webb henderson

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Committee Secretariat
Economic Development, Science and Innovation
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Webb Henderson Submission on the Commerce (Promoting Competition and Other Matters) Amendment Bill

Executive Summary

1. Webb Henderson welcomes the opportunity to submit on the Commerce (Promoting Competition and Other Matters) Amendment Bill (**Bill**).

2. Webb Henderson represents a wide range of international and local clients, from global companies, to Australasian listed entities, and local and global private equity through to local SMEs and start ups. Our combined senior team has over 70 years competition and consumer law experience in private practice and within the regulators in New Zealand and the United Kingdom, with extensive experience working in international teams on both the private client and regulator side of competition enforcement and merger control processes. Our trans-Tasman practice and regular engagement with US, UK and Australian based legal teams and global clients provide us with a strong understanding of the way New Zealand competition law fits into the wider overseas regulatory and legislative frameworks, informing our perspective on the Bill.

3. The current round of reforms represents the fourth major set of changes to competition provisions in the Commerce Act 1986 (**Act**) in the past decade, alongside expansion of the role of the Commerce Commission (**Commission**) via new industry-specific regimes. The Bill does contain some useful amendments to New Zealand's competition regime. However, Webb Henderson is concerned that many of the changes are creating unnecessary additional layers of regulation and more generally the changes move New Zealand's competition law in the opposite direction to the global trends in competition enforcement and merger control which are to require regulators to be commercial and pragmatic and only to focus on the cases that really turn the dial for the economy, and not to unduly hamper foreign investment or SME innovation.

4. Two reform proposals are particularly important in this regard.

   (a) The lack of a compulsory merger notification regime now Australia has moved, coupled with the lack of a de minimis regime for small mergers in the framework of the current voluntary notification regime. The Bill proposes a bespoke New Zealand regime that is a confusing hybrid of compulsory and voluntary, with fishhooks and ambiguity, and international investors will not understand or have any enthusiasm to engage with it. Globally the trend is towards greater rules-based clarity, and New Zealand is making itself an outlier in passing this reform.

   (b) The lack of appropriate safeguards to balance out the ever-broadening Commission discretion in its competition, consumer and regulatory roles.

Webb Henderson has advocated for a Hearing Officer role to be created within the Commission structure, for a senior, legally skilled person to act as an independent arbiter of all aspects of Commission process. While our experience of the Commission is that the agency is staffed by capable, conscientious and diligent people, there are inevitably points in any process where, by virtue of wider agency incentives or objectives, the experience or views of individuals, or agency resources being overly stretched, steps are taken (or not taken) that are either wrong or fail to meet the Commission's own standard of a responsible regulator. The Courts are not an adequate recourse, due to cost and delay, and often the parties do not want to put the Commission offside because a discretion whether or not to intervene or seek penalties has not yet been exercised.

Without significant improvement, our concern is that this reform package will not deliver the intended pro-competitive productivity gains for the New Zealand economy. In fact, it will add to the regulatory burden on businesses operating in New Zealand, with a continued disproportionate effect on small business.

5. This is not to say reform is not required. In particular:

   (a) Webb Henderson supports proposed changes to better protect commercially sensitive information of parties from disclosure during Commission processes, but recommends that such changes should be balanced with additional due process safeguards (such as a Hearing Officer).

   (b) We also support allowing the Commission to accept behavioural undertakings to remedy mergers which would otherwise be prohibited, bringing New Zealand's merger control framework in line with international standards. Webb Henderson team members have advocated for this change for over a decade. However, we note that the drafting of those powers should conform with the intent (which the Bill does not currently achieve).

   (c) Webb Henderson supports the new short form clearance regime for collaborative activities, which again, members of the team had advocated for since the collaborative activities exemption was first introduced. However, we submit that additional measures – such as a requirement on the Commission to publish binding guidance on "safe harbours" - are required to address the uncertainty in the regime, particularly given the scale of most businesses operating in New Zealand's economy.

   (d) There is also a need to promote greater timeliness in New Zealand's merger regime. Webb Henderson supports steps to provide earlier visibility of merger decisions. We also support the work that the Commission is doing alongside statutory changes to support this objective. However, Webb Henderson has significant concerns about the powers to investigate creeping acquisitions, particularly as currently drafted and without a balancing de minimis regime.

6. In conclusion, Webb Henderson requests that in considering these reform proposals, the Select Committee particularly reflect on the fact that New Zealand is a small jurisdiction where development of jurisprudence can take decades. In this context, conformity with Australia's competition legislation, where the deals are larger and cases are taken more often, remains critical for the predictability and clarity of New Zealand's competition law.

7. In this context, Webb Henderson notes that the proposed changes to section 36 to introduce a new predatory pricing test (which failed to be used in Australia), the scale and scope of the power to review previous acquisitions (creeping acquisitions) and

some of the drafting idiosyncrasies of the behavioural undertakings power require extremely careful review and amendment by Select Committee.

8. Detailed submissions on the wording of the Bill are set out below. Webb Henderson requests the opportunity to present the content of this submission, including by appearing at Select Committee.

9. Thank you for your consideration of these points and we look forward to engaging further with your process.

Webb Henderson
Sarah Keene, Jordan Cox, Victoria Fowler and Antonia Horrocks

Detailed submissions on the Bill

Submission 1: Supports the OIA carve-out but recommends Hearing Officer role

1. Webb Henderson supports the introduction of section 100AA, which provides that the Commission must not publish information provided to it 'in confidence'. The new provision is subject to some exemptions but importantly carves out the application of the Official Information Act (**OIA**), meaning the Commission will no longer spend significant resource during its review of merger and authorisation applications, and during enforcement investigations, considering requests for confidential information under the OIA.

2. This change will bring New Zealand's approach on handling of commercially and competitively sensitive information during these proceedings into line with other developed competition agencies, enhancing its reputation with international businesses and increasing efficiency. It will also provide assurance to entities wishing to disclose information relating to a competitor, significant market player, supplier, or similar that they will not face adverse consequences from making such disclosures.

3. However, the Commission does not have a developed disclosure regime for disclosure of information to parties for testing, either during administrative or enforcement processes. This can affect the efficacy and perceptions of its decision-making due to lack of clear timeframes and steps for testing key evidence prior to key internal decisions. Webb Henderson has previously submitted on the need for an internal Hearing Officer to address this issue, and repeats this submission here.[1]

4. To further guard against procedural impropriety in relation to reliance on non-disclosed third party information as evidence against a notifying or investigated party prior to the stage of disclosure for court proceedings, other competition agencies have additional process safeguards and Webb Henderson recommends a review of these and publication of disclosure guidance by the Commission should the OIA carve-out come into effect.

Submission 2: Benefit from statutory notification regime depends on its application

5. To better support beneficial collaboration, the Bill introduces a new statutory notification regime allowing businesses to notify the Commission of proposed collaborative conduct (initially limited to resale price maintenance or small business collective bargaining) and proceed unless the Commission objects. While framed as reducing complexity, cost and delay for legitimate collaborations, most collaborations are currently self-assessed, so this additional regulatory process may not add much benefit in practice.

6. One area where the statutory notification regime could have significant immediate benefit would be by applying it to de minimis mergers. Two of the few other countries with voluntary merger regimes, the United Kingdom and Singapore, both operate de minimis regimes successfully (with the scope of that in the United Kingdom having been recently expanded to enhance its productivity benefits to the economy). Further comments on the merger regime are set out below.

Submission 3: Supports the introduction of a streamlined beneficial collaboration clearance process

7. A new streamlined beneficial collaboration clearance process is proposed, whereby the NZCC can provide clearance only of the technical cartel elements, without also needing to provide a view on whether the arrangement lessens competition

[1] Webb Henderson submission on MBIE discussion document

(allowing the parties to take their own risk on that). Webb Henderson has submitted that this would be beneficial for some years and remains of the view it is a sensible and pragmatic solution to the currently lengthy and involved process of a full authorisation of collaborative activities, which involves complicated market definition and market power assessments.

8. In addition to this change, Webb Henderson submits that given the broad cartel provision and narrow exemptions from it, further guidance on how this regime will be applied, and the types of conduct that the Commission views as falling outside the cartel prohibition, would be welcomed.

Submission 4: Supports the ability for the Commission to accept behavioural undertakings as merger remedies

9. Webb Henderson supports the introduction of the ability for the Commission to voluntarily accept behavioural undertakings as remedies in merger cases. This change will give the Commission greater flexibility to permit mergers and acquisitions that enhance efficiency and productivity to proceed and will align New Zealand's merger control framework with other jurisdictions.

10. The Commission should, however, be able to accept a behavioural undertaking in circumstances beyond those where divestment is insufficient. Limiting the power in this way makes New Zealand an outlier internationally by adding regulatory hurdles into the statute to accepting behavioural undertakings, making it more difficult.

11. Given the introduction of performance injunctions for Part 2, we consider courts should be given a complementary power to require behavioural undertakings for s 47 breaches. A court can direct a person to comply with an existing undertaking (see new 84(2)(d)) but does not appear to be able to require a fresh undertaking.

12. We note that s 93(2)(b) appears to make it explicit that the intention was that a court on appeal cannot accept a behavioural undertaking, so anticipate that it is a policy decision (rather than an oversight) not to allow the court at first instance to require behavioural undertakings. We consider that creates a gap in the court's powers which should be reconsidered.

Submission 5: Change to SLC test is unnecessary and should not be introduced without a de minimis regime

13. Webb Henderson does not support the proposed changes to the substantial lessening of competition (**SLC**) test.

14. As part of its merger reform programme, Australia amended its definition of SLC to make clear that a SLC, in the merger context, may include creating, strengthening or entrenching a substantial degree of power in a market. While alignment with Australia on the wording of the SLC test is, in principle, desirable, Australia's recent amendment applies only to mergers and was introduced to clarify that mergers involving even a small change in market power may result in an SLC. In contrast, in New Zealand this amendment is unnecessary, and the Bill proposes to reform the SLC test for both restrictive trade practices and mergers. This would leave New Zealand out of line with Australia. Webb Henderson is not aware of any justification for extending this reform to the restrictive trade practices prohibitions.

15. We also observe that the stated purpose of changing the SLC test is to clarify the Commission's ability to address "killer" acquisitions. However, this clarification appears unnecessary where the Bill already proposes a specific provision addressing patterns of acquisitions, as discussed below. Webb Henderson is not aware of any evidence that the Commission is currently unable to assess acquisitions of small

competitors under the existing SLC test. On the contrary, the Commission's approach to adopting relatively narrow market definitions in its merger assessments suggests that it can effectively scrutinise acquisitions of small competitors under the existing framework.

16. New Zealand is a small, remote jurisdiction with low deal volumes relative to major economies. Divergence from equivalent jurisdictions—particularly Australia—creates uncertainty and unnecessary cost. New Zealand's merger regime already differs materially from most OECD comparators; further misalignment should be avoided.

17. Given the litigation timeframes typical in competition matters (often a decade between reform and jurisprudence), alignment with Australia ensures access to a deeper jurisprudential base and materially reduces transitional legal uncertainty. If a reform is to be enacted, it should mirror the Australian model and apply only to mergers.

18. Webb Henderson further submits that any reform to the merger control framework that increases scrutiny and therefore regulatory burden, such as this proposed change to the SLC test, should not be introduced without also introducing a de minimis exemption, as discussed further below. Introducing a new definition is likely to introduce uncertainty and complexity without delivering any clear benefit to consumers given the adequacy of the current framework.

Submission 6: Creeping acquisitions power is too widely drafted to be workable

19. Webb Henderson strongly opposes the introduction of powers to consider creeping acquisitions in the format set out in the Bill, for a number of reasons. We do not oppose the policy objective of enabling the Commission to assess patterns of "creeping acquisitions," as such conduct may, in some circumstances, raise legitimate competition concerns.

20. However, because the change increases scrutiny and therefore regulatory burden, the proposed provision should be drafted in line with comparable jurisdictions to avoid unnecessary uncertainty and regulatory creep and should not be introduced in the absence of a de minimis exemption.

21. The Australian regime excludes acquisitions below certain revenue and asset thresholds and is limited to acquisitions involving the same or substitutable goods or services. It is essential for the efficacy of the regime that similar exclusions are adopted in New Zealand.

22. The proposed cumulative-acquisitions provision also raises several significant practical concerns:

    (a) Three-year look-back and disclosure burden:

        (i) Parties would be required, during due diligence, to identify all acquisitions made within the past three years, regardless of size or relevance, and regardless of whether they were made by the acquiring party or the target.

        (ii) This requirement is unbounded and will be particularly burdensome for large entities. This could be partly remedied by the reference to "any party" being amended to "acquiring party", but this would not resolve the issue for companies such as private equity firms with frequent international acquisitions in unrelated markets.

    (b) Retrospectivity concerns:

(i) The Legislation Advisory Guidelines discourage retrospective application. Businesses may have structured past transactions differently had these obligations existed. Accordingly, any cumulative-acquisitions obligation should commence three years after the enactment date.

Submission 7: A de minimis regime is required to balance proposed changes to the merger control framework

23. Webb Henderson submits that the inclusion of a de minimis threshold, structured as a safe harbour enabling the exclusion of small or insignificant transactions (transaction value or market size) from Commission scrutiny under s 47, is a necessary reform to New Zealand's merger control framework.

24. This is particularly important alongside proposals that expand the scope of merger scrutiny, as discussed above. A de minimis threshold would assist in focusing the Commission's resources on transactions where the public benefit of intervention outweighs the public costs, whilst also reducing regulatory burden (especially for small businesses) and increasing commercial certainty.

25. New Zealand is an outlier internationally. New Zealand, the United Kingdom and Singapore are the only comparable jurisdictions that operate voluntary regimes, and New Zealand is the only jurisdiction among them without any statutory or discretionary threshold for merger review linked to transaction size or market significance, despite having one of the most resource-intensive and transparent merger review systems. International practice reinforces the need for proportionate screening and prioritisation of resources in merger assessment.

26. The introduction of a de minimis threshold would materially reduce the regulatory burden for small businesses, which are least able to absorb the resources associated with a merger review process.

27. A threshold would also improve commercial certainty. Although New Zealand's regime is voluntary, the combination of retrospective enforcement under section 47 and the absence of any safe harbour provisions means merging parties may feel compelled to notify to avoid the risk of a later challenge. This effect is heightened by the Commission's practice of adopting relatively narrow market definitions, which can cause small transactions to fall within the thresholds for notification, and intervening in small mergers. A de minimis threshold would provide more clarity to merging parties on when notification is necessary, reducing unnecessary notifications and supporting a more attractive investment environment.

28. Webb Henderson recommends the best legislative solution would be for a specific safe harbour threshold, modelled on the UK de minimis regime, be introduced into Part 3 of the Commerce Act. However, an interim solution to avoid some of the issues outlined above would be for a clearance notification regime for mergers below a specific threshold, utilising the framework set up for RPM and collective bargaining.

Submission 8: Call in/ stay and hold powers require drafting changes

29. The Commission has a strong record of intervening in non-notified mergers, either resulting in the parties seeking clearance or in investigation, potentially followed by injunction and/or court proceedings. The scale of its activity under section 47 indicate that call in powers are not required.

30. However, if the provision in the Bill is introduced, we consider that the following drafting issues should be addressed:

(a) Section 47E(4) – Safe harbour: Clarify whether compliance with safeguarding obligations constitutes a safe harbour such that the person will not be subject to any enforcement action if the safeguarding turns out to be inadequate.

(b) Duration of call-in notices: There is currently no end date. A longstop should be considered, or alternatively a mechanism enabling parties to request that the Commission withdraw notices when the risk no longer exists.

(c) Enforcement consequences: Breaches of ss 47E and 47F should not attract the full suite of penalties in ss 83–85. They should instead be addressed through s 74D.

(d) Clarify what constitutes a breach: the sections are currently unclear on what conduct constitutes a breach so as to attract enforcement consequences.

Submission 9: The saving provision for business acquisitions should not be repealed

31. We oppose the repeal of s 46.

32. The Explanatory Note suggests repeal is justified because s 83(6) prevents pecuniary penalties under both Part 2 and Part 3. However, s 83(6) does **not** shield parties from:

(a) damages under s 82,

(b) offences under s 82B, or

(c) other interventions under Part 6.

33. It also creates significant uncertainty for businesses in merger situations in having to also consider deal documentation under cartel tests, with narrow exemptions in New Zealand compared to sophisticated counterpart jurisdictions. By comparison to other jurisdictions, New Zealand (and Australian) cartel laws are already narrow, and impose per se liability where other jurisdictions apply a rule of reason approach. The repeal of section 46 exacerbates these problems and leaves New Zealand as an outlier internationally in terms of the risk profile of deal documentation that is not caught by equivalent regimes.

Submission 10: A specific predatory pricing prohibition is unnecessary and undesirable

34. Webb Henderson does not support the introduction of a specific predatory pricing prohibition. The existing section 36 misuse of market power test is capable of capturing predatory pricing, making an additional prohibition unnecessary. Introducing a new prohibition is likely to introduce uncertainty and complexity, particularly as to how key terms of the test would be defined and applied and would increase regulatory burden without delivering any clear benefit to consumers given the adequacy of the current framework.

35. Introducing a new test:

(a) adds uncertainty due to undefined concepts such as "sustained period", "long-run average incremental cost", "average total cost" and "average variable cost";

(b) creates compliance difficulties for multiproduct firms allocating fixed/variable costs; and

(c) introduces accounting complexities without clear enforcement benefit.

36. We note that under the Credit Contracts and Consumer Finance Act 2003, there is an unreasonable fees regime (Subpart 6) and the legislation and the underlying Responsible Lending Code provide a significant volume of guidance about how underlying costs can be calculated and allocated to a particular fee – that level of detail shows how complicated it would be to properly define the concepts in this new section so that costs are properly allocated to the product in question.

37. If clarification of enforcement priorities is desired, the Government could instead issue a policy statement under s 26 rather than introducing new legislation.

38. When a standalone predatory pricing prohibition was introduced in Australia, no litigation was, to our knowledge, brought under it, and the prohibition was subsequently repealed following amendments to Australia's s 46 misuse of market power test, which meant that a standalone prohibition was unnecessary - that test is equivalent to New Zealand's s 36 test.

Submission 11: Performance injunction powers require drafting changes

39. Webb Henderson is of the view no changes are required to performance injunction powers and if the proposed changes are retained, amendments are required to the drafting of the provisions in the Bill prior to introduction.

40. Under s 49 of the Retail Payment System Act 2022 a court may grant an injunction requiring a person to do an act that they are required to do under that Act if it is satisfied that the person has refused or failed to do that act or it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act. Under that Act, the court may grant an interim injunction requiring a person to do an act or a thing that they are required to do under the Act if in its opinion it is desirable to do so.

41. The changes to the Act were intended to mirror the provision outlined above but this intent has not flowed through to the drafting in the Bill. It appears the intention here is to require proof of a contravention (as opposed to the way restraining injunctions operate until s 88).

42. For clarity, we suggest inserting an explicit explanation in s 88 that:

    (a) s 82F injunctions require proof that the conduct has already occurred; and

    (b) make it explicit whether the court needs to consider whether there is proof that the person intends to engage again, or whether there is imminent danger of substantial damage (as per s 88(2) and (3)).

43. We also note that the High Court has previously held that the Court can impose mandatory injunctions under existing powers - see *Stevedoring Services (Nelson) Ltd v Port Nelson Ltd* [1992] NZAR 5 at [23], where the Court held that it does have jurisdiction to make these orders from the wording of "any other order" in s 89(1) of the Commerce Act 1986. That provision requires proof of loss or damage, so if this new legislative power is intended to be different, this precedent makes it even more important that s 88 is amended to clarify whether it is the intention that loss or damage is required for an injunction under 82F.

44. We also consider that this section needs to build in some kind of review period, or other restrictions on how long the person is subject to this corrective action order, otherwise 82F(4)(a) essentially allows for the creation of perpetual regulation of a single firm. We would not expect it was the intention for the High Court to allow this power to be used to routinely impose perpetual regulation of a single firm and would expect it would most often be used to remedy more confined instances of harm. For

example, Cabinet papers have discussed examples of performance injunctions to order a dominant company to supply a product or service to a competitor, and particularly flagged digital markets as a sector that would benefit from such injunctions for conduct such as self-preferencing or discriminatory access.[2]

45. There have been cases under the existing restraining injunction power in the Commerce Act which discuss whether perpetual injunctions are appropriate; for example, see *New Zealand Magic Millions Ltd v Wrightson Bloodstock Ltd* [1990] 1 NZLR 731 at 767 - 768. The Court there did not order a perpetual injunction and observed that if the plaintiffs had not achieved competitiveness in the time that the injunction was ordered to ensure for, then their failure would have been due to the ordinary process of competition and should not be protected by law any further.

46. Some guidance can be drawn from the type of mandatory injunctions granted under the Australian Competition and Consumer Act 2010 (and its predecessor the Trade Practices Act 1974); for example, the Court there has granted a mandatory injunction requiring a company to conduct a compliance program as set out in the Court order, and in a separate case mandatory injunctions have been sought requiring information to be removed from websites.

Submission 12: Power to study markets for pro-competitive regulation is unnecessary

47. Section 51F will provide the Commission with a specific power to study a market in order to recommend the development of pro-competition regulation to the Minister. We see no evidence that this provision is required. Existing s 51B(3) already permits consideration of pro-competitive regulation, and previous market studies have made recommendations for both amendment of regulation which is creating barriers to competition and new regulation intended to promote competition.

48. For example, the Commission's Residential Building Materials market study recommended that: *Competition should take a more prominent position in the regulatory system, and decision making within it, to ensure the effective operation of markets for key building supplies and delivery of safe, durable, quality housing for New Zealanders. In practice, this means creating clear compliance pathways for more key building supplies and making it easier for designers and market participants to use new or competing building supplies.*[3] The Commission's Retail Grocery Sector market study recommended: *amendments to planning laws and instruments to ensure sufficient land is available for new supermarkets to be built, to increase certainty for those seeking to develop new retail grocery stores, and limit the grounds on which new developments can be declined*.[4]

49. Introducing an additional statutory study obligation increases regulatory burden without obvious benefit.

Submission 13: Section 98 amendments

50. Section 98(1)(ba) appears to put a requirement on a party to reproduce information in corrupt or otherwise lost documents under compulsion. This means if a person has corrupted files, is asked to reproduce the documents and cannot, then they could be subject to action for failing to comply with a compulsory notice.

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[2] Cabinet paper – Changes to Improve Competition Settings dated 16 September 2025 (https://www.mbie.govt.nz/dmsdocument/31113-commerce-act-review-changes-to-improve-competition-settings-proactiverelease-pdf)
[3] https://www.comcom.govt.nz/assets/pdf_file/0013/300703/Residential-building-supplies-market-study-Executive-summary-6-December-2022.pdf
[4] https://www.comcom.govt.nz/assets/pdf_file/0023/278402/Market-study-into-the-retail-grocery-sector-Executive-summary-8-March-2022.pdf

51. We consider that this section should be amended to say, "if necessary, to use its best endeavours to attempt to…". The same comment applies to section 98H.

Submission 14: Section 93 amendments (Determination of appeals)

52. Section 93(2)(a) creates a regime that is not aligned with international counterparts and arguably inconsistent with the rule of law. The Court should have full powers to reverse or modify any clearance decision, regardless of the basis. The proposed reform restricts the current scope of appeals which is already narrowed procedurally by being restricted to the record before the Commission supplemented by updating evidence.

53. Finally, we set out below some comments on technical changes proposed to the Act.

Comments on technical changes to Act

Provision in statute	WH Comment
Section 22 – New ss 65E-65S (Statutory Notification Regime for Certain Restrictive Trade Practices):	Section 65H(2) requires substantial tightening. While guardrails are necessary, the current drafting is too broad and risks creating uncertainty. For example, the terms "predictable", "well understood", "relatively consistent", "typical market conditions" and "administratively efficient" are all concepts which risk creating uncertainty about their interpretation.
Section 24 – Amendments to s 67 (Authorisations):	As s 66(3A) requires mutual agreement, paragraphs (a)-(d) add unnecessary complexity and are not required. If paragraphs (a)-(d) are retained, paragraph (a) should refer to the complexity of the acquisition or analysis (and the same change should be made in s 67).
Section 28 – Amendments to s 69AB (Voidance if Undertaking Breached)	For s 69AB(1A)(b): Given the wide range of circumstances that could be at play here, we suggest "immediate" is replaced with "as soon as reasonably practicable after the person knew, or ought to have known of the conduct amounting to a breach".
Section 82F	The cross reference to s 80(1) is a shortcut to import the list there, but inadvertently also imports the wording "the court may order the person to pay the Crown such pecuniary penalty as the court determines to be appropriate". The list at 80(1) should just be drafted into 82F to avoid confusion. Suggest that 82F(2) needs a further subsection for "any other order the court sees fit" or similar.
Section 38 Section 85B replaced	This seems duplicative of s 84(2)(d) which says, "direct the person to comply with the undertaking, if the undertaking is of a kind referred to in section 69A(1)(b) or (c)." Having it in two places confuses the power, especially given that this section gives the court discretion under 85B(2)(c) and (d) to give wider orders, whereas s 84 is just a direction to comply with the undertaking. We would also suggest clarification of whether 85B(2)(c) and (d) are intended to apply to any breach of s 69A(1)(a)(b) or (c).
New section 87D and cross-heading inserted	The wording "section 97B" should be inserted into sections 80, 81, 82, 82A, and 89, otherwise it would be easy for people to misinterpret that those sections still only apply to Part 2.
Section 93	The drafting should clarify whether s 93(2)(b) refers to s 93(1)(b). Section 94 would need to be subject to s 93(2)(a) if the policy decision is that a clearance/authorisation cannot be disturbed solely on the basis of whether an undertaking was accepted.
Schedule 1 New Part 7 inserted into Schedule 1AA s 57:	The phrase "whether the proceedings are commenced before, on, or after the commencement date" is unclear, as proceedings cannot realistically precede an acquisition taking place after commencement. The drafting should be clarified.