



Government  
of Canada

Gouvernement  
du Canada

**ABUSE  
OF**  
*Market  
Power*

<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 Abuses Its Power in the Marketplace***

The size of a business, even one that dominates a particular market, is not, of itself, a cause for concern. Businesses may need to become large to achieve lower production costs or to compete against foreign and domestic competitors. However, when a dominant company exploits its market power in a way that hurts competition in the marketplace the *Competition Act* may come into play.

If you feel your ability to compete is being harmed by the anti-competitive acts of a dominant firm, there may be some relief available under the **abuse of dominant position** sections of the *Competition Act*.

## ***When Does the Competition Act Apply?***

The abuse of dominant position sections of the *Competition Act* may apply when all of the following criteria are met:

- The dominant firm or firms have **market power** — that is the ability to set prices above competitive levels. Relevant factors affecting market power include: the existence of barriers to entry, such as tariffs or government regulations that limit competition; a lack of substitute products; a lack of possible competitors; and a low level of innovation in the industry.
- The dominant firm or firms engage in **anti-competitive acts** — business practices that are intended to reduce competition. These practices include: buying up a competitor's customers or suppliers; using "fighting brands" (discount brands) to discipline or keep out competitors; cutting off essential supplies to rival companies; using long-term contracts to stop customers from changing suppliers; and overstepping authority granted by intellectual property rights such as trade-marks and patents.
- The anti-competitive acts have **substantially lessened competition**, or are likely to do so. This can happen when anti-competitive acts eliminate a rival or prevent such things as a rival's entry into a market, potential competition, product innovation and lower prices.

The *Competition Act's* abuse of dominant position sections do not penalize a company that has captured a dominant share of the market because of its better performance.

## ***What Happens After I Contact the Bureau to Make a Complaint?***

If you believe that your company is the victim of anti-competitive acts by a dominant firm, contact the Competition Bureau. Bureau staff will evaluate your situation and market conditions against the three criteria. If the criteria have been met, Bureau officers will begin 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 Bureau Resolve Abuse of Dominant Position Complaints?***

Where appropriate, the Commissioner will open discussions to try to obtain voluntary compliance with the law; sometimes this is all the action needed to correct the situation. The Commissioner can also seek a binding consent order from the Competition Tribunal when all parties agree on a solution that will restore competition to the marketplace.

The Competition Tribunal is like a court, chaired by a judge and independent of any government department.

If voluntary compliance cannot be achieved, the Commissioner may file an application for an order before the Competition Tribunal to remedy the situation. The Tribunal has a number of remedies at its



disposal to overcome the effects of anti-competitive acts and restore competition. The most common remedy is an order that requires the anti-competitive conduct to stop. If the Tribunal believes more has to be done, it may make an order requiring the dominant company to sell some of its assets or shares.

*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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*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.*