

February 12, 2024

The Honourable François-Philippe Champagne
Minister of Innovation, Science and Industry
C.D. Howe Building
235 Queen Street
Ottawa, Ontario
K1A 0H5

RE: Course correction needed on competition law changes

Dear Minister Champagne,

We represent Canadian businesses that compete every day with each other and with companies around the world. Together, our members employ millions of Canadians from a wide range of sectors that contribute billions to Canada's economy. We believe in open and competitive markets that are underpinned by transparent and predictable rules. Unfortunately, your government's recent efforts to modernize Canada's competition laws jeopardize the foundation on which we operate.

Canada's business community recognizes the need to modernize our country's decades-old *Competition Act* to ensure it remains relevant in a rapidly evolving economy. Strong and robust competition laws are critical to providing consumers with competitive prices and product choices, ensuring that small and medium-sized businesses have an equitable opportunity to participate in the economy, and expanding opportunities for Canadian participation in world markets.

That's why we and more than 130 other stakeholders – including small and large businesses, labour organizations, and consumer groups – engaged in the formal process established by your government in late 2022 to comprehensively review the Act.

The result of that consultation process – a “What We Heard” report – was released in late 2023, concluding with these words: “Thanks to the broad and thoughtful participation in this public consultation, the government now feels it is appropriately equipped to develop well-calibrated proposals for Parliamentary consideration.”

We were therefore surprised and disappointed that your government opted not to develop “well-calibrated proposals for Parliamentary consideration” through a stand-alone competition bill.

Instead, without notice, consultation, or meaningful debate in Parliament, you chose to rush through several major changes to the *Act* via an omnibus bill – Bill C-56. Weeks later, you introduced an additional round of consequential changes to the *Act* through a *second* omnibus bill – Bill C-59 – also without notice and consultation.

We are writing to express serious concerns with your decision to make important changes to the *Act* in such an unprecedented manner.

The *Competition Act* establishes one of Canada's most important regulatory regimes. As the legal framework providing the rules by which all businesses operate in the economy, any changes to the *Act* can have far-reaching consequences.

Bill C-59 includes proposals to increase private rights of access to the Competition Tribunal, expand the scope of the civil competitor collaboration provisions to apply to past conduct, and allow the Tribunal to conclude that a merger is likely to prevent or lessen competition substantially, solely based on evidence of concentration or market share.

These proposed changes will have a major impact on the economy and must be thoroughly studied and debated by Parliament, along with their intended and unintended consequences. For instance, Parliament should ensure that an expanded right of private access is not used by businesses to hamstringing their rivals with frivolous lawsuits rather than competing on merit. However, with Bill C-59 being an omnibus bill, such rigorous review is unlikely to occur.

By limiting notice, consultation and debate, the government's approach to reforming the *Act* introduces uncertainty and instability into competitive markets. It risks undermining competition between Canadian companies here at home, while also hampering foreign investment from abroad. Few companies, foreign or domestic, will seek to make significant investments in a country that changes its laws so arbitrarily and capriciously.

We urge the government to go back to the drawing board. The government should remove the proposed *Competition Act* changes in Bill C-59 and recommit to its promised stakeholder consultation process to ensure a modernized *Act* truly benefits all Canadians.

Business Council of Canada

Canadian Chamber of Commerce

Canadian Life and Health Insurance Association

Canadian Manufacturers & Exporters

Canadian Marketing Association

Retail Council of Canada