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LEGISLATIVE SUMMARY



Bill C-49: An Act to amend the Competition Act

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-49: AN ACT TO AMEND THE COMPETITION ACT

1 BACKGROUND

Bill C-49: An Act to amend the Competition Act (short title: Price Transparency Act)¹ was introduced and given first reading in the House of Commons on 9 December 2014. Fundamentally, the bill aims to end geographic price discrimination, which, according to the government, is one of the key contributors to the Canada–U.S. price gap for consumer goods.²

The bill gives the Commissioner of Competition the authority to investigate alleged cases of price discrimination between the two countries. The Commissioner's findings, which are to be publicly reported, must include the apparent reasons for price differences and shed light on any unjustified differences.

1.1 STUDY OF THE STANDING SENATE COMMITTEE ON NATIONAL FINANCE

In 2013, the Standing Senate Committee on National Finance studied the consumer goods price gap between Canada and the United States. The committee concluded that the contributors to price differences are complex and varied.³ It noted, however, that the segmentation of the Canadian and American markets allows manufacturers to sell their products at different prices in the two countries.⁴ The report on its study contains three recommendations⁵ that seek to reduce the legislative barriers to competition in Canada and, over time, to narrow the price discrepancies for products between Canada and the United States. They are:

- reduce tariffs;
- harmonize Canadian and American safety standards; and
- increase the *de minimis* threshold for low-value shipments in Canada.⁶

In 2013, following the release of the committee's report, the federal government eliminated tariffs on baby clothing and some sports and athletic equipment. The purpose of this initiative was to see whether wholesalers, distributors and retailers would pass the savings on to consumers, thereby reducing the gap between Canadian and American prices on these goods.⁷ Moreover, the federal government continues to participate in the work of the Canada–United States Regulatory Cooperation Council to align the two countries' regulations.⁸

2 DESCRIPTION AND ANALYSIS

2.1 INQUIRIES REGARDING SELLING PRICES

The main clauses of the bill give the Commissioner of Competition the authority to investigate alleged cases of price discrimination between Canada and the United States. Clause 3 adds section 10(1.1) to the *Competition Act*⁹ to give the Commission of Competition the discretion to make an inquiry with a view to determining the facts regarding the selling price of a product or class of products in Canada. The inquiry can occur if the Commissioner has reason to believe that the Canadian selling price is, or was, higher than the American selling price of that product or class of products, or a similar product or class of products.

Clause 4 amends section 11 to give the Commissioner the authority, when an inquiry is being made under section 10, to compel a person or a person's affiliate – whether located in or outside Canada – to provide documents or a written return related to the affiliate that is considered relevant to the inquiry. Clause 4 also amends section 11 to give the Commissioner the authority, when an inquiry is being made under section 10, to compel a person located outside Canada to attend an examination. In exercising these authorities, the Commissioner must first obtain the approval of a superior or county court judge. A consequential amendment is made to section 11(3) of the Act.

Clause 5 adds section 23.1 to require the Commissioner to prepare a written report setting out his or her conclusions with respect to the inquiry, and to make the report accessible to the public. The report should be completed within one year of receiving sufficient information for the inquiry.

2.2 TERMS AND DEFINITIONS

2.2.1 “ENTITY”

Clause 2 amends section 2(1) of the Act by adding a definition of the term “entity.” According to the definition, the term includes a corporation, partnership, sole proprietorship, trust or other unincorporated organization that is capable of conducting business. As described in sections 2.2.2 and 2.2.3 of this Legislative Summary, consequential amendments are made to the Act.

2.2.2 NOTIFIABLE TRANSACTIONS REGARDING A PROPOSED ACQUISITION, AMALGAMATION OR COMBINATION

Many of the adjustments made by Bill C-49 to terms used in the Act appear in Part IX (sections 108 to 124), which deals with notifiable transactions. The provisions related to these transactions require that parties notify the Competition Bureau of certain transactions when they are of a specified type, exceed certain thresholds and are not subject to any exemptions.

Clause 11 amends section 108(1) of the Act, which deals with definitions that apply in Part IX, to amend the definition of the term “person” for the purposes of the notifiable transactions regime for proposed acquisitions, amalgamations and combinations.¹⁰ The term is changed to include an entity, liquidator of the succession and administrator of the property of others and to exclude a trustee responsible exclusively for preserving and transferring the property of a person.

As well, clause 11 amends section 108(1) to add the definition of the term “equity interest.” In the case of a corporation, the term means a share; for an entity other than a corporation, it means an interest that entitles the interest holder to the profits of that entity or to the assets of that entity on its dissolution.

Clause 12 amends section 109(2) to expand the application of the notifiable transactions regime to parties that propose to acquire an interest in a combination.

Clause 13 makes consequential amendments to section 110 to add the terms “entity” and “equity interest,” where appropriate, when describing the valuation of assets for purposes of a notifiable acquisition, amalgamation or combination.

Clause 14 makes a consequential amendment in section 111(f) to the exemption of certain Canadian resource property companies from notification for the acquisition of voting shares, by replacing the concepts of “a corporation” and “shares” with “entity” and “equity interest.”

Clause 15 amends section 114(3) to replace the terms “corporation” and “shares” with “entity” and with “equity interest in an entity” so that an entity that is being acquired is required to provide information to the Commissioner of Competition.

Clause 16 makes consequential amendments to section 116 to replace the reference to “a person” with “entity or individual” regarding information that is to be supplied to the Commissioner; this information is described in section 114.

Clause 17 makes consequential amendments to section 117 to replace the reference to “a person” with “individual,” and to expand the limitation imposed on the provision of information concerning a *related corporation* that is not wholly-owned to include an *affiliated entity* that is not wholly-owned.

Clauses 18 and 19 make consequential amendments to sections 118 and 123 regarding the certification of information and the completion of a proposed transaction, in order to account for the replacement of the terms “corporation” and “shares” with “entity” and “equity interest.”

2.2.3 OTHER CONSEQUENTIAL AMENDMENTS

Clause 2 makes consequential amendments to section 2 of the Act regarding control of a corporation or a partnership, and to expand the concept of affiliation to a broader range of business organizations. It replaces instances where a “corporation,” “company,” “partnership” or “person” is mentioned with “entity,” “entities,” “entity or individual” or “individual.”

Clauses 6 and 7 make consequential amendments to the exceptions to the conspiracy offence in section 45(6)(a) and to the bid-rigging offence in section 47(3). They replace the reference to “company” with “entity,” and add references to entities and affiliated individuals.

Clauses 8, 9, 10 and 11 make consequential amendments to sections 76(4), 77(4), 90.1(7) and 108(2) to incorporate the concept of affiliated entities.

2.3 REVIEW

Clause 20 adds section 127.1 to the Act to require a committee of the Senate, the House of Commons or both Houses of Parliament to review sections 10(1.1) and 23.1 within five years of section 127.1 coming into force, and to submit a report on the findings of this review to both Houses of Parliament.

3 COMMENTARY

Bill C-49 received a mixed response from stakeholders following its introduction and first reading in the House of Commons. According to media reports, the main criticism of the bill is that it will probably not be effective in reducing the consumer goods price gap between Canada and the United States.¹¹ The C.D. Howe Institute suggested that the bill might even diminish competition in Canada by discouraging foreign companies from doing business in Canada.¹²

However, the Retail Council of Canada expressed support for the bill. It believes that some foreign manufacturers sell their products at a higher price to Canadian retailers than to U.S. retailers, simply because they believe that Canadians are willing to pay more for the same product. The council believes that the bill will identify manufacturers who practise geographical price discrimination and allow Canadians to know which ones are treating them fairly.¹³

NOTES

1. [Bill C-49: An Act to amend the Competition Act](#), 2nd Session, 41st Parliament.
2. Government of Canada, “[Putting Canadian Consumers First](#),” News release, 9 December 2014.
3. Senate, Standing Committee on National Finance, [The Canada–USA Price Gap](#), February 2013, p. 59.
4. *Ibid.*, p. 7.
5. The committee’s fourth recommendation concerns the book industry alone.
6. *Ibid.* Senate (2013), p. vii.
7. Department of Finance, [Jobs, Growth and Long-Term Prosperity: Economic Action Plan 2013](#), Ottawa, 21 March 2013, pp. 223 and 224.
8. Government of Canada, “[Regulatory Cooperation Council](#),” *Canada’s Economic Action Plan*.

9. [Competition Act](#), R.S.C., 1985, c. C-34.
10. A combination refers to the new entity, such as a partnership, that is created by two or more parties.
11. Marina Strauss, "[Ottawa's proposal to probe retail price gaps finds few backers from suppliers](#)," *The Globe and Mail*, 10 December 2014.
12. Finn Poschmann, "[How U.S. price envy makes us forget about economic facts: Globe and Mail Op-Ed](#)," *C.D. Howe Institute*, 10 December 2014.
13. Diane J. Brisebois, "[On Price, Who's Naughty? Who's Nice?](#)," *A Letter to the Media from our President and CEO*, Retail Council of Canada, 17 December 2014.