

COMMERCE AMENDMENT (NO. 2) BILL

EXPLANATORY NOTE

THIS Bill amends the Commerce Act 1975 and repeals the Trading Coupons Act 1931. Provisions related to trading coupons are contained in *clauses 2, 16 (3), and 25* of this Bill.

Clause 1 relates to the Short Title.

Clause 2: Subclause (1) inserts a definition of the term “trading coupon” into the principal Act.

Subclause (2) substitutes a new definition of the term “working day”. The new definition excludes, as working days, Anzac Day and all days in the period commencing with Christmas Day and ending with the 15th day of January.

Subclause (3) effects a consequential repeal.

Clause 3: Under section 3 (2A) of the principal Act the Minister of Trade and Industry is required to consult the Minister of Justice before recommending any barrister or solicitor for appointment as a member of the Commission. This clause requires the Minister of Trade and Industry to consult instead the Attorney-General.

Clause 4 provides that, where an acting Chairman of the Commerce Commission needs to be appointed, the member of the Commission to be appointed to act in that capacity is to be appointed by the members of the Commission instead of by the Minister of Trade and Industry.

Clause 5 provides for the appointment by the Minister of Trade and Industry of associate members of the Commission. Such a member may be appointed only in relation to a particular matter to be specified in the instrument of appointment.

Clause 6: Notwithstanding that the term of office of a member of the Commission has expired or that a member of the Commission has resigned his office, he is deemed, by section 4 (3) (a) of the principal Act, to continue to be a member of the Commission, for the purposes of any inquiry, application, or matter that was wholly heard before the expiration of his term of office or before his resignation took effect, as the case may be. Under the amendment made by this clause it will not be necessary for the inquiry, application, or matter to have been wholly heard. It will be sufficient if the inquiry, application, or matter is one in which the member took part and which was commenced before the expiration of his term or before his resignation from office.

Clause 7: The amendment made by this clause to section 9 (3) (c) of the principal Act will allow the Commerce Commission to make an order prohibiting the publication of the whole or part of any books or documents produced at any meeting of the Commission. The present provision is limited to books or documents produced at any hearing of the Commission.

Clause 8: Under section 14 (1) of the principal Act the Commerce Commission determines the persons who may appear and be represented in any proceedings before the Commission. The amendment made by this clause allows certain applicants and other persons to appear and be represented, as of right, in certain proceedings before the Commission.

Clause 9: Under section 15 (3) of the principal Act the Commerce Commission may order any party to proceedings before it or any person who has furnished information, particulars, or documents to the Commission or to any party to the proceedings to supply some or all of the information, particulars, or documents to the counsel, solicitor, or agent of any party to the proceedings or to any other named person. The amendment made by this clause will allow the Commission to both order the supply of the information, particulars, or documents and supply them itself.

Clause 10 inserts a new section 17B into the principal Act. The new section (which replaces section 17A (5) of the principal Act) provides for the payment of contributions to employer-subsidised superannuation schemes on behalf of the officers, employees, or members of the Commerce Commission. The new section is wider and more flexible than section 17A (5) of the principal Act in that—

- (a) It relates to members of the Commission as well as to its officers and employees; and
- (b) The scheme to which contributions are made does not have to be established with the approval of the Minister of Finance for the purpose of providing superannuation or retiring allowances for officers or employees of the Commission. It will be sufficient if the scheme is approved for the purposes of the new section by the Minister of Finance.

Clause 11 enables an investigating officer to administer an oath of secrecy for the purposes of section 81J (3) (b) (which relates to investigations into merger or takeover proposals).

Clause 12 applies Part II of the principal Act (which deals with trade practices) to every body corporate which is an instrument of the Crown in respect of the Government of New Zealand or which is a Government Department or a permanent head of a Government Department.

Clause 13 enables any person who is directly affected by any act or omission of the Crown, which if done by a person to whom Part II of the principal Act applies would constitute an offence against any provision of Part II of the principal Act, or any organisation representing any person so affected, to apply to the Supreme Court for a declaration that the Crown has acted in contravention of Part II of the principal Act, and, for the purposes of any such application, the Crown shall be deemed to be a person to whom Part II of the principal Act applies.

Clause 14: Section 21 (1) of the principal Act sets out trade practices that are deemed contrary to the public interest. This statutory deeming can be overridden in certain cases if the Commerce Commission is satisfied that in the particular case the particular effects of the practice are not unreasonable. In so satisfying itself the Commission is required, by section 21 (4) (b), to have regard to the total demand and the potential demand for the goods in question. This clause qualifies section 21 (4) (b) by requiring the Commission to have regard to those questions of demand only where it is practicable to do so. The Commission is also empowered by this clause to have regard, under section 21 (4), to any other matter it thinks relevant.

Clause 15 inserts a cross-reference.

Clause 16: Subclause (1) replaces one of the categories of examinable trade practices. The category is designed to cover specifically a situation such as a collective boycott by a group of wholesalers of a manufacturer who proposes to supply some other wholesaler or a retailer.

Subclause (2) amends paragraphs (b) to (d) of section 23 (1) of the principal Act. These paragraphs define certain classes of examinable trade practices. The word “only” is a key word in each of these paragraphs. For example, section 23 (1) (b) makes any agreement or arrangement between wholesalers to sell goods *only* at prices or on terms agreed upon between those wholesalers an examinable trade practice. This clause widens the ambit of each of those paragraphs by omitting, in each case, the word “only”.

Subclause (3) adds, consequent on the repeal of the Trading Coupons Act 1931 by this Bill, a new specific category of examinable trade practice. The new category is any scheme that involves the issue and redemption of a trading coupon in connection with the sale or supply of any goods or services by any person who sells goods or services to any other person (being, in the case of a sale of goods, a person who purchases them for a purpose other than resale).

Subclause (4) extends the ambit of section 23 (5) by aligning language used in it with language used in section 23 (3) (a) (ii).

Clause 17: Under section 25 of the principal Act the Commerce Commission may, after inquiry under Part II of the principal Act, recommend that any goods should be subject to price control under section 82 of the Act. This clause gives the Commission the alternative of recommending price restraint under section 83 of the Act.

Clause 18 substitutes a new section 28 relating to individual resale price maintenance arrangements. The main differences are as follows:

- (a) *Subsection (1)* of the new section in effect redefines the term “individual resale price maintenance arrangement”:
- (b) The term applies to an agreement or arrangement between a wholesaler and a retailer under which the wholesaler indicates to the retailer a resale price of goods supplied to the retailer by or on behalf of the wholesaler or, for imposition by the retailer, conditions of sale affecting the resale price of goods supplied to the retailer by or on behalf of the wholesaler or both;
- (c) The existing definition applies only where the price or the conditions of sale are stipulated as opposed to indicated;
- (d) The subsection no longer refers directly to an agreement between a wholesaler and a retailer by which the retailer agrees to comply with any condition of sale affecting prices:

- (e) *Paragraph (b)* of the new *subsection (1)* is new. The paragraph includes within the definition of the term individual resale price maintenance arrangement certain agreements and arrangements between wholesalers:
- (f) *Subsection (4)* of the new section redefines classes of agreements and arrangements that do not require approval under *subsection (1)*. These comprise agreements and arrangements under which price lists showing suggested prices or margins or conditions of sale are issued and no sanctions are imposed for non-observance of the suggested prices or margins or conditions of sale. Copies of such price lists are no longer required to be supplied to the Examiner:
- (g) *Subsection (8)* is new. It makes it an offence for a wholesaler to suggest resale prices, or conditions of sale affecting resale prices, under an individual resale price maintenance arrangement that is not approved under *subsection (1)* of the new section unless the wholesaler follows the procedure set out in *paragraphs (a) to (c)* of *subsection (4)*.

Clause 19 authorises the Commerce Commission to act of its own motion in relation to any approval that has been granted under section 29 of the principal Act or is deemed to have been so granted.

The Commission may—

- (a) Revoke the approval; or
- (b) Alter or revoke conditions subject to which the approval was granted or is deemed to have been granted; or
- (c) Impose new or additional conditions.

Such powers may be exercised at present only on the application of—

- (a) The Examiner of Commercial Practices; or
- (b) The person on whose application the practice was approved; or
- (c) Any person carrying on the trade practice.

Clause 20: Subclause (1) inserts a cross-reference.

Subclause (2) provides that where the Commission has to determine, under section 41 (2) of the principal Act, whether a trade practice is contrary to the public interest, the Commission is not confined, in its consideration of that question, to—

- (a) The categories of trade practices set out in the Examiner's report; or
- (b) The effects of the practice as seen by the Examiner and set out in his report.

Clause 21 confers a right of appeal in trade practice matters on any person who has appeared or been represented in the proceedings to which the appeal relates, being—

- (a) A person who appears or is represented in the proceedings by leave of the Commerce Commission as a person who justly ought to be heard; or
- (b) A person—
 - (i) Who appears or is represented in the proceedings by leave of the Commission as a person whose appearance or representation will assist the Commission in its consideration of the subject-matter of the proceedings; and
 - (ii) Who is given leave, pursuant to section 15 (2) of the principal Act, to adduce evidence and cross-examine witnesses in the proceedings.

Clause 22 substitutes a new section 47 in the principal Act. The new section provides that where an appeal is brought under any provision of Part II (which relates to trade practices) the decision or order to which the appeal relates shall, unless the Court otherwise orders, remain in full force pending the determination of the appeal. The existing section has the opposite effect, namely, that the order or decision to which the appeal relates has no effect pending the determination of the appeal.

Clause 23 simplifies the provisions relating to pyramid selling schemes. It remains an offence to promote or operate such a scheme. Provision is no longer made for pyramid selling schemes to be approved. (No such scheme has ever been approved.) Power to exclude any scheme or activities from the scope of the term "pyramid selling scheme" is retained and expanded.

Clause 24 makes it an offence for any person to make any false or misleading statements or to publish or to cause to be published any false or misleading advertisement concerning the profitability or risk or any other material aspect of any business activity that—

- (a) Is represented as one that can be, or can be to a substantial extent, carried on at or from a person's place of residence; or
- (b) Involves the selling of goods other than by a wholesaler or retailer at normal wholesale or retail premises, or the sale of services by a person other than the person who is to supply the services.

Clause 25 inserts a new section 49A in the principal Act. The new section is in similar terms to section 4A of the Trading Coupons Act 1931 (as inserted by section 3 of the Trading Coupons Amendment Act 1969). The section is designed to prevent trading stamp companies from operating.

Clause 26 amends the provision governing the interpretation of provisions of the principal Act relating to mergers and takeovers.

Subclause (1) amends the definition of the term "merger or takeover proposal". The changes in this definition are as follows:

- (a) The definition covers a series of proposals, all of which are referred to as proposals "involving the making of an offer or offers". This requirement that such proposals must involve the making of an offer or offers is deleted.
- (b) The definition, in relation to certain companies and businesses, makes the acquisition of 50 percent or more of the voting power or of the capital or of assets one of the key deciding factors in the application of the definition. This factor is now altered so that the acquisition of more than 50 percent of the voting power or capital or assets will be required in each of these cases. A bare 50 percent will no longer be sufficient.
- (c) The application of the definition is governed, in a number of cases, by the degree to which the net assets of a business are to be acquired or disposed of. The reference to "net" is deleted.

Subclause (2) repeals the definition of the term "offer".

Subclause (3) omits from section 67 (3) (d) of the principal Act (which deals with what constitutes beneficial entitlement to shares) the words "with- in the meaning of the Companies Act 1955" which appear after the word company. This deletion has the effect of applying the wider definition of the term "company" that appears in section 67 (1) of the principal Act.

Subclause (4) and *subclause (5) (a)* make amendments that are related to those made by *subclause (1)*.

Subclause (5) (b) amends the proviso to section 67 (5) of the principal Act which provides that where any assets (including goodwill) or liabilities are shown as having a higher different value in any valuation or assessment made for the purposes of the merger or takeover proposal, the value of those assets or liabilities shall be determined by that different value and not by the value at which those assets or liabilities are shown in the books of the business. The word "higher" is substituted for the word different in both places where it appears. This amendment brings the proviso to section 67 (5) into line with the proviso to section 68 (5).

Subclause (6) adds a new subsection (11) to section 67 of the principal Act. The new subsection provides that, for the purposes of Part III of the principal Act, the voting power at any general meeting of a company shall be determined without reference to any restriction or limitation upon the voting rights of any shares, other than any restriction or limitation which applies to the voting rights of any specified preference shares in that company.

Clause 27 amends section 68 of the principal Act—

- (a) By redefining the time at which notice of a merger or takeover proposal is to be given to the Examiner:
- (b) By making it clear that the Examiner may accept a notice given to him before the prescribed time:
- (c) By allowing the Examiner to return a notice where he is of the opinion that the merger or takeover proposal to which it relates is unlikely to be implemented.

Clause 28: Subclause (1) effects a minor amendment.

Subclauses (2) and (3) authorise the Examiner to embark on a full examination of a merger or takeover proposal, and to report to the Commission accordingly, where he concludes that it is doubtful whether a merger or takeover proposal is or is likely to be contrary to the public interest.

Subclause (4) adds to the grounds on which the Examiner may extend the period of time specified in section 69 (1) of the principal Act.

Subclause (5) makes it clear that section 69 (7) is subject to section 70 (7) (which applies certain of the provisions of section 69).

Clause 29 corrects a cross-reference in section 72 (2) (b) of the principal Act.

Clause 30 corrects an error in section 75 (4) of the principal Act.

Clause 31 alters the period within which the Commerce Commission must complete its inquiry on a merger or takeover proposal. That time is now to run not from the date of the publication by the Examiner of his intention to report to the Commission but from the date of the receipt of the Examiner's report.

Clause 32: Except in certain specified cases, it is at present obligatory to refer to the Commerce Commission every proposed amendment to, and every proposed revocation of, the Positive List. Such a reference to the Commerce Commission is no longer to be obligatory.

Clause 33 removes a limitation on the right to give leave to appeal, against a decision of the Secretary in relation to prices, to a person who represents a substantial number of consumers or users of the goods or services whose prices were fixed or approved by the decision.

Clause 34 substitutes a new section 100 in the principal Act. The section deals with the effect of a decision of the Secretary pending the determination of any pricing appeal. Except to the extent that such a decision reduces prices, every such decision is to remain in full force pending the determination of the appeal. The Commission no longer has power, as an interim measure, to order otherwise. The proviso to subsection (1) is new. It enables the Secretary, with the consent of the Commerce Commission, to deal with subsequent price applications which are made by the appellant before the determination of the appeal.

Clause 35 inserts a new section 108A in the principal Act. The new section, which is related to section 108 enables the Minister, by notice in the *Gazette*, to require any suppliers of services or class or classes of suppliers of services specified in the notice who charge for the performance of the services specified in the notice (being services that are not subject to price control) to keep a statement of the prices charged for the performance of those services prominently displayed in such one or more places in their places of business as the notice specifies.

Clause 36 inserts a new section 121A—

- (a) Requiring any document bearing the seal of the Commission to be received in evidence without further proof; and
- (b) Requiring judicial notice to be taken of the signature of the Chairman of the Commission.

Clause 37 confers on the Commission the function of deciding whether to state a case for the opinion of the Supreme Court on any question of law arising in any matter before the Commission. At present that function is conferred on the Chairman of the Commission.

Clause 38 inserts a new section 130A into the principal Act. The new section requires the Commerce Commission to keep registers in which may be entered or filed any report, notice, application, evidence, submission, or other document or thing given or made to the Commission under the Act. The Commission may open these registers to such persons and to such extent as it thinks fit. The new section is subject to any order concerning confidentiality made under section 9 of the principal Act.

Clause 39 excludes the Tourist Hotel Corporation Act 1974 from the list of Acts not affected by the provisions of the principal Act.

Clause 40 repeals the Trading Coupons Act 1931 and the Trading Coupons Amendment Act 1969.

A new category of examinable trade practice is created by *clause 16 (3)* of this Bill. The new category is any scheme that involves the issue and redemption of a trading coupon in connection with the sale or supply of any goods or services by any person who sells goods or services to any other person (being, in the case of a sale of goods, a person who purchases them for a purpose other than resale).

A new section, in similar terms to section 4A of the Trading Coupons Act 1931 (as inserted by section 3 of the Trading Coupons Amendment Act 1969), is inserted by *clause 25* of this Bill. The section is designed to prevent trading stamp companies from operating.

Hon. Mr Adams-Schneider

COMMERCE AMENDMENT (NO. 2)

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A BILL INTITULED

An Act to amend the Commerce Act 1975 and to repeal the Trading Coupons Act 1931

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows: 5

1. Short Title—This Act may be cited as the Commerce Amendment Act (No. 2) 1979, and shall be read together with and deemed part of the Commerce Act 1975* (hereinafter referred to as the principal Act). 10

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “trade association”, the following definition:

“‘Trading coupon’ includes any coupon, stamp, token, cover, package, document, or other thing issued for delivery, either directly or indirectly, to the purchaser of any goods or services which, by itself or with any other trading coupon or trading coupons, or with any other act or thing, and whether or not it has to be produced or surrendered to any person, entitles or purports to entitle the holder thereof to receive in respect of the purchase of such goods or services any discount or any other gift, allowance, concession, or benefit of any kind whatsoever.” 15 20 25

(2) Section 2 (1) of the principal Act is hereby amended by revoking the definition of the term “working day” (as inserted by section 23 (3) of the Commerce Amendment Act 1976), and substituting the following definition: 25

“‘Working day’ means any day of the week other than— 30

“(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 the 25th day of December in any year and ending with the 15th day of January in the following year.” 35

(3) The Commerce Amendment Act 1976 is hereby amended by repealing so much of the Third Schedule as relates to the insertion in section 2 of the principal Act of the definition of the term “working day”. 40

3. Commerce Commission—Section 3 (2A) of the principal Act (as inserted by section 4 of the Commerce Amendment Act 1976) is hereby amended by omitting the words “Minister of Justice”, and substituting the word “Attorney-General”.

5 **4. Acting Chairman**—Section 3A (2) of the principal Act (as inserted by section 5 (1) of the Commerce Amendment Act 1976) is hereby amended by omitting the words
“Minister may by writing appoint an ordinary member or
members of the Commission”, and substituting the words,
10 “members of the Commission appointed under section 3 of
this Act shall, by resolution, appoint one of their number”.

5. Associate members—The principal Act is hereby amended by inserting after section 3A (as inserted by section 5 (1) of the Commerce Amendment Act 1976), the following
15 section:

“3B. (1) The Minister may from time to time appoint any person to be an associate member of the Commission.

“(2) An associate member shall be appointed, only in relation to a matter to be specified in the instrument of
20 his appointment, for a period commencing on a day specified in that instrument and ending with the day on which the Commission completes its duties in relation to that matter.

“(3) A person may be appointed an associate member of the Commission in respect of more than one matter, either
25 at the time of his first appointment or from time to time.

“(4) Subject to subsection (5) of this section, an associate member shall be deemed a member of the Commission for the purposes of the exercise of any function or power, or the performance of any function or duties, of a member
30 of the Commission under this Act and, except where this section or the context otherwise requires, a reference in this Act to a member shall be construed as including a reference to an associate member.

“(5) Any associate member may attend and vote only
35 at a meeting of the Commission relating to the matter specified in the instrument of appointment of that associate member (including a meeting relating to matters incidental to the matter so specified).”

6. Term of office—Section 4 (3) (a) of the principal Act
40 is hereby amended by omitting the words “that was wholly heard”, and substituting the words “in which he took part and which was commenced”.

7. Orders prohibiting publication—Section 9 (3) (c) of the principal Act is amended by omitting the word “hearing”, and substituting the word “meeting”.

8. Parties to proceedings—Section 14 of the principal Act (as substituted by section 8 (1) of the Commerce Amendment Act 1976) is amended by inserting, after subsection (1), the following subsection: 5

“(1A) Notwithstanding anything in subsection (1) of this section, in any proceedings relating to an application made under section 29 or section 92 of this Act, or to an inquiry 10 under section 76 (1) of this Act, the applicant, or, as the case may be, the participants in the merger or takeover proposal, shall be entitled to appear and be represented, without application in that behalf, as a person or persons who justly ought to be heard.” 15

9. Representation of parties—Section 15 (3) of the principal Act (as substituted by section 8 (1) of the Commerce Amendment Act 1976) is hereby amended by omitting the words “any party to the proceedings, or the person who furnished the information, particulars, or documents to 20 supply some or all of the information, particulars, or documents”, and substituting the words “that some or all of the information, particulars, or documents be supplied”.

10. Superannuation or retiring allowances—(1) The principal Act is hereby amended by inserting, after section 17A 25 (as inserted by section 10 (1) of the Commerce Amendment Act 1976), the following section:

“17B. For the purpose of providing a superannuation fund or retiring allowance for officers and employees of the Commission, or for members of the Commission, sums by way of 30 subsidy or contribution shall, in the case of officers and employees of the Commission, and may, in the case of the members of the Commission, from time to time be paid into any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or into any other 35 employer-subsidised scheme approved by the Minister of Finance for the purposes of this section.”

(2) Section 17A of the principal Act (as inserted by section 10 (1) of the Commerce Amendment Act 1976) is hereby consequentially amended by repealing subsection (5).

5 **11. Members and officers to maintain secrecy**—Section 19 (1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

10 “(b) Before he begins to perform any official duty under this Act, take and subscribe to such oath of fidelity and secrecy as may be prescribed, which oath may be administered—

“(i) By any member of the Commission or by any Justice of the Peace or by any barrister or solicitor of the Supreme Court; or

15 “(ii) Where the oath is required for the purposes of section 81J (3) (b) of this Act, by any person who is engaged or employed in connection with the work of the Examiner and who has himself taken and subscribed to an oath in accordance with this section.”

20 **12. Application of this Part to Crown corporations**—The principal Act is hereby amended by inserting, after section 20, the following section:

25 “20A. Every body corporate which is an instrument of the Crown in respect of the Government of New Zealand or which is a Government Department or a permanent head of a Government Department shall be a person to whom this Part of this Act applies and against whom a prosecution may be brought in respect of an offence against any provision of this Part of this Act.”

30 **13. Application of this Part to the Crown generally**—The principal Act is hereby amended by inserting, after section 20A (as inserted by section 12 of this Act), the following section:

35 “20B. Any person who is directly affected by any act or omission of the Crown which, if done by a person to whom this Part of this Act applies, would constitute an offence against any provision of this Part of this Act, or any organisation representing any person so affected, may apply to the Supreme

Court for a declaration that the Crown has acted in contravention of a provision of this Part of this Act, and, for the purposes of any such application, the Crown shall be deemed to be a person to whom this Part of this Act applies.”

14. Trade practices deemed contrary to the public interest—(1) Section 21 (4) (b) of the principal Act is hereby amended— 5

(a) By omitting the words “among other things”, and substituting the words “where in the opinion of the Commission it is practicable to do so”; and 10

(b) By adding the word “; and”.

(2) Section 21 (4) of the principal Act is further amended by adding the following paragraph:

“(c) Have regard to any other matter it thinks relevant.”

15. Orders of Commission against certain trade practices— 15
Section 22 (1) of the principal Act is hereby amended by inserting, after the words “section 40 (4)”, the words “or section 40 (4A)”.

16. Trade practices against which Commission may make orders—(1) Section 23 (1) of the principal Act is hereby 20
amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Any agreement or arrangement between any combination of persons engaged in the business of selling goods or services to engage in conduct— 25

“(i) Hindering or preventing the sale or supply of goods or services between any persons engaged in the selling of goods or services; or

“(ii) Limiting or restricting the terms and conditions of sale or supply between any persons engaged in the selling of goods or services.” 30

(2) Section 23 (1) of the principal Act is hereby further amended by omitting from paragraphs (b) to (d) the word “only” wherever it appears.

(3) Section 23 (1) of the principal Act is hereby further 35
amended by inserting, after paragraph (f), the following paragraph:

“(fa) Any scheme that involves the issue and redemption of a trading coupon in connection with the sale or supply of any goods or services by any person 40

who sells goods or services to any other person
(being, in the case of a sale of goods, a person who
purchases them for a purpose other than resale):”.

5 (4) Section 23 (5) of the principal Act is hereby amended
by omitting the words “credit, discount”, and substituting
the words “discount, credit, or delivery, or upon product or
service guarantee terms or upon other terms”.

17. Recommendations as to price restraint—Section 25 of
the principal Act is hereby amended—

10 (a) By inserting, after the words “under section 82 of this
Act”, the words, “or subject to price restraint under
section 83 of this Act,”:

(b) By inserting, after the words, “imposition of price
control”, the words, “or price restraint”.

15 **18. Individual resale price maintenance arrangements**—

(1) The principal Act is hereby amended by repealing section
28 (as substituted by section 16 (1) of the Commerce Amend-
ment Act 1976), and substituting the following section:

“28. (1) Subject to subsections (4) and (5) of this section,

20 no person shall be a party to any agreement or arrangement—

“(a) Between a wholesaler and a retailer, being an agree-
ment or arrangement by or pursuant to which the
wholesaler indicates, directly or indirectly, to the
retailer—

25 “(i) A resale price of goods supplied to the
retailer by or on behalf of the wholesaler; or

“(ii) For imposition by the retailer, conditions
of sale affecting the resale price of goods supplied
to the retailer by or on behalf of the wholesaler; or

30 “(iii) Both; or

“(b) Between 2 or more wholesalers, being an agreement
or arrangement by or pursuant to which one of
those wholesalers, being a wholesaler by whom or
on whose behalf goods are supplied to another of
those wholesalers, indicates, directly or indirectly,
to the wholesaler to whom the goods are supplied—

35 “(i) A resale price of the goods supplied; or

“(ii) For imposition by that wholesaler, condi-
tions of sale affecting the resale price of the goods
supplied; or

40 “(iii) Both;—

unless the particular agreement or arrangement has been approved by the Commission pursuant to section 29 of this Act, and any conditions imposed by the Commission under that section are being observed.

“(2) Subsection (1) of this section shall apply in respect of any agreement or arrangement of the type described in that subsection to the extent that the agreement or arrangement is carried on in New Zealand, notwithstanding that one or more of the parties to the agreement or arrangement does not carry on business in New Zealand.

“(3) Subsection (1) of this section shall apply in respect of any agreement or arrangement of the type described in that subsection whether or not the agreement or arrangement is intended to be enforceable by legal proceedings.

“(4) Subsection (1) of this section shall not apply in respect of any agreement or arrangement of the type described in that subsection and the approval of the Commission to the agreement or arrangement shall not be required, if—

“(a) The agreement or arrangement is one under which—

“(i) Any resale price that is indicated is a suggested price only and any conditions of sale that are indicated and affect the resale price are suggested conditions of sale only; and

“(ii) The retailer or wholesaler or prospective retailer or wholesaler to whom the goods are supplied or are to be supplied incurs or would incur, as the case may be, no sanctions of any kind if he charges or proposes to charge a resale price other than a price indicated by or pursuant to the agreement or arrangement or does not impose or does not propose to impose the suggested conditions of sale or any one or more of them; and

“(b) Every price list which is issued by a wholesaler and which shows any indicated resale price or any indicated conditions of sale affecting the resale price,—

“(i) Identifies, as the issuer of the price list and by his full name, the wholesaler by whom the price list is issued; and

“(ii) Contains, in a prominent position and in prominent and legible characters a statement to the following effect:

5 ‘Any resale price or margin or conditions of sale set out or indicated herein are suggestions only. Other prices may be charged, and other conditions of sale may be imposed, in relation to the goods to which the price or margin or conditions of sale relate, without the risk of the issuer of this notice or the supplier of the goods applying sanctions of any kind.’

10 “(5) Nothing in this section shall apply to any trade practice expressly authorised by any other Act.

15 “(6) Notwithstanding that any agreement or arrangement to which subsection (1) of this section applies complies with subsection (4) of this section, the Commission may, at any time after conducting an inquiry or dispensing with an inquiry following a report made by the Examiner after investigation by him in accordance with sections 38 to 40 of this Act, make an order with respect to that agreement or arrangement if it finds it is or is likely to be contrary to the public interest in terms of section 21 of this Act. All provisions of section 22 and of sections 24, 25, 26, and 41 of this Act shall apply with all necessary modifications as if the agreement or arrangement were described in section 23 (1) of this Act.

20 “(7) Every person commits an offence against this Act who acts in contravention of subsection (1) of this section.

25 “(8) Every wholesaler commits an offence against this Act who, for the purposes of an agreement or arrangement which is of the type described in subsection (1) of this section but which is not approved under that subsection, suggests resale prices, or conditions of sale affecting resale prices, to a retailer or wholesaler or prospective retailer or wholesaler and does so other than in accordance with the procedure set out in paragraphs (a) to (c) of subsection (4) of this section.”

30 (2) Section 16 (1) of the Commerce Amendment Act 1976 is hereby consequentially repealed.

35 **19. Approval of collective pricing agreements and individual resale price maintenance agreements**—Section 29 of the principal Act is hereby amended by repealing subsection (8), and substituting the following subsection:

40 “(8) Where approval of a trade practice has been granted under this section, or is deemed to have been so granted, the Commission, on its own motion or on the application of the Examiner or of the person on whose application the practice

was approved or of any person carrying on that trade practice, may at any time—

- “(a) Revoke the approval; or
- “(b) Alter or revoke any conditions subject to which the approval was granted or is deemed to have been granted; or 5
- “(c) Impose new or additional conditions.”

20. Inquiry by Commission—(1) Section 41 (1) of the principal Act is hereby amended by inserting, after the words “subsection (4)”, the words “or subsection (4A)”. 10

(2) Section 41 of the principal Act is hereby further amended by adding the following subsection:

“(3) In determining, under subsection (2) of this section, whether the trade practice to which the Examiner’s report relates is contrary to the public interest, the Commission 15 shall not be confined to a consideration of—

- “(a) The categories of trade practices set out in that report; or
- “(b) The effects of the practice as seen by the Examiner and set out in that report.” 20

21. Persons entitled to appeal—Section 44 of the principal Act is amended by inserting, before paragraph (a), the following paragraph:

- “(aa) Any person who has appeared or been represented in the proceedings to which the appeal relates, 25 being—
 - “(i) A person who appears or is represented in the proceedings by leave of the Commission under section 14 (1) (a) of this Act; or
 - “(ii) A person who appears or is represented in 30 the proceedings by leave of the Commission under section 14 (1) (b) of this Act and who is given leave, pursuant to section 15 (2) of the Act, to adduce evidence and cross-examine witnesses in the proceedings:” 35

22. Provisions pending determination of appeal—The principal Act is hereby amended by repealing section 47, and substituting the following section:

“47. Where an appeal is brought under any provision of this Part of this Act against any decision or order of the Commission, the decision or order to which the appeal relates shall, unless the Court otherwise orders, remain in full force pending the determination of the appeal.”

23. Pyramid selling schemes—(1) The principal Act is hereby amended by inserting, after section 48, the following section:

“48A. (1) Every person commits an offence against this Act who acts as the promoter of, or operates, a pyramid selling scheme.

“(2) For the purposes of this section, the term ‘pyramid selling scheme’, subject to subsection (3) of this section, includes an arrangement for the supply of goods or services pursuant to an arrangement of the type commonly known as a chain letter arrangement.

“(3) For the purposes of this section the term ‘pyramid selling scheme’ does not include any scheme or activities (including all or any of the activities of a particular person or a particular class of person) for the time being declared by the Minister, by notice in the *Gazette*, to be excluded from that term.”

(2) Sections 31 to 37 of the principal Act and section 18 of the Commerce Amendment Act 1976 are hereby repealed.

(3) The principal Act is hereby consequentially amended in the manner set out in the Schedule to this Act.

24. Misrepresentations regarding home-operated businesses—The principal Act is hereby amended by inserting, after section 48A (as inserted by section 23 of this Act), the following section:

“48B. Every person commits an offence against this Act who makes any false or misleading statement or publishes or causes to be published any false or misleading advertisement concerning the profitability or risk or any other material aspect of any business activity that—

“(a) Is represented as one that can be, or can be to a substantial extent, carried on at or from a person’s place of residence; or

“(b) Involves the selling of goods other than by a wholesaler or retailer at normal wholesale or retail premises, or the sale of services by a person other than the person who is to supply the services.”

25. Supply of trading stamps—The principal Act is hereby amended by inserting, after section 49, the following section:

“49A. (1) Every person commits an offence against this Act who supplies or arranges for the supply of any coupon, stamp, token, cover, package, document, or other thing either directly or indirectly to any manufacturer, packer, importer, distributor, or seller of any goods or to any seller of services and undertakes to redeem the coupon, stamp, token, package, document, or other thing, or that it will be redeemed, whether or not it has to be produced or surrendered to any person by giving or delivering to the holder thereof any money, goods, or service. 5 10

“(2) Nothing in subsection (1) of this section applies to any coupon, stamp, token, cover, package, document, or thing issued directly or indirectly in connection with any goods or services by the manufacturer, packer, importer, distributor, or seller of the goods or by the seller of the services, being a coupon, token, cover, package, document, or thing which by itself or with any other act or thing entitles or purports to entitle the holder thereof to receive any money from the issuer, whether or not it has to be produced or surrendered to any person. 15 20

“(3) In this section the term ‘seller’, in relation to any goods, means the person by whom the goods are sold to a person who purchases them for a purpose other than resale.” 25

Cf. 1931, No. 38, ss. 2, 4A; 1969, No. 15, s. 3

26. Interpretation in relation to mergers and takeovers—

(1) The definition of the term “merger or takeover proposal” in section 67 (1) of the principal Act (as substituted by section 22 of the Commerce Amendment Act 1976) is hereby amended: 30

(a) By omitting from paragraphs (a) to (d) the words “involving the making of an offer or offers” wherever they appear:

(b) By omitting from paragraphs (a) to (d) the words “50 percent or more” wherever they appear, and substituting in each case the words “more than 50 percent”: 35

(c) By omitting from paragraph (c), and also from paragraph (d), the word “net” wherever it appears. 40

(2) Section 67 (1) of the principal Act (as substituted by section 22 of the Commerce Amendment Act 1976) is hereby amended by repealing the definition of the term “offer”.

(3) Section 67 (3) (d) of the principal Act is hereby amended by omitting the words “within the meaning of the Companies Act 1955”.

(4) Section 67 (4) of the principal Act is hereby amended:

5 (a) By omitting the words “50 percent or more” wherever they appear, and substituting in each case the words “more than 50 percent”:

10 (b) By omitting from paragraphs (a) to (c) the words “offer or offers involved in the proposal relate” wherever they appear, and substituting in each case the words “proposal relates”:

(c) By omitting from paragraphs (c) and (d) the word “net” wherever it appears.

15 (5) Section 67 (5) of the principal Act is hereby amended—

(a) By omitting the word “net”:

(b) By omitting from the proviso the word “different” in both places where it appears, and substituting in each case the word “higher”.

20 (6) Section 67 of the principal Act is hereby amended by adding the following subsection:

25 “(11) For the purposes of this Part of this Act, the voting power at any general meeting of a company shall be determined without reference to any restriction or limitation upon the voting rights of any shares in that company, other than any restriction or limitation which applies to the voting rights of any specified preference shares in that company.”

27. Certain mergers and takeovers to be notified—

30 (1) Section 68 of the principal Act (as substituted by section 22 of the Commerce Amendment Act 1976) is hereby amended by repealing subsection (1), and substituting the following subsections:

35 “(1) Written notice of every merger or takeover proposal coming within any of the classes described in the Third Schedule to this Act shall be given to the Examiner by or on behalf of one or more of the participants involved.

“(1A) Notice under subsection (1) of this section shall be given—

40 “(a) Where the merger or takeover proposal involves a scheme for the acquisition of the shares of a company (other than a private company) by the making of an offer or offers to the shareholders

of that company, not later than the day on which the offer or the first of the offers is first communicated to the shareholders; and

“(b) In any other case as soon as practicable after the earlier of the following times: 5

“(i) The time at which the merger or takeover proposal first has the provisional acceptance of the parties to it; or

“(ii) The time at which the merger or takeover proposal first appears to the party notifying the Examiner as likely to be implemented: 10

“Provided that the Examiner may, in his discretion, accept a notice given earlier than the time prescribed by this paragraph.

(2) Section 68 of the principal Act is hereby amended by adding the following subsection: 15

“(11) Notwithstanding anything in subsection (1A) (b) or subsection (8) of this section, where the Examiner is of the opinion that a merger or takeover proposal in respect of which a notice has been given under subsection (1) of this section is unlikely to be implemented he may, in his discretion, return the notice to a person by or on whose behalf it was given.” 20

28. Action on notification of merger or takeover proposal—

(1) Section 69 of the principal Act (as substituted by section 22 of the Commerce Amendment Act 1976) is hereby amended by omitting from subsection (1) the words “in the matter”, and substituting the words “on the matter”. 25

(2) Section 69 of the principal Act (as so substituted is hereby amended by inserting, after subsection (2), the following subsection: 30

“(2A) If, during the period specified in subsection (1) of this section, the Examiner concludes that it is doubtful whether the merger or takeover proposal is or is likely to be contrary to the public interest, he may, in his discretion but subject to subsection (5) of this section, by notice in the *Gazette*, notify his intention to report to the Commission on the matter after full investigation in terms of section 74 of the Act.” 35

(3) Section 69 of the principal Act (as so substituted) is hereby amended by inserting in subsection (4), and also in subsection (5), after the words “subsection (2)”, the words “or subsection (2A)”. 40

(4) Section 69 of the principal Act (as so substituted) is hereby amended by omitting from subsection (6) the words “to enable the Examiner to give consideration to any written representations made under subsection (5) of this section”,
 5 and substituting the words “of enabling the Examiner to give written notice under subsection (5) of this section or to give consideration to any written representations made under that subsection”.

(5) Section 69 of the principal Act (as so substituted) is
 10 hereby amended by inserting in subsection (7), before the word “Nothing”, the words “Subject to section 70 (7) of this Act”.

29. Examiner may refer mergers or takeovers (including mergers or takeovers within Schedule 3A) to Commission—
 15 Section 72 (2) (b) of the principal Act (as substituted by section 22 of the Commerce Amendment Act 1976) is hereby amended by omitting the words “section 68 (2)”, and substituting the words “section 68 (2) (b)”.

30. Examiner to report to Commission after investigation—
 20 Section 75 (4) of the principal Act (as substituted by section 22 of the Commerce Amendment Act 1976) is hereby amended by omitting the words “this section” where they first appear, and substituting the words “that section”.

31. Inquiry by Commission—Section 76 of the principal
 25 Act (as substituted by section 22 of the Commerce Amendment Act 1976) is hereby amended by repealing subsection (7), and substituting the following subsection:

“(7) The Commission shall complete its inquiry within
 60 working days after the date of receipt of the report made
 30 to the Commission under section 75 of this Act, or within such further time, not exceeding 40 working days, as the Commission determines is necessary for the proper conduct of the inquiry and for its deliberation on the subject of the inquiry.”

32. Price control—(1) Section 82 of the principal Act is
 35 hereby amended by repealing subsections (7) to (9), and substituting the following subsections:

“(7) The Minister may refer the subject-matter of any
 amendment to or revocation of, or any proposed amendment
 40 to or revocation of, the Positive List to the Commission for inquiry and report to him by such date as he shall specify.

“(8) Where any amendment to or revocation of the Positive List is effected without the subject-matter of that amendment or revocation having first been referred to the Commission for inquiry and report, any person, organisation, or trade association, who or which—

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“(a) Represents the interests of any person selling or supplying the goods or services to which, in the case of an amendment, the amendment relates; or

“(b) Is a bulk purchaser or user of the goods or services to which the amendment or revocation relates; or

10

“(c) Represents, in the opinion of the Minister, a substantial number of consumers or users of the goods or services to which the amendment or revocation relates—

may apply in writing to the Minister not sooner than 6 months after the date of publication of that amendment or revocation in the *Gazette*, for the omission from or addition to the Positive List of those goods or services and the Minister may, in his discretion, refer the matter to the Commission under subsection (7) of this section.”

20

33. Commission may hear appeals—Section 99 (2) (c) of the principal Act (as substituted by section 30 (1) of the Commerce Amendment Act 1976) is hereby amended by omitting the words “on the ground that the decision is of manifest importance to such consumers or users”.

25

34. Validity of decision of Secretary pending determination of appeal—Section 100 of the principal Act (as substituted by section 31 of the Commerce Amendment Act 1976) is hereby amended by repealing subsection (1), and substituting the following subsection:

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“(1) Subject to subsection (2) of this section, the decision of the Secretary appealed from shall remain in full force pending the determination of the appeal:

“Provided that, with the consent of the Commission, the Secretary may exercise his powers under subsections (4) and (5) of section 92 of this Act, in relation to any subsequent application made by the appellant under section 92 (1) of this Act before the determination of the appeal.”

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35. Display of prices of services—The principal Act is hereby amended by inserting, after section 108, the following section:

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“108A. (1) The Minister may from time to time, by notice published in the *Gazette*, direct that any suppliers of services or class or classes of suppliers of services specified in the notice who charge for the performance of the services specified
 5 in the notice (being services which are not for the time being subject to a price order or special approval under this Part of this Act) shall keep a statement of the prices charged for the performance of those services prominently displayed in such one or more places in their places of business as the
 10 notice specifies.

“(2) A notice under this section may be combined with a notice published pursuant to subsection (1) or subsection (2) of section 108 of this Act.

“(3) Every person commits an offence against this Act who
 15 does any act in contravention of or fails to comply in any respect with any obligation or duty imposed on him by a notice published under this section.”

36. Documents under seal or Chairman’s signature to be judicially noticed—The principal Act is hereby amended by
 20 inserting, after section 121, the following section:

“121A. Every document bearing the seal of the Commission shall be received in evidence without further proof, and the signature of the Chairman of the Commission shall be
 25 judicially noticed in or before any Court or before any person or officer acting judicially or under any power or authority conferred by this Act, if the signature is attached to some order, certificate, or other official document made or purporting to be made under this Act.

“(2) For the purpose of subsection (1) of this section no
 30 proof shall be required of the handwriting of the Chairman of the Commission.

37. Case may be stated for Administrative Division of Supreme Court—Section 122 of the principal Act is hereby amended by omitting the words “Chairman of the”.

35 **38. Registers**—The principal Act is hereby amended by inserting, after section 130, the following section:

“130A. (1) The Commission shall maintain, in such form as it thinks fit, a register or registers in which may be entered or filed any report, notice, application, evidence, submission,
 40 or other document or thing given or made to the Commission under this Act.

“(2) Every register maintained pursuant to subsection (1) of this section shall be made available, in whole or in part, for inspection, copy, or publication by such persons, in such manner, and subject to such conditions as the Commission may order from time to time.

5

“(3) This section is subject to any order for the time being in force and made under section 9 of this Act by the Commission.”

39. First Schedule amended—The First Schedule to the principal Act is hereby amended by omitting the words “The 10 Tourist Hotel Corporation Act 1974”.

40. Repeals—The Trading Coupons Act 1931 and the Trading Coupons Amendment Act 1969 are hereby repealed.

SCHEDULE

Section 23 (3)

CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT

Section Amended	Amendment
Section 20	<p>By repealing paragraph (c), and substituting the following paragraph: “(c) Trade practices which are prohibited unless approved by the Commission, being practices dealt with under sections 27 to 30 of this Act under the heading of <i>Pricing Agreements</i>.”</p>
Section 39	<p>By repealing this section, and substituting the following section: “39. Conciliation provisions—(1) Where after investigation pursuant to section 38 (1) (a) of this Act the Examiner is of the opinion that any person is carrying on a trade practice contrary to the public interest, the Examiner shall furnish to that person a statement in writing: “(a) Informing him of the Examiner’s opinion as to the practice which he believes is being carried on by that person; and “(b) Stating on which of the grounds referred to in section 21 of this Act he bases his opinion; and “(c) Requiring him to reply in writing within 21 days stating: “(i) Whether or not he accepts the Examiner’s opinion: “(ii) Whether or not he is prepared to abandon forthwith the practice in question: “(iii) Whether or not he is prepared to alter the trade practice in question so that it conforms with the Examiner’s opinion of the public interest. “(2) Where after investigation pursuant to section 38 (1) (b) of this Act, the Examiner is of the opinion that the carrying on of, or the proposal to carry on, any practice to which any application referred to him by the Commission relates is or may be contrary to the public interest, the Examiner shall furnish to the applicant a statement in writing:</p>

SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT—*continued*

Section Amended	Amendment
Section 39— <i>continued</i>	<p>“(a) Informing the applicant of the Examiner’s opinion:</p> <p>“(b) Stating on which of the grounds set out in section 21 of this Act the Examiner bases his opinion:</p> <p>“(c) Requiring the applicant to reply in writing within 21 days stating:</p> <p> “(i) Whether or not he accepts the Examiner’s opinion:</p> <p> “(ii) Whether or not he is prepared to withdraw the application for approval and, if the case so requires, to abandon forthwith the practice:</p> <p> “(iii) Whether or not he is prepared to alter the practice or proposed practice in question so that it conforms with the public interest.</p> <p>“(3) Where any person to whom the Examiner has furnished a statement in accordance with <u>subsection (1) or subsection (2)</u> of this section does not reply in accordance with the subsection under which the statement was furnished, the Examiner shall forthwith report to the Commission in accordance with section 40 of this Act.</p> <p>“(4) Where any such person replies in accordance with <u>subsection (1) (c) or subsection (2) (c)</u> of this section, the Examiner, if he considers the person, although carrying on or proposing to carry on a practice which, in the opinion of the Examiner, is or may be contrary to the public interest, might agree to carry out such of the following actions as are appropriate, namely—</p> <p> “(a) To abandon the practice:</p> <p> “(b) To withdraw the application:</p> <p> “(c) To alter the practice or the proposed practice so that it conforms with the public interest—</p>

SCHEDULE—*continued*

CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT—*continued*

Section Amended	Amendment
<p>Section 39—<i>continued</i></p>	<p>shall invite that person to confer with him for the purpose of reaching agreement on the nature of a recommendation to be made by the Examiner to the Commission.</p> <p>“(5) In any case where the Examiner invites any person to confer with him under subsection (4) of this section he shall, if necessary for the purpose of reaching agreement with that person, allow 14 days from the date of inviting that person to confer with him, or such longer period as the Examiner in special circumstances thinks fit, before reporting to the Commission in accordance with section 40 of this Act.</p> <p>“(6) This section shall not apply to any of the practices which are offences against any of the provisions of sections 48 to 57 of this Act.”</p>
<p>Section 40</p>	<p>By repealing paragraphs (a) and (b) of subsection (2), and substituting the following paragraphs:</p> <p>“(a) The nature of the trade practice:</p> <p>“(b) The person or persons who are parties to the trade practice:”</p> <p>By repealing paragraph (d) of subsection (2), and substituting the following paragraph:</p> <p>“(d) In the case of a trade practice or proposed trade practice investigated under section 38 (1) (b) of this Act,—</p> <p>“(i) Whether in his opinion, the practice has or is likely to have effects contrary to the public interest; and</p> <p>“(ii) By reference to section 21 (1) of this Act, the grounds on which he bases his opinion; and</p> <p>“(iii) The result of any action by the Examiner under section 39 of this Act in respect of the trade practice in question; and</p>

SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT—*continued*

Section Amended	Amendment
Section 40— <i>continued</i>	<p data-bbox="657 465 1022 677">“(iv) Whether he considers the application should be approved and, if so, whether or not it should be approved with or without conditions and whether any other action should be taken by the Commission.”</p> <p data-bbox="518 677 1022 784">By omitting from subsection (5) the words “or any proposed pyramid selling scheme” and the words “or to the promoter of the pyramid selling scheme”.</p>