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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CANADA

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TABLE OF CONTENTS

Executive Summary.....	3
1. Changes to competition laws and policies, proposed or adopted	4
1.1 Summary of new legal provisions of competition law and related legislation	4
1.2 Other relevant measures, including new guidelines	5
2. Enforcement of competition laws and policies.....	7
2.1 Action against anticompetitive practices	7
2.2 Mergers and acquisitions	8
2.3 Telecommunications and broadcasting.....	10
2.4 The Competition Advocate.....	10
2.5 Market studies	11
2.6 Innovation and Antitrust Workshop	11
3. Collaborative Activities	11
3.1 Domestic.....	11
3.2 International.....	11
4. Resources.....	12
4.1 Budget.....	12
4.2 Human Resources	12
5. Conclusion.....	12

EXECUTIVE SUMMARY

1. The Competition Bureau (Bureau) plays a crucial role in fostering a healthy economic and regulatory climate where competition and innovation thrive. 2014-15 was a year of change and success for the Bureau. It applied an integrated “whole-of-Bureau” approach to build trust, promote confidence and increase compliance with the legislation, while making the best use of the tools at its disposal. The Bureau also increased its competition promotion efforts while aligning with Government of Canada priorities, and enhanced internal collaboration to increase synergies and efficiency.

2. The Bureau focused on four priorities, as detailed in its 2014-15 Annual Plan - Promoting Compliance for the Benefit of Canadian Consumers:

- **Applying effective and integrated enforcement and administration of its legislation.** The Bureau concluded several investigations in 2014-15, and secured more than \$25 million¹ in combined fines, administrative monetary penalties (AMPs) and consumer restitution for cartel conduct, abuse of dominance, and deceptive marketing. This work included charges, guilty pleas and fines in cases such as Octane Quebec, Ocean Freight, Motor Vehicles Components, and Infrastructure Quebec, as well as an AMP of \$5 million in the Ontario water heater industry.
- **Increasing competition promotion efforts.** The Bureau promoted competition through increased advocacy in a variety of key sectors of the economy, including through multiple submissions to the Canadian Radio-television and Telecommunications Commission (CRTC).
- **Aligning activities with Government of Canada priorities.** The Bureau complemented the Government’s consumer agenda by focusing on increased competition in the wireless industry, completing a market study on the propane industry and actively enforcing Canada’s Anti-Spam Legislation.
- **Enhancing organizational synergies through people, strengthened planning and better systems.** With the implementation of more integrated business processes in 2014-15, and a newly realigned organizational structure, the Bureau further increased collaboration and organizational synergies within the Bureau, allowing for greater flexibility in allocating resources to strategic priorities, and establishing a complementary balance between the Bureau’s enforcement and competition promotion activities.

3. By way of numbers, the Bureau:

- Concluded 50 investigations;
- Commenced 306 investigations and examinations;
- Concluded 245 merger reviews;
- Executed 42 search warrants;
- Resolved 25 cases through alternative case resolutions;

¹ All dollar amounts in this report are in Canadian dollars.

- Registered six consent agreements with the Competition Tribunal (Tribunal);
- Completed two market studies and 24 advocacy interventions; and
- Made nine representations to regulators.

4. For additional information on the activities described throughout this report, please consult the Bureau's [corporate documents](#) and the [Bureau's website](#).

1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legal provisions of competition law and related legislation

1.1.1 New legal provisions coming into effect

5. The coming into effect of Canada's Anti-Spam Legislation brought new provisions to the Competition Act (Act) that target false or misleading representations and deceptive marketing practices in the electronic marketplace, including, for example, social media, promotional emails, text messages, and instant messages. These amendments promote greater truth in online advertising for the benefit of consumers, legitimate businesses, and the economy.

1.1.2 Proposed amendments

6. Bill C-49, An Act to Amend the Competition Act (Price Transparency Act) was introduced by the Minister of Industry to address geographic price discrimination by giving the Commissioner of Competition (Commissioner) the authority to investigate and publish reports on alleged cases of price discrimination between Canada and the United States. The Bill had not yet become law when Parliament was dissolved for a federal election, and the Bill has not been reintroduced.

1.1.3 Five appearances before Parliamentary Committees

7. Bureau officials appeared before House and Senate Committees on five occasions and contributed to reviews of three pieces of proposed legislation concerning payment card networks,² telecommunications³ and the Commissioner of Elections' investigative powers.⁴ The Bureau also appeared to present the findings of a review of propane markets⁵ conducted jointly by the Bureau and the National

² Bill S-202, An Act to amend the Payment Cards Networks Act: Senate Standing Committee on Banking, Trade and Commerce (May 29, 2014).

³ Proposed amendments to the Telecommunications Act: House of Commons Standing Committee on Industry, Science and Technology during the Committee's study on Bill C-43, the second budget implementation bill of 2014 (November 18, 2014).

⁴ Bill C-23, An Act to amend the Canada Elections Act and other Acts and to make consequential amendments to certain Acts: House of Commons Standing Committee on Procedure and House Affairs (April 8, 2014).

⁵ Review of propane markets in Canada conducted jointly by the Bureau and the National Energy Board: House of Commons Standing Committee on Natural Resources (December 12, 2014).

Energy Board, and to contribute to an in-depth study on identity theft, during which the Bureau discussed its role in combating mass marketing fraud.⁶

1.2 Other relevant measures, including new guidelines

1.2.1 Internal Restructuring

8. To increase internal collaboration and efficiency, balance enforcement and competition promotion, and ultimately strengthen the impact of the Bureau's work for Canadians, the Bureau consolidated eight branches into four as part of its realignment initiative. In addition to realigning business lines, several other changes took place at the Bureau, including the creation of four new governance committees, each chaired by a senior executive with representatives from across the Bureau, in an effort to increase horizontal decision-making.



1.2.2 Strategic Planning

9. The Bureau adopted a new integrated planning approach to clearly connect its activities with longer-term goals and bring greater transparency to the planning and reporting process. The Bureau's planning starts with an environmental scan to identify trends, opportunities and risks related to competition enforcement. This is complemented by the development of detailed operational plans that set out intended activities for the year ahead and inform the management team's performance agreements. Together, all of these activities shape the priorities and objectives set out in the Bureau's Annual Plan.

10. The Bureau's first Annual Plan, Promoting Compliance for the Benefit of Canadian Consumers, shares the Bureau's priorities and objectives for the year. The Annual Plan was accompanied by a draft three-year Strategic Plan, which was published for public comment in March 2015. Designed as a roadmap for the following three years, the Strategic Plan will help improve the effectiveness and efficiency of the Bureau's competition enforcement and promotion activities. The Strategic Plan identifies five strategic objectives to guide the Bureau's work for 2015-18:

1. **Pursue Compliance** — Use all available tools to increase compliance with Canada's competition laws and prevent and deter anti-competitive or deceptive conduct that could threaten the health, growth and confidence in the Canadian economy;
2. **Empower Canadians** — Create an environment of competitive prices, greater product choice and informed decision-making for the benefit of all Canadians;

⁶ The Bureau's role in combatting mass marketing fraud: House of Commons Standing Committee on Access to Information, Privacy on Ethics during the Committee's study of identity theft (April 3, 2014).

3. **Promote Competition** — Promote and advocate for a more competitive marketplace, emphasizing smart regulation focused on achieving legitimate regulatory objectives;
4. **Collaborate with Partners** — Collaborate with domestic and international partners to promote strong competition principles and expand opportunities for Canadian participation in world markets; and
5. **Champion Excellence** — Promote a culture of excellence throughout the Bureau founded on openness, collaboration and engagement, and securing tangible results.

11. The Bureau also published its first quarterly statistics report, with statistics on mergers and other enforcement matters, advocacy, outreach and partnership initiatives.

12. These initiatives support the Bureau's Action Plan on Transparency, which promotes the development of a more efficient and responsive agency while providing Canadians with greater opportunities to learn about the Bureau's work.

1.2.3 Guidelines

13. The Bureau is committed to providing guidance to its stakeholders. In 2014-15, the Bureau published a number of critical guidance documents that articulate its approach to economic analysis and enforcement action under specific provisions of the Act. These guidelines promote transparency and consistency in the Bureau's work, and provide certainty and predictability for businesses and consumers. Revisions and new guidance are frequently provided in draft form for review and comment by stakeholders.

14. To increase transparency and promote compliance with the Act, the Bureau:

- Published the *Information Bulletin on Communication during Inquiries*, summarizing how and when the Bureau generally communicates during an inquiry with parties under investigation, industry participants, complainants and the general public;
- Released updated Intellectual Property Enforcement Guidelines, following a public consultation period, to reflect amendments to the Act since 2000, as well as recent enforcement experience. The guidelines describe how the Bureau approaches areas where competition policy and intellectual property (IP) rights intersect;⁷
- Published final guidelines describing its approach to enforcing the price maintenance provisions of the Act, including with respect to common business practices, such as minimum resale pricing, manufacturer-suggested resale pricing and minimum advertised pricing;
- Released two merger notification interpretation guidelines to assist parties and their counsel in interpreting and applying the provisions of the Act relating to notifiable transactions;⁸

⁷ A second phase of updates, released in 2015–2016, address additional IP-related issues, including the Bureau's enforcement approach concerning patent litigation settlements, the conduct of standard essential patent owners and the activities of patent assertion entities.

⁸ *Interpretation Guideline No. 12: Requirement to Submit a New Pre-Merger Notification and/or Advance Ruling Certificate Request Where a Proposed Transaction is Subsequently Amended* describes common amendments to proposed transactions and discusses whether such amendments would typically require

- Consulted on revisions to the *Corporate Compliance Programs Bulletin*, which reflect developments in how the Bureau recognizes and considers credible and effective corporate compliance programs in the enforcement of the Act; and
- Published *Guidelines for the Production of Electronically Stored Information*, which set out the Bureau's preferred standard format for receiving electronically-stored information in response to both compulsory and voluntary processes used during the course of an inquiry or investigation.

1.2.4 *Other Guidance: Economic Analysis of Retail Mergers*

15. The Bureau normally relies on a common core of economic tools and techniques when analysing retail mergers. It released a paper that outlines the Bureau's approach to the analysis of the downstream "retail to consumer" and upstream "wholesale to retailer" portions of a retail merger.⁹ The paper also discusses the techniques that the Bureau uses to define the relevant product and geographic markets and addresses how it estimates the competitive effects that a particular merger could have on the market and on consumers.

2. **Enforcement of competition laws and policies**

2.1 *Action against anticompetitive practices*

16. Practices such as bid-rigging, cartels and abuse of a dominant market position break the rules of a competitive marketplace. They deprive law-abiding businesses of market opportunities and often mean higher prices for consumers. They also reduce incentives for businesses to reduce costs and innovate. The Bureau continued to target anti-competitive tactics through effective, integrated enforcement of the Act.

2.1.1 *Abuse of dominance*

17. The major abuse of dominance case for the Bureau in 2014-15 occurred in the market for residential water heaters. The Bureau filed an application with the Tribunal in 2012 following an investigation into complaints that customers were locked into their rental agreements for water heaters. The Bureau's applications against Reliance Comfort Limited Partnership (Reliance) and Direct Energy Marketing Limited ("Direct Energy", whose Ontario residential water heater business was subsequently acquired by EnerCare Inc.) alleged that they had implemented anti-competitive return policies and procedures aimed at preventing consumers from switching to competitors.

18. In November 2014, the Bureau reached a negotiated resolution with Reliance and EnerCare. Under the terms of a consent agreement registered with the Tribunal, Reliance was required to pay an AMP of \$5 million¹⁰ and contribute \$500,000 to the Bureau's investigative costs, while EnerCare provided commitments that it would not continue Direct Energy's alleged anti-competitive policies and practices. Reliance was also required to take certain steps to make it easier for customers to terminate their rental

parties to file a new notification and/or request for an advance ruling certificate (ARC); *Interpretation Guideline No. 14: Duplication Arising From Transactions Between Affiliates* addresses the treatment of duplicative assets and sales revenue arising from transactions between affiliates when determining whether a proposed transaction exceeds the notification thresholds in the Act. These two guidelines are part of the Bureau's *Pre-Merger Notification Interpretation Guidelines*, available online at: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03357.html>.

⁹ The paper is available online at: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03796.html>.

¹⁰ This was the first AMP obtained for an abuse of dominance since amendments to the Act in 2009 added AMPs as a potential sanction.

agreements and return their water heaters. While Direct Energy exited the market for water heater rentals in Ontario in 2014, the Bureau continued to pursue a resolution that addressed its past conduct.

19. In December 2014, the Tribunal ruled that the Commissioner could pursue an order against Direct Energy, despite its exit from the market. In October 2015, the Bureau reached a resolution with Direct Energy to resolve the Bureau's concerns, including an AMP of \$1 million.

2.1.2 Bid-rigging

20. The Bureau successfully investigated several bid-rigging cases. As part of its ongoing investigation into bid-rigging in the motor vehicle components industry, the Bureau found evidence that DENSO Corporation (Denso) conspired with other Japanese motor vehicle components manufacturers to coordinate their separate responses and to agree on which supplier would win bids submitted to Toyota Motor Manufacturing Canada Inc. (Toyota). Denso pled guilty to three counts of bid-rigging and was fined \$2.45 million. Another motor vehicle components manufacturer, Yamashita Rubber Co. Ltd., pled guilty to two counts of bid-rigging and was fined \$4.5 million for rigging bids for components sold to Honda Motor Co.

21. In addition, as a result of a Bureau investigation, six individuals and one company were charged¹¹ for their alleged roles in a bid-rigging conspiracy related to providing \$3.5 million in information technology services to Library and Archives Canada (LAC). Three of these individuals, who were allegedly involved in the conspiracy while employed by LAC, were charged under subsection 80(1) of the *Financial Administration Act* for allegedly making opportunity for another person to defraud the government. The Bureau also worked with the Government of Québec on the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry, and testified before the Commission in October 2014. Additional charges were laid against a company and an individual for a complex bid-rigging scheme that provided preferential treatment for a group of municipal infrastructure contractors. These charges stemmed from a joint investigation carried out by the Bureau and the Sûreté du Québec.

2.1.3 Price-fixing

22. Following an investigation into the ocean freight industry in Canada, two individuals and two companies pled guilty in 2014 to fixing rates or rate formulas for various surcharges applied in the ocean freight industry. ECU Line Canada Inc. was fined \$1 million, and Overseas Container Forwarding, Inc. was fined \$675,000. Both companies were required to set up corporate compliance programs. Two individuals involved received conditional sentences of imprisonment.

2.2 Mergers and acquisitions

2.2.1 Statistics

23. The vast majority of mergers do not raise issues under the Act. However, to ensure that they do not substantially reduce or prevent competition, the Act empowers the Commissioner to review any merger of any size. When mergers exceed a specific size threshold, the Commissioner must be notified before they are completed.

¹¹ Criminal charges were laid by the Bureau, based on a decision to prosecute by the Competition Law Section of the Public Prosecution Service of Canada (PPSC).

24. It was a busy year on the mergers front. The Bureau completed 245 merger reviews, including 55 complex reviews -- meeting its service standards in 99 percent of non-complex cases and 91 percent of complex cases. The Bureau issued Supplementary Information Requests (SIR)¹² in 12 cases. In keeping with its increased focus on transparency, the Bureau also issued 12 position statements over the course of the year, summarizing findings and providing stakeholders with valuable guidance on its approach to merger reviews.

2.2.2 *Key cases*

25. One case last year – Tervita – led to a Supreme Court decision clarifying how to evaluate efficiencies in merger cases, which will guide the Bureau’s approach going forward. The efficiencies defence under the Act can allow mergers to proceed when certain claimed efficiencies arising from the merger are greater than and offset the likely anti-competitive harms.

26. The Tervita case was first challenged before the Tribunal in 2010 on the grounds that the company’s acquisition of a hazardous landfill site and permits would substantially prevent competition. In 2015, the Supreme Court upheld lower court decisions that the merger would prevent competition. However, it found that the efficiencies claimed by the merging parties were greater than and offset the anti-competitive effects and so allowed the appeal. The Tervita decision was the first time in nearly 20 years the Supreme Court provided guidance on merger reviews. In addition to jurisprudence on efficiencies, the case provided useful guidance regarding the test for analysing “prevention of competition” cases.

27. Consistent with ongoing concentration in the newspaper business worldwide, the Bureau reviewed two notable media mergers in 2014-15. The Bureau’s review of Transcontinental’s acquisition of 74 Quebecor Media community newspapers determined that it would have likely resulted in a substantial lessening of competition in certain regional markets. Transcontinental was required to sell 34 newspapers to preserve competition. The Bureau also examined the acquisition of Quebecor Media’s English-language assets (Sun Media) by Postmedia. The Bureau interviewed over 50 market participants and examined thousands of documents. It compelled the merging parties to provide significant data and documents. The Bureau engaged an independent economic expert and sought the views of Canadian consumers by inviting on-line submissions. The review focused on the effect of the transaction on competition for both advertising and readership in the cities where both parties operated local daily newspapers. Based on the evidence gathered, the Bureau concluded that a single owner of both papers would have insufficient additional power in the market to be able to materially increase prices.

28. Finally, with companies doing business around the world, the Bureau continued to take a collaborative approach to enforcement, working closely with other law enforcement agencies in cross-border cases. For example, the Bureau and the Antitrust Division of the United States Department of Justice cooperated extensively in the Louisiana Pacific/Ainsworth transaction. In this case, all of the assets to be transferred were located in Canada. The product market and the relevant assets to be reviewed were essentially identical. The case teams and management at the two agencies worked together and stayed in close contact throughout the review. This deeper cooperation included, among other things, attending each other’s depositions, coordinating on reviews of remedies proposed by the parties, and extensive

¹² Within 30 days of receiving a merger notification, the Bureau may require the notifying parties to supply additional information that is relevant to the assessment of the proposed transaction. Pursuant to paragraph 123(1)(b) of the Act, the issuance of a SIR triggers a second 30-day waiting period during which the proposed transaction cannot be completed. This second 30-day waiting period begins once the parties have provided a complete response and have certified compliance with the SIR.

coordination between economists to compare, validate and improve their econometric models and critically assess the parties' expert economic submissions.

2.2.3 *Advocacy*

29. As part of its mandate, the Bureau participates in a wide range of activities to promote and advocate the benefits of a competitive marketplace, both in Canada and abroad. As part of its ongoing efforts to promote the benefits of competition, the Bureau advocates that regulators and policy makers regulate only where necessary and that they rely on market forces as much as possible to achieve the benefits of competition. Where market forces are insufficient to achieve certain policy objectives, the Bureau provides advice to regulators to assist them in implementing policies that achieve their objectives in a minimally intrusive way.

2.3 *Telecommunications and broadcasting*

30. As part of its ongoing advocacy efforts in the telecommunications industry, the Bureau participated in the CRTC's review of wholesale mobile wireless services as well as its review of wholesale services and associated policies. In its review of the wholesale mobile wireless services, the Bureau examined the ability of companies to profit by keeping prices above competitive levels, and charging rivals high prices for wholesale mobile services. The Bureau submitted evidence that retail competition from an additional nationwide wireless carrier would add approximately \$1 billion a year to the Canadian economy through better product choices, lower roaming rates or prices and other consumer benefits.

31. In its review of the wholesale wireline services and associated policies, the Bureau examined whether vertically integrated incumbents would have an incentive to engage in vertical foreclosure strategies in the markets for low-speed telecommunications services using local loops and high-speed competitor digital access services. Consistent with the Bureau's submission, the CRTC decided not to mandate access to these services. The Bureau also recommended that competitor access to new fibre-to-the-premise services, which provide consumers with high-speed internet access services, should not be mandated because there was insufficient information to determine whether the availability of other, already established high-speed services is a sufficient competitive constraint. The CRTC instead decided to implement a new disaggregated wholesale access service that encompassed both existing high-speed services and new fibre-to-the-premise services.

32. On the broadcasting side, the CRTC adopted a decision that would offer consumers more choice and potentially lower cable bills, which was consistent with the Bureau's submission to the CRTC's *Let's Talk TV* consultation and review of the country's television system.

33. The Bureau advocated that consumers should be free to choose the services they want and pay only for what they choose. It also supported provisions to simplify switching between service providers, require clear contractual terms, while keeping existing safeguards in place to ensure that all television channels are available to Canadians, regardless of which service provider they choose.

2.4 *The Competition Advocate*

34. The *Competition Advocate* is a new publication that was launched to inform discussions on competition issues. The first issue of the *Competition Advocate* shed light on new digital dispatch services in direct competition with the traditional taxi industry. These new services can offer convenience and potential cost savings by allowing consumers to use their smartphones to order and pay for services.

2.5 *Market studies*

35. The cause of propane shortages and price spikes during the winter of 2013-14 was the subject of a joint study by the Bureau and the National Energy Board. The review came at the request of Canada's Ministers of Natural Resources and Industry. The final report found no evidence of anti-competitive behaviour to explain the price spikes on consumers. The examination also found that the winter's high prices and supply shortages did not indicate any long-term supply-demand imbalances in the Canadian propane industry.

36. The Bureau also concluded a study into the beer industries in Ontario and Québec. In light of the Ontario Premier's Advisory Council recommending a number of changes to the Ontario beer market, including expansion of beer sales into grocery stores, the Bureau discontinued the study.

2.6 *Innovation and Antitrust Workshop*

37. Competition drives innovation, which is a key driver of economic growth. With this in mind, the Bureau held a one-day workshop on innovation and antitrust. The goal was to facilitate discussion around the ways competition policy and enforcement practices could create an economic and regulatory environment where innovation can thrive. Approximately 100 people attended, including presenters from competition agencies in Europe and the United States, business and academic leaders, and delegates from other federal government agencies and the legal community.

3. *Collaborative Activities*

38. With companies doing business across Canada and around the world, the Bureau continues to take a collaborative approach to enforcement, working closely with other law enforcement agencies on specific cases. The Bureau also strengthened its international and domestic partnerships to support competition enforcement cooperation and encourage compliance with Canadian competition law. These partnerships ensure that Canadian consumers and businesses will benefit from the Bureau's work in promoting competition in both domestic and international markets.

3.1 *Domestic*

39. The Bureau signed Memoranda of Understanding (MOUs) with the Canadian Intellectual Property Office and the Ontario Securities Commission. These MOUs promote cooperation and collaboration by, among other things, providing for the sharing of information and best practices in areas of mutual interest.

3.2 *International*

40. The Bureau also works closely with other international law enforcement agencies. To support international cooperation, the Bureau signed MOUs with the Competition Commission of India and China's State Administration for Industry and Commerce. These MOUs facilitate communication and collaboration between the Bureau and the foreign agencies in a variety of areas, such as notifications of matters of mutual interest or concern, the coordination of investigations, merger reviews and enforcement activities, sharing of best practices and policy developments, joint education and competition promotion initiatives.

4. Resources

4.1 Budget

41. The Bureau's budget for 2014-15 was \$49.1 million, including approximately \$10.4 million collected through user fees.¹³ Expenditures were \$48.3 million, consisting of \$33.5 million in salaries for 368 employees and \$14.8 million in non-salary expenses.

4.2 Human Resources

42. In 2014-15, the Bureau had 368 employees. In addition, 28 employees from the Department of Justice and PPSC were dedicated to legal support for the Bureau. A large number of employees were either lawyers (46%) or economists (42%). Approximately 66% of employees work in enforcement, while the others work in areas such as advocacy, compliance, communications, relations with international and domestic partners, and corporate services.

5. Conclusion

43. A competitive marketplace spurs innovation and economic activity, and delivers more choice and lower prices to consumers. The Bureau promotes healthy competition through a balanced approach involving enforcement, advocacy and outreach. This involves engaging in strategic interventions to encourage competition in regulated sectors, expanding our outreach efforts and taking an active advocacy role to promote healthy competition in the Canadian economy. All of this is carried out alongside focused, vigilant competition law enforcement to protect Canadian consumers and businesses from anti-competitive activities. The Bureau works to ensure competitive markets and compliance with the legislation we oversee by collaborating with the business and legal communities and Canadians to achieve more than we can alone – for the benefit of consumers, businesses and the economy.

¹³ These include fees for merger notification, merger Advance Ruling Certificates and written opinions. Fines and AMPs are not considered Bureau revenue and instead are remitted to the Government of Canada's Consolidated Revenue Fund (*i.e.*, into general government revenues).