



Cartel Enforcement in New Zealand



ACCC Cartel Conference
24 November 2004

Paula Rebstock
Chair, Commerce Commission



Introduction

- ❑ New Zealand's principal competition legislation is the Commerce Act 1986;
- ❑ It promotes competition in markets within New Zealand;
- ❑ It prohibits conduct that restricts competition, such as price fixing, market sharing, anti-competitive arrangements and taking advantage of market power.

Commerce Commission

- ❑ Strategic priority: Improved cartel enforcement;
- ❑ New initiatives, such as Leniency Policy;
- ❑ Funding Review.

Current enforcement issues



- ❑ Background: Small Economy;
- ❑ Enforcement environment has changed;
- ❑ Developments include:
 - Technological advances;
 - Scope of the Commission's information gathering powers;
 - Challenge to processes;
 - Increase in cross-border issues and business globalisation.

Enforcement Tools



- ❑ Enforcement Criteria based on three key elements:
 - Extent of detriment;
 - The seriousness of the conduct; and
 - Extent of public interest.

- ❑ New enforcement tools:
 - Leniency Policy;
 - a broader Co-operation Policy; and
 - Guidelines on the use of Cease and Desist Orders.

Leniency Policy



- ☐ Focused on cartels;
- ☐ Significantly enhanced incentives for businesses to co-operate;
- ☐ Aligned to similar overseas practices;
- ☐ Primary aim is to enhance the detection and prosecution of international and domestic cartels;
- ☐ Clear immunity to the first member of a cartel to come forward; and
- ☐ Designed to create a level of tension and distrust between members of a cartel.

Co-operation Policy



- ☐ Investigations often initiated and aided by assistance of individuals or businesses.
- ☐ The Commission will exercise its discretion to take lower level of enforcement action, or no action at all against an individual or business, in exchange for information.

Cease and Desist Orders



- ☐ Commission has specific powers to obtain cease and desist orders against anti-competitive behaviour.
- ☐ Can be used to stop cartel behaviour and also mergers and acquisitions.
- ☐ For an order to be made, Cease and Desist Commissioners must be satisfied behaviour is anti-competitive and it is necessary to act urgently.

Trans-Tasman Harmonisation



- ☐ Greater co-operation and effectiveness between agencies would result in significant benefits to consumers and businesses.
- ☐ Productivity Commission Submission.
- ☐ Information sharing between agencies reduces cross-jurisdictional impediments to enforcement and co-operation and increases authorities' ability to prevent anti-competitive conduct

Current/recent investigations

- ❑ On average up to ten cartel investigations open at any one time.
- ❑ Recent investigations include the following markets:
 - Chemicals, insurance, real estate, funeral directors.
- ❑ Medical profession widely investigated:
 - Cardiac anaesthetists, radiologists, ophthalmologists, midwives.
- ❑ Three Leniency Applications:
 - One investigation found no breach; and
 - Two related to ongoing investigations.

Recent prosecutions

- ❑ Ophthalmology Society of New Zealand and five ophthalmologists in contravention of anti-competitive provisions of the Commerce Act – under appeal.
- ❑ Nine North Island meat companies – fined more than \$5.5 million for arrangements.
- ❑ Caltex, Mobil and Shell fined total of \$1.175million for price fixing in relation to discount on petrol.

Conclusion



- ☐ Strategic priority: effective action against cartels.
- ☐ The Commission will continue to be vigilant about business behaviour that constitutes cartel behaviour.



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