

News

Canada's competition laws are slowing disaster-response times for insurers, industry group argues

Insurance Bureau of Canada warns Competition Act has 'chilling effect' as government weighs overhaul

By [Leah Golob](#)



A vehicle and home damaged by a wildfire is seen in Hammond's Plains, N.S., during a media tour on June 6. Photo: The Canadian Press/Pool, Tim Krochak

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As Canada grapples with wildfires and the threat of other natural disasters, insurance companies are warning that the country's competition law is hindering their ability to respond quickly to crises by preventing them from working together.

“In Canada, one of the largest emerging risk[s] is that of climate change, and the resulting increase in natural catastrophic events,” said the Insurance Bureau of Canada (IBC), the national industry association representing home, auto and business insurers, in a [submission](#) to a government consultation on the future of competition policy.

Talking Point

- Canada's Competition Act is slowing insurance companies from quickly responding to natural disasters for fear of breaking rules around competitor collaboration, according to the Insurance Bureau of Canada

“When natural catastrophic events occur, Canadians would benefit from their insurers being able to respond to affected customers and adjust claims as quickly and effectively as possible, without having to pause and consider the potential risks of sanctions due to competitor collaboration,” IBC said.

Auto insurers, for example, could coordinate on setting up an appraisal centre for customers caught in heavy hail to assess whether their vehicles are still drivable, resulting in “a more streamlined insurer response,” IBC's submission reads.

In the case of property-damage claims resulting from natural disasters, insurers could respond more efficiently if they could share information on the “availability and performance of vendors, and the effect of supply-chain issues on response time,” the association added.

Ultimately, it would benefit customers if insurance companies could also respond in a more cost-effective manner by coordinating and sharing resources, IBC said. The

industry association did not respond to *The Logic's* request for comment

The federal government is [considering](#) modernizing the Competition Act, which may include overhauling rules around mergers and acquisitions and creating rules around digital business models.

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Competition law protects “the marketplace from collusion, abuse, price gouging [and] market manipulation of consumer choice,” said Steve Masnyk, executive director of the Canadian Association of Managing General Agents, a national trade association representing property and casualty wholesalers. “For insurers to partner up and collaborate with other insurers to deal with natural catastrophes is in no way a market or financial advantage for anyone,” particularly since insurers will lose money for every dollar they pay out.

Justin Simard, spokesperson for Innovation, Science and Economic Development Canada, which held open submissions on Canada's Competition Act, told *The Logic*, “The Act does not contain special provisions for ‘natural catastrophic events.’ However, it contains a number of exceptions that apply in various circumstances that may be relevant.”

For example, if federal or provincial law authorizes certain actions, insurance companies will not be prosecuted for criminal conspiracy. Likewise, if companies create efficiencies that counteract competitive harm, they won't face a civil prohibition order.

There's also a section in the Insurance Companies Act which says the finance minister can approve a collaboration that might otherwise be considered against the law, Simard said.

While the current law offers the possibility of exemptions from some of its prohibitions under "limited circumstances," given the urgency of natural catastrophes, IBC said, insurers won't always have the time to wait for guidance or assurance from the courts or a tribunal before needing to act.

"The lack of an explicit natural catastrophic exemption has had a chilling effect on coordinated industry responses in the aftermath of natural catastrophic events due to uncertainty and potential non-compliance risks," the submission says.

Omar Wakil, a partner at Torys who specializes in competition law, said a couple sections of the Competition Act with which IBC is concerned are intended to deal with competitor collaborations that harm consumers, and aren't "well suited" to handle extraordinary events or policy issues that exist outside of competition law. For example, the Competition Act is not well equipped to deal with environmental, social and governance (ESG) matters, he said. "Competitors may want to get together to talk about ways to protect the environment that might impact their pricing."

The bureau did relax its enforcement temporarily during the extraordinary circumstances of COVID-19, saying it would not subject certain types of conduct to scrutiny, said Subrata Bhattacharjee, national chair of Borden Ladner Gervais's competition and foreign investment review group. If companies were in doubt, they could seek an opinion from the bureau.

"If we dealt with the pandemic in such a way, there's no reason we would not be able to deal with a black-swan event that the insurers are concerned about in a similar fashion. Or, if absolutely required, there is nothing stopping Parliament from passing laws to deal with an emergency. ... That's what's been done in other jurisdictions."

Wakil similarly suggested, “There ought to be a government override to say that in certain circumstances, you should be able to call up a minister or someone else and get a quick green light to do something.”

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While IBC may not consider it feasible in some urgent cases, it’s better than nothing, he added.

For IBC’s part, it has recommended the updated Competition Act include an explicit exemption that would permit “insurers to share, coordinate and pool resources (competitive collaboration) when undertaken in good faith on public interest grounds to respond to natural catastrophic events.”

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