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The Basics of International Cartel Enforcement in Canada

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I. Introduction

The purpose of this paper is to describe the basic features of international cartel enforcement from the perspective of the Competition Bureau.

Canada's competition laws date from 1889 with the passage by Parliament of what is essentially today section 45 of the *Competition Act* (the "Act"). However, it was not until the early 1990s that the Competition Bureau, along with foreign antitrust agencies, began to address international cartels. International cartel enforcement is a natural outgrowth of antitrust in a global economy. While previously international cartels were not unknown, reductions in trade and investment barriers exposed many hitherto protected firms to competition as well as incentives to collude to preserve prices, profits and markets.

Since the mid 1980s, governments and antitrust enforcers, in seeking to protect the benefits of more open markets from private restraints of trade, have pursued greater international cooperation among antitrust agencies. The focus earlier in international relations in the antitrust field had been characterized by conflict avoidance stemming from extraterritorial application of foreign, and particularly American, law. International cartel enforcement presents a number of challenges for antitrust enforcement agencies beyond the challenge of uncovering covert illegal behaviour agencies normally encountered in domestic enforcement. Jurisdictional hurdles are inherent features in investigating and prosecuting targets that lie offshore. Unlike Canada and the United States, a number of jurisdictions, notably the European Union, address cartels under a civil law regime. Moreover, there are legal barriers to sharing confidential information between the Competition Bureau and foreign antitrust agencies.

Over the last decade great strides have been made toward harmonizing laws and investigative techniques across jurisdictions. Treaties, inter agency agreements and multilateral forums have enhanced the ability of antitrust agencies in different jurisdictions to cooperate and coordinate investigations. Of particular importance in the fight against international cartels has been the invigoration of the leniency policies of the Antitrust Division of the United States Department of Justice in the early 1990s and its subsequent adaptation by Canada, members of the European Union and most other OECD members.

II. The Law

1. Section 45: Conspiracy to Lessen Competition Unduly

Section 45 of the Act prohibits conspiracies, combinations, agreements or arrangements to lessen competition unduly in the supply, manufacture or production of a product. It is a criminal offence thus requiring proof beyond a reasonable doubt. It is also an indictable offence where an accused, upon conviction, can be sentenced to maximum fine of \$10 million and a term of imprisonment of no more than five years. The offence lies in the act of conspiracy regardless of whether it is carried out, and the law provides that an agreement may be proven from circumstantial evidence.

Agreements may be either explicit or implicit. Businesses generally understand that conspiracies are illegal, and explicit written agreements are very rare. Implicit or tacit agreements are also illegal as long as the pattern of behaviour of the accused demonstrates behaviour proving an agreement. Evidence of communication among the accused is critical in this regard. Parallel behaviour where firms make price and output decisions having regard to the reaction of their competitors is common in oligopolies, and might lead to uncompetitive outcomes in certain markets. However, in the absence of communication or other behaviour establishing an agreement, mere conscious parallelism is legal.

The law contains a number of statutory exemptions, among others, for affiliated persons and collective bargaining activities in sections 2 and 4 of the Act. There are also exemptions for classes of agreements in subsection 45(3) which include exchanges of statistics and measures to protect the environment, and export agreements in subsection 45(5). The nature of the agreements set out in subsections 45(3) and 45(5) are not competitively objectionable. However, to protect the competitive process, the exemptions in subsections 45(3) and 45(5) are subject to limitations in subsections 45(4) and 45(6) respectively. For example, an export agreement that has the effect of reducing or limiting the real value of exports of a product would not qualify for the export exemption in subsection 45(5).

The leading conspiracy case is the 1992 Supreme Court of Canada decision in *R. v Nova Scotia Pharmaceutical Association*. The Supreme Court focussed on the word *unduly* in subsection 45(1)(c) as the appellants argued that the offence was overly vague to preclude a defence. In finding for the Crown, the Supreme Court upheld that the offence was not constitutionally invalid on the grounds of vagueness. The decision articulated the following requirements for a conspiracy offence:

- an agreement between two or more persons,
- it is the combination of market power, that is the ability to behave relatively independently of the market, and behaviour likely to injure competition that makes an agreement undue.
- subjective intent, the parties intended and did enter into an agreement;
- objective intent, the parties knew, or a reasonable business person ought to have known, that the agreement would lessen competition unduly.

The conspiracy law in Canada is best described as requiring a partial rule of reason analysis lying between a *per se* condemnation of certain agreements, such as price fixing, and a full rule of reason analysis which would consider benefits of the agreement to the accused such as cost reductions.

2. Section 46: Foreign Directives

Section 46 complements section 45. It makes unlawful conspiracies, combinations, agreements or arrangements implemented in Canada as a result of directives, instructions, intimations of policy or other communications from a person outside of Canada, in a position to direct or influence the policies of the accused, for the purpose of giving effect to a conspiracy which, if entered into in Canada, would be a contravention of section 45. Section 46 does not require the accused to be knowledgeable of the conspiracy. Unlike section 45, there is no statutory maximum fine under section 46.

Section 46 was added to Canada's competition laws in 1976. While there have been a number of guilty pleas under section 46, several with significant fines, there have been no fully litigated cases, and, accordingly, there is no jurisprudence under the section.

III. The Enforcement Process

The enforcement process in Canada is marked by three distinct stages: the first two, namely the preliminary examination and inquiry are conducted by the staff of the Commissioner of Competition (the "Commissioner") and the third stage, the prosecution, is conducted by the Attorney General of Canada (the "Attorney General"). In practice, there is significant cooperation at each stage between the Competition Bureau and the Department of Justice. This is doubly true in international cartel cases which extensively rely upon grants of immunity and other forms of favourable treatment by the Attorney General.

Preliminary investigations usually begin with a complaint from a customer or an informant. The latter may be an existing or former employee or, as in many international cartel cases, a person or a corporation seeking immunity from prosecution. They can also be initiated by Bureau staff research or media reports that suggest a breach of the Act has occurred. The focus of preliminary investigations is on gathering facts, authenticating information and developing a theory of competitive harm to determine whether there are grounds for a formal inquiry.

Section 10 of the Act provides that the Commissioner shall start an inquiry to determine the facts when there is reason to believe that an offence has been, or is about to be, committed.¹ Meeting

1. Section 10 also provides that the Commissioner shall commence an inquiry:

- a) when there is reason to believe that grounds exist for the Competition Tribunal to issue an order under the non-criminal provisions of the Act,
- b) there has been a breach of an order under the Act,
- c) on the direction of the Minister of Industry, and
- d) on the application of six Canadian residents meeting the requirements of section 9 of the Act.

the requirements of section 10 is the first step toward taking more formal investigative actions described later in this paper. Subsection 10(3) requires that inquiries be conducted in private. Thus, questions from third parties, such as the media or others, about the inquiry, including the identity of parties subject to an inquiry, go unanswered. Section 29 bars the communication of confidential information obtained during an inquiry with the most notable exception of such communication for the administration and enforcement of the Act. This allows the use of information in the investigative process and in evidence in prosecutions.²

If an inquiry does not yield sufficient evidence for further action, then it is discontinued and the discontinuance is reported to the Minister of Industry. The Minister may require further inquiry, but has no power to stop an existing inquiry.

Under section 23 of the Act, inquiries may be referred to the Attorney General at any stage for such action the Attorney General may wish to take. In practice, all inquiries in criminal matters that are referred to the Attorney General contain a recommendation to prosecute unless there is an agreement between the Commissioner and the target(s) to seek a consent prohibition order with no admission of an offence.³

Investigative Techniques

1. Immunity Program

By far the most powerful technique available to detect, investigate, prosecute and ultimately punish and deter cartels has been the use of immunity programs (or leniency or amnesty as they are called in other jurisdictions). Typically cartel agreements are tightly guarded “need to know” secrets among participants in order to reduce the likelihood of complaints and informants. Immunity programs are an effective mechanism to break the collective interest of cartel participants in maintaining the covert nature of anti competitive agreements or arrangements. Evidence from a cooperating party who participated in the cartel usually proves to be an insurmountable obstacle to an accused wishing to contest the charges. Immunity programs are particularly important in international cartel enforcement in Canada since the targets and evidence usually lie outside of Canada. The growth in corporate compliance programs and the merger boom of the late 1990s to mid 2001, where cartel activity was uncovered in due diligence exercises, has also contributed to the success of immunity programs.

2. For more information on the confidentiality protections in the Act see the Commissioner’s 1995 Statement on the Treatment of Confidential Information at available at www.competition.cb-bc.gc.ca

3. Inquires may also be resolved by seeking a compliance resolution such as undertaking to cease the business conduct in question. For more information see the Bureau’s Conformity Continuum Bulletin available at www.competition.cb-bc.gc.ca

The success of the program stems from its careful use of economic incentives to cooperate with antitrust authorities. The requirement that only the “first-in” to cooperate will receive immunity or another form of favourable treatment in effect creates a “race to the confessional.” Faced with the realization that the antitrust authorities are armed with evidence from a cooperating party from inside the cartel, many potential accused are ultimately prepared to plead guilty as opposed to contest the matter. The presence of immunity programs in multiple jurisdictions compounds these incentives as guilty pleas in one jurisdiction, for example the United States, will inevitably spark investigations in Canada, the European Union and elsewhere. Consequently, most immunity applicants follow the recommended practice of seeking immunity in multiple jurisdictions where they have exposure. Protection of the immunity applicant’s identity and confidential information, subject to certain exceptions, is another important principle under the Bureau’s Immunity Program.⁴

The Bureau and the Attorney General have successfully used grants of immunity and other forms of favourable treatment in cartel cases since the early 1990s. In 2000, the Program was formalized when the Immunity Program Information Bulletin was issued by the Bureau.⁵ Under the Program, the Commissioner recommends immunity in appropriate cases but it is the Attorney General who decides whether to grant immunity from prosecution or another form of favourable treatment.

There are six conditions for a party to obtain immunity:

- i) they must be the first-in to cooperate,
- ii) they must terminate the illegal activity,
- iii) the instigator of the illegal activity or the sole beneficiary of the activity in Canada will not qualify for immunity,
- iv) they must provide truthful and complete disclosure and timely and on-going cooperation throughout the investigation and prosecution,
- v) where possible, they will make restitution for the illegal activity, and
- vi) a recommendation for immunity will be withdrawn where a party fails to meet any of the conditions above, and a subsequent applicant that meets the requirements under the Program may be recommended for immunity.

4. See paragraphs 33 and 34 of the Immunity Program Information Bulletin.

5. To obtain a copy of the Immunity Program Bulletin as well as Frequently Asked Questions about Immunity see the Bureau’s website at www.competition.cb-bc.gc.ca.

Parties who are not first in may nonetheless qualify for immunity if they are the first to disclose information relating to another offence, for example, a conspiracy relating to one or more other products. This is known as “Immunity Plus.” In these circumstances, the party will be expected to provide evidence and plead guilty to the first offence to receive immunity for the second offence assuming that all of the conditions in the Immunity Program are satisfied. In general, the party’s contribution to the investigation of the initial offence and disclosure of one or more other offences will be recognized in the sentencing recommendation of the Attorney General with respect to the first offence.⁶

The immunity process usually begins with counsel contacting the Senior Deputy Commissioner of the Criminal Matters Branch to ask whether another party is first in relating to a certain product, industry or market. If there is no other applicant, counsel will disclose more inculpatory information, often on a “no names” or hypothetical basis. This is followed by a proffer of information of the illegal activity to Competition Bureau staff to formulate a recommendation as to whether the Attorney General should grant a provisional guarantee of immunity. If the latter is granted, a detailed process of disclosure commences consisting of interviews of implicated persons, document productions and other investigative steps. Provisional grants of immunity impose strict and on-going obligations on applicants, and final immunity is not granted until a prosecution is concluded.

2. Judicially Authorized Investigative Powers

The *Competition Act* has two investigative tools subject to judicial supervision: the subpoena power in section 11 and the power of search and seizure in sections 15 and 16 . As well, amendments to the *Criminal Code* in 1999 provide for the application to the courts for interception of private communications, commonly known as wiretaps.

a) Subpoenas

There are three types of section 11 orders. Paragraph 11(1)(a) requires a person to give testimony under oath before a presiding officer. Paragraph 11(1)(b) requires a person or a corporation to provide records and other things together with an affidavit as to the completeness of the returns. Paragraph 11(1)(c) provides an interrogatory power requiring written answers to questions.

The legal standard for the issuance of a section 11 order is appropriate for a process that is less intrusive than search and seizure. A judge of a superior court must be satisfied that the Commissioner is under inquiry and the person or corporation named in the order has, or is likely to have, the information being sought. Subsection 11(2) complements paragraph 11(1)(b). It provides that a party named in the order must provide the records being sought from affiliates,

6. For more information on “Immunity Plus” see Immunity Program Frequently Asked Questions at the Bureau’s website at www.competition.cb-bc.gc.ca.

including foreign affiliates. However, subsection 11(2) requires that the person *has*, not merely is likely to have, the information being sought.

The process is initiated on the *ex parte* application of the Commissioner to the court. Section 11 orders are used against both targets of an investigation and third parties who have, or are likely to have, information relevant to the Commissioner's inquiry. In practice, third parties are usually notified informally just before the order is served on them. The Act respects a person's constitutional right against self incrimination; testimony obtained under a paragraph 11(1)(a) order cannot be used in proceedings against the person. Most orders provide a 30 to 90 day return date for records or written interrogatories, depending on the size and complexity of the return sought by the order.

In recent years, section 11 orders have been used frequently in international cartel investigations.

b) Search and Seizure

Section 15 of the Act provides the Commissioner with the power to apply to the courts for a warrant for authorized representatives of the Commissioner to enter premises to search for records and other things and seize those falling within the scope of the warrant. Section 16 authorizes the search of computer systems and the seizure of electronic records, including records in foreign data bases.

A judge of a superior court may issue a warrant where there is sufficient information to believe in an *ex parte* application by the Commissioner that an offence has been, or is about be, committed and that relevant records are likely to be found at the premises to be searched. Section 19 of the Act contains provisions addressing claims that certain records are subject to solicitor client privilege. Following the execution of the search, the Commissioner must, as soon as practicable, make a report to the judge or court issuing the warrant describing the records seized, the premises searched and the location in which the records are detained.

Search and seizure powers have been used infrequently in recent years in international cartel investigations by the Competition Bureau.

c) Wiretaps

In 1999 amendments to the *Criminal Code* (the "Code") were made to provide for judicially authorized interception of private communications in the conduct of inquiries under the Act. Section 184.2 of the Code provides for the interception of private communications where either the originator or the intended recipient consents to the interception. Section 184.3 of the Code provides for the interception of private communications without consent for the offences of conspiracy, bid rigging and deceptive telemarketing.

The legal standard for the authorization of wiretaps is more onerous than the standard to obtain a search warrant under the Act. Under section 522 of the Code, a judge of a superior court must be satisfied that:

- a) there are reasonable and probable grounds to believe that an offence has been, or is about to be, committed and that the authorization sought will afford evidence of the offence; and
- b) that other investigative procedures have been tried and have failed; or that other investigative procedures are unlikely to succeed; or that the urgency of the matter is such that it would be impractical to carry out the investigation using only other investigative procedures.

The wiretap process starts with an *ex parte* application under section 185 of the Code to the court. The application is signed by the Solicitor General, or an agent specifically designated for this purpose, and is accompanied by an affidavit signed by an authorized representative of the Commissioner setting out:

- i) the particulars of the alleged offence,
- ii) the type of communications to be intercepted the names and addresses of the targets, the manner of the interception and the time period for which the authorization is requested, and
- iii) the grounds for belief required as set out in the Code.

The Code also requires that notice of the interception be given to the target within 90 days after the time period of the interception has expired. However, this notice period may be extended up to three years.⁷

To date, the Competition Bureau has used a wiretap secured under section 184.2, with the consent of one of the parties to the private communications, in one instance in an international cartel case.

IV. International Cooperation

The Competition Bureau and other competition authorities have enhanced their approach to competition law administration and enforcement through the implementation of cooperation agreements and other cooperative tools.

7. For more information on the use of wiretaps by the Competition Bureau see the [Interception of Private Communications and the Competition Act Information Bulletin](#) available at www.competition@cb-bc.gc.ca.

1. Bilateral Cooperation Instruments

There are three types of instruments that allow the Competition Bureau to cooperate with foreign antitrust agencies: (a) cooperation agreements, (b) competition policy chapters in free trade agreements and (c) mutual legal assistance treaties.

(a) Cooperation Agreements

Although cooperation agreements are not a pre-requisite to cooperation, they provide a transparent, predictable and certain framework for cooperation and coordination of enforcement activities between competition authorities.

State-to-state arrangements and inter-agency arrangements are generally used for bilateral enforcement cooperation. The arrangements, among other things, enable communication of complaints or investigational information as long as the provision of such information to the foreign authority is not prohibited under Canadian law.

The confidentiality provisions of the Act limit the Bureau's ability to communicate certain information to foreign counterparts. However, the Bureau has interpreted the "administration and enforcement" exception under section 29 to enable confidential information to be communicated to foreign authorities for the purposes of advancing a specific investigation under the *Competition Act*.

Ensuring that information is adequately protected is a key requirement to providing any information to a competition authority in another jurisdiction. Our cooperation arrangements include provisions related to the communication and protection of any confidential information that is communicated between Canada and a foreign agency.

State-to-State Cooperation Agreements

- i) State-to-state cooperation agreements are concluded between countries and may apply to important Canadian interests that go beyond competition law enforcement interests.
- ii) Canada has entered into state-to-state cooperation agreements with the United States, the European Commission and Mexico.⁸
- iii) Canada currently is negotiating a state-to-state agreement with the Government of Japan.

8. These agreements are available on the Bureau's website at www.competition@cb-bc.gc.ca.

Agency-to-Agency Cooperation Arrangements

- i) Agency-to-agency arrangements are concluded between competition law enforcement agencies. The interests addressed under such arrangements are limited to competition law enforcement.
- ii) The Commissioner has entered into a trilateral inter-agency cooperation arrangement with his counterparts in Australia and New Zealand, and an agency-to-agency agreement with his counterparts in the United Kingdom.⁹
- iii) The Commissioner and the Chilean competition authority signed an inter-agency arrangement built on commitments under the Canada-Chile Free Trade Agreement.
- iv) The Bureau holds formal bilateral meetings with its foreign counterparts. The frequency of these meetings normally is set out in the cooperation agreements. The heads of the competition authorities and other senior officials participate in these meetings to discuss both enforcement and non-enforcement issues and developments of interest to both jurisdictions.

(b) Cooperation Provisions within Free Trade Agreements

- i) Since the establishment of the North American Free Trade Agreement in 1994, all bilateral free trade agreements negotiated by Canada have contained a chapter related to competition policy.
- ii) As was done in the Canada/Costa Rica Free Trade Agreement and the Canada/Israel Free Trade Agreement, the chapter on competition policy in each Agreement contains obligations to cooperate and specifies the type of cooperation required, including mutual legal assistance, notifications, consultations, and exchange of information.

(c) Cooperation under Mutual Legal Assistance Treaties (“MLAT”)

MLATs are a treaty based form of cooperation that imposes binding obligations on signatory countries. Canada currently has MLATs with approximately 30 countries that provide for formal cooperation on criminal investigations, including criminal matters under the Act. Responses to foreign requests for assistance under MLATs, a formal process subject to ministerial and court authorization in Canada, is performed under Canada's legislation which implements its MLAT obligations: the *Mutual Legal Assistance in Criminal Matters Act*. In this sense, utilizing MLATs is distinct from information sharing with foreign counterparts under our bilateral cooperation agreements since the latter do not require court authorization. Generally, the primary purpose of MLATs is to seek evidence, located in the other jurisdiction, of criminal activity, as

9. *Ibid.*

defined in the requesting jurisdiction. MLATs, for example, the Canada-United States MLAT, can also be used to initiate criminal process, such as the service of criminal charges.

It is important to note that MLATs do not require that the conduct under investigation be the subject of a parallel investigation by Canada and the other jurisdiction or, indeed, to be illegal in both jurisdictions (dual criminality). In a number of instances, the Bureau has responded to MLAT requests from abroad where there is no implication of a breach of Canadian law.

The Minister of Justice plays a pivotal role as Canada's "central authority" in the administration and exercise of powers under MLATs. The Minister of Justice approves the sending of an MLAT request to a central authority in another jurisdiction. When the Minister of Justice receives an MLAT request from another jurisdiction, the Minister of Justice will decide whether to grant the request and send it to the relevant investigative agency, known in the jargon as the "competent authority" for action on a best efforts basis - i.e., to prepare the relevant documentation necessary to gain authorization from the courts in Canada to obtain the evidence requested.

In recent cartel cases, we have used MLATs to request production of evidence located in another jurisdiction and to request assistance to compel the attendance of witness(es) for examination under oath in the other jurisdiction.

2. Multilateral Cooperation

The need for better coordination and cooperation in the enforcement of competition policy has led to cooperation efforts at the multilateral level.

(a) 1998 OECD Recommendation Against Hard Core Cartels

The Recommendation follows previous OECD Recommendations on the establishment of effective competition laws by Member states. It defines hard core cartels as anticompetitive agreements, arrangements or concerted practices to fix prices, rig bids, establish output restrictions or quotas as well as allocate markets or customers.

- i) The Recommendation calls upon OECD member countries to ensure that their laws adequately prohibit hard core cartels and provide for effective sanctions, enforcement procedures and investigative tools.
- ii) Among other things, the Recommendation urges member countries to cooperate with one another in prosecuting hard core cartels by sharing information and by acting on requests from another country for information and assistance in cartel investigations.
- iii) Member countries have responded to the Recommendation with the adoption of leniency programs by most OECD Members and the modernization of their cartel provisions. Notable developments include the introduction in 2002 by the United Kingdom of significant criminal sanctions for cartel conduct. The government of Australia, following

a 2002 review of the *Trade Practices Act (1974)*, already is considering the introduction of criminal definitions and sanctions as well as a workable method of combining a clear and certain leniency policy with a criminal regime to address hard core cartel behaviour.

(b) International Competition Network

The International Competition Network (ICN) is devoted exclusively to competition law enforcement. The ICN provides competition authorities with a specialized venue for addressing practical competition concerns and is focussed on improving worldwide cooperation and enhancing convergence through dialogue.

At the second ICN annual conference in June 2003 in Merida, Mexico, there was an exploratory discussion of forming a new working group on cartels. Further discussion took place at the 5th International Cartels Conference in Brussels on October 1, 2003. A decision will be taken at the third ICN annual conference in Seoul in April 2004, hopefully to move forward on establishing a working group on cartels.

3. Cooperation in Cartel Investigations

Cooperation in cartel enforcement has involved coordination on the timing of formal investigative actions including searches, subpoenas and interviews.

In a few cases, notifications have resulted in the initiation of an inquiry in Canada and coordination of our use of document production orders with another country's use of either searches or subpoenas. In one instance, the Bureau commenced an inquiry on the basis of an immunity application, as opposed to notification, and that case subsequently resulted in the coordination of searches in Canada and each of the other jurisdictions involved. In another case, where multiple jurisdictions received an application for immunity from a single party, that party waived confidentiality, which resulted in significant sharing of information and strategy, although it did not result in the use of coordinated formal powers.

Typically, investigating officers will share theories of cases, assist in the location of companies or individuals, suggest avenues for further investigation, highlight topics that may be relevant in our jurisdiction, but which are not being pursued in the other jurisdiction, as well as discuss timing of events to follow.

V. Prosecution and Sentencing

The Attorney General is responsible for the prosecution of criminal offences under the Act. After a matter is referred under section 23 of the Act, the Attorney General makes an independent determination whether a prosecution is in the public interest.¹⁰

10. The factors considered in making a public interest determination are set out in the Federal Prosecution Services Deskbook of the Department of Justice.

Prosecutions are initiated by the Bureau laying a charge, usually following charge approval by the Attorney General. Disclosure of the Crown's case takes place roughly at the same time. Shortly thereafter, the accused makes a first appearance and makes an election as to the mode of trial before the court. Subsequently, a date is set for a preliminary hearing to determine whether there is sufficient evidence to go to trial. Competition Bureau staff assist Department of Justice counsel in the conduct of prosecutions and may be called as witnesses on the conduct of searches and other investigative steps.

Since the inception of the use of grants of immunity and other forms of favourable treatment, all of the cases where there have been cooperating witnesses have been resolved by way of guilty pleas. There are a number of mitigating and aggravating factors considered by the Attorney General in making sentence submissions before the courts beyond precedents in previous cartel cases. These include the role of accused in the conspiracy, whether they ceased the conduct or continued in the face of the investigation, the degree of cooperation with the authorities, the volume of commerce affected, the impact on victims as well as whether victims have received restitution. Federal Prosecution Services Deskbook recommends that the Attorney General consult with the investigative agency, in this case the Competition Bureau, with respect to sentencing.

Section 36 of the *Competition Act* provides a right of civil recovery before the courts by a person damaged as a result of conduct contrary to the criminal provisions of the Act. In most instances, private suits follow a conviction by the Crown; however, there have been a number of private prosecutions under the conspiracy provisions of the Act. There has been an increasing number of civil suits for recovery of damages, particularly in international cartel cases, in Canada.

VI. Conclusion

The Competition Bureau has an aggressive and successful program to combat international cartels. The record over the past twelve years demonstrates Canada's commitment to deter cartel behaviour. More than 40 convictions, all as a result of guilty pleas, have been entered against corporations and individuals since 1992. Cartels in vitamins, food and feed additives and a variety of other chemical products as well as graphite electrodes have been busted. In the choline chloride case, a former employee was sentenced to a nine month term of imprisonment; and in total, the courts have imposed more than \$180 million in fines.

The Competition Bureau has over 20 on-going investigations involving immunity applicants. International coordination of cartel investigations continues to gather strength. The results of the vigorous enforcement program of both the Bureau and our counterpart agencies in foreign antitrust agencies will continue to generate important, high profile prosecutions and new cases for the foreseeable future.