

## COMMERCE AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill amends the Commerce Act 1975. It has 2 main objects:

- (a) To change the way in which the Commerce Commission operates, from the present basically judicial approach to more of an administrative one. Subject to the requirements of the rules of natural justice, the Commission will have a general discretion in relation to the manner in which it determines any matter before it, the emphasis being on informality and expedition.
- (b) To change the relationship of the Commission and the Examiner in respect of applications for consent to merger or takeover proposals falling within the Third Schedule to the principal Act (in this note referred to as Third Schedule proposals). At present, all such applications go to the Examiner who may consent to them within 25 working days. If, within that period, the Examiner considers that the proposal may be contrary to the public interest, he must refer it to the Commission for determination. If he neither consents to the proposal nor refers it to the Commission within that period of 25 working days, the proposal may go ahead. Under the Bill, all such applications will go to the Chairman of the Commission who, in any particular case, will decide whether it is one that the Examiner could consent to, or whether it should be dealt with by the Commission. In the former case, the Chairman will refer the application to the Examiner for investigation and possible determination; in the latter, for investigation and report to the Commission. In either case, the Chairman may give all such directions to the Examiner as he thinks fit.

The Bill also makes provision for the appointment of suitably qualified persons as lay members of the Administrative Division of the High Court for the purpose of appeals to that Court from determinations of the Commission.

*Clause 1* relates to the Short Title and commencement. The Bill will come into force on 1 April 1984.

### PART I

#### AMENDMENTS RELATING TO COMMERCE COMMISSION

*Clause 2* relates to the membership of the Commission. At present, the Commission is to consist of 4 or more members, and provision is made for the appointment of additional members. Under this clause, membership is limited to 4, and the provision for additional members is dropped.

*Clause 3* allows for the appointment of associate members of the Commission in respect of any specified class of matters before the Commission. At present, an associate member may be appointed only in respect of one or more specified matters.

*Clause 4* provides for the disclosure of financial interests of members of the Commission, where there is a possibility of a conflict of interest arising in respect of any matters coming before the Commission.

*Clause 5* gives the person presiding at any meeting of the full Commission, or of any Division of the Commission, power to give directions relating to the procedure to be followed at that meeting. It also reduces from 3 to 2 the quorum for meetings of a separate Division of the Commission.

*Clause 6* enables the Commission members to assent to a resolution by letter, telegram, cable, or telex message, without the need for a formal meeting.

*Clause 7* imposes on the Commission a general responsibility to inform interested persons on the workings of the Commission, and to promote public understanding of the law relating to competition and consumer protection.

*Clause 8* is the principal clause by which the change in procedure of the Commission is to be effected. In principle, the Commission may conduct its activities in such manner as it determines. It is authorised to hold a public hearing into any matter before it, but it is not obliged to do so in any case. Its present powers to protect confidentiality are preserved.

*Clause 9* builds on the same theme. In particular, the proposed *section 14* requires the Commission to conduct its proceedings with as little formality and technicality as the requirements of the legislation and a proper consideration of the matter before it permits.

The proposed *section 15* empowers the Chairman of the Commission to give directions where the Commission has determined to hold a public hearing. In general, he may give all such directions as he considers desirable to ensure that the hearing is conducted in a convenient and expeditious manner, and that all matters in dispute are effectively and completely determined.

*Clause 10* is of a technical drafting nature only.

*Clause 11* makes it clear that persons appointed to the service of the Commission on secondment from another employer are responsible solely to the Commission for the work carried out for the Commission.

*Clause 12* inserts in the principal Act standard financial and audit provisions relating to the funds of the Commission.

## PART II

### AMENDMENTS RELATING TO TRADE PRACTICES

This Part of the Bill makes no substantive changes to the law relating to trade practices. Except as mentioned in this note, the provisions are all broadly consequential upon the basic changes in the Commission's procedure effected by *clauses 8 and 9* of the Bill.

*Clauses 17 and 19* set out more clearly the functions of the Examiner under Part II of the principal Act. His role is essentially that of an investigator and reporter for the Commission.

*Clause 21* increases the maximum fines that may be imposed for an offence against certain provisions of Part II of the principal Act.

## PART III

## AMENDMENTS RELATING TO MONOPOLIES, MERGERS, AND TAKEOVERS

*Monopolies*

*Clauses 22 to 25* have 2 principal objects:

- (a) To streamline the procedure for investigation and consideration of cases alleged to be contrary to the public interest. At present a preliminary investigation must be held to determine whether there are grounds for believing that the public interest is threatened. Only after such a provisional view is formed, can a full investigation and determination take place. Under the Bill, this first stage is dropped.
- (b) To extend the provisions to the conduct of monopolies and oligopolies, as well as to their mere existence. Thus, it may be that the existence of a monopoly or oligopoly is not in itself contrary to the public interest, but particular conduct of that monopoly or oligopoly is contrary to the public interest. Under the changes effected by these clauses, that conduct may be investigated and dealt with.

*Mergers and Takeovers*

As stated in the introduction to this note, one of the principal objects of the Bill is to change the procedure by which applications for consent to Third Schedule proposals are to be determined. But this Part of the Bill makes 3 other important changes:

- (a) It lowers the threshold of voting power at which an acquisition comes within the scope of the merger or takeover provisions of the principal Act. For public companies the threshold is reduced from 25 percent to 20 percent, and for private companies from 50 percent to 20 percent.
- (b) It provides for direct advice to the New Zealand Stock Exchange when consent to or clearance of a merger or takeover proposal is given.
- (c) It drops the requirement for notice to be given of the implementation of certain other merger or takeover proposals that do not require prior consent.

*Clause 26* substitutes 10 new sections in the principal Act.

*Section 67* defines the term "merger or takeover proposal". Broadly, it covers 4 main categories:

- (a) The acquisition or disposition of shares in a company which, when added to the shares in that company already owned by the purchaser, would give the purchaser more than 20 percent of the voting power at a general meeting of the company.
- (b) The acquisition or disposition of the whole of the capital of a business (other than a company), or of a portion of the capital which, when added to the portion of that capital already held by the purchaser, would give the purchaser at least 50 percent of that capital.
- (c) The acquisition or disposition of the whole of the assets employed in a business or a section of a business (whether a company or not), or of a portion of those assets which, when added to the equity interest in that business or section of business already held by the purchaser, would represent at least 50 percent of the value of the assets employed in the business or section of the business.
- (d) The establishment of a new business to implement a proposal to which any of paragraphs (a) to (c) apply.

The provisions do not apply where the purchaser already owns a controlling interest (for example, more than 20 percent of the voting strength of a company) in the target undertaking.

*Sections 67A and 67B* re-enact existing provisions.

*Sections 68 and 69* clarify the time at which consent is required for a Third Schedule proposal. Contracts, etc., may be signed, so long as they are conditional upon the necessary consent being obtained. However, if the proposal is implemented without consent, an offence is committed.

*Sections 70 to 73* prescribe the new procedure to be followed in respect of Third Schedule proposals. Notice in the first instance is to be given to the Chairman of the Commission. He then refers it to the Examiner for registration, and gives such directions to the Examiner as he thinks fit for the expeditious handling of the case. In particular, the Chairman must decide whether the case is one to which the Examiner may give consent, or whether it is one to be considered by the Commission.

In the former case, the Examiner may, within 25 working days, give his consent if he is satisfied that the proposal is not likely to be contrary to the public interest. If he is not so satisfied, he must report back to the Commission.

*Sections 73A and 73B* provide for the investigation and clearance of merger or takeover proposals other than Third Schedule proposals. They substantially re-enact sections 72 and 73 of the principal Act, but the procedure is brought into line with that now prescribed for Third Schedule proposals.

*Clauses 27 and 28* are largely consequential upon the new procedure. However, the period prescribed for parties to respond to the Examiner where he gives notice of his view that the proposal is contrary to the public interest is reduced from 10 working days to 3 working days.

*Clause 29* prescribes various time limits where the Examiner is carrying out an investigation and preparing a report for the Commission. At present, no time limit is prescribed for this step.

*Clause 30* relates to the determination by the Commission of any matter relating to a merger or takeover proposal. At present, the Commission must conclude the matter within 55 working days, but provision is made for this period to be extended by up to a further 35 working days. Under this clause, a time limit of 50 working days is set, and no provision is made for an extension.

*Clauses 31 to 37* are largely consequential upon the changes in procedure outlined earlier in this note. However, the maximum penalties that may be imposed under section 81C of the principal Act are increased by *clause 34*.

*Clause 38* inserts in the principal Act 4 new sections.

*Section 81JA* provides that where a merger or takeover proposal relates to the acquisition or disposition of shares in a company, and the implementation of the proposal would result in the transferee holding more than 50 percent but less than 100 percent of the voting power at a general meeting of the company, the Commission or the Examiner cannot impose as a condition of its or his consent a condition limiting the purchaser to less than 100 percent of that voting power, unless it or he is satisfied that it is in the public interest to do so.

*Section 81JB* requires the Commission or the Examiner to notify the New Zealand Stock Exchange of any consent or clearance that relates to a merger or takeover proposal involving the acquisition of shares listed on the Exchange.

*Section 81JC* simplifies the present procedure where consent to a merger or takeover proposal is required under both the principal Act and the Overseas Investment Act 1973. Broadly, the Commission or the Examiner must not give consent under the principal Act unless and until consent is given under the other Act.

*Section 81JD* empowers the Commission or the Examiner to require and accept an undertaking by any person in respect of any merger or takeover proposal as a condition of consent.

#### PART IV

##### MISCELLANEOUS AMENDMENTS

*Clause 39* increases the maximum penalties that may be imposed under section 116 of the principal Act for breaches of that Act in relation to price control.

*Clause 40* extends the ambit of section 119C of the principal Act relating to economic loss arising from, or likely to arise from, strikes and lockouts. That section provides for applications to the Arbitration Court for an order directing the resumption of work in certain defined cases. This clause allows for such an application where there is or is likely to be a substantial increase in the cost of undertaking or completing a major construction project arising from delay caused by a strike or lockout. For the purposes of this clause a 'major construction project' is a project so designated by the Governor-General by Order in Council.

*Clause 41* provides for the appointment of suitably qualified lay members to sit with a Judge to hear appeals from the Commission to the Administrative Division of the High Court. Such persons are to be appointed for their knowledge of or experience in trade, industry, economics, accountancy, commercial law, public administration, or consumer affairs. The decision of a majority is sufficient, except that questions of law are to be determined by the Judge.

*Clause 42* increases the general penalties for offences against the Act.

*Clause 43* brings the confidentiality provisions of the principal Act into greater harmony with the Official Information Act 1982.

*Clause 44* gives protection to members of the Commission, the Secretary, and the Examiner in respect of their official functions.

*Clause 45* is a transitional provision. Broadly, the provisions of the Bill will apply to all matters in the pipeline at its commencement, with the exception of merger or takeover proposals that are already before the Commission.

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Hon. Mr Templeton

## COMMERCE AMENDMENT

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A BILL INTITULED

**An Act to amend the Commerce Act 1975**

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

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**1. Short Title and commencement**—(1) This Act may be cited as the Commerce Amendment 1983, and shall be read together with and deemed part of the Commerce Act 1975\* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of April 10 1984.

PART I

AMENDMENTS RELATING TO COMMERCE COMMISSION

- 2. Provision for additional members removed**—Section 3 of the principal Act is hereby amended— 15
- (a) By omitting from subsection (2) (as substituted by section 4 of the Commerce Amendment Act 1976) the words “or more”;
  - (b) By repealing subsection (5);
  - (c) By omitting from subsection (6) the words “or additional 20 members”.

\*R.S. Vol. 7, p. 1

**3. Associate members**—(1) Section 3B of the principal Act (as inserted by section 5 of the Commerce Amendment Act (No. 2) 1979) is hereby amended by repealing subsections (2) and (3), and substituting the following subsection:

5 “(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 instrument of appointment, and for such period as is specified in that instrument.”

10 (2) Section 3B of the principal Act (as so inserted) is hereby further amended by inserting in subsection (5), after the word “matter” in both places where it occurs, the words “, or to any matter of a class,”.

**4. Disclosure of financial interests of members**—The principal Act is hereby amended by inserting, after section 3B  
15 (as so inserted), the following section:

“3C. (1) Where a member, other than the Chairman, has or acquires any direct or indirect pecuniary interest in any business carried on in New Zealand, or in any body corporate carrying on any such business, being an interest that could be in conflict  
20 with his duties as a member, the member shall, to the best of his knowledge, disclose that interest to the Chairman.

“ (2) The Chairman shall, by written notice, disclose to the Minister all direct and indirect pecuniary interests that the Chairman has or acquires in any business or in any body  
25 corporate carrying on any such business.

“ (3) Where an interest is disclosed under **subsection (1)** or **subsection (2)** of this section and,—

“ (a) In the case of an interest in a business, the person carrying on the business; or

30 “ (b) In the case of an interest in a body corporate, that body corporate,—

is concerned in a matter before the Commission, being a matter in the determination of which the Chairman or other member who holds the interest is or will be participating, the Chairman  
35 shall cause that interest to be disclosed to the public.

“ (4) The foregoing provisions of this section shall apply, with any necessary modifications, where the Chairman or any other member of the Commission undertakes any engagement or employment for remuneration outside the duties of his office.”

40 **5. Meetings of Commission**—(1) Section 6 of the principal Act is hereby amended by repealing subsection (5) (as substituted by section 6 of the Commerce Amendment Act 1976), and substituting the following subsection:

45 “ (5) At any meeting of the Commission the quorum shall be 3 members, and at any meeting of any separate Division of the Commission acting pursuant to section 7 (1) of this Act the quorum shall be 2 members.”



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

“(7) Subject to the provisions of this Act, the Chairman or other member who is or will be presiding at a meeting of the Commission, or any separate Division of the Commission acting pursuant to section 7 (1) of this Act, may give directions relating to the procedure to be followed at or in connection with the meeting.” 5

(3) Section 6 of the Commerce Amendment Act 1976 is hereby repealed. 10

**6. Assent to resolution**—The principal Act is hereby amended by inserting, after section 7, the following section:

“7A. A resolution in writing signed, or assented to by letter, telegram, cable, or telex message, by all the members of the Commission or (as the case may require) of a Division of the Commission 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.” 15

**7. Commission to disseminate information**—(1) Section 11 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection: 20

“(1A) In addition to the functions conferred on the Commission by this Act, the Commission shall—

“(a) Make available to persons engaged in trade, and other interested persons, general information for their guidance with respect to the carrying out of the functions, or the exercise of the powers, of the Commission under this Act: 25

“(b) Promote public understanding of the law relating to competition and consumer protection.” 30

(2) The following enactments are hereby repealed:

(a) Section 130 of the principal Act:

(b) Section 38 of the Commerce Amendment Act 1976, and so much of the Third Schedule to that Act as relates to section 130 (1) of the principal Act. 35

(3) Section 12 (3) of the Ministry of Energy Act 1977 is hereby amended—

- (a) By omitting from paragraph (a) the expression “66 (2), and 130 (2)”, and substituting the expression “and 66 (2)”:
- (b) By omitting from paragraph (b) the expression “130,”.

**8. Inquiries and investigations of Commission**—(1) The principal Act is hereby amended by inserting, after section 11, the following section:

“11A. (1) In the exercise of its functions under section 11 (1) of this Act, the Commission may hold such inquiries and may conduct such investigations as it thinks fit.

“(2) Without limiting the generality of **subsection (1)** of this section, the Commission may, if it thinks fit, hold public hearings in respect of any application or other matter before it, but it shall not be obliged to do so in any case.

“(3) Notwithstanding that the Commission holds any such public hearings, it may deliberate in private as to its decision on any matter or as to any question arising in respect of any matter before it.

“(4) The Commission may—

“(a) Order that any matter or class of matters be determined in private, either as to the whole or any portion thereof:

“(b) Make an order prohibiting the publication of any report or account of the evidence at any inquiry or of any other proceedings (whether conducted in public or in private), either as to the whole or any portion thereof:

“(c) Make an order prohibiting the publication of the whole or part of any books or documents produced to the Commission.

“(5) Every person commits an offence against this Act who acts in contravention of any order made by the Commission under **paragraph (b)** or **paragraph (c)** of **subsection (4)** of this section.”

(2) The following enactments are hereby repealed:

(a) Section 9 of the principal Act:

(b) Paragraphs (a) and (b) of section 8 (2) of the Commerce Amendment Act 1976, and so much of the Third Schedule to that Act as relates to section 9 (1) of the principal Act.

**9. Two new sections substituted in principal Act**—(1) The principal Act is hereby amended by repealing sections 14 and 15 (as substituted by section 8 (1) of the Commerce Amendment Act 1976), and section 16, and substituting the following sections:

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**“14. Procedure of Commission**—(1) Subject to the provisions of this Act and of any regulations made under this Act, the Commission may regulate its procedure in such manner as it thinks fit.

“(2) In regulating its procedure the Commission shall provide for as little formality and technicality as the requirements of this Act and a proper consideration of the matter before it permits.

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“(3) No proceedings before the Commission under this Act shall be held bad for want of form or be void or in any way vitiated by reason of any informality or error of form.

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**“15. Chairman may give directions for public hearing**—(1) Where the Commission decides to hold a public hearing in respect of any application or other matter before it, the Chairman of the Commission may, either on the application of any party or intended party or without any such application, and on such terms as he thinks fit, give such directions as he considers desirable to ensure that the hearing is conducted in a convenient and expeditious manner, and that all matters in dispute are effectively and completely determined.

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“(2) Without limiting the generality of **subsection (1)** of this section, the Chairman may—

“(a) Determine the issues to be considered at the hearing:

“(b) Determine who is to be accorded party status, and who (in addition to any person accorded such status) is to be entitled to appear and be heard at the hearing:

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“(c) Give such directions as he thinks fit for the filing, production, or inspection of any document relating to any matter that is to be considered at the hearing:

“(d) Fix a time and place for the hearing.”

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(2) The principal Act is hereby further amended—

(a) By repealing section 8:

(b) By repealing section 44 (aa) (as inserted by section 20 of the Commerce Amendment Act (No. 2) 1979).

(3) Section 44 of the principal Act is hereby further amended by adding the following paragraph:

5 “(j) Any other person who appeared or was represented at any inquiry to which the appeal relates and to whom the Commission granted leave to adduce evidence and cross-examine witnesses.”

(4) Section 12 (3) (b) of the Ministry of Energy Act 1977 is hereby amended by omitting the expression “14 (2), 15 (1),”.

10 (5) The following enactments are hereby consequentially repealed:

(a) Section 8 (1) of the Commerce Amendment Act 1976:

(b) Sections 7 and 8 of the Commerce Amendment Act (No. 2) 1979.

15 **10. Incriminating answers**—Section 17 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the expression “38 (2)”, and substituting the expression “38 (3)”:

20 (b) By omitting from subsection (2) the words “or the Commercial Trusts Act 1910 or the Control of Prices Act 1947 or the Trade Practices Act 1958”.

**11. Employees of Commission on secondment**—

(1) Section 17A of the principal Act (as inserted by section 10 (1) of the Commerce Amendment Act 1976) is hereby amended by inserting, before subsection (6), the following subsection:

25 “(5A) Where any person is appointed under this section on secondment from the service of another employer, that person shall, while engaged in assisting the Commission in carrying out its functions, powers, and duties, be responsible solely to the Commission.”

30 **12. New sections (relating to financial matters) inserted in principal Act**—The principal Act is hereby amended by inserting, after section 19A (as inserted by section 11 of the Commerce Amendment Act 1976), the following sections:

35 “19B. **Funds of Commission**—The funds of the Commission shall consist of—

“(a) Any money appropriated by Parliament for the purposes of the Commission and paid to the Commission for the purposes of the Commission:

“(b) All other money lawfully received by the Commission for the purposes of the Commission:

“(c) All accumulations of income derived from any such money.

“19c. **Bank accounts**—(1) The Commission shall open at any bank or banks such accounts as are necessary for the exercise of its functions and powers. 5

“(2) All money received by the Commission, or by any officer or employee of the Commission, shall, as soon as practicable after it has been received, be paid into such bank account of the Commission as the Commission from time to time determines. 10

“(3) The withdrawal or payment of money from any such account shall be authorised by a prior resolution of the Commission, or shall be submitted to the Commission for confirmation at its first ordinary meeting after the date of payment. 15

“(4) The withdrawal or payment of money from any such account shall be by cheque signed by such person or persons as the Commission may from time to time authorise. 20

“19d. **Accounts and audit**—(1) The Commission shall keep full and correct accounts of all its financial transactions, assets, liabilities, and funds.

“(2) The financial year of the Commission shall end with the 31st day of March or on such other date as may from time to time be directed by the Minister. 25

“(3) At the end of each financial year, the Commission shall prepare an income and expenditure account showing its financial transactions for that year, together with a balance sheet as at the last day of the financial year. 30

“(4) As soon as practicable after the end of its financial year, the Commission shall submit its income and expenditure account and balance sheet to the Audit Office for audit; and for that purpose the Audit Office shall have and may exercise all such powers as it has under the Public Finance Act 1977 in respect of public money and stores. 35

“(5) A copy of the audited accounts of the Commission, together with the report of the Audit Office thereon, shall be laid before Parliament no later than 6 months after the end

of the financial year, and may be incorporated in the annual report of the Commission prepared under section 131 (1) of this Act.

“19E. **Investment of money**—Any money belonging to the  
5 Commission that is not immediately required for expenditure by the Commission may be invested in the same manner in which money in the Public Account may be invested pursuant to section 50 of the Public Finance Act 1977.

“19F. **Exemption from income tax**—The income of the  
10 Commission shall be exempt from income tax.”

## PART II

### AMENDMENTS RELATING TO TRADE PRACTICES

**13. Orders of Commission against certain trade practices**—(1) Section 22 (1) of the principal Act (as amended  
15 by section 14 of the Commerce Amendment Act (No. 2) 1979) is hereby amended by omitting the words “after either holding an inquiry or dispensing with one as permitted by section 40 (4) or section 40 (4A) of this Act”.

(2) Section 14 of the Commerce Amendment Act (No. 2) 1979  
20 is hereby consequentially repealed.

**14. Recommendations relating to price control**—(1) The principal Act is hereby amended by repealing section 25, and substituting the following section:

“25. Where, after making any determination under section  
25 41 of this Act, the Commission is of the opinion that it would be in the public interest that any goods or services to which the matter of the determination relates should be subject to price control under section 82 of this Act or subject to price restraint under section 83 of this Act, the Commission shall  
30 report to the Minister its findings in that respect together with any recommendation it thinks fit to make in relation to the imposition of price control or price restraint.”

(2) Section 16 of the Commerce Amendment Act (No. 2) 1979 is hereby consequentially repealed.

**15. Notification of trade practice**—Section 26 of the principal Act is hereby amended by repealing subsections (3) and (4), and substituting the following subsection:

“3) Before determining any application made under this section, the Commission shall have regard to any  
40 representations made to it by the Examiner and by any person alleged to be carrying on, or to be a party to, the trade practice.”

**16. Individual resale price maintenance arrangements—**

Section 28 of the principal Act (as substituted by section 17 (1) of the Commerce Amendment Act (No. 2) 1979) is hereby amended by omitting from subsection (6) the words “at any time after conducting an inquiry or dispensing with an inquiry”. 5

**17. Functions and powers of Examiner—**The principal Act is hereby amended by repealing section 38, and substituting the following section:

“38. (1) The general functions and powers of the Examiner under this Part of this Act shall be as follows: 10

“(a) To investigate and report on trade practices to the Commission in accordance with section 29 and sections 39 and 40 of this Act:

“(b) To investigate and institute proceedings for offences against any of the provisions of this Part of this Act: 15

“(c) To exercise such other functions and powers as are conferred on him by this Part of this Act.

“(2) In the exercise of his functions and powers under this Part of this Act, the Examiner may conduct such investigations as he thinks fit. 20

“(3) For the purposes of any such investigation, the Examiner, and any person authorised in writing in that behalf by the Examiner, may—

“(a) Inspect, examine, and audit any books or documents:

“(b) Require any person to produce any books or documents 25 in his possession or under his control, and to allow copies of or extracts from any such books or documents to be made:

“(c) Require any person to furnish, in a form to be approved by or acceptable to the Examiner, any information 30 or particulars that may be required by the Examiner, and any copies of or extracts from any such books or documents as aforesaid.

“(4) The Examiner may, if he thinks fit, require that any written information or particulars or any copies or extracts 35 furnished under this section shall be verified by statutory declaration or otherwise as the Examiner may require.”

**18. Conciliation provisions—**Section 39 of the principal Act (as substituted by section 22 (3) of the Commerce Amendment Act (No. 2) 1979) is hereby amended— 40

(a) By omitting from subsection (1) the words “section 38 (1) (a) of this Act”, and substituting the words “section 38 of this Act in respect of any matter other than an application made under section 29 of this Act”:

(b) By omitting from subsection (2) the words “pursuant to section 38 (1) (b) of this Act”, and substituting the words “section 38 of this Act of an application made under section 29 (2) of this Act”.

5 **19. Report by Examiner**—(1) The principal Act is hereby amended by repealing section 40, and substituting the following section:

“40. (1) The Examiner shall furnish a report to the Commission—

10 “(a) On all applications referred to him by the Commission under any provision of this Part of this Act:

“(b) On any trade practice investigated by him which, in his opinion, comes substantially within one or more of the categories set out in section 23 (1) of this Act and which, in his opinion, has or is likely to have effects contrary to the public interest:

15

“(c) On any trade practice of a kind referred to in **paragraph (b)** of this subsection which, as a result of modifications agreed to by the parties in conciliation, he considers will not have or is not likely to have effects contrary to the public interest:

20

“(d) On any trade practice which, in his opinion, has or is likely to have effects contrary to the public interest and does not come substantially within any of the categories set out in section 23 (1) of this Act but which, in his opinion, is a practice in respect of which the Commission should consider making a recommendation for the purposes of paragraph (n) of the said section 23 (1).

25

30 “(2) The report shall show—

“(a) The nature of the trade practice:

“(b) The person or persons who are parties to the trade practice:

35 “(c) In the case of a trade practice investigated under section 38 of this Act in respect of any matter other than an application made pursuant to section 29 (2) of this Act,—

35

“(i) Where, in the Examiner’s opinion, the trade practice is substantially within one or more of the categories specified in section 23 (1) of this Act, the category or categories; and

40



“(ii) By reference to section 21 (1) of this Act, the grounds on which he considers the practice has or is likely to have effects contrary to the public interest, or, in the case of a trade practice to which **subsection (1) (c)** of this section refers, the grounds 5 on which he considers the practice had or would have had those effects if the parties had not agreed to modifications in conciliation; and

“(iii) The result of any action by the Examiner under section 39 of this Act in respect of the trade 10 practice in question; and

“(iv) A recommendation concerning the nature of the order or such other action that he considers the Commission should make or take; and

“(v) The conditions (if any) to which any such 15 order should be subject; and

“(vi) Whether or not the recommendation is concurred in by all persons who would be bound by any such order:

“(d) In the case of a trade practice or proposed trade practice 20 investigated under section 38 of this Act in respect of an application made under section 29 (2) of this Act,—

“(i) Whether in his opinion, the practice has or is likely to have effects contrary to the public interest; 25 and

“(ii) By reference to section 21 (1) of this Act, the grounds on which he bases his opinion; and

“(iii) The result of any action by the Examiner under section 39 of this Act in respect of the trade 30 practice in question; and

“(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 35 Commission.

“(3) If, on completing any investigation under section 38 of this Act, the Examiner is in doubt as to whether or not a trade practice is contrary to the public interest, he may in his discretion report that fact to the Commission and furnish to 40 the Commission a report showing—

“(a) The nature of the trade practice:

“(b) The person or persons who are parties to the trade practice in question:

“(c) The nature and extent of the discussions held by the Examiner with that person or those persons:

“(d) Such other matters as the Examiner considers relevant.

“(4) After considering a report submitted to it under  
5 **subsection (3)** of this section, the Commission,—

“(a) In the case of an application made pursuant to section 29 (2) of this Act, shall determine the matter in accordance with section 41 (2) (a) of this Act:

“(b) In the case of any other trade practice, may proceed to  
10 determine the matter in accordance with section 41 (2) (b) of this Act as if the report were made by the Examiner under **subsection (1) (b)** of this section.”

(2) The following enactments are hereby consequentially repealed:

15 (a) Section 15 (2) of the Commerce Amendment Act 1976:

(b) So much of the Schedule to the Commerce Amendment Act (No. 2) 1979 as relates to section 40 of the principal Act.

**20. Determinations by Commission**—(1) Section 41 (1) of  
20 the principal Act is hereby repealed.

(2) Section 41 of the principal Act is hereby further amended by omitting from subsection (2) the words “Subject to the provisions of this Act, at any inquiry under this section”, and substituting the words “Where a report is made to the  
25 Commission under **section 40 (1)** of this Act,”.

(3) Section 19 (1) of the Commerce Amendment Act (No. 2) 1979 is hereby consequentially repealed.

**21. Penalties**—The principal Act is hereby amended by  
repealing section 58, and substituting the following section:

30 “58. (1) Every person who commits an offence against section 48A of this Act is liable,—

“(a) In the case of an individual, to imprisonment for a term not exceeding 6 months, or a fine not exceeding \$30,000 and, if the offence is a continuing one, to  
35 a further fine not exceeding \$3,000 for every day on which the offence has continued; or

“(b) In the case of a body corporate, to a fine not exceeding \$150,000 and, if the offence is a continuing one, to a further fine not exceeding \$15,000 for every day  
40 on which the offence has continued.

“(2) Every person who commits an offence against section 22 (6), section 27, section 28, section 48, section 48B, section 49, section 51, section 52, or section 54 of this Act is liable,—

- “(a) In the case of an individual, to a fine not exceeding \$15,000 and, if the offence is a continuing one, to a further fine not exceeding \$1,500 for every day on which the offence has continued; or
- “(b) In the case of a body corporate, to a fine not exceeding \$75,000 and, if the offence is a continuing one, to a further fine not exceeding \$7,500 for every day on which the offence has continued. 5
- “(3) Every person who commits an offence against any of the foregoing provisions of this Part of this Act for which no penalty is provided by **subsection (1) or subsection (2)** of this section is liable,— 10
- “(a) In the case of an individual, to a fine not exceeding \$3,000 and, if the offence is a continuing one, to a further fine not exceeding \$300 for every day on which the offence has continued: 15
- “(b) In the case of a body corporate, to a fine not exceeding \$15,000 and, if the offence is a continuing one, to a further fine not exceeding \$1,500 for every day on which the offence has continued.” 20

### PART III

#### AMENDMENTS RELATING TO MONOPOLIES, MERGERS, AND TAKEOVERS

##### *Monopolies*

**22. Investigation into monopolies by Examiner**—(1) The principal Act is hereby amended by repealing section 61 (as substituted by section 22 of the Commerce Amendment Act 1976), and substituting the following section: 25

“61. Where it appears to the Examiner—

“(a) That there may exist— 30

“(i) Any monopoly or oligopoly of the supply of any goods or services or of any particular description of goods or services or of both goods and services; or

“(ii) Any circumstances that are tending or may tend to bring about any such monopoly or oligopoly; and 35

“(b) That the existence of that monopoly or oligopoly, or of those circumstances, or any conduct of that monopoly or oligopoly, may be contrary to the public interest in terms of section 80 of this Act,— 40  
he may conduct an investigation into the existence of the monopoly or oligopoly, or those circumstances, or that conduct.”

(2) Section 80 of the principal Act (as substituted by section 22 of the Commerce Amendment Act 1976) is hereby amended 45

by inserting, after the words “any circumstances that are tending to bring about any monopoly or oligopoly”, the words “or any conduct of any monopoly or oligopoly”.

**23. Conciliation**—(1) Section 62 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 subsection:

“(1) Where, after investigation pursuant to **section 61** of this Act, the Examiner is of the opinion—

10 “(a) That there exists any monopoly, oligopoly, or circumstances of the kind described in **subsection (1)** of that section; and

15 “(b) That the existence of that monopoly or oligopoly, or of those circumstances, or any conduct of the monopoly or oligopoly, is or is likely to be contrary to the public interest,—

he shall serve on the person or persons who in his opinion is or are carrying on the monopoly or oligopoly or whose acts or omissions constitute, in his opinion, any such circumstances  
20 or conduct as aforesaid, a written statement complying with subsection (2) of this section.”

(2) Section 62 of the principal Act (as so substituted) is hereby further amended—

25 (a) By inserting in subsection (2) (b), after the words “or of the circumstances”, the words “or the conduct”:

(b) By omitting from subsection (2) (c) the words “within 28 days after the service of the notice on him stating:”, and substituting the words “, within such period as the Examiner shall specify, stating—”.

30 **24. Two new sections (relating to report by Examiner and determination by Commission) substituted in principal Act**—The principal Act is hereby amended by repealing sections 63 and 64 (as substituted by section 22 of the Commerce Amendment Act 1976), and substituting the  
35 following sections:

“**63. Report by Examiner after investigation**—(1) If, as a result of any investigation under **section 61** of this Act, the Examiner, after having regard to any action taken under section 62 of this Act, is of the opinion—

40 “(a) That there exists any monopoly, oligopoly, or circumstances of the kind described in **section 61 (1)** of this Act; and

45 “(b) That the existence of that monopoly or oligopoly, or of those circumstances, or any conduct of the monopoly or oligopoly, is or is likely to be contrary to the public interest; and

“(c) That the appropriate action to be taken by the Commission concerning that monopoly or oligopoly or those circumstances or that conduct is the making of an order under section 65 of this Act, or the making of a recommendation under section 66 of this Act, or the making of both such an order and such a recommendation,—

he shall furnish to the Commission a report showing the matters specified in **subsection (2)** of this section.

“(2) Every report of the Examiner under **subsection (1)** of this section shall show the following:

“(a) The nature of the monopoly or oligopoly or of such circumstances or of such conduct as aforesaid:

“(b) The person or persons involved:

“(c) By reference to section 80 of this Act, the grounds on which he bases his opinion that the existence of the monopoly or oligopoly, or of such circumstances, or such conduct, is or is likely to be contrary to the public interest:

“(d) The result of the action taken by the Examiner under section 62 of this Act:

“(e) A recommendation concerning the action that he considers the Commission should take under any provision of section 65 or section 66 of this Act:

“(f) Whether or not the person, or any of the persons, involved in the monopoly, oligopoly, circumstances, or conduct have concurred in that recommendation.

“(3) If, on completing any investigation under **section 61** of this Act, the Examiner, after having regard to any action taken under section 62 of this Act,—

“(a) Doubts whether there exists, or does not consider that there exists, any monopoly, oligopoly, or circumstances of the kind described in **section 61 (1)** of this Act; or

“(b) Is of the opinion that there exists any monopoly, oligopoly, or circumstances of the kind described in **section 61 (1)** of this Act, but doubts whether or does not consider that the existence of that monopoly or oligopoly, or of those circumstances, or any conduct of the monopoly or oligopoly, is or is likely to be contrary to the public interest,—

he may furnish to the Commission a report showing the matters specified in **subsection (4)** of this section.

“(4) Every report of the Examiner under **subsection (3)** of this section shall show the following:

5 “(a) A summary of the facts disclosed by the investigation and his opinions or doubts or both with regard to the relevant matters:

“(b) The person or persons involved:

10 “(c) The nature and extent of the investigations conducted by the Examiner and the result of any discussions held with the person, or any of the persons, involved:

“(d) The result of the action taken under section 62 of this Act:

“(e) Such other matters as the Examiner considers relevant.

15 “**64. Determination by Commission**—(1) Upon receipt of a report made by the Examiner under **section 63 (1)** of this Act, the Commission shall determine—

“(a) Whether there exists any monopoly or oligopoly or circumstances of the kind described in **section 61 (1)** of this Act; and

20 “(b) Where it finds any such monopoly or oligopoly or circumstances to exist, whether the existence of that monopoly or oligopoly, or of those circumstances, or any conduct of the monopoly or oligopoly, is or is likely to be contrary to the public interest in terms of section 80 of this Act.

25 “(2) Upon receipt of a report made by the Examiner under **section 63 (3)** of this Act, the Commission may in its discretion determine the matters specified in **subsection (1)** of this section.”

30 **25. Orders and decisions of Commission**—(1) Section 65 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 subsection:

35 “(1) Subject to the provisions of this Act, where the Commission determines—

“(a) That there exists any monopoly, oligopoly, or circumstances of the kind described in **section 61** of this Act; and

40 “(b) That the existence of that monopoly or oligopoly, or of those circumstances, or any conduct of the monopoly or oligopoly, is or is likely to be contrary to the public interest in terms of section 80 of this Act,—

45 the Commission may make one or more of the orders described in **subsection (2)** of this section.”

(2) Section 65 of the principal Act (as so substituted) is hereby further amended by repealing subsection (4), and substituting the following subsection:

“(4) Where the Commission determines—

“(a) That the existence of any monopoly, oligopoly, or 5  
circumstances of the kind described in **section 61 (1)**  
of this Act has not been established; or

“(b) That the existence of any monopoly, oligopoly, or  
circumstances of the kind described in **section 61 (1)** 10  
of this Act, or any conduct of any such monopoly  
or oligopoly, is not or is not likely to be contrary  
to the public interest in terms of section 80 of this  
Act,—

it shall publish that decision in the *Gazette*.”

*Mergers and Takeovers*

15

**26. Ten new sections substituted in principal Act—**

(1) The principal Act is hereby amended by repealing sections 67 to 73 (as substituted by section 22 of the Commerce Amendment Act 1976), and substituting the following sections:

“**67. ‘Merger or takeover proposal’ defined—**(1) Subject 20  
to the succeeding provisions of this section and unless the  
context otherwise requires, in this Act the term ‘merger or  
takeover proposal’ means a proposal of one of the following  
kinds:

“(a) A proposal relating to the acquisition or disposition of 25  
any shares in a company (including a private  
company) which, together with the shares (if any)  
to which the transferee is already beneficially  
entitled or in which the transferee already has a  
beneficial interest, carry the right to exercise or 30  
control the exercise of 20 percent or more of the  
voting power at any general meeting of the  
transferor company:

“(b) A proposal for the acquisition or disposition of—

“(i) The whole of the capital of the business of 35  
any person or body of persons (other than a  
company); or

“(ii) A portion of the capital of the business of any  
person or body of persons (other than a company)  
which, together with the portion (if any) in the capital 40  
of the business to which the transferee is already  
beneficially entitled or in which the transferee  
already has a beneficial interest, constitutes at least  
50 percent of the capital of the business; or

“(c) A proposal relating to the acquisition or disposition of—

5           “(i) The whole of the assets employed in connection with, or appropriated to, a business or a section of a business (whether the business or the section of a business is carried on by a company or not); or

10           “(ii) A portion of the assets employed in connection with, or appropriated to, a business or a section of a business (whether the business or that section of the business is carried on by a company or not) which, together with the equity interest (if any) already held in that business or section of a business by the transferee, represents at least 50 percent of the value of the assets employed in connection with, or appropriated to, that business or section of a business:

15           “(d) A proposal to establish a new company or business for the purpose of entering into a merger or takeover proposal of any of the kinds described in any of **paragraphs (a) to (c)** of this subsection.

20           “(2) A proposal that would otherwise be a merger or takeover proposal by virtue of any of the provisions of **subsection (1)** of this section shall not be a merger or takeover proposal in any of the following circumstances:

25           “(a) Where, in the case of a proposal of the kind described in **paragraph (a)** of that subsection, the transferee is already beneficially entitled to, or already has a beneficial interest in, any shares in the company to which the proposal relates which carry the right to exercise or control the exercise of more than 50 percent of the voting power at any general meeting of the transferor company:

30           “(b) Where, in the case of a proposal of the kind described in **paragraph (b)** of that subsection, the transferee is already beneficially entitled to more than 50 percent of the capital of the business to which the proposal relates:

35           “(c) Where, in the case of a proposal of the kind described in **paragraph (c)** of that subsection, the transferee already holds, in the assets employed in connection with or appropriated to the business or the section of the business to which the proposal relates, an equity interest that represents more than 50 percent of the value of those assets.



“(3) The references in **subsections (1) (a) and (2) (a)** of this section to shares to which a transferee is beneficially entitled shall each be read as including a reference to—

“(a) Shares held by any person or body corporate as trustee for, or nominee or agent of, the transferee; and 5

“(b) Shares in or over which the transferee has any right, title, interest, or control, or in respect of which he has any control over the vote; and

“(c) Shares which the transferee is or will be entitled to acquire under any option, or on the fulfilment of any condition under any agreement, relating to the acquisition of any other shares or financial interests in the transferor company; and 10

“(d) If the transferee is a company, shares to which any interconnected bodies corporate are already beneficially entitled, or which any such interconnected bodies corporate are or will be entitled to acquire in any manner referred to in **paragraph (c)** of this subsection. 15

“(4) Subject to **subsection (5)** of this section, for the purposes of this Act, the value of the assets of the section of the business involved in the merger or takeover proposal shall be determined by reference to the value at which the assets attributable to the section of the business stand in the books of the relevant business, less any relevant provisions for depreciation, at the date when a notice in respect of the merger or takeover proposal is given under **section 70** of this Act or, where no such notice has been given, the date of implementation of the proposal. 20 25

“(5) Where any assets are newly given a value, or are shown as having a higher value than determined in accordance with **subsection (4)** of this section in any valuation or assessment or determination of price made, for the purposes of the merger or takeover proposal, the value of those assets shall be determined by reference to that value or higher value. 30

“(6) For the purpose of determining whether any proposal is or is not a merger or takeover proposal, where any 2 or more persons act jointly or in concert in acquiring or seeking to acquire shares of any company or capital of a business or assets of a business or section of a business— 35

“(a) The shares, capital, or assets to be acquired or sought to be acquired by all of those persons shall be deemed to be shares, capital, or assets to be acquired or sought to be acquired by one of those persons; and 40

“(b) Except in relation to **subsection (2)** of this section, a reference in **subsection (1)** of this section to shares or capital to which the transferee is already beneficially entitled or in which the transferee already has a beneficial interest or, as the case may be, a reference to an equity interest already held in a business or a section of a business, shall be construed as a reference to beneficial entitlements, beneficial interests, or equity interests of all of those persons as if they constituted one person.

“67A. **Certain other terms defined in relation to merger or takeover proposals**—(1) Unless the context otherwise requires, in this Act, in relation to any merger or takeover proposal,—

15 “ ‘Assets’ includes intangible assets:

“ ‘Building society’ means a building society incorporated under the Building Societies Act 1965 or the Building Societies Act 1908:

20 “ ‘Company’, ‘holding company’, ‘private company’, and ‘subsidiary company’ have the same meanings as in the Companies Act 1955; and a company includes an overseas company within the meaning of that Act:

25 “ ‘Controlling interest’ means the extent of voting power, amount of capital, or amount of assets, referred to in any of **paragraphs (a) to (c) of section 67 (1)** of this Act:

“ ‘Implementation’ means the engaging in any conduct that wholly or in part effects the completion of the proposal; and ‘implement’ and ‘implemented’ have corresponding meanings:

30 “ ‘Nominee’, in relation to any particular person, means any other person who may be required to exercise his voting power in relation to any company in accordance with the direction of that particular person, or who holds shares directly or indirectly on behalf of that particular person:

35 “ ‘Participant’ means—

“(a) Where the proposal is of the kind described in **paragraph (a) of section 67 (1)** of this Act, the transferee and the transferor company:

40 “(b) Where the proposal is of the kind described in **paragraph (b)** of that provision, the transferee and the business whose capital or portion of whose capital is intended to be acquired under the proposal:

“(c) Where the proposal is of the kind described in **paragraph (c)** of that provision, the transferee and the business (whether a company or not) whose assets are intended to be acquired under the proposal:

“(d) Where the proposal is of the kind described in **paragraph (d)** of that provision, each business (whether a company or not) involved in the proposal:

“‘Section of a business’ means a division or an activity of a business that is capable in itself of being operated independently as a business:

“‘Share’, in relation to a company, includes stock, any beneficial interest in any share, and any perpetual debenture or perpetual debenture stock:

“‘Transferee’ means a person who, whether acting jointly or in concert with any other person or not, proposes to acquire or is intended to acquire under the merger or takeover proposal shares in a company, or the whole or a portion of the capital of a business, or the whole or a portion of the assets of a business or of a section of a business:

“‘Transferor’ means the owner of a business the capital or assets of which are sought to be acquired or disposed of in whole or in part under the merger or takeover proposal:

“‘Transferor company’ means a company whose shares or any of them are sought to be acquired or disposed of under a merger or takeover proposal.

“(2) For the purposes of this Act, in relation to any merger or takeover proposal,—

“(a) A person appointed as the receiver or manager of the property of a body corporate or as the liquidator of a body corporate is not, merely because of his appointment, a transferee:

“(b) The voting power at any general meeting of a company shall be determined without reference to any restriction or limitation placed by the articles of the company upon the voting rights of a member in respect of any shares in that company.

“67B. **Application to building societies**—The provisions of this Act relating to any merger or takeover proposal, with any necessary modifications, shall apply in respect of building societies in the same way as they apply to companies.

**“68. Certain merger or takeover proposals require consent before implementation—**(1) This section applies to every merger or takeover proposal that belongs to any class described in the Third Schedule to this Act.

5 “(2) Every person commits an offence against this Act who, either by himself or jointly or in concert with any other person, shall implement a merger or takeover proposal to which this section applies unless—

10 “(a) That proposal is one to which consent has been given in accordance with this Part of this Act; and

“(b) All the terms and conditions of the consent are complied with.

“**(3)** For the purposes of this section and the Third Schedule to this Act,—

15 “(a) Where any participant in the merger or takeover proposal is a member of a group of interconnected bodies corporate and will remain so notwithstanding the completion of the merger or takeover proposal, the assets of all the members of the group shall be deemed to be assets of the participant:

20 “(b) Where any new business is being established under a merger or takeover proposal to which **section 67 (1) (d)** of this Act applies, the assets of the new business, other than the assets of the businesses or sections of businesses in which a controlling interest is being acquired, shall be included in the aggregate value of the assets involved in the merger or takeover proposal:

25 “(c) Where any activity specified in the first column of class A of that Schedule is carried on by a body corporate that is interconnected with a participant, that activity shall be deemed to be carried on by the participant:

30 “(d) Where any participant in a merger or takeover proposal is acting jointly or in concert with any other person, any activity specified in the first column of class A of that Schedule which is carried on by that other person shall be deemed to be an activity of the participant and the assets of that other person and any interconnected body corporate shall be deemed to be assets of the participant.

35 “(4) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister, amend the Third Schedule to this Act or revoke that Schedule and substitute a new Schedule; and every such Order in Council  
45 shall have effect according to its tenor.

“69. **Contracts subject to condition of consent**—(1) Subject to **subsection (2)** of this section, the entering into a contract for the acquisition or disposition of any shares, capital, or assets which would implement a merger or takeover proposal to which **section 68** of this Act applies shall not in itself be deemed for the purposes of that section to amount to implementing the proposal if the following requirements are met: 5

“(a) The contract is subject to a condition in writing that none of its provisions relating to the acquisition or disposition will come into force unless and until the merger or takeover proposal has been given consent in accordance with this Part of this Act; and 10

“(b) A notice is given under **section 70** of this Act,—

“(i) Where the proposal involves 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 15

“(ii) In any other case, within 3 working days after the date on which the contract was entered into. 20

“70. **Notice of merger or takeover proposal within Third Schedule**—(1) Any person who is a participant in, or who is otherwise party to, a merger or takeover proposal to which **section 68** of this Act applies may give to the Chairman of the Commission a notice in the prescribed form, together with such information and documents as are prescribed, seeking consent to the proposal before its implementation, and the Chairman shall forthwith refer the notice to the Examiner to be dealt with in accordance with the succeeding provisions of this section, together with such directions as he considers fit to give under **section 71** of this Act. 25 30

“(2) On receipt of a notice that complies with **subsection (1)** of this section, the Examiner shall forthwith—

“(a) Cause the notice to be recorded in a register to be kept by him for the purpose; and 35

“(b) Cause written notice of the date of registration to be given to the person by or on whose behalf the notice under **subsection (1)** of this section was given.

“(3) On receipt of a notice that does not comply with **subsection (1)** of this section, the Examiner may, in his discretion, either— 40

“(a) Accept the notice and take the steps referred to in **subsection (2)** of this section in respect of that notice; or 45

“(b) Return that notice to the person by or on whose behalf it was given; or

5 “(c) Decline to cause the notice to be recorded in the register until the notice complies with **subsection (1)** of this section, in which case the Examiner shall cause the person by or on whose behalf the notice was given to be informed accordingly.

10 “(4) The person giving the notice under **subsection (1)** of this section, and any person on whose behalf it was given, and any person to whom the notice relates, shall from time to time furnish to the Examiner, within such time as he may specify, such further documents or information in relation to the notice as may be required for the purpose of registering the notice under this section.

15 “(5) Any person who has given a notice under **subsection (1)** of this section may, at any time, by a subsequent notice in writing to the Chairman of the Commission, withdraw the notice; and on receipt of any such subsequent notice the Chairman shall inform the Examiner accordingly.

20 “(6) Notwithstanding anything in **subsection (2)** or **subsection (3)** of this section, where the Examiner is of the opinion that the proposal to which a notice relates is, for reasons other than arising from the application of any provision of this Act, unlikely to be completed, the Examiner may, in his discretion, return the notice to the person by or on whose behalf it was given.

25 “(7) When any notice has been registered under this section, the Examiner shall inform the Chairman of the Commission accordingly.

30 “**71. Responsibilities of Chairman on registration of notice**—(1) On referring any notice to the Examiner for registration under **section 70** of this Act, or as soon as practicable thereafter, the Chairman of the Commission shall formally refer the matter to the Examiner—

35 “(a) For investigation and possible determination under **section 72** of this Act; or

“(b) For investigation and report to the Commission under sections 74 and 75 of this Act,—

40 as the Chairman thinks fit; and, as soon as the notice is so registered, the Examiner shall proceed accordingly.

45 “(2) On referring any matter to the Examiner under **paragraph (a) or paragraph (b) of subsection (1)** of this section, the Chairman of the Commission may give all such directions to the Examiner (including directions relating to the time within which any thing is to be done) as he considers will best ensure the convenient and expeditious determination of the matter.

**“72. Examiner may consent to certain merger or takeover proposals within Third Schedule—**(1) Where any matter is referred to him by the Chairman of the Commission under **section 71 (1) (a)** of this Act, the Examiner may, within 25 working days after the date of the registration of the notice given under **section 70** of this Act or within such shorter period as the Chairman may specify on so referring the matter, consent to the proposal by notice in writing to the person by or on whose behalf the notice was given. 5

“(2) Any consent given by the Examiner under **subsection (1)** of this section may be subject to conditions and undertakings in accordance with **section 81JD** of this Act. 10

“(3) If, during the period specified in **subsection (1)** of this section, the Examiner either—

“(a) Forms the provisional view that the merger or takeover proposal is or is likely to be contrary to the public interest in terms of section 80 of this Act; or 15

“(b) Is in doubt whether or not the proposal is or is likely to be contrary to the public interest,—

he shall not consent to the proposal under this section, but shall refer the matter back to the Commission for determination, and shall, if requested to do so by the Chairman of the Commission, investigate the matter and report thereon to the Commission in accordance with **sections 74 and 75** of this Act. 20 25

“(4) Where the Examiner refers the matter back to the Commission under **subsection (3)** of this section, he shall give written notice of the fact that he has done so to the person by or on whose behalf the notice was given under **section 70** of this Act. 30

“(5) If, within the period referred to in **subsection (1)** of this section, the Examiner—

“(a) Consents to the proposal; or

“(b) Neither consents to the proposal nor gives notice under **subsection (4)** of this section that he has referred the matter back to the Commission,— 35

it shall be lawful under this Act to implement the proposal at any time within 12 months after the expiry of that period.

**“73A. Investigation of merger or takeover not coming within Third Schedule—**(1) Where it appears to the Examiner that any merger or takeover (not being one that requires consent under **section 68** of this Act) has been, or is being implemented, being a merger or takeover which he considers is or is likely to be contrary to the public interest, the Examiner may, and shall if directed to do so by the Commission, conduct an investigation into the merger or takeover in accordance with section 74 of this Act. 40 45

“(2) The power conferred on the Examiner by **subsection (1)** of this section shall not be exercised in respect of any merger or takeover if more than 6 months have elapsed since the merger or takeover was completed.

5     **“73B. Examiner may give prior clearance to proposed merger or takeover not coming within Third Schedule—**

(1) Where any arrangements are in contemplation which, if carried into effect, will result in a merger or takeover (other than one that will result from the implementation of a merger  
10 or takeover proposal requiring consent under **section 68** of this Act), any person acting on behalf of any prospective participant may make written application to the Chairman of the Commission for clearance of the proposed merger or takeover.

“(2) Every application under **subsection (1)** of this section shall  
15 contain a statement of all the relevant particulars relating to the proposed merger or takeover, and the applicant shall provide such other documents and information as the Commission or the Examiner requires for the purpose of considering the application.

20     “(3) On receipt of an application under this section, the Chairman of the Commission shall refer the application to the Examiner—

“**(a)** For inquiry and possible determination under the succeeding provisions of this section; or

25     “**(b)** For investigation and report to the Commission under sections 74 and 75 of this Act,—  
as the Chairman thinks fit.

“**(4)** Where any application is referred to the Examiner under **subsection (3) (a)** of this section, he may in his discretion—

30     “**(a)** Give his written clearance to the proposed merger or takeover, on such terms and subject to such conditions not inconsistent with this Act as he thinks fit, to the applicant; or

35     “**(b)** If he is of the view that the particulars or information provided by the applicant are insufficient to form a view whether the proposed merger or takeover is or is likely to be contrary to the public interest, or if he forms the view that the proposed merger or takeover is or is likely to be contrary to the public  
40 interest, decline to give his clearance to it and notify the applicant of his intention to investigate the matter.

“**(5)** Where he refers any application to the Examiner under **subsection (3) (b)** of this section, the Chairman of the Commission  
45 shall give notice of that fact to the applicant.

“**(6)** If, following a notice given under **subsection (4) (b)** or **subsection (5)** of this section, any application for clearance of a proposed merger or takeover is withdrawn by the applicant,



the Examiner shall record that fact and take no further action under this section with respect to the application or the proposed merger or takeover; but nothing in this subsection shall affect the powers of the Examiner under **section 73A** of this Act.

“(7) Where the Commission or the Examiner gives any clearance in respect of a proposed merger or takeover, the Examiner shall not subsequently take any action under **section 73A** of this Act with respect to that merger or takeover, unless the merger or takeover or the arrangements in progress to effect the merger or takeover do not comply with the terms and conditions of the clearance.”

(2) The following enactments are hereby repealed:

- (a) Schedule 3A to the principal Act (as substituted by clause 2 (2) of the Commerce Act (Mergers and Takeovers Notification) Order 1983: 15
- (b) Sections 25 to 28 of the Commerce Amendment Act (No. 2) 1979.
- (3) Clause 2 (2) of the Commerce Act (Mergers and Takeovers Notification) Order 1983, and the Second Schedule to that order, are hereby revoked. 20

**27. Conciliation**—Section 74 of the principal Act (as substituted by section 22 of the Commerce Amendment Act 1976) is hereby amended—

- (a) By repealing subsection (1): 25
- (b) By omitting from subsection (2) the words “full investigation under **subsection (1)** of this section”, and substituting the words “investigation pursuant to **section 71 (1) (b)** or **section 72 (3)** or **section 73A** of this Act: 30
- (c) By omitting from subsection (2) (b) the expression “10”, and substituting the expression “3”:
- (d) By omitting from subsection (5) the expression “10”, and substituting the expression “3”.

**28. Report to Commission**—Section 75 of the principal Act (as substituted by section 22 of the Commerce Amendment Act 1976) is hereby amended— 35

- (a) By repealing subsection (1):
- (b) By omitting from subsection (2) the words “, after having regard to any action taken under subsections (2) to (5) of that section,”: 40
- (c) By omitting from subsection (4) the words “, and the Commission may decide not to conduct an inquiry into the matter under section 76 of this Act”:
- (d) By repealing subsections (5) to (7). 45

**29. Time limit on investigation and report by Examiner**—The principal Act is hereby amended by inserting, after section 75, the following section:

“75A. (1) Subject to **subsection (2)** of this section, if the  
 5 Examiner has not furnished a report to the Commission under section 75 of this Act in respect of any merger or takeover proposal,—

“(a) In the case of an investigation pursuant to **section 71 (1) (b)**  
 or **section 73A** of this Act, within 50 working days  
 10 after the date of the commencement of his investigation; or

“(b) In the case of an investigation pursuant to **section 72 (3)**  
 of this Act, within 25 working days after the date  
 of the commencement of his investigation,—

15 it shall be lawful under this Act for the proposal to be implemented within the 12 months following the expiration of that period.

“(2) If the Examiner by written notice has required any  
 20 person who is a participant in or is otherwise a party to the proposal to furnish to him any document or information by a date specified in the notice and that document or information has not been furnished to the Examiner by that date, the said period of 50 working days or (as the case may require) of 25 working days shall be deemed to be extended by the number  
 25 of working days between the date specified in the notice and the working day after the date on which the document or information is furnished.”

**30. Determination by Commission**—(1) The principal Act is hereby amended by repealing section 76 (as substituted by  
 30 section 22 of the Commerce Amendment Act 1976), and substituting the following section:

“76. (1) Upon receipt of a report made by the Examiner under section 75 of this Act, the Commission shall determine whether the merger or takeover proposal or the merger or  
 35 takeover or the proposed merger or takeover is or is likely to be contrary to the public interest in terms of section 80 of this Act.

“(2) The Commission shall issue its determination within 50 working days after the date of receipt of the report made to  
 40 the Commission under section 75 of this Act.”

(2) Section 30 of the Commerce Amendment Act (No. 2) 1979 is hereby repealed.

**31. Section 77 consequentially repealed**—Section 77 of the principal Act (as substituted by section 22 of the Commerce  
 45 Amendment Act 1976) is hereby repealed.

**32. Powers of Commission**—Section 78 of the principal Act (as substituted by section 22 of the Commerce Amendment Act 1976) is hereby amended—

- (a) By omitting from subsection (1) the words “Where, after holding an inquiry under section 76 of this Act, the Commission decides”, and substituting the words “Where the Commission determines under section 76 of this Act”: 5
- (b) By omitting from subsection (2) the words “Where, after holding an inquiry under section 76 of this Act, the Commission determines”, and substituting the words “Where the Commission determines under section 76 of this Act”: 10
- (c) By repealing subsection (8).

*Offences and Penalties*

**33. Offences in relation to monopolies, mergers, and takeovers**—The principal Act is hereby amended by repealing section 81F (as substituted by section 22 of the Commerce Amendment Act 1976), and substituting the following section: 15

“81F. (1) Every person commits an offence against this Act who contravenes or fails to comply with any order made by the Commission under section 65 (1) of this Act.

“(2) Every person commits an offence against this Act who contravenes or fails to comply with any order made by the Commission under section 78 of this Act or by the Court under section 81 of this Act. 20

“(3) No prosecution for an offence against this section shall be commenced except by the Examiner.” 25

**34. Penalties**—Section 81G of the principal Act (as substituted by section 22 of the Commerce Amendment Act 1976) is hereby amended—

- (a) By inserting in subsection (1), after the words “an offence against”, the words “section 68 or”: 30
- (b) By omitting from subsection (1) (a) the expression “\$20,000”, and substituting the expression “\$50,000”:
- (c) By omitting from subsection (1) (b) the expression “\$100,000”, and substituting the expression “\$250,000”: 35
- (d) By omitting from subsection (2) the expression “\$20,000”, and substituting the expression “\$50,000”.

**35. Section 81H amended**—Section 81H of the principal Act (as substituted by section 22 of the Commerce Amendment Act 1976) is hereby amended by repealing subsection (3), and substituting the following subsections: 40

“(3) Every order made under subsection (1) of this section may at any time be revoked or amended by the Commission in like manner.

“(3A) Every such order shall be deemed to be revoked if it was made during the course of any determination by the 45

Commission of the matter and that matter has been wholly heard and determined and any appeal in relation to it or any reconsideration of it has been disposed of.”

**36. Powers in relation to certain contraventions**—Section 5 81I of the principal Act (as substituted by section 22 of the Commerce Amendment Act 1976) is hereby amended by repealing subsections (1) and (2), and substituting the following subsection:

“(1) Where any merger or takeover proposal is implemented 10 other than at a time when it is lawful under this Act, the Examiner may in his discretion, but subject to **subsection (2)** of this section, at any time thereafter—

“(a) Give his consent to the transaction, subject to such terms 15 and conditions not inconsistent with this Act as he thinks fit, and thereupon the transaction, and any relationships, rights, or interests created by it or arising under it, shall be as valid and effectual as if the Examiner’s consent had been obtained before the transaction was entered into; or

20 “(b) If he forms the opinion that the transaction is or is likely to be contrary to the public interest or he is in doubt whether or not the transaction is contrary to the public interest, he shall not give his consent to it under **paragraph (a)** of this subsection but shall refer 25 the matter to the Commission for determination as if that transaction were a merger or takeover in respect of which an opinion was formed under section 74 (2) of this Act; and all the provisions of this Part of this Act, with any necessary 30 modifications, shall apply accordingly.”

**37. Investigations**—The principal Act is hereby amended by repealing section 81J (as substituted by section 22 of the Commerce Amendment Act 1976), and substituting the following section:

35 “81J. (1) For the purposes of any investigation conducted by the Examiner under this Part of this Act, the Examiner or any person authorised in that behalf in writing by the Examiner may—

“(a) Inspect, examine, and audit any books or documents: 40 “(b) Require any person to produce any books or documents in his possession or under his control, and to allow copies of or extracts from any such books or documents to be made:

45 “(c) Require any person to furnish, in a form to be approved by or acceptable to the Commission, any information or particulars that may be required by the Commission, and any copies of or extracts from any such books or documents as aforesaid.

“(2) The Examiner may, if he thinks fit, require that any written information or particulars or any copies or extracts furnished under this section shall be verified by statutory declaration or otherwise as the Examiner may specify.”

**38. Four new sections inserted in principal Act—**(1) The principal Act is hereby amended by inserting, after section 81J (as substituted by **section 37** of this Act), the following sections: 5

“**81JA. Proposals relating to acquisition or disposition of more than a controlling interest in a company—**  
(1) **Subsection (2)** of this section applies to every merger or takeover proposal where— 10

“(a) The proposal relates to the acquisition or disposition of shares in a company; and

“(b) Those shares would, together with any shares to which the transferee is already beneficially entitled or in which the transferee already has a beneficial interest, carry the right to exercise or control the exercise of more than 50 percent but less than 100 percent of the voting power at any general meeting of the transferor company. 15 20

“(2) No consent or clearance given to any proposal to which this subsection applies shall be—

“(a) Expressed to be limited, in the shareholding that may be acquired or disposed of, to less than 100 percent of that voting power; or 25

“(b) Conditional upon such a limitation or subject to an undertaking to that effect,—

unless the Commission or (as the case may require) the Examiner is satisfied that the limitation, in terms of section 80 of this Act, is necessary to the giving of the consent or clearance. 30

“(3) In respect of any notice for consent given under **section 68** of this Act or any application for clearance made under **section 73B** of this Act in respect of any merger or takeover proposal— 35

“(a) To which **subsection (2)** of this section does not apply; and

“(b) Under which a controlling interest is to be realised through the acquisition or disposition of shares in a company,— 40

the Commission or (as the case may require) the Examiner may give that consent or clearance in terms that would authorise the transferee to acquire shares carrying the right to exercise or control the exercise of 100 percent of the voting power of

the company, where the Commission or the Examiner is satisfied that the extent of any such consent or clearance, in terms of section 80 of this Act, would not affect its or his consideration of the proposal.

5     “81JB. **Consents to be notified to New Zealand Stock Exchange**—(1) This section shall apply to every merger or takeover proposal involving the acquisition of any shares or any class of shares in a company that are listed by the New Zealand Stock Exchange.

10     “(2) The Commission or (as the case may require) the Examiner, in respect of every consent given under this Act to a merger or takeover proposal to which this section applies, shall give notice to the New Zealand Stock Exchange conveying brief particulars of the consent.

15     “(3) The notice shall be given to the New Zealand Stock Exchange as soon as practicable after advice of the consent has been given to the person by or on whose behalf the notice for consent was given.

20     “81JC. **Merger or takeover proposals requiring consent under Overseas Investment Act 1973**—(1) Nothing in this Part of this Act shall limit any provision of the Overseas Investment Act 1973 or any regulations made under that Act.

25     “(2) Notwithstanding any duty or any time limit prescribed in this Act, the Commission or (as the case may require) the Examiner shall withhold any consent that it or he has determined to give under this Act in respect of any merger or takeover proposal that appears to the Commission or the Examiner to require consent under the Overseas Investment Act 1973, unless and until that consent is granted or the  
30 Commission or the Examiner has been notified by the Overseas Investment Commission that it is not so required; and any duty and any time limit imposed by this Act shall be suspended until the occurrence of either event.

35     “(3) Where the Minister of Finance or the Overseas Investment Commission refuses his or its consent to a merger or takeover proposal under the Overseas Investment Act 1973, any notice for consent or application for clearance under this Act in respect of the proposal shall be deemed to be withdrawn.

40     “(4) Where consent to a merger or takeover proposal has already been given under the Overseas Investment Act 1973,—

    “(a) The Examiner shall, before forming an opinion in terms of section 74 of this Act; or

45     “(b) If the matter has been reported to the Commission under section 75 of this Act, the Commission shall, before making any determination under section 76 of this Act,—

consult with the Overseas Investment Commission and take into account the reasons for the consent under the Overseas Investment Act 1973 as part of his or its consideration in terms of section 80 of this Act.

**“81JD. Undertakings may be accepted by Commission or Examiner with consents or clearances to merger or takeover proposals—**(1) The Commission or (as the case may require) the Examiner, in giving consent or clearance under this Part of this Act, may accept or require the giving of a written undertaking by or on behalf of any person concerning the conduct to be engaged in by that person or the doing of any other act affecting competition in a market or the public interest after the giving of consent or clearance. 5 10

“(2) Every undertaking given by any person under this section shall be deemed for the purposes of this Act to be a condition of the consent or clearance given in relation to that person. 15

“(3) If the consent does not apply to the person giving the undertaking, a failure by that person to comply with the undertaking shall constitute an offence against this Act, as if it were a contravention of section 81E of this Act.” 20

(2) The following enactments are hereby consequentially repealed:

(a) Section 15A of the Overseas Investment Act 1977 (as substituted by section 23 (2) of the Commerce Amendment Act 1976): 25

(b) So much of the Second Schedule to the Commerce Amendment Act 1976 as relates to section 15A of the Overseas Investment Act 1973.

#### PART IV

##### MISCELLANEOUS AMENDMENTS

30

**39. Penalties for offences in respect of price control—**  
The principal Act is hereby amended by repealing section 116, and substituting the following section:

“116. Every person who commits any offence against this Part of this Act is liable,— 35

“(a) In the case of an individual, to a fine not exceeding \$2,500 and, if the offence is a continuing one, to a further fine not exceeding \$250 for every day on which the offence has continued:

“(b) In the case of a body corporate, to a fine not exceeding \$12,500 and, if the offence is a continuing one, to a further fine not exceeding \$1,250 for every day on which the offence has continued.” 40

**40. Strikes or lockouts affecting cost of major construction project**—(1) Section 119C of the principal Act (as inserted by section 36 of the Commerce Amendment Act 1976) is hereby amended by inserting, after paragraph (b), the following paragraph:

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“(ba) The cost of undertaking or completing any major construction project has been substantially increased, or it is clearly evident that it will be substantially increased in the immediate future, by delay resulting from a strike or lockout; or”.

(2) Section 119C of the principal Act (as so inserted) is hereby further amended by repealing subsection (9), and substituting the following subsection:

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“(9) In this section—  
“ ‘Arbitration Court’ means the Arbitration Court constituted under the Industrial Relations Act 1973:  
“ ‘Major construction project’ means a construction project designated by the Governor-General by Order in Council as a major construction project for the purposes of this section.”

**41. Additional lay members of High Court for purposes of appellate jurisdiction in respect of Commission determinations, etc.**—The principal Act is hereby amended by inserting, after section 122, the following section:

25  
“122A. (1) For the purposes of the exercise by the Court of its jurisdiction and powers under Part II and Part III of this Act, there shall be lay members of the Court who shall be persons appointed from time to time by the Governor-General.

30  
“(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, in relation to the subject-matter of Parts II and III of this Act, by virtue of that person’s knowledge of or experience in trade, industry, economics, accountancy, commercial law, public administration, or consumer affairs.

35  
40  
“(3) Subject to **subsection (4)** of this section, a lay member of the Court shall hold office for such term, not exceeding 7 years, as the Governor-General shall specify in that member’s instrument of appointment, but may from time to time be reappointed.

“(4) All the provisions of section 3C and section 4 (2) of this Act shall apply, with any necessary modifications, to lay members of the Court appointed under this section.

45  
“(5) 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.



“(6) The presence of a Judge of the Administrative Division and of at least 2 lay members shall be necessary to constitute a sitting of the Court.

“(7) A question of law arising in any proceedings under any of the provisions of Part II or Part III of this Act shall be determined in accordance with the opinion of the Judge. 5

“(8) Except as provided in **subsection (7)** of this section, the decision of a majority of the members present at a sitting of the Court shall be the decision of the Court.

“(9) Except as provided in **subsection (7)** of this section, if the members present are equally divided in opinion in respect of an appeal, the appeal shall be dismissed.” 10

**42. General penalty**—Section 127 of the principal Act is hereby amended—

(a) By omitting the expression “\$1,000”, and substituting the expression “\$4,000”: 15

(b) By omitting the expression “\$5,000”, and substituting the expression “\$20,000”.

**43. Disclosure of information**—(1) The principal Act is hereby amended by repealing section 130A (as inserted by section 39 of the Commerce Amendment Act (No. 2) 1979), and substituting the following section: 20

“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, or other document or thing given or made to the Commission under this Act. 25

“(2) The Secretary shall maintain, in such form as he thinks fit, a register in which shall be entered or filed—

“(a) Brief particulars of every price order and special approval made or given under Part IV of this Act: 30

“(b) Upon the determination of every application under section 92 of this Act, such particulars as were submitted or obtained for the purposes of the determination together with a summary of the reasons for the determination. 35

“(3) Every register maintained pursuant to **subsection (1)** or **subsection (2)** of this section shall be made available, in whole or in part, for inspection, copying, or publication by such persons, in such manner, and subject to such conditions as the Commission may order or, as the case may be, the Secretary may determine in accordance with the Official Information Act 1982. 40

“(4) This section is subject to any order for the time being in force and made under **section 11A (4)** of this Act by the Commission.

“(5) Nothing in this section shall require the Secretary to  
5 disclose information otherwise than in accordance with the Official Information Act 1982.”

(2) The following enactments are hereby repealed:

(a) Sections 17 (5) and 19 of the principal Act:

(b) Section 39 of the Commerce Amendment Act (No. 2) 1979.

10 (3) The Official Information Act 1982 is hereby amended by inserting, in the First Schedule, after the item relating to the Coal Mining Industries Welfare Council, the following item:

“Commerce Commission”.

**44. Proceedings privileged**—(1) The principal Act is hereby  
15 amended by inserting, after section 130A (as substituted by **section 43** of this Act), the following section:

“130B. (1) In this section ‘officer’ means—

“(a) An officer of the Commission:

20 “(b) An officer of the Department appointed pursuant to this Act to assist the Secretary or the Examiner in the administration of this Act:

25 “(c) A person employed or engaged to assist the Commission, or the Examiner, or the Secretary in the exercise of any of its or his functions and powers under this Act.

“(2) No civil or criminal proceedings 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 it acted in bad faith or without reasonable care.

30 “(3) Subject to **subsection (3)** of this section, no civil or criminal proceedings shall lie against any member of the Commission for anything he may do or say or fail to do or say in the course of the exercise or intended exercise of the functions of the Commission, unless it is shown that he acted in bad faith.

35 “(4) No civil or criminal proceedings shall lie against any member of the Commission, the Secretary, or the Examiner for anything he may do or say or fail to do or say in the exercise or intended exercise of any function under this Act in relation to any particular matter before him unless it is  
40 shown that he acted in bad faith.

“(5) No member of the Commission, or the Secretary, or the Examiner, or any officer shall be required to give evidence in any Court, or in any proceedings of a judicial nature, in respect

of anything coming to his knowledge in the course of the exercise or intended exercise of the functions of the Commission.

“(6) Nothing in **subsections (1) to (4)** of this section applies in the case of proceedings for an offence against section 78 or section 78A (1) or section 105 or section 105A of the Crimes Act 1961 or **section 11A (5)** of this Act. 5

“(7) Without limiting section 17 (4) of this Act, anything said or any information supplied or any books or document produced or tendered, or any evidence given, by any person 10 in the course of any proceedings before the Commission shall be privileged in the same manner as if the proceedings were proceedings in a Court.

“(8) For the purposes of clause 5 of the First Schedule to the Defamation Act 1954, any statement, document, opinion, or 15 decision made by the Commission or the Secretary or the Examiner in the course of the exercise or intended exercise of its or his functions shall be deemed to be an official report made by a person holding an inquiry under the authority of the Legislature of New Zealand.” 20

(2) Section 3 (7) of the principal Act is hereby consequentially repealed.

**45. Transitional provision**—(1) Nothing in this Act shall apply to any matter relating to a merger or takeover proposal that was before the Commission immediately before the 25 commencement of this Act; and the Commission shall determine that matter in accordance with the relevant provisions of the principal Act as if this Act had not been passed.

(2) Except as provided in **subsection (1)** of this section, the 30 provisions of this Act, so far as they are applicable and with the necessary modifications, shall apply to all matters under the principal Act, whether commenced before or after the commencement of this Act.

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