



OTTAWA
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The Honourable François-Philippe Champagne, P.C., M.P.
Minister of Innovation, Science and Industry
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Ottawa, ON K1A 0H5

Minister:

Both the Commissioner of Competition and you, the Minister to whom he is responsible, seem to have been caught flat-footed on the recent amendments to the *Competition Act*, specifically those aimed at so called 'greenwashing' contained in Bill C-59 *Fall Economic Statement Implementation Act, 2023*, which became law last month.

You may remember that this legislation is part of your government's 'omnibus bills'. These are bills where significant changes to the laws that govern Canadians are made. However, these changes often receive insufficient attention and lack the thorough analysis or democratic input that is necessary when updating important statutes. This input has been provided by nearly every business organization in the country. Unfortunately, prior to the passage of C-59, this input was disregarded.

The stated intent of the amendments - to combat 'greenwashing'- is commendable. Canadians have seen these false claims throughout society – from primary industries to service industries – much of which is unsubstantiated and, as a result, they are sceptical of such claims. Indeed, they are more sceptical of the federal government's statements in this regard, as your data and outcomes continue to miss substantially.

The main problem Canadian business will face is the increased lack of certainty involved with the amendments to the *Competition Act*. The trifecta of 'reverse onus' provisions, increased private right of access to the Competition Tribunal, and the undefined notion of 'internationally recognized methodology' (which is non-existent) have investors in all industries pausing until they gain clarity.

We understand that the Competition Bureau has received many requests and is developing guidance on the interpretation of these new provisions on an accelerated basis. However, we believe that more proactive measures could have been taken to prevent the confusion and uncertainty that many businesses are currently facing. We would also suggest that this input should have come from parliamentarians, who are elected to provide input on these matters.

.../2

This situation is eerily similar to the Environmental, Social, Governance (ESG) marketing campaign that took the investment industry by storm. While it promised significant advancements, it left investors questioning their achievements and the additional fees they were paying. Marketers reaped substantial profits, but the investors and the ESG outcomes saw little to no substantial progress. The rewards of virtue, it seems, were not shared virtuously. Moreover, the investment community had the freedom to choose from over 200 methodologies to assess their own ESG credentials. This lack of standardization led to confusion and skepticism. The current attempt at quantifying 'greenwashing' seems to be heading down a similar path, with funds likely to be allocated based on nebulous measurements.

These new amendments to the *Competition Act* provide Canadians with new constructs, most of which have no comparable in the world. We highlight the following in the amendments:

(b.2) makes a representation to the public with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that is not based on adequate and proper substantiation in accordance with internationally recognized methodology, the proof of which lies on the person making the representation.

Part of your role is to ensure Canada remains an investable jurisdiction, whether for domestic or international investors. Your proclivity in spending taxpayer funds for untested 'future solutions' for our economy is mostly just gambling with other peoples' money. Surely, you recognize how this new legislation will thwart any new investment in this country – whatever the sector – as it substantially increases litigation risk, and the basis of any action does not currently have a test or a definition.

Business investment thrives on clarity, something that your government has consistently undermined. Before this additional obstacle hampers more Canadian projects, can you please respond to the following questions:

- What measures are being implemented to ensure that this new competition oversight regime provides a reliable basis for business investment?
- How do you plan to seek input on the undefined terms that now exist in this legislation?
- How will you and the Competition Commissioner ensure that these new measures are not exploited as anti-competitive mechanisms?
- How do you plan to compare these new constraints against the non-existent constraints in every other jurisdiction?
- Has any entity within your department or affiliated bodies calculated the potential economic harm this could cause Canadian businesses?
- How do you plan to measure the impact of this new business constraint on the continued outflow of capital from Canada?
- Will you be issuing a policy directive to clarify the limits of this legislation to guide the various regulatory agencies and the courts?

.../3

The Honourable François-Philippe Champagne, P.C., M.P.
12 July 2024
Page 3

Lastly, would you consider drafting some clarifying amending legislation that takes into account the input of business organizations from every sector in the Canadian economy?

We look forward to your response and to understanding more about the steps being taken to address these concerns.

Sincerely,

ORIGINAL SIGNED BY

Rick Perkins, M.P.
South Shore—St. Margarets
Shadow Minister for Innovation, Science
and Industry

ORIGINAL SIGNED BY

Greg McLean, M.P.
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