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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CANADA

-- 2013 --

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This report is submitted by Canada to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 18-19 June 2014.

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EXECUTIVE SUMMARY

1. This report summarizes the main activities of Canada's Competition Bureau (the "Bureau") during the 2012-13 fiscal year (April 1, 2012 to March 31, 2013).
2. In September 2012, John Pecman was appointed interim Commissioner of Competition following the departure of Melanie Aitken.
3. The Bureau continued to deliver on its mandate to ensure that Canadian businesses and consumers prosper in a competitive and innovative marketplace through a mix of enforcement, education and advocacy.
4. During this fiscal year, the Bureau focused on increasing transparency, including by publishing new and updated guidance materials, consulting with stakeholders, conducting outreach and posting more information on its website. The Bureau also continued to increase its issuance of position statements, which describe its analysis of complex merger cases.
5. The Bureau also focused on expanding its advocacy work, including by increasing its input into other regulatory proceedings. For example, the Bureau made a submission to the Canadian Radio-television and Telecommunications Commission (the "CRTC") consultation on the development of a Wireless Code of Conduct for Canada.
6. Strong enforcement remained the Bureau's top priority, and the Bureau achieved strong outcomes in the 2012-13 fiscal year: 232 merger reviews concluded; three consent agreements reached; criminal charges laid in three matters; sixteen guilty pleas or criminal convictions obtained; and more than \$7.8 million in criminal fines imposed.
7. For additional information on the activities described throughout the report, including information notices, news releases and backgrounders, please visit the Bureau's website at: www.competitionbureau.gc.ca.

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

1.1 Amendments to the Competition Act or Labelling Statutes

8. The *Competition Act* (the “Act”) and the *Consumer Packaging and Labelling Act* were consequentially amended by the passage of the *Safe Food for Canadians Act* (Bill S-11) on November 22, 2012, which modernized the regulatory system for food commodities. Although the Bureau is not responsible for food-related provisions of the *Consumer Packaging and Labelling Act*, there were consequential amendments that affected the non-food provisions as a result of Bill S-11.

9. There were no amendments to either the *Textile Labelling Act*, or the *Precious Metals Marking Act* during the period covered by this annual report.

10. No new legislation was proposed and the Bureau did not appear before any Parliamentary Committee during the 2012-13 fiscal year.

1.2 Publications and Consultations

11. In an effort to provide businesses with clear guidelines and a predictable process, the Bureau published guidance documents and undertook public consultations.

1.2.1 Publications

1.2.1.1 Merger Review Performance Report

12. The Bureau published its *Merger Review Performance Report* on April 12, 2012, providing an update on the performance of the Bureau’s Mergers Branch since the last performance report was published in May 2010. The report contains a summary of new and updated merger-related publications and guidance, as well as information and statistics on workload, resources and service standards.

1.2.1.2 Enforcement Guidelines on the Abuse of Dominance Provisions (Sections 78 and 79 of the Competition Act)

13. In September 2012, the Bureau released the final version of its *Enforcement Guidelines on the Abuse of Dominance Provisions (Sections 78 and 79 of the Competition Act)*, providing a concise overview of the Bureau’s enforcement approach to the abuse of dominance provisions of the Act. The final Guidelines were released following a consultation with stakeholders. The Guidelines replace all previous guidelines and bulletins dealing with the administration and enforcement of the abuse of dominance provisions of the Act.

1.2.2 Consultations

1.2.2.1 Pre-Merger Notification Interpretation Guideline Number 15: Assets in Canada and Gross Revenues for Sales in, from or into Canada (Sections 109 and 110 of the Act)

14. In April 2012, the Bureau published a draft Pre-Merger Notification Interpretation Guideline Number 15: Assets in Canada and Gross Revenues for Sales in, from or into Canada (Sections 109 and 110 of the Act) for consultation. Interpretation Guideline 15 provides guidance on how to calculate the aggregate value of assets in Canada and the gross revenues from sales in, from or into Canada. It also provides information on how to determine whether gross revenues from sales are generated from assets in Canada. This guidance aims to assist businesses in determining whether the parties-size and transaction-size thresholds under sections 109 and 110 of the Act are exceeded.

2. Strategic Regulatory Interventions

15. Sections 125 and 126 of the *Competition Act* grant the Bureau a statutory right to make representations regarding competition before federal regulatory boards, commissions or other tribunals, and before provincial regulatory boards. The Bureau has endeavored to increase its level of regulatory interventions to encourage fair and competitive practices. The following is an example of one of these regulatory interventions:

2.1 *Canadian Radio-television and Telecommunications Commission (“CRTC”) Wireless Code of Conduct*

16. In February 2013, the Bureau submitted a response to the CRTC’s consultation regarding their proceeding to establish a mandatory code of conduct for wireless service providers to address clarity and content in service agreements. The Bureau believes that discouraging the creation of switching costs that tend to reduce customer mobility, and effectively encouraging the provision of sufficient information to enable informed consumer choice, will allow Canadians to enjoy the beneficial effects of greater competitive forces in wireless markets including lower prices, higher quality service, and greater innovation.¹

3. Enforcement of Competition Laws and Policies

17. The following section provides a non-exhaustive overview of the Bureau’s significant enforcement actions during the fiscal year 2012-13.

3.1 *Action against anti-competitive practices*

3.1.1 *Abuse of Dominance*

3.1.1.1 Toronto Real Estate Board

18. In May 2011, after an extensive investigation, the Bureau filed an application with the Competition Tribunal (the “Tribunal”), seeking to prohibit anti-competitive practices by the Toronto Real Estate Board (“TREB”).

19. TREB is the largest real estate board in Canada, with approximately 31,000 members. It owns and operates the Toronto Multiple Listing Service system (the Toronto MLS system), which contains current property listings and historical information about the purchase and sale of residential real estate in Toronto and the surrounding area. The vast majority of local real estate transactions make use of the Toronto MLS system, which is an essential tool for agents to help customers buy and sell homes. The Bureau’s investigation concluded that TREB restricts how its member agents can provide information from the Toronto MLS system to their customers, thereby denying member agents the ability to provide innovative brokerage services over the Internet.

20. In September 2012, the Bureau’s case against TREB began before the Tribunal. The case remained active as of March 31, 2013.

¹ The full text of the submission can be found on the Bureau’s website at: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03531.html>

3.1.1.2 Residential Water Heaters

21. In December 2012, the Bureau filed two applications with the Tribunal under the abuse of dominance provisions of the Act seeking orders prohibiting Direct Energy Marketing Limited and Reliance Comfort Limited Partnership, two companies that rent water heaters to residential customers in Ontario, from engaging in anti-competitive conduct.

22. After an investigation, the Bureau determined that Direct Energy and Reliance each engaged in practices that intentionally suppress competition and restrict consumer choice. Specifically, each company implemented water heater return policies and procedures aimed at preventing consumers from switching to competitors. This anti-competitive conduct affects consumers, other rental water heater companies, and businesses that sell water heaters, such as home improvement centres.

23. In addition to prohibition orders, the Bureau is seeking administrative monetary penalties of \$15 million from Direct Energy and \$10 million from Reliance.

24. The case remained active as of March 31, 2013.

3.1.2 Price Maintenance

3.1.2.1 Visa and MasterCard

25. In May 2012, the Bureau's case against Visa and Mastercard under the price maintenance provisions of the Act began at the Tribunal.

26. The Bureau announced in December 2010 that it had filed an application with the Tribunal to strike down restrictive and anti-competitive rules that Visa and MasterCard impose on merchants who accept their credit cards. The Commissioner alleged that these rules had effectively eliminated competition between Visa and MasterCard for merchants' acceptance of their credit cards, resulting in increased costs to businesses and, ultimately, consumers.

27. The case remained active as of March 31, 2013.

3.1.3 Conspiracy

3.1.3.1 Maxzone Canada

28. In May 2012, Maxzone Auto Parts (Canada) Corp. ("Maxzone Canada") pleaded guilty for its role in an international cartel involving the sale of aftermarket replacement automotive lights and was fined \$1.5 million. Following a Bureau investigation, Maxzone Canada admitted to implementing an agreement with competitors to set the price of aftermarket automotive replacement lights in Canada from January 2004 to September 2008. The products, mainly headlights and tail lights, were primarily purchased by auto parts supply companies in Canada for use as replacement parts.

29. In September 2012, the Federal Court of Canada sent a strong message in its sentencing decision in the Maxzone case that anti-competitive activity is serious, harmful, criminal behavior that is akin to fraud and theft and should be viewed and punished as such – including with prison sentences for individuals – in order to achieve the right amount of deterrence. The decision also strongly supported the Bureau's Leniency Program as a framework for developing sentencing recommendations and underscored the need for corporate compliance programs.

3.1.3.2 Quebec Gas Cartel

30. During the 2012-13 fiscal year, the Bureau's investigation into gasoline price-fixing in the province of Quebec led to more charges, guilty pleas, fines and jail terms.

31. Beginning in 2008, the investigation found that retailers in some Quebec gas markets agreed to charge specific prices for gasoline.

32. As of March 31, 2013, thirty-nine individuals and 15 companies had been charged with criminal price-fixing in this case, and 33 individuals and seven companies had pleaded or were found guilty with fines totaling over \$3 million. Of the 33 individuals who had pleaded or were found guilty, six were sentenced to terms of imprisonment totaling 54 months.

3.1.4 Bid-rigging

3.1.4.1 Construction Industry

33. In June 2012, following a two-year joint investigation by the Unité permanente anticorruption (UPAC) of the Sûreté du Québec and the Bureau, 77 charges were laid against 11 individuals—including two municipal officials—and nine construction companies in Quebec in connection with a collusion scheme in the Saint-Jean-sur-Richelieu region. The joint investigation, which ran for just over two years, uncovered evidence of a sophisticated collusion scheme operating since 2007 which gave preferential treatment to a group of contractors in order to obtain municipal contracts, mainly for infrastructure projects in Saint-Jean-sur-Richelieu and surrounding areas.

34. Criminal charges laid included corruption in municipal affairs, breach of trust, influencing a municipal official, fraud upon the government, production and use of counterfeit documents, accepting reward, advance or benefit, misrepresentation or false statement, extortion, and conspiracy. Bid-rigging charges were also laid under the Act.

3.1.4.2 Sewer Services Cartel

35. In November 2011, following a Bureau investigation, the Director of Public Prosecutions laid criminal charges against six companies and five individuals accused of rigging bids for specialized sewer services contracts in the greater Montreal area.

36. The Bureau's investigation revealed that the companies agreed to coordinate their bids to pre-determine the winners of municipal and provincial contracts.

37. In December 2012, two companies and one individual pleaded guilty to conspiring to rig bids for specialized sewer services in the greater Montreal area.

38. The companies were fined a total of \$65,000 and subject to a court order; the individual involved was sentenced to 100 hours of community service and two years' probation. Twenty-three additional criminal charges relating to sewer services contracts valued at \$750,000 were laid against one company and two individuals.

3.2 Mergers and Acquisitions

3.2.1 Statistics on Mergers Examined under the Competition Act

39. During the fiscal year, the Bureau concluded 232 merger examinations, with 27 examinations ongoing at March 31, 2013. Of the 232 examinations that were completed at the end of the fiscal year:

- a) the Bureau issued supplementary information requests in 10 cases;
- b) three consent agreements were registered with the Tribunal;
- c) no transactions were abandoned by the parties as a result of the Bureau's concerns regarding the competitive effects of the merger or for reasons unrelated to the Bureau's position regarding the competitive effects of the merger;
- d) the Bureau concluded that 228 of the 232 examinations completed by the end of the fiscal year did not raise significant competition issues under the Act, and issued an Advance Ruling Certificate ("ARC") in 73 of these transactions²; and
- e) one case was before the Tribunal at the end of the fiscal year.

40. The Bureau published fourteen position statements describing its analysis of merger cases in fiscal year 2012-13.

3.2.2 Summary of significant cases

3.2.2.1 Tervita (Formerly known as CCS Corporation)/ Complete Environmental Inc.

41. In May 2012, the Tribunal ruled in favor of the Bureau's challenge of CCS Corporation's acquisition of Complete Environmental Inc. and its proposed Babkirk hazardous waste landfill site, ordering CCS Corporation to divest the Babkirk hazardous waste landfill site. The Bureau's January 2011 application to the Tribunal alleged that the transaction would lead to a substantial prevention of competition in the market for the disposal of solid hazardous waste from oil and gas producers within Northeastern British Columbia.

42. In February 2013, the Federal Court of Appeal rejected an appeal launched by Tervita in June 2012 and upheld the Tribunal's order.³

3.2.2.2 Air Canada/ United Continental Holdings Inc.

43. In October 2012, a consent agreement was reached following the Bureau's June 2011 application to the Tribunal to prohibit a joint venture between Air Canada and United Continental that would have resulted in the two carriers merging their flight operations for routes between Canada and the United States. The agreement prevents the airlines from coordinating under the joint venture and their three

² 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 the merger provision, 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.

³ Tervita has since appealed to the Supreme Court of Canada. The hearing was held in March 2013, with a decision pending at the time of writing.

existing coordination agreements on 14 high-demand trans-border routes. The consent agreement will remain in force for as long as any one of the coordination agreements or the joint venture remains in force.

3.2.2.3 Waste Management Québec Inc./ RCI Environment Inc.

44. In February 2013, the Bureau reached a consent agreement with Waste Management Québec Inc. (“WMQ”), the Quebec operating subsidiary of Waste Management Inc. Following an extensive review, the Bureau determined that the proposed acquisition of the assets of RCI Environment Inc. (“RCI”) by WMQ would result in a substantial lessening or prevention of competition for waste disposal services in Western Quebec. The consent agreement required WMQ to sell the right to dispose of up to 1.875 million tonnes of waste over 20 years at a landfill in Lachute, Quebec. The sale will preserve competition in the areas above by ensuring that the buyer will have access to sufficient landfill capacity to effectively compete for business. An independent monitor has been appointed to ensure WMQ’s compliance with the terms of the agreement.

3.2.2.4 BCE Inc./Astral Media Inc.

45. In March 2013, following an extensive review of BCE Inc.’s (Bell) proposed acquisition of Astral Media Inc. (Astral), the Bureau reached a consent agreement with Bell that preserves competition in the supply of English and French pay and specialty television programming services in Canada. The agreement required Bell to divest Astral’s ownership interests in several television channels and contained behavioral restrictions to preserve competition in pay and specialty television programming services in Canada.

46. Bell was also required to divest itself of a number of radio stations to comply with the CRTC’s Common Ownership Policy. The Bureau was satisfied that these proposed divestitures were sufficient to ensure the transaction would not result in a substantial lessening or prevention of competition in any radio market.

4. Resources of Competition Authorities

4.1 Bureau operations

47. The Bureau’s operating budget for 2012-2013 was CAD\$51 million, including CAD\$10.6 million collected from user fees. The majority of expenditures, approximately CAD\$33.1 million, were on salaries for 363.45 full-time equivalents.⁴

48. The Bureau has administrative responsibility for collecting fines imposed by the courts as well as Administrative Monetary Penalties (“AMPs”) issued by the Tribunal or the courts. In 2012-2013, over CAD\$7.8 million in fines were imposed while no AMPs were issued. This money is remitted to the Government of Canada’s Consolidated Revenue Fund.

49. As part of the Federal Government’s Deficit Reduction Action Plan, the Bureau contributed to the Government’s objectives by closing regional offices in Calgary, Hamilton and Halifax, reducing operating and salary expenditures in the National Capital Region, and postponing investments in areas like its information technology (IT) infrastructure.

⁴ It should be noted that these numbers are for the Competition Bureau as a whole, including the Fair Business Practices Branch, which carries out consumer protection activities outside the scope of this report.

4.2 *Legal support*

50. 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*

51. April 1, 2012 to March 31, 2013.