Navigating changes to Canada's competition & foreign investment laws amid economic uncertainty

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Canada's legislative framework governing competition/antitrust, foreign investment, and consumer protection has undergone a seismic shift between 2022 and 2025, with further changes to come, reflecting a broader push to strengthen enforcement, protect national interests, and adapt to modern economic challenges.The impact of these changes is now subject to the additional challenges facing the Canadian economy arising from the unprecedented approach to trade conflict with the U.S. – and the response of the Government of Canada to those measures.

Changes to the *Competition Act* (CA), which governs how businesses compete in Canada both from an antitrust and consumer protection perspective, have introduced sweeping reforms to merger reviews, abuse of dominance rules, deceptive marketing provisions, and other agreements affecting competition and labour markets. Simultaneously, the *Investment Canada Act* (ICA), Canada's foreign direct investment regulation scheme, has been revised and is pending further significant changes to tighten oversight of foreign investments, particularly in sectors critical to national security and economic sovereignty.

These amendments are not mere technical updates—they signal a fundamental reorientation of Canada's regulatory approach. Businesses now face heightened scrutiny, stricter compliance requirements, and increased risks of enforcement, whether through public action by the Canadian Competition Bureau (CCB) or private litigation enabled by expanded access to the Competition Tribunal (Tribunal), the specialized administrative tribunal that adjudicates contested mergers, reviewable practices such as abuse of dominance, and deceptive marketing practices. For foreign investors, the ICA changes impose new pre-closing obligations and enhanced ministerial powers, reflecting growing geopolitical tensions and concerns over sensitive industries like technology and critical minerals. In addition, the trade conflict with the U.S. has resulted in an acknowledgment by the Government of Canada that the national security test contained in the ICA may be applied to accommodate concerns over economic sovereignty.

The following outlines the highlights of these legislative changes and their practical implications. More details are available in our articles that are linked throughout.

Part I - *Competition Act* amendments: A new era of enforcement

Merger reviews: Structural presumptions, labour focus, and the end of efficiencies

- **Structural presumptions:** Historically, the merger provisions of the CA did not contain structural presumptions. This is no longer the case, as the changes have added *structural presumptions* to the substantive merger test: a merger is presumed to be anti-competitive if it results in a combined market share exceeding 30 per cent or if the post-merger concentration index (i.e., the Herfindahl-Hirschman Index) rises by more than 100 points and exceeds 1,800. These thresholds, reflecting the approach in the 2023 Merger Guidelines released by the Department of Justice and the Federal Trade Commission, shift the burden to merging parties to rebut the presumption with evidence that the merger does not harm competition. Critically, unlike the U.S. Guidelines, which must be adopted by courts in any given case, in Canada these presumptions are enshrined in the law itself. The Commissioner of Competition also retains discretion to challenge deals below these thresholds if qualitative factors—like network effects and barriers to entry—suggest harm.
- **Repeal of the efficiencies defence:** Canada once was a global outlier in adopting efficiencies as an outright defence to an anti-competitive merger. Though historically the defence was rarely deployed, with a handful of notable exceptions, it has now been repealed. The current approach under the CA is that efficiencies may still be relevant, but only as a factor in assessing competitive effects.
- **Labour market protections:** Substantial harm to competition in labour markets has been expressly added to the Act as a factor to be evaluated in determining whether a merger harms competition. Therefore, the Tribunal could impose remedies on a deal that consolidates employers in a sector, leading to lower wages, reduced benefits, or fewer job opportunities. For instance, a merger between two major retailers in a small town might now be scrutinized not just for price impacts but for its effect on local employment conditions—a sign of Canada's competition policy's expanding social lens.

These changes potentially make merger reviews in Canada more challenging, particularly for strategic buyers consolidating firms with even relatively low market shares or deals affecting workers, reflecting a more interventionist stance aligned with global trends.

Abuse of dominance: A more expansive approach to unilateral conduct

Dominant firms now potentially face increased exposure under the amended abuse of dominance provisions as the substantive test has been expanded and sanctions increased (and now potentially include private actions for recovery).

- **Two-tiered test:** The old test required proof of three elements for any remedy: dominance (e.g., a high market share), anti-competitive acts (*e.g.*, predatory pricing), and market impact (e.g., higher prices or reduced innovation). Now, the

Tribunal can issue a prohibition order if dominance is proven along with *either* a practice of anti-competitive acts *or* conduct that has had, is having, or is likely to have the effect of substantially lessening or preventing competition. More severe remedies, like administrative monetary penalties (AMPs) or divestitures, are available where all three elements are proven. AMPs are significant: up to the greater of $25 million for a first offence (C$35 million for repeat offences), and three times the benefit derived from the conduct, or, if that amount cannot be reasonably determined, 3 per cent of an organization's annual worldwide gross revenues.

- **Excessive pricing as an *Anti-Competitive Act*:** The CA now explicitly includes "excessive and unfair selling prices" as an anti-competitive act. This does not mean high prices alone are problematic under the dominance provisions, but prices that exclude competitors, exploit consumers, or lack economic justification may draw scrutiny. The CCB has signaled restraint, focusing on cases with clear competitive harm (*e.g.*, predatory pricing to bankrupt rivals), but the provision opens the door to future enforcement as market dynamics evolve.

This dual-track approach gives the CCB flexibility: quick prohibition orders to stop harm, and heavier penalties for egregious cases, all while keeping dominant firms on notice.

Anti-competitive agreements: Heightened scrutiny of horizontal and vertical agreements

Section 90.1 of the CA allows the Tribunal to issue a remedial order with respect to civil (non-criminal) agreements that harm competition. The provision – which originally was limited to agreements between competitors, has been expanded significantly to include a wider variety of potentially anti-competitive agreements.

- **Vertical agreements included:** Once limited to agreements between competitors (*e.g.*, price-fixing among retailers), Section 90.1 now covers *any agreement*—including vertical ones between suppliers and customers—where a "significant purpose" is to lessen competition. This shift was partly spurred by concerns over real estate deals, like exclusivity clauses between landlords and anchor tenants that lock out rival stores. For example, a supplier barring a retailer from stocking competitors' goods could now face a Tribunal challenge, even if the parties aren't direct rivals.
- **Remedies and risks:** If found to substantially lessen competition, such agreements can trigger AMPs or, starting June 20, 2025, monetary awards for private litigants. Businesses must now scrutinize a broader range of contracts, as even non-competitive relationships could attract litigation risk.

Private enforcement: Get ready for more competition litigation in Canada

Private litigants—businesses or individuals harmed by anti-competitive conduct—have gained unprecedented power to seek redress.

- **Expanded scope:** Currently, private parties can challenge refusal to deal, price maintenance, tied selling, and abuse of dominance. From June 20, 2025, this extends to deceptive marketing and civil agreements under Section 90.1. A

retailer denied supply by a dominant wholesaler, or a consumer misled by greenwashing, could soon take their case directly to the Tribunal.
- **Easier access:** The leave test has softened: applicants need only show they're "directly and substantially affected" in all or part of their business or that the case serves the public interest. This lowers the bar for small businesses or advocacy groups to step forward.
- **Monetary relief:** Successful litigants can win payments up to the value of the benefit derived from the conduct.

This shift decentralizes enforcement, reducing reliance on the CCB and potentially reshaping competition disputes into a more litigious arena.

Labour market offences: Criminalizing wage-fixing and no-poach deals

The 2022 amendments took a bold step by criminalizing certain labour market agreements.

- **New criminal offence:** Unaffiliated employers who agree to fix wages (*e.g.*, set salaries) or not poach each other's workers now face criminal liability—up to 14 years in prison or discretionary fines.
- **Civil recourse:** Beyond prosecution, private parties can sue for damages, including via class actions, amplifying the financial risk for offenders.

This reflects a global push to treat labour market collusion as seriously as cartel enforcement, prioritizing worker welfare in competition policy.

Deceptive marketing: Targeting drip pricing and greenwashing

Consumer protection under the CA has sharpened its focus on two pervasive issues.

- **Drip pricing (Junk fees):** Drip pricing—advertising a low base price, then adding mandatory fees later in the process—is now explicitly banned under both civil and criminal tracks. Only government taxes or levies **imposed on a purchaser** of a product can be excluded from the headline price.
- **Greenwashing:** Environmental claims must now be substantiated: product claims (*e.g.*, "eco-friendly packaging") require "adequate and proper testing," while business-wide claims (e.g., "carbon-neutral operations") need an "internationally recognized methodology." The burden rests on advertisers to prove their claims, not on the CCB to disprove them.

Part II - *Investment Canada Act* amendments: Canada expands scrutiny of foreign investment

Canada was an early mover in Foreign Direct Investment (FDI) regulation with the creation of the ICA in the 1980s. The ICA allows the Canadian government to scrutinize foreign acquisitions under a national security test and/or an economic "net benefit" test. In recent years, the national security test has emerged as the key FDI screen – and the recent changes enhance Canada's ability to screen and potentially block investments that could be injurious not only to national security but now, economic security, as

announced by the government with clear but unstated reference to the Trump administration's ongoing trade actions. The recent 2024 ICA amendments, which received royal assent on March 22, 2024 and partially became effective on September 3, 2024, represent a major overhaul, driven by concerns over foreign influence in sensitive sectors like critical minerals, advanced technology, and cultural industries. Below, we explore these changes in detail.

New pre-closing filing requirements: Early scrutiny for sensitive sectors

- Starting at a date to be determined by the government (expected later in 2025), foreign investors will be required to file pre-closing notifications for investments of *any size* in "prescribed" sensitive sectors—*e.g.*, critical minerals (such as lithium for batteries), advanced technology (such as AI or semiconductors), or cultural assets (such as media)—if the investment grants access to material non-public information (*e.g.*, proprietary data) or assets, or the right to appoint directors or senior management. Previously, filings were triggered mainly by monetary thresholds (*e.g.*, $2.079 billion in 2025), leaving smaller but strategically significant deals under the radar.
- This shift targets minority investments that could quietly transfer influence or knowledge to foreign entities. The goal is pre-emptive risk assessment, especially amid fears of state-backed investors from adversarial nations.

Investors must plan earlier, as filings delay closing until clearance is granted. Uncertainty persists until regulations define "prescribed sectors," but businesses in technology, mining, or defence should assume they're in scope.

Stronger penalties: Enforcing compliance

- Failing to submit a required pre-closing filing will soon (expected in 2025) be subject to a penalty of up to $500,000. General non-compliance fines (*e.g.*, ignoring review conditions) have jumped from $10,000 to $25,000 per day.

These penalties require careful adherence to the new pre-closing filing requirements, since a missed filing for a small acquisition could result in fines that dwarf the deal's value.

The CA amendments arm the CCB and private litigants with tools to tackle anti-competitive conduct—from mergers to labour collusion—while the ICA changes reflect a strategic pivot toward protecting national interests in an uncertain world.

For practitioners and executives, the message is clear: understand the rules, assess risks early, and engage experts to navigate this complex terrain.

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