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Legislative Summary

BILL C-56: AN ACT TO AMEND THE EXCISE TAX ACT AND THE COMPETITION ACT

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For clarity of exposition, the legislative proposals set out in the bill described in this legislative summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the Senate and House of Commons and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent and come into force.

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LEGISLATIVE SUMMARY OF BILL C-56: AN ACT TO AMEND THE EXCISE TAX ACT AND THE COMPETITION ACT

1 BACKGROUND

Bill C-56, An Act to amend the Excise Tax Act and the Competition Act (short title: Affordable Housing and Groceries Act),[1] was introduced in the House of Commons on 21 September 2023 by the Deputy Prime Minister and Minister of Finance and received first reading that same day. The bill was passed by both chambers of Parliament after being amended in the House of Commons,[2] and it received Royal Assent on 15 December 2023.

Bill C-56 has two parts:

- Part 1 amends the *Excise Tax Act* (ETA)[3] to temporarily enhance the Goods and Services Tax (GST) new residential rental property rebate in respect of new purpose-built rental housing.
- Part 2 amends the *Competition Act*[4] to promote competition, particularly in the grocery sector.

This legislative summary provides a brief description of the key amendments contained in Bill C-56.

1.1 RENTAL HOUSING AFFORDABILITY IN CANADA

In 2021, as part of a research project on housing, Canada Mortgage and Housing Corporation (CMHC) sought to determine whether financial considerations could explain, at least in part, the modest growth of purpose-built rental housing in Canada. In the conclusions in its report, CMHC found that

> - [t]raditional financial performance indicators do not support the development of private-market, purpose-built rentals in the six Canadian markets studied. …
> - … land costs remain a prohibitive cost to financial performance. …
> - … market rents are rarely sufficient to cover the development and construction costs of projects, regardless of the project size, location, and quality of the finishes.[5]

Two years later, in its *Rental Market Report*,[6] CMHC found that, while the supply of rental housing had grown sharply, demand had outpaced it across Canada. As a result, vacancy rates for "purpose-built rental apartments"[7] had dropped so low that CMHC called it a "near-historic low."[8] The report noted that the tighter rental market drove rent growth to "a new high."[9] CMHC also presented new data on the effects of tenant turnover on average rent for two-bedroom units, reporting that it makes existing rental units even more unaffordable in most regions. It further emphasized that tenants with the lowest incomes are especially affected by the lack of affordable housing.

This is the background to Bill C-56, which the government states will "incentivize the construction of more apartment buildings, student housing, and senior residences."[10]

1.2 STATE OF COMPETITION

From 17 November 2022 to 31 March 2023, the Government of Canada undertook public consultations with stakeholders and citizens on the future of Canada's competition policy.[11] On 20 September 2023, Innovation, Science and Economic Development Canada released a summary of the consultation. The document summarizes concerns over the "undue amount of power within and control over markets" held by select corporations and includes feedback received on reform proposals, including for merger provisions.[12] To that end, Part 2 of Bill C-56 aims to enhance competition. While not limited to the grocery sector, these provisions speak to concerns of stakeholders and the general public more broadly about market dominance in this area. The objective is to foster more competition, which could lead to lower prices and encourage innovation. According to the Government of Canada, the amendments to the *Competition Act*

- provide more authority to the Competition Bureau to investigate unfair industry behaviours and take enforcement action, for example in relation to price fixing or gouging;
- enable the Competition Bureau to prevent big grocery stores from impeding smaller competitor stores from opening nearby; and
- remove the efficiencies exception under section 96 of the *Competition Act* to end anti-competitive mergers that raise prices and limit consumers' choices.[13]

2 DESCRIPTION AND ANALYSIS

2.1 AMENDMENTS TO THE *EXCISE TAX ACT*

The ETA provides for several rebates on the GST payable in certain transactions involving real or immoveable property, including a rebate for new rental residential property under section 256.2(3).[14]

Announced in Budget 2000,[15] the rebate generally applies to the GST payable or deemed paid by a person who

- is not the builder and purchases residential property[16] from another person; or
- is the builder of the residential property or an addition to the residential property containing at least two residential units[17] and transfers ownership of a residential unit in the property to another person under a residential lease.

Such a person is generally entitled to a maximum rebate equal to 36% of the GST payable or deemed paid, provided that the fair market value of the residential property or each residential unit, as the case may be, is less than $450,000.

Clause 2(2) of the bill amends section 256.2 of the ETA to enhance the amount of the rebate in certain situations.

First, according to new section 256.2(3.1) of the ETA, the sale must be of "purpose-built rental housing," as defined in the regulations.[18] Second, the construction or last substantial renovation of the residential property or addition, or alteration necessary to effect the conversion, as the case may be, must begin after 13 September 2023, but before 2031, and be substantially completed before 2036. Finally, the requirements set out in the regulations must also be met.[19] Of note, the conditions to be met to qualify for the enhanced rebate under new section 256.2(3.1) apply in addition to the conditions already stipulated under section 256.2(3).

Under new section 256.2(3.2) of the ETA, the enhanced amount of the rebate to which a person is entitled is generally equal to the total GST payable or deemed paid,[20] regardless of the fair market value of the property or units in question. As a result, this amendment "remov[es] the GST on new rental housing construction across the country."[21] As an example, "for a two-bedroom rental unit valued at $500,000, the enhanced GST Rental Rebate would deliver $25,000 in tax relief."[22]

In addition, clause 2(3) provides special consideration for "public service bodies."[23] Generally, a person is not entitled to one of the rebates provided for in section 256.2 of the ETA if they are entitled to a rebate under certain other sections of the ETA.

Section 256.2(9.1) is added to the ETA so that public service bodies can be entitled to the enhanced amount. This new section amends the restriction in section 256.2(9) of the ETA, allowing public service bodies to claim a rebate under section 256.2(3) rather than the rebate provided for in section 259 of the ETA.

As per clause 2(4) of the bill, all of these amendments are deemed to have come into force on 14 September 2023.

2.2 AMENDMENTS TO THE *COMPETITION ACT*

2.2.1 Inquiry by the Commissioner of Competition (Clauses 3 to 7 and 11)

Clause 3 of Bill C-56 introduces new section 10.1 to the *Competition Act*. Following amendments by the House of Commons Standing Committee on Finance (FINA), this section, subject to consultation with, or at the direction of, the Minister of Industry, allows the Commissioner of Competition to conduct an inquiry into the state of competition in a market or industry if it is in the public interest (new sections 10.1(1) and 10.1(2)).

Should an inquiry proceed under new section 10.1 of the *Competition Act*, the commissioner must

- prepare and publish proposed terms of reference, with a minimum 15-day public consultation period (new section 10.1(3));
- submit its final terms of reference, after taking public comments into account, to the minister for approval and publish them once approved (new section 10.1(4));
- complete the inquiry and publish a report on its findings within 18 months of the date of publication of the final terms of reference (new section 10.1(5)), subject to extension by the minister for periods of up to three months (new section 10.1(6)); and
- prior to the publication of the report, send to any person having been subject to an order made under section 11(1) of the *Competition Act* a complete or partial draft of the report and provide them three business days to bring forward any factual inaccuracies or confidential information that should not be disclosed in the final report (new section 10.1(7)).

Clauses 4, 5, 6, 7 and 11 of the bill respectively amend sections 11(1), 21, 29.1(2)(b), 29.2(2)(b) and 124.2(1) of the *Competition Act* to include the application of new section 10.1, and in doing so, extend the Commissioner's investigative and enforcement powers.

Moreover, FINA's addition of clause 7.1 to the bill incorporates "directly or indirectly imposing excessive and unfair selling prices" into the list of anti-competitive acts under section 78(1) of the *Competition Act*. This amendment to that Act aligns Canada with the European Union – including its member states – and the United Kingdom, where excessive pricing has long been treated as abusive behaviour.[24]

2.2.2 Abuse of Dominant Position (Clause 7.2)

At second reading, clause 7.2(1) was added to the bill, amending sections 79(1) and 79(2) of the *Competition Act* to clarify the conditions for which the Competition Tribunal may impose additional or alternative orders on persons found to have engaged in abuse of dominance.

Further, clause 7.2(2) amends section 79(3.1) of the *Competition Act* to increase the administrative monetary penalties that the Tribunal may impose on a person found to have engaged in anti-competitive behaviour. Penalty amounts may not exceed the greater of $25,000,000 (if it is a first order) or $35,000,000 (if it is a subsequent order).

2.2.3 Orders Relating to Anti-competitive Agreements or Arrangements (Clause 8)

Clause 8(1) of the bill adds new section 90.1(1.1) to the *Competition Act* to broaden the scope of Competition Tribunal orders made under section 90.1(1). This amendment creates an exception – by which the Tribunal may prohibit a person from doing anything under the agreement or arrangement, or require a person to take any other action, if it finds that a significant purpose of any part of the agreement or arrangement would prevent or lessen competition in any market – even in the absence of competitors. Consequently, clause 8(2) amends section 90.1(11) of the *Competition Act* to ascribe the definition of "competitor" to the new exception.

Furthermore, at second reading, clause 8(1.1) was added to the bill. This clause repeals sections 90.1(4) to 90.1(6) of the *Competition Act* to remove the exception that prevents the Competition Tribunal from making an order against anti-competitive agreements or arrangements if they have generated or are likely to generate efficiencies great enough to offset the effects of harm to competition and if such an order would impede the likelihood of these efficiencies.

2.2.4 Efficiencies Exception for Mergers (Clauses 9 and 10)

According to the Government of Canada, section 96 of the *Competition Act* has been a long-standing issue of contention.[25] Prior to Bill C-56, section 96 of the *Competition Act* exempted the Competition Tribunal from making an order under

section 92 against anti-competitive mergers if their efficiency gains were great enough to offset the effects of harm to competition and if such an order would have hindered these efficiencies. Many stakeholders who were consulted on the future of Canada's competition policy "felt that an Act allowing anti-competitive transactions undermines the central purpose of competition policy – in which competition itself promotes efficiency over the longer term."[26]

Clause 10 of the bill repeals section 96 of the *Competition Act* and, to that effect, revokes the exception. Consequently, clause 9 amends section 92(1) of the *Competition Act* to account for the removal of section 96.

2.2.5 Transitional Provision (Clause 12)

Under clause 12 of the bill, the efficiencies exception does not cease to apply to proposed transactions that were notified under section 114 of the *Competition Act* and to mergers that have been substantially completed on the day before section 96 of the *Competition Act* is repealed.

2.2.6 Coming into Force (Clause 13)

By virtue of clause 13, clause 8 of the bill (orders relating to anti-competitive agreements or arrangements) comes into force a year after the bill receives Royal Assent. All other amendments to the *Competition Act* come into force at Royal Assent.

NOTES

1. Bill C-56, An Act to amend the Excise Tax Act and the Competition Act, 44th Parliament, 1st Session (S.C. 2023, c. 31).
2. House of Commons, Standing Committee on Finance, *Bill C-56, An Act to amend the Excise Tax Act and the Competition Act*, Thirteenth report, November 2023.
3. *Excise Tax Act* (ETA), R.S.C. 1985, c. E-15.
4. *Competition Act*, R.S.C. 1985, c. C-34.
5. Canada Mortgage and Housing Corporation (CMHC), *Purpose-Built Rentals Facing Financial Feasibility Challenges: Archetypical developments yield insufficient returns in selected metropolitan areas*, December 2021, Research Insight, p. 8.
6. CMHC, *Rental Market Report*, January 2023.
7. Of note, new section 256.2(3.1) of the ETA uses similar language: "purpose-built rental housing." See *Excise Tax Act*, R.S.C. 1985, c. E-15, s. 256.2(3.1).
8. CMHC, *Rental Market Report*, January 2023, p. 6.
9. Ibid., p. 8.

10. Department of Finance Canada, *Government introduces legislation to build more rental homes and stabilize grocery prices*, News release, 21 September 2023.

11. Government of Canada, *Future of Canada's Competition Policy Consultation – What We Heard Report*.

12. Government of Canada, "2. The Role and Functioning of the Competition Bureau," *Future of Canada's Competition Policy Consultation – What We Heard Report*.

13. Department of Finance Canada, *Government introduces legislation to build more rental homes and stabilize grocery prices*, News release, 21 September 2023.

14. *Excise Tax Act*, R.S.C. 1985, c. E-15, s. 256.2(3).

15. Department of Finance Canada, *Better finances, better lives*, Budget 2000, p. 270.

16. Many conditions need to be fulfilled. For definitions of "residential complex" and "residential unit," see *Excise Tax Act*, R.S.C. 1985, c. E-15, s. 123(1). For definitions of "qualifying residential unit" and "self-contained residence," see ibid., s. 256.2(1). The residential units in the property must either be rooms in a residence for students, seniors, individuals with a disability or other individuals or contain private kitchen facilities, a private bath and a private living area, among other conditions.

17. Ibid.

18. Of note, Bill C-56 contains no regulatory provisions to this effect.

19. Ibid.

20. The amount of the rebate depends on the type of unit (element B of the formula in new section 256.2(3.2) of the ETA). A "residential condominium unit," as defined in section 123(1) of the ETA, qualifies for a rebate equal to the full amount of the GST payable or deemed paid. In all other cases, the amount of the rebate is proportional to the "percentage of total floor space," as defined in section 256.2(1) of the ETA. See *Excise Tax Act*, R.S.C. 1985, c. E-15.

21. Department of Finance Canada, *Government introduces legislation to build more rental homes and stabilize grocery prices*, News release, 21 September 2023.

22. Ibid.

23. According to section 123(1) of the ETA, a "public service body" means a non-profit organization, a charity, a municipality, a school authority, a hospital authority, a public college or a university. *Excise Tax Act*, R.S.C. 1985, c. E-15, s. 123(1).

24. McCarthy Tétrault, *Amendments to Canada's Abuse of Dominance Regime*, Insights, 15 January 2024.

25. Government of Canada, "Efficiencies Exception," *Future of Canada's Competition Policy Consultation – What We Heard Report*.

26. Ibid.