

Unclassified

DAF/COMP/AR(2013)1

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

28-May-2013

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2013)1
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CANADA

-- 2012 --

This report is submitted by Canada to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 June 2013.

JT03340342

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

English - Or. English

TABLE OF CONTENTS

Executive Summary	3
1. Changes to Competition Laws and Policies, Proposed or Adopted	3
1.1 Summary of new legal provisions of competition law and related legislation	3
1.2 Other relevant measures, including new guidelines.....	4
1.2.1 Private Members’ Business.....	4
1.2.2 Federal Government Representations to Parliamentary Committees	4
1.2.3 Government proposals for new legislation	5
1.2.4 Publications and Consultations	5
2. International Cooperation Developments.....	7
2.1 International fora participation.....	7
2.1.1 Organisation for Economic Co-operation and Development (“OECD”).....	7
2.1.2 International Competition Network (“ICN”).....	8
2.1.3 International Consumer Protection and Enforcement Network (“ICPEN”)	8
2.2 International Cooperation	8
2.3 Free Trade Agreements.....	8
2.4 Technical Assistance and Staff Exchanges.....	8
3. Enforcement of Competition Laws and Policies	9
3.1 Action against anti-competitive practices	9
3.1.1 Abuse of Dominance.....	9
3.1.2 Price Maintenance.....	9
3.1.3 Conspiracy	9
3.1.4 Bid-rigging.....	10
3.2 Mergers and Acquisitions	11
3.2.1 Statistics on Mergers Examined under the Competition Act.....	11
3.2.2 Summary of significant cases	12
3.3 Misleading Advertising and Deceptive Marketing Practices	13
3.1 Other Activities	14
4. Resources of Competition Authorities	15
4.1 Bureau operations	15
4.2 Legal support	15
4.3 Period covered by the above information	15
5. References to New Reports and Studies on Competition Policy Issues.....	15

Executive Summary

1. From April 1, 2011 to March 31, 2012 (“fiscal year”), the Competition Bureau (“Bureau”) continued to focus its efforts on its overall goal of increasing predictability and transparency for stakeholders. To this end, the Bureau’s work was guided by three priorities: (i) the vigorous enforcement of the laws under the Bureau’s jurisdiction; (ii) the effective implementation of the March 2009 amendments to the *Competition Act* (“Act”); and (iii) the strengthening of the Bureau’s enforcement capacity.

2. In an effort to vigorously enforce the laws under its jurisdiction, the Bureau brought forward a number of cases in 2011-2012, in a wide range of sectors, including air transportation, real estate and construction. The Bureau also sent a strong message about how seriously it takes allegations of misleading advertising and deceptive marketing, by reaching an agreement in an enforcement matter, which included the payment of an administrative monetary penalty of CAD\$10 million, the maximum available under the Act.

3. Under the Bureau’s second priority (i.e. the effective implementation of the 2009 amendments to the Act), the Bureau published new and updated guidance on its enforcement approach and methodology. The Bureau held extensive consultations on revisions to its *Merger Enforcement Guidelines*, and published a final revised version in October 2011. In March 2012, it published draft *Abuse of Dominance Guidelines* for public comment. The Bureau also increased its issuance of position statements, which describe its analysis of complex merger cases, and it has established a public merger register of all closed merger reviews that is updated on a monthly basis.

4. With respect to the third priority of strengthening its enforcement capacity, the Bureau continued to focus its resources on conduct that violated the Act in 2011-2012, targeting cases with the greatest impact on the Canadian economy and consumers. The Bureau believes that principled and strong enforcement is an effective and efficient way for it to carry out its mandate to ensure that Canadian businesses and consumers prosper in a competitive and innovative marketplace.

5. Regarding international matters, the Bureau maintained its active involvement in various international fora in 2011-2012, including the Organisation for Economic Co-operation and Development, the International Competition Network and the International Consumer Protection and Enforcement Network. The Bureau also continued its engagement in various free trade negotiations and competition related cooperation instruments with various jurisdictions from all parts of the world.

6. For additional information on the activities described throughout the report, including information notices, news releases and backgrounders, please visit the Bureau’s Media Centre at: <http://www.competitionbureau.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

7. No new provisions to the Act came into effect during the period covered by this annual report. However, a number of minor technical amendments were made to the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act*, and the *Precious Metals Marking Act* (collectively, “the labelling statutes”) enforced by the Bureau.

1.2 *Other relevant measures, including new guidelines*

1.2.1 *Private Members' Business*

- Bill C-296 and Bill C-349, An Act to amend the Canada Consumer Product Safety Act and the Textile Labelling Act (animal fur or skin)

Introduced on September 29, 2011, Bill C-296 proposed to amend the *Canada Consumer Product Safety Act* to add products made in whole or in part of dog or cat fur to Schedule 2 of that Act, thereby prohibiting any person from manufacturing, importing, advertising or selling such products. It also proposed to amend the *Textile Labelling Act*; specifically, the definition of "consumer textile article" to include any product made in whole or in part of animal skin from which the hair or fur has not been removed. An identical bill (Bill C-349) was introduced on November 16, 2011.

- Bill C-365, An Act to amend the Competition Act (inquiry into industry sector)

Bill C-365 was tabled for first reading on November 29, 2011. It proposed to amend section 10 of the Act to allow the Commissioner of Competition ("Commissioner") to commence an inquiry where "grounds exist for the making of an inquiry into an entire industry sector".

- Bill C-336, An Act to establish the Office of the Oil and Gas Ombudsman to investigate complaints relating to the business practices of suppliers of oil or gas

Bill C-336 was introduced on October 26, 2011, to establish the Office of the Oil and Gas Ombudsman to receive and investigate complaints about the business practices of oil and gas suppliers. The ombudsman would: (i) investigate complaints and make recommendations to a supplier who is the subject of a complaint; (ii) report to the Minister of Industry if the response of the oil or gas supplier is unsatisfactory; and (iii) refer reports to a standing committee of the House of Commons on matters relating to the industry.

8. Each of the aforementioned private members' bills has yet to progress beyond a first reading in the House of Commons.

1.2.2 *Federal Government Representations to Parliamentary Committees*

- Appearances at Parliamentary Committees

Bureau officials appeared before Parliamentary Committees on three occasions between April 1, 2011, and March 31, 2012.

On June 22, 2011, Bureau officials appeared before the House of Commons Standing Committee on Industry, Science and Technology to provide evidence for the Committee's study on the fluctuations of petroleum prices. Bureau officials explained how it processes complaints and conducts investigations. It was also noted that the Bureau is not a price regulator, and that high prices in and of themselves do not fall under the purview of the Act unless they are the result of anti-competitive conduct. The Committee discussion focused on the notion that speculation for the price of crude oil was the root cause for the volatility of petroleum product retail price.

Bureau officials also appeared, with Industry Canada officials, before the same Committee on October 5, 2011, to provide evidence on the Committee's study of the e-commerce market in

Canada. Industry Canada officials provided the Committee with an overview of e-commerce, and how Canada fares relative to the rest of the world. In addition, they described stakeholders and industry suggestions to further advance e-commerce in Canada. Industry Canada officials outlined its main activities supporting e-commerce, while a Bureau official outlined the potential effects of Canada's pending anti-spam legislation on e-commerce and consumer confidence in this marketplace.

On February 15, 2012, Bureau officials appeared before the Standing Senate Committee on National Finance during its examination of price discrepancies in respect of certain goods between Canada and the United States. Bureau officials provided an overview of the Bureau and advised the Committee on how it conducts its enforcement activities, including the compliance and enforcement tools at its disposal and the current range of potential remedies that can be sought and penalties that can be imposed for a violation of the Act. They further explained that Canadian companies are generally free to set their own prices, and that high prices, in and of themselves, do not fall under the purview of the Act unless they are the result of anti-competitive conduct, such as price-fixing, or abuse of a dominant position.

1.2.3 *Government proposals for new legislation*

- An Act to Enact the Investigating and Preventing Criminal Electronic Communications Act and to Amend the Criminal Code and Other Acts (Protecting Children from Internet Predators Act)

Bill C-30 was tabled in the House of Commons on February 14, 2012. It is largely a combination of two previous bills, which proposed to enable law enforcement agencies with new powers to require telecommunications service providers to provide subscriber information.

The Bill contained proposed amendments to the 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 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. The bill was later abandoned.

- 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)

Bill S-3 was originally tabled in the Senate on October 20, 2010, was subsequently re-introduced, received Royal Assent and came into force on November 29, 2011. The law amended 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 labelling statutes enforced by the Bureau.

1.2.4 *Publications and Consultations*

9. The Bureau continued to focus on the effective implementation of the 2009 amendments to the Act in 2011-2012, 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.

- Merger Enforcement Guidelines (final post-consultation, October 2011)

In October 2011, the Bureau published revised *Merger Enforcement Guidelines* (“MEGs”) following a focused internal review and extensive consultations with stakeholders across Canada in 2010 and 2011, as well as consultations with foreign competition agencies. The revised MEGs describe, to the extent possible, how the Bureau will approach its analysis of merger transactions and reflect current Bureau practice and current legal and economic thinking.

- Revised Abuse of Dominance Guidelines - draft (March 2012)

In March 2012, the Bureau published its revised draft *Enforcement Guidelines on the Abuse of Dominance Provisions* (Sections 78 and 79 of the Act) for public comment. The guidelines provide a concise overview of the Bureau's enforcement approach to the abuse of dominance provisions. A previous draft of the guidelines was published for public comment in 2009.

- Merger Review Process Guidelines (revised January 2012)

In January 2012, the Bureau published revised *Merger Review Process Guidelines* (“MRPGs”) that describe the Bureau's general approach to administering the two-stage merger review process under the Act, which is applicable to proposed transactions that are the subject of a notification filing. Since the first publication of the MRPGs in September 2009, the Bureau benefited from considerable experience with the two-stage merger review process and updated the guidelines to reflect current Bureau practices. The updated MRPGs provide stakeholders with, among other things, increased guidance on the supplementary information request (“SIR”) issuance process, including pre- and post-issuance dialogue and the identification of custodians; sample SIR instructions; and the use of timing agreements.

- Updated Guidance on Merger Review “No Action” Letters (August 2011)

In August 2011, the Bureau published revised standard language for “no action” letters (“NAL”) issued by the Bureau. The revised language is better aligned with subsection 123(2) of the Act and more accurately reflects the distinction between the discretionary issuance of an Advance Ruling Certificate (“ARC”) under section 102 of the Act, and a NAL.

- Mergers Remedy Study Summary (August 2011)

In August 2011, the Bureau published a summary of the *Merger Remedy Study* regarding the effectiveness of remedies obtained between 1995 and 2005 under the merger provisions of the Act. The summary outlines the study's key observations and findings, while maintaining the confidentiality of information provided by study participants. The results of the study will be used to update the Bureau's *Information Bulletin on Merger Remedies in Canada*.

- Interpretation Guidelines (July 2011 - March 2012)

The Bureau updated five interpretation guidelines during the fiscal year:

Hostile Transactions Interpretation Guideline Number 1: Bureau Policy on Disclosure of Information (July 2011) addresses the Bureau's policy regarding the disclosure of ‘pertinent information’ to both the bidder and the target of a hostile transaction.

Hostile Transactions Interpretation Guideline Number 2: Bureau Policy on Running of Subsection 123(1) Waiting Periods (July 2011) addresses the commencement of statutory waiting

periods in situations where a proposed transaction ceases to be an unsolicited bid within the initial 30-day waiting period; where a proposed transaction ceases to be an unsolicited bid after the issuance of a SIR, but prior to the bidder having certified completeness of its response to the SIR; and where a proposed transaction ceases to be an unsolicited bid within the second 30-day waiting period (i.e., following the receipt of certified complete responses from all parties subject to a SIR).

Pre-Merger Notification Interpretation Guideline Number 12: Requirement to Submit a New Pre-Merger Notification and/or ARC Request Where a Proposed Transaction is Subsequently Amended (draft March 2012) provides guidance to parties on whether they will be required to submit a new notification and/or request for an ARC, where a proposed transaction has been amended.

Pre-Merger Notification Interpretation Guideline Number 13: Satisfying the Information Requirements Set Out in Section 16 of the Notifiable Transactions Regulations and Completeness of Notification (June 2011) addresses various information requirements set out in section 16 of the Regulations that are often misinterpreted, and discusses how parties can best satisfy these requirements to avoid a determination by the Merger Notification Unit that their Notification is incomplete.

Pre-Merger Notification Interpretation Guideline Number 14: Duplication Arising From Transactions Between Affiliates (draft March 2012) provides guidance to parties when calculating whether a proposed transaction exceeds the party size and transaction size thresholds under sections 109 and 110 of the Act. In particular, it clarifies what amounts may be deducted owing to duplication in determining whether notification thresholds have been exceeded, where a proposed transaction involves affiliates.

2. International Cooperation Developments

2.1 International fora participation

2.1.1 Organisation for Economic Co-operation and Development (“OECD”)

- Competition Committee (“CC”)

During the fiscal year, the Commissioner remained an active member of the CC’s managing body, “the CC Bureau”. In 2011-2012, the CC Bureau contributed to the work of the CC and its Working Parties by providing input and submissions on the following topics: promoting compliance with competition law; impact evaluation of merger decisions; remedies in merger cases; update on developments in transparency; and improving international cooperation in cartel investigations.

- Committee on Consumer Policy (“CCP”)

In 2011-2012, the Bureau participated by providing input and presentations regarding several CCP projects, including a presentation on recent Canadian enforcement actions with respect to misleading and fraudulent claims in the telecommunications market.

2.1.2 International Competition Network (“ICN”)

10. Since the creation of the ICN in 2001, the Bureau has played a key role in the organization’s development by serving as the ICN Secretariat and through participation in the Steering Group (“SG”) and working groups on cartels, unilateral conduct, mergers and agency effectiveness. In addition, the Bureau co-chairs the Cartel Working Group’s subgroup on enforcement techniques and the Operational Framework Working Group.

11. During the fiscal year, the Bureau continued to play a pivotal role in the organizational aspects of the ICN through its continued role as Secretariat and active involvement in the ICN’s Second Decade Project. The Bureau also took part in the 10th Annual Conference held in May 2011, where the Commissioner participated as a panellist in the Mergers Working Group plenary session on current trends and developments in merger enforcement.

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

12. In 2011-2012, the Bureau continued to play a leadership role in ICPEN. The Bureau was a member of the ICPEN Advisory Group and a number of ICPEN working groups. Bureau representatives attended the bi-annual ICPEN meeting in The Hague, Netherlands, in April 2011, where they participated in various sessions on topics such as price advertising, online payment services and intelligence gathering.

13. The Bureau also attended the ICPEN Conference and Best Practices Workshop that took place from February 28 to March 2, 2012 in San José, Costa Rica. The Bureau played an important role in these meetings by: (i) participating on a panel addressing “negative option marketing”; moderating a session relating to deceptive online selling; and (iii) co-moderating a best practices workshop session on enforcement tools and techniques.

2.2 International Cooperation

14. In 2011-2012, the Bureau cooperated with a number of jurisdictions with respect to international enforcement cases including: Australia, Brazil, the European Union, France, Japan, Korea, Luxembourg, New Zealand, Singapore, South Africa, Switzerland, the United Kingdom, and the United States.

15. During the fiscal year, the Bureau also held a number of formal and informal bilateral meetings with its foreign counterparts. These included meetings with antitrust agencies from Brazil, China, the European Commission, Japan, Korea, Mexico and the United States.

2.3 Free Trade Agreements

16. The Bureau, in partnership with Industry Canada and Canada’s Department of Foreign Affairs and International Trade, leads the negotiation of competition policy provisions in Canada’s bilateral and regional free trade agreements, and foreign investment promotion and protection agreements.

17. During this fiscal year, the Bureau was engaged in negotiations with the Caribbean Community (CARICOM), Costa Rica, the European Union, Honduras, India, Morocco, South Korea and Ukraine.

2.4 Technical Assistance and Staff Exchanges

18. The Bureau engaged in staff exchanges with the Korea Fair Trade Commission and the United Kingdom’s Office of Fair Trading, but did not provide any technical assistance in 2011-2012.

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*

- Toronto Real Estate Board

Following an extensive investigation by the Civil Matters Branch and attempts to resolve the Bureau's concerns through agreement, the Commissioner filed an application with the Competition Tribunal ("Tribunal") in May 2011, seeking to ensure greater competition and increased innovation in the market for real estate services in Toronto by prohibiting anti-competitive practices by the Toronto Real Estate Board ("TREB"). The Bureau concluded that TREB is restricting how its member agents can provide information from the Toronto Multiple Listing Service system to their customers, thereby denying consumer choice and member agents the ability to provide innovative brokerage services over the Internet.

3.1.2 *Price Maintenance*

- Visa and MasterCard

In December 2010, the Commissioner brought an application to the Tribunal against Visa and MasterCard seeking to strike down restrictive and anti-competitive rules that Visa and MasterCard impose on merchants who accept their cards – rules that effectively eliminate competition between the credit card networks and result in increased costs to businesses and, ultimately, consumers.

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 CAD\$240 billion in purchases.

3.1.3 *Conspiracy*

- Polyurethane Foam

In January 2012, Domfoam International Inc. and Valle Foam Industries (1995) Inc. pleaded guilty to conspiracy under the Act and were fined a total of CAD\$12.5 million for participating in a price-fixing cartel for polyurethane foam.

Domfoam and its affiliate, Valle Foam, admitted that they had agreed with competitors to fix the price of polyurethane foam products manufactured at their plants in Brampton, Ontario, Delta,

British Columbia, and Montreal, Québec, over an 11 year period. The companies' products are mainly used in carpet underlay, furniture and bedding.

The total of these fines was the highest obtained as of March 31, 2012, and its affiliates in relation to a domestic cartel. The fines in this case were also the first to be imposed following the 2009 amendments to the cartel provisions of the Act.

- Retail Gasoline

- Quebec

During the fiscal year, 12 individuals were fined for fixing the price of gasoline at the pump in Quebec. These fines were a result of the Bureau's extensive investigation into price fixing in the cities of Victoriaville, Thetford Mines, Magog and Sherbrooke, Quebec. The investigation culminated in a first wave of charges in June 2008, and a second wave of charges in July 2010.

As of March 31, 2012, 22 individuals and six companies had pled guilty in this case, with fines totalling over CAD\$2.8 million. Of the 22 individuals who have pleaded guilty, six have been sentenced to terms of imprisonment totalling 54 months.

- Ontario

In March 2012, Pioneer Energy LP, Canadian Tire Corporation, and Mr. Gas pleaded guilty to fixing the price of gasoline at the pump from May to November 2007 in Kingston and Brockville, Ontario.

The Bureau uncovered evidence that competitors agreed among themselves to set the price of gasoline for consumers at the pump. The companies pleaded guilty before the Ontario Superior Court to price-fixing under the Act and were fined a total of CAD\$2 million.

3.1.4 *Bid-rigging*

- R. v. Dowdall et al.

In 2009, bid-rigging charges under section 47 of the Act were laid against seven companies and 14 individuals based on allegations that the parties entered into agreements to coordinate their bids in an illegal scheme to divide contracts for information technology services to various Federal Government departments. To date, two individuals have pleaded guilty in this case.

In October 2011, after a lengthy preliminary hearing, the majority of the accused were committed to trial in relation to 140 counts under both the Act and the *Criminal Code of Canada*. Several of the accused subsequently filed an application seeking to quash the order of committal ordered by the Ontario Superior Court of Justice.

- 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's investigation revealed that the accused secretly coordinated their bids with competitors to pre-determine the winners of the contracts. The illegal agreements also included compensation among the participants to ensure that the contract was awarded to the designated company.

In July 2011, Les Entreprises Promécanic Ltée pleaded guilty to three charges of bid-rigging and was fined CAD\$425,000 for its role in the offence.

- Sewer Services

In November 2011, criminal charges were laid against six companies and five individuals accused of rigging bids for municipal and provincial contracts for specialized sewer services in the greater Montreal area. The charges relate to a total of 37 calls for tender in 2008 and 2009, with a total value of CAD\$3.3 million.

The evidence gathered by the Bureau revealed that the companies secretly agreed to coordinate their bids to pre-determine the winners of municipal and provincial contracts for the cleaning and maintenance of sewers.

MSC Réhabilitation Inc. pleaded guilty in Quebec Superior Court for its role in the bid-rigging scheme for 12 calls for tender from different municipalities. MSC Réhabilitation was fined CAD\$75,000.

- Outreach Program – Cartel & Bid-Rigging Provisions

The Bureau has placed considerable emphasis on preventing and detecting criminal cartels and bid-rigging in both the public and private sectors. The Bureau uses a number of different vehicles to raise awareness about the impact of criminal cartels and bid-rigging on Canadians, and to educate the public on how to detect this illegal activity. In 2011-2012, the Bureau conducted 22 outreach presentations, aimed at deterring criminal cartels and bid-rigging activity, particularly in the Canadian public sector. The presentations were attended by members of various industry and trade associations and procurement officials. As part of these presentations, the Bureau encouraged businesses to adopt or enhance corporate competition law compliance programs and report violations of the Act.

3.2 Mergers and Acquisitions

3.2.1 Statistics on Mergers Examined under the Competition Act

20. During the fiscal year, the Bureau concluded 221 merger examinations, with 25 examinations ongoing at March 31, 2012. Of the 221 examinations that were completed at the end of the fiscal year: (i) no transactions resulted in consent agreements between the parties and the Bureau; (ii) in two cases, 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) four transactions were abandoned before the completion of the Bureau's examination, for reasons unrelated to the Bureau's position regarding the competitive effects of the merger; (v) in 215 examinations, the Bureau concluded that the transaction did not raise significant

competition issues under the Act, issuing an Advance Ruling Certificate (“ARC”) in 77 of these transactions¹ and (vi) two cases were before the Tribunal at the end of the fiscal year.

3.2.2 *Summary of significant cases*

- CCS Corporation – Complete Environmental Inc.

The Commissioner filed an application with the Tribunal in January 2011 to dissolve CCS Corporation's acquisition of Complete Environmental Inc., the owner of a proposed hazardous waste landfill in Northeastern British Columbia. This is the first merger challenge filed purely on the basis of a likely substantial prevention of competition. The challenge also involved a transaction that fell below the merger notification thresholds set out in the Act, and where dissolution was sought as the primary remedy.

The hearing was held in Vancouver, British Columbia before the Tribunal from November 16 to December 2, 2011, with final arguments heard in Ottawa, Ontario from December 12 to 13, 2011.

- Air Canada – United Continental Holdings Inc.

In June 2011, the Commissioner filed an application with the Tribunal to prohibit a proposed joint venture between Air Canada and United Continental Holdings. The joint venture would permit Air Canada and United to coordinate air travel operations on transborder routes. In addition to challenging the proposed joint venture under the merger provisions of the Act, the Commissioner sought to undo certain provisions contained within three existing “coordination agreements” between the airlines under section 90.1 of the Act.²

- Canadian Tire Corporation, Limited – The Forzani Group Ltd.

In October 2011, Canadian Tire Corporation, Limited announced its intention to acquire The Forzani Group Ltd. The transaction involved the purchase of a national sporting goods retailer, including sporting apparel and equipment, by a mass merchandiser with significant sales in sporting equipment.

Following a thorough review, the Bureau concluded in August 2011 that the acquisition was not likely to result in a substantial lessening or prevention of competition. The Bureau issued a Position Statement³ regarding its review of the transaction.

¹ 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 Act. Section 102 of the 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 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.

² Section 90.1 is a new civil provision that came into force on March 12, 2010, enabling the Commissioner to challenge anti-competitive agreements between competitors.

³ A Position Statement briefly describes the Bureau’s analysis of a particular proposed merger and summarizes its main findings to provide transparency to the antitrust community and industry stakeholders. The position statement can be found on the Bureau’s website: [Canadian Tire/Forzani Position Statement](#).

3.3 *Misleading Advertising and Deceptive Marketing Practices*

- Bell Canada

In June 2011, the Bureau reached an agreement with Bell Canada (“Bell”) regarding representations made on Bell’s website and in print materials. The Bureau determined that Bell had charged higher prices than advertised for many of its services including home phone, Internet, satellite TV and wireless. The advertised prices were not in fact available, as additional mandatory fees, such as those related to TouchTone, modem rental and digital television services, were hidden from consumers in fine-print disclaimers. Under the terms of a consent agreement filed with the Tribunal, Bell agreed to stop making misleading representations about the prices offered for its services and was required to pay an administrative monetary penalty (“AMP”) of CAD\$10 million.

- Business Directory Scam – Yellow Page Marketing B.V.

In March 2012, five companies and three individuals were found by the Ontario Superior Court of Justice to have violated the Act for operating a deceptive marketing scheme targeting businesses, individuals and organizations across Canada and internationally. By using symbols that closely resemble the well-known trademark of the Yellow Pages Group, the companies and individuals deceived consumers into believing that they were merely updating contact information for an online business directory listing. The court ordered that the companies and individuals pay AMPs totalling CAD\$9,035,000 (CAD\$8 million by the companies and CAD\$1,035,000 by the individuals), pay full restitution to the victims of the scam, and publish corrective notices. The court also declared that any contracts entered into with the companies and individuals by Canadians were null and void.

- Beiersdorf Canada Inc. - Nivea

In September 2011, the Bureau reached a settlement with Beiersdorf Canada Inc., Nivea’s Canadian distributor, to stop making false or misleading health claims about Nivea’s “My Silhouette” product. The claims suggested, among other things, that regular use of the product slims and reshapes the body, causing a reduction of up to three centimetres on targeted areas. Under the terms of the consent agreement, Beiersdorf was required to immediately remove the products from Canadian shelves, to pay an AMP of CAD\$300,000, to refund the purchase price and shipping costs to Canadian customers, to pay CAD\$80,000 to cover costs associated with the Bureau’s investigation and to publish a corrective notice on Nivea’s Canadian website and in major Canadian newspapers. Shortly after the registration of the consent agreement, Beiersdorf was also required to correct an inaccurate statement made by the company related to the settlement reached with the Bureau.

- Global Management Solutions – GMS and Commutel and Marketing USA

In September 2011, the owner and president of Global Management Solutions-GMS and Commutel and Marketing USA was sentenced to two years in prison and prohibited from engaging in any form of telemarketing for three years after pleading guilty to three counts of deceptive telemarketing related to the promotion of business directories.

- IT Data Direct

In September 2011, charges were laid against five individuals and four companies involved in the Bureau's IT Data Direct case. The investigation uncovered a widespread telemarketing scheme, generating over CAD\$172 million in gross sales that marketed, among other things, subscriptions to online directories.

- Job Opportunity Scam

In April and May 2011, two individuals pleaded guilty for their roles in an employment opportunity scam involving counterfeit cheques and were ordered to pay restitution to the victims of the scheme. Through online and newspaper advertisements, the scam targeted Canadian residents who believed that they had been hired to act as secret shoppers assessing the customer service of Western Union Financial Services.

- Rogers

In November 2010, the Bureau commenced legal proceedings regarding what the Bureau had concluded are misleading claims by Rogers about dropped calls in an advertising campaign promoting its Chatr cell phone brand. The Bureau had also concluded that the claims made were not based on adequate and proper tests. In September 2011, the Commissioner provided her evidence in support of her conclusions that Rogers engaged in deceptive marketing practices by way of five sworn affidavits. In November 2011, the court heard arguments and evidence regarding a constitutional challenge brought by Rogers. This matter is still before the Ontario Superior Court of Justice.

3.1 *Other Activities*

- 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 during the month of March aim to raise awareness and educate consumers and businesses about the dangers of fraud in the Canadian marketplace focused on the 2012 theme – Building Consumer Confidence. The Forum has 138 members, including public sector and law enforcement agencies, provincial and federal government departments, and business and consumer groups.

Originally developed by the Australian Competition and Consumer Commission, the Bureau also published the Canadian edition of *The Little Black Book of Scams*, a compact and easy to use reference guide filled with information Canadians can use to protect themselves against a variety of common scams, how these scams work, how to recognize them, as well as practical tips on how consumers can protect themselves.

In addition, the Bureau prepared an editorial piece for the Minister of Industry that was included in a stand-alone supplement on fraud, prepared by the *Globe and Mail* newspaper and published in March 2012, and collaborated with *La Presse* on a similar project.

Finally, a total of 74 stations used radio segments prepared for FPM, 13 of which were from Quebec with a possible audience reach of more than 2,000,000. The Fraud Prevention section on the Bureau's website received 4,920 hits in March 2012, generating more visits than any other section. *The Little Black Book of Scams* received 4,226 hits on the website and was downloaded 3,081 times.

4. Resources of Competition Authorities

4.1 Bureau operations

21. The Bureau's operating budget for 2011-2012 was CAD\$51.4 million, including CAD\$10.2 million collected from user fees. The majority of the budget, CAD\$34.8 million, was allocated to salaries for 428.5 authorized full-time equivalents ("FTEs"), consisting of 29 executives, 10 economists in the Economic Policy and Enforcement Branch, 248 competition law officers, and 141.5 employees carrying out enforcement support, informatics, administrative services, and other corporate functions.

22. The Bureau has administrative responsibility for collecting fines imposed by the courts as well as AMPs issued by the Tribunal or the courts. In 2011-2012, over CAD\$15.2 million in fines were imposed and over CAD\$19.3 million in AMPs were issued. This money is remitted to the Government of Canada's Consolidated Revenue Fund.

23. By the end of 2011-2012, in a continued effort to realign priorities and resources, the Bureau had reduced its number of FTEs, through attrition, to 400. Of that number, 313 were located in the National Capital Region, and 87 in seven regional offices.

4.2 Legal support

24. The Bureau receives legal support from the Department of Justice ("DOJ") and the Public Prosecution Service of Canada ("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

25. April 1, 2011 to March 31, 2012.

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

26. Nil.