

# **The Competition Act**

## **Background**

The Competition Act (the “Act”) is framework legislation that is vital to the efficient operation of Canadian industry and to ensuring Canada’s competitiveness in the global market. One of the principal purposes of the Act is to ensure that competitive markets are able to operate free of unreasonable restraints. In addition, the Act seeks to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy.

The Commissioner of Competition has exclusive authority to enforce the Act. From time to time, the Commissioner issues guidelines, information bulletins and other policy statements (“Policy Statements”) reflecting her interpretation of the Act and enforcement policies. Policy Statements can improve the transparency of the enforcement process and can be a useful guide to understanding how the Act is applied to business. The Canadian Chamber believes that such an approach is consistent with the transparency initiative endorsed by the Commissioner and will positively serve the interests of all stakeholders.

## **Competition Act Amendments**

Key provisions of the Competition Act were amended in March 2009. Among other things, the amendments:

- re-wrote the Act’s criminal conspiracy offence and created a new civil reviewable practice relating to competitor agreements.
- re-wrote the merger notification regime, making the Competition Act scheme more like the US “second request” process;
- repealed the criminal offences of price discrimination, predatory pricing and price maintenance;
- created a new civil reviewable practice of price maintenance;
- increased the maximum administrative monetary penalties (AMPs) in the many millions of dollars for civil misleading advertising and other deceptive marketing cases, which represented a 100-fold increase from current levels of penalties;
- empowered the Competition Tribunal to order restitution and freeze orders in such cases; and;
- provided for AMPs to be imposed in civil abuse of dominance cases of up to \$10 million for a first order and \$15 million for any second and subsequent orders and;
- repealed provisions of the Act that were specific to the airline industry.

Some of the amendments had been included in recent proposed amendments to the Act that had not been enacted. The Canadian Chamber commented on the previous legislation when it was before the House of Commons and Senate.

However, most of the amendments had not previously been discussed in a legislative context and the Competition Bureau has not consulted on the proposals. And, the Competition Act amendments were introduced as part of the Federal government's 2009 budget bill, so there was no meaningful opportunity for debate or submissions during the legislative process. This was very disappointing.

### **Policy Statements**

In recent years, the Commissioner of Competition has issued numerous Policy Statements. The Commissioner has adopted a practice of issuing Policy Statements in draft form and seeking comments from interested parties. In some instances, meetings are convened to provide an opportunity for discussion.

The Commissioner has demonstrated a willingness to be receptive to comments and make appropriate amendments to the final Policy Statements. The Canadian Chamber often has made submissions on draft Policy Statements and participated in consultative discussions.

### **Recommendations**

That the federal government:

1. Ensure full and open consultation with stakeholders when undertaking any amendments to the Act, to permit meaningful dialogue by all interested stakeholders. Amendments should not be enacted as part of a budget bill.
2. Maintain the Act's general applicability without introducing industry-specific provisions.
3. Direct the Commissioner of Competition to continue to enhance the transparency and predictability of the interpretation and enforcement of the Act through the issuance of Policy Statements, ensuring full and open consultation with stakeholders to permit meaningful dialogue by all interested stakeholders.