

House of Representatives

Supplementary Order Paper

Thursday, 5 December 2013

Commerce (Cartels and Other Matters) Amendment Bill

Proposed amendments

Hon Craig Foss, in Committee, to move the following amendments:

Clause 5

After *clause 5(2)* (after line 34 on page 4), insert:

- (3) Section 4(3) is repealed.

Clause 7

In *clause 7, new section 31(1)*, after “at the time of entering into” (lines 5 and 6 on page 9), insert “or arriving at”.

In *clause 7, new section 32(1)(b)(i)*, replace “or to the maximum” (lines 30 and 31 on page 9) with “including to the maximum”.

Clause 8: new section 47A

In *clause 8*, replace *new section 47A(2)* (line 35 on page 10 to line 2 on page 11) with:

- (2) The High Court may make a declaration that it is satisfied that—
 - (a) the overseas person has acquired a controlling interest in a New Zealand body corporate through the acquisition outside New Zealand of the assets of a business or shares; and
 - (b) the acquisition of that controlling interest has, or is likely to have, the effect of substantially lessening competition in a market in New Zealand.

In *clause 8, new section 47A(4)*, definition of **controlling interest**, *paragraph (e)*, after “corporate” (line 31 on page 11), insert “; or”.

In *clause 8, new section 47A(4)*, definition of **controlling interest**, after *paragraph (e)* (after line 31 on page 11), insert:

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- (f) acquires assets in circumstances where the acquisition results in the overseas person having effective control of the body corporate

Clause 18: new section 82B

In *clause 18*, replace *new section 82B(3)(a)* (lines 30 to 32 on page 20) with:

- (a) notify the prosecution of that fact within 20 working days after the defendant pleads not guilty; and

In *clause 18*, *new section 82B(4)*, replace “liable on conviction on indictment to imprisonment for a term not exceeding 7 years” (lines 38 and 39 on page 20) with “liable on conviction to imprisonment for a term not exceeding 7 years, a fine not exceeding \$500,000, or both”.

In *clause 18*, *new section 82B(5)*, replace “conviction on indictment to a fine of” (lines 2 and 3 on page 21) with “conviction to a fine not exceeding”.

Clause 22

In *clause 22*, *new section 103(4)*, delete “summary” (line 14 on page 24).

New clause 22A and cross-heading

After *clause 22* (after line 19 on page 24), insert:

Regulations

22A Regulations

- (1) Section 108 is amended by repealing paragraphs (ca) and (cb) and substituting the following paragraph:

- (ca) authorising the Commission, in its discretion or on any grounds that are prescribed, to refund any part of a prescribed fee paid by a person in connection with an application under Part 5 for an authorisation or clearance:

- (2) Section 108(cc) and (cd) are amended by inserting “or **65A**” after “application under section 58”.

Clause 24

Replace *clause 24* with:

24 Amendment to Criminal Procedure Act 2011

Part 2 of Schedule 1 of the Criminal Procedure Act 2011 is amended by inserting the following item in its appropriate alphabetical order:

Commerce Act 1986

Section	Offence
Section 82B	Cartel conduct

Explanatory note

This Supplementary Order Paper proposes amendments to the Commerce (Cartels and Other Matters) Amendment Bill (the **Bill**). The main amendments proposed by this SOP are as follows:

- the repeal of section 4(3) of the Commerce Act 1986 (the **Act**). This provision says that section 47 of the Act (which prohibits certain acquisitions) extends to certain acquisitions outside New Zealand to the extent that the acquisition affects a market in New Zealand. This provision is no longer necessary in light of *new section 47A*:
- the replacement of *new section 47A(2)* to clarify the High Court's declaration power in relation to overseas acquisitions. It clarifies the connection between the acquisition of assets or shares, the acquisition of a controlling interest, and the assessment of when there is a lessening of competition in a market in New Zealand:
- the addition of a further paragraph in the definition of controlling interest in *new section 47A(4)*, to reflect the fact that a controlling interest in a body corporate can be acquired through the acquisition of assets:
- the addition of a fine (of up to \$500,000) as the penalty for an individual convicted of the cartel offence in *new section 82B*:
- the amendment of the regulation-making power in section 108 relating to refunds of fees paid to the Commerce Commission, so that refunds can be given for fees paid in relation to both authorisations and clearances, and not just for authorisations, as at present:
- a consequential amendment to the regulation-making power in relation to refunds and exemptions, so that applications for clearances under *new section 65A* are treated in the same way as applications for clearances under section 58.

In addition, the SOP proposes various minor corrections, and makes adjustments that are necessary for consistency with the Criminal Procedure Act 2011, which has come into force since the Bill was considered by the Commerce Committee.