

July 9, 2025

***Primer: Modernization of Canada's Competition Framework and Amendments to the Competition Act under Bill C-59***

On June 20, 2025, the final phase of the Bill C-59 ("C-59") reforms to the Competition Act (the "Act") took effect. These reforms complete a multi-year modernization of Canada's antitrust and competition law that began in 2022, establishing a more interventionist framework for merger review, deceptive marketing and private enforcement (the "Amendments"). By redefining the statutory standards for market concentration, eliminating the efficiencies defence, strengthening deceptive marketing oversight and expanding private rights of action, the Amendments mark a fundamental shift in how competition law will apply to transactions and commercial conduct going forward.

**Statutory Presumption of Anti-competitive Conduct**

The Act now presumes that a merger is anti-competitive when it produces a significant increase in market concentration. Concentration is measured by the Herfindahl-Hirschman Index ("HHI"), which sums the squares of each company's market-share percentage and ranges from 0 in a perfectly fragmented market to 10,000 in a pure monopoly. A merger is presumed to prevent or lessen competition substantially if the HHI after the transaction rises by more than 100 and either the resulting HHI exceeds 1,800 or the merging parties together hold more than 30 percent of the market.

However, merging parties may rebut the presumption by presenting evidence that the transaction will not substantially lessen or prevent competition and the Commissioner retains discretion to investigate and challenge mergers that do not meet the thresholds whenever the evidentiary record indicates competitive harm. The Amendments also extend the limitation period for non-notifiable mergers from

one year to three, prohibit closing while an injunction application is before the Competition Tribunal (the "**Tribunal**") and confirm that the Tribunal may weigh competitive effects in labor markets and the likelihood of post-merger coordination among rivals.

**Elimination of the Efficiencies Defence**

The long-standing statutory defence for mergers that generate offsetting efficiencies has been repealed. Under the former section 96, mergers that resulted in a substantial lessening or a prevention of competition could nonetheless be permitted if the efficiency gains were greater than, and offset, the anti-competitive effects. The Tribunal will now assess mergers solely on their competitive impact, without regard to efficiencies, aligning Canada's merger control framework with international norms.

**Expanded Private Access to the Competition Tribunal**

Effective June 20, 2025, private parties will gain the ability to bring applications under an expanded range of civil provisions. In addition to the existing rights of private access for matters such as refusal to deal, exclusive dealing, tied selling, market restriction and abuse of dominance, applicants will now be permitted to initiate proceedings in respect of deceptive marketing practices and agreements between competitors that are likely to substantially prevent or lessen competition.

The Amendments also broaden the statutory thresholds for obtaining leave to bring a proceeding. Under the previous framework, private applicants were generally required to demonstrate that the disputed conduct directly and substantially affected their entire business.

Under the revised approach, leave may be granted where the conduct directly and substantially affects any part of the applicant's business or where the Tribunal is satisfied that it is in the public interest for the application to proceed.

For the first time, the Tribunal will have the authority to order monetary payments in cases initiated under civil competition provisions. Where a contravention is established, the Tribunal may order the respondent to make a payment not exceeding the benefit derived from the conduct, to be distributed among the applicant and any other person affected. This remedy was previously unavailable in private proceedings and is expected to increase the viability of private enforcement as a complement to the Competition Bureau's (the "**Bureau**") public mandate.

## **Civil Enforcement of Consent Agreements**

The Amendments establish a civil enforcement mechanism allowing the Tribunal to impose administrative monetary penalties where a party fails to comply with terms of a registered consent agreement under the Act. Previously, the Commissioner could only seek enforcement through standard contempt proceedings. Under the amended provisions, on application by the Commissioner, the Tribunal may order a party to pay an administrative penalty if it fails, without good and sufficient cause, to comply with its obligations under the consent agreement. The penalty may be supplemented by additional orders to secure compliance.

## **Protections Against Reprisals**

The Amendments introduce an express prohibition on reprisals taken against any person who communicated with or cooperates with the Commissioner under the Act. Reprisals are broadly defined to include acts intended to penalize, punish, discipline, harass or otherwise disadvantage a person because of such cooperation or communication. A court may grant prohibition orders or impose administrative monetary penalties for contraventions, with maximum penalties of up to \$750,000 for individuals and \$10 million for corporations. These protections are intended to preserve the integrity of enforcement processes and encourage

whistleblowers, complainants and other parties to assist the Bureau without fear of retaliation.

## **Certification of Environmental Collaborations**

A new framework allows parties to an agreement or arrangement that relates to environmental protection to apply for a certificate from the Commissioner confirming that the agreement is not subject to challenge under the criminal conspiracy, bid-rigging or civil collaboration provisions under the Act. The Commissioner may issue a certificate where satisfied that the purpose of the agreement is to protect or restore the environment and that the agreement is unlikely to prevent or lessen competition substantially. Once issued, the certificate provides a safe harbour from challenge under those specific provisions, although other civil reviewable practices (for example, abuse of dominance) could still apply.

## **Limitations on Cost Awards**

The Amendments also constrain the circumstances in which the Tribunal may award costs against the Commissioner. The Tribunal is now prohibited from awarding costs against the Commissioner except where it is satisfied that denying costs would imperil confidence in the administration of justice or would cause substantial harm to a party's ability to carry on business. This reform is aimed at mitigating the effect that potential adverse cost awards could have on public interest enforcement actions, thereby preserving the Commissioner's capacity to pursue robust enforcement of the Act.

## **Implications for Market Participants**

The Amendments introduced through C-59 enhance the Bureau's enforcement framework and expand the potential remedies available to private parties. Businesses may wish to take note of the new provisions addressing environmental claims and the additional attention given to mergers that could affect market concentration. The removal of the efficiencies defence represents a notable shift in the regulatory landscape and could influence how transactions are assessed in concentrated sectors.

Organizations may consider reviewing their compliance measures in light of the broader range

of conduct now subject to review and the increased scope for private proceedings before the Tribunal. Although interpretations of the updated provisions will develop over time, the

revised legislation signals a shift toward a more active and economically focused competition regime.

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