

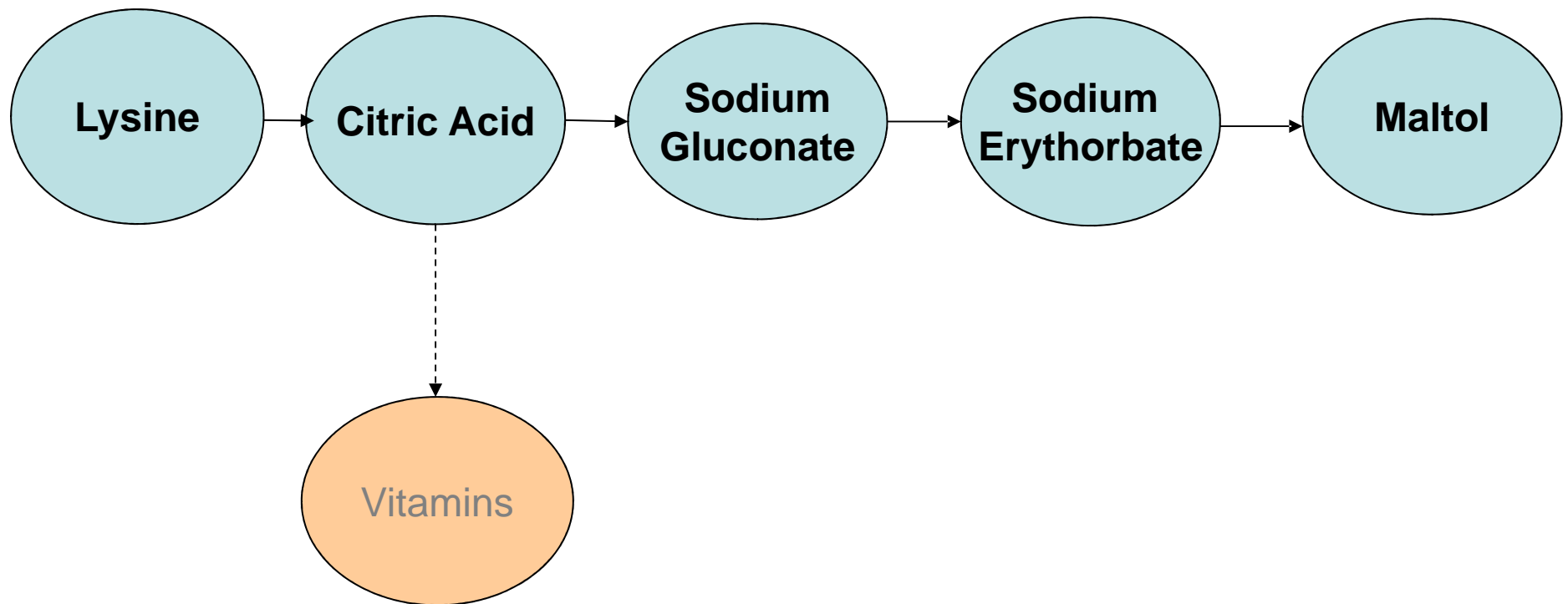


# **CANADA: Recent Developments of Interest to EC Practitioners**

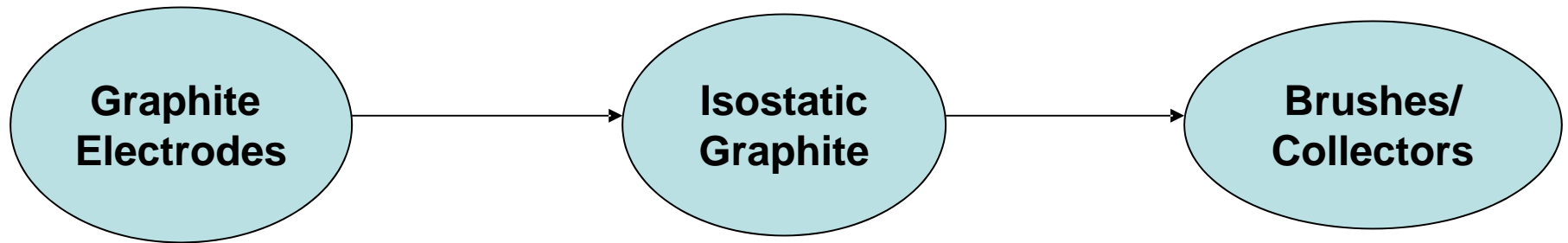
**D. Martin Low, QC | Casey W. Halladay**

November 15, 2011

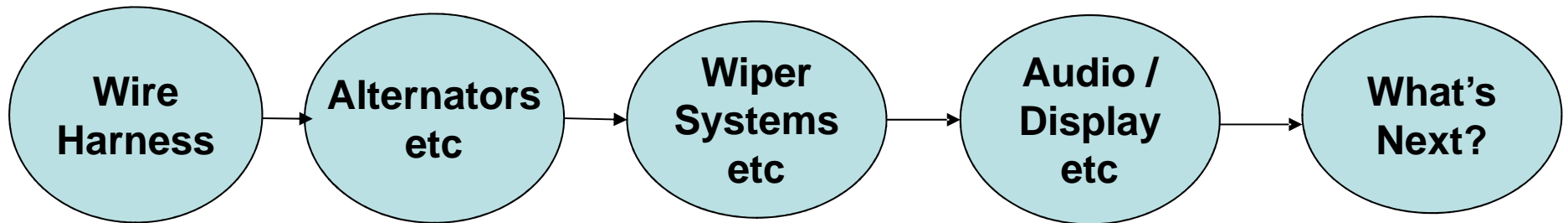
# Cascading Conspiracies: Lysine



# Cascading Conspiracies: Graphite Electrodes



# Cascading Conspiracies: Auto Parts



## Cascading Conspiracies: Auto Parts

- Competition Bureau investigation began with wire harness raids in February 2010
- Quickly expanded through use of “Immunity Plus” program to various other components
- Status as of October 2010:
  - 10 co-operating parties
  - 15 “target” letters and several subpoenas issued
  - **164 markers** issued to the 10 co-operating parties
  - OEMs are assisting the Bureau

## Cascading Conspiracies: Auto Parts

- Major international case: US DOJ, JFTC, DG Comp, Competition Bureau, possibly others all investigating and co-ordinating investigations
- US DOJ has already secured a guilty plea from Furukawa on wire harness:
  - US\$200MM fine
  - 3 individuals jailed (max sentence: 18 months)
  - 2 voluntarily came to USA from Japan to serve sentences
- MORE TO COME: STAY TUNED

## Access to File – Canadian Developments

- Attempts by US plaintiffs to obtain access to DG Comp file documents well-documented: *Vitamins*, *Methionine*, *Rubber Chemicals*, *Flat Glass*, *Air Cargo*, *Payment Cards*, etc.
- Results in those cases – and DG Comp’s level of involvement – have varied
- This tactic has appeared in Canada for the 1<sup>st</sup> time: plaintiffs in *DRAM* litigation are seeking access to Commission SO and other confidential documents
- Motion to be heard November 28<sup>th</sup>: STAY TUNED

# Canada's Emerging Enforcement Approach

- Hold all individuals accountable:
  - An expansive approach to jurisdiction: indirect sales, Section 46, “substantial connection” to Canada
  - Aggressive tactics: extradition requests, border watches, Interpol red notices
  - Seeking higher sentences; arguing cartels = fraud
    - *Competition Act* max sentence imposed to date: 4 years
    - Bureau now citing *LiveEnt* case: 5 year sentence for fraud
  - Commissioner claims to be looking for test case to “galvanise public opinion and bring the judges along”



# Canada's Emerging Enforcement Approach

- Aggressive posture towards corporations:
  - Subpoenas now routinely seek documents in Canada **and abroad**
  - Target letters sent to firms with no Canadian ops
  - Default penalty: 20% of total Canadian VOC
  - Bureau claims VOC includes direct **and indirect** sales into Canada in appropriate cases
  - Fixed leniency discounts: max 50% for 1<sup>st</sup>, max 30% for all others

# Questions?

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