



IMPROVING NEW ZEALAND'S MARKETS OUR PLAN FOR 2012-2015

STATEMENT OF INTENT

Our purpose

To achieve the best possible outcomes in competitive and regulated markets for the long-term benefit of New Zealanders.

Our outcomes

Our goals for New Zealanders are:

- Markets are more competitive and consumers are better informed.
- Regulation is better targeted and more effective.

Our values

Excellence

We produce excellent work that stands up to scrutiny.
We continually look for ways to improve.
We recruit and retain excellent people and support their development.

Integrity

Our independence inspires the trust and confidence of New Zealanders.
We are fair, honest and impartial.

Accountability

We answer to New Zealanders for the work we do and the money we spend.
We take individual responsibility to deliver what we say we will.

Respect

We work together, and support and respect each other.
We value the diversity of people and their opinions.

Good judgement

We understand the environment in which we operate and the impact of our actions.
What we do is relevant and useful.
We are proactive and flexible and look for common-sense solutions.

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We have put considerable effort in recent years into rethinking the way we work, ultimately seeking to achieve more with less.

These improvements have paid off. We are beginning to see the benefits of the significant changes we have made to our structure, philosophy and operating approach. As such, we are well positioned to meet the challenges and workload that we anticipate, contributing to a more competitive and productive economy. We continue to meet our statutory responsibilities mindful of the restrained economic times. So as we enter the next few years, we steer a steady ship.

The outcomes we want for New Zealanders guide our work: that markets are more competitive and consumers are better informed; and that regulation is better targeted and more effective.

In the competition area, market intelligence and advocacy about the law are central to how we do business. As we come to the final stages of litigation in two major international cartel cases, our focus moves towards a better understanding of our local marketplace and lifting levels of compliance across all industries.

Market intelligence allows us to detect and address issues as they emerge. Our intelligence unit monitors market sectors, identifies trends in the complaints we receive, and sources information from local and overseas agencies. This gives us a better understanding of how markets are working and where roadblocks lie, allowing us to make informed decisions about where to target our efforts.

The Commerce Act is over 25 years old, yet awareness of it among key sectors of the economy remains very low. Those that have a clear understanding of the law have a better chance of being onside with it. So, to improve voluntary compliance with the laws we enforce, our focus is on improving awareness and understanding of those laws, and how they apply to New Zealand businesses.

We have a number of initiatives designed to promote compliance, not least of which is a programme of education and advocacy targeted to specific industries that we have identified through our intelligence work. In the next few years, we will be focusing on the construction and health sectors, as well as major retailers and tourism businesses. We will also continue to work to address the issue of lower-tier lenders targeting vulnerable consumers.

We place high priority on seeking redress for consumers through our interventions. Over the last two years we have achieved over \$50 million in compensation for consumers through our work under the Fair Trading and Credit Contracts and Consumer Finance Acts. We respond to breaches of the law by identifying where we can most effectively achieve the greatest benefit for affected consumers and businesses. While we will sometimes have good reason for taking cases to court, it is often through negotiated settlements with the businesses involved that we can achieve more immediate redress, and avoid the time and costs of litigation.

Alongside our competition work, our regulatory responsibilities continue to put heavy and constant demands on our workload. This has been intensified by the high level of litigation in response to our input methodology determinations.

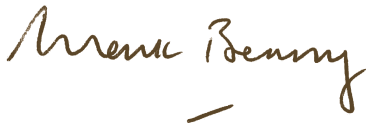
We are also facing a new world in the telecommunications sector. Recent changes to the Telecommunications Act reflect significant change within the market, with the structural separation of Telecom and the roll out of the Government's Ultra Fast Broadband initiative.

As we come to finalise the regulatory instruments under Part 4 of the Commerce Act, our role across all regulated industries will be predominantly one of monitoring how regulation is working.

We do, however, anticipate increased regulatory responsibilities in the dairy sector under the Dairy Industry Restructuring Bill. In the short term, we will be completing an independent preliminary review of Fonterra's Farm Gate Milk Price Manual and how it is applied. This will provide some certainty for investors and Fonterra about the approach we would take if the legislation comes into force.

The proposed law change in the dairy industry is just one of a number of legislative reforms that have the potential to impact our work over the medium term. The proposed changes to the Commerce Act, and amendments to strengthen both the Fair Trading and Credit Contracts and Consumer Finance Acts, will have important implications for the outcomes we seek to achieve.

While our role and responsibilities continue to evolve, one thing remains constant – our focus on the benefits of our work to the wider economy. We strive for improvement, looking for ways to operate more efficiently and effectively. We will continue to measure our impact, refining our approach as necessary. I am confident we have the structure, processes and people in place to do this well.



Dr Mark Berry
Chair

The Commerce Commission is New Zealand's competition authority and regulatory agency.

We are responsible for enforcing laws relating to competition, fair trading, and consumer credit, and have regulatory responsibilities in the electricity, gas, telecommunications, dairy and airport sectors. Our purpose is to achieve the best possible outcomes in competitive and regulated markets for the long-term benefit of New Zealanders.

We are an independent Crown entity, with some quasi-judicial functions established under the Commerce Act. We are primarily accountable to the Minister of Commerce for our performance. We are not subject to direction from the government in carrying out our enforcement and regulatory control activities. This independence requires us to be an impartial promoter and enforcer of the law. Where relevant, we use our experience to provide advice on policy development and legislative reviews. Our outputs are delivered under an Output Agreement with the Minister of Commerce and the Minister for Communications and Information Technology. We report to these ministers on our outputs through Triannual Reports. Our outputs are funded through Vote Commerce and Vote Communications.

What we do

We enforce, adjudicate on, and provide information and guidance relating to New Zealand's competition law, the Commerce Act 1986. The Act prohibits anti-competitive behaviour and structures in markets.

Under the Commerce Act, the Commission can approve a merger that does not substantially lessen competition (known as a clearance). We can also approve a merger or a restrictive trade practice that is anti-competitive but would ultimately benefit New Zealand consumers (known as an authorisation). Clearances and authorisations offer businesses protection from legal action under the Commerce Act.

We also enforce two pieces of consumer legislation that promote fair competition and help ensure consumers can be confident of the accuracy of the information they receive when making purchasing choices. The Fair Trading Act 1986 prohibits false and misleading behaviour by businesses. It also specifies when consumers must be given information about certain products and promotes product safety. The Credit Contracts and Consumer Finance (CCCF) Act 2003

covers consumer lending, consumer leases and buy-back transactions. It requires lenders to disclose certain information to consumers when they enter into a credit contract and sets out rules about interest, payments and credit fees.

Providing information and advice to businesses and consumers about these Acts and how they apply is an important part of our role.

We also play a key role in regulating markets where competition is limited. When competition is limited, there is the risk that consumers are over-charged or don't receive the quality of service they require.

Under the Commerce Act we have regulatory responsibility for suppliers of electricity lines services, gas pipeline services (distribution and transmission) and specified airport services (at Auckland, Christchurch and Wellington International Airports). Our responsibilities for these regulated industries include:

- administering an information disclosure regime (for all services)
- setting and enforcing price-quality paths (which specify maximum revenue or maximum prices, and quality standards) for gas pipeline services, non-consumer-owned electricity distribution services and Transpower
- setting and reviewing input methodologies (upfront regulatory rules and processes) for all regulated services
- conducting inquiries under the Commerce Act into whether particular goods or services should be regulated or controlled, and making recommendations to the Minister.

The Telecommunications Act 2001 regulates the supply of telecommunications services in New Zealand. The Act is administered by the Office of the Telecommunications Commissioner, within the Commerce Commission. Under the Act we make determinations on designated access and specified services and undertake costing and monitoring activities.

Under the Dairy Industry Restructuring Act 2001 we have both enforcement and adjudication roles in resolving disputes between Fonterra and other parties.

Our work is influenced by a wide range of external factors, including the wider economy, legislative reform, our litigation environment and our relationships with other agencies.

The economy and marketplace

The state of the economy is a significant backdrop to the work we do because of the impact it has on the New Zealand marketplace and how businesses operate and consumers behave.

The global economy continues to face considerable ongoing pressures. New Zealand has been insulated from the worst of the global financial crisis by the strength of its trading partners, particularly Australia and parts of Asia, and by high international commodity prices. The economies of New Zealand's trading partners are now looking more fragile and international commodity price levels may have peaked. These uncertain economic times are leading to restraint in both public and private sector expenditure in New Zealand.

Economic pressures and other global trends continue to affect New Zealand businesses and consumers. In the retail market, we are seeing increasing public concern about prices across a range of sectors, and cross-border issues arising from the explosion in online shopping.

Our work in the competition area is dependent on external market forces, as well as our own assessment of where best to focus our attention. The mergers and authorisations work we do is entirely market driven but, for example, we have discretion as to which Fair Trading Act matters we investigate. We prioritise investigations based on a range of factors, including harm to New Zealanders.

As with many government agencies, we have already made changes to how we work to become more efficient and we have managed our financial risks prudently. We continue to look for ways to operate more efficiently.

Government policy and legislative change

The work we do is driven by the laws we have responsibility for enforcing and administering. We closely monitor policy developments that can affect our work and provide input where appropriate, with particular focus on the operational aspects of a regime. Currently there is considerable legislative reform underway that has the potential to impact our work. This includes potential changes to the Commerce Act including the introduction of a new exemption for collaborative activities and an associated clearance regime, and the criminalisation of cartels. Other legislative reform includes a number of amendments to strengthen the Fair Trading Act under the

Consumer Law Reform Bill and potential changes to the CCCF Act.

The Ministry of Agriculture and Forestry's review of the Dairy Industry Restructuring Act is also likely to result in changes to our responsibilities.

We continue to work constructively with officials on the implications of any reforms.

Litigation

Our litigation work is driven by the number and types of cases we choose to litigate, and any appeals we defend. It is also influenced by the complexity of matters before the courts as much as court timetables.

We are currently facing a significant level of litigation. This is due in part to the impact of merits reviews of the input methodologies we set in December 2010. These reviews were anticipated, but have been delayed as the courts have needed to first deal with two streams of judicial review proceedings brought against the Commission.

The second contributor to the high level of litigation is the longstanding air cargo cartel case, which the High Court ruled in 2011 we had jurisdiction to proceed on. A six month hearing is scheduled to start from February 2013.

Court judgments can also have considerable impact on how we carry out our work and interpret legislation.

A recent Supreme Court case has introduced uncertainty in how to practically apply section 36 of the Commerce Act, which deals with anti-competitive conduct by single firms. We risk being out of alignment with similar legislation in Australia and consider this may be best addressed through legislative amendment.

Other judgments that have impacted on our workload include the Supreme Court's judgment that we had made an error in law in our approach to determining the net cost of providing telecommunications services to commercially non-viable customers. Our regulatory work programme has also increased following the High Court's ruling that we are required to set a starting price adjustment input methodology for electricity distribution and gas pipeline businesses.¹

1. We have appealed the High Court's decision regarding a starting price adjustment input methodology.

Working with other agencies

We work cooperatively with relevant government agencies to ensure that we achieve our goals without duplication or conflict, and that we share information and expertise where required. We are an active participant in all-of-government initiatives where appropriate. We seek to foster cross-government links where appropriate and to understand the roles of different government agencies as we work collectively to achieve common goals for all New Zealanders.

Internationally, we are actively involved with our counterpart agencies through forums such as the Organisation for Economic Co-operation and Development (OECD), the International Competition Network and the International Consumer Protection Network.

Closer alignment with Australia remains a priority. We have a close relationship with the Australian Competition and Consumer Commission (ACCC), particularly through our Commissioner cross-appointments. How we cooperate and share information with the ACCC and other overseas regulators is likely to be further strengthened when the Commerce Commission (International Cooperation and Fees) Bill is passed.

New Zealanders benefit when markets work well. Businesses benefit from a competitive environment that encourages innovation and investment and encourages greater regulatory certainty.

Consumers benefit from optimal prices, quality and choice. The outcomes we seek for New Zealanders are:

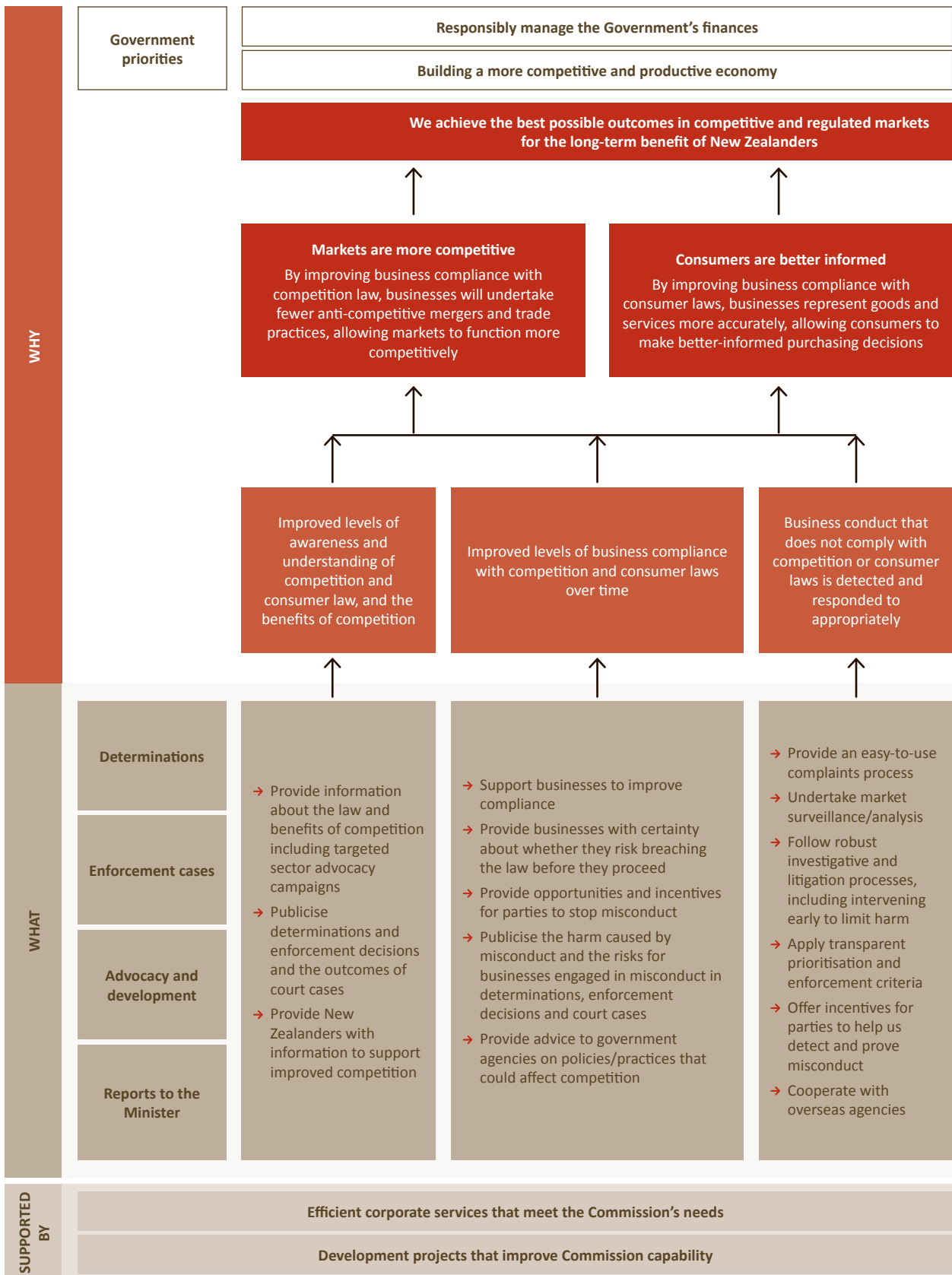
- Markets are more competitive and consumers are better informed.
- Regulation is better targeted and more effective.

Everything we do as an organisation contributes to achieving these goals and the Government's current priorities. Through fostering competition, or putting in place well-targeted regulation where competition is not possible or practical, we encourage businesses to be efficient and innovative, and to meet consumer demands. While these high-level outcomes guide our work, it is not practical or cost-effective to directly measure our performance against them. We have chosen instead to measure the direct impact of our work, as this demonstrates how we are contributing to achieving our outcomes.

We have simplified our strategic framework (pages 8-9) to demonstrate more clearly the links between our critical outputs, impacts and outcomes (what we do and why) and how we contribute to the Government's priorities.

We have also reviewed our performance measurement framework. For the *Regulation is better targeted and more effective* outcome, we have reviewed our performance measurement framework to support the reduced number of output classes. We have reviewed the outcome indicators for the *Markets are more competitive and consumers are better informed* outcome and have repositioned them as impact measures. We have also refined our impact statements and measures.

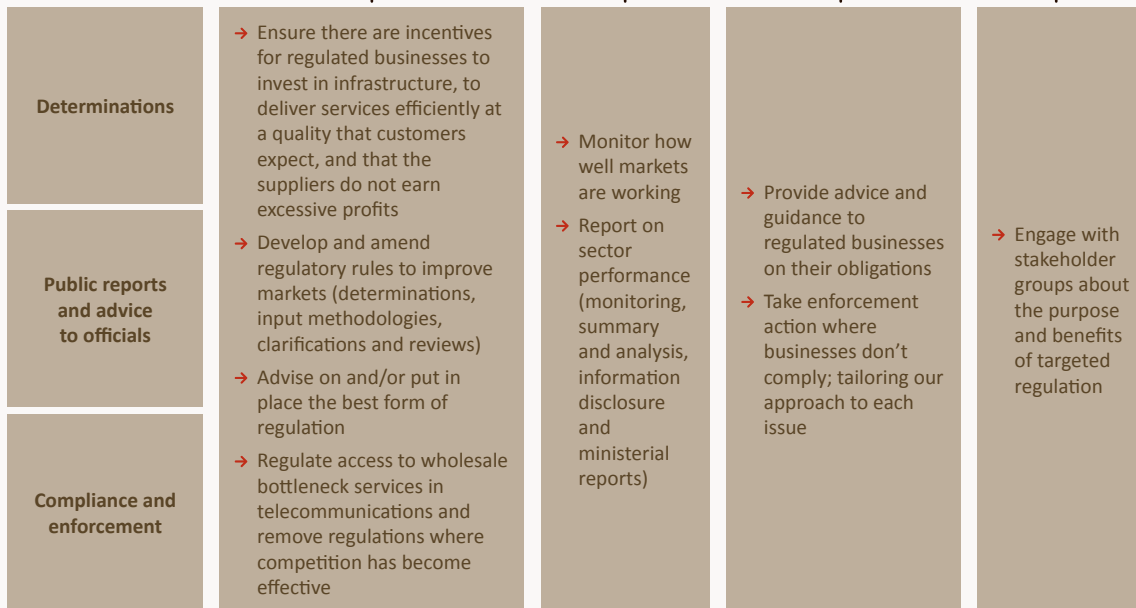
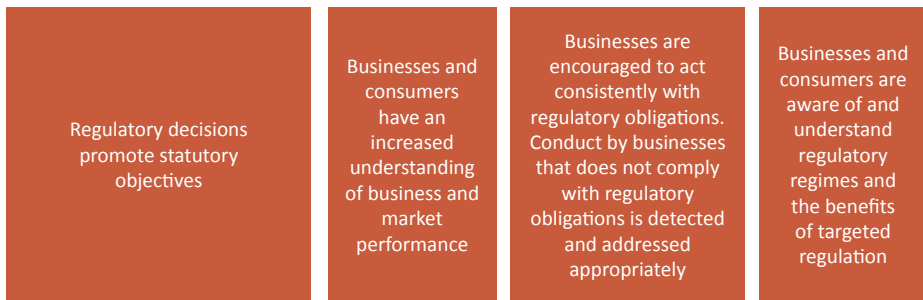
Strategic framework



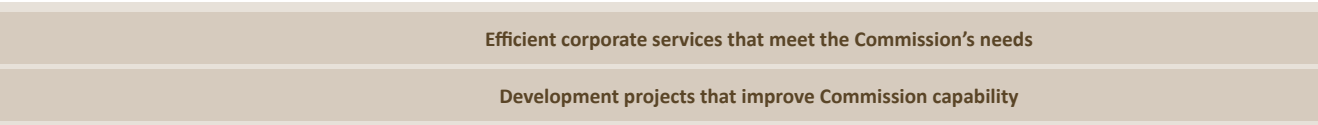


We achieve the best possible outcomes in competitive and regulated markets for the long-term benefit of New Zealanders

Regulation is better targeted and more effective
 By delivering targeted and effective regulation of goods and services in markets where there is little or no competition, consumers receive the goods and services that would have been available if the market was competitive



HOW
 Choose the most cost-effective interventions – promote voluntary compliance



Markets are more competitive and consumers are better informed

When businesses compete on their merits, and provide fair and accurate information, it is ultimately the consumer that decides whether a business succeeds or fails based on price, quality and choice.

The Commission has a pivotal role in promoting competition and ensuring that consumers are well informed. We are responsible for administering and enforcing the Commerce Act, the Fair Trading Act and the CCCF Act. This work contributes to the Government's priority of building a more competitive and productive economy.

Through our work we seek to influence markets so that businesses will:

- undertake fewer anti-competitive mergers and trade practices, allowing markets to function more competitively
- represent goods and services more accurately, allowing consumers to make better-informed purchasing decisions.

What impacts do we have?

We work towards the outcome *Markets are more competitive and consumers are better informed* by seeking, over time, to have the following impacts:

- Improved levels of awareness and understanding of competition and consumer law and the benefits of competition.
- Improved levels of business compliance with competition and consumer laws over time.
- Business conduct that does not comply with competition or consumer laws is detected and responded to appropriately.

How do we achieve these impacts?

Most businesses want to comply with the law. Our job is to make compliance easy for businesses that want to comply by helping them understand their obligations and providing incentives to encourage compliance. Ultimately we want to see more businesses with effective, living compliance programmes in place. We continue to refine and publicise our approach, which focuses on voluntary compliance. This includes a significant programme of work reviewing and updating key elements of our strategy, such as our enforcement criteria and enforcement responses, which we use when making decisions on whether to open an investigation, and what enforcement action to take at the end of an investigation.

Our approach to compliance



Raising awareness and understanding of what we do and why, the specifics of the laws we enforce and how they apply to both businesses and consumers is a major part of improving compliance. We seek to improve understanding by providing information and guidance to businesses and consumers and supporting businesses to take steps to improve their compliance. Among other things, we produce fact sheets and guidelines, publish regularly on our website and through other online channels, contribute to industry and other external publications, and meet with and present to industry and consumer groups.

We publicise and provide reasons for the determinations and enforcement decisions we make to help improve understanding of the approach we take to our work. We also provide timely decisions to businesses contemplating a merger or restrictive trade practice to offer those businesses protection from legal action under the Commerce Act. Speaking in language everyone can understand, and listening to businesses and consumers is central to the effectiveness of our communications approach. We are working to ensure our documents are written in plain English and are working to improve the quality of engagement with our stakeholders. We recognise that we can do a better job of listening to our stakeholders' needs. By improving our understanding of our stakeholders' needs we can be more effective in our interactions and interventions.

We are using market intelligence to drive our advocacy and enforcement decisions. We target our education efforts at industry sectors where we see emerging issues or have ongoing areas of concern. This allows us to focus our efforts cost-effectively where there is the most opportunity to improve compliance and therefore market outcomes.

While we put considerable resource into educating businesses about their obligations, there will always be businesses that operate outside the law, whether intentionally or unintentionally. Our focus is to detect these potential breaches and to deal appropriately with the businesses involved. We decide how to enforce the law by seeking to limit the harm to both other businesses and consumers, and to deter reoffending.

We detect breaches of the law through a number of different sources. One of these is from the complaints we receive from businesses and consumers. We provide a complaints process that is easy to use, and we assess complaints in a timely manner against criteria that help to prioritise where we will focus our resources. Our intelligence unit routinely monitors and assesses specific market sectors, analysing areas where we are seeing high or increasing levels of complaints, and sources information from local and overseas agencies. Through our leniency and cooperation policies, we offer incentives for businesses and individuals to share information about potential breaches of the laws we enforce.

When we do detect issues, we follow robust investigative and litigation practices. We intervene early to limit the extent of harm to a market and use enforcement criteria to guide decisions about the most appropriate enforcement action to take, whether that be issuing a warning letter, reaching a settlement, seeking penalties or compensation, or taking court action. When we take cases to court, we have good reason for doing so. But we also recognise that highly effective outcomes can be achieved without litigation and we will take other courses of action where issues can be resolved more readily and cost-effectively, with redress for affected consumers.

Impact measures

We have set a range of targets to achieve a better understanding of and compliance with competition and consumer laws. In particular, as a result of our interventions, we want to see:

- an increase in the number of businesses that have compliance programmes in place
- improved awareness and understanding by businesses of competition and consumer law
- competitive conditions in markets where we have granted clearances or authorisations
- appropriate penalties, refunds and/or compensation for consumers either through the courts or by settlement
- a decrease in reoffending rates by businesses against which we have taken enforcement action
- improvement in how businesses rate our communications and guidance.

Outcome: Markets are more competitive

By improving business compliance with competition law, businesses will undertake fewer anti-competitive mergers and trade practices, allowing markets to function more competitively.

Impacts

- Improved levels of awareness and understanding of competition law and the benefits of competition in targeted sectors
- Improved levels of business compliance with competition laws over time

Measures	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
The percentage of businesses that have an active compliance programme under the Commerce Act (CA) increases over time ²	23% ³	24% ³ Survey to be completed in May 2012 Baseline to be set in June 2012	Increase year on year	Increase year on year	Increase year on year
Targeted sector surveys indicate that a higher proportion of businesses are aware of and understand competition law and the benefits of competition than before the intervention ⁴	30% ⁵	Survey to be completed in June 2012	Increase year on year in each targeted sector	Increase year on year in each targeted sector	Increase year on year in each targeted sector
Levels of market competition are not substantially lessened in terms of price, quality, range and/or service where the Commission has granted a clearance/authorisation	Levels of market competition were not substantially lessened	Case studies to be completed in June 2012	Levels of market competition are not substantially lessened	Levels of market competition are not substantially lessened	Levels of market competition are not substantially lessened

2. We have refined the wording from “regular compliance programme” to “active compliance programme” to make the measure more meaningful. We have also separated the measures by Act to target the difference in numbers of active compliance programmes by Act.
3. The 2010/11 and 2011/12 actuals are based on surveys conducted in February/March 2010 and October 2011 that covered businesses with between 5 and 100 employees. The May 2012 survey will cover businesses with more than 100 employees. We will set the new baseline based on the October 2011 and May 2012 survey results.
4. In the Statement of Intent 2011-2014 this measure covered both competition and consumer law. We have now separated the measure so we can report on the effectiveness of our intervention under each Act in the targeted sectors.
5. In June 2011 we commissioned a survey of 30 commercial firms to measure the impact of the first phase of the advocacy on the non-residential construction sector. This showed that 30% of firms were aware of the Commission’s education campaign and understood the messages we were delivering.

Outcome: Consumers are better informed

By improving business compliance with consumer laws, businesses will represent goods and services more accurately, allowing consumers to make better-informed purchasing decisions.

Impacts

- Improved levels of awareness and understanding of consumer law in targeted sectors
- Improved levels of business compliance with consumer laws over time

Measures	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
The percentage of businesses that have an active compliance programme under the Fair Trading Act (FTA) increases over time ²	27% ³	42% ³ Survey to be completed in May 2012 Baseline to be set in June 2012	Increase year on year	Increase year on year	Increase year on year
Targeted sector surveys indicate that a higher proportion of businesses are aware of and understand consumer law than before the intervention ⁴	Not measured ⁶	Not measured	Survey to be completed Baseline to be set	Increase year on year in each targeted sector	Increase year on year in each targeted sector

Impact

- Business conduct that does not comply with competition and consumer law is detected and responded to appropriately

Measures	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
We obtain penalties in court for breaches of the Acts we enforce	\$35.4 million	\$4.3 million as at 29 February 2012	No target to be set ⁷	No target to be set ⁷	No target to be set ⁷
We achieve refunds or compensation for affected consumers either in court or by settlement	\$2.9 million	\$4.4 million as at 29 February 2012	No target to be set ⁷	No target to be set ⁷	No target to be set ⁷
As a result of our interventions, the reoffending rates by businesses decrease over time	Not measured	Analysis to be completed in May 2012 Baseline to be set in June 2012	Reoffending rates by businesses decrease over time	Reoffending rates by businesses decrease over time	Reoffending rates by businesses decrease over time
The percentage of surveyed businesses that have received a compliance advice or warning letter from the Commission in the last 12 months, that report that the Commission's communications and guidance are clear and useful increases over time	Not measured	Survey to be completed in May 2012 Baseline to be set in June 2012	Increase year on year	Increase year on year	Increase year on year

6. In the Statement of Intent 2011-2014 the measure covered both competition and consumer law. The construction survey undertaken in June 2011 only covered competition law. In 2012/13 we will confirm the targeted sector to measure the consumer law impact and will conduct a survey and set a baseline.
7. We are measuring the amount of penalties and/or compensation arising from breaches of the Acts we enforce as an indicator for achieving appropriate outcomes for affected parties. It is not appropriate to set targets because of the perverse incentives this creates.

Service performance outlook for 2012-2015

Using the right mix of resources and interventions remains central to our approach over the next three years. We will continue to develop and integrate our intelligence function into our everyday work to better understand where we should target our efforts.

Advocacy and education remain priorities, and we will maintain the high level of stakeholder engagements and publications that we have had in recent years. We will also continue to promote our compliance approach.

We have identified focus areas where there is most opportunity to improve compliance and market outcomes. For our informed consumer area we will continue to focus on telecommunications, which remains an area of concern and still brings in the largest number of complaints of any industry. We will add major retailers to our programme of work because of ongoing compliance issues, particularly in the markets for appliances and electronics, homeware, and groceries.

From our advocacy work during the Rugby World Cup we identified problems within the tourist/souvenir markets. As a result we will also focus on 'country of origin' claims. We will no longer focus on financial services under the Fair Trading Act as the Financial Markets Authority will be better placed to deal with issues in this sector under the proposed Financial Markets Conduct Bill. We will, however, continue to address issues with lenders not providing adequate or proper disclosure under the CCCF Act, through education and, where necessary, litigation. In the consumer credit area, we will continue to collaborate with the Financial Markets Authority to target lower-tier lenders, extending the compliance programme that we piloted in Auckland to Waikato and the Bay of Plenty.

We intend to take enforcement action, including litigation, for breaches of the CCCF Act.

In our competitive markets area we will continue our work in the non-residential construction sector, building on the relationships we have developed over the last year to improve awareness of the Commerce Act. We will also focus on raising levels of awareness and enabling compliance with competition and consumer law in the health professions. We are working with the Ministry of Health in our planning.

The next three years will see some change in terms of the legislation under which we work. This includes potential changes to consumer legislation and likely changes to the Commerce Act to criminalise cartels and introduce a clearance regime for collaborative activity. We are preparing as necessary for each of these changes, bearing in mind likely timeframes and what the changes mean for our day-to-day activity and outputs as well as our wider role. As part of these changes, we will continue to work constructively with officials and be ready to provide useful guidance to our stakeholders.

The work we do in the competition area falls into four broad categories – determinations, enforcement cases, advocacy and development, and reports to the Minister. In terms of our core work, we anticipate no significant changes to our workload over the next few years. For clearances and authorisations, which are largely market-driven, we have seen an increase in applications over the last 12 months compared with the previous two years. We expect to see a return to a steady level of clearance and authorisation activity. Our streamlined authorisation process also means we can decide straightforward authorisation applications as quickly as possible. A drop in the number of leniency applications received in recent years, together with the resolution of some longstanding cases, means that there may be fewer ongoing cases in the short term. However, those cases that remain in litigation, including the air cargo cartel case, are significant.

In 2012/13 our focus will be on:

- finalising and promoting our enforcement response document, which sets out how we respond to suspected breaches of the laws we enforce
- progressing a number of significant cases through the courts
- continuing to develop and publish a range of guidelines and fact sheets about the Commerce, Fair Trading and CCCF Acts
- prioritising those investigations that relate to our focus areas
- continuing targeted industry education initiatives
- increasing our use of market intelligence to identify sectors and issues that warrant investigation.

General market output measures are on pages 38-39.

Regulation is better targeted and more effective

The Commission has a key role in regulating markets where there is little or no competition.

We are currently responsible for administering regulatory regimes under Part 4 of the Commerce Act (electricity lines, gas pipelines industries and specified airport services), the Telecommunications Act and the Dairy Industry Restructuring Act.

The outcome we seek to achieve in this part of our work is *Regulation is better targeted and more effective*. This is because by delivering targeted and effective regulation of goods and services in regulated markets, consumers receive the goods and services at a price and quality that would be seen in a competitive market. This work contributes to the Government's priority of building a more competitive and productive economy.

What impacts do we have?

We work towards the outcome *Regulation is better targeted and more effective* by seeking, over time, to have the following impacts across all sectors we regulate:

- Regulatory decisions promote statutory objectives.
- Businesses are encouraged to act consistently with regulatory obligations. Conduct by businesses that does not comply with regulatory obligations is detected and addressed appropriately.
- Businesses and consumers have an increased understanding of business and market performance.
- Businesses and consumers are aware of and understand regulatory regimes and the benefits of targeted regulation.

How do we achieve these impacts?

Given the complexity of the issues involved, and the large amount of commercial value at stake, we place great importance on understanding the markets, industries and businesses we regulate. For regulation to be effective, it needs to be appropriately targeted. So we monitor how well the markets we regulate work, and have a programme of work to develop and amend regulatory rules so that regulation becomes better targeted.

The extent to which we are responsible for deciding what services are regulated, and the types of regulation that apply, varies by sector. Better targeting can involve advising government on appropriate forms of regulation and/or directly putting regulation in place.

In the telecommunications sector, the regulatory regime focuses on promoting competition for the benefit of end consumers. This includes regulating access to wholesale bottleneck services and removing regulation of services where competition has become effective. Underlying our work is sector monitoring so we are well placed to understand when to leave competition to market forces or when intervention is necessary to promote competition.

In the electricity lines and gas pipelines sectors, the focus of the regulatory regime is on providing certainty, setting price-quality paths (where required), monitoring the performance of regulated services (through information disclosure), and ensuring compliance with regulatory requirements.

We monitor Auckland, Wellington and Christchurch International Airports on their delivery of aircraft and freight services, airfield activities, and specified passenger terminal services.

We also play a key role in facilitating competition in dairy markets. This work requires monitoring contestability in the industry through the entry and expansion of other dairy processors besides Fonterra.

To promote long-term benefits for consumers, regulation aims to promote competition, or, where this is not possible, outcomes consistent with what would be possible in a competitive market. Part of promoting competition includes making sure that there are appropriate incentives for businesses to invest in infrastructure and to deliver services efficiently at a quality that customers expect, and that the suppliers of these services do not earn excessive profits. Both consumers and investors can benefit from well-performing businesses that improve their efficiency, innovate and earn an appropriate level of profit. In providing incentives for investment we have to be careful to avoid creating incentives that could result in unwarranted investment (that is investment where the long-term benefit to consumers is less than the costs that consumers will bear).

The reference to 'long-term' is important. If regulatory settings are too low, lower prices for consumers in the short term could be greatly outweighed by higher long-term costs, and regulated businesses may not make the necessary investments in replacing equipment or in new technology. Given that very large investments are sometimes at stake, understanding these trade-offs is important.

Explaining these trade-offs to both regulated businesses and the wider New Zealand public is also part of our job. We seek to increase understanding of New Zealand's regulated markets, how these regulatory regimes work and what the benefits are. To help with this we are trying to write our documents in plain English and we are improving our online communications to allow us to reach a wider range of stakeholders and interact with them better.

We also engage constructively with the suppliers of regulated services to help them comply. Obviously, regulation will only be effective if suppliers meet regulatory requirements. We seek to achieve voluntary compliance wherever possible, helping them understand the rules. We also engage with suppliers when we are developing regulatory rules to ensure our processes are robust and transparent.

If regulated businesses do not comply, we can take enforcement action. A key part of our role is to decide which cases we will investigate, and tailor our approach to each issue. This involves selecting the most appropriate enforcement action, which can include issuing a warning letter, reaching a settlement, seeking penalties or compensation, or taking court action.

Telecommunications impact measures

We have set a range of targets to achieve telecommunications regulation that is targeted and effective. In particular, we are seeking to achieve:

- continued improvement in the international competitiveness and quality of our broadband and mobile services as a result of our regulatory interventions
- appropriate penalties and/or compensation for consumers as a result of our compliance and enforcement activities (we have not set targets in this area because of the perverse incentives this creates)
- improved understanding of telecommunications markets through our quality monitoring reports
- increased understanding by stakeholders of the benefits of effective and targeted regulation through our advocacy and advice.

Outcome: Regulation is better targeted and more effective

By delivering targeted and effective regulation of goods and services in markets where there is little or no competition, consumers receive the goods and services that would have been available if the market was competitive.

Impact

- Regulatory decisions promote statutory objectives

Measures	Actual			Estimated	Target		
	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15
New Zealand's position in the OECD ranking for fixed broadband services (connections per 100 of the New Zealand population) improves over time	18/30	17/34	17/34	17/34	17/34 or better	17/34 or better	17/34 or better
New Zealand's position in the OECD ranking for mobile broadband services (connections per 100 of the New Zealand population) improves over time	Not measured	Not measured	Not measured	12/34	12/34 or better	11/34 or better	11/34 or better
An increase in the average broadband connection speed for New Zealand customers over time	2.5Mbps	3.3Mbps	3.8Mbps	4.3Mbps	4.8Mbps	5.0Mbps	5.75Mbps

Measures	Actual 2008/09	Actual 2009/10	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
Increased levels of competition in all mobile and fixed line markets as indicated by:							
→ the fixed telephone retail market concentration as measured by the HHI ⁸	5,834	5,286	4,700	Ongoing improvement	Ongoing improvement		
→ the fixed broadband line retail market concentration by connection as measured by the HHI	4,119	4,026	3,677	Ongoing improvement	Ongoing improvement		
→ the mobile retail market concentration by connection as measured by the HHI	4,972	4,237	3,884	Ongoing improvement	Ongoing improvement		
A decrease in the difference in prices between mobile on-net and off-net calls (on-net discount)	Not measured	Not measured	Not measured	-7.6% (voice percentage point discount January 2012)	Year on year decrease	Year on year decrease	Year on year decrease

Impacts

- Businesses are encouraged to act consistently with regulatory obligations
- Conduct by businesses that does not comply with regulatory obligations is detected and addressed appropriately

Measures	Actual 2008/09	Actual 2009/10	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
Total value of penalties and compensation for consumers gained as a result of enforcement cases either in court or by settlement	Not measured	Not measured	\$1.6m	\$31.6m	No target to be set ⁹	No target to be set ⁹	No target to be set ⁹

Impact

- Businesses and consumers have an increased understanding of business and market performance

Measures	Actual 2008/09	Actual 2009/10	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
The percentage of stakeholders who rate the quality of the Telecommunications Annual Monitoring Report as Good–Excellent	Not measured	Not measured	Not measured	Baseline as at 19 March 2012 of 78.5%	80%	85%	85%

- The Herfindahl-Hirschman Index (HHI) is a commonly accepted measure of market concentration and is calculated by squaring the market share of each market participant that has a material number of subscribers and adding these together. The maximum possible score is 10,000.
- We are measuring the amount of penalties and/or compensation arising from breaches of the Acts we enforce as an indicator for achieving appropriate outcomes for affected parties. It is not appropriate to set targets because of the perverse incentives this creates.

Impact

→ Businesses and consumers are aware of and understand regulatory regimes and the benefits of targeted regulation

Measures	Actual 2008/09	Actual 2009/10	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
The level of business and consumer group awareness and understanding of the benefits of targeted regulation increases over time (as measured by survey)	Not measured	Not measured	Not measured	Awareness: Consumers: 19% Businesses: 24% Understanding of benefits: Consumers: 80% Businesses: 74% ¹⁰	Year on year improvement	Year on year improvement	Year on year improvement

Part 4 impact measures

We have set a range of targets to achieve Part 4 regulation that is targeted and effective. In particular, we want to ensure that suppliers of regulated services:

- have incentives to innovate and invest
- have incentives to improve efficiency and provide services at a quality that reflects consumer demands
- share with consumers the benefits of efficiency gains
- are limited in their ability to extract excessive profits.

For electricity lines services and gas pipeline services subject to price-quality regulation, we seek to achieve statutory outcomes that are demonstrated by suppliers:

- continuing to deliver quality services (specific measures for gas pipelines are still to be developed)
- achieving at least normal returns over a five year regulatory period, without extracting excessive profits. Higher than normal returns can be achieved through increased efficiency.

For suppliers of airports services (who are not subject to price-quality regulation) we seek to achieve statutory objectives through ongoing increases in passenger satisfaction.

For all businesses subject to Part 4 we will be expecting 100% compliance with information disclosure requirements so that we have quality information about supplier performance. We will also be seeking to ensure that breaches of price-quality paths (where they apply) do not increase over time.

We also want to see improved understanding by both businesses and consumers of how regulated markets are performing and the benefits of regulation.

10. The Commission's Telecommunications Stakeholder Survey 2012 showed that 19% of consumers and 24% of businesses were aware that the Commerce Commission regulates the telecommunications industry. 80% of consumers and 74% of businesses believe they benefit from Commerce Commission regulation and monitoring of the telecommunications industry.

Outcome: Regulation is better targeted and more effective

By delivering targeted and effective regulation of goods and services in markets where there is little or no competition, consumers receive the goods and services that would have been available if the market was competitive.

Impact

→ Regulatory decisions promote statutory objectives¹¹

Sector	Measures	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
Electricity lines	No deterioration in the quality of electricity distribution services as indicated by aggregate industry SAIDI ¹² and SAIFI ¹³ measures	Weighted average SAIDI=150 Weighted average SAIFI=1.81	Weighted average SAIDI=162 Weighted average SAIFI=1.79	Aggregate industry SAIDI and SAIFI do not increase	Aggregate industry SAIDI and SAIFI do not increase	Aggregate industry SAIDI and SAIFI do not increase
	Transpower meets or exceeds established quality targets as detailed in the <i>Individual Price-Quality Path (Transpower) Reasons Paper</i> of 22 December 2010 ¹⁴	System minutes target exceeded by 6.9 minutes – target not met Number of unplanned interruptions – target met ¹⁵	Not measured until 30 September 2012	Transpower meets or exceeds quality targets	Transpower meets or exceeds quality targets	Transpower meets or exceeds quality targets
	Regulated suppliers that do not breach the price-quality path achieve at least normal returns over a regulatory period, but do not achieve excessive profits. Excessive profits exclude above normal returns achieved as a result of efficiency gains	Not measured	Not measured	100% of businesses achieve at least normal returns but do not achieve excessive profits over the regulatory period (Note: this is not an annual measure and actuals can only be reported once the regulatory period concludes in June 2015)		
Gas pipelines	Regulated suppliers that do not breach the price-quality path achieve at least normal returns over a regulatory period, but do not achieve excessive profits. Excessive profits exclude above normal returns achieved as a result of efficiency gains	Not measured	Not measured	100% of businesses achieve at least normal returns but do not achieve excessive profits over the regulatory period (Note: this is not an annual measure and actuals can only be reported once the regulatory period concludes – the regulatory period has not yet been set due to deferral)		
Airports	The level of customer service satisfaction by surveyed airline passengers improves over time	Not measured	Survey results available on 31 May 2012	New baseline to be set	The level of customer service satisfaction increases over time	The level of customer service satisfaction increases over time

11. The statutory objectives are: a) incentives to innovate and invest, b) incentives to improve efficiency and high-quality services, c) sharing efficiency gains and d) limited ability to extract excessive profits.

12. System Average Interruption Duration Index.

13. System Average Interruption Frequency Index.

14. Quality targets in the *2010 Individual Price-Quality Path (Transpower) Reasons Paper* are: 1) number of loss of supply events > 0.05 system minutes ≤ 21, 2) number of loss of supply events > 1.0 system minutes ≤ 3, 3) HVAC circuit unavailability (unplanned) ≤ 0.056 and 4) total impact of interruptions, total system minutes 16.69.

15. This was the last year of the Administration Settlement before the 2010 IPP determination applied. The targets set in the Administration Settlement are different from the current quality targets.

Impacts

- Businesses are encouraged to act consistently with regulatory obligations
- Conduct by businesses that does not comply with regulatory obligations is detected and addressed appropriately

Sector	Measures	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
Electricity lines	The level of compliance by businesses with the information disclosure requirements is maintained over time	100%	100%	100%	100%	100%
	The number of breaches of the price path by non-exempt electricity distribution businesses does not increase over time	One breach based on initial assessment	Zero breaches	Zero breaches	Zero breaches	Zero breaches
Gas pipelines	The level of compliance by businesses with the information disclosure requirements is maintained over time	Not measured	100%	100%	100%	100%
	The number of breaches of the price path by gas distribution businesses does not increase over time	Not measured	Not measured	Price path setting deferred ¹⁶	Price path to be set (no later than 1 October 2013)	Zero breaches
Airports	The level of compliance by businesses with the information disclosure requirements is maintained over time	Not measured	100%	100%	100%	100%

Impact

- Businesses and consumers have an increased understanding of business and market performance

Sector	Measures	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
Electricity lines	Understanding of the performance of regulated electricity line services by targeted business and consumer groups increases over time	Not measured	Survey data available in June 2012 Baseline to be set by 30 June 2012	Increase in understanding from previous year	Increase in understanding from previous year	Increase in understanding from previous year
Gas pipelines	Understanding of the performance of regulated gas pipeline services by targeted business and consumer groups increases over time	Not measured	Survey data available in June 2012 Baseline to be set by 30 June 2012	Increase in understanding from previous year	Increase in understanding from previous year	Increase in understanding from previous year
Airports	Understanding of the performance of regulated airport services by targeted business and consumer groups increases over time	Not measured	Survey data available in June 2012 Baseline to be set by 30 June 2012	Increase in understanding from previous year	Increase in understanding from previous year	Increase in understanding from previous year

16. The Commission has deferred the start of the initial default price-quality paths (initial DPPs) for gas distribution businesses and gas transmission businesses beyond 1 July 2012. As a result we have not published a determination by 29 February 2012 as we previously indicated. The initial DPPs will commence as soon as practicable, taking effect on a relevant quarter but no later than 1 October 2013.

Impact

→ Businesses and consumers are aware of and understand regulatory regimes and the benefits of targeted regulation

Sector	Measures	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
Electricity lines Gas pipelines Airports	Understanding and awareness by stakeholders, of the regulatory regimes and the benefits of regulation, increase over time	Not measured	Survey data available in June 2012 Baseline to be set by 30 June 2012	Increase in understanding from previous year	Increase in understanding from previous year	Increase in understanding from previous year

Dairy impact measures

In dairy regulation we want to achieve appropriate penalties and/or compensation for consumers as a result of effective compliance and enforcement activities. We will further consider impact measures in this area in the light of the proposed changes to the Dairy Industry Restructuring Act.

Outcome: Regulation is better targeted and more effective

By delivering targeted and effective regulation of goods and services in markets where there is little or no competition, consumers receive the goods and services that would have been available if the market was competitive.

Impacts

- Businesses are encouraged to act consistently with regulatory obligations
- Conduct by businesses that does not comply with regulatory obligations is detected and addressed appropriately

Measures	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
Total value of penalties and compensation gained as a result of enforcement cases either in court or by settlement	Not applicable	Not applicable	No target to be set ¹⁷	No target to be set ¹⁷	No target to be set ¹⁷

Service performance outlook for 2012-2015

Despite the varied sectors we have responsibility for regulating, what we do across all our regulation work falls into three broad categories – determinations, public reports and advice to officials, and compliance and enforcement. Since our last Statement of Intent, we have simplified how we measure the work we do – our outputs – by bringing together the different types of activity for all sectors and reducing the number of measures.

Telecommunications

The amendments to the Telecommunications Act in 2011 changed the landscape of the New Zealand telecommunications market and with it our role. While we have completed much of the initial development work to set up the new regulatory frameworks, it will take some time for these to bed in and for the industry to adjust to the changes.

We anticipate a significant reduction in the number of access determinations and reviews. Our focus is therefore increasingly on monitoring of and reporting on telecommunications markets.

17. We are measuring the amount of penalties and/or compensation arising from breaches of the Acts we enforce as an indicator for achieving appropriate outcomes for affected parties. It is not appropriate to set targets because of the perverse incentives this creates.

The ongoing roll out of the Ultra Fast Broadband (UFB) network will also be an important part of the telecommunications market that we will be monitoring. The success of UFB will depend on a competitive environment that drives investment in infrastructure and services.

In 2012/13 our focus will be on:

- market monitoring, including the local fibre companies and Chorus' copper undertakings, Telecom/Chorus asset sharing arrangements, changes to the difference between the on-net and off-net price of mobile calls and texts, and extending broadband reporting to include the UFB network
- continuing to develop and document processes associated with new regulatory requirements
- reviewing the unbundled bitstream access (UBA) pricing principle
- developing the information disclosure regime for local fibre companies
- implementing our consumer panel for broadband monitoring
- providing input into the Ministry of Economic Development's Telecommunications Service Obligations (TSO) review.

Telecommunications output measures are on pages 40-41.

Part 4 (electricity, gas and airports)

Over the next three years we will finish implementing the initial regulatory instruments required under Part 4 of the Commerce Act. This will include continuing to assist the courts through the merits reviews of input methodologies and making any necessary changes that may arise.

We have additional unanticipated work following the recent High Court judgment on starting price adjustment methodologies. This requires us to develop starting price adjustment input methodologies for electricity distribution and gas pipelines services. We have appealed this decision, but to ensure we can meet any deadlines that are set, we have begun the necessary work. This has meant we have had to reprioritise our work and has slowed some aspects of the wider implementation of input methodologies, particularly for electricity distribution businesses and gas pipelines businesses.

Completing the implementation work will be a significant milestone for the Commission. It will also signal a shift to promoting voluntary compliance and greater understanding of the performance of regulated businesses and the benefits of regulation. We will be working to improve our engagement with stakeholders, introducing a more proactive and consistent approach that underlies all of our regulatory work.

The information we receive through the information disclosure regime will allow us to build a better picture of the performance of regulated businesses. This will help us understand whether the incentives that we have established are working, and inform other future regulatory developments.

In 2012/13 our focus will be on:

- managing the Part 4 appeals, which we expect the High Court to hear before the end of 2012 (to be confirmed)
- determining additional input methodologies for electricity distribution and gas distribution businesses by 30 September 2012, and resetting electricity distribution default price-quality paths by 30 November 2012, if a reset is appropriate in light of the additional input methodologies
- developing information disclosure requirements for Transpower by January 2013
- setting gas pipeline default price-quality paths as soon as possible after additional input methodologies are determined, but no later than October 2013
- evaluating customised price-quality path proposals as required
- evaluating Grid Upgrade Proposals received from Transpower as required
- reviewing the effectiveness of information disclosure for airports as soon as practicable after airports reset their prices – we expect to report on at least Wellington and Auckland Airports in 2012/13.

Part 4 output measures are on pages 40-41.

Dairy

We continue to monitor contestability in dairy markets through the entry and expansion of other dairy processors besides Fonterra. Over the next three years we intend to increase our education initiatives about our role in this area to ensure shareholding Fonterra farmers are aware of their ability to switch between processors.

The Government is currently contemplating a number of changes to the Dairy Industry Restructuring Act 2001, which could increase our regulatory responsibilities under the Act. This would include having to conduct annual reviews of Fonterra's Farm Gate Milk Price Manual and its application. Fonterra's Manual calculates the price Fonterra pays its farmers for raw milk.

The Government has asked us to conduct a dry run review of Fonterra's 2011/12 Milk Price Manual and its application before any potential legislative changes are introduced. Through this dry run, we are establishing our processes and approach that we would apply if the proposed new regime is introduced.

There is uncertainty about what any changes might mean for our other work under the Act. Industry participants might seek clarity about the meaning of the legislative amendments, which will result in an increase in applications for determinations. However, we might also see a drop in applications given the milk monitoring regime will improve transparency.

In 2012/13 our focus will be on:

- meeting any obligations to review Fonterra's Farm Gate Milk Price Manual and its application under the Dairy Industry Restructuring Amendment Bill, if enacted
- providing advice to officials
- raising awareness of our role and the Act, particularly if changes are introduced.

Dairy output measures are on pages 40-41.

It is not only what we do as an organisation that contributes to achieving our outcomes, it is how we do it.

The 'how' is underpinned by a capable and motivated workforce, who know what is expected of them and have the support, leadership and tools to do it well.

In the last two years, we have gone through significant structural and cultural change to provide an environment that helps us do our jobs better. Over the next few years, we will focus on realising the benefits of these changes. This means making sure everything we do has value and is achieved to a high standard, as efficiently as possible. It also means continuously reviewing and improving how we do things, consistent with the Government's priority of delivering better public services.

Improving our business

In 2010/11 we established five strategic programmes that provide a basis for managing and improving our organisational capability and health. The programmes are *Simplify our business*, *Understand our value*, *Better connect*, *Stronger future focus* and *Better investment in people*.

During 2012/13 our focus for these programmes will be on realising the benefits. We will do this by improving the quality of engagement with our stakeholders and making sure we have the right balance of capability and tools we need to perform our core functions effectively.

We are coming into the final year of our current strategic programmes and this year we will be refining our approach for the next three years.

Simplify our business

By simplifying our processes and the way we work, we want to make it easier to do business with the Commission and within the Commission. Part of this involves improving our processes and making them more transparent. We will also complete a number of improvements to our policies so that they are easy-to-read and accessible to all staff.

Understand our value

We need good information to make informed decisions about how we deliver value and where we should focus our resources. We want to be transparent and predictable about what we do and why.

In 2012/13 we will continue to refine and publicise our approach to compliance (page 11), which focuses on helping businesses comply, and will roll out our updated enforcement response document.

Better connect

To do our job better we need to improve how we connect with our stakeholders. This means listening to their needs and communicating in easy-to-understand language. We also need to communicate better within our organisation, sharing information and learning from each other.

In 2012/13 we will be implementing an external stakeholder engagement plan that includes improvements to our website and other online communications. We will also improve our internal communications.

Stronger future focus

A stronger future focus means having long-term plans and processes to continually improve the way we work. This includes evaluating our current performance against government guidelines and industry benchmarks, and making sound and timely investment decisions in systems and processes.

In 2012/13 we will develop the approach and focus for our strategic programmes for the next three years to make sure we have strategies in place that continue to develop the Commission's long-term capability.

We will implement an online strategy to look at opportunities for us to communicate with our stakeholders in ways that make sense to them. We will also implement our Information Systems Strategic Plan, which is discussed in more detail below.

Better investment in people

We aim to attract, develop and retain great people so that we are able to achieve our outcomes. We do this by investing in programmes that help our people and organisational capability grow.

In 2012/13 we will use feedback from employee surveys to identify development and business improvement opportunities. Last year we refreshed our organisational values to define how we expect our people to behave and our commitment to stakeholders. We will continue to promote these values and the organisational culture they embody.

Planning for long-term investment in our information systems

Information systems are increasingly integral to achieving our outcomes. Well-matched information capabilities will help us to be more effective as we seek to use more targeted interventions, to communicate about our work more clearly, and to simplify the way we do business.

We developed our Information Systems Strategic Plan (ISSP) through our *Stronger future focus* programme. The plan provides clarity about what we need from our information systems to support the business over the next three years.

The ISSP includes a strategic information systems roadmap to signal the high-level sequencing and timing of changes, and we will begin to implement individual projects from July 2012.

Resource sharing across the public sector

We look at opportunities to use or provide shared services with other agencies where it makes good business sense to do so. To date we have adopted 15 of the 22 initiatives within the Government ICT roadmap and will continue to assess opportunities on a case-by-case basis.

We also use the purchasing power of government and leverage off all-of-government procurement contracts where possible. We are currently participating in five all-of-government contracts.

Evaluating our capability and health

An important part of our operating philosophy is continuous improvement. Obviously, measuring and monitoring our progress towards our outcomes are a big part of this. We also have good processes in place to evaluate our business improvement initiatives. This helps us ensure we are making the right investments to support our long-term capability needs.

We use the Better Administration and Support Services (BASS) metrics to evaluate our HR, finance, procurement, information and communications technology, and corporate and executive services functions. While we are not one of the agencies directly involved in the programme, we use the framework and benchmark ourselves against BASS metrics to identify strengths and weaknesses, and areas for improvement.

The Commission's BASS metrics for 2010/11 show our administrative and support costs as a proportion of our total organisation running costs are below the median for the BASS small agency cohort. We aim to remain below the median in the 2011/12 year and future BASS results.

We are conscious of the need to deliver value from our activities given the difficult economic times and the expectations of the government and the public.

Our focus over the next three to five years is to manage our expenditure and reserves carefully, while continuing to improve our efficiency and effectiveness. We will invest in innovation while aiming to achieve better value for money from our existing spending.

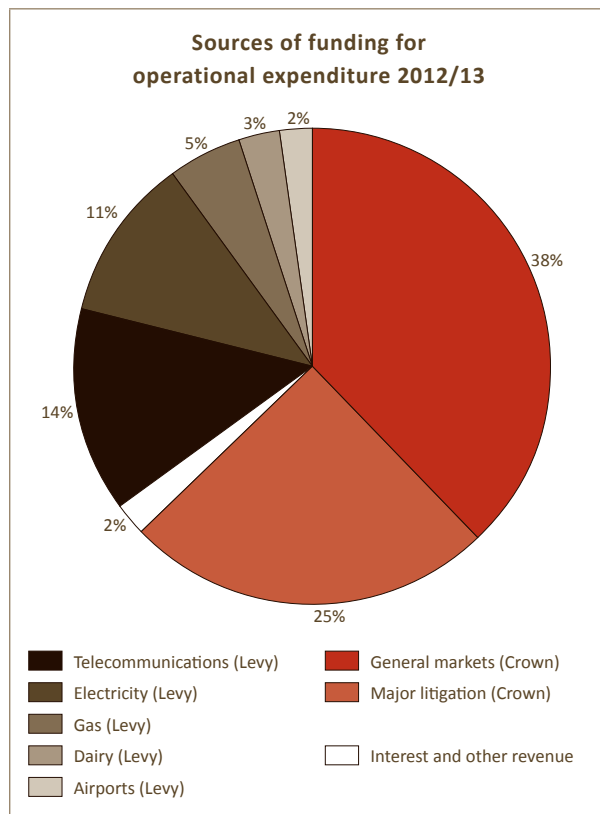
Where our funding comes from

We receive our funding from a variety of sources, including industry levies, interest income and Crown revenue.

In general, the Commission’s industry regulation (electricity lines, gas pipelines, airports, telecommunications and dairy) is funded by levies on the industries themselves.

The Crown uses general taxation to fund our work in the general market area, which includes fair trading, and consumer credit.

In the 2012/13 year, 63% of our revenue will come from the Crown, 35% from industry levies, and the remainder from interest and other third-party sources.



Medium-term (2012-2015) expenditure

The Commission is allowed to retain its surplus from general market activities. We also receive a small amount of funding each year to build a contingency fund, in case we lose a court case and have to pay cost awards. We have built up reserves to help manage our financial risks through the changes we have made to our structure and operating approach, tight management of costs, and the downturn in business activity flowing from the economic downturn.

Although litigation expenditure is difficult to forecast, we do expect it to peak during the 2012/13 year, as a result of several major litigation cases reaching important court phases (previously we expected this to occur in 2011/12). The additional cost of these cases on top of our ordinary work programme means we will have to continue to manage our expenditure prudently.

We expect our litigation costs to decline from 2013/14 and future years, which will bring our litigation expenditure back to funded levels. For all our other functions, we expect to stay within our appropriation levels. Funding of our Part 4 activities after 2013/14 is uncertain, however. In 2011 Cabinet addressed our Part 4 funding levels to 2013/14 but did not consider the funding arrangements past that time. Part 4 funding for 2014/15 is subject to review and will be decided by Cabinet. Funding for our regulatory responsibilities under the Dairy Industry Restructuring Act will also be reviewed by December 2014.

Doing business better

In 2012/13 we plan to invest in improving our online presence as a cost-effective way of improving our connections with businesses and consumers. We are also planning to develop the capabilities of our website, so that we can improve the way we manage information disclosure for regulated businesses.

Getting better value for money

A key focus in 2012/13 and future years is achieving better value for money. We have already identified cost savings in our telecommunications work as a result of new regulatory arrangements flowing from the structural separation of Chorus and Telecom. These savings allow us to permanently reduce our telecommunications funding by \$1.79 million from 2012/13, a saving that is passed on directly to the telecommunications industry. We will continue to examine our expenditure on telecommunications regulation to determine whether we can reduce our funding even further in future years.

Another way we are seeking better value for money is in managing our 'back-office' corporate costs. We have already achieved savings by reducing our office space and rental costs. We will realise further savings over time as we adopt all-of-government contracts and shared services opportunities. We will use the BASS metrics to help us target our cost savings efforts.

In addition to managing corporate costs and identifying opportunities to make our work processes more efficient, we are continuing to focus on building our internal staff capacity and skills and reducing our expenditure on external contractors and consultants, where appropriate.

We will continue to look for better and more efficient ways to carry out our work to make sure we use the funding we receive in the most cost-effective way.

Statement of responsibility

The Crown Entities Act 2004 requires the Commission to prepare a Statement of Intent, including prospective financial statements, before the start of each financial year to promote our accountability to the public. The prospective financial statements may not be appropriate for any other purpose and are unaudited.

The Commission has prepared the prospective financial statements using our best estimates and assumptions of expected future events. As the financial statements are prospective, actual results will be different from the information presented in this Statement of Intent. We will explain all material variations from the prospective financial statements in our subsequent Annual Report.

The Commission accepts responsibility:

- for the preparation of the prospective financial statements in accordance with generally accepted accounting practice in New Zealand, and the judgements we have made in their preparation
- that the prospective financial statements fairly reflect our expected forecast financial position as at 30 June 2013 and the results of our operations, cash flows and service performance for the period ending on that date
- for the establishment and maintenance of a system of internal controls which we have designed to provide reasonable assurance as to the integrity and reliability of our financial and non-financial reporting.

In the opinion of the Commission, the prospective financial statements fairly reflect the expected forecast financial position of the Commission as at 30 June 2013 and the results of our operations, cash flows and service performance for the period ending on that date.



Dr Mark Berry
Chair – Commerce Commission



Anita Mazzoleni
Convenor – Audit, Finance and Risk Management Committee

Statement of significant underlying assumptions

We have prepared the prospective financial statements presented on pages 29-37 on the basis of existing Government policies, in consultation with our oversight ministry, the Ministry of Economic Development. Because these prospective financial statements are forward-looking, we have had to make some assumptions about our work and funding. The prospective financial statements should be read with these assumptions in mind.

We have made the following significant underlying assumptions in preparing the prospective financial statements.

- The Commission's functions will remain essentially the same as in the previous year. The Commerce (Cartels and Other Matters) Amendment Bill will not impose significant costs on the Commission in 2012/13.
- Crown revenue received by the Commission agrees with the 2012/13 Estimates of Appropriation.
- We have based our expected expenditure on major litigation activities on our estimate of the timing and extent of court hearings. If delays, settlements, or significant other litigation matters arise from Commission cases (particularly Air Cargo and Input Methodologies Merits Appeals), then expenditure on major litigation will change, favourably or unfavourably, for the year.
- A significant portion of our work is reactive, based upon requests from ministers or the public, and complaints we receive. In preparing the prospective financial statements, we have assumed that some activity (particularly in general markets) will occur at a level in line with historical activity.
- We have assumed total equity as at 30 June 2012 will exceed \$15 million. This is the value at which Treasury's capital charge is incurred. Should total equity be less than \$15 million at 30 June 2012, expenditure in 2011/12 will be approximately \$600,000 lower than forecast. With total equity forecast to remain below \$15 million during 2012/13 no capital charge cost has been budgeted for the 2012/13 year. Should total equity exceed \$15 million as at either 31 December 2012 or 30 June 2013, then capital charge costs of approximately \$600,000 for each six month period would be incurred.

The Commission has adopted these assumptions as at 9 May 2012.

Statement of prospective comprehensive income for the year ended 30 June 2013

	2011/12 Budget \$000	2011/12 Forecast \$000	2012/13 Budget \$000
Operating income			
Crown revenue	39,352	43,689	42,389
Fees and recoveries	50	300	50
Interest	200	625	534
Other income	60	50	50
Total operating income	39,662	44,664	43,023
Operating expenditure			
Members and personnel	22,021	20,921	22,222
Legal and other professional fees	14,871	12,218	14,887
Computer, information, and information technology	722	789	622
Occupancy	1,733	1,620	1,681
Depreciation and amortisation	817	743	832
Capital charge	0	600	0
Other expenditure	1,832	1,469	2,138
Total operating expenditure	41,996	38,360	42,382
Surplus/(deficit)	(2,334)	6,304	641
Total comprehensive income/(loss) for the year	(2,334)	6,304	641

Statement of prospective changes in equity for the year ended 30 June 2013

	2011/12 Budget \$000	2011/12 Forecast \$000	2012/13 Budget \$000
Balance at 1 July	13,234	13,729	15,071
Comprehensive income			
Surplus/(deficit)	(2,334)	6,304	641
Total comprehensive income	(2,334)	6,304	641
Transactions with owner			
Repayment of surplus to the Crown	(1,119)	(4,962)	(1,528)
Total transactions with owner	(1,119)	(4,962)	(1,528)
Balance at 30 June	9,781	15,071	14,184

Statement of prospective financial position as at 30 June 2013

	2011/12 Budget \$000	2011/12 Forecast \$000	2012/13 Budget \$000
Equity			
General funds	5,920	12,482	11,095
Litigation costs reserve	2,361	1,089	1,589
Litigation fund reserve	1,500	1,500	1,500
Total equity	9,781	15,071	14,184
Current assets			
Cash and cash equivalents	12,748	34,696	15,759
Fees and recoveries receivable	29	35	35
Crown revenue receivable	0	2,990	2,877
Prepayments	15	110	110
Total current assets	12,792	37,831	18,781
Non-current assets			
Property, plant and equipment	1,500	1,203	1,000
Intangibles	593	267	648
Total non-current assets	2,093	1,470	1,648
Total assets	14,885	39,301	20,429
Current liabilities			
Creditors and other payables	2,300	1,900	1,900
Accrued expenses	0	1,690	1,090
Provision for Crown funding to be repaid	1,119	4,962	1,528
Penalties and cost awards held in trust	0	13,936	0
Employee entitlements	1,500	1,500	1,500
Total current liabilities	4,919	23,988	6,018
Non-current liabilities			
Provision for reinstatement of lease occupancy	185	185	185
Other non-current liability	0	57	42
Total non-current liabilities	185	242	227
Total liabilities	5,104	24,230	6,245
Net assets	9,781	15,071	14,184

Statement of prospective cash flows for the year ended 30 June 2013

	2011/12 Budget \$000	2011/12 Forecast \$000	2012/13 Budget \$000
Cash flow from operating activities			
Receipts from Crown	40,656	43,907	42,487
Receipts from fees and recoveries	110	397	100
Receipts of penalties to be paid	0	1,896	212
Receipts from interest	200	626	534
Payments to members and employees	(22,083)	(20,996)	(22,222)
Payments to suppliers	(18,770)	(16,728)	(19,943)
Payment of penalties received	0	(1,100)	(14,148)
Goods and services tax (net)	255	12	15
Net cash inflow/(outflow) from operating activities	368	8,014	(12,965)
Cash flow from investing activities			
Purchase of property, plant and equipment	(599)	(277)	(376)
Purchase of intangible assets	(411)	(95)	(634)
Net cash inflow/(outflow) from investing activities	(1,010)	(372)	(1,010)
Cash flow from financing activities			
Repayment of surplus	(6,389)	(5,342)	(4,962)
Net cash inflow/(outflow) from financing activities	(6,389)	(5,342)	(4,962)
Net increase/(decrease) in cash and cash equivalents	(7,031)	2,300	(18,937)
Opening cash and cash equivalents	19,779	32,396	34,696
Closing cash and cash equivalents	12,748	34,696	15,759

Vote Commerce – enforcement of general market regulation

	2011/12 Budget \$000	2012/13 Budget \$000
Income		
Crown revenue	18,073	16,435
Other income	310	634
Total income	18,383	17,069
Expenditure		
Determinations	3,387	3,363
Enforcement cases	7,764	7,964
Advocacy and development	2,090	2,105
Reports to the Minister	0	0
Total general market expenditure	13,241	13,432
Internal major litigation expenditure		
Competitive markets	1,764	2,096
Fair Trading Act	776	987
CCCF Act	541	450
Telecommunications	302	54
Input methodologies	755	790
Total internal major litigation expenditure	4,138	4,377
Total expenditure	17,379	17,809
Result	1,004	(740)

Vote Communications – enforcement of telecommunications sector regulations

	2011/12 Budget \$000	2012/13 Budget \$000
Income		
Crown revenue	7,790	6,000
Total income	7,790	6,000
Expenditure		
Determinations	2,229	1,886
Compliance and enforcement	852	426
Public reports and advice to officials	3,811	2,308
Total expenditure	6,892	4,620
Result	898	1,380

Vote Commerce – input methodologies

	2011/12 Budget \$000	2012/13 Budget \$000
Income		
Crown revenue	355	0
Total income	355	0
Expenditure		
Determinations	350	0
Public reports and advice to officials	5	0
Total expenditure	355	0
Result	0	0

Vote Commerce – regulation of electricity lines businesses

	2011/12 Budget \$000	2012/13 Budget \$000
Income		
Crown revenue	4,167	4,744
Total income	4,167	4,744
Expenditure		
Regulation		
Determinations	3,676	3,441
Compliance and enforcement	384	698
Public reports and advice to officials	107	537
Total expenditure	4,167	4,676
Result	0	68

Vote Commerce – regulation of natural gas services

	2011/12 Budget \$000	2012/13 Budget \$000
Income		
Crown revenue	1,300	2,156
Total income	1,300	2,156
Expenditure		
Determinations	1,020	1,507
Compliance and enforcement	50	297
Public reports and advice to officials	230	291
Total expenditure	1,300	2,095
Result	0	61

Vote Commerce – regulation of airport services

	2011/12 Budget \$000	2012/13 Budget \$000
Income		
Crown revenue	400	1,019
Total income	400	1,019
Expenditure		
Determinations	75	69
Compliance and enforcement	10	92
Public reports and advice to officials	315	842
Total expenditure	400	1,003
Result	0	16

Vote Commerce – enforcement of dairy sector regulation

	2011/12 Budget \$000	2012/13 Budget \$000
Income		
Crown revenue	905	1,245
Total income	905	1,245
Expenditure		
Determinations	453	283
Compliance and enforcement	140	21
Public reports and advice to officials	91	938
Total expenditure	684	1,242
Result	221	3

Vote Commerce – litigation fund

	2011/12 Budget \$000	2012/13 Budget \$000
Income		
Crown revenue	6,362	10,790
Total income	6,362	10,790
Expenditure		
Competitive markets	4,133	5,405
Fair Trading Act	805	584
CCCF Act	916	869
Telecommunications	385	0
Input methodologies	4,580	3,779
Electricity	0	250
Dairy	0	50
Total expenditure	10,819	10,937
Result	(4,457)	(147)

Output measures 2012/13

General market

Output measures	Actual 2008/09	Actual 2009/10	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
Determinations							
Quantity							
Number of clearance applications processed	11	8	10	15	10-22	10-22	10-22
Number of authorisation applications processed	11	4	3	3	0-4	0-4	0-4
Quality and timeliness							
Percentage of successful defended determinations appeals over 5 years	N/A	100%	100%	100%	100%	100%	100%
Percentage of written reasons published for determinations	100%	100%	100%	100%	100%	100%	100%
Average number of working days from date of registration to date of decision for merger clearance applications	46 days	38 days	32 days	60 days	40 days	40 days	40 days
Average number of working days from date of decision to date of publication of reasons for declined clearance applications	52 days	N/A No declines	N/A No declines	10 days	10 days	10 days	10 days
Enforcement cases							
Quantity							
Number of market structure cases	6	3	1	3	0-5	0-5	0-5
Number of coordinated behaviour cases	10	17	22	8	8-14	8-14	8-14
Number of unilateral conduct cases	14	8	11	3-6	5-10	5-10	5-10
Number of Fair Trading Act cases	298	384	372	400-450	260-400	260-400	260-400
Number of product safety and information standards cases	35	50	76	50-60	40-65	40-65	40-65
Number of CCCF Act cases	43	46	39	50-60	30-50	30-50	30-50

Output measures	Actual 2008/09	Actual 2009/10	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
Quality and timeliness							
Percentage of investigations undecided for more than 18 months (at any point during the year)	Not measured	Not measured	2%	1%	0%	0%	0%
Percentage of investigations decided within 12 months (Commerce Act, Fair Trading Act, Product Safety, and CCCF Act)	Not measured	Not measured	Commerce Act: 70% Fair Trading Act, Product Safety, and CCCF Act: 97% ¹⁸	Commerce Act: 80% Fair Trading Act, Product Safety, and CCCF Act: 95% ¹⁸	90%	90%	90%
Advocacy and development							
Quantity							
Number of Commission guidelines or fact sheets published	28	29	23	28	5-20	5-20	5-20
Number of contributions made to external publications, guidelines and codes of practice	Not measured	Not measured	Not measured	42	20-100	20-100	20-100
Number of substantial pieces of advice provided to inform policy design	24	17	49	18	5-30	5-30	5-30
Number of presentations delivered and stakeholder engagements held	18 Presentations only	17 Presentations only	84 Presentations only	120	50-150	50-150	50-150
Reports to the Minister							
Quantity							
Number of reports to the Minister on the control of certain goods and services in specified markets	0	0	0	0-1	0-1	0-1	0-1
Quality measure for all outputs							
Number of successful legal challenges of the Commission's processes	0	1	0	0	0	0	0

18. In 2010/11 and 2011/12 this timeliness measure was split by Commerce Act and Fair Trading Act, Product Safety and CCCF Act. We have reviewed this measure and have combined them to simplify the measure and to better reflect internal business processes.

Telecommunications, Part 4, Dairy

Output measures	Actual 2008/09	Actual 2009/10	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
Determinations							
Quantity							
Number of determinations (includes determinations, clarifications, reviews and amendments)	15	20	17	27	26-56	15-43	18-45
Quality and timeliness							
Percentage of Part 4 determinations completed by statutory deadlines	Not measured	Not measured	100%	100%	100%	100%	100%
Average time to complete telecommunications determinations	11.4 months	4.83 months	4.8 months	5.5 months	10 months	10 months	10 months
Average time taken to complete dairy determinations	10.9 months	N/A	N/A ¹⁹	120 working days	120 working days	120 working days	120 working days
Percentage of stakeholders who find the Commission determinations and supporting reasons clear	Not measured	Not measured	Not measured	Survey to be completed	75%	75%	75%
Public reports and advice to officials							
Quantity							
Number of reports completed (monitoring reports, summary and analysis reports, information disclosure reports, ministerial reports)	9	11	9	15	12-21	10-19	9-18
Number of substantial pieces of advice provided to officials to inform policy design	0	9	9	5	10-33	12-30	10-28
Quality and timeliness							
Percentage of stakeholders who rate our reports as good or above	Not measured	Not measured	Not measured	Survey to be completed	75%	75%	75%
Percentage of reports completed by the set date	N/A	N/A	Not measured	100%	100%	100%	100%

19. In the 2010/11 Annual Report we reported that two determinations were completed for dairy in 2010/11. We did not complete any dairy determinations in 2010/11. The correct figure is 0 and therefore the timeliness measure is not applicable.

Output measures	Actual 2008/09	Actual 2009/10	Actual 2010/11	Estimated actual 2011/12	Target 2012/13	Target 2013/14	Target 2014/15
Compliance and enforcement							
Quantity							
Number of compliance assessments completed	5	1	35	50	58-67	61-65	61-65
Number of enforcement cases taken	1	0	2	1	0-8	0-8	0-8
Quality and timeliness							
Percentage of compliance assessments completed by the set date	N/A	N/A	100%	100%	100%	100%	100%
Quality measure for all outputs							
Number of successful legal challenges of the Commission's processes	0	0	0	2-3	0	0	0

Cartel	A cartel involves illegal agreements between competitors not to compete with each other such as price fixing; the restriction of outputs; the allocation of customers, suppliers or territories; and bid rigging.
CCCF Act cases	Investigations into possible breaches of the Credit Contracts and Consumer Finance Act by creditors. Potential breaches include a creditor failing to provide the debtor with adequate disclosure of the terms of the consumer credit contract, consumer lease or buy-back transaction; and a creditor charging consumer credit contract fees that may be unreasonable.
Coordinated behaviour cases	Investigations into agreements between competitors not to compete with each other such as price fixing; the restriction of outputs; the allocation of customers, suppliers or territories; and bid rigging.
Price-quality path	Under Part 4 of the Commerce Act 1986 (subparts 9 and 10), non-exempt suppliers of electricity lines services, and suppliers of gas pipeline services are subject to default/customised price-quality regulation.
Fair Trading Act cases	Investigations into possible breaches of the Fair Trading Act. Potential breaches include traders providing consumers with false, misleading or incomplete information relating to the supply of goods and services. Investigations under the FTA may also involve employment advertising, pyramid selling, and the supply of products covered by Product Safety and Consumer Information Standards.
Information disclosure	Under Part 4 of the Commerce Act 1986 (subpart 4), sufficient information is to be readily available to interested persons so that they can assess whether the purpose of Part 4 is being met.
Input methodologies	This involves setting upfront regulatory methodologies, rules, processes, requirements and evaluation criteria for services that are regulated under Part 4, and for undertaking Part 4 inquiries.
Market definition	The process of identifying the relevant market for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, is substitutable for them. The market so defined will be the area of close competition between firms.
Market structure cases	Investigations into mergers that might substantially lessen competition in a market and that do not have the protection of a clearance.
Merger	A merger is a combination of two or more business enterprises into a single enterprise. Colloquially, mergers also include business acquisitions which involve the acquisition of assets or shares of a business.
Product safety and information standards cases	Investigations of products such as bikes, cots and children's toys that might be unsafe, as well as the incorrect labelling of footwear and clothing, and failure to display required information on motor vehicles offered for sale.
Substantial lessening of competition	Substantial lessening of competition concerns a real or substantial impact on a market by lessening, hindering or preventing the process of workable or effective competition.
System Average Interruption Duration Index (SAIDI)	The average outage duration for each customer served, calculated as the sum of all customer duration interruptions divided by the total number of customers served.
System Average Interruption Frequency Index (SAIFI)	The average number of interruptions that a customer experiences, calculated as the total number of customer interruptions divided by the total number of customers served.
Telecommunications Service Obligations (TSO)	An obligation to supply certain telecommunications services to groups of end-users who may not otherwise be supplied on a commercial basis or at a price that is considered to be affordable.
Ultra Fast Broadband Initiative (UFB)	The Government has contracted with Chorus, WEL Networks, Northpower and Enable Networks to build and operate Fibre-to-the-premises networks in 75% of New Zealand.
Unbundled bitstream access (UBA)	A regulated service giving wholesale access to Chorus's DSL full-speed broadband service. Commercial variants are also available.
Unilateral conduct cases	Investigations into prohibited conduct by a person or a business, including taking advantage of their dominant position in a market for an anti-competitive purpose, or specifying a minimum price at which its goods or services can be sold by another.

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Contact details

To contact the Commission with information about false or misleading trading practices, or anti-competitive behaviour by businesses, CALL the Contact Centre on 0800 943 600, WRITE to Contact Centre, PO Box 2351, Wellington or EMAIL contact@comcom.govt.nz

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