



COVERSHEET

Minister	Hon Cameron Brewer	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Commerce (Promoting Competition and Other Matters) Amendment Bill: Approval to Release Amendment Paper	Date to be published	16 October 2026

List of documents that have been proactively released

Date	Title	Author
September 2026	Commerce (Promoting Competition and Other Matters) Amendment Bill: Approval to Release Amendment Paper	Office of the Minister of Commerce and Consumer Affairs
7 September 2026	Commerce (Promoting Competition and Other Matters) Amendment Bill: Approval to Release Amendment Paper CBC-26-MIN-0033 Minute	Cabinet Office

Information redacted

YES / NO (please select)

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[Amendment paper No 802 \[PCO 27095-1/4.0\]](#), drafted by the Parliamentary Counsel Office and annexed to the Cabinet documents published in this proactive release, was published on 14 September 2026.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Business Committee

Commerce (Promoting Competition and Other Matters) Amendment Bill: Approval to Release Amendment Paper

Proposal

1. This paper seeks agreement to release an Amendment Paper to the Commerce (Promoting Competition and Other Matters) Amendment Bill (**the Bill**).
2. The Amendment Paper makes changes to the predatory pricing provision (clause 6 inserts new section 36C) in the Bill and creates a new regulation-making power to enable further detail to be specified in secondary legislation, if required.

Background

3. In August 2025, Cabinet agreed to introduce an objective statutory test for predatory pricing as part of the Bill's broader package of competition reforms [ECO-25-MIN-0134 refers].
4. The predatory pricing provision is intended to clarify when sustained low pricing by a firm with substantial market power crosses the line into exclusionary conduct that harms competition by deterring entry into or expansion in a market.
5. The Bill inserts new section 36C into the Commerce Act 1986 (**the Act**). As introduced, new section 36C would:
 - 5.1. treat sustained pricing below Average Variable Cost (**AVC**) or Average Avoidable Cost (**AAC**) as having the purpose or effect of substantially lessening competition;
 - 5.2. treat sustained pricing above AVC or AAC, but below Long-run Average Incremental Cost (**LRAIC**) or Average Total Cost (**ATC**), as having the purpose or effect of substantially lessening competition if undertaken for an exclusionary purpose;
 - 5.3. confirm that proof of recoupment of strategic losses is not required to establish that predatory pricing has occurred, although recoupment may be taken into account by the Court; and
 - 5.4. exclude short-term promotional pricing, incorrect pricing, and one-off specials, unless these occur as part of a pattern of behaviour over a sustained period.

The Amendment Paper proposes changes to the predatory pricing provision

6. During the select committee process, some submitters raised concerns about the per se, or automatically unlawful, nature of the proposed test. These submitters noted that low pricing is ordinarily pro-competitive and should only be treated as anti-competitive

in narrow circumstances. Some submitters suggested that a rebuttable presumption would be a more workable and proportionate approach.

7. The predatory pricing provision was retained in the Bill unamended when reported back for second reading by the Economic Development, Science and Innovation Committee (**EDSI**), as EDSI was evenly split on a vote to delete the provision.
8. The Amendment Paper responds to the feedback received and the outcome of EDSI's consideration of the Bill by amending new section 36C to:
 - 8.1. amend the predatory pricing provision by inserting new section 36C(2A), which allows the person to rebut the presumed breach of the predatory pricing test by proving that their conduct does not have the purpose, and does not have and is not likely to have the effect, of substantially lessening competition;
 - 8.2. delete the definition of "short-term" in relation to promotional pricing as it risks creating arbitrary boundaries and is not a feature used in comparable overseas regimes;
 - 8.3. refine the definitions of the cost benchmarks used within the predatory pricing test (i.e., AAC, ATC, AVC, and LRAIC); and
 - 8.4. require compliance with any regulations made under new section 36D (see paragraphs 11-13).
9. Cabinet previously agreed to a delayed commencement of new section 36C to allow the Commerce Commission time to develop guidance and prepare for implementation, but this was omitted from the Bill as reported back. The Amendment Paper corrects this omission by providing that new section 36C will commence six months after Royal Assent.
10. The Amendment Paper also removes wording relating to the treatment of recoupment of strategic losses under the predatory pricing test. It also clarifies (to avoid doubt) that the exclusions in new section 36C(5) only apply to predatory pricing and not all of section 36 of the Act (misuse of market power).

The Amendment Paper enables regulations to specify matters of technical detail within the predatory pricing test

11. The Amendment Paper creates a new regulation-making power by inserting new section 36D to enable further detail to be specified in secondary legislation, if required. This may include, for example, specifying how certain cost definitions are calculated and how certain cost components may be treated (e.g. common costs).
12. This provides future flexibility for technical specifications to be set out in secondary legislation to provide certainty about the details of the predatory pricing test, complementing any guidance issued by the Commerce Commission.
13. The regulations will be made by the Governor-General by an Order in Council, on the recommendation of the Minister responsible for the Act.

Regulatory analysis

14. A Regulatory Impact Statement, *Targeted review of the Commerce Act*, was prepared in accordance with Cabinet's impact analysis requirements and submitted at the time Cabinet approved the policy relating to the Bill and the relevant amendments [ECO-25-MIN-0134 refers].
15. The Minister of Commerce and Consumer Affairs authorised drafting of this Amendment Paper. Therefore, Cabinet's impact analysis requirements do not apply to this paper.

Consistency with the principles of responsible regulation

16. The Bill was introduced before 1 July 2026. The Amendment Paper is therefore excluded from the requirements of the Regulatory Standards Act 2025.
17. Accordingly, a Consistency Accountability Statement and Ministerial Statement of Reasons are not required for these amendments.

Compliance

18. The proposed amendments comply with:
 - 18.1. the principles of the Treaty of Waitangi;
 - 18.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 18.3. the principles and guidelines set out in the Privacy Act 2020;
 - 18.4. relevant international standards and obligations;
 - 18.5. the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

19. The following agencies were consulted in relation to this Amendment Paper: Ministry of Justice, Ministry for Regulation, Department of Prime Minister and Cabinet, Ministry of Foreign Affairs and Trade, Office of the Ombudsman, Ministry of Primary Industries and Treasury.
20. The Commerce Commission provided technical feedback.

Binding on the Crown

21. The Bill will bind the Crown so far as it engages in trade, except that the Crown is not liable for pecuniary penalties or for prosecution for an offence under the Act.

Creating new agencies or amending the law relating to existing agencies

22. This Amendment Paper does not create new agencies or amend the law relating to existing agencies.

Allocation of decision-making powers

23. This Amendment Paper does not contain any proposals related to the allocation of decision-making powers between the executive, the courts, and tribunals.

Associated regulations

24. No regulations are needed to bring the Amendment Paper into operation.

Other instruments

25. The Amendment Paper introduces a regulation-making power through new section 36D of the Act. These regulations will provide further technical specifications, if required.
26. The regulations will be made by the Governor-General by Order in Council on the recommendation of the Minister.

Definition of Minister / department

27. The Amendment Paper does not contain a definition of Minister, department, or chief executive of a department.

Commencement of legislation

28. The Bill will come into force the day after it receives Royal Assent, except for the predatory pricing provisions (new sections 36C and 36D) and other provisions designated by Clause 2 of the Bill, which will come into force six months after the day the Bill receives Royal Assent.

Parliamentary stages

29. The Amendment Paper will be released following Cabinet confirmation for it to be considered at the Committee of the Whole House stage of the Bill.
30. I moved the Bill's second reading on 30 July 2026. It holds Category 5 priority on the 2026 Legislation Programme.

Proactive Release

31. 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**) includes an objective statutory test for predatory pricing, as agreed by Cabinet in August 2025 [ECO-25-MIN-0134 refers];
2. **note** that the Amendment Paper retains, but modifies, the objective statutory test for predatory pricing by:

I N C O N F I D E N C E

- 2.1. inserting new section 36C(2A), which allows the person to rebut the presumed breach of the predatory pricing test by proving that their conduct does not have the purpose, and does not have and is not likely to have the effect, of substantially lessening competition;
- 2.2. deleting the definition of “short-term” in relation to promotional pricing;
- 2.3. refining the definitions of the cost benchmarks;
- 2.4. requiring compliance with any regulations made under new section 36D; and
- 2.5. reinstating the previously agreed delayed commencement of the provision, so that it comes into force six months after Royal Assent;
3. **note** that the Amendment Paper creates a new regulation-making power to enable further technical detail to be specified in secondary legislation if required;
4. **note** that the amendments outlined above are consistent with the policy agreed by Cabinet in August 2025 and the associated Regulatory Impact Statement;
5. **note** that the Bill was introduced before 1 July 2026 and the Amendment Paper is therefore excluded from the Regulatory Standards Act 2025 requirements;
6. **note** that referral back to select committee is not required, as the Amendment Paper responds to issues raised during select committee consideration;
7. **note** that the Bill has a Category 5 priority on the 2026 Legislation Programme;
8. **approve** the Amendment Paper for release as soon as practicable; and
9. **authorise** the Minister of Commerce and Consumer Affairs to make minor and technical changes to the Amendment Paper before release, consistent with the policy approvals in this paper.

Authorised for lodgement

Hon Cameron Brewer

Minister of Commerce and Consumer Affairs