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A BILL INTITULED

An Act to amend the Commerce Act 1986, the Fair Trading Act 1986, and the Dumping and Countervailing Duties Act 1988

BE IT ENACTED by the Parliament of New Zealand as follows: 5

1. Short Title and commencement—(1) This Act may be cited as the Commerce Law Reform Act 1989.

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(2) Except as provided in sections 5, 14, 31, 33, 49, 51, and 58 of this Act, this Act shall come into force on the 1st day of April 1990. 10

New

(2) Except as provided in **subsection (3)** of this section, this Act shall come into force on the 1st day of July 1990.

5 (3) **Sections 3 (1), (3), (4), (5), and (6), 15A, 16, 22, 25A, 25B,** (except **subsection (1) (b), 25c, 27, 28, 29, 29A, 29B, 41, 43, 43A, and 43B** of this Act shall come into force on the 1st day of January 1991.

PART I

AMENDMENTS TO COMMERCE ACT 1986

10 **2. Part to be read with Commerce Act 1986**—This Part of this Act and the Schedule to this Act shall be read together with and deemed part of the Commerce Act 1986* (in this Part of this Act referred to as the principal Act).

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15 **3. Interpretation**—(1) Section 2 (7) of the principal Act is hereby amended by omitting the words “For the purposes of this Act,” and substituting the words “Except as provided in **subsection (7A)** of this section, for the purposes of this Act,”.

(2) Section 2 of the principal Act is hereby amended by inserting, after subsection (7), the following subsections:

20 “(7A) For the purposes of section 47 (3) and (4) of this Act, any 2 bodies corporate are to be treated as interconnected if—

25 “(a) One of the bodies corporate holds more than half in nominal value of the other body corporate’s equity share capital (as defined in **subsection (7B)** of this section) or more than half of the equity share capital of each of the bodies corporate is held by the same body corporate or by bodies corporate that are interconnected; or

30 “(b) One of the bodies corporate is interconnected (in accordance with **paragraph (a)** of this subsection), with any body corporate that is interconnected with the other body corporate.

35 “(7B) For the purposes of **subsection (7A)** of this section, ‘equity share capital’, in relation to a body corporate, means the issued share capital of the body corporate excluding share capital that

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does not confer a right to participate in capital or dividends in excess of a specified amount.”

New

3. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the expression “arrive at”, the following definition:

“‘Assets’ includes intangible assets.”

(2) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term “person”, the following definition:

“‘Place’ includes any premises, building, aircraft, ship, carriage, vehicle, or receptacle.”

(3) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term “services”, the following definition:

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

“(a) A beneficial interest in any such share: 20

“(b) A power to exercise, or control the exercise of, a right to vote attaching to any such share that carries the right to vote at general meetings:

“(c) A power to acquire or dispose of, or control the acquisition or disposition of, any such share: 25

“(d) A perpetual debenture and perpetual debenture stock.”

(4) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term “substantial”.

(5) Section 2 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection: 30

“(1A) In this Act (except **section 47 (3) and (4)**) ‘substantial’ means real or of substance.”

(6) Section 2 of the principal Act is hereby amended by repealing subsection (7), and substituting the following subsection: 35

“(7) For the purposes of this Act, any 2 bodies corporate are to be treated as interconnected if—

New

- “(a) One of them is a body corporate of which the other is a subsidiary (within the meaning of section 158 of the Companies Act 1955); or
- 5 “(b) Both of them are subsidiaries (within the meaning of that section) of the same body corporate; or
- “(c) Both of them are interconnected with bodies corporate that, in accordance with **paragraph (a) or paragraph (b)** of this subsection, are interconnected—
- 10 and “interconnected bodies corporate” has a corresponding meaning.”

4. Certain terms defined in relation to competition—

(1) Section 3 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

15

“(1) In this Act(,) ‘competition’ means workable or effective competition.

Struck Out

- “(1A) Every reference in this Act, except the reference in
- 20 **section 36A (1) (b) and (c)** of this Act, to the term ‘market’ is a reference to a market in New Zealand for goods or services as well as other goods or services that are substitutable for them as a matter of fact and commercial common sense.
- “(1B) The reference in **section 36A (1) (b) and (c)** of this Act to the
- 25 term ‘market’, in relation to a market in Australia, is a reference to a market in Australia for goods or services as well as other goods or services that are substitutable for them as a matter of fact and commercial common sense.”

New

- 30 “(1A) Every reference in this Act, except the reference in **section 36A (1) (b) and (c)** of this Act, to the term ‘market’ is a reference to a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.

New

“(1B) The reference in **section 36A (1) (b)** of this Act to the term ‘market’, in relation to a market in Australia, is a reference to a market in Australia for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them. 5

“(1C) The reference in **section 36A (1) (c)** of this Act to the term ‘market’ in relation to a market in New Zealand and Australia, is a reference to a market in New Zealand and Australia for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.” 10

Struck Out

(2) Section 3 (8) of the principal Act is hereby amended by inserting, after the number “36,”, the number “36A,”. 15

New

(2) Section 3 (8) of the principal Act is hereby amended by omitting the expression “sections 36, 66, and 67”, and substituting the expression “sections 36 and 36A”.

(3) Section 3 of the principal Act is hereby amended by adding, as subsection (9), the following subsection: 20

“(9) For the purposes of **sections 47 and 48** of this Act, a person has, or 2 more persons that are interconnected or associated together have, as the case may be, a dominant position in a market if that person as a supplier or an acquirer, or those persons as suppliers or acquirers, of goods or services, is or are in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market and for the purposes of determining whether a person is, or 2 or more persons that are interconnected or associated, are, in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in a market regard shall be had to— 25 30

“(a) The share of the market, the technical knowledge, the access to materials or capital of that person or those persons: 35

New

“(b) The extent to which that person is, or those persons are, constrained by the conduct of competitors or potential competitors in that market:

5 “(c) The extent to which that person is, or those persons are, constrained by the conduct of suppliers or acquirers of goods or services in that market.”

4A. Commission to consider efficiency—The principal Act is hereby amended by inserting, after section 3, the following section:

10 “3A. Where the Commission is required under this Act to determine whether or not, or the extent to which, conduct will result, or will be likely to result, in a benefit to the public, the Commission shall have regard to any efficiencies that the
15 Commission considers will result, or will be likely to result, from that conduct.”

5. Application of Act to conduct outside New Zealand—The principal Act is hereby amended by repealing section 4 and substituting the following section:

20 “4. (1) This Act extends to the engaging in conduct outside New Zealand by any person resident or carrying on business in New Zealand to the extent that such conduct affects a market in New Zealand.

25 “(2) Without limiting subsection (1) of this section, section 36A of this Act extends to the engaging in conduct (*in Australia*) outside New Zealand by any person resident or carrying on business in Australia to the extent that such conduct affects a market, not being a market exclusively for services, in New Zealand.”

30 *Struck Out*

(2) This section shall come into force on a date to be appointed for the commencement of it by the Governor-General by Order in Council.

New

5A. New sections inserted—The principal Act is hereby amended by inserting, after section 6, the following sections:

“6A. Special provisions relating to application of Act to the Crown in right of Australia and to Australian Crown corporations—(1) **Section 36A** of this Act, and Parts VI and VII of this Act, in so far as they relate to a contravention of, or confer powers that may be exercised in relation to, that section, apply to— 5

“(a) The Crown in right of the Commonwealth of Australia, each of the States of the Commonwealth of Australia, and the Northern Territory and the Australian Capital Territory, in so far as the Crown engages in trade; and 10

“(b) Every body corporate that is an authority of the Commonwealth of Australia within the meaning of section 4 of the Trade Practices Act 1984 of the Parliament of the Commonwealth of Australia in so far as it engages in trade; and 15

“(c) Every body corporate established for a purpose of a State of the Commonwealth of Australia by or under a law of that State in so far as it engages in trade; and 20

“(d) Every body corporate in which a State of the Commonwealth of Australia or in which a body corporate referred to in **paragraph (c)** of this section has a controlling interest in so far as it engages in trade. 25

“6B. Crown and Crown corporations not immune from jurisdiction in relation to certain provisions of Trade Practices Act 1974—Neither the Crown nor a body corporate that is an instrument of the Crown in respect of the Government of New Zealand is immune, and neither the Crown nor such a body corporate may claim immunity, from the jurisdiction of the courts of New Zealand and Australia in relation to a contravention of section 46A of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia and in relation to Parts VI and XII of that Act in so far as they relate to a contravention of that section. 30 35

“6C. Application of Evidence Amendment Act 1980—Nothing in the Evidence Amendment Act 1980 applies in 40

New

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

6. Establishment of Commission—Section 8 of the principal Act is hereby amended by repealing subsection (4).

Struck Out

10 **7. Disclosure of financial interests**—The principal Act is hereby amended by repealing section 14, and substituting the following section:

15 “(1) If the Chairman is taking part, or is to take part, in the consideration or determination by the Commission of a matter that relates to or affects a business or body corporate in which the Chairman has acquired a direct or indirect financial interest—

“(a) The Chairman shall disclose that interest to the Minister in writing; and

20 “(b) The Chairman shall not continue to take part, or take part, in the consideration or determination of the matter.

25 “(2) If a member of the Commission is taking part, or is to take part, in the consideration or determination by the Commission of a matter that relates to or affects a business or body corporate in which that member has acquired a direct or indirect financial interest—

“(a) The member shall disclose that interest to the Chairman; and

30 “(b) The member shall not continue to take part, or take part, in the consideration or determination of the matter.

“(3) A failure to comply with this section does not invalidate any determination or order made by the Commission or anything done by the Commission.”

New

7. Disclosure of financial interests—The principal Act is hereby amended by repealing section 14, and substituting the following section:

“14. (1) If the Chairman is taking part, or is to take part, in the consideration or determination by the Commission of a matter that relates to or affects a business or body corporate in which the Chairman has an interest that, in accordance with the rules of natural justice, disqualifies, or would disqualify, the Chairman from taking part in the consideration or determination of that matter,—

“(a) The Chairman shall disclose that interest to the Minister in writing; and

“(b) The Chairman shall not continue to take part, or take part, in the consideration or determination of the matter.

“(2) If a member of the Commission is taking part, or is to take part, in the consideration or determination by the Commission of a matter that relates to or affects a business or body corporate in which that member has an interest that, in accordance with the rules of natural justice, disqualifies, or would disqualify, the member from taking part in the consideration or determination of that matter,—

“(a) The member shall disclose that interest to the Chairman; and

“(b) The member shall not continue to take part, or take part, in the consideration or determination of the matter.

8. Assent to determination—Section 17 of the principal Act is hereby amended by inserting, after the word “telex”, the words “or fascimile”.

9. New sections substituted—The principal Act is hereby amended by repealing section 18, and substituting the following sections:

“18. **Officers and employees**—(1) The Commission may from time to time, appoint such employees (including employees on secondment from other organisations) as it thinks necessary for the efficient performance and exercise of its functions and powers, and, subject to **subsection (2)** of this

section, may at any time remove any employee from office or employment.

5 “(2) Employees appointed under **subsection (1)** of this section shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Commission from time to time determines.

“(3) Subject to the terms and conditions of employment, the Commission may at any time terminate or suspend the employment of any employee.

10 “(4) No person shall be deemed to be in the service of the Crown or in any part of the State services within the meaning of the State Sector Act 1988 by reason only of being employed under this section.

15 “18A. **Personnel policy**—(1) The Commission shall operate a personnel policy that complies with the principal of being a good employer.

20 “(2) For the purposes of this section, a ‘good employer’ is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—

25 “(a) Good and safe working conditions; and
 “(b) An equal employment opportunities programme; and
 “(c) The impartial selection of suitably qualified persons for appointment; and

30 “(d) Recognition of—
 “(i) The aims and aspirations of the Maori people; and
 “(ii) The employment requirements of the Maori people; and

35 “(iii) The need for greater involvement of the Maori people as employees of the employer operating the personnel policy; and

“(e) Opportunities for the enhancement of the abilities of individual employees; and

“(f) Recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and

“(g) Recognition of the employment requirements of women; and

40 “(h) Recognition of the employment requirements of persons with disabilities.

“18B. **Equal employment opportunities**—(1) The Commission—

“(a) Shall in each year develop and publish an equal employment opportunities programme:

“(b) Shall ensure in each year that the equal employment opportunities programme for that year is complied with.

5

“(2) For the purposes of this section and **section 18A** of this Act, an equal employment opportunities programme means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons.

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“18C. **Choice of procedure**—Where the circumstances giving rise to a personal grievance by a person employed by the Commission are also such that that person would be entitled to make a complaint under the Human Rights Commission Act 1977 or the Race Relations Act 1971 or to exercise a right of review or appeal, that person may take one, but not more than one, of the following steps:

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“(a) The person may invoke, in relation to those circumstances, the procedures applicable in relation to personal grievances under the Labour Relations Act 1987 or the relevant award or agreement:

20

“(b) The person may make, in relation to those circumstances, a complaint under the Human Rights Commission Act 1977 or the Race Relations Act 1971:

25

“(c) The person may exercise the right of review or appeal.

“18D. **Superannuation and retiring allowances**—(1) For the purposes of providing superannuation or retiring allowances for its officers or employees appointed under this Act, the Commission may from time to time pay sums of money by way of subsidy or contribution into any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this section.

30

35

“(2) Notwithstanding anything in this Act, any person who, immediately before the commencement of this Act was assisting the Commission by virtue of an appointment under section 18 (1) of this Act and was a contributor to the Government Superannuation Fund under Part II of the Government Superannuation Fund Act 1956 shall be deemed, for the purposes of the Government Superannuation Fund Act

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1956, to be employed in the Government service so long as that person continues to be an officer or employee of the Commission; and that Act shall apply to the person in all respects as if service as such an officer or employee were
 5 Government service. For the purposes of the Government Superannuation Fund Act 1956, the controlling authority in relation to any such person shall be the Commission.

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

10. Accounts and audit—Section 22 (2) of the principal Act is hereby amended by omitting the words “31st day of March”,
 15 and substituting the words “30th day of June”.

11. Commission to have regard to economic policies of Government—Section 26 (1) of the principal Act is hereby amended by omitting the words “Part V of”.

12. Contracts, arrangements, or understandings containing exclusionary provisions prohibited—Section 29 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:
 20

“(1) For the purposes of this Act, a provision of a contract, arrangement, or understanding is an exclusionary provision
 25 if—

“(a) It is a provision of a contract or arrangement entered into, or understanding arrived at, between persons of whom any 2 or more are in competition with each other; and
 30

“(b) It has the purpose of preventing, restricting, or limiting the supply of goods or services to, or the acquisition of goods or services from, any particular person or class of persons, either generally or in particular circumstances or on particular conditions, by all or any of the parties to the contract, arrangement, or understanding, or if a party is a body corporate, by a body corporate that is interconnected with that party; and
 35

“(c) The particular person or the class of persons to which the provision relates is in competition with one or
 40 more of the parties to the contract, arrangement or

understanding in relation to the supply or acquisition of those goods or services.”

13. Use of dominant position in a market—Section 36 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection: 5
 “(2) For the purposes of this section, a person does not use a dominant position in a market for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of this section by reason only that that person seeks to enforce any statutory intellectual property right within the meaning of **section 45 (2)** of this Act in New Zealand.” 10

14. Use of dominant position in trans-Tasman markets—The principal Act is hereby amended by inserting, after section 36, the following section: 15
 “36A. (1) No person who has—
 “(a) A dominant position in a market; or
 “(b) A dominant position in a market in Australia; or
 “(c) A dominant position in a market in New Zealand and Australia—
 shall use that person’s dominant position for the purpose of— 20
 “(d) Restricting the entry of any person into any market, not being a market exclusively for services; or
 “(e) Preventing or deterring any person from engaging in competitive conduct in any market, not being a market exclusively for services; or 25
 “(f) Eliminating any person from any market, not being a market exclusively for services.
 “(2) For the purposes of this section, a person does not use a dominant position in a market for any of the purposes specified in **paragraphs (d) to (f) of subsection (1)** of this section by reason only that that person seeks to enforce any statutory intellectual property right, within the meaning of **section 45 (2)** of this Act, in New Zealand. 30
 “(3) Nothing in this section applies to any practice *(of)* or conduct to which this Part of this Act applies that has been authorised pursuant to Part V of this Act.” 35

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(2) This section shall come into force on a date to be appointed for the commencement of it by the Governor-General by Order in Council. 40

15. Exceptions in relation to copyright, patents, plant varieties, registered designs, and trademarks—(1) The principal Act is hereby amended by repealing section 45, and substituting the following section:

- 5 “45. (1) Nothing in this Part of this Act, except sections 36, 36A, 37, and 38 of this Act, applies—
- “(a) To the entering into of a contract or arrangement or arriving at an understanding in so far as it contains a provision authorising any act that would otherwise be prohibited by reason of the existence of a statutory intellectual property right; or
- 10 “(b) To any act done to give effect to a provision of a contract, arrangement or understanding referred to in **paragraph (a)** of this subsection.
- 15 “(2) For the purposes of **subsection (1)** of this section, a statutory intellectual property right means a right, privilege, (*claim*) or entitlement that is conferred, or acknowledged as valid, by or under—
- “**(a)** The Patents Act 1953; or
- 20 “**(b)** The Designs Act 1953; or
- “**(c)** The Trade Marks Act 1953; or
- “**(d)** The Copyright Act 1962; or
- “**(e)** The Plant Variety Rights Act 1987.”

New

- 25 “(3) For the purposes of **subsection (2)** of this section—
- “**(a)** A person who has applied for a patent in accordance with the Patents Act 1953 and filed the complete specification in relation to the application shall, until the application is determined, be deemed to have
- 30 been granted the patent to which the application relates:
- “**(b)** A person who has made an application for the registration of a design in accordance with section 7 of the Designs Act 1953 shall, until the application is
- 35 determined, be deemed to be the registered proprietor of the design:
- “**(c)** A person who has made an application in accordance with section 26 of the Trade Marks Act 1953 for registration of a trade mark, shall, until the
- 40 application is determined, be deemed to be the registered proprietor of the trade mark:

New

“(d) A person who has made an application in accordance with section 5 of the Plant Variety Rights Act 1987, shall, until the application is determined, be deemed to have been granted the plant variety rights to which the application relates.” 5

(2) **Section 45** of the principal Act, as in force immediately before its repeal by **subsection (1)** of this section, shall continue in force in relation to any act done to give effect to a provision of a contract or arrangement entered into, or an understanding arrived at, before the commencement of this Act. 10

(3) **Subsection (2)** of this section expires with the close of the 30th day of June 1991.

15A. Section 46 repealed—The principal Act is hereby amended by repealing section 46. 15

Struck Out

16. “Merger or takeover proposal” defined—Section 47 (2) (d) of the principal Act is hereby amended by repealing subparagraph (iii), and substituting the following subparagraph: 20
 “(iii) The proposal relates to the acquisition of shares in the transferor company which would result in the transferee holding not more than the same proportion of shares which it held before the increase or alteration.”

17. New sections inserted—The principal Act is hereby amended by inserting, after section 50, the following sections: 25

“50A. **Acquisitions outside New Zealand**—(1) Where the Court is satisfied, on application by the Commission, that—

“(a) The acquisition, outside New Zealand, by a person, of shares in a company, being an acquisition that results in that company becoming an interconnected body corporate of that person, will, or will be likely, to result, directly or indirectly, in any person acquiring a dominant position in a market or strengthening a dominant position in a market; and 30

“(b) The acquisition will not result, or will not be likely to result, in a benefit to the public which would 35

Struck Out

- 5 outweigh any detriment to the public which would result, or would be likely to result, from the acquisition of a dominant position in a market or the strengthening of a dominant position in a market, as the case may be,—
- the Court may order any person named in the application to dispose of such assets in New Zealand as shall be specified in the order.
- 10 “(2) An application under **subsection (1)** of this section may be made at any time within 12 months after the date of the acquisition in respect of which the application under that subsection has been made.
- 15 “(3) The Commission may consult with any person who, in the opinion of the Commission, may assist it in determining whether or not to make an application under **subsection (1)** of this section.
- “(4) The Commission shall have regard to any advice or information obtained from any person with whom it has consulted pursuant to **subsection (3)** of this section.
- 20 “(5) An order under this section may be made on such terms and conditions as the Court thinks fit.
- “**50B. Commission to notify preliminary view—**
- 25 (1) Where the Commission forms the view that it should make an application under **section 50A** of this Act the Commission shall give notice in writing that it has formed that view, and the reasons for having formed it, to—
- “(a) The person who acquired the shares; and
- “(b) The company in which the shares were acquired; and
- 30 “(c) Every person the assets of which the application relates to that is not a person referred to in **paragraph (a)** or **paragraph (b)** of this subsection.
- “**(2)** Every person to whom a notice is given under **subsection (1)** of this section shall have a reasonable opportunity to make submissions to the Commission as to whether or not the Commission should make the application and the Commission shall have regard to those submissions before doing so.

New

16. New Part III substituted—The principal Act is hereby amended by repealing Part III, and substituting the following Part:

“PART III

5

“BUSINESS ACQUISITIONS

“**47. Certain acquisitions prohibited**—(1) No person shall acquire assets of a business or shares if, as a result of the acquisition,—

“(a) That person or another person would be, or would be likely to be, in a dominant position in a market; or

“(b) That person’s or another person’s dominant position in a market would be, or would be likely to be, strengthened.

“(2) For the purposes of this section and **section 48** of this Act, where 2 or more persons are interconnected or associated and together are in a dominant position in a market, each of them is deemed to be in a dominant position in that market.

“(3) For the purposes of this section and **section 48** of this Act, a person is associated with another person if that person is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other.

“(4) A person is not able to exert a substantial degree of influence over the activities of another person for the purposes of **subsection (3)** of this section, by reason only of the fact that—

“(a) Those persons are in competition in the same market; or

“(b) One of them supplies goods or services to the other.

“**48. Bare transfer of market dominance excluded**—Nothing in **section 47** of this Act applies to the acquisition of assets of a business or shares if—

“(a) Before the acquisition either—

“(i) The person acquiring the assets or shares; or

“(ii) The business the assets of which are acquired or the body corporate in which the shares are acquired, as the case may be,—

already had a dominant position in a market; and

“(b) The acquisition has not resulted or will not result in the strengthening of that dominant position.”

18. New sections substituted—The principal Act is hereby amended by repealing section 58, and substituting the following sections:

5 **“58. Commission may grant authorisation for restrictive trade practices**—(1) A person who wishes to enter into a contract or arrangement, or arrive at an understanding, to which that person considers section 27 of this Act would apply, or might apply, may apply to the Commission for an authorisation to do so and the Commission may grant an
10 authorisation for that person to enter into the contract or arrangement, or arrive at the understanding.

 “(2) A person who wishes to give effect to a provision of a contract or arrangement or understanding to which that person considers section 27 of this Act would apply, or might apply,
15 may apply to the Commission for an authorisation to do so, and the Commission may grant an authorisation for that person to give effect to the provision of the contract or arrangement or understanding.

 “(3) A person who wishes to require the giving of, or to give, a covenant to which that person considers section 28 of this Act would apply, or might apply, may apply to the Commission for an authorisation for that person to require the giving of, or to give,
20 the covenant.

 “(4) A person who wishes to carry out or enforce a covenant to which that person considers section 28 of this Act would apply, or might apply, may apply to the Commission for an authorisation to do so, and the Commission may grant an authorisation for that person to carry out or enforce the
25 covenant.

 “(5) A person who wishes to enter into a contract or arrangement, or arrive at an understanding to which that person considers section 29 of this Act would apply, or might apply, may apply to the Commission for an authorisation for that person to enter into the contract or arrangement or arrive
30 at the understanding.

 “(6) A person who wishes to give effect to an exclusionary provision of a contract or arrangement or understanding to which that person considers section 29 of this Act would apply, or might apply, may apply to the Commission to do so, and the
35 Commission may grant an authorisation for that person to give effect to the exclusionary provision of the contract or arrangement or understanding.
40

“(7) A person who wishes to engage in the practice of resale price maintenance to which that person considers section 37 of this Act would apply, or might apply, may apply to the Commission for an authorisation to do so, and the Commission may grant an authorisation for that person to engage in the practice. 5

“(8) A person who wishes to do an act to which that person considers section 38 of this Act would apply, or might apply, may apply to the Commission for an authorisation to do so, and the Commission may grant an authorisation for that person to do that act. 10

“58A. **Effect of authorisation**—(1) While an authorisation under subsection (1) or subsection (5) of section 58 of this Act remains in force, as the case may be, nothing in section 27 or section 29 of this Act, as the case may be, shall prevent the applicant from— 15

“(a) Entering into, or in accordance with the authorisation, giving effect to or enforcing any provision of the contract to which the authorisation relates; or

“(b) Entering into, or in accordance with the authorisation, giving effect to the arrangement to which the authorisation relates; or 20

“(c) Arriving at, or in accordance with the authorisation, giving effect to the understanding to which the authorisation relates. 25

“(2) While an authorisation under subsection (2) or subsection (6) of section 58 of this Act remains in force, as the case may be, nothing in section 27 or section 29 of this Act, as the case may be, shall prevent the applicant from—

“(a) In accordance with the authorisation, giving effect to or enforcing the contract to which the authorisation relates; or 30

“(b) In accordance with the authorisation, giving effect to the arrangement or understanding.

“(3) While an authorisation under subsection (3) of section 58 of this section remains in force, nothing in section 28 of this Act shall prevent the applicant from— 35

“(a) Requiring the giving of, or giving, the covenant to which the authorisation relates; or

“(b) Carrying out or enforcing the terms of the covenant to which the authorisation relates in accordance with the authorisation. 40

“(4) While an authorisation under subsection (4) of section 58 of this Act remains in force, nothing in section 28 of this Act shall

prevent the applicant from carrying out or enforcing the terms of the covenant to which the authorisation relates in accordance with the authorisation.

5 “(5) While an authorisation under **subsection (7) of section 58** of this Act remains in force, nothing in section 37 of this Act shall prevent the applicant from engaging in the practice to which the authorisation relates in accordance with the authorisation.

10 “(6) While an authorisation under **subsection (8) of section 58** of this Act remains in force, nothing in section 38 of this Act shall prevent the applicant from doing the act to which the authorisation relates in accordance with the authorisation.

“**58B. Additional provisions relating to authorisations**—(1) Every authorisation granted by the Commission to a person under **section 58** of this Act to—

15 “(a) Enter into a contract or arrangement or arrive at an understanding; or

“(b) Give effect to a provision of a contract, arrangement, or understanding; or

“(c) Require the giving of, or give, a covenant; or

20 “(d) Carry out or enforce the terms of a covenant; or

“(e) Engage in the practice of resale price maintenance; or

“(f) Do any act referred to in section 38 of this Act,—

25 shall have effect as if it were also an authorisation in the same terms to every other person named or referred to in the application for the authorisation as a party to the contract, arrangement, or understanding, or the practice or act, or as a person who is or would be bound by, or entitled to the benefit of, the covenant, as the case may be.

30 “(2) An authorisation granted to a person under **section 58** of this Act may be expressed to apply to or in relation to another person who,—

35 “(a) In the case of an authorisation to enter into a contract or arrangement or arrive at an understanding, becomes a party to the proposed contract or arrangement at a time after it is entered into or becomes a party to the proposed understanding at a time after it is arrived at:

40 “(b) In the case of an authorisation to give effect to a provision of a contract, arrangement, or understanding, becomes a party to the contract, arrangement, or understanding at a time after the authorisation is granted:

“(c) In the case of an authorisation to require the giving of, or to give, a covenant, becomes bound by, or entitled

to the benefit of, the covenant at a time after the covenant is given:

- “(d) In the case of an authorisation to carry out or enforce the terms of a covenant, becomes bound by, or entitled to the benefit of, the covenant at a time after the authorisation is granted.” 5

19. Authorisation not to be granted in relation to contracts, etc., made before determination by Commission—Section 59 (1) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraphs: 10

- “(b) To require the giving of, or to give a covenant if the covenant has been given before the Commission makes a determination in respect of the application for that authorisation; or 15
- “(c) To engage in the practice of resale price maintenance if the practice is already being engaged in by the applicant for the authorisation before the Commission makes a determination in respect of the application for that authorisation; or 20
- “(d) To do an act or engage in conduct referred to in section 38 of this Act if the applicant has done the act or is engaging in the conduct, before the Commission makes a determination in respect of the application for that authorisation.” 25

20. Determination of applications for authorisation of restrictive trade practices—(1) Section 61 (6) of the principal Act is hereby amended by omitting the words “under section 58 (1) (a) to (d)”, and substituting the words, “pursuant to an application under section 58 (1) to (4)”. 30

(2) Section 61 (7) of the principal Act is hereby amended by omitting the words “under section 58 (1) (e) or (f)”, and substituting the words “pursuant to an application under section 58 (5) or (6)”.

(3) Section 61 of the principal Act is hereby amended by adding the following subsection: 35

“(8) The Commission shall not make a determination granting an authorisation pursuant to an application under section 58 (7) or (8) of this Act unless it is satisfied that—

- “(a) The engaging in the practice of resale price maintenance to which the application relates; or 40
- “(b) The act or conduct to which the application relates—

as the case may be, will in all the circumstances result, or be likely to result, in such a benefit to the public that—

“(c) The engaging in the practice should be permitted; or

“(d) The act or conduct should be permitted.”

5 **21. Section 63 repealed**—Section 63 of the principal Act is hereby repealed.

Struck Out

22. Commission may grant clearances or authorisations for merger or takeover proposals—

10 (1) Section 66 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

15 “(2) Subsections (1), (2) (a) and (b), (4), and (5) of section 60 of this Act shall apply in respect of every notice given under subsection (1) of this section as if the notice was an application under **section 58** of this Act.”

(2) Section 66 of the principal Act is hereby amended by repealing subsections (3) and (4), and substituting the following subsections:

20 “(3) Where a notice given under subsection (1) of this section is registered, the Commission—

 “(a) If it is satisfied that—

25 “(i) The merger or takeover proposal, if implemented, would not result or would not be likely to result in any person (whether or not that person is a participant in or otherwise a party to the merger or takeover proposal) acquiring a dominant position in a market or strengthening a dominant position in a market; and

30 “(ii) That the participants should not be required to wait for 10 working days before implementing the proposal,— shall, within 10 working days of registration of the notice, give a clearance of the merger or takeover proposal by notice in writing to the person by or on whose behalf the notice was given; or

35 “(b) If it is not satisfied that the merger or takeover proposal, if implemented, would not result or would not be likely to result in any person (whether or not that person is a participant in or otherwise a party to the merger or takeover proposal) acquiring a dominant

40

Struck Out

position in a market or strengthening a dominant position in a market, shall, within 10 working days of registration of the notice make a determination in writing to that effect; or

“(c) May neither grant a clearance under **paragraph (a)** of this subsection nor make a determination under **paragraph (b)** of this subsection.

“(4) Notice of every determination made by the Commission under **subsection (3) (b)** of this section shall be given to the person by whom the notice was given.

“(5) If the Commission does not give a clearance of a merger or takeover proposal under **subsection (3) (a)** of this section or make a determination under **subsection (3) (b)** of this section, clearance shall be deemed to have been given of the merger or takeover proposal at the expiration of 10 working days after the date on which the notice was registered.”

(3) Section 66 of the principal Act is hereby amended by inserting, after subsection (7), the following subsection:

“(7A) For the purposes of **subsections (3) and (7)** of this section, if the Commission is satisfied that—

“(a) A participant in relation to a merger or takeover proposal has a dominant position in a market; and

“(b) The implementation of the merger or takeover proposal would not result, or would not be likely to result, in a participant, in relation to the merger or takeover proposal, strengthening a dominant position in that market,—

the Commission shall treat the proposal as one that, if implemented, would not result, or would not be likely to result, in a person acquiring a dominant position in a market.”

(4) Section 66 (9) of the principal Act is hereby amended by omitting the words “100 working days from the date of registration of the notice given”, and substituting the words “60 working days from the date on which the notice in relation to the merger or takeover proposal was registered by the Commission”.

23. Commission may grant clearance or authorisation of merger or takeover proposal which has been implemented—Section 67 of the principal Act is hereby

Struck Out

amended by inserting, after subsection (4), the following subsection:

5 “(4A) For the purposes of subsection (4) of this section, if the Commission is satisfied that—

“(a) Before the implementation of the merger or takeover proposal, a participant in relation to the merger or takeover proposal had a dominant position in a market; and

10 “(b) The implementation of the merger or takeover proposal has not resulted or will not, or will not be likely to, result in a participant in relation to the merger or takeover proposal, strengthening a dominant position in a market,—

15 the Commission shall treat the proposal as one, the implementation of which, has not resulted, or will not, or will not be likely to, result in a person acquiring a dominant position in a market.”

20 **24. Commission may accept undertakings**—The principal Act is hereby amended by inserting, after section 67, the following section:

25 “67A. (1) In giving a clearance or granting an authorisation under section 66 or section 67 of this Act, the Commission may accept a written undertaking given by or on behalf of a participant in relation to the merger or takeover proposal, to dispose of shares or assets specified in the undertaking.

“(2) The Commission shall not accept an undertaking in relation to the giving of a clearance or the granting of an authorisation under section 66 or section 67 of this Act, other than an undertaking given, under **subsection (1)** of this section.

30 “(3) An undertaking given to the Commission under **subsection (1)** of this section shall be deemed to form part of the clearance given or the authorisation granted in relation to the merger or takeover proposal to which the undertaking relates.”

35 *New*

22. New sections substituted—The principal Act is hereby amended by repealing sections 66 to 69 and the heading

New

immediately preceding those sections, and substituting the following heading and sections:

“Business Acquisitions

“66. Commission may give clearances for business acquisitions—(1) A person who proposes to acquire assets of a business or shares may give the Commission a notice seeking clearance for the acquisition. 5

“(2) Subsections (1), (2) (a) and (b), (4), and (5) of section 60 of this Act shall apply in respect of every notice given under subsection (1) of this section as if the notice was an application under section 58 of this Act. 10

“(3) Within 10 working days after the date of registration of the notice, or such longer period as the Commission and the person who gave the notice agree, the Commission shall either— 15

“(a) If it is satisfied that the acquisition will not result in an effect described in paragraph (a) or paragraph (b) of section 47 (1) of this Act, by notice in writing to the person by or on whose behalf the notice was given, give a clearance for the acquisition; or 20

“(b) If it is not satisfied that the acquisition will not result in an effect described in paragraph (a) or paragraph (b) of section 47 (1) of this Act, by notice in writing to the person by or on whose behalf the notice was given, decline to give a clearance for the acquisition. 25

“(4) If the period specified in subsection (3) of this section expires without the Commission having given a clearance for the acquisition and without having given a notice under subsection (3) (b) of this section, the Commission shall be deemed to have declined to give a clearance for the acquisition. 30

“(5) A clearance given under subsection (3) of this section expires—

“(a) Twelve months after the date on which it was given; or

“(b) In the event of an appeal being made against the determination of the Commission giving the clearance, and the determination being confirmed by the Court, 12 months after the date on which the determination is confirmed. 35

New

- 5 “67. **Commission may grant authorisations for business acquisitions**—(1) A person who proposes to acquire assets of a business or shares may give the Commission a notice seeking an authorisation for the acquisition.
- “ (2) Subsections (1), (2) (a) and (b), (4), and (5) of section 60 of this Act shall apply in respect of every notice given under **subsection (1)** of this section as if the notice was an application under **section 58** of this Act.
- 10 “ (3) Within 60 working days after the date of registration of the notice, or such longer period as the Commission and the person who gave the notice agree, the Commission shall—
- “ (a) If it is satisfied that the acquisition will not result in an effect described in **paragraph (a)** or **paragraph (b)** of **section 47 (1)** of this Act, by notice in writing to the person by or on whose behalf the notice was given, give a clearance for the acquisition; or
- 15 “ (b) If it is satisfied that the acquisition will result, or will be likely to result, in such a benefit to the public that it should be permitted, by notice in writing to the person by or on whose behalf the notice was given, grant an authorisation for the acquisition; or
- 20 “ (c) If it is not satisfied as to the matters referred to in **paragraph (a)** or **paragraph (b)** of this subsection, by notice in writing to the person by or on whose behalf the notice was given, decline to give a clearance or grant an authorisation for the acquisition.
- 25 “ (4) If the period specified in **subsection (3)** of this section expires without the Commission having given a clearance or having granted an authorisation or having declined to do so, the Commission shall be deemed to have declined to give a clearance or grant an authorisation.
- 30 “ (5) The Commission shall state in writing its reasons for a determination made by it under **subsection (3)** of this section.
- 35 “ (6) A clearance given or an authorisation granted under **subsection (3)** of this section expires—
- “ (a) Twelve months after the date on which it was given or granted; or
- 40 “ (b) In the event of an appeal being made against the determination of the Commission giving the clearance or granting the authorisation, and the

New

determination of the Commission being confirmed by the Court, 12 months after the date on which the determination is confirmed.

“68. Provisions applying to applications for clearances and authorisations for business acquisitions—(1) Every person who gives a notice under **section 66** or **section 67** of this Act shall from time to time produce, or, as the case may be, furnish to the Commission, within such time as it may specify, such documents and information in relation to the acquisition as may be required by the Commission for the purpose of enabling it to exercise its functions under this section or **section 66** or **section 67** of this Act.

“(2) Notwithstanding **section 66** or **section 67** of this Act, where the Commission is of the opinion that a proposed acquisition is, for reasons other than arising from the application of any provision of this Act, unlikely to be proceeded with, the Commission may, in its discretion, decline to give a clearance or grant an authorisation for that acquisition under this section.

“(3) The Commission shall state in writing its reasons for declining to give a clearance or grant an authorisation under **subsection (2)** of this section.

“(4) A person who has given a notice in respect of an acquisition under **section 66** or **section 67** of this Act may at any time, by notice in writing to the Commission, advise the Commission that it does not wish the Commission to give a clearance or grant an authorisation and the Commission shall accordingly not give a clearance or grant an authorisation in respect of that acquisition.

“(5) The Commission may consult with any person who in the opinion of the Commission is able to assist it in making a determination under **section 66** or **section 67** of this Act, as the case may be.

“69. Effect of clearance or authorisation—Nothing in **section 27** or **section 47** of this Act applies to the acquisition of assets of a business or shares if the assets or shares are acquired in accordance with a clearance or an authorisation and while the clearance or authorisation is in force.

“69A. Commission may accept undertakings—(1) In giving a clearance or granting an authorisation under **section 66** or **section 67** of this Act, the Commission may accept a written

New

5 undertaking given by or on behalf of the person who gave a notice under **section 66 (1)** or **section 67 (1)** of this Act, as the case may be, to dispose of assets or shares specified in the undertaking.

“(2) The Commission shall not accept an undertaking in relation to the giving of a clearance or the granting of an authorisation under **section 66** or **section 67** of this Act, other than an undertaking given under **subsection (1)** of this section.

10 “(3) An undertaking given to the Commission under **subsection (1)** of this section is deemed to form part of the clearance given or the authorisation granted in relation to the acquisition to which the undertaking relates.

15 “**69B. Conferences in relation to business acquisitions**—(1) Before making a determination under **section 66 (3)** or **section 67 (3)** of this Act in relation to an acquisition, the Commission may determine to hold a conference and shall appoint a date, time, and place for the holding of the conference and give notice of the date, time, and place so
20 appointed and of the matters to be considered at the conference to the persons entitled to be present at the conference.

“(2) The provisions of section 64 of this Act shall apply to every conference held under this section as if—

25 “(a) Every reference in that section to a conference called under section 62 of this Act, were a reference to a conference held under this section; and

“(b) The reference in subsection (1) (b) of that section to a person to whom a draft determination was sent
30 under section 62 (2) of this Act, were a reference to the person by or on whose behalf a notice was given under **section 66 (1)** or **section 67 (1)** of this Act, as the case may be; and

35 “(c) The reference in subsection (6) of that section to a determination in respect of an application, were a reference to a determination under **section 66 (3)** or **section 67 (3)** of this Act, as the case may be.

25. Commission may authorise provisional price—

40 Section 71 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

“(1) Pending the making of a determination under section 70 of this Act in respect of any controlled goods or services, the Commission may, by notice in writing to the supplier of those goods or services, authorise the supply of those goods or services to any person at a price determined by the Commission and specified in the notice, on the condition that the price fixed and charged by the supplier for those goods or services is only a provisional price. 5

“(1A) For the purposes of **subsection (1)** of this section, the Commission may conduct such investigations and consult with such persons as the Commission considers may assist it to determine an appropriate provisional price for the supply of the goods or services.” 10

New

25A. Jurisdiction of High Court—Section 75 (1) (b) of the principal Act is hereby amended by repealing subparagraph (i), and substituting the following subparagraph: 15

“(i) Proceedings for the recovery of pecuniary penalties under **section 83** of this Act.”.

25B. Lay members of High Court in certain cases— (1) Section 78 (1) of the principal Act is hereby amended— 20

(a) By omitting the number “82”, and substituting the number “85”; and

(b) By omitting the expression “or 36”, and substituting the expression “, 36, **36A**, or 47”. 25

“(2) Section 78 (3) of the principal Act is hereby amended by omitting the number “82”, and substituting the number “85”.

(3) Section 78 (4) of the principal Act is hereby amended—

(a) By inserting in paragraph (c), after the expression “section 80”, the expression “or **section 83**”: 30

(b) By inserting in paragraph (d), after the expression “section 81”, the expression “or section 84”:

(c) By omitting from paragraph (e) the words “of this Act”, and substituting the words “or **section 84A** of this Act”:

(d) By adding the following paragraph: 35

“(f) To exercise the power to make an order directing the disposal of shares or assets under **section 85** of this Act.”.

New

25c. Evidence not otherwise admissible—Section 79 of the principal Act is hereby amended by inserting, after the expression “section 80”, the expression “or **section 83**”.

5 **26. Pecuniary penalties**—Section 80 (1) of the principal Act is hereby amended—

(a) By omitting the expression “\$100,000”, and substituting the expression “~~(\$200,000)~~ \$500,000”; and

10 (b) By omitting the expression “\$300,000”, and substituting the expression “~~(\$600,000)~~ \$5,000,000”.

Struck Out

27. Contravention of section 50 an offence—(1) Section 83 (1) (a) of the principal Act is hereby amended by omitting the expression “\$100,000”, and substituting the expression
15 “\$200,000”.

(2) Section 83 (1) (b) of the principal Act is hereby amended by omitting the expression “\$300,000, and substituting the expression “\$600,000”.

20 **28. Court may order divestiture of assets in respect of contravention of Part III**—Section 85 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

25 “(1) Subject to subsection (2) of this section, in any case where the Court, on the application of the Commission, is satisfied that any person—

“**(a)** Has contravened section 50 of this Act; or

“**(b)** Has been found in any other proceedings under this Part of this Act to have contravened section 50 of this Act,—

30 it may, by order,—

“**(c)** Give directions for the disposal by that person of any shares or assets acquired in contravention of that section; or

35 “**(d)** Give directions for the disposal by that person of any shares or assets in accordance with an undertaking given by the person under **section 67A** of this Act to dispose of shares or assets.”

Struck Out

29. Other orders—(1) Section 89 (2) of the principal Act is hereby amended—

- (a) By inserting, after the words “contravention of”, the words “Part II of”; and 5
 - (b) By inserting, after the words “would contravene”, the words “Part II of”.
- (2) Section 89 (3) of the principal Act is hereby amended—
- (a) By inserting, after the words “contravention of”, the words “section 28 of”; and 10
 - (b) By inserting, after the words “would contravene”, the words “section 28 of”.

New

27. New section substituted—The principal Act is hereby amended by repealing section 83 and the heading above that section, and substituting the following heading and section: 15

“Business Acquisitions

- “83. Pecuniary penalties**—(1) If the Court is satisfied on the application of the Commission that a person—
- “**(a)** Has contravened **section 47** of this Act: 20
 - “**(b)** Has attempted to contravene that section:
 - “**(c)** Has aided, abetted, counselled, or procured any other person to contravene that section:
 - “**(d)** Has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene that section: 25
 - “**(e)** Has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of that section:
 - “**(f)** Has conspired with any other person to contravene that section,— 30

the Court may order the person to pay to the Crown such pecuniary penalty as the Court determines to be appropriate, not exceeding \$500,000 in the case of a person not being a body corporate, or \$5,000,000 in the case of a body corporate, in respect of each such act or omission. 35

New

“(2) In determining an appropriate penalty under this section, the Court shall have regard to all relevant matters, including—

- 5 “(a) The nature and extent of the act or omission:
- “(b) The nature and extent of any loss or damage suffered by any person as a result of the act or omission:
- “(c) The circumstances in which the act or omission took place:
- 10 “(d) Whether or not the person has previously been found by the Court in proceedings under this Part of this Act to have engaged in any similar conduct.

“(3) The standard of proof in proceedings under this section shall be the standard of proof applying in civil proceedings.

- 15 “(4) In any proceedings under this section, the Commission, upon the order of the Court, may obtain discovery and administer interrogatories.

- 20 “(5) Proceedings under this section may be commenced within 3 years after the matter giving rise to the contravention arose.

“(6) A person is not liable to a pecuniary penalty under both section 80 of this Act and this section in respect of the same conduct.”

25 **28. Injunctions may be granted by Court for contravention of Part III**—Section 84 of the principal Act is hereby amended

- 30 (a) By omitting the words “, that a merger or takeover proposal is being, or has been, implemented in contravention of section 50”, and substituting the words “or any other person, that a person intends to engage, or is engaging, or has engaged, in conduct that constitutes or would constitute a contravention of section 47”; and
- 35 (b) By omitting from paragraph (a) the number “50”, and substituting the number “47”.

29. Actions for damages for contraventions of Part III—The principal Act is hereby amended by inserting, after section 84 (as amended by section 28 of this Act), the following section:

New

“84A. (1) Every person is liable in damages for any loss or damage caused by that person engaging in conduct that constitutes any of the following:

“(a) A contravention of **section 47** of this Act: 5

“(b) Aiding, abetting, counselling, or procuring the contravention of that section:

“(c) Inducing by threats, promises, or otherwise the contravention of that section:

“(d) Being in any way directly or indirectly, knowingly concerned in, or party to, the contravention of that section: 10

“(e) Conspiring with any other person in the contravention of that section:

“(2) An action under **subsection (1)** of this section may be commenced at any time within 3 years from the time when the cause of action arose.” 15

29A. Court may order divestiture of assets or shares in respect of contravention of Part III—The principal Act is hereby amended by repealing section 85, and substituting the following section: 20

“85. (1) In any case where the Court, on the application of the Commission, is satisfied that any person—

“(a) Has contravened **section 47** of this Act; or

“(b) Has been found in any other proceedings under this Part of this Act to have contravened **section 47** of this Act,— 25

it may, by order,—

“(c) Give directions for the disposal by that person of such assets or shares as shall be specified in the order; or 30

“(d) Give directions for the disposal by that person of any assets or shares in accordance with an undertaking given by the person under **section 69A** of this Act.

“(2) An application under **subsection (1)** of this section may be made at any time within 2 years from the date on which the contravention occurred.” 35

29B. Persons entitled to appeal—Section 92 of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

New

5 “(c) In the case of an appeal against a determination of the Commission under **section 66** or **section 67** of this Act in relation to a notice seeking a clearance or an authorisation, as the case may be,—

“*(i)* The person who sought the clearance or the authorisation; and

10 “*(ii)* Any person whose assets, or the shares in which, are proposed to be acquired pursuant to the clearance or authorisation; and

“*(iii)* Any person who participated in any conference held by the Commission under **section 69B** of this Act in relation to the clearance or authorisation.”

15 **30. New sections substituted**—(1) The principal Act is hereby amended by repealing section 98, and substituting the following sections:

20 “**98. Commission may require person to supply information or documents or give evidence**—Where the Commission considers it necessary or desirable for the purposes of carrying out its functions and exercising its powers under this Act, the Commission may, by notice in writing served on any person, require that person—

25 “(a) To furnish to the Commission, by writing signed by that person or, in the case of a body corporate, by a director or competent servant or agent of the body corporate, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or

30 “(b) To produce to the Commission, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice; or

35 “(c) To appear before the Commission at a time and place specified in the notice to give evidence, either orally or in writing, and produce any document or class of documents specified in the notice.

Struck Out

“98A. **Powers to search premises, etc.**—(1) Subject to this section, an employee of the Commission authorised in writing by the Commission for the purpose, may, for the purpose of ascertaining or establishing whether any person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act, at any time in the day or night, enter upon and search any premises, building, aircraft, ship, carriage, vehicle, box, receptacle, or place and inspect, remove, and take copies of any documents or extracts from them, in the possession of, or under the control of, any person. 5 10

“(2) No person shall exercise the powers conferred by **subsection (1)** of this section unless that person obtains a warrant authorising that person to exercise those powers in accordance with **subsection (3)** of this section. 15

“(3) Where any District Court Judge or Justice, or any Court Registrar (not being a constable), is satisfied, on application in writing made on oath, that there is reasonable ground for believing that it is necessary for the purpose of ascertaining or establishing whether any person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act for an employee of the Commission authorised for the purpose, to exercise the powers conferred by **subsection (1)** of this section, that District Court Judge, Justice, or Court Registrar may, by warrant, authorise that officer or employee, to exercise those powers in relation to any premises, building, aircraft, ship, carriage, vehicle, box, receptacle, or place specified in the warrant. 20 25

“98B. **Powers conferred by warrant**—(1) Every warrant issued under **section 98A** of this Act shall authorise the person named in the warrant to enter upon and search the premises, building, aircraft, ship, carriage, vehicle, box, receptacle, or place specified in the warrant and inspect, remove, and take copies of any documents or extracts from them in the possession of, or under the control of, any person. 30 35

“(2) Every warrant issued under **section 98A** of this Act to search any premises, building, aircraft, ship, carriage, vehicle, or place shall authorise the person named in the warrant, at any time within one month from the date of the issue of the warrant, to enter and search the premises, building, aircraft, ship, carriage, vehicle, or place, with such assistants as may be 40

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- necessary, and, if necessary, to use force for making entry, whether by breaking open doors or otherwise; and shall authorise any person named in the warrant to break open any
- 5 box or receptacle, by force if necessary.
- “(4) Every warrant issued under **section 98A** of this Act to search any box or receptacle shall authorise any person named in the warrant to break open the box or receptacle, by force if necessary.
- 10 “(5) The power to enter and search any premises, building, aircraft, ship, carriage, vehicle, box, receptacle, or place pursuant to a warrant issued under **section 98A** of this Act may be exercised on one occasion only.
- “98C. **Person executing warrant to produce evidence of authority and identity**—Every person executing any warrant issued under **section 98A** of this Act—
- 15 “(a) Shall have the warrant with him or her; and
- “(b) Shall produce it on initial entry and, if requested, at any subsequent time; and
- 20 “(c) Shall identify himself or herself to the owner or occupier of the premises, building, or place, or to the owner or person for the time being in charge of the aircraft, ship, carriage, vehicle, box, or receptacle, as the case may require; and
- 25 “(d) Shall produce evidence of that person’s identity.
- “98D. **Schedule of evidence taken to be prepared**—
- (1) Every person who executes a warrant issued under **section 98A** of this Act shall prepare a schedule specifying—
- 30 “(a) Any documents that have been removed from the premises, building, aircraft, ship, carriage, vehicle, box, receptacle, or place or of which any copies or extracts have been taken:
- “(b) The place from which any such documents or extracts have been removed:
- 35 “(c) The place where any such documents or extracts are held.
- “(2) A copy of every schedule prepared under **subsection (1)** of this section shall be given to the occupier or person in charge of the premises, building, aircraft, ship, carriage, vehicle, box,
- 40 receptacle, or place as soon as practicable.

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“98E. **Duty to provide all reasonable facilities and assistance**—The occupier or person in charge of any premises, building, aircraft, ship, carriage, vehicle, box, receptacle, or place that an authorised person enters pursuant to a warrant issued under **section 98A** of this Act shall provide the authorised person with all reasonable facilities and assistance for the effective exercise of the authorised person’s powers.

New

“98A. **Power to search**—(1) The Commission may, from time to time, authorise an employee of the Commission to search under a warrant issued under **subsection (2)** of this section any place named in the warrant for the purpose of ascertaining whether a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act, not being a contravention of **section 99A** of this Act.

“(2) A District Court Judge, or Justice, or a Court Registrar (not being a constable) who is satisfied on application made on oath by a person who is authorised under **subsection (1)** of this section that there are reasonable grounds to believe that it is necessary for the purpose of ascertaining whether or not a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act, not being a contravention of **section 99A** of this Act, for an employee of the Commission to search any place may, by warrant, authorise that employee to search a place specified in the warrant.

“(3) A person who applies for a warrant shall, having made reasonable inquiries, disclose—

“(a) Details of every previous application for a warrant to search the place that the person knows has been made within the preceding 28 days; and

“(b) The result of the application.

“98B. **Powers conferred by warrant**—(1) A warrant issued under **section 98A** of this Act authorises the person named in it—

“(a) To enter and search the place specified in the warrant on one occasion within 30 days of the date of issue of

New

5	the warrant at a time that is reasonable in the circumstances:
10	“(b) To use such assistance as is reasonable in the circumstances:
15	“(c) To use such force for gaining entry and for breaking open any article or thing as is reasonable in the circumstances:
20	“(d) To search for and remove documents or any article or thing that the person executing the warrant believes on reasonable grounds may be relevant:
25	“(e) Where necessary, to take copies of documents, or extracts from documents, that the person executing the warrant believes on reasonable grounds may be relevant:
30	“(f) Where necessary, to require a person to reproduce, or assist any person executing the warrant to reproduce, in usable form, information recorded or stored in a document.
35	“(2) A person assisting the person executing the warrant also has the powers referred to in paragraphs (c), (d), and (e) of subsection (1) of this section.
40	“(3) The warrant shall be executed in accordance with such reasonable conditions as may be specified in the warrant when it is issued.
	“98C. Warrant to be produced —A person executing a warrant issued under section 98A of this Act—
	“(a) Must have the warrant with him or her; and
	“(b) Must produce it on initial entry and, if requested, at any subsequent time; and
	“(c) Must identify himself or herself to the owner or occupier or person in charge of the place if that person is present; and
	“(d) Must produce evidence of his or her identity.
	“98D. Other duties of person who executes a warrant —
	(1) A person who executes a warrant issued under section 98A of this Act must, before completing the search, leave in a prominent place at the place searched,—
	“(a) In the case of a search carried out at a time when the owner or occupier was not present, a written notice stating,—

New

- “(i) The date and time when the warrant was executed; and
- “(ii) The name of the person who executed the warrant; and 5
- “(b) In the case of a search where a document or article or thing was removed from the place being searched, a schedule of documents or articles or things that were removed during the search.
- “(2) If it is not practicable to prepare a schedule before completing the search, or if the owner or occupier of the place being searched consents, the person executing the warrant— 10
- “(a) May, instead of leaving a schedule, leave a notice stating that documents, or articles, or things have been removed during the search and that, within 7 days of the search, a schedule will be delivered, left, or sent stating what documents, articles, or things have been removed; and 15
- “(b) Must, with 7 days of the search,—
- “(i) Deliver a schedule to the owner or occupier; 20
- or
- “(ii) Leave a schedule in a prominent position at the place searched; or
- “(iii) Send a schedule by mail to the owner or occupier of the place searched. 25
- “(3) Every schedule must state—
- “(a) The documents, articles, and things that have been removed; and
- “(b) The location from where they were removed; and
- “(c) The location where they are being held. 30
- “98E. **Duty to assist**—The occupier or person in charge of the place that a person authorised pursuant to a warrant issued under **section 98A** of this Act enters for the purpose of searching must provide that person with all reasonable facilities and assistance in executing the warrant.” 35

“98F. **Power to inspect and take copies of documents, etc.**—The Commission, or any person authorised by the Commission for the purpose, may inspect and take copies of any documents or extracts from them obtained pursuant to a warrant issued under **section 98A** of this Act. 40

5 “98G. **Commission may exercise powers notwithstanding other proceedings**—The Commission may exercise any power under sections 98 to 98F of this Act notwithstanding that any proceedings, whether under Part VI of this Act or otherwise, have been instituted in any Court.

Struck Out

31. Supply of information and documents in relation to section 36A—The principal Act is hereby amended by inserting, after section 98G of the following section:

10 “98H.—(1) Where the Commission considers it necessary or desirable for the purposes of carrying out, in relation to section 36A of this Act, its functions and exercising its powers under this Act, the Commission may by notice in writing served on any person who is ordinarily resident in Australia or who
15 carries on business in Australia, require that person—

“(a) To furnish to the Commission, by writing signed by that person or, in the case of a body corporate, by a director or competent servant or agent of the body corporate, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or

20 “(b) To produce to the Commission, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice.

25 “(2) A person who is required to furnish information or a class of information or produce any document or class of documents to the Commission pursuant to this section complies with this section if that person furnishes the information or that
30 class of information or produces the document or that class of documents to the Australian Trade Practices Commission in accordance with the Trade Practices Act 1974.”

35 (2) This section shall come into force on a date to be appointed for the commencement of it by the Governor-General by Order in Council.

New

“98H. **Supply of information and documents in relation to section 36A**—(1) Where the Commission considers it

New

necessary or desirable for the purposes of carrying out its functions and exercising its powers under this Act in relation to **section 36A** of this Act, the Commission may by notice in writing served on any person who is ordinarily resident in Australia or who carries on business in Australia, require that person—

“(a) To furnish to the Commission, by writing signed by that person or, in the case of a body corporate, by a director or competent servant or agent of the body corporate, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or

“(b) To produce to the Commission, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice.

“(2) A person who is required to furnish information or a class of information or produce any document or class of documents to the Commission pursuant to this section complies with this section if that person furnishes the information or that class of information or produces the document or that class of documents to the Australian Trade Practices Commission in accordance with the Trade Practices Act 1974.”

32. Powers of Commission to take evidence—Section 99 (3) of the principal Act is hereby amended by omitting the expression “98 (1) (c)”, and substituting the expression “98 (c)”.

33. Commission may receive information and documents on behalf of Australian Trade Practices Commission—The principal Act is hereby amended by inserting, after section 99, the following section:

“99A. (1) Where the Australian Trade Practices Commission requires any person resident or carrying on business in New Zealand to furnish any information or any class of information or produce any document or class of documents to it pursuant to section 155A of the Trade Practices Act 1974, the information or class of information may be furnished or the document or class of documents may be produced to the Commission for transmission to the Australian Trade Practices Commission.”

“(2) The Commission shall deliver the information or class of information furnished or the document or class of documents produced to it to the Australian Trade Practices Commission as soon as practicable.

5 *Struck Out*

“(3) The Commission may inspect and take copies of any information or class of information furnished or any document or class of documents produced to it under this section.”

“(4) Every person who—

10 *Struck Out*

“(a) Refuses or fails to comply with a notice referred to in subsection (1) of this section; or

“(b) In purported compliance with such a notice, furnishes information or produces a document knowing it to be false or misleading—

15

New

“(a) Refuses or fails, without reasonable excuse, to comply with a requirement referred to in subsection (1) of this section; or

20 “(b) In purported compliance with such a requirement, furnishes information or produces a document knowing it to be false or misleading—

25 commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 in the case of an individual, or \$30,000 in the case of a body corporate.”

Struck Out

(2) This section shall come into force on a date to be appointed for the commencement of it by the Governor-General by Order in Council.

30 **34. Offences**—The principal Act is hereby amended by repealing section 103, and substituting the following section:

- “103. (1) No person shall—
- “(a) (*Refuse or fail*) Without reasonable excuse, refuse or fail to comply with a notice under **section 98** of this Act; or
- “(b) In purported compliance with such a notice, furnish information, or produce a document, or give evidence, knowing it to be false or misleading; or
- “(c) (*Obstruct or hinder*) Resist, obstruct, or delay an employee of the Commission acting pursuant to a warrant issued under **section 98A** of this Act.
- “(2) No person shall (*deceive or*) attempt to deceive or knowingly mislead the Commission in relation to any matter before it.
- “(3) No person, having been required to appear before the Commission pursuant to **section 98 (c)** of this Act, shall—
- “(a) Without reasonable excuse, refuse or fail to appear before the Commission to give evidence; or
- “(b) Refuse to take an oath or make an affirmation as a witness; or
- “(c) Refuse to answer any question; or
- “(d) Refuse to produce to the Commission any book or document that that person is required to produce.
- “(4) Any person who contravenes **subsection (1)** or **subsection (2)** or **subsection (3)** of this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 in the case of an individual, or \$30,000 in the case of a body corporate.”

35. Delegation by Commission—Section 105 (1) of the principal Act is hereby amended by omitting the words “grant a clearance or”.

36. Proceedings privileged—Section 106 of the principal Act is hereby amended by repealing subsections (4) and (5), and substituting the following subsections:

“(4) A person shall not be excused from complying with any requirement to furnish information, produce documents, or give evidence under this Act, or, on appearing before the Commission, from answering any question or producing any document, on the ground that to do so might tend to incriminate that person or that person’s spouse.

“(5) A statement made by a person in answer to a question put by or before the Commission shall not in criminal proceedings or in proceedings under section 80 of this Act, be admissible against that person, or that person’s spouse.”

37. Judicial notice—The principal Act is hereby amended by inserting, after section 106, the following section:

“106A. For the purposes of this Act, judicial notice shall be taken in all courts and for all purposes of—

- 5 “(a) The common seal of the Commission:
- “(b) The signature of any person holding, or who has held, office as the Chairman, Deputy Chairman, or a member of the Commission on a document that appears to be a document made on behalf of the Commission:
- 10

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- 15 “(c) The common seal of the Australian Trade Practices Commission:
- “(d) The signature of any person holding, or who has held, office as the Chairman, Deputy Chairman, a member, Registrar or Deputy Registrar of the Australian Trade Practices Commission on a document that appears to be a document made on behalf of that Commission.”

New

- 20 “(c) The official seal of the Australian Trade Practices Commission:
- 25 “(d) The official signature of any person holding, or who has held, office as the Chairman, Deputy Chairman, or a member, of the Australian Trade Practices Commission on a document that appears to be a document made on behalf of that Commission.”

38. Annual report—Section 107 (1) of the principal Act is hereby amended by omitting the words “31st day of March”, and substituting the words “30th day of June”.

Struck Out

39. Regulations—Section 108 of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph:

- 35 “(cc) Authorising the Commission to refund a part of the prescribed fee paid by a person in respect of the

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giving of a notice under section 66 (1) of this Act in any case where—

“(i) The Commission does not make a determination under **subsection (3) (b)** of that section; 5
or

“(ii) Having made a determination under **subsection (3) (b)** of that section, the Commission gives a clearance of a merger or takeover proposal under subsection (6) of that section.” 10

New

39. Regulations—Section 108 of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraphs:

“(ca) Authorising the Commission in its discretion, or on such grounds as may be prescribed, to refund a part of the prescribed fee paid by a person who gives a notice under **section 67 (1)** of this Act in any case where the Commission gives a clearance under that section: 15 20

“(cb) Authorising the Commission to refund a part of the prescribed fee paid by a person on an application under section 70 (1) of this Act in any case where a written undertaking is obtained or accepted from that person in accordance with section 72 of this Act.” 25

40. Transitional provisions repealed—(1) Sections 112 to 115 of the principal Act are hereby repealed.

(2) The repeal of sections 112 to 115 of the principal Act by **subsection (1)** of this section does not affect the validity of anything done pursuant to, or effected by, the enactments repealed. 30

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41. New First Schedule substituted—The principal Act is hereby amended by repealing the First Schedule, and 35

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substituting the First Schedule set out in the Schedule to this Act.

New

5 **41. First Schedule repealed**—The principal Act is hereby amended by repealing the First Schedule (as amended by section 83 of the Broadcasting Act 1989).

10 **42. Human Rights Commission Act 1977 amended**—Section 69 of the Human Rights Commission Act 1977 is hereby amended by repealing subsections (3) and (4), and substituting the following subsections:

15 “(3) Nothing in this Part of this Act shall limit or affect the Commerce Act 1986 and where any complaint, in relation to any organisation which exists for the purposes of members who carry on a particular profession, trade, or calling, or in relation to any officer, agent of, or other person connected with any such organisation, is made under section 68 of this Act with respect to a matter which may, wholly or in part, be investigated under the Commerce Act 1986, the Commission shall refer that complaint to the Commerce Commission pursuant to that Act.

20 “(4) The Commission shall not investigate or institute any proceedings with respect to a complaint of a kind referred to in subsection (3) of this section except to the extent that the Commerce Commission has certified that the matter or part of the matter is not able to be, or has not been, dealt with, determined, or disposed of in accordance with the Commerce Act 1986.”

25 **43. Consequential amendment to Broadcasting Act 1989**—Section 83 of the Broadcasting Act 1989 is hereby consequentially repealed.

New

43A. Amendment to Radiocommunications Act 1989—Section 138 of the Radiocommunications Act 1989 is hereby

New

amended by repealing subsection (1), and substituting the following subsection:

“(1) Subject to subsections (2) and (3) of this section, for the purposes of **section 47** of the Commerce Act 1986, management rights in relation to radio frequencies and licences created under section 48 of this Act shall be deemed to be assets of a business.” 5

43B. Transitional provisions in relation to mergers and takeovers—Notwithstanding the repeals and amendments effected by this Act,— 10

(a) The provisions of the principal Act that were in force immediately before the 1st day of January 1991 shall apply in relation to every notice given under **section 66** or **section 67** of that Act as in force immediately before that date and to every clearance given or authorisation granted in relation to the proposal to which the notice relates as if this Act had not been passed: 15

(b) Without limiting **paragraph (a)** of this section, every clearance given and every authorisation granted under **section 66** or **section 67** of the principal Act as in force immediately before the 1st day of January 1991 or as continued in force by virtue of **paragraph (a)** of this section is deemed to be a clearance or an authorisation to which **section 69** of the principal Act (as inserted by **section 22** of this Act) applies. 20 25

PART II

AMENDMENTS TO FAIR TRADING ACT 1986

44. Part to be read with Fair Trading Act 1986—This Part of this Act shall be read together with and deemed part of the Fair Trading Act 1986* (in this Part of this Act referred to as the principal Act). 30

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aircraft, ship, carriage, vehicle, box, receptable, or place specified in the warrant.

“47A. **Powers conferred by warrant**—(1) Every warrant issued under **section 47** of this Act shall authorise the person named in the warrant to enter upon and search the premises, building, aircraft, ship, carriage, vehicle, box, receptable, or place specified in the warrant and— 5

“(a) Inspect and remove any documents in the possession of or under the control of any person, and take copies of or extracts from any such documents; and 10

“(b) Inspect and remove any goods in the possession of or under the control of any person.

“(2) Every warrant issued under **section 47** of this Act to search any premises, building, aircraft, ship, carriage, vehicle, or place shall authorise the person named in the warrant at any time within one month from the date of the issue of the warrant to enter and search the premises, building, aircraft, ship, carriage, vehicle, or place, with such assistants as may be necessary, and, if necessary, to use force for making entry, whether by breaking open doors or otherwise; and shall authorise any person named in the warrant to break open any box or receptacle, by force if necessary. 15 20

“(3) Every warrant issued under **section 47** of this Act to search any box or receptable shall authorise any person named in the warrant to break open the box or receptable, by force if necessary. 25

“(4) The power to enter and search any premises, building, aircraft, ship, carriage, vehicle, box, receptable, or place pursuant to a warrant issued under **section 47** of this Act may be exercised on only one occasion. 30

“47B. **Person executing warrant to produce evidence of authority and identity**—Every person executing any warrant issued under **section 47** of this Act—

“(a) Shall have the warrant with him or her; and 35

“(b) Shall produce it on initial entry and, if requested, at any subsequent time; and

“(c) Shall identify himself or herself to the owner or occupier of the premises, building, or place, or to the owner or person for the time being in charge of the 40

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aircraft, ship, carriage, vehicle, box, or receptable,
as the case may require; and

“(d) Shall produce evidence of that person’s identity.

5 “47C. **Schedule of evidence taken to be prepared—**
(1) Every person who executes a warrant issued under **section 47**
of this Act shall prepare a schedule specifying—

10 “(a) Any documents or goods that have been removed from
the premises, building, aircraft, ship, carriage,
vehicle, box, receptable, or place or of which any
copies or extracts have been taken:

 “(b) The place from which any such documents or extracts or
goods have been removed:

 “(c) The place where any such documents or extracts or
15 goods are held.

 “(2) A copy of every schedule prepared under **subsection (1)** of
this section shall be given to the occupier or person in charge of
the premises, building, aircraft, ship, carriage, vehicle, box,
receptable, or place as soon as practicable.

20 “47D. **Duty to provide all reasonable facilities and
assistance—**The occupier or person in charge of any premises,
building, aircraft, ship, carriage, vehicle, box, receptable, or
place that an authorised person enters pursuant to a warrant
issued under **section 47** of this Act shall provide the authorised
25 person with all reasonable facilities and assistance for the
effective exercise of the authorised person’s powers.

New

“47. **Power to search—**(1) The Commission may, from time
to time, authorise an employee of the Commission to search
30 under a warrant issued under **subsection (2)** of this section any
place named in the warrant for the purpose of ascertaining
whether a person has engaged in or is engaging in conduct that
constitutes or may constitute a contravention of this Act.

35 “(2) A District Court Judge, or Justice, or a Court Registrar
(not being a constable) who is satisfied on application made on
oath by a person who is authorised under **subsection (1)** of this
section that there are reasonable grounds to believe that it is
necessary for the purpose of ascertaining whether or not a

New

person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act for an employee of the Commission to search any place may, by warrant, authorise that employee to search a place specified in the warrant. 5

“(3) A person who applies for a warrant shall, having made reasonable inquiries, disclose—

“(a) Details of every previous application for a warrant to search the place that the person knows has been made within the preceding 28 days; and 10

“(b) The result of the application.

“47A. **Powers conferred by warrant**—(1) A warrant issued under section 47 of this Act authorises the person named in it—

“(a) To enter and search the place specified in the warrant on one occasion within 30 days of the date of issue of the warrant at a time that is reasonable in the circumstances: 15

“(b) To use such assistance as is reasonable in the circumstances: 20

“(c) To use such force for gaining entry and for breaking open any article or thing as is reasonable in the circumstances:

“(d) To search for and remove documents or any article or thing that the person executing the warrant believes on reasonable grounds may be relevant: 25

“(e) To search for and remove goods that the person executing the warrant believes on reasonable grounds may be relevant:

“(f) Where necessary, to take copies of documents, or extracts from documents, that the person executing the warrant believes on reasonable grounds may be relevant: 30

“(g) Where necessary, to require a person to reproduce, or assist any person executing the warrant to reproduce, in usable form, information recorded or stored in a document. 35

“(2) A person assisting the person executing the warrant also has the powers referred to in paragraphs (c), (d), (e), and (f) of subsection (1) of this section. 40

New

“(3) The warrant shall be executed in accordance with such reasonable conditions as may be specified in the warrant when it is issued.

5 “47B. **Warrant to be produced**—A person executing a warrant under **section 47** of this Act—

“(a) Must have the warrant with him or her; and

“(b) Must produce it on initial entry and, if requested, at any subsequent time; and

10 “(c) Must identify himself or herself to the owner or occupier or person in charge of the place if that person is present; and

“(d) Must produce evidence of his or her identity.

“47C. **Other duties of person who executes a warrant**—

15 (1) A person who executes a warrant issued under **section 47** of this Act must, before completing the search, leave in a prominent place at the place searched,—

“(a) In the case of a search carried out at a time when the owner or occupier was not present, a written notice stating—

20

“(i) The date and time when the warrant was executed; and

“(ii) The name of the person who executed the warrant; and

25

“(b) In the case of a search where documents or goods were removed from the place being searched, a schedule of documents or goods that were removed during the search.

30 “(2) If it is not practicable to prepare a schedule before completing the search, or if the owner or occupier of the place being searched consents, the person executing the warrant—

“(a) May, instead of leaving a schedule, leave a notice stating that documents or goods have been removed during the search and that, within 7 days of the search, a schedule will be delivered, left, or sent stating what documents or goods have been removed; and

35

“(b) Must, within 7 days of the search,—

“(i) Deliver a schedule to the owner or occupier;

or

40

“(ii) Leave a schedule in a prominent position at the place searched; or

New

“(iii) Send a schedule by mail to the owner or occupier of the place searched.

“(3) Every schedule must state—

“(a) The documents or goods that have been removed; and 5

“(b) The location from where they were removed; and

“(c) The location where they are being held.

“47D. **Duty to assist**—The occupier or person in charge of the place that a person authorised pursuant to a warrant issued under **section 47** of this Act enters for the purpose of searching 10 must provide that person with all reasonable facilities and assistance in executing the warrant.”

“47E. **Power to inspect documents and goods**—The Commission, or any person authorised in writing by the Commission for the purpose, may— 15

“(a) Inspect and take copies of any documents or extracts from documents obtained pursuant to a warrant issued under **section 47** of this Act; or

“(b) Inspect any goods obtained under any such warrant.

“47F. **Offence**—Every person who (*obstructs or hinders*) 20 resists, obstructs, or delays any authorised person acting pursuant to a warrant issued under **section 47** of this Act commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 in the case of an individual, or \$30,000 in the case of a body corporate.” 25

PART III

AMENDMENTS TO DUMPING AND COUNTERVAILING DUTIES ACT 1988

46. Part to be read with Dumping and Countervailing Duties Act 1988—This Part of this Act shall be read together 30 with and deemed part of the Dumping and Countervailing Duties Act 1988* (in this Part referred to as the principal Act).

47. Interpretation—(1) Section 3 (1) of the principal Act is hereby amended by repealing the definition of the term “industry”. 35

(2) Section 3 (1) of the principal Act is hereby amended by omitting from paragraph (b) of the definition of the term “like goods”, the word “other” in the second place where it appears.

*1988, No. 158

New

(3) Section 3 (1) of the principal Act is hereby amended by adding the following definition:

5 “Tariff” has the meaning given to it in section 2 (1) of the Tariff Act 1988.”

48. Meaning of “industry”—The principal Act is hereby amended by inserting, after section 3, the following section:

Struck Out

10 “3A. (1) For the purposes of this Act ‘industry’, in relation to the investigation and determination of both the existence and effect of any alleged dumping or subsidising of any imported goods, and in relation to the investigation and determination of injury, means—

- 15 “*(a)* The New Zealand producers of like goods,—
 “*(b)* Such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods; but does not include importers, other than specified importers, of the allegedly dumped or subsidised goods.

New

20 “3A. (1) For the purposes of this Act ‘industry’, in relation to any goods, means—

- 25 “*(a)* The New Zealand producers of like goods; and
 “*(b)* Such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods,— but does not include producers who are also importers, other than specified importers, of the allegedly dumped or subsidised goods.

30 “(2) For the purposes of **subsection (1)** of this section, the Minister or the Secretary may, in his or her discretion, determine that a producer who is also an importer of like goods is a specified importer if the Minister or the Secretary is satisfied that, having regard to the nature and extent of the
 35 importation of the allegedly dumped or subsidised goods

including the value, quantity, frequency and purpose of the importation, that person should not be excluded from being treated as a New Zealand producer.

“(3) Notice of every determination made under **subsection (2)** of this section shall be published in the *Gazette*.” 5

49. Meaning of “goods of Australian origin”—The principal Act is hereby amended by inserting, after section 3A (as inserted by **section 48** of this Act), the following section:

Struck Out

“3B. (1) For the purposes of this Act, “goods of Australian origin” means goods falling within the classes of goods for the time being entitled to be entered under the Tariff at the rates and exemptions provided for Australia.” 10

New

“3B. For the purposes of this Act, “goods of Australian origin” means goods falling within the classes of goods for the time being entitled to be entered under the Tariff at the rates and exemptions provided for Australia, or, if no rates or exemptions are provided in relation to particular goods for Australia, that would be entitled to be entered under the Tariff if rates and exemptions were provided in relation to those particular goods.” 15
20

Struck Out

(2) This section shall come into force on a date to be appointed for the commencement of it by the Governor-General by Order in Council. 25

New

49A. Act to bind the Crown—The principal Act is hereby amended by inserting after **section 3B** (as inserted by **section 49** of this Act), the following section: 30
“3c. This Act binds the Crown.”

50. Form of notice—Section 9 of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

5 “(a) Containing a brief summary of the reasons for the giving of the notice; and”.

51. Initiation and subsequent investigation—Section 10 of the principal Act is hereby amended by adding the following subsection:

10 “(7) Nothing in this section shall authorise the Secretary to initiate an investigation in relation to any alleged dumping of goods of Australian origin.”

Struck Out

15 (2) This section shall come into force on a date to be appointed for the commencement of it by the Governor-General by Order in Council.

New

51A. Termination of investigations—Section 11 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

20 “(3) Notice shall be given of the initiation of every further investigation under subsection (2) of this section.”

52. Preliminary determination—Section 12 (3) of the principal Act is hereby amended by omitting the word “duties”, and substituting the word “measures”.

25 **53. Anti-dumping and countervailing duties**—
(1) Section 14 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

30 “(1) Where the Minister, having made a final determination under section 13 of this Act, is satisfied, in relation to the importation into New Zealand of goods, that—

“(a) The goods are being dumped or subsidised; and

35 “(b) By reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded,—

the Minister may by notice state that this section applies to those goods, and—

“(c) There shall be charged, collected, and paid on demand of the Collector on those goods, including goods in relation to which a provisional direction has been given under section 16 of this Act, that are dumped, a special duty to be known as anti-dumping duty; and 5

“(d) There shall be charged, collected, and paid on demand of the Collector on those goods, including goods in relation to which a provisional direction has been given under section 16 of this Act, that are subsidised, a special duty to be known as countervailing duty.” 10

(2) Section 14 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection: 15

“(3A) The Minister may, from time to time, reassess the rate or amount of anti-dumping or countervailing duty, including any elements of any formula used to establish such a rate or amount, determined under subsection (2) of this section, may determine a new rate or amount in accordance with that subsection, and, in that event, shall give notice of the new rate or amount.” 20

54. Price undertakings—(1) Section 15 (2) of the principal Act is hereby amended by omitting the words “The price”, and substituting the words “Any price”. 25

(2) Section 15 (4) of the principal Act is hereby amended by inserting, after the words “completed if”, the words “the Minister or”.

55. Provisional measures—(1) Section 16 (1) of the principal Act is hereby amended by omitting from paragraph (a) of the proviso the words “by the Minister pursuant to”, and substituting the words “for the purposes of”. 30

New

(2) Section 16 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection: 35

“(3) When a provisional direction given under subsection (1) of this section ceases to have effect, any security given pursuant to the provisional direction shall be released, except in relation 40

New

to goods to which the preliminary determination applied, and to the extent that duty is payable pursuant to a direction given under section 14 of this Act on those goods.”

5 **56. Retrospective measures**—Section 17 of the principal Act is hereby amended by repealing subsections (3) and (4), and substituting the following subsections:

 “(3) Where the Minister determines—

 “(a) In respect of dumped goods—

10 “(i) Either that there is a history of dumping causing material injury or that the importer was or should have been aware that the goods were dumped and that such dumping would cause injury; and

15 “(ii) That the material injury is caused by substantial dumped imports of a product in a relatively short period to such an extent that in order to preclude it recurring the Minister is of the opinion that it appears necessary to levy an anti-dumping duty retrospectively:

20 “(b) In the case of subsidised goods, in critical circumstances, where the Minister determines that material injury which is difficult to repair is caused by massive imports, in a relatively short period, of goods benefitting from export subsidies paid or bestowed

25 inconsistently with the provisions of the General Agreement on Tariffs and Trade and the Agreement on the Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, and where it is deemed necessary, in

30 order to preclude the recurrence of such material injury it is necessary to impose countervailing duty retrospectively,—

35 the Minister may levy an anti-dumping or countervailing duty, as the case may be, on goods deemed to have been delivered for home consumption in accordance with section 17 of the Customs Act 1966 or deemed to have been removed for home consumption under section 17A of that Act not more than 90

40 days prior to the date of the application of provisional measures.

“(4) Where the Government of the country of export or the exporter, as the case may be, from whom the Minister has accepted an undertaking pursuant to section 15 of this Act violates the undertaking and the Minister, in accordance with section 16 of this Act, levies provisional duties, anti-dumping duty or countervailing duty may be levied in accordance with section 14 of this Act on goods deemed to have been delivered for home consumption in accordance with section 17 of the Customs Act 1966 or deemed to have been removed for home consumption in accordance with section 17A of that Act not more than 90 days before the application of the provisional measures, except that such retrospective duty shall not apply to goods deemed to have been delivered for home consumption in accordance with section 17 of the Customs Act 1966 or deemed to have been removed for home consumption in accordance with section 17A of that Act before the date of the violation of the undertaking by the Government of the country of export or the exporter, as the case may be.”

57. Third country anti-dumping and countervailing duties—Section 18 of the principal Act is hereby amended by inserting, after the words “anti-dumping duty”, the words “or countervailing duty, as the case may be,”.

New

57A. Savings—Section 19 of the principal Act is hereby amended by adding the following subsection:

“(4) Anti-dumping duty or countervailing duty charged on goods pursuant to section 186L of the Customs Act 1966 (as inserted by section 2 (1) of the Customs Amendment Act (No. 3) 1987) and dumping duty imposed on goods pursuant to section 186A of the Customs Act 1966 (as inserted by section 11 of the Customs Acts Amendment Act (No. 2) 1983) may, from time to time, be reassessed in accordance with section 14 (3A) of this Act as if the rate or the amount of that duty had been determined under section 14 (2) of this Act.”

58. Transitional provisions in respect of goods of Australian origin—(1) Any investigation that, immediately before the commencement of this section, was being carried out by the Secretary pursuant to section 10 of the principal Act in relation to any alleged dumping of goods of Australian origin, shall cease on the commencement of this section.

5 (2) Nothing in sections 12 to 17 of the principal Act shall, after the commencement of this section, apply in relation to goods of Australian origin in relation to which an investigation into any alleged dumping has been initiated under section 10 of the principal Act.

New

10 (2A) Notwithstanding section 19 (1) of the principal Act, nothing in section 186L of the Customs Act 1966 (as inserted by section 2 (1) of the Customs Amendment Act (No. 3) 1987) shall, after the commencement of this section, apply in relation to goods of Australian origin in relation to which an investigation into any alleged dumping has been initiated under section 186H of that Act (as so inserted).

15 (2B) Notwithstanding section 19 (2) of the principal Act, nothing in section 186A of the Customs Act 1966 (as inserted by section 11 of the Customs Acts Amendment Act (No. 2) 1983) shall, after the commencement of this section, apply in relation to goods of Australian origin in relation to which an investigation into any alleged dumping has been initiated under
20 that section.

Struck Out

(3) Nothing in subsection (2) of this section shall affect the collection and payment of anti-dumping duty payable on goods immediately before the commencement of this section.

25

New

(3) Nothing in subsections (2), (2A), and (2B) of this section affects the collection and payment of dumping duty or anti-dumping duty, as the case may be, payable immediately before the commencement of this section.

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(4) This section shall come into force on a date to be appointed for the commencement of it by the Governor-General by Order in Council.

Struck Out

Section 41 (1)

SCHEDULE

NEW FIRST SCHEDULE TO COMMERCE ACT 1986

Section 50

"FIRST SCHEDULE

Classes of Merger or Takeover Proposals Requiring Prior Clearance or Authorisation by the Commission

Class A

MERGER or takeover proposals (other than those coming within Class B of this Schedule) in which the aggregate value of the assets of all the participants involved is at least \$100,000,000 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 at least \$15,000,000; 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 at least \$15,000,000.

Class B

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 publishing of daily newspapers or Sunday newspapers or both	Printing or publishing 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
The milling of animal feed or the wholesaling of eggs or both	The milling of animal feed or the wholesaling of eggs or both	\$2,500,000
Broadcasting or the publishing of newspapers or both	Broadcasting	\$2,500,000
		"