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Canada: Cartel Enforcement

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Competition law in Canada is governed by one federal statute, the Competition Act (Act). The commissioner of competition (the commissioner) is responsible for the enforcement and administration of the Act. The commissioner is assisted in his or her duties by a staff of approximately 390 people at the Competition Bureau (the Bureau) and a group of lawyers from the federal Department of Justice who are assigned to provide legal assistance and advice to the Bureau.

In relation to criminal matters, the commissioner is responsible for investigations of possible criminal offences under the Act. The commissioner may, at any stage of an inquiry under section 10 of the Act, refer a matter to the attorney general of Canada for consideration as to whether an offence has been or is about to be committed against the Act and for such action as the attorney general may wish to take. In this regard, it is the attorney general of Canada who has the sole authority to decide whether a prosecution is warranted in any case. The Public Prosecution Service of Canada (PPSC) is the administrative unit within the federal government that supports the attorney general of Canada with respect to prosecutions, and effectively it is the director of public prosecutions (DPP), who heads the PPSC, who exercises the discretion to prosecute on behalf of the attorney general of Canada. While it is possible for the attorney general of Canada to initiate and conduct a prosecution under the Act without a referral and recommendation from the commissioner, as a practical matter, in almost every case the attorney general of Canada, through the DPP, will only consider prosecution under the Act where such a referral and recommendation from the commissioner has been made.

In relation to civil matters, the commissioner is primarily responsible for both investigations and decisions to initiate legal proceedings for conduct that is contrary to the civil provisions of the Act.[1] In this regard, it is the commissioner who files applications for remedial orders before the Competition Tribunal, a specialised tribunal composed of federal court judges and business and economic experts. The Competition Tribunal receives such applications from the commissioner and conducts hearings to determine whether the alleged conduct is in fact contrary to the Act and whether a remedial order should be granted if a contravention is found.

Criminal cartel law

Section 45

Subsection 45(1) of the Act[2] creates an indictable offence for any person who, with a competitor of that person, in respect of a product, conspires, agrees or arranges:

- to fix, maintain, increase or control the price for the supply of the product;
- to allocate sales, territories, customers or markets for the production or supply of the product; or
- to fix, maintain, control, prevent, lessen or eliminate the production or supply of the product.

If convicted of an offence under section 45, a person is liable to fines of up to C$25 million, or to terms of imprisonment of up to 14 years, or to both, for each count of the indictment.[3]

A conviction under section 45 requires the prosecution to prove, beyond a reasonable doubt, that the person was party to a conspiracy, agreement or arrangement with a competitor in respect of the prohibited conduct noted above. Subsection 45(3) of the Act provides that the court may infer the existence of a conspiracy, agreement or arrangement from circumstantial evidence, without direct evidence of communication between or among the alleged parties to it. The prosecution must also prove the mens rea of the offence (guilty mind) beyond a reasonable doubt, namely, that the accused intended to enter into the agreement, conspiracy or arrangement and had knowledge of its terms.

There are a number of features of section 45 that are of particular note. First, section 45 does not require the prosecution to show that the conspiracy, agreement or arrangement had any adverse effect on competition.[4] Consequently, any conspiracy, agreement or arrangement among competitors, no matter how small those competitors are in terms of their sales of a particular product, can be liable under this section. Second, the offence is committed once a conspiracy, agreement or arrangement with a competitor with respect to the prohibited conduct is established, as well as the mens rea intent of the accused, even if the conspiracy, agreement or arrangement is carried on for a short period of time or never implemented. Third, there is no statute of limitations that applies to section 45 and the DPP is free to prosecute persons for conduct contrary to section 45 that may have begun or occurred many years ago.

There are a limited range of defences available under section 45.[5] Pursuant to subsection 45(4), no person can be convicted of a subsection 45(1) offence where that person establishes, on a balance of probabilities, that the conspiracy, agreement or arrangement is ancillary to a broader agreement or separate agreement that includes the same parties and it is directly related to, and reasonably necessary for giving effect to the objective of that broader or separate agreement or arrangement; and the broader or separate agreement or arrangement, considered alone, does not contravene subsection 45(1). An example of a subsection 45(4) defence could be a non-compete agreement as part of a larger purchase agreement that would prevent the seller of a business from starting up a business that competes with the buyer of the seller's business for some reasonable period of time and within a reasonable geographic area, where reasonableness of the non-compete reflects the nature of the products sold and geographic markets served by the seller's business. A non-compete agreement that extended to products not sold by the seller or which precluded entry into geographic markets not served by the seller's business is unlikely to meet the requirements of subsection 45(4).

There is a defence under subsection 45(5) for any conspiracy, agreement or arrangement contrary to subsection 45(1) where it

relates only to the exports of products from Canada, unless it has resulted or is likely to result in the reduction of the real value of exports, has restricted or is likely to restrict any person from entering into or expanding the business of exporting products from Canada or is in respect only of the supply of services that facilitate the export of products from Canada. This provision is sometimes referred to as the 'export cartel' defence. A variation of this concept is often found in the competition law of countries other than Canada, despite its dubious public policy merit.

As a result of jurisprudence, there is another defence for section 45 that relates to conduct that is required or authorised by a federal or provincial regulatory agency acting pursuant to a validly enacted federal or provincial statute. For example, where a supply management board sets the price or supply for an agricultural product, such as milk or eggs, pursuant to its lawful mandate, the supply management board and its members could not be found to violate section 45 of the Act and the companies that are required to follow the pricing set by the supply management board should also not be subject to section 45.

Section 46

Section 46 of the Act creates an offence for a corporation that carries on business in Canada to implement any foreign directive, instruction, intimation of policy or other communication for the purpose of giving effect to a conspiracy, agreement or arrangement that was entered into outside of Canada but which, if entered into Canada, would contravene section 45.

This provision is designed to attack foreign cartels that may be having an effect in Canada, but which may present jurisdictional issues as the conspirators are located outside of Canada. Note that section 46 does not require the Canadian corporation to have knowledge of the fact that the policy it is implementing was a result of a cartel agreement or arrangement, nor does that corporation need to even be affiliated with the company giving the directive, though that usually will be the case. This section only applies to corporations and not to non-corporate entities such as trusts or partnerships.

Section 46 is an indictable offence and on conviction a corporation can be fined any amount at the discretion of the court.

Section 47

Section 47 of the Act creates an offence for bid rigging, which is a type of conspiracy with respect to formal bidding or tendering. Section 47 applies to an agreement or arrangement between or among two or more persons whereby one or more persons agrees or undertakes in response to a call or request for bids or tenders to:

- not submit a bid or tender;
- withdraw a submitted bid or tender; or
- make a bid or tender that has been arrived at by agreement or arrangement among two or more bidders or tenders.

This section will not apply if the agreement or arrangement is made known by any person who is a party to the agreement or arrangement to the person calling for the bids or tenders before or at the time the bids or tenders are submitted or withdrawn, as the case may be. As a result of this proviso, joint bidding is permissible as long as the agreement or arrangement is made known at or before the time the joint bid is submitted.

Bid rigging is an indictable criminal offence that carries a penalty if convicted of a fine at the discretion of the court or a term of imprisonment of up to 14 years.

Civil agreements provision – section 90.1

Section 45 is designed to attack hard-core cartels for which there are no plausible benefits to society. As such, the government has decided to apply a per se criminal standard regardless of the actual effect on competition of such agreements or arrangements. However, there are many agreements or arrangements between competitors that may have little or no effect on competition and that may produce benefits to the economy, such as joint ventures or strategic alliances that lower production costs or make it possible for companies to offer products or services they could not develop, produce or sell individually. Section 90.1 of the Act allows for the civil review of these potentially beneficial types of agreements or arrangements between competitors.[6]

Pursuant to section 90.1, the Competition Tribunal may issue a remedial order where the agreement or arrangement, whether existing or proposed, prevents or lessens, or is likely to prevent or lessen, competition substantially in a market. The remedial order may prevent a party to the agreement or arrangement from doing anything under the agreement or arrangement, or, with the consent of the person, requiring that person whether a party or not to the agreement or arrangement, to take any other action. Unlike the criminal provisions, there is no fine or possibility of imprisonment for a contravention of section 90.1.

In making a determination of whether an agreement or arrangement would likely lessen or prevent competition substantially, the Competition Tribunal may have regard to the same list of factors as it does when considering an application to challenge a proposed or completed merger. These factors include market share and concentration, effective competition remaining, barriers to entry and expansion and any removal of a vigorous and effective competitor that resulted from the agreement or arrangement.

Also, like the merger provisions under the Act, section 90.1 provides a defence for agreements or arrangements between competitors that create real gains in efficiency that will be greater than, and offset, the effects of any prevention or lessening of competition and which will not likely be obtained if a remedial order were made.

Competitor collaboration guidelines[7]

The Bureau has provided helpful guidance on the application of the criminal conspiracy provisions in its competitor collaboration guidelines. The guidelines indicate that section 45 will generally not be applied to dual distribution situations where a manufacturer may supply its distributors and also sell to end customers in competition with its distributors. Similarly, the Bureau has indicated that it would generally not apply section 45 to franchise arrangements where franchisees may compete with franchisor-owned outlets. Such agreements and arrangements could be reviewed under section 90.1 of the Act.

In addition, the guidelines indicate that the Bureau will not apply section 45 to joint purchasing agreements, such as buying groups, because in their view section 45 applies to the price for the supply of a product, not to the price for the purchase of a product. Such joint purchasing agreements could be considered under section 90.1 of the Act.

While this guidance is helpful to assess the risk of prosecution for the types of agreements described above, it should be noted that the guidelines do not bind private litigants who may try to advance a civil claim based on a breach of section 45 in respect of agreements concerning dual distribution, franchising or joint purchasing. In addition, the guidelines are only a statement of how the commissioner and the Bureau will use their enforcement

discretion. They do not bind the attorney general of Canada or the DPP in terms of the discretion to prosecute, and do not bind the courts, who have the sole responsibility of interpreting the law.

Criminal investigation and punishment for cartels

Substantive and personal jurisdiction

In order for Canadian courts to assert jurisdiction for conduct that may have occurred outside of Canada, a Canadian court must have both substantive jurisdiction over the subject matter of the alleged offence and personal jurisdiction over the accused person.

In *Libman v The Queen*,[8] the Supreme Court of Canada indicated that for a Canadian court to have jurisdiction, '...all that is necessary to make the offence subject to the jurisdiction of our courts is that a significant portion of the activities constituting that offence took place in Canada.'

The issue of substantive jurisdiction over criminal conspiracies for conduct taking place mostly or all outside of Canada but that may have had an effect in Canada, has not specifically been tested in a contested criminal proceeding. In a number of cartel cases, companies have pleaded guilty even though the agreements occurred outside of Canada.[9]

In terms of personal jurisdiction, the general rule is that a person who is outside of Canada and is not brought into Canada by means of a special statute, or voluntarily submits to the jurisdiction of the court, is not subject to the jurisdiction of the court. However, Canada has extradition treaties with a number of countries, including the United States and the United Kingdom. Pursuant to these extradition treaties, where conspiracy and bid-rigging conduct is also criminal conduct in the state where the individual is located, Canada can request that individuals who are charged with offences under section 45 or 47 of the Act be arrested in that state and removed to Canada for trial.

Asserting personal jurisdiction over a corporation that has no operations or assets in Canada is more difficult. Pursuant to the Criminal Code, a notice of indictment must be served on a corporation by delivering it to the manager, secretary or other executive officer of the corporation or a branch thereof. If the corporation does not have an office in Canada, a notice of indictment may still be served on the corporation if one of its executive officers is present in Canada to carry on the business of the corporation.

As noted above, even if jurisdiction cannot be established for a corporation located outside of Canada, that corporation's affiliate located in Canada may be charged under section 46 for implementing a foreign-based conspiracy in Canada.

The commissioner's investigative powers under the Act

Under the Act a number of investigative tools are available to the commissioner for obtaining evidence of a contravention of either the criminal or civil provisions of the Act.

In the criminal context, the main investigative tool under the Act is the use of search warrants, which can be obtained by an ex parte order of a court under section 15 of the Act. In order to obtain such an order, the commissioner must establish that there are reasonable grounds to believe both that an offence has been or is about to be committed and that the premises to be searched contain records or other things that will provide evidence of such an offence. The search warrant may also authorise the commissioner's staff at the Bureau to use or cause to be used any computer system on the premises to search for data contained in or available to the computer system. In so doing, the court may set terms and conditions on which the computer system may be operated and specify the individuals who may operate the computer system for this purpose. The Bureau has used this authority to search and copy data that is available to the computer system in Canada but which is stored outside of Canada, such as data contained in a common database used by a Canadian company and its foreign-based affiliates. Pursuant to subsection 18(4), the Bureau is obligated to return records seized within 60 days unless an agreement or court order is obtained or a proceeding is initiated.

In the case of multiple investigative targets where the fact of the investigation is not known, the Bureau will usually conduct coordinated searches on multiple premises involving multiple companies, all timed in such a way as to occur at the same time to maximise the element of surprise and reduce the risk of destruction of relevant evidence. Where the alleged cartel activity involves other jurisdictions, these searches may also be coordinated with similar searches executed in those other jurisdictions, such the United States and Europe.

Another tool that can be used is a subpoena power under section 11 of the Act. Under section 11, the commissioner may apply on an ex parte basis for a court order that can compel the production of records, require the attendance of a person at a hearing to be examined under oath or solemn affirmation or require a person to respond in writing under oath or solemn affirmation to such questions as the order specifies. In order to obtain a section 11 order, the commissioner must be on inquiry under section 10 of the Act and the judge must be satisfied that a person has or is likely to have information that is relevant to the inquiry. Importantly, the Act provides that no testimony or written return of information obtained from an individual under a section 11 order can be used against that individual in any criminal proceedings thereafter instituted against him or her, other than a prosecution under section 132 or 136 of the Criminal Code.[10] This limitation on the use of the evidence obtained from a section 11 order will be an important consideration for its use by the commissioner when the commissioner wishes to leave open the possibility of prosecutions of culpable individuals. However, evidence obtained from individuals under a section 11 process can be used against corporate defendants.

Pursuant to subsection 11(2) of the Act, a section 11 order can compel an affiliate of a corporation in Canada, whether that affiliate is located in Canada or outside of Canada, to produce such records it has that are relevant to the inquiry. This section has never been judicially tested. For example, a Canadian subsidiary may have no legal right to require its foreign parent or other affiliates to produce such records and thus may not have the legal capacity to comply with a section 11 order of this type.

In respect of criminal conspiracy, bid rigging and criminal deceptive marketing investigations, the commissioner may also apply to a court for an order to intercept private communications through electronic means without the consent of the persons involved in the communications. This investigative tool of intercepting telephone or computer communications will be used sparingly as it is expensive to implement. Nevertheless, it has been used effectively, for example with respect to the gathering evidence of a conspiracy concerning local gasoline retailing in certain parts of the province of Quebec.[11]

Another investigative tool available to the commissioner is provided by mutual legal assistance treaties (MLAT) with various countries that allow for the use of investigative processes in other countries, such as search warrants, to be used to gather evidence to advance certain Canadian investigations, such as criminal conspiracies and bid rigging. The MLAT process also provides for Canadian

investigative processes to be used to advance the investigations of other countries to which the MLAT applies. The MLAT process is used infrequently owing to its formal nature and the length of time it takes to process such requests and obtain the requested evidence.

Immunity and leniency programmes[12]

The most effective tool the commissioner has for detecting and investigating criminal cartels is actually not provided for in the Act. In the early 1990s, following on the success of the United States with similar programmes, the commissioner developed an administrative programme to encourage cartel participants to come forward and disclose the existence of their conspiracy and provide evidence of it in return for a recommendation to the DPP for immunity or lenient treatment. While the commissioner's immunity and leniency programme does not bind the DPP, who has the exclusive authority to grant immunity from prosecution or lenient treatment, the DPP can be expected in all but the most exceptional of cases to follow the recommendation of the commissioner in this regard.

Immunity is available only where the commissioner is either unaware of the offence or is aware of the offence but there is not sufficient evidence to warrant a referral for prosecution to the DPP and, in both cases, the corporation or the individual is the first to come forward in Canada and request immunity. Being the 'first in' is therefore essential to obtain immunity. If the DPP, on the recommendation of the commissioner, decides to agree to grant immunity from prosecution, that immunity will normally cover not only the corporation but also its current officers, directors and employees. Former officers, directors and employees typically also receive immunity, but such a determination will be made on a case-by-case basis.

The immunity programme has proved to be very effective in unearthing cartels, particularly cartels formed outside of Canada that have effects in Canada. The use of such immunity programmes in other jurisdictions, such as the United States, has set in motion a 'race to the prosecutor' for participants in many international cartels in recent years.

In order to qualify for immunity, the applicant must meet the following conditions:

- the party must terminate its participation in the illegal activity;
- the party must not have coerced others to be a party to the illegal activity;
- the party requesting immunity must not be the only party involved in the offence;
- throughout the course of the investigation and subsequent prosecutions, the party must provide complete, timely and ongoing cooperation, including:
    - revealing all conduct of which it is aware or becomes aware, that may constitute an offence under the Act;
    - provide full, complete, frank and truthful disclosure of all non-privileged information, evidence and records in its possession, under its control or available to it, wherever located, that may relate to the anti-competitive conduct for which immunity is sought;
    - there must be no misrepresentation of any material facts; and
    - companies must take all lawful measures to secure the cooperation of current directors, officers and employees for the duration of the investigation and any ensuing prosecutions.

Where immunity is not available, the second-in or later applicants may still qualify for lenient treatment. The party that is second in line after the immunity applicant (the first-in leniency applicant) is eligible for a reduction of 50 per cent of the fine that would otherwise have been recommended, provided it meets the requirements of the leniency programme, including providing full, frank, timely and truthful cooperation, terminating its participation in the cartel and agreeing to plead guilty. Importantly, where the first-in leniency applicant is a corporation, the commissioner will recommend that no separate charges be laid against the applicant's current directors, officers and employees, provided that such individuals cooperate with the commissioner's investigation in a full, frank, timely and truthful fashion. Former directors, officers or employees will also typically qualify for lenient treatment provided they cooperate with the commissioner's investigation and any subsequent prosecution, although this determination again will be made on a case-by-case basis.[13]

A second-in leniency applicant is eligible for a reduction of 30 per cent of the fine that would otherwise been recommended by the commissioner to the DPP. Subsequent leniency applicants may also be eligible for fine reductions that are less than what would otherwise have been recommended. However, for second-in and subsequent leniency applicants, current and former directors, officers or employees may be charged depending on their role in the offence.

In *R v Nestlé Canada Inc et al*,[14] the Ontario Superior Court clarified the scope of disclosure in a Canadian government prosecution once charges have been laid. The court held that 'factual information' provided to the Bureau by applicants seeking immunity or leniency (ie, through the proffer process) before a plea agreement is reached must be produced to the accused co-conspirators in subsequent criminal proceedings. This decision only applies if immunity or leniency is granted to the applicant, after a proffer is made to the Bureau and charges are laid against others. If immunity or leniency is not granted, such information will remain confidential but the Bureau is free to use the information provided to pursue its investigations. Consequently, the information of the immunity or leniency applicant provided to the Bureau and produced to the other accused co-conspirators by the prosecution may eventually be made public as part of the court proceedings and thereby be available as evidence for follow-on civil actions for breach of the criminal provisions of the Act.

Criminal fines and punishment

The largest individual corporate fine for section 45 conduct was a fine of C$50.9 million levied against F Hoffmann-La Roche relating to an international cartel for bulk vitamins. The largest individual fine for bid rigging was C$30 million paid by Yazaki Corporation in 2013 in relation to the sale of motor vehicle components.

Individuals have been sentenced to terms of imprisonment for section 45 convictions ranging from several months up to one year. These sentences have been served in the community. However, sentences to be served in the community are no longer available for convictions under the current section 45. Fine levels for individuals have ranged from several thousand dollars up to C$550,000.

Private civil actions for criminal cartel conduct

Under section 36 of the Act any person who has suffered loss or damages as a result of conduct that is contrary to the criminal provisions of the Act, including conspiracy or bid rigging, may bring a civil action to recover the amount of such loss or damage as well as the cost to him or her of any investigation in connection with the matter and of proceedings under that section. Only single damages can be recovered under section 36.

In any such civil action, the record of proceedings in any court in which a person was convicted of an offence under the criminal provisions of the Act is, in the absence of any evidence to the contrary, proof that the person against whom the action is brought engaged in such conduct contrary to the Act and any such evidence can be used as evidence in the civil action. In order to avoid creating evidence that could be used in such civil actions, it is common practice when parties engage in an immunity or leniency process with the Bureau to orally provide non-documentary evidence rather than in any paper or electronic form. With respect to private actions where the plaintiff is seeking evidence from the Bureau, the Bureau's policy is to only provide confidential information received from an immunity or leniency applicant where it is required to do so by a court order.

The Supreme Court of Canada has ruled that indirect purchasers may also recover damages under section 36.[15] This would include, for example, consumers who purchased a product that contained parts whose prices had been artificially elevated as a result of bid rigging or conspiracy conduct. The Supreme Court of Canada also recently upheld a lower court ruling requiring the DPP and Competition Bureau to produce wire-tap transcripts to class action plaintiffs. However, this disclosure was limited to the recordings that had already been disclosed to the accused in the related criminal proceedings.[16]

Conclusion

The Bureau's highest enforcement priority is to vigorously detect and punish firms and individuals who engage in criminal cartel activity and bid rigging. The Act was amended in 2010 to facilitate prosecutions of cartel activity by removing the need to show the conduct had any anti-competitive effect. The immunity and leniency programmes developed over the past two decades, in conjunction with similar programmes by the United States and several of Canada's other trading partners, have proven to be very effective in detecting and punishing international cartel activity. In recent years, the Bureau has also stepped up its enforcement efforts with respect to purely domestic cartels and bid rigging.

Given these developments, companies should have in place effective corporate compliance programmes to prevent conduct that could raise issues under the criminal cartel and bid-rigging provisions of the Act.

Notes

1 Although another party may seek leave from the Competition Tribunal under section 103.1 to bring an application under sections 75-77 of the Act dealing with refusal to deal, price maintenance and exclusive dealing/tied selling, respectively.

2 Section 45 is the main provision that covers criminal conspiracy. There are also sections that are directed to conspiracy relating to professional sport (section 48) and agreements or arrangements of federal financial institutions (section 49).

3 Pursuant to recent amendments to the Criminal Code, conditional sentences that allow for service in the community are no longer available for sentences under the current section 45 and actual jail time must be served for custodial sentences. Fines are still available, as are suspended sentences with probation. Conditional sentences remain available for individuals convicted of section 45 conduct that occurred before 12 March 2010.

4 If the alleged anti-competitive conduct occurred before 12 March 2010, the predecessor version of section 45 applies, which requires that the conduct be shown to have lessened or prevented competition unduly.

5 In addition to these defences, section 45 does not apply to any conspiracy, agreement or arrangement entered into only by companies each of which is an affiliate of the other. Section 45 also does not apply to federal financial institutions in respect of conduct covered by section 49 of the Act.

6 Pursuant to subsection 90.1(10) and section 45.1, no proceedings may be commenced against a person for substantially the same facts under both section 45 and section 90.1.

7 The Competitor Collaboration Guidelines can be found on the Competition Bureau's website: www.competitionbureau.gc.ca.

8 *Libman v The Queen* [1985] 2 SCR 178 at paragraph 74.

9 For example, foreign manufacturers of fax paper, sorbates and bulk vitamins have all pleaded guilty to section 45 offences, even though the agreements were all reached outside Canada, but did affect prices in Canada for these products.

10 These Criminal Code provisions relate to perjury and the giving of contradictory evidence by a witness in a judicial proceeding.

11 'Criminal Charges Laid by the Competition Bureau in Gas Price Fixing Case', Competition Bureau press release dated 15 July 2010.

12 For complete details of these programmes, see the Competition Bureau's bulletins on the leniency and immunity programmes, as well as their FAQ documents that provide further details on these programmes, all of which are available on the Competition Bureau's website.

13 For example, if the former employee is currently employed by another company that is a party to the cartel and that company has not come forward for immunity or leniency, that former employee of the first-in leniency applicant may not receive any lenient treatment.

14 *R v Nestlé Canada Inc et al* 2015 ONSC 810.

15 *Pro-Sys Consultants Ltd v Microsoft Corporation* [2013] 3 SCR 477.

16 *Jacques c Pétroles Irving Inc*, 2014 SCC 66.

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Richard Annan is co-head of the competition, antitrust and foreign investment group and serves as counsel at Goodmans. Richard specialises in competition law, having served 22 years with the Canadian Competition Bureau. He was the major case director and strategic policy adviser of the mergers branch and most recently acted as assistant deputy commissioner of competition responsible for Division A of the mergers branch and the Mergers Notification Unit. Richard joined Goodmans in 2004.

Richard has led the examination of many significant mergers in a wide range of industries under the Competition Act. In 1998, he led the examination of the proposed mergers between the Royal Bank of Canada and the Bank of Montreal and between the Toronto-Dominion Bank and the Canadian Imperial Bank of Commerce, the largest and most complex merger examinations ever undertaken in Canada. In 1999, he led the examination of the merger between Air Canada and Canadian Airlines. Richard was the investigative team leader in the Gemini I and II cases that were resolved through Competition Tribunal proceedings. While acting assistant deputy commissioner, Richard was the responsible manager for a number of high-profile cases, including *General Electric/Honeywell, British American Tobacco/Rothmans International, Coca-Cola/Cadbury Schweppes, General Electric/Instrumentarium, Great West Life/Canada Life, Rona/Réno-Dépôt, Canadian National/BC Rail* and *Manulife/John Hancock*.

Richard is recognised as a leading competition/antitrust lawyer by *Chambers Global: The World's Leading Lawyers*, *The Best Lawyers in Canada* and Euromoney's *Guide to the World's Leading Competition and Antitrust Lawyers*.

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Cal Goldman is a partner at Goodmans and co-head of the firm's competition, antitrust and foreign investment group. His practice covers all aspects of Canadian competition law, focusing on Canadian and international mergers, abuse of dominance, cartels, civil reviewable matters and counselling on trade practices. He has extensive experience advising on foreign investment matters under the Investment Canada Act. He also has been involved in major Canadian and international cartel matters, from earlier cases pertaining to fax paper, lysine and vitamins through to more recent cases pertaining to auto parts and other product markets.

Cal is a former commissioner of the Canadian Competition Bureau. Before his appointment as commissioner, he acted as special counsel to the attorney general of Canada in the Uranium cartel proceedings and in the appellate proceedings on the constitutional validity of Section 45 (the cartel provision) of the Competition Act.

Cal is co-chair of the Foreign Investment and Antitrust Interface Task Force of the ABA Section of Antitrust Law. He is on the Executive of the Competition Committee of the Business and Industry Advisory Committee to the OECD. Cal is co-chair of the ICC Task Force on the International Competition Network.

Cal is recognised globally in numerous directories and guides. He is ranked in the top tier by *Chambers Global* for both competition and antitrust law and by Investment Canada foreign investment review and by *Legal Media Group*'s The Best of the Best, *Who's Who Legal: Competition Lawyers and Economists*, *Lexpert* and other rankings.

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