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Please note that submissions are subject to the OIA and the Privacy Act 2020. In line with this, MBIE intends to upload copies of submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). MBIE will consider you to have consented to uploading by making a submission unless you clearly specify otherwise in your submission. MBIE will take your views into account when responding to requests under the OIA and publishing submissions. Any decision to withhold information requested under the OIA can be reviewed by the Ombudsman.

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To support transparency in our decision-making, MBIE proactively releases a wide range of information. MBIE will upload copies of all submissions to its website at [www.mbie.govt.nz](http://www.mbie.govt.nz). Your name, and/or that of your organisation, will be published with your submission on the MBIE website unless you clearly specify you would like your submission to be published anonymously. Please tick the box provided if you would like your submission to be published anonymously i.e., without your name attached to it.

If you consider that we should not publish any part of your submission, please indicate which part should not be published, explain why you consider we should not publish that part, and provide a version of your submission that we can publish (if we agree not to publish your full submission). If you indicate that part of your submission should not be published, we will discuss with you before deciding whether to not publish that part of your submission.

We encourage you not to provide personally identifiable or sensitive information about yourself or others except if you feel it is required for the purposes of this consultation.

### **Personal information**

All information you provide will be visible to the MBIE officials who are analysing the submissions and/or working on related policy matters, in line with the Privacy Act 2020. The Privacy Act 2020 includes principles that guide how personal information can be collected, used, stored and disclosed by agencies in New Zealand. Please refrain from including personal information about other people in your submission.

### **Contacting you about your submission**

MBIE officials may use the information you provide to contact you regarding your submission. By making a submission, MBIE will consider you to have consented to being contacted, unless you clearly specify otherwise in your submission.

### **Viewing or correcting your information**

We may share this information with other government agencies, in line with the Privacy Act 2020 or as otherwise required or permitted by law. This information will be securely held by MBIE. Generally, MBIE keeps public submission information for ten years. After that, it will be destroyed in line with MBIE's records retention and disposal policy. You have the right to ask for a copy of any personal information you provided in this submission, and to ask for it to be corrected if you think it is wrong. If you'd like to ask for a copy of your information, or to have it corrected, please contact MBIE by emailing [competition.policy@mbie.govt.nz](mailto:competition.policy@mbie.govt.nz).

## Submission information

(Please note we require responses to all questions marked with an \*)

## Release of information

Please let us know if you would like any part of your submission to be kept confidential.

☒ I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

# Privacy of natural persons

[To check the boxes above: Double click on box, then select 'checked']

Personal details and privacy	
1.	<p>I have read and understand the Privacy Statement above. Please tick Yes if you wish to continue*</p> <p>[To check the boxes below Double click on box, then select 'checked']</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
2.	<p>What is your name?*</p> <p>Privacy of natural persons</p>
3.	<p>Do you consent to your name being published with your submission?*</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>
4.	<p>What is your email address? Please note this will not be published with your submission.*</p> <p>Privacy of natural persons</p>
5.	<p>What is your contact number? Please note this will not be published with your submission.*</p> <p>Privacy of natural persons</p>
6.	<p>Are you submitting as an individual or on behalf of an organisation?*</p> <p><input checked="" type="checkbox"/> Individual (skip to 8)</p> <p><input type="checkbox"/> Organisation</p>
7.	<p>If on behalf of an organisation, we require confirmation you are authorised to make a submission on behalf of this organisation.</p> <p><input type="checkbox"/> Yes, I am authorised to make a submission on behalf of my organisation</p>
8.	<p>If you are submitting on behalf of an organisation, what is your organisation's name? Please note this will be published with your submission.</p> <p></p>

9.	If you are submitting on behalf of an organisation, which of these best describes your organisation? Please tick one.
	<div> <input type="checkbox"/> Law Firm           <input type="checkbox"/> Consumer organization           <input type="checkbox"/> Consultancy           <input type="checkbox"/> Think-Tank           <input type="checkbox"/> Advocacy group           <input type="checkbox"/> Business/Private Firm           <input type="checkbox"/> Contractor/SME           <input type="checkbox"/> Registered charity           <input type="checkbox"/> Non-governmental organisation           <input type="checkbox"/> Academic Institution           <input type="checkbox"/> Central government           <input type="checkbox"/> Iwi, hapū or Māori organisation           <input type="checkbox"/> Academic/Research           <input type="checkbox"/> Other. Please describe:         </div>

## Responses to questions

The Competition Policy team welcomes your feedback on as many sections as you wish to respond to, please note you do not need to answer every question.

Mergers	
Issue 1 – the substantial lessening of competition test	
1.	<p>What are your views on the effectiveness of the current merger regime in the Commerce Act? Please provide reasons.</p>
2.	<p>What is the likely impact of the Commission blocking a merger (either historically, or if the test is strengthened) on consumers in New Zealand? Please provide examples or reasons.</p>
3.	<p>Has the ‘substantial lessening of competition’ test been effective in practice in preventing mergers that harm competition? Please provide examples of where it has, or has not, been effective.</p>
4.	<p>Should the ‘substantial lessening of competition’ test be amended or clarified, including for:</p> <ul style="list-style-type: none"> <li>a. Creeping acquisitions? If so, should a three-year period be applied to assessing the cumulative effect of a series of acquisitions for the same goods or services?</li> <li>b. Entrenchment of market power (eg including acquisitions relating to small or nascent competitors)?</li> <li>c. In relation to just the merger provisions or wherever the test applies in the Commerce Act?</li> </ul> <p>If so, how? Please provide reasons.</p>
5.	<p>How important is it for the ‘substantial lessening of competition’ test in the Commerce Act to be aligned with the merger test in Australian competition law, for</p>

	example, to provide certainty for businesses operating across the Tasman and promote a Single Economic Market? Please provide reasons and examples.
6.	How effective do you consider the current merger regime is in balancing the risk of not enough versus too much intervention in markets?
<b>Issue 2 – Substantial degree of influence</b>	
7.	Do you consider that the current test of ‘substantial degree of influence’ captures all the circumstances in which a firm may influence the activities of another? If not, please provide examples.
8.	Should the Commerce Act be amended to provide relevant criteria or further clarify how to assess effective control? If so, how should it be amended? Please provide reasons.
<b>Issue 3 – Assets of a business</b>	
9.	Do you consider the term “assets of a business” in section 47 of the Commerce Act is unclear or unduly narrows the application of the merger review provisions in the Act?
10.	<p>If you consider there is a problem, how should the phrase be amended? For example, by:</p> <ol style="list-style-type: none"> <li>referring simply to “assets”? or</li> <li>should the definition of “assets” in the Commerce Act be further refined?</li> </ol>

Issue 4 – Mergers outside the clearance process	
11.	What are your views on how effectively New Zealand’s voluntary merger regime is working?
12.	Do you consider non-notified mergers to be an issue in New Zealand? Please provide reasons.
13.	<p>What are your views on amending the Act to confer additional powers on the Commission to strengthen its ability to investigate and stop potentially anti-competitive mergers? In responding, please consider the merits of each of the options:</p> <ul style="list-style-type: none"> <li>a. A stay and/or hold separate power</li> <li>b. A call-in power</li> <li>c. A mandatory notification power for designated companies.</li> </ul>
Issue 5 – Behavioural undertakings	
14.	Should the Commerce Commission be able to accept behavioural undertakings to address concerns with proposed mergers? If so, in what circumstances?

<b>Anticompetitive conduct</b>	
<b>Issue 6 – Facilitating beneficial collaboration</b>	
15.	Has uncertainty regarding the application of the Commerce Act deterred arrangements that you consider to be beneficial? Please provide examples.
16.	What are your views on whether further clarity could be provided in the Commerce Act to allow for classes of beneficial collaboration without risking breaching the Commerce Act?
17.	What are your views on the merits of possible regulatory options outlined in this paper to mitigate this issue?
18.	If relevant, what do you consider should be the key design features of your preferred option to facilitate beneficial collaboration?
<b>Issue 7 – Anti-competitive concerted practices</b>	

19.	What are your views on whether the Commerce Act adequately deters forms of 'tacit collusion' between firms that is designed to lessen competition between them?
20.	Should 'concerted practices' (eg, when firms coordinate with each other for the purpose or effect of harming competition) be explicitly prohibited? What would be the best way to do this?
<b>Code or rule-making powers and other matters</b>	
<b>Issue 8 – Industry Codes or Rules</b>	
21.	<p>Do you consider that industry codes or rules could either:</p> <ul style="list-style-type: none"> <li>a. Fill a gap in the competition regulation regime or</li> <li>b. Prove a more efficient and appropriate response to addressing sector-specified competition issues rather than developing primary legislation? Please provide reasons.</li> </ul>
22.	If you think that industry codes or rules could fill a gap, what class of matters or rules could be included in an industry code or rules?
23.	If the Commerce Act is amended to provide for the making of industry codes or rules, what matters would be important to consider in the design of the empowering provisions in the Act?



<b>Issue 9 – Modernising court injunction powers</b>	
24.	Should the injunctions powers in the Commerce Act be updated to allow the court to set performance requirements? Please provide reasons
<b>Issue 10 – Protecting confidential information</b>	
25.	Do you consider that the Commission effectively maintains the balance between protecting commercially sensitive information and meeting its legal obligations, including the principle of public availability? Please provide reasons or examples.
26.	What additional regulatory changes may be desirable relating to commercially sensitive information? Please provide reasons.
27.	What are your views on strengthening the confidentiality order provisions in s 100 of the Act?
<b>Issue 11 – Minor and technical amendments to the Commerce Act</b>	

28.	What are your views on these proposed technical amendments to the Commerce Act?
29.	Are there any other minor or technical changes you consider could be made to improve the functioning of New Zealand's competition law?
Any other issues	
30.	Are there any other issues that you would like to raise?
	<p>This submission focussed around food delivery services. Food delivery services usually consist of a marketplace(platform) that involves a website and app. These platforms display products(mainly food dishes) for multiple businesses(restaurants), allowing consumers to place orders, and have them delivered.</p> <p>I have two issues that I would like to raise for discussion.</p> <ul style="list-style-type: none"> <li>• <b>Exclusive agreements between delivery services and businesses.</b></li> <li>• <b>Inflated prices that lead to misleading customers through promotions, ads, offers, discounts, invoices, etc.</b></li> </ul> <p><b>Exclusive agreements between delivery services and businesses.</b></p> <p><b>Background</b></p> <ol style="list-style-type: none"> <li>1. Large delivery services have exclusive agreements with major franchises and local businesses. This means that the business is not allowed to use another delivery service. Or in some agreements, the business is allowed to use only "certain" delivery services, but not others.</li> <li>2. Most delivery services charge the businesses a commission on the value of the orders sold through their platform.</li> <li>3. These commission charges are usually passed on to the consumer through inflating the product prices.</li> </ol>

4. Delivery services will agree to charge businesses at a fixed percentage commission rate. If a business uses another delivery service that is not allowed in the agreement, then the delivery service will penalise the business by raising their commission.
5. One delivery service that I know of charges an exclusive commission rate of 20%, and a commission rate of 30% as a penalty for using another delivery service.
6. Delivery services call this an exclusive/non exclusive agreement, but it is only an exclusive agreement that has a penalty term.
7. There are laws against this in Sections 27 and 36 in the Commerce Act. However, these are not preventing delivery services from still applying this agreement.

#### **Problems**

8. Exclusive/non exclusive agreements only benefit the delivery service. There are no benefits for the business to be exclusive. It is a bully tactic to stop businesses using other delivery services.
9. If other delivery services charge less commission, or no commission at all, some businesses will still choose to remain exclusive to a delivery service and pay 20%, because they have the market power.
10. This means that the only option the customer has is to purchase the order from the delivery services with the 20% inflated prices, because the business can not offer their products on another delivery services platform at a lower price.

#### **Possible solution for discussion**

11. Eliminate any exclusive/non exclusive agreements where the business does not benefit from being exclusive.

OR

12. The monetary value the delivery service receives by being exclusive should also be the same as the monetary value the business receives by being exclusive.

**Inflated prices that lead to misleading customers through ads, offers, and invoices.**

#### **Background**

1. Many businesses are attempting to offer consumers the same price on delivery platforms as they do in their businesses.
2. However, these same businesses will inflate their prices to cover the cost of the high commission rate from some delivery services eg.

30%., and not because they need to cover any additional costs associated with preparing orders for delivery.

### **Problems**

3. Consumers are not aware how much extra they are paying to have an item delivered.
4. Some businesses use the same inflated prices on delivery platforms that charge a lower, or no, commission rate. In these cases the business is charging the consumer more than they are paying in commission. The business owners do this because they think if the customer is willing to pay 'x' amount on one delivery platform for their product, then they will pay the same amount on another delivery platform.
5. Some businesses with already expensive products, are still forced to absorb part of the commission costs from delivery services, because inflating their prices to cover the full commission fee would be a ridiculous price for the consumer to pay.
6. Supermarkets aren't allowed to inflate prices on their own website for delivery, but they can, and do, on other delivery service platforms.
7. Customers will see promotions offering a free delivery or a discount on an order, if they use one delivery service over another, when they are actually being misled and paying much more with the inflated product prices.

### **Possible solution for discussion**

8. Businesses must list prices on other platforms for the same price that they do in their business.
9. Added costs for commissions, or other fees, should be obvious to the consumer, and not hidden through inflated prices.

### 10. **Current pricing structure**

#### **Business**

Products \$120.00  
Delivery fee (FREE) \$0  
Total: \$120.00

### 11. **Proposed pricing structure**

#### **Business**

Products \$100

#### **Platform**

Commission (20%) \$20  
Delivery fee (FREE) \$0

Total: 120..00

12. If the delivery service, or the business wants to offer a 10% discount on the order to the consumer. That must be 10% off the original price, and not 10% the price that was inflated by 20%.

For example:

**Business**

Products \$100

**Platform**

Discount(less 10%) -\$10

Commission(20%) \$18

Delivery fee (FREE) \$0

Total: 108..00

13. There are a few business(restaurant) owners who may argue that they spend more on preparing orders for delivery. This is not true.

**General Comments:**

## Thank you

We appreciate you sharing your thoughts with us. Please find all instructions for how to return this form to us on the first page.