

# DEVELOPMENTS / DÉVELOPPEMENTS

## YEAR IN REVIEW (2016-2017)

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*Highlights of another active year for Canadian competition and foreign investment law include:*

- *The Competition Tribunal's held that the Toronto Real Estate Board's policy restricting the ability of brokerages to offer products to consumers over the internet violated the Competition Act's abuse of dominance provisions.*
- *The Bureau reaffirmed the role of the Act's efficiency defence in merger review with their decision in Canexus/Chemtrade.*
- *The Bureau's application under s. 74.1 against Moose Knuckles for their allegedly deceptive "Made in Canada" claims was resolved through mediation.*
- *Ontario and British Columbia courts reached different verdicts on the issue of whether cartel members may be liable for "umbrella pricing" (i.e., higher prices charged by non-cartel members that allegedly benefit from the "umbrella" provided by supra-competitive cartel pricing) in class actions*
- *Guidance for national security reviews under the Investment Canada Act was published*
- *Thresholds for "net benefit" reviews for investments by (or from) non-SEO WTO investors in non-cultural businesses increased from \$600 million to \$800 million in April 2017, and then to \$1 billion in June 2017. The Canada-EU Comprehensive Economic and Trade Agreement will raise that threshold will rise to \$1.5 billion for EU investors and investors from certain other countries party to free trade agreements containing most-favoured nations clauses, including the United States.*

*Les points suivants constituent les faits saillants d'une nouvelle année bien occupée en droit canadien de la concurrence et des investissements étrangers :*

- *le Tribunal de la concurrence a jugé qu'en limitant la capacité des courtiers immobiliers à offrir des produits aux consommateurs sur*

*Internet, la politique du Toronto Real Estate Board (l'association immobilière de Toronto) contrevenait aux dispositions sur l'abus de position dominante de la Loi sur la concurrence (la Loi);*

- *avec sa décision dans l'affaire Canexus/Chemtrade, le Bureau de la concurrence (le Bureau) a réaffirmé le rôle du moyen de défense fondée sur les gains en efficience qu'offre la Loi dans le contexte d'examen de fusionnements;*
- *la réclamation formulée par le Bureau contre Moose Knuckles en vertu de l'article 74.1 de la Loi, pour l'utilisation (qui aurait été trompeuse) de l'indication « Fait au Canada », a été réglée par voie de médiation;*
- *les tribunaux de l'Ontario et de la Colombie-Britannique ont rendu des verdicts différents sur la question à savoir si, dans le contexte de recours collectifs, les membres d'un cartel peuvent être tenus responsables pour la fixation de prix de protection (c'est-à-dire des prix plus élevés pratiqués par les non-membres du cartel, qui bénéficieraient supposément de la « protection » accordée par les prix supraconcurrentiels du cartel);*
- *dans le cadre de la Loi sur Investissement Canada, des lignes directrices sur l'examen relatif à la sécurité nationale des investissements ont été publiées;*
- *le seuil applicable pour les examens de l'« avantage net » d'investissements dans des entreprises qui ne sont pas des entreprises culturelles, consentis par des investisseurs OMC qui ne sont pas des entreprises publiques (ou provenant de tels investisseurs) est passé de 600 à 800 millions de dollars en avril 2017, puis à un milliard de dollars en juin 2017. L'Accord économique et commercial global entre le Canada et l'Union européenne (UE) relèvera ce seuil à 1,5 milliard de dollars pour les investisseurs de l'UE et les investisseurs de certains autres pays qui sont signataires d'accords de libre-échange qui comprennent des clauses de traitement de la nation la plus favorisée, dont les États-Unis.*

## INTRODUCTION AND HIGHLIGHTS

**T**he year 2016-2017 marks the success of Canada's Competition Bureau (the "Bureau") in several enforcement actions including notable actions against bid-rigging, abuse of dominance and deceptive marketing. Highlights of 2016-2017 include:

- The Competition Tribunal (the “Tribunal”) issued its new decision in the long-running abuse of dominance case brought by the Commissioner of Competition (the “Commissioner”) against the Toronto Real Estate Board (“TREB”). The case had been remitted back to the Tribunal by the Federal Court of Appeal, which disagreed with the Tribunal’s original holding that the abuse of dominance provisions do not apply to persons who do not compete in the affected or potentially affected market. In its reconsidered reasons released on April 27, 2016, the Tribunal held that TREB’s actions were contrary to s. 79 of the *Competition Act* (the “Act”). The Tribunal found that TREB’s policy against allowing clients access to the realtors’ on-line databases via realtor websites had substantially prevented competition in the residential real estate market in Toronto, and issued an order requiring TREB to amend its policies and procedures within 60 days. TREB has again appealed the decision, and the Tribunal’s order is temporarily stayed pending the results of the appeal. Following this precedent, the Commissioner launched another abuse of dominance case against a non-participant in an affected market, concerning the Vancouver Airport Authority’s alleged control over the supply of the airport’s galley handling services.
- The efficiencies defence to otherwise anti-competitive mergers continued to dominate attention in the field of merger review, as the Bureau accepted the efficiencies defence to clear two proposed acquisitions of Alberta’s Canexus Corporation. In its review of Superior Plus’s proposed acquisition of Canexus, the Bureau determined in 2016 that the transaction would likely result in a substantial lessening of competition in the supply of sodium chlorate and chlor-alkali chemicals in certain Canadian markets. The Bureau did not challenge the deal, however, as it found that the transaction would result in efficiency gains that would clearly outweigh its predicted anti-competitive effects. Ultimately, the United States Federal Trade Commission (“FTC”) challenged the transaction and, with no equivalent efficiencies defence to rely on, Superior abandoned the merger. A second buyer, Toronto-based Chemtrade, then bid to acquire Canexus. Again, in 2017, the Bureau identified likely anti-competitive effects in the Western Canadian market for sodium chlorate, but accepted that the projected efficiencies would outweigh these effects and did not challenge the deal. In light of Chemtrade’s minor role in the U.S., the FTC did

not challenge the Chemtrade acquisition and the transaction was able to close on March 10, 2017.<sup>1</sup>

- The Bureau continued its active enforcement of the Act's deceptive marketing practices and misleading advertising provisions, particularly with respect to false pricing and discount claims. The Bureau concluded a number of pricing-related investigations into companies in various industries, including: Hudson's Bay (mattress pricing), Amazon (seller list prices), and Budget and Avis (rental car pricing and discounts).
- The Bureau also addressed deceptive marketing practices involving "Made in Canada" claims, filing an application under s. 74.1 of the Act against premium winter coat manufacturer, Moose Knuckles. The Bureau alleged that despite marketing its parkas as "Made in Canada", Moose Knuckles' goods were mostly manufactured in Vietnam and other parts of Asia, with only finishing touches added in Canada. Through mediation (only the second use of mediation to help resolve or narrow the issues in Tribunal litigation, following its inaugural use in *The Commissioner of Competition v Parkland Industries Ltd. and Parkland Fuel Corporation* in 2016), the Bureau reached a consent agreement with Moose Knuckles, under which the company agreed to donate \$750,000 over five years to charities in Canada, as well as to clarify its marketing through the use of qualifying statements.
- Provincial courts in Ontario and British Columbia reached different verdicts on the issue of whether cartel members may be liable for "umbrella pricing" in class actions; namely, higher prices charged by non-cartel members that allegedly benefit from the "umbrella" provided by supra-competitive cartel pricing. In April 2017, the Ontario Divisional Court upheld the 2015 decision of the Superior Court of Justice in *Shah v. LG Chem, Ltd.* denying a class including so-called "umbrella purchasers". In May 2016, in *Godfrey v. Sony Corporation*, the British Columbia Supreme Court reached a different conclusion, holding that umbrella purchasers had a reasonable cause of action and certifying them as part of a class.
- On the *Investment Canada Act* front, National Security Review guidance was published for the first time in 2016. In addition, there will likely be materially fewer "net benefit" reviews going forward

as the threshold for investments by (or from) non-SEO WTO investors in non-cultural businesses increased from \$600 million to \$800 million in April 2017, which was subsequently increased to \$1 billion in June 2017. When the ICA provisions in the legislation implementing the Canada-EU Comprehensive Economic and Trade Agreement take effect, that threshold will rise to \$1.5 billion for EU investors and investors from certain other countries party to free trade agreements containing most-favoured nations clauses, including the United States.

### **Competition Bureau**

The Bureau, led by the Commissioner, John Pecman, is responsible for the enforcement and administration of the Act. The Bureau's role includes advocating competition in the marketplace by providing submissions and studies before organisations such as the Organisation for Economic Co-operation and Development ("OECD"). The Bureau has continued to make submissions to the OECD Competition Committee Roundtable on various competition related issues, such as public interest considerations in merger control,<sup>2</sup> sanctions in antitrust cases,<sup>3</sup> agency decision-making in merger cases<sup>4</sup> and on the independence of competition authorities.<sup>5</sup> During 2016-17, the Commissioner and the Bureau continued to strengthen ties with other domestic competition law enforcement authorities, signing cooperation arrangements China<sup>6</sup>, New Zealand<sup>7</sup>, Mexico<sup>8</sup> and Hong Kong<sup>9</sup>. The Bureau also issued a template for merger consent agreements in September 2016 following publication in of *Merger Remedies Guide 2016* by the International Competition Network's working group, co-chaired by Canada.<sup>10</sup>

### **Legislative Amendments**

On September 28, 2016, the federal Minister of Innovation, Science and Economic Development introduced Bill C-25, *An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act, and the Competition Act*. As of the date of writing, it had passed the second reading on December 9, 2016 and had been referred to a special committee. Bill C-25 looks to broaden the antiquated affiliation rules under the Act. Upon receiving royal assent, the Bill will: (a) broaden the definition of "entity" in the Act to include a corporation or a partnership, sole proprietorship, trust or other unincorporated organization capable of conducting business; and (b) expand the meaning of "control" for non-corporate entities. The Bill,

when passed, will close several loopholes previously allowing otherwise notifiable mergers to go unnotified, solely as a result of the type of legal entity involved in the transaction.

## **Mergers**

### **Merger review threshold increased**

Pursuant to an annual indexing formula, the threshold for the “size of the target” 2017 has now increased to \$88 million<sup>11</sup> based on either the book value of assets or the gross revenues from sales in or from Canada. The “size of the parties” thresholds remains unchanged at \$400 million based on either book value or assets on gross revenues in, from or into Canada of all parties to the transaction since the merger provisions went into force in 1989.

### **Bureau releases consent agreement template for mergers**

On September 29, 2016, the Bureau issued a template for merger consent agreements, in an effort to provide the Canadian legal and business community with improved insight into the Bureau’s expectations with regards to negotiating measures to resolve likely competitive issues arising from a proposed merger.<sup>12</sup> The Bureau indicates that it will update the template over time, based on its experience with future negotiations of consent agreements. The Bureau also reiterated its preference for reaching consent agreements, rather than challenging proposed transactions before the Tribunal.

### **If at first you don’t succeed ...**

Superior Plus Corp (“Superior”) announced its proposed acquisition of Canexus Corporation (“Canexus”) in October 2015. Superior and Canexus are both Canadian chemical producers primarily supplying the pulp and paper industry. The Bureau’s review concluded that the proposed transaction would likely result in a substantial lessening of competition in the supply of sodium chlorate in the Eastern and Western Canadian markets.<sup>13</sup> Sodium chlorate is an upstream chemical required as a bleaching agent used by pulp and paper manufacturers. In Western Canada, the Bureau also found that the acquisition would result in a substantial lessening of competition in the supply of chlor-alkali chemicals used in various industries. The parties were the sole producers of the chlor-alkali chemicals in Western Canada. Despite this finding, the Bureau ultimately issued a No Action Letter (“NAL”) on June 28, 2016,

as a result of its finding that the merger would result in efficiency gains “clearly greater” than the likely significant anti-competitive effects of the transaction. The day prior to this finding, however, the U.S. had filed an administrative complaint challenging the transaction on the basis that the deal would significantly reduce competition in the North American market for sodium chlorate. Although the FTC and the Bureau worked closely in reviewing the transaction, the United States lacks an equivalent to Canada’s efficiencies defence as set out under section 96 of the Act. Following the FTC’s challenge to the transaction, Superior abandoned the deal.

Following Superior’s failed quest to acquire Canexus, Toronto-based Chemtrade Logistics Income Fund (“Chemtrade”), and after first launching its own hostile bid, reached an agreement with Canexus to acquire the company.<sup>14</sup> Chemtrade is a supplier and producer of multiple industrial chemicals, including sodium chlorate. The Bureau’s review determined that the transaction would likely result in anti-competitive effects in the Western Canadian market for sodium chlorate. However, as with the proposed transaction with Superior, the Bureau’s investigation determined that the expected efficiencies from the transaction, including savings in transport costs, would significantly outweigh the likely anti-competitive effects. As a result, the Bureau issued a NAL on March 8, 2017. Unlike the proposed Superior deal, the FTC did not challenge the Chemtrade transaction, opting not to issue a Second Request.<sup>15</sup>

### **ChemChina’s proposed acquisition of Syngenta**

In February 2016, China National Chemical Corp (“ChemChina”) announced it had reached an agreement to acquire Swiss pesticide giant, Syngenta AG. ChemChina operates in Canada through its affiliate, ADAMA Agricultural Solutions Ltd. (“ADAMA”) and ADAMA’s Canadian subsidiary.<sup>16</sup> Both ADAMA and Syngenta supply pesticides to farmers, golf courses and municipalities for a variety of crops in Canada. ADAMA is a fairly recent entrant into the Canadian market. The Bureau considered a variety of different market definitions and concluded that the merger was not likely to result in a substantial prevention or lessening of competition under any of those definitions. The Bureau determined that due to the federal regulatory regime for pesticides, the geographic market was likely Canada. It considered whether products were substitutes based on product labels for pest and crop combinations, but also considered factors such as efficacy for a given pest/crop combination,

timing for application spectrum of coverage, product training offered by the manufacturer, resistance considerations, loyalty programs and price.

The Bureau's investigation involved a range of overlapping products produced by the parties. It concluded that the proposed transaction was not likely to lead to a substantial lessening or prevention of competition, due to various reasons specific to each product, such as a lack of substitutability between the parties' products, effective remaining competitors or likely entry of generic competition. As a result, on February 14, 2017, the Bureau cleared the transaction without remedies. On April 5, 2017, both the U.S. and E.U. antitrust authorities announced that the proposed transaction had received approval in their jurisdictions as well, but, on the condition of several divestitures.

### **Bell's acquisition of Manitoba Telecom Services**

In May 2016, BCE Inc. ("Bell") announced its intention to acquire Manitoba Telecom Services ("MTS"). Both Bell and MTS were active in the provision of wireless telecommunications services in Manitoba. The Bureau's investigation of the proposed transaction concluded that it would remove a strong regional competitor that was effective in constraining the pricing of Bell, Rogers and TELUS products.<sup>17</sup> On February 15, 2017, the Bureau announced that it had reached a consent agreement with Bell, under which Bell committed to divest retail wireless stores, subscribers and spectrum to two different purchasers. Under the agreement, Bell must sell six retail stores, 24,700 subscribers and 40 MHz of spectrum to Xplornet Communications Inc. ("Xplornet"), an established provider of rural broadband internet throughout Canada. This divestiture would establish Xplornet as a new entrant in the Manitoba wireless services market. Bell also agreed to provide certain transitional services to Xplornet, including expedited access to Bell's towers in Manitoba, temporary access to a mobile wireless network and support for wireless handset procurement. Bell also agreed to sell a significant number of its MTS subscribers to TELUS, as well as approximately one third of its MTS dealer locations. The Bureau found the divestitures in the consent agreement adequately addressed the Commissioner's competition concerns with the transaction.

### **Crop Production Services' acquisition of Andrukow**

On September 1, 2016, the Bureau announced that it reached a consent agreement with Crop Production Services ("CPS") regarding its proposed

acquisition of substantially all of Andrukow Group Solutions Inc.'s assets and the assets of related vendors (collectively, "Andrukow").<sup>18</sup> CPS is a subsidiary of Agrium Inc., a global supplier of agricultural products and services based in Canada. Both CPS and Andrukow operate retail stores in Alberta and Saskatchewan selling agricultural products such as fertilizers, seeds and crop protection products to farmers. Andrukow operated seventeen retail outlets in Alberta and one in Saskatchewan. The Bureau's review focused on the local retail supply of nitrogen fertilizers, namely urea, urea-ammonium nitrate and anhydrous ammonia. The Bureau determined that the proposed transaction would lead to a substantial lessening or prevention of competition in several markets in Alberta and Saskatchewan. To address the Bureau's concern, CPS, agreed to divest four retail outlets in Alberta: two CPS stores and two Andrukow stores. On January 16, 2017, Winnipeg-based grain company Parrish and Heimbecker, Limited announced it had reached an agreement with CPS to acquire the four divested sites.<sup>19</sup>

### **Iron Mountain's acquisition of Recall**

In June 2015, Iron Mountain Incorporated ("Iron Mountain") proposed to acquire Recall Holdings Limited ("Recall"). The parties were both global suppliers of records management services, and also offer shredding and data management services. In its review, the Bureau found that the parties were the two largest suppliers of records management services in Canada, and were close competitors for both local and multi-city customers. To remedy these concerns, Iron Mountain entered into a consent agreement with the Bureau on March 31, 2016.<sup>20</sup> Under the consent agreement, Iron Mountain agreed to divest records management assets, including certain facilities and customer contracts, in all six identified local markets where the parties overlapped.<sup>21</sup> On December 29, 2016, Summit Park LLC agreed to acquire eight records management facilities from Iron Mountain in the six Canadian cities of overlap, as well as three of Iron Mountain's U.S. facilities. On January 11, 2017, the Bureau announced that it had reviewed the proposed divestiture and determined that the sale of the assets to Summit Park would preserve competition in the relevant records management services markets.

### **Abbott Laboratories proposed acquisition of St. Jude Medical**

On April 28, 2016, Abbott Laboratories ("Abbott") announced its intention to acquire St. Jude Medical, Inc. ("St. Jude"). Both companies

sell medical devices for the treatment of cardiovascular conditions. The Bureau found that the medical devices offered by the parties were largely complementary, with the significant exception of vessel closure devices (“VCDs”), which are used to seal surgical access holes following cardiovascular procedures. Due to federal regulatory requirements for medical devices, the relevant geographic market was Canada. The parties are the two largest suppliers of VCDs in Canada and accounted for the vast majority of the market sales. In addition, there were significant barriers to entry given the specialized technological nature of VCDs, and evidence showing that physicians exhibited strong preferences for certain models and a reluctance to switch to new products. The Bureau determined that the merger would substantially lessen competition in the supply of VCDs in Canada. To resolve the Bureau’s concerns, Abbott entered into a consent agreement with the Bureau on December 28, 2016.<sup>22</sup> The agreement required Abbott to divest St. Jude’s VCD business, including manufacturing assets, intellectual property and customer contracts. The Commissioner had also pre-approved Terumo Corporation as an acceptable purchaser of the divested business as had competition regulators in several jurisdictions including the U.S. The Bureau and the U.S. FTC appointed the same monitor to ensure the transfer of the VCD business is effected, including all related intellectual property.

### **McKesson acquisition of Katz Group, including Rexall**

In March 2016, McKesson Corporation (“McKesson”) announced its proposed acquisition of the healthcare businesses of the Katz Group, which included the pharmacy retail chain, Rexall Pharmacy Group Ltd (“Rexall”). McKesson is the largest wholesaler of pharmaceutical products in Canada and is the primary supplier of pharmaceutical products to many of Canada’s largest pharmacy retail chains, including Rexall. McKesson does not own any of its own retail pharmacies, but does provide banner services to independent pharmacists operating under one of McKesson’s own banners, including IDA, Guardian, Remedy’s Rx and Medicine Shoppe. The Katz Group also owns ClaimSecure, a health care claims business that is connected to 99% of licensed pharmacies in Canada and processes health and dental benefit transactions for plans representing approximately 1.2 million Canadians.

In its review, the Bureau considered both potential unilateral effects and coordinated effects. In terms of unilateral effects, the Bureau

identified 26 local markets where the proposed transaction would likely result in a substantial lessening or prevention of competition. In reaching this conclusion, the Bureau assessed the potential vertical effects of an upstream distributor acquiring a downstream retailer, as well as McKesson's potential influence on independent pharmacies operating under its retail banners. In terms of coordinated effects, the Bureau noted that both in the process of serving its wholesale customers, as well as via Katz Group's SecureClaim service, McKesson would have access to detailed data on Rexall's direct competitors, including retail pricing, individual prescription drug purchases and wholesale prices and quantiles of pharmaceutical products. The Bureau concluded that the combined access to this competitive intelligence would likely enable the merged entity to alter the competitive dynamics of Rexall's retail markets and would significantly increase the likelihood of coordination among retail pharmacies.

In order to remedy these concerns, the parties entered into a consent agreement with the Commissioner on December 16, 2016.<sup>23</sup> To resolve the potential unilateral effects in the 26 markets, McKesson agreed to divest Rexall retail locations in each of the markets. To address the potential coordinated effects, the consent agreement restricts the transmission of commercially sensitive information between McKesson's wholesale business, the Rexall business and the ClaimSecure business.

### **Couche-Tard's acquisition of Imperial Oil retail gas stations**

In an agreement dated March 8, 2016, Couche-Tard (operating as Mac's in Ontario) proposed to acquire 51 retail gasoline stations in the Greater Montreal Area and 242 retail gasoline sites in Ontario from Imperial Oil. The Bureau's review of the transaction focused on local geographic markets where both Couche-Tard and Imperial Oil operate gas stations. As Couche-Tard (unlike Imperial Oil) does not distribute wholesale gasoline to retailers and because the proposed transaction did not involve gasoline distribution contracts, the Bureau's review was limited to the retail sale of gasoline. Ultimately, the Bureau's analysis concluded that the proposed transaction would result in a substantial lessening of competition in two local markets: Carleton Place, Ontario and Saint-Bruno/Saint-Basile, Quebec. The Bureau, in particular, cited the high barriers to entry in the relevant markets, including the high fixed costs and environmental and regulatory approvals. To resolve this

issue, the Bureau entered into a consent agreement with Couche-Tard on September 7, 2016, under which Couche-Tard agreed to divest one gasoline station in each of the two local markets.<sup>24</sup>

### **ModSpace's amalgamation with Williams Scotsman International, Inc.**

On March 16, 2016, Modular Space Corporation ("ModSpace") announced its proposed amalgamation with Williams Scotsman International Inc. ("Williams Scotsman"). The parties are the two largest lenders of modular units, such as office trailers and lavatories, in Canada. Their customers typically include commercial and industrial companies, with the units and related services generally rented on a project-specific basis. On June 23, 2016, the Bureau issued a no-action letter, concluding that the transaction would be unlikely to result in a substantial lessening or prevention of competition.<sup>25</sup> The Bureau's review focused on six local regions where the parties overlapped and had a significant presence. In most of these markets, the Bureau determined there were effective remaining competitors, and for the markets with more limited remaining competition, expansion by key competitors was possible, and had occurred in other geographic markets.

### **Harnois Groupe pétrolier's proposed acquisition of Distribution pétrolières Therrien Inc.**

Under an agreement of November 9, 2015, Le Groupe Harnois Inc. ("Harnois") proposed to acquire substantially all of Distributions pétrolières Therrien Inc.'s ("DPT") assets, which were comprised largely of its gasoline supply agreements with Esso-branded dealers in Quebec.<sup>26</sup> Before the transaction, Harnois owned 58 of its own stations and supplied gasoline to an additional 253 Harnois, Petro-T and Esso-branded retail gasoline stations in Quebec, New Brunswick, Labrador and Ontario. Under the parties' gasoline distribution contracts, DPT and Harnois have the ability to change their wholesale prices. As a result, the Bureau's review primarily considered whether the proposed transaction would be likely to substantially lessen competition in the local markets where a DPT distribution contract overlaps with one or more of Harnois' corporate stations, or a dealer station already supplied by Harnois. The Bureau applied the framework it established in Parkland's acquisition of Pioneer earlier in the year, by which it conducted a detailed analysis of local markets across Quebec in order to determine which stations made up the given local market and each station's effectiveness as a competitor.

The Bureau ultimately concluded that the proposed transaction would likely result in a substantial lessening of competition in two local areas: Coaticook and Lac-Mégantic, Quebec. In both markets, only one additional competitor would have remained post-transaction. On June 23, 2016, the Bureau reached a consent agreement with Harnois. Under the agreement, Harnois is required to divest either its corporate station or a dealer supply agreement in Lac-Mégantic, and is prevented from increasing any margin on its sales to dealers in Coaticook.

### **Bureau opts not to oppose global beer mergers**

In November 2015, Anheuser-Busch InBev SA/NV (“Anheuser-Busch”), which owns Labatt, announced its planned acquisition of the global interests of SABMiller plc, and its intention to sell the rights to certain Miller brands to Molson Coors Brewing Company (“Molson Coors”).<sup>27,28</sup> Labatt and Molson Coors are the two largest brewers in Canada. Labatt manages brands including Budweiser, Labatt Blue, Stella Artois, Corona and Alexander Keith’s, while Molson Coors’ brands include Coors Light, Molson Canadian, and the Rickard’s brands. By acquiring SABMiller, Anheuser-Busch would add Foster’s Lager and Castle Lager to its Canadian portfolio, while its proposed divestiture would transfer the Miller Genuine Draft and Miller Lite brands to Molson Coors.

On May 31, 2016, the Bureau announced it would not oppose Anheuser-Busch’s two proposed transactions and issued a no-action letter to the parties.<sup>29</sup> The Bureau determined that the proposed acquisition of SABMiller coupled with the immediate divestiture of certain Miller brands to Molson Coors was not likely to substantially lessen or prevent competition in any relevant market in Canada.

### **Bureau accepts proposed sale of St-Hubert to Cara Operations Limited**

On March 31, 2016, Cara Operations Limited (“Cara”) agreed to acquire 2312-2484 Quebec Inc., which operates St. Hubert restaurants and several food manufacturing and distribution centres in Quebec. Cara is a Vaughan-based company that owns the Swiss Chalet brand, as well as several other Canadian restaurant brands such as Harvey’s, Montana’s, Milestones, East Side Mario’s, Kelsey’s, New York Fries and Bier Markt. In its review of the proposed transaction, the Bureau identified numerous other restaurants that target similar customers in each of

the local markets where there is geographic overlap between the parties' restaurant sites. As such, on May 18, 2016<sup>30</sup> it issued a no-action letter confirming it will not challenge the proposed transaction.

### **Bureau allows proposed sale of RONA to Lowe's**

On February 3, 2016, Lowe's announced its proposed acquisition of RONA. Both parties are retailers of home improvement products. RONA is a Quebec-based company with 496 stores across Canada, with the largest number of those located in its home province. RONA also operated a wholesale distribution business supplying both its own retail network and other third party wholesale customers. Lowe's, a U.S.-based company, entered the Canadian market in 2007. The Bureau determined that the parties, both retail home improvement chains, competed across many product categories. The Bureau concluded that there were effective remaining competitors in each local market where Lowe's and RONA were direct competitors, including Home Depot, Home Hardware and Canadian Tire. The Bureau also considered the contemplated expansion of future competition due to Lowe's potential further entry into the Canadian market, but found any prevention did not meet the timely, likely and sufficient threshold set out in its Merger Enforcement Guidelines. Further, effective competition from other market participants would remain in all local markets in which Lowe's could have likely entered in the future. As a result of its finding that a sufficient number of effective competitors remained in each local market, the Bureau issued a no-action letter on May 12, 2016.<sup>31</sup>

### **Staples abandons its proposed acquisition of Office Depot**

In early 2015, Staples announced its intention to acquire the global business of Office Depot, which operates in Canada under the name Grand & Toy. The Bureau, in its review, had concluded that if the acquisition had proceeded, Staples would have accounted for over 80% of sales to businesses of various office products in Canada.<sup>32</sup> On December 7, 2016, the Commissioner and the U.S. FTC simultaneously filed court challenges in their respective countries, on the grounds that the merger would harm competition in the supply of office products. After the United States court's issuance of an injunction preventing the merger on May 10, 2016, the parties announced their intention to abandon the transaction, eliminating any need for the Tribunal to consider the Canadian application.

## Shaw Communications' acquisition of WIND Mobile

In December 2015, Shaw Communications Inc. (“Shaw”) announced its proposed acquisition of wireless carrier WIND Mobile Corp. (“WIND Mobile”), a wholly-owned subsidiary of Mid-Bowline Group Corp. On February 4, 2016, the Bureau announced that it had decided not to challenge the proposed acquisition and issued a no-action letter.<sup>33</sup> The Bureau determined that the proposed acquisition of WIND Mobile was unlikely to result in a substantial lessening or prevention of competition because, among other reasons, the two companies do not currently compete against each other, as Shaw does not own wireless assets. As a result, the Bureau also concluded that the proposed transaction does not increase concentration in the Canadian mobile wireless industry. Essentially, Shaw will replace WIND Mobile as a competitor to the three national mobile wireless service providers – Bell, Rogers and TELUS – in urban areas of southern and eastern Ontario, Alberta and British Columbia. On March 1, 2016, Shaw announced it had closed the acquisition of WIND Mobile.<sup>34</sup>

## Investment Canada Act

### Threshold Increases

The threshold for Ministerial review of direct investments by WTO state-owned enterprises (“SOE”s) under the “net benefit to Canada” test increased from \$375 million to \$379 million for 2017, as published in the Canada Gazette on February 11, 2017.<sup>35</sup> The threshold for direct investments by WTO investors or where the vendor has WTO status, for non-SOEs and non-cultural businesses increased from \$600 to \$800 million on April 24, 2017, which was subsequently increased to \$1 billion on June 22, 2017– two years earlier than scheduled.<sup>36</sup>

Following Canada’s ratification of the Comprehensive Economic and Trade Agreement (“CETA”), the House of Commons introduced Bill C-30, *An Act to implement the Comprehensive Economic and Trade Agreement between Canada and the European Union and its Member States and to provide for certain other measures*. Bill C-30 received Royal Assent on May 16, 2017, however the provisions related to the ICA will come into force on a day to be specified by an Order-in-Council.

Under CETA, the new enterprise value threshold for acquisitions of Canadian businesses by or from European Union investors will increase

to C\$1.5 billion. Bill C-30 extends this new threshold to investors from other countries under trade agreements, to meet Canada's obligations under these agreements' most-favoured nation clauses, such as NAFTA's article 1103.<sup>37</sup> Notably, this threshold only applies to WTO Investors or Vendors, not cultural businesses or investments by SOEs. The \$1.5 billion threshold will also be indexed annually to the GDP growth index.

### **Guidelines on the National Security Review of Investments**

On December 19, 2016, the Minister of Innovation, Science and Economic Development issued Guidelines on the National Security Review of Investments.<sup>38</sup> As the term "national security" remains undefined in the ICA, these guidelines offer the government's first guidance for assessing the likelihood of a review. The guidelines provide a non-exhaustive list of factors that the government will take into account when assessing whether an investment would be "injurious to national security". These nine factors – reminiscent of similar guidance published in the United States in relation to reviews of foreign investments in that country by the Committee on Foreign Investment in the United States ("CFIUS") – are as follows:

- the potential effects of the investment on Canada's defence capabilities and interests;
- the potential effects of the investment on the transfer of sensitive technology or know-how outside of Canada;
- involvement in the research, manufacture or sale of goods/technology relating to certain controlled goods noted in the *Defence Production Act*, including firearms, military training equipment, certain types of aircraft, weaponry and defence systems, etc.;
- the potential impact of the investment on the security of Canada's critical infrastructure. Critical infrastructure refers to processes, systems, facilities, technologies, networks, assets and services essential to the health, safety, security or economic well-being of Canadians and the effective functioning of government;
- the potential impact of the investment on the supply of critical goods and services to Canadians, or the supply of goods and services to the Government of Canada;
- the potential of the investment to enable foreign surveillance or espionage;

- the potential of the investment to hinder current or future intelligence or law enforcement operations;
- the potential impact of the investment on Canada's international interests, including foreign relationships; and,
- the potential of the investment to involve or facilitate the activities of illicit actors, such as terrorists, terrorist organizations or organized crime.

### **Conspiracies and Bid-Rigging**

#### **Final accused pleads guilty in Quebec water and sewer services bid-rigging matter**

On February 17, 2017, Aquaréhab Eau Potable ("Aquaréhab"), a Quebec water and sewer system infrastructure company pleaded guilty before the Superior Court of Quebec and was ordered to pay a \$160,000 fine. Aquaréhab pleaded guilty to eight counts of bid-rigging for municipal water service contracts. Aquaréhab admitted that between June 2006 and March 2011, it participated in a bid-rigging conspiracy for pneumatic excavation and cathodic protection contracts.<sup>39</sup> This is the second guilty plea in the municipal sewer and water contracts matter. To date, a total of \$277,000 in fines has been imposed by the courts. This matter has now come to a close as Aquaréhab was the last remaining accused.

#### **First time a bid-rigging investigation resulted in charges under the *Financial Administration Act***

On December 2, 2016, a former Library and Archives Canada manager pleaded guilty to failing to report a wrongdoing relating to the purchase of IT professional services. The manager's conduct related to the Bureau's May 2014 case against Microtime Inc. and six individuals, for which it brought criminal charges for bid-rigging conspiracy relating to federal government contracts for the supply of professional IT services. The manager breached the *Financial Administration Act* ("FAA"), which governs how public funds are managed, collected and spent. The manager received a conditional discharge including 15 months' probation and 100 hours of community service. In total, the Bureau's investigation has led to three individuals pleading guilty, \$43,000 in fines, 36 months in conditional sentences and 250 hours of community service.<sup>40</sup> This marks the first time the Bureau's bid-rigging investigation led to a charge under the FAA.

## Guilty plea in bid-rigging conspiracy in Saint-Jean-sur-Richelieu, Quebec

On October 11, 2016, Construction Benvas Inc. (“Benvas”) pleaded guilty to a bid-rigging conspiracy involving an infrastructure repair project in Saint-Jean-sur-Richelieu and was ordered to pay a \$100,000 fine.<sup>41</sup> As a result of a joint investigation by the *Sûreté du Québec’s Service des enquêtes sur la corruption*, a division of the *Unité permanente anticorruption* (Permanent Anti-corruption unit) and the Bureau, 83 criminal charges were laid against 13 individuals and 11 companies. Benvas’ role involved signing an alleged unlawful agreement with CIV-BEC Inc., whereby Benvas undertook not to submit a bid for an infrastructure repair project on Courville Street in exchange for \$25,000, thus allowing CIV-BEC Inc. to land the contract for the project.

### Class Actions

In 2017 and 2016, the Ontario and the British Columbia courts reached diverging verdicts on whether “umbrella purchasers” may have a cause of action in class actions against alleged cartel members. Umbrella pricing refers to the phenomenon where businesses who are not themselves part of a cartel nevertheless benefit from the cartel’s effects on prices in the market, creating an “umbrella” of supra-competitive prices, that is, prices that are artificially increased in selling goods in a market affected by the cartel.

In October 2015, the Ontario Superior Court of Justice, in *Shah v. LG Chem, Ltd.* held that the umbrella purchasers had not disclosed a reasonable cause of action and should be excluded from class membership.<sup>42</sup> In *Shah*, the plaintiffs, Khurram Shah and Alpine Holdings Inc., brought a class action under section 36 of the Act on behalf of direct and indirect purchasers of rechargeable lithium ion battery cells (“LIBs”). There were 26 named defendants including designers and manufacturers of the cells, such as LG Chem, Panasonic, Sanyo Electric, Sony, and Samsung SDI. According to the plaintiffs, the defendants’ conspiracy to raise prices of LIBs for 11 years was also successful in raising the prices of manufacturers who were not co-conspirators. The plaintiffs argued that purchasers from non-cartel manufacturers should be included in the proposed class membership as “umbrella purchasers”.

Justice Perell decided that umbrella purchasers should be excluded from class membership on the grounds that umbrella pricing claims are

inconsistent with the principles of restitutionary law. In his reasoning, Justice Perell held that the purchases of umbrella purchasers did not provide any benefits to the defendants and that extending the scope of the class membership would create indeterminate liability for the defendants.

On April 26, 2017, the Ontario Divisional Court heard the plaintiff's appeal of Justice Perell's order, and upheld the lower court's exclusion of umbrella purchasers from the certified class.<sup>43</sup> The Divisional Court disagreed with Justice Perell's reasoning that umbrella pricing claims are inconsistent with restitutionary law, but ultimately agreed that umbrella purchasers would expose the respondents to indeterminate liability. As a result, the Court dismissed the appeal in part and the umbrella purchaser appellants were denied class membership.

Contrary to Ontario, however, in May 2016, the British Columbia Supreme Court heard a similar class action case and found that umbrella purchasers did have a cause of action under the Act. In *Godfrey v. Sony Corporation*, the plaintiffs alleged that the defendants were participants in a global price-fixing cartel for optical disc drives ("ODD").<sup>44</sup> Notably, the Court considered umbrella pricing claims, with the proposed class including purchasers of ODD and ODD-containing products from non-cartel members. In this case, the Court certified the class action to include the umbrella purchaser class of non-member ODD products and ODD-containing products, accepting that the impact of a price-fixing cartel may extend beyond the cartel members' products. Justice Masuhara rejected Justice Perell's reasoning in *Shah*, holding that while umbrella purchaser claims *would* be inconsistent with restitutionary law, the scope of claims under the Act is not determined by restitutionary law. Justice Masuhara was also of the view that although umbrella purchasing claims could expose defendants to liability for the pricing decisions of non-defendants, those pricing decisions are not truly independent – they are made in the context of a market price distorted by the cartel. Justice Masuhara also found allowing such claims to be consistent with the spirit of the Act's goals of compensation, deterrence and behaviour modification.

As seen in the judgments in *Shah* and *Godfrey*, the courts in Ontario and British Columbia are split on whether umbrella purchasers have a cause of action under the Act. Given this inconsistency, these cases may head to the Supreme Court of Canada.

## **Japanese company pleaded guilty in international bid-rigging conspiracy**

From January 2000 to September 2012, Nishikawa Rubber Co., Ltd. (“Nishikawa”), a Japanese manufacturer of auto-body sealants, engaged in illegal arrangements with its supplier of body sealing products (“BSP”). Accordingly, Nishikawa’s conduct affected approximately US\$236 million worth of sales of BSPs in Canada. The BSPs were sold to car makers in both the United States and Canada. In July 2016, Nishikawa was charged in the United States for its participation in an international bid-rigging conspiracy in the United States and Canada. Nishikawa pleaded guilty and was ordered to pay a fine of US\$130 million. According to the Bureau, this unprecedented one-stop-shop resolution had been possible due to its cooperation with the United States Department of Justice, Antitrust Division.<sup>45</sup> In Canada, the Bureau’s investigation of the alleged conspiracies and bid-rigging agreements among suppliers of the motor vehicle components led to nine guilty pleas and over \$70 million in fines.

## **Guilty plea in residential construction bid-rigging scheme in Montreal**

On March 14, 2016, Les Entreprises de Ventilation Climasol Inc. (“Climasol”), and its President pleaded guilty in the Superior Court of Quebec. Following its investigation based on a tip from a former employee, on December 21, 2010, the Bureau laid criminal charges against eight companies and five individuals accused of bid-rigging for a ventilation contract in the Faubourg St-Laurent Phase II project.<sup>46</sup> Climasol was fined \$130,000 and its President an additional \$10,000 for their participation in the bid-rigging scheme. The President had coordinated his bids with other competitors to predetermine the winner of the ventilation contract. Similarly, one other company, Les Entreprises Promécanic Ltée, pleaded guilty to three charges for participating in this scheme and was fined \$425,000.

## **Guilty plea in Montreal bid-rigging scheme for municipal contracts**

On February 8, 2016, Chalifoux Sani Laurentides Inc., a Montreal-based company, pleaded guilty in the Superior Court of Quebec for its participation in a sewer services bid-rigging scheme, and was fined \$118,000.<sup>47</sup> The charges against its owner were stayed. The Bureau had discovered the bid-rigging scheme via its Immunity Program and had

laid charges against six companies and five individuals on November 22, 2011.<sup>48</sup> The Bureau's investigation revealed that bids were rigged for 37 calls for tender for sewer services valued at over \$3 million in 2008 and 2009. As of February 2016, five companies and one individual had pleaded guilty for participating in the bid-rigging scheme. The companies were fined a total of \$268,000 and one of the individuals was ordered to complete 100 hours of community service.

## **Deceptive Marketing Practices and Misleading Advertising**

### **Competition Bureau sues HBC over alleged deceptive regular price claims and clearance sales**

On February 22, 2017, the Bureau brought an action against Hudson's Bay Company ("HBC") for deceptive regular price claims and deceptive clearance promotions on mattresses and foundations sold together as sleep sets. According to the Bureau's investigation, HBC engaged in deceptive marketing practices by grossly inflating the regular prices of sleep sets and advertising discounts that lead customers to believe that the prices were significant deals.<sup>49</sup> The Bureau also alleged that HBC misled its customers by marking its on-hand inventory as "clearance" and "end of line", when in fact HBC was ordering new sleep sets from its factory to fulfill each purchase. The Bureau filed an application with the Tribunal to end this deceptive marketing practice and to order an administrative monetary penalty ("AMP").

### **Montreal-based company fined for deceptive marketing**

On February 7, 2017, Mega Byte Information ("Mega Byte") pleaded guilty to a deceptive telemarketing scheme that sold subscriptions to online directories using misleading sales techniques which targeted thousands of business in Canada, the United States and Europe. Mega Byte is one of the four Montreal-based companies that were charged with making misleading representations and engaging in deceptive telemarketing in September 2011. In light of the guilty plea, Mega Byte is required to pay a \$450,000 fine and the president of the company is prohibited from engaging in telemarketing for 10 years.<sup>50</sup> This plea follows three other individuals who entered guilty pleas in connection with the deceptive marketing scheme in 2015.

### **Consent agreement with Amazon.com.ca Inc.**

On January 11, 2017, the Bureau registered a consent agreement with Amazon.com.ca Inc. (“Amazon”). The Bureau’s investigation found that Amazon’s comparison of its prices to a regular price or “list price” created the impression that prices for items offered on its Canadian website were lower than prevailing market prices. The Bureau determined that Amazon accepted its list prices provided by its suppliers without verifying the accuracy of those prices. During the investigation, Amazon voluntarily implemented specific policies and procedures to ensure true comparisons between regular and sale prices and compliance with the Act. Under the agreement, Amazon agreed to pay a \$1 million AMP and \$100,000 towards the Bureau’s costs.<sup>51</sup>

### **Canadian class action settlement reached for misleading consumers**

In December 2016, the Bureau participated in a class action settlement that Volkswagen reached with consumers of its 2.0 litre diesel vehicles. If the settlement is approved by the courts, it will provide buyback and restitution payments for consumers totaling \$2.1 billion, ultimately making this one of the largest consumer settlements in Canadian history.<sup>52</sup> As of April 2017, the settlement was still being considered in hearings at the Superior Court of Justice in Toronto. The settlement also resulted in the Bureau and Volkswagen Group Canada Inc. and Audi Canada Inc. reaching a consent agreement which provides for an AMP of \$15 million. The consent agreement was registered with the Tribunal to rectify the false and misleading environmental marketing claims that were used to promote vehicles with 2.0 litre diesel engines.

### **Jewellery inspection leads to correction of false gold claims**

In December 2016, the Bureau, in a jewellery inspection blitz, identified a distributor who sold gold-covered plastic earrings as solid gold. The distributor has since corrected the markings of approximately 5,000 pairs of earrings that were marked as 10 and 14 karat gold when they were actually plastic covered with a layer of gold.<sup>53</sup> This action is part of the Bureau’s initiative to monitor the marketplace and ensure compliance with the *Precious Metals Marking Act* and its *Regulations*.

## **Bureau takes action against premium clothing brand, Moose Knuckles**

In April 2016, the Bureau took action against Moose International Inc. (“Moose Knuckles”), a manufacturer of premium winter jackets, for its deceptive marketing practices. The Bureau filed an application with the Tribunal pursuant to s. 74.1 of the Act, claiming that the parkas were marketed as ‘Made in Canada’ when they were mostly manufactured in Vietnam and elsewhere in Asia. The Bureau alleged that only the finishing touches to the jackets, such as the trim, zippers and snaps, were done in Canada. In 2009, to clarify its approach to enforcing the false or misleading representation provisions of the Act, the Bureau issued ‘Made in Canada’ and ‘Product of Canada’ enforcement guidelines, which set out the three conditions necessary to make these claims: (a) the last substantial transformation of the good occurred in Canada; and (b) at least 51% of the total direct costs of producing or manufacturing the good have been incurred in Canada; and (c) the ‘Made in Canada’ representation is accompanied by a qualifying statement, such as ‘Made in Canada with imported parts’ or ‘Made in Canada with domestic and imported parts’, if applicable.<sup>54</sup>

In December 2016, the Bureau reached a consent agreement with Moose Knuckles to resolve the legal proceedings. As part of the agreement, Moose Knuckles will donate \$750,000 over five years to charities in Canada that provide winter jackets to children in need. Moose Knuckles will also accompany its “Made in Canada” representations with qualifiers to clarify that the parkas contain certain Canadian and imported components. Of note, this marks the second time an agreement has been reached through a mediation process in a Tribunal proceeding.

### **Individual sentenced in deceptive marketing case**

In October 2016, the Bureau sentenced Jacqueline Kolthoff to 16 months’ imprisonment to be served in the community and two years’ probation for her role in defrauding Canadian and American businesses. She is prohibited from telemarketing for 10 years. Kolthoff, who was initially charged in December 2012, followed by an investigation by the Bureau and the Centre of Operations Linked to Telemarketing Fraud, pleaded guilty to nine counts of deceptive telemarketing under the Act. Kolthoff was one of five individuals charged in the investigation. The investigation revealed that some of the tactics used during telemarketing

calls falsely implied that the caller represented a business that had an existing relationship with the victim's company.<sup>55</sup>

### **Internet and home phone company to pay \$300,000 to settle advertising case**

In September 2016, Comwave Networks Inc. in Toronto ("Comwave"), agreed to pay an AMP of \$300,000 for making false and misleading representations regarding the level of service for internet and home phone connections. The Bureau and Comwave entered a consent agreement whereby Comwave additionally agreed to pay \$60,000 towards the costs of the Bureau's investigation and to establish a corporate compliance program to avoid this problem in the future.<sup>56</sup>

### **Avis and Budget reach an agreement with the Bureau to ensure prices advertised are accurate**

On June 2, 2016, the Bureau reached a consent agreement with Aviscar Inc. ("Avis") and Budgetcar Inc. /Budgetauto Inc. ("Budget") pursuant to which each company will pay a \$3 million AMP for false or misleading advertising prices and discounts on rental cars and associated products. In addition, Avis and Budget were each required to pay \$250,000 towards the Bureau's investigation costs and implement corporate compliance programs. The Bureau determined that certain prices and discounts were not attainable because consumers were charged additional mandatory fees that were not disclosed at the time of making the reservation. The Bureau's investigation concluded that the companies' representations were misleading and that the mandatory fees could increase the cost of a car rental by 5% to 20% above the advertised price.

### **Bell customers receive up to \$11.82 million as part of an agreement with the Bureau**

In May 2016, the Bureau reached a consent agreement with Bell regarding its investigation of Bell's unwanted "premium text messaging" charges on customers' wireless phone bills. The Bureau investigated whether Rogers, Bell, Telus and the Canadian Wireless Telecommunications Association were making or permitting false or misleading representations to be made to customers in third party advertisements relating to premium text messaging services and placing charges for these services without prior authorization from their customers. Under the terms of the agreement, Bell has agreed to: (i) issue up to \$11.82 million in rebates

to current and former customers; (ii) donate an estimated \$800,000 to public interest advocacy groups supporting digital media research and awareness; (iii) publish a notice to affected customers; (iv) enhance its corporate compliance program; and (v) develop a consumer awareness campaign to educate customers about how charges can be incurred on wireless devices to avoid unwanted charges.

## **Unilateral Conduct, Civil Competitor Collaborations, Abuse of Dominance and Private Access**

### **Civil Competitor Collaborations**

Following an 18 month long investigation, on February 7, 2014, the Bureau reached a consent agreement with four major e-book publishers, Hachette Book Group, HarperCollins, Macmillan and Simon & Schuster, which would lower the prices of e-books in Canada. The Bureau relied on similar settlements in the United States which led to discounts of 20 per cent or more on bestselling books. The Commissioner alleged that the companies' conduct substantially prevented or lessened the competition in the e-books market, contrary to section 90.1 of the Act. To resolve the Commissioner's concern, the agreement would allow retailers, who sold under agency agreements, to offer discounts on the e-books. Soon after it was signed, e-book retailer, Kobo Inc. ("Kobo") challenged the agreement by arguing that the consent agreement should be varied or rescinded. Kobo alleged that the impugned agency agreements with retailers had resulted from individual agreements with retailers, such as Kobo, and not because of agreements between competing publishers.<sup>57</sup> Kobo challenged the agreement by arguing that it was based on terms that could not be the subject of an order of the Tribunal, given that the agreement was deficient in that it "[omitted] any particulars of the alleged agreement or arrangement, [making] it practically impossible for the Tribunal to exercise its supervisory jurisdiction under section 106(2)."<sup>58</sup> In March 2014, the Tribunal granted Kobo's motion for a stay of the consent agreement pending determination of its application by the Tribunal.

Based on these arguments, the Commissioner filed a reference pursuant to subsection 124.2(2) of the Act. The purpose of the reference was to ask the Tribunal to determine the nature and scope of its jurisdiction under section 106(2). On September 8, 2014, the Tribunal released its decision finding that on an application under subsection 106(2), the Tribunal is limited to assessing the following: (i) whether the terms of a consent agreement are not within the scope of the type of order(s) that the Tribunal

is permitted to issue; (ii) whether the consent agreement identifies the substantive elements of the impugned practice, and contains either an admission of such elements or a statement that the respondents do not contest the Commissioner's allegations; and/or (iii) whether the terms of the consent agreement are unenforceable or lead to an unenforceable obligation, for example because they are too vague.<sup>59</sup> Kobo appealed the Tribunal's decision to the Federal Court of Appeal. On June 18, 2015, the Federal Court of Appeal upheld the Tribunal's decision.

On June 10, 2016, the Tribunal rescinded the consent agreement from 2014 and rejected Kobo's request that would prevent the Bureau from resolving its competition concerns with a new consent agreement in the e-books industry. The Bureau announced in January 2017 that Apple and three of the four major publishers investigated, Hachette, Macmillan and Simon & Schuster, had entered into new consent agreements. HarperCollins did not enter an agreement and as a result, the Commissioner filed an application with the Tribunal requesting an order to stop its alleged anti-competitive conduct.<sup>60</sup> HarperCollins filed a motion for summary dismissal, which the Tribunal heard on May 3, 2017; the Tribunal's decision on the motion is outstanding.

## **Abuse of Dominance**

### **Bureau terminates its investigation into alleged anti-competitive conduct by Apple**

The Bureau commenced an inquiry into Apple Inc. and Apple Canada Inc. (collectively referred to as "Apple") in 2014. The investigation was based on allegations that Apple entered into potentially anti-competitive agreements with Canadian wireless carriers. The Bureau was concerned with specific clauses in the agreements, such as: (i) minimum order quantities or other volume commitments; (ii) most-favoured nation or any other term that required preferential or parity treatment; and (iii) upfront retail subsidy requirements. On January 6, 2017, the Commissioner announced that it had discontinued its investigation into Apple's business practices under the abuse of dominance provision of the Act. After its analyses of the information gathered during the investigation, the Bureau concluded that it did not have sufficient evidence to pursue the matter.

## **Bureau's position regarding its investigation into alleged anti-competitive conduct by TMX Group Limited**

In 2015, Aequitas Innovations Inc. (“Aequitas”) requested that the Bureau start an investigation into the alleged anti-competitive conduct by TMX Group Limited (“TMX Group”), which prevented Aequitas from developing a consolidated securities market data product called the CMV Connect™. To develop this product, Aequitas required access to private market data of investment dealers. The Bureau had to consider whether the contractual clauses imposed by TMX Group contravened the abuse of dominance provisions in the Act. Based on the evidence, the Bureau found that even absent TMX Group's contractual clauses, it was unlikely that Aequitas would be able to obtain a sufficient volume of private market data from investment dealers to develop the product. As a result, on November 21, 2016, the Commissioner announced that he had discontinued the investigation into TMX Group's alleged anti-competitive conduct.<sup>61</sup>

## **Tribunal rules in favour of the Commissioner in TREB decision**

On May 27, 2011, the Commissioner filed a notice of application with the Tribunal pursuant to section 79 of the Act for an order prohibiting the Toronto Real Estate Board (“TREB”) from making rules, agreements and policies that exclude, prevent or impede the entry of innovative business models and impose restrictions on real estate brokers from using the internet more efficiently.<sup>62</sup> The Tribunal dismissed the Commissioner's application on April 15, 2013, finding that TREB did not meet the definition of a dominant firm as it did not itself compete in the real estate services market in question. Instead, the Tribunal found that TREB was not a competitor in real estate services but a not-for-profit corporation, and that, as such, it could not abuse a dominant position for purposes of the Act.

The Commissioner appealed the Tribunal's finding to the Federal Court of Appeal. On February 3, 2014, the Court overturned the Tribunal's decision and held that the Tribunal misinterpreted the Act's abuse of dominance provisions. The Court ordered the Tribunal to revisit the Commissioner's application on its merits.<sup>63</sup> The decision expanded the interpretation of anti-competitive acts under para. 79(1)(b) of the Act. In its reasoning, the Court concluded that anti-competitive conduct includes acts by a non-competitor against competitors in a market, provided the non-competing entity has the requisite control of a market. For instance,

anti-competitive conduct may include “controlling a significant input to competitors in the market, or [...] making rules that effectively control the business conduct of those competitors”.<sup>64</sup> TREB tried to appeal the Court’s decision to the Supreme Court of Canada but was denied leave in July 2014.

The Tribunal reheard the case in 2015 and on April 27, 2016, it ruled in favour of the Commissioner, finding that TREB abused its market power by imposing restrictions on the ability of brokerages to offer products and services to consumers over the Internet.<sup>65</sup> The Commissioner argued that TREB’s rules limited the way real estate brokers and salespersons could display and use the board’s multiple listing service® (MLS®) on password-protected virtual office websites (“VOW”). The Tribunal partially granted the application brought by the Commissioner pursuant to the abuse of dominance provision (section 79) of the Act. In reaching its conclusion, the Tribunal found that the Commissioner had satisfied, on a balance of probabilities, the three elements required under section 79 of the Act. First, TREB substantially or completely controls the supply of MLS-based residential real estate services in the Greater Toronto Area (subsection 79(a)). Second, TREB engaged in, and continues to engage in anti-competitive acts (subsection 79(b)). Third, TREB’s restrictions on VOW had and would likely have the effect of preventing competition substantially in a market (subsection 79(c)).

### **Bureau files dominance application against the Vancouver Airport Authority**

Following the Tribunal’s decisions in TREB, in late 2016, the Commissioner made an application to the Tribunal pursuant to section 79 of the Act against the Vancouver Airport Authority (“VAA”).<sup>66</sup> Although the VAA is not a competitor, similar to TREB, the VAA is a non-competitor that controls the number of competitors in a market. The Bureau’s investigation revealed that the VAA restricts competition by denying new in-flight catering suppliers access to the airport. The Tribunal has not yet heard the application but mediation will again occur, prior to a hearing (if necessary) scheduled for November 2017.

### **Bureau completes investigation of Google**

On April 19, 2016, the Bureau decided to discontinue its investigation into alleged anti-competitive conduct by Google related to Google’s online search, search advertising and display advertising services

in Canada. As part of its investigation, the Bureau consulted with international authorities, including the Federal Trade Commission and the European Commission. Upon closing the investigation, the Bureau found evidence to support only one allegation regarding Google's use of anti-competitive clauses in contracts that negatively affect advertisers.<sup>67</sup> Given the Bureau's concerns with these responses, Google has decided not to reintroduce these clauses in Canada or any clauses that may have the same effect.

### **Private access to the Competition Tribunal**

Private access to the Tribunal is available for reviewable conduct under sections 75 (refusal to deal), 76 (price maintenance) and 77 (exclusive dealing, tied selling and market restriction). The purpose of the private access provisions is to complement the Bureau's public enforcement and to increase the deterrent effect of the Act. In 2016, there was only one application for leave pursuant to section 103.1 of the Act. In *CarGurus, Inc. v. Trader Corporation*, CarGurus Inc. filed an application in an attempt to force its rival, Trader Corporation, to supply it with vehicle listing data pursuant to sections 75, 76 and 77 of the Act.<sup>68</sup> Both CarGurus and Trader carry market automobiles online and compete by offering consumers the ability to search vehicle listings for automobile dealers and private sellers. After assessing the evidence, the Tribunal found that there was not enough credible evidence to determine that CarGurus may be directly and substantially affected in its business by Trader. The Tribunal was not satisfied pursuant to section 76 on the grounds that there was insufficient evidence of CarGurus' alleged low pricing policy or that it was a low-cost competitor. In its decision, the Tribunal denied CarGurus leave to commence a private application under sections 75, 76 and 77 of the Act.<sup>69</sup> This decision demonstrates the ongoing difficulty for applicants wishing to seek private access under the Act's private application provisions.

### **Competition Bureau releases draft bulletin on *Information Requests from Private Parties in Proceedings for Recovery of Loss or Damages***

Under section 36 of the Act, private parties may bring proceedings to recover loss or damages from conduct infringing the criminal provisions in Part VI of the Act or from failure of any person to comply with an order of the Tribunal or of a court under the Act. On March 8, 2017, the Bureau released a draft version of its bulletin on *Information Requests*

from *Private Parties in Proceedings for Recovery of Loss or Damages*.<sup>70</sup> The purpose of the bulletin is to provide insight on the Bureau's approach to requests to confidential information in its possession from persons involved in private law suits brought under section 36 of the Act. The bulletin sets out the Bureau's general position of not voluntarily providing information to persons contemplating, or who are parties to, proceedings under section 36. The Bureau's position is designed to encourage the voluntary provision of information, the provision of which would be compromised if the Bureau could not provide assurances of confidentiality.

## Intellectual Property Interface

### Finalized version of IPEGs

Seven months after releasing its second draft revision of the *Intellectual Property Enforcement Guidelines* (the "IPEGs"), the Bureau finalized its updated IPEGs on March 31, 2016. The final draft of the IPEGs adds additional clarity and guidance on the Bureau's enforcement approach to important issues at the interface between competition and intellectual property law. The revised IPEGs, in particular, reflect other developments since their 2000 iteration, including addressing patent litigation settlement agreements, product switching (also known as product hopping), patent assertion entities and activities related to collaborative standard setting and standard essential patents.

On March 29, 2017, the Bureau was recognized at the 2017 Antitrust Writing Awards in Washington, D.C., for its innovative approach to the IPEGs, winning the title of Most Innovative Soft Law (intellectual property section).

## Endnotes

<sup>1</sup> Chemtrade Logistics Income Fund, News Release, "Chemtrade Announces Closing of the Canexus Acquisition" (10 March 2017), online: <[www.chemtradelogistics.com/main/news-releases/2017/03/10/chemtrade-announces-closing-of-the-canexus-acquisition](http://www.chemtradelogistics.com/main/news-releases/2017/03/10/chemtrade-announces-closing-of-the-canexus-acquisition)>.

<sup>2</sup> Competition Bureau, "Competition Bureau submission to the OECD Competition Committee roundtable on Public Interest Considerations in Merger Control" (14 June 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04101.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04101.html)>.

<sup>3</sup> Competition Bureau, "Competition Bureau submission to the OECD Global Forum on Competition Roundtable on Sanctions in Antitrust Cases" (19

October 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04150.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04150.html)>.

<sup>4</sup> Competition Bureau, “Competition Bureau submission to the OECD Competition Committee Roundtable on Agency Decision-making in Merger Cases: Prohibition and Conditional Clearances” (15 November 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04155.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04155.html)>.

<sup>5</sup> Competition Bureau, “Competition Bureau submission to the OECD Global Forum on Competition Roundtable on Independence of Competition Authorities: From designs to practice” (2 December 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04160.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04160.html)>.

<sup>6</sup> Competition Bureau, “Competition Bureau and the National Development and Reform Commission of the People’s Republic of China work towards enhancing cooperation in cross-border policy and enforcement” (1 February 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04023.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04023.html)>.

<sup>7</sup> Competition Bureau, “Canada and New Zealand sign cooperation arrangement to enhance support in cross-border competition enforcement” (12 April 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/04/canada-and-new-zealand-sign-cooperation-arrangement-to-enhance-support-in-cross-border-competition-enforcement.html](http://www.canada.ca/en/competition-bureau/news/2016/04/canada-and-new-zealand-sign-cooperation-arrangement-to-enhance-support-in-cross-border-competition-enforcement.html)>.

<sup>8</sup> Competition Bureau, “North American antitrust authorities continue collaboration” (20 May 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/05/north-american-antitrust-authorities-continue-collaboration.html](http://www.canada.ca/en/competition-bureau/news/2016/05/north-american-antitrust-authorities-continue-collaboration.html)>.

<sup>9</sup> Competition Bureau, “Canada and Hong Kong sign cooperation instrument to strengthen collaboration in cross-border competition matters” (2 December 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/12/canada-hong-kong-sign-cooperation-instrument-strengthen-collaboration-cross-border-competition-matters.html](http://www.canada.ca/en/competition-bureau/news/2016/12/canada-hong-kong-sign-cooperation-instrument-strengthen-collaboration-cross-border-competition-matters.html)>.

<sup>10</sup> Competition Bureau, “Consent agreement template provides transparency and predictability for merger remedy negotiations” (29 September 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/09/consent-agreement-template-provides-transparency-predictability-merger-remedy-negotiations.html](http://www.canada.ca/en/competition-bureau/news/2016/09/consent-agreement-template-provides-transparency-predictability-merger-remedy-negotiations.html)> [*Consent Agreement Template*].

<sup>11</sup> Competition Bureau, “2017 pre-merger notification transaction-size threshold” (3 March 2017), online: <[www.canada.ca/en/competition-bureau/news/2017/03/2017\\_pre-merger\\_notificationtransaction-size-threshold.html](http://www.canada.ca/en/competition-bureau/news/2017/03/2017_pre-merger_notificationtransaction-size-threshold.html)>.

<sup>12</sup> *Consent Agreement Template*, *supra* note 10. Competition Bureau, “Consent agreement template provides transparency and predictability for merger remedy negotiations” (29 September 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/09/consent-agreement-template-provides-transparency-predictability-merger-remedy-negotiations.html](http://www.canada.ca/en/competition-bureau/news/2016/09/consent-agreement-template-provides-transparency-predictability-merger-remedy-negotiations.html)>.

<sup>13</sup> Competition Bureau, “Competition Bureau statement regarding Superior’s proposed acquisition of Canexus” (28 June 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04111.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04111.html)>.

<sup>14</sup> Competition Bureau, “Acquisition of Canexus by Chemtrade will not be challenged” (8 March 2017), online: <[www.canada.ca/en/competition-bureau/news/2017/03/acquisition\\_of\\_canexusbychemtradewillnotbechallenged.html](http://www.canada.ca/en/competition-bureau/news/2017/03/acquisition_of_canexusbychemtradewillnotbechallenged.html)>.

<sup>15</sup> Canexus Corporation, “Management Information Circular and Proxy Statement” (11 January 2017) at 45, online: <[www.sedar.com](http://www.sedar.com)>.

<sup>16</sup> Competition Bureau, “Competition Bureau statement regarding the proposed acquisition of Syngenta by ChemChina” (14 February 2017), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04197.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04197.html)>.

<sup>17</sup> Competition Bureau, “To acquire MTS, Bell must sell assets and provide services to Xplornet” (15 February 2017), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04199.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04199.html)>.

<sup>18</sup> Competition Bureau, “Competition Bureau statement regarding CPS’ proposed acquisition of Andrukow” (1 September 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04135.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04135.html)>.

<sup>19</sup> Parrish and Heimbecker, Limited, News Release, “Parrish & Heimbecker Announces Four New Retail Acquisitions” (16 January 2017), online: <[parrishandheimbecker.com/press%20release%20-%20alberta%20retail.pdf](http://parrishandheimbecker.com/press%20release%20-%20alberta%20retail.pdf)>.

<sup>20</sup> Competition Bureau, “Competition Bureau statement regarding Iron Mountain’s acquisition of Recall” (31 March 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04055.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04055.html)>.

<sup>21</sup> The six local markets were Toronto, Montreal, Ottawa, Calgary, Edmonton and Vancouver.

<sup>22</sup> Competition Bureau, “Competition Bureau statement regarding the acquisition of St. Jude Medical by Abbott” (28 December 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04179.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04179.html)>.

<sup>23</sup> Competition Bureau, “Consent agreement reached in sale of Rexall Health to McKesson” (14 December 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/12/consent-agreement-reached-sale-rexall-health-mckesson.html](http://www.canada.ca/en/competition-bureau/news/2016/12/consent-agreement-reached-sale-rexall-health-mckesson.html)>.

<sup>24</sup> Competition Bureau, “Competition Bureau statement regarding Couche-Tard’s proposed acquisition of retail gasoline sites from Imperial Oil” (7 September 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04137.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04137.html)>.

<sup>25</sup> Competition Bureau, “Competition Bureau statement regarding the proposed amalgamation of Modular Space Corporation and Williams Scotsman International, Inc.” (23 June 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04107.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04107.html)>.

<sup>26</sup> Competition Bureau, “Competition Bureau statement regarding Le Groupe Harnois Inc.’s proposed acquisition of Distributions pétrolières Therrien Inc.’s gasoline supply arrangements” (23 June 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04106.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04106.html)>.

<sup>27</sup> The sale of Miller brands is also global but excluding the U.S.

<sup>28</sup> Competition Bureau, “Competition Bureau will not oppose global beer mergers” (31 May 2016) online: <[www.canada.ca/en/competition-bureau/](http://www.canada.ca/en/competition-bureau/)>

news/2016/05/competition-bureau-will-not-oppose-global-beer-mergers.html>.

<sup>29</sup> Competition Bureau, “Competition Bureau statement regarding Anheuser-Busch InBev’s proposed acquisition of SABMiller and the concurrent divestiture of certain Miller brands to Molson Coors” (31 May 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04097.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04097.html)>.

<sup>30</sup> Competition Bureau, “Competition Bureau satisfied that proposed sale of St-Hubert will not limit consumer choice” (18 May 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/05/competition-bureau-satisfied-that-proposed-sale-of-st-hubert-will-not-limit-consumer-choice.html](http://www.canada.ca/en/competition-bureau/news/2016/05/competition-bureau-satisfied-that-proposed-sale-of-st-hubert-will-not-limit-consumer-choice.html)>.

<sup>31</sup> Competition Bureau, “Competition Bureau statement regarding the proposed acquisition by Lowe’s of RONA” (12 May 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04085.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04085.html)>.

<sup>32</sup> Competition Bureau, “Competition Bureau withdrawing its court challenge of Staples’ acquisition of Office Depot” (19 May 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/05/competition-bureau-withdrawing-its-court-challenge-of-staples-acquisition-of-office-depot.html](http://www.canada.ca/en/competition-bureau/news/2016/05/competition-bureau-withdrawing-its-court-challenge-of-staples-acquisition-of-office-depot.html)>.

<sup>33</sup> Competition Bureau, “Competition Bureau backgrounder regarding the proposed acquisition by Shaw of WIND” (4 February 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04027.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04027.html)>.

<sup>34</sup> Shaw Communications Inc, Press Release, “Shaw closes WIND Acquisition” (1 March 2016), online: <[newsroom.shaw.ca/materialDetail.aspx?MaterialID=6442451782](http://newsroom.shaw.ca/materialDetail.aspx?MaterialID=6442451782)>.

<sup>35</sup> Notice (Department of Industry), (2017) C Gaz I, 664 (*Investment Canada Act*).

<sup>36</sup> Bill C-30, *An Act to implement the Comprehensive Economic and Trade Agreement between Canada and the European Union and its Member States and to provide for certain other measures*, 1st Sess, 42nd Parl, 2017.

<sup>37</sup> The schedule extends the new \$1.5 billion threshold to countries party to the North American Free Trade Agreement, the Canada-Chile Free Trade Agreement, the Canada-Peru Free Trade Agreement, the Canada-Colombia Free Trade Agreement, the Canada-Panama Free Trade Agreement, Canada-Honduras Free Trade Agreement or the Canada-Korea Free Trade Agreement.

<sup>38</sup> Ministry of Innovation, Science and Economic Development, “Guidelines on the National Security Review of Investments” (19 December 2016), online: <[www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk81190.html](http://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk81190.html)>.

<sup>39</sup> Competition Bureau, “Auaréhab pleads guilty to rigging bids for municipal contracts, pays a \$160,000 fine” (17 February 2017), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04184.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04184.html)>.

<sup>40</sup> Competition Bureau, “Public servants who turn a blind eye to wrongful activities will be held accountable” (2 December 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/12/public-servants-turn-blind-wrongful-activities-will-held-accountable.html](http://www.canada.ca/en/competition-bureau/news/2016/12/public-servants-turn-blind-wrongful-activities-will-held-accountable.html)>.

<sup>41</sup> Competition Bureau, “Guilty plea in bid-rigging conspiracy in

Saint-Jean-sur-Richelieu, Quebec” (11 October 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/10/guilty-plea-rigging-conspiracy-saint-jean-richelieu-quebec.html](http://www.canada.ca/en/competition-bureau/news/2016/10/guilty-plea-rigging-conspiracy-saint-jean-richelieu-quebec.html)>.

<sup>42</sup> 2015 ONSC 6148 [*Shah*].

<sup>43</sup> *Shah v LG Chem, Ltd*, 2017 ONSC 2586.

<sup>44</sup> 2016 BCSC 844 [*Godfrey*].

<sup>45</sup> Competition Bureau, “Unprecedented cooperation with US antitrust enforcement authority leads to major cartel crackdown” (20 July 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/07/unprecedented-cooperation-with-us-antitrust-enforcement-authority-leads-to-major-cartel-crackdown.html](http://www.canada.ca/en/competition-bureau/news/2016/07/unprecedented-cooperation-with-us-antitrust-enforcement-authority-leads-to-major-cartel-crackdown.html)>.

<sup>46</sup> Competition Bureau, “Bid-rigging scheme leads to \$140,000 fines for Quebec company and its President” (14 March 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/03/bid-rigging-scheme-leads-to-140-000-fines-for-quebec-company-and-its-president.html](http://www.canada.ca/en/competition-bureau/news/2016/03/bid-rigging-scheme-leads-to-140-000-fines-for-quebec-company-and-its-president.html)>.

<sup>47</sup> Competition Bureau, “Quebec company fined \$118,000 for participating in sewer services cartel” (8 February 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/02/quebec-company-fined-118-000-for-participating-in-sewer-services-cartel.html](http://www.canada.ca/en/competition-bureau/news/2016/02/quebec-company-fined-118-000-for-participating-in-sewer-services-cartel.html)>.

<sup>48</sup> Competition Bureau, “Archived- Competition Bureau exposes sewer services cartel in Quebec” (22 November 2011), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03430.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03430.html)>.

<sup>49</sup> Competition Bureau, “Competition Bureau sues HBC over alleged deceptive regular price claims and clearance sales” (22 February 2017), online: <[www.canada.ca/en/competition-bureau/news/2017/02/competition\\_bureausueshbcoverallegeddeceptiveregularpriceclaims.html](http://www.canada.ca/en/competition-bureau/news/2017/02/competition_bureausueshbcoverallegeddeceptiveregularpriceclaims.html)>.

<sup>50</sup> Competition Bureau, “Montreal-based company fined \$450,000 for deceptive telemarketing” (7 February 2017), online: <[www.canada.ca/en/competition-bureau/news/2017/02/montreal\\_based\\_companyfined450000fordeceptivetelemarketing.html](http://www.canada.ca/en/competition-bureau/news/2017/02/montreal_based_companyfined450000fordeceptivetelemarketing.html)>.

<sup>51</sup> Competition Bureau, “Amazon changes pricing practices and pays \$1.1 million to settle price advertising case” (11 January 2017), online: <[www.canada.ca/en/competition-bureau/news/2017/01/amazon-changes-pricing-practices-pays-1-1-million-settle-price-advertising-case.html](http://www.canada.ca/en/competition-bureau/news/2017/01/amazon-changes-pricing-practices-pays-1-1-million-settle-price-advertising-case.html)>.

<sup>52</sup> Competition Bureau, “Volkswagen and Audi to pay up to \$2.1 billion to consumers and \$15 million penalty for environmental marketing claims” (19 December 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/12/volkswagen-audi-pay-up-2-1-billion-consumers-15-million-penalty-environmental-marketing-claims.html](http://www.canada.ca/en/competition-bureau/news/2016/12/volkswagen-audi-pay-up-2-1-billion-consumers-15-million-penalty-environmental-marketing-claims.html)>.

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<sup>55</sup> Competition Bureau, “Sentencing in deceptive telemarketing case” (28 October 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/10/sentencing-deceptive-telemarketing-case.html](http://www.canada.ca/en/competition-bureau/news/2016/10/sentencing-deceptive-telemarketing-case.html)>.

<sup>56</sup> Competition Bureau, “Comwave to pay over \$300,000 to settle telecom services advertising case” (13 September 2016), online: <[www.canada.ca/en/competition-bureau/news/2016/09/comwave-pay-over-300-000-settle-telecom-services-advertising-case.html](http://www.canada.ca/en/competition-bureau/news/2016/09/comwave-pay-over-300-000-settle-telecom-services-advertising-case.html)>.

<sup>57</sup> See *Kobo Inc v Canada (Commissioner of Competition)* (21 February 2014), CT-2014-002 (Notice of Application).

<sup>58</sup> *Ibid.*

<sup>59</sup> See *Kobo Inc v The Commissioner of Competition*, 2014 Comp Trib 14 (Reasons and Order).

<sup>60</sup> Competition Bureau, “Canadian retailers will be able to offer discounts on ebooks by three major publishers” (20 January 2017), online: <[www.canada.ca/en/competition-bureau/news/2017/01/canadian-retailers-will-able-offer-discounts-ebooks-three-major-publishers.html](http://www.canada.ca/en/competition-bureau/news/2017/01/canadian-retailers-will-able-offer-discounts-ebooks-three-major-publishers.html)>.

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<sup>62</sup> See *Canada (Commissioner of Competition) v The Toronto Real Estate Board*, (27 May 2011), CT- 2011-003 (Notice of Application).

<sup>63</sup> *Canada (Commissioner of Competition) v Toronto Real Estate Board*, 2014 FCA 29.

<sup>64</sup> *Ibid.*, at para. 13.

<sup>65</sup> See *Canada (Commissioner of Competition) v The Toronto Real Estate Board*, 2016 Comp Trib 7 (Reasons for Order and Order).

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<sup>67</sup> Competition Bureau, “Competition Bureau statement regarding its investigation into alleged anti-competitive conduct by Google” (19 April 2016), online: <[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04066.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04066.html)>.

<sup>68</sup> See *CarGurus, Inc v Trader Corporation* (4 April 2016), CT-2016-003 (Application for Leave Pursuant to Section 103.1).

<sup>69</sup> See *CarGurus, Inc v Trader Corporation*, 2016 Comp Trib 15 (Reasons for Order and Order Dismissing an Application for Leave).

<sup>70</sup> Competition Bureau, “Competition Bureau invites feedback on draft bulletin regarding requests for confidential information in certain private law suits” (8 March 2017), online: <[www.canada.ca/en/competition-bureau/news/2017/03/competition\\_bureauinvitesfeedbackondraftbulletinregardingrequest.html](http://www.canada.ca/en/competition-bureau/news/2017/03/competition_bureauinvitesfeedbackondraftbulletinregardingrequest.html)>.

