CT-2017-002

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act,* RSC 1985, c C-34, as amended;

AND IN THE MATTER OF an arrangement between HarperCollins Publishers L.L.C., Hachette Book Group Inc., Verlagsgruppe Georg von Holtzbrinck GMBH, Holtzbrink Publishers, LLC d/b/a Macmillan, Simon & Schuster Inc. and Apple Inc.;

AND IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 90.1 of the *Competition Act.*

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant (Responding Party)

- and -

HARPERCOLLINS PUBLISHERS L.L.C., and HARPERCOLLINS CANADA LIMITED

Respondents (Moving Parties)

- and -

RAKUTEN KOBO INC.

Intervenor

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

FILED / PRODUIT
Date: April 25, 2017
CT-2017-002

Andrée Bernier for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT. # 66

AFFIDAVIT OF MIKE BROWN

(Motion for Summary Dismissal of Application)

I, **MIKE BROWN**, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a legal assistant at WeirFoulds LLP, lawyers for the Intervenor in this matter, and as such I have personal knowledge of the matters set out below. Where that knowledge is based on information and belief, I have stated the source of my knowledge and believe it to be true.

2. A copy of the Response of the Commissioner of Competition to Kobo's Request for Leave to Intervene in this application is attached hereto as **Exhibit "A"**.

3. A copy of the Annual Report of the Commissioner of Competition for the year ending March 31, 2010 is attached hereto as **Exhibit "B"**.

4. A copy of the Affidavit of Dean Shaikh (without exhibits) sworn May 31, 2002, filed in *The Commissioner of Competition v. Bayer AG and Aventis Cropscience Holding S.A.* is attached hereto as **Exhibit "C"**.

5. A copy of the Affidavit of Michael Sullivan, sworn June 15, 2001, filed in *The Commissioner of Competition v. Lafarge S.A.*, CT-2001-004, is attached hereto as **Exhibit "D"**.

6. An excerpt of a proxy statement dated September 26, 2016, filed by St. Jude Medical, Inc. with the United States Securities and Exchange Commission, which excerpt includes a merger statement regarding the merger with Abbott Laboratories, is attached hereto as **Exhibit "E"**.

SWORN before me at the City of Toronto, in the Province of Ontario, this 25th day of April, 2017.)

A Commissioner for Taking Affidavits, etc.
Scott McGrath

MIKE BROWN

This is **Exhibit "A"** to the Affidavit of Mike Brown

sworn before me this 25th day of April, 2017

Commissioner for Taking Affidavits

Scott McGrath

CT-2017-002

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an arrangement between HarperCollins Publishers L.L.C., Hachette Book Group Inc., Verlagsgruppe Georg von Holtzbrinck GMBH, Holtzbrinck Publishers, LLC d/b/a Macmillan, Simon & Schuster Inc. and Apple Inc.;

AND IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 90.1 of the *Competition Act.*

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE
FILED / PRODUIT
Date: March 30, 2017
CT-2017-002
Andrée Bernier for / pour
REGISTRAR / REGISTRAIRE
OTTAWA, ONT. # 46

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

AND

HARPERCOLLINS PUBLISHERS L.L.C., and
HARPERCOLLINS CANADA LIMITED

Respondents

RESPONSE OF THE COMMISSIONER OF COMPETITION
(Request for Leave to Intervene by Rakuten Kobo Inc.)

---

1. This Response by the Commissioner of Competition (the "Commissioner") is filed pursuant to rule 44(1) of the *Competition Tribunal Rules* (the *"Rules")* in response to the motion by Rakuten Kobo Inc. ("**Kobo**") for leave to intervene in this proceeding.

2. For purposes of this motion only, the Commissioner does not contest the factual assertions in the affidavit of Michael Tamblyn filed with Kobo's Request for Leave to Intervene. The Commissioner reserves the right to contest any or all such assertions, as the Commissioner

considers appropriate, in the context of the hearing and disposition of the s. 90.1 Application.

3. The Commissioner consents to Kobo's appearance as an intervenor in the s. 90.1 Application, including in any pre-hearing motions or proceedings, subject to the limitations canvassed in paragraphs 7-20 below and the conditions set out in paragraphs 21-23 below.

Kobo Topics

4. Paragraph 15 of Kobo's Request for Leave to Intervene identifies 3 topics on which Kobo seeks to present its perspective:

   1. Whether the shift to agency in Canada arose as a result of the [US] Conspiracy and, if so, whether the Tribunal has jurisdiction to determine a case under s. 90.1 in respect of the conspiracy.

   2. The procompetitive effects Kobo, as a retailer, observed as a result of the adoption of agency terms.

   3. The impact of the Commissioner's proposed orders on retailers like Kobo and on competition in the retail market in Canada.

5. The Commissioner opposes the first proposed topic for the reasons set out below.

6. The Commissioner is prepared to consent to the second and third proposed topics, provided Kobo's submissions are limited to Kobo's direct knowledge and perspective.

<u>Proposed Topic 1</u>

7. Kobo's first proposed topic has two distinct elements: Kobo's interpretation of the facts with respect to the shift to agency in Canada, and Kobo's application of the law to the facts with respect to the Tribunal's jurisdiction.

8. The Commissioner will address each element separately.

i. Whether the shift to agency in Canada arose as a result of the [US] Conspiracy

9. The Commissioner accepts that, as a retailer, Kobo can offer a unique perspective with respect to how its own agency contracts were negotiated and entered into.

10. However, Kobo is not qualified to speak on behalf of any other retailer, or with respect to the way in which other retailers entered into agency contracts in Canada. This is consistent with the fact that Kobo has led no evidence that indicates that it has knowledge or information in this regard.

> ***Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated*, 2011 Comp. Trib. 2 ["*Visa/MasterCard*"], at para 49 – TD Bank's Proposed Topic 6**

11. To the contrary, paragraph 19(c) of Kobo's Request for Leave to Intervene acknowledges that Kobo should be granted intervenor status so that it can speak to "Kobo's position as an E-book retailer who has entered into agency relationships..."

12. Similarly, paragraph 21 of Michael Tamblyn's affidavit indicates that Kobo is able to "present its perspective, as an E-book retailer in Canada, as to how and why it came to use agency agreements in Canada..." [emphasis added]

13. The Commissioner proposes to modify the first topic to "how and why Kobo came to use agency agreements in Canada." On that basis, the Commissioner would consent to Kobo's intervention on this topic.

ii. Whether the Tribunal has jurisdiction to determine a case under s. 90.1 in respect of the conspiracy

14. The assessment of the Tribunal's jurisdiction is a legal question to be determined by applying the law to the facts.

15. HarperCollins has already indicated that it will be making submissions on this topic.

See for example HarperCollins' Response to the Application at paras 9, 10; at Section V(A), entitled "The Tribunal Lacks Jurisdiction", at paras 76-86; and at Section V(B), entitled "There is No "Existing or Proposed" Arrangement" at paras 87-94

16. The person seeking leave to intervene must demonstrate to the Tribunal that they will bring a unique or distinct perspective, separate and apart from that provided by the parties, that will assist the Tribunal in deciding the issues before it.

***Visa/MasterCard*, at paras 16, 19**

17. Even where the Tribunal finds that a proposed intervenor is directly affected by the issues, it should not permit that intervenor to address a topic better addressed by one of the parties.

***Visa/MasterCard*, at para 49 – The Association's Proposed Topics 2, 5**

18. Kobo has given no indication as to how it will offer a unique perspective with respect to this legal analysis, nor how its position as a retailer will assist the Tribunal when applying the law to the facts.

19. To permit Kobo to make submissions on this element of the first topic would unnecessarily lengthen the proceedings and be repetitive to the position that HarperCollins will be taking.

20. The Commissioner submits that Kobo's request to intervene on this element of the first topic should not be granted.

Kobo's Scope of Participation

21. The Commissioner consents to Kobo's proposed scope of participation, as set out in paragraph 25 of Kobo's Request for Leave to Intervene.

22. The Commissioner submits that, in addition, Kobo be required to:

- Produce an affidavit of documents listing documents relevant to Kobo's Topics
- Produce those documents to the extent that they are not privileged
- Make a representative available for examination for discovery (limited to Kobo's Topics)

Costs and Other Procedural Matters

23. The Commissioner submits that Kobo should be liable for costs and be able to seek costs.

24. Counsel for Kobo has indicated that they accept the Commissioner's modifications to Kobo's proposed topics 2 and 3, as well as scope and costs.

25. The Commissioner requests that this motion be heard in writing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Gatineau, Quebec,

this 30th day of March, 2017.

DEPARTMENT OF JUSTICE,
COMPETITION BUREAU LEGAL SERVICES
Place Du Portage, Phase 1
50 Victoria Street, 22nd Floor
Gatineau, QC K1A 0C9

John Syme
Alex Gay
Esther Rossman
Katherine Johnson
Tel: (819) 953-3903
Fax: (819) 953-9267

Counsel for the Applicant,
Commissioner of Competition

TO: **COMPETITION TRIBUNAL**
90 Sparks Street, Suite 600
Ottawa, ON K1P 5B4

AND: **STIKEMAN ELLIOTT LLP**
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Katherine Kay
Danielle Royal
Mark Walli
Tel: (416) 869-5507
Fax: (416) 947-0866

Counsel for the Respondents,
HarperCollins Publishers L.L.C.
and HarperCollins Canada Limited

AND: **WEIRFOULDS LLP**
4100-66 Wellington Street west
PO Box 35, TD Centre
Toronto ON M5K 1B7

Nikiforous Iatrou
Bronwyn Roe
Scott McGrath
Tel: (416) 947-5072
Fax: (416) 365-1876

Counsel for the Proposed Intervenors,
Rakuten Kobo Inc.

This is **Exhibit "B"** to the Affidavit of Mike Brown

sworn before me this 25th day of April, 2017

Commissioner for Taking Affidavits

Scott McGrath

Competition Bureau Canada | Bureau de la concurrence Canada

ANNUAL REPORT OF THE COMMISSIONER OF COMPETITION FOR THE YEAR ENDING MARCH 31, 2010

For information on the Competition Bureau's activities, please contact:

Information Centre
Competition Bureau
50 Victoria Street
Gatineau QC K1A 0C9

Tel.: 819-997-4282
Toll free: 1-800-348-5358
TTY (for hearing impaired): 1-800-642-3844
Fax: 819-997-0324
Web site: www.competitionbureau.gc.ca

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2012-01-18

Aussi offert en français sous le titre Rapport annuel du commissaire de la concurrence pour l'exercice se terminant le 31 mars 2010.

LETTER OF PRESENTATION

Gatineau, Quebec

The Honourable Christian Paradis, PC, MP
Minister of Industry
Ottawa, Ontario K1A 0H5

Dear Minister,

I have the honour to submit, pursuant to section 127 of the *Competition Act*, the following report on the operation of the *Competition Act*, the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act* and the *Precious Metals Marking Act* for the fiscal year ended March 31, 2010.

Melanie L. Aitken
Commissioner of Competition

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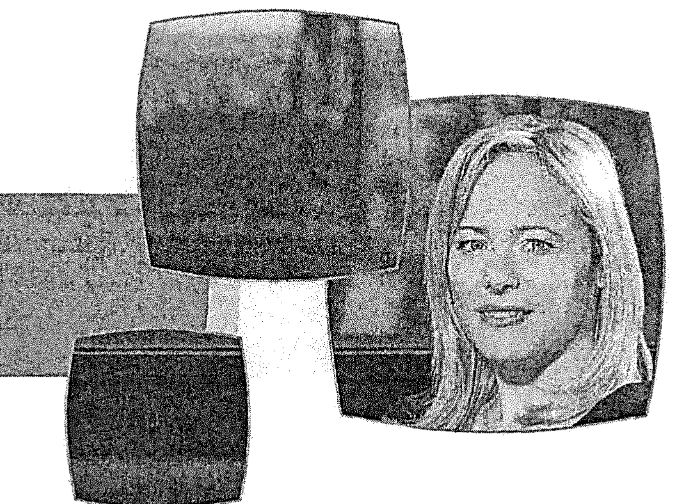
MESSAGE FROM THE COMMISSIONER



I am pleased to present the Competition Bureau's Annual Report, for the fiscal year ending March 31, 2010.

In March 2009, Parliament passed significant amendments to the *Competition Act*, ushering in a new era in Canadian competition law. The amendments established a new two-stage merger review process, created a more effective criminal enforcement regime, introduced the potential for administrative monetary penalties for abuse of dominance, and repealed criminal offences for certain pricing practices.

My top priority as Commissioner of Competition this year has been the successful implementation of these amendments. With the aim of providing as much transparency and predictability as possible, we reached out immediately to businesses, consumer groups, and the legal community in the wake of the amendments, and quickly updated many of our guidance documents and created new ones, including the introduction of the *Competitor Collaboration Guidelines*, and the *Merger Review Process Guidelines*. The dedicated team at the Competition Bureau (Bureau) has worked diligently to put the new provisions into action, and I am extremely proud of what we have accomplished.

The changes to our merger review regime were tested almost immediately by a very significant and complex merger between two firms in the oil and gas industry. I am pleased to report that the new two-step process resulted in an efficient review of the transaction and robust remedies to maintain a competitive market for Canadian consumers.

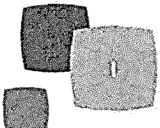
Combating cartels continues to be a priority for the Bureau and, by way of example, in June 2009, three international air carriers pleaded guilty for their part in an air cargo cartel affecting Canada. The new cartel provisions will enhance our efforts to combat this type of harmful anti-competitive behaviour in the future.

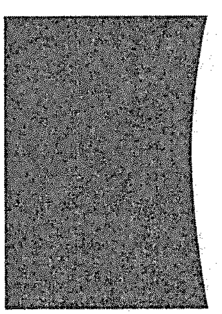
Going forward, we are on the watch for misleading and fraudulent representations in areas that hit close to home for Canadians. In December 2009, in a move that I hope is indicative of an increased recognition of the damage deceptive marketing practices impose on our economy, the Ontario Superior Court imposed a record $15 million fine against a Toronto company for operating a business directory scam targeting Canadian and U.S. businesses.

The Bureau is also pursuing an abuse of dominance case against the Canadian Real Estate Association (CREA). In February 2010, the Bureau filed an application with the Competition Tribunal seeking to prohibit CREA from imposing rules on its members that limit consumer choice and prevent innovation in the market for residential real estate services.

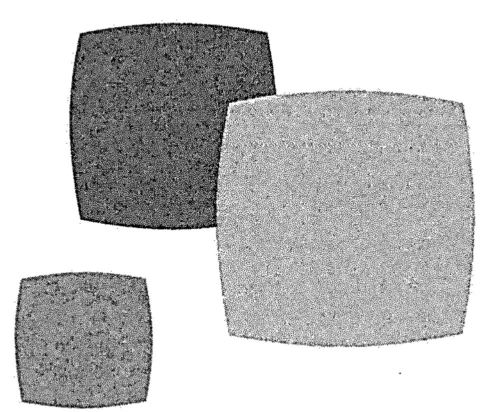
It has been an extraordinarily exciting and rewarding time at the Bureau, as we use our new tools to ensure that Canadian businesses and consumers prosper in a competitive and innovative marketplace.

Melanie L. Aitken
Commissioner of Competition





1. ABOUT THE COMPETITION BUREAU



1. ABOUT THE COMPETITION BUREAU

The Competition Bureau (Bureau) is an independent law enforcement agency that ensures Canadian businesses and consumers prosper in a competitive and innovative marketplace.

Headed by the Commissioner of Competition (Commissioner), the Bureau is responsible for the administration and enforcement of the *Competition Act* (Act), the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*.

This annual report summarizes the Bureau's activities under these statutes for the fiscal year ending March 31, 2010. It demonstrates how the Bureau's activities over the past year have benefited Canadians. For information on the activities described throughout the report, including information notices, new releases, and backgrounders, please visit the Bureau's Media Centre (http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_02766.html). For statistical data, please refer to the Appendix, which is found at the end of this report. Legal references and further information about the Bureau's work can be found on the Bureau's Web site (www.competitionbureau.gc.ca).

1.1 Organizational Structure

The Commissioner is the head of the Bureau. The Bureau is organized into eight Branches. In 2009-2010, the Bureau employed 435 people (including students). Of that number, 338 were located in the National Capital Region, and 97 in seven regional offices. The Bureau's regional offices are located in Halifax, Montreal, Toronto, Hamilton, Winnipeg, Calgary and Vancouver.

The Civil Matters Branch is responsible for detecting and deterring restrictive trade practices that have a negative impact on competition, such as abuse of dominance, refusal to deal, exclusive dealing, tied-selling and price maintenance. Activities of concern can also extend to certain types of anti-competitive agreements or arrangements of a non-criminal nature.

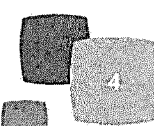
The Compliance and Operations Branch oversees the Bureau's compliance program, training programs and client services. It manages the Bureau's Information Centre, as well as Bureau-wide planning, resource management, administration and informatics activities.

The Criminal Matters Branch is responsible for detecting, investigating, and deterring hard core cartels including conspiracies, agreements or arrangements among competitors and potential competitors to fix prices, allocate markets or restrict supply, and bid-rigging.

The Economic Policy and Enforcement Branch provides economic advice and expertise, as well as enforcement support, to the Bureau's Chief Economist and to the Bureau as a whole.

The Public Affairs Branch is the Bureau's communications division. It ensures that Canadian consumers, businesses, parliamentarians and the international community are aware of the Bureau's contributions to competition in the marketplace and to the growth of the Canadian economy.

The Fair Business Practices Branch administers and enforces the provisions of the Act on misleading representations and deceptive marketing practices. The Branch also enforces the *Consumer Packaging*



and Labelling Act, the *Precious Metals Marking Act* and the *Textile Labelling Act*.

The Legislative and International Affairs Branch is responsible for the ongoing modernization of the Act, as well as managing and coordinating the Bureau's work within Parliament's law-making process, and assists with policy and advocacy matters. The Branch promotes the Bureau's interests in international cooperation, negotiations and policy development.

The Mergers Branch reviews merger transactions to assess whether mergers are likely to prevent or substantially lessen competition in the marketplace.

1.2 Bureau Operations

The Bureau's operating budget for 2009-2010 was $50.8 million, including $10.5 million collected from user fees. The majority of the budget, $35.7 million, was allocated to salaries for 420 authorized full-time staff, consisting of 27 executives, 14 economists, 241 competition law officers, and 138 employees carrying out informatics, administrative services and support functions.

The Bureau has administrative responsibility for collecting fines imposed by the courts. Over $33 million in fines were imposed in 2009-2010. This money is remitted to the Government of Canada's Consolidated Revenue Fund.

In 2009-2010, the Bureau undertook a complete revision of its budget allocation; this excludes revenues generated through merger notifications and written opinions. The aim of the review was, and continues to be, to realign the Bureau's resources with its priorities. The exercise has proven valuable in equipping senior management with the necessary focus to develop responsible, focused and disciplined plans consistent with our enforcement focus and priority. As well, it has provided an opportunity for managers to undertake an in-depth review and make appropriate resource level adjustments across the Bureau's lines of work, to better ensure the Bureau is responsive to the demands of Canadians.

1.3 Priorities 2009-2010

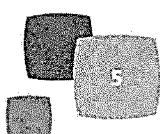
The Bureau had several priorities for action in 2009-2010 including the following[1].

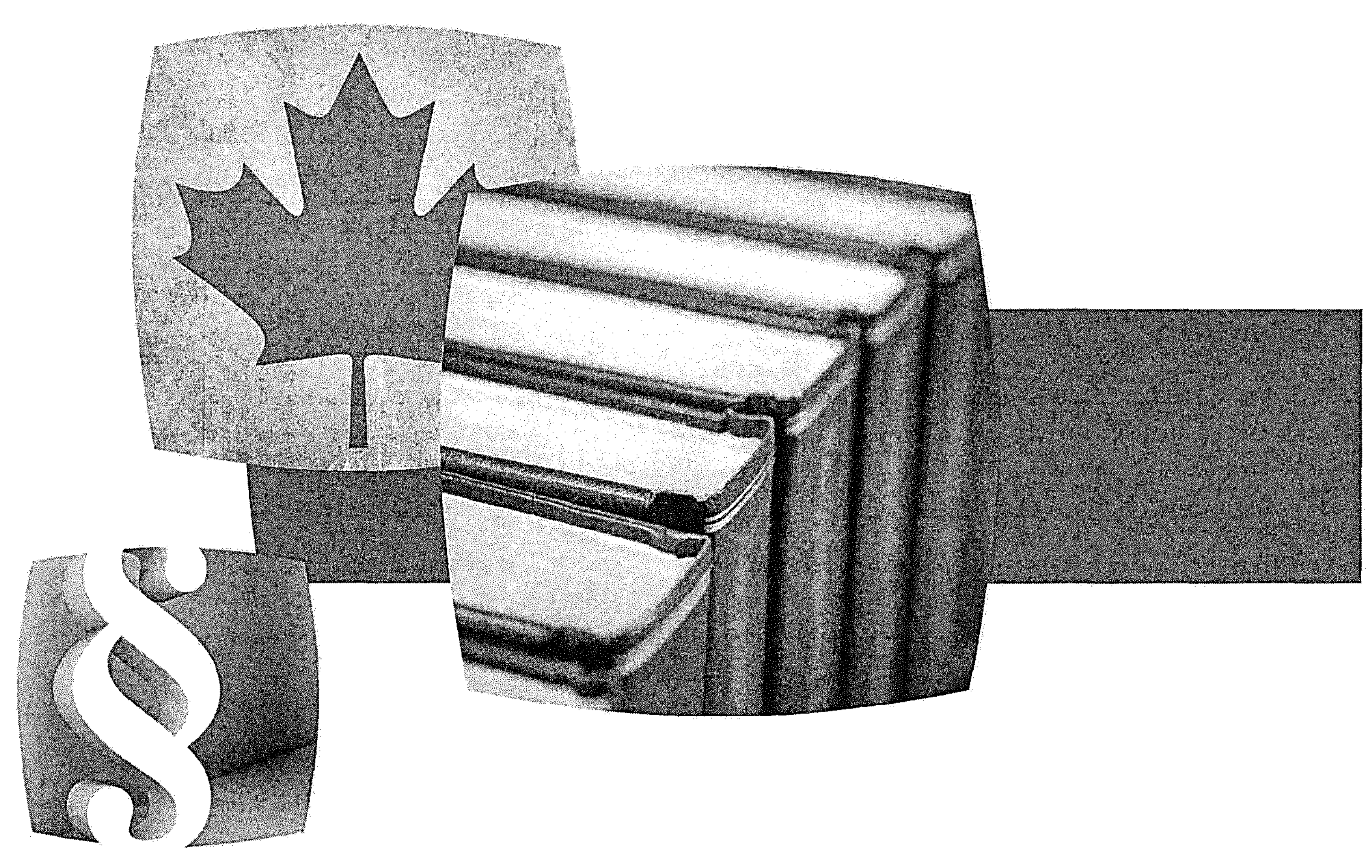
Competition Bureau Priorities

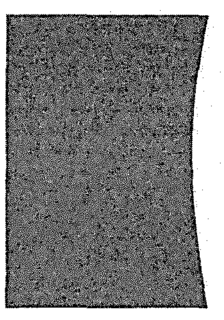
1. The Bureau committed to developing the most effective, transparent and efficient ways to implement the amendments to the *Competition Act* in 2009-2010.
2. Combating international and domestic cartels were important priorities for the Bureau. In 2009-2010, the Bureau committed to continue to focus its efforts on domestic cartels and bid-rigging.
3. The Bureau continued to review mergers and acquisitions, and to challenge those few that were likely to result in a substantial lessening or prevention of competition.
4. As part of the Food and Consumer Safety Action Plan, the Bureau committed to engage in consultations to ensure the clarity of "Product of Canada" and "Made in Canada" representations.
5. The Bureau also planned to focus its advocacy efforts on certain key areas where it would have the most potential to affect change, such as the Internet.

These priorities are demonstrated throughout this report and are reported upon across the Bureau's major lines of business.

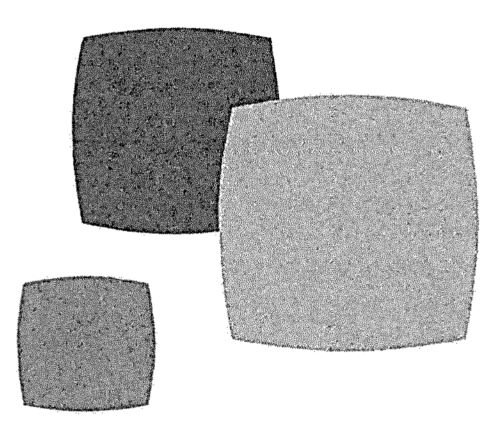
[1] For further information see the 2009-10 Industry Canada Departmental Performance Report (DPR) and the 2009-10 Industry Canada Part III – Report on Plans and Priorities (RPP).







2. MODERNIZING CANADA'S COMPETITION LAW



2. MODERNIZING CANADA'S COMPETITION LAW

As reported in the Bureau's 2008-2009 Annual Report, the Government of Canada introduced significant amendments to the Act on January 27, 2009, which were designed to modernize the Act and to align it more closely with the competition laws of Canada's major trading partners.

The majority of these amendments received Royal Assent and came into force on March 12, 2009. The remaining amendments, relating to reform of the conspiracy provisions and new provisions on competitor collaborations, came into force on March 12, 2010. The coming into force of these particular sections of the Act was delayed for one year to allow businesses time to adjust to the new law.

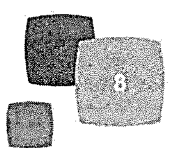
The introduction of a two-stage merger review mechanism, as described in last year's annual report, necessitated amendments to the *Notifiable Transactions Regulations*, SOR/87-348 (Regulations). In particular, amendments were required to eliminate the separate "short form" and "long form" notification information requirements in favour of a uniform notification. Other amendments to the Regulations included corrections to outdated statutory section references, a mechanism to facilitate the electronic submission of certain documents, and a reduction in the amount of information that parties to a proposed transaction are required to supply to the Commissioner for the purpose of pre-merger notification. These amendments were published for public consultation on April 4, 2009, and came into force on February 2, 2010.

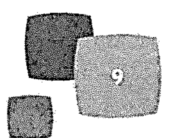
Beginning in May 2009, the Bureau held general consultations and outreach to multiple constituencies to give businesses and consumers an opportunity to develop a better understanding of how the amendments to the Act would affect them. These information sessions were held in Toronto, Montreal, Vancouver, Calgary and Halifax.

The Bureau also issued a number of guidance documents to assist the public in understanding the new provisions and the Bureau's enforcement approach. In September 2009, the Bureau published its Merger Review Process Guidelines. These guidelines are designed to offer a high degree of transparency and predictability regarding the Bureau's procedural approach to merger review. The guidelines reflect the Bureau's experience to date and the positive and constructive feedback received during the Bureau's consultations with external stakeholders.

In addition, recognizing the need for transparency and predictability in its assessment of competitor collaborations, the Bureau issued its Competitor Collaboration Guidelines in December 2009.

Additional information is included in Chapter 9 of this report.

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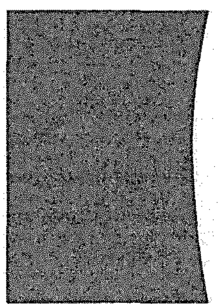
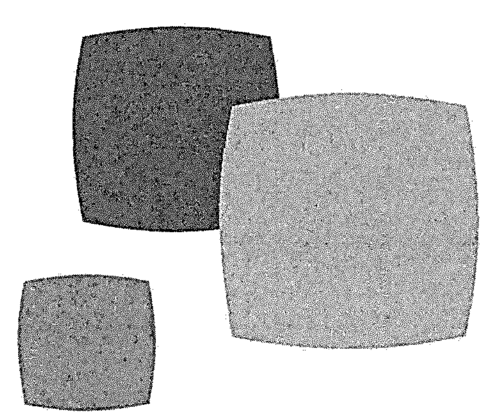


3. PURSUING CRIMINAL MATTERS



3. PURSUING CRIMINAL MATTERS

The Bureau enforces the criminal cartel and bid-rigging provisions of the Act. Combating international and domestic cartels and addressing domestic bid-rigging remained important enforcement priorities for the Bureau in 2009-2010.

On March 12, 2010, two amended provisions of the Act came into force, creating a dual track (criminal and civil) approach for agreements between competitors. The criminal prohibition, section 45, the cornerstone cartel provision of the Act, applies to agreements between actual or potential competitors to fix prices, allocate markets or reduce output in respect of the supply of products, and where the restraint on competition is not in furtherance of a legitimate joint venture or collaboration. The new section 45 made "hard-core" cartel agreements *per se* offences, while other forms of competitor collaborations, joint ventures and strategic alliances are subject to review under a civil provision, s. 90.1, that prohibits agreements only where they are likely to substantially lessen or prevent competition.

The changes to the Act allow for more effective criminal enforcement against the most serious cartel agreements, while providing businesses with greater freedom and flexibility to benefit from legitimate alliances with their competitors. While these changes were introduced by amendments to the Act that received Royal Assent on March 12, 2009, the coming into force of these sections of the Act was delayed for one year to allow businesses time to adjust to the new law.

Bid-rigging, a criminal offence prohibited by section 47 of the Act, consists of an agreement where, in response to a call for bids or tenders, bidders agree not to submit a bid, or agree to submit bids that have been pre-arranged among themselves.

The Bureau has a range of tools at its disposal, including the Immunity Program, to enforce these provisions. The most serious matters are referred to the Director of Public Prosecutions with a recommendation for prosecution. Offenders may receive heavy fines, prison terms or a combination of both.

3.1 Enforcement Actions

Gasoline

In May 2009, two individuals and a company pleaded guilty to criminal charges for conspiring to fix the price of gasoline at the pump in Victoriaville, Quebec. These guilty pleas followed the laying of charges in June 2008 against 13 individuals and 11 companies accused of fixing the price of gas at pumps in Victoriaville, Thetford Mines, Magog, and Sherbrooke, Quebec. Jean-Yves Plourde was sentenced to pay a fine of $10,000 and perform 150 hours of community service for his involvement in the conspiracy. Daniel Drouin received an absolute discharge and made a charitable donation of $10,000, and Les Pétroles Cadrin Inc. was fined $90,000.

In October 2009, Gisèle Durand was sentenced to four months in jail and ordered to make a $20,000 donation to a charitable organization. Michel Dubreuil was sentenced in December 2009 to six months in jail and ordered to make a $25,000 donation to a charitable organization for his role in a conspiracy to fix the price of gasoline at the pump in Sherbrooke, Quebec.

The 2009 guilty pleas bring the total fines in the Bureau's Quebec gas inquiry to over $2.7 million, with ten individuals and six companies pleading guilty, as of March 31, 2010. Of the ten individuals who pleaded guilty, six were sentenced to terms of imprisonment totalling 54 months.

Air Cargo

In June 2009, three international air carriers, Société Air France, Koninklijke Luchtvaart Maatschappij N.V. and Martinair Holland N.V. pleaded guilty and were fined $4 million, $5 million and $1 million, respectively, for their parts in an air cargo cartel affecting Canada. The carriers admitted to fixing surcharges on air cargo exported on certain routes from Canada.

In July 2009, Qantas Airway Limited (Qantas) pleaded guilty and was fined $155,000 for its participation in the cartel. Qantas admitted that its Freight Division fixed surcharges on air cargo exported on certain routes from Canada.

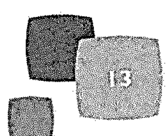
In October 2009, British Airways Plc (British Airways) pleaded guilty and was fined $4.5 million for its role in the cartel. British Airways admitted to fixing surcharges on the sale and supply of international air cargo exported on certain routes from Canada. The Bureau's investigation into the alleged conduct of other air cargo carriers is ongoing.

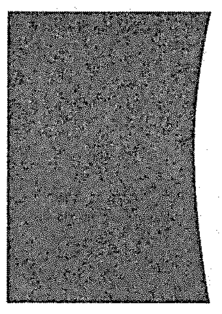
TPG Technology Consulting Ltd. et al.

In June 2009, Theodore Martin, the former owner of TRM Technologies Inc. (TRM), pleaded guilty to a criminal charge of rigging bids in a Transport Canada tendering process for an information technology contract, and was fined $25,000. In addition, a prohibition order was issued against TRM. This plea followed the laying of charges in February 2009 against 14 individuals and seven companies. The case is ongoing against the remaining companies and individuals accused of rigging bids to obtain Government of Canada contracts for information technology services.

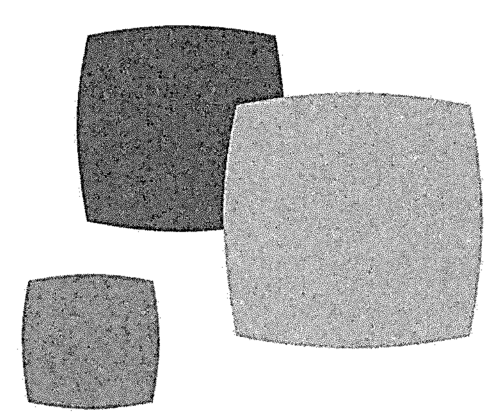
3.2 Anti-Bid-Rigging Program

The Bureau has placed considerable emphasis on preventing and detecting bid-rigging in both the public and private sectors. The Bureau uses 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 2009-2010 the Bureau conducted 52 outreach presentations for 1,772 people, aimed at deterring bid-rigging activity, particularly in the Canadian public sector.





4. PREVENTING ABUSE OF DOMINANCE AND OTHER ANTI-COMPETITIVE BUSINESS PRACTICES



4. PREVENTING ABUSE OF DOMINANCE AND OTHER ANTI-COMPETITIVE BUSINESS PRACTICES

The Bureau administers and enforces provisions of the Act relating to abuse of dominance, as well as refusals to deal and tied selling, among others. These provisions are often referred to as the civil provisions of the Act.

Abuse of a dominant position occurs when a dominant firm or a dominant group of firms in a market engages in a practice of anti-competitive acts, with the result that competition is prevented or lessened substantially.

In cases of non-compliance with the civil provisions of the Act, the Commissioner may file an application with the Competition Tribunal (Tribunal) for an order to remedy the situation. In addition, the Tribunal may order administrative monetary penalties (AMPs) where an abuse of a dominant position is found.

The Bureau encourages voluntary compliance with the Act. Voluntary compliance includes a broad spectrum of solutions to remedy anti–competitive behaviour, ranging from an informal resolution to the registration of a consent agreement with the Tribunal or contested proceedings. Examples of alternative case resolutions are available on the Bureau's web site.

4.1 Enforcement Actions

Canadian Real Estate Association

In February 2010, the Bureau filed an application with the Tribunal seeking an order to prohibit the Canadian Real Estate Association (CREA) from imposing rules on its members that limit consumer choice and prevent innovation in the market for residential real estate services.

The Bureau determined that CREA's rules restrict the ability of consumers to choose the real estate services they want, forcing them to pay for services they do not need. The rules also prevent real estate agents from offering more innovative service and pricing options to consumers.

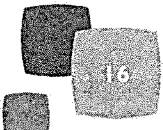
In March 2010, the Bureau reported that it would continue with its challenge to the anti-competitive rules imposed by CREA. This case was ongoing at fiscal year-end.

Waste Management of Canada and Waste Services Inc.

In June 2009, the Bureau registered a consent agreement with the Tribunal involving two Canadian waste services companies, Waste Management of Canada Co. and Waste Services (CA) Inc. Under the terms of the agreement, the companies agreed to stop using long-term contracts that locked in customers and contained highly restrictive terms, which had the effect of foreclosing competitors from the market. These contracts resulted in substantially less competitive markets for commercial waste collection services, leading to higher prices and reduced choice for businesses. The Bureau has observed new entry and the significant expansion of smaller existing competitors since the registration of the consent agreement.

Interac

In September 2007, Interac, Canada's dominant firm in the provision of debit payment services, asked the Bureau to consent to a variation of a consent order previously imposed on Interac in 1996 in response to its anti-competitive conduct at



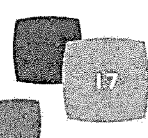
that time. In February 2010, the Bureau determined it was not appropriate to consent to the requested variation, concluding that the safeguards in the consent order remained necessary to protect consumers. In particular, the Bureau did not agree that the removal of the restriction against for-profit activities by Interac would be pro-competitive, or necessary to allow Interac to remain competitive.

To provide Interac with greater flexibility to respond to any material entry in the future by a competitor, the Bureau also evaluated other changes to the governance structure and corporate status of Interac. Those changes would allow Interac to continue as a not–for–profit corporation with independent directors. The Bureau had concluded that such changes would be acceptable, as they would maintain the necessary safeguards against anti–competitive activity that are contained in the consent order.

Individual v Hockey Canada

In July 2008, the Bureau received a complaint regarding Hockey Canada's bulletin A09-02, which outlined sanctions against so-called "outlaw" hockey leagues, defined as leagues that operate outside the auspices of Hockey Canada, and in direct competition with the organization. The Bureau examined the bulletin and concluded that some aspects of the sanctions gave rise to issues under section 79 of the Act, which prohibits abuse of dominant position.

The Bureau contacted Hockey Canada to discuss its concerns and the ensuing dialogue ultimately led Hockey Canada to eliminate or substantially modify the problematic sanctions. A revised bulletin containing new sanctions was posted on Hockey Canada's Web site. This issue was formally resolved in May 2009.



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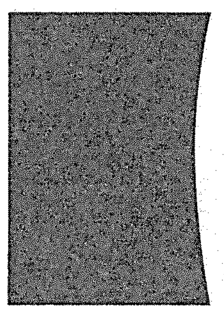
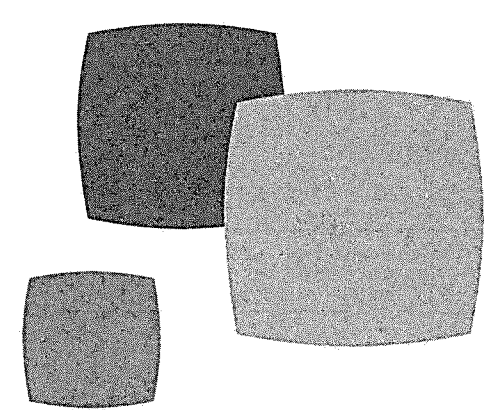


5. ELIMINATING FALSE OR MISLEADING REPRESENTATIONS AND DECEPTIVE MARKETING PRACTICES



5. ELIMINATING FALSE OR MISLEADING REPRESENTATIONS AND DECEPTIVE MARKETING PRACTICES

The Bureau administers and enforces the civil and criminal false or misleading representations and deceptive marketing practices provisions of the Act, as well as the three regulatory statutes promoting fair and truthful representations in the marketing of consumer products; namely, the Consumer Packaging and Labelling Act *as it relates to non-food products, the* Precious Metals Marking Act *and the* Textile Labelling Act.

The Bureau promotes truth in advertising in the marketplace by discouraging deceptive business practices and encouraging the provision of information to allow consumers to make informed choices.

In 2009-2010 the Bureau targeted the increasing number of misleading and fraudulent performance claims affecting Canadians in areas of health and the environment. The Bureau was also focused on deterring illegal telemarketing and other scams.

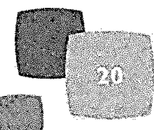
5.1 Enforcement Actions

Dynasty Spas

In June 2009, the Bureau announced that it had secured commitments from seven Canadian hot tub and spa retailers making representations that their Dynasty Spas products were associated with the ENERGY STAR program, an international standard for energy-efficient consumer products. In January 2010, the Bureau announced that it had reached settlements through consent agreements with two additional Canadian hot tub retailers who were making unsupported claims that their Dynasty Spas products were associated with the program. These companies agreed to stop making representations involving the ENERGY STAR program and to take action to correct the misinformation in the marketplace. Companies had used a variety of energy efficiency claims in the sale and promotion of hot tubs and spas, conveying the impression that the products were eligible for certification. The Bureau concluded that these representations violated the Act, in that they were materially false or misleading and influenced consumers in their decision to purchase the products.

Bamboo Labelling and Advertising

In January 2010, the Bureau announced that more than 450,000 textile articles had been re–labelled and over 250 Web pages had been corrected as a result of the Bureau's efforts to ensure that textile articles derived from bamboo are accurately labelled and advertised. As part of this initiative, the Bureau contacted a variety of retailers, importers, manufacturers, sellers, processors and finishers to inform them of its concerns regarding the labelling and advertising of certain textiles. The Bureau took action over potentially misleading labelling and advertising in the marketplace with respect to textile articles labelled "bamboo". While such textile articles may have been derived from bamboo pulp, they had not been made from natural bamboo fibre, but were, in fact, rayon fibres made through a chemical process. Consumers may have been paying a higher price for such articles on the assumption that the articles had environmentally friendly or health–enhancing qualities.



Operation Mirage

Recognizing the seriousness of deceptive telemarketing, the Bureau launched Operation Mirage in June 2009, a campaign designed to combat fraudulent telemarketing operations. The campaign targeted fraudsters who used illegal techniques to market phoney business directories to businesses and not-for-profit organizations. It was the largest-ever Bureau sweep against deceptive telemarketing and one of the largest ever in Canada.

This action was conducted under the newly amended Act, which allows for significantly higher penalties for those convicted of criminal telemarketing offences. Operation Mirage also aims to educate, through an outreach campaign, thousands of vulnerable job seekers who may unknowingly work for deceptive telemarketing operations, thereby exposing themselves to criminal penalties.

As a result of this initiative, the Bureau took action against 50 organizations and individuals in the Montreal area. The Bureau was assisted in this initiative by the COLT partnership (Royal Canadian Mounted Police, Sûreté du Québec, City of Montreal Police Service, Canada Border Services Agency, U.S. Federal Trade Commission, Federal Bureau of Investigation, U.S. Department of Homeland Security and the U.S. Postal Inspection Service).

DataCom Marketing Inc.

Toronto-based DataCom Marketing Inc. (DataCom) telemarketers contacted customers in Canada and the United States, claiming that they were updating information in their business directory listings. The telemarketers implied that the businesses had ordered a listing in the past and that someone in the company had already authorized an order. By using this "assumed sale" technique, which led customers to believe that they had already ordered a listing when in fact they had not, the company deceived businesses.

The telemarketers failed to disclose which company they represented, the price of the product, the terms and conditions to return it, the purpose of the call and the nature of the product, contrary to the requirements of the telemarketing provisions of the Act. Customers subsequently received a business directory, which they had ordered based on this fraudulent representation. Victims lost hundreds of dollars each while the scam netted $12.9 million in profits.

In July 2009, the Bureau announced that Bernard Fromstein had been sentenced to two years in a federal penitentiary, and the maximum period of probation of three years for his involvement in the DataCom telemarketing scheme. In addition to his jail sentence, Mr. Fromstein was also prohibited from engaging in any form of telemarketing for a period of 10 years.

Another senior manager, Paul Barnard, received a two-year conditional sentence after cooperating in the investigation. The Ontario Superior Court of Justice also imposed a record $15 million fine against DataCom for operating a business directory scam targeting Canadian and U.S. businesses, a record amount under the deceptive marketing provisions of the Act.

Job Opportunity Scams

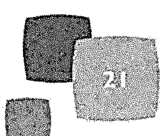
Lookman Temidayo Adegbola operated an employment opportunity scam involving counterfeit cheques. The victims, located in the United States, were led to believe they had been hired as secret shoppers to evaluate the services of MoneyGram, an international money transfer service. They were provided with cheques and instructed to deposit them in their own accounts, then withdraw the money and wire it to Canada under the pretext of assessing the customer service provided by the money transfer outlet.

The cheques were subsequently identified as counterfeit. When the banks reversed the counterfeit deposits, the victims were left liable for the money withdrawn. Victims reported losses ranging from $2,400 (USD) to $9,000 (USD) each.

Bureau officers seized approximately 600 counterfeit cheques totalling over $1 million (USD) during a search of Adegbola's residence in Brampton, Ontario.

Following a trial by judge and jury in the Ontario Superior Court of Justice, Adegbola, 33, was found guilty pursuant to the *Criminal Code* to fraud over $5000; forgery; possession of instruments of forgery; and uttering forged documents.

In October 2009, Adegbola was sentenced to three and a half years in prison for operating an



employment opportunity scam involving counterfeit cheques. The accused was also ordered to pay $26,000 in restitution.

Olufemi Olutunde, of Brampton, Ontario, was sentenced to 12 months in jail for his part in an employment opportunity scam involving counterfeit cheques. The scam targeted Canadian residents who applied for employment positions through local newspapers or online. After being hired, victims were provided with cheques and instructed to deposit them, then withdraw cash and wire it to individuals through Western Union Financial Services, an international money transfer service.

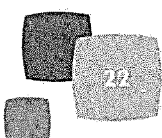
A variation of this scheme involved victims believing that they had been hired to act as payment processors for a fictitious company located abroad. Employment duties involved accepting payments on behalf of the company from alleged customers and wiring money as instructed. All cheques were subsequently identified as counterfeit and the victims were left liable to their banks for the money withdrawn from their accounts. Victims reported losses ranging from $1,900 to $18,000 each.

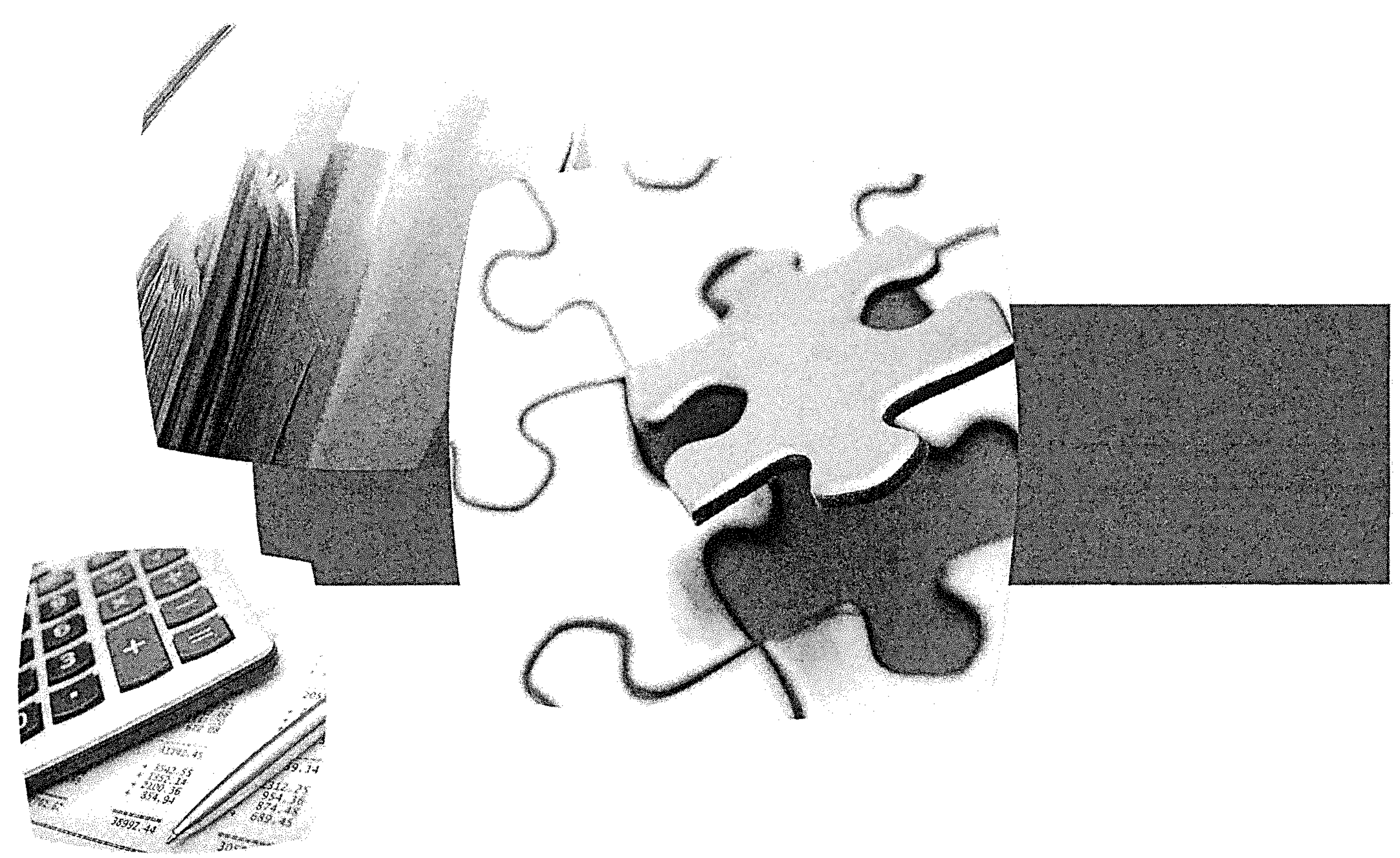
Olutunde pleaded guilty to fraud over $5,000 pursuant to the *Criminal Code* of Canada. He also admitted to picking up approximately $460,000 in transfers at Western Union outlets during an eight month period under aliases supported by false identification documents. The Ontario Superior Court of Justice ordered Olutunde to pay restitution of $23,000 to 14 victims for his part in the employment opportunity scam.

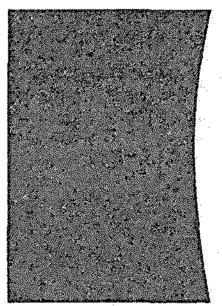
The Bureau's investigation has led to further arrests, with three other individuals currently before the Ontario courts.

H1N1 Flu Virus

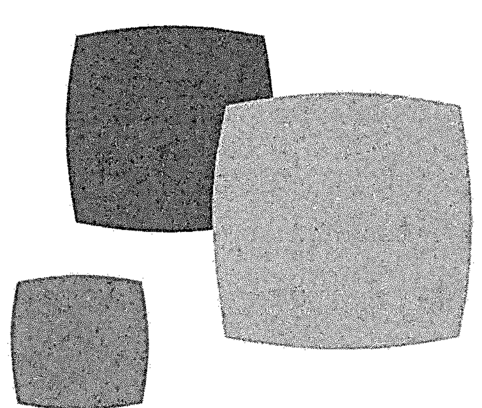
In November 2009, the Bureau partnered with Health Canada in releasing a joint consumer warning to Canadians about unauthorized products to treat or prevent the H1N1 flu virus. For more information, please visit the advisory page (http://www.hc-sc.gc.ca/ahc-asc/media/advisories-avis/_2009/2009_179-eng.php).







6. REVIEWING MERGERS



6. REVIEWING MERGERS

Mergers in Canada are subject to review by the Bureau to ensure that they will not result in a substantial lessening or prevention of competition. When the Bureau finds that a proposed merger is likely to substantially lessen competition or prevent competition, the Commissioner may ask the parties to restructure the merger, block, or require remedies to resolve particular competition issues.

When concerns cannot be addressed by negotiation, the Commissioner may bring an application to the Tribunal to alter or block the proposed transaction. Where mergers involve more than one jurisdiction, Bureau staff work with other competition authorities to coordinate the timing of the review process and the review itself, to the extent possible, and, when appropriate, seek consistent (or at least non-conflicting) remedies.

6.1 Key Merger Reviews

Pfizer and Wyeth

In January 2009, Pfizer Inc. (Pfizer) announced that it would acquire Wyeth in a transaction valued at $68 billion. As part of its comprehensive review of the proposed transaction, in May 2009, the Bureau issued one of its first Supplementary Information Requests under the new two-stage merger review process that came into force in March 2009. To resolve the serious competition concerns raised by the proposed merger, in October 2009, the Bureau and the parties entered into a consent agreement requiring the divestiture of a significant number of animal pharmaceutical and vaccine products to Boehringer Ingelheim Vetmedica, Inc. Pfizer was also required to amend an arrangement with Paladin Labs Inc. governing the supply in Canada of a human pharmaceutical product marketed under the name "Estring" to ensure continued competition in the supply of hormone replacement therapy products in Canada. Over the course of its review, the Bureau cooperated closely with the U.S. Federal Trade Commission.

Ticketmaster and Live Nation

In February 2009, Ticketmaster Entertainment, Inc. (Ticketmaster) and Live Nation, Inc. (Live Nation) announced their intention to merge. Historically, Ticketmaster had been Canada's largest supplier of ticketing services and, during 2008 and early 2009, Live Nation had taken certain steps to enter the Canadian ticketing services market. Following a detailed review, the Bureau concluded that the proposed merger between Ticketmaster and Live Nation raised serious competition concerns, owing to the fact that it would prevent Live Nation from entering the Canadian marketplace as a direct competitor to Ticketmaster. It would also raise barriers that would deter other companies from entering the market to compete against the merged Ticketmaster-Live Nation entity.

To resolve these concerns, the parties made certain commitments to the Bureau and U.S. antitrust authorities in January 2010, whereby Ticketmaster agreed to sell its subsidiary ticketing business (Paciolan) to a leading venue management company, and to license its ticketing system for use by the second-largest promoter of live events in North America. Ticketmaster and Live Nation also consented to certain behavioural commitments to preclude anti-competitive bundling of their services. The divestiture of Paciolan was completed in March 2010.

Agrium and CF Industries

In February 2009, Agrium Inc. (Agrium) proposed to acquire CF Industries through a hostile bid. After an extensive review of the proposed transaction, the Bureau concluded that the acquisition would likely result in a substantial lessening or prevention of competition in the wholesale supply of certain nitrogen fertilizer products in Alberta and Saskatchewan.

To resolve these competition issues, the Bureau and Agrium entered into a consent agreement in November 2009, requiring Agrium to divest half of its nitrogen-based fertilizer production facility in Carseland, Alberta, and to supply additional product to Terra Industries Inc., a new entrant into Western Canada.

Merck and Schering-Plough

In March 2009, Merck & Co., Inc. (Merck) and Schering-Plough Corporation (Schering-Plough) entered into a merger agreement. After an extensive review of the transaction, competition concerns related to certain animal health markets were resolved when Merck divested its 50 percent interest in Merial Limited (Merial) to Sanofi-Aventis in September 2009. However, Merck, Schering-Plough and Sanofi-Aventis entered into a Call Option Agreement on July 29, 2009, that provides Sanofi-Aventis with the ability to eventually combine the Merial and Schering-Plough animal health businesses. In October 2009, the Bureau, Merck and Schering-Plough entered into a consent agreement, whereby any combination of these assets contemplated within 10 years would be subject to prior review and approval by the Bureau. The consent agreement also required the divestiture of a human health product in development for the treatment of chemotherapy-induced and post-operative side effects to OPKO Health, Co., to remedy serious competition concerns raised by the proposed merger in relation to the supply of products used in the treatment of these medical conditions. The Bureau cooperated closely with the U.S. Federal Trade Commission over the course of its review.

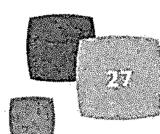
Suncor Energy and Petro-Canada

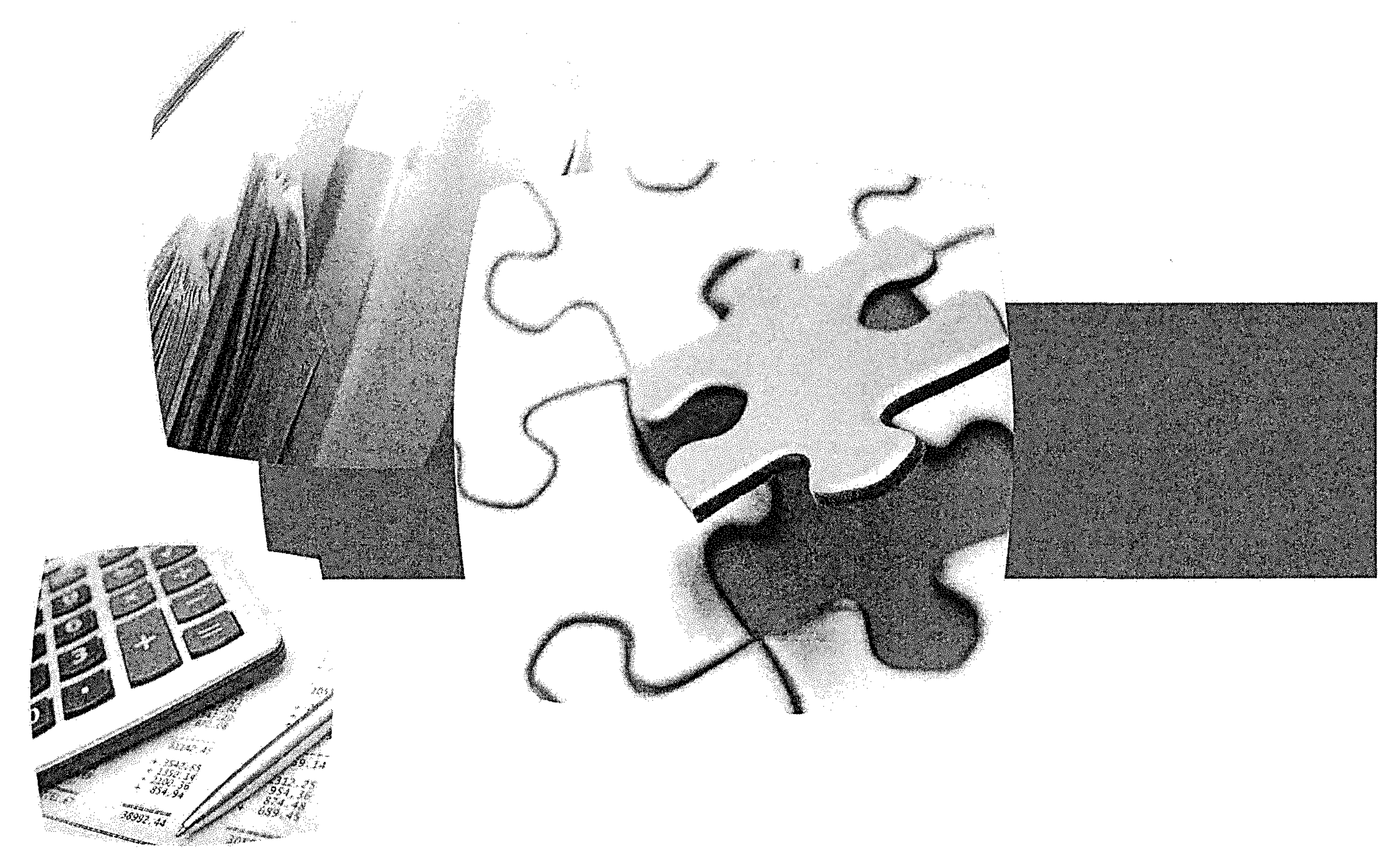
In March 2009, Suncor Energy Inc. (Suncor) and Petro-Canada announced that the companies planned to merge to create an entity with an estimated market value of $43.3 billion. After an extensive review of the proposed transaction, which involved the issuance of the Bureau's first Supplementary Information Request following the 2009 amendments to the Act, the Bureau concluded that the acquisition would likely result in a substantial lessening or prevention of competition in the retail marketing of gasoline in southern Ontario, and in respect of the wholesale supply of gasoline in the Greater Toronto Area (GTA).

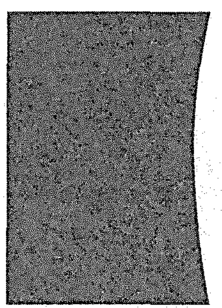
To resolve the competition issues raised by the proposed merger, in July 2009, the Bureau entered into a consent agreement with Suncor and Petro-Canada, requiring them to divest and supply 104 retail gas stations in southern Ontario, and to sell approximately 1.1 billion litres of terminal storage and distribution capacity annually, to be used for wholesale distribution at their terminals in the GTA for a period of 10 years. The merged company must also supply 98 million litres of gasoline each year, for 10 years, to independent gasoline marketers. In August 2009, pursuant to the terms of the consent agreement, the Bureau approved the divestiture of terminal storage and distribution capacity to Ultramar Ltd., following which Suncor entered into terminalling agreements with Ultramar Ltd. for the acquired capacity for the full 10 year period. In December 2009, the Bureau approved the divestiture of 98 retail gas stations in southern Ontario to Husky Energy Inc. As of the end of fiscal 2009-2010, arrangements are also in place for the remaining six stations to be divested.

Clean Harbors and Eveready

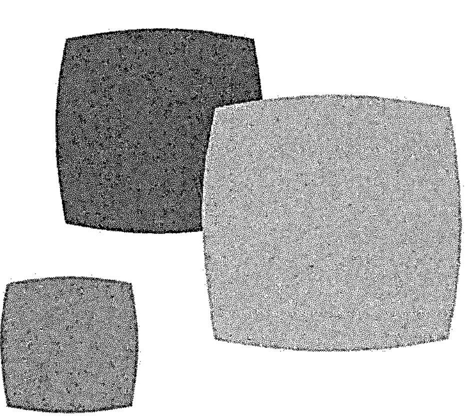
In April 2009, Clean Harbors Inc. (Clean Harbors) announced its intention to acquire Eveready Inc. Following an extensive review, the Bureau concluded that the proposed transaction would likely substantially lessen or prevent competition for the disposal of Class I solid hazardous waste in Alberta. The Bureau was concerned that, among other things, the transaction could result in higher prices for solid hazardous waste disposal, as Clean Harbors would have owned the only two Class I hazardous waste landfills in Alberta. In July 2009, the Bureau reached an agreement with Clean Harbors requiring the divestiture of the Pembina Area Landfill.







7. COMPLIANCE AND OPERATIONS



7. COMPLIANCE AND OPERATIONS

The Compliance and Operations Branch is divided into three divisions, overseeing activities to ensure the Bureau has the tools it needs to conduct its work. The three divisions are as follows:

7.1 Capacity Building

This division is responsible for facilitating Information Management (IM) within the organization, as well as the long-term development of the Bureau's staff, including the development and implementation of initiatives for training, recruitment and retention.

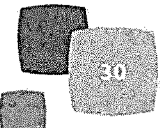
In 2009-2010, the Bureau modified its existing training program to ensure that Bureau staff will have the competencies to effectively implement the new amendments, and the knowledge to address the challenges of today's Canadian marketplace. The Bureau also developed a Strategic Intelligence and Information Management Strategy that included the creation of a governance structure to better define project priorities relating to IM and Information Technology (IT) across the organization, provide a forum to improve IM processes, and ensure that IM/IT initiatives conform to Bureau and Government standards.

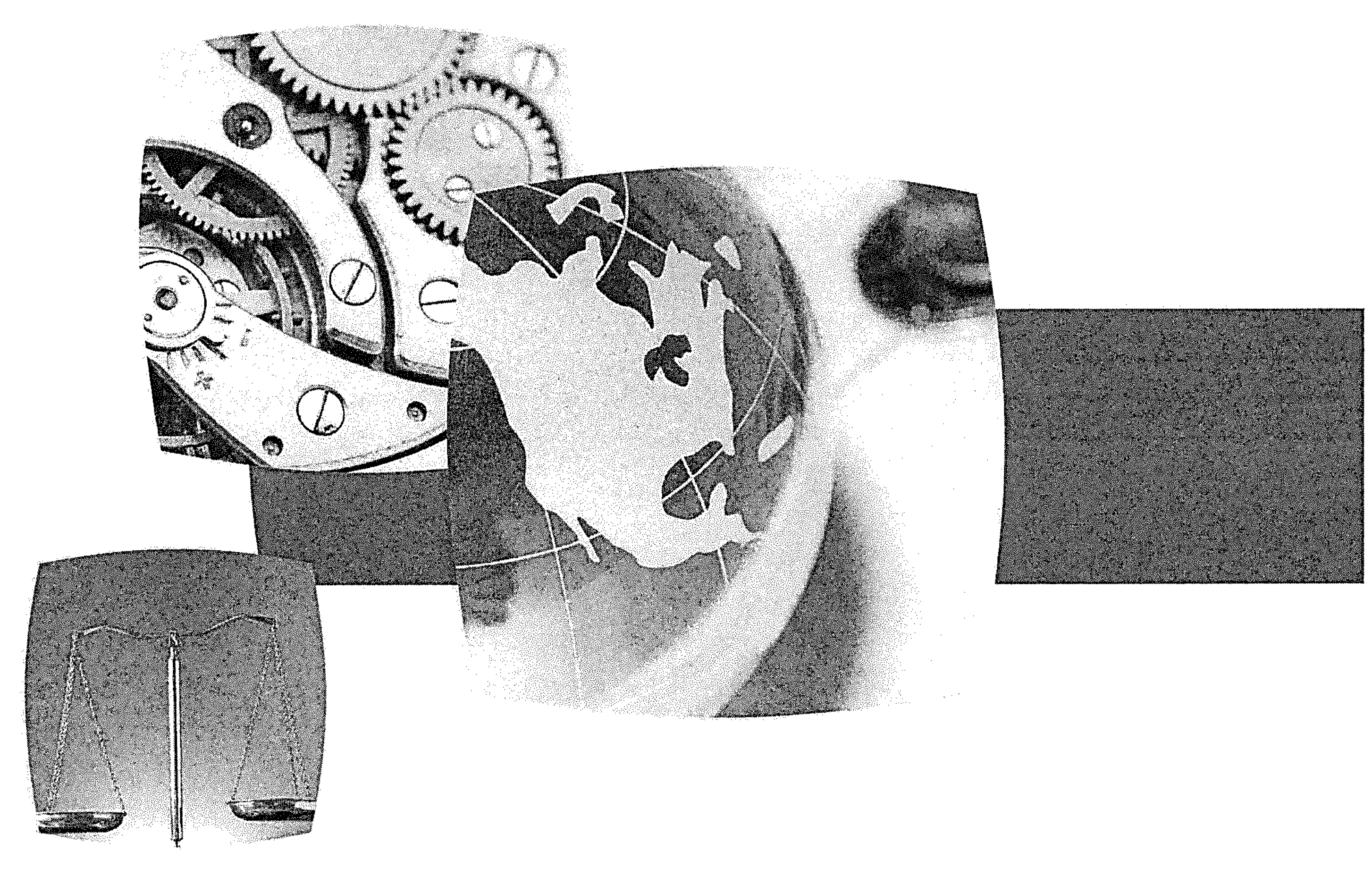
7.2 Management Services

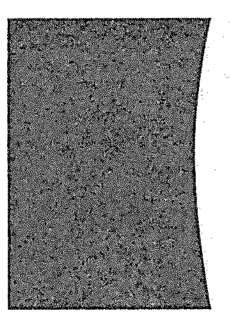
The Bureau's work is important to businesses, consumers and the economy as a whole, but in order to have the greatest impact for Canadians, the Bureau must ensure that its resources are focussed on areas that will benefit Canadians the most. In response to the challenging economic times in 2009-2010, the need to effectively implement the amendments and to ensure that resources were aligned with priorities, the Compliance and Operations Branch led an in-depth budget review exercise. The objective of the exercise was to create a sustainable long-term plan for the organization that was not only responsive to Canadians, but also reflective of the unique demands faced by an independent law enforcement agency, dependant on funding fluctuations.

7.3 Enforcement Services

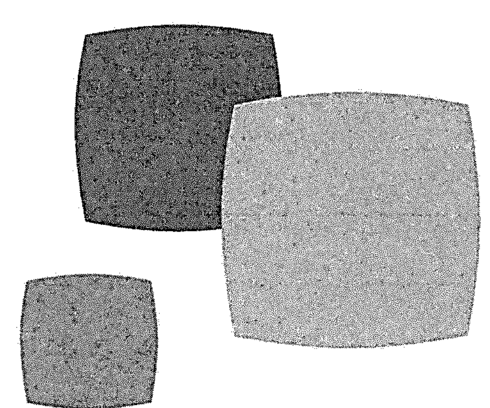
The Bureau Electronic Evidence Working Group continued to develop and deepen expertise and develop policy concerning electronic evidence (e-evidence) gathering by the Bureau. This year, the Working Group focused on court rulings with respect to warrants, and the search, seizure and disclosure of electronic evidence, assessing their implications on Bureau practice, and ensuring any necessary adjustments were implemented to keep policies and procedures at the leading edge of evolving electronic evidence issues. The Electronic Evidence Unit continues to develop an intelligence-led approach to seizing and analysing e-evidence to quickly identify relevant evidence for Bureau case teams. This approach aims to enhance the overall efficiency of Bureau investigations while protecting the integrity of evidence in the development of enforcement cases.







8. ADVOCATING FOR COMPETITION AND INTERNATIONAL COOPERATION



8. ADVOCATING FOR COMPETITION AND INTERNATIONAL COOPERATION

The Bureau participates in a wide range of activities to promote the benefits of a competitive marketplace, both at home and internationally. In the domestic realm, as appropriate, Bureau officials appear before federal and provincial government agencies and regulatory bodies.

Internationally, the Bureau plays a leading role in the International Competition Network, the International Consumer Protection Enforcement Network, and the Organisation for Economic Co-operation and Development.

8.1 Parliamentary Involvement

Industry Canada and Bureau officials appeared at Parliamentary Committees on four occasions between April 1, 2009, and March 31, 2010. The topics discussed were:

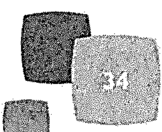
- Bill C-10, the *Budget Implementation Act* – In May 2009, as part of the Parliamentary review of the Federal Budget, which included significant amendments to the Act, Industry Canada and Bureau officials appeared before the Senate Standing Committee on Banking, Trade, and Commerce.
- Competitiveness of Canadian Agriculture – In May 2009, Bureau officials appeared before the House of Commons Standing Committee on Agriculture and Agri-Food to answer questions as part of the Committee's study of competitiveness issues in the agriculture sector. In particular, the Bureau was asked for details regarding a recent merger review in the beef processing industry. The Bureau provided information in the context of its confidentiality obligation in Section 29 of the Act.
- Bill C-27, the *Electronic Commerce Protection Act* – In June 2009, Industry Canada and Bureau officials appeared before the House of Commons Standing Committee on Industry, Science and Technology to answer questions during the Committee's examination of Bill C-27.
- Credit and Debit Cards - In November 2009, Bureau officials appeared before the House of Commons Standing Committee on Industry, Science and Technology to answer questions in relation to the Committee's study on credit card interchange fees and the debit payment system in Canada.

8.2 Advocacy work within Canada

The Bureau had several important opportunities in 2009-2010 to promote the benefits of competition. The Bureau's achievements included:

Self-Regulated Professions

In 2009-2010, the Bureau continued to monitor progress in the provision of professional services since the release of the study entitled *Self-Regulated Professions - Balancing Competition and Regulation* in December 2007. As intended, the study initiated a dialogue on how to improve competition in self-regulated professions. Several professional groups indicated that the study prompted a review of their regulations with a view to removing or modifying those that unnecessarily restrict competition.



Pharmaceuticals

In November 2008, the Bureau published a report entitled *Benefiting from Generic Drug Competition in Canada: The Way Forward*. The report suggests ways to make the generic drug market work better for consumers, businesses and governments in order for Canadians to get the most value for their health-care dollars. In 2009-2010, the Bureau continued to monitor ongoing initiatives by public and private drug plan administrators to obtain lower drug prices.

Environment

In 2009-2010, the Bureau actively assisted regulators and dealt with complaints and queries from stakeholders on provincial programs dealing with recycling, and the design and implementation of waste management stewardship programs.

8.3 International Partnerships and Advocacy

The Bureau actively participates in a number of international organizations to foster greater cooperation among competition authorities around the world. These activities are critical to effective law enforcement, as coordination among agencies advances enforcement efforts. In 2009-2010, the Bureau participated in the following international organizations:

Organisation for Economic Co-operation and Development - Competition Committee

During this fiscal year, the Commissioner remained an active member of the Competition Committee (CC) of the Organisation for Economic Co-operation and Development (OECD), and the Bureau contributed to the work of the CC and its Working Parties. In 2009-2010, the Bureau provided input and submissions on the following topics: competition, patents and innovation; competition and regulation in accountancy; substantive test for merger review; the application of competition law to state-owned enterprises; margin squeezing; generic pharmaceuticals; failing firm defence; procedural fairness in civil competition law cases; and collusion and corruption in public procurement.

Committee on Consumer Policy

The Bureau also participated in the OECD's Committee on Consumer Policy (CCP). Specifically, the Bureau provided input on several projects of the CCP, including projects on green claims and e-commerce.

International Competition Network

Since the creation of the International Competition Network (ICN) in 2001, the Bureau has played a vital role in the organization's development through participation in the Steering Group and working groups on advocacy, 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 pivotal role in the organizational aspects of the ICN by acting as the Secretariat and through active involvement in the Annual Conference Planning Committee.

Cartel Working Group

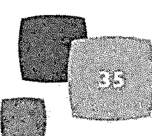
The Bureau's involvement as Co-Chair of the Cartel Working Group's subgroup on Enforcement Techniques reflects the high priority the Bureau continues to place on cartel law enforcement. This subgroup aims to improve the effectiveness of anti-cartel enforcement by identifying and sharing specific investigative 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.



International Consumer Protection and Enforcement Network

In 2009-2010, the Bureau continued to play a leadership role in the International Consumer Protection and Enforcement Network (ICPEN). The Bureau assumed the role of Secretariat and actively participated in the bi-annual ICPEN meeting and Best Practices Workshop in November 2009, in Sydney, Australia.

As Chair of the Fraud Prevention Forum, the Bureau worked with its partners to raise awareness among consumers and businesses regarding the dangers of fraud, and participated in ICPEN's Fraud Prevention Month in March 2010. In November 2009, the Bureau participated in a joint Internet sweep by ICPEN members to expose fraudulent and misleading Web sites. This year, the Bureau focused on loan and grant scams.

8.4 International Cooperation

The Bureau cooperated with the following jurisdictions in 2009-2010 with respect to international cartel and merger cases: Australia, Brazil, Chile, the European Union, Japan, Korea, New Zealand, Taiwan, the United Kingdom and the United States.

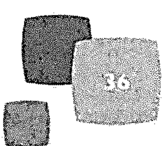
Free Trade Agreements

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

During the fiscal year, the Canadian government concluded negotiations on the FTA with Panama. A previously negotiated FTA with Jordan was signed on June 28, 2009, and signed agreements with Peru and the European Free Trade Association came into force in July and August, 2009.

Technical Assistance

The Bureau has provided technical assistance to foreign jurisdictions for a number of years. In 2009-2010, the Bureau engaged in technical assistance and capacity-building exercises with Australia, Brazil, Chile, China, Russia, and Tanzania.



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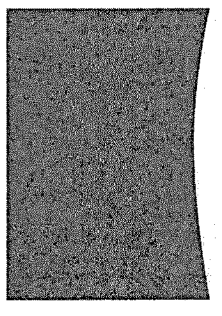
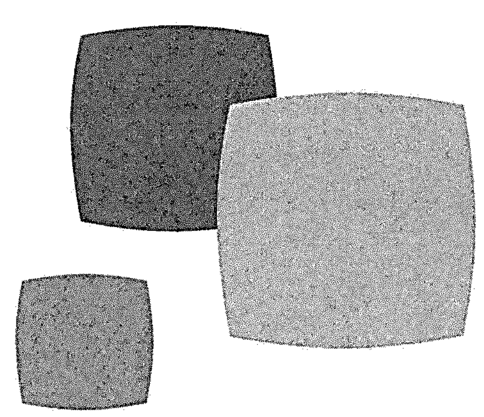


9. COMMUNICATING WITH CONSUMERS AND BUSINESS



9. COMMUNICATING WITH CONSUMERS AND BUSINESS

Communicating the Bureau's work in the interests of Canadians is an important part of its mandate. The Bureau uses a number of different vehicles to draw attention to both its enforcement efforts and non-enforcement activities.

9.1 Announcements

The Bureau issued 67 announcements during the 2009-10 fiscal year describing the benefits of its activities to the economy and to Canadians. This is a slight increase above last year's total of 63. Announcements include news releases, information notices, and items in the Bureau's CB in Brief news digest. Launched in November 2009, the CB in Brief is an electronic publication distributed regularly to media and stakeholders to provide a snapshot of recent news and developments.

9.2 Media Relations

The Bureau also responded to enquiries from journalists in Canada and abroad, resulting in approximately 5,300 print, radio, television and online media reports on Bureau-related matters. This is a 33 per cent increase in coverage from 2008-09. The Bureau's media analysis found that 98 per cent of the coverage was positive.

Five high-profile Bureau media issues in 2009-2010

1. The Canadian Real Estate Association (CREA) and the Multiple Listing Service (MLS)
2. Suncor and Petro-Canada merger
3. Gasoline price-fixing in Quebec
4. Ticketmaster's misleading representations
5. Credit Card fees and new entrants into the debit market

9.3 Press Conferences

The Bureau held a press conference on June 2, 2009, to announce that it was taking action against 50 organizations and individuals in the Montreal area, including executing 10 search warrants, as part of "Operation Mirage". The press conference resulted in 48 print, online and television reports, with an estimated reach of 1.7 million people.

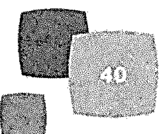
9.4 Bureau Web site

The Bureau's Web site (www.competitionbureau.gc.ca) provides a wealth of useful information to a wide audience ranging from consumers and businesses to legal and media professionals. The site also features an automatic email distribution list that sends subscribers information updates, and a Real Simple Syndication (RSS) news feed that provides easy access to all Bureau announcements.

9.5 Information Centre

The Information Centre is essential to the Bureau's public awareness and enforcement activities. It is the public's primary access point for information requests and complaints related to the four statutes the Bureau administers. Information officers provide information to clients, mainly over the telephone, and register complaints on a wide range of topics, including:

- False or misleading representations and deceptive marketing practices;
- Restraints to competition; and
- Mergers.



In 2009-10, the Bureau's Information Centre registered 17,827 requests via telephone, fax, mail and Internet.

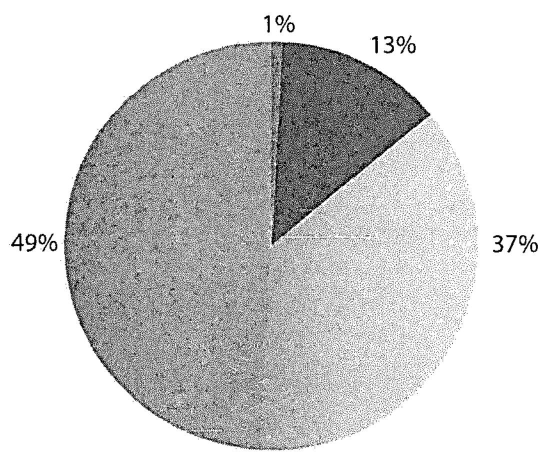
Requests made to the Competition Bureau	
Total Bureau Requests	17,827
Complaints	6,585
Information requests	6,282
No-Issue[2]	4,960
Canadian Anti-Call Fraud Call Centre (CAFCC)[3]	3,446

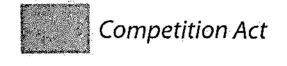
The tables and illustration below summarize the main types of complaints and information requests received by the Bureau's Information Centre in 2009-2010.

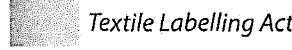
Top 5 Complaints by Product or Service	
1. Directory listings	520
2. Contests, Sweepstakes & Lotteries	408
3. Electronics & Digital	305
4. Health, medical, dental & optical products	275
5. Clothing & personal accessories	271

Information Requests	
Competition Act	3,052
Textile Labelling Act	2,256
Consumer Packaging and Labelling Act	802
Precious Metals Marking Act	60

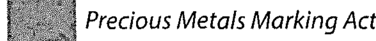
INFORMATION REQUESTS




Competition Act


Textile Labelling Act

Consumer Packaging and Labelling Act


Precious Metals Marking Act

The public can contact the Information Centre in a number of ways:

- Through the toll-free telephone line (1-800-348-5358) from 8:30 a.m. to 4:30 p.m. Eastern Time;
- Via an electronic complaint form on the Bureau's Web site;
- By facsimile (819-997-0324); and
- By mail (Competition Bureau, 50 Victoria Street, Gatineau, Quebec, K1A 0C9).

9.6 Outreach Initiatives

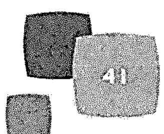
Fraud Prevention Month

Since 2004, the Fraud Prevention Forum (Forum), chaired by the Bureau, has organized Fraud Prevention Month 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 approximately 120 members including public sector and law enforcement agencies, provincial and federal governmental departments, and business and consumer groups.

The 2010 Fraud Prevention Month was launched on February 25th. Throughout the month, members hosted a number of fraud awareness activities,

[2] No-Issue includes requests that are not relevant to the Bureau's mandate or were referred to the Bureau in error.

[3] Complaints received by the Canadian Anti-Fraud Call Centre (CAFCC), formerly Phonebusters, that are actionable by the Bureau. CAFCC is managed on a tripartite basis by the Bureau, the Ontario Provincial Police (OPP) and the Royal Canadian Mounted Police (RCMP). It is the central agency in Canada that collects information on telemarketing, advanced fee fraud letters (Nigerian letters) and identity theft complaints. The information is then disseminated to the appropriate law enforcement agencies.



including regional news conferences, fraud seminars, workshops, interactive online quizzes and shredding events. Many Better Business Bureaus in communities across Canada hosted "Scam Jams", one day anti-fraud events designed to educate consumers and businesses on how they can protect themselves from fraud.

The Commissioner conducted 20 media interviews on fraud-related issues during the month, and announcements were published in French and English language daily newspapers across the country, and aired on regional radio and TV stations. Articles or references to the Bureau and Fraud Prevention Month appeared in a total of 55 daily and community newspapers, and online, with a total print circulation of approximately 756,000 Canadians. There were also 16 related radio or TV broadcasts reaching an audience of approximately 2,945,000.

The Bureau also participated in a standalone supplement on fraud prepared by the *Globe and Mail* that was published on March 29, 2010. The Minister of Industry contributed an opinion piece for the supplement, and other Forum partners provided content and advertising.

Meetings with Consumer Groups

The Commissioner hosts sessions with consumer groups from across Canada. These meetings provide the Bureau with the opportunity to listen to consumer concerns, discuss its work and mandate directly with these stakeholders, and describe how the Bureau benefits consumers.

By way of example, Bureau officials met with representatives from various consumer groups including the Canadian Consumer Initiative, the Consumers' Association of Canada, the Consumer Interest Alliance, the Consumers Council of Canada, the Automobile Protection Association, Option consommateurs, the Public Interest Advocacy Centre, L'Union des consommateurs, as well as Industry Canada's Office of Consumer Affairs. Issues covered included telecommunications, the Fraud Prevention Forum, the Bureau's regulated professions study, and collaboration on future Bureau enforcement guidelines.

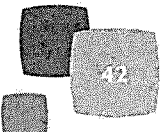
Meetings with Business and Legal Community

The Commissioner and other Bureau officers communicate regularly with business and leaders of the legal community across the country, through meetings, seminars, conferences, and consultations. The Commissioner and other senior Bureau representatives also often speak or participate in panels at major conferences to discuss competition law and policy issues, and to communicate the Bureau's enforcement approach. The Bureau frequently engages directly with business, academic, and legal stakeholders through roundtables and consultations on its enforcement guidelines, and delivers presentations and seminars to interested groups on specific enforcement topics.

9.7 Bulletins and Guidelines

Enforcement guidelines are an articulation of the Bureau's enforcement policy with respect to the various provisions of the Act, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act*, and the *Precious Metals Marking Act* based on the Bureau's past experience, jurisprudence and economic theory. In 2009-10, the Bureau issued 10 sets of enforcement guidelines to provide information on its enforcement approach in various areas.

- *Application of the* Competition Act *to Representations on the Internet*
- *Competitor Collaboration Guidelines*
- *Consumer Rebate Promotions*
- *Deceptive Notices of Winning a Prize — Section 53 of the* Competition Act
- *Merger Review Process Guidelines*
- *Multi-level Marketing Plans and Schemes of Pyramid Selling — Sections 55 and 55.1 of the* Competition Act
- *Ordinary Price Claims — Subsections 74.01(2) and 74.01(3) of the* Competition Act
- *"Product of Canada" and "Made in Canada" Claims*
- *Promotional Contests — Section 74.06 of the* Competition Act
- *Telemarketing — Section 52.1 of the* Competition Act



9.8 Public Consultations

Throughout the year, the Bureau invites the public and interested parties to comment on various initiatives as part of its consultation process. Submissions are made available via the Bureau's Web site, unless the participants request that their responses remain confidential.

In 2009-10, the Bureau conducted a number of consultations to garner feedback from the Canadian business community and their legal advisors on its proposed enforcement approach in key areas. The full list of consultations, consultation documents and submissions are available on the Bureau's Web site. Some key consultations during 2009-2010 included the following.

Competitor Collaboration Guidelines

The 2009 amendments to the conspiracy provision of the Act created a more effective criminal enforcement regime for the most egregious forms of cartel agreements. The amendments also removed the threat of criminal sanctions for legitimate collaborations to avoid discouraging firms from engaging in potentially beneficial alliances. Accordingly, in December 2009, the Bureau published its *Competitor Collaboration Guidelines* after a period of extensive public consultation. These guidelines were designed to assist firms in assessing the likelihood that a competitor collaboration would raise concerns under the criminal or civil provisions of the Act and, if so, whether the Commissioner would be likely to commence an inquiry in respect of the collaboration.

Enforcement Guidelines relating to "Product of Canada" and "Made in Canada" Claims

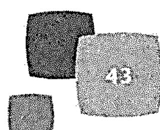
In December 2009, following public consultations, the Bureau published its Enforcement Guidelines on *"Product of Canada" and "Made in Canada" Claims*, as part of the Bureau's efforts to ensure transparency and predictability in its enforcement policies.

These guidelines, consistent with the Government's commitment to improve truth in labelling for consumer products, describe the Bureau's approach in assessing "Product of Canada" and "Made in Canada" claims for non-food products under the false or misleading representations provisions of the Act, the *Consumer Packaging and Labelling Act* and the *Textile Labelling Act*.

To provide businesses with sufficient time to adapt, the new guidelines took effect on July 1, 2010.

Merger Review Process Guidelines

In September 2009, the Bureau published its revised *Merger Review Process Guidelines* after extensive consultations with stakeholders. The *Merger Review Process Guidelines* describe the Bureau's general approach to administering the two-stage merger review process that was introduced pursuant to the 2009 amendments to the Act. In particular, the *Merger Review Process Guidelines* outline the supplementary information request (SIR) process, including a description of the practices and procedures that the Bureau will generally follow to ensure that the potential burden on parties in responding to a SIR is no greater than necessary, while at the same time enabling the Bureau to obtain information required to conduct its review.



HOW TO CONTACT THE COMPETITION BUREAU

Anyone wishing to obtain additional information about the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act*, the *Precious Metals Marking Act*, or the program of written opinions or to file a complaint under any of these statutes should contact the Bureau's Information Centre.

Web site

www.competitionbureau.gc.ca

Address

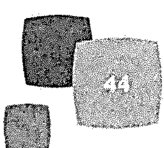
Information Centre
Competition Bureau
50 Victoria Street
Gatineau, Quebec
K1A 0C9

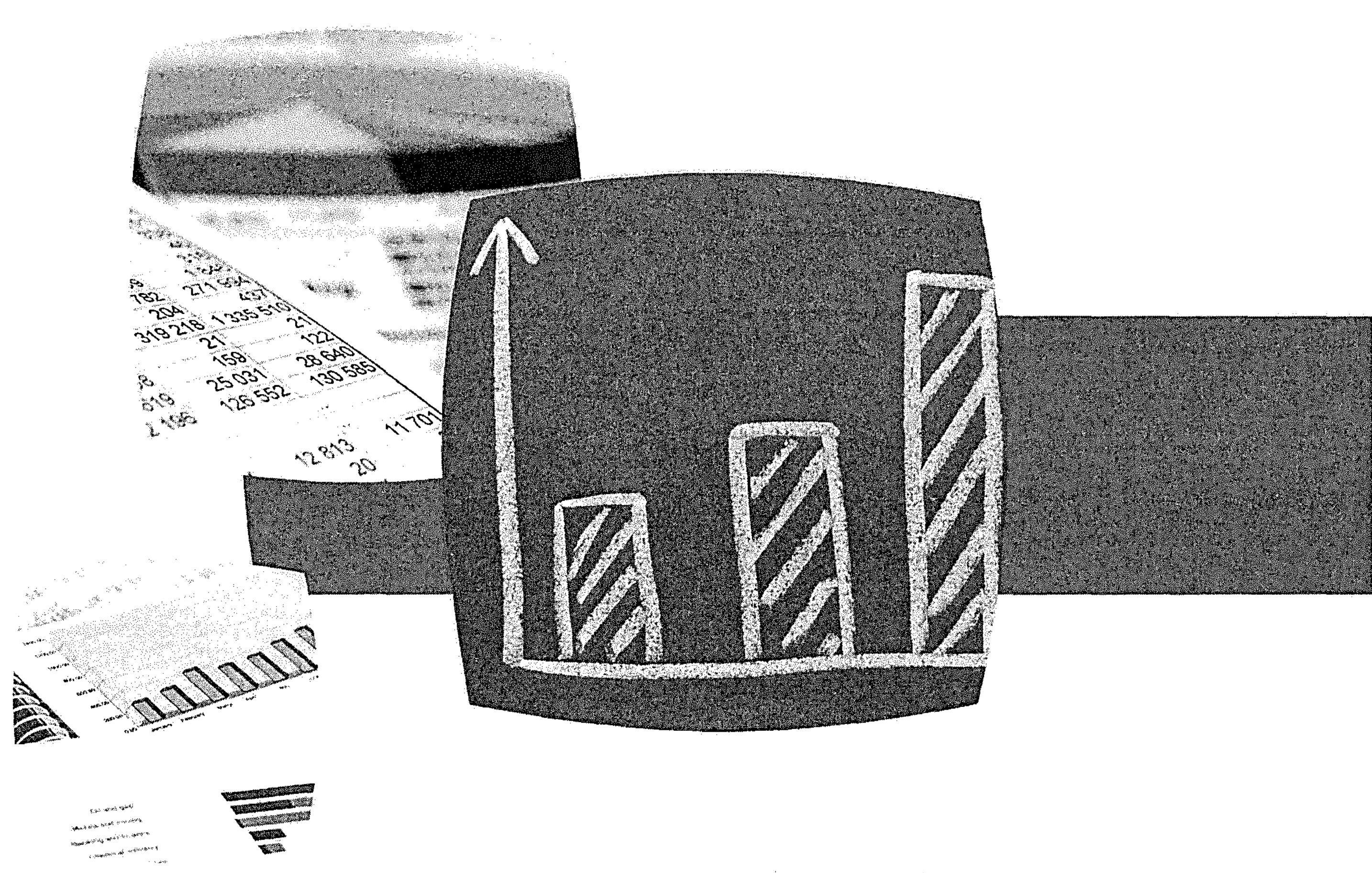
Telephone

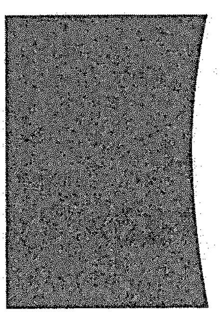
Toll-free: 1-800-348-5358
National Capital Region: 819-997-4282
TTY (for hearing impaired) 1-800-642-3844

Facsimile

819-997-0324







APPENDIX: COMPETITION BUREAU STATISTICS

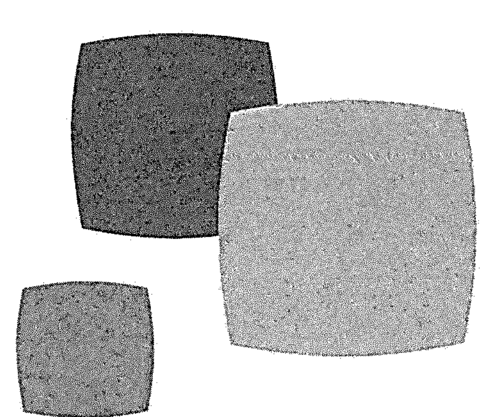


TABLE 1: Competition Bureau Statistics

Law Enforcement Activity	FBPB	Civil	Criminal	Mergers
Inquiries commenced (Number of formal inquiry commenced between April 1 and March 31)	9	2	3	2
Inquiries in progress (Number of formal inquiries in progress on April 1)	29	9	14	2
Inquiries discontinued (Number of formal inquiries discontinued between April 1 and March 31)	0	1	1	0
Examinations in progress (Number of examinations in progress on April 1 - Examinations are complaints and information requests that have been assigned for further assessment as well as orders being reviewed)	80	15	37	16
Examinations commenced (Number of examinations commenced between April 1 and March 31)	40	13	31	216
Examinations concluded (Number of examinations concluded between April 1 and March 31)	74	12	23	221
Matters where charges were laid (Number of matters where charges were laid between April 1 and March 31)	4	-	1	-
Matters where applications were filed (Number of matters where applications were filed between April 1 and March 31)	0	1	-	0
Matters with criminal orders (Number of matters where there were orders between April 1 and March 31)	6	-	2	-
Convictions	12	-	4	-
Prohibition Orders without convictions	2	-	2	-
Interim injunctions (criminal)	0	-	0	-
Matters with civil orders (Number of matters where there were orders between April 1 and March 31)	4	3	0	6
Registered Consent Agreements	11	1	-	6
Final Order in contested proceedings	1	0	-	0
Interim injunctions (civil)	0	0	-	0
Alternative Case Resolutions (Examinations that raised an issue under the Act but were resolved without resort to the Court or Tribunal; these include agreements and voluntary compliance)	144	2	0	2
Compliance Contacts (Information letters and meetings)	11	-	6	0
Information Bulletins and Enforcement Guidelines published (All guidelines published between April 1 and March 31 including those for consultation, new publication and those that have been revised)	9	1	5	1
Total Fines Imposed	$17,725,000	-	$14,830,000	-
Administrative Monetary Penalties	$400,000	-	-	-

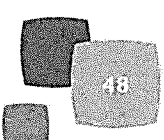


TABLE 2: Advocacy of Competition Principles

Advocacy of Competition Principles	
Advocacy under Sections 125 & 126	
• In May 2009, the Bureau provided a submission to the Canadian Council of Ministers of the Environment (CCME), in response to the CCME's discussion document entitled *Towards a Proposed Canada-Wide Action Plan for Extended Producer Responsibility*. • In February 2010, the Bureau provided a submission to the Government of Ontario's Ministry of the Environment in response to its document entitled *From Waste to Worth: The Role of Waste Diversion in the Green Economy*, which served as a discussion paper on reforms to Ontario's *Waste Diversion Act, 2002*.	2
Representations to regulators outside of formal proceedings	
• On two occasions, the Bureau met with provincial governmental bodies and stewardship organizations involved in waste recovery stewardship programs in the province of Ontario to provide competition advocacy advice on the design and implementation of their programs.	2

TABLE 3: Speeches and Outreach

	FBPB	Civil	Criminal	Mergers	Commissioner of Competition
Speeches (Number of times Bureau staff speak to stakeholders. This includes information sessions and outreach activities, not the number of participants)	39	12	50	5	20
Recruitment Initiatives[4] (Number of presentations made to potential Bureau recruits - this includes seminars)	0	1	1	8	0

[4] In 2009-2010, an Executive of the Bureau also taught the Competition Law Course at Queen's University, Faculty of Law, with several Bureau officers contributing as guest lecturers.

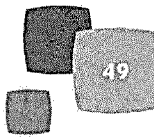


TABLE 4: Mergers Examinations

Examinations Commenced	**216**
Notification filings and Advance Ruling Certificate requests	200
Notification filings only	10
ARC requests only	155
ARC requests and Notification filings	35
Other examinations	16
Examinations Concluded	**221**
No issues[5] under the *Competition Act*	211
Advance Ruling Certificates issued	139
"No-action" letters[6]	57
Other examinations	15
Concluded with issues under the *Competition Act*	8
Consent Agreements Registered with the Competition Tribunal	6
Foreign remedies resolved Canadian competition concerns	1
Transactions abandoned owing to competition concerns	1
Section 92 applications concluded or withdrawn	0
Transactions abandoned for reasons unrelated to the Commissioner's position	2
Supplementary Information Requests issued in concluded matters	5
Total Examinations during the year	**232**
Examinations ongoing at year-end	**11**

[5] Examinations resulting in assessment of no current enforcement action.

[6] Including ARC refusals

Reviewing Mergers

Number of mergers reviewed where the answer was provided to parties between April 1 and March 31, as well as the number of those provided where the service standard was met.

TABLE 5: Merger Review – Meeting Service Standards

	2007-2008			2008-2009			2009-2010		
	Provided	Met	%	Provided	Met	%	Provided	Met	%
Non-complex	279	267	95.69	180	174	96.67	173	162	93.64
Complex	23	21	91.30	23	20	86.96	27	24	88.8
Very Complex	4	4	100	5	3	60	6	5	83.33
Total:	306	292	95.42	208	197	94.71	206	191	92.72

CHART 1: Mergers Review – Meeting Service Standards

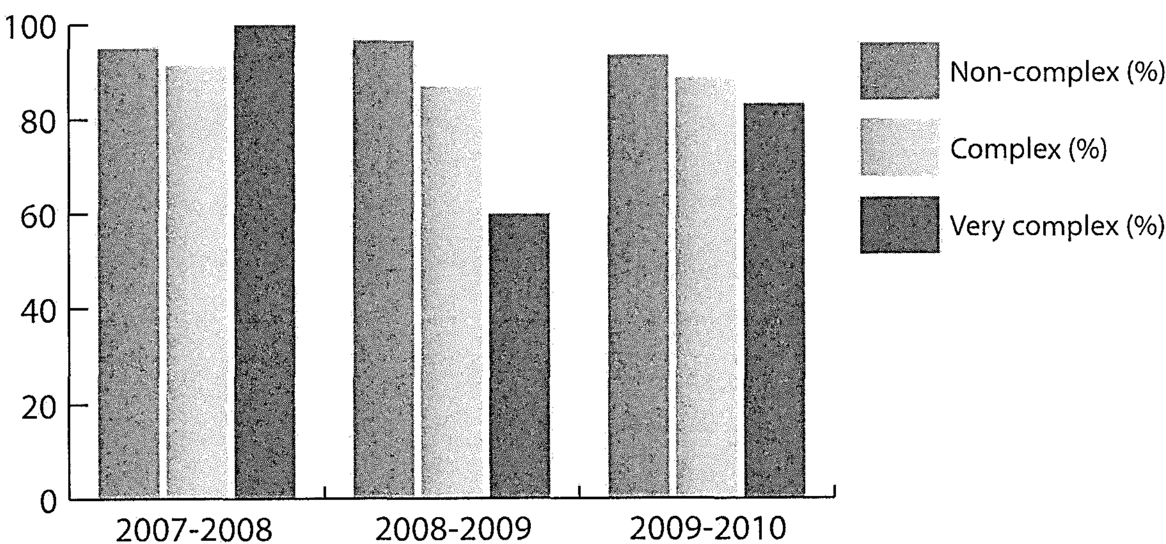


TABLE 6: Merger Review – Average Completion Time

	2007-2008	2008-2009	2009-2010
Non-complex (days)	9.5	9.6	9.7
Complex (weeks)	7.5	6.8	5.7
Very Complex (months)	2.5	8.6	3.1

Written Opinions

Number of Written Opinions provided between April 1 and March 31 as well as the number of those provided where the service standard was met.

TABLE 7: Written Opinions – Meeting Service Standards

	2007-2008			2008-2009			2009-2010		
	Provided	Met	%	Provided	Met	%	Provided	Met	%
FBPB									
Complex	1	1	100	0	0	0	0	0	0
Non-complex	15	3	20	8	4	50	11	5	45
Civil									
Complex	0	0	0	0	0	0	0	0	0
Non-complex	0	0	0	0	0	0	0	0	0
Criminal									
Complex	0	0	0	0	0	0	0	0	0
Non-complex	0	0	0	1	0	0	0	0	0
Mergers									
Complex	0	0	0	0	0	0	0	0	0
Non-complex	0	0	0	0	0	0	1	1	100
Total:	16	4	25	9	4	44	12	6	50

This is **Exhibit "C"** to the Affidavit of Mike Brown

sworn before me this 25th day of April, 2017

Commissioner for Taking Affidavits

Scott McGrath

CT- 2002 - 003

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Commissioner of Competition for an Order pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition for an Order pursuant to section 104 of the *Competition Act*;

AND IN THE MATTER OF the acquisition by Bayer AG of all of the shares of Aventis CropScience Holding S.A., constituting the agrochemical business of Aventis S.A. and, in Canada, the indirect acquisition by Bayer AG of all of the shares of Aventis CropScience Canada Co.

BETWEEN:

THE COMMISSIONER OF COMPETITION

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE
FILED / PRODUIT
MAY / MAI 31 2002
REGISTRAR — REGISTRAIRE
OTTAWA, ONT. #1(b)

Applicant

- and -

BAYER AG
and AVENTIS CROPSCIENCE HOLDING S.A.

Respondents

AFFIDAVIT OF DEAN SHAIKH

I, DEAN SHAIKH, of the City of Ottawa, in the Province of Ontario, Public Servant, **MAKE OATH AND SAY:**

1. I am an acting Senior Competition Law Officer in the Mergers Branch of the Competition Bureau (the "Bureau"), Industry Canada and an authorized representative of the Applicant, the Commissioner of Competition (the "Commissioner").

2. I graduated from Queen's University in May 1997 with a Bachelor of Laws. I am currently attending graduate studies in law at the University of Ottawa leading to the degree of Master of Laws specializing in international law and competition law. I have been an employee of the Bureau since February, 1998 and I have worked in the Mergers Branch since August, 2000. I have been involved in other merger matters which have been the subject of consent orders issued by the Competition Tribunal.

3. I have been assigned to work on an inquiry into the proposed acquisition by Bayer AG ("Bayer") of all of the shares of Aventis CropScience Holding S.A. ("ACS"), and, in Canada, the indirect acquisition by Bayer of all of the shares of Aventis CropScience Canada Co. ("ACS Canada"). As such I have knowledge of the matters hereto deposed and of the information contained in the Statement of Grounds and Material Facts and the Consent Order Impact Statement filed in support of the application by the Commissioner in this matter except that which is obtained upon information and belief, and, where so stated, I verily believe such information to be true.

4. I believe that the Statement of Grounds and Material Facts accurately reflects the findings of the investigation by the Bureau. I further believe that the Consent Order Impact Statement accurately reflects the manner in which the Draft Consent Order ("DCO") will alleviate the competition concerns identified in the Statement of Grounds and Material Facts.

A. THE ACQUISITION

5. Pursuant to definitive stock purchase agreements, signed effective October 2, 2001, among Bayer, Aventis Agriculture and Schering Aktiengesellschaft ("Schering"), and SCIC Holdings LLC ("SCIC"), Bayer intends to acquire all shares in ACS from the vendors, Aventis S.A. and Schering (the "Acquisition"). Currently, the shareholders of ACS are Aventis Agriculture, a wholly-owned subsidiary of Aventis S.A. (47.93%), Hoechst A.G., a 98% owned subsidiary of Aventis (28.07%), Schering (19.83%), and SCIC, a wholly-owned subsidiary of Schering (4.17%). Following the Acquisition, Bayer's crop science activities will be organized as a separate legal entity to be named "Bayer CropScience".

6. The Acquisition involves the purchase by Bayer of ACS' world-wide business of researching, developing, manufacturing and supplying crop protection and crop production products and related chemical products. In Canada, Bayer will indirectly acquire ACS Canada's business activities which include the manufacture and supply of

the following pesticides: insecticides; seed treatments; herbicides; fungicides; and professional-use pesticides.

B. THE EXAMINATION

7. The examination of the Acquisition was commenced by the Bureau in October 2001. On October 17, 2001, the parties filed a notification pursuant to section 114 of the *Competition Act* (the *"Act"*). On January 24, 2002, the Commissioner caused a formal inquiry to be commenced.

8. An investigative team comprised of three additional Competition Law Officers, an Enforcement Support Officer and an Economist from the Competition Policy Branch at the Bureau was assembled to conduct the competition analysis of the Acquisition. Legal counsel from the Competition Law Division of the Department of Justice was also assigned to this matter. Thereafter, two industry experts and an economic expert were retained to assist in the further review of the Acquisition.

9. The business activities of the Respondents are conducted internationally and the Acquisition has been subject to regulatory approval in other jurisdictions. For these reasons, contact with the Federal Trade Commission of the United States (the "FTC")

and the Competition Directorate-General of the European Commission (the "European Commission") was initiated at an early stage in the investigation. The Respondents provided waivers of confidentiality that permitted an exchange of information among the Bureau, the FTC and the European Commission.

10. The investigation encompassed the following:

i. review of information provided by Bayer and ACS Canada pursuant to section 114 of the *Act*;

ii. review of information provided voluntarily by Bayer and ACS Canada;

iii. meetings with counsel and representatives of Bayer and ACS Canada;

iv. telephone and in-person interviews with competitors and customers of Bayer and ACS Canada and other industry participants, including manufacturers, distributors, retailers, and growers;

v. telephone discussions with federal government officials of the Pest Management Regulatory Agency (the "PMRA") regarding the process involved in the registration of pesticide products and related chemical compounds;

vi. telephone discussions with federal government officials of the Canadian Intellectual Property Office regarding patent protection in the pesticide industry;

vii. review of information obtained pursuant to orders of the Federal Court of Canada issued under section 11 of the *Act* to the following: Bayer; ACS Canada; Gustafson Partnership (a joint venture between Bayer and Crompton Corporation); five competitors; and, the PMRA;

viii. consultation with economic, industry and intellectual property experts and a review of their research and reports;

ix. telephone discussions with representatives of the FTC and the European Commission, as well as a review of documents, including transcripts of depositions, provided to the Bureau by the FTC; and

x. meetings with the FTC and an exchange of draft documents.

11. During the course of the investigation outlined above, I have conducted an examination of the effects of the Acquisition on competition in Canada. After consultation with other members of the investigative team as well as industry and economic experts, I have defined the relevant product and geographic markets and examined other evaluative criteria as described in the Statement of Grounds and Material Facts.

C. SUBSTANTIAL LESSENING OR PREVENTION OF COMPETITION

12. In mid-March 2002, the Bureau informed the parties of its findings, in particular, that the Acquisition would likely result in a substantial lessening or prevention of competition in the following markets: (a) insecticides for certain fruit and vegetable crops in Canada; (b) seed treatments for canola in Canada; (c) seed treatments for cereals in Canada; and, (d) grassy weed herbicides for spring wheat in Western Canada.

13. The Statement of Grounds and Material Facts provides a competitive analysis of the Acquisition and the Consent Order Impact Statement describes the anticipated effects of the remedies proposed in the DCO.

D. PROPOSED REMEDIES

14. The DCO provides that Bayer will, with certain exclusions: divest acetamiprid (an active ingredient in insecticides and insecticide seed treatments) and certain other assets related to the worldwide insecticide and canola seed treatment business of ACS; license iprodione (an active ingredient in fungicide seed treatments for canola); divest triticonazole (an active ingredient in fungicide seed treatments) and certain other assets pertaining to the Canadian cereal seed treatment business of ACS; and divest flucarbazone (an active ingredient in herbicides) and certain other assets related to Bayer's worldwide wheat grass herbicide business. The divestiture of certain additional

assets is required in the event that Bayer is unable to divest acetamiprid, license iprodione or divest flucarbazone. As explained in the Consent Order Impact Statement, these remedies are intended to preserve competition which would likely otherwise have been substantially lessened or prevented in the relevant markets as a result of the Acquisition.

15. Throughout the examination, the Bureau maintained regular communications with the FTC and the European Commission to ensure that proposed remedies for Canada were consistent with those being contemplated in these other jurisdictions.

16. On April 17, 2002, the European Commission announced its approval of the remedies proposed by the Respondents to alleviate competition concerns in Europe. These remedies, referred to as the "European Commitments", are set out in the document attached and marked as Confidential Exhibit "A".

17. The proposed remedies for Canada relating to the Triticonazole Business and parts of the Iprodione Canola Seed Treatment Business in Canada (as these terms are defined in the Draft Consent Order), are consistent with the remedies required by the European Commission as set out in paragraphs 129, 145 and 148 of the European Commitments.

18. In mid-April, the Bureau met with the FTC to discuss the remedies that would be proposed in both Canada and the United States. Following this, the Bureau attended negotiations between the FTC and the Respondents. The remedies approved by the FTC

to alleviate the competition concerns in the United States are set out in the FTC's "Decision and Order", attached and marked as Exhibit "B".

19. The proposed remedies for Canada relating to the Acetamiprid Business and the Flucarbazone Business (as these terms are defined in the DCO) are identical to the remedies required by the FTC as set out in Parts II, IV, XI and XII of the FTC's Decision and Order. Common language is considered necessary to prevent conflict between the remedies proposed in each jurisdiction.

20. In addition to the above-noted divestitures, Bayer is also required to provide the acetamiprid acquirer with a licence to iprodione (an active ingredient in seed treatments for canola). In this case, a licence and supply agreement are sufficient and a divestiture is not required because, unlike the previously mentioned assets, iprodione is off-patent and Bayer will retain rights to iprodione for other uses.

21. The proposed remedies involve the divestiture of significant intellectual property. The language in the DCO as well as the FTC's Decision and Order is intended to provide the acquirers of the divested assets with assurances that all intellectual property necessary to continue to develop, manufacture and sell the relevant products will be divested or licensed. For greater certainty, the DCO also provides the acquirers with protection against claims of infringement by Bayer.

22. The framework for the divestiture of intellectual property in the DCO is the same as that in the FTC's Decision and Order. This approach was adopted for two reasons: (1) to ensure consistency between the two orders; and (2) to rely on the expertise of the FTC in light of their prior experience with divestitures of intellectual property in the crop protection industry.

E. THE PROPOSED INTERIM CONSENT ORDER

23. To permit the Respondents to close the Acquisition, the Commissioner proposes an interim order for the purpose of maintaining the Hold Separate Businesses (as the term is defined in the Draft Consent Interim Order) as independent businesses, separate from the Respondents' other operations, pending the determination of the Commissioner's application.

24. Under the proposed interim order, the Hold Separate Businesses will be managed by independent managers, under the supervision of an independent monitor. The independent managers will be Mr. Wolfgang Bieber, Mr. Vincent Turriès, Mr. Stan Prokopchuk, Mr. Garry Van Den Bussche, Mr. Leo Blydorp and Mr. Bryan Bowden. The independent monitor will be Mr. Richard Gilmore. Attached and marked as Confidential Exhibits C-1, C-2, C-3, C-4, C-5, C-6 and C-7 are copies of the curriculum vitae for each of the independent managers and independent monitor.

25. To preserve the integrity of the Hold Separate Businesses and to ensure consistency with the other jurisdictions, Messrs. Gilmore, Bieber and Turriès will oversee all businesses that are required to be held separate in Canada, the United States and Europe pending the required divestiture of assets in all three jurisdictions.

26. The Respondents have consented to the interim order proposed by the Commissioner.

27. I believe that without the interim order, there will be irreparable harm to competition in at least the following respects:

    (a) The Respondent, Bayer, would be free to integrate the Hold Separate Businesses with its other operations and would be able to exercise the market power the Commissioner alleges will arise if the Respondent, Bayer, acquires certain assets within the Hold Separate Businesses; and

    (b) The Respondent, Bayer, would have access to pricing, customers lists and other confidential information pertaining to those assets within the Hold Separate Businesses.

28. I believe that the interim order is necessary to preserve the divestiture of certain assets that are part of the Hold Separate Businesses as an effective remedy in this case. I believe that the form of the interim order proposed by the Commissioner will achieve that purpose.

SWORN BEFORE ME, at the City of Gatineau, in the Province of Québec, this 31st day of May, 2002.

A Commissioner, etc.

Commissaire à l'assermentation
JOSÉE BRUNET
96 746
District Judiciaire de Hull, QC.

DEAN SHAIKH

This is **Exhibit "D"** to the Affidavit of Mike Brown

sworn before me this 25th day of April, 2017

Commissioner for Taking Affidavits

Scott McGrath

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Commissioner of Competition for an order pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34 as amended;

AND IN THE MATTER OF the proposed acquisition by Lafarge S.A. of Blue Circle Industries plc, a company engaged in the construction materials business.

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

and

LAFARGE S.A.

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE
CT-2001/004
FILED / PRODUIT
JUN / JUIN 15 2001
REGISTRAR - REGISTRAIRE
OTTAWA, ONT. #1(e)

Respondent

AFFIDAVIT OF MICHAEL SULLIVAN

I, Michael Sullivan of the City of Ottawa, Province of Ontario, Public Servant, MAKE OATH AND SAY:

1. I am a Senior Competition Law Officer at the Competition Bureau, Mergers Branch.

2. I have worked as a Competition Law Officer at the Competition Bureau since late1982, and have worked in the Mergers Branch from November 1994 to the present and prior to that from1988 to 1992.

3. I have participated in or led nine investigations of mergers concerning the cement and related construction materials industries since 1988.

4. On February 10, 2000, Lafarge S.A.("Lafarge") of Paris, France made an unsolicited offer through the London U.K. stock exchange to acquire all the shares of Blue Circle Industries plc

("Blue Circle") of the U.K. Under the terms of the London stock exchange rules, Lafarge's bid had to be accepted by the majority of Blue Circle's shareholders by May 3, 2000. The bid was opposed by the Board of Directors and senior management of Blue Circle.

5. I was the Senior Officer in respect of this matter in February 2000, when the Commissioner first received notice under section 114 of the *Competition Act* by Lafarge S.A. of the then proposed offer.

6. Based on my prior knowledge of the cement and construction industries in Ontario and the specific facts relevant to the then proposed transaction, I believed that a merger of Lafarge and Blue Circle would raise serious competition concerns in certain markets in Ontario which warranted a thorough investigation and careful consideration of the impact of the potential remedy issues, including the remedies proposed by Lafarge.

7. I assembled an investigative team consisting of another competition law officer, an enforcement support officer, and an economist from the Economic Policy and Enforcement Division of the Competition Bureau. An inquiry was commenced under section 10 of the *Competition Act*. I requested, and was assigned, legal counsel from the Competition Law Division of the Department of Justice. Thereafter, I identified and retained two industry experts to assist in the Bureau's investigation, one in respect of the cement and related concrete products industry and another for the aggregates industry.

8. Given the significant U.S. sales of both Lafarge and Blue Circle from Canadian cement production facilities, contact with the Federal Trade Commission of the United States ("FTC") was initiated early in the investigation and the parties to the then proposed merger provided letters permitting the co-operation and the sharing of information otherwise barred by the confidentiality provisions of the *United States Hart-Scott Rodino Antitrust Improvement Act 1976*. Contact with DGIV of the European Commission and securities regulators in the United Kingdom was also initiated.

9. The investigation encompassed:

i) reviewing information provided by Lafarge and Blue Circle under section 114 of the *Competition Act*;

ii) reviewing information provided voluntarily by Lafarge and Blue Circle;

iii) attending separate meetings with counsel and representatives of Lafarge and Blue Circle;

iv) telephone discussions and attending meetings with representatives of the FTC as well as the review of documents, including transcripts of depositions, provided to the Competition Bureau by the FTC;

v) telephone interviews with Ontario government officials regarding the regulatory process in respect of licensing an aggregate extraction operation;

vi) meetings and discussions with the above mentioned industry experts as well as reviewing their interim reports;

vii) over 24 telephone, as well as two in-person, interviews with producers of cement, ready mix concrete and other precast concrete products, aggregates, asphalt and paving road construction (hereinafter "asphalt/paving"); and

viii) the issuance of over 12 questionnaires to aggregates producers and the review of responses.

10. At the conclusion of the investigation process in April 2000, I concluded that the only effective remedy that would eliminate the likely substantially lessening of competition in the cement and related concrete materials markets affected would be the divestiture of substantially all of Blue Circle's cement and related concrete products businesses in Canada as well as the related transportation, sales and distribution assets, including the Detroit grinding facility and U.S. distribution terminals.

11. On April 28, 2000, the Bureau issued a news release in respect of an agreement whereby Lafarge agreed to divest all of Blue Circle's cement business and the vast majority of its related construction materials businesses in Canada to resolve the Bureau's competition concerns, including "such asphalt and aggregates assets as the Commissioner shall require.

12. On May 3, 2000,Lafarge announced that an insufficient number of Blue Circle shares had been tendered to Lafarge thus ending the bid.

13. On July 25, 2000, Lafarge Canada Inc. ("Lafarge Canada") and Kilmer Van Nostrand Co. Limited ("KVN") announced Lafarge Canada's proposed acquisition of KVN's wholly-owned subsidiary, The Warren Paving & Materials Group Limited (Warren) (hereinafter referred to as the "Lafarge/Warren transaction"). Lafarge Canada is a wholly-owned subsidiary of Lafarge Corporation in the United States. Lafarge holds a majority equity interest in Lafarge Corporation. Warren produced aggregates and operated an asphalt business in Ontario, Alberta,

Saskatchewan and British Columbia. The Lafarge /Warren transaction was substantially completed on December 20, 2000. Consequently, Lafarge Canada's market position with respect to aggregates in Ottawa-Carleton, Brockville, Cornwall, Belleville, GTA, Tri-City Area, London, Sault Ste. Marie, Thunder Bay and Barrie, Ontario increased relative to its position in the Spring of 2000. With respect to asphalt/paving, the Lafarge /Warren transaction increased Lafarge Canada's market position in the Tri-City Area, London and Barrie, Ontario.

14. On January 8, 2001, Lafarge announced that it had reached an agreement with Blue Circle management to buy the 77.4% of shares in Blue Circle that it did not already own. At or about that time, counsel for Lafarge advised Mr. Robert Lancop, an Assistant Deputy Commissioner of Competition in the Mergers Branch, that Lafarge would fully respect the agreement in principle noted at paragraph 11 above. In November 2000, I had been assigned to head the Mergers Notification Unit, and responsibility for the matter was transferred to, Mr. John Pecman, another Senior Competition Law Officer.

15. The Lafarge/Warren transaction described in paragraph 13 above, necessitated further review of the Ontario aggregates and asphalt/ paving as well as related road construction markets.

16. Mr. Pecman has advised, and I verily believe, that he constituted a team as described in paragraph 7. above. I have been advised by Mr. Pecman, and verily believe, that the investigation he supervised in respect of the aggregates and asphalt/paving markets in Ontario, encompassed essentially the same activities as those enumerated in paragraphs 9(i) to 9(vi) above. Additionally Mr. Pecman's investigation included:

i) over 30 interviews with aggregate industry participants and/or customers;

ii) reviewing both written responses to information requests from industry participants as well as detailed submissions from two competitors;

iii)in-person interviews with Lafarge and Blue Circle officials;

iv) retention of an aggregate industry expert and review of his detailed reports, followed by

on-site inspections of many Blue Circle aggregate operations;

v) review of the Ontario pre-cast concrete structure and cold-patch asphalt markets which had not been addressed during the investigation in 2000;

vi) communication and exchange of draft documents with the FTC to co-ordinate divestiture packages as well as draft consent orders, hold-separate arrangements and related documents; and

vii) telephone interviews with the Trustee/mMonitor candidate, Mr. Daniel Somes.

17. On April 11, 2001, the Competition Bureau issued a press release announcing that the Bureau would not challenge the proposed acquisition of Blue Circle by Lafarge as a result of the divestitures and hold-separate arrangements negotiated, and that the Commissioner of Competition would, with the consent of Lafarge, seek an order from the Competition Tribunal.

18. At the beginning of June, Mr. Pecman commenced new duties within the Competition Bureau, and I resumed responsibility for the carriage of this matter.

19. I believe that the Statement of Grounds and Material Facts accurately reflects the findings of the Bureau's investigation.

SWORN BEFORE ME, at the City of Hull,)
in the Province of Quebec,)
this 15th day of June 2001.)
)

MICHAEL SULLIVAN

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Commissioner of Competition for an Order pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34, as am.;

AND IN THE MATTER OF the proposed acquisition by Lafarge S.A. of Blue Circle Industries plc, a company engaged in the construction materials business.

BETWEEN:

The Commissioner of Competition

Applicant

- and -

Lafarge S.A.

Respondent

AFFIDAVIT OF MICHAEL SULLIVAN

André Brantz
John Symes
Department of Justice
Competition Law Division
Place du Portage, Phase 1
50 Victoria Street, 22nd Floor
Hull, Quebec
K1A 0C9

This is **Exhibit "E"** to the Affidavit of Mike Brown

sworn before me this 25th day of April, 2017

____

Commissioner for Taking Affidavits

Scott McGrath

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant ☒

Filed by a Party other than the Registrant ☐

Check the appropriate box:

☐ Preliminary Proxy Statement

☐ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

☒ Definitive Proxy Statement

☐ Definitive Additional Materials

☐ Soliciting Material under §240.14a-12

St. Jude Medical, Inc.
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

☒ No fee required.

☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

☐ Fee paid previously with preliminary materials.

☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

MERGER PROPOSED—YOUR VOTE IS VERY IMPORTANT

September 26, 2016

Dear St. Jude Medical, Inc. Shareholder:

On April 27, 2016, St. Jude Medical, Inc. and Abbott Laboratories entered into an Agreement and Plan of Merger, which we refer to as the merger agreement, that provides for the acquisition of St. Jude Medical by Abbott. Under the terms of the merger agreement, a subsidiary of Abbott will merge with and into St. Jude Medical, with St. Jude Medical surviving the merger as a wholly owned subsidiary of Abbott, which we refer to as the first merger, and, then, St. Jude Medical will merge with and into a second subsidiary of Abbott, with such second subsidiary surviving the merger, which we refer to as the second merger. We refer to these two merger transactions as the "mergers."

If the mergers are completed, you will be entitled to receive $46.75 in cash, without interest, and 0.8708 of an Abbott share for each St. Jude Medical share that you own at the time the first merger is completed, in each case, less any applicable withholding taxes. This proportion of cash and shares is subject to adjustment in certain limited circumstances. See the section entitled "Proposal 1: The Mergers—Per Share Merger Consideration." You will not, however, receive any fractional Abbott shares in the mergers. Instead, you will receive cash in respect of any fraction of an Abbott share to which you otherwise would be entitled to receive. See the section entitled "The Merger Agreement—Effective Times, Effects of the Mergers; Organizational Documents of the Surviving Company; Directors and Officers." The implied value of the Abbott share portion of the merger consideration will fluctuate as the market price for Abbott shares fluctuates. You should obtain current stock price quotations for Abbott shares and St. Jude Medical shares before deciding how to vote with respect to approval of the merger agreement. St. Jude Medical shares and the Abbott shares are traded on the New York Stock Exchange under the symbols "STJ" and "ABT," respectively.

You are being asked to vote on the merger agreement and additional matters at St. Jude Medical's 2016 annual meeting of shareholders, which we refer to as the shareholders' meeting. **The St. Jude Medical board of directors unanimously recommends that St. Jude Medical shareholders vote "FOR" Proposal 1 to approve the merger agreement and also "FOR" Proposals 2 through 9 to be considered at the shareholders' meeting and "AGAINST" Proposal 10 to be considered at the shareholders' meeting.**

In considering the recommendation of the St. Jude Medical board of directors with regards to Proposals 1 and 2, you should be aware that certain of the St. Jude Medical directors and executive officers will have interests in the mergers that may be different from, or in addition to, the interests of St. Jude Medical shareholders generally. See the section entitled "Interests of St. Jude Medical's Directors and Executive Officers in the Mergers" of the accompanying proxy statement/prospectus.

Your vote is important. The mergers cannot be completed unless St. Jude Medical shareholders holding at least a majority of the St. Jude Medical shares outstanding as of the close of business on September 16, 2016, the record date for the shareholders' meeting, vote in favor of approval of the merger agreement at the shareholders' meeting. **The failure of any shareholder to vote will have the same effect as a vote against approving the merger agreement. Accordingly, whether or not you plan to attend the shareholders' meeting, you are requested to promptly vote your shares by proxy electronically via the Internet, by telephone or by sending in the appropriate paper proxy card as instructed in these materials.**

St. Jude Medical's shareholders' meeting will be held on October 26, 2016, beginning at 2:00 p.m. (Central Time), at the Minnesota History Center, located at 345 Kellogg Boulevard West, St. Paul, Minnesota, 55102.

This proxy statement/prospectus describes the shareholders' meeting, the mergers, the documents relating to the mergers and other related matters. **Please read carefully the entire proxy statement/prospectus, including the section entitled "Risk Factors" beginning on page 37, for a discussion of the risks relating to the proposed mergers, and the Annexes and documents incorporated by reference.**

Michael T. Rousseau
President and
Chief Executive Officer
St. Jude Medical, Inc.

Neither the U.S. Securities and Exchange Commission nor any state securities commission has approved or disapproved the mergers or other transactions described in the attached proxy statement/prospectus or the securities to be issued pursuant to the first merger under the attached proxy statement/prospectus, nor have they determined if the attached proxy statement/prospectus is accurate or adequate. Any representation to the contrary is a criminal offense.

The accompanying proxy statement/prospectus is dated September 26, 2016 and is first being mailed to St. Jude Medical shareholders on or about September 26, 2016.

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NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

Dear St. Jude Medical Shareholder:

You are cordially invited to attend St. Jude Medical's 2016 annual meeting of shareholders, which we refer to as the shareholders' meeting. The shareholders' meeting will be held on October 26, 2016, at 2:00 p.m. (Central Time), at the Minnesota History Center, located at 345 Kellogg Boulevard West, St. Paul, Minnesota, 55102, to consider and vote upon the following matters:

Proposal 1. to approve the Agreement and Plan of Merger, dated as of April 27, 2016, as it may be amended from time to time, by and among Abbott Laboratories, an Illinois corporation, St. Jude Medical, Inc., a Minnesota corporation, Vault Merger Sub, Inc., a Delaware corporation, and Vault Merger Sub, LLC, a Delaware limited liability company, and adopt the plan of merger (as such term is defined in Section 302A.611 of the Minnesota Business Corporation Act) contained therein;

Proposal 2. to approve, by advisory (non-binding) vote, certain compensation arrangements for St. Jude Medical's named executive officers in connection with the mergers contemplated by the merger agreement;

Proposal 3. to elect three members to the St. Jude Medical board of directors for terms ending in 2019;

Proposal 4. to approve, by advisory (non-binding) vote, the compensation of St. Jude Medical's named executive officers in 2015;

Proposal 5. to approve the St. Jude Medical, Inc. 2016 Stock Incentive Plan;

Proposal 6. to approve amendments to St. Jude Medical's articles of incorporation and bylaws to declassify the St. Jude Medical board of directors;

Proposal 7. to approve amendments to St. Jude Medical's bylaws to implement proxy access;

Proposal 8. to ratify the appointment of Ernst & Young LLP as St. Jude Medical's independent registered public accounting firm for 2016;

Proposal 9. to adjourn the shareholders' meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the shareholders' meeting to approve the merger agreement;

Proposal 10. a shareholder proposal regarding supermajority voting if properly presented at the meeting; and

any other business that may properly come before the meeting.

The accompanying proxy statement/prospectus further describes the matters to be considered at the shareholders' meeting. A copy of the merger agreement has been included as Annex A to the accompanying proxy statement/prospectus.

The record date for the shareholders' meeting is September 16, 2016. Only shareholders of record as of the close of business on September 16, 2016 are entitled to notice of, and to vote at, the shareholders' meeting. All shareholders of record as of that date are cordially invited to attend the shareholders' meeting in person. Attendance at the shareholders' meeting will be limited to St. Jude Medical shareholders as of the close of business on the record date or their authorized representatives, as more fully described under the section entitled "Information About the Shareholders' Meeting." If you wish to attend the meeting in person, you will need to register for the shareholders' meeting and print your admission ticket at www.proxyvote.com. An admission ticket and a form of valid government-issued photo identification must be presented in order to be admitted to the shareholders' meeting.

THE MERGER AGREEMENT

This section describes the material terms of the merger agreement. The descriptions of the merger agreement in this section and elsewhere in this proxy statement/prospectus are qualified in their entirety by reference to the complete text of the merger agreement, a copy of which is attached as Annex A and is incorporated by reference into this proxy statement/prospectus. This summary does not purport to be complete and may not contain all of the information about the merger agreement that is important to you. You are encouraged to carefully read the entire merger agreement.

Explanatory Note Regarding the Merger Agreement

The merger agreement is included to provide you with information regarding its terms. Neither the merger agreement nor the summary of its material terms included in this section is intended to provide any factual information about Abbott or St. Jude Medical. Factual disclosures about St. Jude Medical and Abbott contained in this proxy statement/prospectus and/or in the public reports of St. Jude Medical and Abbott filed with the SEC (as described in the section entitled "Where You Can Find More Information") may supplement, update or modify the disclosures about St. Jude Medical and Abbott contained in the merger agreement. The merger agreement contains representations and warranties and covenants of the parties customary for a transaction of this nature. The representations and warranties contained in the merger agreement were made only for purposes of the merger agreement as of the specific dates therein, were solely for the benefit of the parties to the merger agreement, may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to the merger agreement instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries under the merger agreement and should not rely on the representations and warranties or any descriptions thereof as characterizations of the actual state of facts or condition of the parties thereto or any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of representations and warranties may change after the date of the merger agreement, which subsequent information may or may not be fully reflected in Abbott's or St. Jude Medical's public disclosures. Accordingly, the representations and warranties in the merger agreement should not be relied on by any persons as characterizations of the actual state of facts about St. Jude Medical or Abbott at the time they were made or otherwise.

Effective Times, Effects of the Mergers; Organizational Documents of the Surviving Company; Directors and Officers

Effective Times

The merger agreement provides for two mergers: (i) a merger of Vault Merger Sub, Inc. with and into St. Jude Medical with St. Jude Medical surviving the merger as a wholly owned subsidiary of Abbott (we refer to St. Jude Medical after completion of the first merger as the first surviving corporation), promptly followed by (ii) a merger of St. Jude Medical, as the first surviving corporation, with and into Vault Merger Sub, LLC with Vault Merger Sub, LLC surviving the merger as a wholly owned subsidiary of Abbott (we refer to Vault Merger Sub, LLC after completion of the second merger as the surviving company). On the closing date, St. Jude Medical and Vault Merger Sub, Inc. will effect the first merger by filing a certificate of merger with the Secretary of State of the State of Delaware and articles of merger with the Secretary of State of the State of Minnesota. We refer to the time at which such first merger becomes effective as the first effective time. At the first effective time, all of the property, rights, privileges, immunities, powers and franchises of St. Jude Medical and Vault Merger Sub, Inc. will vest in St. Jude Medical as the first surviving corporation, and all of the liabilities, obligations and duties of St. Jude Medical and Vault Merger Sub, Inc. will become liabilities, obligations and duties of St. Jude Medical as the first surviving corporation. Promptly thereafter,

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St. Jude Medical and Vault Merger Sub, LLC will effect the second merger by filing a certificate of merger with the Secretary of State of the State of Delaware and articles of merger with the Secretary of State of the State of Minnesota. We refer to the time at which such second merger becomes effective as the second effective time. At the second effective time, all of the property, rights, privileges, immunities, powers and franchises of St. Jude Medical and Vault Merger Sub, LLC will vest in Vault Merger Sub, LLC as the surviving company, and all of the liabilities, obligations and duties of St. Jude Medical and Vault Merger Sub, LLC will become liabilities, obligations and duties of Vault Merger Sub, LLC as the surviving company.

Effects of the Mergers on Capital Stock

At the first effective time, each St. Jude Medical share issued and outstanding immediately prior to the first effective time, other than the canceled and dissenting shares described below, will automatically be converted into the right to receive the per share merger consideration of $46.75 in cash, without interest, and 0.8708 of an Abbott share, in each case less any applicable withholding taxes; provided that cash will be paid in respect of any fractional Abbott shares, as described in the section entitled "The Merger Agreement—Effective Times, Effects of the Mergers; Organizational Documents of the Surviving Company; Directors and Officers."

However, if dissenters' rights are exercised with regards to approximately 8.5% or greater of St. Jude Medical shares outstanding as of April 29, 2016, the per share merger consideration will be adjusted such that the aggregate stock consideration is equal to 41% of the sum of the aggregate stock consideration plus the aggregate cash amount, as calculated pursuant to the merger agreement. This potential for adjustment is intended to ensure that the mergers, taken together, satisfy the "continuity of interest" requirement applicable to a reorganization within the meaning of Section 368(a)(1)(A) of the Code.

Additionally, at the first effective time, each St. Jude Medical share issued and outstanding immediately prior to the first effective time that is owned, directly or indirectly, by (i) Abbott, (ii) any subsidiary of Abbott or (iii) any subsidiary of St. Jude Medical, which shares we refer to as canceled shares, will automatically be canceled and will cease to exist.

Further, at the second effective time, each share of common stock of the first surviving corporation will be automatically canceled and cease to exist. Each limited liability company interest of Vault Merger Sub, LLC issued and outstanding prior to the second effective time will remain outstanding as a limited liability company interest of the surviving company.

No consideration will be delivered in exchange for any canceled shares.

Each St. Jude Medical share issued and outstanding immediately prior to the first effective time and held by a person (i) who is entitled to demand and who has properly demanded dissenters' rights with respect to such shares, whom we refer to as a dissenting shareholder, and (ii) who complies in all respects with the provisions of the MBCA concerning the rights of St. Jude Medical shareholders to require payment by the surviving company of the "fair value" of such shares, which we refer to as dissenting shares, will not be converted into the right to receive the merger consideration. Instead, dissenting shares will become the right to receive whatever consideration may be determined to be due to such dissenting shareholder under Sections 302A.471 and 302A.473 of the MBCA. If any dissenting shareholder fails to perfect, waives, withdraws or otherwise loses dissenters' rights (or a court of competent jurisdiction determines that such holder is not entitled to exercise dissenter's rights), dissenting shares held by such dissenting shareholder will be treated as though such dissenting shares had been converted into the right to receive the merger consideration as of the first effective time. For more information regarding dissenter's rights, see the section entitled "Dissenters' Rights of St. Jude Medical Shareholders." In addition, a copy of Sections 302A.471 and 302A.473 are attached as **Annex F** to this proxy statement/prospectus.

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All St. Jude Medical shares converted into the right to receive the per share merger consideration will cease to exist as of the first effective time. St. Jude Medical shareholders will receive cash in respect of fractional Abbott shares to which they are otherwise entitled in connection with the mergers. The total amount of such fractional shares will be aggregated into a number of whole Abbott shares and sold by the exchange agent, as agent for the St. Jude Medical shareholders having an interest in those shares, in one or more transactions. Such St. Jude Medical shareholders will receive cash, without interest, in respect of such fractional shares in an amount equal to each such shareholder's proportionate interest in the aggregate proceeds of such sale or sales by the exchange agent (reduced by any fees of the exchange agent attributable to such sale or sales). We refer to such cash as the fractional share cash amount.

St. Jude Medical shares will, after the first effective time, represent only the right to receive the merger consideration and the right to receive any other amounts expressly provided in the merger agreement, without interest, subject to compliance with the exchange and payment procedures set forth in the merger agreement.

Organizational Documents of the Surviving Company; Directors and Officers

The articles of incorporation and bylaws of St. Jude Medical, as in effect immediately prior to the first effective time (with such modifications as determined by Abbott), will become the articles of incorporation and bylaws of the first surviving corporation.

The individuals holding positions as directors and officers of Vault Merger Sub, Inc. immediately prior to the first effective time will become the initial directors and officers of the first surviving corporation.

At the second effective time, the certificate of formation and limited liability company agreement of Vault Merger Sub, LLC, as in effect immediately prior to the second effective time, will be the certificate of formation and limited liability company agreement of the surviving company, except the references to Vault Merger Sub, LLC will be replaced with references to St. Jude Medical, LLC, until further amended in accordance with applicable law.

The individuals holding positions as directors and officers of Vault Merger Sub, LLC immediately prior to the second effective time will become the initial directors and officers of the surviving company.

Exchange and Payment Procedures

Prior to the first effective time, Abbott will enter into a customary exchange agreement in form reasonably acceptable to St. Jude Medical with a nationally recognized financial institution designated by Abbott and reasonably acceptable to St. Jude Medical. Prior to the first effective time, Abbott will deposit with the exchange agent (i) book-entry Abbott shares representing the full number of whole Abbott shares required to deliver the aggregate Abbott share portion of the merger consideration (disregarding for this purpose any adjustments for cash that will be paid in respect of fractional shares) and (ii) cash sufficient to pay the per share cash amount in exchange for outstanding St. Jude Medical shares as determined in accordance with the terms of the merger agreement. We refer to such cash and book-entry shares, along with the aggregate amount of any owed dividends or distributions that become due to the holders of converted St. Jude Medical shares, which Abbott will also deposit with the exchange agent, as the exchange fund.

Exchange of Book-entry St. Jude Medical Shares

Each holder of record of St. Jude Medical shares whose shares were held in book-entry form and were converted into the right to receive the per share merger consideration will automatically and upon

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the first effective time be entitled to receive, and Abbott will cause the exchange agent to pay and deliver as promptly as practicable after the first effective time (i) the per share merger consideration, (ii) any fractional share cash amount and (iii) the amount of any owed dividends or distributions.

Exchange of St. Jude Medical Share Certificates; Lost, Stolen or Destroyed Certificates

Within four business days after the first effective time, the exchange agent will mail to each record holder of a St. Jude Medical share certificate a letter of transmittal and instructions for surrendering St. Jude Medical share certificates in exchange for the merger consideration. Upon surrender of a St. Jude Medical share certificate and a duly executed letter of transmittal to the exchange agent in compliance with the instructions for surrender, Abbott will, in exchange for such certificates, cause the exchange agent to pay and deliver as promptly as practicable (i) the per share merger consideration, (ii) any fractional share cash amount and (iii) the amount of any owed dividends or distributions.

In the event of a transfer of ownership of St. Jude Medical share certificates that is not registered in St. Jude Medical's transfer records, payment may be made and shares may be issued to a person other than the person in whose name the surrendered St. Jude Medical share certificate is registered, if (i) the St. Jude Medical share certificate is properly endorsed (or otherwise in proper form for transfer) and (ii) the person requesting payment pays any required transfer taxes or establishes to the satisfaction of the surviving company that any required transfer taxes have been paid.

In the event that a St. Jude Medical share certificate was lost, stolen or destroyed, the previous holder of the St. Jude Medical share certificate may still obtain (i) the per share merger consideration, (ii) any fractional share cash amount and (iii) the amount of any owed dividends or distributions to which she or he would be entitled had she or he surrendered the lost, stolen or destroyed St. Jude Medical share certificate by (a) making an affidavit regarding the loss, theft or destruction of the St. Jude Medical share certificate (in form and substance reasonably acceptable to Abbott) and (b) posting a bond (in a reasonable amount as determined by Abbott or the exchange agent) as indemnity against any future claims against the surviving company with respect to the lost, stolen or destroyed St. Jude Medical share certificate. The letter of transmittal will include instructions regarding the procedures to be taken by a holder of a certificate if such holder has lost a certificate or if such certificate has been stolen or destroyed.

St. Jude Medical share certificates should not be surrendered by shareholders prior to the first effective time and should be sent only pursuant to instructions set forth in the letter of transmittal that will be mailed to shareholders as soon as reasonably practicable following the first effective time. In all cases with respect to St. Jude Medical shares certificates, the merger consideration will be provided only in accordance with the procedures set forth in such letter of transmittal.

No interest will be paid or accrue on any cash payable upon surrender of any St. Jude Medical share certificates.

Rights of St. Jude Medical Shareholders Following the First Effective Time and Transfers Following the Effective Times

The per share merger consideration paid in accordance with the terms of the merger agreement upon the surrender of certificates or book-entry shares will be deemed to be in full satisfaction of all rights pertaining to such St. Jude Medical shares (other than the right to receive dividends or other distributions, if any, in accordance with the merger agreement). After the first effective time, there will be no further registration of transfers on the transfer books of the surviving company and any certificates formerly representing St. Jude Medical shares that are presented to the surviving company or the exchange agent for any reason will be canceled and exchanged for the per share merger consideration.

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None of the parties to the merger agreement, the surviving company nor the exchange agent will be liable with respect to any Abbott shares or cash from the exchange fund delivered to a public official pursuant to any applicable abandoned property, escheat or similar law. Further, any merger consideration remaining unclaimed by former holders of St. Jude Medical shares immediately prior to when such amounts would otherwise escheat to or become property of any governmental authority will, to the fullest extent permitted by applicable law, become the property of the surviving company free and clear of any claims or interest of any person previously entitled thereto.

Withholding Rights

Abbott, the surviving company, and the exchange agent will each be entitled to deduct and withhold any amounts due under applicable tax laws from the amounts that would otherwise become payable under the terms of the merger agreement, and any such withheld amounts that are paid to the appropriate taxing authorities will be treated as having been paid or issued, as applicable, to the person from whom such amounts were originally withheld. With respect to withholding on payments made to a St. Jude Medical shareholder (including a St. Jude Medical shareholder that received its shares pursuant to the deemed exercise of a St. Jude Medical option), such withholding will be made first from the cash otherwise payable to such holder. If such cash is not sufficient for such purpose, such withholding will be made from the Abbott shares otherwise issuable to the holder (with the Abbott shares valued for this purpose at the fair market value of such shares at the time of the withholding).

Treatment of St. Jude Medical Equity Awards

Treatment of Stock Options

As described below, certain St. Jude Medical options will be deemed exercised upon the occurrence of the mergers and others will be assumed by Abbott and converted into similar Abbott options. Additionally, Abbott may elect to treat some or all St. Jude Medical options which otherwise would be assumed and converted into Abbott options as surrendered St. Jude Medical options and deem them exercised upon the occurrence of the mergers.

Each surrendered St. Jude Medical option will be deemed exercised pursuant to a cashless exercise and settled by the deemed issuance of a number of St. Jude Medical shares (rounded down to the nearest whole share, but with any partial shares otherwise issuable settled in cash) equal to the difference of (i) the number of St. Jude Medical shares subject to such surrendered St. Jude Medical option as of immediately prior to the first effective time minus (ii) the number of whole and partial (computed to the nearest four decimal places) St. Jude Medical shares that, when multiplied by the "Fair Market Value" (as defined in the applicable plan providing for such award), is equal to the aggregate exercise price of such surrendered St. Jude Medical option. Each St. Jude Medical share deemed issued pursuant to the deemed option exercise will be converted into the right to receive the per share merger consideration, less applicable withholding taxes.

Additionally, each option to purchase St. Jude Medical shares granted under a St. Jude Medical share plan and any other compensatory option to purchase St. Jude Medical shares (excluding any option granted under certain employee stock purchase plans) that is outstanding immediately prior to the first effective time and is not a surrendered St. Jude Medical option will be assumed by Abbott and converted into an option to acquire, on substantially the same terms and conditions, a number of Abbott shares equal to the product (rounded down to the nearest whole share) of (i) the number of St. Jude Medical shares subject to such option multiplied by (ii) the stock award exchange ratio, at an exercise price per Abbott share equal to the quotient (rounded up to the nearest whole cent) of (a) the per share exercise price for the St. Jude Medical shares subject to such assumed option as of immediately prior to the first effective time divided by (b) the stock award exchange ratio. Further, the vesting of each such converted option, to the extent then unvested, will accelerate in full upon the

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second anniversary of the first effective time if the holder of such award remains employed with Abbott or any of its subsidiaries through such date. Upon vesting, settlement will occur at such time as is permitted by applicable law and will be subject to applicable withholding taxes.

The merger agreement defines the "stock award exchange ratio" as the sum of (i) the exchange ratio (as it may be adjusted) plus (ii) the quotient of (a) the per share cash amount divided by (b) Abbott's volume-weighted average closing price for the five consecutive trading days ending on the complete trading day ending immediately prior to the closing.

Treatment of Restricted Share Awards

Each St. Jude Medical restricted share award that is outstanding immediately prior to the first effective time will vest as of the first effective time and be canceled and converted into the right to receive the per share merger consideration with respect to each St. Jude Medical share subject to such restricted share award, less applicable withholding taxes.

Treatment of Restricted Stock Units

As described below, certain restricted stock unit awards, or RSU awards, with respect to St. Jude Medical shares will be canceled and converted into the right to receive the per share merger consideration and others will be assumed by Abbott and converted into similar Abbott RSU awards. Additionally, Abbott may elect to treat some or all St. Jude Medical RSU awards which otherwise would be assumed and converted into Abbott RSUs as surrendered St. Jude Medical RSU awards, as defined below, cancel such surrendered St. Jude Medical RSU awards and convert them into the per share merger consideration.

At the first effective time, each surrendered St. Jude Medical RSU award will be canceled and converted into the right to receive the per share merger consideration (or, with respect to such surrendered St. Jude Medical RSU award that is settled in cash under its existing terms, the cash equivalent thereof) with respect to each St. Jude Medical share subject to such surrendered St. Jude Medical RSU award, less applicable withholding taxes.

Additionally, at the first effective time, each St. Jude Medical RSU award that (i) is outstanding immediately prior to the first effective time and (ii) is not a surrendered St. Jude Medical RSU award will be assumed by Abbott and converted into an Abbott RSU award, with substantially the same terms and conditions as were applicable to such St. Jude Medical RSU award, for a number of Abbott shares equal to the product (rounded to the nearest whole share) of (a) the number of St. Jude Medical shares subject to such St. Jude Medical RSU award multiplied by (b) the stock award exchange ratio (as defined in the merger agreement). Further, the vesting of each such assumed RSU award, to the extent then unvested, will accelerate in full upon the second anniversary of the first effective time if the holder of such award remains employed with Abbott or any of its subsidiaries through such date. Upon vesting, settlement will occur at such time as is permitted by applicable law and will be subject to applicable withholding taxes.

Employee Stock Purchase Plans

From and after the date of the merger agreement and through the first effective time, there will be no new offering periods under the St. Jude Medical 2007 Employee Stock Purchase Plan or under the St. Jude Medical Employee Stock Purchase Savings Plan maintained for St. Jude Medical employees located in Japan and, thus, any current offering period will be the final offering periods under such plans. Additionally, there will be no increase in the amount of payroll deductions permitted to be made by the participants in either plan during the current offering periods under each plan, except those made in accordance with payroll deduction elections effective prior to the date of the merger agreement. Further, no individuals will be permitted to commence participation in either plan, and the

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accumulated contributions of participants in both plans in each plan's respective current offering periods will be required to be used to purchase St. Jude Medical shares no later than five business days prior to the first effective time, and each plan's participants' purchase rights under such offerings will terminate immediately thereafter.

Representations and Warranties

The merger agreement contains customary and, in certain cases, reciprocal, representations and warranties by St. Jude Medical and Abbott that are: (i) subject, in some cases, to specified exceptions and qualifications contained in confidential disclosure letters and (ii) qualified by certain information filed by the parties with the SEC, excluding, in each case, any disclosures set forth in any risk factor section or other general statements to the extent they are cautionary, predictive or forward-looking in nature.

The reciprocal representations and warranties relate to, among other things:

- organization, good standing and qualification to do business;
- corporate authority and approval relating to the execution, delivery and performance of the merger agreement;
- the absence of any need for action by governmental authorities in order to complete the mergers, other than actions in connection with filing the certificates of merger and articles of merger, compliance with antitrust and securities laws, and compliance with applicable requirements of the NYSE;
- the absence of any conflict with or violation or breach of organizational documents or any conflict with or violation of agreements, laws or regulations as a result of the execution, delivery and performance of the merger agreement and completion of the mergers;
- capitalization;
- subsidiaries' organization, good standing and qualification to do business;
- the filing or furnishing of reports, forms, documents and financial statements required by the SEC and compliance with certain provisions of the Sarbanes-Oxley Act;
- financial statements;
- information provided by a party for inclusion in this proxy statement/prospectus;
- the absence of undisclosed liabilities;
- the absence of certain material changes or events in the respective businesses of each of St. Jude Medical and Abbott;
- compliance with applicable laws;
- investigations, litigations and proceedings; and
- broker's and finder's fees.

The merger agreement also contains additional representations and warranties by St. Jude Medical relating to, among other things, the following:

- real estate owned and leased by St. Jude Medical;
- St. Jude Medical's intellectual property;
- tax matters;

- St. Jude Medical's employment practices and employee benefit plans;
- the absence of claims against St. Jude Medical pertaining to environmental laws and St. Jude Medical's compliance with such laws;
- healthcare regulatory matters;
- St. Jude Medical's significant contracts and agreements;
- the opinion of St. Jude Medical's financial advisor;
- the inapplicability of antitakeover statutes;
- compliance with applicable anticorruption laws; and
- insurance plans.

The merger agreement also contains additional representations and warranties by Abbott relating to, among other things, the following:

- commitments for Abbott to obtain the debt financing required to consummate the transaction;
- the absence of beneficial ownership of St. Jude Medical shares by Abbott, Vault Merger Sub, Inc., and Vault Merger Sub, LLC;
- tax matters in relation to the transaction; and
- the absence of a need for a vote of Abbott shareholders to approve the mergers.

The representations and warranties will not survive the mergers. Many of the representations and warranties contained in the merger agreement are qualified by a "materiality" standard or by a "material adverse effect" standard.

A material adverse effect, with respect to St. Jude Medical or Abbott, as applicable, means any effect, change, condition, occurrence or event that, individually or in the aggregate, (i) has had or would reasonably be expected to have a material adverse effect on the business, assets, results of operations or financial condition of the party and its subsidiaries, taken as a whole, or (ii) would prevent, materially delay or materially impair the ability of the party to perform its obligations under the merger agreement or to consummate the mergers, excluding, in the case of clauses (i) and (ii), any effect, change, condition, occurrence or event to the extent resulting from or arising out of or attributable to (a) the credit, financial or securities markets or general economic or political conditions in the United States or elsewhere in the world, including changes in interest or exchange rates, except to the extent any such effect, change, condition, occurrence or event has a disproportionate adverse effect on the party and its subsidiaries, taken as a whole, relative to other participants in the industries in which the party and its subsidiaries operate, (b) conditions generally affecting the industries in which the party and its subsidiaries operate, except to the extent any such effect, change, condition, occurrence or event has a disproportionate adverse effect on the party and its subsidiaries, taken as a whole, relative to other participants in the industries in which the party and its subsidiaries operate, (c) acts of war (whether or not declared), sabotage or terrorism or any escalation or worsening of any such acts of war (whether or not declared), sabotage or terrorism, or natural disasters (including hurricanes, tornadoes, floods, volcanoes, tsunamis, pandemics or earthquakes), except to the extent any such effect, change, condition, occurrence or event has a disproportionate adverse effect on the party and its subsidiaries, taken as a whole, relative to other participants in the industries in which the party and its subsidiaries operate, (d) any failure by the party and its subsidiaries to meet any internal or published projections, forecasts, predictions, guidance, budgets or internal or published financial or operating predictions of revenue, earnings, cash flow or cash position, (e) changes or proposed changes in law (including changes or proposed changes in generally applicable rules, regulations and administrative policies of the FDA) or GAAP or the authoritative interpretations thereof, except to the

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extent any such effect, change, condition, occurrence or event has a disproportionate adverse effect on the party and its subsidiaries, taken as a whole, relative to other participants in the industries in which the party and its subsidiaries operate, (f) the execution and delivery of the merger agreement, the performance of the transactions contemplated by the merger agreement and the consummation of the mergers and the announcement of the foregoing (other than, for purposes of certain enumerated representations and warranties of each party), including the impact thereof on relationships, contractual or otherwise, with customers, suppliers, distributors, partners, employees or regulators, or any litigation arising from allegations of breach of fiduciary duty or violation of law relating to the merger agreement or the transactions contemplated by the merger agreement, (g) any action taken by the party or its subsidiaries that is required to comply with the merger agreement (other than for purposes of certain enumerated representations and warranties of each party), or that is taken with the other party's written consent or at the other party's written request, (h) any change or proposed change in the party's credit ratings or (i) any decline in the market price, or change in trading volume, of the capital stock of the party (it being understood that clauses (d), (h) and (i) will not prevent the underlying cause of any such effect, change, condition, occurrence or event (to the extent not otherwise falling within any of the exceptions provided by clauses (a) through (c), and (e) through (g) hereof) from being taken into account in determining whether there has been a material adverse effect); provided, however, that with respect to a disproportionate adverse effect referred to in clauses (a), (b), (c) or (e), only the incremental disproportionate impact or impacts may be taken into account in determining whether there has been, or would reasonably be expected to be, a material adverse effect.

Conduct of Businesses of St. Jude Medical and Abbott Prior to Completion of the Mergers

Pursuant to the terms of the merger agreement, each of St. Jude Medical and Abbott agreed that, except as expressly contemplated by the merger agreement, subject to certain exceptions or unless the other party approves in writing (such approval not to be unreasonably withheld, delayed or conditioned), between the date of the merger agreement and the first effective time, it will, and will cause each of its subsidiaries to conduct its business in the ordinary course in all material respects and to the extent consistent with that, will use commercially reasonable efforts to:

- preserve substantially intact its business organization;
- maintain in effect all of its material foreign, federal, state and local licenses, permits, consents, franchises, approvals and authorizations;
- preserve generally its existing business relationships with its key customers, distributors, lenders, suppliers and others having significant business relationships with it;
- preserve generally its existing relationships with governmental authorities with jurisdiction over its operations; and
- retain generally its key employees.

Unless approved by the other party in writing (such approval not to be unreasonably withheld, delayed or conditioned), each of St. Jude Medical and Abbott also agreed not to, and not to permit any of its subsidiaries to:

- adopt or publicly propose a plan of complete or partial liquidation or resolutions providing for or authorizing such a liquidation or dissolution; or
- take or knowingly fail to take any action that could reasonably be expected to prevent the mergers, taken as a whole, from qualifying as a "reorganization" within the meaning of Section 368(a) of the Code.

St. Jude Medical also has agreed that, except as expressly contemplated by the merger agreement, subject to certain exceptions or unless Abbott approves in writing (such approval not to be

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unreasonably withheld, delayed or conditioned), between the date of the merger agreement and the first effective time, it will not, nor permit any of its subsidiaries to:

- amend its articles of incorporation or bylaws;
- split, combine or reclassify any of its capital stock;
- (i) declare or pay any distribution on St. Jude Medical shares (except a quarterly dividend payable to holders of St. Jude Medical capital stock in an amount not to exceed $0.31 per share) or (ii) offer to or redeem or otherwise acquire, any shares of its capital stock, or any other instruments convertible into or exchangeable for any shares of its capital stock, which we refer to as St. Jude Medical securities (except for acquisitions of St. Jude Medical shares in connection with certain exercises, settlements or vesting of St. Jude Medical options and St. Jude Medical stock awards in compliance with the merger agreement), in each case subject to an exception for transactions solely among St. Jude Medical and its wholly owned subsidiaries or solely among St. Jude Medical's wholly owned subsidiaries, which we refer to as intercompany transactions;
- issue, deliver or sell (or authorize any of the forgoing) any St. Jude Medical securities or St. Jude Medical subsidiary securities, other than (a) the issuance of St. Jude Medical shares under certain employee stock purchase plans, (b) upon the exercise of St. Jude Medical stock options or the settlement of St. Jude Medical RSU awards or St. Jude Medical restricted share awards in compliance with the terms of the merger agreement and (c) as part of an intercompany transaction;
- incur or commit to any capital expenditures in each of fiscal years 2016 and 2017 that exceed the amount budgeted in St. Jude Medical's respective 2016 and 2017 capital expenditure plans, in each case by more than 5%, which we refer to as capital expenditure limits;
- acquire, directly or indirectly, any assets in excess of $5 million individually or $25 million in the aggregate, other than (i) ordinary course purchases of supplies, inventory, merchandise, products and materials (including repurchases), (ii) pursuant to any material contract or agreement in effect as of the date of the merger agreement, (iii) capital expenditures made in accordance with the applicable capital expenditure plan or pursuant to intercompany agreements solely among St. Jude Medical and its wholly owned subsidiaries, or (iv) purchases of securities pursuant to cash management programs made in the ordinary course of business;
- license, lease or transfer (including sales) any of St. Jude Medical's or its subsidiaries' assets (other than intellectual property rights) that have a fair market value of (or for a purchase price in excess of) $5 million individually or $25 million in the aggregate, other than (i) ordinary course transfers of inventory or equipment to customers; (ii) ordinary course leases or transfers of surplus, worn out or obsolete assets that are no longer used or useful to St. Jude Medical's or its subsidiaries' respective businesses, (iii) transfers solely among St. Jude Medical and its wholly owned subsidiaries, (iv) leases and subleases of real property owned by St. Jude Medical or its subsidiaries and leases or subleases of real property under which St. Jude Medical or any of its subsidiaries is a tenant or subtenant (in each case not involving aggregate lease payments in excess of $5 million individually or $25 million in the aggregate) and (v) sales of securities pursuant to cash management programs in the ordinary course of business;
- make any investment in any other person or form or acquire any subsidiary that is not wholly owned by St. Jude Medical or any of its wholly owned subsidiaries, other than (i) purchases of securities pursuant to cash management programs in the ordinary course of business and (ii) investments in any wholly owned subsidiaries of St. Jude Medical;
- incur any indebtedness for borrowed money (or any related guarantee), sell any debt securities or enter into, modify or terminate any contract with respect to indebtedness for borrowed money

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(or any related guarantee), except for, in each case, (i) intercompany indebtedness solely among St. Jude Medical and its wholly owned subsidiaries or (ii) certain interim actions with respect to indebtedness as permitted by the merger agreement;

- enter into certain contracts with restrictions on competing or conducting certain lines of business that grant an exclusivity or "most favored nation" right (subject to certain exceptions);

- (i) materially modify, terminate or waive, release or assign any material rights under a material contract or (ii) enter into any contract that would have been a material contract to St. Jude Medical had it been entered into prior to the date of the merger agreement, other than, in each case, (a) in the ordinary course of business in a manner not material to St. Jude Medical and its subsidiaries, taken as a whole, (b) capital expenditures in accordance with the applicable capital expenditure limit, or (c) certain interim actions with respect to indebtedness permitted by the merger agreement;

- (i) recognize any material new labor organization or other similar employee representative, or (ii) except as may be required by law, negotiate, enter into, modify or terminate any material collective bargaining agreement or similar instrument that would be a material collective bargaining agreement under the terms of the merger agreement if it were in effect on the date of the merger agreement;

- grant any equity or equity-based awards (subject to certain exceptions);

- except as required pursuant to the terms of any St. Jude Medical compensation or benefit plan or other similar arrangement (which we refer to as a St. Jude Medical plan) in effect on the date of the merger agreement, (i) grant any increase in compensation (including gross-up and indemnity obligations) to any current or former employee, director or independent contractor of St. Jude Medical or any of its subsidiaries other than increases in annual base salary or hourly wages during St. Jude Medical's 2017 fiscal year to employees who are not executive officers in the ordinary course of business and in a manner consistent with past practices (subject to certain limitations included in St. Jude Medical's confidential disclosure letter), (ii) grant or increase any severance, retention or termination payments or benefits to any current or former St. Jude Medical employee, (iii) establish, terminate or amend any St. Jude Medical plan or any similar arrangement that would have been a St. Jude Medical plan if it were in existence on the date of the merger agreement (other than ordinary course amendments consistent with past practice that do not enhance benefits or increase the cost of providing such benefits), (iv) take any action to accelerate funding or any rights or benefits under any St. Jude Medical plan, (v) hire, appoint or promote any employee if the person would have an aggregate annual base salary and target bonus opportunity (excluding commission-based compensation) in excess of $500,000, or hire or promote any independent contractor with annual total compensation that in the aggregate would exceed $500,000, or (vi) change any assumptions used to calculate funding obligations for or change the manner in which or basis on which contributions are made to any St. Jude Medical plan (except as required by GAAP);

- make any material changes to St. Jude Medical's methods of financial accounting, except as may be required by (i) GAAP (or any authoritative interpretation thereof), (ii) by any applicable law, including Regulation S-X of the Exchange Act, or (iii) any governmental authority or quasi-governmental authority (including the Financial Accounting Standards Board or any similar organization);

- (i) except in the ordinary course of business, make any material election with respect to taxes, (ii) change any material election with respect to taxes, (iii) amend any material tax return (except as is consistent with the merger agreement or settlement of any claim or assessment described in the following clause (iv)), or (iv) agree or settle any material claim or assessment in

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respect of taxes for an amount materially in excess of the amount reserved therefor on St. Jude Medical's balance sheet as of January 2, 2016 (as included in its fiscal year 2015 Annual Report on Form 10-K);

- settle any pending or threatened legal, administrative or investigative proceeding (other than tax proceedings) except for settlements of non-criminal proceedings that (i) involve monetary payments not exceeding (a) $5 million individually or $25 million in the aggregate (exclusive of any amounts covered by insurance) or (b) the amount (if any) reserved for such proceeding on St. Jude Medical's balance sheet as of January 2, 2016, (ii) do not impose any material restriction on the businesses of St. Jude Medical or any of its subsidiaries, (iii) do not involve the admission of wrongdoing by St. Jude Medical or any of its subsidiaries, (iv) do not involve any injunctive, equitable or other non-monetary relief (except for insignificant ancillary non-monetary relief), (v) provide for a complete release of the claims in dispute and (vi) do not involve any license, cross license or similar arrangement with respect to St. Jude Medical's intellectual property rights;

- (i) fail to maintain or defend any challenge to any material registered intellectual property rights owned by St. Jude Medical or its subsidiaries, or to any material intellectual property rights exclusively licensed to St. Jude Medical or its subsidiaries (to the extent it or a subsidiary has the right to take such action or cause such action to be taken), (ii) fail to maintain any contract that licenses material intellectual property rights to St. Jude Medical or its subsidiaries, (iii) disclose to any third party (other than to Abbott or under a confidentiality agreement) any trade secret of St. Jude Medical or its subsidiaries in a way that will lead to loss of trade secret protection (except in connection with a patent application filed by St. Jude Medical or its subsidiaries) or (iv) transfer or otherwise encumber any material intellectual property rights of St. Jude Medical or its subsidiaries other than non-exclusive licenses ancillary to research, development, manufacture, clinical testing, sales, distribution and commercialization activities entered into in the ordinary course of business consistent with past practice;

- enter into any hedging arrangements other than for purposes of offsetting a bona fide exposure (including counterparty risk);

- grant any lien (with limited exceptions) on any of St. Jude Medical's material assets other than (i) to secure indebtedness and other obligations to the extent permitted under the interim operating covenant restricting incurrence of indebtedness as described above or (ii) to a wholly owned subsidiary of St. Jude Medical; or

- agree or commit to do any of the foregoing.

Abbott has also agreed that, except as expressly contemplated by the merger agreement, subject to certain exceptions or unless St. Jude Medical approves in writing (such approval not to be unreasonably withheld, delayed or conditioned), between the date of the merger agreement and the first effective time, it will not:

- amend its articles of incorporation or by-laws in a manner that would have a material and adverse impact on the value of Abbott shares or would prevent, materially delay or materially impair the ability of Abbott to perform its obligations under the merger agreement or to consummate the mergers (except that this covenant does not apply to an amendment to Abbott's articles of incorporation to increase the number of authorized shares of any class);

- declare, set aside or pay any distribution with respect to Abbott shares with a record date prior to closing, except for quarterly dividends in amounts consistent with past practice (including annual adjustments consistent with past practice) consistent with prior timing;

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- to the extent it would reasonably be expected to materially delay or prevent closing of the mergers, redeem or acquire, or offer to redeem or acquire, any Abbott shares or any other instruments convertible into or exchangeable for any Abbott shares;
- issue, deliver or sell (or authorize any of the forgoing) a number of Abbott shares that would violate Section 312.03(c) of the NYSE Listed Company Manual if Abbott's shareholders do not approve such action;
- acquire, directly or indirectly, any assets if any such acquisition, either individually or in the aggregate, would reasonably be expected to materially delay or adversely affect in any material respect the satisfaction of the closing conditions relating to the receipt of specified regulatory approvals; or
- agree or commit to do any of the foregoing.

No Solicitation

Except as expressly permitted by the merger agreement, St. Jude Medical agreed that it will not, and that it will cause its affiliates and its and their respective officers, directors and employees not to (and will use its reasonable best efforts to cause its and its affiliates' other representatives not to), directly or indirectly:

- solicit, initiate or knowingly encourage any inquiry, proposal, indication of interest or offer that constitutes, or would reasonably be expected to lead to, a company acquisition proposal (as defined below);
- approve or recommend, or propose to approve or recommend, a company acquisition proposal;
- approve or recommend, or propose to approve or recommend, or execute or enter into any alternative acquisition agreement (as defined below);
- enter into, continue or otherwise participate in any discussions or negotiations regarding any company acquisition proposal; or
- agree to do any of the foregoing actions.

Under the merger agreement, a "company acquisition proposal" means any inquiry, proposal, indication of interest or offer from any person (other than Abbott and its subsidiaries or affiliates) relating to (i) any direct or indirect acquisition or purchase of the business or assets (based on the fair market value thereof) (including equity interests in subsidiaries) of St. Jude Medical or any of its subsidiaries representing 15% or more of the consolidated revenues, net income or assets of St. Jude Medical and its subsidiaries, (ii) any issuance, sale or other disposition, directly or indirectly, to any person of securities representing 15% or more of the total voting power of St. Jude Medical, (iii) any tender offer or exchange offer that if consummated would result in any person, directly or indirectly, beneficially owning 15% or more of the outstanding St. Jude Medical shares, (iv) any merger, consolidation, amalgamation, share exchange, business combination, reorganization, recapitalization, liquidation, dissolution, or similar transaction involving St. Jude Medical or any of its subsidiaries pursuant to which any person (or the shareholders of any person) would acquire, directly or indirectly, more than 15% of the consolidated assets of the company and its subsidiaries (based on the fair market value thereof) or more than 15% of the aggregate voting power of the St. Jude Medical or of the surviving entity or (v) any combination of the foregoing, in each case, other than the merger agreement and the transactions contemplated by the merger agreement.

Under the merger agreement, an "alternative acquisition agreement" means any letter of intent, memorandum of understanding, merger agreement or other similar agreement relating to any company acquisition proposal (other than a confidentiality agreement that (i) does not contain any provision that

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would prevent St. Jude Medical from complying with its obligation to provide any disclosure regarding a company acquisition proposal to Abbott as required by the merger agreement and (ii) that contains confidentiality provisions no less favorable in the aggregate to St. Jude Medical than the confidentiality agreement in effect between St. Jude Medical and Abbott immediately prior to execution of the merger agreement, except that such confidentiality agreement need not contain a standstill provision or otherwise restrict the making of or amendment or modification of a company acquisition proposal, which we refer to as an acceptable confidentiality agreement).

However, if the following conditions are met, St. Jude Medical is permitted, in response to receipt of a company acquisition proposal, to furnish information with respect to St. Jude Medical and its subsidiaries and engage in discussions or negotiations with a person or persons making such company acquisition proposal:

- the subject company acquisition proposal: (i) must be written and bona fide, (ii) must have been made after the date of the merger agreement, (iii) must have been received prior to obtaining approval of the first merger and approval of the merger agreement by the St. Jude Medical shareholders, and (iv) must not have resulted from breach of the non-solicitation covenant; and

- the St. Jude Medical board of directors has determined in good faith, after consultation with St. Jude Medical's outside financial advisors and outside legal counsel, (i) that the company acquisition proposal is or is reasonably expected to lead to a superior proposal (as defined below) and (ii) that a failure to furnish information in response to or engage in discussions or negotiations related to the company acquisition proposal is reasonably likely to be inconsistent with St. Jude Medical's directors' fiduciary duties.

Additionally, prior to furnishing such information or engaging in such discussions or negotiations, St. Jude Medical must (i) enter into an acceptable confidentiality agreement with the person or persons making the company acquisition proposal and (ii) promptly (and in any event within 24 hours) following furnishing any such nonpublic information to such person, furnish such nonpublic information to Abbott (to the extent such nonpublic information has not been previously so furnished to Abbott or its representatives).

As used in the merger agreement, a superior proposal means a bona fide written company acquisition proposal made after the date of the merger agreement from any person (other than Abbott and its subsidiaries or affiliates) (with all references to "15% or more" in the definition of company acquisition proposal being deemed to reference "50% or more") which the St. Jude Medical board has, after consultation with St. Jude Medical's financial advisors and outside legal counsel, determined in its good-faith judgment would, if consummated, result in a transaction more favorable to its shareholders from a financial point of view than the transactions contemplated by the merger agreement and is reasonably capable of being completed on the terms proposed, taking into account all financial, legal, regulatory, timing, financing and other aspects thereof that the St. Jude Medical board deems relevant.

Existing Discussions or Negotiations; Required Notification of Abbott

Under the terms of the merger agreement, St. Jude Medical agreed to immediately cease any discussions or negotiations with any person regarding a company acquisition proposal that may have been ongoing. Further, St. Jude Medical agreed to use its reasonable best efforts to have any confidential information that might have been provided to any person in connection with any such discussions or negotiations returned to it.

St. Jude Medical also agreed to promptly (and in any event within 24 hours of receipt or knowledge of receipt by a St. Jude Medical officer or director) notify Abbott of the receipt of a company acquisition proposal or any inquiries or proposals with respect to a company acquisition proposal. Such notice must include the identity of the person or persons making the company

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acquisition proposal (or the related proposal or inquiry) and the material terms thereof. Further, after giving such a notice, St. Jude Medical must keep Abbott reasonably informed, on a prompt basis (and, in any event, within 24 hours of receipt or knowledge or receipt by an officer or director of St. Jude Medical) of any material amendments or material developments related to the proposal, inquiry or company acquisition proposal underlying the notice. These updates must include copies of any revised or new documents evidencing or delivered in connection to the proposal, inquiry or company alternative proposal underlying the initial notice.

No Change in Recommendation or Entry into Alternative Acquisition Agreement

Subject to certain exceptions described below, the St. Jude Medical board of directors may not take any action to:

- (i) withhold or withdraw (or modify or qualify in a manner adverse to Abbott) or propose publicly to withhold or withdraw (or modify or qualify in a manner adverse to Abbott), the St. Jude Medical board of director's recommendation to the St. Jude Medical shareholders to approve the merger agreement, which we refer to as the St. Jude Medical board recommendation, (ii) approve, recommend, or publicly propose to approve or recommend any company acquisition proposal or (iii) following any company acquisition proposal structured as a tender or exchange offer, fail, within 10 business days of the commencement thereof pursuant to Rule 14d-2 of the Exchange Act, to recommend against acceptance of any such tender or exchange offer by the St. Jude Medical shareholders, or subsequently withdraw (or modify or qualify in a manner adverse to Abbott) any such recommendation. We refer to any action in described in (i), (ii) or (iii) of the preceding sentence as a company adverse recommendation change; or

- cause or permit St. Jude Medical or any of its subsidiaries to enter into any alternative acquisition agreement.

Fiduciary Exception

However, at any time before the St. Jude Medical shareholder approval is obtained, St. Jude Medical may, subject to the conditions described in the next sentence, (i) make a company adverse recommendation change or (ii) cause St. Jude Medical to enter into an alternative acquisition agreement with respect to a company acquisition proposal that did not result from a breach of the non-solicitation covenant and terminate the merger agreement (as described more fully below in the section "The Merger Agreement—Termination of the Merger Agreement"). St. Jude Medical may take the actions described in the preceding sentence if and only if, the St. Jude Medical board of directors concludes in good faith, after consultation with St. Jude Medical's outside financial advisors and outside legal counsel, that (a) in the case of a proposed company adverse recommendation change not made in response to a company acquisition proposal, failure to take such action is reasonably likely to be inconsistent with the St. Jude Medical directors' fiduciary duties or (b) in the case of a proposed company adverse recommendation change in response to, or entering into a proposed alternative acquisition agreement with respect to, a company acquisition proposal, such company acquisition proposal constitutes a superior proposal and failure to take such action is reasonably likely to be inconsistent with St. Jude Medical's directors' fiduciary duties.

Prior to making any company adverse recommendation change and/or causing St. Jude Medical to enter into any alternative acquisition agreement, (i) the St. Jude Medical board of directors must provide Abbott five calendar days' prior written notice of any intention to make such company adverse recommendation change and/or cause St. Jude Medical to enter into any alternative acquisition agreement (including, among other things, the reasons therefor); (ii) during the five calendar days following the delivery of such written notice, St. Jude Medical must negotiate in good faith with Abbott

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regarding any revisions or changes to the merger agreement or the mergers proposed by Abbott; and (iii) after the five calendar days, the St. Jude Medical board of directors must conclude in good faith, after consultation with financial advisors and outside legal counsel, that (a) the company acquisition proposal continues to be a superior proposal (or, if the proposed company adverse recommendation change is not in response to a company acquisition proposal, that failure to make the company adverse recommendation change is reasonably likely to be inconsistent with the St. Jude Medical directors' fiduciary duties) and (b) failure to make a company adverse recommendation change would continue to be reasonably likely to be inconsistent with the St. Jude Medical board of directors' fiduciary duties.

In the event of any change in the financial terms of or any material amendment or modification to any superior proposal (or, if the proposed company adverse recommendation change does not relate to a company acquisition proposal, any material change to the underlying relevant facts and circumstances), St. Jude Medical must again satisfy the notice and other requirements set out in the preceding paragraph (except that the five calendar day period will instead be the longer of (i) two calendar days or (ii) the amount of time remaining in the initial five calendar day period).

Additionally, unless the merger agreement has been validly terminated, the St. Jude Medical board must submit the merger agreement for approval by the St. Jude Medical shareholders at the shareholders' meeting required by the merger agreement and described below (regardless of whether St. Jude Medical makes a company adverse recommendation change). In the event there is a company adverse recommendation change made in compliance with the merger agreement and in response to a superior proposal, St. Jude Medical may only enter into an alternative acquisition agreement with respect to the superior proposal by concurrently terminating the merger agreement and paying Abbott a $685 million termination fee. We refer to this termination right as the fiduciary termination right.

St. Jude Medical is not prohibited from (i) taking and disclosing to its shareholders a position contemplated by Exchange Act Rule 14e-2(a) or making a statement contemplated by Exchange Act Rule 14d-9 or item 1012(a) of Regulation M-A or (ii) making any disclosure to its shareholders that is required by applicable law. However, if any disclosure or statement contemplated by (i) or (ii) of the preceding sentence constitutes a company adverse recommendation change, it is subject to all provisions of the merger agreement applicable to company adverse recommendation changes.

St. Jude Medical Shareholder Meeting

St. Jude Medical has agreed to call, give notice of, convene and hold a meeting of its shareholders for the purpose of obtaining the St. Jude Medical shareholder approval, which we refer to as the company shareholder meeting, as promptly as practicable (but in no event later than 50 days) after this registration statement on Form S-4 of which this proxy statement/prospectus forms a part is declared effective under the Securities Act. Except as described above with respect to a company adverse recommendation change, the St. Jude Medical board of directors will recommend approval of the first merger and adoption of the plan of merger and approval related transactions in the proxy statement/prospectus. Additionally, St. Jude Medical will use its reasonable best efforts to solicit from its shareholders proxies in favor of the approval of the first merger and adoption of the plan of merger agreement and will take all other action as reasonably necessary or advisable to secure the approval and adoption of the foregoing.

St. Jude Medical may adjourn, recess or postpone the company shareholder meeting, (i) after consultation with Abbott, to the extent necessary to ensure that any required supplement or amendment to the proxy statement/prospectus is provided to its shareholders within a reasonable amount of time in advance of the meeting, (ii) if at the time that the meeting is originally scheduled (as stated in this proxy statement/prospectus) there are insufficient St. Jude Medical shares represented to constitute a quorum necessary to conduct the business of the meeting or (iii) to solicit additional proxies if, at the time the meeting is originally scheduled, insufficient St. Jude Medical shares have

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been voted in favor of approval of the merger agreement to obtain the St. Jude Medical shareholder approval contemplated by the merger agreement. However, St. Jude Medical is not permitted to adjourn, recess or postpone the company shareholder meeting for more than 30 days (with respect to any one adjournment or postponement) without Abbott's prior written consent which cannot be unreasonably withheld, delayed or conditioned.

The parties have agreed that regardless of whether there is a company adverse recommendation change, the St. Jude Medical shareholder meeting will be held unless the merger agreement is terminated in accordance with its terms.

Financing

Abbott's Financing Obligations

Abbott has agreed in the merger agreement to, and to cause its subsidiaries to, use its and their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary, proper or advisable to timely arrange and obtain, on the terms and conditions set forth in the financing commitment letters, the proceeds of the debt financing in an amount sufficient, together with other financial resources available to Abbott, to consummate the transactions contemplated by the merger agreement (including making all payments required to be made by Abbott thereunder). In furtherance of the foregoing, to the extent necessary to consummate the transactions contemplated by the merger agreement, Abbott has agreed to use, and to cause its subsidiaries to use, its and their reasonable best efforts to: (i) maintain in full force and effect the financing commitment letters with the terms and subject to the conditions set forth therein (subject to certain exceptions), (ii) negotiate, execute and deliver (and use reasonable best efforts to cause any other parties to the financing commitment letters to negotiate, execute and deliver) definitive agreements in respect of the debt financing contemplated by the financing commitment letters on the terms and conditions (including, as necessary, "market flex" terms and conditions) contained in the financing commitment letters), which we refer to as the definitive financing agreements and (iii) satisfy on a timely basis all the conditions applicable to Abbott to the funding of the debt financing as set forth in the financing commitment letter or the definitive financing agreements, as applicable, within Abbott's control. In the event that all conditions to the mergers applicable to St. Jude Medical or to both Abbott and St. Jude Medical are satisfied or waived (or upon funding shall be satisfied or waived), Abbott is required to use its reasonable best efforts to cause the commitment parties to fund the debt financing on the closing date, to the extent the proceeds thereof are required to consummate the transactions contemplated by the merger agreement.

Further, without the prior consent of St. Jude Medical (such consent not to be unreasonably withheld, delayed or conditioned), Abbott is not permitted (subject to exceptions permitting additions to or replacements of lenders, lead arrangers, bookrunners, syndication agents or similar entities and the implementation or exercise of any market flex provisions contained in the financing commitment letters) to amend or modify, or waive any provision or remedy under, the financing commitment letter or the definitive financing agreements if such amendment, modification or waiver: (i) reduces the aggregate amount of debt financing unless the aggregate amount of the debt financing following such reduction, together with other financial resources available to Abbott, is sufficient to consummate the transactions contemplated by the merger agreement, (ii) expands the conditions or other contingencies relating to the receipt or funding of the debt financing or imposes additional conditions or other contingencies relating to the funding of the debt financing, in a manner that in any such case would reasonably be expected to (a) materially delay funding or make materially less likely the funding of the debt financing (or satisfaction of the conditions to the debt financing) on the closing date, (b) materially adversely impact Abbott's ability to enforce its rights against parties to any financing commitment letter or definitive financing agreement or (c) materially adversely affect Abbott's ability to timely consummate the mergers and the other transactions contemplated by the merger agreement.

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If funds in the amounts set forth in the financing commitment letter or the definitive financing agreements, or any portion thereof, become unavailable, Abbott will, and will cause its subsidiaries to, as promptly as practicable following the occurrence of such event, use its or their reasonable best efforts to obtain substitute financing sufficient, together with other financial resources available to Abbott, to consummate the transactions contemplated by the merger agreement.

Abbott is also permitted to substitute commitments in respect of other financing from the same and/or alternative third-party financing sources for all or any portion of the debt financing so long as (i) all conditions precedent to the availability of such substitute financing have been satisfied or are no less favorable in any material respect to Abbott than the conditions precedent set forth in the financing commitment letters and (ii) the aggregate amount of the debt financing is not reduced as a result of such substitution if, as a result of such reduction, such reduced amount would not be sufficient, together with other financial resources available to Abbott, to consummate the transactions contemplated by the merger agreement.

Financing Cooperation

In the merger agreement, St. Jude Medical has agreed to, to cause its subsidiaries to, and to use reasonable best efforts to cause its and their representatives to provide all cooperation that is necessary, customary or advisable and reasonably requested by Abbott to assist Abbott in arranging, obtaining and syndicating any debt or equity financing in connection with the transactions contemplated by the merger agreement. See the section entitled "Proposal 1: The Mergers—Financing of the Mergers."

Access to Information

Subject to certain limitations, prior to the first effective time and upon reasonable notice, St. Jude Medical and its subsidiaries will afford Abbott and its representatives reasonable access during normal business hours to all of St. Jude Medical's and its subsidiaries' properties, books, contracts, commitments, records, officers and employees (other than to the extent related to the negotiation and execution of the merger agreement or, without limiting the no-solicitation covenant, to any company acquisition proposal or any other transactions or related proposals potentially competing with or alternative to the mergers).

Expenses

Except as otherwise provided in the merger agreement, whether or not the mergers are consummated, all costs and expenses incurred in connection with the merger agreement will be paid by the party incurring such costs or expenses. Except as otherwise provided in the merger agreement, all transfer, documentary, sales, use, stamp, registration, value added or other taxes and fees payable by St. Jude Medical or any of its subsidiaries in connection with the mergers will be paid by the surviving company (or the applicable subsidiary of the surviving company).

Employee Matters

Subject to the requirements of applicable law and the terms of any applicable collective bargaining agreement, Abbott will, until the later of December 31, 2017 and the first anniversary of the first effective time, provide each employee who continues to be employed by Abbott or its subsidiaries immediately following the first effective time, who we refer to as continuing employees, (i) a base salary or wages and, subject to the terms of the merger agreement, annual cash incentive compensation opportunity, in each case no less favorable than what was available to such continuing employee immediately prior to the first effective time, (ii) severance benefits that are no less favorable than what would have been provided to such continuing employee under the St. Jude Medical plans that provide

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severance benefits in effect on the date of the merger agreement, and (iii) employee health, welfare and retirement benefits that are no less favorable in the aggregate than those provided to such continuing employee by St. Jude Medical or any of its subsidiaries immediately prior to the first effective time.

Additionally, subject to St. Jude Medical not having provided a long-term incentive award to a continuing employee, Abbott will provide a long-term incentive award in 2017 to each continuing employee that is employed at the time such awards are granted on a basis consistent with Abbott's practices (including with respect to eligibility) for awarding long-term incentive awards to similarly situated employees of Abbott or its subsidiaries generally.

Further, Abbott has agreed from and after the first effective time to honor all St. Jude Medical plans in effect at the first effective time in accordance with their terms. However, this undertaking by Abbott does not limit its right to amend or terminate any such St. Jude Medical plan in accordance with the plan's terms. Abbott also acknowledged and agreed that the consummation of the first merger will be considered a "change in control" for all purposes under all St. Jude Medical plans and related award agreements (except for those that are or were sponsored or maintained by Thoratec Corporation or its subsidiaries) that contain a definition of "change in control" or a similar term in respect of St. Jude Medical.

To the extent continuing employees become eligible to participate in any employee benefit plan maintained by Abbott or its subsidiaries following the first effective time, the continuing employees' service with St. Jude Medical or any of its subsidiaries prior to the first effective time will be treated as service with Abbott or its subsidiaries for purposes of eligibility to participate, vesting, level of benefits and benefit accrual to the extent recognized by St. Jude Medical prior to the effective time, provided that St. Jude Medical service will not be recognized if it would result in duplication of benefits, and further provided that it will not be credited for any purpose under any cash or equity incentive compensation plan, defined benefit pension plan, post-retirement welfare plan or any plan under which similarly situated employees of Abbott do not receive credit or that is "grandfathered" or frozen.

Further, Abbott will waive (or cause its subsidiaries to waive) all limitations as to preexisting conditions, exclusions and waiting periods with respect to participation and coverage requirements under any Abbott welfare benefit plan in which the continuing employees may be eligible to participate after the first effective time and use commercially reasonable efforts to provide each continuing employee with credit for any copayments and deductibles paid during the plan year in which the first effective time occurs (or, if later, the year in which the applicable continuing employee is first eligible to participate in the applicable Abbott plan) in satisfying any applicable deductible or out-of-pocket requirements under any applicable Abbott welfare benefit plan, in each case, to the extent such expenses would have been credited under the St. Jude Medical plan in which such continuing employee participated immediately prior to the first effective time.

Indemnification and Insurance

After the first effective time, Abbott agreed to, and to cause the first surviving corporation and the surviving company to, indemnify and hold harmless, and advance expenses to, each indemnitee (as defined below) against certain claims and for certain losses in connection with such indemnitee's service as a director or officer of St. Jude Medical or any of its subsidiaries at or prior to the first effective time. In addition, Abbott agreed to, and to cause the first surviving corporation and the surviving company to, assume certain indemnification obligations of St. Jude Medical and its subsidiaries to any indemnitee (i) as provided in the articles of incorporation, bylaws or other governing organizational documents of St. Jude Medical and its subsidiaries in effect on the date of the merger agreement, as applicable to a particular indemnitee or (ii) pursuant to any agreement in existence on the date of the merger agreement.

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Abbott also agreed to assure that the articles of incorporation and bylaws of the first surviving corporation and the surviving company will contain provisions no less favorable to the indemnitees (with respect to limitations on liability and indemnification) than those which were included in the articles of incorporation or bylaws of St. Jude Medical on the date of the merger agreement.

Further, Abbott is not permitted to settle, compromise or consent to the entry of any judgment in any threatened or actual claim for which an indemnitee has sought indemnification, unless (i) such settlement, compromise or consent includes a complete release of such indemnitee for all liability arising out of such claim or (ii) such indemnitee otherwise consents in writing.

We collectively refer to any individual who at the first effective time is or at any time prior to the first effective time was (i) a director or officer of St. Jude Medical or (ii) a director or officer of a subsidiary of St. Jude Medical as an indemnitee.

The merger agreement requires Abbott to cause the surviving company to maintain for a period of six years after the first effective time, St. Jude Medical's existing directors' and officers' liability insurance policy, or comparable insurance provided by a reputable insurer containing terms and conditions that are at least as favorable to the indemnitees. However, the surviving company is not required to make annual premium payments for such insurance in excess of 250% of the amount of St. Jude Medical paid in its last fiscal year for such insurance. In lieu of the foregoing, St. Jude Medical, at its option (in consultation with Abbott), may obtain prior to the first effective time a prepaid "tail" policy for a period of no more than six years that provides coverage for the indemnitees that is substantially equivalent to St. Jude Medical's existing coverage for an aggregate price not to exceed a specified amount.

Certain Additional Covenants

The merger agreement also contains additional covenants, including, among others, covenants relating to the filing of this proxy statement/prospectus, regulatory filings and approvals (which are described in the section entitled "Proposal 1: The Mergers—Regulatory Approvals"), the delisting of St. Jude Medical shares from the New York Stock Exchange, which we refer to as the NYSE, and deregistration of St. Jude Medical under the Exchange Act, reporting requirements under Section 16 of the Exchange Act, notification of certain events and regulatory matters, coordination with respect to litigation relating to the mergers and public announcements with respect to the transactions contemplated by the merger agreement.

Conditions to Completion of the Mergers

The respective obligations of each of St. Jude Medical, Abbott, Vault Merger Sub, Inc. and Vault Merger Sub, LLC to complete the mergers are subject to the fulfillment or waiver (to the extent permitted under applicable law), at or prior to the closing of the mergers, of the following conditions:

- the St. Jude Medical shareholder approval must have been obtained;
- Abbott shares that will be issued in connection with the mergers must have been approved for listing on the NYSE, subject to official notice of issuance;
- no law order, writ, injunction, decree, consent decree, judgment, award, injunction, or settlement may have been promulgated, entered, enforced, enacted or issued, as applicable, by any governmental authority that prohibits, enjoins or makes illegal the consummation of either of the mergers or issuance of Abbott shares as merger consideration;
- the registration statement on Form S-4 of which this proxy statement/prospectus forms a part must have been declared effective by the SEC under the Securities Act and no stop order

suspending the effectiveness of the Form S-4 is in effect and no proceedings for that purpose are pending; and

- the waiting period (or extensions thereof) applicable to the mergers under the HSR Act has expired or been terminated and all applicable filings, registrations, waiting periods (or extensions thereof) and approvals under each applicable competition law of the European Union, Brazil, Canada, China, India, Israel, Japan, South Africa, South Korea or Turkey relating to the transactions contemplated by the merger agreement must have been made, expired, terminated or obtained, as the case may be.

The obligations of Abbott, Vault Merger Sub, Inc. and Vault Merger Sub, LLC to complete the mergers are also subject to the fulfillment, or waiver by Abbott, at or prior to the first effective time of the following additional conditions:

- St. Jude Medical must have performed in all material respects all covenants and obligations required by the merger agreement to be performed by it prior to the first effective time;

- subject to certain exceptions and materiality standards provided in the merger agreement, the representations and warranties of St. Jude Medical must be true and correct at and as of the date of the merger agreement and at and as of the closing date as though made at and as of the closing date;

- the absence of any effect, change, condition, occurrence or event that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect with respect to St. Jude Medical since the date of the merger agreement;

- St. Jude Medical must have delivered to Abbott a certificate, dated as of the closing date and signed by an executive officer of St. Jude Medical, certifying to the effect that the preceding three conditions have been met; and

- Abbott must have received the opinion of nationally recognized outside counsel, in form and substance reasonably satisfactory to Abbott, dated as of the closing date, to the effect that, on the basis of facts, representations and assumptions set forth or referred to in such opinion, the mergers, taken together, will qualify as a "reorganization" within the meaning of Section 368(a) of the Code.

The obligations of St. Jude Medical to complete the mergers also are subject to the fulfillment, or waiver by St. Jude Medical, at or prior to the first effective time of certain conditions, including the following:

- Abbott, Vault Merger Sub, Inc. and Vault Merger Sub, LLC must have performed in all material respects all covenants and obligations required by the merger agreement to be performed by them prior to closing;

- subject to certain exceptions and materiality standards provided in the merger agreement, the representations and warranties of Abbott must be true and correct at and as of the date of the merger agreement and at and as of the closing date as though made at and as of the closing date;

- the absence of any effect, change, condition, occurrence or event that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect with respect to Abbott since the date of the merger agreement;

- Abbott must have delivered to St. Jude Medical a certificate, dated as of the closing date and signed by an executive officer, certifying to the effect that the preceding three conditions have been met; and

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- St. Jude Medical must have received the opinion of nationally recognized outside counsel, in form and substance reasonably satisfactory to St. Jude Medical, dated as of the closing date, to the effect that, on the basis of facts, representations and assumptions set forth or referred to in such opinion, the mergers, taken together, will qualify as a "reorganization" within the meaning of Section 368(a) of the Code.

Regulatory Approvals

Under the merger agreement, St. Jude Medical and Abbott agreed to cooperate with each other and to use their respective reasonable best efforts in order to obtain the required regulatory approvals. For purpose of obtaining required regulatory approvals, St. Jude Medical and Abbott generally agreed that "reasonable best efforts" will not require Abbott to (i) divest, (ii) terminate any contracts related to or (iii) accept any conditions that would apply to, in each case, any businesses, assets, equity interests, product lines, properties or contracts of Abbott or St. Jude Medical. However, Abbott is required to take any of the actions described in the previous sentence if (i) such action does not relate to a development program or a development-stage product and (ii) would not reasonably be expected to, individually or in the aggregate, result in a one-year loss of revenues in excess of $325 million (measured by reference to fiscal year 2015 revenue) of either Abbott and its subsidiaries, taken as a whole, or St. Jude Medical and its subsidiaries, taken as a whole.

Additionally, for purpose of obtaining such approvals, St. Jude Medical and Abbott agreed that "reasonable best efforts" will not require Abbott or St. Jude Medical to (i) agree to any material modification of the merger agreement or to waive the terms and conditions of the merger agreement or (ii) litigate (or participate in the litigation of) any judicial or administrative proceeding involving the FTC, the DOJ or other similar governmental authority in connection with the mergers or any of the other transactions contemplated in the merger agreement.

To the extent permitted by law, Abbott will have control over and lead all communications and strategy relating to obtaining all approvals, consents, waivers, registrations, permits, authorizations and other confirmations from any governmental authority or other third party necessary or advisable to consummate the mergers (including with regards to any litigation arising therefrom). However, Abbott is required (i) to consult with St. Jude Medical in advance and, in good faith, take St. Jude Medical's views into account regarding the overall strategic direction of any such approval process and (ii) to consult with St. Jude Medical prior to (a) taking any material substantive positions, (b) making any dispositive motions or material substantive filings or submissions or (c) entering into any negotiations concerning such approvals.

Termination of the Merger Agreement

Termination

The merger agreement may be terminated and the mergers abandoned at any time prior to the first effective time, whether before or after any approval of the first merger and merger agreement by the holders of St. Jude Medical shares:

- by mutual written consent of St. Jude Medical and Abbott;
- by either St. Jude Medical or Abbott if the first merger has not been consummated on or prior to April 27, 2017, which we refer to as the end date. If, however, all of the conditions to closing, other than certain conditions relating to competition laws, have been satisfied or are capable of being satisfied at such time, the end date may be extended by either St. Jude Medical or Abbott to July 27, 2017. The right to terminate the merger agreement according to this provision is not available to a party if the failure of the closing to have occurred by the end date was due to the failure of such party to perform any of its obligations under the merger agreement or due to the

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breach by such party of its representations and warranties contained in the merger agreement. We refer to this termination right as the end date termination right;

- by either St. Jude Medical or Abbott, if an order by a governmental authority of competent jurisdiction has been issued permanently restraining, enjoining or otherwise prohibiting the mergers or the issuance of Abbott shares as merger consideration and such order has become final and nonappealable. However, the right to terminate the merger agreement according to this specific provision is not available to a party if such order was due to the failure of such party to perform any of its obligations under the merger agreement or due to the breach by such party of its representations and warranties contained in the merger agreement;

- by either St. Jude Medical or Abbott, if the St. Jude Medical shareholder approval has not been obtained after a vote on approval of the merger agreement has been taken at the company shareholders' meeting (including any postponement or adjournment thereof) duly convened therefor;

- by either St. Jude Medical or Abbott, if the other party has materially breached or failed to perform any representations, warranties, covenants or agreements contained in the merger agreement and such breach or failure (i) would result in the failure of specified conditions to closing and (ii) is not curable by the end date, or if capable of being cured by the end date, such party has not commenced good-faith efforts to cure the breach or failure within thirty calendar days following (or the breach or failure is not cured within sixty calendar days following) receipt by the party of written notice from the other party of such breach or failure. However, the terminating party may not exercise this termination right if it is then in material breach of any representation, warranty, covenant or agreement contained in the merger agreement, which breach would give rise to the failure of any of the conditions set forth in this subparagraph of the other party to effect the merger;

- by Abbott if a company adverse recommendation change occurs; or

- by St. Jude Medical prior to receipt of the St. Jude Medical shareholder approval, if the St. Jude Medical board of directors authorizes St. Jude Medical to enter into an alternative acquisition agreement with respect to a superior proposal in accordance with the covenants regarding no solicitation, no change of recommendation and entry into an alternative acquisition agreement, and substantially concurrently with termination, St. Jude Medical enters into an alternative acquisition agreement providing for such superior proposal and prior to or concurrently with such termination, St. Jude Medical pays to Abbott in immediately available funds the $685 million termination fee.

Termination Fee

St. Jude Medical must pay Abbott a termination fee of $685 million, which we refer to as the termination fee, if the merger agreement is terminated (or, in the case of the second bullet below, at the time of termination, could have been terminated) in the following circumstances:

- in the event the merger agreement is terminated by St. Jude Medical in accordance with the provisions regarding its fiduciary termination right in connection with a superior proposal; or

- in the event the merger agreement is terminated by Abbott, due to occurrence of a company adverse recommendation change.

Additionally, if St. Jude Medical enters into a definitive agreement with respect to any company acquisition proposal or any company acquisition proposal is consummated (in each case with references to 15% in the definition of company acquisition proposal being replaced by 50% for this purpose)

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within twelve months after a valid termination of the merger agreement in any of the following circumstances, St. Jude Medical must also pay Abbott the termination fee:

- *Termination by St. Jude Medical or Abbott pursuant to the end date termination right.* The merger agreement is terminated pursuant to the end date termination right and at any time after the date of the merger agreement but prior to the termination, either (i) a company acquisition proposal was made or communicated to the St. Jude Medical board of directors and not withdrawn without qualification prior to such termination or (ii) a company acquisition proposal was publicly announced or publicly made known and not publicly withdrawn without qualification prior to the termination;

- *Termination by St. Jude Medical or Abbott because St. Jude Medical shareholder approval is not obtained.* The merger agreement is terminated because St. Jude Medical shareholder approval is not obtained and at any time after the date of the merger agreement but prior to completion of the St. Jude Medical shareholder meeting (including any adjournment or postponement thereof) a company acquisition proposal was publicly announced or publicly made known and not publicly withdrawn without qualification prior to the company shareholder meeting (including any adjournment or postponement thereof); or

- *Termination by Abbott because of St. Jude Medical's breach or failure to perform of covenants or agreements.* The merger agreement is terminated due to St. Jude Medical's breach or failure to perform covenants or agreements in the merger agreement and at any time after the date of the merger agreement but prior to the termination, either (i) a company acquisition proposal was made or communicated to the St. Jude Medical Board and not withdrawn without qualification prior to such breach or failure or (ii) a company acquisition proposal was publicly announced or publicly made known and not publicly withdrawn without qualification prior to such breach or failure.

In no event will the termination fee be payable more than once.

Post-Termination Liability

Generally, if the merger agreement is terminated, it immediately becomes void and of no further effect without any liability or obligation on the part of any party except for (i) the requirement of St. Jude Medical to pay Abbott the termination fee of $685 million in the circumstances described above and (ii) any liability of either party for any fraud or knowing, material and intentional breach of the merger agreement.

Other than with respect to claims for, or arising out of or in connection with fraud or knowing, intentional and material breach of any covenant in the merger agreement, payment of the termination fee constitutes the sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise) of Abbott, its shareholders and their respective representatives against St. Jude Medical. *Any termination fee paid by St. Jude Medical pursuant to the merger agreement will be offset against any award for damages awarded to Abbott pursuant to any claim based on fraud or knowing, intentional and material breach of the merger agreement.*

Amendment and Assignment

Any provision of the merger agreement may be amended, supplemented or waived only if such amendment, supplement or waiver is in writing and signed by St. Jude Medical, Abbott, Vault Merger Sub, Inc. and Vault Merger Sub, LLC. However, after the receipt of the St. Jude Medical shareholder approval, if any such amendment or waiver will require further approval of the holders of St. Jude Medical shares, the effectiveness of such amendment or waiver will be subject to obtainment of such

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further approval. Certain amendments or waivers will require obtaining the prior written consent of third party financiers of the mergers.

The merger agreement cannot be assigned without the prior written consent of the nonassigning parties to the merger agreement, provided that, with the prior written consent of St. Jude Medical, such consent not to be unreasonably withheld, delayed or conditioned, Abbott may designate, prior to the first effective time, another wholly owned subsidiary of Abbott to be a party to the mergers instead of Vault Merger Sub, Inc. or Vault Merger Sub, LLC, provided that such assignment will not relieve Abbott of its obligations under the merger agreement, or otherwise enlarge, alter or change any obligation of any party to the merger agreement.

Jurisdiction; Specific Enforcement

Each of St. Jude Medical, Abbott, Vault Merger Sub, Inc. and Vault Merger Sub, LLC agreed that irreparable damage would occur in the event that any of the provisions of the merger agreement are not performed or are breached, and that money damages would not be an adequate remedy in such a situation. Accordingly, and in addition to any other remedy that each may be entitled to at law or in equity, each of St. Jude Medical, Abbott, Vault Merger Sub, Inc. and Vault Merger Sub, LLC agreed that, each will be entitled to an injunction or injunctions to prevent breaches or threatened breaches of the merger agreement and to enforce specifically the terms and provisions of the merger agreement without proof of actual damages or otherwise. Each of St. Jude Medical, Abbott, Vault Merger Sub, Inc. and Vault Merger Sub, LLC also irrevocably waived any requirement for the securing or posting of any bond in connection with such injunctions.

Further, with respect to disputes arising under the merger agreement, each of St. Jude Medical, Abbott, Vault Merger Sub, Inc. and Vault Merger Sub, LLC (i) consented to the personal jurisdiction of the Court of Chancery of the State of Delaware (or to the extent the Court of Chancery of the State of Delaware declines jurisdiction, any federal court located in the State of Delaware), (ii) agreed not to assert as a defense, counterclaim or otherwise, any claim that such party (or its property, if applicable) is not personally subject to the jurisdiction of the above named courts and (iii) agreed that it would not bring any action or claim related to the merger agreement in any court other than those courts mentioned above.

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INTERESTS OF ST. JUDE MEDICAL'S DIRECTORS AND EXECUTIVE OFFICERS IN THE MERGERS

In considering the recommendation of the St. Jude Medical board of directors that you vote to adopt the merger agreement, you should be aware that St. Jude Medical's executive officers and non-employee directors have economic interests in the mergers that are different from, or in addition to, those of St. Jude Medical's shareholders generally. The St. Jude Medical board of directors was aware of and considered those interests, among other matters, in reaching its decisions to (i) approve the mergers and the other transactions contemplated thereby, (ii) adopt, approve and declare advisable the merger agreement, and (iii) resolve to recommend the approval of the merger agreement to St. Jude Medical shareholders. The transactions contemplated by the merger agreement will be a "change in control" for purposes of the St. Jude Medical executive compensation and benefit plans described below.

Certain Assumptions

Except as otherwise specifically noted, for purposes of quantifying the potential payments and benefits described in this section, the following assumptions were used:

- The value of the per share merger consideration is $75.84 for each St. Jude Medical share based on the average closing price per St. Jude Medical share over the five business days following the first public announcement of the transaction on April 28, 2016;
- The effective time is September 7, 2016, which is the assumed date of the closing of the mergers solely for purposes of the disclosure in this section; and
- Each executive officer of St. Jude Medical was terminated by St. Jude Medical without "cause" or resigned for "good reason" (as such terms are defined in the relevant plans and agreements), in either case immediately following the assumed effective time of September 7, 2016.

Change in Control Severance Agreements

Payments and Benefits. St. Jude Medical has entered into change in control severance agreements, which are referred to as the CIC severance agreements, with each of its executive officers. The CIC severance agreements provide for certain payments and other benefits if, within three years (or two years in the case of certain executive officers who are not named executive officers) following a change in control, St. Jude Medical terminates the executive officer's employment without "cause" or the executive officer terminates his or her employment for "good reason." Such payments and benefits include: (1) severance pay equal to 2.9 times the sum of the executive officer's annual salary and target bonus and (except in the case of certain executive officers who are not named executive officers) certain other compensation received by the executive officer during the 12 months before termination; (2) up to three years of health, life, accident and disability insurance substantially similar to that in effect at the time of termination; (3) gross-up payments described below; and (4) the payment of legal fees and expenses relating to the termination. The occurrence of the mergers will constitute a "change in control" for purposes of the CIC severance agreements. In addition, pursuant to the merger agreement, if the employment of a participant in the St. Jude Medical Management Incentive Compensation Plan is terminated without cause prior to the payment of an annual bonus for the fiscal year in which the mergers occur, the participant will receive an annual bonus for such year equal to his or her target bonus opportunity and assuming the achievement of target performance, pro-rated for the portion of such year elapsed through the date of termination.

For the estimated amounts that each of St. Jude Medical's named executive officers would receive under the CIC severance agreements upon a qualifying termination of employment and in satisfaction of the pro-rata target bonus award upon a termination without cause, see the section entitled

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"Quantification of Potential Payments and Benefits to St. Jude Medical's Named Executive Officers in Connection with the Mergers." Based on the assumptions described above under "—Certain Assumptions" and the additional assumptions used for purposes of estimating amounts for named executive officers, the estimated aggregate amount of the payments and benefits to be provided to St. Jude Medical's executive officers who are not named executive officers under the CIC severance agreements upon a qualifying termination of employment and in satisfaction of the pro-rata target bonus award upon a termination without cause is $28,239,094 excluding the gross-up payments described below.

Gross-Ups

The CIC severance agreements provide that each executive officer is entitled to a tax gross-up payment, which are referred to as the Gross-Up Payment, in the event that any payments or distributions made to such officers in connection with the first merger, which are referred to as the Total Payments, become subject to an excise tax pursuant to Section 280G and Section 4999 of the Code or any successor provision thereto, or any interest, penalties or additions to tax with respect to such excise tax, which is referred to as the Excise Tax; provided, however, that no such officer will be entitled to any Gross-Up Payment in the event such officer has voluntarily resigned or been terminated for cause prior to the closing of the first merger. While the actual amounts to be paid to the executive officers by St. Jude Medical will not be determinable until after the effective time of the mergers, for the estimated value of the potential payments that could be made to each of the St. Jude Medical named executive officers in respect of the Gross-Up Payments, see the section entitled "Quantification of Potential Payments and Benefits to St. Jude Medical's Named Executive Officers in Connection with the Mergers." The estimated aggregate Gross-Up Payments that could become payable to St. Jude Medical's executive officers who are not named executive officers is $7,598,071. If any payments and benefits under a retention agreement (see the section entitled "Abbott Retention Agreements") between an executive officer and Abbott, are determined to be parachute payments for purposes of Section 280G of the Code, the amount of the Gross-Up Payment under such officer's St. Jude Medical CIC severance agreement will increase.

Equity Compensation

Treatment of Stock Options. As described below, certain St. Jude Medical options will be deemed exercised upon the occurrence of the mergers and others will be assumed by Abbott and converted into similar Abbott options. Additionally, Abbott may elect to treat some or all St. Jude Medical options which otherwise would be assumed as surrendered St. Jude Medical options, as defined below, and deem them exercised upon the occurrence of the mergers.

(i) *Surrendered Stock Options.* Each St. Jude Medical option that is outstanding immediately prior to the first effective time, and is either vested as of immediately prior to the first effective time or that becomes vested by its terms as a result of the occurrence of the first effective time (excluding any option granted under certain employee stock purchase plans), which we refer to as a surrendered St. Jude Medical option, shall be deemed exercised pursuant to a cashless exercise and settled by issuance of a number of St. Jude Medical shares equal to the difference (rounded down to the nearest whole share, but with any partial shares otherwise issuable settled in cash) of (i) the number of St. Jude Medical Shares subject to such surrendered St. Jude Medical option as of immediately prior to the first effective time minus (ii) the number of whole and partial (computed to the nearest four decimal places) St. Jude Medical Shares that, when multiplied by the "Fair Market Value" (as defined in the applicable plan providing for such award), is equal to the aggregate exercise price of such surrendered St. Jude Medical option. Such St. Jude Medical shares will then be canceled and converted into the right to receive the merger consideration with

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respect to each St. Jude Medical share issued in respect of the stock option, less any applicable withholding taxes.

(ii) *Assumed Stock Options.* Additionally, each option to purchase St. Jude Medical shares granted under a St. Jude Medical share plan and any other compensatory option to purchase St. Jude Medical shares (excluding any option granted under certain employee stock purchase plans) that is outstanding immediately prior to the first effective time and not a surrendered St. Jude Medical option will be assumed by Abbott and converted into an option to acquire, on substantially the same terms and conditions, a number of Abbott shares equal to the product (rounded down to the nearest whole share) of (i) the number of St. Jude Medical shares subject to such option multiplied by (ii) the stock award exchange ratio, at an exercise price per Abbott share equal to the quotient (rounded up to the nearest whole cent) of (a) the per share exercise price for the St. Jude Medical shares subject to such assumed option as of immediately prior to the first effective time divided by (b) the stock award exchange ratio. Further, the vesting of each such St. Jude Medical option, to the extent then unvested, will immediately accelerate in full upon the second anniversary of the first effective time if the holder of such award remains employed with Abbott or any of its subsidiaries through such date.

The merger agreement defines the "stock award exchange ratio" as the sum of (i) the exchange ratio (as it may be adjusted) plus (ii) the quotient of (a) the per share cash amount divided by (b) Abbott's volume-weighted average closing price for the five consecutive trading days ending on the complete trading day ending immediately prior to the closing.

Treatment of Restricted Share Awards. Each St. Jude Medical restricted share award that was outstanding as of the date of the merger agreement will vest immediately prior to the first effective time and will be canceled and converted into the right to receive the merger consideration with respect to each St. Jude Medical share subject to such restricted share award, less any applicable withholding taxes.

Treatment of Restricted Stock Units. As described below, certain restricted stock unit awards, or RSU awards, with respect to St. Jude Medical shares will be canceled and converted into the right to receive the merger consideration and others will be assumed by Abbott and converted into similar Abbott RSU awards. Additionally, Abbott may elect to treat some or all St. Jude Medical RSU awards which otherwise would be assumed as surrendered St. Jude Medical RSU awards, as defined below, cancel such surrendered St. Jude Medical RSU awards and convert them into the merger consideration.

(i) *Surrendered RSU Awards.* At the first effective time, each RSU award with respect to St. Jude Medical shares that (i) is outstanding as of immediately prior to the first effective time, (ii) is vested as of immediately prior to the first effective time or will become vested by its terms as a result of the occurrence of the first effective time, and (iii) by its terms is to be settled in connection with the occurrence of vesting or the first effective time, as of the first effective time (which we refer to as a surrendered St. Jude Medical RSU award), will be canceled and converted into the right to receive the merger consideration (or, with respect to such RSU award that is settled in cash under its existing terms, the cash equivalent thereof) with respect to each St. Jude Medical share subject to such RSU award, less any applicable withholding taxes.

(ii) *Assumed RSU Awards.* Additionally, at the first effective time, each RSU award with respect to St. Jude Medical shares that (i) is outstanding as of immediately prior to the first effective time and (ii) is not a surrendered St. Jude Medical RSU award will be assumed by Abbott and converted into an RSU award, with substantially the same terms and conditions as were applicable to such St. Jude Medical RSU award, for a number of Abbott shares equal to the product (rounded to the nearest whole share) of (i) the number of St. Jude Medical shares subject to such RSU award multiplied by (ii) the stock award exchange ratio. Further, the vesting of each such RSU award, to the extent then unvested, will immediately accelerate in full upon the second

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anniversary of the first effective time if the holder of such award remains employed with Abbott or any of its subsidiaries through such date. Upon vesting, settlement will occur at such time as is permitted by applicable law and will be subject to applicable withholding taxes.

Treatment of Assumed Equity Awards upon Termination of Employment Following the Mergers. At the effective time, the outstanding St. Jude Medical options and restricted stock units held by St. Jude Medical's executive officers that convert into equity awards with respect to Abbott shares in the manner described above will remain subject to the same service-based vesting conditions; provided, however, that as described above, the vesting of such awards will immediately accelerate in full upon the second anniversary of the first effective time subject to continued employment through such date. Further, pursuant to the original terms of these awards, if an executive officer's employment is terminated by St. Jude Medical without "cause" or by the executive officer under circumstances which would constitute "good reason" within two years following the first effective time, the assumed outstanding equity awards will fully vest upon such termination and each outstanding assumed option would remain outstanding and exercisable until the earlier of (a) a period of one year following such termination of employment and (b) the expiration of its term.

For an estimate of the amounts that would become payable to each of St. Jude Medical's named executive officers in respect of their unvested equity awards, see the section entitled "Quantification of Potential Payments and Benefits to St. Jude Medical's Named Executive Officers in Connection with the Mergers." Based on the assumptions described above under "—Certain Assumptions" and the additional assumptions used for purposes of estimating amounts for named executive officers, (i) the estimated aggregate amounts that would become payable to St. Jude Medical's executive officers who are not named executive officers in respect of their unvested equity awards is as follows: unvested St. Jude Medical options—$13,890,399; unvested St. Jude Medical restricted shares—$0; and unvested St. Jude Medical restricted stock units—$7,882,506; and (ii) the estimated aggregate amount that would become payable to St. Jude Medical's non-employee directors in respect of their unvested St. Jude Medical restricted shares is $2,231,516. For more information on equity holdings of St. Jude Medical's non-employee directors and executive officers, see the table entitled "Certain Beneficial Owners of St. Jude Medical Shares."

Abbott Retention Agreements

On July 22, 2016, Mr. Rousseau entered into a retention agreement with Abbott that will become effective contingent upon the closing of the mergers and continue for a retention period unless terminated by either Abbott or Mr. Rousseau or extended by mutual agreement of the parties. The retention agreement provides that Mr. Rousseau will serve as President, Cardiovascular and NeuroModulation of Abbott. Mr. Rousseau's initial base salary will remain at the levels in effect as of the closing of the mergers, and he will be entitled to participate in Abbott's annual cash bonus plan. In the event that Mr. Rousseau remains employed by Abbott for the retention period, or is sooner terminated by Abbott without "cause" or as a result of his death, he will receive a $5,000,000 cash retention award from Abbott.

In July and August 2016, Abbott entered into retention agreements with the following executive officers of St. Jude Medical: Vice President, Global Clinical Affairs and Chief Medical Officer Mark Carlson; Vice President and Corporate Controller Jeffrey A. Dallager; Vice President, Chief Technology Officer Philip J. Ebeling; Group President Eric S. Fain; Vice President, Information Technology and Chief Information Officer Mark W. Murphy; and Vice President, Global Operations and Supply Chain Scott P. Thome. Each such retention agreement will become effective contingent upon the closing of the mergers and supersede and replace the applicable executive officer's CIC severance agreement with St. Jude Medical. Under the retention agreements, each applicable executive officer's initial base salary and incentive target opportunity will remain at the levels in effect as of the closing of the mergers, and each applicable executive officer will be entitled to participate in Abbott's incentive stock program. In

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addition, under the retention agreements, each applicable executive officer is eligible for the following retention awards: (a) a time-vesting restricted stock unit award with a value approximately equivalent to each executive officer's annual equity award from St. Jude Medical for 2015, and (b) three time-vesting cash retention awards, (i) the first two of which are each equal to 50% to 100% of the applicable executive officer's annual base salary as of the closing of the mergers, and (ii) the last of which is equal to the amount the applicable executive officer would have received under his CIC severance agreement had his employment been terminated upon the closing of the mergers. Payment of the retention awards is subject to the applicable executive officer's continued employment with Abbott for the retention periods specified in the applicable retention agreement, or an earlier termination by Abbott without "cause" or as a result of the applicable executive officer's death. The right to the Gross-Up Payment under each such executive officer's St. Jude Medical CIC severance agreement is not modified by his retention agreement.

In August and September 2016, Abbott entered into retention agreements with the following executive officers of St. Jude Medical: Vice President, Chief Marketing Officer Lisa M. Andrade; Vice President, Global Human Resources and Chief Compliance Officer I. Paul Bae; Vice President, Corporate Strategy Rachel H. Ellingson; and Vice President, Global Quality Jeff A. Fecho. Each such retention agreement will become effective contingent upon the closing of the mergers and provides that the applicable executive officer's initial base salary and incentive target opportunity will remain at the levels in effect as of the closing of the mergers. In addition, under the retention agreements, each applicable executive officer is eligible for a time-vesting cash retention award equal to 50% to 100% of the applicable executive officer's annual base salary as of the closing of the mergers. Payment of the retention awards is subject to the applicable executive officer's continued employment with Abbott for the retention periods specified in the applicable retention agreement, or an earlier termination by Abbott without "cause" or as a result of the applicable executive officer's death. Each applicable executive officer's CIC severance agreement will remain in effect, and any amounts payable under such agreements will be payable at the end of the applicable retention period.

Abbott may enter into additional retention agreements with other executive officers of St. Jude Medical prior to the closing of the mergers.

Indemnification and Insurance

Pursuant to the terms of the merger agreement, St. Jude Medical non-employee directors and executive officers will be entitled to certain ongoing indemnification and coverage under directors' and officers' liability insurance policies following the mergers. Such indemnification and insurance coverage is further described in the section entitled "The Merger Agreement—Indemnification and Insurance."

Quantification of Potential Payments and Benefits to St. Jude Medical's Named Executive Officers in Connection with the Mergers

The information set forth in the table below is intended to comply with Item 402(t) of the SEC's Regulation S-K, which requires disclosure of information about certain compensation for each named executive officer of St. Jude Medical that is based on, or otherwise relates to, the mergers, which is referred to as the merger-related compensation. For additional details regarding the terms of the payments and benefits described below, see the section entitled "Interests of St. Jude Medical's Directors and Executive Officers in the Mergers" above.

The amounts shown in the table below are estimates based on multiple assumptions that may or may not actually occur or be accurate on the relevant date, including the assumptions described below and in the footnotes to the table, and do not reflect certain compensation actions that may occur

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before completion of the mergers. For purposes of calculating such amounts, the following assumptions were used:

- the value of the per share merger consideration is $75.84 for each St. Jude Medical share based on the average closing price per St. Jude Medical share over the five business days following the first public announcement of the transaction on April 28, 2016;
- the effective time is September 7, 2016, which is the assumed date of the closing of the mergers solely for purposes of the disclosure in this section; and
- each executive officer of St. Jude Medical was terminated by St. Jude Medical without "cause" or resigned for "good reason" (as such terms are defined in the relevant plans and agreements), in either case immediately following the assumed effective time of September 7, 2016.

As a result of the foregoing assumptions, the actual amounts, if any, to be received by a named executive officer may materially differ from the amounts set forth below.

Named Executive Officer	Cash[1]	Equity[2]	Perquisites/ Benefits[3]	Tax Reimbursement[4]	Total
Daniel J. Starks	$ 5,983,450	$ 12,336,887	$ 59,583	$ —	$ 18,379,920
Michael T. Rousseau	15,334,621	14,434,151	59,583	7,794,554	37,622,909
Eric S. Fain	6,417,851	6,187,033	59,583	3,547,427	16,211,894
Denis Gestin[5]	6,212,035	5,786,848	59,620	—	12,058,503
Donald J. Zurbay	4,797,129	5,082,855	59,583	2,594,349	12,533,916

(1) *Cash.* The amounts reported in this column consist of (i) a lump sum cash severance amount payable under each named executive officer's CIC severance agreement upon a "double-trigger" qualifying termination equal to 2.9 times the sum of (x) the named executive officer's base salary as in effect as of the date of termination of employment, (y) the named executive officer's target bonus for the fiscal year in which the termination of employment occurs and (z) certain other compensation received by the named executive officer during the 12 months before termination, and (ii) a lump sum cash payment payable in respect of the annual bonus for the year in which the mergers occur upon a "double-trigger" termination without cause equal to the named executive's target bonus opportunity and assuming the achievement of target performance, pro-rated for the portion of the year elapsed through the date of termination. The table below quantifies each separate component of the cash severance compensation included in the aggregate total reported above. In addition, for Mr. Rousseau, the amount reported above includes a retention award, which is payable upon the conclusion of a retention period or his earlier qualifying termination of employment. Upon the closing of the mergers, the CIC severance agreement with Mr. Fain will be superseded and replaced by his retention agreement, which is described above.

Named Executive Officer	Base Salary Component of Severance	Bonus Component of Severance	Other Compensation Component of Severance (e.g., other taxable income realized during the preceding twelve months)	Pro-Rata Target Bonus
Daniel J. Starks	855,500	—	5,127,950	$ —
Michael T. Rousseau	2,900,000	3,625,000	2,963,731	845,890
Eric S. Fain	2,153,627	2,153,627	1,608,050	502,547
Denis Gestin	1,905,533	1,905,533	1,951,122	449,847
Donald J. Zurbay	1,537,000	1,306,450	1,648,820	304,859

(2) *Equity.* Pursuant to the terms of the outstanding equity awards, each named executive officer would be entitled to accelerated vesting of his assumed and outstanding stock options and RSUs upon a "double trigger" qualifying termination. In addition, all assumed outstanding stock options and RSUs will automatically vest even without a qualifying termination of employment if the named executive officer remains employed through the second anniversary of the first effective time. We have assumed that the named executive officers will experience a qualifying termination at the first effective time. The value of the

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unvested and accelerated stock options is the difference between the value of $75.84 per share and the exercise price of the stock option, multiplied by the number of unvested shares as of September 7, 2016 and the value of the unvested and accelerated RSUs is equal to $75.84 multiplied by the number of unvested RSUs as of September 7, 2016, in each case, consistent with the methodology applied under SEC Regulation S-K Item 402(t)(2). The amounts in this column for the unvested and accelerated stock options and RSUs do not reflect any taxes payable by the named executive officers. For further details regarding the treatment of St. Jude Medical equity awards in connection with the merger, see the section entitled "Interests of St. Jude Medical's Directors and Executive Officers in the Mergers—Equity Compensation." The value of each such benefit is shown in the following table:

Named Executive Officer	Value of Unvested Stock Options	Value of Unvested RSUs
Daniel J. Starks	8,016,434	4,320,453
Michael T. Rousseau	9,404,366	5,029,785
Eric S. Fain	4,123,199	2,063,834
Denis Gestin	3,389,201	1,947,647
Donald J. Zurbay	3,235,848	1,847,007

(3) *Perquisites/Benefits.* Under each CIC Severance Agreement, upon a "double trigger" qualifying termination, each named executive officer is entitled to up to three years of health, accident, disability and life insurance benefits substantially similar to those in effect immediately prior to the qualifying termination at the expense of St. Jude Medical.

(4) *Tax Reimbursement.* Each named executive officer is entitled to a cash payment in an amount sufficient to pay any excise tax required to be paid by the employee in connection with the mergers under Section 4999 of the Code, as well as any additional income, employment and excise taxes payable with respect to the payment for such excise taxes. The estimated tax reimbursement amounts for Mr. Fain will increase under his St. Jude Medical CIC severance agreement if certain payments and benefits under any retention agreement with Abbott are determined to be parachute payments for purposes of Section 280G of the Code.

(5) Amounts for Mr. Gestin were converted from Euros to U.S. dollars using the exchange rate of $1.00 to 0.91466 Euro, the exchange rate in effect on the last business day of fiscal year 2015.

The St. Jude Medical board of directors unanimously recommends that you vote "FOR" approval of the merger agreement. Proxies will be voted "FOR" approval of the merger agreement unless otherwise specified.

https://www.sec.gov/Archives/edgar/data/203077/000104746916015715/a2229813zdefm1... 4/25/2017

THE COMMISSIONER OF COMPETITION	and	HARPERCOLLINS PUBLISHERS L.L.C. and HARPERCOLLINS CANADA LIMITED	and	RAKUTEN KOBO INC.
Applicant		Respondents		Intervenor

CT-2017-002

COMPETITION TRIBUNAL

AFFIDAVIT OF MIKE BROWN

(Motion for Summary Dismissal of Application)

WEIRFOULDS LLP
Barristers & Solicitors
4100 - 66 Wellington Street West
P.O. Box 35, Toronto-Dominion Centre
Toronto, ON M5K 1B7

Nikiforos Iatrou
Scott McGrath
Bronwyn Roe

Tel: 416-365-1110
Fax: 416-365-1876

Lawyers for the Intervenor, Rakuten Kobo Inc.

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