

A New Direction for Canada's Competition and Investment Policy?

Generating wealth and creating opportunities and jobs for Canadians in a rapidly changing and highly competitive global economy were on the minds of the federal ministers of Industry and Finance when they announced the creation of the Competition Policy Review Panel on July 12, 2007. Chaired by Lynton (Red) Wilson, the five prominent Canadians named to the Panel were charged with the task of offering recommendations to the government on how to enhance Canada's productivity and competitiveness. Accepting their wide ranging mandate, Panel members focused on policy measures that would encourage Canadian firms to be aggressive investors at home and abroad and make Canada an attractive destination for talent as well as for investment, both domestic and foreign. An extensive review and public consultation took the Panel into politically charged territory, including the role of foreign direct investment in Canada and restrictions on foreign ownership in certain Canadian industry sectors.

The report, released today and entitled *Compete to Win* is the result of a year of consultation from over 150 stakeholders. The Panel sets out a national Competitiveness Agenda designed to strengthen competition and lead to the development of new Canadian global success stories.

The Panel makes specific recommendations with respect to the *Investment Canada Act* and the *Competition Act*. The Panel also identifies a number of broad public policy priorities and recommends the establishment of a new body – the Canadian Competitiveness Council.

The Panel's Main Findings

The reviews of Canada's competitive position were mixed. Canada, it was noted possesses numerous advantages, including a diverse economy, abundant natural resources, a good location, high education and political and institutional stability. On the flipside, Canada suffers from jurisdictional fragmentation, complex regulatory systems, high taxation and high cost of capital to name a few. The Report made the following key recommendations in these areas:

Foreign Direct Investment

The Panel supports the Government view that an explicit national security test is needed within the *Investment Canada Act (ICA)* and that this review requirement be aligned with that used by the Committee on Foreign Investment in the United States. The Panel also supports the Government's view of the application of the ICA and state-owned enterprises.

The Panel notes that the review process should be predictable, timely and transparent and recommends changes that they believe will narrow the scope of the Act but still protect Canada's national interest:

- Amending the *Investment Canada Act* to reduce barriers to foreign investment by increasing review thresholds to \$1 billion except for cultural industries; reversing the onus to require the government to demonstrate that an investment would be "contrary to Canada's national interest" before disallowing a transaction; increasing transparency and predictability by publishing an annual report on the operation of the ICA; and preserving a distinct approach for the cultural sector that would see the current \$5 million threshold maintained while also recommending the Minister of Canadian Heritage initiate a broad review every five years of cultural industry policies.

Competition Policy

The Panel believes it is "desirable to conform Canadian legal requirements with those of the U.S., where practicably feasible, with a view to minimizing unnecessary procedural or substantive differences, given the high level of integration of business operations in the two countries."

The Panel believes the primary focus of Canadian competition law and its administration and enforcement should be on anti-competitive conduct and outcomes more than on concerns about industry concentration.

The Panel notes that a number of the issues that they are concerned with were dealt with in Bill C-19 (introduced in Parliament in 2004 but dying on the Order Paper with the 2005 election):

- Updating and modernizing the *Competition Act* in line with best practices internationally;
- Creating a Canadian Competitiveness Council to give voice to and advocate for competition in Canada, and ensure sustained attention by governments on national competitiveness; and,
- Given the high level of integration with the US economy, harmonize Canadian legal requirements and merger review process with those of the US to the extent feasible.

Public Policy Priorities for Action

The Panel makes 47 specific public policy recommendations. The priorities for action include a number of themes, such as: taxation and regulation; attracting skilled talent; nurturing growth; Canada-US ties; international trade and investment; and innovation and intellectual property. Highlights of the Panels' recommendations include:

Taxes

- Governments should continue to reduce corporate income taxes, eliminate capital taxes, harmonize sales taxes and lower income taxes for lower and middle income Canadians.

Post secondary Institutions

- Post-secondary education institutions should improve partnerships with businesses, create co-op education opportunities and support international student exchanges.

Cities

- Given the role cities play in attracting and developing talent and investment, the federal government should place a priority on addressing urban issues including infrastructure and immigrant settlement.

Venture Capital

- Develop options to provide more venture capital for emerging businesses with demonstrated capacity for growth.

Internal Trade Barriers

- Eliminate internal barriers between provinces and territories that inhibit the free flow of goods, services and people and harmonize federal and provincial environmental procedures.

Canada U.S. Border

- Address the “thickening” of the Canada-US border as Canada’s top trade priority.

Brazil, Russia, India and China

- Prioritize international market opportunities particularly with the BRIC (Brazil, Russia, India and China) countries.

Regulation

- All new regulations should be assessed on their ability to negatively impact competitiveness, moreover, where feasible product and professional standards should be harmonized with US practices.

SRED

- To encourage greater levels of private sector R&D, the federal government should monitor the Scientific Research and Experimental Development Tax Credit to ensure it is incenting investment.

Patent Law and Copyright Law

- Enhance Canada's patent law and copyright regimes and strengthen anti-counterfeiting and piracy laws.

Implications for Canada's Private Sector

In reviewing the Panel's findings the influence of climate change policy and other environmental considerations is noticeably absent. These issues were not a part of the Panel's mandate, but Government actions on the climate change agenda and the public pressure for "greener policy" will invariably have a tremendous impact on Canada's competitiveness.

The Panel calls for greater liberalization of investment restrictions in regulated sectors in order to increase Canada's competitiveness by:

- Reviewing air transport, uranium mining, telecommunications and broadcasting, and financial services regimes every five years;
- Allowing up to 49 percent foreign ownership of air carriers on a reciprocal basis;
- Liberalizing foreign ownership restrictions in uranium mining, subject to a new national security regime, and obtaining greater rights to develop nuclear resources or process uranium;
- Allowing foreign firms to establish or acquire Canadian telecom companies with less than a 10% market share, and, following a review of broadcasting and cultural policies, further liberalizing investment restrictions in the telecom and broadcasting sectors; and,
- Retaining the financial services sector's "widely held" rule, while removing the *de facto* prohibition on mergers of large financial institutions, subject to regulatory safeguards.

What Will the Government Do?

The report has been formally delivered to the Government. The Government will examine the Panel recommendations and begin to decide on areas to move forward. Generally, for federal Conservatives, the Panel's findings will be welcomed as a credible third party validation of many of their philosophical beliefs: reduced corporate and personal taxation; greater alignment and integration with U.S. standards, regulations and practices; reduced regulatory interference; and harmonized taxation and regulatory practices with the provinces to name a few.

We can anticipate that the Government will likely respond by highlighting the measures it has already taken to address the Panel's findings and recommendations. One example is the "re-tooling the immigration system to be responsive to market demands" which was recently passed by Parliament as part of the Budget bill.

While the synergies between the Panel's recommendations and core Conservative beliefs are obvious, the government may be limited in terms of what it can actually achieve given the dynamics of the current minority Parliament. In particular the Panel's recommendations with respect to specific sectors will spark intense public policy debate across the political spectrum.

Conclusion

The reality of a minority Parliament will tie the Government's hands in many respects. However, there are enough solid themes and recommendations that could easily find their way into a Speech From the Throne or that could be articulated within an election platform. For the Conservative government, the report validates many of their core beliefs and for the Opposition parties it provides ammunition to speak to areas where government action is needed.

The Government's challenge will be to move beyond broad themes and into concrete specific actions that will benefit Canada's economy.

Link to the report:

[http://www.ic.gc.ca/epic/site/cprp-gepmc.nsf/vwapj/Compete_to_Win.pdf/\\$FILE/Compete_to_Win.pdf](http://www.ic.gc.ca/epic/site/cprp-gepmc.nsf/vwapj/Compete_to_Win.pdf/$FILE/Compete_to_Win.pdf)

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