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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CANADA**

-- 2010 --

*This report is submitted by Canada to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 October 2011.*

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## ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CANADA

-- April 1, 2010 through March 31, 2011 --

### Executive Summary

1. From April 1, 2010 to March 31, 2011 (“fiscal year”), the Competition Bureau (“Bureau”) continued to focus its efforts on the effective implementation of the broad reforms to the *Competition Act* that were enacted in March 2009; notably, by clarifying key enforcement issues in the areas of abuse of dominance, competitor collaborations and price maintenance, to ensure increased transparency, clarity and predictability for Canadians.

2. The Bureau continued to focus its enforcement efforts on domestic bid-rigging, abuse of dominance, timely and effective merger reviews, and deceptive marketing practices. In doing so, the Bureau undertook several enforcement actions in 2010-2011 in a number of sectors, including real estate, credit cards, and telecommunications. Significant fines and/or prison terms were imposed by the courts in cases involving cartels, bid-rigging, and false or misleading representations. The Bureau also concluded 228 merger examinations during the fiscal year.

3. The Bureau also targeted mass marketing fraud over the Internet as part of its ongoing effort to ensure that Canadians know how to better protect themselves from fraudulent claims, to better recognize scams, and to avoid falling victim to such scams.

4. On the international front, the Bureau continued to be an active contributor to the work of international organizations such as the Organisation for Economic Co-operation and Development, the International Competition Network and the International Consumer Protection and Enforcement Network. The Bureau maintained and enhanced bilateral contacts with its foreign counterparts to facilitate enforcement of the *Competition Act* in the areas of merger review, cartels and deceptive marketing practices. The Bureau also participated in technical assistance and capacity-building initiatives with representatives from antitrust agencies in various jurisdictions.

5. Public documents, including more detailed descriptions or full texts of many matters referred to in this Annual Report, are available on the Bureau Web site in English at <http://www.competitionbureau.gc.ca> and in French at <http://www.bureaudelaconurrence.gc.ca>.

### 1. Changes to Competition Laws and Policies, Proposed or Adopted

#### 1.1 Summary of new legal provisions of competition law and related legislation

##### 1.1.1 Bill C-28: Anti-spam Legislation

6. On December 15, 2010, the Parliament of Canada (“Parliament”) passed new comprehensive anti-spam legislation that also amends Canada’s *Competition Act*. The legislation, which will come into force in early 2012, is designed to deter the most damaging and deceptive forms of spam that impact Canadians and Canadian businesses.

7. The amendments to the *Competition Act* include:

- New civil and criminal provisions to address specific online deceptive practices, including false or misleading representations in headers (*i.e.*, in subject lines or sender names in e-mails), in the content of a communication or in locators such as web addresses and URLs;
- A new civil injunctive power to prevent a person from supplying a product (e.g. Internet service) to another person;
- Changes to existing criminal and civil injunctions applicable to deceptive marketing practices to help streamline the Bureau's ability to use these tools;
- Technology-neutral amendments that make certain definitions and existing provisions apply more broadly to include emerging technologies; and
- Investigative assistance that will allow the Bureau to collect evidence on behalf of foreign counterparts.

## 1.2 ***Other relevant measures, including new guidelines***

### 1.2.1 *Private Members' Business*

- Private Members' Bill C-452: An Act to amend the Competition Act (inquiry into industry sector)

Introduced on October 1, 2009, this Bill proposed to authorize the Commissioner of Competition ("Commissioner") to inquire into an entire industry sector where the Commissioner believes it necessary, using the formal evidence-gathering powers already contained in the *Competition Act*. This Bill died on the Order Paper when Parliament was dissolved on March 26, 2011.

### 1.2.2 *Federal Government Representations to Parliamentary Committees*

- Appearances at Parliamentary Committees

Industry Canada and Bureau officials appeared at Parliamentary Committees on four occasions between April 1, 2010 and March 31, 2011.

- On July 20, 2010, Bureau officials appeared before the House of Commons Committee on Industry, Science and Technology to provide evidence on its study of the impending closure of the Shell Oil Refinery in Montreal, Québec.
- On December 9, 2010, Bureau officials appeared before the House of Commons Committee on Industry, Science and Technology to provide evidence on its study of Bill C-452, *An Act to Amend the Competition Act* (inquiry into industry sector).
- On December 7, 2010, Bureau officials appeared before the Senate Committee on Transport and Communications to provide evidence during its study of Emerging Issues in the Airline Industry.
- On February 9, 2011, Bureau officials appeared before the Senate Banking, Trade and Commerce Committee to provide evidence during its review of Bill S-201, *An Act to Amend the Office of the Superintendent of Financial Institutions Act* (credit and debit cards).

- Submission to the Review of the Revised Foreign Investment Policy in Book Publishing and Distribution

In September 2010, the Bureau made a submission to Canadian Heritage's Review of the Revised Foreign Investment Policy in Book Publishing and Distribution. The Bureau's submission provided a competition perspective on the issue of foreign investment and ownership restrictions, and highlighted the importance of competition principles in examining investment restrictions in Canadian markets. The Bureau recommended that, to the extent possible, and given the Government of Canada's cultural policy objectives, foreign investment and ownership restrictions in the book industry, and particularly in the book retail sector, should be relaxed or removed to provide a broader array of capital options in the market, to improve the conditions for entry of new competitors, and to apply pressure on incumbents to invest and innovate for the benefit of Canadian businesses and consumers.

### 1.2.3 *Government proposals for new legislation*

- An Act to amend the Criminal Code, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act (Investigative Powers for the 21<sup>st</sup> Century Act)

Tabled in the House of Commons on November 1, 2010, this Bill proposed to update certain existing *Criminal Code* offences and investigative powers, as well as create new powers to meet the demands of the current computer and telecommunications environment. The Bill included proposed amendments to the *Competition Act* that included: incorporating, by reference, certain new powers in the *Criminal Code* to allow for the preservation and production of data – for both civil and criminal cases; and making the definitions and certain other provisions in the *Competition Act* technology-neutral. It also proposed to amend the *Mutual Legal Assistance in Criminal Matters Act* to allow the Bureau to execute search warrants without the presence of a peace officer. This Bill died on the Order Paper when Parliament was dissolved on March 26, 2011.

- An Act regulating telecommunications facilities to support investigations (Investigating and Preventing Criminal Electronic Communications Act)

Tabled in the House of Commons on November 1, 2010, the purpose of this Bill was (i) to require telecommunications service providers to make their infrastructure capable of accommodating an interception warrant for all types of modern communications when updating their systems; and (ii) to create a regime allowing for the warrantless request of subscriber information by law enforcement agencies (including the Bureau) with which telecommunications service providers would have to comply. This Bill died on the Order Paper when Parliament was dissolved on March 26, 2011.

- A third Act to harmonize federal law with the civil law of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law (Federal Law – Civil Law Harmonization Act)

Tabled in the Senate on October 20, 2010, this Bill proposed to amend twelve federal statutes to ensure that Canadian federal legislation accounts for its four different legal/linguistic audiences: (i) common law English; (ii) common law French; (iii) Civil Code French; and (iv) Civil Code English. The proposed amendments included minor technical changes in the three labelling statutes enforced by the Bureau.<sup>1</sup> This Bill died on the Order Paper when Parliament was dissolved on March 26, 2011.

<sup>1</sup> The Consumer Packaging and Labelling Act, the Textile Labelling Act, and the Precious Metals Marking Act (collectively, the "labelling statutes").

#### 1.2.4 Publications and Consultations

8. The Bureau continued to focus on the effective implementation of the amendments to the *Competition Act* in 2010-2011 with a view to enhancing transparency in discharging its mandate. In an effort to provide businesses with clear guidelines and a predictable process, the Bureau undertook public consultations and released various guidance documents.

- Updated Merger-Related Guidance Documents

In October 2010, after public consultations, the Bureau released an updated Fees and Service Standards Policy for Mergers and Merger-Related Matters (“Merger Policy”), Fees and Service Standards Handbook for Mergers and Merger-Related Matters (“Merger Handbook”) and Procedures Guide for Notifiable Transactions and Advance Ruling Certificates under the Competition Act (“Procedures Guide”). The policies and procedures set out in these guidance documents came into effect on November 1, 2010.

The Merger Handbook and the Procedures Guide incorporate changes required owing to recent amendments to the *Competition Act*, the *Notifiable Transactions Regulations*, and the Merger Policy, as well as feedback solicited during consultations held earlier in the year regarding fees and service standards. The Merger Handbook implements service standards that reflect greater consistency with statutory waiting periods and also reduces the information that merging parties are required to provide in order to commence the Bureau's merger review service standard. The Procedures Guide sets out policies and procedures relating to the submission, whether in paper form or electronically, of pre-merger notifications and requests for Advance Ruling Certificates.

- Merger Enforcement Guidelines

In September 2010, the Bureau announced that it would hold a series of roundtables to explore the merits of revising the *Merger Enforcement Guidelines* (“MEGs”). The purpose of the roundtables was to assess whether the guidelines accurately reflect current merger review practices at the Bureau and the potential impact of the recent publication of the revised *Horizontal Merger Guidelines* by the antitrust authorities in the United States, as well as other legal and economic developments.

In February 2011, the Commissioner announced that the Bureau would undertake moderate revisions to the MEGs. This decision followed the roundtable consultations, which were conducted across Canada, as well as consultations with foreign agencies, internal consultations, and a focused internal review. The Bureau published the draft revised MEGs in June 2011, seeking public feedback on the revisions. The Bureau intends to publish the final revised MEGs in the Fall of 2011.

- Fee and Service Standards Handbook for Written Opinions

In November 2010, the Bureau announced that it would update its *Fee and Service Standards Handbook for Written Opinions* (“Handbook”), to reflect amendments to the *Competition Act* that came into force in 2009 and 2010. The revised Handbook provides updated guidance on the factors the Commissioner will generally take into consideration when deciding whether to provide a Written Opinion in non-merger matters; how the Bureau determines the complexity of a proposed practice or conduct subject to a Written Opinion; the information required by the Bureau to commence the applicable service standard; and when services may be paused or terminated.

- Merger Review Performance Report

In May 2010, the Merger Review Performance Report was published. The report provided an update on the performance of the Bureau's Mergers Branch since the last report, which was published in June 2007. The performance report provided information on workload and resources, merger review expenditures, filing complexity and service standards, and written feedback from stakeholders received during the review period. This report was discussed during the Merger Fee Forum and Stakeholder Consultation in May 2010.

- Leniency Program Bulletin and Frequently Asked Questions

In September 2010, the Bureau published its Leniency Program Bulletin ("Bulletin") and a comprehensive set of frequently asked questions. The Bulletin outlines the factors the Bureau considers when making sentencing recommendations to the Public Prosecution Service of Canada ("PPSC") and the process for seeking a recommendation for a lenient sentence in criminal cartel cases. A recommendation for lenient treatment may be available to a company or individual who cooperates with the Bureau's investigation and admits involvement, but is not the first to approach the Bureau.

- Memorandum of Understanding between the Commissioner of Competition and the Director of Public Prosecutions

In May 2010, the Commissioner and the Director of Public Prosecutions entered into a Memorandum of Understanding ("MOU") with respect to the investigation and prosecution of offences under the *Competition Act* and the labelling statutes. The MOU sets out the guiding principles of the relationship between the Bureau and the PPSC, and clearly outlines the organizations' respective roles and responsibilities at the investigative and prosecution stages of a case. It is expected that the MOU will provide increased transparency and predictability in Bureau investigations by providing the public with a clear understanding of the interaction between Bureau investigators and PPSC counsel.

- "Regulated" Conduct Bulletin

In order to foster compliance and ensure greater fairness, predictability and transparency, in September 2010, the Bureau released an updated Bulletin on "Regulated" Conduct, which incorporated changes brought about by the recent amendments to the *Competition Act*.

The Bulletin on "Regulated" Conduct outlines the Bureau's approach to the enforcement of the *Competition Act* in situations where conduct is regulated by other laws enacted by various levels of government. The updated Bulletin replaced the Bureau's 2006 Bulletin, and reflects current Bureau priorities.

- Corporate Compliance Program Bulletin

The Bureau also released an updated Bulletin on Corporate Compliance Programs ("Compliance Bulletin") in September 2010. The Compliance Bulletin describes the Bureau's approach to programs designed to ensure compliance with the *Competition Act* and the labelling statutes, and identifies measures that businesses should consider in order to prevent or minimize their risk of contravening the statutes, and to detect contraventions, should they occur. The Compliance Bulletin also provides tools to help Canadian businesses develop their own compliance program.

The Bureau first issued a Compliance Bulletin in 1997, and revised it in 2006 to reflect amendments at that time to the *Competition Act*. The Bureau subsequently held public consultations in Spring 2008 to identify areas for improvement, and to ensure the Bureau's compliance tools were both practical and relevant to the Canadian business community. This most recent version of the Compliance Bulletin reflects the results of those consultations, and incorporates changes brought about by the amendments to the *Competition Act*.

- "Product of Canada" and "Made in Canada" Claims

In December 2009, the Bureau released its revised Enforcement Guidelines on "*Product of Canada*" and "*Made in Canada*" Claims ("Guidelines"). The Guidelines describe the Bureau's approach to assessing "Product of Canada" and "Made in Canada" claims for non-food products under the false or misleading representations provisions of the *Competition Act* and the labelling statutes. In May 2010, the Bureau further clarified its enforcement approach to "Made in Canada" and "Product of Canada" claims, announcing that, for a six-month period following implementation of the Guidelines, the Bureau would only consider enforcement action in circumstances of bad faith. The Guidelines took effect on July 1, 2010.

#### 1.2.5 *Announcements and Media Reports*

9. In addition to the guidelines and bulletins noted above, the Bureau issued 60 announcements during the fiscal year describing the benefits of its activities to the economy and to Canadians. Announcements include news releases, information notices, and items in the Bureau's electronic *CB in Brief* news digest.

10. The Bureau responded to enquiries from journalists in Canada and abroad, resulting in approximately 4,400 print, radio, television and online media reports on matters involving the Bureau.

## 2. **International Cooperation Developments**

### 2.1 *International fora participation*

#### 2.1.1 *Organisation for Economic Co-operation and Development ("OECD")*

- Competition Committee

The Bureau is an active member of the OECD's Competition Committee ("CC"). In 2010-2011, the Bureau provided input and submissions on the following topics: public procurement and bid-rigging issues; procedural fairness in civil and administrative enforcement proceedings; information exchanges between competitors; the Regulated Conduct Defence; economic evidence in merger analysis; and creeping acquisitions. As a member of the CC Bureau, the Commissioner also contributed to the overall direction and planning of the CC and its Working Parties.

- Committee on Consumer Policy

The Bureau also participated in the OECD's Committee on Consumer Policy ("CCP"). Specifically, the Bureau provided input and presentations regarding several projects of the CCP, including presentations on Canada's environmental claims guidelines and the Bureau's Enforcement Guidelines on "*Product of Canada*" and "*Made in Canada*" Claims.

### 2.1.2 *International Competition Network (“ICN”)*

11. The Bureau continued to play an important role in the ICN through the Commissioner’s active participation in the Steering Group, as Secretariat for this virtual network, and through the Bureau’s participation in Working Groups on agency effectiveness, mergers, cartels and unilateral conduct. In addition, the Bureau co-chairs the Cartel Working Group’s subgroup on Enforcement Techniques and the Operational Framework Working Group. During the fiscal year, the Bureau continued to play a role in the organizational aspects of the ICN through the Secretariat and active involvement in the Annual Conference Planning Committee.

- Cartel Working Group

The Bureau co-chairs the Cartel Working Group’s subgroup on Enforcement Techniques. This subgroup aims to improve the effectiveness of anti-cartel enforcement by identifying and sharing specific investigative techniques and advancing education and information-sharing through its annual Cartel Workshop.

- Merger Working Group

The Bureau participated in the activities of the Merger Working Group, including the development of new Recommended Practices for Merger Analysis on Competitive Effects and a report on Information Requirements for Merger Notification.

- Unilateral Conduct Working Group

The Bureau actively participated in the drafting of the Report on the Analysis of Refusal to Deal with a Rival under Unilateral Conduct Laws, published by the Unilateral Conduct Working Group.

### 2.1.3 *International Consumer Protection and Enforcement Network (“ICPEN”)*

12. In 2010-2011, the Bureau continued to play a leadership role in the work and direction of ICPEN. The Bureau served as the Secretariat and was a member of the Advisory Group, as well as a number of ICPEN working groups. The Bureau actively participated in the bi-annual ICPEN meeting and Best Practices Workshop in May 2010, held in Washington, D.C. The Commissioner made a keynote address and other representatives of the Bureau participated in various sessions on cooperation with consumer associations and the business sector, electronic commerce, and health scams in the age of the H1N1 virus. The second ICPEN Conference and Best Practices Workshop took place in November 2010, in Noordwijk, The Netherlands. Representatives of the Bureau participated in presentations and sessions relating to the following topics: the effective use of ICPEN’s collective intelligence, intelligence hotspots, intelligence and cross-border experiences, green claims, and succession planning.

13. In September 2010, the Bureau announced its participation in a joint Internet sweep by members of ICPEN to expose fraudulent and misleading Internet sites. This year, the Bureau focused on fraudulent and deceptive advertising on social networking sites. During the sweep, thousands of websites and e-mails were examined by agencies from over 20 countries. As a result of ICPEN’s coordinated enforcement action, the Bureau helped to identify unscrupulous fraudsters who may use social media sites to target those most likely to fall victim to their scams.

## **2.2 *International Cooperation***

14. The Bureau cooperated with the following jurisdictions in 2010-2011 with respect to international enforcement cases: Australia, Brazil, Chile, the European Union, France, Switzerland, Japan, Mexico, New Zealand, South Africa, the United Kingdom, and the United States.

## **2.3 *Free Trade Agreements***

15. The Bureau, in partnership with Canada's Department of Industry and Department of Foreign Affairs and International Trade, develops competition policy provisions in bilateral and regional free trade agreements ("FTAs"), and Foreign Investment Promotion and Protection Agreements, and acts as the lead negotiator on competition policy matters on behalf of the Government of Canada.

16. During the fiscal year, the Canadian Government concluded FTA negotiations with Panama. This agreement was signed in May 2010, but has not yet come into force.

17. Ongoing FTA negotiations during the fiscal year included negotiations on the Canada-EU Comprehensive Economic and Trade Agreement, and with Honduras, Morocco, Ukraine, the Caribbean Community, India, and South Korea.

## **2.4 *Technical Assistance and Staff Exchanges***

18. The Bureau engaged in technical assistance and capacity-building exercises with China, Mexico, Tanzania, and the United Kingdom, and engaged in staff exchanges with Korea and the United States Federal Trade Commission.

## **3. *Enforcement of Competition Laws and Policies***

19. The following section provides a non-exhaustive overview of the Bureau's significant enforcement actions during the fiscal year.

### **3.1 *Action against anti-competitive practices***

#### **3.1.1 *Abuse of Dominance***

- **Canadian Real Estate Association**

In February 2010, the Commissioner challenged before the Competition Tribunal ("Tribunal") anti-competitive rules imposed by the Canadian Real Estate Association ("CREA") on real estate agents who list residential properties using the Multiple Listing Service ("MLS") system. The Commissioner's application to the Competition Tribunal ("Tribunal") sought to strike down these anti-competitive rules.

The Bureau launched its Tribunal challenge following three years of discussions with CREA and several months of intensive negotiations. After being approached by CREA to resume negotiations, the Bureau announced in **September 2010**, that it had reached an agreement in principle that fully resolved the Commissioner's concerns. The agreement was filed with the Tribunal, ratified by CREA members, and took effect in October 2010.

Under the agreement, CREA must eliminate its ability to adopt anti-competitive rules, including those that discriminate against real estate agents who are hired by consumers to offer a "mere posting" service. In the case of mere postings, a home seller hires a real estate agent only

to list his or her property on the MLS system and agrees to handle all other details of the transaction directly.

As a result of the consent agreement, Canadians have the ability to choose which services they want from a real estate agent when selling their home, and to pay only for those selected services. At the same time, the agreement ensures that real estate agents have the flexibility to provide innovative service and pricing options to customers.

### 3.1.2 *Price Maintenance*

- Visa and MasterCard

In December 2010, the Bureau announced that it filed an application with the Tribunal, to strike down restrictive and **anti-competitive** rules that Visa and MasterCard imposed on merchants who accept their credit cards. These rules effectively eliminated competition between Visa and MasterCard for merchants' acceptance of their credit cards, resulting in increased costs to businesses and, ultimately, consumers. Merchants in Canada pay an estimated \$5 billion annually in hidden credit card fees.

The anti-competitive restraints on merchants result in higher prices for all consumers, whether they pay by cash, cheque, debit or credit, because merchants pass along some or all of the high costs they are forced to pay as a result of Visa's and MasterCard's anti-competitive rules. The rules challenged by the Bureau prohibit merchants from encouraging consumers to consider lower cost payment options like cash or debit, and prohibit merchants from applying a surcharge to a purchase on a high cost card. Further, once a merchant agrees to accept one of Visa or MasterCard's credit cards, that merchant must accept all credit cards offered by that company, including cards that impose significant costs on merchants, such as premium cards.

Visa and MasterCard operate the two largest credit card networks in Canada. Together they processed more than 90 percent of all credit card transactions by Canadian consumers in 2009, representing over \$240 billion in purchases.

In response to complaints by merchants and their associations, the Bureau launched its investigation and challenged Visa and MasterCard's rules under the price maintenance provisions of the *Competition Act*. A formal inquiry was initiated in April 2009 and the hearing of the application is set to begin in April 2012.

### 3.1.3 *Conspiracy*

- Compressors

In October and November 2010, Embraco North America Inc. ("Embraco") and Panasonic Corporation ("Panasonic") were each fined \$1.5 million by the Federal Court after pleading guilty to criminal charges that they fixed the price of hermetic refrigeration compressors sold to a refrigerator and freezer manufacturer in Canada.

The Bureau's investigation revealed that Panasonic and Embraco, together with other competitors, conspired to fix the price of hermetic refrigeration compressors sold in Canada, and elsewhere, from January 2005 to December 2005. The compressors were sold to W.C. Wood Corporation, located in Guelph, Ontario, and used in the manufacture of various brand-name chest freezers.

Prior to negotiating their annual supply contract, Panasonic and Embraco exchanged information on their hermetic refrigeration compressor prices, production capacities and other market intelligence, and agreed to increase the price for hermetic refrigeration compressors sold to W.C. Wood Corporation in Canada.

These pleas marked the end of the Bureau's investigation into this matter.

### 3.1.4 *Bid-rigging*

- Ventilation

In December 2010, criminal charges were laid against eight companies and five individuals accused of rigging bids for private sector ventilation contracts for residential high-rise buildings in the Montreal area.

The Bureau uncovered evidence indicating that several companies specializing in ventilation, air conditioning and heating services, secretly coordinated their bids in order to pre-determine the winners of the contracts, while blocking out honest competitors. The Bureau's investigation found evidence of criminal activity in five competitive bidding processes between 2003 and 2005, for contracts worth approximately \$8 million. The contracts in question relate to the supply and installation of ventilation and/or air conditioning systems in residential high-rise construction projects in the greater Montreal region.

- Anti-Bid-Rigging Program

The Bureau has placed considerable emphasis on preventing and detecting bid-rigging in both the public and private sectors. The Bureau uses a number of different vehicles to raise awareness about the impact of bid-rigging on Canadians, and to educate procurement officials on how to detect this illegal activity. In 2010-2011, the Bureau conducted 33 outreach presentations for approximately 2,463 people, aimed at deterring bid-rigging activity, particularly in the Canadian public sector.

## 3.2 *Mergers and Acquisitions*

### 3.2.1 *Statistics on Mergers Examined under the Competition Act*

20. During the fiscal year, the Bureau concluded 228 merger examinations, with 19 examinations ongoing at March 31, 2011. Of the 228 examinations that were completed at the end of the fiscal year: (i) four resulted in consent agreements between the parties and the Bureau; (ii) in one case, the Bureau was satisfied that remedies obtained by foreign agencies resolved Canadian competition concerns; (iii) no transactions were abandoned by the parties as a result of the Bureau's concerns regarding the competitive effects of the merger; (iv) one transaction was abandoned before the completion of the Bureau's examination, for reasons unrelated to the Bureau's position regarding the competitive effects of the merger; and (v) in 222 examinations, the Bureau concluded that the transaction did not raise significant competition issues under the *Competition Act*, issuing an Advance Ruling Certificate ("ARC") in 135 of these transactions.<sup>2</sup>

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<sup>2</sup> An ARC may be issued by the Commissioner to a party or parties to a proposed merger transaction who want to be assured that the transaction will not give rise to proceedings under section 92 of the Competition Act. Section 102 of the Competition Act provides that an ARC may be issued when the Commissioner is satisfied that there would not be sufficient grounds on which to apply to the Tribunal for

### 3.2.2 *Summary of significant cases*

- IESI-BFC Ltd. and Waste Services, Inc.

In November 2009, IESI-BFC Ltd. (“BFI”) and Waste Services, Inc. (“WSI”) announced their intention to merge. After an extensive review of the proposed transaction, the Bureau concluded that the transaction would likely result in a substantial lessening or prevention of competition in the supply of commercial waste collection services in a number of markets in Canada.

Under the terms of a consent agreement filed with the Tribunal in June 2010, BFI and WSI were required to divest commercial waste collection assets, including customer contracts, vehicles, bins and other equipment in each of Calgary, Edmonton, Hamilton, Ottawa and Simcoe County. BFI and WSI were also required to divest WSI's commercial waste transfer station located in Hamilton.

- CCS Corporation and Complete Environmental Inc.

In January 2011, the Bureau applied to the Tribunal for an order to dissolve CCS Corporation's (“CCS”) acquisition of Complete Environmental Inc. (“Complete”), owner of the proposed Babkirk Secure Landfill in Northeastern British Columbia. This transaction was completed in January 2011. Prior to the completion of the transaction, CCS and the Bureau entered into a preservation agreement whereby CCS agreed to preserve and maintain the business of Complete, including all permits and certificates necessary for the establishment and operation of the Babkirk Secure Landfill, until the resolution of the Bureau's application to the Tribunal.

Following a thorough review, the Bureau concluded that CCS's acquisition of the proposed Babkirk Secure Landfill would likely result in a substantial prevention of competition for the disposal of hazardous waste produced at oil and gas facilities in Northeastern British Columbia. Complete had obtained regulatory approval to convert Babkirk into a secure landfill in February 2010. CCS operated the only two operational secure landfills in British Columbia. Had the Babkirk Secure Landfill opened, it would have been CCS's competitor. This is the first merger challenge filed by the Bureau since 2005.

### 3.3 *Misleading Advertising and Deceptive Marketing Practices*

#### 3.3.1 *Criminal*

- Matthew Hovila and Strategic Ecomm Inc.

Matthew Hovila, of Edmonton, Alberta, Director of Strategic Ecomm Inc. and MSH Investments Inc., was arrested in January 2011, in relation to the operation of an alleged online job opportunities scam. The scam involved making representations with respect to employment in the oil and gas industry. Mr. Hovila faces criminal charges regarding the making of materially false or misleading representations, the contravention of a registered consent agreement, possession of property obtained through criminal activity, and laundering the proceeds of crime.

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an order against a proposed merger. The issuance of an ARC is discretionary. An ARC cannot be issued for a transaction that has been completed, nor does an ARC ensure approval of the transaction by any agency other than the Bureau.

Mr. Hovila and his company, Strategic Ecomm Inc., previously signed a consent agreement in 2006 regarding the same Internet site and paid a \$100,000 administrative monetary penalty. This consent agreement was registered with the Tribunal in February 2006. Consent agreements that are registered with the Tribunal have the same force and effect as a court order. The Bureau has been investigating this matter as part of its broader monitoring program regarding compliance with court orders, including registered consent agreements.

### 3.3.2 *Civil*

- Rogers Communications Inc. & Chatr Wireless Inc.

In November 2010, following a two-month investigation, the Bureau began legal proceedings against Rogers Communications Inc. (“Rogers”) and Chatr Wireless Inc. before the Ontario Superior Court of Justice to stop what the Bureau concluded was misleading advertising of Rogers' Chatr discount mobile telephone service. Rogers' Canada-wide advertising campaign claimed that Chatr subscribers would experience “fewer dropped calls than new wireless carriers” and have “no worries about dropped calls”. The Bureau's investigation, which involved a review of technical data, led the Bureau to conclude that there was no discernible difference in dropped call rates between Chatr and new entrants.

The Bureau has asked the court to order Rogers to:

- immediately stop the advertising campaign and refrain from engaging in similar campaigns;
- pay an administrative monetary penalty of \$10 million;
- pay restitution to affected customers; and
- issue a corrective notice to inform the general public about the nature and provisions of the order issued against them.

- Price Disclosure Cases

Following the release of its Enforcement Guidelines on “*Consumer Rebate Promotions*” in September 2009, the Bureau has continued its efforts to ensure that material conditions, limitations and exclusions as they relate to rebates and other types of promotions are clearly and conspicuously disclosed to consumers before they make their purchasing decision. To this end, the Bureau entered into alternative case resolutions with Mexx Canada and its parent company Liz Claiborne Canada Inc., Smart Set, a division of Reitmans (Canada) Limited, Zellers Inc., and Whirlpool Canada LP to ensure that consumers would be able to redeem various rebates or “savings cards/passes” despite limiting redemption terms and conditions that may not have been adequately disclosed.

### 3.3.3 *Other Activities*

- Fraud Prevention Forum and Fraud Prevention Month

Since 2004, the Fraud Prevention Forum (“Forum”), chaired by the Bureau, has organized Fraud Prevention Month (“FPM”) in Canada. Activities and events conducted by Forum members throughout the month of March aim to raise awareness and educate consumers and businesses about the dangers of fraud in the Canadian marketplace. The Forum has 138 members, including public sector and law enforcement agencies, provincial and federal governmental departments, and business and consumer groups.

The theme for the 2011 FPM campaign was Internet Fraud. In March 2011, the Bureau issued a news release to launch FPM, followed by a consumer advisory on fraudulent advertising on social networking sites. The Bureau also prepared an opinion editorial piece for the Minister of Industry, which was included in a stand-alone supplement on fraud, prepared by the Globe and Mail and published in March 2011. The Forum also organized a fraud awareness conference entitled “Preventing Fraud in a Digital Age,” which was held in Ottawa in March 2011.

#### **4. Resources of Competition Authorities**

##### **4.1 Bureau operations**

21. In the 2010-2011 fiscal year, the Bureau’s operating budget was CAN\$50.6 million, which includes CAN\$10.9 million collected from user fees. The majority of the budget, \$35.3 million, was allocated to salaries for 440.5 full-time staff, consisting of 253 competition law officers (various professional backgrounds: lawyers, economists, etc.), 29 executives, 10 economists, and 148.5 support staff (includes employees carrying out informatics, administrative services and support functions).

22. In 2010-2011, the Bureau employed 420 people (including students). Of that number, 328 were located in the National Capital Region, and 92 were located in seven regional offices.

##### **4.2 Legal support**

23. The Bureau receives legal support from the Department of Justice (“DOJ”) and the PPSC in its daily activities. The DOJ’s Competition Bureau Legal Services is responsible for providing legal services to the Commissioner, and for representing the Commissioner on all matters other than those for which the PPSC is responsible. The Competition Law Section of the PPSC is responsible for initiating and conducting criminal prosecutions on behalf of the Attorney General of Canada, and for advising the Bureau on criminal investigations.

##### **4.3 Period covered by the above information**

- April 1, 2010 to March 31, 2011.

#### **5. References to New Reports and Studies on Competition Policy Issues**

- Nil.