



Անդրադարձ

Շնորհակալություն արտահայտում եմ ձեր հարգանքների և հետաքրքրման համար:

Ձեր հարցերի և մտադրությունների վերաբերյալ եմ պատրաստվում օգնել ձեզ:

Ձեր հարգանքներով, Իրենա Թորոնթոն (Պատմության և Գրականության Գիտության Կենտրոն)



About us

The Canadian Chamber of Commerce is committed to enabling the future of business success. To advance progress on forward-looking public policy issues, the Canadian Chamber Future of Business Centre is our platform for placing these topics into the public debate.

This report has been authored by a fellow of the Canadian Chamber Future of Business Centre, with input from the Advisory Council. The report reflects the views of the author and does not necessarily reflect the views of the Advisory Council or the Canadian Chamber's members.

More information about the Canadian Chamber Future of Business Centre can be found online at <https://chamber.ca/futureofbusinesscentre/>.

Competition act reform interim report

As policymakers in the United States and Europe continue to explore reforms to their competition policy rules to respond to the surge in economic and consumer activity occurring in digital formats, there is increasing focus on competition policy reform in Canada. This includes a commitment by the federal government to review the Competition Act.

This report contributes to the public policy debate by identifying the key issues that will, and should, be considered as part of the Competition Act review. This iteration of the report will be subject to further consultation and input to shape a final report that will be delivered later this year.



Introduction

In 1889, Canada enacted what is recognized as the first competition statute of modern times, the *Act for the Prevention and Suppression of Combinations Formed in Restraint of Trade*.¹ While Canada can claim to be a pioneer in competition law and take credit for expanding the role of competition policy with the introduction of a state-of-the-art *Competition Act* (the “Act”) in 1986, it has not been in the global forefront in more recent times.



second step suggested a “comprehensive modernization” study and consultations on the “role and functioning” of the Act with a view to fixing “shortcomings” that allow for harmful business conduct.

The recent government announcements were preceded and supplemented by important debate in Canada regarding the need for competition policy reform. The substantive debate began with the Commissioner of Competition calling for legislative amendments;⁵ then two reports from the government Standing Committee on Industry Science and Technology⁶ recommending specific amendments; a limited public consultation and commentary by Senator Howard Wetston⁷ featuring Professor Edward Iacobucci’s⁸ reform paper; amplified by the Competition Bureau’s regulatory reform ‘wish list’, submitted to Wetston





Remaining Key Issues and Questions for Further Reforms

Many Canadian practitioners and experts argue that our competition law is largely fit for purpose while identifying some specific retooling to improve its effectiveness — especially speedier resolution of cases.



1) A revision to the purpose clause of the Act

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3) Strengthen Abuse of Dominance provisions

The Act currently recognizes that businesses can gain market share and can legitimately become “big” through the competitive process. However, when a dominant firm takes advantage of its size by engaging in conduct that harms competition, the Act provides for remedies to restore competition to the market. The unique features of data-driven digital markets can mask conduct that may be designed to eliminate competition especially with regard to emerging competitors.

Key questions in this regard include:

- i. Is there a need for special rules or prohibitions for the digital economy (such as a dedicated gatekeeper, self-preferencing, or serial emerging-competitor acquisitions provisions)?
- ii. Does the growing competition oversight of the digital economy in larger jurisdictions create spillover effects that reduce the urgency or need to significantly reform Canada’s competition law?
- iii. Should more efficient, speedier dispute-resolution mechanisms, including less onerous interim injunctions and arbitrations, be made available particularly for fast-moving and dynamic digital markets?
- iv. Could a code of conduct for the digital economy based on a review of business models and understanding of the competitive landscape be adopted to avoid inflexible regulations?



4) Bolster anti -cartel tools

It is widely accepted that cartels, including bid-rigging cartels, have no redeeming features. They are therefore treated as the most egregious offenders under the Act. Despite amendments in 2009 to make cartels *per se* illegal, the Competition Bureau's enforcement record has been poor, owing to a decline in immunity applicants and challenges with the criminal prosecution regime. The one-two punch of historic levels of public procurement and rising inflation makes effective anti-cartel detection, investigation and adjudication more important than ever.

Key questions in this regard include:

- i. Should the Act's criminal anti-cartel track be complemented by civil reviewable provisions as is the case with deceptive marketing practices (eg. could improve enforcement of tacit collusion)?
- ii. Should government procurement authorities be required to produce bidding information on request from the Competition Bureau and to use independent bid certificates in the tendering process?
- iii. Are modifications required to the private action provisions respecting criminal offences to make the Competition Bureau's immunity program more attractive?
- iv. Is it necessary to establish a standal



6) Restructure the institutional design of the Competition Bureau

There is broad international consensus that competition authorities should be independent from the executive branch of government to deter political interference with their law enforcement and advocacy mandate. The Competition Bureau is currently administered by ISED, Canada's Industry department, which is charged with implementing the government's industrial policy. ISED's mission to foster a growing, competitive and knowledge-based Canadian economy often promotes national champions at the expense of competition in conflict with the mandate of the Competition Bureau.

Key questions in this regard include:

- i. Does the Competition Bureau need a stronger voice to advocate for competition (ie. should it be better insulated from the Industry department)?
- ii. Should a Canadian Competition Council or equivalent competitiveness body be formed that could continually review the state of competition in Canada, and make recommendations for future policy reform as necessary?
- iii. Does the Competition Bureau require additional resources, digital expertise and technology or budgetary oversight to improve its effectiveness?²⁰
- iv.



8) Review amendments from the Budget Implementation Act process

There are serious concerns with the proposed amendments to the Competition Act in the BIA which should be deferred and included in the broader consultation so they can be properly studied and refined. Four of the most problematic amendments include: (1) a new, unclear and over-broad criminalization of wage-fixing and no-poach agreements among unaffiliated employers; (2) the massive increase of administrative monetary penalties for abuse of dominance and misleading advertising; and (3) the addition of broad restrictions and vague definitional criteria for abuse of dominance which could inadvertently chill competition; and (4) unclear drip pricing sections.

Key questions in this regard include:

- i. Should the government defer the BIA amendments and include them in the broader consultation for appropriate study and refinement?
- ii. Are there other problematic BIA amendments that need to be refined?
- iii. What specific changes should be made to the BIA amendments?

