DO DOWNWARD PRICING CONSPIRACIES EXIST IN CANADA? A CRITICAL ASSESSMENT OF *DIRSTEIN TOWING INC V STREAMLINE AUTO BODY LTD*

Adam S. Goodman[1]
Heenan Blaikie LLP, Toronto

This article addresses the question of whether downward pricing agreements - agreements between competitors to charge lower, as opposed to higher, prices - can constitute price-fixing under section 45 of the Competition Act. In response to this question, the author argues that such conduct, which includes anti-competitive conduct such as joint predatory pricing, can indeed run counter to section 45 based on the section's plain wording. This is notwithstanding the recent decision in Dirstein Towing Inc v Streamline Auto Body Ltd in which the Ontario Superior Court of Justice suggested the opposite. While the author does not dispute the outcome of the Dirstein Towing decision, which resulted in a dismissal of the claim, he submits that it would have been better reasoned had the court relied on the ancillary restraints defence instead of suggesting that downward pricing agreements do not constitute price-fixing under section 45.

Cet article porte sur la question de savoir si les ententes de fixation des prix à la baisse – ententes entre des concurrents visant à demander des prix plus faibles, et non pas plus élevés – peuvent constituer une fixation des prix en vertu de l'article 45 de la Loi sur la concurrence. En réponse à cette question, l'auteur soutient qu'un tel comportement, qui englobe le comportement anticoncurrentiel comme l'établissement conjoint de prix d'éviction, peut effectivement être contraire à l'article 45 à la lumière du libellé de cet article. L'auteur fait valoir cet argument nonobstant la décision qu'a récemment rendue la Cour supérieure de justice de l'Ontario dans Dirstein Towing Inc c Streamline Auto Body Ltd, qui indique le contraire. L'auteur ne conteste pas l'issue de la décision Dirstein Towing, qui a entraîné le rejet de la demande, mais il avance que la Cour aurait suivi un meilleur raisonnement si elle s'était fondée sur la défense des restrictions accessoires plutôt que d'indiquer que les ententes de fixation à la baisse des prix ne constituent pas une fixation des prix en vertu de l'article 45.

Does section 45 of the *Competition Act* (the "Act"), which prohibits conspiracies in restraint of trade, apply to agreements between competitors to fix prices at lower, as opposed to

higher, prices? This is one of the central competition law questions addressed in the recent Ontario Superior Court of Justice decision, *Dirstein Towing Inc v Streamline Auto Body Ltd.*[2] In answering this question, Belleghem J offered a relatively straightforward, though perhaps overly simplistic assessment. In the judge's view, the answer was a clear "no":

> [The rate guidelines of the towing association] were established to prevent "gouging". If their purpose was to prevent competition, then they would prevent members from charging *less* than the guideline, rather than prevent them from charging more. There is simply no merit whatsoever to plaintiff's counsel's assertion that the guidelines have in some manner "fixed prices", reduced competition, or affected the plaintiff's business.[3]

This conclusion suggests that competitor agreements to charge lower prices, by their nature, do not amount to conspiracy under section 45. As a result, *Dirstein Towing* may serve as an important precedent upon which businesses facing similar allegations of downward pricing collusion may try to rely. *Dirstein Towing* is also significant because it is among the first judicial decisions to deal with section 45 following that section's amendment in 2010. More generally, this decision is a rare example of a section 45 case being decided on the merits.

Notwithstanding these factors, *Dirstein Towing* is unlikely to fundamentally change the risk assessment for downward pricing agreements amongst competitors, unless its legal conclusion regarding downward pricing agreements is upheld by an appellate court.[4] As it currently stands, such agreements will continue to raise risk under section 45 of the Act. As will be discussed in this case comment, the proposition that downward pricing agreements between competitors are not subject to section 45 can be criticized based on that provision's plain wording.

This case comment will summarize the key facts of the *Dirstein Towing* case and review the law and enforcement position of the Competition Bureau (the "Bureau") regarding downward pricing agreements between competitors, with a discussion regarding the Canadian approach to joint predatory pricing. In so doing, this case comment will provide a critical assessment of some of the key competition law findings in the case. In particular, instead of a broad finding that downward pricing agreements between competitors are not covered by section 45, this article will argue that a more appropriate conclusion

would have been to permit the arrangement in this instance based on the ancillary restraints defence provided for in subsection 45(4) of the Act.

The Facts

In 2009, a group of towing companies in the County of Wellington, Ontario formed an unincorporated association known as the Wellington Towing Group (the "Group"). The Group was formed at the request of the Wellington Ontario Provincial Police (the "OPP"). The OPP was seeking a single telephone line instead of having to call multiple towing companies when towing services were required for vehicles involved in incidents under the investigation of the OPP.[5] Belleghem J. characterized the OPP's request as "download[ing] the cost to the group."[6]

The Group established several rules for its towing company members. The most significant were the payment of $300 in yearly dues,[7] a requirement that members maintain a pound to store vehicles within Wellington County,[8] and a requirement that members adhere to maximum price rate caps for towing services.[9]

Regarding the requirement that member towing companies adhere to maximum price rate caps, one plaintiff witness described the purpose behind them as to sanction "chasers", being "tow operators who use aggressive means to solicit business".[10] The rate caps were designed to address a concern by the OPP to avoid referring accident victims, who ultimately pay for the towing services called out by the OPP, to predatory towers. The concern was explained by Belleghem J as:

> "Gouging" was a feature of towing that was of concern to the O.P.P. At the end of the day, the O.P.P. were the essential "customers". The O.P.P. arranged towing for third party motor vehicle accident victims *only* when these victims were unable or unwilling to designate a particular tower. The concerns of the "customer", (the O.P.P.), were that its perceived role as an impartial public entity would be "sullied" in any cases where an officer in charge of an accident case was seen to be party to towing arrangements of a victim's vehicle by an unscrupulous tower who "gouged" the hapless accident victim.[11]

In the OPP's view, its concerns about gouging that were addressed

by the establishment of the Group, its rate caps and requirement for a pound within Wellington County:

> The O.P.P. calls are scanned. As a result, [OPP Inspector Smith] said, tow truck operators would show up on an ad hoc basis. They would then be accepted by owners without knowing better. As a result, the vehicle could end up being towed large distances, and the owner would be charged exorbitant fees. This is part of the reason why the O.P.P. wanted the tower to have a pound in the county where the vehicle had become disabled.[12]

The plaintiff, Dirstein Towing Inc., was a towing company that maintained its pound in the County of Perth, near Wellington. As a result of not maintaining a pound within Wellington, the plaintiff was prevented from joining the Group. It is noteworthy that the plaintiff was a member of the Perth County Towing Association, which had a similar requirement regarding the maintenance of a pound within Perth County. Moreover, the plaintiff could have rented a pound facility within Wellington to satisfy the requirement.[13]

Although invited to the founding meeting of the Group, the plaintiff failed to attend and never joined.[14]

The action consisted of the plaintiff's claim against the individual towing company members of the Group. The causes of action asserted by the plaintiff included a claim for $500,000 in damages under sections 36, which provides a cause of action for breaches of the Act's criminal provisions, and 45, which is the criminal conspiracy provision of the Act, as well as the torts of common law conspiracy and unlawful interference with economic interests.[15]

Belleghem J dismissed the action in its entirety. Regarding the claims under the Act, Belleghem J found no price fixing or other restraint of trade prohibited by section 45. Moreover any losses suffered by the plaintiff were not found to be attributable to the Group's conduct.[16] As discussed earlier, the maximum price requirement was held not to be covered by section 45. Regarding the requirement that the members maintain a pound within the Wellington County, Belleghem J found this to be an ancillary restraint permitted under the ancillary restraints defence in subsection 45(4) of the Act.[17]

Downward Pricing Agreements and Recent Amendments to the Act

The Act underwent significant amendment in March 2009. The section 45 conspiracy offence, previously subject to a partial rule of reason ("undue") standard, was changed to a *per se* offence, requiring no evidence of competitive impact. The new section 45 came into force on March 12, 2010. Prior to this amendment, the section 45 offence required an undue lessening of competition as an element of the offence:

> 45. (1) Every one who conspires, combines, agrees or arranges with another person
>
> (a) to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,
>
> (b) to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,
>
> (c) to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property, or
>
> (d) to otherwise restrain or injure competition unduly,
> is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million dollars or to both.[18]

Since March 2010, the section 45 offence has been *per se* and limited to horizontal arrangements between competitors:

> 45. (1) Every person commits an offence who, with a competitor of that person with respect to a product, conspires, agrees or arranges
>
> (a) to fix, maintain, increase or control the price for the supply of the product;
>
> (b) to allocate sales, territories, customers or markets for the production or supply of the product; or
>
> (c) to fix, maintain, control, prevent, lessen or eliminate the production or supply of the product.[19]

Additionally, within section 45, an ancillary restraints defence was added and the previously common law regulated conduct defence was incorporated into the Act:

> (4) No person shall be convicted of an offence under subsection (1) in respect of a conspiracy, agreement or arrangement that would otherwise contravene that subsection if
>
> (a) that person establishes, on a balance of probabilities, that
>
> (i) it is ancillary to a broader or separate agreement or arrangement that includes the same parties, and
>
> (ii) it is directly related to, and reasonably necessary for giving effect to, the objective of that broader or separate agreement or arrangement; and
>
> (b) the broader or separate agreement or arrangement, considered alone, does not contravene that subsection.
>
> [...]
>
> (7) The rules and principles of the common law that render a requirement or authorization by or under another Act of Parliament or the legislature of a province a defence to a prosecution under subsection 45(1) of this Act, as it read immediately before the coming into force of this section, continue in force and apply in respect of a prosecution under subsection (1).[20]

Apart from the section 45 conspiracy offence, section 90.1 was added to the Act. This provision is a new civil provision that permits the Bureau to challenge, on a civil basis, agreements amongst competitors that result in a substantial lessening or prevention of competition in a market.

The plain language of section 45 (both the former and current) is sufficiently broad as to capture agreements between competitors to charge lower prices, even if the underlying consumer protection concern behind the criminalization of price fixing is competitors agreeing to charge customers higher prices. It is noteworthy that under the former section 45, upward price fixing (agreements to charge higher prices) was specifically captured by the language, "to enhance unreasonably the price thereof". Notwithstanding that specific language, downward price fixing remained potentially subject to catchall language, "to otherwise restrain or injure competition unduly."

In *Dirstein Towing*, Belleghem J found that there could be "no merit whatsoever" to the plaintiff's allegation that the agreement to a maximum rate amongst the members of the Group amounted to price fixing. In the judge's view, "[i]f their purpose was to prevent competition, then they would prevent members from charging *less* than the guideline, rather than prevent them from charging more."[21] While in this case, there appears to have been no evidence that the members of the Group agreed to the maximum rates for anti-competitive purposes, and higher pricing agreements are the primary concern of competition law, agreements amongst competitors to charge lower prices can still be anti-competitive in intent and effect. In particular, agreements amongst competitors to engage in joint predatory pricing may be viewed as anti-competitive and captured by section 45 of the Act.

Predatory pricing is the sale of goods at extremely low or below cost prices in order to eliminate or discipline a competitor or to deter entry into the market by a competitor.[22] Prior to the 2009 amendments, the Act contained several provisions that could be applied against businesses engaged in predatory pricing conduct, including a criminal provision generally prohibiting predatory pricing and a civil abuse of dominance provision, which could be applied in situations of dominance by the business engaging in the predatory conduct. The criminal predatory pricing provision provided as follows:

> 50. (1) Every one engaged in a business who
>
> [...]
>
> (c) engages in a policy of selling products at prices unreasonably low, having the effect or tendency of substantially lessening competition or eliminating a competitor, or designed to have that effect,
>
> is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.[23]

While the general prohibition on predatory pricing was repealed as a result of the 2009 amendments, predatory pricing remains in the Act as an example of anti-competitive conduct that can potentially be subject to the abuse of dominance provision.[24]

As a matter of enforcement policy, prior to the 2009 amendments, the Bureau took the position that predatory downward pricing agreements

between competitors could be prosecuted under the former section 45 conspiracy provision. In its 2008 *Predatory Pricing Enforcement Guidelines*, the Bureau stated its position as follows:

> Occasionally, the Bureau receives complaints that two or more firms are engaged in joint predatory conduct. In these circumstances, the Bureau could examine the complaint under the abuse of dominance or conspiracy provisions as they respectively address tacit and explicit anti-competitive agreements.[25]

In *R c Perreault*,[26] a jury found an accused owner of a driving school guilty under the predatory pricing and conspiracy provisions for, amongst other things, conspiring with other driving schools to lower the price of driving courses in order to push competitors who would not participate in the cartel out of the market.[27]

It is noteworthy that, notwithstanding the conviction in *Perreault*, predatory pricing conduct was rarely pursued under the criminal predatory pricing provision (for unilateral conduct) or the criminal conspiracy provision (for agreements between competitors to engage in joint predatory pricing). Indeed, the Bureau took the position that it would only pursue "egregious" predatory pricing conduct through the Act's criminal provisions. The Bureau's default for addressing complaints regarding predatory pricing was the abuse of dominance provision.[28]

By comparison, in the United States, predatory pricing agreements are *per se* unlawful under section 1 of the *Sherman Act*. Such prescribed agreements may be horizontal (between competing businesses)[29] or vertical (between customers and suppliers).[30] As an evidentiary matter, however, the Supreme Court of the United States has suggested that proof of the agreement in such cases may be difficult to establish.[31]

The 2009 amendments to the Act followed a lively economic debate concerning the utility and efficacy of regulating predatory pricing conduct.[32] While the amended Act maintained predatory pricing as an example of anti-competitive conduct that could be subject to civil challenge under the abuse of dominance provision, the criminal predatory pricing provision was repealed. As can be seen from the post-March 2010 wording of section 45, however, joint predatory pricing, and indeed any agreement among potential competitors to charge lower prices may still be caught by the conspiracy offence.

For its part, post-2010, the Bureau has not disclosed its enforcement approach to agreements between competitors to charge lower prices. The Bureau issued the *Competitor Collaboration Guidelines* (the "Guidelines")[33] following the 2009 amendments to explain its approach to the section 45 criminal conspiracy provision and the section 90.1 civil competitor collaboration provision in certain circumstances. The Guidelines are silent regarding competitor agreements to charge lower prices and joint predation. The Guidelines do, however, explain that the Bureau views section 45 as applicable only to "naked restraints". Restraints that may be captured by the language of subsection 45(1) may still properly qualify for the subsection 45(4) ancillary restraints defence if they are directly related to or reasonably necessary to give effect to a broader agreement that is not prohibited under subsection 45(1). The Bureau set out its view of the ancillary restraints defence as follows:

> The Bureau recognizes that some desirable business transactions or collaborations require explicit restraints to make them efficient, or even possible. For example, one or more parties to a joint venture or licensing arrangement may refuse to participate in such arrangements without some explicit restraint on competition. Similarly, parties may not wish to invest in the joint development of a product where one party is able to independently compete with the joint venture. Although such ancillary restraints may fall within the type of conduct described in subsection 45(1), they are more appropriately subject to review under the civil agreements provision in section 90.1 of the Act. As explained elsewhere in these Guidelines, the criminal prohibition in section 45 is reserved for agreements between competitors to fix prices, allocate markets or restrict output that constitute "naked restraints" on competition (restraints that are not implemented in furtherance of a legitimate collaboration, strategic alliance or joint venture).[34]

Dirstein Towing in the Context of the Amended Act

It is significant that in *Dirstein Towing*, Belleghem J accepted the pro-competitive nature underlying the formation of the Group. The OPP requested that the towing companies in Wellington County join together to form a rotation with a single telephone number that could be accessed by the OPP, which allowed the OPP to avoid calling twenty different companies. This created efficiencies for the OPP and the

vehicle owners.[35] The pro-competitive nature of the general agreement between the competitor towing companies in Wellington County was explained by Belleghem J as follows:

> There were a number of advantages to having a central number for calling local towers. It made it much simpler for the officer. The officer could program the central number into his cell phone instead of having to deal with the London dispatcher. It would give what [OPP Inspector Smith] called "one stop shopping". There would be no concern about how far the vehicle was being towed. In addition, it enabled the O.P.P. to download the expense of a central dispatch number. It also gave the O.P.P. a voice in the regulation of the towing industry, i.e. if the O.P.P. had concerns with respect to towing they would be able to get a quick answer from the association. This would be important because of matters such as hazardous spills at the scene. The [OPP] detachment would only need to deal with one entity instead of many towers. All of the towers could be addressed at the same meeting instead of having to address them individually.[36]

Although Belleghem J did not enter into a significant explanation of the subsection 45(4) ancillary restraints defence, he accepted that the rule requiring members of the Group to maintain a pound within Wellington County, which precluded the plaintiff from joining, was saved by that defence:

> The agreements with respect to the setting up of zones and the requirement for a secure pound to be within the County is part of the larger agreement contemplated by s. 45(4) which provides a complete defence to the conspiracy allegation. The pound requirement, which seems to be at the heart of the plaintiff's complaint, is a necessary ancillary to the main protocol.[37]

There is no such ancillary restraints analysis, however, applied to the Group's maximum price requirement. Instead, Belleghem J suggested the rate guideline, "which *prohibited* increased fees" and "prevented "gouging"" did not constitute price fixing.[38] This legal conclusion does not reflect the plain wording of the section 45 prohibition on price fixing, which is not limited to agreements between competitors on upward pricing. It also ignores the possibility that some forms of downward price fixing, such as joint predation, can be anti-competitive.[39]

The Group's downward price requirements could have likewise been saved under the ancillary restraints defence, given the legitimate nature

of the Group's formation in response to the OPP's request. The decision went too far, and did not have to do so, in suggesting that downward pricing agreements do not amount to price fixing under section 45.

In addition to the lack of discussion regarding the ancillary restraints defence, the decision also missed an opportunity to consider the application of the newly legislated regulated conduct defence, given that the Group was formed at the request of the OPP. It should be noted, however, that the OPP's request that the defendants form the Group would most likely not be sufficient to establish a successful defence under the current law regarding regulated conduct.[40]

Moreover, given the Group was formed in 2009, and the impugned conduct thus spanned the former section 45 (pre-March 12, 2010) and the current section 45, it is unclear why the decision only appears to have only considered the current wording of section 45. The case was an opportunity to consider how the law should address conduct that overlaps the former and current conspiracy provisions.

As a result of the plaintiff's abandonment of its appeal of the decision, the Court of Appeal will not weigh in on these issues.[41]

In conclusion, despite the valiant attempt by the trial judge to synthesize a good deal of evidence and having come to the defensible conclusion that the plaintiff's claims should be dismissed, the decision in *Dirstein Towing* ignores the plain wording of section 45 of the Act and the Bureau's enforcement approach to the issue of downward pricing agreements. As such, downward pricing agreements amongst competitors will continue to raise issues in Canada. The Guidelines issued by the Bureau remain the most useful analytical framework for businesses to assess risk emanating from such conduct, even though the Guidelines do not explicitly address downward pricing agreements.

Endnotes

[1] The author is a senior associate in the Competition/Antitrust and Foreign Investment group of Heenan Blaikie LLP in Toronto. The author would like to thank Gregory McLean, associate at Heenan Blaikie for his assistance. The views and opinions expressed herein are the author's own and do not necessarily reflect the views and opinions of Heenan Blaikie or its clients.
[2] 2012 ONSC 4896, 2012 CarswellOnt 11313.

[3] *Ibid* at para 79.
[4] In that regard, it is noteworthy that the plaintiff abandoned its appeal of the decision to the Court of Appeal for Ontario.
[5] *Supra* note 2.
[6] *Ibid* at para 21.
[7] *Ibid.*
[8] *Ibid* at para 3.
[9] *Ibid* at para 20.
[10] *Ibid.*
[11] *Ibid* at para 76.
[12] *Ibid* at para 35.
[13] *Ibid* at para 19.
[14] *Ibid* at para 2.
[15] *Ibid* at para 4.
[16] *Ibid* at paras 104-105. Belleghem J suggested that the plaintiff's losses might be attributable to a near simultaneous loss of business from CAA, which was being sued by the plaintiff for, amongst other things, breach of contract in another action. It should be noted that the plaintiff's action against CAA South Central Ontario was dismissed on a summary judgment basis by Allen J in *Dirstein Towing Inc v CAA South Central Ontario*, 2013 ONSC 206. The author acted as counsel for CAA South Central Ontario in that other action.
[17] *Ibid* at 127.
[18] *Competition Act*, RSC 1985, c C-34, s 45(1), as repealed by 2009, c 2, s 410.
[19] *Competition Act*, RSC 1985, c C-34, s 45(1).
[20] *Ibid* at ss 45(4), (7).
[21] *Supra* note 2 at para 79.
[22] The Organization for Economic Co-Operation and Development (OECD) defines the predatory pricing as "pricing so low that competitors quit rather than compete, permitting the predator to raise prices in the long run." *Predatory Pricing* (Paris: OECD, 1989) at 2, online: Organization for Economic Co-Operation and Development <http://www.oecd.org/competition/abuse/2375661.pdf>.
[23] *Competition Act*, RSC 1985, c C-34, s 50(1)(c), as repealed by 2009, c 2, s 413.
[24] Pursuant to s 78(1)(i), "selling articles at a price lower than the acquisition cost for the purpose of disciplining or eliminating a competitor" is included in the list of anti-competitive acts that may be subject to remedy under the abuse of dominance provisions of the Act.
[25] *Predatory Pricing Enforcement Guidelines* (July 2008) at s 2.2.1, online: Competition Bureau <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02713.html>. The 2008 version of this document replaced a version from 1991 and the Bureau's (never finalized) draft *Enforcement Guidelines for Illegal Trade Practices: Unreasonably Low Pricing Policies* (Hull: Competition Bureau, 8 March 2002), neither of which addressed joint predation.
[26] [1996] RJQ 2565 (SC).

[27] *Ibid* at para 11.
[28] Within the definition of "egregious conduct", the Bureau included using predatory pricing, "to enforce or invite participation in a cartel agreement, or on an ongoing or repetitive basis, or where the firm is subject to a Competition Tribunal or court order, or an undertaking forming part of an alternative case resolution." *Predatory Pricing Enforcement Guidelines* (July 2008), s 2.2.1, online: Competition Bureau <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02713.html>.
[29] See, for example, *Matsushita v Zenith Ratio Corp*, 475 US 574 (1986).
[30] See, for example, *Atlantic Richfield Co v USA Petroleum Co*, 495 US 328 (1990) at 339. It should be noted that this case also stands for the proposition that any maximum price-fixing agreement is unlawful under section 1 of the *Sherman Act*, however, there would be no antitrust injury unless the conduct was predatory.
[31] *Matsushita v Zenith Ratio Corp*, 475 US 574 at 588-598 (1986).
[32] For a discussion regarding the debate regarding whether and/or how to enforce predatory pricing rules, see *Predatory Pricing* (Paris: OECD, 1989) at 19-28, online: Organization for Economic Co-Operation and Development <http://www.oecd.org/competition/abuse/2375661.pdf>.
[33] Canada, Competition Bureau, *Competitor Collaboration Guidelines* (Gatineau: Competition Bureau, 8 May 2009).
[34] *Ibid* at 12.
[35] *Supra* note 2 at paras 1, 7, 35-37.
[36] *Ibid* at para 37.
[37] *Ibid* at para 127.
[38] *Ibid* at paras 78-79.
[39] These comments should not be taken as questioning that the ultimate outcome of the action, given the evidence that Belleghem J carefully details in the decision. Indeed, in reading the decision, it is difficult to see how the plaintiff suffered any harm as a result of the defendants' conduct, given it could have taken steps to join the Group, such as renting a pound within Wellington County, but chose not to do so. The defendants even invited the plaintiff to join the Group at the outset. Given that any losses incurred by the plaintiff were essentially found to have been self-inflicted, Belleghem J found that the plaintiff failed to prove any damages caused by the defendants, which is a requirement for a remedy under section 36 of the Act. See *Ibid* at para 112.
[40] Additionally, as a practical matter, the Bureau has specified that in considering the regulated conduct defence, it will "focus on the question of whether a *validly enacted provincial law* authorizes (expressly or impliedly) or requires the impugned conduct." (emphasis added) See Canada, Competition Bureau, *"Regulated" Conduct Bulletin* (Gatineau: Competition Bureau, 29 June 2006) at 4.
[41] Additionally, although the plaintiff also complained to the Bureau, the Bureau's conclusions regarding the Group's conduct are not public,

Belleghem J noted that the evidence of the plaintiff's principal was that he was, "unable to get information from them [the Bureau] with respect to the status of his complaint." *Supra* note 2 at para 16.