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### OUR COMPETITION PRACTICE

Lenczner Slaght has extensive experience in all areas of competition litigation. We regularly act in cases involving alleged breaches of the *Competition Act*, including misleading advertising, price fixing, and other conspiracy cases. We also represent defendants in class actions alleging violations of the *Act*. Our clients include leading multinational manufacturers, auto parts companies, and technology companies, among others. The breadth of our courtroom experience, combined with our deep understanding of strategic business issues, allows us to provide effective representation for both Canadian and international clients in the most vigorously contested disputes.

# Competition

*“As a result of the flurry of legislative amendments in recent years, businesses need to ensure they’re re-evaluating their approach to competition law compliance.”*

### What was the most interesting development of 2023, and why?

The biggest development of 2023 in this space were further amendments to the *Competition Act*.

In recent years, the government has undertaken significant legislative reform efforts in this space to strengthen the Competition Bureau’s enforcement abilities and try to more effectively address anti-competitive conduct. Following an initial series of amendments in 2022, further amendments were passed in 2023, with yet more amendments likely in 2024. The key amendments passed in late 2023 include:

- ▶ Granting the Competition Bureau new information-gathering powers to conduct market studies (independent of any particular investigation).

- ▶ Expanding the scope of reviewable collaborations between companies.
- ▶ Removing the efficiency defence for both mergers and reviewable collaborations.
- ▶ Restructuring the legal test for abuse of dominance to make it easier to establish.
- ▶ Adding excessive and unfair selling prices as an anti-competitive act for abuse of dominance.
- ▶ Increasing the maximum available penalties for abuse of dominance, up to the greater of (a) \$25 million for a first violation, or (b) three times the value of the benefit derived from the anti-competitive practice, or, if that amount cannot be reasonably determined, 3% of the company’s annual worldwide gross revenues.

### What’s the primary takeaway for businesses from the past year?

As a result of the flurry of legislative amendments in recent years, businesses need to ensure they’re re-evaluating their approach to competition law compliance. Some practices that were historically lawful may have become unlawful in the last few years. And some business practices that were historically low risk have now become substantially riskier, particularly for larger players that arguably hold a dominant position in certain markets.

Rather than business as usual, companies need to carefully consider their existing practices against recent amendments to avoid potential risks. The coming into force of some provisions has specifically been delayed by a year in order to allow businesses to review their practices; they should take that opportunity. There have always been significant benefits for businesses to have robust competition

law compliance programs. In light of developments in 2023, now is the time for businesses to review their policies to make sure they reflect updates to the legislation, and to audit the effectiveness of the program historically to ensure that it is sufficiently robust.

### What’s one trend you are expecting in 2024?

Over the course of 2024, both the Competition Bureau and the business community will continue to adapt to the new legislative framework. There is no doubt that the Competition Bureau will work on providing more information to businesses through updated enforcement guidelines and policy statements. While the Competition Bureau may be cautious in taking too much enforcement action too quickly, they will look for appropriate opportunities to flex their new legislative powers. The Competition Bureau’s enforcement action will likely remain robust in more straight-forward areas, such as deceptive marketing practices, where the Competition Bureau plays a consumer protection role.