CANADIAN COMPETITION LAW AND POLICY DEVELOPMENTS

CRIMINAL IMMUNITY UNDER THE *COMPETITION ACT*

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The Competition Bureau launched its Immunity Program under the *Competition Act* at presentations held in Montreal and Toronto on February 17 and 18, 2000. The Bureau's presentations included a review of the new draft policy and its revised procedures. Representatives from the Bureau and the Attorney General discussed the increasing number of requests for immunity and the manner in which the Bureau plans to address issues arising from the implementation of the Immunity Program in Canada.

The Immunity Program differs from the existing Cooperating Parties Program. It has been designed to provide an incentive for the early disclosure of competition offences by providing immunity from criminal prosecution to the first corporation or employee which discloses the problem and complies with the necessary requirements of the Immunity Program. It is significant that the Attorney General's role has been integrated into the process since the Attorney General has the sole authority to grant immunity for an offence under the Act.

Defining Immunity

A party granted immunity under the Act will not be prosecuted for a criminal offence for which immunity has been granted notwithstanding that there has been a violation of the Act. Central to the granting of immunity is the party's willingness to cooperate with the Bureau's investigation of the offence. In order to fulfil this obligation, the party seeking immunity must meet and uphold the strict requirements set out by the Bureau and the Attorney General. If the party fails to meet the requirements or ceases to comply with the requirements imposed by the Bureau and the Attorney General, the party may be prosecuted and a subsequent party who complies may be granted immunity.

Requirements for Obtaining Immunity

Timing is fundamental to a party's attempt to obtain immunity. The "first in" principle is fundamental to the process as the Commissioner of Competition encourages an applicant to come forward as soon as it believes that it may be implicated in a competition offence.

The Commissioner will recommend to the Attorney General that immunity should be granted to a party in the following circumstances:

(a) the Bureau is unaware of the offence and the party is the first to disclose it; or

(b) the Bureau is aware of the offence and the party is the first to come forward before there is sufficient evidence to warrant a referral of the matter to the Attorney General.

In addition, the following requirements must be met by a party before immunity will be granted:

(a) the party must take effective steps to terminate its participation in the illegal activity;

(b) the party must not have been the instigator or the leader of the illegal activity or the sole beneficiary of the activity in Canada; and

(c) the party must provide complete and timely cooperation including:

(i) revealing any and all offences in which the party may have been involved;

(ii) providing full, frank and truthful disclosure of all the evidence and information known or available to the party or under its control. It is imperative that there be no misrepresentation of any material fact; and

(iii) cooperating fully, continuously and expeditiously throughout the Bureau's investigation and with respect to any subsequent prosecutions. In the case of a company, it must take all lawful measures to promote the cooperation of its officers, directors, and employees throughout the investigation and any subsequent prosecutions.

Although not a formal requirement, normally the party must consent to a Prohibition Order under section 34 of the Act and make restitution for the illegal activity.

Impact of Corporate Immunity on Officers, Directors and Employees

Once a company qualifies for immunity, it will also be extended to all officers, directors and employees who admit their involvement in the illegal anti-competitive activities as part of the corporate admission and who provide complete and timely cooperation. Conversely, even if a corporation does not qualify for immunity, past and present officers, directors and employees who come forward with the corporation to cooperate may be considered for immunity.

The Immunity Process

A party wishing to obtain immunity must complete a four-stage process. The first step, *Initial Contact*, commences with a communication with the Bureau to discuss the possibility of immunity. The request is usually made on the basis of a hypothetical disclosure as certain inculpatory information must be disclosed at this stage. The second step, *Provisional Guarantee of Immunity*, is initiated by the party when it decides to proceed with the immunity application. The offence is once again usually described to the Bureau in hypothetical terms. The information is then presented to the Attorney General who has independent discretion with respect to the granting of immunity. If it is appropriate, a written provisional guarantee of immunity is provided. The next stage, *Full Disclosure*, takes place following the receipt of a provisional guarantee of immunity. Sufficient detail as to what evidence or testimony a potential witness can provide and its utility must be made available

to the Bureau. Accordingly, at this stage full disclosure is essential. It is understood that the Bureau will not use this information against the party unless there is a failure to comply with the immunity requirements. The final stage, *Immunity Agreement*, commences once the terms of the provisional guarantee of immunity are satisfied and the Attorney General executes an Immunity Agreement in which all of the continuing obligations are described.

Additional Considerations

The Bureau takes the position that confidential information voluntarily provided by a party as part of the Immunity Program may not be communicated to any other person except to another Canadian law enforcement agency or for the purpose of the administration or enforcement of the Act. In addition, the Bureau treats as confidential the identity of a party requesting immunity and any information obtained from that party. The Bureau will only provide a foreign agency with information obtained from a party who has applied for immunity if the party agrees to the disclosure. The Bureau will only disclose confidential documents and evidence when ordered to do so by a court. Further, the Bureau will resist subpoenas and other applications for disclosure by vigorously arguing privilege in order to protect the Immunity Program.

Situations that arise from transnational criminal anti-competitive activities, such as international price-fixing cartels and deceptive marketing practices, may fall under the jurisdiction of more than one competition authority. In such cases, authorities in multiple jurisdictions may examine the situation and decide to pursue independent, joint or parallel investigations. On occasion, a foreign competition authority may advise the Bureau of an investigation so that an individual or corporation that subsequently contacts the Bureau may not qualify for immunity. It is important to recognize that Canada will not afford special consideration to an applicant solely because it has been granted immunity in another jurisdiction. However, when approached by a party seeking immunity, the Bureau will advise the party of similar immunity programs in other jurisdictions.

Conclusion

It is evident that once this program has been finalized, it will have a significant impact on the manner in which immunity is granted in criminal prosecutions arising under the Act. For additional information, please see the Immunity Program under the Act available at the Industry Canada Website – http://strategis.ic.gc.ca/SSG/ct01705e.html.

INTELLECTUAL PROPERTY UNDER THE *COMPETITION ACT*: THE DRAFT IP GUIDELINES IN PERSPECTIVE

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Introduction

With the recent issuance, revision and re-issuance of draft intellectual property enforcement guidelines (the "Draft IP Guidelines") by the Competition Bureau,[2] Canadian businesses and their lawyers have had an opportunity to focus on the complex relationship between this country's intellectual property ("IP") laws and its competition laws. That this is an important debate at this point in our country's history should come as no surprise. Beginning in the latter part of the 20th century we

have witnessed a dramatic shift in the sources of value and wealth in the Canadian and global economies. Material resources and capital are increasingly being replaced by information and other intangible sources of value. These new sources of value are often subject to protection under IP laws. The innovation fostered by IP laws is an increasingly important driver of economic activity and a source of value to businesses and consumers.

The Draft IP Guidelines have been developed in the context of a limited number of cases involving the application of the *Competition Act* to IP rights, including decisions of the Competition Tribunal in cases brought under the refusal to deal[3] and the abuse of dominance[4] provisions of the Act. These competition law cases have raised public policy concerns with respect to the application of the Act to matters involving IP and innovation. This paper examines the latest developments in the evolving relationship between competition law and IP in Canada. The importance of this relationship has been highlighted by recent cases in Canada and the U.S. in which competition and antitrust laws have been applied to conduct involving IP rights, and, of course, by the release of the Bureau's Draft IP Guidelines.

Intellectual Property Law and Innovation

The manner in which IP law generally serves to foster and promote innovation is now considered self-evident. The Draft IP Guidelines recognize this function of IP in the following passage:

> Adequate protection of intellectual property...plays an important role in stimulating new technology development, artistic expression and knowledge dissemination, all of which are vital to the knowledge-based economy.[5]

Other countries, including the United States,[6] have issued guidelines which have similarly recognized the importance of IP to the encouragement of innovation. The requirement that IP rights be protected in order to provide an incentive for the development of valuable works has been accorded global recognition in treaties such as the World Intellectual Property Organization ("WIPO") treaties and the World Trade Organization ("WTO") treaty concerning Trade-Related Aspects of Intellectual Property ("TRIPS").

Canada, as a member of WIPO and signatory to many of the international treaties, including TRIPS, has enacted *the Patent Act*,[7] *Copyright Act*,[8] *Trade-Marks Act*,[9] *Industrial Design Act*[10], the *Integrated Circuit Topography Act*[11] and other laws to protect IP and the rights of inventors and creators to benefit from their ideas and innovations.

Intellectual Property and Canadian Competition Policy

Canadian competition policy has recognized the pro-competitive impact of innovation and the development of the new products and technologies which are fostered by IP rights,[12] but has also been concerned that IP rights could be used to substantially or unduly lessen or prevent competition. Recognition of the important role played by IP rights has been reflected in statements made by a number of former Directors of Investigation and Research. For example, in comments made to the XXXVIth World Congress of the International Association for the Protection of Industrial Property, a former Director noted that:

> Intellectual property rights ('IPRs'), including patents, trademarks, copyrights, registered industrial designs and integrated circuit topographies, are a key factor in fostering innovation and growth in today's

> economy. Such rights provide vital incentives for research and development leading to new products and production processes. By promoting innovation, intellectual property rights also serve to strengthen competition in particular markets for goods and services.[13]

While there is now an increased awareness of the pro-competitive implications of IP rights for competition, there is also a recognition that IP may in some circumstances be used in an anti-competitive fashion and should therefore be subject to some degree of competition law oversight. In Canada, as in the United States, the competition law authorities have endeavoured, from time to time, to provide guidance with respect to the agency's views concerning the circumstances in which it might seek to apply the law in cases involving IP. In 1974, then Deputy Director, Roy Davidson, identified certain licensing provisions and practices which could arguably have the effect of unreasonably extending IP rights and would therefore be subject to close scrutiny under the provisions of the *Combines Investigation Act* (the "CIA"). These practices included tying arrangements, charging royalties or placing other restrictions on patents after they expire, restrictions on imports and cross-licensing.[14]

More recently, Gilles Ménard, then Deputy Director of Investigation and Research (Civil Branch), described the manner in which the Bureau would consider challenging the misuses of IP under the abuse provisions of the Act:

> As we move towards a knowledge-based economy, I believe the Bureau will become more and more involved in reviewing and resolving allegations of abusive conduct arising from the misuse of intellectual property rights. These cases may be addressed under sections 32 or 79 of the *Competition Act*. Section 32 provides for a special remedy involving the use of intellectual property rights where their use has injured the competitive market process. In addition, a situation could arise where the alleged abusive conduct has had or will continue to lessen competition substantially in a market and be addressed under the abuse of dominance provisions.
>
> Were there to be a challenge under section 79, the interesting issue would be to determine whether the act complained of was only the exercise of an intellectual property right or the enjoyment of any interest derived thereunder, and therefore exempt from the abuse of dominance provisions, or whether it could be characterized as an anti-competitive act. The wording of section 79(5) indicates clearly that the provisions remain applicable to practices that are shown to constitute abuses of intellectual property rights, as opposed to the mere exercise of such rights.[15]

On April 18, 2000, the Bureau released the second version of its Draft IP Guidelines. These guidelines are being developed by the Bureau in an attempt to provide guidance to industry in respect of the principles governing the Bureau's policies on the interface between IP and competition laws. In the Draft IP Guidelines, the Bureau acknowledges the complementary interaction between the two types of laws:

> IP laws and competition laws are two complementary instruments of government policy that promote an efficient economy. IP laws provide incentives for innovation and technological diffusion by establishing enforceable property rights for the creators of new and useful products, technologies and original works of expression. Competition laws may be invoked to protect these same incentives from anti-competitive conduct that creates, enhances or maintains market power or otherwise harms vigorous inter-firm rivalry.[16]

Prior to the recent decision in *Warner*, in which the Competition Tribunal concluded that copyright licences are not "products" within the meaning of the refusal to deal provision of the Act, it had been thought that IP, as a species of personal property, would be considered a "product" within the meaning of the Act and therefore subject generally to the Act in the same manner as IP is considered by the American authorities to be subject to U.S. antitrust laws. On this point the U.S. Guidelines state that the "Agencies apply the same general antitrust principles to conduct involving intellectual property that they apply to conduct involving any other form of tangible or intangible property" [17] Further, the U.S. Guidelines go on to state:

> Intellectual property law bestows on the owners of intellectual property certain rights to exclude others. These rights help the owners to profit from the use of their property. An intellectual property owner's rights to exclude are similar to the rights enjoyed by owners of other forms of private property. As with other forms of private property, certain types of conduct with respect to intellectual property may have anti-competitive effects against which the antitrust laws can and do protect. Intellectual property is thus neither particularly free from scrutiny under the antitrust laws, nor particularly suspect under them.[18]

Notwithstanding *Warner*, the Bureau has stated in the Draft IP Guidelines that it agrees with the approach adopted by the American and European competition authorities. It endorses the view that the exercise of IP rights is like the exercise of any property rights and should similarly be subject to the application of the Act:

> The approach elaborated [in these Guidelines] is based on the premise that the *Competition Act* generally applies to conduct involving IP as it applies to conduct involving other forms of property.[19]

However, unlike the United States, where the courts have had numerous occasions in the past century to consider and make decisions concerning the relationship between IP rights and antitrust law, in Canada this issue had not, until very recently, been directly addressed by the Competition Tribunal and has yet to be directly considered by an appellate court. It is hoped that the Bureau's IP Guidelines, once finalized, will help fill this gap.

The Draft IP Guidelines and the limited number of Canadian cases in which the criminal conspiracy, merger or abuse of dominance provisions have addressed circumstances involving IP and the recent refusal cases are discussed in the following section.

Application of the *Competition Act* to Intellectual Property

The Draft IP Guidelines

The Bureau's overall approach to the application of the Act to IP (as set out in the Draft IP Guidelines) is as follows:

> The circumstances in which the Bureau may apply the *Competition Act* to conduct involving IP or IP rights fall into two broad categories: those involving 'something more' than the mere exercise of the IP right, and those involving the mere exercise of the IP right and nothing else. The Bureau will use the general provisions of the *Competition Act* to address the former and section 32 (special remedies) to address the latter.
>
> In either case, the Bureau does not presume that the conduct is itself anti-competitive, violates the general provisions of the *Competition Act* or should be remedied under section 32.

> The analytical framework the Bureau uses to determine the presence of anti-competitive effects stemming from the exercise of rights to other forms of property is sufficiently flexible to apply to conduct involving IP, even though IP has important characteristics that distinguish it from other forms of property.
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> When conduct involving an IP right warrants a special remedy under section 32, the Bureau will act only in the rare circumstances described [in the Draft IP Guidelines] and when the conduct cannot be remedied by the relevant IP statute.[20]

Importantly, the Draft IP Guidelines acknowledge that conduct involving IP must be assessed in the context of the evolving global and technological environment and, in particular, the rapid rate of technological change occurring in many industries. They also note that the enforcement practices of Canada's major trading partners must be considered.[21] The Draft IP Guidelines articulate, as a general principle, the modern approach to the interface between IP and competition law, under which the exercise of IP rights is generally not seen as anti-competitive, but may be subject to the Act where an undue or substantial lessening of competition has resulted or is likely to result.

The Draft IP Guidelines also provide that the Bureau will employ a five step analysis in matters involving IP. In particular, it will:

- identify the transaction or conduct;
- define the relevant market(s);
- determine if the firm(s) under scrutiny possess market power, by examining the level of concentration and entry conditions in the relevant market;
- determine if the transaction or conduct would unduly or substantially lessen or prevent competition in the relevant market; and
- consider, where appropriate, any relevant efficiency rationales.

Many of the policies and principles that form the basis of the Draft IP Guidelines can be found in the limited number of Competition Tribunal and court cases that have dealt with IP from a competition law perspective. The conspiracy, merger, abuse of dominance and refusal to deal provisions of the Act have all been applied in circumstances where IP played, directly or indirectly, a role in the case. We examine these cases below.

Conspiracy Provisions

In the 1993 case of *Her Majesty the Queen* v. *Chemagro Limited*,[22] guilty pleas were entered by Chemagro under sections 45(1)(c) and 46 of the Act respecting a conspiracy to lessen competition in the supply of a product and foreign-directed market sharing arrangements, respectively. Chemagro sold certain chemical insecticides in Canada under the trade names Folithion and Matacil. Through its parent corporation, Bayer A.G., located in Germany, Chemagro entered into a market sharing agreement with Sumitomo Chemical Co. Ltd. of Japan respecting the supply of chemical insecticides from 1982 to 1988 in contravention of section 46 of the Act. Chemagro also entered into a market sharing arrangement respecting its biological insecticides sold under the Futura XLV and Futura XLV-HP trade-marks with Abbott Laboratories (U.S.) which sold its product under the trade-mark Dipel. The effect of the arrangement was to lessen competition unduly in the supply and sale of biological insecticides in Canada in contravention of section 45(1)(c) of the Act. Fines were imposed in the amount of $1.25 million for the foreign directed conspiracy and $750,000 for the domestic conspiracy. The sentence also prohibited any similar future

conduct and limited Chemagro's ability to exercise its IP rights respecting these trade-marks.

In an earlier unreported decision brought under the criminal monopolization provisions of the CIA, a predecessor of the Act, the Court addressed allegedly anti-competitive abuses of patent licensing involving General Electric Company Limited ("GE") and Union Carbide Canada Limited.[23] In that case, the Crown had alleged that a patent licence for a plastic compound used in electrical wires granted by GE to Union Carbide constituted a shared monopoly which contravened the CIA. The terms of the licence prevented Union Carbide from selling the compound to customers who did not have a certain type of machinery. The evidence showed that there were only four such firms and that the terms of the licence would prevent other firms from entering the market. While the Court dismissed the case because the Crown had not met the high burden of proof respecting detriment to the public interest as required under the criminal monopoly provisions of the CIA, the Court apparently accepted that the CIA applied to patent licences.

Merger Provisions

Although there has not been a case brought under the merger provisions which dealt exclusively with a merger of IP assets, there is no clear basis for believing that the merger provisions of the Act do not apply to all forms of the property rights, including IP. This is reflected in the remedies that the Tribunal may grant, and has granted, that affect IP rights. This question arose in the context of the Bureau's successful Competition Tribunal proceedings against Southam Inc. in which the Bureau alleged that Southam's acquisitions of community papers in the southern part of British Columbia had substantially lessened competition.[24] The Tribunal's remedial order in *Southam* called for the divestiture, at Southam's option, of either the North Shore News or the Real Estate Weekly newspapers.[25] The Tribunal's order in *Southam* related to the assets of a newspaper business which included the copyrights in the newspapers as well as the trade-marks associated with those newspaper businesses.

As a practical matter, it seems likely that any order by the Tribunal requiring the divestiture of a company, branch, division or facility will involve divestiture of IP assets that are used in the operation of the business, such as software protected by copyright, trade-marked brand names and manufacturing processes protected by patents. The Draft IP Guidelines acknowledge that in the case of a merger, the Tribunal may and has ordered the divestiture of assets, including IP, where a substantial lessening of competition was likely to result, thereby overriding the rights of property owners.[26] This is also consistent with the approach taken by the Director in the *Merger Enforcement Guidelines* ("MEGs"), in which he states that IP assets are to be treated in the same manner as other assets and that asset transactions which generally fall within the scope of section 91 include the purchase or lease of a brand name or other IP rights.[27]

Abuse of Dominance

Anti-competitive abuses of patents and trade-marks have been the subject of investigations for many years in Canada. The abuse provisions contained in sections 78 and 79 of the Act require that the Tribunal be persuaded that a dominant party has engaged in a practice of anti-competitive acts which has caused or is likely to cause a substantial

lessening of competition. If the Tribunal finds, in response to an application made by the Director, that there has been an abuse of dominant position in a market, it can make an order prohibiting the dominant party from engaging in similar conduct in the future. This could include an order prohibiting an abusive exercise of IP rights. The Tribunal also has the power to make such other orders that are necessary to restore competition, including orders requiring the divestiture of assets.

The abuse of IP rights was discussed in Canada as early as the 1940s. The Commission under the CIA issued a report in 1948 regarding the use of patents in the optical goods industry to control trade beyond the scope of the patent grants. In that report, the Commissioner stated:

> In this case there was a united exercise of the individual patent monopolies in a manner having a cumulative effect quite different in degree and kind from the separate exploitation of individual patents. It is not a case of a simple licensing system under a single patent but rather the joint use of patents as an instrument to control prices and trade generally in almost an entire industry. Extensive as are the rights granted by the *Patent Act*, it confers no right permitting combination of patentees or of patents in a manner which would reduce or eliminate the competition which would otherwise exist between them. A patentee is thus in the same position as the holder of any other property in respect of action constituting combination.[28]

Abuse of patents and trade-marks was raised as an issue in an investigation into the distribution of pesticides in Canada by the Restrictive Trade Practices Commission (hereinafter the "RTPC") in 1965.[29] The RTPC concluded that a chemical supplier had abused the exclusive rights derived under its patents and trade-marks relating to a plant growth regulant by refusing to sell the regulant to one of its former distributors. While the RTPC recognized that a "legitimate monopoly arises out of patent rights", it stated that:

> where a manufacturer enjoys a sole supplier position in a market, that power must not be used to limit distribution for the purpose of controlling competition in the market place. Nor may a manufacturer use its monopoly power with respect to one product to force a customer to buy other products.[30]

This decision is significant because it suggested that the tying of the sale of patented and unpatented products by a firm with market power could potentially constitute an abuse of IP rights. However, as a result of the collapse of the market for the relevant product in that case, no further legal action was taken.

The abuse of dominance provisions of the Act have been applied in respect of IP on two more recent occasions. The first such decision was that in *NutraSweet*.[31] In that case, the Tribunal found that the trade-mark allowances offered by NutraSweet for displaying the swirl logo, the exclusive supply and use clauses, the co-operative marketing allowances, the meet-or-release clauses and the most favoured-nation-clauses constituted anti-competitive acts. The Tribunal found that trade-mark allowances and advertising discounts created an "all-or-nothing" choice for customers and were essentially inducements to exclusivity.[32]

The Tribunal also determined that the use of NutraSweet's U.S. patent to secure a competitive advantage in Canada was an anti-competitive act. NutraSweet had apparently attempted to use its U.S. patent to lessen competition in Canada by offering rebates on exports of aspartame from the United States in an effort to induce importers to exclusively

use NutraSweet's aspartame in products produced by them in Canada.[33] The Tribunal decided that this arrangement constituted an abuse of NutraSweet's IP rights (in this case, a U.S. patent) which amounted to an anti-competitive inducement to exclusivity.

Having determined that NutraSweet's anti-competitive practices had prevented or lessened competition substantially, the Tribunal issued a broad remedial order prohibiting NutraSweet from enforcing, or entering into, contractual terms relating to the exclusivity of supply or use of financial inducements for trade-mark display or other allowances, meet-or-release clauses and most-favoured-nation clauses, unless such clauses were also found in supply contracts between NutraSweet and any competitor.[34] The *NutraSweet* decision and remedial order suggested that the Tribunal views abuses of IP rights in the same manner as other abuses and is willing to issue orders which regulate the use of IP rights, such as trade-marks and patents, in the same manner as any other type of property rights.

The Competition Tribunal was again faced with allegations of abuse of dominance relating to the licensing of trade-marks in the *Tele-Direct*[35] proceedings. In that case, it was alleged that the telephone directory publisher had engaged in anti-competitive acts, contrary to the abuse of dominance provision of the Act, by, among other things, refusing to license its "Yellow Pages" and walking fingers logos to competing suppliers of telephone directory advertising services. In this case the Tribunal was required to consider the interaction of the abuse of dominance provisions under section 79, including the specific exemption pertaining to the mere exercise of trade-mark rights under section 79(5), with the rights of a trade-mark owner under section 19 of the *Trade-Marks Act* to exclusive use of the trade-mark. Although not expressly stated in a decision, it appears the Tribunal may have also considered the implications of section 50 of the *Trade-Marks Act* which requires a trade-mark owner to maintain direct or indirect control of the character or quality of the wares or services with which a trade-mark may be used under a licence.

The Tribunal found that the *Trade-Marks Act* allows trade-mark owners to decide to whom they will license their trade-marks and under what terms to protect those trade-marks.[36] However, the Tribunal recognized that neither the *Trade-Marks Act* nor the Act authorizes the misuse of trade-marks beyond the mere exercise of statutory rights. In acknowledging that a trade-mark may be misused by tying a trade-mark product to another product, the Tribunal added:

> The Tribunal is in agreement with the Director that there may be instances where a trade-mark may be misused. However, in the Tribunal's view, something more than the mere exercise of statutory rights, even if exclusionary in effect, must be present before there can be a finding of misuse of a trade-mark. Subsection 79(5) explicitly recognizes this.[37]

However, the Tribunal did not clearly identify the criteria that would have to be satisfied before it would find that conduct extended beyond the "mere exercise of statutory rights" for the purposes of that section.

The Tribunal found that the decision by the trade-mark owners to refuse to license their trade-marks, even if motivated by competitive considerations, was not an abuse of dominance and commented that "the selective refusal to license a trade-mark is not an anti-competitive act".[38] The Tribunal went on to add:

> [Tele-Direct's] refusal to license [its] trade-marks falls squarely within [its] prerogative. Inherent in the very nature of the right to license a trade-mark is the right for the owner of the trade-mark to determine whether or not, and to whom, to grant a licence; selectivity in licensing is fundamental to the rationale behind protecting trade-marks.[39]

The Tribunal also contrasted refusals to license a trade-mark with situations in which anti-competitive provisions are attached to trade-mark licences. Accordingly, the Tribunal did not issue an order against Tele-Direct in respect of its trade-marks.

In contrast to *Tele-Direct*, the Tribunal did expressly order the licensing of trade-marks in two consent order cases. In the *Interac* case,[40] the charter members of an electronic banking network were alleged to have engaged in a series of anti-competitive acts that restricted membership to that network and allowed the major chartered banks in Canada to maintain control of shared electronic financial services. To ensure competition, the consent order provided, among other things, that the members should provide a "commercially reasonable trade mark license without charge upon request to any member participating in the shared services that use the trade marks". Similarly, in the *AGT Directory* case, the consent order prohibited the respondents from refusing to license the "Yellow Pages" trade-marks to certain companies for use in the sale of advertising in telephone directories, provided these companies entered into and maintained commercially reasonable standard form trade-mark licences.[41]

Refusal to Deal

The refusal to deal provision of the Act provides, in response to an application made by the Director, that the Tribunal may order that one or more suppliers of a product accept the complainant as a customer within a specified time on usual trade terms. In order to make such an order, the Tribunal must find that all of the following criteria have been satisfied:

(a) the complainant is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms;

(b) the complainant is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market;

(c) the complainant is willing and able to meet the usual trade terms of the supplier or suppliers of the product; and

(d) the product is in ample supply.

In addition to the foregoing provisions, the Director may seek a similar order under the abuse of dominance provisions set out in section 79 of the Act.

The Director has brought four applications in which he has sought to compel the respondent to supply either proprietary products or the right to use certain forms of IP. Three of these cases were brought under section 75; the other was the *Tele-Direct* case brought under section 79, that was discussed in the previous section.

All three of the cases brought by the Director pursuant to section 75 of the Act have dealt in some

measure with IP rights. In the first two, *Director of Investigation and Research* v. *Chrysler Canada Ltd.*[42] and *Director of Investigation* v. *Xerox Canada Inc.*,[43] the Tribunal was asked to order the respondents to supply proprietary Chrysler auto parts and proprietary Xerox copier parts, respectively, to the complainants.[44] In *Chrysler*, the order related to Chrysler branded auto parts. In the *Xerox* case, the order specifically referred to copier parts (possibly covered by patents), manuals and related materials.

In *Warner*, a case brought under the refusal to deal provision, the Director applied to the Tribunal for an order requiring that Warner Music Canada Ltd. and two related entities supply BMG Direct Ltd. with a licence to make sound recordings from Warner's master recordings, in order to permit BMG to compete in the record club business in Canada. Warner, a 50% partner in the only other significant record club business in Canada, had refused to license its products to BMG in Canada but had licensed the same products to BMG in the United States. The Tribunal granted Warner's preliminary motion to strike the Director's application on the grounds that section 75 does not give the Tribunal jurisdiction to compel the supply of music licences.

The narrow holding of the Tribunal in *Warner* was that section 75 did not apply to the facts of that case. Although the Tribunal accepted the Director's submission that the definitions of "article" and "product" are broad enough to encompass a copyright as a form of personal property, it decided that "on the facts of this case the licences are not a product as that term is used in section 75 of the Act, because on a sensible reading section 75 does not apply to the facts of this case."[45] Further, the Tribunal found that:

> Although a copyright licence can be a product under the Act, it is clear that the word 'product' is not used in isolation in section 75, but must be read in context. The requirements in section 75 that there be an 'ample supply' of a 'product' and usual trade terms for a product show that the exclusive legal rights over intellectual property cannot be a 'product' — there cannot be an 'ample supply' of legal rights over intellectual property which are exclusive by their very nature and there cannot be usual trade terms when licences may be withheld. The right granted by Parliament to exclude others is fundamental to intellectual property rights and cannot be considered to be anti-competitive ...[46]

The Tribunal also accepted Warner's arguments that "when considered in the context of sections 32 and 79(5) of the Act, the term 'product' in section 75 cannot be read to include these copyright licenses".[47] With respect to section 79(5), Warner argued that "because Parliament expressly excluded the simple exercise of copyright rights from the definition of 'anti-competitive acts' in section 79, one cannot reasonably find jurisdiction over such matters in section 75 without a clear statement to that effect".[48]

In essence, the Tribunal seems to have found that copyrights and copyright licences are "products" as defined in the Act but not for the purposes of section 75 of the Act. In addition to being contrary to subsection 15(1) of the *Interpretation Act*,[49] which provides that all definitions in a statute of Canada apply to all provisions of that statute, this statement of the Tribunal has created some measure of uncertainty as to the application of other sections of the Act to IP.

Section 32 of the Act, discussed further in the following section, empowers the Federal Court of Canada, on application by the Attorney General, to issue orders to deal with situations in which the

use of exclusive IP rights prevents or lessens unduly competition in the manufacture or sale of an article. Section 32(3) provides that the Court may not issue an order at variance with any of Canada's international treaty obligations. Contrasting section 32 with the absence of comparable express provisions in section 75, the Tribunal accepted Warner's argument that:

> in the absence of clear language, it would be wrong to conclude that the Tribunal, as an inferior tribunal, has been given the power to ignore intellectual property rights and order the respondents to grant what are, in effect, compulsory licences in favour of BMG (Canada) when the Federal Court can make such an order only after the applicant meets a competition impact test and only after any defences based on international treaty rights are considered.[50]

The implications of the Tribunal's references in *Warner* to sections 79(5) and 32 for future proceedings under section 79 are unclear. In contrast to section 75, section 79 does include a competitive impact test, although it uses different terminology than the undueness test in section 32. In addition, the Tribunal in *Warner* emphasized that the Director had not alleged that the respondents had any anti-competitive objectives or that their existing licences had any anti-competitive provisions.[51] Further, the decision turned largely on the specific wording of section 75. However, section 79 does not include any defence for treaty obligations. Accordingly, it remains to be seen whether, in a particular case, the Tribunal might rule that section 32 excludes, by implication, the application of section 79 to an anti-competitive misuse of IP rights, or whether section 79(5) will be read as an indication that section 79 may apply to anti-competitive uses of IP rights beyond the exercise of the specific rights derived under the applicable IP statute. The latter approach is implicit in the Tribunal's rulings in *NutraSweet* and *Tele-Direct* and seems to have been adopted in the Draft IP Guidelines, as indicated by the statement that the Bureau applies the general provisions of the *Competition Act* when IP rights form the basis of arrangements between independent entities, whether in the form of a transfer, licensing arrangement or agreement to use or enforce IP rights, and when the alleged competitive harm stems from such an arrangement and not just from the mere exercise of the IP right and nothing else.[52]

Section 32

Section 32 is a provision of the Act which deals with anti-competitive abuses of IP rights. This provision had been invoked in two cases involving Union Carbide of Canada ("Union Carbide") in the late 1960s and early 1970s, both of which were ultimately resolved through negotiations with the Bureau, and has not subsequently been used by the Commissioner and the Attorney General. These cases related to the restrictive provisions employed by Union Carbide in licences to use the company's patented processes and machines for the production of polyethylene film from resin and the treatment of this film for printing.

The first *Union Carbide* case[53] involved provisions in Union Carbide's licences that prevented the use of relatively inexpensive imported polyethylene resin with Union Carbide's patented processes and machinery. As long as the licensee bought the resin used in the process from Union Carbide or Canadian Industries Limited, the licensee would not be charged a royalty for use of the patented process. However, if the licensee imported the resin from the United States, it was required to pay a royalty. The Director took the view that this was a classic tying

case with the patent on the film being used to control the market for unpatented resin. The Attorney-General of Canada requested an order voiding all licences for the use of extrusion patents containing these restrictive provisions, on the basis that these provisions unduly lessened competition in the production and supply of the resin in Canada. This initial case was discontinued by the Attorney-General upon the filing of Minutes of Settlement on December 12, 1969. Included in the Minutes of Settlement was an undertaking by Union Carbide to cease tying, to grant a royalty-free licence to anyone for the film, to cease banning importation of the film, and finally, to grant one of the patents to the Crown.

The second case was instituted by the Attorney General against Union Carbide and five other companies shortly after the Minutes of Settlement were filed in the first case.[54] This latter case involved licences for treating polyethylene film for printing. In instituting the action, the Director alleged that the patent licence terms, which discriminated against small purchasers, constituted an attempt to exclude small purchasers from a substantial part of the film sheet market. Other licence provisions alleged to be abusive included clauses that provided that: (i) the patented process could not be used on specific products; (ii) Union Carbide receive a paid-up licence on any improvement patents obtained by licensees regarding the treatment of polyethylene film; (iii) the licensee would not dispute the Union Carbide patent; and (iv) the licensee would recognize the Union Carbide patents beyond the period of the patent grant.

The Minutes of Settlement filed in the Federal Court of Canada in June 1971 contained undertakings by Union Carbide and the other defendants to revise the relevant licences to eliminate discriminatory royalties, field-of-use restrictions, no-challenge clauses and provisions requiring the payment of royalties on patents after their expiry.

Not surprisingly, the Draft IP Guidelines address the potential application of section 32.[55] Importantly, the revised Draft IP Guidelines differ from the earlier draft in that they have taken important steps toward clarifying how the Bureau will distinguish between those circumstances that merit a referral to the Attorney General for an examination under section 32 of the Act and those that will be examined under the general provisions of the Act. This distinction is important because section 32 may apply to the unilateral exercise of IP rights, such as the right to refuse to license IP. Moreover, that section provides the court with the power to order special remedies, including declaring an agreement or licence void, ordering compulsory licensing of an IP right, revoking a patent and expunging or amending a trademark. The circumstances in which section 32 will apply are therefore of great importance to holders of IP.

The first draft of the Draft IP Guidelines attempted to explain the scope of application of section 32 based upon the notion of "inherent" IP rights.[56] This approach has now been dropped. Instead, the revised Draft IP Guidelines distinguish between the application of the general provisions of the Act and section 32 as follows: the general provisions will not be applied to the "mere" exercise of an IP right, which includes the right to use the IP, the right not to use the IP and the right to refuse others the use of the IP (typically, a refusal to license). In such cases, only section 32 "could" apply.[57]

However, according to the Draft IP Guidelines, the Commissioner will not recommend that the Attorney General make an application under section 32 unless

the following three criteria are satisfied: (i) there must be no appropriate remedy available under the relevant IP statute; (ii) the refusal (usually a refusal to license) must affect competition in a market that is different or larger than the subject matter of the IP; and (iii) such refusal must substantially lessen or prevent competition in that market. In order to satisfy these latter two criteria, the IP holder must be dominant in a relevant market and the IP must be an essential input (*i.e.* the IP must prevent entry by others into the relevant market); and the Bureau must be satisfied that invoking a special remedy against the IP holder would not adversely alter the incentives to invest in research and development. This requires a consideration of whether the cost to the innovator was insignificant or whether the refusal to license is stifling further innovation.[58]

Conclusion

Competition authorities in Canada and in the U.S. have each stated that they generally seek to apply the provisions of their respective competition laws to circumstances involving IP in the same manner as to other property. Consequently, merger, conspiracy, abuse of dominance and refusal to supply cases in Canada have in the past dealt with conduct involving IP rights, primarily in situations where those rights may have been exercised in a manner that extended beyond the scope of the legislation which creates and protects the IP.

As pointed out elsewhere, the "special characteristics [of e-commerce] warrant a sophisticated and subtle antitrust enforcement policy designed to prevent collusive agreements and the abuse of market power, while allowing the full force of innovation to proceed at its market-determined pace" [59] The same is true in respect of the interface between IP and competition where, given the rapid pace of change in many knowledge-based industries, competition authorities may wish to exercise caution in order to avoid enforcement action which may chill innovation and other efficiency benefits arising out of conduct involving IP. The current version of the Draft IP Guidelines has addressed many of the issues raised by the relationship between IP and competition law. However, a number of issues remain. For example, in respect of section 32, it remains unclear how the Bureau will determine whether the cost to an innovator was insignificant or whether a refusal to license is actually stifling or promoting further innovation. These and other issues remain to be addressed either in the IP Guidelines or, ultimately, before the courts.

Notes

[1] Partners, Davies, Ward & Beck, Toronto, Canada, rcorley@dwb.com and bfacey@dwb.com. This paper builds upon the analysis of related topics explored in earlier papers. See R.F.D. Corley and B.A. Facey, "The Role of Competition Law in the Information Economy", Osgoode Hall Law School of York University, Professional Development Programme, Financing and Business Issues for New Technology Industries: March 26, 1999; R.F.D. Corley, "Antitrust: Friend or Foe of Innovation", Address to the American Bar Association Conference, Antitrust Section, Toronto, Ontario, August 3-5, 1998; R.F.D. Corley and C.J. Prudham, "Intellectual Property Law and Canadian Competition Law" in *Protecting & Managing Intellectual Property Assets Conference* (Toronto: Federated Press, 1997); and R.F.D. Corley, "The Competition Act and the Information Economy" (Address to the CBA Competition Law Conference, Aylmer, Quebec, September 18-19, 1997).

[2] Competition Bureau, *Intellectual Property Enforcement Guidelines*, first draft issued June 11, 1999, second draft issued April 18, 2000. Richard Corley was a member of the six person panel of experts consulted by the Competition Bureau in the course of the preparation of the Draft IP Guidelines. Copies of the Draft IP Guidelines may be obtained through "http://competition.ic.gc.ca"

[3] *Canada (Director of Investigation and Research)* v. *Warner Music Canada Ltd.* (1997), 78 C.P.R. (3d) 321. [hereinafter *Warner*]

[4] *Canada (Director of Investigation and Research)* v. *Tele-Direct (Publications) Inc.* (1997), 73 C.P.R. (3d) 1. [hereinafter *Tele-Direct*]

[5] Draft IP Guidelines, at 1.

[6] United States Department of Justice and the Federal Trade Commission, *Antitrust Guidelines for the Licensing of Intellectual Property*, issued on April 6, 1995 [hereinafter U.S. Guidelines] note at page 2:

> The intellectual property laws provide incentives for innovation and its dissemination and commercialization by establishing enforceable property rights for the creators of new and useful products, more efficient processes, and original works of expression. In the absence of intellectual property rights, imitators could more rapidly exploit the efforts of innovators and investors without compensation. Rapid imitation would reduce the commercial value of innovation and erode incentives to invest, ultimately to the detriment of consumers. The antitrust laws promote innovation and consumer welfare by prohibiting certain actions that may harm competition with respect to either existing or new ways of serving consumers.

[7] R.S.C. 1985, c. P-4, as amended.

[8] R.S.C. 1985, c. C-42, as amended.

[9] R.S.C. 1985, c. T-13, as amended.

[10] R.S.C. 1985, c. I-9, as amended.

[11] S.C. 1990, c. 37, as amended.

[12] R.D. Anderson, S.D. Khosla and M.F. Ronayne, "The Competition Policy Treatment of Intellectual Property Rights in Canada: Retrospect and Prospect", in R.S. Khemani and W.T. Stanbury, eds., *Canadian Competition Law and Policy at the Centenary* (Halifax: Institute for Research on Public Policy, 1991), chapter 23, pp. 497-538 at 498 [hereinafter *Anderson and Khosla*].

[13] George N. Addy, Director of Investigation and Research, "Competition Policy and Intellectual Property Rights: Complimentary Framework Policies for a Dynamic Market" (Address to the XXXVIth World Congress of the AIPPI, Montreal, Quebec, June 29, 1995), at 1.

[14] See Roy M. Davidson, Deputy Director, *Combines Investigation Act*, "Notes for a Talk before the Law Society of Upper Canada" (June 14, 1974) at 11-12 for a complete list of licensing provisions and conditions.

[15] Gilles Ménard, Deputy Director of Investigation and Research (Civil Matters), "Abuse of Dominance: Some Reflections of Recent Cases and Emerging Issues" (Remarks to the Conference of The Canadian Institute on Competition Law and Competitive Business Practices, May 10, 1996), at 22.

[16] Draft IP Guidelines, at 1-2.

[17] U.S. Guidelines, at 3.

[18] *Ibid.*

[19] Draft IP Guidelines, at 2

[20] Draft IP Guidelines, at 3.

[21] Draft IP Guidelines, at 3.

[22] (11 June 1993), (Quebec Superior Court Criminal Division) [unreported].

[23] *R.* v. *Canadian General Electric and Union Carbide Canada Limited*, unreported decision of Judge Charles (Provincial Court, Judicial District of York, March 9, 1979).

[24] *Canada (Director of Investigation and Research)* v. *Southam Inc.* (1992), 47 C.P.R. (3d) 240. [hereinafter *Southam*]

[25] *Southam*, at 253. Divestiture orders may be employed in merger cases to prevent the potential substantial lessening of competition expected to result from a merger.

[26] Draft IP Guidelines, at 7.

[27] MEGs, at §1.

[28] Report of the Commissioner, *Combines Investigation Act, Optical Goods; Investigation into an Alleged Combine in the Manufacture and Sale of Optical Goods in Canada* (1948), at 96-97 (footnote omitted).

[29] Restrictive Trade Practices Commission, *Distribution and Pricing of Pesticides; A Report in the Matter of an Inquiry Relating to the Manufacture, Formulation, Distribution and Sale of Weed Killers, Insecticides and Related Products* (1965), RTPC No. 37.

[30] *Ibid.*, at 40.

[31] *Canada (Director of Investigation and Research)* v. *NutraSweet Co.* (1990) 32 C.P.R. (3d) 1. [hereinafter *NutraSweet*]

[32] *NutraSweet*, at 41-42.

[33] *Ibid.*, at 45-46.

[34] *Ibid.*, at 58.

[35] *Director of Investigation and Research* v. *Tele-Direct (Publications) Inc.* (1997), 73 C.P.R. (3d) 1. [hereinafter *Tele-Direct*]

[36] *Tele-Direct*, at 33.

[37] *Ibid.*, at 32.

[38] *Ibid.*, at 30.

[39] *Ibid.*, at 32.

[40] *Director of Investigation and Research* v. *Bank of Montreal, et al.* (1996), 68 C.P.R. (3d) 527 (Comp. Trib.).

[41] *Director of Investigation and Research* v. *AGT Directory Limited, et al.*, [1974] C.C.T.D. No. 24, Trib. Dec. No. CT 9402/19, Clause 3(f).

[42] (1989), 27 C.P.R. (3d) 1 (Comp. Trib.) [hereinafter *Chrysler*].

[43] (1990), 33 C.P.R. (3d) 83 (Comp. Trib.) [hereinafter *Xerox*].

[44] It is unclear whether the parts at issue in *Xerox* and *Chrysler* were patented. However, there did not appear to be any third party suppliers of a number of the relevant parts.

[45] *Warner*, at 333.

[46] *Ibid.*

[47] *Ibid.*

[48] *Ibid.* at 332.

[49] R.S.C. 1985, c. I-12.

[50] *Warner*, at 332. The Tribunal seems to have misunderstood the remedy being sought. The Director

had requested a specific order requiring Warner to license BMG only, and not a compulsory licensing scheme as previously existed under the *Copyright Act*.

[51] *Warner*, at 334.

[52] Draft IP Guidelines, at 15.

[53] *R.* v. *Union Carbide Canada Limited*, Exchequer Court of Canada, Court No. B-1979. Information filed October 12, 1967; Minutes of Settlement filed December 12, 1969.

[54] *R.* v. *Union Carbide Canada Limited, Atinco Paper Products Limited, Gait Paper Products, Subob Paper Products Limited and Atlantic Packaging Company*, Court No. B03495. Information filed December 15, 1969; Minutes of Settlement filed June 19, 1971.

[55] Draft IP Guidelines, section 4.2.2.

[56] This was a major criticism of the first draft of the IP Guidelines. See for example, "ITAC Comments", September 7, 1999, http://strategis.ic.gc.ca/SSG/ct01582e.html.

[57] See *Molnycke AB* v. *Kimberly-Clark of Canada Limited* (1991), 36 C.P.R. (3d) 493 (Federal Court of Appeal holding that the impairment of competition inherent in the exercise of rights expressly provided by a Canadian IP statute could not be undue).

[58] See Draft IP Guidelines, section 4.2.2.

[59] See D. Balto, *Emerging Antitrust Issues in Electronic Commerce*, 1998 Antitrust Institute, Columbus, Ohio, November 12, 1999.

STATEMENTS AND NEWS RELEASES ISSUED BY THE COMPETITION BUREAU DURING THE PERIOD JANUARY 1, 2000 TO JUNE 30, 2000

The following Statements and News Releases are available on the Bureau's website at http://strategis.ic.gc.ca/SSG/ct01256e.html

January 18, 2000
INFORMATION: Competition Bureau Finds Competitive Market Forces Determine Commission Rates Paid to Travel Agents on International Flights

January 31, 2000
INFORMATION: Proposed Merger of Toronto-Dominion Bank and Canada Trust
INFORMATION: Low Gasoline Prices in the Greater Vancouver Market are the Result of Vigorous Competition

February 3, 2000
INFORMATION: Competition Bureau Warns Fashion Clothing Suppliers – Price Maintenance Will Not Be Tolerated

February 4, 2000
INFORMATION: Competition Bureau Concludes Gasoline Price Increases of July 1999 Due to Market Forces
INFORMATION: Gasoline Prices in Kenora, Ontario

February 16, 2000
NEWS RELEASE: Ultramar's Proposed Acquisition of Ottawa Terminal: Consent Order Sought to Maintain Competition in Ottawa Region

February 17, 2000
INFORMATION: Competition Bureau Launches New Draft Immunity Information Bulletin

February 18, 2000
NEWS RELEASE: Canadian Victims of Florida Based Travel Vacation Packages May Be Eligible for Refunds

February 24, 2000
NEWS RELEASE: Erratum

March 1, 2000
NEWS RELEASE: Federal Court Imposes a Fine of $5.2 Million for International Vitamin Conspiracies

March 6, 2000
INFORMATION: No Charges Laid Against Van Lines

March 17, 2000
INFORMATION: Competition Bureau Concludes there is No Evidence to Support Allegations Against Gasoline Suppliers in Conception Bay South, Newfoundland

March 30, 2000
NEWS RELEASE: Federal Court Imposes A Fine of $1 Million For International Vitamin Conspiracies

March 31, 2000
NEWS RELEASE: Construction Management Firm and Electrical Contractors Fined for Bid-Rigging

CANADIAN COMPETITION RECORD

April 4, 2000
INFORMATION: Competition Bureau Discontinues Inquiry of Monsanto Regarding Agricultural Herbicide

April 11, 2000
NEWS RELEASE: Commissioner of Competition Responds to Report by Global Competition Review

April 17, 2000
INFORMATION: Public Consultation on Legislative Changes to the *Competition Act* and the *Competition Tribunal Act*

April 18, 2000
NEWS RELEASE: Consent Order Registered Against Universal Payphone Systems inc.
INFORMATION: Competition Bureau Seeks Comments on Draft Intellectual Property Guidelines

April 25, 2000
INFORMATION: Publication of Merger Notifiable Transactions Interpretation Guidelines
NEWS RELEASE: Alberta Pine Shake Manufacturer Convicted of Bid-rigging under the *Competition Act*

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INFORMATION: Competition Driving Changes in the Saskatchewan Grain Handling Industry

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INFORMATION: Regulated Conduct Defence Applies to Issuance of Taxi Licences – Allegations of Conspiracy Unsubstantiated
INFORMATION: Final Version of the "Notifiable Transactions and Advance Ruling Certificates Under the *Competition Act*: Procedures Guide"

May 9, 2000
INFORMATION: Revised Deadlines for the Public Consultation on Legislative Changes to the *Competition Act* and the *Competition Tribunal Act*

May 10, 2000
INFORMATION: Competition Bureau Releases Draft Guidelines On Pet Food Labelling and Advertising

May 18, 2000
INFORMATION: Proposed Acquisition of Blue Circle by Lafarge
INFORMATION: Competition Bureau Seeks Comments on Draft Abuse of Dominance Guidelines

June 8, 2000
NEWS RELEASE: Share Divestitures Address Canadian Competition Concerns in Acquisition of Blue Circle Shares by Lafarge

June 16, 2000
INFORMATION: Conformity Continuum Information Bulletin

June 19, 2000
INFORMATION: Preliminary Inquiry Commenced in the Sherbrooke Gasoline Case
NEWS RELEASE: Warning to Businesses: Beware of Phoney Invoices

June 30, 2000
INFORMATION: 60 Day Sale Period for Canadian Regional Airlines Limited

NEWS RELEASE ISSUED BY INDUSTRY CANADA

The following News Release is available on Industry Canada's website at http://www.ic.gc.ca/cmb/welcomeic.nsf/icpages/newsreleases

June 26, 2000
NEWS RELEASE: New Member Appointed to the Competition Tribunal