

CBA COMPETITION LAW FALL CONFERENCE

SEPTEMBER 27-28, 2018 | OTTAWA

WEDNESDAY, SEPTEMBER 26, 2018

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, SEPTEMBER 27, 2018

8:30 | 8:50 REGISTRATION AND HOT BREAKFAST | Room: Confederation Foyer

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8:50 | 9:05 WELCOME & INTRODUCTION | Room: Confederation II-III

Speakers: **Oliver Borgers, McCarthy Tétrault LLP** (Toronto)
Elisa Kearney, Davies Ward Phillips & Vineberg LLP (Toronto)

9:05 | 10:30 OPENING PLENARY: LITIGATING ANTITRUST CASES IN THE UNITED STATES AND CANADA | Room: Confederation II-III (1.5 hours – substantive content)

Antitrust cases before the Competition Tribunal and the United States courts are usually large, complex, involve significant financial stakes, attract national public interest and affect the competitiveness of private enterprise and industry. However, Competition Tribunal cases often take years to resolve and there is debate as to whether litigated proceedings are the most efficient approach to antitrust issues. An esteemed panel, including the Chairperson of Canada's Competition Tribunal, will discuss recent procedural developments in Canada, including mediation and a new fast track process, whether statutory reform is required, best practices for getting an effective and efficient resolution from the Competition Tribunal and lessons to be learned from the United States.

Moderator: Linda Plumpton, *Torys LLP* (Toronto)
Panelists: Mr. Justice Denis Gascon, *Chairperson, Competition Tribunal and Judge, Federal Court* (Ottawa)
Rob Kwinter, *Blake, Cassels & Graydon LLP* (Toronto)
John Syme, *General Counsel, Competition Bureau Legal Services* (Gatineau)
Pete Levitas, *Arnold & Porter Kay Scholer LLP* (Washington)

10:30 | 10:45 REFRESHMENT BREAK | Room: Confederation Foyer

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10:45 | 12:15 CONCURRENT SESSIONS

Session I: RETAIL PRICING AND MARKETING IN THE DIGITAL ECONOMY: UNDERSTANDING THE PITFALLS AND OPPORTUNITIES WHEN THE WORLDS OF CONSUMER PROTECTION AND PRIVACY COLLIDE | Room: Governor General I
(1.5 hours – substantive content)

The growth of e-commerce has the potential to increase competition within retail markets, enhance consumer choice and facilitate innovation. It is no surprise that the Competition Bureau continues to focus its enforcement and advocacy efforts on online and mobile advertising as well as digital pricing practices. An experienced panel will review strategies and policies relating to retail pricing in Canada and the United States, including how to safely make ordinary price claims and how to avoid misleading or improper pricing practices in the digital economy. The panel will also discuss the growing intersection of consumer protection and privacy issues, and enforcement by the Office of the Privacy Commissioner in this area involving inappropriate data practices, targeted advertising, deception and consent.

Moderator: Kelly Harris, *Partner, Miller Thomson LLP* (Toronto)
Panelists: Josephine Palumbo, *Deputy Commissioner, Cartels and Deceptive Marketing Practices Branch, Competition Bureau* (Gatineau)
Amy Ralph Mudge, *Venable LLP* (Washington)
Brent Homan, *Deputy Commissioner, Compliance Sector, Office of the Privacy Commissioner of Canada* (Gatineau)

Session II: HOT TOPICS IN MERGER NOTIFICATION IN CANADA AND ABROAD
| Room: Governor General II *(1.5 hours – substantive content)*

The rules for notifying mergers, and the practices for how those mergers are notified, differ around the world. Join our expert panel as they bring Canadian and international perspectives on key questions concerning the Canadian merger notification rules as well as notification analysis and best practices in merger notification in the U.S. and Europe. Among other topics, the panel will discuss “affiliation” rules in the notification analysis context (including recent changes to the affiliation rules in Canada’s Competition Act), how merger notification rules apply to joint ventures, and considerations surrounding the types of strategic documents and transaction agreements that may be appended to merger notification forms.

Moderator: David Rosner, *Goodmans LLP* (Toronto)
Panelists: Mark Magro, *Merger Notification Unit, Competition Bureau* (Gatineau)
Kaeleigh Kuzma, *Osler, Hoskin & Harcourt LLP* (Toronto)
Annamaria Mangiaracina, *Linklaters LLP* (Brussels)
Jesse Solomon, *Davis Polk & Wardwell LLP* (Washington)

Session III: PROCEDURAL FAIRNESS AND ANTITRUST: A GLOBAL PERSPECTIVE | Room: Governor General III (1.5 hours – substantive content)

Standards of due process and procedural fairness in the investigation and enforcement of competition laws differ around the world, including with regard to principles and practices related to non-discrimination, transparency, timely resolution, confidentiality, conflicts of interest, proper notice, opportunity to defend, access to counsel and judicial review. Panelists will discuss the gold standard in the investigation and enforcement of competition law and whether the Competition Bureau, Competition Tribunal and Canadian courts are meeting the standard.

Moderator: John F. Rook, *Bennett Jones LLP* (Toronto)
Panelists: Randall Hofley, *General Counsel and Senior Enforcement Advisor, Competition Bureau Legal Services* (Gatineau)
Timothy Longman, *International Counsel, Antitrust Division, U.S. Department of Justice* (Washington)
Alvaro Ramos, *Senior Director, Head of Global Antitrust, Qualcomm* (San Diego)
Julie Rosenthal, *Goodmans LLP* (Toronto)

12:15 | 14:00 LUNCHEON | Room: Confederation I

13:00 – 13:10 Remarks
13:10 – 13:20 Award presentation to the winner of the James H. Bocking Memorial Award
Certificate of appreciation presentation to past Bocking Award Jury Member
13:20 – 14:00 Keynote address: Matthew Boswell, Interim Commissioner of Competition

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14:00 | 15:15 PLENARY SESSION: TREB, AMEX AND THE FUTURE OF MONOPOLIZATION IN DATA-DRIVEN MARKETS | Room: Confederation II-III (1.25 hours – substantive content)

A long-awaited Federal Court of Appeal decision found that the Toronto Real Estate Board (TREB) abused its dominant position by restricting access to data. The Competition Bureau is of the view that the TREB case “clearly underscores that crucial link between competition and innovation and the Bureau’s role in upholding both”. However, this decision has been eight years in the making, and a number of questions remain unanswered. In what circumstances may restricting access to data amount to an abuse of

dominance and what effect, if any, does market definition have on this conclusion when it comes to platform markets? What precedential value, if any, does the AMEX decision in the United States have in Canada? Are reforms required to the Competition Tribunal rules and processes to encourage a more efficient resolution? An expert panel will explore these timely questions.

Moderator: **Brian Facey**, *Blake, Cassels and Graydon LLP* (Toronto)

Panelists: **Jeanne Pratt**, *Senior Deputy Commissioner, Mergers and Monopolistic Practices Branch, Competition Bureau* (Gatineau)

Suzanne Wachsstock, *VP and Chief Antitrust Counsel, American Express Company* (Washington)

Fiona Schaeffer, *Milbank Tweed Hadley & McCloy LLP* (New York)

Dr. Renée Duplantis, *The Brattle Group* (Toronto)

15:15 | 15:30 REFRESHMENT BREAK | Room: Confederation Foyer

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15:30 | 17:00 CONCURRENT SESSIONS

Session I: IS THAT A CONSPIRACY? | Room: Governor General I
(1.5 hours – substantive content)

Combatting cartels continues to be a top priority for the Competition Bureau, which has publicly committed to vigorously pursue all those involved in cartel activities. Using a case study approach, panelists will explore the evidentiary standard and burden of proof that the Competition Bureau must meet to refer a matter for criminal prosecution and consider whether digital technologies will make price fixing and other forms of conspiracy easier or harder to coordinate, monitor and detect. The importance of corporate compliance programs, immunity and leniency programs, deferred prosecution agreements and whistleblowing to the prevention, detection and prosecution of criminal conspiracies will also be discussed.

Moderator: **Randy Hughes**, *Bennett Jones LLP* (Toronto)

Panelists: **Ann Salvatore**, *Acting Deputy Commissioner, Cartels Directorate, Competition Bureau* (Gatineau)

Chantelle Cseh, *Davies Ward Phillips & Vineberg LLP* (Toronto)

John Rosen, *Rosen & Company Barristers* (Toronto)

Steven Cherry, *Wilmer Cutler Pickering Hale and Dorr LLP* (Washington)

Session II: MARKET STUDIES - AN EFFECTIVE USE OF COMPETITION BUREAU RESOURCES?
| Room: Governor General II
(1.5 hours – substantive content)

The former Commissioner of Competition, John Pecman, amongst others, has argued strongly that the Competition Bureau needs formal powers to conduct market studies to be an effective advocate of competition. However, others are of the view that the Competition Bureau has not identified how previous market studies were deficient or

that information obtained voluntarily from market study participants was inadequate to justify the potentially significant costs arising from formal market study powers and that market studies divert scarce resources away from competition law enforcement. Learning from past experience, panelists both for and against formal market study powers will discuss what powers the Commissioner of Competition currently has or should be granted, as well as best practices for conducting market studies and procedural safeguards for stakeholders.

Moderator: **Dany Assaf**, *Torys LLP* (Toronto)

Panelists: **Leila Wright**, *Associate Deputy Commissioner, Competition Promotion Branch, Competition Bureau* (Gatineau)
James Mancini, *Competition Division, OECD* (Paris)
Leah Noble, *Director, Strategic Partnerships, Labatt Brewing Company Limited* (Toronto)

Session III: COMPETITION, TRADE AND NATIONAL SECURITY | Room: Governor General III
(1.5 hours – substantive content)

Across the globe, foreign investment review and protectionism is a hot-button issue, as demonstrated by countless news headlines covering contentious cross-border mergers that have attracted considerable attention. In light of current economic and geopolitical conditions, it is hardly surprising that foreign investment is attracting intense regulatory scrutiny, especially where economic or national security risks are engaged. With foreign investment review becoming increasingly complex, our panel of experts, comprised of speakers from Canada, the U.S., the U.K., Germany and China, will discuss shared challenges and offer insight into and best practices for navigating an evolving foreign investment and national security review environment.

Moderator: **Jason Gudofsky**, *McCarthy Tétrault LLP* (Toronto)

Panelists: **Lisa Wright**, *Slaughter and May LLP* (London)
Dr. Jürgen Beninca, *Jones Day* (Frankfurt)
Damara Chambers, *Covington & Burling LLP* (Washington)
Hazel Yin, *Freshfields Bruckhaus Deringer LLP* (Beijing)

17:00 | 18:30 COCKTAIL RECEPTION | Room: Confederation I

Sponsored by:  CRA Charles River Associates

18:30 | 22:00 DINNER | O’Born Room at the National Arts Centre | 1 Elgin Street

20:15 Second City - Improv Theater Performance

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FRIDAY, SEPTEMBER 28, 2018

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

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8:00 | 9:00 REGISTRATION AND HOT BREAKFAST | Room: Confederation Foyer

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9:00 | 10:15 CONCURRENT SESSIONS

**Session I: COMPETITION LAW AND POLICY IN EMERGING INDUSTRIES | Room: Governor
General I (1.25 hours – substantive content)**

This panel will consider whether competition law and policy applies to emerging industries such as blockchain, cannabis and the “app economy”. For example, in April 2018, the OECD Competition Committee considered whether the rise of blockchain technology is relevant to the work of competition authorities and, if so, how. The possibility of price fixing and predation in the “app economy” may also become a growing concern to competition authorities. Cannabis is emerging as a new multi-billion dollar industry in Canada although it remains illegal under federal laws in the United States – has it caught the attention of the Competition Bureau?

Moderator: **Michael Kilby**, *Stikeman Elliott LLP (Toronto)*

Panelists: **Debbie Salzberger**, *McCarthy Tétrault LLP (Toronto)*

Ian Disend, *Senior Policy Analyst, Marketplace Framework Policy Branch, Innovation, Science and Economic Development Canada (Ottawa)*

Vicky Eatrides, *Acting Senior Deputy Commissioner, Cartels and Deceptive Marketing Practices Branch, Competition Bureau (Gatineau)*

Bram Abramson, *General Counsel, Decentral Inc. (Toronto)*

**Session II: ASSESSMENT OF NON-PRICE EFFECTS IN MERGERS – AN UPDATE | Room: Governor
General II (1.25 hours – substantive content)**

Competition authorities are increasingly being called on to assess non-price effects in merger review. The importance of innovation, quality, or even privacy in some markets is substantial. Failing to consider non-price effects may lead to inaccurate conclusions about the effect of a merger on consumer or total welfare. This panel will explore the primary dimensions of non-price competition that have been analyzed in merger cases to date and discuss the evidence that should be required to satisfy the burden of proving anti-competitive effects in mergers involving non-price effects so as to mitigate the risk of introducing subjectivity to the merger review process.

Moderator: **Grant Bishop**, Associate Director of Research, C.D. Howe Institute (Toronto)

Panelists: **Myles Hansen**, VP Associate General Counsel, Competition Law & Crop Science Strategy, Bayer Crop Science (St Louis)

Dr. Paul Johnson, TD MacDonald Chair in Industrial Economics, Competition Bureau (Gatineau)

Justin Lenzo, Navigant Economics (Chicago)

Paul Collins, Stikeman Elliott LLP (Toronto)

Session III: COMPETITION IN THE CANADIAN TELECOMMUNICATIONS SECTOR | Room: Governor General III (1.25 hours – substantive content)

The federal Government is searching for an appropriate regulatory framework to facilitate and protect competition in the Canadian telecommunications sector. Regulatory capture is a concern and there appears to be jurisdictional overlap and regulatory duplication. This panel will explore what Innovation, Science and Economic Development Canada (ISED), the CRTC and the Competition Bureau are doing to create an efficient and just regulatory and enforcement framework that delivers a competitive telecommunications system in Canada.

Moderator: **Christine Dobby**, Telecom Reporter, Globe and Mail (Toronto)

Panelists: **Greg Lang**, Major Case Director, Policy, Planning and Advocacy Directorate, Competition Bureau (Gatineau)

Bill Abbott, Legal Counsel, Canadian Radio-television and Telecommunications Commission (Gatineau)

Monica Song, Partner, Dentons Canada LLP (Ottawa)

Elizabeth Roscoe, Hill+Knowlton Strategies Canada (Ottawa)

10:15 | 10:30 REFRESHMENT BREAK | Room: Confederation Foyer

10:30 | 12:00 CLOSING PLENARY SESSION: IF I WERE COMMISSIONER..... | Room: Confederation II-III (1.5 hours – substantive content)

We are embarking on a new era of competition law enforcement in Canada as a new Commissioner of Competition takes the reigns. A deeply experienced panel will debate what the new Commissioner's priorities should be, what is working well and does not need fixing, whether legislative or organizational changes are required and where Competition Bureau resources should be spent.

Moderator: **Ron Knox**, Editor-at-Large, Global Competition Review (Kansas City)

Panelists: **Bill Kovacic**, George Washington University (Washington)

Anita Banicevic, Davies Ward Phillips & Vineberg LLP (Toronto)

Margaret Sanderson, Charles River Associates (Toronto)

James Musgrove, McMillan LLP (Toronto)

12:00 | 12:15 CLOSING REMARKS | Room: Confederation II-III

Oliver Borgers, McCarthy Tétrault LLP (Toronto)

Elisa Kearney, Davies Ward Phillips & Vineberg LLP (Toronto)

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12:15 | 14:00 WOMEN IN COMPETITION LAW LUNCH | Room: Governor General III
(1 hour – professional content)

Speaker: **Crystal O'Donnell**, *Founder and CEO, Heuristica Discovery Counsel*
(Toronto)

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