

EXPOSURE DRAFT

2016

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Competition and Consumer Amendment (Competition Policy Review) Bill 2016

No. , 2016

(Treasury)

**A Bill for an Act to amend the *Competition and
Consumer Act 2010*, and for related purposes**

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1
2 **A Bill for an Act to amend the *Competition and***
3 ***Consumer Act 2010*, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *Competition and Consumer Amendment*
7 *(Competition Policy Review) Act 2016*.

8 **2 Commencement**

- 9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.
13

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A day or days to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2, Part 1	A day or days to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day	

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	after the end of that period.	
4. Schedule 2, Part 2	Immediately after the commencement of the provisions covered by table item 3.	
5. Schedules 3 to 9	A day or days to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
6. Schedule 10, items 1 to 88	A day or days to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
7. Schedule 10, item 89	Immediately after the commencement of the provisions covered by table item 5.	
8. Schedule 10, items 90 to 114	A day or days to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
9. Schedule 10, item 115	Immediately after the commencement of the provisions covered by table item 11.	
10. Schedule 10, items 116 to 144	A day or days to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
11. Schedules 11 to 13	A day or days to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months	

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Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1 Definition of “competition”

1
2

Schedule 1—Definition of “competition”

3

Competition and Consumer Act 2010

4

1 Subsection 4(1) (definition of *competition*)

5

Repeal the definition, substitute:

6

competition includes:

7

(a) competition from goods that are, or are capable of being,
imported into Australia; and

8

9

(b) competition from services that are rendered, or are capable of
being rendered, in Australia by persons not resident or not
carrying on business in Australia.

10

11

12

2 At the end of Part XIII

13

Add:

14

Division 3—Application of amendments made by the Competition and Consumer Amendment (Competition Policy Review) Act 2016

15

16

17

180 Amendment of the definition of *competition*

18

19

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21

22

The repeal and substitution of the definition of *competition* in
subsection 4(1) made by Schedule 1 to the *Competition and
Consumer Amendment (Competition Policy Review) Act 2016*
applies in relation to conduct engaged in, on or after the
commencement of that Schedule.

4

Competition and Consumer Amendment (Competition Policy Review)

No. , 2016

Bill 2016

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1 **Schedule 2—Cartels**

2 **Part 1—Amendments**

3 *Competition and Consumer Act 2010*

4 **1 Subsection 6(2C)**

5 Omit “*likely* and *production* have”, substitute “*production* has”.

6 **2 Section 44ZZRB (definition of *likely*)**

7 Repeal the definition.

8 **3 At the end of paragraph 44ZZRD(3)(a)**

9 Add:

- 10 (iv) the acquisition, or likely acquisition, of goods or
11 services from persons or classes of persons by any or all
12 of the parties to the contract, arrangement or
13 understanding; or

14 **4 Paragraphs 44ZZRD(4)(c) to (e)**

15 After “services” (last occurring), insert “in trade or commerce”.

16 **5 Paragraph 44ZZRD(4)(f)**

17 After “goods” (last occurring), insert “in trade or commerce”.

18 **6 Paragraphs 44ZZRD(4)(g) and (h)**

19 After “services” (last occurring), insert “in trade or commerce”.

20 **7 After paragraph 44ZZRD(4)(h)**

21 Insert:

- 22 (ha) if subparagraph (3)(a)(iv) applies in relation to preventing,
23 restricting or limiting the acquisition, or likely acquisition, of
24 goods or services—the acquisition of those goods or services
25 in trade or commerce; or

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Schedule 2 Cartels Part 1 Amendments

1 **8 Paragraphs 44ZZRD(4)(i) and (j)**

2 After “services” (last occurring), insert “in trade or commerce”.

3 **9 Subsection 44ZZRD(4) (note)**

4 Repeal the note, substitute:

5 Note 1: *Party* has an extended meaning—see section 44ZZRC.

6 Note 2: *Trade or commerce* is defined in section 4 to mean trade or commerce
7 within Australia or between Australia and places outside Australia.

8 **10 Subsection 44ZZRD(5)**

9 Omit “subparagraph (3)(a)(iii),”, substitute “subparagraph (3)(a)(iii) or
10 (iv) or”.

11 **11 Paragraph 44ZZRD(7)(a)**

12 Omit “subparagraph (3)(a)(iii)”, substitute “subparagraphs (3)(a)(iii)
13 and (iv)”.

14 **12 Subsection 44ZZRO(1)**

15 After “a contract”, insert “, arrangement or understanding”.

16 **13 Paragraphs 44ZZRO(1)(a) and (b)**

17 Repeal the paragraphs, substitute:

18 (a) the cartel provision is:

19 (i) for the purposes of a joint venture; or

20 (ii) reasonably necessary for undertaking a joint venture;

21 and

22 (b) the joint venture is for any one or more of the following:

23 (i) production of goods;

24 (ii) supply of goods or services;

25 (iii) acquisition of goods or services; and

26 **14 Paragraphs 44ZZRO(1)(c) and (d)**

27 After “the contract”, insert “, arrangement or understanding”.

28 **15 Subsections 44ZZRO(1A) and (1B)**

29 Repeal the subsections.

1 **16 Subsection 44ZZRO(2)**

2 Omit “, (1A) or (1B)” (first occurring).

3 **17 Subparagraphs 44ZZRO(2)(a)(i) and (ii)**

4 Omit “, (1A) or (1B), as the case may be”.

5 **18 Paragraph 44ZZRO(2)(b)**

6 Omit “, (1A) or (1B), as the case may be”.

7 **19 Subsection 44ZZRP(1)**

8 After “a contract”, insert “, arrangement or understanding”.

9 **20 Paragraphs 44ZZRP(1)(a) and (b)**

10 Repeal the paragraphs, substitute:

11 (a) the cartel provision is:

12 (i) for the purposes of a joint venture; or

13 (ii) reasonably necessary for undertaking a joint venture;

14 and

15 (b) the joint venture is for any one or more of the following:

16 (i) production of goods;

17 (ii) supply of goods or services;

18 (iii) acquisition of goods or services; and

19 **21 Paragraphs 44ZZRP(1)(c) and (d)**

20 After “the contract”, insert “, arrangement or understanding”.

21 **22 Subsections 44ZZRP(1A) and (1B)**

22 Repeal the subsections.

23 **23 Subsection 44ZZRP(2)**

24 Omit “, (1A) or (1B)”.

25 **24 Section 44ZZRS**

26 Repeal the section, substitute:

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Schedule 2 Cartels Part 1 Amendments

44ZZRS Restrictions on supplies and acquisitions

(1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to making, or giving effect to, a contract, arrangement or understanding that contains a cartel provision to the extent that the cartel provision:

- (a) imposes, on a party to the contract, arrangement or understanding (the *acquirer*) acquiring goods or services from another party to the contract, arrangement or understanding, an obligation that relates to:
 - (i) the acquisition by the acquirer of the goods or services; or
 - (ii) the acquisition by the acquirer, from any person, of other goods or services that are substitutable for, or otherwise competitive with, the goods or services; or
 - (iii) the supply by the acquirer of the goods or services or of other goods or services that are substitutable for, or otherwise competitive with, the goods or services; or
- (b) imposes, on a party to the contract, arrangement or understanding (the *supplier*) supplying goods or services to another party to the contract, arrangement or understanding, an obligation that relates to:
 - (i) the supply by the supplier of the goods or services; or
 - (ii) the supply by the supplier, to any person, of other goods or services that are substitutable for, or otherwise competitive with, the goods or services.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code* and subsection (2) of this section).

(2) A person who wishes to rely on subsection (1) in relation to a contravention of section 44ZZRJ or 44ZZRK bears an evidential burden in relation to that matter.

(3) This section does not affect the operation of section 45 or 47.

25 Section 44ZZRB of Schedule 1 (definition of *likely*)

Repeal the definition.

1 **26 At the end of paragraph 44ZZRD(3)(a) of Schedule 1**

2 Add:

- 3 (iv) the acquisition, or likely acquisition, of goods or
4 services from persons or classes of persons by any or all
5 of the parties to the contract, arrangement or
6 understanding; or

7 **27 Paragraphs 44ZZRD(4)(c) to (e) of Schedule 1**

8 After “services” (last occurring), insert “in trade or commerce”.

9 **28 Paragraph 44ZZRD(4)(f) of Schedule 1**

10 After “goods” (last occurring), insert “in trade or commerce”.

11 **29 Paragraphs 44ZZRD(4)(g) and (h) of Schedule 1**

12 After “services” (last occurring), insert “in trade or commerce”.

13 **30 After paragraph 44ZZRD(4)(h) of Schedule 1**

14 Insert:

- 15 (ha) if subparagraph (3)(a)(iv) applies in relation to preventing,
16 restricting or limiting the acquisition, or likely acquisition, of
17 goods or services—the acquisition of those goods or services
18 in trade or commerce; or

19 **31 Paragraphs 44ZZRD(4)(i) and (j) of Schedule 1**

20 After “services” (last occurring), insert “in trade or commerce”.

21 **32 Subsection 44ZZRD(4) of Schedule 1 (note)**

22 Repeal the note, substitute:

23 Note 1: *Party* has an extended meaning—see section 44ZZRC.

24 Note 2: *Trade or commerce* is defined in section 4 to mean trade or commerce
25 within Australia or between Australia and places outside Australia.

26 **33 Subsection 44ZZRD(5) of Schedule 1**

27 Omit “subparagraph (3)(a)(iii),”, substitute “subparagraph (3)(a)(iii) or
28 (iv) or”.

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Schedule 2 Cartels
Part 1 Amendments

1 **34 Paragraph 44ZZRD(7)(a) of Schedule 1**

2 Omit “subparagraph (3)(a)(iii)”, substitute “subparagraphs (3)(a)(iii)
3 and (iv)”.

4 **35 Subsection 44ZZRO(1) of Schedule 1**

5 After “a contract”, insert “, arrangement or understanding”.

6 **36 Paragraphs 44ZZRO(1)(a) and (b) of Schedule 1**

7 Repeal the paragraphs, substitute:

8 (a) the cartel provision is:

9 (i) for the purposes of a joint venture; or

10 (ii) reasonably necessary for undertaking a joint venture;
11 and

12 (b) the joint venture is for any one or more of the following:

13 (i) production of goods;

14 (ii) supply of goods or services;

15 (iii) acquisition of goods or services; and

16 **37 Paragraphs 44ZZRO(1)(c) and (d) of Schedule 1**

17 After “the contract”, insert “, arrangement or understanding”.

18 **38 Subsections 44ZZRO(1A) and (1B) of Schedule 1**

19 Repeal the subsections.

20 **39 Subsection 44ZZRO(2) of Schedule 1**

21 Omit “, (1A) or (1B)”.

22 **40 Subsection 44ZZRO(3) of Schedule 1**

23 Omit “, (1A) or (1B)” (first occurring).

24 **41 Subparagraphs 44ZZRO(3)(a)(i) and (ii) of Schedule 1**

25 Omit “, (1A) or (1B), as the case may be”.

26 **42 Paragraph 44ZZRO(3)(b) of Schedule 1**

27 Omit “, (1A) or (1B), as the case may be”.

1 **43 Subsection 44ZZRP(1) of Schedule 1**

2 After “a contract”, insert “, arrangement or understanding”.

3 **44 Paragraphs 44ZZRP(1)(a) and (b) of Schedule 1**

4 Repeal the paragraphs, substitute:

5 (a) the cartel provision is:

6 (i) for the purposes of a joint venture; or

7 (ii) reasonably necessary for undertaking a joint venture;
8 and

9 (b) the joint venture is for any one or more of the following:

10 (i) production of goods;

11 (ii) supply of goods or services;

12 (iii) acquisition of goods or services; and

13 **45 Paragraphs 44ZZRP(1)(c) and (d) of Schedule 1**

14 After “the contract”, insert “, arrangement or understanding”.

15 **46 Subsections 44ZZRP(1A) and (1B) of Schedule 1**

16 Repeal the subsections.

17 **47 Subsection 44ZZRP(2) of Schedule 1**

18 Omit “, (1A) or (1B)”.

19 **48 Section 44ZZRS of Schedule 1**

20 Repeal the section, substitute:

21 **44ZZRS Restrictions on supplies and acquisitions**

22 (1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in
23 relation to making, or giving effect to, a contract, arrangement or
24 understanding that contains a cartel provision to the extent that the
25 cartel provision:

26 (a) imposes, on a party to the contract, arrangement or
27 understanding (the *acquirer*) acquiring goods or services
28 from another party to the contract, arrangement or
29 understanding, an obligation that relates to:

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Schedule 2 Cartels Part 1 Amendments

- 1 (i) the acquisition by the acquirer of the goods or services;
2 or
3 (ii) the acquisition by the acquirer, from any person, of
4 other goods or services that are substitutable for, or
5 otherwise competitive with, the goods or services; or
6 (iii) the supply by the acquirer of the goods or services or of
7 other goods or services that are substitutable for, or
8 otherwise competitive with, the goods or services; or
9 (b) imposes, on a party to the contract, arrangement or
10 understanding (the *supplier*) supplying goods or services to
11 another party to the contract, arrangement or understanding,
12 an obligation that relates to:
13 (i) the supply by the supplier of the goods or services; or
14 (ii) the supply by the supplier, to any person, of other goods
15 or services that are substitutable for, or otherwise
16 competitive with, the goods or services.
- 17 (2) A person who wishes to rely on subsection (1) bears an evidential
18 burden in relation to that matter.
- 19 (3) This section does not affect the operation of section 45 or 47.

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Cartels Schedule 2

Renumbering Division 1 of Part IV and Schedule 1 Part 2

Part 2—Renumbering Division 1 of Part IV and Schedule 1

Competition and Consumer Act 2010

49 Renumbering Division 1 of Part IV of the *Competition and Consumer Act 2010*

(1) In this item:

Division 1 means Division 1 of Part IV of the *Competition and Consumer Act 2010*.

(2) The sections of Division 1 are renumbered in a single series so that each section referred to in column 1 of an item in the following table has the number stated in column 2 of that item:

Renumbering Division 1 of Part IV		
Item	Column 1 Current section number	Column 2 New section number
1	44ZZRA	45AA
2	44ZZRB	45AB
3	44ZZRC	45AC
4	44ZZRD	45AD
5	44ZZRE	45AE
6	44ZZRF	45AF
7	44ZZRG	45AG
8	44ZZRH	45AH
9	44ZZRI	45AI
10	44ZZRJ	45AJ
11	44ZZRK	45AK
12	44ZZRL	45AL
13	44ZZRM	45AM
14	44ZZRN	45AN
15	44ZZRO	45AO

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Schedule 2 Cartels

Part 2 Renumbering Division 1 of Part IV and Schedule 1

Renumbering Division 1 of Part IV

Item	Column 1 Current section number	Column 2 New section number
16	44ZZRP	45AP
17	44ZZRR	45AQ
18	44ZZRS	45AR
19	44ZZRT	45AS
20	44ZZRU	45AT
21	44ZZRV	45AU

1

- 2 (3) The subsections of each section of Division 1 that has more than one
3 subsection are renumbered so that they bear consecutive Arabic
4 numerals enclosed in parentheses starting with “(1)”.
- 5 (4) The paragraphs of each section or subsection, or of each definition, of
6 Division 1 are relettered so that they bear lower-case letters in
7 alphabetical order enclosed in parentheses starting with “(a)”.
- 8 (5) The subparagraphs of each paragraph of each section or subsection, or
9 of each paragraph of each definition, of Division 1 are renumbered so
10 that they bear consecutive lower-case Roman numerals enclosed in
11 parentheses starting with “(i)”.
- 12 (6) Subject to subitem (7), each provision of the *Competition and*
13 *Consumer Act 2010* that refers to a provision that has been renumbered
14 or relettered under this item is amended by omitting the reference and
15 substituting a reference to the last-mentioned provision as renumbered
16 or relettered.
- 17 (7) Subitem (6) does not apply to a reference that is expressed as a
18 reference to a provision as in force at a time that is before the
19 commencement of this item.

20 **50 Renumbering Division 1 of Part 1 of Schedule 1 to the**
21 ***Competition and Consumer Act 2010***

- 22 (1) In this item:

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Cartels **Schedule 2**

Renumbering Division 1 of Part IV and Schedule 1 **Part 2**

1 *Division 1* means Division 1 of Part 1 of Schedule 1 to the *Competition*
2 *and Consumer Act 2010*.

3 (2) The sections of Division 1 are renumbered in a single series so that each
4 section referred to in column 1 of an item in the following table has the
5 number stated in column 2 of that item:
6

Renumbering Division 1 of Part 1 of Schedule 1

Item	Column 1 Current section number	Column 2 New section number
1	44ZZRA	45AA
2	44ZZRB	45AB
3	44ZZRC	45AC
4	44ZZRD	45AD
5	44ZZRE	45AE
6	44ZZRF	45AF
7	44ZZRG	45AG
8	44ZZRH	45AH
9	44ZZRI	45AI
10	44ZZRJ	45AJ
11	44ZZRK	45AK
12	44ZZRL	45AL
13	44ZZRM	45AM
14	44ZZRN	45AN
15	44ZZRO	45AO
16	44ZZRP	45AP
17	44ZZRR	45AQ
18	44ZZRS	45AR
19	44ZZRT	45AS
20	44ZZRU	45AT
21	44ZZRV	45AU

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Schedule 2 Cartels

Part 2 Renumbering Division 1 of Part IV and Schedule 1

- 1 (3) The subsections of each section in Division 1 that has more than one
2 subsection are renumbered so that they bear consecutive Arabic
3 numerals enclosed in parentheses starting with “(1)”.
- 4 (4) The paragraphs of each section or subsection, or of each definition, in
5 Division 1 are relettered so that they bear lower-case letters in
6 alphabetical order enclosed in parentheses starting with “(a)”.
- 7 (5) The subparagraphs of each paragraph of each section or subsection, or
8 of each paragraph of each definition, in Division 1 are renumbered so
9 that they bear consecutive lower-case Roman numerals enclosed in
10 parentheses starting with “(i)”.
- 11 (6) Subject to subitem (7), each provision of the *Competition and*
12 *Consumer Act 2010* that refers to a provision that has been renumbered
13 or relettered under this item is amended by omitting the reference and
14 substituting a reference to the last-mentioned provision as renumbered
15 or relettered.
- 16 (7) Subitem (6) does not apply to a reference that is expressed as a
17 reference to a provision as in force at a time that is before the
18 commencement of this item.

19 **51 References in other Acts, instruments or documents to** 20 **renumbered provisions**

- 21 (1) Subject to subitem (2), after the commencement of this item, a reference
22 in an Act (other than the *Competition and Consumer Act 2010*) enacted
23 before that commencement (whether or not the provision containing
24 that reference has come into operation), or in an instrument or
25 document, to a provision of the *Competition and Consumer Act 2010*
26 that has been renumbered or relettered under item 49 or 50 is to be
27 construed as a reference to that provision as so renumbered or
28 relettered.
- 29 (2) Subitem (1) does not apply to a reference that is expressed as a
30 reference to a provision as in force at a time that is before the
31 commencement of this item.

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Price signalling and concerted practices **Schedule 3**
Main amendments **Part 1**

1 **Schedule 3—Price signalling and concerted**
2 **practices**

3 **Part 1—Main amendments**

4 *Competition and Consumer Act 2010*

5 **1 Division 1A of Part IV**

6 Repeal the Division.

7 **2 Subsections 45(1) to (3)**

8 Repeal the subsections, substitute:

9 (1) A corporation must not:

10 (a) make a contract or arrangement, or arrive at an
11 understanding, if a provision of the proposed contract,
12 arrangement or understanding has the purpose, or would have
13 or be likely to have the effect, of substantially lessening
14 competition; or

15 (b) give effect to a provision of a contract, arrangement or
16 understanding, if that provision has the purpose, or has or is
17 likely to have the effect, of substantially lessening
18 competition; or

19 (c) engage with one or more persons in a concerted practice that
20 has the purpose, or has or is likely to have the effect, of
21 substantially lessening competition.

22 (2) Paragraph (1)(b) applies in relation to contracts or arrangements
23 made, or understandings arrived at, before or after the
24 commencement of this section.

25 (3) For the purposes of this section, *competition* means:

26 (a) in relation to a provision of a contract, arrangement or
27 understanding or of a proposed contract, arrangement or
28 understanding—competition in any market in which:

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Schedule 3 Price signalling and concerted practices

Part 1 Main amendments

- 1 (i) a corporation that is a party to the contract, arrangement
2 or understanding, or would be a party to the proposed
3 contract, arrangement or understanding; or
4 (ii) any body corporate related to such a corporation;
5 supplies or acquires, or is likely to supply or acquire, goods
6 or services or would, but for the provision, supply or acquire,
7 or be likely to supply or acquire, goods or services; or
8 (b) in relation to a concerted practice—competition in any
9 market in which:
10 (i) a corporation that is a party to the practice; or
11 (ii) any body corporate related to such a corporation;
12 supplies or acquires, or is likely to supply or acquire, goods
13 or services or would, but for the practice, supply or acquire,
14 or be likely to supply or acquire, goods or services.

3 After subsection 45(5)

15 Insert:

- 16
17 (5A) The making of a contract, arrangement or understanding does not
18 constitute a contravention of this section because the contract,
19 arrangement or understanding contains a provision the giving
20 effect to which would, or would apart from subsection 47(10) or
21 section 88 or 93, constitute a contravention of section 47.

4 Subsection 45(6)

22 Omit all the words up to and including “by way of:”, substitute:

- 23
24 (6) This section does not apply to or in relation to the giving effect to a
25 provision of a contract, arrangement or understanding, or to or in
26 relation to engaging in a concerted practice, by way of:

5 Subsections 45(7) and (8)

27 Repeal the subsections, substitute:

- 28
29 (7) This section does not apply to or in relation to:
30 (a) a contract, arrangement or understanding to the extent that
31 the contract, arrangement or understanding directly or
32 indirectly provides for; or

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Price signalling and concerted practices **Schedule 3**
Main amendments **Part 1**

- 1 (b) a proposed contract, arrangement or understanding to the
2 extent that the proposed contract, arrangement or
3 understanding would directly or indirectly provide for; or
4 (c) a concerted practice to the extent that the practice directly or
5 indirectly involves;
6 the acquisition of any shares in the capital of a body corporate or
7 any assets of a person.

- 8 (8) This section does not apply to or in relation to:
9 (a) a contract, arrangement or understanding, or
10 (b) a proposed contract, arrangement or understanding; or
11 (c) a concerted practice;
12 the only parties to which are or would be bodies corporate that are
13 related to each other.

14 **6 Division 1A of Part 1 of Schedule 1**

15 Repeal the Division.

16 **7 Subsections 45(1) to (3) of Schedule 1**

17 Repeal the subsections, substitute:

- 18 (1) A person must not:
19 (a) make a contract or arrangement, or arrive at an
20 understanding, if a provision of the proposed contract,
21 arrangement or understanding has the purpose, or would have
22 or be likely to have the effect, of substantially lessening
23 competition; or
24 (b) give effect to a provision of a contract, arrangement or
25 understanding, if that provision has the purpose, or has or is
26 likely to have the effect, of substantially lessening
27 competition; or
28 (c) engage with one or more other persons in a concerted
29 practice that has the purpose, or has or is likely to have the
30 effect, of substantially lessening competition.
31 (2) Paragraph (1)(b) applies in relation to contracts or arrangements
32 made, or understandings arrived at, before or after the
33 commencement of this section.

EXPOSURE DRAFT

Schedule 3 Price signalling and concerted practices

Part 1 Main amendments

- 1 (3) For the purposes of this section, *competition* means:
- 2 (a) in relation to a provision of a contract, arrangement or
- 3 understanding or of a proposed contract, arrangement or
- 4 understanding—competition in any market in which:
- 5 (i) a person who is a party to the contract, arrangement or
- 6 understanding, or would be a party to the proposed
- 7 contract, arrangement or understanding; or
- 8 (ii) any body corporate related to such a person;
- 9 supplies or acquires, or is likely to supply or acquire, goods
- 10 or services or would, but for the provision, supply or acquire,
- 11 or be likely to supply or acquire, goods or services; or
- 12 (b) in relation to a concerted practice—competition in any
- 13 market in which:
- 14 (i) a person who is a party to the practice; or
- 15 (ii) any body corporate related to such a person;
- 16 supplies or acquires, or is likely to supply or acquire, goods
- 17 or services or would, but for the practice, supply or acquire,
- 18 or be likely to supply or acquire, goods or services.

19 **8 After subsection 45(5) of Schedule 1**

20 Insert:

- 21 (5A) The making of a contract, arrangement or understanding does not
- 22 constitute a contravention of this section because the contract,
- 23 arrangement or understanding contains a provision the giving
- 24 effect to which would, or would apart from subsection 47(10) or
- 25 section 88 or 93, constitute a contravention of section 47.

26 **9 Subsection 45(6) of Schedule 1**

27 Omit all the words up to and including “by way of:”, substitute:

- 28 (6) This section does not apply to or in relation to the giving effect to a
- 29 provision of a contract, arrangement or understanding, or to or in
- 30 relation to engaging in a concerted practice, by way of:

31 **10 Subsections 45(7) and (8) of Schedule 1**

32 Repeal the subsections, substitute:

EXPOSURE DRAFT

Price signalling and concerted practices **Schedule 3**
Main amendments **Part 1**

- 1 (7) This section does not apply to or in relation to:
2 (a) a contract, arrangement or understanding to the extent that
3 the contract, arrangement or understanding directly or
4 indirectly provides for; or
5 (b) a proposed contract, arrangement or understanding to the
6 extent that the proposed contract, arrangement or
7 understanding would directly or indirectly provide for; or
8 (c) a concerted practice to the extent that the practice directly or
9 indirectly involves;
10 the acquisition of any shares in the capital of a body corporate or
11 any assets of a person.
- 12 (8) This section does not apply to or in relation to:
13 (a) a contract, arrangement or understanding, or
14 (b) a proposed contract, arrangement or understanding; or
15 (c) a concerted practice;
16 the only parties to which are or would be bodies corporate that are
17 related to each other.

EXPOSURE DRAFT

Schedule 3 Price signalling and concerted practices

Part 2 Other amendments

1 **Part 2—Other amendments**

2 *Competition and Consumer Act 2010*

3 **11 Paragraphs 4(2)(a) and (b)**

4 Omit “the requiring of the giving of, or the giving of, a covenant”,
5 substitute “the engaging in of a concerted practice”.

6 **12 Subparagraph 6(2)(b)(i)**

7 Omit “and 44ZZRK, Division 1A of Part IV, and sections”, substitute “,
8 44ZZRK,”.

9 **13 Paragraph 6(2)(d)**

10 Omit “subsection 45(1) and subparagraph 87(3)(a)(i)”, substitute
11 “paragraph 87(3)(a)”.

12 **14 Subsection 45(8A)**

13 Omit “Subsection (2)”, substitute “Subsection (1)”.

14 **15 Subsection 45(9)**

15 Omit “subsection (2)” (wherever occurring), substitute “subsection (1)”.

16 **16 Subsection 51(4)**

17 Repeal the subsection.

18 **17 Paragraph 84(1)(b)**

19 Omit “or 44ZZRK, Division 1A of Part IV, section 46 or 46A”,
20 substitute “, 44ZZRK, 46 or 46A,”.

21 **18 Paragraph 84(3)(b)**

22 Omit “Division 1A of Part IV,”.

23 **19 Paragraph 93AB(1)(a)**

24 Omit “paragraph 45(2)(a)”, substitute “paragraph 45(1)(a)”.

EXPOSURE DRAFT

Price signalling and concerted practices **Schedule 3**
Other amendments **Part 2**

1 **20 Paragraph 93AB(1)(b)**

2 Omit “paragraph 45(2)(b)”, substitute “paragraph 45(1)(b)”.

3 **21 Subsection 93AC(2)**

4 Omit “subparagraph 45(2)(a)(ii) or (b)(ii)”, substitute
5 “paragraph 45(1)(a) or (b)”.

6 **22 Subsection 45(8A) of Schedule 1**

7 Omit “Subsection (2)”, substitute “Subsection (1)”.

8 **23 Subsection 45(9) of Schedule 1**

9 Omit “subsection (2)” (wherever occurring), substitute “subsection (1)”.

10 **24 Subsection 51(4) of Schedule 1**

11 Repeal the subsection.

EXPOSURE DRAFT

Schedule 4 Exclusionary provisions

1 **Schedule 4—Exclusionary provisions**
2

3 *Competition and Consumer Act 2010*

4 **1 Section 4D**

5 Repeal the section.

6 **2 Section 76C**

7 Repeal the section.

8 **3 Subsection 93AC(1)**

9 Repeal the subsection, substitute:

10 *Commission’s objection notice—cartel provisions*

11 (1) If:

12 (a) a corporation gives the Commission a collective bargaining
13 notice under subsection 93AB(1A) in relation to a contract,
14 or proposed contract, containing a cartel provision of the kind
15 referred to in that subsection; and

16 (b) the Commission is satisfied that any benefit to the public that
17 has resulted or is likely to result or would result or be likely
18 to result from the provision does not or would not outweigh
19 the detriment to the public that has resulted or is likely to
20 result or would result or be likely to result from the
21 provision;

22 the Commission may give the corporation a written notice (the
23 *objection notice*) stating that it is so satisfied.

24 **4 Paragraph 10.08(1)(a)**

25 Repeal the paragraph.

26 **5 Subsection 10.08(1)**

27 Omit “, (a)”.

1 **Schedule 5—Covenants affecting competition**
2

3 *Competition and Consumer Act 2010*

4 **1 Subsection 4(1)**

5 Insert:

6 *contract* includes a covenant.

7 *party*, to a contract that is a covenant, includes a person bound by,
8 or entitled to the benefit of, the covenant.

9 **2 Subsection 4(3)**

10 Omit “, or to render a covenant,”.

11 **3 Subsection 4(3)**

12 Omit “or the covenant” (wherever occurring).

13 **4 Paragraph 4F(1)(a)**

14 Omit “, or a covenant or a proposed covenant,”.

15 **5 Subparagraph 4F(1)(a)(i)**

16 Omit “, or the covenant was required to be given or the proposed
17 covenant is to be required to be given, as the case may be,”.

18 **6 Subparagraph 6(2)(b)(i)**

19 Omit “45B,”.

20 **7 Paragraph 6(2)(e)**

21 Repeal the paragraph.

22 **8 Section 44ZZRQ**

23 Repeal the section.

24 **9 Subsection 45(5)**

25 Repeal the subsection, substitute:

EXPOSURE DRAFT

Schedule 5 Covenants affecting competition

- 1 (5) This section does not apply to or in relation to a provision of a
2 contract, arrangement or understanding or of a proposed contract,
3 arrangement or understanding, or to or in relation to a concerted
4 practice, in so far as the provision or practice relates to:
5 (a) conduct that contravenes section 48; or
6 (b) conduct that would contravene section 48 if subsection 48(2)
7 did not apply; or
8 (c) conduct that would contravene section 48 if it were not
9 authorised under section 88; or
10 (d) conduct that would contravene section 48 if this Act defined
11 the acts constituting the practice of resale price maintenance
12 by reference to the maximum price at which goods or
13 services are to be sold or supplied or are to be advertised,
14 displayed or offered for sale or supply.

15 **10 Sections 45B and 45C**

16 Repeal the sections.

17 **11 Subsection 46A(6)**

18 Omit “45B,”.

19 **12 Paragraph 87(3)(a)**

20 Repeal the paragraph, substitute:

- 21 (a) a provision of a contract made, whether before or after the
22 commencement of the *Trade Practices Amendment Act 1977*,
23 is unenforceable because of section 45 in so far as it confers
24 rights or benefits or imposes duties or obligations on a
25 corporation; or

26 **13 Subsection 87(3)**

27 Omit “or of a person who would, but for subsection 45B(1), be bound
28 by, or entitled to the benefit of, the covenant, as the case may be”.

29 **14 Paragraph 87(3)(c)**

30 Omit “or covenant” (wherever occurring).

EXPOSURE DRAFT

Covenants affecting competition **Schedule 5**

1 **15 Paragraph 87(3)(d)**

2 Omit “, or another person who would, but for subsection 45B(1), be
3 bound by, or entitled to the benefit of, the covenant,”.

4 **16 Paragraph 87(3)(d)**

5 Omit “or person”.

6 **17 Subsection 87(5)**

7 Omit “or covenant” (wherever occurring).

8 **18 Paragraph 151AJ(3)(a)**

9 Omit “45B,”.

10 **19 Subsections 151AJ(4), (5) and (7)**

11 Omit “45B,”.

12 **20 Paragraph 151AJ(7)(d)**

13 Repeal the paragraph.

14 **21 Section 44ZZRQ of Schedule 1**

15 Repeal the section.

16 **22 Subsection 45(5) of Schedule 1**

17 Repeal the subsection, substitute:

18 (5) This section does not apply to or in relation to a provision of a
19 contract, arrangement or understanding or of a proposed contract,
20 arrangement or understanding, or to or in relation to a concerted
21 practice, in so far as the provision or practice relates to:

22 (a) conduct that contravenes section 48; or

23 (b) conduct that would contravene section 48 if subsection 48(2)
24 did not apply; or

25 (c) conduct that would contravene section 48 if it were not
26 authorised under section 88; or

27 (d) conduct that would contravene section 48 if this Act defined
28 the acts constituting the practice of resale price maintenance
29 by reference to the maximum price at which goods or

EXPOSURE DRAFT

Schedule 5 Covenants affecting competition

1 services are to be sold or supplied or are to be advertised,
2 displayed or offered for sale or supply.

3 **23 Sections 45B and 45C of Schedule 1**

4 Repeal the sections.

5 **24 Existing orders under section 87**

6 If:

7 (a) before the commencement of the amendments made to
8 section 87 of the *Competition and Consumer Act 2010* by this
9 Schedule, an order was made under that section relating to a
10 contravention of section 45B of that Act; and

11 (b) the order was still in force immediately before that
12 commencement;

13 the amendments do not apply in relation to, and do not affect the
14 validity of, the order.

EXPOSURE DRAFT

Secondary boycotts **Schedule 6**

1 **Schedule 6—Secondary boycotts**
2

3 *Competition and Consumer Act 2010*

4 **1 Paragraph 76(1A)(a)**

5 Omit “45D, 45DB,”.

EXPOSURE DRAFT

Schedule 7 Misuse of market power

1 **Schedule 7—Misuse of market power**
2

3 *Competition and Consumer Act 2010*

4 **1 Section 46**

5 Repeal the section, substitute:

6 **46 Misuse of market power**

- 7 (1) A corporation that has a substantial degree of power in a market
8 must not engage in conduct that has the purpose, or has or is likely
9 to have the effect, of substantially lessening competition in that or
10 any other market.
- 11 (2) Without limiting the matters to which regard may be had in
12 determining for the purposes of subsection (1) whether conduct has
13 the purpose, or has or is likely to have the effect, of substantially
14 lessening competition in a market, regard must be had to the extent
15 to which:
- 16 (a) the conduct has the purpose of, or has or would be likely to
17 have the effect of, increasing competition in that market,
18 including by enhancing efficiency, innovation, product
19 quality or price competitiveness in that market; and
- 20 (b) the conduct has the purpose of, or has or would be likely to
21 have the effect of, lessening competition in that market,
22 including by preventing, restricting, or deterring the potential
23 for competitive conduct or new entry into that market.
- 24 (3) A corporation is taken for the purposes of this section to have a
25 substantial degree of power in a market if:
- 26 (a) a body corporate that is related to that corporation has, or 2 or
27 more bodies corporate each of which is related to that
28 corporation together have, a substantial degree of power in
29 that market; or
- 30 (b) that corporation and a body corporate that is, or that
31 corporation and 2 or more bodies corporate each of which is,
32 related to that corporation, together have a substantial degree
33 of power in that market.

EXPOSURE DRAFT

Misuse of market power **Schedule 7**

- 1 (4) In determining for the purposes of this section the degree of power
2 that a body corporate or bodies corporate has or have in a market:
3 (a) regard must be had to the extent to which the conduct of the
4 body corporate or of any of those bodies corporate in that
5 market is constrained by the conduct of:
6 (i) competitors, or potential competitors, of the body
7 corporate or of any of those bodies corporate in that
8 market; or
9 (ii) persons to whom or from whom the body corporate or
10 any of those bodies corporate supplies or acquires goods
11 or services in that market; and
12 (b) regard may be had to the power the body corporate or bodies
13 corporate has or have in that market that results from:
14 (i) any contracts, arrangements or understandings that the
15 body corporate or bodies corporate has or have with
16 another party or other parties; or
17 (ii) any proposed contracts, arrangements or understandings
18 that the body corporate or bodies corporate may have
19 with another party or other parties.
- 20 (5) For the purposes of this section, a body corporate may have a
21 substantial degree of power in a market even though:
22 (a) the body corporate does not substantially control that market;
23 or
24 (b) the body corporate does not have absolute freedom from
25 constraint by the conduct of:
26 (i) competitors, or potential competitors, of the body
27 corporate in that market; or
28 (ii) persons to whom or from whom the body corporate
29 supplies or acquires goods or services in that market.
- 30 (6) Subsections (4) and (5) do not limit the matters to which regard
31 may be had in determining, for the purposes of this section, the
32 degree of power that a body corporate or bodies corporate has or
33 have in a market.
- 34 (7) To avoid doubt, for the purposes of this section, more than one
35 corporation may have a substantial degree of power in a market.
-

EXPOSURE DRAFT

Schedule 7 Misuse of market power

- 1 (8) In this section:
2 (a) a reference to power is a reference to market power; and
3 (b) a reference to a market is a reference to a market for goods or
4 services; and
5 (c) a reference to power in relation to, or to conduct in, a market
6 is a reference to power, or to conduct, in that market either as
7 a supplier or as an acquirer of goods or services in that
8 market.

9 **2 Paragraph 151AJ(5)(c)**

10 Repeal the paragraph.

11 **3 Paragraph 151AJ(5)(d)**

12 Omit “subsection 46(2)”, substitute “subsection 46(3)”.

13 **4 Subsection 151BC(4)**

14 Repeal the subsection, substitute:

- 15 (4) The Commission must not make an exemption order in relation to
16 particular conduct of a person if the conduct is in contravention of
17 section 46.

18 **5 Section 46 of Schedule 1**

19 Repeal the section, substitute:

20 **46 Misuse of market power**

- 21 (1) A person who has a substantial degree of power in a market must
22 not engage in conduct that has the purpose, or has or is likely to
23 have the effect, of substantially lessening competition in that or
24 any other market.
- 25 (2) Without limiting the matters to which regard may be had in
26 determining for the purposes of subsection (1) whether conduct has
27 the purpose, or has or is likely to have the effect, of substantially
28 lessening competition in a market, regard must be had to the extent
29 to which:

EXPOSURE DRAFT

Misuse of market power **Schedule 7**

- 1 (a) the conduct has the purpose of, or has or would be likely to
2 have the effect of, increasing competition in that market,
3 including by enhancing efficiency, innovation, product
4 quality or price competitiveness in that market; and
- 5 (b) the conduct has the purpose of, or has or would be likely to
6 have the effect of, lessening competition in that market,
7 including by preventing, restricting, or deterring the potential
8 for competitive conduct or new entry into that market.
- 9 (3) A person (the *first person*) is taken for the purposes of this section
10 to have a substantial degree of power in a market if:
- 11 (a) a body corporate that is related to the first person has, or 2 or
12 more bodies corporate each of which is related to the first
13 person together have, a substantial degree of power in that
14 market; or
- 15 (b) the first person and a body corporate that is, or the first
16 person and 2 or more bodies corporate each of which is,
17 related to the first person, together have a substantial degree
18 of power in that market.
- 19 (4) In determining for the purposes of this section the degree of power
20 that a person (the *first person*) or bodies corporate has or have in a
21 market:
- 22 (a) regard must be had to the extent to which the conduct of the
23 first person or of any of those bodies corporate in that market
24 is constrained by the conduct of:
- 25 (i) competitors, or potential competitors, of the first person
26 or of any of those bodies corporate in that market; or
- 27 (ii) persons to whom or from whom the first person or any
28 of those bodies corporate supplies or acquires goods or
29 services in that market; and
- 30 (b) regard may be had to the power the first person or bodies
31 corporate has or have in that market that results from:
- 32 (i) any contracts, arrangements or understandings that the
33 first person or bodies corporate has or have with another
34 party or other parties; or
- 35 (ii) any proposed contracts, arrangements or understandings
36 that the first person or bodies corporate may have with
37 another party or other parties.
-

EXPOSURE DRAFT

Schedule 7 Misuse of market power

- 1 (5) For the purposes of this section, a person may have a substantial
2 degree of power in a market even though:
3 (a) the person does not substantially control that market; or
4 (b) the person does not have absolute freedom from constraint by
5 the conduct of:
6 (i) competitors, or potential competitors, of the person in
7 that market; or
8 (ii) persons to whom or from whom the person supplies or
9 acquires goods or services in that market.
- 10 (6) Subsections (4) and (5) do not limit the matters to which regard
11 may be had in determining, for the purposes of this section, the
12 degree of power that a person or bodies corporate has or have in a
13 market.
- 14 (7) To avoid doubt, for the purposes of this section, more than one
15 person may have a substantial degree of power in a market.
- 16 (8) In this section:
17 (a) a reference to power is a reference to market power; and
18 (b) a reference to a market is a reference to a market for goods or
19 services; and
20 (c) a reference to power in relation to, or to conduct in, a market
21 is a reference to power, or to conduct, in that market either as
22 a supplier or as an acquirer of goods or services in that
23 market.

1 **Schedule 8—Third line forcing**
2

3 *Competition and Consumer Act 2010*

4 **1 Subsection 47(10)**

5 Omit “constituted by a corporation engaging in conduct of a kind
6 referred to in subsection (2), (3), (4) or (5) or paragraph (8)(a) or (b) or
7 (9)(a), (b) or (c)”, substitute “by a corporation”.

8 **2 Paragraph 47(10)(a)**

9 Omit “that conduct”, substitute “the conduct that constitutes the practice
10 of exclusive dealing”.

11 **3 Subsection 47(10A)**

12 Repeal the subsection.

13 **4 Subsection 47(10) of Schedule 1**

14 Omit “constituted by a person engaging in conduct of a kind referred to
15 in subsection (2), (3), (4) or (5) or paragraph (8)(a) or (b) or (9)(a), (b)
16 or (c)”, substitute “by a person”.

17 **5 Paragraph 47(10)(a) of Schedule 1**

18 Omit “that conduct”, substitute “the conduct that constitutes the practice
19 of exclusive dealing”.

20 **6 Subsection 47(10A) of Schedule 1**

21 Repeal the subsection.

EXPOSURE DRAFT

Schedule 9 Resale price maintenance

1 **Schedule 9—Resale price maintenance**
2

3 *Competition and Consumer Act 2010*

4 **1 Section 48**

5 Before “A corporation”, insert “(1)”.

6 **2 At the end of section 48**

7 Add:

8 (2) Subsection (1) does not apply to a corporation or other person
9 engaging in conduct that constitutes the practice of resale price
10 maintenance if:

- 11 (a) the corporation or other person has given the Commission a
12 notice under subsection 93(1) describing the conduct; and
13 (b) the notice is in force under section 93.

14 **3 Subdivision A of Division 2 of Part VII (heading)**

15 Repeal the heading, substitute:

16 **Subdivision A—Exclusive dealing and resale price maintenance**

17 **4 Section 93 (heading)**

18 Repeal the heading, substitute:

19 **93 Notification of exclusive dealing or resale price maintenance**

20 **5 Subsection 93(1)**

21 Repeal the subsection, substitute:

22 (1) Subject to subsection (2):

23 (a) a corporation that engages, or proposes to engage, in conduct
24 of a kind referred to in subsection 47(2), (3), (4), (5), (6), (7),
25 (8) or (9); or

26 (b) a corporation or other person who engages, or proposes to
27 engage, in conduct of a kind referred to in section 48;

EXPOSURE DRAFT

Resale price maintenance **Schedule 9**

1 may give to the Commission a notice setting out particulars of the
2 conduct or proposed conduct.

3 **6 Subsection 93(2)**

4 Omit “may not give a notice”, substitute “or other person may not give
5 a notice under subsection (1)”.

6 **7 Paragraph 93(2)(a)**

7 After “corporation”, insert “or other person”.

8 **8 Paragraph 93(3A)(a)**

9 After “corporation”, insert “or other person”.

10 **9 Paragraph 93(3A)(a)**

11 Omit “section 44ZZW, subsection 47(6) or (7) or paragraph 47(8)(c) or
12 (9)(d)”, substitute “section 48”.

13 **10 Subsection 93(3A)**

14 After “the corporation”, insert “or other person”.

15 **11 Subsections 93(3B), (5) and (6)**

16 After “corporation” (wherever occurring), insert “or other person”.

17 **12 Subsection 93(7)**

18 After “subsection (1)”, insert “describing conduct or proposed conduct
19 referred to in subsection 47(2), (3), (4), (5), (6), (7), (8) or (9)”.

20 **13 Subsection 93(7A)**

21 Repeal the subsection, substitute:

22 (7A) A notice under subsection (1) describing conduct or proposed
23 conduct referred to in section 48 comes into force:

24 (a) at the end of the period of 60 days, or such other period as is
25 prescribed by the regulations, starting on the day when the
26 corporation or other person gave the Commission the notice;
27 or

EXPOSURE DRAFT

Schedule 9 Resale price maintenance

1 (b) if the Commission gives notice to the corporation or other
2 person under subsection 93A(2) during that period—when
3 the Commission decides not to give the corporation or other
4 person a notice under subsection (3A) of this section.

5 **14 Subsection 93(7B)**

6 Omit “section 44ZZW, subsection 47(6) or (7) or paragraph 47(8)(c) or
7 (9)(d)”, substitute “section 48”.

8 **15 Subparagraphs 93(7B)(b)(i) and (ii)**

9 After “corporation”, insert “or other person”.

10 **16 Subsection 93(7C)**

11 Omit “section 44ZZW, subsection 47(6) or (7) or paragraph 47(8)(c) or
12 (9)(d)”, substitute “section 48”.

13 **17 Paragraph 93(7C)(b)**

14 After “corporation”, insert “or other person”.

15 **18 Paragraphs 93(8)(a) and (b)**

16 After “corporation”, insert “or other person”.

17 **19 Subsection 93(10)**

18 After “corporation” (wherever occurring), insert “or other person”.

19 **20 At the end of section 96**

20 Add:

21 (8) Subsection (1) does not apply with respect to any act referred to in
22 a paragraph of subsection (3) if the supplier and the second person
23 referred to in that paragraph are bodies corporate that are related to
24 each other.

25 **21 Section 48 of Schedule 1**

26 Before “A person”, insert “(1)”.

EXPOSURE DRAFT

Schedule 10 Authorisations, notifications and class exemptions

Part 1 Main amendments

1 **Schedule 10—Authorisations, notifications**
2 **and class exemptions**

3 **Part 1—Main amendments**

4 *Competition and Consumer Act 2010*

5 **1 Section 88**

6 Repeal the section, substitute:

7 **88 Commission may grant authorisations**

8 *Granting an authorisation*

9 (1) Subject to this Part, the Commission may, on an application by a
10 person, grant an authorisation to a person to engage in conduct,
11 specified in the authorisation, to which one or more provisions of
12 Part IV specified in the authorisation would or might apply.

13 Note: For an extended meaning of engaging in conduct, see subsection 4(2).

14 *Effect of an authorisation*

15 (2) While the authorisation remains in force, the provisions of Part IV
16 specified in the authorisation do not apply in relation to the
17 conduct to the extent that it is engaged in by:

18 (a) the applicant; and

19 (b) any other person named or referred to in the application as a
20 person who is engaged in, or who is proposed to be engaged
21 in, the conduct; and

22 (c) any particular persons or classes of persons, as specified in
23 the authorisation, who become engaged in the conduct.

24 *Conditions*

25 (3) The Commission may specify conditions in the authorisation.
26 Subsection (2) does not apply if any of the conditions are
27 contravened.

EXPOSURE DRAFT

Authorisations, notifications and class exemptions **Schedule 10**
Main amendments **Part 1**

1 *Single authorisation may deal with several types of conduct*

2 (4) The Commission may grant a single authorisation for all the
3 conduct specified in an application for authorisation, or may grant
4 separate authorisations for any of the conduct.

5 *Past conduct*

6 (5) The Commission does not have power to grant an authorisation for
7 conduct engaged in before the Commission decides the application
8 for the authorisation.

9 *Withdrawing an application*

10 (6) An applicant for authorisation may at any time, by writing to the
11 Commission, withdraw the application.

12 **2 Subsections 90(5A) to (9)**

13 Repeal the subsections, substitute:

14 (6) The Commission must not make a determination granting an
15 authorisation under section 88 in relation to conduct unless the
16 Commission is satisfied in all the circumstances:

17 (a) that the conduct would not have the effect, or be likely to
18 have the effect, of substantially lessening competition; or

19 (b) that:

20 (i) the conduct would result, or be likely to result, in a
21 benefit to the public; and

22 (ii) the benefit would outweigh the detriment to the public
23 that would result, or be likely to result, from the
24 conduct.

25 (7) Paragraph (6)(a) does not apply to the extent (if any) that any of
26 the following provisions, and no other provisions of Part IV, would
27 (apart from an authorisation under section 88) apply to the conduct:

28 (a) one or more provisions of Division 1 of Part IV (cartel
29 conduct);

30 (b) one or more of sections 45D to 45DB (secondary boycotts);

31 (c) section 48 (resale price maintenance).

EXPOSURE DRAFT

Schedule 10 Authorisations, notifications and class exemptions

Part 1 Main amendments

1 **3 Subsection 90(9A)**

2 Omit “In determining what amounts to a benefit to the public for the
3 purposes of subsections (8A), (8B) and (9):”, substitute “In relation to
4 the Commission’s consideration of an application for an authorisation to
5 engage in conduct to which section 49 would or might apply or for a
6 merger authorisation, in determining what amounts to a benefit to the
7 public for the purposes of paragraph (6)(b):”.

8 **4 Subsection 93(3)**

9 Repeal the subsection, substitute:

- 10 (3) If the Commission is satisfied in all the circumstances that the
11 engaging by a corporation in conduct or proposed conduct of a
12 kind described in subsection 47(2), (3), (4), (5), (6), (7), (8) or (9)
13 and referred to in a notice given by the corporation under
14 subsection (1):
- 15 (a) has or would have the purpose or has or is likely to have, or
16 would have or be likely to have, the effect of substantially
17 lessening competition within the meaning of section 47; or
 - 18 (b) has not resulted or is not likely to result, or would not result
19 or be likely to result, in a benefit to the public; or
 - 20 (c) has resulted or is likely to result, or would result or be likely
21 to result, in a benefit to the public that has not or would not
22 outweigh the detriment to the public constituted by any
23 lessening of competition that:
 - 24 (i) has resulted or is likely to result from the conduct; or
 - 25 (ii) would result or be likely to result from the proposed
26 conduct;
- 27 the Commission may at any time give notice in writing to the
28 corporation stating that the Commission is so satisfied and
29 accompanied by a statement setting out its reasons for being so
30 satisfied.

31 **5 Subsection 93(3B)**

32 Repeal the subsection, substitute:

33 (3B) If:

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Authorisations, notifications and class exemptions **Schedule 10**
Main amendments **Part 1**

- 1 (a) a corporation or other person has notified the Commission
2 under subsection (1) of conduct or proposed conduct; and
3 (b) the Commission has given the corporation or other person a
4 notice under subsection 93AAA(1) imposing conditions
5 relating to the conduct or proposed conduct; and
6 (c) the Commission is satisfied that the corporation or other
7 person has failed to comply with those conditions;
8 the Commission may at any time give notice in writing to the
9 corporation or other person stating that the Commission is so
10 satisfied and accompanied by a statement setting out its reasons for
11 being so satisfied.

6 At the end of Subdivision A of Division 2 of Part VII

12 Add:

13 93AAA Imposing conditions relating to notifications

14 (1) If:

- 15 (a) a corporation or other person gives the Commission a notice
16 under subsection 93(1) relating to particular conduct, or
17 proposed conduct, of a kind referred to in section 48; and
18 (b) the Commission reasonably believes that:
19 (i) apart from this section, the Commission would have
20 grounds to give the corporation or other person a notice
21 under subsection 93(3A) relating to that notice; and
22 (ii) those grounds would not exist if particular conditions
23 relating to the conduct or proposed conduct were
24 complied with;

25 the Commission may give the corporation or other person a written
26 notice imposing those conditions.
27

- 28 (2) The Commission must, at the time it gives the corporation or other
29 person the notice under subsection (1), give the corporation or
30 other person a written statement of its reasons for giving the notice.

31 7 Subsection 93AB(2)

32 Omit “another person (the *target*)”, substitute “one or more other
33 persons (the *target* or *targets*)”.

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Schedule 10 Authorisations, notifications and class exemptions

Part 1 Main amendments

1 **8 Subsection 93AB(3) (heading)**

2 Repeal the heading, substitute:

3 *Second—making of contracts*

4 **9 Subsection 93AB(3)**

5 After “the target” (first occurring), insert “, or with one or more of those
6 targets,”.

7 **10 Subsection 93AB(3)**

8 Omit “the target” (last occurring), substitute “that target or those
9 targets”.

10 **11 Subsection 93AB(4) (heading)**

11 Repeal the heading, substitute:

12 *Third—price of contracts*

13 **12 Paragraphs 93AB(4)(a) and (b)**

14 After “the target”, insert “or targets”.

15 **13 After subsection 93AB(7)**

16 Insert:

17 (7A) If the corporation is a member of a group of contracting parties, a
18 collective bargaining notice may be expressed to be given on
19 behalf of persons who become members of the group after the
20 notice is given. If the notice is so expressed, then it is also taken to
21 have been given by those persons.

22 **14 After subsection 93AC(2)**

23 Insert:

24 *Commission’s objection notice—non-compliance with conditions*

25 (2A) If:

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Authorisations, notifications and class exemptions **Schedule 10**
Main amendments **Part 1**

- 1 (a) a corporation gives the Commission a collective bargaining
2 notice that relates (wholly or partly) to collective boycott
3 conduct or proposed collective boycott conduct; and
4 (b) the Commission has given the corporation a notice under
5 subsection 93ACA(1) imposing conditions relating to the
6 conduct or proposed conduct; and
7 (c) the Commission is satisfied that the corporation has failed to
8 comply with those conditions;
9 the Commission may give the corporation a written notice (the
10 *objection notice*) stating that the Commission is so satisfied.

11 **15 After section 93AC**

12 Insert:

13 **93ACA Imposing conditions relating to collective boycott conduct**

- 14 (1) If:
15 (a) a corporation gives the Commission a collective bargaining
16 notice that relates (wholly or partly) to collective boycott
17 conduct or proposed collective boycott conduct; and
18 (b) the Commission reasonably believes that:
19 (i) apart from this section, the Commission would have
20 grounds to give the corporation an objection notice
21 relating to the collective bargaining notice; and
22 (ii) those grounds would not exist if particular conditions
23 relating to the conduct or proposed conduct were
24 complied with;
25 the Commission may give the corporation a written notice
26 imposing those conditions.
- 27 (2) The Commission must, at the time it gives the corporation the
28 notice under subsection (1), give the corporation a written
29 statement of its reasons for giving the notice.

30 **16 Paragraph 93AD(1)(a)**

31 Repeal the paragraph, substitute:

- 32 (a) at the end of the period which is:
-

EXPOSURE DRAFT

Schedule 10 Authorisations, notifications and class exemptions

Part 1 Main amendments

- 1 (i) if the notice relates (wholly or partly) to collective
2 boycott conduct or proposed collective boycott
3 conduct—60 days or such other period as is prescribed
4 by the regulations; or
5 (ii) otherwise—14 days or such other period as is prescribed
6 by the regulations;
7 starting on the day the corporation gave the Commission the
8 notice; or

17 Paragraph 93AD(3)(c)

9 Repeal the paragraph, substitute:

- 10 (c) at the end of:
11 (i) if subparagraph (ii) does not apply—the period of 3
12 years beginning on the day the corporation gave the
13 collective bargaining notice; or
14 (ii) the period determined under subsection (5).
15

18 Subsection 93AD(3) (note)

16 Repeal the note, substitute:

- 17 Note 1: A collective bargaining notice is not in force, to the extent that it
18 relates to collective boycott conduct, while a stop notice is in force in
19 relation to the collective bargaining notice: see section 93AG.
20 Note 2: Section 93AE deals with the withdrawal of a collective bargaining
21 notice.
22

23 19 At the end of section 93AD

24 Add:

25 *Commission may determine expiry of collective bargaining notice*

- 26 (5) If the Commission is satisfied that:
27 (a) the period provided for in subparagraph (3)(c)(i) is not
28 appropriate in all the circumstances; and
29 (b) another period, ending no later than the end of the period of
30 10 years beginning on the day the corporation gave the
31 collective bargaining notice, is appropriate in all the
32 circumstances;

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Authorisations, notifications and class exemptions **Schedule 10**
Main amendments **Part 1**

1 the Commission may give to the corporation a written notice
2 determining that other period for the purposes of
3 subparagraph (3)(c)(ii).

4 (6) The Commission must, at the time it gives the corporation the
5 notice under subsection (5), give the corporation a written
6 statement of its reasons for giving the notice.

7 **20 At the end of Subdivision B of Division 2 of Part VII**

8 Add:

9 **93AG Stop notice for collective boycott conduct**

- 10 (1) The Commission may give a corporation a written notice (a *stop*
11 *notice*) if:
- 12 (a) the corporation has given the Commission a collective
13 bargaining notice that relates (wholly or partly) to collective
14 boycott conduct; and
 - 15 (b) the collective bargaining notice is in force under
16 section 93AD; and
 - 17 (c) the Commission reasonably believes that:
 - 18 (i) the collective boycott conduct has resulted in serious
19 detriment to the public; or
 - 20 (ii) serious detriment to the public is imminent as a result of
21 the collective boycott conduct.
- 22 (2) The Commission must, at the time it gives the corporation the stop
23 notice, give the corporation a written statement of its reasons for
24 giving the stop notice.
- 25 (3) While the stop notice is in force, the collective bargaining notice is
26 taken, for the purposes of this Act, not to be in force under
27 section 93AD to the extent that the collective bargaining notice
28 relates to collective boycott conduct.
- 29 (4) The stop notice comes into force at the time the Commission gives
30 the corporation the stop notice.
- 31 (5) The stop notice ceases to be in force at the earliest of the following
32 times:
-

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Part 1 Main amendments

- 1 (a) at the end of the period provided under subsection (6);
2 (b) if, before the end of that period, the Commission gives the
3 corporation an objection notice under subsection 93AC(1) or
4 (2) that relates to the collective bargaining notice—when that
5 objection notice is given;
6 (c) if, before the end of that period, the Commission gives the
7 corporation a notice under subsection 93ACA(1) imposing
8 conditions relating to conduct or proposed conduct that
9 relates to the collective bargaining notice—when that notice
10 under subsection 93ACA(1) is given;
11 (d) if the Commission withdraws the stop notice—when it is
12 withdrawn.
- 13 (6) For the purposes of paragraph (5)(a), the period is:
14 (a) the period of 90 days beginning on the day the Commission
15 gives the corporation the stop notice; or
16 (b) if the Commission extends it under subsection (7)—that
17 period as so extended.
- 18 (7) The Commission may, before the end of the period referred to in
19 paragraph (6)(a), extend the period by giving the corporation a
20 written notice extending that period by a further period of up to 90
21 days.

21 Division 3 of Part VII

22 Repeal the Division, substitute:

23 Division 3—Class exemptions

24 95AA Commission may determine class exemptions

- 25 (1) The Commission may, by legislative instrument, determine that
26 one or more specified provisions of Part IV do not apply to a kind
27 of conduct specified in the determination, if the Commission is
28 satisfied in all the circumstances:
29 (a) that conduct of that kind would not have the effect, or would
30 be likely not to have the effect, of substantially lessening
31 competition; or
32

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Authorisations, notifications and class exemptions **Schedule 10**
Main amendments **Part 1**

- 1 (b) that conduct of that kind would result, or would be likely to
2 result, in a benefit to the public that would outweigh the
3 detriment to the public that would result, or would be likely
4 to result, from conduct of that kind.
- 5 (2) The Commission may specify in the determination any one or more
6 of the following limitations:
7 (a) a limitation to persons of a specified kind;
8 (b) a limitation to circumstances of a specified kind;
9 (c) a limitation to conduct that complies with specified
10 conditions.
- 11 (3) The determination must specify the period, ending no later than the
12 end of the period of 10 years beginning on the day it is made, for
13 which it is to be in force.
- 14 (4) The determination:
15 (a) enters into force on the day it is made; and
16 (b) ceases to be in force at the earlier of the following times:
17 (i) if the Tribunal sets it aside under subsection 102(5F)—
18 at the end of the day on which the Tribunal sets it aside;
19 (ii) at the end of the period specified under subsection (3) of
20 this section.
- 21 (5) While the determination remains in force but subject to any
22 limitations specified under subsection (2), the provisions of Part IV
23 specified in the determination do not apply in relation to conduct of
24 the kind specified in the determination.

22 After section 101A

25 Insert:

27 101B Application for review of class exemptions

- 28 (1) A person dissatisfied with the making of a determination under
29 section 95AA may, as prescribed and within the time allowed by or
30 under the regulations, apply to the Tribunal for a review of the
31 making of the determination.

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Schedule 10 Authorisations, notifications and class exemptions

Part 1 Main amendments

- 1 (2) The Tribunal must review the making of the determination if the
2 Tribunal is satisfied that the person has a sufficient interest.

23 After subsection 102(5)

3
4 Insert:

- 5 (5AAA) Upon a review of the giving of a notice by the Commission under
6 subsection 93(3B):
- 7 (a) if the person who applied for the review satisfies the Tribunal
8 that the corporation or other person on whom the conditions
9 relating to the conduct or proposed conduct have been
10 imposed has not failed to comply with those conditions—the
11 Tribunal must make a determination setting aside the notice;
12 or
- 13 (b) if the person who applied for the review does not so satisfy
14 the Tribunal—the Tribunal must make a determination
15 affirming the notice.
- 16 (5AAB) Upon a review of the giving of a notice by the Commission under
17 subsection 93AAA(1):
- 18 (a) if the person who applied for the review satisfies the Tribunal
19 that:
- 20 (i) apart from section 93AAA, the Commission would not
21 have had grounds referred to in
22 subparagraph 93AAA(1)(b)(i); or
- 23 (ii) compliance with the conditions imposed by the notice
24 would not ensure those grounds would not exist;
25 the Tribunal must make a determination setting aside the
26 notice; or
- 27 (b) if the person who applied for the review does not so satisfy
28 the Tribunal—the Tribunal must make a determination
29 affirming the notice.

24 After subsection 102(5AB)

30
31 Insert:

- 32 (5ABA) Upon a review of the giving of a notice by the Commission under
33 subsection 93AC(2A):
-

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Authorisations, notifications and class exemptions **Schedule 10**
Main amendments **Part 1**

- 1 (a) if the person who applied for the review satisfies the Tribunal
2 that the corporation on whom the conditions relating to the
3 conduct or proposed conduct have been imposed has not
4 failed to comply with those conditions—the Tribunal must
5 make a determination setting aside the notice; or
6 (b) if the person who applied for the review does not so satisfy
7 the Tribunal—the Tribunal must make a determination
8 affirming the notice.

9 **25 After subsection 102(5C)**

10 Insert:

- 11 (5D) Upon a review of the giving of a notice by the Commission under
12 subsection 93ACA(1):
13 (a) if the person who applied for the review satisfies the Tribunal
14 that:
15 (i) apart from section 93ACA, the Commission would not
16 have had grounds referred to in
17 subparagraph 93ACA(1)(b)(i); or
18 (ii) compliance with the conditions imposed by the notice
19 would not ensure those grounds would not exist;
20 the Tribunal must make a determination setting aside the
21 notice; or
22 (b) if the person who applied for the review does not so satisfy
23 the Tribunal—the Tribunal must make a determination
24 affirming the notice.
- 25 (5E) Upon a review of the giving of a notice by the Commission under
26 subsection 93AD(5):
27 (a) if the person who applied for the review satisfies the Tribunal
28 that:
29 (i) the period provided for in subparagraph 93AD(3)(c)(i)
30 in relation to the relevant collective bargaining notice is
31 appropriate in all the circumstances; or
32 (ii) the other period determined by the Commission under
33 subsection 93AD(5) is not appropriate in all the
34 circumstances;

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Schedule 10 Authorisations, notifications and class exemptions

Part 1 Main amendments

- 1 the Tribunal must make a determination setting aside the
2 notice under subsection 93AD(5); or
- 3 (b) if the person who applied for the review does not so satisfy
4 the Tribunal—the Tribunal must make a determination
5 affirming the notice.
- 6 (5F) Upon a review of the making of a determination under
7 section 95AA:
- 8 (a) if the person who applied for the review satisfies the Tribunal
9 that:
- 10 (i) conduct of the kind specified in the determination would
11 have the effect, or would be likely to have the effect, of
12 substantially lessening competition; or
- 13 (ii) conduct of that kind would not result, or would be
14 unlikely to result, in a benefit to the public that would
15 outweigh the detriment to the public that would result,
16 or would be likely to result, from conduct of that kind;
- 17 the Tribunal must make a determination setting aside the
18 determination under section 95AA; or
- 19 (b) if the person who applied for the review does not so satisfy
20 the Tribunal—the Tribunal must make a determination
21 affirming the determination under section 95AA.

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Authorisations, notifications and class exemptions **Schedule 10**
Other amendments **Part 2**

1 **Part 2—Other amendments**

2 *Competition and Consumer Act 2010*

3 **26 Subsection 4(1) (definition of *authorisation*)**

4 Repeal the definition, substitute:

5 *authorisation* means an authorisation under Division 1 of Part VII
6 granted by the Commission or by the Tribunal on a review of a
7 determination of the Commission.

8 **27 Subsection 4(1) (definition of *clearance*)**

9 Repeal the definition.

10 **28 Subsection 4(1)**

11 Insert:

12 *collective boycott conduct* means conduct that has a purpose
13 referred to in subsection 44ZZRD(3) in relation to a contract,
14 arrangement or understanding.

15 **29 Subsection 4(1)**

16 Insert:

17 *merger authorisation* means an authorisation that:

- 18 (a) is an authorisation for a person to engage in conduct to which
19 one or both of sections 50 and 50A would or might apply; but
20 (b) is not authorisation for a person to engage in conduct to
21 which any other provision of Part IV would or might apply.

22 *overseas merger authorisation* means a merger authorisation that
23 is not an authorisation for a person to engage in conduct to which
24 section 50 would or might apply.

25 **30 Subsection 8A(6)**

26 Omit “or a clearance”.

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Schedule 10 Authorisations, notifications and class exemptions

Part 2 Other amendments

1 **31 Subsection 8A(6)**

2 Omit “subsection 93(3) or (3A) or 93AC(1) or (2)”, substitute
3 “subsection 93(3), (3A) or (3B) or 93AC(1), (2) or (2A)”.

4 **32 Subsection 25(1)**

5 Omit “or a clearance”.

6 **33 Section 29P**

7 Repeal the section.

8 **34 Paragraph 44ZZRR(1)(b)**

9 Omit “subsection 88(8A)”, substitute “section 88”.

10 **35 Paragraphs 44ZZRT(1)(b) and (2)(b)**

11 Omit “subsection 88(8B)”, substitute “section 88”.

12 **36 Paragraph 45(6)(a)**

13 Omit “or 88(8) or section 93”, substitute “or section 88 or 93”.

14 **37 Subparagraph 45(6)(b)(i)**

15 Omit “subsection 88(8)”, substitute “section 88”.

16 **38 Subsection 45(6A)**

17 Omit “subsection 88(8B)”, substitute “section 88”.

18 **39 Subsection 45(9)**

19 Omit “subsection 88(1) applies”, substitute “the corporation intends to
20 apply for an authorisation under section 88”.

21 **40 Subsection 45D(1) (note 1)**

22 Omit “subsection 88(7)”, substitute “section 88”.

23 **41 Subsection 45DA(1) (note 1)**

24 Omit “subsection 88(7)”, substitute “section 88”.

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Authorisations, notifications and class exemptions **Schedule 10**
Other amendments **Part 2**

1 **42 Subsection 45DB(1) (note 1)**

2 Omit “subsection 88(7)”, substitute “section 88”.

3 **43 Subsection 45E(8) (note)**

4 Omit “subsection 88(7A)”, substitute “section 88”.

5 **44 Section 45EA (note)**

6 Omit “subsection 88(7A)”, substitute “section 88”.

7 **45 Subsection 46A(6)**

8 Omit “or clearance”.

9 **46 Subsection 49(1) (note)**

10 Omit “subsection 88(8B)”, substitute “section 88”.

11 **47 Subsections 50(1) and (2) (note)**

12 Omit “a clearance or an authorisation for the acquisition under
13 Division 3 of Part VII: see subsections 95AC(2) and 95AT(2)”,
14 substitute “an authorisation for the acquisition under section 88”.

15 **48 Paragraphs 50(4)(b) and (c)**

16 Omit “a clearance or”.

17 **49 Paragraph 50(4)(d)**

18 Omit “clearance or”.

19 **50 Subsection 50(5)**

20 Repeal the subsection.

21 **51 Subsection 75B(1)**

22 Omit “section 55B, 60C, 60K or 95AZN”, substitute “section 55B, 60C
23 or 60K”.

24 **52 Subparagraph 76(1)(a)(iii)**

25 Repeal the subparagraph.

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Schedule 10 Authorisations, notifications and class exemptions

Part 2 Other amendments

1 **53 Paragraphs 76(1A)(c) and (1B)(a)**

2 Repeal the paragraphs.

3 **54 Section 76A**

4 Repeal the section.

5 **55 Section 76B (heading)**

6 Repeal the heading, substitute:

7 **76B What happens if substantially the same conduct is a**
8 **contravention of Part IV and an offence?**

9 **56 Subsections 76B(2) to (4)**

10 Omit “or section 95AZN”.

11 **57 Paragraph 76B(5)(a)**

12 Omit “or section 95AZN”.

13 **58 Section 80AC (heading)**

14 Repeal the heading, substitute:

15 **80AC Injunctions to prevent mergers if authorisation granted on the**
16 **basis of false or misleading information**

17 **59 Subsection 80AC(1)**

18 Omit “(1)”.

19 **60 Paragraph 80AC(1)(b)**

20 Omit “, under Division 3 of Part VII (mergers), a clearance or an
21 authorisation”, substitute “a merger authorisation”.

22 **61 Paragraphs 80AC(1)(d) and (e)**

23 Omit “clearance or”.

24 **62 Subsection 80AC(2)**

25 Repeal the subsection.

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Authorisations, notifications and class exemptions **Schedule 10**
Other amendments **Part 2**

1 **63 Section 81A (heading)**

2 Repeal the heading, substitute:

3 **81A Divestiture where merger done under authorisation granted on**
4 **false etc. information**

5 **64 Paragraph 81A(1)(b)**

6 Omit “, under Division 3 of Part VII (mergers), a clearance or an
7 authorisation”, substitute “a merger authorisation”.

8 **65 Paragraph 81A(1)(d)**

9 Omit “section 95AZN or”.

10 **66 Paragraphs 81A(1)(e) and (f)**

11 Omit “clearance or”.

12 **67 Subsections 81A(3) and (6)**

13 Repeal the subsections.

14 **68 Subsection 86C(4) (paragraph (a) of the definition of**
15 **contravening conduct)**

16 Omit “section 55B, 60C, 60K or 95AZN”, substitute “section 55B, 60C
17 or 60K”.

18 **69 Subsection 87B(1A)**

19 Omit “a clearance or an authorisation under Division 3 of Part VII”,
20 substitute “a merger authorisation”.

21 **70 Part VII (heading)**

22 Repeal the heading, substitute:

23 **Part VII—Authorisations and notifications**

24 **71 Division 1 of Part VII (heading)**

25 Repeal the heading, substitute:

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Schedule 10 Authorisations, notifications and class exemptions

Part 2 Other amendments

1 **Division 1—Authorisations**

2 **72 Paragraph 89(1)(a)**

3 Omit “prescribed by the regulations”, substitute “approved by the
4 Commission”.

5 **73 Subsection 90(10)**

6 Omit “an authorisation under subsection 88(9)”, substitute “a merger
7 authorisation”.

8 **74 After subsection 90(10A)**

9 Insert:

10 (10B) Subject to subsections (12) and (13), if:

11 (a) the Commission does not determine an application for a
12 merger authorisation within 90 days from the day on which
13 the Commission received the application; and

14 (b) the application is not an application for an overseas merger
15 authorisation;

16 the Commission is taken to have refused, at the end of that period,
17 to grant the authorisation applied for.

18 **75 Subsection 90(11)**

19 Omit “an authorisation under subsection 88(9)”, substitute “an overseas
20 merger authorisation”.

21 **76 Subsection 90(12)**

22 Omit “subsection (11) (in this subsection and in subsection (13) referred
23 to as the *base period*)”, substitute “subsection (10B) or (11) (the *base*
24 *period*)”.

25 **77 Subsection 90(12)**

26 Omit “subsection (11)” (last occurring), substitute “that subsection”.

27 **78 Subsection 90(13)**

28 Omit “subsection (11)” (wherever occurring), substitute
29 “subsection (10B) or (11)”.

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Authorisations, notifications and class exemptions **Schedule 10**
Other amendments **Part 2**

1 **79 Subsection 90(15)**

2 Omit “an authorisation under subsection 88(9)”, substitute “a merger
3 authorisation”.

4 **80 Subsection 90A(1)**

5 Omit “an authorisation under subsection 88(9)”, substitute “an overseas
6 merger authorisation”.

7 **81 Subsection 91(2A)**

8 Omit “(9)”, substitute “(6)”.

9 **82 Subsections 91A(4) and (5)**

10 Repeal the subsections, substitute:

- 11 (4) The Commission must not make a determination varying an
12 authorisation unless the Commission is satisfied in all the
13 circumstances:
- 14 (a) that the variation would not have the effect, or would be
15 likely not to have the effect, of substantially lessening
16 competition; or
 - 17 (b) that the variation would not result, or would be likely not to
18 result, in a reduction in the extent to which the benefit to the
19 public of the conduct to which the authorisation relates
20 outweighs any detriment to the public caused by the conduct.

21 **83 Subsection 91B(5)**

22 Omit “subsection 90(5A), (5B), (5C), (5D), (6), (7), (8), (8A), (8B) or
23 (9)”, substitute “subsection 90(6)”.

24 **84 Paragraph 91C(6)(a)**

25 Omit “an authorization under subsection 88(9)”, substitute “an overseas
26 merger authorisation”.

27 **85 Paragraph 91C(6)(a)**

28 Omit “an authorization granted on an application granted under
29 subsection 88(9)”, substitute “an overseas merger authorisation”.

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Schedule 10 Authorisations, notifications and class exemptions

Part 2 Other amendments

1 **86 Subsection 91C(7)**

2 Omit “subsection 90(5A), (5B), (5C), (5D), (6), (7), (8), (8A), (8B) or
3 (9)”, substitute “subsection 90(6)”.

4 **87 Subsection 93(3A)**

5 After “so satisfied”, insert “and accompanied by a statement setting out
6 its reasons for being so satisfied”.

7 **88 Subsections 93(4) to (6)**

8 Omit “subsection (3) or (3A)”, substitute “subsection (3), (3A) or (3B)”.

9 **89 Paragraph 93(7A)(b)**

10 After “subsection (3A)”, insert “or (3B)”.

11 **90 Subparagraph 93(7B)(b)(ii)**

12 Omit “subsection (3A)”, substitute “subsection (3A) or (3B)”.

13 **91 At the end of subsection 93(7C)**

14 Add:

15 ; or (c) if the Commission gives the corporation or other person a
16 notice under subsection (3B)—on the 31st day after the
17 Commission gave the notice under subsection (3B) or on a
18 later day specified in writing by the Commission.

19 **92 Subsection 93(9)**

20 Omit “subsection (3) or (3A), a reference in subsection (7) or
21 paragraph (7C)(b)”, substitute “subsection (3), (3A) or (3B), a reference
22 in subsection (7) or paragraph (7C)(b) or (7C)(c)”.

23 **93 Paragraph 93(10)(a)**

24 Omit “subsection (3) or (3A)”, substitute “subsection (3), (3A) or (3B)”.

25 **94 Section 93AA (definition of *objection notice*)**

26 Omit “subsection 93AC(1) or (2)”, substitute “subsection 93AC(1), (2)
27 or (2A)”.

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Authorisations, notifications and class exemptions **Schedule 10**
Other amendments **Part 2**

1 **95 Subsection 93AB(1) (heading)**

2 Repeal the heading, substitute:

3 *Notice to Commission—competition provisions*

4 **96 Subsections 93A(1), (3), (4) and (10A)**

5 Omit “subsection 93(3) or (3A) or 93AC(1) or (2)”, substitute
6 “subsection 93(3), (3A) or (3B) or 93AC(1), (2) or (2A)”.

7 **97 Division 1 of Part IX (heading)**

8 Repeal the heading, substitute:

9 **Division 1—Applications for review**

10 **98 Subsection 101(1A)**

11 Omit “subsection 90(5A), (5B), (5C), (5D), (6), (7), (8), (8A), (8B) or
12 (9)”, substitute “subsection 90(6)”.

13 **99 Paragraph 101(1B)(a)**

14 Omit “an authorization under subsection 88(9)”, substitute “an overseas
15 merger authorisation”.

16 **100 After subsection 101(1B)**

17 Insert:

18 (1C) The regulations may make it a requirement that a person applying
19 under subsection (1) for review of a determination relating to a
20 merger authorisation give an undertaking under section 87B that
21 the person will not make the acquisition to which the authorisation
22 relates while the Tribunal is considering the application.

23 **101 Subsection 101(2)**

24 Repeal the subsection, substitute:

25 (2) A review by the Tribunal is a re-hearing of the matter, unless it is a
26 review of a determination by the Commission:

27 (a) in relation to an application for a merger authorisation or a
28 minor variation of a merger authorisation; or

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Schedule 10 Authorisations, notifications and class exemptions

Part 2 Other amendments

1 (b) in relation to the revocation of a merger authorisation, or the
2 revocation of a merger authorisation and the substitution of
3 another merger authorisation.

4 (3) Subsections 90(6), 91A(4), 91A(5), 91B(5) and 91C(7) apply in
5 relation to the Tribunal in like manner as they apply in relation to
6 the Commission.

7 **102 Section 101A (heading)**

8 Repeal the heading, substitute:

9 **101A Application for review of notices under Division 2 of Part VII**

10 **103 Section 101A**

11 Omit “subsection 93(3) or (3A) or 93AC(1) or (2)”, substitute
12 “subsection 93(3), (3A) or (3B), 93AAA(1), 93AC(1), (2) or (2A),
13 93ACA(1) or 93AD(5)”.

14 **104 After subsection 102(1)**

15 Insert:

16 (1AA) If a person applies to the Tribunal for review of a determination of
17 the Commission relating to:

18 (a) the grant of a merger authorisation (a *domestic merger*
19 *authorisation*) that is not an overseas merger authorisation;
20 or

21 (b) the minor variation, or the revocation, of a domestic merger
22 authorisation; or

23 (c) the revocation of a domestic merger authorisation and the
24 substitution of another domestic merger authorisation;

25 the Tribunal must make its determination on the review within 90
26 days after receiving the application for review.

27 **105 Paragraph 102(1A)(a)**

28 Omit “an authorisation under subsection 88(9)”, substitute “an overseas
29 merger authorisation”.

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Authorisations, notifications and class exemptions **Schedule 10**
Other amendments **Part 2**

1 **106 Paragraph 102(1A)(b)**

2 Omit “authorization granted under that subsection”, substitute “overseas
3 merger authorisation”.

4 **107 Paragraph 102(1A)(c)**

5 Repeal the paragraph, substitute:

6 (c) the revocation of an overseas merger authorisation and the
7 substitution of another overseas merger authorisation;

8 **108 Subsection 102(5AC)**

9 Omit “subsection 93AC(1) or (2)”, substitute “subsection 93AC(1), (2)
10 or (2A)”.

11 **109 At the end of section 102**

12 Add:

13 (8) If the review is a review of a determination of the Commission in
14 relation to:

15 (a) an application for a merger authorisation; or

16 (b) an application for a minor variation of a merger
17 authorisation; or

18 (c) an application for, or the Commission’s proposal for, the
19 revocation of a merger authorisation; or

20 (d) an application for, or the Commission’s proposal for, the
21 revocation of a merger authorisation and the substitution of
22 another merger authorisation;

23 the Tribunal must not, for the purposes of the review, have regard
24 to any information, documents or evidence other than:

25 (e) information that was referred to in the Commission’s reasons
26 for making the determination; and

27 (f) the information, documents or evidence referred to in
28 subsection (7); and

29 (g) information given to the Tribunal as a result of the Tribunal
30 seeking such relevant information, and consulting with such
31 persons, as it considers reasonable and appropriate for the
32 sole purpose of clarifying the information, documents or
33 evidence referred to in subsection (7); and

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Schedule 10 Authorisations, notifications and class exemptions

Part 2 Other amendments

1 (h) any information or report given to the Tribunal under
2 subsection (6).

3 **110 Section 102A**

4 Repeal the section.

5 **111 Subsection 109(1A)**

6 Omit “subsection 93(3) or (3A) or 93AC(1) or (2)”, substitute
7 “subsection 93(3), (3A) or (3B) or 93AC(1), (2) or (2A)”.

8 **112 Division 3 of Part IX**

9 Repeal the Division.

10 **113 Section 150J**

11 Omit “, clearance”.

12 **114 Paragraph 151AY(2)(c)**

13 Omit “subsection 93(3) or (3A) or 93AC(1) or (2)”, substitute
14 “subsection 93(3), (3A) or (3B) or 93AC(1), (2) or (2A)”.

15 **115 Subparagraph 155(2)(b)(iv)**

16 Omit “93(3) or (3A) or 93AC(1) or (2)”, substitute “93(3), (3A) or (3B)
17 or 93AC(1), (2) or (2A)”.

18 **116 Paragraph 157(1)(a)**

19 Omit “or Subdivision B of Division 3 of Part VII”.

20 **117 Paragraph 157(1)(ba)**

21 Repeal the paragraph.

22 **118 Section 157AA**

23 Repeal the section.

24 **119 Paragraph 162(1)(b)**

25 Omit “section 90 or 93A, Division 3 of Part XI or section 151AZ”,
26 substitute “section 90, 93A or 151AZ”.

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Authorisations, notifications and class exemptions **Schedule 10**
Other amendments **Part 2**

1 **120 Subsection 163(5)**

2 Omit “118”.

3 **121 Paragraph 165(1)(a)**

4 Omit “or section 95AH”.

5 **122 Subsection 165(3A)**

6 Repeal the subsection.

7 **123 Paragraph 170(3)(a)**

8 Omit “or a clearance under Division 3 of Part VII”.

9 **124 Subparagraph 170(3)(b)(ii)**

10 Repeal the subparagraph.

11 **125 Subsection 172(2B)**

12 Omit “an authorisation under subsection 88(9)”, substitute “a merger
13 authorisation”.

14 **126 Section 174**

15 Before “In”, insert “(1)”.

16 **127 At the end of section 174**

17 Add:

18 (2) A reference in this Division to subsection 88(1A) or
19 paragraph 88(1A)(b) is a reference to that subsection or paragraph
20 as in force before the commencement of Schedule 10 to the
21 *Competition and Consumer Amendment (Competition Policy*
22 *Review) Act 2016*.

23 **128 Paragraph 44ZZRR(1)(b) of Schedule 1**

24 Omit “subsection 88(8A)”, substitute “section 88”.

25 **129 Paragraphs 44ZZRT(1)(b) and (2)(b) of Schedule 1**

26 Omit “subsection 88(8B)”, substitute “section 88”.

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Schedule 10 Authorisations, notifications and class exemptions

Part 2 Other amendments

1 **130 Paragraph 45(6)(a) of Schedule 1**

2 Omit “or 88(8) or section 93”, substitute “or section 88 or 93”.

3 **131 Subparagraph 45(6)(b)(i) of Schedule 1**

4 Omit “subsection 88(8)”, substitute “section 88”.

5 **132 Subsection 45(6A) of Schedule 1**

6 Omit “subsection 88(8B)”, substitute “section 88”.

7 **133 Subsection 45(9) of Schedule 1**

8 Omit “subsection 88(1) applies”, substitute “the person intends to apply
9 for an authorisation under section 88”.

10 **134 Subsection 45D(1) of Schedule 1 (note 1)**

11 Omit “subsection 88(7)”, substitute “section 88”.

12 **135 Subsection 45DA(1) of Schedule 1 (note 1)**

13 Omit “subsection 88(7)”, substitute “section 88”.

14 **136 Subsection 45E(8) of Schedule 1 (note)**

15 Omit “subsection 88(7A)”, substitute “section 88”.

16 **137 Section 45EA of Schedule 1 (note)**

17 Omit “subsection 88(7A)”, substitute “section 88”.

18 **138 Subsection 49(1) of Schedule 1 (note)**

19 Omit “subsection 88(8B)”, substitute “section 88”.

20 **139 Subsection 50(1) of Schedule 1 (note)**

21 Omit “a clearance or an authorisation for the acquisition under
22 Division 3 of Part VII: see subsections 95AC(2) and 95AT(2)”,
23 substitute “an authorisation for the acquisition under section 88”.

24 **140 Paragraphs 50(4)(b) and (c) of Schedule 1**

25 Omit “a clearance or”.

EXPOSURE DRAFT

Authorisations, notifications and class exemptions **Schedule 10**
Other amendments **Part 2**

- 1 **141 Paragraph 50(4)(d) of Schedule 1**
2 Omit “clearance or”.
- 3 **142 Subsection 50(5) of Schedule 1**
4 Repeal the subsection.

EXPOSURE DRAFT

Schedule 10 Authorisations, notifications and class exemptions

Part 3 Transitional provisions

1 **Part 3—Transitional provisions**

2 **143 Existing authorisations**

3 An authorisation granted under section 88 of the *Competition and*
4 *Consumer Act 2010* (other than subsection 88(5) or (6A)) that was in
5 force immediately before the commencement of this item continues in
6 force after that commencement as if:

- 7 (a) it had been granted under that section as amended by this
8 Schedule; and
- 9 (b) it specified the following provision or provisions of Part IV:
- 10 (i) if the authorisation was granted under
11 subsection 88(1A)—sections 44ZZRF, 44ZZRG,
12 44ZZRJ and 44ZZRK;
- 13 (ii) if the authorisation was granted under
14 subsection 88(1)—section 45;
- 15 (iii) if the authorisation was granted under
16 subsection 88(7)—sections 45D, 45DA and 45DB;
- 17 (iv) if the authorisation was granted under
18 subsection 88(7A)—sections 45E and 45EA;
- 19 (v) if the authorisation was granted under
20 subsection 88(8)—section 47;
- 21 (vi) if the authorisation was granted under
22 subsection 88(8A)—section 48;
- 23 (vii) if the authorisation was granted under
24 subsection 88(8B)—section 49;
- 25 (viii) if the authorisation was granted under
26 subsection 88(9)—section 50A.

27 **144 Existing merger clearances and authorisations**

28 A clearance or authorisation granted under Division 3 of Part VII of the
29 *Competition and Consumer Act 2010* that was in force immediately
30 before the commencement of this item continues in force after that
31 commencement as if:

- 32 (a) it was an authorisation granted under section 88 of that Act as
33 amended by this Schedule; and
- 34 (b) it specified section 50.
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Schedule 11—Admissions of fact

Competition and Consumer Act 2010

1 Section 83

Repeal the section, substitute:

83 Findings and admissions of fact in proceedings to be evidence

- (1) In a proceeding against a person under section 82 or in an application under subsection 51ADB(1) or 87(1A) for an order against a person, a finding of any fact made by a court, or an admission of any fact made by the person, is prima facie evidence of that fact if the finding or admission is made in proceedings:
 - (a) that are proceedings:
 - (i) under section 77, 80, 81, 86C, 86D or 86E; or
 - (ii) for an offence against section 44ZZRF or 44ZZRG; and
 - (b) in which that person has been found to have contravened, or to have been involved in a contravention of, a provision of Part IV or IVB, or of section 55B, 60C or 60K.
- (2) The finding or admission may be proved by production of:
 - (a) in any case—a document under the seal of the court from which the finding or admission appears; or
 - (b) in the case of an admission—a document in which the admission was made.

2 Application provision

The amendment made by this Schedule applies in relation to findings of fact, and admissions of fact, made on or after the commencement of this item.

EXPOSURE DRAFT

Schedule 12 Power to obtain information, documents and evidence

1 **Schedule 12—Power to obtain information,**
2 **documents and evidence**
3

4 *Competition and Consumer Act 2010*

5 **1 Subsection 155(1)**

6 Omit all the words from and including “that constitutes” to and
7 including “subsection 95AZM(6)”, substitute “referred to in
8 subsection (2)”.

9 **2 After subsection 155(1)**

10 Insert:

11 (2) For the purposes of subsection (1), the matter must be a matter
12 that:

13 (a) constitutes, or may constitute, a contravention of:

14 (i) this Act; or

15 (ii) Division 4A or 4B of Part 3.3 of the
16 *Radiocommunications Act 1992*; or

17 (iii) any of the terms of an undertaking under section 87B of
18 this Act or under section 218 of the Australian
19 Consumer Law; or

20 (b) is relevant to:

21 (i) a designated communications matter (as defined by
22 subsection (9) of this section); or

23 (ii) a designated water matter (as defined by
24 subsection (9A) of this section); or

25 (iii) the making of a decision by the Commission under
26 subsection 90(1) in relation to an application for a
27 merger authorisation; or

28 (iv) the making of a decision by the Commission under
29 subsection 91B(4), 91C(4), 93(3) or (3A) or 93AC(1) or
30 (2).

31 **3 After subsection 155(5A)**

32 Insert:

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Power to obtain information, documents and evidence **Schedule 12**

- 1 (5B) Paragraph (5)(a) does not apply to the extent that:
2 (a) the notice relates to producing documents; and
3 (b) after a reasonable search, the person is not aware of the
4 documents.

5 Note: A defendant bears an evidential burden in relation to the matters in
6 subsection (5B), see subsection 13.3(3) of the *Criminal Code*.

- 7 (6) For the purposes of paragraph (5B)(b), in making a reasonable
8 search, the person may take into account the following:
9 (a) the nature and complexity of the matter to which the notice
10 relates;
11 (b) the number of documents involved;
12 (c) the ease and cost of retrieving a document;
13 (d) the significance of any document likely to be found;
14 (e) any other relevant matter.

15 **4 Subsection 155(6A)**

16 Omit “a fine not exceeding 20 penalty units or imprisonment for 12
17 months”, substitute “imprisonment for 2 years or a fine not exceeding
18 100 penalty units”.

19 **5 Existing section 155 notices**

- 20 (1) If a notice issued under subsection 155(1) of the *Competition and*
21 *Consumer Act 2010* was in force immediately before the
22 commencement of this item, after that commencement:
23 (a) the notice continues in force; and
24 (b) section 155 of the *Competition and Consumer Act 2010* as
25 amended by this Act applies in relation to the notice;
26 as if the notice had been issued under that section as so amended.
- 27 (2) However, the amendment of subsection 155(6A) of the *Competition and*
28 *Consumer Act 2010* made by this Schedule does not apply in relation to
29 a notice served before the commencement of this item.

EXPOSURE DRAFT

Schedule 13 Access to services

Part 1 Declared services

1 **Schedule 13—Access to services**

2 **Part 1—Declared services**

3 *Competition and Consumer Act 2010*

4 **1 Subparagraph 29O(2)(b)(ii)**

5 Repeal the subparagraph, substitute:

- 6 (ii) section 44CA (about declaration criteria for services
7 under Part IIIA);

8 **2 Section 44B**

9 Insert:

10 *declaration criteria*, for a service, has the meaning given by
11 section 44CA.

12 **3 After section 44C**

13 Insert:

14 **44CA Meaning of *declaration criteria***

15 (1) The *declaration criteria* for a service are:

- 16 (a) that access (or increased access) to the service, on reasonable
17 terms and conditions, following a declaration of the service
18 would promote a material increase in competition in at least
19 one market (whether or not in Australia), other than the
20 market for the service; and

21 Note: *Market* is defined in section 4E.

- 22 (b) that the facility that is used (or will be used) to provide the
23 service could meet the total foreseeable demand in the market
24 at the least cost; and

25 (c) that the facility is of national significance, having regard to:

- 26 (i) the size of the facility; or
27 (ii) the importance of the facility to constitutional trade or
28 commerce; or

EXPOSURE DRAFT

Access to services **Schedule 13**
Declared services **Part 1**

- 1 (iii) the importance of the facility to the national economy;
2 and
3 (d) that access (or increased access) to the service, on reasonable
4 terms and conditions, following a declaration of the service
5 would promote the public interest.
- 6 (2) For the purposes of paragraph (1)(b), the cost referred to in that
7 paragraph is to take into account the costs, to the provider of the
8 service, of co-ordinating multiple users of the facility.
- 9 (3) Without limiting the matters to which the Council may have regard
10 for the purposes of section 44G, or the designated Minister may
11 have regard for the purposes of section 44H, in considering
12 whether paragraph (1)(d) applies the Council or designated
13 Minister must have regard to:
- 14 (a) the effect that declaring the service would have on
15 investment in:
- 16 (i) infrastructure services; and
17 (ii) markets that depend on access to the service; and
18 (b) the administrative and compliance costs that would be
19 incurred by the provider of the service if the service is
20 declared.

21 **4 Subsection 44F(4)**

22 Repeal the subsection.

23 **5 After subsection 44G(1A)**

24 Insert:

- 25 (1B) The Council cannot recommend declaration of a service that is the
26 subject of a regime in relation to which a decision under
27 section 44N that the regime is an effective access regime is in force
28 (including as a result of an extension under section 44NB).

29 **6 Subsection 44G(2)**

30 Repeal the subsection, substitute:

- 31 (2) The Council cannot recommend that a service be declared unless it
32 is satisfied of all of the declaration criteria for the service.

EXPOSURE DRAFT

Schedule 13 Access to services

Part 1 Declared services

1 **7 Subsection 44H(2)**

2 Repeal the subsection.

3 **8 After subsection 44H(3A)**

4 Insert:

5 (3B) The designated Minister cannot declare a service that is the subject
6 of a regime in relation to which a decision under section 44N that
7 the regime is an effective access regime is in force (including as a
8 result of an extension under section 44NB).

9 **9 Subsection 44H(4)**

10 Repeal the subsection, substitute:

11 (4) The designated Minister cannot declare a service unless he or she
12 is satisfied of all of the declaration criteria for the service.

13 **10 Subsection 44H(9)**

14 Omit all the words after “at the end of that”, substitute:

15 60-day period:

- 16 (a) to have made a decision under this section in accordance with
17 the declaration recommendation; and
18 (b) to have published that decision under section 44HA.

19 **11 Paragraph 44LB(3)(b)**

20 Omit “matters referred to in subsection 44G(2) in relation to the
21 service”, substitute “declaration criteria for the service”.

22 **12 Paragraph 44LG(5)(b)**

23 Omit “matters referred to in subsection 44H(4) in relation to the
24 service”, substitute “declaration criteria for the service”.

25 **13 Paragraph 44LI(2)(a)**

26 Omit “matters mentioned in subsection 44G(2) in relation to the
27 service”, substitute “declaration criteria for the service”.

EXPOSURE DRAFT

Schedule 13 Access to services

Part 2 Effective access regimes

1 **Part 2—Effective access regimes**

2 *Competition and Consumer Act 2010*

3 **15 Paragraph 29O(2)(a)**

4 Omit “or 44NA”, substitute “, 44NA or 44NBA”.

5 **16 After Subdivision C of Division 2A of Part IIIA**

6 Insert:

7 **Subdivision CA—Revocation of Commonwealth Minister’s**
8 **decision**

9 **44NBA Recommendation by Council**

- 10 (1) If a decision of the Commonwealth Minister is in force under
11 section 44N (including as a result of an extension under
12 section 44NB) that a regime established by a State or Territory for
13 access to a service is an effective access regime, the Council:
14 (a) may, on its own initiative; and
15 (b) must, on an application made under subsection (3);
16 consider whether to recommend that the Commonwealth Minister
17 should revoke the decision.
- 18 (2) Before considering on its own initiative whether to recommend
19 that the Commonwealth Minister should revoke the decision, the
20 Council must publish, by electronic or other means, a notice to that
21 effect.
- 22 (3) Any of the following may make a written application to the
23 Council asking it to recommend that the Commonwealth Minister
24 revoke the decision:
25 (a) a person who is seeking access to the service;
26 (b) the responsible Minister for the State or Territory;
27 (c) the provider of the service.

EXPOSURE DRAFT

Access to services **Schedule 13**
Effective access regimes **Part 2**

- 1 (4) In considering whether to make the recommendation, the Council
2 must consider whether it is satisfied that the regime no longer
3 meets the relevant principles, set out in the Competition Principles
4 Agreement, relating to whether access regimes are effective access
5 regimes, because of either or both of the following:
6 (a) substantial changes to the regime;
7 (b) substantial amendments of those principles.
- 8 (5) If the Council is so satisfied, the Council must, in writing,
9 recommend to the Commonwealth Minister that he or she revoke
10 the decision.
- 11 (6) If the Council is not so satisfied, the Council must, in writing,
12 recommend to the Commonwealth Minister that he or she not
13 revoke the decision.
- 14 Note 1: There are time limits that apply to the Council's recommendation: see
15 section 44NC.
- 16 Note 2: The Council may request information and invite public submissions:
17 see sections 44NBB and 44NE.
- 18 Note 3: The Council must publish its recommendation: see section 44NF.

19 **44NBB Council may request information**

- 20 (1) The Council may give a person a written notice requesting the
21 person give to the Council, within a specified period, information
22 of the kind specified in the notice that the Council considers may
23 be relevant to deciding what recommendation to make under
24 section 44NBA.
- 25 (2) The Council must:
26 (a) give a copy of the notice to:
27 (i) if an application was made under subsection 44NBA(3)
28 and the person is not the applicant—the applicant; and
29 (ii) if the person is not the provider of the service—the
30 provider; and
31 (b) publish, by electronic or other means, the notice.
- 32 (3) In deciding what recommendation to make, the Council:

EXPOSURE DRAFT

Schedule 13 Access to services

Part 2 Effective access regimes

- 1 (a) must have regard to any information given in compliance
2 with a notice under subsection (1) within the specified
3 period; and
4 (b) may disregard any information of the kind specified in the
5 notice that is given after the specified period has ended.

6 **44NBC Decision by the Commonwealth Minister**

- 7 (1) On receiving a recommendation under section 44NBA, the
8 Commonwealth Minister must assess whether he or she should
9 revoke the decision. Subject to subsection (2) of this section, he or
10 she must do this in accordance with subsection 44N(2).

11 Note: The Commonwealth Minister must publish his or her decision: see
12 section 44NG.

- 13 (2) In making his or her assessment, the Commonwealth Minister must
14 consider whether he or she is satisfied as to the matter set out in
15 subsection 44NBA(4).
- 16 (3) If the Commonwealth Minister is so satisfied, he or she must, by
17 notice in writing, revoke the decision. The notice must specify the
18 day on which the decision is to cease to be in force.
- 19 (4) If the Commonwealth Minister is not so satisfied, he or she must,
20 by notice in writing, decide not to revoke the decision.
- 21 (5) If the Commonwealth Minister does not publish under
22 section 44NG his or her decision on the recommendation within
23 the period starting at the start of the day the recommendation is
24 received and ending at the end of 60 days after that day, he or she
25 is taken, immediately after the end of that 60-day period:
- 26 (a) to have made a decision under this section in accordance with
27 the recommendation made by the Council under
28 section 44NBA; and
29 (b) to have published that decision under section 44NG.

30 **17 Subsection 44NC(1)**

31 Omit “or 44NA”, substitute “, 44NA or 44NBA, or on a consideration
32 by the Council on its own initiative under section 44NBA,”.

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Access to services **Schedule 13**
Effective access regimes **Part 2**

1 **18 Subsection 44NC(2)**

2 After “the application is received”, insert “, or the consideration is
3 notified under subsection 44NBA(2)”.

4 **19 Subsection 44NC(3)**

5 Omit “or 44NA”, substitute “, 44NA or 44NBA, or on a consideration
6 by the Council on its own initiative under section 44NBA,”.

7 **20 Subsection 44NC(3) (at the end of the table)**

8 Add:

4	A notice is given under subsection 44NBB(1) requesting information in relation to the application or consideration	The day on which the notice is given	The last day of the period specified in the notice for the giving of the information
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9 **21 Subsection 44NC(5)**

10 After “the applicant” (first occurring), insert “(if the Commission is not
11 acting on its own initiative under paragraph 44NBA(1)(a))”.

12 **22 Paragraph 44NC(8)(a)**

13 Omit “on the application”.

14 **23 Paragraph 44NC(9)(a)**

15 Repeal the paragraph, substitute:

16 (a) if the Commission is not acting on its own initiative under
17 paragraph 44NBA(1)(a)—the applicant; and

18 **24 Subsection 44NE(1)**

19 Omit “or 44NA”, substitute “, 44NA or 44NBA, or on a consideration
20 by the Council on its own initiative under section 44NBA,”.

21 **25 Subsection 44NE(3)**

22 Omit “on the application”.

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Schedule 13 Access to services

Part 2 Effective access regimes

1 **26 Subparagraph 44NE(6)(c)(iii)**

2 Omit “on the application”.

3 **27 Subsection 44NF(1)**

4 Omit “or 44NA”, substitute “, 44NA or 44NBA”.

5 **28 Paragraphs 44NF(2)(a) and (4)(a)**

6 After “or 44NA”, insert “, or under section 44NBA (unless the
7 recommendation relates to a consideration by the Council under that
8 section on its own initiative)”.

9 **29 Subsection 44NG(1)**

10 Omit “or 44NA”, substitute “, 44NA or 44NBA”.

11 **30 Paragraphs 44NG(2)(a) and (3)(a)**

12 After “or 44NA”, insert “, or under section 44NBA (unless the
13 recommendation relates to a consideration by the Council under that
14 section on its own initiative)”.

15 **31 After subsection 44O(1)**

16 Insert:

17 (1A) If, on receiving a recommendation under section 44NBA relating
18 to a decision under section 44N, the Commonwealth Minister has
19 made a decision under section 44NBC:

20 (a) the person who applied under subsection 44NBA(3) for the
21 Council to make a recommendation relating to that decision
22 under section 44N; or

23 (b) any other person who could have applied under
24 subsection 44NBA(3) for the Council to make such a
25 recommendation;

26 may apply to the Tribunal for review of the Commonwealth
27 Minister’s decision under section 44NBC.

28 **32 Paragraph 44ZZOAAA(3)(a)**

29 Omit “or 44NB(3A)”, substitute “, 44NB(3A) or 44NBC(5)”.

EXPOSURE DRAFT

Access to services **Schedule 13**
Effective access regimes **Part 2**

1 **33 Application provision**

2 The amendments made by this Part apply in relation to:

- 3 (a) all decisions under section 44N of the *Competition and*
4 *Consumer Act 2010* that were in force immediately before the
5 commencement of this item; and
6 (b) all decisions under that section made on or after that
7 commencement.

EXPOSURE DRAFT

Schedule 13 Access to services

Part 3 Access to declared services

1 **Part 3—Access to declared services**

2 *Competition and Consumer Act 2010*

3 **34 After subsection 44V(2)**

4 Insert:

5 (2A) Without limiting paragraph (2)(d), a requirement referred to in that
6 paragraph may do either or both of the following:

- 7 (a) require the provider to expand the capacity of the facility;
8 (b) require the provider to expand the geographical reach of the
9 facility.

10 **35 Paragraph 44W(1)(d)**

11 After “extensions of the facility”, insert “(including expansions of the
12 capacity of the facility and expansions of the geographical reach of the
13 facility)”.

14 **36 Paragraph 44W(1)(e)**

15 Repeal the paragraph, substitute:

- 16 (e) requiring the provider to bear some or all of the costs of
17 extending the facility (including expanding the capacity of
18 the facility and expanding the geographical reach of the
19 facility);
20 (ea) requiring the provider to bear some or all of the costs of
21 maintaining extensions of the facility (including expansions
22 of the capacity of the facility and expansions of the
23 geographical reach of the facility);

24 **37 Paragraph 44X(1)(e)**

25 After “extensions”, insert “(including expansions of capacity and
26 expansions of geographical reach)”.