A GUIDE TO THE
FAR REACHING AND SUBSTANTIVE CHANGES
TO THE COMPETITION ACT
PURSUANT TO
BILL C-19, BILL C-56 AND BILL C-59

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Burnet, Duckworth & Palmer LLP

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A Guide to the Far Reaching and Substantive Changes to the Competition Act Pursuant to Bill C-19, Bill C-56 And Bill C-59

By Alicia Quesnel and Brittney LaBranche[1]

In this Guide, we review several of the most significant changes to the *Competition Act* (Canada) (**Act**) made pursuant to *An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures* (**Bill C-19**), which received Royal Assent on June 23, 2022, *An Act to amend the Excise Tax Act and the Competition Act* (**Bill C-56**), which received Royal Assent on December 15, 2023 and *Fall Economic Statement Implementation Act, 2023* (**Bill C-59**), which is anticipated to receive Royalty Assent early in 2024.

The content of this article is intended to provide a general guide to the subject matter. Specialist advise should be sought about any specific circumstances.

This Guide will be updated when Bill C-59 comes into effect.

Criminal Offenses

Unlawful Agreements Between Employers

Effective as of June 23, 2023, one year following the date Bill C-19 came into force, it is criminally illegal under new section 45 (1.1) for employers to enter into agreements or arrangements with one another to fix, maintain, decrease or control salaries, wages or terms and conditions of employment, or to not solicit or hire each other's employees, even if the employers are not in the same business. Importantly, the new criminal conspiracy provisions involving employers are entitled to rely on the ancillary restraints defence as is available to criminal conspiracies generally. As such, employers cannot be convicted of an offense under section 45 (1.1) if they establish, on a balance of probabilities, that: (a) the agreement or arrangement: (i) is ancillary to a broader and separate agreement or arrangement that includes the same parties; and (ii) is directly related to, and reasonably necessary for giving effect to the objectives of the broader agreement; and (b) the broader agreement itself does not contravene section 45(1.1). For example, a non-solicitation clause in a purchase and sale agreement would very likely meet these requirements.

Fines at the Discretion of the Court

Violations of the criminal conspiracy provisions in section 45(1) and 45 (1.1) are an indictable offense and offenders are liable on conviction to imprisonment for a term not exceeding 14 years, or to a fine (or both). Prior to June 23, 2023, the fine could not exceed $25,000,000. Effective as of June 23, 2023, the fine is at the discretion of the court.

False or Misleading Representations – Drip Pricing

Section 52 of the Act was amended under Bill C-19, effective June 23, 2022, to make it clear that "drip pricing" constitutes a false or misleading representation. Drip pricing representation is defined as a representation of a price that is not attainable due to fixed obligatory charges or fees, other than amounts imposed under an Act of Parliament or the legislature of a province (for example, sales tax).

While this was clarified with respect to the person making the false or misleading representation, it was not clarified with respect to the false or misleading representations sent or caused to be sent in sender information or subject matter information of an electronic message, or sent or caused to be sent in an electronic message, or in a locator, which are covered by section 52.01 of the Act. Bill C-59 rectifies this so that upon royal assent, it will be clear that drip pricing representations constitute false or misleading representations for the purposes of section 52.01 of the Act as well.

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Deceptive Marketing Practices

Drip Pricing

A person that makes a false and misleading representation could be charged criminally under Part VI of the Act, or the matter could be dealt with by the Commissioner of Competition (**Commissioner**) under the deceptive marketing provisions of the Act, which are matters that are reviewable by the Commissioner and the Competition Tribunal (**Tribunal**) and not criminal offences. Section 74.01 of the Act was amended by Bill C-19 on June 23, 2022 to clarify that drip pricing constitutes a false or misleading representation for the purposes of section 74.01. When it comes into effect, Bill C-59 will clarify that false or misleading representations sent or caused to be sent in sender information or subject matter information of an electronic message, or sent or caused to be sent in an electronic message, or in a locator, which are covered by section 74.011 of the Act, include drip pricing representations.

Environmental Claims

The deceptive marketing provisions of the Act will be amended under Bill C-59 to include, as a reviewable misrepresentation to the public, a statement, warranty or guarantee of a product's benefits for **protecting the environment** or **mitigating the environmental and ecological effects of climate change** that is not based on an adequate and proper test. This is notably a fairly narrow type of misrepresentation in that the representation must be specific to a product's benefits. It is not likely broad enough to capture general "greenwashing" claims related to a company's commitment to the environment or the steps it may be taking to reduce its carbon footprint.

AMPs

Administrative monetary penalties (**AMPs**) for violations of the deceptive marketing practices provisions of the Act were increased under Bill C-19 to provide for a monetary penalty that is designed to make conduct that violates the Act unprofitable. While there is a minimum penalty, the penalties have been revised to require the party to pay 3 x the value of the benefit they received as a result of the impugned, as follows:

(a) for individuals, the greater of: (i) $750,000 for the first order, and $1,000,000 for any subsequent orders; and (ii) 3 x the value of the benefit derived from the deceptive conduct if the amount can reasonably be determined; and

(b) for corporations, the greater of: (i) $10,000,000 for the first order, and $15,000,000 for any subsequent order; and (ii) 3 x the value of the benefit derived from the deceptive conduct or, if that amount cannot reasonably be determined, 3% of the corporation's annual worldwide gross revenues.

Private Rights of Actions

On the first anniversary of the day Bill C-59 comes into force, private persons will be entitled to apply to the Tribunal for leave to bring a private action against a person for their deceptive marketing practices.

See "**Private Rights of Actions**" below.

Refusal to Deal, Price Maintenance, Exclusive Dealing, Tied Selling and Market Restrictions

Section 75 (Refusal to Deal)

Bill C-59 will amend the refusal to deal provisions found in section 75 of the Act in two material respects. First, the amendments will make it easier to establish that the impugned conduct has occurred. Under the current provisions, a person must be substantially affected in their whole business by another person's refusal to deal. Under Bill C-50, the impugned conduct will be satisfied if a person is substantially affected in the **whole or part** of their business.

Second, Bill C-59 will amend section 75 to include a refusal to provide "diagnosis or repair" services. When Bill C-59 comes into force, the Tribunal will have the power to order a supplier of a product that is a means of diagnosis or repair (defined as diagnostic and repair information, technical updates, diagnostic software or tools and any related

documentation and service parts) to accept a person as a customer on usual trade terms if the means of diagnosis or repair can be readily supplied.

Private Rights of Actions

Private rights of action are already applicable to sections 75 (*Refusal to Deal*), 76 (*Price Maintenance*) and 77 (*Exclusive Dealing, Tied Selling and Market Restrictions*).

On the first anniversary of the day Bill C-59 comes into force, private persons will be entitled to apply to the Tribunal for additional remedies that will come into force at that time.

See "***Private Rights of* Actions**" below.

Abuse of Dominance

Some of the most significant changes have been made under Bill C-56, and will be made under Bill C-59 to the abuse of dominance provisions of the Act (sections 78 and 79).

Anti-Competitive Acts

Bill C-19 amended section 78 of the Act to clarify that an anti-competitive act for the purpose of the abuse of dominance provisions of the Act, means an act intended to have a predatory, exclusionary or disciplinary negative effect on a competitor, or to have an adverse effect on competition. It also amended the illustrative list of anti-competitive acts to include the act of "a selective or discriminatory response to an actual or potential competitors for the purpose of impeding or preventing the competitor's entry into, or expansion in, a market or eliminating the competitor from a market".

Bill C-56 further amended the illustrative list of anti-competitive acts in section 78 by including the act of "directly or indirectly imposing excessive and unfair selling prices".

Test for Abuse of Dominance

Bill C-56 significantly expanded the scope of what constitutes abuse of dominance. Prior to Bill C-56 coming into force, a party that substantially or completely controls a class or species of business in any area of Canada had to be engaged in a 'practice of anti-competitive acts' in order to violate the abuse of dominance provisions. This is no longer the case. A person that substantially or completely controls a class or species of business in any area of Canada can be subject to an order of the Tribunal for abuse of dominance if the person is engaged in either:

(a) a practice of anti-competitive acts; or

(b) conduct: (i) that had, is having or is likely to have a substantial prevention or lessening of competition; and (ii) the effect is not the result of superior competitive performance.

Bill C-19 (which refers to practices, but which will be amended under Bill C-59 to refer to conduct) introduced several new factors for the Tribunal to consider when assessing conduct for abuse of dominance, including: (a) the effect of the practice (conduct) on barriers to entry; (b) the effect of the practice (conduct) on price or non-price competition, including quality, choice or consumer privacy; (c) the nature and extent of change and innovation in a relevant market; and (d) any other factor that is relevant to competition in the market that is or would be affected by the practice (conduct).

AMPs and Other Actions, Including Divestiture

The bifurcation of the test for abuse of dominance has also resulted in a bifurcation of the AMPs and other remedies available to be imposed by the Tribunal. The penalties are higher and more substantial if the impugned conduct involves a practice of anti-competitive acts that has had or is having a substantial prevention or lessening of competition in a market.

If the impugned conduct **involves a practice of anti-competitive acts** and the Tribunal finds that: (a) the practice has had or is having a substantial prevention or lessening of competition in a market where the person has a 'plausible

competitive interest'; and (b) an order prohibiting that conduct is not likely to restore competition in that market, the Tribunal may:

(a) in addition to, or in lieu of a prohibition order, make an order directing the person to take such actions as are reasonably and necessary to overcome the effects of the practice in the market, including the **divestiture of assets or shares**; and

(b) order them to pay an AMP in an amount not exceeding the greater of: (i) $25,000,000 and, for each subsequent order, an amount not exceeding $35,000,000; and (ii) 3 x the value of the benefit derived from the conduct or, if that amount cannot reasonably be determined, 3% of the corporation's annual worldwide gross revenues.

If the impugned conduct **does not involve a practice of anti-competitive acts**, the Tribunal can order the person to pay an AMP in an amount not exceeding the greater of: (i) $10,000,000 and, for each subsequent order, an amount not exceeding $15,000,000; and (b) 3 x the value of the benefit derived from the conduct or, if that amount cannot reasonably be determined, 3% of the corporation's annual worldwide gross revenues.

Limitation on Action

As a result of the amendments included in Bill C-56, no action may be taken under section 79 of the Act in respect of a practice of anti-competitive acts or conduct more than 3 years after the practice or conduct has ceased.

Private Rights of Action

Bill C-19 extended private rights of action to abuse of dominance conduct.

On the first anniversary of the day Bill C-59 comes into force, private persons will be entitled to apply to the Tribunal for additional remedies that will come into force at that time.

See "***Private Rights of* Actions**" below.

Arrangements Between Competitors and Others

Significant changes have been made and more changes are on their way for section 90.1 of the Act. Known as the 'competitor collaboration' or 'strategic alliance' provisions, these provisions were originally designed to provide a civil remedy to the Commissioner to address agreements or arrangements between competitors that did not rise to the level of a criminal conspiracy, but which nonetheless had, were having, or were likely to have, a substantial prevention or lessening of competition in a market.

Expanded Scope of Application

Under the Act, a "competitor" is defined to include a person who it is reasonable to believe would be likely to compete with respect to a product in the absence of the agreement or arrangement. Bill C-56 has widened the scope of application of section 90.1 of the Act to include agreements and arrangements between persons, **even if they are not competitors**, if the Tribunal finds that a *significant* purpose of the agreement or arrangement, or any part of it, is to substantially prevent or lessen competition in a market. These revisions will capture agreements or arrangements between parties that have a vertical relationship, such as a supplier and a customer.

Bill C-19 introduced several new factors for the Tribunal to consider when assessing agreements or arrangements between competitors and others, including: (a) network effects within a market; (b) whether the agreement or arrangement would contribute to the entrenchment of the market position of leading incumbents; and (c) any effect of the agreement or arrangement on price or non-price competition, including quality, choice or consumer privacy.

Repeal of the Efficiencies Defence

Referred to as the '**Efficiencies Defence'**, the Act previously precluded the Tribunal from making an order under section 90.1 if the Tribunal found that the agreement or arrangement has brought about or is likely to bring about gains in efficiency that will be greater than, and will offset the effects of any prevention or lessening of competition. Bill C-56 has repealed the Efficiencies Defence. Gains in efficiency are now only a factor for consideration.

Limitation on Action

Effective on the first anniversary of the day Bill C-59 comes into force, no application can be made under section 90.1 in respect of an agreement or arrangement that has been terminated for more than 3 years.

AMPs and Other Actions, Including Divestiture

Effective on the first anniversary of the day Bill C-59 comes into force, parties subject to orders under section 90.1 will also become subject to a potential divestiture remedy as well as AMPs.

If Tribunal finds that an agreement or arrangement or a proposed agreement or arrangements has had, or is having a substantial prevention or lessening of competition in a market, the Tribunal may:

(a) if the Tribunal determines that an order prohibiting that conduct is not likely to restore competition in that market, in addition to, or in lieu of a prohibition order, make an order directing the person to take such actions as are reasonably and necessary to overcome the effects of the practice in the market, including the **divestiture of assets or shares**; and

(b) order them to pay an AMP in an amount not exceeding the greater of: (i) $10,000,000 and, for each subsequent order, an amount not exceeding $15,000,000; and (ii) 3 x the value of the benefit derived from the conduct or, if that amount cannot reasonably be determined, 3% of the corporation's annual worldwide gross revenues.

In considering the amount of the AMP, the Tribunal is required to take into account evidence of: (a) the effect on competition in the relevant market; (b) the gross revenues from sales affected by the agreement or arrangement; (c) any actual or anticipated profits affected by the agreement or arrangement; (d) the financial position of the person against whom the order is made; (e) the history of compliance with the Act; and (f) any other relevant factor.

Private Rights of Action

On the first anniversary of the day Bill C-59 comes into force, Bill C-59 will extend private rights of action to agreements or arrangements impugned under section 90.1(1).

See "***Private Rights of* Actions**" below.

Review of Agreements and Arrangements with Competitors and Others

Prior to these amendments, the Tribunal's only remedy was, without the consent of the person, to prohibit the parties from undertaking any activities under the agreement, or with the consent of the parties, to undertake other actions. These very significant changes to section 90.1 will not come into effect until the first anniversary of the day that Bill C-59 comes into force. Given the new potential penalties available to the Commissioner, as well as the extension of private rights of action to such agreements or arrangements, companies should use that time to review and assess whether changes should be made to any of their arrangements and agreements.

Mergers

Significant changes are being made to the merger provisions of the Act.

Scope of Application

When Bill C-59 comes into effect, consideration of the impact of a proposed merger on the sources from which a trade, industry or a profession obtains a product, or from which a trade, industry or a profession disposes of a product, will be expanded to include labour.

Bill C-19 introduced several new factors for the Tribunal to consider when determining whether or not a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially including: (a) network effects within a market; (b) whether the merger or proposed merger would contribute to the entrenchment of the market position of leading incumbents; and (c) any effect of the merger or proposed merger on price or non-price competition, including quality, choice or consumer privacy.

One of the biggest surprises is that Bill C-59 will repeal section 92(2) of the Act. Pursuant to section 92(2), the Tribunal was prohibited from making a finding that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially **solely on the basis of evidence of concentration or market share**. Not only has this been repealed, but Bill C-59 will introduce market concentration and change in market concentration as factors for consideration of the impact of the merger on competition. Bill C-59 will also introduce, as a factor for consideration, any likelihood that the merger or proposed merger will or would result in express or tacit coordination between competitors in a market.

Repeal of the Efficiencies Defence

Bill C-56 has repealed the Efficiencies Defence as it applies to mergers. Gains in efficiency are now only a factor for consideration.

Limitation on Action

The Act currently provides that no application can be made under section 92 in respect of a merger more than one year after the merger has been substantially completed. This will change when Bill C-59 comes into effect. If the merger was subject to notification, the one year period will continue to apply. However, for mergers that are not subject to notification, the Commissioner will have 3 years to review the merger transaction under the merger provisions of the Act. Smaller transactions that have potential anti-competitive impacts will remain subject to review and potentially, divestiture requirements, for a longer period of time.

Merger Notifications

Size of Transaction Test

Under the current Act, a proposed merger is notifiable if its meets the financial thresholds required under the '*size of parties*' test as well as the '*size of transaction'* test. The '*size of transaction*' test can be met on the basis of the value of assets in Canada of an entity (and entities controlled by that entity) or the value of revenues from sales in or from Canada from assets in Canada of an entity (and entities controlled by that entity). Revenues generated by sales made into Canada from assets outside of Canada were not included.

The revenue portion of the *'size of transaction*' test will be revised when Bill C-59 comes into effect to account for the value of revenues generated in, from or **into** Canada by the entity and entities controlled by that entity, or as applicable, all of the assets being acquired, including assets located outside of Canada.

This change is anticipated to significantly expand the number of mergers, in particular, mergers of non-Canadian entities that have sales into Canada, that are subject to notification under the Act.

Anti-Avoidance

Bill C-19 introduced a general "anti-avoidance" provision to the Act, which specifies that if a transaction is designed to avoid the application of Part IX, the merger notification provisions will nonetheless apply to the substance of the proposed transaction.

Bill C-59 will also clarify that if a transaction includes both the acquisition of assets and the acquisition of shares, the value of the assets for both the asset transaction and the share transaction, and the value of the revenues for the asset transaction and the share transaction, must be aggregated.

Private Rights of Actions

Scope of Application

Prior to Bill C-56 coming into effect, private parties were entitled to apply for leave to bring an application against another person for a violation of sections 75 (*Refusal to Deal*), 76 (*Price Maintenance*) and 77 (*Exclusive Dealing, Tied Selling and Market Restrictions*) of the Act. When Bill C-56 came into force, the private right of action was extended to section 79 (*Abuse of Dominance*).

On the first anniversary of the day Bill C-59 comes into force, the private right of action will be further extended to section 74.1 (*Deceptive Marketing Practices*) as well as agreements or arrangements impugned under section 90.1(1) (*Agreements or Arrangements between Competitors*).

In all cases, the Tribunal may not grant leave if the matter: (a) is the subject of an inquiry by the Commissioner at that time; or (b) was the subject of an inquiry that has been discontinued because of a settlement between the Commissioner and the person.

Subject to the foregoing, the Tribunal may grant leave to a person to make an application under:

(a) section 74.1 (*Deceptive Marketing Practices*) if it is satisfied that it is in the public interest to do so;

(b) prior to the first anniversary of the date Bill C-59 comes into force, section 75 (*Refusal to Deal*), 77 (*Exclusive Dealing, Tied Selling and Market Restrictions*) and 79 (*Abuse of Dominance*) if it has reason to believe that the applicant is **directly and substantially affected in the applicant's business by any practice** referred to in any of those sections that could be subject to an order; and

(c) after the first anniversary of the date Bill C-59 comes into force, section 75 (*Refusal to Deal*), 77 (*Exclusive Dealing, Tied Selling and Market Restrictions*), 79 (*Abuse of Dominance*) and section 90.1 (*Agreements or Arrangements between Competitors*) if:

    (i) it has reason to believe that the applicant is **directly and substantially affect in the whole or part of the applicant's business by any conduct** referred to in one of those sections that could be subject to an order under that section; or

    (ii) it is satisfied that it is in the public interest to do so.

As these provisions show, the Tribunal will have significantly more discretion to grant leave to a person to make an application under the private action sections after the first anniversary of the date Bill C-59 comes into force.

Limitations of Action

The right to make an application for leave under these private rights of action provisions can not be made more than 1 year after the practice of conduct has ceased and may be subject to further conditions imposed by the Tribunal.

Disgorgement Remedy

After the first anniversary of the date Bill C-59 comes into force, sections 74.1 (*Deceptive Marketing Practices*), 75 (*Refusal to Deal*), 76 (*Price Maintenance*), 77 (*Exclusive Dealing, Tied Selling and Market Restrictions*), 79 (*Abuse of Dominance*) and 90.1 (*Agreements or Arrangements between Competitors*), private parties granted leave to apply under those sections will also be entitled to apply to the Tribunal for a remedy (sometimes referred to as a '*disgorgement*' remedy) that is designed to prevent unjust enrichment and make conduct that violates the Act unprofitable.

The disgorgement remedy allows the Tribunal to order the impugned party to pay an amount, not exceeding the benefit derived from the conduct, to be distributed among the applicant and any other persons affected by the conduct in any manner the Tribunal considers appropriate. Such terms include: (a) specifying how the payment is to be administered; (b) appointing an administrator; (c) specifying how the administrator will be paid; (d) notification to claimants; (e) time and manner for making claims; (f) conditions for eligibility; and (g) the manner of payment and dealing with undistributed amounts.

Note that if the application is made by the Commissioner, the Tribunal is not authorized to impose this remedy. It is only available if an order is made as a result of an application by a person granted leave to bring the application. The Commissioner, by contrast, can request the imposition of an AMP that could be as high as 3 x the value of the benefit derived from the conduct. The AMP, however, will not be distributed to persons affected by the conduct.

Consent Agreements

After the first anniversary of the date Bill C-59 comes into force, the matter that is subject to the private right of action can be resolved through a consent agreement between the parties that is registered and filed with the Tribunal, although the Commissioner can apply to have the registered consent agreement varied or rescinded if it finds the consent agreement is not in conformity with the purposes of the Act.

Settlement Agreements

After the first anniversary of the date Bill C-59 comes into force, the party granted leave to bring the action is also entitled to discontinue the action if it reaches a settlement agreement with the party whose conduct is subject to the order. A copy of the settlement agreement must be provided to the Commissioner within 10 days and the Tribunal, on application of the Commissioner, may vary or rescind the settlement agreement if it finds that:

(a) in case of a settlement agreement applicable to conduct under section 74.1, it is not in conformity with the purposes of the deceptive marketing practices provisions of the Act; and

(b) in case of a settlement agreement applicable to any other private right of action, the agreement has or is likely to have, anti-competitive effects.

Parties to a settlement agreement must provide the Commissioner with a copy of the settlement agreement within 10 days, failing which, the Tribunal may, on application of the Commissioner, order the person to pay an AMP not exceeding $10,000 for each day they fail to apply.

Interim Orders and AMPs

Interim Orders to Prevent Closing of a Merger

Bill C-59 will amend the Act to permit the Commissioner to apply for an interim order to prevent a proposed merger from closing before the Commissioner has completed his review, whether or not he has applied to the Tribunal for an order challenging the merger under section 92. These applications can be made by the Commissioner quickly and efficiently on an *ex parte* basis. Under the new provisions, once the Commissioner makes an application for an interim order, the parties to the proposed merger are not entitled to close until the matter has been heard and disposed of by the Tribunal.

AMPS

After the first anniversary of the date Bill C-59 comes into force, if a court, on application of the Commissioner, determines that a person has failed to comply with or is likely to fail to comply with, a registered consent agreement entered into by the Commissioner and that person, the court may, among other things, order the person to pay an AMP not exceeding $10,000 for each day they fail to comply.

Reprisal Actions

Bill C-59 will introduce new provisions to deal with "reprisal actions". These are defined as actions taken to penalize, punish, discipline, harass or disadvantage another person because of that person's communications with the Commissioner or because that person has cooperated, testified or assisted, or has expressed an intention to cooperate, testify or assist in an investigation or proceeding under the Act.

The new provisions allow a court, on application of the Commissioner, to make an order prohibiting a person from engaging in reprisal actions and ordering them to pay an AMP not exceeding: (a) in the case of an individual, $750,000 for the first order and $1,000,000 for each subsequent order; and (b) in the case of a corporation, $10,000,000 for the first order and $15,000,000 for each subsequent order.

Environmental Certificate

Bill C-59 will introduce the right of parties to an agreement or arrangement that is for the purpose of protecting the environment and that is not likely to prevent or lessen competition substantially in a market, to apply for a certificate (**Environmental Certificate**).

sections 45, 46, 47, 49 and 90.1 will not apply to an agreement or arrangement that is the subject of an Environmental Certificate.

The Tribunal may rescind or vary an Environmental Certificate, on application by: (i) the Commissioner; (ii) the parties to the agreement or arrangement; or (iii) any person directly and substantially affected in the whole or part of their business by the agreement or arrangement, if the Tribunal finds that:

(a) the parties have terminated the agreement without giving notice to the Commissioner;

(b) the parties have agreed, with the Commissioner's consent, to vary the agreement;

(c) the agreement or arrangement is not being implemented in accordance with the description of the Environmental Certificate

(d) the parties have failed to comply with the terms specified in the Environmental Certificate; or

(e) the agreement or arrangement prevents or lessens or is likely to prevent or lessen, competition substantially in a market.

It is not entirely clear to us what this new provision is attempting to achieve, or what "ill" it is attempting to address, though it may be attractive to come companies who desire to market and advertise themselves as champions of the environment.

Market Inquiries

Pursuant to the amendments provided for in Bill C-56, which came into effect December 15, 2023, either the Commissioner, following consultation with the Minister of Innovation, Science and Technology (**Minister**), or the Minister, may cause a formal market inquiry to be undertaken if the Commissioner or the Minister, as applicable, is of the opinion that it is in the public interest to do so. While the Commissioner typically undertakes informal market inquiries, these powers, previously only available to the Commissioner in respect of an inquiry into a person's conduct or alleged breach of the Act, will allow the Commissioner to apply to court to require a person to answer questions, in person or in writing, or to produce documents relevant to the market inquiry.

The time and cost of compliance will depend upon how expansive the request for information is. If the request for records and data is as expansive as a supplementary information request, a party required to respond to the request will need to engage a third party to conduct the relevant searches of their electronic systems, as well as legal counsel to assist in the process. Both the time commitment as well as the internal and third party costs of compliance could be very significant.