



## Commerce Act (Fees) Amendment Regulations 2017

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 21st day of August 2017

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 108(c), (ca), and (cc) of the Commerce Act 1986 on the advice and with the consent of the Executive Council.

### Contents

	Page
1 Title	2
2 Commencement	2
3 Principal regulations	2
4 New regulation 1A inserted (Transitional, savings, and related provisions)	2
1A Transitional, savings, and related provisions	2
5 Regulation 2 amended (Fees prescribed for purposes of Commerce Act 1986)	2
6 Regulation 3 amended (Refunds)	2
7 New Schedule 1 inserted	3
<b>Schedule</b>	<b>3</b>
<b>New Schedule 1 inserted</b>	

## Regulations

### 1 Title

These regulations are the Commerce Act (Fees) Amendment Regulations 2017.

### 2 Commencement

- (1) These regulations, except regulation 5(1), (3), and (4), come into force on the day after the date on which these regulations are notified in the *Gazette*.
- (2) Regulation 5(1), (3), and (4) comes into force on the 28th day after the date on which these regulations are notified in the *Gazette*.

### 3 Principal regulations

These regulations amend the Commerce Act (Fees) Regulations 1990 (the **principal regulations**).

### 4 New regulation 1A inserted (Transitional, savings, and related provisions)

After regulation 1, insert:

#### 1A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

### 5 Regulation 2 amended (Fees prescribed for purposes of Commerce Act 1986)

- (1) In regulation 2(a), replace “\$11,250” with “\$36,800”.
- (2) After regulation 2(a), insert:
  - (ab) for an application under section 65A of the Act, a fee of \$3,680:
- (3) In regulation 2(b), replace “\$2,250” with “\$3,680”.
- (4) In regulation 2(c), replace “\$22,500:” with “\$36,800.”
- (5) Revoke regulation 2(d).

### 6 Regulation 3 amended (Refunds)

- (1) Revoke regulation 3(1).
- (2) Revoke regulation 3(2).
- (3) After regulation 3(2), insert:
  - (3) If the prescribed fee paid under these regulations in respect of an application under section 58 or 65A of the Act or a notice under section 66(1) or 67(1) of the Act is more than the cost to the Commerce Commission of determining that application or notice, the Commerce Commission must refund that part of the fee paid that is more than the cost.
- (4) A refund under subclause (3) must be paid—

- (a) within 60 working days after the date on which the application or notice is determined; or
- (b) in the case of an application under section 58 or 65A that is withdrawn under section 60(8) of the Act before it is determined, within 60 working days after the date on which the Commerce Commission receives the notice in writing withdrawing the application.

**7 New Schedule 1 inserted**

Insert the Schedule 1 set out in the Schedule of these regulations as the first schedule to appear after the last regulation of the principal regulations.

**Schedule**  
**New Schedule 1 inserted**

r 7

**Schedule 1**  
**Transitional, savings, and related provisions**

r 1A

**Part 1**

**Provisions relating to Commerce Act (Fees) Amendment Regulations  
2017**

**1 Interpretation**

In this Part,—

**2017 amendment regulations** means the Commerce Act (Fees) Amendment Regulations 2017

**relevant amendment date** means the date on which regulation 3(1) is revoked by regulation 6(1) of the 2017 amendment regulations.

**2 Amendments to regulation 3 (refunds) do not apply to fees paid before amendments commence**

Regulation 3, as in force immediately before the relevant amendment date, continues to apply in relation to prescribed fees that are paid before the relevant amendment date as if regulation 6 of the 2017 amendment regulations had not been made.

Michael Webster,  
Clerk of the Executive Council.

## Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations make changes to the Commerce Act (Fees) Regulations 1990 (the **principal regulations**) that take effect on 2 dates, as follows:

*Changes that come into force on the day after the date on which these regulations are notified in the Gazette*

On the day after the date that these regulations are notified in the *Gazette*,—

- the fee for an application for a clearance under section 65A of the Commerce Act 1986 (the **Act**) in relation to a contract, arrangement, or understanding that contains, or may contain, a cartel provision is set at \$3,680:
- the discretionary refund authority for fees that are paid for notices under section 67(1) of the Act (in any case where the Commerce Commission gives a clearance under that section) is revoked. However, the authority is preserved for fees paid before the date of revocation:
- a new obligation relating to refunds is imposed on the Commerce Commission (*see new regulation 3(3)*). The new obligation arises where the costs to the Commission of determining an application under section 58 or 65A of the Act or a notice under section 66(1) or 67(1) of the Act are less than the prescribed fee paid for that matter. In these circumstances, the Commission must, within 60 working days after determining the application or notice (or, in the case of an application under section 58 or 65A of the Act, the date of its earlier withdrawal), refund the difference between the Commission's costs and the fee paid. The new obligation applies for fees that are paid on or after *new regulation 3(3)* commences:
- provisions relating to fees for an application under section 70(1) of the Act are revoked because section 70 has been repealed.

*Changes that come into force on the 28th day after the date on which these regulations are notified in the Gazette*

On the 28th day after the date that these regulations are notified in the *Gazette*,—

- the fee for an application under section 58 of the Act for authorisation of a restrictive trade practice is increased from \$11,250 to \$36,800:
- the fee for a notice under section 66(1) of the Act seeking a clearance for a business acquisition is increased from \$2,250 to \$3,680:
- the fee for a notice under section 67(1) of the Act seeking an authorisation for a business acquisition is increased from \$22,500 to \$36,800.

All fee amounts referred to are inclusive of goods and services tax.

### Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 23 March 2015 to help inform the decisions taken by the Government relating to the contents of this instrument.

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

- <http://www.mbie.govt.nz/info-services/business/competition-policy/commerce-act-fees-review>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 24 August 2017.

These regulations are administered by the Ministry of Business, Innovation, and Employment.