

**Reprint  
as at 15 September 2011**



**Commerce Act 1986**

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This Act is administered by the Ministry of Economic Development.**

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**Title** *[Repealed]*

Title: repealed, on 26 May 2001, by section 3 of the Commerce Amendment Act 2001 (2001 No 32).

*[Repealed]*

**1 Short Title and commencement**

- (1) This Act may be cited as the Commerce Act 1986.
- (2) This Act shall come into force on 1 May 1986.

**1A Purpose**

The purpose of this Act is to promote competition in markets for the long-term benefit of consumers within New Zealand.

Section 1A: inserted, on 26 May 2001, by section 4 of the Commerce Amendment Act 2001 (2001 No 32).

**2 Interpretation**

- (1) In this Act, unless the context otherwise requires,—
  - accounting period** has the same meaning as in section 2(1) of the Financial Reporting Act 1993, except that every reference to an entity is a reference to a body corporate
  - acquire**,—
    - (a) in relation to goods, includes obtain by way of gift, purchase, or exchange; and also includes take on lease, hire, or hire purchase:
    - (b) in relation to services, includes accept:
    - (c) in relation to interests in land, includes obtain by way of gift, purchase, exchange, lease or licence
  - arrive at**, in relation to an understanding, includes reach, and enter into
  - assets** includes intangible assets
  - associate member** means a member appointed under section 11(1)



**authorisation** means an authorisation granted by the Commission under Part 5, or by the court on appeal under Part 6 against a determination of the Commission

**Authority** means the Electricity Authority established under the Electricity Industry Act 2010

**business** means any undertaking—

- (a) that is carried on for gain or reward; or
- (b) in the course of which—
  - (i) goods or services are acquired or supplied; or
  - (ii) any interest in land is acquired or disposed of—otherwise than free of charge

**chairperson** means the chairperson of the Commission

**clearance** means a clearance given by the Commission under Part 5, or by the court on appeal under Part 6 against a determination of the Commission

**Commission—**

- (a) means the Commerce Commission established under Part 1; or
- (b) for the purposes of determining any matter or class of matter specified in a direction under section 16(1), means the Division of the Commission specified in the direction in accordance with section 16(5)

**Commissioner** means a Commissioner appointed under section 74AA(1)

**court** means the High Court of New Zealand

**covenant** means a covenant (including a promise not under seal) annexed to or running with an estate or interest in land (whether at law or in equity and whether or not for the benefit of other land); and **proposed covenant** has a corresponding meaning

**credit instrument** means any agreement (whether in writing or not) acknowledging an obligation to pay a sum or sums of money on demand or at any future time or times

**deputy chairperson** means the deputy chairperson of the Commission

**document** means a document in any form whether signed or initialled or otherwise authenticated by its maker or not; and includes—

- (a) any writing on any material:
- (b) any information recorded or stored by means of any tape recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:
- (c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:
- (d) any book, map, plan, graph, or drawing:
- (e) any photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced

**give effect to**, in relation to a provision of a contract, arrangement, or understanding, includes—

- (a) do an act or thing in pursuance of or in accordance with that provision:
- (b) enforce or purport to enforce that provision

**goods**—

- (a) means personal property of every kind (whether tangible or intangible); and
- (b) includes—
  - (i) ships, aircraft, and vehicles:
  - (ii) animals, including fish:
  - (iii) minerals, trees, and crops, whether on, under, or attached to land or not:
  - (iv) gas and electricity:
  - (v) to avoid doubt, water and computer software

**local authority** includes every local authority and every public body or other authority created by or pursuant to any public Act or local Act

**member of the Commission**—

- (a) means a member appointed under section 9(2); and
- (b) means the Telecommunications Commissioner appointed under section 9 of the Telecommunications Act 2001; and

- (c) in the circumstances in section 11(3), includes an associate member

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**person**, includes a local authority, and any association of persons whether incorporated or not

**place** includes any premises, building, aircraft, ship, carriage, vehicle, or receptacle

**prescribed** means prescribed by regulations under this Act or by the Commission

**price**, includes valuable consideration in any form, whether direct or indirect; and includes any consideration that in effect relates to the acquisition or supply of goods or services or the acquisition or disposition of any interest in land, although ostensibly relating to any other matter or thing

**provision**, in relation to an understanding or arrangement, means any matter forming part of or relating to the understanding or arrangement

**services** includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges, or facilities that are or are to be provided, granted, or conferred in trade; and, without limiting the generality of the foregoing, also includes the rights, benefits, privileges, or facilities that are or are to be provided, granted, or conferred under any of the following classes of contract:

- (a) a contract for, or in relation to,—
- (i) the performance of work (including work of a professional nature), whether with or without the supply of goods; or
  - (ii) the provision of, or the use or enjoyment of facilities for, accommodation, amusement, the care of persons or animals or things, entertainment, instruction, parking, or recreation; or
  - (iii) the conferring of rights, benefits, or privileges for which remuneration is payable in the form of a royalty, tribute, levy, or similar exaction:

- (iv) to avoid doubt, the supply of electricity, gas, telecommunications, or water, or the removal of waste water:
- (b) a contract of insurance, including life assurance, and life reinsurance:
- (c) a contract between a bank and a customer of the bank:
- (d) any contract for or in relation to the lending of money or granting of credit, or the making of arrangements for the lending of money or granting of credit, or the buying or discounting of a credit instrument, or the acceptance of deposits;—

but does not include rights or benefits in the form of the supply of goods or the performance of work under a contract of service

**share** means a share in the share capital of a company or other body corporate, whether or not it carries the right to vote at general meetings; and includes—

- (a) a beneficial interest in any such share:
- (b) a power to exercise, or control the exercise of, a right to vote attaching to any such share that carries the right to vote at meetings of the company:
- (c) a power to acquire or dispose of, or control the acquisition or disposition of, any such share:
- (d) a perpetual debenture and perpetual debenture stock

**supply**,—

- (a) in relation to goods, includes supply (or resupply) by way of gift, sale, exchange, lease, hire, or hire purchase; and
- (b) in relation to services, includes provide, grant, or confer;—

and **supply** as a noun, **supplied**, and **supplier** have corresponding meanings

**trade** means any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services or to the disposition or acquisition of any interest in land

**turnover** means the total gross revenues (exclusive of any tax required to be collected) received or receivable by a body cor-

porate in an accounting period as a result of trading by that body corporate within New Zealand

**working day** means any day of the week other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
- (b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

(1A) In this Act (except sections 36, 36A, and 47(3) and (4)) **substantial** means real or of substance.

(2) In this Act,—

- (a) a reference to **engaging in conduct** shall be read as a reference to doing or refusing to do any act, including—
  - (i) the entering into, or the giving effect to a provision of, a contract or arrangement; or
  - (ii) the arriving at, or the giving effect to a provision of, an understanding; or
  - (iii) the requiring of the giving of, or the giving of, a covenant:
- (b) a reference to **conduct**, when that expression is used as a noun otherwise than as mentioned in paragraph (a), shall be read as a reference to the doing of, or the refusing to do, any act, including—
  - (i) the entering into, or the giving effect to a provision of, a contract or arrangement; or
  - (ii) the arriving at, or the giving effect to a provision of, an understanding; or
  - (iii) the requiring of the giving of, or the giving of, a covenant:
- (c) a reference to **refusing to do an act** includes a reference to—
  - (i) refraining (otherwise than inadvertently) from doing that act; or
  - (ii) making it known that that act will not be done:
- (d) a reference to a person **offering to do an act**, or **to do an act on a particular condition**, includes a reference to the person making it known that the person will accept applications, offers, or proposals for the person to do

that act or to do that act on that condition, as the case may be.

- (3) Where any provision of this Act is expressed to render a provision of a contract or a covenant unenforceable if the provision of the contract or the covenant has or is likely to have a particular effect, that provision of this Act applies in relation to the provision of the contract or the covenant at any time when the provision of the contract or the covenant has or is likely to have that effect, notwithstanding that—
- (a) at an earlier time the provision of the contract or the covenant did not have that effect or was not regarded as likely to have that effect; or
  - (b) the provision of the contract or the covenant will not or may not have that effect at a later time.
- (4) In this Act—
- (a) a reference to the **acquisition of goods** includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods:
  - (b) a reference to the **supply or acquisition of goods or services** includes a reference to agreeing to supply or acquire goods or services:
  - (c) a reference to the **supply or acquisition of goods** includes a reference to the supply or acquisition of goods together with other property or services or both:
  - (d) a reference to the **supply or acquisition of services** includes a reference to the supply or acquisition of services together with property or other services or both:
  - (e) a reference to the **resupply of goods acquired from a person** includes a reference to—
    - (i) a supply of the goods to another person in an altered form or condition; and
    - (ii) a supply to another person of other goods in which the goods have been incorporated.
- (5) For the purposes of this Act—
- (a) a provision of a contract, arrangement or understanding, or a covenant shall be deemed to have had, or to have, a particular purpose if—
    - (i) the provision was or is included in the contract, arrangement or understanding, or the covenant

- was or is required to be given, for that purpose or purposes that included or include that purpose; and
- (ii) that purpose was or is a substantial purpose:
- (b) a person shall be deemed to have engaged, or to engage, in conduct for a particular purpose or a particular reason if—
- (i) that person engaged or engages in that conduct for that purpose or reason or for purposes or reasons that included or include that purpose or reason; and
- (ii) that purpose or reason was or is a substantial purpose or reason.
- (6) In this Act—
- (a) a reference to a **contract** shall be construed as including a reference to a lease of, or a licence in respect of, any land or a building or part of a building, and shall be so construed notwithstanding any express reference in this Act to any such lease or licence:
- (b) a reference to **making or entering into a contract**, in relation to such a lease or licence, shall be read as a reference to granting or taking the lease or licence:
- (c) a reference to a party to a contract, in relation to such a lease or licence, shall be read as including a reference to any person bound by, or entitled to the benefit of, any provision contained in the lease or licence.
- (7) For the purposes of this Act, any 2 bodies corporate are to be treated as **interconnected** if—
- (a) one of them is a body corporate of which the other is a subsidiary (within the meaning of sections 158 and 158A of the Companies Act 1955 or sections 5 and 6 of the Companies Act 1993, as the case may be); or
- (b) both of them are subsidiaries (within the meaning of those sections) of the same body corporate; or
- (ba) both of them are entities referred to by any of the paragraphs (other than paragraph (e)) of the definition of transferor in section 2(1) of the Health Sector (Transfers) Act 1993; or

- (c) both of them are interconnected with bodies corporate that, in accordance with paragraph (a) or paragraph (b), are interconnected—  
and **interconnected bodies corporate** has a corresponding meaning.
- (7A) For the purposes of subsection (7)(a) and (b), no body corporate shall be regarded as a subsidiary (within the meaning of sections 158 and 158A of the Companies Act 1955 or sections 5 and 6 of the Companies Act 1993, as the case may be) of the Crown.
- (8) For the purposes of this Act—
  - (a) any contract or arrangement entered into, or understanding arrived at by an association or body of persons, shall be deemed to have been entered into or arrived at by all the persons who are members of the association or body:
  - (b) any recommendation made by an association or body of persons to its members or to any class of its members shall, notwithstanding anything to the contrary in the constitution or rules of the association or body of persons, be deemed to be an arrangement made between those members or the members of that class and between the association or body of persons and those members or the members of that class.
- (9) Nothing in subsection (8) applies to—
  - (a) any member of an association or body of persons who expressly notifies the association or body in writing that he disassociates himself from the contract, arrangement, or understanding or any provision thereof and who does so disassociate himself:
  - (b) to any member of an association or body of persons who establishes that he had no knowledge and could not reasonably have been expected to have had knowledge of the contract, arrangement, or understanding.

Compare: 1975 No 113 ss 2(1), 67A(3); 1976 No 67 ss 22, 23(3); 1979 No 140 s 2; 1983 No 144 s 26; Trade Practices Act 1974 ss 4, 4C, 4F, 4H (Aust)

Section 2(1) **accounting period**: inserted, on 26 May 2001, by section 5 of the Commerce Amendment Act 2001 (2001 No 32).

Section 2(1) **assets**: inserted, on 1 January 1991, by section 2(1) of the Commerce Amendment Act 1990 (1990 No 41).



Section 2(1) **associate member**: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **Authority**: inserted, on 1 November 2010, by section 146(1) of the Electricity Industry Act 2010 (2010 No 116).

Section 2(1) **chairman**: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **chairperson**: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **Commission**: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **Commissioner**: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **deputy chairman**: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **deputy chairperson**: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **Electricity Commission**: repealed, on 1 November 2010, by section 146(2) of the Electricity Industry Act 2010 (2010 No 116).

Section 2(1) **goods**: substituted, on 8 July 2003, by section 3(1) of the Commerce Amendment Act 2003 (2003 No 32).

Section 2(1) **member of the Commission**: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **Minister**: substituted, on 26 May 2001, by section 5 of the Commerce Amendment Act 2001 (2001 No 32).

Section 2(1) **officer of the Commission**: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **place**: inserted, on 1 July 1990, by section 2(2) of the Commerce Amendment Act 1990 (1990 No 41).

Section 2(1) **services** paragraph (a)(iv): added, on 8 July 2003, by section 3(2) of the Commerce Amendment Act 2003 (2003 No 32).

Section 2(1) **share**: inserted, on 1 January 1991, by section 2(3) of the Commerce Amendment Act 1990 (1990 No 41).

Section 2(1) **share** paragraph (b): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 2(1) **substantial**: repealed, on 1 January 1991, by section 2(4) of the Commerce Amendment Act 1990 (1990 No 41).

Section 2(1) **turnover**: inserted, on 26 May 2001, by section 5 of the Commerce Amendment Act 2001 (2001 No 32).

Section 2(1A): inserted, on 1 January 1991, by section 2(5) of the Commerce Amendment Act 1990 (1990 No 41).

Section 2(1A): amended, on 26 May 2001, by section 9(2) of the Commerce Amendment Act 2001 (2001 No 32).

Section 2(7): substituted, on 1 January 1991, by section 2(6) of the Commerce Amendment Act 1990 (1990 No 41).

Section 2(7)(a): substituted, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 2(7)(b): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 2(7)(ba): inserted, on 1 January 2001, by section 107(1) of the New Zealand Public Health and Disability Act 2000 (2000 No 91).

Section 2(7A): inserted, on 9 December 1994, by section 2(1) of the Commerce Amendment Act 1994 (1994 No 135).

Section 2(7A): amended, on 1 January 2001, by section 107(2) of the New Zealand Public Health and Disability Act 2000 (2000 No 91).

### **3 Certain terms defined in relation to competition**

- (1) In this Act **competition** means workable or effective competition.
- (1A) Every reference in this Act, except the reference in section 36A(2)(b) and (c), to the term **market** is a reference to a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.
- (1B) The reference in section 36A(2)(b) to the term **market**, in relation to a market in Australia, is a reference to a market in Australia for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.
- (1C) The reference in section 36A(2)(c) to the term **market** in relation to a market in New Zealand and Australia, is a reference to a market in New Zealand and Australia for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.
- (2) In this Act, unless the context otherwise requires, references to the **lessening of competition** include references to the hindering or preventing of competition.
- (3) For the purposes of this Act, the effect on competition in a market shall be determined by reference to all factors that affect competition in that market including competition from goods or services supplied or likely to be supplied by persons not resident or not carrying on business in New Zealand.
- (4) In sections 27 and 28, a reference to a **market** in relation to the purpose or effect in respect of competition of a provision

of a contract, arrangement, or understanding, or of a covenant, or of conduct, shall be read as including a reference to—

- (a) a market in which a person who is a party to the contract, arrangement, or understanding, or any interconnected body corporate, or, as the case may be, the person or any associated person (within the meaning of section 28(7)) who requires the giving of, or gives the covenant, supplies or acquires or is likely to supply or acquire, or would, but for that provision, covenant, or conduct, supply or acquire or be likely to supply or acquire goods or services; and
  - (b) any other market in which those goods or services may be supplied or acquired.
- (5) For the purposes of section 27, a provision of a contract, arrangement, or understanding shall be deemed to have or to be likely to have the effect of substantially lessening competition in a market if that provision and—
- (a) the other provisions of that contract, arrangement, or understanding; or
  - (b) the provisions of any other contract, arrangement, or understanding to which that person or any interconnected body corporate is a party—
- taken together, have or are likely to have the effect of substantially lessening competition in that market.
- (6) For the purposes of section 28, a covenant shall be deemed to have or to be likely to have the effect of substantially lessening competition in a market if—
- (a) that covenant; and
  - (b) any other covenant to the benefit of which that person or an associated person (within the meaning of section 28(7)) is entitled or would be entitled if the covenant were enforceable—
- taken together, have or are likely to have the effect of substantially lessening competition in that market.
- (7) For the purposes of sections 27 and 28, the engaging in conduct shall be deemed to have or to be likely to have the effect of substantially lessening competition in a market if—
- (a) the engaging in that conduct; and

- (b) the engaging by that person in conduct of the same or a similar kind—

taken together, have or are likely to have the effect of substantially lessening competition in that market.

(8) *[Repealed]*

(9) *[Repealed]*

Compare: Trade Practices Act 1974 ss 4, 4E, 4G, 45(3), (4), 45B(4), 46 (Aust)

Section 3(1): substituted, on 1 July 1990, by section 3(1) of the Commerce Amendment Act 1990 (1990 No 41).

Section 3(1A): inserted, on 1 July 1990, by section 3(1) of the Commerce Amendment Act 1990 (1990 No 41).

Section 3(1A): amended, on 26 May 2001, by section 9(3) of the Commerce Amendment Act 2001 (2001 No 32).

Section 3(1B): inserted, on 1 July 1990, by section 3(1) of the Commerce Amendment Act 1990 (1990 No 41).

Section 3(1B): amended, on 26 May 2001, by section 9(3) of the Commerce Amendment Act 2001 (2001 No 32).

Section 3(1C): inserted, on 1 July 1990, by section 3(1) of the Commerce Amendment Act 1990 (1990 No 41).

Section 3(1C): amended, on 26 May 2001, by section 9(3) of the Commerce Amendment Act 2001 (2001 No 32).

Section 3(8): repealed, on 26 May 2001, by section 9(4) of the Commerce Amendment Act 2001 (2001 No 32).

Section 3(9): repealed, on 26 May 2001, by section 11(3) of the Commerce Amendment Act 2001 (2001 No 32).

### **3A Commission to consider efficiency**

Where the Commission is required under this Act to determine whether or not, or the extent to which, conduct will result, or will be likely to result, in a benefit to the public, the Commission shall have regard to any efficiencies that the Commission considers will result, or will be likely to result, from that conduct.

Section 3A: inserted, on 1 July 1990, by section 4 of the Commerce Amendment Act 1990 (1990 No 41).

## **4 Application of Act to conduct outside New Zealand**

- (1) This Act extends to the engaging in conduct outside New Zealand by any person resident or carrying on business in New Zealand to the extent that such conduct affects a market in New Zealand.

- (2) Without limiting subsection (1), section 36A extends to the engaging in conduct outside New Zealand by any person resident or carrying on business in Australia to the extent that such conduct affects a market, not being a market exclusively for services, in New Zealand.
- (3) Without limiting subsection (1), section 47 extends to the acquisition outside New Zealand by a person (whether or not the person is resident or carries on business in New Zealand) of the assets of a business or shares to the extent that the acquisition affects a market in New Zealand.

Section 4: substituted, on 1 July 1990, by section 5 of the Commerce Amendment Act 1990 (1990 No 41).

Section 4(3): added, on 2 September 1996, by section 2 of the Commerce Amendment Act 1996 (1996 No 113).

## **5 Application of Act to the Crown**

- (1) Subject to this section, this Act shall bind the Crown in so far as the Crown engages in trade.
- (2) The Crown shall not be liable to pay a pecuniary penalty under section 80.
- (3) The Crown shall not be liable to be prosecuted for an offence against this Act.
- (4) Where it is alleged that the Crown has contravened any provision of this Act and that contravention constitutes an offence, the Commission or the person directly affected by the contravention may apply to the court for a declaration that the Crown has contravened that provision; and, if the court is satisfied beyond a reasonable doubt that the Crown has contravened that provision, it may make a declaration accordingly.

Compare: 1975 No 113 s 20B; 1979 No 140 s 12; Trade Practices Act 1974 s 2A (Aust)

## **6 Application of Act to Crown corporations**

- (1) This Act applies to every body corporate that is an instrument of the Crown in respect of the Government of New Zealand engaged in trade.

- (2) Notwithstanding any enactment or rule of law, proceedings under Part 6 may be brought against a body corporate referred to in subsection (1).

Compare: 1975 No 113 s 20A; 1979 No 140 s 11

**6A Special provisions relating to application of Act to the Crown in right of Australia and to Australian Crown corporations**

Section 36A, and Parts 6 and 7, in so far as they relate to a contravention of, or confer powers that may be exercised in relation to, that section, apply to—

- (a) the Crown in right of the Commonwealth of Australia, each of the States of the Commonwealth of Australia, and the Northern Territory and the Australian Capital Territory, in so far as the Crown engages in trade; and
- (b) every body corporate that is an authority of the Commonwealth of Australia within the meaning of section 4 of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia in so far as it engages in trade; and
- (c) every body corporate established for a purpose of a State of the Commonwealth of Australia by or under a law of that State in so far as it engages in trade; and
- (d) every body corporate in which a State of the Commonwealth of Australia or in which a body corporate referred to in paragraph (c) has a controlling interest in so far as it engages in trade.

Section 6A: inserted, on 1 July 1990, by section 6 of the Commerce Amendment Act 1990 (1990 No 41).

Section 6A(b): amended, on 2 September 1996, by section 13(2) of the Commerce Amendment Act 1996 (1996 No 113).

**6B Crown and Crown corporations not immune from jurisdiction in relation to certain provisions of Trade Practices Act 1974**

Neither the Crown nor a body corporate that is an instrument of the Crown in respect of the Government of New Zealand is immune, and neither the Crown nor such a body corporate may claim immunity, from the jurisdiction of the courts of

New Zealand and Australia in relation to a contravention of section 46A of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia and in relation to Parts VI and XII of that Act in so far as they relate to a contravention of that section.

Section 6B: inserted, on 1 July 1990, by section 6 of the Commerce Amendment Act 1990 (1990 No 41).

**6C Application of Evidence Amendment Act 1980**

Nothing in the Evidence Amendment Act 1980 applies in relation to the application of section 46A of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia or Parts VI and XII of that Act in so far as they relate to a contravention of that section.

Section 6C: inserted, on 1 July 1990, by section 6 of the Commerce Amendment Act 1990 (1990 No 41).

**7 Law relating to restraint of trade and breaches of confidence not affected**

- (1) Nothing in this Act limits or affects any rule of law relating to restraint of trade not inconsistent with any of the provisions of this Act.
- (2) Nothing in this Act limits or affects any rule of law relating to breaches of confidence.
- (3) No rule of law referred to in subsection (1) or subsection (2) affects the interpretation of any of the provisions of this Act.

Compare: Trade Practices Act 1974 s 4M (Aust)

## **Part 1**

### **The Commerce Commission**

**8 Establishment of Commission**

- (1) There is hereby established a commission to be called the Commerce Commission.
- (2) Except as expressly provided otherwise in this or any other Act, the Commission must act independently in performing its statutory functions and duties, and exercising its statutory powers, under—
  - (a) this Act; and

- (b) any other Act that expressly provides for the functions, powers, or duties of the Commission (other than the Crown Entities Act 2004).

(3) *[Repealed]*

(4) *[Repealed]*

Section 8(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 8(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 8(4): repealed, on 1 July 1990, by section 7 of the Commerce Amendment Act 1990 (1990 No 41).

#### **8A Application of Crown Entities Act 2004**

- (1) The Commission is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2) The Crown Entities Act 2004 applies to the Commission except to the extent that this Act expressly provides otherwise.
- (3) Members of the Commission are the board for the purposes of the Crown Entities Act 2004.

Section 8A: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **9 Membership of Commission**

- (1) The Commission must have no less than 4, and no more than 6, members appointed in accordance with this section, and may also have associate members appointed under section 11(1).
- (2) No less than 3, and no more than 5, of the members, of whom at least 1 must be a barrister and solicitor of at least 5 years' standing, must be appointed by the Governor-General in accordance with section 28(1)(b) of the Crown Entities Act 2004.
- (3) One of the members must be appointed by the Governor-General as Telecommunications Commissioner under section 9 of the Telecommunications Act 2001.
- (4) The Minister must not recommend a person for appointment as a member under subsection (2) unless,—
  - (a) in the opinion of the Minister, that person is qualified for appointment, having regard to the functions of the Commission, by virtue of that person's knowledge of or experience in industry, commerce, economics, law, ac-



- countancy, public administration, or consumer affairs;  
and  
(b) in the case of a member who is a barrister or solicitor,  
the Minister has first consulted with the Attorney-General.
- (5) Subsections (2) and (4) do not limit section 29 of the Crown Entities Act 2004.
- Section 9: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **10 Terms and conditions of appointment**

- (1) *[Repealed]*
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) For the purpose of providing a superannuation fund or retiring allowance for members of the Commission, sums by way of subsidy or contribution may from time to time be paid into any superannuation scheme which is registered under the Superannuation Schemes Act 1989.
- (6) *[Repealed]*
- Compare: 1975 No 113 ss 4(1), 10, 17B; 1979 No 140 s 9(1)
- Section 10(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
- Section 10(2): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
- Section 10(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
- Section 10(4): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
- Section 10(5): substituted, on 1 April 1991, by section 80 of the National Provident Fund Restructuring Act 1990 (1990 No 126).
- Section 10(6): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **11 Associate members**

- (1) The Minister may from time to time appoint any person to be an associate member of the Commission.
- (1A) Subsection (1) applies despite section 28(1)(b) of the Crown Entities Act 2004.

- (2) An associate member shall be appointed only in relation to a matter or a class of matters to be specified in that member's notice of appointment, and for such period, not exceeding 5 years, as is specified in that instrument.
- (3) Subject to subsection (4), an associate member shall be deemed to be a member of the Commission for the purposes of the performance or exercise of any function, duty, or power of a member of the Commission under this Act or any other Act; and except where this section or the context otherwise requires, a reference in this Act or in any other Act to a member of the Commission must be construed as including a reference to an associate member.
- (4) An associate member may attend and vote only at a meeting of the Commission relating to the matter or class of matters specified in that member's notice of appointment (including a meeting relating to matters incidental to the matter or class of matters so specified).
- (5) An associate member may only be appointed in relation to a matter or class of matters arising under an Act under which the Commission is required to act independently under section 8(2).
- (6) An associate member may not be appointed as chairperson, deputy chairperson, or a temporary deputy chairperson under clause 5 of Schedule 5 of the Crown Entities Act 2004.

Compare: 1975 No 113 s 3B; 1979 No 140 s 5; 1983 No 144 s 3

Section 11(1A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 11(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 11(3): amended, on 15 April 2004, by section 3(1)(a) of the Commerce Amendment Act 2004 (2004 No 23).

Section 11(3): amended, on 15 April 2004, by section 3(1)(b) of the Commerce Amendment Act 2004 (2004 No 23).

Section 11(4): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 11(5): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 11(6): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **12 Chairperson and deputy chairperson**

- (1) One member appointed under section 9(2) must be appointed by the Governor-General, on the recommendation of the responsible Minister, as chairperson and another must be appointed as deputy chairperson.
- (2) The chairperson and deputy chairperson may only be removed from office as chairperson or deputy chairperson for just cause.
- (3) In other respects, clauses 1(2) and (3) and 4(2) and (3) of Schedule 5 of the Crown Entities Act 2004 apply to the appointment and removal of the chairperson and deputy chairperson of the Commission.

Section 12: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **13 Termination of appointment of members**

- (1) The Governor-General may remove any member of the Commission appointed by the Governor-General from office under section 39 of the Crown Entities Act 2004.
- (2) The Minister may remove any associate member from office on the same grounds and in the same manner as the Governor-General may remove a member under section 39 of the Crown Entities Act 2004.
- (3) Subsection (2) applies despite section 39(1) of the Crown Entities Act 2004.
- (4) Notwithstanding that the term of office of a member has expired or that a member has resigned that office, that person shall be deemed to continue as a member for the purpose of—
  - (a) completing the determination of any matter before that person, as a member, which was commenced before the expiration of the term of office or before the resignation took effect, as the case may be;
  - (b) giving reconsideration to any matter following a direction of the court under Part 6.
- (5) Subsection (4) applies despite sections 32(3) and 45 of the Crown Entities Act 2004.

Compare: 1975 No 113 s 4(2), (3); 1976 No 67 s 23(3); 1979 No 140 s 6

Section 13(1): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 13(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 13(3): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 13(5): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **14 Disclosure of financial interests**

*[Repealed]*

Section 14: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **15 Meetings of Commission**

(1) *[Repealed]*

(2) *[Repealed]*

(2A) *[Repealed]*

(3) *[Repealed]*

(4) At any meeting of the Commission the quorum shall be 3 members.

(5) Subsection (4) applies despite clause 9(1) and (2) of Schedule 5 of the Crown Entities Act 2004.

(6) *[Repealed]*

(7) Subject to the provisions of this Act, the chairperson may give directions regarding the procedure to be followed at or in connection with any meeting of the Commission.

Compare: 1975 No 113 s 6; 1983 No 144 s 5(1), (2)

Section 15(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 15(2): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 15(2A): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 15(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 15(4): amended, on 15 April 2004, by section 4(3) of the Commerce Amendment Act 2004 (2004 No 23).

Section 15(5): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 15(6): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 15(7): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**16 Chairperson may direct Commission to sit in Divisions**

- (1) The chairperson may, by writing signed by him, direct that the powers of the Commission under this Act or any other Act in relation to any matter or class of matter, shall be exercised by separate Divisions of the Commission.
- (1A) The powers in subsection (1) are an exception to clause 14 of Schedule 5 of the Crown Entities Act 2004.
- (2) Each Division shall consist of such members as are for the time being assigned to that Division by the chairperson.
- (3) If the members appointed to any Division do not include either the chairperson or the deputy chairperson, the chairperson shall from time to time nominate the member who is to be chairperson of that Division.
- (4) In the absence of the member so nominated from any meeting of the Division, the members present shall appoint one of their number to be the chairperson of the Division for the purposes of that meeting.
- (5) For the purpose of the determination of a matter or class of matters specified in a direction given under subsection (1), the Commission shall be deemed to consist of the Division of the Commission specified in the direction; and the powers of any such Division shall not be affected by any changes or vacancies in its membership.
- (6) A Division of the Commission may exercise powers of the Commission under this Act or any other Act notwithstanding that another Division of the Commission is exercising powers of the Commission at the same time.
- (7) Any direction given under subsection (1) may be revoked or amended by the chairperson by writing signed by him.

Compare: 1975 No 113 s 7; 1976 No 67 s 7

Section 16 heading: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 16(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 16(1): amended, on 15 April 2004, by section 5(1) of the Commerce Amendment Act 2004 (2004 No 23).

Section 16(1A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 16(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 16(3): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 16(4): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 16(6): amended, on 15 April 2004, by section 5(2) of the Commerce Amendment Act 2004 (2004 No 23).

Section 16(7): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **17 Assent to determination**

- (1) A determination in writing signed, or assented to in writing (whether sent by post, delivery, or electronic communication), by all the members of the Commission or, of a Division of the Commission, as the case may be, necessary to constitute a quorum shall be as valid and effectual as if it had been made at a meeting of the Commission or Division duly called and constituted by those members.
- (2) This section applies despite clause 13 of Schedule 5 of the Crown Entities Act 2004.

Compare: 1975 No 113 s 7A; 1983 No 144 s 6

Section 17(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 17(2): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **18 Officers and employees**

*[Repealed]*

Section 18: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **18A Personnel policy**

*[Repealed]*

Section 18A: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**18B Equal employment opportunities**

*[Repealed]*

Section 18B: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**18C Choice of procedure**

*[Repealed]*

Section 18C: repealed, on 1 December 2004, by section 72 of the Employment Relations Amendment Act (No 2) 2004 (2004 No 86).

**18D Superannuation and retiring allowances**

(1) *[Repealed]*

(2) Notwithstanding anything in this Act, any person who, immediately before the commencement of this Act was assisting the Commission by virtue of an appointment under section 18(1) and was a contributor to the Government Superannuation Fund under Part 2 of the Government Superannuation Fund Act 1956 shall be deemed, for the purposes of the Government Superannuation Fund Act 1956, to be employed in the Government service so long as that person continues to be an officer or employee of the Commission; and that Act shall apply to the person in all respects as if service as such an officer or employee were Government service. For the purposes of the Government Superannuation Fund Act 1956, the controlling authority in relation to any such person shall be the Commission.

(3) Subject to the Government Superannuation Fund Act 1956, nothing in subsection (2) shall entitle any person to whom that subsection applies to become a contributor to the Government Superannuation Fund after ceasing to be a contributor to that Fund.

Section 18D: inserted, on 1 July 1990, by section 10 of the Commerce Amendment Act 1990 (1990 No 41).

Section 18D(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**19 Money to be appropriated by Parliament for purposes of this Act**

*[Repealed]*

Section 19: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**20 Funds of Commission**

*[Repealed]*

Section 20: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**21 Bank accounts**

*[Repealed]*

Section 21: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**22 Crown entity**

*[Repealed]*

Section 22: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**23 Investment of money**

*[Repealed]*

Section 23: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**24 Exemption from income tax**

The income of the Commission shall be exempt from income tax.

Compare: 1975 No 113 s 19F; 1983 No 144 s 12

**25 Functions of Commission in relation to dissemination of information**

In addition to the functions conferred on the Commission by this Act, the Commission shall make available or co-operate in making available information with respect to—

- (a) the carrying out of the functions and the exercise of the powers of the Commission under this Act; and



(b) the purposes and provisions of this Act.

Compare: 1975 No 113 s 11(1A); 1983 No 144 s 7; Trade Practices Act 1974 s 28(1)(a) (Aust)

**26 Commission to have regard to economic policies of Government**

- (1) In the exercise of its powers under this Act, the Commission shall have regard to the economic policies of the Government as transmitted in writing from time to time to the Commission by the Minister.
- (2) The Minister shall cause every statement of economic policy transmitted to the Commission under subsection (1) to be published in the *Gazette* and laid before Parliament as soon as practicable after so transmitting it.
- (3) For the avoidance of doubt, a statement of economic policy transmitted to the Commission under this section is not a direction for the purposes of Part 3 of the Crown Entities Act 2004.

Compare: 1975 No 113 s 2A(1)(e); 1976 No 67 s 3; Trade Practices Act 1974 s 29 (Aust)

Section 26(1): amended, on 1 July 1990, by section 12 of the Commerce Amendment Act 1990 (1990 No 41).

Section 26(3): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**Part 2**  
**Restrictive trade practices**

*Practices substantially lessening competition*

**27 Contracts, arrangements, or understandings substantially lessening competition prohibited**

- (1) No person shall enter into a contract or arrangement, or arrive at an understanding, containing a provision that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.
- (2) No person shall give effect to a provision of a contract, arrangement, or understanding that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.

- (3) Subsection (2) applies in respect of a contract or arrangement entered into, or an understanding arrived at, whether before or after the commencement of this Act.
- (4) No provision of a contract, whether made before or after the commencement of this Act, that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market is enforceable.

Compare: Trade Practices Act 1974 s 45(1), (2) (Aust)

## **28 Covenants substantially lessening competition prohibited**

- (1) No person, either on his own or on behalf of an associated person, shall—
  - (a) require the giving of a covenant; or
  - (b) give a covenant—that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.
- (2) No person, either on his own or on behalf of an associated person, shall carry out or enforce the terms of a covenant that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.
- (3) Subsection (2) applies to a covenant whether given before or after the commencement of this Act.
- (4) No covenant, whether given before or after the commencement of this Act, that has the purpose, or has or is likely to have the effect of substantially lessening competition in a market is enforceable.
- (5) No person shall—
  - (a) threaten to engage in particular conduct if a person who, but for subsection (4), would be bound by a covenant, does not comply with the terms of the covenant; or
  - (b) engage in particular conduct because a person who, but for subsection (4), would be bound by a covenant, has failed to comply, or proposes or threatens to fail to comply, with the terms of the covenant.
- (6) Where a person—
  - (a) issues an invitation to another person to enter into a contract containing a covenant; or

- (b) makes an offer to another person to enter into a contract containing a covenant; or
    - (c) makes it known that the person will not enter into a contract of a particular kind unless the contract contains a covenant of a particular kind or in particular terms,—that person shall, by issuing that invitation, making that offer, or making that fact known, be deemed to require the giving of the covenant.
  - (7) For the purposes of this section, 2 persons shall be taken to be associated with each other in relation to a covenant or proposed covenant if, but only if,—
    - (a) one person is under an obligation (otherwise than in pursuance of the covenant or proposed covenant), whether formal or informal, to act in accordance with the directions, instructions, or wishes of the other person in relation to the covenant or proposed covenant; or
    - (b) the persons are interconnected bodies corporate.
- Compare: Trade Practices Act 1974 s 45B(1)–(3), (7) (Aust)

## **29 Contracts, arrangements, or understandings containing exclusionary provisions prohibited**

- (1) Subject to subsection (1A), for the purposes of this Act, a provision of a contract, arrangement, or understanding is an exclusionary provision if—
  - (a) it is a provision of a contract or arrangement entered into, or understanding arrived at, between persons of whom any 2 or more are in competition with each other; and
  - (b) it has the purpose of preventing, restricting, or limiting the supply of goods or services to, or the acquisition of goods or services from, any particular person or class of persons, either generally or in particular circumstances or on particular conditions, by all or any of the parties to the contract, arrangement, or understanding, or if a party is a body corporate, by a body corporate that is interconnected with that party; and
  - (c) the particular person or the class of persons to which the provision relates is in competition with 1 or more of the parties to the contract, arrangement or understanding in

relation to the supply or acquisition of those goods or services.

- (1A) A provision of a contract, an arrangement, or an understanding that would, but for this subsection, be an exclusionary provision under subsection (1) is not an exclusionary provision if it is proved that the provision does not have the purpose, or does not have or is not likely to have the effect, of substantially lessening competition in a market.
- (2) For the purposes of subsection (1)(a) and (c), a person is in competition with another person if that person or any interconnected body corporate is, or is likely to be, or, but for the relevant provision, would be or would be likely to be, in competition with the other person, or with an interconnected body corporate, in relation to the supply or acquisition of all or any of the goods or services to which that relevant provision relates.
- (3) No person shall enter into a contract, or arrangement, or arrive at an understanding, that contains an exclusionary provision.
- (4) No person shall give effect to an exclusionary provision of a contract, arrangement, or understanding.
- (5) Subsection (4) applies to an exclusionary provision of a contract or arrangement made, or understanding arrived at, whether before or after the commencement of this Act.
- (6) No exclusionary provision of a contract, whether made before or after the commencement of this Act, is enforceable.

Compare: Trade Practices Act 1974 ss 4D, 45(1)–(3) (Aust)

Section 29(1): substituted, on 1 July 1990, by section 13 of the Commerce Amendment Act 1990 (1990 No 41).

Section 29(1): amended, on 26 May 2001, by section 7(1) of the Commerce Amendment Act 2001 (2001 No 32).

Section 29(1A): inserted, on 26 May 2001, by section 7(2) of the Commerce Amendment Act 2001 (2001 No 32).

Section 29(2): amended, on 26 May 2001, by section 7(3) of the Commerce Amendment Act 2001 (2001 No 32).

*Price fixing*

**30 Certain provisions of contracts, etc, with respect to prices deemed to substantially lessen competition**

- (1) Without limiting the generality of section 27, a provision of a contract, arrangement, or understanding shall be deemed for the purposes of that section to have the purpose, or to have or to be likely to have the effect, of substantially lessening competition in a market if the provision has the purpose, or has or is likely to have the effect of fixing, controlling, or maintaining, or providing for the fixing, controlling, or maintaining, of the price for goods or services, or any discount, allowance, rebate, or credit in relation to goods or services, that are—
- (a) supplied or acquired by the parties to the contract, arrangement, or understanding, or by any of them, or by any bodies corporate that are interconnected with any of them, in competition with each other; or
  - (b) resupplied by persons to whom the goods are supplied by the parties to the contract, arrangement, or understanding, or by any of them, or by any bodies corporate that are interconnected with any of them in competition with each other.
- (2) The reference in subsection (1)(a) to the supply or acquisition of goods or services by persons in competition with each other includes a reference to the supply or acquisition of goods or services by persons who, but for a provision of any contract, arrangement, or understanding would be, or would be likely to be, in competition with each other in relation to the supply or acquisition of the goods or services.

Compare: Trade Practices Act 1974 s 45A(1), (7), (8) (Aust)

**31 Joint venture pricing exempt from application of section 30**

- (1) For the purposes of this section—
- (a) **joint venture** means an activity in trade—
    - (i) carried on by 2 or more persons, whether or not in partnership; or
    - (ii) carried on by a body corporate for the purpose of enabling 2 or more persons to carry on that activity jointly by means of their joint control, or by

means of their ownership of shares in the capital, of that body corporate or an interconnected body corporate:

- (b) a reference to a contract or arrangement entered into, or an understanding arrived at for the purposes of a joint venture shall, in relation to a joint venture by way of an activity carried on by a body corporate in terms of paragraph (a)(ii), be read as including a reference to the memorandum and articles of association, rules, or other document that constitute or constitutes, or is or are to constitute, that body corporate.
- (2) Nothing in section 30 applies to a provision of a contract or arrangement entered into, or an understanding arrived at for the purposes of a joint venture, to the extent that the provision relates to—
- (a) the joint supply by the parties to the joint venture, or the supply by the parties to the joint venture in proportion to their respective interests in the joint venture, of goods jointly produced by those parties in pursuance of the joint venture; or
  - (b) the joint supply by the parties to the joint venture of services in pursuance of the joint venture, or the supply by the parties to the joint venture in proportion to their respective interests in the joint venture, of services in pursuance of, and made available as a result of, the joint venture; or
  - (c) in the case of a joint venture carried on by a body corporate in terms of subsection (1)(a)(ii),—
    - (i) the supply by that body corporate of goods produced by it in pursuance of the joint venture; or
    - (ii) the supply by that body corporate of services in pursuance of the joint venture, not being services supplied on behalf of the body corporate by a person who is the owner of shares in the capital of the body corporate, or a body corporate that is interconnected with such a person.

Compare: Trade Practices Act 1974 ss 4J, 45A(2) (Aust)

**32 Certain recommendations as to prices for goods and services exempt from application of section 30**

Nothing in section 30 applies to a provision of a contract, arrangement, or understanding, to the extent that the provision recommends or provides for the recommending of the price for, or a discount, allowance, rebate or credit in relation to goods or services where the parties to the contract, or arrangement, or understanding include not less than 50 persons (bodies corporate that are interconnected being counted as a single person) who supply or acquire, in trade, goods or services to which the provision applies.

Compare: Trade Practices Act 1974 s 45A(3) (Aust)

**33 Joint buying and promotion arrangements exempt from application of section 30**

Nothing in section 30 applies to a provision of a contract, arrangement, or understanding that—

- (a) relates to the price for goods or services to be collectively acquired, whether directly or indirectly, by parties to the contract, arrangement, or understanding; or
- (b) provides for joint advertising of the price for the resupply of goods so acquired.

Compare: Trade Practices Act 1974 s 45A(4) (Aust)

**34 Certain provisions of covenants with respect to prices deemed to substantially lessen competition**

- (1) Without limiting the generality of section 28, a covenant shall be deemed for the purposes of that section to have the purpose, or to have or to be likely to have the effect, of substantially lessening competition in a market if the covenant has the purpose or has or is likely to have the effect of fixing, controlling, or maintaining, or providing for the fixing, controlling or maintaining of the price for goods or services, or any discount, allowance, rebate, or credit in relation to goods or services, that are—
  - (a) supplied or acquired by the persons giving the covenant or the persons entitled to the benefit of the covenant, or by any of them, or by bodies corporate that are inter-

- connected with any of them, in competition with each other; or
- (b) resupplied by persons to whom the goods are supplied by the persons giving the covenant or the persons entitled to the benefit of the covenant, or by any of them, or by bodies corporate that are interconnected with any of them, in competition with each other.
- (2) The reference in subsection (1)(a) to the supply or acquisition of goods or services by persons in competition with each other includes a reference to the supply or acquisition of goods or services by persons who, but for the covenant, would be in competition with each other in relation to the supply or acquisition of the goods or services.

Compare: Trade Practices Act 1974 s 45C (Aust)

*Practices substantially lessening competition  
conditional upon authorisation*

**35 Contracts or covenants subject to authorisation not  
prohibited under certain conditions**  
*[Repealed]*

Section 35: repealed, on 26 May 2001, by section 8 of the Commerce Amendment Act 2001 (2001 No 32).

*Taking advantage of market power*

Heading: substituted, on 26 May 2001, by section 9(1) of the Commerce Amendment Act 2001 (2001 No 32).

**36 Taking advantage of market power**

- (1) Nothing in this section applies to any practice or conduct to which this Part applies that has been authorised under Part 5.
- (2) A person that has a substantial degree of power in a market must not take advantage of that power for the purpose of—
- (a) restricting the entry of a person into that or any other market; or
  - (b) preventing or deterring a person from engaging in competitive conduct in that or any other market; or
  - (c) eliminating a person from that or any other market.



- (3) For the purposes of this section, a person does not take advantage of a substantial degree of power in a market by reason only that the person seeks to enforce a statutory intellectual property right, within the meaning of section 45(2), in New Zealand.
- (4) For the purposes of this section, a reference to a person includes 2 or more persons that are interconnected.

Section 36: substituted, on 26 May 2001, by section 9(1) of the Commerce Amendment Act 2001 (2001 No 32).

### **36A Taking advantage of market power in trans-Tasman markets**

- (1) Nothing in this section applies to any practice or conduct to which this Part applies that has been authorised under Part 5.
- (2) A person must not, for any of the purposes specified in subsection (3), take advantage of the person's substantial degree of power (if any)—
  - (a) in a market; or
  - (b) in a market in Australia; or
  - (c) in a market in New Zealand and Australia.
- (3) The purposes are as follows:
  - (a) restricting the entry of a person into a market that is not a market exclusively for services:
  - (b) preventing or deterring a person from engaging in competitive conduct in a market that is not a market exclusively for services:
  - (c) eliminating a person from a market that is not a market exclusively for services.
- (4) For the purposes of this section, a person does not take advantage of a substantial degree of power in a market by reason only that the person seeks to enforce—
  - (a) a statutory intellectual property right, within the meaning of section 45(2), in New Zealand;
  - (b) a statutory intellectual property right in Australia.
- (5) For the purposes of this section, a reference to a **person** includes 2 or more persons that are interconnected.

Section 36A: substituted, on 26 May 2001, by section 9(1) of the Commerce Amendment Act 2001 (2001 No 32).

**36B Purposes may be inferred**

The existence of any of the purposes specified in section 36 or section 36A, as the case may be, may be inferred from the conduct of any relevant person or from any other relevant circumstances.

Section 36B: inserted, on 26 May 2001, by section 9(1) of the Commerce Amendment Act 2001 (2001 No 32).

*Resale price maintenance***37 Resale price maintenance by suppliers prohibited**

- (1) No person shall engage in the practice of resale price maintenance.
- (2) For the purposes of this section a person engages in the practice of **resale price maintenance** if that person (in this section referred to as the supplier) does any of the acts referred to in subsection (3).
- (3) The acts referred to for the purposes of subsection (2) are—
  - (a) the supplier making it known to another person that the supplier will not supply goods to the other person unless the other person agrees not to sell those goods at a price less than a price specified by the supplier:
  - (b) the supplier inducing, or attempting to induce, another person not to sell, at a price less than a price specified by the supplier, goods supplied to the other person by the supplier or by a third person who, directly or indirectly, has obtained the goods from the supplier:
  - (c) the supplier entering or offering to enter into an agreement, for the supply of goods to another person, where one of the terms is or would be that the other person will not sell the goods at a price less than a price specified, or that would be specified, by the supplier:
  - (d) the supplier withholding the supply of goods to another person for the reason that the other person—
    - (i) has not agreed to the condition mentioned in paragraph (a); or
    - (ii) has sold, or is likely to sell, goods supplied to him by the supplier, or goods supplied to him by a third person who, directly or indirectly, has

- obtained the goods from the supplier, at a price less than a price specified by the supplier as the price below which the goods are not to be sold:
- (e) the supplier withholding the supply of goods to another person for the reason that a third person who, directly or indirectly, has obtained, or wishes to obtain, goods from the other person—
    - (i) has not agreed not to sell those goods at a price less than a price specified by the supplier; or
    - (ii) has sold or is likely to sell goods supplied or to be supplied to that third person, by the other person, at a price less than a price specified by the supplier as the price below which the goods are not to be sold.
- (4) For the purposes of subsection (3),—
- (a) where the supplier makes it known, in respect of any goods, that the price below which those goods are not to be sold is a price specified by another person in respect of those goods, or in respect of goods of a like description, that price shall be deemed to have been specified, in respect of the first-mentioned goods, by the supplier:
  - (b) where a set form, method, or formula is specified by or on behalf of the supplier and a price may be ascertained by calculation from, or by reference to, that set form, method, or formula, that price shall be deemed to have been specified by the supplier:
  - (c) where the supplier makes it known, in respect of any goods, that the price below which those goods are not to be sold is a price ascertained by calculation from or by reference to a set form, method, or formula specified by another person in respect of those goods, or in respect of goods of a like description, that price shall be deemed to have been specified, in respect of the first-mentioned goods, by the supplier:
  - (d) where the supplier makes a statement to another person of a price that is likely to be understood by that person as the price below which goods are not to be sold, that price shall be deemed to have been specified by the supplier as the price below which the goods are not to be sold:

- (e) anything done by a person acting on behalf of, or by arrangement with, the supplier shall be deemed to have been done by the supplier.
- (5) For the purposes of this section, **sale** includes advertise for sale, display for sale, and offer for sale, and **sell**, **selling**, and **sold** have corresponding meanings.

### **38 Resale price maintenance by others prohibited**

- (1) No person (in this section referred to as the third party) shall—
  - (a) make it known to another person that the third party proposes to engage in conduct, whether alone or in concert with any other person, that will hinder or prevent the supply of any goods to, or the acquisition of any goods from, that person unless that person agrees not to sell those goods at a price less than the price specified by the third party; or
  - (b) engage in conduct, whether alone or in concert with any other person, that will hinder or prevent the supply of goods to, or the acquisition of goods from, another person for the purpose of inducing that person not to sell those goods at a price less than a price specified by the third party.
- (2) For the purposes of subsection (1),—
  - (a) where the third party makes it known, in respect of any goods, that the price below which those goods are not to be sold is a price specified by another person in respect of those goods, or in respect of goods of a like description, that price shall be deemed to have been specified in respect of the first-mentioned goods, by the third party:
  - (b) where a set form, method, or formula is specified by or on behalf of the third party and a price may be ascertained by calculation from, or by reference to, that set form, method, or formula, that price shall be deemed to have been specified by the third party:
  - (c) where the third party makes it known, in respect of any goods, that the price below which those goods are not to be sold is a price ascertained by calculation from or by reference to a set form, method, or formula specified by another person in respect of those goods, or in respect

- of goods of a like description, that price shall be deemed to have been specified, in respect of the first-mentioned goods, by the third party:
- (d) where the third party makes a statement to another person of a price that is likely to be understood by that person as the price below which goods are not to be sold, that price shall be deemed to have been specified by the third party as the price below which the goods are not to be sold:
  - (e) anything done by a person acting on behalf of, or by arrangement with, the third party shall be deemed to have been done by the third party.
- (3) For the purposes of this section **sale** includes advertise for sale, display for sale, and offer for sale, and **sell**, **selling**, and **sold** have corresponding meanings.

### 39 Recommended prices

For the purposes of section 37(3)(b), a supplier of any goods is not to be taken as inducing, or attempting to induce, another person not to sell those goods at a price less than a price specified by the supplier merely because—

- (a) a statement of a price is applied or used in relation to the goods or is applied to a covering, label, reel, or thing if the statement is preceded by the words “recommended price”; or
- (b) the supplier has given notification in writing to the other person (not being a notification in the form of a statement applied to the goods or to any covering, label, reel, or thing as mentioned in paragraph (a)) of the price that the supplier recommends as appropriate for the sale of those goods, if the notification, and each writing that refers, whether expressly or by implication, to the notification, includes a statement to the effect that the price is a recommended price only and there is no obligation to comply with the recommendation.

Compare: Trade Practices Act 1974 s 97 (Aust)

**40 Withholding the supply of goods**

For the purposes of section 37(3)(d) and (e), the supplier shall be deemed to withhold the supply of goods to another person if—

- (a) the supplier refuses or fails to supply those goods to, or as requested by, the other person; or
- (b) the supplier refuses to supply those goods except on terms that are disadvantageous to the other person; or
- (c) in supplying those goods to the other person, the supplier treats that person less favourably, whether in respect of time, method, or place of delivery, or otherwise, than the supplier treats other persons to whom the supplier supplies the same or similar goods; or
- (d) the supplier causes or procures a person to act in relation to the supply of goods in the manner specified in paragraphs (a), (b), or (c), as the case may be.

Compare: Trade Practices Act 1974 s 98 (Aust)

**41 Preventing the supply of goods**

For the purposes of section 38,—

- (a) the supply of goods shall be deemed to be prevented if—
  - (i) the supply of those goods is refused except on terms that are disadvantageous to the person acquiring the goods; or
  - (ii) the supply of those goods is on terms which are less favourable, whether in respect of time, method, or place of delivery, or otherwise, than the person who supplies the goods treats other persons to whom the same or similar goods are supplied:
- (b) the acquisition of goods shall be deemed to be prevented if—
  - (i) the acquisition of those goods is refused except on terms that are disadvantageous to the person supplying the goods; or
  - (ii) the acquisition of those goods is on terms which are less favourable, whether in respect of time, method, or place of delivery, or otherwise, than

the person who acquires the goods treats other persons from whom the same or similar goods are acquired.

**42 Special evidentiary provisions in respect of certain resale price maintenance practices**

- (1) Where, in proceedings under this Act against a supplier for a contravention of section 37(3)(d) or section 37(3)(e) it is proved that—
- (a) the supplier has acted in a manner referred to in section 40; and
  - (b) during a period ending immediately before the supplier so acted, the supplier had been supplying goods of the kind withheld either to—
    - (i) the person in respect of whom the contravention is alleged; or
    - (ii) a person carrying on a similar business to that person; and
  - (c) during a period of 6 months immediately before the supplier so acted, the supplier became aware of a matter or circumstance capable of constituting a reason referred to in section 37(3)(d) or (e)—
- it shall be presumed, in the absence of evidence to the contrary, that the supplier so acted on account of that matter.
- (2) Nothing in subsection (1) applies in respect of terms imposed by a supplier that are disadvantageous or treatment that is less favourable than the supplier accords other persons if the terms or treatment consists only of a requirement by the supplier as to the time at which, or the form in which, payment was to be made or as to the giving of security to secure payment.

Compare: Trade Practices Act 1974 s 100(1), (2) (Aust)

**43 Statutory exceptions**

- (1) Nothing in this Part applies in respect of any act, matter, or thing that is, or is of a kind, specifically authorised by any enactment or Order in Council made under any Act.
- (2) For the purposes of subsection (1), an enactment or Order in Council does not provide specific authority for an act, matter, or thing if it provides in general terms for that act, matter, or

thing, notwithstanding that the act, matter, or thing requires or may be subject to approval or authorisation by a Minister of the Crown, statutory body or a person holding any particular office, or, in the case of a rule made or an act, matter, or thing done pursuant to any enactment, approval or authorisation by Order in Council.

- (3) No act, matter, or thing authorised under section 7(2)(i) of the Sharebrokers Amendment Act 1981 or section 70(1)(n) of the Real Estate Agents Act 1976 as enacted immediately before the commencement of this Act, shall be taken to be specifically authorised under subsection (1).

Compare: 1975 No 113 ss 22(7), 27(3)(c); 1976 No 67 ss 15(1), 20(2)(b)

#### **44 Other exceptions**

- (1) Nothing in this Part applies—
- (a) to the entering into of a contract, or arrangement, or arriving at an understanding between partners none of whom is a body corporate in so far as it contains a provision in relation to the terms of the partnership or the conduct of the partnership business or in relation to competition between the partnership and a party to the contract, arrangement, or understanding while that party is, or after that party ceases to be, a partner:
  - (b) *[Repealed]*
  - (c) to the entering into of a contract of service or a contract for the provision of services in so far as it contains a provision by which a person, not being a body corporate, agrees to accept restrictions as to the work, whether as an employee or otherwise, in which that person may engage during, or after the termination of, the contract:
  - (d) to the entering into of a contract for, or the giving or requiring the giving of a covenant in connection with, the sale of a business or shares in the capital of a body corporate carrying on a business in so far as it contains a provision that is solely for the protection of the purchaser in respect of the goodwill of the business:
  - (e) to the entering into of a contract, or arrangement, or arriving at an understanding in so far as it contains a provision obligating a person to comply with or apply



standards of dimension, design, quality, or performance prepared or approved by the Standards Association of New Zealand or by any association or body prescribed for the purpose of this paragraph by regulations made under this Act:

- (f) to the entering into of a contract, or arrangement, or arriving at an understanding in so far as it contains a provision that relates to the remuneration, conditions of employment, hours of work, or working conditions of employees:
  - (g) to the entering into of a contract, or arrangement, or arriving at an understanding in so far as it contains a provision that relates exclusively to the export of goods from New Zealand or exclusively to the supply of services wholly outside New Zealand, if full and accurate particulars of the provision (not including particulars of prices for goods or services but including particulars of any method of fixing, controlling, or maintaining such prices) were furnished to the Commission before the expiration of 15 working days after the date on which the contract or arrangement was made or the understanding was arrived at, or 60 working days after the commencement of this Act, whichever is the later:
  - (h) to any act done, otherwise than in trade, in concert by users of goods or services against the suppliers of those goods or services:
  - (i) to any act done to give effect to a provision of a contract, arrangement, or understanding, or to a covenant referred to in paragraphs (a) to (g).
- (1A) Nothing in this Part (except sections 36 and 36A) applies to—
- (a) the entering into of a contract or arrangement, or arriving at an understanding, or the giving or requiring the giving of a covenant, if the only parties, or (in the case of a covenant or proposed covenant) the only persons who are or would be respectively bound by, or entitled to the benefit of, the covenant or proposed covenant, are, or would be, interconnected bodies corporate:

- (b) any act done to give effect to a provision of a contract, arrangement, or understanding, or to a covenant referred to in paragraph (a).
- (2) Nothing in this Part applies—
  - (a) to the entering into of a contract, or arrangement, or arriving at an understanding in so far as it contains a provision exclusively for the carriage of goods by sea from a place in New Zealand to a place outside New Zealand or from a place outside New Zealand to a place in New Zealand; or
  - (b) to any act done to give effect to a provision of a contract, arrangement, or understanding referred to in paragraph (a).

- (3) For the purposes of subsection (2), a provision of a contract, arrangement, or understanding is not a provision exclusively for the carriage of goods by sea if it relates to the carriage of goods to or from a ship or the loading or unloading of a ship.

Compare: Trade Practices Act 1974 s 51(2), (2A) (Aust)

Section 44(1)(b): repealed, on 26 May 2001, by section 10(1) of the Commerce Amendment Act 2001 (2001 No 32).

Section 44(1A): inserted, on 26 May 2001, by section 10(2) of the Commerce Amendment Act 2001 (2001 No 32).

Section 44(3): added, on 31 August 1990, by section 11(1) of the Port Companies Amendment Act 1990 (1990 No 120).

#### **45 Exceptions in relation to intellectual property rights**

- (1) Nothing in this Part, except sections 36, 36A, 37, and 38, applies—
  - (a) to the entering into of a contract or arrangement or arriving at an understanding in so far as it contains a provision authorising any act that would otherwise be prohibited by reason of the existence of a statutory intellectual property right; or
  - (b) to any act done to give effect to a provision of a contract, arrangement, or understanding referred to in paragraph (a).
- (2) For the purposes of subsection (1), a **statutory intellectual property right** means a right, privilege, or entitlement that is conferred, or acknowledged as valid, by or under—

- (a) the Patents Act 1953; or
  - (b) the Designs Act 1953; or
  - (c) the Trade Marks Act 2002; or
  - (d) the Copyright Act 1994; or
  - (e) the Plant Variety Rights Act 1987; or
  - (f) the Layout Designs Act 1994.
- (3) For the purposes of subsection (2),—
- (a) a person who has applied for a patent in accordance with the Patents Act 1953 and filed the complete specification in relation to the application shall, until the application is determined, be deemed to have been granted the patent to which the application relates:
  - (b) a person who has made an application for the registration of a design in accordance with section 7 of the Designs Act 1953 shall, until the application is determined, be deemed to be the registered proprietor of the design:
  - (c) a person who has made an application in accordance with section 32 of the Trade Marks Act 2002 for registration of a trade mark shall, until the application is determined, be deemed to be the registered proprietor of the trade mark:
  - (d) a person who has made an application in accordance with section 5 of the Plant Variety Rights Act 1987 shall, until the application is determined, be deemed to have been granted the plant variety rights to which the application relates.

Section 45: substituted, on 1 January 1995, by section 42(1) of the Layout Designs Act 1994 (1994 No 116).

Section 45(2)(c): substituted, on 20 August 2003, by section 201 of the Trade Marks Act 2002 (2002 No 49).

Section 45(2)(d): substituted, on 1 January 1995, by section 236(1) of the Copyright Act 1994 (1994 No 143).

Section 45(3)(c): amended, on 20 August 2003, by section 201 of the Trade Marks Act 2002 (2002 No 49).

#### **46 Saving in respect of business acquisitions**

Nothing in this Part applies—

- (a) to the entering into of a contract or arrangement or the arriving at of an understanding in so far as the contract, arrangement, or understanding contains a provision that

- provides for the acquisition or disposition of assets of a business or shares; or
- (b) to any act done to give effect to a provision of a contract, arrangement, or understanding that provides for the acquisition or disposition of assets of a business or shares.

Section 46: substituted, on 2 September 1996, by section 3 of the Commerce Amendment Act 1996 (1996 No 113).

### Part 3

#### Business acquisitions

Part 3: substituted, on 1 January 1991, by section 18 of the Commerce Amendment Act 1990 (1990 No 41).

#### 47 Certain acquisitions prohibited

- (1) A person must not acquire assets of a business or shares if the acquisition would have, or would be likely to have, the effect of substantially lessening competition in a market.
- (2) For the purposes of this section, a reference to a **person** includes 2 or more persons that are interconnected or associated.
- (3) For the purposes of this section, a person is **associated** with another person if that person is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other.
- (4) A person is not able to exert a substantial degree of influence over the activities of another person for the purposes of subsection (3) by reason only of the fact that—
- (a) those persons are in competition in the same market; or
- (b) one of them supplies goods or services to the other.

Compare: Trade Practices Act 1974 s 50 (Aust)

Section 47: substituted, on 26 May 2001, by section 11(1) of the Commerce Amendment Act 2001 (2001 No 32).

#### 48 Bare transfer of market dominance excluded

*[Repealed]*

Section 48: repealed, on 26 May 2001, by section 11(3) of the Commerce Amendment Act 2001 (2001 No 32).

**49 Application to building societies**

*[Repealed]*

Section 49: repealed, on 1 January 1991, by section 18 of the Commerce Amendment Act 1990 (1990 No 41).

**50 Certain merger or takeover proposals require clearance or authorisation**

*[Repealed]*

Section 50: repealed, on 1 January 1991, by section 18 of the Commerce Amendment Act 1990 (1990 No 41).

**51 Contracts subject to condition of clearance or authorisation**

*[Repealed]*

Section 51: repealed, on 1 January 1991, by section 18 of the Commerce Amendment Act 1990 (1990 No 41).

**Part 4**

**Regulated goods or services**

Part 4: substituted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**Subpart 1—Preliminary provisions**

Subpart 1 heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**52 Overview of Part**

This Part provides for the regulation of the price and quality of goods or services in markets where there is little or no competition and little or no likelihood of a substantial increase in competition.

Section 52: substituted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**52A Purpose of Part**

- (1) The purpose of this Part is to promote the long-term benefit of consumers in markets referred to in section 52 by promoting outcomes that are consistent with outcomes produced in

competitive markets such that suppliers of regulated goods or services—

- (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and
  - (b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands; and
  - (c) share with consumers the benefits of efficiency gains in the supply of the regulated goods or services, including through lower prices; and
  - (d) are limited in their ability to extract excessive profits.
- (2) In this Part, the purpose set out in subsection (1) applies in place of the purpose set out in section 1A.

Section 52A: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

## **52B Outline of Part**

- (1) This Part provides—
- (a) generic provisions for imposing any 1 or more of 3 types of regulation on goods or services (*see* subpart 2); and
  - (b) for the Commission to determine input methodologies applying to the supply of goods or services regulated under this Part (*see* subpart 3).
- (2) The different types of regulation under this Part are as follows:
- (a) information disclosure regulation, under which regulated suppliers are required to disclose information in accordance with requirements determined by the Commission (*see* subpart 4):
  - (b) negotiate/arbitrate regulation, under which regulated suppliers are required to negotiate with other parties on prices and quality, and, if negotiation is unsuccessful, to enter into binding arbitration (*see* subpart 5):
  - (c) price-quality regulation, of which there are 2 types:
    - (i) default/customised price-quality regulation, under which default price-quality paths are set for regulated suppliers, but individual suppliers may seek a customised price-quality path instead (*see* subpart 6); and

- (ii) individual price-quality regulation, under which the Commission sets a price-quality path for an individual regulated supplier (*see* subpart 7).
- (3) Regulation of the following services is dealt with by subparts 9 to 11:
  - (a) electricity lines services (subpart 9):
  - (b) gas pipeline services (subpart 10):
  - (c) services at certain airports (subpart 11).
- (4) This section is only a guide.

Section 52B: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

## 52C Interpretation

In this Part, unless the context otherwise requires,—

**claw-back** has the meaning given to it by section 52D

**consumer** (other than in sections 54C, 54D, and 55A) means a person that consumes or acquires regulated goods or services

**information disclosure requirement** means a requirement that applies to a supplier of goods or services that are subject to information disclosure regulation, and is specified in a section 52P determination

**input methodology** means a description of any methodology, process, rule, or matter that includes any of the matters listed in section 52T and that is published by the Commission under section 52W; and, in relation to particular goods or services, means any input methodology, or all input methodologies, that relate to the supply, or to suppliers, of those goods or services

**inquiry** means an inquiry by the Commission carried out in accordance with sections 52H to 52J

**price**—

- (a) means any 1 or more of individual prices, aggregate prices, or revenues (whether in the form of specific numbers, or in the form of formulas by which specific numbers are derived); and
- (b) includes any related terms of payment

**pricing methodologies** means methodologies for setting the prices of individual goods or services, or classes of goods

or services, and includes methodologies for setting different prices for different customer groups

**publicly available**, in relation to making a document or information available, means that—

- (a) the document or information is available for inspection, free of charge, on an Internet site that is publicly accessible at all reasonable times; and
- (b) a copy of the document or information is available for inspection at all reasonable times, free of charge, at the head office of the person that is required to make it publicly available or, if the person is the Minister, at the head office of the department responsible for the administration of this Act; and
- (c) copies of the document may be purchased by any person at a reasonable price

**publicly disclose**, in relation to information required to be disclosed under information disclosure regulation, means to disclose information to the public in the manner required by a section 52P determination

**regulated** means regulated under this Part

**regulated goods or services** means goods or services that are declared to be regulated—

- (a) by Order in Council made under section 52N; or
- (b) by any of subparts 9 to 11

**regulated supplier** means a person to whom a section 52P determination applies in relation to particular goods or services

**section 52P determination** means a determination by the Commission under section 52P that sets out how each type of regulation that applies to particular regulated goods or services applies to a supplier of those goods or services; and, in relation to particular goods or services, means every section 52P determination relevant to the regulation of those goods or services.

Section 52C: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

## **52D Meaning and application of claw-back**

- (1) A reference to the Commission applying **claw-back** is a reference to the Commission doing either of the following:



- (a) requiring a supplier to lower its prices on a temporary basis in order to compensate consumers for some or all of any over-recovery that occurred under the prices previously charged by the supplier:
  - (b) allowing a supplier to recover some or all of any shortfall in its revenues that occurred under the prices previously charged by the supplier.
- (2) If the Commission requires a supplier to lower its prices, it must also require that the lowering of prices must be spread over time in order to minimise undue financial hardship to the supplier.
- (3) If the Commission allows a supplier to recover any shortfall, it must require that any recovery must be spread over time in order to minimise price shocks to consumers.

Section 52D: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### Subpart 2—Regulating particular goods or services

Subpart 2: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **52E Overview of process if regulation imposed on goods or services**

- (1) The process for imposing regulation under this subpart on particular goods or services involves the following steps:
  - (a) the Commission holds an inquiry into whether, and if so how, to regulate the goods or services, and then makes a recommendation to the Minister under section 52K:
  - (b) the Minister considers the Commission's recommendation and decides whether or not to recommend to the Governor-General that regulation be imposed and, if so, which type or types of regulation:
  - (c) if the Minister decides to recommend regulation, an Order in Council may be made under section 52N that makes the goods or services subject to regulation and identifies the type or types of regulation that apply:
  - (d) for each type of regulated goods or services, the Commission makes a section 52P determination specifying

how the applicable type or types of regulation apply to a supplier of the regulated goods or services.

- (2) This section is only a guide.

Section 52E: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**52F Effect of goods or services being subject to regulation**

- (1) If goods or services are subject to regulation of a particular type, every regulated supplier of those goods or services must comply with—
- (a) the requirements of this Part relating to that type of regulation; and
  - (b) every section 52P determination applying to the supplier.
- (2) Sections 86 to 87C (which relate to offences and civil proceedings relating to contraventions of this Part) apply to a regulated supplier on and from the date on which the supplier is obliged to comply with a relevant section 52P determination.
- (3) The Commission is entitled to exercise any of its powers under this Act for the purpose of monitoring compliance by regulated suppliers with regulation under this Part.

Section 52F: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**52G When goods or services may be regulated**

- (1) Goods or services may be regulated under this Part only if—
- (a) the goods or services are supplied in a market where there is both—
    - (i) little or no competition; and
    - (ii) little or no likelihood of a substantial increase in competition; and
  - (b) there is scope for the exercise of substantial market power in relation to the goods or services, taking into account the effectiveness of existing regulation or arrangements (including ownership arrangements); and
  - (c) the benefits of regulating the goods or services in meeting the purpose of this Part materially exceed the costs of regulation.

- (2) In any consideration of this test, the part of the test in subsection (1)(c) need not be considered unless the parts of the test in subsection (1)(a) and (b) are satisfied.

Section 52G: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### *Commission inquiry*

Heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **52H How inquiry triggered**

- (1) The Commission—
- (a) must hold an inquiry if required to do so by the Minister; and
  - (b) may hold an inquiry on its own initiative.
- (2) Any requirement by the Minister must—
- (a) be in writing; and
  - (b) specify the date by which the Commission must make a recommendation under section 52K to the Minister.

Section 52H: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **52I Commission inquiry into particular goods or services**

- (1) In conducting an inquiry into particular goods or services, the Commission must consider—
- (a) whether the test in section 52G is satisfied in relation to the goods or services; and
  - (b) if that test is satisfied, whether the goods or services should be regulated; and
  - (c) if so, how the goods or services should be regulated, including—
    - (i) how the goods or services should be defined; and
    - (ii) which type or types of regulation (as set out in section 52B(2)) the goods or services should be subject to; and
    - (iii) how that type or those types of regulation should apply to suppliers of the goods or services.
- (2) As part of an inquiry into particular goods or services, the Commission—

- (a) must determine (and then apply) input methodologies for the supply of the goods or services, in accordance with subpart 3; and
  - (b) must, when carrying out the analysis required by section 52G(1)(c), undertake a qualitative analysis of all material long-term efficiency and distributional considerations.
- (3) As part of that qualitative analysis, the Commission must, as far as practicable,—
  - (a) quantify material effects on allocative, productive, and dynamic efficiency; and
  - (b) quantify material distributional and welfare consequences on suppliers and consumers; and
  - (c) assess the direct and indirect costs and risks of any type of regulation considered, including administrative and compliance costs, transaction costs, and spill-over effects.
- (4) As part of an inquiry, the Commission must, when considering which type of regulation might be imposed,—
  - (a) assess the benefits of imposing different types of regulation in meeting the purpose of this Part against the costs of imposing those types of regulation; and
  - (b) consider what would be the most cost-effective type or types of regulation in the circumstances.
- (5) During an inquiry, the Commission may have regard to any other matters it considers necessary or desirable for the purpose of the inquiry.

Section 52I: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

## **52J Process of inquiry**

- (1) At the start of an inquiry, the Commission must publish in the *Gazette* a notice setting out,—
  - (a) in the case of an inquiry required by the Minister, the Minister's requirements; and
  - (b) in the case of an inquiry on the initiative of the Commission, the terms of reference for the inquiry.
- (2) The notice must set out indicative time frames and key steps.
- (3) During the course of an inquiry, the Commission—

- (a) may publish, in whatever way it considers appropriate, further notices, consultation documents, or papers; and
  - (b) must give interested persons a reasonable opportunity to give their views; and
  - (c) may hold 1 or more conferences; and
  - (d) must have regard to any views received from interested persons within any time frames set.
- (4) Before the end of an inquiry, the Commission must publish a proposed recommendation for consultation.

Section 52J: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**52K Commission's recommendation following inquiry**

- (1) At the end of an inquiry, having considered the matters in section 52I, the Commission must make a recommendation to the Minister on whether, in its opinion, the goods or services should be regulated.
- (2) If the recommendation is that particular goods or services should be regulated, the recommendation must state the following:
  - (a) how the goods or services should be specified;
  - (b) which type or types of regulation should apply to the goods or services;
  - (c) what input methodologies apply;
  - (d) if information disclosure regulation is recommended, the material provisions of the information disclosure requirements;
  - (e) if negotiate/arbitrate regulation is recommended, the material provisions of the negotiation process and arbitration process;
  - (f) if default/customised price-quality regulation is recommended, the default price path and quality standards;
  - (g) if individual price-quality regulation is recommended, the material provisions to apply.
- (3) The Minister must publish the Commission's recommendation, and may do so in whatever way he or she considers appropriate.
- (4) To avoid doubt, a recommendation by the Commission is not a determination of the Commission.

Section 52K: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

*Order in Council imposing regulation*

Heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**52L Minister's consideration**

- (1) The Minister must consider any recommendation of the Commission made under section 52K.
- (2) As part of that consideration, the Minister—
  - (a) must consult with the relevant sector Minister (such as the Minister of Energy or the Minister of Transport); and
  - (b) may request further information or advice from the Commission.
- (3) If the Minister proposes, contrary to the recommendation of the Commission, that the goods or services should be regulated, or that they should be subject to a type of regulation not recommended by the Commission, the Minister must ask the Commission for written advice on what the material provisions of the relevant section 52P determination would be likely to be if the goods or services were subject to the type or types of regulation proposed by the Minister.
- (4) Any request by the Minister under subsection (3), and the Commission's advice given following that request, must be made publicly available.
- (5) If the Commission receives a request under subsection (3), it may, at its discretion,—
  - (a) consult with interested parties; or
  - (b) reopen its inquiry, in which case section 52J applies with all necessary modifications.

Section 52L: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**52M Minister's decision and recommendation**

- (1) Having considered the Commission's recommendation in accordance with section 52L and any advice given following a request under section 52L(3), the Minister must—

- (a) decide whether, in the opinion of the Minister, the goods or services should be regulated; and
  - (b) if the goods or services are to be regulated, decide which type or types of regulation are to apply; and
  - (c) make a recommendation to that effect, if the goods or services are to be regulated.
- (2) The Minister's decision may be the same as, or different from, the Commission's recommendation under section 52K.
- (3) If the Minister's decision is different from the Commission's recommendation, the Minister must set out the reasons for the decision and make the decision, with the reasons, publicly available.

Section 52M: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**52N Order in Council imposing regulation**

- (1) The Governor-General may, on the recommendation of the Minister made under section 52M, make an Order in Council imposing regulation on particular goods or services.
- (2) The order must—
  - (a) declare that the goods or services are regulated; and
  - (b) state which type or types of regulation the goods or services are subject to.
- (3) The order may identify the goods or services it relates to by reference to goods or (with all necessary modifications) services—
  - (a) supplied in or for delivery within specified regions, areas, or localities in New Zealand; or
  - (b) supplied in different quantities, qualities, grades, or classes; or
  - (c) supplied by or to or for the use of different persons or classes of persons; or
  - (d) any or all of paragraphs (a) to (c).
- (4) Subsection (3) applies so that any part or element of goods or services can be dealt with separately.
- (5) The order must include an expiry date, which must be a date not later than 20 years after its date of commencement.

- (6) The order is a regulation within the meaning of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.

Section 52N: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### **52O Revocation or amendment of Order in Council**

- (1) An Order in Council made under section 52N in respect of particular goods or services may not be revoked or significantly amended unless the Commission has held an inquiry into the goods or services.
- (2) In subsection (1), **significantly amended** means amended in a way that—
- (a) alters the type or types of regulation applying to the goods or services; or
  - (b) materially alters the goods or services to which the regulation applies, so that either—
    - (i) the goods or services, or any of them, are no longer regulated; or
    - (ii) goods or services that were not identified in the original order are now subject to regulation.
- (3) An Order in Council made under section 52N may be amended in any other material way only after the Commission has consulted with interested parties, but may be amended in a non-material way without prior consultation.

Section 52O: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### *Commission determination about how regulation applies*

Heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### **52P Determinations by Commission under this section**

- (1) The Commission must make determinations under this section specifying how the relevant forms of regulation apply to suppliers of regulated goods or services.
- (2) Determinations must be made,—



- (a) in the case of goods or services declared to be regulated by an Order in Council under section 52N, as soon as practicable after the Order in Council is made; and
  - (b) in the case of goods or services declared to be regulated under any of subparts 9 to 11, in accordance with sections 54I, 54J, 54K, 55E, and 56E.
- (3) Determinations must—
  - (a) set out, for each type of regulation to which the goods or services are subject, the requirements that apply to each regulated supplier; and
  - (b) set out any time frames (including the regulatory periods) that must be met or that apply; and
  - (c) specify the input methodologies that apply; and
  - (d) be consistent with this Part.
- (4) It is not necessary for a single determination to address all matters relating to particular regulated goods or services, or to a supplier of regulated goods or services, and different parts of any determination may come into effect at different times.
- (5) If a determination under this section is made following an inquiry and a recommendation under section 52K, the requirements referred to in subsection (3)(a) must not differ in any material respect from the recommendation, or (if applicable) from any advice given to the Minister under section 52L(3).
- (6) A determination under this section may require a supplier to comply with the requirements set out in any other determination that has been made under this section in respect of regulated goods or services of the same type.
- (7) The Commission must, as soon as practicable after making a determination under this section,—
  - (a) give a copy of the determination to each supplier to whom the determination relates; and
  - (b) publish a summary of it in the *Gazette*; and
  - (c) make the whole determination publicly available.
- (8) Each supplier to whom the determination relates must comply with the requirements imposed by the determination.

Section 52P: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**52Q Amendment of section 52P determination**

- (1) A section 52P determination may be amended in a material way only after the Commission has consulted with interested parties, but may be amended in a non-material way without prior consultation.
- (2) However, the Commission is not required to conduct an inquiry before amending a determination.
- (3) An amendment forms part of the determination it amends.
- (4) An amendment comes into force on the date specified in the amendment, which must be (except in the case of an amendment relating to a customised price-quality path that takes effect under section 53ZA(3)) a date on or after the date on which it, or a summary of it, is published in the *Gazette*.
- (5) The Commission must, as soon as practicable after making an amendment,—
  - (a) give a copy of the amendment to each supplier to whom the determination relates; and
  - (b) publish the amendment, or a summary of the amendment, in the *Gazette*; and
  - (c) make a copy of the determination, as amended by the amendment, publicly available.

Section 52Q: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**Subpart 3—Input methodologies**

Subpart 3 heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**52R Purpose of input methodologies**

The purpose of input methodologies is to promote certainty for suppliers and consumers in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of goods or services under this Part.

Section 52R: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**52S How published input methodologies apply**

Every relevant input methodology relating to the supply of particular goods or services that is published under section 52W must be applied,—

- (a) if the goods or services are regulated, by every regulated supplier of the goods or services in accordance with the relevant section 52P determination; and
- (b) in all cases, by every person entitled or required under this Act to recommend, decide, or determine—
  - (i) whether or how regulation under this Part should apply to the goods or services; or
  - (ii) the prices or quality standards applying to the goods or services.

Section 52S: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**52T Matters covered by input methodologies**

- (1) The input methodologies relating to particular goods or services must include, to the extent applicable to the type of regulation under consideration,—
  - (a) methodologies for evaluating or determining the following matters in respect of the supply of the goods or services:
    - (i) cost of capital;
    - (ii) valuation of assets, including depreciation, and treatment of revaluations;
    - (iii) allocation of common costs, including between activities, businesses, consumer classes, and geographic areas;
    - (iv) treatment of taxation; and
  - (b) pricing methodologies, except where another industry regulator (such as the Electricity Authority) has the power to set pricing methodologies in relation to particular goods or services; and
  - (c) regulatory processes and rules, such as—
    - (i) the specification and definition of prices, including identifying any costs that can be passed through to prices (which may not include the legal costs of any appeals against input method-

- ology determinations under this Part or of any appeals under section 91 or section 97); and
- (ii) identifying circumstances in which price-quality paths may be reconsidered within a regulatory period; and
- (d) matters relating to proposals by a regulated supplier for a customised price-quality path, including—
- (i) requirements that must be met by the regulated supplier, including the scope and specificity of information required, the extent of independent verification and audit, and the extent of consultation and agreement with consumers; and
  - (ii) the criteria that the Commission will use to evaluate any proposal.
- (2) Every input methodology must, as far as is reasonably practicable,—
- (a) set out the matters listed in subsection (1) in sufficient detail so that each affected supplier is reasonably able to estimate the material effects of the methodology on the supplier; and
  - (b) set out how the Commission intends to apply the input methodology to particular types of goods or services; and
  - (c) be consistent with the other input methodologies that relate to the same type of goods or services.
- (3) Any methodologies referred to in subsection (1)(a)(iii) must not unduly deter investment by a supplier of regulated goods or services in the provision of other goods or services.

Section 52T: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

Section 52T(1)(b): amended, on 1 November 2010, by section 147 of the Electricity Industry Act 2010 (2010 No 116).

## **52U When input methodologies must be determined**

- (1) The Commission must determine input methodologies for the goods or services regulated under subparts 9 to 11 no later than 30 June 2010.
- (2) The Minister may, on the written request of the Commission, extend the deadline referred to in subsection (1) once, by a

period of up to 6 months, in which case notice of the extension must be given in the *Gazette*.

- (3) The Commission must determine input methodologies for any goods or services that are the subject of an inquiry as soon as practicable after the Commission is satisfied that the parts of the test for the regulation of goods or services set out in paragraphs (a) and (b) of section 52G(1) are satisfied.

Section 52U: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**52V Commission process for determining input methodologies**

- (1) When the Commission begins work on an input methodology, it must publish a notice of intention to do so that—
- (a) outlines the process that will be followed; and
  - (b) sets out the proposed time frames.
- (2) During the course of its work on an input methodology, the Commission—
- (a) must publish a draft methodology; and
  - (b) must give interested persons a reasonable opportunity to give their views on that draft methodology; and
  - (c) may hold 1 or more conferences; and
  - (d) must have regard to any views received from interested persons within any time frames set.
- (3) Despite subsections (1) and (2), any work done or action taken (including any consultation) by the Commission on input methodologies before the commencement of this section may be treated by the Commission and any person consulted as work done or action taken under this section.
- (4) The Commission must consult with interested parties before deciding to treat earlier work or action as work or action done under this section.

Section 52V: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**52W Publication of input methodologies**

- (1) The Commission must publish every input methodology, and every amendment to an input methodology,—
- (a) within 10 working days after the Commission determines the input methodology or amendment; and

- (b) if the input methodology or an amendment is determined by the High Court on appeal, within 10 working days after the Commission receives a copy of the decision of the High Court.
- (2) The publication must be by way of a notice in the *Gazette* setting out—
  - (a) a brief description of the nature of the methodology and the goods or services to which it applies; and
  - (b) the reasons for determining that methodology; and
  - (c) how it is publicly available.
- (3) The Commission must make every input methodology, and every amended input methodology, publicly available as soon as the input methodology or amendment is published.

Section 52W: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **52X Amendment of input methodologies**

If the Commission proposes to amend an input methodology by making a material change, section 52V applies as if the amendment were a new input methodology.

Section 52X: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **52Y Review and date of publication of input methodologies**

- (1) The Commission must review each input methodology no later than 7 years after its date of publication and, after that, at intervals of no more than 7 years.
- (2) The date of publication of an input methodology is the date on which it is published under section 52W(1)(a) or, if it is subsequently published under section 52W(1)(b), the date of that later publication.
- (3) Section 52V applies, with all necessary modifications, as if the review were a new input methodology.
- (4) Section 52W applies if, following a review, an input methodology is replaced or amended.

Section 52Y: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

*Appeals against input methodology  
determinations*

Heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**52Z Appeals against input methodology determinations**

- (1) Any person who gave views on an input methodology determination to the Commission as part of the process under section 52V, and who, in the opinion of the court, has a significant interest in the matter, may appeal to the High Court against the determination.
- (2) In this section and section 52ZA, **input methodology determination** means any of the following:
  - (a) the initial determination of an input methodology;
  - (b) any determination by the Commission that amends the input methodology;
  - (c) any determination by the Commission of an input methodology following a review of the input methodology.
- (3) In determining an appeal against an input methodology determination, the court may do any of the following:
  - (a) decline the appeal and confirm the input methodology set out in the determination;
  - (b) allow the appeal by—
    - (i) amending the input methodology; or
    - (ii) revoking the input methodology and substituting a new one; or
    - (iii) referring the input methodology determination back to the Commission with directions as to the particular matters that require amendment.
- (4) The court may only exercise its powers under subsection (3)(b) if it is satisfied that the amended or substituted input methodology is (or will be, in the case of subsection (3)(b)(iii)) materially better in meeting the purpose of this Part, the purpose in section 52R, or both.
- (5) If the court allows an appeal, the Commission may seek clarification from the court on any matter for the purpose of implementing the court's decision.

- (6) There is a right of appeal under section 97 to the Court of Appeal from any decision or order of the High Court under this section on a point of law only.

Section 52Z: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### **52ZA Process for appeals**

- (1) Any appeal under section 52Z must be brought within 20 working days after the date on which the input methodology determination is published.
- (2) The appeal must be by way of rehearing and must be conducted solely on the basis of the documentary information and views that were before the Commission when it made its determination, and no party may introduce any new material during the appeal.
- (3) The High Court must sit with 2 lay members (unless the court considers that only 1 is required).
- (4) Each of the lay members must have relevant experience and be appointed from the pool of people appointed under section 77 to be members of the court for the purpose of hearing the appeal.
- (5) Section 77 applies, and section 77(14) is not limited by subsection (3) of this section.

Section 52ZA: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### **53 Input methodology applies pending outcome of appeal**

- (1) The High Court may not stay the application of section 52S with respect to any input methodology published under section 52W until any appeal against it is finally determined.
- (2) Section 52S continues to apply with respect to every input methodology published under section 52W until any appeal against the input methodology is finally determined.

Section 53: substituted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).



## Subpart 4—Information disclosure regulation

Subpart 4: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### **53A Purpose of information disclosure regulation**

The purpose of information disclosure regulation is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of this Part is being met.

Section 53A: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### **53B Effect of being subject to information disclosure regulation**

- (1) Every supplier of goods or services that are subject to information disclosure regulation must—
  - (a) publicly disclose information in accordance with the information disclosure requirements set out in the relevant section 52P determination; and
  - (b) supply to the Commission a copy of all information disclosed in accordance with the section 52P determination, within 5 working days after the information is first made publicly available; and
  - (c) supply to the Commission, in accordance with a written notice by the Commission, any further statements, reports, agreements, particulars, or other information required for the purpose of monitoring the supplier's compliance with the section 52P determination.
- (2) If a supplier of goods or services is subject to information disclosure regulation, the Commission—
  - (a) may monitor and analyse all information disclosed in accordance with the information disclosure requirements; and
  - (b) must, as soon as practicable after any information is publicly disclosed, publish a summary and analysis of that information for the purpose of promoting greater understanding of the performance of individual regulated suppliers, their relative performance, and the changes in performance over time.

Section 53B: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53C Section 52P determination to set out information disclosure requirements**

- (1) A section 52P determination relating to goods or services that are subject to information disclosure regulation must—
  - (a) specify the goods or services to which it applies; and
  - (b) specify the suppliers to which it applies; and
  - (c) specify the information to be disclosed; and
  - (d) specify the manner in which the information is to be disclosed; and
  - (e) specify the form of disclosure; and
  - (f) specify when, and for how long, information must be disclosed; and
  - (g) specify the input methodologies that apply; and
  - (h) specify any other methodologies that are required in the preparation or compilation of the information.
- (2) Information required to be disclosed may include (without limitation) any or all of the following:
  - (a) financial statements (including projected financial statements):
  - (b) asset values and valuation reports:
  - (c) prices, terms and conditions relating to prices, and pricing methodologies:
  - (d) contracts:
  - (e) transactions with related parties:
  - (f) financial and non-financial performance measures:
  - (g) plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, revenues, quality and service levels, capacity and spare capacity, and efficiency improvements:
  - (h) asset management plans:
  - (i) quality performance measures and statistics:
  - (j) assumptions, policies, and methodologies used or applied in these or other areas:
  - (k) consolidated information that includes information about unregulated goods or services, in which case section 53D applies.

- (3) The section 52P determination may do all or any of the following:
- (a) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be verified by statutory declaration:
  - (b) require independent audits of disclosed information:
  - (c) require the retention of data on which disclosed information is based, and associated documentation:
  - (d) exempt any person or class of persons, or provide for exemptions, from any requirements of the determination, and provide for the revocation of exemptions:
  - (e) provide for transitional provisions:
  - (f) impose any other requirements that the Commission considers necessary or desirable to promote the purpose of information disclosure regulation.
- (4) The section 52P determination may not require a supplier to publicly disclose any provision of an existing contract that, immediately before the goods or services became subject to information disclosure regulation, was not required by or under Part 4A (as defined in section 54B) or any other enactment to be publicly disclosed.

Section 53C: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### **53D Consolidated information may also be required**

- (1) The purpose of this section is to enable the Commission to monitor compliance with information disclosure regulation applying to regulated goods or services.
- (2) A section 52P determination may require information referred to in subsection (3) to be disclosed only to the extent required to enable the purpose in subsection (1) to be met.
- (3) If a regulated supplier provides goods or services that are not subject to regulation under this Part (**unregulated goods or services**), the supplier may be required to disclose—
- (a) consolidated financial statements, and any other information referred to in section 53C, for all businesses (including those related to the supply of unregulated goods or services) undertaken by that supplier; and

- (b) consolidated financial statements, and any other information referred to in section 53C, for the supply of all unregulated goods or services in aggregate; and
  - (c) reconciliation between information provided under paragraphs (a) and (b) with information disclosed in accordance with information disclosure requirements applying to the regulated goods or services.
- (4) If a supplier supplies more than 1 kind of regulated goods or services, the Commission may require the supplier to provide consolidated information and performance measures relating to all, or any combination of, the regulated goods or services.

Section 53D: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **53E Charge for providing copies to public**

- (1) A person who is required, by a section 52P determination, to provide copies of statements and information to the public on request may charge for providing those copies.
- (2) The charge must be no more than is reasonably required to recover the costs of providing those copies.

Section 53E: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **53F Limited exception to obligation to apply input methodologies**

- (1) Despite section 52S, suppliers that are subject only to information disclosure regulation do not have to apply the following input methodologies in accordance with that section:
  - (a) pricing methodologies;
  - (b) methodologies for evaluating or determining the cost of capital.
- (2) However, to avoid doubt, subsection (1) does not affect anything else in this subpart, and in particular does not affect—
  - (a) section 53B(2) (which means the Commission may use the input methodologies referred to in subsection (1) to monitor and analyse information); and
  - (b) section 53C(2) (which means that suppliers may still be required to disclose information about the pricing meth-

odologies, and methodologies for evaluation or determining the cost of capital, that they do in fact use).

Section 53F: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### Subpart 5—Negotiate/arbitrate regulation

Subpart 5: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **53G Purpose of negotiate/arbitrate regulation**

The purpose of negotiate/arbitrate regulation is to encourage a supplier and its customers to reach agreement, through negotiation, on the supplier's prices and quality standards during a specified regulatory period, and to provide for binding arbitration if negotiation is unsuccessful.

Section 53G: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **53H Overview of negotiate/arbitrate regulation**

- (1) If a regulated supplier is subject to negotiate/arbitrate regulation,—
  - (a) the supplier must enter into negotiations with parties identified by the Commission in order to reach agreement on the matters identified by the Commission (being the prices and quality standards associated with regulated goods or services) that will apply for the regulatory period specified by the Commission; and
  - (b) if the negotiations fail to reach a settlement of all the matters within the time frames set by the Commission, the parties must enter into arbitration to resolve the outstanding matters; and
  - (c) the terms of the arbitration are set by the Commission, and the arbitral award is binding on the parties unless or until they agree to vary it.
- (2) This section is only a guide.

Section 53H: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53I Section 52P determination to set out requirements for application of negotiate/arbitrate regulation**

- (1) If negotiate/arbitrate regulation applies to regulated goods or services, the section 52P determination must set out the following:
  - (a) the parties to the negotiation or arbitration:
  - (b) the matters (including the prices and quality standards associated with the regulated goods or services) that the parties must agree to by negotiation, or are bound to by arbitral award:
  - (c) the period or periods for which any negotiated settlement or arbitral award applies:
  - (d) a reference to the input methodologies that apply:
  - (e) the information that the parties must provide to the other parties and, if necessary, the arbitrator, and the time frames for that provision:
  - (f) the processes for negotiations, including the form of involvement by the parties, and the form, scope, and coverage of any negotiated settlement:
  - (g) the time frames for the negotiations (including stages in negotiations) and, in particular, the date by which, if negotiations are not complete, the parties must enter into arbitration to settle any remaining unresolved matters:
  - (h) the terms of any compulsory arbitration that takes place under section 53J, including its form, procedures, the allocation of costs, and powers of the arbitrator:
  - (i) the date by which the arbitral award must be made:
  - (j) the manner in which the parties must make publicly available any negotiated settlement, arbitral award, or both.
- (2) The Commission may include in the determination any other matters it considers necessary or desirable to promote the purpose of negotiate/arbitrate regulation.
- (3) If the parties to a negotiation agree to arbitration, the arbitration may be on whatever terms they agree to, but must be completed within the time frames set for the negotiation.
- (4) The Commission may extend any time frames set out in a section 52P determination.
- (5) The terms of arbitration set by the Commission must—

- (a) allow the parties a reasonable period within which to agree on an arbitrator but, if agreement is not reached within that period (or any extended period allowed under subsection (4)), the terms must provide that the Commission must appoint the arbitrator (and may not appoint itself as the arbitrator); and
- (b) include provisions enabling the parties to enforce the arbitral award; and
- (c) include a right of appeal to the High Court, exercisable by any party to the arbitration, on a point of law only.

Section 53I: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### **53J Compulsory arbitration**

- (1) If a settlement is not reached (whether by negotiation or voluntary arbitration) within the time frame set by the Commission, the parties must enter into arbitration under this section on the terms set out in the section 52P determination.
- (2) The Arbitration Act 1996 does not apply to arbitration under this section, but the Commission may, in setting out the terms of the arbitration in the section 52P determination, apply any provisions of that Act to the arbitration.
- (3) The arbitrator's role is to make an arbitral award that promotes the purpose of this Part.
- (4) If final consumers of regulated goods or services are not directly represented as parties in the arbitration, the arbitrator must have particular regard to the effect of the outcome of the arbitration on those final consumers.
- (5) The arbitral award is binding on the parties to the arbitration unless or until the parties agree to vary it.

Section 53J: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

## Subpart 6—Default/customised price-quality regulation

Subpart 6: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### **53K Purpose of default/customised price-quality regulation**

The purpose of default/customised price-quality regulation is to provide a relatively low-cost way of setting price-quality paths for suppliers of regulated goods or services, while allowing the opportunity for individual regulated suppliers to have alternative price-quality paths that better meet their particular circumstances.

Section 53K: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### **53L Overview of default/customised price-quality regulation**

- (1) If goods or services are subject to default/customised price-quality regulation,—
  - (a) the Commission sets default price-quality paths that apply for a regulatory period, and all regulated suppliers must apply those default price-quality paths; but
  - (b) individual suppliers may make a proposal to the Commission for a customised price-quality path; and
  - (c) the Commission may set a customised price-quality path for the supplier, and that then applies for a set period instead of a specified default price-quality path.
- (2) This section is only a guide.

Section 53L: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### **53M Content and timing of price-quality paths**

- (1) Every price-quality path (whether a default price-quality path or a customised price-quality path under this subpart, or an individual price-quality path under subpart 7) must specify,—
  - (a) in relation to prices, either or both of the following with respect to a specified regulatory period:
    - (i) the maximum price or prices that may be charged by a regulated supplier:



- (ii) the maximum revenues that may be recovered by a regulated supplier; and
  - (b) the quality standards that must be met by the regulated supplier; and
  - (c) the regulatory period.
- (2) A price-quality path may include incentives for an individual supplier to maintain or improve its quality of supply, and those incentives may include (without limitation) any of the following:
  - (a) penalties by way of a reduction in the supplier's maximum prices or revenues based on whether, or by what amount, the supplier fails to meet the required quality standards:
  - (b) rewards by way of an increase in the supplier's maximum prices or revenue based on whether, or by what amount, the supplier meets or exceeds the required quality standards:
  - (c) consumer compensation schemes that set minimum standards of performance and require the supplier to pay prescribed amounts of compensation to consumers if it fails to meet those standards:
  - (d) reporting requirements, including special reporting requirements in asset management plans, if the supplier fails to meet the quality standards.
- (3) Quality standards may be prescribed in any way the Commission considers appropriate (such as targets, bands, or formulae) and may include (without limitation)—
  - (a) responsiveness to consumers; and
  - (b) in relation to electricity lines services, reliability of supply, reduction in energy losses, and voltage stability or other technical requirements.
- (4) A regulatory period must be 5 years.
- (5) However, the Commission may set a shorter period than 5 years if it considers that it would better meet the purposes of this Part, but in any event may not set a term less than 4 years.
- (6) Subsections (4) and (5) are subject to section 53W.
- (7) No default price-quality path applies to a supplier until the date specified in the relevant section 52P determination, which

must be a date at least 4 months after a summary of the determination is published in the *Gazette* under section 52P(7)(b).

Section 53M: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### **53N Monitoring compliance with price-quality paths**

For the purpose of monitoring compliance with a price-quality path (whether a default price-quality path or a customised price-quality path under this subpart, or an individual price-quality path under subpart 7), the Commission may, in addition to exercising its powers under section 98, issue a written notice to a regulated supplier requiring it to provide any or all of the following:

- (a) a written statement that states whether or not the supplier has complied with the price-quality path applying to that supplier:
- (b) a report on the written statement referred to in paragraph (a) that is signed by an auditor in accordance with any form specified by the Commission:
- (c) sufficient information to enable the Commission to properly determine whether all applicable price-quality paths have been complied with:
- (d) a certificate, in the form specified by the Commission and signed by at least 1 director of the supplier, confirming the truth and accuracy of any information provided under this section.

Section 53N: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### *Default price-quality path*

Heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### **53O Section 52P determination to set out requirements of default price-quality paths**

If default price-quality regulation applies to regulated goods or services, the section 52P determination must set out a default price-quality path that includes—

- (a) the starting prices that apply to the supply of the goods or services during the first regulatory period; and
- (b) the rate or rates of change in prices, relative to the Consumer Price Index, allowed during the first regulatory period; and
- (c) the quality standards that apply during the first regulatory period; and
- (d) the date or dates on which the default price-quality path (or any part of it) takes effect; and
- (e) the annual date by which any proposal for a customised price-quality path must be received; and
- (f) the annual date by which compliance must be demonstrated in accordance with section 53N.

Section 53O: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53P Resetting starting prices, rates of change, and quality standards**

- (1) Before the end of the first and every subsequent regulatory period, the Commission must amend the section 52P determination by setting out the starting prices (as referred to in section 53O(a)), rates of change (as referred to in section 53O(b)), and quality standards (as referred to in section 53O(c)) that apply for the following regulatory period.
- (2) In resetting starting prices, rates of change, and quality standards, the Commission must consult with interested parties.
- (3) The starting prices must be either—
  - (a) the prices that applied at the end of the preceding regulatory period; or
  - (b) prices, determined by the Commission, that are based on the current and projected profitability of each supplier.
- (4) Starting prices set in accordance with subsection (3)(b) must not seek to recover any excessive profits made during any earlier period.
- (5) Subject to subsection (8), the Commission must set only 1 rate of change per type of regulated goods or services (for example, if the rate of change (*x*) is 1% in a CPI-*x* path, 1% must be the rate for all goods or services of that type).

- (6) The rate of change must be based on the long-run average productivity improvement rate achieved by either or both of suppliers in New Zealand, and suppliers in other comparable countries, of the relevant goods or services, using whatever measures of productivity the Commission considers appropriate.
- (7) When setting the rate of change, the Commission may take into account the effects of inflation on the inputs of suppliers of the relevant goods or services.
- (8) The Commission may set alternative rates of change for a particular supplier—
  - (a) as an alternative, in whole or in part, to the starting prices set under subsection (3)(b) if, in the Commission's opinion, this is necessary or desirable to minimise any undue financial hardship to the supplier or to minimise price shock to consumers; or
  - (b) as an incentive (under section 53M(2)) for the supplier to improve its quality of supply.
- (9) Any alternative rates of change set under subsection (8) may include step changes.
- (10) The Commission may not, for the purposes of this section, use comparative benchmarking on efficiency in order to set starting prices, rates of change, quality standards, or incentives to improve quality of supply.
- (11) If starting prices, rates of change, and quality standards have not been set by way of an amendment to the relevant section 52P determination by the end of the regulatory period to which it applies, the starting prices, rates of change, and quality standards that apply at the end of the regulatory period continue to apply until the reset starting prices, rates of change, and quality standards are set.

Section 53P: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

*Customised price-quality paths*

Heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53Q Supplier may propose customised price-quality path**

- (1) At any time after a default price-quality path is set by the Commission, a supplier that is (or is likely to be) subject to the default price-quality path may make a proposal to the Commission for a customised price-quality path to apply to that supplier.
- (2) Every proposal must—
  - (a) comply with the input methodologies referred to in section 52T(1)(d) relating to the process for, and content of, customised price-quality path proposals; and
  - (b) be made within the period, or by the annual date, specified for the purpose in the section 52P determination; and
  - (c) include the standard application fee for customised price-quality path proposals; and
  - (d) apply or adopt all relevant input methodologies.
- (3) A supplier may make only 1 proposal during a regulatory period, and may not make a proposal within the 12 months before a default price-quality path is due to be reset.
- (4) A supplier that makes a proposal must make it publicly available as soon as practicable after it has been made to the Commission.

Section 53Q: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53R Effect of making proposal for customised price-quality path**

A supplier that makes a proposal to the Commission—

- (a) cannot withdraw the proposal; and
- (b) is bound, for the regulatory period to which it applies, by any customised price-quality path that the Commission subsequently sets for the supplier.

Section 53R: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53S Preliminary assessment of proposal**

- (1) Within 40 working days after receiving a proposal, the Commission must determine whether the proposal complies with the input methodologies referred to in section 52T(1)(d) relating to the process for, and content of, customised price-quality path proposals.
- (2) If the proposal does not comply with those requirements, the Commission may, at its discretion,—
  - (a) discontinue any consideration of the proposal; or
  - (b) request the supplier to remedy the deficiencies in the proposal by providing additional information within 40 working days.
- (3) If the supplier fails to provide any additional information requested by the Commission under subsection (2)(b), the Commission may discontinue any consideration of the proposal.
- (4) If a proposal is discontinued under subsection (2) or (3), section 53Q(3) does not apply and the supplier may make another proposal within the regulatory period (except in the 12 months before the default price-quality path is due to be reset).

Section 53S: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53T Process and timing for assessing proposal**

- (1) Once the Commission decides that a proposal complies with the input methodologies relating to the process for, and content of, customised price-quality path proposals, it must—
  - (a) give notice that the proposal is under consideration, and how copies of the proposal may be obtained; and
  - (b) set a date for interested persons to make submissions on the proposal; and
  - (c) have regard to any submissions made by that date.
- (2) The Commission must make a determination on a proposal for a customised price-quality path within 150 working days of receiving a complete proposal, subject to sections 53U and 53Z.

Section 53T: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53U Extension of time frames**

The time frames specified in sections 53S and 53T may, with the agreement of the supplier and the Commission, each be extended by a total of up to 30 working days.

Section 53U: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53V Determination setting customised price-quality path**

- (1) The Commission may determine any customised price-quality path that the Commission considers appropriate for a supplier that has made a proposal.
- (2) To avoid doubt, and without limitation, in determining a customised price-quality path that complies with section 53M the Commission may do any of the following:
  - (a) set a price-quality path that is lower, or otherwise less favourable to the regulated supplier, than the default price-quality path that would otherwise apply:
  - (b) if it sets a lower or a higher price than applied under the default price-quality path, apply claw-back:
  - (c) with the agreement of the supplier, vary an input methodology that would otherwise apply to the supplier.
- (3) A customised price-quality path for a supplier is imposed by way of an amendment to the section 52P determination relating to the default/customised price-quality regulation applying to the supplier.

Section 53V: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53W Term of customised price-quality paths**

- (1) A customised price-quality path applies for 5 years.
- (2) However, the Commission may set a shorter period than 5 years if it considers this would better meet the purpose of this Part, but in any event may not set a term less than 3 years.

Section 53W: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53X What happens when customised price-quality path ends**

- (1) When the customised price-quality path of a supplier of goods or services ends, the supplier is subject to the default price-

quality path that is generally applicable to other suppliers of those goods or services.

- (2) The starting prices that apply at the beginning of the default price-quality path are those that applied at the end of the customised price-quality path unless, at least 4 months before the end of the customised price-quality path, the Commission advises the supplier that different starting prices must apply.
- (3) The supplier remains subject to the default price-quality path until—
  - (a) the end of the period for which it applies to other suppliers; or
  - (b) a new customised price-quality path begins to apply to the supplier.
- (4) To avoid doubt, a supplier who is or was subject to a customised price-quality path may apply in accordance with section 53Q for another customised price-quality path.

Section 53X: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53Y Commission's costs relating to assessing, setting, and reconsidering customised price-quality path**

- (1) The Commission's costs in assessing a proposal for, and setting or reconsidering, a customised price-quality path must be met by the person who makes the proposal for a customised price-quality path.
- (1A) If the amount paid by a person in respect of a proposal for a customised price-quality path exceeds the Commission's costs in assessing the proposal and (if applicable) setting or reconsidering the customised price-quality path, the Commission may refund the excess to the person who paid it.
- (2) The costs may be recovered in whatever manner the Commission determines.

Section 53Y: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

Section 53Y heading: amended, on 1 November 2010, by section 148(1) of the Electricity Industry Act 2010 (2010 No 116).

Section 53Y(1): amended, on 1 November 2010, by section 148(2) of the Electricity Industry Act 2010 (2010 No 116).

Section 53Y(1A): inserted, on 1 November 2010, by section 148(3) of the Electricity Industry Act 2010 (2010 No 116).



**53Z Prioritisation by Commission**

- (1) The Commission is not required to consider any more than 4 proposals for a customised price-quality path relating to the same type of regulated goods or services in any one year.
- (2) If the Commission receives more than 4 proposals for a customised price-quality path relating to the same type of regulated goods or services in any one year, the Commission—
  - (a) may defer the additional proposals to a subsequent year; but
  - (b) must prioritise its consideration of the proposals in accordance with the criteria in subsection (3).
- (3) The criteria for Commission decisions on priorities are as follows:
  - (a) quality and completeness of the initial proposal:
  - (b) urgency of any proposed additional investment (compared to historic rates of investment) required to meet consumer requirements on quality:
  - (c) materiality of the proposal relative to the size and revenues of the supplier.

Section 53Z: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53ZA What happens if Commission does not make decision within time frame**

- (1) This section applies if the Commission does not make a determination within 150 working days of receiving a complete proposal (or within any extended time agreed under section 53U).
- (2) If the regulated supplier has not complied, in the Commission's opinion, with any reasonable exercise by the Commission of its information-gathering powers under section 53ZD or 98, the default price-quality path continues in effect at the close of that period, and the Commission must notify the supplier accordingly.
- (3) If the regulated supplier has so complied, the customised proposal made under section 53Q takes effect at the close of that period.
- (4) If a customised price-quality path proposal takes effect under subsection (3), the Commission must immediately prepare an

amendment to the relevant section 52P determination, setting out the customised price-quality path applying to the supplier.

Section 53ZA: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

*What happens to price-quality paths if input methodologies change*

Heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53ZB What happens to price-quality paths if input methodologies change**

- (1) Default or customised price-quality paths may not be reopened within a regulatory period on the grounds of a change in an input methodology, except as provided in subsection (2).
- (2) Every default and customised price-quality path must be reset by the Commission in accordance with section 53P if—
  - (a) an input methodology changes as a result of an appeal under section 52Z; and
  - (b) had the changed methodology applied at the time the price-quality path was set, it would have resulted in a materially different path being set.
- (3) When resetting a default or customised price-quality path under subsection (2), the Commission must apply claw-back.

Section 53ZB: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**Subpart 7—Individual price-quality regulation**

Subpart 7: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53ZC Price-quality path for individual businesses**

- (1) If individual price-quality regulation applies to goods or services supplied by a supplier, the Commission may set the price-quality path for that supplier using any process, and in any way, it thinks fit, but must use the input methodologies that apply to the supply of those goods or services.

- (2) The following provisions of subpart 6 apply (with all necessary modifications) where individual price-quality regulation is imposed:

- (a) sections 53M and 53N;
- (b) section 53ZB.

Section 53ZC: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### Subpart 8—Miscellaneous provisions

Subpart 8: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **53ZD Powers of Commission under this Part**

For the purpose of carrying out its functions and exercising its powers under this Part, the Commission may, in addition to exercising its powers under section 98, do any of the following:

- (a) consult with any person the Commission considers may assist it;
- (b) investigate any of the following:
  - (i) how effectively and efficiently any supplier of the goods or services is supplying the goods or services;
  - (ii) how any formula, methodology, or price-quality path being considered by the Commission may be applied, or how any formula, methodology, or price-quality provision determined or authorised by the Commission has been applied, in considering proposed prices or quality standards;
  - (iii) how any conditions relating to the quality of the goods or services may be, or are being, fulfilled;
- (c) examine, consider, or investigate any activity, cost, revenue, transfer, asset valuation, circumstance, or event that is occurring or that has occurred during the previous 7 years;
- (d) by notice in writing, require any supplier of the goods or services—
  - (i) to prepare and produce forecasts, forward plans, or other information; and

- (ii) to apply any methodology specified by the Commission in the preparation of forecasts, forward plans, or other information:
- (e) by notice in writing, require any supplier of the goods or services, or any previous supplier of them that the Commission has reason to believe may have information or documents relevant to the investigation, audit, or inquiry, at the time and place specified in the notice, to do either or both of the following:
  - (i) produce or supply to the Commission documents and information in relation to the goods or services, or the prices or operations of the person in respect of the goods or services:
  - (ii) to answer any questions about any matter that the Commission has reason to believe may be relevant to the investigation, audit, or inquiry:
- (f) by notice in writing, require any supplier of the goods or services, at the time and place specified in the notice, to produce or supply to the Commission an expert opinion from an appropriately qualified person, or from a member of a class of appropriately qualified persons, as determined by the Commission in relation to the matters in paragraph (b), (c), (d), or (e)(i).

Section 53ZD: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### **53ZE Levies**

- (1) Every supplier of regulated goods or services (or prescribed class of suppliers of regulated goods or services) must pay to the Minister the levy determined in accordance with regulations made under subsection (2).
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
  - (a) specifying the amount of levies, or method of calculating or ascertaining the amount of levies, on the basis that the estimated costs of performing the Commission's functions, powers, and duties under this Part, and of collecting the levy money, should be met fully out of levies:

- (b) including, or providing for the inclusion, in levies of any shortfall in recovering those actual costs:
  - (c) refunding, or providing for refunds of, any over-recovery of those actual costs:
  - (d) providing different levies for different classes of suppliers or goods or services:
  - (e) specifying the financial year or part financial year to which those levies apply, and applying to that financial year or part financial year and each subsequent financial year until revoked or replaced:
  - (f) providing for the payment and collection of those levies:
  - (g) for the first financial year to which the levy applies to a supplier or class of suppliers, including in the levy amount or method costs incurred by the Commission in connection with preparing itself to perform, and performing, its functions, powers, and duties under this Part, irrespective of the fact—
    - (i) that the regulations are made and come into effect after that year; or
    - (ii) that the goods or services become regulated after the costs were incurred (for example, costs incurred by the Commission in preparing input methodologies):
  - (h) requiring payment of a levy for a financial year or part financial year, irrespective of the fact that the regulations may be made after that financial year has commenced:
  - (i) exempting or providing for exemptions from, and providing for waivers of, the whole or any part of the levy for any case or class of cases.
- (3) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the Crown.
- (4) The Minister must consult with the suppliers of regulated goods or services, or representatives of those suppliers, before making a recommendation for the purposes of subsection (2).

Section 53ZE: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53ZF Material may be incorporated by reference**

Schedule 5 applies if the Commission wishes to incorporate material by reference in any of the following documents:

- (a) a section 52P determination:
- (b) an input methodology.

Section 53ZF: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**53ZG Power to exempt disclosure of commercially sensitive information**

- (1) The Commission may, on application, exempt any person or class of persons, in respect of any information or class of information that the Commission considers to be commercially sensitive, from any obligation to make that information publicly available as part of the requirements of information disclosure regulation, negotiate/arbitrate regulation, or customised price-quality regulation.
- (2) The Commission may grant the exemption on any terms and conditions that it thinks fit.
- (3) The exemption must be granted by notice in the *Gazette*, and takes effect from the date specified in the exemption (which must not be earlier than the date of the *Gazette* notice).
- (4) The Commission may, in like manner, vary or revoke any exemption.
- (5) The Commission must keep a list of all current exemptions made by it under this section available for public inspection free of charge during normal office hours of the Commission at the offices of the Commission.
- (6) An exemption under this section is not a regulation within the meaning of the Regulations (Disallowance) Act 1989 or the Acts and Regulations Publication Act 1989.

Section 53ZG: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

## Subpart 9—Electricity lines services

Subpart 9 heading: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### *Application, overview, and interpretation*

Heading: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **54 Overview of how subpart applies**

- (1) This subpart provides—
  - (a) that all suppliers of electricity lines services are subject to information disclosure regulation; and
  - (b) that suppliers of electricity lines services that are not consumer-owned are also subject to price-quality regulation; and
  - (c) for the transition to the new regime provided for in this Part.
- (2) This section is only a guide.

Section 54: substituted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **54A Overview of when subpart applies**

- (1) This subpart applies on and after 1 April 2009.
- (2) However, sections 54D(3) and 54N apply as soon as the rest of this Part comes into force.
- (3) This section is only a guide.

Section 54A: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **54B Interpretation for subpart**

- (1) In this subpart, unless the context otherwise requires,—  
**administrative settlement** means a deed entered into by the Commission and a supplier of electricity lines services in respect of a breach of a threshold or a breach of a default price-quality path referred to in section 54J  
**consumer-owned** has the meaning given in section 54D  
**electricity lines services** has the meaning given in section 54C

**Part 4A** means Part 4A of this Act as in force immediately before its repeal by the Commerce Amendment Act 2008

**threshold** means a threshold set by the Commission under Part 4A for the declaration of control in relation to large electricity lines businesses

**Transpower** means Transpower New Zealand Limited or any subsidiary of, or successor to, that company.

- (2) References in this subpart to Transpower include references to Transpower in its role as system operator under the Electricity Industry Act 2010.

Section 54B: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

Section 54B(2): added, on 1 November 2010, by section 149 of the Electricity Industry Act 2010 (2010 No 116).

#### **54C Meaning of electricity lines services**

- (1) In this subpart, unless the context otherwise requires, **electricity lines services**—
- (a) means the conveyance of electricity by line in New Zealand; and
  - (b) with respect to services performed by Transpower, includes services performed as system operator.
- (2) However, none of the following are electricity lines services:
- (a) conveying electricity solely for the supplier's own consumption or for the consumption of the supplier's associates;
  - (b) conveying electricity only from a generator to the national grid or from the national grid to a generator;
  - (c) conveying electricity (other than via the national grid) only from a generator to a local distribution network or from a local distribution network to a generator;
  - (d) conveying electricity by lines that are not connected, directly or indirectly, to the national grid;
  - (e) conveying electricity only by a line or lines that are mostly in competition with a line or lines operated by another supplier of electricity lines services that is not an associate of the person, provided that the competition is actual competition and not potential competition:



- (f) conveying electricity if the total circuit length of all of the prescribed voltage electric lines provided by the supplier (or over which electricity is conveyed by the supplier, as the case may be) is less than 25 kilometres:
  - (g) conveying electricity if the total amount of electricity conveyed to consumers by the supplier is less than 20 gigawatt hours per annum:
  - (h) conveying electricity if the total number of consumers to whom the supplier conveys electricity is less than 500.
- (3) The prescribed voltage electric lines, the electricity conveyed, or the number of consumers to whom electricity is conveyed, when measured in relation to a supplier include, for the purposes of subsection (2)(f) to (h), the lines provided by, electricity conveyed by, or number of consumers of, any associate of the supplier.
- (4) In this section, unless the context otherwise requires,—
- associate** has the same meaning as in section 73 of the Electricity Industry Act 2010
- consumer** has the same meaning as in section 2(1) of the Electricity Act 1992
- lines** has the same meaning as in section 2(1) of the Electricity Act 1992
- national grid** has the same meaning as in section 5 of the Electricity Industry Act 2010
- prescribed voltage electric line** means a line that is capable of conveying electricity at a voltage equal to or greater than 3.3 kilovolts.

Section 54C: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

Section 54C(1): substituted, on 1 November 2010, by section 150(1) of the Electricity Industry Act 2010 (2010 No 116).

Section 54C(4) **associate**: amended, on 1 November 2010, by section 150(2) of the Electricity Industry Act 2010 (2010 No 116).

Section 54C(4) **national grid**: amended, on 1 November 2010, by section 150(3) of the Electricity Industry Act 2010 (2010 No 116).

**54D Definition of consumer-owned**

- (1) In this subpart, unless the context otherwise requires, a supplier is **consumer-owned** if it is a supplier that meets the following criteria:
- (a) all the control rights and all the equity return rights (within the meaning of clause 6 of Schedule 2 of the Electricity Industry Act 2010) in the supplier are held by 1 or more customer trusts, community trusts, or customer co-operatives; and
  - (b) the trustees of each customer trust or community trust, or the committee of shareholders of each customer co-operative, as the case may be, that is referred to in paragraph (a) are elected by the persons who are consumers of the supplier in accordance with subsections (2A) to (2C); and
  - (c) at least 90% of the persons who are consumers of the supplier as at an income distribution resolution date benefit from that income distribution; and
  - (d) the supplier has fewer than 150 000 ICPs.
- (2) In this section, unless the context otherwise requires,—
- community trust**, in relation to a supplier, is a trust in respect of which—
- (a) at least 90% of the income beneficiaries comprise persons who are a class or classes identified by reference to their domicile or location or operation within the geographic area or areas of operation of the supplier; and
  - (b) at least 90% of its income distributions are paid to those beneficiaries or for purposes related to that geographic area or areas

**consumer** has the same meaning as in section 2(1) of the Electricity Act 1992, and includes, for the purposes of references to the election of trustees in this section and section 54H, any person who is listed on an electoral roll as a resident of an address that consumes the electricity in question

**customer co-operative**, in relation to a supplier, means a co-operative company (as defined in section 2(1) of the Co-operative Companies Act 1996) that has the characteristics described in the definition of customer trust in this subsection, applied as if references to trusts were to co-operatives,

references to income beneficiaries were to shareholders, and all other necessary modifications were made

**customer trust**, in relation to a supplier, means a trust in respect of which—

- (a) at least 90% of the income beneficiaries comprise persons who are a class or classes identified by reference to any of—
  - (i) the person's connection to the lines of the supplier;
  - (ii) the person's receipt of electricity from the supplier;
  - (iii) the person's liability for payment for supply of electricity from the supplier;
  - (iv) the person's liability for payment for the connection to the lines of the supplier;
  - (v) the person's liability for payment for line services supplied by the supplier; and
- (b) at least 90% of its income distributions are paid to those beneficiaries

**ICP** means a point of connection on a local or an embedded network at which a retailer supplies electricity to a consumer

**income distribution resolution date** means the date that a supplier, or the trust or co-operative that owns a supplier, as the case may be, resolves to make an income distribution to beneficiaries.

(2A) The requirements in respect of elections for the purposes of subsection (1)(b) are as follows:

- (a) every trustee of the customer trust or community trust, or every member of the committee of shareholders of each customer co-operative, as the case may be, must have been elected solely by the persons who are consumers of the supplier; and
- (b) either—
  - (i) at least 90% of the persons who are consumers of the supplier at the time of the election are eligible to vote in those elections; or
  - (ii) in the case of a customer trust or community trust, there is ward-based voting that complies with the requirements of subsection (2B); and

- (c) each consumer must have an equal vote.
- (2B) The requirements for ward-based voting are as follows:
  - (a) at least 90% of the persons in a ward who are consumers of the supplier at the time of the election are eligible to vote in the election of all of the trustees of that ward; and
  - (b) ward boundaries must provide for effective and fair representation of all consumers of the supplier, and in particular,—
    - (i) the proportion of consumers in relation to the number of trustees of the relevant trust must be approximately equal in each ward; and
    - (ii) the wards must not be based on volume of electricity supplied; and
  - (c) ward boundaries must be reviewed periodically (at intervals determined by the Commission) in consultation with all consumers of the supplier.
- (2C) A trustee of a customer trust or community trust, or a member of the committee of shareholders of a customer co-operative, as the case may be, must be treated as having been elected solely by the persons who are consumers of the supplier if the person—
  - (a) has been declared to be elected without an election in the case of a nominee at an election where the number of nominations was equal to or less than the number of vacancies; or
  - (b) has been declared to be elected as the next-highest-polling candidate in the case where a higher-polling candidate at the election was unable to fill the elected position; or
  - (c) has been declared to be elected by the remaining trustees or members following a casual vacancy that arose between elections, provided that—
    - (i) the person is the first person to have been so elected since the last election at which consumers of the supplier voted; and
    - (ii) the person is elected to hold office only until the next scheduled election at which consumers of the supplier will vote.

- (2D) The Commerce Commission may require a supplier that claims to meet the criteria in this section to verify that claim by statutory declaration.
- (2E) The declaration must be made by the persons and in the form required by the Commerce Commission.
- (3) As soon as practicable after this subsection comes into force, the Minister must publish a notice in the *Gazette* stating the names of the suppliers that are consumer-owned as at that date.
- (4) The notice in subsection (3) is only for information purposes and has no legal effect.

Section 54D: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

Section 54D(1)(a): amended, on 1 November 2010, by section 151(1) of the Electricity Industry Act 2010 (2010 No 116).

Section 54D(1)(b): substituted, on 1 November 2010, by section 151(2) of the Electricity Industry Act 2010 (2010 No 116).

Section 54D(2A): inserted, on 1 November 2010, by section 151(3) of the Electricity Industry Act 2010 (2010 No 116).

Section 54D(2B): inserted, on 1 November 2010, by section 151(3) of the Electricity Industry Act 2010 (2010 No 116).

Section 54D(2C): inserted, on 1 November 2010, by section 151(3) of the Electricity Industry Act 2010 (2010 No 116).

Section 54D(2D): inserted, on 1 November 2010, by section 151(3) of the Electricity Industry Act 2010 (2010 No 116).

Section 54D(2E): inserted, on 1 November 2010, by section 151(3) of the Electricity Industry Act 2010 (2010 No 116).

Section 54D(3): brought into force, on 14 October 2008, by section 2(1)(b) of the Commerce Amendment Act 2008 (2008 No 70).

### *Imposition of regulation under this Part*

Heading: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

## **54E Electricity lines services declared to be regulated**

Electricity lines services are regulated under this Part.

Section 54E: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**54F All electricity lines services are subject to information disclosure regulation**

All electricity lines services are subject to information disclosure regulation under this Part.

Section 54F: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**54G Certain electricity lines services are also subject to default/customised price-quality regulation**

- (1) All electricity lines services (other than those supplied by Transpower) are subject to default/customised price-quality regulation under this Part unless they are exempt.
- (2) All electricity lines services that are supplied by a supplier that is consumer-owned are exempt (unless an Order in Council has been made in respect of the service under section 54H).

Section 54G: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**54H How exempt status can be lost and default/customised price-quality regulation can be applied to consumer-owned suppliers**

- (1) Electricity lines services that are supplied by a supplier that is consumer-owned cease to be exempt for the purpose of section 54G (and therefore become subject to default/customised price-quality regulation under this Part) if the Governor-General, by Order in Council, declares that this section applies.
- (2) The Minister may make a recommendation only if the Minister is satisfied that either—
  - (a) the Commission has advised the Minister that a supplier has ceased to be consumer-owned within the meaning of section 54D; or
  - (b) the Commission has recommended to the Minister that the purpose of this Part would be better met if price-quality regulation were imposed on the supplier under this Part.
- (2A) A supplier must give notice in writing to the Commission within 10 working days after becoming aware that it has ceased to be consumer-owned.

- (3) The Commission may make a recommendation under subsection (2)(b) only following consideration of a petition made by 1 or more of the following:
- (a) 15% of the persons who are domestic consumers of the supplier as at the date of the petition who are eligible to vote in elections for trustees of the customer trust or community trust, or for members of the committee of shareholders of the customer co-operative:
  - (b) 20% of the persons who are domestic consumers of the supplier as at that date who are not eligible to vote in elections for trustees of the customer trust or community trust, or for members of the committee of shareholders of the customer co-operative:
  - (c) 25% of the persons who are non-domestic consumers (either by number or by consumption of that class of consumer) of the supplier as at that date.
- (3A) In this section, **domestic consumer** has the same meaning as in section 5 of the Electricity Industry Act 2010.
- (4) If exact figures are not available as to the number of persons in a class referred to in subsection (3), the Commission may rely on any estimate that the Commission considers to be a reasonable estimate.
- (5) **Petition** means a petition to the Commission seeking the application of price-quality regulation to all or any of the electricity lines services of the relevant supplier, and that records the signatures of the signatories.
- (6) The Governor-General may, on the recommendation of the Minister, make an Order in Council in accordance with this section.

Section 54H: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

Section 54H(2A): inserted, on 1 November 2010, by section 152(1) of the Electricity Industry Act 2010 (2010 No 116).

Section 54H(3)(a): substituted, on 1 November 2010, by section 152(2) of the Electricity Industry Act 2010 (2010 No 116).

Section 54H(3)(b): substituted, on 1 November 2010, by section 152(2) of the Electricity Industry Act 2010 (2010 No 116).

Section 54H(3)(c): substituted, on 1 November 2010, by section 152(2) of the Electricity Industry Act 2010 (2010 No 116).

Section 54H(3A): inserted, on 1 November 2010, by section 152(3) of the Electricity Industry Act 2010 (2010 No 116).

**54I Commission must make section 52P determination specifying how subpart applies**

- (1) The section 52P determinations that specify how information disclosure regulation applies to each supplier of electricity lines services must be made as soon as practicable after 1 April 2009.
- (2) The section 52P determinations that specify how default/customised price-quality regulation applies to each supplier of electricity lines services that is subject to that form of regulation as at 1 April 2009 are made as set out in section 54J.
- (3) The section 52P determinations that specify how default/customised price-quality regulation applies to each supplier of electricity lines services that becomes subject to that form of regulation as a result of an Order in Council made under section 54H must be made as soon as practicable after the order comes into force.

Section 54I: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**54J Section 52P determinations setting out default price-quality paths applying from 1 April 2009**

- (1) This section applies in respect of suppliers of electricity lines services that are subject to default/customised price-quality regulation on and after 1 April 2009.
- (2) On and after 1 April 2009, the thresholds for large electricity lines businesses that expire on 31 March 2009 are deemed to be section 52P determinations that—
  - (a) apply those thresholds to each supplier as if the thresholds were default price-quality paths; and
  - (b) state that the regulatory period for each supplier ends on 31 March 2010; and
  - (c) comply with sections 52P and 53O; and
  - (d) were notified in the *Gazette* under section 52P(7)(b) at least 4 months before 1 April 2009.



- (3) However, a breach of a default price-quality path before the close of 31 March 2010 must be dealt with in accordance with section 54N and not under Part 6.
- (4) Nothing in this section affects sections 54N and 54O.

Section 54J: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**54K Section 52P determinations setting out default price-quality paths applying from 1 April 2010**

- (1) Before 1 April 2010, the Commission must reset the default price-quality paths for each supplier that apply on and after that date, using the process set out in section 53P.
- (2) The Commission may reset the default price-quality paths even if all or any of the relevant input methodologies have not been determined.
- (3) If an input methodology is published after 1 April 2010 and if, had that methodology applied at the time the default price-quality paths were reset as required by subsection (1), it would have resulted in a materially different path being set, then the Commission may reset the default price-quality paths in accordance with section 53P and may apply claw-back, despite section 53ZB(1).
- (4) However, the Commission may not exercise its powers in subsection (3) later than 9 months after the date of publication of the input methodology.
- (5) Nothing in this section affects sections 54N and 54O.

Section 54K: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

*Transitional arrangements*

Heading: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**54L Administrative settlements made before 1 April 2009 (other than with Transpower)**

- (1) This section applies to every administrative settlement accepted by the Commission before 1 April 2009 in respect of a breach of a threshold other than an administrative settlement with Transpower.

- (2) The enactment of the Commerce Amendment Act 2008 does not limit or affect an administrative settlement to which this section applies, except as provided in this section.
- (3) Any breach of the administrative settlement must be dealt with in accordance with the terms of the settlement.
- (4) The expiry of the administrative settlement must be treated as if it were the end of a customised price-quality path, and section 53X applies accordingly (unless the supplier concerned would not otherwise be subject to default/customised price-quality regulation after the expiry of the settlement).

Section 54L: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**54M Administrative settlements with Transpower made before 1 April 2009**

- (1) This section applies to any administrative settlement with Transpower that is accepted by the Commission before 1 April 2009 in respect of a breach of a threshold.
- (2) Any breach of an administrative settlement with Transpower may be dealt with under Part 6 as if it were a breach of a customised price-quality path, despite anything in the terms of the settlement.
- (3) Before the expiry of the administrative settlement, the Commission must recommend to the Minister that an Order in Council be made under section 52N declaring that either—
  - (a) Transpower is subject to default/customised price-quality regulation under subpart 6; or
  - (b) Transpower is subject to individual price-quality regulation under subpart 7.
- (4) Subpart 2, except the provisions relating to inquiries, applies to the process for imposing that regulation and making the section 52P determination.
- (5) If an Order in Council declares that Transpower is subject to default/customised price-quality regulation, the section 52P determination must set the price-quality path that applies for the regulatory period commencing with the date on which the Order in Council comes into force, using the process under section 53P for resetting default price-quality paths.

(6) *[Repealed]*

Section 54M: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

Section 54M(3)(b): amended, on 1 November 2010, by section 153(1) of the Electricity Industry Act 2010 (2010 No 116).

Section 54M(6): repealed, on 1 November 2010, by section 153(2) of the Electricity Industry Act 2010 (2010 No 116).

**54N Breaches of thresholds and default price-quality paths  
before 1 April 2010**

- (1) This section applies to—
  - (a) any breach of a threshold that occurred before the close of 31 March 2007; and
  - (b) any breach of a threshold that occurs on or after 1 April 2007 and before the close of 31 March 2009; and
  - (c) any breach of a default price-quality path that occurs on or after 1 April 2009 and before the close of 31 March 2010.
- (2) The Commission may not publish a notice of intention to declare control under Part 4A,—
  - (a) in respect of a breach referred to in subsection (1)(a), at any time after 1 October 2008; and
  - (b) in respect of a breach referred to in subsection (1)(b) or (c), at any time after the expiry of 12 months after the end of the financial year in which the breach occurs.
- (3) The Commission may, at any time before the expiry of 12 months after the date on which the Commission publishes a notice of intention to declare control under subsection (2) in respect of the breach,—
  - (a) make a control declaration under Part 4A; or
  - (b) enter into an administrative settlement in respect of the breach under Part 4A.
- (4) The Commission may do anything under subsections (2) and (3) as if the Commerce Amendment Act 2008 had not been enacted, except that the purpose in section 52A must be taken to be the purpose of Part 4A.
- (5) To avoid doubt, the Commission may, but need not, apply input methodologies in acting under subsection (3).

- (6) Despite anything in Part 4A, any control imposed, or administrative settlement entered into, under Part 4A in accordance with subsection (3) is subject to the following:
- (a) the term of control, or of the settlement, must be not more than 5 years:
  - (b) the expiry of the term must be treated as if it were the expiry of a customised price-quality path, and section 53X applies accordingly (unless the supplier concerned would not otherwise be subject to default/customised price-quality regulation after the expiry of the term).

Section 54N: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**54O Breaches of control imposed, or administrative settlements entered into, after 1 April 2009**

- (1) If a supplier breaches control imposed, or an administrative settlement entered into, in accordance with section 54N(3), the breach may be dealt with under Part 6 as if it were a breach of a customised price-quality path, despite anything in the terms of the control or settlement.
- (2) To avoid doubt, this section applies whether or not the supplier is, after 1 April 2009, subject to default/customised price-quality regulation.

Section 54O: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**54P Proposals for customised price-quality paths**

- (1) A supplier of electricity lines services may not propose a customised price-quality path until an input methodology setting out the requirements and criteria for proposals for customised price-quality paths (as required by section 52T(1)(d)) is published under section 52W.
- (2) However, in accordance with section 53V(2), the Commission may apply claw-back when setting any customised price-quality path.

Section 54P: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

Section 54P(1): amended, on 1 November 2010, by section 154(a) of the Electricity Industry Act 2010 (2010 No 116).

Section 54P(1): amended, on 1 November 2010, by section 154(b) of the Electricity Industry Act 2010 (2010 No 116).

*Energy efficiency*

Heading: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**54Q Energy efficiency**

The Commission must promote incentives, and must avoid imposing disincentives, for suppliers of electricity lines services to invest in energy efficiency and demand side management, and to reduce energy losses, when applying this Part in relation to electricity lines services.

Section 54Q: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

*Transpower grid upgrade plans and capital expenditure proposals*

Heading: substituted, on 1 November 2010, by section 155 of the Electricity Industry Act 2010 (2010 No 116).

**54R Approval of Transpower's grid upgrade plans**

- (1) The role of the Electricity Commission in requesting or approving grid upgrade plan proposals by Transpower (including proposals to amend existing grid upgrade plans) is transferred to the Commission on the commencement date.
- (2) Subsection (1) applies both to proposals made on and after the commencement date and to any proposals that were requested or under consideration by the Electricity Commission before the commencement date.
- (3) Until the input methodology required by section 54S is determined and published under section 52W,—
  - (a) Transpower must comply with Part F of the Electricity Governance Rules, as that Part relates to grid upgrade plan proposals; and
  - (b) when considering grid upgrade plan proposals, the Commission—

- (i) must apply, with any necessary modifications, the grid investment test set out in Schedule F4 of Part F of the Electricity Governance Rules; and
  - (ii) must apply, with any necessary modifications, those parts of section III of Part F of the Electricity Governance Rules that relate to the process for approving grid upgrade plans (which includes rules 12 to 15 and 17.2); and
  - (iii) need not repeat any processes already undertaken by the Electricity Commission or undertake any processes that the Electricity Commission would have been required to undertake.
- (4) To avoid doubt,—
  - (a) subsection (1) takes effect on the commencement date whether or not the Commerce Act (Transpower Thresholds) Notice 2008 or any administrative settlement between the Commission and Transpower has been amended to reflect the transfer referred to in that subsection; and
  - (b) nothing in this section affects the transfer from the Electricity Commission to the Electricity Authority of all other roles relating to transmission, such as setting grid reliability standards and the transmission pricing methodology.
- (5) The Commission may change any timetables previously agreed for consultation on, and approval of, grid upgrade plan proposals, but must first consult Transpower on any timetable changes.
- (6) To facilitate the transfer of roles referred to in subsection (1), the Electricity Authority must give the Commission copies of all information it holds regarding grid upgrade plan proposals that were under consideration by the Electricity Commission before the commencement date.
- (7) In this section,—
  - commencement date** means 1 November 2010
  - Electricity Governance Rules** means the Electricity Governance Rules 2003 as they were immediately before their revocation by the Electricity Industry Act 2010

**grid upgrade plan** has the meaning set out in the Electricity Governance Rules.

Section 54R: substituted, on 1 November 2010, by section 155 of the Electricity Industry Act 2010 (2010 No 116).

**54S Commission to prepare input methodology for capital expenditure proposals**

- (1) The Commission must determine an input methodology for Transpower's capital expenditure proposals.
- (2) The input methodology must include—
  - (a) requirements that must be met by Transpower, including the scope and specificity of information required, the extent of independent verification and audit, and the extent of consultation and agreement with consumers; and
  - (b) the criteria the Commission will use to evaluate capital expenditure proposals; and
  - (c) time frames and processes for evaluating capital expenditure proposals, including what happens if the Commission does not comply with those time frames.
- (3) The input methodology must be determined no later than 1 November 2011; but the Minister may, on the written request of the Commission, extend the deadline once by a period of up to 3 months, in which case notice of the extension must be given in the *Gazette*.
- (4) Subpart 3 of Part 4 applies to the input methodology as if it were an input methodology referred to in section 52T, except as provided in subsection (2) or (3) of this section.

Compare: 1986 No 5 ss 52T(1)(d), 52U

Section 54S: substituted, on 1 November 2010, by section 155 of the Electricity Industry Act 2010 (2010 No 116).

**54T Procedure before jurisdiction order can be made**  
*[Repealed]*

Section 54T: repealed, on 1 November 2010, by section 155 of the Electricity Industry Act 2010 (2010 No 116).

**54U Levies during transition in jurisdiction***[Repealed]*

Section 54U: repealed, on 1 November 2010, by section 155 of the Electricity Industry Act 2010 (2010 No 116).

*Interface with Electricity Industry Act 2010*

Heading: inserted, on 1 November 2010, by section 156 of the Electricity Industry Act 2010 (2010 No 116).

**54V Impact of certain decisions made under Electricity Industry Act 2010**

- (1) The Electricity Authority must consult with the Commission before amending the Electricity Industry Participation Code (the **Code**) in a manner that will, or is likely to, affect the Commission in the performance of its functions or exercise of its powers under this Part.
- (2) The Electricity Authority must advise the Commission as soon as practicable after doing any of the following things that is likely to be relevant to the powers or functions of the Commission under this Part:
  - (a) making any provision of the Code:
  - (b) making any decision under the Code:
  - (c) issuing any guidelines:
  - (d) giving a direction to Transpower and 1 or more industry participants to enter into 1 or more transmission agreements under section 44 of the Electricity Industry Act 2010.
- (3) The Electricity Authority must advise the Commission, as soon as practicable, following any change in the Code that results in increased costs to Transpower or to any distributor or class of distributors.
- (4) The Commission must take into account, before exercising any of its powers or performing any of its functions under this Part,—
  - (a) any provision of the Code, or decision made under it, that relates to or affects the pricing methodologies or performance requirements applicable to Transpower:



- (b) any provision of the Code, or decision made under it, that relates to or affects the pricing methodologies applicable to any other line owner:
  - (c) any guidelines of which it receives advice under subsection (2)(c) that are likely to be relevant to the exercise of the powers or performance of the duties or functions of the Commission under this Part:
  - (d) any directions of which it receives advice under subsection (2)(d):
  - (e) the levy payable by Transpower or any other line owner under section 128 of the Electricity Industry Act 2010:
  - (f) the continuance of supply obligations imposed by section 105 of the Electricity Industry Act 2010.
- (5) The Commission must, if asked by the Electricity Authority to do so, reconsider a section 52P determination and, to the extent that the Commission considers it necessary or desirable to do so, amend the determination, to take account of any matter referred to in subsection (4).
- (6) Requirements relating to quality standards for Transpower in a section 52P determination must be based on, and be consistent with, quality standards for Transpower that are set by the Electricity Authority; but the Commission may prescribe them in any way it considers appropriate, as authorised by section 53M(3).

Section 54V: substituted, on 1 November 2010, by section 156 of the Electricity Industry Act 2010 (2010 No 116).

### *Savings provisions*

Heading: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **54W Savings provision relating to existing information disclosure requirements**

Any information disclosure requirements published by the Commission under subpart 3 of Part 4A before 1 April 2009 continue to apply to each supplier of electricity lines services in respect of every financial year that precedes the first financial year to which a determination made by the Commission under section 54I(1) applies to that supplier.

Section 54W: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**54X Savings provision for existing levy regulations for electricity lines businesses**

- (1) Any regulations made pursuant to section 57ZK before the repeal of Part 4A continue to apply to each person who is a large line owner in respect of every financial year that precedes the first financial year to which levy regulations made under section 53ZE apply to that supplier.
- (2) Subsection (1) applies as if—
  - (a) references in those regulations to the Commission's costs included references to the costs of exercising and performing the Commission's powers, duties, and functions under this Part, and enforcing the obligations under this Part, in respect of those persons, and with all other necessary modifications; and
  - (b) terms used in subsection (1) have the same meaning as they do in those regulations.

Section 54X: inserted, on 1 April 2009, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**Subpart 10—Gas pipeline services**

Subpart 10 heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

*Overview and interpretation*

Heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**55 Overview of subpart**

- (1) This subpart provides—
  - (a) that certain gas pipeline services are subject to information disclosure regulation and price-quality regulation; and
  - (b) for the transition to the new regime provided for in this Part.
- (2) This section is only a guide.

Section 55: substituted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**55A Meaning of gas pipeline services**

- (1) In this subpart, unless the context otherwise requires, **gas pipeline services** means the conveyance of natural gas by pipeline, including the assumption of responsibility for losses of natural gas.
- (2) However, none of the following are gas pipeline services:
  - (a) conveying natural gas to a gas processing facility:
  - (b) conveying natural gas if the total amount of gas conveyed to consumers by the supplier is less than 75 000 gigajoules per annum:
  - (c) conveying natural gas by a pipeline that is listed in the second column of Schedule 6.
- (3) The gas conveyed, when measured in relation to a supplier includes, for the purposes of subsection (2)(b), the gas conveyed by any associate of the supplier.
- (4) In this section, unless the context otherwise requires,—

**associate** has the same meaning as in section 12 of the Electricity Industry Reform Act 1998

**consumer** has the same meaning as in section 2(1) of the Gas Act 1992

**container** has the same meaning as in section 2(1) of the Gas Act 1992

**gas refueller** has the same meaning as in section 2(1) of the Gas Act 1992

**pipeline**—

  - (a) means everything used, or designed or intended for use, (whether above or below ground) in or in connection with the conveyance of natural gas between—
    - (i) the boundary of the gas field or gas processing facility to the point of supply to a consumer or gas refueller; or
    - (ii) the outlet of the container in which gas is stored to the point of supply to a consumer or gas refueller; but
  - (b) excludes meters.

- (5) The Governor-General may, by Order in Council made on the recommendation of the Minister, amend Schedule 6 by—
- (a) adding any pipeline:
  - (b) deleting any pipeline:
  - (c) changing the description of any pipeline or its owner.
- (6) The Minister may make a recommendation for the purpose of subsection (5) only if the Minister is satisfied that—
- (a) the Commission has made a recommendation to the same effect; and
  - (b) in the case of a recommendation to add a pipeline, the gas pipeline services are supplied in a market where the owner of the pipeline does not have a substantial degree of market power; and
  - (c) in the case of a recommendation to delete a pipeline, the gas pipeline services are supplied in a market where the owner of the pipeline has a substantial degree of market power; and
  - (d) the Commission has consulted (without necessarily holding an inquiry) with interested parties.

Section 55A: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### *Imposition of regulation under this Part*

Heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

## **55B Gas pipeline services declared to be regulated**

Gas pipeline services are regulated under this Part.

Section 55B: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

## **55C All gas pipeline services are subject to information disclosure regulation**

Gas pipeline services are subject to information disclosure regulation under this Part.

Section 55C: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**55D All gas pipeline services are subject to price-quality regulation**

Gas pipeline services are subject to default/customised price-quality regulation under this Part on and after 1 July 2010.

Section 55D: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**55E Commission must make section 52P determination specifying how subpart applies**

- (1) The section 52P determinations that specify how information disclosure regulation applies to each supplier of gas pipeline services must be made as soon as practicable after this subpart comes into force.
- (2) The section 52P determinations that specify how default/customised price-quality regulation applies to each supplier of gas pipeline services must be made as soon as practicable after 1 July 2010, in the manner set out in section 55F.
- (3) The section 52P determinations that specify how default/customised price-quality regulation applies to each supplier of gas pipeline services that become subject to that form of regulation as a result of an Order in Council made under section 55A(5)(a) must be made as soon as practicable after the order comes into force.

Section 55E: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**55F Section 52P determinations setting out first default price-quality paths**

- (1) The Commission must use the processes set out in section 53P in making the first section 52P determinations that set out how default price-quality regulation applies to suppliers of gas pipeline services as if 30 June 2010 were the end of the previous regulatory period.
- (2) However, if a supplier has increased its weighted average prices by more than the movement, or forecast movement, in the all groups index number of the New Zealand Consumer Price Index in the period beginning 1 January 2008 and ending with the date that the determination is made, the Commission may apply claw-back to the extent of requiring the supplier to

lower its prices in order to compensate consumers for some or all of any over-recovery of revenues that occurred during that period.

- (3) The Commission may set a default price-quality path in respect of suppliers of gas pipeline services even if all or any of the relevant input methodologies have not been determined.
- (4) If an input methodology is published after a section 52P determination referred to in subsection (1) is made, and if, had that methodology applied at the time the default price-quality paths were set as required by subsection (1), it would have resulted in a materially different path being set, then the Commission may reset the default price-quality paths and may apply claw-back, despite section 53ZB(1).
- (5) However, the Commission may not exercise its powers in subsection (4) later than 9 months after the date of publication of the input methodology.

Section 55F: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

*Services controlled by virtue of Commerce  
(Control of Natural Gas Services) Order 2005*

Heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**55G Existing order, authorisations, and undertakings continue to apply until 1 July 2012 (or earlier expiry)**

- (1) This section provides how price-quality regulation under this Part applies to services that are controlled by virtue of the Commerce (Control of Natural Gas Services) Order 2005 (the **order**).
- (2) The order continues in force, despite the repeal of Part 4 (as it was before its repeal by the Commerce Amendment Act 2008), until the date on which the order expires or is revoked (the **expiry date**).
- (3) The enactment of the Commerce Amendment Act 2008 does not limit or affect, before the expiry date, any of the following in respect of the gas pipeline services that are controlled by virtue of the order:

- (a) any authorisation made (including the ability to amend or revoke an authorisation), or any undertaking obtained or accepted, under Part 5 before 1 April 2009; or
  - (b) the power of the Commission to obtain or accept any further undertakings under Part 5; or
  - (c) any action that may be commenced or continued in respect of a breach of any authorisation or undertaking.
- (4) To avoid doubt, subsection (3) applies as if the provisions of Parts 4 to 6 had not been amended or repealed by the Commerce Amendment Act 2008.
- (5) However, any breach of the order after 1 April 2009 may be dealt with under Part 6 as if it were a breach of a customised price-quality path.

Section 55G: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**55H How price-quality regulation under this Part applies after 1 July 2012 (or earlier expiry)**

- (1) This section provides how price-quality regulation under this Part applies to a gas pipeline service after it ceases to be controlled by virtue of the Commerce (Control of Natural Gas Services) Order 2005 (the **order**).
- (2) The expiry of the order must be treated as if it were the expiry of a customised price-quality path, and section 53X applies accordingly.
- (3) In this section, the date on which the order expires is—
  - (a) the expiry date referred to in section 55G; or
  - (b) if an undertaking is obtained or accepted from a supplier in respect of a service that expires on an earlier date, that earlier date, provided that the order ceases to apply to that service on or before that date (by revocation of the order or otherwise).

Section 55H: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

*Interface with Gas Act 1992*

Heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**55I Impact of certain decisions made under Gas Act 1992**

- (1) The recommending body must advise the Commerce Commission as soon as practicable after making any recommendation for a gas governance regulation or rule under Part 4A of the Gas Act 1992, or after making any decision under gas governance regulations or rules, or after issuing any guidelines, that is or are likely to be relevant to the powers of the Commerce Commission under this Part.
- (2) The Commission must take into account, before exercising any of its powers under this Part,—
  - (a) any gas governance regulation or rule under Part 4A of the Gas Act 1992, or decision under those gas governance regulations or rules, that relates to or affects the quality standards or pricing methodologies applicable to a pipeline owner:
  - (b) any guidelines issued by the recommending body of which it is advised under subsection (1) that are likely to be relevant to the powers of the Commerce Commission under this Part:
  - (c) the levy payable by any pipeline owner under the Gas Act 1992.
- (3) The Commission must, if asked by the recommending body to do so, reconsider any section 52P determination and, to the extent that the Commission considers it necessary or desirable to do so, amend the determination, to take account of any matter referred to in subsection (2).
- (4) In this section, **recommending body** has the same meaning as in section 43D of the Gas Act 1992.

Section 55I: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).



*Savings provisions*

Heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**55J Savings provision until Commission publishes information disclosure requirements**

- (1) The Gas (Information Disclosure) Regulations 1997 continue to apply to each supplier of gas pipeline services in respect of every financial year that precedes the first financial year to which a determination made by the Commission referred to in section 55E(1) applies to that supplier.
- (2) After that, no regulations made under section 55 of the Gas Act 1992 apply to the supplier of gas pipeline services.

Section 55J: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**55K Savings provision for existing levy regulations for services controlled under Commerce (Control of Natural Gas Services) Order 2005**

- (1) Any regulations made pursuant to section 74 before the repeal of that section continue to apply to each person that is a supplier of controlled services under the Commerce (Control of Natural Gas Services) Order 2005 in respect of every financial year that precedes the first financial year to which levy regulations made under section 53ZE apply to that supplier.
- (2) Subsection (1) applies as if—
  - (a) references in those regulations to the Commission's costs include references to the costs of exercising the Commission's powers and performing its duties under this Part, and enforcing the obligations under this Part, in respect of those persons, and with all other necessary modifications; and
  - (b) terms used in subsection (1) have the same meaning as they do in those regulations.

Section 55K: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

## Subpart 11—Airport services

Subpart 11 heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### *Overview and interpretation*

Heading: substituted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **56 Overview of subpart**

- (1) This subpart provides—
- (a) that specified airport services (at Auckland, Wellington, and Christchurch airports) are subject to information disclosure under this Part; and
  - (b) for the transition to the new regime provided for in this Part; and
  - (c) for a review of the new regime as soon as any new price is set in 2012 for specified airport services.
- (2) This section is only a guide.

Section 56: substituted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

#### **56A Meaning of specified airport services**

- (1) In this Part, unless the context otherwise requires, **specified airport services** means all of the services supplied by the companies referred to in subsection (2) in markets directly related to the following activities (whether for international and domestic flights):
- (a) aircraft and freight activities;
  - (b) airfield activities;
  - (c) specified passenger terminal activities;
  - (d) any other services that are determined by the Governor-General, by Order in Council made on the recommendation of the Minister under subsection (4), to be specified airport services for the purposes of this Part.
- (2) The companies are—
- (a) the company (as defined in section 2 of the Auckland Airport Act 1987) that operates Auckland International Airport or any subsidiary of, or successor to, that company that operates all or part of the airport:

- (b) the company (as defined in section 2 of the Wellington Airport Act 1990) that operates Wellington International Airport or any subsidiary of, or successor to, that company that operates all or part of the airport;
  - (c) the airport company (as defined in section 2 of the Airport Authorities Act 1966) that operates Christchurch International Airport or any subsidiary of, or successor to, that company that operates all or part of the airport.
- (3) Terms used in subsection (1)(a) to (c) have the same meanings as in section 2 of the Airport Authorities Act 1966.
- (4) The Minister may recommend that an Order in Council be made under subsection (1)(d) only if the Minister is satisfied that—
  - (a) the Commission has made a recommendation to the same effect; and
  - (b) the services are supplied in a market where any or all of the companies referred to in subsection (2) have a substantial degree of market power; and
  - (c) the Commission has consulted (without necessarily holding an inquiry) with interested parties.

Section 56A: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

### *Imposition of regulation under this Part*

Heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

## **56B Specified airport services declared to be regulated**

Specified airport services are regulated under this Part.

Section 56B: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

## **56C Specified airport services are subject to information disclosure regulation**

Specified airport services are subject to information disclosure regulation under this Part.

Section 56C: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**56D Duty to also disclose to Secretary of Transport**

Each supplier of specified airport services must supply to the Secretary of Transport a copy of any information disclosed under this Part, as soon as practicable after so disclosing it.

Section 56D: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**56E Commission must make determination specifying how subpart applies**

The section 52P determinations that specify how information disclosure regulation applies to each supplier of specified airport services must be made no later than 1 July 2010 (or, if the deadline for determining input methodologies is extended under section 52U(2), no later than the day after the date to which that deadline is extended).

Section 56E: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

*How information disclosure regulation applies*

Heading: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**56F Transitional provision until Commission publishes information disclosure requirements**

- (1) The Airport Authorities (Airport Companies Information Disclosure) Regulations 1999 continue to apply to each supplier of specified airport services in respect of every financial year that precedes the first financial year to which a determination made by the Commission under section 56E applies to that supplier.
- (2) After that, no regulations made under section 9A of the Airport Authorities Act 1966 apply to that supplier.
- (3) Each supplier of specified airport services must supply to the Commission a copy of any information disclosed under those regulations, as soon as practicable after so disclosing.
- (4) The Commission may monitor and analyse any information supplied to it under this section.

Section 56F: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**56G Transitional provision requiring review after new prices set**

- (1) As soon as practicable after any new price for a specified airport service is set in or after 2012 by a supplier of the service, the Commission must—
  - (a) review the information that has been disclosed by suppliers of specified airport services under subpart 4; and
  - (b) consult (without necessarily holding an inquiry) with interested parties; and
  - (c) report to the Ministers of Commerce and Transport as to how effectively information disclosure regulation under this Part is promoting the purpose in section 52A in respect of the specified airport services.
- (2) To avoid doubt, subsection (1) applies regardless of whether or not any new price for a specified airport service is set before 2012.

Section 56G: inserted, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**57 Commission process**

*[Repealed]*

Section 57: repealed, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**57A Technical provisions relating to declaration of control**

*[Repealed]*

Section 57A: repealed, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**57B Records to be kept for control purposes**

*[Repealed]*

Section 57B: repealed, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**57C Other Acts relating to price control not affected**

*[Repealed]*

Section 57C: repealed, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**57CA Impact of certain decisions made under Gas Act 1992***[Repealed]*

Section 57CA: repealed, on 14 October 2008, by section 4 of the Commerce Amendment Act 2008 (2008 No 70).

**Part 4A  
Provisions applicable to electricity  
industry***[Repealed]*

Part 4A: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57D Interpretation***[Repealed]*

Section 57D: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57DAA Meaning of electricity lines business***[Repealed]*

Section 57DAA: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57DAAB Meaning of electricity supply business***[Repealed]*

Section 57DAAB: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57DA Body that exercises jurisdiction under this Part***[Repealed]*

Section 57DA: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including

when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

#### **57DB Transfer of jurisdiction in respect of Transpower**

*[Repealed]*

Section 57DB: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

#### **57DC Transfer of jurisdiction relating to other large electricity lines businesses**

*[Repealed]*

Section 57DC: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

#### **57DD Procedure before jurisdiction order can be made**

*[Repealed]*

Section 57DD: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

#### **57DE Levies during transition in jurisdiction**

*[Repealed]*

Section 57DE: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

#### **57DF Ministerial powers**

*[Repealed]*

Section 57DF: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

## Subpart 1—Controlled goods or services

*[Repealed]*

Subpart 1: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

### **57E Purpose**

*[Repealed]*

Section 57E: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

### **57F Commission, not Minister, may declare that goods or services supplied by large electricity lines businesses are controlled**

*[Repealed]*

Section 57F: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

### **57G Thresholds for declaration of control**

*[Repealed]*

Section 57G: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

### **57GA Incorporation by reference of material in thresholds**

*[Repealed]*

Section 57GA: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).



**57GB Effect of amendments to, or replacement of, material incorporated by reference in thresholds**

*[Repealed]*

Section 57GB: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57GC Amendments to, or replacement of, material incorporated by reference to be of same general character as original material**

*[Repealed]*

Section 57GC: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57GD Proof of material incorporated by reference**

*[Repealed]*

Section 57GD: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57GE Effect of expiry of material incorporated by reference**

*[Repealed]*

Section 57GE: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57GF Requirement to consult**

*[Repealed]*

Section 57GF: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57GG Access to material incorporated by reference***[Repealed]*

Section 57GG: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57H Process for making decisions on declaration of control***[Repealed]*

Section 57H: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57I Process before declaration made***[Repealed]*

Section 57I: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57J Effect of declaration of control***[Repealed]*

Section 57J: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57K Priorities***[Repealed]*

Section 57K: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57L Maximum of 5 years for duration of declaration***[Repealed]*

Section 57L: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal),

on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57M Authorisations and undertakings**

*[Repealed]*

Section 57M: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57MA Impact of certain decisions made under Electricity Act 1992**

*[Repealed]*

Section 57MA: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57N Commission may lift control**

*[Repealed]*

Section 57N: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**Subpart 2—Transpower’s pricing methodology**

*[Repealed]*

Subpart 2: repealed, on 18 October 2004, by section 10(1) of the Commerce Amendment Act (No 2) 2004 (2004 No 82).

**57O Commission may be required to authorise Transpower’s pricing methodology**

*[Repealed]*

Section 57O: repealed, on 18 October 2004, by section 10(1) of the Commerce Amendment Act (No 2) 2004 (2004 No 82).

**57P Authorisations in respect of Transpower's pricing methodology***[Repealed]*

Section 57P: repealed, on 18 October 2004, by section 10(1) of the Commerce Amendment Act (No 2) 2004 (2004 No 82).

**57Q Authorisations and undertakings***[Repealed]*

Section 57Q: repealed, on 18 October 2004, by section 10(1) of the Commerce Amendment Act (No 2) 2004 (2004 No 82).

**57R Enforcement of authorisations***[Repealed]*

Section 57R: repealed, on 18 October 2004, by section 10(1) of the Commerce Amendment Act (No 2) 2004 (2004 No 82).

**57S Revocation of authorisations***[Repealed]*

Section 57S: repealed, on 18 October 2004, by section 10(1) of the Commerce Amendment Act (No 2) 2004 (2004 No 82).

**Subpart 3—Information disclosure***[Repealed]*

Subpart 3: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57T Information disclosure***[Repealed]*

Section 57T: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57U Information to be supplied to Commerce Commission***[Repealed]*

Section 57U: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal),

on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57V Commerce Commission to publish summaries**

*[Repealed]*

Section 57V: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57W Reasonable charge may be imposed for providing copies of statements**

*[Repealed]*

Section 57W: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**Subpart 4—Asset valuations**

*[Repealed]*

Subpart 4: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

*Recalibration of asset values of large electricity  
line owners*

*[Repealed]*

Heading: repealed, on 18 October 2004, by section 11(1) of the Commerce Amendment Act (No 2) 2004 (2004 No 82).

**57X Purpose of recalibrations**

*[Repealed]*

Section 57X: repealed, on 18 October 2004, by section 11(1) of the Commerce Amendment Act (No 2) 2004 (2004 No 82).

**57Y Interpretation**

*[Repealed]*

Section 57Y: repealed, on 18 October 2004, by section 11(1) of the Commerce Amendment Act (No 2) 2004 (2004 No 82).

**57Z Large electricity line owners must supply valuation to Commerce Commission***[Repealed]*

Section 57Z: repealed, on 18 October 2004, by section 11(1) of the Commerce Amendment Act (No 2) 2004 (2004 No 82).

**57ZA Comprehensive audit of asset values of large electricity line owners***[Repealed]*

Section 57ZA: repealed, on 18 October 2004, by section 11(1) of the Commerce Amendment Act (No 2) 2004 (2004 No 82).

**57ZB Procedure after audit of asset values carried out***[Repealed]*

Section 57ZB: repealed, on 18 October 2004, by section 11(1) of the Commerce Amendment Act (No 2) 2004 (2004 No 82).

**57ZC Outcome of audit of asset values***[Repealed]*

Section 57ZC: repealed, on 18 October 2004, by section 11(1) of the Commerce Amendment Act (No 2) 2004 (2004 No 82).

*Review of valuation methodologies**[Repealed]*

Heading: repealed, on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57ZD Review of valuation methodologies***[Repealed]*

Section 57ZD: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57ZE Process when carrying out review of valuation methodologies***[Repealed]*

Section 57ZE: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal),

on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

## Subpart 5—General provisions

*[Repealed]*

Subpart 5: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

### **57ZF Powers of Commission**

*[Repealed]*

Section 57ZF: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

### **57ZG Powers of entry and inspection**

*[Repealed]*

Section 57ZG: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

### **57ZH Authorised persons to prove identity**

*[Repealed]*

Section 57ZH: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

### **57ZI Offence to obstruct authorised persons**

*[Repealed]*

Section 57ZI: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57ZJ Other offences***[Repealed]*

Section 57ZJ: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**57ZK Levy of electricity lines businesses***[Repealed]*

Section 57ZK: repealed (but may continue to be applied under Part 4 in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply (as default price-quality paths) after its repeal), on 1 April 2009, by section 5 of the Commerce Amendment Act 2008 (2008 No 70).

**Part 5****Authorisations and clearances***Restrictive trade practices***58 Commission may grant authorisation for restrictive trade practices**

- (1) A person who wishes to enter into a contract or arrangement, or arrive at an understanding, to which that person considers section 27 would apply, or might apply, may apply to the Commission for an authorisation to do so and the Commission may grant an authorisation for that person to enter into the contract or arrangement, or arrive at the understanding.
- (2) A person who wishes to give effect to a provision of a contract or arrangement or understanding to which that person considers section 27 would apply, or might apply, may apply to the Commission for an authorisation to do so, and the Commission may grant an authorisation for that person to give effect to the provision of the contract or arrangement or understanding.
- (3) A person who wishes to require the giving of, or to give, a covenant to which that person considers section 28 would apply, or might apply, may apply to the Commission for an authorisation to do so, and the Commission may grant an authorisation for that person to require the giving of, or to give, the covenant.



- (4) A person who wishes to carry out or enforce a covenant to which that person considers section 28 would apply, or might apply, may apply to the Commission for an authorisation to do so, and the Commission may grant an authorisation for that person to carry out or enforce the covenant.
- (5) A person who wishes to enter into a contract or arrangement, or arrive at an understanding to which that person considers section 29 would apply, or might apply, may apply to the Commission for an authorisation for that person to enter into the contract or arrangement or arrive at the understanding.
- (6) A person who wishes to give effect to an exclusionary provision of a contract or arrangement or understanding to which that person considers section 29 would apply, or might apply, may apply to the Commission to do so, and the Commission may grant an authorisation for that person to give effect to the exclusionary provision of the contract or arrangement or understanding.
- (7) A person who wishes to engage in the practice of resale price maintenance to which that person considers section 37 would apply, or might apply, may apply to the Commission for an authorisation to do so, and the Commission may grant an authorisation for that person to engage in the practice.
- (8) A person who wishes to do an act to which that person considers section 38 would apply, or might apply, may apply to the Commission for an authorisation to do so, and the Commission may grant an authorisation for that person to do that act.

Section 58: substituted, on 1 July 1990, by section 19 of the Commerce Amendment Act 1990 (1990 No 41).

#### **58A Effect of authorisation**

- (1) While an authorisation under subsection (1) or subsection (5) of section 58 remains in force, as the case may be, nothing in section 27 or section 29, as the case may be, shall prevent the applicant from—
  - (a) entering into, or in accordance with the authorisation, giving effect to or enforcing any provision of the contract to which the authorisation relates; or

- (b) entering into, or in accordance with the authorisation, giving effect to the arrangement to which the authorisation relates; or
  - (c) arriving at, or in accordance with the authorisation, giving effect to the understanding to which the authorisation relates.
- (2) While an authorisation under subsection (2) or subsection (6) of section 58 remains in force, as the case may be, nothing in section 27 or section 29, as the case may be, shall prevent the applicant from—
  - (a) in accordance with the authorisation, giving effect to or enforcing the contract to which the authorisation relates; or
  - (b) in accordance with the authorisation, giving effect to the arrangement or understanding.
- (3) While an authorisation under subsection (3) of section 58 remains in force, nothing in section 28 shall prevent the applicant from—
  - (a) requiring the giving of, or giving, the covenant to which the authorisation relates; or
  - (b) carrying out or enforcing the terms of the covenant to which the authorisation relates in accordance with the authorisation.
- (4) While an authorisation under subsection (4) of section 58 remains in force, nothing in section 28 shall prevent the applicant from carrying out or enforcing the terms of the covenant to which the authorisation relates in accordance with the authorisation.
- (5) While an authorisation under subsection (7) of section 58 remains in force, nothing in section 37 shall prevent the applicant from engaging in the practice to which the authorisation relates in accordance with the authorisation.
- (6) While an authorisation under subsection (8) of section 58 remains in force, nothing in section 38 shall prevent the applicant from doing the act to which the authorisation relates in accordance with the authorisation.

Section 58A: inserted, on 1 July 1990, by section 19 of the Commerce Amendment Act 1990 (1990 No 41).

**58B Additional provisions relating to authorisations**

- (1) Every authorisation granted by the Commission to a person under section 58 to—
- (a) enter into a contract or arrangement or arrive at an understanding; or
  - (b) give effect to a provision of a contract, arrangement, or understanding; or
  - (c) require the giving of, or give, a covenant; or
  - (d) carry out or enforce the terms of a covenant; or
  - (e) engage in the practice of resale price maintenance; or
  - (f) do any act referred to in section 38,—
- shall have effect as if it were also an authorisation in the same terms to every other person named or referred to in the application for the authorisation as a party to the contract, arrangement, or understanding, or the practice or act, or as a person who is or would be bound by, or entitled to the benefit of, the covenant, as the case may be.
- (2) An authorisation granted to a person under section 58 may be expressed to apply to or in relation to another person who,—
- (a) in the case of an authorisation to enter into a contract or arrangement or arrive at an understanding, becomes a party to the proposed contract or arrangement at a time after it is entered into or becomes a party to the proposed understanding at a time after it is arrived at:
  - (b) in the case of an authorisation to give effect to a provision of a contract, arrangement, or understanding, becomes a party to the contract, arrangement, or understanding at a time after the authorisation is granted:
  - (c) in the case of an authorisation to require the giving of, or to give, a covenant, becomes bound by, or entitled to the benefit of, the covenant at a time after the covenant is given:
  - (d) in the case of an authorisation to carry out or enforce the terms of a covenant, becomes bound by, or entitled to the benefit of, the covenant at a time after the authorisation is granted.

Section 58B: inserted, on 1 July 1990, by section 19 of the Commerce Amendment Act 1990 (1990 No 41).

**59 Contracts or covenants subject to authorisation not prohibited under certain conditions**

- (1) Despite anything in this Act, but subject to section 59B,—
- (a) a contract to which section 27 or section 29 applies may be entered into if the requirements of subsection (2) are complied with:
  - (b) a covenant to which section 28 applies may be required to be given, or may be given, if the requirements of subsection (2) are complied with.
- (2) For the purposes of subsection (1), the requirements that must be met are,—
- (a) in the case of a contract to which section 27 or section 29 applies, that the contract is subject to a condition that the provision, or exclusionary provision, as the case may be, does not come into force unless and until authorisation is granted to give effect to the provision, or exclusionary provision and that application must be made for that authorisation within 15 working days after the contract is entered into:
  - (b) in the case of a covenant to which section 28 applies, that the covenant is subject to the condition that it does not have effect unless and until authorisation is granted to give effect to it and that application must be made for that authorisation within 15 working days after the covenant is made.

Section 59: substituted, on 26 May 2001, by section 13 of the Commerce Amendment Act 2001 (2001 No 32).

**59A When Commission may grant authorisation**

- (1) The Commission may grant an authorisation to a person—
- (a) to enter into a contract or arrangement, or to arrive at an understanding, even though the contract or arrangement has been entered into, or the understanding has been arrived at, before the Commission makes a determination in respect of the application for that authorisation; or
  - (b) to give effect to a provision of a contract or arrangement entered into, or an understanding arrived at, even though the applicant has already given, or is already giving, effect to the provision before the Commission

- makes a determination in respect of the application for that authorisation; or
- (c) to require the giving of, or to give, a covenant even though the covenant has been given before the Commission makes a determination in respect of the application for that authorisation; or
  - (d) to do an act or engage in conduct referred to in section 37 or section 38 even though the applicant has already done the act or is already engaging in the conduct before the Commission makes a determination in respect of the application for that authorisation.
- (2) Subject to subsection (3), all of the parties to the contract, arrangement, or understanding must, unless and until authorisation is granted, discontinue—
- (a) giving effect to the provision of the contract, arrangement, or understanding:
  - (b) engaging in conduct referred to in section 37 or section 38.
- (3) The parties to the contract, arrangement, or understanding may do any of the things set out in subsection (2) as long as any of the parties establishes to the satisfaction of the Commission that discontinuing any of those things would, or would be likely to, result in exceptional hardship to any of the parties.

Section 59A: inserted, on 26 May 2001, by section 13 of the Commerce Amendment Act 2001 (2001 No 32).

**59B Contraventions not prevented by granting of authorisation under section 59 or section 59A**

Nothing in section 59 or section 59A prevents conduct that occurred before an authorisation was granted in respect of it and that would otherwise have constituted a contravention of this Act from continuing to constitute a contravention.

Section 59B: inserted, on 26 May 2001, by section 13 of the Commerce Amendment Act 2001 (2001 No 32).

**60 Procedure for applications for authorisation of restrictive trade practices**

- (1) Every application for an authorisation under section 58 shall be made in the prescribed form, shall contain such particulars

as may be specified in the form and shall be accompanied by payment of such fee as may be prescribed.

- (2) On receipt of an application that complies with subsection (1), the Commission shall forthwith—
  - (a) record the application in the register to be kept by the Commission for the purpose;
  - (b) give written notice of the date of registration to the person by or on whose behalf the application was made;
  - (c) give notice of the application to any other person who, in the Commission's opinion, is likely to have an interest in the application;
  - (d) give public notice of the application in such manner as the Commission thinks fit.
- (3) Any person who has an interest in any application in respect of which a notice is given under subsection (2)(d) may give written notice to the Commission of that person's interest and the reason therefor.
- (4) On receipt of an application that does not comply with subsection (1), the Commission may, at its discretion, either—
  - (a) accept the application and take the steps referred to in subsection (2) in respect of that application; or
  - (b) return the application to the person by or on whose behalf it was made; or
  - (c) decline to register the application until it complies with subsection (1).
- (5) Where the Commission declines to register an application under subsection (4)(c), it shall forthwith notify the person by or on whose behalf the application was made.
- (6) The person making the application under subsection (1), and any person on whose behalf it was made, and any person to whom the application relates, shall from time to time produce, or, as the case may be, furnish to the Commission, within such time as it may specify, such further documents or information in relation to the application as may be required by the Commission for the purpose of enabling it to exercise its functions under this Part.
- (7) Notwithstanding anything in subsection (2) or subsection (4), where the Commission is of the opinion that the matters to

which an application relates are, for reasons other than arising from the application of any provision of this Act, unlikely to be proceeded with, the Commission may, in its discretion, return the application to the person by or on whose behalf the application was made.

- (8) Any person who has made an application to the Commission for an authorisation may, at any time, by notice in writing to the Commission, withdraw the application.

Compare: 1975 No 113 s 70; 1983 No 144 s 26; Trade Practices Act 1974 s 89(1), (2) (Aust)

**61 Determination of applications for authorisation of restrictive trade practices**

- (1) The Commission shall, in respect of an application for an authorisation under section 58, make a determination in writing—
- (a) granting such authorisation as it considers appropriate;
  - (b) declining the application.
- (2) Any authorisation granted pursuant to section 58 may be granted subject to such conditions not inconsistent with this Act and for such period as the Commission thinks fit.
- (3) The Commission shall take into account any submissions in relation to the application made to it by the applicant or by any other person.
- (4) The Commission shall state in writing its reasons for a determination made by it.
- (5) Before making a determination in respect of an application for an authorisation, the Commission shall comply with the requirements of section 62.
- (6) The Commission shall not make a determination granting an authorisation pursuant to an application under section 58(1) to (4) unless it is satisfied that—
- (a) the entering into of the contract or arrangement or the arriving at the understanding; or
  - (b) the giving effect to the provision of the contract, arrangement or understanding; or
  - (c) the giving or the requiring of the giving of the covenant; or

- (d) the carrying out or enforcing of the terms of the covenant—  
as the case may be, to which the application relates, will in all the circumstances result, or be likely to result, in a benefit to the public which would outweigh the lessening in competition that would result, or would be likely to result or is deemed to result therefrom.
- (6A) For the purposes of subsection (6), a lessening in competition includes a lessening in competition that is not substantial.
- (7) The Commission shall not make a determination granting an authorisation pursuant to an application under section 58(5) or (6) unless it is satisfied that—
  - (a) the entering into of the contract or arrangement or the arriving at the understanding; or
  - (b) the giving effect to the exclusionary provision of the contract, or arrangement or understanding—  
as the case may be, to which the application relates, will in all the circumstances result, or be likely to result, in such a benefit to the public that—
  - (c) the contract or arrangement or understanding should be permitted to be entered into or arrived at; or
  - (d) the exclusionary provision should be permitted to be given effect to.
- (8) The Commission shall not make a determination granting an authorisation pursuant to an application under section 58(7) or (8) unless it is satisfied that—
  - (a) the engaging in the practice of resale price maintenance to which the application relates; or
  - (b) the act or conduct to which the application relates—  
as the case may be, will in all the circumstances result, or be likely to result, in such a benefit to the public that—
  - (c) the engaging in the practice should be permitted; or
  - (d) the act or conduct should be permitted.

Compare: Trade Practices Act 1974 s 90(1), (2), (4), (5), (6), (7), (8) (Aust)

Section 61(6): amended, on 1 July 1990, by section 21(1) of the Commerce Amendment Act 1990 (1990 No 41).

Section 61(6A): inserted, on 2 September 1996, by section 4 of the Commerce Amendment Act 1996 (1996 No 113).

Section 61(7): amended, on 1 July 1990, by section 21(2) of the Commerce Amendment Act 1990 (1990 No 41).



Section 61(8): added, on 1 July 1990, by section 21(3) of the Commerce Amendment Act 1990 (1990 No 41).

**62 Commission to prepare draft determination in relation to restrictive trade practices**

- (1) Before determining an application for an authorisation under section 58, the Commission shall prepare a draft determination in relation to the application.
- (2) The Commission shall send a copy of the draft determination and a summary of the reasons therefor to—
  - (a) the applicant;
  - (b) any person to whom a notice has been given pursuant to section 60(2)(c);
  - (c) any person who has given a notice pursuant to section 60(3) and who in the opinion of the Commission has such an interest in the application as to justify the Commission sending a copy of the draft determination to that person;
  - (d) any other person who in the opinion of the Commission may assist the Commission in its determination of the application.
- (3) The applicant and each other person to whom a copy of the draft determination is sent shall notify the Commission within 10 working days after a date fixed by the Commission (not being a date earlier than the day on which the notice is sent) whether the applicant or other person wishes the Commission to hold a conference in relation to the draft determination.
- (4) If each of the persons to whom a draft determination was sent under subsection (2)—
  - (a) notifies the Commission within the period of 10 working days prescribed in subsection (3) that the person does not wish the Commission to hold a conference in relation to the draft determination; or
  - (b) does not notify the Commission within that period that the person wishes the Commission to hold such a conference—the Commission may make the determination at any time after the expiration of that period.

- (5) If any of the persons to whom a draft determination was sent under subsection (2) notifies the Commission, in writing, within the period of 10 working days prescribed in subsection (3) that he or she wishes the Commission to hold a conference in relation to the draft determination, the Commission must appoint a date, time, and place for the holding of the conference and give notice of the date, time, and place so appointed to each of the persons to whom a draft determination was sent under subsection (2).
- (6) The Commission may, of its own motion, determine to hold a conference in relation to the draft determination and must appoint a date, time, and place for the holding of the conference and give notice of the date, time, and place so appointed to each of the persons to whom the draft determination was sent under subsection (2).
- (7) Where the Commission is of the opinion that 2 or more applications for authorisations that are made by the same person, or by bodies corporate that are interconnected with each other, involve the same or substantially similar issues, the Commission may treat the applications as if they constitute a single application, and may prepare a single draft determination in relation to the applications and hold a single conference in relation to that draft determination.

Compare: Trade Practices Act 1974 s 90A(1), (2), (5), (6), (13) (Aust)

Section 62(5): substituted, on 14 October 2008 (applying in respect of every application for an authorisation under section 58 that is made after that date), by section 6(1) of the Commerce Amendment Act 2008 (2008 No 70).

Section 62(6): substituted, on 14 October 2008 (applying in respect of every application for an authorisation under section 58 that is made after that date), by section 6(1) of the Commerce Amendment Act 2008 (2008 No 70).

## **63 Commission may grant provisional authorisation**

*[Repealed]*

Section 63: repealed, on 1 July 1990, by section 22 of the Commerce Amendment Act 1990 (1990 No 41).

## **64 Procedure at conference**

- (1) At every conference called under section 62,—
  - (a) the Commission shall be represented by a member or members nominated by the chairperson:

- (b) each person to whom a draft determination was sent under section 62(2), and any other person whose presence at the conference is considered by the Commission to be desirable, is entitled to attend and participate personally or, in the case of a body corporate, be represented by a person who, or by persons each of whom, is a director, officer, or employee of the body corporate:
  - (c) a person participating in the conference in accordance with paragraph (b) is entitled to have another person or other persons present to assist him:
  - (d) no other person is entitled to be present.
- (2) The Commission may require any employee of the Commission to attend a conference called under section 62 where in the opinion of the Commission that officer may assist the Commission in the determination of the application.
- (3) At every conference called under section 62 the Commission shall provide for as little formality and technicality as the requirements of this Act and a proper consideration of the application permits.
- (4) The Commission shall cause such record of the conference to be made as is sufficient to set out the matters raised by the persons participating in the conference.
- (5) Any member of the Commission attending the conference may terminate the conference when that member is of the opinion that a reasonable opportunity has been given for the expression of the views of persons participating in the conference.
- (6) The Commission shall have regard to all matters raised at the conference, and may at any time after the termination of the conference make a determination in respect of the application.

Compare: Trade Practices Act 1974 s 90A(7), (8), (9), (11) (Aust)

Section 64(1)(a): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 64(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **65 Commission may vary or revoke authorisations**

- (1) Subject to subsection (2), if at any time after the Commission has granted an authorisation under section 58 the Commission is satisfied that—

- (a) the authorisation was granted on information that was false or misleading in a material particular; or
  - (b) there has been a material change of circumstances since the authorisation was granted; or
  - (c) a condition upon which the authorisation was granted has not been complied with—
- the Commission may revoke or amend the authorisation or revoke the authorisation and grant a further authorisation in substitution for it.
- (2) The Commission shall not revoke or amend an authorisation or revoke an authorisation and substitute a further authorisation pursuant to subsection (1) unless the person to whom the authorisation was granted and any other person who in the opinion of the Commission is likely to have an interest in the matter is given a reasonable opportunity to make submissions to the Commission and the Commission has regard to those submissions.
- Compare: Trade Practices Act 1974 s 91(4) (Aust)

### *Business acquisitions*

Heading: substituted, on 1 January 1991, by section 23 of the Commerce Amendment Act 1990 (1990 No 41).

- 66 Commission may give clearances for business acquisitions**
- (1) A person who proposes to acquire assets of a business or shares may give the Commission a notice seeking clearance for the acquisition.
- (2) Subsections (1), (2)(a) and (b), (4), and (5) of section 60 shall apply in respect of every notice given under subsection (1) as if the notice was an application under section 58.
- (3) Within 10 working days after the date of registration of the notice, or such longer period as the Commission and the person who gave the notice agree, the Commission shall either—
- (a) if it is satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market, by notice in writing to the person by or on whose behalf the notice was given, give a clearance for the acquisition; or

- (b) if it is not satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market, by notice in writing to the person by or on whose behalf the notice was given, decline to give a clearance for the acquisition.
- (4) If the period specified in subsection (3) expires without the Commission having given a clearance for the acquisition and without having given a notice under subsection (3)(b), the Commission shall be deemed to have declined to give a clearance for the acquisition.
- (5) A clearance given under subsection (3) expires—
  - (a) 12 months after the date on which it was given; or
  - (b) in the event of an appeal being made against the determination of the Commission giving the clearance, and the determination being confirmed by the court, 12 months after the date on which the determination is confirmed.

Section 66: substituted, on 1 January 1991, by section 23 of the Commerce Amendment Act 1990 (1990 No 41).

Section 66(3)(a): amended, on 15 December 2005, by section 3(1) of the Commerce Amendment Act (No 2) 2005 (2005 No 95).

Section 66(3)(a): amended, on 26 May 2001, by section 11(2) of the Commerce Amendment Act 2001 (2001 No 32).

Section 66(3)(b): amended, on 15 December 2005, by section 3(2) of the Commerce Amendment Act (No 2) 2005 (2005 No 95).

Section 66(3)(b): amended, on 26 May 2001, by section 11(2) of the Commerce Amendment Act 2001 (2001 No 32).

## **67 Commission may grant authorisations for business acquisitions**

- (1) A person who proposes to acquire assets of a business or shares may give the Commission a notice seeking an authorisation for the acquisition.
- (2) Subsections (1), (2)(a) and (b), (4), and (5) of section 60 shall apply in respect of every notice given under subsection (1) as if the notice was an application under section 58.
- (3) Within 60 working days after the date of registration of the notice, or such longer period as the Commission and the person who gave the notice agree, the Commission shall—

- (a) if it is satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market, by notice in writing to the person by or on whose behalf the notice was given, give a clearance for the acquisition; or
  - (b) if it is satisfied that the acquisition will result, or will be likely to result, in such a benefit to the public that it should be permitted, by notice in writing to the person by or on whose behalf the notice was given, grant an authorisation for the acquisition; or
  - (c) if it is not satisfied as to the matters referred to in paragraph (a) or paragraph (b), by notice in writing to the person by or on whose behalf the notice was given, decline to give a clearance or grant an authorisation for the acquisition.
- (4) If the period specified in subsection (3) expires without the Commission having given a clearance or having granted an authorisation or having declined to do so, the Commission shall be deemed to have declined to give a clearance or grant an authorisation.
- (5) The Commission shall state in writing its reasons for a determination made by it under subsection (3).
- (6) A clearance given or an authorisation granted under subsection (3) expires—
  - (a) 12 months after the date on which it was given or granted; or
  - (b) in the event of an appeal being made against the determination of the Commission giving the clearance or granting the authorisation, and the determination of the Commission being confirmed by the court, 12 months after the date on which the determination is confirmed.

Section 67: substituted, on 1 January 1991, by section 23 of the Commerce Amendment Act 1990 (1990 No 41).

Section 67(3)(a): amended, on 15 December 2005, by section 4 of the Commerce Amendment Act (No 2) 2005 (2005 No 95).

Section 67(3)(a): amended, on 26 May 2001, by section 11(2) of the Commerce Amendment Act 2001 (2001 No 32).

**68 Provisions applying to applications for clearances and authorisations for business acquisitions**

- (1) Every person who gives a notice under section 66 or section 67 shall from time to time produce or, as the case may be, furnish to the Commission, within such time as it may specify, such documents and information in relation to the acquisition as may be required by the Commission for the purpose of enabling it to exercise its functions under this section or section 66 or section 67.
- (2) Notwithstanding section 66 or section 67, where the Commission is of the opinion that a proposed acquisition is, for reasons other than arising from the application of any provision of this Act, unlikely to be proceeded with, the Commission may, in its discretion, decline to give a clearance or grant an authorisation for that acquisition under this section.
- (3) The Commission shall state in writing its reasons for declining to give a clearance or grant an authorisation under subsection (2).
- (4) A person who has given a notice in respect of an acquisition under section 66 or section 67 may at any time, by notice in writing to the Commission, advise the Commission that it does not wish the Commission to give a clearance or grant an authorisation and the Commission shall accordingly not give a clearance or grant an authorisation in respect of that acquisition.
- (5) The Commission may consult with any person who, in the opinion of the Commission, is able to assist it in making a determination under section 66 or section 67, as the case may be.

Section 68: substituted, on 1 January 1991, by section 23 of the Commerce Amendment Act 1990 (1990 No 41).

**69 Effect of clearance or authorisation**

Nothing in section 27 or section 47 applies to the acquisition of assets of a business or shares if the assets or shares are acquired in accordance with a clearance or an authorisation and while the clearance or authorisation is in force.

Section 69: substituted, on 1 January 1991, by section 23 of the Commerce Amendment Act 1990 (1990 No 41).

**69A Commission may accept undertakings**

- (1) In giving a clearance or granting an authorisation under section 66 or section 67, the Commission may accept a written undertaking given by or on behalf of the person who gave a notice under section 66(1) or section 67(1), as the case may be, to dispose of assets or shares specified in the undertaking.
- (2) The Commission shall not accept an undertaking in relation to the giving of a clearance or the granting of an authorisation under section 66 or section 67, other than an undertaking given under subsection (1).
- (3) An undertaking given to the Commission under subsection (1) is deemed to form part of the clearance given or the authorisation granted in relation to the acquisition to which the undertaking relates.

Section 69A: inserted, on 1 January 1991, by section 23 of the Commerce Amendment Act 1990 (1990 No 41).

**69AB Authorisation or clearance void if undertaking contravened**

- (1) If a person contravenes an undertaking accepted under section 69A, the clearance given or the authorisation granted in relation to the acquisition to which the undertaking relates is void and of no effect from the date it was given or granted.
- (2) Subsection (1) does not prevent the court from making an order under sections 85A to 85C in relation to the undertaking.

Section 69AB: inserted, on 14 October 2008 (applying only to undertakings under section 69A that are accepted in relation to clearances given or authorisations granted on notices under section 66 or 67 that are registered after that date), by section 7(1) of the Commerce Amendment Act 2008 (2008 No 70).

**69AC Variation of undertaking**

- (1) The Commission may, on an application made under subsection (2), accept a variation of an undertaking given under section 69A if it considers that the variation would not have materially affected its decision to give the clearance or grant the authorisation in relation to the acquisition to which the undertaking relates if the variation had been proposed at the time of the decision.



- (2) An application for a variation under subsection (1)—
  - (a) may be made only by the person who gave the undertaking or on whose behalf the undertaking was given; and
  - (b) must be made no later than 20 working days before the date on which the relevant obligation under the undertaking must be met.
- (3) The Commission must notify the person who made the application of its decision on the application no later than 3 working days before the relevant obligation under the undertaking must be met.
- (4) A variation under subsection (1)—
  - (a) comes into force on a date specified in the variation (being a date that is on or after the date on which the variation is accepted); and
  - (b) is deemed to form part of the undertaking (and, accordingly, is deemed under section 69A(3) to form part of the clearance given or the authorisation granted in relation to the acquisition to which the undertaking relates).

Section 69AC: inserted, on 14 October 2008 (applying to every undertaking accepted under section 69A before that date if the period for giving effect to the undertaking has not expired at that time and to every undertaking accepted under section 69A after that date), by section 7(1) of the Commerce Amendment Act 2008 (2008 No 70).

#### **69B Conferences in relation to business acquisitions**

- (1) Before making a determination under section 66(3) or section 67(3) in relation to an acquisition, the Commission may determine to hold a conference and shall appoint a date, time, and place for the holding of the conference and give notice of the date, time, and place so appointed and of the matters to be considered at the conference to the persons entitled to be present at the conference.
- (2) The provisions of section 64 shall apply to every conference held under this section as if—
  - (a) every reference in that section to a conference called under section 62, were a reference to a conference held under this section; and
  - (b) the reference in subsection (1)(b) of that section to a person to whom a draft determination was sent under

- section 62(2), were a reference to the person by or on whose behalf a notice was given under section 66(1) or section 67(1), as the case may be; and
- (c) the reference in subsection (6) of that section to a determination in respect of an application, were a reference to a determination under section 66(3) or section 67(3), as the case may be.

Section 69B: inserted, on 1 January 1991, by section 23 of the Commerce Amendment Act 1990 (1990 No 41).

*Authorisations in respect of controlled goods  
or services  
[Repealed]*

Heading: repealed, on 14 October 2008, by section 8 of the Commerce Amendment Act 2008 (2008 No 70).

**70 Authorisations in respect of prices, revenues, and quality standards**  
*[Repealed]*

Section 70: repealed, on 14 October 2008, by section 8 of the Commerce Amendment Act 2008 (2008 No 70).

**70A Considerations to be observed by Commission**  
*[Repealed]*

Section 70A: repealed, on 14 October 2008, by section 8 of the Commerce Amendment Act 2008 (2008 No 70).

**70B Procedure for making authorisations**  
*[Repealed]*

Section 70B: repealed, on 14 October 2008, by section 8 of the Commerce Amendment Act 2008 (2008 No 70).

**70C Remedies and penalties if overcharging or quality standards breached**  
*[Repealed]*

Section 70C: repealed, on 14 October 2008, by section 8 of the Commerce Amendment Act 2008 (2008 No 70).

**70D Terms of authorisations**

*[Repealed]*

Section 70D: repealed, on 14 October 2008, by section 8 of the Commerce Amendment Act 2008 (2008 No 70).

**70E Investigations and audits**

*[Repealed]*

Section 70E: repealed, on 14 October 2008, by section 8 of the Commerce Amendment Act 2008 (2008 No 70).

**70F Revocation and amendment of authorisations**

*[Repealed]*

Section 70F: repealed, on 14 October 2008, by section 8 of the Commerce Amendment Act 2008 (2008 No 70).

**71 Provisional authorisations**

*[Repealed]*

Section 71: repealed, on 14 October 2008, by section 8 of the Commerce Amendment Act 2008 (2008 No 70).

**72 Alternative undertakings**

*[Repealed]*

Section 72: repealed, on 14 October 2008, by section 8 of the Commerce Amendment Act 2008 (2008 No 70).

**73 Conferences in relation to authorisations about controlled goods or services**

*[Repealed]*

Section 73: repealed, on 14 October 2008, by section 8 of the Commerce Amendment Act 2008 (2008 No 70).

**74 Levies**

*[Repealed]*

Section 74: repealed, on 14 October 2008, by section 8 of the Commerce Amendment Act 2008 (2008 No 70).

## Part 6

### Enforcement, remedies, and appeals

#### *Cease and desist orders*

Heading: inserted, on 1 April 2002, by section 15(1) of the Commerce Amendment Act 2001 (2001 No 32).

#### **74AA Cease and desist Commissioners**

- (1) The Governor-General, on the recommendation of the Minister (which recommendation may be given only after consultation by the Minister with the Attorney-General), must appoint 2 persons as Commissioners for the sole purpose of hearing cease and desist applications in accordance with sections 74A to 74C.
- (2) The Minister may not recommend a person for appointment as a Commissioner unless that person—
  - (a) is a barrister or solicitor; and
  - (b) would qualify for appointment as a member of the Commission under section 9(4)(a) of this Act and sections 29(2) and 30(2) of the Crown Entities Act 2004.
- (3) The notice of appointment must—
  - (a) state—
    - (i) the date on which the appointment takes effect; and
    - (ii) the term of appointment, which may be 5 years or any shorter period that is stated in the notice; and
  - (b) be published by the Minister in the *Gazette* as soon as practicable after being given.
- (4) Section 106 of this Act and sections 31, 32(2) to (4), 34, 35, 39 to 45, 47, 48, 62 to 68, 122 to 126 (as applied by section 106(3B) of this Act), and 188 to 190 of the Crown Entities Act 2004 apply to a Commissioner, with any necessary modification, as if he or she were a member of the Commission.
- (5) A Commissioner must act independently of the Commission in carrying out his or her functions under this Act.
- (6) The Commission must include in its annual report under section 150 of the Crown Entities Act 2004 the information in

section 152(1)(a) and (d) to (f) of that Act, in respect of each Commissioner.

Section 74AA: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**74A Commissioner may make cease and desist orders**

- (1) A Commissioner may make a cease and desist order, by consent or following a hearing held under section 74C, if the Commissioner is satisfied that—
  - (a) a prima facie case has been made out that a person has engaged in any conduct referred to in section 80(1) or section 83(1); and
  - (b) it is necessary to act urgently—
    - (i) to prevent a particular person or consumers from suffering serious loss or damage:
    - (ii) in the interests of the public.
- (2) Subject to subsection (3)(a), the effect of a cease and desist order is to restrain conduct for any period and on any terms that are specified in the order.
- (3) A cease and desist order made under subsection (1)—
  - (a) may require a person to do something only if the Commissioner is satisfied that restraining the person from engaging in the conduct will not restore competition, or the potential for competition, in a market:
  - (b) must be in writing with the facts and reasons for it clearly set out:
  - (c) is deemed to be a determination of the Commission that is subject to appeal in accordance with sections 91 to 97.

Section 74A: inserted, on 1 April 2002, by section 15(1) of the Commerce Amendment Act 2001 (2001 No 32).

**74B Investigation, notice, and opportunity to be heard**

A cease and desist order may be made under section 74A only if—

- (a) an investigation has been conducted into the alleged contravention of this Act and a report has been submitted to the Commission recommending that a cease and desist order be sought; and

- (b) the Commission agrees with the recommendation in the report and directs an employee of the Commission to make an application for a cease and desist order; and
- (c) the person against whom an order is sought is served with notice in writing of the following matters:
  - (i) the nature of the alleged contravention;
  - (ii) the terms of the proposed order;
  - (iii) the reasons for the order; and
- (d) the person against whom an order is sought has an opportunity to—
  - (i) access the relevant information held by the Commission;
  - (ii) make a written submission;
  - (iii) consent to the terms of the proposed order or have the matter determined by a Commissioner following a hearing.

Section 74B: inserted, on 1 April 2002, by section 15(1) of the Commerce Amendment Act 2001 (2001 No 32).

Section 74B(b): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **74C Procedure at cease and desist hearing**

- (1) At every hearing for a cease and desist order, the Commissioner presiding over the hearing—
  - (a) must provide for as little formality and technicality as the requirements of this Act and a proper consideration of the matter permits;
  - (b) must permit the Commission and the person against whom an order is sought to appear and give evidence, to be represented by counsel, to call witnesses, and to cross-examine witnesses;
  - (c) has the necessary incidental powers in relation to the hearing of evidence, including the power to exclude irrelevant or repetitive evidence and the powers set out in sections 99 and 100.
- (2) For the purposes of conducting a hearing for a cease and desist order, a Commissioner may exercise the powers in section 98 as if he or she were the Commission.

Section 74C: inserted, on 1 April 2002, by section 15(1) of the Commerce Amendment Act 2001 (2001 No 32).

Section 74C(2): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**74D Pecuniary penalties for contravention of cease and desist order**

- (1) If the court is satisfied on the application of the Commission that a person has acted in contravention of an order made under section 74A, the court may order the person to pay to the Crown any pecuniary penalty that the court determines to be appropriate.
- (2) The amount of any pecuniary penalty must not exceed \$500,000.
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) Proceedings under this section may be commenced within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered. However, no proceedings under this section may be commenced 10 years or more after the matter giving rise to the contravention.

Section 74D: inserted, on 1 April 2002, by section 15(1) of the Commerce Amendment Act 2001 (2001 No 32).

Section 74D(3): repealed, on 14 October 2008, by section 12(2)(a) of the Commerce Amendment Act 2008 (2008 No 70).

Section 74D(4): repealed, on 14 October 2008, by section 12(2)(a) of the Commerce Amendment Act 2008 (2008 No 70).

*Jurisdiction of courts*

**75 Jurisdiction of High Court**

- (1) In accordance with this Part, the High Court shall hear and determine the following matters:
  - (aa) applications for orders under section 74D:
  - (a) in the case of contraventions of Part 2,—
    - (i) proceedings for the recovery of pecuniary penalties under section 80:
    - (ii) applications for injunctions under section 81:
    - (iii) actions for damages under section 82:
  - (b) in the case of contraventions of Part 3,—

- (i) proceedings for the recovery of pecuniary penalties under section 83:
    - (ii) applications for injunctions under section 84:
    - (iia) actions for damages under section 84A:
    - (iii) proceedings under section 85:
  - (c) in the case of contraventions relating to Part 4,—
    - (i) proceedings for the recovery of pecuniary penalties under section 86 or 87:
    - (ii) applications for orders under section 86A, 86C, or 87A:
    - (iii) applications for injunctions under section 87C:
  - (d) applications for orders under section 89:
  - (e) appeals against determinations of the Commission:
  - (f) applications for orders under section 80B or section 80C:
  - (g) proceedings for offences against section 80E:
  - (h) applications for orders under section 82A:
  - (i) applications for orders under section 85A or 85B.
- (2) *[Repealed]*

Section 75(1)(aa): inserted, on 26 May 2001, by section 16(1) of the Commerce Amendment Act 2001 (2001 No 32).

Section 75(1)(b)(i): substituted, on 1 January 1991, by section 25 of the Commerce Amendment Act 1990 (1990 No 41).

Section 75(1)(b)(iia): inserted, on 2 September 1996, by section 5 of the Commerce Amendment Act 1996 (1996 No 113).

Section 75(1)(c): substituted, on 14 October 2008, by section 9(1) of the Commerce Amendment Act 2008 (2008 No 70).

Section 75(1)(e): added, on 15 August 1991, by section 3(4) of the Judicature Amendment Act 1991 (1991 No 60).

Section 75(1)(f): added, on 26 May 2001, by section 16(2) of the Commerce Amendment Act 2001 (2001 No 32).

Section 75(1)(g): added, on 26 May 2001, by section 16(2) of the Commerce Amendment Act 2001 (2001 No 32).

Section 75(1)(h): added, on 26 May 2001, by section 16(2) of the Commerce Amendment Act 2001 (2001 No 32).

Section 75(1)(i): added, on 14 October 2008, by section 9(2) of the Commerce Amendment Act 2008 (2008 No 70).

Section 75(2): repealed, on 15 August 1991, by section 3(4) of the Judicature Amendment Act 1991 (1991 No 60).



**76 Jurisdiction of District Courts**

In accordance with this Part, the District Court shall hear and determine proceedings for offences against sections 86B, 87B, 100, and 103.

Section 76: amended, on 14 October 2008, by section 10 of the Commerce Amendment Act 2008 (2008 No 70).

**77 Additional lay members of High Court for purposes of appellate jurisdiction in respect of Commission determinations**

- (1) For the purposes of the exercise by the court of its jurisdiction and powers under this Part, there shall be lay members of the court who shall be persons appointed from time to time by the Governor-General.
- (2) No person shall be appointed as a lay member of the court unless, in the opinion of the Governor-General, that person is qualified for appointment by virtue of that person's knowledge or experience in industry, commerce, economics, law, or accountancy.
- (3) A lay member of the court shall hold office for such term, not exceeding 5 years, as the Governor-General shall specify in that member's instrument of appointment, but may from time to time be reappointed.
- (4) There shall be paid to such lay members, out of money appropriated by Parliament for the purpose, remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the court were a statutory Board within the meaning of that Act.
- (5) The Governor-General may terminate the appointment of a lay member of the court for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.
- (6) Any lay member of the court may resign his office by notice in writing to the Minister.
- (7) Notwithstanding that the term of office of a lay member of the court has expired or that a lay member has resigned that office, that person shall be deemed to continue as a lay member

of the court for the purpose of completing the hearing of any matter before that person, as a lay member of the court, which was commenced before the expiration of the term of office or before the resignation took effect, as the case may be.

- (8) Before entering upon the exercise of the duties of their office, the lay members shall take an oath before a Judge of the court that they will faithfully and impartially perform the duties of their office.
- (9) The presence of a Judge of the court and of at least 1 lay member shall be necessary to constitute a sitting of the court.
- (10) The decision of a majority (including the Judge or, where more than 1 Judge sits, including a majority of the Judges) of the members present at a sitting of the court shall be the decision of the court.
- (11) If the members present are equally divided in opinion, the decision of the Judge, or of a majority of the Judges, shall be the decision of the court.
- (12) If any question before the court cannot be decided in accordance with subsections (10) and (11), the question shall be referred to the Court of Appeal for decision in accordance with the practice and procedure of that court, which for the purpose shall have all the powers of the High Court under this Part.
- (13) The decision of the Court of Appeal in any proceedings under this section takes effect, and must be entered, as if it were a decision of the High Court under this Act.
- (14) Notwithstanding anything in the foregoing provisions of this section, a Judge of the court sitting alone shall have jurisdiction to make any of the following orders:
  - (a) an order on any application made in the course of any proceedings:
  - (b) an order that is not opposed:
  - (c) an order in any proceedings that the parties agree should be heard and determined by a Judge alone:
  - (d) an order in any proceedings where the matter in issue is substantially a question of law only:
  - (e) an order made on the application of any party directing that any proceedings should be heard and determined

by a Judge alone on the ground that the matter in issue is substantially a question of law only:

- (f) an order granting the leave of the court to appeal to the Court of Appeal.

Compare: 1975 No 113 s 122A; 1983 No 144 s 41; 1985 No 7 s 2

Section 77(1): amended, on 15 August 1991, by section 3(4) of the Judicature Amendment Act 1991 (1991 No 60).

Section 77(2): amended, on 15 August 1991, by section 3(4) of the Judicature Amendment Act 1991 (1991 No 60).

Section 77(3): amended, on 15 August 1991, by section 3(4) of the Judicature Amendment Act 1991 (1991 No 60).

Section 77(5): amended, on 1 January 2002, by section 70(1) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 77(5): amended, on 15 August 1991, by section 3(4) of the Judicature Amendment Act 1991 (1991 No 60).

Section 77(6): amended, on 15 August 1991, by section 3(4) of the Judicature Amendment Act 1991 (1991 No 60).

Section 77(7): amended, on 15 August 1991, by section 3(4) of the Judicature Amendment Act 1991 (1991 No 60).

Section 77(9): amended, on 15 August 1991, by section 3(4) of the Judicature Amendment Act 1991 (1991 No 60).

Section 77(13): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 77(14): amended, on 15 August 1991, by section 3(4) of the Judicature Amendment Act 1991 (1991 No 60).

## **78 Lay members of High Court in certain cases**

- (1) For the purposes of the exercise by the High Court of its jurisdiction and powers under sections 80 to 85 in respect of proceedings which relate to any of sections 27 to 29, 36, 36A, 37, 38, or 47, a Judge of the court may, of his own motion or on the application of any party to the proceedings, require any person or persons appointed as a lay member or lay members of the High Court pursuant to section 77, to hear and determine the proceedings as an additional lay member or additional lay members of the court.
- (2) Where a lay member of the High Court is required pursuant to subsection (1) to hear and determine any proceedings as an additional lay member of the court, that person shall for the purposes of those proceedings be a lay member of the court.

- (3) The provisions of subsections (10) to (13) of section 77 shall apply in respect of any proceedings to which this section applies as if the proceedings to which those provisions refer were proceedings in the High Court under sections 80 to 85.
- (4) Notwithstanding anything in the foregoing provisions of this section, a Judge of the court sitting alone shall have jurisdiction—
- (a) to make any of the following orders—
    - (i) an order on any application made in the course of any proceedings:
    - (ii) an order that is not opposed:
    - (iii) an order in any proceedings that the parties agree should be heard and determined by a Judge alone:
    - (iv) an order in any proceedings where the matter in issue is substantially a question of law only:
    - (v) an order made on the application of any party directing that any proceedings should be heard and determined by a Judge alone on the ground that the matter in issue is substantially a question of law only:
    - (vi) an order granting the leave of the court to appeal to the Court of Appeal:
  - (b) to determine any question as to the application of section 30 arising in any proceedings:
  - (c) to exercise the power to make an order directing the payment of a pecuniary penalty pursuant to section 80 or section 83:
  - (d) to exercise the power to grant an injunction pursuant to section 81 or section 84:
  - (e) to exercise the power to make an order for the payment of damages in proceedings under section 82 or section 84A:
  - (f) to exercise the power to make an order directing the disposal of shares or assets under section 85.

Section 78(1): amended, on 2 September 1996, by section 6 of the Commerce Amendment Act 1996 (1996 No 113).

Section 78(1): amended, on 15 August 1991, by section 3(4) of the Judicature Amendment Act 1991 (1991 No 60).

Section 78(1): amended, on 1 January 1991, by section 26(1)(a) of the Commerce Amendment Act 1990 (1990 No 41).

Section 78(1): amended, on 1 January 1991, by section 26(1)(b) of the Commerce Amendment Act 1990 (1990 No 41).

Section 78(2): amended, on 15 August 1991, by section 3(4) of the Judicature Amendment Act 1991 (1991 No 60).

Section 78(3): amended, on 1 January 1991, by section 26(2) of the Commerce Amendment Act 1990 (1990 No 41).

Section 78(4)(c): amended, on 1 January 1991, by section 26(3)(a) of the Commerce Amendment Act 1990 (1990 No 41).

Section 78(4)(d): amended, on 1 January 1991, by section 26(3)(b) of the Commerce Amendment Act 1990 (1990 No 41).

Section 78(4)(e): amended, on 1 January 1991, by section 26(3)(c) of the Commerce Amendment Act 1990 (1990 No 41).

Section 78(4)(f): added, on 1 January 1991, by section 26(3)(d) of the Commerce Amendment Act 1990 (1990 No 41).

## **79 Evidence not otherwise admissible**

In the exercise of its jurisdiction under this Part, except in respect of criminal proceedings and proceedings for pecuniary penalties, the court may receive in evidence any statement, document, or information that would not be otherwise admissible that may in its opinion assist it to deal effectively with the matter.

Section 79: amended, on 14 October 2008, by section 11 of the Commerce Amendment Act 2008 (2008 No 70).

### *Proceedings for pecuniary penalties*

Heading: inserted, on 14 October 2008, by section 12(1) of the Commerce Amendment Act 2008 (2008 No 70).

## **79A Proceedings for pecuniary penalties**

In any proceedings under this Part for a pecuniary penalty—

- (a) the standard of proof is the standard of proof applying in civil proceedings; and
- (b) the Commission may, by the order of the court, obtain discovery and administer interrogatories.

Section 79A: inserted, on 14 October 2008, by section 12(1) of the Commerce Amendment Act 2008 (2008 No 70).

**79B Relationship between pecuniary penalties and criminal liability**

- (1) Once criminal proceedings against a person for an offence under section 86B or 87B are determined, the High Court may not order the person to pay a pecuniary penalty in respect of the conduct, events, transactions, or other matters that were the subject of the criminal proceedings.
- (2) Once civil proceedings against a person for a pecuniary penalty under this Part are determined, the person may not be convicted of an offence under section 86B or 87B in respect of the conduct, events, transactions, or other matters that were the subject of the civil proceedings.

Section 79B: inserted, on 14 October 2008, by section 12(1) of the Commerce Amendment Act 2008 (2008 No 70).

*Restrictive trade practices***80 Pecuniary penalties**

- (1) If the court is satisfied on the application of the Commission that a person—
  - (a) has contravened any of the provisions of Part 2; or
  - (b) has attempted to contravene such a provision; or
  - (c) has aided, abetted, counselled, or procured any other person to contravene such a provision; or
  - (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene such a provision; or
  - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision; or
  - (f) has conspired with any other person to contravene such a provision,—the court may order the person to pay to the Crown such pecuniary penalty as the court determines to be appropriate.
- (2) The court must order an individual who has engaged in any conduct referred to in subsection (1) to pay a pecuniary penalty, unless the court considers that there is good reason for not making that order.
- (2A) In determining an appropriate penalty under this section, the court must have regard to all relevant matters, in particular,—

- (a) any exemplary damages awarded under section 82A; and
  - (b) in the case of a body corporate, the nature and extent of any commercial gain.
- (2B) The amount of any pecuniary penalty must not, in respect of each act or omission, exceed,—
  - (a) in the case of an individual, \$500,000; or
  - (b) in the case of a body corporate, the greater of—
    - (i) \$10,000,000; or
    - (ii) either—
      - (A) if it can be readily ascertained and if the court is satisfied that the contravention occurred in the course of producing a commercial gain, 3 times the value of any commercial gain resulting from the contravention; or
      - (B) if the commercial gain cannot be readily ascertained, 10% of the turnover of the body corporate and all of its interconnected bodies corporate (if any).
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) Proceedings under this section may be commenced within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered. However, no proceedings under this section may be commenced 10 years or more after the matter giving rise to the contravention.
- (6) Where conduct by any person constitutes a contravention of 2 or more provisions of Part 2, proceedings may be instituted under this Act against that person in relation to the contravention of any 1 or more of the provisions; but no person shall be liable to more than 1 pecuniary penalty under this section in respect of the same conduct.

Compare: Trade Practices Act 1974 ss 76, 77 (Aust)

Section 80(1): amended, on 26 May 2001, by section 17(1) of the Commerce Amendment Act 2001 (2001 No 32).

Section 80(2): substituted, on 26 May 2001, by section 17(2) of the Commerce Amendment Act 2001 (2001 No 32).

Section 80(2A): inserted, on 26 May 2001, by section 17(2) of the Commerce Amendment Act 2001 (2001 No 32).

Section 80(2B): inserted, on 26 May 2001, by section 17(2) of the Commerce Amendment Act 2001 (2001 No 32).

Section 80(3): repealed, on 14 October 2008, by section 12(2)(b) of the Commerce Amendment Act 2008 (2008 No 70).

Section 80(4): repealed, on 14 October 2008, by section 12(2)(b) of the Commerce Amendment Act 2008 (2008 No 70).

Section 80(5): substituted, on 26 May 2001, by section 17(3) of the Commerce Amendment Act 2001 (2001 No 32).

**80A Body corporate not to indemnify certain persons in respect of pecuniary penalties**

- (1) A body corporate must not indemnify a director, servant, or agent of the body corporate or an interconnected body corporate in respect of—
- (a) liability for payment of a pecuniary penalty under section 80 that arises out of a provision of a contract, arrangement, or understanding that is deemed, under section 30, to have the purpose, or to have or to be likely to have the effect, of substantially lessening competition in a market; or
  - (b) costs incurred by that director, servant, or agent in defending or settling any proceeding relating to that liability.
- (2) An indemnity given in contravention of subsection (1) is void.
- (3) In this section,—

**agent** includes a former agent

**director** includes a former director

**indemnify** includes relieve or excuse from liability, whether before or after the liability arises; and **indemnity** has a corresponding meaning

**servant** includes a former servant.

Section 80A: inserted, on 26 May 2001, by section 18 of the Commerce Amendment Act 2001 (2001 No 32).

**80B Pecuniary penalties for contravention of section 80A**

- (1) If the court is satisfied on the application of the Commission that a body corporate has acted in contravention of sec-



tion 80A, the court may order the body corporate to pay to the Crown any pecuniary penalty that the court determines to be appropriate.

- (2) The amount of any pecuniary penalty must not, in respect of each act or omission, exceed 2 times the value of any indemnity given in contravention of section 80A.
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) Proceedings under this section may be commenced within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered. However, no proceedings under this section may be commenced 10 years or more after the matter giving rise to the contravention.

Section 80B: inserted, on 26 May 2001, by section 18 of the Commerce Amendment Act 2001 (2001 No 32).

Section 80B(3): repealed, on 14 October 2008, by section 12(2)(c) of the Commerce Amendment Act 2008 (2008 No 70).

Section 80B(4): repealed, on 14 October 2008, by section 12(2)(c) of the Commerce Amendment Act 2008 (2008 No 70).

### **80C Court may order certain persons to be excluded from management of body corporate**

The court may make an order that a person must not, without the leave of the court, be a director or promoter of, or in any way, either directly or indirectly, be concerned or take part in the management of, a body corporate for a period not exceeding 5 years as may be specified in the order, if the court is satisfied on the application of the Commission that—

- (a) the person has entered into a contract or arrangement, or arrived at an understanding, containing a provision that is deemed by section 30(1) to have the purpose, or to have or to be likely to have the effect, of substantially lessening competition in a market:
- (b) the person has given effect to a provision of a contract, arrangement, or understanding that is deemed by section 30(1) to have the purpose, or to have or to be likely to have the effect, of substantially lessening competition in a market:

- (c) the person has entered into a contract or arrangement, or arrived at an understanding, that contains an exclusionary provision:
- (d) the person has given effect to an exclusionary provision of a contract, arrangement, or understanding.

Section 80C: inserted, on 26 May 2001, by section 18 of the Commerce Amendment Act 2001 (2001 No 32).

**80D Application for order under section 80C**

- (1) The Commission must give not less than 10 days' notice of its intention to apply for an order under section 80C to the person against whom the order is sought.
- (2) On the hearing of the Commission's application or an application for leave by a person against whom an order under section 80C has been made,—
  - (a) the Commission must appear and call the attention of the court to any matter that seems to it to be relevant, and may give evidence or call witnesses; and
  - (b) the person against whom the order is sought or has been made may appear and give evidence or call witnesses.
- (3) The Registrar of the court must, as soon as practicable after the making of an order under section 80C, give notice of the order to—
  - (a) the person against whom the order has been made; and
  - (b) the Registrar of Companies, and the Registrar of Companies must give notice in the *Gazette* of the name of the person against whom the order is made.

Section 80D: inserted, on 26 May 2001, by section 18 of the Commerce Amendment Act 2001 (2001 No 32).

**80E Offence to act in contravention of order made under section 80C**

- (1) Every person commits an offence who acts in contravention of an order made under section 80C.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000.
- (3) The offence is triable on indictment.

Section 80E: inserted, on 26 May 2001, by section 18 of the Commerce Amendment Act 2001 (2001 No 32).

**81 Injunctions may be granted by court for contravention of Part 2**

The court may, on the application of the Commission or any other person, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute any of the following—

- (a) a contravention of any of the provisions of Part 2:
- (b) any attempt to contravene such a provision:
- (c) aiding, abetting, counselling, or procuring any other person to contravene such a provision:
- (d) inducing, or attempting to induce, any other person, whether by threats, promises or otherwise, to contravene such a provision:
- (e) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision:
- (f) conspiring with any other person to contravene such a provision.

Compare: Trade Practices Act 1974 s 80(1), (2) (Aust)

**82 Actions for damages for contravention of Part 2**

- (1) Every person is liable in damages for any loss or damage caused by that person engaging in conduct that constitutes any of the following—
  - (a) a contravention of any of the provisions of Part 2:
  - (b) aiding, abetting, counselling, or procuring the contravention of such a provision:
  - (c) inducing by threats, promises, or otherwise the contravention of such a provision:
  - (d) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention of such a provision:
  - (e) conspiring with any other person in the contravention of such a provision.
- (2) An action under subsection (1) may be commenced within 3 years after the matter giving rise to the contravention was

discovered or ought reasonably to have been discovered. However, no action under subsection (1) may be commenced 10 years or more after the matter giving rise to the contravention.

Compare: Trade Practices Act 1974 s 82 (Aust)

Section 82(2): substituted, on 26 May 2001, by section 19 of the Commerce Amendment Act 2001 (2001 No 32).

### **82A Exemplary damages for contravention of Part 2**

- (1) The court may order a person who has engaged in any conduct referred to in section 82(1) to pay exemplary damages even though the court has made, or may make, an order directing the person to pay a pecuniary penalty under section 80 for the same conduct.
- (2) In determining whether to award exemplary damages and, if they are to be awarded, the amount of them, the court must have regard to—
  - (a) whether a pecuniary penalty has been imposed on the defendant for a contravention involving the conduct concerned in the claim for exemplary damages; and
  - (b) if so, the amount of the pecuniary penalty.

Section 82A: inserted, on 26 May 2001, by section 20 of the Commerce Amendment Act 2001 (2001 No 32).

### *Business acquisitions*

Heading: substituted, on 1 January 1991, by section 29 of the Commerce Amendment Act 1990 (1990 No 41).

### **83 Pecuniary penalties**

- (1) If the court is satisfied on the application of the Commission that a person—
  - (a) has contravened section 47:
  - (b) has attempted to contravene that section:
  - (c) has aided, abetted, counselled, or procured any other person to contravene that section:
  - (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene that section:

- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of that section:
- (f) has conspired with any other person to contravene that section,—

the court may order the person to pay to the Crown such pecuniary penalty as the court determines to be appropriate, not exceeding \$500,000 in the case of a person not being a body corporate, or \$5,000,000 in the case of a body corporate, in respect of each such act or omission.

- (2) In determining an appropriate penalty under this section, the court shall have regard to all relevant matters, including—
  - (a) the nature and extent of the act or omission:
  - (b) the nature and extent of any loss or damage suffered by any person as a result of the act or omission:
  - (c) the circumstances in which the act or omission took place:
  - (d) whether or not the person has previously been found by the court in proceedings under this Part to have engaged in any similar conduct.
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) Proceedings under this section may be commenced within 3 years after the matter giving rise to the contravention arose.
- (6) A person is not liable to a pecuniary penalty under both section 80 and this section in respect of the same conduct.

Section 83: substituted, on 1 January 1991, by section 29 of the Commerce Amendment Act 1990 (1990 No 41).

Section 83(3): repealed, on 14 October 2008, by section 12(2)(d) of the Commerce Amendment Act 2008 (2008 No 70).

Section 83(4): repealed, on 14 October 2008, by section 12(2)(d) of the Commerce Amendment Act 2008 (2008 No 70).

#### **84 Injunctions may be granted by court for contravention of Part 3 or undertaking**

- (1) Where it appears to the court, on the application of the Commission or any other person, that a person intends to engage, or is engaging, or has engaged, in conduct that constitutes or

would constitute a contravention of section 47, the court, by order, may do all or any of the following things:

- (a) grant an injunction restraining any person from engaging in conduct that constitutes or would constitute—
    - (i) a contravention of section 47:
    - (ii) any attempt to contravene that provision:
    - (iii) aiding, abetting, counselling, or procuring any other person to contravene that provision:
    - (iv) inducing or attempting to induce any other person, whether by threats, promises or otherwise, to contravene that provision:
    - (v) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of that provision:
    - (vi) conspiring with any other person to contravene that provision:
  - (b) impose on any person obligations to be observed in the carrying on of any business or the safeguarding of any business or any assets of any business:
  - (c) provide for the carrying on of any business or the safeguarding of any business or assets of any business, either by the appointment of a person to conduct or supervise the conduct of any business (on such terms and with such powers as may be specified or described in the order), or in any other manner, as it thinks necessary in the circumstances of the case.
- (2) If it appears to the court, on the application of the Commission, that a person intends to engage, or is engaging, or has engaged, in conduct that constitutes or would constitute a contravention of an undertaking accepted under section 69A, the court, by order, may do all or any of the following things:
- (a) grant an injunction restraining any person from engaging in conduct that constitutes or would constitute—
    - (i) a contravention of that undertaking:
    - (ii) any attempt to contravene that undertaking:
    - (iii) aiding, abetting, counselling, or procuring any other person to contravene that undertaking:

- (iv) inducing or attempting to induce any other person, whether by threats, promises, or otherwise, to contravene that undertaking:
- (v) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of that undertaking:
- (vi) conspiring with any other person to contravene that undertaking:
- (b) impose on any person obligations to be observed in the carrying on of any business or the safeguarding of any business or any assets of any business:
- (c) provide for the carrying on of any business or the safeguarding of any business or assets of any business, either by the appointment of a person to conduct or supervise the conduct of any business (on the terms and with the powers as may be specified or described in the order), or in any other manner, as it thinks necessary in the circumstances of the case.

Compare: 1975 No 113 s 81H; 1976 No 67 s 22; 1983 No 144 s 35

Section 84 heading: amended, on 14 October 2008, by section 13(1) of the Commerce Amendment Act 2008 (2008 No 70).

Section 84(1): amended, on 1 January 1991, by section 30(a) of the Commerce Amendment Act 1990 (1990 No 41).

Section 84(1)(a)(i): amended, on 1 January 1991, by section 30(b) of the Commerce Amendment Act 1990 (1990 No 41).

Section 84(2): added, on 14 October 2008 (applying only to undertakings under section 69A that are accepted in relation to clearances given or authorisations granted on notices under section 66 or 67 that are registered after that date), by section 13(2) of the Commerce Amendment Act 2008 (2008 No 70).

### **84A Actions for damages for contravention of Part 3**

- (1) Every person is liable in damages for any loss or damage caused by that person engaging in conduct that constitutes any of the following:
  - (a) a contravention of section 47:
  - (b) aiding, abetting, counselling, or procuring the contravention of that section:
  - (c) inducing by threats, promises, or otherwise the contravention of that section:
  - (d) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention of that section:

- (e) conspiring with any other person in the contravention of that section.
- (2) An action under subsection (1) may be commenced at any time within 3 years from the time when the cause of action arose.

Section 84A: inserted, on 1 January 1991, by section 31 of the Commerce Amendment Act 1990 (1990 No 41).

**85 Court may order divestiture of assets or shares in respect of contravention of Part 3**

- (1) In any case where the court, on the application of the Commission, is satisfied that any person—
  - (a) has contravened section 47; or
  - (b) has been found in any other proceedings under this Part to have contravened section 47,—it may, by order,—
  - (c) give directions for the disposal by that person of such assets or shares as shall be specified in the order; or
  - (d) give directions for the disposal by that person of any assets or shares in accordance with an undertaking given by the person under section 69A.
- (2) An application under subsection (1) may be made at any time within 2 years from the date on which the contravention occurred.

Section 85: substituted, on 1 January 1991, by section 32 of the Commerce Amendment Act 1990 (1990 No 41).

**85A Pecuniary penalties for contravention of undertaking**

- (1) The court may, on the application of the Commission, order a person to pay a pecuniary penalty to the Crown if the court is satisfied that the person—
  - (a) has contravened an undertaking accepted under section 69A; or
  - (b) has attempted to contravene an undertaking accepted under section 69A; or
  - (c) has aided, abetted, counselled, or procured any other person to contravene an undertaking accepted under section 69A; or



- (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene an undertaking accepted under section 69A; or
  - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of an undertaking accepted under section 69A; or
  - (f) has conspired with any other person to contravene an undertaking accepted under section 69A.
- (2) However, the court may only make an order under subsection (1) if the acquisition to which the undertaking relates has proceeded.
- (3) The amount of pecuniary penalty must not, in respect of each act or omission, exceed \$500,000.
- (4) In setting the amount of pecuniary penalty, the court must take into account all of the following matters:
  - (a) the nature and extent of the contravention;
  - (b) the circumstances in which the contravention took place;
  - (c) whether the person has obstructed or hindered the Commission in any attempt of the Commission to obtain compliance with the undertaking;
  - (d) whether the person has taken any steps with the intention of—
    - (i) impeding the disposal of assets or shares in accordance with the undertaking; or
    - (ii) limiting the effectiveness of the undertaking in preventing a substantial lessening of competition in a market;
  - (e) whether the person or an interconnected body corporate has previously been found by the court in proceedings under this Part to have engaged in similar conduct.
- (5) Subsection (4) is subject to section 85C.
- (6) A person may not be liable to more than 1 pecuniary penalty in respect of the same conduct.
- (7) An application under this section may be made at any time within 12 months from the date on which the relevant obligation under the undertaking was required to be met.

Section 85A: inserted, on 14 October 2008 (applying only to undertakings under section 69A that are accepted in relation to clearances given or authorisations granted on notices under section 66 or 67 that are registered after that date), by section 14(1) of the Commerce Amendment Act 2008 (2008 No 70).

**85B Court may order divestiture of assets or shares in respect of contravention of undertaking**

- (1) If the court, on the application of the Commission, is satisfied that any person has contravened an undertaking accepted under section 69A and the acquisition to which the undertaking relates has proceeded, the court may, by order, give directions for the disposal by that person of any assets or shares in accordance with the undertaking.
- (2) An application under this section may be made at any time within 12 months from the date on which the relevant obligation under the undertaking was required to be met.

Section 85B: inserted, on 14 October 2008 (applying only to undertakings under section 69A that are accepted in relation to clearances given or authorisations granted on notices under section 66 or 67 that are registered after that date), by section 14(1) of the Commerce Amendment Act 2008 (2008 No 70).

**85C Matters court must not take into account under sections 85A and 85B**

For the purposes of sections 85A and 85B, the court must not take into account any of the following:

- (a) whether it was appropriate for the Commission to accept the undertaking under section 69A:
- (b) whether the undertaking under section 69A is still necessary or desirable:
- (c) whether any of the terms of the undertaking under section 69A are still necessary or desirable:
- (d) the extent to which the contravention of the undertaking under section 69A may have lessened competition in a market.

Section 85C: inserted, on 14 October 2008 (applying only to undertakings under section 69A that are accepted in relation to clearances given or authorisations granted on notices under section 66 or 67 that are registered after that date), by section 14(1) of the Commerce Amendment Act 2008 (2008 No 70).

*Regulated goods or services*

Heading: substituted, on 14 October 2008, by section 15 of the Commerce Amendment Act 2008 (2008 No 70).

**86 Pecuniary penalty for contravening information disclosure requirement**

- (1) The court may, on application by the Commission, order any person to pay a pecuniary penalty to the Crown if the court is satisfied that the person—
  - (a) has contravened any information disclosure requirement (as defined in section 52C); or
  - (b) has attempted to contravene any such requirement; or
  - (c) has aided, abetted, counselled, or procured any other person to contravene any such requirement; or
  - (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene any such requirement; or
  - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of any such requirement; or
  - (f) has conspired with any other person to contravene any such requirement.
- (2) In subsection (1) and section 86B, a reference to **contravening an information disclosure requirement** includes all or any of the following:
  - (a) failing to disclose information required to be disclosed:
  - (b) failing to disclose information in the form or within the time required:
  - (c) disclosing information under an information disclosure requirement that is false or misleading.
- (3) The amount of pecuniary penalty must not, in respect of each act or omission, exceed \$500,000 in the case of an individual, or \$5,000,000 in the case of a body corporate.
- (4) In determining the amount of pecuniary penalty, the court must have regard to all relevant matters, including—
  - (a) the nature and extent of the contravention; and
  - (b) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence); and

- (c) whether the person has previously been found by the court in proceedings under this Part to have engaged in similar conduct.
- (5) A supplier may not be liable to more than 1 pecuniary penalty in respect of the same conduct.
- (6) Proceedings under this section may be commenced at any time within 3 years after the contravention occurred.

Section 86: substituted, on 14 October 2008, by section 15 of the Commerce Amendment Act 2008 (2008 No 70).

**86A Order requiring information disclosure requirement to be complied with**

- (1) The court may, on application by the Commission, order a supplier of regulated goods or services to comply with an information disclosure requirement that applies to the supplier.
- (2) An order under this section must specify the date by which, or period within which, the supplier must comply with the requirement.

Section 86A: inserted, on 14 October 2008, by section 15 of the Commerce Amendment Act 2008 (2008 No 70).

**86B Offences relating to information disclosure regulation**

- (1) A person commits an offence if—
  - (a) the person, knowing that particular goods or services are subject to information disclosure regulation, intentionally contravenes any information disclosure requirement relating to those goods or services; or
  - (b) the person is subject to an order under section 86A and fails to comply with the order by the date, or within the period, specified.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding \$200,000 in the case of an individual, or \$1,000,000 in the case of a body corporate.
- (3) Despite section 14 of the Summary Proceedings Act 1957, proceedings for an offence under subsection (1)(a) may be commenced at any time within 3 years after the contravention occurred.

Section 86B: inserted, on 14 October 2008, by section 15 of the Commerce Amendment Act 2008 (2008 No 70).

**86C Orders where negotiate/arbitrate regulation applies**

- (1) The court may, on the application of a party (**party A**) to negotiation or arbitration in respect of goods or services that are subject to negotiate/arbitrate regulation, make either or both of the following orders:
  - (a) an order requiring another party to the negotiation or arbitration (**party B**) to comply with the relevant section 52P determination in the manner specified by the court;
  - (b) an order requiring party B to pay party A an amount to compensate party A for loss or damage suffered as a result of party B failing to co-operate, or inadequately co-operating with, the negotiation or arbitration.
- (2) Any application for an order under subsection (1)(b) must be made within 1 year after the date on which the failure to co-operate, or inadequate co-operation, occurred.
- (3) In setting an amount under subsection (1)(b), the court must have regard to all relevant factors, including—
  - (a) the nature and extent of the failure to co-operate; and
  - (b) the extent to which the failure was the result of factors outside the control of party B; and
  - (c) whether party B has previously been ordered to pay compensation for a similar failure in proceedings under this section.

Section 86C: inserted, on 14 October 2008, by section 15 of the Commerce Amendment Act 2008 (2008 No 70).

**87 Pecuniary penalty for contravening price-quality requirements**

- (1) The court may, on application by the Commission, order a person to pay a pecuniary penalty to the Crown if the court is satisfied that the person—
  - (a) has contravened any price-quality requirement applying to the regulated goods or services; or
  - (b) has attempted to contravene any such requirement; or

- (c) has aided, abetted, counselled, or procured any other person to contravene any such requirement; or
  - (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene any such requirement; or
  - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of any such requirement; or
  - (f) has conspired with any other person to contravene any such requirement.
- (2) In subsection (1) and sections 87A to 87C, a reference to **contravening a price-quality requirement**—
- (a) refers to a requirement imposed by a determination made under section 52P in relation to goods or services that are subject to default/customised price-quality regulation or to individual price-quality regulation imposed under Part 4; and
  - (b) means either or both of the following:
    - (i) failing to comply with the requirements for prices, whether by charging a price for the goods or services that is higher than the maximum price permitted, or by receiving more revenue than is permitted, or in any other way:
    - (ii) refusing or failing to comply with any quality standards required under the price-quality regulation.
- (3) The amount of pecuniary penalty must not, in respect of each act or omission, exceed \$500,000 in the case of an individual, or \$5,000,000 in the case of a body corporate.
- (4) In setting the amount of pecuniary penalty, the court must take into account all of the following matters:
- (a) the nature and extent of the contravention:
  - (b) the nature and extent of any loss or damage suffered by any person as a result of the contravention:
  - (c) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence):

- (d) whether or not the person has previously been found by the court in proceedings under this Part to have engaged in similar conduct.
- (5) A supplier may not be liable to more than 1 pecuniary penalty in respect of the same conduct.
- (6) Proceedings under this section may be commenced at any time within 3 years after the contravention occurred.

Section 87: substituted, on 14 October 2008, by section 15 of the Commerce Amendment Act 2008 (2008 No 70).

**87A Compensation for contravention of price-quality requirement**

- (1) If the court orders a person to pay a pecuniary penalty under section 87 in respect of the contravention of a price-quality requirement, the court may, in addition, order the person to pay compensation to any person who has suffered, or is likely to suffer, loss or damage as a result of the contravention (an **aggrieved person**).
- (2) An application for orders under this section may be made by the Commission or any aggrieved person.
- (3) The application must be made within 1 year of the date of the pecuniary penalty order.
- (4) The court may make an order under this section whether or not any aggrieved person is party to the proceedings.
- (5) In proceedings under this section, the court may make such orders as to cost as it thinks fit.

Section 87A: inserted, on 14 October 2008, by section 15 of the Commerce Amendment Act 2008 (2008 No 70).

**87B Offence relating to price-quality regulation**

- (1) A person commits an offence if—
  - (a) the person, knowing that particular goods or services are subject to price-quality regulation, intentionally contravenes a price-quality requirement in respect of the goods or services; or
  - (b) the person is subject to an order under section 87C(1)(b) and fails to comply with the order.

- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding \$200,000 in the case of an individual, or \$1,000,000 in the case of a body corporate.
- (3) Despite section 14 of the Summary Proceedings Act 1957, proceedings for an offence under subsection (1)(a) may be commenced at any time within 3 years after the contravention occurred.

Section 87B: inserted, on 14 October 2008, by section 15 of the Commerce Amendment Act 2008 (2008 No 70).

**87C Injunction and other orders relating to price-quality regulation**

- (1) If the court is satisfied that goods or services that are subject to price-quality regulation are being supplied, or are likely to be supplied, in contravention of any price-quality requirement applying with respect to those goods or services, the court may do either or both of the following:
  - (a) grant an injunction restraining any supplier of those goods or services from supplying them in contravention of the price-quality requirement:
  - (b) requiring the supplier to supply the goods or services in accordance with the price-quality requirement applying to them.
- (2) An application for an order under this section may be made by any person.

Section 87C: inserted, on 14 October 2008, by section 15 of the Commerce Amendment Act 2008 (2008 No 70).

*Injunctions generally*

**88 General provisions relating to granting of injunctions**

- (1) The court may at any time rescind or vary an injunction granted under this Part.
- (2) Where an application is made to the court under this Part for the grant of an injunction restraining a person from engaging in conduct of a particular kind the court may,—
  - (a) if it is satisfied that the person has engaged in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or



- (b) if in the opinion of the court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,—  
whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind.
- (3) Where an application is made to the court under this Part for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the court may,—
  - (a) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or
  - (b) if in the opinion of the court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,—  
whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (3A) In determining whether to grant an interim injunction under this section, the court must give any weight that the court considers appropriate to the interests of consumers or, as the case may be, acquirers.
- (4) In any proceeding under this section, the Commission, upon the order of the court, may obtain discovery and administer interrogatories.

Compare: Trade Practices Act 1974 s 80(3), (4), (5) (Aust)

Section 88(3A): substituted, on 26 May 2001, by section 22 of the Commerce Amendment Act 2001 (2001 No 32).

#### **88A When undertaking as to damages not required by Commission**

- (1) If the Commission applies to the court for the grant of an interim injunction under this Part, the court must not, as a condition of granting an interim injunction, require the Commission to give an undertaking as to damages.
- (2) However, in determining the Commission's application for the grant of an interim injunction, the court must not take into ac-

count that the Commission is not required to give an undertaking as to damages.

Section 88A: inserted, on 26 May 2001, by section 23 of the Commerce Amendment Act 2001 (2001 No 32).

## **89 Other orders**

- (1) Where, in any proceedings under this Part, the court finds that a person who is a party to the proceedings has suffered, or is likely to suffer, loss or damage by conduct of another person that was engaged in in contravention of any of the provisions of Part 2, the court may, whether or not it grants an injunction or makes any other order under this Part, make such order or orders as it thinks appropriate against the person who engaged in the conduct, or any other person who in relation to the contravention did any act referred to in section 81(b) to (f).
- (2) Where a contract is entered into in contravention of this Act, or as the case may be, a contract contains a provision which if given effect to would contravene this Act, the court may, in any proceedings under this Part, or on application made for the purpose by a party to the contract or any person claiming through or under any party to the contract, make an order—
  - (a) varying the contract, in such manner as it thinks fit, not being a manner inconsistent with the provisions of this Act;
  - (b) cancelling the contract;
  - (c) requiring any person who is a party to the contract to make restitution or pay compensation to any other person who is a party to the contract.
- (3) Where a covenant is given in contravention of this Act, or as the case may be, the enforcement of the terms of a covenant would contravene this Act, the court may, in any proceedings under this Part, or on application made for the purpose by a person who, but for section 28(4) would be bound by or entitled to the benefit of the covenant or any person claiming through or under any such person, make an order—
  - (a) varying the covenant, in such manner as it thinks fit, not being a manner inconsistent with the provisions of this Act;

- (b) requiring any person who, but for section 28(4) would be bound by or entitled to the benefit of the covenant to make restitution or pay compensation to any other person who, but for section 28(4) would be bound by or entitled to the benefit of the covenant.
- (4) Nothing in subsection (2) or subsection (3) shall prevent any proceedings being instituted or commenced under this Part.
- (5) Nothing in the Illegal Contracts Act 1970 applies to any contract entered into in contravention of this Act or to any contract which contains a provision the giving effect to of which would constitute a contravention of this Act.
- (6) Notwithstanding any enactment or rule of law, where a contract is entered into in contravention of this Act by reason that the contract contains a particular provision, or the contract contains a provision which if given effect to would contravene this Act, the enforceability of any other provision of the contract shall not be affected by the existence of that provision.
- (7) In this section, a reference to a contravention of this Act includes a reference to contravening the requirements of any type of regulation under Part 4.

Compare: Trade Practices Act 1974 s 87(1)(a) (Aust)

Section 89(7): added, on 14 October 2008, by section 16 of the Commerce Amendment Act 2008 (2008 No 70).

## **90 Conduct by servants or agents**

- (1) Where, in proceedings under this Part in respect of any conduct engaged in by a body corporate, being conduct in relation to which any of the provisions of this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, acting within the scope of his actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate—
  - (a) by a director, servant, or agent of the body corporate, acting within the scope of his actual or apparent authority; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant, or agent of the body corporate, given within the

- scope of the actual or apparent authority of the director, servant or agent—  
shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.
- (3) Where, in a proceeding under this Part in respect of any conduct engaged in by a person other than a body corporate, being conduct in relation to which a provision of this Act applies, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, acting within the scope of his actual or apparent authority, had that state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate—  
(a) by a servant or agent of the person acting within the scope of his actual or apparent authority; or  
(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, given within the scope of the actual or apparent authority of the servant or agent—  
shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.
- (5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that intention, opinion, belief or purpose.
- Compare: Trade Practices Act 1974 s 84 (Aust)

*Appeals from determinations of Commission*

**91 Appeals in relation to determinations by Commission**

- (1) There is a right of appeal to the High Court under this subsection against any determination of the Commission under this Act, other than the following:
- (a) a determination, or any part of a determination, made under section 52P (a **section 52P determination**) that sets out—

- (i) how information disclosure regulation or negotiate/arbitrate regulation applies to regulated suppliers; or
  - (ii) the default price-quality path that applies to regulated suppliers:
- (b) an input methodology determination (as defined in section 52Z, and for which a separate appeal right is given under that section).
- (1A) An appeal against a section 52P determination may not include an appeal against all or part of an input methodology, whether on a point of law or any other ground.
- (1B) There is a right of appeal to the High Court on a question of law against any determination of the Commission under this Act (including a determination referred to in subsection (1)).
- (2) Every such appeal shall be made by giving notice of appeal within 20 working days after the date of the determination appealed against or within such further time as the court may allow.

Compare: 1975 No 113 s 42

Section 91(1): substituted, on 14 October 2008, by section 17 of the Commerce Amendment Act 2008 (2008 No 70).

Section 91(1A): inserted, on 14 October 2008, by section 17 of the Commerce Amendment Act 2008 (2008 No 70).

Section 91(1B): inserted, on 14 October 2008, by section 17 of the Commerce Amendment Act 2008 (2008 No 70).

## **92 Persons entitled to appeal**

The following persons may exercise the right of appeal pursuant to section 91—

- (a) in the case of an appeal against a determination of the Commission in relation to an application for an authorisation under section 58, the applicant and any person who participated in any conference held by the Commission under section 62 in relation to the authorisation:
- (b) in the case of an appeal against a determination of the Commission revoking or amending an authorisation pursuant to section 65(1) or revoking an authorisation and substituting a further authorisation pursuant to that

subsection, the person to whom the authorisation was granted:

- (c) in the case of an appeal against a determination of the Commission under section 66 or section 67 in relation to a notice seeking a clearance or an authorisation, as the case may be,—
  - (i) the person who sought the clearance or the authorisation; and
  - (ii) any person whose assets, or the shares in which, are proposed to be acquired pursuant to the clearance or authorisation; and
  - (iii) any person who participated in any conference held by the Commission under section 69B in relation to the clearance or authorisation:
- (d) in the case of an appeal against a determination made under section 52P, any supplier or consumer (as defined in section 52C) of goods or services to which the determination relates:
- (e) *[Repealed]*
- (f) in the case of an appeal against a determination of a Commissioner under section 74A, any person against whom a cease and desist order was made.

Section 92(c): substituted, on 1 January 1991, by section 33 of the Commerce Amendment Act 1990 (1990 No 41).

Section 92(d): substituted, on 14 October 2008, by section 18 of the Commerce Amendment Act 2008 (2008 No 70).

Section 92(e): repealed, on 14 October 2008, by section 18 of the Commerce Amendment Act 2008 (2008 No 70).

Section 92(f): added, on 1 April 2002, by section 15(2) of the Commerce Amendment Act 2001 (2001 No 32).

### **93 Determination of appeals**

In determining an appeal under section 91(1), the court may do any of the following:

- (a) confirm, modify, or reverse the determination or any part of it:
- (b) exercise any of the powers that could have been exercised by the Commission in relation to the matter to which the appeal relates.

Compare: 1975 No 113 s 45(3), (4)

Section 93: amended, on 14 October 2008, by section 19 of the Commerce Amendment Act 2008 (2008 No 70).

**94 Court may refer appeals back for reconsideration**

- (1) Notwithstanding anything in section 93, the court may, in any case, instead of determining any appeal under that section, direct the Commission to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.
- (2) In giving any direction under this section, the court shall—
  - (a) advise the Commission of its reasons for doing so; and
  - (b) give to the Commission such directions as it thinks just concerning the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.
- (3) In reconsidering the matter so referred back, the Commission shall have regard to the court's reasons for giving a direction under subsection (1), and the court's directions under subsection (2).

Compare: 1975 No 113 s 46

**95 Provisions pending determination of appeal**

- (1) Where an appeal is brought under any provision of this Part against any determination of the Commission, the determination to which the appeal relates shall remain in full force pending the determination of the appeal, unless the court orders to the contrary.
- (2) However, the court may not stay the application of a determination made under section 52P in respect of which an appeal is brought under section 91(1) or (1B) .

Compare: 1975 No 113 s 47; 1979 No 140 s 21

Section 95(2): added, on 14 October 2008, by section 20 of the Commerce Amendment Act 2008 (2008 No 70).

**96 Court may order proceedings to be heard in private**

- (1) The court may, in its discretion, order that the hearing or any part of the hearing of any proceedings under this Act shall be held in private.

- (2) The court may make an order prohibiting the publication of any report or description of proceedings or any part of proceedings under this Act (whether heard in public or in private); but no order under this subsection shall prohibit the publication of any determination of the court.

Compare: 1975 No 113 s 45(1), (2)

**97 Appeal to Court of Appeal in certain cases**

- (1) Notwithstanding anything in any enactment, any party to any appeal before the High Court against any determination of the Commission who is dissatisfied with any decision or order of the court may, with the leave of the court or of the Court of Appeal, appeal to the Court of Appeal; and section 66 of the Judicature Act 1908 shall apply to any such appeal.
- (2) In determining whether to grant leave to appeal under this section, the court to which the application for leave is made shall have regard to the following matters:
- (a) whether any question of law or general principle is involved;
  - (b) the importance of the issues to the parties;
  - (c) the amount of money in issue;
  - (d) such other matters as in the particular circumstances the court thinks fit.
- (3) The court granting leave under this section may in its discretion impose such conditions as it thinks fit, whether as to costs or otherwise.
- (4) *[Repealed]*
- (5) An appeal to the Court of Appeal under this section may be made against either of the following only on a point of law:
- (a) a decision or order of the High Court under section 52Z;
  - (b) a decision or order of the High Court on an appeal under section 91(1) or (1B) against a determination of the Commission made under section 52P.

Section 97(1): amended, on 15 August 1991, by section 3(4) of the Judicature Amendment Act 1991 (1991 No 60).

Section 97(4): repealed, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 97(5): added, on 14 October 2008, by section 21 of the Commerce Amendment Act 2008 (2008 No 70).



## **Part 7**

### **Miscellaneous provisions**

#### **98 Commission may require person to supply information or documents or give evidence**

Where the Commission considers it necessary or desirable for the purposes of carrying out its functions and exercising its powers under this Act, the Commission may, by notice in writing served on any person, require that person—

- (a) to furnish to the Commission, by writing signed by that person or, in the case of a body corporate, by a director or competent servant or agent of the body corporate, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or
- (b) to produce to the Commission, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice; or
- (c) to appear before the Commission at a time and place specified in the notice to give evidence, either orally or in writing, and produce any document or class of documents specified in the notice.

Section 98: substituted, on 1 July 1990, by section 34 of the Commerce Amendment Act 1990 (1990 No 41).

#### **98A Power to search**

- (1) The Commission may, from time to time, authorise an employee of the Commission to search under a warrant issued under subsection (2) any place named in the warrant for the purpose of ascertaining whether a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act, not being a contravention of section 99A.
- (2) A District Court Judge, Justice, or Community Magistrate, or a court Registrar (not being a constable) who is satisfied on application made on oath by a person who is authorised under subsection (1) that there are reasonable grounds to believe that it is necessary for the purpose of ascertaining whether or not a person has engaged in or is engaging in conduct that consti-

tutes or may constitute a contravention of this Act, not being a contravention of section 99A, for an employee of the Commission to search any place may, by warrant, authorise that employee to search a place specified in the warrant.

- (3) A person who applies for a warrant shall, having made reasonable inquiries, disclose—
  - (a) details of every previous application for a warrant to search the place that the person knows has been made within the preceding 28 days; and
  - (b) the result of the application.
- (4) In this section, a reference to a contravention of this Act includes a reference to contravening the requirements of any type of regulation under Part 4.

Section 98A: inserted, on 1 July 1990, by section 34 of the Commerce Amendment Act 1990 (1990 No 41).

Section 98A(2): amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).

Section 98A(4): added, on 14 October 2008, by section 22 of the Commerce Amendment Act 2008 (2008 No 70).

#### **98B Powers conferred by warrant**

- (1) A warrant issued under section 98A authorises the person named in it—
  - (a) to enter and search the place specified in the warrant on 1 occasion within 30 days of the date of issue of the warrant at a time that is reasonable in the circumstances;
  - (b) to use such assistance as is reasonable in the circumstances;
  - (c) to use such force for gaining entry and for breaking open any article or thing as is reasonable in the circumstances;
  - (d) to search for and remove documents or any article or thing that the person executing the warrant believes on reasonable grounds may be relevant;
  - (e) where necessary, to take copies of documents, or extracts from documents, that the person executing the warrant believes on reasonable grounds may be relevant;
  - (f) where necessary, to require a person to reproduce, or assist any person executing the warrant to reproduce, in

usable form, information recorded or stored in a document.

- (2) A person assisting the person executing the warrant also has the powers referred to in paragraphs (c), (d), and (e) of subsection (1).
- (3) The warrant shall be executed in accordance with such reasonable conditions as may be specified in the warrant when it is issued.

Section 98B: inserted, on 1 July 1990, by section 34 of the Commerce Amendment Act 1990 (1990 No 41).

#### **98C Warrant to be produced**

A person executing a warrant issued under section 98A—

- (a) must have the warrant with him or her; and
- (b) must produce it on initial entry and, if requested, at any subsequent time; and
- (c) must identify himself or herself to the owner or occupier or person in charge of the place if that person is present; and
- (d) must produce evidence of his or her identity.

Section 98C: inserted, on 1 July 1990, by section 34 of the Commerce Amendment Act 1990 (1990 No 41).

#### **98D Other duties of person who executes a warrant**

- (1) A person who executes a warrant issued under section 98A must, before completing the search, leave in a prominent place at the place searched,—
  - (a) in the case of a search carried out at a time when the owner or occupier was not present, a written notice stating,—
    - (i) the date and time when the warrant was executed; and
    - (ii) the name of the person who executed the warrant; and
  - (b) in the case of a search where a document or article or thing was removed from the place being searched, a schedule of documents or articles or things that were removed during the search.

- (2) If it is not practicable to prepare a schedule before completing the search, or if the owner or occupier of the place being searched consents, the person executing the warrant—
- (a) may, instead of leaving a schedule, leave a notice stating that documents, or articles, or things have been removed during the search and that, within 7 days of the search, a schedule will be delivered, left, or sent stating what documents, articles, or things have been removed; and
  - (b) must, within 7 days of the search,—
    - (i) deliver a schedule to the owner or occupier; or
    - (ii) leave a schedule in a prominent position at the place searched; or
    - (iii) send a schedule by mail to the owner or occupier of the place searched.
- (3) Every schedule must state—
- (a) the documents, articles, and things that have been removed; and
  - (b) the location from where they were removed; and
  - (c) the location where they are being held.

Section 98D: inserted, on 1 July 1990, by section 34 of the Commerce Amendment Act 1990 (1990 No 41).

#### **98E Duty to assist**

The occupier or person in charge of the place that a person authorised pursuant to a warrant issued under section 98A enters for the purpose of searching must provide that person with all reasonable facilities and assistance in executing the warrant.

Section 98E: inserted, on 1 July 1990, by section 34 of the Commerce Amendment Act 1990 (1990 No 41).

#### **98F Power to inspect and take copies of documents, etc**

The Commission, or any person authorised by the Commission for the purpose, may inspect and take copies of any documents or extracts from them obtained pursuant to a warrant issued under section 98A.

Section 98F: inserted, on 1 July 1990, by section 34 of the Commerce Amendment Act 1990 (1990 No 41).

**98G Commission may exercise powers notwithstanding other proceedings**

The Commission may exercise any power under sections 98 to 98F notwithstanding that any proceedings, whether under Part 6 or otherwise, have been instituted in any court.

Section 98G: inserted, on 1 July 1990, by section 34 of the Commerce Amendment Act 1990 (1990 No 41).

**98H Supply of information and documents in relation to section 36A**

- (1) Where the Commission considers it necessary or desirable for the purposes of carrying out its functions and exercising its powers under this Act in relation to section 36A, the Commission may by notice in writing served on any person who is ordinarily resident in Australia or who carries on business in Australia, require that person—
  - (a) to furnish to the Commission, by writing signed by that person or, in the case of a body corporate, by a director or competent servant or agent of the body corporate, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or
  - (b) to produce to the Commission, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice.
- (2) A person who is required to furnish information or a class of information or produce any document or class of documents to the Commission pursuant to this section complies with this section if that person furnishes the information or that class of information or produces the document or that class of documents to the Australian Competition and Consumer Commission in accordance with the Trade Practices Act 1974.

Section 98H: inserted, on 1 July 1990, by section 34 of the Commerce Amendment Act 1990 (1990 No 41).

Section 98H(2): amended, on 2 September 1996, by section 8 of the Commerce Amendment Act 1996 (1996 No 113).

**99 Powers of Commission to take evidence**

- (1) For the purposes of carrying out its functions and exercising its powers under this Act, the Commission may receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not the same would be otherwise admissible in a court of law.
- (2) The Commission may take evidence on oath and for that purpose a member of the Commission or any employee of the Commission duly appointed for the purpose may administer an oath.
- (3) The Commission may require the evidence referred to in section 98(c) to be given on oath, and for that purpose a member of the Commission or any employee of the Commission duly appointed for the purpose may administer an oath.
- (4) The Commission may permit a person appearing as a witness before the Commission to give evidence by tendering and, if the Commission thinks fit, verifying by oath, a written statement.
- (5) Where any person has appeared as a witness before the Commission pursuant to a notice in that behalf, or has given evidence before the Commission, whether pursuant to a notice or not, the Commission may, if it thinks fit, order any sum to be paid to that witness on account of his expenses, not exceeding the amount that would be payable to him if his attendance had been as a witness for the Crown in a criminal case in accordance with the regulations for the time being in force for the payment of witnesses for the Crown in criminal cases.

Compare: 1975 No 113 s 13; 1976 No 67 s 8(8)(d)

Section 99(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 99(3): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 99(3): amended, on 1 July 1990, by section 35 of the Commerce Amendment Act 1990 (1990 No 41).

**99A Commission may receive information and documents on behalf of Australian Competition and Consumer Commission**

- (1) Where the Australian Competition and Consumer Commission requires any person resident or carrying on business in New Zealand to furnish any information or any class of information or produce any document or class of documents to it pursuant to section 155A of the Trade Practices Act 1974, the information or class of information may be furnished or the document or class of documents may be produced to the Commission for transmission to the Australian Competition and Consumer Commission.
- (2) The Commission shall deliver the information or class of information furnished or the document or class of documents produced to it to the Australian Competition and Consumer Commission as soon as practicable.
- (3) Every person who—
  - (a) refuses or fails, without reasonable excuse, to comply with a requirement referred to in subsection (1); or
  - (b) in purported compliance with such a requirement, furnishes information or produces a document knowing it to be false or misleading—commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 in the case of an individual, or \$30,000 in the case of a body corporate.

Section 99A: inserted, on 1 July 1990, by section 36 of the Commerce Amendment Act 1990 (1990 No 41).

Section 99A heading: amended, on 2 September 1996, by section 9 of the Commerce Amendment Act 1996 (1996 No 113).

Section 99A(1): amended, on 2 September 1996, by section 9 of the Commerce Amendment Act 1996 (1996 No 113).

Section 99A(2): amended, on 2 September 1996, by section 9 of the Commerce Amendment Act 1996 (1996 No 113).

**100 Powers of Commission to prohibit disclosure of information, documents, and evidence**

- (1) Subject to subsection (2), the Commission may, in relation to any application for, or any notice seeking, any clearance or authorisation under Part 5, or in the course of carrying out any

other investigation or inquiry under this Act, make an order prohibiting—

- (a) the publication or communication of any information or document or evidence which is furnished or given or tendered to, or obtained by, the Commission in connection with the operations of the Commission:
  - (b) the giving of any evidence involving any such information, document, or evidence.
- (2) Any order made by the Commission under subsection (1) may be expressed to have effect for such period as is specified in the order, but no such order shall have effect,—
- (a) where that order was made in connection with any application for, or any notice seeking, any clearance or authorisation under Part 5, after the expiry of 20 working days from the date on which the Commission makes a final determination in respect of that application or notice, or, where that application or notice is withdrawn before any such determination is made, after the date on which the application or notice is withdrawn:
  - (b) where that order was made in connection with any other investigation or inquiry conducted by the Commission, after the conclusion of that investigation or inquiry.
- (3) On the expiry of any order made under subsection (1), the provisions of the Official Information Act 1982 shall apply in respect of any information, document, or evidence that was the subject of that order.
- (4) Every person who, contrary to any order made by the Commission under subsection (1), publishes or communicates any information or document or evidence commits an offence and is liable, on summary conviction, to a fine not exceeding \$4,000 in the case of a person not being a body corporate, and \$12,000 in the case of a body corporate.

Section 100: substituted, on 1 April 1987, by section 25(1) of the Official Information Amendment Act 1987 (1987 No 8).

#### **100A Commission may state case for opinion of High Court**

- (1) The Commission may at any time state a case for the opinion of the court on any question of law arising in any matter before it.



- (2) The court may order the removal into the Court of Appeal of any case stated for the opinion of the court under this section.
- (3) The court or the Court of Appeal, as the case may be, shall hear and determine the question, and shall remit the case with its opinion to the Commission.

Section 100A: inserted, on 2 September 1996, by section 10 of the Commerce Amendment Act 1996 (1996 No 113).

#### **101 Notices**

- (1) Any notice given by the Commission under or for the purposes of this Act shall be sufficiently given if it is in writing under the seal of the Commission or is signed by the chairperson, or by 1 or more of the members of the Commission, or by any person purporting to act by direction of the Commission, and is served in accordance with section 102 on the person or persons primarily concerned therewith or on any person or organisation deemed by the Commission to represent the person or persons primarily concerned therewith.
- (2) All documents purporting to be signed by or on behalf of the Commission or to be sealed with the seal of the Commission shall, in all courts and in all proceedings under this Act, be deemed to have been so signed or sealed with due authority unless the contrary is proved.

Compare: 1975 No 113 s 120A; 1976 No 67 s 37(1)

Section 101(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **102 Service of notices**

- (1) Any notice or other document required or authorised to be served on or given to any person for the purposes of this Act may be served or given by delivering it to that person, or by leaving it at his usual or last known place of residence or business or at the address specified by him in any notice, application, or other document made or given or tendered to the Commission under this Act, or by posting it by letter addressed to him at that place of residence or business or at that address.
- (2) If any such notice or other document is sent to any person by registered letter, then, unless the contrary is shown, it shall be deemed to have been delivered to him when it would have

been delivered in the ordinary course of post; and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.

- (3) Where for any purpose under this Act a notice or document is required to be served on an association or body of persons the notice or document may be served on the secretary, executive officer, manager, or other officer holding a similar position in the association or body; and for the purposes of this Act, service on the association or body shall, unless otherwise directed by the Commission, be deemed to be service on all persons who are members of the association or body or who are represented on the association or body by those members.

Compare: 1975 No 113 s 121(1)–(3)

### **103 Offences**

- (1) No person shall—
- (a) without reasonable excuse, refuse or fail to comply with a notice under sections 53B(1)(c), 53N, 53ZD, and 98; or
  - (b) in purported compliance with such a notice, furnish information, or produce a document, or give evidence, knowing it to be false or misleading; or
  - (c) resist, obstruct, or delay an employee of the Commission acting pursuant to a warrant issued under section 98A.
- (2) No person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it.
- (3) No person, having been required to appear before the Commission pursuant to section 98(c), shall—
- (a) without reasonable excuse, refuse or fail to appear before the Commission to give evidence; or
  - (b) refuse to take an oath or make an affirmation as a witness; or
  - (c) refuse to answer any question; or
  - (d) refuse to produce to the Commission any book or document that that person is required to produce.
- (4) Any person who contravenes subsection (1) or subsection (2) or subsection (3) commits an offence and is liable on summary

conviction to a fine not exceeding \$10,000 in the case of an individual, or \$30,000 in the case of a body corporate.

- (5) Proceedings for an offence against subsection (4) may be commenced within 6 months after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.

Section 103: substituted, on 1 July 1990, by section 37 of the Commerce Amendment Act 1990 (1990 No 41).

Section 103(1)(a): amended, on 14 October 2008, by section 23 of the Commerce Amendment Act 2008 (2008 No 70).

Section 103(5): added, on 26 May 2001, by section 25 of the Commerce Amendment Act 2001 (2001 No 32).

#### **104 Determinations of Commission**

- (1) Any determination, clearance, authorisation, or decision given by the Commission under or for the purposes of this Act shall be sufficiently given if it is in writing under the seal of the Commission or is signed by 1 or more members of the Commission or by an employee of the Commission authorised for the purpose.
- (2) A copy of a determination, clearance, authorisation or decision of the Commission, certified to be a true copy by an employee of the Commission authorised in that behalf to certify copies of determinations, clearances, authorisations or decisions of the Commission, shall be received in all courts as evidence of the determination, clearance, authorisation or decision.
- (3) A document purporting to be a copy of a determination, clearance, authorisation or decision of the Commission and to be certified to be a true copy in accordance with subsection (2) shall, unless the contrary is established, be deemed to be such a copy and to be so certified.

Compare: 1975 No 113 s 120A; 1976 No 67 s 37(1)

Section 104(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 104(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **105 Restriction on delegation**

- (1) The Commission may not delegate its powers to grant, revoke, or vary an authorisation under this Act.

(2) *[Repealed]*

(3) *[Repealed]*

Section 105: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 105(1): amended, on 14 October 2008, by section 24(1) of the Commerce Amendment Act 2008 (2008 No 70).

Section 105(2): repealed, on 14 October 2008, by section 24(2) of the Commerce Amendment Act 2008 (2008 No 70).

Section 105(3): repealed, on 14 October 2008, by section 24(2) of the Commerce Amendment Act 2008 (2008 No 70).

## **106 Proceedings privileged**

- (1) No proceedings, civil or criminal, shall lie against the Commission for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that the Commission acted without reasonable care or in bad faith.
- (2) No proceedings, civil or criminal, lie against any member of the Commission, or any officer or employee of the Commission, or any member of a committee of the Commission, for anything that person may do or say or fail to do or say in the course of the operations of the Commission, unless it is shown that the person acted in bad faith.
- (3) Nothing in subsections (1) and (2) applies in respect of proceedings for—
  - (a) an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or
  - (b) the offence of conspiring to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or
  - (c) the offence of attempting to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961.
- (3A) Section 59(3) of the Crown Entities Act 2004 (which provides that a statutory entity may bring an action against a member for breach of an individual duty) does not apply, unless it is shown by the Commission that the person acted in bad faith.
- (3B) Sections 122 to 126 of the Crown Entities Act 2004 apply as if the conduct for which a person may be indemnified or insured

under those sections were conduct that is covered by the protection from liability in this section.

- (3C) This section contains an exception to section 121 of the Crown Entities Act 2004.
- (4) A person shall not be excused from complying with any requirement to furnish information, produce documents, or give evidence under this Act, or, on appearing before the Commission, from answering any question or producing any document, on the ground that to do so might tend to incriminate that person.
- (5) A statement made by a person in answer to a question put by or before the Commission shall not in criminal proceedings or in proceedings for pecuniary penalties, be admissible against that person.
- (6) Nothing in subsection (5) applies in respect of—
  - (a) proceedings on a charge of perjury against the maker of the statement; or
  - (b) proceedings on a charge of an offence against section 103.
- (7) No court or other person shall be entitled to require any member of the Commission, or any employee of the Commission or any other person present at any meeting of the Commission, to divulge or communicate any information furnished or obtained, documents produced, obtained or tendered, or evidence given, in connection with the operations of the Commission.
- (8) Nothing in subsection (7) applies in respect of—
  - (a) any proceedings referred to in subsection (3) or subsection (6); or
  - (b) any proceedings to which the Commission is a party.
- (9) Anything said, or any information furnished, or any document produced or tendered, or any evidence given by any person to the Commission, shall be privileged in the same manner as if that statement, information, document, or evidence were made, furnished, produced, or given in proceedings in a court.
- (10) For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any statement, document, determination, clearance, authorisation, or decision made by the Commission in the exercise or intended exercise of any of its func-

tions or powers shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

Compare: 1975 No 113 ss 17(1), (3), (4), 130B; 1976 No 67 ss 9, 23(3); 1983 No 144 s 45

Section 106(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 106(3A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 106(3B): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 106(3C): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 106(4): substituted, on 1 July 1990, by section 39 of the Commerce Amendment Act 1990 (1990 No 41).

Section 106(4): amended, on 14 October 2008, by section 25(1) of the Commerce Amendment Act 2008 (2008 No 70).

Section 106(5): substituted, on 1 July 1990, by section 39 of the Commerce Amendment Act 1990 (1990 No 41).

Section 106(5): amended, on 14 October 2008, by section 25(2) of the Commerce Amendment Act 2008 (2008 No 70).

Section 106(5): amended, on 14 October 2008, by section 25(3) of the Commerce Amendment Act 2008 (2008 No 70).

Section 106(6)(b): amended, on 14 October 2008, by section 25(4) of the Commerce Amendment Act 2008 (2008 No 70).

Section 106(7): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 106(10): substituted, on 1 February 1993, by section 56(1) of the Defamation Act 1992 (1992 No 105).

### **106A Judicial notice**

For the purposes of this Act, judicial notice shall be taken in all courts and for all purposes of—

- (a) the common seal of the Commission:
- (b) the signature of any person holding, or who has held, office as the chairperson, deputy chairperson, or a member of the Commission on a document that appears to be a document made on behalf of the Commission:
- (c) the official seal of the Australian Competition and Consumer Commission:
- (d) the official signature of any person holding, or who has held, office as the chairperson, deputy chairperson, or a

member, of the Australian Competition and Consumer Commission on a document that appears to be a document made on behalf of that Commission.

Section 106A: inserted, on 1 July 1990, by section 40 of the Commerce Amendment Act 1990 (1990 No 41).

Section 106A(b): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 106A(c): amended, on 2 September 1996, by section 12 of the Commerce Amendment Act 1996 (1996 No 113).

Section 106A(d): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 106A(d): amended, on 2 September 1996, by section 12 of the Commerce Amendment Act 1996 (1996 No 113).

## **107 Annual report** *[Repealed]*

Section 107: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **108 Regulations**

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing the procedure to be followed under this Act in respect of applications and notices to, and proceedings of, the Commission:
- (b) prescribing forms of applications, notices, and other documents required for the purposes of this Act, and requiring the use of such forms:
- (c) prescribing fees to be paid for the purposes of this Act:
- (ca) authorising the Commission in its discretion, or on such grounds as may be prescribed, to refund a part of the prescribed fee paid by a person who gives a notice under section 67(1) in any case where the Commission gives a clearance under that section:
- (cb) authorising the Commission to refund a part of a prescribed fee paid by a person in any case where a written undertaking is obtained or accepted from that person:

- (d) providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

Compare: 1975 No 113 s 132

Section 108(ca): inserted, on 1 July 1990, by section 42 of the Commerce Amendment Act 1990 (1990 No 41).

Section 108(cb): substituted, on 14 October 2008, by section 26 of the Commerce Amendment Act 2008 (2008 No 70).

#### **109 Commission may prescribe forms**

For the purposes of this Act the Commission may from time to time prescribe forms of applications, notices, and other documents required for the purposes of this Act.

#### **110 Repeals, revocations, savings, and consequential amendments**

- (1) The enactments specified in Schedule 2 are hereby amended in the manner indicated in that schedule.
- (2) The enactments specified in Schedule 3 are hereby repealed.
- (3) The regulations and orders specified in Schedule 4 are hereby revoked.
- (4) Without limiting any provision of this Act, it is hereby expressly declared that every order, approval, authorisation, notice, decision, consent, or any other act of authority that originated under or was deemed to have originated under any enactment, regulations, or order repealed or revoked by this section (not being a consent granted in respect of a merger or takeover proposal under the Commerce Act 1975) and subsisting or in force at the commencement of this Act, shall cease to have effect on that commencement.
- (5) The repeal of the enactments, and the revocation of the regulations and orders, by this section shall not affect the liability of any person for any offence that was committed before the commencement of this Act, and any proceedings for any such offence may be taken as if this Act had not been passed.
- (6) Unless the context otherwise requires, in any other enactment a reference to the Examiner of Trade Practices and Prices appointed under section 10 of the Trade Practices Act 1958 shall be read as a reference to the Secretary of Trade and Industry.



**111 Transitional provisions in respect of certain contracts, arrangements, or understandings**

- (1) Nothing in sections 27 and 29 and sections 80 to 82 shall have any application before 1 March 1987 to the giving effect to a provision of a contract entered into on or before 11 June 1985.
- (2) Nothing in section 28 and sections 80 to 82 shall have any application before 1 March 1987 to the carrying out or enforcing of the terms of a covenant given before 11 June 1985.
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) Nothing in sections 27 and 29 and sections 80 to 82 shall have any application before 1 March 1987 to the giving effect to a provision of a contract, arrangement, or understanding which immediately before the commencement of this Act—
  - (a) constituted a trade practice in respect of which an approval granted by the Commerce Commission under section 29 of the Commerce Act 1975 was in force (being a trade practice to which section 27(1) of that Act applied); or
  - (b) constituted a trade practice deemed to have been approved, or deemed to have been approved subject to conditions, under section 29 of the Commerce Act 1975 pursuant to subsection (10) of that section (being a trade practice to which section 18A of the Trade Practices Act 1958 applied); or
  - (c) constituted a collective pricing practice to which section 30 of the Commerce Act 1975 applied.
- (6) Nothing in this section limits or affects the application of the provisions of Part 5 and the provisions of Part 6 (except sections 80 to 82).

Section 111(3): repealed, on 1 March 1987, by section 2(3) of the Civil Aviation Amendment Act 1987 (1987 No 12).

Section 111(4): repealed, on 1 March 1987, by section 2(3) of the Civil Aviation Amendment Act 1987 (1987 No 12).

**112 Transitional provisions in respect of goods and services  
subject to price control under Commerce Act 1975**

*[Repealed]*

Section 112: repealed, on 1 July 1990, by section 43(1) of the Commerce Amendment Act 1990 (1990 No 41).

**113 Transitional provisions in respect of goods and services  
subject to price restraint under regulations made under  
Commerce Act 1975**

*[Repealed]*

Section 113: repealed, on 1 July 1990, by section 43(1) of the Commerce Amendment Act 1990 (1990 No 41).

**114 Transitional provisions in respect of milk pricing**

*[Repealed]*

Section 114: repealed, on 1 July 1990, by section 43(1) of the Commerce Amendment Act 1990 (1990 No 41).

**115 Savings in respect of certain provisions of Commerce  
Act 1975**

*[Repealed]*

Section 115: repealed, on 1 March 1987, by section 49(2) of the Fair Trading Act 1986 (1986 No 121).

**116 Winding up of Commerce Commission established under  
Commerce Act 1975**

*[Repealed]*

Section 116: repealed, on 14 October 2008, by section 27 of the Commerce Amendment Act 2008 (2008 No 70).

**117 Members of Commerce Commission established  
under Commerce Act 1975 deemed to be members of  
Commission**

*[Repealed]*

Section 117: repealed, on 14 October 2008, by section 27 of the Commerce Amendment Act 2008 (2008 No 70).

**118 Lay members of High Court appointed pursuant to  
Commerce Act 1975 deemed to be lay members of High  
Court appointed under this Act**

*[Repealed]*

Section 118: repealed, on 14 October 2008, by section 27 of the Commerce Amendment Act 2008 (2008 No 70).

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**Schedule 1**

s 50

**Classes of merger or takeover proposals  
requiring prior clearance or authorisation  
by the Commission**

*[Repealed]*

Schedule 1: repealed, on 1 January 1991, by section 44 of the Commerce Amendment Act 1990 (1990 No 41).

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**Schedule 2**  
**Enactments amended**

s 110(1)

**Air Services Licensing Act 1983 (1983 No 36)***Amendment(s) incorporated in the Act(s).***Milk Act 1967 (1967 No 53) (RS Vol 18, p 451)***Amendment(s) incorporated in the Act(s).***Ministry of Energy Act 1977 (1977 No 33)***Amendment(s) incorporated in the Act(s).***Official Information Act 1982 (1982 No 156)***Amendment(s) incorporated in the Act(s).***Real Estate Agents Act 1976 (1976 No 9)***Amendment(s) incorporated in the Act(s).***Sharebrokers Amendment Act 1981 (1981 No 43) (RS Vol 11, p 344)***Amendment(s) incorporated in the Act(s).***Social Security Act 1964 (1964 No 136) (RS Vol 13, p 403)***Amendment(s) incorporated in the Act(s).***Transport Act 1962 (1962 No 135) (RS Vol 16, p 659)***Amendment(s) incorporated in the Act(s).***Trustee Banks Act 1983 (1983 No 116)***Amendment(s) incorporated in the Act(s).*

**Schedule 3**  
**Enactments repealed**

s 110(2)

**Commerce Act 1975 (1975 No 113) (RS Vol 7, p 1)**

**Commerce Amendment Act 1976 (1976 No 67) (RS Vol 7, p 148)**

**Commerce Amendment Act 1979 (1979 No 42) (RS Vol 7, p 155)**

**Commerce Amendment Act (No 2) 1979 (1979 No 140) (RS  
Vol 7, p 155)**

**Commerce Amendment Act 1980 (1980 No 105) (RS Vol 7,  
p 159)**

**Commerce Amendment Act 1983 (1983 No 144)**

**Commerce Amendment Act 1985 (1985 No 7)**

**Commerce Amendment Act (No 2) 1985 (1985 No 67)**

**Milk Amendment Act 1980 (1980 No 60)**

*Amendment(s) incorporated in the Act(s).*

**Ministry of Agriculture and Fisheries Amendment Act 1976  
(1976 No 102)**

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**Schedule 4**

s 110(3)

**Orders and notices revoked****Commerce Act Commencement Order 1975 (SR 1975/247)****Commerce Regulations 1984 (SR 1984/68)****Natural Gas (Price Restraint) Regulations 1981 (SR 1981/335)****Positive List of Controlled Goods and Services 1981 (SR 1981/37)****Positive List of Controlled Goods and Services 1981,  
Amendment No 1 (SR 1981/156)****Positive List of Controlled Goods and Services 1981,  
Amendment No 2 (SR 1981/166)****Positive List of Controlled Goods and Services 1981,  
Amendment No 3 (SR 1981/173)****Positive List of Controlled Goods and Services 1981,  
Amendment No 4 (SR 1981/348)****Positive List of Controlled Goods and Services 1981,  
Amendment No 5 (SR 1982/42)****Positive List of Controlled Goods and Services 1981,  
Amendment No 6 (SR 1982/121)****Positive List of Controlled Goods and Services 1981,  
Amendment No 7 (SR 1983/122)****Positive List of Controlled Goods and Services 1981,  
Amendment No 8 (SR 1984/29)****Positive List of Controlled Goods and Services 1981,  
Amendment No 9 (SR 1984/327)**

**Positive List of Controlled Goods and Services 1981,  
Amendment No 10 (SR 1985/56)**

**Positive List of Controlled Goods and Services 1981,  
Amendment No 11 (SR 1985/64)**

**Positive List of Controlled Goods and Services 1981,  
Amendment No 12 (SR 1985/165)**

**Positive List of Controlled Goods and Services 1981,  
Amendment No 13 (SR 1985/191)**

**Positive List of Controlled Goods and Services 1981,  
Amendment No 14 (SR 1985/218)**

**Positive List of Controlled Goods and Services 1981,  
Amendment No 15 (SR 1985/303)**

**Positive List of Controlled Goods and Services 1981,  
Amendment No 16 (SR 1986/30)**

**Positive List of Controlled Goods and Services 1981,  
Amendment No 17 (SR 1986/56)**

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**Schedule 5**

s 53ZF

**Material incorporated by reference**

Schedule 5: added, on 14 October 2008, by section 28 of the Commerce Amendment Act 2008 (2008 No 70).

**1 Definitions**

In this schedule, unless the context otherwise requires,—

**material** means written material that is set out in a document other than a Part 4 determination

**Part 4 determination** means either of the following:

- (a) a determination made under section 52P;
- (b) an input methodology published under section 52W.

**2 Material incorporated by reference into Part 4 determinations**

- (1) The Commission may incorporate by reference any material into a Part 4 determination if—
  - (a) the material deals with technical matters; and
  - (b) it is impractical to include it in, or publish it as part of, the determination.
- (2) Material may be incorporated by reference into a Part 4 determination—
  - (a) in whole or in part; and
  - (b) with any modifications, additions, or variations specified in the Part 4 determination.
- (3) Material incorporated by reference—
  - (a) is the material as it exists at the time the Part 4 determination is published; and
  - (b) has legal effect as part of the Part 4 determination for all purposes, except as provided in clauses 8 and 9.

**3 Proof of material incorporated by reference**

- (1) A copy of any material incorporated by reference in a Part 4 determination must be—
  - (a) certified by the chairperson as a correct copy of the material; and
  - (b) retained by the chairperson.



- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation of the material into the Part 4 determination.

#### **4 Access to material incorporated by reference**

- (1) The Commission—
  - (a) must make copies of all material incorporated by reference in a Part 4 determination available for inspection during normal working hours at the head office of the Commission; and
  - (b) must make copies of the material available for purchase at a reasonable price from the head office of the Commission; and
  - (c) may make copies of the material available in any other way that the chairperson considers appropriate in the circumstances (such as on an Internet site); and
  - (d) must give notice in the *Gazette* of how the material is available for inspection and purchase.
- (2) Subclause (1) applies to material when it is first incorporated into a Part 4 determination, and to any subsequent amendment or replacement of the material that is incorporated into the determination.
- (3) A failure to comply with this clause does not invalidate a Part 4 determination.

#### **5 Effect of amendments to, or replacements of, material incorporated by reference**

An amendment to, or replacement of, material incorporated by reference in a Part 4 determination has legal effect as part of the determination only if—

- (a) the amendment or replacement material is made by the person or organisation that made the original material; and
- (b) the amendment or replacement material is of the same general character as the original material; and
- (c) either—

- (i) a subsequent Part 4 determination states that the particular amendment or replacement material has legal effect as part of the determination; or
- (ii) the chairperson, by notice in the *Gazette*, adopts the amendment or replacement material as having legal effect as part of the determination.

**6 Effect of expiry of material incorporated by reference**

Material incorporated by reference in a Part 4 determination that expires, is revoked, or ceases to have effect, ceases to have legal effect as part of the Part 4 determination only if—

- (a) a subsequent Part 4 determination states that the material ceases to have that legal effect; or
- (b) the chairperson, by notice in the *Gazette*, states that the material ceases to have that legal effect.

**7 Consultation before material incorporated by reference**

(1) This clause applies if—

- (a) the Commission proposes to incorporate material by reference into any Part 4 determination; or
- (b) the Commission proposes to make a Part 4 determination adopting amended or replacement material; or
- (c) the chairperson proposes to publish a notice in the *Gazette* adopting amended or replacement material.

(2) If any of the things referred to in subclause (1) are proposed, the Commission—

- (a) must make copies of the material (which in this subclause includes any amended or replacement material) proposed to be incorporated by reference available for inspection during normal working hours at the head office of the Commission; and
- (b) must make copies of the material available for purchase at a reasonable price from the head office of the Commission; and
- (c) may make copies of the material available in any other way that the chairperson considers appropriate in the circumstances (such as on an Internet site); and

- (d) must give notice in the *Gazette* of how copies of the material may be inspected and purchased, and how people may make comments on the proposal; and
  - (e) must allow a reasonable opportunity for people to comment on the proposal; and
  - (f) must consider any comments made within the time allowed.
- (3) A failure to comply with this clause does not invalidate a Part 4 determination.

**8 Acts and Regulations Publication Act 1989 not applicable**  
The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in a Part 4 determination, or to any amendment to, or replacement of, the material.

**9 Regulations (Disallowance) Act 1989 not applicable**  
The Regulations (Disallowance) Act 1989 does not apply to material incorporated by reference in a Part 4 determination, or to any amendment to, or replacement of, the material.

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s 55A(2)(c), (4)

**Schedule 6**  
**Exemptions from Part 4 in respect of**  
**specific pipelines**

Schedule 6: added, on 14 October 2008, by section 28 of the Commerce Amendment Act 2008 (2008 No 70).

| <b>Pipeline owner</b>  | <b>Pipeline</b>   |
|--|---|
| Todd Taranaki Limited  | McKee Production Station—Tikorangi gas pipelines  |
| Swift Energy New Zealand Limited                                   | Waihapa—New Plymouth gas pipeline   |
| Methanex New Zealand Limited                                       | <ul style="list-style-type: none"> <li>• Bertrand Road—Waitara Valley Plant gas pipeline (via Faull Road Mixing Station)</li> <li>• Tikorangi—Faull Road Mixing Station gas pipeline</li> <li>• Faull Road Mixing Station—Motunui Plant main process gas pipeline</li> <li>• Faull Road Mixing Station—Waitara Valley Plant minor gas pipeline</li> </ul> |
| Energy Infrastructure Limited and Petroleum Infrastructure Limited | The 032 pipeline running from the T-junction on the Maui Pipeline at Ngatimaru Road to the Pohokura Production Station and the Methanex Motunui Methanol Plant  |
| Vector Limited   | Kapuni—Faull Road Mixing Station low temperature separator gas pipeline   |
| Nova Gas Limited   | All gas pipelines   |
| Origin Energy Resources NZ (Rimu) Ltd                              | Rimu Production Station—Mokoia Mixing station gas pipeline  |
| TAG Oil (NZ) Limited   | Sidewinder Production Station—Vector 300 Line at Durham Road Upper  |

Schedule 6: amended, on 15 September 2011, by clause 3 of the Commerce (Part 4 Regulation—Gas Pipeline Services) Order 2011 (SR 2011/274).

## Commerce Amendment Act 1990

Public Act    1990 No 41  
Date of assent    29 June 1990  
Commencement    see section 1

### **1    Short Title and commencement**

- (1) This Act may be cited as the Commerce Amendment Act 1990 and shall be read together with and deemed part of the Commerce Act 1986 (hereinafter referred to as “the principal Act”).
- (2) Except as provided in subsection (3), this Act shall come into force on 1 July 1990.
- (3) Sections 2(1), (3), (4), (5), and (6), 17, 18, 23, 25, 26 (except subsection (1)(b)), 27, 29, 30, 31, 32, 33, 44, 46, 47, and 48 shall come into force on 1 January 1991.

### **48    Transitional provisions in relation to mergers and takeovers**

- (1) Notwithstanding the repeals and amendments effected by this Act,—
  - (a) the provisions of the principal Act that were in force immediately before 1 January 1991 shall apply in relation to every notice given under section 66 or section 67 of that Act as in force immediately before that date and to every clearance given or authorisation granted in relation to the proposal to which the notice relates as if this Act had not been passed:
  - (b) without limiting paragraph (a), every clearance given and every authorisation granted under section 66 or section 67 of the principal Act as in force immediately before 1 January 1991 or as continued in force by virtue of paragraph (a) is deemed to be a clearance or an authorisation to which section 69 of the principal Act (as inserted by section 23) applies.
- (2) Nothing in section 27 or section 47 of the principal Act (as enacted by section 18) shall apply in relation to the acquisition of assets or shares if—

- 
- (a) the acquisition results from a proposal that was not a merger or takeover proposal under Part 3 of the Commerce Act 1986 (as in force immediately before the commencement of this Act) by reason of section 47(2) of that Act (as so in force); and
  - (b) the acquisition gives effect to a written agreement made before the commencement of this Act whether or not the parties to the acquisition and the agreement are the same persons.

Section 48(2): added, on 1 August 1990, by section 2 of the Commerce Amendment Act (No 2) 1990 (1990 No 84).

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## **Commerce (Clearance Validation) Amendment Act 2001**

Public Act    2001 No 89  
Date of assent    6 November 2001  
Commencement    see section 2

### **1    Title**

- (1) This Act is the Commerce (Clearance Validation) Amendment Act 2001.
- (2) In this Act, the Commerce Act 1986 is called “the principal Act”.

### **2    Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

### **3    Consideration of notices applying for clearance made before 26 May 2001**

- (1) This section applies to a notice under section 66(1) of the principal Act seeking clearance for the acquisition of the assets of a business, or shares if it—
  - (a) was given to the Commission before the commencement of section 11 of the Commerce Amendment Act 2001; and
  - (b) had not been finally disposed of before that commencement.
- (2) The principal Act applies to a notice (other than the notice seeking clearance for the proposed acquisition that was the subject of the proceedings *Foodstuffs (Auckland) Limited v Commerce Commission and Progressive Enterprises Limited* (CA 163/01, 19 September 2001)) to which this section applies as if section 11 of the Commerce Amendment Act 2001 had not been enacted.
- (3) Every action of the Commission before the commencement of this Act must for all purposes be treated as being as valid and effectual as it would have been if this Act had come into

force on the commencement of section 11 of the Commerce Amendment Act 2001.

- (4) This section is for the avoidance of doubt.
-



## Commerce Amendment Act 2004

Public Act    2004 No 23  
Date of assent    14 April 2004  
Commencement    see section 2

### **1    Title**

- (1) This Act is the Commerce Amendment Act 2004.
- (2) In this Act, the Commerce Act 1986 is called “the principal Act”.

### **2    Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

### **3    Associate members**

- (1) *Amendment(s) incorporated in the Act(s).*
  - (2) For the avoidance of doubt, any appointment made before the commencement of this Act under section 11 of the principal Act is valid and effective whether or not it relates to a matter or class of matters under an Act other than the principal Act.
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**Contents**

- 1 General
  - 2 Status of reprints
  - 3 How reprints are prepared
  - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
  - 5 List of amendments incorporated in this reprint (most recent first)
- 

**Notes****1 General**

This is a reprint of the Commerce Act 1986. The reprint incorporates all the amendments to the Act as at 15 September 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

**2 Status of reprints**

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

**3 How reprints are prepared**

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see* <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

**4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989***

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5**     ***List of amendments incorporated in this reprint  
(most recent first)***

Commerce (Part 4 Regulation—Gas Pipeline Services) Order 2011 (SR 2011/274)

Electricity Industry Act 2010 (2010 No 116): sections 146–156

Commerce Amendment Act 2008 (2008 No 70)

Commerce Amendment Act (No 2) 2005 (2005 No 95)

Crown Entities Act 2004 (2004 No 115): section 200

Employment Relations Amendment Act (No 2) 2004 (2004 No 86): section 72

Commerce Amendment Act (No 2) 2004 (2004 No 82)

Commerce Amendment Act 2004 (2004 No 23)

Supreme Court Act 2003 (2003 No 53): section 48(1)

Commerce Amendment Act 2003 (2003 No 32)

Trade Marks Act 2002 (2002 No 49): section 201

Human Rights Amendment Act 2001 (2001 No 96): section 70(1)  
Commerce Amendment Act 2001 (2001 No 32)  
New Zealand Public Health and Disability Act 2000 (2000 No 91): section 107  
District Courts Amendment Act 1998 (1998 No 76): section 7  
Commerce Amendment Act 1996 (1996 No 113)  
Copyright Act 1994 (1994 No 143): section 236(1)  
Commerce Amendment Act 1994 (1994 No 135)  
Layout Designs Act 1994 (1994 No 116): section 42(1)  
Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16):  
section 2  
Defamation Act 1992 (1992 No 105): section 56(1)  
Judicature Amendment Act 1991 (1991 No 60): section 3(4)  
National Provident Fund Restructuring Act 1990 (1990 No 126): section 80  
Port Companies Amendment Act 1990 (1990 No 120): section 11(1)  
Commerce Amendment Act 1990 (1990 No 41)  
Civil Aviation Amendment Act 1987 (1987 No 12): sections 2(3), 43(1)  
Official Information Amendment Act 1987 (1987 No 8): section 25(1)  
Fair Trading Act 1986 (1986 No 121): section 49(2)

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