



Competition Bureau
Canada

Bureau de la concurrence
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SPEAKING NOTES

for

**Sheridan Scott
Commissioner of Competition**

COMPETITION BUREAU

**Rabobank Group
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I greatly appreciate Rabobank's invitation to join you this evening in Montreal. Not only is this a great chance to visit this great city, but most importantly it provides the opportunity to talk with you about what I believe are our shared interests.

In particular, we at the Competition Bureau are absolutely dedicated to the success of the Canadian economy, and in Quebec, you have built on a history of economic success and are taking this success to the world with growing exports of high technology products. More and more Quebec firms are engaging in research and development. In fact, in terms of spending on R&D as a percentage of Gross Domestic Product, Quebec leads all other provinces, and compares favourably with the United States.

I could turn to any number of individual Quebec success stories to inspire confidence in our future. But you know these better than I - you are those success stories.

Nevertheless, we can, and must do better. We are falling farther behind the U.S. in terms of productivity and income growth, and the rest of the world is not standing still, but is racing us down the innovation highway.

So what has this to do with my job as Commissioner of Competition in Canada? Lots. I oversee a group of lawyers, economists, business analysts and others who have two jobs. First, we enforce the *Competition Act* to protect competitive forces in the economy. And second, we are energetic advocates on behalf of competition.

I will speak a bit more about our advocacy work later, but let me begin with a quick primer on the four broad enforcement elements of the Act. I will be very brief regarding three of these, and I will then spend a bit more time on one activity which I know is of interest to you, our merger reviews.

First, the Act provides the Bureau with civil powers to deal with certain potentially anti-competitive business practices . These include practices such as abuse by a firm of its dominant position in a market to reduce or preclude competition, refusal to deal, tied selling, and exclusive dealing. Now I know that aggressive pricing and bundled discounts can be legitimate business practices and we are very, very careful to differentiate business practices which support, or are part of intense and vigorous competition, from those with the effect of impeding competition. If you are interested in how we apply these provisions to the retail grocery industry, you will find an interpretive bulletin on our website.

The second part of the Act covers criminal practices such as price fixing. These have been described as the most egregious forms of anti-competitive conduct and we are going to be increasing our focus this year on domestic cartels and bid rigging.

You may in fact recall the announcement in late January of a major cartel decision involving the paper industry. Cascades Fine Papers Group Inc., Domtar Inc. and Unisource Canada, Inc. each pled guilty in the Superior Court of Justice in Toronto to two counts of conspiring to lessen competition unduly contrary to section 45 of the *Competition Act*. Each

company was sentenced to record fines of \$12.5 million for their part in the domestic conspiracy of carbonless sheets and they were ordered to fire or at least demote key employees.

This decision demonstrates that we and the courts take domestic cartels very seriously.

And the economic reason is clear: cartels and bid rigging are capable of diverting large sums of money away from consumers, away from taxpayers, and away from other Canadian companies such as yours that compete globally. In short, these acts destroy markets and competitiveness.

Which in fact brings me to the third element of our mandate which is to preserve the integrity of the marketplace, and in particular marketplace information. To this end, the Act contains provisions dealing with false and misleading advertising.

The Bureau's role and powers in enforcing these three elements of the Act are those of a law enforcement agency. For example, we can and do seek search warrants and conduct searches. We can and do seek wiretaps. We have an immunity program for individuals who want to bring us evidence of cartels or other criminal offences.

And if we do not settle a case, we proceed to the Competition Tribunal to deal with civil matters. This is a specialised body equipped with both

judicial and economic and business expertise. For criminal matters, we proceed by way of the Attorney General to the ordinary court system.

Much the same is true of the fourth element of our act, the review of mergers. In the case of mergers, the Act provides the Bureau with the right to review any merger in order to prevent a significant lessening of competition. But only the larger mergers must be notified to the Bureau. These involve companies with combined sales or assets exceeding \$400 million, and where the acquired firm has sales or assets exceeding \$50 million. And historically, over 96%% of all notifications are approved without change.

When we review a merger, we do so on the basis of very careful analysis and in close consultation with participants in the affected markets, including customers, suppliers and competitors of the merging firms, and other affected parties. We usually begin by defining the geographic and product markets that would be affected by the merger. This may involve several specific products for a given merger. For example, the merger of two food processors may impact only on several overlapping product lines, and affect only a limited geographic region. We would focus our attention there.

After we establish definitions of the affected markets, we examine the degree of concentration as a screening device; if it is low, it is usually unnecessary to proceed further. If not, we will consider entry conditions, remaining domestic and foreign competition, extent of the rivalry between

firms, other relevant factors, and so on that may affect whether the merger would result in a significant market impact over time - that is, a price increase or reduced quality or choice of products.

And we undertake this analysis well aware of the business pressures for timely resolution of issues.

In fact, timeliness is just one of the five basic principles which guide all of our efforts, including merger reviews. These are: timeliness, as I have already mentioned, fairness, predictability, transparency and confidentiality. Let me address each of these in the merger context.

First timeliness. We have established service standards for mergers and we publish our results annually. Every two years or so, we conduct a detailed review of our performance and fees with an external stakeholders, including leading members of the competition bar and associations.

Our timelines are relatively simple. We establish our position in non-complex cases within two weeks of our receiving a complete request. More complex cases get up to 10 weeks. And even the most complex cases have a timeline of five months. And these are the outer limits - most cases are determined more rapidly.

Now I know that five months seems like a long time. But this is for the exceptional cases and is in keeping with international practices for the review of complex cases which merit careful scrutiny.

This was certainly the case for the acquisition by Cargill of Better Beef, which was complicated by the effects of border closings due to the mad cow issue. Our review involved a formal inquiry. We used the formal powers available under the *Competition Act* to obtain written returns of information from the parties and competing beef packers. We also obtained relevant information and views from a number of third party sources including feedlot owners, farmers, industry associations, cattle brokers and grocery retailers, as well as federal and provincial government officials. In addition, the Bureau retained two independent experts, one in the field of agricultural economics and the other in industrial organization.

After a thorough investigation, econometric work, and careful analysis, the Bureau concluded that a merger of Cargill and Better Beef was not likely to result in a substantial prevention or lessening of competition in any relevant market. This was all done within the five-month timeframe. It is not always easy, but we do everything possible to meet our commitments.

As for predictability, we have a policy of open communications on our approach to mergers, including detailed formal guidelines which set out the analytical framework we apply to merger reviews. The merger guidelines and other Bureau Guidelines are of course available on our Web site. We also make numerous presentations to the Bar and others to ensure that both we and they are prepared to expedite merger reviews.

Transparency is our third principle, an important principle to improve both understanding of our reviews, and acceptance by affected stakeholders,

including customers and suppliers, of the outcomes.

I will have a few more words about this later, but in the case of mergers, we are publishing backgrounders on our more interesting cases, such as the Cargill case I just mentioned, and the recent Sogides-Quebecor merger. In that latter case, the Bureau analysed the merger's impact on competition in the Quebec publishing and distribution industry, consulting publishers, distributors, bookstores, government officials and industry associations.

In the end, while we did not contest the merger, we had concerns about the possibility of information exchanges between two competing booksellers due to an overlap in their Boards of Directors. As a result, we obtained an agreement that saw one person resigning from the Board of one of the booksellers and being replaced by an independent member. This is an example of how we can avert market difficulties and protracted litigation through the use of consent agreements with the merging parties. And our backgrounder is intended to make our reasoning more evident to all concerned.

As for fairness, we cannot impose remedies or block mergers on our own. With the exception of financial sector mergers where the Minister of Finance has the final say, and airline sector mergers where the Minister of Transport has finally say, merging parties have full recourse to the Competition Tribunal, and potentially to the courts if they disagree with our reviews.

But more to the point, we make every effort to be impartial as a professional obligation. We work carefully with the merging parties to get the facts straight, to ensure there are no questions of misinterpretation and to afford the parties full right to discuss their cases with us. And just in case there is any concern regarding political interference, rest assured that the Bureau operates completely independently of the Government of the day. Ministers have no say over the Bureau's work.

The fifth principle, confidentiality, is critically important to the business and financial communities. Parties count on our confidentiality for we are dealing with your most sensitive business data. And we are well aware that information regarding our decisions could move financial markets. While information confidentiality is formally protected by S. 29 of the Act, it is also safeguarded by the professionalism of our staff and our commitment to maintain the Bureau's spotless record.

Now while enforcement is a big part of our job, we are not just *les flics économiques*. We are specifically charged by our Act to advise on, and speak for and about competition in Canada. We do this through our interventions in regulatory fora such as the Canadian Radio and Telecommunications Commission and the Canadian Transport Commission and by providing advice to governments of all levels on policies, regulations and other matters affecting the marketplace.

In this, we are reasoned advocates. We do not argue blindly for competition at the expense of all other goals. We do, however, advocate

that these goals be achieved through and in concert with competitive forces, and with the least impact on the marketplace.

This is not always easy, but we need to continue the effort because the competitive marketplace is crucial for our future. The central role of competition in economic progress is well established. Michael Porter and other modern thinkers have written about the importance of the forces of competition within an economy in determining economic competitiveness. Marcel Côté, who recently chaired a blue ribbon panel on behalf of the Competition Bureau, has noted that “Innovation is generated by the myriad of entrepreneurs attempting to break the status quo...” while “...competition forces established businesses to innovate...”

In short, competition helps drive the competitiveness which determines our standard of living.

In fact, competition may be more important than ever before. In a knowledge-based economy, with production coming from a much bigger, more diverse world, the real key to significant gains in our standard of living must come from innovation -- innovation in our business practices, technologies, and science. Innovation in our product designs and marketing. And innovation in our marketplaces to keep pace with emerging opportunities and challenges.

You know too well that the pace of innovation has skyrocketed, facilitated by a much larger base of highly educated individuals, information and

communication technology, and of course globalization. Companies are bringing new products, services and processes to markets at a speed which is dazzling. In the past, a company could successfully stick to its knitting. Today, it will find itself rapidly unravelled by rivals that knit faster, better and at lower costs.

All of the factors supporting global innovation are being accelerated with the emergence of China, India and other countries. We have seen the impact of their low cost labour. But they are challenging with more than low costs. These countries are dead serious about moving up the value chain, and quickly. To compete, we must be even more innovative.

At the same time, these emerging markets are offering us enormous opportunities. But unless we are there with world class, innovative products, our opportunities will be severely limited.

So how do we get there?

Well it appears that successful innovation is the complex product of a wide array of supply and demand. On the supply side are factors such as highly qualified graduates, tax credits, funding for basic research, centres of excellence, and so on.

For Quebec, many of these factors are well analysed in the “Tableau de Bord du Système d’innovation Québécois” which is published by le Ministère du Développement économique, de l’Innovation et de

l'Exportation. This report, as I am sure many of you know, highlights the importance for innovation of firm level ability, the innovation environment, linkages amongst firms and sectors, and the social and economic context for successful innovation.

Less attention has been paid in Le Tableau and elsewhere to the factors affecting the demand for innovation, that is the factors that motivate and guide a firm's innovation decisions. In January of 2005, The Institute for Competitiveness and Prosperity produced a report titled *Canada's Economic Prosperity*. Based on the work of the World Economic Forum, the report identifies many factors contributing to our productivity malaise compared to the U.S. One of the overall factors they identify is weaker competitive pressures in Canada.

I have not seen similar studies for Québec alone. But I do know that you are blessed with entrepreneurial skills and drive. And I hear regularly about the pressures that businesses face. I see that many markets, especially those well integrated into the global scene are intensely competitive. Yet I also know that even if the economic environment here were to be proven to be first rate today, we could not rest on our laurels. To function at the cutting edge of global competition, all of our markets need to be highly efficient, with minimal distortions from regulations. They need to be free from anti-competitive activity. And they must continue to improve to keep up with the rest of the world.

Given that, the obvious question is: what do we have to do to improve

Canadian marketplaces?

There are some examples elsewhere in the world. For example, Australia, the UK and the European Union are all making competition a cornerstone of their economic development initiatives, with great success. In Australia, they have totally revamped their way of doing things, from their competition act through to the way they treat regulation and legislation in all markets. The UK is applying a competition lens to all proposed legislation to ensure that the many and varied policy objectives of government are achieved with the least interference to the marketplace.

We in Canada have to get moving. And in the Competition Bureau, we are acting on the two fronts I mentioned earlier - enforcement and advocacy.

We are actively attacking cartels, with an increasing focus on the domestic market. We are also going after fraudulent mass marketers who undermine consumer confidence and drain billions from legitimate markets in Canada and around the world. And we are looking to step up efforts to ensure the soundness of the electronic marketplace.

To ensure that competition is protected in as large a segment of the economy as possible, we are examining the relationship between the *Competition Act* and other laws and regulations to see if our Act can be interpreted to apply to anti-competitive conduct even in certain regulated markets.

Excellent enforcement of a modern act is not enough, however. My experiences in the government as a regulator, and in the private sector as a regulatee have taught me one important lesson: a market will not be competitive if basic business conditions, especially how the market is regulated, mitigate against it.

So we are taking steps to focus our advocacy on key areas where we can make marketplaces better. And we are getting better informed about the marketplace by increasing our direct contacts with business, consumer and other stakeholders

I won't go into details, but you know that this effort is critical. Healthy marketplaces are key to future success - success for your companies, for Quebec and for all of Canada .

So I want to wrap up this discussion with reference to a point I made at the outset. We at the Bureau want Canadian businesses to succeed. And we are working hard to help make that possible by improving the competitive environment in which you live.

That environment will benefit everyone, from individual consumers through to small entrepreneurs up to the biggest corporations. And it is part of the recipe to ensure the future prosperity of Canada.

Your continued support and engagement in this effort is crucial.

Now before we get to dinner, I want to thank Rabobank for the invitation to meet you here tonight. I look forward to some excellent Québec cuisine and equally excellent discussions this evening and into the future.