

Commerce (Promoting Competition and Other Matters) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Commerce Act 1986 (the **Act**) to implement a package of reforms that modernise and strengthen New Zealand’s competition settings.

The Bill gives effect to decisions made by the Government following a targeted review of the Act. The review identified a range of issues with the current regime, including complexity, cost, and delays in supporting pro-competitive collaboration; limitations in enforcement tools; and gaps in the merger control framework.

To address these issues, the Bill introduces a new statutory notification regime to better support beneficial collaboration between businesses. Initially limited to resale price maintenance and small business collective bargaining, the regime allows firms to notify the Commerce Commission (the **Commission**) of proposed conduct and to proceed unless the Commission objects. This provides a faster, more cost-effective alternative to formal clearance or authorisation. The Bill also empowers the Commission to grant class exemptions for categories of low-risk conduct and introduces discretion for the Commission to waive or reduce application fees. Additional changes streamline the cartel clearance process and provide greater flexibility for collaborative arrangements involving changing participants over time.

The Bill also strengthens the Commission’s enforcement toolkit by introducing corrective action orders for contravention of Part 2. These will enable the High Court, on application by the Commission, to order firms to take steps to restore competition following a breach of the Act.

To further support effective enforcement, the Bill enhances protections for confidential information. It introduces an exemption from the Official Information Act 1982 for confidential information provided to the Commission in the course of its functions, modelled on the legislative frameworks used by the Reserve Bank of New Zea-

land and the Financial Markets Authority. The Bill also extends the scope and duration of confidentiality orders, and introduces new protections for whistleblowers who provide information to the Commission.

The Bill updates the merger control regime to improve clarity, predictability, and regulatory effectiveness. It clarifies the substantial lessening of competition test to explicitly cover conduct that creates, strengthens, or entrenches market power, aligning with international best practice. The Commission will be empowered to assess patterns of serial acquisitions over time and accept behavioural undertakings to address competition concerns. The Bill introduces targeted “call-in” and “hold-separate” powers to allow the Commission to call in potentially harmful mergers for review, and it establishes new statutory time frames for complex merger decisions to improve transparency and timeliness.

Finally, the Bill introduces a new objective test for predatory pricing, removing the requirement to prove recoupment and clarifying when below-cost pricing is likely to breach the Act.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2025&no=237>

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 14 August 2025 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.mbie.govt.nz/dmsdocument/31117-regulatory-impact-statement-targeted-review-of-the-commerce-act-1986-proactiverelease-pdf>
- <https://www.regulation.govt.nz/our-work/regulatory-impact-statements/>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement.

Clause 3 provides that the Bill amends the Commerce Act 1986 (the **Act**).

Part 1

Main amendments

Part 1 contains the main amendments to the Act.

Clauses 4 and 5 amend the Act's interpretation sections. They make the following 3 changes that are intended to align the Act more closely with Australian competition legislation:

- *Clause 4(1)* updates the definition of assets to make clear its expansive meaning.
- *Clause 5(1)* adds, for the avoidance of doubt, that substantially lessening competition in a market may include creating, strengthening, or entrenching a substantial degree of power in the market. This does not change the need to establish a substantial lessening of competition, but rather makes clear that in some cases a small increase in the market power of a dominant player may give rise to a substantial lessening of competition in that market.
- *Clause 5(2)* relates to the prohibition on certain anticompetitive acquisitions. It allows the cumulative effect of a series of acquisitions over the previous 3 years to be considered as the effect of a single acquisition when applying the prohibition.

Clause 6 inserts *new section 36C*, which is a new objective test for predatory pricing. Under this provision, certain pricing conduct (such as pricing below Average Variable Cost or Average Avoidable Cost) by a person that has a substantial degree of power in a market will be treated as a misuse of market power (that is, 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). The fact of recoupment of strategic losses is not required to establish predatory pricing.

Clause 7 repeals a redundant reference in section 43 of the Act.

Clause 8 repeals section 46, which currently manages the overlap between the Part 2 and 3 prohibitions. The provision is considered no longer necessary given section 83(6) already provides that a person will not be liable to a pecuniary penalty under both Parts 2 and 3.

Clause 9 makes changes to the section 47 prohibition on certain acquisitions. It removes the qualifier that the assets are “of a business” to ensure that “assets” is not given a limited interpretation—so, for example, acquiring a strategic parcel of land or a key patent that is not sold as part of a business could be subject to section 47. The clause also introduces some factors that may be considered in determining whether 2 parties are associated with each other.

Clause 10 inserts *new sections 47E to 47G* to give the Commission new powers to—

- impose a temporary suspension of no more than 40 working days on an acquisition if the Commission considers it necessary to protect competition while it assesses whether the acquisition has the potential to breach section 47 (*new section 47E*); and

- require a person proposing an acquisition to apply for clearance if the acquisition has the potential to breach section 47 (*new section 47F*).

Clause 11 inserts a new cross-heading.

Clause 12 inserts *new section 51F*, which enables the Commission to carry out a study in relation to any market, industry, or sector in order to recommend to the Minister the development of pro-competition regulation (such as regulation to break down barriers to entry to, and expansion in, a market). This is based on the current power of the Commission to carry out competition studies in a market.

Clause 13 updates the current bespoke power and process for incorporating material by reference in Part 4 determinations. The change is to instead rely on the standard power in section 64 of the Legislation Act 2019 to incorporate material by reference in secondary legislation, while retaining the ability for some amendments to incorporated material to be given legal effect via a streamlined process. *Clause 58* repeals Schedule 5 of the Act, which contains the current bespoke process for incorporation by reference.

Clauses 14 and 15 replace outdated references.

Clauses 16 to 22 contain amendments to Part 5 of the Act (which currently relates to authorisations and clearances) about the following:

- a new streamlined beneficial collaboration clearance process, in which the Commission need only assess the conduct's purpose and whether cartel provisions are reasonably necessary, and need not also assess broader competition impacts (*see new section 65BA*);
- allowing clearance to be granted for collaborative arrangements that have changing participants over time (*see new section 65BC*);
- a new statutory notification regime to allow firms to notify proposed collaborative conduct and proceed unless the Commission objects (*see new sections 65E to 65Q and new Schedule 8*);
- a new power for the Commission to grant class exemptions to proactively exempt classes of collaborative conduct (*see new section 65R*);
- a new discretion for the Commission to waive or refund fees (for example, for clearances and authorisations) if it considers it appropriate to do so (*see new section 65S*).

Clauses 23 to 29 contain amendments to Part 5 of the Act in relation to authorisations and clearances for business acquisitions. The changes include—

- more prescriptive time frames for decision-making and statutory tests for the extension of time frames (*see clauses 23 and 24*);
- an ability for the Commission to suspend the statutory time frames while waiting for information (*see clause 26*);

- time frames for providing reasons to the applicant (*see clause 25* and also the amendment to the appeal time frame in *clause 40(3)*, which will start running only once full reasons for the decision are provided);
- enabling the Commission to accept a behavioural undertakings in some circumstances as part of giving an authorisation or clearance for acquisitions (*see clause 27*);
- an allowance for a minor or technical breach of an undertaking if certain conditions are complied with (*see clause 28*).

Clause 30 inserts *new section 74D*, which provides an enforcement option for breach of conditions attaching to a no-objection notice or an authorisation relating to restrictive trade practices (in addition to the Commission's power to rescind the no-objection notice or authorisation due to breach of conditions).

Clause 31 makes consequential changes to reflect the new court orders enabled by *new sections 74D and 82F*.

Clause 32 inserts *new section 82F*, which provides for the additional civil remedy of a performance injunction for breaches of Part 2 of the Act (restrictive trade practices). These orders could be used to restore competition in a market after a breach and can apply in addition to the other orders a court may make (for example, pecuniary penalties and compensation).

Clauses 33 to 37 make consequential amendments.

Clause 38 expands current section 85B to reflect the new power to accept behavioural undertakings. *New section 85B* gives the court a power to direct compliance with a behavioural undertaking. *Clause 34(3)* provides for a similar court order that can be used in cases where it appears to the court that a person intends to breach an undertaking, but has not yet done so.

Clauses 40 and 41 relate to appeal rights. *Clause 40(1) and (2)* provides only for appeals to the High Court on a question of law in respect of decisions of the Commission under *sections 65E to 65R* (which relate to the statutory notification regime and class exemptions). *Clause 41* prevents the court from modifying, reversing, or accepting a behavioural undertaking. Instead, the acceptance of a behavioural undertaking when giving a clearance or an authorisation for an acquisition is intended to remain at the sole discretion of the Commission.

Clause 42 inserts *new sections 97A and 97B*, which broadly prohibit retaliation against or victimisation of a person for providing information or making a complaint to the Commission.

New section 97A prohibits retaliation by an employer against their employee, with the consequence of a personal grievance under the Employment Relations Act 2000. *New section 97B* prohibits any person from treating another person less favourably than they would someone in comparable circumstances because the person (or their relative or associate) is assisting the Commission in the specified ways. *Clause 39* inserts *new section 87D*, which provides consequences for breach of *new section 97B*.

Enforcement options include injunctions, pecuniary penalties, compensation, and exemplary damages.

These new sections apply in addition to the whistleblowing protections in the Protected Disclosures (Protection of Whistleblowers) Act 2022 and will cover a broader range of disclosures to the Commission.

Clause 43 amends section 98 to clarify the scope of some aspects of the Commission's powers to require information and align this with modern precedents that other regulators are operating under.

Clause 45 replicates these changes in respect of section 98H requests for information relating to misuse of market power in trans-Tasman markets.

Clause 44 amends section 98A to make explicit that a search warrant may specify a thing to be searched. "Thing" is defined in the Search and Surveillance Act 2012 as including an intangible thing (for example, an email address or access information to an internet data storage facility). This definition applies for the purposes of section 98A.

Clause 46 makes a technical drafting change to replace an outdated reference.

Clauses 47 to 51 relate to co-operation arrangements with overseas regulators. The amendments are intended to make clear that arrangements may be multilateral as well as bilateral.

Clauses 52 and 53 insert *new sections 100 and 100AA* to provide for more expansive confidentiality protections and restrictions. Both provisions affect the application of the Official Information Act 1982.

New section 100 provides for the Commission to issue confidentiality orders and replaces the current power for doing so in section 100. There are 2 key changes. Under *new section 100*, a confidentiality order could remain in force for 10 years after the matter that it relates to has concluded, compared with the 20 working days currently allowed. While a confidentiality order remains in force, a person commits an offence if, without reasonable excuse, they publish or communicate information in contravention of the order and the information that the order covers remains outside the application of the Official Information Act 1982. The second change is to increase the maximum penalty for breach of a confidentiality order from \$4,000 to \$100,000 for an individual and from \$12,000 to \$300,000 for a body corporate.

New section 100AA introduces new protections for confidential information supplied to the Commission. The Commission would not be able to disclose the information, including under the Official Information Act 1982, unless 1 or more of the grounds specified in *new section 100AA(2)* apply. This restriction would apply for 10 years, after which time the information would become subject to disclosure under the Official Information Act 1982 in the usual way. In certain cases, the Commission may extend the 10-year period, meaning that the restriction on disclosure would continue to apply for the extended period. However, it could not extend beyond the time by which the records would need to be transferred to Archives New Zealand under the Public Records Act 2005. This is usually required after the records have been in exis-

tence for 25 years, but may be deferred (*see* sections 21 and 22 of the Public Records Act 2005).

Clause 54 makes an amendment relating to the methods of serving notices under the Act.

Clause 55 is related to the new powers of the Commission to carry out studies of pro-competition regulation (*see new section 51F*) and to require participants in the relevant market—

- to prepare and produce forecasts, forward plans, or other information and provide them to the Commission; and
- to apply any methodology specified by the Commission in the preparation of forecasts, forward plans, or other information.

The clause amends section 103 to make it an offence, without reasonable excuse, to refuse or fail to comply with those requirements from the Commission. The maximum penalty, in the case of an individual, is a fine not exceeding \$100,000 and, in any other case, a fine not exceeding \$300,000.

Clause 56 amends section 106(5), which provides for inadmissibility of statements in criminal proceedings or proceedings for pecuniary penalties, to make clear that it does not apply to any incriminating statements that may be made to the Commission on a voluntary basis.

Clause 57 inserts new transitional and savings provisions.

Part 2

Consequential amendments

Part 2 (clauses 60 and 61) makes consequential changes to the principal Act and other legislation relating to the main amendments.

Hon Scott Simpson

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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:	
(c)	section 10:	10
(d)	sections 16 and 17:	
(e)	sections 19 to 38:	
(f)	sections 40 and 41:	
(g)	section 59.	
3	Principal Act	15
	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:	20

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

- (2) In section 2(1), replace the definition of **document** with:

document means—

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(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—

(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:

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(ii) a book, map, plan, graph, or drawing:

(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**”.

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- (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:

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(2A) To avoid doubt, **substantially lessening competition in a market** may include creating, strengthening, or entrenching a substantial degree of power in the market.

- (2) After section 3(7), insert:

- (8) For the purposes of sections 47, 47A, 66, and 67, the effects of an acquisition include, where relevant, the combined effects of—

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(a) the acquisition (the **current acquisition**); and

(b) any other acquisition by any party to the current acquisition (including any interconnected or associated persons within the meaning of section 47(3)) of assets or shares in the relevant period.

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- (9) In **subsection (8)**, **relevant period** means,—

(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

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(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) **Subsection (8)** does not limit the circumstances in which an acquisition of assets or shares would have, or would be likely to have, the effect of substantially lessening competition in a market.

6 New section 36C inserted (Predatory pricing)

After section 36B, insert:

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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—
- (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).
- (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.
- (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.
- (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.
- (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.

- (7) In this section,—

- (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:
- (d) financial arrangements that create economic dependency on the part of the other person: 5
- (e) contractual agreements, informal arrangements, or historical patterns of deference.

10 New sections 47E to 47G inserted

After section 47D, insert:

47E Commission may suspend acquisition 10

- (1) The Commission may impose a suspension on an acquisition, or a proposed acquisition, of assets or shares by giving notice in writing to the person that has acquired or is proposing to acquire the assets or shares.
- (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 15
 - (b) state what assets or shares are subject to the suspension.
- (3) During the suspension period, the person who receives the notice—
 - (a) must not acquire the assets or shares; and
 - (b) must ensure that the business and its assets, if already acquired, are safe-guarded. 20
- (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.
- (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. 25
- (6) Section 47(2) to **(5)** applies to this section.

47F Commission may require clearance of acquisition 30

- (1) This section applies if the Commission has reasonable grounds to believe that—
 - (a) a person is proposing to acquire assets or shares (a **proposed acquisition**); and
 - (b) the proposed acquisition has the potential to result in a breach of section 47. 35

(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—	
(a)	seeking clearance for the acquisition under section 66; or	5
(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).	10
(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—	15
(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	20
(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.	25
11	New cross-heading above section 48 inserted After the Part 3A heading, insert:	
<i>Competition studies</i>		
12	New section 51F and cross-heading inserted After section 51E, insert:	30
<i>Studies of pro-competition regulation</i>		
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	35

order to recommend to the Minister the development of pro-competition regulation.

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— 5
- (a) to prepare and produce forecasts, forward plans, or other information and provide them to the Commission; and 10
- (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— 15
- (a) provide the final report to the Minister, including any recommendations that include any of the matters referred to in section 51B(3); and
- (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) 20

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.
- (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— 25
- (a) the amendment or replacement material is of the same general character as the original material; and 30
- (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 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. 35

- (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. 5
- 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”. 10

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”.

16 Part 5 heading replaced 15

Replace the Part 5 heading with:

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

17 New section 58AAA inserted (Overview) 20

After the Part 5 heading, insert:

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: 25
- (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: 30
- (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). 35

(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.

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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.

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(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

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(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.

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(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.

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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; and

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(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; and

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(c) section 30C(1) does not apply to any cartel provision in the contract, arrangement, understanding, or covenant.

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,—
- (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: 5
 - (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: 10
 - (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:
 - (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. 15
- (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. 20
- (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. 25
- (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. 30
- (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**. 35
- (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.

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

After section 65D, insert:

Statutory notification regime for certain restrictive trade practices

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 categories of conduct that are likely to be in the public interest or are unlikely to substantially lessen competition. 10
- (2) **Sections 65F to 65Q** provide a framework that enables persons to notify the Commission of proposed conduct (within the permitted categories) and, unless the Commission objects within a specified time frame, a provision or provisions of Part 2 of the Act do not apply to the conduct. 15
- (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

In **sections 65E to 65Q**, unless the context otherwise requires,— 20

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 25

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**. 30

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

- (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). 5
- (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 10
 - (b) the type of conduct is 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— 15
 - (i) would not have the effect, or would not be likely to have the effect, of substantially lessening competition in typical market conditions; or
 - (ii) is likely, in typical market conditions, to have public benefits that outweigh the expected detriments of the type of conduct; and 20
 - (d) a notice in respect of the type of conduct will be administratively efficient to assess within the time frame in **section 65M(2)**.
- (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 25
 - (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. 30
- (5) An order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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. 35
- (2) The Minister may make a recommendation to remove a type of conduct only if the Minister—
- (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
- (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). 5
- 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.
- (2) Section 60 applies to the notification as if it were an application referred to in that section. 10
- Compare: Competition and Consumer Act 2010 s 93(1) (Aust)
- 65K Commission may object**
- (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 15
- (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. 20
- 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. 25
- (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.
- (3) An order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 30
- 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— 35
- (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.

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

65O Length of protected period

- (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**.
- (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.

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

65P Conditions relating to no-objection notices

- (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.
- (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
 - (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.

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- (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)

65Q Commission may rescind no-objections

- (1) The Commission may rescind a no-objection, after giving 45 working days' notice to the person that notified the conduct, if the Commission is satisfied that **section 65K(1)** applies or will apply. 5
- (2) The Commission may also rescind a no-objection if the Commission is satisfied—
- (a) that the activity engaged in is materially different from the type of activity that was notified; or 10
 - (b) the no-objection notice was given on information that was false or misleading in a material particular; or
 - (c) there has been a material change of circumstances; or
 - (d) a condition of the no-objection notice has not been complied with. 15

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— 20
- (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. 25
- (2) The Commission may specify in the exemption any 1 or more of the following limitations:
- (a) a limitation to persons of a specified kind:
 - (b) a limitation to circumstances of a specified kind: 30
 - (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). 35
- (4) While the exemption remains in force, but subject to any limitations specified under **subsection (2)**, the provisions of Part 2 specified in the exemption do 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).
- (6) The Commission must not grant an exemption under this section unless it is satisfied that— 5
- (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. 10
- (8) Exemptions made 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** 15
- 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. 20
- 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: 25
- (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; or 30
 - (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. 35
- (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 160 working days if”.
- (2) After section 67(3), insert: 5
- (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; or 10
- (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. 15
- (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)** 20
- (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 25
- (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. 30
- (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)**. 35

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

- (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: 5
- (a) the acquisition or a related acquisition is being considered by an overseas regulator: 10
 - (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: 10
 - (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. 15
- (2) The notice must state—
- (a) the applicable circumstance under **subsection (1)**; and
 - (b) when the suspension will end, which must be no later than 5 working days after the circumstance ceases to apply. 20
- (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)

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- (1) Replace section 69A(1) with:

- (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: 30
- (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. 35

- (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
 - (b) either—
 - (i) an undertaking under **subsection (1)(a)** would be insufficient; or
 - (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)**.
- 28 Section 69AB amended (Authorisation or clearance void if undertaking contravened)** 10
- After section 69AB(1), insert:
- (1A) However, a person does not contravene an undertaking accepted under section 69A if—
 - (a) the breach is only minor or technical in nature; and 15
 - (b) the person notifies the Commission as soon as they became aware of the breach; and
 - (c) the person is taking, or has taken, reasonable steps to mitigate or remedy the effects of the breach to the satisfaction of the Commission.
- 29 Section 69AC amended (Variation of undertaking)** 20
- (1) After section 69AC(1), insert:
 - (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: 25
 - (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. 30
 - (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: 35
 - (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***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)**. 5
- (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:
- (a) an order directing the person to comply with the term: 10
- (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:
- (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: 15
- (d) an order for any consequential relief that the court thinks appropriate.

31 Section 75 amended (Jurisdiction of High Court)

- (1) After section 75(1)(aa), insert:
- (aab) applications for orders under **section 74D** to enforce conditions: 20
- (2) After section 75(1)(a)(iii), insert:
- (iv) applications for orders under **section 82F**:

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

After section 82E, insert: 25

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

- (1) The court may, on the application of the Commission, 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**). 30
- (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.
- (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: 35

- (b) using a specified methodology, protocol, standard, or application programming interface:
- (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: 5
- (e) disclosing information to the Commission, another person, or the public.
- (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: 10
 - (c) be made on any other terms and conditions that the court thinks fit.

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. 15
- (2) In section 83(1)(a), replace “section 47 or 47B” with “section 47, 47B, **47E, or 47F**”.

34 Section 84 amended (Injunctions may be granted by court for contravention of Part 3 or undertaking)

- (1) In section 84(1), after “section 47”, insert “, **47E, or 47F**” in each place. 20
- (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)**. 25

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) 30

- (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)

In section 85A(7), replace “date on which the relevant obligation under the undertaking was required to be met” with “date of the contravention”. 35

38 Section 85B replaced (Court may order divestiture of assets or shares in respect of contravention of undertaking)

Replace section 85B with:

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)**. 5
- (2) The court may make any 1 or more of the following orders if it is satisfied that the person has contravened the undertaking:
- (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: 10
- (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:
- (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: 15
- (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. 20

39 New section 87D and cross-heading inserted

After section 87C, insert:

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

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. 25
- (2) In this section, **contravention of section 97B** means any of the following:
- (a) an actual contravention of **section 97B**: 30
- (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**: 35
- (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 .	
40	Section 91 amended (Appeals in relation to determinations by Commission)	
(1)	After section 91(1)(b), insert:	
(c)	a decision of the Commission under any of sections 65E to 65R .	5
(2)	After section 91(1B), insert:	
(1C)	There is also a right of appeal to the High Court on a question of law against a decision of the Commission under any of sections 65E to 65R .	
(3)	Replace section 91(2) with:	
(2)	Notice of appeal must be given within—	10
(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	15
(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	20
(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	25
	After the Part 7 heading, insert:	
	<i>No retaliation or victimisation in relation to making complaint or providing information to Commission</i>	
97A	No retaliation by employer	
(1)	An employer must not retaliate, or threaten to retaliate, against an employee because the employee—	30
(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.
- (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. 5
- (3) **Subsection (1)** does not apply if—
- (a) the employee knowingly made a false allegation or otherwise acted in bad faith; or 10
- (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. 15
- (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 20
- 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
- retaliate** has the meaning given in section 21 of the Protected Disclosures (Protection of Whistleblowers) Act 2022. 25
- Compare: 2022 No 20 s 21
- 97B No victimisation**
- (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— 30
- (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 35
- (ii) provides or intends to provide information that is within the scope of the Commission’s functions, powers, or duties under any legislation; or

- (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)**. 5
- (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. 10
- (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. 15
- Compare: 2022 No 20 s 22
- 43 Section 98 amended (Commission may require person to supply information or documents or give evidence)** 20
- (1) In section 98(1)(b), after “documents specified in the notice,”, insert “(within the time and in the manner specified in the notice)”.
- (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 25
- (3) Repeal section 98(4).
- 44 Section 98A amended (Power to search)** 30
- (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)**
- (1) In section 98H(1)(b), after “documents specified in the notice,”, insert “(within the time and in the manner specified in the notice)” 35
- (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).
- (3) In section 98H(2), replace “produce” with “produce, reproduce, or assist in reproducing”. 5
- (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)** 10
- In section 99AA(6), replace “section 29 of the Fuel Industry Act 2020” with “sections 71 and 72 of the Fuel Industry Act 2020”.
- 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”. 15
- 48 Section 99E amended (Government-to-government co-operation arrangements)**
- (1) In section 99E(1), replace “an overseas regulator” with “1 or more overseas regulators”. 20
- (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”.
- (4) After section 99E(3), insert: 25
- (4) Subsections (2) and (3) apply with all necessary modifications before an existing co-operation arrangement may be extended to include another overseas regulator.
- 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”. 30
- (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. 35

- 50 Section 99G amended (Content of co-operation arrangements)**
In section 99G(1), replace “overseas regulator” with “overseas regulators” in each place.
- 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. 5
- (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”. 10
- 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** 15
- (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): 20
- (b) the giving of any evidence involving any such information, document, or evidence. 25
- (2) The order has effect for the period specified in the order.
- (3) However, the order must not have effect after 10 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: 30
- (b) the conclusion of the investigation or inquiry that the order relates to.
- (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. 5
- (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.
- 53 New section 100AA inserted (Confidentiality of information) 10**
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: 15
 - (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—
- (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 20
 - (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 25
 - (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 30
 - (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. 35
- (4) However, this section ceases to apply to information after a period of 10 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 years 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 the subject of the information (in which case, the extended period applies in place of the 10-year period for the purposes of **subsection (4)**). 5
- (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.
- (7) After this section ceases to apply to the information, the Official Information Act 1982 applies in the usual way. 10
- Compare: 2011 No 5 s 59; 2021 No 31 s 269

54 Section 102 amended (Service of notices)

After section 102(1)(d), insert:

- (e) in any other manner a District Court Judge directs. 15

55 Section 103 amended (Offences)

In section 103(1)(a), after “notice under section”, insert “**51F(2)**”.

56 Section 106 amended (Proceedings privileged)

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. 20

57 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in **Schedule 1** of this Act as the last Part; and 25
- (b) make all necessary consequential amendments.

58 Schedule 5 repealed

Repeal Schedule 5.

59 New Schedule 8 inserted

After Schedule 7, insert the **Schedule 8** set out in **Schedule 2** of this Act. 30

Part 2

Consequential amendments

60 Consequential amendments to principal Act

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

5

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

10

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

15

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 under any contract, arrangement, or understanding that results from the collective bargaining will total no more than \$3 million 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 conduct should be permitted	10 years

Schedule 3
Consequential amendments to principal Act**s 60****Section 47A**

In section 47A(1), delete “of a business”. 5

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”. 10

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”. 15

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).

Replace section 223 with: 20

223 Material incorporated by reference

- (1) This section applies for the purposes of section 66(2)(b) of the Legislation Act 2019.
- (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— 25
 - (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. 30
- (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 of the secondary legislation issues a notice stating that the material ceases to have that legal effect. 35

Telecommunications Act 2001 (2001 No 103)—*continued*

- (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.

5

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

Part 4		
Provision relating to Commerce (Promoting Competition and Other Matters) Amendment Act 2025		10
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—	
	(a) a section 170 determination:	
	(b) an input methodology.	15
(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.	
(3)	In this clause, commencement date means the day after the Commerce (Promoting Competition and Other Matters) Amendment Act 2025 receives the Royal assent.	20