

4 May 2022

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Commerce (Grocery Sector Covenants) Amendment Bill

1. We have considered whether the Commerce (Grocery Sector Covenants) Amendment Bill (the Bill) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO 24707/3.0). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. The Bill prohibits restrictive covenants on land and exclusivity covenants in leases that lessen competition in the retail grocery sector.
4. On 8 March 2022, the Commerce Commission published its final report on the market study into the retail grocery sector. The purpose of the market study was to examine whether competition in the sector was working well, and what could be done to improve it.
5. The report found that competition was not working well for consumers in the retail grocery sector and made several recommendations for improving competition. The Bill progresses the Commerce Commission's recommendations to prohibit restrictive and exclusivity covenants that lessen competition.
6. Sections 27 and 28 of the Commerce Act 1986 *inter alia* prohibit restrictive and exclusivity covenants that meet the test of having the purpose, or actual or likely effect, of substantially lessening competition in a market. The Bill alters the test in respect of 'designated grocery retailers' to whether the covenant has the purpose, or actual or likely effect, of impeding the development or operation of retail grocery stores by other people.
7. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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