

NOVEMBER 23, 2023

Great FESpectations: Further Changes to Canadian Competition Law Ahead

Authors: [Mark Katz](#) and [Umang Khandelwal](#)

Canada's Minister of Finance, Chrystia Freeland, delivered the federal government's [Fall Economic Statement](#) (FES) on November 21, 2023, in which she [announced](#) the government's intention to introduce "generational changes to competition law in Canada," which will "help stabilize prices and provide more choice for Canadians." The FES states that the proposed changes will "help bring Canada into alignment with international best practices to ensure that our marketplaces promote fairness, affordability, and innovation."

According to the FES, the government will propose amendments to the *Competition Act* to

- "Strengthen the tools and powers available to the Competition Bureau to enable it to crack down on abuses of dominance by bigger companies, such as predatory pricing;
- Further modernize merger reviews, including by empowering the Competition Bureau to better detect and address "killer acquisitions" and other anticompetitive mergers;
- Enhance protections for consumers, workers, and the environment, including by prohibiting misleading "greenwashing" claims and improving the focus on worker impacts in competition analysis;
- Empower the Commissioner of Competition to review a wider selection of anticompetitive collaborations and seek meaningful remedies to ensure that harmful conduct is not repeated; and
- Broaden the reach of the law by enabling more private parties to bring cases before the Competition Tribunal and receive payment if they are successful."

Another amendment to the *Competition Act* proposed in the FES includes preventing manufacturers from refusing, in an anticompetitive manner, to provide the means to repair devices and products ("right to repair"). The FES also proposes introducing further reforms in the coming months to target unfair or excessive "junk fees" imposed on consumers, particularly in the air transport, telecom and banking sectors. These changes are in addition to the amendments to the *Copyright Act* passed earlier this year by Bill C-244 to grant consumers or business users a "right to repair" the products that they have purchased, and the amendments to the *Competition Act* enacted in 2022, which explicitly amended the misleading representation provisions to refer to "drip pricing" as a false or misleading representation.

The FES also proposes amendments to the *Competition Tribunal Act* to address legal cost awards following Tribunal proceedings. This issue attracted greater attention after the [recent Tribunal decision](#) in which the Competition Bureau was [ordered to pay](#) C\$13 million in legal costs to the respondents in the Rogers/Shaw merger litigation.

The proposed legislative changes set out in the FES are in addition to those already under consideration in Bill C-56 (currently in second reading in the House of Commons) noted in our [bulletin](#) of September 28, 2023. Bill C-56 proposes introducing a formal "market study" power for the Competition Bureau, repealing the efficiencies defence for merger reviews, and authorizing the Competition Bureau to seek civil orders against collaborations among non-competitors that lessen or prevent competition. Following an agreement between the Liberals and the NDP last week, it is expected that the scope of the bill will be expanded by the Standing Committee on Finance to include changes to the test for abuse of dominance and enhanced penalties for such conduct, as well as broadening certain aspects of the Bureau's authority with respect to the proposed new market studies power.

The FES proposals are stated in broad terms only. Accordingly, businesses will have to await the government's introduction of specific legislative amendments to gauge the full impact of the planned changes. It is also unclear whether and to what extent the new proposals contained in the FES may be included in a further revised version of Bill C-56 currently before Parliament or left to a future round of amendments pursuant to a separate process. That said, it is clear that the Canadian government is intent on following through on its goal to revamp Canadian competition law by enhancing the Competition Bureau's enforcement authority in significant ways.

Davies' Competition Law group will continue to monitor and report on major developments as they occur.

Key Contacts: [John Bodrug](#), [Mark Katz](#), [Anita Banicevic](#) and [Charles Tingley](#)

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