



Competition Bureau
Canada

Bureau de la concurrence
Canada



An Overview of the Competition Bureau

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- Independent federal law enforcement agency
- *We contribute to the prosperity of Canadians by protecting and promoting competitive markets and enabling informed consumer choice.*

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Bienvenue | Welcome





About the *Competition Act*

- Federal law governing most business conduct in Canada
- Both criminal and civil provisions aimed at preventing anti-competitive practices in the marketplace
- *1.1 The purpose of this Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.*





About the Competition Bureau Organizational Structure

Enforcement Branches

Fair Business Practices

- Misleading representations
- Deceptive telemarketing
- Deceptive marketing practices

Criminal Matters

- Price-fixing
- Bid-rigging
- International Cartels

Mergers

- Combinations/amalgamation
- Strategic alliances
- Agreements among competitors

Civil Matters

- Abuse of dominant position
- Market restriction
- Interventions

Support Branches

- Legislative and International Affairs Branch
- Public Affairs Branch
- Economic Policy and Enforcement Branch
- Compliance and Operations





Bureau Enforcement Priorities

- Effective Implementation of Amendments to the Competition Act
- Domestic Cartels and Bid-rigging
- Mass Marketing Fraud (MMF)
 - coordinate partnership efforts to disrupt enablers of MMF
 - target consumer and SME schemes involving Canadians
- Electronic Marketplace
 - target fraudulent and misleading health performance claims
- Mergers and Dominance
 - clarify key issues related to the enforcement principles of the Act





Civil Matters - Notable Matters

The Commissioner of Competition v. The Canadian Real Estate Association (CREA)

- Ongoing Application by Commissioner under section 79 of the Competition Act (Abuse of Dominance)
- Using MLS to impose rules that restrict access to alternatives

Nanaimo Waste Hauling (2009)

- Resulted in consent agreement to eliminate use of controversial restrictive clauses in waste hauling
 - Rights of first refusal, long term contracts, automatic renewals, etc.
 - http://www.ct-tc.gc.ca/CMFiles/CT-2009-003_Registered%20Consent%20Agreement_001_61_6-16-2009_7583.pdf





Fair Business Practices - Notable Matters

- Datacom
 - Record \$15 million fine against DataCom Marketing Inc.
 - DataCom tricked businesses into believing that they had already ordered a business directory listing and using deceptive scripts and aggressive collection tactics.
 - President now in jail, three years probation, 10 year prohibition
- Project False Hope-Combating Cancer Fraud
 - In December 2008, the Bureau won an award for outstanding collaborative work on this project targeting cancer-related fraud.
 - Together with partners, the Bureau took action against over 100 Canadian-operated websites making unsubstantiated claims concerning cancer-related products or treatments.

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Mergers Branch - Notable Matters

- Suncor / Petro-Canada Merger
 - Consent agreement with Suncor Energy Inc. and Petro-Canada, requiring them to divest 104 retail gas stations in southern Ontario and to sell storage and distribution network capacity in the Greater Toronto Area for 10 years
- Google/Yahoo
 - In October 2008, Google Inc. and Yahoo! Inc. abandoned a potentially seriously anticompetitive agreement following a closely integrated investigation by the Bureau and the U.S. Department of Justice.





Criminal Matters Branch - Investigating Cartels

- Canada's Competition Act contains several provisions that prohibit cartel activity in its various forms.
 - Conspiracy - Section 45
 - Bid Rigging - Section 47
- Under section 36 of the Act, victims of cartel activity may take private legal action against the participants for damages.
- Bill C-10, which received Royal Assent on March 12, 2009, amended sections 45 and 47 of the Competition Act. The amendments to section 45 came into force on March 12, 2010.





Investigating Cartels

- A cartel is a formal or informal group of otherwise independent businesses
- Goal is to lessen or prevent competition among its participants.
- Cartel members enter into an agreement or arrangement to do such things as:
 - fix prices
 - mutually allocate markets or customers
 - limit production or supply
 - rig bids
- ...





Bid Rigging – Section 47

47. (1) In this section, "bid-rigging" means

(a) an agreement or arrangement between or among two or more persons whereby one or more of those persons agrees or undertakes not to submit a bid or tender in response to a call or request for bids or tenders, or agrees or undertakes to withdraw a bid or tender submitted in response to such a call or request, or

(b) the submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by agreement or arrangement between or among two or more bidders or tenderers,

where the agreement or arrangement is not made known to the person calling for or requesting the bids or tenders at or before the time when any bid or tender is submitted or withdrawn, as the case may be, by any person who is a party to the agreement or arrangement.

(2) Every person who is a party to bid-rigging is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both.





Key Elements of a Bid Rigging Offence (s.47)

- Two or more persons;
- agree or arrange
 - for one or more of them not to submit a bid or tender, or
 - for one or more of them to submit a bid or tender arrived at by their agreement, or
 - for one or more of them to withdraw a submitted bid or tender;
- in response to a call or request for bids or tenders; and
- the agreement or arrangement was not made known to the person who called or requested the bids or tenders, at or before the submission or withdrawal of bids.





Penalties for Bid Rigging

- No limit on fines
- Jail term up to fourteen (14) years for individuals
- Victims have a statutory right to sue perpetrators to recover damages caused by bid-rigging (s. 36)
- Criminal record may be registered with the Canadian Police Information Centre (CPIC)

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Common Forms of Bid Rigging

- Cover bidding – fake bidding
- Bid suppression – withholding bids
- Bid rotation – rotating agreed best bid
- Market division – carving up the market
- More than one of these techniques may be used

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Notable Canadian Bid Rigging Cases

- Chicoutimi Construction
 - Three construction companies are alleged to have rigged bids for the expansion and refitting of the Chicoutimi Hospital and for work to be done on the Alcan smelter in Alma, Quebec.
- Electrical Contractors - Toronto
 - Pearson Airport, Skydome Hotel, BCE Place, and other projects were targeted by bid-rigging schemes involving electrical contract work during construction or renovation
 - At least 24 competitions were rigged during a five-year period
 - 8 electrical contractors and 1 general contractor were convicted
 - Fines totalled more than \$3 million





International Bid Rigging Cases

United Kingdom

- In 2009, the Office of Fair Trade imposed fines of £129.2 million on 103 construction firms.
- Firms engaged in bid-rigging activities on 199 tenders from 2000 to 2006, mostly in the form of 'cover pricing'

Netherlands

- Government offered leniency to companies that came forward before May 1, 2004
- 473 Companies applied and 15 nationwide bid rigging schemes were exposed in different sectors of the construction marketplace.





Detection is Key for Protection

- Bid-rigging schemes are secret and difficult to detect
- Some types of industries are more susceptible to bid-rigging
- Various warning signs may signal that a bid-rigging scheme is in place

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Warning Signs Involving Bid Submission and Outcomes

- Competitors' bids are received together
- Identical irregularities in bids
- Suppliers meet before they submit tenders and you are not present
- Suppliers that would normally tender fail to do so
- ...





More Warning Signs Involving Bid Submission

- Same supplier is often the successful bidder
- Winning bidder does not accept the contract
- Winning bidder subcontracts work to unsuccessful bidders
- Pattern suggesting rotation of successful bids among several suppliers

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If You Suspect Bid-Rigging

- Thoroughly record details of all relevant behaviour
- Do not discuss with suspected participants
- Decide whether or not to continue with the tender
- Contact the Competition Bureau
- ...





Conspiracy (s.45)

- Amendments to the Competition Act conspiracy provisions effective March 12, 2010
- No longer required to prove that a conspiracy prevents or lessens competition “unduly” or enhance prices “unreasonably”
- Now Illegal for competitors or potential competitors to conspire, agree or arrange to:
 - fix or control prices,
 - allocate markets or customers, or
 - restrict the production or supply of a product
- Penalties for conspiracy have increased significantly:
 - the maximum fine will increase from \$10 million to **\$25 million**, and
 - the maximum jail term will increase from five to **fourteen years**
- Civil provisions address other types of agreements that are likely to have a substantial anti-competitive effect





Notable Section 45 Cases

- Quebec Gasoline Case:
 - In June 2008, 13 individuals and 11 companies were charged with fixing the price of gasoline at the pump.
 - Five of the companies and ten of the individuals have pleaded guilty with fines totalling over \$2.7 million.
 - Six of the individuals have been sentenced to a total of 54 months in prison.
- Hydrogen Peroxide
 - In November 2008, Akzo Nobel Chemicals International AV was fined \$3.15M after pleading guilty for fixing the price of hydrogen peroxide sold in Canada.





Investigation and Enforcement

- Evidence and detection include these sources:
 - Complaints alleging anti-competitive practices
 - Immunity Program
 - Whistleblowers
 - International actions
- Preliminary investigation
- Formal inquiry
 - Investigative tools include searches, subpoenas, wiretaps, and enforcement agency cooperation
- Criminal matters referred to the Public Prosecution Service of Canada for consideration and prosecution before courts





All Industries are at Risk

- Bid-Rigging (s. 47) – reinforcement cable, flour milling, bus services, electrical contractors, crown timber
- Conspiracy (s. 45) – carbonless paper, rubber chemicals, compressed gas, concrete, pulp baling wire, insecticides, fax paper, ductile iron pipe, ambulance operators, pharmacies, waste disposal, driving schools, lysine, citric acid, sodium gluconate, snow removal, choline chloride, bulk vitamins, sorbates, notaries





How to Contact the Competition Bureau

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