

Commerce (Clearance Validation) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill relates to notices under section 66(1) of the principal Act seeking clearance for a business acquisition that—

- was given to the Commerce Commission before the commencement of section 11 of the Commerce Amendment Act 2001 (26 May 2001); and
- had not been finally disposed of before that commencement.

Section 11 of the Commerce Amendment Act 2001 replaced section 47 of the principal Act with an amended section that strengthened the prohibition on business acquisitions that may have an anti-competitive effect.

In a recent decision, the Court of Appeal has held that the principal Act requires notices applying for clearance made and not finally disposed of before 26 May 2001 to be dealt with and disposed of in the light of the strengthened prohibition that took effect on that day.

This Bill reverses the effect of that decision, so that all notices are dealt with on the basis of the law as it was at the time they were made.

Clause by clause analysis

Clause 1 relates to the Bill's Title.

Clause 2 provides that the Bill comes into force on the day after assent.

Clause 3 provides that—

- notices applying for clearance that were made and not finally disposed of before 26 May 2001 must be dealt with in the light of the section 47 as it was before it was amended; and
 - to the extent that the Commission may already have dealt with any notice made and not finally disposed of before that day in the light of the section 47 as it was before it was amended, the Commission's actions are valid and effectual.
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Hon Paul Swain

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Commerce (Clearance Validation) Amendment Act 2001.
- (2) In this Act, the Commerce Act 1986¹ is called “the principal Act”.

¹ 1986 No 5

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Consideration of notices applying for clearance made before 26 May 2001

- (1) This section applies to a notice under section 66(1) of the principal Act seeking clearance for the acquisition of the assets of a business, or shares if it—
- (a) was given to the Commission before the commencement of section 11 of the Commerce Amendment Act 2001; and
- (b) had not been finally disposed of before that commencement.

- (2) The principal Act applies to a notice to which this section applies as if section 11 of the Commerce Amendment Act 2001 had not been enacted.
- (3) Every action of the Commission before the commencement of this Act must for all purposes be treated as being as valid and effectual as it would have been if this Act had come into force on the commencement of section 11 of the Commerce Amendment Act 2001. 5
- (4) This section is for the avoidance of doubt. 10