



**Asia-Pacific
Economic Cooperation**

2012/SOM1/CPLG/039

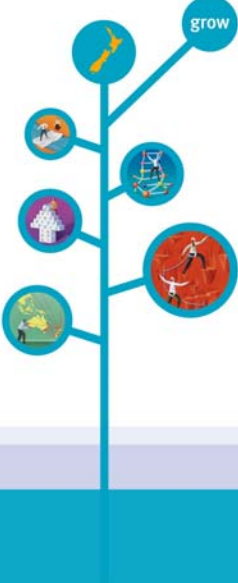
Agenda Item: 8

Updates and Developments: Competition Policy

Purpose: Information
Submitted by: New Zealand



**Competition Policy and Law Group Meeting
Moscow, Russia
12-13 February 2012**



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Updates and Developments: Competition Policy

Ministry of Economic Development
Presentation to the CPLG, APEC, SOM1
February 2012

Ministry of Economic Development
Manatū Ōhanga

Legislative developments

1. Commerce (Cartels and Other Matters) Amendment Bill
2. Commerce Commission (International Cooperation and Fees) Bill
3. Dairy Industry
4. Telecommunications – structural separation of Telecom New Zealand



Ministry of Economic Development
Manatū Ōhanga

Commerce (Cartels and Other Matters) Amendment Bill 2011

Following concerns that it would be difficult to express in legislation what constitutes hard-core cartel conduct, the Ministry developed an exposure draft Bill

A further round of consultation suggested that there was broad support for:

- The prohibition, which specifically prohibits price fixing, restricting output, market allocation and bid rigging
- The collaborative activity exemption, which is a broad principle based exemption that examines the substance of the collaborative activity, not the form

Together the prohibition and exemptions should clarify the law and minimise the risk of overreach, which exists in the current law

Cartel Criminalisation

The Bill also contains a clearance regime, which allows businesses to approach the Commerce Commission to test whether a proposed arrangement is likely to raise concerns.

Clearance provides confirmation that the collaborative activity is okay, in that it would not contravene the cartel prohibition, nor would it contravene the prohibition against arrangements that substantially lessen competition.

The Bill was introduced to Parliament on 13 October 2011 and is currently awaiting its first reading.

Commerce Commission (International Cooperation and Fees) Bill

Bill authorises the NZCC to provide investigative assistance to share information it holds with competition and consumer protection authorities, subject to appropriate safeguards

Key features include:

- Governmental cooperation arrangements must be put in place before information can be shared
- Specific matters for the NZCC to take into account on a case by case basis when considering a request for assistance
- Provisions that protect privileged material

We expect that the Bill will be passed later this year



Dairy Industry

There a number of work streams underway to consider specific issues relating to the dairy industry. These include:

- Fonterra's farm-gate milk price setting
- The Raw Milk Regulations
- The regulatory regime to accompany Fonterra's proposed capital restructure



Telecommunications

The government has put in place the Ultra-Fast Broadband (UFB) Initiative to build a fibre network in partnership with the private sector

Key features of the regulatory framework include:

- Structural separation of Telecom New Zealand into a network company and retail company
- Requirements for open access
- Continuity of current copper-based services for a specified period



Competition cases

- Freight forwarding – NZCC obtained settlement with five parties, penalties in excess of \$NZ8.8 million
- Air cargo – High Court found there is a market in New Zealand for inbound air cargo services. This clears the way for the hearing on the substantive price fixing allegations
- Gas Insulated Switch Gear – High Court dismissed NZCC claims against Siemens
- Datatails – High Court imposed a \$12 million penalty against Telecom for misusing market power. The decision is under appeal

