COMPETITION TRIBUNAL
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CT-2024-010

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF certain conduct of Google Canada Corporation and Google LLC relating to the supply of online advertising technology services in Canada;

AND IN THE MATTER OF an Application by the Commissioner of Competition for one or more Orders pursuant to section 79 of the *Competition Act*.

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

-and-

GOOGLE CANADA CORPORATION AND GOOGLE LLC

Respondents

MOTION RECORD
VOLUME 21 OF 29

May 6, 2025

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This is Exhibit “88” referred to in the Affidavit of Mary DeCaire sworn by Mary DeCaire at the City of Toronto, in the Province of Ontario, before me on May 5, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

JAKOB KELLY

Competition Bureau Canada

Bureau de la concurrence Canada

ANNUAL REPORT OF THE COMMISSIONER OF COMPETITION FOR THE YEAR ENDING MARCH 31, 2012

Canada

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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, 2012.

John Pecman
Interim Commissioner of Competition

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MESSAGE FROM THE COMMISSIONER



I am pleased to present the Competition Bureau's (Bureau) Annual Report, for the fiscal year ending March 31, 2012.

In addition to my overall goal of increasing predictability and transparency for our stakeholders, I have outlined three priorities that have guided our work this year.

My first priority has been to vigorously enforce the laws under our jurisdiction. We have brought forward a number of cases that demonstrate our commitment to enforcement.

In June 2011, we filed an application with the Competition Tribunal (Tribunal) to block a proposed joint venture between Air Canada and United Continental Holdings Inc. that, if allowed, would monopolize ten important airline routes between Canada and the United States, and substantially reduce competition on an additional nine routes, leading to increased prices and reduced consumer choice.

In another case before the Tribunal, we are challenging rules imposed by the Toronto Real Estate Board that are denying consumer choice and the ability of real estate agents to introduce innovative real estate brokerage services through the Internet.

We also saw our first conviction under the amended conspiracy provisions of the *Competition Act* (Act). Two companies pleaded guilty and were fined for their participation in a price-fixing cartel in the polyurethane foam industry - our highest fine to date for a corporation and its affiliates in relation to a domestic cartel.

We sent a strong message about how seriously we take allegations of misleading advertising and deceptive marketing. For example, we reached an agreement with Bell Canada in June 2011 regarding misleading representations about the prices offered for its services. Under the terms of the agreement, Bell corrected its advertising and paid an administrative monetary penalty of $10 million, the maximum available under the Act.

My second, and related, priority as Commissioner has been the effective implementation of the 2009 amendments to the Act. We have published new and updated guidance on our enforcement approach and methodology. For example, we held extensive consultations on revisions to our Merger Enforcement Guidelines, and published a final revised version in October 2011. In March 2012, we published draft Abuse of Dominance Guidelines for public comment. We have also begun publishing more position statements, which describe the Bureau's analysis of complex merger cases, and have established a public merger register of all closed merger reviews, updated on a monthly basis.

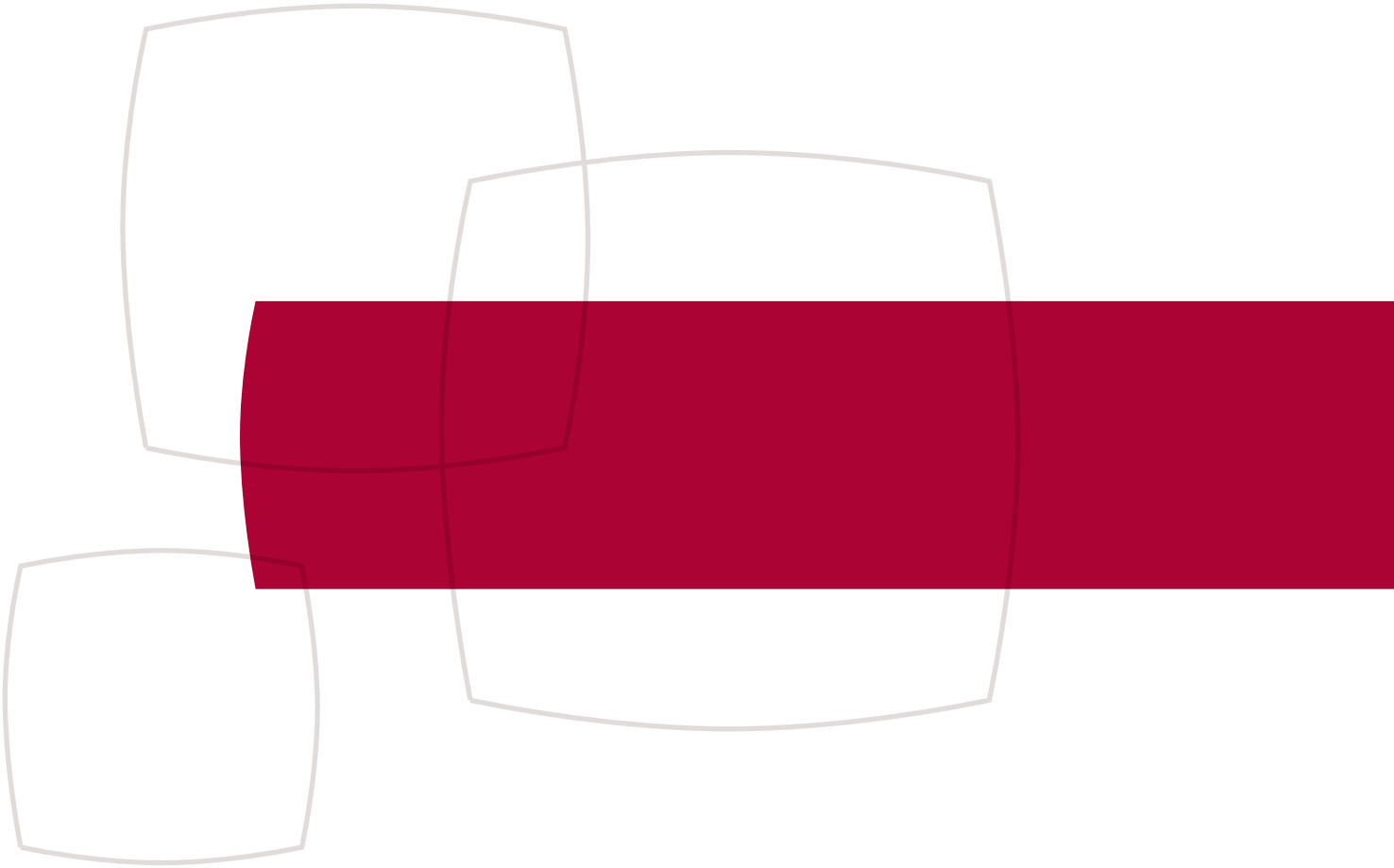
My third priority has been to strengthen our enforcement capacity. The Bureau has made every effort to restrain spending this fiscal year. Despite the reductions, the Bureau continued to focus its resources on conduct that violates the Act, targeting cases with the greatest impact on the Canadian economy and consumers.

By aligning our resources with our priorities, and by enhancing our litigation and investigative capacity, we have meaningfully advanced the mandate given to us by Parliament.

In support of enhancing the Bureau's enforcement capacity, the Bureau continued to look for opportunities to ensure that it has staff with the right mix of experience and expertise. The Bureau undertook initiatives to bring in highly skilled and knowledgeable talent, by looking to other antitrust agencies, law firms, economic organizations and the private sector generally. The Bureau has also embraced a "learn by doing" approach that provides employees with hands-on experience to develop the knowledge, skills and tools to do their work.

I firmly believe that this focus on principled and strong enforcement is the most effective and efficient way for the Bureau to carry out its mandate 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 Bureau as an independent law enforcement agency ensures that 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* (except as it relates to food), 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, 2012. It demonstrates how the Bureau's activities over the past year have benefited Canadians. For additional information on the activities described throughout the report, including information notices, news releases and backgrounders, please visit the Bureau's Media Centre at: www.competitionbureau.gc.ca. For statistical data, please refer to the Appendix, at the end of this report.

1.1 Organizational Structure

The Bureau is organized into eight Branches:

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 **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 Branch also actively reaches out to stakeholders engaged in procurement to enable them to detect and deter bid-rigging and other cartel activities.

The **Fair Business Practices Branch** administers and enforces the provisions of the Act on false or misleading representations and deceptive marketing practices. The Branch also enforces the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Precious Metals Marking Act* and the *Textile Labelling Act*.

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

The **Compliance and Operations Branch** oversees the Bureau's electronic evidence and conversion units. It manages the Bureau's Information Centre, as well as Bureau-wide planning, resource management, administration and informatics activities. The Branch ensures that employees and managers have the necessary tools to conduct their work.

The **Economic Policy and Enforcement Branch** provides economic advice and analysis in support of the Bureau's investigations.

The **Legislative and International Affairs Branch** advances fair and efficient competition principles by providing input through legislative, regulatory and policy development processes. Through participation and leadership in international competition fora, the Branch fosters strong relationships with key partners, advances and reinforces the Bureau's enforcement priorities, and coordinates international efforts to promote competitive markets and effective competition law enforcement.

The **Public Affairs Branch** is responsible for the Bureau's communications. 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 **Competition Bureau Legal Services Unit of the Department of Justice** is responsible for providing legal services to the Commissioner and for representing the Commissioner on all matters other than those for which the Public Prosecution Service of Canada is responsible.

The **Competition Law Section of the Public Prosecution Service** of Canada is responsible for initiating and conducting criminal prosecutions on behalf of the Attorney General of Canada and for advising the Bureau on criminal investigations.

1.2 Bureau Operations

The table below presents the Bureau's authorized budget and expenditures for 2011-2012. The Bureau's operating budget for 2011-2012 was $51.4 million, including $10.2 million collected from user fees. The majority of the budget, $34.7 million, was expended on salaries for 400.5 full-time equivalents (FTEs).

Budget and Expenditures for 2011-2012		
	Budget	**Expenditure**
Salary	34,839,488	34,730,011
O&M	14,020,927	15,925,062
Funding from IC[1]	2,000,000	
Capital	549,065	467,481
TOTAL	51,409,480	51,122,554

Budget and Expenditures for 2011-2012		
	Authorized	**Used**
FTE	428.5	400.5
User fees collected		10,200,000

In a continued effort to manage within its authorized budget, the Bureau limited hiring and carefully managed its Operations and Maintenance (O&M) funds to ensure that it had sufficient resources to focus on cases. The Bureau had to rely more on external legal agents than in the past, as complex matters resulting from amendments to the Act required timely and experienced legal support. In 2011-2012, Industry Canada (IC) provided an additional two million dollars in funding to assist with litigation costs associated with these cases.

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

1.3 Priorities 2011-2012

The following is a brief summary of the Bureau's key accomplishments in meeting the Bureau's priorities.

Vigorous enforcement of the laws under our jurisdiction

- In January 2012, Domfoam International Inc. and Valle Foam Industries Inc. were fined $12.5 million after pleading guilty to criminal charges that they had agreed with competitors to fix the price of polyurethane foam in Canada.
- In May 2011, the Commissioner filed an application with the Tribunal, seeking to ensure greater competition and increased innovation in the market for real estate services in Toronto by prohibiting anti-competitive practices by the Toronto Real Estate Board.
- In June 2011, the Commissioner filed an application with the Tribunal to block a proposed joint venture between Air Canada and United Continental Holdings that would monopolize important Canada/United States airline routes, leading to increased prices and reduced consumer choice on these key transborder routes.

1. One-time funding provided by IC in support of litigation costs.

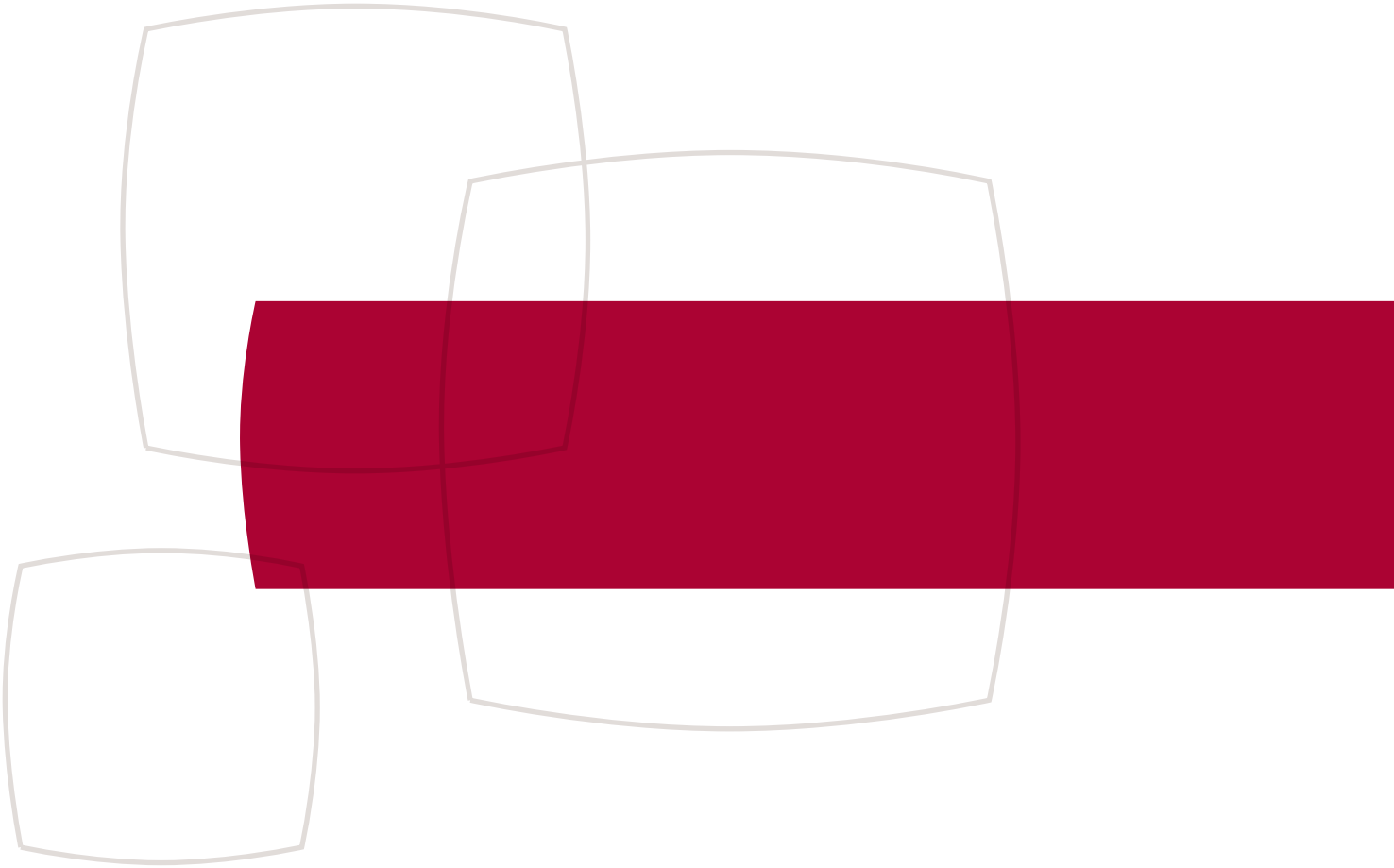
- In June 2011, the Bureau reached an agreement with Bell to stop making what the Bureau had concluded were misleading representations about the prices offered for its services and was required to pay an AMP of $10 million.

Effective implementation of the amendments

- The Bureau continues to demonstrate effective implementation and enforcement of the recent amendments to the Act, as evidenced by the Visa and MasterCard case, the first opportunity for the Tribunal to consider a case under the amended price maintenance provision, that was decriminalized with the passage of the amendments, and the Yellow Page Marketing B.V. case, the first case since the amendments where the Bureau sought and obtained an order for the freezing of corporate assets.
- The Bureau released updated *Merger Enforcement Guidelines* and *Merger Review Process Guidelines* and two new interpretation guidelines (one regarding hostile transactions and another concerning pre-merger notification). The Bureau also published for public consultation, two interpretation guidelines regarding pre-merger notification.
- The Bureau published for public comment a revised draft of *the Enforcement Guidelines* on *the Abuse of Dominance Provisions* (sections 78 and 79 of the Act).

Improving our enforcement capacity

- The Criminal Matters Branch concluded an in-depth examination of its operations and began implementing changes to its internal procedures in order to streamline the handling of, and improve its focus on, investigations relevant to Canadians.
- Over the course of the past year, the Bureau has attracted a number of talented individuals from other federal departments and central agencies, strengthening our links with the rest of government, as well as attracting individuals from the private sector with competition, legal and business experience.



PUBLIC

6861

2. BRANCH HIGHLIGHTS 2011-2012

2. BRANCH HIGHLIGHTS 2011-2012

The Bureau, through the committed work of its staff, continued to deliver on its priorities and had numerous successes in the past year.

2.1 Civil Matters Branch

The Civil Matters Branch 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.

The Bureau encourages voluntary compliance with the Act. Voluntary compliance includes a wide spectrum of solutions to remedy anti–competitive behaviour, ranging from an informal resolution to the registration of a consent agreement with the Tribunal.

In cases of non-compliance with the civil provisions of the Act, the Commissioner may file an application with the Tribunal for an order to remedy the situation. The Tribunal may order an AMP where it finds an abuse of a dominant position.

Key Achievements

Toronto Real Estate Board

Following an extensive investigation by the Civil Matters Branch and attempts to resolve the Bureau's concerns through agreement, the Commissioner filed an application with the Tribunal in May 2011, seeking to ensure greater competition and increased innovation in the market for real estate services in Toronto by prohibiting anti-competitive practices by the Toronto Real Estate Board (TREB). The Bureau concluded that TREB is restricting how its member agents can provide information from the Toronto Multiple Listing Service system to their customers, thereby denying consumer choice and member agents the ability to provide innovative brokerage services over the Internet. The litigation was still ongoing at the end of the reporting period and a Tribunal hearing is anticipated to begin during the Fall of 2012.

Visa and MasterCard



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

The rules challenged by the Bureau prohibit merchants from encouraging consumers to consider lower cost payment options like cash or debit, and prohibit merchants from applying a surcharge to a purchase on a high cost card. Further, once a merchant agrees to accept one of Visa or MasterCard's credit cards, that merchant must accept all credit cards offered by that company, including cards that impose significant costs on merchants, such as premium cards.

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

Since the filing of the Commissioner's application, extensive investigation and preparation was undertaken by the Civil Matters Branch in preparation for the

hearing of this matter that starts in May 2012. This is the first opportunity for the Tribunal to consider a case alleging price maintenance, which was redefined in the course of the recent amendments and is now subject to civil, rather than criminal, review.

DID YOU KNOW?

The Toronto Real Estate Board is the largest real estate board in Canada, with approximately 31,000 members? The Bureau has filed an application with the Tribunal seeking to prohibit anti-competitive practices by the Toronto Real Estate Board that are denying consumer choice and stifling innovation.

2.2 Criminal Matters Branch

The Bureau's Criminal Matters Branch administers and 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 2011-2012.

In March 2010, a new law relating to cartels and collaborations between competitors came into effect. These changes to the Act enable the Bureau to enforce Canada's anti-cartel law more effectively against serious offenders, who agree to fix prices, allocate markets, and restrict output. The conspiracy provision, section 45 of the Act, makes it a criminal offence for two or more competitors or potential competitors to conspire, agree, or arrange to fix prices, allocate customers or markets, or restrict output of a product. This conduct is punishable by a fine of up to $25 million, and/or imprisonment for a term of up to 14 years.

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, withdraw a bid, or agree to submit bids that have been pre-arranged among themselves. Penalties for bid-rigging include a fine in the discretion of the court and/or a prison sentence of up to 14 years.

The Bureau has a range of tools at its disposal to enforce these provisions. Under the Bureau's Immunity and Leniency programs, parties that disclose to the Bureau an offence not yet detected, or provide evidence leading to the filing of charges, may receive immunity or lenient treatment from the Director of Public Prosecutions, provided the parties cooperate with the Bureau. These programs provide powerful incentives for corporations and individuals to come forward and cooperate with the Bureau's investigations.

Key Achievements

R. v. Dowdall

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

In October 2011, after a lengthy preliminary hearing, the majority of the accused were committed to trial in relation to 140 counts under both the Act and the *Criminal Code of Canada*. Several of the accused subsequently filed an application seeking to quash the order of committal ordered by the Ontario Superior Court of Justice. At year end, the application had not been heard.

Ventilation



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

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

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

Sewer Services



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

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

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

Polyurethane Foam

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

Domfoam and its affiliate, Valle Foam, admitted that they had agreed with competitors to fix the price of polyurethane foam products manufactured at their plants in Brampton, Ontario, Delta, British Columbia, and Montreal, Québec, over an 11 year period. The companies' products are mainly used in carpet underlay, furniture and bedding.

The total of these fines is the highest obtained to date for a corporation and its affiliates in relation to a domestic cartel. The fines in this case are also the first to be imposed following the recent amendments to the cartel provisions of the Act.

Retail Gasoline

Quebec

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

As of March 31, 2011, 22 individuals and six companies have pleaded guilty in this case, with fines totalling over $2.8 million. Of the 22 individuals who have pleaded guilty, six have been sentenced to terms of imprisonment totalling 54 months.

Ontario

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

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

Outreach Programs

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

DID YOU KNOW?

In 2011-2012, there were 17 immunity and 13 leniency applications involving alleged cartel and bid-rigging activities. The Bureau's Immunity and Leniency Programs provide transparency and predictability to ensure that the public understands the immunity and leniency processes. These programs are among the Bureau's most effective tools to combat cartels.

2.3 Fair Business Practices Branch

The Bureau's Fair Business Practices Branch 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* (except as it relates to food), 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 2011-2012, the Branch focused on misleading representations to consumers, including fine print disclaimers.

Key Achievements

Bell Canada



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

Business Directory Scam – Yellow Page Marketing B.V.



In March 2012, five companies and three individuals were found by the Ontario Superior Court of Justice to have violated the Act for operating a deceptive marketing scheme targeting businesses, individuals and organizations across Canada and internationally. By using symbols that closely resemble the well-known trademark of the Yellow Pages Group, the companies and individuals deceived consumers into believing that they were merely updating contact information for an online business directory listing. In fact, buried in the fine print was a stipulation that, by returning the form, victims were committing to a new two-year contract for a listing at an annual cost of $1,428 with companies that have no relation to the Yellow Pages Group. The Court ordered that the companies and individuals pay AMPs totalling $9,035,000 ($8 million by the companies and $1,035,000 by the individuals), pay full restitution to the victims of the scam and publish corrective notices. The Court also ordered that any mail sent to the companies and individuals that had been held since a Court order in July 2011, be returned to the victims. The Court also declared that any contracts entered into with the companies and individuals by Canadians were null and void. The respondents have since appealed this decision.

Beiersdorf Canada Inc. - Nivea

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

Global Management Solutions - GMS and Commutel and Marketing USA

In September 2011, the owner and president of Global Management Solutions-GMS and Commutel and Marketing USA was sentenced to two years in

prison and prohibited from engaging in any form of telemarketing for three years after pleading guilty to three counts of deceptive telemarketing related to the promotion of business directories. The directories contained information about various companies and organizations. Victims were led to believe that they were existing customers of the telemarketing company or that the product was being offered free of charge; however, if they kept the product (a CD directory), they were sent an invoice or if it was returned, they had to pay a separate charge.

IT Data Direct

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

Job Opportunity Scam



In April and May 2011, two individuals pleaded guilty for their roles in an employment opportunity scam involving counterfeit cheques and were ordered to pay restitution to the victims of the scheme. Through online and newspaper advertisements, the scam targeted Canadian residents who believed that they had been hired to act as secret shoppers assessing the customer service of Western Union Financial Services. The victims were provided with cheques, instructed to deposit them, then to withdraw cash and wire it to individuals through the international money transfer service. All cheques were subsequently identified as counterfeit and the victims were left liable for the cash withdrawals.

Rogers

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

DID YOU KNOW?

During the Yellow Pages investigation, the Bureau worked closely with the U.S. Federal Trade Commission, the Australian Competition and Consumer Commission and the U.K. National Fraud Intelligence, all of which are undertaking enforcement initiatives against U.S. targets. In this case, the court ordered the highest AMP in a contested deceptive marketing practices case to date, totalling $9,035,000 ($8 million by the companies and $1,035,000 by the individuals).

2.4 Mergers Branch

Mergers in Canada are subject to review by the Bureau under the Act, 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 or prevent competition, the Commissioner will 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 non-conflicting and, to the extent appropriate, consistent remedies.

The workload and resources of the Mergers Branch continue to be strained by a steady influx of highly complex transactions raising serious competition concerns. For fiscal year 2011-2012, the percentage of merger reviews designated as 'complex' increased over the previous fiscal year. The associated complexity and compressed timeframe of these complex reviews require the Bureau to retain industry and economic experts to assist it in completing its reviews. Where necessary, outside counsel are also retained to supplement the legal support provided by Competition Bureau Legal Services of the Department of Justice.

Key Achievements

CCS Corporation – Complete Environmental Inc.



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

The hearing was held in Vancouver, British Columbia before the Tribunal from November 16 to December 2, 2011, with final arguments heard in Ottawa, Ontario from December 12 to 13, 2011. The Tribunal's decision on this matter was still pending at year end.

Air Canada – United Continental Holdings Inc.



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

Canadian Tire Corporation, Limited – The Forzani Group Ltd.

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

Following a thorough review, the Bureau concluded in August 2011 that the acquisition was not likely to result in a substantial lessening or prevention of competition. The Bureau issued a Position Statement[3] regarding its review of the transaction.

DID YOU KNOW?

The average compliance time for Supplementary Information Requests (SIRs) has decreased since the 2009 amendments came into force. In 2011-2012, the Mergers Branch issued 8 SIRs, all of which were fully complied with in an average of 44 days. This represents a 20% reduction in average compliance time from 2010-2011 (57 days), and a 50% reduction since 2009-2010 (93 days)!

2.5 Compliance and Operations

The Compliance and Operations Branch contributes to the Bureau's success by ensuring the branches have the tools they need to conduct their work, and that they work within approved policies and procedures. The Branch has three divisions.

Key Achievements

Renewal and Information Management

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

This year, as part of on-going efforts to strengthen the Bureau's enforcement capacity, the training curriculum was modified to focus on more internal training with an emphasis on learning by doing.

2. Section 90.1 is a new civil provision that came into force on March 12, 2010, enabling the Commissioner to challenge anti-competitive agreements between competitors.
3. A Position Statement briefly describes the Bureau's analysis of a particular proposed merger and summarizes its main findings to provide transparency to the antitrust community and industry stakeholders. More details regarding the position statement can be found on the Bureau's website: Canadian Tire/Forzani Position Statement

Management Services

The Bureau's work is important to businesses, consumers and the economy as a whole. The Bureau must ensure that it has sufficient resources, and that these resources are focussed on areas that will have the greatest impact for Canadians. In preparing for the government's review of departmental spending, and responding to earlier measures such as Strategic Review, the Bureau made every effort to restrain spending during the fiscal year. Expenditures were reduced in the areas of corporate supplies, telecommunications and publications. Salary costs were controlled via attrition and by delaying the filling of vacant positions.

The Bureau supported the creation of Shared Service Canada (SSC) by transferring resources and employees to the new organization. SSC will lead to Government-wide efficiencies in Information Technology (IT) through the centralization of shared services and common infrastructure.

To support the implementation of Canada's Anti-Spam Legislation (CASL), the IT architecture to support internet and deceptive electronic commerce investigations was established. The Bureau also began to implement a litigation support software which will accelerate document review and early case assessment.

Enforcement Services

The presence of large volumes of electronically stored information generated by businesses and evolving technology continues to present new challenges to Bureau investigations. Over the last year, the Bureau's Electronic Evidence Unit continued to evolve and adjust to meet these challenges. In addition to continuing the successful implementation of the 'Seize Smart' strategy, which has appropriately minimized seized electronically stored information leading to more targeted and focussed investigations, the Case Intelligence-Led Strategy (Strategy) was developed over the last year. The Strategy seeks to enhance the ability to deal with large volumes of information by improving an investigator's ability to analyse information gathered, and to focus on the information required to advance the case. Through the use of forensic, analytical and electronic discovery software, complex investigations are being dealt with in a more efficient and timely manner.

In 2011-2012, the Bureau's Information Centre registered 22,248 requests via telephone, fax, mail and Internet, a significant increase from 17,994 requests in 2010-2011. The Information Centre plays a key role in promoting awareness of the Bureau to the public and supports enforcement activities. As the public's primary access point for information requests and complaints related to the four statutes, Information Officers provide information to clients, primarily over the telephone, and register their complaints.

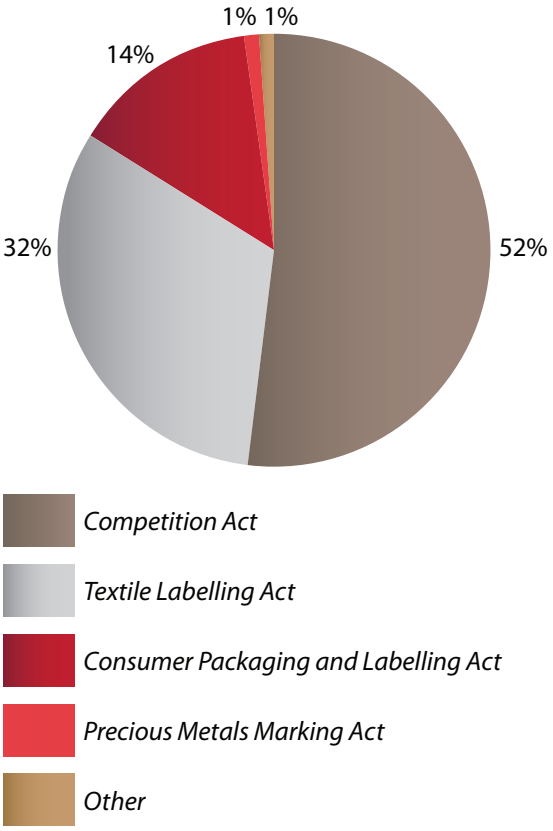
Requests made to the Competition Bureau	
Total Bureau requests	22,248[4]
Complaints	9,009
Information requests	5,848
No-issue[5]	7,392

The tables and illustration below summarize the main types of complaints and information requests received by the Bureau's Information Centre in 2011-2012.

Top 5 Complaints by Product or Service	
1. Directory listings	2,442
2. Travel, transportation, vacations, hotels & resorts	1,323
3. Electronic & digital products	689
4. Contests, sweepstakes & lotteries	528
5. Home and office paper, supplies and services	484

4. This number includes complaints and information requests directed to the Bureau from the Canadian Anti-Fraud Centre (CAFC). The CAFC is managed by the Royal Canadian Mounted Police, the Ontario Provincial Police and the Bureau. The CAFC is the central fraud repository in Canada that collects information and criminal intelligence on fraud schemes that target large numbers of people, referred to as mass marketing fraud. Examples include job scams, lottery scams, false charities, and identity crime.
5. No-Issue includes requests that are not relevant to the Bureau's mandate or were referred to the Bureau in error.

Information Requests[6]	
Competition Act	3,076
Textile Labelling Act	1,876
***Consumer Packaging and Labelling Act* (except as it relates to food)**	856
Precious Metals Marking Act	87
Other	60



2.6 Economic Policy and Enforcement Branch

The primary role of the Economic Policy and Enforcement Branch is to provide economic advice and support to the Bureau's enforcement cases. In 2011-2012, economists within the Branch were involved in numerous reviews including: the joint venture between Air Canada and United Continental Holdings, the merger between Canadian Tire and Forzani, the proposed acquisition of the TSX by the Maple Group, the proposed acquisition by Bell and Rogers of Maple Leafs Sports and Entertainment, and the Bureau's misleading advertising investigation into Bell Canada's misleading representations.

In an effort to reduce spending on external training, the Branch provided internal training courses to Bureau staff. Branch economists offered a course in basic economics that introduced fundamental principles and concepts of economics that are applicable to the Bureau's enforcement work. They also provided training in basic Industrial Organization economics that offered insights into oligopoly theory and business strategy.

The Branch continued to provide its visiting speaker program where competition policy experts and economic scholars make presentations to Bureau staff on topics relevant to the Bureau's enforcement work. This program is designed to create and maintain links between the Bureau and experts in competition policy as well as educate Bureau staff on recent developments in economics. The Branch arranged for a total of nine speakers in 2011-2012.

2.7 Legislative and International Affairs Branch

The Legislative and International Affairs Branch manages the Bureau's participation in a wide range of activities to promote the benefits of a competitive marketplace, both domestically and internationally. The Branch develops and supports government legislative, regulatory and policy initiatives. Specifically, the Branch is responsible for inputting into proposals relating to the Act and other legislation administered and enforced by the Bureau, as well as departmental and government-wide proposals that could benefit from the Bureau's enforcement experience. The Branch also provides policy support for the Bureau's enforcement activities, and assists in the preparation of Bureau officials to appear before federal and provincial government agencies, regulatory bodies, and Parliamentary committees.

Internationally, the Branch supports the Government in the negotiation and implementation of competition provisions in free trade agreements, and leads the development of bilateral cooperation instruments with

6. 107 information requests dealt with more than one statute, and therefore the total number of information requests listed above differs from the number of information requests previously identified in Requests made to the Competition Bureau.

the Bureau's foreign counterparts. The Branch also manages the Bureau's leading role in the International Competition Network and the Organisation for Economic Co-operation and Development.

Key Domestic Achievements

Representations to Parliamentary Committees

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

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

Bureau officials also appeared, with Industry Canada officials, before the same Committee on October 5, 2011, to provide evidence on the Committee's study of the e-commerce market in Canada. Industry Canada officials provided the Committee with an overview of electronic commerce, and how Canada fares relative to the rest of the world. In addition, they described stakeholders and industry suggestions to further advance e-commerce in Canada. Industry Canada officials outlined its main activities supporting e-commerce, while a Bureau official outlined the potential effects of Canada's pending anti-spam legislation on e-commerce and consumer confidence in this marketplace.

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

Key International Achievements

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 law enforcement, as coordination among agencies leads to improved enforcement outcomes. In 2011-2012, the Bureau participated in the following international organizations:

International Competition Network

The International Competition Network (ICN) advocates the adoption of superior standards and procedures in competition policy around the world, formulates proposals for procedural and substantive convergence, and seeks to facilitate effective international cooperation for the benefit of member agencies, consumers and economies worldwide. Since the creation of the ICN in 2001, the Bureau has played a key role in the organization's development by serving as the ICN Secretariat and through participation in the Steering Group (SG) and working groups on cartels, unilateral conduct, mergers and agency effectiveness. In addition, the Bureau co-chairs the Cartel Working Group's subgroup on enforcement techniques and the Operational Framework Working Group.

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

Operational Framework Working Group

The Bureau continues to co-chair the Operational Framework Working Group (OFWG). In 2011-2012, the OFWG was tasked with amending the ICN's Operational Framework to promote diversity, inclusiveness and transparency within

the ICN governance framework while maintaining continuity with existing practices. As a result, these amendments clarified roles and processes of SG members and Working Group Chairs.

Cartel Working Group

The Bureau continues to co-chair the Cartel Working Group's subgroup on enforcement techniques. This subgroup aims to improve the effectiveness of anti-cartel enforcement by identifying and sharing specific investigative techniques and advancing education and information sharing through its annual Cartel Workshop, which was held in Bruges, Belgium in October 2011. Additionally, each year, the Cartel Working Group's subgroup on enforcement techniques drafts a new chapter or revises an existing chapter in its 'Anti-Cartel Enforcement Manual'. In 2011 and 2012, the subgroup on enforcement techniques drafter a new chapter entitled 'Cartel Awareness, Outreach and Compliance,' which will be unveiled at the ICN Annual Conference in Rio de Janeiro, Brazil in April 2012.

Merger Working Group

The Bureau actively participated in teleseminars on merger review processes and commented on the Merger Working Group's work products with a view to identifying areas for improvement.

Unilateral Conduct Working Group

The Bureau actively participated in drafting a chapter on two ICN work products relating to specific guidance on defining market power and dominance.

Organisation for Economic Co-operation and Development - Competition Committee

The Organisation for Economic Co-operation and Development's (OECD) Competition Committee (CC) is comprised of representatives of antitrust enforcement and policy agencies of OECD Member countries. The CC reviews domestic and international developments in competition laws and policies, promotes cooperation between Member countries, exchanges views on competition law and policy issues arising in other international fora, and makes recommendations to the OECD Council on matters within the competence of the CC. During this fiscal year, the Commissioner remained an active member of the CC's managing body, "the Bureau". In 2011-2012, the Competition Bureau contributed to the work of the CC and its Working Parties by providing input and submissions on the following topics: promoting compliance with competition law; impact evaluation of merger decisions; remedies in merger cases; update on developments in transparency; and improving international cooperation in cartel investigations.

Organisation for Economic Co-operation and Development - Committee on Consumer Policy

The OECD's Committee on Consumer Policy (CCP) examines questions relating to domestic and international consumer law and policy, including issues of consumer safety and the development of a global marketplace for consumers, and contributes to the further development and strengthening of cooperation between Member countries in consumer policy development and law enforcement. In 2011-2012, the Bureau participated in the CCP by providing input and presentations regarding several projects of the CCP, including a presentation on recent Canadian enforcements actions with respect to misleading and fraudulent claims in the telecommunication market.

International Consumer Protection and Enforcement Network

The International Consumer Protection and Enforcement Network (ICPEN) is comprised of consumer protection authorities from almost 50 countries, whose aim is to protect consumers' economic interests around the world, share information about cross-border commercial activities that may affect consumer welfare, and encourage global cooperation among law enforcement agencies. In 2011-2012, the Bureau continued to play a leadership role in ICPEN. The Bureau was a member of the ICPEN Advisory Group and a number of ICPEN working groups. Bureau representatives attended the bi-annual ICPEN meeting in The Hague, Netherlands, in April 2011. Bureau officials participated in various sessions on topics such as price advertising, online payment services and intelligence gathering.

The Bureau also attended the ICPEN Conference and Best Practices Workshop that took place from February 28 to March 2, 2012. The Bureau played a significant role in these meetings by: (i) participating on a panel addressing "negative option marketing";

(ii) moderating a session relating to deceptive online selling; and (iii) co-moderating a best practices workshop session on enforcement tools and techniques.

International Cooperation

The Bureau develops and implements bilateral cooperation agreements with foreign antitrust agencies in order to, among other things, facilitate information exchanges on competition law enforcement and the coordination of global enforcement activity. In 2011-2012, the Bureau cooperated with a number of jurisdictions with respect to international enforcement cases including: Australia, Brazil, the European Union, France, Japan, Korea, Luxembourg, New Zealand, Singapore, South Africa, Switzerland, the United Kingdom, and the United States.

In 2011-2012, the Bureau held a number of formal and informal bilateral meetings with its foreign counterparts. These included meetings with antitrust agencies from Brazil, China, the European Commission, Hong Kong, Japan, Korea, Mexico and the United States. In addition, the Bureau engaged in staff exchanges with the United Kingdom's Office of Fair Trading and the Korean Fair Trade Commission.

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, and Foreign Investment Promotion and Protection Agreements, and acts as the lead negotiator on competition enforcement matters on behalf of the Government of Canada.

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

2.8 Public Affairs Branch

Communicating the Bureau's mandate to Canadians is an important part of the work of the Public Affairs Branch. The Bureau uses a number of different vehicles to draw attention to both its enforcement efforts and non-enforcement activities to educate consumers and deter anti-competitive activity. The following describes the various ways the Bureau communicated the results of its work over the past year.

Announcements

The Bureau issued 43 announcements during the 2011-2012 fiscal year describing the benefits of its activities to the economy and to Canadians. Announcements include news releases, information notices, and items in the Bureau's electronic CB in Brief news digest published monthly on the website.

Media Relations

The Bureau responded to enquiries from journalists in Canada and abroad, resulting in approximately 5,700 print, radio, television and online media reports on matters involving the Bureau. The Bureau's media analysis concluded that 98 percent of coverage ranged from positive to neutral in tone.

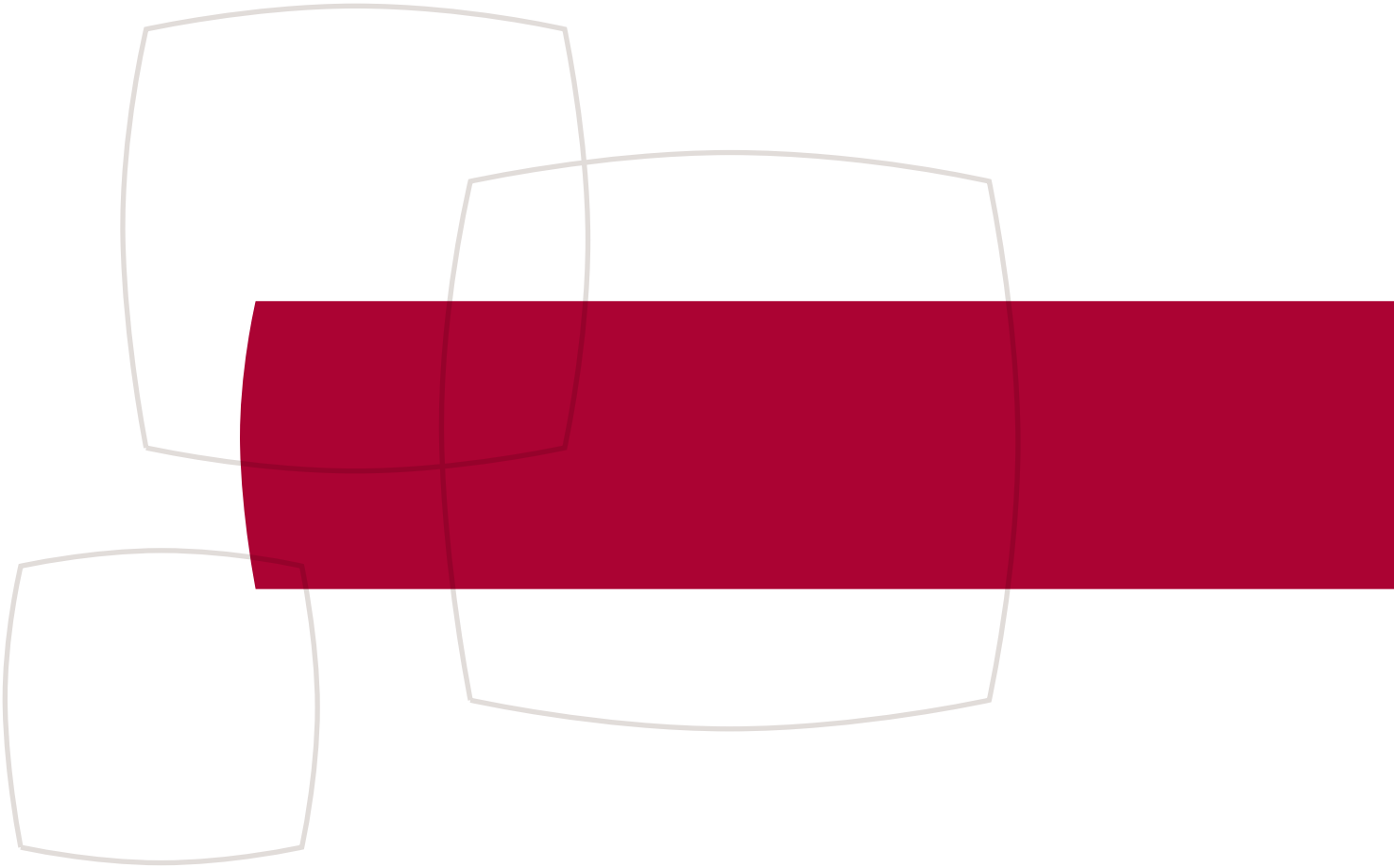
High profile media issues in 2011-2012
1. **Maple / TMX Transaction**
2. **Gas Price-Fixing Cartel (Ontario and Québec)**
3. **Bell Canada and Misleading Advertising**
4. **Lawful Access Legislation**
5. **Air Canada / United Continental Joint Venture**

Bureau Website

The Bureau's website (www.competitionbureau.gc.ca) provides a wealth of useful information to a wide and varied audience, ranging from consumers and businesses to legal and media professionals. The site received a total of 865,399 visits during 2011-2012, compared to a total of 689,922 visits during 2010-2011.

The site also features an automatic email distribution list that sends information updates to subscribers, as well as a Real Simple Syndication (RSS) news feed that provides subscribers with access to Bureau announcements as they become available.

Top five Bureau announcements for 2011-2012 based on visits to the Bureau website	
Announcements	**Visits**
1. Competition Bureau Reaches Agreement with Bell Canada Requiring Bell to Pay $10 million for Misleading Advertising - June 28, 2011	7,569
www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03388.html	
2. Competition Bureau Sues to Shut Down Business Directory Scam – July 28, 2011	4,644
www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03393.html	
3. Competition Bureau Sues Canada's Largest Real Estate Board for Denying Services Over the Internet – May 27, 2011	3,747
www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03379.html	
4. Competition Bureau Exposes Sewer Services Cartel in Quebec – November 22, 2011	2,941
www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03430.html	
5. Competition Bureau Sends Signal to Price-Fixers with $12.5 million Fine – January 6, 2012	2,323
www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01353.html	



3. PUBLICATIONS AND CONSULTATIONS

3. PUBLICATIONS AND CONSULTATIONS

The Bureau issues enforcement guidelines to provide guidance on its enforcement approach in various competition areas.

Enforcement guidelines are an articulation of the Bureau's enforcement policy with respect to the various provisions of the Act, *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act*, and the *Precious Metals Marking Act* based on the Bureau's past experience, jurisprudence, and accepted economic theory.

The Bureau continued to focus on the effective implementation of the amendments to the Act in 2011-2012, with a view to enhancing transparency in discharging its mandate. In an effort to provide businesses with clear guidelines and a predictable process the Bureau released various guidance documents and undertook public consultations.

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



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

Revised Abuse of Dominance Guidelines - draft (March 2012)

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

Merger Review Process Guidelines (revised January 2012)



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

Updated Guidance on Merger Review "No Action" Letters (August 2011)

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

where the Commissioner uses her discretion to issue a NAL with respect to proposed transactions entered into after September 1, 2011, the standard language will be as follows: "…the Commissioner does not, at this time, intend to make an application under section 92 in respect of the proposed transaction".

Mergers Remedy Study Summary (August 2011)

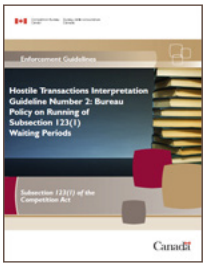
In August 2011, the Bureau published a summary of the *Merger Remedy Study* (Study) regarding the effectiveness of remedies obtained between 1995 and 2005 under the merger provisions of the Act. The summary outlines the Study's key observations and findings while maintaining the confidentiality of information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

Hostile Transactions Interpretation Guideline Number 1: Bureau Policy on Disclosure of Information (July 2011)



This Interpretation Guideline (IG) addresses the Bureau's policy regarding the disclosure of 'pertinent information' to both the bidder and target of a hostile transaction.

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



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

Pre-Merger Notification Interpretation Guideline Number 12: Requirement to Submit a New Pre-Merger Notification and/or ARC Request Where a Proposed Transaction is Subsequently Amended (March 2012)



IG 12 provides guidance to parties on whether they will be required to submit a new notification and/or request for an ARC, where a proposed transaction has been amended.

Pre-Merger Notification Interpretation Guideline Number 13: Satisfying the Information Requirements Set Out in Section 16 of the Notifiable Transactions Regulations and Completeness of Notification (June 2011)



IG 13 addresses various information requirements set out in section 16 of the Regulations that are often misinterpreted, and discusses how parties can best satisfy these requirements to avoid a determination by the Merger Notification Unit that their Notification is incomplete.

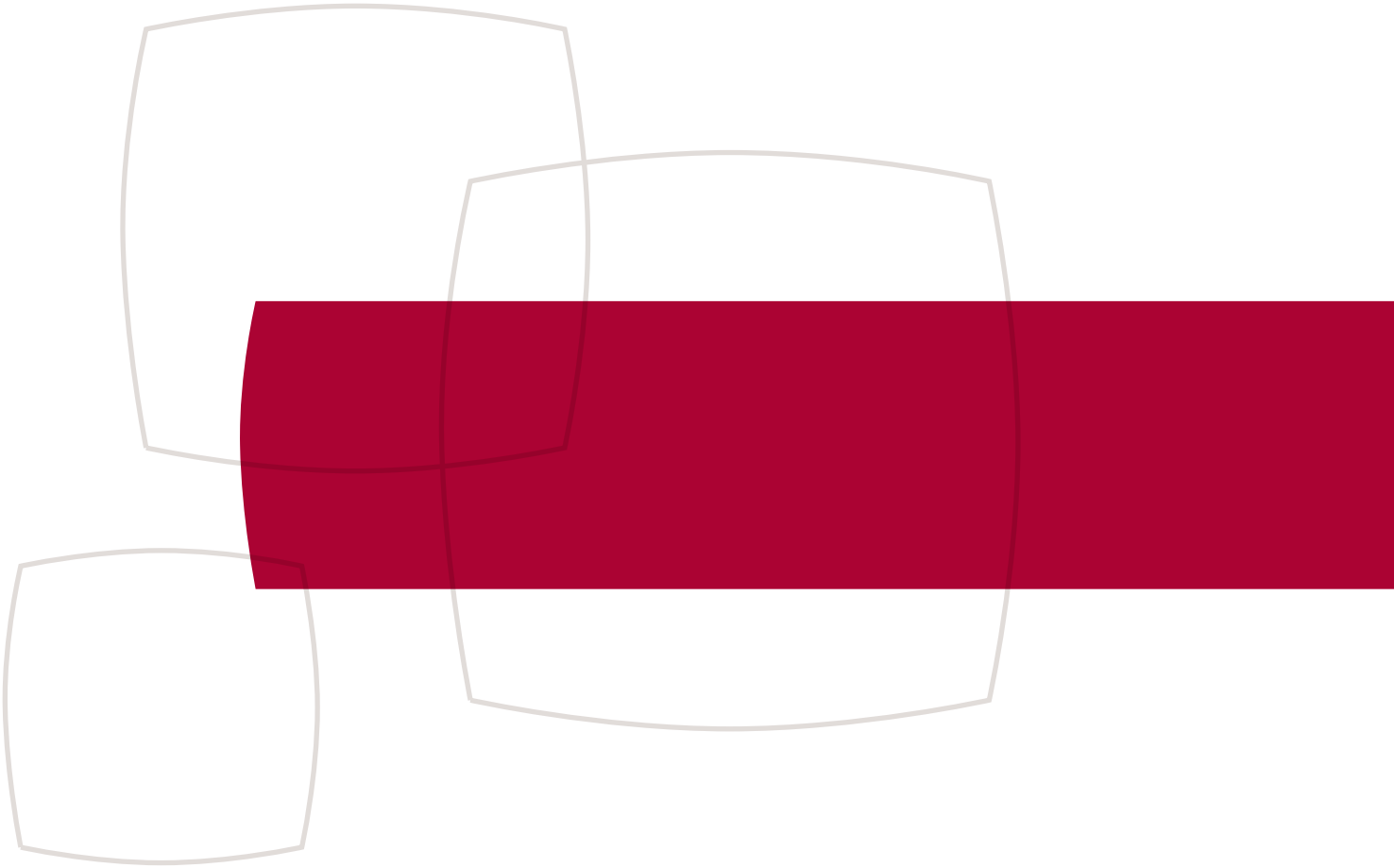
Pre-Merger Notification Interpretation Guideline Number 14: Duplication Arising From Transactions Between Affiliates (March 2012)



IG 14 provides guidance to parties when calculating whether a proposed transaction exceeds the party size and transaction size thresholds under sections 109 and 110 of the Act; in particular, it clarifies what amounts may be deducted owing to duplication in determining whether notification thresholds have been exceeded, where a proposed transaction involves affiliates.

Position Statements – Canadian Tire/ Forzani (October 2011)

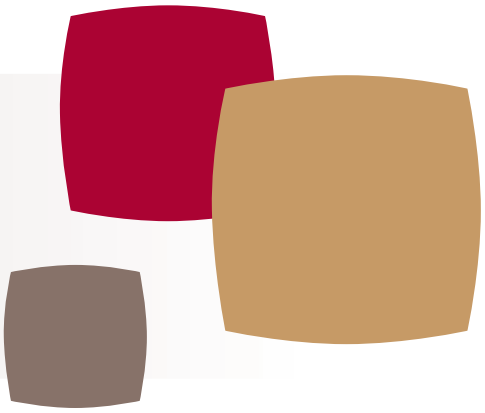
Please refer to the Merger Key Achievements in section 2.4.



PUBLIC

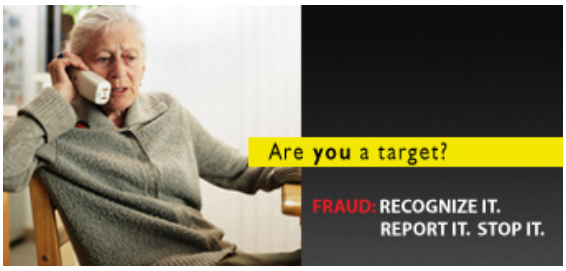
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4. OUTREACH INITIATIVES



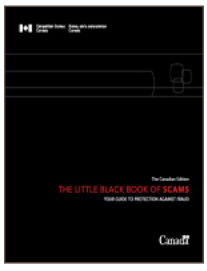
4. OUTREACH INITIATIVES

Fraud Prevention Month



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

The Bureau plays an important role in building consumer confidence by discouraging deceptive business practices and encouraging the provision of sufficient information to allow Canadian consumers to make informed purchasing decisions. This led to this year's theme: **Building Consumer Confidence**. Each Monday of the 2012 campaign, the Bureau issued an announcement: a news release to launch FPM, followed by tips for consumers, tips for businesses, and a consumer advisory regarding fake news websites.



Originally developed by the Australian Competition and Consumer Commission, the Bureau also published the Canadian edition of *The Little Black Book of Scams*, a compact and easy to use reference guide filled with information Canadians can use to protect themselves against a variety of common scams, how these scams work, how to recognize them, as well as practical tips on how consumers can protect themselves. It also debunks common myths about scams, provides contact information for reporting a scam to the correct authority, and offers a step-by-step guide for scam victims to reduce their losses and avoid becoming repeat victims.

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

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

FRAUD: RECOGNIZE IT. REPORT IT, STOP IT.

HOW TO CONTACT THE COMPETITION BUREAU

Anyone wishing to obtain additional information about the *Competition Act*, the *Consumer Packaging and Labelling Act* (except as it relates to food), 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.

Website

www.competitionbureau.gc.ca

Address

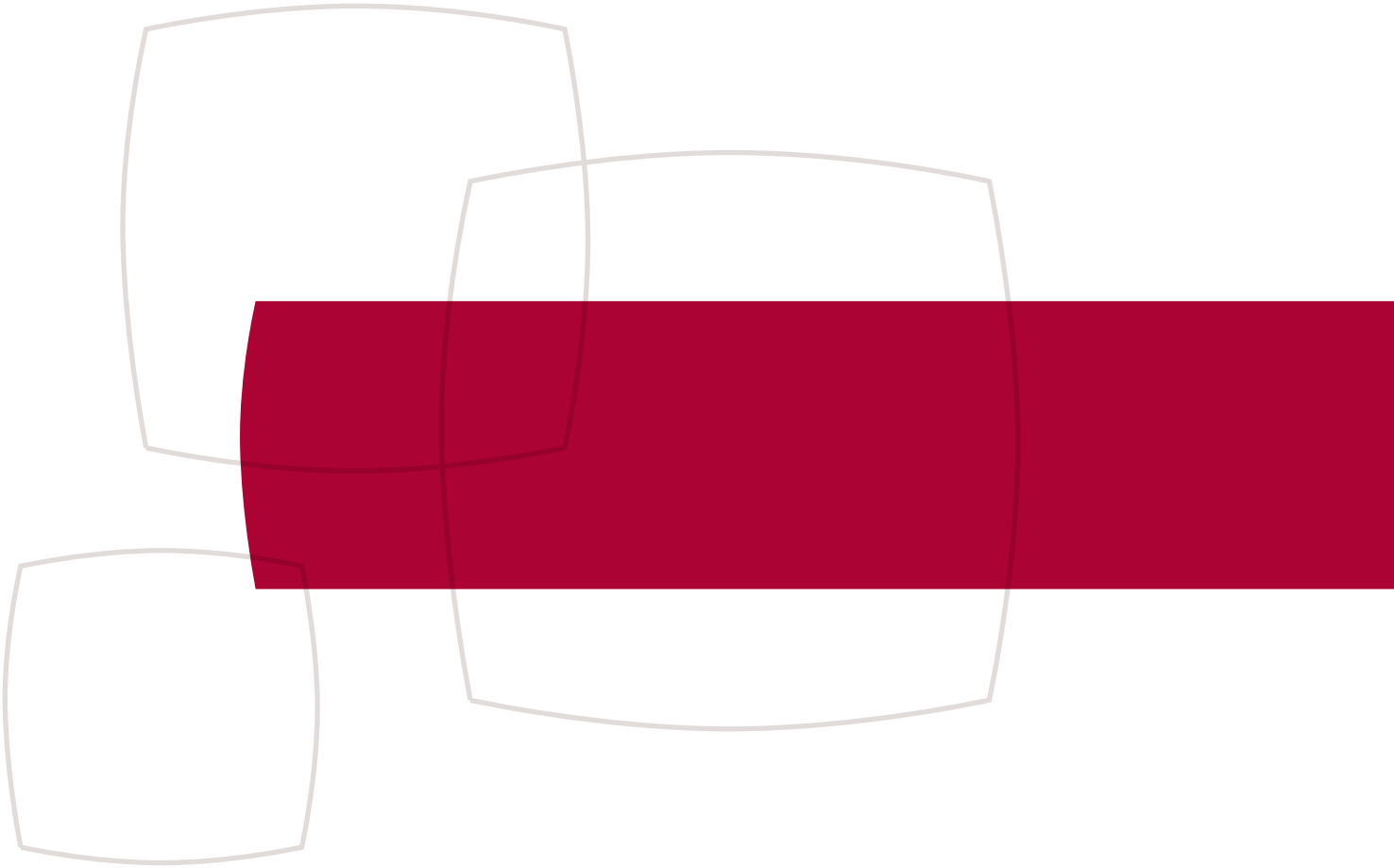
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APPENDIX: COMPETITION BUREAU STATISTICS

Table 1: Competition Bureau Statistics				
Law Enforcement Activity	**FBPB**	**Civil**	**Criminal**	**Mergers**
Inquiries commenced (Number of formal inquiries commenced between April 1, 2011 and March 31, 2012)	3	3	8	2
Inquiries in progress (Number of formal inquiries in progress on April 1, 2011)	35	9	15	2
Inquiries discontinued (Number of formal inquiries discontinued between April 1, 2011 and March 31, 2012)	3	1	4	1
Examinations in progress (Number of examinations in progress on April 1, 2011 - Examinations are complaints and information requests that have been assigned for further assessment as well as orders being reviewed)	47	21	10	18
Examinations commenced (Number of examinations commenced between April 1, 2011 and March 31, 2012)	14	13	5	228
Examinations concluded (Number of examinations concluded between April 1, 2011 and March 31, 2012)	16	12	5	221
Matters where charges were laid (Number of matters where charges were laid between April 1, 2011 and March 31, 2012)	2	-	6	-
Matters where applications were filed (Number of matters where applications were filed between April 1, 2011 and March 31, 2012)	1	1	-	1
Matters with criminal orders (Number of matters where there were orders between April 1, 2011 and March 31, 2012)	3	-	6	-
Convictions	3	-	6	-
Prohibition Orders without convictions	0	-	0	-
Interim injunctions (criminal)	0	-	0	-
Matters with civil orders (Number of matters where there were orders between April 1, 2011 and March 31, 2012)	3	0	-	0
Registered Consent Agreements	2	0	-	0
Final Order in contested proceedings	1	0	-	0
Interim injunctions (Civil)	1	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 undertakings, agreements and voluntary compliance, and does not include Registered Consent Agreements)	2	0	1	2
Compliance Contacts (Information letters and meetings)	0	1	7	-
Information Bulletins and Enforcement Guidelines published (All guidelines published between April 1, 2011 and March 31, 2012 including those for consultation, new publication and those that have been revised)	1	1	0	10
Total Fines Imposed	0	-	$15,229,500	-
Total Administrative Monetary Penalties	$19,335,000	0	-	-

Table 2: Advocacy of Competition Principles[7]	
Advocacy under Sections 125 and 126	0
Representations to regulators outside of formal proceedings	0

Table 3: Speeches and Outreach					
	FBPB	**Civil**	**Criminal**	**Mergers**	**Commissioner**
Speeches[8] (Number of times Bureau staff spoke to stakeholders. This includes information sessions and outreach activities, not the number of participants)	16	2	32	8	15
Recruitment Initiatives (Number of presentations made to potential Bureau recruits; this includes seminars)	0	1	0	0	0

Table 4: Merger Examinations	
Examinations Commenced	**228**
Notification filings and Advance Ruling Certificate (ARC) requests	204
Notification filings only	7
ARC requests only	157
ARC requests and Notification filings	40
Other examinations	24
Examinations Concluded	**221**
No issues[9] under the *Competition Act*	215
Advance Ruling Certificates issued	77
"No-action" letters[10]	121
Other examinations	17
Concluded with issues under the *Competition Act*	2
Consent Agreements Registered with the Competition Tribunal	0
Foreign remedies resolved Canadian competition concerns	2
Transactions abandoned due to competition concerns	0
Section 92 applications concluded or withdrawn	0
Transactions abandoned for reasons apparently unrelated to the Commissioner's position	4
Supplementary Information Requests issued	8
Total Examinations during the year (including ongoing matters from previous year)	246
Examinations ongoing at year end[11]	25
Matters Before the Tribunal or The Courts[12]	**2**
Section 92 matters	**2**
Other Tribunal or Court Proceedings	**0**

7. In 2011-2012, there were no advocacy initiatives promoting competition principles undertaken owing to the Bureau's focus on vigorous enforcement of the laws under its jurisdiction.
8. In 2011-2012, 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.
9. Examinations resulting in assessment of no current enforcement action.
10. Including ARC refusals.
11. Includes all examinations not concluded within this fiscal year, including those commenced in previous fiscal years. Also includes matters on-going before the tribunal or Courts at year end.

Reviewing Mergers

Number of mergers reviewed where the answer was provided to parties between April 1 and March 31, 2012.

Table 5: Merger Review - Meeting Service Standards 2011-2012[13]			
Complexity	**Examinations Concluded**	**Meeting our Service Standards**	**Average Completion Time (days)**
Non-Complex (14 days)	146	133 (91.10%)	11.25
Complex (30/45 days)	50	41 (82.00%)	36.62
Total	**196**	**174 (88.78%)**	**-**

Written Opinions

Number of Written Opinions provided between April 1, 2011 and March 31, 2012.

Table 6: Written Opinions – Meeting Service Standards									
	2009-2010			**2010-2011**			**2011-2012**		
	Provided	**Met**	**%**	**Provided**	**Met**	**%**	**Provided**	**Met**	**%**
FBPB									
Complex (6 weeks)	0	0	0	4	0	0	10	0	0
Non-Complex (2 weeks)	11	5	45	12	3	25	1	0	0
Civil									
Complex (10 weeks)	0	0	0	7	0	0	1[14]	0	0
Non-Complex (6 weeks)	0	0	0	0	0	0	0	0	0
Criminal									
Complex (10 weeks)	0	0	0	7	0	0	1	0	0
Non-Complex (6 weeks)	0	0	0	0	0	0	0	0	0
Mergers									
Complex (28 days)	0	0	0	1	1	100	0	0	0
Non-Complex (14 days)	1	1	100	1	1	100	0	0	0
Total	**12**	**6**	**50**	**32**	**5**	**16**	**12**	**0**	**0**

12. Includes ongoing section 92 matters and other matters before the tribunal or courts (such as section 100 and 106 matters). Excludes consent agreements.
13. As of November 1, 2010, the previous complex and very complex categories have been consolidated into a new complex category, with a service standard of 45 calendar days, commencing the day a complete notification or ARC request is received by the Commissioner, assuming sufficient information is provided to assign complexity. However, where a Supplementary Information Request (SIR) is issued, the service standard is 30 calendar days, commencing on the day on which the Commissioner receives a complete response to the SIR from all SIR recipients.
14. Written opinion request requires a joint assessment involving the Civil and Criminal matters branches.

This is Exhibit “89” referred to in the Affidavit of Mary DeCaire sworn by Mary DeCaire at the City of Toronto, in the Province of Ontario, before me on May 5, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

JAKOB KELLY

Competition Bureau Canada | Bureau de la concurrence Canada

Lower Prices. More Choice.

ANNUAL REPORT OF THE COMMISSIONER OF COMPETITION FOR THE YEAR ENDING MARCH 31, 2013

Canada

This publication is not a legal document. It contains general information and is provided for convenience and guidance in applying the *Competition Act*.

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The Competition Bureau at a glance

About the Competition Bureau

The Competition Bureau (Bureau) is an independent law enforcement agency headed by the Commissioner of Competition (Commissioner) that is responsible for administering and enforcing Canada's:

- *Competition Act* (Act)
- *Consumer Packaging and Labelling Act* (except as it relates to food)
- *Textile Labelling Act*
- *Precious Metals Marking Act*

The Bureau is made up of:

- Four enforcement branches
- Four enforcement support branches

The Bureau also provides funding to support two independent legal support branches:

- Competition Bureau Legal Services (Department of Justice)
- Competition Law Section of the Public Prosecution Service of Canada (PPSC)

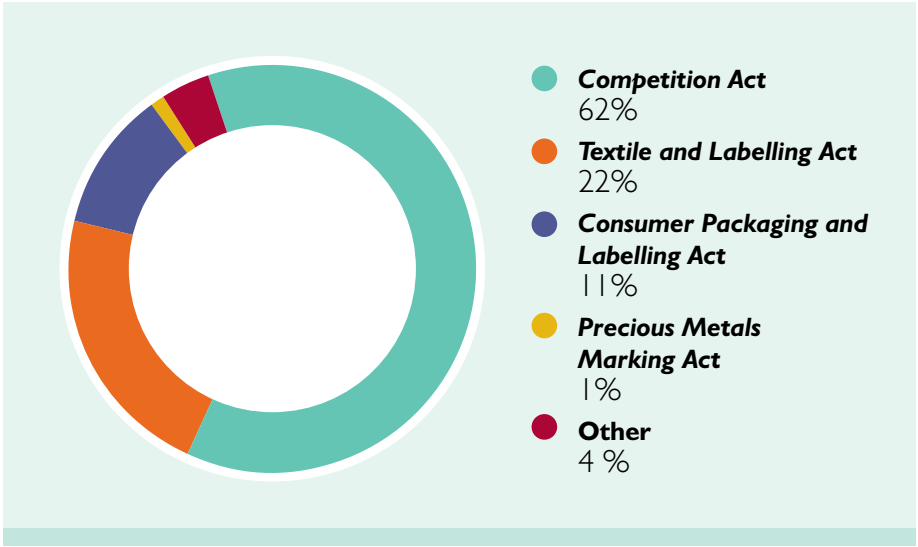
Priorities in 2012–2013

- Achieve results for Canadians through active, targeted and principled enforcement of competition laws and regulations
- Apply Canada's competition laws progressively, transparently and in step with the changing marketplace
- Cultivate strong, agile enforcement capacity

THE YEAR IN NUMBERS

5 terabytes	The amount of digital information seized by the Bureau's forensic investigators—equal to a stack of paper 300 times taller than the Eiffel Tower
13	The number of search warrants executed by the Bureau
5,825	The number of complaints registered with the Bureau
10,067	The number of information requests received by the Bureau
14	The number of position statements published to provide greater communication and transparency regarding the Bureau's decision-making process
20,000	The number of times the Canadian edition of *The Little Black Book of Scams* was downloaded from the Bureau's website
> $7.8 million	Total fines imposed by the Courts as a result of Bureau actions

Breakdown of Information Requests, 2012–2013



Message from the Commissioner

If necessity is the mother of invention, competition is arguably the mother of *innovation*. Competition inspires creativity, drives efficiency and fosters economic health—producing lower prices and more choice for consumers.



On multiple fronts in 2012–2013, the Bureau continued to pursue its mandate of ensuring Canada's markets remain competitive. It did so in the midst of change: the departure of the former Commissioner of Competition, Melanie Aitken, and my appointment as Interim Commissioner; and the beginnings of a shift toward greater transparency and more frequent use of strategic regulatory interventions to encourage fair and competitive practices.

A key example of the latter was our submission to the Canadian Radio-television and Telecommunications Commission (CRTC) on the development of a wireless code for Canada—an opportunity to weave good, consumer-friendly practices into the fabric of the sector. Strategic regulatory interventions like these complement enforcement and help create a positive culture of competition for the country.

On the enforcement front, we achieved strong outcomes: three consent agreements reached; five matters with criminal charges laid; six convictions obtained; and more than $7.8 million in fines imposed.

The rise in particular of e-commerce and digital technology has shifted the ground in many arenas. Last year, we joined more than 25 consumer protection agencies in a joint sweep targeting fraudulent and deceptive online and mobile advertising—identifying vendors who do not properly disclose the terms of transactions that can result in recurring charges, usage fees and contract terms for consumers. The Bureau added Twitter to its media monitoring service to identify emerging issues and gauge consumer and business response to our actions.

As the marketplace changes, our approaches must change along with it. We held Sector Days throughout the year, during which experts from various industries briefed our teams on the latest trends and emerging issues in their particular sectors.

Going forward, we will build on the strong enforcement work we have been engaged in over the past few years with the new provisions accorded under our Act. At the same time, we will employ the full set of tools at our disposal to encourage compliance.

It was a privilege to be asked to serve as Interim Commissioner following the departure of Melanie Aitken. I must congratulate and thank Melanie on her contributions to our mandate: she not only stood as a steadfast defender of competition in Canada but also helped raise the profile of the Bureau in many important ways.

Finally, I have to thank our expert staff for yet another year of committed effort, the results of which are well documented in these pages.

Sincerely,

John Pecman
Interim Commissioner of Competition

Our goal at the Bureau is to ensure Canadian businesses and consumers enjoy the advantages of a competitive marketplace and strong economy.

That's because healthy competition boosts Canada's economic performance, increases productivity and drives innovation—benefiting Canadians with lower prices and more choice.

The following stories share some of the ways we carried out our role in 2012–2013.

Fair fares for travellers

For many Canadians—especially business travellers—easy, affordable access to American destinations is essential. When Air Canada and United Continental Holdings, Inc. (United Continental) announced plans for a joint venture that would effectively merge their flight operations on high-demand Canada–United States (U.S.) routes, the Bureau stepped in to ensure the deal would not result in higher prices and less choice for consumers.

The Bureau reached a consent agreement with the airlines in October 2012, ensuring that Air Canada and United Continental will not use their joint venture or any existing agreements to coordinate prices, price-specific seat quantities, pool revenues or costs, or to share commercially sensitive information related to 14 key passenger routes—all of which would be detrimental to consumers. The agreement will remain in force as long as the joint venture or any of the airlines' coordination agreements are active, overseen by an independent monitor appointed by the Bureau.

Economists and lawyers within the Bureau assessed the proposed Air Canada – United Continental joint venture to identify its potential impacts. Their analysis provided clear direction for the eventual agreement, which protects both Canadians' travel options and pocketbooks.

> The agreement will remain in force as long as the joint venture or any of the airlines' coordination agreements are active



Exposing hidden mobile service fees

Consumers are routinely cautioned to "read the fine print", but at the same time companies have a responsibility to be accurate and truthful in how they advertise their services. In 2012, the Bureau took Bell Canada (Bell), Rogers Communications, Inc. (Rogers), TELUS Corporation (Telus) and the Canadian Wireless Telecommunications Association (CWTA) to task for not doing so—seeking full customer refunds and $31 million in penalties for allegedly misleading customers in their promotion of "premium texting services".

The Bureau began legal proceedings after a five-month investigation, concluding the three companies, together with the CWTA, had facilitated the sale of premium-rate digital content such as trivia questions and ringtones to existing customers for up to $10 per transaction—when those customers had allegedly been misled into thinking the content was free. In fact, customers believed measures were in place to *prevent* unauthorized charges.

If the Bureau's case is successful, the organizations will be required to issue public notices about the orders brought against them and to stop any promotions not clearly disclosing prices and other terms and conditions for digital content. In addition to refunds for all customers, the Bureau is seeking administrative monetary penalties (AMPs): $10 million each from Bell, Rogers and Telus, and $1 million from the CWTA. The case remained active as of March 31, 2013.

Submission by the Commissioner of Competition on Wireless Code of Conduct

Also in 2012–2013, the Bureau filed a response with the CRTC, contributing to the regulator's work to establish a mandatory code that would require all wireless service agreements to be clear and specific. Ensuring consumers have clear, complete information to make purchasing decisions is a key way the Bureau protects Canadians from high costs.



Price protection at the pumps

It was one of the largest, most exhaustive criminal investigations in the history of the Bureau: the search for evidence of gasoline price-fixing in certain markets in Quebec. Aided by wiretaps, searches and expert analysis, the Bureau uncovered the proof it needed. By the end of March 2013, 39 people and 15 companies faced criminal charges.

Detecting and proving price-fixing conspiracies is tough work. High or identical prices are not evidence of criminal activity on their own: there has to be evidence that competing companies have agreed, together, to set prices. The Bureau's investigation revealed that, in certain local gas markets retailers or their representatives had been communicating with each other to determine the price they would charge for gasoline.

As of March 31, 2013, 33 people and seven of the companies charged with wrongdoing had either pleaded or been found guilty, and were fined more than $3 million. Six people were sentenced to a combined total of 54 months in prison.

Despite the challenges associated with proving price-fixing and other illegal activity, when such allegations are substantiated, the Bureau does not hesitate to take action—in the interest of honest business operators and Canadian consumers.

> High or identical prices are not evidence of criminal activity on their own.





Free to choose means free to switch

When consumers' choices are restricted, they face the risk of higher prices and poorer service. In 2012, after an extensive investigation, the Bureau sued Direct Energy Marketing Limited (Direct Energy) and Reliance Comfort Limited (Reliance), alleging that their policies and procedures were designed to keep consumers from changing water heater providers, and is seeking $25 million in AMPs.

To ensure competition in the market for residential water heater sales and rentals—and to protect consumer choice—the Bureau is seeking orders prohibiting Direct Energy and Reliance from engaging further in the alleged anti-competitive conduct, as well as $15 million in AMPs from Direct Energy and $10 million in AMPs from Reliance.

In 2002, the Bureau launched a similar proceeding against Direct Energy's predecessor, Enbridge Services, Inc.—resulting in a 10-year consent order against the company. The Bureau's 2012 investigation found that Direct Energy re-engaged in this conduct after the consent order expired in February 2012. As of March 31, 2013, the current case was ongoing before the Competition Tribunal (Tribunal).

The Bureau's filing against Direct Energy and Reliance was taken under the 'abuse of dominance' provisions of Canada's *Competition Act*. Abuse of dominance occurs when companies use their position as market leaders to suppress competition—behaviour the Bureau always aims to act swiftly against.

Abuse of dominance occurs when companies use their position as market leaders to suppress competition—behaviour the Bureau always aims to act swiftly against.

6901

Empowering consumers to protect themselves

Every year, Canadians lose millions of dollars to scam artists online, by mail and over the phone. The Bureau's *Little Black Book of Scams* provides tips, insights and myth-busting advice to help people recognize and guard against fraudulent offers and schemes. Since its publication in 2012, it has quickly become the most downloaded document on the Bureau's website.

Scams come in all shapes and sizes, from phoney lotteries requiring payment for prizes to pyramid schemes and personal appeals aimed at obtaining people's personal and financial information. Adapting the Australian Competition and Consumer Commission's anti-scam guide for Canadian readers, *The Little Black Book of Scams* covers the full range of threats and how to keep from falling prey to them.

By the end of the fiscal year, *The Little Black Book of Scams* had been downloaded 20,000 times since its launch as part of Fraud Prevention Month in 2012. The Bureau chairs Canada's Fraud Prevention Forum, which organizes Fraud Prevention Month every year to raise awareness among consumers and businesses about the dangers of fraud in the Canadian marketplace.

The Bureau is committed to equipping consumers with the knowledge to advocate for themselves, as it is one of the simplest and most powerful ways to encourage transparency and discourage deceptive business practices.

> Every year, Canadians lose millions of dollars to scam artists online, by mail and over the phone.



Operational highlights

CIVIL MATTERS BRANCH

The Civil Matters Branch detects and deters restrictive trade practices that have a negative impact on competition—including abuse of dominance, refusal to deal, exclusive dealing, tied-selling and price maintenance. Activities of concern may also include certain types of anti-competitive agreements and other non-criminal arrangements.

May 2012

VISA AND MASTERCARD

The Bureau initiated a case before the Tribunal to strike down rules imposed on merchants by Visa and MasterCard in May 2012. These rules prohibit merchants from encouraging consumers to pay by lower-cost options such as cash or debit, prevent the application of surcharges to purchases made with high-cost cards, and require merchants accepting Visa or MasterCard to accept all cards offered by those companies, even those imposing significant costs. The Bureau alleges that these rules are restrictive and anti-competitive. The case remained active as of March 31, 2013.

September 2012

TORONTO REAL ESTATE BOARD

After an extensive investigation, the Bureau filed an application with the Tribunal to prohibit rules of the Toronto Real Estate Board (TREB) limiting the ways member agents can provide information to clients—including previous listings and sale prices. The restrictions prevent agents from introducing innovative real estate brokerage services using the Internet. The Bureau alleges that these rules are restrictive and anti-competitive. The case remained active as of March 31, 2013.

December 2012

RESIDENTIAL WATER HEATERS

The Bureau filed suit against Direct Energy and Reliance, alleging the two companies intentionally suppressed competition and restricted consumer choice through their water heater return policies and procedures. The Bureau filed two applications with the Tribunal, seeking orders prohibiting further anti-competitive conduct as well as AMPs: $15 million from Direct Energy and $10 million from Reliance.

CRIMINAL MATTERS BRANCH

The Criminal Matters Branch investigates and deters bid-rigging and conspiracies, agreements or arrangements among competitors to fix prices, allocate markets or restrict supply. It also reaches out to stakeholders engaged in procurement to help them detect and deter bid-rigging and other cartel activities.

May 2012

MAXZONE CANADA

The Bureau investigated Maxzone Canada for its role in an international cartel involving the sale of aftermarket replacement automotive lights purchased mainly by auto parts companies in Canada. After admitting to the existence of an agreement with competitors to set the price of these lights in Canada, Maxzone Canada pleaded guilty and was fined $1.5 million.

June 2012
CONSTRUCTION INDUSTRY

Following a two-year joint investigation by the Unité permanente anticorruption (UPAC) of the Sûreté du Québec and the Bureau, 77 charges were laid against 11 individuals—including two municipal officials—and nine construction companies in Quebec in connection with a collusion scheme in the Saint-Jean-sur-Richelieu region. That scheme gave preferential treatment to a group of contractors to obtain municipal construction contracts. Criminal charges laid include corruption in municipal affairs, breach of trust, influencing a municipal official, fraud upon the government, production and use of counterfeit documents, accepting reward, advance or benefit, misrepresentation or false statement, extortion, and conspiracy.

Bid-rigging charges were also laid under the Act. Over the course of the year, the Bureau worked to raise awareness of the impact of criminal cartels and bid-rigging and to educate the public on how to detect and prevent them. Twelve outreach presentations were held, focusing in particular on the Canadian public sector, encouraging organizations to adopt or enhance corporate competition law compliance programs and report violations of the Act.

December 2012
SEWER SERVICES CARTEL

Two companies and one individual pleaded guilty to conspiring to rig bids for specialized sewer services in the greater Montreal area. Evidence revealed the companies agreed to coordinate their bids to pre-determine the winners of municipal and provincial contracts. The companies were fined a total of $65,000 and subject to a court order; the individual involved was sentenced to 100 hours of community service and two years' probation. Twenty-three additional criminal charges relating to sewer services contracts valued at $750,000 were laid against one company and two individuals.

March 2013
QUEBEC GAS CARTEL

In 2010, the Quebec Superior Court ordered two individuals to pay $8,000 in fines for their role in a price-fixing conspiracy in Sherbrooke, following the Bureau's investigation into gasoline price-fixing in Quebec, a process that began in 2008. One of the Bureau's most exhaustive criminal cases, the investigation found retailers in some Quebec gas markets agreed to charge specific prices for gasoline. As of March 31, 2013, 33 people and seven companies pleaded or were found guilty of gasoline price-fixing in Quebec. The total fines brought in the case exceeded $3 million, and six individuals have been sentenced to a total of 54 months of imprisonment.

FAIR BUSINESS PRACTICES BRANCH

The Fair Business Practices Branch promotes truth in advertising and encourages the sharing and availability of information to help consumers make informed choices. It also enforces provisions in various Acts (the *Competition Act*, the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Precious Metals Marking Act* and the *Textile Labelling Act*) related to false or misleading representations and deceptive marketing practices.

June 2012
STRATEGIC ECOMM INC.

The Alberta Provincial Criminal Court ordered the Director of Strategic Ecomm, Inc. and MSH Investments, Inc. to stand trial on criminal charges for making materially false or misleading representations, contravening a registered consent agreement, possessing property obtained through crime, and laundering the proceeds of crime. The consent agreement—which is valid for 10 years and has the same effect as a court order—was entered into in 2006 regarding the making of false or misleading representations under the Act's civil provisions. He also paid a $100,000 AMP in 2006 and agreed to cease the conduct and notify the public.

July 2012 / December 2012
DECEPTIVE TELEMARKETING

In July 2012, the Quebec Court of Appeal upheld a 2008 Quebec Superior Court decision to dismiss a challenge opposing a search conducted and warrants executed as part of the Bureau's investigation into the conduct of several companies and individuals involved in a fraudulent telemarketing scheme. The investigation uncovered a complex operation—believed to be the largest deceptive telemarketing in Canada in 2007—that allegedly defrauded thousands of businesses across Canada, the United States, Europe and Central America. In September 2011, the Bureau announced criminal charges had been laid against five individuals and four companies involved in this investigation. As of March 31, 2013, this case continued before the courts.

In December 2012, following an investigation in partnership with the Centre of Operations Linked to Telemarketing Fraud (COLT), the Bureau announced criminal charges had been laid against four individuals from Montreal and another from Brossard for defrauding the public of more than $5,000. Four of the individuals were also charged under the deceptive telemarketing provision of the Act. The Bureau's investigation determined some of the alleged tactics used during the calls included implying the caller represented a business that had an existing relationship with the victim's company, indicating certain products or services were required under government rules, or implying that the call was being made on behalf of a government agency.

September 2012

BELL, ROGERS, TELUS, AND THE CWTA

The Bureau began legal proceedings against Bell, Rogers, Telus and the CWTA alleging that the four groups facilitated the sale of premium-rate digital content to customers who believed the content was free and measures were in place to prevent them from incurring charges. The Bureau is seeking corrective notices, full customer refunds and AMPs of $31 million. The case was still before the courts as of March 31, 2013.

February 2013

BUSINESS DIRECTORY SCAM

In February 2013, the Ontario Court of Appeal upheld an Ontario Superior Court of Justice (OSCJ) decision ordering an individual to pay a $500,000 AMP in connection with the Yellow Page Marketing B.V. deceptive marketing scheme, which targeted businesses, individuals and organizations across Canada and internationally. Prior to that decision, in March 2012, five companies and three individuals were found to have violated the Act for operating a deceptive marketing scheme. The OSCJ ordered the companies and individuals to pay AMPs totalling $9,035,000, pay full restitution to the victims of the scam, publish corrective notices, and return any mail sent to the companies and individuals to the victims. During its investigation, the Bureau worked closely with the United States Federal Trade Commission, the Australian Competition and Consumer Commission and the United Kingdom National Fraud Intelligence Bureau.

MERGERS BRANCH

The Mergers Branch reviews mergers affecting the Canadian marketplace to determine whether they are likely to reduce or prevent competition. Where this is the case, it will negotiate to reach agreement with involved parties on remedy, and, where necessary, will also take steps to prohibit transactions from closing prior to the completion of its review. The Branch works closely with other competition authorities where mergers involve reviews in multiple jurisdictions.

May 2012

TERVITA (FORMERLY KNOWN AS CCS CORPORATION) – COMPLETE ENVIRONMENTAL, INC.

In January 2011, the Bureau challenged CCS Corporation's acquisition of Complete Environmental, Inc. and its proposed Babkirk hazardous waste landfill site, alleging the transaction would prevent competition for the disposal of hazardous waste in Northeastern British Columbia. In May 2012, the Tribunal agreed and ordered CCS Corporation to divest the Babkirk hazardous waste landfill site. In February 2013, the Federal Court of Appeal rejected an appeal launched by Tervita in June 2012 and upheld the Tribunal's order.

October 2012

AIR CANADA – UNITED CONTINENTAL

A consent agreement was reached following the Bureau's application to prohibit a joint venture between Air Canada and United Continental that would have resulted in the two carriers merging their flight operations for Canada-U.S. routes. The agreement prevents the airlines from coordinating under the joint venture and existing coordination agreements on 14 high-demand trans-border routes thereby ensuring lower prices and more choice for travelers.

February 2013

WASTE MANAGEMENT QUÉBEC, INC.

A consent agreement was reached to address concerns that the proposed acquisition of RCI Environment, Inc. (RCI) by Waste Management Québec, Inc. (WMQ) would have led to fewer choices and higher prices for waste disposal services in Western Quebec. The consent agreement required WMQ to sell the right to dispose of up to 1.875 million tonnes of waste over 20 years at a landfill in Lachute, Quebec. The sale will ensure that this buyer can access sufficient landfill capacity to compete for business in those areas. An independent monitor will be appointed to ensure WMQ's compliance with the terms of the agreement.

March 2013

BROADCASTING INDUSTRY – BCE, INC./ASTRAL MEDIA, INC.

A consent agreement was reached to address concerns that BCE, Inc. (Bell)'s proposed acquisition of Astral Media, Inc. (Astral) would have led to increased prices and reduced choice and innovation in the television distribution industry. The agreement required Bell to divest Astral's ownership interests in several television channels and contained behavioural restrictions to preserve competition in pay and specialty television programming services in Canada. Bell will also divest itself of a number of radio stations to comply with the CRTC's Common Ownership Policy.

LEGISLATIVE AND INTERNATIONAL AFFAIRS BRANCH

The Legislative and International Affairs Branch advances fair and efficient competition principles by giving input into legislative,

regulatory and policy development processes. The Branch also negotiates trade and cooperation instruments, actively leads international competition fora, and fosters strong relationships with key partners, co-ordinating international efforts to promote competitive markets and effective competition law enforcement.

Year-round

INTERNATIONAL COMPETITION NETWORK (ICN)

The ICN advocates for competition policy standards and procedures around the world. The Bureau played a key role in its development, serving as the ICN Secretariat, participating on the ICN Steering Group and various working groups including the:

- Operational Framework Working Group
- Advocacy Working Group
- Agency Effectiveness Working Group
- Cartel Working Group
- Merger Working Group
- Unilateral Conduct Working Group

The Bureau also co-chaired both the ICN Cartel Working Group subgroup on enforcement techniques and the Operational Framework Working Group, and participated in the 11th Annual Conference in April 2012, where the Commissioner intervened on the Merger Working Group plenary panel on recent developments in merger analysis.

Year-round

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

The OECD advances policies to improve the economic and social wellbeing of people around the world. The Commissioner leads Canada's delegation in the OECD Competition Committee, which is part of the OECD's Directorate for Financial and Enterprise Affairs. The Bureau also participates in the Committee on Consumer Policy, part of the OECD's Directorate for Science, Technology and Industry.

In 2012–2013, Canada contributed to the work of the Competition Committee through input and submissions on: payment systems, leniency for subsequent applicants, vertical restraints for online sales, and provided input into a joint OECD/ICN project. The Commissioner was elected a member of the Competition Committee's managing body at its February 2013 meeting.

Industry Canada's Office of Consumer Affairs leads Canada's participation in the OECD's Committee on Consumer Policy (CCP), with contributions from the Bureau pertaining to the enforcement perspective. Last year, the Bureau contributed policy guidance regarding online and mobile payments and the purchase of digital content, and made presentations on: a principled approach to policy and program implementation; and Internet intermediaries and privacy in mobile commerce.

Year-round

INTERNATIONAL CONSUMER PROTECTION AND ENFORCEMENT NETWORK (ICPEN)

ICPEN is comprised of consumer protection authorities from almost 50 countries with the aim of protecting consumers' economic interests. The Bureau continued to play a leadership role in ICPEN as a member of its Advisory Group and a number of working groups. In October 2012, Bureau representatives attended the bi-annual ICPEN meeting in Ghent, Belgium, and participated in sessions on criminal agency interaction, stakeholder management, and mobile payments. The Bureau also reported on the results of the 2012 ICPEN Internet sweep, for which it served as coordinator, and attended the ICPEN Best Practices Workshop.

Year-round

INTERNATIONAL COOPERATION

The Bureau develops and implements bilateral cooperation agreements with foreign antitrust agencies to—among other things—facilitate information exchanges on competition law enforcement and the coordination of global enforcement activity. In 2012–2013, the Bureau cooperated with a number of jurisdictions including: Australia, the European Union, France, Germany, Japan, Mexico, the Netherlands, New Zealand, Singapore, Spain, Switzerland, the United Kingdom and the U.S.

The Bureau also held formal and informal bilateral meetings with its foreign counterparts, including meetings with antitrust and consumer protection agencies from Australia, China, the European Union, France, Germany, Mexico, Taiwan, the United Kingdom and the U.S. It also engaged in staff exchanges with the U.S. Federal Trade Commission, the United Kingdom's Office of Fair Trading and the Korea Fair Trade Commission.

Year-round

FREE TRADE AGREEMENTS

In partnership with Industry Canada and Foreign Affairs, Trade and Development Canada, the Bureau develops competition policy provisions in bilateral and regional free trade agreements and Foreign Investment Promotion and Protection Agreements, and acts as the lead negotiator on competition enforcement matters for the Government of Canada. In 2012–2013, the Bureau engaged in negotiations with the Caribbean Community (CARICOM), Costa Rica, the European Union, Honduras, India, Japan, Morocco, South Korea, the Trans-Pacific Partnership and the Ukraine.

In light of a changing international landscape, the Bureau formulated an international strategy to guide its international work moving forward, putting greater focus on interaction with emerging economies—particularly in the Asia-Pacific region and Latin America. China, in particular, has been identified as a key jurisdiction with which to broaden relations

in the immediate term; two bilateral meetings took place with the Chinese merger review authority, the Ministry of Commerce, in June 2012 and January 2013.

PUBLIC AFFAIRS BRANCH

The Public Affairs Branch is responsible for the Bureau's communications, ensuring Canadian consumers, businesses and parliamentarians, as well as members of the international community are aware of the Bureau's contributions to competition in the marketplace and to the growth of the Canadian economy.

Year-round

COMMUNICATIONS AND MEDIA RELATIONS

The Bureau published 72 announcements describing the benefits of its activities to the economy and Canadians, including news releases, information notices, position statements, speeches and items in the Bureau's monthly electronic *CB in Brief* web-based news digest.

The Bureau responded to 636 enquiries from journalists in Canada and abroad, up from 504 the previous year, resulting in approximately 7,830 print, radio, television, and online media reports on matters involving the Bureau, up from 5,721 the previous year. Media analysis concluded 98 percent of coverage ranged from positive to neutral in tone.

In March 2013, the Bureau launched a Twitter account in order to better communicate the results of its work with consumers, businesses, stakeholders and the media. Various announcements are regularly tweeted once they are made public on the Bureau's website.

Appendix A includes a table showing the five issues that generated the most media coverage in 2012–2013.

February 2013

WEBSITE

The Bureau launched its revamped website (www.competitionbureau.gc.ca) in February 2013. Changes included an updated look, more intuitive navigation and a new search engine for more accurate results. This initiative implemented the Government of Canada's new web standards designed to make websites more user-friendly in general and more accessible to those with disabilities.

The Bureau's website received a total of 1,101,855 visits in 2012–2013, up from 865,399 the previous year.

Appendix A includes a table showing the top five Bureau announcements viewed online in 2012–2013.

Year-round

PUBLICATIONS

The Bureau released various guidance documents and other publications in 2012–2013, including:

Merger Review Performance Report – April 2012
Giving an update on the performance of the Bureau's Mergers Branch since May 2010.

The Abuse of Dominance Provisions Enforcement Guidelines – September 2012
Final Enforcement Guidelines on the Abuse of Dominance Provisions covered in sections 78 and 79 of the Act, based on public consultations on prior draft guidelines.

Bid-rigging pamphlets – February 2013
Posted online for public use, with essential information on how to detect and prevent bid-rigging.

Monthly Report on Concluded Merger Reviews
Launched in February 2012 to increase transparency, listing merger reviews concluded in the prior month (in cases when a pre-merger notification was made under section 114 of the Act or a request was made for an Advance Ruling Certificate (ARC) under section 102 of the Act), providing the names of the parties to the transaction, the industry sector involved, and the result of the Bureau's review. By the end of 2012–2013, the Bureau had published the outcome of 241 merger reviews.

Position statements
The Bureau published 14 position statements on merger reviews in 2012–2013, covering a wide variety of industries including: commercial printing, broadcasting, financial services, pork processing, wholesale electrical supply, film distribution and the retail sale of furniture and appliances. Appendix A includes the full list of position statements and associated hyperlinks.

ECONOMIC POLICY AND ENFORCEMENT BRANCH

The Economic Policy and Enforcement Branch provides economic advice and support for the Bureau's enforcement cases and is responsible for leading the Bureau's advocacy initiatives and regulatory interventions.

February 2013

CRTC WIRELESS CODE SUBMISSION

The Branch led the drafting of a Bureau submission to the CRTC regarding its proceeding to establish a mandatory wireless code. The Bureau advised that discouraging switching costs—which tend to reduce

customer mobility—and encouraging the provision of sufficient information to enable considered consumer choices will allow Canadians to benefit from lower wireless prices, higher quality service and greater innovation.

Year-round

ECONOMIC TRAINING

In an effort to reduce spending on external training, the Branch provided internal training courses to Bureau staff. Branch economists offered a course in basic economics that introduced fundamental principles and concepts of economics that are applicable to the Bureau's enforcement work. They also provided training in basic Industrial Organization economics that offered insights into oligopoly theory and business strategy.

Year-round

COST EFFICIENCIES

On the financial front, given cost containment measures, the Branch put in place a number of initiatives leading to cost savings: 1) approval of the Branch prior to retaining outside economic expertise to ensure the appropriate tasks are being requested and to verify that the tasks could not be completed internally; 2) development of a Bureau-wide seminar on how to manage experts to help the Bureau deal with its expert costs; and 3) a pilot project on efficiencies to estimate cost savings by doing more work internally rather than retaining external expertise.

COMPLIANCE AND OPERATIONS BRANCH

The Compliance and Operations Branch oversees the Bureau's electronic evidence and conversion units and manages the Information Centre as well as Bureau-wide planning, resource management, administration and information activities.

Year-round

INFORMATION CENTRE

The Information Centre plays a key role in promoting awareness of the Bureau to the public and supports enforcement activities. It registered 16,570 requests via telephone, fax, mail and Internet in 2012–2013. Appendix A includes a table showing the main types of complaints and information requests received.

Year-round

RENEWAL AND INFORMATION MANAGEMENT

The Bureau launched the Human Resources Committee (HRC) in October 2012. The committee, chaired by a senior manager and comprised of a manager from each Branch and a representative from the Human Resources Branch, meets on a monthly basis. The objective of the committee is to steer people management initiatives in support of the Public Service and Industry Canada renewal agenda.

Other key Renewal and Information Management activities included:

- Development of the Paralegal Development Program, which will ensure consistent competencies for all paralegals while ensuring appropriate training and career progression in the Bureau
- Development of a Bureau Action Plan in response to the 2011 Public Service Employee Survey Results
- Significantly reducing response times for Access to Information and Privacy requests
- Hosting Sector Days—learning events during which marketplace participants give presentations on their industries' dynamics, challenges and trends. In 2012–2013, the Bureau held sector days with Apple, Google, and Rogers.

Year-round

MANAGEMENT SERVICES

In preparing for the government's Deficit Reduction Action Plan, the Bureau made every effort to focus on finding suitable alternatives for affected employees and restrain spending during the fiscal year. Expenditures were reduced in the areas of information technology, travel, corporate supplies, telecommunications, training, and publications. Salary costs were controlled via attrition, delaying the filling of vacant positions and finding suitable alternatives for affected employees.

The Bureau was involved in projects supporting the Shared Services Canada (SSC) initiative, participating in several SSC working groups to address issues related to transferring the Bureau's law enforcement environment to SSC's architecture. Architectural designs have been established that align the Bureau's environments with minimum implementation disruptions and ensure that the security of the Bureau's information is maintained.

By the end of the fiscal year, the Bureau was positioned to begin reinvesting in infrastructure, namely a boardroom modernization project that will enable video and web conferencing and allow the Bureau to further reduce its expenditures on travel, training and meetings. This is consistent with the Government of Canada's goal of modern infrastructure to support videoconferencing as a major tool to reduce travel expenditures. The Bureau was also well positioned to begin to reinvest in technology upgrades that had been delayed over the previous two-year period.

Year-round

ENFORCEMENT SERVICES

The Electronic Evidence Unit (EEU) continued to focus on developing strategies, policies and training to tackle the large volume of evidence gathered in the Bureau's white-collar crime investigations. Its forensic investigators assisted various law enforcement agencies across Canada, lending expertise in the execution of search warrants and forensic analysis of digital information. The EEU also continued to liaise with its domestic and international counterparts to share best practices and to address computer forensic enforcement issues, such as cloud computing and internet-based fraudulent schemes.

Financial discussion and analysis

The Bureau's operating budget was approximately $51 million in 2012–2013, including $10.6 million collected from user fees. The majority of expenditures (approximately $33.1 million) were on salaries for 363.45 full-time equivalents (FTEs). Table 1 presents the Bureau's authorized budget and expenditures for the year.

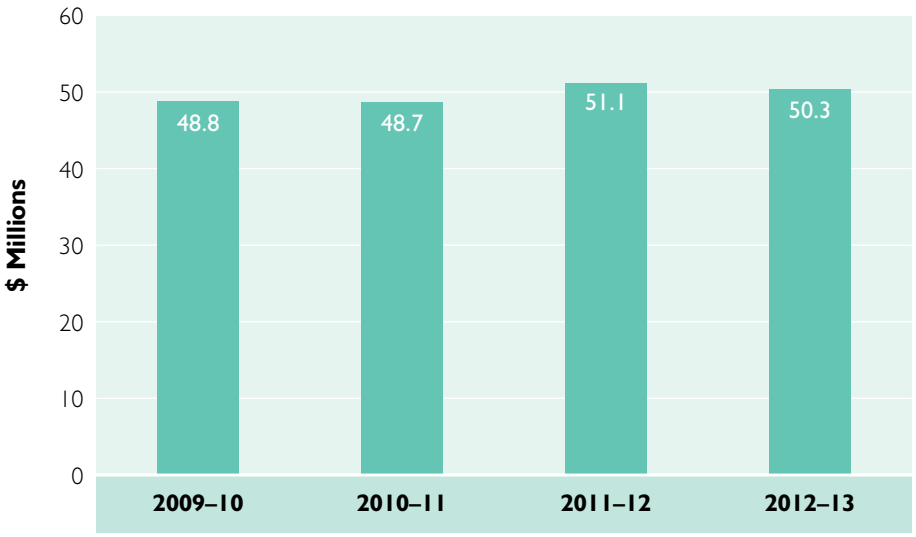
In response to the Government's Deficit Reduction Action Plan (DRAP), the Bureau contributed to the Government's objectives by closing regional offices in Calgary, Hamilton and Halifax, reducing operating and salary expenditures in the National Capital Region, and postponing investments in its information technology infrastructure. By the end of the fiscal year, the Bureau had found alternate employment for the majority of its affected staff.

Consistent with 2011–2012, the Bureau had to rely on external legal agents as complex matters resulting from amendments to the Act required timely and experienced legal support. In 2012–2013, Industry Canada provided an additional $1.2 million dollars in funding to assist with litigation costs associated with these cases. While several of these cases may continue in 2013–2014, it is expected that reliance on external legal counsel will begin to subside as the Bureau provides support to the Department of Justice to develop an internal litigation team.

TABLE 1: Authorized Budget's Expenditures for 2012–2013[1]

	Budget	**Expenditure**
Salary	$33,323,697	$33,077,060
O&M	$17,007,514	$16,550,252
Capital	$678,215	$660,842
TOTAL	**$51,009,426**	**$50,288,154**
	Authorized	**Used**
FTE	386	363.45
User fees collected	**$10,648,000**	

FIGURE 1: Bureau Spending Trend[2]



1 Does not include Work Force Adjustment (WFA) budget and expenditures.

2 Does not include WFA expenditures.

The Bureau will continue to work closely with the department and the Public Prosecution Service of Canada (PPSC) to control rising costs. A substantially higher number of cases are being referred to the PPSC as a result of several factors, including the 2009 amendments to the Act that increased maximum fines and periods of incarceration, and the introduction of the *Safe Streets and Communities Act* that removed conditional sentences for individuals convicted under the criminal cartel, bid-rigging, and misleading advertising provisions of the Act. To meet this demand, the Bureau requires a larger complement of experienced prosecutors to advance cases, which the Bureau currently pays for through cost-recovery.

The Bureau has administrative responsibility for collecting fines imposed by the courts as well as AMPs issued by the Tribunal or the courts. In 2012–2013, over $7.8 million in fines were imposed; no AMPs were issued. Fines and AMPs are remitted to the Government of Canada's Consolidated Revenue Fund.

Appendix A: Bureau statistics

ESTIMATED SAVINGS FROM BUREAU ACTIVITIES

The Bureau is required to report annually on its performance through a Departmental Performance Report (DPR) to Parliament. The DPR provides details of accomplishments and results achieved in the most recently completed fiscal year against performance expectations, as set out in the corresponding Report on Plans and Priorities (RPP). The Bureau quantifies the benefits of its activities via the following quantitative performance indicator:

TABLE 1: Competition Law Enforcement[3]

Expected Result	Performance Indicator	Target
Reduction in anti-competitive behaviour	Estimated dollar savings per annum to consumers from Bureau actions that stop anti-competitive activity	$515 million

In 2012–2013, the Bureau's estimated dollar savings to consumers was $130 million. The target was not met due to a number of files with high volumes of commerce still ongoing before the courts. It should also be noted that for 2012–2013, the methodology for this indicator was revised to capture the work of the Bureau's four enforcement Branches. As a result, there is no trend information available at this time.

3 Performance Information is available on the web: http://www.ic.gc.ca/eic/site/icgc.nsf/eng/h_00055.html.

KEY STATISTICS FOR THE YEAR

TABLE 2: Competition Bureau Statistics

Law Enforcement Activity	FBPB	Civil	Criminal	Mergers
Examinations in progress (Number of examinations in progress on April 1, 2012 – Examinations are complaints and information requests that have been assigned for further assessment as well as orders being reviewed)	47	23	33	27
Examinations commenced (Number of examinations commenced between April 1, 2012 and March 31, 2013)	13	15	25	226
Examinations concluded (Number of examinations concluded between April 1, 2012 and March 31, 2013)	22	12	20	232
Inquiries commenced (Number of formal inquiries commenced between April 1, 2012 and March 31, 2013)	6	7	7	2
Inquiries in progress (Number of formal inquiries in progress on April 1, 2012)	30	13	22	2
Inquiries discontinued (Number of formal inquiries discontinued between April 1, 2012 and March 31, 2013)	8	1	3	3
Matters where charges were laid (Number of matters where charges were laid between April 1, 2012 and March 31, 2013)	2	n/a	3	n/a
Matters where applications were filed (Number of matters where applications were filed between April 1, 2012 and March 31, 2013)	1	2	n/a	0
Matters with criminal orders (Number of matters where there were orders between April 1, 2012 and March 31, 2013)	0	n/a	6	n/a
Convictions	0	n/a	6	n/a
Prohibition Orders without convictions	0	n/a	0	n/a
Interim injunctions (criminal)	0	n/a	0	n/a
Matters with civil orders (Number of matters where there were orders between April 1, 2012 and March 31, 2013)	0	0	n/a	3
Registered Consent Agreements	0	0	n/a	3
Final Order in contested proceedings	0	0	n/a	0
Interim injunctions (civil)	0	0	n/a	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)	1	0	7	0

continued on next page

Law Enforcement Activity	FBPB	Civil	Criminal	Mergers
Information Bulletins and Enforcement Guidelines published (All guidelines published between April 1, 2012 and March 31, 2013 including those for consultation, new publication and those that have been revised)	0	1	0	1
Total Fines Imposed	$0	n/a	$ 7,865,000	n/a
Administrative Monetary Penalties	$0	$0	n/a	n/a

TABLE 3: Regulatory Interventions

Regulatory Interventions under Sections 125 and 126 of the Act: *Submission before the CRTC on the Wireless Code of Conduct Working Paper (Telecom Notice of Consultation CRTC 2012-557-3)*	1

TABLE 4: Speeches and Outreach

	FBPB	Civil	Criminal	Mergers	Commissioner
Speeches (Number of times Bureau staff spoke to stakeholders. This includes information sessions and outreach activities, not the number of participants)	39	13	17	10	10
Recruitment Initiatives (Number of presentations made to potential Bureau recruits; this includes seminars)	0	2	0	11	0

2012–2013 was very productive and successful for the Bureau where mergers are concerned. Despite an increased workload, including an exceptionally busy third quarter, the Bureau improved the percentage of reviews where the service standard was met over the previous fiscal year.

The Bureau is currently meeting the service standard in more than 92% of its merger reviews (both complex and non-complex) and in over 95% of its non-complex reviews.

Additionally, despite an overall decrease in the percentage of reviews designated as complex, 2012-2013 contained a relatively higher proportion of "very complex" transactions requiring in-depth analysis. This is evidenced by the fact that Supplementary Information Requests (SIRs) were issued in 10 reviews—a slight increase over the previous year. Several other reviews were also closely considered for a SIR due to their complex nature.

TABLE 5: Merger Examinations

Examinations Commenced	**226**
Notification filings and ARC requests	212
Notification filings only	6
ARC requests only	173
ARC requests and Notification filings	33
Other examinations	14
Examinations Concluded	**232**
No issues[4] under the Act	228
ARC issued	73
"No-action" letters[5]	138
Other examinations	17
Concluded with issues under the Act	**4**
Consent Agreements Registered with the Tribunal	3
Foreign remedies resolved Canadian competition concerns	0
Transactions abandoned due to competition concerns	0
Section 92 applications concluded or withdrawn	1
Transactions abandoned for reasons apparently unrelated to the Commissioner's position	0
SIRs issued	10
Total Examinations during the year (including ongoing matters from previous year)	253
Examinations ongoing at year end[6]	20
Matters Before the Tribunal or the Courts[7]	**1**
Section 92 matters	**0**
Other Tribunal or Court Proceedings	**1**

4 Examinations resulting in assessment of no current enforcement action required.

5 Including ARC refusals.

6 Includes all examinations not concluded within this fiscal year, including those commenced in previous fiscal years. Also includes matters ongoing before the Tribunal or Courts at year end.

7 Includes ongoing section 92 matters and other matters before the Tribunal or Courts (such as section 100 and 106 matters). Excludes consent agreements.

TABLE 6: Merger Review – Meeting Service Standards[8]

	2012–2013		
Complexity	**Examinations Concluded**	**Meeting Bureau Service Standards**	**Average Completion Time (days)**
Non Complex (14 days)	168	95.24%	11.89 days
Complex (30/45 days)	46	80.43%	37.50 days
Total	214	92.06%	n/a

TABLE 7: Written Opinions – Meeting Bureau Service Standards

	2010–2011			2011–2012			2012–2013		
	Provided	Met	%	Provided	Met	%	Provided	Met	%
FBPB									
Complex (6 weeks)	4	0	0	10	0	0	17	12	71
Non-complex (2 weeks)	12	3	25	1	0	0	0	0	n/a
Civil									
Complex (10 weeks)	7	0	0	1[9]	0	0	0	0	n/a
Non-complex (6 weeks)	0	0	0	0	0	0	0	0	n/a
Criminal									
Complex (10 weeks)	7	0	0	1	0	0	0	0	n/a
Non-complex (6 weeks)	0	0	0	0	0	0	0	0	n/a
Mergers									
Complex (28 days)	1	1	100	0	0	0	0	0	n/a
Non-complex (14 days)	1	1	100	0	0	0	3	3	100

8 As of November 1, 2010, the previous complex and very complex categories have been consolidated into a new complex category, with a service standard of 45 calendar days, commencing the day a complete notification or ARC request is received by the Commissioner, assuming sufficient information is provided to assign complexity. However, where a Supplementary Information Request (SIR) is issued, the service standard is 30 calendar days, commencing on the day on which the Commissioner receives a complete response to the SIR from all SIR recipients.

9 Written opinion request required a joint assessment involving the Civil and Criminal matters branches.

TABLE 8: High-profile media issues in 2012–2013

1. BCE / Astral Transaction
2. Maple / TMX Transaction
3. Visa & MasterCard – Rules for Merchants
4. Gas Price-Fixing Cases – Ontario and Québec
5. Bell, Rogers, Telus & CWTA – Misleading Advertising

TABLE 9: Top Bureau announcements for 2012–2013 based on visits to the Bureau website

Announcements	Visits
1. Competition Bureau Sues Bell, Rogers and Telus for Misleading Consumers: Bureau Seeks Customer Refunds and $31 Million In Penalties http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03498.html	**10,583**
2. Competition Bureau Launches The Little Black Book of Scams http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03449.html	**7,243**
3. Competition Bureau Alleges Anti-Competitive Conduct by Visa and MasterCard: Hearing Starts Today http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03465.html	**7,071**
4. Competition Bureau Secures Over $9 Million and Money Back to Victims for Business Scam http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03439.html	**7,034**
5. Competition Bureau Successful in Precedent-Setting Merger Challenge http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03468.html	**6,118**

POSITION STATEMENTS PUBLISHED IN 2012–2013

Transcontinental / Quad/Graphics:
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03451.html

Chartwell & Healthcare REIT / Maestro Retirement Residences:
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03456.html

Cardinal Health / Futuremed:
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03458.html

Bell & Rogers / MLSE:
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03464.html

Maple / TMX:
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03480.html

United Technology / Goodrich:
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03483.html

WESCO Distribution / EECOL Electric:
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03516.html

Pork Processors & Hog Producers
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03519.html

Alliance Films / Entertainment One
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03523.html

RBC / Ally Canada:
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03533.html

Hillman / H. Paulin & Co:
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03536.html

National Oilwell Varco / Robbins & Myers:
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03537.html

LifeLab BC / BC Biomedial:
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03550.html

Leon's / The Brick:
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03551.html

TABLE 10: Requests made to the Competition Bureau

Total Bureau requests	17,367
Complaints	5,825
Information requests	10,067
No-issue[10]	1,475

TABLE 11: Top 5 Complaints by Product or Service (Top-level categories)

1. Business products and services[11]	1789
2. Telecom products and services[12]	583
3. Electronics[13]	569
4. Financial products and services	307
5. Transportation and vehicles	260

TABLE 12: Information Requests[14]

Competition Act	6,330
Textile Labelling Act	2,202
Consumer Packaging and Labelling Act (except as it relates to food)	1,133
Precious Metals Marking Act	92
Other	394

10 No-issue includes requests that are not relevant to the Bureau's mandate or were referred to the Bureau in error.

11 Business products and services includes: directory listings and office supplies for businesses.

12 Telecom products and services includes: wireless products and services.

13 Electronics includes: computer hardware and software.

14 84 information requests dealt with more than one statute, and therefore the total number of information requests listed above differs from the number of information requests previously identified in Requests made to the Bureau.

This is Exhibit “90” referred to in the Affidavit of Mary DeCaire sworn by Mary DeCaire at the City of Toronto, in the Province of Ontario, before me on May 5, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

JAKOB KELLY

Competition Bureau Canada
Bureau de la concurrence Canada

THE 4 Cs OF COMPETITION



ANNUAL REPORT OF THE COMMISSIONER OF COMPETITION FOR THE YEAR ENDING MARCH 31, 2014

Canada

This publication is not a legal document. It contains general information and is provided for convenience and guidance in applying the *Competition Act*.

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

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Healthy competition makes our economy stronger and our industries more productive. It creates energy and unleashes innovation. It gives consumers lower prices and better choices, and helps Canadian businesses and consumers prosper.

In 2013–2014, the Competition Bureau focused its priorities through the lens of the **four Cs of competition**: compliance, communication, collaboration and Canadians.

By enforcing Canada's competition laws, enhancing transparency and promoting partnerships with our stakeholders, we continue to promote a marketplace that ensures fairness for all.

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THE COMPETITION BUREAU AT A GLANCE

ABOUT THE COMPETITION BUREAU

The Competition Bureau (Bureau) is an independent law enforcement agency headed by the Commissioner of Competition (Commissioner). The Bureau is responsible for administering and enforcing Canada's:

- *Competition Act (Act)*
- *Consumer Packaging and Labelling Act* (except as it relates to food)
- *Textile Labelling Act*
- *Precious Metals Marking Act*

The Bureau comprises:

- Four enforcement branches
- Four enforcement support branches

The Bureau also provides funding to support two independent legal support organizations:

- Competition Bureau Legal Services (Department of Justice)
- Competition Law Section of the Public Prosecution Service of Canada

PRIORITIES IN 2013–2014

- Benefit Canadians through focused enforcement and strategic regulatory interventions
- Apply Canada's competition laws in a transparent and predictable manner
- Build trust through enhanced collaboration with stakeholders and enforcement partners

THE YEAR IN NUMBERS

$572,100,000
Estimated dollar savings to consumers in 2013–2014 from Bureau actions that stop anti-competitive activity

$55,720,000
Fines imposed by the Courts

$500,000
Administrative monetary penalties imposed by the Courts or Tribunal

40 Leniency markers granted	**82** Immunity markers granted
5 Convictions without guilty pleas	**11** Guilty pleas
35 Search warrants executed	**233** Merger examinations concluded
21 Publications	**598** Media enquiries received

14,515
Requests received by the Bureau Information Centre

MESSAGE FROM THE COMMISSIONER



I was honoured to be named Commissioner of Competition in 2013. It is a tremendous privilege to lead an organization of such dedicated, hard-working and skilled public servants.

To protect consumers and promote healthy competition in Canada, we at the Competition Bureau adopted a fresh way of looking at our priorities in 2013–2014, viewing them through the lens of what we call 'the four Cs' of competition: compliance, communication, collaboration and Canadians.

These four Cs are essential to every aspect of our work—enforcing Canada's competition laws (the *Competition Act* and labelling statutes), advocating for competitive markets, pursuing regulatory interventions, and engaging with stakeholders.

We know most businesses want to comply with the law. Our belief is that the most effective way to approach compliance is as a shared objective. When compliance is a collective responsibility, the Bureau and market participants can achieve much more than we could alone.

When businesses engage in anti-competitive behaviour, we will not hesitate to take action to achieve compliance, where appropriate.This report includes several examples of how we did so last year—including securing the largest fine for bid-rigging ever ordered by a Canadian court, and obtaining restitution for car buyers affected by inaccurate advertising.

Clear communication is vital to advancing compliance as a shared objective, both within the Bureau and externally with stakeholders. This includes being more open about our policies, practices and procedures, and applying Canada's laws in a transparent and predictable manner. In pursuit of that openness, we released our *Action Plan on Transparency*; created outreach products, such as videos to support *The Little Black Book of Scams*; and sought out opportunities to speak with as many of our stakeholders as possible.

Such outreach, of course, creates ties and opens the door to the third C: collaboration. We endeavour to work with partners and stakeholders, including other government departments in Canada as well as competition agencies abroad. This report profiles our collaborative activities here at home, as well as the groundwork laid for formal collaborations with partners in China, India and elsewhere to advance and protect the interests of Canadians at home and abroad. Domestically, we established Memoranda of Understanding or similar documents with the Canadian Radio-television and Telecommunications Commission, the Office of the Privacy Commissioner of Canada, and Public Works and Government Services Canada. Globally, we took part in—and led—initiatives through fora like the Organisation for Economic Co-operation and Development, the International Competition Network and the International Consumer Protection and Enforcement Network.

All of this work is driven by our view that a competitive marketplace benefits Canada by spurring innovation and economic activity and by delivering more choice and competitive prices to Canadians. That conviction is clear in the dedication of all the highly skilled people who make up our team here at the Bureau.

In the year ahead, we will apply an integrated, whole-Bureau approach to build trust, promote confidence and increase compliance with our legislation, making best use of the full set of tools at our disposal: outreach, advocacy, and enforcement. We will increase our competition promotion efforts while aligning with Government of Canada priorities, and will work even more closely together within the Bureau to increase synergies and efficiency.

We will do all of this with the ongoing aim of ensuring that Canadian consumers and businesses enjoy the benefits of healthy competition.

Sincerely,

John Pecman
Commissioner of Competition



COMPLIANCE

The Bureau works to promote a culture of shared compliance in which each of the Bureau, the business community and the legal community does its part to realize the benefits of healthy competition. However, when anti-competitive behaviour does occur, we will not hesitate to take action, where appropriate, to protect consumers and businesses from harm, seeking fines and other penalties against the companies or individuals responsible.

BATTLE AGAINST BID-RIGGING

Bid-rigging can occur despite the outward appearance of a competitive bidding process. Behind the scenes, two or more parties may secretly agree to influence the process by not submitting a bid, withdrawing a bid, or submitting a bid arrived at by agreement. These tactics can prevent honest businesses from winning contracts that they may otherwise have been awarded and result in inflated prices that harm consumers. Cartels in general are harmful because they typically result in unfair, inefficient, and anti-competitive markets.

In 2013–2014, our most extensive bid-rigging investigation to date made headlines when the Ontario Superior Court of Justice fined Yazaki Corp. $30 million for its part in an international bid-rigging cartel involving motor vehicle components supplied to Honda and Toyota, two of Canada's most popular vehicle brands. That particular fine was the largest levied for bid-rigging in Canadian history. Four other companies were also fined, for a combined total of $49.2 million. During the course of our investigation, we received invaluable assistance from our antitrust partners in Australia, Europe, the United States and Japan. The information sharing that resulted from collaboration with our international partners played a pivotal role in the success of the Bureau's investigation.

STANDING UP FOR CONSUMERS

Price-fixing is egregious anti-competitive conduct that usually results in higher prices for consumers. In 2013–2014, a Bureau investigation led to criminal charges against four companies and three individuals for conspiring to fix the price of chocolate products in Canada. Hershey Canada Inc. pleaded guilty before the Ontario Superior Court of Justice and was fined $4 million; the case against the individuals and the other companies—Nestlé Canada Inc., Mars Canada Inc. and ITWAL Limited—remained active as of March 31, 2014.

Our work in the airline cargo industry continued; Cathay Pacific Airways Limited (Cathay) and LATAM Airlines Group S.A. (LATAM) both pleaded guilty to engaging in price-fixing agreement and were fined $1.5 million and $975,000, respectively, by the Ontario Superior Court of Justice. To date, the Bureau's air cargo surcharges investigation has resulted in nine criminal convictions and fines of over $25 million. In addition to Cathay and LATAM, Cargolux, Air France, KLM, Martinair, Qantas, British Airways and Korean Air have also pleaded guilty to fixing one or more air cargo surcharges for shipments on certain routes from Canada.

TRUTH IN ADVERTISING

If fair prices are one half of what healthy competition means for consumers, real choice is the other half. Misleading advertising and deceptive marketing practices undermine Canadians' ability to make objective and informed choices.

In 2013–2014, the Bureau acted to prevent and deter such deceptive conduct. In August 2013, we reached consent agreements with Hyundai Auto Canada Corp. and Kia Canada Inc., outlining steps for the two companies to address inaccurate fuel consumption ratings advertised for their vehicles. Among other things, these consent agreements ensured full compensation for affected customers—owners of the affected vehicles received the cost associated with the difference between advertised and corrected fuel consumption ratings, plus an additional 15 per cent for the inconvenience caused by the misleading advertising.

COMPLIANCE AS A SHARED OBJECTIVE

To encourage shared compliance, we launched a Criminal Cartel Whistleblowing Initiative in the spring of 2013, encouraging the public and the business community to report suspected bid-rigging, price-fixing or other anti-competitive activity under the Act. In doing so, whistleblowers can request that their identity be kept confidential. The initiative ensures that whistleblowers are protected from reprisal by employers.

As part of the 2014 Fraud Prevention Month campaign, we released a video on corporate compliance to encourage companies to establish a culture of compliance within their organizations. The video illustrates the importance of complying with the Act in an easy-to-understand way.

Moreover, to further raise awareness of the anti-cartel provisions in the Act, we released a video on how to recognize and report cartels as part of our first annual Anti-cartel Day in March 2014. This video complements our other communication activities, such as our ongoing publication of guidelines, bulletins and pamphlets to promote compliance with the Act, the *Consumer Packaging and Labelling Act,* the *Textile Labelling Act* and the *Precious Metals Marking Act.*

2013–2014 OPERATIONAL HIGHLIGHTS

DECEPTIVE TELEMARKETING
June 2013–December 2013

The Bureau uncovered evidence of a telemarketing scheme in which a Montreal company deceived businesses in the United States into paying for business directory listings that they had not ordered. In June 2013, Claude Berthiaume received a 12-month conditional sentence and was prohibited from engaging in telemarketing for 10 years after pleading guilty to making false and misleading representations in the Court of Québec. In July 2013, an order of the Superior Court of Québec prohibited Kevin Secours from engaging in telemarketing for 10 years. In December 2013, Gilles Tremblay pleaded guilty to nine counts of deceptive telemarketing under the Act and two counts of fraud under the *Criminal Code*, receiving a conditional sentence of nine months (to be served in the community) and an additional 12 months of probation.

INTERAC
September 2013

Interac Inc. sought flexibility to remain a viable low-cost payment alternative for merchants in an increasingly competitive marketplace. The Bureau assessed the company's request to amend the existing consent agreement governing its business. This included obtaining information from Interac Inc. and numerous market participants, as well as an extensive analysis of the rapidly evolving payments industry. The Bureau concluded that there had been material changes in circumstances and that these changes warranted the requested variation to the consent agreement. In September 2013, the Competition Tribunal approved an amended consent agreement, while retaining safeguards to ensure continued open and non-discriminatory access to the Interac network. The amended consent agreement supports a dynamic and competitive payments industry, which benefits Canadian consumers and businesses.

IMMUNITY AND LENIENCY FREQUENTLY ASKED QUESTIONS (FAQS) UPDATE
September 2013

The Bureau published revised sets of FAQs related to its Immunity and Leniency Programs in September 2013. These programs deliver strong incentives for organizations and individuals to come forward and cooperate with the Bureau's investigations. The updated FAQs provide additional guidance to market participants and address topics such as how the Bureau treats immunity and leniency markers in the context of investigations that it does not intend to pursue. The FAQs also expand on and clarify existing topics, such as the proffer process, indirect sales, and how the Bureau determines its fine recommendations. These FAQs, along with the Immunity and Leniency Bulletins, provide a comprehensive picture of the Bureau's approach to immunity and leniency applications.

MERGER REVIEW
Year-round

Regarding merger review activities, 2013–2014 was a productive and successful year for the Bureau. New filings received and reviews completed were up slightly over the previous fiscal period. Despite an increased workload, the Bureau continued to meet its service standards in 90 percent of its merger reviews (both complex and non-complex); more than 93 percent for non-complex reviews. Additionally, the Bureau maintained these service standards while reducing the average review time for both non-complex and complex reviews by approximately 1.5 days. These improvements in review efficiencies are a result of an ongoing Bureau initiative to streamline its merger review process. While the number of Supplementary Information Requests (SIRs) issued remained unchanged over the previous fiscal year (10 issued in both fiscal years), the number of reviews resulting in a negotiated remedy increased significantly—from three in 2012-2013 to seven in 2013–2014. This increase is largely attributable to the Commissioner's renewed focus on using the full range of tools within the Bureau's power to resolve competition issues or concerns.

AGRIUM/GLENCORE
September 2013

A consent agreement was reached to address concerns that Agrium Inc.'s (Agrium) proposed acquisition of the majority of Viterra Inc.'s retail agri-products business from Glencore International plc would likely lead to a substantial lessening and/or prevention of competition in the retail supply of nitrogen fertilizers to farmers in certain areas of Alberta and Saskatchewan. Under the terms of the consent agreement, Agrium was required to divest seven retail stores and nine anhydrous ammonia businesses—which it did in March 2014. Agrium is also required to supply anhydrous ammonia to the purchaser of the divested assets for up to four years at prices not to exceed those charged to its retail outlets in Alberta and Saskatchewan.

CINEPLEX-LANDMARK/EMPIRE
October 2013

In June 2013, Empire Theatres Ltd. (Empire) announced it had reached an agreement with Cineplex Inc. (Cineplex) for the sale of 24 Empire theatres in Atlantic Canada, as well as two in Whitby and Kanata, Ontario. At the same time, Empire announced it had reached a separate agreement with Landmark Cinemas (Landmark) for the sale of 20 theatres in various other cities in Ontario and Western Canada. The Bureau found the proposed Cineplex acquisition of the Whitby and Kanata theatres would likely lead to a substantial lessening of competition in those markets. Advised of the Bureau's concerns, the parties engaged in further negotiations that lead to Empire selling its two Ontario theatres to Landmark. Consequently, the Bureau provided No Action Letters in October 2013 to both Cineplex and Landmark for their revised transactions, permitting the mergers to proceed.



"CINEPLEX REVISED ITS PLAN TO ACQUIRE THE WHITBY AND KANATA THEATRES IN LIGHT OF COMPETITION CONCERNS IDENTIFIED BY THE BUREAU."



SOBEYS/SAFEWAY
October 2013

A consent agreement was reached to address concerns that Sobeys' proposed acquisition of the assets of Canada Safeway might reduce consumer choice and raise retail grocery prices in parts of Western Canada. The agreement required Sobeys to divest itself of 23 stores in Alberta, British Columbia, Manitoba and Saskatchewan. As of February 13, 2014, all but one of the stores had been sold. The Bureau expects the remaining Sobeys grocery store (Price Chopper Stafford Square, in Winnipeg) to be sold in accordance with the consent agreement.

LOBLAW/SHOPPERS DRUG MART CORP.
March 2014

A consent agreement was reached to address concerns that Loblaw's proposed acquisition of Shoppers Drug Mart Corporation would likely increase prices, decrease services and reduce product variety and innovation in the retail sale of pharmacy products and drugstore-type merchandise in certain local markets in Canada. The agreement also addressed concerns that the transaction might lead to higher wholesale prices paid by other retailers to suppliers. It required the sale of 18 retail stores and nine pharmacies within Loblaw stores to independent operators and contained certain behavioural restrictions on Loblaw programs and agreements with suppliers for up to five years from the date of closing the proposed transaction. The Bureau will continue to investigate Loblaw's programs, agreements and conduct related to pricing strategies and programs with suppliers that reference competitor prices.

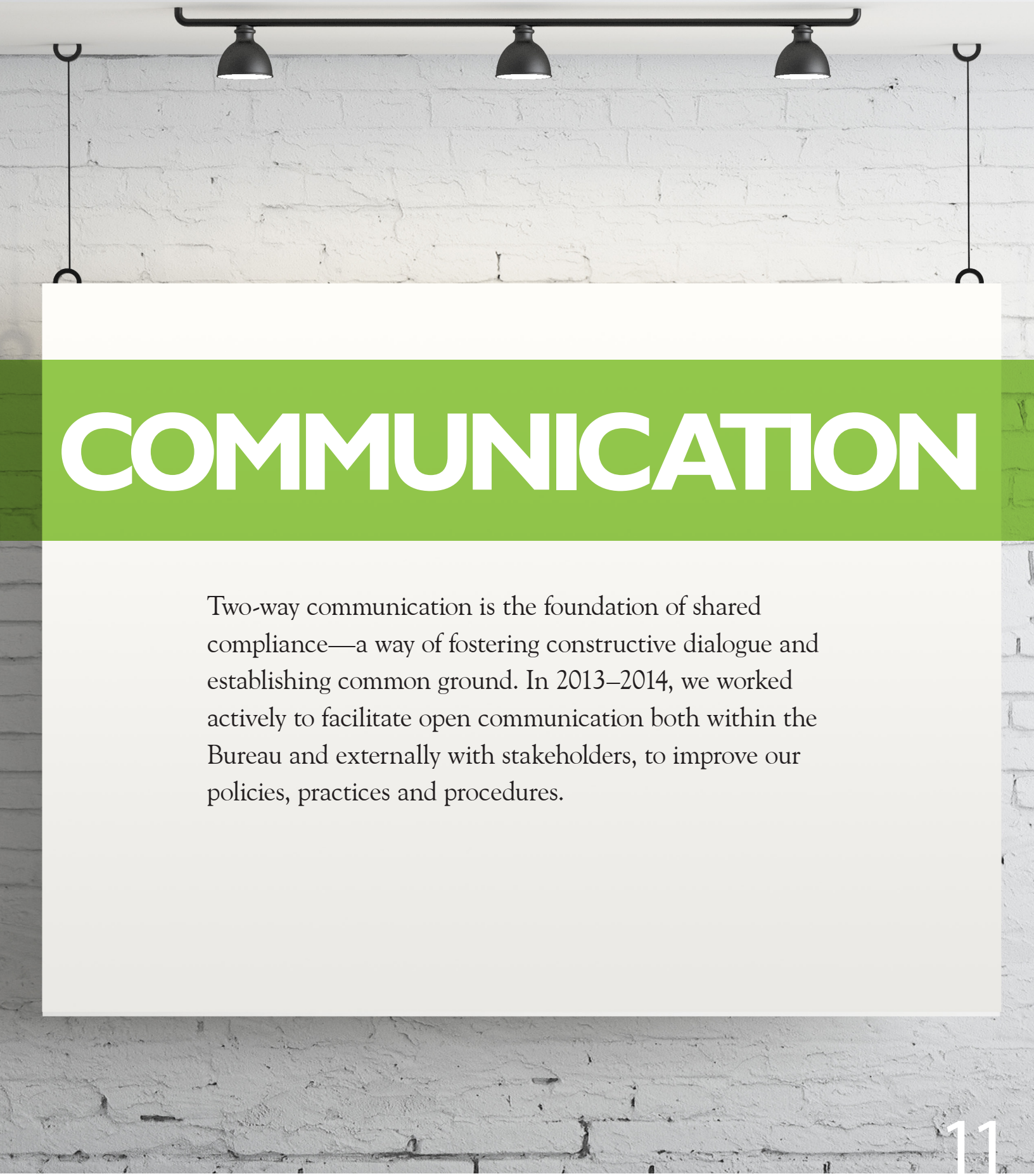
CRIMINAL BREACH OF A CONSENT AGREEMENT
February 2014

In February 2014, Matthew Hovila, of Edmonton, Alberta, was sentenced to 15 months in jail for contravening the criminal false or misleading representations provisions of the *Competition Act*, and an additional 15 months in jail for breaching a court order. Mr. Hovila also pleaded guilty to being in possession of proceeds of crime under the *Criminal Code* and was sentenced to an additional year in jail, to be served concurrently. Another hearing is set for later in 2014 in relation to restitution to the victims of the online job opportunities scam. In June 2013, Mr. Hovila was found guilty under the Act of making materially false or misleading representations with respect to finding employment in the oil and gas industry on his former website and of contravening a consent agreement registered with the Competition Tribunal. This was the Bureau's first conviction for the contravention of a registered consent agreement.

TORONTO REAL ESTATE BOARD (TREB)
February 2014

In February 2014, the Bureau's case against TREB, regarding restrictions on access to and use of data in the Multiple Listing Service (MLS) system by member agents, was returned to the Competition Tribunal by the Federal Court of Appeal for re-consideration; the Federal Court of Appeal overturned the Tribunals decision, agreeing with the Bureau that the Tribunal erred in its decision. In 2013, the Tribunal dismissed the Bureau's application for an order against TREB under section 79 of the Act, holding that TREB does not compete with its members and, therefore, the restrictions on the use of the MLS are not an abuse of dominance. The Bureau appealed the decision, arguing that the Tribunal relied on an overly narrow interpretation of the Act.

The Bureau originally brought the case to the Tribunal in May 2011.



COMMUNICATION

Two-way communication is the foundation of shared compliance—a way of fostering constructive dialogue and establishing common ground. In 2013–2014, we worked actively to facilitate open communication both within the Bureau and externally with stakeholders, to improve our policies, practices and procedures.

TOWARD GREATER TRANSPARENCY

Communication goes hand in hand with transparency, certainty and predictability—all of which are essential to the Bureau's outreach work. At the Canadian Bar Association 2013 Spring Forum, we unveiled our *Action Plan on Transparency*. It is our plan to promote the development of a more cost-effective, efficient and responsive agency, all the while providing Canadians with more opportunities to learn about our work. It lists a series of strategies for achieving our goals, including consulting with stakeholders on important issues, developing new bulletins and guidelines, publicizing the outcomes of inquiries, and establishing guiding principles for stakeholder and investigation-related communications.

At the Bureau, we strive to be an organization that not only promotes awareness of our work, but also listens to what Canadians are saying. In 2013–2014, we sought input from Canadians on our draft information bulletin Communication during Inquiries, which summarizes how and when we will generally communicate with parties under inquiry to promote transparency and compliance with the Act. We also sought input from Canadians on our draft Enforcement Guidelines entitled *Price Maintenance (Section 76 of the Competition Act)*, which describe our general approach to enforcing section 76 of the Act as it relates to common business practices, such as minimum resale pricing, suggested resale pricing and minimum advertised pricing.

Lastly, following extensive consultations, we implemented measures to improve the efficiency of our merger reviews in the oil and gas sector, where we perform a large number of merger reviews. Specific measures include providing greater clarity to stakeholders—particularly the legal community—on information required by the Bureau to complete a merger review and the creation of decision criteria for assessing certain upstream oil and gas transactions. We will continue to examine other areas for enhancing efficiencies, including how we review non-complex mergers and the document review process for complex mergers where a Supplementary Information Request is issued.

> "BUREAU OFFICIALS DELIVERED A TOTAL OF 169 SPEECHES TO AUDIENCES."

ACTIVELY REACHING OUT

Furthering our commitment to communication, Bureau officials delivered a total of 169 speeches to audiences as near as the Canadian Bar Association in Ottawa and as far as the Indian Institute of Management (Kashipur) in New Delhi, India. These engagements were part of our effort to reach out, share our vision with stakeholders, and connect with potential partners. To inform Canadians of our activities, significant speeches were posted on the Bureau's website. As of March 31, 2014, these speeches were accessed nearly 7,800 times.

In addition, over the course of the year, we published 21 bulletins and 11 position statements on a wide range of industries, including retail grocery, telecommunications and cash-solutions services. These position statements provide valuable information to our stakeholders and the general public on how the Bureau carries out its analysis, summarizing the results of important investigations, inquiries and reviews conducted under the Act.

Lastly, our Information Centre plays a key role in promoting awareness of the Bureau directly to the public and supporting our enforcement activities. In 2013–2014, the Information Centre responded to 14,515 information requests from members of the public via telephone, fax, mail and Internet. Additional information regarding the types of complaints we receive can be found in Table 2.1 of the Appendix.



2013–2014 OPERATIONAL HIGHLIGHTS

STATE-OWNED ENTERPRISES

May 2013

In May 2013, the Bureau provided the legal community with guidance regarding its approach to information gathering in merger reviews involving state-owned enterprises (SOEs). Specifically, the Bureau underlined the fact that reviews involving SOEs are treated the same as all other merger reviews in terms of information gathering standards and analytical techniques. SOEs, like any other parties, are expected to disclose and provide information regarding any affiliates (i.e. other corporations that are ultimately controlled by the same foreign state) whose activities potentially overlap with the businesses of the merging parties. Where parties are unable to provide this information, and the Bureau believes the information is necessary to complete a review, the Bureau may not be able to issue clearance in the form of an Advance Ruling Certificate or a No Action Letter.

COMMUNICATIONS AND MEDIA RELATIONS

Year-round

Communicating with our stakeholders is an important part of our work. Over the course of the year, we issued:

- 17 announcements related to domestic and international cartels
- 8 announcements related to abuse of dominance
- 22 announcements related to false and misleading advertising
- 12 announcements related to merger reviews
- 22 announcements related to non-enforcement actions, such as staffing, international cooperation and Memoranda of Understanding
- 4 announcements related to strategic regulatory interventions and advocacy
- 12 CB-in-Briefs, a web-based monthly news digest for stakeholders, media and the general public

We responded to 598 enquiries from journalists in Canada and abroad, contributing to approximately 10,290 print, radio, television and online media reports on matters related to the Bureau's work, up from 7,830 the previous year. Table 6.1 (Appendix) shows the five issues that generated the most media coverage in 2013–2014.

WEBSITE AND SOCIAL MEDIA

Year-round

We revamped the Fraud Prevention section of our website to make information easier to find and developed a new section on corporate compliance to help businesses develop and maintain effective internal compliance programs. Building on the launch of our corporate Twitter account the previous year, we went live with a Facebook page and YouTube channel to increase our social media presence and the reach of our announcements. As well, 10 speeches delivered by Bureau representatives were published on our website.

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COLLABORATION

We expect to achieve far greater benefits for Canadian businesses and consumers by working together with partners. In 2013–2014, we pursued collaborations with organizations in Canada and abroad, building a Bureau whose reach is not strictly limited by its resources or jurisdictional boundaries.

MUTUAL UNDERSTANDING, COMBINED IMPACT

The Bureau is moving to a collaborative, horizontal approach where we engage our stakeholders, including enforcement partners and Canadian consumers. This helps us increase our expertise and the impact of our enforcement activities. Furthermore, this builds more effective and efficient competition enforcement both within Canada and globally.

In 2013–2014, we increased our opportunities for collaboration through a number of Memoranda of Understanding (MOU) or similar documents with national partners, including two with the Canadian Radio-television and Telecommunications Commission (CRTC). The first of these was a Letter of Agreement that will allow us to cooperate more closely with the CRTC on matters affecting the telecommunications and broadcasting sectors. The second was a MOU with the Office of the Privacy Commissioner of Canada and the CRTC—setting out a framework for information-sharing and coordinated enforcement related to Canada's new Anti-Spam Legislation.

We also collaborated with the Department of Public Works and Government Services Canada (PWGSC) to strengthen our collective ability to prevent, detect, report and investigate possible cartel activity affecting Canadians. As part of the MOU, the Bureau and PWGSC will share information relating to procurement processes and real property transactions by way of collaboration in the areas of enforcement, education and awareness.

In 2011, the Quebec provincial police force, the Sûreté du Québec, created a Permanent Anti-Corruption Unit (UPAC). UPAC coordinates investigations of corruption and collusion in the Quebec public system. Our partnership with UPAC has seen us cooperate on a number of investigations, including one that resulted in 77 charges being laid against nine companies and 11 individuals in the construction industry in connection with a collusion scheme in the Saint-Jean-sur-Richelieu region near Montreal.

ADVANCING CANADIAN INTERESTS AT HOME AND ABROAD

In the global economy, promoting healthy competition seldom stops at a nation's borders. Working cooperatively with competition authorities in other jurisdictions has become an essential part of our work, facilitating communication and trust, allowing us to exchange best practices, and enhancing our ability to address competition issues that cross borders.

Guided by our International Strategy initiated in 2012–2013, last year we strengthened our relationships with key international counterparts. We advanced relations with three Chinese competition authorities over a number of meetings and began negotiating MOUs with two of them. We also participated in the Latin American Competition Forum of the Organisation for Economic Co-operation and Development (OECD), hosted colleagues from the Japan Fair Trade Commission and initiated negotiations toward a MOU with India's competition authority. All these international partnerships support the Bureau's effort to ensure that Canadian businesses benefit from competitive markets in Canada and abroad.

We worked with the United States Federal Trade Commission and Department of Justice to jointly publish a set of *Best Practices on Cooperation in Merger Investigations* promoting effective coordination between the agencies. The document sets out practices for our two agencies to apply when reviewing the same merger—streamlining the administrative burden on businesses while, at the same time, increasing transparency to the legal and business communities.

SHARING SPECIALIZED KNOWLEDGE

In 2013–2014, we worked with industry specialists to strengthen our understanding of how healthy competition can be promoted domestically and globally. For example, in October 2013, we co-hosted a one-day workshop with the University of Ottawa's Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic to explore the areas of e-commerce and online advertising. The workshop—which involved Canadian, American, British and Australian academia, and marketing, advertising and law enforcement experts—will enhance our ability to address such topics on behalf of Canadians.

In November 2013, we held a workshop to explore competition issues in the pharmaceutical sector. The workshop was attended by approximately 100 representatives from domestic and international government agencies, such as Health Canada and the United States Federal Trade Commission, the pharmaceutical sector, the legal community and academia. We heard stakeholders' perspectives on potential competition law implications of practices that could impact competition between branded and generic pharmaceuticals.

2013–2014 OPERATIONAL HIGHLIGHTS

NORTH AMERICAN MARKETPLACE
February 2014

In February 2014, we met with the heads of the United States Federal Trade Commission, the United States Department of Justice Antitrust Division and the Mexican Federal Economic Competition Commission to discuss cooperative antitrust enforcement in the interconnected North American marketplace.

INTERNATIONAL CONSUMER PROTECTION AND ENFORCEMENT NETWORK (ICPEN)
September 2013

Working with members of ICPEN, the Bureau coordinated an Internet sweep, targeting misleading and inadequate information disclosure in children's online games and applications. The sweep facilitated further action by each agency, ranging from education to enforcement. Consumer protection agencies from around the world took part.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)
Year-round

The Bureau contributed to discussions of the OECD Competition Committee on promoting cooperation and convergence in competition law policy and enforcement. It participated in three meetings of the OECD Competition Committee and contributed to discussions on topics, including information sharing, cartel detection and generic pharmaceuticals.

In 2013–2014, the Bureau made submissions to the OECD entitled "Ex-Officio Cartel Investigations and the Use of Screens to Detect Cartels" and "Fighting Corruption and Promoting Competition". The submission on ex-officio investigations outlines methods used by the Bureau to detect cartels outside of immunity and leniency, including the Bureau's Information Centre; our partnerships with police forces; our outreach in the procurement, business and legal communities; and the Bureau's Criminal Cartel Whistleblowing Initiative. The submission was considered during the OECD Competition Committee Roundtable in October 2013.

The submission on fighting corruption and promoting competition discusses the efforts that the Bureau has made to strengthen its partnerships with various police forces, procurement authorities and other anti-corruption officials. It also provides examples in which these partnerships have led to the detection and deterrence of collusion and corruption in Canada. The submission was considered during the OECD Competition Committee Roundtable in February 2014.

The Bureau also worked extensively with the OECD Committee on Consumer Policy on the development of the Consumer Policy Guidance on Mobile Payments, which was published in February 2014. The guidance is intended to shape consumer protection and industry practices in the area of mobile and online payments in a manner that will remain relevant as the technology evolves.





INTERNATIONAL COMPETITION NETWORK (ICN)

Year-round

The ICN advocates the adoption of superior standards and procedures in competition policy around the world; formulates proposals for procedural and substantive convergence; and seeks to facilitate effective international cooperation for the benefit of member agencies, consumers and economies worldwide. The Bureau exchanges enforcement experiences through the ICN, which provides a platform to develop practical guidance and best practices to increase cooperation and convergence on enforcement and advocacy. We continue to play a key role in its growth, serving as the ICN Secretariat, as well as participating on the ICN Steering Group and various working groups, including the:

- Advocacy Working Group
- Agency Effectiveness Working Group
- Cartel Working Group
- Merger Working Group
- Unilateral Conduct Working Group

The Bureau holds a significant leadership role in the ICN. The Commissioner serves on the Steering Group, which guides the ICN's annual program of work. We continued to act as the ICN Secretariat, coordinating the activities of ICN Working Groups and maintaining ICN operations. The Bureau also co-chaired the Cartel Working Group subgroup 2, which deals with enforcement techniques. As co-chairs of subgroup 2, the Bureau took a lead role in planning and organizing the 2013 Cartel Workshop held in October in Cape Town, South Africa. The Workshop brought together agency and non-government agency participants from around the world to discuss common cases and best practices.

INTERNATIONAL BAR ASSOCIATION/ AMERICAN BAR ASSOCIATION

Year-round

The Bureau also contributed significantly to the International Bar Association/American Bar Association International Cartel Workshop held in Rome in February 2014. The Bureau planned, organized and participated in a panel with seven other agencies based on a hypothetical scenario involving an international cartel investigation. The Commissioner also participated on an 'International Enforcers' panel with several other agencies.

INTERNATIONAL COOPERATION

Year-round

To further advance our International Strategy, the Bureau focused on diversifying partnerships in Asia-Pacific and Latin America. We initiated relationships with key counterparts by securing cooperation instruments with the agencies in India and Brazil. The Bureau continued collaboration with existing partnerships and developed potential partnerships. In one case, we began negotiations with Colombia for a cooperation instrument pursuant to the Canada-Colombia Free Trade Agreement.

FREE TRADE AGREEMENTS

Year-round

The Bureau is the lead in negotiations of the Competition Policy chapter in Canada's Free Trade Agreements on behalf of the Government of Canada. Ongoing negotiations are with the European Union, Korea, Japan and the Trans-Pacific Partnership.

MARKET SURVEILLANCE ADMINISTRATOR OF ALBERTA MEMORANDUM OF UNDERSTANDING

March 2014

The Bureau and the Market Surveillance Administrator of Alberta (MSA) signed a Memorandum of Understanding for continued and more detailed cooperation between the two agencies. The arrangement will provide greater certainty to stakeholders in situations involving overlapping mandates between the two agencies, including mergers in the Alberta energy sector.



CANADIANS

Our ultimate goal is to ensure that Canadian consumers and businesses prosper in a competitive and innovative marketplace. That means the welfare of Canadians is factored into every decision we make and every action we pursue.

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ADVOCATING FOR COMPETITIVE MARKETS

From September to November 2013, we invited Canadians to identify industries where we might advocate for increased competition. The input allowed the Bureau focus its advocacy activities in sectors of interest to Canadians. Two of these sectors were the pharmaceutical and telecommunication industries.

In pharmaceuticals, the Bureau submitted a letter to the Alberta College of Pharmacists about the use of loyalty programs related to pharmacist services and the sale of prescription drugs. This helped raise the profile of the issue among regulators across the country and laid the foundation for our report on restrictions on advertising in self-regulated professions.

With respect to telecommunications, we provided written submissions to the CRTC regarding the effect that roaming agreements have on competition in Canadian mobile wireless markets. These submissions observed that the terms and conditions imposed in mobile wireless roaming agreements, including the rates charged by Canada's largest wireless companies to new entrants, were being used as a strategic tool to reduce the new players' ability to offer competitive prices and choices to consumers. Taking note of our position on the competitive impact of these roaming agreements, the CRTC took steps to address the pricing behaviour of the three incumbent wireless companies with regard to wholesale roaming.

In addition to our efforts to encourage competition in these industries, we also worked to promote compliance with the Act and the other legislation we enforce. In February 2014, the Ontario Superior Court of Justice issued its decision in the Rogers-Chatr case. While the court concluded that Rogers' claims were not false or misleading, it found that Rogers did not conduct adequate and proper tests in some Canadian cities prior to making its "fewer dropped calls" claims. Rejecting the argument that Rogers had exercised due diligence before making these performance claims, the Court ordered Rogers to pay an administrative monetary penalty of $500,000.

EMPOWERING CANADIANS TO PROTECT THEMSELVES

The success of the Canadian edition of *The Little Black Book of Scams* in 2012–2013 proved that awareness is a powerful defence against deceptive conduct for consumers and small businesses. Building on the popularity of the anti-fraud reference guide, in March 2014, we premiered a series of four animated videos for Fraud Prevention Month. These videos profile some of the most common scams included in *The Little Black Book of Scams*: small business scams, employment scams, Internet scams and mobile phone scams. The videos—all under two minutes long—demonstrate the tactics used to deceive consumers and businesses, and show Canadians how they can protect themselves and their families from fraud.

SEEKING FAIRNESS FOR RETAILERS

Promoting competition means protecting businesses from unfair practices just as it means protecting consumers. In December 2010, the Bureau filed an application with the Competition Tribunal to strike down restrictive rules that Visa and MasterCard imposed on merchants who accept their credit cards. The Commissioner alleged that these rules effectively eliminated competition between Visa and MasterCard for merchants' acceptance of their credit cards, resulting in increased costs to businesses and, ultimately, consumers. While the Tribunal dismissed the Bureau's application, it also found that Visa's and MasterCard's conduct influenced upwards the price of credit card services in Canada and had an adverse effect on competition. The Tribunal also noted that regulation of the industry would provide a more appropriate solution than any remedy that it could impose.

Following a careful review of the Tribunal's decision, the Bureau decided not to appeal, instead focusing its efforts on identifying alternate means of addressing competition issues in the supply
of credit card services in Canada. The Government of Canada committed in its 2014 budget to "work with stakeholders to promote fair and transparent practices and to help lower credit card acceptance costs for merchants, while encouraging merchants to lower prices to consumers".

2013–2014 OPERATIONAL HIGHLIGHTS

LEON'S FURNITURE LIMITED (LEON'S) AND THE BRICK LTD. (THE BRICK)

July 2013

In support of Canadians' interests, the Bureau commenced legal action against Leon's and The Brick for what it believes are deceptive marketing practices. Our investigation into promotions offering 'buy now, pay later' options revealed, among other things, that many customers were required to pay up-front fees despite the 'buy now, pay later' promotions. As a result, the Bureau filed an action with the Ontario Superior Court of Justice to end this type of alleged deceptive advertising, seeking administrative monetary penalties against both Leon's and The Brick, as well as refunds for customers who paid so-called administration or processing fees. The case remained active as of March 31, 2014.

RESIDENTIAL WATER HEATERS

August 2013

In December 2012, the Bureau filed applications with the Competition Tribunal against Reliance Comfort Ltd. Partnership (Reliance) and Direct Energy Marketing Ltd. related to practices that were alleged to intentionally suppress competition and restrict consumer choice in the water heater industry. In March 2013, the Tribunal denied Reliance's request for an order striking or amending the application filed against it. In August 2013, Reliance's appeal of the decision was denied, as was its leave to appeal to the Supreme Court of Canada. These applications continue before the Tribunal.

SUBMISSIONS AND REGULATORY INTERVENTIONS

January 2014

In February 2014, the CRTC initiated a proceeding to determine whether wholesale mobile wireless services markets are sufficiently competitive now and will be sufficiently competitive in the future. Pursuant to section 125 of the Act, we provided a submission to the CRTC in respect of this proceeding. In the submission, we identified circumstances where incumbent wireless service providers can use their market position to disadvantage entrants.

The Bureau also provided a submission to the City of Toronto as part of its Taxicab Industry Review. The submission advocates for a regulatory framework that would benefit Canadians by providing them with more urban transportation options at competitive prices.

EBOOKS

February 2014

The Bureau considers the digital economy to be an important and growing sector in Canada. Following an 18-month investigation into the ebook industry, the Bureau signed a consent agreement with Hachette Book Group, HarperCollins, Macmillan and Simon & Schuster that saw the four publishers agree to remove or amend clauses in their distribution agreements. The Bureau alleged that the publishers engaged in conduct that reduced competition for ebooks in Canada, contrary to the civil competitor collaboration provision in section 90.1 of the Act. Since the registration of the Consent Agreement, a third party affected by the agreement has filed a motion with the Competition Tribunal under section 106(2) of the Act to rescind or vary the agreement.

PROPANE MARKET REPORT

February 2014

In February 2014, the Ministers of Natural Resources and Industry requested that the Bureau and the National Energy Board (NEB) work together to determine the causes of high propane prices and supply shortages in Canada this past winter. In March 2014, the Bureau and the NEB publicly released a preliminary report that provided an overview of the Canadian propane industry, current propane supplies, and initial perspectives on the factors that may have contributed to high prices and propane shortages. The final report, which will describe the causes of these market issues and make recommendations, where appropriate, on how to avoid similar issues in the future, will be released early in the next fiscal year.



PROMOTING COMPETITION BY SUPPORTING GOVERNMENT INITIATIVES

The Bureau continued to work with the Department of Industry and other government departments to advance competition principles by providing input into various legislative, regulatory and policy initiatives. Another area of focus for the Bureau was the implementation of the federal public service transformation agenda, which aims to promote a high-performing workforce and excellence in people management through a number of initiatives, including:

- Continuing advancement of development programs for Paralegals and Competition Law Officers
- Soliciting internal input for the Government's *Blueprint 2020: Getting Started, Getting Your Views* process, which will define the future vision of the public service
- Training managers and disseminating information to employees in preparation for the launch of the Treasury Board Secretariat's *Performance Management Directive* on April 1, 2014
- Hosting learning sessions, including Sector Days—when market participants, such as Netflix and Telus gave presentations on their industries' dynamics, challenges and trends—and private law firm discussions on promoting competition in specialized markets such as electricity
- Internal collaboration to increase accountability and streamline processes for responding to *Access to Information Act* and *Privacy Act* requests
- A focused review of the Bureau's historical records to determine archival value according to the *Library and Archives of Canada Act*, leading to the elimination of 79 boxes and archiving of nearly 600 boxes
- Continued collaboration with Shared Services Canada and Industry Canada to centralize information technology infrastructure while maintaining security of the Bureau's information
- Installation of new video and web conferencing facilities to increase collaboration and training while managing travel and training costs



BUILDING INTERNAL CAPACITY

The Bureau continued its focus on realigning resources to priorities with the aim of ensuring a more agile and collaborative organization, one that can achieve a more balanced delivery of the Bureau's mandate. A Talent Development Strategy (TDS) that will ensure long-term sustainability within the Bureau by cultivating skilled, motivated and well-rounded employees who continuously strive for excellence is currently being drafted. The strategy will encompass employee development at all levels, with training and other learning engagement strategies, that will help the Bureau deliver on its mandate while supporting individual employee career development. The TDS will consider Bureau priorities and the necessary competencies, and tailor learning and development plans to build the required skills and competencies. The new performance management program played a key role in equipping managers to provide ongoing, constructive feedback and direction to support employee development.

We continued to develop our executives and our employees, at all levels, including providing core classroom training and hands-on training to our employees. We also provided leadership training to 12 employees and language training to approximately 85 employees. We balanced the need for core enforcement training with the need to be aware of developments in various sectors of the domestic and global economies including, for example, through a series of information sessions on the digital economy. The Bureau has continued to place emphasis on collaborating on training with internal and external partners to provide our employees with different perspectives and practical tools to do their work. All training activities were offered with the goal to increase the Bureau's effectiveness in its operations and to improve the technical capability of its staff.

The Bureau continued to develop strategies, policies and training to tackle the large volume of evidence gathered through our investigations. Our forensic investigators supported various law enforcement agencies across Canada, lending expertise in the execution of search warrants and forensic analysis of digital information. We also continued to liaise with domestic and international counterparts to share best practices and address computer forensic enforcement issues, such as cloud computing and internet-based fraud schemes.

We also implemented intelligence software to increase the speed and efficacy of our investigators' evidence reviews. In anticipation of Canada's Anti-Spam Legislation coming into force in July 2014, the Bureau provided technical support to the CRTC and established access to the Spam Reporting Centre for Bureau employees to access important data to support future investigations. This includes the creation of a web submission form and other means for the public to make submissions, which take into account the different technological knowledge and abilities of members of the public.

The Bureau continued to collect reliable and credible performance data, which will lead to increased transparency and provide management with the opportunity to make strategic decisions based on results.



FINANCIAL DISCUSSION AND ANALYSIS

The Bureau's budget for 2013–2014 was $48.8, including approximately $10.5 million from user fees.[1] The Bureau's expenditures for 2013–14 were $47 million and consisted of $33.6 million in salaries for 362 full-time equivalents (FTEs), and $13.4 million in non-salary. Table 1 presents the Bureau's authorized budget and expenditures for the year.

TABLE 1: AUTHORIZED BUDGET EXPENDITURES FOR 2013–2014

	Budget	**Expenditure**
Salary	$34,491,129	$33,597,992
O&M	$13,518,100	$13,081,886
Capital	$740,215	$321,713
TOTAL	**$48,749,444**	**$47,001,591**
	Authorized	**Used**
FTEs	390	362

[1] The Bureau collected nearly $11M in user fees (including $19,000 in written opinions) of which approximately $464,000 was transferred to the Government of Canada's Consolidated Revenue Fund.

> “A MORE STRATEGIC APPROACH IN THE USE OF ECONOMIC AND INDUSTRY EXPERTS ALSO RESULTED IN FURTHER SAVINGS.”

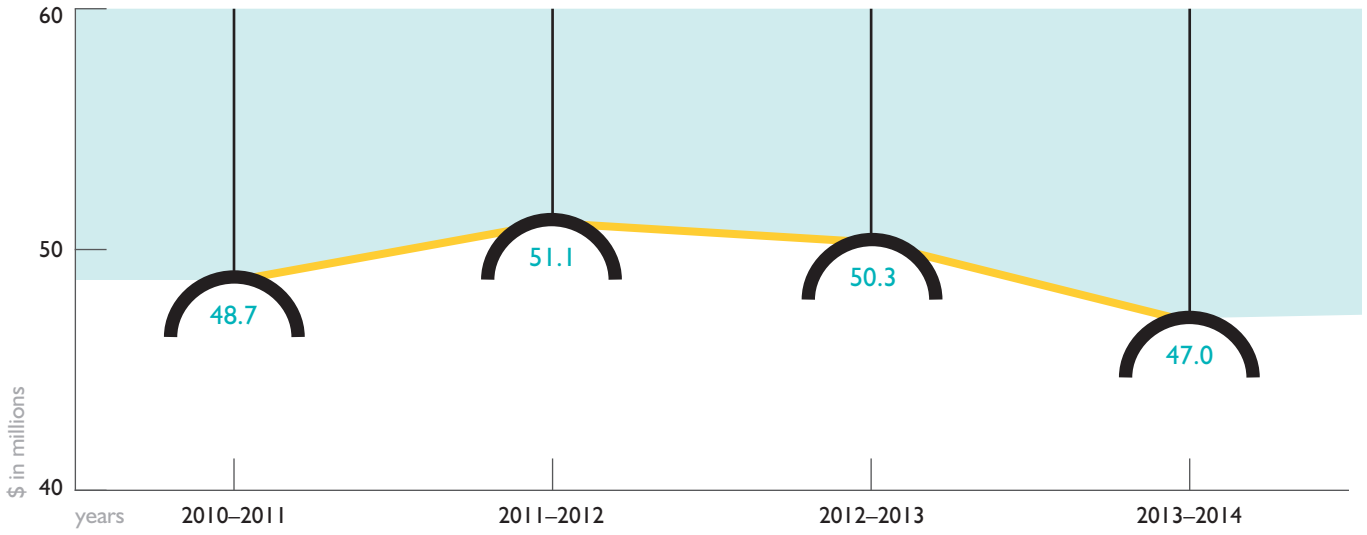
Savings to the Bureau from the Government’s *Deficit Reduction Action Plan* were fully implemented and realized in 2013–2014. Additional cost reductions were achieved through the Bureau’s ongoing strategy to build a strong in-house legal team within the Competition Bureau Legal Services Unit of the Department of Justice and to reduce reliance on external legal counsel. A more strategic approach in the use of economic and industry experts also resulted in further savings. These concrete Bureau actions provided increased financial flexibility that enabled strategic investments to improve the Bureau’s information technology.

The Bureau also continued to work closely with Industry Canada and the Public Prosecution Service of Canada to control rising costs in the area of legal support for criminal cases.

The Bureau has administrative responsibility for collecting fines imposed by the courts as well as AMPs issued by the Competition Tribunal or the courts. In 2013–2014, approximately $55 million in fines were imposed and $0.5 million in AMPs were issued. Fines and AMPs are not considered Bureau revenue and instead are remitted to the Government of Canada’s Consolidated Revenue Fund.

Figure 1 illustrates the Bureau’s spending trend from 2010–2011 to 2013–2014.

FIGURE 1: BUREAU SPENDING TREND[2]



[2] Does not include Work Force Adjustment budget and expenditures.



APPENDIX:

BUREAU PERFORMANCE DATA



TABLE 1

Estimate Savings from Bureau Activities			
The Bureau is required to report annually on its performance through a Departmental Performance Report (DPR) to Parliament. Industry Canada's DPR provides details of accomplishments and results achieved in the most recently completed fiscal year against performance expectations, as set out in the corresponding Report on Plans and Priorities. The Bureau quantifies the benefits of its activities via the following quantitative performance indicator: estimated dollar savings per annum to consumers from Bureau actions that stop anti-competitive.			
Expected Result	**Performance Indicator**	**Target**	**2013–14 Total**
Reduction in anti-competitive behavior	Estimated dollar savings per annum to consumers from Bureau actions that stop anti-competitive activity	$515M	$572.1M[3]

[3] In 2013–2014, the Bureau's estimated dollar savings to consumers was approximately $572.1 million. The Bureau surpassed its performance target due to the conclusion of a number of matters that provided a larger dollar savings per annum to consumers.

The following tables include statistics relating to a variety of intake measures, merger and non-merger related enforcement matters, as well as advocacy, outreach and partnership initiatives.

TABLE 2

Intake		
Measure	**2013–14 Total**	**Description**
Complaints and information requests	14,515	Complaints and questions submitted to the Bureau that relate to the Bureau's four statutes (*Competition Act*, *Consumer Packaging and Labelling Act*, *Textile Labelling Act* and *Precious Metals Marking Act*).
Media requests	598	Media requests to the Bureau.
Textile Labelling CA Identification Number applications	770	The CA Identification Number is registered for the exclusive use of a Canadian dealer on the label of a consumer textile article in place of a name and postal address (as per the *Textile Labelling Act*).

TABLE 2.1

Top 5 Complaints by Product or Service
2013–14
1. Business products – directory listings
2. Electronics – computer hardware and software
3. Telecom – wireless
4. Food – grocery & beverages
5. Business products – office supplies

"THE BUREAU'S ESTIMATED DOLLAR SAVINGS TO CONSUMERS WAS APPROXIMATELY $572.1 MILLION."

TABLE 3

Enforcement – Non Merger

The Competition Bureau enforces both criminal and civil provisions of Canada's *Competition Act* aimed at addressing anti-competitive practices and misleading advertising as well as the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*.

Measure	2013–14 Total	Description
Investigative Stage		
Immunity markers granted to applicants	82	Number of immunity markers the Criminal Matters Branch and the Fair Business Practices Branch granted.
Leniency markers granted to applicants	40	Number of leniency markers the Criminal Matters Branch granted.
Investigations		
commenced	40	Investigations and compliance assessment matters that were opened. Investigations include matters on which inquiries have been commenced.
concluded	28	Investigations and compliance assessment matters that were closed.
total ongoing investigations	104	Investigations ongoing (i.e. matter not closed) at the end of the previous period. Investigations include matters on which inquiries have been commenced (as of the 1st day of reporting period).
Inquiries		
commenced	16	Investigation for which an inquiry has been commenced pursuant to section 10 of the *Competition Act*.
discontinued	11	Inquiries discontinued by the Commissioner. This measure does not include inquiries closed for reasons other than discontinuance.
total ongoing inquiries	68	Investigation for which an inquiry has been commenced pursuant to section 10 of the *Competition Act*, regardless of when commenced, as long as inquiry is ongoing (as of the 1st day of reporting period).
Search warrants	35	Number of search warrants issued.
Section 11 orders	7	A section 11 order is an order issued by a judge under section 11 of the *Competition Act*. This statistic includes all section 11 orders issued, including when multiple orders are issued for a single investigation during the reporting period.
Investigations referred to the Public Prosecution Service of Canada	2	Investigations referred to the Public Prosecution Service of Canada for consideration and action.

TABLE 3.1

Resolutions		
Measure	**2013–14 Total**	**Description**
Alternative Case Resolutions	7	Investigations that raised an issue under the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* or the *Textile Labelling Act*, which were resolved outside of proceedings before the Court or Competition Tribunal. Alternative Case Resolutions include: the adoption of corporate compliance programs, voluntary codes, information contacts, information letters, warning letters, stand still letters, compliance meetings and undertakings.
Registered Consent Agreements	3	All Consent Agreements registered pursuant to section 74.12 or 105 of the *Competition Act* with the Competition Tribunal or Courts.
Convictions without Guilty Pleas	5	All convictions without guilty pleas, includes sections 65 and 66 under the *Competition Act*.
Guilty pleas	11	The number of guilty pleas made by individuals or companies for an offence under the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* or the *Textile Labelling Act*.
Prohibition order with convictions	0	All prohibition orders with convictions (subsection 34(1)) under the *Competition Act*.
Prohibition order without convictions	1	All prohibition orders without convictions (subsection 34(2)) under the *Competition Act*.
Interim injunctions	0	All interim injunctions (section 33) under the *Competition Act*.

TABLE 3.2

Contested Matters – Before the Courts or Competition Tribunal		
Measure	**2013–14 Total**	**Description**
Matters before the Competition Tribunal, Provincial Superior Courts or Federal Court		
Matters currently before the Competition Tribunal	6	Applications brought by the Commissioner related to substantive matters before the Competition Tribunal where applications were filed but do not include Consent Agreements registered pursuant to sections 74.12 or 105 of the *Competition Act*. This excludes interim steps in a proceeding or rescission or variation of a Consent Agreement or Order under sections 74.13 and 106 of the *Competition Act* (excluding private access).
Matters currently before the Courts	20	Proceedings related to substantive matters before the courts where proceedings were filed. This excludes interim steps in a proceeding or rescission or variation of a Consent Agreement or Order under sections 74.13 and 106 of the *Competition Act*.

TABLE 3.3

Outcomes		
Measure	**2013–14 Total**	**Description**
Total fines imposed	$55.7M	Total amount of fines imposed upon companies and individuals by the Courts.
Total bid-rigging fines imposed	$49.2M	Total amount of bid-rigging fines imposed. This statistic is included in "Total fines imposed".
Individuals sentenced	6	The number of individuals sentenced under the *Competition Act*.
Companies sentenced	9	The number of companies sentenced under the *Competition Act*.
Combined jail time imposed	30 months	Total amount of jail time imposed.
Total administrative monetary penalties (AMPs)	$0.5M	Total amount of AMPs imposed by the Competition Tribunal or Courts.
Total restitution	$0	Total amount of restitution imposed by the Competition Tribunal or the Courts.
Final orders issued by the Competition Tribunal	1	All Orders issued under sections 74.1, 75, 76, 77, 79, 81, 82, 83, 84, 86, 87, 90.1, 92 of the *Competition Act*. This includes orders issued under sections 74.1, 74.111 and 92.1, Temporary Orders, and rescission or variation of a Consent Agreement or Order under sections 74.13 and 106 of the *Competition Act*.

TABLE 4

Enforcement – Merger-Related

Under the Competition Act, mergers and proposed mergers of all sizes and in all sectors of the economy are subject to review to determine whether they have resulted, or will likely result, in a substantial lessening or prevention of competition.

Matters (ALL)

Measure	2013–14 Total	Description
Examinations		
Commenced	230	Includes all merger reviews that were opened during the period.
Pre-Merger Notification (PMNs) filings & Advance Ruling Certificate (ARC) requests	218	PMNs filed pursuant to section 114(1) of the *Competition Act* and ARC requests made pursuant to section 102 of the *Competition Act*. Includes matters where either a Notification filing or an ARC request, or both occur.
Other examinations	12	Matters where no PMN or ARC request was received. Includes Investment Canada applications, Heritage Canada applications, complaints and reviews of non-notifiable mergers initiated by the Mergers Branch.
Concluded	233	Merger reviews that were completed during the period.
No issues under the Act	221	Merger reviews that were completed with no issues under the *Competition Act*.
With issues under the Act	8	Does not include ongoing Matters before the Competition Tribunal. Concluded with monitoring.
Transactions abandoned for reasons unrelated to the Commissioner's position	4	Merging parties abandon their proposed merger for reasons other than the Bureau's views on the proposed merger.
Total Ongoing Merger Reviews	15	Merger reviews ongoing (i.e. matter not closed) at the end of the previous period (as of the 1st day of reporting period).
Inquiries		
Commenced	3	Matters for which an inquiry has been commenced pursuant to section 10 of the *Competition Act*.
Discontinued	0	Inquiries discontinued by the Commissioner.
Total Ongoing Inquiries	6	Matters for which an inquiry has been commenced pursuant to section 10 of the *Competition Act*, regardless of when commenced, as long as inquiry is ongoing (as of the 1st day of reporting period).

TABLE 4.1

Concluded Matters (No Issues)		
Measure	**2013–14 Total**	**Description**
Advanced Ruling Certificates (ARC) Issued	106	Examinations concluded with the issuance of an ARC pursuant to section 102 of the *Competition Act*.
No Action Letters (NAL) Issued	107	Examinations concluded with the issuance of a NAL pursuant to section 114 of the *Competition Act*.
Other Examinations	8	Examinations that do not contain a Notification filing or ARC request. These matters are opened for other reasons including Investment Canada applications, Heritage Canada applications, complaints and reviews of non-notifiable mergers initiated by the Mergers Branch.
Total Concluded Matters (No Issues)	**221**	
Concluded & On-Going Matters (With Issues)		
Consent Agreements	4	Consent Agreements registered with the Competition Tribunal pursuant to section 105 of the *Competition Act* related to mergers.
Transactions Abandoned due to competition concerns	0	Merging parties abandon their proposed merger after being informed that the transaction raises issues under the *Competition Act*.
Alternative Case Resolutions	4	Matters that raised an issue under the *Competition Act* but were resolved outside of proceedings before the Competition Tribunal. Includes warning letters and undertakings.
Total Concluded Matters (With Issues)	**8**	
Matters Before the Competition Tribunal	1	Includes ongoing section 92 matters and other matters before the Competition Tribunal (such as section 100 and 106 matters) or the courts.

TABLE 4.2

Merger Review Performance Indicators			
Please visit the Competition Bureau Fees and Service Standards Handbook for Mergers and Merger-Related Matters.			
Measure	**Complexity**	**2013–14 Total**	**Description**
Matters Concluded (#)	Non-Complex	173	Non-complex mergers are readily identifiable by the clear absence of competition issues, and include transactions where there is no or minimal overlap between parties, assuming properly defined product and geographic markets. Minimal overlap includes a combined post-merger market share of less than 10% in any relevant market.
	Complex	46	Complex mergers involve proposed transactions between competitors, or between customers and suppliers, where there are indications that the transaction may, or is likely to, create, maintain, or enhance market power. Proposed transactions, where the combined post-merger market share of the parties is potentially 35% or more, are generally classified as complex.
	Total	**219**	
Matters Concluded (%)	Non-Complex	79%	
	Complex	21%	
	Total	**100%**	
Service Standard Met (#)	Non-Complex	161	14 days from the calendar day on which sufficient information has been received by the Bureau.
	Complex	36	45 days from the calendar day on which sufficient information has been received by the Bureau except where a Supplementary Information Request is issued, in which case it shall be 30 days.
	Total	**197**	
Service Standard Met (%)	Non-Complex	93%	
	Complex	78%	
Avg. Review Time (days)	Non-Complex	10.38	
	Complex	36.09	
Supplementary Information Requests Issued		**10**	A request made pursuant to section 114(2) of the *Competition Act*.

TABLE 5

Advocacy		
The Bureau participates in a wide range of activities to promote and advocate the benefits of a competitive marketplace, both in Canada and abroad. This includes recommending that regulators and policy-makers rely on market forces as much as possible and that regulation, where required, limits competition as little as possible. Our Advocacy Portal on the Bureau's website highlights recent advocacy work conducted by the Bureau.		
Measure	**2013–14 Total**	**Description**
Representations before regulatory bodies	3	Interventions, submissions and appearances before regulatory bodies pursuant to our advocacy function under section 125 and 126 of the *Competition Act*.
Small to medium advocacy interventions	0	Interventions may include written submissions including letters, calls, and meetings with regulatory groups and other stakeholders.
Market studies	0	Market studies are designed to improve understanding of the effects of competition on the economy.

The Bureau made the following interventions under sections 125 and 126 of the Competition Act in 2013–2014:

- Notice of Consultation CRTC 2013-685 – Wholesale mobile wireless roaming in Canada – Unjust discrimination/undue preference
- Notice of Consultation CRTC 2013-551 – Review of wholesale services and associated policies
- Submission to the City of Toronto related to the Taxicab Industry Review

TABLE 6

Outreach		
The Bureau promotes transparency in all its operations by communicating with stakeholders and providing them with up-to-date information and guidance through a wide variety of publications.		
Measure	**2013–14 Total**	**Description**
Speeches	169	The total number of presentations by Bureau officials to external stakeholders, including speaking engagements, information sessions, panel participation and outreach activities.
Publications	21	New publications and those that have been revised, including information bulletins, enforcement guidelines, position statements, pamphlets, FAQs and Bureau performance reports.

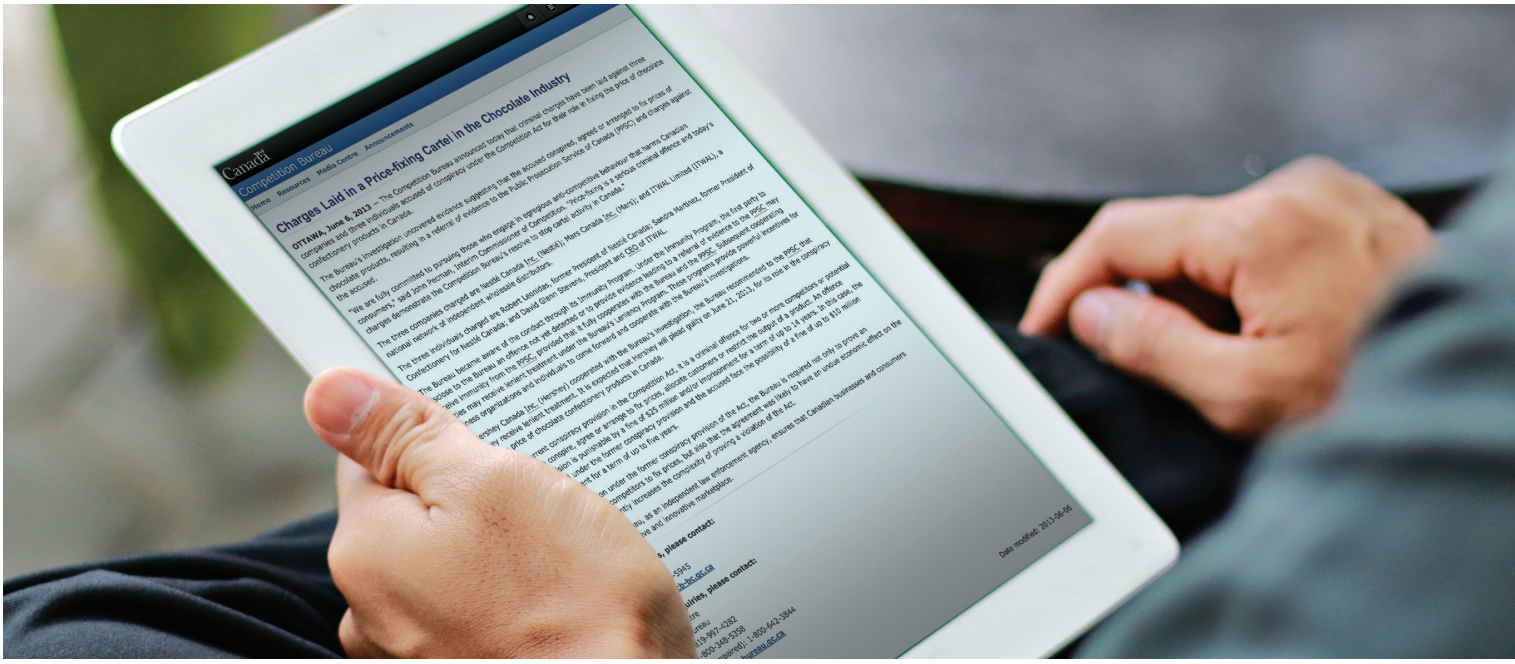


TABLE 6.1

High-Profile Media Issues	
High-profile is determined by online, print, radio and television, and social media attention as tracked by the Bureau.	
2013–14	
1. Visa & MasterCard case – Rules for merchants	
2. Loblaw/Shoppers Drug Mart transaction	
3. Sobeys/Canada Safeway transaction	
4. Chocolate price-fixing case	
5. Cross-border pricing issues	

TABLE 6.2

Top Bureau Announcements	
Top Bureau announcements are based on visits to the Bureau's website.	
Announcements	**2013–14 Visits**
Charges Laid in a Price-fixing Cartel in the Chocolate Industry – June 6, 2013	4,530
Competition Bureau Requires Significant Divestitures in Sobeys/Safeway Deal – October 22, 2013	2,668
Competition Bureau Takes Action Against Leon's and The Brick for Deceptive 'Buy Now, Pay Later' Promotions – July 9, 2013	2,460
Record $30M Fine Obtained by Competition Bureau Against Japanese Auto Parts Supplier – April 18, 2013	2,141
Competition Bureau Reaches Consent Agreement in Loblaw/Shoppers Deal – March 21, 2014	1,896

TABLE 7

Partnerships		
The Bureau collaborates with domestic and international partners in order to enhance its ability to promote and protect a competitive marketplace.		
Measure	**2013–14 Total**	**Description**
International		
Cooperation Instruments	12	Memoranda of Understanding, cooperation agreements and cooperation arrangements. This includes all existing instruments.
Formal bilateral meetings	4	Bilateral meetings between the Bureau and foreign law enforcement agencies and competition authorities pursuant to obligations under cooperation instruments.
International Fora meetings and workshops	16	Meetings and workshops with multinational organizations (e.g., Organisation for Economic Co-operation and Development, International Competition Network, International Consumer Protection and Enforcement Network).
Domestic		
Formal domestic partnerships	17	Number of domestic partnerships in which the Bureau participates (e.g., the Market Surveillance Administrator of Alberta, the Canadian Radio-television and Telecommunications Commission, Canadian Intellectual Property Office and the Department of Public Works and Government Services) where Memoranda of Understanding or other agreements are in place.



GLOSSARY

Competition Act: The *Competition Act* is a federal law governing most business conduct in Canada. It contains both criminal and civil provisions aimed at preventing anti-competitive practices in the marketplace.

Consumer Packaging and Labelling Act: The *Consumer Packaging and Labelling Act* is a criminal statute relating to the packaging, labelling, sale, importation and advertising of prepackaged and certain other products.

Precious Metals Marking Act: The *Precious Metals Marking Act* is a criminal statute relating to the marking of articles containing precious metals.

Textile Labelling Act: The *Textile Labelling Act* is a criminal statute relating to the labelling, sale, importation and advertising of consumer textile articles.

Matter: An ongoing issue or case that requires action by the Competition Bureau.

Investigation: A civil (non-merger) or criminal investigation under the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* or the *Precious Metals Marking Act*.

Compliance Assessment: An examination of a program, activity or individual transaction to ensure that it conforms to legislation, regulations and administrative directives.

Merger Review: A review of a merger under the *Competition Act*.

Immunity: The first party to disclose to the Competition Bureau an offence not yet detected or to provide evidence leading to the filing of charges may receive immunity from prosecution from the Director of Public Prosecutions of Canada as long as the party cooperates with the Bureau and any subsequent prosecution.

Leniency: The Competition Bureau may recommend to the Director of Public Prosecutions that cooperating persons who have breached the cartel provisions under the *Competition Act*, who are not eligible for a grant of immunity, nevertheless be considered for lenient treatment in sentencing.

Competition Tribunal: The Competition Tribunal is a specialized tribunal that combines expertise in economics and business with expertise in law. The Tribunal is a strictly adjudicative body that operates independently of any government department. The cases it hears are complex and deal with matters such as mergers, misleading advertising and restrictive trade practices. The Competition Tribunal should be distinguished from the Competition Bureau. The Competition Bureau investigates complaints and decides whether to proceed with the filing of an application with the Competition Tribunal.

Courts: Under the *Competition Act*, as well as under the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*, certain practices may be brought before the courts, which include the Federal Court or the Superior Court of a province. Under the civil regime of the *Competition Act*, certain practices may be brought for review before the Competition Tribunal, the Federal Court or the superior court of a province.



This is Exhibit “91” referred to in the Affidavit of Mary DeCaire sworn by Mary DeCaire at the City of Toronto, in the Province of Ontario, before me on May 5, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

JAKOB KELLY

Competition Bureau Canada
Bureau de la concurrence Canada

For a Competitive Playing Field

Promoting compliance for the benefit of Canadian consumers

ANNUAL REPORT OF THE COMMISSIONER OF COMPETITION FOR THE YEAR ENDING MARCH 31, 2015

Canada

This publication is not a legal document. It contains general information and is provided for convenience and guidance in applying the *Competition Act*.

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For a Competitive Playing Field

Healthy competition benefits everyone. It means lower prices and more choice for consumers. It means increased access to opportunities for businesses. And it drives innovation by inspiring companies to continuously improve and expand on their offerings of products and services, fuelling economic growth.

The Competition Bureau plays a crucial role in fostering an economic and regulatory environment in which competition and innovation can thrive. In 2014–2015, we focused on using all of the tools at our disposal — enforcement, promotion and advocacy — to promote compliance with Canada's competition laws, seeking a competitive playing field to benefit all Canadians.

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The Competition Bureau at a Glance

ABOUT THE COMPETITION BUREAU

The Competition Bureau (Bureau) is an independent law enforcement agency headed by the Commissioner of Competition (Commissioner). Its legislated mandate is to help cultivate a competitive, innovative marketplace for the benefit of Canadian businesses and consumers, and to administer and enforce Canada's:

- *Competition Act*
- *Consumer Packaging and Labelling Act* (except as it relates to food)
- *Textile Labelling Act*
- *Precious Metals Marking Act*

OUR STRUCTURE

In 2014–2015, **the Bureau streamlined its structure from eight branches to four**, creating a stronger, more adaptive agency that will ensure Canadian consumers and businesses continue to prosper in a competitive and innovative marketplace.

PREVIOUS STRUCTURE

1. **Civil Matters Branch**
2. **Criminal Matters Branch**
3. **Fair Business Practices Branch**
4. **Mergers Branch**
5. **Compliance and Operations Branch**
6. **Economic Policy and Enforcement Branch**
7. **Legislative and International Affairs Branch**
8. **Public Affairs Branch**

NEW STRUCTURE

Enforcement branches

1. **Cartels and Deceptive Marketing Practices Branch**
   - Cartels Directorate
   - Deceptive Marketing Practices Directorate
2. **Mergers and Monopolistic Practices Branch**
   - Mergers Directorate
   - Monopolistic Practices Directorate

Enforcement support branches

3. **Competition Promotion Branch**
   - Advocacy and Economic Analysis Directorate
   - International Affairs Directorate
   - Policy and Planning Directorate
   - Public Affairs and Outreach Directorate
4. **Corporate Services Branch**

The Bureau's work is also supported by two independent legal support organizations:

- Competition Bureau Legal Services (Department of Justice)
- Competition Law Section of the Public Prosecution Service of Canada (PPSC)

The Year in Numbers

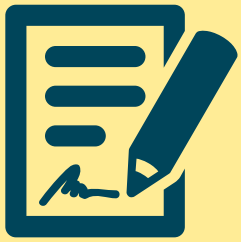
ENFORCEMENT

$8.63M fines imposed by the courts as a result of Bureau actions

$10M administrative monetary penalties[1] imposed by the Competition Tribunal

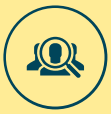
$7.11M restitution to consumers

$950,169,365 estimated dollar savings to consumers in 2014–2015 from **Bureau actions that stop anti-competitive activity**



6 registered **consent agreements**

99% non-complex mergers reviewed in a timely manner



42 search warrants executed



6 guilty pleas



increase in administrative monetary penalties:

- $500,000 in 2013–2014
- $10 million in 2014–2015

decrease in fines imposed by the courts as a result of Bureau actions[2]:

- $55.7 million in 2013–14
- $8.63 million in 2014–15

13% increase in investigations and examinations commenced:

- 270 in 2013–2014
- 306 in 2014–2015

increase in alternative case resolutions:

- 7 in 2013–2014
- 25 in 2014–2015

170% increase in Section 11 orders[3] in non-merger cases:

- 7 in 2013–2014
- 19 in 2014–2015

17% decrease in presentations to external stakeholders:

- 169 in 2013–2014
- 141 in 2014–2015

20% increase in search warrants executed:

- 35 in 2013–2014
- 42 in 2014–2015

1 Administrative monetary penalties, or "AMPs," are civil remedies, and quite distinct from fines (which are criminal). The purpose of an AMP is to promote and encourage compliance with the *Competition Act*, and failure to pay one may be enforced civilly as a debt due to the Crown. A fine, by contrast, is a punishment imposed by a court upon conviction of a criminal offence, and failure to pay may lead to imprisonment.

2 The variance between 2013–2014 and 2014–2015 is largely due to the total amount of bid-rigging fines imposed by the courts as a result of Bureau actions. In 2013–2014 the courts imposed 49.2 million dollars in fines as a result of the Bureau's investigation into an international bid-rigging cartel involving motor vehicle parts.

3 A section 11 order is an order issued by a judge under section 11 of the *Competition Act*.

OUTREACH



141 speeches

532 media enquiries received

26 publications

11,019 media hits

544,852 website visits

50,366 video views

41,055 publication downloads

13,925 information requests and complaints received by the Bureau Information Centre



ADVOCACY

9 representations to regulatory bodies

24 advocacy interventions

PARTNERSHIPS



2 signed Memoranda of Understanding

20 formal domestic partnerships

16 fora meetings and workshops with international organizations

Setting Our Strategy

As part of its realignment in 2014–2015, the Bureau adopted a new, integrated planning approach to clearly connect its activities with longer-term goals and bring greater transparency to the planning and reporting process:

STRATEGIC PLANNING

The Bureau's planning starts with an environmental scan to identify trends, opportunities and risks related to competition enforcement. This is complemented by the development of detailed operational plans that set out intended activities for the year ahead and inform the management team's performance agreements. Together, all of these activities shape the priorities and objectives of the Bureau's annual plan.

ANNUAL PLAN

The Bureau published its first annual plan in 2014–2015: *Promoting Compliance for the Benefit of Canadian Consumers*. The plan shares the Bureau's priorities and objectives for the coming year with Canadian consumers and stakeholders in the business and legal communities. It outlines how we intend to deliver on each of our strategic objectives during the fiscal year.

THREE-YEAR STRATEGIC PLAN

To better meet the needs of Canadians, the Bureau published a draft of its 2015–2018 strategic plan for public comment in March 2015. Designed as a roadmap for the next three years, the strategic plan will help improve the effectiveness and efficiency of the Bureau's competition enforcement and promotion activities.

The annual plan and three-year strategic plan support the Bureau's *Action Plan on Transparency*, which promotes the development of a more efficient and responsive agency while providing Canadians with greater opportunities to learn about the Bureau's work.

PRIORITIES FOR 2014–2015

The Bureau's 2014–2015 annual plan sets out four priorities for the fiscal year:

1. **Apply effective and integrated enforcement and administration of the *Competition Act* and labelling statutes.**[4]
2. **Increase competition promotion efforts to advance a culture of compliance and competition advocacy.**
3. **Align with and deliver on Government of Canada priorities.**
4. **Increase organizational synergies through our people, planning and systems.**

FROM PLAN TO RESULTS

The commitments of our 2014–2015 annual plan are listed at the start of each core reporting section of this annual report, along with an indication of how we progressed toward our targets.

4 Labelling statutes, in the context of this document, refer to the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act* and the *Precious Metals Marking Act*.

Message from the Commissioner

2014–2015 was a year of success and change for the Competition Bureau.

We successfully pursued our four strategic priorities — effective and integrated enforcement, increased competition promotion, alignment with government priorities and greater organizational synergies — with the aim of ensuring competitive markets for Canadian companies and consumers.

At the same time, we changed how we work, putting greater emphasis on promoting compliance and realigning our operations to become more seamless and streamlined.

On the enforcement front, we conducted and concluded more investigations than in the previous year, with administrative monetary penalties rising from $500,000 to $10 million and restitution to consumers from zero to $7.11 million.

Promoting compliance for the benefit of Canadian consumers was the thematic title of our annual plan. In enacting it, we worked to foster a spirit of competition across the country — for example, through submissions to the Canadian Radio-television and Telecommunications Commission (CRTC) on making the country's cable industry more consumer-friendly. We also increased our collaboration with domestic and international partners.

To align with government priorities, we completed one market study, made recommendations to the CRTC about Canada's wireless services industry and began enforcing the country's anti-spam law. To achieve greater synergies, we combined programs to increase internal and external collaboration and streamlined eight branches into four. We renewed our governance practices, clarified decision-making roles and responsibilities, and integrated our strategic, operational and budget planning activities.

Since becoming Commissioner, I have consistently emphasized the importance of thinking and acting as "one Bureau".



Last year's activities marked an ambitious step toward achieving that goal.

At the end of 2014–2015, we concluded the activities of our annual plan and began drafting — and consulting publicly on — a new strategic vision to take us into the next three years.

Going forward, we will build on the work we have done, our cumulative successes and changes, to meet the needs of Canada's rapidly evolving markets as new business models emerge and new opportunities arise. We know that healthy competition breeds innovation, and we are committed to ensuring the country's competitive frameworks foster that.

I congratulate everyone in our organization for their hard work, dedication and professionalism over the course of the year. We have laid the groundwork: now comes the "roll-up-the-sleeves" task of ongoing implementation and refinement to realize the full advantage of operating as one Bureau in service to all Canadians.

John Pecman
Commissioner of Competition

Blowing the Whistle on Unfair Practices

Practices like bid-rigging, cartels and deceptive marketing break the rules of a competitive marketplace. They rob law-abiding businesses of market opportunities and often mean higher prices for consumers. Last year, we continued to call foul on anti-competitive tactics through effective, integrated enforcement of the *Competition Act* and labelling statutes.

RECORD-SETTING PENALTIES PROVE IT PAYS TO PLAY BY THE RULES

When businesses engage in anti-competitive behaviour, they may be required to pay fines, administrative monetary penalties (AMPs) or make restitutions to consumers. Many of these consequences came into play last year in the Bureau's efforts to protect competition in Ontario and Quebec's water heater industry. We concluded a multi-year effort to stop deceptive door-to-door sales tactics, secured $1.5 million in consumer restitution and obtained two $5-million AMPs — including the first ever for abuse of dominance.[5]

Our efforts in the water heater industry led to a consent agreement with National Energy Corporation requiring the company to adopt a corporate compliance program, with oversight by an independent compliance monitor. It was the first time such a monitor was required in a non-merger situation in Canada. We also reached a consent agreement with Reliance Comfort Limited Partnership to resolve anti-competitive practices concerning water heater return policies requiring the company to take certain steps to make it easier for customers to terminate their rental agreements and return their water heaters.

The water heater industry case is a strong example of our "one Bureau" approach. Involving misleading advertising and anti-competitive conduct, it drew on multiple areas of Bureau expertise. The case also involved a proposed merger between Reliance Comfort Limited Partnership and National Energy Corporation, and the consent agreements obtained were critical to our approval of that merger.

PRIORITY 1
Apply effective and integrated enforcement and administration of the *Competition Act* and labelling statutes.

COMMITMENTS	STATUS
Leverage and integrate all available tools to seek greater compliance with the *Competition Act* at a lower cost — taking fuller advantage of outreach, communication, advocacy, publications, voluntary compliance, suasion and consent.	☑
Adopt collaborative enforcement approaches by working with other law enforcement agencies and/or government agencies on specific cases or initiatives so as to better leverage our mutual resources.	☑
Advance operational improvements through enforcement policies and procedures.	☑
Revise our Intellectual Property Enforcement Guidelines and publish our new Enforcement Guidelines — *Price Maintenance* (Section 76 of the *Competition Act*).	☑

☑ Achieved ◐ Partially Achieved

5 Abuse of dominance happens when a dominant firm or group of firms engages in anti-competitive practices that prevent or lessen competition substantially in a given market.

GOING TO BAT FOR WIRELESS CONSUMERS

Last year, the Bureau concluded a multi-year investigation that found Canada's three largest wireless companies — Rogers, Bell Canada (Bell) and Telus Corporation (Telus) — in conjunction with the Canadian Wireless Telecommunications Association (CWTA) facilitated the sale to their own customers of premium-rate digital content for fees that had not been adequately disclosed. Customers were misled into believing the content was free.

As part of the resulting consent agreement, Rogers agreed to pay up to $5.42 million in customer refunds — the most to date in a Bureau settlement — and to stop billing for premium text messaging services unless approved by the customer. The company also pledged to create a consumer awareness campaign about how wireless charges are incurred, and to strengthen its corporate compliance program related to billing on behalf of third parties.

In a clear example of international cooperation, our case was helped by a landmark U.S. District Court of Maryland decision requiring an American company to disclose key information about premium text services. The U.S. Federal Trade Commission provided that information to the Bureau.

WHEN ENFORCEMENT MEETS COMPLIANCE, CANADIANS WIN

The Bureau promotes truth in advertising by discouraging deceptive business practices and encouraging companies to give consumers the information they need to make informed choices. *The Competition Act* contains criminal and civil provisions to address false or misleading representations and deceptive marketing practices in promoting the supply or use of a product or any business interest.

> "The Bureau promotes truth in advertising by discouraging deceptive business practices and encouraging companies to give consumers the information they need to make informed choices."

THE YEAR IN ENFORCEMENT

50 investigations concluded

+$25 million in fines, administrative monetary penalties and consumer restitution

25 alternative case resolutions

22 ongoing matters before the Competition Tribunal or the courts at year-end

Last year, the Bureau questioned certain performance claims made by Bauer Hockey Corp. about its RE-AKT hockey helmet, as the claims were not based on adequate and proper testing — and consumer health and safety could have been at risk. We were pleased that Bauer cooperated fully with our investigation, agreeing to stop making the claims, donating $500,000 in equipment to a registered Canadian youth sport charity, and contributing $40,000 to our investigative costs. Working with the Bureau, Bauer also agreed to implement an enhanced corporate compliance program to prevent similar issues from happening in the future.

ENSURING CHOICE WHEN IT COMES TO CONSUMERS' HEALTH

The Bureau is constantly on the watch for any situation in which a company or group of companies uses its power in the marketplace to suppress or prevent competition. In November 2014, we reached an agreement with Medtronic Inc., Canada's largest supplier of insulin pumps for diabetic patients, over anti-competitive practices that limited competition and consumer choice. Following an investigation, we raised concerns that some of the warranty terms for a popular Medtronic insulin pump limited competitors from supplying insulin reservoir and infusion sets in Canada, and limited the choices available to diabetes patients who depend on those products. Medtronic agreed to revise its warranty terms and to advise customers about the revisions.

BREAKING UP BID-RIGGING

Bid-rigging occurs when two or more parties secretly agree to influence a bidding process — whether by not bidding, withdrawing a bid, or agreeing to submit bids with specific content. It's the business equivalent of sports teams deciding in advance who's going to win a game. Bid-rigging prevents honest competitors from having a fair shot at winning the contract in question, and can often mean higher prices for consumers.

Last year, thanks to a Bureau investigation, DENSO Corporation pled guilty to three counts of bid-rigging under the *Competition Act* and was fined $2.45 million by the Ontario Superior Court of Justice for participating in an international bid-rigging conspiracy. Yamashita Rubber Co. Ltd. pled guilty to two counts of bid-rigging in December and was fined $4.5 million. Both guilty pleas are part of an ongoing investigation into a series of alleged conspiracies and bid-rigging agreements in the motor-vehicle component industry. Since 2013, our investigations in this area have led to seven guilty pleas and more than $56 million in court-imposed fines.

PUTTING A STOP TO PRICE-FIXING

Price-fixing is another form of anti-competitive collusion. It happens when companies agree among themselves on how to price goods and services instead of allowing market competition to determine rates. In 2014, two individuals and two companies pled guilty under the *Competition Act* to fixing rates or rate formulas for various surcharges applied in the ocean freight industry. ECU Line Canada Inc. was fined $1 million, and Overseas Container Forwarding, Inc. was fined $675,000. Both companies were required to set up a corporate compliance program. Two individuals involved received conditional sentences. The case came to light in 2009 through our Immunity Program, which offers individuals the prospect of immunity from prosecution for disclosing as-yet undetected offences and for providing evidence. The Immunity Program and our complementary Leniency Program — which advocates for lenient treatment of companies and individuals ineligible for immunity — are effective tools for exposing anti-competitive behaviour.

> "Price-fixing is another form of anti-competitive collusion. It happens when companies agree among themselves on how to price goods and services instead of allowing market competition to determine rates."

MAKING SURE MERGERS WORK FOR CANADIANS

Mergers can be seen as a positive way to increase efficiencies. However, to make sure they don't have the opposite effect of reducing or preventing competition, the *Competition Act* empowers the Commissioner to review any merger of any size. When mergers exceed a specific size threshold, the Commissioner *must* be notified before they are completed. Not doing so is a criminal offence.

In 2014–2015, we completed 245 merger reviews, including 55 complex reviews. We met our service standard for timely review in 99 percent of non-complex cases and 91 percent of complex cases. Where we had concerns, competitive markets were protected in several ways: through alternative case resolutions, by the parties abandoning their proposed transaction after our concerns became known, or by consent agreements requiring divestitures or behavioural remedies.

One case last year — *Tervita* — led to a Supreme Court decision clarifying how to evaluate efficiencies in merger cases, which will guide our approach going forward. Under the *Competition Act*, efficiencies can allow mergers to proceed when they are otherwise anti-competitive. The *Tervita* case was first challenged before the Competition Tribunal in 2010 on the grounds that the company's acquisition of a hazardous landfill site and permits would substantially lessen competition. In 2015, the Supreme Court upheld lower court decisions that the merger would reduce competition. However, it found that the efficiencies outweighed the anti-competitive effects and so allowed the appeal.

OTHER MERGERS REVIEWED LAST YEAR INCLUDE

- Postmedia/Sun Media
- Burger King/Tim Hortons
- Eastlink/Bruce Telecom
- Marriott/Delta
- Manulife/Standard Life
- TVA Group/Vision Globale
- TransForce/Contrans
- Reynolds/Novelis

The *Tervita* decision was the first time in nearly 20 years the Supreme Court provided guidance on merger reviews.

Also last year, we reached consent agreements for the Medtronic/Covidien merger and with Transcontinental Inc. over the proposed acquisition of 74 community newspapers. That last agreement required 34 of the newspapers to be put up for sale by an independent party at no minimum price, taking into consideration the financial distress of many newspapers and the ongoing transformation of the community newspaper industry.

In keeping with our increased focus on transparency, we issued 12 position statements over the course of the year, summarizing findings and giving stakeholders valuable guidance on our approach to merger reviews. We also released a new *Pre-Merger Notification Interpretation Guideline* for public comment.

COMPETITION HAS NO BORDERS

With companies doing business across Canada and around the world, we continued to take a collaborative approach to enforcement last year, working closely with other law enforcement agencies on specific cases. For example, we enjoyed unprecedented coordination with the U.S. Department of Justice during our review of the Louisiana Pacific/Ainsworth merger, received evidence from the U.S. Federal Trade Commission to support our premium text messaging case, and coordinated a joint Internet sweep by members of the International Consumer Protection and Enforcement Network targeting deceptive online marketing aimed at vulnerable consumers.

Here at home, we worked together with the Government of Québec on the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry, and testified before the Commission in October 2014. We also carried out a joint investigation with the Sûreté du Québec, laying criminal charges against a company and an individual for a complex bid-rigging scheme that provided preferential treatment for a group of municipal infrastructure contractors.

“With companies doing business across Canada and around the world, we continued to take a collaborative approach to enforcement last year, working closely with other law enforcement agencies on specific cases.”

ONGOING INITIATIVES

Many Bureau investigations and other activities carry over from one year to the next. In 2014–2015, we obtained decisions for several such ongoing cases involving Kobo and the Toronto Real Estate Board. Details on these are available at www.competitionbureau.gc.ca.

PROTECTING INTELLECTUAL PROPERTY IN CANADA

Based on public consultations, we released updated *Intellectual Property Enforcement Guidelines* ("Guidelines") in 2014 to reflect amendments to the *Competition Act* since 2000 as well as recent enforcement experience. The Guidelines describe how we approach areas where competition policy and intellectual property (IP) rights intersect. A second phase of updates, intended in 2015–2016, will address additional IP-related issues, including our enforcement approach concerning patent litigation settlements, the conduct of standard essential patent owners and the activities of patent assertion entities.

We also released final Enforcement Guidelines entitled *Price Maintenance* (Section 76 of the *Competition Act*) on September 15, 2014. The Guidelines describe the Bureau's general approach to enforcing section 76 of the *Competition Act*, including with respect to common business practices, such as minimum resale pricing, manufacturer-suggested resale pricing and minimum advertised pricing.

GAINING EFFICIENCIES, HONING OPERATIONS

We made greater use of evidence handling software last year to assist with the processing of documents for litigated cases and other purposes. We also reduced preliminary evidence review times from months to weeks, with our Evidence Handling Reengineering Working Group looking at ways to further streamline the evidence handling lifecycle. In addition, we also improved our budget forecasting last year, even as we restructured and took on new initiatives.



Sharing the Rulebook on Healthy Competition

Competition thrives when it's a core value shared by companies, consumers and government. In 2014–2015, we used all the tools at our disposal to promote a culture of compliance and competition advocacy — getting all players on the same page by making presentations to regulators, talking to stakeholders, working with partners and engaging the public.

GAME-CHANGING RECOMMENDATIONS FOR THE CABLE TV MARKET

We know that companies and other stakeholders are effective promoters of compliance and can provide the best conditions for an efficient, competitive and open marketplace for the good of all Canadians. For that reason, we actively advocate for competition and for compliance with Canada's competition laws. Last year, the CRTC adopted a landmark decision consistent with the Bureau's recommendations on television services that would give consumers more choice and potentially lower cable bills. We submitted our recommendations through *Let's Talk TV*, a formal, consultative review of the country's television system. Looking at the issues of choice, consumer information, vertical integration and genre exclusivity, we advocated that consumers should be free to choose the services they want and pay only for what they choose. We also supported provisions to simplify switching between service providers and for clear contractual terms, and urged keeping existing safeguards in place to ensure that all television channels are available to Canadians, regardless of which service provider they choose.

PRIORITY 2
Increased competition promotion efforts to advance a culture of compliance and competition advocacy.

COMMITMENTS	STATUS
Increase our competition promotion efforts through our advocacy, stakeholder outreach and communication functions.	✓
Complete ongoing market studies and initiate at least two other market studies.	◐
Broaden awareness of and support for competition principles to benefit Canadian businesses and consumers, and increase the competition-related advice we offer to other government departments.	✓
Diversify and strengthen partnerships with key regulators.	✓
Enhance our participation in multilateral fora, roundtables and workshops, and continue a leadership role.	✓
Continue to consult on important issues and provide guidance on investigations and stakeholder communications through the release of our *Transparency Bulletin*.	✓
Publicize enforcement outcomes, issue consumer advisories and position statements, and expand the Bureau's social media presence.	✓

✓ Achieved ◐ Partially Achieved

PROMOTING COMPETITION AND COMPLIANCE THROUGH ADVOCACY

The Bureau made nine representations to regulators in 2014–2015 — three times as many as the previous year — including multiple submissions to the CRTC about wholesale mobile wireless services and cable TV.

RAISING AWARENESS OF FRAUD

In March 2015, the Bureau, its Fraud Prevention Forum partners, and representatives from the Vancouver Police Department and the Better Business Bureau, officially kicked off Fraud Prevention Month by announcing the year's top 10 scams. We also released a series of eight animated videos based on the *Canadian Edition of The Little Black Book of Scams* as well as details about the most common investment scams. For the third consecutive year, we hosted a Twitter Chat on "2 Good 2 B True Day", which this year focused on fake online reviews.

That same month, we hosted our second annual Anti-Cartel Day, helping Canadian companies learn how to recognize situations in which independent businesses agree to fix prices, "share" customers or markets, restrict production or rig bids. Several new resources were unveiled including YouTube videos, web content and Facebook postings. Among the new web pages was a series on competition in the construction industry, focusing on a sector that is particularly susceptible to cartel activity.

GIVING GUIDANCE

The Bureau published **new and updated guidance** last year to increase transparency and promote compliance, including:

- *Information Bulletin on Communication during Inquiries* (summarizing how and when we typically communicate with parties under investigation, industry participants, complainants and the general public)
- *Price Maintenance Enforcement Guidelines* (describing our approach to enforcing section 76 of the *Competition Act* with respect to common business practices such as minimum resale pricing, manufacturer-suggested resale pricing and minimum advertised pricing — final guidance)
- *Guidelines for the Production of Electronically Stored Information* (outlining our preferred standard format for receiving electronically stored information during inquiries and investigations — released for consultation)
- *Intellectual Property Enforcement Guidelines* (updated, released for consultation — see page 11 for more detail)

The Bureau also released a revised Corporate Compliance Programs Bulletin ("Bulletin") for public comment in 2014–2015. The Bulletin reflects new developments in how we will recognize and consider such programs as we enforce the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*.

PUBLIC
6976

> "To foster compliance and provide greater transparency into how we investigate retail mergers, we published a white paper written by the T.D. MacDonald Chair in Industrial Economics."

RELIABLE EVIDENCE FOR INFORMED DECISIONS

We undertake market studies to better understand specific industries and highlight competition issues to regulators, industry participants and the public. We undertook two such studies last year: one on the country's propane industry, the other an examination of the Ontario/Québec beer markets, which was not released publicly. (Read more about these studies on page 16.) A further study continued past year-end, looking at restrictions on advertising by pharmacists, dentists and veterinarians.

To foster compliance and provide greater transparency into how we investigate retail mergers, we published a white paper written by the T.D. MacDonald Chair in Industrial Economics.[6] The paper discussed the economic tools and techniques we use when investigating mergers, how we define relevant product and geographic markets, and how we estimate the competitive effects of potential mergers on the marketplace and consumers.

A new communication vehicle, *The Competition Advocate* ("*Advocate*"), was launched last year to inform public discussions on competition in a wide range of sectors. The first issue of the *Advocate* shed light on emerging digital dispatch services in the taxi industry, which can offer convenience and potential cost savings by allowing consumers to use their smartphones to order services.

GOING SOCIAL

The Bureau received record coverage on social media in 2014–2015, exceeding its audience targets for mainstream and social media by 190.8 million media hits. In the third quarter of the year, the Bureau was mentioned in 12,708 tweets, more than the entire year before. This new benchmark is due mainly to the Bureau's investigation of Apple, which generated 7,033 tweets.

Last year, as part of our *Action Plan on Transparency*, we published our first Quarterly Report in August 2014, with statistics on various types of information requests and other "intake measures" as well as mergers, other enforcement matters, and advocacy, outreach and partnership initiatives. These reports are published every quarter and give Canadians up-to-date information on a wide range of competition activities.

To aid transparency, the Bureau also published numerous enforcement outcomes and consumer advisories, including warnings about weight loss products promoted through social media sites, back-to-school and clothing donation bins, fake online endorsements and fake emails offering consumer refunds.

6 Established in 1990, the T.D. MacDonald Chair advises the Bureau on economic matters related to competition policy and contributes economic analysis to significant Bureau investigations.

TEAMWORK: THE FOUNDATION OF SHARED COMPLIANCE

Throughout the year, the Bureau strengthened its international and domestic partnerships to support competition and compliance. This included signing memoranda of understanding (MOUs) with India's Competition Commission and China's State Administration for Industry and Commerce. We also signed MOUs with the Canadian Intellectual Property Office (CIPO), Ontario's Ministry of Government and Consumer Services, and the Ontario Securities Commission for greater domestic enforcement cooperation.

PLAYING IN THE INTERNATIONAL LEAGUE

Throughout the year, the Bureau took part in multilateral fora, roundtables and workshops.

The Commissioner served on the Steering Group of the International Competition Network (ICN), which advocates for the adoption of superior standards and procedures in competition policy and seeks effective international cooperation for the benefit of member agencies, consumers and economies worldwide.

We continued to act as ICN Secretariat and co-Chair of the ICN Mergers Group. The ICN provides a platform for developing practical guidance and best practices that increase cooperation and convergence on enforcement and advocacy.

As an executive committee member of the OECD Competition Committee and OECD-ICN co-ordinator, the Bureau released a submission to the Committee's Roundtable on Airline Competition, sharing our perspective on airline industry competition issues in Canada.



"The Commissioner served on the Steering Group of the International Competition Network (ICN), which advocates for the adoption of superior standards and procedures in competition policy and seeks effective international cooperation for the benefit of member agencies, consumers and economies worldwide."

Seeking Wins for All Canadians

When every player on the field is well-aligned and working with a common purpose, the odds of winning go up. Recognizing this, the Bureau worked throughout 2014–2015 to ensure its activities aligned with the priorities of the Government of Canada and the Canadian public.

PREVENTING SHORTAGES, AVOIDING SPIKES

At the direct request of Canada's Ministers of Natural Resources and Industry, the Bureau and the National Energy Board (NEB) jointly authored a study into what caused propane shortages and price spikes the previous winter. The final report, published in April 2014, found no evidence that anti-competitive behaviour had an impact on recent propane price spikes on consumers. The examination also found that last winter's prices and supply shortages were not indicative of long-term supply–demand imbalances in the Canadian propane industry.

The Bureau also concluded a study into the beer industries in Ontario and Québec. This study attracted attention from both the media and the public, and the Bureau actively contributed to the debate. In April 2015, the Ontario Premier's Advisory Council recommended a number of changes to the Ontario beer market, including expansion of beer sales into grocery stores. In light of these developments, we discontinued the study.

Market studies provide the Bureau with insights that enable improved enforcement decisions. For example, last year, we were able to use information gleaned during the beer study to resolve a complaint from a market participant more quickly than would have been possible without the information and analysis from our market study.

PRIORITY 3
Aligned with and deliver on Government of Canada priorities.

COMMITMENTS	STATUS
Complete a market study on propane in collaboration with the National Energy Board.	✓
Complete a market study assessing differences at the production, distribution and retail levels of the beer industries in Québec and Ontario.	◐[7]
Continue advocacy efforts on telecommunications and wireless issues by intervening or making submissions before the CRTC.	✓
Begin implementing and enforcing the new provisions of the *Competition Act* that came into force as part of Canada's Anti-Spam Legislation (CASL).	✓

✓ Achieved ◐ Partially Achieved

7 As the market study was discontinued, owing to the reasons described above, it was not released publicly.

$950 MILLION FOR CANADIANS

In 2014–2015, Bureau actions to stop anti-competitive activity resulted in more than $950 million in savings for Canadians.

BETTER WIRELESS PRICES FOR ALL

As part of our ongoing advocacy efforts in the telecommunications industry, we shared our views with the CRTC last year on the market power of the country's largest wireless companies. Given Canadians' vast and growing dependence on wireless technology, we looked at the impact of companies' ability to profitably keep prices above competitive levels, and to charge rivals high prices for wholesale mobile services. Estimating that retail competition from a new nationwide wireless carrier could add approximately $1 billion a year to the Canadian economy through better product choices, lower roaming rates or prices and other consumer benefits, the Bureau recommended the CRTC address wholesale wireless pricing and, if needed, adopt regulatory measures to ensure new market entrants can compete effectively.

COMPETITION DRIVES INNOVATION

Innovation is a key driver of economic growth, and competition drives innovation — inspiring companies to develop better products and services for consumers and bring them to market faster, at an affordable price. In November 2014, we held a one-day workshop in Ottawa on innovation and antitrust to facilitate discussion around the ways competition policy and enforcement practices create an economic and regulatory environment where innovation can thrive. 100 people attended, including presenters from competition agencies in Europe and the U.S., business and academic leaders, and delegates from federal government agencies, the legal community and civil society. Live tweeting throughout the workshop gave up-to-the-minute reporting on the event, with the hashtag #CBinnov8 for readers to follow.

KEEPING CANADIANS' INBOXES CLEAR

Canada's Anti-Spam Legislation came into effect in July 2014 — bringing new provisions to the *Competition Act* that target false or misleading representations and deceptive marketing practices in social media, promotional emails, text messages, instant messages and other channels of the electronic marketplace. We began enforcing those new provisions last year, filing an application with the Competition Tribunal in March to end alleged false or misleading price representations by car rental companies Avis and Budget, seeking $30 million in AMPs from the companies as well as refunds for consumers. Our investigation found Avis and Budget advertised unattainable prices and discounts in promotional emails for vehicle rentals and other associated products due to additional fees imposed during the rental process.

> "Innovation is a key driver of economic growth, and competition drives innovation — inspiring companies to develop better products and services for consumers and bring them to market faster, at an affordable price."

Strengthening Our Team for Peak Performance

Our ability to promote compliance and serve Canadians is stronger when we work as one Bureau — with sharply honed skills and a steadfast commitment to work as a team. Last year's process of realignment has made us a leaner, more adaptive agency focused on meeting the needs of Canada's markets and protecting the interests of consumers.

STREAMLINED, STRATEGIC AND ACCOUNTABLE

In 2014–2015, we consolidated eight branches into four and increased internal collaboration and efficiency to better prioritize how we use our resources — balancing enforcement and competition promotion and ultimately strengthening the impact of our work for Canadians. We also developed a performance strategy to ensure the collection of credible, reliable performance data, and prepare for Departmental evaluations. An economic expert reviewed how we estimate the consumer impact of our enforcement and advocacy activities and recommended ways to further align our performance measures with internationally recognized methodologies. Going forward, we will further undertake a benchmarking exercise to determine the metrics used by other domestic law enforcement agencies to calculate the societal and economic value of enforcement activities, before finalizing and implementing the strategy.

A FINELY TUNED TEAM

We identified training requirements to inform an organization-wide talent management framework and facilitated internal and external training, including sessions with the Canadian Bar Association, law enforcement partners, and economists to keep abreast of developments across the sectors of the economy. We also started developing a learning framework to meet our training needs and better deliver on our strategic objectives. This framework will include greater coordination of in-house, external and mandatory training (including language training and management development).

We also continued our efforts to support *Blueprint 2020*, the federal public service transformation agenda, participating in a pilot to foster greater inclusiveness and diversity in the workplace, and extensively supporting awareness-building and training activities around mental health in the workplace.

PRIORITY 4
Increased organizational synergies through our people, planning and systems.

COMMITMENTS	STATUS
Integrate our business processes and better utilize our deep, diverse skill sets to ensure fair, healthy competition in Canada as efficiently and effectively as possible by implementing a new organizational structure.	☑
Improve accountability and performance reporting by finalizing and implementing a Performance Measurement Strategy.	◐
Support and implement all Government transformative activities related to information technology (IT) and information management including the transition of IT support to Shared Services Canada.	☑
Identify training requirements and facilitate internal and external training opportunities, including those involving the Canadian Bar Association and law enforcement partners.	☑

☑ Achieved ◐ Partially Achieved

EVERY PLAYER COUNTS

We continued to promote the values of employment equity and diversity (EED) throughout the year and worked to ensure the Bureau embraces diversity and inclusiveness and respects cultural heritage. These efforts were led by our EED Champion — who in turn was supported by an EED Working Group (EEDWG) of 20-some employees who met regularly to share ideas on how the Bureau can better integrate diversity and inclusiveness into its day-to-day operations. In May 2014, the EED Working Group received a Deputy Minister's Award in recognition of its exceptional work on diversity and inclusiveness.

The EEDWG's Research sub-group drafted an internal research paper showing the positive link between diversity, inclusiveness, innovation and productivity based on consultations with advocacy organizations, a police department, a law firm, the Department of Justice, Agriculture Canada, the Royal Bank and others. The paper will ultimately provide a business case for operationalizing diversity and inclusiveness.

The Recruitment sub-group began discussions on how to educate managers and officers about the importance of diversity and inclusiveness in recruitment and succession planning, while the Awareness sub-group hosted a lunch-time panel discussion on career development and posted diversity-related messages at headquarters.

LEADING ENFORCEMENT IN THE DIGITAL ERA

Last year we developed strategies, policies and training to manage digital information gathered through investigations and inquiries under the *Competition Act*. Our forensic investigators lent their expertise to various law enforcement agencies across Canada, sharing insights into search warrant execution and the forensic analysis of digital information. We continued to share best practices with domestic and international counterparts on forensic enforcement issues such as cloud computing and Internet-based fraud schemes, and installed intelligence software to increase the speed and efficacy of our investigators' evidence reviews.

PLAYING OUR PART ON THE PUBLIC SERVICE TEAM

The Bureau actively supported the 2014 Public Service Employee Survey, gathering and analyzing results to develop an action plan. We also participated in the government's *Blueprint 2020*, offering input into the future vision of Canada's public service.

> "We identified training requirements to inform an organization-wide talent management framework and facilitated internal and external training, including sessions with the Canadian Bar Association, law enforcement partners, and economists to keep abreast of developments across the sectors of the economy."

IMPLEMENTING GOVERNMENT INITIATIVES AT THE BUREAU

The Bureau continued to implement the federal public service transformation agenda last year, which aims to promote a high-performing workforce and excellence in people management. Key activities included managing human resources through the Treasury Board's Performance Management Program — holding mid-year reviews and identifying training needs for all staff — and continuing the effort with Shared Services Canada and Industry Canada to centralize IT infrastructure while maintaining the security of Bureau data.

"The Bureau continued to implement the federal public service transformation agenda last year, which aims to promote a high-performing workforce and excellence in people management."



OTHER EMPLOYMENT EQUITY AND DIVERSITY HIGHLIGHTS:

- *Positive Space* initiative: three Bureau champions
- *Respectful Healthy and Inclusive Workplace* initiative: senior manager pilot participant
- *Building Mentally Healthy Workplaces* workshop: attended by two senior managers
- EED intranet portal launched
- Employee accommodations: 23 employees had ergonomic modifications to workstations, access to a quiet room, or tools to facilitate telework arrangements — all for medical or other reasons
- *Commissioner's Award*: received by EED Working Group participant in recognition of exceptional work

Financial Discussion and Analysis

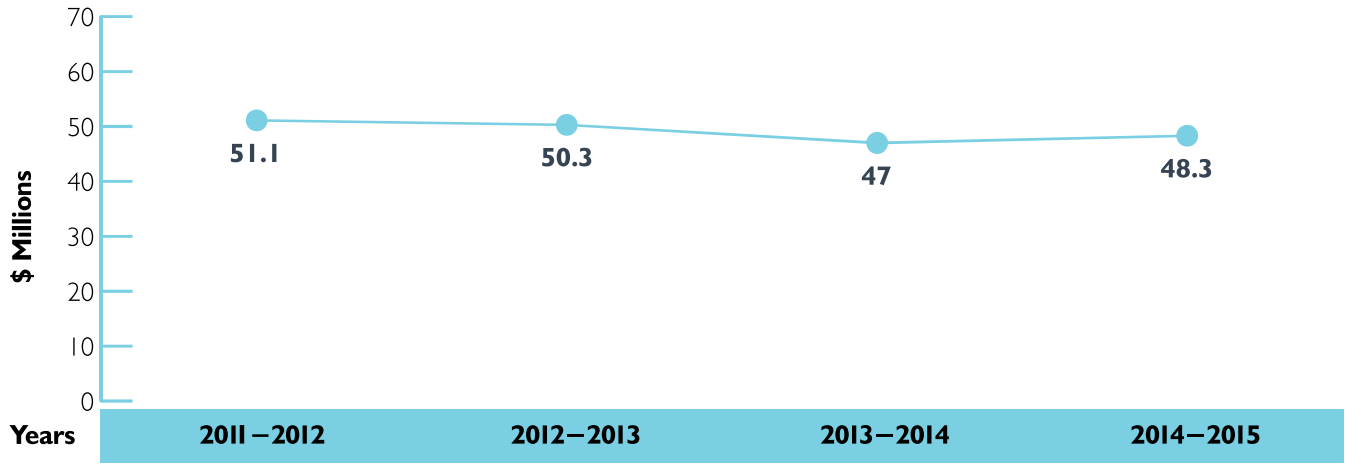
The Bureau's budget for 2014–2015 was $49.1 million, including approximately $10.4 million from user fees.[8] Expenditures were $48.3 million, consisting of $33.5 million in salaries for 368 full-time equivalents (FTEs) and $14.8 million in non-salary expenses. Table 1 presents the Bureau's authorized budget and expenditures for the year.

TABLE 1: AUTHORIZED BUDGET EXPENDITURES FOR 2014–2015

	BUDGET	EXPENDITURE
Salary	$34,074,051	$33,486,308
O&M	$14,895,462	$14,671,597
Capital	$124,049	$124,049
Total	$49,093,562	$48,281,954
	AUTHORIZED	**USED**
FTEs	390	368

Figure 1 illustrates the Bureau's spending trend from 2011–2012 to 2014–2015.

FIGURE 1: Bureau spending trend[9]



8 The Bureau collected nearly $11.9 million in user fees (including $18,000 in written opinions) of which approximately $1.7 million was transferred to the Consolidated Revenue Fund.

9 Does not include Work Force Adjustment budget and expenditures.

Appendix: Bureau Performance Data

TABLE 1:

ESTIMATED SAVINGS AND VALUE FROM BUREAU ACTIONS AND BUREAU INFORMATION PRODUCTS ASSESSED

The Bureau is required to report annually on its performance through a Departmental Performance Report (DPR) to Parliament. Industry Canada's DPR provides details of accomplishments and results achieved in the most recently completed fiscal year against performance expectations, as set out in the corresponding Report on Plans and Priorities. The Bureau quantifies the benefits of its activities via the following quantitative performance indicators: estimated dollar savings per annum to consumers from Bureau actions that stop anti-competitive activity, estimated dollar value per annum associated with deterrence from Bureau enforcement actions, Competition Bureau information products accessed and audience reached through mainstream and social media.

EXPECTED RESULT	PERFORMANCE INDICATOR	TARGET	2014–2015 ACTUAL RESULTS
Consumers benefit from a competitive marketplace	Estimated dollar savings per annum to consumers from Bureau actions that stop anti-competitive activity	$225 million	$950,169,365*
Deterrence of conduct contrary to the *Competition Act*	Estimated dollar value per annum associated with deterrence resulting from Bureau enforcement actions	$17 million	$20,758,085
Consumers benefit from information enabling them to make informed choices	Competition Bureau information products accessed	5,465 media hits	11,019 media hits
	Audience reached through mainstream and social media	234.2 million	425 million

* The Bureau surpassed its target for estimated savings for consumers in 2014–2015, largely due to the conclusion of a consent agreement that produced savings of more than $875 million per year.

The following tables include statistics relating to a variety of intake measures, merger and non-merger related enforcement matters, as well as advocacy, outreach and partnership initiatives.

TABLE 2:

INTAKE		
MEASURE	**2014–2015 TOTAL**	**DESCRIPTION**
Complaints and information requests	13,925	Complaints and questions submitted to the Bureau that relate to the Bureau's four statutes (*Competition Act*, *Consumer Packaging and Labelling Act*, *Textile Labelling Act* and *Precious Metals Marking Act*).
Media requests	532	Media requests to the Bureau.
Textile Labelling CA Identification number applications	766	The CA Identification number is registered for the exclusive use of a Canadian dealer on the label of a consumer textile article in place of a name and postal address (as per the *Textile Labelling Act)*.

TABLE 2.1:

TOP 5 COMPLAINTS BY PRODUCT OR SERVICE (Top level categories)	
2014–2015	
1. Business products and services	624
2. Electronics	227
3. Food products and services	139
4. Transportation and vehicles	114
5. Contests and lotteries	100

TABLE 3:

ENFORCEMENT – NON MERGER

The Competition Bureau enforces both criminal and civil provisions of Canada's *Competition Act* aimed at addressing anti-competitive practices and misleading advertising as well as the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*.

MEASURE	2014–2015 TOTAL	DESCRIPTION
INVESTIGATIVE STAGE		
Immunity markers granted to applicants	28	Number of immunity markers the Criminal Matters Branch and the Fair Business Practices Branch granted.
Leniency markers granted to applicants	21	Number of leniency markers the Criminal Matters Branch granted.
Investigations		
Commenced	55	Investigations and compliance assessment matters that were opened. Investigations include matters on which inquiries have been commenced.
Concluded	50	Investigations and compliance assessment matters that were closed.
Total Ongoing Investigations	120	Investigations ongoing (i.e. matter not closed) at the end of the previous period. Investigations include matters on which inquiries have been commenced (as of the 1st day of reporting period).
Inquiries		
Commenced	8	Investigation for which an inquiry has been commenced pursuant to section 10 of the *Competition Act*.
Discontinued	4	Inquiries discontinued by the Commissioner.
Total Ongoing Inquiries	74	Investigation for which an inquiry has been commenced pursuant to section 10 of the *Competition Act*, regardless of when commenced, as long as inquiry is ongoing (as of the 1st day of reporting period).
Search warrants	42	Number of search warrants issued.
Section 11 orders	19	A section 11 order is an order issued by a judge under section 11 of the *Competition Act*. This statistic includes all section 11 orders issued, including when multiple orders are issued for a single investigation during the reporting period.
Investigations referred to the Public Prosecution Service of Canada	5	Investigations referred to the Public Prosecution Service of Canada for consideration and action.

TABLE 3.1:

RESOLUTIONS		
MEASURE	**2014–2015 TOTAL**	**DESCRIPTION**
Alternative Case Resolutions	25	Investigations that raised an issue under the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* or the *Textile Labelling Act,* which were resolved outside of proceedings before the court or Competition Tribunal. Alternative Case Resolutions include: the adoption of corporate compliance programs, voluntary codes, information contacts, information letters, warning letters, stand still letters, compliance meetings and undertakings.
Registered Consent Agreements	4	All Consent Agreements registered pursuant to section 74.12 or 105 of the *Competition Act* with the Competition Tribunal or courts.
Convictions without Guilty Pleas	1	All convictions without guilty pleas, includes sections 65 and 66 under the *Competition Act*.
Guilty pleas	6	The number of guilty pleas made by individuals or companies for an offence under the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* or the *Textile Labelling Act*.
Prohibition order with convictions	0	All prohibition orders with convictions (subsection 34(1)) under the *Competition Act*.
Prohibition order without convictions	0	All prohibition orders without convictions (subsection 34(2)) under the *Competition Act*.
Interim injunctions	0	All interim injunctions (section 33) under the *Competition Act*.

TABLE 3.2:

CONTESTED MATTERS – BEFORE THE COURTS OR COMPETITION TRIBUNAL		
MEASURE	**2014–2015 TOTAL**	**DESCRIPTION**
Matters before the Competition Tribunal, Provincial Superior Courts or Federal Court		
Matters currently before the Competition Tribunal	4	Applications brought by the Commissioner related to substantive matters before the Competition Tribunal where applications were filed but do not include Consent Agreements registered pursuant to sections 74.12 or 105 of the *Competition Act*. This excludes interim steps in a proceeding or rescission or variation of a Consent Agreement or Order under sections 74.13 and 106 of the *Competition Act* (excluding private access).
Matters currently before the Courts	18	Proceedings related to substantive matters before the courts where proceedings were filed. This excludes interim steps in a proceeding or rescission or variation of a Consent Agreement or Order under sections 74.13 and 106 of the *Competition Act*.

TABLE 3.3:

OUTCOMES		
MEASURE	**2014–2015 TOTAL**	**DESCRIPTION**
Total fines imposed (millions)	$8.63M	Total amount of fines imposed upon companies and individuals by the Courts.
Total bid-rigging fines imposed (millions)	$6.95M	Total amount of bid-rigging fines imposed. This statistic is included in "Total fines imposed".
Individuals sentenced	3	The number of individuals sentenced under the *Competition Act*.
Companies sentenced	4	The number of companies sentenced under the *Competition Act*.
Combined jail time imposed (months)	32 months	Total amount of jail time imposed.
Total administrative monetary penalties (AMPs) (millions)	$10M	Total amount of AMPs imposed by the Competition Tribunal or Courts.
Total restitution (millions)	$7.11M	Total amount of restitution imposed by the Competition Tribunal or the Courts.
Final orders issued by the Competition Tribunal	0	All Orders issued under sections 74.1, 75, 76, 77, 79, 81, 82, 83, 84, 86, 87, 90.1, 92 of the *Competition Act*. This includes orders issued under sections 74.1, 74.111 and 92.1, Temporary Orders, and rescission or variation of a Consent Agreement or Order under sections 74.13 and 106 of the *Competition Act*.



TABLE 4:

ENFORCEMENT – MERGER-RELATED

Under the *Competition Act*, mergers and proposed mergers of all sizes and in all sectors of the economy are subject to review to determine whether they have resulted, or will likely result, in a substantial lessening or prevention of competition.

MATTERS (ALL)		
MEASURE	**2014–2015 TOTAL**	**DESCRIPTION**
Examinations		
Commenced	255	Includes all merger reviews that were opened during the period.
Pre-Merger Notification (PMNs) filings & Advance Ruling Certificate (ARC) requests	240	PMNs filed pursuant to section 114(1) of the *Competition Act* and ARC requests made pursuant to section 102 of the *Competition Act*. Includes matters where either a Notification filing or an ARC request, or both occur.
Other examinations	15	Matters where no PMN or ARC request was received. Includes Investment Canada applications, Heritage Canada applications, complaints and reviews of non-notifiable mergers initiated by the Mergers Branch.
Concluded	245	Merger reviews that were completed during the period.
No issues under the Act	231	Merger reviews that were completed with no issues under the *Competition Act*.
With issues under the Act	9	Does not include ongoing Matters before the Competition Tribunal. Concluded with monitoring.
Transactions abandoned for reasons unrelated to the Commissioner's position	5	Merging parties abandon their proposed merger for reasons other than the Bureau's views on the proposed merger.
Total Ongoing Merger Reviews	24	Merger reviews ongoing (i.e. matter not closed) at the end of the previous period (as of the 1st day of reporting period).
Inquiries		
Commenced	3	Matters for which an inquiry has been commenced pursuant to section 10 of the *Competition Act*.
Discontinued	0	Inquiries discontinued by the Commissioner.
Total Ongoing Inquiries	12	Matters for which an inquiry has been commenced pursuant to section 10 of the *Competition Act*, regardless of when commenced, as long as inquiry is ongoing (as of the 1st day of reporting period).

TABLE 4.1:

CONCLUDED MATTERS (NO ISSUES)		
MEASURE	**2014–2015 TOTAL**	**DESCRIPTION**
Advanced Ruling Certificates (ARC) Issued	120	Examinations concluded with the issuance of an ARC pursuant to section 102 of the *Competition Act*.
No Action Letters (NAL) Issued	101	Examinations concluded with the issuance of a NAL pursuant to section 114 of the *Competition Act*.
Other Examinations	10	Examinations that do not contain a Notification filing or ARC request. These matters are opened for other reasons including Investment Canada applications, Heritage Canada applications, complaints and reviews of non-notifiable mergers initiated by the Mergers Branch
Total Concluded Matters (No Issues)	231	
CONCLUDED & ON-GOING MATTERS (WITH ISSUES)		
Consent Agreements	2	Consent Agreements registered with the Competition Tribunal pursuant to section 105 of the *Competition Act* related to mergers.
Transactions Abandoned due to competition concerns	2	Merging parties abandon their proposed merger after being informed that the transaction raises issues under the *Competition Act*.
Alternative Case Resolutions	2	Matters that raised an issue under the *Competition Act* but were resolved outside of proceedings before the Competition Tribunal. Includes warning letters and undertakings.
Total Concluded Matters (With Issues)	6	
Matters Before the Competition Tribunal	0	Includes ongoing section 92 matters and other matters before the Competition Tribunal (such as section 100 and 106 matters) or the courts.

TABLE 4.2:

MERGER REVIEW PERFORMANCE INDICATORS Please visit the Competition Bureau Fees and Service Standards Handbook for Mergers and Merger-Related Matters			
MEASURE	**COMPLEXITY**	**2014–2015 TOTAL**	**DESCRIPTION**
Matters Concluded (#)	Non-Complex	170	Non-complex mergers are readily identifiable by the clear absence of competition issues, and include transactions where there is no or minimal overlap between parties, assuming properly defined product and geographic markets. Minimal overlap includes a combined post-merger market share of less than 10% in any relevant market.
	Complex	55	Complex mergers involve proposed transactions between competitors, or between customers and suppliers, where there are indications that the transaction may, or is likely to, create, maintain, or enhance market power. Proposed transactions, where the combined post-merger market share of the parties is potentially 35% or more, are generally classified as complex.
	Total	225	
Matters Concluded (%)	Non-Complex	76%	
	Complex	24%	
	Total	100%	
Service Standard Met (#)	Non-Complex	168	14 days from the calendar day on which sufficient information has been received by the Bureau.
	Complex	50	45 days from the calendar day on which sufficient information has been received by the Bureau except where a SIR is issued, in which case it shall be 30 days.
	Total	218	
Service Standard Met (%)	Non-Complex	99%	
	Complex	91%	
Avg. Review Time (days)	Non-Complex	10.55	
	Complex	33.35	
Supplementary Information Requests Issued		12	A request made pursuant to section 114(2) of the *Competition Act*.

TABLE 5:

ADVOCACY

The Bureau participates in a wide range of activities to promote and advocate the benefits of a competitive marketplace, both in Canada and abroad. This includes recommending that regulators and policy-makers rely on market forces as much as possible and that regulation, where required, limits competition as little as possible. Our Advocacy Portal on the Bureau's website highlights recent advocacy work conducted by the Bureau.

MEASURE	2014–2015 TOTAL	DESCRIPTION
Representations before regulatory bodies	9	Interventions, submissions and appearances before regulatory bodies pursuant to our advocacy function under section 125 and 126 of the *Competition Act*.
Small to medium advocacy interventions	24	Interventions may include written submissions including letters, calls, and meetings with regulatory groups and other stakeholders.
Market studies	3	Market studies are designed to improve understanding of the effects of competition on the economy.

TABLE 6:

OUTREACH

The Bureau promotes transparency in all its operations by communicating with stakeholders and providing them with up-to-date information and guidance through a wide variety of publications.

MEASURE	2014–2015 TOTAL	DESCRIPTION
Speeches	141	The total number of presentations by Bureau officials to external stakeholders, including speaking engagements, information sessions, panel participation and outreach activities.
Publications	26	New publications and those that have been revised, including information bulletins, enforcement guidelines, position statements, pamphlets, FAQs and Bureau performance reports.

TABLE 6.1:

HIGH PROFILE MEDIA ISSUES 2014–2015

ISSUE	HITS	% OF TOTAL COVERAGE	ESTIMATED REACH
1. Postmedia/Sun Media transaction	1,252	11%	41.7 million
2. *Price Transparency Act*	1,136	10%	52 million
3. Transcontinental/Quebecor transaction	648	6%	20.7 million
4. Gas prices	542	5%	8.2 million
5. Burger King/Tim Hortons transaction	452	4%	12.8 million

TABLE 6.2:

TOP BUREAU ANNOUNCEMENTS Top Bureau announcements are based on visits to the Bureau's website	
ANNOUNCEMENTS	**2014–2015 VISITS**
Criminal Charges Laid Against a Company and Six Individuals Involved in Bid-rigging Scheme	4,121 visits
National Home Services to pay $7 million for misleading door-to-door water heater promotions	3,573 visits
Competition Bureau approves the sale of 13 Loblaw-owned stores and pharmacies to Metro, Jean Coutu and Remedy's	2,868 visits
Statement from the Commissioner of Competition on Postmedia's Proposed Acquisition of QMI's English-language Media Assets	2,272 visits
Competition Bureau Strengthens Competition in Ontario's Water Heater Industry	2,229 visits

TABLE 7:

PARTNERSHIPS The Bureau collaborates with domestic and international partners in order to enhance its ability to promote and protect a competitive marketplace.		
MEASURE	**2014–2015 TOTAL**	**DESCRIPTION**
INTERNATIONAL		
Cooperation Instruments	2	Memoranda of Understanding, cooperation agreements and cooperation arrangements. This includes all existing instruments.
Formal bilateral meetings	5	Bilateral meetings between the Bureau and foreign law enforcement agencies and competition authorities pursuant to obligations under cooperation instruments.
International Fora meetings and workshops	16	Meetings and workshops with multinational organizations (e.g., Organisation for Economic Co-operation and Development, International Competition Network, International Consumer Protection and Enforcement Network).
DOMESTIC		
Formal domestic partnerships	20	Number of domestic partnerships in which the Bureau participates (e.g., the Market Surveillance Administrator of Alberta, the Canadian Radio-television and Telecommunications Commission, Canadian Intellectual Property Office and the Department of Public Works and Government Services) where Memoranda of Understanding or other agreements are in place.

Glossary

***Competition Act*:** The *Competition Act* is a federal law governing most business conduct in Canada. It contains both criminal and civil provisions aimed at preventing anti-competitive practices in the marketplace.

Competition Tribunal: The Competition Tribunal is a specialized tribunal that combines expertise in economics and business with expertise in law. The Tribunal is a strictly adjudicative body that operates independently of any government department. The cases it hears are complex and deal with matters such as mergers, misleading advertising and restrictive trade practices. The Competition Tribunal should be distinguished from the Competition Bureau. The Competition Bureau investigates complaints and decides whether to proceed with the filing of an application with the Competition Tribunal.

Compliance Assessment: An examination of a program, activity or individual transaction to ensure that it conforms to legislation, regulations and administrative directives.

***Consumer Packaging and Labelling Act*:** The *Consumer Packaging and Labelling Act* is a criminal statute relating to the packaging, labelling, sale, importation and advertising of prepackaged and certain other products.

Courts: Under the *Competition Act*, as well as under the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*, certain practices may be brought before the courts, which include the Federal Court or the Superior Court of a province. Under the civil regime of the Competition Act, certain practices may be brought for review before the Competition Tribunal, the Federal Court or the superior court of a province.

Immunity: The first party to disclose to the Competition Bureau an offence not yet detected or to provide evidence leading to the filing of charges may receive immunity from prosecution from the Director of Public Prosecutions of Canada as long as the party cooperates with the Bureau and any subsequent prosecution.

Investigation: A civil (non-merger) or criminal investigation under the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* or the *Precious Metals Marking Act*.

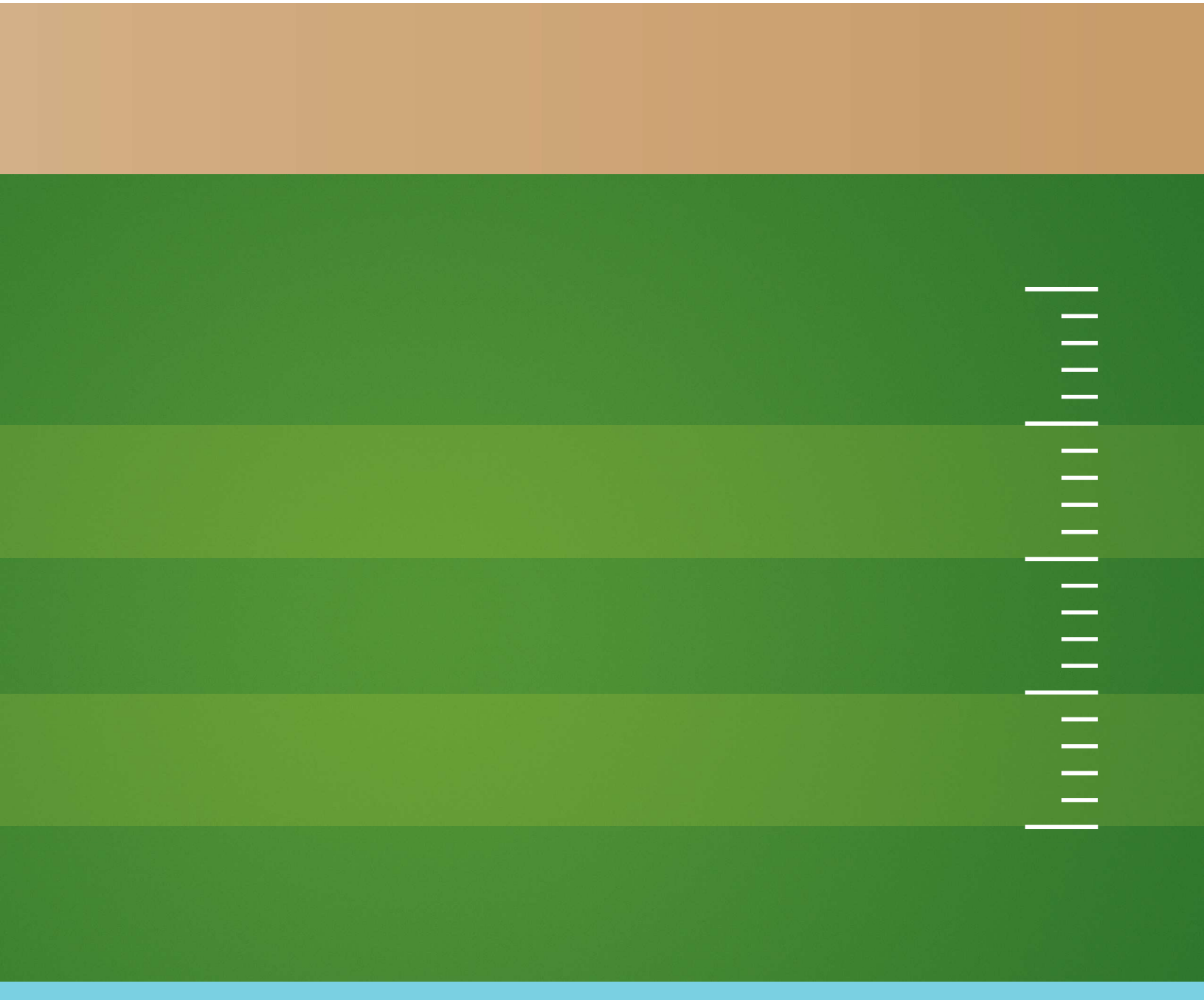
Leniency: The Competition Bureau may recommend to the Director of Public Prosecutions that cooperating persons who have breached the cartel provisions under the *Competition Act*, who are not eligible for a grant of immunity, nevertheless be considered for lenient treatment in sentencing.

Matter: An ongoing issue or case that requires action by the Competition Bureau.

Merger Review: A review of a merger under the *Competition Act*.

***Precious Metals Marking Act*:** The *Precious Metals Marking Act* is a criminal statute relating to the marking of articles containing precious metals.

***Textile Labelling Act*:** The *Textile Labelling Act* is a criminal statute relating to the labelling, sale, importation and advertising of consumer textile articles.



This is Exhibit “92” referred to in the Affidavit of Mary DeCaire sworn by Mary DeCaire at the City of Toronto, in the Province of Ontario, before me on May 5, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

JAKOB KELLY

Corporate Compliance Programs

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Bulletin

June 3, 2015

This publication is not a legal document. It contains general information and is provided for convenience and guidance.

PDF version



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The views expressed here are not intended to restate the law or to be a binding statement of how the Commissioner of Competition's ("Commissioner") discretion will be exercised in a particular situation. This bulletin is not a substitute for the advice of legal counsel and businesses should consider obtaining independent legal advice when developing a corporate compliance program. Enforcement decisions and the ultimate resolution of any particular matter are based on the specific circumstances of the matter. [1] Readers should refer to the specific laws when questions of law arise and, if a particular situation gives rise to concerns, should consider obtaining independent legal advice. The final interpretation of the law rests with the courts.

Preface

A critical component of Canada's economic prosperity is a free market in which robust competition among market players determines prices, increases consumer choice and stimulates innovation. A complex network of laws, rules and practices developed and enforced at all levels of government safeguards the continued viability of Canada's free and competitive markets.

The Competition Bureau (the "Bureau") is an independent law enforcement agency that ensures Canadian businesses and consumers prosper in a competitive and innovative marketplace. The Bureau investigates anti-competitive practices, business arrangements or agreements, and deceptive conduct, and promotes compliance with the laws under its

jurisdiction, namely the *Competition Act* (the "Act"), the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act* and the *Precious Metals Marking Act* (collectively, the "Acts"). The Act includes amendments that came into force on July 1, 2014 as a result of Canada's Anti-Spam Legislation ("CASL").

Anti-competitive activities, deceptive conduct, and even otherwise legitimate business arrangements or agreements that raise competition issues harm Canada's economy. They can also be illegal. This bulletin provides guidance regarding credible and effective corporate compliance programs [2] designed to ensure compliance with the Acts. It does so in three parts, by:

- **first**, setting out measures that Canadian individuals and businesses [3] should consider in order to minimize their risk of engaging in illegal anti-competitive activities and to detect any illegal activities;
- **second**, providing tools to help businesses develop compliance programs. A Corporate Compliance Program Framework setting out the essential components of a credible and effective program has been included with this publication as an appendix [4]; and
- **third**, examining hypothetical case studies illustrating how the Bureau may consider the credibility and effectiveness of a compliance program. [5]

A good corporate compliance program helps to identify the boundaries of permissible conduct, as well as identify situations where it would be advisable to seek legal advice. Implementing a corporate compliance program can, in certain circumstances, be ordered by a court [6], agreed to in a consent agreement or required as part of an alternative case resolution ("ACR") as a condition of the Bureau not pursuing enforcement action. However, as both the courts and the Bureau may (where appropriate) take the pre-existence of credible and effective compliance programs and/or a

demonstration of some due diligence into account as a mitigating factor when assessing remedies in the event of a breach of the Acts, businesses should therefore take a proactive approach and recognize the value of a credible and effective program.

This bulletin sets out the Bureau's view of the essential components of a credible and effective corporate compliance program. To be credible, at a minimum such a program must demonstrate the company's commitment to conducting business in conformity with the Acts. To be effective, it needs to motivate and inform all those acting for the company, including executives, managers and employees [7], about their legal duties, the need for compliance with internal policies and procedures, the potential costs to the business of contravening the Acts, and the harm to the Canadian economy caused by contraventions. It also needs to include tools for management to use to prevent and detect contraventions of the Acts.

A credible and effective corporate compliance program has three broad benefits for businesses:

- **first**, it signals an entity's seriousness in tackling and addressing the legal obligations and ethical considerations facing businesses today;
- **second**, it reduces costs of compliance by helping to clarify, for business managers and officers, the boundaries of permissible conduct as well as situations that could put their business at risk of violating the Acts; and
- **third**, should there be any violations of the Acts, it provides a possibility for the business to mitigate the cost of non-compliance.

The Bureau recognizes that many businesses may already have a program in place and encourages them to take the opportunity to ensure that the essential components highlighted in this bulletin are reflected in their program.

The revisions to this bulletin reflect the importance that the Bureau places on corporate compliance programs as a means to facilitate broader compliance under the Acts.

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1. Introduction

1.1 General

Complying with the Acts is not optional; ignorance of the law is not a defence. By implementing credible and effective compliance programs, businesses can significantly reduce the risks of violating the Acts and help to avoid disruptive and costly investigations.

This updated bulletin sets out basic principles and provides general guidance for the development of an in-house compliance program. The Bureau encourages businesses to craft programs that reflect their specific circumstances. Some of the questions businesses may ask themselves in structuring their programs are:

- How familiar are the managers of the business with the requirements in the Acts and how they apply to the business?
- Does the business operate in multiple countries?
- Does the business have market power in the industry?
- Does the business, and/or the sector within which it operates, have a history of contraventions?
- Does the business make representations to the public to promote its products or business interests?
- What is the size of the business?

1.2 The Small and Medium-sized Enterprise (the “SME”) sector

This bulletin seeks to help businesses of all sizes and configurations to develop credible and effective compliance programs. The Bureau recognizes that SMEs and larger businesses have different needs and concerns. As a

result, each business should implement and follow a corporate compliance program that is commensurate with its size and business activities.

A compliance program helps SMEs in at least two ways. First, it enables SMEs to identify areas of high risk of contravention of the Acts. Second, it allows SMEs to determine circumstances where they may be the victim of anti-competitive conduct by other parties. In both instances, the policies and programs adopted by SMEs can be geared towards mitigating and managing areas of higher assessed risk.

The Bureau has developed fact sheets and a pamphlet on corporate compliance programs to assist SMEs in crafting credible and effective compliance programs to inform and facilitate their efforts to comply with the law, and will continue to develop further resources to assist SMEs in this regard. [8]

1.3 Implementation and advice

The decision to implement a compliance program is generally voluntary. However, in certain circumstances, the Bureau will recommend or request that:

- a program be established in the context of a prohibition order obtained under section 34 of the Act, a probation order, [9] a consent agreement under sections 74.12 or 105 of the Act, a contravention of subsection 114(1) of the Act, [10] as well as in the context of ACRs; and
- an independent compliance monitor be appointed to monitor the implementation and operation of any such compliance program.

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2. The importance of compliance

2.1 Why is compliance important?

Every individual and business, regardless of its size, has a duty to act lawfully. The Bureau operates on the assumption that all legitimate businesses and their management wish to comply with all applicable laws. The importance of a credible and effective compliance program in avoiding contraventions under the Acts, and in detecting and dealing with such behavior by the business or by its competitors, should not be underestimated.

Violating the Act could result in imprisonment, fines, administrative monetary penalties ("AMPs"), restitution, the obligation to publish notices, and the obligation to cease and desis—or a combination of these. As well, for a business, it will have reputation and market repercussions. For example, contravention of the Act, whether civil or criminal, can expose a business to significant fines or AMPs and recovery of damages by private parties. [11] In addition, most provinces have procedures in place to certify class action proceedings; it is not uncommon to see such actions filed when a criminal offence has been committed under the Act.

2.2 The purpose of a credible and effective Corporate Compliance Program

A compliance program has the following purposes:

- **first**, to inform businesses of how to minimize contraventions of the Acts, thereby avoiding the likely penalties and the costs associated in defending against the enforcement of the Acts;
- **second**, to detect at an early stage actions that may contravene the Acts, thereby allowing the company or individual to be the first-in to request immunity from prosecution or to be better placed to apply for lenient treatment in sentencing—it may also be taken into account in

determining whether a matter will be pursued along a criminal or civil track where both options are available, and in assessing the magnitude of AMPs the Bureau may seek in a reviewable matter; and

- **third**, where possible, to identify circumstances where the company is potentially being affected by the anti-competitive conduct of other parties.

2.3 The benefits of a credible and effective Corporate Compliance Program

A well-structured compliance program provides a framework for compliance with the Acts. Some of the specific benefits of a credible and effective program may include the following:

- maintaining a good reputation;
- improving a business' ability to recruit and retain staff—a business with a reputation for compliance is likely to attract higher-quality employees and have a better employee retention rate;
- improving a business' ability to attract and retain customers and suppliers who value companies that operate ethically;
- reducing the risk of non-compliance;
- triggering early warnings of potentially illegal conduct;
- allowing a business to qualify for favourable treatment in sentencing, or reducing costs related to litigation, fines, AMPs, adverse publicity and the disruption to operations resulting from a Bureau investigation and/or proceedings before the court; [12]
- reducing the exposure of employees, management and the business to criminal or civil liability;

- educating employees as to the appropriate course of conduct if called upon to provide evidence in the course of an inquiry by the Bureau, or if the company is the target of such an inquiry;
- assisting a business and its employees in their dealings with the Bureau —for example, by identifying contraventions of the Act early enough to request immunity or leniency; and
- increasing awareness of possible conduct in breach of the Act among competitors, suppliers and customers in the market.

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3. Consideration given by the Bureau to a Corporate Compliance Program

3.1 General

The existence of a compliance program does not immunize businesses or individuals from enforcement action by the Commissioner or from the Commissioner recommending to the Public Prosecution Service of Canada ("PPSC") a prosecution. However, in determining the most appropriate means to resolve cases, including offences and contraventions where the exercise of due diligence is a defence, a credible and effective program may be considered by the Bureau in determining:

- how to proceed against companies and in making its recommendations to the PPSC, including recommendations on the fine that should be imposed; [13] or
- the magnitude of remedy to seek with respect to non-merger reviewable matters.

Consideration, and therefore the potential benefits, will be greater in most circumstances for a company with a pre-existing credible and effective compliance program, than for a company that waits until it is investigated before implementing or enhancing a program.

A compliance program will be considered credible and effective when the company can demonstrate that it was reasonably designed, implemented and enforced in the circumstances. The burden of establishing this is always on the company. Companies that make such claims do so voluntarily and on the understanding that the Bureau will test the credibility and effectiveness of the compliance program. In these circumstances, the Bureau will expect timely access to relevant records and individuals to properly assess the company's program. [14]

3.2 Specific examples

3.2.1 Criminal sentencing and civil remedies

Criminal matters

A compliance program may assist a business in the early detection of a contravention of the criminal provisions of the Act, thereby allowing it to benefit from the advantages of being either an Immunity or Leniency Program applicant.

A business, after making an application for immunity or leniency, may choose to either implement a new corporate compliance program or make adjustments to a pre-existing program to better enable it to comply with the provisions of the Act. This will assist in ensuring that it adopts policies and practices that conform with the law in the future. The Bureau may recommend that the PPSC require an applicant to implement a credible and effective program using this bulletin as a guide in conjunction with any grant of leniency.

The existence of a program, however, will not necessarily result in a favorable recommendation to the PPSC. When the Bureau is satisfied that a compliance program *in place at the time the offence occurred* was credible and effective, in keeping with the approach set out in this bulletin, the Bureau will treat the program as a mitigating factor when making recommendations to the PPSC in conjunction with an application under the Bureau's Leniency Program. [15]

The Compliance Unit (the "CU") of the Bureau will be responsible for the review of the credibility and effectiveness of a company's compliance program. The CU will conduct this review with the purpose of determining whether the compliance program meets the criteria set out in this bulletin. At the same time, information gathered during the investigative process that pertains to the credibility and effectiveness of a compliance program will be shared with the CU. [16]

If a leniency applicant requests fine mitigation on the basis of the company having a credible and effective corporate compliance program, the CU will require timely access to all appropriate corporate records and staff to make a determination. While such access is voluntary and the decision to grant access rests with the leniency applicant, an inability to properly assess the compliance program will affect the recommendation of the CU regarding any additional leniency considerations.

The CU's recommendation will be communicated to the Senior Deputy Commissioner of Competition for the Cartels and Deceptive Marketing Practices Branch, who is ultimately responsible for making leniency recommendations to the PPSC. The PPSC has ultimate discretion whether to accept or reject the Bureau's recommendation, but the Bureau's recommendation is given due consideration by the PPSC. [17]

Civil matters

In non-criminal matters, the Commissioner may apply to a court for a remedial order. In this regard, the existence of a credible and effective program at the time that the impugned conduct took place may be considered by the Bureau as mitigating the magnitude of an AMP, or other remedies sought by the Commissioner as they relate to deceptive marketing practices. This may be the case where there is evidence that the activity is contrary to a business' policies and the statements of its management, that those committing the contravention took steps to avoid detection from management, and that the conduct was terminated and disciplinary action was taken as soon as it became known to management. Except in the case of a consent agreement under s. 105 of the Act, the Tribunal or a court has discretion whether to accept, reject or modify the Commissioner's remedy recommendation, or order its own remedy.

3.2.2 The choice to pursue either a civil or criminal track

In certain instances, the Bureau has the option to pursue a matter either under a civil or criminal track. For example, the false or misleading representations and deceptive marketing practices provisions of the Act, which prohibit making a materially false or misleading representation to the public for the purposes of promoting a product or a business interest, may be pursued either civilly, or criminally if there is clear and compelling evidence that the conduct was engaged in knowingly or recklessly.

The Bureau's decision to pursue a matter under the civil or criminal track also takes into consideration whether criminal prosecution is in the public interest. To determine whether it is in the public interest, among other things, the pre-existence of a credible and effective compliance program, is taken into account.

3.2.3 Due diligence defence

For certain false or misleading representations and deceptive marketing practices provisions under the Act, [18] a company may argue that it had exercised due diligence to prevent the conduct.

The pre-existence of a program is not, in itself, a defence to allegations of wrongdoing under any of these provisions. At the same time, a credible and effective program may enable a business to demonstrate that it took reasonable steps to avoid contravening the law. Documented evidence of a credible and effective corporate compliance program will assist a company in advancing a defence of due diligence, where available. [19]

3.2.4 Consent agreements and other non-contested resolutions

Depending on the circumstances, conduct contravening the Acts may be resolved without fully-contested proceedings. For example, the Act allows for the registration of a consent agreement with the Tribunal under section 105 to address civil reviewable matters under Part VIII. Similarly, a consent agreement may be registered with a court under section 74.12. Section 34 provides that a court may, on application of the Attorney General of Canada, issue a consent prohibition order with or without an admission of guilt. [20] The Bureau's effort to increase compliance without the need for contested proceedings is also supported by the availability of ACRs, which may include, among other compliance instruments, undertakings, information meetings, information letters, warning letters and compliance meetings.

The Commissioner is generally open to settlement offers in all cases, provided that settling the matter by way of a consent agreement is more in the public interest than by litigating it. In certain circumstances, the Commissioner may be more inclined to consider an alternative form of resolution to litigation, including entering into a consent agreement, where the business can demonstrate that:

- the conduct was contrary to a credible and effective corporate compliance program in existence at the time of the contravention;
- it terminated the conduct in breach of one of the Acts as soon as it was detected;
- it was brought to the Commissioner's attention;
- it attempted to remedy the adverse effects of the conduct;
- the conduct occurred at a lower level in the business;
- disciplinary action was taken by the company against the employee who engaged in the conduct; and
- the conduct was not carried out or endorsed by management.

A compliance program is not a prerequisite for ACRs or consent agreements, as appropriate, in either civil or criminal matters. The existence of a credible and effective program could, however, provide a business the tools through which it is able to satisfy the above-noted requirements.

If the Bureau determines that an alternative form of resolution is appropriate to resolve a matter, and a credible and effective program is not already in place, the Commissioner may, whenever appropriate, require the implementation of such a program as part of the resolution. Where a program is already in place, the Commissioner may, whenever appropriate, require the business to review its program to promote compliance with the Acts and possibly to revise or enhance its program.

Where the implementation of a program forms part of the resolution of a matter, the business may be required to demonstrate to the Commissioner that its program is likely to prevent conduct in breach of the Acts. As a starting point, businesses should refer to section 4 of this bulletin — Basic Requirements for a Credible and Effective Corporate Compliance Program to assess whether the proposed program is likely to be credible and effective.

3.2.5 Where management is involved in the breach

When a company engages in conduct that breaches the Act, if one or more managers participated in, condoned or were willfully blind to that conduct, it may indicate to the Bureau that management's commitment to compliance may not be serious and the company's program was neither credible nor effective. In addition to the Bureau pursuing both the company and the individuals, knowingly contravening the law despite the existence of a program may be considered an aggravating factor.

However, the Commissioner may still give consideration to the company's program, if it provides evidence that it exercised due diligence to prevent the commission of the offence or contravention, and that the managers in question acted alone and hid the conduct from others in the company.

3.2.6 Third party Corporate Compliance Programs

Competition law compliance risks can arise outside of the proprietary business activities of companies, such as through relationships with third parties. As part of their compliance program, companies should be aware of the risk posed to them by the third parties with whom they do business, or interact with in respect of their business.

For example, a company may determine that its participation in a trade association represents a significant risk relating to potential cartel behaviour, and may prohibit its representatives from participating unless the association implements a credible and effective competition law compliance program. [21] In other situations, it may assist smaller companies, which are seeking to act as sales agents for the company, to implement a competition law compliance program.

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4. Basic requirements for a credible and effective Corporate Compliance Program

A credible and effective compliance program is one that, within the resources of the company and in the light of its activities, addresses the risk profile of the business. However, in all instances, a credible and effective compliance program should have seven basic elements:

1. Management Commitment and Support
2. Risk-based Corporate Compliance Assessment
3. Corporate Compliance Policies and Procedures
4. Compliance Training and Communication
5. Monitoring, Verification and Reporting Mechanisms
6. Consistent Disciplinary Procedures and Incentives for Compliance
7. Compliance Program Evaluation

Each of these elements is discussed below.

4.1 Management commitment and support

Management's clear, continuous and unequivocal commitment and support is the foundation of a credible and effective corporate compliance program.

(a) Management support

Fostering a culture of compliance starts at the top.

Management, in the performance of its fiduciary duties, must always exercise care, skill and diligence and act in the best interests of the business, including compliance with relevant legal requirements. In addition to the

broad range of traditional risks faced by a business, management must also identify and assess the principal compliance risks that the business faces and implement appropriate systems to manage those risks.

Management fosters a culture of compliance within the business by both actively participating in the compliance program and assuming a highly visible role in its promotion on an on-going basis. By demonstrating its clear, continuous and unequivocal commitment to compliance, management conveys the message that contraventions of the law are not acceptable under any circumstances. Presenting values and principles, but not acting upon them, undermines the credibility of a program and reduces the potential benefits a company could otherwise attain as a result of its program. Failure to execute and a lack of management commitment are the main reasons compliance programs fail.

(b) The compliance officer

To ensure that a company meets its compliance objectives, the company should assign responsibility for its compliance program to a high level executive position. The position should have:

- high visibility in the organization through an appropriate title such as “Compliance Officer”;
- independence, professionalism, and the authority to implement and enforce a credible and effective program across the company;
- the necessary financial and human resources relative to the company’s risk profile; and
- the opportunity to participate in senior management decision making and to develop a solid understanding of what is taking place within the business itself, the industry in which it operates and an ability to properly assess the potential non-compliance risks to the business.

(c) Involvement of the board of directors

The company's board of directors [22] should appoint the Compliance Officer [23] and endorse the company's compliance program. The Compliance Officer should report to the board of directors, or a committee of the board of directors (such as the audit committee) on compliance program matters, such as the implementation and effectiveness of the program, disciplinary actions resulting from a breach of the program's policies and procedures, as well as any allegations of contraventions of the Acts. The Compliance Officer should only be removable by the board of directors on terms set in advance by the board. The involvement of the board of directors, or even a committee of the board of directors, serves as an additional level of fiduciary protection where managers may be the perpetrators of a contravention of the law.

The board of directors and management must also commit to allocating the necessary financial, human resource and infrastructure support to ensure that the Compliance Officer is able to fully implement the program.

Suggestions to meet this requirement

- Management should be responsible for clearly promoting compliance with the Acts as a fundamental part of their business policy and their supervisory role, and be held accountable for their actions in this regard.
- Management should expressly commit to compliance, ensure that a credible and effective compliance program is established, actively participate in programs designed to educate and support compliance, and create incentives that promote adherence to the business' compliance program.
- A committed and capable member of management should be appointed as a Compliance Officer, responsible for the business' compliance program and for dealing with questions and concerns pertaining to compliance with the law.

- The board of directors should have full responsibility for the selection and the terms for dismissal of the Compliance Officer, and for the approval of an appropriate compliance program.
- The board of directors, or a committee of the board of directors, should be informed of any disciplinary actions resulting from breaches of the compliance program.
- The Compliance Officer should report at least quarterly to the board of directors on compliance matters.

4.2 Risk-based corporate compliance assessment [24]

A thorough assessment of the potential risks faced by a company will allow it to properly design compliance strategies that address those risks.

Non-compliance with the Acts exposes a business and its staff to civil and criminal penalties, the risk of private civil litigation and reputational damage, among other negative consequences. To prevent non-compliance, a business should:

- engage in a risk assessment to properly address the breadth of potential exposure to non-compliance risks;
- devise a corporate compliance program that addresses these risks; and
- foster a culture of compliance as a means of risk reduction/mitigation.

(a) Identify areas of risk

The Compliance Officer, in conjunction with management, must work to identify the key legal risks faced by the business. The business can then tailor its compliance program to the specific risks faced and to design proportionate compliance measures to meet the most likely and most serious of those risks.

A proportionate strategy provides the flexibility to incorporate specific approaches to compliance into a program based on, among other things, the size of the business, the nature of the industry, and the internal culture of the business. For example, all businesses, regardless of their size, should include measures that address their potential exposure to the criminal provisions of the Act relating to bid-rigging, price fixing and other cartel activities, as well as those provisions relating to deceptive marketing practices. The risks associated with other provisions of the Act, such as the abuse of dominance provisions, will depend upon the nature and size of the business.

However, businesses must be cognizant that risks may change as their business evolves and their compliance programs will need to be sufficiently flexible to allow them to adapt. For example, potential risks can arise in new or unusual circumstances, such as when a business becomes a party to a proposed merger, or enters a new product or geographic market.

(b) Identify employees exposed to risk

One approach to identifying risks is to determine who in the business is most likely to contravene the Acts. [25] Individuals who are likely to have contact with competitors, such as those in sales and marketing roles, as well as participants in trade association activities, and trade show and conference attendees, are at a higher risk of engaging in cartel activities than individuals in manufacturing or financial positions. Similarly, everyone involved in making representations to the public to promote products or the interests of the business will need, at a minimum, guidance on the false and deceptive marketing provisions of the Act.

Further, all employees should be made aware of the compliance program, as a disaffected employee may be inclined to take some form of action that puts the business at risk. In those circumstances, tools that promote a positive

employee environment throughout the organization, including in human resources, may help identify and prevent contraventions of the law. Furthermore, a business may consider asking employees who are in a position to potentially engage in, or be exposed to, conduct in breach of the Acts, to certify in writing that they have read and understood the company's program, including its policies and procedures. [26]

(c) Identify changes that can affect risk profiles

Where the duties associated with managers' and employees' positions are unlikely to change significantly from year to year, businesses should be able to incorporate a risk assessment and requisite mitigation plan into their job descriptions. At the same time, businesses must recognize that the assignment of new duties to specific positions may alter the existing risk profile and therefore ensure that the mitigation strategy is sufficient to address any new risks.

Significant changes to the business activities can also affect risk profiles. For example, a reduction in the business' workforce might create changes that undercut previously effective compliance controls. A decision to enter a new product [27] or geographic market can change the risk calculation. A merger or a new marketing campaign can change or add new risks that need to be considered.

Similarly, the business' on-going risk assessment must also be able to identify new risks that may arise from other sources, such as changes in the law and the associated jurisprudence, the Bureau's enforcement policies and in the industry (for example, the characteristics of the markets in which it operates, new products, new geographic markets, deregulation, changes among competitors, and changes in supply and demand levels and chains).

Suggestions to meet this requirement

- The Compliance Officer, in conjunction with management, should conduct risk assessments annually to better assess compliance issues and identify priority areas to be addressed.
- In addition, the Compliance Officer should ensure that new risks arising from changes both within and outside of the business are monitored and assessed and that strategies are developed on a timely basis to properly address those risks.
- The types of risk factors the Compliance Officer and management should consider include:
    - whether staff participate in trade associations in conjunction with their competitors;
    - whether the business regularly recruits employees from competitors (particularly managers, marketing executives and salespeople);
    - whether markets are characterized by a small number of competitors (for example, whether there are frequent occurrences where the same bidders compete on tenders);
    - whether it is common practice to have, or it is easy to gain, competitor intelligence within the sector;
    - whether it is common practice for competitors to form joint ventures with each other;
    - whether the business makes representations to the public to promote its products or business interests; and
    - whether it is common for competitors of the business to also be its customers or suppliers.
- The Compliance Officer can initially use existing job descriptions to identify risk factors associated with positions in the business and incorporate the appropriate mitigation strategies as part of the

requirements of the position. The Compliance Officer should revisit job descriptions as they evolve over time, and speak with employees to ensure that the requirements of their job descriptions have not changed in a way that introduces new risk factors for the position.

4.3 Corporate compliance policies and procedures

A corporate compliance program should be tailored to the operations of a business and establish internal controls that reflect its risk profile.

The development and documentation of compliance policies and procedures tailored to the operations of a business are critical to the success of a program. Compliance policies and procedures should be designed in a manner most relevant to the business' operations and employees' daily activities, and scaled to its risk profile. For example, if a business often submits bids, a list of "dos and don'ts" when preparing a bid submission could be included in its policies and procedures. Similarly, it could be made clear that employees are not to engage in discussions with competitors about pricing, allocating markets or customers, or limiting supply of any products, in any situation whether professional or social. Moreover, policies and procedures can be put in place to ensure that all advertising, pricing and any other representations made to the public are not deceptive.

Compliance policies and procedures should establish internal controls designed to prevent contraventions from happening, scaled to a company's risk profile. Examples of such internal controls may include:

- ensuring that employees who handle purchases from suppliers who are also competitors are distinct from employees responsible for sales and/or marketing;
- requiring that employees obtain prior approval and undergo compliance training before attending trade association meetings where competitors

may be present;

- setting up systems to ensure that any savings claims made when pricing products are fully compliant with the law;
- ensuring adequate and proper testing is conducted on products before any performance claims are made to the public;
- reviewing all advertising copy to ensure that the general impression created is not false or misleading; and
- limiting employee participation in trade associations to those associations that have implemented their own credible and effective compliance programs. [28]

Ideally, policies and procedures should be updated as the business' risk profile evolves, and the business' Compliance Officer should document efforts to promote and improve the program. Businesses could rely on trade associations to inform them of developments in this regard, to do so in a less resource-intensive manner. All staff should be promptly notified of any changes in the program, and the revised policies and procedures should be available to all employees and managers in a readily accessible, easy to understand format. Depending on the magnitude of the revisions, it would be advisable to promptly hold a training session focusing on these changes.

From a broader perspective, the company should encourage third parties, such as trade associations and those acting for the company, to address risks associated with their operations. This may include monitoring third parties' conduct and requiring that third parties acting for the company, or any trade associations that they are associated with, implement their own credible and effective compliance programs. Trade associations that are charged with keeping their members up-to-date on the latest compliance developments should be well positioned in this regard.

Suggestions to meet this requirement

- Establish clearly written compliance policies and procedures and distribute them to at least all relevant staff or, ideally, all staff. [29]
- Take reasonable measures to promptly notify staff of changes to these compliance policies that result from, among other things, changes to the business' compliance risks due to changes in business activities, the industry, the law and jurisprudence, and the Bureau's enforcement practices.
- Design policies and procedures for different business units based on the compliance risks that may arise (for instance, a list of "dos and don'ts" and "red flag" issues).
- Require employees to sign a certification letter (see sample at Appendix B) stating that they have read and understand the company's Code of Conduct and applicable compliance policies.

4.4 Training and education

A credible and effective corporate compliance program includes on-going training and communications focusing on compliance issues for staff at all levels who are in a position to potentially engage in, or be exposed to, conduct in breach of the Act.

(a) The importance of compliance training

The objective of a compliance program is to prevent contraventions of the Act. All staff members need to understand the parameters of acceptable behavior as it applies to their business activities. Training managers and employees to be able to detect prohibited conduct and educating them about the range of penalties and remedies for non-compliance is essential.

Furthermore, given the unique characteristics of each business, the Bureau recognizes that a business requires flexibility in designing effective compliance training and communication programs.

(b) Design of compliance training and communications programs

A credible and effective program must provide training on the general principles and the business' specific policies for individuals who deal with situations that could raise issues under the Act. Training and communications programs should demonstrate, in a practical way, how compliance policies and procedures affect daily activities. [30] Case studies drawn from circumstances faced by the business or the industry can be particularly effective, including those where contraventions resulted in discipline. Bringing together employees who perform similar duties to present and discuss scenarios dealing with the specific realities of their work provides the link between the business' policies and procedures and the situations an employee may face. Additional training and communications could include descriptions of prohibited conduct and the issuance of bulletins that discuss current compliance issues that may affect the operations of the business.

The Bureau offers a variety of publications and compliance tools that can be used in the training and education component of a business' program. [31]

(c) Delivery of training

A business should choose the most effective methods for training and communicating to its employees based on the company's size and compliance risk assessment. For example, a business can use small group seminars, manuals, email messages, online training or workshops to effectively educate staff.

Effective courses are best delivered by experts (for example, by knowledgeable legal counsel or a Compliance Officer), where practicable, in addition to day-to-day compliance messages offered by managers, and should be delivered in a consistent manner throughout the business to avoid different employees receiving inconsistent levels of training and conflicting information. For example, businesses can use blended methods where online training is used to communicate a base level of information to a broader group, with additional live training that is focused on the highest risk staff or is targeted at specific circumstances that certain employees may encounter. Furthermore, where resources are scarce, smaller companies could pool their resources to deliver the requisite training through a trade association's compliance regime. Regardless of the methods used, it is crucial to provide opportunities for extensive discussions and time for questions in training sessions.

(d) The need for mandatory training

The business should have mandatory compliance training as part of a compliance program framework for all staff in positions with identified risks for non-compliance. New appointments to these positions should be required to take training as part of assuming those duties. Incumbent managers and employees should be required to renew their training on a periodic basis, depending upon the risks associated with the position. [32] To ensure all employees receive the training, the company should document attendance and consider it a factor in the employee's performance review for that time period.

Management should also play an active role in delivering compliance messages to employees, reinforcing their support for the program, by taking the necessary compliance training themselves, sending emails supporting the compliance program and referring to the program during meetings, presentations and other speaking opportunities. As such, management may

wish to capitalize on the educational information from the Bureau to assist in training and reference examples of businesses and individuals that have been sanctioned for breaching the Act.

Suggestions to meet this requirement

- Train all relevant staff or, ideally, all staff as soon as possible (for instance, during an initial orientation session) regarding the importance and expectation of compliance.
- Tailor training to address particular real-life situations faced by the business.
- Make regular training a requirement of performance review for medium- and high-risk positions.
- Regularly assess the knowledge and attitudes of staff towards compliance policies and procedures.
- Document the content of all training sessions and record attendance.

4.5 Monitoring, verification [33] and reporting mechanisms

Monitoring, verification and reporting mechanisms are vital to the success of any corporate compliance program.

To ensure that compliance programs are credible and effective, companies should:

1. monitor their programs on an on-going basis to ensure that their implementation is effective;
2. regularly verify whether contraventions of the Act have occurred and whether they have been dealt with appropriately; and
3. ensure that their staff can report contraventions of the compliance program or the Act confidentially and without the threat of retaliation.

Effective monitoring, verification and reporting mechanisms help prevent and detect contraventions and high-risk conduct, educate staff, provide both employees and managers with the knowledge that they are subject to oversight and determine the program's overall efficacy.

The most effective monitoring, verification and reporting procedures are those that also enable businesses to identify areas of risk, areas where additional specific training is required and areas where compliance issues may require new policies to be developed. This can be achieved in many ways and will depend on the business' particular needs, such as the extent of its exposure to potential contraventions of the Acts.

While all such mechanisms are fundamental to the success of any compliance program, it is crucial that a compliance program allows the Compliance Officer to conduct a detailed, professional investigation of compliance issues raised, [34] and to take all of the necessary steps to stop on-going, and prevent future, contraventions.

(a) Monitoring

Monitoring refers to the on-going procedures that are implemented to prevent contravention of the Act. Evidence of such efforts may also support a due diligence defence, where applicable, should litigation arise. [35] Depending on the risks, periodic or continuous monitoring may be necessary. A business should take the opportunity to assess whether any of its internal or external practices may potentially contravene the Acts.

(b) Verification

Verification may be periodic, *ad hoc* or event-triggered and is designed to determine whether a contravention of the Acts has occurred and, if so, to ensure that it has been dealt with appropriately. Compliance verification

practices are likely to vary from one business to another depending on the specific risks faced. They can also be used to examine the effective operation of the compliance program. [36]

(c) Reporting

A confidential, internal reporting procedure encourages staff to provide timely and reliable information regarding potential contraventions of the compliance program or the Acts that can be the basis for further investigation by the Compliance Officer. Managers, employees and others acting for the business must be able to obtain advice and raise concerns without fear of retaliation and without first having to raise issues with their superiors or supervisors. Staff must be encouraged to freely report conduct that they believe contravenes the Acts and/or compliance policies. The program should clearly identify which actions require reporting, and when, how and to whom they should be reported.

An effective reporting system can be achieved in different ways, for example by implementing a confidential reporting system, promoting an anonymous hotline or by identifying legal counsel and/or the Compliance Officer as compliance resources. Anyone reporting a concern or cooperating in an investigation should be guaranteed the strongest of protections from retaliation by others in the business, including management.

While an internal reporting mechanism is important, there may be situations where the use of an external reporting mechanism would be more appropriate. A program should educate employees, who are in a position to engage in, or be exposed to, conduct in potential breach of the Act about the Bureau's Immunity Program, Leniency Program and whistleblowing provisions (sections 66.1 and 66.2 of the Act). [37]

Suggestions to meet this requirement

- Monitor business activities continuously or periodically, as appropriate, to ensure compliance. [38]
- Identify employees who are exposed to a heightened risk (for instance, based on roles and responsibilities, being the target of previous investigations or having engaged in misconduct under the Acts or compliance policies) and ensure training is taken as a mandatory condition of performance review.
- Plan and conduct verification exercises, either by appointment or unannounced, to confirm whether a business, or area of a business, or staff, is or are fully complying with the Acts; these exercises may include a review of paper and computer files (especially emails and other electronic message systems) of staff who are in a position to engage in, or be exposed to, conduct in potential breach of the Acts. [39]
- Take immediate action to stop any contravention of the Acts.
- Put in place a confidential reporting procedure (for instance, inform the Compliance Officer, and through that position the board of directors or a committee of the board of directors, when an incident occurs and report to legal counsel).
- Cooperate with the Bureau where a breach has occurred (which involves self-reporting).
- Document all compliance efforts (this will assist in advancing a defence of due diligence, where available).

4.6 Consistent disciplinary procedures and incentives for compliance

Consistent disciplinary actions as well as appropriate compliance-related incentive plans demonstrate the seriousness with which the business views conduct in breach of the Act and its commitment to compliance.

A disciplinary code or policy setting out the consequences for individuals who initiate or participate in conduct in breach of the Acts, or otherwise do not abide by a business' program, deters misconduct and reflects a commitment to compliance. A credible and effective program should explicitly state that disciplinary actions (for example, suspension, demotion, dismissal and even legal action) will be taken when a manager or an employee fails to comply with the compliance program and/or contravenes the Acts. It should also state that disciplinary actions will be taken when a manager fails to take reasonable steps to prevent or detect misconduct within the requirements of the compliance program, or does not initiate appropriate disciplinary action.

Providing appropriate incentives for performing in accordance with the compliance program can also play an important role in fostering a culture of compliance (for instance, compliance and active support of the program should be considered for the purposes of employee evaluations, promotions and bonuses). Incentives work as effective tools for a business that wishes to promote compliance by employing concrete actions. [40]

All disciplinary actions and procedures involving specific individuals or groups in a business should be recorded, as proper documentation may be relevant in the context of a contravention of the Acts. [41]

Suggestions to meet this requirement

- Take appropriate and consistent disciplinary action (up to and including dismissal) for failure to comply with the business' compliance program and/or with the Acts.
- When a contravention occurs, examine whether management took reasonable steps that would have prevented or detected the contravention and hold managers accountable to that standard.

- Create an incentive system for staff at all levels to adhere to and actively support the business' compliance program.
- Have all staff sign a certification letter in the form attached as Appendix B of this bulletin.

4.7 Compliance program evaluation

A program's ability to deliver its core objective must continuously be assessed. It is also necessary to monitor new developments regarding the Acts and business activities to determine their impact on the program.

Evaluating a compliance program on a regular basis will ensure that it achieves its goal of promoting compliance. This also allows for an assessment of whether the program captures new or emerging risks.

The Compliance Officer should be given the responsibility and authority to undertake this review and to make the necessary changes to the compliance program. In situations where changes to the Acts or the jurisprudence have an immediate effect on the business' risk exposure, the Compliance Officer should take immediate steps to notify staff of what is required to remain compliant.

To evaluate the effectiveness of an existing program, the Compliance Officer could engage in the following:

- conduct surveys, informal post-training follow-up meetings, focus groups and exit interviews with key individuals;
- test knowledge of the Acts and compliance policies and procedures regularly, as well as attitudes and beliefs about compliance, to determine whether the program needs to be updated or modified; and
- monitor developments from areas of corporate compliance outside of competition law and, when appropriate, incorporate their best practices

into the program.

Regular evaluation also allows an opportunity to refresh the training material and the course presentation styles to ensure that staff remains engaged during the training process; repeated training with the same material or approach can quickly become stale and managers and employees can lose interest. Where resources are scarce, smaller companies could have updates disseminated to them collectively in the compliance training offered by a trade association.

There are a number of elements in a compliance program that can be assessed:

- The program's overall design;
- The approach used to implement the program to test whether all the elements have been effectively rolled out;
- The program's impact, to measure how well it is working and whether employees are retaining its core messages, whether training methods are working;
- Whether the written policies and procedures that are in place are resulting in compliance, such as ensuring that representations made to the public are not deceptive;
- Whether the program and associated policies and procedures reflect developments in the law;
- Whether those written policies and procedures are easily understood;
- Whether the verification function is properly designed to detect illegal conduct; and
- Whether the reporting system works as intended, are employees willing to use it, or whether there is a fear of retaliation.

The review should extend to include the resources provided by the business to support the compliance program. It is recognized that these programs are ancillary to a company's main business and that other demands will dictate where resources are directed. However, the risks associated with a contravention of the Acts are sufficiently high that the board of directors and managers cannot ignore the benefits of a properly resourced, credible and effective compliance program.

Suggestions to meet this requirement

- The Compliance Officer (in conjunction with legal counsel, when necessary) should regularly review all aspects of the compliance program, including associated policies and procedures, implementation, training, audit procedures and reporting systems, to ensure that it is accurate and reflects any recent legislative and jurisprudential developments.
- The Compliance Officer should, either immediately or at the end of the review, take the necessary steps to strengthen the program.
- The review should extend to the resources allocated to support the program to ensure that it is able to function properly.
- Various tools should be available to conduct a review, including individual and group interviews, focus groups, surveys and exit interviews.
- Companies should also consider having their compliance program reviewed by an independent third party.

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5. Conclusion

A credible and effective compliance program is a valuable tool in safeguarding the reputation of a business and preventing and detecting contraventions of the Act, thus increasing a firm's likelihood of avoiding or mitigating criminal or civil consequences. Such a program will help to clarify the limits of legitimate business conduct and enhance the understanding of what is acceptable behavior, so that legitimate competitive practices can be vigorously pursued without contravening the law.

The success of Canadian competition law is largely attributed to compliance by business and individuals. Over and above the direct benefits to individual businesses, an effective compliance program can also make an important contribution to broader public knowledge and understanding of the Acts and the importance of free and fair competition. Credible and effective compliance programs thus serve a public purpose and make an important contribution to ensuring that Canadian businesses and consumers prosper in a competitive and innovative marketplace.

How to contact the Competition Bureau

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

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 (teletypewriter) (for hearing impaired): 1-866-694-8389

Facsimile

819-997-0324

Immunity & leniency

Anyone wishing to apply under either the Commissioner's Immunity Program or the Commissioner's Leniency Program should contact:

Senior Deputy Commissioner, Cartels and Deceptive Marketing Practices Branch819-997-1208

Appendix A: Corporate Compliance Program Framework

Preface

This Corporate Compliance Program Framework ("Framework") was designed to help Canadian businesses design their own corporate compliance program in relation to one or more of the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act* ("Acts"). It should be used in conjunction with the Competition Bureau's ("Bureau") bulletin on *Corporate Compliance Programs*. The Framework refers to Appendices (such as a Training and Education Program,

Procedures for Monitoring, Verification and Reporting and a Disciplinary Code) to be drafted by businesses to suit their specific needs and the competition risks they may face.

The Framework is a flexible tool that should be adapted to the specific activities and resources of a particular business. The Framework is a general guide only and the Bureau will not deem a compliance program deficient or non-credible if a company deviates from the Framework, where the deviation is reasonable in the circumstances. The Bureau encourages any innovations that are designed to improve the effectiveness of the Framework.

The Framework is offered for the purpose of providing guidance. It is not to be taken as a substantial corporate compliance program and needs to be tailored to a business' needs. Furthermore, the content of the Framework and accompanying Appendices are not intended to serve as legal advice. Readers should obtain independent legal advice when developing a corporate compliance program.

To be completed by the subject company:

[COMPANY X] CORPORATE COMPLIANCE PROGRAM

1. Introduction

1.1 Purpose

This Corporate Compliance Program ("Program") has been established so that our business complies with the competition and labelling laws that apply to our business.

It includes practical advice concerning rules of conduct that will help our business anticipate and prevent contraventions before they occur, and detect and report contraventions if they do occur. This program is for use in our daily business by all employees.

1.2 Commitment to compliance

1.2.1 [Company X] is committed to complying with the law in letter and in spirit. There may be instances where this program sets standards that are higher than those required by the law. Nevertheless it is imperative that you follow the rules of conduct established by this program strictly.

[A personal statement by the chief executive officer or his/her equivalent stressing his/her personal commitment to the program, and his or her uncompromising adherence to the competition and labelling laws and the principle of competitive markets may be incorporated. This is more powerful if it is personal, rather than being written by company lawyers, and may include examples from the executive's experience.]

1.2.2 Our board of directors [or the business' highest appropriate governing authority] has designated a senior corporate officer responsible for the development, implementation and maintenance of the program. The [Compliance Officer or other appropriately titled position] may be contacted at: [Contact Information].

1.3 Employees' responsibility for compliance

1.3.1 While the [Compliance Officer or other appropriately titled position] manages the program, daily responsibility for compliance with the law rests with each and every officer, manager and employee of the business. Compliance with the law protects not only our business, but also each of us individually.

1.3.2 In addition, our business has developed Policies, Procedures and Practical Guides that are available [link to intranet, or indicate other readily accessible location], to assist you in recognizing improper conduct and knowing when and how to seek advice.

1.4 Canadian competition law

The purpose of Canadian competition law is to maintain and encourage effective competition in Canada. Effective competition benefits all of us by ensuring competitive prices, service and quality, and by encouraging greater innovation. The Acts maintain a competitive marketplace by prohibiting certain activities that might reduce or prevent competition or harm consumers. The Commissioner of Competition and staff of the Competition Bureau (the "Bureau") administer and enforce these Acts. A general description of each of these Acts is set out in the appendix attached to this program.

1.5 Penalties and remedies under the Acts

1.5.1 A contravention of the Acts, whether civil or criminal, can have serious legal consequences for our business and our employees. For example, contraventions can:

- expose the business to significant criminal fines or civil administrative monetary penalties, restitution, orders from the courts or Competition Tribunal that prohibit the continuation of the practice and/or impose other obligations on the company, and the recovery of damages by private parties; and
- expose employees convicted of criminal offences to fines and imprisonment or to administrative monetary penalties.

1.5.2 [Discuss the penalties and remedies for both the company and employees that are associated with the provisions of the Acts that are the most likely to apply to the business' activities based on the risks you may face.]

1.6 Subject personnel

1.6.1 The program applies to all of us, at all levels of the business; this is important for anyone in a position to potentially engage in, or be exposed to, illegal conduct. When we refer to “employees”, we mean it in the broadest of terms, including officers, managers, employees and anyone else acting for our company.

1.6.2 It is the personal responsibility of all employees to conduct their activities on behalf of our business in compliance with both the letter and the spirit of the law. No one who is employed by our company has the authority to engage in any conduct, or knowingly permit a subordinate to engage in any conduct, that contravenes the law or this program.

1.6.3 Anyone who engages in such conduct or who otherwise contravenes the program or the law may be subject to appropriate disciplinary or corrective measures, up to and including dismissal. Any manager or supervisor who fails to take reasonable steps to prevent or detect contraventions will also be subject to discipline. This is in addition to any criminal or civil liability that may be imposed on the individual as a result of a finding of the courts or the Competition Tribunal.

1.7 Employee acknowledgment

1.7.1 Each employee is required to acknowledge that he/she has read and understands this program and that he/she understands his/her obligations under it. Such an acknowledgement will also be sought in the event that significant changes to the program take place.

2. Management involvement and support

2.1 Our business recognizes that management’s clear and unequivocal support is the foundation of a credible and effective compliance program.

2.2 As part of acting in the best interests of our business, management must always demonstrate leadership and a commitment to legal and ethical conduct.

2.3 It is management's duty to promote and ensure compliance with the law. Management is accountable for promoting and complying with the law.

2.4 While management is accountable for compliance, the responsibility to manage the program is delegated by the board of directors [or the highest governing authority] to the [Compliance Officer or other appropriately titled position].

3. Corporate compliance policies and procedures

3.1 The business recognizes that strong compliance policies and procedures are critical to the success of the program.

3.2 Our company's Compliance Policies, Procedures and Practical Guides are available at [either an attached hyperlink or attached in Appendix [ ], whichever is appropriate]. These policies and procedures will be updated to reflect changes in the business, the law, the Bureau's enforcement policies, or the industry. Reasonable measures will be taken to promptly notify all employees of such changes.

Policies and procedures shall:

- be written in plain language and made available to all employees;
    - identify activities that are illegal or questionable and the consequences for contravention under the Acts;
    - provide examples to illustrate the specific practices that are prohibited, so that employees can easily understand how the application of the Acts may impact on their own duties and responsibilities;

- provide guidance on the company's policies regarding the creation and management of corporate documents;
- provide guidance to employees on the criminal risks of obstructing an inquiry by the Commissioner, including providing examples of the types of activities that may constitute obstruction;
- outline the possible consequences of breaching the program and the law;
- inform employees about the provisions of the *Competition Act* that protect whistleblowers, including a discussion of the consequences of any retaliation against whistleblowers for the company;
- inform employees about the Bureau's Immunity and Leniency Programs;
- provide a code of conduct giving instructions on how to respond when a search warrant is executed or when an inspection is being conducted by the Bureau;
- provide a code of conduct giving instructions on how to respond when a court order compelling the production of records or oral testimony is served; and
- provide a code of conduct regarding the participation of its employees to any trade association activities.

4. Training and education

4.1 Our business recognizes that to be effective, the program must include an ongoing training component that addresses compliance issues for all employees.

4.2 An outline of our company's Training and Education Program is attached at Appendix [ ].

The Training and Education Program shall:

- require each employee to participate in appropriate ongoing training provided by our business;
- require all new employees to participate in training as soon as practicable after the commencement of their employment, but prior to being put in position where they might violate the law;
- cover all compliance issues the company may face that are relevant to the duties of that employee;
- provide employees that face particular exposure to compliance risks with more in-depth training;
- provide guidance on specific business conduct that should be avoided;
- ensure that all relevant training materials are available;
- allow sufficient opportunity for questions and discussion during training sessions;
- ensure that training is delivered by experts and that it is consistent throughout the company; and
- be evaluated regularly to make sure it is working and reflects the business activities and the state of the law.

4.3 A copy of the company's appropriate guidance materials relating to this program will be distributed to all employees upon commencement of their employment.

5. Monitoring, verification [42] and reporting mechanisms

5.1 Monitoring

5.1.1 The [Compliance Officer or other appropriately titled position] shall ensure that the program provides for monitoring of business activities continuously or periodically, as appropriate based on the risk assessment

associated with those activities, to ensure compliance; and

5.1.2 The [Compliance Officer or other appropriately titled position] shall ensure that the program is reviewed and evaluated periodically, and that the program is updated when issues arise, when there are new developments in the law or the business activities of our company, and when opportunities for improvement are detected.

5.2 Verification

5.2.1 The [Compliance Officer or other appropriately titled position] shall conduct periodic, *ad hoc* compliance audits, or event-triggered investigations, as appropriate, to confirm whether our business is fully complying with the Acts and whether our program is being implemented properly and operating effectively;

5.2.2 The [Compliance Officer or other appropriately titled position] shall review and update this program when issues are detected; and

5.2.3 Procedures for Verification are attached at Appendix [ ].

5.3 Reporting

5.3.1 All instances of non-compliance with the program or the law shall be reported and communicated to the [Compliance Officer or other appropriately titled position], who shall regularly report to [the highest governing authority] in our company;

5.3.2 The program is intended to help employees comply with the requirements of the law, recognize improper conduct, understand how you must behave because of the law, and know when to seek advice;

5.3.3 If employees have any questions concerning the program or the law, they should contact the [Compliance Officer or other appropriately titled position] and/or company legal counsel [for companies that have one];

5.3.4 If employees become aware of a breach or possible breach of the program or the law, they must report it to the [Compliance Officer or other appropriately titled position] immediately;

5.3.5 No employees shall suffer any adverse employment consequences for reporting a possible contravention of the program or the law. In that regard, the company undertakes to guarantee the employee's [pay level, employment level; promotion opportunities, etc.] and guarantees that in circumstances where there are *bona fide* grounds for concern, regardless of whether in the end it proves to be a contravention of a law, that the employee will not be demoted or suffer any other form of punishment; and

5.3.6 Procedures for Reporting are attached at Appendix [ ].

6. Disciplinary procedures and incentives

6.1 The business is strongly committed to compliance with this program and the law. We take non-compliance very seriously.

6.2 Each employee's commitment to this program is taken into account as part of our incentive program, and in decisions about advancement and promotion in our company. [Provide further details here].

6.3 Any breach of this program and/or the Acts will result in disciplinary action, as described in the Disciplinary Code.

6.4 A Disciplinary Code is attached at Appendix [ ].

[Signature of management]

Appendix A — Overview of the laws enforced

by the commissioner of competition

The *Competition Act*

Canadian competition law is contained in the *Competition Act*, a federal law governing most business conduct in Canada. It contains both criminal and civil provisions aimed at preventing certain advertising practices and sets out certain prohibitions on how competitors may deal with each other, as well as how businesses treat their suppliers and customers. Specifically, the *Competition Act* addresses, among other things, conspiracy (such as price-fixing, market allocation and output restriction), bid-rigging, merger review, abuse of dominance, false or misleading representations, double ticketing, multi-level marketing and pyramid schemes, bait and switch selling, sale above advertised price, refusal to deal, price maintenance, exclusive dealing, tied-selling, and market restrictions. The most recent amendments to the *Competition Act* came into effect on July 1, 2014, as a part of Canada's Anti-Spam Legislation.

The *Consumer Packaging and Labelling Act*

The *Consumer Packaging and Labelling Act* is a law that establishes the requirements relating to the packaging, labelling, sale, importation and advertising of pre-packaged products. It requires that pre-packaged consumer products bear accurate and meaningful labelling information to help consumers make informed purchasing decisions. The *Consumer Packaging and Labelling Act* prohibits false or misleading representations and sets out specifications for mandatory label information, such as the product's name, net quantity and dealer identity.

The *Textile Labelling Act*

The *Textile Labelling Act* is a law relating to the labelling, sale, importation and advertising of consumer textile articles. It requires that textile articles bear accurate and meaningful labelling information to help consumers make informed purchasing decisions. The *Textile Labelling Act* prohibits false or misleading representations and sets out specifications for mandatory label information, such as the generic name of each fibre present and the dealer's full name and postal address or a CA identification number.

The *Precious Metals Marking Act*

The *Precious Metals Marking Act* is a law relating to the marking of articles containing precious metals. It provides for uniform description and quality markings of articles made with gold, silver, platinum or palladium to help consumers make informed purchasing decisions. The *Precious Metals Marking Act* prohibits the making of false or misleading representations related to precious metal articles. It also requires that dealers who choose to mark their articles with representations related to the precious metal quality, do so as described by the Act and accompanying regulations.

Enforcement of the Acts

The Commissioner investigates matters under the *Competition Act* through the use of investigative powers set out in the Act. These include, among others, the ability to search offices, seize records and interview individual employees under oath. In situations involving the criminal provisions of the Act, the Commissioner refers the case to the Public Prosecution Service of Canada, which assumes responsibility for laying charges and pursuing the case in the courts. In situations involving the civil provisions of the Act, the Commissioner will pursue the matter directly by filing an application with the Competition Tribunal or, in certain cases, the courts.

Under the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*, inspectors can enter and inspect business premises of a dealer of pre-packaged products, textile fibre products or precious metal articles, and seize such products and articles.

Appendix B: Certification letter

A business may consider asking all employees, including all levels of management, who are in a position to potentially engage in, or be exposed to, conduct in breach of the Acts to certify in writing that they have read and understand the company's compliance program and their obligations under it. The business should make it known that this is a requirement for all employees at risk, so that it is clear that everyone in such a position is required to adhere to the policy. This Certification Letter is intended to be adapted by each business prior to being signed by employees. Readers may wish to obtain independent legal advice regarding this Certification Letter.

Employee's letter

I, _____ of the City of _____, am employed by [Company X] in the capacity of [job description or title]. I acknowledge that I am subject to and am required to comply with [Company X]'s Corporate Compliance Program, including its Code of Conduct (the "Program").

This is to advise that I have read and understand [Company X]'s Code of Conduct, the goal of which is to promote ethical conduct and compliance with the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act*, and the *Precious Metals Marking Act*.

I understand that compliance with [Company X]'s program is a condition of my continued employment with [Company X] and that failure to comply with the program may result in disciplinary action, including termination of

employment. I also understand that this certification letter is not a guarantee of continued employment with [Company X].

_____

_____

_____

Company X

Date:

Signature:

Witness name:

Signature:

WITNESSED THIS _____ DAY OF

_____, _____.

Appendix C: Due Diligence Checklist

The following Due Diligence Checklist is designed to help businesses comply with the Competition Act (the "Act"), the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act* and the *Precious Metals Marking Act* (collectively, the "Acts"). [43] The checklist provides examples only and is not exhaustive. This checklist is intended for Compliance Officers or other compliance experts within a business, and to assist in drafting guidance for the business' employees as part of a broader compliance program. These examples are meant to be adapted by each business as a starting point and should be tailored to a business' compliance risk profile prior to being distributed to employees. Readers may wish to obtain independent legal advice, if a particular situation gives rise to concerns.

Competition Act

General

- Ensure that any wrongdoing is promptly reported to your business' legal counsel, management or Compliance Officer.
- Ensure that the identity of the Compliance Officer and how to contact this officer is known to all employees.
- Ensure that any potential issues of compliance with the Act are considered when preparing documents, presentations or training.
- Ensure that the Competition Bureau ("Bureau") is contacted if you suspect or have information that the company, competitors or suppliers are breaching or have breached the Act.
- Ensure that legal advice is sought, if a particular situation gives rise to concerns.
- Ensure that all employees are familiar with the compliance program and have access to the business' corporate Compliance Officer.
- Ensure that policies and procedures are in place to ensure compliance with the Act.
- Ensure that all employees acknowledge that they have read and understood the compliance program and that they understand their obligations.
- Know that businesses may be held responsible for the actions of their employees.
- Know that management will be held accountable first and foremost.
- Consider requesting a written opinion from the Commissioner prior to engaging in business activities that may raise concerns under the Act.

- Know that the Bureau has Immunity and Leniency Programs under which parties can self-report their involvement in criminal activities in return for immunity or favourable treatment in criminal prosecutions.

Conspiracy and bid-rigging

- Ensure that all pricing decisions are made without coordinating with competitors or others outside of your company.
- Ensure that legal advice is sought before contacting competitors, as contact with competitors may result in concerns under the Act.
- Ensure that records of any contacts with competitors are kept where concerns may arise.
- Ensure that legal advice is sought before entering into any agreement with a competitor.
- Know that reaching an agreement, including through any informal understanding or discussion, with competitors about pricing, market or customer allocation, production levels, bid rigging or other agreements dealing with an element of competitive rivalry contravenes the Act.
- Know the compliance risks that can arise when a competitor is a customer and/or a supplier or joint venture partner, and seek legal assistance as appropriate.
- Know that agreeing with competitors not to compete for certain customers or in a particular product or geographic market contravenes the Act.
- Know that agreeing with competitors to prevent other businesses from competing in a particular product or geographic market contravenes the Act.

- Know that discussing prices, changes in industry production, capacity or inventories could contravene the Act.
- Avoid pre-announcing prices or price lists, or engaging in any behaviour that could increase one's ability to coordinate pricing, market allocation, production levels or any other element of competition.
- Avoid making any comments that could be viewed as signaling to competitors any intentions or expectations regarding price, trade terms or other elements of competition.
- Avoid making any comments that can be perceived as threats or promises to competitors regarding pricing, market share or any other element of competition.
- Know that discussing pricing, market allocation, production levels or another element of competitive rivalry in "informal meetings" or "off-the-record" conversations at the business' functions, through social media, or as a component of any electronic information package, could contravene the Act. If improper discussions arise, business representatives should leave the meeting and have their departure recognized. The incident should be reported immediately to the Compliance Officer and appropriate authorities or legal counsel.
- Ensure that you adhere to a clear and written agenda prior to meeting with competitors. Ensure that all discussions with competitors are confined to the immediate subjects for which the meeting was convened. If you have questions about the topics to be discussed and the topics to be avoided, consult your business' Compliance Officer and/or legal counsel in advance. You may wish to have legal counsel attend the meeting to provide guidance during the course of the meeting.

- Ensure that you consult with your business' legal counsel any time there are concerns about discussions that took place at a meeting or function or elsewhere with competitors.
- Ensure that the Bureau is contacted where suspicions of bid-rigging exist (for example, a business is a victim of bid-rigging or has information about a bid-rigging scheme).
- Know that agreeing with a person to submit prearranged bids without prior notice of the agreement to the tendering authority is a criminal offence.
- Know that agreeing with a person not to submit a bid without prior notice of the agreement to the tendering authority is a criminal offence.
- Know that agreeing with a person to withdraw a bid without prior notice of the agreement to the tendering authority is a criminal offence.

Restrictive trade practices: Abuse of Dominance [44], exclusive dealing, tied-selling, market restriction, price maintenance and civil agreements [45]

Ensure that, where questions arise, legal advice is sought or that the Bureau is contacted before engaging in practices that may affect the state of competition (this can be heightened in circumstances where you may be considered a leader in a market [46] or have some degree of market power, or where you are considering an agreement with a competitor that may significantly lessen competition in a market). Caution should be exercised in the following situations:

- Before implementing a loyalty program or an exclusivity agreement with your customers;

- When using one of your products as leverage to force or induce a customer to purchase another product;
- Before selling articles at a price lower than your cost;
- Before penalizing a customer that supplies a product outside a defined market;
- When refusing to supply a product to a would-be customer if this would-be customer may be substantially affected or precluded from carrying on business because of the refusal;
- When entering into agreements with, or making promises or threats to, resellers of products to influence upward, or discourage the reduction of, the price at which they sell or advertise a product within Canada;
- Suggesting retail prices—in such a case, ensure that it is clearly stated that suggested retail prices are provided as guidelines only and that producers or suppliers have no obligation to charge the suggested prices;
- Refusing to supply a product to, or discriminating against, another business because of its low pricing policy; and
- When entering into, among other things, information-sharing agreements, research and development agreements or joint production agreements.

Mergers

- Before closing, ensure that legal advice is sought or that the Bureau is contacted when in doubt regarding the requirement to notify the Commissioner of a merger.
- Ensure that all appropriate documents are produced as part of any required notification to the Commissioner.

- Before closing, beware of taking steps to coordinate with an acquisition target before the Bureau has provided its advice regarding the potential impact of the merger.
- Consider a due diligence exercise before any merger to determine if there are likely competition law issues arising as a result of any proposed merger and whether the merger target has a compliance program.
- Plan for updating compliance program and compliance training after an acquisition occurs.

False or misleading representations and deceptive marketing practices

- Ensure that no representations are made to the public to promote a product or business interest if those representations create a false or misleading general impression or otherwise contravene the provisions of the Act prohibiting misleading representations and deceptive marketing practices.
- Know the amendments to the Act that came into effect on July 1, 2014 as a result of Canada's Anti-Spam Legislation.
- Ensure that no electronic message contains false or misleading representations, including in the sender information or subject matter information.
- Ensure that no false or misleading representations are made in locators (for example, a URL or metadata).
- Ensure that, when engaging in telemarketing, the following is disclosed at the beginning of every communication:

    1. the name of the company or person the communicator is working for;

2. the type of product or business interest the communicator is promoting;
3. the purpose of the communication,
4. the price of any product being sold, and
5. any restrictions or conditions that must be met before the product will be delivered

- Ensure that, when engaging in telemarketing, the following is disclosed at some time during every communication:
    1. the price of any product being promoted; and
    2. any restrictions or conditions that must be met before the product is delivered.
- Know that telemarketers are forbidden to:
    - make any representation that is false or misleading;
    - conduct a contest, lottery or other game where delivery of the prize is conditional on payment in advance, or where the approximate value of the prizes and other facts that affect the chances of winning are not fairly disclosed;
    - offer a free gift or a product at minimal cost as an inducement to buy a second product (this is acceptable if they disclose the approximate value of the gift or premium); and
    - require payment in advance where the price of the product upon delivery is found to be significantly in excess of the fair market value of that product.
- Ensure that fine-print disclaimers are avoided. If used, ensure that the overall general impression created by an advertisement is not false or misleading.

- Know that the provisions regarding false or misleading representations and the deceptive marketing practices apply whether the representations are disseminated to the public in Canada or abroad.
- Know that the provisions regarding false or misleading representations and the deceptive marketing practices apply whether the representations are made in a place accessible to the public or not.
- Ensure that the overall general impression created by a representation, as well as the literal meaning, is not false or misleading.
- Know that no one actually needs to be misled for a court to find that an advertisement is false or misleading.
- Ensure that the lowest price appearing on a product is charged.
- Ensure that reasonable quantities of a product advertised at a bargain price are available for sale.
- Ensure that contest rules are disclosed in a reasonably conspicuous manner prior to a potential contest participant being inconvenienced in some way or committed to the advertiser's product or to the contest.
- Ensure that the distribution of prizes when conducting a contest is not unduly delayed.
- Ensure that the term "regular price" is not used in an advertisement unless the product has been offered in good faith for sale at that price for a substantial period of time, or a substantial volume of the product has been sold at that price within a reasonable period of time.
- Ensure that the price of a product is not increased to cover the cost of a free product.
- Ensure that the illustrations used are not different from the product being sold.

- Ensure that a performance claim is not made unless it was based on adequate and proper testing conducted before the claim is made, even if a business believes the claim is accurate.
- Ensure that a product is not sold above the advertised price.
- Ensure that legal advice is sought when in doubt as to the legality of any representation made to the public when promoting a product or business interest.

Trade Associations [47]

- Ensure that legal advice is sought before joining or renewing membership in a trade association.
- Ensure that no company representative participates in a trade association or attends any trade association function unless he/she has competition law compliance training.
- Ensure that the trade association has its own competition law compliance program supported by knowledgeable legal counsel.
- Ensure that a clear copy of the agenda for all trade association meetings is obtained prior to a meeting. Competing firms should not participate in a meeting where such an agenda is not provided.
- Ensure that the trade association minutes are reviewed and that mistakes are reported.
- Ensure that representatives use caution when participating in trade association events and are alert to the types of discussions that may raise concerns. If improper discussions arise, he/she should leave and have his/her departure recognized (for example, in the minutes). The incident should immediately be reported to the Compliance Officer, legal

counsel or any other appropriate individual identified in the business' corporate compliance program.

- Never participate in any trade association activities that are "off the record".
- Ensure that legal advice is sought if a particular situation gives rise to concerns.
- Know that discussing sensitive competition issues with other association members that relate to pricing, markets, production levels, customers, bidding situations and other competitive information may be anti-competitive and possibly illegal.
- Review all standard-setting activities with legal counsel.
- Seek legal advice before discussing agreements on sensitive competition issues.

Consumer Packaging and Labelling Act

- Ensure that the requirements of the *Consumer Packaging and Labelling Act* are complied with if the business is a retailer, manufacturer, producer, importer packer or seller of any prepackaged product sold to consumers.

Textile Labelling Act

- Ensure the requirements of the *Textile Labelling Act* are complied with if the business is a manufacturer, processor, finisher, importer or seller of any textile fibre product used in consumer articles.

Precious Metals Marking Act

- Ensure the requirements of the *Precious Metals Marking Act* are complied with if the business is the manufacturer or importer of any precious metal article.

Appendix D: Hypothetical case examples of compliance issues

The following hypothetical examples are intended to illustrate the analytical framework that the Competition Bureau (the "Bureau") will generally apply in considering a pre-existing competition law compliance program. The Bureau's analysis in the hypothetical examples below does not replace the advice of legal counsel and is not intended to restate the law or to constitute a binding statement of how the Commissioner of Competition (the "Commissioner") will exercise discretion in a particular situation. The enforcement decisions of the Commissioner and the ultimate resolution of issues will depend on the particular circumstances of the matter in question.

The Bureau cannot guarantee specific sentencing outcomes in cartel cases. The Public Prosecutions Service of Canada ("PPSC") has independent discretion to consider the Bureau's sentencing recommendations. The Competition Tribunal (the "Tribunal") and the courts are ultimately responsible for imposing civil remedies and criminal penalties.

Hypothetical 1 — Ineffective compliance program

Company A is a large, publicly-owned Canadian manufacturer of widgets. Company A has operations throughout Canada and the United States. Five years ago, there was a change in ownership at Company A. New

management was brought in and several directors were replaced. Compensation for the new management team was heavily tied to Company A's stock market performance.

Three months ago, after officers from the Bureau conducted searches of several of Company A's offices, lawyers for the company contacted the Senior Deputy Commissioner of Competition for the Cartels and Deceptive Marketing Practices Branch and obtained a first-in marker under the Bureau's Leniency Program.

Company A proffered that for two years prior to the searches, staff from its sales department, including regional sales directors, met with their counterparts from Companies B and C, after annual trade association meetings and at social occasions, such as customer-sponsored social events, to agree on price increases and not to solicit each other's long-standing customers. These meetings were followed by telephone conversations to implement the agreements or, on a few occasions, to correct "mistakes" when one of the co-conspirators failed to adhere to an agreement.

In discussions with the Bureau's investigative team and PPSC counsel regarding the potential fine that the Crown and Company A would submit in a joint sentencing submission to the court, lawyers for Company A argued that the potential fine should be reduced on the basis that: it had a pre-existing corporate compliance program; the illegal conduct was contrary to Company A's corporate policy to comply with the *Competition Act* (the "Act"); and the illegal conduct did not involve executive level officers or Board members. In addition, Company A took several measures to strengthen its corporate compliance program since its admission to the Leniency Program.

Company A's compliance program

The program was introduced 10 years earlier with the strong support of the former President of Company A and its then board of directors. Working with outside legal counsel, the former President realized the significant risk of cartel activities given the highly concentrated nature of the widget industry.

Company A's General Counsel was appointed as the Compliance Officer by the board of directors, and for several years the program appeared to work well with regular training sessions, updates to reflect changes in the law and periodic unannounced compliance audits, particularly in the sales department, which posed the greatest risk of cartel contraventions. One employee was disciplined by being ruled ineligible for promotion for a year for not reporting an unauthorized discussion with a competing sales representative about industry prices. The General Counsel always attended trade association meetings and provided warnings to Company A's attendees to respect policies in the compliance program regarding interactions with competitors.

Five years ago, both demand and prices fell for widgets as a result of a recession. Company A's legal department and budget for outside counsel were cut in half, and employee training was severely cut back. The new President of Company A stressed the importance of cutting "red tape" and empowering managers and employees to be action oriented and to take risks to improve results.

Against the advice of Company A's General Counsel, compliance reports were no longer provided directly to the board of directors; the employee hotline was eliminated; and in-person training was replaced by on-line texts and tests to cut costs. Responsibility for administering and enforcing the corporate compliance program was transferred to a junior lawyer in the legal department with no prior training or experience in corporate compliance. The annual certification of compliance letters continued to be nominally required from key officers, supervisors and employees, but the rate of

delinquency increased significantly, particularly outside of Company A's head office. Finally, there was less oversight and monitoring of trade association activities.

Analysis

The Bureau conducted an examination of the corporate compliance program in effect prior to Company A's leniency application. In addition to reviewing the written content of the program, record keeping, reporting, compliance audit records, incentives, training content and attendance were evaluated. Key individuals were also interviewed by staff from the Bureau's Compliance Unit ("CU").

At the completion of the examination, the CU provided a report to the Senior Deputy Commissioner of Competition for the Cartels and Deceptive Marketing Practices Branch recommending that the fine for Company A not be reduced because it did not meet the Bureau's standard of having a credible and effective program at the time the illegal conduct occurred. The report concluded that despite the existence of the program and the fact that no senior officers or Directors were involved in the illegal conduct, a combination of negligence and the imposition of a "win-at-all-costs" culture by Company A's management helped to create a climate susceptible to the illegal conduct in the sales department. Similarly, the report concluded that Company A's board did not provide adequate oversight of management or the competition law compliance program.

Over the past five years, management of Company A significantly reduced its commitment to its corporate compliance program, resulting in it losing its credibility and effectiveness. Interviews with key sales department staff revealed that by the time the illegal conduct occurred, most employees felt that the corporate compliance program was just a bureaucratic exercise that could be ignored owing to pressure to improve Company A's results and

stock market performance. They indicated that managers and supervisors in the sales department never mentioned the program and that it was not a factor in annual evaluations.

Reducing the influence and independence of the Compliance Officer was a clear signal to staff that competition law compliance had become less of a priority. Another signal was the elimination of the employee hotline, thereby reducing the ability of employees to anonymously ask questions and report suspect behaviour while heightening employee concerns about possible retaliation for blowing the whistle. Eliminating the employee hotline also reduced the ability of the Compliance Officer to monitor adherence to the program. Company A's new Compliance Officer admitted spending more time on business matters than competition compliance, and was under pressure not to discipline sales staff beyond issuing warnings that communicating with competitors could lead to an investigation by the Bureau.

In interviews, most sales department staff could not remember any details of the online compliance training. One sales representative recalled receiving a warning not to discuss business issues with competitors at a customer sponsored social event, but his manager said that lawyers were always exaggerating the risk.

Finally, the CU recommended that Company A's recent efforts to strengthen its competition law compliance program did not merit reducing Company A's potential fine because it merely brought the program back to a state where it could potentially be effective in the future.

Hypothetical 2 — Senior management involvement

Company B was a co-conspirator in the widget manufacturers conspiracy described in Hypothetical 1 above. Like Company A, Company B has operations throughout North America. It's a privately-owned company

headquartered in Asia controlled by a family that lives outside Canada.

Six years ago, Company B was convicted of price-fixing with competitors in the United States and paid a considerable fine. The former Vice-President of Sales and Marketing, along with a junior executive in the Sales and Marketing Department, were also convicted and sentenced to imprisonment. Both individuals returned to administrative positions at Company B after serving their prison terms. After a year, the former Vice-President of Sales and Marketing was transferred to Montreal to become the new president of Company B's Canadian subsidiary. The President of the parent company wanted to dismiss the former Vice-President of Sales and Marketing, but felt that this step would have jeopardized his own position at Company B because the former Vice-President of Sales and Marketing was married to a member of Company B's founding family.

With the recession, there was more and more discussion at trade association meetings and customer-sponsored social events of how distressed the industry had become and the need to maintain prices and protect each other's traditional customers. The new President of Company B's Canadian subsidiary encouraged sales representatives to develop competitor contacts. Eventually, discussions led to agreements and arrangements among the widget manufacturers to fix prices and allocate customers in the Canadian market.

After the searches, Company B decided to participate in the Bureau's Leniency Program. Company B's lawyers argued that the potential fine should be reduced on the basis that Company B had a pre-existing corporate compliance program.

Company B's compliance program

Company B's corporate compliance program was introduced on the heels of its conviction for price-fixing in the United States. The President of Company B was very concerned with the damage that accrued from the investigation and conviction. With the help of an outside law firm, Company B implemented a competition law compliance program with the General Counsel appointed as Company B's Compliance Officer. Although he would have preferred to dismiss the former Vice-President of Sales and Marketing had it not been for the family connection, the President believed that implementing a compliance program and transferring the former Vice-President of Sales and Marketing to Canada would keep Company B out of trouble in the future.

Company B's General Counsel had very limited knowledge of competition laws and retained the services of the above mentioned law firm to provide training to sales staff. In its first year of operation, in-person compliance training was limited to employees in the United States, while sales staff abroad was linked into the training sessions by teleconference. No specific training was provided to the executive team of Company B, although the General Counsel did provide a report along with a video of the training session to the President. Sales representatives were required to provide an attestation that they attended the training sessions and would abide by Company B's compliance program.

Once the recession struck, compliance training was limited to rebroadcasting the video of the training session. Sales staff was still required to provide annual attestations but Company B's General Counsel did not monitor or verify adherence to the compliance program.

Analysis

The Bureau's CU conducted an examination of Company B's corporate compliance program in effect prior to Company B's leniency application.

At the completion of the examination, the CU provided a report to the Senior Deputy Commissioner of Competition for the Cartels and Deceptive Marketing Practices Branch recommending that the fine for Company B not be reduced, on the basis that it did not have a credible and effective program at the time the illegal conduct occurred. The report concluded that Company B's "paper and preach" approach reflected a lack of commitment to compliance by senior management. The fact that the President of Company B's Canadian subsidiary encouraged representatives to develop competitor contacts amply demonstrated that management's commitment to compliance was not serious and that the program was neither credible nor effective.

The President of the Canadian subsidiary admitted that socializing with competitors and encouraging sales staff to develop competitor contacts was risky. This serious problem might have been prevented by providing training to Company B executives and by making compliance part of their evaluations and promotion criteria. Several Canadian employees noted that the family connection of the President of Company B's Canadian subsidiary to the owners of Company B, and the general lack of policies and procedures to report actual or suspected misconduct, created a concern about possible retaliation, if they reported concerns about inappropriate interactions with competitors. They also reported that they had no confidence that their concerns would be taken seriously.

Other issues identified in the Bureau's examination included:

- the program did not address Canadian competition law requirements;
- there had been no risk assessment;
- the Compliance Officer failed to monitor the activities of the President of Company B's Canadian subsidiary, an individual with a conviction for illegal conduct;

- there were no incentives to promote the compliance program;
- staff did not have the ability to report any actual or suspected misconduct through an employee hotline or other similar means;
- training, record-keeping relating to who had attended training fell well short of best compliance practices;
- the effectiveness of the Compliance Officer, given both his other responsibilities at Company B and lack of training in compliance issues, was insufficient;
- a lack of program monitoring and verification also fell well short of best compliance practices; and
- there had been no internal evaluation of the program, which would have disclosed the weaknesses identified above.

Finally, the CU recommended that the implementation of a credible and effective corporate compliance program as part of a prohibition order granted under section 34 of the Act, should be included in the Bureau's leniency recommendations to the PPSC. Given the company's lack of commitment to its previous program, the Bureau also recommended to the PPSC that the company be required to appoint an independent compliance monitor to ensure that it implement the compliance program pursuant to the court's instructions.

Hypothetical 3 — Effective compliance program

Company X is a multinational parts manufacturer. Its primary customers are multinational original equipment manufacturers. Only well-financed, technically sophisticated parts suppliers with manufacturing plants located in close proximity to the equipment manufacturers' assembly operations are qualified to supply the equipment manufacturers.

After several years operating in intensely competitive market conditions, a number of parts manufacturers resorted to price-fixing. Unbeknownst to Company X, one of the parts manufacturers decided to cooperate with the authorities by applying for immunity from prosecution in Canada, the United States and the European Union. As a result, the Bureau and the authorities in the United States and the European Union conducted simultaneous searches of several parts manufacturers, including Company X.

Company X decided to cooperate with the Bureau and obtained a marker under the Bureau's Leniency Program for a specific part sold to certain original equipment manufacturers. Company X proffered that an account manager who had transferred to Company X's North American subsidiary in the United States two years earlier had entered into two price-fixing agreements for parts supply contracts. The investigation revealed that the agreements were prompted by the account manager's personal relationship with a former supervisor now working for a competitor.

In discussions with the Bureau's investigative team and PPSC counsel regarding the potential fine that Crown and Company X would submit in a joint sentencing submission to the court, lawyers for Company X argued that the potential fine should be reduced on the basis that Company X had a pre-existing corporate compliance program.

Company X's compliance program

Company X's competition law compliance program was introduced in the early 1990s and was administered by its legal department with the occasional assistance of outside counsel.

In the mid-1990s, Company X established manufacturing and sales subsidiaries in North America, South America and Asia, and its compliance obligations became more complex. The board of Company X decided to appoint a Compliance and Ethics Officer who could only be removed by the

board and would periodically report to the board. Competition compliance manuals were updated and included country-specific requirements, an employee hotline was installed, and the President issued an annual reminder of the importance of competition law compliance. Business units each had a representative with responsibility for promoting and administering the compliance program in that unit. Mandatory training for executives and sales and marketing staff was held each year. Records of attendance at training seminars and attestations of compliance were rigorously maintained by the Compliance Officer. Importantly, a number of rules and controls were tightened. Attendance at trade association meetings required pre-clearance by the Compliance Officer. The compliance manual explicitly stated that participating in, encouraging or condoning illegal conduct was subject to disciplinary procedures, including loss of employment. Finally, adherence to Company's X's compliance program was made one of the factors the board considered in determining executive compensation.

Analysis

The Bureau's CU conducted an examination of Company X's corporate compliance program in effect prior to Company X's leniency application.

At the completion of the examination, the CU provided a report to the Senior Deputy Commissioner of Competition of the Cartels and Deceptive Marketing Practices Branch recommending that the fine for Company X should be reduced on the basis that it had a credible and effective program at the time the illegal conduct occurred. Company X's program addressed each of the seven key elements in the Bureau's *Corporate Compliance Programs* bulletin. The report concluded that the two instances of price-fixing were the result of the account manager's actions, which were clearly in contravention of Company X's compliance program, and that the account manager had, in fact, taken steps to avoid detection by managers at the company. Company X's Compliance Officer was able to provide

documentation proving that the account manager attended annual training sessions and signed attestations of compliance. In this case, the price-fixing offences clearly resulted from the unethical behaviour of one individual with responsibility for pricing and bidding transactions.

Other findings in the CU's report supporting possible fine mitigation for Company X included:

- the leadership of Company X provided strong support for the compliance program;
- Company X's board provided adequate oversight of management insofar as competition law compliance was concerned;
- the Compliance Officer had sufficient authority and operating and reporting independence to overcome any potential internal pressures at Company X to engage in non-compliant conduct. The Compliance Officer also participated in senior management decision-making meetings;
- there had been thorough and on-going compliance risk assessment. Compliance audits were targeted at higher risk points, including senior management;
- staff had the ability to report any actual or suspected misconduct through Company X's employee hotline. There were strong safeguards against retaliation, including follow up with staff that had raised issues, and disciplinary measures were taken against managers who engaged in, or threatened, retaliation;
- the compliance program had been evaluated from time-to-time, and measures to improve the program were implemented on a timely basis;
- disciplinary measures were taken against managers who had failed to ensure that all necessary employees had taken compliance training; and

- Company X's compliance program met the Bureau's best practices in terms of compliance policies and procedures, training, reporting mechanisms and disciplinary and incentive procedures.

Hypothetical 4 — Alternative case resolution

123 Service Co. is a sole proprietorship with 30 employees. It provides maintenance services in a city in Canada for parks, sports fields and the grounds surrounding public and private buildings. Acme Maintenance Ltd. is a small, family-owned and operated business providing similar services in the city in question.

Recently, the Bureau received a complaint from purchasing officials and the city manager implicating 123 Service Co. and Acme Maintenance Ltd. in a bid-rigging scheme for maintenance services, possibly contrary to section 47 of the Act. Bureau officers met with the city purchasing officials to obtain information regarding the alleged conduct and the two implicated companies.

The examination revealed that potentially two contracts were subject to bid "rotation" agreements over the past six months. Bureau officers learned that both companies were small businesses and the two contracts in question were of relatively modest value. City officials indicated that up until this time both companies enjoyed favourable business reputations. The Bureau did not have any record of prior complaints against either company.

As a result of its examination of the matter, the Bureau decided to approach the respective owners of 123 Service Co. and Acme Maintenance Ltd.

At the meeting with 123 Service Co, the proprietor indicated that since being contacted by the Bureau, the company's Compliance Officer and lawyer looked into the allegations. It seems that a new employee responsible for sales and developing quotes and submitting bids who had joined 123 Service

Co. earlier that year from Acme Maintenance Ltd. had met with his counterpart in coffee shops and at social gatherings to exchange pricing information and reveal bidding intentions. The proprietor for 123 Service Co. indicated that the company has a “zero tolerance” policy for illegal conduct, and that the company had fired the sales representative in question. The lawyer also indicated that the company had begun implementing a corporate compliance program a year ago and wanted to resolve the matter explaining that it had contacted the city manager to apologize and pay back the overcharge on one of the contracts in question.

At the meeting with Acme Maintenance Ltd., the President of the company told Bureau officers that he trusts his employees and could not believe that they would break the law. The President said that he was not involved in any improper communications with 123 Service Co. The President indicated that the company did not have a competition law compliance program and admitted signing the bid documents that were sent to the city without asking the sales representative any questions about the prices in the quotes. Bureau officers then explained the requirements to resolve the matter through an Alternative Case Resolution (“ACR”), without recommending charges.

123 Service Co.’s compliance program

A year earlier, a number of companies in the maintenance services industry in another city in Canada were convicted for bid-rigging. The proprietor of 123 Service Co. read about this in the newspaper. The newspaper article described how government purchasing agencies were getting tougher on companies by barring convicted companies from bidding on future contacts for periods as long as five years and how the Bureau and the PPSC were seeking more jail terms for individuals involved in bid-rigging. Given that 123 Service Co. bids for most of its business, the proprietor realized that involvement in bid-rigging could destroy the company and land individuals in jail. Meeting with the three other managers and the supervisors of the two

maintenance crews, the proprietor handed out the newspaper article and stated a “zero tolerance” policy for illegal conduct. The business manager for 123 Service Co. was asked to update the company’s Code of Conduct and take on the role of Compliance Officer.

The business manager did an online search of compliance programs and watched the compliance video on the Bureau’s website. Using the Bureau’s *Corporate Compliance Programs* bulletin as a guide, the business manager developed a competition law "dos and don'ts” document focusing on the highest risk area for the company, cartel activity. In addition to the "dos and don’ts", the company’s Code of Conduct was updated so that staff were advised that they could ask questions and report potentially illegal behaviour and set out disciplinary measures up to loss of employment. The company’s law firm was also informed about the compliance program. The proprietor of 123 Service Co. held a meeting with managers, supervisors and sales representatives to explain the reasons for implementing the program and set out how it would work. A wallet sized “dos and don’ts” card was handed out, and the Code of Conduct and key compliance program reminders were emailed to all staff and posted on the company’s intranet. The company’s website was updated to reflect its commitment to fair and ethical business practices. During management meetings, the proprietor would also ask about contacts with competitors and issue the occasional reminder about the dangers of bid-rigging. The Compliance Officer also made a point of examining some of the bidding files to see if there were any signs of questionable conduct.

Analysis

In this hypothetical scenario, the Bureau would be prepared to resolve the matter with 123 Service Co. using an ACR because the affected volume of commerce and duration of the illegal conduct were relatively modest, there were no prior complaints or convictions, the offence appeared to have taken

place at a lower level in the company, the company took steps to payback the overcharge on one of the city contracts and the company fully cooperated with the Bureau.

Many aspects of 123 Service Co.'s compliance program meet the Bureau's criteria for a credible and effective corporate compliance program given the relatively small size of the company. The company's actions in the areas of management involvement and support, risk assessment, communications, monitoring, auditing and reporting mechanisms, and disciplinary procedures collectively represented a serious effort to prevent contraventions. The company's program could have been better in the area of training, incentives and controls over hiring and pricing, but these issues in this scenario would not disqualify the company from the option of an ACR.

If Acme Maintenance Ltd. wanted to resolve the matter with an ACR, the Bureau would insist on any ACR being conditional on Acme Maintenance Ltd. admitting responsibility for the illegal conduct, implementing a credible and effective compliance program, and taking steps to pay back the city for the overcharge on the contract it won through bid-rigging.

Hypothetical 5 — Failure to notify a merger

Corporations A and B are each Canadian publicly-traded companies with assets in Canada in excess of $400M. Corporation B owns shares of Corporation A and until recently, its shareholding has never exceeded 18%. Last month, Corporation B bought additional voting shares of Corporation A on the open market, as the Director of Corporation B's Trading Department felt that Corporation A's shares were currently undervalued, increasing Corporation B's voting interest in Corporation A to 21%.

A week following the acquisition, the transaction is briefly mentioned at a board meeting of Corporation B. Corporation B's General Counsel asked the Director whether anyone had checked with the Legal Department, prior to

making the acquisition, to ensure that no pre-merger notification filing was required under the Act. The Director replied that he thought this was not necessary as this acquisition of shares was made for investment purposes and that Corporation B was not acquiring control of Corporation A. General Counsel said that the Act does not require that control be acquired to trigger a notification obligation, adding that given the size of Corporations A and B, a filing was likely required and that their failure to notify prior to the acquisition may well be an offence under the Act. It was decided that external competition counsel should be retained.

Competition counsel confirmed that under the Act, a filing is required in respect of an acquisition of voting shares that are publicly-traded if the proposed acquisition results in the acquiring party, together with its affiliates, holding in excess of 20% of the target corporation's voting interests, and if certain financial thresholds are exceeded. Corporations A and B have sufficient assets and/or revenues to exceed those financial thresholds, and competition counsel concluded that there had been a failure to notify and that corrective measures should be taken immediately.

Competition counsel also pointed out that although Corporation A's shares were acquired on the open market, rather than pursuant to an agreement between Corporations A and B, Corporation A still had a notification obligation. He recommended that Corporation A be contacted without delay and that notification filings be prepared by both parties and submitted as soon as possible to the Bureau, together with the applicable filing fee and a letter explaining the circumstances of the failure to notify, stressing that both parties acted diligently as soon as they became aware of the issue and are in the process of implementing measures to prevent future notification failures.

Corporation B's compliance program

Corporation B has a competition law compliance program, but it had not been updated recently. Competition counsel recommended that Corporation B's competition law compliance program be updated immediately; in particular to cover the pre-merger notification requirements of the Act, along with supplemental compliance training for Corporation B's managers and directors.

All of competition counsel's recommendations were accepted and a corrective merger filing was submitted to the Bureau three weeks after the acquisition was completed.

Analysis

Parties that complete a notifiable transaction without submitting a notification under subsection 114(1) of the Act may have committed a criminal offence under subsection 65(2) of the Act, and may be liable to a maximum fine of $50,000.

As stated in the Bureau's *Procedures Guide for Notifiable Transactions and Advance Ruling Certificates Under the Competition Act* where a transaction has been completed in contravention of the Act, it is important to bring the matter to the attention of the Merger Notification Unit and submit a notification, together with the applicable filing fee and an explanation for the failure to notify, as soon as possible. The explanation should be submitted by an officer or director of the company, setting out the reasons why the notification was not filed in a timely manner, how and when the failure was discovered, and what steps have been taken to prevent future contraventions of the Act.

In the present case, once the corrective filing was received, the Bureau assessed the transaction to determine whether it was likely to result in a substantial lessening or prevention of competition, as the Bureau would normally do in respect of any proposed transaction that is brought to its

attention by way of a pre-merger notification. While the specific facts are not discussed here, for the purposes of this hypothetical scenario it is assumed that the transaction did not raise any substantive competition issues and that the Bureau decided not to challenge the transaction under section 92 of the Act. Consequently, the Bureau informed the parties that the Commissioner did not, at this time, intend to make an application under section 92 of the Act in respect of the transaction.

With respect to the failure to comply with Part IX of the Act, given that the parties voluntarily reported the failure immediately and complied with all corrective measures, as outlined in the Bureau's policy, and Corporation B had a compliance program and appropriately upgraded it, the parties were informed that, in this case, the Commissioner was of the view that there was no need to commence an inquiry under section 10 of the Act or to refer this matter to the PPSC for prosecution.

Hypothetical 6 — Limited consideration of program/digital economy

Company Y is a popular consumer electronics retailer with 15 stores across Canada that planned a back-to-school promotional event that would run from mid-August to the end of August. The promotion offered 40% off all laptops with the purchase of an all-in-one printer. Company Y's marketing department decided to promote the event via the company's website, emails and text messages.

To promote the back-to-school event on its website, Company Y created a new webpage. Near the top of the page were the words "Back-to-School Sale: 40% off all laptops!" and immediately underneath was text stating, "Requires minimum $100 purchase of an all-in-one printer", which text was equally prominent. Beside the text were images showing a laptop beside a printer.

Company Y also prepared promotional emails. The emails were sent to members of Company Y's frequent shoppers club and other consumers who signed up to Company Y's email list. The subject line stated "Back-to School Sale: 40% off all laptops!" The body of the email encouraged consumers to come down to the store while supplies lasted, and featured images of various laptop computers.

Text messages are also sent to consumers. The text messages all stated, "Back-to-School Sale: 40% off all laptops!" and invited consumers to hurry in to the store.

No mention was made of the requirement to buy a printer to qualify for the discount on the laptop in either the emails or the text messages sent to consumers.

Company Y's compliance program

Company Y's Compliance Program was created in 1997 and had not been updated since. It stated that prior to launching a promotional campaign, marketing materials had to be reviewed by senior management of the company and in-house counsel to ensure the materials comply with the Act. A meeting was always arranged for such review.

For the back-to-school event, the marketing department arranged a meeting with senior management and counsel. At the meeting, the Director of Marketing explained the plan for the back-to-school campaign, but presented only a mock-up of the proposed new webpage. Detailed notes taken during the meeting indicate that senior management and counsel conducted a diligent review of the website mock-up. One senior manager noted that the sentence "Requires minimum $100 purchase of an all-in-one printer" and the sentence "40% off all laptops," both are in the main part of the representation, and the nearby graphics of the laptop and printer together created the general impression that receiving the 40% discount was

conditional upon purchasing an all-in-one printer. The Director of Marketing also satisfied senior management and counsel that that the laptops in question were offered in good faith for a substantial period of time prior to the promotional period, and therefore raised no compliance issues under the ordinary selling price provisions of the Act.

Senior management and counsel approved the back-to-school campaign on the strength of the meeting, without ever reviewing the marketing materials to be sent via email and text.

Analysis

Following complaints about the text message and email advertisements, the Bureau examined the marketing campaign under the misleading advertising and deceptive marketing practices provisions of the Act, including the provisions of Canada's Anti-Spam Legislation ("CASL") that apply to the sending of electronic messages.

In this hypothetical analysis, the business failed to ensure that each version of the promotion was reviewed to ensure compliance with the Act. While the webpage did not appear to raise issues under the Act, the representations in emails and texts could create the false or misleading general impression that all laptops were eligible for the 40% discount, when in fact the discount was conditional on purchasing a printer.

In its case assessment, the Bureau recognized that Company Y had made efforts to establish a credible and effective program, and to apply it to the back-to-school event. However, the application of Company Y's compliance program to the back-to-school sale was only partially effective, in that it did not address all the representations being made, and it failed to take into account amendments to the Act, including those made under CASL. Furthermore, addressing only the use of websites without considering the

use of email, texting, smartphones and other electronic media alternatives reflected a failure to conduct a current risk assessment, and a failure to have appropriate controls in place.

While the compliance efforts fell well short of establishing that Company Y exercised due diligence, the Bureau gave some consideration to the program as a mitigating factor when determining the magnitude of administrative monetary penalties it would seek as a remedy. The level of mitigation was limited because the program was deficient, dated and only partially effective.

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Footnotes

1 See the Competition Bureau's *Conformity Continuum* bulletin.

2 The Bureau uses the term "compliance programs" throughout this bulletin but recognizes that often these programs are referred to in a broader sense as "compliance and ethics" programs. For added clarity, the term "compliance programs" in this bulletin refers specifically to corporate compliance programs designed to ensure compliance with the Acts.

3 For the purposes of this bulletin, the terms "business" and "company" are used interchangeably and include all forms of business entities, whether or not incorporated.

4 See Appendix A — *Corporate Compliance Program Framework*.

5 See Appendix D — Hypothetical Case Examples of Compliance Issues.

6 For the purposes of this bulletin, the term “court” includes the Competition Tribunal (the “Tribunal”).

7 For the purposes of this bulletin, the terms “employees”, “staff” and “personnel” are used interchangeably.

8 Additional resources to assist smaller businesses with the development of compliance programs are available through the Bureau’s compliance web portal.

9 Section 732.1 of the *Criminal Code* provides that a court may prescribe, as a condition of a probation order, that the offender establish a program (i.e. policies, standards and procedures to reduce the likelihood of the organization committing a subsequent offence).

10 Subsection 65(2) of the Act provides that every person who, without good and sufficient cause, the proof of which lies on that person, contravenes subsection 114(1) is guilty of an offence and liable on conviction on indictment or on summary conviction to a fine not exceeding $50,000.

11 Pursuant to section 36 of the Act, any person who has suffered loss or damage as a result of any offence under Part VI of the Act (such as conspiracy, bid-rigging, illegal trade practices, false or misleading representations and deceptive telemarketing) or as a result of a failure to comply with a court order may initiate legal proceedings for the recovery of damages.

12 See section 3 of this bulletin — Consideration Given by the Bureau to a Corporate Compliance Program.

13 Including contraventions of subsection 114(1) of the Act.

14 The Bureau's assessment will be based on the criteria set out in this bulletin, although it will be sufficiently flexible to incorporate the unique nature of the company in question. In that regard, the Bureau will consider such issues as the size of the company and any new or innovative features that the company employs to promote compliance with the law.

15 The Bureau will recommend immunity from prosecution for the business or individual involved in the offence that is first-in to make an application and meets all the requirements of the *Immunity Program*.

16 For example, comments from staff to investigating officers about their knowledge of the company's compliance program, corporate documents that indicate the level of management support for the program, etc.

17 See Section 3 of the Memorandum of Understanding between the Commissioner and the PPSC.

18 The following sections of the Act contain a due diligence defence: section 52.1, deceptive telemarketing; section 53, deceptive notice of winning a prize; and section 55, multi-level marketing plans.

19 Even if due diligence is not made out, the presence of a credible and effective compliance program may nevertheless be a mitigating factor considered by the court when determining the quantum of an AMP, for example.

20 Section 34 of the *Competition Act* allows for a court to impose prescriptive terms.

21 Trade associations face unique compliance issues regarding competition law. Given that an association provides a forum where competitors collaborate on association activities, trade associations are exposed to greater risks of anti-competitive conduct. It is very important that trade associations implement credible and effective programs with strict codes of ethics and conduct and appropriate procedures and compliance steps to prevent improper conduct and to prevent the trade association and its members from being used as a conduit for illegal activities. These trade association compliance programs could also be used as a means to collectively train and update its members' employees on their common compliance risks, where each company doing so individually would be cost prohibitive. For more information on trade associations, see the Bureau's pamphlet entitled *Trade Associations and the Competition Act*.

22 While references are made in this bulletin to the roles and responsibilities of the board of directors, these comments apply equally to the owners of businesses that do not have a board, regardless of their size.

23 Reference is made in this bulletin to the role of the Compliance Officer or group of persons responsible for the compliance function in a business. In cases of smaller businesses that do not have the resources to appoint such an officer on a full-time basis, these comments are directed to the manager with ultimate responsibility for establishing and enforcing the company's compliance program.

24 The United Kingdom's Office of Fair Trading, the predecessor to the Competition and Markets Authority ("CMA"), released a compliance guide "*How your business can achieve compliance with competition law*" that developed the area of risk-based corporate compliance. Many of these suggestions are drawn from that guide. Another useful reference regarding risk assessment is the *Framework Document on Anti-trust Compliance Programmes* (French only) from France's Autorité de la concurrence.

25 Other approaches can include: benchmarking other businesses on compliance risk analysis; looking at the characteristics of the different markets where the company operates; and reviewing guides issued by the government and other agencies that work on compliance issues.

26 See Appendix B — Certification Letter.

27 The Act defines "product" to include an article or a service.

28 Businesses may want to consider extending this to other third party entities with whom the company frequently interacts, such as suppliers and distributors.

29 For the purposes of this document, "relevant staff" means those who could be in a position to potentially engage in, or be exposed to, conduct in breach of the Acts and therefore are in the best position to challenge the conduct and/or report it to the Compliance Officer.

30 See Appendix C — Due Diligence Checklist, which is designed to help businesses comply with the Acts.

31 These include the Bureau's fact sheets and pamphlet on corporate compliance program for small and medium-sized businesses, multimedia tools as well as detailed guidelines and bulletins on various provisions of the Act. They are available on the Bureau's website. See also Appendix A — Corporate Compliance Program Framework and Appendix C — Due Diligence Checklist.

32 The frequency of training can be guided by evaluations of employees' awareness and understanding of the rules and the continuing impact of prior training, and by new risks arising from changes both within and outside of the business.

33 "Verification", "verify", "audit" and "auditing" as used in this bulletin refer to "compliance auditing."

34 This should include, where appropriate, the retention of those with the necessary expertise to enable a proper assessment of the circumstances.

35 See section 3 of this bulletin — Consideration Given to Corporate Compliance Programs — which refers to the due diligence defence.

36 Monitoring and verification of the effectiveness of compliance programs can also identify the need for additional or new training.

37 For more information on how to apply for immunity, see the Bureau's *Immunity Program under the Competition Act* and *Immunity Program: Frequently Asked Questions*.

38 For example, continuous monitoring is required if the business regularly makes representations to the public, or if the business frequently bids on contracts.

39 Companies need to be mindful of the requirements of the *Privacy Act* and consult with legal counsel prior to searching an employee's paper files or computer.

40 J. Murphy, "Using Incentives in Your Compliance and Ethics Program" (Society of Corporate Compliance and Ethics; 2012).

41 See section 3 of this bulletin — Consideration Given to Corporate Compliance Programs.

42 "Verification" refers to "compliance auditing."

43 For more information on specific provisions of the Act, see the Bureau's website.

44 See the Bureau's Enforcement Guidelines on *The Abuse of Dominance Provisions* of the *Competition Act* (sections 78 and 79 of the Act).

45 See the Bureau's *Competitor Collaboration Guidelines*.

46 For the purpose of this Appendix, a “leader” is a business whose actions are taken to have an appreciable or significant impact in a market. Market share is a good indication to determine if a business is a leader in a market. The Bureau’s general approach with regard to market share is that a market share of less than 35 percent will generally not give rise to concerns. See the Bureau’s Enforcement Guidelines on *The Abuse of Dominance Provisions* of the *Competition Act* (sections 78 and 79 of the Act).

47 The Bureau has published a set of “dos and don’ts” specifically designed for trade associations in its “*Trade Associations and the Competition Act*” pamphlet.

Date modified:
2022-01-20

ontact the Competition Bureau

This is Exhibit “93” referred to in the Affidavit of Mary DeCaire sworn by Mary DeCaire at the City of Toronto, in the Province of Ontario, before me on May 5, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

JAKOB KELLY

Competition Bureau Canada
Bureau de la concurrence Canada



STAYING COMPETITIVE IN A CHANGING WORLD

Protecting and Promoting Competition for the Benefit of All Canadians

ANNUAL REPORT OF THE COMMISSIONER
OF COMPETITION FOR THE YEAR ENDING
MARCH 31, 2016

Canada

This publication is not a legal document. It contains general information and is provided for convenience and guidance in applying the *Competition Act*.

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STAYING COMPETITIVE IN A CHANGING WORLD

Competition is dynamic by nature. It spurs progress and drives innovation. And for the benefit of Canadian consumers and businesses, the Competition Bureau must be just as dynamic itself — evolving our practices and processes to respond to a changing marketplace and the impacts of disruptive new technologies and business models.

In 2015–16, we did exactly that: pursuing our mandate to enforce and promote Canada's competition laws while forging new partnerships, adopting new ways of engaging with consumers and industry, and completing our organizational realignment into "One Bureau" dedicated to protecting competition so that Canadians can continue to benefit from greater choice and lower prices.



HIGHLIGHTS: 2015–16

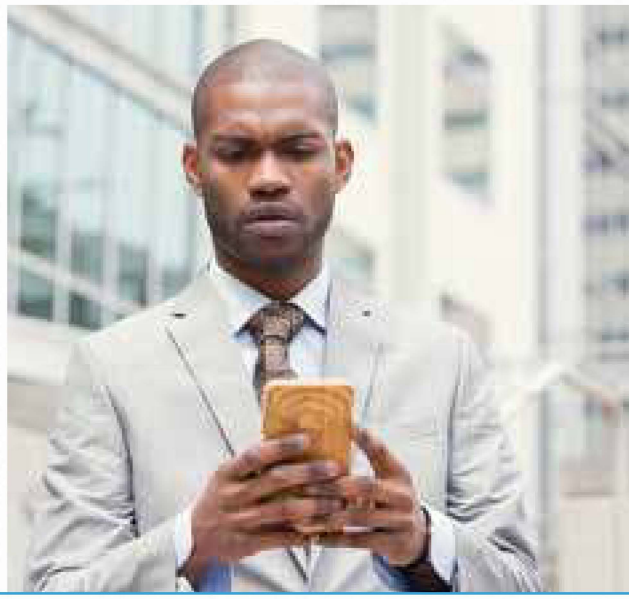
A YEAR OF PROTECTING AND PROMOTING COMPETITION

Putting a stop to unwanted text messaging

It can be a shock to find you've been charged for something you thought was free.

That's exactly what happened to Canadian mobile phone customers who were charged for services they did not want or for which they did not agree to pay, such as ringtones, trivia questions and other "premium" content.

The Bureau's innovative enforcement approach to stopping these kinds of false or misleading representations led to a settlement with Telus that included up to $7.34 million in rebates for consumers who were unknowingly charged for these services — the largest refund in Bureau history. Our strategy? Instead of going after individual perpetrators, we went straight to the wireless providers who permitted these unauthorized third-party charges to appear on their customers' bills. Related proceedings against Canada's "big three" providers (Rogers, Bell, Telus) and the Canadian Wireless Telecommunications Association (CWTA) began in 2012; this record-setting settlement follows a similar agreement reached with Rogers in March 2015.

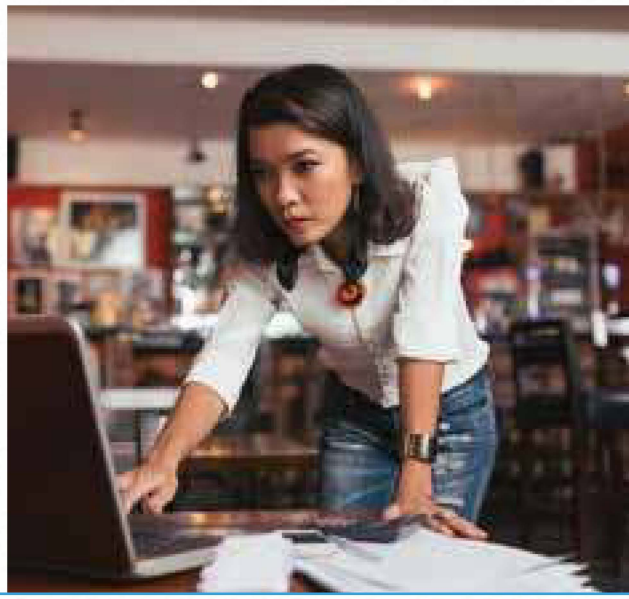


Honesty in online reviews

Ever get the feeling an online review is too good to be true? In some cases, you might be right.

With Canadians depending more and more on the information they find online to make buying decisions, we took a stand against the practice of "astroturfing" — that is, when a company posts fake online reviews as though they were written by independent and impartial consumers.

After our investigation found Bell employees and contractors were encouraged to post positive reviews and ratings for the company's mobile apps, we reached an agreement with Bell that saw the telecommunications provider pay a $1.25 million administrative monetary penalty. In addition to taking measures to strengthen its corporate compliance program, Bell also hosted a workshop — at its own expense — to discuss the importance of trust and integrity in the digital economy.



Safeguarding our infrastructure investments



When companies collude while bidding on government contracts, Canadian taxpayers are the ones who ultimately pay the price.

This is especially damaging to the economy in large-scale construction projects essential for delivering safe, high-quality public infrastructure. That's why the Bureau continues to investigate and push for fines for criminal cartels where there is evidence of bid-rigging in the construction sector.

Over the past few years, our investigations have resulted in numerous criminal charges and fines against companies that rigged bids on road construction, water treatment and other contracts in Quebec — including more than 44 charges against three companies and four individuals in the past year alone. To complement our enforcement efforts, we've also increased our compliance outreach and awareness initiatives to help the construction sector and government procurement officials better recognize and prevent this criminal anti-competitive behaviour.

An open road for new ride-sharing models



Consumers have embraced disruptive services like Uber that have brought new business models to the taxi industry — despite resistance from cab companies in many cities.

In November 2015, we published a paper calling for the modernization of Canada's taxi regulations to allow taxis and ride-sharing services to compete on an even playing field. To give citizens more transportation choices at better prices, we argued that cities should embrace rather than prohibit ride-sharing services, imposing new regulations only when necessary to protect the safety of passengers and drivers. At the same time, regulations on taxis should be relaxed to allow them to compete more effectively with new business models.

That paper directly influenced the development of new taxi regulations in several Canadian cities. It also exemplified our commitment to respond quickly to market shifts for the sake of Canadian consumers, and in support of competition and entrepreneurial innovation.

Fuelling competition in the retail gas sector

When gas prices increase, Canadians have less money to spend on other important purchases like food, housing and health care for their families.

We upheld our commitment to ensure competitive gas pricing by challenging, in a number of local markets, Parkland Fuel Corporation's proposed acquisition of Ontario and Manitoba gas stations from Pioneer Energy, and by continuing our investigation into retail gas price-fixing in Quebec.

In the Parkland case, we obtained our first-ever mediated settlement, demonstrating why mediation may become a "go to" tool for resolving disputes quickly and achieving outcomes that benefit all parties involved. Our price-fixing investigation also continued to bring greater fairness to pumps across Quebec. Since 2008, our investigation has resulted in charges being laid against dozens of individuals and companies, with millions in court-imposed fines.



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THE COMPETITION BUREAU AT A GLANCE

The Competition Bureau (Bureau) has a legislated mandate to ensure Canadian consumers and businesses prosper in a competitive and innovative marketplace. We are committed to doing so through all means available, from law **enforcement** to competition **promotion**.

Responsibilities

Headed by the Commissioner of Competition, the Bureau administers and enforces Canada's:

- *Competition Act*
- *Consumer Packaging and Labelling Act* (except as it relates to food)
- *Textile Labelling Act*
- *Precious Metals Marking Act*

Guiding Principles

Vision

To be one of the leading competition agencies in the world; one that is open, transparent and collaborative, and that vigorously enforces and promotes competition to provide Canadians with the benefits of a competitive and innovative marketplace.

Mission

To promote and protect competition for the benefit of Canadians, the Bureau will administer and enforce the Acts with fairness and predictability to prevent and deter anti-competitive behaviour and deceptive marketing practices, review mergers to ensure they do not harm competition, and empower consumers and businesses.

Core Values

Openness and transparency

We engage with our stakeholders through a wide range of new and existing means of communication to dialogue and share information, and to explain to Canadians and our partners the benefits of competition for consumers, businesses and the productivity of the Canadian economy.

Collaboration

We work with our partners to advance competition to ensure our marketplace is functioning efficiently.

Integrity and fairness

We act with integrity and fairness and in the public interest at all times. This requires a principle-based approach to enforcing and administering the Acts. Our decisions are based on facts, evidence and sound judgment. We are committed to protecting the confidentiality of sensitive information.

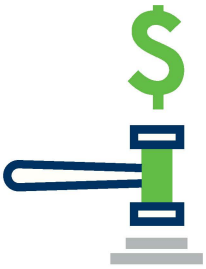
Respect

We interact honestly and respectfully with our colleagues, partners and all Canadians — recognizing their diversity and their individual contributions to healthy competition.

Leadership

We show leadership through our actions, strategic approach and commitment to continuous innovation.

The Year in Numbers



$16.27 MILLION
IN FINES, ADMINISTRATIVE MONETARY PENALTIES[1] IMPOSED AND CUSTOMER RESTITUTIONS

$3.18 MILLION
TOTAL FINES IMPOSED

$5.75 MILLION
ADMINISTRATIVE MONETARY PENALTIES

$7.34 MILLION
CUSTOMER RESTITUTIONS



221
MERGER REVIEWS COMPLETED

64
INVESTIGATIONS (NON-MERGER) CONCLUDED



7
GUILTY PLEAS IN CARTEL CASES

6
COMPANIES SENTENCED FOR CRIMINAL CONDUCT UNDER THE *COMPETITION ACT*



135
SPEECHES AND PRESENTATIONS TO STAKEHOLDERS

25
ADVOCACY INITIATIVES

10,993
COMPLAINTS AND INFORMATION REQUESTS RECEIVED BY THE BUREAU INFORMATION CENTRE

1 Administrative monetary penalties (AMPs) are different from fines in that they are used to promote and encourage compliance with the Competition Act. Failure to pay an AMP may be enforced civilly as a debt due to the Crown. A fine, by contrast, is a punishment imposed by a court upon conviction of a criminal offence and failure to pay it may lead to imprisonment.

Enforcement



12
GUILTY PLEAS (NON-CONTESTED) BY INDIVIDUALS OR COMPANIES

16
ONGOING CIVIL APPLICATIONS BEFORE THE COMPETITION TRIBUNAL OR THE COURTS

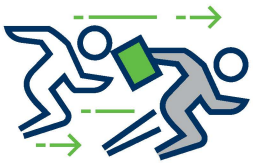
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ALTERNATIVE CASE RESOLUTIONS EMPLOYED

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SEARCH WARRANTS ISSUED

15
SECTION 11 ORDERS ISSUED

Advocacy and Outreach



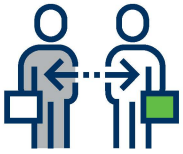
4
REPRESENTATIONS TO REGULATORY BODIES

64
PUBLICATIONS

33,860
PUBLICATION DOWNLOADS

490
MEDIA REQUESTS

Partnerships



2
NEW INTERNATIONAL COOPERATION AGREEMENTS

7
NEW DOMESTIC PARTNERSHIP AGREEMENTS

15
BILATERAL MEETINGS WITH FOREIGN LAW ENFORCEMENT AND COMPETITION AGENCIES

17
MEETINGS AND WORKSHOPS WITH INTERNATIONAL ORGANIZATIONS

MESSAGE FROM THE COMMISSIONER

The most rewarding aspect of change is seeing it take effect. Last year was the first under our new organizational structure and, while the process of transformation is still ongoing, it has already helped us become a more open, transparent and collaborative agency. To achieve even greater internal integration, we developed our first three-year strategic plan, which lays out five strategic objectives to guide our current and future work.



Externally, we're operating under a new government focused on making Canada a centre of global innovation. Our work to bolster and enhance competition will be a fundamental support in fostering that innovation.

The challenge, of course, is that the global economy is changing at an unprecedented speed and magnitude. To respond and adapt accordingly, we at the Bureau must also be innovative in everything we do.

I'm pleased to say that a strong commitment to innovation can already be seen in many of our accomplishments from the past year. We've invested in shared compliance because we are convinced we can achieve greater success by working collaboratively with businesses and consumers. We've also advocated for new business models that benefit consumers. For example, we issued recommendations on modernizing the regulations in Canada's taxi industry to allow taxis and ride-sharing services to compete on an even playing field. This advice to regulators had a direct impact on the development of regulations in municipalities across Canada, and feedback from stakeholders in the industry suggests that it was perhaps our most important and effective piece of advocacy to date.

By paying attention to the potential presented by emerging technologies and business models in today's marketplace, we become more innovative and effective in promoting new forms of competition. And with more competition comes more innovation that ultimately benefits consumers, businesses and the economy as a whole.

At the same time, we have been steadfast in our role of enforcing Canada's competition laws. Our cartel investigations have led to guilty pleas and fines related to auto parts, retail gasoline and public sector infrastructure contracts. We also secured record-setting consumer refunds through our ongoing investigation into misleading advertising in the wireless telecommunications sector.

Now that we've successfully implemented our new organizational structure, our "One Bureau" approach is the foundation for continuous improvement going forward. We are striving to work even more collaboratively and transparently with partners and stakeholders, and are focusing more of our efforts on supporting innovation in the digital economy. We are also improving the way we measure our performance to align with the government's emphasis on delivering concrete results — through reporting that is focused on real-world impact. The success of our work will be measured not only by the number of cases we have concluded, but also by whether or not they encourage compliance with the law or deter anti-competitive behaviour.

In closing, the Bureau remains dedicated not only to keeping Canada competitive but also to staying ahead of the curve in a rapidly changing world. This commitment means being more creative and innovative in our defence of a competitive marketplace for Canadians. As Wayne Gretzky once said, we need to skate to where the puck is going, not where it's been — and that's how we will approach our work for Canadians.

John Pecman
Commissioner of Competition

OUR STRATEGIC OBJECTIVES

To better meet the needs of Canadians in a changing marketplace, last year we developed our first three-year plan and shared it publicly. The Bureau's *2015–2018 Strategic Vision* describes the mission and values at the core of our organization, and sets out five new strategic objectives that will guide our work on behalf of consumers and businesses over the next three years:

1.  **INCREASE COMPLIANCE** – Use all available tools to increase compliance with Canada's competition laws and prevent and deter anti-competitive or deceptive conduct that could threaten the health, growth and confidence in the Canadian economy.

2.  **EMPOWER CANADIANS** – Create an environment of competitive prices, greater product choice and informed decision-making for the benefit of all Canadians.

3.  **PROMOTE COMPETITION** – Promote and advocate for a more competitive marketplace, emphasizing smart regulation focused on achieving legitimate regulatory objectives.

4.  **COLLABORATE WITH PARTNERS** – Collaborate with domestic and international partners to promote strong competition principles and expand opportunities for Canadian participation in world markets.

5.  **CHAMPION EXCELLENCE** – Promote a culture of excellence throughout the Bureau founded on openness, collaboration, engagement, and securing tangible results.

The *2015–2018 Strategic Vision* is supported by our annual plans, which provide details on how we intend to deliver on each of these strategic objectives during each fiscal year. Commitments from our 2015–16 Annual Plan (the first year of operations under the new three-year plan) are listed at the start of each core reporting section of this report along with an indication of our progress against those commitments.

PRIORITY 1: INCREASE COMPLIANCE

Protecting Canadians with new approaches to enhance compliance and enforcement

How do we take on the most serious forms of anti-competitive behaviour? With a compliance and enforcement approach that promotes competition and fosters innovation in the marketplace. Our newly updated Competition and Compliance Framework, for example, serves as the foundational guideline for how we advance investigations and cooperate with other agencies — helping maximize compliance and protect competition in Canada's changing economy.

PRIORITY 1

Use all available tools to increase compliance with Canada's competition laws and prevent and deter anti-competitive or deceptive conduct that could threaten the health, growth and confidence in the Canadian economy.

COMMITMENTS	STATUS
Continue effective and integrated enforcement and administration of our legislation through the full use of the *Competition and Compliance Framework*.	◉
Engage with the procurement community to increase awareness of bid-rigging and other cartel conduct and its consequences.	◉
Deploy technical infrastructure and provide advice on IT-related strategies to support compliance with Canada's Anti-Spam Legislation (CASL).	◉
Refresh the *Corporate Compliance Programs* bulletin to promote the adoption of credible and effective competition compliance programs.	◉
Provide stakeholders with accurate and up-to-date guidance by consulting on the advancement and updates of documents such as the *Intellectual Property Enforcement Guidelines*.	◉

◉ ACHIEVED ◒ PARTIALLY ACHIEVED

24

ALTERNATIVE CASE RESOLUTIONS[2]

5

NON-MERGER-RELATED CONSENT AGREEMENTS

12

CORPORATE COMPLIANCE PRESENTATIONS DELIVERED TO KEY STAKEHOLDER AUDIENCES

3,200

VIEWS OF THE *CORPORATE COMPLIANCE PROGRAMS* BULLETIN

Cracking Down on Cartels and Bid-Rigging

A cartel is a group of businesses that agrees to engage in anti-competitive practices like bid-rigging, where they submit a bid arrived at by agreement or they agree not to submit, or to withdraw a bid on a contract so another wins the job. It's a serious criminal offence that harms Canadians by driving up prices[3] and by reducing the incentive to innovate. As always, we are committed to enforcing the provisions of the *Competition Act* and will not hesitate to take action against cartels to protect consumers and businesses.

Persistence pays off against an auto-sector cartel

The largest cartels investigation in Bureau history continued last year — and continued to generate results. In December 2015, Toyo Tire & Rubber Co. Ltd. pleaded guilty to three counts of bid-rigging and was fined $1.7 million for making secret agreements with other suppliers of anti-vibration vehicle components about how to respond to quote requests from Toyota. This marks the eighth guilty plea since the investigation began in 2009, secured in large part because of the information provided by the 21 parties cooperating in our immunity and leniency programs. Since 2013, this investigation has resulted in more than $70 million in fines issued by the courts.

Keeping competition flowing for municipal services

With the federal government set to undertake one of the largest infrastructure investments in Canadian history, we have heightened our efforts to uncover and put a stop to cartel activity in the municipal services sector — and protect Canadian taxpayers from footing the bill for inflated procurement costs. Last year, as a result of our investigations in this area, Chalifoux Sani Laurentides Inc. pleaded guilty and was fined $118,000 for its participation in a bid-rigging scheme to obtain sewer cleaning and maintenance contracts in Quebec. Five other companies and one individual in Quebec have also pleaded guilty for their involvement in this cartel since 2012.

In June 2015, following an investigation that started in 2011, we laid 44 criminal charges against three companies and four individuals accused of bid-rigging for the supply of water services to municipalities in Quebec. Another company, Les Enterprises Paysagistes Gaspard Inc., pleaded guilty to nine counts of bid-rigging and was fined $117,000 for its role in the alleged conspiracy.

Learning from experience for more effective enforcement

The Bureau experienced setbacks in two of its major cartels investigations last year. Following our investigation into price-fixing in the chocolate industry, charges were stayed against Mars Canada, Nestlé Canada and ITWAL Ltd., and in our case related to bid-rigging for federal government IT service contracts, six individuals and three companies were found not guilty.

2 Cases where the Bureau resolves concerns of non-compliance without the need for litigation or consent agreements.

3 Recent studies suggest that in cases where bid-rigging occurs, governments and businesses end up paying approximately 20 percent more than usual for the goods or services procured — costs that are ultimately passed on to taxpayers and customers.

In the spirit of innovation and transformation, we are drawing on the lessons learned from these cases to re-examine our enforcement processes — including evaluating our Leniency and Immunity Programs and engaging an external expert to review our procedures. We are also working to strengthen the way we collaborate and communicate with the Public Prosecution Service of Canada.

Toward More Truth in Advertising

Consumers put their trust in businesses to provide accurate product information so that they can make smart buying decisions for their families. The *Competition Act*'s prohibitions against deceptive marketing and misleading advertising practices (such as fake testimonials and unproven performance claims) are essential to maintaining a healthy, competitive marketplace.

Less time in court, more benefits for Canadians

Litigation isn't the only tool we use to resolve competition issues. Where possible, we work toward consent agreements that benefit Canadians — like the one reached in December 2015 with Reebok-CCM. Reebok-CCM's advertisements for the CCM Resistance hockey helmets created the impression that the equipment would protect players from head injuries such as concussions. Although the company had conducted testing on the helmet prior to making the claims, we concluded that the testing was not adequate and proper to support the marketing claims. Reebok-CCM cooperated fully with our investigation and, as part of the consent agreement reached, agreed to stop making certain performance claims and to implement an enhanced corporate compliance program to prevent similar issues from reoccurring. It also donated $475,000 in equipment to a charity that supports youth sports — a great alternative to spending unnecessary time and money in the courtroom.

This represents our second performance claim case settled in the past two years after we reached a similar consent agreement with Bauer in 2014.

Protecting the integrity of online reviews

Online reviews can help Canadians make informed buying decisions — but only if they represent the thoughts and experiences of real consumers. Last year, we determined that certain Bell employees were encouraged to post positive reviews and five-star ratings for the MyBell and Virgin My Account mobile apps on the iTunes App Store and the Google Play Store. By not disclosing the fact they worked for Bell, these reviews created the misleading impression that they were made by ordinary consumers. In an excellent example of shared compliance, Bell acted quickly to remove the reviews as soon as it was made aware of the matter.

As part of the agreement we made with Bell in October 2015, the company will no longer direct employees to rate or review its own products —

PROVIDING GUIDANCE TO THE PROCUREMENT COMMUNITY

While the construction sector has always been a hotbed for bid-rigging, we're working to change that through an increased focus on shared compliance. Believing that the Bureau and all of its stakeholders have an important role to play in ensuring compliance, we routinely host educational sessions to provide procurement officers with the tools they need to prevent, detect and help deter criminal cartel activity — delivering more than 300 speeches and presentations since 2005.

In 2015–16, we gave twelve presentations to procurement officers and government officials, including a presentation on bid-rigging and corporate compliance to the City of Saskatoon, University of Saskatchewan, Saskatchewan Ministry of Highways and Saskatchewan Research Council as part of Anti-Cartel Day. We also launched our new Competition in the Construction Industry webpage, providing businesses in that sector with guidance on the criminal cartel provisions of the *Competition Act,* as well as tips and resources for staying on the right side of the law.

and will enhance its corporate compliance program to focus more on this issue to prevent it from happening again. In addition to paying an administrative monetary penalty of $1.25 million, Bell also hosted a workshop to discuss trust in the digital economy and the integrity of online reviews.

GIVING CANADIANS GUIDANCE TO PROTECT THEMSELVES AGAINST SPAM

Canada's Anti-Spam Legislation (CASL) gave the Bureau a powerful new tool for deterring deceptive online marketing practices that harm both consumers and businesses. In addition to our ongoing proceedings against Avis and Budget, we launched a new inquiry under the updated false/misleading representations provisions of the Competition Act.

We also continued to work with partners like the Canadian Radio-television Commission and the Office of the Privacy Commission to promote awareness of CASL and encourage Canadians to protect themselves against spam. This included updating the Fight Spam website, focusing on the digital economy during Fraud Prevention Month, and hosting a Twitter chat on subscription traps and free trial scams during our fourth annual "2 Good 2 Be True Day."

Putting a Stop to Monopolistic Practices

When companies abuse their market power to prevent or lessen competition substantially in a particular market, Canadians suffer from higher prices, less choice and less innovation. Last year, we continued our work to prevent that from happening with eight new investigations and three inquiries into these practices and made progress in several significant ongoing investigations dealing with this type of conduct.

Turning up the heat when companies limit consumer choice

The marketplace is healthier when consumers can choose freely between service providers. In October 2015, we reached a consent agreement with Direct Energy to resolve concerns that it had limited consumer choice by establishing water heater rental return policies that prevented Ontarians from switching to its competitors or terminating their contracts to purchase their own water heaters.

We first brought the case against Direct Energy to court in 2012. Even though the company left the Ontario water heater rental market in 2014, we continued to pursue the case — and were provided clarity on our ability to do so from the Competition Tribunal in March 2015. As part of the agreement reached, Direct Energy payed a $1 million administrative monetary penalty. It is also required to maintain a corporate compliance program in the event it re-enters the Ontario water heater rental market, showing that companies can't evade responsibility just because they're no longer active in a particular market.

"The play is under review"

When Rogers and the National Hockey League (NHL) entered into a 12-year broadcast and multimedia agreement in 2013, which gave Rogers exclusive rights to all nationally broadcast NHL games as well as the Stanley Cup Playoffs, it was important to understand how the deal would affect the Canadian broadcasting industry — especially in the context of the ongoing evolution of the broadcasting landscape, with more viewers choosing on-demand service options over the traditional "linear" model of watching television. (Prior to this agreement, the national broadcasting rights were divided between Bell and CBC, with Rogers and Bell holding regional broadcasting rights to various Canadian teams.)

Our review of the agreement, which we completed in October 2015, gathered input from advertisers, television service providers and distributors to look at the potential impact on prices paid for Rogers' Sportsnet channels, advertising rates during NHL games and the ability of Rogers' competitors to obtain "must-have" sports programming. In the end, we found that the agreement has, thus far, not substantially lessened or prevented competition in the broadcasting industry.

Mergers Under the Microscope

Under the *Competition Act*, mergers of all sizes and in all sectors may be reviewed to ensure they don't reduce or prevent competition. These reviews consider everything from economic concentration in the relevant industry to how much of the market the merging companies already own. If a merger is likely to affect competition, we may apply to the Competition Tribunal for an order to prevent, dissolve or alter it. We may also negotiate a consent agreement with the purchaser to resolve our concerns.

MERGERS: THE YEAR IN REVIEW

We completed 221 merger reviews in 2015–16, including 65 complex reviews (up from 55 complex reviews the year before). We met our service standard for timely review in 96 percent of non-complex cases and 85 percent of complex cases, with the average review taking respectively 36.40 days and 10.85 days for complex and non-complex cases.

We entered into consent agreements to resolve seven cases, including Pfizer/Hospira, BCE/Rogers/Glentel and Iron Mountain/Recall. We also completed reviews of several other high-profile transactions such as Shaw/Wind Mobile and Renaud-Bray/Archambault.

Preserving competition at the pumps

We reached a historic consent agreement with Parkland Fuel Corporation, last year, to resolve litigation related to its acquisition of Pioneer Energy. Parkland, which operates or supplies about 700 gas stations across Canada, had proposed to acquire 181 stations and 212 supply agreements from Pioneer — a deal that would have increased Parkland's market share to as much as 100 percent in certain parts of Ontario and Manitoba.

To protect consumers in those markets from the higher gasoline prices, we challenged the proposed acquisition in 14 communities across the two provinces. Following the first-ever mediation in a Competition Tribunal proceeding, we were able to reach an agreement that made sense to all parties: Parkland agreed to sell gas stations or supply agreements in six of the 14 markets and surrender its ability to increase any margin it earns on the sale of gasoline in two markets where it is a wholesale supplier.

Promoting Compliance

We believe compliance with Canada's competition laws isn't just something for the Bureau to enforce: it's a shared responsibility in which the business and legal communities also play an important part. What's more, we know most businesses want to comply with the law. That's why, throughout 2015–16, we increased our compliance promotion efforts by developing innovative new resources to help businesses comply with the law.

Sharing the importance of compliance with all Canadians

Established in 2015–16, the Bureau's new Compliance Unit leads our compliance promotion efforts, giving presentations across Canada and developing new resources to help businesses adopt credible and

NEW WAYS TO ENGAGE CANADIANS IN MERGER REVIEWS

When examining any merger, we obtain information from a variety of industry participants, including customers, suppliers, competitors and associations. For some consumer-facing mergers, we may also facilitate the gathering of information by inviting Canadians to submit views on a proposed merger. Such views are received on a confidential basis, and may be submitted via the Bureau's website. In July 2015, we invited Canadians to use our website to provide input on Renaud-Bray's proposed acquisition of a division of Groupe Archambault.

effective corporate compliance programs. It delivered 12 compliance presentations to Canadian stakeholders last year, including businesses, law firms, trade associations, academia and government officials, and also hosted a joint corporate compliance workshop with the International Chamber of Commerce in Calgary. The Compliance Unit also reviews corporate compliance programs in enforcement cases to ensure they are credible and effective, shares best practices with foreign antitrust agencies and promotes the Bureau as an international leader in corporate compliance.

We continued to extend our reach by releasing new online content and videos to help businesses reinforce compliance. Our Corporate Compliance Portal, for example, which offers businesses resources to recognize and prevent anti-competitive conduct, received more than 3,800 visits in 2015–16. And in May 2015, our *Fair Play* video used the metaphor of hockey to explain how competition benefits businesses and consumers. The Canadian Chamber of Commerce helped us grow our audience for that video by sharing *Fair Play* with its 450 local chambers and boards of trade representing some 200,000 businesses.

Helping businesses build effective and credible compliance programs

Competition compliance programs can help businesses of all sizes identify areas where they might be at risk of violating the *Competition Act*. Last year, we published a new version of our *Corporate Compliance Programs* bulletin, drawing on the latest approaches to compliance and enforcement to give small- and medium-sized businesses up-to-date guidance on how to develop and maintain a credible and effective program. The revised bulletin was very well received, with Canadians downloading it more than 3,200 times in 2015–16.

We also published several other new resources, including a pamphlet on corporate compliance programs, three competition and compliance fact sheets, and a new compliance video. Internationally, the bulletin and its associated materials were praised by compliance professionals, legal commentators and antitrust enforcers. In addition, a number of domestic law firms noted that the bulletin's release demonstrated a more serious and systemic approach to compliance by the Bureau and "confirmed the Bureau's leading place amongst competition and antitrust regulators with respect to compliance programs."

TRANSPARENCY IN EVERYTHING WE DO

Openness and transparency are two of the Bureau's core values — and we uphold those values by applying Canada's competition laws in a clear and predictable way. This includes consulting with Canadians on the development of new compliance guidelines. Last year, we held consultations on a number of key documents, including our draft *Competition and Compliance Framework* bulletin (published November 2015), the *Pre-Merger Notification Interpretation Guidelines* (published September 2015) and the *Intellectual Property Enforcement Guidelines* (published March 2016).

To bring more transparency to our merger review process, we updated the *Merger Review Process Guidelines* in September 2015 to include new instructions on how merging parties should respond to requests for supplementary information. In addition, in April 2015, we issued the *Production of Electronically Stored Information Enforcement Guidelines* to inform businesses of our preferred format for receiving electronically stored information during an investigation, making our processing and review of submitted information much more efficient.

We also released 8 position statements to provide the antitrust community, industry stakeholders and the general public with clarity on our approach to certain investigations, inquiries and merger reviews, as well as their results. This included statements about our review of the Renaud Bray and Archambault merger, as well as the NHL/Rogers broadcasting rights agreement.

PRIORITY 2: EMPOWER CANADIANS

Equipping Canadians with new tools and resources to protect themselves

With disruptive technologies and business models reshaping every market sector, consumers need accurate and reliable information to make smarter buying decisions and defend themselves against the latest forms of fraud. By focusing our enforcement efforts on the issues that will have the greatest potential impact on consumers — complemented by innovative new research, outreach and partnership activities — we are empowering Canadians to realize the full benefits of a competitive marketplace.

PRIORITY 2

Create an environment of competitive prices, greater product choice and informed decision-making for the benefit of all Canadians.

COMMITMENTS	STATUS
Pursue consumer-focused enforcement through a wide variety of tools in our *Competition and Compliance Framework* to assist consumers by preventing and deterring deceptive marketing practices, cartels, and anti-competitive conduct and mergers.	◉
Conduct research on emerging issues in competition law, economic policy and deceptive conduct to identify matters with the highest potential to affect consumers and then prioritize assignment of adequate resources.	◉
Promote awareness through outreach activities, including: • Presentations to consumer groups, partners and the legal and business communities to promote the Bureau's mandate • Developing and delivering an anti-fraud public awareness campaign for Fraud Prevention Month 2016 • Increasing visibility and public access to the Bureau's information videos and other educational materials through outreach and social media	◉
Cooperate and collaborate with consumer protection agencies to act against fraudulent and deceptive advertising in the online and mobile markets.	◉
Subject to parliamentary approval of the *Price Transparency Act*, implement legislation and increase awareness of our work in this area through consumer education and outreach.	N/A[4]

◉ ACHIEVED ◒ PARTIALLY ACHIEVED

4 Our 2015–16 Annual plan included a commitment to implement the *Price Transparency Act*, which would have helped tackle geographic price discrimination (specifically, the difference in prices between Canada and the United States). After initiating a study of the Canada–U.S. price gap last year — including conducting international benchmarking and contacting industry experts — we suspended our work in this area when the *Price Transparency Act* bill died on the Order Paper.

$7.34M
IN CUSTOMER RESTITUTIONS

10,993
COMPLAINTS AND INFORMATION REQUESTS

682,070
VISITS TO THE BUREAU'S WEBSITE

6
CONSUMER ADVISORIES PUBLISHED[5]

A Consumer-Focused Approach

Canadians have always been at the heart of everything we do. In 2015–16, we concentrated many of our enforcement efforts on the issues that directly affect Canadian consumers, from exposing hidden mobile phone charges to breaking up price-fixing at the pumps in Quebec.

Not every sale is a bargain

Consumers buy products on sale because they believe they're saving money. But retailers may not always offer sales in good faith. The *Competition Act* contains provisions to ensure that when advertisers promote products at sale prices, consumers are not enticed by references to artificially inflated 'regular prices'. In May 2015, we reached a consent agreement with arts-and-crafts store Michaels of Canada ULC after our investigation found it did not ensure its custom and ready-made frames were offered for sale in good faith before promoting them at substantial discounts. As part of the agreement, Michaels payed a $3.5 million administrative monetary penalty and established a corporate compliance program to ensure that the price claims for all its products comply with the *Competition Act*.

Keeping gasoline prices affordable in Quebec

Gasoline is a significant expense for most Canadian households, making competition among gas retailers important to keeping costs down. Last year, we secured a $1 million fine against Les Pétroles Global Inc. for its role in a price-fixing conspiracy in Victoriaville, Sherbrooke and Magog, Quebec — part of a wider investigation that has brought charges against 39 individuals and 15 companies since 2008. To date, more than $4 million in total fines have been imposed against companies in Quebec and Ontario accused of price-fixing in the retail gasoline market.

Record-setting refunds for wireless customers

In 2015–16, we obtained our largest consumer restitution ever: a total of $7.34 million in rebates from Telus for facilitating "premium" text message services that consumers were misled into believing were free. As part of that settlement, which resulted from our ongoing investigation into Canada's three largest wireless providers, Telus agreed to donate $250,000 for research and education on how service providers collect and use customers' personal data, and establish a consumer awareness campaign on how to avoid unwanted wireless charges. We reached a similar agreement with Rogers in 2014–15, securing $5.42 million in refunds for customers. As of March 31, 2016, legal proceedings against Bell and the CWTA were ongoing.

Assessing the Impact of Disruptive Business Models

The disruptive business models used by companies like Netflix, Uber and Airbnb are dramatically changing the marketplace. In some cases, these changes may lead established companies to engage in anti-competitive behaviour or to pressure regulators to enact rules affecting the ability of these new entrants to operate. As the sharing economy grows and even more new business models emerge and challenge the status quo, the Bureau has an important role to play in promoting the benefits of competition to regulators.

In January 2016, we held a one-day workshop to advance thinking on emerging competition issues. Attended by approximately 120 participants from

5 As of the 2016–17 Fiscal Year, the Bureau now uses the term consumer alerts instead of consumer advisories.

Canada and abroad, including representatives from the business, legal and academic communities, this workshop focused on the implications of disruptive business models on competition and regulation, and looked at how to best incorporate factors other than price (e.g., convenience, variety) into a competition assessment. A keynote address on competition advocacy and disruptive innovations was delivered by the Director of the Office of Policy Planning at the U.S. Federal Trade Commission. A summary of the workshop can be found on our website.

ENGAGING CANADIANS

Reaching out to Canadians is key to increasing awareness and understanding of our role in promoting and protecting competition — and to giving them the information they need to protect themselves against anti-competitive behaviour.

Last year, we delivered a total of 135 speeches and presentations to consumers, partners, academia, and the legal and business communities on a wide range of issues, including corporate compliance and bid-rigging. We also co-hosted two bi-annual consumer group meetings with the Canadian Radio-television and Telecommunications Commission, as part of our efforts to foster a meaningful dialogue about issues that affect Canadian consumers. We continued to share news and initiatives with the public through:

- Sixty-eight announcements on enforcement outcomes, regulatory interventions and cooperation agreements
- Twelve issues of *CB in Brief*, a monthly publication that provides a snapshot of recent Bureau news and developments
- Six consumer advisories to inform Canadians about scams, including three issued during Fraud Prevention Month
- Two issues of *The Deceptive Marketing Practices Digest*, a publication launched in June 2015 to give advertisers a better understanding of the laws we enforce — with the first issue focusing on the digital economy and topics including fake reviews and disclaimers in online advertising

MORE "SOCIAL" THAN EVER

By expanding our social media participation, we have significantly improved the ability of Canadians to access our information and resources. In 2015–16, we:

- Doubled the number of our Twitter followers (to 4,026)
- Posted 981 tweets (up 61%)
- Increased views of our videos to 62,343 (up 10%)
- Increased use of Facebook and LinkedIn to reach more Canadians

Beating Back Fraud with Knowledge

The best weapon against fraud is information. As chair of Canada's Fraud Prevention Forum, the Bureau plays a key leadership role in fighting against fraud both domestically and internationally, which includes participating in Fraud Prevention Month every March. The 2016 edition of Fraud Prevention Month ("**Recognize, Reject and Report Fraud**") focused on equipping consumers and businesses with the information they need to protect themselves from becoming victims of fraud.

After participating in kick-off events in Vancouver, Toronto and Montreal — along with other Forum partners, such as the Better Business Bureau, Toronto Police Services and Option consommateurs — we used both traditional and new media to raise awareness of several fraud-related issues, leveraging the networks of our partners to reach an even larger audience. This included:

- The "2 Good 2 Be True Day" Twitter chat, which focused on subscription traps and free trial scams
- A YouTube video highlighting some of the most common investment scams

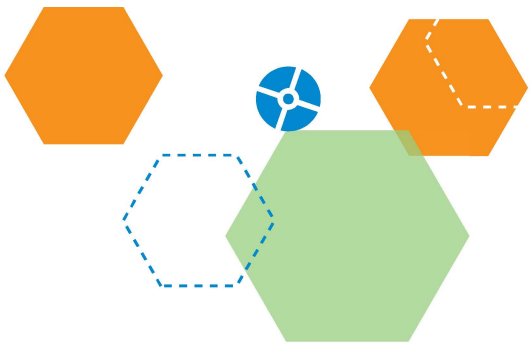
- Tips for businesses and consumers on how to avoid being scammed
- Tips for new immigrants and refugees about scams that threaten them with deportation or arrest
- Partnering with the Better Business Bureau and Option consommateurs to create the annual Canada's Top 10 Scams list.

These efforts led to the highest number of consumer contact in the six years of Fraud Prevention Month. The campaigns hashtags #FPM2016 and #MPF2016 were used more than 14,000 times by more than 4,500 people on Twitter, and resulted in more than 56 million impressions across all tweets and re-tweets.

RAISING AWARENESS ABOUT CARTELS

During Fraud Prevention Month, we held our third annual Anti-Cartel Day to help businesses detect and prevent price-fixing and bid-rigging.

Working with the Canadian Chamber of Commerce and other partners, this event featured a panel discussion with representatives from the *Unité permanente anticorruption* of the Sûreté du Québec and the Ontario Provincial Police, giving businesses a better understanding of how cartels work, how to avoid being part of one, and how to identify and report them.



ENGAGING SMALL BUSINESS IN FRAUD PREVENTION MONTH

During Fraud Prevention Month 2016, our partnership with the Canada Business Network (CBN) was essential to delivering our message to more Canadians than ever before. In March 2016, the CBN hosted on its website two blogs written by the Bureau, including one that encouraged small- and medium-sized businesses to build an anti-fraud plan while providing tips on how they can recognize, reject and report fraud. These blogs were also promoted through the CBN's social media accounts. As many competition authorities worldwide find it challenging to reach small businesses, the Bureau is fortunate to be able to leverage a resource like the CBN to engage with this sizeable and very important stakeholder group.

Standing Together Against Online Fraud

To act against fraudulent and deceptive advertising in the fast-evolving online and mobile markets, it is essential for the Bureau to collaborate with consumer protection agencies worldwide to share best practices and experience. Last year, we continued our work with the Canadian Anti-Fraud Centre (CAFC), which collects information and criminal intelligence on mass marketing fraud (e.g., telemarketing), advance fee fraud (e.g., "West African" letters), Internet fraud and identify theft. As a member of the CAFC joint management team, we chaired three meetings alongside the Royal Canadian Mounted Police and the Ontario Provincial Police, and contributed to several decisions on the CAFC's overall strategic direction.

In addition to our work with the CAFC, we coordinated the 2015 International Consumer Protection and Enforcement Network Internet sweep, which saw 25 agencies participating in reviewing more than 1,500 websites to identify issues, such as "drip pricing" in travel and tourism (i.e., when an advertised prices is unattainable because of mandatory additional fees) and e-commerce subscription traps. Nearly half of the websites examined, including Canadian websites, were flagged as being suspicious.

We also contributed to the new version of the Organisation for Economic Co-operation and Development (OECD) recommendation on consumer protection in e-commerce, which has been updated to address the emerging trends and challenges faced by consumers in the digital marketplace. This marks the first significant revision to this document since it was created in 1999.

We also continued to collaborate with the National Cyber-Forensics Training Alliance Canada, and met with domestic and international law enforcement partners to discuss new forensic tools and technologies for capturing and preserving representations made in online and mobile environments — and how to use that evidence in our investigations.



PRIORITY 3: PROMOTE COMPETITION

Advocating for competition and innovation in the Canadian marketplace

Competition is the key to a strong and healthy economy by delivering the benefits of lower prices, more consumer choice and greater innovation. In 2015–16, we continued to promote those benefits to Canadians while providing advice to regulators, industry and government partners. Our goal: to provide the support and guidance needed for public policy and regulations to be shaped by the best available evidence that reflects today's constantly changing technology and business models in a way that allows competition and innovation to thrive.

PRIORITY 3

Promote and advocate for a more competitive marketplace, emphasizing smart regulation focused on achieving legitimate regulatory objectives.

COMMITMENTS	STATUS
Develop a proactive advocacy strategy to highlight impediments to competition, which will include: • Complete at least two market studies in regulated sectors of importance to the national economy • Intervene in regulatory proceedings and providing advice to governments where necessary	DELAYED[6] NOT ACHIEVED ACHIEVED
Collaborate with Canada's provincial and territorial governments and other key domestic partners to identify and analyze regulated sectors that could benefit from increased competition.	ACHIEVED
Develop and release guidance to address the interface between intellectual property and competition law.	ACHIEVED
Work with ISED to promote the continued adoption of strong competition policy as a cornerstone of Canada's economic development approach and to shape public policy debate on Canada's legislative framework related to matters of competition law and labelling.	ACHIEVED

ACHIEVED · PARTIALLY ACHIEVED · NOT ACHIEVED · DELAYED

Building the Foundation for a More Competitive Future

Competition and innovation can be stifled by anti-competitive behavior, but also by overly restrictive regulations that prevent new players with new ideas from entering the market. With business models and technologies evolving faster than regulations can be written, the Bureau continued to provide advice and recommendations to regulators and policymakers across Canada, encouraging them to consider the impacts on competition and innovation of any new regulations they may impose.

6 The Advocacy Unit was subject to a formative evaluation by the Audit and Evaluation Branch of Innovation, Science and Economic Development Canada (ISED) during the fiscal year of 2015–16. To ensure consistency with the recommendations of the evaluation, the development of an advocacy strategy has been put on hold until the evaluation is complete.

25
ADVOCACY-RELATED INITIATIVES

4
SUBMISSIONS TO REGULATORS

120
PARTICIPANTS AT OUR WORKSHOP ON EMERGING COMPETITION ISSUES

Where Competition Hits the Road

Ride-sharing services like Uber have become increasingly popular by offering Canadians lower fares, shorter waits and, in many cases, better service than traditional taxis. However, cities struggled to establish effective regulation frameworks for these new business models.

Recognizing the need to advocate swiftly for fair competition and innovation in the marketplace, we issued a white paper in November 2015 calling on regulators to overhaul and modernize Canada's taxi industry regulations. In this document, we recommended that regulators relax the burdensome restrictions already imposed on taxis (such as the tightly controlled fares and limited number of license plates issued) and establish appropriate regulations on ride-sharing services. We also noted that any new regulations imposed should be no more intrusive than needed and done so only to achieve legitimate policy goals, such as ensuring passenger and driver safety, so that ride-sharing providers and taxi drivers alike — and their customers — can reap the benefits of increased competition and innovation.

This intervention has already had a direct impact on the transportation services of many municipalities across Canada, with cities like Ottawa, Edmonton, Toronto and Calgary citing the recommendations made in our white paper when revising their taxi regulations — making it one of the strongest, highest-impact examples of our advocacy work to date.

COMMITTED TO CONSULTATION

We often consult and partner with provincial/territorial governments and others to identify regulated sectors that could benefit from increased competition. When we authored our white paper on the taxi industry, our Advocacy Unit consulted with municipal governments across Canada to better understand the issues they were facing with respect to ride-sharing services.

How would you like to pay for that?

As more consumers adopt digital wallets and mobile payment technologies, increased competition in the payments space could bring significant benefits to consumers and merchants. That's the message we presented to the Department of Finance Canada in response to their call for comments regarding oversight of the national payment systems in June 2015. In our submission, we advocated that new oversight measures should ensure that consumers have the flexibility to switch between different payment services and methods, both within their mobile wallets and between mobile wallets. This measure would incentivize competition on both quality and price. We also advocated that merchants be able to opt-out of accepting emerging payment technologies, and those who do accept them be allowed to apply surcharges to those methods of payment. These two measures in tandem are likely to stimulate competition between payment service providers, reduce card acceptance fees and decrease the risk of those fees being passed on by merchants to consumers, leading to lower retail prices for all consumers.

More choice over channels

The wholesale agreements between television service providers and channel owners can lead to the creation of bundles of channels (often with only one or two channels a subscriber actually wants) rather than

allowing consumers to pick and choose the channels they prefer. Building on our submissions to the Canadian Radio-television and Telecommunications Commission's (CRTC) Let's Talk TV hearings in 2014, we made further submissions in response to a call for comments on a proposed wholesale code of conduct which would govern wholesale agreements. We successfully advocated that the CRTC carefully consider the impacts of certain terms to these agreements that have led to channel bundling, and their potential impact on television service providers' incentive to offer consumers increased flexibility and choice in a "pick-and-pay" environment.

We also gave support to a CRTC proposal that would incentivize online video-on-demand providers to let consumers subscribe to online video-on-demand services without having to be a television or internet service subscriber to that online video-on-demand provider, encouraging greater competition while providing Canadians more flexibility in how they watch video content, and from whom they purchase television and internet services.

Clearer Communications About IP Rights

Intellectual property (IP) rights have become increasingly important in our knowledge-based economy. We made it a priority last year to help businesses — especially those in the pharmaceutical industry — understand how we deal with competition IP issues such as patent settlements. Following extensive consultations, we released an updated version of the Intellectual Property Enforcement Guidelines in March 2016 to incorporate the latest Canadian case law, as well as recent enforcement experience in Canada and abroad. We will review the guidelines annually and revise them as needed to keep pace with the changing economic and technological environments.

Contributing to Effective Competition Policy

Competition policy is a cornerstone of Canada's approach to economic development. We provide the federal government with expertise and advice on issues related to competition policy, working closely with ISED to shape public policy debate and provide input on competition-related regulatory and legislative initiatives. We also work with ISED's Canada Business Network to increase our visibility among Canada's small- and medium-sized business communities.

The Bureau works closely with Global Affairs Canada in negotiating the competition policy provisions of Canada's free trade agreements. Last year, we participated in exploratory discussions and trade negotiations and provided support for the implementation and ratification processes. In particular, we supported the negotiations of the competition policy provisions and contributed to related treaty process work for the Canada-Ukraine Free Trade Agreement and the Trans-Pacific Partnership Agreement.

The Bureau also works through multilateral organizations such as the International Competition Network (ICN) and OECD to develop best practices in competition law enforcement and to share policy and enforcement updates that may be useful to other jurisdictions.

TAKING AN IN-DEPTH LOOK AT SPECIFIC MARKETS

Market studies are powerful tools for exploring the competitive dynamics of a particular industry in greater detail. While our annual plan committed to completing two studies last year, we were unable to do so because of other advocacy priorities. Going forward, we intend to conduct a market study on technology-led innovation in the financial services sector, with a focus on how innovation is affecting the use of products and services such as peer-to-peer banking, digital wallets and crowd-funding. The study will also explore whether there is a need for regulatory reform to promote greater competition in this sector.

PRIORITY 4: COLLABORATE WITH PARTNERS

Promoting competition and innovation through new and stronger partnerships

Collaborating with partners in Canada and abroad strengthens our ability to ensure consumers and businesses realize the benefits of a competitive, innovative marketplace. Last year, we continued to work with other government departments, law enforcement agencies, consumer protection organizations and our international counterparts in our enforcement of the *Competition Act*.

PRIORITY 4

Collaborate with domestic and international partners to promote strong competition principles and expand opportunities for Canadian participation in world markets.

COMMITMENTS	STATUS
Finalize and sign MOUs with competition authorities in emerging markets to develop stronger working relationships on enforcement matters.	◉
Increase collaboration with other government departments, law enforcement partners and domestic and international partnerships.	◉
Deepen existing relationships related to enforcement cooperation in international fora, including: • Continuing a leadership role on the ICN Merger Working Group • Continuing to participate in ICN working group activities • Providing ongoing support to the OECD through knowledge exchange • Advancing our priorities at the OECD through submissions on important issues	◉
Enhance international engagement with consumer protection agencies such as ICPEN and private sector groups.	◉
Pursue second generation agreements to deepen cooperation with existing partners.	◉

◉ ACHIEVED ◒ PARTIALLY ACHIEVED

17

INTERNATIONAL MEETINGS AND WORKSHOPS ATTENDED

19

INVESTIGATIONS WITH INTERNATIONAL PARTNERS

28

INVESTIGATIONS WITH DOMESTIC PARTNERS

15

BILATERAL MEETINGS WITH FOREIGN LAW ENFORCEMENT AND COMPETITION AGENCIES

INTERNATIONAL INVESTIGATIONS

The Bureau collaborated with its international partners on 19 investigations last year, including:

- Australian Competition and Consumer Commissioner
- New Zealand Commerce Commissioner
- United States Federal Trade Commission
- Autorité de la concurrence de la France.

Competition is a Global Concern

No country is an island in today's global economy. By sharing information with partners and collaborating on cross-border enforcement, we are better able to combat anti-competitive business practices that affect Canadians.

Protecting consumers on both sides of the border

Canadian businesses, schools and government departments collectively purchase more than $500 million in office supplies each year. Competition is critical to keeping these costs down. When Staples and Office Depot (which operates in Canada as Grand & Toy) proposed merging, we worked closely with the U.S. Federal Trade Commission (FTC) to weigh the potential impact. This resulted in the first-ever simultaneously litigated challenge to a merger in Canada and the United States — and demonstrates our commitment to strong international relationships to protect competition here at home.

In our investigation, we found that if Staples were to acquire its main competitor, it would account for more than 80 percent of all office supply sales in Canada. To protect consumers in both countries from paying higher prices, the Bureau and the FTC filed simultaneous challenges in December 2015 to block the merger, working closely with each other to review the case details.[7]

New agreements with international counterparts

We strengthened our network of international partners last year by signing memoranda of understanding (MOU) with China's Ministry of Commerce and National Development and Reform Commission. These two MOUs, together with the MOU signed during the previous fiscal year with China's State Administration for Industry and Commerce, will further improve our ability to cooperate with Chinese agencies on enforcement matters. To date, we have entered into cooperation instruments (including MOUs) with 13 jurisdictions around the world.

7 In May 2016, we withdrew our challenge when the two parties announced that they were abandoning the merger after a U.S. District Court ruled in favour of the FTC's injunction.

We also actively sought opportunities to deepen our existing relationships — by negotiating "second-generation" cooperation agreements that enhance information sharing and the provision of assistance during international investigations. This led to the signing of a new MOU with the New Zealand Commerce Commissioner, our first second-generation instrument, in April 2016.[8]

Exchanging knowledge with partners around the world

Sharing best practices with our international counterparts helps protect consumers and businesses not only in Canada but all over the world. In 2015–16, we conducted 15 formal bilateral meetings with other competition authorities, including the fair trade commissions of South Korea and Japan. We also attended a trilateral meeting with the United States and Mexico to discuss more effective regional collaboration across North America.

In addition, we provided technical assistance training to the Ecuadorian competition authority, presented on investigative techniques at a United Nations workshop in Colombia, participated in staff exchanges with our counterparts in France and Hong Kong, and hosted study visits with representatives from Singapore and Vietnam.

International Collaborations

To safeguard consumers against fraud and deceptive advertising, we actively collaborate with consumer protection and competition agencies including through international organizations like the International Consumer Protection and Enforcement Network (ICPEN) and the OECD Committee on Consumer Policy.

LEADER IN THE INTERNATIONAL COMPETITION NETWORK

We help develop best practices in competition policy with our international counterparts by taking an active leadership role in organizations like the International Competition Network (ICN), which seeks to enhance collaboration and promote convergence in competition laws and practices among its participants.

As an executive member of the ICN Steering Group, the Commissioner of Competition helps set the ICN's annual work program and guides the overall direction of the organization. The Commissioner also acts as liaison between the ICN and the Competition Committee of the OECD to ensure alignment in the work of these two important bodies. Administratively, the Bureau serves as ICN Secretariat, coordinating activities and meetings such as the ICN Annual Conference.

We also participate in several ICN working groups. For example, we are a co-chair of the Merger Working Group, which promotes the adoption of best practices in merger review. Last year, we also contributed to a project on international cooperation in merger reviews and led the development of the *2016 Merger Remedies Guide*, a framework of principles and practical guidance for designing and implementing more effective merger remedies.

8 Although the MOU was signed shortly after the end 2015–16 Fiscal Year, its signature is a result of the negotiations which took place in 2015–16.

ICPEN

We continued to play a significant role in ICPEN, which brings together agencies from more than 60 countries to share intelligence, discuss market developments and develop best practices to tackle the problems faced by consumers around the world. In addition to giving multiple presentations at ICPEN conferences and workshops throughout the year, we participated in and co-led several ICPEN working groups, including the Online Reviews and Endorsements Project Working Group and the Complaints Analysis Working Group. The latter reviews commonly complained-about business practices to consider whether enforcement action should be taken. We also led a project looking at misleading price advertising and drafted a chapter on developing reliable evidence for litigation for the ICPEN Enforcement Training Manual.

OECD

We contributed to international discussions on competition and consumer matters through our work with the OECD. We coordinated four OECD Competition Committee meetings last year, including the 2015 Global Forum on Responsible Business Conduct. We also made several submissions and presentations, sharing our perspective on issues such as antitrust enforcement, oligopoly markets, cartel behaviour in the construction industry and disruptive innovation in the financial sector. In addition, we supported several projects of the OECD Committee on Consumer Policy (CCP) that aim to help public authorities enhance the development of effective consumer policies. As previously mentioned, this includes contributing to the new version of the Organisation for Economic Co-operation and Development (OECD) recommendation on consumer protection in e-commerce. We also attended meetings in April and October, 2015 in Paris, France, to advance the CCP's program of work and collaborated on preparations for the June 2016 OECD Ministerial Meeting on the Digital Economy.

Stronger Partnerships for Enhanced Enforcement

Collaborating with law enforcement agencies is essential to fulfilling our compliance and enforcement mandate. In 2015–16, we further strengthened our investigative capabilities by signing cooperation agreements with both the Ontario Provincial Police (OPP) and the Royal Canadian Mounted Police (RCMP).

Building on our existing relationships, these MOUs will enhance the way we collaborate, consult and share resources with the OPP and RCMP during investigations into cartels, bid-rigging, deceptive marketing practices and other illegal activities that hurt consumers and businesses alike. They will also enhance our cooperation in conducting outreach and awareness activities to educate Canadians on how to detect, report and prevent anti-competitive business practices.

Domestic collaborations

We have signed MOUs with many organizations across Canada in recent years, agreeing to share information and resources to improve our enforcement and to advance our investigations. Agencies with which we have agreements include:

- Canadian Intellectual Property Office
- Office of the Privacy Commissioner
- Ontario Ministry of Government and Consumer Services
- Ontario Securities Commission
- Canadian Anti-Fraud Centre
- Permanent Anti-Corruption Unit (Sûreté du Québec)
- Public Services and Procurement Canada (PSPC)

As a result of these agreements, we continued to engage with our partners throughout the year to tackle common issues. For example, as part of our MOU with Public Works and Government Services Canada (now PSPC), we exchanged information relating to procurement processes and real property transactions by way of collaboration in the areas of enforcement, education and awareness.

PRIORITY 5: CHAMPION EXCELLENCE

Embedding continuous improvement and innovation into our organizational culture

Responding effectively to the rapid pace of change demands adaptability. This means having the capacity to update our own processes and structures to meet the needs of Canadian consumers and businesses. Last year, we focused on building a culture of excellence by adopting a new governance structure, committing to employee development and well-being, and contributing to government-wide transformation initiatives that will create a more efficient and high-performing public service.

PRIORITY 5

Promote a culture of excellence throughout the Bureau founded on openness, collaboration and engagement, and securing tangible results.

COMMITMENTS	STATUS
Complete the implementation of our realignment and new governance structure.	●
Develop a Talent Management Framework[9].	◒
Respond to the Public Service Employee Survey.	●
Promote a respectful, healthy and inclusive workplace.	●
Support and contribute to the implementation of departmental and government-wide initiatives related to information technology, information management, finance and human resources.	●

● ACHIEVED ◒ PARTIALLY ACHIEVED

9 The Bureau's Talent Management Strategy was partially developed in 2015-16. Consultations and focus groups were held with staff, between February and April 2016, to inform the draft strategy. The strategy was completed and shared with staff in 2016-17 for final comments and adjustments. The final version will be published early 2017-18.

An Open and Adaptive Bureau

With the publication of our three-year strategic plan and renewal of our governance structure, we completed our organizational realignment process — the culmination of our multi-year effort to become a more open, collaborative and effective agency.

Planning for the future

In June 2015, following a period of public consultation, we published our *2015–2018 Strategic Vision*. With five strategic objectives that will guide our work over the next three years, this document reinforces the links between our actions and long-term goals to ensure we're making the best possible use of our resources — and that Canadians continue to benefit from increased competition. The three-year vision also supports our *Action Plan on Transparency*, which promotes the development of a more responsive agency while providing Canadians with more opportunities to learn about our work.

A new governance structure for improved oversight and management

To ensure a more holistic approach to the oversight and coordination of the way we set priorities and allocate our resources, last year, we established **four new governance committees**:

4 New Governance Committees

MAJOR ENFORCEMENT AND ADVOCACY COMMITTEE

OVERSEES THE COORDINATION AND USE OF OUR ENFORCEMENT AND ADVOCACY RESOURCES

STRATEGIC POLICY AND PLANNING COMMITTEE

SETS OUR STRATEGIC, OPERATIONAL AND POLICY PRIORITIES

PRACTICES AND PROCEDURES COMMITTEE

DEVELOPS, IMPLEMENTS AND EVALUATES OUR CONSUMER PROTECTION, LABELLING, COMPETITION AND ENFORCEMENT GUIDELINES, PRACTICES AND PROCEDURES

CORPORATE MANAGEMENT COMMITTEE

ASSISTS WITH RESPONSIBILITIES RELATED TO HUMAN RESOURCES, FINANCE, MATERIEL, INFORMATION TECHNOLOGY, INFORMATION MANAGEMENT AND SECURITY

Managing our Most Valuable Assets: Our People

Attracting and retaining top talent is crucial to our ability to deliver on our mandate. Over the past year, we made significant progress on the development of our new Talent Management Strategy, which will help us build a more diverse and inclusive workforce that works as "One Bureau" and can respond quickly to external and internal change.

We identified a number of new commitments to be included in the strategy, such as investing in both technical and management skills training; mapping out employees' learning and development options; implementing a more formal succession planning process to develop leadership skills among employees at all levels; broadening the range of work experiences available to employees; and ensuring our staffing and development processes are open and transparent.

Consultations and focus groups on the draft strategy were held with staff in early 2016. The final version of the strategy will be published in 2016–17 and implemented over the course of three years.

An Action Plan to Address the Needs of Our Workforce

The Public Service Employee Survey (PSES) is a measure of public servants' opinions on topics such as employee engagement, leadership and the workplace. In response to the findings of the 2014 PSES, we developed an action plan to address the areas employees identified as needing improvement. It is focused on creating a more respectful and inclusive workplace, providing better training and support for career development, and improving the flow of information from senior management.

Several items in the action plan were successfully implemented in 2015–16. For example, we improved our remote access services, continued our support of the federal government's *Respectful, Healthy and Inclusive Workplace* initiative, modernized our internal communications tools, and completed initiatives to help staff develop and maintain their second language skills.

Contributing to a High-Performing Public Service

The Bureau continues to support the government's transformation initiatives related to information technology, information management, finance and human resources. In 2015–16, we were one of 43 government partner organizations that moved to Shared Service Canada's common email system, which will help to reduce costs, increase security and enhance service delivery to Canadians. We also actively prepared for the transition to GCDOCS, the new content management solution that will standardize electronic document and record management across the public service.

In keeping with the government's *Blueprint 2020* objectives of a modern workplace, we modernized several of our conference rooms with updated video-conferencing equipment to increase collaboration and reduce travel costs. We also continued our collaboration with ISED's Records Management Services to develop more effective retention and archival procedures for our historical records, leading to the disposal of 800 boxes of paper records.

TOWARD A RESPECTFUL, HEALTHY AND INCLUSIVE WORKPLACE

Our Diversity and Inclusiveness Working Group (DIWG), comprised of 20 volunteers across the Bureau, meets quarterly to share ideas on how we can better integrate diversity and inclusiveness into our day-to-day operations. In 2015–16, the DIWG hosted a number of initiatives for staff that focused on promoting well-being and mental health in the workplace. This included a lunch-and-learn presentation on stress management, a full-day workshop for Management Committee members on mental health awareness and management, a webinar on mental health in the workplace, and a joint event with the Canadian Intellectual Property Office on accommodating employees with disabilities.

To improve the health and safety of our employees, we updated our business continuity plans to better reflect our new organizational realignment. We also offered first-aid training to all employees and installed defibrillators throughout our offices, providing training on the devices to several staff members.



FINANCIAL DISCUSSION AND ANALYSIS

The Bureau's budget for 2015–16 was $49.3 million, including approximately $10.5 million from user fees.[10] Expenditures were $47.6 million, consisting of $33.1 million in salaries for 362 full-time equivalents (FTEs) and $14.5 million in non-salary expenses.

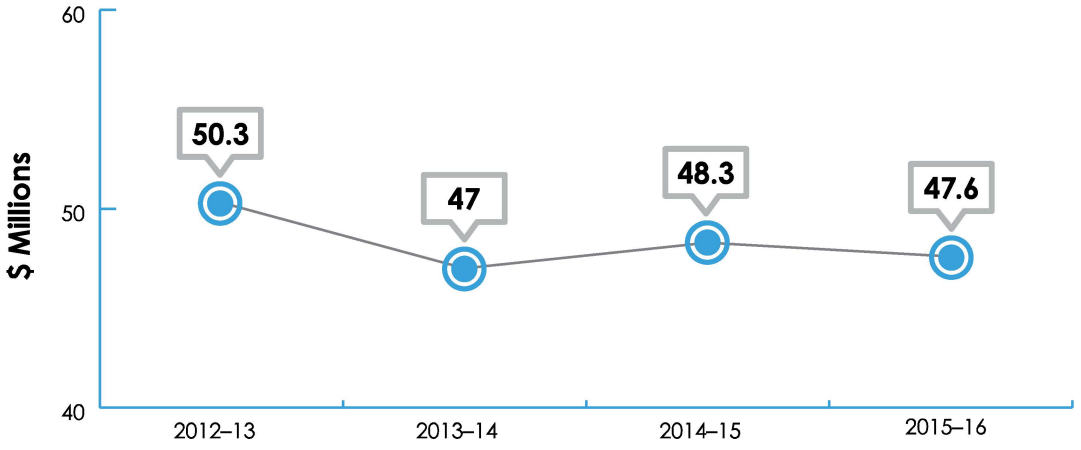
Table 1 presents the Bureau's authorized budget and expenditures for the year.

TABLE 1: AUTHORIZED BUDGET EXPENDITURES FOR 2015–16

	Budget	Expenditure
Salary	$ 33,617,397	$ 33,091,489
O&M	$ 15,143,402	$ 14,240,031
Capital	$ 475,515	$ 304,577
TOTAL	$ 49,263,314	$ 47,636,097
FTEs	362	

Figure 1 illustrates the Bureau's spending trend from 2012–13 to 2015–16.

FIGURE 1: BUREAU SPENDING TREND, 2012–13 TO 2015–16



10 The Bureau collected approximately $10.5 million in user fees (including $10,450,000 from pre-merger notification and advance ruling certificates, $ 40,000 for written opinions and $74,700 for fulfilling requests for CA numbers).



This is Exhibit “94” referred to in the Affidavit of Mary DeCaire sworn by Mary DeCaire at the City of Toronto, in the Province of Ontario, before me on May 5, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

JAKOB KELLY

Competition Bureau completes extensive investigation of Google

News Release

Bureau continues to monitor competition issues in the digital economy

April 19, 2016 — OTTAWA, ON — Competition Bureau

The Competition Bureau announced today that it is closing its investigation into a number of allegations of anti-competitive conduct by Google. These allegations related to Google's online search, search advertising and display advertising services in Canada.

Details of the investigation are available on the Bureau's website in a comprehensive position statement in line with the Bureau's core values of openness and transparency.

The Bureau conducted an extensive review of allegations that Google engaged in conduct with the intention to exclude or disadvantage its competitors, contrary to the abuse of dominance provisions of the *Competition Act*.

The Bureau found evidence to support one of the allegations against Google: that the company used anti-competitive clauses in certain types of contracts that negatively affected advertisers, with the intent to exclude its competitors. Google made changes to these terms and conditions in 2013, in response to similar concerns raised by the United States Federal Trade Commission (FTC). In response to the Bureau, Google has agreed not to reintroduce the clauses in Canada, and has agreed not to introduce any other clauses that may have the same effect in its English-language and French-language contracts. As a result of these changes, advertisers have more flexibility to use competing advertising platforms, allowing for greater search advertising competition.

The Bureau did not find sufficient evidence of a substantial lessening or prevention of competition in the market to support the other allegations.

Quick facts

- The Bureau's inquiry focused on facts and evidence related to allegations of anti-competitive conduct affecting the Canadian marketplace.
- As part of its investigation, the Bureau consulted with industry and economic experts and conducted over 130 interviews with a broad range of market participants, including competitors, publishers and advertisers.
- The Bureau analyzed large volumes of information collected from stakeholders and information supplied by Google, which was obtained under an order of the Federal Court.
- The Bureau also consulted with international counterparts including the FTC and the European Commission throughout the investigation.

Quote

> "Data-driven companies play an important and growing role in Canada's economy. We will continue to monitor firms in the digital economy to ensure they do not engage in anti-competitive conduct. Should new evidence come to light of anti-competitive conduct that may affect the Canadian marketplace, by Google or any other market participant, I won't hesitate to take appropriate action."
>
> John Pecman,
> Commissioner of Competition

Related Information

- Competition Bureau Statement Regarding its Investigation into Alleged Anti-Competitive Conduct by Google

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

Search for related information by keyword

Hon. Navdeep Singh Bains | Competition Bureau | Information and Communications

Date modified:
2016-04-19

This is Exhibit “95” referred to in the Affidavit of Mary DeCaire sworn by Mary DeCaire at the City of Toronto, in the Province of Ontario, before me on May 5, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

JAKOB KELLY

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Investigation into alleged anti-competitive conduct by Google

Position Statement

See the news release that corresponds to this position statement.

OTTAWA, April 19, 2016 — Today, the Commissioner of Competition (Commissioner) announced that he has discontinued an investigation into allegations that Google Inc. (Google) engaged in conduct contrary to the abuse of dominance provisions of the *Competition Act* (Act). This statement summarizes the extensive investigation conducted by the Competition Bureau (Bureau) in its review of allegations that Google engaged in anti-competitive business practices related to online search, search advertising and display advertising services in Canada.

On this page

- Executive summary
- Search and search advertising review
- Display advertising review
- Conclusion
- Footnotes

Executive summary

Market context

The collection, analysis and use of data is increasingly becoming an important source of competitive advantage in the digital economy, driving innovation and product improvement. In this vein, certain firms may become large by benefiting from a first-mover advantage and accessing marketplace data that enables them to offer an attractive product to consumers. The size of a business, however, even one that dominates a particular market, does not, of itself, raise an issue under the Act. A strong market position may be gained in a number of legitimate ways, including by competing vigorously, even aggressively, and offering consumers something that is preferred to the offerings of rivals. However, any steps taken by a dominant firm to hold onto or enhance that market position through anti-competitive conduct that inhibits the ability of competing firms to grow their customer base by competing on the merits may raise concerns under the abuse of dominance provisions in the Act.

For both businesses and consumers, online search and search advertising markets are critical for access to, and participation in, the digital economy. Given the importance and rapidly evolving nature of the digital economy the Bureau is vigilant in investigating allegations of anti-competitive conduct in this sector. Anti-competitive activity by a dominant firm, particularly in an industry characterized by "network effects" [1], may negatively affect competition, and may inhibit the development of an open, dynamic and innovative digital marketplace for consumers and businesses.

Investigation background

Following the receipt of complaints, the Bureau opened an inquiry in 2013 to investigate Google's conduct related to online search and search advertising. Over the course of this inquiry the Bureau received additional complaints regarding Google's conduct in the online display advertising sector, which prompted a further review.

To properly test the allegations, the Bureau took a number of steps to determine the relevant facts. [2] The Bureau consulted with industry and economic experts and conducted over 130 interviews with a broad range of market participants, including competitors, publishers, advertisers, original equipment manufacturers, wireless carriers and firms that provide online advertising solutions. The Bureau also analyzed a substantial volume of information collected from various stakeholders and obtained an order under section 11 of the Act compelling Google to provide documents and written returns of information.

In conducting its investigation, the Bureau also consulted and worked with international counterparts, including the U.S. Federal Trade Commission (FTC) and the European Commission. The Bureau's review was focused on the facts and evidence related to alleged anti-competitive conduct affecting the Canadian marketplace.

Summary of Bureau conclusions

During its investigation, the Bureau examined whether Google possesses market power in the markets for online search, search advertising and display advertising, and whether Google used that market power to exclude or otherwise disadvantage its rivals. Specifically, the Bureau examined allegations that Google engaged in several practices intended to raise its rivals' costs, inhibit their ability to expand and generally make it more difficult for them to compete. These allegations are described in detail below.

As a result of an in-depth investigation, the Bureau concluded that Google used anti-competitive clauses in its AdWords Application Programming Interface (API) Terms and Conditions. The Bureau concluded that these clauses were intended to exclude rivals and negatively affected advertisers. Google has removed these clauses and has provided a commitment to the

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Commissioner not to reintroduce them (or others which have the same effect) for a period of five years. With respect to the other allegations of anti-competitive conduct, the Bureau did not find sufficient evidence that Google engaged in these practices for an anti-competitive purpose, and/or that the practices resulted in a substantial lessening or prevention of competition in any relevant market.

However, the Bureau will be closely following developments with respect to Google's ongoing conduct, including the results from investigations of our international counterparts. More generally, the Bureau will continue actively monitoring the digital marketplace given its importance to innovation and the economy. As stated in the Bureau's 2015-2018 Strategic Vision, the Bureau will deter or prevent anti-competitive conduct hindering the emergence of innovation. The Bureau will not hesitate to take appropriate action should new evidence come to light of anti-competitive conduct by Google that may affect the Canadian marketplace.

Search and search advertising review

Background

Google is a multinational company that offers a number of internet-related products and services, including its search engine and related search advertising services. Canadian internet users rely on search engines to find information, consume entertainment, and shop for products and services. Search engines function by indexing web pages; when a user types words into a search engine, the search engine reviews its index and provides the user with various results related to the query, including a list of web pages ranked in order of relevance. Users do not pay to use search engines, but they provide search engines with important data with each search query, and when they click on the links provided in response to those queries. Search engines typically analyze this user data to optimize their search algorithms and display more relevant results.

When a search engine displays its search results, it may also place ads on its search engine results page (SERP). Advertisers can pay to have their ads placed on a SERP in response to specific queries in order to target consumers with advertisements for products and services that are relevant to them. Search engines earn revenues primarily from the sale of these ads. Search engines also gather and analyze information from users who click on the ads, allowing them to provide even more targeted, relevant ads to users and charge advertisers accordingly.

As a result of the above, the online search and search advertising markets are characterized by "network effects": the more users and advertisers use a given search engine, the more it is able to leverage data to improve its product and, by extension, attract more users and advertisers.

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In addition to its general search engine, Google operates several specialized search engines such as Google Maps and Google Flights. These specialized search engines are known as “vertical” search engines. They provide users with information about a specific topic, such as shopping, travel, or weather.

Analysis

Under Canadian competition law, 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 has been or is likely to be prevented or lessened substantially. [3]

Based on information gathered throughout the investigation, the Bureau concluded that the primary relevant markets are online search and search advertising services in Canada. However, given the nature of certain allegations (e.g. search manipulation) the price and non-price effects of the alleged business practices may be felt in other relevant markets (e.g. the market for online local review services in Canada).

Google’s search engine accounts for the vast majority of search queries that are made by Canadian users and search advertising purchases that are made by businesses in Canada. Based on information gathered throughout its investigation, including the high market shares that Google has in Canada and high barriers to entry in the search engine market, the Bureau concluded that Google possesses market power in the markets for online search and search advertising services in Canada.

During its investigation, the Bureau considered allegations that Google used its dominant position in the markets for online search and search advertising in order to exclude rivals (e.g., competing general and vertical search engines). Specifically, the Bureau examined allegations that Google engaged in the following conduct:

1. **AdWords API Restrictions** — preventing advertisers or other third parties from effectively engaging in “cross-platform” search advertising campaigns between Google and other search engines;
2. **Search Manipulation** — the manipulation of Google’s search results, so that Google-related links appear higher in what is presented to users, and/or that competitor-related links appear lower than they otherwise would in an objective ranking based on the relevancy of these links;
3. **Preferential Treatment of Google Services** — the preferential treatment of Google’s services (Google Maps, Google Flights, etc.) compared to the services of competitors on Google’s SERP;

4. **Syndication Agreements** — entering into long-term agreements with websites that create search entry points for Google directly on the websites (e.g., search toolbars "powered by Google" on news websites) and/or restrict the manner in which ads are displayed on third party websites in response to search queries;
5. **Distribution Agreements** — entering into long-term agreements with hardware manufacturers and software developers to set Google as the default search engine (on smartphones, personal computers, browsers, etc.); and
6. **Other Allegations** — denying competitors access to a high-quality YouTube mobile application; and tying the sale of ads on tablets and personal computers to the sale of ads on mobile phones.

The Bureau's conclusions with respect to each of these allegations were based on a careful review of the facts and evidence relevant to the Canadian market.

1. AdWords API restrictions

Firms in the digital economy can use "Application Programming Interfaces" to allow different programs to communicate with one another. For example, APIs ensure that mobile applications work on mobile devices by facilitating the communication between the application's software and the device's operating system. The Bureau considered allegations that Google's AdWords API Terms and Conditions prevented software developers that help companies manage their search advertising campaigns (known as "licensees") from easily transferring information between Google advertising campaigns and advertising campaigns on competing platforms. These AdWords API restrictions allegedly were making it more difficult for companies to advertise on multiple platforms (known as "multi-homing"). The problematic AdWords API clauses related to certain input and copying restrictions, which hindered the ability of licensees to multi-home, and by doing so, enable their clients to advertise on competing search engines.

Evidence collected by the Bureau supports the conclusion that Google used certain AdWords API clauses with the intent to exclude rival search engines. There did not appear to be any technical or efficiency justification for creating these restrictions. The evidence obtained also showed anti-competitive effects resulting from these AdWords API clauses. Market participants expressed serious concerns with these clauses, and provided the Bureau with evidence of the negative effects of Google's AdWords API restrictions on their businesses, and on the market generally.

In 2013, Google made changes to its AdWords API Terms and Conditions in response to concerns raised by the FTC. However, Google's commitment to the FTC did not specifically govern the manner in which it does business in Canada, nor did it apply to both its English-language and French-language AdWords API Terms and Conditions. As a result, in response to concerns

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identified by the Bureau, Google has committed to the Commissioner that it will not reintroduce these restrictive API clauses in Canada or introduce any other API clauses that may have the same effect, in either its English-language or French-language AdWords API Terms and Conditions, for a period of five years. The Bureau believes that, as a result of these changes, market participants are able to freely transfer advertising campaign data between competing search advertising platforms, which allows for greater multi-homing and, by extension, competition in search advertising.

2. Search manipulation

The Bureau considered allegations that Google alters its search results to exclude rivals that provide competing services (e.g., maps, local reviews, travel) and provide Google-related services with preferential placement that would not otherwise occur based on an objective ranking determined by relevance. Alterations to the algorithm that determines the ordering of search results on the basis of factors other than relevance could potentially harm websites that are moved further down the Google SERP by reducing traffic to these sites. This conduct could be considered anti-competitive if Google altered its search results for the purpose of harming a competitor and if the conduct substantially prevented or lessened competition in a market. In addition to the potential impact on price in the market, the Bureau also focussed on non-price factors such as quality, convenience, value-added features, and, particularly, innovation in this rapidly-evolving space.

Although Google frequently makes changes to the algorithm it uses to rank search results, evidence obtained over the course of the investigation indicates that Google's changes are generally made to improve user experiences. For example, Google takes steps to demote websites that attempt to artificially increase their ranking in the search results independent of the quality or relevancy of their content. The Bureau did not find adequate evidence to support the conclusion that Google's changes to its search results were intended to exclude rivals in Canada.

The Bureau also sought evidence of the harm allegedly caused to market participants in Canada as a result of any alleged search manipulation. However, the Bureau did not find adequate evidence to support the conclusion that any alleged search manipulation was having an exclusionary effect on rivals (e.g., by materially affecting sales or revenue data of these parties in Canada), or that the conduct has resulted in a substantial lessening or prevention of competition in a market (e.g., a material impact on prices or impeding the development, diffusion and marketing of innovative services).

3. Preferential treatment of Google services

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The Bureau considered allegations that Google promotes its own services on the SERP in order to exclude rivals. [4] For example, when a user searches for "Dentists in Halifax", Google may display a map or a collection of consumer reviews of local dentists in Halifax. Preferential treatment of Google services could include placing these services in prominent places on the SERP (e.g., inserting a Google Maps information box at the top of the page) or using graphics to draw users' attention to its services (e.g., using images or displaying Google services in an information box).

While Google often displays its services in prominent places on the SERP, the Bureau does not consider the provision of objective answers to be an anti-competitive act (e.g., providing a numeric response to the query "How tall is the Calgary Tower?"). In fact, providing objective answers in prominent places on the SERP is generally beneficial to consumers. However, a search engine's provision of answers that are more subjective in nature could be considered anti-competitive if this practice is engaged in by a dominant firm for the purpose of excluding rivals and with the result that competition is substantially lessened or prevented. For example, the Bureau considered the potential effect that this practice may have on the incentive for firms to innovate and compete with Google in these markets and, particularly where competing services have superior quality, the potential harm to consumers in the form of reduced product quality, choice, or innovation.

The Bureau sought evidence of the harm allegedly caused to market participants in Canada as a result of any alleged preferential treatment of Google's services. The Bureau did not find adequate evidence to support the conclusion that this conduct has had an exclusionary effect on rivals, or that it has resulted in a substantial lessening or prevention of competition in a market.

4. Syndication agreements

Search engines enter into syndication agreements with third party websites. These agreements may perform two functions: (1) create search entry points directly on websites (e.g., Google search toolbars on news websites); and (2) govern the manner in which ads are displayed on the website, following a user's search query. Syndication agreements provide additional search entry points for users by placing the toolbar in a convenient place on the website, increase traffic to the search engine, and increase revenue for both the website and the search engine. [5]

The Bureau considered whether Google's syndication agreements exclude search rivals by denying them search queries that may have otherwise been made on their search engines and, by extension, denying them the "search scale" necessary to compete with Google. The Bureau also considered whether competing search advertising platforms were excluded as a result of the preferential placement of Google ads on third party websites.

Based on the information obtained over the course of the investigation, it does not appear that Google's syndication agreements have imposed significant switching costs on publishers or users. The evidence does not support a conclusion that Google's syndication partners are locked into long-term agreements that render the market significantly less competitive. On the contrary, Google and its rivals regularly compete for the business of third party websites, as evidenced by bidding activity, which may lead to websites switching search providers. The Bureau analyzed data related to publishers' use of multiple search engines over time and concluded that the switching activity was significant between search engines. With respect to users of websites that partner with Google, they can easily switch to a different search provider if they are unhappy with the syndicated search results.

Accordingly, the Bureau concluded that Google's syndication agreements have not resulted in a substantial lessening or prevention of competition in Canada.

5. Distribution agreements

Search engines also enter into distribution agreements with hardware manufacturers and software developers that set the default search engine on smartphones, personal computers, browsers, etc. Similar to syndication agreements, the Bureau considered allegations that distribution agreements exclude search rivals by denying them the number of searches necessary to compete with Google. [6]

The evidence obtained over the course of the investigation supports the conclusion that Google competes with other search engines for the business of hardware manufacturers and software developers. Other search engines can and do compete for these agreements so they appear as the default search engine. The Bureau analyzed data related to the use by hardware manufacturers and software developers of multiple search engines and concluded that the switching activity over time was significant and that these parties are able, for example, to ship multiple devices with different pre-loaded search engine defaults. Finally, consumers can and do change the default search engine on their desktop and mobile devices if they prefer a different one to the pre-loaded default.

Accordingly, the Bureau concluded that Google's distribution agreements have not resulted in a substantial lessening or prevention of competition in Canada.

6. Other allegations

Finally, the Bureau evaluated two other allegations related to Google's conduct in the markets for online search and search advertising in Canada. First, allegations were raised that Google prevented mobile competitors from accessing a high-quality YouTube mobile application.

PUBLIC

Second, concerns were raised that Google's "Enhanced Campaigns" forces advertisers that want to buy ads displayed on mobile devices to also buy ads on personal computers and tablets.

The Bureau did not uncover adequate evidence to support a finding that Google engaged in either of these practices to exclude rivals. The Bureau also did not find adequate evidence that these practices substantially lessened or prevented competition in Canada.

Display advertising review

Background

The online display advertising ecosystem comprises advertisers that purchase ad space from website publishers. The product they exchange is "display advertising inventory" where one unit of advertising inventory is an impression on a website. An advertiser can purchase display advertising inventory directly from the publisher or through indirect channels using real-time auctions. These real-time auctions (referred to as "ad exchanges") are digital marketplaces that enable advertisers and publishers to buy and sell advertising space.

The purchase and sale of display advertising inventory was historically done through written commitments between advertisers and publishers to run a particular advertising campaign on a website. In recent years, "programmatic advertising" has emerged as a popular method of buying and selling display advertising inventory. This involves using automated systems to buy and sell display advertising inventory.

Google owns and operates leading technology products across the entire online display advertising ecosystem:

- **Publisher Side**: Google operates a popular ad serving tool called DoubleClick for Publishers (DFP), and a significant ad exchange, DoubleClick Ad Exchange (AdX). Ad servers are computer servers that allow publishers to manage their display advertising inventory and deliver ads on their websites. Ad exchanges are technology platforms that operate as online marketplaces, matching advertiser demand with publisher inventory programmatically.
- **Advertiser Side**: Google operates a demand-side platform called DoubleClick Bid Manager (DBM). Demand-side platforms are technology interfaces that centralize and aggregate the purchase of display advertising inventory for advertisers from multiple inventory sources, including from ad exchanges. In addition, Google's AdWords is, arguably, one of the largest buyers of display advertising inventory.

Analysis

Given that the allegations described below relate to inventory sold through Google's ad exchange, the Bureau focussed its review on the market for exchange-based online display advertising services in North America. While Google is a significant player, it is not clear that it possesses market power in this space. Google operates leading products across the entire online display advertising ecosystem, which may give it an advantage over non-integrated competitors. However, the market is highly fragmented and features a number of new and existing competitors, which suggests that barriers to entry are low. That being said, given the limited number of well-established players in the market, barriers to expansion may not be low. Lastly, market participants provided evidence that it is easy to switch between competing ad exchanges, casting further doubt that Google has market power in this particular market.

Notwithstanding the uncertainty regarding Google's market power in this space, the Bureau considered allegations that Google engaged in conduct to exclude rivals such as competing ad exchanges and demand-side platforms. Specifically, the Bureau examined allegations that Google engaged in the following conduct:

1. **AdX Terms of Service** — amending its AdX terms of service to exclude competing ad exchanges;
2. **Enhanced Dynamic Allocation** — implementing a software setting in DFP that unfairly advantages Google over competing ad exchanges;
3. **Bundling** — inducing exclusive use by advertisers of multiple Google products through incentives; and
4. **Control of Information** — controlling information across the entire online display advertising ecosystem as a result of Google's end-to-end integration.

As described in greater detail below, the Bureau concluded that there is no compelling evidence to suggest this conduct has excluded rivals or harmed Canadian publishers or advertisers, or that it has resulted in a substantial lessening or prevention of competition in this market. The Bureau's conclusions with respect to these allegations were based on a careful review of the evidence obtained over the course of its investigation.

1. Google's AdX terms of service

If a publisher decides to use Google's AdX to sell its display advertising inventory, it must adhere to Google's AdX Seller Program Guidelines (the Guidelines). The Bureau considered whether the Guidelines require publishers, as a precondition to using AdX, to commit to exclusively directing their inventory through AdX, thereby excluding ad exchange rivals from competing effectively in this space.

PUBLIC

Based on the information obtained over the course of the investigation, it is evident that publishers are not obligated to use Google's AdX exclusively, and in fact, have control over how their inventory is filled. The evidence also supports the conclusion that publishers commonly switch between ad exchanges, that it is not difficult for publishers to switch between ad exchanges, and that competing ad exchanges are growing in the exchange-based online display advertising market in North America.

Accordingly, the Bureau concluded that Google's AdX terms of service have not resulted in a substantial lessening or prevention of competition in this market.

2. Enhanced dynamic allocation

When Google's DFP receives a request for an ad from a website, under certain circumstances Google's Enhanced Dynamic Allocation (EDA) feature in DFP will check AdX (and only AdX) to see if any advertisers are willing to pay more for the ad impression. The Bureau considered allegations that this gives AdX an unfair advantage because it gives Google a right of first refusal on valuable ad impressions and because it reduces the number of ad impressions available for competing ad exchanges to bid on. The Bureau also considered allegations that the EDA feature in DFP may disadvantage publishers because DFP does not check other ad exchanges to see if they could obtain more value for their ad impressions.

The information gathered by the Bureau suggests that there has been no exclusionary effect on competing ad exchanges as a result of EDA. Moreover, publishers were not generally concerned about EDA owing to the benefits of the feature and the flexibility they retain notwithstanding EDA. In particular, publishers suggest that EDA is beneficial because it provides them with an opportunity to increase revenue. With respect to flexibility, publishers ultimately decide which ad exchanges to use and can set a "price floor" for each ad exchange. Lastly, EDA is optional, so publishers can decide for themselves whether or not to use this feature in DFP.

An advanced programmatic technique called "header bidding" has also emerged, giving publishers additional flexibility in filling their display advertising inventory. Prior to header bidding, publishers would prioritize their inventory sequentially (e.g. direct sales would normally have a higher priority level than indirect sales through ad exchanges). When a publisher's ad server received a request for an ad, it would check each priority level, one-by-one, to see, first, if any of its direct sales are appropriate to fill a given ad impression. If the publisher's direct sales were not appropriate, the publisher's ad server would try to sell the ad impression at the next priority level all the way down to open auctions. Header bidding essentially gives all ad exchanges (including Google's AdX) a chance to compete across the publisher's entire display

advertising inventory. This process brings the digital media industry closer to a single unified auction where demand sources compete side by side rather than sequentially, ultimately yielding higher revenues for publishers.

Accordingly, the Bureau concluded that EDA has not resulted in a substantial lessening or prevention of competition in the market.

3. Bundling

The Bureau also considered allegations that Google offers incentives to advertisers to encourage them to use only Google's services across the display advertising ecosystem. For example, complainants alleged that Google uses below-cost pricing and provides incentives for advertisers that use Google's demand-side platform (DBM) to also purchase inventory on Google's ad exchange (AdX). These practices allegedly foreclose the market to competing demand-side platforms.

Based on the information collected by the Bureau, the incentives that Google offers to advertisers are marginal and would not likely induce exclusivity. Many advertisers continue to use multiple demand-side platforms to meet their needs and there is no evidence that rivals have been excluded from competing effectively as a result of such incentives. The Bureau also did not find evidence that these practices substantially lessened or prevented competition in this market.

4. Control of information

The Bureau evaluated a general concern that Google's end-to-end integration across the entire online display advertising ecosystem gives it visibility into market price and volume information. The concerns were that Google may be in a conflict of interest (representing advertisers on one hand and publishers on the other) and that Google's access to superior information may enable it to engage in conduct to exclude rivals in each segment of the exchange-based online display advertising market.

The Bureau does not currently have reason to believe that the data Google has obtained from its offerings across the online display advertising ecosystem has been used to exclude a competitor. While Google's control of information across the ecosystem may be relevant in determining whether or not it has market power, there is no allegation of a corresponding anti-competitive practice for the Bureau to evaluate.

Conclusion

The Bureau conducted an extensive investigation into allegations that Google engaged in a variety of anti-competitive business practices related to online search, search advertising and display advertising services in Canada. For the reasons set out above, the Bureau concluded that there is inadequate evidence to support a conclusion that Google's conduct, outside its practices related to the AdWords API Terms and Conditions, was engaged in for an anti-competitive purpose and/or that the conduct substantially lessened or prevented competition in Canada. In respect of its AdWords API Terms and Conditions, Google has provided a commitment to the Commissioner that resolves his concerns.

The digital economy, including the increasing competitive significance of data, will continue to play a crucial role for Canadian businesses and consumers. Robust competition policy and enforcement in this sector will nurture a competitive and innovative Canadian marketplace.

The Commissioner makes his enforcement decisions based on the available evidence. The Bureau will closely follow developments with respect to Google's ongoing conduct, including the results from investigations of our international counterparts. More generally, the Bureau will continue actively monitoring the digital marketplace. Should new evidence come to light of harm in the Canadian marketplace, whether through subsequent complaints or the Bureau's ongoing monitoring efforts, the Bureau will not hesitate to take appropriate action.

The Bureau, as an independent law enforcement agency, ensures that Canadian businesses and consumers prosper in a competitive and innovative marketplace. The Bureau investigates allegations of anti-competitive practices and promotes compliance with the laws under its jurisdiction, including the Act.

This publication is not a legal document. The Bureau's findings, as reflected in this Position Statement, are not findings of fact or law that have been tested before a tribunal or court. Further, the contents of this Position Statement do not indicate findings of unlawful conduct by any party.

However, in an effort to further enhance its communication and transparency with stakeholders, the Bureau may publicly communicate the results of certain investigations, inquiries and merger reviews by way of a Position Statement. In the case of a merger review, Position Statements briefly describe the Bureau's analysis of a particular proposed transaction and summarize its main findings. The Bureau also publishes Position Statements summarizing the results of certain investigations, inquiries and reviews conducted under the *Competition Act*. Readers should exercise caution in interpreting the Bureau's assessment.

Enforcement decisions are made on a case-by-case basis and the conclusions discussed in the Position Statement are specific to the present matter and are not binding on the Commissioner of Competition.

For media enquiries:
Media Relations
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Footnotes

1 "Network effects" exist when the value of a product or service depends on the number of others who also use the product or service.

2 The Bureau applies analytical methodologies, and makes enforcement decisions, on a case-by-case basis. The methodologies and conclusions discussed in this statement are specific to the review of the allegations in question and are not binding on the Commissioner. The legal requirements of section 29 of the *Competition Act*, and the Bureau's policies and practices regarding the treatment of confidential information, limit the Bureau's ability to disclose information obtained during the course of an investigation

3 For more information, please see the Bureau's Enforcement Guidelines on The Abuse of Dominance Provisions.

4 The Bureau analyzed search manipulation and the preferential treatment of Google services as distinct but related allegations.

5 Revenues generated through syndicated search ads are shared between the website publisher and the search engine.

6 The Bureau's review regarding distribution agreements focussed solely on the search engine settings on various software and hardware devices.

Date modified:

ontact the Competition Bureau

This is Exhibit “96” referred to in the Affidavit of Mary DeCaire sworn by Mary DeCaire at the City of Toronto, in the Province of Ontario, before me on May 5, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

JAKOB KELLY


Competition Bureau Canada
@CompBureau
Competition Bureau completes extensive investigation of Google
ow.ly/4mRzXU
12:02 PM · Apr 19, 2016
5
1

This is Exhibit “97” referred to in the Affidavit of Mary DeCaire sworn by Mary DeCaire at the City of Toronto, in the Province of Ontario, before me on May 5, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

JAKOB KELLY

Competition Bureau Canada
Bureau de la concurrence Canada



COMPETITION BUREAU

BUILDING A MORE COMPETITIVE AND INNOVATIVE CANADA

ANNUAL REPORT OF THE COMMISSIONER OF COMPETITION FOR THE YEAR ENDING MARCH 31, 2017

Canada

PUBLIC

7154

This publication is not a legal document. It is intended to provide general information and is provided for convenience. To learn more, please refer to the full text of the Acts or contact the Competition Bureau.

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STRENGTHENING COMPETITION TO DRIVE INNOVATION

Competition drives innovation.

An open and welcoming marketplace that fosters the emergence of new companies and is unhampered by anti-competitive business practices is essential to a nationwide culture of innovation. Without competitive markets innovation cannot thrive.

The Bureau's role is to safeguard the market forces that enable innovators to compete on a level playing field.

Throughout 2016–2017, we supported innovation by continuing to promote the importance of competition, enforcing Canada's competition laws, and advocating for less restrictive regulations — strengthening the ability of Canadian businesses to innovate in a fast-changing global economy.

HIGHLIGHTS: 2016–2017

Standing up for truth in advertising

People are always happy to hear about a great deal that will save them money… as long as the claims are actually true.

It is not unusual for online retailers to compare their prices with those of the competition, showing how their products are less expensive than others. But sometimes the promised cost savings are not accurate — potentially causing consumers to choose one company over another based on false and misleading information.

When we found that Amazon.com.ca Inc (Amazon) relied on its suppliers for the regular prices — or "list prices" — shown on its website, without verifying that those prices were accurate, we reached an agreement with Amazon which saw it pay a $1 million administrative monetary penalty. This sent a clear message to the marketplace that unsubstantiated savings claims will not be tolerated. As a result of this investigation, Amazon made changes to the way it advertises list prices on its Canadian website to accurately represent savings. The policies put in place by Amazon have had an effect beyond Amazon's Canadian website, including on savings claims for products sold on www.amazon.com.

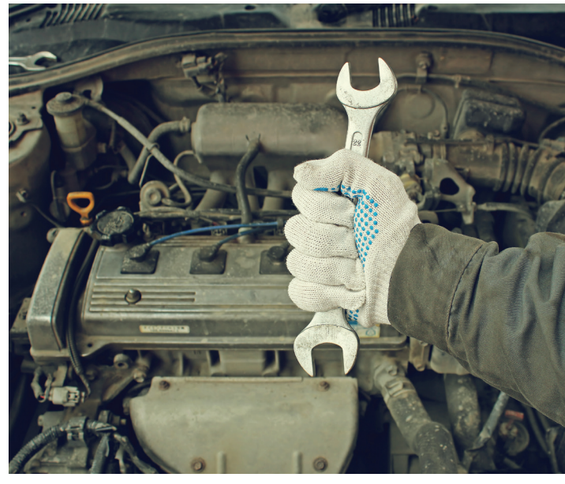


Protecting companies and consumers from getting stung by cartels

When companies collude to win contracts, consumers end up losing. Collusion deliberately drives up prices and deprives markets of competition and innovation.

Over the past few years, our investigations into collusion in the auto-parts sector have led to over $70 million in penalties against numerous companies, including a $13 million fine issued to Showa Corporation in 2016 — the second-largest bid-rigging fine ever ordered by a Canadian court.

When collusion crosses borders, cooperation is crucial to stopping it. In 2016–2017, we worked closely with the U.S. Department of Justice on a bid-rigging conspiracy which led to a USD$130 million fine against Nishikawa Rubber for its role in an international bid-rigging conspiracy. It was a further example of our commitment to create an environment where every company has a fighting chance to win bids and bring its innovations to market.





Carmakers clean up their act over deceptive environmental claims

The Bureau helped get compensation for affected Canadians who bought vehicles marketed as having clean diesel 2.0L engines with reduced emissions.

Volkswagen and Audi made headlines in 2015 when software installed in some of their vehicles was found to alter the operation of the vehicle during testing which reduced emissions generating falsely positive emissions tests.

In 2016–2017, the Bureau reached an agreement with the two companies that saw them pay $15 million in penalties for their deceptive marketing. We also took part in a class-action settlement between Volkswagen, Audi and consumers. In 2017, Volkswagen and Audi agreed to pay up to $2.1 billion in payments to the more than 100,000 Canadians who had bought or leased the affected vehicles — one of the largest settlements ever in Canada. Strong actions like these are important to ensuring Canadians' confidence when making major purchasing decisions.



A look to the future of financial services

Innovative, technology-led financial services have the potential to improve the way people manage their money. We want to make sure Canadians benefit in every way possible.

Digital tools can help increase Canadians' access to financial services for everything from transferring funds and making payments, to investing and borrowing. In 2016–2017, we launched a comprehensive market study to deepen our understanding of the emerging financial technology (FinTech) marketplace — and advise policymakers on how to best to help innovative new players grow and succeed.

As part of the study, we also held a one-day FinTech workshop which brought together 133 entrepreneurs and representatives from the banking, regulatory, legal and academic communities to share their ideas and help shape the future of competition and innovation in Canada's financial services industry.

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Restoring retail price competition for ebooks in Canada

When an arrangement among competitors prevented businesses from competing on ebook prices, we took action to turn the page — to bring better value to Canadian readers.

In many competitive markets, businesses compete on prices to attract customers. But in Canada's ebook market, our investigation found that an arrangement among publishers has prevented Canadian retailers from offering discounts on ebooks — meaning Canadians saw virtually identical prices no matter where they shopped.

In 2016–2017, we signed agreements with publishers Hachette, Macmillan and Simon & Schuster, as well as Apple, in order to allow retailers to offer discounts and compete on the prices of ebooks from those publishers. These agreements are aimed at helping to ensure Canadians receive the full benefits that come with retail price competition — and demonstrated that the Bureau will not hesitate to take action on anti-competitive behaviour in the digital economy.

The agreements are currently on hold pending the outcome of a challenge brought by Kobo. Related proceedings against another publisher, HarperCollins, are ongoing.





Editorial credit: Lestertair / Shutterstock.com

A new prescription for drugstore competition

Mergers are generally seen as a way to increase competitiveness, allowing Canadians to benefit from lower prices, greater product choice and better quality services but sometimes they can have the opposite effect, especially in smaller communities.

When McKesson, Canada's largest wholesale supplier of prescription and over-the-counter drugs, wanted to purchase Rexall — one of the country's biggest pharmacy chains — and the ClaimSecure healthcare claims adjudication business, the Bureau took action to preserve competition at both the wholesale and retail levels.

Our review found that the proposed deal would likely have affected competition in many ways. For example, we found that McKesson would have had an incentive to give more favourable terms when supplying Rexall pharmacies, than when supplying competing chains. Before approving the acquisition, McKesson signed an agreement that required it to sell off Rexall pharmacies in 26 communities across Canada, and restricted its ability to share commercially sensitive information between its wholesale and healthcare claims adjudication retail businesses.

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PUBLIC

MESSAGE FROM THE COMMISSIONER



Competitive markets drive businesses to innovate. Competition creates a strong incentive for companies to pursue more efficient production techniques and business models and develop better products and services for their customers. That kind of innovation is important to productivity, efficiency and inclusive growth across all sectors and in all regions of Canada — which is why the Government of Canada has made it a top priority.

Through the federal Innovation Agenda, the government aims to prepare Canadians for a rapidly changing digital economy, to take full advantage of emerging technologies that can elevate the competitiveness of new and established businesses, and to foster the next generation of global companies that will create more jobs and help grow the middle class.

The Competition Bureau plays an important role in achieving these objectives by supporting competition to help drive innovation in the marketplace. Through our enforcement, promotion and advocacy work, we ensure a level playing field for innovative companies to attract funding, commercialize their ideas and scale up to compete globally. By working to build a fairer and more open marketplace, we also help make Canada a destination of choice for international investment and growth.

We also conduct market studies in support of competition. With disruptive technologies and business models in the financial industry dramatically changing how Canadians access and use their money, in 2016–2017, we began studying the implications for consumers and businesses — and weighing the need for regulatory reform to promote greater competition in this area — while maintaining consumer confidence in the sector. Our final report on the topic will be published later in 2017.

We continued to fight bid-rigging, price-fixing, abuse of dominance, deceptive marketing practices and other tactics that harm competition and consumer confidence and cost Canadian consumers and taxpayers. We secured record-setting fines and customer refunds through our investigations into the auto-parts and wireless telecommunications sectors.

Although a smaller competition agency than some of our international counterparts, we continue to punch above our weight. We received several honours for our enforcement and advocacy successes last year: we won the International Compliance and Ethics Award from the Society of Corporate Compliance and Ethics, our *Intellectual Property Enforcement Guidelines* were named the "most innovative soft law" at the 2017 Antitrust Writing Awards, and we were nominated for Agency of the Year in the Americas by the Global Competition Review.

I am proud of the excellent results that were achieved by our dedicated and professional employees for Canadian businesses and consumers in 2016–2017. As the global digital economy continues to evolve and new challenges arise, we will remain vigilant. All of us at the Bureau are committed to building on the successes of the past year to help make Canada a global centre of innovation excellence.

John Pecman
Commissioner of Competition

WE ARE CANADA'S COMPETITION BUREAU

The Competition Bureau (Bureau) has a legislated mandate to ensure that Canadian businesses and consumers prosper in a competitive and innovative marketplace. We are committed to doing so through all means available, from law **enforcement** to competition **promotion.**

OUR RESPONSIBILITIES

Headed by the Commissioner of Competition, the Bureau administers and enforces the *Competition Act*, the *Consumer Packaging and Labelling Act* (except enforcement as it relates to food), the *Textile Labelling Act* and the *Precious Metals Marking Act* (collectively referred to as the Acts).

OUR GUIDING PRINCIPLES

Vision

To be one of the leading competition agencies in the world; one that is open, transparent and collaborative, and that vigorously enforces and promotes competition to provide Canadians with the benefits of a competitive and innovative marketplace.

Mission

To promote and protect competition for the benefit of Canadians, the Bureau will administer and enforce the Acts with fairness and predictability, to:

- Prevent and deter anti-competitive behaviour and deceptive marketing practices
- Review mergers to ensure they do not harm competition
- Empower consumers and businesses

OUR CORE VALUES

Openness and transparency

We engage with our stakeholders through a wide range of new and existing means of communication to dialogue and share information, and to explain to Canadians and our partners the benefits of competition for consumers, businesses and the productivity of the Canadian economy.

Collaboration

We work with our partners to advance competition to ensure our marketplace is functioning efficiently.

Integrity and fairness

We act with integrity and fairness and in the public interest at all times. This requires a principle-based approach to enforcing and administering the Acts. Our decisions are based on facts, evidence and sound judgement. We are committed to protecting the confidentiality of sensitive information.

Respect

We interact honestly and respectfully with our colleagues, partners and all Canadians — recognizing their diversity and their individual contributions to healthy competition.

Leadership

We show leadership through our actions, strategic approach and commitment to continuous innovation.

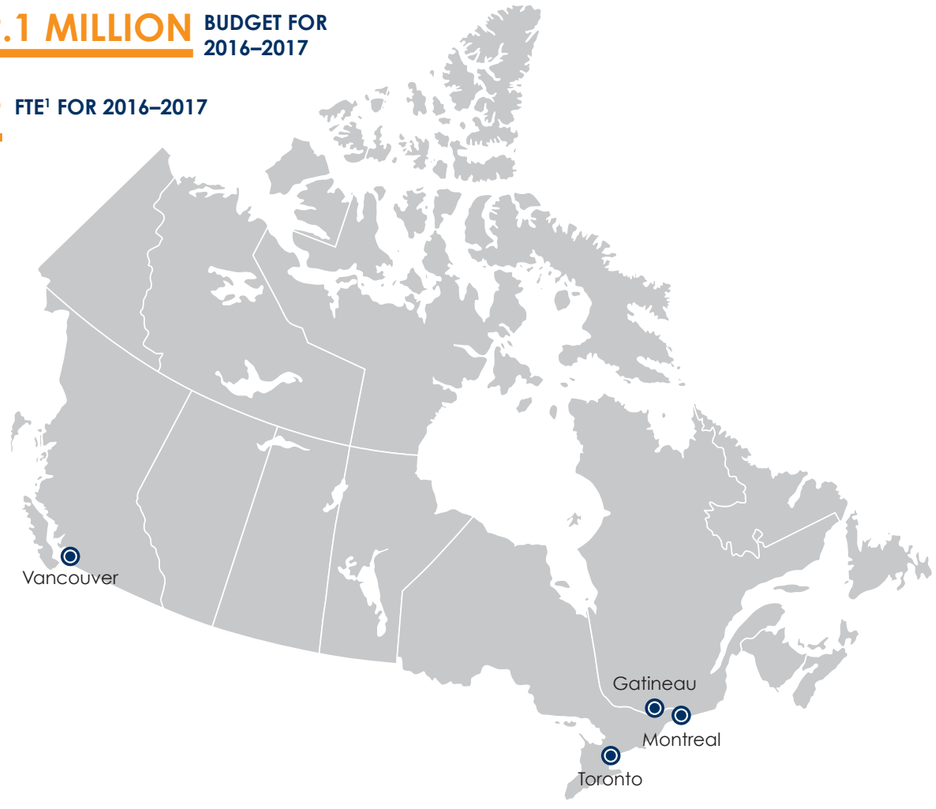
THE BUREAU AT A GLANCE

Our organization is headquartered in Gatineau, Quebec, and has regional offices in Montreal, Toronto and Vancouver.

BUDGET AND EMPLOYEES

$49.1 MILLION BUDGET FOR 2016–2017

369 FTE[1] FOR 2016–2017



1 Full-time equivalent employees.

OUR STRUCTURE

ENFORCEMENT BRANCHES

Cartels and Deceptive Marketing Practices Branch

- Cartels Directorate
- Deceptive Marketing Practices Directorate

Mergers and Monopolistic Practices Branch

- Mergers Directorate
- Monopolistic Practices Directorate

ENFORCEMENT SUPPORT BRANCHES

Competition Promotion Branch

- Economic Analysis Directorate
- International Affairs Directorate
- Policy, Planning and Advocacy Directorate
- Public Affairs and Outreach Directorate
- Compliance Unit

Corporate Services Branch

- Enforcement Services Directorate
- Finance, Administration and Information Management Directorate
- Talent Management and Development Directorate

PUBLIC

THE YEAR IN NUMBERS

$44.85 MILLION

IN FINES, ADMINISTRATIVE MONETARY PENALTIES[2] IMPOSED AND CONSUMER RESTITUTION

$13.73 MILLION
TOTAL FINES IMPOSED

$19.3 MILLION
ADMINISTRATIVE MONETARY PENALTIES

UP TO $11.82 MILLION
CUSTOMER RESTITUTIONS

222
MERGER REVIEWS COMPLETED

61
INVESTIGATIONS (NON-MERGER) CONCLUDED

5
GUILTY PLEAS IN CARTEL CASES[3]

4
COMPANIES SENTENCED FOR CRIMINAL CONDUCT UNDER THE *COMPETITION ACT*

160
SPEECHES AND PRESENTATIONS TO STAKEHOLDERS

35
ADVOCACY INITIATIVES

10,589
COMPLAINTS AND INFORMATION REQUESTS RECEIVED BY THE BUREAU INFORMATION CENTRE[4]

2 Administrative monetary penalties (AMPs) are different from fines in that they are used to promote and encourage compliance with the *Competition Act*. Failure to pay an AMP may be enforced civilly as a debt due to the Crown. A fine, by contrast, is a punishment imposed by a court upon conviction of a criminal offence and failure to pay it may lead to imprisonment.

3 The Bureau also secured one guilty plea in a contested proceeding.

4 Number of complaints and information requests which relate to the Bureau's four statutes: the *Competition Act*, *Consumer Packaging and Labelling Act*, *Textile Labelling Act* and the *Precious Metals Marking Act*.

Enforcement

74
NEW INVESTIGATIONS COMMENCED

61
INVESTIGATIONS CONCLUDED

138
ONGOING INVESTIGATIONS

11
SEARCH WARRANTS ISSUED

33
ALTERNATIVE CASE RESOLUTIONS REACHED

10
CONSENT AGREEMENTS IN NON-MERGER CASES

8
CONSENT AGREEMENTS IN MERGER CASES

Advocacy and outreach

62
PUBLICATIONS

696,517
VISITS TO THE BUREAU'S WEBSITE

44,736
VIEWS OF THE BUREAU'S VIDEOS

301
MEDIA REQUESTS

35
ADVOCACY INITIATIVES

4
REPRESENTATIONS TO REGULATORY BODIES

29
OTHER ADVOCACY INITIATIVES

2
ISSUES OF THE *COMPETITION ADVOCATE* PUBLISHED

Partnerships

2
NEW INTERNATIONAL COOPERATION AGREEMENTS

3
NEW DOMESTIC PARTNERSHIP AGREEMENTS

43
FORMAL BILATERAL MEETINGS WITH FOREIGN LAW ENFORCEMENT AND COMPETITION AGENCIES

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PUBLIC



PRIORITY 1: INCREASE COMPLIANCE

WE ENCOURAGE INNOVATION BY STANDING UP TO ANTI-COMPETITIVE BUSINESS PRACTICES

Enforcement and compliance outreach are essential tools in the fight against anti-competitive activities that stifle innovation. We continued to work on several high-impact enforcement cases targeting cartels, bid-rigging and abuse of dominance, reviewing proposed mergers and acquisitions, and raising awareness among Canadian businesses about the importance of complying with the *Competition Act*.

PRIORITY 1

Use all available tools to increase compliance with Canada's competition laws, and prevent and deter anti-competitive or deceptive conduct that could threaten the health, growth and confidence in the Canadian economy.

COMMITMENTS	STATUS
Support innovation in the digital economy by deterring anti-competitive conduct that impedes new entrants, products and services and by stopping deceptive marketing practices in e-commerce.	◉
Raise awareness throughout the procurement community and among potential bidders about bid-rigging related to infrastructure spending, given increasing public-sector investment.	
• Deliver a minimum of thirty bid-rigging/compliance presentations to targeted audiences	◉
• Use data screening mechanisms to detect potential bid-rigging	◒[5]
Increase small and medium-sized businesses' awareness of the importance of complying with the statutes administered by the Bureau.	
• Leverage membership networks of small and medium sized businesses associations to expand reach	◉
• Engage in targeted outreach with small and medium businesses across the country to promote the adoption of corporate compliance programs	◉

◉ ACHIEVED ◒ PARTIALLY ACHIEVED ○ NOT ACHIEVED

5 Screening mechanisms are under development.

CARTELS AND BID-RIGGING

Price-fixing and bid-rigging inhibit innovation, drive up prices and reduce consumer choice. They are also serious criminal offences. Continuing our crackdown on cartels, in 2016–2017, we secured significant fines and laid charges against several companies in the infrastructure and auto-parts sectors.

Protecting infrastructure investments with our law enforcement partners

The Government of Canada is investing billions in infrastructure. That makes it more important than ever to put a stop to bid-rigging in the infrastructure sectors. Bid-rigging on public contracts prevents the government from getting good value for tax dollars spent. It stifles competition in the market by favouring colluding firms to the detriment of competing firms or those attempting to enter the market and reduces innovation in the construction industry. Our investigations in 2016–2017 were backed by solid partnerships with Canada's law enforcement agencies, including a joint investigation with the *Sûreté du Québec* that resulted in multiple guilty pleas and fines in Quebec for bid-rigging and collusion in Saint-Jean-sur-Richelieu.

A huge win against international cartels

Our investigation into an international conspiracy led to the second-largest fine ever ordered by a Canadian court for bid-rigging. Japanese auto-parts manufacturer Showa Corporation pleaded guilty and was fined $13 million by the Ontario Superior Court of Justice for engaging in a secret arrangement with another supplier of electric power steering gears sold to Honda for cars manufactured in Canada. Since April 2013, our investigations into bid-rigging agreements among auto-parts suppliers have resulted in more than $70 million in fines imposed by Canadian courts.

Helping the public sector get wise to cartel activity

With greater focus on public outreach, we were able to help even more public procurement officers and government officials detect and prevent bid-rigging on public contracts. Over the year, we gave 35 presentations to groups of procurement officers at all levels of government to raise awareness of cartel behaviour and provide practical tips on how to recognize when a call for bids might be a bid-rigging target. We also continued to co-develop a new screening mechanism with Public Services and Procurement Canada that can automatically sift through bid-submission data for signs of agreements between competitors.

$13.28 MILLION

TOTAL FINES IMPOSED IN CARTEL CASES

5 GUILTY PLEAS (NON-CONTESTED)

2 INDIVIDUALS SENTENCED

1 COMPANY CHARGED CRIMINALLY

Award-winning compliance promotion

The ultimate responsibility for respecting Canada's competition laws falls to the companies engaged in the marketplace. To comply successfully, those businesses need reliable, expert guidance. In September 2016, we were honoured with the 2016 International Compliance and Ethics Award from the Society of Corporate Compliance and Ethics in recognition of our support for Canadian businesses.

Over the course of the year, we held 32 compliance outreach events across Canada. Many focused on encouraging small and medium-sized businesses to adopt corporate compliance programs. To reach as wide an audience as possible, we partnered with the Canada Business Network (CBN), giving presentations at local small business support offices across the country. We also expanded our outreach by establishing new relationships with non-profit groups like Futurpreneur Canada, which led to an appearance at its annual summit and other speaking engagements at small business events. We further promoted our compliance messaging through new educational material, including four new compliance blogs posts and a crossword puzzle to help stakeholders familiarize themselves with compliance concepts in an accessible way.

35 BID-RIGGING PRESENTATIONS TO PUBLIC PROCUREMENT OFFICERS

32 COMPLIANCE OUTREACH EVENTS

36 TARGETED OUTREACH (PRESENTATIONS AND GUIDANCE) TO SMALL AND MEDIUM-SIZED BUSINESSES

5 COMPLIANCE PUBLICATIONS

COMPETITION AND INNOVATION IN THE DIGITAL ECONOMY

To maximize the potential benefits that innovative new products, services and business models provide Canadians, we took targeted action to support the growth of a competitive digital economy by investigating and deterring anti-competitive conduct in several sectors.

Fighting for innovation in real estate services

Our ongoing abuse of dominance case against the Toronto Real Estate Board (TREB) reached a critical point in April 2016 when the Competition Tribunal ruled that TREB had abused its market power by preventing real estate agents from offering certain services and information online. Had TREB not imposed such restrictions, its members could have offered new and innovative products and services over the internet to help home buyers and sellers make more informed choices about one of the most significant investments of their lives. The decision has been appealed by TREB to the Federal Court of Appeal.

Ensuring consumer-friendly pricing for ebooks

We achieved an important milestone in our ebooks case, signing consent agreements in January 2017 with publishers Hachette, Macmillan and Simon & Schuster, as well as Apple. These agreements will allow retailers to offer discounts on ebooks and compete on the prices of ebooks — ensuring consumers can benefit from retail price competition in this growing market. These agreements are currently on hold pending the outcome of a challenge brought by Kobo. As no agreement has been reached with a fourth publisher, HarperCollins, the Commissioner has filed an application with the Competition Tribunal for an order to stop its alleged anti-competitive conduct.

Greater transparency in digital economy cases

We promote transparency and certainty for businesses by providing guidance on our approach to enforcement in digital economy cases. In 2016, we published position statements summarizing the results of the following investigations:

- To increase predictability for marketplace participants in the digital economy, we conducted an extensive investigation into several allegations that Google was not complying with the abuse-of-dominance provisions of the *Competition Act*. We found evidence to support only one of the allegations relating to certain contracts with advertisers. This issue was resolved when Google made changes to its contracts to give advertisers more flexibility to use competing advertising platforms.
- Our investigation into TMX Group Limited, which operates the Toronto Stock Exchange, focused on access to securities market data. We found that while TMX Group had refused requests by investment dealers to share private market data, the conduct was unlikely to violate the *Competition Act* as it was doubtful that sufficient future competition would have materialized.
- We closed our investigation related to Apple's contracts with Canadian wireless carriers that sell and market iPhones. We did not find sufficient evidence to conclude that Apple had engaged in an abuse of dominance under the *Competition Act*.

+80% NUMBER OF ENFORCEMENT CASES IN THE DIGITAL ECONOMY COMPARED TO PREVIOUS YEAR

43 DIGITAL ENFORCEMENT CASES STARTED

35 DIGITAL ENFORCEMENT CASES CONCLUDED

44 DIGITAL ENFORCEMENT CASES ONGOING

MERGER REVIEWS

We review mergers of all sizes and in all sectors to ensure they will not substantially lessen or prevent competition, so that consumers and businesses will continue to benefit from a dynamic marketplace that offers innovative products and services, increased choice and competitive prices. In 2016–2017, we completed 222 merger reviews, including 53 complex reviews in industries that have a significant impact on the day-to-day lives of Canadians. We also reached eight consent agreements that required merging companies to sell assets or take other measures to address competition concerns.

Competition is in stock at the drugstore

We reviewed the proposed $3 billion acquisition of the Rexall pharmacy retail chain by McKesson, the largest wholesaler of prescription and over-the-counter drugs in Canada. After determining that the proposed merger would significantly reduce competition in both the wholesale and retail supply of certain pharmaceutical products and services, we entered into a consent agreement requiring McKesson to sell Rexall stores in 26 markets in British Columbia, Alberta, Saskatchewan, Ontario and the Northwest Territories, and to restrict the transmission of commercially sensitive information between its wholesale business, the Rexall retail business and the Claim Secure healthcare claims adjudication business.

For a more transparent merger review process

We published a template for merger consent agreements that gives the legal and business communities more insight into the terms we negotiate for merger remedies. We also ramped up our efforts to provide guidance to the legal community, industry stakeholders and the public by publishing 17 position statements describing our analysis of a proposed acquisition or merger.

222 MERGERS REVIEWS COMPLETED

169 NON-COMPLEX REVIEWS

53 COMPLEX REVIEWS

99% NON-COMPLEX MERGERS REVIEWED WITHIN SERVICE STANDARD

74% COMPLEX MERGERS REVIEWED WITHIN SERVICE STANDARD

8 MERGER-RELATED CONSENT AGREEMENTS

1 MERGER ABANDONED DUE TO COMPETITION CONCERNS

17 POSITION STATEMENTS PUBLISHED

PUBLIC

7162

Preserving fair retail gas prices

A lack of competition at the pumps hurts consumers and businesses alike. In June 2016, we reached a consent agreement to address concerns related to Le Groupe Harnois Inc.'s proposed acquisition of the gasoline supply arrangements of Distributions pétrolières Therrien Inc. To prevent Harnois from being able to raise retail prices at its corporate stations and wholesale prices at the dealer stations it supplies, the agreement requires Harnois to sell either a retail station or distribution contract in Quebec, and removes its ability to influence gasoline retail prices in the area.

That agreement was followed by one with Couche-Tard, in September 2016, related to its acquisition of retail gasoline sites from Imperial Oil. The agreement required that two gas stations be sold to a purchaser approved by the Commissioner and resolved our concerns that the proposed transaction would reduce competition substantially in a local market near the South Shore of the Montréal area and in Carleton Place, in eastern Ontario.

Protecting the seeds of innovation in Canada's agriculture sector

We reviewed a number of mergers in the agricultural industry over the past year, looking at whether the proposed transactions would affect competition and were likely to affect the innovation efforts of the merging parties. While some mergers did not raise any concerns, others did, such as Crop Production Services' (CPS) acquisitions of the agri-product retail stores of Andrukow and Wendland. To resolve our concerns, CPS agreed to sell some of its retail locations in Alberta and Saskatchewan. Our work in this sector continues, with ongoing reviews of the proposed Agrium/Potash, Dow/DuPont and Bayer/Monsanto mergers.

Protecting competition in Manitoba's wireless market

When Bell announced its intention to acquire Manitoba Telecom Services (MTS), we undertook a nine-month investigation to ensure the merger would not have anti-competitive effects. After reviewing, we concluded that the merger would likely lessen or prevent competition for retail wireless services in Manitoba and lead to higher prices and fewer options for Manitobans. To resolve this issue, we reached a consent agreement with Bell which required it to sell six retail stores, 24,700 subscribers and 40 MHz of spectrum to Xplornet — a leading provider of rural broadband internet through fixed wireless and satellite networks throughout Canada, including rural Manitoba — establishing a new entrant in the Manitoba mobile wireless services market. Additionally, Bell committed to selling a significant number of its MTS subscribers and approximately one-third of its MTS dealer locations to TELUS.





PRIORITY 2: EMPOWER CANADIANS

WE GIVE CANADIANS THE POWER TO MAKE SMARTER AND SAFER CHOICES

Fake online reviews, mass marketing schemes, undisclosed fees and hidden terms and conditions do more than just hurt Canadian consumers. By reducing consumer confidence in the marketplace, business growth and innovation also suffer. People need to trust that what they see is what they will get — so we tackle deceptive marketing practices head-on and provide Canadians with the tools and advice to defend themselves against the latest scams, as well as misleading practices.

PRIORITY 2

Create an environment of competitive prices, greater product choice and informed decision-making for the benefit of all Canadians.

COMMITMENTS	STATUS
Provide timely and accurate warnings to reduce the risk of Canadian consumers being victims of civil and criminal deceptive marketing.	
• Consult with partners to develop a Consumer Deceptive Marketing Advisory System (CDMAS)[6]	◉
• Increase the Bureau's use of social media and other digital engagement capabilities	◉

◉ ACHIEVED ◒ PARTIALLY ACHIEVED ○ NOT ACHIEVED

6 Although this was initially referred to as the consumer deceptive marketing advisory system (CDMAS) in the Competition Bureau's 2016–2017 Annual Plan, it is now referred to as "consumer alerts."

DECEPTIVE MARKETING PRACTICES

While advertising aims to entice consumers to buy, it must do so in truthful ways. Unfortunately, that is not always the case. That is when we step in to restore consumer confidence.

Record-setting compensation for Canadian consumers

Once again, we secured record-setting refunds for Canadians misled by deceptive marketing practices, including those unknowingly charged for unwanted "premium" text messages like ringtones and trivia quizzes. In 2012, we took Canada's three big telecom carriers (Bell, Rogers and Telus) and the Canadian Wireless Telecommunications Association to court for allowing third parties to advertise and charge customers for unauthorized messages. In May 2016, Bell agreed to pay up to $11.82 million to affected customers — the largest restitution ever obtained through a consent agreement — and to donate approximately $800,000 to public interest advocacy groups. This agreement concluded the Bureau's investigation into this matter, as we previously reached agreements with Telus and Rogers.

We also investigated the marketing practices of Volkswagen and Audi, concluding that they had made false environmental marketing claims to promote some of their diesel-powered vehicles. We participated in a proposed class-action settlement against the companies, resulting in an order to pay up to $2.1 billion in compensation to affected consumers — one of the largest consumer settlements in Canadian history.[7] We also reached a separate consent agreement with Volkswagen and Audi that led to an additional $15 million penalty.

Bringing hidden fees to light

Practices like drip pricing, where an advertised price is unattainable due to extra mandatory fees or charges, have a significant impact on consumer confidence. We continued to crack down on companies who use this tactic, reaching a settlement with Avis and Budget that required the rental car companies to pay a $3 million penalty.[8] In a similar case, we required telecom service provider Comwave to pay $300,000 in penalty for advertising its internet and phone plans as having unlimited usage even though monthly caps were in place and for misrepresenting charges for telecommunications services with advertised prices that were unattainable because of additional non-optional fees. Each company also agreed to implement a corporate compliance program to ensure their advertising complies with the law, and was required to cover some of the expenses related to the Bureau's investigation — $250,000 for Avis and Budget and $60,000 for Comwave.

Taking action when the price is not right

When companies promote their products and services at sale prices, it is against the law to entice consumers with misleading references to "regular prices". In 2016–2017, Amazon Canada agreed to pay a $1 million penalty for comparing its prices to higher "list prices" without verifying that they actually represented the real market price. As a result of our investigation, Amazon corrected its pricing practices not only on its Canadian website, but also on www.amazon.com.

We also took legal action in February 2017 against the Hudson's Bay Company (HBC) for what we consider to be deceptive regular prices claims and deceptive clearance promotions for mattresses and foundations sold together as sleep sets. Our investigation found that HBC has engaged in deceptive marketing practices by offering sleep sets at grossly inflated regular prices and then advertising deep discounts on these prices, suggesting significant deals to consumers. This case is ongoing.

7 The settlement was approved by the courts on April 21, 2017.

8 This was the Bureau's first proceeding under the new provisions of the *Competition Act* that came into force as part of Canada's Anti-Spam Legislation (CASL) in July 2014, as Avis and Budget used electronic messages to disseminate the alleged false or misleading representations.

Because "Made in Canada" should mean what it says

Many people are willing to pay a premium for products manufactured in Canada — so any clothing with a "Made in Canada" label should be telling the truth. During the year, we reached an agreement with Moose Knuckles to address concerns that its parkas labelled as Canadian-made were actually manufactured in Asia with the finishing touches applied here at home. In December 2016, the company agreed to make it clearer that some parkas are made with Canadian and imported components. It also agreed to add more operations at its Canadian factories and to donate $750,000 to charities in Canada, including those that provide winter jackets to children in need.

UP TO $11.82 MILLION
CUSTOMER RESTITUTION OBTAINED

$19.3 MILLION
ADMINISTRATIVE MONETARY PENALTIES ISSUED

15 CONSUMER AND BUSINESS ALERTS ISSUED

696,517 WEBSITE VISITS

44,736 VIDEO VIEWS

13,043 SOCIAL MEDIA ENGAGEMENTS[9]

8,669 TWITTER HITS

9,757 MEDIA HITS

FRAUD PREVENTION

Giving Canadians tools and guidance to protect themselves against fraud and deceptive marketing practices is essential to our consumer-focused work. In 2016–2017, we increased our engagement efforts to reach out to more Canadians than ever about these important issues.

A new system for warning Canadians about scams

We developed a new consumer alert system to warn Canadians about the dangers of new scams, misleading advertising and deceptive marketing practices. This included consulting with our partners on best practices and leveraging our network of partners to share our alerts with a wider audience.

We issued 12 consumer alerts and three business alerts covering topics such as fake charity/donation appeals and deceptive door-to-door tactics used to sell water heaters. These earned substantial public and media interest: for example, our pre-Valentine's Day alert about the hidden terms and fake profiles used to get people to sign up for online dating websites was featured in a CTV News interview seen by more than 1.37 million people.

Together in the fight against fraud

As chair of Canada's Fraud Prevention Forum, the Bureau plays a leading role in fraud prevention. The Forum brings together more than 80 law enforcement agencies, businesses and public-sector organizations to educate Canadians about the impact of fraud and how they can protect themselves from being victimized. In addition to ongoing collaboration throughout the year, Forum members participate in an annual Fraud Prevention Month campaign each March.

As part of our campaign for Fraud Prevention Month in March 2017, we encouraged social media users to share their tips for fighting fraud. On *Mythbuster Mondays*, we debunked common misconceptions about fraud using the hashtag #mythbusters. On Fridays, we published a #TipOfTheWeek related to a particular scam and in between, our popular *Fraudfacts* messages highlighted eye-opening statistics related to scams.

9 Number of times that other social media accounts liked or loved Bureau social media posts, commented on a post or shared/retweeted content to their followers.

PUBLIC

7164

We also engaged Canadians during a 2 *Good 2 B True* Twitter chat about fake online endorsements, posting and sharing tweets that reached approximately 440,000 twitter handles. In addition, we participated in 11 *Fraudchats* hosted by the Financial Services Commission of Ontario.

Expanding our reach

During Fraud Prevention Month 2017, we developed and shared more than 750 social media messages on multiple platforms. Our campaign hosted more than 16,000 tweets and retweets, reaching 5.8 million Twitter users (up nine percent from 2016).

Throughout the year, we used our social media presence to reach as many Canadians as possible. In 2016–2017, we increased our Twitter followers by 37 percent and our Facebook followers by 41 percent, and issued 74 percent more tweets than the previous year. We also launched a new Canada150 series in March 2017, posting one message each month about the Bureau's history to Twitter, Facebook and LinkedIn.

Reaching out to more Canadians

As part of our work to promote and protect competition in Canada, we delivered 160 speeches and presentations to consumers, partners, academia, and the legal and business communities on topics ranging from innovation in the financial sector to building trust in the online marketplace. We also issued 62 publications (e.g., bulletins, guidelines, videos, pamphlets) and 17 position statements, including a backgrounder on the Volkswagen/Audi settlement explaining the options available to affected consumers.

In addition, we further engaged with Canadians by publishing:

- **12** issues of *CB in Brief*, a monthly publication that provides a snapshot of recent Bureau news and developments.
- **77** announcements on enforcement outcomes, regulatory interventions and cooperation agreements.



PRIORITY 3: PROMOTE COMPETITION

WE ADVOCATE FOR A MARKETPLACE THAT NURTURES COMPETITION AND INNOVATION

The Canadian Government's Innovation Agenda aims to put Canada at the forefront of digital development and adoption. As emerging technologies reshape the business landscape, we work to make sure Canadian laws and regulations adapt to reflect the new reality, giving businesses the freedom to grow and compete at home and abroad — while continuing to protect and promote the interests of consumers.

PRIORITY 3

Promote and advocate for a more competitive marketplace, emphasizing smart regulation focused on achieving legitimate regulatory objectives.

COMMITMENTS	STATUS
Foster innovation through a pro-competitive approach to regulation.	
• Undertake a market study of technology-led innovation and emerging services in the Canadian financial services sector	◉
• Complete three competition promotion/ advocacy pieces pertaining to new forms of competition	◒ [10]
Strengthen our analytical frameworks and address competitive implications through workshops with stakeholders.	
• Address markets impacted by innovative technologies, services and business models by hosting a workshop that examines emerging competition issues	◉
• Host a workshop related to Anti-Cartel Day	○ [11]

◉ ACHIEVED ◒ PARTIALLY ACHIEVED ○ NOT ACHIEVED

10 The Bureau completed two advocacy promotional pieces focusing on restrictions in healthcare advertising and nurse practitioners. Due to competing priorities, it was determined that a third would not be completed.

11 In light of competing priorities and given that the Bureau was selected to host the 2017 International Competition Network Cartel Workshop in October 2017, it was determined that an Anti-Cartel Day workshop would not be held in 2016–2017.

COMPETITION IN THE HEALTHCARE SECTOR

Greater competition and innovation in Canada's health care sector can bring lower costs and better service for consumers. In 2016–2017, we released a pair of publications advocating for more competition in this vital industry.

A closer look at healthcare advertising restrictions

In October 2016, we published a report suggesting that the restrictions on what healthcare providers can advertise are unintentionally reducing competition and stifling innovation. While intended to protect consumer safety (by putting service quality ahead of price competition), we found that these restrictions have not had an impact on quality and have actually led to unnecessarily high prices. As such, we encouraged policy makers to collect more data on the potential impacts of their policies on Canada's healthcare markets when crafting new regulations. At the same time, we released a new issue of the *Competition Advocate*, which includes internationally-accepted best practices for regulators to follow when developing effective regulation.

Where competition meets the common cold

With many Canadians finding it difficult to get a doctor's appointment when they need one, nurse practitioners could help by treating common illnesses, ordering tests and prescribing medication. Independent nurse practitioners represent a new innovative health care business model in Canada. Our March 2017 issue of the *Competition Advocate* encouraged healthcare regulators to review the current policies that restrict nurse practitioners from operating independently. Allowing independent nurse practitioners to provide health care services could reduce wait times, improve patients' access, and increase consumer choice. Since some provinces are currently considering how best to incorporate nurse practitioners into their health care frameworks, we will continue to advocate that choice and innovation be central to that discussion.

4 REPRESENTATIONS BEFORE REGULATORY BODIES

29 OTHER ADVOCACY INTERVENTIONS

2 ISSUES OF *COMPETITION ADVOCATE* PUBLISHED

228 PARTICIPANTS AT OUR FINTECH WORKSHOP

PROTECTING CONSUMERS AND BUSINESSES

Throughout 2016–2017, we continued to advocate for a strong, healthy and competitive economy that can deliver the benefits of lower prices, more consumer choice and greater innovation to Canadian consumers and businesses.

A new framework for strengthening net neutrality

We called on the Canadian Radio-television and Telecommunications Commission (CRTC) to stop internet service providers (ISPs) from using differential pricing. By charging lower data-usage rates for their own content (or that of their affiliates) than for similar content from other sources, ISPs are harming competition and impeding consumer choice. We presented our recommendations to the CRTC in the Fall of 2016, as part of their consultations on differential pricing for wireline and wireless data plans. In April 2017, the CRTC unveiled a new regulatory framework that prohibits not only differential pricing but also the preferential treatment of any type of data by ISPs.

Standing up for drywall consumers in Western Canada

In September 2016, anti-dumping duties were provisionally imposed on drywall imported into Western Canada from the United States after the only domestic producer of drywall in Western Canada lodged a complaint with the Canada Border Service Agency under the *Special Import Measures Act*. Those duties ultimately restricted competition from U.S. drywall suppliers, with public information suggesting that the duties increased prices by as much as 30 percent for certain large customers and up to 80 percent at big box retail outlets. With concerns expressed by home builders and the media, the Government of Canada issued an Order in Council to the Canadian International Trade Tribunal (CITT) to quickly assess and report on the competitive impacts of the duties. We provided the CITT with a framework for assessing those impacts, which helped the CITT conclude that fully imposing the duties would go against Canada's economic, trade and commercial interests. The Government subsequently lowered the tariff — by more than 32 percent — and provided approximately $12 million in compensation to consumers in Fort McMurray who had been affected by higher drywall costs during post-wildfire rebuilding in 2016. For our contribution, we received an honourable mention from the International Competition Network and World Bank Group, as part of their 2016–2017 Competition Advocacy Contest, for our competition advocacy in the drywall industry.

INTELLECTUAL PROPERTY ENFORCEMENT

Innovation in a knowledge-based economy generates intellectual property (IP) — ideas, concepts, plans, designs and more that can be sold and licensed by their owners. While that IP needs protection as an asset for companies' profitability and growth, it can also be used strategically to engage in anti-competitive conduct. Last year, we released an updated version of our *Intellectual Property Enforcement Guidelines* (IPEGs) to provide greater clarity on how we deal with competition issues involving IP. In March 2017, leading international antitrust experts named the IPEGs as the most innovative non-enforcement tool at the International Antitrust Writing Awards. We also began our first annual review of the IPEGs, as part of our commitment to review them each year and revise as required.

INNOVATION IN THE FINANCIAL SERVICES SECTOR

By sharing our expertise with government, regulators, businesses and consumers, we are helping to identify and remove barriers to competition in specific industries, including the financial technology (FinTech) market.

In May 2016, we launched a market study into technology-led innovation in the financial services sector to better understand the impact these innovations will have on the competitive landscape. The study will allow us to provide guidance to policymakers on how best to create an environment that will allow FinTech innovation to thrive in Canada. Over the past year, we consulted and received submissions from more than 100 stakeholders representing all segments of the financial services sector, including banks, FinTech start-ups, federal and provincial regulators, international agencies, and consumer and business groups. We also created a FinTech web portal to provide Canadians with the most recent updates on the market study, which will be finalized and published by the end of 2017.

A workshop on FinTech

As part of our FinTech market study, we organized a one-day workshop in February 2017 that brought together FinTech firms, banks, regulatory authorities, policymakers and international experts to engage in discussions on competition, innovation and regulation in the financial services sector. The workshop was attended by 133 participants from across Canada and abroad as well as approximately 95 participants via webcast. An overview of the workshop highlights is available on our website.

PUBLIC



PRIORITY 4: COLLABORATE WITH PARTNERS

WE WORK WITH OUR PARTNERS TO PROMOTE AND PROTECT COMPETITION AROUND THE WORLD

One of the goals of the Innovation Agenda is to make Canada a top destination for global investment. We are helping achieve that by sharing best practices in competition policy with our international counterparts, teaming up with law enforcement agencies to stop anti-competitive conduct, and shaping free trade agreements to ensure that the benefits of trade liberalization are not offset by anti-competitive business conduct.

PRIORITY 4

Collaborate with domestic and international partners to promote strong competition principles and expand opportunities for Canadian participation in world markets.

COMMITMENTS	STATUS
Facilitate more transparent interaction with other domestic regulators and enhance our ability to effectively administer labelling statutes by concluding additional memoranda of understanding.	◉

COMMITMENTS	STATUS
Enhance and strengthen our network of international partners to address anti-competitive activity and deceptive marketing practices that cross borders and promote convergence in competition law policy.	
• Support trade liberalization efforts of the government by engaging in competition related cooperation with competition authorities in the Asia Pacific region and other regions	◉
• Participate in at least two technical cooperation and capacity-building projects	◉
• Fulfill Canada's free trade agreement obligations by advancing negotiations of competition related cooperation instruments	◉
• Inform and advance competition policy by focusing our participation in multilateral international fora (e.g., Organisation for Economic Co-operation and Development (OECD), International Competition Network (ICN), International Consumer Protection and Enforcement Network (ICPEN)) on topics related to efficiencies, innovative business models, the digital economy, market studies and the evaluation of the impact of competition authorities' activities	◉

◉ ACHIEVED ◒ PARTIALLY ACHIEVED ○ NOT ACHIEVED

DOMESTIC AND INTERNATIONAL PARTNERSHIPS

In an increasingly globalized marketplace, partnering with other Canadian agencies and our international peers allows us to extend our reach while making more efficient use of our resources.

A worldwide community of competition policy and enforcement

We worked closely with the U.S. Department of Justice on a bid-rigging conspiracy involving Japanese auto-parts manufacturer Nishikawa Rubber Co. Ltd., leading to a USD$130 million fine to address harms caused in both Canada and the U.S. By avoiding costly duplication of effort, we were able address the harm caused and get the most from our limited resources.

We also met with other competition agencies to share best practices and intelligence on enforcement and policy development, including high-level meetings with our American and Mexican counterparts in May 2016, the United Kingdom's Competition and Market Authority in July 2016, and the European Commission's Directorate General for Competition in March 2017. With a focus on increasing our engagement in the Asia-Pacific region, we also met with partners and participated in events in China, India, Indonesia, Taiwan, Hong Kong, Japan and Malaysia.

Building a stronger partner network

We strengthened our network of international partners by signing two new cooperation instruments in 2016–2017. We signed a memorandum of understanding (MOU) with the Hong Kong Competition Commission, its first international cooperation instrument related to competition. We also signed a second-generation arrangement with the New Zealand Commerce Commission, enhancing our capacity to share information and provide investigative assistance. As of March 31st, 2017, we have entered into cooperation instruments with 14 jurisdictions worldwide.

We signed new MOUs with Canadian agencies, including an MOU with the Inspector General of the City of Montréal that will allow us to leverage each other's expertise and resources to better detect and deter price-fixing and bid-rigging in that city. The MOU we signed with Transport Canada, meanwhile, will enhance cooperation in the assessment of mergers, acquisitions and joint ventures in the transportation sector. We now have MOUs with more than a dozen law enforcement and regulatory agencies across Canada.

2 NEW INTERNATIONAL COOPERATION AGREEMENTS SIGNED

43 MEETINGS WITH FOREIGN LAW ENFORCEMENT AGENCIES OR COMPETITION AUTHORITIES

35 INTERNATIONAL FORA MEETING AND WORKSHOPS

10 TECHNICAL ASSISTANCE INITIATIVES

3 NEW DOMESTIC COOPERATION AGREEMENTS SIGNED

A global exchange of competition insight and experience

One of the best ways to protect consumers in Canada and around the world is by sharing best practices with our international counterparts. We did that through 10 technical assistance projects and capacity — Committee of Ukraine, Taiwan Fair Trade Commission and African Competition Forum. We also delivered a presentation on international cooperation in mergers to Asian competition agencies at the OECD Korea Policy Centre.

To facilitate greater understanding and cooperation with our partners, we exchanged staff with our counterparts in India, South Korea and Hong Kong. One of our managers also worked with the U.S. Federal Trade Commission and the OECD to provide enforcement advice to the Anti-Monopoly Commission of Ukraine, while another Bureau officer joined the European Commission's Directorate General for Competition for a six-month term. We also hosted visiting delegations from foreign competition agencies on tours to Canada, including a study visit by the Korea Fair Trade Commission.

Promoting and protecting competition in trade

To ensure that the benefits of trade liberalization are not hindered by anti-competitive behaviour, we continued to support the government's trade-liberalization efforts. We worked closely with Global Affairs Canada to negotiate the competition policy provisions in many of Canada's free trade agreements, including the Canada-Ukraine Free Trade Agreement, the Trans-Pacific Partnership Agreement and the Canada-European Union Comprehensive Economic and Trade Agreement (CETA).

MULTILATERAL FORA AND EVENTS

In 2016–2017, we once again took a leadership role in many organizations that promote sound competition policies internationally and address anti-competitive conduct that crosses borders:

OECD

As a Member of the OECD Competition Committee, we help shape global competition policy by participating in events like the OECD Ministerial on the Digital Economy, where the Commissioner of Competition spoke on consumer trust and market growth in the digital economy. In 2016–2017, we also made five formal submissions on topics such as sanctions in antitrust cases, fidelity rebates and public interest considerations in merger control. In addition, we continued to act as liaison to the ICN and OECD.

ICN

ICN is a group of competition authorities devoted to improving collaboration on competition law enforcement. As ICN Secretariat and member of the Steering Group, we contributed to many products and events, including co-hosting the first ICN Chief Economist Workshop. We concluded our three-year term as co-chair of the Merger Working Group, coordinating a number of merger panels including a Merger Workshop on Investigative Techniques in Washington, D.C., and a panel on merger nexus and thresholds at the ICN Merger Roundtable in Paris, France. During our tenure on the Merger Working Group we also led development of the first *Recommended Practices on Merger Remedies*. We have now started our term as co-chair of the Agency Effectiveness Working Group, which aims to develop and share best practices for enforcement planning and operations among members and non-government advisors.

ICPEN

ICPEN brings together 80 countries to tackle deceptive marketing practices and other consumer issues. In addition to attending several ICPEN conferences and workshops — including hosting a session on online platforms and intermediaries in September 2016 — we were also involved in working groups such as the Online Lead Generation Project Group, which explores the collection and sale of online user information. We also once again led ICPEN's annual Internet sweep, with the 2016 edition focusing on identifying websites whose business models rely on online reviews and endorsements.

International Mass Marketing Fraud Working Group (IMMFWG)

We played a significant part in the IMMFWG's International Day of Action Against Mass Marketing Fraud in June 2016, working with our law enforcement partners to draw attention to the serious problem of telemarketing, internet, mass mailing and other types of fraud.



PRIORITY 5: CHAMPION EXCELLENCE

WE PLACE INNOVATION AND OPENNESS AT THE HEART OF OUR ORGANIZATION'S CULTURE

To make our organization nimble, creative and ahead of the curve, innovation and continuous improvement are always encouraged within the Bureau. Whether by finalizing our strategy for attracting top talent or launching a new online communications platform for staff, we are ensuring our ability to maintain a high-performing workforce — as well as a respectful, diverse, healthy and inclusive work environment.

PRIORITY 5

Promote a culture of excellence throughout the Bureau founded on openness, collaboration and engagement, and securing tangible results.

COMMITMENTS	STATUS
Deliver a talent management strategy focused on planning, attracting, growing, engaging and retaining talents at all levels.	◉
Undertake concrete actions to build and sustain a healthy, respectful and supportive work environment and improve internal communications focused on continuous engagement.	
• Implement activities in the Bureau's Action Plan in response to the 2014 Public Service Employee Survey	◉
• Build a respectful, healthy and inclusive workplace and mental health awareness through ongoing dialogue	◉
• Foster a strong culture of diversity and inclusiveness and commitment to the use of both official languages through ongoing activities and new initiatives	◉

◉ ACHIEVED ◒ PARTIALLY ACHIEVED ○ NOT ACHIEVED

GROWING OUR TALENT

In 2016–2017, we continued to support our employees giving them more opportunities to develop their skills and leadership qualities, and by working toward an even safer and more inclusive work environment.

Greater internal capacity and better processes

In 2016–2017, we reviewed more complex mergers in key sectors of the economy, continuing a trend which has seen the number of complex strategic mergers increase over the last three years. These types of merger reviews require a more complex analysis. To maintain our capacity to handle complex reviews, we hired several new economists in our Mergers and Monopolistic Practices Branch, and provided several training opportunities for existing staff to build their econometric capacity. We also developed new policy guides to optimize document reviews during major merger reviews and investigations.

In addition, we began looking at ways to streamline our processes and enhance the use of technology in relation to evidence handling, analysis and our ability to meet disclosure obligations in criminal matters. These internal assessments have led to application optimization and the development of new applications. We initiated projects to retrofit our digitization environment, optimize our litigation processing environment and deploy a disclosure application. We also developed a new process for preserving electronic media required for Bureau investigations. Work on these initiatives will continue throughout 2017.

PROTECTING COMPETITION TAKES TALENT

We finalized and launched our Talent Management Strategy to provide employees with a clearer path for career development. It focuses on four priority areas identified by employees — development, training, mobility and engagement, and workplace issues — and outlines deliverables that will be implemented between 2017 and 2020 to attract, grow, engage and retain talent within our organization. Some of the actions already completed under this strategy include:

- Developing a new program for employee recognition
- Launching a development program for paralegals
- Launching an e-learning zone, a one-stop source for all of our learning activities accessible to all Bureau employees

We also delivered more than 40 training and information sessions to staff throughout the year, and facilitated the participation of Bureau employees in approximately 80 external training courses.

SUPPORTING MENTAL HEALTH, DIVERSITY AND INCLUSIVENESS

We undertook 37 new initiatives to build and sustain a safe, healthy, respectful and supportive work environment. In addition to hosting numerous awareness-raising events on issues related to mental health and diversity, we created the Competition Bureau Workplace Wellbeing Network to further explore and develop strategies for addressing various workplace issues affecting wellness and mental health. This new network supports government-wide efforts to build healthy, respectful and supportive work environments, including the Innovation, Science and Economic Development Canada's Mental Health Network and the Bureau's own Diversity and Inclusiveness Working Group.

At the same time, our Diversity and Inclusiveness Working Group looked at how diversity and inclusiveness affects productivity and innovation in the workplace. In the report on its findings, the group found that when leaders improve diversity and inclusion, they can better leverage the unique skills and viewpoints of all their employees — leading to better problem solving, collaboration, engagement, creativity and efficiency.

REIMAGINING HOW WE COMMUNICATE INTERNALLY

Based on staff feedback, we revamped our intranet site to improve how we communicate with our people. The new #Bureau portal and newsletter are dedicated to sharing corporate information (such as notices about facilities, training opportunities, or health and safety issues) in a way that ensures employees get the information they need faster and more easily — and with fewer all-staff emails.

Responding to the 2014 Public Service Employee Survey

The Public Service Employee Survey (PSES) measures the opinions of public servants on topics such as employee engagement and leadership. In response to the findings of the 2014 PSES, we developed an action plan to address the key priority areas identified by our employees. Some of the actions taken in 2016–2017 include:

- Making mental health and workplace wellness a top management priority (to build a healthy, respectful and inclusive workplace).
- Enhancing training, learning and career development through the overarching Talent Management Strategy (to attract, develop and retain skilled employees).
- Facilitating mobility within the workplace (to create a more flexible workforce). Providing more timely information on workplace issues by launching the #Bureau portal (to improve the flow of information within the organization).



FINANCIAL DISCUSSION AND ANALYSIS

The Bureau's budget for 2016–2017 was $49.1 million, including approximately $10.9 million from user fees.[12] Expenditures were $47.9 million, consisting of $33.5 million in salaries for 369 full-time equivalents (FTEs) and $14.4 million in non-salary expenses.

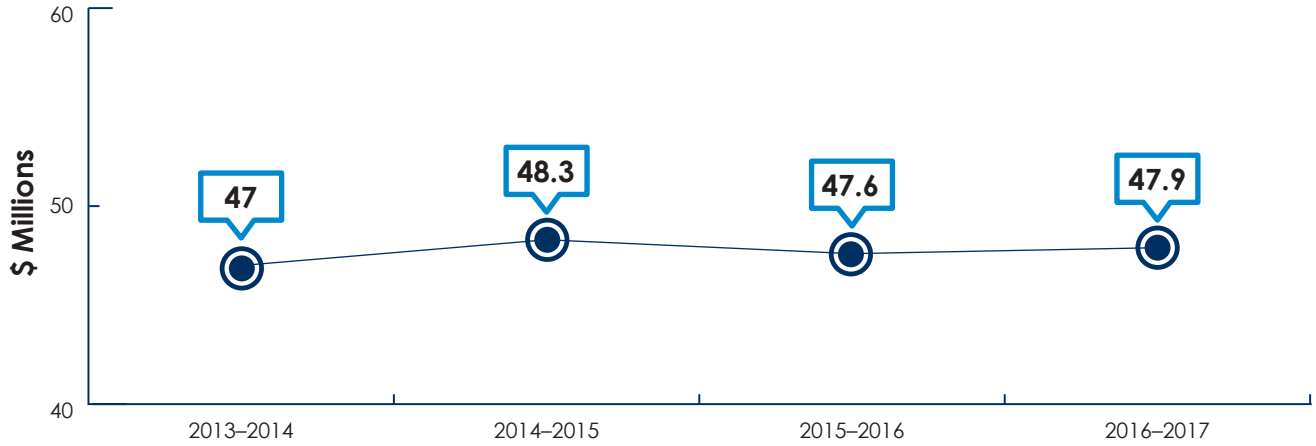
Table 1 presents the Bureau's authorized budget and expenditures for the year.

TABLE 1: AUTHORIZED BUDGET EXPENDITURES FOR 2016–2017

	Budget	Expenditure
Salary	$34,217,397	$33,497,195
O&M	$14,466,573	$14,117,223
Capital	$370,000	$249,927
TOTAL	$49,053,970	$47,864,345
FTEs	369	

FIGURE 1: BUREAU SPENDING TREND, 2013–2014 TO 2016–2017

Figure 1 illustrates the Bureau's spending trend from 2013–2014 to 2016–2017.



12 The Bureau collected nearly $10.9 million in user fees (including $10,774,985 from pre-merger notification and advance ruling certificates, $18,000 for written opinions and $90,300 for fulfilling requests for CA numbers).

This is Exhibit “98” referred to in the Affidavit of Mary DeCaire sworn by Mary DeCaire at the City of Toronto, in the Province of Ontario, before me on May 5, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

JAKOB KELLY

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Competition Bureau Canada
Bureau de la concurrence Canada

FROM BREAD TO BANKING:
DRIVING COMPETITION AND INNOVATION IN CANADA

2017–18 ANNUAL REPORT



Canada

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For information on the Competition Bureau's activities

This publication is not a legal document. It is intended to provide general information and is provided for convenience. To learn more about the Competition Bureau's activities, please refer to the full text of the relevant Acts (the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*) or contact the Competition Bureau's Information Centre at:

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): 1-866-694-8389
Fax: 819-997-0324
Website: **www.competitionbureau.gc.ca**

This publication can be made available in alternative formats upon request. Contact the Competition Bureau's Information Centre at the numbers listed above.

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Aussi offert en français sous le titre Rapport annuel du commissaire de la concurrence pour l'exercice se terminant le 31 mars 2018.

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MESSAGE FROM **THE COMMISSIONERS**

2017–18 was a transitional year for the Bureau with the end of our 2015–18 Strategic Vision and also for me personally, with my term as Commissioner of Competition concluding in May 2018.



I am proud of the results we have achieved for consumers and businesses across a variety of sectors. We fought to enable retailers to offer discounts on ebooks, exposed hidden fees charged by online retailers and secured record-setting fines against cartels in the international autoparts sector.

We also looked ahead at what's to come, focusing particularly on innovation in the digital economy. Our case against the Toronto Real Estate Board set a precedent for putting digital innovation first, while our market study on financial technology and discussion paper on the competition-related challenges of big data have helped shape stakeholders' understanding of these key areas of innovation.

It is my hope that the Bureau will continue to prioritize this kind of forward-looking analysis in the years ahead, further exploring how emerging trends and technologies will affect competition — and how Canadians will do business in the digital world.

Over the past five years, my priority has been to build trust through collaboration with *all* of the Bureau's stakeholders. That trust has many facets: the trust Canadians have in the marketplace; trust between the Bureau and the legal community that deals with competition matters; trust with our international and domestic law enforcement partners; and the trust of our government partners who count on our expert insights to develop and improve regulations that will serve Canadians today and into the future.

It has been a privilege to serve Canadians in this capacity. I am proud of the many accomplishments we have made to ensure consumers and businesses prosper in a competitive and innovative marketplace. I want to thank every member of the Bureau's staff and management for their tireless work and dedication in realizing our Strategic Vision — and I am confident they will harness the momentum created over these past years to deliver many more excellent results for all Canadians.

John Pecman
Outgoing Commissioner
of Competition

Competition has a direct impact on the day-to-day lives of Canadians. Competitive marketplaces drive innovation, leading to better products, greater choice and lower prices for Canadian consumers for everything from bread to banking services.



Our goal at the Competition Bureau is to ensure that Canadians enjoy the benefits of innovation by promoting and supporting competition. We are pursuing that aim through high-profile cases, such as our investigation into the alleged price-fixing of bread products in Canada's grocery stores and our legal proceedings against Ticketmaster over alleged misleading price advertising — both issues that impact the daily lives of Canadians.

I am proud of what we achieved in 2017–18, and I am honoured to have been asked to lead the Competition Bureau until the next Commissioner is appointed. Thanks to Commissioner Pecman's leadership and vision, the Bureau is well positioned to continue to succeed in delivering on its mandate. I intend to build on this solid foundation to ensure that Canadians continue to benefit from increased competition and innovation in the marketplace.

Matthew Boswell
Interim Commissioner
of Competition

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WHO WE ARE

WE ARE CANADA'S COMPETITION BUREAU

Our Responsibilities

Headed by the Commissioner of Competition, the Competition Bureau (Bureau) administers and enforces the *Competition Act*, the *Consumer Packaging and Labelling Act* (except enforcement as it relates to food), the *Textile Labelling Act* and the *Precious Metals Marking Act* (collectively referred to as the Acts).

Our Vision

To be among the leading competition agencies in the world; one that is open, transparent and collaborative, and that vigorously enforces and promotes competition to provide Canadians with the benefits of a competitive and innovative marketplace.

Our Mission

To promote and protect competition for the benefit of Canadians, the Bureau will administer and enforce the Acts with fairness and predictability, to:

- Prevent and deter anti-competitive behaviour and deceptive marketing practices
- Review mergers to ensure they do not harm competition
- Empower consumers and businesses

Our Core Values

Openness and transparency

We engage with our stakeholders through a wide range of new and existing means of communication to dialogue and share information, and to explain to Canadians and our partners the benefits of competition for consumers, businesses and the productivity of the Canadian economy.

Collaboration

We work with our partners to advance competition to ensure our marketplace is functioning efficiently.

Integrity and fairness

We act with integrity and fairness and in the public interest at all times. This requires a principle-based approach to enforcing and administering the Acts. Our decisions are based on facts, evidence and sound judgement. We are committed to protecting the confidentiality of sensitive information.

Respect

We interact honestly and respectfully with our colleagues, partners and all Canadians — recognizing their diversity and their individual contributions to healthy competition.

Leadership

We show leadership through our actions, strategic approach and commitment to continuous innovation.

Our Structure

Our organization is headquartered in Gatineau, Québec, and has regional offices in Montréal, Toronto and Vancouver.



Headquartered:
Gatineau, Québec

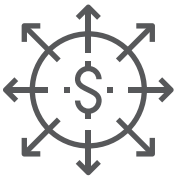
Regional Offices:
Montréal
Toronto
Vancouver



Budget and Employees



Budget for 2017–2018:
$49.6 million



Full-time Employees for 2017–2018:
361

Branches

Cartels and Deceptive Marketing Practices
- Cartels Directorate
- Deceptive Marketing Practices Directorate

Mergers and Monopolistic Practices
- Mergers Directorate
- Monopolistic Practices Directorate

Competition Promotion
- Economic Analysis Directorate
- International Affairs Directorate
- Policy, Planning and Advocacy Directorate
- Public Affairs and Outreach Directorate
- Compliance Unit

Corporate Services
- Enforcement Services Directorate
- Finance, Administration and Information Management Directorate
- Talent Management and Development Directorate

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FINANCIAL SNAPSHOT

The Bureau's budget for 2017–18 was $49.6 million, including approximately $10 million from user fees.[1] Expenditures were $48.6 million, consisting of $36.6 million in salaries for 361 full-time equivalent (FTE) employees and $14 million in non-salary expenses.

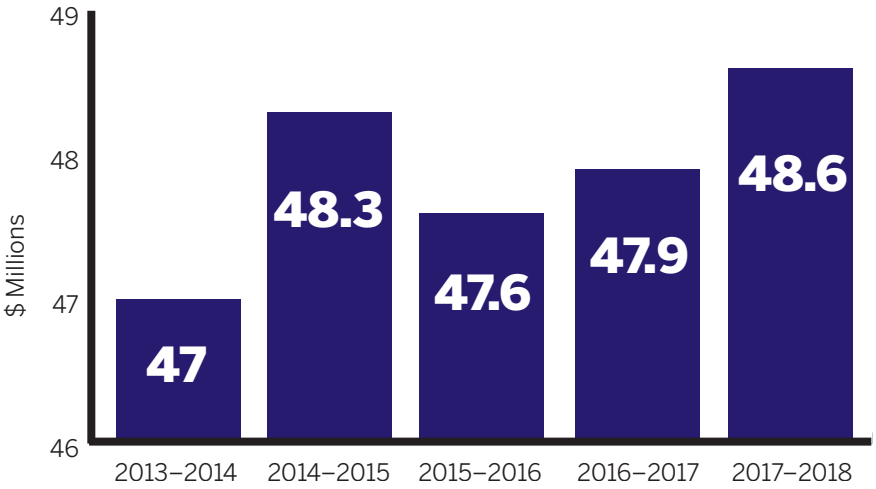
Table 1 presents the Bureau's authorized budget and expenditures for the year.

Table 1: Authorized budget expenditures for 2017–18

	BUDGET	EXPENDITURE
Salary	$34,460,353	$36,613,959
O&M	$15,034,640	$13,921,530
Capital	$78,104	$72,913
Total	$49,573,097	$48,608,403

Figure 1 illustrates the Bureau's spending trend for the past five years.





1 The Bureau collected $10.06 million in user fees (including $9,937,360 from pre-merger notification and advance ruling certificates, $14,130 for written opinions and $105,400 for fulfilling requests for CA numbers).

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WHAT WE ACHIEVED

HIGHLIGHTS: **OUR YEAR AT A GLANCE**

2017

May

- Second-generation cooperation arrangement signed with Japan Fair Trade Commission to strengthen cooperation and further build ties

July

- *Competition Advocate* issued calling for a rethink of food truck regulations
- Guidance issued for firms considering participation in ISED's Innovation Superclusters Initiative

April

- Tip line launched for Canadians to report suspected federal contracting fraud
- Hertz/Dollar Thrifty agreed to pay a $1.25 million administrative monetary penalty for advertising unattainable prices
- Mitsubishi Electric agreed to pay $13.4 million in fines for rigging bids for car parts

June

- Memorandum of Understanding (MOU) signed with Colombia's competition authority, the Superintendence of Industry and Commerce, to enhance cross-border collaboration
- Agreements reached with Couche-Tard and Parkland to preserve competition in retail gas in Ontario, Quebec and Atlantic Canada

August

September

2018

October

- Canada-wide investigation into alleged bread price-fixing in Canada's grocery sector ramped-up
- 14th annual ICN Cartel Workshop hosted in Ottawa with attendees from 50 foreign jurisdictions

November

- Senior-level trilateral meeting held with U.S. and Mexican counterparts to strengthen North American cooperation
- Québec sewer services cartel case concluded with seventh guilty plea

December

- Federal Court of Appeal upheld Competition Tribunal decision in favour of innovation in TREB case
- FinTech market study report published, providing 30 recommendations to regulators and policymakers on how to increase competition and innovation in financial services
- 12th guilty plea and fines obtained in international car parts bid-rigging conspiracy investigation

January

- Legal action against Ticketmaster commenced over alleged misleading ticket price advertising
- Up to $290.5 million in compensation obtained for Canadians in Volkswagen, Audi and Porsche emissions case
- MOU signed with Consumer Protection BC to increase cooperation in support of consumers and businesses

February

- Federal Court upholds agreements between the Bureau and four major Canadian publishers, paving the way for Canadian retailers to offer discounts on ebooks to consumers
- White Paper on big data published highlighting key themes for competition policy and enforcement in Canada
- Enterprise Rent-A-Car agreed to pay $1 million in penalties for advertising unattainable prices
- Agreement reached with Leon's and The Brick regarding concerns over the advertising of financing plans

March

- 14th annual Fraud Prevention Month kicked off, aimed at giving Canadians the information they need to recognize, reject and report fraud
- Second edition of the *Little Black Book of Scams* published, a guide that exposes 12 of the most prevalent scams in Canada

INCREASE COMPLIANCE

Protecting competition in Canada's grocery stores



When all players in the marketplace follow the rules, everybody wins. By increasing compliance with Canada's competition laws, our work helps to prevent and deter anti-competitive conduct like price-fixing and bid-rigging, mergers that stand to substantially lessen or prevent competition as well as deceptive marketing practices that threaten the growth of the Canadian economy, and the confidence consumers have in it.

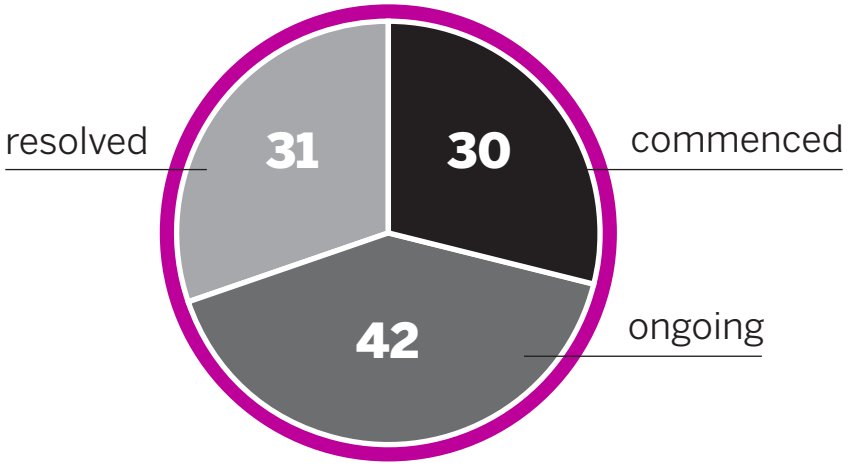
For example, Canadians expect to pay fair prices for everyday staples like bread. When it turns out they may not have, it becomes major news. Last year, we uncovered an alleged scheme between the country's largest bread makers and grocery retailers to fix the price of fresh commercial bread. The investigation is ongoing, and we will continue to focus on determining the facts.

OUR COMMITMENTS	STATUS
Continue to build confidence and support competition and innovation in the digital economy through the administration and enforcement of our legislation	
▪ Pursue high-impact cases	**Achieved**
Safeguard government spending on infrastructure projects by focusing on detecting and preventing bid-rigging	
▪ Set up and promote bid-rigging tip line	**Achieved**
▪ Continue to raise procurement community and bidder awareness of bid-rigging and compliance	**Achieved**

Competition and Innovation in the Digital Economy

PUTTING THE DIGITAL ECONOMY IN THE SPOTLIGHT

Digital Economy Cases



COMPETITION IN ACTION

Putting the squeeze on drip pricing

Canadians need to have trust that the prices they see advertised online are the ones they will actually pay. That trust is easily broken when online retailers add hidden fees and charges to their products and services.

Drip pricing, for example, is a practice where extra fees are incrementally added at different stages of the online buying process, causing the final price to be much higher than advertised. Last year, we took on key players in the car rental industry over hidden fees, resulting in a total of $2.25 million in administrative monetary penalties for Hertz/Dollar Thrifty and Enterprise Rent-A-Car. We also took legal action against Ticketmaster over alleged misleading ticket price advertising — sending a strong message to online retailers that false or misleading claims will not be tolerated.

Enabling digital innovation through competition

In a big win for competition and consumers, the case against the Toronto Real Estate Board (TREB) was upheld by the Federal Court of Appeal. It was found that TREB had blocked its members from offering certain innovative online brokerage services, preventing home buyers and sellers from taking advantage of a wide range of options when making one of the most significant financial transactions of their lives. By lifting restrictions on access and use of real estate data, agents will be able to offer consumers new services that provide insights into home sales prices and trends online. Following the Federal Court of Appeal decision, TREB sought leave to appeal to the Supreme Court of Canada. The Bureau opposed this application, and will continue to fight for increased competition and innovation in this important sector.

In January 2018, the Bureau reached a consent agreement with Softvoyage Inc., a Canadian developer of travel-related software, regarding restrictive terms in its contracts with tour operators and travel agencies which excluded rival companies. This resolution is expected to open the door to greater competition and innovation in the travel industry, resulting in more choices for Canadian travellers.

A new chapter for ebook competition in Canada

We continued to work to restore price competition for ebooks, having found that certain publishers had entered into an arrangement preventing Canadian retailers from offering discounts on their ebooks. This meant that Canadians saw identical prices for the vast majority of those publishers' ebooks no matter where they shopped. In the wake of consent agreements reached in early 2017 with Apple and three ebook publishers — Hachette, Macmillan and Simon & Schuster — we reached a similar consent agreement in early 2018 with a fourth ebook publisher, HarperCollins. The agreements with ebook publishers enable Canadian retailers to offer discounts on ebooks to consumers.

In February 2018, the Federal Court rejected an application by Kobo, Canada's largest ebook retailer, which challenged certain of the consent agreements between the Bureau and ebook publishers. The Federal Court decision upheld the Hachette, Macmillan and Simon & Schuster consent agreements and cleared the way for the HarperCollins agreement to come into force. The decision paves the way for Canadian retailers to offer consumers the benefit of retail price competition in the ebook marketplace.

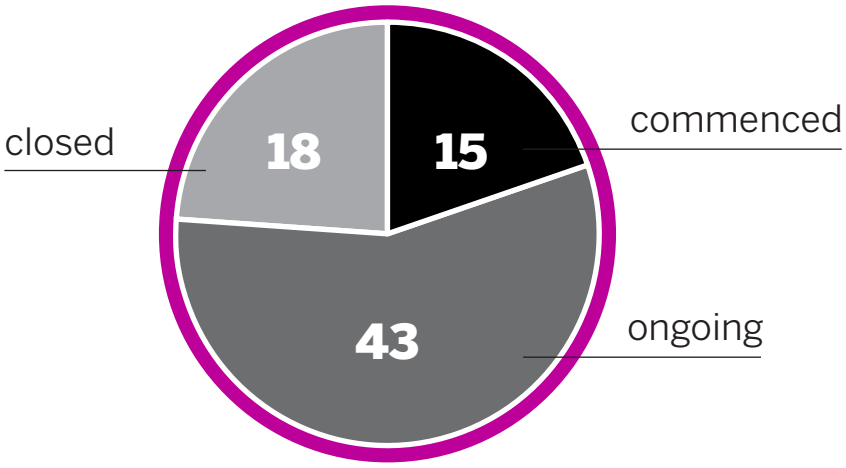
Cartels and Bid-Rigging

TAKING ACTION AGAINST CARTELS



$14.8 million in fines imposed in cartel cases

Investigations





42 promotional activities in support of the tip line



7 immunity markers granted to applicants

COMPETITION IN ACTION

Making a difference through high-impact cases

Price-fixing strikes a nerve with Canadians because it undermines the sense of fair play expected from a free market economy. As part of our ongoing investigation into alleged price-fixing among Canada's two largest bread makers (Canada Bread and Weston Bakeries) and several major grocery retailers, we executed searches to gather more information about the alleged offences. In the coming year we will continue this important work to combat price-fixing in the Canadian grocery sector.

In November 2017, Irving Oil Ltd. pleaded guilty to one count of retail price maintenance in Quebec and was fined $287,583. It follows a wider Bureau investigation that resulted in charges being laid against 39 individuals and 15 companies in 2008, 2010 and 2012 for their role in a gasoline price-fixing conspiracy in the province of Quebec.

In the auto-parts sector, our sustained efforts to address international bid-rigging conspiracies once again led to substantial fines being brought against the companies involved. In April 2017, Mitsubishi Electric Corporation pleaded guilty to three counts of bid-rigging and was fined $13.4 million by the Ontario Superior Court of Justice — one of the largest bid-rigging fines ever ordered by a court in Canada. In December 2017, Japanese manufacturer NGK Spark Plug Co., Ltd. also pleaded guilty to one count of bid-rigging and was fined $550,000.

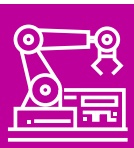
In October 2017, Cardinal Ventilation Inc. was fined $375,000 after pleading guilty to bid-rigging related to three condominium development projects in Montréal. The company admitted it had won a ventilation contract by conspiring with competing firms to ensure its bid was the lowest — and then reciprocating that arrangement to ensure the competing firms would get the contracts for other projects. This sixth guilty plea concludes the Bureau's Quebec ventilation case, with more than $1 million in total fines handed down by the courts.

Last year we also focused our efforts on public procurement, where bid-rigging can increase contract costs that are ultimately borne by taxpayers. In November 2017, we wrapped up our bid-rigging investigation into sewer service cartels in Quebec with a seventh and final guilty plea.

Giving Canadians a voice against cartels

Information and complaints from the public are essential to identifying and understanding potential cartel behaviour. That's why it is important for us to continually improve the tools and programs that allow Canadians to share what they know. Our best weapon against cartels are our Immunity and Leniency Programs. Under the Immunity Program, the first party to disclose to the Bureau an offence not yet detected or to provide evidence leading to the filing of charges, may be entitled to full immunity from prosecution. Any individual or organization that does not qualify for immunity can apply for leniency. Under the Leniency Program, qualifying applicants can be eligible for leniency in sentencing for reporting cartel offences to the Bureau and cooperating with an investigation. Consultations began last year on how to update these programs to increase their transparency and predictability.

We also launched a dedicated tip line that allows the public to report suspected instances of fraud, collusion or corruption affecting federal government contracts, helping build trust in government procurement. In its first year of operation, the Bureau received 140 tips through the telephone tip line and online form. This joint initiative with Public Services and Procurement Canada and the Royal Canadian Mounted Police complements the measures already in place to ensure that federal contracts are lawful, ethical, and fair.



$13.4 million

in fines against Mitsubishi Electric Corporation for bid-rigging in the auto-part sector.

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Canada-Wide Compliance Promotion

SPREADING THE WORD

22
bid-rigging presentations

38
compliance outreach events

7
compliance publications

Helping small and medium-sized businesses prevent anti-competitive behaviour

In 2017–18, we delivered more than 30 compliance presentations across the country — giving companies the knowledge and tools needed to develop their own corporate compliance programs and help prevent anti-competitive behaviour before it occurs. Our outreach focused on small- and medium-sized businesses which typically lack the resources needed to adopt compliance programs.

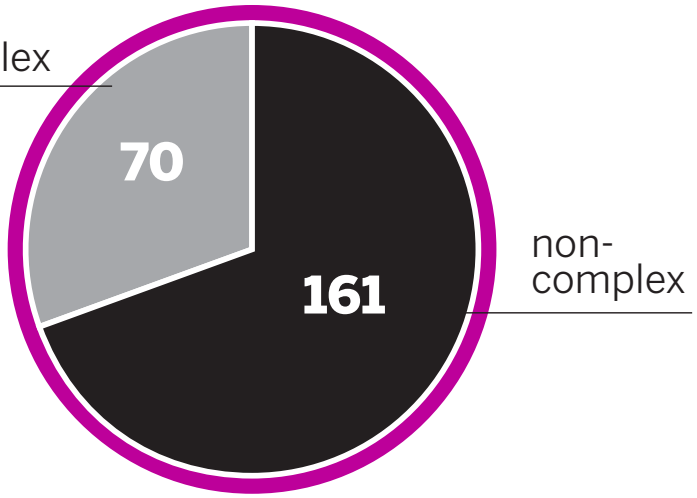
We provided targeted outreach and bid-rigging presentations to public procurement authorities to help them promote compliance throughout their own organizations. Such outreach also facilitates information sharing, enabling public procurement authorities to provide the Bureau with information about the procurement activities they are seeing in their work. This engagement demonstrates the Bureau's continued commitment to shared compliance — reinforcing that compliance with the law is a shared responsibility.

Merger Reviews

PROTECTING COMPETITION IN AN EVOLVING MARKETPLACE

6 merger-related consent agree-ments

Merger Reviews Concluded



COMPETITION IN ACTION

Making sure mergers do not harm competition and innovation

When competitors merge, the loss of a rival can reduce the incentive of market participants to innovate and bring new and better products to market. Last year, we concluded that the proposed merger between E.I. du Pont de Nemours and Company (DuPont) and The Dow Chemical Company (Dow) would likely decrease competition and innovation in the development and supply of crop protection products and certain packaging plastics typically used in specialized packaging applications for diverse products like food, beverages and pharmaceuticals. To address our concerns and maintain competition and innovation, DuPont agreed to sell a significant part of its global herbicides business and research and development (R&D) branch to FMC Corporation, a United States based chemical technologies company. Additionally, Dow agreed to sell its global business of certain specialised plastics products to SK Global Chemical Co. LTD (SK Global), a new entrant in these markets.

As part of our continued efforts to preserve competition in the retail gas industry, last year we reached separate consent agreements with Alimentation Couche-Tard Inc. (Couche-Tard) and Parkland Industries Ltd. (Parkland). These agreements related to Couche-Tard's proposed merger with CST Brands Inc. (Ultramar) and its decision to sell a number of retail gasoline sites and dealer contracts to Parkland. As these mergers and acquisitions would have resulted in decreased competition in local markets in Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador, we stepped in to address the competition concerns in this important sector.

To address our concerns, Couche-Tard agreed to sell 366 gas stations and gasoline supply contracts to Parkland and one gas station to Philippe Gosselin & Associés Limitée (Filgo). In the subsequent sale of assets to Parkland, the Bureau concluded that a substantial lessening of competition in several markets in Ontario was likely. In those markets, Parkland agreed to sell nine gasoline supply contracts to MacEwen

Petroleum Inc. (MacEwen) or McDougall Energy Inc. In addition, there were two other markets where the Bureau found that Parkland was not a suitable purchaser. In the latter, Parkland also divested certain of its own assets to MacEwen, prior to the Bureau entering into either of the consent agreements.

Consent agreements were also reached with companies across a variety of sectors affecting Canadian consumers and businesses, including with:

- The Sherwin-Williams Company for its proposed acquisition of The Valspar Corporation, resolving concerns that the merger would have reduced competition for customers that require a long-term supply of large batch shipments of industrial wood coatings; and,
- Superior Plus LP for its proposed acquisition of Canwest Propane, resolving concerns that the merger would have led to a substantial price increase in the retail sale of bulk propane for many consumers, particularly those living in rural areas.

Deceptive Marketing Practices

STANDING UP FOR CANADIANS



$2.8 billion
in estimated consumer savings[2]



$5.1 million
in administrative monetary penalties



2
jail sentences

COMPETITION IN ACTION

Fighting for truth in advertising

We stood up to deceptive marketing and advertising in a big way in 2017–18. In September 2017, a Montreal businessman was sentenced to 18 months in jail for making false product claims and deceiving consumers about delivery times. In March 2018, the last accused in a Bureau deceptive telemarketing case was sentenced to two years less a day in jail and three years of probation for defrauding businesses in Canada and the United States. And our investigation into Thompson Hill Publishing resulted in an $180,000 fine for making false or misleading representations and engaging in deceptive telemarketing.

2 Estimated consumer savings measures the total consumer savings arising from an enforcement matter in a given fiscal year.

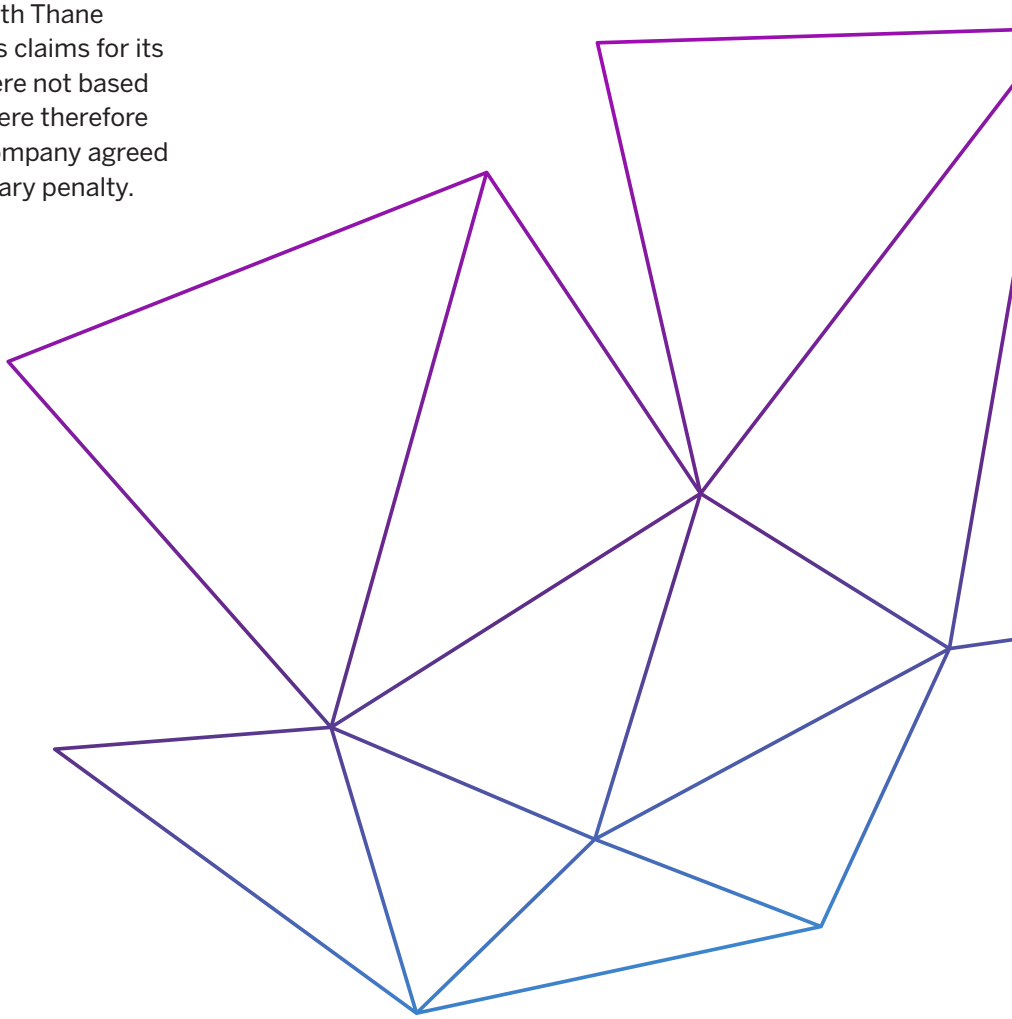
In January 2018, as part of a class-action settlement related to false environmental marketing claims made by Volkswagen, Audi and Porsche, buyers and lessees of certain 3.0 litre diesel vehicles were awarded up to $290.5 million in compensation. The Bureau also reached a consent agreement with the three Canadian automobile distributors under which Volkswagen Canada and Audi Canada committed to paying a total administrative monetary penalty of $2.5 million.

In addition, we worked in close cooperation with Leon's and The Brick to resolve concerns over false or misleading advertising of financing plans, bringing an end to legal proceedings we had launched in 2013. As part of this consent agreement, Leon's and The Brick agreed to each donate $750,000 worth of home furnishings over two years to charities in Canada.

We also reached a consent agreement with Thane Canada Inc. after we found its weight loss claims for its electronic muscle stimulation devices were not based on adequate and proper testing — and were therefore false or misleading to consumers. The company agreed to pay a $350,000 administrative monetary penalty.

Promoting truthful advertising and labelling

In 2017–18, we stepped-up our industry outreach to prevent misleading advertising and labelling. In September 2017, we held meetings with industry stakeholders from the Canadian Jewelry Association and Jewellers Vigilance Canada to find a joint solution to precious metal articles sold to consumers which were not compliant with the *Precious Metals Marking Act*. We also continued our work on Made in Canada representations, meeting with the President of the Canadian Shoe Manufacturer's Association in September 2017 regarding false or misleading "Made in Canada" claims and representations on footwear imported into Canada. In 2018, we delivered several presentations to the Canadian Apparel Federation on labelling requirements for textiles and apparel.



EMPOWER CANADIANS

Leading the way in the fight against fraud



We are dedicated to ensuring that consumers are well-informed and confident in their buying decisions. Through our work, we are equipping Canadians with the knowledge they need to protect themselves against false or misleading representations and deceptive marketing practices.

In March 2018, we once again led Fraud Prevention Month, a campaign aimed at helping Canadians recognize, reject and report fraud. In addition to participating in awareness campaigns like the Top 10 Scams, and the #fraudchat and #2G2BT Twitter chats, this year we also launched the second edition of our Little Black Book of Scams, a guide that exposes 12 of the most prevalent scams in Canada.

OUR COMMITMENTS	STATUS
Continue to provide timely and accurate warnings to reduce the risk of Canadian consumers being victims of civil and criminal deceptive marketing	
▪ Increase the number of consumer and business alerts	**Achieved**
▪ Collaborate on Fraud Prevention Month activities	**Achieved**

Helping Canadians Stand Up for Themselves





consumer and business alerts issued



Twitter hits



media hits



web visits



complaints and information requests received by the Bureau's Information Centre

COMPETITION IN ACTION

Helping Canadians recognize fraud

Consumers and businesses play a crucial role in the fight against fraud. When people know how to recognize and report scams, they not only protect themselves, but also help the Bureau and its partners stop fraud.

In addition to our ongoing role as Chair of Canada's Fraud Prevention Forum, we once again led Fraud Prevention Month, an annual education and awareness campaign held every March to help Canadians recognize, reject and report fraud. Over the course of the month, the Bureau and its partners from over 90 private sector firms, consumer and volunteer groups, government agencies and law enforcement, participated in a number of events and activities to raise awareness about new and ongoing scams. As part of #FPM2018, we launched the second edition of our *Little Black Book of Scams*, profiling the 12 most prevalent scams in Canada. We also participated in awareness campaigns like the Top 10 Scams, and the #fraudchat and #2G2BT (2 Good 2 Be True) Twitter chats to keep the conversation going about fraud.

Raising awareness of deceptive marketing practices

A key focus of our public outreach is ensuring Canadian consumers have the tools and guidance needed to protect themselves against false or misleading representations and deceptive marketing practices. From monthly subscription traps to scams involving weight loss products, technical support and requests from fake CEOs, deceptive marketing practices have an impact on all Canadians.

We increased our outreach efforts to reach more Canadians with information about these issues, meeting our goal by issuing 12 consumer alerts and one business alert over the year. We also boosted our presence on social media to share information in an easily accessible way, achieving a 112% increase in social media engagement from levels achieved in 2016–17.

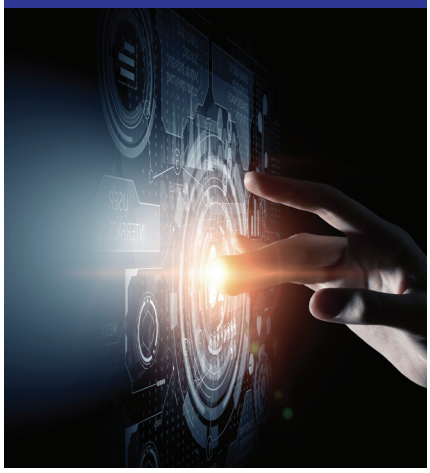
In May 2017, we published the third volume of the *Deceptive Marketing Practices Digest*. In addition to giving consumers and businesses timely information about false or misleading representations and deceptive marketing practices, it explored how the Bureau and its international partners are working together to promote clarity and confidence in a borderless marketplace.



in social media engagement from levels achieved in 2016–17.

PROMOTE COMPETITION

Advocating for greater competition and innovation through modernized banking regulations



Unnecessary and overly-restrictive regulations can stifle competition and innovation. When providing advice to governments and other decision makers, we advocate for a pro-competitive, innovation-friendly approach to regulation.

The financial services sector plays a significant role in Canadians' day-to-day lives, whether they're receiving or making payments, borrowing, spending, saving or investing. The market study report we published last year will help shape the future of financial services, providing regulators and policymakers with 30 recommendations to encourage greater competition and innovation in payments, lending and investment dealing and advice.

COMMITMENTS	STATUS
Inform and advance dialogue in Canada on emerging competition issues	
▪ Increase engagement with policy thought leaders and think tanks	**Achieved**
▪ Publish a white paper on big data	**Achieved**
Foster innovation through a pro-competitive approach to regulation	
▪ Complete a market study of the Canadian financial services sector and publish a report	**Achieved**

Acting in Canadians' Best Interests

Promotion and Advocacy

3 representations before regulatory bodies

21 other advocacy interventions[3]

1 market study published

1 issue of The Competition Advocate published

COMPETITION IN ACTION

Exploring the future of financial services

From grocery shopping to business investments, virtually every aspect of Canada's economy relies on the financial services sector. New technologies stand to bring greater speed and convenience to Canadians as they spend, borrow and invest — but to fulfil that potential, the marketplace needs to encourage more competition and innovation in this sector.

In December 2017, following 18 months of active engagement with Canadians, government partners, as well as national and international stakeholders, we published a market study of innovation in the financial services industry (FinTech). Focused on emerging FinTech services in retail payment systems, peer-to-peer lending and equity crowdfunding, and investment dealing and advice, the study provides policymakers and regulators with 30 recommendations on how to promote greater competition and innovation in financial services.

Our research included more than 130 interviews, 50 written submissions, and a one-day workshop that brought together more than 230 participants from Canada and abroad. Since the report's release, many financial services stakeholders have published responses indicating their readiness to continue the dialogue on this important issue. At the Bureau, we plan to carry this work forward, nurturing a competitive environment that allows Canadian FinTech companies to innovate and grow globally.

Getting a grip on big data

With the expansion of digital technologies, the amount of data available has increased exponentially. While that data can be used to drive innovation and quality improvements across many industries, it may also introduce challenges for competition law enforcement. In support of our ongoing commitment to remain at the forefront of emerging competition issues in Canada, we published a discussion paper on big data to spark dialogue on how to address these challenges in ways

3 Other interventions (outside formal interventions, submissions and appearances before regulatory bodies), including written submissions, letters, calls and meetings with regulatory groups and other stakeholders.

that support innovation and competition. As part of this work we consulted with a number of partners and stakeholders, including the Office of the Privacy Commissioner of Canada; the Canadian, American and International Bar associations; industry associations; major technology firms and leading antitrust scholars. This work was recognized by the International Antitrust Writing Awards as one of the top "Soft Law" publications of 2017. The final report was published in February 2018, highlighting key themes for competition policy and enforcement in Canada.

Supporting Canada's Innovation Superclusters Initiative

The federal government is investing nearly $1 billion in business-led "innovation superclusters" — large-scale collaborations that will bring together Canadian innovators, energize the economy and help our country be a world leader in innovation.[4] To encourage participation in the Innovation Superclusters Initiative, we issued a guidance document advising interested firms that in the vast majority of cases, collaborative projects promoted by the initiative will not raise competition concerns. The collaboration and partnerships encouraged by this initiative can accelerate the pace of innovation and bring new products, services and processes to market, faster and cheaper. They can also enable organizations to combine technologies and resources, leading to the development of new and better products and services for the benefit of Canadians and the economy.

Rethinking food truck regulations

A pro-competitive approach to regulation is essential to fostering competition and innovation in any industry. *Promoting Fair Competition in the Restaurant and Mobile Food Industry* — part of our ongoing *Competition Advocate* series — highlights how competition, innovation and consumer choice can be improved by removing regulatory barriers that keep food trucks and other mobile food services from competing with brick-and-mortar restaurants. Studies have shown that food trucks can bring vitality to community streets, contribute to safety, encourage pedestrian-friendly environments, and give Canadians more affordable and convenient food options along with increased employment opportunities.



30 recommendations for policy makers and regulators for promoting competition and innovation in the FinTech industry.

4 Innovation, Science and Economic Development. (February 2018). *Innovation Superclusters Initiative.* https://www.canada.ca/en/innovation-science-economic-development/programs/small-business-financing-growth/innovation-superclusters.html

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COLLABORATE WITH PARTNERS

Taking on cartels with our international colleagues



Today's complex and fast-moving markets stretch across borders, making it critical for us to work with our international counterparts to deliver on our mandate. Strong, mutually beneficial partnerships at all levels ensure healthy competition, build global awareness of key issues and enable action against unlawful practices — all of which help protect Canadian businesses and consumers.

Last year, we hosted the 14th annual International Competition Network (ICN) Cartel Workshop, sharing knowledge and best practices in cartel and bid-rigging detection, investigation and deterrence with representatives from more than 50 antitrust agencies. This three-day event created an open dialogue that will help improve the competitiveness of public procurement processes in Canada and around the world.

COMMITMENTS	STATUS
Continue to enhance and strengthen our network of partners to address anti-competitive activities and deceptive marketing practices, and promote best practices at an international level	
▪ Host the 14th Annual ICN Cartel Workshop	**Achieved**
▪ Co-chair ICN Agency Effectiveness Working Group	**Achieved**
▪ Continue leadership roles in OECD, ICN and ICPEN	**Achieved**

Sharing our Knowledge and Best Practices Around the World



COMPETITION IN ACTION

Promoting competition excellence at home and abroad

Collaborating with international and domestic partners allows us to engage in open dialogue to address cross-border competition concerns, build consensus and share knowledge and best practices. Ultimately, it helps strengthen competition promotion and enforcement across Canada and around the world.

One of the steps we took last year to increase collaboration with international partners was to sign a new cooperation agreement with the Japan Fair Trade Commission — promoting further cooperation, coordination and communication between our two authorities. This agreement, signed in May 2017, will increase the efficiency of investigations between our two countries and contribute to more effective enforcement outcomes. A month later, we signed a Memorandum of Understanding (MOU) with our counterpart in Colombia, the Superintendence of Industry and Commerce, to promote cooperation and strengthen cross-border competition law enforcement. We also met with U.S. and Mexican competition authorities to reinforce North American cooperation in competition law enforcement.

Working with Global Affairs Canada, Innovation, Science and Economic Development Canada as well as other departments, we continued to provide our expertise in support of key Canadian trade initiatives. This included concluding the competition policy provisions for the renegotiation and modernization of the North American Free Trade Agreement and advancing negotiations toward a possible Pacific Alliance Free Trade Agreement.

Domestically, we signed an MOU with Consumer Protection BC in January 2018. This arrangement provides a framework for cooperation on enforcement matters, marketplace trends, policies and other issues of mutual interest — helping to foster a more competitive marketplace for the benefit of consumers and the economy, not only in the province of British Columbia, but throughout Canada.

5 Formal international and domestic agreements include Memoranda of Understanding and other agreements.

Providing leadership on the international stage

Competition agencies around the world face similar challenges — and we are much more effective when we work together. By taking an active role in organizations such as the ICN, the Organisation for Economic Co-operation and Development (OECD) and the International Consumer Protection and Enforcement Network (ICPEN), we are able to share our knowledge and best practices with the international community.

We took part in several OECD meetings last year, including roundtables of the OECD Competition Committee and the Committee on Consumer Policy (CCP). Our active participation in these meetings included a presentation on the Canada–European Union Comprehensive Economic and Trade Agreement and responding to questions regarding our formal submission to the OECD Competition Committee on Methodologies for Conducting Market Studies.

We continued our leadership roles in the ICN, acting as the ICN Secretariat, a member of the ICN Steering Group and co-chair of the Agency Effectiveness Working Group (AEWG). Through the AEWG, we played an instrumental role in bringing together academics and economists from competition agencies around the world to share their knowledge in important areas of competition law enforcement. In October 2017, we hosted the 14th annual ICN Cartel Workshop. Attended by 250 representatives from 50 antitrust agencies, this three-day session promoted collaboration on — and best practices for — cartel detection, investigation and deterrence related to public procurement. We also acted as the liaison between the ICN and the OECD to ensure alignment in the work of these two important bodies.

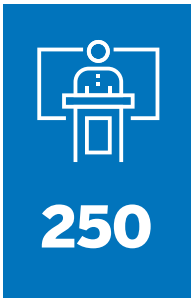
We continued to enhance and strengthen our network of partners to address anti-competitive activities and deceptive marketing practices, and promote best practices through our participation in ICPEN. The Bureau played an active role in both annual ICPEN conferences, and served once again as the coordinator for ICPEN's Annual Internet Sweep.

Getting better together

Each year, we take part in numerous capacity-building programs and events to help improve our own capabilities as well as those of the international competition agencies with whom we work. For example, we shared our experience and best practices at the ICN's capacity–building workshop on due process in Singapore by facilitating a training session on integrating procedural fairness into agency decision-making and moderating a panel offering practical solutions. Again in Singapore, we participated in the Antitrust Regional Seminar on Economic Analysis in Competition Enforcement, which supported the development of competition policy and enforcement in the Asia-Pacific region. We led a "how-to" session on merger control analysis and delivered a presentation on our approach to abuse of dominance cases. We also shared various aspects of competition law and policy, including merger review and exclusionary conduct, to senior officers of the Competition Commission of India (CCI) using a number of presentations and case studies.

In February 2018, we delivered a presentation on compliance as part of a seminar for the staff of regional antitrust authorities at the Eurasian Antitrust Forum in Kazakhstan. In addition, we organized an ICN outreach program on due process and transparency for the Association of Southeast Asian Nations (ASEAN) Heads of Agencies.

To further strengthen cross-agency collaboration, we continued to participate in staff exchanges with our international counterparts. In 2017-18, we sent staff to the Australian Competition and Consumer Commission (ACCC), the Korea Fair Trade Commission (KFTC) and the Hong Kong Competition Commission. We also welcomed staff from the ACCC, the KFTC, the CCI and the Austrian Federal Competition Authority.



representatives from 50 antitrust agencies attended the ICN Cartel Workshop hosted by the Bureau.

PUBLIC
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CHAMPION EXCELLENCE

Creating a workplace where mental health matters



Investing in our people allows the Bureau to perform at its peak — and deliver the best possible outcomes for Canadians and the economy.

In our view, organizational excellence begins with a respectful, diverse, healthy and inclusive work environment. In our ongoing efforts to support workplace wellness, last year we set up a Workplace Wellbeing Network, appointed Workplace Wellbeing Co-Champions, implemented the *Not Myself Today* campaign and held Mental Health Week. We also developed a mental health action plan to tackle the most pressing issues facing our employees, furthering the conversation on wellbeing and mental health through a campaign of training, presentations, posters, newsletters and more.

COMMITMENTS	STATUS
Build and sustain a high performing workforce and a respectful, healthy and inclusive work environment	
▪ Implement our multi-year Talent Management Strategy	**Ongoing**
▪ Improve workplace wellness including awareness of mental health	**Achieved**
Enhance the Bureau's Performance Measurement Framework to create an environment of continuous improvement and better measure the achievement of the Bureau's long-term outcomes	
▪ Use new methods to enhance our performance measurement framework	**Ongoing**

Inspiring Professional Growth and Transparency

Professional Growth



72 training courses and information sessions offered



7 public and stakeholder consultations on documents

COMPETITION IN ACTION

Maintaining a high-performing workforce

When we developed our Talent Management Strategy (Strategy), our aim was to change the way the Bureau plans, acquires, develops and retains its workforce. Over the past year, we have remained fully committed to implementing the Strategy — and to maintaining a high-performing, respectful, diverse, healthy and inclusive work environment.

Since the Strategy was launched, we have expanded our training, career development, performance, employee recognition and talent management programs. We introduced our first in-house e-learning course, developed and started to implement a core training program for Bureau investigators and paralegals, coordinated and delivered more than 70 training and information sessions to staff, and facilitated the participation of Bureau employees in approximately 150 external training courses.

Shining a spotlight on workplace wellness

Given that every year 1 in 5 people will personally experience a mental health problem or illness,[6] mental health awareness is key to maintaining a high-performing and healthy workplace. In 2017–18, we established a Workplace Wellbeing Network, appointed Workplace Wellbeing Co-Champions, implemented the Not Myself Today campaign and held Mental Health Week to raise awareness about mental health, break down stigma and provide resources to employees.

Based on the results of our previous survey on wellbeing and mental health issues, we developed an action plan with recommendations for how to tackle some of the more pressing issues faced by our employees. Overall, we undertook 18 initiatives to build and sustain a safe, healthy, respectful and supportive work environment. These included sharing a monthly newsletter and posters to raise awareness of mental health topics, facilitating and hosting a series of group discussions and presentations, encouraging employees to participate in wellbeing and mental health-related activities and challenges, and conducting mental health first aid training sessions.

6 Canadian Mental Health Association. (2016). *Fast Facts about Mental Illness*. http://www.cmha.ca/media/fast-facts-about-mental-illness/

Creating a more transparent and accountable Bureau

To help us make better decisions and ensure we focus on the issues that matter most, we need tools and practices to measure and report on our activities and their impact for Canadians.

Last year, we updated our key performance indicators to align with the Treasury Board's 2016 structure for planning, reporting, financial management and evaluation. We refined our logic model and performance measurement framework, holding workshops to identify needs and results across our different activities — and determine how they connect to the Bureau's higher-level goals. We were then able to accurately identify and refine the performance indicators and targets for our specific lines of business.

Our *Quarterly Statistics Report* — now the *Performance Measurement & Statistics Report* — features an enhanced performance measurement dashboard to provide a more comprehensive view of the Bureau's performance. A narrative section added to the report speaks to variances in statistics, highlights key activities from the past quarter, and provides additional context on newsworthy and public-facing activities.

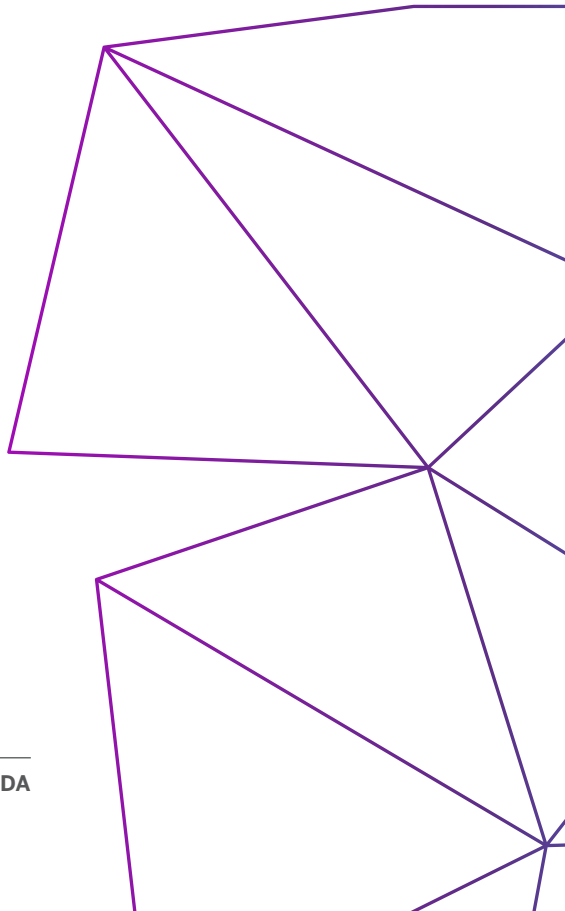
We also continued our efforts to identify meaningful outcome-based measures, working closely with partners such as Statistics Canada and the Bank of Canada to identify available data. As we move to implement a case management system that will help us better organize, assess and approach our case work, we will incorporate performance measurement considerations into our business needs to leverage the important insights derived from our data.

In March 2018, we published a *Practical Guide to Efficiencies Analysis in Merger Reviews* for public consultation to provide additional guidance and transparency to stakeholders and the practitioner community following a recent decision from the Supreme Court of Canada. The Guide focuses on the Bureau's internal assessment of efficiencies prior to making an enforcement decision, and provides practical guidance on how best to engage with the Bureau when conducting this highly complex analysis.



18

mental health initiatives undertaken in 2017–18, including presentations, newsletter and training sessions.



This is Exhibit “99” referred to in the Affidavit of Mary DeCaire sworn by Mary DeCaire at the City of Toronto, in the Province of Ontario, before me on May 5, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

JAKOB KELLY

Driving Competition for Canadians

2018-19 Annual Report



This publication is not a legal document. It is intended to provide general information and is provided for convenience. To learn more, please refer to the full text of the Acts or contact the Competition Bureau.

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Message from the Commissioner



Strong, vigorous competition benefits all Canadians. At the most basic level, competition is the force that drives us to do better. It leads to better choices, better prices, innovative products and services and creates consumer trust by ensuring accurate information in the marketplace. It leads to a stronger economy where businesses push each other to innovate to offer the best they can while consumers are better off and more confident in their spending. The Competition Bureau works tirelessly to enforce and promote Canada's competition and labelling laws so Canadians have confidence and trust in the rapidly expanding and ever-evolving digital economy.

Competition ensures that consumers always have choices, allowing them to reward companies that earn their business and trust. By providing the freedom to choose, competition forces companies to fight for every consumer, protecting those same consumers from being taken for granted by entrenched players that get too comfortable.

In 2018-19, we continued to bring the benefits of competition to Canadians through our actions as highlighted below and further in this report.

In a big win for consumers and innovation, through hard work and perseverance we prevented the Toronto Real Estate Board from withholding its real estate data from agents who wanted to use that data to offer innovative online services. For most of us, buying a home is one of the biggest decisions of our lives and this outcome will make it easier for realtors to innovate and to improve the quality of and types of services offered to consumers.

We took action against deceptive online marketing in the rental car industry so consumers can trust that the advertised price is genuine. We continued to hold the pharmaceutical industry under the microscope to prevent potentially harmful conduct. We worked hard to safeguard taxpayer dollars with our ongoing investigations into bid-rigging involving Quebec infrastructure projects, sending a clear message to potential offenders that there is a price to be paid for engaging in anticompetitive behavior.

We also launched a market study to assess the current state of competition in the broadband sector. By better equipping regulators and policymakers, the study will help Canadians benefit from competitive high-speed Internet options.

We are proud of all that we achieved in 2018-19; however, we know there is much work to do in the year ahead as we protect and support Canadians through active enforcement and advocacy.

I look forward to guiding the Bureau as we continue to build a culture of competition in Canada that leads to increasing consumer confidence, particularly in the rapidly evolving digital economy, supporting innovation, and ensuring that Canadians benefit from all that competition brings to the Canadian economy.



Matthew Boswell

Commissioner of Competition



Who we are

Our responsibilities

Headed by the Commissioner of Competition, the Competition Bureau administers and enforces the *Competition Act*, the *Consumer Packaging and Labelling Act* (except enforcement as it relates to food), the *Textile Labelling Act* and the *Precious Metals Marking Act* (collectively referred to as the Acts).

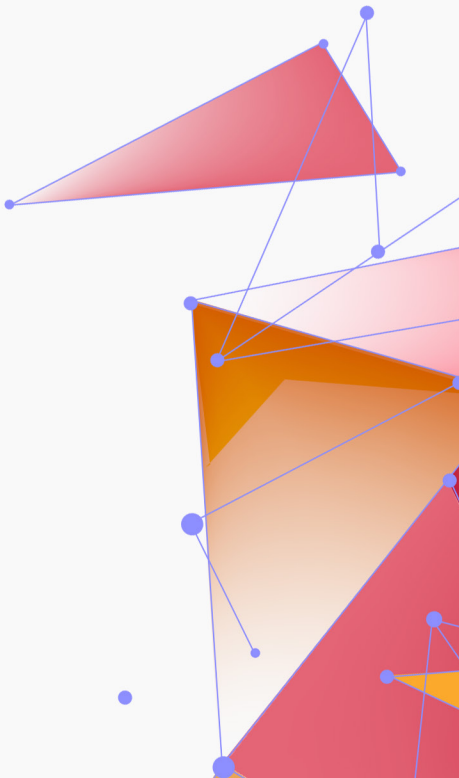
Our vision

To be a world-leading competition agency, one that is at the forefront of the digital economy and champions a culture of competition for Canada.

Our mission

To promote and protect competition for the benefit of Canadians, the Bureau will administer and enforce the Acts with fairness and predictability, to:

- Prevent and deter anti-competitive behaviour and deceptive marketing practices
- Review mergers to ensure they do not harm competition
- Empower Canadian consumers and businesses
- Promote competitive markets across Canada



We are Canada's Competition Bureau

Our structure

Our organization is headquartered in Gatineau, Quebec, and has regional offices in Montreal, Toronto and Vancouver.



Budget and people

Budget for 2018–2019:
$52.6M

370
Full-time employees

Branches

Enforcement branches

Cartels and Deceptive Marketing Branch

- Cartels Directorate
- Deceptive Marketing Practices Directorate

Mergers and Monopolistic Practices Branch

- Mergers Directorate
- Monopolistic Practices Directorate

Enforcement support branches

Competition Promotion Branch

- Economic Analysis Directorate
- International Affairs Directorate
- Policy, Planning, and Advocacy Directorate
- Public Affairs and Outreach Directorate
- Compliance Unit

Corporate Services Branch

- Enforcement Services Directorate
- Finance, Administration and Information Management Directorate
- Talent Management and Development Directorate

Financial snapshot

The Bureau's budget for 2018-19 was $52.6M, including $15M from user fees.[1]

Expenditures were $52.7M, consisting of $35.5M in salary for 370 full-time equivalent employees and $17.2M in non-salary expenses.

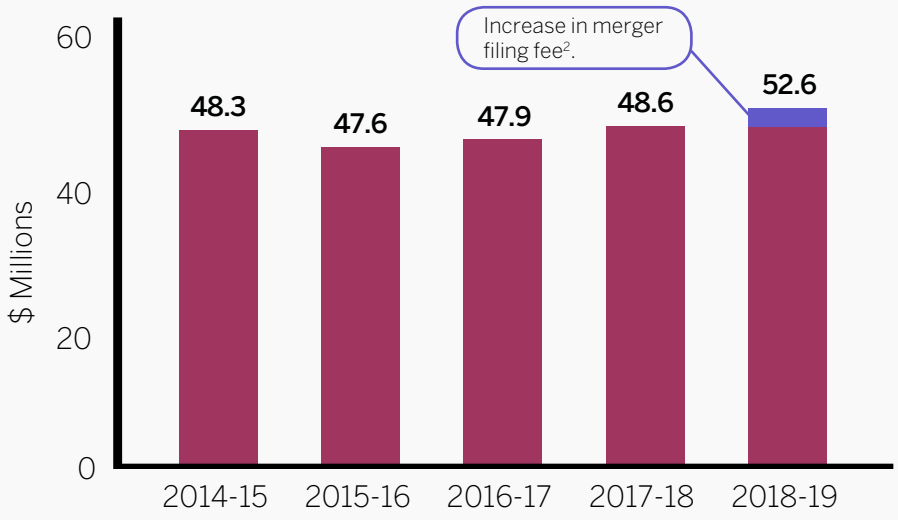
Table 1 presents the Bureau's authorized budget and expenditures for the year.

Table 1: Authorized budget expenditures for 2018-2019

Fiscal Year 2018-19	Budget	Expenditures
Salary	$34,858,624	$35,522,446
O&M	$17,616,306	$17,010,265
Capital	$170,000	$147,907
Total	$52,644,930	$52,680,618

Figure 1 illustrates the Bureau's spending trend for the past five years.

Spending trend for 2014-15 to 2018-19[2]



[1] The Bureau collected $15,362,145 in user fees (including $15,348,145 from pre-merger notification and advance ruling certificates, and $14,000 in written opinions.)

[2] The Bureau announced in May 2018 that the filing fee for merger reviews would increase. Prior to the increase, the merger filing fee had remained unchanged since 2003. This change is reflected in the spending increase for 2018-19.

In 2019,

the Bureau released its year at a glance 2018-19, highlighting some of the Bureau's work over the past year. Our work addressed competition concerns in sectors that have a direct impact on Canadians, including the digital economy, infrastructure, telecommunications, agriculture, and airlines.



Increase compliance

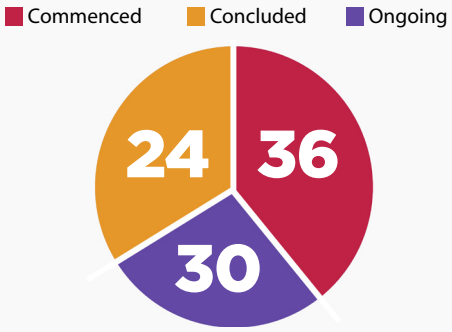
Robust and healthy competition benefits everyone: consumers, businesses, and the economy as a whole. By increasing compliance with Canada's competition laws, the Bureau works to help prevent and address anti-competitive activity such as abuse of dominance, price-fixing, bid-rigging, mergers that stand to substantially lessen or prevent competition, and deceptive marketing practices.

Competition and innovation in the the digital economy

Putting the digital economy in the spotlight

The Bureau's work increases trust in the digital marketplace by strengthening compliance with Canada's competition laws. A strong, competitive digital marketplace is essential to the well-being of Canadians and the affordability of products and services.

Digital economy cases



Competition in action

Bringing clarity to streaming services

In September 2018, the Bureau spearheaded the annual International Consumer Protection and Enforcement Network internet sweep. This year, there was a focus on terms and conditions in the digital economy. Following this sweep, the Bureau issued letters to operators of online video-streaming services in Canada, advising them to review their marketing practices and related terms and conditions, to follow best practices, and comply with the law. Under the *Competition Act*, terms and conditions cannot be used to hide the real meaning of a marketing message or to bury important information, such as the true cost of a service.

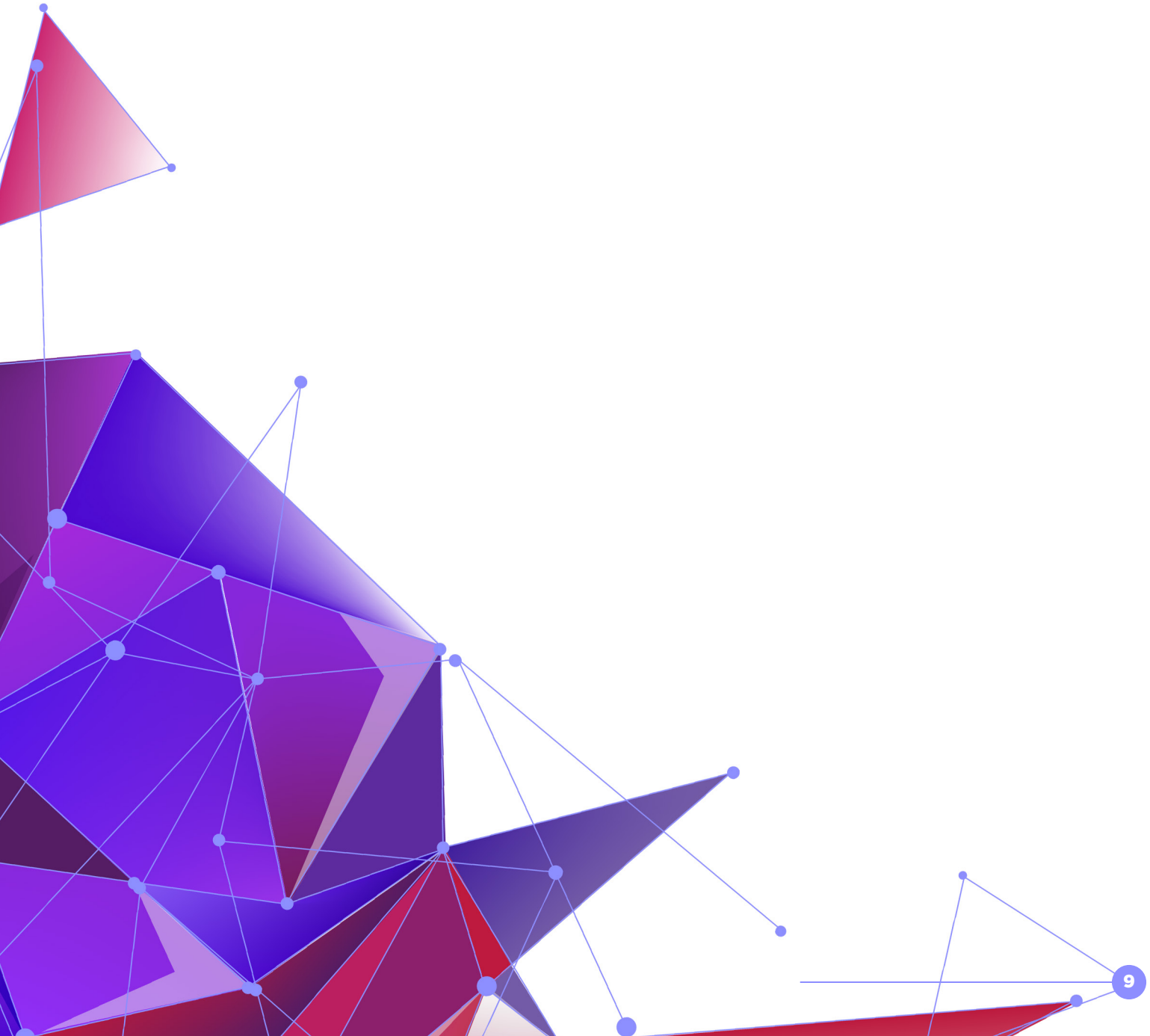
Increasing access to innovative real estate services

Buying or selling a house is one of the most financially significant decisions for many Canadians, who generally use a real estate agent or broker to help. Having access to real estate data is critical, which usually includes current property listings and historical sales data, such as sold prices. In a big win for competition and innovation, the Supreme Court of Canada dismissed the Toronto Real Estate Board's (TREB) application in August 2018, which sought to appeal earlier decisions that required TREB to remove anti-competitive restrictions that prevented its members' from accessing and using real estate data in innovative ways. The decision gives home buyers and sellers in Canada's largest real estate market access to a greater range of innovative service options, delivered through greater competition among TREB's members.

Providing advice to influencers

In a recent edition of the Deceptive Marketing Practices Digest, released June 2018, we provided advertisers with advice to help ensure that the representations they make to the public are truthful and presented in a way that consumers can understand. We explored three marketing practices: influencer marketing, "Made in Canada" claims, and savings claims.

Each of these can have an influence on consumers and the decisions they make. Consumers rely on the opinions and reviews shared online by influencers and believe they are genuine and impartial. They believe that Made in Canada claims signify something important about the level of Canadian manufacture that goes into a product, and when retailers make savings claims, consumers believe they are legitimate.



Competition and innovation in the health and biosciences sector

Putting health and biosciences in the spotlight

The health and biosciences sector is a significant contributor to Canada's economy. It contributed $7.8 billion to Canada's annual Gross Domestic Product (GDP) in 2016, as part of the broader health care ecosystem that represented 11% of Canada's annual GDP.[3] Fostering innovation and competition in the health and biosciences sector is crucial. Competition drives innovators to produce advanced health care solutions and technologies. It also provides Canadians with lower prices and increased choices for products related to their well-being.

2 guidance documents

published in the health-biosciences sector

19 meetings

with domestic and international agencies or regulators in support of competition and innovation in the health-biosciences sector

Competition in action

Monitoring the biologic and biosimilar industry

In February 2019, we completed our investigation into allegations of abuse of dominance by Janssen Inc., a pharmaceutical company owned by Johnson & Johnson. The Bureau's investigation considered whether Janssen was engaging in conduct that shielded its biologic drug, Remicade, from competition from biosimilar drugs such as Inflectra and Renflexis. This included allegations of predatory pricing, as well as other conduct that could exclude or disadvantage biosimilar competitors.

[3] Canada's Economic Strategy Tables. (February 2018) "Health and Biosciences: The sector today and opportunities for tomorrow."

While the Bureau concluded that there was no evidence to demonstrate Janssen's conduct had substantially lessened or prevented competition, we will continue to monitor the Canadian biologic and biosimilar industry closely to respond to developments that have the potential to disrupt competition in this critical sector of our economy. Although biosimilar drugs are relatively new in Canada, they are likely to play an important role in keeping health costs down in the future. Biosimilar drugs provide patients with safe and effective treatment options at prices often far lower than that of an original biologic. The Bureau will not hesitate to take appropriate action to maintain and promote competition in the pharmaceutical industry.

Maintaining drugstore competition

In April 2018, the Bureau reached an agreement with METRO Inc. (Metro) in regards to its acquisition of The Jean Coutu Group (PJC) Inc. The agreement addressed competition concerns focused on pharmacy distribution and franchising services in certain local markets in Quebec. The Bureau's review found that the merger would have likely led to substantially higher prices or decreases in services for consumers related to the purchase of medications and other pharmacy products in eight regions in Quebec. As part of the agreement, Metro agreed to sell certain properties or lease to alternative distributors to preserve competition in the identified regions.

Investigating abuse of dominance in the pharmaceutical industry

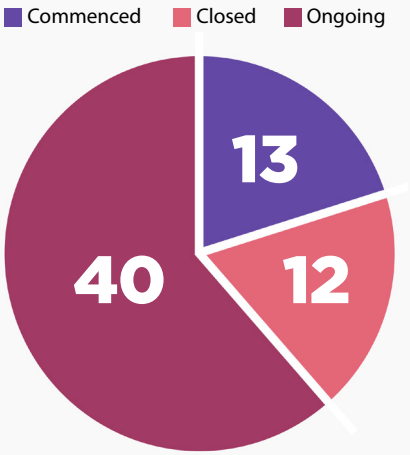
When businesses set up roadblocks to prevent competitors from getting their products to market, the Bureau takes notice. In the pharmaceutical industry, this is critical because competition ultimately leads to more affordable drugs for Canadians.

In December 2018, we closed our investigation into allegations of abuse of dominance by certain brand name drug manufacturers, including Celgene Inc., Pfizer Canada Inc. and Sanofi-Aventis Canada Inc. We investigated policies and practices that were alleged to restrict generic drug manufacturers from accessing samples of brand name drugs. After a careful review of the facts, we found that there was insufficient evidence to demonstrate that competition had been substantially lessened or prevented. While we concluded this investigation, this type of alleged conduct may warrant further enforcement or advocacy action in the future.

Cartels and bid-rigging

Bid-rigging refers to a tainted tendering process that often results in higher prices and lower quality goods and services. Bid-rigging is a conspiracy among potential suppliers that occurs when there is a call for tenders to fulfill a contract. In other words, it increases costs and stifles free-market competition.

Investigations



$1.3 million
in fines

$5.9 million
total settlements pursuant to section 34 (2) and 34 (2.1)

Competition in action

Car parts manufacturer pays a hefty fine for bid-rigging

In October 2018, the Ontario Superior Court of Justice rendered the thirteenth and final guilty plea in a series of international bid-rigging conspiracies among car parts suppliers. Japanese car parts manufacturer INOAC Corporation was ordered to pay $1.3 million for its role in an international bid-rigging conspiracy. A Bureau investigation determined that INOAC entered into illegal agreements with a competing Japanese parts manufacturer. The companies conspired to determine who would win certain calls for bids issued by Toyota in 2004 for the supply of plastic interior car parts. The parts were used in Toyota Corollas manufactured and sold in Canada between 2008 and 2014.

The Bureau's investigation into the series of international bid-rigging conspiracies among car parts suppliers led to fines totalling more than $86 million, including three of the largest bid-rigging fines ever imposed by the courts in Canada: $30 million (Yazaki Corporation), $13.4 million (Mitsubishi Electric) and $13 million (Showa Corporation).

Safeguarding federal infrastructure investments

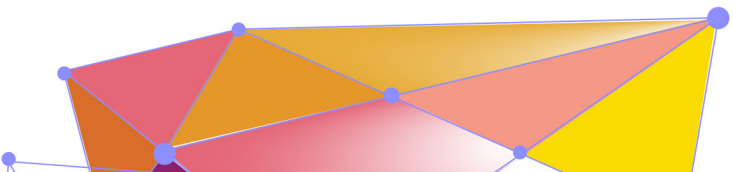
Criminal bid-rigging schemes lead to increased costs in infrastructure projects, which waiver Canadian trust in government investments. It hurts Canadian taxpayers' pockets, making contracts more expensive than they should be.

The Bureau safeguarded government infrastructure spending through its large-scale investigation into municipal contracts in Quebec. The Bureau uncovered a bid-rigging scheme that targeted municipal infrastructure contracts awarded from 2002 to 2011 in the cities of Québec, Laval and Gatineau, as well as certain municipalities in the Montreal region, the period varying for each municipality and city. The Bureau and the Public Prosecution Service of Canada reached a settlement with Genivar (now WSP Canada) and the firm was ordered to pay $4 million. As part of another settlement, Dessau, a Quebec-based engineering firm, was ordered to pay a $1.9 million settlement for its participation in the same scheme. In January 2019, Dessau's former Director and Assistant Vice-President, Outaouais, received a 12-month sentence, including 6 months of house arrest and 6 months under curfew, after pleading guilty for his involvement in the conspiracy. These outcomes shows that there is a significant price to pay for rigging bids.

Ensuring fair and transparent processes in the infrastructure sector

By building relationships with public procurement authorities, the Bureau can further strengthen mutual efforts to protect public contracts from bid-rigging and other criminal cartel activities. In December 2018, we signed a memorandum of understanding (MOU) with Defence Construction Canada (DCC) to enhance cooperation as both agencies work to ensure fair and competitive public procurement processes.

The Bureau conducted 12 promotional activities related to the Federal Contracting Fraud Tip Line to encourage those who witness or suspect unethical business practices in federal contracting to report it.



Credible, effective compliance programs

Through our outreach activities, we promote competitive markets that work well for Canadians by providing businesses with valuable information to help them comply with Canada's competition laws.

By providing small- and medium-sized businesses with knowledge and tools to develop or strengthen their compliance programs, we help prevent anti-competitive practices from taking place. In 2018-2019, we have participated in 26 compliance outreach events.

14
bid-rigging presentations

26
compliance outreach events

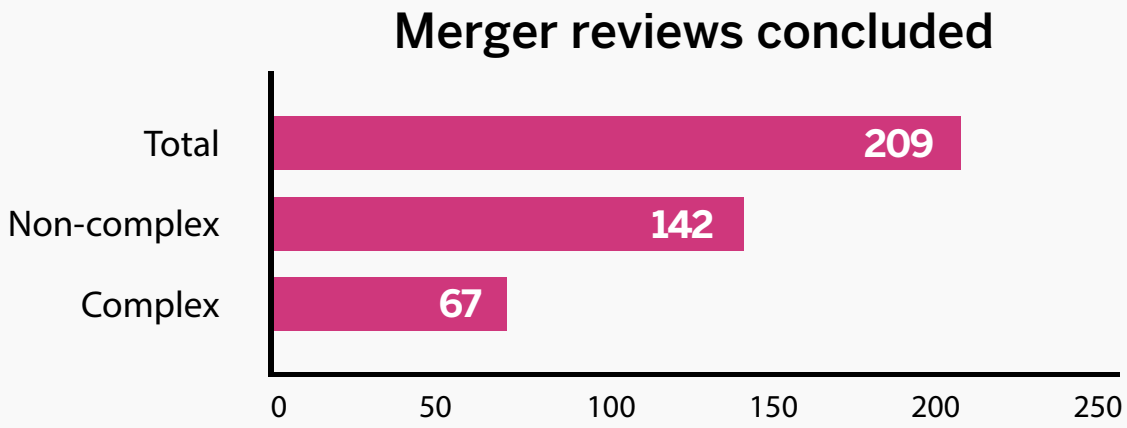
2
compliance publications

Revised Immunity and Leniency Program

To enhance our ability to detect, investigate and prosecute unlawful conduct, in September 2018 we launched a revised Immunity and Leniency Program, in collaboration with the Public Prosecution Service of Canada. These programs encourage targets to cooperate with our investigations. Cooperating witnesses could receive immunity or leniency in return. The updates ensure that the programs keep pace with the evolving competition law environment and reflect a commitment by the Bureau and the Public Prosecution Service of Canada to provide clarity, predictability and transparency for potential applicants.

Merger reviews

Mergers can be a positive way to increase competitiveness throughout the Canadian economy. In those rare instances where transactions give rise to serious competition concerns, the Commissioner will take appropriate action to ensure that competition is preserved.



Competition in action

Protecting competition in the agriculture industry

In November 2018, the Bureau helped maintain competitive prices and product choice for farmers in Ontario, by reaching an agreement with La Coop fédérée (LCF), the largest agri-food enterprise in Quebec, with respect to its acquisition of Cargill Limited's Ontario grain business. Our review concluded that within certain local areas of southwestern and central Ontario, the proposed transaction would likely substantially lessen competition in the retailing of crop inputs, and specifically fertilizers and crop protection products. As part of the agreement, LCF agreed to sell their retail stores in Alliston, Harrow, Tilbury, and Waterford.

Providing input on competition in the airline industry

Many communities in the North rely on air services due to the large geographic areas and limited road infrastructure in certain areas. These services play an important role in economic development, interconnectedness among communities, and the supply of food, healthcare and other goods and services. In February 2019, the Bureau issued a report to the Minister of Transport that outlined competition concerns regarding a merger between two Northern Canadian airlines: First Air and Canada North. We noted in the report that the effects of the transaction were likely to include reductions in passenger and cargo capacity, increases in price, and reductions in flight schedules. This was the first time that the Minister of Transport directed a public interest review of a proposed transaction involving a transportation undertaking. It also marked the first time that the Commissioner was required to provide such a report and subsequently an assessment of proposed undertakings to address his concerns.

Deceptive marketing practices

The Bureau promotes truth in advertising by discouraging deceptive business practices and empowering consumers to make informed choices.

Competition in action

Building confidence in online pricing

Consumers should have confidence that the prices advertised online are the ones they will actually pay. Drip pricing is a practice where extra fees are added during the online buying process, causing the final price to be much higher than originally advertised.

In 2018-19, we continued to investigate drip pricing in the rental-car industry. We found that Discount Car & Truck Rentals Ltd. (Discount) advertised rental prices that were unattainable due to mandatory fees added later during the purchasing process, among other misleading representations. Because of our findings, Discount paid a $700,000 penalty and agreed to review its business practices to comply with the law. This was the fourth agreement in a series of investigations by the Bureau related to drip pricing practices by car rental companies. In total, these investigations have led to $5.95 million in penalties and an online marketplace that Canadians can trust.

The Bureau continued its ongoing litigation against Ticketmaster, Live Nation and affiliated companies. Our investigation targets potential deceptive claims made by the companies about the price of sports and entertainment tickets.

Natural health products: weight loss claims

In February 2019, the Bureau called on all sellers and marketers of natural health products in Canada to review their practices and ensure that weight loss claims are not false, misleading or unsubstantiated. We issued this warning to ensure businesses are compliant with the *Competition Act* when marketing these products. In collaboration with Health Canada, the Bureau will continue to work to help protect Canadians against deceptive marketing related to health products. The Bureau will also continue to monitor the marketplace carefully.

Empower Canadians

When consumers and businesses can recognize and report fraudulent activity, they also become key contributors in helping to prevent it. In addition to enforcing our legislation to detect, prevent, and deter anti-competitive conduct and reviewing mergers to ensure they do not harm competition, the Bureau works to empower Canadian consumers and businesses so that they can better protect themselves against potential scams.

47 million views
for Fraud Prevention Month

15.53% increase
in social media followers

740,880 visits to the Bureau's website

This year marked the 15th anniversary of the Fraud Prevention Month campaign. In partnership with the Fraud Prevention Forum members, the Bureau led the campaign directed at consumers and businesses to promote awareness and understanding of the dangers of fraud.

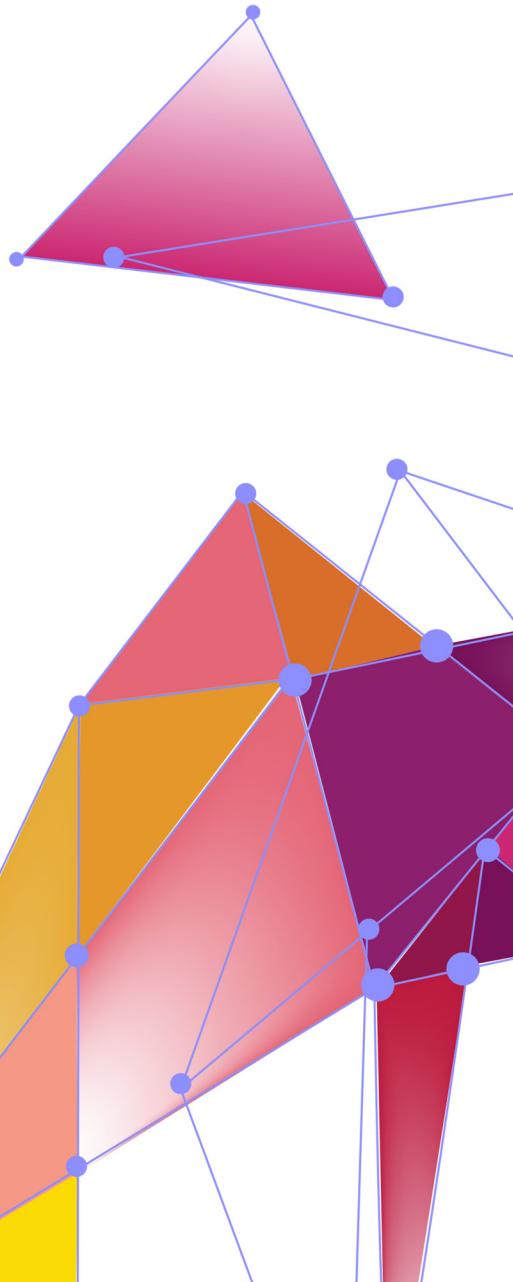
As part of its activities, the Bureau distributed 150,000 copies of *The Little Black Book of Scams* nationally, produced three new videos based on the Book's content and translated it into the six most spoken non-official languages in Canada: Mandarin, Cantonese, Punjabi, Tagalog, Spanish and Arabic. The Bureau also launched a webpage to help businesses fight fraud and distributed receipt paper and bookmarks bearing fraud-fighting tips in libraries throughout Canada.

The Bureau hosted 12 in-person presentations for seniors, new Canadians and students. It also participated in press conferences and consumer-facing events with forum members such as the Better Business Bureau of Mainland B.C., the Canadian Anti-Fraud Centre, Option consommateurs and the Royal Canadian Mounted Police in Montreal, Toronto, Edmonton and Vancouver. The Bureau leveraged traditional and social media to increase awareness. Our social media campaign reached over 6.5 million social media users Twitter, Facebook and LinkedIn.

Competition in action

Alerting Canadians consumers and businesses

The Bureau published 13 consumer and business alerts informing Canadian consumers and businesses on issues that matter to them. For instance, in the peak of moving season, we posted an alert on rental scams, to ensure that students are aware of fraudsters and fake rental advertisements that could potentially scam them into giving money for security deposits or first month's rent. We also posted an alert on International Day of Charity to make Canadians aware of charity scammers – who pose as agents of valid, well-known charities or fake charities to convince Canadians to donate money.



Promote competition

Competition drives innovation, in turn enhancing productivity, increasing choice, and advancing cutting-edge technology. Unnecessary regulation can stifle innovation and slow Canada's economic growth. As Canada's competition experts, our role is to provide forward-thinking advice to regulators and policy-makers to give innovation the fuel it needs to thrive.

Competition in action

Examining broadband internet services in Canada

Every day, Canadians rely on broadband services to connect with their peers, make purchases, or run their business. To foster competition in the telecommunications sector, the Bureau launched a market study to investigate consumer habits in purchasing internet services. The study focuses on the current state of competition in the Canadian broadband sector. In support of the market study, the Bureau launched a public consultation survey in October 2018 to learn about consumer habits in purchasing internet services, which received over 42,000 responses from Canadians. This feedback helps the Bureau detect certain trends and focus in on what matters most to Canadians.

42,000 responses to survey

A fairer telecommunications landscape

Last spring, the Government of Canada expressed concerns on mobile phone service affordability. In response to these concerns, the Canadian Radio-television and Telecommunications Commission (CRTC) launched public consultations. The Bureau provided advice by writing five formal submissions to the CRTC, to support competition in telecommunications services for Canadians.

9 general advocacy interventions

17 FinTech focused interventions

8 representations before regulatory bodies

Shining a light on progress in the FinTech sector

In 2017, after an extensive 18-month study of the industry, the Bureau published its FinTech Market Study Report in which it made 30 recommendations to Canada's regulators and policy-makers. In September 2018, we released a progress report, which highlighted how regulators and policy-makers put some of our recommendations into practice.

In an effort to promote tech-led innovation in the financial service sector, the Bureau made submissions to other Canadian federal and provincial regulators, including the Department of Finance's consultation Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime, their consultation on the Merits of Open Banking, and to the British Columbia Securities Commission's Securities law Framework for FinTech Regulation. The Bureau also appeared before the Senate Standing Committee on Banking, Trade and Commerce on the potential benefits and challenges of open banking for Canadian financial services consumers. It is clear that a real transformation is taking place, and the Bureau looks forward to seeing the evolution and growth of the FinTech sector.

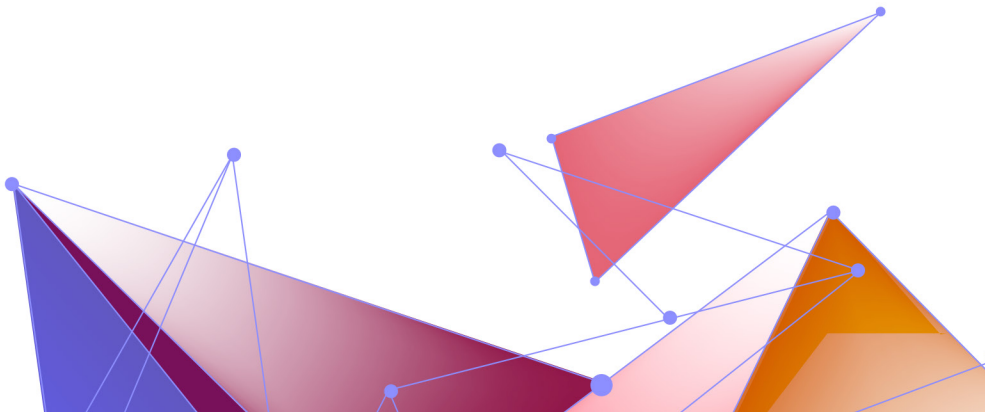
Bringing competition into focus

In July 2018, the Bureau released "Bringing Competition into Focus", an advocacy piece examining regulations governing Canada's prescription eyewear industry and their impact on consumers' ability to get prescription eyewear online. In this edition, we called on governments and regulators to ensure regulations are based on evidence and strictly necessary to address legitimate public policy concerns. Competition in the eyewear industry should not be harmed by overly restrictive rules.

Encouraging pro-competitive regulation

As part of British Columbia's liquor policy review, the Commissioner sent an open letter to regulators in British Colombia asking them to consider the principles of competition while reviewing their liquor policy. British Columbia's liquor policy is restrictive on hospitality retailers, which means private liquor distributors cannot sell their products to restaurants, bars and hotels. Hospitality retailers can only buy their alcohol products from government-owned stores at retail prices. This policy restricts competition: it raises prices and limits the selection of products. Allowing hospitality retailers to buy alcohol products from private distributors could help reduce their costs and lead to lower prices and more choices for consumers.

On another matter, the Bureau urged policy-makers in British Columbia to rethink and improve provincial taxi regulations by applying the principles of competition. In line with its report on Modernizing Regulation in the Canadian Taxi Industry, the Bureau encouraged B.C.'s Select Standing Committee on Crown Corporations to level the playing field for taxis and ride-sharing providers.



Transparent communication

We continually strive to be more transparent, open, and welcoming to discussion and collaboration. This instills confidence, raises awareness and ensures accountability. Last year, we committed to bolstering transparency in our organizational policies and processes. We updated guidelines, increased collaboration, and opened discussions on competition issues.

Competition in action

Updated Intellectual Property Enforcement Guidelines

In November 2018, the Bureau published a draft version of the revised Intellectual Property Enforcement Guidelines (IPEGs) and invited interested parties to provide comments. A few months later, we released the final version with integrated feedback from our stakeholders. The updated document clarifies the Bureau's approaches on investigations involving intellectual property. Our goal is to make it easier for those with a stake in intellectual property matters to operate within the law, including legal communities and high-tech industries.

Updated Abuse of Dominance Guidelines

In March 2019, we released an updated Abuse of Dominance Enforcement Guidelines, which provide an overview of the Bureau's approach to enforcing the abuse of dominance provisions of the *Competition Act*. The revised guidelines include various updates, such as:

- enhanced guidance on how the Bureau assesses certain types of anti-competitive conduct;
- the Bureau's approach to assessing non-price effects on competition, dynamic competition and innovation;
- how the Bureau considers potential remedies; and
- examples that illustrate how Bureau analysis may be conducted.

Collaborate with partners

Modern markets move quickly across borders, making it integral for us to work with our international counterparts to deliver on our mandate. Strong, mutually beneficial partnerships allow us to advance shared competition goals and build awareness on key issues while also taking action against unlawful practices. This year, we continued to participate actively in international workshops through international fora, strengthening our global partnerships.

We co-organized a Competition Economics Workshop with the Organisation for Economic Co-operation and Development (OECD) and the International Competition Network. The workshop brought together Chief and Senior Economists from around the world to discuss emerging issues and share best practices. When we work together with our partners, we can share and collaborate on ways to achieve the best results.



127
domestic meetings

27
international fora meetings and workshops

7
formal domestic partnerships signed

8
capacity building activities with international partners

Competition in action

Strengthening domestic relationships

Fostering strong and collaborative relationships with the Bureau's partners is essential to ensuring that Canadian businesses and consumers prosper in a competitive and innovative marketplace. This year, we worked toward developing and strengthening our partnerships with key domestic stakeholders. In total, we held 127 meetings with agencies and regulators, including Transport Canada, the Canadian Transportation Agency and Public Services and Procurement Canada, among others. We also signed seven formal domestic partnerships, with the goal of raising awareness on competition issues and driving important conversations forward.

In April 2018, for instance, we signed an MOU with the Spectrum and Telecommunications Sector of Innovation, Science, and Economic Development Canada (ISED) to create a framework for cooperation so that both organizations can gain from each other's expertise. We also signed an Administrative Note on Communication with the Investment Review Division of ISED to increase transparency on the nature and scope of communications between the two groups.

Strengthening international relationships

In the past year, we actively participated in international workshops, strengthening our global partnerships. This included the International Consumer Protection and Enforcement Network, the Association of Southeast Asian Nations Sub-Regional Workshop on Big Data and Competition Law, the International Competition Network Cartel Workshop, and the International Mass Marketing Fraud Working Group. We also took part in formal meetings with other competition agencies to work towards shared competition goals that cross borders, such as New Zealand, the United Kingdom (UK), and the European Union (EU). We held bilateral meetings with key stakeholders in Brazil, EU, New Zealand, UK, Mexico, US, Hong Kong, and Singapore. In October 2018, the Commissioner met with international counterparts in Mexico and the United States, discussing shared competition priorities, like big data and best practices in the digital economy.

Spotlight: Competition and gender

Over the past few years, the Government of Canada announced a broad priority for gender equality, and has taken many steps to examine issues through a gender lens. For example, Gender Based Analysis Plus (GBA+) is now mandatory for government policies and legislation in Canada. In the past year, the Bureau further researched competition and gender, to see if there are opportunities to promote gender equality with competition enforcement and policy.

In November 2018, the Bureau worked with the OECD to advance research on gender and competition. We worked with the OECD to host a series of panels and forums and participated in the 2018 OECD Global Forum on Competition. At the OECD's "March on Gender" event in recognition of International Women's Day, the Bureau facilitated a panel on Gender and Competition at the Conference on Gender Equality in Business. We will continue to create and support opportunities for further research in this area.

Champion excellence

A healthy, diverse, and high-performing workforce is crucial to deliver effectively on our mandate, driving results for Canadians. In the past year, we have continued to maintain organizational excellence by implementing the Bureau's Talent Management strategy, and promoting a respectful, civil, diverse, healthy and inclusive work environment.

Competition in action

Maintain a high-performing workforce

To support skills development and career advancement, we offered 56 training and information sessions to our employees. We focused on improved training and greater access to learning opportunities, as well as promoting mobility to ensure a well-rounded workforce that can respond to current and emerging challenges.

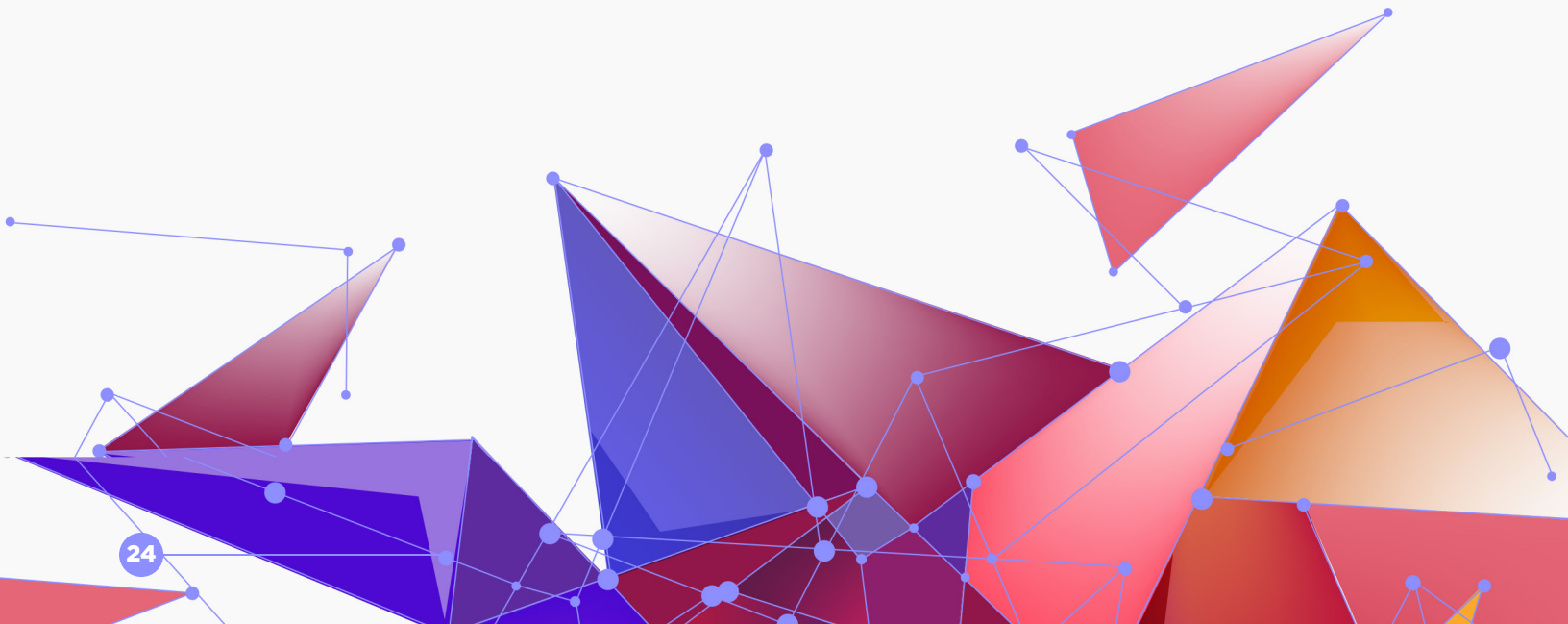
56
training and information sessions offered

40
events related to workplace wellness, official languages, diversity and inclusiveness

Driving accountability through a performance measurement culture

Being accountable drives outcomes. It allows an organization to set concrete goals and measure progress. To remain accountable in 2018-19, we continued to demonstrate progress on our priorities and commitments by publishing our Performance Measurement & Statistics Report. The report aligns with our Annual Plan and features an enhanced performance measurement dashboard, a narrative of key highlights, and performance data about our activities.

In May, we released an impact report highlighting the key results achieved for Canadians by delivering on our 2015-2018 Strategic Vision. Highlights include an estimated $8.4 billion in consumer savings, more than $19 million in customer restitution, and more than $60 million in fines and penalties imposed by the courts for anti-competitive conduct and deceptive marketing practices.



This is Exhibit “100” referred to in the Affidavit of Mary DeCaire sworn by Mary DeCaire at the City of Toronto, in the Province of Ontario, before me on May 5, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

JAKOB KELLY

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7225



Our Year in Action

Safeguarding Competition in a Digital World

2019-2020 Annual Report

Canada

PUBLIC 7226

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Nos activités de l'année : protéger la concurrence dans un monde numérique – Rapport annuel 2019-2020.

Message from the Commissioner



As we reflect on the past year, it is clear that the Canadian economy is more digitally focused than ever before, and the growth of our digital and data-driven economy will likely only accelerate in the years ahead. As a result, the Competition Bureau's vision—to be a world-leading competition agency that is at the forefront of the digital economy and champions a culture of competition in Canada—is more important now than ever before. We set out this vision in our *2019-2020 Annual Plan* and in our *Strategic Vision for 2020-2024*. It will guide us as we build our capacity in the digital economy and deliver the benefits of competition to Canadians.

The Bureau is taking a proactive approach to competition enforcement and advocacy. Our goal is to help Canadian consumers and businesses reap the benefits of competition in the digital economy. To that end, at the beginning of the year, we indicated that we would vigorously enforce and promote competition where it matters most to Canadians, in areas such as telecommunications, health and biosciences, and infrastructure. We have done just that. For example, a strong telecommunications sector is key within the digital economy and, over the past year, we have completed comprehensive studies into the wireless and broadband industries. We also participated in proceedings and consultations at the federal and provincial levels on device financing and cellphone bill transparency. Our goal throughout was to provide objective, evidence-based advice, guided by the principle that effective, sustainable competition is the best way to lower prices, improve choice and deliver high-quality networks to Canadians.

Over the last year, we have also taken a number of enforcement actions in the online world. Our case against Ticketmaster for alleged misleading pricing claims led to a settlement that included a $4 million penalty and $500,000 towards our investigative cost. We also negotiated our first temporary consent agreement, which stopped travel retailer FlightHub from using false or misleading marketing practices in online flight sales. Through actions like these, we continue to send a strong message of deterrence against false or misleading claims online and to promote consumer trust in the online marketplace.

In addition to these major enforcement and promotion actions, we hosted an international Data Forum in the spring of 2019. The event focused on strategies for competition enforcers to collaborate and keep pace with digital platforms and privacy concerns.

In July 2019, we announced the appointment of our first Chief Digital Enforcement Officer (CDEO). The CDEO has already helped to advance initiatives to modernize our processes, be digital-by-design, and provide employees with new tools to enforce the law. We also stepped up our proactive intelligence gathering efforts by expanding the role of our Merger Notification Unit to detect non-notifiable mergers that could raise competition concerns.

I am thankful for the exceptional commitment of the Bureau's employees in delivering on these goals. We have a small but mighty team of determined and dedicated professionals, and I am proud of the important work we have advanced in the past year to serve the public interest of Canadians.



Matthew Boswell

Commissioner of Competition

Who we are

Our responsibilities

Headed by the Commissioner of Competition, the Competition Bureau (the "Bureau") administers and enforces 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* (collectively referred to as the Acts).

Our vision

To be a world-leading competition agency, one that is at the forefront of the digital economy and champions a culture of competition for Canada.

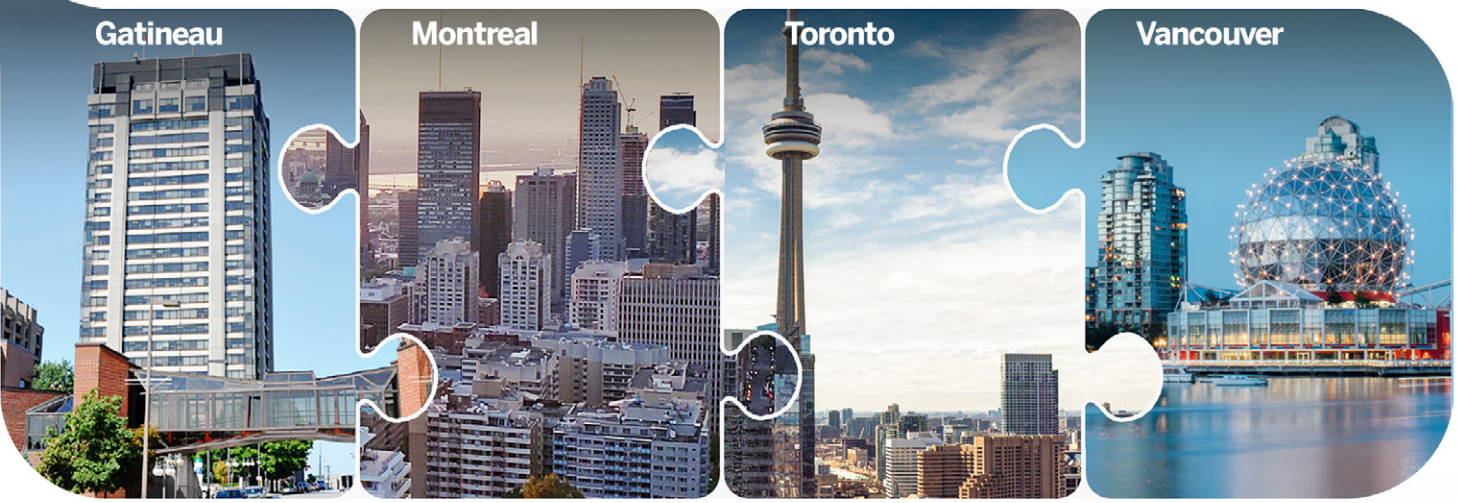
Our mission

To promote and protect competition for the benefit of Canadians, the Bureau will administer and enforce the Acts with fairness and predictability, to:

- Prevent and deter anti-competitive behaviour and deceptive marketing practices
- Review mergers to ensure they do not harm competition
- Empower Canadian consumers and businesses
- Promote competitive markets across Canada

Our structure

Our organization is headquartered in Gatineau, Quebec, and has regional offices in Montreal, Toronto and Vancouver.



Budget and people

Budget for 2019-2020:
$53.7 M[1]

Full time employees for 2019-2020:
382

[1] Following the 2018 revised filing fee for pre-merger notifications and requests for advance ruling certificates, the Bureau's budget includes material expenses relating to employee benefits and accommodations. In 2019-2020, this represented a cost of approximately $2.8M for the Bureau.

What we achieved

Highlights

May 2019

- The Hudson's Bay Company agreed to pay a $4 million penalty and $500,000 towards investigative costs to settle the Bureau's ongoing litigation relating to advertising and pricing practices for sleep sets.
- The Bureau advocated for greater competition in the wireless industry in submissions to the Canadian Radio-television and Telecommunications Commission (CRTC).

June 2019

- A former executive from engineering firm Dessau pled guilty to rigging bids on city of Gatineau's infrastructure contracts.
- The Bureau challenged Thoma Bravo's acquisition of oil and gas reserves software firm Aucerna.
- Ticketmaster agree to pay a $4 million penalty and $500,000 towards investigative costs to settle the Bureau's ongoing litigation relating to misleading pricing claims for online tickets.

July 2019

- A former executive from Cima+ and a former executive from Genivar (now WSP Canada) pled guilty to an infrastructure bid-rigging case in Gatineau.
- The Bureau hired a new Chief Digital Enforcement Officer to help keep pace with the digital economy.
- The Bureau and other competition authorities of the G7 countries released a Common Understanding highlighting opportunities and challenges raised by the digital economy.

August 2019

- The Bureau published a market study on competition and consumer habits in Canada's high speed Internet industry.
- The Bureau advocated for more competition in Ontario's liquor industry in an open letter to the Minister of Finance of Ontario.
- The Bureau preserved competition for oil and gas reserves valuation and reporting software by reaching a settlement in Thoma Bravo's acquisition of Aucerna.

September 2019

- The Bureau called on Canadian businesses to report potentially anti-competitive conduct in the digital economy through its Digital Outreach consultation.
- The Bureau enhanced information-gathering efforts on non-notifiable mergers by creating the Merger Intelligence and Notification Unit.

October 2019

- The Bureau hosted a trilateral meeting with its American and Mexican counterparts that focused on competition law enforcement and advocacy in the digital economy.
- The Bureau entered into a temporary consent agreement with FlightHub to protect consumers from false or misleading representations that result in hidden fees being charged for flights.

November 2019

- A fourth engineering executive pled guilty to bid-rigging that cheated the City of Gatineau out of an estimated $1.8 million.
- The Bureau made an additional submission to the CRTC regarding competition in the wireless sector.

December 2019

- The Bureau sent letters to over 100 companies and marketing agencies that work with social media influencers, advising them to review their advertising practices.
- The Bureau challenged Parrish & Heimbecker's acquisition of a grain elevator from Louis Dreyfus in Virden, Manitoba.

January 2020

- The Bureau preserved competition in Western Canada's hydrogen peroxide market by securing a remedy following its review of Evonik's proposed merger with PeroxyChem.

February 2020

- StubHub agreed to pay a $1.3 million penalty for advertising unattainable prices for event tickets.
- The Bureau appeared before the CRTC to advocate for our policy recommendation and address the CRTC's questions.

March 2020

- The Bureau took action to stop weight loss claims by seller of 'WeightOFF Max!' and 'Forskolin Nx'.
- Engineering firm Roche ltée, Groupe-conseil (now Norda Stelo Inc.) was ordered to pay a $750,000 penalty in a settlement for bid-rigging on contracts in Québec City and Lévis.

- The Bureau concluded its review of Air Canada's proposed acquisition of Transat with a report outlining its competition concerns delivered to the Minister of Transport.
- The Bureau issued a statement regarding enforcement during the COVID-19 pandemic.



High impact and consumer-focused enforcement

Supporting competition in the digital economy

The digital sector is the fastest growing sector in Canada. Digitalization has forever changed the way we interact and has transformed the consumer and business landscape. While strong competition enforcement is a cornerstone of any thriving economy, protecting competition and consumer trust in the digital economy is more important than ever. For Canada's digital economy to continue to thrive, consumers need to trust the online marketplace.

Digital economy cases

41 commenced
40 ongoing
34 concluded

Being upfront about the true cost of tickets



Canadians spend billions of dollars online every year buying tickets to their favourite sporting and entertainment events. It is critical that they have confidence that the prices they see online are the ones they will pay. In June 2019, we settled our case against Ticketmaster and affiliated companies over alleged misleading pricing claims for online ticket sales. Our investigation found that the prices advertised were unattainable because Ticketmaster added mandatory fees in the later stages of the purchasing process. Ticketmaster agreed to pay a $4 million administrative monetary penalty (AMP) and $500,000 towards our investigative costs.

In February 2020, we also reached an agreement with StubHub over concerns about its advertising of unattainable prices for online tickets. We found that consumers could not buy tickets at the prices the company advertised because it charged additional mandatory fees. Unless consumers clicked or tapped to turn on optional filters to see prices that included the fees, the fees were only revealed at later stages of the purchasing process. StubHub agreed to pay a $1.3 million AMP and to ensure that prices for tickets to events in Canada include all mandatory fees throughout the ticket purchasing process.

Both of the investigations into Ticketmaster and StubHub followed our past warning issued to the ticketing industry, calling on all ticket vendors to review their marketing practices and to display the true price of tickets upfront.

Protecting consumers from hidden fees

Too often, consumers find great online travel deals only to realize the deals are no longer affordable or available by the time they have selected their flight. In October 2019, we took action to protect consumers from false or misleading representations that led to hidden fees for flights. While we continue to investigate the marketing practices of FlightHub Group Inc., we reached a temporary consent agreement that prohibits the company from using false or misleading marketing practices on flighthub.com and justfly.com. We continue to investigate representations for seat selection and flight cancellations, which lead to hidden fees, and allegations that some prices increase after consumers select their flights.

Calling on businesses to report anti-competitive conduct in the digital economy

In September 2019, we called on Canadian businesses to provide us with information on potentially anti-competitive conduct in the digital economy. Over 25 businesses and business associations responded to our call-out. Some of the issues highlighted in our call-out included business strategies that may harm competition, such as: refusals to deal, self-preferencing, margin squeezing and creeping acquisitions. The information we received may be used to inform and support future investigations into alleged anti-competitive conduct in digital markets.

Cracking down on social media influencer marketing

In today's digital world, many consumers follow the day-to-day activities of online personalities who share their interests and whose opinions they respect. These personalities, known as "influencers", are an important source of information for their followers, subscribers, and readers who value their unique points of view on products or services. With the reliance on influencer marketing set to be a continuing trend, businesses and influencers need to be transparent when advertising on social media so that consumers can easily recognize when content is actually an advertisement.

In December 2019, we sent letters to close to 100 companies and marketing agencies involved in influencer marketing in Canada, advising them to review their marketing practices to ensure that they respect the law. We made it clear that influencers need to disclose the relationships they have with a business, product or service they promote. Among other things, we asked them to clearly state if they receive money or commissions, free products or services, discounts, free trips or tickets to events, or have a business or family connection with the brand. We also highlighted the importance of having reviews and testimonials that are honest and based on actual experience.

Influencer awareness campaign

In January 2020, we held a month-long social media awareness campaign for influencers and businesses who work with them to promote their products. This included providing daily tips to help influencers understand their advertising obligations when they promote a product or give testimonials and reviews. The campaign garnered significant attention from marketing associations, entrepreneurs, influencers and journalists.

Ensuring truth in advertising

Deceptive marketing practices hurt Canadians and lower trust in the marketplace. To help ensure that markets work well for all Canadians and to maintain trust in the digital economy, we continued to take action against deceptive marketing conduct and encouraged companies to play by the rules.

Deceptive marketing

$9.3 million in administrative monetary penalties (AMPs)
6 consumer and business alerts

Making sure the price is right

When companies promote their products and services at sale prices, it is against the law to entice consumers with misleading references to a false "regular price". In May 2019, we concluded our case against the Hudson's Bay Company which agreed to pay a $4 million AMP and $500,000 towards our investigative costs for its pricing and marketing practices of sleep sets in Canada. Our investigation, which began in 2017, found that the Hudson's Bay Company was offering sleep sets at inflated regular

prices and then advertising deep discounts on these prices, suggesting significant deals to consumers. As part of the registered consent agreement, the Hudson's Bay Company will ensure the marketing of its sleep sets complies with the *Competition Act* (the "Act") and maintain a compliance program to minimize the risk of future breaches of the Act.

Bringing competition in the health care and bio-sciences sector into focus

Competitive prices and services for health care and medication are essential for Canadians' health and well-being. This year, we continued to take action to ensure these sectors remain competitive by focusing our outreach to key stakeholders in the pharmaceutical industry. We tackled misleading advertising in health and performance products and services and cracked down on conduct that harms competition in the industry.



In July 2019, we completed an investigation into the supply of vaccines for a provincial public vaccination program. This involved allegations that a vaccine manufacturer was trying to restrict off-label use of its products, through a provision in a procurement contract that could have prevented public authorities from using other products and resulted in higher costs for provinces. Ultimately, we concluded that there was no violation of the Act given that the conduct did not materialize. However, if we become aware of similar practices in the future, we will not hesitate to pursue enforcement action to put a stop to the conduct. Following our investigation, we published a position statement to provide guidance to the pharmaceutical industry and ensure this conduct is deterred.

Ensuring trust in natural health products

If claims are not tested and true, consumers are not getting what they paid for. Under the Act, claims about the performance or efficacy of a product must be based on adequate and proper testing conducted before the claims are made. In March 2020, we took legal action to stop Nuvocare Health Sciences Inc. and its President and CEO from making weight loss and fat burning claims in the marketing of certain natural health products. We asked the Competition Tribunal to issue a Temporary Order requiring Nuvocare to stop making the claims about some of their products. The order, granted in May 2020, will protect consumers from harm while we complete our ongoing investigation into whether the company's claims are supported by testing.

Remaining vigilant during the COVID-19 pandemic

As Canada responded to COVID-19, we adapted our operations and released a statement assuring Canadians that the Bureau remains vigilant against potentially harmful anti-competitive conduct by those who may seek to take advantage of consumers and businesses during these extraordinary circumstances. This includes scrutinizing evidence and taking appropriate action against companies or individuals engaging in deceptive marketing practices such as false or misleading claims about a product's ability to prevent, treat or cure the virus.

Putting a stop to bid-rigging

When bid-rigging happens in the infrastructure sector, Canadians pay the price. Bid-rigging is a criminal offence where two or more parties collude to influence a bidding process.[2] The lack of a true competitive process drives up prices for contracts and harms governments' investments in new infrastructure projects.

Bid-rigging investigation

3 guilty pleas by individuals involved in the conspiracy

Conditional sentences totalling **59** months and **260** hours of community service

$750,000 paid in corporate settlement pursuant to subsections 34 (2) and 34 (2.1) of the Act

In 2019-2020, we continued our efforts to protect government spending in infrastructure by stopping bid-rigging on procurement contracts for engineering services. As a result of our ongoing investigation, we obtained a settlement from engineering firm Roche ltée, Groupe-conseil (now Norda Stelo Inc.), which was ordered to pay $750,000 for rigging bids on municipal infrastructure contracts in the province of Quebec. This is the third settlement in this matter, as two other engineering firms were previously ordered to pay $1.9 million and $4 million respectively for their roles in the bid-rigging scheme. The investigation also led to three guilty pleas by former executives of engineering firms Cima+, Genivar, and Dessau for bid-rigging on City of Gatineau infrastructure contracts. They received conditional prison sentences totalling 4 years and 11 months, and court-ordered community service totalling 260 hours.

Working together to prevent collusion

Raising awareness among procurement officials and other stakeholders about bid-rigging is critical to ensuring that they take measures to prevent the likelihood of wrongdoing, recognize the potential red flags of bid-rigging and report suspicious activities to the Bureau. In 2019-2020, we provided 18 presentations on bid-rigging to the procurement community and other stakeholders, reaching an audience of approximately 750 participants who play key roles in government procurement. We also continued to promote the Federal Contracting Fraud Tip Line, which was launched in 2017, to help Canadians report suspected fraud, collusion, corruption or unethical behavior in Government of Canada contracting. We received 71 tips since April 1, 2019.

Compliance outreach

18 bid-rigging presentations
65 compliance outreach events
3 compliance publications
1 compliance program reviewed

[2] By agreeing upfront on who will win, not bidding or withdrawing so another will win, or taking turns at winning.

Stopping harmful conduct before it happens

Providing businesses with the information they need to comply with Canada's competition laws is an essential part of the Bureau's work. Compliance is a shared responsibility. Through our outreach activities, we provide small and medium-sized businesses with the knowledge and tools they need to develop or strengthen their compliance programs, which in turn deters harmful and potentially illegal practices before they take place. In 2019-2020, we led and participated in 65 compliance outreach events, with over 2,735 participants.

Merger reviews

Mergers can be a way to increase competitiveness throughout the Canadian economy. However, some transactions have the potential to harm competition and innovation. We review mergers of all sizes and in all sectors to identify and challenge those that pose a threat to competitive markets in Canada.

Mergers

234 merger reviews concluded

97% merger review service standards met

2 merger-related Consent Agreements

Preserving competition in oil and gas reserves valuation and reporting software

In August 2019, we successfully challenged a merger that could have led to a monopoly in the supply of reserves valuation and reporting software to Canadian oil and gas producers. During our review of Thoma Bravo's proposed purchase of Aucerna, we found that the companies' software (MOSAIC and Val Nav) competed vigorously with one another and were the only two reserves valuation and reporting software used by Canadian oil and gas companies. The loss of rivalry between the two would have likely led to higher prices, lower quality of services and less innovation with respect to these software, to the detriment of Canadian businesses. In August 2019, we signed an agreement with Thoma Bravo requiring it to sell its MOSAIC reserves valuation and reporting software business to an independent purchaser.

Protecting competition for local farmers in Manitoba

To protect and maintain competition for farmers near Virden, Manitoba, in December 2019, we challenged Parrish & Heimbecker's (P&H) acquisition of a primary grain elevator from Louis Dreyfus Company. The purchase gave P&H control of the only two grain elevators along a 180 km stretch of the TransCanada Highway and eliminated the



rivalry between two close competitors, which could have resulted in farmers in the Virden area earning less for their wheat and canola. To protect and maintain competition, we filed an application with the Competition Tribunal requesting that the Tribunal issue an order requiring P&H to sell one of the two elevators to an independent buyer. Safeguarding competition in this area will protect farmers from financial harm.

Maintaining competition in the airline industry

In March 2020, we concluded our review of Air Canada's proposed acquisition of Transat and outlined our significant concerns with the proposed transaction in a report to the Minister of Transport. Our review found that the proposed transaction would likely lessen or prevent competition in the sale of air travel or vacation packages to Canadians. Eliminating the rivalry between these two airlines would lead to higher prices, less choice and service, and a significant reduction in travel by Canadians on a variety of routes where their existing networks overlap. The report provided to the Minister of Transport will inform Transport Canada's public interest review of the proposed transaction as it relates to national transportation.

Proactive intelligence gathering

Notification provisions allow the detection of most – but not all – potentially anti-competitive mergers. In 2019, we expanded the role of our Merger Intelligence and Notification Unit, broadening our focus and stepping up our intelligence gathering efforts to detect non-notifiable mergers that could raise competition concerns. Our intelligence gathering captured transactions where there was no indication that the merging parties intended to voluntarily engage with us before closing. In a few instances, we also observed an increase in voluntary communications from merging parties and their counsel on non-notifiable transactions.



Promoting pro-competitive policies and regulations

Forward-thinking advocacy



Competition is an essential part of a thriving economy. As Canada's competition expert, we provide advice on how regulators and policymakers can promote pro-competitive policies and regulations. We also foster discussion on emerging competition policy issues. In the past year, we advocated for greater competition in the telecommunications, waste management, and liquor industries. We also held a Data Forum to discuss perspectives on how competition is impacted by our increasingly data-driven economy. Our efforts to promote competition are an essential part of supporting a competitive economy.

Advocacy

7 representations before regulatory bodies
18 other advocacy interventions

A study on competition in Canada's high-speed Internet industry

High-speed Internet is at the heart of Canada's rapidly growing digital economy. Canadians use the Internet every day to connect with friends and family, run their businesses, make purchases and stay informed. Healthy competition between high-speed Internet providers plays a key role in ensuring all Canadians can access and fully participate in the digital economy. In August 2019, we published the results of our study about competition and consumer habits in Canada's high-speed Internet industry. We found that many Canadians benefit from choice between Internet service providers. Although the majority of Canadian households continue to get Internet from traditional telecom companies, more than one million households use an independent provider for their high-speed connection. Regulations that allow independent providers to buy access to telecom companies' networks make it easier for Canadians to choose a plan that meets their needs and budget. The findings from our study will serve to inform regulatory reviews concerning high-speed Internet and help regulators and policymakers create policies where all Canadians can benefit from high-speed Internet options at competitive prices.

Broadband study in numbers

2,005 Canadian households surveyed
12 focus groups with participants from across Canada
42,000 comments from online surveys
20 written submissions from Internet service providers

More competition for mobile wireless services

In comparison to other countries, studies suggest that Canadians pay some of the most expensive rates in the world for wireless plans.

In 2019-2020, we advocated for more competition in the wireless industry to lower prices and improve choice for Canadians, by providing recommendations to the CRTC as part of its review of mobile wireless services in Canada. In our review of competition in Canada's wireless services markets, we found that prices differ greatly from one region to another and that the price of mobile plans continues to be higher where there is no strong regional competitor to Bell, Telus and Rogers.

In May 2019, we provided detailed strategies to the CRTC on how to encourage competition in this area, including improving roaming access for new entrants, reducing the cost of switching carriers by "decoupling" the costs of phones and plans and structuring future spectrum auctions differently to encourage competition.

In November 2019, we recommended the adoption of a Mobile Virtual Network Operator (MVNO) policy requiring Bell, Telus and Rogers to sell temporary access to their wireless networks to regional facilities-based carriers who intend to invest and further expand their own networks. We advanced that such a policy would lead to more competition on price, while avoiding the risk that network quality would decline. In February 2020, we appeared before the CRTC to advocate for our policy recommendation and address the CRTC's questions.

Keeping up with big data

In today's digital economy, data is a critical asset for any firm looking to innovate. At the same time, a handful of digital platforms controls vast amounts of data. Globally, there are concerns about data concentration in the digital marketplace and policymakers are increasingly concerned about how data is collected and used.

In May 2019, we hosted a one-day forum to foster discussion on competition policy in the digital era. The forum brought together more than 100 participants from the business, legal and academic communities, federal regulators and foreign competition authorities to discuss key issues such as digital platforms, privacy and data portability. It was also attended by the Minister of Innovation, Science and Economic Development Canada (ISED), the Honourable Nadveep Bains, who gave opening remarks and spoke about Canada's new Digital Charter. The forum was an opportunity to advance an important public policy dialogue and gather valuable insight from key stakeholders on the competition issues related to the digital economy, as well as possible solutions.

It also laid the foundation for the critical work the Bureau commenced shortly after receiving Minister Bains' welcome letter, to address the issues outlined in that letter in cooperation with the Strategy and Innovation Policy Sector at ISED such as: the impact of digital transformation on competition; emerging issues for competition in data accumulation, transparency, and control; the effectiveness of our competition policy tools and frameworks, and our investigative and judicial processes.

Increasing choice and lowering prices for liquor in Ontario

Ontario's current liquor policy limits the number of retailers who can sell alcohol and the price they can charge. This makes price competition difficult and limits the selection of product available to consumers. In an open letter to the Ontario Minister of Finance, the Commissioner encouraged the province to balance policy concerns such as public health and safety with the principles of competition in their review of the liquor policy. The Commissioner indicated that Ontario's consumers and businesses can benefit from a less restrictive system by allowing all retailers an equal opportunity to participate, encouraging competition on price, and supporting proper wholesale pricing. The end result would allow bars and restaurants to offer consumers a wider variety of products at lower prices.

A strong advocate for competition in waste management

When the British Columbia Minister of Environment and Climate Change Strategy requested our views on competition-related issues that could stem from the adoption of two waste management bylaws in Metro Vancouver, we advocated for competition and innovation. In an open letter to the Minister, we shared our concerns that adoption of these bylaws may lessen competition and innovation for waste management services in the Metro Vancouver area. We encouraged the Minister to consider whether Metro Vancouver's environmental objectives could be advanced and achieved through other means that would allow the area's residents to benefit from vigorous competition.

International collaboration

Today's digital and data-driven economy is truly borderless. To foster competitive and innovative digital marketplaces, it is more important than ever for competition agencies to share best practices and work together on enforcement and advocacy matters. Building and maintaining strong partnerships improves the Bureau's ability to deliver results for Canadians.

Collaborating with partners

19 international fora meetings and workshops
10 capacity building activities with international partners
2 international agreements signed

In 2019-2020, we continued building strong partnerships with other competition and law enforcement agencies to protect competition in Canada, tackle international anti-competitive activity, and promote the convergence of competition policies. In October 2019, we hosted a trilateral meeting with the heads of the U.S. Department of Justice Antitrust Division, the U.S. Federal Trade Commission and Mexico's Federal Economic Competition Commission, which focused on competition enforcement and advocacy in the digital economy. We continued to work with our international partners and share best practices by playing a leadership role in organizations, such as the Organisation for Economic Cooperation and Development (OECD), the International Competition Network (ICN) and the International Consumer Protection and Enforcement Network (ICPEN). In June and December 2019, we participated in the OECD Competition Committee meetings, as well as the Global Forum on Competition.

The ICPEN Presidency

In May 2019, it was announced that the Bureau will assume the ICPEN presidency from July 1, 2020 to June 30, 2021. During our term, we will focus on promoting truth in online advertising and building consumer confidence in the digital economy. To deliver on this, we will draw on our experiences in fraud prevention, big data, and marketing practices in the digital economy.

Tackling the challenges of the digital economy together

The rapid pace of innovation that is fueling the digital economy brings with it unprecedented opportunities for businesses and consumers worldwide. However, it also raises new questions and challenges from a competition perspective. In 2019, we met with competition authorities of the G7 countries and the European Commission to discuss the issues faced by competition agencies around the world and released a Common Understanding highlighting opportunities and challenges raised by the digital economy.

Gender and competition

We continued to champion research and global discussion on gender and competition. In November 2019, the Bureau participated in a panel discussion organised by the American Bar Association: "Competition Policy and Economics: What's Gender Got to Do With It?"

We are also undertaking work with the OECD to support research on gender and competition. The two-year project will focus on the relationship between gender and competition, how competition can contribute to gender equality, and how OECD countries can ensure gender inclusive competition law enforcement and policy.

Increasing cooperation on fair and effective procedures

Fair and effective procedures are essential to sound competition law enforcement and can increase opportunities for international cooperation. In May 2019, we helped found the ICN Framework on Competition Agency Procedures. The framework aims to foster fair, consistent and effective procedures in competition law enforcement around the world and encourages open communication and transparency between competition authorities about the rules governing their investigation and enforcement procedures.

Strengthening domestic relationships

Fostering strong and collaborative relationships with our domestic partners is essential to help ensure that Canadians can benefit from a competitive marketplace and consumers and businesses are safe from harmful conduct. Strong domestic partnerships allow for better collaboration, cooperation and information sharing on enforcement cases and other matters of mutual interest. In 2019-2020, we continued to build and strengthen relationships with key domestic stakeholders and existing partners, including by holding 190 meetings or calls with agencies, regulators and academics.

A strong voice for competition

In 2019-2020, the Commissioner and other Bureau senior officials gave five speeches highlighting the importance of competition, focusing on topics such as honest advertising in the digital age, the role of competition in the digital economy, and the impact of data on competition. This includes a speech given to the C.D. Howe, focused on how to build a culture of competition in Canada.

We also published a number of new or revised guidance documents to help Canadian businesses understand their obligations with the Acts we enforce and raise awareness of fraud and deceptive marketing so consumers can enjoy the full benefits of today's digital economy.

For example, in March 2020, we published volume five of the *Deceptive Marketing Practices Digest*, which focused on three marketing issues that impact consumers and businesses in the online marketplace: the collection of consumer data in exchange for "free" online products and services; unsubstantiated weight loss claims; and the advertising of unattainable prices in the car rental market. In June 2019, we also released updated guidance concerning compliance with the labelling statutes to help dealers of consumer textile articles containing filling or stuffing understand their labelling obligations.

Alerting Canadian consumers and businesses

Throughout the year, we published six alerts informing Canadian consumers and businesses about issues that matter to them. In August 2019, we alerted the public to fake government websites which attempt to scam Canadians out of money and personal information and provided tips on how to recognize these scams. In May 2019, we warned consumers about "forever prices" offered by telecom sales representatives, which actually refer to monthly promotional discounts and do not guarantee a fixed price.

Empowering Canadians

27% increase in social media followers
More than **1,100 posts** on Facebook, Twitter, LinkedIn and YouTube
659,971 visits to the Bureau's website
88 new or revised publications and press releases

Fraud Prevention Month

Fraud can target anyone. From young teens to the elderly, from consumers to big corporations, everyone is at risk. According to the Canadian Anti-Fraud Centre, in 2019, Canadians lost over $98 million to fraud.

In 2019-2020, we continued to fight fraud by helping Canadians stand up to scammers, supporting the activities of the Canadian Anti-Fraud Centre alongside our partners at the Royal Canadian Mounted Police and Ontario Provincial Police. In March 2020, we launched our 16th edition of Fraud Prevention Month, a nationwide awareness campaign led by the Bureau to help Canadians recognize, reject and report fraud. Working with our many partners, we shared tips on how to spot and stay protected against widespread scams, including digital fraud. We launched a social media campaign, participated in awareness events and published a consumer alert to warn Canadians about subscriptions traps related to free trial offers. While we had to halt the campaign in light of the COVID-19 pandemic, we still reached an estimated 22 million people on Twitter in only two weeks of activities. This represents an increase of 406% in engagements and 184% in impressions compared to the same period last year.

In mid-March, we refocused our efforts and messages around the COVID-19 pandemic. We worked with other enforcement partners to warn consumers about companies that are taking advantage of the public's fears by misleading consumers with the advertising and labelling of various products and services.

Investing in our people

Delivering on our mandate requires a highly skilled and diverse workforce. To ensure this, we continued to invest in our people, by equipping them with tools and the knowledge needed to perform at their best and providing them with opportunities to develop their skills and expertise. This included information sessions hosted by the Public Prosecution Service of Canada and the Canadian Bar Association on topics relating to competition law. We also improved efficiencies across the organization by deploying more modern and digital tools and information sessions to assist employees in using new technology in the workplace.

To support our teams, we continued our strong commitment to foster a healthy, inclusive, and civil workplace through our wellness campaigns and civility in the workplace programs. We promoted our core values such as transparency and respect by offering mandatory training on unconscious biases and harassment prevention to all employees. We also undertook various workplace wellness, diversity and inclusiveness initiatives. For example, we organized the Bureau's first Human Library, during which real people (books) were "loaned" to employees (readers) to challenge stereotypes and prejudices through dialogue. We also offered our employees free weekly yoga sessions, access to a mindfulness app, and laid the groundwork for a number of evidence based mental health pilot projects in the coming year. Finally, we launched the Bureau's Informal Network Program, which helps employees connect with colleagues and benefit from the diverse experience of their peers.

101 training and information sessions to develop employees' skills and expertise

50 events related to workplace wellness, official languages, diversity and inclusiveness

Modernizing our enforcement tools

In the summer of 2019, we hired a Chief Digital Enforcement Officer (CDEO) to help us keep pace with evolving technologies and business practices in the digital economy. Our new CDEO will help us implement new intelligence-gathering tools, such as advanced analytical models, algorithms, automated processes, and artificial intelligence capabilities, as well as develop a digital strategy.

Facilitating an innovative workplace

To keep up with the digital age and encourage creativity and innovation in the workplace, in 2019-2020, we established the Bureau Innovation Garage, a dedicated space for project teams and keen innovators to test new concepts, pilot big ideas and explore new technologies and methodologies.

A new Strategic Vision for the digital age

In February 2020, we published our *Strategic Vision for 2020-2024*, outlining how we will focus our efforts and renew our organization for the digital age. Our Vision will act as a roadmap for how we will build capacity in the digital economy and deliver the benefits of competition to Canadians. Our ability to achieve our vision centres on our greatest resource: our employees. As part of our Vision, we will invest in new dynamic tools and training to increase our capacity and ability to handle and analyze the vast amounts of data common to today's digitally-focused investigations.



Financial snapshot

The Bureau's budget for 2019-2020 was $53.7M[3], including $16.5M from user fees.[4]

Expenditures were $52.4M, consisting of $37M in salary for 382 full-time equivalent employees and $15.3M in non-salary expenses.

Table 1 presents the Bureau's authorized budget and expenditures for the year.

Table 1: Authorized budget expenditures for 2019-2020

Fiscal Year 2019-2020	Budget	Expenditures
Salary	**$37.3M**	**$37M**
O&M	**$16.3M**	**$15.3M**
Capital	**$86K**	**$86K**
Total	**$53.7M**	**$52.4M**

[3] Following the 2018 revised filing fee for pre-merger notifications and requests for advance ruling certificates, the Bureau's budget includes material expenses relating to employee benefits and accommodations. In 2019-2020, this represented a cost of approximately $2.8M for the Bureau.

[4] The Bureau collected $16,529,168 in user fees (including $16,519,668 from pre-merger notification and advance ruling certificates, and $7,000 in written opinions.)

This is Exhibit “101” referred to in the Affidavit of Mary DeCaire sworn by Mary DeCaire at the City of Toronto, in the Province of Ontario, before me on May 5, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

JAKOB KELLY

PUBLIC

Competition Bureau obtains court order to advance an investigation of Google

From: Competition Bureau Canada

News release

October 22, 2021 – GATINEAU, QC – Competition Bureau

The Competition Bureau has obtained a court order to advance a civil investigation into conduct by Google related to its online advertising business. The Bureau is investigating whether this conduct is harming competition in Canada.

The Bureau is investigating whether Google has engaged in certain practices that harm competition in the online display advertising industry in Canada. This industry is made up of various technology products that are used to display advertisements to users when they visit websites or use apps.

The Bureau requires more information to examine these practices and to determine whether they are:

- impeding the success of competitors; and
- resulting in higher prices, reducing choice and hindering innovation for advertising technology (ad tech) services, and harming advertisers, publishers and consumers.

The order, granted by the Federal Court of Canada on October 22, 2021, requires Google to produce records and written information that are relevant to the Bureau's investigation.

The Bureau's investigation is ongoing and there is no conclusion of wrongdoing at this time.

Quick facts

- Online display advertising – where advertising is shown to users when they visit websites or use apps – includes a variety of ad formats from pictures to videos.
- Advertisers and publishers use ad tech services to connect through digital marketplaces where ad space can be bought and sold in auctions.
- Google sells online ad space to advertisers in Canada, among other places, on YouTube. It also provides online ad tech services to both advertisers and publishers in Canada who buy and sell online ad space.
- The Bureau previously investigated Google for alleged anti-competitive conduct relating to online search, search advertising and displaying advertising. At that time, the Bureau committed to closely follow developments with respect to Google's conduct.

Related products

- Abuse of Dominance Enforcement Guidelines

Associated links

- Information Bulletin on the Communication of Confidential Information Under the Competition Act
- Abuse of dominance

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

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