

The Bell Gully *Regulator Report* lists recent changes, decisions and developments at the main New Zealand and Australian corporate, commercial and competition regulatory bodies for the period to 5 July 2007. For further details on any matter in this report, just click on the hyperlink below each item. Should you have any questions regarding the contents of the Bell Gully *Regulator Report* please call your usual contact at Bell Gully or contact a member of the Bell Gully [Corporate Team](#) or the [Competition Team](#). For past editions of the Bell Gully *Regulator Report* please [click here](#).

A companion publication, *Commercial Quarterly*, Bell Gully's digest of current corporate and commercial law issues, is published every quarter. For the Autumn issue of *Commercial Quarterly* please [click here](#). For all other Bell Gully publications please [click here](#).

## Securities Commission

### **Securities Commission completes annual oversight review of NZX**

The Securities Commission's annual oversight review of the NZX has found that NZX's performance as a registered exchange continues to be good. The focus of the Commission's review was on particular issues regarding NZX's performance of its statutory functions. The Commission does make some specific recommendations for improvement, and has communicated its concerns and recommendations to NZX, NZX Discipline and the Special Division.

[Click here for more](#)

### **Securities Commission accepts enforceable undertaking from Contributory Mortgage Investments Limited**

The Securities Commission has accepted an enforceable undertaking from contributory mortgage broker Contributory Mortgage Investments Limited (CMI), its nominee company Contributory Mortgage Nominees Limited, and its directors John Martin and Ron Jamieson to give CMI an opportunity to raise its standards of care and governance. These undertakings included an agreement not to offer new mortgages. Subsequent oral undertakings extended the period of restraint on CMI offering new mortgages.

[Click here for more](#)

### **Securities Commission issues warning on Locke Guaranty Trust (NZ) Ltd advertisements**

The Securities Commission has banned advertisements for the Locke Secured Capital Plan. The investment is offered by Locke Guaranty Trust (NZ) Limited (LGT). LGT is incorporated in New Zealand and has an Auckland address. LGT states that New Zealanders are not eligible to invest in the plan, but appears to be using New Zealand as a base to offer securities in other countries.

[Click here for more](#)

### **Securities Commission settles insider trading case with Midavia and Richwhite and issues notice to Tranz Rail shareholders**

The Securities Commission has reached a settlement of the insider trading proceeding against Midavia Rail Investments Ltd BVBA (previously known as Pacific Rail Limited NV), which was a former Tranz Rail shareholder, and David Richwhite, a former director of Tranz Rail. This settlement, and earlier settlements with other defendants, resulted in payments totalling NZ\$27.5 million. The Commission is now preparing to seek advice from the

## Securities Commission continued

High Court on classes of shareholders that will be entitled to payment from the compensation. When the High Court guidance has been received the Commission will follow the court's directions to identify eligible shareholders.

[Click here for further details](#)

To view a statement made by Bell Gully on behalf of Midavia Rail Investments BVBA and David Richwhite, [click here](#)

### Securities Act Exemption Notices

The following Securities Act exemption notices have been published:

- **Securities Act (Matauri Properties Limited) Exemption Notice 2007 (SR 150/2007)**  
Subject to specified conditions, this notice exempts Matauri Bay Properties Limited, the Matauri Bay Residents' Society (and every person acting on behalf of either or both of them) from sections 33(3), 37, 37A, 38A, 54, and 54B(3) of the Securities Act 1978 and from the Securities Regulations 1983 (except regulation 8) in respect of any participatory securities in the form of membership of the society that confers rights to participate in the ownership and use of all or part of the communal facilities at their Matauri Bay development.
- **Securities Act (Registered Banks Futures Contracts) Exemption Notice 2007 (SR 151/2007)**  
This notice relates to disclosure requirements for registered banks in relation to non-exchange traded futures contracts and contracts of the type described in section 37(2) of the Securities Markets Act 1988. The effect of the exemptions is to give registered banks greater clarity about their obligations when offering and dealing in these products. The notice came into effect on 7 June and expires on 31 July 2012.

### Financial Reporting Act Exemption Notices

The following Financial Reporting Act exemption notice has been published:

- **Financial Reporting Act (Overseas Issuers – United States of America) Exemption Notice 2007 (171/2007)**  
Under the new exemption powers given to the Securities Commission under section 35A of the Financial Reporting Act 1993 (the FRA), the Securities Commission has issued a notice exempting directors of certain issuers incorporated in the United States of America that offer securities in New Zealand under the Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002 or the Securities Act (Overseas Listed Issuers) Exemption Notice 2002 from various provisions of the FRA. The effect of the exemptions is to allow such issuers to provide the financial statements that they are required to prepare under financial reporting requirements in the United States. The notice took effect on 26 June and expires on 30 June 2012.

## Takeovers Panel

### Takeovers Code Exemption Notices

The following Takeovers Code exemption notices have been published:

- **Takeovers Code (Class Exemptions) Notice (No 2) 2001 Amendment Notice 2007**  
The Takeovers Panel has amended the Takeovers Code (Class Exemptions) Notice (No 2) 2001 (the 2001 notice) as a result of changes made to the Takeovers Code by the Takeovers Code Approval Amendment Regulations 2007. Clause 4 (which relates to a class exemption for a shareholder approved buyback) as amended requires certain documents, statements, and information to be copied to the Panel. Clause 26 has been revoked. The notice came into force on 1 July 2007.  
[Click here for more](#)

## Takeovers Panel continued

- **Takeovers Code (Offers Unconditional as to Level of Acceptance) Exemption Revocation Notice 2007**  
The Takeovers Panel has given a notice revoking the Takeovers Code (Offers Unconditional as to Level of Acceptance) Exemption Notice 2002 with effect from 1 July 2007. The exemption is no longer necessary following the latest amendments to the Takeovers Code.  
[Click here for more](#)
- **Takeovers Code (Utilico Limited) Exemption Notice 2007**  
The Takeovers Panel has granted an exemption to Utilico Limited (Utilico) from rule 6(1) of the Code in respect of any increase in the percentage of voting rights in Infratil Limited and Utilico International Limited held or controlled by Utilico as a result of the acquisition of all of the assets of Utilico Investment Trust PLC (UIT) pursuant to a scheme of reconstruction under the Insolvency Act 1986 (UK). This notice applies to acts or omissions occurring on or after 1 June 2007 and expires on 30 November 2007.  
[Click here for more](#)
- **Takeovers Code (CanWest MediaWorks (NZ) Limited) Exemption Notice 2007**  
The Takeovers Panel has granted an exemption from rule 35 of the Takeovers Code to enable each of the CanWest MediaWorks (NZ) Limited (MediaWorks) executives to take part in the offer for all of the equity securities of MediaWorks by HT Media Limited.  
[Click here for more](#)

## Ministry of Economic Development (MED)

### **Government eases the way for local authorities to raise funds**

On 21 June, Commerce Minister Lianne Dalziel announced the government's intention to restore an exemption for local authorities to the current Securities Act disclosure regime. This will allow local authorities to produce an Investment Statement, with an accompanying certificate signed off by two councillors, compared to the current requirement of an Investment Statement and Prospectus signed off by the full council. The removal of the local authorities' exemption in 1998 resulted in the withdrawal of local authorities from the public debt securities market. The changes will be made in a Securities (Local Authorities) Amendment Bill planned for later this year.

[Click here for more](#)

### **Commerce Minister announces finance sector changes**

On 19 June, Lianne Dalziel announced the first phase in a package of new rules for the non-bank financial sector arising from the reviews of Financial Products and Providers and Financial Intermediaries. The main changes include:

- regulation of financial advisors by a co-regulatory model involving Approved Professional Bodies (APBs) with oversight by the Securities Commission;
- registration of all financial service providers on a publicly-searchable database;
- implementing comprehensive consumer dispute resolution and redress mechanisms;
- licensing trustees and retaining them as frontline supervisors while enhancing the approval and monitoring role of the Securities Commission; and
- making the Reserve Bank of New Zealand the single prudential regulator for banks, non-bank deposit takers and insurers.

Phase two decisions on insurance, collective investment schemes and debt issuers, regulation of platform and portfolio management services and an enhanced disclosure regime will be made later this year.

[Click here for more](#)

## Ministry for the Environment

### **New national environmental standards proposed for telecommunications facilities**

On 15 June, the Ministry for the Environment released a public discussion document proposing new national environmental standards for low-impact telecommunications facilities in the road reserve. The discussion document includes proposals developed by the telecommunications industry. The aim is to help speed up expansion of the infrastructure needed for high-quality telecommunications services in New Zealand and lower the costs for new telecommunications companies to enter the market.

[Click here to access the media release](#)

[Click here to access the Discussion Document](#)

## New Zealand Commerce Commission (NZCC)

### **Speeches**

#### **Investment in Telecommunications Networks: a Perfect Storm?**

*Speech to the IET, Wellington Branch, 20 June 2007*

In his final weeks as Telecommunications Commissioner, Douglas Webb reflects on some of the major challenges facing the telco industry in the coming years. For those out of the telco loop this speech provides a good overview of the issues that have arisen to date and it also provides some insight into the Commission's view on the road ahead.

[Click here for a transcript of this speech](#)

### **NZCC media releases**

The NZCC has issued the following media releases:

#### **Mergers and Acquisitions**

- **Reasons published for decline of Transpacific's acquisition**

The NZCC has published its reasons for declining to grant clearance for Transpacific Industries to acquire the South Island assets and businesses of EnviroWaste Services and up to 50% of the shares in Manawatu Waste. The NZCC found the proposed acquisition would have resulted in a substantial lessening of competition in four separate waste markets.

[Click here for more](#)

- **Commission declines applications from Foodstuffs and Woolworths to acquire The Warehouse**

The NZCC has declined to grant clearance to Foodstuffs and declined to grant clearance to Woolworths Limited for either of them to acquire up to 100% of the shares in The Warehouse Group Limited. The NZCC states that they were not satisfied that either of the proposed acquisitions will not have, or would not be likely to have, the effect of substantially lessening competition in the relevant markets.

[Click here for more](#)

#### **Market Behaviour**

- **Promoter fined over 'free' flights to Gold Coast**

A man who promoted 'free' flights deals to businesses has been fined \$6,000 on a representative charge of breaching the Fair Trading Act. Customers were told they would get free flights to the Gold Coast if they purchased from the business. The court found that the promotion was misleading because anyone wanting to use the 'free' flight had to pay for inflated accommodation on the Gold Coast to qualify. The extra charge for the accommodation meant customers were, in effect, paying for the flight. The NZCC note that companies must ensure "that any promotions they offer are genuine and that consumers are getting what they are promised" if they want to avoid prosecution.

[Click here for more](#)

- **Leather furniture trader fined over sale that wasn't**  
An Auckland leather furniture company has been fined a total of \$36,000 over misleading claims about the sale price of its leather lounge suites. The company breached the Fair Trading Act by advertising furniture as being on sale when the price was the same before, during, and after the sale and claiming, incorrectly, that the lounge suites on sale were sold by other retailers for double the price when, in fact, the other furniture was of a superior quality to the lounge suites on sale.  
[Click here for more](#)
- **ASB to pay \$4.1 million over credit card fees**  
ASB is the sixth major bank to plead guilty to breaching the Fair Trading Act by failing to properly disclose currency conversion fees paid by its credit card and debit card customers from March 2002 to March 2005. Customers paid fees of up to 2.35% of the total transaction.  
[Click here for more](#)

### Telecommunications

- **Next step underway for local loop backhaul and bitstream backhaul services**  
On 19 June NZCC issued notices requiring Telecom to submit standard terms proposals by 28 September 2007 for the two backhaul services necessary to support local loop (LLU) and bitstream access. The notices require Telecom to specify the non-price terms and conditions on which it proposes to provide an unbundled local loop backhaul service and an unbundled bitstream access backhaul service.  
[Click here for more](#)
- **Commission receives proposals from Telecom for unbundled local loop and co-location services**  
The NZCC received proposals from Telecom covering the non-price terms for the unbundled local loop and co-location regulated services on 12 June (having earlier rejected a [request](#) from Telecom to extend the time period for submitting its proposals). Submissions on the proposals were required from interested parties by 28 June 2007. The NZCC will prepare draft Determinations incorporating both price and non-price terms. It is anticipated that these draft Determinations will be issued by the end of July.  
[Click here for more](#)

### Consumer issues

- **Christchurch retailer fined over unsafe wooden toys**  
A retailer has been fined \$12,000 over unsafe wooden toys sold by Notty Horse Wooden Toys in Christchurch's South City Mall for breaches of the Product Safety Standards (Children's Toys) Regulations 2005.  
[Click here for more](#)
- **'Tender' car sales were not exempt from consumer law**  
A car sales company has been found guilty of breaching the Fair Trading Act by misleading consumers about their rights and the remedies that were available to them. The company negotiated cheaper prices for some cars if customers signed a tender form. Sales by tender or auction are exempt from the Consumer Guarantees Act, but the court found the company was not offering genuine tender sales because purchase prices had already been agreed with the buyers.  
[Click here for more](#)

## **ACCC media releases**

The ACCC has issued the following media releases:

### **Mergers and Acquisitions**

- **ACCC allows Sky and TVN to share racing content**  
A Memorandum of Understanding that will allow Tabcorp, Sky and TVN to share thoroughbred racing content has been granted final authorisation by the ACCC.  
[Click here for more](#)
- **Comments sought on proposed joint venture of PMP Limited/McPherson's Limited book printing businesses**  
The ACCC issued a Statement of Issues on the proposed joint venture between Griffin Press, a wholly-owned subsidiary of PMP Ltd, and McPherson's Printing Division, a division of McPherson's Ltd on 20 June. The Statement of Issues seeks further information on a number of competition issues which have arisen from the ACCC's market inquiries.  
[Click here for more](#)
- **Comments sought on Healthscope Limited/Symbion Health Limited proposal**  
The ACCC issued a Statement of Issues on the proposed acquisition of Symbion Health Limited's pathology, medical centre and imaging businesses by Healthscope Limited, on 20 June. The Statement of Issues seeks further information on a number of competition issues which have arisen from the ACCC's market inquiries.  
[Click here for more](#)

### **Market Behaviour**

- **No appeal against Geelong petrol decision**  
The ACCC will not appeal the Federal Court judgment of 29 May 2007 in which Justice Gray dismissed the ACCC's allegations of price-fixing in the Geelong petrol market during 1999 and 2000.  
[Click here for more](#)
- **Complementary medicines incorrectly labelled 'Made in Australia'**  
Two suppliers of complementary medicine products have admitted to labelling products as 'Made in Australia' when the products were actually manufactured in New Zealand. The products were not substantially transformed in Australia and less than 50 percent of the cost of manufacture occurred in Australia, so the suppliers could not rely on the defences available under the Trade Practices Act 1974 for country of origin claims.  
[Click here for more](#)
- **Court declares false and misleading representations made on insulation rating labels**  
The Federal Court, Melbourne, has declared that insulation rating labels on the packaging of certain Greenstuf polyester insulation batts falsely represented their performance characteristics and were misleading and deceptive.  
[Click here for more](#)
- **Bevco corrects misleading country of origin fruit juice labels**  
Fruit juice producer Bevco Pty Ltd will change its labelling of its products following an ACCC investigation. Bevco had labelled a number of its fruit juice beverage products as "100% Australian Made & Owned" although the products predominantly consisted of imported reconstituted juice.  
[Click here for more](#)

- **Bevilles Jewellers corrects two-price advertising**  
Bevilles Jewellers has acknowledged that its two-price advertising of some jewellery items may have been misleading. Based on sales information provided by Bevilles, the ACCC was concerned that the two-price advertising of some items misrepresented, in breach of the consumer protection provisions of the Trade Practices Act 1974, the usual selling price of the item immediately preceding publication of the catalogue, and also the amount of savings available to consumers who purchased the item during the catalogue promotion.  
[Click here for more](#)
- **ACCC alleges resale price maintenance by TEAC**  
The ACCC has instituted legal proceedings in the Federal Court, Melbourne, against TEAC Australia Pty Ltd alleging the company engaged in resale price maintenance in relation to a range of TEAC-branded electronic goods including televisions, digital set-top boxes and portable music devices.  
[Click here for more](#)
- **ACCC releases petrol issues paper**  
The ACCC released an issues paper on matters relevant to its inquiry into petrol pricing on 28 June.  
[Click here for more](#)

### Telecommunications

- **Interim determinations in telecommunications arbitrations**  
The ACCC has published interim determinations, together with the statements of reasons, in two telecommunications arbitrations regarding the supply of the Local Carriage Service (LCS) and Wholesale Line Rental Service (WLR) from Telstra Corporation Ltd to Chime Communications Pty Ltd to encourage reasonable LCS and WLR prices to apply across the market.  
[Click here for more](#)
- **Consumers continue to reap benefits from competition in telecommunications**  
Two reports issued by the ACCC on 13 June indicate that Australian consumers continue to reap the benefits from competition in telecommunications. In the ACCC's media release, Graeme Samuel notes that the overall average prices paid by consumers fell by 6.5 percent in real terms and overall investment in communications rose 9.5 percent in 2005–06 to AUD\$6.9 billion.  
[Click here for more](#)
- **ACMA and ACCC issue joint report on communications infrastructure and services availability**  
The Australian Communications and Media Authority (ACMA) and the ACCC issued a joint report titled *Communications Infrastructure and Services Availability in Australia 2006-07* on 26 June. The report, developed using the expertise of both agencies, discusses the availability of broadband, fixed voice, mobile voice, mobile data, and broadcasting infrastructure and services.  
[Click here for more](#)

### Access

- **Draft Mobile Terminating Access Service (MTAS) Pricing Principles Determination and supporting documentation issued**  
The ACCC has issued the Draft MTAS Pricing Principles Determination relevant for 1 July 2007 to 31 December 2008. The Trade Practices Act 1974 requires the Commission to have regard to a pricing principles determination if the Commission is required to arbitrate a MTAS access dispute.  
[Click here for more.](#)
- **ACCC issues discussion paper on FANOC (G9) special access undertaking for broadband access services**  
The ACCC issued a public discussion paper on FANOC's (G9) special access undertaking for broadband access services. FANOC Pty Ltd is a company formed by the G9 consortium of telecommunications carriers and it proposes to build a fibre-to-the-node network.  
[Click here for more](#)

## ACCC continued

- **ACCC draft decision to reject Optus's undertakings for Mobile Terminating Access Service (MTAS)**  
On 21 June, the ACCC announced its draft decision to reject the access undertakings submitted by Optus Mobile Pty Limited and Optus Network Pty Limited (together Optus) on the basis that the price terms and conditions are not reasonable.  
[Click her for more](#)
- **Draft notice proposing to revoke GeelongPort notification**  
The ACCC is proposing to remove the immunity for an exclusive dealing arrangement being conducted by GeelongPort believing it substantially lessens competition and is not in the public interest. The arrangement involves GeelongPort providing access to Lascelles Wharf in Geelong on condition that customers use GeelongPort's shore-based figee cranes when they are available to unload fertiliser and other dry bulk cargos.  
[Click here for more](#)
- **ACCC to consider rail access undertaking from Australian Rail Track Corporation**  
Australian Rail Track Corporation has submitted a rail access undertaking for assessment under Part IIIA of the Trade Practices Act 1974.  
[Click here for more](#)

## Bell Gully News

### **KiwiSaver - time to review your employment agreements**

KiwiSaver went live on the weekend - have you reviewed your employment agreements? [Read on](#)

### **Bell Gully secures influential Asia-Pacific ranking**

Bell Gully is one of only two New Zealand law firms to be ranked in mergermarket's league tables of legal advisors in the Asia-Pacific region for the first half of 2007. [Read on](#)

### **From Xero to hero**

Bell Gully has acted on the successful float of online software innovator Xero. [Read on](#)

### **Received in confidence**

During a 'dawn raid', how can a company's confidential and commercially sensitive information be protected? Roger Partridge, Partner, and Simon Ladd, Senior Associate, explain. [Read on](#)

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