The 2014 Year in Review is a summary of the major developments in Canadian competition and foreign investment law last year. We also look ahead to 2015 and consider how the events of 2014 may impact business activity this year.

A Year of Firsts

2014 was a year of firsts and historic decisions across the competition law landscape. In the Tervita merger case, the Supreme Court of Canada issued its first decision on the “prevention” of competition test and provided guidance on the efficiencies defence. Class actions alleging an international price-fixing conspiracy of dynamic random access memory (DRAM) were settled for $80 million, representing the second largest recovery in Canadian competition class action history. In a landmark decision, the Supreme Court ruled that wiretap evidence from a criminal price-fixing investigation must be disclosed to class action plaintiffs. Breaking new ground, a U.S. court ordered a company located in the U.S. to disclose information to assist the Canadian Competition Bureau in a misleading advertising case in Canada. For the first time, a Canadian was extradited to the United States to face criminal antitrust charges. In another first, an individual was sentenced to 15 months in jail for breaching a consent agreement (an agreement that is entered into with the Bureau to resolve the Bureau’s concerns). Impacting pharmaceuticals, the Bureau issued its preliminary views on how Canadian competition law could apply to pharmaceutical patent litigation settlements.

These, and other top stories, are covered in more detail in this 2014 Year in Review:

CARTEL ENFORCEMENT

Cartel enforcement continues to be a top priority for the Competition Bureau. Numerous guilty pleas, fines and charges for bid-rigging and price-fixing were secured in 2014 — including the continuation of the Bureau’s enforcement actions in the auto parts industry, which is the Bureau’s largest bid-rigging investigation to date. Also, a number of important decisions were released in 2014. For detailed discussion see: Cartel Enforcement.

MERGERS (COMPETITION ACT)

We cover the Supreme Court of Canada’s decision in Tervita Corporation et al v. Commissioner of Competition, as well as emerging trends in merger review from 2014 which are expected to continue into 2015. Behavioural remedies and the review of non-notifiable transactions were just some of the stories last year which highlight regulatory risk under the Competition Act. These and other events in 2014 underscore the benefits of concluding early competition analysis in appropriate circumstances. Furthermore, the Bureau’s efforts to deepen and expand collaboration and cooperation with antitrust regulatory agencies around the world will continue to shape merger review for multinational companies into 2015. For detailed discussion see: Mergers (Competition Act).

MERGERS (INVESTMENT CANADA ACT — FOREIGN INVESTMENT REVIEW)

The Canadian government has been steadily increasing its focus on national security and rejecting mergers due to national security concerns. This has been a concern for foreign investors (especially state-owned enterprises) and Canadian businesses, especially in light of
the dearth of guidance with respect to the types of transactions that are likely to be prone to national security attention. However, this may change with new amendments to the Investment Canada Act that allow for the public dissemination of information relating to national security reviews. For detailed discussion see: Mergers (Investment Canada Act — Foreign Investment Review).

**ABUSE OF DOMINANCE**

In 2014, the Competition Bureau continued to pursue abuse of dominance investigations and litigation. The Competition Tribunal’s redetermination of the Bureau’s application against the Toronto Real Estate Board (TREB), expected in 2015, may redefine the scope of abuse of dominance, making an already nebulous area of the law potentially more uncertain. For detailed discussion see: Abuse of Dominance.

**PRICING PRACTICES**

A story which garnered a significant amount of attention in 2014 was the introduction of the Canadian government’s Price Transparency Act to target “unjustified” cross-border price discrimination. Under the proposed legislation, the Competition Bureau will be empowered to investigate and “expose” gaps between U.S. and Canadian selling prices. Although, the proposed law is not intended to set or regulate prices in Canada (nor does it provide for penalties or other remedies), should it become law, targeted companies will be exposed to the time and expense of responding to the Commissioner of Competition’s investigation and will have to contend with reputational risk associated with the Commissioner’s inquiry and public report. For detailed discussion see: Pricing Practices.

**MISLEADING ADVERTISING**

In 2014, companies and individuals that were found to have contravened the false or misleading representations provisions of the Competition Act were ordered to pay significant administrative monetary penalties (AMPs) and an individual was sentenced to prison for his role in deceptive telemarketing. Also, new amendments to the Competition Act (introduced under Canada’s Anti-Spam Legislation or CASL) which contain serious consequences for false or misleading electronic messages came into force last year. Significantly, the Chatr/Rogers decision was released in 2014 and it provides guidance on determinations of AMPs. For detailed discussion see: Misleading Advertising.

**OTHER DEVELOPMENTS**

Changes to the Competition Act have been proposed which would expand the Commissioner’s investigative powers to compel information from persons outside of Canada. New rules will come into force in 2015 with respect to data preservation and production orders against third parties which will provide the Bureau with an additional investigatory tool. For detailed discussion see: Other Developments in 2014.
Cartel Enforcement

**BID-RIGGING**

The Competition Bureau’s ongoing investigation into the motor vehicle components industry, which has resulted in the highest bid-rigging fine to date, continued to make news from 2013 into 2014. Four Japanese auto parts suppliers (NSK, Panasonic, DENSO and Yamashita Rubber) pleaded guilty for participating in an international bid-rigging conspiracy and were fined a total of almost $12 million. This brings the grand total to seven guilty pleas and over $56 million in fines since April 2013. At the end of 2014 the Bureau indicated that “[i]nternational companies who engage in bid-rigging that impacts the supply of auto parts to Canadian-based automobile manufacturers continue to be an enforcement priority for the Bureau”. More pleas and fines are likely to follow in 2015.

In 2014, several individuals faced bid-rigging charges in respect of two separate government contracts. In an investigation which began in 2009, Microtime and six individuals were criminally charged in May 2014 for allegedly conspiring to rig bids for information technology services to Library and Archives Canada (LAC). The individuals charged include employees of LAC, as well as the owner of Microtime who is currently residing in the U.S. In another case, Construction Beaudin & Courville, B. Fregeau et Fils and two individuals were charged for their alleged role to rig bids for infrastructure projects in Québec. It is alleged that the bid-rigging scheme ensured preferential treatment for a group of contractors seeking to obtain municipal contracts for infrastructure projects. Eleven individuals and nine companies were charged in connection with this same investigation in 2012.

The Competition Bureau discontinued its investigation of alleged collusive conduct into the setting of yen LIBOR rates and their use in pricing interest rate derivative products in early 2014.

**PRICE-FIXING**

Guilty pleas and fines were secured in respect of an alleged price-fixing cartel in the ocean freight industry. Following a Bureau investigation which began in 2009, Overseas Container Forwarding (OCF), ECU Line Canada (ECU) and two of ECU’s executives pleaded guilty to criminal conspiracy for price-fixing relating to various surcharges for the supply of non-vessel operating common carrier export consolidation services from Canada to foreign destinations. OCF and ECU were fined $675,000 and $1 million, respectively, and were each required to set up a corporate compliance program under the terms of their prohibition orders. The two executives were each sentenced to two concurrent conditional sentences (ranging from three to four months) and community service (ranging from 20-30 hours).

**EXTRADITION**

For the first time, a Canadian has been extradited to the U.S. on antitrust charges. In November 2014, John Bennett was extradited from Canada to the U.S. on a charge of participating in a conspiracy to pay kickbacks and commit fraud with respect to work on an

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1. [Record $30M Fine Obtained by Competition Bureau Against Japanese Auto Parts Supplier](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03560.html)
2. [Seventh guilty plea in Competition Bureau’s investigation involving motor vehicle components](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03860.html)
McCarthy Tétrault LLP
mccarthy.ca

environmental cleanup project in New Jersey, which carries a penalty of up to five years in jail and a $250,000 fine. Mr. Bennett was also charged with a related count for major fraud related to contracts obtained in respect of the project, which carries a penalty of up to 10 years in jail and a $1 million criminal fine. The maximum fine may be increased to twice the gain derived from the crime or twice the loss suffered by the victims of the crime, if either of those amounts is greater than the statutory maximum fine. Mr. Bennett lost his fight against extradition on October 30, 2014 when the Supreme Court of Canada dismissed his application for leave to appeal an order of the British Columbia Court of Appeal ordering his extradition to the U.S.

CONSTITUTIONAL ISSUES

In *R v. Durward*, an Ontario court held that section 69(2) of the Competition Act is unconstitutional and of no force and effect in criminal proceedings brought against corporations or individuals. Section 69(2) creates an evidentiary presumption that actions taken by an agent of a participant, or records (such as emails and other electronic documents) found to be in the possession of a participant, are *prima facie* attributable to that participant. The Court found that the presumptions in section 69(2) reverse the onus of proof onto the accused with respect to essential elements of an offence. As such, the provision breaches the presumption of innocence and is of no force and effect with respect to a criminal proceeding. However, the Court expressly noted that its decision does not prevent the use of section 69(2) in a civil proceeding before the Competition Tribunal. The Crown has indicated it intends to appeal the ruling.

CIVIL PLAINTIFFS ACCESS TO WIRETAPS

In 2014, the Supreme Court of Canada ruled that wiretap evidence from the Bureau’s criminal price-fixing investigation of gas stations in Québec must be disclosed to civil plaintiffs in a parallel class action. For further discussion, see Class Actions, below.

STAY OF PROCEEDINGS FOLLOWING REPUDIATION OF PLEA AGREEMENT

The Québec Court of Appeal confirmed that a stay of proceedings of price-fixing charges was the appropriate remedy following the repudiation by the Public Prosecution Service of Canada (PPSC) of a plea agreement. In *R. v. Couche-Tard inc.*, the Court of Appeal upheld the Superior Court’s decision that although the repudiation of a plea agreement does not generally constitute an abuse of process, in this case it caused irreparable harm to the fairness of the trial.

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The Durward case involves the same requests for proposals as *R. v. Dowdall* (2013 ONCA 196). In *Dowdall*, the Ontario Court of Appeal, in dismissing an appeal by the defendants to avoid commitment for trial, found that there was sufficient evidence for a trier of fact to conclude that a “call or request for bids or tenders” had been made, which is a required element of the bid-rigging offence.

6 There are two other important aspects of the Durward case worth noting: this case is by jury (which is a first for bid-rigging prosecutions), and the final decision should provide clarity on the definition of “call or request for bids or tenders”.

process, which justified a stay of proceedings. The PPSC had made a plea agreement pursuant to which the accused corporation’s counsel had disclosed their defence strategy. The Quebec Court of Appeal concluded there was a presumption that the disclosure of defence strategy would cause an irreparable harm to the fairness of the trial process, which justified a stay of proceedings.

COMPLIANCE PROGRAMS

The Competition Bureau released a revised draft of its Corporate Compliance Programs Bulletin in the fall. An important update in the draft Bulletin is the addition of an incentive program for companies that qualify for leniency under the Bureau’s Leniency Program and can demonstrate that their compliance program was credible and effective. These companies may receive a discretionary reduction in fines. For further detail, see our article, Focus on Competition Law Compliance — Competition Bureau Releases Draft Updated Bulletin on Corporate Compliance Programs.
Civil Review of Agreements Among Competitors

EBOOKS CASE

Following a Competition Bureau investigation and allegations that certain ebook publishers, Hachette Book Group, HarperCollins, Macmillan and Simon & Schuster, contravened the Competition Act’s civil competitor collaboration provision (section 90.1) by reducing competition in ebooks, these publishers entered into a consent agreement with the Bureau. Under the consent agreement, the publishers agreed to amend or remove clauses in their distribution agreements with individual ebook retailers which the Bureau alleges have the effect of restricting retail price competition. In an interesting twist, Kobo, an ebook retailer, unsuccessfully attempted to challenge the consent agreement before the Competition Tribunal. That decision is under appeal. For further detail on the Tribunal’s decision in Kobo Inc. v. The Commissioner of Competition see Other Developments in 2014, below.

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Mergers (Competition Act)

TERVITA

In January 2015, the Supreme Court of Canada released its long awaited decision in Tervita Corporation et al v. Commissioner of Competition.9 In a 6-1 decision, the Supreme Court allowed Tervita’s appeal and set aside the divestiture order made by the Competition Tribunal and upheld by the Federal Court of Appeal (FCA). The Supreme Court agreed with the FCA’s conclusion that the merger would likely result in a substantial prevention of competition, but overruled the conclusions of the Tribunal and the FCA that the merger was not saved by the efficiencies defence.

This case stems from Tervita’s acquisition of Complete Environmental Inc. which held a permit to develop a landfill for the disposal of hazardous waste in northeastern British Columbia. Tervita already owned and operated two hazardous waste landfills. Although the transaction was below the merger notification threshold, the Commissioner of Competition brought an application after the transaction had closed on the ground that it substantially prevented competition by eliminating the only potential competitor for secure landfill services. The FCA had upheld the Tribunal’s ruling ordering Tervita to divest Complete on the basis that its acquisition was likely to prevent competition substantially. The FCA also upheld the Tribunal’s decision that the efficiencies defence in section 96 of the Competition Act was not available to Tervita because the efficiencies of the transaction did not offset its anti-competitive effects. For further detail of the Tribunal’s decision see our article: Competition Tribunal Releases its Decision in the CCS Merger Case.

This is the first Supreme Court decision on the “prevention” of competition test. The Supreme Court held that the timeframe to determine whether one of the merging parties would, “but for” the merger, be likely to enter the market must be discernible. The Supreme Court warned against looking too far in the future, but recognized that the inherent time delay to enter an industry because of barriers to entry is an important consideration. The Supreme Court agreed with the Tribunal’s controversial conclusion that there was sufficient evidence to support a finding of a substantial prevention of competition as a result of the merger.

However, in regard to the efficiencies defence, the Supreme Court concluded that the Commissioner did not meet her burden of quantifying the quantifiable anti-competitive effects of the merger and did not prove any qualitative anti-competitive effects of the merger. As such, the anti-competitive effects raised by the Commissioner were assigned no weight by the Supreme Court and, by default, were offset by the modest overhead efficiency gains proven by Tervita.

While the facts of the case are unique, the Supreme Court’s decision is a significant loss for the Commissioner. Going forward, the Supreme Court has provided guidance on the proper application of the efficiencies defence. Most notably, the Supreme Court has made it very clear that in contested merger litigation the burden of proving anti-competitive effects rests with the Commissioner. This will likely have an impact on the scope of information requests in the context of merger review, with a corresponding increase in the time required to clear transactions that raise competition concerns.

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BEHAVIOURAL REMEDIES

The Competition Bureau has demonstrated an increasing willingness to accept behavioural remedies, such as restrictions on contracting practices, in merger matters. In the past, the Bureau has been reluctant to accept behavioural remedies (preferring structural remedies, such as divestment). Although this trend could allow merging parties to avoid divesting valuable assets in favour of behavioural commitments, it could also potentially result in added complexity, monitoring costs and/or unexpected changes to business practices.

As part of Loblaws’ acquisition of Shoppers Drug Mart in the grocery and drugstore space, Loblaws entered into a consent agreement with the Bureau. To address the Bureau’s vertical concerns with Loblaws’ supply practices, Loblaws agreed not to engage in certain contracting practices which, in the Bureau’s view, forced suppliers to provide financial compensation to Loblaws, allowing it to maintain profit margins in the face of price competition. For further detail, including the other behavioural remedies Loblaws agreed to, see our article Competition Bureau Approves Loblaws’ Acquisition of Shoppers Drug Mart Subject to Divestitures and Restrictions on Contracting Practices With Suppliers.

In the armoured car services industry, GardaWorld Security acquired G4S Cash Solutions. In order to obtain clearance from the Bureau, GardaWorld committed to modifying its contracting practices and not enforcing certain terms in its existing customer contracts for three years. As a result, among other things, the contracts are limited to two years and are easier for customers to terminate. For further detail, see our article Competition Bureau Clears GardaWorld’s Acquisition of G4S With Commitment to Change Contracting Practices.

In the pharmacy management services segment, TELUS Health acquired XD³ Solutions. TELUS Health committed to changing certain contracting practices for five years. Among these commitments, TELUS Health agreed not to include terms that make it difficult for pharmacists to switch service providers.

REVIEW OF NON-NOTIFIABLE TRANSACTIONS

The Bureau has jurisdiction to review and challenge proposed and completed mergers which are non-notifiable. In its 2014 submission to the Organisation for Economic Co-operation and Development (OECD) regarding the review of consummated and non-notifiable mergers, the Bureau expressed the view that given the relatively short window for the Commissioner to challenge a transaction after it has closed (one year), “parties to a non-notifiable transaction

13 The Competition Act amendments in 2009 reduced the time within which the Bureau can challenge a transaction from three years to one year.
may be more likely to engage in strategic behaviour to avoid detection than was historically the case.” In an effort to secure timely detection, the Bureau maintains communication with market stakeholders (e.g., customers, suppliers and competitors) to detect non-notifiable transactions it may wish to review. Transactions are detected mainly through complaints from market stakeholders or market monitoring. The Tervita case (discussed above), is a recent example of the Bureau exercising its jurisdiction to challenge non-notifiable transactions.14 In 2014, the Bureau reported the following non-notifiable transactions which were brought to its attention via complaints and resulted in commitments from the parties to address the Bureau’s concerns: (i) Bragg Communications’ proposed acquisition of Bruce Telecom (discussed in Abandoned Mergers, below), (ii) Bell Aliant’s acquisition of O.N. Tel (Ontera) where, in response to the Bureau’s concerns, Bell Aliant agreed to lease facilities along a significant portion of Ontera’s network to a third party, Bragg Communications, for 20 years,15 and (iii) the TELUS Health Solutions/XD3 transaction (discussed in Behavioural Remedies, above).

These transactions are a reminder that mergers of any size may be reviewed and challenged by the Competition Bureau. As a result, a substantive competition analysis should be part of the assessment of proposed transactions of any size, that may give rise to competition issues.

ABANDONED MERGERS

In 2014, two notable mergers were abandoned after receiving resistance from the Bureau. Louisiana-Pacific and Ainsworth Lumber terminated their acquisition agreement after concluding that Canadian and U.S. competition approvals could not be “obtained without divestitures significantly beyond those contemplated in the Arrangement Agreement without engaging in lengthy and expensive litigation with the regulatory authorities.” For further detail, see our article Louisiana-Pacific Corporation and Ainsworth Lumber Co. Ltd. Terminate USD$1.1B Deal Due to Regulatory Hurdles. Bragg Communications decided not to proceed with its proposed acquisition of Bruce Telecom after the Bureau informed the parties that it would challenge the deal because of its view that the acquisition would likely have substantially lessened competition for telecommunications services in two rural Ontario communities. Notably, this transaction did not meet the notification thresholds under the Competition Act. For further detail, see our article Eastlink Abandons Its Acquisition of Bruce Telecom Due to Opposition by Competition Bureau.

The parties to these transactions likely incurred significant transaction costs and devoted significant effort and time — only to abandon the deals. Again, these cases illustrate that it is critical for merging parties to evaluate from the outset the antitrust risk associated with complex mergers.

INDUSTRY FOCUS

In the fall of 2014 the Bureau released a white paper on its approach to retail mergers.16 Given the Bureau’s recent review of several high-profile retail mergers,17 the Bureau’s white paper is
timely. In it, the Bureau discusses some of the economic tools and techniques it has used to investigate retail mergers and provides its approach to analyzing the downstream and upstream portions of a retail merger.

In regard to media mergers, two newspaper mergers in 2014 raise questions as to whether (and if so, how) the Bureau’s approach in merger review may be impacted by changes in the industry, such as the decline of print media. Pursuant to a consent agreement with the Bureau, Transcontinental agreed to divest 34 local community newspapers (later reduced to 33) in order to acquire Québecor’s community newspapers in Québec. The aim of the consent agreement was to preserve competition in the sale of advertising in community newspapers in several areas in Québec. However, no buyers could be found for 19 of the newspapers, resulting in Transcontinental keeping one and shutting down the rest. Of the 14 newspapers for which buyers could be found, only 3 will continue as papers, with the remaining 11 to be published online-only.

Later in 2014, a second newspaper merger was announced: Postmedia’s acquisition of Québecor’s 175 daily newspapers, specialty publications and digital properties. In a rare move, the Bureau issued a statement inviting Canadian consumers and other stakeholders to share their views on competition-related issues regarding the deal. This deal will be closely watched in 2015 as it “raises the question of whether the Competition Bureau will consider factors that underscore the unique circumstances that face media mergers: the effect on the quality of the content; the financial pressure that traditional print media are under; and the changing nature of the ‘product market,’ as opposed to the business or geographic markets.”

CROSS-BORDER COOPERATION

In 2014, the Bureau continued and expanded its collaboration and cooperation with antitrust regulatory agencies around the world. In particular, ties between the Bureau, the U.S. Department of Justice (U.S. DOJ) and the Federal Trade Commission (FTC) were further strengthened with the release of a joint publication on best practices for cooperation in cross-border merger investigations. Moreover, this co-operation manifested itself in the review and resolution of the following cross-border mergers in 2014:

- The Louisiana-Pacific/Ainsworth Lumber transaction (discussed in Abandoned Mergers, above) involved significant collaboration, and resulted in the Bureau and the U.S. DOJ presenting a united front to the parties.

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17 Notable retail mergers in 2014 include the Loblaws/Shoppers Drug Mart transaction discussed above and Burger King’s acquisition of Tim Hortons. Competition Bureau clears Burger King/Tim Hortons merger: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03828.html

18 Competition Bureau Statement Regarding the Acquisition by Transcontinental of Québecor Media’s Community Newspapers in Québec; Competition Bureau Approves the Sale of 14 Transcontinental Community Newspapers: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03807.html

19 Transcontinental Inc. announces the results of the sale process of the weekly newspapers in Québec designated by the Competition Bureau: http://tctranscontinental.com/documents/10180/1475871/press_14-09-03.pdf


– Covidien’s acquisition of Medtronic: given the global nature of the parties’ businesses, the Bureau worked closely with foreign agencies, especially the FTC, in reviewing the transaction. As the divestiture assets served both the U.S. and Canadian markets, the Bureau coordinated with the FTC on remedies. The two agencies entered into parallel consent agreements with Covidien and appointed a joint monitor to ensure Covidien’s compliance with its divestiture obligations.23

– The Bureau worked closely with the U.S. DOJ and the Mexican Federal Competition Commission in reviewing Continental AG’s acquisition of Veyance Technologies. The parties’ settlement with the U.S. DOJ was sufficient to address the Bureau’s concerns. The Bureau cleared the transaction without requiring further remedies in Canada.24

OTHER MERGER HIGHLIGHTS

– Other mergers cleared by the Bureau included insurance,25 freight transportation,26 corrective lenses,27 and water heaters28 transactions.

– Merger review activity is increasing: the Bureau commenced 154 merger reviews in the two quarters ending September 30, 2014 as compared with 230 merger reviews for all of fiscal 2013-2014.

– The Bureau released 15 position statements on its review of mergers, as compared with 13 in 2013.

– The pre-merger notification transaction-size threshold for 2015 increased to $86 million from the 2014 threshold of $82 million. The party size threshold remains $400 million.

– Proposed amendments to the Competition Act were introduced in 2014 which would expand the concept of affiliation to include a broader range of organizations, such as trusts.29 This will potentially increase the number of transactions for which pre-merger notification requirements apply.

23 Competition Bureau statement regarding the acquisition by Medtronic of Covidien: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03848.html
24 Competition Bureau statement regarding the acquisition by Continental of Veyance: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03861.html
26 Transforce’s acquisitions of Vitran (http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03712.html) and Contrans (http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03835.html)
29 See our article: Cross-border Price Discrimination: Increased Powers for the Commissioner of Competition.
Mergers (Investment Canada Act — Foreign Investment Review)

NATIONAL SECURITY REVIEW

There has been a slow escalation in the rigour of enforcement of the Investment Canada Act by the Minister of Industry in recent years, as evidenced by the increase in the length of reviews and the scale and scope of written undertakings that foreign investors have been required to give the Minister of Industry to secure approval. In particular, the Canadian government has increased its focus on acquisitions of Canadian businesses by foreign investors which give rise to national security concerns and has even rejected transactions for national security reasons. For example, according to media reports in 2014, the government established a secret committee to review foreign investment for national-security risks. It is apparent that to the extent it may have been in past deals, the importance of the national security dimension of a transaction can no longer be underestimated.

Despite the fact that the national security regime was created in 2009 and the first known rejection under the new regime occurred in 2013, the Canadian government has provided limited guidance on the scope and nature of national security reviews or disclosure of other national security reviews that were ordered. However, this may change in light of recent amendments to the Investment Canada Act which allow for increased disclosure of information relating to national security reviews. The changes allow the government to disclose any information contained in (i) notices that are sent to the foreign investor which relate to the national security review process and (ii) orders that are made under the national security review, unless the Minister of Industry is satisfied that disclosure would be prejudicial to the foreign investor or target. Concerns have been raised that the new disclosures may go too far, especially if information is disclosed before the parties have announced the transaction. It remains to be seen how the government will utilize these new disclosure powers and whether they will provide meaningful guidance on the national security review regime without prejudicing the parties whose information is disclosed.

30 It has been reported in the media that the secret committee is composed of the Public Safety Deputy Minister Francois Guimont (the chairman of the committee), the heads of the Canadian Security Intelligence Service and the Communications Security Establishment Canada (Canada’s two spy agencies), and Stephen Rigby, Prime Minister Stephen Harper’s National Security Adviser.

31 Accelero’s attempted $520 million acquisition of telecommunications company Allstream was blocked by the Minister of Industry in October 2013. For further detail, see our article: Investment Canada Act: Minister of Industry Blocks Acquisition of Allstream by Accelero Capital Holdings on National Security Grounds.


33 Letter to the Honourable Senator Irving Gerstein, Chair, Banking, Trade and Commerce Committee and Mr. David Sweet, M.P. Chair, Industry, Science and Technology Committee from R. Jay Holsten, Chair, National Competition Law Section, November 17, 2014: http://www.cba.org/CBA/submissions/pdf/14-64-eng.pdf.
OTHER FOREIGN INVESTMENT HIGHLIGHTS

– While the Canadian government allowed state-owned Progress Energy to acquire natural gas assets from Talisman Energy\(^{34}\) in 2014, state-owned enterprises (SOE) seeking to acquire Canadian natural resources (especially in the oil sands\(^{35}\)) continued to face special scrutiny under the foreign investment review process.

– The 2015 threshold for review and prior approval of the direct acquisition of control of a non-cultural Canadian business, where either the seller or buyer is ultimately controlled in a country that is a member of the World Trade Organization (WTO) other than Canada, was increased to $369 million from $354 million in 2014. The threshold for cultural businesses and transactions where neither party is a member of the WTO remains $5 million.

On a date still to be fixed, new regulations under the *Investment Canada Act* will come into force, progressively increasing the WTO review threshold to $1 billion. It is proposed that the review threshold be increased from the current asset value-based threshold to, initially, a threshold of $600 million based on “enterprise value” for WTO investors. This threshold will subsequently be increased to $800 million and $1 billion. For SOE investments, the review threshold will remain the existing annually adjusted $369 million threshold in asset value.

– Pursuant to the proposed *Canada–EU Comprehensive Economic and Trade Agreement* (CETA), Canada should increase the threshold for review of acquisitions of Canadian businesses by European Union companies to $1.5 billion. Other free trade agreement partners of Canada will also likely benefit from this higher threshold pursuant to most-favoured-nation commitments in those trade agreements. For further detail, see our article, *CETA Will Create a Two-Tiered System for Investment Canada Act Reviews*.


\(^{35}\) In statements by Prime Minister Stephen Harper following approval of CNOOC’s proposed acquisition of Nexen and PETRONAS Carigali Canada Ltd.’s proposed acquisition of Progress Energy Resources Corp. in 2012, it was made clear that any approvals of future acquisitions of oil sands development by SOEs would be the exception. For further detail, see our article: *CNOOC Approval Signals Canadian Government Continues to Welcome Foreign Investment … With Some Strings Attached.*
Abuse of Dominance

**TREB – IS ABUSE OF DOMINANCE LIMITED TO INJURING COMPETITORS?**

In February 2014, the Federal Court of Appeal (FCA) sent the Commissioner’s abuse application against TREB back to the Competition Tribunal for redetermination, having concluded that the Tribunal erred in dismissing the case. The Commissioner alleges that TREB’s rules limit competition from on-line brokers who are members of TREB. The Tribunal had dismissed the Commissioner’s application, without considering the merits, on the basis that the abuse of dominance provisions cannot apply to TREB (a trade association) because it does not compete with its members. As such, the Tribunal concluded that TREB’s rules cannot have an intended negative effect on a “competitor” as required by the FCA’s decision in *Canada Pipe*. The FCA reversed essentially on the basis that the Tribunal had put form over substance. In July 2014, the Supreme Court of Canada denied TREB’s application for leave to appeal the FCA’s decision. The FCA decision in TREB casts some uncertainty over who can be the subject of an abuse of dominance application by the Commissioner. It suggests, at a minimum, that trade associations can be investigated for abuse of dominance. The uncertainty created by this decision is troublesome, particularly in view of the fact that administrative monetary penalties (AMPs) of up to $10 million are now available in abuse of dominance cases. On its reconsideration of the case in 2015, it would be beneficial for the Tribunal to provide guidance on this issue. For more detail on the FCA’s decision and the Tribunal’s original decision, see our article, *Supreme Court of Canada Dismisses Toronto Real Estate Board’s Leave to Appeal — Competition Tribunal Must Reconsider Commissioner’s Application*.

**WATER HEATERS – A CHANGING LANDSCAPE**

The Competition Bureau’s abuse application against Reliance was resolved by a consent agreement in which the water heater rental supplier agreed to pay a $5 million administrative monetary penalty (AMP) and $500,000 to the Competition Bureau for its investigation costs. Reliance is also required to take certain steps to make it easier for customers to terminate their rental agreements and return their water heaters to Reliance. Concurrent with the Bureau’s resolution with Reliance, another water heater rental supplier, EnerCare (which recently acquired Direct Energy’s water heater rental business in Ontario) committed to take certain steps to make it easier for customers to terminate rental agreements and return water heaters.36

The Commissioner’s separate application against Direct Energy is continuing before the Competition Tribunal. Motions argued in December 2014 are expected to determine whether the case can proceed in light of Direct Energy’s sale of its water heater rental business.

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36 In an ironic twist, National Energy agreed to pay $7 million for its deceptive marketing practices in persuading consumers to rent their water heaters. National Energy was an intervenor in support of the Commissioner’s cases against Reliance and Direct Energy, claiming that the respondents’ practices created artificial barriers to entry.
ABUSE OF DOMINANCE INVESTIGATIONS

In 2014, the Bureau initiated or discontinued the following investigations (on the public record):

- A grocery chain is being investigated for its alleged pricing practices with suppliers.37
- A cell phone provider is being investigated for allegedly using its market power to promote the sale of its phones.38
- The Bureau discontinued its investigation of Canadian National Railway (CN) for allegedly implementing a rail pricing strategy that would price its transloading competitors out of the marketplace.39

37 The Bureau obtained section 11 production orders against 12 suppliers of the retailer. For example, Competition Act v. Smucker Foods of Canada, Federal Court (Canada), T-2346-14.
38 Federal Court (Canada), T-2503-14.
Pricing Practices

FEDERAL GOVERNMENT TARGETS “UNJUSTIFIED” CROSS-BORDER PRICE DISCRIMINATION

The Canadian government introduced amendments to the Competition Act (referred to as the Price Transparency Act) to target “unjustified” price discrimination between Canada and the U.S. for identical goods. The proposed law is not intended to set or regulate prices in Canada, nor does it provide for penalties or other remedies. Instead, the Commissioner of Competition would be given powers and tools to investigate and “expose” gaps between U.S. and Canadian selling prices and the reasons for that difference. After receiving information for the inquiry, the Commissioner must issue within a year a public report setting out the conclusions of the inquiry. The proposed amendments raise concerns for targeted companies that would be exposed to the time and expense of responding to the Bureau’s inquiries. Those companies would also have to contend with the reputational risk associated with the Bureau’s inquiry and public report.

An important, but less publicized provision of the Price Transparency Act would expand the Bureau’s power to subpoena information and documents from foreign entities. For further detail, see our article, Cross-border Price Discrimination: Increased Powers for the Commissioner of Competition.

REVISED PRICE MAINTENANCE GUIDELINES

The Bureau released its revised Price Maintenance Guidelines in the fall of 2014. The new guidelines reflect the 2009 amendments to the Competition Act which decriminalized price maintenance and introduced a competitive effects requirement. As such, they provide welcome guidance for companies seeking to participate in permissible price maintenance. Among other things, the guidelines discuss the circumstances in which price maintenance can be pro-competitive or anti-competitive. The key consideration in determining whether price maintenance poses competition risk is market power. In its guidelines, the Bureau says that price maintenance conduct is a concern only where it is likely to create, preserve or enhance market power.

The new guidelines refer to the Visa/MasterCard case, in which the Tribunal held that there was no price maintenance because the credit card issuers and acquirers were not reselling a substantially similar product to the product they purchased from Visa or MasterCard. The Tribunal concluded that the product being resold “should be identical or substantially similar”

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40 The proposed amendments follow the federal budget that was released in February which included the government’s consumer friendly plans to prohibit price discrimination between the U.S. and Canada. For further detail on the federal budget, see our article 2014 Budget Targets "Unjustified" Cross-Border Price Discrimination.

41 The Price Transparency Act also includes proposed amendments that expand the concept of affiliation to include a broader range of organizations, such as trusts. This will potentially increase the situations in which pre-merger notification requirements apply. Such amendments will also clarify the application of the affiliate exception to criminal conspiracy and bid-rigging and to civilly reviewable practices.

42 Price Maintenance (Section 76 of the Competition Act), Enforcement Guidelines.

43 Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated, 2013 Comp Trib 10. This the first case in which the price maintenance provision was interpreted since it was amended in 2009. For further detail, see our article Reasons in Commissioner of Competition v. Visa.
to the product originally sold in order to constitute price maintenance. Interestingly, the Bureau takes the view in its Guidelines, that Visa/MasterCard stands for the proposition that the product a retailer resells need not be identical to the product supplied to it by the supplier or even in the same product market as the product supplied. Two notable epilogues to Visa/MasterCard are that a class action against Visa and MasterCard, as well as other financial institutions, based on similar facts to the Bureau litigation was certified in 2014, and a year after the Tribunal’s decision was rendered, Visa and MasterCard unilaterally agreed to lower their interchange fees, which was the focus of that case.

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44 Watson v. Bank of America Corporation, 2014 BCSC 532. This decision is under appeal before the British Columbia Court of Appeal.

Intellectual Property: Focus on the Pharmaceutical Industry

In 2014, the Bureau issued its preliminary views on how Canadian competition law could apply to pharmaceutical patent litigation settlements in its white paper, *Patent Litigation Settlement Agreements: A Canadian Perspective*. In particular, it focussed on so-called “pay for delay” settlements where a brand name drug company settles patent infringement litigation with a generic on terms which include a payment to the generic. Unfortunately, the Bureau has not (yet) excluded the application of the criminal provisions of the *Competition Act* to settlements of patent litigation. Notwithstanding the 2013 decision of the U.S. Supreme Court in *Actavis* that a “rule of reason” approach is appropriate in these cases,\(^{46}\) the Bureau has said that it may review and prosecute a patent litigation settlement under the *per se* criminal conspiracy provision of the *Competition Act*. Given the Bureau’s keen interest, but limited guidance, as well as its unclear position on criminal enforcement, a cautious approach is warranted pending further guidance or enforcement action by the Bureau. For further discussion on the Bureau’s white paper, see our article, *Canadian Competition Bureau Provides Preliminary Guidance on Pharma Patent Settlements*.

In 2014, the Bureau also released updated intellectual property enforcement guidelines (see our article, *Competition Bureau Releases Updated IP Guidelines*) with plans for a second stage of updates which will add guidance about patent litigation settlements, product life-cycle management strategies and other patent issues. The Bureau also entered into a memorandum of understanding with the Canadian Intellectual Property Office (CIPO) which mandates closer cooperation, consultation and information sharing between the Bureau and CIPO for matters that straddle intellectual property and competition law\(^{47}\) and provided a submission to the Organisation for Economic Co-operation and Development (OECD) on the Canadian pharmaceutical industry.\(^{48}\)

The Bureau discontinued its investigation of Alcon in 2014 (under the abuse of dominance provisions of the Act) for “product hopping”. “Product hopping” is an alleged practice whereby a brand name drug company patents a new formulation of an existing drug and then tries to prevent or delay competition from generic drug companies with respect to the original formulation by switching patients to the newer formulation before patent expiry on the original formulation. In Alcon’s case, its alleged tactic for achieving this was to stop supplying the old formulation and telling customers it was indefinitely on “back order”. The Bureau discontinued its investigation in May 2014 after Alcon voluntarily resumed supply of the old formulation to address the Bureau’s concerns. For further discussion, see our article, *Competition Bureau Discontinues Pharma "Product Hopping" Inquiry.*

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\(^{47}\) See our article *Draft Updated IP Guidelines and MOU with CIPO Are Latest Signs of Competition Bureau’s Renewed Interest in IP Rights.*

\(^{48}\) *Competition Bureau Submission to the OECD Competition Committee Roundtable on Competition Issues in the Distribution of Pharmaceuticals*: [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03775.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03775.html)
Class Actions

**CRIMINAL WIRETAP EVIDENCE FROM BUREAU INVESTIGATION AVAILABLE TO CLASS ACTION PLAINTIFFS**

In *Pétrolière Imperiale v. Jacques*, the plaintiffs sought access to the recordings of private communications intercepted pursuant to wiretap authorizations obtained by the Competition Bureau as part of its investigation. These recordings had been provided to the accused as part of the disclosure in the criminal proceedings, but for the most part had not been adduced in evidence in the criminal proceedings. The Supreme Court of Canada affirmed the trial judge’s decision ordering the Competition Bureau and the Director of Public Prosecutions to disclose the recordings requested, subject to certain controls in order to protect the interests of third parties. The Court was of the view that neither section 193(1) of the *Criminal Code* nor section 29(1) of the *Competition Act* provided immunity from disclosure of wiretap evidence found to be relevant in the context of civil proceedings. For further detail, see our article, *Alleged Crime, Punishment…and Disclosure: A Summary of the Supreme Court’s Decision in Jacques v. Imperial Oil.*

**SECOND-LARGEST COMPETITION CLASS ACTION SETTLEMENT**

At the end of 2013, the Supreme Court of Canada released an important class action trilogy of cases which allowed indirect purchasers to assert competition claims and released the evidentiary burden on plaintiffs at class certification. For further detail on the trilogy, see our article, *Supreme Court Releases the Indirect Purchaser Trilogy.* In 2014, in one of the trilogy cases which dealt with alleged international price-fixing of dynamic random access memory (DRAM), the plaintiffs secured approval of settlements with the remaining defendants, bringing the total recovery to over $80 million which remain to be distributed to class members. This is the second-largest recovery for a competition class action in Canadian history and perhaps an omen of things to come. For further detail on the Pro-Sys case settlement, see our article, *Historic Class Action Settlement and Distribution Protocol.*

**LIMITS ON TORT AND RESTITUTIONARY CLAIMS**

The decision of the British Columbia Court of Appeal decision in *Wakelam* is good news for defendants in competition class actions. *Wakelam* casts serious doubt on the ability of plaintiffs to use alleged breaches of the *Competition Act* to found restitutionary claims and common law torts. The ramifications of *Wakelam* are still being sorted out by the courts, with plaintiffs alleging that it is inconsistent with the Supreme Court of Canada decisions in *Pro-Sys* and *Bram.* Whether tort or restitutionary claims can be based on breaches of the *Competition Act* is important in determining the scope of claims available to class action plaintiffs.

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49 2014 SCC 66.
52 Pro-Sys Consultants Ltd. v. Microsoft Corporation, 2013 SCC 57.
Misleading Advertising

ADMINISTRATIVE MONETARY PENALTIES (AMPS) AND SENTENCES

In February 2014, Chatr/Rogers (Chatr is a wireless cellular brand owned by Rogers) was ordered to pay a $500,000 AMP for having failed to conduct adequate and proper testing prior to launching an ad campaign about having fewer dropped calls than new wireless carriers.\(^{54}\) The Court discussed a number of factors in its decision to order the $500,000 AMP instead of the $5 million to $7 million AMP and prohibition order that the Commissioner of Competition had sought. For further detail regarding the Chatr/Rogers case, see our article, *Performance Claims: Ontario Superior Court Orders Rogers to Pay $500,000 Administrative Monetary Penalty in Chatr Case.*

In another performance claim matter, Bauer, a hockey equipment manufacturer, entered into a consent agreement with the Bureau and agreed to cease making certain performance claims relating to its RE-AKT hockey helmet, donate $500,000 of equipment, pay investigation costs of $40,000, implement an enhanced compliance program and ensure retailers do not make the impugned performance claims.\(^{55}\)

The Bureau, in its ongoing scrutiny of the water heater industry, determined that sales agents for National Energy were making false or misleading representations regarding their identity and the purpose of their visits to the customers’ homes. As a result, National Energy entered into a consent agreement with the Bureau under which it agreed to pay $7 million in restitution, administrative monetary penalties and costs, as well as implement a compliance program which is to include an independent compliance monitor.\(^{56}\)

Following a Bureau investigation and charges against four companies and four individuals in 2012, the former co-owner of Corporation Oxford-Data and Sapphire Media Group was sentenced to 18 months in prison for misleading advertising and deceptive telemarketing in relation to his involvement in a deceptive telemarketing scheme relating to online business directory listings that targeted organizations in Canada and the U.S.\(^{57}\)

SERIOUS CONSEQUENCES FOR MISLEADING ELECTRONIC MESSAGES

New provisions under the *Competition Act*, introduced under Canada’s Anti-Spam Legislation (CASL), came into force on July 1, 2014. CASL is widely considered to be the toughest commercial electronic messaging legislation in the world.\(^{58}\) The new provisions specifically prohibit, under both civil and criminal provisions, false or misleading representations in electronic messages or in the locator (e.g. URL, metadata), including false or misleading sender or subject matter information. Consequences for contravening the new provisions can be severe. Violation of the criminal provisions is punishable by a fine at the discretion of the court.

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\(^{54}\) Commissioner of Competition v. Chatr Wireless Inc. and Rogers Communications Inc., 2014 ONSC 1146.


\(^{56}\) National Home Services to pay $7 million for misleading door-to-door water heater promotions: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03849.html

\(^{57}\) Deceptive telemarketer receives 18-month prison sentence: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03722.html

\(^{58}\) More information on CASL, including McCarthy Tétrault’s Anti-Spam Toolkit, can be found here.
and/or imprisonment of up to 14 years. Under the civil provisions, the Bureau can apply to a court for an order to stop the conduct, publish corrective notices, refund consumers and impose an administrative monetary penalty (AMP) of up to $10 million for a first offence, and up to $15 million for each subsequent offence.

**U.S. COMPANY ORDERED TO DISCLOSE DOCUMENTS TO ASSIST CANADIAN COMPETITION BUREAU**

In the context of the Competition Bureau’s ongoing case against wireless carriers regarding premium text messaging, a U.S. court ordered Aegis Mobile, a company located in the U.S., to disclose certain documents to the Federal Trade Commission in order to assist the Bureau in its case.59 This is the first time a U.S. court has granted this type of investigative assistance to obtain information on behalf of the Bureau.

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Other Developments in 2014

Discussed below are other events in 2014 which have the potential to impact a broad spectrum of competition issues.

CONSENT AGREEMENTS — BREACHES AND CHALLENGES

The Competition Bureau regularly resolves certain concerns via negotiated consent agreements with market participants. Consent agreements have the same force and effect as an order of the Competition Tribunal. There were two important decisions relating to consent agreements in 2014.

For the first time, an individual was sentenced to 15 months in jail for breaching a 10-year consent agreement for operating an online job opportunities scam (as well as an additional 15 months in jail for criminal misleading or false representations). The Bureau said that it had been investigating this matter as part of its broader monitoring program regarding compliance with court orders, including registered consent agreements.

In another case, *Kobo Inc. v. The Commissioner of Competition*, the Competition Tribunal clarified the limits of a third party’s ability to challenge a consent agreement. It held that a third party is restricted to challenging a consent agreement on the basis that: (i) the terms of the agreement are not within the scope of the type of order(s) which could be ordered for the conduct in question, (ii) the agreement does not identify the substantive elements of the conduct in question and/or does not indicate that the Commissioner has concluded that each of those elements has been met, or (iii) the terms of the consent agreement are unenforceable. The decision is under appeal.

PROPOSED AMENDMENTS TO INCREASE POWERS FOR THE COMMISSIONER OF COMPETITION

The *Price Transparency Act* includes proposed amendments to the *Competition Act* which would expand the Commissioner’s investigative powers by allowing the Commissioner to seek court orders to require:

- a person located outside Canada to attend an examination, produce documents or deliver written information where the person has or is likely to have information that is relevant to the Commissioner’s inquiry,

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60 Consent agreements may be signed by the Commissioner of Competition and a person in respect of matters such as mergers, abuse dominance and civil review of agreements among competitors (under section 105 of the Competition Act), as well as deceptive marketing practices (section 74.12 of the Act).


63 Bill C-49, *An Act to amend the Competition Act*.

64 Proposed section 11(2.1) of the *Competition Act*. 
– affiliates (located in or outside Canada) of a person (located in or outside Canada) to produce documents or deliver written information to the Commissioner where the affiliate has or is likely to have information that is relevant to the Commissioner’s inquiry. In this regard, the definition of affiliate has been expanded.

Empowering a Canadian court to issue orders compelling information from persons outside Canada is an extraordinary measure. The legality and enforceability of such orders will undoubtedly be challenged before the courts. Developments in this area will be closely watched especially in light of the fact that the Bureau’s first course of action to obtain information from targets of an investigation (with the exception of merger cases), will be to obtain a legally binding production order from a court under section 11 of the *Competition Act*. Recent high profile examples in which the Bureau utilized court orders to compel information include its investigation into a cell phone provider’s contracts with wireless carriers, a grocery chain’s programs with its suppliers and the ebook industry.

**THIRD PARTY DATA PRESERVATION DEMANDS IN BUREAU INVESTIGATIONS**

Bill C-13, which principally deals with online crime, received royal assent in 2014 and will become law on March 9, 2015. Among other things, it will create new powers under the *Criminal Code* with respect to data preservation demands and production orders against third parties (i.e. those who are not the target of an investigation). These changes will also impact investigations under the *Competition Act*. While the *Competition Act* already gives significant power to the Bureau with respect to compelling information from third parties, preservation orders will be a new investigatory tool at the Bureau’s disposal.

**COMPETITION BUREAU ADVOCACY**

In 2014, the Bureau was active in providing submissions on competition in many industries and launched *The Competition Advocate* to periodically publish its views on competition in various industries. The Bureau’s advocacy projects in 2014 included:

– submissions to the Canadian Radio-television and Telecommunications Commission (CRTC) regarding wireless roaming rates, television and wholesale services;

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65 Proposed section 11(2) and 11(2.1) of the *Competition Act*.
66 The Bureau’s approach has recently shifted from relying on voluntary requests for information to seeking court orders compelling information for inquiries in non-merger cases “for ALL but exceptional cases.” Remarks by John Pecman, Interim Commissioner of Competition, February 7, 2013: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03529.html
67 Federal Court (Canada), T-2503-14.
68 The Bureau obtained section 11 production orders against 12 suppliers of the grocery retailer. For example, *Competition Act v. Smucker Foods of Canada*, Federal Court (Canada), T-2346-14.
69 Clarification on the Bureau’s ongoing investigation into alleged anti-competitive behaviour in the Canadian ebooks industry: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03869.html
72 This webpage outlines the Bureau’s advocacy work: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_03557.html
– submissions to the City of Toronto regarding taxicabs;

– joint submissions with the National Energy Board to the Minister of National Resources and the Minister of Industry regarding propane; and

– submission to the Organisation for Economic Co-operation and Development (OECD) regarding airlines.\(^3\)

\(^3\) *Competition Bureau Submission to OECD Roundtable on Airlines:*
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03752.html
Our Competition/Antitrust Law Group

Domestic and international businesses operating in Canada must be vigilant about respecting the civil and criminal provisions of the *Competition Act*, and on the lookout for opportunities to gain a competitive edge. McCarthy Tétrault has one of the leading competition and antitrust practices in Canada. Our group and its partners are consistently ranked at the top of key Canadian and international ranking services, including *Chambers Global*, *Lexpert*, *Global Competition Review* and *Euromoney*. We help you cut through the complex maze of issues to avoid problems and minimize risks, and if necessary, defend your interests with vigour.

**INCOMPARABLE EXPERTISE**

Our services flow into two main streams — advice and litigation. We advise you on private and public mergers and acquisitions, structuring deals, business practices and day-to-day compliance matters. We help you understand the criminal and non-criminal provisions of the Act and develop comprehensive and effective compliance programs. Our competition litigators are among the most reputed in Canada. We represent you in proceedings before the Competition Tribunal or the courts.

Clients in every sector turn to McCarthy Tétrault to address their competition and antitrust needs. We integrate exceptional expertise across the firm in all areas of law and in Canada’s two legal systems — civil and common law — to address any client issue.

**MERGERS**

Competition issues have become more prominent in merger transactions. We regularly act for clients on large transactions, both domestic and international, which raise complex competition issues. We have extensive experience working with clients and lawyers in the U.S. and abroad on cross-border and international transactions that raise competition issues in multiple jurisdictions.

**CARTELS AND CLASS ACTIONS**

We have a wealth of expertise in cartel matters. In the cartel area, we represent clients in criminal proceedings, Competition Bureau investigations, and civil proceedings, including class actions. McCarthy Tétrault’s experience in defending competition class actions, as well as class actions in general, is unsurpassed in Canada. Over the past 20 years, our lawyers have represented clients involved in almost all national and international cartel cases in Canada.

**COMPETITION TRIBUNAL PROCEEDINGS**

In Canada, merger cases, abuse of dominance and other significant civil matters are dealt with by the Competition Tribunal. We have an unsurpassed track record of litigating cases before the Tribunal and have been frequently retained by the Commissioner in Tribunal proceedings.
COMPETITION ADVICE AND COMPLIANCE PROGRAMS

We provide you with valuable assistance to ensure that your business practices are in compliance with competition laws and help you avoid the potentially severe consequences of a Competition Bureau investigation.

INDUSTRY LEADERSHIP

Members of our National Competition/Antitrust Law Group are consistently recognized among the world’s top lawyers by the leading international directories. McCarthy Tétrault’s competition lawyers have advised the Government on legislative amendments and enforcement practices and have acted as counsel on landmark competition cases, both for and against the Government. Our knowledgeable and widely published lawyers have written and lectured extensively on all aspects of competition law and have held executive positions in the National Competition Law Section of the Canadian Bar Association.

For more information, please contact:

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