

GATES ARE OPEN FOR CONSULTATION ON ROUND TWO OF COMPETITION ACT AMENDMENTS

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On November 17th, the Minister of Innovation, Science and Economic Development Canada (“ISED”) announced a [consultation](#) on the future of competition policy in Canada, which will lead to further review and potential overhaul of Canada’s Competition Act (the “Act”). This follows a set of amendments to the Act enacted this past summer that, among other things, expanded the Competition Bureau’s investigatory powers, increased penalties for civil and criminal offences, and criminalized wage-fixing and non-solicitation agreements (see McMillan’s bulletin on these amendments [here](#)). However, the Commissioner of Competition [indicated](#) this fall that the Bureau will participate in the consultation and continue pushing for further reforms to the Act that were not captured in the amendments enacted earlier this year.

During the comment period, which runs until February 27, 2023, ISED wants to hear from individuals and businesses on many topics, including the role and powers of the Competition Bureau, the effectiveness of enforcement and corrective measures, whether changes are needed to the merger review process and the unique issues posed by data and digital markets.

ISED has published a [discussion paper](#) listing proposed reforms, notably including changes to the merger efficiencies defence, criminalizing buy-side collusion beyond only labour coordination, and introducing a principles-based abuse of dominance provision. The discussion paper cites a number of thought pieces by members of McMillan’s Competition, Antitrust & Foreign Investment Group, including a C.D. Howe Intelligence Memo by [Joshua Krane](#) and [James Musgrove](#) titled “[The Danger of Precautionary Principle Challenges to Nascent Mergers](#)”, and a National Post article by [Joshua Krane](#), [Mark Opashinov](#) and [William Wu](#) titled “[Vigorous enforcement, not studies, are what Canada's competition laws need](#)”.

A comprehensive review of the Act will follow this consultation provided the current government remains in power.

If you are interested in participating in the consultation or have questions about how the implemented or proposed reforms may affect your business, members of [McMillan’s Competition, Antitrust & Foreign Investment Group](#) are happy to assist you.

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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