

## Competition, Antitrust and Foreign Investment

June 3, 2016

### Innovation and Infrastructure: Key Priorities for the Competition Bureau

Innovation and economic growth, including infrastructure spending, are key priorities of the Government of Canada. In the Competition Bureau's recently released draft annual plan for 2016-2017 and in recent speeches by John Pecman, the Commissioner of Competition,<sup>1</sup> the Bureau has made clear that strengthening competition in these areas also will be a key focus for the Bureau in its advocacy efforts and enforcement activities.

#### Innovation

##### *Advocacy Efforts*

The Bureau intends to increase its efforts to advocate for regulatory frameworks that allow competition and innovation to thrive.

Last year, the Bureau produced a white paper advocating for the modernization and overhaul of regulations in the taxi industry to allow taxis and ride-sharing services to compete on a more level playing field. This white paper was influential in the ongoing regulatory reviews that a number of major Canadian cities have undertaken of their respective taxi regulations.

This year, the Bureau is undertaking a market study of technology-led innovation and emerging services in the Canadian financial services sector. Examples of such innovations include mobile wallets and payments, peer-

to-peer banking, crowd-funding and online-based financial advisory services. The Bureau will look at the impact of technology on competition in financial services, examining the barriers to entry or expansion of new technology-driven companies, factors influencing the adoption of these new products and services, as well as the state of current regulatory frameworks.

In addition, the Bureau plans to complete three additional competition promotion or advocacy papers pertaining to new forms of competition in the next year.

#### Enforcement Efforts

With respect to enforcement efforts, the Bureau will support innovation in the digital economy by deterring anti-competitive conduct that impedes new entrants, products and services and by stopping deceptive marketing practices in e-commerce. The Bureau recognizes that data-driven companies play an important and growing role in Canada's economy.

Commissioner Pecman has signaled that the Bureau will continue to consider the effects of a firm's behavior on non-price factors of competition, such as quality, convenience, and in particular, on innovation. He noted that the recent decision of the Competition Tribunal in the Toronto Real Estate Board case<sup>2</sup> supported the Bureau's view that the Toronto Real Estate Board was abusing its market power by preventing real estate brokerages from offering innovative products and services to consumers over the Internet.

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<sup>1</sup> Draft 2016-2017 Annual Plan: Strengthening Competition to Drive Innovation", Competition Bureau, May 18 2016; "Competition Bureau: Innovating to Succeed", Remarks by John Pecman, Commissioner of Competition, at the Canadian Bar Association's Competition Law Spring Forum, May 19, 2016.

<sup>2</sup> *The Commissioner of Competition v. The Toronto Real Estate Board*, 2016 Comp. Trib. 7, Reasons and Order dated April 27, 2016.

# Goodmans<sup>LLP</sup> Update

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## Infrastructure

### *Combatting Bid-Rigging*

The Government of Canada plans to promote economic growth by making very large investments in public infrastructure projects over the next several years. The Bureau has announced that it will support that initiative by ramping up its efforts to prevent bid-rigging on publicly-funded construction projects. According to a recent press report, the Bureau normally holds 20 to 30 workshops a year for public procurement officials on identifying potential bid-rigging. Commissioner Pecman plans to reallocate spending this year to double the number of workshops.<sup>3</sup>

It also can be expected that in this environment the Bureau will be increasingly focused on uncovering bid-rigging cases, including those involving publicly-funded construction projects. For example, the Bureau is currently conducting a large-scale inquiry into allegations of bid-rigging and conspiracy in the supply of condominium refurbishment services in the Greater Toronto Area.<sup>4</sup>

As a result, it would be prudent for construction firms and material suppliers to be proactive in their efforts to comply with the *Competition Act* and review their compliance programs or implement such programs if they do not currently exist.

## Other Competition Bureau Priorities

The Bureau's draft annual plan for 2016-2017 also has indicated that the Bureau will focus its resources in these additional areas:

- increasing awareness of the importance of complying with the *Competition Act* among small and medium-sized businesses;
- providing timely and accurate warnings to reduce the risk of Canadian consumers being the victims of deceptive marketing;
- strengthening the Bureau's analytical frameworks and address competitive implications through workshops with stakeholders;
- facilitating more transparent interaction with other domestic regulators and enhance the Bureau's ability to effectively administer the labelling statutes by concluding additional memoranda of understanding;
- enhancing the Bureau's network of international competition enforcement agencies and promote convergence in competition law and policy; and
- delivering a talent management strategy focused on attracting, growing, engaging and retaining talent at all levels.

For further information, please contact any member of Goodmans' Competition, Antitrust and Foreign Investment Group or any member of Goodmans' Technology Group in relation to innovation issues.

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<sup>3</sup> "Agency warns of bid-rigging as Ottawa set to spend on infrastructure" The Globe and Mail, May 30, 2016.

<sup>4</sup> "Competition Bureau targets condo renovation industry in criminal probe", The Globe and Mail, May 25, 2016.