

2024 YEAR IN REVIEW

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2024 marked a watershed moment in Canadian competition law, with some of the most significant legislative reform in decades now fully in force. The passage of both Bill C-56 and C-59 has reshaped the Competition Act, introducing a structural presumption for mergers, expanding private enforcement rights, and creating new provisions targeting environmental claims, among other things. These changes reflect a growing political and public appetite for stronger competition enforcement, resulting in increased activity from the Bureau, including its first merger remedy under the new structural presumption and a series of high-profile investigations and consent agreements.

The Bureau's enforcement posture has become more assertive, and its policy agenda more ambitious. It has issued a flurry of draft guidelines and launched consultations on topics ranging from greenwashing to property controls, signaling a desire to shape the interpretation of the new regime. Yet, uncertainty remains—particularly around the scope of private access, the interpretation of “significant purpose” in civil collaborations, and the substantiation of environmental claims. As we move into 2025, stakeholders will need to navigate this changed landscape with care, balancing compliance with practicality to ensure that reform continues to serve both competitive markets and commercial realities.

En 2024, le droit de la concurrence au Canada a connu un tournant décisif, avec l'entrée en vigueur de certaines des plus importantes réformes législatives des dernières décennies. L'adoption des projets de loi C-56 et C-59 a profondément refaçonné la Loi sur la concurrence, en introduisant notamment une présomption structurelle sur les effets concurrentiels des fusions, en élargissant l'accès privé au Tribunal de la concurrence, et en créant de nouvelles dispositions visant les déclarations environnementales. Ces changements reflètent un appétit politique et public croissant pour un renforcement de l'application de la loi en matière de concurrence, ce qui s'est traduit par une intensification des activités du Bureau, y compris sa première mesure corrective dans un cas de fusion selon la nouvelle présomption structurelle, ainsi qu'une série d'enquêtes très médiatisées et d'accords amiables.

Le Bureau adopte désormais une approche plus affirmée dans son application de la loi et poursuit un programme politique plus ambitieux. Il a publié une série d'avant-projets de lignes directrices et lancé des consultations sur des sujets allant de l'écoblanchiment aux contrôles de propriété, signalant

sa volonté d'influencer l'interprétation du nouveau régime. Toutefois, des incertitudes persistent—notamment en ce qui concerne la portée de l'accès privé, l'interprétation de la notion de « objectif important » dans les collaborations civiles, et la justification des déclarations environnementales. Alors que 2025 progresse, les intervenants devront naviguer avec prudence dans ce paysage transformé, en conciliant conformité et pragmatisme afin que la réforme continue de servir à la fois la concurrence sur les marchés et les réalités commerciales.

I. Overview

The last two years have seen a near complete overhaul of the competition regime in Canada, with arguably the most significant amendments to the *Competition Act* (the “**Act**”)¹ being approved by the Senate of Canada in 2024. The amendments in Bill C-59 have reshaped the Canadian competition landscape by strengthening the merger control regime, expanding the scope for private enforcement, and introducing new provisions to address environmental claims and agreements, among others. The Competition Bureau (the “**Bureau**”) has begun using these new enforcement tools, bringing its first drip pricing case to the Tribunal and obtaining, for the first time, a merger remedy anchored in the new structural presumption. The Bureau has also focused its attention on property controls and environmental claims, creating greater enforcement risk for businesses taking actions in these areas.

Overall, these amendments have resulted in greater, and to some extent unpredictable, enforcement risk both from the Bureau and, increasingly, private parties. In an attempt to combat this uncertainty, the Bureau has published a series of preliminary guidelines and launched multiple consultations in 2024, all intended to clarify the Bureau’s enforcement priorities as a result of these changes. However, ambiguity still remains as to the practical implications of many of these new provisions, especially with the new environmental claims provisions and the new private access leave test. The upcoming year is likely to be very busy for competition law in Canada. The Bureau will continue to finalize and publish guidance materials clarifying its approach to enforcement and hopefully bring key cases to the Competition Tribunal (the “**Tribunal**”). Private parties will test the boundaries of the private access regime. Both of these will aid in establishing much-needed jurisprudence in this new legal landscape.

II. The First Round of Amendments to the Competition Act Are (Finally) Complete

2024 saw the coming into force of further amendments to modernize Canada's competition law. Following a February 2022 announcement from the Minister of Innovation, Science and Economic Development (the "**Minister**")² of the government's intention to "carefully evaluate potential ways to improve" the Act, the government undertook a four-month consultation process to solicit input on how best to modernize the Canadian competition framework and better equip the Bureau to "protect consumers and enhance public trust in the contestability and reliability of the marketplace".³ The feedback from this consultation process, which the federal government made available in a public report,⁴ informed the development of two pieces of legislation, Bill C-56 and Bill C-59, each of which introduced meaningful changes to the Act.

Bill C-56,⁵ titled the *Affordable Housing and Groceries Act*, received Royal Assent on December 15, 2023 at which time a preliminary set of amendments to the Act came into effect, including (i) repeal of the efficiencies defense for mergers, (ii) a restructuring of the abuse of dominance framework to expand the scope of potentially abusive behaviour, reduce the legal burden to establish abuse of dominance and increase the quantum of financial penalties, and (iii) the introduction of formal market study powers for the Commissioner of Competition (the "**Commissioner**") including the ability to obtain court orders for the production of information, records and testimony to support market studies.⁶ Bill C-56's amendments to the Act's civil prohibition on anti-competitive agreements or arrangements, discussed further below, came into effect on December 15, 2024.

Bill C-59, an omnibus bill presenting various proposals from the federal government's 2023 budget and fall economic statement to amend a broad range of legislation, was tabled in Parliament by then Deputy Prime Minister and Minister of Finance, Chrystia Freeland, on November 21, 2023.⁷ It then underwent months of debate in the House of Commons, during which little time or attention was given to the provisions proposing to amend the Act. Bill C-59 completed its third and final reading in the House of Commons on May 28, 2024 and was sent to the Senate of Canada, which passed the bill in just three weeks. Bill C-59 received Royal Assent on June 20, 2024, at which point most of its amendments to the Act came into effect.

The following summarizes the Bill C-56 and Bill C-59 amendments to the Act introduced or implemented in 2024.

A) Substantive and Procedural Updates to the Merger Control Regime

The Act's merger control regime, as amended, will increase the number of transactions subject to mandatory merger review and recalibrate the substantive review framework. The Bureau's *Merger Enforcement Guidelines*, which are the primary resource for the Bureau's interpretation of the Act's merger control regime, will also be undergoing a comprehensive review.⁸ As part of this review, the Bureau launched a consultation process on November 7, 2024 seeking input from various stakeholders, which consultation process concluded on January 12, 2025.⁹

i) Merger Notification

Under the Act, a mandatory pre-merger notification filing is usually triggered where three key criteria are met (additional criteria and exemptions also apply in particular circumstances): (i) the target carries on an operating business, defined as "a business undertaking in Canada to which employees employed in connection with the undertaking ordinarily report for work"; (ii) the parties to the transaction (together with their affiliates) have a combined aggregate book value of assets in Canada, or combined annual gross revenues from sales in, from and into Canada, exceeding C\$400 million, referred to as the size-of-parties threshold, and (iii) the assets in Canada of the target together with its controlled subsidiaries (in a share transaction) or the target assets in Canada (in an asset transaction) have a book value exceeding C\$93 million, or generate annual gross revenues from sales in and from Canada in excess of C\$93 million (the monetary value of this threshold can be adjusted annually based on GDP growth), referred to as the size-of-transaction threshold.

While the size-of-parties threshold remains unchanged, the relevant revenues to be considered for the size-of-transaction threshold has been expanded to consider sales in, from and into Canada from all assets subject to the transaction. The inclusion of import sales in the size-of-transaction threshold means that transactions involving a target with cross-border business are now more likely to be notifiable to the Bureau, even where the target does not have a material presence or sales within Canada (although the target entity / assets would still need to meet the operating business requirement).

Furthermore, the size-of-transaction threshold was previously assessed separately for share acquisitions and asset acquisitions, even where both acquisitions were occurring as part of a single transaction. Under the revised

regime, the assets and revenues associated with asset and share acquisitions must be aggregated where both acquisitions form part of the same transaction.

Finally, for all mergers that are not notified to the Bureau, whether mandatorily under Part IX of the Act or voluntarily through a request for an advance ruling certificate, the Bureau will now have three years post-closing to bring a challenge before the Tribunal. The limitation period remains at one-year for all notified mergers.

ii) Merger Review

Arguably the most significant change to the Act is the introduction of a structural presumption, whereby a transaction that results in, or is likely to result in, an increase to the Herfindahl-Hirschman Index (“**HHI**”) of more than 100 and either (i) an HHI of more than 1,800 or (ii) a combined market share of more than 30%, is presumed to be anti-competitive, unless the merging parties can prove otherwise on a balance of probabilities. The new structural presumption closely mirrors the structural presumption in the U.S. DOJ’s 2023 Merger Guidelines.¹⁰ However, the U.S. guidelines can be revoked or amended at any time and can be applied on a discretionary basis, whereas this new structural presumption is enshrined in law, creating a much more permanent feature of the Canadian regime with limited scope for discretionary enforcement.

The Bureau has been a strong proponent of structural presumptions, stating as part of its submissions to the Minister’s consultation that a structural presumption is “not only logical, it follows the economics-based conclusion that mergers in highly concentrated markets are more likely to be anti-competitive, and ensures that the Bureau’s investigative and litigation resources are used efficiently in cases where the presumption is met.”¹¹ With the Bureau’s wish being granted, the structural presumption is expected to play a central role in the Bureau’s approach to merger enforcement going forward.

In addition, sections 92 and 93 of the Act have been amended to expressly include new substantive assessment factors as part of the Tribunal’s assessment of whether a substantial prevention or lessening of competition (“**SPLC**”) is likely to result from a proposed merger or has resulted from a completed merger. While the list is not exhaustive, the set of factors now expressly includes (a) the transaction’s impact on labour markets, (b) the transaction’s impact on concentration or market shares and (c) the potential for increased express or tacit coordination. The inclusion of the

transaction's effects on labour markets is indicative of the federal government's broader goal of ensuring effective competition in the labour market, building upon 2022 amendments to introduce prohibitions on no-poach and wage fixing agreements into the Act.

iii) Merger Remedies

The Act has been amended to allow the Tribunal to impose a higher remedial threshold upon litigated mergers. The Tribunal can now make orders requiring the parties to restore competition to pre-merger levels, rather than to the point at which it can no longer be said to be substantially less than it was before the merger. Notably, no transitional provisions are associated with the new remedial standard, meaning that the Tribunal could apply the new standard to any matter put before it, even if the transaction closed or was notified prior to the enactment of Bill C-59. As a result of this amendment, remedy negotiations with the Bureau will now also require parties to offer and agree to remedy packages that restore competition to pre-merger levels.

Bill C-59 has also established an immediate and automatic prohibition on closing a merger when the Bureau applies for an interim order to enjoin closing (either under section 100 or 104 of the Act), until the injunction has been heard and disposed of by the Tribunal. It is also arguable that this change will allow private parties to stall a merger through the filing of a section 104 application. Specifically and as discussed in greater detail below, Bill C-59 has opened the Act's civil collaboration provision under section 90.1 to private actions and allows private parties to seek injunctive relief under section 104 in connection with such actions. While section 90.1 does not explicitly refer to mergers and the Bureau has never used it as an alternative merger remedy, its terms are broad enough to capture such agreements.¹² As such, if a section 104 order is sought in connection with an application under section 90.1, and provided that the merger is an agreement that comes within the ambit of section 90.1, this will trigger the automatic closing prohibition.

B) Private Enforcement under the Act

Bill C-59 has expanded the scope for private enforcement under the Act, by extending the right of private access to cover civil collaborations (section 90.1) and deceptive marketing practices (section 74.01). In addition to expanded access, private applicants will also have a new, lower test to meet to obtain leave from the Tribunal to bring an application.

For refusal to deal (section 75), price maintenance (section 76), exclusive dealing, tied selling and market restriction (section 77), abuse of dominance (section 79), and civil collaborations (section 90.1), leave may be granted where only part of an applicant's business is affected, or if the Tribunal determines it is in the "public interest" to grant leave. The latter option for granting leave, the "public interest" test, is entirely new to private competition litigation under the Act while the former option is a substantial reduction to the current leave standard, which requires an applicant to demonstrate that its entire business is directly and substantially affected by the agreement. For deceptive marketing practices (section 74.01), leave may be granted only where the Tribunal is satisfied that it is in the public interest to do so.

Potential disgorgement awards for private litigants have also been added for applications under sections 75, 76, 77, 79, and 90.1. Where the Tribunal finds in favour of a private applicant, it can order disgorgement in an amount up to the value of the benefit derived from the conduct at issue, to be distributed amongst the private applicant and any other person affected by the conduct. As part of the federal government's consultation process, the absence of strong financial incentives was cited as a primary driver behind the lack of private competition litigation in Canada to date.¹³ While it remains to be seen whether disgorgement opportunities are sufficient to incentivize private enforcement, the introduction of private disgorgement itself marks a major departure from past practice where financial penalties, to the extent they could be ordered, were limited to administrative monetary penalties ("AMPs") payable to the Bureau.

The amendments related to private access under the Act do not come into effect until June 20, 2025.

C) Strengthening Civil Prohibitions on Anti-Competitive Agreements

Amendments in Bill C-56 to expand the scope of the Act's civil collaborations provisions (section 90.1) came into effect on December 15, 2024, which marked the one year anniversary of the passage of Bill C-56. In its previous form, section 90.1 applied only to agreements that include actual or potential competitors. In its new form, both an agreement between competitors (without reference to its purpose) and any other agreement (regardless of the competitive relationship between the parties) for which "a significant purpose" is to prevent or lessen competition in any market may be subject to Bureau enforcement and / or remedial orders by the Tribunal.

Notably, an infringement may occur where only “part of” the agreement has a significant purpose to prevent or lessen competition (rather than the entire agreement) and the purpose is to “prevent or lessen competition”, a lower standard than the *substantial* prevention or lessening of competition that applies elsewhere in the Act.

What constitutes a “significant purpose” is an ambiguous concept. The term is not defined in the Act, does not appear elsewhere in the Act or in any other federal legislation, and has never been judicially considered in Canada. Parliamentary debates in respect of Bill C-56 offer no meaningful assistance in interpreting the term — they simply indicate that the amendments sought to target all agreements “aimed at reducing competition”, even where the agreeing parties were not competitors.¹⁴ It is similarly unclear how the Bureau or, when the right to private access comes into effect in June 2025, a private litigant will divine whether the purpose of the agreement was to prevent or lessen competition. All of these points will need to be clarified as part of the Bureau’s guidance or by the Tribunal once it has an opportunity to adjudicate these provisions.

Bill C-59 has further broadened the scope of the Act’s civil collaboration prohibitions by enabling the Tribunal to make orders in respect of past agreements or arrangements, provided they have not been terminated for more than three years. Whereas voluntary cessation of an agreement or arrangement that violated section 90.1 was previously sufficient to shield parties to the agreement or arrangement from enforcement, putting an end to problematic agreements or arrangements may no longer be enough to insulate parties from liability.

Moreover, the cost of non-compliance has increased for parties to an impugned agreement. In addition to prohibition orders (which the Tribunal previously had jurisdiction to make), the Tribunal can now also impose structural orders, such as the divestiture of assets or shares, or AMPs of up to the greater of (a) \$10 million (or \$15 million for subsequent infringements), or (b) three times the value of the benefit derived from the agreement or arrangement or, if that amount cannot be reasonably determined, up to 3% of the person’s annual worldwide gross revenues.

Since its introduction in 2009, only two applications have been brought under section 90.1, both of which were resolved by consent agreements.¹⁵ Together with the introduction of a right of private access (discussed in the previous section), the scope for public and private enforcement of the Act’s civil collaboration provisions has been significantly enhanced; however, it

remains to be seen whether these changes will have the intended effect of increasing enforcement activity.

D) Environmental Claims

i) Deceptive Marketing

While environmental claims have always been subject to the Act's deceptive marketing regime, Bill C-59 introduced two express violations where a person makes a representation to the public:

- a) in the form of a statement, warranty or guarantee of a product's benefits for protecting or restoring the environment or mitigating the environmental, social and ecological causes or effects of climate change that is not based on an adequate and proper test; or
- b) with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that is not based on adequate and proper substantiation in accordance with internationally recognized methodology.

With respect to the first provision, this amendment simply clarifies for advertisers that such statements will generally be assessed in the same way as performance claims (consistent with the number of cases related to environmental claims already brought by the Bureau under the civil deceptive marketing provisions). That said, the new statutory language, which expressly includes statements regarding the social or ecological dimensions of climate change, may arguably broaden the scope of the deceptive marketing regime.

The second provision, which requires "adequate and proper substantiation" for statements about a "business or business activity", significantly broadens the scope of reviewable conduct, which was previously restricted to statements about a product. Instead of an adequate and proper test standard as exists under the Act's deceptive marketing regime, the new provisions require adequate and proper substantiation in accordance with internationally recognized methodology. Preliminary guidance on these provisions, including the scope of enforcement and what constitutes an internationally recognized methodology, was provided by the Bureau as part of draft guidelines¹⁶ published in December 2024, which were subject to a consultation process that ended on February 28, 2025.

ii) Environmental Certificates

The Act now contains a certification mechanism, by which the Bureau can certify certain environment-related agreements and exempt them from the criminal and civil collaboration provisions of the Act. Private parties are able to request a certificate from the Bureau, which certificate can last up to a maximum of 10 years (subject to extensions by the Bureau), that authorizes a proposed environmental collaboration subject to any terms imposed by the Bureau in the certificate. In order to grant such an exemption, the Bureau must be satisfied that (a) the agreement is made for the purpose of protecting the environment; and (b) the agreement is not likely to prevent or lessen competition substantially.¹⁷

From a procedural standpoint, the Bureau must consider such a request as soon as practicable, though there is no set timeline. When applying for the certificate, parties must provide relevant information at the Bureau's request. Once issued, the certificate must be registered with the Tribunal and thereafter, the conspiracy, bid-rigging, and civil collaborations provisions of the Act will not apply with respect to the sanctioned agreement.

Given that this new mechanism provides no safe harbour for collaborative agreements that the Bureau determines are either not made for the purpose of protecting the environment or are likely to prevent or lessen competition substantially, it is unclear how private parties contemplating such collaborations are incentivized to come forward and seek a certificate. This is particularly so in light of the existing alternatives available under the Act which serve to insulate some environmental collaborations from the Act's criminal provisions. For example, the "ancillary restraints defense" protects anti-competitive agreements that are ancillary to a broader legitimate agreement and are reasonably necessary for achieving the objective of that broader agreement.

E) Updates to Price Representations

The Act's restriction on drip pricing was previously silent as to which obligatory charges or fees could be excluded from the upfront price of a product or service, allowing sellers to exclude their own regulatory charges or fees from the upfront price. In its amended form, the restriction specifies that the charges or fees that can be excluded from the upfront price of a product or service are only those imposed directly on the purchaser by law, effectively requiring sellers to use "all in pricing".

With respect to ordinary price selling, the amendments have shifted the onus from the Bureau onto sellers or advertisers to prove that any discounts being offered are not false or misleading. In its submissions to the Minister's consultation process, the Bureau cited evidentiary difficulties in establishing violations and argued that the onus should be on sellers to prove that they have met the required volume or time related tests under section 74.01(3).¹⁸

F) Introduction of a Right of Repair

The Act now includes an express right to repair, preventing manufacturers from refusing to provide to third-parties the “means of diagnosis and repair” so long as doing so does not require disclosure of any trade secrets. Under the Act, means of diagnosis and repair is defined as any diagnostic, maintenance, repair and calibration information, technical updates, diagnostic software or tools and any related documentation and service parts.

G) Protection Against Reprisal Actions

A new civil regime has been introduced whereby the Commissioner or an affected party can apply to the Federal Court or provincial superior court for a prohibition order and/or an administrative monetary penalty to protect those who assist the Commissioner from retaliatory conduct intended to “penalize, punish, discipline, harass or disadvantage” their cooperation.

III. Competition Bureau Enforcement Activity

A) Mergers

i) Bureau approves purchaser for divestiture assets from Secure/Tervita transaction

On February 5, 2024, the Bureau announced its approval of R360 Environmental Solutions Canada Inc., an affiliate of Waste Connections, Inc., as the buyer of 29 facilities owned by Secure Energy Services (“**Secure**”).¹⁹ Secure acquired these facilities as part of its acquisition of Tervita Corporation, a competing supplier of oilfield waste services in the Western Canadian Sedimentary Basin.

Secure and Tervita closed their merger on July 2, 2021, following which the Bureau initiated proceedings to challenge the merger before the Tribunal. Secure was ultimately ordered to divest these facilities by the Tribunal in a March 2023 decision in order to resolve a substantial lessening of competition found in 136 markets.²⁰ Secure's appeal of the Tribunal's decision was dismissed by the Federal Court of Appeal (“**FCA**”) in August 2023,²¹

and its application for leave to appeal the FCA's decision to the Supreme Court of Canada was dismissed in February 2024.²² The Bureau concluded that the divestiture of these facilities, which includes 17 treatment, recovery, and disposal facilities, four standalone water disposal wells, six landfills and two caverns, would reintroduce competition for oilfield waste services in the Western Canadian Sedimentary Basin.

ii) Bureau reaches consent agreement with Béton Provincial regarding its acquisition of the ready-mix concrete business of CRH Canada Group Inc

In March 2024, the Bureau entered into a consent agreement with Béton Provincial to address competition concerns resulting from its acquisition of the Québec-based concrete operations of CRH Canada Group Inc.²³ Béton Provincial, headquartered in Québec City, operates concrete production assets, ready-mix concrete batch plants and quarries for aggregates in Québec, Ontario and New Brunswick. The Bureau's review concluded that the transaction would likely result in a substantial lessening of competition for the supply of ready-mix concrete in the Laurentides, as a result of a loss of rivalry between the parties' ready-mix concrete batch plants in the region.²⁴ Under the consent agreement, Béton Provincial is required to divest CRH's plant in Mont-Tremblant along with associated operating assets, employees and customer contracts to an independent purchaser approved by the Commissioner of Competition.

iii) Report to the Minister of Transport regarding the Bunge/Viterra Merger

On April 23, 2024, the Bureau released its report to the Minister of Transport concluding that Bunge Limited's ("**Bunge**") proposed acquisition of Viterra Limited ("**Viterra**") would likely result in substantial anti-competitive effects and a significant loss of rivalry between two key competitors in key agricultural markets in Canada.²⁵

Under section 53(1) of the *Canada Transportation Act*,²⁶ transactions involving a transportation undertaking that are notifiable under the Act must be concurrently notified to the Minister of Transport. Where the Minister of Transport initiates a public interest review of the transaction, as it did in this case, the Bureau loses jurisdiction to challenge the transaction and, instead, assumes a consultative role in the public interest review by reporting on any competition concerns associated with the transaction.

The Bureau's analysis considered the competitive effects of a combination of Bunge and Viterra on the markets for the origination of grain and the production and sale of oilseed products as well as the competitive effects upon the market for handling of grain at terminal elevators at ports as a result of the combination of Viterra's terminal elevator operations with Bunge's existing minority interest in the G3 group of companies ("G3"), which operates terminal elevators at some of the same ports as Viterra.

With respect to the market for grain origination, the Bureau concluded that the transaction would result in Bunge acquiring Western Canada's largest grain elevator company, resulting in a substantial lessening of competition for the purchase of canola in the areas around Altona, Manitoba and Nipawin, Saskatchewan. The Bureau also noted that the transaction could harm competition with respect to pricing, innovation, entry, and quality of service in local areas where G3 (which is also active in the grain origination market) and Viterra compete. With respect to oilseed production, Bunge and Viterra own two of three canola crushing plants in Eastern Canada. As such, the Bureau concluded that, following completion of the transaction, Bunge would have an increased ability to limit the supply of refined canola oil products to customers it perceives to be its competitors in downstream markets for oil distribution and further processing.

Finally, with respect to terminal elevator operations at ports, the Bureau concluded that, notwithstanding the potential for Bunge to influence G3's competitiveness with respect to entry, expansion and innovation as a result of its minority interest, the transaction would be unlikely to result in a SPLC with respect to the use of terminal elevator capacity in any relevant area in Canada as a result of effective remaining competition and significant excess capacity.

In January 2025, the Minister of Transport announced the approval of Bunge's acquisition of Viterra, subject to terms and conditions aimed at protecting competition in the Canadian grain and oilseed sector.²⁷ The terms and conditions include:

- Bunge's divestiture of six grain elevators in Western Canada;
- Strict and legally binding controls on Bunge's minority ownership stake in G3;
- A price protection program for certain purchasers of canola oil in Central and Atlantic Canada;

- Retaining Viterra's head office in Regina for a minimum of five years; and
- A binding commitment from Bunge to invest at least \$520 million in Canada within the next five years.

iv) Bureau reaches consent agreement with Bell Media Inc regarding its acquisition of Outedge Media Canada LP

In June 2024, the Bureau entered into a consent agreement with Bell Media Inc. (“**Bell**”) in connection with its acquisition of Outedge Media Canada LP (“**Outedge Canada**”) to resolve competition concerns over outdoor advertising services in Ontario and Québec.²⁸ Both Bell, a communications and media company servicing residential, business and wholesale customers, and Outedge Canada provide outdoor advertising services using their respective inventories of billboards, street furniture and transit displays. The Bureau analyzed advertisers’ willingness to substitute across different media types (e.g. television, radio, online) and across different out-of-home mediums and concluded that the relevant product market was no broader than the sale of outdoor advertising services.²⁹

The Bureau’s investigation concluded that the merger was likely to substantially lessen competition for outdoor advertising services in Québec City, Trois-Rivières, Sherbrooke, the Greater Montréal Area and the Greater Toronto Area, where there are a limited number of rival suppliers and other providers face significant barriers to entry or expansion, such as strict by-laws and lengthy permitting processes.³⁰ Under the consent agreement, Bell was required to divest a total of 669 advertising displays, including digital displays, across the five markets. In designing the remedy, the Bureau gave consideration to the parties’ respective portfolio of displays to ensure that the divestiture purchaser would acquire a sufficiently diverse set of assets to effectively compete with Bell across these markets.

v) Bureau approves National Bank of Canada’s acquisition of Canadian Western Bank

In September 2024, the Bureau cleared National Bank of Canada’s \$5 billion acquisition of Canadian Western Bank, both of which are Schedule 1 banks under the *Bank Act*. This marks the second Canadian bank merger to receive Bureau approval in the past three years, the other being Royal Bank of Canada’s 2022 acquisition of HSBC Bank Canada which involved a lengthier review by the Bureau. The transaction received approval from the Minister of Finance and Office of the Superintendent of Financial

Institutions in December 2024, clearing the way for the transaction to close in 2025.

vi) Bureau reaches consent agreement with TransAlta Corporation regarding its acquisition of Heartland Generation

On November 13, 2024, the Bureau entered into a consent agreement with TransAlta Corporation (“**TransAlta**”) to resolve concerns regarding the substantial lessening of competition in Alberta’s wholesale electricity market that would have resulted from its acquisition of Heartland Generation (“**Heartland**”).³¹ Both TransAlta and Heartland are power generators and marketers of electricity with a portfolio of generation assets in Alberta.

All electricity supplied into Alberta’s electricity grid is sold through Alberta’s wholesale electricity market operated by the Alberta Electricity System Operator (“**AESO**”). For each hour of the day, electricity generators make offers that set out the amount of electricity they are willing to generate from a particular generation asset and a price based on the expected supply and demand for the hour. AESO then sorts and dispatches offers from the lowest-priced offer to the highest-priced offer for each hour of the day until all electricity required to meet demand in the hour has been dispatched. The Bureau’s review of the transaction focused on TransAlta’s post-transaction ability to increase the wholesale price of electricity within any given hour using a practice known as economic withholding, whereby electricity generated from an asset is offered at a higher price to reduce the likelihood that such electricity will ultimately be dispatched to satisfy demand.

The Bureau concluded that TransAlta would have the ability and incentive to engage in economic withholding of all or a portion of the electricity generated from Heartland’s simple cycle gas plants (also known as “peaking” units) during hours where renewable sources of electricity were insufficient to meet demand, thereby raising the wholesale price of electricity to the benefit of the balance of TransAlta’s portfolio of generating assets.³² Based on its merger simulation economic model, the Bureau concluded that the hours in which price impacts were likely to be greatest were summer super-peak hours (5am-8am & 5pm-12am) and all hours during winter months, during which demand for electricity is high and the availability of wind and solar power tends to be lower. Notably, the Bureau considered the parties’ share of total generating capacity in Alberta but concluded that, in this market, market shares were not an accurate measure of market power.

Under the consent agreement, TransAlta agreed to divest its interests in the Poplar Hill, Rainbow Lake 4 and Rainbow Lake 5 generation facilities

being acquired from Heartland, two of which are “peaking” units upon which the Bureau’s theory of harm was predicated.

vii) Bureau obtains first remedy related to a structural presumption merger in RONA Inc’s acquisition of All-Fab Building Components LP

On December 23, 2024, the Bureau entered into a consent agreement with RONA Inc. (“**RONA**”) in respect of its acquisition of All-Fab Building Components LP (“**All-Fab**”) to remedy concerns related to competition for the design, manufacture and supply of roof and floor trusses in Saskatoon, Saskatchewan.³³ Both RONA and All-Fab are manufacturers of roof and floor trusses and distributors of building materials under multiple banners.

The Bureau’s review focused on two geographic areas – namely, Edmonton, Alberta and Saskatoon, Saskatchewan.³⁴ While the Bureau found sufficient competitive discipline in Edmonton, the Bureau concluded that the parties’ post-transaction market share would exceed 30% in some geographic market scenarios in Saskatoon and that the concentration index (i.e., the HHI) exceeded 1800 and increased by more than 100 under any geographic market scenario, such that the structural presumption in subsection 92(3) of the Act was likely met in the Saskatoon area. The Bureau also concluded that competitive discipline upon the parties was limited and barriers to entry were high as a result of limited access to truss designers and qualified staff, cost of equipment, access to relationships with suppliers and the need to build a reputation of quality service with customers.

To remedy the Bureau’s concerns, RONA agreed to divest the truss manufacturing facility owned by its banner ZyTech Building Systems located in Martensville, Saskatchewan (a city immediately north of Saskatoon) to a third party purchaser approved by the Bureau. This is the first time that the Bureau relied on the rebuttable structural presumption in taking action to remedy an anti-competitive merger.

B) Abuse of Dominance

i) Bureau reaches consent agreement with the Yukon Real Estate Association regarding its membership requirements

On April 25, 2024, the Bureau announced that it had entered into a consent agreement with the Yukon Real Estate Association (the “**YREA**”), a trade association representing real estate agents and salespeople in the Yukon.³⁵ Members of the association have exclusive access to the Multiple

Listing Service (“**MLS**”) for viewing listings and conducting brokerage services. The consent agreement resulted from the Bureau’s investigation into the YREA’s membership practices, which revealed that the YREA engaged in anti-competitive acts by requiring prospective members to reside in the Yukon for one year before becoming eligible for membership. By implementing and enforcing this residency requirement, the Bureau concluded that the YREA created barriers to new competition, particularly for alternative business models and fee structures. Ultimately, the Bureau determined that the YREA’s conduct likely resulted in a substantial lessening of competition for MLS-based residential real estate brokerage services in the Yukon, in violation of the Act’s abuse of dominance provisions.

Among other things, the consent agreement prohibits the YREA from requiring that members be physically present in, or have a representative physically present in, the Yukon and prevents the YREA from enforcing discriminatory policies against non-resident members.³⁶

This YREA investigation bears a close resemblance to the Bureau’s examination of the membership practices of the Northwest Territories Association of Realtors (the “**NWTAR**”) in late 2023.³⁷ In that case, the Bureau found that the NWTAR had engaged in anti-competitive behavior by denying membership to individuals attempting to compete remotely with its existing members. Consequently, NWTAR and the Bureau entered into consent agreement, prohibiting the NWTAR from enforcing discriminatory membership practices.³⁸

ii) Bureau advances its investigation into Kalibrate’s gas and pricing services

In July 2024, the Bureau obtained a court order in connection with its inquiry into Kalibrate Canada Inc. (“**Kalibrate**”). Kalibrate provides data services, including competition intelligence, location consulting, and pricing services, to the retail gas industry. Through its investigation, the Bureau is looking to determine whether Kalibrate’s services have an adverse effect on competition between gas stations in Canada, in a manner contrary to the restrictive trade practices and abuse of dominance provisions of the Act. The court order requires Kalibrate to produce records and information relevant to the Bureau’s investigation.

iii) Bureau advances its investigation into the Canadian Real Estate Association's policies

In October 2024, the Bureau obtained a court order to advance its inquiry into potential anti-competitive conduct by the Canadian Real Estate Association (“CREA”).³⁹ CREA is an industry association representing over 160,000 real estate brokers, agents, and salespeople working through 65 real estate boards and associations across Canada. The Bureau’s investigation is focused on CREA’s commission rules and its “REALTOR Cooperation Policy”. Specifically, the Bureau is examining whether: (i) CREA’s commission rules discourage buyers’ realtors from competing to offer lower commission rates or affect competition in other ways, which could result in less competition and higher costs for both buyers and sellers; and, (ii) CREA’s Realtor Cooperation Policy makes it more difficult for alternative listing services to compete, reduces competition among realtors, or gives larger real estate brokerages an unfair advantage over smaller ones.

CREA’s commission rules mandate that sellers’ agents offer compensation to buyers’ agents for properties listed on an MLS system, while its REALTOR Cooperation Policy requires residential real estate listings to be placed on an MLS system within three days of being marketed to the public, with some exceptions. The court order compels CREA to produce records and information pertinent to the Bureau’s investigation. In response, CREA has asserted that “its rules and policies are both pro-competitive and pro-consumer,” but that it, nonetheless, intends to cooperate with the Bureau.⁴⁰

In parallel, the Bureau has invited stakeholders—home buyers, sellers, realtors, and other market participants—to share their experiences regarding real estate commissions and CREA’s policies within the Canadian real estate market.

iv) Bureau advances its investigation into Dye & Durham’s business practices

In November 2024, the Bureau obtained a court order to gather information and further an ongoing investigation into alleged anti-competitive conduct by Dye & Durham Limited (“Dye & Durham”).⁴¹ Dye & Durham offers legal software products and services, including conveyancing software designed to assist legal practitioners with residential real estate transactions. The Bureau’s investigation is focused on whether Dye & Durham has engaged in practices that harm competition in Canada’s conveyancing software industry. The alleged anti-competitive behavior under scrutiny includes, but is not limited to: refusing to allow third-party conveyancing

software to interoperate with Dye & Durham software; tying or bundling of Dye & Durham's conveyancing software with other Dye & Durham software; exclusive dealing with suppliers; and preventing customers of Dye & Durham conveyancing software from switching to third-party conveyancing software.

The court order requires Dye & Durham to produce records and written information relevant to the Bureau's investigation. In a public statement, Dye & Durham raised concerns regarding the Bureau's allegations, stating that "the Bureau's filing materials improperly contextualize commercial relationships and standard industry practices in software and data services, such as subscription and contract terms, discounted pricing, and product suite offerings".⁴²

v) Bureau files application with the Tribunal alleging anti-competitive conduct against Google regarding its online advertising

On February 29, 2024, the Bureau obtained a court order requiring Google to produce records and written information relevant to the Bureau's ongoing investigation into Google's advertising practices in Canada.⁴³ The Bureau's investigation, which commenced in 2020, concerns claims that Google has engaged in certain practices that harm competition in the online display advertising industry in Canada. Originally focused on allegations that Google was leveraging its market power in the supply of video advertising in the market for advertiser buying tools, the scope of the investigation shifted to determining whether Google is leveraging its market power across display advertising technology services and using predatory pricing in certain display advertising technology services.

On November 28, 2024, the Bureau filed an application with the Tribunal, alleging that Google engaged in anti-competitive conduct in online advertising in Canada.⁴⁴ In its application, the Bureau requested an order that, among other things, would require Google to sell two of its advertising tools, direct Google to pay an administrative monetary penalty, and prohibit Google from continuing to engage in anti-competitive conduct.

The United States Department of Justice brought a case against Google in January 2023 for similar conduct, alleging that Google monopolized the market for search advertising.⁴⁵ The case was heard before the Federal District Court of Virginia in November 2024.⁴⁶ As at the end of 2024, a decision had not yet been issued.

C) Bid-Rigging and Conspiracy

i) Sentences imposed and settlements reached in bid-rigging case for asphalt contracts in Granby region

On January 15, 2024, the Bureau announced that it had entered into a settlement agreement with Construction DJL Inc., requiring the company to pay \$1.5 million in connection with its engagement in alleged bid-rigging for ministère des Transports du Québec paving contracts in the Granby region of Québec.⁴⁷ As a result of its alleged participation in the scheme from 2008 to 2009 with competitors Sintra Inc. and Pavages Maska Inc. to submit rigged bids, the company was also ordered to follow its corporate compliance program and to maintain appropriate control procedures to ensure its effectiveness. This settlement takes into account that the individuals involved in the scheme no longer work for the company as well as Construction DJL's previous reimbursement of overpayments related to the bid-rigging scheme through the Québec government's Voluntary Reimbursement Program.

On May 23, 2024, the Bureau announced that it had also reached a settlement with Pavages Maska Inc. in connection with the same bid-rigging scheme in the Granby region, ordering the company to pay \$100,000.⁴⁸ Pavages Maska's settlement took into account that the individuals involved in the scheme had a limited role and no longer worked for the company as well as Pavages' implementation of a corporate compliance program and appropriate control procedures.

Further, in September 2023, charges were laid against two individuals in connection with the alleged conspiracy, Serge Daunais, formerly vice-president of Pavages Maska Inc., and Marcel Roireau, vice-president of operations for Construction DJL Inc.⁴⁹ On September 5, 2024, the Bureau announced that Mr. Roireau had been sentenced to twelve months house arrest after pleading guilty to his involvement in rigging bids for asphalt contracts in the Granby region from 2008 to 2009.⁵⁰ On January 14, 2025, the Bureau announced that Mr. Daunais had pleaded guilty for his involvement in the bid-rigging conspiracy and was ordered to pay a \$20,000 fine.⁵¹

ii) Individual sentenced in bid-rigging case for public contracts in Québec

On October 28, 2024, the Bureau announced that André Côté, a former executive for engineering firm Roche ltée, Groupe-conseil (now Norda Stelo), had been sentenced as a result of his participation in a bid-rigging

conspiracy in Québec.⁵² Evidence gathered by the Bureau found that Mr. Côté participated in a bid-rigging scheme between September 1, 2006 and November 19, 2010, in which several individuals employed by consulting engineering firms conspired to divide municipal infrastructure contracts in Québec City among the firms. The former executive received a 14-month conditional sentence, consisting of seven months house arrest and a seven-month curfew. He is also required to complete 100 hours of community service. Mr. Côté was one of two individuals originally charged in November 2023 in connection with the bid-rigging conspiracy.⁵³

D) Deceptive Marketing and Misleading Advertising

i) Bureau reaches a consent agreement with SiriusXM Canada over subscription price advertising

On June 5, 2024, the Bureau entered into a consent agreement with SiriusXM Canada (“**Sirius**”), concluding the Bureau’s drip pricing investigation into Sirius’ subscription price representations.⁵⁴ The Bureau alleged that Sirius advertised its satellite radio and streaming subscription plans at prices that were not attainable due to an additional mandatory Music Royalty and Administrative Fee, which increased the monthly cost of a plan by 10-20% above the advertised price. As part of the consent agreement, Sirius agreed to pay a \$3.3 million administrative monetary penalty as well as an additional \$30,000 to cover the cost of the Bureau’s investigation. Sirius also agreed not to engage in drip pricing, nor promote subscription plans at prices that were not attainable. The consent agreement further required Sirius to enhance its compliance program and implement new procedures to comply with Canadian competition laws.

ii) Bureau obtains a second court order in its Amazon investigation

On June 12, 2024, the Bureau announced that it had obtained a second court order from the Federal Court of Canada to gather information to advance its ongoing investigation into potential false or misleading claims by Amazon.⁵⁵ The Bureau’s investigation, originally launched in November 2021, concerns claims made by Amazon that may be influenced by reviews and ratings, which could affect how products are ranked and displayed on Amazon’s website and mobile app. The court order requires Amazon to produce records and written information that are relevant to the Bureau’s investigation into whether these claims raise concerns under the deceptive marketing provisions of the Act.

iii) Competition Tribunal finds that Cineplex engaged in drip pricing

On September 23, 2024, the Tribunal ruled in the Bureau's favour, finding that Cineplex engaged in drip pricing by adding a mandatory \$1.50 fee when customers purchased tickets online, which was not applied to in-person sales.⁵⁶ In concluding that the online ticket prices were misleading, the Tribunal ordered Cineplex to pay a \$38.9 million administrative monetary penalty, equivalent to the amount Cineplex collected from consumers as a result of the booking fee between June 2022 and December 2023. Cineplex was also ordered to cover a portion of the legal fees and disbursements incurred by the Bureau and was prohibited from engaging in similar deceptive practices for 10 years.⁵⁷ This was the first case that required the Tribunal to apply the recently enacted drip pricing provisions of the Act, which came into force in December 2023.

IV. New Guidelines, Bulletins and Consultations

A) Immunity and Leniency Programs under the *Competition Act*

On June 19, 2024, the Bureau and the Public Prosecution Service of Canada issued updated Immunity and Leniency Programs guidance to include the new criminal wage-fixing and no-poaching provisions of the Act.⁵⁸ The criminalization of wage-fixing and no-poaching agreements was passed in Bill C-19, which came into force on June 23, 2022.⁵⁹ The amendments made it *per se* illegal for unaffiliated employers to enter into agreements to fix, maintain, decrease or control wages or terms or conditions of employment, or to solicit or hire each other's employees.⁶⁰

The Immunity and Leniency Program offers immunity from prosecution or lenient treatment to an individual or business who is willing to terminate their participation in serious criminal activity under the Act and provide cooperation to an investigation. The updated guidelines extend this program to conduct that may otherwise fall under the criminal wage-fixing and no-poach provisions of the Act. In particular, they provide that an employer who enters into a wage-fixing or no-poaching agreement that affects Canadian employees, contrary to subsection 45(1.1) of the Act, may seek immunity or leniency under the program. These changes represent the most significant amendments to the immunity and leniency program since the changes in 2018, requiring that prospective immunity and leniency applicants fully disclose the facts and evidence relating to the violation,

including documentary production and recorded witness testimony, before final immunity or leniency is granted.

B) Enforcement Guidelines on Agreements Between Companies to Protect the Environment

On July 22, 2024, the Bureau issued preliminary guidance on the new environmental certificates program.⁶¹ This new, voluntary pre-approval regime for environmental collaborations enables the Commissioner to issue a certificate insulating parties to an agreement from the application of sections 45, 46, 47, and 49 (covering criminal cartel agreements and bid rigging) and 90.1 (covering civil competitor collaborations that harm competition) of the Act. The new guidance provides that the Bureau can issue a certificate, which will then be registered with the Tribunal, if it is satisfied that the proposed agreement is for the purpose of protecting the environment and does not harm competition (i.e., result in an SPLC). Certificates are only available for proposed agreements, not existing agreements.

The guidelines further outline the process for parties to a potential agreement to apply for an environmental certificate. A request to apply for the program must include the following initial information: (i) a copy of the proposed agreement and a description of the proposed collaboration; (ii) a description of the business rationale; (iii) a description of why the proposed collaboration is necessary to protect the environment; (iv) a complete description of the parties to the proposed agreement; and (v) a description of the products and services relevant to the agreement. Once the request is received by the Bureau, it will then follow up with the parties to seek additional, more specific information about the proposed collaboration. The applicants must provide any information requested by the Bureau regarding the proposed agreement. If it is determined that the certificate was obtained based on incomplete or inaccurate information provided by the parties, it may be found to be invalid.

C) Draft Enforcement Guidelines on Real Estate “Property Controls”

On August 7, 2024, the Bureau issued draft guidance on the use of property controls in commercial real estate.⁶² Competitor property controls are restrictions on the use of commercial real estate. The Bureau’s draft guidelines address two common forms of property controls: exclusivity clauses and restrictive covenants. Exclusivity clauses prohibit a landlord from leasing a unit or a piece of land to a company that competes with an existing tenant, or limit what or how products can be sold. Restrictive covenants,

on the other hand, prevent a purchaser or owner of a commercial property from using the location to operate or lease to operators of certain types of businesses that compete with a previous owner. The draft guidance provides that property controls may be enforced under either the abuse of dominance provisions or the anti-competitive collaboration provisions of the Act.

In its guidelines, the Bureau states that it considers there to be limited circumstances where property controls may increase overall competition, and may therefore escape enforcement action under the abuse of dominance regime. In particular, the Bureau's guidelines provide that an exclusivity clause may be pro-competitive if, for example, no retailer would otherwise make an investment to become a key tenant in a new shopping plaza. Provided that the scope of the exclusivity clause does not go further than necessary to encourage new entry or to allow a tenant to make investments to develop their storefront, the Bureau's guidance states that it would consider such a restriction to be justified.

On the other hand, the guidance clarifies that the use of restrictive covenants by dominant firms is considered by the Bureau to be an anti-competitive business practice in almost all cases. Notably, the preliminary guidelines list factors that the Bureau will consider to determine whether a firm, or group of firms in a joint dominance scenario, is dominant, and indicate that the scope of the property control itself (in terms of covered products, competitors or geographic areas) may be taken into account when assessing dominance. Absent any evidence of a pro-competitive justification, the guidelines provide that competitor property controls used by dominant firms will be deemed anti-competitive.

The Bureau's proposed guidelines, however, provide limited insight with respect to its enforcement approach under the expanded section 90.1 framework. The guidelines only confirm that section 90.1 could apply to competitor property controls where there is proof that the agreement has the effect of harming competition and that the Bureau will typically consider all parties to the agreements (i.e., the tenants and lessors) to be the targets of any section 90.1 investigation.

This preliminary guidance was open for public consultation until October 7, 2024. Updated guidance is expected in 2025.

D) Market Studies Information Bulletin

On October 23, 2024, the Bureau released its Market Studies Information Bulletin, providing general guidance and information on how the Bureau

plans to conduct its market studies following the amendments in Bill C-56.⁶³ Prior to these amendments, the Bureau could only rely on publicly available information, information already in its possession, and information provided by stakeholders on a voluntary basis in completing its market studies. Now, the Bureau also has the power to apply for a court order to compel a legal person to provide it with relevant information for the completion of a market study.⁶⁴ This bulletin was intended to replace the 2018 Market Studies Information Bulletin and, more specifically, provide guidance regarding this new means for the Bureau to access relevant information.⁶⁵

The bulletin also outlines a series of steps that the Bureau will take before launching a market study, including (i) identifying relevant industries; (ii) identifying relevant sectors; and (iii) deciding on the scope of the market study. When identifying relevant industries, the bulletin clarifies that the Bureau is guided by public interest and will seek to identify sectors that are important to the Canadian economy, taking into consideration areas where its resources and expertise may provide the most value. When selecting a sector for the market study, the bulletin further states that the Bureau will ask a series of questions to determine whether carrying out the market study is in the public interest. These questions include, among others: is there behaviour the Bureau is concerned about; will the study be useful for the Bureau's enforcement or advocacy work; and does the Bureau have the resources needed to complete it fully and on time?

Finally, the bulletin provides an overview of how the Bureau launches market studies. First, the Commissioner must consult with the Minister regarding its intention to commence a market study or, in the alternative, the Minister can direct the Commissioner to conduct a market study if they believe it is in the public interest to do so. Following this initial consultation with the Minister, the Bureau publishes proposed terms of reference for the public to comment on as part of the draft market study notice. The public then has 15 days to comment on the proposed terms of reference before the Bureau develops its final terms of reference. Once the Minister approves the final terms of reference, they are published on the Bureau's website and the market study period officially begins. The Bureau must finish its study and publish its findings within 18 months. However, the Bureau can ask the Minister to extend the initial period for up to three more months at a time if issues arise.

The Bureau accepted feedback on the preliminary information bulletin until December 23, 2024. The Bureau intends to publish a final version of the bulletin in March 2025.

E) Preliminary Guidance on Changes to the *Competition Act*

On November 7, 2024, the Bureau published preliminary guidance on how it plans to enforce the updated mergers and restrictive trade practices provisions of the Act following the amendments in Bills C-56 and C-59.⁶⁶ More specifically, the guidelines are broken up into various sections that discuss amendments to the mergers, abuse of dominance, civil anti-competitive collaboration, refusal to deal and private access provisions of the Act. The preliminary guidelines also invite feedback and suggestions on more questions that the Bureau could answer regarding the amendments in updated versions of the guidance.

The mergers section discusses, among others, the new structural presumption, outlining that the Bureau will find it helpful for merging parties to provide detailed data on market shares, if available, as early on as possible in the review process. The guidance further clarifies that the Bureau may consider multiple measures of market share to confirm whether a merger meets the presumption thresholds. The section on mergers also confirms that the Bureau will apply the same general analysis in labour markets as it does in other buyer markets where the merging firms purchase inputs for their business. However, in the context of labour markets, the Bureau will focus on whether the merger will harm competition substantially for workers.

Another section of the preliminary guidance discusses the abuse of dominance amendments. Among other clarifications, this section indicates that the Bureau will not consider high prices on their own to be excessive and unfair pricing under the new provisions of the Act. Instead, it outlines that charging high prices is only an abuse of dominance when it is done by a dominant firm and either meets the definition of an anti-competitive act because it is intended to have certain negative effects on a competitor or an adverse effect on competition, or has the effect of harming competition substantially.

The civil anti-competitive collaboration section of the guidance discusses the expansion of the provision to apply to agreements among non-competitors. The guidance provides examples of agreements that do not involve competitors that may still harm competition and therefore may fall outside of the Act. For example, an agreement between a retailer and supplier providing the retailer a right of last offer (i.e., the opportunity to match a competitor's lower price) may fall outside the Act if the agreement disadvantages competing retailers and makes competition less intense in the market.

The proposed guidance also clarifies that even though efficiencies have been removed as a defence for civil anti-competitive agreements, the Bureau will still consider efficiencies in its analysis as to whether an agreement results in an SPLC, though to a lesser extent than it did previously.

The final sections of the guidance discuss the amendments to the refusal to deal provisions of the Act regarding the refusal to supply a means of diagnosis or repair, as well as the expansion of the private right of access regime. In particular, guidance on the private access regime outlines that the Bureau views private access to the Tribunal as a complement to the Bureau's enforcement of the Act. However, the Bureau also acknowledges that it must make choices as to how to use its limited resources to protect competition in ways that matter most for Canadians.

F) Public Consultation on the Merger Enforcement Guidelines

On November 7, 2024, the Bureau launched a public consultation, inviting stakeholders to provide comments on the Bureau's proposed updated Merger Enforcement Guidelines following the recent amendments to the merger provisions of the Act.⁶⁷ The Merger Enforcement Guidelines are intended to provide general direction on the Bureau's analytical approach to merger enforcement. Accordingly, this consultation is meant to invoke a much deeper analysis (and associated feedback) regarding the application of the amendments to the merger enforcement regime than the feedback requested on the Preliminary Guidance to Changes to the *Competition Act* discussed above. The Merger Enforcement Guidelines were last updated in 2011. Since then, the Canadian landscape for merger review has changed significantly, as has the Bureau's enforcement posture surrounding mergers.

To facilitate stakeholder feedback, the Bureau prepared a discussion paper that outlines possible areas for it to consider in the updated guidelines and initial guiding questions for stakeholders to provide input.⁶⁸ In the discussion paper, the Bureau outlines that it intends to adapt the guidelines to, among others: adhere to the recent amendments to the Act; take into account its experiences since 2011 across various industries; include new findings or approaches from developments in economic research; and discuss new features of competition in Canada and international markets, including digital markets and technologies. Overall, the Bureau states that it intends to ensure that the guidelines provide a clear framework and are flexible enough to apply to the varied and changing market settings in Canada.

The Bureau's public consultation ended on January 12, 2025. While submissions were not made public at the time of this writing, it is expected that

many key stakeholders, including the Canadian Bar Association, provided submissions to the Bureau.

G) Proposed Enforcement Guidelines on Environmental Claims

On July 22, 2024, the Bureau announced the launch of a public consultation to gather feedback on the interpretation of the new environmental claims and greenwashing provisions of the Act.⁶⁹ On the same day, the Bureau released Volume 7 of its “Deceptive Marketing Practices Digest”, intended to provide interim guidance on how businesses can ensure they stay on the right side of the new environmental claims and greenwashing provisions.⁷⁰

During the consultation period the Bureau received over 200 submissions from a variety of stakeholders. The overwhelming majority of the submissions highlighted the need for the Bureau to provide greater certainty through its draft guidelines as to how it intends to enforce the new greenwashing provisions. Many also raised alarm bells surrounding the potential chilling effect that this lack of certainty, if left unremedied, could have on innovation and environmental ambition for Canadian businesses. In particular, numerous submissions stressed the need for the Bureau to provide guidance on how it intended to interpret the vague and, until now, undefined concept of an “internationally recognized methodology”. Further, several stakeholders expressed concern as to how the Bureau’s enforcement of the greenwashing provisions will interact with securities regulation surrounding environmental disclosure. Stakeholders further brought attention to the reversal of the burden of proof for proving environmental claims under the new greenwashing provisions. Where previously the Bureau was responsible for proving a claim was misleading, these stakeholders argued that the burden is now on businesses to prove that their environmental claims are valid, leading to concern surrounding the new legal risks this may create for Canadian businesses. The consultation period closed on September 27, 2024.

Following the closing of the consultation period, on December 23, 2024, the Bureau released its proposed guidelines concerning environmental claims (the “**Draft Greenwashing Guidelines**”).⁷¹ The Bureau is expected to issue final guidance by June 2025, before the private access regime becomes applicable to these provisions.

As a result of the amendments in Bill C-59, there are now four provisions of the Act that are relevant to the review of environmental claims, two

of which are entirely new. *First*, environmental claims remain reviewable under the false and misleading provisions in paragraph 74.01(1)(a) of the Act, which prohibits a person from making representations to the public that are false or misleading in a material respect for the purpose of promoting a product or business interest.⁷² *Second*, environmental claims remain reviewable under the product performance claims provisions of the Act in paragraph 74.01(1)(b), which prohibits a person from making a representation to the public, for the purpose of promoting a product or any business interest, in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on adequate and proper testing.⁷³ As both of these provisions were in force prior to the amendments, the Draft Greenwashing Guidelines do not shed any new light on their enforcement.

Third, environmental claims may be reviewable under a new provision in paragraph 74.01(1)(b.1) of the Act, which prohibits a person from making a representation to the public in the form of a statement, warranty or guarantee of a product or service's benefits for protecting or restoring the environment or mitigating the environmental, social and ecological causes or effects of climate change that is not based on adequate and proper testing.⁷⁴ The proposed guidelines adopt the principles established by the courts and previous Bureau guidance with respect to performance claims (under section 74.01(1)(b)), which must similarly be adequately and properly tested prior to the claim being made.

Fourth, environmental claims may be reviewable under a new provision in paragraph 74.01(1)(b.2) of the Act, which prohibits a person from making a representation to the public with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that is not based on adequate and proper substantiation in accordance with internationally recognized methodology.⁷⁵ In contrast to the test for the environmental benefits of a product or service, the requirement to substantiate claims promoting the "benefits of a business or business activity" with an "internationally recognized methodology" was an entirely new concept and has never been subject to judicial interpretation. The Bureau's draft guidelines are therefore the first and only interpretative guidance regarding this new requirement.

In an effort to provide greater clarification as to what constitutes an "internationally recognized methodology", the Draft Greenwashing Guidelines outline that:

- A methodology that has been recognized in two or more countries will generally be considered by the Bureau to be “internationally recognized”, provided it results in adequate and proper substantiation. However, the Bureau does not interpret the Act as requiring that the methodology be recognized by the governments of two or more countries.
- The particular internationally recognized methodology used to substantiate claims must be appropriate for the Canadian context, with regard to factors such as the geography and climate.
- While the Act does not require third party verification, “internationally recognized methodologies often require third party verification.”
- The Act does not require businesses to use the “best methodology available” to substantiate claims and, where more than one internationally recognized methodology is available, any such methodology will meet the requirements of the provision.
- If no testing methodology exists for a particular claim, advertisers and businesses may rely on internationally recognized methodologies that “together can create substantiation for the claim, or that are used for substantiating similar claims.” Where a business concludes that there is no way to substantiate a claim, “it should avoid making that claim, and instead make claims that it can back up.”
- For methodologies required or endorsed by Canadian governments, the Bureau assumes that any such methodologies are consistent with internationally recognized methodologies. However, the Bureau is of the view that responsibility lies with businesses to conduct thorough due diligence to confirm that the government-approved, Canadian methodology is recognized internationally.

These details provide a useful indication of how the Bureau is likely to examine the internationally recognized methodology concept in active enforcement cases, and underscores the continuing importance for companies to ensure that their substantiation efforts are grounded in reputable metrics and/or standards prior to making any promotional statements.

The Draft Greenwashing Guidelines also make it clear that the Act’s deceptive marketing provisions, including the new greenwashing provisions, are intended to capture marketing and/or promotional representations made to the public “for the purpose of promoting a product or business interest”,

which is consistent with the statutory language. In other words, where a representation is made “*exclusively* for a different purpose, such as to investors and shareholders in the context of securities filings” the Bureau is of the view that such claims fall outside the purview of the Act’s deceptive marketing provisions. Similarly, the Bureau has made clear that where information contained in regulatory disclosures is then used in a business’s promotional or marketing materials, such claims will fall within the Bureau’s likely enforcement scope. There are, however, some grey areas. For example, while some disclosures on environment-related activities may be mandatory, some firms may choose to disclose more than is statutorily required, resulting in questions as to whether such voluntary disclosures were made for the purpose of promoting a business interest.

Finally, the Draft Greenwashing Guidelines confirm that the Bureau will not seek to enforce against any individual or entity for breaches of the new greenwashing provisions prior to their enactment. However, the reassurance that the Bureau will not apply the new provisions retroactively provides no comfort with respect to the other provisions of the deceptive marketing regime. Those provisions, especially the general provisions relating to materially false and misleading statements and the requirement for adequate and proper testing to support performance claims, have been in force for many years, and the Bureau could enforce against claims made prior to June 2024 on that basis; indeed, those provisions were the basis for its greenwashing enforcement activity until Bill C-59 was enacted.

V. Bureau Submissions and Reports

A) 2024–2025 Annual Plan: Strengthening Competition for Canadians

In April 2024, the Commissioner released the Bureau’s Annual Plan for 2024-2025, entitled “Onwards and Upwards: Strengthening Competition for Canadians.”⁷⁶ The Bureau’s strategic objectives for the year include protecting Canadians through enforcement and promoting competition in Canada.

Regarding enforcement, the Bureau intends to utilize “all of the tools” at its disposal, including recent legislative amendments, to prevent, detect, and address anti-competitive activities. As with the 2023-2024 Annual Plan, the Bureau will position itself to be prepared to bring cases to court and leverage the expertise of the Digital Enforcement and Intelligence Branch to advance its investigations. The Annual Plan also confirms that the Bureau’s enforcement efforts will continue to focus on certain sectors of the economy,

including online marketing, telecommunications, financial services, health, and infrastructure. Additionally, it will address deceptive marketing practices related to environmental claims and junk fees, such as drip pricing.

In terms of promoting competition, the Bureau stated that it would encourage policymakers and regulators to adopt pro-competitive policies. The Bureau also intends to advocate for increased competition in key sectors using its new market study powers and aim to create and deepen international and domestic relationships.

B) Bureau Makes Recommendations to Strengthen Competition in Canada's Financial Sector

In March 2024, the Bureau made a submission in response to the Department of Finance's public consultation concerning competition in the Canadian financial sector.⁷⁷ The consultation sought to identify barriers to banking services; improve the acquisition and merger process for banks to foster greater competition; and, explore measures to encourage competition while supporting jobs in the financial sector.⁷⁸ Reiterating its findings with respect to the Royal Bank of Canada's acquisition of HSBC Bank Canada, the Bureau noted that Canadian financial services markets are concentrated, with five large banks providing most of the services to Canadians; there are high barriers to entry and expansion in many financial services markets; and, conditions in some financial services markets may facilitate coordinated behavior among firms.

The Bureau put forward two recommendations to promote competition within the financial sector:

- First, the Bureau recommended that the Department of Finance adopt a consumer-driven banking framework aimed at increasing competition and innovation; and
- Second, the Bureau urged policymakers to reconsider the application of the stress test at mortgage renewal for uninsured borrowers, with a view towards allowing more borrowers with uninsured mortgages to benefit from competition among lenders.

Additionally, the Bureau suggested that the Department of Finance consider concentration and market share when assessing future financial transactions and regularly report on competition indicators in Canadian banking.

C) Artificial Intelligence and Competition Discussion Paper

In March 2024, the Bureau released a discussion paper setting out its preliminary assessment of the implications of artificial intelligence (“AI”) on competition in Canada.⁷⁹ Notably, the discussion paper highlights three key competition-related concerns within the AI industry.

First, the Bureau identifies data as a critical barrier to entry. It states that “participation in AI development markets heavily relies on the ability to access data and compute inputs,” noting an emerging market for data providers specifically for AI purposes. The Bureau indicates that both the volume and quality of data are essential for creating competitive AI models from the ground up.⁸⁰ Consequently, new entrants may find it challenging to compete against established incumbents who have been developing data collection technologies and collecting user data for years.⁸¹

Second, the Bureau warns that pricing algorithms might facilitate tacit collusion among competitors. Unlike manual price setting, algorithmic pricing can near-instantaneously integrate significant amounts of competitive information, such as competitor pricing, supply, demand, and customer personal data. The discussion paper cautions that, when multiple competing firms use algorithms to set prices, these systems could theoretically enable competitors to communicate indirectly in ways that enforcers might find difficult to detect.⁸²

Lastly, the Bureau notes that vertical relationships play a significant role in AI markets. AI development firms depend on data to train their technologies, while AI deployment firms rely on AI development firms to access these technologies and create new AI products or services. The Bureau observes that competition issues could arise if vertically-integrated firms engage in practices that exclude downstream competitors from the market, such as refusing to supply necessary data.⁸³

VI. Private Applications

A) *JAMP v Janssen*

On November 20, 2024, the Tribunal dismissed JAMP Pharma Corporation’s (“JAMP”) application for leave to commence an application against Janssen Inc. (“Janssen”) under the abuse of dominance provisions of the Act.⁸⁴ This was the first application considered by the Tribunal since the Act was amended in 2022 to allow private parties to seek leave to bring abuse of dominance claims.⁸⁵

In its application for leave, JAMP alleged that Janssen—in its dominant position with respect to biologic drugs containing ustekinumab—engaged in numerous anti-competitive acts to prevent competitors from launching biosimilar products to its ustekinumab drug product (known as STELARA). In particular, JAMP submitted that Janssen engaged in “sham” litigation and gamed the regulatory system to dissuade the entry of biosimilars, developed a fighting brand to create confusion and uncertainty in the market and delay switching, and engaged in predatory pricing, among other anti-competitive acts. JAMP argued that Janssen’s anti-competitive conduct substantially lessened competition in the supply of ustekinumab in Canada.⁸⁶ JAMP sought extensive remedies including broad prohibition orders and monetary penalties.⁸⁷

Janssen challenged JAMP’s application for leave on the basis that its conduct did not amount to a violation of the Act’s abuse of dominance provision. Janssen argued that, in any event, JAMP could not satisfy the leave test as only *part* of its business (i.e., its biosimilar to STELARA)—rather, than its *entire* business—would have been directly and substantially affected any alleged misconduct.⁸⁸ In its reply submission, JAMP took the position that the Act’s leave test did not require an applicant to show that the entirety of its business was affected but, even where only *part* of its business was directly and substantially affected, an applicant could meet this component of the leave test.⁸⁹

Ultimately, the Tribunal concluded that JAMP did not adduce sufficient evidence to give rise to a *bona fide* belief that an order could be made under the Act’s abuse of dominance provisions. That is, the Tribunal found no cogent and credible evidence suggesting that Janssen engaged in anti-competitive behaviour that is contrary to the Act’s abuse of dominance regime or that Janssen’s conduct could have the effect of substantially lessening or preventing competition in the ustekinumab market.⁹⁰

The Tribunal also found that JAMP did not provide sufficient evidence to support a *bona fide* belief that it was directly and substantially affected in its business by any misconduct.⁹¹ In so doing, the Tribunal determined that the Act does not require that an applicant be directly and substantially affected in its entire business. Even where only part of an applicant’s business is directly and substantially affected by the abuse of a dominant position, leave may be granted.⁹²

Of note, the Tribunal’s decision confirms that, unlike abuse of dominance applications, leave applications raised under the Act’s refusal to deal (section

75) and exclusive dealing, tied selling and market restriction (section 77) provisions require that the applicant prove that it is affected in the *entirety* of that competitor's business.⁹³ This distinction will be done away with once the new leave test comes into effect in June 2025, which provides that for refusal to deal (section 75), price maintenance (section 76), exclusive dealing, tied selling and market restriction (section 77), abuse of dominance (section 79) and civil collaborations (section 90.1), leave may be granted even if only part of an applicant's business is affected, or if the Tribunal determines it is in the "public interest" to grant leave.⁹⁴

B) *Winston Gaskin v Rogers*

In February 2024, a self-represented litigant, Winston Gaskin, filed a notice of application for leave to commence an abuse of dominance case against Rogers Communications Inc.⁹⁵ Mr. Gaskin's proposed notice of application does not detail the alleged anti-competitive conduct. However, the notice sets out the remedies sought, which includes an order: (i) prohibiting the respondents, for a period of 10 years, from engaging in "any practices that pertain to the leasing, ownership, acquisition, operation, procurement, management or supply of telecommunications leasing or infrastructure ownership related to telecommunications and cable, fiber or data centres or other like assets in Western Canada"; (ii) requiring the respondents to pay an administrative monetary penalty; and, (iii) requiring the respondents to pay \$40 million in damages.⁹⁶

In April 2024, the Tribunal ordered the court registry to reject the documents tendered by Mr. Gaskin in connection with the leave application.⁹⁷ Having regard to the requirements of the Act and the *Competition Tribunal Rules*, the Tribunal determined that Mr. Gaskin's application materials were not properly constituted and materially deficient.⁹⁸ The Tribunal made clear that its ruling does not bar Mr. Gaskin from filing acceptable application materials that comply with the statutory requirements.⁹⁹

C) *Goshen v The Saskatchewan Health Authority and The Ministry of Health*

In October 2024, Goshen Professional Care Inc. ("**Goshen**"), the owner and operator of a private care home in Emerald Park, Saskatchewan, filed a notice of application seeking leave to commence an action against the Saskatchewan Health Authority (the "**SHA**") under the Act's refusal to deal and abuse of dominance provisions.¹⁰⁰ In brief, Goshen entered into an Accountability Agreement with the SHA regarding a pilot project whereby the SHA utilized Goshen's services, providing Goshen 40 long-term care

(publicly funded) residents for their 80-bed home.¹⁰¹ Goshen alleges that, midway through the contractual period, the SHA unilaterally terminated the agreement, stating that the SHA would be transferring its residents to Goshen's competitor under a new public-private partnership pilot project.¹⁰² The SHA informed Goshen that it was ineligible for the new pilot project because that new project was limited to homes "in Regina".¹⁰³ Goshen asserts that, as a consequence of the SHA's actions, its lender required full repayment of the outstanding loans, which ultimately gave rise to insolvency proceedings against Goshen.¹⁰⁴

Goshen claims that the SHA's rationale for excluding Goshen's private care home from the pilot project was arbitrary and/or designed to wrongfully deprive Goshen of the supply for residents from the public system.¹⁰⁵ In so doing, Goshen alleged that, the SHA, alongside the Ministry of Health, abused its dominant position in the elder care market to deprive Goshen of the supply of care home contracts and residents, and to substantially undermine Goshen's financial viability.¹⁰⁶

As at January 2025, the SHA and the Ministry of Health had not filed any reply materials and the matter has been paused, pending the Saskatchewan Court of King's Bench decision with respect to concurrent bankruptcy proceedings.¹⁰⁷ The Commissioner, however, has certified that the alleged misconduct is not the subject of any current or former Bureau enforcement action or inquiry.¹⁰⁸

VII. Conclusion

The recent amendments to the Act are transformative. The strengthened merger control regime, the broadened scope for private action, and the new provisions addressing non-horizontal anti-competitive agreements, deceptive marketing and environmental claims mark a new era of competition enforcement in Canada. While the newly introduced amendments respond to public calls for stronger competition regulations, they also introduce uncertainty for businesses at a time when the Canadian economy is being tested by geopolitical turmoil.

In 2024, the Bureau's emphasis on public consultations and the development of guidance provided further clarity on practical implications of these changes. In the coming years, the further development of guidance documents, coupled with dialogue between policymakers, businesses, and the Bureau will be crucial in navigating the evolving competition landscape, particularly in the context of international economic instability. It remains to be seen what impact the amendments, and the Bureau's enforcement

priorities, may have on Canada's economic resilience, perhaps most notably with respect to merger review and enforcement in the absence of an efficiencies defence.

ENDNOTES

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- ⁴ *Ibid.*
- ⁵ Bill C-56, *An Act to amend the Excise Tax Act and the Competition Act*, 1st Sess, 44th Parl, 2023 (assented to 15 December 2023).
- ⁶ A comprehensive review of the amendments introduced as part of Bill C-56 is available in the Canadian Competition Law Review’s 2023 Year In Review publication; see Kevin Wright & Reba Nauth, “2023 Year in Review” (2024) 37:1 Can Competition L Rev at 2, online: <<https://cclr.cba.org/index.php/cclr/article/view/849/834>>.
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- ¹² Casey Halladay & Erin Keogh, “Stricter Review of Commercial Agreements

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¹³ ISED, *Future of Canada’s Competition Policy Consultation*, *supra* note 3.

¹⁴ “Bill C-56, An Act to amend the Excise Tax Act and the Competition Act”, 3rd reading, *House of Commons Debates*, 44-1, No 265 (11 December 2023) at 1300 (Alexis Brunelle-Duceppe).

¹⁵ In 2011, the Bureau filed an application against Air Canada, United Continental and United Airlines alleging that a coordinated arrangement of air services between Air Canada and United Airlines violated section 90.1 of the Act, *supra* note 1. The Bureau entered into a consent agreement with the parties to resolve its concerns, whereby Air Canada and United Continental agreed to refrain from coordinating prices, available seats at each price, and pooling revenue, as well as refrain from sharing commercially-sensitive information. In 2017, the Bureau filed an application pursuant to section 90.1 against HarperCollins, claiming that HarperCollins’ agreements with six other publishers to switch their distribution models for e-books from wholesale to agency would result in a substantial lessening of competition. The Bureau and HarperCollins ultimately entered into a consent agreement in January 2018, which permitted retailers to sell the e-books at discounts.

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¹⁷ The inclusion of the civil collaboration provisions (section 90.1) within the scope of the exemption is also unusual, as section 90.1 requires, as a constituent element, a SPLC. The intent appears to be to provide parties with greater certainty, by having this determination made prior to entering into the agreement, rather than seeing parties implement an initiative and risk enforcement action. But any such certainty is limited, as the Bureau can apply to have the certificate rescinded or varied if it ultimately does result in a SPLC.

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²⁶ *Canada Transportation Act*, SC 1996, c 10, s 53(1).

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⁸¹ *Ibid*.

⁸² *Ibid* at 20-24.

⁸³ *Ibid* at 17-18.

⁸⁴ *JAMP Pharma Corporation v Janssen Inc*, 2024 CanLII 121994 (CACT) [*JAMP Pharma* Reasons for Order and Order].

⁸⁵ *JAMP Pharma Corporation v Janssen Inc* (20 November 2024), CT-2024-006, online: Competition Tribunal <decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/521319/index.do> (decision note).

⁸⁶ *JAMP Pharma* Reasons for Order and Order, *supra* note 84 at paras 81-83.

⁸⁷ *Ibid* at para 85.

⁸⁸ *Ibid* at para 26.

⁸⁹ *Ibid* at paras 23-27.

⁹⁰ *Ibid* at paras 87-145.

⁹¹ *Ibid* at paras 164-79.

⁹² *Ibid* at para 69.

⁹³ *Ibid* at para 46.

⁹⁴ Nikiforos Iatrou et al, “JAMP Launches Novel Competition Complaint Alleging Janssen Abused its Dominance Over Stelara (ustekinumab)” (26 August 2024), online: <mccarthy.ca/en/insights/blogs/techlex/jamp-launches-novel-competition-complaint-alleging-janssen-abused-its-dominance-over-stelara-ustekinumab>.

⁹⁵ *Winston Gaskin et al v Rogers Communications Inc et al* (9 February 2024),

CT-2024-002, online: Competition Tribunal <decisions.ct-tc.gc.ca/ct-tc/cdo/en/521260/1/document.do> (request for leave to make an application pursuant to s 103.1 of the Act, *supra* note 1).

⁹⁶ *Ibid* at para 1.

⁹⁷ *Winston Gaskin et al v Rogers Communications Inc et al*, 2024 CanLII 31438 at para 35 (CACT).

⁹⁸ *Ibid* at para 6.

⁹⁹ *Ibid* at para 32.

¹⁰⁰ *Goshen Professional Care Inc v The Saskatchewan Health Authority and The Ministry Of Health* (2 October 2024), CT-2024-007, online: Competition Tribunal <decisions.ct-tc.gc.ca/ct-tc/cdo/en/521300/1/document.do> (proposed Notice of Application under ss 75 and 79 of the Act, *supra* note 1).

¹⁰¹ *Ibid* at para 5.

¹⁰² *Ibid* at para 6.

¹⁰³ *Ibid*.

¹⁰⁴ *Ibid* at paras 8-10.

¹⁰⁵ *Ibid* at para 7.

¹⁰⁶ *Ibid*.

¹⁰⁷ *Goshen Professional Care Inc v The Saskatchewan Health Authority and the Ministry of Health* (27 November 2024), CT-2024-007, online: <decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/521321/index.do> (direction to counsel regarding SKKB proceeding).

¹⁰⁸ *Goshen Professional Care Inc v The Saskatchewan Health Authority and the Ministry of Health* (10 October 2024), CT-2024-007, online: <decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/521303/index.do> (certification of the Commissioner pursuant to s 103.1 of the Act, *supra* note 1).