BILATERAL AND MULTILATERAL CO-OPERATION ON COMPETITION MATTERS

Speaking Notes

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Introduction

Canada is a strong supporter of international competition law and policy co-operation. Free Trade Agreements have brought Canada opportunities in terms of firms becoming more efficient through greater economies of scale, concentrating on specific markets or forming strategic alliances. Increased trade has also brought us increased risks in terms of firms colluding on a North American scale to fix prices, share markets, etc.

During the 1990’s we have witnessed an escalation in the number of multinational conspiracies and mergers involving more than one jurisdiction. It is clear that a high degree of co-operation among antitrust agencies is necessary for effective competition law administration and enforcement.

Greater enforcement co-operation is essential in helping to ensure that private anti-competitive business practices do not replace the tariff and non-tariff barriers that have been reduced through the successive rounds of multilateral trade liberalization efforts and through bilateral agreements. I expect the same will be true for a potential Free Trade Area of the Americas (FTAA) agreement.

Benefits of Bilateral Co-operation

Bilateral co-operation creates synergies by providing alternative perspectives, investigative techniques and approaches. It creates a wider “pool” of information relevant to a particular matter. Co-operation can increase the diversity of the information available to investigators and adds to the efficiency of the merger review process. Finally, cross-border co-operation can help to eliminate the shield of the international border for offenders; this is particularly true in the case of deceptive marketing practices affecting consumers, such as illegal telemarketing.

Indeed, mutual assistance through our co-operative agreements can be an effective method of advancing investigations in cases where, in the past, evidence would have been beyond reach. We have been able to open up the lines of communications between our organizations, leading to discussion of case theories and market definition in merger matters. In past criminal cases involving conspiracies or deceptive marketing practices, we have shared evidence, coordinated formal search and seizure actions and have coordinated and conducted parallel investigations. We hope to see an increase in the number of coordinated...
investigations and expanded use of the sharing arrangements in place in order to so achieve even more success when competition issues cross our borders.

Canada’s Current Co-operation

Through regular communication between organizations, bilateral cooperation in Canada has included the following:

- discussions of case theories and market definitions;
- joint Internet sweeps to detect deceptive marketing practices;
- sharing information and evidence subject to confidentiality laws;
- coordinated searches; and
- conducting coordinated investigations.

MLAT with US

In 1990 the governments of Canada and the United States signed the Mutual Legal Assistance Treaty (MLAT) that allows law enforcers in both countries to request formal assistance from the other party, relating to criminal activity, including criminal competition law matters. This treaty provides for the collection, and subject to confidentiality safeguards, the sharing of information with the other agency, which can facilitate parallel investigations.

Bilateral Co-operation Agreements

In 1995, our former MOU on notification, consultation and co-operation with respect to the application of national anti-trust laws was replaced by a broader co-operation agreement known as the Agreement between the Government of the United States of America and the Government of Canada Regarding the Application of their Competition and Deceptive Marketing Practices Laws. This agreement expanded the scope of cooperation to include marketing practices offences and has allowed our agencies to notify, consult, and co-operate with each other to address anti-competitive activity that affects both or either country.

Earlier this year, Canada and the EU signed a similar co-operation agreement. We also co-operate with other OECD members pursuant to the OECD’s Revised Recommendation Concerning Co-operation Between Member Countries on Restrictive Business Practices and International Trade. These co-operation arrangements allow for informal co-operation, but provides no specific mechanisms for sharing confidential information protected under each party’s laws.

Co-operating on Criminal Cases

Our investigations of cartels involving foreign interests have more than tripled over the last four years and cross-jurisdictional deceptive marketing practices are more prevalent, demonstrating the need to foster even closer co-operative relations. At any given time, we have several such investigations underway, and we continue to work co-operatively with our sister agencies.

Co-operating on Mergers and other Non-Criminal matters

The current proliferation of horizontal multinational mergers requiring review by national or regional competition authorities again reinforces the need for enhanced international co-operation and coordination. Often, we have
valuable exchanges with our US, Mexican, and European counterparts, discussing issues such as product market definition, entry conditions and in some cases our dialogue has followed through to the remedial stage.

Discussions, without disclosing confidential information, can occur regarding:

- the dynamics of particular industries
- background industry information
- principal economic theories
- approaches to assessing markets
- theory of particular cases
- specific plans of, or approaches to investigations
- economic issues in our advocacy work.

Sharing Confidential Information

Necessary confidentiality laws can limit our ability to cooperate with foreign competition authorities. However, the Bureau can provide non-public investigative information if it is for the purpose of the administration or the enforcement of the Canadian Competition Act. Providing information must further a specific inquiry, file or matter. We cannot use waivers to override confidentiality protections in Canada, but these have been a useful way for some foreign agencies to share information with us.

Multilateral Competition Frameworks

Bilateral co-operation is essential, but does not solve all of our concerns. On the multilateral front, we believe that both the WTO and the FTAA should play an important role.

Rather than continuing to allow the haphazard approach to competition policy that we have seen in recent WTO agreements, we believe that members should work toward establishing a sound multilateral competition framework at the WTO to advance competition policy internationally.

The Commissioner has advocated the development of a multilateral framework agreement at the WTO where countries would adopt a sound competition law, with appropriate scope and independence in investigation and adjudication; a commitment to the principles of transparency, non-discrimination and procedural fairness; access to effective deterrents; an advocacy role for the competition authority; protection of confidential information; common substantive approaches to private conduct, such as cartels, abuse of dominance and anti-competitive mergers, that directly and adversely affect opportunities created by trade and investment liberalization; and, mechanisms to facilitate and foster co-operation between competition authorities. We advocate that a similar framework agreement on competition policy be established within the FTAA.

We believe that support mechanisms, such as a peer review process, will be critical to the successful implementation of an agreement. Finally, a coordinated technical assistance program which builds the capacity of developing countries will be essential to ensure that developing and emerging economies are treated as full and equal partners and will realize the benefits of an agreement. With these measures in place, framework agreements on competition within the WTO or FTAA will foster a global culture of competition, facilitate co-operation amongst competition authorities, and will help members reap the benefits of trade liberalization.