
TOTAL LIABILITIES		6,616	4,490	10,213
NET ASSETS		6,883	5,265	5,615

The accompanying Statement of Service Performance, Statement of Accounting Policies and Notes to the Financial Statements on pages 58 to 74 form part of the financial statements.

STATEMENT OF CASH FLOWS FOR THE YEAR ENDED 30 JUNE 2009

	NOTES	ACTUAL 2008/09 \$000	BUDGET 2008/09 \$000	ACTUAL 2007/08 \$000
CASH FLOWS FROM OPERATING ACTIVITIES				
Crown revenue received		42,264	38,590	38,270
Fees and recoveries received		254	610	219
Interest received		866	1,010	1,110
Member and employee payments		(21,428)	(21,992)	(17,505)
Goods and services tax (net)		(303)	0	0
Supplier payments		(18,387)	(21,042)	(17,890)
NET CASH INFLOW FROM OPERATING ACTIVITIES	14	3,266	(2,824)	4,204
CASH FLOWS FROM INVESTING ACTIVITIES				
Investments receipts/(deposits)		5,000	7,500	2,500
Property, plant and equipment sale proceeds		0	0	0
Property, plant and equipment purchases		(484)	(450)	(1,078)
Intangible asset purchases		(254)	(450)	0
NET CASH INFLOW/(OUTFLOW) FROM INVESTING ACTIVITIES		4,262	6,600	1,422
CASH FLOWS FROM FINANCING ACTIVITIES				
Repayment of surplus		(4,335)	0	0
NET CASH INFLOW/(OUTFLOW) FROM FINANCING ACTIVITIES		(4,335)	0	0
NET INCREASE/(DECREASE) IN CASH AND CASH EQUIVALENTS		3,193	3,776	5,626
Opening cash and cash equivalents		5,926	300	300
CLOSING CASH AND CASH EQUIVALENTS		9,119	4,076	5,926
CASH AND CASH EQUIVALENTS COMPRISE:				
Cash and cash equivalents		9,119	4,076	5,926
CLOSING CASH AND CASH EQUIVALENTS		9,119	4,076	5,926

The accompanying Statement of Service Performance, Statement of Accounting Policies and Notes to the Financial Statements on pages 58 to 74 form part of the financial statements.

STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 2009

	ACTUAL 2008/09 \$000	BUDGET 2008/09 \$000
VOTE COMMERCE - GENERAL MARKET		
OPERATING REVENUE	15,033	15,195
OPERATING EXPENDITURE		
Market structure cases	227	209
Coordinated behaviour cases	3,679	3,644
Unilateral conduct cases	2,056	1,893
Determinations	1,534	3,205
Framework development	776	502
Public information/education	298	22
Reports to Ministers	16	0
COMMERCE ACT EXPENDITURE		
Fair Trading Act cases	3,561	4,222
Safety and standards cases	82	290
Framework development	182	20
Public information/education	391	5
FAIR TRADING ACT EXPENDITURE		
Credit Contracts and Consumer Finance Act cases	963	1,330
Framework development	226	67
Public information/education	40	88
TOTAL OUTPUT EXPENDITURE	14,031	15,497
VOTE COMMERCE - GENERAL MARKET OPERATING (DEFICIT)/SURPLUS	1,002	(302)
VOTE COMMERCE - LITIGATION FUND		
OPERATING REVENUE	10,385	10,500
Major litigation	9,795	10,000
TOTAL OUTPUT EXPENDITURE	9,795	10,000
VOTE COMMERCE - LITIGATION FUND OPERATING SURPLUS	590	500
VOTE COMMUNICATIONS		
OPERATING REVENUE	7,820	8,040
EXPENDITURE		
Determinations	1,504	1,333
TSO cost allocations	466	740
Monitoring and reporting	2,055	2,361
Enforcement	72	568
Code approval	2	191
Reports to Ministers	726	718
Framework development	332	317
Public information/education	132	147
Information disclosure	1,844	1,665
TOTAL OUTPUT EXPENDITURE	7,134	8,040
VOTE COMMUNICATIONS OPERATING SURPLUS	686	0

	ACTUAL 2008/09 \$000	BUDGET 2008/09 \$000
VOTE ENERGY - ELECTRICITY LINES		
OPERATING REVENUE	3,631	5,630
EXPENDITURE		
Assessment of performance threshold compliance	1,143	1,089
Threshold inquiries	523	1,556
Framework development	1,014	1,472
Public information/education	100	0
Information disclosure	780	1,513
TOTAL OUTPUT EXPENDITURE	3,560	5,630
VOTE ENERGY - ELECTRICITY LINES OPERATING SURPLUS	71	0
VOTE ENERGY - GAS PIPELINE REGULATION		
OPERATING REVENUE	1,750	300
EXPENDITURE		
Determinations	1,178	207
Authorisations - compliance assessment	0	93
Framework development	326	0
TOTAL OUTPUT EXPENDITURE	1,504	300
VOTE ENERGY - GAS PIPELINE REGULATION OPERATING SURPLUS	246	0
VOTE COMMERCE - DAIRY		
OPERATING REVENUE	907	300
EXPENDITURE		
Investigations	13	300
Determinations	468	0
Public information/education	24	0
TOTAL OUTPUT EXPENDITURE	505	300
VOTE COMMERCE - DAIRY OPERATING SURPLUS	402	0
VOTE COMMERCE - INPUT METHODOLOGIES (AIRPORTS)		
VOTE ENERGY - INPUT METHODOLOGIES (ELECTRICITY AND GAS)		
OPERATING REVENUE	3,400	3,000
EXPENDITURE		
Principles and guidelines	3,075	3,000
TOTAL OUTPUT EXPENDITURE	3,075	3,000
VOTE COMMERCE - INPUT METHODOLOGIES OPERATING SURPLUS	325	0
VOTE COMMERCE - AIRPORTS		
OPERATING REVENUE	401	0
EXPENDITURE		
Principles and guidelines	110	0
TOTAL OUTPUT EXPENDITURE	110	0
VOTE COMMERCE AND AIRPORTS OPERATING SURPLUS	291	0

STATEMENT OF ACCOUNTING POLICIES FOR THE YEAR ENDED 30 JUNE 2009

REPORTING ENTITY

The Commerce Commission (the Commission) is a Crown entity, established under the Commerce Act 1986 (operating solely within New Zealand) with responsibilities for the Commerce Act 1986 and the Fair Trading Act 1986; the Electricity Industry Reform Act 1998; the Dairy Industry Restructuring Act 2001 and the Telecommunications Act 2001; and the Credit Contracts and Consumer Finance Act 2003.

MEASUREMENT BASE AND STATEMENT OF COMPLIANCE

These financial statements have been prepared in accordance with the Crown Entities Act 2004. The financial statements have been prepared on a historical cost basis for a going concern in accordance with New Zealand Generally Accepted Accounting Practice (GAAP) and were authorised for issue by the Commission on 31 October 2008.

The financial statements comply with New Zealand equivalents to International Financial Reporting Standards (NZ IFRS) and other applicable Financial Reporting Standards as appropriate for public benefit entities. All available reporting exemptions allowed under NZ IFRS for public benefit entities have been adopted.

FUNCTIONAL AND PRESENTATION CURRENCY

The Commission's functional currency is the New Zealand dollar and, accordingly, these financial statements are presented in New Zealand dollars (rounded to the nearest thousand).

SIGNIFICANT ACCOUNTING POLICIES

The significant accounting policies which materially affect the measurement of financial performance, position and cash flows have been applied consistently for all reporting periods covered by these financial statements including the comparative information. The significant accounting policies are:

Revenue – Revenue is measured at the fair value of consideration received or receivable. Revenue is derived through the provision of outputs for the Crown, for services to third parties, court cost award recoveries and investment income.

Crown revenue – The Commission receives appropriations from the Crown. These are restricted in their use to the purpose of meeting the Commission's objectives, as outlined in the Statement of Intent. Appropriations received but not spent are refunded to the Crown after year end. Appropriations from the Crown are recognised as revenue when received. Appropriations received but not spent are treated as a Crown creditor and shown in the Statement of Financial Position as a provision for refund of appropriation to the Crown.

Expenditure – All expenditure incurred in the provision of outputs for the Crown is recognised in the income statement when an obligation arises on an accruals basis.

Foreign currency transactions – Transactions in foreign currencies are translated into the Commission's functional currency at exchange rates at the dates of the transactions. Monetary liabilities denominated in foreign currencies at the reporting date are translated to the functional currency at the exchange rate at that date. Any gain or loss on monetary liabilities is the difference between the cost in the functional currency at the beginning of the period and payments during the period and are recognised in the income statement during that period.

Leases – The Commission is party to various operating leases as a lessee. As the lessors retain substantially all of the risk and rewards of ownership of the leased property, plant and equipment, the operating lease payments are recognised in the income statement only in the period in which they are incurred. Any lease incentives received or obligations to make good on the condition of leased premises are recognised in the income statement over the term of the lease. At balance date, any unamortised incentive and outstanding obligation for reinstatement is recognised as a liability in the balance sheet.

Depreciation and impairment – Depreciation is provided on a straight-line basis on all asset components to allocate the cost of the asset (less any estimated residual value) over its useful life. The residual values and remaining useful lives of property, plant and equipment components are reviewed at least annually.

STATEMENT OF ACCOUNTING POLICIES FOR THE YEAR ENDED 30 JUNE 2009 (contd)

All property, plant and equipment are subject to an annual test of impairment to test the recoverable amount. Any impairment losses are charged to the income statement in the period in which they are first identified. The estimated useful lives of the major asset classes are:

Computer and Office Equipment	3 – 4 years
Furniture and Fittings	up to 5 years
Leasehold Improvements	for the period of lease

Taxation – The Commission is exempt from income tax under section CW 38 of the Income Tax Act 2004.

Service performance outputs – Direct costs are charged directly to outputs. Personnel costs are allocated to outputs based on the time records. The indirect costs of support groups and overhead costs are charged to outputs based on the relative time records of each output.

Equity – Equity is the Crown's interest in the Commission and is measured as the difference between total assets and total liabilities. Equity is disaggregated and classified into components to enable clearer identification of the specified uses that the Commission has for its accumulated surpluses. The components of equity are accumulated funds and restricted funds. Restricted funds are those reserves subject to specific conditions of use binding on the Commission which may not be altered without reference to other counterparties. The Litigation Fund was established as a restricted fund to provide funds for major litigation activities. The criteria for operation of the Fund are laid down in the Output Agreement between the Commission and the Ministry of Economic Development.

Cash and cash equivalents – Cash and cash equivalents comprises cash on hand, transactional cash balances and call deposits held with New Zealand registered banks which are highly liquid and are used as part of the Commission's day-to-day cash management.

Receivables – Receivables are stated at their estimated net realisable value, after providing for doubtful and uncollectible debts. All known bad debts are written off and charged to the income statement in the period in which they are first identified.

Investments – Investments comprise debt securities (term deposits) issued by New Zealand registered banks and are classified as loans and receivables. Loans and receivables are initially measured at fair value plus any transaction costs. After initial recognition, loans and receivables are re-measured at amortised cost using the effective interest rate method. Any gains or losses arising from impairment or de-recognition are recognised in the income statement in the period in which they are first identified.

Property, plant and equipment – All items of property, plant and equipment owned are recorded at historical cost less accumulated depreciation and any impairment losses. An item of property, plant and equipment acquired in stages is not depreciated until the item of property, plant and equipment is in its final state and ready for its intended use. Subsequent expenditure that extends the useful life or enhances the service potential of an existing item of property, plant and equipment is capitalised. All other costs incurred in maintaining the useful life or service potential of an existing item of property, plant and equipment are recognised in the income statement as expenditure when incurred. Gains or losses arising from the sale or disposal of an item of property, plant and equipment are recognised in the income statement in the period in which the item of property, plant and equipment is sold or disposed of.

Intangible assets – Computer software that is not integral to the operation of the hardware is recorded as an intangible asset. Software is amortised on a straight-line basis over its estimated useful life to a maximum of three years.

Financial instruments – The Commission is inherently a party to financial instruments as part of its day-to-day operations. Financial instruments are monetary assets and liabilities and are initially recognised at their fair value and subsequently measured at their amortised cost less any impairment losses. All revenue and expenditure arising from the financial instruments are recognised in the income statement when earned or an obligation exists.

Employee entitlements – At balance date, any unpaid employee entitlements earned by employees for salaries, bonuses and annual leave are recognised as a liability in the balance sheet and charged to the income statement. Entitlements are calculated on an actual entitlement basis at current rates of remuneration.

Cash flows – Operating, investing and financing cash flows are prepared using the direct method subject to the netting of certain cash flows. The cash flows in respect of bank deposits that have been rolled over under arranged banking facilities have been netted in order to ensure meaningful disclosures. Operating cash flows include all cash received from all operating revenue sources and all cash payments for all operating expenditure items. Investing cash flows reflect the payments for property, plant and equipment purchases, proceeds from the sale of property, plant and equipment, and the net movement in bank deposits.

Contingencies – As the Commission is a quasi-judicial body, it is inherently engaged in litigation activity which may result in costs being ordered against or in favour of the Commission. The outcome of an order for costs may not be certain until all appeal processes are completed. Accordingly, the possibility of a costs award being incurred or received is disclosed firstly as either a contingent liability or contingent asset respectively. An award for costs, whether for or against the Commission, is only recognised in the income statement when it is probable that there will be a future outflow or inflow of resources.

Comparatives – To ensure consistency with the current year, all comparative information including the Budget (Statement of Intent) has been restated or reclassified where appropriate. The budget comparatives are those approved by the Commission at the beginning of the year for inclusion as prospective financial statements in the Statement of Intent. The budget was prepared in accordance with Generally Accepted Accounting Practice and is consistent with the accounting policies governing the preparation of these financial statements.

CHANGES IN ACCOUNTING POLICIES

The only change in accounting policy was the treatment of Crown revenue. In 2007/08 Crown revenue was applied as earned on an accruals basis for all Votes and the Litigation Fund. In the 2008/09 year Crown revenue as earned on an accruals basis was only applied to the Litigation Fund. The financial impact on 2007/08 would be a repayment of surplus to the Crown of \$4.335 million and a nil balance for Crown revenue in advance.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

1. CRITICAL ACCOUNTING JUDGEMENTS AND ESTIMATES

In authorising these financial statements for issue, the Members of the Commission have ensured that the specific accounting policies necessary for the proper understanding of the financial statements have been disclosed and that all accounting policies adopted are appropriate for the Commission's activities and have been applied consistently throughout the year.

In applying the accounting policies, the Members of the Commission are required to make certain judgements and estimates. The Audit, Finance and Risk Management Committee and the Members of the Commission have considered the following critical judgements and estimates to be appropriate.

CONTINGENCIES

The Commission is party to several significant litigation cases and appeals as a result of its enforcement and quasi-judicial role. In undertaking significant litigation the Commission is faced with the risk of losing and having to meet a multi-million dollar cost award. The possible awards can range from \$0.5 million to \$6 million.

The Commission has, in conjunction with its Legal Services Committee and General Counsel, assessed the likelihood of the appeals being successful and the likelihood of costs being awarded against, or in favour of, the Commission.

Costs awards that are likely to result in a future outflow of resources have been recognised as at 30 June 2009 in the income statement. The Commission has also disclosed its contingent liabilities as a result of cost awards that may possibly result in a future outflow of resources as at 30 June 2009 (refer note 2).

The cases currently under appeal are funded through a non-departmental expense appropriation for major litigation. The Litigation Fund was established as a restricted fund to provide funds for major litigation activities. The criteria for operation of the Fund are laid down in an annual Output Agreement executed between the Commission and the Ministry of Economic Development. Only actual and direct operating costs of Litigation Fund cases are charged against the Fund.

The Ministry of Economic Development monitors the performance of the Litigation Fund on behalf of the Crown and authorises the payment of government grants quarterly in arrears to reimburse the Litigation Fund for expenditure incurred (net of interest and court costs received).

The government grants for the Litigation Fund have been increased for the financial year ending 30 June 2010 and subsequent years and include additional funding of \$0.5 million to establish a contingency reserve to manage the impact of adverse costs awards that may be awarded against the Commission in the future. The additional funding will be rolled over to subsequent years up to a cap of \$3.0 million.

2. CONTINGENT LIABILITIES AND ASSETS

Contingent liabilities at both June 2009 and 2008

– In July 2000 the Commission filed proceedings against Telecom New Zealand Limited (Telecom) alleging a breach of section 36 of the Commerce Act 1986 in that Telecom used its dominant position in the market for fixed line rental telephone services to residential customers or had an anti-competitive purpose when it introduced the 0867 package in 1999.

In April 2008 the High Court ruled in favour of Telecom with an award for costs. The Commission appealed the judgment in May 2008. The Court of Appeal ruled in favour of Telecom in August 2009. In September 2009 the Commission applied to the Supreme Court for leave to appeal. If the Commission is unsuccessful on appeal it is possible that the Commission could face costs which are uncertain at this time.

Contingent assets – The Commission has been successful in its action against Telecom in the datatails case. It is unknown at this stage whether Telecom will appeal this decision. If Telecom does not appeal the decision it is possible the Commission will receive a costs award which amount is uncertain.

There were no contingent assets as at 30 June 2008.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009 (contd)

3. CROWN REVENUE

	2008/09 \$000	2007/08 \$000
CROWN REVENUE		
Vote Commerce - General Markets	13,935	13,579
Vote Commerce - Dairy	905	300
Vote Commerce - Airports	400	0
Vote Commerce - Airports - Input Methodologies	577	0
Vote Communications	7,791	6,359
Vote Energy - Electricity Lines	3,630	4,232
Vote Energy - Electricity Lines - Input Methodologies	2,386	0
Vote Energy - Gas Pipeline Regulation	1,749	1,925
Vote Energy - Gas Pipeline Regulation - Input Methodologies	437	0
Litigation Fund	9,885	10,754
Litigation Costs Reserve	500	500
TOTAL CROWN REVENUE	42,195	37,649
CROWN REVENUE COMPRISE:		
CROWN REVENUE DUE		
Vote Commerce - General Markets	13,935	13,579
Vote Commerce - Dairy	905	521
Vote Commerce - Airports	0	0
Vote Commerce - Airports - Input Methodologies	577	0
Vote Communications	7,791	7,201
Vote Energy - Electricity Lines	3,630	3,317
Vote Energy - Electricity Lines - Input Methodologies	2,386	0
Vote Energy - Gas Pipeline Regulation	299	300
Vote Energy - Gas Pipeline Regulation - Input Methodologies	437	0
Litigation Fund	10,385	9,440
TOTAL CROWN REVENUE DUE	40,345	34,358
SUPPLEMENTARY FUNDING DUE		
Vote Commerce - Dairy	0	384
Vote Commerce - Airports	400	0
Vote Communications	0	1,427
Vote Energy - Electricity Lines	0	2,261
Vote Energy - Gas Pipeline Regulation	1,450	1,881
Litigation Fund	0	1,314
Litigation Costs Reserve	0	500
TOTAL SUPPLEMENTARY FUNDING DUE	1,850	7,767
TOTAL CROWN REVENUE DUE	42,195	42,125

	2008/09 \$000	2007/08 \$000
Vote Commerce - Dairy	0	0
Vote Communications	0	0
Vote Energy - Electricity Lines	0	0
Vote Energy - Gas Pipeline Regulation	0	(400)
Litigation Fund	0	(1,736)
TOTAL CROWN REVENUE RETAINED/TRANSFERRED	0	(2,136)
CROWN REVENUE RECEIVABLE		
Vote Energy - Gas Pipeline Regulation	0	259
Litigation Fund	2,009	1,736
TOTAL CROWN REVENUE RECEIVABLE	2,009	1,995
CROWN REVENUE REPAYABLE		
Vote Commerce - Dairy	(401)	(605)
Vote Commerce - Airports	(290)	0
Vote Commerce - Airports - Input Methodologies	(55)	0
Vote Communications	(686)	(2,269)
Vote Energy - Electricity Lines	(70)	(1,346)
Vote Energy - Electricity Lines - Input Methodologies	(229)	0
Vote Energy - Gas Pipeline Regulation	(572)	(115)
Vote Energy - Gas Pipeline Regulation - Input Methodologies	(42)	0
TOTAL CROWN REVENUE REPAYABLE	(2,345)	(4,335)

The Crown (Government) and the Commission are related parties. The Members (Commissioners) of the Commission are appointed by the Crown. The Commission has specific regulatory responsibilities in the dairy processing, electricity lines and telecommunications industries which are ultimately funded by industry levies payable to the Crown.

The Commission's major source of revenue is Crown revenue. The Commission must repay any excess revenue received relating to this Crown revenue. Amounts are owed to and from the Crown with respect to Crown revenue due or repayable as at each balance date as recognised in the balance sheet.

The Commission is also a party to transactions with other entities within the Crown as part of its day-to-day operations. As these transactions are conducted on an arm's length basis, within the normal course of operation, further disclosure of the details of the transactions is exempted under NZ IFRS.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009 (contd)

4. MEMBERS AND PERSONNEL

	2008/09 \$000	2007/08 \$000
Members' remuneration	1,465	1,584
Chief Executive Officer	351	22
General Manager	0	311
Senior Management	1,601	1,585
TOTAL KEY MANAGEMENT PERSONNEL REMUNERATION	3,417	3,502
All other employees	15,693	12,158
TOTAL SHORT-TERM EMPLOYEE BENEFITS	19,110	15,660
Redundancy and other cessation payments	35	0
Recruitment	535	776
Professional development	487	460
Other employment-related costs	1,590	769
TOTAL MEMBERS AND PERSONNEL	21,757	17,665
MEMBERS' REMUNERATION COMPRISES:		
M Berry (Chair 01 April - 30 June 2009)	100	0
PR Rebstock (Chair 01 July 2008 - 31 March 2009)	442	446
D Caygill (Deputy Chair - until September 2007)	0	43
DR Bates (Commissioner)	156	183
DF Curtin (Commissioner)	53	160
PJM Taylor (Commissioner)	192	161
S Begg (Commissioner - commenced 17 June 2009)	2	0
D Caygill (Associate)	14	7
P Harris (Associate)	0	5
A Mazzoleni (Associate)	231	139
G Pickering (Associate)	126	37
P Duignan (Associate - commenced 10 June 2009)	5	0
R Patterson (Telecommunications Commissioner)	144	374
DA Webb (Telecommunications Commissioner)	0	29
TOTAL MEMBERS' REMUNERATION	1,465	1,584

The Telecommunications Commissioner is a full-time position with Dr Ross Patterson appointed from July 2007, replacing Douglas Webb. The Chair, Dr Mark Berry, is on a full-time fixed term contract. All other Commissioners are remunerated for service on a daily rate set by the Remuneration Authority as follows:

MEMBERS' DAILY RATES	2008/09	2007/08
Chair (Paula Rebstock until 31 March 2009)	1,680	1,650
Deputy Chair	0	1,420
Commissioners and Associates	1,380	1,350
Cease and Desist Commissioners	1,400	1,230

Additional remuneration of up to 50 per cent of the daily rate is payable if the number of hours worked on any day has exceeded eight hours. The daily rate includes any annual and sick leave entitlement and no additional payments are made on account of annual leave or sick leave.

EMPLOYEES WITH TOTAL ANNUAL REMUNERATION OVER \$100,000 (IN BANDS OF \$10,000):	2008/09 NUMBER	2007/08 NUMBER
\$100,000 - \$110,000	8	10
\$110,001 - \$120,000	9	13
\$120,001 - \$130,000	9	6
\$130,001 - \$140,000	11	7
\$140,001 - \$150,000	6	1
\$150,001 - \$160,000	6	1
\$160,001 - \$170,000	1	1
\$170,001 - \$180,000	2	1
\$180,001 - \$190,000	1	2
\$190,001 - \$200,000	0	0
\$200,001 - \$210,000	1	1
\$210,001 - \$220,000	1	2
\$220,001 - \$230,000	1	1
\$230,001 - \$240,000	2	0
\$240,001 - \$250,000	1	0
\$250,001 - \$260,000	1	0
\$310,001 - \$320,000	0	1
\$340,001 - \$350,000	1	0

Redundancy and other cessation payments – the payment of \$35,000 relates to four employees.

5. DIRECT OUTPUT COSTS

	2008/09 \$000	2007/08 \$000
Legal costs	1,047	1,263
Experts	3,928	4,057
Litigation Fund expenditure	7,385	10,240
Cost awards	3	0
Other expenses	991	1,262
TOTAL DIRECT OUTPUT COSTS	13,354	16,822

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009 (contd)

6. TOTAL OPERATING EXPENDITURE

	2008/09 \$000	2007/08 \$000
TOTAL OPERATING EXPENDITURE INCLUDES:		
Auditor's remuneration	36	40
Operating leases	1,453	1,274
AUDITOR'S REMUNERATION COMPRISES:		
Audit fees	36	35
Audit-related fees (NZ IFRS impacts)	0	5
TOTAL AUDITOR'S REMUNERATION	36	40

7. ACCUMULATED FUNDS

	2008/09 \$000	2007/08 \$000
Balance at 1 July	3,615	3,565
Operating surplus for the year	3,613	550
Provision for repayment of surplus to the Crown	(2,345)	
Transfer to litigation costs reserve	(500)	(500)
BALANCE AT 30 JUNE	4,383	3,615

8. LITIGATION COSTS RESERVE

	2008/09 \$000	2007/08 \$000
Balance at 1 July	500	0
Transfer from accumulated funds	500	500
BALANCE AT 30 JUNE	1,000	500

9. LITIGATION FUND

	2008/09 \$000	2007/08 \$000
Balance at 1 July	1,500	1,500
Transfers to the litigation fund	7,885	10,754
Transfers from the litigation fund	(7,885)	(10,754)
TOTAL LITIGATION FUND	1,500	1,500
TRANSFERS TO THE LITIGATION FUND COMPRISE:		
Crown revenue	7,885	10,611
Court-awarded cost recoveries	0	127
Interest	0	16
TOTAL TRANSFERS TO THE LITIGATION FUND	7,885	10,754

10. PROPERTY, PLANT AND EQUIPMENT

	COMPUTER AND OFFICE EQUIPMENT \$000	FURNITURE AND FITTINGS \$000	LEASEHOLD EQUIPMENT \$000	MOTOR VEHICLES \$000	TOTAL \$000
COST OR VALUATION					
Balance at 1 July 2007	1,363	957	1,470	44	3,834
Additions	675	124	210	0	1,009
Disposals	0	0	0	0	0
Transfer to assets held for sale	0	0	0	0	0
BALANCE AT 30 JUNE 2008	2,038	1,081	1,680	44	4,843
Balance at 1 July 2008	2,038	1,081	1,680	44	4,843
Additions	343	68	70	0	481
Disposals	0	0	0	0	0
Transfers	95	(33)	94	0	156
BALANCE AT 30 JUNE 2009	2,476	1,116	1,844	44	5,480
ACCUMULATED DEPRECIATION AND IMPAIRMENT LOSSES					
Balance at 1 July 2007	935	704	402	26	2,067
Depreciation expense	268	230	185	5	688
Eliminate on disposal	0	0	0	0	0
Transfer to assets held for sale	0	0	0	0	0
Impairment losses	0	0	0	0	0
BALANCE AT 30 JUNE 2008	1,203	934	587	31	2,755
Balance at 1 July 2008	1,203	934	587	31	2,755
Depreciation expense	432	86	313	5	836
Eliminate on disposal	0	0	0	0	0
Transfers	105	(136)	0	0	(31)
Impairment losses	0	0	0	0	0
Reversal of impairment losses	0	0	0	0	0
BALANCE AT 30 JUNE 2009	1,740	884	900	36	3,560
CARRYING AMOUNTS					
At 1 July 2007	428	253	1,068	18	1,767
At 30 June and 1 July 2008	835	147	1,093	13	2,088
AT 30 JUNE 2009	736	232	944	8	1,920

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009 (contd)

11. INTANGIBLES (COMPUTER SOFTWARE)

	ACQUIRED SOFTWARE \$000	INTERNALLY GENERATED SOFTWARE \$000	TOTAL \$000
COST			
Balance at 1 July 2007	1,116	0	1,116
Additions	73	0	73
Disposals	0	0	0
BALANCE AT 30 JUNE 2008	1,189	0	1,189
Balance at 1 July 2008	1,189	0	1,189
Additions	254	0	254
Disposals	0	0	0
BALANCE AT 30 JUNE 2009	1,443	0	1,443
ACCUMULATED DEPRECIATION AND IMPAIRMENT LOSSES			
Balance at 1 July 2007	566	0	566
Amortisation expense	193	0	193
Disposals	0	0	0
Impairment losses	0	0	0
BALANCE AT 30 JUNE 2008	759	0	759
Balance at 1 July 2008	759	0	759
Amortisation expense	262	0	262
Disposals	0	0	0
Impairment losses	0	0	0
Transfers	28	0	28
BALANCE AT 30 JUNE 2009	1,049	0	1,049
CARRYING AMOUNTS			
At 1 July 2007	550	0	550
At 30 June and 1 July 2008	430	0	430
AT 30 JUNE 2009	394	0	394

12. REINSTATEMENT PROVISION

	2008/09 \$000	2007/08 \$000
Balance at the beginning of the year	185	185
Charge for the year	0	0
COST AT THE END OF THE YEAR	185	185

13. FINANCIAL INSTRUMENTS

	2008/09 \$000	2007/08 \$000
THE CARRYING AMOUNTS OF EACH CLASS OF FINANCIAL ASSETS AND LIABILITIES ARE:		
MONETARY ASSETS		
Cash and cash equivalents	9,119	5,926
Fees and recoveries receivable	0	136
Crown revenue receivable	2,009	1,995
Investments	0	5,000
TOTAL MONETARY ASSETS	11,128	13,057
MONETARY LIABILITIES		
Creditors	1,361	1,762
Crown revenue repayable	2,345	4,335
TOTAL MONETARY LIABILITIES	3,706	6,097
NET MONETARY ASSETS	7,422	6,960

Financial instruments are monetary assets and liabilities and include cash and cash equivalents, receivables, investments and payables resulting from day-to-day operations. There are risks inherent with all financial instruments and risk management policies are used to mitigate the exposure to market risk comprising liquidity risk, credit risk, interest rate risk and currency risk.

Liquidity risk

Liquidity risk is the risk arising from unmatched cash outflows and maturities of financial instruments leading to difficulty in settling obligations as they fall due. As Crown Government grants are received quarterly in advance, the Commission does not have a material risk in meeting its day-to-day obligations as they fall due. The Commission's ratio of monetary assets to liabilities as at 30 June 2009 is 3.0:1 (2007/08: 2.1:1). The Commission is not permitted any form of debt borrowings and has credit card facilities with an aggregate limit of \$44,000 (2007/08: \$36,000).

Credit risk

Credit losses result from a counterparty defaulting on its obligations owed to the Commission resulting in a financial loss to the Commission. Financial instruments, which potentially subject the Commission to risk, consist of cash and bank balances, receivables and investments (bank deposits). The maximum credit risk exposure is represented by the carrying amount of each monetary asset on the balance sheet.

The Commission does not have a material credit risk with respect to receivables due from third parties. All other receivables are due from the Crown. Cash not immediately needed to settle obligations as they fall due is invested with New Zealand registered banks with appropriate credit ratings. Limits are in place restricting deposit terms, individual deposit amounts, currency and the level of deposits with any one registered bank. The Commission is not exposed to any concentrations of credit risk, other than an exposure to the New Zealand banking sector. No collateral is required to be held as security against amounts owed to the Commission.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009 (contd)

Interest rate risk

As interest rates change, the fair value of interest-bearing bank deposits may change and future cash inflows will fluctuate. In accordance with the Commission's cash management policy, there are limits on the terms of all interest-bearing deposits, ensuring that deposits re-price within six months (short-term). There are no other market risks.

The financial instruments' carrying amount closely approximates their fair values as at 30 June 2008 and 30 June 2007. The effective interest rate on interest-bearing deposits over the year was 6.76 per cent (2007/08: 8.51 per cent). A 1 per cent change in interest rates, with all other factors unchanged, would change interest earnings by \$112,000 (2007/08: \$123,000).

Currency risk

Currency risk results from fluctuations in the value of future cash outflows because of changes in foreign exchange rates. The Commission engages overseas experts, requiring payment in a range of foreign currencies. The transactions are not hedged and are translated into New Zealand dollars at the exchange rate (spot) obtained when the invoices are paid. A 10 per cent change in exchange rates, with all other factors unchanged, would change expenditure by \$258,000 (2007/08: \$550,000).

14. RECONCILIATION OF OPERATING SURPLUS FOR THE YEAR TO NET CASH INFLOWS FROM OPERATING ACTIVITIES

	2008/09 \$000	2007/08 \$000
OPERATING SURPLUS FOR THE YEAR	3,613	550
NON-CASH ITEMS:		
Depreciation and amortisation	1,098	881
Loss/(gain) on sale of property, plant and equipment	0	0
Employee entitlements	329	160
Reinstatement provision	0	0
TOTAL NON-CASH ITEMS	1,427	1,041
CHANGE IN WORKING CAPITAL ITEMS:		
Fees and recoveries receivable	79	(31)
Crown revenue receivable	(14)	(1,860)
Prepayments	97	63
Creditors	(401)	470
Accrued expenses	(1,535)	1,490
Crown revenue repayable	0	2,481
TOTAL CHANGE IN WORKING CAPITAL ITEMS	(1,774)	2,613
NET CASH INFLOWS FROM OPERATING ACTIVITIES	3,266	4,204

15. OPERATING (NON-CANCELLABLE) LEASES

	2008/09 \$000	2007/08 \$000
LEASE PAYMENTS DUE:		
Within one year	1,477	1,434
Within one to two years	1,111	0
Within two to five years	183	2,604
After five years	0	0
TOTAL OPERATING (NON-CANCELLABLE) LEASES	2,771	4,038

The future operating (non-cancellable) lease payments comprise contractual amounts due for leased office equipment and premises. The Commission leases three offices, with all leases expiring in 2011. Under each lease, there are rights of renewal of up to six years. The Commission is required to reinstate certain premises to their original condition at the end of the lease and is providing for these costs over the lease period.

16. CAPITAL EXPENDITURE COMMITMENTS

The Commission had entered into capital expenditure contracts as at 30 June 2008 to the value of \$37,500 (2007/08: \$54,000).

17. TRUST FUNDS

	2008/09 \$000	2007/08 \$000
TRUST ACCOUNT		
Trust account at the beginning of the year	55	517
Receipts		2,620
Payments	(55)	(3,082)
TRUST ACCOUNT AT THE END OF THE YEAR	0	55

The Trust Account receipts reflect awards of compensation and any pecuniary penalties imposed under the Commerce Act 1986, collected on behalf of and paid/payable to the Crown. The Commission has no ownership rights in or future benefits arising from the trust monies.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009 (contd)

18. EXPLANATION OF SIGNIFICANT VARIANCES AGAINST BUDGET

Explanations for significant variations from the budgeted figures in the Statement of Intent are as follows:

Statement of comprehensive income

Other expenditure

Other expenditure was \$2.487 million less than budgeted due to expenditure not being incurred as estimated in a number of expense types.

Statement of financial position

Cash and cash equivalents

Cash and cash equivalents were \$5.043 million greater than budgeted due to much reduced payments to suppliers and a change in the classification of investment deposits.

Repayment of surplus

The repayment of surplus was \$1.740 million greater than budgeted due to surpluses across all Votes whereas most Votes were budgeted to achieve a nil result. In particular Vote Commerce had a budgeted deficit of \$0.302 million versus a year end actual of \$1.002 million.

APPENDICES

Appendices detailing the following are available on the Commission's website www.comcom.govt.nz under Publications/Annual Report.

- Competitive Markets
- Informed Consumers
- Sound Regulatory Regimes – Telecommunications
- Sound Regulatory Regimes – Electricity
- Sound Regulatory Regimes – Gas
- Sound Regulatory Regimes – Input Methodologies
- Sound Regulatory Regimes – Dairy

