

First round of amendments to the Competition Act now in effect

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On June 23, 2022, amendments to Canada's *Competition Act* (amendments) received Royal Assent as part of [Bill C-19](#) [PDF] under the *Budget Implementation Act, 2022*. The amendments came into force immediately upon receipt of Royal Assent, except for the amendments to the criminal conspiracy provisions, which come into effect on June 23, 2023.

The Competition Bureau has released [a guide to the 2022 amendments](#), which shares the enforcer's perspective on the most important changes. The Bureau has also indicated it will host public online information sessions in the coming weeks to further inform stakeholders about the amendments and will be reviewing and updating the Bureau's enforcement guidance.

The amendments were enacted as initially proposed in Bill C-19 on April 28, 2022. Refer to our earlier [Osler Update](#) for a detailed overview of the amendments, with the key changes summarized below:

- **Wage-fixing and no-poach agreements.** Entry by unaffiliated employers into a wage-fixing agreement or a no-poach agreement will, effective June 23, 2023, be a criminal offence, though the regulated conduct and ancillary restraints defences will be available for such agreements.
- **Drip pricing.** The practice of drip pricing is expressly described as misleading under the criminal and civil false or misleading representations provisions.
- **Private right of access for abuse of dominance allegations.** Private parties may now apply for leave to bring an application under the abuse of dominance provisions and the Competition Tribunal has the ability to award administrative monetary penalties in private actions. Private parties may also seek interim relief in abuse of dominance cases.
- **Expanded information-gathering powers.** The Commissioner now has expanded information-gathering tools when conducting inquiries.
- **Increased fines and penalties.** Fines for the violation of the criminal conspiracy provisions will, as of June 23, 2023, be uncapped. Corporate penalties for deceptive marketing practices and abuse of dominance will now be determined as the greater of: (i) \$10 million (\$15 million for subsequent orders) and (ii) three times the value of the benefit derived or, if this amount cannot be calculated, three percent of annual worldwide gross revenues.
- **Expanded definition of anti-competitive act.** An "anti-competitive act" is now any act

“intended to have a predatory, exclusionary or disciplinary negative effect on a competitor, or to have an adverse effect on competition”. The amendments expand the current non-exhaustive list of potential anti-competitive acts in section 78 to include “a selective or discriminatory response to an actual or potential competitor for the purpose of impeding or preventing the competitor’s entry into, or expansion in, a market or eliminating the competitor from a market”.

- **Expanded factors to be considered in assessing competitive effects:** The amendments expand the factors to be considered by the Competition Tribunal when determining whether, in the context of merger reviews, alleged abuses of dominance and civil competitor agreements, there is a substantial lessening or prevention of competition to include: network effects, entrenchment of a leading incumbent’s market position, effects on quality, choice or consumer privacy, and a change to innovation in the relevant market. Additional factors have also been added to better reflect competitive dynamics in the digital economy.

- **Anti-avoidance in merger review.** The amendments introduce an anti-avoidance provision to the notifiable transactions provisions of the *Competition Act*.

A second stage of amendments is expected as part of the government’s consideration of a comprehensive reform of the *Competition Act*. For questions regarding the amendments to the *Competition Act* or any inquiries relating to Canada’s competition law regime, please contact the members of Osler’s [Competition and Foreign Investment Group](#).