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Trends to Watch

2026 Competition/Antitrust & Foreign Investment Outlook

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This publication reviews key developments in Canada during 2025, and reflects on their potential significance for 2026 and beyond.

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TABLE OF CONTENTS

More Enforcement and Expanded Policy Objectives

Canada's competition and foreign investment law regimes entered 2025 with substantial momentum. After years of, at times plodding, legislative effort, sustained political and public attention had produced substantial reforms to Canada's *Competition Act* and *Investment Canada Act*. However, 12 months later, the brave new world of Canadian competition and foreign investment law enforcement is yet to arrive. Does 2025 signal an enduring status quo? Or, as new legislative tools mature, will 2026 see Canada's competition and foreign investment authorities establish new enforcement paradigms?

Matthew Boswell, the former Commissioner of Competition ("Commissioner"), was outspoken in pursuing *Competition Act* reform and predicting big change from the ensuing legislative victories. In September 2024, the Commissioner presented a vision for more enforcement action, which would be faster, stronger and more people-focused than before. It is much too soon to issue a final verdict; but, such change appears to be, at least, delayed. While the Commissioner forecasted a "healthy skepticism" towards mergers and a focus on those that make everyday life less affordable for Canadians, 2025 saw no new merger challenges and only two merger remedies, both in the upstream oil & gas industry. Outside of mergers, the Competition Bureau ("Bureau") brought only two new applications before the Competition Tribunal ("Tribunal") in 2025, both adding to the Bureau's long running string of drip pricing cases.

Whether emboldened *Competition Act* enforcement takes hold in 2026 will be the responsibility of Commissioner Boswell's successor, following his decision to step down from the role as of December 2025. An interim Commissioner is in place until the permanent appointment of his successor, which is expected in early 2026. Both Commissioner Boswell and his immediate predecessor were drawn from the Competition Bureau's own ranks; and while many of the odds on favourites to succeed Commissioner Boswell similarly already call the Bureau home, there is precedent for an external appointment.

> **As Canada grapples with a shifting economic landscape brought on by the U.S. government's vacillating tariff policy, what role does the government see for competition policy and where does it rank with other priorities?**

The choice of new Commissioner will provide the Carney government with an explicit opportunity to respond to Commissioner Boswell's repeated appeals for a whole-of-government approach to competition. As Canada grapples with a shifting economic landscape brought on by the US' vacillating tariff policy, what role does the government see for competition policy and where does it rank with other priorities? Just over a year after the repeal of the much maligned efficiencies merger defence, will resurgent economic nationalism rekindle a desire to foster "Canadian champions"? While the Bureau has a strong record of political independence, which is expected to endure, the installation of a new commissioner provides the Canadian government with an

opportunity to steer the direction of Canadian competition law enforcement for years to come.

> **In the year ahead, Canada's twin efforts to buttress domestic industries and to diversify international economic partnerships are likely to create both new opportunities and risks for foreign investors.**

As the Canadian government develops its industrial policy in the face of geopolitical challenges, the *Investment Canada Act* provides a direct tool for political intervention. In 2025, the Canadian government announced the importance of economic security as a component of national security, but also hit pause on the implementation of *Investment Canada Act* amendments intended to strengthen Canada's ability to act against investments seen as injurious to Canada's national security. Overall, notwithstanding heightened cross-border tensions, in 2025, the government's enforcement of the *Investment Canada Act* remained generally consistent with past practice. In the year ahead, Canada's twin efforts to buttress domestic industries and to diversify international economic partnerships are likely to create both new opportunities and risks for foreign investors.

As we take stock of what changed in 2025 and what remained stubbornly the same, our *2026 Outlook* sets it sights on the year head. We look at what is next for Canada's competition and foreign investment law enforcement landscape as governments, enforcement agencies, businesses and other stakeholders find their footing among new legislative regimes, shifting geopolitics and changing priorities.

Investment Canada Act – Is 2026 the Year for the Expanded Filing Regime?

For decades, Canada's foreign investment review regime sought to balance the need to attract foreign capital with the protection of national interests. That balance is now shifting toward enhanced oversight. Once viewed primarily as an economic tool, the *Investment Canada Act* has evolved into a mechanism for safeguarding Canadian sovereignty amid growing geopolitical uncertainty. The year 2025 marked a turning point: Prime Minister Justin Trudeau stepped down, and Mark Carney assumed leadership of the Liberal Party and the Prime Minister's office ahead of a spring election, leading to the appointment of a new Minister for Innovation, Science and Industry (the "Minister"), the department primarily responsible for the administration and enforcement of the *Investment Canada Act*. At the same time, the inauguration of President Donald Trump in the United States reignited trade tensions, sending ripples across North America and beyond. These significant political changes, coupled with the emergence of an *Investment Canada Act* national security regime already on a path towards reform, have created real uncertainty for foreign investors in Canada. This climate is likely to persist before conditions stabilize.

> **Once viewed primarily as an economic tool, the *Investment Canada Act* has evolved into a mechanism for safeguarding Canadian sovereignty amid growing geopolitical uncertainty.**

COUNTDOWN TO THE MANDATORY FILING REGIME

Following the enactment of several amendments to the *Investment Canada Act* in 2024, some of the most practical changes in decades are still pending. Expected to come into force in 2026, after the necessary regulations are amended or interpretative notes are developed in consultation with key stakeholders, these amendments lay the foundation for a more interventionist approach to foreign investment.

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The pending changes include:

— **Mandatory Pre-Implementation Filings:** Non-passive investments, both controlling and minority, in (to be) prescribed sensitive sectors will require notification before closing, irrespective of the nationality of the investor. This measure aims to prevent potentially injurious investments from proceeding unchecked, but also creates timing uncertainty and regulatory risk allocation considerations for transacting parties. A consultation on implementing regulations is anticipated early in 2026.

— **Expanded "Call-In" Powers:** Currently, only direct acquisitions of control that exceed the relevant financial thresholds are subject to a (pre-closing) net benefit review and approval under the *Investment Canada Act*. Conversely, foreign acquisitions of control of Canadian businesses that fall below the net benefit review financial thresholds, as well as indirect acquisitions of control, are subject only to a notification obligation, which may be filed up to 30 days after closing. As a result of incoming amendments, the government will gain authority to call in for review any direct or indirect investments by entities owned or influenced by foreign states under the net benefit review regime if it is in the public interest. This call in power can be exercised any time up to 45 days following receipt of a completed notification filing, and reflects Ottawa's growing concern about state-linked capital and its potential impact on Canadian interests.

ECONOMIC SECURITY JOINS THE NATIONAL SECURITY EQUATION

The *Investment Canada Act*'s evolution in the last year has not been limited to procedural changes, but also reflects a conceptual shift in how Canada defines "security". On March 5, 2025, the government updated the "Guidelines on the National Security Review of Investments" (the "Guidelines"), introducing economic security as a formal consideration. The revised Guidelines also incorporate the Sensitive Technology List, published on February 6, 2025, which identifies 11 technology areas deemed critical to Canada's security and therefore may be considered sensitive for the purposes of a national security review, including artificial intelligence, quantum science, advanced energy, and aerospace, among others.

These collective changes acknowledge that opportunistic acquisitions, including transfers of emerging or novel technologies to non-allied nations during periods of economic vulnerability, can undermine Canada's innovation ecosystem and supply chains—risks that are inseparable from national security.

Trade tensions with the United States have also shaped current Canadian enforcement priorities.

POTENTIALLY HEIGHTENED SCRUTINY OF CERTAIN FOREIGN INVESTMENTS

Trade tensions with the United States have also shaped current Canadian enforcement priorities. The government's March 2025 amendments to the Guidelines explicitly cite the need to protect Canadian businesses from predatory investment behavior amid tariff-driven economic pressures. In this environment, foreign investment reviews have become a proxy for the Canadian government's broader economic strategy. Investor origin remains a critical national security consideration, with investments from U.S.-controlled purchasers in some circumstances facing heightened scrutiny. Where previously U.S.-backed investments were considered lower risk, increasing tensions have prompted the Canadian government to give greater consideration to foreign investment from its southern neighbour, although the evolution of US-Canada geopolitical and trade relationships in the coming months is likely to have an impact on enforcement risks under the ICA .

As well, investors can continue to take some comfort in the fact that very few foreign investments into Canada are subject to, let alone blocked by, national security reviews. However, with the likely implementation of the new mandatory filing regime for certain (to be) prescribed investments in 2026, the timing for national security review is expected to move forward, with more transactions investigated pre-closing, which could affect risk allocation in transaction agreements and the commercial incentives to undertake transactions in sectors known to be sensitive.

TESTING THE BOUNDS OF THE FOREIGN INVESTMENT REGIME THROUGH JUDICIAL REVIEW

This year has seen continued assertiveness from the Minister and the federal government in blocking new investments and mandating the wind-up of existing ones.

Some of these actions have been challenged through judicial review. In particular, on June 27, 2025, Canada ordered Hikvision, a Chinese surveillance camera supplier, to wind-up its Canadian operations after a national security review was initiated in November 2024 on the jurisdictional basis that the company failed to file an *Investment Canada Act* notification in 2015. Hikvision's judicial challenge was dismissed in September, with the Federal Court prioritizing national security interests over commercial harm. The

Federal Government's decision to order the wind-up of Hikvision signals an enhanced willingness to scrutinize existing businesses in Canada that the government considers to potentially pose a threat to Canadian national security. It also serves as a reminder of the government's broad powers to initiate and conclude reviews of foreign investments on grounds of national security—powers that have now been extended to the Minister, where previously they were only held by the Federal Cabinet.

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This decision by the Federal Court follows TikTok's ongoing judicial review of an order requiring it to cease its Canadian operations, echoing parallel actions at the time in the United States (which were later abandoned in favour of re-domesticating TikTok's ownership to the U.S.). The number of judicial review challenges, such as these, is expected to increase as the new Minister (and private parties through judicial review) explore the limits of her expanded authority.

THE EVOLVING NATURE OF NET BENEFIT REVIEWS

Parallel to developments in national security, the net benefit review regime is evolving as the Minister has demonstrated unprecedented engagement with merging parties, including holding direct conversations with CEOs prior to the commencement of net benefit reviews in the case of Teck Resources Ltd.'s proposed merger with UK-based miner, Anglo American PLC—a departure from past practice. It also remains to be seen how the Minister will use her new powers to "call-in" for review investments by state-owned enterprises ("SOE") once they come into force, further amending the contours of the net benefit review regime.

Nonetheless, what appears to remain static is the continued spotlight on SOE investors (such as those from China and the UAE) as well as investments in critical minerals, oil and gas, and mining companies (including Teck and Anglo American, Ovintiv Inc.'s acquisition of certain assets of Paramount Resources Ltd., and Sunoco LP's takeover of Parkland Corp.), a trend that will likely continue in the year to come.

ADAPTING TRANSACTION TERMS TO ENHANCED REGULATORY OVERSIGHT

The cumulative effect of these changes, and those still to come into effect, is evident. Our annual review of the 30 largest negotiated deals involving Canadian publicly listed entities between January and December 1, 2025 ("Canadian M&A Deal Study") indicates that the manner in which the *Investment Canada Act* is incorporated in transaction agreements continues to evolve. There was an increase in agreements containing a representation that the purchaser was not a "non-Canadian" for *Investment Canada Act* purposes, reaching 33% in 2025, stabilizing back to levels seen in 2023 (27%) from only 13% in 2024. While it is premature to conclude that this trend reflects a market preference for Canadian purchasers amid global tensions, it is certainly a development worth monitoring in the years ahead.

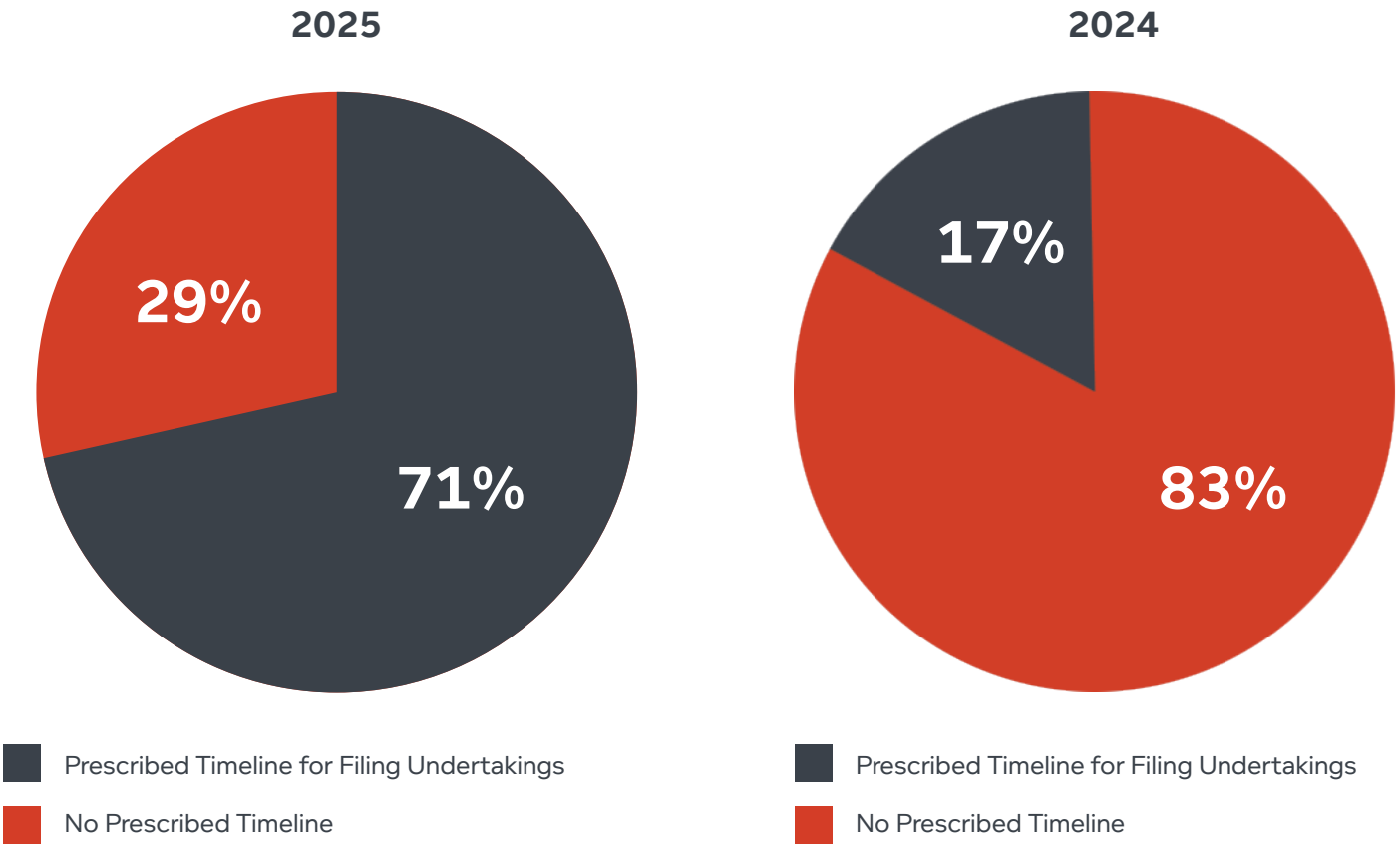
The *Investment Canada Act*'s impact extends beyond representations and warranties as it also remains pertinent to deal timing. Of the seven deals in 2025 that included a covenant regarding filing timelines for net benefit review applications, five (or 71%) required the foreign purchaser to file undertakings within a prescribed timeline compared to only 17% of such instances in 2024. These covenants are typically seen as a means of expediting the review process by forcing an investor to engage on remedies with the Minister at a particular point in the review. Additionally, of the 20 deals with a foreign-controlled buyer, 25% included national security clearance under Part IV.1 of the *Investment Canada Act* as a closing condition, compared to 19% and 27% in the previous two years, perhaps signalling that the market is in a relatively

settled state on codifying the assessment of national security risk in transaction agreements.

The following chart illustrates the comparison between deals that included a covenant requiring foreign purchasers to file undertakings within a prescribed timeline and those that did not, for the years 2024 and 2025.

Recent changes to the *Investment Canada Act* regime reflect a shift from a reactive to a proactive regulatory posture. As the mandatory filing regime comes into force in 2026 and the Minister begins to explore the contours of the new economic security factor, the timeline and outcome of potential national security reviews, and the *Investment Canada Act* regime more generally, may need to become a more explicit consideration for parties in transaction agreements.

Incidence of Timeline for Filing ICA Undertakings in Merger Agreements



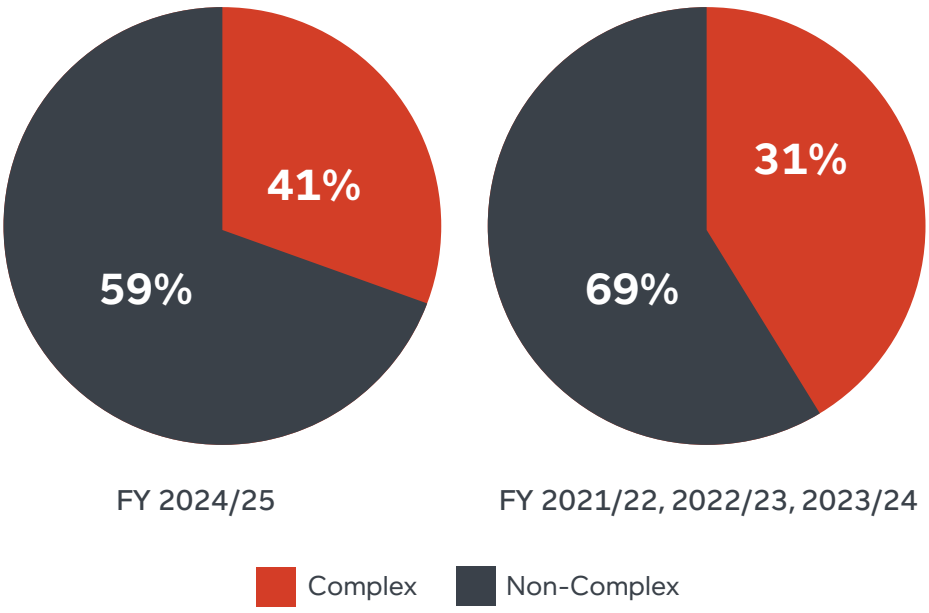
Merger Review: More Friction, but Similar Outcomes

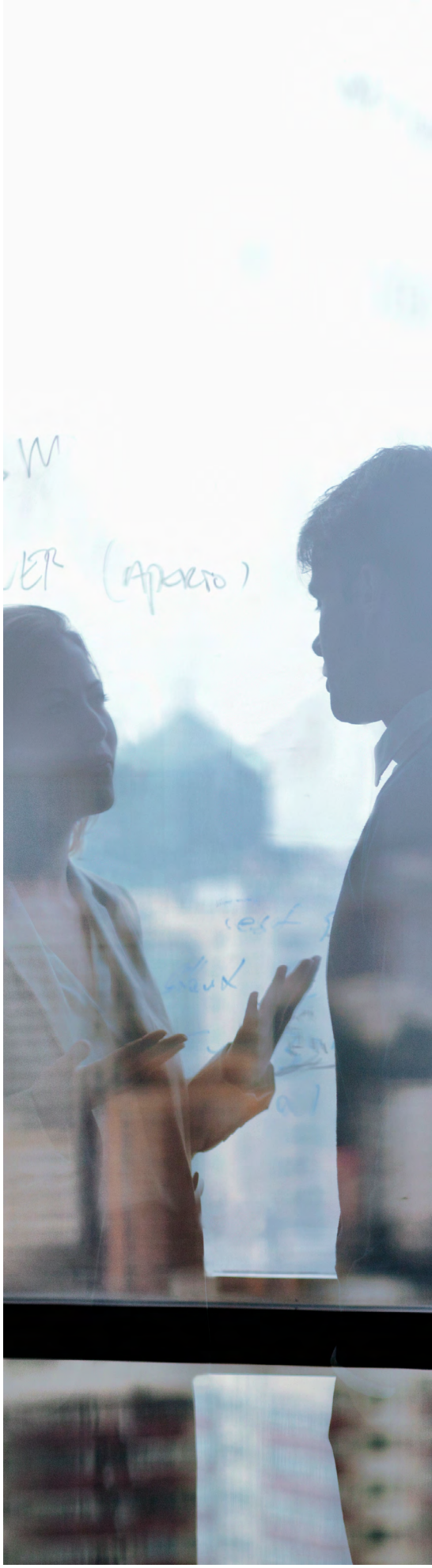
In his address to the Canadian Bar Association's Competition Section *Fall Conference* in September 2024, the former Commissioner, Matthew Boswell, characterized amendments to the *Competition Act* that came into effect just two months prior as ushering in a "new era of competition enforcement [that] is best thought of as generational change".[1] While the Bureau's approach to merger enforcement has shifted under the amended merger control regime, the first eighteen months of the new era of competition enforcement have yet to result in the promise of less technocratic enforcement, stronger remedies, and an overall increase in enforcement action.

INCREASING NUMBER OF "COMPLEX" TRANSACTIONS WITH LENGTHIER REVIEWS

In its most recent fiscal year (April 1, 2024 - March 31, 2025), the Bureau's Merger Intelligence and Notification Unit received 247 merger notifications, marking a 31% increase over the previous fiscal year and the largest number of notifiable transactions since the 2007-2008 fiscal year (in which an unprecedented 300 merger filings were received).[2] During the same period, the Bureau concluded 237 merger reviews, of which 98 mergers were designated as

Complexity Designation of Concluded Merger Reviews





1 Competition Bureau, Address by Matthew Boswell, Commissioner of Competition at the Canadian Bar Association Competition Fall Law Conference, "The new era of competition enforcement in Canada" (September 26, 2024), online: **https://www.canada.ca/en/competition-bureau/news/2024/09/the-new-era-of-competition-enforcement-in-canada.html**.

2 Competition Bureau, "Merger Intelligence and Notification Unit – Update on Key Statistics 2024-2025" (October 15, 2025), online: **https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/merger-intelligence-and-notification-unit-update-key-statistics-2024-2025** (the "MINU Statistics Report").

complex.[3] This represents a 50% increase in mergers designated as complex as compared to the previous three-year period (average of 65 complex mergers).[4]

A material contributing factor to this increase is the introduction of a merger-specific structural presumption threshold into the *Competition Act*, whereby a transaction that is likely to result in a combined parties' market share in excess of 30% or a concentration index (also known as the Herfindahl-Hirschman Index) of more than 1,800, together in either case with an incremental increase to the pre-merger concentration index of more than 100, is presumed to be anti-competitive, unless the merging parties can prove otherwise on the balance of probabilities. Rather than being used as a tool to streamline merger reviews by enabling the Bureau to deprioritize below-threshold mergers, the structural presumption has further entrenched market shares as a central focus of the Bureau's approach to merger review, resulting in more transactions being designated as complex in the absence of clear market share evidence. This has increased the review timeline for otherwise straight-forward transactions and, for those truly complex cases, resulted in an increase in the number of "pull and refile" transactions.

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Filing of complete pre-merger notification forms (alone or in combination with an ARC request) by both parties to a transaction commences the statutory 30-day waiting period under subsection 123(1) of the *Competition Act*, the expiry of which places the parties in a legal position to close the transaction even in the face of an ongoing Bureau review. While not intended for this purpose,[5] if the Bureau aims to prevent the parties from completing their merger upon expiration of the waiting period, the Bureau can issue a supplementary information request ("SIR"), which triggers a fresh 30-day waiting period that starts only once both parties have complied with the SIR (which will involve the parties supplying the Bureau with a significant volume of records and data). Given the material temporal and financial burden associated with responding to a SIR, we are seeing an increasing trend of parties, sometimes at the Bureau's request, pulling and refiling their pre-merger notification filings in the hope that the additional time will lead the Bureau to conclude that it does not need to issue a SIR or otherwise will lead the Bureau to issue a narrower SIR. A pull and refile restarts the 30-day statutory waiting period, providing the Bureau with at least another 30 days to complete its review.[6] While a significant majority of complex reviews will likely continue to be completed within 45 days, transactions where the parties pull and refile their pre-merger notifications will likely take at least 60 – 75 days for the Bureau to complete its review (or longer where the Bureau requires additional information and decides to issue a SIR even after the pull and refile).[7]

FAMILIAR RESULTS FROM THE BUREAU'S "HEALTHY SKEPTICISM"

A cornerstone of the *Competition Act*'s revised merger control regime was the introduction of a higher remedial standard, enabling the Tribunal to order, and therefore the Bureau to negotiate, remedies that would "restore competition to the level that would have prevailed but for the merger" (as compared to the previous remedial standard, which only required the remedy to remove the "substantial" lessening of competition). While this amendment was touted as providing the Bureau with the ability to fully

3 Based on the information contained in the initial filings (which can include an ARC request and / or pre-merger notification forms) submitted by merging parties, the Bureau will designate a transaction as either "non-complex" or "complex". The Bureau typically reserves the non-complex designation for transactions with a clear absence of competition issues, including transactions with no or minimal (<10% combined market share in any relevant market) overlap. All other transactions are designated as complex (i.e., transactions between competitors, or between customers and suppliers, where there are indications that the transaction may, or is likely to, create, maintain, or enhance market power) and carry a service standard period of 45 calendar days (as opposed to 14 calendar days for non-complex transactions). The Bureau's service standard is not binding, but rather represents an indicative timeline within which the Bureau aims to complete its review based on the complexity of the transaction. For further information, please see the Competition Bureau Fees and Service Standards Handbook for Mergers and Merger-Related Matters, available online: **https://competition-bureau.canada.ca/en/competition-bureau-fees-and-service-standards-handbook-mergers-and-merger-related-matters**

4 Competition Bureau, *supra* note 2.

5 In particular, under subsection 114(2) of the *Competition Act*, the Commissioner can issue a SIR only where the Commissioner requires additional information that is "relevant to the Commissioner's assessment of the proposed transaction" and not because the Commissioner seeks to delay closing.

6 As long as both parties refile their respective pre-merger notification filings within 5 business days of pulling the initial filings, no filing fee is payable in connection with the refiling.

7 While the MINU Statistics Report indicates that the vast majority of complex merger reviews (91%) continue to be completed within the 45 calendar day service standard period (average review timeline of 44.46 days, up approximately 22% from the previous year), these statistics do not reflect the increasing trend of "pull and refile" as the service standard period also resets upon refiling and only the second 45-day service standard period is factored into these statistics.

preserve and protect competition, the outcomes of the Bureau's merger enforcement activity remain consistent with years past. In 2025, the Bureau has entered into only two merger remedies (down from four in 2024), with both involving divestures of a similar nature to the remedies that the Bureau would have otherwise extracted under the former remedial standard.[8]

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Similarly, the Bureau appears to have put the brakes on high-stakes merger litigation in 2025. Although the Bureau obtained court orders in connection with multiple post-closing merger investigations,[9] including the BWX Technologies / Kinetrics transaction in the nuclear medicine sector and the Mérieux NutriSciences / Bureau Veritas transaction in the food testing sector, it has yet to challenge these or any other transactions before the Tribunal, as it has done in past years with the Rogers / Shaw and Secure / Tervita transactions. While the Bureau will continue to actively monitor the post-closing competitive impact of transactions, these trends suggest that the Bureau will likely be much more selective in the transactions it decides to challenge before the Tribunal in 2026.

HOW ARE TRANSACTING PARTIES DEALING WITH THE NEW ERA OF COMPETITION ENFORCEMENT?

In the face of a changing merger control regime in Canada, regulatory risk allocation remains a paramount consideration for transacting parties. Our Canadian M&A Deal Study[10] indicates that purchasers are becoming increasingly reticent to agree to remedial commitments in the face of regulatory uncertainty, with the proportion of transactions involving an express obligation to provide a remedy, whether structural or behavioural, declining slightly from the previous year (nine out of 21 agreements (43%) as compared to eight out of 17 agreements (47%)). On the other hand, vendors are equally reticent to let purchasers off the hook where *Competition Act* approval is required; for example, the number of agreements with a reverse

8 In June 2025, the Bureau entered into a consent agreement with Canadian Natural Resources Limited in connection with its acquisition of Schlumberger N.V.'s interest in the Palliser Block joint venture, which involved the divestiture of a majority interest in one of three gas processing plants in a particular region to address concerns regarding an increase in market concentration (CT-2025-003). In connection with Schlumberger Limited's acquisition of ChampionX Corporation, the Bureau entered into a consent agreement with Schlumberger Limited in July 2025 to remedy concerns in the oilfield services sector in Canada through a quasi-structural remedy involving the divestiture of one of ChampionX's subsidiaries and a commitment to license IP owned by another subsidiary (CT-2025-005).

9 The *Competition Act*'s merger control regime provides the Bureau with the ability to review any notified transaction (except those in respect of which it issued an advance ruling certificate (ARC)) within one year after closing and any unnotified transaction within three years after closing.

10 As described in the previous chapter, the Canadian M&A Deal Study involves an annual review of the 30 largest negotiated deals involving Canadian publicly listed entities between January and December 1, 2025. Of the 30 transaction agreements reviewed, 21 agreements included a *Competition Act* closing condition, which is the highest number of agreements in the past seven years of our Canadian M&A Deal Study to include *Competition Act* closing conditions.

hell-or-high water covenant (which covenants provide a purchaser is not required to provide any remedy to obtain *Competition Act* approval) remain scarce.[11] Vendors are also extracting greater protections through reverse termination fees ("**RTF**"), with six agreements including a RTF payable where *Competition Act* clearance is not obtained (the greatest number of RTFs since we began this study in 2015). These statistics demonstrate that regulatory risk allocation will remain a central consideration for transacting parties, particularly in those transactions where obtaining *Competition Act* approval may not be straight-forward.

REVISED MERGER ENFORCEMENT GUIDELINES WILL INFLUENCE THE PATH FORWARD

Over a year-and-a-half after the *Competition Act*'s amended merger control regime came into effect, in November 2025, the Bureau finally published, in draft form, its revised *Merger Enforcement Guidelines* ("**MEGs**"). The MEGs serve as the main source of guidance on the Bureau's approach to merger enforcement under the *Competition Act* and have not undergone a significant refresh since they were last revised in 2011. The draft revised MEGs suggest that the Bureau's approach to merger review under the *Competition Act*'s amended merger control regime will be largely consistent with past practice; however, the draft revised MEGs do provide a more detailed insight, using more accessible language, into the Bureau's approach to central tenets of merger enforcement such as market definition and the structural presumption. The draft revised MEGs also address (albeit at a high level) the Bureau's approach to merger enforcement in growing areas of interest such as the digital economy (including platforms and multi-sided markets) and innovation industries. The Bureau is undertaking a consultation process on the draft revised MEGs until February 11, 2026 and finalized guidance is expected to be published shortly thereafter.

11 Only two agreements reviewed in 2025 included a reverse hell-or-high water covenant as compared to seven such agreements in 2023.

Cartels and Competitor Collaborations: Where's the Enforcement?

Statistics from the Bureau's 2024–2025 reporting period evidence a continued enforcement focus on criminal cartel activity. Of the 81 total Bureau non-merger investigations commenced in the last year, 42 related to cartels, while 27 of the 52 Bureau investigations closed involved cartels.[1] The Bureau also continued to pursue domestic bid-rigging schemes, further demonstrating the agency's commitment to tackling cartel activity, no matter its scale. These developments clearly signal that criminal conspiracies will remain an enforcement priority for the Bureau in 2026 and beyond.

The Bureau has released a number of guidelines and discussion papers on its approach to the evolving use of artificial intelligence ("AI") and algorithmic pricing, and on the newly amended civil competition collaboration provision. Most notably, the Bureau overhauled its *Competitor Collaboration Guidelines* (as they relate to section 90.1 of the *Competition Act*), replacing it with a comprehensive set of draft *Anti-competitive Conduct and Agreements Enforcement Guidelines* (the "ACCA Guidelines"). Along with the Bureau's *Competitor property controls and the Competition Act guidelines* (the "Property Control Guidelines"), the draft ACCA Guidelines provide some clarity on how the *Competition Act*'s anti-competitive collaboration provision applies to vertical agreements. Now that the Bureau has established an approach to vertical agreements, it remains to be seen whether these agreements will be subject to increased scrutiny in the coming years.

CARTEL ENFORCEMENT ON THE RISE

Statistical Update for the Bureau's 2024–2025 Fiscal Year

Statistics from the Bureau's 2024–2025 reporting period (April 1, 2024 – March 31, 2025) suggest that 2026 will be a busy year for the Bureau's cartel directorate:[2]

Enforcement Metric	2024–2025	2023–2024	2022–2023	2021–2022	2020–2021
New cartel investigations	**42**	**22**	**30**	**14**	**14**
Cartel Investigations Closed	**27**	**35**	**21**	**19**	**15**
Ongoing cartel investigations	**40**	**34**	**47**	**39**	**36**
Search warrants issued[3]	**3**	**1**	**0**	**1**	**0**
Immunity markers granted	**7**	**3**	**1**	**2**	**4**
Leniency markers granted	**5**	**0**	**0**	**0**	**0**
Total fines imposed on companies	**$0**	**$51,960,000**	**$0**	**$761,967**	**$0**
Total fines imposed on individuals	**$216,000**	**$0**	**$25,000**	**$0**	**$0**
Total settlements pursuant to prohibition orders	**$250,000**	**$1,850,000**	**$485,000**	**$0**	**$5,400,000**

1 Competition Bureau, "A New Era for Competition in Canada- Commissioner of Competition 2024 25 Annual Report" (October 2, 2025), online: < **https://competition-bureau.canada.ca/sites/default/files/documents/cb-annual-report-2024-2025-eng.pdf**>.

2 Competition Bureau, "Competition Bureau performance measurement & statistics report 2024-2025" (July 24, 2025), online: < **https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/competition-bureau-performance-measurement-statistics-report-2024-2025**>.

3 Includes multiple warrants for a single investigation.

The commencement of 42 new investigations nearly doubles the Bureau's new investigati ns count compared to its 2023-2024 fiscal year. While the Bureau closed 27 cartel investigations, by the end of its 2024-2025 reporting year, the agency still had 40 ongoing cartel investigations. The uptick in the number of immunity and leniency markers granted is also noteworthy; the fact that the Bureau granted leniency markers, that may assist in conducting investigations and secure guilty pleas, for the first time in five years.

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The increase in fines imposed on individuals stems from the resolution of over-a-decade old, domestic bid-rigging cases, making room for the Bureau to pursue new cartel cases.

Out with the Old, in with the New

In 2025, the Bureau announced fines for cases related to bidding for social housing in Manitoba and public paving contracts in Quebec.

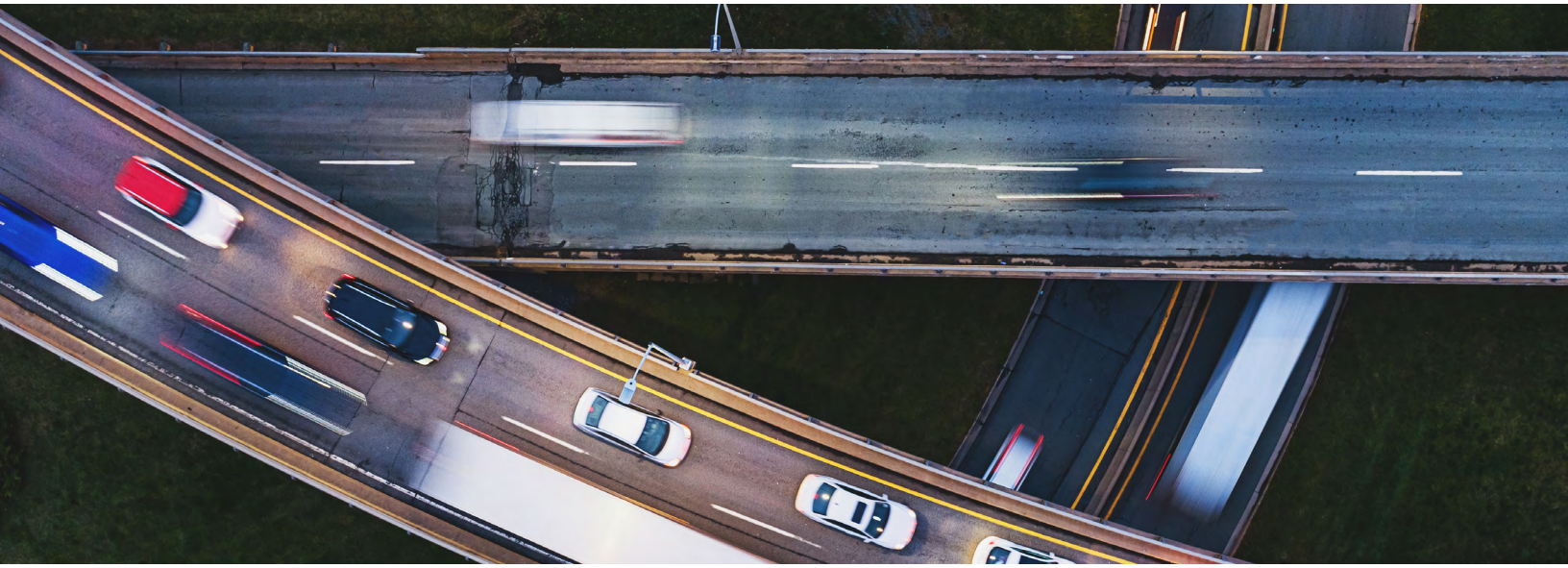
On February 6, 2025, five contractors in Brandon, Manitoba, plead guilty and were ordered to pay a combined amount of $196,000 in fines.[4] In December 2022, the Bureau announced that the five contractors were indicted for alleged conspiracy to divide up contracts for refurbishment services of social housing units. The charges were laid after the Bureau uncovered that these individuals manipulated 54 social housing contracts awarded by the Manitoba Housing and Renewal Corporation between December 2011 and February 2016, for a total value of approximately C$3.5 million. According to the Bureau, their scheme allowed the contractors to determine in advance which one would obtain the public contract and to establish the price of the project.

In January 2025, Serge Daunais, a former executive for Pavages Maska Inc., pleaded guilty to conspiring with competitors to submit rigged bids for paving contracts awarded in 2008 by the Ministère des Transports du Québec (the "**MTQ**") in the Granby region, and was ordered to pay a $20,000 fine.[5] This plea follows criminal charges laid in September 2023 against two individuals for their involvement in this bid-rigging conduct.

On March 20, 2025, the Bureau also announced that Pavex Ltd. will pay C$150,000 for entering into bid-rigging agreements to allocate territories for paving contracts awarded by the MTQ in the Saguenay-Lac-Saint-Jean, Quebec region between 2008 and 2010. The payment was

4 Competition Bureau, "Five contractors in Brandon, Manitoba, plead guilty to conspiracy related to social housing projects" (February 6, 2025), online: < **https://www.canada.ca/en/competition-bureau/news/2025/02/five-contractors-in-brandon-manitoba-plead-guilty-to-conspiracy-related-to-social-housing-projects.html**>.

5 Competition Bureau, "$20,000 fine for second construction executive guilty of bid-rigging in the Granby region" (January 14, 2025), online (News Release): < **https://www.canada.ca/en/competition-bureau/news/2025/01/20000-fine-for-second-construction-executive-guilty-of-bid-rigging-in-the-granby-region.html**>.



part of a civil prohibition order settlement reached between the Public Prosecution Service of Canada and the company.[6]

> **The use of AI in the real estate industry was a key focus for the Bureau in 2025.**

These resolutions suggest that the Bureau is willing to pursue and conclude investigations into domestic bid-rigging and cartel matters, even where the penalties involved are relatively small-scale and the underlying conduct occurred long ago.

REAL ESTATE AND ARTIFICIAL INTELLIGENCE ("AI") TAKE CENTRE STAGE

The use of AI in the real estate industry was a key focus for the Bureau in 2025:

— In early 2025, the Bureau announced an investigation into the use of algorithmic pricing in Canadian rental markets, following the U.S. RealPage case and seemingly initiated at the request of the Minister of Innovation, Science and Industry.[7] In November 2025, the Bureau announced that it had discontinued its investigation into whether suppliers of algorithmic pricing software, namely RealPage and Yardi, had abused a dominant position or entered into anticompetitive collaboration. Ultimately, the Bureau found that: (i) there was insufficient evidence to conclude that RealPage or Yardi occupied a dominant position in a relevant market; and, (ii) there was a relatively low adoption of revenue management software by Canadian landlords, such that it was unable to demonstrate that competition in Canada was harmed substantially under either the *Competition Act*'s abuse of dominance or civil collaboration provisions.[8]

In concluding its investigation, the Bureau warned that algorithmic pricing software may distort the competitive process and result in violations of the *Competition Act*, where it relies on competitively sensitive information; makes it easier to accept and implement pricing recommendations than to reject or override them (e.g., penalizes landlords for rejecting the software's recommendations); or, artificially inflates or limits the reduction in price recommendations.

— While the investigation was ongoing, in June 2025, the Bureau also issued a news release that it had become "aware that some landlords and property managers may be engaging with their competitors, including through discussion groups on social media."[9] Although it recognized that some discussions between competitors may be justified, the Bureau warned that it is illegal for competitors to agree about, rental prices,

6 Competition Bureau, "Pavex to pay $150,000 in territory allocation settlement in Saguenay–Lac-Saint-Jean" (March 20, 2025), online (News Release): < **https://www.canada.ca/en/competition-bureau/news/2025/03/pavex-to-pay-150000-in-territory-allocation-settlement-in-saguenaylac-saint-jean.html**>.

7 The Canadian Press, Competition Bureau says it's probing whether landlords are using AI to set rents" (February 17, 2025), online: <**https://www.thecanadianpressnews.ca/science/competition-bureau-says-its-probing-whether-landlords-are-using-ai-to-set-rents/article_e3b2878e-eb5b-5b7e-a2c2-69d014d339ff.html**>. Global News, " Competition Bureau should probe potential rent price fixing: minister" (November 1, 2024), online: <**https://globalnews.ca/news/10847113/ai-rent-price-fixing-claims-canada/**>.

8 Competition Bureau, "Competition Bureau position statement regarding its civil investigation into RealPage's and Yardi's algorithmic pricing software used in the rental housing market" (November 10, 2025), online: < **https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/competition-bureau-position-statement-regarding-its-civil-investigation-realpages-and-yardis**>.

9 Competition Bureau, "Landlords and property managers: agreeing with competitors on rental prices is illegal" (June 25, 2025), online (News Release): < **https://www.canada.ca/en/competition-bureau/news/2025/06/landlords-and-property-managers-agreeing-with-competitors-on-rental-prices-is-illegal.html**>.

including any increases or surcharges; the terms of their leases, for instance, amenities and services; and, restricting the housing supply by artificially reducing the availability of rental units.

Relatedly, the use of AI and its broader implications on competition remains top of mind for the Bureau. In July 2025, the Bureau released a *Algorithmic pricing and competition* discussion paper, with a view of advancing its understanding of algorithmic pricing.[10] Among other things, the discussion paper posits that algorithmic pricing could facilitate both explicit and tacit agreements to fix prices between competitors. According to the Bureau, competitors could use the same algorithm to process their data that, in turn, sets or recommends prices to each of them to earn the highest combined profit for all. In doing so, these algorithms could "hub-and-spoke" conspiracies, enabling competitors to implement a coordinated pricing strategy.

While Bureau is in the preliminary stages of developing its enforcement approach to the use of AI and algorithmic pricing, these developments suggest that it will not shy away from undertaking AI cases where they are perceived to result in anti-competitive conduct.

VERTICAL AGREEMENTS: THE BUREAU'S NEW BATTLEGROUND?

Prior to the enactment of Bill C-56, section 90.1 of the *Competition Act* was limited to agreements among actual or potential competitors. As of December 2024, the provision was expanded to capture any agreement, regardless of the competitive relationship between the parties, for which "a significant purpose" is to "prevent or lessen competition in any market." The term "significant purpose" was not defined under the *Competition Act*, nor subject to judicial interpretation. Moreover, the revised provision introduced a different standard than exists elsewhere in the *Competition Act*; whereas the typical standard is to "prevent or lessen competition *substantially* in any market", section 90.1. requires that a "significant purpose" of a vertical agreement must be to "prevent or lessen competition in any market" — eliminating the substantiality threshold.

> **It was not until 2025 that the Bureau released guidance on its interpretation of the newly amended section 90.1.**

It was not until 2025 that the Bureau released guidance on its interpretation of the newly amended section 90.1, in the form of its Property Control Guidelines[11] and the draft ACCA Guidelines currently open for consultation.[12] Although these guidelines acknowledge that the *Competition Act* imposes different legal tests for agreements between competitors and agreements between non-competitors, the Bureau's assessment of horizontal and vertical agreements are practically indistinguishable. According to the draft ACCA Guidelines—when reviewing agreements that do not involve competitors—the Bureau will focus on whether the agreement has the effect of harming competition. In its view, where an agreement has the effect of substantially harming competition it presumably has a significant purpose to prevent or lessen competition in a market, in the absence of credible evidence to the contrary.[13]

The draft ACCA Guidelines are subject to public consultation until January 2026. As the Bureau finalizes its enforcement position on vertical arrangements, companies can expect heightened scrutiny with respect to vertical arrangements.

10 Competition Bureau, "Algorithmic pricing and competition: Discussion paper" (June 10, 2025), online: < **https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/publications/algorithmic-pricing-and-competition-discussion-paper**>.

11 Competition Bureau, "Competitor property controls and the Competition Act" (June 4, 2025), online: < **https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/publications/competitor-property-controls-and-competition-act**>.

12 Competition Bureau, "Anti-competitive Conduct and Agreements" (October 31, 2025), online (Enforcement Guidelines): < **http://competition-bureau.canada.ca/en/how-we-foster-competition/consultations/anti-competitive-conduct-and-agreements**>.

13 Ibid at paras 425-430.

Abuse of Dominance and Unilateral Conduct – Bigger Waves in Big Tech

The Bureau's appetite for tackling unilateral conduct has shown no signs of slowing down in 2025. Following six high-profile investigations and the launch of landmark litigation against Google's ad tech business in 2024, its resolve to test expanded enforcement powers has only intensified. As the Google proceedings unfold and constitutional challenges loom, 2026 is shaping up to be a pivotal year for abuse of dominance enforcement in Canada. We expect the Bureau to continue drawing inspiration from international counterparts, with particular attention to online marketplaces, real estate platforms, and small and medium enterprise ("SME") lending. Meanwhile, private actions continue to gain momentum, adding a new dimension to an increasingly dynamic enforcement landscape.

Following six high-profile investigations and the launch of landmark litigation against Google's ad tech business in 2024, resolve to test expanded enforcement powers has only intensified.

ANALYSIS OF THE GOOGLE ADTECH LITIGATION – *WHY IS THE BUREAU INTERVENING NOW?*

In November 2024, the Bureau filed its long-anticipated application against Google, alleging that Google's control over key AdTech tools distorted competition and harmed both publishers and advertisers. The Bureau claims Google abused its market power by "raising barriers to entry and expansion, suppressing innovation and excluding rivals."[1]

The timing is notable. The application closely followed amendments to the *Competition Act* that expanded the Bureau's ability to seek administrative monetary penalties ("AMP"), which now reach $25 million ($35 million for repeat offenders) and three times the benefit derived from the conduct, or, if that amount cannot be reasonably determined, 3% of global revenues – suggesting the Bureau may have waited to launch this case until stronger remedies were in play.

The Bureau's proposed remedies stand out amid a crowded global enforcement landscape. While the underlying theory of harm – centred on self-preferencing and foreclosure – mirrors actions in the U.S. and EU, Canada's approach could prove more disruptive. The Bureau is seeking not only significant monetary penalties but also the divestiture of DoubleClick for Publishers and AdX, two core components of Google's AdTech stack. By contrast, France has relied on behavioural commitments, which some critics view as ineffective and burdensome.[2] The U.S. Department of Justice is pursuing divestitures, while

1 *Commission of Competition v. Google Canada Corporation and Google LLC*, CT-2024-010 (Notice of Application), at p.7, online: **https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/521324/1/document.do**

2 Anna Langlois and Bethan John, Global Competition Review, "Equativ exec blasts France's Google ad tech remedies in US trial" (September 29, 2025), online: **https://globalcompetitionreview.com/article/equativ-exec-blasts-frances-google-ad-tech-remedies-in-us-trial**

the European Commission paired its €2.95 billion fine with an order to eliminate inherent conflicts of interest; divestitures, however, remain on the table.[3]

> **As 2026 unfolds, the Bureau's assertiveness invites broader questions: is this the first in a wave of tech-focused investigations?**

As 2026 unfolds, the Bureau's assertiveness invites broader questions: is this the first in a wave of tech-focused investigations? And with AMPs now scaled to global revenues, if the case reaches litigation on the merits (see *Google's Constitutional Challenge* below) will Canada favour monetary penalties over structural remedies and behavioural constraints – or perhaps a mixture of all three?

GOOGLE'S CONSTITUTIONAL CHALLENGE: A TEST CASE FOR CANADA'S NEW AMP POWERS

In May 2025, Google launched a constitutional challenge targeting the administrative monetary penalties it could face if found in violation.[4] This came before the Tribunal has even heard the merits of the Bureau's abuse of dominance case against it. Based on Google's 2024 global revenue figures, the potential penalty could reach $10.5 billion, dwarfing not only Canada's hitherto record antitrust fine, but exceeding any antitrust fine levied for a single infringement overseas.

Google argues these penalties amount to a "true penal consequence," warranting Canadian Charter and Bill of Rights protections, including a higher standard of proof.5 The Bureau has countered that the motion is premature, speculative, and based on assumptions about the Tribunal's eventual ruling.

This challenge could have far-reaching implications. If Google succeeds, it may constrain the Bureau's ability to rely on the increased AMPs across civil enforcement, potentially chilling future cases. However, if the Tribunal upholds the framework, it will solidify the regime's expanded remedial powers and likely embolden more assertive enforcement in 2026 and beyond.

PRIVATE REINFORCEMENT REIMAGINED: THE SIGNIFICANCE OF ALEXANDER MARTIN V. GOOGLE

The June 2025 amendments to the *Competition Act* expanded the existing pathway for private enforcement, allowing individuals to seek leave from the Tribunal to bring abuse of dominance applications. Leave may now be granted on two distinct grounds: if the applicant's business is directly and substantially affected in whole or in part by the conduct, or if the Tribunal is satisfied that it is in the public interest to allow the case to proceed. This marks a significant shift from the previous regime, which required a direct and substantial impact on the applicant's business *as a whole*.

Alexander Martin's application, relating to Google's alleged dominance in the Canadian search engine market through exclusionary is the first to test this new provision.[6] Before assessing the merits, his case will require the Tribunal to interpret the new public interest leave threshold. The Tribunal's decision will be precedent-setting. It must balance

> **Google launched a constitutional challenge targeting the administrative monetary penalties it could face if found in violation.**

3 Rashid Baxter and Bethan John, Global Competition Review, "Google hit with EU €2.95 billion adtech sanction, divestments still on the table" (September 5, 2025), online: **https://globalcompetitionreview.com/article/google-hit-eu-eu295-billion-adtech-sanction-divestments-still-the-table**

4 Tara Deschamps, Financial Post, "Google, Competition Bureau battle over possible constitutional challenge in case" (May 28, 2025), online: **https://financialpost.com/news/google-competition-bureau-constitutional-challenge**

5 *Commission of Competition v. Google Canada Corporation and Google LLC,* CT-2024-010 (Notice of Motion), at p. 12, online: **https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/521411/index.do**

6 *Alexander Martin v. Alphabet Inc., Google LLC, Google Canada Corporation, Apple Inc. and Apple Canada Inc.,* CT-2025-004 (Memorandum of Fact and Law of the Applicant) at p. 6–8, online: **https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/521438/1/document.do**

enabling legitimate private-led actions with avoiding a flood of speculative claims. While the Bureau is not a party to the application, it has a stake in how permissively the test is applied – too narrow, and the reform risks irrelevance; too broad, and it may strain enforcement resources or dilute case quality.

While Martin's case remains the only public interest application to date, a successful outcome could pave the way for broader consumer-led enforcement and prompt companies to reassess associated enforcement risks. It will also be telling to see how actively the Bureau engages with private access proceedings going forward.

OTHER RECENT DEVELOPMENTS IN UNILATERAL CONDUCT AND TRENDS TO WATCH.

Guidelines Rewritten – *A New Lens on Dominance Enforcement?*

On October 31, 2025, the Bureau launched a public consultation to solicit feedback on its proposed Anti-Competitive Conduct and Agreement Guidelines ("ACCA Guidelines"), which would replace the now dated Abuse of Dominance Enforcement Guidelines published in 2019. While the core legal test under section 79 remains unchanged – market dominance, a practice of anti-competitive acts and conduct that has the effect of harming competition substantially – the ACCA Guidelines mark a strategic shift toward a more principles-based and effects-focused approach. The revised framework streamlines certain prescriptive thresholds and expands the scope of potentially anti-competitive conduct, emphasizing adverse effects on competition even absent subjective evidence of intent. Allied to the dilution of the legal test for abuse of dominance as part of recent legislative amendments, this broader, less prescriptive language signals increased enforcement flexibility – particularly in fast-evolving markets – and may introduce greater uncertainty for firms assessing enforcement risk. Stakeholders are encouraged to engage with the consultation to help shape the final version.

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Section 11 and Amazon's Fair Pricing Policy

In 2026, the Bureau's investigation into Amazon's Marketplace Fair Pricing Policy will warrant close attention. Introduced in 2017, the Bureau's investigation intensified in 2025; to advance its investigation into Amazon's conduct, the Bureau exercised its powers under section 11 of the *Competition Act* and obtained a court order compelling the production of records and relevant information for the investigation. With digital marketplaces central to Canada's retail economy, this investigation could mark a turning point in how dominance is policed online.

TREB 2.0? Real Estate Data and the Quebec Professional Association for Real Estate Brokers Investigation

In April 2016, the Tribunal ruled in favour of the Bureau's abuse of dominance case against the Toronto Regional Real Estate Board ("TRREB"). More recently, in February 2023, the Bureau obtained a first order in its investigation into conduct by the Quebec Professional Association for Real Estate Brokers ("QPAREB").[7] QPAREB, similar in its core functions to TRREB, manages the multiple listing service ("MLS"), that collects and centralizes Quebec real estate data. The Bureau, in May 2025, announced it obtained a second court order to advance its investigation into QPAREB. As housing affordability and digital transformation remain top of mind for policymakers, expect real estate platforms – and more broadly, any party that collects and shares market data – to face heightened regulatory attention in the year ahead.

Anchored in its headline-catching AdTech litigation, the Bureau's abuse of dominance enforcement stepped out of second gear in 2025. Expect more of the same in the coming 12 months.

7 Competition Bureau, "Competition Bureau obtains court order to advance an investigation of competition in the Quebec real estate services market" (February 20, 2023), online:**https://www.canada.ca/en/competition-bureau/news/2023/02/competition-bureau-obtains-court-order-to-advance-an-investigation-of-competition-in-the-quebec-real-estate-services-market.html**

Deceptive Marketing: The Steady Drip of Drip-Pricing Cases

A MORE LITIGIOUS BUREAU

The Bureau emerged as a more assertive enforcer in 2025, particularly in the realm of drip pricing. This aligns with the Bureau's *2025-2026 Annual Plan – Strengthening competition in a changing economy*, which emphasized a continued and intensified focus on deceptive marketing, with drip pricing remaining a top priority.[1]

In 2025, the Commissioner launched new drip pricing proceedings before the Tribunal against DoorDash and Canada's Wonderland. Canada's Wonderland, the largest amusement park operator in Canada, was challenged for promoting cheaper pricing on its website and social media channels that excluded mandatory processing fees, while DoorDash was accused of excluding mandatory fees (i.e., service fees, delivery fees, expanded range fees, small order fees, and regulatory response fees) from advertised food delivery prices until checkout. Both cases remain active before the Tribunal and are scheduled to be heard in Fall 2026.

Looking ahead to 2026, drip pricing enforcement will remain a top priority, with continued legal action and scrutiny likely targeting digital and consumer-facing platforms. At least two marquee appeal decisions should also be released in 2026 and provide insight into many drip pricing issues.

> **Looking ahead to 2026, drip pricing enforcement will remain a top priority.**

First, last year, we reported on the Bureau's victory against Cineplex – the first contested case to apply the *Competition Act*'s new explicit drip pricing provision. The Bureau alleged Cineplex's advertised movie ticket prices were unattainable due to 'hidden' online booking fees. The Tribunal ruled in the Bureau's favour and imposed an administrative monetary penalty of nearly C$39 million – the highest ever ordered under the *Competition Act*. In October 2025, the Federal Court of Appeal heard Cineplex's appeal. Cineplex asserts that the Tribunal erred as the online booking fee was sufficiently disclosed, placed immediately and prominently on the first page of the ticket sales process, and that consumers understand webpages require scrolling to be reviewed in their entirety. The decision is expected after the publication of this Outlook. Second, *Deane v. Canada Post Corporation*, the first drip pricing certification decision made by Canada's Federal Court,[2] is also headed to the Federal Court of Appeal in 2026. Both appeals – one via class action and the other through the Tribunal – will clarify the *Competition Act*'s approach to pricing disclosures in digital formats.

1 Competition Bureau, *2025-2026 Annual Plan – Strengthening competition in a changing economy* (May 15, 2025), online: **https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/2025-2026-annual-plan-strengthening-competition-changing-economy**.

2 **2025 FC 1194** (Gagné J.), decided July 8, 2025 [*Deane*].

Despite legislative amendments expanding the private action regime under the *Competition Act*, take up has been relatively muted thus far, as the Tribunal has yet to provide guidance on procedural issues like third party funders and contingency fees. For now, plaintiffs continue to favour class actions, which offer well-understood procedural tools and potential for collective redress. The class action bar has been active in bringing drip pricing cases in 2025, challenging an array of businesses, including an online florist, travel booking website, food delivery app, parking services, streaming content provider, and hotels as will be detailed below in "**Competition Litigation: Class Action Landscape Gathers Momentum**."

As courts release decisions on what types of harm can be demonstrated on a class-wide basis and what theories of damages are most appropriate for addressing drip pricing practices, we may see a strategic shift. Depending on rulings in cases like *Cineplex*, *DoorDash*, and the class actions discussed below, litigants may increasingly opt for the Tribunal, recognizing its procedural and evidentiary advantages. Private applicants before the Tribunal may now also seek disgorgement from alleged drip pricers, to be distributed among the applicant and any other person affected by the conduct. As these cases progress, 2026 will likely bring greater clarity on how the Tribunal will approach this remedy – and whether its availability will encourage private applicants to choose the Tribunal over class proceedings.

In this flurry of drip pricing litigation, settlements remain elusive. Many companies maintain their fee disclosures are sufficiently transparent and, absent a definitive ruling from courts or the Tribunal otherwise, appear ready to defend their practices vigorously.

> **In this flurry of drip pricing litigation, settlements remain elusive.**

GREENWASHING

In June 2025, the Bureau published its *Environmental claims and the Competition Act Enforcement Guidelines*, the finalized guidance on how companies should apply the new *Competition Act* environmental claims provisions to their activities.[3] These guidelines reflect changes from the Bureau's December 2024 draft, discussed in last year's **Outlook**. The guidelines are considerably less prescriptive than guidance documents released by peer agencies, such as the US Federal Trade Commission's *Green Guide* and the UK Competition & Markets Authority's *Green Claims Code*. With a broad and flexible approach, the Bureau can assess environmental claims on a case-by-case basis. Based on

3 Competition Bureau, *Environmental claims and the Competition Act* (June 5, 2025), online: **https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/publications/environmental-claims-and-competition-act**.

2025's enforcement activity, it appears that the Bureau is waiting to find egregious cases to use its new greenwashing enforcement toolkit.

In November 2025, the Federal Government tabled *Budget 2025: Canada Strong*, which includes proposed amendments to the greenwashing provisions. These would remove the requirement for businesses to substantiate environmental claims using internationally recognized methodology standards, and eliminate the ability for third parties to bring greenwashing complaints directly to the Tribunal. If enacted, these changes could reduce litigation risk for businesses in 2026, and may further reinforce the Bureau's cautious enforcement posture.

We are also seeing companies self-correcting and retreating from environmental claims in light of Bureau enforcement and numerous six-resident complaints.

Nevertheless, we are also seeing companies self-correcting and retreating from environmental claims in light of Bureau enforcement and numerous six-resident complaints – whereby six residents of Canada can file a complaint compelling a Bureau inquiry – spurred by environmental groups. Although the Bureau is investigating these claims, it is quietly shutting down inquiries without formal action, a trend we expect to continue in 2026. We also expect companies will continue scaling back environmental claims and potentially broader environmental efforts as activist groups drive scrutiny via this complaint mechanism.

THE RISE AND FALL OF MAPLE GLAZING

In the weeks and months following the onset of US-Canada trade tensions in early 2025, a growing movement to "buy Canadian" surged, with businesses increasingly highlighting their Canadian origins through the use of Canadian symbols like the maple leaf, Canadian flag or other labels like "Made in Canada" or "Product of Canada". In March 2025, the Bureau updated its "Product of Canada" and "Made in Canada" Claims Enforcement Guidelines, which largely reaffirmed existing guidance to reflect current law, but signalled an increased scrutiny of alleged Maple Glazing.[4]

The Bureau updated its "Product of Canada" and "Made in Canada" Claims Enforcement Guidelines, which largely reaffirmed existing guidance to reflect current law, but signalled an increased scrutiny of alleged Maple Glazing.

Companies are treading carefully amid heightened media scrutiny and Bureau posturing, and Canada has not seen any enforcement activity from the Bureau or private parties – who, as of June 2025, could initiate proceedings under the *Competition Act* for materially false or misleading representations, including Maple Glazing.

Although we have yet to see a case be filed, Maple Glazing is clearly on the Bureau's radar and companies are taking this seriously, proactively seeking compliance advice to ensure their marketing practices align with regulatory expectations.

4 Competition Bureau, *"Product of Canada" and "Made in Canada" Claims* (March 7, 2025), online: **https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/publications/product-canada-and-made-canada-claims**.

Competition Litigation: Class Action Landscape Gathers Momentum

Over the past few years, plaintiffs counsel have moved away from following Bureau and U.S. Department of Justice enforcement action and towards proactively searching for competition claims. 2025 was no different. In this section, we summarize some notable ways plaintiffs' counsel have spun the *Competition Act* last year and look ahead to what we think is coming in 2026

Over the past few years, plaintiffs counsel have moved away from following Bureau and U.S. Department of Justice enforcement action and towards proactively searching for competition claims.

DEVELOPMENTS FROM 2025

Conspiracies among Non-Competitors: Plaintiffs Counsel's Work in Progress

Section 45 is violated only when a defendant conspires, agrees or arranges to engage in prohibited conduct "with a competitor". These words were specifically added to the offence in 2010,[1] and have since been interpreted to be a mandatory element.

Plaintiff counsel are increasingly pushing the boundaries on which agreements, whether or not between competitors, fall within the scope of s. 45.

Despite this, plaintiff counsel are increasingly pushing the boundaries on which agreements, between competitors or not, fall within the scope of s. 45. Two decisions, currently under reserve by the same panel at the Federal Court of Appeal, illustrate this point.

In *Difederico v. Amazon.com, Inc.*[2], the plaintiff alleged that the application of a clause from Amazon's business solutions agreement and its fair pricing policy to third-party sellers on its website amounted to a s. 45 agreement. The clauses required third party sellers to ensure the price of their products on Amazon were at least as favourable as their prices on any other website and allowed Amazon to suspend or terminate selling privileges for non-compliance. Although Amazon was an online store where the third parties sold their products, the court concluded there was arguably an agreement to control prices between competitors because the clauses regulated the prices of products sold on Amazon where Amazon itself also operates as a seller of record. However, arguably, the object of such agreement was to

1 See **Bill C-10, *An Act to implement certain provisions of the budget tabled in Parliament on January 27, 2009* and related fiscal measures**, 2nd Sess, 40th Parl, 2009, cl 410 (Royal Assent March 12, 2009); and compare with *Competition Act*, R.S.C. 1985, c. C-34, s. **45(1)** as it appeared between March 12, 2009 and March 11, 2010.

2 **2023 FC 1156** [*Difederico*].

ensure favourable prices for Amazon's customers and was therefore outside the scope of the unambiguously harmful agreements that s. 45 is intended to capture.

In *Sunderland v. Toronto Regional Real Estate Board*[3], the plaintiff alleged that real estate brokerages, real estate industry associations, and real estate brokerage franchisors all agreed to fix, maintain, increase or control prices for buyer brokerage services. While the industry associations and franchisors do not compete to supply buyer brokerage services, the plaintiff asserted that both groups aided, abetted and counselled the conspiracy by promulgating rules requiring a seller to pay for buyer brokerage services and publish such offer to pay, and by requiring brokerages to abide by these rules as a condition of becoming a franchisee. The court concluded that brokerages arguably entered into an agreement to control the price of buyer brokerage services through the rules dictating who would pay and when payment could be negotiated. Despite being a non-competitor, the industry associations involvement in creating the rules and requiring mutual membership arguably aided and abetted the brokerages' conspiracy bringing them within the scope of liability as well.

While the outcome in *Difederico* and *Sunderland* differed, the court appears to bend the "with a competitor" requirement in each case. In *Difederico*, a store operator is found to be a competitor with third parties selling on its online store triggering s. 45. In *Sunderland*, despite being non-competitors the court was willing to extend liability to industry associations as an aider and abetter to the agreement. Appellate decisions in both of these cases are expected by early 2026. The outcome of these appeals will likely determine whether plaintiffs continue to assert conspiracies between non-competitors.

Opening the Faucet on Drip Pricing Cases

Since the codification of drip pricing as a distinct category of deceptive marketing via Bill C-19, drip pricing has proven to be an enforcement priority for the Bureau.[4] With it has come a wave of class actions targeting add-on fees seemingly across the entire Canadian economy. 2025 saw the first class action reach a certification hearing. *Deane* signalled a permissive attitude towards the certification of drip pricing class action leaving elements of the offence such as what it means for a "fee" to be fixed to the merits stage, as well as accepting the quantum of the add-on fee itself as a possible measure of class members' harm.[5] On the back of *Deane*, plaintiffs will likely be emboldened to search for and progress more drip pricing class actions. This decision, along with others in this area, is currently under appeal. We look forward to 2026 for further guidance.

> ***Deane* signalled a permissive attitude towards the certification of drip pricing class action leaving elements of the offence such as what it means for a "fee" to be fixed to the merits stage.**

3 **2023 FC 1293** [*Sutherland*].
4 See *Commissioner of Competition v. Cineplex Inc.*, **CT-2023-003**, *Commissioner of Competition v. Canada's Wonderland Company*, **CT-2025-001**.
5 *Deane*, *supra* note 22.

Kicking the Tires on Hub and Spokes

Over the past-year, we have also observed an increasing number of hub-and-spoke conspiracy claims. In line with the general trend towards bending the "competitor" requirements for a s. 45 conspiracy, hub-and-spoke claims often allege that a non-competitor (operating as the hub) agrees to provide services to competitors in an industry (the spokes) which fix, maintain, increase or control prices. Examples include *Modhgill v. McCain Foods Ltd.*[6] and *City of Kamloops v. Atkore, Inc.*.[7]

PREDICTIONS FOR 2026

In 2026, we anticipate that plaintiff counsel will continue to be proactive and to advance cases independently of Bureau enforcement. We recommend keeping an eye out for the following:

> **In 2026, we anticipate that plaintiff counsel will continue to be proactive and to advance cases independently of Bureau enforcement.**

— **Speculative Cases without Evidence of Conspiracy**: as plaintiffs' counsel increasingly plead from scratch without building on findings from enforcement activity, expect more claims to be populated by bald and conclusory assertions. Correspondingly, defence counsel may be emboldened to move to strike claims from the outset and continue developing the case law on pleading s. 45 conspiracy claims.[8]

— **Non-Competitor Aiding and Abetting Claims**: a successful outcome for the plaintiffs in *Sunderland* will likely open the gates for extending liability for more s. 45 conspiracy claims to non-competitors through the aiding and abetting provisions of the *Criminal Code*, R.S.C. 1985, c. C-46. Aiding allows parties who "assist or help the actor" to commit an offence to be held liable for the offence while "abetting" does the same for those who "encourage, instigate, promote or procure" the offence to be committed.[9] In theory, a party such as an industry association or a data analytics firm could provide services that assist or promote conduct by businesses that violate s. 45, even though they themselves do not operate in the same market or compete with those businesses. We await the Federal Court of Appeal's decision in *Sunderland* to see how this will work in practice.

— **Hub-and-Spokes and Information Exchange**: in a similar vein, 2026 will likely see new hub-and-spoke conspiracy claims under s. 45 implicating both non-competitors and competitors. We anticipate cases involving information exchange (in particular, the exchange of pricing information) to be especially active given the prevalence of cases involving data analytics firms servicing multiple businesses in the same industry in the U.S. and the Bureau's recent interest in algorithmic pricing.[10]

Overall, we see 2026 as a year of continued innovation by plaintiffs counsel. With a shortage of actual price fixing cases being investigated by the Bureau and U.S. Department of Justice relative to the flurry of new plaintiff firm entrants to this area, we anticipate that plaintiffs counsel will continue to be creative in exploring and litigating novel theories of harm.

6 Court File No. VLC-S-S-248367, issued December 3, 2024.
7 Court File No. SE2547310, issued September 26, 2025.
8 Building on *Jensen v. Samsung Electronics Co. Ltd.*, **2023 FCA 89**.
9 *R. v. Briscoe*, 2010 SCC 13 at para. **14**.
10 Government of Canada, ***Algorithmic pricing and competition: Discussion Paper***, from June 10, 2025 to August 4, 2025.

Conclusion: Neither Here nor There

With the last 12 months not – with a few notable exceptions – representing a significant departure from prevailing orthodoxies at the Competition Bureau or the government agencies enforcing the amended *Investment Canada Act*, the forthcoming year will test whether Canada is truly on a path towards greater interventionism in competition or foreign investment law, whether in respect of merger review, cartels, unilateral conduct or national security matters.

Importantly, the amendments ushered in to Canada's competition and foreign investment law regimes – ostensibly seeking to align Canada more closely with international norms – already in some respects appear to be international outliers, as shifting geopolitical and industrial strategy policy objectives redefine how governments interact with and provide direction to, their competition and foreign investment enforcement agencies.

If Canada completes the transition towards more rigorous competition and foreign investment enforcement in 2026, new risks for businesses with a nexus to Canada will emerge. However, if government seeks to temper some of the recent amendments' sharper edges, companies, investors and other stakeholders subject to the *Competition Act* and the *Investment Canada Act* will be forced to navigate a different form of regulatory complexity.

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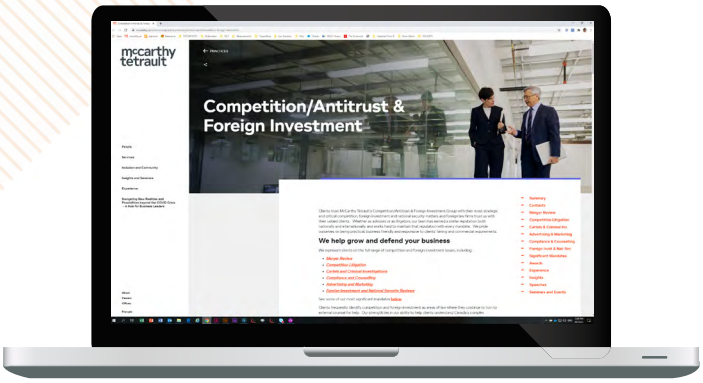

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