

## COMPETITION LAW · LEGISLATIVE REFORM

# Canada's Competition Act: Three Years of Transformative Reform

*A practitioner's guide to the 2022–2024 amendments for Canadian and American counsel*

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## Introduction

Between June 2022 and June 2024, Parliament enacted three successive waves of amendments to Canada's Competition Act, representing the most sweeping overhaul of Canadian competition law since the Act replaced the Combines Investigation Act in 1986. For American counsel advising clients with Canadian operations, or Canadian counsel managing cross-border transactions, understanding the cumulative effect of these changes is now essential.

This article summarizes the key reforms introduced by Bills C-19, C-56, and C-59, and identifies the issues of greatest practical significance for businesses operating in Canada.

## The Three Waves of Reform

### Bill C-19 (June 2022)

The first wave addressed several discrete but significant issues. Most importantly for practitioners:

- Drip pricing was expressly deemed a false or misleading representation under both civil and criminal provisions. Businesses that advertise a price that is not attainable due to mandatory fixed charges now face civil and criminal exposure.
- Private access to the Competition Tribunal was extended to the abuse of dominance provisions for the first time, allowing parties directly and substantially affected by dominance conduct to seek leave to bring an application.
- The definition of 'anti-competitive act' under the abuse of dominance framework was expanded to include acts intended to have an adverse effect on competition generally, not only on a competitor.
- New per se criminal prohibitions were introduced for wage-fixing and no-poach agreements between unaffiliated employers, regardless of whether those employers compete in the same product markets. These provisions came into force on June 23, 2023 after a one-year transitional period, and carry a maximum penalty of 14 years imprisonment or a fine at the discretion of the court.

### Bill C-56 (December 2023)

The second wave, originally introduced in response to concerns about grocery pricing, made structural changes to several key provisions:

- **Abuse of dominance, restructured test:** The three-part test under section 79 was modified so that only two of the three original elements (substantial market power, plus either a practice of anti-competitive acts or a substantial lessening or prevention of competition) must be established to obtain a prohibition order. However, all three elements remain required to obtain administrative monetary penalties or other remedies.
- **Market studies:** A new mechanism was introduced allowing the Commissioner of Competition or the Minister to initiate formal market studies, with compulsory production powers.
- **Civil collaboration (section 90.1):** The civil competitor collaboration provisions were expanded to cover agreements between non-competitors where a significant purpose of the collaboration is to prevent or lessen competition. This amendment came into force on December 15, 2024.

The third wave was the most far-reaching and touched virtually every corner of the Act:

- **Merger review, structural presumptions:** Rebuttable presumptions of anticompetitiveness were introduced for mergers that either (a) combine firms with more than 30% market share or (b) result in a post-merger HHI exceeding 1,800 with an increase of more than 100. These thresholds align with the updated U.S. Merger Guidelines issued in 2023.
- **Merger review, remedial standard:** The Act now empowers the Tribunal to make orders 'to preserve the level of competition' that would have prevailed but for the merger, a standard broader than the prior restoration of pre-merger conditions.
- **Private enforcement, expanded access:** Effective June 20, 2025, private parties may seek leave to bring applications under the abuse of dominance, civil collaboration, refusal to deal, exclusive dealing, tied selling, and market restriction provisions. Leave may now be granted where the applicant's business is substantially affected in whole or in part, or where the Tribunal is satisfied that granting leave is in the public interest.
- **Administrative monetary penalties, substantially increased:** AMPs under the abuse of dominance and civil collaboration provisions were raised to the greater of (a) \$25 million (\$35 million for subsequent orders) and (b) three times the value of the benefit derived, or if that cannot be reasonably determined, 3% of worldwide gross revenues.
- **Efficiencies defence, repealed:** The efficiencies defence under section 96, which had allowed mergers to proceed despite anticompetitive effects if efficiency gains were sufficient, was repealed.
- **Ordinary selling price, burden shifted:** The burden of establishing that ordinary selling price claims meet the statutory criteria was shifted from the Commissioner to the seller.
- **Greenwashing:** New provisions were introduced requiring that environmental claims be based on adequate and proper testing, with exposure to AMPs for non-compliant representations.

## Implications for Practitioners

The cumulative impact of the 2022–2024 reforms is significant. Key areas of practical concern include:

- **Mergers:** The introduction of structural presumptions and the repeal of the efficiencies defence require careful upfront analysis in any transaction with Canadian competition law dimensions.
- **Vertical agreements:** The expansion of section 90.1 to agreements between non-competitors, and the significantly higher AMP exposure across pricing and distribution provisions, warrants review of standard supply, distribution, and licensing agreements.
- **Private enforcement:** The entry into force of the expanded private access regime in June 2025 opens the door to competitor and consumer challenges before the Competition Tribunal. For dominant firms, this adds a new dimension to competition risk management.
- **Advertising:** Expanded deceptive marketing provisions and the new burden shift on ordinary selling price claims require advertisers to review promotional practices and ensure substantiation files are current.

## REFERENCES

*Competition Act, RSC 1985, c C-34, as amended by Bill C-19 (SC 2022, c 10), Bill C-56 (SC 2023, c 28), and Bill C-59 (SC 2024, c 15).*

*Commissioner of Competition v Google Canada Corporation and Google LLC, 2026 Comp Trib 10 (constitutional challenge to AMPs dismissed).*

*Competition Bureau, Guide to the December 2023 amendments to the Competition Act (2023).*

*Competition Bureau, Preliminary Guidance on Mergers and Restrictive Trade Practices Provisions (November 2024).*

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