



Canada is situated in North America, bordering the North Atlantic Ocean on the East, North Pacific Ocean on the West, and the Arctic Ocean on the North, North of the United States of America. Canada is the second largest country in the world after Russia. Its population is, however, only about one-fifth of Russia's.

Economy

Canada ranks eleventh (World Bank Database Indicators) in the world in GDP. As an affluent, high-tech industrial society, newly entered in the trillion-dollar class, Canada closely resembles the US in its market-oriented economic system, pattern of production, and affluent living standards.

Given its great natural resources, skilled labour force, and modern capital plants, Canada enjoys solid economic prospects. Solid fiscal management has provided Canada with a comparatively favorable fiscal position that assisted the country during the recent global recession and should allow the federal government to balance its budget in a few years. Canada is one of the world's largest producers of a wide variety of minerals. Minerals, forest products, and agriculture have been major factors in Canada's economic development.

Canada continues to enjoy a trade surplus with its principal trading partner, the United States, even though the American market now absorbs only 71 percent of Canadian exports compared with more than 85 percent of in 2002. Over the same period, Canadian exports to Europe and China have been increasing.¹ The spectacular growth of Canada's manufacturing segment, particularly since the 1950s, has transformed the nation from a rural, agricultural society into one primarily industrial and urban. Industry is now the leading segment of the nation's economy employing one-fourth in goods producing industries like mining and manufacturing.²

PROFILE	
Population:	34.3 thousand***
GDP (Current US\$):	1.736 trillion***
Per Capita Income: (Current US\$)	45,560 (Atlas Method) ⁱ *** 41,000 (at PPP) ⁱⁱ **
Surface Area:	10.0 million sq. kms.*
Life Expectancy:	81 years*
Literacy (%):	99 (of ages 15 and above)**
HDI Rank:	6**
Sources:	
- World Development Indicators Database, World Bank, 2010	
- Human Development Statistical Annex, UNDP, 2011 ⁱⁱⁱ	
- World Factbook, CIA	
(*) For the year 2010	
(**) For the year 2011	
(***) For the year 2012	
ⁱ http://databank.worldbank.org/databank/download/GNIPC.pdf	
ⁱⁱ https://www.cia.gov/library/publications/the-world-factbook/geos/ca.html	
ⁱⁱⁱ http://hdr.undp.org/en/media/HDR_2011_EN_Tables.pdf	

Competition Evolution and Environment

In 1889, the Canadian Parliament became the first national Government to pass a competition legislation. During the nineteenth century, a time when a protected market was created through tariffs, large corporations were being formed and farmers feared that abuse might arise from increased concentration of economic power. The only types of abusive conduct the federal legislators addressed in this new *Act for the Prevention and Suppression of Combinations in Restraint of Trade* (Act) were combines or conspiracies to fix prices or restrict output.

In 1892, the substantive provisions of the Act were incorporated into the first *Criminal Code* of Canada. By 1897, one charge of conspiracy was laid against American

❖ Original paper written (2006-07) by Josee Filion & updated (October 2012) internally CUTS International.

– *The views expressed in this Article are entirely the views of the author in her personal capacity and do not necessarily reflect the views of the Competition Bureau*”.

Tobacco Company of America, which pleaded guilty and was acquitted.

In 1910, the scope of the renamed Act, the *Combines Investigation Act* (CIA), was expanded to include, for example, a prohibition against anticompetitive mergers and monopolistic activities that were reviewed under criminal law. To make enforcement more effective, the Government converted the criminal provisions into civil law and established an enforcement agency. Later, in 1921, the civil law was found to be unconstitutional,³ and by 1923, the criminal law was restored but the newly created enforcement agency remained.

In the years, 1935 to 1960, the legislation underwent a number of significant amendments, most of which aimed to expand the scope of prohibited activities, including price discrimination and predatory pricing (1935), resale price maintenance (1951) and misleading advertising (1960).

Faced with the controversy involving the suspension of the CIA during the Second World War, when production, allocation of resources, and the setting of prices were subject to the control of the Wartime Prices and Trade Board, the Government in 1950 appointed the MacQuarrie Committee to study the purposes and methods of the legislation. An objective of the review was to recommend any amendments desirable to make the CIA ‘a more effective instrument for the encouraging and safeguarding of our free economy’.

With a view to strengthening and improving the procedures, organisation and remedies in the CIA, the chief recommendation of the MacQuarrie Committee was the separation of functions and responsibilities between investigation and research on the one hand and appraisal and report on the other.

The 1952 amendments to the CIA, therefore, provided for a Director of Investigation and Research and a Restrictive Trade Practices Commission, today, the Commissioner of Competition, and the Competition Tribunal, respectively. The legislation of 1952 also incorporated the first structural remedy for the dissolution of a merger.

Until at least 1960, the conspiracy provisions dominated the enforcement activity of the Director, with convictions or prohibition orders being obtained in 75 of the 84 prosecutions that were commenced under the conspiracy provisions. With the scope of the legislation and the breadth and vigour of its enforcement having increased during the postwar period, the nature and objective of the CIA had become better known by the Canadian public, and some observers would argue that it increased its power to deter. But what was the impact of the legislation on economic efficiency?

Pursuing such an assessment of Canada’s competition policy, the Economic Council of Canada, an independent and research-based body established by federal statute in the mid-sixties to advise the Government of Canada on economic policy, was tasked in 1966 to undertake a review of ‘combines, mergers, monopolies and restraint of trade’ with a view to bring competition policy in harmony with other economic policy instruments and ensuring a balance between maintaining competition in domestic markets and helping, not hindering, the international competitiveness of Canadian firms.

In its 1969 Interim Report on Competition Policy, the Council stated that competition is an important means of achieving economic efficiency, and therefore:

“The main objective of competition policy should be that of obtaining the most efficient possible performance from the economy...in dynamic as well as static terms...and the avoidance of economic waste...with a view to enhancing the well-being of Canadians”.

In doing so, the Council made recommendations to be implemented in two Stages. The Stage I amendments included:

- the decriminalisation of the merger and monopoly provisions that proved to be inoperable under criminal jurisdiction, and the establishment of a civil tribunal with specialised expertise;
- the expansion of the scope of the CIA to cover services of all kinds;
- the addition of practices that would be referable to the tribunal for adjudication:
 - refusal to deal;
 - consignment selling;
 - exclusive dealing;
 - tied selling;
 - market restriction;
 - extraterritorial application of foreign judgments;
 - foreign laws and directives with an adverse effect on competition in Canada; and
 - refusal to supply by a foreign competitor.

Competition Law

The Stage II 1986 amendments represented a fundamental change to the former law and its procedures. The amendments led to the creation of today’s *Competition Act*, the introduction of a purpose clause and brought in, among other things:

- new reviewable matters relating to mergers, pre-notification of large merger transactions, abuse of dominant position, delivered pricing and specialisation agreements;
- clarified and strengthened criminal conspiracy provisions; and
- new investigatory powers and procedures to bring the competition legislation into conformity with the *Charter of Rights and Freedoms*⁴.

In addition, the Government passed an accompanying legislation, the *Competition Tribunal Act*, which established the Competition Tribunal as a new adjudicative body to succeed the Restrictive Trade Practices (RTPs) Commission.

Apart from a few exceptions, the Competition Act applies to businesses in all sectors of the Canadian economy.⁵ Prohibitions contained in the Act take two different forms: criminal offences and civil reviewable matters. Amendments to the Competition Act in 2009 have brought significant changes with regard to criminal offences & civil reviewable matters. Criminal offences now include conspiracy, bid-rigging, , criminal misleading advertising and deceptive telemarketing and pyramid selling. The criminal offences for discriminatory pricing, predatory pricing and price maintenance up to 2009 are now considered as civil reviewable matters.⁶

The Director may refer a case to the Attorney General of Canada for consideration as to what action the Attorney General may wish to take, which can include criminal charges. Criminal charges are prosecuted before the various courts of criminal jurisdiction in each province. Courts may impose fines, order imprisonment, issue prohibition orders and interim injunctions or any combination of these sanctions.

Civil reviewable matters include price maintenance, civil misleading advertising, predatory pricing, mergers; abuse of dominant position; refusal to deal; consignment selling; exclusive dealing; tied selling; market restriction and delivered pricing. The Director may address these matters by filing an application with the Competition Tribunal for an interim order or final order to stop certain activities or requiring a person to take certain steps that the Tribunal considers necessary to prevent injury to competition.

Although the two Stages of amendments substantially reformed the competition legislation, the protection of competition in Canada continued through incremental amendments. In 1999, the amendments added a new criminal offence of deceptive telemarketing, made changes to the merger pre-notification requirements and created a civil process to deal with misleading marketing practices. Finally, the Director was replaced by a Commissioner of Competition, who is appointed by the Governor in Council to direct the Competition Bureau.

In the face of a changing global economy and parliamentary interest in competition law, the turn of the century gave rise to further sets of amendments. By way of a Bill that was tabled in the House of Commons in 2001, and entered into force a year later, the 2002 amendments sought to increase Canada’s ability to:

- effectively enforce and administer competition policy and provided for provisions to facilitate cooperation with foreign competition authorities regarding evidence for civil competition matters;

- prohibit the sending of deceptive notice of winning a prize aimed at the general public and sent through the mail and Internet;
- streamline the Competition Tribunal process by providing for cost awards, summary dispositions and references; and
- broaden the scope under which the Competition Tribunal may issue temporary orders.

Soon after, the April 2002 Report of the House of Commons Standing Committee on Industry, Science and Technology, led to a new round of amendments. Canada considered proposals to strengthen the civil provisions with administrative monetary penalties, restitution and civil cause of action, reform of the conspiracy and pricing provisions, and allow for inquiries into the functioning of markets in Canada.

**Box 1: The Waste Case (2009)
(Joint Dominance Case – Exclusionary Contracting Practices)**

This was a joint abuse of dominance case in relation to alleged abusive contracting practices among waste collection companies on Vancouver Island. In this case, *Commissioner of Competition v. Waste Services (CA) Inc. and Waste Management of Canada Corporation*, the Bureau challenged certain contracting practices of two waste collection companies on Vancouver Island, which included long-term contracts that the Bureau argued locked in customers and included similar, and in the Bureau’s view, highly restrictive terms that included automatic renewal clauses, liquidated damages (significant penalties for early contract termination) and rights of first refusal. While settled under a consent agreement, it shows some of the types of exclusionary contracting practices that can, and in a number of cases have been, challenged by the Bureau and/or possibly held to be anti-competitive by the Tribunal (although all of the joint abuse cases to date have been settled).

The Bureau appeared to be particularly concerned with the companies’ contracting practices that had exclusionary effects on competing waste companies’ ability to access customers based, among other things, on the long duration of contracts, certain first refusal rights for the two suppliers and significant penalties imposed on customers for switching to alternative suppliers. The Bureau can now challenge a completed merger before the Competition Tribunal up until one year (previously three years) after the transaction has been substantially completed.

Source: Canadian Regulatory Law: News, Rules & Trends., 2009, available at <http://www.ipvancouverblog.com/canadiancompetitionlaw-abuseofdominance/>

In a move to further strengthen the Canadian system, on November 02, 2004 Federal Ministry of Industry tabled Bill C-19 – An act to amend the Competition Act and to make consequential amendments to other Acts – in the House of Commons. Bill C-19 was referred to the standing committee for review on November 16, 2004, although the committee has temporarily deferred consideration of the bill pending resolution of an issue pertaining to the deductibility of fines under the Competition Act for income tax purposes.

Further important amendments were put in place in 2009. A new provision of restitution has been added in the Competition Act. The Tribunal can order the person in violation to make restitution to purchasers even for civil matters. Administrative monetary penalties have been increased for abuse of dominance and deceptive marketing. The airline-specific provisions have been repealed thereby giving equal treatment to all the industries. One of the amendments is designed to provide a more effective criminal system for egregious forms of cartel agreements while allowing other forms of coordinated conduct to be dealt with under a civil provision. Fundamental changes have also been made to merger review procedures.

Institutions, its Competencies and Anticompetitive Business Practices

The Competition Act establishes the Competition Bureau, which is responsible for the enforcement and administration of the Competition Act. The Commissioner of Competition who heads the Bureau has full independence in the conduct and disposition of inquiries under the Competition Act.

The Bureau conducts its work in five main areas:

- to investigate anticompetitive activities that range from price fixing and bid-rigging to misleading advertising; the Competition Act contains provisions dealing with criminal offences and civil reviewable matters. Stiff penalties, such as fines and/or prison time can be imposed upon those who choose to engage in anticompetitive behaviour;
- to review proposed mergers to ensure they do not lead to a substantial lessening or prevention of competition;
- plays the role of supervisor, drawing the line between anticompetitive conduct and vigorous competition;
- ensures that consumers have accurate information at their disposal; and
- promotes and advocates greater competition. The Bureau has a statutory right to make interventions and independent representations in respect of competition.

To ensure both effective enforcement of and continued compliance with the Competition Act, the Bureau updates itself in light of technological change, industry trends, and consumer and business issues.

Fair Business Practices Provisions

The Competition Bureau’s Fair Business Practices Branch promotes fair competition in the marketplace by discouraging deceptive business practices and encouraging the provision of sufficient information to enable informed consumer choice.

This goal is achieved through the application of the Competition Act, *Consumer Packaging and Labelling Act*, *Textile Labelling Act*, and *Precious Metals Marking Act*. These statutes aim to protect consumers and maintain marketplace confidence in the quality of such products. The three standards-based laws concern the adequacy and accuracy of information provided to consumers in labelling, packaging and marking of consumer goods.

Prohibitions contained in the *Competition Act* take two different forms: criminal offences and civil reviewable matters. Criminal matters include false or misleading representations, deceptive telemarketing, deceptive notice of winning a prize and schemes of pyramid selling. The reviewable matters include materially false or misleading representations to the public, misleading price representations, representations not based on adequate and proper testing, misleading warranties and guarantees, untrue misleading or unauthorised use of tests and testimonials, non-availability of advertised specials, sale above advertised price and promotional contests.

Box 2: Canada Wins Guilty Pleas in Petrol Case

Canada’s Competition Bureau has obtained a guilty plea from Suncor Energy, the country’s largest oil company, in an investigation over collusion to fix the price of petrol. In a separate bureau probe, five individuals and a cooperative have also pleaded guilty to fixing petrol prices in Quebec.

The bureau found that Suncor’s subsidiary Sunoco and Pioneer agreed to coordinate price increases in response to price changes by their competitors. “Throughout the Competition Bureau’s investigation, Sunoco cooperated fully and, to put this matter behind it, agreed to pay a C\$500,000 penalty,” says the company in a statement.

Pioneer and rivals Canadian Tire Corporation and Mr Gas separately pleaded guilty to price fixing last month, receiving fines totalling C\$2 million. The bureau has so far obtained guilty pleas from 27 individuals and seven companies in the case and imposed more than C\$3 million in fines. Six individuals who pleaded guilty have received jail sentences for a total of 54 months..

Source: GCR, 16th April, 2012. Available at <http://www.globalcompetitionreview.com/news/article/31670/canada-wins-guilty-pleas-petrol-case/>

Period: 2010-2011	Number
Total Bureau Requests	17,994
Complaints	5,272
Infro Requests	6,710
No-Issue	6,012

Source: Annual Report of Canada Competition Bureau

Every year the Competition Bureau receives an average of 20,000 requests and complaints. Those include complaints regarding mass market include fraud which is fraud by mail, telephone and internet.

Other Market Regulatory Legislation

Besides the Competition Act, other federal and provincial statutes relating to regulated sectors also address competition matters in particular sectors of the economy.

Telecommunications Sector

The Canadian Radio-television and Telecommunications Commission Act empowers the Canadian Radio-television and Telecommunications Commission (CRTC) to forbear from regulation where there is adequate competition.

The CRTC is vested with the authority to regulate and supervise all aspects of the Canadian broadcasting system, as well as to regulate telecommunications common carriers

and service providers that fall under federal jurisdiction. Its regulatory powers are derived from the *Telecommunications Act* of 1993 and the *Bell Canada Act*.

The main objective of the *Telecommunications Act* is to ensure that Canadians have access to reliable telephone and other telecommunications services at affordable prices.

Energy Sector

The Canadian energy sector is committed to developing and promoting economic, regulatory and voluntary approaches that encourage sustainable development of energy resources.

National Energy Board Act established the National Energy Board, an independent federal agency, that regulates several aspects of Canada's energy industry. Its purpose is to promote safety, environmental protection and economic efficiency in the Canadian public interest within the mandate set by Parliament for the regulation of pipelines, energy development and trade.

Concluding Observations and Future Scenario

An overview of Canada's competition regime would be incomplete without recognising the key challenge of maintaining the evolution of competition law and policy to remain in step with an environment of increased international competitiveness, characterised by changing market conditions, innovation and deregulation. Although

Box 3: Irving Oil Charged in Gas Price-Fixing Cartel

The Competition Bureau announced today that criminal charges have been laid against Irving Oil and Mr. Serge Parent, manager of Irving Oil for the province of Quebec, for fixing the price of retail gasoline in Victoriaville, Thetford Mines and Sherbrooke, Quebec.

“These charges highlight our continued and steadfast commitment to combating domestic price-fixing cartels,” said John Pecman, Interim Commissioner of Competition. “Canadians are ultimately on the losing end of secret agreements that cheat them out of their money.”

By using a number of investigative tools, including wiretaps and searches, the Bureau found evidence that in certain local Quebec markets gas retailers, or their representatives, communicated with one another to agree on the price they would charge customers for gasoline.

Thirty-nine individuals and 15 companies have now been charged with criminal price-fixing in this case. To date, 27 individuals and seven companies have pleaded guilty with fines totalling over \$3 million. Of the 27 individuals who have pleaded guilty, six have been sentenced to terms of imprisonment totalling 54 months. The Competition

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Source: Competition Bureau, September 28, 2012 <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03503.html>

Box 4: Competition Bureau Sends Signal to Price-Fixers with \$12.4 mn Fine

The Competition Bureau announced today that Domfoam International Inc. and Valle Foam Industries (1995) Inc. pleaded guilty yesterday to conspiracy under the *Competition Act* and were fined a total of \$12.5 mn for participating in a price-fixing cartel for polyurethane foam. Under the *Competition Act*, an agreement between competitors to fix prices, allocate markets or restrict output in Canada is a criminal offence. In March 2010, amendments to the conspiracy provision of the Act came into force.

Source: Competition Bureau, January 6, 2012

these key drivers of the economy have been changing the nature of competition policy for many years, continuous attention to these forces will ensure that competition is maintained and encouraged in the interests of consumers, business and the economy as a whole.

Furthermore, to adapt Canadian competition policy to a rapidly changing business environment, institutional and legislative changes are necessary so that the Competition Bureau can better cope with an expanded and more high profile mandate. Certain aspects which calls for immediate attention are:

- As of all the regulatory agencies in Canada, the Competition Bureau's broad mandate is of fundamental importance, both to the business community and the national economy, it should be equipped with the necessary tools in order to meet the challenges of the new environment;
- The Competition Bureau should be established as a stand-alone federal agency, attached to Industry Canada and reporting as it now does to Parliament through the Minister of Industry.

Endnotes

- 1 TD Economics, February 1, 2012, available at <www.td.com/document/PDF/economics/special/dp0212_trade.pdf>
- 2 <http://www.phac-aspc.gc.ca/alw-vat/intro/wp-mt-eng.php>
- 3 The constitutional validity of the CIA was later confirmed by the Supreme Court of Canada as a valid legislation under the federal general trade and commerce power, and the federal criminal law power.
- 4 The Canadian *Charter of Rights and Freedoms* is part of the constitution, which is the supreme law of Canada, and guarantees certain rights and freedoms. Any actions taken by Canadian authorities will be governed by the Charter. The most relevant provisions are the following:
Sections 8: the right of any person to be secure against unreasonable search and seizure;
Section 11(c): the right of any person charged with a criminal offence not to be compelled to be a witness in proceedings against him or her in respect of that offence; and
Section 13: the right of any person not to have any incriminating evidence given in a proceeding used against him or her in any other proceeding, except in the case of false testimony.
- 5 The Act does not apply in respect of the following activities or sectors: collective bargaining activities, amateur sport, ocean shipping, energy, airlines, farm products, copyright collectives and certain regulated conduct.
6. Competition Bureau, <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03045.html>