

COMMERCE AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Commerce Act 1975.

Clause 1 relates to the Short Title and commencement. Except as provided in clause 2 (6), the Act comes into force on the day on which it receives the Governor-General's assent.

Clause 2 confirms the Third Schedule and Schedule 3A to the Commerce Act 1975 (as substituted by the Commerce Act (Mergers and Takeovers Notification) Order 1983).

Section 47 of the Commerce Amendment Act 1983 is repealed. That section validated, in error, those two Schedules (as substituted by the Commerce Act (Mergers and Takeovers Notification) Order 1978).

On 1 April 1984 Schedule 3A was repealed by section 26 (2) of the Commerce Amendment Act 1983.

This clause is deemed to have come into force on 1 April 1984 (the date of commencement of the Commerce Amendment Act 1983).

Clause 3 inserts a new paragraph (cc) in section 68 (4) of the principal Act. Section 68 makes it an offence to implement a merger or takeover proposal of a class described in the Third Schedule to the principal Act unless the proposal is consented to and the terms and conditions of the consent are complied with.

Section 68 (4) (c) of the principal Act provides that for the purposes of section 68 and the Third Schedule, where an activity specified in the first column of Class A of that Schedule is carried on by a body corporate which is interconnected with a participant, that activity shall be deemed to be carried on by the participant.

The new paragraph (cc) provides that where an activity specified in the second 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.

Clause 4 repeals the Third Schedule to the Commerce Act 1975 (the Third Schedule validated by clause 2 of the Bill) and substitutes a new Third Schedule.

The new Third Schedule is the same as the Third Schedule which it replaces except that notification will now be required to be given of a merger or takeover proposal in which a participant carrying on the milling of flour, or the baking of bread, or both, effects a proposal with a participant who also carries on any of those activities and the aggregate value of the assets of those participants is \$2,500,000 or more.

Clause 5 revokes the Commerce Act (Mergers and Takeovers Notification) Order 1983.

Hon. David Caygill

COMMERCE AMENDMENT

ANALYSIS

Title	3. Certain merger or takeover proposals require consent before implementation
1. Short Title and commencement	4. New Third Schedule substituted
2. Validation of substitution of new Third Schedule and new Schedule 3A	5. Revocation Schedule

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
5 follows:

- 1. Short Title and commencement**—(1) This Act may be
cited as the Commerce Amendment Act 1984 and shall be read
together with and deemed part of the Commerce Act 1975*
(hereinafter referred to as the principal Act).
- 10 (2) Except as provided in **section 2 (6)** of this Act, this Act shall
come into force on the day on which it receives the Governor-
General's assent.

*Reprinted R.S. Vol. 7, p. 1
Amendment: 1983, No. 144

- 2. Validation of substitution of new Third Schedule and
new Schedule 3A**—(1) The revocation of the Third Schedule
15 to the principal Act (as substituted by the Commerce Act
(Mergers and Takeovers Notification) Order 1978) by the
Commerce Act (Mergers and Takeovers Notification) Order
1983, and the substitution by the Commerce Act (Mergers and

Takeovers Notification) Order 1983 of a new Third Schedule to the principal Act, are hereby declared to be, and to have always been, valid.

(2) The revocation of Schedule 3A to the principal Act (as substituted by the Commerce Act (Mergers and Takeovers Notification) Order 1978) by the Commerce Act (Mergers and Takeovers Notification) Order 1983, and the substitution by the Commerce Act (Mergers and Takeovers Notification) Order 1983 of a new Schedule 3A to the principal Act, are hereby declared to be, and to have always been, valid.

(3) The revocation of the Commerce Act (Mergers and Takeovers Notification) Order 1978 by the Commerce Act (Mergers and Takeovers Notification) Order 1983 is hereby declared to be, and to have always been, valid.

(4) Section 47 of the Commerce Amendment Act 1983 is hereby consequentially repealed.

(5) Nothing in this section limits the effect of section 26 (2) (a) of the Commerce Amendment Act 1983, which, on 1 April 1984, repealed Schedule 3A to the principal Act (as substituted by clause 2 (2) of the Commerce Act (Mergers and Takeovers Notification) Order 1983).

(6) This section shall be deemed to have come into force on the 1st day of April 1984.

3. Certain merger or takeover proposals require consent before implementation—Section 68 (4) of the principal Act (as enacted by section 26 (1) of the Commerce Amendment Act 1983) is hereby amended by inserting, after paragraph (c), the following paragraph:

“(cc) Where any activity specified in the second 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:”.

4. New Third Schedule substituted—The principal Act is hereby amended by repealing the Third Schedule (as substituted by the Commerce Act (Mergers and Takeovers Notification) Order 1983 and validated by section 2 (1) of this Act), and substituting the Third Schedule set out in the Schedule to this Act.

5. Revocation—The Commerce Act (Mergers and Takeovers Notification) Order 1983 is hereby consequentially revoked.

SCHEDULE

Section 4

NEW THIRD SCHEDULE TO COMMERCE ACT 1975

“THIRD SCHEDULE

Section 68 (1)

CLASSES OF MERGER OR TAKEOVER PROPOSALS REQUIRING NOTIFICATION

Class A

Merger or takeover proposals in which a participant carrying on one of the activities specified in column 1 hereof effects a proposal with one or more participants carrying on any of the activities specified, in relation to the first-mentioned activity in column 2 hereof and, if specified, in which the aggregate value of the assets of all the participants is that specified or more than that specified in column 3 hereof.

Column 1	Column 2	Column 3
The brewing of beer	The making, wholesaling or retailing of alcoholic beverages; or The making or wholesaling of non-alcoholic beverages; or Both	
The processing of fruit and vegetables	The processing of foodstuffs; or The wholesaling or retailing of processed foodstuffs; or Both	\$2,500,000
The transportation of goods by land (not including freight forwarding)	The transportation of goods by land (not including freight forwarding)	\$2,500,000
The publishing of daily newspapers or Sunday newspapers or both	Printing or publishing or both	
The manufacture of paint or wallpaper or both	The manufacturing or wholesaling or retailing of paint or wallpaper or both	
The milling of flour or the baking of bread or both	The milling of flour or the baking of bread or both	\$2,500,000

Class B

Merger or takeover proposals (other than those coming within Class A of this Schedule) in which the aggregate value of the assets of all the participants involved is \$20,000,000 or more and—

- (a) In the case of a merger or takeover proposal involving not more than 2 participants, the value of the assets of the smaller participant is \$2,500,000 or more; or
- (b) In the case of a merger or takeover proposal involving more than 2 participants, the aggregate value of the assets of the participants (excluding those of the largest participant) is \$2,500,000 or more.”