



COVERSHEET

Minister	Hon Scott Simpson	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Commerce (Promoting Competition and Other Matters) Amendment Bill: Approval for Introduction	Date to be published	16 February 2026

List of documents that have been proactively released

Date	Title	Author
December 2025	Commerce (Promoting Competition and Other Matters) Amendment Bill: Approval for Introduction	Office of the Minister of Commerce and Consumer Affairs
4 December 2025	Commerce (Promoting Competition and Other Matters) Amendment Bill: Approval for Introduction LEG-25-MIN-0254 Minute	Cabinet Office

Information redacted

YES / NO

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Some information has been withheld for the reasons of legal privilege or confidential advice to Government.

In Confidence

Office of the Minister of Commerce and Consumer Affairs
Cabinet Legislation Committee

Commerce (Promoting Competition and Other Matters) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval for the introduction of the Commerce (Promoting Competition and Other Matters) Amendment Bill (**Commerce Amendment Bill**). I seek agreement to refer the Bill to the Economic Development, Science and Innovation Committee for four months' consideration, with the aim of the Bill being enacted by mid-2026.

Background

- 2 In September 2024, Cabinet agreed to a targeted review of the competition settings in the Commerce Act [ECO-24-MIN-0206 refers]. Public consultation ran from December 2024 to February 2025 and highlighted systemic concerns.
- 3 The competition policy reforms were progressed in two tranches of Cabinet policy decisions. On 25 June 2025, the Cabinet Economic Policy Committee (**ECO**) agreed to the first package of reforms to the Commerce Act [ECO-25-MIN-0098]. These reforms strengthen the Commission's enforcement toolkit, better protect confidential business information, and support beneficial business collaboration that is unlikely to harm competition. On 20 August 2025, ECO agreed to the second package of reforms [ECO-25-MIN-0134], which update the merger regime, clarify liability for the use of AI and algorithms, and provide a new objective test for predatory pricing.
- 4 The reforms to New Zealand's competition law settings are being considered alongside reforms to the Commerce Commission's (**Commission's**) governance arrangements, following the findings of the Governance and Effectiveness review led by Dame Paula Rebstock. The governance reforms agreed to by ECO on 20 August 2025 [ECO-25-MIN-0133] are being progressed through a separate bill.

Policy

- 5 The Commerce Amendment Bill is intended to give effect to decisions made by the Government following a targeted review of the Commerce Act 1986 (**the Commerce Act**). The review identified a range of issues with the current regime, including complexity, cost, and delays in authorising beneficial collaboration with

minimal impacts on competition. It also highlighted limitations in enforcement tools and gaps in the Commission's merger control regime.

Supporting beneficial collaboration

- 6 To address these issues, the Bill introduces a new statutory notification regime to better support business collaboration that delivers public benefits or is unlikely to harm competition. Under this regime, businesses can notify the Commission of proposed collaborative conduct and proceed unless the Commission objects. This provides a faster, lower-cost alternative to the current authorisation process, which costs \$36,800 in fees and involves significant time and legal complexity, making it inaccessible for many. Initially, the new statutory notification regime will be limited to resale price maintenance and small business collective bargaining, with the ability to add further categories through Order in Council.
- 7 The Bill empowers the Commission to grant class exemptions for categories of conduct that are unlikely to harm competition or that deliver public benefits, such as collaborative research and development or joint purchasing arrangements. The Bill also allows the Commission to waive or reduce application fees where appropriate, such as where the costs would cause undue hardship, or where there are significant public benefits.
- 8 The Bill streamlines the clearance process by clarifying that, for collaborative activity clearance, the Commission need only assess whether the proposed conduct is a collaborative activity, and whether any cartel provisions are reasonably necessary. Additional changes provide flexibility for arrangements involving changing participants over time, such as sector-wide initiatives or public-private partnerships. Together, these reforms will reduce duplication, simplify compliance, and promote business innovation and dynamism – delivering benefits for consumers and supporting economic growth.

Improving enforcement

- 9 The Bill strengthens the Commission's enforcement toolkit by introducing orders for corrective action. These will enable the High Court, on application by the Commission, to order firms to take steps to remedy and restore competition following a breach of the Act.
- 10 To further support effective enforcement, the Bill strengthens protections for confidential information provided to the Commission. Businesses and individuals have become increasingly reluctant to share information due to concerns it could be disclosed under the Official Information Act 1982 (**OIA**), citing the risk of retaliation or misuse by competitors. This reluctance undermines the Commission's ability to gather evidence and assess mergers and anti-competitive conduct effectively.

11 To address this, the Bill introduces a 10-year OIA exemption for confidential information provided to the Commission in the course of its functions, with the ability to extend that period where necessary. This exemption is based on similar provisions in the Financial Markets Authority Act 2011 (**FMA Act**) and the Reserve Bank of New Zealand Act 2021 (**RBNZ Act**). The Bill also broadens and clarifies the scope of confidentiality orders and introduces new protections for whistleblowers who provide information to the Commission. These measures are aimed at reducing the chilling effect of possible disclosure on cooperation and ensuring the Commission can access the information it needs to enforce the Act.

Updating merger control

12 The Bill updates the merger control regime to improve clarity, predictability, and regulatory effectiveness. It provides that the substantial lessening of competition test explicitly covers conduct that creates, strengthens, or entrenches market power, aligning with recent reforms in Australia. This clarification will empower the Commission to better address “killer acquisitions” that eliminate emerging competitors. The Bill also empowers the Commission to assess patterns of serial acquisitions that cumulatively reduce competition.

13 The Bill empowers the Commission to accept behavioural undertakings, allowing merging parties to commit to conduct-based remedies where structural solutions are impractical. In addition, targeted “call-in” and “stay-and-hold” powers will enable the Commission to review potentially harmful mergers. New statutory timeframes for complex merger decisions will improve transparency and timeliness.

Predatory pricing

14 The Bill introduces a new statutory objective test for predatory pricing. This test clarifies when below-cost pricing breaches the Act and codifies existing case law by confirming that proof of future recoupment is not required (in other words, a firm does not need to demonstrate it will recover losses by raising prices after forcing competitors out of the market).

Confirming liability for AI-enabled conduct

15 In August, Cabinet agreed to amend the Commerce Act to ensure the Act’s prohibitions apply to conduct carried out using artificial intelligence (**AI**) or algorithmic tools on behalf of a person [ECO-25-MIN-0134]. This provision is not included in the current draft of the Bill, as further work is required to confirm the most appropriate approach. **Legal professional privilege**

16 **Confidential advice to Government**

This approach supports Cabinet’s intent to future-proof the Commerce

Act as technology evolves, while carefully managing any wider implications across the statute book.

Overall impact

- 17 These reforms collectively ensure that New Zealand's competition regime remains robust, responsive, and aligned with international best practice. This Bill will support innovation, productivity, and consumer welfare by promoting a level playing field for competition across the economy.

Additional policy decisions made under delegated authority

- 18 In June and August 2025, Cabinet authorised me to make minor or technical changes, as well as additional policy decisions consistent with the general policy intent, on any issues that arise in drafting or passage through the House [ECO-25-MIN-0098 and ECO-25-MIN-0134].

Protecting confidential information

- 19 Under this authority, I agreed that the 10-year exemption from the OIA for confidential information provided to the Commission may be extended beyond 10 years, where necessary, until the information becomes publicly accessible under the Public Records Act 2005. This ensures that sensitive information, such as disclosures from small businesses about dominant firms or material relevant to long-running investigations, can remain protected where there is an ongoing risk of prejudice. The Commission would be required to consult the original supplier of the information before any extension is granted, ensuring that continued protection is justified and proportionate.

- 20 Following feedback from the Office of the Ombudsman and the Ministry of Justice, I agreed to refine the way confidential information provided to the Commission is exempted from the OIA. The exemption remains, but the provisions have been restructured to more closely align with the frameworks in the FMA Act and the RBNZ Act. This alignment introduces clear statutory grounds for disclosure, making the regime more transparent, proportionate, and consistent with comparable protections. These changes strengthen confidence in the Commission's processes while ensuring that confidentiality is maintained only where genuinely necessary.

Effective enforcement mechanisms

- 21 I have also agreed to a set of additional policy decisions to strengthen enforcement mechanisms and ensure the effectiveness of the changes introduced by the Bill, namely:

- 21.1. Enabling the court to make orders to enforce compliance with behavioural and structural undertakings, including:

- 21.1.1. Addressing contraventions by making orders to fulfil outstanding obligations, provide compensation, or grant consequential relief; and
- 21.1.2. Directing a person to comply with a behavioural undertaking, including through issuing an injunction;
- 21.2. Providing the Commission with flexibility and enforcement powers in relation to undertakings and conditions, including:
 - 21.2.1. Allowing the Commission to consider circumstances where contravention of an undertaking should not void a merger clearance or authorisation;
 - 21.2.2. Enabling enforceable conditions on collaborative activity clearances, with non-compliance as grounds for rescission; and
 - 21.2.3. Empowering the Commission to seek court orders to enforce conditions imposed under the authorisation regime.
- 21.3. Removing section 46 of the Act, which relates to savings in respect of business acquisitions, to simplify the Act and avoid unintended consequences arising from recent drafting changes.
- 21.4. Amending section 100 to introduce a “reasonable excuse” element into the offence and making it clear that section 100 orders can apply for an entire merger review process or investigation. This aligns the liability setting with that of section 103 and the Legislation Guidelines.

22 These measures close gaps in the current framework, where remedies for non-compliance with undertakings or conditions are limited and ensure that structural and behavioural undertakings can be implemented as intended. By enabling enforceable conditions on clearances and authorisations, and providing recourse to the High Court for enforcement, these decisions promote compliance, protect market integrity, and maintain confidence in the regulatory regime.

Impact Analysis

23 The Regulatory Impact Statement, *Targeted review of the Commerce Act* was prepared and submitted at the time that Cabinet approved the policy relating to the Bill [ECO-25-MIN-0134]. The subsequent additional policy decisions do not materially impact on the analysis.

Compliance

24 The Bill complies with:

- 24.1. the principles of the Treaty of Waitangi;

- 24.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 24.3. the disclosure statement requirements (a disclosure statement has been prepared and is attached to this paper);
- 24.4. the principles and guidelines set out in the Privacy Act 2020;
- 24.5. relevant international standards and obligations; and
- 24.6. the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

25 The Commerce Amendment Bill engages section 14 of BORA by extending the Commission's power to make orders restricting the disclosure of information or documents, to attach terms and conditions on release, and maintain such orders for up to 10 years after an investigation or inquiry. The Bill also provides an exemption from the OIA for confidential information provided to the Commission in the course of performing its statutory functions.

26 These measures limit the right to seek and receive information under section 14 of BORA, but they are reasonable and justified under section 5. They protect the integrity of Commission investigations and encourage cooperation, reducing the risk of withheld information that could undermine enforcement. The approach is modelled on frameworks in the FMA Act and the RBNZ Act. I consider this approach balances the right to information with the public interest in effective competition enforcement.

Consultation

- 27 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 this Cabinet paper. The Department of Prime Minister and Cabinet has been informed.
- 28 The Commission, Ministry of Justice, and the Office of the Ombudsman have been consulted on the draft Commerce Amendment Bill.

Binding on the Crown

- 29 The Bill will bind the Crown so far as it engages in trade, except that the Crown is not liable for pecuniary penalties and for prosecutions for an offence under the Act.

Creating new agencies or amending law relating to existing agencies

- 30 The legislation does not create any new agencies. The Bill proposes to amend the law relating to an existing agency.

31 The Bill proposes to amend the existing coverage of the OIA by introducing an exemption for confidential information provided to the Commission in the course of its functions, modelled on the legislative frameworks in the FMA Act and the RBNZ Act. The Bill does not amend the existing coverage of the Ombudsmen Act 1975 or the Local Government Official Information and Meetings Act 1987.

Allocation of decision-making powers

32 The proposed legislation does create some new powers for the Commission, the courts and the Minister, but does not involve any particular allocation of decision-making powers between the executive, the courts, and tribunals.

Implications for the courts

33 Anticipated resourcing implications for the Courts are expected to be very minimal. At most, the reforms may result in one or two additional cases per year, and likely fewer. The Commission has not indicated that it foresees any increase in the costs associated with its litigation portfolio because of these changes. Most proceedings under the Commerce Act are resolved by agreement, either prior to filing or before reaching substantive trial. This pattern of resolution further mitigates any potential increase in case volumes.

34 In many respects, the measures contained in the Bill are likely to be neutral or will reduce demands on judicial resources. Corrective action orders will only arise once a contravention has been established and can be addressed contemporaneously with any penalty. Predatory pricing is already prohibited under section 36, and the introduction of section 36C will provide a clearer and more specific economic test, thereby simplifying judicial consideration. Similarly, the statutory powers to suspend or call-in mergers for review are likely to avoid the need for High Court injunctions or enforcement proceedings. Provisions designed to facilitate collaborative activities are expected to lessen the risk of litigation in respect of such arrangements.

Associated regulations

35 The Commerce Act (Fees) Regulations 1990 will need to be amended to prescribe fees and forms for notification under the new statutory notification regime.

Other instruments

36 The proposed legislation includes new class exemption powers, enabling the Commission to exempt classes of conduct that may technically breach Parts 2 or 3 but are likely to cause minimal harm to competition, or create public benefits, such as collective bargaining by small businesses.

Commencement of legislation

37 The Act will come into force the day after the date on which it receives the Royal assent, but for the following areas, which are subject to a six-month delay:

- 37.1. The expanded substantial lessening of competition test and the Commission's new powers to assess serial acquisitions;
- 37.2. The streamlined collaborative activity clearance regime;
- 37.3. The new statutory notification regime, class exemptions, and fee waivers;
- 37.4. Amendments to the timeframe and publication requirements for merger clearances and authorisations, as well as the Commission's new suspension and call-in powers;
- 37.5. The sections enabling the Commission to accept behavioural undertakings for merger clearances and authorisations, as well as amendments addressing both behavioural and structural undertakings;
- 37.6. The new objective test for predatory pricing;
- 37.7. New court orders, penalties, injunctions and appeals.

Parliamentary stages

38 The Bill has a category 5 priority on the 2025 Legislation Programme (to proceed to select committee by the end of 2025).

39 I intend to introduce the Bill on 9 December 2025, and depending on the availability of House time, will move the first reading of the Bill in the week of 15 December 2025.

40 I propose the Bill be referred to the Economic Development, Science and Innovation Committee, with a report back date of late April 2026. The Bill should be passed by mid-2026.

Proactive Release

41 I intend to proactively release this paper within 30 business days, subject to possible redactions in line with the Official Information Act 1982.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** that the Commerce (Promoting Competition and Other Matters) Amendment Bill (**the Bill**) holds a category 5 priority on the 2025 Legislation Programme (to proceed to select committee by the end of 2025);
- 2 **note** that the Bill amends the Commerce Act 1986 to implement a package of reforms that modernise and improve New Zealand's competition settings;
- 3 **note** that Cabinet authorised me to make additional policy decisions and minor or technical changes, consistent with the general policy intent previously agreed by Cabinet;
- 4 **note** that additional policy decisions have been made under delegated authority to:
 - 4.1. allow the 10-year exemption from the Official Information Act 1982 (**OIA**) for confidential information provided to the Commission in the course of its functions to be extended beyond 10 years, where necessary, until the information becomes publicly accessible under the Public Records Act 2005;
 - 4.2. enable the court to make orders to enforce compliance with behavioural and structural undertakings, including by:
 - 4.2.1. addressing contraventions by making orders to fulfil outstanding obligations, provide compensation, or grant consequential relief;
 - 4.2.2. directing a person to comply with a behavioural undertaking, including through issuing an injunction;
 - 4.3. provide the Commission with flexibility and enforcement powers in relation to undertakings and conditions, including by:
 - 4.3.1. allowing the Commission to consider circumstances where contravention of an undertaking should not void a merger clearance or authorisation;
 - 4.3.2. enabling enforceable conditions on collaborative activity clearances, with non-compliance as grounds for rescission; and
 - 4.3.3. empowering the Commission to seek court orders to enforce conditions imposed under the authorisation regime;

- 4.4. repeal section 46, which currently provides a savings provision to prevent overlap between Parts 2 and 3 for business acquisitions; and
- 4.5. amend section 100 to introduce a “reasonable excuse” element into the offence, and make it clear that section 100 orders can apply for an entire merger review process or investigation.

5 **note** that Cabinet previously agreed to amend the Act to clarify that its prohibitions apply to conduct carried out using artificial intelligence (**AI**) or algorithmic tools [ECO-25-MIN-0134], but this provision is not included in the Bill at this stage as further work is needed Confidential advice to Government

6 **approve** the Bill for introduction, subject to the final approval of the Government Caucus and sufficient support in the House of Representatives;

7 **agree** that the Bill be introduced on 9 December 2025;

8 **agree** that the Government propose that the Bill be:

- 8.1. referred to the Economic Development, Science and Innovation Committee for consideration, with a report back date of late April 2026; and
- 8.2. enacted by mid-2026.

Authorised for lodgement

Hon Scott Simpson
Minister of Commerce and Consumer Affairs