

Commerce (Promoting Competition and Other Matters) Amendment Bill

Government Bill

As reported from the Economic Development, Science and Innovation
Committee

Commentary

Recommendation

The Economic Development, Science and Innovation Committee has examined the Commerce (Promoting Competition and Other Matters) Amendment Bill and recommends by majority that it be passed. We recommend all amendments unanimously.

About the bill as introduced

The bill would amend the Commerce Act 1986 to address issues identified in a review of the legislation commissioned by the Government in 2025. The review identified complexity, cost, and delays in supporting pro-competitive collaboration; limitations in enforcement; and gaps in the merger control framework.

This bill would amend the Act to address these problems by:

- introducing a new statutory notification regime to better support collaboration between businesses
- empowering the Commerce Commission to grant class exemptions for categories of low-risk conduct
- giving the Commission discretion to waive or reduce application fees
- introducing corrective action orders for contravention of Part 2 of the Act
- enhancing protections for confidential information and extending the scope and duration of confidentiality orders
- introducing new protections for whistleblowers who provide information to the Commission
- strengthening the merger control regime by:

- clarifying the “substantial lessening of competition” test to cover conduct that creates, strengthens, or entrenches market power
- allowing the Commission to call in potentially harmful mergers for review
- establishing new statutory timeframes for complex merger decisions
- introducing a new objective test for predatory pricing.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We wish to bring the House’s attention to some issues relating to clauses 12, 13, 22, 40, and 55, and Schedule 4, which we discuss in more detail later in this commentary.

Proposed amendments

This commentary covers the main amendments we recommend be made to the bill as introduced. We do not discuss minor or technical amendments.

A new statutory notification regime

Clause 22 of the bill as introduced would insert sections 65E to 65Q into Part 5 of the Act (*Authorisations and clearances*). Clause 59 would insert Schedule 8 into the Act, as set out in Schedule 2 of the bill. These provisions would establish a new statutory notification regime for conduct specified in Schedule 8.

Adding or amending types of notifiable conduct

Schedule 8 would establish the types of notifiable conduct in the statutory notification regime. Section 65H would empower the Governor-General by Order in Council, to add or amend types of notifiable conduct in Schedule 8 on the recommendation of a Minister.

Section 65H(2) would establish what the Minister must be satisfied with before making a recommendation to add a type of conduct. Subsection (2)(b) specifies that the type of conduct would be predictable, that is, well understood and with consistent outcomes of enforcement or authorisation. Under subsection (2)(c)(ii), the type of conduct would be likely, in typical market conditions, to have public benefits that outweigh the expected detriments of the conduct.

We consider that section 65H(2) should be tightened to clarify what types of notifiable conduct could be added by Order in Council. Specifically, we recommend amending subsection (2)(b) so that the criterion focuses on the likely effects of the type of conduct, rather than the conduct itself. We also recommend amending subsection (2)(c) so that the focus is on the conduct not being likely to substantially lessen competition in a market or being likely to yield public benefits that outweigh the expected detriments.

We propose similar tightening in section 65H(2)(d), which relates to the Commission's ability under section 65M to issue a "no-objection" notice about conduct. We recommend amending subsection (2)(d) so that, rather than referring to "administrative efficiency", the criterion focuses on whether the Commission can assess the likely effects of the relevant type of conduct within the time frame in section 65M(2).

Rescinding a no-objection notice

Proposed section 65Q sets out the circumstances in which the Commission could rescind a no-objection notice. Under subsection (1), it could do so after giving 45 working days' notice to the person that notified the conduct.

We understand that Australia operates a similar regime, but with a notice period of 30 days. To align with Australia, we recommend that section 65Q(1) be amended to change the notice period before the rescission takes effect to 30 working days.

Further, to support the regime's certainty and efficiency, we recommend inserting subsections (3) and (4) to require the Commission, before it may rescind a no-objection notice, to ensure that:

- the person that notified the conduct, and any other person likely to have an interest in the rescission, has had a reasonable opportunity to make submissions to the Commission
- the Commission has had regard to those submissions
- the rescission notice includes the Commission's reasons for rescinding the no-objection.

We also recommend inserting section 65Q(5), to clarify that the "protected period" referred to in section 65O would end when a no-objection was rescinded, but the rescission would not affect anything that was done while the no-objection was in force.

Class exemptions for Parts 2 and 3

Clause 22 of the bill as introduced would also insert section 65R. The policy intent is that section 65R would enable the Commission to grant class exemptions to exempt certain conduct from any provisions in Part 2 (*Restrictive trade practices*) and Part 3 (*Business acquisitions*) of the Act.

Class exemptions could cover conduct that is either unlikely to substantially lessen competition or is likely to result in public benefits that outweigh the detriments to the public. Exemptions would be time-limited, may include limitations or conditions, and would be secondary legislation.

Applying the class exemption power to Part 3 would empower the Commission to create targeted class exemptions for smaller mergers that are unlikely to cause competitive harm but might technically contravene the Act.

We note that, in the bill as introduced, Part 3 is not mentioned in section 65R(4). The New Zealand Law Society suggested that section 65R be amended to clarify that class exemptions cover both Parts 2 and 3 of the Act. We agree that this clarification is

necessary for consistency and recommend that section 65R(4) be amended accordingly.

Threshold for collective bargaining

Clause 2 of Schedule 8, inserted by clause 59 of the bill, would establish types of conduct, and the thresholds that would apply for the conduct to be notifiable. The types of conduct would initially be limited to collective bargaining with a monetary threshold and resale price maintenance. We were advised by officials that the regime would allow contractors such as Fired Up Stilettos to participate in collective bargaining.

Clause 2 would limit collective bargaining to instances where parties reasonably expect that the results of collective bargaining (such as the value of goods or services supplied or acquired, understandings, or arrangements) would total no more than \$3 million over a 12-month period. To improve clarity, we recommend amending clause 2 of Schedule 8 to clarify that the \$3 million threshold would apply to each individual participant, rather than being a combined threshold across all participants.

Jurisdiction of courts and tribunals

Clause 40 would amend section 91 of the Act (*Appeals in relation to determinations by Commission*). Under clause 40 as introduced, the Commission's decisions under the statutory notification regime would be subject to a right of appeal to the High Court, limited to errors of law. The Commission would not be able to challenge the High Court's decision other where it believes the Court has made mistakes in legal interpretation or application.

We note that clause 40 appears to empower appeals to the High Court in respect of decisions by the Commission to make class exemptions. This does not align with the bill's policy intent.

Therefore, we recommend amending clause 40(1) and (2) to clarify that, under section 91 of the Act, persons could appeal to the High Court on questions of law under these proposed sections:

- 65K (Commission may object)
- 65M (Commission may issue no-objection notice or otherwise not object)
- 65O(1)(a) (Length of protected period)
- 65P (Conditions relating to no-objection notices)
- 65Q (Commission may rescind no-objections).

Updating the mergers and acquisitions regime

Since 1990, New Zealand's merger clearance and authorisation regime has operated on a voluntary basis. Parties may seek clearance or authorisation before completing a transaction. Equally, they may proceed without notification and risk that the Commerce Commission will seek an injunction to prevent the transaction from being completed. We note that if a deal is fast-moving or not public, the Commission may not

become aware of it, or have enough information to seek an injunction, before completion.

Clause 10 of the bill as introduced would insert new sections 47E to 47G. The policy intent of these sections is to strengthen the voluntary regime.

Proposed section 47E would empower the Commerce Commission to suspend a proposed acquisition for up to 40 working days if it has reasonable grounds to believe that suspension is necessary to protect competition, while it assesses whether the acquisition has the potential to breach section 47. During the suspension period, the merging parties must ensure that the business and its assets are safeguarded. The Commission may specify safeguarding steps.

Some submitters argued that the proposed thresholds for intervention are set too low. Others were concerned about the clarity of the proposed directions for safeguarding. Some support the powers as sensible enhancements to improve active oversight in New Zealand's voluntary merger regime. We agree that, while there is a clear case for giving the Commission more effective tools while it assesses potentially problematic acquisitions that operate outside the clearance process, the provisions should be clearer and more tightly calibrated.

We further agree that the proposed link between compliance with any safeguarding directions and later enforcement should be clearer. We consider that a more limited safeguard is required, namely that a court must have regard to the extent of a person's compliance with safeguarding directions in any enforcement proceedings.

We therefore recommend amending section 47E(3)(b) so that the person who receives notice of the suspension must take reasonable steps to ensure that the business and its assets are safeguarded. We also recommend replacing proposed section 47E(4) to clarify that the notice may specify the steps for safeguarding the business or assets, which a court would then need to have regard to.

Further, we recommend inserting new clause 33(3) to insert new section 83(2)(e) in the Act. This would, in the case of a person taking reasonable steps to ensure a business and assets are safeguarded during a suspension period, allow a court to determine an appropriate pecuniary penalty for non-compliance with the safeguarding steps that it has specified under previously discussed new section 47E(4).

Suspending statutory timeframes

Clause 26 would insert section 68A. Section 68A would enable the Commission to suspend certain time frames established by the Act while waiting for information from third parties that would determine a clearance or authorisation.

We consider that section 68A should apply when the acquisition is being considered by an overseas regulator or the Commission is waiting for information from an applicant, or from third parties, and only where the information is relevant to the Commission's assessment. To preserve the integrity of statutory time frames and benefit applicants, we recommend amending the bill accordingly by replacing proposed section 68A(1). This would include replacing paragraph 68A(1)(b), which would require the

Commission to be satisfied that the information, or the consideration by an overseas regulator, is material to its determination.

Clarifications relating to competition

Clause 5 of the bill as introduced would amend section 3 of the Act to update the merger control regime. Section 3 defines some terms that relate to competition. Clause 5(1) would insert section 3(2A) into the Act to clarify that the phrase “substantially lessening competition in a market” may include “creating, strengthening, or entrenching a substantial degree of power in the market”.

The policy intent of this clause is to enable the Commerce Commission (for example) to scrutinise and, where warranted, prevent acquisitions where an incumbent acquires a nascent or innovative rival to slow the rival’s product development. Some submitters argued that the clarification is unnecessary because current case law and the substantial lessening of competition (SLC) test already capture the concerns of proposed section 3(2A). We consider that applying the clarification across the Commerce Act may create uncertainty about legitimate competitive responses, because such conduct could be framed as “strengthening” or “entrenching” a firm’s position.

Therefore, we recommend limiting the clarification in proposed clause 3(2A), “creating, strengthening, or entrenching a substantial degree of market power”, to the merger regime only, that is, to existing sections 47, 47A, 66, and 67 of the Act. These sections deal with business acquisitions, and clearances and authorisations for business acquisitions that are given or granted by the Commission.

Preventing “creeping acquisitions”

Clause 5(2) would insert section 3(8)–(10) to provide that the Commission’s assessment of a merger may consider any other acquisition by any party to the current acquisition of assets or shares in the relevant period. Clause 5(2) is intended to address “creeping acquisitions”, where a firm makes a series of small acquisitions that cumulatively decrease competition over time.

Proposed section 3(8) would clarify when the combined effects of such acquisitions can be considered for the purposes of sections 47 and 47A in Part 3 of the Act (*Business acquisitions*). These sections provide for the prohibition of some business acquisitions, and declarations relating to acquisitions by overseas persons. Section 3(8) would also clarify the position, for the purposes of sections 66 and 67 in Part 5 of the Act (*Authorisations and clearances*). Sections 66 and 67 enable the Commerce Commission to give clearances and grant authorisations for business acquisitions.

Proposed section 3(8)(b) as introduced would refer to a “relevant period”, to be counted when considering the combined effects of any other acquisition of assets and shares by any other party to the current acquisition. Section 3(9) would provide that for section (8), in the case of a clearance or authorisation application under section 66 or 67, a “relevant period” means the period starting three years before the registration date of the clearance or authorisation notice, and ending on the notice’s registration date.

Some submitters argued that there is no evidence that serial acquisitions are escaping scrutiny by the Commerce Commission. They state that the three-year “lookback” would create uncertainty and chill activity relating to mergers and acquisitions. Several submitters said that the proposal is broader than the Australian model.

We consider that the risk of creeping acquisitions could be better targeted, while reducing compliance costs and legal uncertainty. We recommend inserting new subparagraphs (i) and (ii) in section 3(8)(b) to limit the lookback to prior acquisitions that occur in the relevant period and involve the same, substitutable, or otherwise competitive goods or services. This would align the New Zealand provisions more closely with Australia’s.

Time frames for decision making

Clauses 23 and 24 of the bill as introduced would amend sections 66 and 67 of the Act by providing more prescriptive timeframes for the Commission’s decisions on applications for clearances and authorisations. They would also provide statutory tests for when time frames may be extended or suspended. Clause 25 would amend section 68 to provide a timeframe for giving written reasons.

Some submitters recommended that extensions of time be based on the complexity of the analysis required, rather than on the complexity of the acquisition. We agree. We recommend amending clauses 23 and 24 accordingly.

A boundary for scrutiny

Clause 8 of the bill as introduced would repeal section 46 of the Act (*Saving in respect of business acquisition*). Section 46 is one of a number of provisions that provide for exceptions to the application of Part 2 of the Act (*Restrictive trade practices*). It draws a bright-line boundary by providing that acquisitions of assets of a business or shares are dealt with through the merger regime in Part 3 (*Business acquisitions*) rather than also being able to be challenged under Part 2.

The proposed repeal of section 46 is based on the premise that the provision is no longer needed, given the bill’s related changes to the merger’s provisions and the existing safeguard in section 83 of the Act (*Pecuniary penalties relating to business acquisitions*) against double civil pecuniary penalties.

A number of submitters argued that repeal of section 46 would expose ordinary merger activity to Part 2 scrutiny, chilling legitimate commercial activity. We recognise that submitters value a clear and statutory boundary. We therefore recommend deleting clause 8 of the bill, to retain section 46.

Practical and proportionate standards for undertakings

Clause 27 of the bill as introduced would replace existing sections 69A(1) and (2). New section 69A(1)(b) would enable the Commission, when giving a clearance or granting an authorisation, to accept commitments (“behavioural undertakings”) from a person who proposes to acquire assets of a business or shares, about how they

would behave after a merger, including that they would take or refrain from taking an action specified in the undertaking.

New section 69A(2) would establish conditions that the Commission must be satisfied with before it accepts a behavioural undertaking from the firm to either act, or refrain from acting. These include that the Commission be satisfied that selling off assets or shares (a structural remedy) is insufficient. Several submitters argued that the provisions contained in subsections (2)(a) and (b) create an unrealistic hurdle, because structural divestment is almost always theoretically possible, even if commercially unviable or disproportionate.

We agree. We therefore recommend removing proposed section 69A(2)(a) that would require the Commission to be satisfied that, without the undertaking, it was unlikely to be able to grant an authorisation or clearance.

Further, we recommend replacing proposed section 69A(2)(b)(i) to require that the Commission be satisfied that addressing the effects of the acquisition by way of a structural undertaking would cause costs out of all proportion to those effects, or is otherwise not reasonably practicable.

Notifying awareness of a breach

Clause 28 of the bill as introduced would amend existing section 69AB (*Authorisation or clearance void if undertaking contravened*). New section 69AB(1A) would establish circumstances in which there has not been a contravention. One of these, set out in subsection (1A)(b), is that the person has notified the Commission as soon as they became aware of the breach.

The New Zealand Law Society argues that requiring a person to notify the Commission “as soon as” they become aware of a breach is too strict. We agree. We recommend replacing that standard in section 69AB(1A)(b) with a deadline of 5 working days that would be triggered by awareness of the material facts of the failure to comply.

Seeking corrective action orders

Clause 32 as introduced would insert section 82F into Part 6 of the Act (*Enforcement, remedies, and appeals*). This would empower the High Court to issue a corrective action order for contravention of Part 2 (*Restrictive trade practices*). Section 82F(1) would enable this to happen on the application of the Commerce Commission.

Some submitters argued that private parties can already enforce Part 2 and should be able to seek corrective action orders. We agree. We recommend amending section 82F(1) so that both the Commission and private parties may apply to the court for corrective action orders under section 82F.

We note that section 88(1) of the Act provides that the court may at any time rescind or vary an injunction made under Part 6. We therefore recommend inserting section 82F(5) to provide that the court may at any time rescind or vary an order made under section 82F.

Injunctions granted by the High Court

The Commerce Commission supports the powers provided for in new section 82F. Because corrective action orders are available only after a breach is established, the Commission also supports expanding existing court powers, so the court could restrain both threatened or ongoing conduct, and where appropriate, compel affirmative steps.

We consider that a provision making it explicit that the court may grant injunctions, including requiring a person to take specific action for contravention of Part 2, would reduce uncertainty and potential litigation. We therefore recommend inserting new clause 31A to replace existing section 81 (*Injunctions may be granted by court for contravention of Part 2*) with new sections 81 and 81A.

Our proposed new section 81 would enable the court to grant an injunction that restrains a person from acting or requires a person to do an act or thing. This would be on the application of the Commission or any other person and under certain conditions. New section 81A provides for when a court could grant performance injunctions for contravention of Part 2.

Length of confidentiality orders

Clause 52 of the bill as introduced would replace existing section 100 (*Powers of Commission to prohibit disclosure of information, documents, and evidence*). New section 100 would enable the Commerce Commission, during an investigation, inquiry, or merger assessment, to make a time-limited confidentiality order prohibiting the disclosure of specific information related to the matter. Clause 53 would insert section 100AA, which would create a statutory protection for confidential information supplied to the Commission.

Section 100(3) as introduced provides that the confidentiality order would not have any effect from 10 years after the Commission's final determination on an application or notice, or since the conclusion of the investigation or inquiry. While the order is in force, the information covered would not be subject to release under the Official Information Act 1982.

The Office of the Ombudsman cautioned that the combined effect of proposed section 100 and the separate confidentiality framework in proposed section 100AA could unjustifiably restrict access to information. The New Zealand Law Society suggested that orders made under section 100 should be limited to a minimum period.

We agree. We recommend that section 100(3) be amended to limit the period for which section 100 orders could remain in force to 5 years after the conclusion of the Commission's related investigation or inquiry.

Length of statutory protection for confidential information

Proposed section 100AA as introduced would set the default protection period for confidential information provided to the Commission at 10 years. In defined circumstances, the Commission could extend protection, but not beyond the date by which

records must be transferred to Archives New Zealand under the Public Records Act 2005.

The Office of the Ombudsman opposed this provision, questioning whether the 10-year prohibition, with potential extensions, struck the right balance. The New Zealand Law Society recommended removing or narrowing the provision. We agree and recommend amending proposed section 100AA(4) and (5) to limit the initial confidentiality period to 5 years, with further extensions permitted only in increments of no more than 5 years at a time.

Requirements for confidentiality orders

The New Zealand Law Society favoured further restrictions. It proposed requiring the Commission to demonstrate a link between the reasons for the confidentiality order and the duration, and confining the order to relevant information that genuinely needs confidentiality. It also proposed that an order be made only after considering factors such as open justice, trust, and public accountability.

We accept that the Commission's decision-making in this matter needs clearer boundaries, and recommend the insertion of section 100(3A). It would apply to any confidentiality order that would extend beyond the date of an application's final determination or the conclusion of the investigation or inquiry. It would require the Commission, before making such an order, to consider whether the order's duration is appropriate, having regard to the risk of harm and the principles of transparency, accountability, and public trust.

Proposed studies of pro-competition regulation

Clause 12 of the bill as introduced would insert section 51F (*Commission may carry out study of pro-competition regulation*) into Part 3A of the Act (*Competition studies*). New section 51F would empower the Commission to conduct market studies in any market, industry, or sector, and to recommend pro-competition regulation. Proposed section 51F(2) would enable the Commission to require market participants to prepare and provide forecasts and forward plans for these studies.

Some submitters opposed the proposed new study power, arguing that the Commission's existing market study powers under Part 3A make it unnecessary. We agree that the existing Part 3A framework gives the Commission the necessary powers to gather information and make recommendations, while embedding clearer process safeguards than the proposed section 51F.

Some submitters opposed enabling the Commission to compel parties to create new information, such as forecasts, describing it as overly intrusive and inconsistent with established disclosure principles. We are also concerned that this proposed information-gathering power may not be justified.

We consider that the Commission's current information-gathering powers under Part 3A, supported by section 98 (*Commission may require a person to supply information or documents or give evidence*) are sufficient to enable it to analyse markets and

develop recommendations. We therefore recommend removing the proposed pro-regulation study power by deleting clauses 11, 12, and 55 from the bill.

We further recommend inserting new clause 11, to amend existing section 51B (*Preparation of competition report*). New subsection (3A) would expressly allow the Commission to recommend the development of pro-competition regulation, and to recommend reforms to reduce regulatory barriers to competition.

New method of incorporation by reference

Clause 13 (which would insert section 53ZF) and proposed Schedule 4 relate to material incorporated by reference into secondary legislation. These provisions would allow the maker of the secondary legislation to give legal effect, by a notice in the *Gazette*, to amended or replacement material of the same general character, and to remove the legal effect of expired or revoked material.

Schedule 4 would replace section 223 of the Telecommunications Act 2001 with proposed section 223 (*Material incorporated by reference*). We note that the proposed amendments to the Telecommunications Act are substantially similar to changes proposed in the Telecommunications Amendment Bill, which is currently before the House. We therefore recommend that these amendments be removed from Schedule 4.

Clause 58 of the bill as introduced would repeal Schedule 5 of the Commerce Act, which defines materials incorporated by reference and provides for matters such as access and amendments to such materials. In the absence of Schedule 5, section 223 of the Telecommunications Act would have no effect. We therefore recommend amending Schedule 4 of the bill to repeal section 223 of the Telecommunications Act 2001.

New Zealand Labour Party and Green Party of Aotearoa differing view

Labour and Greens urged the Government to push forward with this bill at first reading because New Zealanders are paying the price for weak competition in essentials like groceries, banking, insurance, and energy.

The bill as introduced contained a number of important and constructive reforms. The best thing about it is the new powers to tackle creeping acquisitions and private equity roll-ups, particularly the conduct that entrenches market power over time.

However, the bill has been weakened during the select committee process.

Predatory pricing prohibitions are a standard feature of competition law in comparable jurisdictions. They exist to prevent dominant firms from temporarily pricing below cost in order to eliminate competitors, before later raising prices once market power is secured. The proposed use of long run average cost as an objective benchmark was consistent with established international competition practice and would have been a small step forward.

Labour and Greens would have supported sector-specific industry codes. The omission reduces the bill's ability to deliver meaningful change in markets where consumers are currently being failed.

Labour and Greens are also disappointed that the committee did not progress amendments to section 97B that would have provided contractors initiating collective bargaining with a safe harbour from retaliatory conduct by contractees, despite concerns raised during submissions that without such protections the right to collectively bargain may exist in theory but not in practice.

Labour and Greens urge the Government to hold its nerve. New Zealanders facing high grocery bills, banking costs, energy prices, and insurance costs need a competition regime prepared to confront excessive market power directly. While this bill contains worthwhile reforms, in its amended form it falls well short of the ambition signalled by Government ministers to tackle the structural competition problems facing the New Zealand economy.

Appendix

Committee process

The Commerce (Promoting Competition and Other Matters) Amendment Bill was referred to this committee on 16 December 2025. We called for submissions on the bill with a closing date of 4 February 2026. We received and considered submissions from 80 interested groups and individuals. We heard oral evidence from 21 submitters. We wish to acknowledge the efforts of all submitters and thank them for their engagement.

Advice on the bill was provided by the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clause 22, clause 13, Schedule 4, and proposed section 65R.

Committee membership

Dr Parmjeet Parmar (Chairperson)

Dr Hamish Campbell

Reuben Davidson

Cushla Tangaere-Manuel

Dr Vanessa Weenink

Arena Williams

Scott Willis

Dr David Wilson

Ricardo Menéndez-March participated in the place of Scott Willis for this item of business.

Related resources

The documents we received as advice and evidence are available on the Parliament website.

**Commerce (Promoting Competition and Other Matters)
Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Cameron Brewer

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	100	Powers of Commission to prohibit disclosure of information, documents, and evidence	34
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Part 2

Consequential amendments

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Schedule 1

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Schedule 2

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Schedule 3

Consequential amendments to principal Act

Schedule 4

Amendments to other legislation

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Commerce (Promoting Competition and Other Matters) Amendment Act **2025**.

2 Commencement

5

- (1) This Act comes into force on the day after Royal assent.
- (2) However, the following sections come into force 6 months after Royal assent:

(a) **section 4(3):**

(b) ~~sections 5 and 6:~~

(b) section 5:

10

(c) **section 10:**

(d) **sections 16 and 17:**

(e) **sections 19 to 38:**

(f) ~~sections 40 and 41:~~

(f) sections 39A to 41:

15

(g) **section 59.**

3 Principal Act

This Act amends the Commerce Act 1986.

Part 1

Main amendments

4 Section 2 amended (Interpretation)

- (1) In section 2(1), replace the definition of **assets** with:
- assets** includes property of any kind, whether tangible or intangible, and includes legal and equitable rights and interests that are not property, however they arise 5
- (2) In section 2(1), replace the definition of **document** with:
- document** means—
- (a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds or from which symbols, images, or sounds can be derived, and includes— 10
- (i) a label or marking or any other writing that identifies or describes a thing of which it forms part, or to which it is attached:
- (ii) a book, map, plan, graph, or drawing: 15
- (iii) a photograph, film, or negative; and
- (b) information electronically recorded or stored, and information derived from that information
- (3) In section 2(1), definition of **substantial**, paragraph (a), replace “sections 36 and 36A” with “**sections 3(2A)**, 36, 36A, and **36C**”. 20
- (4) In section 2(1), definition of **substantial**, paragraph (b), replace “section 47(3) and (4)” with “section 47(3) to **(5)**”.

5 Section 3 amended (Certain terms defined in relation to competition)

- (1) After section 3(2), insert:
- (2A) To avoid doubt, for the purposes of sections 47, 47A, 66, and 67, **substantially lessening competition in a market** may include creating, strengthening, or entrenching a substantial degree of power in the market. 25
- (2) After section 3(7), insert:
- (8) For the purposes of sections 47, 47A, 66, and 67, the effects of an acquisition include, ~~where~~ if relevant, the combined effects of— 30
- (a) the acquisition (the **current acquisition**); and
- (b) any other acquisition by any party to the current acquisition (including any interconnected bodies corporate or associated persons within the meaning of section 47(3)) of assets of a business or shares ~~in the relevant period~~. that— 35
- (i) involves any of the same goods or services as the current acquisition or goods or services that are substitutable for, or otherwise

- competitive with, the goods or services involved in the current acquisition (disregarding any geographical factors or limitations); and
- (ii) occurs in the relevant period.
- (9) In **subsection (8), relevant period** means,— 5
- (a) in the case of a clearance application under section 66 or an authorisation application under section 67, the period starting 3 years before the date of registration of the clearance or authorisation notice and ending on the date of registration of that notice; or
- (b) in any other case, the period starting 3 years before the date of the current acquisition or the date on which proceedings under section 47 or 47A are filed in respect of the current acquisition, whichever is earlier, and ending on that date. 10
- (10) **Subsection (8)** does not limit the circumstances in which an acquisition of assets of a business or shares would have, or would be likely to have, the effect of substantially lessening competition in a market. 15

6 New section 36C inserted (Predatory pricing)

After section 36B, insert:

36C Predatory pricing

- (1) This section applies to a person (**A**) that has a substantial degree of power in a market (within the meaning of that term in section 36) and that engages in predatory pricing— 20
- (a) in that market; or
- (b) in any other market in which A (or an interconnected person) supplies, or is likely to supply, goods or services (or supplies, or is likely to supply, goods or services indirectly through 1 or more other persons). 25
- (2) A's predatory pricing conduct must be treated, for the purposes of section 36, as having the purpose, or as having or being likely to have the effect, of substantially lessening competition in the market in which the predatory pricing occurred. 30
- (3) In this section, **predatory pricing** is either or both of the following for a sustained period in the relevant market:
- (a) pricing below Average Variable Cost or Average Avoidable Cost:
- (b) pricing above Average Variable Cost or Average Avoidable Cost but below Long-run Average Incremental Cost or Average Total Cost if the pricing is for an exclusionary purpose. 35
- (4) The fact of recoupment of strategic losses is not required to establish predatory pricing but, if it exists, may be taken into account as part of the court's assessment.

(5)	Despite subsection (3) , the following are not predatory pricing unless they are part of a pattern of behaviour over a sustained period:	
	(a) short-term promotional pricing:	
	(b) other short-term below-cost pricing, including one-off specials or discounts or instances where pricing is displayed incorrectly.	5
(6)	This section does not limit section 27 or sections 36 to 36B.	
	Example	
	Other conduct, including pricing above Long-run Average Incremental Cost or Average Total Cost, may also be predatory under (and breach) other sections of this Act.	10
(7)	In this section,—	
	Average Avoidable Cost means the average cost a business could avoid by not producing the goods or services in question. This includes both average variable costs and any fixed costs that could be saved. These could be things like lease payments, staff salaries, or maintenance contracts that can be cancelled or reduced	15
	Guidance note	
	Pricing below Average Avoidable Cost indicates the firm is incurring losses that it could otherwise avoid.	
	Average Total Cost means total costs (fixed plus variable) divided by the number of units produced	20
	Average Variable Cost means the average cost of variable inputs (for example, labour and materials) used to produce each unit of output	
	Guidance note	
	Pricing below Average Variable Cost suggests that a firm is not covering its basic operating costs.	25
	exclusionary purpose means all or any of the following purposes:	
	(a) restricting the entry of a person into that or any other market:	
	(b) preventing or deterring a person from engaging in competitive conduct in that or any other market:	30
	(c) excluding a person from that or any other market	
	Long-run Average Incremental Cost means the average cost of producing an additional increment of output over the long term, including both fixed and variable costs	
	short-term , in relation to pricing, means pricing for a period of not more than 3 months in aggregate in any 12-month period.	35

7	Section 43 amended (Statutory exceptions)	
	Repeal section 43(3).	
8	Section 46 repealed (Saving in respect of business acquisitions)	
	Repeal section 46.	
9	Section 47 amended (Certain acquisitions prohibited)	5
(1)	In section 47(1), delete “of a business”.	
	After section 47(4), insert:	
(5)	The following factors may, without limitation, be relevant in determining whether a person is able to exert a substantial degree of influence over the activities of another person for the purposes of subsection (3):	10
(a)	shareholding or voting rights that provide the ability to influence key decisions of the other person:	
(b)	the right to appoint or remove directors or key executives of the other person:	
(c)	veto powers over strategic decisions of the other person:	15
(d)	financial arrangements that create economic dependency on the part of the other person:	
(e)	contractual agreements, informal arrangements, or historical patterns of deference.	
10	New sections 47E to 47G inserted	20
	After section 47D, insert:	
47E	Commission may suspend acquisition	
(1)	The Commission may impose a suspension on an acquisition, or a proposed acquisition, of assets <u>of a business</u> or shares by giving notice in writing to the person that has acquired or is proposing to acquire the assets or shares.	25
(2)	The notice must—	
(a)	specify the period of the suspension (the suspension period), which must be no longer than 40 working days after the date of the notice; and	
(b)	state what assets or shares are subject to the suspension.	
(3)	During the suspension period, the person who receives the notice—	30
(a)	must not acquire the assets or shares; and	
(b)	must <u>take reasonable steps to</u> ensure that the business and its assets, if already acquired, are safeguarded.	
(4)	The notice may specify the steps that must be taken to safeguard the business or assets for the purposes of subsection (3)(b), in which case the person must comply with those steps.	35

- (4) The notice may specify steps to safeguard the business or assets for the purposes of **subsection (3)(b)**, in which case a court must have regard to those steps in determining what is required under **subsection (3)(b)**.
- (5) The Commission may exercise the power under this section only if it has reasonable grounds to believe that exercising the power is necessary to protect competition while the Commission assesses ~~whether the acquisition has the potential to result in, or has resulted in, a breach of section 47.~~ 5
- (6) Section 47(2) to **(5)** applies to this section.
- 47F Commission may require clearance of acquisition**
- (1) This section applies if the Commission has reasonable grounds to believe that— 10
- (a) a person is proposing to acquire assets of a business or shares (a **proposed acquisition**); and
- (b) ~~the proposed acquisition has the potential to result in a breach of~~ may breach section 47. 15
- (2) The Commission may, in writing, direct the person who proposes to acquire the assets or shares to seek clearance for the acquisition under section 66.
- (3) The person who is given the direction under **subsection (2)** must, if they wish to proceed with the proposed acquisition, comply with the direction by— 20
- (a) seeking clearance for the acquisition under section 66; or
- (b) if they prefer, applying for authorisation for the acquisition under section 67.
- (4) The person must not acquire the assets or shares, or any part of them, during the period starting on the date of the direction and ending on the date on which the clearance is determined under section 66 (or the authorisation is determined under section 67, if applicable). 25
- (5) Section 47(2) to **(5)** applies to this section.
- 47G Other provisions relating to exercise of Commission’s power to suspend or require clearance**
- (1) If the Commission gives a notice under **section 47E** or a direction under **section 47F**, the Commission must— 30
- (a) give its reasons for issuing the notice or direction with the notice or direction; and
- (b) provide a copy of the notice or direction, including reasons, to the other party or parties to the acquisition or proposed acquisition; and 35
- (c) make a copy of the notice or direction, including reasons, publicly available, except that the Commission may omit any information if it is satisfied there is good reason not to make it publicly available.

- (2) The Commission may withdraw the notice or direction at any time.
- (3) To avoid doubt, a notice under **section 47E** or a direction under **section 47F** is not a determination of the Commission.

11 Section 51B amended (Preparation of competition report)

After section 51B(3), insert:

5

- (3A) To avoid doubt, the recommendations may, without limitation, be made for the purpose of—
 - (a) reducing regulatory barriers to competition; or
 - (b) the development of regulation to promote competition.

11 New cross-heading above section 48 inserted

10

After the Part 3A heading, insert:

Competition studies

12 New section 51F and cross-heading inserted

After section 51E, insert:

Studies of pro-competition regulation

15

51F Commission may carry out study of pro-competition regulation

- (1) The Commission may carry out a study in relation to any market, industry, or sector, if the Commission considers it to be in the public interest to do so, in order to recommend to the Minister the development of pro-competition regulation.

20

Example

Regulation to break down barriers to entry to, and expansion in, a market.

- (2) For the purposes of doing so, and without limiting its ability to exercise its powers under section 98 for those purposes, the Commission may, by notice in writing, require any participant in the relevant market that the Commission has reason to believe may have information or documents relevant to the study—
 - (a) to prepare and produce forecasts, forward plans, or other information and provide them to the Commission; and
 - (b) to apply any methodology specified by the Commission in the preparation of forecasts, forward plans, or other information.
- (3) The Commission may consult any person that, in the opinion of the Commission, is able to assist it to complete its report.
- (4) The Commission must—
 - (a) provide the final report to the Minister, including any recommendations that include any of the matters referred to in section 51B(3); and

25

30

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- (b) at least 5 working days later, make the final report publicly available.
- ~~(5) To avoid doubt, the report is not a determination of the Commission.~~

13 Section 53ZF replaced (Material may be incorporated by reference)

Replace section 53ZF with:

53ZF Material incorporated by reference

- (1) This section applies for the purposes of section 66(2)(b) of the Legislation Act 2019. 5
- (2) If material incorporated by reference in a section 52P determination or in an input methodology is amended or replaced by the originator of the material after the secondary legislation is made, legal effect may be given to that amendment or replacement material if— 10
- (a) the amendment or replacement material is of the same general character as the original material; and
- (b) the maker of the secondary legislation issues a notice to adopt the amendment or replacement material as having legal effect as part of the secondary legislation. 15
- (3) If material incorporated by reference in a section 52P determination or in an input methodology expires, is revoked, or otherwise ceases to have effect, the material ceases to have legal effect as part of the secondary legislation if the maker of the secondary legislation issues a notice stating that the material ceases to have that legal effect. 20
- (4) A notice issued under **subsection (2)(b) or (3)** must be published in the *Gazette* and publicised by the maker of the secondary legislation.
- (5) This section does not limit section 66(2)(a) of the Legislation Act 2019.
- (6) In this section, **material** has the meaning given in section 63 of the Legislation Act 2019. 25

Compare: 2010 No 116 s 131B

14 Section 54C amended (Meaning of electricity lines services)

In section 54C(4), definition of **associate**, replace “section 73 of the Electricity Industry Act 2010” with “clause 8 of Schedule 2 of the Electricity Industry Act 2010”. 30

15 Section 55A amended (Meaning of gas pipeline services)

In section 55A(4), definition of **associate**, replace “section 12 of the Electricity Industry Reform Act 1998” with “clause 8 of Schedule 2 of the Electricity Industry Act 2010”. 35

16 Part 5 heading replaced

Replace the Part 5 heading with:

Part 5
**Authorisations, clearances, statutory notification regime,
exemptions, and other powers**

17 New section 58AAA inserted (Overview)

After the Part 5 heading, insert:

5

58AAA Overview

- (1) This Part provides for procedures as follows:
 - (a) sections 58 to 65D provide for the Commission to grant authorisations and clearances in respect of certain provisions of Part 2, including streamlined clearances for certain conduct: 10
 - (b) **sections 65E to 65Q** provide a notification process in respect of conduct that is unlikely to substantially lessen competition or that is likely to be in the public interest:
 - (c) **section 65R** enables the Commission to make secondary legislation exempting any class of persons or any class of transactions from compliance with any provision or provisions of Part 2 or 3: 15
 - (d) sections 66 to 69B provide for the Commission to grant clearances and authorisations for business acquisitions.
- (2) *See also* other exceptions (for example, the exception in section 31 for collaborative activities). 20
- (3) **Subsection (1)** is only a guide to the general scheme and effect of this Part.

18 Section 64 amended (Procedure at conference)

After section 64(2), insert:

- (2A) The conference or any part of it may be conducted by audio link or audiovisual link if the Commission considers it appropriate. 25

19 New sections 65BA to 65BC inserted

After section 65B, insert:

65BA Commission may give clearances relating to collaborative activities

- (1) A person that proposes to do anything referred to in section 65A(1) may apply to the Commission for a clearance under this section in respect of section 30. 30
- (2) The Commission must give a clearance under this section if it is satisfied that—
 - (a) the applicant and any other party to the proposed contract, arrangement, understanding, or covenant are or will be involved in a collaborative activity; and 35

- (b) every cartel provision in the contract, arrangement, understanding, or covenant is reasonably necessary for the purposes of the collaborative activity.
- (3) For the purposes of **subsection (2)**, it is not necessary for the Commission to determine whether a particular provision is in fact a cartel provision, providing there are reasonable grounds for believing that it might be. 5
- (4) If clearance is not given within 30 working days after the date on which the application is registered in accordance with section 60(2)(a), the Commission is deemed to have declined to give the clearance, subject to any alternative timetable agreed between the Commission and the person applying for clearance. 10

65BB Effect of clearance under section 65BA

The effect of a clearance given under **section 65BA** is that—

- (a) a party to the contract, arrangement, understanding, or covenant to which the clearance relates does not contravene section 30 by entering into the contract or arrangement, or arriving at the understanding, or giving, or requiring the giving of, the covenant, while the clearance is in force; and 15
- (b) a person does not contravene section 30 by giving effect to any cartel provision in the contract, arrangement, understanding, or covenant to which the clearance relates, while the clearance is in force; and 20
- (c) section 30C(1) does not apply to any cartel provision in the contract, arrangement, understanding, or covenant, while the clearance is in force.

65BC Additional provisions relating to clearances under section 65A or 65BA

- (1) A clearance given to a person under section 65A or **65BA** may be expressed to apply to, or in relation to, another person that,— 25
 - (a) in the case of a clearance to enter into a contract or an arrangement or arrive at an understanding, becomes a party to the proposed contract or arrangement at a time after it is entered into or becomes a party to the proposed understanding at a time after it is arrived at: 30
 - (b) in the case of a clearance to give effect to a provision of a contract, arrangement, understanding, or covenant, becomes a party to the contract, arrangement, understanding, or covenant at a time after the clearance is given:
 - (c) in the case of a clearance to require the giving of, or to give, a covenant, becomes bound by, or entitled to the benefit of, the covenant at a time after the covenant is given: 35
 - (d) in the case of a clearance to carry out or enforce the terms of a covenant, becomes bound by, or entitled to the benefit of, the covenant at a time after the clearance is granted. 40

- (2) A clearance granted to a person under section 65A or **65BA** may be granted subject to such conditions not inconsistent with this Act and for such period as the Commission thinks fit.
- (3) The Commission may vary those conditions if—
- (a) the clearance was given on information that was false or misleading in a material particular; or
 - (b) there has been a material change of circumstances; or
 - (c) a condition upon which the clearance was granted has not been complied with.
- (4) The Commission must not vary conditions under this section unless the person to which the clearance was given, and any other person who in the opinion of the Commission is likely to have an interest in the matter, is given a reasonable opportunity to make submissions to the Commission and the Commission has had regard to those submissions.
- (5) If the Commission is of the opinion that proposed conduct is, for reasons other than arising from the application of any provision of this Act, unlikely to be proceeded with, the Commission may, in its discretion, decline to give a clearance for that conduct under section 65A or **65BA**.
- (6) The Commission must state in writing its reasons for declining to give a clearance or for imposing or varying conditions under this section.

20 Section 65C amended (Procedures relating to clearances)

In section 65C(1) and (2), after “under section 65A”, insert “or **65BA**”.

21 Section 65D amended (Revocation of clearances)

- (1) In section 65D(1), after “under section 65A”, insert “or **65BA**”.
- (2) After section 65D(1)(b), insert:
- (c) a condition upon which the clearance was granted has not been complied with.

22 New sections 65E to 65S and cross-headings inserted

After section 65D, insert:

Statutory notification regime for certain restrictive trade practices 30

65E Purpose and outline of sections 65F to 65Q

- (1) The purpose of **sections 65F to 65Q** is to provide a process for streamlined consideration of certain ~~eategories~~types of conduct that are likely to be in the public interest or are unlikely to substantially lessen competition.
- (2) **Sections 65F to 65Q** provide a framework that enables persons to notify the Commission of proposed conduct (within the permitted ~~eategories~~types) and,

unless the Commission objects within a specified time frame, a provision or provisions of Part 2 of the Act do <u>does not</u> apply to the conduct.	
(3) This section is only a guide to the general scheme and effect of sections 65F to 65Q .	
65F Interpretation for sections 65E to 65Q	5
In sections 65E to 65Q , unless the context otherwise requires,—	
conduct includes proposed conduct	
no-objection has the meaning given by section 65M(2)	
notifiable conduct means conduct that may be notified under section 65G	
notified conduct means notifiable conduct of which the Commission has been notified	10
notify or give notice means to give a valid notification under section 65J	
objection test means the test set out in Schedule 8 in respect of a type of notifiable conduct	
protected period , in relation to a notice, means the period referred to in section 65O .	15
65G What conduct is notifiable	
Conduct may be notified under section 65J if it is of a type of conduct that is listed in Schedule 8 .	
65H Adding or amending notifiable conduct	20
(1) The Governor-General may, by Order in Council, on the recommendation of the Minister, amend Schedule 8 by—	
(a) adding any type of conduct; or	
(b) amending any type of conduct (including the thresholds that apply in order to be notifiable conduct, or the provisions to which it applies, or its protected period).	25
(2) The Minister may make a recommendation to add a type of conduct only if the Minister is satisfied that—	
(a) adding the type of conduct is consistent with the purposes set out in sections 1A and 65E ; and	30
(b) the type of conduct is likely effects of the type of conduct, in general, are predictable (that is, the conduct is well understood and the outcomes of enforcement or authorisation (if relevant) are relatively consistent); and	
(c) the type of conduct <u>would, in general,</u> —	
(i) would not have the effect, or would not be likely to have the effect, of substantially lessening competition in typical market conditions in a market; or	35

- (ii) ~~is likely, in typical market conditions, be likely~~ to have public benefits that outweigh the expected detriments of the type of conduct; and
- (d) ~~a notice in respect of the type of conduct will be administratively efficient to assess the~~ Commission will be able to assess the likely effects of the type of conduct within the time frame in **section 65M(2)**. 5
- (3) The Minister may make a recommendation to amend a type of conduct if the Minister is satisfied that—
- (a) the amendment is necessary or desirable to better give effect to the purposes set out in sections 1A and **65E**; or 10
- (b) the amendment is minor or technical and does not materially change the type or description of the conduct.
- (4) The Minister may make a recommendation under this section only if the Minister has consulted the Commission.
- (5) An order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 15
- 65I Removing notifiable conduct**
- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, amend **Schedule 8** by removing any type of conduct.
- (2) The Minister may make a recommendation to remove a type of conduct only if the Minister— 20
- (a) has considered the matters in **section 65H(2)(a) to (d)** (applied with necessary modifications); and
- (b) is not satisfied that inclusion of the type of conduct promotes the long-term benefit of consumers within New Zealand; and 25
- (c) has consulted the Commission.
- (3) An order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 65J Notification of notifiable conduct**
- (1) A person that engages, or proposes to engage, in notifiable conduct may give the Commission a notice in writing setting out the conduct. 30
- (2) Section 60 applies to the notification as if it were an application referred to in that section.
- Compare: Competition and Consumer Act 2010 s 93(1) (Aust)
- 65K Commission may object** 35
- (1) The Commission may object by issuing an objection notice if the Commission considers that—

- (a) the notified conduct is not within the type and thresholds of notifiable conduct in **Schedule 8**; or
- (b) the notified conduct meets the objection test set out in that schedule in respect of that type of conduct.
- (2) An objection notice must be accompanied by a statement setting out the Commission's reasons. 5
Compare: Competition and Consumer Act 2010 s 93(3), (3A) (Aust)
- 65L Amending objection test for notifiable conduct**
- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, amend **Schedule 8** by amending the objection test in respect of any type of notifiable conduct. 10
- (2) The Minister may make a recommendation to amend an objection test only if—
- (a) the Minister is satisfied that amending the objection test is consistent with the purposes set out in sections 1A and **65E**; and
- (b) the Minister has consulted the Commission. 15
- (3) An order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 65M Commission may issue no-objection notice or otherwise not object**
- (1) The Commission may issue a no-objection notice.
- (2) The Commission is deemed not to object (a **no-objection**) if— 20
- (a) the Commission does not issue an objection notice within 45 working days after the date on which it registers the notification; or
- (b) the Commission issues a no-objection notice.
- 65N Effect of no-objection**
- The effect of the Commission not objecting to notified conduct is, during the protected period, the same as if the Commission had granted an authorisation in respect of the notified conduct and the relevant provisions that are listed in **Schedule 8** alongside the type of notified conduct. 25
Compare: Competition and Consumer Act 2010 s 93(7) (Aust)
- 65O Length of protected period** 30
- (1) The **protected period** for the purposes of **section 65N** is—
- (a) the period specified by the Commission in a no-objection notice; or
- (b) 3 years, if the Commission does not specify the period in a no-objection notice.
- (2) However, the Commission may not specify a protected period that is longer than the maximum duration for the relevant conduct specified in **Schedule 8**. 35
- (3) The protected period starts—

- (a) on the day on which the Commission issues a no-objection notice; or
- (b) in any other case of the Commission not objecting, on the 45th working day after the date on which the Commission registers the notification.

Compare: Competition and Consumer Act 2010 s 93(7A)–(9) (Aust)

65P Conditions relating to no-objection notices 5

- (1) The Commission may issue a no-objection notice subject to any conditions relating to the circumstances in which the no-objection notice applies, including (without limitation) by reference to any person or class of persons or any transaction or class of transactions.
- (2) The no-objection notice must include the Commission’s reasons for imposing the conditions. 10
- (3) The Commission may vary a condition imposed under this section if—
 - (a) the no-objection notice was given on information that was false or misleading in a material particular; or
 - (b) there has been a material change of circumstances; or 15
 - (c) a condition upon which the no-objection notice was issued has not been complied with.
- (4) The Commission must not vary conditions under this section unless the person on which the condition was imposed, and any other person who in the opinion of the Commission is likely to have an interest in the matter, is given a reasonable opportunity to make submissions to the Commission and the Commission has had regard to those submissions. 20
- (5) The Commission must state in writing its reasons for varying conditions imposed under this section.

Compare: Competition and Consumer Act 2010 s 93AAA (Aust) 25

65Q Commission may rescind no-objections

- (1) The Commission may rescind a no-objection, after giving 45–30 working days’ notice to the person that notified the conduct, if the Commission is satisfied that **section 65K(1)** applies or will apply.
- (2) The Commission may also rescind a no-objection if the Commission is satisfied that— 30
 - (a) ~~that~~ the activity engaged in is materially different from the type of activity that was notified; or
 - (b) the no-objection notice was given on information that was false or misleading in a material particular; or 35
 - (c) there has been a material change of circumstances; or
 - (d) a condition of the no-objection notice has not been complied with.

- (3) The Commission must not rescind a no-objection under **subsection (1)** unless the person that notified the conduct, and any other person who in the opinion of the Commission is likely to have an interest in the rescision, is given a reasonable opportunity to make submissions to the Commission and the Commission has had regard to those submissions. 5
- (4) The notice rescinding a no-objection must include the Commission’s reasons for rescinding the no-objection.
- (5) The **protected period** referred to in **section 650** ends when a no-objection is rescinded, but the rescision does not affect anything done while the no-objection was in force. 10

Powers of Commission to grant exemptions and refund or waive fees

65R Commission may grant class exemptions

- (1) The Commission may, on the terms and conditions (if any) that it thinks fit, exempt any class of persons or any class of transactions from compliance with any provision ~~or provisions~~ of Part 2 or 3 in respect of a kind of conduct specified in the exemption, if the Commission is satisfied in all the circumstances— 15
- (a) that conduct of that kind would not have the effect, or would not be likely to have the effect, of substantially lessening competition; or
 - (b) that conduct of that kind would result, or would be likely to result, in a benefit to the public that would outweigh the detriment to the public that would result, or would be likely to result, from conduct of that kind. 20
- (2) The Commission may specify in the exemption any 1 or more of the following limitations: 25
- (a) a limitation to persons of a specified kind:
 - (b) a limitation to circumstances of a specified kind:
 - (c) a limitation to conduct that complies with specified conditions.
- (3) An exemption granted under this section may continue in force for not more than 10 years (and at the close of the date that is 10 years after the exemption first comes into force, the exemption must be treated as having been revoked unless it is sooner revoked or expires). 30
- (4) While the exemption remains in force, but subject to any limitations specified under **subsection (2)**, the ~~provisions of Part 2~~ provision of Part 2 or 3 specified in the exemption ~~do~~ does not apply in relation to conduct of the kind specified in the exemption.
- (5) The breach of a term or condition of an exemption ~~granted under this section~~ is a breach of the provision to which the exemption relates (unless the terms of the exemption otherwise provide). 35
- (6) The Commission must not grant an exemption ~~under this section~~ unless it is satisfied that—

- (a) granting the exemption is necessary or desirable in order to promote the purpose of this Act; and
- (b) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
- (7) The Commission’s reasons for making an exemption (including why the exemption is appropriate) must be published together with the exemption. 5
- (8) Exemptions ~~made~~ granted under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
Compare: Competition and Consumer Act 2010 s 95AA (Aust)
- 65S Power for Commission to refund or waive certain fees** 10
- The Commission may, in its discretion, refund or waive all or part of a fee for any application under this Part if the Commission is satisfied that—
- (a) the payment of the fee would cause undue hardship; or
- (b) the public benefits of the notified conduct significantly outweigh the detriments. 15
- 23 Section 66 amended (Commission may give clearances for business acquisitions)**
- (1) In section 66(3), replace “such longer period as” with “a longer period of up to 140 working days if”.
- (2) After section 66(3), insert: 20
- (3A) The Commission may agree with the person to extend the time frame for a determination under subsection (3) beyond 140 working days by 20 additional working days at a time if more time is needed to consider the application because—
- (a) ~~of the complexity of the acquisition~~ its complexity; or 25
- (b) the Commission decides to hold a conference under section 69B; or
- (c) the person offers an undertaking during the Commission’s consideration; or
- (d) a change in circumstances or other event occurs during the Commission’s consideration that materially affects its consideration. 30
- (3) In section 66(4), after “subsection (3)”, insert “, or a longer period agreed in accordance with **subsection (3A)**,”.
- 24 Section 67 amended (Commission may grant authorisations for business acquisitions)**
- (1) In section 67(3), replace “such longer period as” with “a longer period of up to 35
160 working days if”.
- (2) After section 67(3), insert:

- (3A) The Commission may agree with the person to extend the time frame for a determination under subsection (3) beyond 160 working days by 20 additional working days at a time if more time is needed to consider the application because—
- (a) ~~of the complexity of the acquisition~~ its complexity; or 5
 - (b) the Commission decides to hold a conference under section 69B; or
 - (c) the person offers an undertaking during the Commission’s consideration; or
 - (d) a change in circumstances or other event occurs during the Commission’s consideration that materially affects its consideration. 10
- (3) In section 67(4), after “subsection (3)”, insert “, or a longer period agreed in accordance with **subsection (3A)**”.
- (4) Repeal section 67(5).
- 25 Section 68 amended (Provisions applying to applications for clearances and authorisations for business acquisitions)** 15
- (1) After section 68(1), insert:
- (1A) After making a determination under section 66(3) or 67(3), the Commission must—
- (a) give to the applicant, in writing,—
 - (i) a summary of reasons for its decision no later than 1 working day after giving notice of its decision; and 20
 - (ii) a full statement of reasons for its decision no later than 20 working days after giving notice of its decision; and
 - (b) make publicly available the information referred to in **paragraph (a)** as soon as practicable after providing it to the applicant, except that the Commission may omit any information if it is satisfied that there is good reason not to make it publicly available. 25
- (2) Replace section 68(3) with:
- (3) If the Commission declines to give a clearance or grant an authorisation under subsection (2), the Commission must give reasons in accordance with **subsection (1A)**. 30
- 26 New section 68A inserted (Suspension of time frame for determining clearance or authorisation)**
- After section 68, insert:
- 68A Suspension of time frame for determining clearance or authorisation** 35
- (1) ~~The Commission may suspend the time frame for making a determination under section 66 or 67, by notice in writing to the applicant, if any 1 or more of the following circumstances apply:~~

- (a) ~~the acquisition or a related acquisition is being considered by an overseas regulator:~~
- (b) ~~the Commission has required information or documents in accordance with section 98 from a person (other than the applicant) for the purpose of considering the clearance or authorisation and that person has not complied with the requirement:~~ 5
- (c) ~~the Commission has requested information or documents be provided voluntarily by a person (other than the applicant) for the purpose of considering the clearance or authorisation and that person has not provided the information or documents.~~ 10
- (1) The Commission may suspend the time frame for making a determination under section 66 or 67, by notice in writing to the applicant, if—
 - (a) any 1 or more of the following circumstances apply:
 - (i) the acquisition or a related acquisition is being considered by an overseas regulator: 15
 - (ii) the Commission has required information or documents in accordance with section 98 from a person for the purpose of considering the clearance or authorisation and that person has not complied with the requirement:
 - (iii) the Commission has requested that information or documents be provided voluntarily by a person for the purpose of considering the clearance or authorisation and the person has not provided the information or documents; and 20
 - (b) the Commission is satisfied that the consideration by the overseas regulator or the information or document (as applicable) is material to the Commission's determination. 25
- (2) The notice must state—
 - (a) the applicable circumstance under **subsection (1)(a)**; and
 - (b) when the suspension will end, which must be no later than 5 working days after the circumstance ceases to apply. 30
- (3) A working day that falls within the period of suspension does not count for the purpose of the time frames under section 66 or 67 for determining a clearance or authorisation.

27 Section 69A amended (Commission may accept undertakings)

- (1) Replace section 69A(1) with: 35
- (1) In giving a clearance or granting an authorisation under section 66 or 67, the Commission may accept a written undertaking given by or on behalf of the person who gave a notice under section 66(1) or 67(1), as the case may be, to do any 1 or more of the following:

- (a) dispose of assets or shares specified in the undertaking:
- (b) take or refrain from taking an action specified in the undertaking:
- (c) pay to the Commission all or part of the Commission's costs incurred in monitoring compliance with the undertaking and investigating, or bringing proceedings in relation to, a contravention of the undertaking. 5
- (2) Replace section 69A(2) with:
- (2) However, the Commission may accept an undertaking under **subsection (1)(b)** only if the Commission is satisfied that—
- (a) ~~without the undertaking it is unlikely that the Commission would be able to give the clearance or grant the authorisation; and~~ 10
- (b) either— or both of the following apply:
- (i) ~~an undertaking under **subsection (1)(a)** would be insufficient; or~~
- (i) addressing the effects of the acquisition by way of an undertaking under **subsection (1)(a)** would cause costs (including efficiency costs) out of all proportion to those effects or is otherwise not reasonably practicable; 15
- (ii) the undertaking is reasonably necessary to give effect to an undertaking under **subsection (1)(a)**; and
- (c) the undertaking is reasonably practicable for the Commission to monitor and enforce, having regard to the costs of doing so and any undertaking that may be given under **subsection (1)(c)**. 20
- 28 Section 69AB amended (Authorisation or clearance void if undertaking contravened)**
- After section 69AB(1), insert:
- (1A) However, a person does not contravene an undertaking accepted under section 69A if— 25
- (a) ~~the breach failure to comply~~ is only minor or technical in nature; and
- (b) ~~the person notifies the Commission as soon as they became aware of the breach no later than 5 working days after becoming aware of the material facts of the failure to comply; and~~ 30
- (c) the person is taking, or has taken, reasonable steps to mitigate or remedy the effects of the ~~breach failure to comply~~ to the satisfaction of the Commission.
- 29 Section 69AC amended (Variation of undertaking)**
- (1) After section 69AC(1), insert: 35
- (1A) For the purposes of subsection (1), the Commission may take into account any event or change in circumstances that occurred after the decision.
- (2) Replace section 69AC(2)(b) with:

- (b) must be made no later than 20 working days before the earlier of the following:
- (i) the date on which the relevant obligation under the undertaking must be met:
 - (ii) the date on which the person proposes that the variation take effect. 5
- (3) Replace section 69AC(3) with:
- (3) The Commission must notify the person of its decision on the application no later than 3 working days before the earlier of the following:
- (a) the date on which the relevant obligation under the undertaking must be met: 10
 - (b) the date on which the person proposes that the variation take effect.
- 30 New section 74D and cross-heading inserted**
- After section 74C, insert:
- Enforcement of conditions* 15
- 74D Enforcement of conditions**
- (1) If the Commission considers that a person has breached a condition imposed under section 61(2) or **65P**, the Commission may apply to the High Court for an order under **subsection (2)**.
- (2) The court may make any 1 or more of the following orders if it is satisfied that the person has breached a term of the condition: 20
- (a) an order directing the person to comply with the term:
 - (b) an order directing the person to pay to the Crown an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach: 25
 - (c) any order that the court thinks appropriate that directs the person to compensate any other person who has suffered loss or damage as a result of the breach:
 - (d) an order for any consequential relief that the court thinks appropriate.
- 31 Section 75 amended (Jurisdiction of High Court)** 30
- (1) After section 75(1)(aa), insert:
- (aab) applications for orders under **section 74D** to enforce conditions:
- (2) After section 75(1)(a)(iii), insert:
- (iv) applications for orders under **section 82F**:

31A Section 81 replaced (Injunctions may be granted by court for contravention of Part 2)

Replace section 81 with:

81 Injunctions may be granted by court for contravention of Part 2

The court may, on the application of the Commission or any other person, grant an injunction— 5

(a) restraining a person from engaging in conduct that constitutes or would constitute any of the following:

(i) a contravention of any of the provisions of Part 2:

(ii) any attempt to contravene such a provision: 10

(iii) aiding, abetting, counselling, or procuring any other person to contravene such a provision:

(iv) inducing, or attempting to induce, any other person, whether by threats, promises, or otherwise, to contravene such a provision:

(v) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision: 15

(vi) conspiring with any other person to contravene such a provision:

(b) requiring a person to do an act or a thing if—

(i) that person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do that act or thing; and 20

(ii) the refusal or failure constitutes or would constitute conduct referred to in **paragraph (a)(i) to (vi)**.

81A When court may grant performance injunctions for contravention of Part 2 25

(1) This section applies for the purposes of **section 81(b)**.

(2) A court may grant an injunction requiring a person to do an act or a thing if—

(a) it is satisfied that the person has refused or failed to do that act or thing;
or

(b) it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing. 30

(3) The court may grant an interim injunction requiring a person to do an act or a thing if, in its opinion, it is desirable to do so.

(4) **Subsections (2)(a) and (3)** apply whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing. 35

(5) **Subsections (2)(b) and (3)** apply whether or not—

- (a) the person has previously refused or failed to do that act or thing; or
- (b) there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.

Compare: 2020 No 60 s 37; 2023 No 31 s 139

32 New section 82F inserted (Court may order corrective action for contravention of Part 2) 5

After section 82E, insert:

82F Court may order corrective action for contravention of Part 2

- (1) The court may, on the application of the Commission or any other person, make an order described in **subsection (2)** if the court is satisfied that a person has engaged in conduct set out in section 80(1) (a **contravention**). 10
- (2) An order may require the person to take any steps specified in the order to—
 - (a) avoid, remedy, or mitigate any actual or likely adverse effects arising from the contravention:
 - (b) ensure that the contravention is not continued or repeated. 15
- (3) Steps specified in the order may, without limitation, include—
 - (a) making goods, services, or information available for supply, or adopting a process for considering and dealing with requests for their supply:
 - (b) using a specified methodology, protocol, standard, or application programming interface: 20
 - (c) acting in a non-discriminatory manner in dealings with any class of persons:
 - (d) reflecting terms specified in the order in any contracts with any class of persons, including suppliers or customers:
 - (e) disclosing information to the Commission, another person, or the public. 25
- (4) The order may—
 - (a) appoint a person to monitor or report on compliance with the order:
 - (b) provide for the resolution of disputes in carrying out the order:
 - (c) be made on any other terms and conditions that the court thinks fit.
- (5) The court may at any time rescind or vary an order made under this section. 30

Compare: 2003 No 52 s 98A

33 Section 83 amended (Pecuniary penalties relating to business acquisitions)

- (1) In section 83(1), replace “either of those sections” with “any of those sections” in each place.
- (2) In section 83(1)(a), replace “section 47 or 47B” with “section 47, 47B, **47E, or 47F**”. 35

- (3) After section 83(2)(d), insert:
- (e) in the case of **section 47E(3)(b)**, the extent of a person’s compliance with any safeguarding steps specified under **section 47E(4)**.
- 34 Section 84 amended (Injunctions may be granted by court for contravention of Part 3 or undertaking)** 5
- (1) In section 84(1), after “section 47”, insert “, **47E, or 47F**” in each place.
- (2) In section 84(1)(a), replace “that provision” with “any of those sections” in each place.
- (3) After section 84(2)(c), insert:
- (d) direct the person to comply with the undertaking, if the undertaking is of a kind referred to in **section 69A(1)(b) or (c)**.
- 35 Section 84A amended (Actions for damages for contravention of Part 3)**
- In section 84A(1), replace “section 47 or 47B” with “section 47, 47B, **47E, or 47F**” in each place.
- 36 Section 85 amended (Court may order divestiture of assets or shares in respect of contravention of section 47)** 15
- (1) In the heading to section 85, after “**section 47**”, insert “, **47E, or 47F**”.
- (2) In section 85(1), after “section 47”, insert “, **47E, or 47F**” in each place.
- 37 Section 85A amended (Pecuniary penalties for contravention of undertaking)** 20
- In section 85A(7), replace “date on which the relevant obligation under the undertaking was required to be met” with “date of the contravention”.
- 38 Section 85B replaced (Court may order divestiture of assets or shares in respect of contravention of undertaking)**
- Replace section 85B with: 25
- 85B Other court orders in respect of contravention of undertaking**
- (1) If the Commission considers that a person has contravened an undertaking accepted under section 69A, the Commission may apply to the court for an order under **subsection (2)**.
- (2) The court may make any 1 or more of the following orders if it is satisfied that the person has contravened the undertaking: 30
- (a) if the undertaking is of the kind referred to in **section 69A(1)(a)**, an order directing disposal by that person of any assets or shares in accordance with the undertaking;
- (b) if the undertaking is of the kind referred to in **section 69A(1)(b) or (c)**, an order directing the person to comply with the undertaking: 35

- (c) any order that the court thinks appropriate that directs the person to compensate any other person who has suffered loss or damage as a result of the contravention:
- (d) an order for any consequential relief that the court thinks appropriate.
- (3) An application under this section may be made at any time within 12 months from the date of the contravention. 5

39 New section 87D and cross-heading inserted

After section 87C, insert:

No victimisation in relation to making complaint or providing information to Commission 10

87D Pecuniary penalties, injunctions, damages, and other orders for victimisation

- (1) Sections 80, 81, 82, 82A, and 89 apply to a contravention of **section 97B** as if a contravention of **section 97B** were a contravention of a provision of Part 2.
- (2) In this section, **contravention of section 97B** means any of the following: 15
 - (a) an actual contravention of **section 97B**:
 - (b) an attempted contravention of **section 97B**:
 - (c) aiding, abetting, counselling, or procuring a contravention of **section 97B**:
 - (d) inducing, or attempting to induce, a contravention, whether by threats, promises, or otherwise, of **section 97B**: 20
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of **section 97B**:
 - (f) conspiring with any other person in a contravention of **section 97B**.

39A Section 88 amended (General provisions relating to granting of injunctions) 25

- (1) In section 88(3A), replace “under this section” with “under this Part”.
- (2) In section 88(4), replace “under this section” with “for an injunction under this Part”.

40 Section 91 amended (Appeals in relation to determinations by Commission) 30

- (1) After section 91(1)(b), insert:
 - (c) a ~~decision~~ determination of the Commission under any of ~~sections 65E to 65R~~ **sections 65K, 65M, 65O(1)(a), 65P, and 65Q**.
- (2) After section 91(1B), insert: 35

- (1C) There is also a right of appeal to the High Court on a question of law against a ~~decision~~ determination of the Commission under any of ~~sections 65E to 65R~~ **sections 65K, 65M, 65O(1)(a), 65P, and 65Q.**
- (3) Replace section 91(2) with:
- (2) Notice of appeal must be given within— 5
- (a) 20 working days after—
- (i) the date of the determination appealed against; or
- (ii) the date on which the full statement of reasons is made publicly available under **section 68(1A)** if the appeal is against a determination under section 66 or 67; or 10
- (b) such further time as the court may allow.
- 41 Section 93 amended (Determination of appeals)**
- In section 93, insert as subsection (2):
- (2) However,—
- (a) a court may not modify or reverse the determination or any part of a determination only because the Commission has declined to accept an undertaking under **section 69A(1)(b)**; and 15
- (b) **subsection (1)(b)** does not include the power to accept an undertaking under **section 69A(1)(b)**.
- 42 New sections 97A and 97B and cross-heading inserted** 20
- After the Part 7 heading, insert:
- No retaliation or victimisation in relation to making complaint or providing information to Commission*
- 97A No retaliation by employer**
- (1) An employer must not retaliate, or threaten to retaliate, against an employee because the employee— 25
- (a) makes or intends to make a complaint to the Commission that is within the scope of the Commission’s functions, powers, or duties under any legislation; or
- (b) provides or intends to provide information to the Commission that is within the scope of the Commission’s functions, powers, or duties under any legislation. 30
- (2) **Subsection (1)** applies even if the employee is mistaken about the complaint or information being within the scope of the Commission’s functions, powers, or duties under any legislation, provided that the employee has a reasonably held belief that it is within the scope. 35
- (3) **Subsection (1)** does not apply if—

- (a) the employee knowingly made a false allegation or otherwise acted in bad faith; or
- (b) the information is or includes intelligence and security information, defence information, or international relations information.
- (4) If an employer retaliates, or threatens to retaliate, against an employee in breach of **subsection (1)**, the employee has a personal grievance under **section 103(1)(I)** of the Employment Relations Act 2000, and Part 9 of that Act applies accordingly. 5
- (5) For the purposes of this section,—
- defence information, intelligence and security information, and international relations information** have the meanings given in section 4 of the Protected Disclosures (Protection of Whistleblowers) Act 2022 10
- employee** has the meaning given in section 6 of the Employment Relations Act 2000
- employer** has the meaning given in section 5 of the Employment Relations Act 2000 15
- retaliate** has the meaning given in section 21 of the Protected Disclosures (Protection of Whistleblowers) Act 2022.
- Compare: 2022 No 20 s 21
- 97B No victimisation** 20
- (1) A person (**A**) must not treat, or threaten to treat, another person (**B**) less favourably than A would treat other persons in the same or substantially similar circumstances because—
- (a) B (or a relative or an associate of B)—
- (i) makes or intends to make a complaint to the Commission that is within the scope of the Commission’s functions, powers, or duties under any legislation; or 25
- (ii) provides or intends to provide information that is within the scope of the Commission’s functions, powers, or duties under any legislation; or 30
- (iii) has encouraged another person to take an action described in **subparagraph (i) or (ii)**; or
- (iv) has given information in support of, or relating to, an action described in **subparagraph (i) or (ii)**; or
- (b) A believes or suspects that B (or a relative or an associate of B) intends to do, or has done, anything described in **paragraph (a)**. 35
- (2) **Subsection (1)** applies even if B (or the relative or associate of B) is mistaken about the complaint or information being within the scope of the Commission’s

- functions, powers, or duties under any legislation, provided that B (or the relative or associate of B) has a reasonably held belief that it is within the scope.
- (3) **Subsection (1)** does not apply if—
- (a) B knowingly made a false allegation or otherwise acted in bad faith; or
 - (b) the information is or includes intelligence and security information, defence information, or international relations information.
- (4) For the purposes of this section, **defence information, intelligence and security information, and international relations information** have the meanings given in section 4 of the Protected Disclosures (Protection of Whistleblowers) Act 2022.
- Compare: 2022 No 20 s 22

43 Section 98 amended (Commission may require person to supply information or documents or give evidence)

- (1) In section 98(1)(b), after “documents specified in the notice,”, insert “(within the time and in the manner specified in the notice)”. 15
- (2) After section 98(1)(b), insert:
- (ba) if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in any document or class of documents specified in the notice (within the time and in the manner specified in the notice); or 20
- (3) Repeal section 98(4).

44 Section 98A amended (Power to search)

- (1) In section 98A(1), after “place”, insert “or thing”.
- (2) In section 98A(2), after “place”, insert “or thing” in each place.

45 Section 98H amended (Supply of information and documents in relation to section 36A) 25

- (1) In section 98H(1)(b), after “documents specified in the notice,”, insert “(within the time and in the manner specified in the notice)”.
- (2) After section 98H(1)(b), insert:
- (c) if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in any document or class of documents specified in the notice (within the time and in the manner specified in the notice). 30
- (3) In section 98H(2), replace “produce” with “produce, reproduce, or assist in reproducing”. 35
- (4) In section 98H(2), replace “produces” with “produces, reproduces, or assists in reproducing”.

- 46 Section 99AA amended (Sharing of information and documents with public service agencies, statutory entities, Reserve Bank, and New Zealand Police)**
- In section 99AA(6), replace “section 29 of the Fuel Industry Act 2020” with “sections 71 and 72 of the Fuel Industry Act 2020”. 5
- 47 Section 99C amended (Definitions of terms used in sections 99B to 99P)**
- In section 99C, definition of **co-operation arrangement**, replace “an overseas regulator” with “1 or more overseas regulators”.
- 48 Section 99E amended (Government-to-government co-operation arrangements)** 10
- (1) In section 99E(1), replace “an overseas regulator” with “1 or more overseas regulators”.
- (2) In section 99E(1)(a), replace “the overseas regulator” with “each overseas regulator”.
- (3) In section 99E(1)(b), replace “the overseas regulator” with “an overseas regulator”. 15
- (4) After section 99E(3), insert:
- (4) Subsections (2) and (3) apply with all necessary modifications before an existing co-operation arrangement may be extended to include another overseas regulator. 20
- 49 Section 99F amended (Regulator-to-regulator co-operation arrangements)**
- (1) In section 99F(1), replace “an overseas regulator” with “1 or more overseas regulators”.
- (2) After section 99E(3), insert:
- (4) Subsections (1) and (2) apply with all necessary modifications before an existing co-operation arrangement may be extended to include another overseas regulator. 25
- 50 Section 99G amended (Content of co-operation arrangements)**
- In section 99G(1), replace “overseas regulator” with “overseas regulators” in each place. 30
- 51 Section 99H amended (Procedures relating to co-operation arrangements)**
- (1) In section 99H(1), replace “the overseas regulator” with “each overseas regulator” in each place.
- (2) In section 99H(2), replace “overseas regulator” with “overseas regulators”.
- (3) In section 99H(3), after “amendment to a co-operation arrangement”, insert “, including to an extension of the co-operation arrangement to include another overseas regulator”. 35

52 Section 100 replaced (Powers of Commission to prohibit disclosure of information, documents, and evidence)

Replace section 100 with:

- 100 Powers of Commission to prohibit disclosure of information, documents, and evidence** 5
- (1) The Commission may, in relation to any application for clearance or authorisation or any notification under Part 5, or in the course of carrying out any other investigation or inquiry under this Act, make an order prohibiting—
- (a) the publication or communication of any information, document, or evidence, or any class of information, document, or evidence, given to, or obtained by, the Commission in connection with the operations of the Commission (whether or not the information, document, or evidence is already in the Commission’s possession at the time of making the order): 10
- (b) the giving of any evidence involving any such information, document, or evidence. 15
- (2) The order has effect for the period specified in the order.
- (3) However, the order must not have effect after ~~10~~ 5 years have elapsed since—
- (a) the date on which the Commission makes a final determination in respect of the application or notice that the order relates to or the date on which the application or notice is withdrawn: 20
- (b) the conclusion of the investigation or inquiry that the order relates to.
- (3A) Before making an order that has effect beyond the date of the final determination of an application or a notice or the conclusion of the investigation or inquiry (as applicable), the Commission must consider whether the duration of the order is appropriate, having regard to— 25
- (a) the risk of harm to the supplier of, or person who is the subject of, the information, document, or evidence if the order is not made for that duration; and
- (b) the benefits of transparency, accountability, and public trust in the Commission’s activities. 30
- (4) The Commission may make the order on any terms and conditions that it thinks fit.
- (5) On the expiry of the order, the provisions of the Official Information Act 1982 apply in respect of any information, document, or evidence that was the subject of the order, subject to **section 100AA**. 35
- (6) A person who, contrary to the order, publishes or communicates any information, document, or evidence without reasonable excuse commits an offence and is liable, on conviction, to,—
- (a) in the case of an individual, a fine not exceeding \$100,000:

- (b) in any other case, a fine not exceeding \$300,000.
- (7) An order made under this section also binds the Commission, although the order may make different provision for the Commission.
- (8) For the purposes of this section, **inquiry** includes a study carried out under Part 3A.

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53 New section 100AA inserted (Confidentiality of information)

After section 100, insert:

100AA Confidentiality of information

- (1) This section applies to the following information:
 - (a) information provided to the Commission under this Act or any other legislation in confidence: 10
 - (b) information derived from or based on information referred to in **paragraph (a)**.
- (2) The Commission must not publish or disclose information to which this section applies unless— 15
 - (a) the information is available to the public under an Act (other than the Official Information Act 1982) or is otherwise publicly available information; or
 - (b) the information is in a statistical or summary form; or
 - (c) the publication or disclosure is for the purposes of, or in connection with, the performance or exercise of any function or power conferred or imposed on the Commission by this Act or any other legislation; or 20
 - (d) the publication or disclosure is made under section 99AA or a co-operation arrangement; or
 - (e) the publication or disclosure is to a person who the Commission is satisfied has a proper interest in receiving the information; or 25
 - (f) the publication or disclosure is with the consent of the person who supplied the information or to whom the information relates.
- (3) The Commission may make information to which this section applies available under the Official Information Act 1982 only if 1 or more grounds under **subsection (2)** apply. 30
- (4) However, this section ceases to apply to information after a period of ~~10~~ 5 years has elapsed since the information was provided to the Commission (but *see* **subsection (5)**).
- (5) The Commission may extend the period referred to in **subsection (4)** beyond ~~10~~ 5 years by increments of no more than 5 years at a time if, after consulting the person who provided the information, the Commission is satisfied that disclosure of the information may cause harm to that person or any person who is 35

- the subject of the information (in which case, the extended period applies in place of the ~~10-year~~ 5-year period for the purposes of **subsection (4)**).
- (6) However, the Commission must not extend the period beyond the date on which the information is required to be transferred to Archives New Zealand under the Public Records Act 2005. 5
- (7) After this section ceases to apply to the information, the Official Information Act 1982 applies in the usual way.
Compare: 2011 No 5 s 59; 2021 No 31 s 269
- 54 Section 102 amended (Service of notices)** 10
After section 102(1)(d), insert:
(e) in any other manner a District Court Judge directs.
- 55 Section 103 amended (Offences)**
In section 103(1)(a), after “notice under section”, insert “**51F(2)**”.
- 56 Section 106 amended (Proceedings privileged)** 15
Replace section 106(5) with:
(5) A statement made by a person in response to a question put by the Commission that the person is required to answer is not admissible against the person in criminal proceedings or proceedings for pecuniary penalties.
- 57 Schedule 1AA amended** 20
In Schedule 1AA,—
(a) insert the Part set out in **Schedule 1** of this Act as the last Part; and
(b) make all necessary consequential amendments.
- 58 Schedule 5 repealed**
Repeal Schedule 5.
- 59 New Schedule 8 inserted** 25
After Schedule 7, insert the **Schedule 8** set out in **Schedule 2** of this Act.

Part 2

Consequential amendments

- 60 Consequential amendments to principal Act** 30
Amend the principal Act as set out in **Schedule 3**.
- 61 Amendments to other legislation**
Amend the legislation specified in **Schedule 4** as set out in that schedule.

Schedule 1
New Part 7 inserted into Schedule 1AA

s 57

Part 7		
Provisions relating to Commerce (Promoting Competition and Other Matters) Amendment Act 2025		
32	Interpretation	5
	In this Part,—	
	amendment means an amendment made by the Commerce (Promoting Competition and Other Matters) Amendment Act 2025	10
	commencement date means, in relation to an amendment or a new section inserted by an amendment, the date on which the amendment comes into force.	
33	Existing proceedings	
(1)	This clause applies to amendments to the following sections:	
	(a) section 2, to the extent that it relates to the definition of assets:	15
	(b) section 3:	
	(c) section 47 (and related consequential changes) .	
(2)	The amendments apply on and from the commencement date to proceedings in respect of an acquisition that takes place on or after the commencement date, whether the proceedings are commenced before, on, or after the commencement date.	20
34	Applications for clearance or authorisation of business acquisitions	
	Section 68A and the amendments to sections 66, 67, 68, and 69A apply only to applications for clearance or authorisation made on or after the commencement date.	25
35	Existing undertakings given under section 69A	
	The amendments to sections 69AB and 69AC apply on and from the commencement date to an undertaking, whether the undertaking was given before, on, or after the commencement date.	
36	Retaliation or victimisation	30
	Sections 97A and 97B apply to retaliation or victimisation described in those sections that occurs on or after the commencement date, whether the retaliation or victimisation is in response to conduct that occurred before, on, or after the commencement date.	

37	Existing orders under section 100	
(1)	This clause applies to orders made under section 100 before the commencement date (existing orders).	
(2)	The amendments to section 100 do not apply to an existing order.	
38	Confidential information	5
(1)	Section 100AA applies on and from the commencement date to information whether that information is provided to the Commission before, on, or after the commencement date.	
(2)	However, section 100AA does not apply in respect of any request for information under the Official Information Act 1982 that is made before the commencement date.	10
39	Existing material incorporated by reference	
(1)	This clause applies in relation to any material that was, immediately before the commencement date of the amendment to section 53ZF, incorporated by reference into—	15
(a)	a section 52P determination:	
(b)	an input methodology.	
(2)	On and from the commencement date, the material must be treated as having been incorporated by reference in accordance with section 64 of the Legislation Act 2019.	20

Schedule 2
New Schedule 8 inserted into principal Act

s 59

Schedule 8
Types of notifiable conduct for purposes of statutory notification regime

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s 65G

1 Interpretation

In this schedule, unless the context otherwise requires,—

collective bargaining means any collective negotiation, by 2 or more persons who supply or acquire goods or services in competition with each other, of the terms (for example, price) for the supply or acquisition of those goods or services

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resale price maintenance means the doing of any acts referred to in section 37(3) or 38(1).

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2 Types of notifiable conduct for purposes of statutory notification regime

The types of notifiable conduct for the purpose of **section 65G**, their relevant provisions for the purposes of **section 65N**, and their maximum protected periods, are as follows:

Type of conduct	Thresholds that apply in order to be notifiable conduct	Provisions of Act in respect of which no-objection has same effect as authorisation	Objection test for purposes of section 65K(1)(b)	Maximum protected period
Collective bargaining	The parties reasonably expect that the value of the goods or services supplied <u>or acquired</u> under any contract, arrangement, or understanding that results from the collective bargaining will total no more than \$3 million, <u>per party to the contract, arrangement, or understanding</u> , over a 12-month period	Section 30	The conduct will not result, or will be unlikely to result, in such a benefit to the public that the conduct should be permitted	5 years
Resale price maintenance	N/a	Sections 37, 38	The conduct will not result, or will be unlikely to result, in such a benefit to the public that the	10 years

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Type of conduct	Thresholds that apply in order to be notifiable conduct	Provisions of Act in respect of which no-objection has same effect as authorisation	Objection test for purposes of section 65K(1)(b) conduct should be permitted	Maximum protected period
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Schedule 3
Consequential amendments to principal Act

s 60

Section 47A

In section 47A(1), delete “of a business”.

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In section 47A(2)(a), delete “of a business”.

Section 66

In section 66(1), delete “of a business”.

Section 67

In section 67(1), delete “of a business”.

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Section 69

In section 69, delete “of a business”.

Section 84

In section 84(1)(b), replace “assets of any business” with “assets”.

In section 84(1)(c), replace “assets of any business” with “assets”.

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In section 84(2)(b), replace “assets of any business” with “assets”.

In section 84(2)(c), replace “assets of any business” with “assets”.

Schedule 4

Amendments to other legislation

s 61

Employment Relations Act 2000 (2000 No 24)

In section 67B(3), replace “(k)” with “(l)”. 5

After section 103(1)(k), insert:

- (l) that the employer has retaliated, or threatened to retaliate, against the employee in breach of **section 97A** of the Commerce Act 1986 (because the employee intends to make or has made a complaint, or intends to provide or has provided information, to the Commerce Commission). 10

After section 110B(3), insert:

- (4) This section applies to **section 97A** of the Commerce Act 1986 as if references to protected disclosure and disclosure were references to the actions of an employee described in **section 97A(1)(a) and (b)** of that Act. 15

Radiocommunications Act 1989 (1989 No 148)

In section 138(1), after “assets”, delete “of a business”.

Telecommunications Act 2001 (2001 No 103)

Repeal section 15(2)(e).

Repeal section 223. 20

Replace section 223 with:

223 Material incorporated by reference

- (1) This section applies for the purposes of section 66(2)(b) of the Legislation Act 2019. 25
- (2) If material incorporated by reference in a section 170 determination or an input methodology is amended or replaced by the originator of the material after the secondary legislation is made, legal effect may be given to that amendment or replacement material if— 30
- (a) the amendment or replacement material is of the same general character as the original material; and
- (b) the maker of the secondary legislation issues a notice to adopt the amendment or replacement material as having legal effect as part of the secondary legislation.
- (3) If material incorporated by reference in a section 170 determination or an input methodology expires, is revoked, or otherwise ceases to have effect, the material ceases to have legal effect as part of the secondary legislation if the maker 35

Telecommunications Act 2001 (2001 No 103)—continued

- of the secondary legislation issues a notice stating that the material ceases to have that legal effect.
- (4) A notice issued under **subsection (2)(b) or (3)** must be published in the *Gazette* and publicised by the maker of the secondary legislation.
- (5) This section does not limit section 66(2)(a) of the Legislation Act 2019. 5
- (6) In this section, **material** has the meaning given in section 63 of the Legislation Act 2019.

In Schedule 1AA, insert as the last Part (and make all necessary consequential amendments):

Part 4 10

Provision relating to Commerce (Promoting Competition and Other Matters) Amendment Act 2025

19 Existing material incorporated by reference

(1) This clause applies in relation to any material that was, immediately before the commencement date, incorporated by reference into— 15

(a) a section 170 determination;

(b) an input methodology.

(2) On and from the commencement date, the material must be treated as having been incorporated by reference in accordance with section 64 of the Legislation Act 2019. 20

(3) In this clause, **commencement date** means the day after the Commerce (Promoting Competition and Other Matters) Amendment Act **2025** receives the Royal assent.

Legislative history

9 December 2025
16 December 2025

Introduction (Bill 237–1)
First reading and referral to Economic Development, Science
and Innovation Committee