

Federal Government Proposes to Prohibit "Unjustified" Canada-US Price Discrimination

In the federal budget released on February 11, 2014, the Canadian government has advanced a proposal to give the Competition Bureau additional powers to prohibit what it refers to as unjustified geographic price discrimination, in an apparent effort to reduce the gap between higher consumer prices in Canada as compared to the United States. This proposal may represent a major change in Canadian competition policy.

The budget cites several studies that conclude that Canadian consumers pay an average of 10 percent more than Americans for identical goods. The government's Standing Committee on National Finance reported that potential causes for price differences include import tariffs, the relatively small size of the Canadian market, higher operating costs and product safety standards, insufficient competition in the Canadian retail market and manufacturers engaging in country pricing strategies. There is also the issue of constantly changing exchange rates. Needless to say, this proposal is giving rise to uncertainty in the market, and particular concern amongst multi-national suppliers and retailers.

The government is currently assessing whether tariff elimination (for products such as hockey equipment and baby clothes) can narrow the price gap for consumers, with results expected by the end of 2014. However, if enacted, this amendment to the *Competition Act* will likely affect multinational companies that have market power to charge higher prices and will require these firms

to ensure that any price differences are fully justified, based on higher manufacturing or distribution costs.

The possibility of price regulation for consumer goods raises a variety of practical concerns, related to compliance and enforcement uncertainty. For instance, the test of "legitimate higher costs" require that the government have a defensible comparator of cross-border prices and operating costs. In addition to the practical issues, this may significantly alter the role of the Competition Bureau. It will have to carefully walk the fine line between challenging anti-competitive conduct and regulating market prices, notwithstanding earlier Bureau protestations that it is not a price regulator.

There are also constitutional issues with the proposal. Provinces may argue that anti-price discrimination provisions will invade the provincial jurisdiction over "property and civil rights". Such price regulation provisions would also be inconsistent with the laws of some significant trade partners. As opposed to this exercise in price regulation, reducing tariffs would seem to be a simple step which could alleviate the "problem".

The release of the actual amendments in the coming months will indicate the mechanisms through which the government intends to implement its goal of narrowing the geographic price gap between Canada and the United States. The prohibitions and any exemptions will provide a fuller picture of how the Competition Bureau will police illegitimate higher prices in Canada.

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[a cautionary note](#)

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