

CBA COMPETITION LAW FALL CONFERENCE

OCTOBER 6-7 | OTTAWA, ON

WEDNESDAY, OCTOBER 5, 2016

12:00 | 21:00 COMPETITION BUREAU CHARITY GOLF TOURNAMENT & DINNER | RIVERMEAD GOLF CLUB

This pre-conference event will be held at the exclusive Rivermead Golf Club in Gatineau, Québec (just outside of Ottawa). Space is extremely 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 6, 2016

8:30 | 9:00 REGISTRATION AND HOT BREAKFAST | Rideau Canal Atrium

9:00 | 9:05 WELCOME & INTRODUCTION

9:05 | 10:30 OPENING PLENARY SESSION

COMPETITION ENFORCEMENT AND POLICY: THE NEXT 30 YEARS

With the 30th anniversary of the *Competition Act* upon us, join our distinguished panel of former Commissioners for an important discussion and debate about the direction of competition law enforcement and policy in Canada. What does the future of Canadian competition policy and enforcement look like, what should it look like, and are any corrections in course necessary (whether through formal amendments, enforcement priorities or policy)?

10:30 | 10:45 REFRESHMENT BREAK

10:45 | 12:15 CONCURRENT SESSIONS

Session I: THE IPEGS IN INTERNATIONAL PERSPECTIVE

The Competition Bureau issued its revised intellectual property enforcement guidelines (IPEGS) in early 2016. The IPEGS reflect cutting edge issues arising from the competition law/intellectual property interface that are also currently being debated and decided in other jurisdictions. Hear from leading experts on how issues such as cross licensing, standard setting, product hopping, patent assertion entities and reverse settlement payments have been approached in Canada and in other jurisdictions; and what we can learn from such experiences.

Session II: THE ELEPHANT IN THE OFFICE: DEALING WITH INDIVIDUALS IN CRIMINAL CASES

One of the biggest challenges that practitioners face when corporate clients are confronted with allegations of criminal conduct under the *Competition Act* is how to handle any individuals involved in or implicated by the conduct. This panel will speak to the complex, sensitive and strategic considerations, as well as best practices, for advising clients in relation to potentially complicit employees and senior executives; including with respect to issues of conflict of interest and privilege.

Session III: MAKING THE CASE – “BEST PRACTICES” FOR EVIDENCE AND INFORMATION GATHERING IN MERGER CASES

The experience in several recent mergers (Parkland/Pioneer; Office Depot/Staples; Rona/Lowe’s; Filgo/Coop), has reaffirmed the importance of defining the correct product and geographic markets as well as quantifying effects and efficiencies. But what evidence and information is useful and persuasive when conducting such exercises? Upon what information do the Bureau and its economists rely? Hear invaluable insight into “best practices” in the development of information and evidence in merger cases.

12:15 | 14:00 LUNCHEON | Trillium Ballroom 4th Floor Shaw Centre

Certificate of appreciation presentation to past Bocking Award jury member

14:00 | 15:15 PLENARY SESSION

THE TROUBLE WITH TREB: LESSONS LEARNED AND THE FUTURE OF ABUSE OF DOMINANCE IN CANADA

In its re-determination decision in the Toronto real estate board (TREB) case, the Competition Tribunal provided extensive guidance for the application of the abuse of dominance provisions. What are the practical implications of this decision for counselling clients? What types of conduct can now be pursued? Are any amendments necessary? Does the Tribunal’s redetermination decision have implications for other areas of Canadian competition law? Join us to find out.

15:15 | 15:30 REFRESHMENT BREAK | RIDEAU CANAL ATRIUM

15:30 | 17:00 CONCURRENT SESSIONS

Session I: TIME FOR A REBOOT? EXPLORING A FRESH APPROACH TO IMMUNITY AND LENIENCY PROGRAMS

Businesses and their counsel must always weigh the risks and potential benefits of participating in the Competition Bureau’s immunity and leniency programs. How has this evaluation changed (if at all) as a result of recent developments? What are the benefits of seeking leniency or immunity in light of the unsuccessful prosecutions in *R. v. Durward* and *R. v. Nestlé*, and the likelihood of follow-on class actions? Has the risk of debarment from government tenders effectively foreclosed participation in these programs for some companies?

Our panellists will discuss the implications of recent developments upon the decision of whether to seek immunity or leniency, as well possible changes to the immunity and leniency programs.

Session II: NON-PRICE EFFECTS IN COMPETITION ANALYSIS – FACT OR FICTION?

While the focus in merger analysis remains largely on price effects, to what extent, if any, are non-price effects considered in competition cases and assessments? How are non-price effects, such as impacts on quality, innovation, consumer choice, diversity of business models, and convenience, among others, even measured? What can we learn from the Competition Tribunal's TREB re-determination decision and from other jurisdictions in respect to non-price competition and effects? Join this panel of experts to learn more about these timely issues.

Session III: EXCLUSION AND COLLUSION IN A DIGITAL AGE

Knowledge is power. Information is power. But can access to data confer market power or lead to the exclusion of competitors? If so, then how? Is access to data appropriately regulated through antitrust? In the age of apps, algorithms and screens, what does collusion look like? What tools can businesses and regulators use to ferret out such collusive conduct? Join us for an engaging discussion of cutting edge data and innovation-related competition law considerations with experts from Canada and abroad.

17:00 | 18:30 COCKTAIL RECEPTION | Daly's Restaurant Ottawa, located on the 4th floor at The Westin Ottawa Hotel

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

FRIDAY, OCTOBER 7, 2016

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

8:00 | 9:00 HOT BREAKFAST | Rideau Canal Atrium

9:00 | 10:30 CONCURRENT SESSIONS

Session I: "IF I TOLD YOU I'D HAVE TO SHOOT YOU:" DUE PROCESS IN FOREIGN INVESTMENT REVIEW

The relatively new national security provisions in the *investment Canada Act* and recent developments have brought the issue of due process to the forefront. How has due process been assured in other national security related processes in Canada? What is the state of play in the United States on similar issues under CFIUS? Could the Canadian government go further than it does in shedding light on national security and net benefit reviews? If not, what avenues can an investor pursue? This panel will examine

these issues and will discuss best practices when faced with a transaction that has potential national security implications.

Session II: ADVERTISING UPDATE: KEY DEVELOPMENTS AND WHAT YOU NEED TO KNOW

From rental cars to “made in Canada” claims to “astro-turfing”, the Competition Bureau has continued to be very active in its enforcement in the advertising area. Join us for a discussion of what these enforcement actions mean for advertisers in Canada. What issues advertisers should be on the look-out for? For instance, when are companies potentially liable for third parties such as bloggers and affiliate marketers? When are representations in electronic messages actionable under the *Competition Act*?

Session III: SCHOLARS PANEL: LOYALTY PROGRAMS – RISKS & REWARDS

Loyalty programs are integral competitive tools for many Canadian businesses. They can be used to attract new customers, help retain existing ones, and as well provide customers with important discounts. While loyalty programs may appear to be a win-win for both businesses and their customers, they can raise potential competition law concerns in Canada and elsewhere. Panellists will discuss the intersection of law and economics in the area of loyalty programs. Join them to learn the latest perspective on these issues and how to better advise your clients with respect to the legal risks arising from loyalty programs.

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

10:45 | 11:00 Remarks from William MacLeod, Chair, ABA Section of Antitrust Law

11:00 | 12:15 CLOSING PLENARY SESSION

DEBATING THE DEVELOPMENTS

Our panel of leading experts will discuss and debate key developments and issues such as:

- Is it time to amend the *Competition Act* to allow for private actions for abuse of dominance matters?
- Should damages be available for private actions before the Competition Tribunal?
- Does the consent agreement process need reform?
- What are the pros and cons of mediation for competition law matters?

12:00 | 12:15 CLOSING REMARKS

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