

CLEAR AS MUD: ANALYZING VOLUNTARY PROPERTY CONTROL REMOVALS SO FAR

Posted on January 20, 2025

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The Competition Bureau [recently announced](#) that Empire (the parent company of IGA, Sobeys, etc.), agreed to remove an exclusive/restrictive covenant in favour of the IGA (and only grocery store) in Crowsnest Pass, Alberta, that apparently prevented other grocery stores from entering the market,[\[1\]](#) after an “investigation” by the Bureau.

As discussed in the questions below, this announcement may actually bring less clarity for landlords and tenants seeking to understand when and how alleged these types of restrictions will be enforced. Crowsnest Pass is home to about 6,000 people, so this action seems like very low-hanging fruit for the Bureau’s first publicly announced attempt at reining in “property controls”. The grocery industry and retailers more generally have not yet developed a consistent position on potential enforcement of “property controls”. As of November 2024, Walmart has “unilaterally waive[d] retail restrictions”,[\[2\]](#) Loblaw’s CEO indicated a desire to remove their property controls “if others do so”,[\[3\]](#) Empire’s CEO indicated a preference for eliminating property controls but suggested that the government should legislate them away,[\[4\]](#) and other retailers are taking a “wait and see” approach.

Outstanding questions include the following:

- Is this announcement connected to other as-yet unannounced actions by the Bureau?
- How did the Bureau become aware of the now-removed exclusive/restrictive covenant and why did they decide to pursue it?[\[5\]](#)
- Does this signal that the Bureau’s likely enforcement approach will be to seek voluntary waivers of property controls (as opposed to taking stronger enforcement action through consent agreements or by bringing cases before the Competition Tribunal and seeking monetary penalties or other available remedies)?
- Will another grocer even move into the Crowsnest Pass region? The Bureau’s press release cryptically notes that “a new grocery store competitor can move forward with plans to open a second store in Crowsnest Pass in 2025”. It is unclear if this implies that the Bureau is aware of existing plans by a competitor to open a new store imminently or if this is the Bureau announcing to competitors that they

will no longer be restricted from moving into this community by the property control.

- Will the Bureau go after similar regions with one or few stores and a similar “property control”?
- Will similar inquiries arise pertaining to non-grocery “property controls”?
- Will this announcement spur other grocers or other retailers to voluntarily relax or remove their restrictive covenants and exclusives?

While it seems too early to tell where the “property control” saga will go next, our Leasing and Competition groups stand ready to advise on the specific implications of these developments for your business.

[1] Of course, IGA could have agreed to waive its exclusive/restrictive covenant in whole or in part– it is unknown whether other grocers attempted to enter the market and were unsuccessful in getting a waiver.

[2] [Walmart Canada axing some property controls amid grocery competition scrutiny.](#)

[3] [Loblaws willing to eliminate property controls, CEO says.](#)

[4] *ibid.*

[5] [For example](#), Crowsnest Pass’s mayor was apparently unaware of the investigation until the announcement.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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