MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Scott Simpson	**Portfolio**	Commerce and Consumer Affairs
Title of Cabinet paper	Changes to improve competition settings	**Date to be published**	16 September 2025

List of documents that have been proactively released		
Date	**Title**	**Author**
June 2025	Commerce Act Review – Changes to improve competition settings	Office of the Minister of Commerce and Consumer Affairs
25 June 2025	Commerce Act Review – Changes to improve competition settings ECO-25-MIN-0098 Minute	Cabinet Office
August 2025	Commerce Act Review – Further changes to improve competition settings	Office of the Minister of Commerce and Consumer Affairs
20 August 2025	Commerce Act Review – Further changes to improve competition settings ECO-25-MIN-0134 Minute	Cabinet Office
20 August 2025	Regulatory Impact Statement – Targeted review of the Commerce Act 1986	MBIE
August 2025	Commerce Commission Governance and Effectiveness	Office of the Minister of Commerce and Consumer Affairs
20 August 2025	Commerce Commission Governance and Effectiveness ECO-25-MIN-0133 Minute	Cabinet Office
13 June 2025	Governance and Effectiveness Review of the Commerce Commission – Final Recommendations Report	Dame Paula Rebstock, Professor Allan Fels AO, David Hunt
June 2025	Commerce Commission – Response to the Governance and Effectiveness Review	Commerce Commission

Information redacted **YES / NO** *(please select)*

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Some information has been withheld for the reason of confidential advice to Government.

In confidence

Office of the Minister of Commerce and Consumer Affairs

Office of the Acting Minister of Commerce and Consumer Affairs (Grocery Sector)

Chair, Cabinet Economic Policy Committee

Commerce Act Review: Further Changes to Improve Competition Settings

Proposal

1 This paper seeks agreement to a second tranche of reforms to the Commerce Act 1986 following initial reforms agreed to by Cabinet in June 2025.

2 This paper is one of the two papers being considered concurrently to strengthen New Zealand's competition framework. The companion paper *Commerce Commission Governance and Effectiveness* recommends structural and operational changes to lift the Commission's performance. Together, the two papers support a more modern, capable, and responsive competition regime.

Relation to Government priorities

3 One of the central pillars of the Government's Going for Growth agenda is promoting competition. Competitive markets drive productivity by encouraging innovation, investment, and the efficient allocation of resources.

4 The Commerce Act is central to this work and underpins much of the competition framework in our economy. Ensuring the Act remains up to date and effective is critical to maintaining competitive markets and supporting the broader growth agenda.

Executive summary

5 The proposals in this paper aim to strengthen New Zealand's competition settings and establish a more flexible, responsive regime that enhances market certainty and reduces the regulatory burden for firms engaging with the Commission.

6 Many of New Zealand's key sectors have become highly concentrated with high barriers to entry and expansion. Market studies have identified market failures in groceries, banking, and residential building supplies, where a few firms have entrenched market power and new entry is unlikely.[1]

7 New Zealand consumers face higher prices in these concentrated markets than overseas, and innovation and productivity have fallen behind OECD peers. The 2024 OECD Economic Survey of New Zealand highlighted several indicators of weak competition, including high prices, excessive profits, high vertical

[1] While structural indicators like market concentration can highlight areas of concern, they are not determinative of competitive outcomes. The reforms in this paper are designed to better assess and respond to actual market behaviour and barriers to competition, rather than relying solely on structural proxies.

integration, weak innovation, poor corporate performance, and stubbornly high market shares of incumbents.

8 New Zealand's competition law is no longer fit for purpose. The Commerce Act lacks the tools, flexibility, and certainty needed to maintain effective competitive pressure. Gaps in the merger regime have allowed rising market concentration, weakening competition. Unlike other jurisdictions, the Commerce Act lacks the tools to address competition barriers in already concentrated markets.

9 Modernising the Commerce Act now will minimise the need for future regulation. Previous governments have responded to competition challenges by introducing repeated sector-specific regulation. Strengthening New Zealand's overall competition framework will better equip the Commission to address markets with high barriers to entry and expansion, reducing the need for repeated sectoral regulation, such as the Grocery Industry Competition Act 2023 and the Fuel Industry Act 2020. These interventions involved lengthy policy and legislative development processes and have not always delivered the broader, enduring improvements to market dynamics that a more robust and flexible competition regime could achieve.

10 Therefore, we propose the following changes to the Commerce Act:

10.1 Reforms to the merger regime to enable the Commission to consider creeping acquisitions[2] and killer acquisitions,[3] to accept voluntary behavioural undertakings as a condition for merger approval,[4] and to call in mergers for review that could harm competition. The Commission would also be required to meet new statutory timeframes to ensure timeliness and certainty for the business community.

10.2 Clarifying that anti-competitive business conduct can include the use of artificial intelligence (**AI**) or algorithmic tools, where such use satisfies the elements of an existing prohibition under the Commerce Act.

10.3 Allowing regulations to be made that facilitate new entry into concentrated markets that are not working well for consumers and where there are high barriers to entry.

11 We have heard concerns about the Commission's cautious approach, and the perception that engagement with the Commission can be complex and costly for business. In the companion paper *Commerce Commission Governance and Effectiveness*, we propose significant governance reforms to strengthen the Commission's institutional arrangements to ensure it can effectively exercise any new powers. We also proposing targeted limitations on those powers to ensure they are used judiciously, alongside legislative changes to clarify key concepts and introduce statutory timeframes. These measures are intended to increase certainty and timeliness for businesses engaging with the

[2] Serial acquisitions that individually fall below thresholds but together can entrench market power.
[3] Incumbents acquiring emerging or potential competitors before they can grow into effective rivals.
[4] Commitments from firms to change or limit their conduct to address competition concerns.

Commission, particularly in relation to merger assessments and decision-making processes.

Background

12 In September 2024, Cabinet agreed to a targeted review of the competition settings in the Commerce Act [ECO-24-MIN-0206 refers]. The review also considered OECD recommendations and early findings from the Independent Governance and Effectiveness Review of the Commission. Public consultation ran from December 2024 to February 2025 and highlighted systemic concerns.

13 On 13 June 2025, the Independent Review of the Commission concluded with the release of its final report, recommending 32 structural and operational changes to strengthen the Commission's governance and capability. These reforms are addressed in the companion Cabinet paper, *Commerce Commission Governance and Effectiveness*.

14 On 25 June 2025, ECO agreed to the first package of reforms to the Commerce Act [ECO-25-MIN-0098]. The Minister of Commerce and Consumer Affairs signalled we would return to Cabinet shortly with a second round of policy decisions, which complement the governance reforms set out in the companion paper. These proposals include a new board and decision-making model to enhance the Commission's strategic focus and expertise, and drive performance.

We propose reforms to the current merger regime to make it more predictable, proportionate, and accessible

15 Mergers can deliver economic benefits, such as improved efficiency and innovation. For example, the Vodafone/ TelstraClear and Goodman Fielder/ Lion Dairy & Drinks mergers supported infrastructure expansion and product development. In New Zealand's small market economy, mergers play a constructive role in supporting scale and investment, provided they do not undermine competition.

16 When mergers substantially lessen competition, this can lead to higher prices, lower quality, and reduced consumer choice. For example, the consolidation of supermarket chains in the early 2000s contributed to the emergence of a duopoly that now controls around 90 per cent of the grocery market, limiting consumer options and reducing competitive pressure on pricing and service levels. Mergers in the banking sector in the late 2000s and early 2010s concentrated market share among four Australia-owned banks which now dominate the sector. This has reduced competitive tension, constrained innovation, and created barriers for domestic banks seeking to expand.

17 Stakeholders generally support targeted changes to ensure the Commission can prevent mergers that harm competition. New merger tools (such as "call-in" and "stay and hold" powers) would improve the Commission's ability to manage emerging risks. Other changes, such as clearer definitions and shorter statutory timeframes, respond directly to concerns about the cost and complexity of engaging with the Commission, and make the regime more predictable, proportionate, and accessible.

18 As set out in the Regulatory Impact Statement, the overall effect of the reforms is expected to be a net reduction in regulatory burden, with clearer rules, more predictable timelines, and improved protections for confidential information.

Clarifying the substantial lessening of competition test to address killer acquisitions

19 We propose clarifying that the substantial lessening of competition test, as it is used throughout the Act, may include conduct that creates, strengthens, or entrenches a substantial degree of power in a market, in line with recent reforms in Australia.

20 This will confirm the Commission is able to consider killer acquisitions (observed internationally in sectors such as pharmaceuticals and digital technology) where dominant firms acquire innovative startups with competing products in development, only to shut them down.

21 This clarification does not introduce new powers for the Commission and is expected to improve the Commission's ability to assess complex transactions without increasing the regulatory burden on businesses. The core question remains whether the conduct or transaction substantially lessens competition. In making this assessment, the Commission would have regard to indicators such as business strategy set out in internal documents, and/or patterns of behaviour following previous acquisitions. Guidance will be developed to support consistent application and reduce uncertainty for merging parties.

Empowering the Commission to consider the broader competitive effects of serial acquisitions over a three-year period

22 One way that firms gain market power and dominance over time is through making a series of small acquisitions, often referred to as "creeping acquisitions". For example, these patterns have been observed in the car parking sector, where Wilson Parking has progressively acquired a significant number of car park operations, with prices increasing in many locations following consolidation.

23 The Commission's authority to assess the cumulative impact of these acquisitions is not explicit in the Act. To address this, we propose the Commission be empowered to consider the broader competitive effects of serial acquisitions over a three-year period. This approach is consistent with recent merger reforms in Australia, which come into force on 1 January 2026.

24 Most business transactions will be unaffected by this change. The three-year lookback is targeted at firms engaging in repeated acquisitions in the same market, particularly where that market is already concentrated or where competition is fragile. Businesses making occasional or unrelated acquisitions will not be impacted. The Commission will not have new powers to unwind past acquisitions, nor will it affect its existing ability to take action where a past acquisition was independently unlawful.

Creating more certainty for business by clarifying key terms for merger assessment

25 The review highlighted that businesses are often uncertain about when to notify a transaction to the Commission.

26 To address this, we propose clearly outlining in the Act the factors the Commission may consider when deciding when a partial acquisition gives an entity a "substantial degree of influence" over another to raise competition concerns. This will give businesses more certainty, make decisions more predictable, and align New Zealand with international best practice.

27 We also propose confirming that "assets of a business" includes rights, infrastructure and land. This will help businesses understand whether deals involving things like machinery, licenses, or undeveloped land fall within the merger regime. It will also help tackle strategies like land banking, where firms buy land to block future competitors – a concern that has arisen in the grocery sector. The previous Government had to pass legislation in 2022 to ban the use of restrictive land covenants by major supermarkets, which had been used to prevent competitors from accessing suitable sites.

Empowering the Commission to accept and enforce voluntary behavioural undertakings

28 The Commission currently lacks the authority to accept voluntary behavioural undertakings from merging firms (other than in relation to the disposal of assets or shares). These undertakings are commitments proposed by merging firms about their future conduct and are commonly used overseas, including in Australia and the United Kingdom, to resolve competition issues while preserving potential merger benefits.[5] Feedback from public consultation, especially from the business and legal communities, showed strong support for allowing the Commission to accept these undertakings.

29 The current gap in the merger regime may lead to the rejection of mergers that could otherwise be cleared with appropriate behavioural remedies, resulting in missed opportunities for efficiencies and consumer benefits. This gap was highlighted in the proposed merger between Sky TV and Vodafone in 2016, which was ultimately declined. One of the Commission's key concerns was that the merged entity could use Sky's premium sports content to hinder competition in the broadband and mobile markets. However, the Commission lacked the authority to accept behavioural undertakings (such as assurances around content access) that might have mitigated these concerns.

30 Therefore, we propose amending the Act to empower the Commission to accept and enforce behavioural undertakings to provide a more flexible and less intrusive alternative to blocking mergers. This is expected to reduce unnecessary regulatory intervention and support outcomes that benefit both competition and consumers. These undertakings would, in most cases, be proposed voluntarily by the merging firms to address competition concerns identified by the Commission. It would be up to the parties involved to satisfy the Commission that their proposed undertakings address and remedy the competition issue.

[5] eg the Australian Competition and Consumer Commission (ACCC) accepted undertakings requiring Foxtel to provide wholesale access to its content to third-party internet service providers, addressing concerns about vertical foreclosure. In the United Kingdom, the Competition and Markets Authority (CMA) accepted commitments from British Telecom to maintain access to its network for mobile competitors following its acquisition of EE Limited.

31 Acceptance of these undertakings would be at the Commission's discretion. If the Commission's decision to decline a merger clearance or authorisation application is appealed to the High Court, and an undertaking was offered as part of the merger review, the Court would not have the power to require the Commission to accept the undertaking but could refer the matter back to the Commission for reconsideration.

Powers to address unnotified mergers

32 The current voluntary merger regime limits the Commission's ability to intervene when firms choose not to notify the Commission about a merger, increasing the risk that anti-competitive mergers are completed before scrutiny is possible. While some jurisdictions, including Australia, have adopted mandatory notification, we propose a more proportionate approach. Given the high rate of voluntary compliance in New Zealand, a mandatory regime would impose unnecessary costs on businesses and the Commission, including for low-risk transactions.

33 Therefore, we propose providing the Commission with a targeted "stay and hold" power to suspend the completion of a potentially anti-competitive merger for up to 40 working days. This would allow time to assess competition risks before the transaction is completed. Both the United Kingdom and Singapore allow their competition authorities to impose "standstill" orders that can remain in place for several weeks or months, with no fixed limit. In this context, a 40-working day limit provides a clear and proportionate safeguard.

34 We also propose providing the Commission with a targeted "call-in" power to require parties to seek clearance if the Commission considers the transaction may substantially lessen competition. This notice would pause the transaction until clearance is granted, declined, or the process is terminated.

35 These new tools further align the regime with international best practice and enhance the Commission's ability to address emerging risks. To support certainty, the Commission will publish guidance on the use of these tools. This guidance is developed by the Commission to explain how it will interpret and apply the law in practice. It provides clarity for businesses and promotes transparency and accountability in the Commission's decision-making.

Setting clear statutory decision-making timeframes and transparency requirements

36 Currently there are no clear statutory timeframes for complex merger clearance and authorisation decisions, which can cause uncertainty for businesses and consumers. While straightforward cases are often resolved within the 40 working days required by the Act, complex mergers can take significantly longer, with recent examples such as THL/ Apollo (183 working days) and Foodstuffs NI/Foodstuffs SI (184 working days). This creates unnecessary uncertainty for the parties involved.

37 The Commission is also not currently required to publish written reasons for its clearance decisions, which can delay guidance to the market and limit opportunities for challenge. For example, the Commission announced its clearance decision for the Microsoft/ Activision merger in August 2023 and only

published written reasons in July 2025. This lack of transparency creates uncertainty for the parties involved and may deter similar transactions. To address these issues and improve certainty and predictability, we propose to:

37.1 introduce a statutory timeframe of 100 working days for complex merger decisions (in addition to the initial 40-day clearance and 60-day authorisation periods – bringing the total up to 140 or 160 working days, respectively), and

37.2 require the Commission to publish a decision summary within one working day and full reasons within 20 working days. The 20-working day period for appealing a merger decision would run from the date the Commission publishes its full written reasons.

We propose clarifying liability for AI and algorithms

38 Businesses are increasingly using algorithms and AI to monitor competitors, set prices, and automate strategic decisions. In sectors like travel, accommodation, and e-commerce, over 30 per cent of large retailers use algorithmic pricing tools that enable rapid price matching and market monitoring.

39 International regulators have raised concerns about the potential for such tools to facilitate anti-competitive outcomes, particularly in concentrated markets. For example, The United Kingdom's Competition and Markets Authority (CMA) uncovered a cartel where firms used repricing software to coordinate prices.

40 While AI-facilitated conduct may already fall within the scope of the Act, legal uncertainty remains. Therefore, we propose amending the Act to clarify that existing prohibitions (including those on cartel conduct and anti-competitive agreements) apply equally to conduct carried out using AI or algorithmic tools. This would confirm that firms are liable for such conduct, just as they are for actions taken by employees or agents. The amendment would not create new offences but would close a potential loophole.

Addressing concentrated markets with high barriers to entry

41 We propose creating a power to make targeted regulations to guide conduct among market participants to break down barriers to entry and expansion. The model is inspired by Australia's industry code framework under the Competition and Consumer Act 2010, which has successfully been used to break down barriers in concentrated markets, for example:

41.1 the Telecommunications Code supported access to essential infrastructure for new entrants, while the Fuel Retailing Code improved transparency in wholesale pricing, helping smaller retailers compete.

41.2 The Wheat Port Code prevents vertically integrated port operators from blocking competitors' access to export infrastructure, supporting competition and protecting export value.

42 A similar rule-making power in New Zealand would create the flexibility to set targeted rules in sectors where there are material barriers to entry or expansion.

Examples of where these rules could help facilitate new entry into concentrated markets in New Zealand include:

42.1 ensuring fair access to app marketplaces for software developers; requiring fair access to third parties to essential infrastructure, such as port infrastructure;

42.2 requiring increased transparency of wholesale pricing to ensure prices for new entrants are fair and non-discriminatory.

43 The regulations could not be used to restructure markets (for example, forcing divestment of businesses) or directly regulate prices.

44 To ensure this power is used proportionately and only as a last resort, we propose Cabinet would only approve regulations being made on the Commission's recommendation, where the Commission is satisfied that:

44.1 the market in question is concentrated, whereby market power is held by only a small number of firms;

44.2 there are barriers to entry and expansion;

44.3 the market is not working well for consumers,[6] and the proposed rules are consistent with the purpose of the Act.

45 While recommendations may be based on existing evidence, we propose amending the Act to grant the Commission the ability to require information from parties to assess whether a rule is justified in a particular market.

46 Proactively allowing a regulation making power will minimise the need for future Governments to create bespoke sector specific primary legislation, the likes of which we have seen in the grocery and fuel sectors.

47 Regulations would take the form of secondary legislation (under the Commerce Act) and be enforced by the Commission through the High Court, using tools consistent with other regimes, including civil penalties, injunctions, and compensation. We also propose a graduated penalty framework, modelled on the Grocery Industry Competition Act 2023, with penalty tiers specified in each rule to support proportionate enforcement.

Proposed constraints on regulation-making power

48 To ensure this power is carefully constrained, we propose that regulations can only be developed:

48.1 on the basis of a recommendation from the Commission and where the conditions (set out in paragraph 44) have been met;

48.2 the Minister is satisfied that the regulations are necessary or desirable to achieve the purposes of the Act;

[6] For example, there is evidence of high prices; and/ or high profits; and/ or poor levels of services; and/ or low levels of innovation.

48.3 the Commission and the Minister have considered any codes of conduct or solutions proposed by industry;

48.4 affected parties have been consulted; and

48.5 a Regulatory Impact Assessment has been undertaken to inform Cabinet's decision to approve any new regulations.

49 Regulations would be subject a five-year sunset clause. Renewal would require the Commission to determine that material barriers to entry or expansion persist. The Commission could also recommend early removal of the regulations if those barriers no longer exist (eg due to advances in technology).

Combating predatory pricing

50 Predatory pricing is a strategy where a firm with substantial market power deliberately sets prices below cost with the intent to eliminate competition or prevent new entrants from gaining a foothold. Once competition is weakened or removed, the firm may then raise prices to recoup losses and exploit its market power. While consumers may benefit from lower prices in the short term, longer-term impacts can include higher prices and reduced innovation and productivity.

51 Allegations of predatory pricing have arisen in the aviation, grocery and building supplies sectors, but enforcement remains challenging. Part of the challenge is the lack of clarity around the circumstances when prices are so low that they breach competition law. The Commission has taken just two enforcement actions on predatory pricing: the Port Nelson judgement in 1994 and Carter Holt Harvey in 2006, reflecting in part the difficulty of enforcing against predatory pricing given the lack of legal certainty.

52 Section 36 of the Commerce Act prohibits businesses with a substantial degree of market power from engaging in conduct that has the purpose, effect or likely effect of substantially lessening competition. Predatory pricing occurs when where a firm with substantial market power reduces its prices for a sustained period, or at strategic times, with the purpose, effect or likely effect of substantially lessening competition.

53 However, unlike many other jurisdictions, New Zealand has no objective economic test for when prices are so low that they breach section 36 of the Commerce Act.(To address this, we propose an objective economic test that aligns with Europe, the United Kingdom, Canada and Singapore, and sets out that for firms with substantial market power:

53.1 Pricing below Average Variable Cost (AVC) or Average Avoidable Cost (AAC) over a sustained period is presumptively unlawful. These pricing strategies suggest a firm is not covering its basic operating costs or is incurring losses it could otherwise avoid, respectively.

53.2 Pricing above AVC/AAC but below Long-Run Average Incremental Cost (the average cost of producing an additional unit of output over the long-term costs) or Average Total Cost (total costs divided by the number of units produced) over a sustained period is presumptively unlawful only where there is evidence of exclusionary intent.

54 To further clarify the framework , we propose codifying case law by making it explicit in the Act that proof of recoupment of strategic losses is not required to establish predatory pricing.

55 We also propose that short-term promotional pricing, including one-off specials, de minimis discounts, or mistaken pricing, are not captured unless part of a sustained pattern of pricing behaviour. These changes would support earlier intervention, reduce uncertainty, and ensure the test targets genuinely anti-competitive behaviour.

Financial implications

56 These proposals are not expected to require additional Crown funding at this stage. Most changes clarify or modestly expand the Commission's functions and can be managed within its baseline. Some proposals may have future resource implications. The companion paper notes that the governance reforms are expected to generate fiscal savings over time to help offset these pressures.

Legislative implications

57 We propose that the policy outlined in this paper be given effect through the Commerce (Promoting Competition and Other Matters) Amendment Bill, which is at priority category 5 (to proceed to Select Committee by the end of 2025).

58 The Act binds the Crown in so far as the Crown engages in trade (section 5).

Impact analysis

Regulatory Impact Statement

59 A panel with representatives from the Ministry of Business, Innovation and Employment and the Ministry for Regulation has reviewed the RIS and considers it partially meets the quality assurance criteria.

Climate Implications of Policy Assessment

60 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population, cost-of-living and human rights implications

61 There are no direct population, cost-of-living or human rights implications.

62 The Ministry of Justice will provide advice to the Attorney-General on the consistency of the Commerce (Promoting Competition and Other Matters) Amendment Bill with the Bill of Rights Act 1990 prior to introduction.

Consultation

63 The Treasury, Ministry for Regulation, Ministry for Primary Industries, Ministry of Justice, Office of the Ombudsman, Ministry of Foreign Affairs and Trade, and the Commission have been consulted on the Cabinet paper. The Department of Prime Minister and Cabinet has been informed.

64 MBIE undertook public and targeted consultation on options for reform between December 2024 and April 2025.

Communications and proactive release

65 We expect to announce these proposals soon after Cabinet decisions are made. This paper will be published on MBIE's website within 30 working days after announcements have been made, subject to appropriate redactions.

Recommendations

The Minister of Commerce and Consumer Affairs and the Acting Minister of Commerce and Consumer Affairs (Grocery Sector) recommends that the Committee:

1 **note** that in 2024, Cabinet agreed to a targeted review of the economy-wide competition settings in the Commerce Act 1986 [ECO-24-MIN-0206 refers];

2 **note** that MBIE undertook public and targeted consultation on options for reform between December 2024 and April 2025;

3 **note** that in June 2025, Cabinet agreed to the first package of reforms aimed at updating the competition settings in the Commerce Act. The Minister of Commerce and Consumer Affairs signalled that he would return to Cabinet with a second round of policy decisions [ECO-25-MIN-0098 refers];

Enhancing the merger regime

4 **agree** to clarify that the 'substantial lessening competition' test (throughout the Act) includes creating, strengthening, or entrenching a substantial degree of market power in a market;

5 **agree** to empower the Commission to combine the acquiring party's relevant acquisitions in the previous three years when assessing the competition impact of the current acquisition;

6 **agree** to clarify the meaning of:

6.1 "substantial degree of influence" by setting out a non-exhaustive list of factors the Commission may consider, including:

6.1.1 Shareholding or voting rights that provide influence over key decisions;

6.1.2 The right to appoint or remove directors or key executives;

6.1.3 Veto powers over strategic decisions;

6.1.4 Financial arrangements that create economic dependency; and

6.1.5 Contractual agreements, information arrangements, or historical patterns of deference;

6.2 "assets of a business" to confirm this includes any kind of property, as well as a legal or equitable right that is not property;

7 **agree** to empower the Commission to accept behavioural undertakings proposed by merging parties as a condition for merger clearance or authorisation;

8 **agree** that if the Commission's decision to decline a merger clearance or authorisation is appealed, and an undertaking was offered as part of the merger review, the court may not require the Commission to accept the undertaking, but may refer the matter back to the Commission for reconsideration;

9 **agree** to provide the Commission with "stay and hold" and "call-in" powers to:

9.1 temporarily suspend the completion of a potentially anti-competitive merger for a period of 40 working days while it investigates a transaction;

9.2 require parties to apply for clearance within a period defined in the notice if the Commission considers the transaction may substantially lessen competition, with the notice operating as a stay on the transaction until the clearance is decided, declined or the process is terminated by the Commission;

10 **agree** to introduce statutory timeframes for the Commission to issue merger decisions, namely:

10.1 100 additional working days for complex merger decisions, with appropriate exceptions;

10.2 publication of a decision summary within one working day, and full written reasons within 20 working days;

11 **agree** that the 20-working-day period for appealing a merger decision commences on the date the Commission publishes its full written reasons;

Deterring anti-competitive conduct using digital methods

12 **agree** to amend the Act to ensure its prohibitions apply to conduct carried out using artificial intelligence (**AI**) or algorithmic tools on behalf of a person;

Addressing concentrated markets with high barriers to entry

13 **agree** to allow the Commission to recommend the development of regulations to guide conduct among market participants to break down barriers to entry and expansion in concentrated markets;

14 **agree** that regulations be made by the Governor-General through Order in Council on the recommendation of the Minister of Commerce and Consumer Affairs, subject to:

14.1 the Commission having satisfied conditions set out in paragraph 44;

14.2 a requirement that the Minister is satisfied the regulations are necessary or desirable to achieve the purposes of the Act;

14.3 consideration by the Commission and the Minister of any voluntary codes of conduct or solutions proposed by industry;

14.4 mandatory consultation with affected parties;

14.5 a Regulatory Impact Assessment;

14.6 Cabinet approval; and

14.7 a five-year sunset clause (unless renewed or amended).

15 **agree** to enable the Commission to investigate whether a pro-competition regulation is justified in a particular market or sector, including through requiring information from the relevant market participants, noting that such an inquiry is not a prerequisite to regulation development;

16 **agree** to adopt standard enforcement tools, such as civil penalties, injunctions, and compensation for affected parties, supported by a graduated penalty framework modelled on the framework in the Grocery Industry Competition Act 2023 for breaches of the regulations;

Combating predatory pricing

17 **agree** to introduce an objective test for predatory pricing as described in paragraph 53;

18 **agree** to make explicit that proof of recoupment is not required to establish predatory pricing;

19 **agree** to that short-term promotional pricing, including one-off specials, de minimis discounts, or mistaken pricing are not captured unless part of a sustained pattern of below-cost pricing behaviour;

Drafting and minor and technical changes

20 **invite** the Minister of Commerce and Consumer Affairs, in consultation with the Acting Minister of Commerce and Consumer Affairs (Grocery Sector), to issue drafting instructions to the Parliamentary Counsel Office (**PCO**) to give effect to the above decisions;

21 **authorise** the Minister of Commerce and Consumer Affairs, in consultation with the Acting Minister of Commerce and Consumer Affairs (Grocery Sector), to make minor or technical changes to the policy decisions in this paper, as well as additional policy decisions consistent with the general policy intent, on issues that arise during drafting and passage of the Bill through the House.

Authorised for lodgement

Hon Scott Simpson

Minister of Commerce and Consumer Affairs

Hon Nicola Willis

Acting Minister of Commerce and Consumer Affairs (Grocery Sector)