

Departmental Disclosure Statement

Commerce (Promoting Competition and Other Matters) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by MBIE.

MBIE certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

26 November 2025

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information	4
Part Three: Testing of Legislative Content.....	6
Part Four: Significant Legislative Features	9

Part One: General Policy Statement

Introduction

This Bill amends the Commerce Act 1986 (**the Act**) to introduce 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 Zealand 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 timeframes 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.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
In September 2024, Cabinet agreed to undertake a targeted review of the competition provisions in the Commerce Act. Public consultation was held from December 2024 to February 2025. Information on this review is available here: Refreshing competition settings Ministry of Business, Innovation & Employment	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
The following regulatory impact statement (RIS) informed the policy decisions: <ul style="list-style-type: none"> Targeted review of the Commerce Act, MBIE, 14 August 2025 (accessible here: Regulatory Impact Statement - Targeted Review of the Commerce Act 1986). 	

2.3.1. If so, did the Ministry for Regulation provide an independent opinion on the quality of any of these regulatory impact statements?	YES
A quality assurance panel with representatives from MBIE and the Ministry for Regulation reviewed the RIS and considered that overall, it partially meets the quality assurance criteria. While issues 1 to 6 meet the criteria, in relation to issue 7 (predatory pricing), no consultation was conducted as the proposal was introduced late in the policy process.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
The RIS included analysis of pro-competition rules (i.e. industry codes), which Cabinet subsequently decided not to progress.	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	N/A
The RIS used to inform Cabinet policy decisions, dated 14 August 2025, included a high-level qualitative assessment of the potential costs and benefits. This is accessible here: Regulatory Impact Statement - Targeted Review of the Commerce Act 1986 .	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>The effectiveness of the reforms, including those supporting pro-competitive collaboration and enhancing merger oversight, will depend on businesses' understanding of the new tools and their willingness to engage with the Commission. The Commission's role in providing clear guidance, engaging with businesses, and applying the new tools in a transparent and proportionate manner will be critical to ensuring compliance and realising the intended benefits. Cabinet has agreed that the Commission will support implementation through updated guidelines and targeted engagement.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

MBIE consulted with the Ministry of Foreign Affairs and Trade throughout the policy development process. The Ministry of Foreign Affairs and Trade has not raised concerns about the Bill's consistency with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

MBIE considers that the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The Ministry of Justice has been consulted. Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry of Justice's website at:
<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>The Bill amends the maximum fine for breaches of confidentiality orders under section 100 of the Commerce Act, aligning the maximum with the fine for failing to comply with other Commission orders under section 103. The fine had not been increased since the offence was enacted in 1986. The Bill also amends section 100 to introduce a “reasonable excuse” element into the offence.</p> <p>The Bill extends the existing civil pecuniary penalties relating to business acquisitions under section 83 of the Act to breaches of the Commission’s new suspension and call-in powers.</p> <p>The Bill creates a new prohibition on retaliation against, or victimisation of, whistleblowers which is enforced using existing remedies including civil pecuniary penalties. The Bill also inserts new provisions that will improve clarity in relation to predatory pricing for the purposes of the prohibition under section 36 of the Act.</p> <p>The Bill enables the High Court to issue corrective action orders, extending the types of remedies available for contraventions of Part 2 of the Act, and provides for the enforcement of a wider range of undertakings and conditions by the Court. The Bill also creates a statutory notification regime, and Commission decisions under this regime are subject to a limited right of appeal to the High Court in relation to errors of law. The Bill repeals the previous prohibition on the Commission accepting behavioural undertakings in a merger clearance or authorisation, but prevents the High Court from accepting such an undertaking on appeal, instead requiring the matter be referred to back to the Commission.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>MBIE consulted the Ministry of Justice as part of the policy development process on these provisions, and on the final Bill. Following feedback from the Ministry of Justice on the proposed OIA exemption, the provisions were restructured to more closely align with the legislative frameworks in the Financial Markets Authority Act and the Reserve Bank of New Zealand Act. This alignment introduces clear statutory grounds for disclosure, making the regime more transparent, proportionate, and consistent with comparable protections.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
The following external consultation occurred: <ul style="list-style-type: none">• MBIE ran public consultation from 5 December 2024 to 17 February 2025, received 55 submissions, and conducted further targeted consultation with a wide range of stakeholders, including major law firms, economics, consumer groups, and businesses.• The following government agencies and entities were consulted as part of the policy development process: The Treasury, Ministry for Regulation, Ministry for Primary Industries, Ministry of Justice, Office of the Ombudsman, Ministry of Foreign Affairs and Trade, and the Commerce Commission.• The following agencies and entities were consulted on the draft Bill: The Office of the Ombudsman, Ministry of Justice, and the Commerce Commission.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
The Bill amends section 100 of the Commerce Act by increasing penalties for contravening a confidentiality order and changing the offence from strict liability to one that includes a “reasonable excuse” defence.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>The Bill introduces two mechanisms that provide potential conditional civil immunity from enforcement under Parts 2 or 3 of the Commerce Act. Firstly, the statutory notification regime allows certain collaborative conduct to proceed unless the Commission objects within a specified timeframe. If the Commission does not object, the conduct cannot be challenged under the Act for the duration of the notification. Second, the new class exemption power enables the Commission to proactively exempt categories of conduct from compliance with Parts 2 or 3. While not framed as formal immunities, both mechanisms have the effect of shielding notified or exempted conduct from enforcement action.</p> <p>The Bill also streamlines the Collaborative Activity Clearance regime, enabling a party to seek a clearance that provides immunity against the cartel conduct prohibition only, but does not require the Commission to consider the competition effects of the conduct. This more limited immunity is likely to be faster and easier to obtain, leaving the applicant to self-assess whether the conduct may substantially lessen competition.</p> <p>Finally, the Bill clarifies the immunity provided by section 106(5) of the Commerce Act, to make clear that the protection against the use of compelled statements against the maker of the statement does not apply to a voluntary statement.</p>	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>The Bill provides the Commission with the power to issue a notice suspending an acquisition. The suspension power can operate for up to 40 working days, providing time for the Commission to assess the competition effects of the acquisition. The Commission will also have the power to issue a notice requiring a party to apply for formal clearance of an acquisition. These powers are required to ensure that all mergers that potentially harm competition are subject to an appropriate form of regulatory scrutiny. These notices will be subject to judicial review by the High Court.</p> <p>The Bill creates a statutory notification regime that allows businesses to notify certain collaborative conduct to the Commission and proceed with the conduct after 45 working days unless the Commission objects. If the Commission does not object, the conduct cannot be challenged under the Act for the duration of the notification (generally, 3 years). The Commission's decisions will be subject to a limited right of appeal to the High Court in relation to errors of law.</p> <p>The Bill empowers the Commission to grant class exemptions from provisions of Parts 2 and 3 the Commerce Act. The Commission's exemption decisions will be secondary legislation, and subject to disallowance.</p> <p>The Bill amends the merger clearance and authorisation provisions to ensure that decisions and reasons are made in a timelier fashion, and to enable the Commission to accept behavioural undertakings.</p> <p>The Bill also creates a time-limited exemption from the Official Information Act 1982 for confidential information provided to the Commission in the course of its functions, subject to extension if the Commission considers disclosure of the information will cause harm to the provider or subject of the confidential information.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The Bill introduces a statutory notification regime for certain types of collaborative conduct. The categories of conduct eligible for notification are set out in a schedule to the Act, and at enactment will include two categories, namely resale price maintenance and collective bargaining by small businesses. New categories of conduct may be added, and existing categories amended or removed, by Order in Council on the recommendation of the Minister. This will enable the categories of conduct to be extended to additional forms of conduct over time. In making a recommendation to add additional conduct to the schedule, the Minister must consult the Commission, and must be satisfied that the conduct is either unlikely to harm competition or likely to be beneficial, that adding the conduct is consistent with the purpose of the notification regime and the Act, that the conduct is predictable, and that assessment of it will be administratively efficient.</p> <p>The Bill also creates a new power for the Commission to grant class exemptions from provisions of Parts 2 and 3 of the Commerce Act. These exemptions are issued by determination and exempt specified classes of conduct from the application of the Act, subject to conditions. In making an exemption, the Commission must be satisfied that the conduct is either unlikely to harm competition or likely to be beneficial, that the exemption is necessary or desirable to promote the purpose of the Act, and that the exemption is no broader than reasonably necessary.</p> <p>Both the Minister's decisions to change the Schedule, and the Commission's decision to grant a class exemption, are secondary legislation and subject to disallowance.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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