



**The *Competition Act* and Business Activity:  
Misleading Advertising, Price Maintenance  
and Compliance Programs**

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**GARDINER ROBERTS**

## **An Introduction to the *Competition Act***

### **Four Major Areas of Economic Activity Regulated by the *Competition Act***

#### 1. Agreements between Competitors

- Offences
  - Section 45 - conspiracies, agreements or arrangements
- Reviewable Matters
  - Section 90.1 - competitor collaboration

## 2. Deceptive Marketing Practices

- Offences
  - Section 52 – misleading advertising
  - Section 52.1 – deceptive telemarketing
  - Section 55 – multi-level marketing
  - Section 55.1 – pyramid selling
- Reviewable Matters
  - Section 74.01 - misleading advertising, ordinary price claims
  - Section 74.04 – bait and switch selling
  - Section 74.05 – sales above advertised price
  - Section 74.06 – promotional contests

## 3. Unilateral Conduct

- Section 79 – abuse of dominance
- Section 75 – refusal to deal
- Section 76 – price maintenance
- Section 77 – tied selling, exclusive dealing, market restriction
- The role of private plaintiffs – section 103.1

## 4. Mergers

- Sections 91, 92 – all mergers reviewable by the Commissioner of Competition
- Application to the Competition Tribunal
- Based on a substantial lessening or prevention of competition (“SLPC”)
- Which has occurred or is likely to occur because of the merger
- Notifiable Transactions – Part IX
- Financial Thresholds – sections 109, 110

## *Competition Act*

- Assets in Canada or Annual Gross Revenues from sales in, from or into Canada of Parties and Affiliates – at least \$400 million (CDN)
- Assets in Canada of an Operating Business or Annual Gross Revenues from sales in or from Canada generated from those assets - \$82 million (CDN) for 2014

### Other Parties and Actions

- Section 36 – Recovery of Damages for certain breaches of the *Competition Act*
- Class Action Litigation

## **Misleading Advertising**

- What is Misleading Advertising?
  - *Maritime Travel Inc. v. Go Travel Direct.Com Inc.*, [2008] N.S.J. No. 224
- Criminal or Civil Case
  - Competition Bureau Information Bulletin - *Misleading Representations and Deceptive Marketing Practices: Choice of Criminal or Civil Track under the Competition Act*
- Private Parties Claim for Damages – *Competition Act*, s. 36 – *Maritime Travel*
- Social Media
- Other Government Agencies and Industry Groups

## **Price Maintenance**

- What is Price Maintenance?
- Common Situations
  - Minimum Resale Pricing, Manufacturer-Suggested Retail Pricing (“MSRP”), Minimum Advertised Pricing (“MAP”)
- Pro-Competitive Effects of Price Maintenance
- Adverse Effects of Price Maintenance on Competition
- Adverse Effect on Competition in a Market
  - Market Definition
  - Market Power
- Private Enforcement - *Competition Act*, s. 103.1



## **Competition Law Compliance Programs**

- Competition Bureau Compliance Initiatives
- Not Required, but ...
- Why Businesses should have a Corporate Compliance Program
- Even Me? Yes, even SME
  - Tailored and Scalable Compliance Programs
- The Seven Elements of a Credible and Effective Corporate Compliance Program