



Targeted Commerce Act Review  
Competition and Consumer Policy  
Ministry of Business, Innovation and Employment  
PO Box 1473  
WELLINGTON

**BY EMAIL: [commerceact@mbie.govt.nz](mailto:commerceact@mbie.govt.nz)**

21 July 2016

Dear Sir/Madam

**Cross-Submission Process: Targeted Review of the Commerce Act 1986**

We write in connection to the Targeted Review of the Commerce Act being undertaken by MBIE noting that cross-submissions are now being sought on the 39 submissions and supplementary letter from the Commerce Commission to the Minister of Commerce and Consumer Affairs relevant to the 17 November 2015 MBIE Issues Paper.

The MIA did not make submissions on the Issues Paper, however, has kept informed of the process through its membership with Business New Zealand – who did submit. Given the importance of MBIE understanding the views of a wide variety of businesses on the matter subject to this review process and the content of the Commerce Commissions supplementary letter, we set out our comments below.

**Background**

The MIA is a voluntary trade association representing the majority of New Zealand meat processors and exporters.

By way of context the New Zealand meat industry earned \$7.3 billion in export revenue in the year ended June 2015, and is New Zealand's second largest export industry. The industry processes around 28 million sheep and cattle every year, exporting more than one million tonnes of red meat and co-products to more than 120 markets around the world. MIA member companies operate processing plants throughout the country that employ around 24,000 workers. Although some of our members are indeed large businesses the MIA represents a variety of businesses types. A list of MIA members is attached as Appendix 1.

**Comments on Submissions and Commerce Commissions Supplementary Letter**

As a general point the MIA is concerned that:

- (a) there appears to be insufficient evidence warranting the proposition that section 36 be amended by replacing the “taking advantage” limb and use of the “counterfactual test” with an “effects test”; and

- (b) the introduction of an “effects” test is likely to create significant business uncertainty around what activity would fall within such a prohibition and ultimately chill legitimate business activity.

The MIA is supportive of the BusinessNZ submissions dated 19 February 2016 and those submitted as part of this cross-submission process. We also believe the submissions made by Bell Gully and Russell McVeagh during the February 2016 consultations are very useful.

The MIA would like to emphasise the following points raised by submitters:

1. An examination of the effectiveness of section 36 must go beyond how many cases have been successfully prosecuted under this section.
2. The views of large business are a relevant consideration to reforming clause 36 – it is this group who shall be most affected by the proposed change. Such views should not be dismissed or viewed as somehow unconstructive to an informed debate on proposed legislative change.
3. As reflected in the February 2016 Business NZ submission, a number of options for amending section 36 should be mooted for discussion, rather than recommending what has been referred to as an extreme change. Ideally these options should sit across a spectrum with all implications assessed and clearly explained for public comment.
4. As noted by Bell Gully, business certainty around what the law considers misusing market power must be a fundamental consideration as part of a section 36 review.
5. An “effects test” is likely to introduce significant uncertainty for businesses stifling decision making and requiring a significant increase in legal and economic input.
6. Any amendments to the law should not chill competition and/or have the ultimate effect of protecting small business by placing larger firms, including those without market power, under prohibitions that are difficult to assess. It is important that MBIE adequately assess these risks when posing changes to section 36.
7. The small size of New Zealand’s economy and the inevitability of having a relatively smaller number of firms within markets must be taken into account when considering changes to competition law, particularly in the area of misuse of market power.

In respect of the use of alternative enforcement mechanisms, in theory MIA does not have issue with this approach, however as noted by Business NZ, we would want to consider this further when proposed legislative change is better understood. Also, we are of the view that the points made by Russell McVeagh at paragraph (k) on page 7 of their submission are highly relevant to the assessment as to whether changes should be made to enforcement mechanisms.

We would echo other submitters’ concerns around the costs associated with market studies and urge consideration of the ultimate value in conducting such exercises on a regular basis, particularly when other avenues already exist for such activities. The points made by Bell Gully at para 6.3 are also relevant – *“If it is thought that such market studies should be conducted more frequently . . . to impose further research functions upon the Commission could distract it from other roles, and would*

*present obvious difficulties with reference to separate enforcement roles, as referenced by MBIE in its Issues Paper”.*

Thank you for the opportunity to provide comment.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Sarah Mann', followed by a long horizontal line extending to the right.

Sarah Mann  
MIA

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## Appendix 1 – List of MIA Members and Associate Members

<b>Members</b>
Advance Marketing Ltd
AFFCO New Zealand Ltd
Alliance Group Ltd
ANZCO Foods Ltd
ANZPAC Foods Ltd
Auckland Meat Processors Ltd
Ballande New Zealand Ltd
Blue Sky Meats (NZ) Ltd
Clover Exports Ltd
Columbia Exports Ltd
Crusader Meats New Zealand Ltd
Davmet New Zealand Ltd
Fern Ridge Ltd
Greenlea Premier Meats Ltd
Harrier Exports Ltd
Lanexco Ltd
Lean Meats Oamaru Ltd
Lowe Corporation Ltd
Mathias International (Mathias Meats NZ Ltd)
Ovation New Zealand Ltd
Progressive Meats Ltd
Silver Fern Farms Ltd
Tara Exports Ltd
Taylor Preston Ltd
Te Kuiti Meat Processors Ltd
Universal Beef Packers Ltd
Kintyre Meats Ltd
<b>Affiliate Members</b>
AgResearch-MIRINZ Centre
Aon New Zealand Limited
Bemis Flexible Packaging Australia
CentrePort Wellington
Diversey New Zealand Ltd
Ecolab PTY Ltd
Hamburg-Sud New Zealand Ltd
Hapag-Lloyd (New Zealand) Ltd
Intralox Ltd
Jasol New Zealand
Maersk New Zealand Ltd
Milmeq Ltd
Oceanic Navigation Ltd
Port of Napier
Port Otago Ltd
Pyramid Trucking Ltd
Sealed Air (New Zealand)
Scott Technology Ltd
Vero Marine Insurance
Wallace Corporation Ltd
Foodcap International Ltd