

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 4 October 2006. 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](#).

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New Zealand Exchange (NZX)

- **Securities Commission rates NZX's market operation as good**
A Securities Commission report released on 26 September describes NZX as having good management and operation of New Zealand's capital markets. The report concludes that NZX is "satisfying its obligation to operate its markets in accordance with its conduct rules". The report is the result of an overview by the Commission across all aspects of NZX's business during the 2005 calendar year.
[Click here for more](#) (Also refer to the **Oversight Review of NZX** item noted in the Securities Commission section below.)
- **Case against NZX struck out on all counts**
The High Court of New Zealand has struck out all actions bought by BNZ and Access Brokerage Limited (in Liquidation) against NZX. The judge found that there was no arguable case that NZX was legally liable.
[Click here for more](#)
- **Update on upcoming changes to the NZAX Market**
On 2 October, the following changes became effective on the NZAX Market:
 - The tick size for securities quoted on the NZAX Market changed from 2 cents to match those that apply on the NZSX Market (0.1 cent for any order price up to 20 cents, and 1 cent for any order price above 20 cents); and
 - trading hours extended from 11am-4pm to more closely replicate those of the NZSX Market. Session states will also be altered to reflect those of the NZSX Market when changes to the NZX Participant Rules have been made to remove the anonymous call auction.[Click here for more](#)
- **NZX announces acquisition of FundSource business**
On 29 September, NZX announced the acquisition of the business infrastructure of FundSource Research Limited. FundSource, an investment research company based in Auckland, provides fund managers and financial intermediaries both qualitative and quantitative research on over 600 investment funds including unit trusts, personal superannuation schemes and insurance bonds. NZX's CFO Steve Armstrong notes that the acquisition is consistent with NZX's commitment to strengthening New Zealand's savings framework – to make it easier for investors to become informed and confident, and in control of their financial future.
[Click here for more](#)
- **Thomson provides NZX Market depth service to customers**
On 3 October, NZX announced that Thomson Financial, an operating unit of The Thomson Corporation (NYSE: TOC, TSX: TOC), had passed NZX's accreditation process to provide the NZX Market depth service. This service enables data distributors to provide increased breadth and depth of market information to their customers worldwide. Thomson joins global vendors Reuters and Bloomberg in this NZX data product development.
[Click here for more](#)

<p>NZX continued</p>	<ul style="list-style-type: none"> • Market insight NZX has published the September edition of its monthly newsletter “Market insight”, which contains details of the latest news and events at NZX. Click here to access a copy of September's Market insight
<p>Securities Commission</p>	<ul style="list-style-type: none"> • Oversight Review of NZX 2005 The Securities Commission has completed its first oversight review of NZX's regulatory functions. The review focussed on NZX's arrangements in the 2005 calendar year for discharging its obligations in the following areas: <ul style="list-style-type: none"> ➤ conflict management; ➤ arrangements for supervision of market participants; ➤ arrangements for supervision of listed issuers; ➤ arrangements for release of market information; ➤ market operations and infrastructure; ➤ disciplinary arrangements and NZX Discipline; ➤ supervision of NZX as a listed issuer by the Special Division; and ➤ governance. <p>The Commission's overall conclusion is that NZX is satisfying its obligation to operate its markets in accordance with its conduct rules. However, the Commission has made recommendations for improvements including the following:</p> <ul style="list-style-type: none"> ➤ NZX should take disciplinary action against market participants who commit repeat breaches of the Participant Rules; ➤ NZX should consider enlarging the membership of the Listing Subcommittee to address potential issues arising from conflicts of interest; ➤ given NZX's position as both a listed issuer and regulator of all other listed issuers listed on its markets, NZX should set an example of full compliance with all lawful directions or requests from the Special Division; and ➤ given the risk of lack of clarity regarding roles in responding to a crisis, the Commission recommends that responsibilities of the CEO and Head of Regulation for exercising delegated powers be reconsidered by the Board of NZX to ensure that the responsibilities are clarified. <p>NZX has already agreed to take specific action in response to certain recommendations and in respect of the remaining recommendations NZX has committed to reconsider its position and has undertaken to report back to the Commission by the end of the 2006 calendar year. Click here for the Oversight Review</p> • Securities Commission releases third review of financial reports The Securities Commission has completed the third cycle of its financial reporting surveillance programme. The Commission reviewed 45 financial reports with balance dates from 31 March 2005 to 30 September 2005. Nineteen issuers had matters that needed to be addressed. For the first time the Commission looked into disclosures required about the transition from New Zealand Equivalents to International Financial Reporting Standards (NZ IFRS). More than half of the reports either did not include information about the transition to NZ IFRS, or only partially complied with the requirements. The review also identified three matters relating to continuous disclosure notices that have been referred to NZX for its consideration. The Commission is continuing its Financial Reporting Surveillance Programme and is currently reviewing financial reports of early adopters of NZ IFRS with a 31 December 2005 balance date. Click here for more • Securities Act Exemption Notices The following Securities Act Exemption Notices have been published: <ul style="list-style-type: none"> ➤ Securities Act (Vehicle Testing Group Limited) Exemption Amendment Notice 2006/289 ➤ Securities Act (UBS Securities New Zealand Limited) Exemption Notice 2006/290 ➤ Securities Act (Translated Advertisements) Exemption Notice 2006/305 Click here for Exemption Notices

<p>Securities Commission continued</p>	<ul style="list-style-type: none"> <p>International Organisation of Securities Commissions (IOSCO) Emerging Markets Committee Luncheon Address On 21 September Chairman of the IOSCO Executive Committee and New Zealand Securities Commission Chairman Jane Diplock, gave a speech in Shanghai. The Chairman spoke about the vision of IOSCO for the future. By 2010 IOSCO wants all members – currently including regulators in 108 jurisdictions - to implement IOSCO's 30 core principles of securities regulation, or have a clear strategy for doing so. Ms Diplock said the principles lay the basis for sound, consistent securities regulation in all markets, while allowing for differences in regulatory structures and processes. IOSCO also wants to see all members signed up to the IOSCO Multilateral Memorandum of Understanding on Consultation, Cooperation and Exchange of Information (the "IOSCO MOU").</p> <p>The speech discusses the crucial role of emerging markets such as China in achieving the IOSCO vision. Ms Diplock notes that emerging markets are extremely important in the global economy and capital markets and the standards set by the IOSCO Principles and the MOU present a challenge for regulators and policymakers in many jurisdictions. The speech concludes that to achieve the IOSCO vision for 2010 there is a need to speed up implementation of the IOSCO Principles and encourage greater commitment to cross-border cooperation between regulators. Click here for more</p> <p>Trans-Tasman Relations: A Securities Regulator's View On 14 September, Securities Commission Chairman Jane Diplock gave a speech on trans-Tasman cooperation suggesting that the best solution may lie in building confidence in each other's institutions and frameworks. Ms Diplock observes that in 2006 New Zealand and Australia have made progress towards a single economic market and are now in the phase of working out the best model for implementation.</p> <p>The speech also looks at the mutual recognition of securities offerings as an important step in the trans-Tasman integration of capital markets. Draft regulations to enable this have been issued in New Zealand, and Canberra is currently seeing public comment on the legislation. Implementation is due to occur from 1 April 2007 and following this issuers will be able to offer securities on both sides of the Tasman using the same offer documents. An issuer will be subject to the regulations in their home jurisdiction - be that Australia or New Zealand - and their offer documents will need to include certain additional information prescribed by the other "host" jurisdiction. In order to streamline the process for offering securities, both Commission's will have supervisory powers in both countries for trans-Tasman offers that originate in their home jurisdiction.</p> <p>Another point discussed is the relationship of Australasia to the International Organisation of Securities Commissions (IOSCO). Ms Diplock notes that New Zealand has made significant progress to align with the IOSCO standards over recent years and now awaits legislation to tighten the law on insider trading (bringing us into line with Australia) and to introduce a regime against manipulation of securities markets. The new law builds on earlier reforms which included the Takeovers Code and overhaul of the regulation of stock exchanges. Next, New Zealand will address the regulation of financial intermediaries. The Securities Commission has strongly recommended to the Ministry of Economic Development (responsible for policy process) that whatever arrangements are put in place for oversight of financial intermediaries, they must be mutually recognisable in Australia. Click here for the full copy of the speech</p>
<p>Reserve Bank of New Zealand</p>	<ul style="list-style-type: none"> <p>Reserve Bank releases Annual Report On 4 October, the Reserve Bank released its 2005-2006 Annual Report. This covers the year to 30 June 2006, and includes the Board of Directors' Report on the bank's performance. Reserve Bank Governor Alan Bollard said the last year had been particularly challenging. Monetary policy had had to contend with more persistent oil price increases and stronger economic activity than anticipated. Domestic inflation pressures had remained strong during the year. Click here to access the Annual Report</p>

<p>Takeovers Panel</p>	<ul style="list-style-type: none"> • Annual Report 2006 The Takeovers Panel has released its 2006 Annual Report. In the Chairman's Review, John King notes the recent steps taken by the panel to address the use of the schemes of arrangement and amalgamation provisions in the Companies Act to merge or acquire code companies. He also notes the impending changes to the takeovers regime under the amendments proposed by the Securities Legislation Bill. In particular he notes: <ul style="list-style-type: none"> ➤ the change in the definition of a code company. When the new law is enacted some companies currently within the definition of a code company will no longer be subject to the code, and some small non-listed companies that currently are not subject to the code will come under its jurisdiction; ➤ the new rule which enables the panel to take action over any misleading conduct relating to takeovers. The panel is developing policies for enforcing the new rule and will take into account policies in Australia where 'truth in takeovers' has received considerable attention; and ➤ the permanent orders which will give the panel the power to deal decisively with any kind of misleading conduct and with misleading or deceptive, or otherwise defective, takeover documents. The panel will also be able to make restraining orders and compliance orders for breaches of exemptions as well as breaches of the Code itself, and against any person with a secondary involvement in the breach as well as the person who has actually committed the breach. <p>However, Mr King goes on to note that the panel's approach to its role under the Takeovers Act and the code will not change. When a breach occurs it intends to continue to seek the most appropriate remedy for the breach in the circumstances and the right outcome for the market whether or not that requires the use of formal powers. The panel will issue more detailed information on the new legislation and technical amendments to the code as soon as firm dates for their introduction are known.</p> <p>Click here to access the Report</p> • Takeovers Code Exemption Notices The following Takeovers Code Exemption Notice has been published: <ul style="list-style-type: none"> ➤ Takeovers Code (Burns Philp Finance New Zealand Limited) Exemption Notice 2006/293 <p>Click here for Exemption Notices</p>
<p>Ministry of Economic Development [MED]</p>	<ul style="list-style-type: none"> • Supplementary Order Papers released for the Securities Legislation Bill On 13 September, MED released SOP No.58 and SOP No.59 proposing further amendments to the Securities Legislation Bill. SOP No.58 divides the Bill into 4 separate Bills namely: the Securities Amendment Bill; Securities Markets Amendment Bill; Takeovers Amendment Bill and the Fair Trading Amendment Bill. SOP No. 59 contains a number of minor technical amendments but also contains some substantive changes to address concerns raised in public submissions on the Bill. In particular, the proposed amendments: <ul style="list-style-type: none"> ➤ clarify that professional advisers (such as lawyers, accountants and investment advisers) do not transgress the no dealing, no disclosure, and no advice or encouragement rules under the new insider trading regime by virtue of knowledge or inside information acquired in the course of acting for the principal; ➤ recognise that investment advisers might not always be able to meet their disclosure obligations if they have to make the disclosure prior to giving advice by providing a new regulation making power to allow some flexibility as to timing and disclosure; and ➤ protect a person from liability for contravention of a public issuer's continuous disclosure obligations if that person takes reasonable steps to ensure compliance by the issuer. <p>Click here for SOP No.58. Click here for SOP No.59.</p> • Electricity to be included in Commerce Act Review - Ministers of Commerce and Energy media statement On 13 September, Commerce Minister Lianne Dalziel and Energy Minister David Parker announced that electricity supply provisions would be included in a review of parts of the Commerce Act. A review of Parts 4 and 5 of the Commerce Act was announced earlier this year. The Government has now decided to include Part 4A in the review. Parts 4 and 5 relate to the control of goods and services, and authorisations and clearances respectively. Part 4A allows for individual electricity lines businesses to be placed under regulatory control if they breach thresholds set by the Commerce Commission. Lianne Dalziel said all interested parties would have full opportunity to comment when the discussion documents are released early next year. It is expected that final policy decisions will be made in late 2007. Any legislative amendments that result from this review will not come into effect until 2008 at the earliest, and therefore will not affect the outcome of current regulatory processes in relation to electricity lines businesses. Click here for more

<p>MED continued</p>	<ul style="list-style-type: none"> • Mega reform of financial sector a step closer To read Bell Gully's latest commentary on the MED's review of Financial Products and Providers click here. • CER Ministers launch Trans-Tasman Mutual Recognition Guide Australian and New Zealand Ministers released an updated Users' Guide to the Mutual Recognition Agreement and Trans-Tasman Mutual Recognition Arrangement (TTMRA) on 20 September. Under the TTMRA, goods that may be legally sold in Australia may be legally sold in New Zealand and vice versa regardless of differences in standards and other sales-related regulatory requirements. A person registered to practise an occupation in one country is entitled to practise an equivalent occupation in the other country without the need to undergo further testing or examination. Click here to read more.
<p>Australian Stock Exchange (ASX)</p>	<ul style="list-style-type: none"> • Recent floats Click here for recent ASX floats • Upcoming floats Click here for upcoming ASX floats
<p>New Zealand Commerce Commission (NZCC)</p>	<ul style="list-style-type: none"> • NZCC media releases The NZCC has issued the following media releases: <ul style="list-style-type: none"> ➤ New Zealand Bus Limited (NZBL) has been fined \$500,000 and been ordered to pay around \$600,000 in costs to the Commerce Commission after it breached section 47 of the Commerce Act when it acquired shares in Mana Coach Services Limited. The vendors of the shares, Ian Waddell and Kerry Waddell, have also been found guilty of being accessories to the transaction. No financial penalty was imposed on the vendors. Section 47 of the Commerce Act prohibits acquisitions that are likely to substantially lessen competition. The NZCC administers a voluntary regime that allows companies to apply for clearance if they consider their planned acquisition could raise competition issues. Commission General Manager Geoff Thorn said the significant penalty imposed on NZBL showed that the voluntary clearance regime was robust. Click here for more ➤ The Commission visited the Auckland offices of Air New Zealand on Wednesday 27 and Thursday 28 September as part of an ongoing investigation. The investigation relates to a small part of the company's business since before 2001. Click here for more ➤ Westpac has become the fourth major bank to plead guilty to breaching the Fair Trading Act by failing to properly disclose fees charged for overseas currency transactions on its credit and debit cards. The company pleaded guilty to 19 charges of breaching the Fair Trading Act. Westpac has been fined a total of \$570,000 in the Auckland District Court and agreed to pay \$4.5 million in compensation to customers who made foreign currency transactions on their cards. Westpac will also pay \$80,000 in costs to the Commission. Click here for more ➤ The NZCC has issued a Final Determination for Vodafone's application for an access determination under the Telecommunications Act 2001. This service will provide interconnection of local calls between Telecom's fixed network and Vodafone's cellular network for those Vodafone customers with a local number. The Commission's conclusion is that Telecom and Vodafone should exchange local calls at a reciprocal price of zero in accordance with the 'pure bill and keep' pricing method. The determination relates to the provision by Telecom of interconnection with Telecom's fixed PSTN (Public Switched Telephone Network) for local calls to and from Vodafone's local numbers. It does not include calls to and from Vodafone's mobile numbers. Click here for more ➤ The Commission has cleared Hancock or a nominee to acquire the shares and/or assets of a number of Carter Holt Harvey Limited subsidiaries that hold forestry assets. The forestry assets include freehold property, non-freehold land interests, standing timber on that land, plant and equipment, business contracts, licences and consents. The forests and other assets are located in Northland, Auckland, Central North Island, Hawke's Bay and Nelson. Click here for more

<p>NZCC continued</p>	<ul style="list-style-type: none"> ➤ Unison Networks will voluntarily reduce its average prices from 1 December this year and will comply with the NZCC's price path threshold for the remainder of the current five-year regulatory period. The voluntary move forms part of an administrative settlement offer presented to the Commission earlier this month. It follows earlier price reductions to Rotorua and Taupo consumers in April this year. Click here for more ➤ The Commission has advised the Minister of Communications that Telecom has complied with all of the service quality measures in the Telecommunications Service Obligations (TSO) instrument for the 2005/06 financial year. Each year, Telecom is required to provide the Commission with information on its compliance with the service quality measures in the TSO instrument. The Commission reviews Telecom's compliance, and notifies Telecom and the Minister of Communications of any non-compliance. Click here for more ➤ The NZCC has reported to the Minister of Communications on Sprint International New Zealand Limited's performance in complying with the TSO Deed for Telecommunications Relay Services (TRS) for meeting the telephone communication needs of deaf, hearing impaired and speech impaired people. The Commission's report is for the period from 1 July 2005 to 30 June 2006. Click here for more ➤ The Commission has received an application from Solid Energy New Zealand Limited seeking clearance to acquire the entire share capital in Newvale Coal Co Limited. Solid Energy is a state-owned enterprise that has coal mining operations in the Waikato, the West Coast and in Southland. Solid Energy primarily supplies bituminous and sub-bituminous coal to both domestic and international customers. Newvale Coal is a private mining company owned by the Highstead family. It operates the Newvale opencast mine, which is located in the Waimumu coal field in Southland. The Newvale mine primarily supplies lignite coal to domestic customers. Click here for more ➤ The Commission has named a panel of experts who will advise the Commission on its draft guidelines on estimating the cost of capital which is an important input into most of its regulatory decisions. The panel will comprise Professor Bradford Cornell, Professor Julian Franks and Dr Martin Lally. In providing advice to the Commission, the panel will focus on both the theoretical and practical issues involved in estimating a firm's cost of capital for regulatory purposes. It is expected that the panel will provide a report outlining its advice to the Commission by mid-December. The Commission will consider the advice and formulate its final guidelines on estimating the cost of capital. The panel's review of the Commission's present cost of capital approach will be conducted independently of any regulatory proceedings currently before the Commission. Click here for more
<p>Australian Competition and Consumer Commission (ACCC)</p>	<ul style="list-style-type: none"> • ACCC media releases The ACCC has issued the following media releases: <ul style="list-style-type: none"> ➤ The ACCC has decided not to take action to prevent APT acquiring GasNet. It did so on the basis that, in the event that the proposed Alinta AGL joint merger proposal schemes go ahead, the Australian Pipeline Trust proposed acquisition of GasNet is not likely to lead to a substantial lessening of competition in breach of section 50 of the Trade Practices Act 1974. If the Alinta AGL joint merger proposal schemes proceed, AGL will no longer hold an interest in the Australian Pipeline Trust and as a result GasNet will remain as an independent Victorian gas transmission network without significant vertical links to Victorian and New South Wales gas retailers. Given these unusual circumstances, the ACCC has determined that it will not oppose the acquisition at this stage given that it is expected that AGL will not hold an interest in APT beyond October 2006. Click here for more ➤ The ACCC has issued a determination authorising Qantas Airways Ltd to enter into a cooperation agreement with Orangestar Investment Holdings Pte Ltd. Orangestar is the holding company of Jetstar Asia and Valuair. Click here for more ➤ The ACCC has granted interim authorisation to Callide Power Management Pty Limited and CS Energy Limited to begin joint negotiations for a price review with Anglo Coal. CS Energy is the owner of the Callide B power station, while CPM and CS Energy are 50/50 joint venture partners in the Callide C power station. Anglo Coal is the owner of the Callide coal mine. Click here for more

ACCC continued

- On 15 September, the ACCC instituted proceedings against Alinta Ltd in the Federal Court in relation to the court enforceable undertaking it gave to the ACCC on 22 October 2004 over its acquisition of the Dampier to Bunbury Natural Gas Pipeline.
[Click here for more](#)
- At the request of OneSteel and Smorgon, the ACCC agreed on 19 September to continue to pause the timeline for its assessment of OneSteel's proposed acquisition of Smorgon. At the conclusion of this pause, the ACCC will form a new timeline for consideration of the matter, including a new indicative decision date. At that time, an announcement will be made that the new timeline is available on the ACCC website.
[Click here for more](#)
- The ACCC will not intervene in the proposed acquisition of BabyLove Products Pty Ltd by Britax Childcare Pty Ltd.
[Click here for more](#)
- On 21 September, the ACCC issued its draft decision on Epic Energy's proposed access arrangement revisions for the South West Queensland Pipeline. The ACCC is being advised by the Australian Energy Regulator in this review. The ACCC proposes to approve the revised access arrangement for the Pipeline. It is satisfied that the revisions proposed by Epic are consistent with the provisions and principles of the national gas code. It will make its final decision on the revisions after considering submissions in response to this draft decision.
[Click here for more](#)
- The ACCC has issued a draft decision proposing to allow Refrigerant Reclaim Australia to increase the levy on refrigerant gas imported and sold in Australia from \$1 to \$1.50. The RRA has had an authorisation in place since 1994 for industry to agree to impose a levy to fund the collection and disposal of ozone depleting substances and synthetic greenhouse gases. The levy was initially set at \$1 per kilogram on refrigerant gases sold by importers of those gases.
[Click here for more](#)
- The ACCC has issued a draft decision proposing to deny an application from the Coalition of Major Professional Sports to collectively negotiate with licensed sports betting operators such as Tabcorp, Betfair and members of the Association of Australian Bookmaking Companies. In its application, COMPS has sought authorisation for it to be allowed to collectively negotiate for the payment of a product fee by sports betting operators.
[Click here for more](#)
- Barton Mines Corporation and Barton International Inc, two US companies operating in Australia, have been ordered to pay penalties totalling \$1.525 million by the Federal Court after they admitted entering into an illegal market sharing arrangement for the supply of alluvial garnet in Australia. The Federal Court declared that the two companies breached section 45 of the Act by entering into an agreement by which the companies agreed to restrictions in relation to the geographic territories into which each would be permitted to supply alluvial garnet. This type of conduct is commonly described as market sharing.
[Click here for more](#)
- The ACCC has sought special leave to appeal to the High Court following the decision of the Full Federal Court to dismiss its appeal against a decision by Justice Allsop that Baxter Healthcare Pty Ltd was protected from the Trade Practices Act by Crown immunity. The Act generally applies to governments when those governments are carrying on a business. The Full Court concurred with the findings of the trial judge that because Baxter was supplying state purchasing authorities which were not carrying on a business and therefore entitled to Crown immunity, the Crown immunity extended to protect Baxter from the proceedings brought by the ACCC. In deciding to seek special leave to appeal from the decision of the Full Federal Court, the ACCC believes that the High Court may clarify whether all transactions by businesses in Australia are subject to prohibitions in the Act against anti-competitive conduct.
[Click here for more](#)
- The ACCC issued its 12th imputation testing and non-price terms and conditions report under the enhanced accounting separation regime for Telstra. The report presents data for the quarter ending 30 June 2006. The report presents key performance indicators that compare Telstra's customer service performance in meeting certain non-price terms and conditions for its wholesale and retail customers. Key performance indicators for fixed-line telephony and ADSL services are reported. The report does not reveal any systematic discrimination by Telstra against its wholesale customers.
[Click here for more](#)

ACCC continued

- The ACCC has decided not to relieve Alinta of the requirement to divest the Agility service contracts which operate over the Moomba to Sydney and Parmelia Pipeline. On 2 August 2006, the ACCC approved the Alinta AGL joint merger proposal subject to Alinta's eventual divestiture of the whole of its interest in the Australian Pipeline Trust and divestiture of the Agility service contracts which operated over the MSP and Parmelia Pipeline. The contracts would provide considerable scope for Alinta to access information relating to the pricing and flow of gas on the MSP and Parmelia and that this would affect competition for the supply of wholesale gas.
[Click here for more](#)
- Up to AUD3.1 million will be available in rebates for eligible consumers who bought five popular LG Electronics Australia Pty Ltd air conditioner models that did not comply with the energy efficiency values claimed on rating labels. The ACCC and LG have agreed an estimate of the potential difference in operating costs that may be experienced in respect of each of the five models.
[Click here for more.](#)

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