



Competition Bureau  
Canada

Bureau de la concurrence  
Canada

## **SPEAKING NOTES**

**for**

**Sheridan Scott  
Commissioner of Competition**

**COMPETITION BUREAU**

**Standing Senate Committee on Banking Trade and Commerce  
Study on Consumer Issues Arising in the Financial Sector**

**February 10, 2005**

**(Check against delivery)**

Thank you Mr. Chair and members of the Committee. I am accompanied today by Gaston Jorré, Senior Deputy Commissioner of Competition, Mergers Branch, and Sally Southey, our Assistant Commissioner, Communications Branch, who is also responsible for our consumer outreach program.

We welcome this opportunity to participate in your study on consumer issues arising in the financial sector.

As an independent law enforcement body, the Competition Bureau seeks to ensure that all Canadians enjoy the benefits of competition, namely competitive prices, product choice and quality services.

The Bureau enforces and administers the *Competition Act*, a vital piece of economic legislation which touches on virtually all sectors of the Canadian economy.

We are not a consumer protection agency, but I believe that two facets of our work would be of particular interest to your current study.

I would like to briefly describe how the Bureau reviews merger transactions in the financial services industry. Then, I will explain the Bureau's role in addressing false or misleading representations and deceptive marketing practices.

Both these areas, which are under our jurisdiction, can affect consumers in the financial sector.

## **Merger Review**

Let's begin with merger review.

The Commissioner of Competition can review mergers in all sectors of the economy, but large mergers in the financial services sector are somewhat unique.

It's important to realize that the Bureau applies the same analytical framework when reviewing a bank merger as it does for other sectors. We assess whether the merger would result in a substantial lessening or prevention of competition. This means that we assess whether the merger creates, enhances, or maintains market power. What we tend to focus on is whether or not the merged entity has the ability to raise prices. However, we also address non-price dimensions of competition, such as a reduction in quality or service.

In the bank merger reviews in 1998, we examined the impact on competition in all banking services and determined that a detailed analysis was required for three major lines of business in which banks are engaged: branch banking services to individuals and businesses, credit cards, and securities. Other areas of banking did not pose competition concerns and therefore were not subject to detailed review.

When the Bureau concludes that a merger would result in a substantial lessening or prevention of competition, we work with the parties to find a remedy for the problem. If there is no settlement, then the parties would either abandon the transaction or face possible litigation before the Competition Tribunal.

However, in the case of bank mergers there is an exception which gives the Minister of Finance the final decision when he has certified that his actions are “in the best interest of the financial system in Canada..”

In 2001, as part of Bill C-8, the Department of Finance issued guidelines that set out the separate responsibilities of all concerned with respect to large bank merger reviews. They described the process as follows:

- the Competition Bureau and the Office of the Superintendent of Financial Institutions (OSFI) provide independent reports to the Minister;
- the House of Commons Finance Committee and the Senate Banking Committee provide their reports to the Minister of Finance;
- the Minister of Finance renders a decision on whether the public interest, prudential, and competition concerns raised by the transaction, are capable of being addressed;
- if not, the transaction is denied and the process ends;
- if the concerns are capable of being addressed, the merger review process enters the negotiation of remedies stage;
- the Competition Bureau negotiates the competition remedies with the banks;
- the OSFI negotiates prudential remedies; and,
- following the successful negotiation of remedies, the Minister of Finance is in a position to approve the transaction with terms and conditions that implement those remedies.

The analytical framework for reviewing transactions in this industry has not changed since 1998, when the Bureau reviewed two bank merger proposals. We will continue to apply this framework in any future transaction. The outcome may well be different, given changing circumstances in the marketplace, but the framework will remain the same.

### **Accurate and Reliable Information in the Marketplace**

The second area I would like to address relates to our jurisdiction over false and misleading advertising, which touches consumers and the financial services sector in a variety of ways. Our jurisdiction in this area is based on the need for consumer confidence in the marketplace which is key to a well-functioning economy.

Financial institutions, like other businesses, cannot engage in false and misleading advertising. The Bureau carefully reviews all complaints received on this subject. However, the vast majority of complaints regarding financial services are not against major institutions like banks. The bulk of the complaints deal mainly with various types of fraudulent representations to entice consumers to

give away their money in the hope of getting access to loans, for fake credit card protection, solicitations to obtain personal financial information, etc.

Over the years, the Bureau has seen a number of such scams that affect financial institutions. Litigation in this area is very expensive, and is often not the best means of enforcing the Act. Sometimes, public awareness initiatives and other means of encouraging compliance, are cheaper and often more efficient. This approach of using different instruments is known at the Bureau as the Conformity Continuum. Educating consumers is a vital part of this process.

The Fraud Prevention Forum is one example of how the Bureau works to increase consumer awareness and promote confidence in the marketplace. As chair of the Forum, I was very pleased to join with our partners in declaring this month as Fraud Awareness Month in Canada. Our goal is to inform Canadians about the dangers and warning signs of fraud.

This month more than 45 public and private-sector organizations, including all the major financial institutions, are participating in a number of different ways, such as distributing more than 30 million bill inserts, airing public service announcements, buying newspaper ads and posting Web banners, all in the name of fraud education and prevention.

Millions of Canadian consumers are being educated on how to protect themselves from fraud, thanks to this month-long campaign.

### **Staying informed**

In addition to our fraud prevention work, the Bureau is also building partnerships directly with consumer organizations, in order to develop an open and constructive dialogue on consumer issues, including those that affect financial services. In December 2004, we hosted an inaugural meeting with representatives of consumer associations and various consumer groups. As part of the meeting, the Bureau outlined its work, mandate, and benefit to consumers. It also explored ways to strengthen linkages with these groups.

The Bureau also needs to understand changes in the business environment if it is to do an effective job. Technology, globalization and deregulation have changed many business models, and we need to be aware of the latest developments. As a result, we have established a number of industry sector teams, including financial services. The creation of sector teams and the organization of sector days will ensure that the Bureau is aware of, and sensitive to industry developments and concerns

Sector days will involve a series of meetings between industry leaders and the Bureau staff in order for us to learn more about how the business environment is changing.

The first of these sector days will take place on March 14, 2005 in Ottawa, focussing on the financial services sector, specifically insurance.

## Update

I would also like to take this opportunity, before concluding my remarks, to update the committee on consultations we are conducting in relation to the issue of efficiencies under the Act.

Some of you may recall that when I appeared before you in the Spring of 2004 in relation to private member's bill C-249, you expressed an interest in understanding the issue of efficiencies in light of Canada's broader industrial and economic context.

Since C-249 died on the Order Paper, the Competition Bureau has undertaken an extensive consultation process which consists of three main components:

- a Consultation Paper entitled Treatment of Efficiencies in the *Competition Act* to form the basis of discussion with a broad range of stakeholders who were invited to submit their views in both written submissions and roundtables;
- an international roundtable in October 2004 with participants from the EU, the US, Australia, Mexico and the UK; and
- an advisory panel of experts with backgrounds in business and international trade.

You might be interested to learn that, as part of this consultation process, we have received a submission from a financial institution, the RBC Financial Group, highlighting the importance of the consideration of efficiencies in the context of bank merger proposals.

We would be happy to respond to your questions.