



Government
of Canada

Gouvernement
du Canada

**RESTRICTING
THE SUPPLY
AND USE**
of
Products

<http://competition.ic.gc.ca>

Canada



COMPETITION
BUREAU

What Is the Competition Act?

The *Competition Act* (the Act) is a federal law governing business conduct in Canada and is enforced by the Competition Bureau (the Bureau). It aims to promote competition in the marketplace by stopping anti-competitive practices. Most businesses in Canada, both small and large, are governed by this Act.

The Commissioner of Competition (the Commissioner) is head of the Bureau, which is part of Industry Canada. The Commissioner is responsible for the administration and enforcement of the *Competition Act*, as well as three statutes concerning the accuracy and adequacy of information provided to consumers:

- the *Consumer Packaging and Labelling Act*
- the *Textile Labelling Act*
- the *Precious Metals Marking Act*.

When a Company Uses Restrictive Practices in the Marketplace

Restrictive practices, such as exclusive dealing, tied-selling and market restriction, can be cause for concern under the *Competition Act*. These types of restrictions may exist in franchise agreements, distribution relationships, dealer agreements or other similar relationships. However, not all restrictive practices are harmful to competition. In some situations these practices may enhance the distribution of a product to the benefit of users.

If you feel your ability to compete is being harmed by the restrictive conduct of a major supplier or suppliers, there may be some relief available under the **exclusive dealing, tied-selling and market restriction** provisions of the *Competition Act*.

What Are Exclusive Dealing, Tied-selling and Market Restriction?

- **Exclusive Dealing** occurs when a supplier requires or induces a customer to deal only, or mostly, in certain products.

- **Tied-selling** exists when a supplier, as a condition of supplying a particular product, requires or induces a customer to buy a second product. It may also occur when the supplier prevents the customer from using a second product with the supplied product.
- **Market Restriction** occurs when a supplier requires the customer to sell the specified products in a defined market, for example by penalizing the customer for selling outside that defined market.

When Does the Competition Apply?

The exclusive dealing, tied-selling and market restriction sections of the *Competition Act* may apply when the following conditions are met:

- The conduct is engaged in by a **major supplier** or is **widespread in a market**. A firm with less than 35 percent market share is not generally considered to be a major supplier. However, market share is only one factor that must be considered. Others include the existence of barriers to entry that limit competition, a lack of substitute products, and lack of competition among existing suppliers.
- The conduct in question constitutes a **practice**. Different restrictive acts considered together, as well as repeated instances of one act with one or more customers, may constitute a practice.
- The restrictive practice discourages a firm's entry into, or expansion in, the market; in other words, you must show an **exclusionary effect**.
- The practice has **substantially lessened competition**, or is likely to do so. This may happen when the supplier's restrictive practice prevents, for example, a rival's entry into a market, potential competition, product innovation or lower prices.

These sections of the *Competition Act* may not apply to major suppliers who make **temporary** exclusive dealing arrangements or who might restrict the supply of a product to a particular market to promote

a new supplier or product. The Act might not apply to a supplier requiring a customer to buy certain products together because of the technological relationship between such products, or to financial institutions imposing tied-selling arrangements to better secure a loan. Furthermore, the Act does not apply to such conduct practised between or among affiliated companies.

What Happens After I Make a Complaint?

If you believe that you or your business are adversely affected by the restrictive practices of a major supplier, contact the Competition Bureau. Bureau staff will ask about your situation and market conditions to check whether the required conditions have been met. If they have, Bureau officers will begin confidential interviews and a review of records, documents and other sources of information. The Bureau can also apply to the courts for subpoenas or use other compulsory means to continue its investigation.

The Bureau conducts its investigations in private and keeps confidential the identity of the source and the information provided. However, if someone has important evidence about an offence under the Act, that person may be asked to testify in court.

How Does the Competition Bureau Resolve This Type of Complaint?

Where appropriate, the Commissioner will open discussions to obtain voluntary compliance with the law. Sometimes, this is all the action needed to correct the situation.

Where a more formal approach is needed, the Commissioner can seek a binding Consent Order from the **Competition Tribunal** when all parties agree to a solution that will restore competition in the marketplace. The Competition Tribunal is like a court, chaired by a judge and independent of any government department.

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If voluntary compliance cannot be achieved, the Commissioner may file an application before the Competition Tribunal for an order to remedy the situation. The Tribunal has a number of remedies at its disposal to overcome the effects of restrictive practices and restore competition. The most common is an order that requires the practice to stop.

The Bureau produces videos and publications on various aspects of the Competition Act, the Consumer Packaging and Labelling Act, the Textile Labelling Act and the Precious Metals Marking Act. To find out more about our videos and publications, contact the Information Centre at:

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50 Victoria Street
Hull QC K1A 0C9

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This publication is only a guide. It provides basic information about the Competition Bureau and the Competition Act. For further information, you should refer to the full text of the Competition Act or contact the Competition Bureau at one of the numbers listed above.