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Maintaining Your Competitive Advantage: *What's New in Competition Law*

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James Musgrove

Mark Opashinov

With the assistance of Joshua Chad

Overview

1. Competition Bureau Update
2. Cartel Issues
3. New Section 90.1
4. Mergers
5. Abuse and Other Reviewable Conduct
6. Class Action Developments
7. Investment Canada Update
8. Corruption of Foreign Public Officials
9. Misleading Advertising Developments

Competition Bureau Update

Competition Bureau

Announced Priorities for the Year

1. Effective and Integrated Enforcement
2. Competition Promotion/Regulatory Advocacy/Collaboration
3. Alignment with Government Priorities
4. Bureau Efficiency

Bureau Priorities

1. Effective and Integrated Enforcement
   - Updated Guidelines
   - Better Evidence Handling
   - Promotion of Compliance
   - Conformity Continuum

Bureau Priorities

2. Competition Promotion/Regulatory Advocacy/Collaboration
   - CRTC Interventions (Broadcasting/Wireless)
   - Beer and Propane Investigations
   - Advertising restrictions re Pharmacists; Dentists and Veterinarians
   - Partnerships with other Agencies/Enforcers
   - Meaningful Consultation on Guidelines (IP/Price Maintenance/Immunity & Leniency FAQs)

Bureau Priorities

3. Align with Government Priorities (controversial point)

- Regulatory Interventions
- Cross Border Pricing (“Unjustified Cross Border Price Discrimination”)
- IP/Digital Economy Focus
  - Updated Guidelines (refusal to license issue)
  - Product Hopping
  - Generic Drugs and Reverse Payments Issues
  - Pharma/IP Workshops
  - MOU with Canadian Intellectual Property Office

Bureau Priorities

4. Bureau Efficiency

- 8 branches to become 4 branches

1. Criminal Matters & Marketing Practices under Senior Deputy, Matt Boswell

2. Mergers and Reviewable Conduct under Senior Deputy, Lisa Campbell

Competition Bureau Update

3. Rambod Behboodi appointed to new position of Deputy Commissioner – Competition Promotion Branch (Economics/Advocacy/Inter-Governmental Affairs/Compliance/International/ Communications)

Cartel Issues

1. *Per se* Conspiracy Provision

- Under Canada's new (2010) law, subject to specific exemptions, agreements between competitors or potential competitors will be found to be illegal when they deal with:
  - How much suppliers charge for their goods/services
  - Dividing the market (geographically/by customer/otherwise)
  - Restricting output of products
- "Price" includes aspects of price (*e.g.* credit terms, discounts, etc.)
- Restricting Output of Products, in particular, can be broader than you think

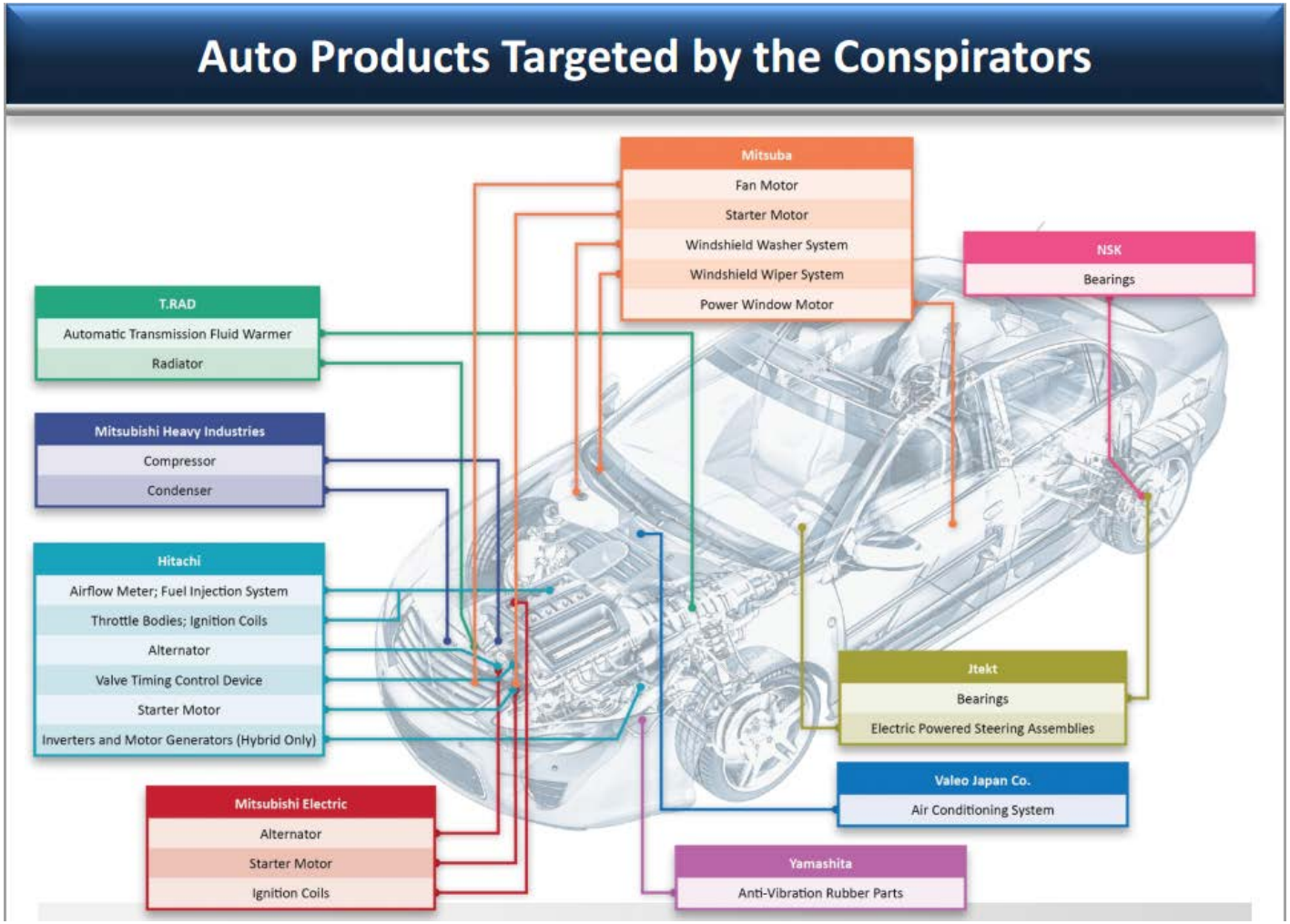
1. *Per se* Conspiracy Provision…cont.

- Loss of “undueness” defence shifts burden, in both criminal cases and class actions
- A new defense exists when the accused can show that the impugned agreement is:
  - "ancillary" to a broader or separate agreement that includes the same parties;
  - *directly related to* and *reasonably necessary* for giving effect to the objective of the broader agreement; and
  - the broader agreement must itself be legal
- Still, 4.5 years in, and no guidance on these provisions from the Courts

2. *What's New* Now

- Last year and before, a spate of Retail Gasoline Matters (Quebec & Ontario)
  - That set of cases seems to be getting to the end of the road (there are ongoing class actions)
- This year – and for a while – is the time of **Auto Parts**
  - Fines to date:
    - 2014-08-20: DENSO Corporation, $2.45M fine for Body ECUs
    - 2014-02-20: Panasonic Corporation, $4.7M fine for switches and sensors
    - 2014-01-30: NSK Ltd., $4.5M fine for wheel hub unit bearings
    - 2013-07-12: JTEKT Corporation, $5M fine for wheel hub unit bearings
    - 2013-04-18: Yazaki Corporation, $30M fine for wire harnesses
    - 2013-04-04: Furukawa Electric Co., Ltd., $5M fine for electrical boxes

2. *What's New* Now…cont.



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US DOJ

2. *What's New* Now…cont.

  - Part of large international set of investigations/prosecutions (EU/Japan/US/Korea/China)
  - Many auto parts implicated
  - More criminal cases expected in Canada

- First extradition – to US – for bid rigging, conspiracy and fraud (Bennett Environmental – John Bennett)
- Eight credit card Class Actions in 5 Provinces
- We also see cases arising out of the Quebec Charbonneau Inquiry:
  - In March, the Bureau conducted seizures at over a dozen businesses for an investigation involving the building of public parks and squares, and the repair of sidewalks, pipes, streets and sewers
- Discounts for Compliance (Draft Bulletin on Competition Compliance)

3. Section 69 Developments

- Durward Case – Madam Justice Warkentin
- Section 69 allows use of documents to prove, in the absence of evidence to the contrary, that the participant knows the contents of the document, and that things which the document says were done, said or agreed were done, said or agreed.
- In the case, the court said that this violates the Charter right regarding the presumption of innocence
- Expressly says the decision does not apply outside the criminal law context

4. Bureau's Increased Enforcement Zeal

- Bureau has announced that it is seeking actual jail sentence:

"On the flip side, the failure to put in place or to follow through with a credible compliance program can expose you and your business to significant financial and reputational risks, not to mention the possibility of administrative monetary penalties, fines and even jail time."

- Commissioner Pecman, 2014

4. Bureau's Increased Enforcement Zeal..cont.

"*The Bureau will look for appropriate cases in which to prosecute individuals, and seek incarceration as well as fines and intends to maintain an aggressive approach to enforcement.*"

- Commissioner Pecman, 2013

4. Bureau's Increased Enforcement Zeal…cont.

- *Maxzone* case suggests that the court will no longer rubber stamp joint sentencing submissions following successful leniency applications, and will be looking for jail time

> "*In the absence of a serious and very realistic threat of at least some imprisonment in a penal institution, directors, officers and employees who may otherwise contemplate participating in an agreement proscribed by Section 45 of the Act, or who may have been directed to implement such an agreement in Canada in contravention of Section 46 of the Act, are unlikely to be sufficiently deterred from entering into or implementing such agreements by mere fines.*"

4. Bureau's Increased Enforcement Zeal..cont.

"[The *Maxzone*] decision sent a strong message both to the judiciary and Canadians, that anti-competitive activity is serious, harmful, criminal behaviour that is akin to fraud and theft and should be viewed and punished as such – including with prison sentences for individuals, in order to achieve the right amount of deterrence."

- Commissioner Pecman, 2012

5. Reduced Fines for Compliance Policies

- Bureau's September 2014 Draft Compliance Program Bulletin
- Seeks to encourage Compliance Programs
- Recognizes large and small firms have different needs and different resources
- Encourages firms to tailor programs based on the risks they face
- Provides that if firms have credible and effective compliance programs, may get discount if participate in Leniency Program
- May also help in decision on which track to take in dual track provisions, or for consideration for alternate case resolution, or lower AMPs in reviewable cases

New Section 90.1

Section 90.1

- Commissioner can challenge competitor agreements and seek a prohibition or other remedial order from the Competition Tribunal
- Implications:
  - No fines or private actions to recover damages
  - Not notifiable to Bureau (unless merger definition and financial thresholds are met)
  - Some consideration of introducing a notification mechanism – mandatory or optional
  - Bureau case flow will likely be complaint-driven
  - Toronto Real Estate Board case (at Tribunal) suggests that Section 90.1 may be relevant to trade association conduct

Section 90.1…cont.

E-Books Case

- Parallel to U.S. challenge to Apple/e-book Publishers
- Allegation was that Apple organized or facilitated an agreement amongst publishers not to allow e-book retailers to set prices/offer discounts – Apple introduced agency model
- In Canada a number of publishers – but not all – and not Apple – entered into Consent Agreement, with limited articulation of the allegedly wrongful conduct:

  > "whereas the Commissioner alleges that further to an agreement, or arrangement, the Respondents have engaged in conduct with the result that competition in the markets for E-Books in Canada has been substantially prevented or lessened contrary to Section 90.1"

- The remedy was essentially, to prevent publishers from agreeing with retailers to not offer discounts, or to have an MFN clause.

Section 90.1…cont.

- Consent Agreement challenged under Section 106(2) by Kobo – argument that it is directly affected and will be hurt by the Consent Agreement, and that there was not a proper basis for the agreement
- The Tribunal ruled that there is no basis under the Consent Agreement process to challenge whether or not there is a basis for an order. Can only challenge a Consent Agreement on the basis that:
  1. The terms of the Order are not the type of terms which could be ordered under the Section of the Act
  2. The Agreement failed to identify the substantive elements of the conduct and/or failed to indicate that the Commissioner has concluded that they are met
  3. That aspects of the Consent Agreement are unenforceable
- Under appeal

Mergers

1. Overview

- Significant amendment in 2009 to move to a two-stage system (like U.S. Second Request)
- One-year window to challenge
- Now, Bureau regularly issues post closing statements on complex cases – last year approximately 25% of “complex” cases had closing statements
- Monthly “merger register” has implications for confidentiality
- Particular issues with state owned enterprises

2. Supplementary Information Requests (SIR) Process

- Relatively uncommon – only about 5% of transactions in last 2 years
- For non-SIR transactions, waiting period 30 days from complete filing to close (can be shortened) - for 80% of transactions – 2 week clearance
- For SIR transactions – 30 days + up to 90 days + 30 days
- SIR scope
  - Up to 30 custodians
  - Bureau will review, but not “bless” search terms
  - Typically 2 years+ for records; 3 years+ for data

2. SIR Process…cont.

- Time to complete SIR varies (20 to 89 days in last couple of years)
- Volume of records varies 4,000 – 70,000 documents
- Bureau likes dialog and rolling production
- Indexing a vexing issue in deals subject to both a SIR and a US Second Request
- Certification is “complete and accurate in all material respects” versus US’ “substantial compliance”

2. SIR Process…cont.

- Production of Electronically Stored Information Enforcement Guidelines:
  - Bureau staff to contact producing parties following issuing SIR to highlights where guidelines apply
  - The guidelines formalize the Bureau's current procedures for collecting electronic documents
  - All electronically stored information to be produced in its native format
  - Parent/child relationships amongst records are to be preserved
  - Records are to be produced indexed by Specification

3. CCS Case

- Hazardous Waste Disposal Case – well below notifiability thresholds – less than $10 million
- Case filing January 2011; Decision May 2012; Appeal Decision February 2013; Leave to SCC Granted July 2013
- Tribunal found prevention of competition
- Tribunal rejected efficiency defence (most efficiencies proposed were not real or not cognizable)
- Court of Appeal upheld Tribunal decision – but noted that in conducting an analysis of efficiencies as against anti-competitive effect, the Tribunal needs to be objective in identifying the anti-competitive effects – a subjective (non-quantifiable) analysis is not encouraged – and even that has to be “reasonable”
- Argued in Spring of 2014 before Supreme Court of Canada
- Decision expected “any day”

4. Bruce Telecom Case

- Well below threshold
- Reviewed as a result of complaints
- Issues in 2 small towns (broadband and bundles of home phone/TV/broadband)
- Wireless not sufficient substitution
- Bureau threatened to block – purchaser abandoned transaction

5. Bell Aliant Case

- Bell Aliant purchase of O.N. Tel Inc. assets in Northern Ontario
- Well below thresholds
- Bureau insisted on remedies
  - Long term (20 year) lease of facilities on O.N. Tel's network to Eastlink
  - Quasi – structural remedy

6. Louisiana Pacific Case

- Proposed US and Canadian transaction in OSB
- Both US and Canadian authorities had concerns
- Parties abandoned transaction

7. Retail Cases

- Numerous major retail mergers over last couple of years (Sobeys/Safeway; Leons/The Brick; Loblaw's/SDM; Canadian Tire/Forzani; Agrium/Viterra; etc.)
- Review a lot of time/lot of data – different geographic market and product market analysis
- Bureau released paper – in September 2014 on retail mergers
  - Markets typically local
  - Difficult question re "Bundle of Products" retailers – who competes with whom
  - Economic analysis – evidence to be expected (diversion ratio/critical loss/upward pricing provision analysis, etc.)
  - Also concerns re vertical effects/monopsony power/"waterbed effect"
- Loblaw's case involved remedy, which – somewhat surprisingly – includes not lowering pricing to smaller suppliers

8. Quebec Newspaper Case

- Transcontinental purchased 74 community newspapers from Quebecor
- Remedy was to require 34 papers to be offered for sale with no minimum
- Ultimately 14 were sold – 3 to continue as traditional weeklies, 11 as online papers
- Bureau's focus is on economic markets – not on broader societal issues (proactive Bureau statement issued to this effect in current Quebecor/Postmedia deal)

9. Garda World Purchase of G4S Cash Solutions

- Issue was armored car services in Quebec
- Resolved by undertaking
  - Allow customers to terminate contract on 30 days notice
  - Contracts limited to 2 years
  - No right of first refusal
- A (rare) behavioural remedy, designed to lower barriers to entry

Abuse and Other Reviewable Conduct

1. General Points

- Bureau has announced will use Section 11 order to investigate all Reviewable Conduct matters
- We are increasingly seeing use of Section 11 power including oral examination:
  - Used in the GardaWorld case
  - “Section 11 orders are a key investigative tool for the Bureau and we intend to use them to their fullest extent, including increasing the use of oral examinations under oath.” – Commissioner Pecman, October 2013

2. Refusal to Deal

- No applications brought by government for more than a decade - since the availability of a private right of action

3. Price Maintenance

- New statutory provision
- Price maintenance is now a reviewable practice
- Vertical resale requirement ("the person's customer or any other person to whom the product comes for resale")
- Adverse effect on competition requirement
- Cease and desist remedy
- Suppliers increasingly exploring their freedom
- Greater ability to implement "*Colgate*"/"*Leegin*" type programs/co-ordinate north and south of the border

3. Price Maintenance…cont.

- **The Credit Card case**

  - Allegation was that “honour all cards” and “no-surcharge” rules constituted price maintenance – “by agreement, threat, promise or any like means, has influenced upward, or has discouraged the reduction of the price at which…[someone]..supplies or offers to supply…”
  - The July 23, 2013 decision – confirmed that conduct the impugned simply does not fit the paradigm of price maintenance

3. Price Maintenance…cont.

- **Guideline**

  - In September 2014 Bureau released Price Maintenance Guideline
    - Recognized that Price Maintenance often pro-competitive (enhancing inter-brand competition)
    - Wholesale price increase is not price maintenance
    - Market power is a key function
    - Resale of a Product can occur (the Guidelines say) when the product is re-packaged, re-portioned, processed or transformed (controversial)
    - Indirect price maintenance may be effected by terms and conditions of sale (controversial)
  - Change in the marketplace
    - MAPP policies more common
    - Explicit price maintenance – more common

4. Abuse of Dominant Market Position

- Basic tests remain the same
  - Practice of anti-competitive acts (intentional predatory, disciplinary or exclusionary effect on competitor)
  - One or more persons substantially control a class of business (that is, exercises market power – ability to raise price over competitive level for significant time)
  - Substantial prevention or lessening of competition (preserve, entrench or enhance the market power over that which would exist but for the conduct)
- Consequences of being wrong are significantly increased (*e.g.,* Administrative Monetary Penalties of $10M/$15M)

4. Abuse of Dominant Market position…cont.

Toronto Real Estate Board case:

- Product is residential real estate brokerage service in Toronto
- Alleged that rules make it difficult to open a Virtual Office Website business model – broker shares information over the web with its customers – so excludes brokers with that sort of business model
- TREB contested case across the board now (no power in market, conduct not directed at competitors, proper use of copyright, etc.)
- Tribunal decided that, since members are not the Board's competitors – section does not apply

4. Abuse of Dominant Market Position…cont.

Toronto Real Estate Board case:

- Court of Appeal reversed decision
  - "The Commissioner's position: that **a person not a competitor in a particular market may nevertheless control** that market substantially within the meaning of paragraph 79(1)(a) by, for example, controlling a significant input to competitors in the market, or by making rules that effectively control the business conduct of those competitors – was "**an interpretation of paragraph 79(1)(a) that the words can reasonably bear**".
  - " I **do not interpret *Canada Pipe* to mean that as a matter of law, a person who does not compete in a particular market can never be found to have committed an anti-competitive act against competitors in that market**, or that a subsection 79(1) order can never be made against a person who controls a market other than as a competitor."

4. Abuse of Dominant Market Position…cont.

Toronto Real Estate Board case:

- "The guidelines indicate at most that the Commissioner's understanding of the scope of subsection 79(1) has changed over time. In my view, they provide no useful guidance to the Court in interpreting that provision."

- Supreme Court of Canada refused leave to appeal

4. Abuse of Dominant Market Position…cont.

Water Heater case:

- Reliance Home Comfort and Direct Energy – not a joint dominance case, separate geographic markets
- 70% - 76% alleged market share
- Alleged various “tricks” used to make entry more difficult
- $10 million/$15 million AMPs sought
- Some questions about case:
  - Why local markets?
  - Why no change to market share during Consent Agreement
- Cases go to hearing in January 2015

4. Abuse of Dominant Market Position…cont.

Alcon Case:

- Product Hopping allegation regarding prescription drugs Patanal and Pataday
- Inquiry discontinued – Alcon recommenced supply
- Can refusal to supply a patent protected product be an anti-competitive act?

Loblaw Investigation:

- Sparked by Loblaw's/SDM merger
- Concern seems to be focused on contracts with suppliers which reference rivals (e.g. – you will lower my price of product X if my competitor advertises/sells product X for less than $Y)

Class Action Developments

Class Action Developments

- Three important Supreme Court of Canada decisions on the issue of whether indirect purchasers have a legal cause of action (*Sun-Rype*, *Microsoft* and *Infineon*)
- The SCC appeals were decided in November 2013
- Allowed “indirect” claims
- Confirmed that there was no pass on defense, but said the courts could deal with double recovery issue
- Decided that there is no claim in constructive trust for breach of the *Competition Act*

Class Action Developments…cont.

- Wakelam (BSCCA) and A.I. Enterprises (SCC) cases decided in January, 2014
- They determined:
  - Competition Act an exhaustive code – claims may be made under its civil damages provisions, but not for unjust enrichment, waiver of tort, or constructive trust
  - Credit Card case in B.C. extended the rule to common law conspiracy as well
  - AI Enterprises determined that unlawful means tort should be narrowly defined to avoid unintended consequences – is only as broad as the cause of action which the direct party who was the victim of the "unlawful means" had

Class Action Developments…cont.

- Dozens of auto parts cases now pending in 4 Provinces
- Credit Card Action partially certified in BC – under appeal. Outstanding in 4 other provinces
- Many other cases

Investment Canada

Investment Canada

- Acquisition of Canadian business by non-Canadian, with book value assets exceeding $354 million (2014) requires Minister of Industry approval
- Transactions involving the acquisition of “cultural business” require approval for assets over $5 million – and may be reviewable beneath that level
- The $354 book value threshold is to increase to $600M in “enterprise value” – likely in 2015, then to $800M in 2017, then to $1 billion in 2019; thereafter the $1 billion threshold will be revised each year based on the GDP formula now in use
- Historically, almost all transactions have been approved, but changes in SOE rules, and national security rules, the rejection of the BHP’s proposed takeover of Potash Corp., and the delayed approval of CNOOC’s acquisition of Nexen, and Petronas’ acquisition of Progress Energy, have caused some concern

Investment Canada…cont.

- With respect to SOEs, in December 2012, at the time that the CNOOC and Petronas transactions were approved, the government reconfirmed that, for SOE acquisitions, Canadian standards of governance will be required; and factors such as Canadian management, listing on Canadian stock exchange; independent Canadian directors were important
- SOEs (from WTO countries) will continue to be subject to the $344M approval review threshold
- Acquisition of oil sands businesses by SOEs will not be permitted except on a “exceptional basis”
- Investment Canada follow up on undertakings is *becoming* more regular and aggressive (U.S. Steel case)

Investment Canada…cont.

- Provinces are playing an active role – the process is becoming more obviously "political" – BHP/Potash the most obvious example

National Security

- "National Security" remains undefined
- The National Security provisions of the ICA allow the Minister of Defence to investigate and require a "review" (by the Federal Cabinet) of the acquisition of an interest (which could be short of control) in a Canadian business

Investment Canada…cont.

- The ICA gives the Minister certain deadlines for National Security reviews:
  1. The time within which the Minister may give notice of and order a review
  2. The time within which such review may take place, for a referral to the Cabinet
  3. The time within which the Cabinet may take any of the allowed measures to protect national security
- Amendments passed in June 2013 allow for more time for such reviews, including extensions with the consent of the investor

Investment Canada…cont.

- There is no systematic public information to confirm that there have been national security reviews
- Newspaper reports suggest that there is a “secret” review committee, with officials from the Department of Public Safety (D.M. Francoise Guimont); officials at CSIS and CSEC and Stephen Rigby (National Security Advisor)
- National security concerns likely were part of the Minister’s decision to not approve the acquisition of MacDonald Dettwiler, a satellite technology company (it occurred just prior to the new provisions becoming law)

Investment Canada…cont.

- It was reported that the national security provisions were invoked and the parties abandoned a proposed acquisition of Forsys Metals Corp.'s (a Canadian company) uranium properties in Namibia by George Forrest International, a Belgian company
- Similarly, Accelero Capital's proposed purchase of Allstream from Manitoba Tel was stopped on national security grounds
- Orascom Telecom Holding SAE, an Egyptian company that was majority-owned by Vimpelcom Ltd., a Russian entity, withdrew its offer for *de jure* control of Wind Mobile likely due to a national security review

Corruption of Foreign Public Officials

Corruption of Foreign Public Officials

Canada's law now tougher in following respects:

- "business" now includes not-for-profits
- Specifically applies to conduct undertaken outside of Canada by Canadian persons or companies
- Maximum sentences increased from 5 to 14 years
- Formerly lawful, "facilitation payments" now caught
- Books and records offence added

Corruption of Foreign Public Officials…cont.

- Nationality as well as territorial jurisdiction
- RCMP has exclusive jurisdiction – and has established a dedicated unit
- Significant Case
  - Niko Resource - $9.5 million fine for a Land Rover “gift”
  - Griffith Energy - $10.3 million fine related to significant payments for energy concessions
  - Nazir Karigar – 3 years in jail for failed bribe
  - Significant number of ongoing investigations

Misleading Advertising Developments

1. Ordinary Sale Price is Back

- A decade ago Bureau was focused on Ordinary Selling Price/Misleading Sales Claims (eg. Sears, Forzani, Suzy Shier, etc.)
- Then enforcement efforts seemed to shift to other issues
- Now, Bureau has announced renewed enforcement effort on OSP
- Rule is that, to claim a price is a "sale" more than 50% of the product must be sold at above the "regular" price; or product must be offered for sale at or above the regular price more than 50% of the time (actually, statute says "substantial volume"/"substantial period of time" – Bureau says 50%) (Section 74.01(2)(3))
- Must be offered for sale "in good faith"
- This is the key point
- Saving provision in Section 74.01(5) (not otherwise misleading)

2. Brick/Leons

- Case against large furniture retailer filed July 9, 2012 – still pending
- Advertising claim “Don’t Pay a Cent”, but due to various credit and security charges, did need to pay a cent
- This was disclosed in the “small print”, and of course consumers knew it before they closed the purchase – as they had to sign up for it
- Bureau theory alleges drip pricing/consumer psychology
- The Commissioner is seeking a cease and desist order, corrective notices, monetary penalties and restitution to consumers (amounts not defined)

3. Chatr

- Chatr advertising claimed “fewer dropped calls” than the new entrants in the wireless telephone market
- Case decided August 2013
- Found that a test is actually required for performance claims – even though, logically, Rogers knew that it had to have fewer dropped calls
- Found a standard of “credulous and not technologically sophisticated consumer”

3. Chatr…cont.

- Court found that consumers would understand the advertisements to mean that Chatr had fewer dropped calls in the zones it operates in, and that it was more reliable with respect to dropped calls than the new entrants
- Court found that the claims were not false or misleading
- But, Court also found that Chatr was obliged to complete its testing *before* launching the advertisements
- Case included two Charter of Rights arguments (re constitution on AMPs and Adequate and Proper Test – the Bureau won)
- Commissioner was seeking $10 million AMP plus restitution order ($20/month/customer)
- Remedy granted $500,000/No Prohibition Order because:
  - Recognizing importance of reputation to advertisers
  - General deterrence irrelevant to AMPs
  - Claim was true

4. Texting Case

- Wireless telephone texting case launched September 2012 against Rogers, Bell, Telus and CWTA
- Alleges that ads for premium text messaging services sold over the respondents' systems were misleading as to the costs
- The Canadian Wireless Telecommunications Association is also named as a defendant
- The three carriers developed a system for facilitating premium text messaging services with and through the CWTA
- The services are offered/advertised by third parties
- Defendants will argue that the third parties control the content of the advertising of these services, which just used the defendants' systems as delivery method

4. Texting Case…cont.

- In July, 2014 FTC got court order from US District Court in Maryland under Section 1782 of the US Civil Code against Aegis Mobile LLC to require it to produce documents – first time use of this evidence gathering protocol
- The Commissioner is seeking $10 million AMPs from each of Bell, Rogers and Telus ($15 million from any with a prior order) and $1 million from the CWTA; the Commissioner is also seeking
  - Full reimbursement for customers for all charges incurred pursuant to the conduct
  - Prohibition orders
  - Corrective notices from each of the defendants

5. CASL Mandated Changes to Competition Act (In force July 1, 2014)

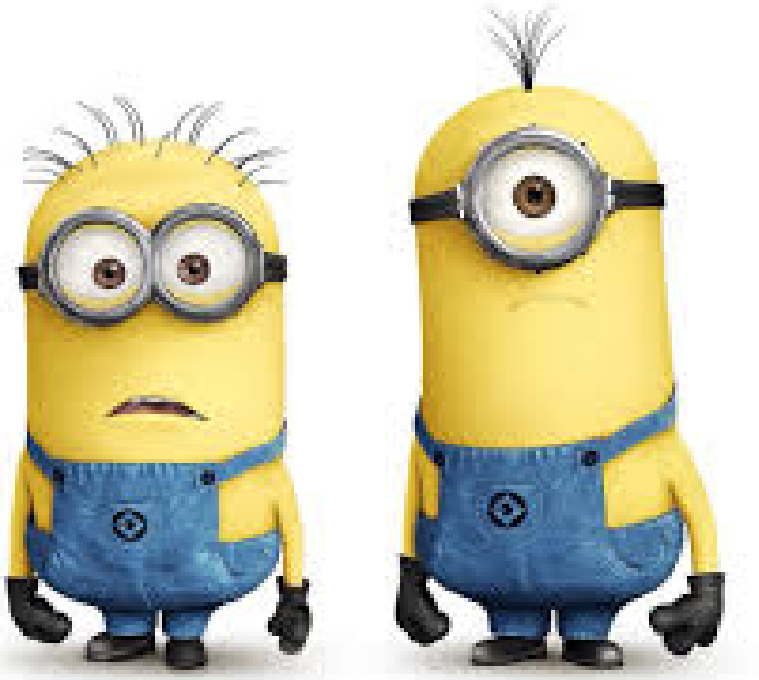
- False or misleading sender information
- False or misleading subject matter information
- False or misleading URL (Note no “materiality” requirement for these 3)
- Representation that is false or misleading in a material respect in an electronic message

6. Holiva Case

- Online job opportunity scam
- Entered into Consent Agreement in mid 2000's
- Found to have breached it by continuing the prohibited operation
- Criminally convicted (June 2013) and sentenced to 30 month imprisonment (February 2014) for both the activity, and the breach of the Consent Agreement

7. Other “Hot” Topics

- Astroturfing (fake testimonials)
- Flogging (fake blogging)
- Mobile Device Related Issues
- “Hidden” Pricing/ Disclosure Issues / Disclaimer Points
- Continuing issue of sophistication of consumer (credulous and unsophisticated? Time – Chatr)
- Whirlpool class action case – silence about a “defect” is not misleading advertising



Questions?

THANK YOU

James Musgrove
+1.416.307.4078
james.musgrove@mcmillan.ca

Mark Opashinov
+1.416.865.7873
mark.opashinov@mcmillan.ca