

# CBA COMPETITION LAW FALL CONFERENCE

October 26-27, 2017 | Ottawa (ON)

## Competition Law and Innovation

### WEDNESDAY, OCTOBER 25

**12:00 | 21:00 COMPETITION BUREAU CHARITY GOLF TOURNAMENT & DINNER | [Rivermead Golf Club](#)**

This traditional pre-conference event will be held at the exclusive Rivermead Golf Club in Gatineau, Québec (just outside of Ottawa). Space is limited. Participants will have a round of golf, a shared power cart, practice balls for the driving range and a bag drop service, with a reception and dinner to follow. Proceeds will be donated to the Government of Canada Workplace Charitable Campaign.

### THURSDAY, OCTOBER 26

**8:30 | 9:00 REGISTRATION AND HOT BREAKFAST | [Room: Rideau Canal Atrium](#)**

**Brattle**

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**9:00 | 9:05 WELCOME & INTRODUCTION | [Room: 214](#)**

**Speakers:** Anita Banicevic, Chair, Competition Law Section, CBA (Davies Ward Phillips Vineberg LLP)  
Shuli Rodal, Fall Conference Chair (2017) (Osler, Hoskin & Harcourt LLP)

**9:05 | 10:30 OPENING PLENARY SESSION (1.5 substantive hours)**

#### **Setting the Stage: Strategic Priorities for a Competitive Canadian Economy**

Join our distinguished panel of government representatives, policy experts and private sector representatives for a discussion of the opportunities and challenges Canadian companies and policy makers face in a global economy adapting to continuous innovation and disruption. What are the key policy objectives for Canada to succeed and compete on a global stage, what can we learn from other countries and what role can and should competition policy play in encouraging innovation and fostering a competitive economy?

**Moderator:** Susan Hutton (Stikeman Elliott)

**Panellists:** Mark Schaan (Marketplace Framework Policy Branch, ISED)

**10:30 | 10:45 REFRESHMENT BREAK | Room: Rideau Canal Atrium**

**10:45 | 12:00 CONCURRENT SESSIONS**

**Session I: Competitor Collaborations and Antitrust Compliance in a Connected World  
Room: 209 (1.25 substantive hours)**

Existing and emerging technologies create opportunities for pro-competitive collaborations but also create risks of increased coordination and decreased competitive rivalry. Panellists will discuss a variety of topics including the competition law implications of the use of artificial intelligence, algorithms, benchmarking, R&D collaborations, and best practices for compliance.

**Moderator:** Niki Iatrou (Weir Foulds LLP)

**Panellists:** Azriel Ezrachi (Oxford University)  
Krista McWhinnie (Monopolistic Practices Directorate, Competition Bureau)

**Session II: Debating the Efficiencies Defence | Room: 210 (1.25 substantive hours)**

The appropriate role of efficiencies in merger analysis remains a hot topic in Canada as well as in the U.S. Join us for an engaging discussion regarding the most current perspective on the role and practical impact of efficiencies in merger analysis and recent cases in Canada and the U.S.. The panel will also discuss the relevance of the efficiencies defence in today's economy, the evolution of the defence through jurisprudence and practice, and practical observations on best practices, approach and strategy in cases where efficiencies may be a factor in the outcome.

**Moderator:** Michelle Lally (Osler, Hoskin & Harcourt LLP)

**Panellists:** Wilson Mudge (Arnold & Porter LLP)  
Ian Clarke (Counsel, Department of Justice)  
Dr. Henry Khawaty (Berkeley Research Group)  
Richard Annan (Goodmans LLP)

**Session III: Top 10 Issues in Advertising Law | Room: 212 (1.25 substantive hours)**

Misleading representations continue to be an important enforcement priority for the Competition Bureau, with a particular focus on representations made through digital media. With the Bureau securing a number of high profile settlements over the past year (Avis Budget/Hertz and Dollar Thrifty and Amazon) and initiating proceedings against Hudson's Bay, it is clear that businesses advertising in Canada need to pay attention to these issues. At the same time, resolution through settlements or mediation rather than court decisions leaves uncertainty as to the scope and application of the misleading advertising provisions in the digital age. Join us for a discussion on what these developments mean for advertisers in Canada and as well as best practices for compliance.

**Moderator:** Antonio Di Domenico (Faskens LLP)

\*\*\* Please note that topics and speakers are still subject to change \*\*\*

**Panellists:** Michael Brown (Norton Rose LLP)  
Rami Greiss (Competition Bureau)

**12:15 | 14:00 LUNCHEON | Room: Trillium Ballroom**

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**14:00 | 15:15 CONCURRENT SESSIONS**

**Session I: Economics of Merger Analysis | Room: 209 (1.25 substantive hours)**

Economic analysis is an increasingly important aspect of the Competition merger review and analysis. Join our panel of leading economists who will provide an overview of the key economic principles underlying merger review in Canada, as well as the latest updates on the analyses, tools and techniques employed by economists in the course of advising their clients on merger analysis and review.

**Moderator:** David Rosner (Blake, Cassels & Graydon LLP)

**Panellists:** Dr. Ramsey Shehadeh (NERA)  
Alan Gunderson (Economics Analysis Directorate, Competition Bureau)  
Margaret Sanderson (CRAI)

**Session II: So you think you have a compliance program? | Room: 210 (1.25 substantive hours)**

The Competition Bureau and U.S. antitrust authorities have provided detailed guidance to companies for what constitutes an effective compliance program. Our panel of experts will discuss expectations for an effective compliance program created based on such guidance as well as the practical challenges and best practices to fulfill these expectations, particularly in respect of auditing and monitoring a company's compliance. What does this mean in practice? How can multinational companies conduct such audits and not bump up against privacy law considerations in certain jurisdictions? What are the reasonable limits on such audits?

**Moderator:** Kevin Wright (DLA Piper)

**Panellists:** James Musgrove (McMillan LLP)  
Nadia Brault (Compliance Unit, Competition Bureau)  
Jennifer Hefler (Wal-Mart)

**Session III: 'Big Data': What is the Role for Competition Law?  
Room: 212 (1.25 substantive hours)**

Join our panel for a discussion on the application of competition law principles to the evolving issues arising in the area of ownership of data. How valuable is data and the ability to access and use it? What are the strengths and limitations of competition law in addressing emerging issues in the data economy relative to other enforcement alternatives? Is competition law too blunt a sword?

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**Moderator:** Elisa Kearney (Davies)  
**Panellists:** Greg Sivinski (Microsoft Corporation)  
Danny Sokol (University of Florida and Wilson Sonsini Goodrich & Rosati  
LLP)  
Paul Johnson (Industrial Economics, Competition Bureau)

**15:15 | 15:30 REFRESHMENT BREAK | Room: Rideau Canal Atrium**

**Sponsored by:**  Edgeworth  
Economics

**15:30 | 16:45 CONCURRENT SESSIONS**

**Session I: Comparative Perspectives on Class Actions Litigation | Room: 209 (1.25 substantive hours)**

Join our panel of Judges and litigators as they discuss comparative experiences in class action litigation in the U.S. and Canada. Discussion topics will include comparative approaches to certification, ascertainability, remedies, and privilege as well as the unique issues presented in multi-jurisdictional actions.

**Moderator:** Don Houston (McCarthys)  
**Panellists:** Judge Jon S. Tigar (United States District Court for the Northern District of California)  
The Honourable Paul M. Perell (Ontario Superior Court of Justice)  
Charles Wright, Siskinds)  
Stacey Anne Mahoney (Morgan Lewis & Bockius LLP)

**Session II: Embracing Change: Innovation in the Practice and Enforcement of Competition Law Room: 210 (1.25 Ethical, Professionalism, Practice Management hours)**

Innovative technologies are already beginning to impact the practice and enforcement of competition and foreign investment law. Our panel will discuss the latest technological innovations including the use of algorithms and artificial intelligence for merger review and cartel detection and investigations, as well as the implications for in-house counsel, private practitioners, and the future enforcement of competition law

**Moderator:** Huy Do (Fasken Martineau DuMoulin LLP)  
**Panellists:** Rosa Abrantes Metz (Global Economics Group)  
Ben Alarie (Blue J Legal)

**Session III: Vertical Mergers - Views Across the Border | Room: 212 (1.25 substantive hours)**

Vertical mergers and horizontal mergers where there is also a vertical dimension raise unique antitrust issues. Join our panel of experts who will discuss recent experiences in

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the review of vertical mergers in Canada and the U.S., including evolving approaches to the key issues of incentives and foreclosure, and the appropriate form of remedies to resolve vertical concerns.

**Moderator:** Omar Wakil (Torys)  
**Panellists:** Deborah Salzberger (Blake Cassels & Graydon LLP)  
Sandy Walker (Dentons)

**17:00 | 18:30 COCKTAIL RECEPTION | located on the 22nd floor of The Westin Ottawa Hotel**

Sponsored by:  CRA Charles River Associates

**18:30 | 22:00 DINNER | Restaurant 18 | 18 York Street, Byward Market**

Sponsored by:  Deloitte.

## **FRIDAY, OCTOBER 27**

**8:00 | 9:00 YOUNG LAWYERS' SPEED MENTORING EVENT AND BREAKFAST | Room: 202**

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**8:00 | 9:00 CONFERENCE BREAKFAST | Rideau Canal Atrium**

**9:00 | 10:15 CONCURRENT SESSIONS**

**Session I: Investment Canada Act Reviews – Insights and Inside Perspectives on the Foreign Investment and National Security Review Process | Room: 209 (1.25 substantive hours)**

Join our panel of practitioners, advisers, in-house counsel and government representatives for a discussion on Canada's evolving approach to foreign investment review. We'll discuss what to expect from the net benefit review process under the higher thresholds, perspectives on Canada's Guidelines on the National Security Review of Investments, and recent experiences in national security and net benefit reviews.

**Moderator:** Oliver Borgers (McCarthy Tetrault LLP)  
**Panellists:** Michael Kilby (Stikeman Elliott LLP)  
Bruce Drysdale (DFH Public Affairs)

**Session II: Canada's Revised Immunity Policy -- Opportunities and Challenges for multi-jurisdictional cases | Room: 210 (1.25 substantive hours)**

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Canada's immunity and leniency policy is currently under review with significant changes being contemplated. At the same time, there have been developments in the application of the U.S. approach to leniency and treatment of individuals. What do these changes mean in practical terms and what are the implications of these changes and proposed changes to multi-jurisdictional criminal cases. Join us for a timely discussion of these important changes.

**Moderator:** Denes Rothschild (Borden Ladner Gervais LLP)  
**Panellists:** Chris Naudie (Osler, Hoskin & Harcourt LLP)  
Randy Hughes (Bennett Jones LLP)  
Stephane Hould (Deputy Commissioner, Cartels Directorate,  
Competition Bureau)  
Amy Manning (McGuireWoods LLP)

**Session III: Scholars Panel: Essential Facilities: New Life for an Old Doctrine? | Room: 212**  
**(1.25 substantive hours)**

The essential facilities doctrine originated with a 1912 US Supreme Court decision but was all but destroyed by another U.S Supreme Court decision in 2004. In Europe, the doctrine has been welcomed and has been adopted more recently. In Canada, however, it remains an open question whether the refusal to allow access to an essential facility by a dominant firm could (or should) constitute an abuse of dominant position. Join our panel of esteemed scholars to discuss the current and future of the essential facilities doctrine in antitrust.

**Moderator:** Renée Duplantis (The Brattle Group)  
**Panellists:** Danny Sokol (University of Florida and Wilson Sonsini Goodrich & Rosati  
LLP)  
Jeffrey R. Church (University of Calgary LLP)  
W. Michael G. Osborne (Affleck Greene McMurtry LLP)

**10:15 | 10:30 REFRESHMENT BREAK | Rideau Canal Atrium**

**10:30 | 12:00 CLOSING PLENARY SESSION: The interview | Room: 214 (1.5 substantive hours)**

Join us for a discussion of cutting edge antitrust policy and enforcement issues with senior level representatives from North American competition enforcement agencies.

**Moderator:** Anita Banicevic (Davies Ward Phillips Vineberg LLP)  
**Panellists:** John Pecman (Commissioner of Competition, Competition Bureau)  
Andrew Finch (Deputy Attorney General, Antitrust, U.S Department of  
Justice)  
Jon Jacobson (Wilson Sonsini)

**12:00 | 12:15 CLOSING REMARKS**

Thank you to our USB Key Sponsor:



**12:15 | 14:00 CANADIAN WOMEN IN COMPETITION LAW (CWCL) NETWORKING LUNCH | Room: 211**

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