



**THE COMMERCE ACT (MERGERS AND TAKEOVERS
NOTIFICATION) ORDER 1978**

KEITH HOLYOAKE, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 18th day of December 1978

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 68 (3) of the Commerce Act 1975, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council and on the recommendation of the Minister of Trade and Industry, hereby makes the following order.

ORDER

1. Title and commencement—(1) This order may be cited as the Commerce Act (Mergers and Takeovers Notification) Order 1978.

(2) This order shall come into force on the 7th day after the date of its notification in the *Gazette*.

2. New Third Schedule to Commerce Act 1975 substituted—The Third Schedule to the Commerce Act 1975 (as amended by section 23 (3) of the Commerce Amendment Act 1976) is hereby revoked, and the Third Schedule set out in the First Schedule to this order is hereby substituted.

3. New Schedule 3A to Commerce Act 1975 substituted—Schedule 3A to the Commerce Act 1975 (as inserted by section 23 (1) of the Commerce Amendment Act 1976) is hereby revoked, and the Schedule 3A set out in the Second Schedule to this order is hereby substituted.

SCHEDULES

Cl. 2

FIRST SCHEDULE

NEW THIRD SCHEDULE TO THE COMMERCE ACT 1975

Section 68 (1)

"THIRD SCHEDULE

CLASSES OF MERGER OR TAKEOVER PROPOSALS REQUIRING NOTIFICATION
TO EXAMINER*Class A*

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

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

Class B

Merger or takeover proposals (other than those coming within Class A of this Schedule) in which the aggregate value of the assets of all the participants involved is \$7,500,000 or more and—

FIRST SCHEDULE—*continued*

- (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 \$1,000,000 or more; or
- (b) In the case of a merger or takeover proposal involving more than 2 participants, the aggregate value of the assets of the participants (excluding those of the largest participant) is \$1,000,000 or more."

SECOND SCHEDULE

Cl. 3

NEW SCHEDULE 3A TO THE COMMERCE ACT 1975

"SCHEDULE 3A Sections 68 (3), (4), 71 (1)

CLASSES OF MERGERS AND TAKEOVERS REQUIRING NOTIFICATION TO
EXAMINER WITHIN 10 WORKING DAYS OF COMPLETION

Mergers and takeovers (other than those resulting from the implementation of merger or takeover proposals coming within the Third Schedule to this Act) in which—

- (a) In the case of a merger or takeover involving not more than 2 participants, the value of the assets of the smaller participant is \$1,000,000 or more; or
- (b) In the case of a merger or takeover proposal involving more than 2 participants, the aggregate value of the assets of the participants (excluding those of the largest participant) is \$1,000,000 or more.

NOTE: For the purposes of this Schedule, the value of assets shall be determined by reference to the values at which, immediately before the merger or takeover is put into effect, the assets stood in the books of the participants less any relevant provisions for depreciation:

Provided that where any assets (including goodwill) are shown as having a higher value in any valuation or assessment made for the purposes of the merger or takeover, the value of those assets shall be determined by that higher value and not by the value at which those assets stand in the books of the participant."

P. G. MILLEN,

Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the order, but is intended to indicate its general effect.

This order amends the law relating to the notification, under the Commerce Act 1975, of merger or takeover proposals and mergers and takeovers. The order substitutes a new Third Schedule (relating to merger or takeover proposals) and a new Schedule 3A (relating to mergers and takeovers) in that Act.

The general effect is to render the provisions of those Schedules less onerous. The provisions that required certain merger or takeover proposals relating to the milling of flour or the baking of bread or both to be notified to the Examiner of Commercial Practices are deleted.

The new Schedules are based on recommendations made by the Commerce Commission to the Minister of Trade and Industry following an inquiry held by the Commerce Commission pursuant to a direction of the Minister of Trade and Industry under section 68 (4) of the Act.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 21 December 1978.
This order is administered in the Department of Trade and Industry.