

Cassels on Competition Special Edition - Changes to Canadian Competition Law: Bill C-56 Receives Royal Assent

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A first set of amendments to the Canadian *Competition Act* became law when Bill C-56 (the *Affordable Housing and Groceries Act*) received royal assent on Friday, December 15, 2023. Please see our previous commentary on Bill C-56 [here](#) and [here](#).

The following changes are now in effect:

- **Repeal of the Efficiencies Defence:** The statutory efficiencies defence is no more.* The defence allowed otherwise anticompetitive mergers to proceed if the merging parties could prove that the efficiency gains from their transaction were greater than (or likely to be greater than) and offset the anticompetitive effects of the merger and would not likely have been attained if the transaction were prohibited.
- **New Market Studies Powers:** The Commissioner of Competition (the head of the Competition Bureau) is now empowered to initiate a market study inquiry, either independently or at the direction of the Minister of Industry. Once on inquiry, the Commissioner will be able to apply for court orders compelling companies which are likely to have information that is relevant to the inquiry to produce records and deliver written responses under oath to questions from the Commissioner as well as to make their executives available to attend to be examined under oath by the Commissioner.
- **Increased Penalties for Abuse of Dominance:** The financial penalties (AMP) for abuse of dominance (section 79) have been increased. Previously they were the greater of **\$10M** (or **\$15M** for subsequent order) or three times value of benefit derived from the abusive conduct or, if that amount cannot be determined, 3% of the person's worldwide turnover. Now the maximum AMP is the greater of **\$25M** (or **\$35M** for subsequent order) or three times value of benefit derived from the abusive conduct or, if that amount cannot be determined, 3% of the person's worldwide turnover.
- **Lower Test for Abuse of Dominance:** Previously, a remedial order could only be made under the abuse of dominance provision in section 79 if three elements were established: (a) the person against whom the order is sought is dominant in a market; (b) that person has engaged in a practice of anticompetitive acts; *and* (c) those acts have, are, or will substantially lessen or prevent competition in the relevant market. It will now be easier for the Commissioner and private litigants to obtain an order prohibiting a dominant firm from engaging in anticompetitive conduct by requiring them to establish only *either* (i) dominance and anticompetitive acts *or* (ii) dominance and anticompetitive effects. All three elements still need to be established before other remedies, including an AMP, can be imposed.

- **Excessive and Unfair Selling Prices Can Constitute Abuse of Dominance:** “Directly or indirectly imposing excessive and unfair selling prices” has been added to the non-exhaustive list of anticompetitive acts that can constitute an abuse of dominance.

Bill C-56 also amends the civil agreements provision (section 90.1). Those changes come into effect on **December 16, 2024**.

- **Vertical Agreements May be Prohibited:** Currently, under section 90.1, the Commissioner may seek orders prohibiting agreements or arrangements between actual or potential competitors (only) that prevent or lessen competition substantially. Bill C-56 expands the scope of that provision to apply to *any* agreement or arrangement between and among non-competitors if a “significant purpose of the agreement or arrangement, or any part of it, is to prevent or lessen competition in any market.”

Further amendments to the *Competition Act* are expected in the new year when *An Act to implement certain provisions of the fall economic statement* (Bill C-59) receives royal assent. Please see our commentary on Bill C-59 [here](#). The recent and anticipated amendments to the *Competition Act* represent some of the most significant changes to Canadian competition law in decades. Businesses should review the amendments and update their competition compliance programs accordingly.

* The efficiencies defence remains available for transactions that were notified or substantially completed prior to December 15, 2023

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.