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Annual Report on Competition Policy Developments in Canada

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This report is submitted by Canada to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 27-28 November 2018.

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1. Executive Summary

1. An open and welcoming marketplace that fosters the emergence of new companies and is unhampered by anticompetitive business practices is essential to a nationwide culture of innovation. Without competitive markets, innovation cannot thrive. The Competition Bureau's (Bureau) role is to safeguard market forces that enable innovators to compete on a level playing field. The Bureau's work helps strengthen the ability of Canadian businesses to innovate in a fast-changing global economy. In 2016–2017, the Bureau stood up for truth in advertising, prevented companies and consumers from getting stung by cartels, helped get compensation from carmakers who allegedly made deceptive environmental claims, launched a comprehensive market study on technology-led innovation in financial services, restored retail price competition for ebooks in Canada, and reviewed 222 mergers.

1.1. Standing up for truth in advertising

2. It is not unusual for online retailers to compare their prices with those of the competition to show that their products are less expensive. But sometimes the promised cost savings are not accurate and can entice consumers to choose one company over another based on false or misleading information. When the Bureau found that Amazon.com.ca Inc. (Amazon) relied on its suppliers for the regular prices – or “list prices” – shown on its website, without verifying that those prices were accurate, it saw the company pay a \$1 million administrative monetary penalty. This sent a clear message to the marketplace that unsubstantiated savings claims will not be tolerated. As a result of this investigation, Amazon made changes to the way it advertises list prices on its Canadian website to accurately represent savings. The policies put in place have had an effect beyond Amazon's Canadian website, including on savings claims for products sold on www.amazon.com.

1.2. Ensuring that carmakers clean up their act over allegedly deceptive environment claims

3. Volkswagen and Audi made headlines in 2015 when software installed in some of their vehicles was found to alter their operation during testing. This reduced emissions and generated false positive emissions tests. In 2016–2017, the Bureau reached an agreement with the two companies that saw them pay \$15 million in penalties for their alleged deceptive marketing. The Bureau also took part in a class-action settlement between Volkswagen, Audi and consumers. In 2017, Volkswagen and Audi agreed to pay up to \$2.1 billion in payments to the more than 100,000 Canadians who had bought or leased affected vehicles – one of the largest settlements ever in Canada. Strong actions like these ensure Canadians can be confident when making major purchasing decisions.

1.3. Protecting companies and consumers from getting stung by cartels

4. Over the past few years, the Bureau's investigations into collusion in the auto parts sector have led to over \$70 million in penalties against numerous companies, including a \$13 million fine issued to Showa Corporation in 2016 – the second largest bid-rigging fine ever ordered by a Canadian court. When collusion crosses borders, international cooperation is crucial to stopping it. For instance, in 2016–2017, the Bureau

worked closely with the U.S. Department of Justice on a bid-rigging conspiracy which led to a USD \$130 million fine against Nishikawa Rubber. It was a further example of the Bureau's commitment to create an environment where every company has a fighting chance to win bids and bring its innovations to market.

1.4. Looking into the future of financial services

5. Digital tools can help increase Canadians' access to financial services for everything from transferring funds and making payments, to investing and borrowing. In 2016–2017, the Bureau launched a comprehensive market study to deepen its understanding of the emerging financial technology (FinTech) marketplace and to advise policymakers on how to best help innovative new players grow and succeed. As part of the study, the Bureau also held a one-day FinTech workshop which brought together 133 entrepreneurs and representatives from the banking, regulatory, legal and academic communities. This workshop enabled them to share their ideas and help shape the future of competition and innovation in Canada's financial services industry.

1.5. Restoring retail price competition for ebooks in Canada

6. In many competitive markets, businesses compete on prices to attract customers. However, in Canada's ebook market, the Bureau's investigation found that an arrangement among publishers hindered competition by preventing Canadian retailers from offering discounts on ebooks. This meant that Canadians saw virtually identical prices no matter where they shopped. In 2016–2017, the Bureau signed agreements with publishers Hachette, Macmillan and Simon & Schuster, as well as Apple, to allow retailers to offer discounts and compete on the prices of ebooks from those publishers. These agreements will help ensure Canadians receive the full benefits that come with retail price competition. They also demonstrate that the Bureau will not hesitate to take action on anticompetitive behaviour in the digital economy.

1.6. A new prescription for drugstore competition

7. When McKesson, Canada's largest wholesale supplier of prescription and over-the-counter drugs, wanted to purchase Rexall (one of the country's biggest pharmacy chains) and the ClaimSecure healthcare claims adjudication business, the Bureau took action to preserve competition at the wholesale and retail levels. The Bureau's review found that the proposed deal would likely have affected competition in many ways. For example, the Bureau found that McKesson would have had an incentive to give more favourable terms when supplying Rexall pharmacies than when supplying competing chains. Before the Bureau approved the acquisition, McKesson signed an agreement that required it to sell off Rexall pharmacies in 26 communities across Canada, and restricted its ability to share commercially sensitive information between its wholesale and healthcare claims adjudication retail businesses.

8. For additional information on the activities described throughout this report, please consult the Bureau's plans and reports, including the 2016-2017 Annual Report and 2016-2017 Year End Quarterly Statistics Report.

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

2.1. Summary of new legal provisions of competition law and related legislation

9. No new legal provisions of competition law or related legislation were introduced in fiscal year 2016-2017.

2.2. Other relevant measures, including new guidelines

2.2.1. Guidelines

10. To increase the transparency and fairness of the merger review process, the Bureau updated its Pre-Merger Notification Interpretation Guidelines in 2017, notably adding new clarifications within creditor acquisitions. The update explains that an acquisition following a transfer that occurs after an announcement or filing for bankruptcy would not be exempt under paragraph 111(d) of the *Competition Act*. This is the case because the acquisition would not be deemed a credit transaction in the ordinary course of business.

11. To help Canadians better understand the impact of fraud on the marketplace, the Bureau published its Fraud Facts 2017 during Fraud Prevention Month as a snapshot of the types of scams affecting consumers, as well as how to fight back. Each year during March, the Bureau works with partners like the Canadian Anti-Fraud Centre and the Royal Canadian Mounted Police to educate Canadians about the signs of fraud, protect themselves against scammers, and the importance of reporting suspicious activity to law enforcement agencies.

12. To ensure greater transparency of the merger review process, the Bureau published a template for merger consent agreements to give the Canadian legal and business communities more insight into how it negotiates for merger remedies.

13. To provide better guidance and transparency to the legal community, industry stakeholders and the general public, the Bureau also published 17 position statements to describe its analysis of proposed transactions.

2.2.2. Strategic planning

14. The Bureau plays a unique role in Canadian society: it contributes to the mandate of Canada's Department of Innovation, Science and Economic Development by ensuring that both regulations and the marketplace promote the kind of healthy and productive competition that stimulates innovation. Competition also encourages businesses to launch products and services that are better, more affordable, more convenient, and that fulfill the needs of companies and consumers. The 2016-2017 Annual Plan was designed to further focus the Bureau's commitment to that role.

15. The 2016-2017 Annual Plan set out the Bureau's priorities in enforcement, competition promotion and advocacy for the fiscal year. Through continuous environmental scanning to identify risks, trends and opportunities, the Bureau identified the 10 areas of focus for 2016-2017 that have the potential to achieve the greatest possible impacts for Canadians according to the following well defined objectives of the Bureau's 2015-2018 Strategic Vision:

- Increase compliance: Focus on high-impact enforcement cases, merger reviews and outreach, including the advancement of a number of ongoing cases and projects.
- Empower Canadians: Provide the information and support consumers need to protect themselves against the harms of anticompetitive behaviour.
- Promote competition: Advocate for the reduction or removal of barriers to competition in regulated markets and transfer knowledge to businesses and consumers about the benefits of increased competition.
- Collaborate with partners: Collaborate with domestic and international partners to further promote and protect a competitive marketplace, address anticompetitive activity that crosses borders and promote sound competition policies internationally.
- Champion excellence: Promote a culture of excellence centred on building talent and a healthy workplace based on the principles of transparency, continuous improvement and engagement, aligned with the Canadian Government's broader efforts to build an agile workforce, ensure sound stewardship and work as one.

2.3. Government proposals for new legislation

16. There were no government proposals for new legislation in fiscal year 2016-2017.

3. Enforcement of competition laws and policies

3.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

17. Enforcement and compliance outreach are essential tools in the fight against anticompetitive activities that stifle innovation. The Bureau continued to work on several high-impact enforcement cases targeting cartels, bid-rigging and abuse of dominance in 2016–2017, while raising awareness among Canadian businesses about the importance of complying with the *Competition Act*.

3.1.1. Cartels and bid-rigging

18. Agreements to fix prices, allocate markets, restrict output and bid-rigging inhibit innovation, drive up prices and reduce consumer choice. They are also serious criminal offences. The Bureau continued to crack down on cartels in 2016–2017, securing significant fines and laying charges against several companies in the infrastructure and auto-parts sectors.

19. The Government of Canada is investing billions of dollars in infrastructure. That makes it more important than ever to put a stop to bid-rigging in the infrastructure sectors. Bid-rigging on public contracts prevents the government from getting good value for tax dollars spent. Additionally, it stifles competition in the market by favouring colluding firms to the detriment of competing firms or those attempting to enter the market. Bid-rigging also reduces innovation in the construction industry. The Bureau's investigations in 2016–2017 were backed by solid partnerships with Canada's law enforcement agencies, including a joint investigation with the *Sûreté du Québec* that

resulted in multiple guilty pleas and fines for bid-rigging and collusion in Saint-Jean-sur-Richelieu.

20. The Bureau's investigation into an international conspiracy led to one of the largest fines ever ordered by a Canadian court for bid-rigging. Japanese auto-parts manufacturer Showa Corporation pleaded guilty and was fined \$13 million by the Ontario Superior Court of Justice for engaging in a secret arrangement with another supplier of electric power steering gears sold to Honda for cars manufactured in Canada. Since April 2013, the Bureau's investigations into bid-rigging agreements among auto-parts suppliers have resulted in more than \$70 million in fines imposed by Canadian courts.

21. With a greater focus on public outreach, the Bureau was able to help many public procurement officers and government officials detect and prevent bid-rigging on public contracts. Over the year, the Bureau gave 35 presentations to groups of procurement officers at all levels of government to raise awareness of cartel behaviour and provide practical tips on how to recognize when a call for bids may be subject to bid-rigging activity. The Bureau also continued to co-develop a new screening mechanism with Public Services and Procurement Canada that can automatically sift through bid-submission data for signs of agreements between competitors.

3.1.2. Deceptive marketing practices

22. Fake online reviews, mass marketing schemes, undisclosed fees and hidden terms and conditions do more than just hurt consumers. By reducing consumer confidence in the marketplace, business growth and innovation also suffer. People need to trust that what they see is what they will get. For this reason, the Bureau tackles deceptive marketing practices head-on and provides Canadians with tools and advice to help them recognize, reject and report the latest scams and misleading practices.

23. The Bureau secured record-setting refunds for Canadians misled by alleged deceptive marketing practices, including those unknowingly charged for unwanted "premium" text messages like ringtones and trivia quizzes. In 2012, the Bureau took Canada's three large telecom carriers (Bell, Rogers and Telus) and the Canadian Wireless Telecommunications Association to court for allowing third parties to advertise and charge customers for unauthorized messages. In May 2016, Bell agreed to pay up to \$11.82 million to affected customers — the largest restitution ever obtained through a consent agreement — and to donate approximately \$800,000 to public interest advocacy groups. This agreement concluded the Bureau's investigation into this matter, as it previously reached agreements with Telus and Rogers.

24. Practices like drip pricing, where an advertised price is unattainable due to extra mandatory fees or charges, have a significant impact on consumer confidence. The Bureau continued to crack down on companies who use this tactic and reached a settlement with Avis and Budget that required the rental car companies to pay a \$3 million penalty. <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04031.html> - fn8 In a similar case, the Bureau required telecom service provider Comwave to pay \$300,000 in penalties for advertising its internet and phone plans as having unlimited usage even though monthly caps were in place, and for allegedly misrepresenting charges for telecommunications services with advertised prices that were unattainable because of additional non-optional fees. Each company also agreed to implement a corporate compliance program to ensure their advertising complies with the law and was required to cover some of the expenses related to the Bureau's investigation — \$250,000 for Avis and Budget and \$60,000 for Comwave.

25. The Bureau took legal action in February 2017 against the Hudson's Bay Company (HBC) for what it considers to be deceptive regular price claims and deceptive clearance promotions for mattresses and foundations sold together as sleep sets. The Bureau's investigation found that HBC has engaged in deceptive marketing practices by offering sleep sets at grossly inflated regular prices and then advertising deep discounts on these prices, suggesting significant deals to consumers. This case is ongoing.

26. Many people are willing to pay a premium for products manufactured in Canada – so any clothing with a “Made in Canada” label should be telling the truth. During the 2016-2017 year, the Bureau reached an agreement with apparel manufacturer Moose Knuckles to address allegations that its parkas labelled as Canadian-made were actually manufactured in Asia while only finishing touches were applied in Canada. In December 2016, the company agreed to clarify that some of its parkas are made with both Canadian and imported components. It also agreed to add more operations at its Canadian factories and to donate \$750,000 to charities in Canada, including those that provide winter jackets to children in need.

3.1.3. Monopolistic practices

27. The Bureau's abuse of dominance case against the Toronto Real Estate Board (TREB) reached a critical point in April 2016 when the Competition Tribunal ruled that TREB had abused its market power by preventing real estate agents from offering certain services and information online. Without such restrictions, TREB members could have offered new and innovative products and services over the internet to help home buyers and sellers make more informed choices about one of the most significant investments of their lives.

28. The Bureau promotes transparency and certainty for businesses by providing guidance on its approach to enforcement in digital economy cases. In 2016, the Bureau published position statements summarizing the results of the following investigations:

- To increase predictability for marketplace participants in the digital economy, the Bureau conducted an extensive investigation into several allegations that Google was not complying with the abuse-of-dominance provisions of the *Competition Act*. The Bureau found evidence to support only one of the allegations relating to certain contracts with advertisers. This issue was resolved when Google made changes to its contracts to give advertisers more flexibility to use competing advertising platforms.
- The Bureau's investigation into TMX Group Limited, which operates the Toronto Stock Exchange, focused on access to securities market data. The Bureau found that while TMX Group had refused requests by investment dealers for it to share private market data, the conduct was unlikely to violate the *Competition Act*, as it was doubtful that sufficient future competition would have materialized.
- The Bureau closed its investigation related to Apple's contracts with Canadian wireless carriers that sell and market iPhones. The Bureau did not find sufficient evidence to conclude that Apple had engaged in an abuse of dominance under the *Competition Act*.

3.1.4. Summary of activities of competition authority

29. In 2016-2017, the Bureau commenced 74 new investigations and examinations and resolved 33 cases through alternative case resolutions. Alternative case resolutions

allow the Bureau to resolve some issues quickly and easily without a full inquiry or judicial proceeding. They include voluntary undertakings by companies and individuals to adopt certain measures to correct the impact of anticompetitive conduct. Resolving matters in this way reduces uncertainty and maximizes the use of Bureau resources.

3.1.5. Summary of activities of courts

30. Bureau investigations in 2016-2017 led to 5 guilty pleas in cartel cases and 4 companies sentenced for criminal conduct under the *Competition Act*. The Bureau also executed 11 search warrants.

31. The Bureau entered into 10 non-merger-related consent agreements. In civil cases, negotiated settlements are often formalized in a consent agreement registered with the Tribunal, making the terms enforceable in a court. When registered, consent agreements have the force of a court order; violations of their terms may result in criminal penalties, including fines and imprisonment.

3.1.6. Description of significant cases with international implications

32. Collaborating with partners to tackle anticompetitive conduct in Canada and abroad is key to fulfilling the Bureau's mandate. In an increasingly complex and globalized marketplace, the Bureau recognizes the importance of partnering with other Canadian agencies and international peers. Doing so extends its reach while making efficient use of its resources - without duplicating effort, time or cost.

33. The Bureau met with other competition agencies to share best practices and intelligence on enforcement and policy development, including high-level meetings with its American and Mexican counterparts in May 2016, the United Kingdom's Competition and Market Authority in July 2016, and the European Commission's Directorate General for Competition in March 2017. With a focus on increasing its engagement in the Asia-Pacific region, the Bureau also met with partners and participated in events in China, India, Indonesia, Taiwan, Hong Kong, Japan and Malaysia. In total, the Bureau attended or hosted a total of 43 meetings with foreign law enforcement agencies or competition authorities.

34. In 2016-2017, the Bureau signed 4 new cooperation instruments with its international partners, bringing the total number to 20 within 15 jurisdictions.

- In April 2016, the Bureau signed a second-generation cooperation arrangement with the New Zealand Commerce Commission, enhancing the Bureau's capacity to share information and provide investigative assistance.
- The Bureau also strengthened its network of international partners by signing a memorandum of understanding (MOU) with the Hong Kong Competition Commission in December 2016, its first international cooperation instrument related to competition.
- In May 2017, the Bureau signed a second cooperation arrangement with the Japan Fair Trade Commission to bolster information sharing and build ties between the enforcement agencies.
- In June 2017, the Bureau also signed an MOU with Colombia's Superintendence of Industry and Commerce, fulfilling a commitment made under the Canada-Colombia Free Trade Agreement to establish a cooperation instrument between the countries' respective competition authorities.

35. One of the best ways to promote competition in Canada and around the world is by sharing best practices with international counterparts. The Bureau accomplished this through 10 technical assistance projects and capacity-building initiatives, including training sessions with the Korea Fair Trade Commission, the Anti-Monopoly Committee of Ukraine, the Taiwan Fair Trade Commission and the African Competition Forum. The Bureau also delivered a presentation on international cooperation in mergers to Asian competition agencies at the Organisation for Economic Co-operation and Development (OECD) Korea Policy Centre.

36. To foster greater understanding and cooperation with international partners, the Bureau exchanged staff with its counterparts in India, South Korea and Hong Kong. One of the Bureau's managers also worked with the U.S. Federal Trade Commission and the OECD to provide enforcement advice to the Anti Monopoly Commission of Ukraine, while another Bureau officer joined the European Commission's Directorate General for Competition for a six month term. The Bureau also hosted visiting delegations from foreign competition agencies, including a study visit by the Korea Fair Trade Commission.

37. To ensure that the benefits of trade liberalization are not hindered by anticompetitive behaviour, the Bureau continued to support the Canadian Government's trade-liberalization efforts in 2016-2017. It worked closely with Global Affairs Canada to negotiate the competition policy provisions in many of Canada's free trade agreements, including the Canada-Ukraine Free Trade Agreement, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Canada-European Union Comprehensive Economic and Trade Agreement (CETA).

38. As a Member of the OECD Competition Committee, the Bureau helps shape global competition policy by participating in events like the OECD Ministerial on the Digital Economy, where the Commissioner of Competition spoke on consumer trust and market growth in the digital economy. In 2016-2017, the Bureau also made 5 formal submissions on topics such as sanctions in antitrust cases, fidelity rebates and public interest considerations in merger control. In addition, the Bureau continued to act as liaison to the ICN and OECD.

39. As ICN Secretariat and member of the Steering Group, the Bureau contributed to many products and events, including co-hosting the first ICN Chief Economist Workshop. The Bureau concluded its three-year term as co-chair of the Merger Working Group, coordinating a number of merger panels, including a Merger Workshop on Investigative Techniques in Washington, D.C., and a panel on merger nexus and thresholds at the ICN Merger Roundtable in Paris, France. During the Bureau's tenure on the Merger Working Group, it also led the development of the first *Recommended Practices on Merger Remedies*. The Bureau has now started its term as co-chair of the Agency Effectiveness Working Group, which aims to develop and share best practices for enforcement planning and operations among members and non-government advisors.

40. As part of the International Consumer Protection and Enforcement network (ICPEN), the Bureau works with a network of counterpart agencies from 80 countries to tackle deceptive marketing practices and other consumer issues. In 2016-2017, Bureau staff attended several ICPEN conferences and workshops, hosted a session on online platforms and intermediaries in September 2016, and were involved in working groups such as the Online Lead Generation Project Group, which explores the collection and sale of online user information. The Bureau also once again led ICPEN's annual Internet

sweep in 2016, which focused on identifying websites whose business models rely on online reviews and endorsements.

41. In June 2016, the Bureau played a significant part in the International Mass Marketing Fraud Working Group's (IMMFWG) International Day of Action Against Mass Marketing Fraud. It worked with law enforcement partners to draw attention to the serious problem of telemarketing, internet, mass mailing and other types of fraud.

3.2. Mergers and acquisitions

42. The Bureau reviews mergers of all sizes in all sectors to ensure these consolidations do not substantially reduce or prevent competition. Greater competition generally leads to a more dynamic marketplace that offers innovative products and services, increased choice and competitive prices for businesses and consumers.

3.2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws

43. In reviewing mergers, the Bureau considers many elements to determine whether they will affect competition, including the level of economic concentration in the relevant industry and the merging parties' market shares.

44. In 2016-2017, the Bureau completed 222 merger reviews, including 169 non-complex reviews, and 53 complex reviews in industries that are important to Canadians, such as agriculture, retail gasoline, pharmaceutical products and wireless telecommunications. During this period, the Bureau also reached a total of 8 consent agreements, a significant number of which required merging firms to sell assets, establish firewalls, or take other measures to address competition concerns in Canada. One merger was abandoned by the parties due to competition concerns. 99% of non-complex merger cases were reviewed within the service standard, while 74% of complex mergers were reviewed within the service standard. The Bureau also issued 17 position statements.

3.2.2. Summary of significant cases

Le Groupe Harnois Inc.

45. A lack of competition at the gas pumps hurts consumers and businesses alike. In June 2016, the Bureau reached a consent agreement to address concerns related to Le Groupe Harnois Inc.'s proposed acquisition of the gasoline supply arrangements of Distributions pétrolières Therrien Inc. To prevent Harnois from raising retail prices at its corporate gas stations and wholesale prices at the dealer gas stations it supplies, the agreement required Harnois to sell either a retail station or distribution contract in Quebec, and removed its ability to influence gasoline retail prices in the area.

46. In September 2016, the Bureau concluded an agreement with Couche-Tard with regards to its acquisition of retail gasoline sites from Imperial Oil. The agreement required that two gas stations be sold to a purchaser approved by the Commissioner. The solution resolved the Bureau's concerns that the proposed transaction would reduce competition substantially in a local market near the South Shore of the Montreal area and in Carleton Place, in eastern Ontario.

Crop production services

47. The Bureau reviewed a number of mergers in the agricultural industry over the 2016-2017 year to determine whether the proposed transactions were likely to affect competition or the innovation efforts of the merging parties. While some mergers did not raise any concerns, such as ChemChina/Syngenta, others did, such as Crop Production Services' (CPS) acquisitions of the agri-product retail stores of Andrukow and Wendland. To resolve the Bureau's concerns, CPS agreed to sell some of its retail locations in Alberta and Saskatchewan.

48. The Bureau reached a consent agreement with Dow and DuPont to address competition and innovation concerns in the supply and development of certain crop protection products and specialized packaging plastics. The Bureau concluded that the transaction would likely lessen competition and remove incentives for the companies to innovate. To address the Bureau's concerns, DuPont agreed to sell a significant part of its global herbicides business and research and development branch to FMC Corporation. Dow agreed to sell its global business of certain specialized plastics products, to SK Global Chemical Co LTD (SK Global), a new entrant in these markets. These sales by Dow and DuPont will preserve competition and innovation in the sale and development of key crop protection products and specialized packaging plastics.

Bell

49. When Bell announced its intention to acquire Manitoba Telecom Services (MTS) in 2016, the Bureau undertook a nine-month investigation to ensure the merger would not have anticompetitive effects. After its review, the Bureau concluded that the merger would likely diminish or prevent competition for retail wireless services in Manitoba and lead to higher prices and fewer options for Manitobans. To resolve the issue, the Bureau reached a consent agreement with Bell which required it to sell six retail stores, 24,700 subscribers and 40 MHz of spectrum to Xplornet — a leading provider of rural broadband internet through fixed wireless and satellite networks throughout Canada, including rural Manitoba — establishing a new entrant in the Manitoba mobile wireless services market. Additionally, Bell committed to selling a significant number of its MTS subscribers and approximately one-third of its MTS dealer locations to TELUS.

Sherwin-Williams

50. In May 2017, the Bureau reached a consent agreement with the Sherwin-Williams Company (Sherwin-Williams) concerning its acquisition of the Valspar Corporation (Valspar). This agreement resolved the Bureau's competition concerns in the market for high volume orders of industrial wood coatings in Canada. The Bureau's investigation concluded that the proposed transaction, if allowed to proceed, would likely result in a substantial lessening of competition and increased prices for industrial wood coatings such as varnishes and lacquers used by manufacturers of kitchen and bathroom cabinets, and furniture and building products.

51. To address the Bureau's concerns, Sherwin-Williams agreed to sell Valspar's industrial wood coatings assets in Canada and the US to Axalta Coating System Ltd (Axalta), a new entrant in this market. The assets Valspar agreed to sell include manufacturing plants, research and development assets, intellectual property, and customer contracts. The Bureau determined that selling these assets would be necessary to preserve competition and protect innovation in the market. As these assets are located

in both Canada and the US, the Bureau worked closely with the United States Federal Trade Commission, which also reviewed the transaction.

Teva

52. In April 2016, the Bureau reached a consent agreement with Teva, which resolved the competition concerns related to the transaction. The Bureau concluded that Teva's acquisition of Allergan's generic pharmaceutical business would likely have resulted in a substantial reduction or prevention of competition for the sale of two pharmaceutical products in Canada due to the elimination of future competition between the parties. In conducting the review, the Bureau cooperated with a number of its international counterparts, including the United States Federal Trade Commission and the European Commission.

Staples/Office Depot

53. The Bureau took action to protect businesses and organizations across Canada from paying higher prices for their office products. The Staples/Office Depot matter was challenged before the Tribunal in 2015, and it remained ongoing until May 2016. In light of announcements by the parties that they were abandoning the proposed merger, the Bureau officially withdrew the application to the Tribunal challenging Staples' proposed acquisition of Office Depot.

54. This was the final action in a historic case where simultaneous court challenges were filed for the first time by Canadian and American agencies in an antitrust matter. The transaction was challenged by the Bureau and the US Federal Trade Commission on the grounds that the merger would harm competition in the office products delivery business.

55. Following the issuance in May 2016 of an injunction in the US preventing the parties from closing the proposed global merger for an interim period, the parties announced their decision to abandon the deal, thereby eliminating the need for the Bureau to proceed with its application before the Tribunal. The review of this global merger demonstrates how the Bureau can work closely with its international counterparts to ensure that competition in Canada is protected.

4. The role of competition authorities in the formation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

56. Competitive and innovative marketplaces do not stand still. As they evolve, the ways that they are regulated must change as well. As part of its mandate, the Bureau participates in a wide range of activities to promote and advocate for the benefits of a competitive marketplace - lower prices, more choice and greater innovation – in Canada and abroad. As technological change spurs new business models, the Bureau engages policymakers and thought leaders on emerging issues, such as big data and pro-competitive regulatory approaches to the FinTech sector.

4.1. Healthcare

57. The Bureau released two publications in 2016-2017 advocating for more competition in the healthcare sector. In October 2016, it published [a report](#) suggesting

that restrictions on advertising in the healthcare industry, intended to protect consumer safety, can unintentionally reduce competition and stifle innovation. The Bureau called on governments and regulating bodies to conduct more research on the outcomes of their policies.

58. The Bureau's March 2017 issue of the Competition Advocate focused on regulations for nurse practitioners. The Bureau underlined the importance of provincial/territorial health regulators incorporating non-restrictive policies. The Bureau also explained the benefits (to patients and the healthcare system as a whole) that can result from reducing barriers that prevent or discourage the nurse practitioner business model. These benefits include potentially reducing wait times for patients and costs on the healthcare system. The publication was well-received by regulators, and may inform further discussions about the role of nurse practitioners.

4.2. Telecommunications

59. The Bureau advocated for more competition in the telecommunications sector in 2016-2017 by calling on the Canadian Radio television and Telecommunications Commission (CRTC) to prohibit internet service providers (ISPs) from using differential pricing with regard to their own or affiliated content. When ISPs receive financial benefit from content providers for favouring their content, differential pricing can harm competition, stifle innovation and impede consumer choice. It can also decrease product quality and increase the prices paid by consumers.

60. In April 2017, the CRTC established a framework that prohibits differential pricing practices that favour certain types of content over others. This decision aligns with the Bureau's recommendation to disallow differential pricing where an ISP receives financial benefit for favouring certain content, but goes further by ruling against any preferential treatment of data.

4.2.1. Drywall consumers in Western Canada

61. In September 2016, anti-dumping duties were provisionally imposed on drywall imported into Western Canada from the United States after the only domestic producer of drywall in Western Canada lodged a complaint with the Canada Border Service Agency under the *Special Import Measures Act*. Those duties ultimately restricted competition from U.S. drywall suppliers, with public information suggesting that the duties increased prices by as much as 30 percent for certain large customers and up to 80 percent at big box retail outlets. In response to the concerns expressed by home builders and the media, the Government of Canada issued an Order in Council to the Canadian International Trade Tribunal (CITT) to quickly assess and report on the competitive impacts of the duties. The Bureau provided the CITT with a framework for assessing those impacts, which helped the CITT conclude that fully imposing the duties would go against Canada's economic, trade and commercial interests. The Government subsequently lowered the tariff by more than 32 percent and provided approximately \$12 million in compensation to consumers in Fort McMurray who had been affected by higher drywall costs during post-wildfire rebuilding in 2016. In recognition of its contribution to competition advocacy in the drywall industry, the Bureau received an honourable mention from the International Competition Network and World Bank Group, as part of their 2016-2017 Competition Advocacy Contest.

4.3. Intellectual property rights

62. As advanced consumer and business technologies become increasingly common and complex, Canada has seen a surge in the importance and value of intellectual property (IP) to its economy. Business practices involving IP are likewise becoming more complex and strategic. As the intersection of IP and competition law has evolved, so has the Bureau's approach to supporting dynamic competition and innovation in the marketplace.

63. The Bureau won praise from leading international antitrust experts for its revised IP Enforcement Guidelines (IPEGs), which provide greater clarity to stakeholders on how the Bureau deals with competition issues involving IP. The Bureau was honoured with the title of “Most Innovative Soft Law” (intellectual property section) at the 2017 International Antitrust Writing Awards. The award singled out the Bureau's IPEGs as the most innovative non-enforcement tool by a competition agency on issues relating to antitrust and IP.

4.4. Fraudulent and deceptive marketing practices

64. In 2016-2017, the Bureau developed a new consumer/business alert system to warn Canadians about the dangers of new fraud scams, misleading advertising and deceptive marketing practices. To this end, the Bureau consulted with its partners on best practices and leveraged its network of partners to share the alerts with a wider audience.

65. The Bureau issued 12 consumer and 3 business alerts covering topics such as fake charity/donation appeals and deceptive door-to-door tactics used to sell water heaters. These alerts earned substantial public and media interest. For example, the Bureau's pre-Valentine's Day alert about the hidden terms and fake profiles used to get people to sign up for online dating websites was featured in a CTV News interview seen by more than 1.37 million people.

66. As chair of Canada's Fraud Prevention Forum, the Bureau plays a leading role in fraud prevention. The Forum brings together more than 90 law enforcement agencies, businesses and public-sector organizations to educate Canadians about the impact of fraud and how they can protect themselves. As part of the Fraud Prevention Month campaign in March 2017, the Bureau encouraged social media users to share their tips for fighting fraud. The campaign generated more than 16,000 tweets and retweets, reaching 5.8 million Twitter users (up nine percent from the 2016 campaign). On Mythbuster Mondays, the Bureau debunked common misconceptions about fraud using the hashtag #mythbusters. On Fridays, the Bureau published a #TipOfTheWeek related to particular scams and its popular Fraudfacts messages highlighted eye-opening statistics on scams.

67. The Bureau also engaged with Canadians during a #2Good2BTrue Twitter chat about fake online endorsements by posting and sharing tweets that reached approximately 440,000 Twitter handles. In addition, the Bureau participated in 11 Fraudchats hosted by the Financial Services Commission of Ontario.

68. As part of the Bureau's work to promote and protect competition in Canada, its representatives delivered 160 speeches and presentations to consumers, partners, academics, and the legal and business communities on topics ranging from innovation in the financial sector to building trust in the online marketplace. The Bureau also issued 62 publications (e.g., bulletins, guidelines, videos, pamphlets) and 17 position statements,

including a backgrounder on the Volkswagen/Audi settlement explaining the options available to affected consumers.

4.5. Compliance

69. The Bureau expanded its outreach efforts in 2016-2017 to encourage businesses across Canada to adopt credible and effective corporate compliance programs. Businesses have an important role in ensuring compliance with the law, and the Bureau is active in providing guidance and tools to help them implement compliance programs.

70. The Bureau's Compliance Unit delivered presentations to stakeholders across the country, many of which focused specifically on small and medium-sized businesses. The Bureau held 32 compliance outreach events, including 28 presentations to targeted stakeholder groups and 4 presentations at tradeshow. The Bureau also collaborated with organizations such as the Canada Business Network to promote its compliance messaging and educational material. Last year, this content included compliance blogs and a compliance crossword puzzle to help stakeholders familiarize themselves with compliance concepts in an innovative and accessible way.

71. The Society of Corporate Compliance and Ethics recognized these considerable efforts to promote corporate compliance by awarding the Competition Bureau its 2016 International Compliance and Ethics Award.

5. Resources of competition authorities

5.1. Resources overall (current numbers and change over previous year):

72. The Bureau's budget for 2016-2017 was \$49.1 million (including approximately \$10.9 million from user fees), compared to a 2015-2016 budget of \$49.3 million (including approximately \$10.5 million from user fees). Expenditures were \$47.9 million, consisting of \$33.5 million in salaries for 369 full-time equivalents (FTEs) and \$14.4 million in non-salary expenses. In comparison, expenditures for 2015-2016 were \$47.6 million, consisting of \$33.1 million in salaries for 362 FTEs and \$14.5 million in non-salary expenses.

5.1.1. Annual budget (in your currency and USD):

73. The Bureau's budget for 2016-2017 was \$49.1 million (37.7 million USD).¹

5.1.2. Number of employees (person-years):

74. Approximately 363 employees work at or with the Bureau. In addition, there are 30 employees from the Department of Justice and Public Prosecution Service Canada who are dedicated to providing legal services to the Bureau. Most Competition Bureau staff generally fill investigative and advocacy roles rather than economists and lawyer roles; though the Bureau does have a dedicated Economic Analysis Directorate that provides economic analysis and advice to support the Bureau's enforcement investigations. The Bureau hires employees with a diversity of backgrounds, including

¹ Based on the CAD-USD exchange rate as of August 8, 2018.

individuals who have studied in economics and law. Specific information related to employees' university degrees is no longer tracked.

5.2. Human resources (person-years) applied to:

75. Approximately 229 employees are dedicated to competition enforcement. In addition, there are 30 employees from the Department of Justice and the Public Prosecution Service Canada who are dedicated to the Bureau. Approximately 53 employees work in the Mergers Directorate, 65 are in the Cartels Directorate, 37 in the Monopolistic Practices Directorate, 79 in the Deceptive Marketing Practices Directorate and the remaining competition enforcement employees fill other roles such as advocacy, international, electronic evidence gathering and analysis, etc.

5.3. Period covered by the above information:

76. The above information covers fiscal year 2016-2017.

5.4. Conclusion

77. Innovation remains a key theme for the Bureau. With countries around the world seeking to attract talent, develop new technologies and grow successful companies, Canada is in the midst of a global innovation race. The Bureau knows that open and competitive markets spur innovation by stimulating creative thinking, driving efficiency and energizing productivity.

78. The Bureau is committed to ensuring that its efforts make a difference in the context of evolving market conditions. The Bureau remains dedicated to protecting competition and enforcing Canada's competition laws for the benefit of companies and consumers. The Bureau will continue to identify areas of emerging and pressing need within the scope of its competition promotion and enforcement operations.