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Directorate for Financial and Enterprise Affairs  
**COMPETITION COMMITTEE**

## Annual Report on Competition Policy Developments in Canada

-- 2021 --

This report is submitted by Canada to the Competition Committee FOR INFORMATION.

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## Canada

### Introduction

1. Against the backdrop of global disruption brought on by the COVID-19 pandemic, the Competition Bureau adapted to challenges during uncertain times. We delivered results for Canadians using the law enforcement, advocacy and collaboration tools available to us.
2. Our achievements showcased in this annual report are consistent with our Strategic Vision: to be a world-leading competition agency, one that is at the forefront of the digital economy and champions a culture of competition for Canada.

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

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

3. No new provisions were introduced in fiscal year 2020-2021.

#### 1.2. Other relevant measures, including new guidelines

##### *1.2.1. Investing in our organization*

4. As our workplace shifted quickly to work-from-home, having the right tools for that environment became essential. By modernizing our processes and upgrading our technology, we were more efficient and able keep pace with the digital world. We began making a more dedicated effort to recruit from diverse educational and professional backgrounds. This will ensure our teams benefit from wide-reaching expertise and different perspectives.

##### *Using innovation to tackle challenges*

5. In 2020, we launched the Bureau Innovation Garage (BIG). This platform allows employees to experiment with new concepts, pilot new ideas and explore digital technologies. Our staff participated in over 30 introductory sessions. The purpose of BIG is to work together on current challenges and explore new technologies and concepts like cloud computing and data governance. Using the BIG, we gathered staff feedback on the 2019-20 Public Service Employee Survey which allowed managers to address concerns more collaboratively.

6. We also established a Digital Evidence Community of Practice. This group will find ways to work more efficiently. This includes sharing knowledge and best practices related to automation and artificial intelligence for evidence gathering and analysis.

##### *Supporting mental health during the pandemic*

7. Health and safety is our top priority. We renewed focus on this commitment at the outset of the pandemic. We recognized that the first way we serve Canadians is by staying healthy and taking steps to avoid spreading COVID-19. The Bureau implemented health and safety measures to help ensure a safe work environment for our employees. As we navigated through the pandemic, we've increased our efforts to protect the wellbeing of our employees. We undertook activities to encourage workplace wellness, including

holding mental health panel discussions and publishing a mental health and COVID-19 newsletters.

### *Leveraging new digital tools*

8. We continued to support a culture of innovation and continuous improvement. We ensured business continuity as we pursued our mandate in the most challenging circumstances to deliver competition benefits to Canadians: lower prices, more choice and greater innovation. We leveraged new digital tools to boost collaboration with internal and external partners and stakeholders.

### *Breaking down barriers*

9. Diversity, inclusiveness and accessibility are essential components of employee well-being. Recent events brought heightened awareness to racism and discrimination in all of its forms. It is more important than ever to ensure every employee feels included and well-supported. We began by assessing the services we provide to the public and training staff to ensure all communications and documents are accessible. The Bureau's Diversity and Inclusion Working Group successfully launched the "Your Voice" platform, which was created as a digital space to share information, insights, and experiences. We held a series of safe-space discussions where employees could share their lived experiences and perspectives with coworkers without fear of reprisal or judgement.

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

### **2.1. Action against competition anticompetitive practices**

#### **2.1.1. Cartels**

##### *Dropping the hammer on bid-rigging*

10. Bid-rigging is a serious criminal offence. It undermines competitive markets and drives up the prices of products and services. When companies conspire to rig bids on public contracts, it raises costs for the public. They effectively steal taxpayer money that could otherwise be used for important public needs.

11. Bid-rigging can cause serious damage to our economy. We will do everything in our power to investigate allegations of wrongdoing and refer cases to the Public Prosecution Service of Canada for prosecution, where warranted.

12. Since 2019, our investigations have resulted in six engineering firms paying more than \$12 million for their roles in bid-rigging schemes. These schemes targeted infrastructure contracts in municipalities in the province of Quebec.

13. This includes the following settlements reached in 2020-2021:

- In December 2020, CIMA+ was ordered to pay \$3.2 million for bid-rigging on municipal infrastructure contracts in Québec City, Montréal, Laval, St-Eustache and Gatineau. The Court also ordered the company to maintain its corporate compliance program, which is designed to prevent further anti-competitive activity by its employees.

- In June 2020, SNC-Lavalin was ordered to pay \$1.9 million for rigging bids on municipal infrastructure contracts in Montréal and the Québec City area. The Court also ordered the company to maintain its corporate compliance program, which is designed to prevent further anti-competitive activity by its employees.
- In June 2020, Génius Conseil Inc. was ordered to pay \$300,000 for bid-rigging on municipal infrastructure contracts in Montréal and North Shore municipalities. The payment accounted for the company's collaboration with the Bureau through its Leniency Program.

#### *Four companies charged in alleged bid-rigging case in the Greater Toronto Area*

14. In March 2021, the Bureau laid criminal charges against four companies and three individuals in connection with an alleged bid-rigging scheme targeting condominium refurbishment contracts in the Greater Toronto Area between 2009 and 2014. The alleged victims include condominium corporations and the condominium owners.

#### **2.1.2. Deceptive Marketing Practices**

##### *Ensuring digital giants are held accountable*

15. Facebook previously estimated that it has 24 million monthly active Canadian users. Those users need to trust representations about how their personal information is shared, and the extent to which they can control access to such information. A Bureau investigation concluded that the company made false or misleading claims between 2012-2018 about the privacy of Canadians' personal information on Facebook and Messenger.

16. Canada's *Competition Act* prohibits deceptive marketing practices. This includes false claims about privacy protection. As part of a settlement, Facebook paid a **\$9 million penalty**, plus an additional \$500,000 for the costs of the Bureau's investigation. Facebook also agreed not to make false or misleading representations about the disclosure of personal information. This includes representations about the extent to which users can control access to their personal information on Facebook and messenger.

17. Canadians expect and deserve truth from businesses in the digital economy. Claims about privacy are no exception. The Bureau will not hesitate to crack down on any business that makes false or misleading claims to Canadians about how they use personal data.

##### *Checking claims about hockey helmets*

18. In November 2020, the Bureau reached a [settlement with TRUE Sports Inc.](#) The Bureau's investigation concluded that the testing used to support certain performance claims about one of its hockey helmets was not adequate. As part of the settlement, TRUE Sports agreed to:

- cease making all claims at issue, and remove the remaining claims from all marketing material, including on packaging and online advertising,
- donate \$100,000 to support youth sports, and
- pay \$20,000 to cover the Bureau's investigation costs.

19. This was the Bureau's third investigation into the marketing of hockey helmets since 2014.

*Weight-loss claims that seem too good to be true*

20. The Bureau took [action in March 2020 against NuvoCare Health Sciences Inc.](#) and its President and CEO, Ryan Foley. The Bureau applied to the Competition Tribunal for a temporary order to stop the company from making unsubstantiated weight-loss and fat-burning claims in its marketing of certain natural health products.

21. In May 2020, the Bureau and NuvoCare entered into a temporary consent agreement. The agreement prohibited NuvoCare from making unsubstantiated weight loss and fat burning claims when marketing their products while the Bureau completes its ongoing investigation.

*Risk-free trials are risky business*

22. In January 2021, [Revive You Media was fined \\$15 million](#) after a Bureau investigation concluded that the company was operating a subscription trap scam. The Company is also subject to a ten-year court order prohibiting it from any direct or indirect involvement in promoting deceptive trial offers. Consumers were led to believe they were ordering free trials for health and dietary supplements without any further obligations. In fact, they were unknowingly trapped into monthly subscriptions that cost them \$100 a month or more. The use of catchy wording like “risk-free trial,” and “just pay a small shipping fee” were meant to mislead consumers and lock them into an illegal subscription trap.

*Protecting consumers from hidden fees*

23. The Bureau’s investigation into FlightHub Group Inc. concluded that the online travel agency:

- made millions in revenue from charging customers hidden fees,
- authored positive customer reviews to promote its services, and
- made numerous false or misleading claims about prices and a variety of services, including seat selection and cancellation policies.

24. The investigation led to a settlement of \$5.8 million in total penalties, including \$400,000 each for two of the company’s directors. FlightHub had to remove any false online reviews. The company and two directors were also prohibited from making any further false or misleading claims.

**2.1.3. Monopolistic Practices***Fighting to maintain competition in pharmaceuticals*

25. Canadians spend millions of dollars every year on prescription medications that are essential to their health and wellbeing. If large pharmaceutical companies dominate the market and restrict the entry of generic drug companies, this could result in the cost of brand name products being even higher. Generic drug companies exist so consumers have choice in the brands they purchase. The Bureau will not tolerate any anti-competitive conduct that prevents or delays competition from generic alternatives.

26. In October 2019, we launched an inquiry into alleged conduct by Otsuka Canada Pharmaceutical Inc. We received a complaint alleging Otsuka had restricted access to samples of its branded product, Jinarc, to prevent or delay the entry of competing generic drugs to the market. Shortly after the launch of the investigation, Otsuka provided Jinarc samples to the generic manufacturer and resolved the Bureau’s concerns.

*Inviting input as part of an ongoing investigation*

27. In August 2020, the Bureau invited market participants to provide input to help inform its ongoing civil investigation into conduct by Amazon under the restrictive trade practices provisions of the *Competition Act*.

28. The Bureau is examining whether Amazon is engaging in conduct on its Canadian marketplace, Amazon.ca, that is impacting competition to the detriment of consumers and companies that do business in Canada. Sellers and businesses with relevant information were asked to confidentially share their experiences with the Bureau.

**2.2. Mergers and acquisitions**

29. Under the *Competition Act*, mergers and proposed mergers of all sizes and in all sectors of the economy are subject to review. Our reviews aim to determine whether the merger has resulted, or will likely result, in a substantial lessening or prevention of competition.

**2.2.1. Animal health products**

30. In July 2020, the Bureau entered into a consent agreement to avoid harm to competition in the animal health care products industry. The Bureau's agreement with Elanco Animal Health Incorporated resolves concerns related to its proposed acquisition of Bayer Animal Health.

31. Elanco and Bayer were each other's closest competitor. Without the Bureau's intervention, there would have been a limited number of competitors left in the supply of animal health products for both companion and farm animals. Throughout our review, we cooperated with counterparts in other jurisdictions, including:

- the U.S. Federal Trade Commission,
- the European Commission, and
- the Australian Competition and Consumer Commission.

**2.2.2. Keeping Canadians plugged-in**

32. In August 2020, we registered a consent agreement to address our concerns related to WESCO International Inc.'s \$6.1-billion acquisition of Anixter International Inc.

33. Without the Bureau's intervention, the merger of two of the largest distributors of pole line hardware and data communication (datacom) products in Canada would have limited competition significantly in these industries. We concluded that the impact on contractors, utilities, cable companies and telecommunication service providers would have resulted in higher prices and a lower quality of service for a large number of customers. The consent agreement required WESCO to divest its datacom and utility divisions.

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

34. In 2020-21, the Bureau concluded 192 merger reviews and registered 2 Consent Agreements with the Competition Tribunal. The Bureau achieved a 97.5% merger review service standard for non-complex cases and an 84% merger review service standard for complex cases.

## 2.3. Collaboration

35. Building and maintaining relationships with partners is vitally important. This is especially true in today's global, ever-changing digital marketplace. It also supports Canada's all-hands-on-deck response to COVID-19.

### *2.3.1. International collaboration*

#### *Enhancing Cooperation in Competition Enforcement*

36. In September 2020, the Bureau signed a new international competition enforcement framework: the "Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities".

37. Other signatories include:

- the Australian Competition Consumer Commission,
- the New Zealand Commerce Commission,
- the United Kingdom Competition and Markets Authority, and
- the United States Department of Justice and the United States Federal Trade Commission.

38. This new arrangement will allow us to cooperate more effectively on investigations, work on joint projects and offer future interorganizational training initiatives.

#### *Building trust in a changing marketplace*

39. The Bureau began a one-year Presidency of the International Consumer Protection and Enforcement Network on July 1, 2020.

40. As President, we led the network of consumer protection and law enforcement authorities from over 65 countries, representing approximately five billion consumers worldwide. Under the theme "building trust in a changing marketplace", we led working groups and organized a variety of virtual events focused on topics including:

- the impacts of COVID-19,
- artificial intelligence,
- digital platforms,
- data privacy concerns, and
- enforcement in the digital economy.

#### *Supporting economic recovery on the international stage*

41. The Bureau [provided a submission](#) to the Organization for Economic Co-operation and Development's Competition Committee. The submission highlighted what we have done to support economic growth in Canada. This includes the Bureau's crack-down on anti-competitive and deceptive conduct brought on by the pandemic, as well as our work in promoting the positive outcomes of pro-competitive policies to public decision makers.



### *2.3.2. Strengthening domestic relationships*

#### *Non-delivery scams*

42. In March 2021, the Bureau released a consumer alert. It highlighted scams where items bought online are not delivered and offered quick tips to help consumers detect and avoid them.

#### *Scams targeting businesses*

43. Over the course of 2020, Canadian businesses reported losing \$24.5 million to scam artists. Since it is estimated that only 5% of fraud is reported, its true impact of these scams is likely far greater.

44. In March 2021, we released a business alert drawing attention to the most common scams targeting Canadian businesses. These include:

- phishing,
- tech support, and
- fake CEO scams.

45. We also provided tips to help businesses stay vigilant and avoid becoming victims of fraud.

#### *Fraud Prevention Month*

46. In February 2021, we celebrated our 17<sup>th</sup> year of Fraud Prevention Month. The Bureau joined forces with the Royal Canadian Mounted Police and the Canadian Anti-Fraud Centre to focus on fighting online fraud in Canada. Our campaign included tips and various contact points to report fraud.

47. Our social media campaign had a potential reach of more than 11.4 million in 2021. This represented a significant increase from the previous month-long campaign in 2019.

#### *Compliance Bootcamp*

48. In December 2020, we launched the Compliance Bootcamp. This new initiative was the first in a series of learning modules to help businesses stay on the right side of the law.

49. The first instalment featured tips and resources to help businesses and marketing professionals avoid potentially deceptive marketing that might put them in the Bureau's enforcement crosshairs. The modules are targeted at small and medium sized enterprises and the organizations that support them, such as chambers of commerce and trade associations.

50. When the series is complete, it will cover deceptive marketing practices, labelling, collusion and abuse of dominance.

#### *Listening to our stakeholders*

51. In 2020-21, we conducted public opinion research to learn more about the level of awareness and understanding consumers, businesses and policy makers and regulators have about the Bureau's activities. This research included focus groups and surveys with 1,500 participants across Canada. It allowed us to assess the impact of our work on their behaviours.

52. The results showed that although stakeholders have limited levels of awareness and understanding of our organization and activities, some of their decisions were informed by our work. In particular, they cited our:

- [Consumer and Business Alerts](#),
- [Little Black Book of Scams](#) and
- [Deceptive Marketing Practices Digest](#).

53. These insights will help us target our messaging to key stakeholder groups and enhance our broader outreach and communications efforts.

### 3. The role of competition authorities in the formulation and implementation of other policies

54. As Canada’s competition authority, we advocated to regulators and policy-makers across Canada to encourage competition and innovation in areas that matter the most to Canadians. We expanded our leadership role in the international community. We also expanded our awareness efforts through social media to reach more stakeholders in the business and legal communities and promote compliance with the law.

#### 3.1. Promoting Competition in Canada

55. In August 2020, we launched a [Competition Assessment Toolkit](#). The Toolkit aims to help policymakers across the country promote competition in Canadian industries during and after COVID-19. It provides a step-by-step guide to assess the impact of new and existing policies on competition and innovation. Since the Toolkit’s launch, we have actively promoted it to regulators and policymakers at all levels of government.

56. Also in August 2020, the Bureau filed a [submission](#) to the Ontario Standing Committee on Finance and Economic Affairs. We highlighted the importance of pro-competitive policies in supporting the ongoing participation of small and medium-sized enterprises (SMEs) in the marketplace. The Bureau encouraged the Government of Ontario use the Competition Assessment Toolkit and take competition issues into consideration as it conducts its review of barriers to entry and expansion for SMEs.

57. In January 2021, the Bureau launched its first annual “Switch Week” campaign. This campaign encourages Canadians to take advantage of competition by considering switching providers or renegotiating their contracts to lower their monthly bills. Throughout Switch Week, the Bureau provided practical tips and tools through social media and news media.

#### 3.2. Advocating for pro-competitive regulations

##### 3.2.1. *Keeping Canadians connected*

58. In July 2020, we filed our [final submission](#) to the Canadian Radio-television and Telecommunications Commission’s (CRTC) review of mobile wireless services.

59. Our analysis found prices can be more than 50% lower for all cell phone users in markets where there is strong competition from regional carriers. We recommended a Mobile Virtual Network Operator policy in which national facilities-based incumbents would sell temporary access to their wireless networks to regional carriers who intend to invest and further expand their own networks. This policy—if adopted—would help to

incentivize and accelerate the expansion of regional carriers so they can quickly deliver lower prices and greater choice for Canadian consumers.

60. In August 2020, the Bureau also filed an intervention with the CRTC on the approach to rate setting for wholesale telecommunications services. Building on the findings of the Bureau's 2019 Broadband Market Study—among other substantial research—the Bureau analyzed the effects on competition of five proposed rate-setting methodologies.

61. We concluded that instead of agreeing on a specific rate-setting methodology, the general rules and procedures guiding how the methodology will be implemented should be considered first. We offered our support to help design and develop these rules and procedures to ensure pro-competitive policies are considered for the benefit of all consumers.

### ***3.2.2. Banking on Competition***

62. As the Bank of Canada works to renew Canada's Monetary Policy Framework, we advocated strongly for a greater focus on competitive markets as a key driver of a productive, dynamic, and resilient economy.

63. Our submission focused on three areas where competition supports better outcomes:

- lowering inflationary pressures,
- driving productivity, and
- promoting a culture of competition to reinvigorate Canada's economy.

64. In the current climate, Canada can benefit from a strong culture of competition to ensure wealth and prosperity of all citizens in the years ahead.

### **3.3. Right to repair**

65. Many Canadian consumers are joining “right to repair” campaigns. Typically, these campaigns are aimed at electronic devices.

66. We submitted input to the public consultation held by the Government of Quebec's Consumer Protection Office on the sustainability, reparability and obsolescence of certain consumer goods. We included recommendations that any person designated by the consumer—including independent repairers—be granted access to repair parts as needed, when the consumer asks the manufacturer to do so.

67. This would give independent repairers the chance to compete with repairers that are affiliated with manufacturers, and could be beneficial to the consumer.

## **4. Resources of competition authorities**

### **4.1. Resources overall (current numbers and change over previous year)**

68. The Bureau's budget for 2020-21 was \$52.1 million, including \$13.7 million from user fees, compared to a budget of \$53.7 million, including \$16.5 million from user fees in 2019-2020. Expenditures were \$51.3 million.

69. The high degree of economic uncertainty in 2020-21 meant that user fee revenue fluctuated significantly throughout the year. This impacted the Bureau's spending

throughout the year, resulting in year-end expenditures being lower than the Bureau's overall budget. In comparison, expenditures for 2019-2020 were \$52.4 million.

#### **4.1.1. Annual budget (in CAD and USD)**

70. The Bureau's budget for 2020-21 was \$52.1 million (\$41.45 million USD).<sup>1</sup>

#### **4.1.2. Number of employees (person-years)**

71. In 2020-2021, approximately 379 full-time employees worked at the Bureau.

72. Most Bureau staff fill investigative and advocacy roles. The Bureau hires employees with a diversity of backgrounds, including individuals who have studied in economics and law. Specific information related to employees' university degrees is no longer tracked.

### **4.2. Human resources (person-years)**

73. Approximately 157 employees are dedicated to competition enforcement. Approximately 54 employees work in the Mergers Directorate, 69 are in the Cartels Directorate, and 34 in the Monopolistic Practices Directorate. The remaining employees are found in deceptive marketing, advocacy, communications, international, electronic evidence gathering and analysis, etc.

### **4.3. Period covered by the above information**

74. The above information covers fiscal year 2020-2021 (April 1, 2020 – March 31, 2021).

## **5. Closing Remarks**

75. In the 2020-21 fiscal year, we continued to focus on the importance of safeguarding and promoting competitive markets in the digital economy. We also continued to protect Canadians through enforcement across multiple industries. We took action against dozens of businesses to stop potentially deceptive marketing related to COVID-19 prevention and protection. Our merger reviews preserved competition in the animal health and datacom industries, and we took action to maintain competition in the pharmaceutical industry.

76. We accomplished all this by first ensuring our employees are well supported and equipped with the tools they need to fulfil the Bureau's mandate. We are thankful to have such a devoted team that continuously strives for excellence and works so diligently to advance our efforts in serving all Canadians.

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<sup>1</sup> Based on the Bank of Canada CAD-USD exchange rate as of March 31, 2021.