



Competition Bureau  
Canada

Bureau de la concurrence  
Canada

## **SPEAKING NOTES**

**for**

**Sheridan Scott**

**Commissioner of Competition**

**COMPETITION BUREAU**

**Competition Bureau Priorities**

**Competition Law Spring Conference**

**Mergers in the Morning: Abuse in the Afternoon**

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**(Check against delivery)**

I welcome this opportunity to address the first Spring Meeting of the Canadian Bar Association's Competition Law Division.

I know that some of you look for and read my speeches on the Bureau's Web site. So you will know that I have given a number of talks recently to a variety of audiences who are not always devotees of competition law. I usually include in these presentations some core elements relating to the role of the Bureau, its powers, the importance of competition to innovation and the importance of innovation to our future prosperity in a rapidly changing globalized economy.

You can all relax. I am not going to repeat those themes today. I think this audience knows and supports this message.

But I am not going to ignore it either. I am going to take it a step further and talk to you about what we in the Bureau are doing this year to maintain and enhance competition in Canada in the light of an economy which is being changed and challenged by massive external forces, internal regulatory change, and new technologies which are transforming marketplaces, and are being used to de-fraud Canadians.

In short, I am going to try to place a framework around the Bureau's priorities for this year. And I will focus on three areas: enforcement, advocacy and management.

These priorities are the result of a new planning framework we have introduced to the Bureau. This process involves an initial assessment which engages all of the Bureau staff in examining the environment in which they will be working in the coming year.

The results of this exercise inform a retreat of the senior management of the Bureau. At this retreat, we build on the results of the staff discussions and consider what steps might enable us to have the greatest impact for Canadians. The output of that exercise is further refined by a team of Bureau staff and further discussed and agreed to by the Deputy Commissioners and myself.

And in early April, all staff of the Bureau are informed of the outcome at our annual Town Hall Meeting.

I intend to repeat this process each year. It provides a clear and systematic approach which allows us to benefit from input from all staff and will keep us focussed on key objectives.

Now I know that many of you are not necessarily fans of planning processes - I could almost hear a collective mental yawn from parts of the room when I mentioned it. So let me get on with the substance of our discussions.

With one word of caution. Each time I discuss priorities with the staff, I have to be careful to mention that we are not going to ignore other areas of the Act. Yes, we are

going to put a special emphasis on certain areas of the Act. But we can and will take action whenever competition in Canada is threatened by serious conduct contrary to any part of the Act. And if an unforeseen but potentially valuable advocacy opportunity arises, we will be there to respond.

And we are not necessarily abandoning the objectives and issues I discussed with you in November at your Annual Meeting. Questions regarding transparency and critical self-assessment, maintaining knowledge of, and linkages with the business community, the substance of the Act and possible amendments, and other points that I raised last fall are being pursued. But we are also moving on - in some cases with new initiatives, and in other areas with renewed or revised approaches.

With that in mind, where did we end up in terms of priorities? First, we set out to feature those areas where we wish to make the greatest progress and have the greatest impact this year in terms of enforcement or advocacy. Once done, we narrowed the choices down as follows:

In terms of enforcement, our selection continues to reflect the need to attack the most egregious and harmful forms of anti-competitive behaviour in the market place; namely cartels and fraudulent mass marketing.

First, we will be focussing the lens more sharply this year to improve our capacity to detect and deal with domestic cartels and bid rigging. While our staff in the National Capital Region will continue to work in concert with our international colleagues on global activities, they will be putting particular emphasis on attacking national cartels.

We have already had some success this year. In January, Cascades Fine Papers Group Inc., Domtar Inc. and Unisource Canada 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. A prohibition order was issued against the companies and senior staff were either demoted or dismissed.

Meanwhile, as some of you may know, we are creating greater capacity in our regional offices to achieve our goals with more "feet on the street". We hope this will increase the visibility of the Bureau and allow us better insights into the operation of the economy across the country. Bid rigging will be the early priority in the regions, as we build capacity.

And, we are shifting resources to support this work. Despite continued pressure on our limited budget, we have increased our spending in the Criminal Matters Branch by close to 50% compared to three years ago.

Second, we are continuing our focus on mass marketing fraud. As you know, this type

of behaviour not only harms Canadian consumers and businesses directly, but it also erodes competition by undermining consumer confidence in the marketplace, including in the increasingly important electronic marketplace. We are working with an important and growing partnership of police, government, private sector and international partners to fight fraud through intelligent enforcement.

Pursuing those who commit offences through mass marketing fraud is a broad area of law enforcement which the Bureau shares with numerous other domestic and international agencies. The trans-national and international character of such crimes has compelled agencies to cooperate with each other on a number of different levels to assist each other's investigations, avoid duplication of effort, establish priorities, share information and intelligence, and learn from each other's approaches. The shared interest that characterizes this work is much more acute than any other work undertaken by the Bureau and has led the enforcement community to pursue means to cooperate more effectively, including the creation of enforcement partnerships at the local level.

As a result, we now have six law enforcement partnerships across Canada devoted to combatting Mass Marketing Fraud - whether by way of mail, telephone or internet or a combination of these three vehicles - and have made mass marketing fraud a priority enforcement area for our regional staff.

These partnerships have facilitated a deeper and more frequent level of cooperation and communication, built upon mutual respect and understanding. Each partner contributes specific expertise, allowing us to be more efficient, effective and timely. In the Pacific Liberty/Centurion credit card scams matter, where the crooks sold to victims a credit card they never received, the Alberta Partnership and the Toronto Strategic Partnership worked together to lay charges within six months of the start of the investigation.

All six of our partnerships participated in Operation Global Con, the largest and most far reaching multinational enforcement operation ever directed at mass marketing fraud schemes according to the U.S. DOJ and FTC. Organisations from seven countries were involved, leading to arrests of more than 565 people, including close to 100 in Canada.

This year we will be paying particular attention to business supply cases, with a view to maximizing general deterrence.

Our next priority reflects the growing relevance of the electronic market place, an increasingly important element for Canada's economic prosperity and an increasingly attractive breeding ground for anti-competitive behaviour.

FairWeb - the Bureau's dedicated internet surveillance and enforcement programme - has been in operation for several years. However, the drop in consumer confidence in this promising new market place, as evidenced by several U.S. studies, is cause for

some concern. According to the Gartner Research, 33% of online shoppers are buying fewer items due to worries about online fraud.

This year we will be paying attention to transactions involving some of the most destructive activities in the electronic market place. Consumers are constantly turning to the internet for information about their well being and often do so at a time when they are most easily exploited.

Therefore, we are undertaking a program of work to examine possible fraudulent and misleading health performance claims in the electronic marketplace. Aside from damaging competition, such fraudulent misrepresentation can be particularly cruel and harmful, taking not just money, but harming personal well being, and perhaps even taking lives.

This program involves the use of new software and tools that we hope will make us more efficient and effective at attacking anti-competitive behaviour in this area.

Finally on the enforcement front, we are taking a special look at defining more carefully the abuse of dominance provisions - the subject of this afternoon's discussions . As well as examining the situation in Canada, we will benefit from the work which is emerging from other countries on this complex and contentious area of competition policy.

As I said before, we will deal with our usual rigour with serious breaches of any part of the Act. And with respect to mergers, the maintenance of an efficient and effective review and enforcement process is always a core objective of the Bureau.

Let me turn now to our advocacy priorities. As you know, the Bureau plays a key role as an informed advocate for the marketplace within and outside the government. And this work is a core component of our efforts for very good reasons. As my German counterpart, Ulf Böge put it at the 2004 Competition Forum in Seoul, Korea:

"Acting against infringements of competition by companies remains without doubt our key task. But to effectively protect competition requires more. The battle against state-imposed restrictions of competition is no less important if competition is to develop freely."

The range of possible advocacy opportunities is, however, very wide and long. As with enforcement, we must be strategic and make the best use of our limited resources.

At your Annual Meeting last year , I outlined our approach to setting out our priorities. In addition to considering the importance of a sector to the Canadian economy, we ask ourselves four questions to determine what areas we will target for our advocacy efforts.

- a. Does a ready forum to present information exist?
- b. Can the Bureau bring its unique perspective to bear on this issue in a useful way?
- c. Will we be able to gauge or measure any effects our advocacy efforts may have?
- d. Will our advocacy efforts have clear benefits for Canadians?

We again asked these questions and, as a result, we are targeting four areas for our advocacy efforts:

1. Health: Our initial work has focussed on competition issues related to pharmaceuticals, a large and growing portion of the health care budget.
2. Telecommunication: A number of issues have emerged from the Report of the Telecom Policy Review Panel and we are preparing to support the anticipated additional work and reviews that may emerge.
3. Self-regulated professionals: We will be looking at anti-competitive barriers whose removal or reform would improve competition. Those of you interested in our work in this area can read more details in my remarks on this topic last week, found in the speeches section of our web site.
4. Competition Lens: This project will develop options to prevent anti-competitive policy from slipping by unnoticed by integrating competition analysis into the process of legislative development, an approach already adopted by Australia, the UK and other countries.

I want to wrap up today with a short discussion about our management priorities for the Bureau.

At its heart, the Bureau consists of its people. And we are blessed with an outstanding, dedicated staff. But we face many of the same challenges as the private sector in terms of the greying of the work force, personal development and continual education of staff, and organizational memory and corporate learning.

Our priorities deal with these issues. We are developing an integrated learning plan system so that each employee will have a customized and targeted learning experience. Corporately, we will be conducting ex-post reviews to see where we have done well, and where we can do better, with an initial focus on mergers. This is not an exercise in self-flagellation but an honest effort to discover best practices and uncover areas for improvement. The lessons learned will feed back into our training plan.

Another important step will be the hiring of a Chief Economist, a position I have created to bring additional prominence to, and support for economics within the Bureau. We are currently engaged in the process for staffing the position.

Finally, we will be looking at our performance management approaches in the Bureau in order to ensure that we are both effective and efficient.

I am sure you are looking forward to this afternoon's sessions. So let me close with one final, personal priority.

At your meeting last November, I noted that we all have to be stronger advocates for competition. And I challenged the competition law community to explain to our fellow Canadians, both formally and informally, how competition works in the real world and to remind them of its benefits.

Since then, I have met with many groups, carrying that message forward and explaining the international pressures that require Canada to ensure that our markets are world leaders in effective competition.

This is vitally important work because the competitive marketplace is a powerful spur to innovation. The Institute for Competitiveness and Prosperity summed it up this way:

“... company strategies and operations are only as good as they need to be. If the environment in which companies operate is not providing the specialized support and the intense pressure for innovations and upgrading, then the companies will have uninspired strategies and mediocre operations.”

We cannot afford mediocre operations or non-competitive markets if Canada is to prosper. And this message bears repeating by others. So I would like to renew the challenge today. Perhaps, paraphrasing President Kennedy, we should ask not what competition can do for us, but what we can do for competition.

Thank you.