



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)

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

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



Cabinet Economic Policy Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Commerce Act Review: Further Changes to Improve Competition Settings

Portfolio Commerce and Consumer Affairs

On 20 August 2025, the Cabinet Economic Policy Committee (ECO):

- 1 **noted** that in 2024, ECO agreed to a targeted review of the economy-wide competition settings in the Commerce Act 1986 (the Act) [ECO-24-MIN-0206];
- 2 **noted** that public and targeted consultation on options for reform was undertaken between December 2024 and April 2025 [ECO-24-MIN-0261];
- 3 **noted** that in June 2025, ECO agreed to the first package of reforms aimed at updating the competition settings in the Act, noting that the Minister of Commerce and Consumer Affairs (the Minister) would return to Cabinet with a second round of policy decisions [ECO-25-MIN-0098];

Enhancing the merger regime

- 4 **agreed** 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 **agreed** to empower the Commerce Commission (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 **agreed** 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;
 - 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 **agreed** to empower the Commission to accept behavioural undertakings proposed by merging parties as a condition for merger clearance or authorisation;
- 8 **agreed** 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 **agreed** 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 **agreed** 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 **agreed** 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 **agreed** 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 **agreed** to enable the Commission to investigate whether pro-competition regulation is justified in a particular market or sector, including through requiring information from the relevant market participants;

Combating predatory pricing

- 14 **agreed** to introduce an objective test for predatory pricing as described in paragraph 53 of the paper under ECO-25-SUB-0134;
- 15 **agreed** to make explicit that proof of recoupment is not required to establish predatory pricing;
- 16 **agreed** 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

- 17 **invited** the Minister, in consultation with the Acting Minister of Commerce and Consumer Affairs (for Grocery Sector matters), to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decisions;
- 18 **authorised** the Minister, in consultation with the Acting Minister of Commerce and Consumer Affairs (for Grocery Sector matters), to make minor or technical changes to the above policy decisions, and additional policy decisions consistent with the general policy intent, on issues that arise during drafting and passage of the Bill through the House.

Rachel Clarke
Committee Secretary

Present:

Hon David Seymour
Rt Hon Winston Peters
Hon Nicola Willis (Chair)
Hon Chris Bishop
Hon Brooke van Velden
Hon Shane Jones
Hon Paul Goldsmith
Hon Louise Upston
Hon Dr Shane Reti
Hon Tama Potaka
Hon Penny Simmonds
Hon Andrew Hoggard
Hon Nicola Grigg
Hon Mark Patterson
Hon James Meager
Hon Scott Simpson
Simon Court MP

Officials present from:

Office of the Prime Minister
Office of Hon Scott Simpson
Ministry of Business, Innovation and Employment
Officials Committee for ECO