

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 12 December 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](#).

A companion publication, *Commercial Quarterly*, covers current commercial law issues that may impact on your business and trading operations and is published every quarter. For the Spring issue of *Commercial Quarterly* please [click here](#). For all other Bell Gully publications please [click here](#).

As this is our last issue for the year, we would like to take this opportunity to wish you all the very best for the holiday season and for the New Year. *Regulator Report* will be back in February 2007.

<p>New Zealand Exchange (NZX)</p>	<ul style="list-style-type: none"> <li>• <b>Market insight</b> NZX has published the November edition of its monthly newsletter, "Market insight", which contains details of the latest news and events at NZX. <a href="#">Click here to access a copy of November's Market insight</a></li> <li>• <b>NZAX Market - a vehicle for growth - celebrates its third birthday</b> New Zealand Alternative Exchange (NZAX) marked its third birthday in November with almost three times the number of companies and three times the market capitalisation it began with three years ago.  The NZAX Market was designed by New Zealand Exchange Limited (NZX) as a listing facility for small to medium sized and non-standard companies. Since inception in 2003, the NZAX has increased from 10 companies and 10 securities to 29 companies and 34 securities. Market capitalisation of the NZAX has climbed from \$197 million to \$529 million. NZAX-listed companies have raised over \$155 million in capital in initial public offerings and secondary capital raisings. In addition, several NZAX-listed companies have elected to transfer to the NZSX after experiencing growth facilitated by their NZAX listing. <a href="#">Click here for more</a></li> <li>• <b>NZX Quarterly Index Review announced</b> NZX has announced the results of the September Quarterly Index review. There will be no additions to or deletions from the headline NZX 50 Index this quarter. New NZSX listings Barramundi Limited and Kermadec Property Fund Limited will be added to the NZX SmallCap Index. <a href="#">Click here for more</a></li> </ul>
<p>Securities Commission</p>	<ul style="list-style-type: none"> <li>• <b>Securities Act Exemption Notices</b> The following Securities Act Exemption Notices have been published: <ul style="list-style-type: none"> <li>➤ Securities Act (Australian Registered Managed Investment Schemes) Exemption Amendment Notice 2006/346</li> <li>➤ Securities Act (Liontamer Investment Management Pty Limited) Exemption Notice 2006/347</li> <li>➤ Securities Act (Brambles Limited) Exemption Notice 2006/364</li> </ul> <a href="#">Click here for Exemption Notices</a> </li> </ul>

<p>Takeovers Panel</p>	<ul style="list-style-type: none"> <li>• <b>Takeovers Code Exemption Notices</b> The following Takeovers Code Exemption Notice have been published: <ul style="list-style-type: none"> <li>➤ Takeovers Code (The Tindall Foundation Limited) Exemption Notice 2006</li> <li>➤ Takeovers Code (Active Equity Managers Limited) Exemption Notice 2006</li> </ul> <a href="#">Click here for Exemption Notices</a> </li> </ul>
<p>Ministry of Economic Development (MED)</p>	<ul style="list-style-type: none"> <li>• <b>KiwiSaver Regulations 2006</b> The KiwiSaver Act 2006, the KiwiSaver Regulations 2006 and the Superannuation Schemes (Fees) Amendment Regulations came into force on 1 December 2006. The KiwiSaver Regulations 2006 address the issues necessary for implementation of KiwiSaver. Some further regulations may be made in 2007, which are likely to include regulations over the fee subsidy and mortgage diversion. Other regulations contemplated by the Act will be promulgated if and when needed. The MED has published questions and answers giving background information on the KiwiSaver regulations for savers, employers and providers. To access the KiwiSaver Q&amp;A <a href="#">click here</a></li> <li>• <b>KiwiSaver on track with default providers selected</b> Finance Minister Michael Cullen and Commerce Minister Lianne Dalziel have named six default providers they intend to appoint for KiwiSaver. Dr Cullen said the announcement of the default providers is an important step in the introduction of the workplace-based retirement savings scheme.  The six providers selected will be ready to accept members when the scheme comes into operation on July 1, 2007. They are: <ul style="list-style-type: none"> <li>• ASB Group Investments Limited;</li> <li>• AMP Services (NZ) Limited;</li> <li>• ING (NZ) Limited;</li> <li>• Mercer Human Resource Consulting Limited;</li> <li>• National Mutual Corporate Superannuation Services Limited (trading as AXA New Zealand); and</li> <li>• TOWER Employee Benefits Limited.</li> </ul> <a href="#">Click here for more</a> For more information on KiwiSaver <a href="#">click here</a> </li> <li>• <b>Cabinet Paper on Copyright, Commissioning and Contracts: report back on discussion paper submissions</b> In March 2006, Cabinet approved the release of a discussion document entitled "The Commissioning Rule, Contracts and the Copyright Act 1994". The discussion paper sought public submissions on the following: <ul style="list-style-type: none"> <li>• the adequacy of section 21(3) of the Copyright Act 1994, relating to ownership of copyright in commissioned works; and</li> <li>• the relationship between copyright law and contract law.</li> </ul> This paper provides a summary of the submissions and seeks agreement to the preparation of a further paper for targeted consultation with interested stakeholders. The recommendations in this paper have been agreed by Cabinet. <a href="#">Click here for more</a> To read an article on this discussion paper by Bell Gully Partner Stephen Revill <a href="#">click here</a> </li> </ul>

<p>MED continued</p>	<ul style="list-style-type: none"> <li>• <b>Measuring Compliance Costs: Evaluation of the Dutch Standard Cost Model and the Australian Cost Model (Incorporating a Trial Measurement of the Costs Arising from the Schedules to the Securities Regulations 1983)</b> PricewaterhouseCoopers was engaged by the MED in December 2005 to undertake a trial measurement of the compliance costs arising from the Schedules to the Securities Regulations 1983 ("the Schedules"). Internationally, attention is being given to a Standard Cost Model (SCM) as a method for identifying and measuring the cost of certain types of regulatory compliance. The SCM is widely used in Europe and has been adapted for use in Australia. The purpose for the trial measurement is to evaluate the appropriateness of the Dutch Standard Cost Model (DSCM) and the Australian Cost Model (ACM) for New Zealand. The evaluation is concerned with the theoretical basis of the models, their suitability for use as a policy-making tool and the challenges that departments or consultants tasked with applying the models are likely to face.</li> </ul> <p>This report considers:</p> <ul style="list-style-type: none"> <li>• the background to the models and differences between the models;</li> <li>• details of the trial measurement on compliance with the Schedules to the Securities Regulations 1983;</li> <li>• lessons learned from the trial about the implementation of the models; and</li> <li>• the results of the trial measurement.</li> </ul> <p>A key finding from the report is that the Australian model appears better suited to New Zealand conditions and offers a means to obtain better quantitative and qualitative estimates of the compliance costs falling on business. <a href="#">Click here for more</a></p> <ul style="list-style-type: none"> <li>• <b>Expiry of PPSR security interests</b> Unless renewed, a security interest registered on the Personal Property Securities Register (PPSR) will automatically expire after five years (or at an earlier date where a lesser term has been specified in the financing statement). A Financing Statement registered during the introduction of the PPSR (1 May - 30 October 2002) that selected the automatic expiry date, will need to renew to maintain priority before 1 May 2007. For more information visit the <a href="#">PPSR website</a></li> </ul>
<p>New Zealand Commerce Commission (NZCC)</p>	<ul style="list-style-type: none"> <li>• <b>NZCC media releases</b> The NZCC has issued the following media releases: <ul style="list-style-type: none"> <li>➤ The NZCC's investigations into whether or not to amend the terms of the current roaming and co-location services have now formally commenced, with the Commission's decision to investigate under Schedule 3 of the Telecommunications Act 2001 published in the New Zealand Gazette. <a href="#">Click here for more</a></li> <li>➤ The NZCC has received an application from Owens Corning seeking clearance to acquire the building reinforcement business of Compagnie de Saint-Gobain. Owens Corning is an American-based building products company, with a number of manufacturing plants located throughout the world. Among other things, Owens Corning currently supplies glass fibre reinforcements into New Zealand through third party distributors. Compagnie de Saint-Gobain is a French company that also supplies glass fibre reinforcements internationally. <a href="#">Click here for more</a></li> <li>➤ Transpower has told the NZCC that it is advising customers of its proposed prices for 2006/07 and 2007/08. Transpower proposes to raise prices on 1 April 2007 by an average of 15.2% over the March 2006 level. This comprises a 12.2% increase backdated until 1 April 2006, compounded with a 2.7% increase to apply from 1 April 2007. <a href="#">Click here for more</a></li> <li>➤ The NZCC has received an application from Elite Truck Rentals Limited (Elite) seeking clearance to acquire the assets of ORIX Truck Rental, a division of ORIX New Zealand Limited. ORIX is a wholly-owned subsidiary of ORIX Australia Corporation Limited, which is in turn a wholly-owned subsidiary of the ORIX Corporation of Japan, a major international finance company. In New Zealand, ORIX commenced business operations in 1994 and currently provides fleet leasing services for all types of vehicles throughout the country. <a href="#">Click here for more</a></li> </ul> </li> </ul>

<p>NZCC continued</p>	<ul style="list-style-type: none"> <li>➤ The NZCC has completed its consideration of the Telecommunications Carriers' Forum code for co-location of radio communications services, known as the Co-location Code. The Commission is satisfied that the Code meets all the requirements of Schedule 2 of the Telecommunications Act 2001 and has approved it. The Code provides a framework for negotiating co-location agreements, addressing such matters as queuing policy, information disclosure, operational issues, and dispute resolution. <a href="#">Click here for more</a></li> <li>➤ The NZCC has cleared Johnson &amp; Johnson to acquire the stock, assets and business of the Consumer Healthcare division of Pfizer Inc. Commission Chair Paula Rebstock said that the Commission was satisfied that the proposed acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in any of the relevant markets. <a href="#">Click here for more</a></li> <li>➤ The Mill Liquorsave Ltd was fined \$10,000 on Friday 8 December for breaching Section 13(i) of the Fair Trading Act with a promotional flyer offering a free Tui footy windbreaker with selected packs of Tui beer. Section 13(i) prohibits misleading representations about the existence or effect of a condition that needed to be satisfied before acquiring an offer, in connection with the supply or possible supply of goods or services. <a href="#">Click here for more</a></li> <li>➤ The NZCC has received an application from ihug for reconsideration of Decision 582 on the price of the regulated bitstream service supplied by Telecom to ihug and CallPlus. ihug considers that there have been material changes in circumstances since June 2006 when that decision was issued and has sought clarification on interpretation and application of the pricing principle used in the decision. <a href="#">Click here for more</a></li> </ul>
<p>Australian Competition and Consumer Commission (ACCC)</p>	<ul style="list-style-type: none"> <li>• <b>ACCC media releases</b> The ACCC has issued the following media releases: <ul style="list-style-type: none"> <li>➤ The ACCC has issued a discussion paper on the declaration for the analogue pay television service. The paper marks the start of a public inquiry into whether the declaration should be continued, varied or revoked. The ACCC deemed the analogue pay TV service a declared service on 1 September 1999. In order to declare a service, the ACCC must be satisfied that the making of the declaration will promote the Long Term Interests of End-users (LTIE) of carriage services, or of services supplied using carriage services (listed services). <a href="#">Click here for more</a></li> <li>➤ The ACCC has issued a decision authorising CS Energy Limited and Callide Power Management Pty Ltd (CPM) to jointly negotiate a price review with Anglo Coal. CS Energy and CPM propose to agree to use the same data as the basis for the review, to engage joint experts and consultants and to jointly conduct negotiations 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 owns the Callide coal mine. <a href="#">Click here for more</a></li> <li>➤ The ACCC will continue to regulate telecommunications only where necessary, in a balanced and considered way, ACCC Commissioner Ed Willett said in addressing the Broadbanding Regional Australia 2006 conference. "Ultimately, by promoting competition, and efficient investment and use of infrastructure, the benefits of broadband services can be realised and sustained over many years to come...Australia was not badly placed when compared to other OECD countries in terms of broadband technologies," Mr Willett said. <a href="#">Click here for more</a></li> <li>➤ The ACCC has welcomed a decision by the Australian Competition Tribunal to reject Optus's proposed undertaking for the supply of its Domestic GSM Terminating Access Service. Optus had proposed that the price for the Mobile Terminating Access Service should trend towards a proposed target price of 17 cents per minute in 2007, using a three-year adjustment path. The ACCC had previously released a pricing determination that provided for prices to fall to 12 cents per minute by 2007. Optus had sought a decision from the tribunal to overturn an ACCC decision that the terms and conditions on which Optus proposed to supply the service were unreasonable and that the access undertaking should be rejected. <a href="#">Click here for more</a></li> <li>➤ The ACCC has called on food and beverage manufacturers to curb their use of potentially misleading labels when marketing goods to customers. ACCC Commissioner John Martin launched a new food descriptors guideline designed to help businesses understand what was considered acceptable and unacceptable labelling under the requirements of national competition and consumer protection laws contained in the Trade Practices Act 1974 and said it was the responsibility of every member of the \$90 billion a year sector to ensure they were complying with consumer protection laws. <a href="#">Click here for more</a></li> </ul> </li> </ul>

## ACCC continued

- The ACCC Commission would make a “sober, informed decision” on the level of competition that would result from any media mergers, ACCC Chairman Graeme Samuel said in addressing the Information Communications Entertainment Conference. "Our analysis [of mergers] is an exhaustive process of examining and defining the market, talking to involved parties, their competitors and their customers and making a sober, informed decision on the level of competition based on the facts, rather than emotive responses or comment in the press," he said.  
[Click here for more](#)
- The ACCC has accepted Alinta's offer of revised new court-enforceable undertakings about its proposal to potentially retain an interest in APT. On 8 November the ACCC began market inquiries about a new draft undertaking. The new undertaking replaces the undertaking accepted by the ACCC on 3 August 2006.  
[Click here for more](#)
- The ACCC has issued a statement of issues on the proposed acquisition of the consumer healthcare business of Pfizer Inc by Johnson & Johnson. The statement of issues seeks further information on market definition and a number of competition issues which the ACCC has identified.  
[Click here for more](#)
- The ACCC has received notification of three access disputes concerning the charges associated with Telstra's supply of the Line Sharing Service. The disputes have been notified by Adam Internet Pty Limited, Agile Pty Limited and Amcom Pty Limited respectively under Part XIC of the Trade Practices Act 1974.  
[Click here for more](#)
- The ACCC has made two decisions on related matters regarding fixed interconnection, local call resale and wholesale line rental. The ACCC issued its final decision to reject Telstra's undertakings for fixed interconnection (PSTN) and local call resale (LCS) services and has released indicative prices for fixed interconnection, local call resale and wholesale line rental services.  
[Click here for more](#)
- The ACCC has issued a series of challenges to Telstra. Telstra should "throw the switch" on ADSL2+ in the exchanges which were capable of being enabled to ADSL2+ and offer high speed broadband to the vast majority of Australians, as it could, ACCC Chairman Graeme Samuel, said.  
[Click here for more](#)
- The ACCC has issued the seventh current cost accounting report relating to Telstra. The report contains current cost financial information for 'core' telecommunications access services. It constitutes the information that the ACCC is required to make public in respect to current cost accounting under the Direction issued by the Minister for Communications, Information Technology and the Arts in June 2003.  
[Click here for more](#)
- Telstra Corporation Limited has notified the ACCC of separate access disputes with Optus Mobile Pty Limited and Optus Networks Pty Limited. These access disputes relate to the price paid by Telstra for the Domestic Mobile Terminating Access Service supplied by the Optus entities.  
[Click here for more](#)
- The ACCC has issued a Statement of Issues on the proposed acquisition of Promina Group Ltd by Suncorp Metway Limited. The statement of issues seeks further information and comment on the manufacture and supply of personal insurance lines (home insurance, motor vehicle insurance and compulsory third party insurance).  
[Click here for more](#)
- The ACCC has instituted proceedings against Navman Australia Pty Limited, former general manager of Navman Christopher Baird and current Australasian sales manager of Navman David King, alleging resale price maintenance in the supply of Navman marine, in-car and personal navigation products.  
[Click here for more](#)

<p>Australian Stock Exchange</p>	<ul style="list-style-type: none"> <li>• <b>Recent floats</b> <a href="#">Click here for recent ASX floats</a></li> <li>• <b>Upcoming floats</b> <a href="#">Click here for upcoming ASX floats</a></li> </ul>
<p>Reserve Bank of New Zealand</p>	<ul style="list-style-type: none"> <li>• <b>Third High-level Seminar of Central Banks in the East Asia-Pacific Regions and the Euro Area</b> The Reserve Bank and the European Central Bank (ECB) jointly organised the 3rd High-Level Seminar of Central Banks in the East Asia-Pacific Region and the Euro Area. The seminar was held at the Reserve Bank of Australia in Sydney on November 20-21. The seminar was attended by governors from both the East Asia-Pacific Central Banks (EMEAP) and the Eurosystem. The purpose of the seminar was to exchange views on issues that are relevant to both the Euro Area and the East Asia-Pacific regions, and to deepen relations between EMEAP and the Eurosystem. <a href="#">Click here for more</a></li> </ul>
<p>Bell Gully publications</p>	<p>Bell Gully has recently published the following articles on its website:</p> <ul style="list-style-type: none"> <li>• <b>Proactive Legal Advice – Bell Gully paper on corporate governance</b> Bell Gully partners Garry Downs and Andrew Brown prepared this paper for a series of Law Society intensives on corporate governance held in Wellington and Auckland in late November. Written for lawyers, it looks at how legal counsel can proactively assist on governance matters at a practical level. While it states there is no “one size fits all” in corporate governance, the paper identifies the general principles relevant to all organisations, delves into the lawyer’s role in setting the governance agenda and looks at some practical examples of how both in-house and external lawyers can help in designing and implementing a corporate governance framework. The paper was presented by Garry Downs on November 28 and 29. <a href="#">An extract from the paper can be accessed by clicking here.</a></li> <li>• <b>The Rise and Rise of Regulatory Litigation</b> During the past decade, the New Zealand legislature has reversed the trend towards “light-handed” regulation evident in the 1980s and 1990s and reverted to an increasingly heavy-handed model of regulatory enforcement. The implications for market participants have involved: <ul style="list-style-type: none"> <li>• The criminalisation of conduct formerly addressed under the civil law;</li> <li>• Closer scrutiny by commercial regulators with significant statutory powers and enlarged litigation budgets;</li> <li>• Heightened deal execution risk associated with regulatory intervention; and</li> <li>• Record penalties for breaches of the regulatory regimes.</li> </ul> This trend has continued apace in 2006. In this context, it is especially important to be alert to the regulatory dimensions of corporate activity. <a href="#">Click here to access this Bell Gully publication</a></li> <li>• <b>FSQ Bulletin: Credit Contracts and Consumer Finance Act prosecution</b> In the first prosecution under the Credit Contracts and Consumer Finance Act (the Act), a financier has been fined \$59,000 and been ordered to pay affected customers a total of \$13,700 in damages. This penalty serves as a warning to financiers that the Commerce Commission means business when it comes to enforcing the consumer protections set out in the Act. <a href="#">Click here to access this Bell Gully publication</a></li> </ul>
<p><i>The Bell Gully Regulator Report is designed to highlight certain New Zealand and Australian corporate, commercial and competition regulatory developments. The Bell Gully Regulator Report is not designed to be comprehensive and is necessarily brief and general in nature and is not intended to provide legal advice. You should seek professional legal advice before taking any action in relation to the matters dealt with in this publication. Bell Gully is not the author of any information received by clicking on the hypertext links and therefore is not responsible for their accuracy.</i></p>	