



Government
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REFUSAL *to* *Supply*

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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*.

Refusal to Supply

There is no absolute obligation on any business to supply to, or buy a product from, another business. However, under certain circumstances, if your business refuses to supply another business or another business refuses to supply you, the *Competition Act* may apply.

Why Would a Supplier Refuse Supplies to a Customer?

The supplier might, for example, try to reduce costs by decreasing the number of distributors, or gain revenue by cutting out the intermediary.

Under What Circumstances Would the Competition Act Apply?

When **all** of the following requirements under the refusal to supply provisions of the *Competition Act* are met:

- the would-be customer shows that the business has been **substantially affected**, or that he/she is unable to carry on business, because they cannot obtain **adequate supplies of a product** on usual trade terms;
- the inability to obtain adequate supplies must result from a **lack of competition among suppliers**;
- the would-be customer must be willing and able to meet the supplier's **usual trade terms**;
- the product must be in **ample supply**.

What Do the Following Words Mean?

“substantially affected”

A business would be substantially affected if the product refused accounted for a large portion of its sales and was essential to its continued profitability or survival.

The overall effect of the refusal also depends on whether the product could be easily replaced by another product or related line of business, or whether the product must be used or sold in conjunction with others.

“adequate supplies of a product”

Someone who is refused supplies must pursue all alternate sources of supply, taking into account price, quality, delivery time and profit margin. If the cost of a replacement product makes sales unprofitable, this would not be considered a reasonable alternative.

An article that is different from others by a trademark or trade-name is not a separate product, unless it dominates the market. Therefore, a refusal to supply a national brand would not raise a concern under the law, if another national or regional brand or generic equivalent were suitable replacements.

“lack of competition among suppliers”

If other suppliers are willing to supply the would-be customer, or if the inability to obtain adequate supplies is the result of a supplier’s legitimate business decision and not for anti-competitive reasons, this condition may not be satisfied.

“usual trade terms”

A would-be customer must be able to meet the supplier’s usual credit terms, purchase requirements, and reasonable technical and service requirements.

“ample supply”

If there is a shortage of the product resulting from, for example, a fire at a plant, raw material shortages, limited production capacity or inventories, this condition would not be met.

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

Bureau staff will ask you to explain your situation to check whether the four criteria have been met. If so, the Bureau will initiate discussions between you and your supplier to obtain voluntary compliance with the Act, which may include the supplier’s written promise or undertaking to supply. A more formal solution would involve the Bureau seeking a binding consent order from the Competition Tribunal when all parties have agreed on satisfactory supply conditions.

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.

What Is the Competition Tribunal?

The Competition Tribunal is like a court, chaired by a judge and independent of any government department. In a case of refusal to supply, where the parties cannot agree on a resolution, the Bureau may ask the Tribunal to adjudicate. As hearings before the Tribunal involve considerable time and expense, the Bureau attempts to resolve disputes without contested proceedings whenever possible.

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:

Information Centre
Competition Bureau
Industry Canada
50 Victoria Street
Hull QC K1A 0C9

Toll free: 1-800-348-5358
National Capital Region: (819) 997-4282
TDD (for hearing impaired): 1-800-642-3844

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E-mail: compbureau@ic.gc.ca
Web site: <http://competition.ic.gc.ca>

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.

