



Competition Bureau  
Canada

Bureau de la concurrence  
Canada

## **SPEAKING NOTES**

for

**Sheridan Scott**  
**Commissioner of Competition**

**COMPETITION BUREAU**

**Speech to the Fédération des Chambres de Commerce du Québec**

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**(Check against delivery)**

I greatly appreciate your invitation to be with you today in Montreal

As I was preparing to meet with you, I took a look at your Web site. And what I saw there convinced me of one thing: we are pursuing common objectives.

I know you may find this odd, that a law enforcer like me would share the objectives of a private sector organization like yours. But if you step back and think about our roles, we really do have much in common.

Take the Federation's mission, which is admirable in its clarity: Promouvoir la liberté d'entreprendre qui s'inspire de l'initiative et de la créativité afin de contribuer à la richesse collective en coordonnant l'apport du travail de tous.

Now my mission, despite being enshrined in an Act of Parliament, is also clear: it is to maintain and encourage competition in Canada. Amongst other things, we have been given this mission in order to:

- expand opportunities for Canadian participation in world markets; and,
- ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy.

So our two mandates fit hand in glove. Your's expresses directly the objective of ensuring that the marketplace provides the opportunity for initiative and creativity in entrepreneurship to benefit the economy. My

mandate, and my presentation today focus on the role that competition and competition policy can play in ensuring the health of this marketplace and how this drives innovation in Canada.

This is important, for innovation is the crucial ingredient for economic success. And while we have a fairly good track record of creativity in Canada, we can do better.

In fact, on October 18, 2005, the Conference Board described Canada as an underperforming but potentially gifted child. Our productivity achievements were declared to be our most significant weakness, with 2004 increases less than one-third of those in the US (1.1% versus 3.6%). This goes straight to Canadians' wallets and purses: our annual per capita income gap with the US now exceeds \$ 8,000 (US dollars).

Now it is easy to overlook our accomplishments. As a country, we have made great progress in the last 20 years, opening up to new markets with multilateral and regional trade agreements. We have reduced barriers to internal trade, and arguably cut some red tape and regulations. Our fiscal health has been restored and in many ways we have created a solid foundation for future growth.

In Quebec, you have built on a history of economic success and are world leaders in a number of industries of the future - aerospace, pharmaceuticals, biotechnology, and so on. You 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 that inspire confidence in our future. But you know these better than I. And I bet many of you are those success stories.

Despite this success, we all know we can, and must do better. Across Canada, we are falling farther behind the US in terms of productivity and income growth, as I noted earlier, and the rest of the world is not standing still, but is racing us down the innovation highway.

This innovation race is not confined to research and development spending but requires the transformation of that effort into new products and services, higher value added, profits and wages. Success, it seems, is based not on just doing more of one thing, but on doing many things better.

So what has this to do with my job as Commissioner of Competition in Canada? Lots.

Just over two years ago, I won the open competition, appropriately enough, to become head of Canada's Competition Bureau. As such, 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.

First, the Act provides the Bureau with the right to review and contest mergers in order to prevent excessive market concentration. Only the larger mergers must be notified to the Bureau, and these mergers are very carefully analysed to ensure that we act only where the merger will result in a significant lessening of competition -- in fact, very few, under 4% of all notifications, result in any form of contested issue.

The second part of the Act covers certain anti-competitive business practices which may emerge when a market has become highly concentrated. These include practices such as abuse of dominant position, refusal to deal and so on. As with mergers, we are particularly careful to differentiate business practices which support, or are part of intense and vigorous competition, from those with the effect of precluding competition.

Third, you are most likely aware that the Act covers criminal practices such as price fixing and bid rigging. These have been described as the most

egregious forms of anti-competitive conduct and are taken very seriously.

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 to two counts of conspiring to lessen competition unduly and each company was sentenced to record fines of \$12.5 million and was ordered to fire or demote key executives.

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 fourth 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 four 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 we must present our cases either to the Competition Tribunal, a specialised body equipped with both judicial and economic and business expertise, or through the Attorney General to the courts for Criminal matters.

While you may be aware of these enforcement duties, I suspect that our advocacy role is less well known. I want to change that situation today. We are specifically charged by our Act to advise on, and speak for and about competition in Canada. We take this role very seriously, from our interventions in regulatory fora such as the Canadian Radio and Telecommunications Commission and the Canadian Transportation Agency, to our advice to governments of all levels on policies affecting the marketplace. Occasionally, government departments will seek our advice on policy, including on pieces of legislation as they are being drafted.

We are reasoned advocates. We do not argue blindly for competition at the expense of all other goals. We 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.

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.

Obviously, the world is changing and challenging. 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.

So how do we get there?

Well, as I said earlier, it appears that successful innovation is more than research and development, or new equipment, or electronic commerce. It 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 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. The report notes that according to a survey of business executives, Canada trails the United States in 17 of 23 factors regarding firm rivalry and the degree of sophistication of customers.

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, and see that many markets, especially those well integrated into the global scene are intensely competitive. But I also know that even if the economic environment here were 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 supported by world-class marketplace frameworks, such as copyright

and patents. 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 to the way they treat regulation and legislation in all markets. They have achieved national consensus on the importance of competitive markets and have coordinated state and federal efforts.

The UK offers another example. They have also revamped their competition enforcement but, perhaps more importantly, they are 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.

I can't speak for what is going on across the federal or Quebec governments, but I can tell you that we in the Competition Bureau 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

To ensure our efforts meet the needs of the times, we are staying on top of issues arising from the changing economic environment, such as the interface between intellectual property laws, competition policy and innovation.

To increase transparency and inform business, we are publishing backgrounders to our decisions, and being as open as possible with respect to our analyses and views.

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.

And this is where our role as advocate for competition comes into play.

To be effective advocates, we have to be plugged into how markets operate. So I now meet regularly with small business groups, consumer representatives, and the major business associations in Canada. I, and other Bureau staff, are out talking to groups such as this one, increasing business awareness of the Bureau, and in turn, the Bureau's awareness of business issues and concerns.

To increase sectoral expertise, we have created teams of officials from across the Bureau, each of which is responsible for developing and maintaining awareness of sectoral developments, contacts and issues. We have 'sector days' during which business leaders visit the Bureau to discuss developments in their industries, including developments related to globalization, emerging technologies, and regulatory issues.

We are engaging leading experts in business and economics to help us understand issues affecting markets and the potential for improved reliance on marketplace solutions.

And I emphasize again that we are not doing this in isolation. We are closely watching the efforts of other countries to look for more effective ways of improving our marketplaces.

Now I know that I have burdened you with a lot of information, and you may be wondering how it fits together? The answer is simple: we are doing everything within our power and in collaboration with others to improve Canadian markets. I have talked about the importance of competition as a driver of success - success for your companies, for Quebec and for all of Canada - because you can, through sharing your insights and concerns, and marshalling your efforts, make a difference.

I want to wrap up this discussion with reference to a point I made at the outset. Our economy and our markets are strong overall. We have the potential to achieve the innovation, efficiency and agility that determines economic winners. But our international competitors are, in Olympic terms, training hard and going for gold. We have to be every bit as committed to the challenge.

The Federation and the Competition Bureau have similar missions and each have important roles to play to ensure that our markets are world leaders.

These world leading markets will benefit all players in our economy, from individual consumers through to smaller businesses up to the biggest corporations. It is part of the recipe to ensure our future prosperity.

Your continued support and engagement in this effort is crucial.

Thank you. I look forward to our discussion today, and into the future.