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**FIGHTING CORRUPTION AND PROMOTING COMPETITION**

**Contribution from Canada**

-- Session I --

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## FIGHTING CORRUPTION AND PROMOTING COMPETITION

-- Canada --

### 1. Introduction

1. Canada's Competition Bureau (the "**Bureau**") is pleased to provide this submission to the OECD Competition Committee's February 2014 roundtable on "Fighting Corruption and Promoting Competition". The Bureau, headed by the Commissioner of Competition (the "**Commissioner**"), is an independent law enforcement agency responsible for the administration and enforcement of the *Competition Act* (the "**Act**")<sup>1</sup> and certain other statutes. In carrying out its mandate, the Bureau strives to ensure that Canadian consumers and businesses prosper in a competitive and innovative marketplace.

2. The Act is a federal law governing most business conduct in Canada. It includes both criminal and civil provisions aimed at preventing anti-competitive practices in the marketplace, including criminal provisions that prohibit cartels. These cartel provisions prohibit agreements or arrangements among competitors to fix prices, allocate markets or restrict output that constitute "naked restraints" on competition (restraints that are not implemented in furtherance of a legitimate collaboration, strategic alliance or joint venture). They also prohibit foreign directives, bid-rigging and certain conspiracies relating to professional sports and federal financial institutions.<sup>2</sup>

3. Cartels deprive Canadians of the benefits of competition, such as lower prices and increased product choice, and represent one of the most egregious forms of anti-competitive conduct. Therefore, cracking down on domestic and international cartels has been, and continues to be, one of the Bureau's top enforcement priorities.

4. The Bureau has observed a close relationship between cartel conduct and corruption, particularly with respect to bid-rigging in public procurement. Given this relationship, the Bureau has, in recent years, taken steps to maintain and improve its relationships with police forces, procurement authorities and other anti-corruption officials in Canada in order to complement each organization's efforts to promote competition and combat corruption. Like cartels, corruption can have significant adverse effects on consumers, businesses and the economy in Canada.

5. This submission discusses the efforts that the Bureau has made to strengthen its partnerships with various police forces, procurement authorities and other anti-corruption officials. It also provides examples in which these partnerships have led to the detection and deterrence of collusion and corruption in Canada.

### 2. Partnerships with Police Forces

6. The Bureau has partnerships with several Canadian police forces that complement and support its work. Specifically, the Bureau continues to strengthen its ties with the white-collar crime investigation units of various police forces. The Bureau believes that the police officers working in these units may

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<sup>1</sup> R.S.C. 1985, c. C-34.

<sup>2</sup> *Id.* at ss. 45-49.

come across evidence of cartel activity in the course of their investigations that can be provided to the Bureau to pursue cartel investigations.

7. Over the past years, the Bureau has benefited significantly from the support provided by a number of police forces across Canada, including the Royal Canadian Mounted Police (the “RCMP”), Canada’s national police agency, and various provincial and municipal police forces. In particular, police officers have provided assistance to the Bureau in the execution of searches under the Act, including ensuring the safety and security of Bureau officers and helping with the search and seizure of records. These exercises are good examples of effective collaboration between the Bureau and police forces.

8. Additionally, the RCMP has provided support to the Bureau in planning and implementing wiretaps, which have proven to be an effective tool for investigating cartel conduct under the Act. For example, the RCMP assisted the Bureau in conducting wiretaps in the spring of 2010. The information obtained during these wiretaps was used to support the Bureau’s application for several search warrants in the summer of 2011. In January 2012, one of the target companies of this investigation pleaded guilty to price-fixing and was ordered by the court to pay a fine of \$12.5 million.<sup>3</sup>

9. As part of its efforts to strengthen its ties with police forces, the Bureau has had a number of officers embedded with police forces in recent years. Generally speaking, this has involved having Bureau officers working directly with a team of police officers at their offices on common investigations. This practice has allowed Bureau officers and police officers to share best practices and learn new and innovative investigative techniques. It has also assisted the Bureau and police forces in better understanding one another’s mandates and contributed to increased detection and deterrence of collusion and corruption in Canada.

### **3. Permanent Anti-Corruption Unit**

10. An example of effective collaboration involves a joint investigation conducted by the Bureau and the Unité permanente anticorruption (“UPAC”), a permanent anti-corruption unit established by the Government of Quebec.<sup>4</sup> In particular, following the creation of UPAC, the Bureau and UPAC conducted a joint investigation of the construction industry in the Saint-Jean-sur-Richelieu region in Montreal. The investigation uncovered evidence of a sophisticated criminal scheme giving 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.

11. As a result of this investigation, a total of 77 criminal charges were laid against nine companies and 11 individuals in June 2012. These charges included 20 counts of bid-rigging under the Act against nine companies and 24 counts of bid-rigging against six individuals. Other criminal charges laid included charges of corruption in municipal affairs; breach of trust; improperly influencing a municipal official; fraud upon the government; production and use of counterfeit documents; secret commissions;

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<sup>3</sup> See Competition Bureau, Announcement, “Competition Bureau Sends Signal to Price-Fixers with \$12.5 Million Fine” (6 January 2012), available online at [www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01353.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01353.html).

<sup>4</sup> UPAC’s mandate is to coordinate and lead units for investigation, audit and prevention in an effort to fight corruption in public institutions in the Province of Quebec. For more information on UPAC, see [www.upac.gouv.qc.ca](http://www.upac.gouv.qc.ca).

misrepresentations or false statements; extortion; and conspiracy. Two municipal officials were also arrested in connection with the investigation.<sup>5</sup>

12. In the press release announcing the charges, the Director of UPAC stated that:

*Collusion and bid-rigging are insidious phenomena that hurt healthy competition, as they favour a small number of contractors to the detriment of new players in awarding public contracts. I applaud the extensive operations carried out simultaneously by the investigators of the Corruption Investigations Unit and the Competition Bureau of Canada, which have led to today's arrests.*<sup>6</sup>

13. Similarly, the Director of Information and Criminal Investigations for the Sûreté du Québec (the “SQ”) stated that:

*This investigation revealed that a scheme of collusion, breach of trust and corruption has been operating since 2007, involving infrastructure projects for the City of Saint-Jean-sur-Richelieu and a number of neighbouring cities. The direct impact of that scheme was a significant increase in costs for the affected cities and the elimination of competition.*<sup>7</sup>

14. The success of this joint investigation has strengthened the partnership among the Bureau, UPAC and the SQ, and has demonstrated the importance of cooperation and collaboration between law enforcement agencies in Canada in the pursuit of criminal collusion and corruption offences.

#### **4. The Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry**

15. Another example of effective collaboration between the Bureau and other anti-corruption officials relates to the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry, also known as the Charbonneau Commission (the “**Commission**”), which was created by the Government of Quebec on November 9, 2011.<sup>8</sup> The Commission is chaired by the Honourable Justice France Charbonneau and its mandate is to:

- examine the existence of schemes and, where appropriate, to paint a portrait of activities involving collusion and corruption in the provision and management of public contracts in the construction industry (including private organizations, government enterprises and municipalities) and to include any links with the financing of political parties;

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<sup>5</sup> See Competition Bureau, Announcement, “UPAC and the Competition Bureau of Canada Lay 77 Charges Against 11 Individuals and 9 Companies” (21 June 2012), available online at [www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03473.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03473.html).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> By way of background, under the *Loi sur les commissions d'enquête* (Act respecting public inquiry commissions) in the Province of Quebec, the government may appoint commissioners to investigate any matter connected with the Government of Quebec, the administration of justice or any matter of importance relating to public health or the welfare of the population. Public Commissions of Inquiry are established to determine facts and discover the truth in relation to issues of concern. They are independent of government and they offer recommendations for dealing with situations deemed problematic. For more information on the Charbonneau Commission, see [www.ceic.gouv.qc.ca](http://www.ceic.gouv.qc.ca).

- paint a picture of possible organized crime infiltration in the construction industry; and
- examine possible solutions and make recommendations establishing measures to identify, reduce and prevent collusion and corruption in awarding and managing public contracts in the construction industry.

16. The Commission launched its public inquiry on May 22, 2012, and a final report is scheduled to be released on April 19, 2015. To date, more than 120 people have testified under oath before the Commission and the majority of the hearings have been broadcast on television and/or the internet. The inquiry has received a great deal of media attention and has been a major news story in the Province of Quebec since its inception.

17. Due to the interplay between collusion and corruption, the Bureau is very interested in the work and outcome of the Commission. On several occasions, Bureau officials have met with representatives of the Commission to provide background on the Bureau's mandate, the Bureau's investigative process and the Bureau's programs. The strong relationship between the Bureau and the Commission has helped make the Bureau a more effective law enforcement agency by ensuring that the Bureau's mandate and law enforcement role remain relevant in the Commission's analysis. Additionally, the significant media attention garnered by the Commission has improved public awareness of the Bureau's mandate and the laws it enforces, particularly the offence of bid-rigging.

## **5. Outreach with Procurement Authorities and other Law Enforcement Agencies**

18. The Bureau regularly provides outreach presentations to procurement authorities and other law enforcement agencies in Canada. The purpose of these presentations is to discuss the Bureau's mandate and provide the members of these communities with the knowledge necessary to detect, prevent and, where necessary, report cartel activity.

### **5.1 Procurement Authorities**

19. Providing outreach presentations to public procurement organizations at all levels of government has been and continues to be a priority for the Bureau. For example, in 2011, the Bureau provided 10 anti bid-rigging outreach training sessions to more than 1,000 employees of Public Works and Government Services Canada ("PWGSC"), the principal procurement agency of the Canadian federal government. These presentations provided PWGSC's procurement officials with the knowledge necessary to detect, prevent and report bid-rigging to the Bureau. In particular, they included information on, among other things, the bid-rigging provisions in the Act, the common forms of bid-rigging, the characteristics that make an industry more susceptible to bid-rigging, the warning signs for possible bid-rigging, and the techniques that can be used to prevent bid-rigging. In the Bureau's view, these types of presentations diminish the odds of collusion and, by extension, corruption.

20. Over the years, the Bureau and PWGSC have worked together to address the challenges posed by cartel activity, particularly bid-rigging. Pursuant to this existing relationship, PWGSC refers bid-rigging complaints and cases to the Bureau for investigation, and the Bureau provides annual training to PWGSC staff on bid-rigging prevention.

21. For example, in 2005, following an outreach session provided by the Bureau, PWGSC contacted the Bureau to raise concerns about certain bidding processes, and the Bureau began an investigation. As a result of this investigation, bid-rigging charges were laid against 14 individuals and seven companies in February 2009. The parties were accused of rigging 10 bids to obtain Government of Canada contracts for

information technology services worth approximately \$67 million.<sup>9</sup> Two individuals have each pleaded guilty to one count of bid-rigging. The case against the other individuals and companies is currently before the courts and the Public Prosecution Service of Canada is preparing for multiple trials.

22. As a result of the publicity generated by this case, the public procurement community became more aware of the importance of combating bid-rigging. The Bureau leveraged this increased awareness to expand its educational initiatives and, in particular, emphasize collaboration with PWGSC and other government departments.

23. As part of this collaboration, the Bureau recently entered into a Memorandum of Understanding (the “**MOU**”) with PWGSC. The MOU is intended to strengthen the prevention, detection, reporting and investigation of possible cartel activity, including bid-rigging, for procurement processes and real property transactions that fall under the responsibility of PWGSC. This agreement, the first of its kind for the Bureau, highlights the commitment of the Canadian Government, through the Bureau and PWGSC, to take steps towards eliminating illegal cartel activity, maintaining competition in the marketplace and saving taxpayers’ money.<sup>10</sup>

24. As part of the MOU, the Bureau and PWGSC agree to share information relating to procurement processes and real property transactions by way of collaboration in the areas of enforcement, education and awareness. By working together to share resources and exchange knowledge, both organizations will benefit from each other’s expertise and will enhance their ability to achieve their goals of preserving and promoting fair, efficient and competitive processes. The two organizations will also collaborate in training and awareness programs to educate relevant stakeholders and PWGSC staff on how to detect and prevent cartel activity.

## **5.2 Other Law Enforcement Agencies**

25. As noted above, the Bureau believes that there are significant benefits to educating other law enforcement agencies on the Bureau’s mandate. As a result, the Bureau has, in recent years, provided outreach presentations to a variety of police forces and anti-corruption officials in Canada, including the RCMP and the SQ. Additionally, senior Bureau officials have met regularly with senior officials of a number of different police forces. These outreach efforts have been aimed at educating police forces about the mandate and policies of the Bureau and improving collaboration among law enforcement agencies in Canada. Going forward, the Bureau will continue to provide outreach to, and seek opportunities for further collaboration with, such agencies.

## **6. Conclusion**

26. Although the Bureau and other law enforcement agencies in Canada have different mandates, the intersection between collusion and corruption makes it crucial for competition law enforcers and anti-corruption law enforcers to support each other’s efforts to promote competition and combat corruption. Through its partnerships with various police forces, procurement authorities and other anti-corruption agencies, the Bureau has made significant strides in ensuring that Canada has a comprehensive and successful regime for combating collusion and corruption. This ultimately results in more competitive markets, which benefit consumers, businesses and the economy in Canada.

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<sup>9</sup> See Competition Bureau, Announcement, “Competition Bureau Announces Charges Against Companies Accused of Rigging Bids for Government of Canada Contracts” (17 February 2009), available online at [www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02983.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02983.html).

<sup>10</sup> See Competition Bureau, Announcement, “Competition Bureau and Public Works and Government Services Canada Join Forces to Help Prevent Cartel Activity” (9 September 2013), available online at [www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03604.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03604.html).