The Canadian government has introduced a proposal to address what it calls the “country pricing” issue, which involves companies charging higher prices in Canada than in the United States. The government stated that Canadian consumers “should not be charged more in Canada for identical goods sold for less in the United States” and committed to take “further action to end geographic price disparities.”

The Canadian Senate conducted hearings on the issue and offered the following recommendations to address the Canada-U.S. price gap:

- A comprehensive review of Canada's tariffs;
- Continuing efforts to harmonize product standards without discriminating against American products;
- Providing more certainty about the activities of companies with cross-border operations that may contribute to the price discrepancies between the two countries.

On February 11, 2014, the Canadian government included in its federal budget a proposal to address what is now referred to as “price parity agreements.” The government stated that this measure was intended to ensure that Canadian consumers are not charged more for identical goods sold for less in the United States.

The Senate report offered the following recommendations to address the Canada-U.S. price gap:

- A comprehensive review of Canada’s tariffs;
- Continuing efforts to harmonize product standards without discriminating against American products;
- Providing more certainty about the activities of companies with cross-border operations that may contribute to the price discrepancies between the two countries.

The notable aspect of the various scenarios identified above, including price parity agreements, is that they fall into two broad categories: those that are simply about ensuring price parity (so-called “price parity agreements”) and those that are about ensuring price maintenance.

Price Maintenance is likely to create, preserve or enhance “market power” – namely, the ability to behave relatively independently of the market.

The Draft Guidelines then identify the circumstances in which price maintenance may adversely affect competition in a relevant market and can create, preserve or enhance market power:

- Restraint of trade: A supplier or a retailer may be found to be engaging in price maintenance in a relevant market.
- Market exclusion: A supplier or a retailer may be found to be engaging in price maintenance in a relevant market.
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That said, all indications remain that the Canadian government intends to move ahead with this proposal and to impose at least certain multinational companies to justify cross-border differentials resulting in higher prices in Canada. This would reverse the 2009 amendments to the Competition Act referred to above, which repealed the then-existing price discrimination offences.

Interestingly, if the “country pricing” proposal is adopted, one by-product may be to affect the relative flexibility now afforded suppliers under Canada’s price maintenance provision.

For example, if a supplier mandates that its retail customers in Canada price at a level which is higher than in the United States, it could conceivably be investigated for engaging in unjustified cross-border price discrimination, even though its unilateral pricing program may not raise issues under the price maintenance provision.