



THE CANADIAN  
BAR ASSOCIATION  
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June 18, 2024

Via email: [INDU@parl.gc.ca](mailto:INDU@parl.gc.ca)

Joël Lightbound, M.P.  
Chair, Standing Committee on Industry and Technology  
Sixth Floor, 131 Queen Street  
House of Commons  
Ottawa, ON K1A 0A6

Dear Mr. Lightbound,

**Re: Bill C-352, Lowering Prices for Canadians Act**

I am writing on behalf of the Competition Law and Foreign Investment Review Section of the Canadian Bar Association (CBA Section) to provide a supplementary submission arising from the June 3, 2024, meeting of the Standing Committee on Industry and Technology (INDU) regarding Bill C-352, the *Lowering Prices for Canadians Act*.

We appreciate the opportunity to have appeared at the INDU session. Without repeating our testimony, we wish to submit brief additional comments. Specifically, the CBA Section submits that efficiencies be included among the factors listed in sections 93 and 90.1(2) of the *Competition Act*.

As you know, the efficiencies defense was removed from the *Competition Act* through Bill C-56, which received Royal Assent on December 15, 2023. Bill C-352 proposes to replace the efficiencies defense in the merger review (section 92) and civil competitor collaboration (section 90.1) provisions of the *Competition Act*, with the inclusion of efficiencies among the factors listed in sections 93 and 90.1(2) that the Competition Tribunal can consider when assessing competitive effects. As we noted during the INDU session, the CBA Section agrees with this inclusion.

However, efficiencies have not yet been listed as factors in sections 93 and 90.1(2) of the Act. With the removal of efficiencies as a legal defense, it is logical that they be listed as explicit factors for the Competition Tribunal to consider when assessing whether a merger or competitor collaboration substantially lessens or prevents competition.

It is well recognized in Canada and globally that efficiencies are relevant when assessing competitive effects, as they can lead to pro-competitive outcomes, enhanced productivity and innovation, ultimately benefiting consumers. As such, efficiencies should be expressly recognized as an important factor along with other factors in sections 93 and 90.1(2). The Commissioner of

Competition confirmed during the INDU session that the Competition Bureau considers efficiencies when assessing the competitive impact of mergers and civil collaborations. Recognizing efficiencies as a factor for the Tribunal to consider does not reintroduce the efficiency defense as previously formulated.

We would be happy to expand on the foregoing and answer any further questions you may have.

Yours truly,

*(original letter signed by Yves Faguy for Elisa Kearney)*

Elisa Kearney  
Chair, Competition Law and Foreign Investment Review Section

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*The Canadian Bar Association is a national association of 40,000 lawyers, Québec notaries, law teachers and students, with a mandate to promote improvements in the law and the administration of justice. The Section promotes greater awareness and understanding of legal and policy issues relating to competition law and foreign investment. We do not advocate for a particular position or outcome and represent a diversity of opinions, but we understand the Competition Act and the enforcement of competition laws.*