

## ANNEX B – The *Competition Act* and its application to Canada’s communications sector

### *The Competition Act*

1. The Bureau, as an independent law enforcement agency, ensures that Canadian businesses and consumers prosper in a competitive and innovative marketplace. Headed by the Commissioner, the Bureau is responsible for the administration and enforcement of the *Competition Act*, the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act* and the *Precious Metals Marking Act*.
2. The *Competition Act* is a federal law governing most business conduct in Canada. It contains both criminal and civil provisions aimed at preventing anti-competitive practices in the marketplace. Its purpose is to maintain and encourage competition in Canada in order to:
  - promote the efficiency and adaptability of the Canadian economy;
  - expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada;
  - ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy; and
  - provide consumers with competitive prices and product choices.
3. As a law enforcement agency, the Bureau investigates alleged contraventions of the *Competition Act*. When a contravention is found, the Bureau may apply for remedies before the Competition Tribunal or courts (for civil provisions), or refer cases to the Public Prosecution Service of Canada (for criminal provisions).
4. Key provisions of the *Competition Act* include:
  - **Merger review** pursuant to sections 91 and 92 of the *Competition Act*. Mergers are generally viewed by the Bureau as a positive way to increase competitiveness, allowing Canadians to benefit from lower prices, better product choice and higher quality services. However, the Competition Bureau pays close attention to the small portion of mergers that could substantially prevent or lessen competition in particular antitrust markets. If the Commissioner determines that a merger is likely to substantially prevent or lessen competition, he or she may apply to the Competition Tribunal for an order to prevent, dissolve or alter the merger. Although horizontal mergers (that is to say, mergers between competitors) generally raise the most issues for the Bureau, it may also examine vertical mergers and conglomerate mergers where these are likely to substantially prevent or lessen competition. While both the Bureau and the CRTC are responsible for reviewing mergers in the broadcasting and telecommunications

industries, the Bureau uses a competition-focused lens while the CRTC uses its own review criteria.

- **Monopolistic practices**, particularly the abuse of dominance provisions in sections 78 and 79 of the *Competition Act*.<sup>56</sup> When a dominant company exploits its market power in a way that hurts competition in the marketplace, the *Competition Act* may be enforced. This includes situations where the dominant firm or firms engage in business practices that are likely to substantially prevent or lessen competition. This particularly includes conduct designed to exclude, predate on, or discipline competitors.
- **Cartels**, including conspiracies pursuant to section 45 and bid-rigging pursuant to section 47 of the *Competition Act*. A cartel is formed when competitors make an agreement, an arrangement or conspire to lessen or prevent competition. The most common forms of cartel conduct include rigging bids, fixing prices, market allocation, and output restriction. Cartels are illegal because they lead to higher prices, decreased product choice and less innovation.
- Criminal and civil provisions that prohibit **false or misleading advertising** pursuant to sections 52 and 74.01 of the *Competition Act*, and related provisions dealing with deceptive marketing practices. Under the criminal provisions, the general provision prohibits all materially false or misleading representations made knowingly or recklessly for the purposes of promoting a product or business interest. Other provisions specifically prohibit deceptive telemarketing, deceptive notices of winning a prize, double ticketing, and schemes of pyramid selling. The multi-level marketing provisions prohibit certain types of representations relating to compensation. Under the civil provisions, the general provision prohibits all materially false or misleading representations made for the purposes of promoting a product or a business interest. Other provisions specifically prohibit performance representations that are not based on adequate and proper testing, misleading warranties and guarantees, false or misleading ordinary selling price representations, untrue, misleading or unauthorized use of tests and testimonials, bait and switch selling, and the sale of a product above its advertised price. The promotional contest provisions prohibit contests that do not disclose required information.

### ***The Bureau and other communications regulators***

5. The provisions of the *Competition Act* apply to the conduct of all firms operating in the communications sector.

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<sup>56</sup> Monopolistic practices also include several related provisions, including section 75 (refusals to deal), section 76 (price maintenance), and section 77 (exclusive dealing and tied-selling) of the *Competition Act*.

6. As the Bureau's authority and mandate in the communications sector overlaps with that of several other organizations, the Bureau has reached [agreements](#) with a number of these organizations to establish a framework for interaction and cooperation in enforcement or other matters of mutual interest. These include two agreements in relation to the CRTC, and a memorandum of understanding between the Bureau and the Spectrum and Telecommunications Sector of Innovation Science and Economic Development.