New Zealand Banking Association
Te Rangapū Pēke

Submission

to

The Economic Development, Science and Innovation Committee

on the

Commerce (Promoting Competition and Other Matters) Amendment Bill

4 February 2026

NEW ZEALAND BANKING ASSOCIATION – TE RANGAPŪ PĒKE
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About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following seventeen registered banks in New Zealand are members of NZBA:

- ANZ Bank New Zealand Limited
- ASB Bank Limited
- Bank of China (NZ) Limited
- Bank of New Zealand
- China Construction Bank (New Zealand) Limited
- Citibank N.A.
- The Co-operative Bank Limited
- Heartland Bank Limited
- The Hongkong and Shanghai Banking Corporation Limited
- Industrial and Commercial Bank of China (New Zealand) Limited
- JPMorgan Chase Bank N.A.
- KB Kookmin Bank Auckland Branch
- Kiwibank Limited
- Rabobank New Zealand Limited
- SBS Bank
- TSB Bank Limited
- Westpac New Zealand Limited

Contact details

3. If you would like to discuss any aspect of this submission, please contact:

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Introduction

4. NZBA welcomes the opportunity to provide feedback to the Economic Development, Science and Innovation Committee (**Committee**) on the Commerce (Promoting Competition and Other Matters) Amendment Bill (**Bill**). NZBA commends the work that has gone into developing the Bill.

5. We support the Bill's stated objective to better support beneficial collaboration between businesses. As set out in our previous submission on MBIE's review of the Commerce Act in 2025, we support the principle of introducing a simple notice regime for collaborative activities.[1]

6. Consistent with our previous submission, this submission primarily focuses on the proposed statutory notification regime and the proposal to allow the Commerce Commission to grant class exemptions, as set out in clause 22 of the Bill. We also comment on the Bill's proposed expansion of the Commerce Commission's discretionary powers, specifically the introduction of a "performance injunction" civil remedy in clause 32, and the creation of a new power to conduct studies into pro-competitive regulation in clause 12.

7. Overall, we submit that the introduction of a statutory notification regime is a welcome addition to the Commerce Act. However, we consider that the current scope of conduct to which the regime applies is too narrow, and that the process is too lengthy to enable time-sensitive collaborative activities. Finally, we submit that the proposed expansion of the Commerce Commission's discretion is unnecessary, as the existing regime already provides adequate tools to address the concerns identified.

Statutory Notification Regime

8. Clause 22 of the Bill would introduce new sections 65E – 65Q, which propose to enable a streamlined process for consideration of certain categories of conduct that are likely to be in the public interest or are unlikely to substantially lessen competition.

9. NZBA previously submitted that, of the options outlined by MBIE in its 2025 review, the best choice would be to develop a simple notice regime. We therefore welcome the direction of travel indicated by the Bill.

10. The uncertainty about the ability of competitors to engage in collaborative activity under the Commerce Act has historically hindered industry discussions on issues that need a joint approach to benefit consumers.

11. The banking industry's ongoing work on, for example, responding to the Commerce Commission's Personal Banking Services Market Study recommendations, and fraud

[1] See NZBA's submission on MBIE's Discussion Document: *Promoting competition in New Zealand – a targeted review of the Commerce Act 1986*.

and scam prevention, have required time- and cost-intensive consideration of whether they fall within the existing collaborative activities exemption.

12. As such, concerns around competition risk have, at times, unnecessarily constrained discussions, and likely consumer benefits.

13. The introduction of a statutory notification regime could therefore lessen these constraints and facilitate collaborative activity that is unlikely to substantially lessen competition.

14. However, we consider that the current list of notifiable conduct is too narrow, and further, that the timeframe for the Commerce Commission to object to a notice is unnecessarily long.

Notifiable conduct

14.1. The current list of notifiable conduct for the purposes of the statutory notification regime, to be set out in a new Schedule 8, is limited to collective bargaining where the value of goods or services supplied will total no more than $3 million over a 12-month period, and resale price maintenance.

14.2. This list would not capture a wide range of activities that could be progressed at an industry level, such as those set out at paragraph [11] above.

14.3. As noted, the existing collaborative activity exception is uncertain and can constrain discussions.

14.4. At a minimum, we submit that notifiable conduct should receive protection from both ss 27 and 30 of the Commerce Act. At present, the notification exemption for collective bargaining only provides protection from s 30 and continues to require that the parties self-assess exposure under s 27. Unless this is addressed the same chilling effect raised above will remain undermining the potential benefit of the reform.

14.5. If the intention is to streamline the way parties can gain comfort that their activity is not in breach of the Commerce Act, the statutory notification regime should from its inception be designed to address both of the primary forms of breach.

14.6. For completeness, we note that there is flexibility for the Minister to add, amend or remove listed activities under Schedule 8.

Timeframe for consideration of notices

14.7. The Commerce Commission is deemed not to object to a notification if it does not issue an objection notice within 45 working days after the date on which it registers the notification.

14.8. Existing processes for authorisations and clearances under the Commerce Act provide for timeframes of 120 working days and 30 working days, respectively.

14.9. As we have previously submitted, banks often need to respond quickly to emerging risks and trends in the economy and markets. There are clear advantages to consumers – and to financial stability – where banks are more easily able to collaborate on matters impacting the sector.

In our view, a 45 working day timeframe for notifiable conduct does not facilitate a timely process for activities that are considered low-risk by merit of inclusion within the regime.

14.10. At a minimum, we consider that the Bill should explicitly provide for a regime to govern collaborations between competitors in times of emergencies (for example, during global pandemics and natural disasters). In such emergencies time is of the essence and a requirement to wait 45 working days to see if the Commission will not object in order for the parties to have the confidence to proceed is unworkable. We would recommend a new provision that in times of genuine emergencies parties are able to notify the Commission of certain conduct and be permitted to proceed with that conduct as if it had been authorised unless and until the Commission raise an objection. This regime would be sufficiently limited in both application and time that it would balance any theoretical risk to competition with the need for urgent action to restore supply chains or respond to threats. For example, banks needed to work quickly to assist customers impacted by Cyclone Gabrielle in 2023; where multiple parties are looking to collaborate to quickly assist customers, the Bill should ensure that decisions are made in good time with appropriate oversight from the Commission.

14.11. NZBA notes that the Emergency Management Bill establishes a framework for coordinated emergency planning and response across agencies and essential infrastructure providers, including the development of sector response plans. However, it does not provide Commerce Act protections for sector participants such as banks. It is therefore important that this Bill complements that framework by ensuring a reliable and rapid pathway for urgent collaboration during emergencies. Without an emergency fast-track process (providing a materially shorter objection timeframe where collaboration is reasonably necessary) there is a risk that essential emergency actions are delayed due to legal risk and uncertainty.

Class exemptions

15. We support empowering the Commerce Commission to grant class exemptions, as proposed in s 65R. As previously submitted, class exemptions may be helpful as they would remove the need to give notice to the Commission regarding specified types of

collaboration, and would complement the statutory notice regime by streamlining the process for specified, exempted conduct.

16. We consider an apposite example of the type of conduct that should quickly be addressed by way of a class exemption is anti-scam activity. At this stage, banks, government departments, and other private sector industries such as telcos are all working towards protecting New Zealanders from scams through the MBIE-led Anti-Scam Alliance.

17. A lot of time and resource is spent assessing proposed activities from a competitive perspective. The introduction of a class exemption would facilitate more timely and straightforward action, in turn helping to protect New Zealand customers from being defrauded. Timeliness is crucial to help ensure meaningful impact for New Zealanders in the rapidly evolving fraud and scams environment.

Expansion of Commerce Commission discretion

Performance injunctions

18. The Bill proposes to introduce a "performance injunction" as a new civil remedy for breaches of Part 2 of the Commerce Act. We submit that the existing enforcement regime already provides sufficient deterrence against anti-competitive conduct, and there is no clear justification for expanding the courts' remedial powers in this manner.

19. We are also concerned that the proposed performance injunctions risk placing the Court in an ongoing supervisory or managerial role over commercial conduct, which is inconsistent with the judiciary's traditional functions. The High Court already possesses flexible inherent jurisdiction to craft injunctive relief where necessary, including orders capable of addressing competitive harm. Introducing a bespoke statutory remedy therefore risks duplicating existing powers, adding unnecessary complexity, and blurring the separation between judicial enforcement and ongoing regulatory oversight.

Studies into pro-competitive regulation

20. The Bill also proposes to empower the Commerce Commission to undertake studies for the purpose of recommending new pro-competitive regulation. In our view, this expansion of the Commerce Commission's mandate is unnecessary particularly if it is intended to be exercised without having first undertaken a robust study involving public consultation. We also consider that policy development should be carried out by government agencies and regulators with deep experience in the relevant area, rather than by the Commerce Commission alone.

21. The current framework already allows the Commerce Commission to make recommendations for legislative or regulatory change under section 51B of the Commerce Act, a power it has exercised previously – for example, in the market study

into Personal Banking Services. The Commerce Commission's ability to suggest reforms is therefore well-established without requiring a new statutory power.

22. We acknowledge that regulatory intervention can be justified where markets cannot function effectively on their own or where there is a lack of current or future competition. However, such intervention should remain a last resort. Government intrusion into competitive markets must be approached cautiously, as effective competition is the most reliable driver of efficiency, innovation, and positive outcomes for consumers. We are concerned that introducing a standalone power to conduct studies into pro-competitive regulation risks normalising regulatory intervention and may blur the distinction between the Commerce Commission's core role as an independent enforcement agency and the function of policy development, which properly sits with Government.