

30 April 2021

Committee Secretariat  
Economic Development, Science and Innovation Committee  
Parliament Buildings  
Wellington

By email: [edsi@parliament.govt.nz](mailto:edsi@parliament.govt.nz)

**SUBMISSION on  
Commerce Amendment Bill**

**1. Introduction**

Thank you for the opportunity to make a submission on the Commerce Amendment Bill. This submission is from Consumer NZ, an independent, non-profit organisation dedicated to advocating on behalf of New Zealand consumers. Consumer NZ has a reputation for being fair, impartial, and providing comprehensive consumer information and advice.

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**2. Comments on the bill**

Consumer NZ strongly supports the introduction of the Commerce Amendment Bill and changes to section 36. Our comments on the bill are set out below and relate primarily to this section.

***Clause 14 (new section 36)***

We support the amendment to section 36 proposed in clause 14 of the bill. Given New Zealand's size and scale, and the high degree of concentration in key markets, more effective rules are required to prevent anti-competitive conduct by firms with a substantial degree of market power.

We consider the test introduced by clause 14 is more likely to be effective at policing anti-competitive behaviour than the existing wording of section 36. As such, the amendment will help achieve the Act's purpose to "promote competition in markets for the long-term benefit of consumers within New Zealand".

Further, we consider a "substantial lessening of competition" is the appropriate standard for the prohibition. This standard is more likely to capture anti-competitive conduct and is well understood and applied in the context of other provisions of the Act. It will also align our legislation with equivalent competition provisions in Australian law.

A further significant benefit is that the amendment will provide a firmer foundation for legal action by the regulator in cases where this is warranted. The existing "taking

advantage" test is complex and costly to apply, and limits the ability of the regulator to take action. Consumers are disadvantaged as a result.

**Clause 28 (new section 83)**

We support increasing the maximum penalties that can be imposed on businesses for a breach of section 47 of the Commerce Act. These penalties have been unchanged for some time and don't provide an adequate deterrent to anti-competitive mergers and acquisitions.

Thank you for the opportunity to make a submission on the Commerce Amendment Bill. If you require any further information, please do not hesitate to contact me.

Yours sincerely

Jon Duffy  
Chief executive