Submission

by

THE NEW ZEALAND INITIATIVE

and the

International Center for Law & Economics

to the Ministry of Business, Innovation & Employment

on the Discussion Document

Promoting competition in New Zealand – A targeted review of the Commerce Act 1986

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1. INTRODUCTION AND SUMMARY

1.1 This submission on the discussion document *Promoting competition in New Zealand – A targeted review of the Commerce Act 1986* is made by The New Zealand Initiative (the **Initiative**), a Wellington-based think tank supported primarily by major New Zealand businesses, and the International Center for Law & Economics [ICLE].

1.2 The Initiative undertakes research that contributes to the development of sound public policies in New Zealand, and we advocate for the creation of a competitive, open and dynamic economy and a free, prosperous, fair and cohesive society.

1.3 The Initiative's members span the breadth of the New Zealand economy. Our business members are subject to the Commerce Act. The views expressed in this submission are those of the author rather than the New Zealand Initiative's members.

1.4 The International Center for Law & Economics is a US-based nonprofit, nonpartisan research center working with a roster of more than fifty academic affiliates and research centers from around the globe.

1.4 In summary, we submit that the Review targets secondary, procedural matters instead of the critical first-order barriers—namely, regulatory and policy-based constraints—that are the true impediments to a dynamic and competitive market in New Zealand.

1.5 Within the context of the matters addressed by the document, our comments can be summarised as follows:

(a) Regulatory or policy-based barriers to entry often create or exacerbate the very substantial lessening of competition (SLC) that the Act seeks to prevent. In such cases, rather than imposing extensive regulatory regimes that police market conduct or structure, easing entry barriers is likely to be a more effective solution. Accordingly, when the Commerce Commission identifies that an SLC is driven by a regulatory regime, it should be empowered to test whether those entry barriers can be relaxed before resorting to more intrusive interventions.

There needs to be a regularised mechanism for the Commerce Commission to report to the responsible Agency or Ministry, or to the Ministry for Regulation, when it encounters an area where a perceived SLC is created or exacerbated by a regulatory regime. There is, to the best of our knowledge, no regular review process for these regulatory regimes testing whether the potential detrimental effects on competition are outweighed by the public benefit sought by the regime, or whether the restraint on competition remains the most cost-effective way of providing the desired benefit.

When the Commerce Commission identifies regulatory regimes that might result in an SLC, either as part of a market study or as part of another review process, it should be able to request that the Ministry for Regulation review the relevant regime. Easing the regulatory barrier may be the best way of ensuring workably competitive markets. Ben Hamlin's proposed modernisation of the Crown Exception would help.

(b) New Zealand is a small market and, in many cases, is a 'regulation-taker' – meaning that large international companies that also trade in New Zealand face many other regulators, who may or may not have already provided clearance for various mergers or arrangements. But aligning New Zealand's regime with Australia's is not the only way of achieving congruence and reducing transactions cost. If a merger is likely to trigger an ACCC test, and approval by both ACCC and the Commerce Commission would be necessary, New Zealand could defer to ACCC's ruling.

But for mergers between New Zealand companies with no Australian entanglements, there seems no obvious need for New Zealand's framework to align with Australia's. Instead, New Zealand should tailor its framework to local market conditions. This local tailoring ensures that mergers beneficial to NZ consumers are not blocked simply due to incongruency with foreign standards.

(c) A consumer-welfare focus is critical given that market structure is only an imperfect proxy for competitive harm. Merger control should focus on safeguarding competition and consumer welfare rather than achieving particular market structures. And where the Commission may not have resource to pursue all potential SLCs, it should focus first on those that do most harm to consumer welfare.

(d) Without vigilant, ongoing review, industry codes or rules risk evolving into de facto coordination mechanisms that can further entrench existing market power. This is a particular worry for industries facing a common regulator that can serve as additional enforcement mechanism for anticompetitive conduct by blocking new entry.

2. THE UNADDRESSED FIRST-ORDER BARRIERS

2.1 Commerce Commission market studies have pointed to land use planning as an underlying barrier to competition.

2.1.1 In building material supply, covenants on the few sites zoned for large footprint retail hinder the entry of new competitors. This reinforces market concentration, as builders tend to favour the convenience of bundled deliveries—even if such convenience outweighs the potential cost savings of sourcing materials from alternative, lower cost suppliers. In effect, a new entrant with a competitive model may be blocked simply because zoned scarcity limits access to essential retail sites.

2.1.2 In retail grocery, zoning, consenting processes, and Overseas Investment Office processes make large-scale large-footprint entry impracticable.

2.2 While trade competitors are meant to avoid interfering in each other's resource consenting processes, other anticompetitive uses of land-use planning processes remain available.

2.2.1 In November 2024, the Christchurch Press reported that Three Parks developer Willowridge had sought McDonald's as a tenant while objecting to McDonald's application to open at another location.[1] The Panel declined the consent in February 2025 on points relating to landscape and views. However, it also considered that "there is no issue of trade competition that applies such that Willowridge are precluded from having their submission received and considered",[2] despite Willowridge materially benefitting if the consent were declined and McDonald's took up tenancy at Three Parks instead.

2.3 A review of the Commerce Act could consider making anticompetitive uses of regulatory processes, including land use planning and consenting processes, a specifically forbidden restrictive trade practice under Part 2.

2.4 Other regulatory systems work to anticompetitive effect. Consider pharmacies. Restrictions on pharmacy ownership act as a barrier to entry. If that barrier has been hurdled, the pharmacy must acquire a licence to dispense funded prescriptions. In response to calls from the Community Pharmacists to block new pharmacies being opened within set distances of existing pharmacies, Medsafe and Te Whatu Ora pointed to existing rules that prioritise licences in places with few pharmacies.[3] In effect, Medsafe and Te Whatu Ora seemed to be telling community pharmacists not to worry too much, because existing regulatory practice already works as a substantial barrier to entry.

2.5 The Crown Exception to the Commerce Act (Section 43) might be read as broadly permitting activities authorised by legislation or might otherwise discourage prosecution of restrictive trade practice offences that are arguably authorised by a regulatory regime.

2.5.1 Ben Hamlin has suggested useful modernisations of the Crown Exception.[4] Under his proposed amendment, all regimes falling within the exception must be listed. Exceptions should be no wider than reasonably necessary to achieve the exception's purpose. Ministers would be required to receive regular reports on whether each exception should be retained, repealed, or amended. And the Minister would be able to seek Commerce Commission input for those reports.

2.5.2 Alternatively, or additionally, Part 2 could provide a mechanism for the Commerce Commission to determine whether a regulatory regime creates an SLC that harms consumer welfare. Such an assessment—whether self-initiated by the Commission, triggered by an identified SLC, or incorporated into a broader market study—should, once completed, prompt a review by the Ministry for Regulation to assess whether the public benefit of the regulatory regime justifies its competitive restraint.

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[1] Jamieson, Debbie. 2024. "Moral and health-related objections dismissed: Wanaka McDonald's hearing." The Christchurch Press. 25 November. Available at https://www.stuff.co.nz/nz-news/360496928/moral-and-health-related-objections-dismissed-wanaka-mcdonalds-hearing

[2] Atkins, Helen, Lisa Mein and Robert Scott. 2025. "Decision of the Queenstown Lakes District Council, RM230874." 12 February.

[3] Ternouth, Louise. 2024. "Community pharmacists afraid for future of business and patient care." Radio New Zealand. 31 July. https://www.rnz.co.nz/news/national/523520/community-pharmacists-afraid-for-future-of-business-and-patient-care

[4] Hamlin, B. 2024. "Commerce (Modernised Exceptions) Amendment Bill 2024". A draft Member's Bill produced for the Competition Policy Institute of New Zealand's 2024 workshop.

2.6 We are encouraged that the Commission has begun to turn its eye back to regulatory regimes. The Commission's compliance advice to the Ophthalmologists College was welcome. However, more regular and ongoing attention to the anticompetitive effects of occupational licensing and other regulatory regimes is necessary in a small market.

2.7 We consequently urge that the review of the Commerce Act consider modernisation of the Crown Exception, designating anticompetitive use of regulatory regimes to be a restrictive trade practice, and setting provision for the Commission to assess whether a regulatory regime results in a substantial lessening of competition.

3. BECAUSE YOU ASKED...

3.1 We now turn to some of the questions posed in the discussion document.

Q1. What are your views on the effectiveness of the current merger regime in the Commerce Act? Please provide reasons.

The current regime shows strengths in its flexibility and voluntary clearance process; however, it suffers from significant shortcomings. In practice, overly rigid thresholds and an SLC (substantial lessening of competition) test that sometimes captures low value or efficiency--driven transactions—such as the blocked sale of a small DJ software company—can stifle innovation and discourage venture capital investment. This is particularly damaging in a small economy like New Zealand, where viable exit strategies- are crucial for startup growth.

Q2. What is the likely impact of the Commission blocking a merger (either historically or if the test is strengthened) on consumers in New Zealand? Please provide examples or reasons.

Blocking mergers that deliver efficiencies or cause no plausible consumer harm can lead to higher costs, reduced innovation, and uncertainty for investors. For instance, if a merger involving a small local tech firm is blocked solely because of formalistic criteria (despite negligible local turnover and a lack of competitive harm), it may deter venture capital funding and limit the exit opportunities that drive innovation and consumer benefits.

Q4. Should the 'substantial lessening of competition' test be amended or clarified, including for creeping acquisitions or entrenchment of market power? If so, how? Please provide reasons.

Yes. We recommend that the SLC test be amended to:

- Explicitly incorporate a consumer-welfare analysis: The test should require an assessment of whether the merger causes plausible harm (or, conversely, provides benefits) to consumers.
- Tailor aggregation for creeping acquisitions and consider regulatory alternatives: In sectors where zoning, consenting rules, or other regulatory constraints create de facto local monopolies, serial acquisitions may have a more significant competitive impact because the larger entity may have less fear of entry. However, in such cases, the Commission's first response should be to warn the relevant

regulatory authority that the regulatory regime risks creating an SLC and should be reviewed.

- Clarify "entrenchment" of market power: Amendments should require objective evidence that the merger would strengthen or entrench market power in a manner that harms consumer welfare. It is also not clear what "entrenchment of market power" would mean in this context. If it means leveraging a firm's current position to enter new markets, merger control should not, as a matter of principle, seek to prevent incumbents from entering adjacent markets.

These changes would help ensure that only mergers with a genuine risk of harming competition are subject to intervention, and that intervention is appropriately targeted.

Large firms moving into the core business of competitors from adjacent markets often represents the biggest source of competition for incumbents, as it is often precisely these firms who have the capacity to contest competitors' dominance in their core businesses effectively. This scenario is prevalent in digital markets, where incumbents must enter multiple adjacent markets, most often by supplying highly differentiated products, complements, or "new combinations" of existing offerings.[5] Without concrete evidence of harm to consumers, improvements to a company's position in a market — or in adjacent markets — should not in itself be enough to block a merger.

On the question of "serial acquisitions," we understand that multiple small acquisitions can, under some circumstances, create a cumulative risk to competition, especially in highly concentrated markets. There remains the question of when this is likely to occur, however. While serial acquisitions and roll-up strategies merit further study, there is no apparent basis, in either the economic literature or enforcement experience, for any general changes to the procedures or substantive standards by which serial acquisitions are scrutinized.

For example, the Australian Treasury considered modifying notification so that "all mergers within the previous three years by the acquirer or the target will be aggregated for the purposes of assessing whether a merger meets the notification thresholds, irrespective of whether those mergers were themselves individually notifiable."[6]

However, this will impose costs on both merging firms and the enforcers called on to scrutinize noticed acquisitions.[7] Moreover, bundling all mergers "by the acquirer or the target" across any moving three-year window will, in effect, greatly lower the threshold for those firms engaged in multiple acquisitions over time. Thus, while any single three-year period may be clear enough, a moving window may create unnecessary uncertainty

[5] NICOLAS PETIT, BIG TECH AND THE DIGITAL ECONOMY: THE MOLIGOPOLY SCENARIO (2020); see also Walid Chaiehoudj, On "Big Tech and the Digital Economy": Interview with Professor Nicolas Petit, COMPETITION FORUM (11 Jan. 2021), https://competition-forum.com/on-big-tech-and-the-digital-economy-interview-with-professor-nicolas-petit.

[6] Merger Reform: A Faster, Stronger, and Simpler System for a More Competitive Economy, AUSTRALIAN GOVERNMENT, THE TREASURY 5 (10 Apr. 2024), https://treasury.gov.au/sites/default/files/2024-05/p2024-518262-merger-reforms-paper.pdf ("Merger Reform Paper").

[7] See, generally, Brian Albrecht, Dirk Auer, Daniel J. Gilman, Gus Hurwitz, & Geoffrey A. Manne, Comments of the International Center for Law & Economics on Proposed Changes to the Premerger Notification Rules, INT'L CTR LAW ECON. (27 Sept. 2023), https://laweconcenter.org/resources/comments-of-the-international-center-for-law-economics-on-proposed-changes-to-thepremerger-notification-rules.

for consummated transactions well after operations or assets have been knit together, such that there is no efficient way to "unscramble the eggs."

More broadly, many of the activities described as "serial acquisitions" are indistinguishable from normal patterns of business growth and consolidation that occur in maturing industries. As a general matter, it is not clear why a company growing through multiple small acquisitions should be viewed differently than one growing "organically" or through fewer, larger acquisitions. This raises important questions about the underlying theory of harm. If the concern is market concentration, this can occur through various means, not just serial acquisitions. If the concern is about the specific process of multiple small acquisitions, it is unclear why this would be inherently more problematic than other forms of growth.

Recent research by Cohn, Hotchkiss, and Towery sheds light on the motivations behind roll-up strategies in private-equity buyouts of private firms.[8] Their study suggests that these strategies are often driven by two primary motives: unlocking growth potential in capital-constrained firms and improving operational performance in underperforming firms. They find that acquired firms often experience significant increases in sales growth and moderate improvements in profitability post-acquisition. Such findings support the view that these strategies can create value through both growth and operational improvements. They also suggest that properly executed roll-up strategies can serve legitimate business purposes beyond mere market consolidation.

Given the legitimate business reasons for acquisitions (serial or not), we are aware of no theoretical or empirical grounds on which to suppose that multiple acquisitions are typically anticompetitive. The competitive effects of growth—whether through acquisition or internal expansion—depend on various factors, including market structure, barriers to entry, and the specific capabilities and assets being acquired or developed. For example, in some cases, serial acquisitions might allow a firm to quickly assemble complementary assets and capabilities, leading to increased innovation and more robust competition. In other instances, organic growth might allow a firm to build market power in ways that are difficult for competitors to challenge.

To be clear, we do not suggest that there are no circumstances under which serial acquisitions raise competitive concerns. Rather, we believe that considerable work remains to be done if competition enforcers seek to tailor notice requirements in a manner that is efficient for both commercial development and enforcement alike.

[8] See Jonathan B. Cohn, Edith Hotchkiss, & Erin Towery, Sources of Value Creation in Private Equity Buyouts of Private Firms, 26 REV. OF FIN. 257 (2022).

Q5. How important is it for the 'substantial lessening of competition' test to be aligned with the merger test in Australian competition law? Please provide reasons and examples.

New Zealand's regime need not mirror Australia exactly. However, avoiding regulatory incongruency is important for business certainty:

- Local Context Matters: If two purely New Zealand companies can merge without harming NZ consumers—even if the deal would be blocked in Australia—the merger should be allowed.
- Cross-Border Efficiency: Where one or both companies have significant Australian entanglements, ACCC clearance should serve as a strong indicator of competitive acceptability, thereby reducing duplicative regulatory costs.

It should also be noted that Australia is considering changes to its SLC test that are not without their downsides. New Zealand should not seek to replicate these flaws at home. More specifically, proposed merger reform in Australia would amplify the meaning of "substantially lessening competition" to include the creation, strengthening, or entrenching of market power. According to the original consultation: "(u)nder the current substantial lessening of competition test, it may be difficult to stop acquisitions that lead to a dominant firm extending their market power into related or adjacent markets."

However, as pointed out in our response to Q5, merger control should not, as a matter of principle, seek to prevent incumbents from entering adjacent markets. Moreover, it is unclear why the SLC test in its current state is insufficient to curb the misuse of market power. The SLC test is a standard used by regulatory authorities to assess the legality of proposed mergers and acquisitions. Simply put, it examines whether a prospective merger is likely to substantially lessen competition in a given market, with the purpose of preventing mergers that increase prices, reduce output, limit consumer choice, or stifle innovation as a result of a decrease in competition.

The SLC test examines likely coordinated and non-coordinated effects in all three types of mergers: horizontal, vertical, and conglomerate. Horizontal mergers may substantially lessen competition by eliminating a significant competitive constraint on one or more firms, or by changing the nature of competition such that firms that had not previously coordinated their behaviour will be more likely to do so. Vertical and conglomerate mergers tend to pose less of a risk to competition.[9]

Still, there are facts and circumstances under which they can substantially lessen competition by, for example, foreclosing rivals from necessary inputs, supplies, or markets. These outcomes will often be associated with an increase in market power. As the OECD has written:

- The focus of the SLC test lies predominantly on the impact of the merger on existing competitive constraints and on measuring market power post-merger.[10]
- In other words, the SLC test already accounts for increases in market power that are capable and likely of harming competition.

[9] See, e.g., Guidelines on the Assessment of Non-Horizontal Mergers Under the Council Regulation on the Control of Concentrations Between Undertakings, (2008/C 265/07), paras 11-13 (EU).
[10] Standard for Merger Review, OECD 6 at 16 (11 May 2010), https://www.oecd.org/daf/competition/45247537.pdf.

The problem with the Australian proposed amendments to the SLC test is that they could be interpreted so broadly that any incremental increase in the market share of a company that already holds some degree of market power would "substantially lessen competition." This is misguided, and could capture swathes of procompetitive conduct. Indeed, there are many mergers that would—if permitted—benefit consumers, either immediately or in the longer term, but that may have some effect on enhancing market share or market power. Improving a firm's products and thereby increasing its sales will often lead to increased market share and market power. This is not a competition problem per se; the problem, rather, is when market power is misused, or is likely to be misused. Whether or not this is effectively the case is what competition authorities strive to ascertain. The modified SLC test in Australia could substitute that judicious approach for a blunt, de facto prohibition of mergers and acquisitions by firms with market power. New Zealand should thus not seek to replicate it.

Another Australian reform which New Zealand should not follow is the modification of notification thresholds based on concentration. Concentration-based notification thresholds is that they unduly emphasize market structure. Our concern is that, by instituting market concentration as a notification criterion, merger-review process in New Zealand will remain committed to the analysis of market structure as the prime indicator of whether a merger should be allowed. This would be a mistake. Market structure is, at best, an imperfect proxy for competitive effects and, at worst, a misleading one.

The absence of correlation between increased concentration and both anticompetitive causes and deleterious economic effects is demonstrated by a recent, influential empirical paper by Shanat Ganapati. Ganapati finds that the increase in industry concentration in U.S. non-manufacturing sectors between 1972 and 2012 was "related to an offsetting and positive force—these oligopolies are likely due to technical innovation or scale economies. [The] data suggests that national oligopolies are strongly correlated with innovations in productivity."[11] In the end, Ganapati found, increased concentration resulted from beneficial growth in firm size in productive industries that "expand[s] real output and hold[s] down prices, raising consumer welfare, while maintaining or reducing [these firms'] workforces."[12] Sam Peltzman's research on increasing concentration in manufacturing finds that it has, on average, been associated with both increased productivity growth and widening margins of price over input costs. These two effects offset each other, leading to "trivial" net price effects.[13]

This does not mean that concentration measures have no use in merger enforcement. Instead, it demonstrates that market concentration is often unrelated to antitrust enforcement, because it is driven by factors endogenous to each industry. In revamping its merger-control rules, New Zealand should be careful not to rely too heavily on structural presumptions based on concentration measures, as these may

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[11] Shanat Ganapati, Growing Oligopolies, Prices, Output, and Productivity, 13(3) AM. ECON. J. MICROECON. 309-327, 324 (Aug. 2021).
[12] Id, at 309.
[13] Sam Peltzman, Productivity, Prices and Productivity in Manufacturing: a Demsetzian Perspective, Coase-Sandor Working Paper Series in Law and Economics 917, (19 Jul. 2021).

be poor indicators of those cases where antitrust enforcement would be most beneficial to consumers.

In sum, market structure should remain only a proxy for determining whether a transaction significantly lessens competition. It should not be at the forefront of merger review. And it should certainly not be the determining factor in deciding whether to block a merger. Similarly, it is not an appropriate notification threshold in merger control.

Our view is that there is no need to reinvent the wheel. Turnover has typically been used as a proxy for a merger's competitive impact because it offers a first indicator of the parties' relative position on the market. Where the parties (and especially the target company) have either no or only negligible turnover in the relevant country, it is highly unlikely that the merger will significantly lessen competition. Again, as recommended by the ICN:

- Examples of objectively quantifiable criteria are assets and sales (or turnover). Examples of criteria that are not objectively quantifiable are market share and potential transaction-related effects. Market share-based tests and other criteria that are inherently subjective and fact-intensive may be appropriate for later stages of the merger control process (e.g., determining the scope of information requests or the ultimate legality of the transaction), but such tests are not appropriate for use in making the initial determination as to whether a transaction requires notification.

Q6. How effective do you consider the current merger regime in balancing the risk of not enough versus too much intervention in markets?

The regime struggles with this balance. The Commission has limited resources. Pursuing very minor mergers with trivial effects on the New Zealand market, while failing to pursue enforcement action in occupational licensing cases that appear very obviously anticompetitive and harmful, does not provide the strongest improvement to consumer welfare.

A more explicit consumer-welfare focus not just in assessing merger effects but also in allocating scarce enforcement resources across areas could help achieve a more balanced approach.

Q8. Should the Commerce Act be amended to provide relevant criteria or further clarify how to assess a substantial degree of influence? If so, how should it be amended? Please provide reasons.

Yes. The Act should be amended to include clearer, more detailed criteria for assessing influence—considering factors such as board control, veto rights over key strategic decisions, and historical patterns of influence. This approach would reduce reliance on simple numerical thresholds (such as a 20% shareholding presumption) and better reflect the real-world dynamics of control.

Q14. Should the Commission be able to accept behavioural undertakings under the Commerce Act to address concerns with mergers? If so, in what circumstances?

This is a difficult area. Behavioural undertakings could allow efficient mergers to proceed that would otherwise be blocked by the Commission. However, there is risk that innocuous mergers that would have been approved regardless could be made subject to behavioural undertakings that do not work to the long-run benefit of consumer welfare.

Q17. What are your views on the merits of possible regulatory options outlined in this paper to mitigate this issue?

The range of options (including binding guidance, safe-harbour notification regimes, and class exemptions) are promising. Our preference is for a flexible framework that shifts the burden to the Commission to demonstrate competitive harm when needed, rather than requiring pre-clearance for every collaboration. Such flexibility is especially valuable for smaller businesses.

Q18. If relevant, what do you consider should be the key design features of your preferred option to facilitate beneficial collaboration?

Key design features could include:

- Clear definitions that distinguish beneficial collaboration from coordinated anticompetitive conduct.
- Built-in safeguards such as sunset clauses and periodic reviews to prevent regulatory drift.
- Transparent oversight and stakeholder consultation to ensure that any implicit regulatory pressure does not distort competitive behaviour.

Q19. What are your views on whether the Commerce Act adequately deters forms of 'tacit collusion' between firms that is designed to lessen competition?

While the Act addresses overt collusion, tacit collusion (especially in concentrated markets with high entry barriers) may not be sufficiently deterred. In some cases, implicit regulatory preferences or pressures can inadvertently serve as a coordination mechanism among incumbents, thus reducing independent competitive behaviour.

For example, if the banking regulator were viewed by the banks as having strong preferences about the greenhouse gas footprint of a bank's lending portfolio, banks could coordinate around that signal to increase margins when lending to sectors viewed as disfavoured by the banks' regulator. Enhanced measures may be needed to address these subtle forms of collusion. But those measures would be best focused on the behaviour of the regulator, to break the potential coordination point.

Q20. Should 'concerted practices' (e.g., when firms coordinate with each other with the purpose or effect of harming competition) be explicitly prohibited? What would be the best way to do this?

We again point to the importance of a consumer welfare standard when weighing the effects of any potential substantial lessening of competition. Any tightening of restrictions should preserve legitimate collaborative behaviour through clear exceptions and safeguards.

Q21. Do you consider that industry codes or rules could either:

a. fill a gap in the competition regulation regime or

b. provide a more efficient and appropriate response to addressing sector-specific competition issues rather than developing primary legislation?

We here only caution that industry codes can risk becoming instruments for anticompetitive coordination. If the review fixes on codes as potential instrument, it should ensure that any implemented codes are subject to ongoing review and sunset clauses to ensure that they have not themselves resulted in a lessening of competition to consumers' detriment.

Q30. Are there any other issues that you would like to raise?

Yes. In addition to the detailed responses above, we urge the Review to adopt a broader perspective on competition in New Zealand.

- Broader Structural Barriers: Many significant anticompetitive effects in NZ stem from regulatory regimes beyond the Commerce Act—such as land use planning, occupational licensing, and permitting processes—that effectively create cartels.
- Role of the Crown Exception: We urge the adoption of Ben Hamlin's proposed modernisation of the Commerce Act to ensure that any SLC caused by regulatory regimes provided that exception are able to meet an ongoing public benefit assessment.
- Legislative Reform Beyond Mergers: We recommend that the Review consider whether the Commerce Act should be broadened (or complemented by other legislative measures) to empower the Commerce Commission to assess and, if necessary, challenge statutory regimes that restrict competition. For example, issues in land use planning (as seen in recent zoning decisions) and licensing arrangements (e.g., for community pharmacies and universities) have substantial competitive impacts that deserve attention.

In short, while the Review's focus on merger control and minor regulatory tweaks is welcome, we strongly advocate that it also address these larger, structural issues that currently impose significant anticompetitive constraints on New Zealand's markets.

We also urge that, when considering alignment to Australia's merger regime, the submission of Manne et al (2024) on Australia's reforms be weighed carefully. It has raised serious concerns with Australia's approach.[14]

[14] Manne, Geoffrey et al. 2024. "Comments of the International Center for Law & Economics: Reforming Mergers and Acquisitions – Exposure Draft". 13 August. Available at https://laweconcenter.org/wp-content/uploads/2024/08/Comments-of-the-ICLE-Merger-Consultarion-AUS.pdf