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Competition and antitrust in Canada



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First enacted in 1889, Canadian competition legislation predates the U.S. Sherman Act. Canada's current Competition Act (the "Act") governs all Canadian antitrust matters and, with few exceptions, applies to all businesses in Canada.

1. The legislation - Overview

The stated purposes of the Act are to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the economy and ensure equitable opportunities for small and medium sized business, in order to expand the opportunities for Canadians to participate in world markets, and to provide consumers with competitive prices and product choices. Balancing these often conflicting objectives can be a challenging feature of Canadian antitrust enforcement.

The Act contains a mix of criminal offences, civil reviewable practices and private rights of action. Matters such as conspiracy to fix prices, allocate customers or markets and bid-rigging are prosecuted as offences in the criminal courts. As such, each case must be proven beyond a reasonable doubt and strict rules of evidence apply. The Act specifically authorizes private actions for damages incurred as a result of criminal conduct that is prohibited by the Act.

Mergers, certain non - "hard core" agreements between competitors, abuse of dominant position (monopolization), refusals to deal, resale price maintenance and various non-price vertical market restraints constitute some of the key non-criminal reviewable practices. Such practices that prevent or lessen competition may be restrained by the Competition Tribunal, a specialized adjudicative body for non-criminal competition matters.

The Competition Act also contains various prohibitions on misleading advertising.

2. Antitrust actors

2.1 Commissioner of Competition

The Commissioner of Competition (the "Commissioner") serves as Canada's chief antitrust enforcement official. In charge of the Competition Bureau (the "Bureau"), the Commissioner has the statutory authority to administer and enforce the Act. The Commissioner investigates breaches of the Act and initiates proceedings for certain reviewable practices. The Commissioner collaborates with the Public Prosecution Service of Canada, which is responsible for the conduct of criminal prosecutions and acts as the investigator with respect to criminal conduct under the Act.

The Commissioner must commence a formal inquiry whenever he has reason to believe that a criminal offence has been, or is about to be, committed. A formal inquiry must also be commenced when the Commissioner considers that grounds exist for the Competition Tribunal (the "Tribunal") to make an order regarding a merger or other reviewable practice. Although most inquiries begin at the Commissioner's instance, the Commissioner must also commence an inquiry when the federal Minister of Innovation, Science and Economic Development so directs, or on the sworn application of six Canadian residents. All inquiries are conducted in private and confidentiality requirements are established by the statute.

A broad arsenal of compulsory investigative tools is available to the Commissioner to assist with investigations. These include warrants for search and seizure and orders for examinations under oath, production of records or other physical evidence and – in the case of deceptive telemarketing, bid-rigging and conspiracy – judicial authorizations to conduct wire tapping. Computer databases and corporate records of both Canadian and

foreign affiliates are also potentially exposed to compulsory investigative procedures. Exercise of these powers requires advance judicial authorization and is subject to the constitutional protections afforded under the Canadian Charter of Rights and Freedoms.

2.2 Competition Bureau

The Bureau provides the Commissioner with necessary administrative and enforcement support. Appointed Deputy Commissioners of Competition oversee branches dealing with mergers, civil matters, criminal matters, compliance and operations, economics, legislative and international affairs, and fair business practices.

2.3 Attorney General/Public Prosecution Service of Canada

The ultimate responsibility for federal criminal prosecutions rests with the Director of Public Prosecutions ("DPP"), through the Public Prosecution Service of Canada. The DPP has responsibility for initiating federal criminal proceedings and prosecuting federal criminal offences in Canada, including the criminal provisions of the Competition Act. In practice, prosecutions under the Act normally are initiated only upon a referral by the Commissioner, and the Bureau's Cartel Directorate of the Cartels and Deceptive Marketing Practices Branch will be closely consulted in the course of a prosecution and with regard to any sentencing recommendation to be made. All criminal proceedings under the Act take place in the criminal courts, rather than before the Tribunal.

2.4 Competition Tribunal

Non-criminal disputes under the Competition Act (such as merger challenges, abuse of dominance and other reviewable conduct matters, and certain types of misleading advertising) may be adjudicated by the Competition Tribunal, which acts, effectively, as a court with respect to such matters.

The Tribunal consists of both judicial and lay members. The mixed composition seeks to ensure that the Tribunal will include the critical components of judicial independence, impartiality and fairness, as well as specialized knowledge of business and economics. The Tribunal sits in panels of at least three, and no more than five, members to consider any application. The Chairman of the Tribunal is selected from among the judicial members and supervises the Tribunal's work.

The Tribunal does not possess investigatory power. The Commissioner or, in some cases, an affected person, must

initiate an Application for an order of the Tribunal on matters subject to determination. Private parties have rights to initiate proceedings regarding several reviewable practices (discussed below), subject to leave from the Tribunal. As well, an interested party may, with leave of the Tribunal, intervene in a Tribunal proceeding in respect of matters relevant to the proceeding that affect that person. The Tribunal may grant leave to intervene where: (a) the matter alleged to affect the interested party is legitimately within the scope of the Tribunal's consideration or is a matter sufficiently relevant to the Tribunal's mandate; (b) the interested party is directly affected by that matter; (c) representations made by the interested party are relevant to a matter specifically raised by the Commissioner or the private party who initiated the proceeding; and (d) the interested party brings to the Tribunal a unique or distinct perspective that will assist the Tribunal in deciding the matters before it.

Although the Competition Tribunal Act requires that proceedings must be handled as 'informally and expeditiously as the circumstances and considerations of fairness permit', the Tribunal has tended to adopt a relatively formal manner, appearing much like a regular court. A typical contested proceeding will require as much as twelve months for final resolution. Even consent proceedings may be lengthy, but the Tribunal increasingly tends to insist on tight time limits for the interlocutory stages of an application.

2.5 Private litigants

The Act provides a statutory cause of action for loss or damage that results from conduct that is contrary to the criminal provisions of the Act or from failure to comply with a Tribunal or court order. Recovery is limited to actual loss plus costs, but both pre- and post-judgment interest may also be awarded. Costs may include those of any investigation of the conduct in question as well as the costs of the proceeding, which frequently require expensive investigative methods, such as surveys and economic analysis. Class action proceedings are commonplace in significant cartel matters, even where criminal proceedings have not been undertaken in Canada.

Private parties may also seek leave of the Tribunal to initiate Tribunal proceedings in respect of resale price maintenance, refusal to deal, exclusive dealing, tied selling and market restriction. The Tribunal has held that the threshold for seeking leave is reasonably low, but there must be some credible evidence that would satisfy the Tribunal that the applicant was in fact directly and substantially affected by the alleged reviewable practice. If leave is granted and proceedings commenced, the Tribunal ultimately may make a supply or prohibition order, but it has no jurisdiction to award damages to private parties.

3. Regulation of anti-competitive behavior

The Act adopts a bifurcated approach to the regulation of anti-competitive behavior. The Act treats some conduct as sufficiently egregious to warrant criminal sanctions. Conversely, reviewable practices are considered only potentially anti-competitive, and they are therefore subject to review and prospective prohibition only after the conduct has been established to have anti-competitive effects. Payment of administrative monetary penalties (very much like fines) also can be ordered in respect of certain reviewable practices.

3.1 Criminal offences

3.1.1 Cartels

Since the Act's inception, conspiracy provisions have been at the heart of Canadian competition law. Hard core cartel conduct (agreement between competitors on price, market allocation or output restriction) is a serious criminal offence in Canada and carries the possibility of individual imprisonment for up to 14 years and corporate and individual fines of up to C\$25 million per count. Other types of agreements between competitors may be subject to review and prohibition under a civil competitor agreements provision if they are found to be likely to prevent or lessen competition substantially.

The cartel provision in Section 45 of the Act stipulates that it is per se a criminal offence to conspire, agree or arrange with a competitor to fix prices, allocate customers or markets or control the production or supply of a product. A "competitor" includes a person who would be likely to compete with respect to the product in the absence of agreement. A "product" includes any article or service.

An ancillary restraints defence provides a partial safe harbour for agreements containing elements that might be alleged to constitute hard-core conduct. However, it places the onus on the parties to the agreement to establish that the price, customer/territory or production restriction was both directly related to and reasonably necessary in order to achieve the objective of a broader agreement between the same parties that, when considered without the restriction, would not contravene the new criminal offence. This may be a complex and difficult standard to meet in many situations.

The civil provision relating to competitor agreements is discussed in more detail below.

3.1.2 Foreign directed conspiracies

The Act also contains a unique offence respecting the implementation of a foreign cartel in Canada. This provision seeks to prevent circumvention of the general conspiracy offence through the implementation of anti-competitive agreements entered into by parties beyond Canada's borders.

A corporation operating in Canada can be fined for implementing a conspiracy directed by persons outside of Canada, even if the persons acting on behalf of the Canadian corporation had no knowledge of the foreign conspiracy. The Act fixes no maximum amount for a fine against the Canadian corporation that is convicted of implementing a foreign-directed conspiracy.

3.1.3 Bid-rigging

The Act contains a specific offence of bid-rigging. The offence involves agreement on bids to be submitted, or agreement not to submit a bid, or agreement to withdraw bids previously submitted. It provides for an unlimited fine, imprisonment of up to 14 years, or both. Like the criminal conspiracy offence, bid-rigging is a per se offence, in that proof of market power or the economic impact of the bid-rigging is not a component of the offence. However, there is a defence available if the person calling for the bids is made aware in advance of the agreement between the bidders or potential bidders.

3.1.4 Misleading advertising

Misleading advertising (representations made to the public which are materially false or misleading) constitutes both a criminal offence and a civil reviewable matter, subject to administrative monetary penalties. To fall within the criminal prohibition, the conduct must be engaged in "knowingly" or "recklessly". The administrative monetary penalties for civil breaches of the statute can be significant, reaching a maximum of C\$1 million for individuals and C\$15 million for businesses. Criminal penalties can include a fine without limit, or incarceration for up to 14 years.

In both criminal and administrative reviews of misleading advertising, it is not necessary to establish that any person was misled – a representation can be misleading

even if no one is actually misled. It is also not necessary to establish that persons to whom the representations were made were within Canada or that representation was made in a place to which the public had access.

The Act contains a specific offence regarding deceptive “telemarketing”, which is defined in the Act as the use of interactive telephone communications to promote the supply or use of a product or to promote a business interest. An offence is committed if a person who engages in telemarketing: (i) makes representations that are false or misleading in a material way; (ii) offers a product at no cost, or a price less than fair market value, in return for the supply or use of another product, if both the fair market price of the product and all terms and restrictions related to the supply or purchase are not disclosed in a reasonable and timely manner; (iii) offers a product for sale at a price grossly exceeding its fair market value if delivery of the product is conditional upon prior payment; or (iv) offers or purports to offer contests, lotteries or games of chance and skill, where the prize is conditional on the participant’s prior payment of any sum or where the number and value of prizes and other information related to the chance of winning are not fairly and adequately disclosed.

The Bureau’s Information Bulletin on telemarketing provides that the offence covers only live voice communications. As such, faxes, Internet communications and automated pre-recorded messages are not covered by the specific deceptive telemarketing offence, but are subject to the general provisions concerning misleading advertising.

There are also a variety of provisions advising, promotional contests, double ticketing, pyramid selling, bait-and-switch selling, and other deceptive practices. In the past, these sections tended to be enforced rigorously and were widely recognized as among the Act’s most frequently invoked provisions. However, in Canada as elsewhere, limited resources have led the Bureau’s Cartels and Deceptive Marketing Practices Branch to concentrate on fewer and larger cases. The Branch typically focuses on cases with national implications.

3.2 Immunity programs

The Bureau has published an Information Bulletin, entitled “Immunity Program under the Competition Act”, and “Immunity Program: Frequently Asked Questions”. The Bulletin sets out the Bureau’s policy with respect to the granting of immunity from prosecution in exchange for cooperation in the investigation and prosecution of criminal

activities under the Act. As noted above, the DPP has the ultimate discretion on whether to grant immunity, but as a practical matter, immunity is typically not granted (or withheld) without a recommendation by the Commissioner and the Bureau’s position is invariably given considerable weight by the DPP. The Bulletin is a significant contribution to transparency, in setting out the policy and practice guidance applicable to immunity decisions.

The Bulletin states that the Commissioner will recommend that immunity be granted to a party where: (i) the Bureau is unaware of an offence and the party is the first to disclose it; or (ii) the Bureau is aware of an offence and the party is the first to come forward before there is sufficient evidence to warrant a referral of the matter to the DPP. A party seeking immunity must meet the following requirements in order to qualify for immunity:

- the party must terminate its participation in the illegal activity;
- the party must not have coerced others to be party to the illegal activity;
- the party must not be the only party involved in the offence; and
- throughout the course of the Bureau’s investigation and subsequent prosecutions, the party must provide complete, timely and on-going cooperation.

If the first applicant for Immunity fails to meet these requirements, a subsequent party that does meet the requirements may be recommended for immunity.

Parties that are “first-in” with evidence of a conspiracy and that meet the requirements of the program can expect to receive full immunity. Parties that come forward subsequently will not receive immunity, but are likely to be offered more lenient fines, calculated by reference to the relevant volume of commerce, the party’s position in the queue, and other aggravating or mitigating factors. Unless a firm intends to contest cartel allegations on substantive or jurisdictional grounds in an effort to avoid criminal liability there are significant benefits to coming forward early in Canada.

The Bulletin makes it clear that being the first to seek immunity in another jurisdiction will not result in any favorable treatment in Canada. The implication for foreign companies and their counsel is clear: the historical tendency to deal with large jurisdictions such as the United States or the European Union first may leave a firm exposed to slipping down the queue and missing the opportunity for immunity in Canada.

4. Reviewable practices

4.1 Mergers

The Act applies to mergers, regardless of size, that either occur in Canada or can be shown to substantially prevent or lessen competition in Canada. Mergers that negatively affect competition are controlled through civil proceedings, rather than criminal sanctions.

The Competition Act has notification provisions which require that notification be provided to the Competition Bureau before certain large mergers are completed. The notification provisions apply to mergers of a given size, whether or not there is any substantive issue. At the same time, mergers which fall below the notification threshold can nevertheless be challenged. If they give rise to a substantial prevention or lessening of competition.

4.1.1 Substantial lessening or prevention of competition

The Commissioner, and ultimately the Tribunal on application by the Commissioner, examines mergers to determine whether, in the words of the Act, a merger will likely prevent or lessen competition substantially.

The Tribunal has equated substantial lessening of competition with the prospect that customers would face 'significantly higher prices or significantly less choice over a significant period of time in relevant markets'. Thus, analysis of any merger case begins with definition of relevant markets, considering both geographic and product dimensions. Market share data is important in determining whether a proposed merger is likely to prevent or lessen competition substantially, but the Tribunal has expressly recognized that market share data is not necessarily a reliable determinant of anti-competitive effects. Other factors such as ease of entry into the market, effectiveness of remaining competition and the likelihood of business failure will be considered. Barriers to entry are particularly important: the Tribunal has stated that a substantial lessening or prevention of competition is unlikely to occur in the absence of such barriers.

4.1.2 Efficiency defence

Of major jurisdictions with sophisticated merger review enforcement regimes, Canada alone provides a statutory efficiency gains defence. The Act's efficiency defence provides in substance that an anti-competitive merger will not be prohibited if the gains in efficiency which

result from the merger outweigh its anti-competitive effects. This involves a comparison of the aggregate gains in efficiency with the aggregate effects of the lessening of competition, and accordingly requires consideration of the deadweight loss resulting from the merger as well as the efficiency benefits achieved.

4.1.3 Merger enforcement guidelines

The Bureau last updated its Merger Enforcement Guidelines (the "Merger Guidelines") in October 2011. Five key elements of the Merger Guidelines are particularly noteworthy. First, the Merger Guidelines use a market power test to measure whether a merger will prevent or lessen competition substantially in any relevant market. Second, the Merger Guidelines require determination of relevant product and geographic markets based on a hypothetical monopolist's ability to impose a significant, non-transitory price increase. The third significant element concerns "safe harbours." Generally, a post-merger market share of less than 35% is considered benign. However, where interdependent behavior is of concern, the "safe harbours" are a post-merger market share of less than 10%, or a combined market share of the four largest competitors of 65%. Fourth, the Merger Guidelines provide guidance on the Commissioner's analysis of a proposed merger's anti-competitive effects, specifically with respect to the merger's unilateral and coordinated effects. The Merger Guidelines also include a brief discussion of vertical and conglomerate mergers.

4.1.4 Pre-merger notification

As with other mature competition regimes, Canada's merger review regime is primarily preventative rather than curative. Pre-merger notification is required for large transactions. Size-of-person and size-of-transaction tests determine pre-merger notification obligations in Canada.

► *Thresholds*

Parties that, together with their affiliates, have Canadian assets or gross annual revenues from sales in, from or into Canada of less than C\$400 million are exempt from the pre-notification obligations. As well, pre-merger notification is required only if the value of the assets to be acquired, or gross annual sales from such assets, exceeds C\$92 million in 2018 (the threshold is subject to an annual adjustment based on inflation). Similar but more complicated thresholds apply to voting share acquisitions, amalgamations and other combinations.

➤ *No-close period*

Where pre-merger notification is required, the parties may not close the transaction until expiry of the mandatory waiting period of 30 days. The waiting period begins to run once the completed filing has been delivered to the Commissioner. A fee of C\$50,000 is payable in connection with notification. During the 30 day waiting period, the Commissioner may request the parties to provide additional information that is relevant to an assessment of the transaction. (A Supplementary Information Request). If this request is made, a further mandatory waiting period will run until 30 days after the Commissioner's requirements have been fully satisfied (subject to early termination by the Commissioner).

The Bureau's general approach to administering the Act's two-stage merger notification process is discussed in the Commissioner's Merger Review Process Guidelines.

4.1.5 Advance ruling certificates

Parties to a proposed merger may apply for an advance ruling certificate ("ARC"). When the Commissioner is satisfied that insufficient grounds exist to challenge a proposed merger, an ARC may be issued. If the merger closes within one year of the issuance of the ARC, the Commissioner cannot challenge the merger unless the ARC was issued on incomplete or incorrect information. An ARC also exempts the merging parties from the pre-merger notification provisions. A filing fee of C\$50,000 is payable upon application for an ARC.

4.1.6 Time for review

The Bureau strives to complete its investigation of mergers within defined time periods, which are discussed in the Bureau's Fee and Services Standards Handbook for Mergers and Merger - Related Matters. Non-complex mergers are to be reviewed within 14 days. For complex mergers, the service standard is 45 days or, if the Commissioner issues a Supplementary Information Request, 30 days following receipt by the Bureau of a completed response to the request. Frequently, the parties agree not to close their transaction after expiry of the statutory waiting period to allow the Bureau to complete its investigation. If the parties refuse a request not to close, the Commissioner may seek injunctive relief to prevent closing, or take costly post-closing divestiture proceedings.

4.2 Other reviewable practices

The Act treats some competitor agreements, abuse of dominant position and most vertical restraints as non-criminal matters reviewable by the Tribunal on application by the Commissioner or, in some cases, affected persons. Abuse of Dominant Market Position, Resale Price Maintenance, Refusal to Deal, Exclusive Dealing, Tied Selling and non-criminal Competitor Agreements are the principal vertical restraints. Misleading advertising is also an important reviewable practice, as indicated above.

4.2.1 Competitor agreements

The civil agreement provision is designed to address competitor agreements that do not amount to hard core cartel conduct, but that have an adverse effect on competition. Under this provision, the Commissioner can challenge any agreement or arrangement made between competitors and seek a remedial order that the agreement not be given effect to. The test for imposing a remedial order is whether the agreement or arrangement is likely to prevent or lessen competition substantially in a market. There is no power to impose penalties.

4.2.2 Price maintenance

Prior to March 2009, resale price maintenance was a *per se* criminal offence in Canada, but is now reviewable conduct, subject to a cease and desist order, but no criminal penalties. Influencing upward, or discouraging the reduction of, the price at which anyone sells a product is now a civil reviewable matter that is subject to review by the Competition Tribunal. For simple price maintenance, the Tribunal may issue a prohibition order where competition is likely to be adversely affected. There is no power to impose penalties and no exposure to other civil actions in respect of price maintenance.

The decriminalization of price maintenance allowed Canadian businesses greater flexibility to adopt practices, such as minimum advertised pricing policies ("MAPPs"), which are commonly used in the United States, provided that the policy does not have an adverse effect on competition.

4.2.3 Abuse of dominant position

Abuse of dominant market position (monopolization) is a reviewable practice under the Act. The Tribunal may make an order prohibiting a dominant firm or a

group of dominant firms from engaging in a practice of anti-competitive acts that is likely to prevent or lessen competition substantially in a market. If the Tribunal finds that a prohibition order is not likely to restore competition, it may also direct the dominant firm or firms to take such reasonable actions as are necessary to overcome the effects of the practice in the market, including possibly divestiture of assets or shares. The Tribunal may also order a firm to pay an administrative monetary penalty (AMP) of up to C\$10 million for the first occurrence of an abuse of dominance and up to C\$15 million for subsequent occurrences.

The Act contains a non-exhaustive list of anti-competitive acts that could be challenged, including: pre-empting scarce facilities or resources; buying up products to prevent erosion of existing price levels; and squeezing by a vertically integrated supplier of the margin available to an unintegrated customer in competition with the supplier. However, party size (or market share) alone is not a ground for a finding of dominance. In a number of contested abuse of dominant position cases, the Commissioner has successfully obtained orders nullifying and prohibiting the use of various terms in the dominant firm's contracts with its customers.

The Commissioner's enforcement views and practices in relation to the abuse of dominant position provisions of the Act are set out in the Enforcement Guidelines on the Abuse of Dominance Provisions. Prior to March 2009, predatory pricing and price discrimination were criminal offences. While these offences have been repealed, predatory pricing or price discrimination could be subject to review, and to administrative monetary penalties, under the abuse of dominance provisions.

4.2.4 Refusal to deal

The Tribunal may order a supplier to accept a person as its customer, where the Tribunal determines that the person's business is substantially affected, or precluded from operating because adequate supplies of a product cannot be obtained anywhere in the market on usual trade terms. The refusal to deal must have resulted from insufficient competition among suppliers, and the refusal must have, or be likely to have, an adverse effect on competition. An application to the Tribunal for a supply order may be made by the Commissioner or, with leave of the Tribunal, by a private party. The Tribunal may grant leave to a private party to initiate proceedings if it has reason to believe that the party's business is directly and substantially affected by the refusal to deal.

4.2.5 Exclusive dealing and tied selling

Exclusive dealing occurs when a supplier requires or induces a customer to deal exclusively or primarily in products supplied or designated by the supplier. Tied selling occurs when a supplier makes its supply of goods conditional on the customer's agreement to either purchase another product from the supplier or its nominee, or refrain from using or distributing another product not manufactured or designated by the supplier in conjunction with the first product. The Tribunal may make an order prohibiting exclusive dealing or tied selling if the practice has resulted in a substantial prevention or lessening of competition. As in the case of refusals to deal and price maintenance, an application for a prohibition order with respect to exclusive dealing and tied selling may be made by the Commissioner and, with leave of the Tribunal, by a private party.

5. International cooperation

International consultation and coordination activities between the Bureau and competition enforcement agencies in other jurisdictions have become a major element of Canadian enforcement policy and practice in cartel matters, as well as in merger review and other civil non-merger matters. Amendments to the Act introduced in 2002 enhance the scope of international cooperation in antitrust enforcement. The Act explicitly provides that Canada may enter into competition enforcement cooperation agreements with other countries that permit the exchange of information in criminal and civil competition matters between the Bureau and other antitrust enforcement agencies. Canada currently has competition cooperation agreements with a number of countries, including Australia, Brazil, Chile, Hong Kong, India, Japan, Republic of Korea, Mexico, New Zealand, People's Republic of China, Taiwan, the European Union, the United Kingdom, and the United States. These agreements do not, however, impinge on the provisions of the law of either jurisdiction that govern the confidentiality of information of private parties.

Cooperative efforts of the Bureau and the United States Department of Justice under the Mutual Legal Assistance Treaty ("MLAT") are very important in the investigation of criminal offences with cross-border implications. Allowing the two countries to assist in each other's investigations, the MLAT permits Canadian and U.S. antitrust enforcement agencies to coordinate enforcement activities, exchange information and meet regularly to discuss matters of mutual interest.

6. Antitrust compliance programs

To assist firms in developing their own initiatives for compliance with the Act, the Commissioner has issued an Information Bulletin that outlines the components of an effective compliance program. The Bulletin also discusses the benefits of such a program, especially in relation to a company's dealings with the Bureau. The Commissioner considers the following seven elements essential to the creation of an effective compliance program: (i) management commitment and support, (ii) risk-based corporate compliance assessment, (iii) corporate compliance policies and procedures, (iv) compliance training and communication, (v) monitoring, verification and reporting mechanisms, (vi) consistent disciplinary procedures and incentives for compliance, and (vii) compliance program evaluation.

A company with a compliance program which the Commissioner considers "effective and appropriate for [the company's] particular business" may benefit from the potential for early detection of criminal behavior, establishment of due diligence defences, reduction of sentences or fines, and the Commissioner's greater willingness to consider alternative resolutions.¹

¹ *A cautionary note: The foregoing is an overview of Canadian competition law. The Competition Group of McMillan LLP prepared this information, which is accurate at the time of writing as a general outline of the key elements of Canada's Competition Act and practice under the Act. Readers are cautioned that in considering the application of the law to any particular situation, a qualified Canadian lawyer should be consulted.*

(The information in this brochure is current to June 2017).

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About McMillan

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