BELL GULLY

Corporate Reporter

17 NOVEMBER 2015

Welcome to Issue No. 38 of Corporate Reporter, Bell Gully's regular round-up of corporate and general commercial matters, designed to keep you informed on regulatory developments, legislation and cases of interest.

IN BRIEF

Items in this issue include:

- Corporate governance reporting requirements for NZX listed issuers under review;
- An exposure draft of a new Incorporated Societies Bill has been released for consultation;
- Changes to organised crime and anti-corruption legislation passed;
- Overseas case law provides guidance for New Zealand courts on liquidated damages clauses and the meaning of “officer” in health and safety legislation;
- The Registrar of Companies provides advice on the new resident director requirement;
- Final provisions of the Financial Markets Conduct Act in force from 1 December 2015 for operators of financial product markets; and
- The latest media releases from the New Zealand Commerce Commission and the Australian Competition and Consumer Commission.

COMMERCIAL

Regulatory developments

Trans-Pacific Partnership Agreement text released

The text of the Trans-Pacific Partnership Agreement (**TPPA**) was released by theTPP parties on 5 November 2015. A copy of the TPPA is available *here*.

The TPPA is expected to come into force within two years, once countries have completed their domestic legislative procedures.

In New Zealand, the text of the agreement, together with a National Interest Analysis, will be presented to Parliament for examination by the Foreign Affairs, Defence and Trade Select Committee. After that, the legislative changes required in order to implement the TPPA will go through normal Parliamentary procedures, including select committee scrutiny.

The TPPA cannot be modified unilaterally by New Zealand, but there is some flexibility in the way various measures can be implemented through domestic legislation and regulation.

The Government has summarised key outcomes of the TPPA for New Zealand in *TPP in Brief*. It has also provided New Zealand-specific factsheets which set out information on the content of the TPPA. These are available *here*.

For previous Bell Gully commentary on the TPPA, click *here* and *here*.

Changes to organised crime and anti-corruption legislation passed

The Organised Crime and Anti-corruption Legislation Bill has been passed in the form of separate amendments to 15 statutes. The amendments are aimed at strengthening existing laws to combat organised crime and corruption, and improving New Zealand's ability to collaborate with international counterparts. This includes:

- amendments to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**) requiring reporting entities to report to the Financial Intelligence Unit within the Police all international wire transfers over a certain threshold value (expected to be NZ$1,000) and all domestic physical cash transactions over a certain threshold value (expected to be NZ$10,000) in the form of "prescribed transaction reports"; and

- an amendment to the Companies Act 1993 requiring particulars of any "facilitation payments" to Foreign Public Officials (**FPOs**) (which are still carved out from the Crimes Act 1961 provided the value of the payment is small and the payment is given to an FPO for the sole or primary purpose of ensuring or expediting the performance by the official of a "routine government action") to be recorded in a company's accounting records.

The changes are a timely reminder for businesses to review the adequacy of systems they have in place for preventing, detecting and responding to corruption issues, and reiterate the importance of continued, active and on-going compliance with New Zealand's AML/CFT laws.

For Bell Gully commentary on the legislative amendments see our earlier client update: *Spotlight on organised crime and corruption: new law changes*

Exposure draft of a new Incorporated Societies Act released for consultation

The Minister of Commerce and Consumer Affairs has released an exposure draft of the proposed Incorporated Societies Bill, which will repeal and replace the Incorporated Societies Act 1908, for consultation. This follows on from the Law Commission's report on the 1908 Act and the tabling of the Government's response to the Commission's report in February 2014 in which the Government agreed to 101 of the Commission's 102 recommendations in full or in principle. Copies of the Law Commission's report and the government's response are available *here*.

As expected, the exposure draft of the Bill largely follows the Law Commission's main recommendations. The Bill also includes several detailed provisions to give effect to general recommendations made by the Law Commission. These relate to such matters as the powers of the Registrar of incorporated societies and transitioning societies registered under the 1908 Act and the Charitable Trusts Act 1957 to the new Act.

Overview of the key changes

The key changes from the Incorporated Societies Act 1908 include:

- removing the ability to establish an incorporated society under the Charitable Trusts Act 1957;
- requiring societies to have 10 members at all times, not just at the time of application;
- imposing duties on committee members and other "officers" (as that term is to be defined in the Bill) similar to those of company directors under sections 131 to 137 of the Companies Act 1993, as well as obligations to disclose specified statutory financial conflicts of interests (and any non-financial interests specified in the society's constitution), and to be excluded from discussion or voting on the matter;
- requiring all societies to prepare financial statements in accordance with accounting standards issued by the External Reporting Board and lodge them with the Registrar;
- detailed annual reporting to the Registrar (which will differ depending on whether the society is or is not a registered charity) including membership numbers and contact information for the new role of a "contact officer" of the society;
- a framework for dealing with members' grievances and complaints;
- minimum matters that a society's constitution must address in order to be eligible to be registered as an incorporated society. (But note that the Bill does not adopt the Law Commission's recommendation to provide a model constitution. Instead the Ministry of Business, Innovation and Employment (**MBIE**) is proposing to provide a set of standard provisions (to be issued by the Minister on the recommendation of the Registrar) that are common to all societies and allow each society to determine which, if any, it wants to adopt);
- provision for the society to specify (in its constitution) a not-for-profit entity (or class of not-for-profit entities) to which any surplus assets should be distributed on the liquidation or deregistration of the society, and clarifying the prohibition on distributing surplus assets to members on dissolution;
- the introduction of a range of criminal offences (with fines up to a maximum of NZ$200,000 or five years' imprisonment) for offences such as an officer using his or her position to obtain an advantage, as well as infringement offences (punishable by a maximum NZ$5,000 fine or a maximum infringement fee of NZ$1,000

depending on whether the matter is pursued by the Registrar through the courts or under a new infringement notice regime); and

- provisions to enable a simple one-step system for amalgamations of societies.

These changes will require many of New Zealand's 23,000-plus societies to substantially update their constitutions. They will also require societies to improve their governance practices as statutory duties on committee members, accountability and transparency requirements become mandatory.

Submission details

MBIE is seeking submissions on the exposure draft of the Incorporated Societies Bill as well as the proposed standard provisions for society constitutions.

In addition, MBIE and the Ministry for Primary Industries are consulting on whether agricultural and pastoral societies should continue to operate under sector-specific legislation or be brought within the scope of the new Incorporated Societies Act. They have reached a preliminary view that they should be brought under the new Act.

The exposure draft of the Bill and other relevant documents are available *here*.

Submissions close next year on **30 June 2016**.

Timeline to enactment

A lengthy consultation period has been given for this phase of the consultation process to help ensure that a high quality Bill is introduced into Parliament in 2017.

The Bill is not expected to be enacted until 2018, and there will be at least two years from the date of enactment before the new Act starts applying to societies currently registered under the 1908 Act and the Charitable Trusts Act and branches registered under the Incorporated Societies Amendment Act 1920.

Key contract and commercial law statutes are being updated

The Parliamentary Counsel Office (**PCO**) and the Ministry of Business, Innovation and Employment (**MBIE**) have released an exposure draft of the Contract and Commercial Law Bill for public consultation prior to its proposed introduction to Parliament next year.

This is the first of the Bills which will be introduced under the revision powers enacted in the Legislation Act 2012 which allow the Government to revise statutes to make them more accessible, readable, and easier to understand.

The statutes included in the Contract and Commercial Law Bill are:

- Carriage of Goods Act 1979;
- Contracts (Privity) Act 1982;
- Contractual Mistakes Act 1977;
- Contractual Remedies Act 1979;
- Electronic Transactions Act 2002;
- Frustrated Contracts Act 1944;
- Illegal Contracts Act 1970;
- Mercantile Law Act 1908;

- Minors' Contracts Act 1969;
- Sale of Goods Act 1908; and the
- Sale of Goods (United Nations Convention) Act 1994.

The PCO and MBIE are particularly interested in obtaining feedback on the specific drafting changes made and on whether the proposed Bill contains any inadvertent changes to the law.

Submissions on the exposure draft are due on **7 December 2015**. Further details are available *here*.

OIO makes changes to its "sensitive land" application process requirements

The Overseas Investment Office (**OIO**) has released new and updated materials to help streamline the consent process for applications involving sensitive land, particularly where the "benefit to New Zealand" criteria for consent are relevant.

The key change is the requirement for a vendor to complete a new 'Vendor Information Form' (**VIF**), which must be provided at the same time as an application for consent. This is to help the OIO to better understand the land or assets being acquired, and what would most likely happen without the proposed investment (the 'counterfactual').

The OIO has also released an updated version of its Required Information Checklist for applicants.

A copy of the VIF and updated checklist are available *here*.

In the courts

Australian decision sheds light on meaning of "officer" in health and safety legislation

A recent Australian judgment interpreting the meaning of "officer" under the Australian work health and safety laws provides a useful insight into how New Zealand Courts may approach the question of whether a person is an officer under the new Health and Safety at Work Act 2015 (which takes effect on 4 April 2016).

For further details see our earlier client update *here*.

UK Supreme Court reconsiders rule against contractual penalty clauses

In an eagerly anticipated judgment, the United Kingdom Supreme Court has reconsidered the test for whether a liquidated damages clause is an unenforceable penalty.

In *Cavendish Square Holding BV v Makdessi* the Supreme Court applied a new broader test, asking whether the liquidated damages clause protects the legitimate interest of the innocent party. If so, it is not a penalty (unless it is out of proportion to that interest). This contrasts with the traditional test which is to examine whether a clause imposes a fee or obligation which is a genuine pre-estimate of possible loss to the innocent party upon breach (a

permissible liquidated damages clause) or is "extravagant" or "unconscionable" in relation to that possible loss (a penalty).

The Supreme Court also expressly rejected the recent approach taken to these clauses by the High Court of Australia. As a result, New Zealand courts will eventually be faced with a decision on whether to follow UK or Australian law, the key difference being:

- under the English approach a court may consider a broad range of matters in relation to the clause and it is expected that a greater range of clauses are likely to be found to be genuine liquidated damages clauses as opposed to penalties; and
- under the Australian approach, the courts will apply a more restrictive and formulaic test focusing on whether the liquidated damages sum is extravagant in comparison with the maximum conceivable loss. Under the Australian approach there may be a higher likelihood that a liquidated damages clause with a deterrent purpose would be held to be an unenforceable penalty.

For full Bell Gully commentary on this judgement see our article *Liquidated damages clauses: UK Supreme Court changes the law*.

COMPANY LAW

News from the Companies Office

Companies Registrar interprets "lives in New Zealand" for resident director requirement

Under changes brought in by the Companies Amendment Act 2014, all New Zealand companies are required to have at least one director who either lives in New Zealand; or lives in Australia and is a director of a company incorporated in Australia. Under transition provisions this requirement came into effect for newly incorporated companies from 1 May 2015 and for companies incorporated prior to that date after 28 October 2015.

The Companies Act 1993 does not define what is meant by the term "lives in New Zealand", but recently the Companies Registrar has indicated that this will be interpreted on the basis that a director lives in New Zealand if he or she is "*personally present in New Zealand for more than 183 days in total in a 12-month period*".

Click here for further details.

In the courts

Payments by a developer's financier to a construction company can be clawed back under the voidable transaction provisions

A recent High Court judgment, *Sanson v Ebert Construction Limited* [2015] NZHC 2402, is set to have a significant impact on the way construction businesses are paid. Often a three way agreement is entered into between the financier, the developer, and the construction company providing for the financier to pay the construction company directly. This judgment shows that payments to the construction company made under

such a direct agreement can still be subject to attack by the developer's liquidator as a voidable transaction under section 292 of the Companies Act 1993.

For Bell Gully commentary on this judgment see our earlier client update *here*.

MERGERS AND ACQUISITIONS

Takeovers Panel

Panel issues new class exemption relating to information given in takeover notices and offer documents

Under the Takeovers Code offerors are required to provide information (under clause 14(3) of Schedule 1 of the Code) in takeover notices and in offer documents about consistency of statements given to regulatory bodies, even in circumstances where the offeror has not given any such statements. This can result in an offeror providing irrelevant and potentially confusing information. The *Takeovers Code (Class Exemptions) Notice (No 2) 2001 Amendment Notice (No 2) 2015* amends the principal notice to exempt offerors, subject to certain conditions, from providing such information where the information has only been provided to the Takeovers Panel and no other regulatory body.

CAPITAL MARKETS

Regulatory developments

FMCA licensed market operator provisions in force from 1 December 2015

The provision in the Financial Markets Conduct Act 2013 (**FMCA**) which requires those operating financial product markets to become licensed unless exempt (either through regulations or if the market does not meet certain size thresholds) has been kept "on hold" while certain existing unregulated markets considered their positions with officials. This appears to have been sorted now with the enactment of the *Financial Markets Legislation (Phase 3) Commencement Order 2015* last month, which brings the remaining provisions of the FMCA into force on **1 December 2015.**

The *Financial Markets Conduct (Unlisted Market) Regulations 2015*, which also comes into force on 1 December 2015, prescribe Unlisted (a financial product market operated by Efficient Market Services Limited and the main unregulated market affected by the new FMCA regime) as an exempt market for the purposes of the FMCA. This means Unlisted will not have to be licensed or be subject to the licensed market provisions in Part 5 of the Act. This includes the rules relating to insider trading, market manipulation, continuous disclosure, disclosure by substantial product holders, and disclosure by directors and senior managers. The exemption granted is however subject to a number of conditions, including an on-going oversight role by the FMA and the Minister of Commerce and various disclosure obligations for the benefit of investors.

All of the businesses currently licensed to operate a financial product market obtained deemed financial product market licences when the FMCA came into force on 1 December 2014 under transition provisions in the Act. A list of those businesses is available *here*.

Financial Markets Authority (FMA)

AFAs supplying personalised DIMS are put on same footing as DIMS licensees

The *Financial Markets Conduct (Offers of Financial Products Through Authorised Financial Advisers Supplying Personalised DIMS) Exemption Notice 2015* came into force on 6 November 2015.

The effect of the exemption is to allow offerors to offer financial products through an authorised financial adviser (**AFA**) providing a personalised discretionary investment management service (**DIMS**) under the Financial Advisers Act 2008 without having regard as to whether that AFA's client is a "wholesale" or a "retail investor" requiring full disclosure under Part 3 of the Financial Markets Conduct Act 2013 (**FMCA**). This is subject to a condition that it is the AFA who decides whether to acquire the financial products and not the investor.

This puts AFAs in the same position as DIMS licensees who benefit from the disclosure exemption under clause 7 of Schedule 1 of the FMCA for offers made through DIMS licensees.

The time period for this exemption is limited to two years, during which time the Financial Advisers Act will be reviewed and a decision made on whether the notice should be extended.

Financial Markets Conduct (DIMS Providers—Reporting on Percentage-based Charges) Exemption Notice 2015

FMA has provided temporary relief under the above *notice* for providers of a discretionary investment management service (**DIMS**) from the requirement to report to investors on percentage-based charges in funds that are managed by the provider or an associated person (**associated funds**) under the Financial Markets Conduct Regulations 2014 (**FMC Regulations**).

FMA has recognised that this FMC Regulations requirement will require DIMS providers to make systems changes and, during the transition process, may result in difficulties and unnecessary compliance costs for providers. The exemption notice therefore relieves DIMS providers from providing the level of information required by the FMC Regulations subject to conditions that mean investors receive some information about the percentage-based charges and are informed about the limits of the information.

The exemptions only relate to periods that end on or before **30 September 2016**.

FMA consults on draft guidance of fund fees and returns for managed funds

FMA has released its "*Draft guidance on fund fees and returns for managed funds*" for consultation. It is aimed at fund managers currently preparing their first product disclosure statements and fund updates as they make their transition to the Financial Markets Conduct Act regime.

This appears to be in response to FMA's recent review of funds' offer documents and disclosure statements under the Securities Act regime, in which FMA saw some inconsistencies in how performance-based fees were disclosed and how managers were calculating 0% prescribed investor rate (**PIR**) returns and fund charges.

The draft guidance paper highlights FMA's thoughts on the:

- calculation of returns applying a 0% PIR;
- classifying underlying fund charges; and
- calculation and disclosure of performance-based fees in managed funds.

Submissions close on **27 November 2015.**

Further details are available on FMA's website *here*.

Information sheet on custodian's obligations released

FMA has released a new information sheet which outlines the obligations of custodians under the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014. It explains the difference between a broker and a custodian, custodians for wholesale and managed investment scheme clients, and custodians' statutory obligations. The information sheet also lists examples of different custodial arrangements.

A copy of the information sheet is available *here*.

NZX Limited (NZX)

Corporate governance reporting requirements for listed issuers are under review

NZX has commenced a consultation process to update the Corporate Governance Best Practice Code (**NZX Code**) reporting provisions contained in Appendix 16 to the NZX Main Board Listing Rules (**Listing Rules**). It also intends to review the Listing Rules' mandatory corporate governance requirements as part of a proposed broader review of the Listing Rules targeted for next year.

Other than some specific provisions relating to reporting of gender diversity which were introduced relatively recently in NZX's Main Board Listing Rules, the NZX Code reporting provisions have not been updated since their introduction in 2003.

Areas which NZX has identified that its current reporting requirements are not as extensive as other regimes include:

- disclosure of the respective roles and responsibilities of the board and management;

- reporting on information about each director, including a profile of experience, length of service, independence and ownership interests;
- disclosure of written committee charters and of details in relation to members and attendances by members at committee meetings;
- reporting on written policies for complying with continuous disclosure obligations and systems of control for financial reporting and accounting records;
- requirements in relation to environmental, social and corporate governance factors (ESG) reporting;
- reporting of chief executive officer and senior executive remuneration; and
- reporting on risk management.

As a starting point for its review, NZX proposes to use the principles outlined in FMA's recent handbook, 'Corporate Governance in New Zealand Principles and Guidelines' published in December 2014 (*FMA Handbook*) as a basis for a revised reporting regime. This is to help ensure that there is a more consistent approach between the respective regimes. The FMA principles (which are broadly consistent with ASX's principles) cover the following nine topics: ethical standards, board composition and performance, board committees, reporting and disclosure, remuneration, risk management, auditors, shareholder relations and stakeholder interests.

NZX also proposes to introduce a new tiered approach to reporting according to principles, recommendations (or guidelines) and commentary. Under this structure, the principles would be supplemented by recommendations which outline in more detail the particular matters which are expected of issuers in relation to the principle discussed. These recommendations (which would effectively form the updated NZX Code) would be more prescriptive than the principles and would be required to be met on a "comply or explain" basis. This differs from NZX's current approach, which requires an explanation of how an issuer's corporate governance practices materially differ from the NZX Code but not necessarily an explanation why. The final layer will outline commentary in relation to the application of the relevant recommendations and additional best practice commentary in areas where issuers may choose, but would not be required, to report against. In addition there would continue to be the mandatory corporate governance provisions set out in the Listing Rules.

Outline of timeline

The review is to be conducted in two stages. NZX is seeking initial feedback from interested parties by **29 January 2016** on the matters outlined in the *Discussion paper - Review of corporate governance reporting requirements within NZX Main Board Listing Rules* released this month. Following completion of this discussion round NZX will develop detailed proposals for further consultation.

NZX expects to have the new reporting requirements in place by the end of 2016.

NZX reminds issuers to take note of the definition of "officer" when reporting on gender diversity

NZX has observed in its most recent compilation of gender diversity statistics from issuers' annual reports that some issuers are misinterpreting the definition of an "officer".

NZX's Listing Rules require issuers to include a quantitative breakdown as to the gender composition of the issuer's directors and "officers" as at the issuer's balance date and including comparative figures for the prior

balance date of the issuer. In this context an “officer” means a person, however designated, who is concerned or takes part in the management of the issuer’s business, but excludes a person who does not: (a) report directly to the Board; or (b) report directly to a person who reports to the Board. This replicates the test that was contained in the Securities Markets Act 1988 (**SMA**) to ensure that gender composition reporting is comparable for periods prior to the introduction of the Financial Markets Conduct Act 2013 (which does not carry over the concept of officer from the SMA).

NZX has issued a *Guidance Note* on this matter and prepared a *template* for issuers to use when reporting on gender diversity.

New debt spread class ruling

Due to the number of waivers NZX Regulation (**NZXR**) has granted to issuers of debt securities for the purposes of the spread requirements in NZX Debt Market Listing Rule 5.2.3, NZXR has issued a ruling that the rule will be satisfied if a class of debt securities is held by 100 members of the public (rather than 500), holding at least 25% of the relevant class. It should be noted that NZX interprets "holders" of securities in this context to include beneficial holders who hold through custodians or nominees.

A copy of the ruling is available *here*.

COMPETITION AND CONSUMER LAW

Regulatory developments

Members Bill proposes an adjudicator for disputes between supermarkets and suppliers

The Commerce (Supermarket and Adjudicator and Code of Conduct) Amendment Bill (by Mojo Mathers, MP for the Green Party) has been introduced to Parliament after being pulled from the members’ bill ballot. This Bill, if passed, would amend the Commerce Act 1986 to require that a supermarket adjudicator is established in order to resolve disputes between supermarkets and suppliers.

A copy of the Bill is available *here*.

New Zealand Commerce Commission (NZCC)

Media releases

The NZCC has issued the following media releases:

Industry regulation and regulatory control

NZCC updates process for input methodologies review
The NZCC has released a process update paper confirming the key topics and next steps for the input methodologies review.

The topics identified in the problem definition paper remain the key focus for the review with a few minor changes and additions. Prior to reaching draft decisions, the NZCC intends to engage with stakeholders on cost of capital issues, airports profitability, gas pipeline issues, related party transactions and the customised price-quality path requirements.
Click here for more

Cost of capital amendments no longer on fast track under IMs review
The NZCC has decided not to progress fast tracking potential changes concerning the cost of capital for customised price-quality paths as part of the input methodologies review. Those changes will now be considered as part of the main review scheduled for completion in December 2016.
Click here for more

NZCC releases draft decision on liability allocation for telecommunications providers
The NZCC has released its draft decision about how much 18 telecommunications providers will pay towards the NZ$50 million Telecommunications Development Levy for 2014/15.

The draft decision sets out how much of the NZ$50 million levy each of these 'qualifying liable persons' should pay in proportion to their qualified revenue. Based on the draft decision, almost 90% of the contributions will be paid by Spark, Chorus and Vodafone.
Click here for more

NZCC releases draft report on Fonterra's 2015/16 Milk Price Manual
The NZCC has released its draft report on its statutory review of Fonterra's Milk Price Manual for the 2015/16 dairy season. The Manual sets out how Fonterra will calculate how much it will pay dairy farmers for raw milk.
Click here for more

NZCC releases draft report on dairy sector competition in New Zealand
The NZCC has released its draft report for consultation on the state of competition in New Zealand's dairy industry. The NZCC began its review in June this year at the request of the Minister for Primary Industries as required under the Dairy Industry Restructuring Act 2001.
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NZCC releases draft amendments to airport land valuation rules
The NZCC has released draft amendments for consultation on the application of the airport land valuation rules as part of the input methodologies review.
Click here for more

Transpower's maximum allowable revenues reviewed and adjusted for 2016/17 to 2019/2020 pricing years
The NZCC has completed its review of Transpower's proposed update to the forecast maximum allowable revenue (forecast MAR) for the 2016/17 to 2019/20 pricing years.
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Final decisions on fast track amendments for customised paths
The NZCC has published amendments that provide more flexibility for gas and electricity distributors when applying for a customised price-quality path.
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Mergers and acquisitions

NZCC approves Cavalier's application to acquire NZ Wool Services
The NZCC has issued its final determination approving Cavalier Wool Holdings' application to acquire New Zealand Wool Services International's wool scouring business and assets.
Click here for more

Rheem applies for clearance to acquire Peter Cocks
Rheem New Zealand Limited has applied to the NZCC for clearance to acquire the business and assets of Peter Cocks (2010) Limited. The proposed acquisition relates to the parties' activities in the manufacture and distribution of electric storage water heaters for residential and commercial use.

The NZCC has published a statement of preliminary issues relating to the application.
Click here for more

Tennex applies for clearance to acquire San-i-pak
Tennex Capital Limited has applied to the NZCC for clearance to acquire the medical and quarantine waste business of San-i-pak Limited.

The NZCC has published a statement of preliminary issues relating to the application.
Click here for more

Vocus seeks clearance to merge with M2
The NZCC has received an application from Vocus Communications Limited seeking clearance to acquire up to 100% of the shares and/or assets of M2 Group Limited.

The NZCC has published a statement of preliminary issues relating to the application.
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Update on Z Energy's application to acquire Chevron New Zealand
On 1 July 2015, Z Energy Limited (**Z Energy**) registered an application with the NZCC seeking clearance to acquire 100% of the shares in Chevron New Zealand the owner of the Caltex brand in New Zealand. The NZCC is currently assessing the competition effects of the proposed merger in consultation with Z Energy and market participants.

Commissioners set an indicative timeframe for their decision to be made on 18 December 2015 and have not yet sought to alter this timeframe. However, due to the complexity of the merger and number of outstanding issues, it is possible an extension will be sought. The NZCC will provide a further update if this is the case.
Click here for more

NZCC clears Wilson Parking to acquire Tournament leases in Newmarket and Wellington
The NZCC has given clearance for Wilson Parking New Zealand Limited to acquire five car park leases from Tournament Parking Limited.
Click here for more

Market behaviour

NZCC files court proceedings in waste oil case
The NZCC has filed proceedings against Enviro Waste Services Limited and one individual for attempted anti-competitive conduct in relation to the collection of waste oil in the upper South Island.
Click here for more

NZCC files further court proceedings in livestock case
The NZCC has filed court proceedings against Rural Livestock Limited for alleged price fixing in connection with the introduction of the National Animal Identification Tracing Act 2012.
Click here for more

Consumer issues

NZCC prosecutes business over unsafe Transforma Ladders
Brand Developers Limited has been fined NZ$153,000 in Auckland District Court for charges relating to wrongly claiming that its Transforma ladders had a certified load rating of 180kg and for selling ladders in breach of an Unsafe Goods Notice prohibiting their sale.
Click here for more

Baa Baa Beads warned over health claims
Wholesaler and online retailer 'Baa Baa Beads' has received a warning from the NZCC after it failed to substantiate its claims about the therapeutic benefits of its Baltic amber products.
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Australian Competition and Consumer Commission (ACCC)

Selected ACCC media releases

The ACCC has issued the following media releases:

Mergers and acquisitions

ACCC will not oppose Vocus's proposed acquisition of M2
The ACCC has announced that it will not oppose Vocus Communication Limited's proposed acquisition of M2 Group Limited.
Click here for more

ACCC to not oppose Foxtel and Ten acquisitions
The ACCC has announced that it will not oppose the proposed acquisitions by Foxtel Management Pty Ltd and Ten Network Holdings Ltd.
Click here for more

Market behaviour

ACCC believes price monitoring for monopoly infrastructure (rather than other means of regulation) will damage Australia's economy
Price monitoring for monopoly infrastructure is ill-conceived in theory and not working in practice, ACCC Chairman Rod Sims has said.
Click here for more

Australia and China to cooperate on cartel investigations
The ACCC and the National Development and Reform Commission of the People's Republic of China (NDRC) have signed a memorandum of understanding which paves the way for increased engagement between the ACCC and NDRC on international cartel investigations affecting Australian and Chinese markets.
Click here for more

ACCC proposes to deny authorisation of ihail taxi booking app
The ACCC has issued a draft determination which proposes to deny authorisation to ihail Pty Ltd (ihail) for joint venture arrangements between Australian and international taxi networks and other participants in the taxi industry to launch and operate a new smartphone taxi booking app.
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Telecommunications

ACCC proposes to declare a Superfast Broadband Access Service
The ACCC has released a draft decision proposing to declare a Superfast Broadband Access Service (SBAS).

Currently, some superfast broadband services are already declared, some are subject to carrier licence conditions, others are subject to ministerial exemptions with conditions, while still others aren't regulated at all. The ACCC considers declaration of an SBAS will promote the long-term interests of end-users because it is likely to promote competition between telecommunications providers supplying services to end-users.
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NEED MORE INFORMATION?

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For more information on any of the items in the Corporate Reporter, please contact your usual Bell Gully adviser or any member of Bell Gully's *Corporate*, *Commercial* or *M&A* teams. Alternatively, you can contact the editor *Diane Graham* by email or call her on 64 9 916 8849.