

House of Representatives

Supplementary Order Paper

Thursday, 18 October 2001

Commerce (Clearance Validation) Amendment Bill

Proposed amendment

Hon Paul Swain, in Committee, to move the following amendment:

Clause 3(2)

To insert, after the word “notice” at line 2 on page 2, the words “(other than the notice seeking clearance for the proposed acquisition that was the subject of the proceedings *Foodstuffs (Auckland) Limited v Commerce Commission and Progressive Enterprises Limited* (CA 163/01, 19 September 2001))”.

Explanatory note

The Bill is a consequence of the decision of the Court of Appeal in the case *Foodstuffs (Auckland) Limited v Commerce Commission and Progressive Enterprises Limited* that the application of Progressive Enterprises Limited to the Commerce Commission for clearance to acquire certain supermarkets, notice of which was given to the Commission before the amendment of section 47 of the Commerce Act 1986 by the Commerce Amendment Act 2001, should have been considered on the basis of section 47 as amended.

This decision overturned a decision of the High Court that the application should be dealt with on the basis of section 47 as it was before it was amended.

In the light of the High court decision, the Commission had already given Progressive a clearance on the basis of section 47 as it was.

As introduced, the Bill had the effect that—

- all notices given to the Commission before the commencement of the Commerce Amendment Act 2001 were to be dealt with on the basis of section 47 as it was before it was amended; and
- the Commission’s actions in having already dealt with some of them on that basis were validated.

The amendment proposed in this Supplementary Order Paper excepts Progressive's notice from the requirement that these notices should be dealt with on the basis of section 47 as it was, and has the consequential effect that the Commission's actions in respect of it are not validated. So Foodstuffs' victory in the Court of Appeal is preserved, but Progressive is left free to pursue an appeal to the Privy Council if it wishes.
