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# Regulatory, Not Penal: The Competition Tribunal Upholds Revenue-Based AMPs

*The constitutional challenge to Canada's new AMP regime and what the Google decision means for competition enforcement*

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## Introduction

The 2022–2024 amendments to Canada's Competition Act dramatically increased the potential administrative monetary penalties (AMPs) available in civil enforcement proceedings. Under the current regime, the Competition Tribunal may impose AMPs for abuse of dominance of up to the greater of (a) \$25 million (\$35 million for subsequent orders) and (b) three times the value of the benefit derived from the anti-competitive practice, or - if that amount cannot be reasonably determined - 3% of the respondent's annual worldwide gross revenues.

For large multinational companies, 3% of worldwide revenues can be a staggering figure. Google Canada Corporation and Google LLC raised precisely this concern in the context of the Competition Bureau's abuse of dominance application against Google in the online advertising sector, arguing that AMPs of that magnitude constitute a 'true penal consequence' attracting the protections of section 11 of the Canadian Charter of Rights and Freedoms.

On March 3, 2026, Justice Andrew D. Little of the Competition Tribunal dismissed Google's constitutional challenge in *Commissioner of Competition v. Google Canada Corporation and Google LLC*, 2026 Comp Trib 10. The decision is currently under appeal to the Federal Court of Appeal.

## Background: The Competition Bureau's Application

In November 2024, the Commissioner of Competition filed an application against Google alleging abuse of dominance in the supply of online advertising technology services in Canada, under section 79 of the Competition Act. The Bureau alleged that Google abused its dominant position across multiple levels of the ad tech supply chain - including ad buying tools, ad servers, and ad exchanges - through a series of anti-competitive acts dating back to 2008.

Among the remedies sought, the Commissioner sought an AMP equal to three times the value of the benefit derived from Google's anti-competitive practices or, if that amount cannot be reasonably determined, 3% of Google's worldwide gross revenues. Based on Google's 2024 global revenues, the latter measure would amount to approximately C\$10.5 to \$14 billion.

## Google's Constitutional Challenge

In May 2025, Google brought a motion challenging the constitutionality of paragraph 79(3.1)(b) of the Competition Act, the provision authorizing AMPs measured at 3% of worldwide gross revenues. Google argued that:

- An AMP of such magnitude would constitute a 'true penal consequence' for the purposes of section 11 of the Charter, which protects persons 'charged with an offence' from self-incrimination and entitles them to the presumption of innocence, trial by jury, and other criminal procedural protections.
- Characterizing the proceeding as civil and regulatory did not change its constitutional character if the practical effect was to expose the respondent to financial sanctions that were punitive in nature.

## The Tribunal's Analysis

The Tribunal applied the framework from *Guindon v. Canada*, 2015 SCC 41, as recently affirmed in *John Howard Society of Saskatchewan v. Saskatchewan (Attorney General)*, 2025 SCC 6, to assess whether the AMPs under section 79(3.1)(b) constitute 'true penal consequences.' The key findings were:

- **Magnitude alone is insufficient:** Even very large AMPs can serve a regulatory compliance purpose when directed at well-resourced corporations operating in large markets.
- **Purpose is remedial and prospective:** The AMP provisions are directed at promoting compliance and deterring future anti-competitive conduct, rather than punishing past wrongdoing. The statutory factors governing the Tribunal's discretion reinforce this regulatory character.
- **Statutory safeguards exist:** The Tribunal's discretion is constrained by mandatory statutory factors, there is no minimum penalty, and the maximum is a ceiling rather than a presumptive figure.
- **The scheme does not authorize true penal consequences:** Applying the *Guindon* framework, the Tribunal held that the AMP regime under section 79(3.1)(b) is a regulatory scheme, not a penal one.

## Significance and Next Steps

The decision is significant for several reasons:

- It confirms, at first instance, that the dramatically increased AMPs introduced by the 2022–2024 amendments are constitutional. The Tribunal's reasoning would appear to apply equally to AMPs available under sections 90.1 and the deceptive marketing practices provisions.
- It expands the enforcement toolkit for the Commissioner and, since June 20, 2025, for private applicants in any proceeding involving a large, well-resourced respondent.
- It raises important strategic questions for dominant firms. A respondent that calculates worst-case AMP exposure as a multiple of its worldwide revenues must factor that exposure into settlement and litigation decisions.
- Google has filed a notice of appeal with the Federal Court of Appeal. If reversed, the ability to impose revenue-based AMPs on large multinationals would be significantly curtailed pending further judicial clarification.

American counsel advising clients with Canadian operations should be aware that the AMP exposure for sustained anti-competitive conduct in Canada is now meaningfully comparable to the penalty exposure faced in major U.S. antitrust proceedings, a development that reflects Parliament's deliberate intention to align Canadian enforcement norms with international best practices.

## REFERENCES

*Commissioner of Competition v. Google Canada Corporation and Google LLC*, 2026 Comp Trib 10, Justice Andrew D. Little (March 3, 2026).

*Guindon v. Canada*, 2015 SCC 41, [2015] 3 SCR 3.

*John Howard Society of Saskatchewan v. Saskatchewan (Attorney General)*, 2025 SCC 6.

*Competition Act*, RSC 1985, c C-34, ss. 79, 79(3.1)(b), as amended by Bill C-59 (SC 2024, c 15).

*Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*, s. 11.

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