



Government
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"Lawful Access - Amendments to the *Competition Act*"

Competition Bureau

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Canada



Competition Act

- The *Competition Act* is a framework law containing both criminal and civil law provisions
- The Act deals with:
 - Mergers
 - Criminal offences, such as: conspiracy to fix prices, price discrimination and predatory pricing, price maintenance and bid-rigging (Part VI)
 - Civil offences, such as: abuse of dominant position; refusal to supply, exclusive dealing, tied-selling and market restriction, consignment selling and delivered pricing (Part VIII)
 - Misleading representations, fraudulent telemarketing and deceptive marketing practices, with choice of criminal or civil track (or “dual track” regime) (Part VI or Part VII.1)

Competition Bureau

Enforcement of Criminal and Civil Matters

- Bureau investigates, with the use of court-authorized search and subpoena powers, such as:
 - Order for Oral Examination (section 11(1)(a))
 - Production Orders (sections 11(1)(b)(c))
 - Search Warrant (sections 15 and 16)
 - Wiretap – for certain criminal offences (*Criminal Code*)

Amendments to the *Competition Act*

- There is a need to have certain legislative amendments to the *Competition Act* in light of technological changes
- Rapidly-changing technology is challenging the ability of the Competition Bureau to investigate matters under the Act, such as deceptive marketing and telemarketing, and bid rigging.
- Proposed amendments to the *Competition Act* include:
 - (1) Amendments to mirror *Criminal Code* amendments
 - (2) Amendments to incorporate existing *Criminal Code* investigative tools
 - (3) Tools to facilitate enforcement (*Mutual Legal Assistance in Criminal Matters Act* warrants and streamlined peace officer assistance)
 - (4) Technical amendments

Amendments to the *Competition Act*

1- Amendments to Mirror *Criminal Code* Amendments

- The Competition Bureau is mirroring some of the *Criminal Code* amendments, such as: warrants for the installation and monitoring of a transmission data recorder, a production order for tracking information, a production order for transmission data, partial disclosure of transmission data and preservation orders.
- These changes would ensure that the scope of the *Criminal Code* amendments are available for the enforcement of criminal offences under the *Competition Act*, as well as for the enforcement of the contraventions of the provisions of the *Competition Act* dealing with civil reviewable matters.
- These amendments will include the appropriate safeguards to comply with the *Charter*.

Amendments to the *Competition Act*

2- Amendments to Incorporate Existing *Criminal Code* investigative tools

- Additional enforcement tools are being sought to authorize the issuance of warrants for visual recording and assistance orders, subject to the same safeguards as in the *Criminal Code*.
- These additional enforcement tools will ensure that adequate investigative powers are available to competition law officers.

Amendments to the *Competition Act*

2- Amendments to Incorporate Existing *Criminal Code* investigative tools (continued)

Proposals for visual recording warrant:

“A judge of a superior or county court may, on the *ex parte* application of the Commissioner or the authorized representative of the Commissioner, issue a warrant in writing authorizing the Commissioner or any other person named in the warrant to make a visual recording of any persons engaged in activities in circumstances in which the persons have a reasonable expectation of privacy.”

“visual recording” includes a photographic, film or video recording made by any means.

Amendments to the *Competition Act*

2- Amendments to Incorporate Existing *Criminal Code* investigative tools (continued)

Safeguards for visual recording warrant:

- Reasonable grounds to believe that there has been a contravention of the *Competition Act*
- Mandatory consent of the Attorney General of Canada
- No other investigative procedure likely to succeed
- All documents relating to the application to be kept in a sealed packet
- Same time periods for execution of warrant as in the *Criminal Code*
- Same requirement to notify persons visually recorded as in *Criminal Code*

Amendments to the *Competition Act*

3- Tools to Facilitate Enforcement

Streamlined Peace Officer Assistance:

- An amendment is being sought to provide for streamlined peace officer assistance.
- It will clarify the law to ensure that we can seek peace officer protection and assistance at the time the judge issues a warrant.

Amendments to the *Competition Act*

3- Tools to Facilitate Enforcement (continued)

Mutual Legal Assistance in Criminal Matters Act (MLACMA)

Warrants:

- A minor amendment to the MLACMA would provide that search warrants and other warrants issued under the MLACMA can be executed by the Bureau's competition law officers.
- Currently, such warrants can only be executed by peace officers.
- This amendment will further the evidence-gathering process as a number of the criminal cases under investigation pursuant to the *Competition Act* involve international anti-competitive or fraudulent or deceptive marketing activities.

Amendments to the *Competition Act*

4- Technical Amendments

- The Bureau also seeks minor amendments to the *Competition Act* to update its language in order to reflect technological changes.
- For instance, the expression “interactive telephone communications” found under section 52.1 would be replaced by an expression which would cover any means of telecommunications, in order to include voice over Internet Protocol and any other current or emerging communication technology.