

# 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 | 9:00 REGISTRATION AND HOT BREAKFAST | Room: Confederation Foyer**

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### **9:00 | 9:05 WELCOME & INTRODUCTION | Room: Confederation II-III**

### **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.

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

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## 10:45 | 12:15 CONCURRENT SESSIONS

**Session I: RETAIL PRICING IN THE DIGITAL ERA: UNDERSTANDING THE COMPETITION ACT - PITFALLS AND OPPORTUNITIES | 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 discuss the Bureau's digital pricing consultations and review strategies and policies relating to retail pricing, including how to safely make ordinary price claims, when to engage in or resist resale price maintenance and how to avoid misleading or improper pricing practices in the digital era.

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

The Competition Act's new affiliation rules have changed the merger notification analysis; the Act now captures transactions that were not previously notifiable and exempts others that had been notifiable for technical reasons. Join our expert panel as they review the "before and after" notification analysis in a set of hypothetical transactions. The panel will also address a variety of other notification issues relevant to Canadian practitioners, including best practices in form-drafting, what you need to know for multi-jurisdictional merger control assessments, *Canadian Transportation Act* filing obligations, treatment of royalties, what is a "voting share", and much more.

**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.

**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: Interim Commissioner of Competition or Commissioner of Competition if appointed

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**14:00 | 15:15** PLENARY SESSION: TREB, AMEX AND THE FUTURE OF MONOPOLIZATION IN DATA-DRIVEN PLATFORM MARKETS | Room: Confederation II-III  
*(1.5 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? Will the Supreme Court of Canada agree to hear the TREB appeal and uphold the finding that the burden of proof on the Commissioner of Competition to prove anti-competitive effects in an abuse of dominance case can be met solely by adducing qualitative evidence? Are reforms required to the Competition Tribunal rules and processes to encourage a more efficient resolution? An expert panel will explore these timely questions.

**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.

**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.

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

The Trump administration in the United States and other governments around the world are taking broad interpretations of national security and blurring the lines between economic and national security interests. Such an approach is expected to affect foreign direct investment and the competitiveness of domestic and national markets. A panel of experts will demystify the approach to foreign investment and national security laws in the U.S., Canada, Europe and China and discuss how companies doing deals around the world can navigate these stormy waters.

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

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**18:30 | 22:00 DINNER | O’Borne 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: Twenty Two (22<sup>nd</sup> Floor)**

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

**Session I: COMPETITION LAW AND POLICY IN EMERGING INDUSTRIES | Room: Governor General I (1.5 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?

**Session II: ASSESSMENT OF NON-PRICE EFFECTS IN MERGERS – AN UPDATE | Room: Governor General II (1.5 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.

**Session III: COMPETITION IN THE CANADIAN TELECOMMUNICATIONS SECTOR | Room: Governor General III (1.5 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.

**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.

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

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**12:15 | 14:00 WOMEN IN COMPETITION LAW LUNCH | Room: Saskatchewan (Level 3)**

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