

Mr Rowling

MONOPOLIES AND MERGERS

ANALYSIS

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A BILL INTITULED

An Act to provide for the establishment of a Monopolies Commission to define its functions and powers and to provide for other matters incidental thereto

5 **BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Monopolies and Mergers Act 1970.

10 2. **Interpretation**—In this Act, unless the context otherwise requires,—

15 “New Zealand investor” means every New Zealand citizen who has a beneficial interest in any company or the subsidiary of any company registered in New Zealand.

No. 74—1

“Foreign investor” means every person not being a New Zealand citizen who has a beneficial interest in any company or the subsidiary of any company registered in New Zealand.

“Acquisition” means any arrangement to acquire the securities of another company and includes any purchase which is sufficient to offer effective control or effective majority ownership of such company and any arrangements to acquire the whole or any part of the assets of such company.

“Enterprise” means any company or subsidiary of any company registered in New Zealand.

“Minister” means the Minister of Finance.

3. Monopolies Commission—There shall be a Commission appointed to be known as the Monopolies Commission. It shall comprise 5 members appointed by the Governor-General.

4. Term of office—All appointments to the Commission shall be for terms of 5 years.

5. Nature of appointment—The chairman shall be appointed on a full-time basis. All other members will be appointed on a part-time basis.

6. Purpose of the Commission—The purpose of the Commission shall be—

- (a) The encouragement of New Zealand citizens to establish, to own and to control enterprises exploiting New Zealand’s resources and utilising New Zealanders’ special skills: 25
- (b) The safeguarding of the New Zealand economy against the introduction of foreign capital except that it be in the national interest: 30
- (c) The consideration of all matters which appear in the particular circumstances to be relevant to the general economic position of New Zealand in order that we can achieve:
 - (i) The production, control and distribution by the most efficient and economical means of goods of such types and qualities at those prices that will meet the requirements of the home and overseas markets: 35
 - (ii) The organisation of industry and trade in such a way that their efficiency is progressively increased and new enterprise is encouraged: 40

(iii) The fullest use and best distribution of the men, materials and industrial capacity in New Zealand:

- 5 (iv) The development of technical improvements and expansion of existing markets and the opening of new markets:
- (d) The prevention of any take-over which contravenes the Trade Practices Act 1958.

7. Functions and powers of the Commission—The functions
10 of the Commission shall include at any time consideration of and determination of all matters relating to the special matter of this Act, including the control and ownership of enterprises and companies affecting New Zealand's natural
15 resources and all companies whose activities are of an economic or strategic nature. The Commission shall have the power to determine whether—

- (a) Any proposed acquisition of a controlling interest or a merger best serves the public interest.
- 20 (b) The effect of any acquisition of the controlling or total interests by one company, association or person of the securities of another company may be such as to substantially lessen competition or to tend to create a monopoly.
- 25 (c) Any enterprise should be controlled entirely by New Zealand investors or to some lesser extent by New Zealand investors.
- (d) Any enterprise might be partly or wholly controlled by other than New Zealand investors.
- 30 (e) On any increase of capital by a company, foreign investors should be entitled to participate, and if so to what extent?
- (f) The securities or any kind or class of them in any company operating in New Zealand might be owned by other than New Zealand investors and if so to
35 what extent?
- (g) It is in the public interest that any proposal to take over or close down an enterprise, which has local or regional economic importance, or is of special economic or strategic value should be permitted to
40 proceed.
- (h) Any proposal for acquisition of a controlling interest or the take-over by a foreign investor of any company incorporated in New Zealand without an associated expansion of production be permitted to
45 proceed.

- (i) Any proposal for acquisition of a controlling interest or the take-over by a foreign investor of any company incorporated in New Zealand which is wholly or substantially owned and operated by New Zealand investors and which is efficiently run and which is not in need of capital for expansion should be permitted to proceed. 5
- (j) Any proposal for the establishment by a foreign investor of any enterprise should be permitted to proceed.

8. Additional powers—The Commission may exercise all additional powers and functions as Parliament may from time to time determine. 10

9. Parties to be heard—Before making a determination, decision, or order in any case, the Commission shall have regard to any representation made to it by any party to the matters in question and the Commission instead of making a determination or order may permit any party which has made representations as aforesaid to take such steps within such time as may be limited in that behalf by the Commission as may be necessary to ensure that the spirit and intention of the Act is not affected. 15 20

10. Appeals—The right of appeal against any determination, decision, or order of the Commission shall lie to the Administrative Division of the Supreme Court.

11. Return of foreign investment—The Governor-General, by Order in Council, may require that together with its annual list and summary every company shall furnish to the Registrar of Companies and also to the Commission a return setting out in relation to every foreign investor in such company, the number and class of each kind of security held, the amount paid up in respect of each such class and kind of security, and during the financial year in respect of which the return relates the total amount received by way of dividend, and also the total amount received by way of interest in respect of securities beneficially owned by every such foreign investor, and the names, addresses, nationality, and occupations of every such foreign investor; the names, addresses, and registered offices of every New Zealand company which is a foreign investor; 25 30 35

the names, addresses, and registered offices and country of registration of every company not on the New Zealand Register and being a foreign investor, and the names, addresses, occupations, and nationalities of all the directors thereof; and the total amount of securities paid up by foreign investors.

12. Authority to maintain register of foreign investors—The Commission shall maintain a register of foreign investors and also of associations operating in New Zealand effectively controlled by foreign investors and recording such information as the Governor-General by Order in Council may from time to time determine.

13. Foreign investment to be shown on balance sheets—The balance sheet of every public company on the New Zealand Register shall show as a footnote:

- (a) The total number and paid up value of its voting securities; and
- (b) The total number and paid up value of such securities beneficially owned by foreign investors.

14. Offers by foreign investors to be reported to Commission—Every offer by any foreign investor for securities which might confer either effective control or effective majority ownership of the securities of a company on a New Zealand Register or which together with any existing holding or holdings by foreign investors might be sufficient to obtain effective control or effective majority ownership of the securities of any company on the New Zealand Register shall forthwith be reported by the offeror (or in default the offeree) to the Commission.

15. Inquiry into foreign investment in New Zealand—The Commission shall have power to inquire into every aspect of foreign investment in New Zealand including interest in or rights to natural resources, or licensed or controlled industries, licensed or controlled goods or property; or to any monopoly or quasi-monopoly or to any trademark, patents processes or royalties and the like; or to any source of export income, or to any line of commerce which earns export income or incurs any charge against foreign exchange holdings of New Zealand or which otherwise affects the balance of payments of New Zealand, or to any transport service which operates between New Zealand and other parts of the world, or in any medium of mass communication; and shall report to the Minister of Finance.

16. Power to prohibit or restrict foreign investment—Notwithstanding anything contained in this or any other Act, the Commission may prohibit or restrict the beneficial acquisition of securities or assets by foreign investors either on an individual or a collective basis.

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17. Annual Report—(1) The Commission shall not later than the 30th day of June in every year furnish to the Minister a report of its proceedings and operations for the preceding financial year.

(2) A copy of every such report shall be laid before Parliament within 28 days after the date on which it is furnished to the Minister if Parliament is then in session and, if not, shall be laid before Parliament within 28 days after the commencement of the next ensuing session.

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