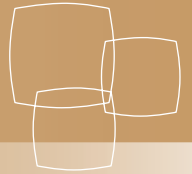




Competition Bureau
Canada

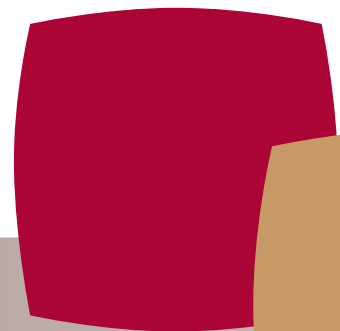
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Guide



A Guide to Amendments to the *Competition Act*

April 22, 2009



Canada 

Important amendments to the *Competition Act* became law on March 12, 2009.

The changes will modernize the *Competition Act* and bring it more closely in line with the competition laws of our country's major trading partners.

The amendments will increase the predictability, efficiency and effectiveness of the enforcement and administration of the *Competition Act* for both business and the Competition Bureau, and better protect Canadians from the harm caused by anti-competitive conduct.

It is important to ensure that consumers and legitimate businesses do not fall prey to illegal activity, and that if they do, they have confidence the law will be enforced effectively and the penalties are tough enough to deter future illegal activity.

This document explains the most important changes to the *Competition Act*, in the areas of deceptive marketing, restitution for victims of false and misleading representations, pricing provisions, collaboration among competitors, merger review, and others.

DECEPTIVE MARKETING

The Competition Bureau promotes truth in advertising in the marketplace by discouraging deceptive business practices and by encouraging the provision of information to allow consumers to make informed choices.

- Administrative monetary penalties have been increased for non-criminal offences.
 - Individuals: maximum \$750,000 for first-time offence and \$1 million for subsequent offences (formerly \$50,000 and \$100,000, respectively).
 - Corporations: maximum \$10 million for first-time offence and \$15 million for subsequent offence (formerly \$100,000 and \$200,000, respectively).
- For criminal offences, the maximum term of imprisonment has been increased to 14 years from 5 years.
- A false or misleading representation is now clearly subject to action under the *Competition Act* even when made to the public outside Canada, or in a non-public setting.

RESTITUTION

This is a new provision in the *Competition Act*.

- The court or Tribunal may now order the person in violation to make restitution to purchasers.
 - The amount of restitution may not exceed the total paid by purchasers.
- The court or Tribunal may issue an injunction to prevent the disposal of property to ensure that there are funds available for restitution to victims.

- Restitution is already available for criminal offences, including criminal false or misleading representations, under the *Criminal Code*.

ABUSE OF DOMINANCE

Abuse of dominance continues to be dealt with under the non-criminal provisions of the *Competition Act*.

- Administrative monetary penalties (AMPs) have been introduced for abuse of dominance: maximum \$10 million for first offence; maximum \$15 million for subsequent offences.
- The airline-specific provisions have been repealed so that all industries are treated equally.

PRICING PROVISIONS

- The former criminal pricing provisions have been repealed; such activities will be addressed under the civil abuse of dominance provisions.
 - The criminal pricing provisions concerning price discrimination, predatory pricing, geographic price discrimination and promotional allowances have been repealed.
 - Pricing practices are now subject to review under a civil provision, but a remedy is only available where evidence of likely substantial anti-competitive effect.
 - The removal of these offences promotes innovative pricing programs and increases certainty for Canadian businesses.

PRICE MAINTENANCE

The price maintenance provisions are designed to provide resellers of products with the freedom to set their own prices and to provide suppliers with the ability to compete through low-pricing policies.

- The former criminal provision has been repealed and replaced with a new non-criminal provision.
 - Similar to the refusal to deal provision, it must be shown that there is an “adverse effect” on competition before the Tribunal can issue an order under the civil price maintenance provision (to prohibit conduct or accept a customer).
 - There is a right of access for private litigants to bring cases for price maintenance to the Competition Tribunal.
 - The decriminalization of the price maintenance provision promotes aggressive pricing with no threat of criminal sanctions.

COMPETITOR COLLABORATION

The amendments create a more effective criminal enforcement regime for the most egregious forms of cartel agreements, while allowing other forms of potentially anti-competitive competitor collaborations to be reviewed under a civil provision.

- True cartel-like behaviour (price-fixing, market allocation, output restriction) is subject to criminal prosecution and is prohibited outright.
 - The maximum fine for conviction is increased to \$25 million from \$10 million, and the maximum term of imprisonment to 14 years from 5 years.
- Other forms of potentially anti-competitive agreements between or among competitors are subject to civil review and assessed to determine if they result in a substantial lessening or prevention of competition.
- These provisions are not in force until March 2010. Until then, parties may apply to the Commissioner for an opinion on the legality of existing or proposed agreements.
- The Bureau will issue draft Guidelines describing the Bureau's proposed approach to assessing agreements among competitors. Following consultation with interested parties, the Guidelines will be issued in final form to provide predictability to business.

MERGER REVIEW

New merger review procedures will allow for a more efficient and effective review of mergers.

- The Bureau may now only challenge a completed merger before the Competition Tribunal up until one year (previously three years) after the transaction has been substantially completed.
- There is a new merger review and information-gathering process:
 - The initial waiting period during which parties may not implement a notifiable merger is 30 days after notification by parties (subject to early termination of the waiting period by the Bureau).
 - If more information is needed, the Commissioner can issue a Supplementary Information Request any time during the initial waiting period.
 - A Supplementary Information Request triggers a second 30-day waiting period, which commences when all information required to be provided in the Supplementary Information Request has been received.
- The "size of transaction" asset/revenue threshold for mandatory merger notification is raised to \$70 million (from \$50 million for most kinds of transaction), and indexed based on changes to Canada's GDP, subject to a different amount to be prescribed by regulations.
- *Draft Revised Merger Review Process Guidelines* describing the Bureau's proposed approach were released for consultation on March 24, 2009. Interested parties are invited to provide comments by May 29, 2009.

BID-RIGGING

- Definition of bid-rigging is amended to explicitly prohibit the withdrawal of bids by agreement, and the maximum term of imprisonment has been increased to 14 years (from 5 years).

OBSTRUCTION AND NON-COMPLIANCE

Certain penalties were increased to promote compliance with the *Competition Act* and to deter conduct that would compromise the effective enforcement of the Act, such as destruction of evidence.