



Canadian Cartel Enforcement



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Canada


Canada's Anti-Cartel Provisions

- Criminal Anti-Cartel provisions:
 - Conspiracy
 - Economic effects (undue lessening of competition)
 - Bid-rigging
- Bifurcated Model
- Organizational Structure
 - Regional network






Recent Conspiracy Legislative Amendments

- Need for reform
 - Two-track (criminal/civil) approach to agreements between competitors
 - Price fixing, market allocation and output restriction agreements prohibited on a per se standard
 - Other agreements subject to civil provision and assessed for harm to competition
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Recent Conspiracy Legislative Amendments (cont'd)

- Increased penalties
 - Maximum fine: \$25 million (from \$10 million)
 - Maximum prison term: 14 years (from 5 years)
 - Implementation of necessary processes
 - Competitor Collaboration Guidelines
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Amendments: Bid-rigging

- Came into force March, 2009
- Agreements to withdraw a bid now prohibited
- Increased penalties
 - Maximum prison term: 14 years (from 5 years)



Formal Evidence Gathering Powers

- Search and seizure (s. 15 and 16)
- Interception of electronic communications: wiretaps (*Criminal Code*)
- Section 11 Orders (subpoena powers, oral hearings)
- Mutual Legal Assistance Treaties (MLATs)



Immunity Program

- Majority of cartel cases arise out of immunity applications
- Revised in 2007
- Bureau will recommend that the Director of Public Prosecutions (DPP) grant immunity to the first business organization or individual to come forward and cooperate



Leniency (penalty reduction)

- Applicants are encouraged to seek lenient treatment when immunity is not available
- Draft Bulletin on Sentencing and Leniency
 - Transparent and predictable approach
 - Shift emphasis from an investigatory process to rapid settlements
 - Based on “good faith” representations
 - Can result in reductions up to 50% on fines and no charges against individuals
 - Pending MOU with Public Prosecution Service of Canada





Smaller Agency Challenges

- Priority Setting
 - Combating domestic cartels
 - Case triage
- Balanced approach to international cartel enforcement



Case Example: Air Cargo

- Investigation of Conspiracy by international air cargo carriers
- Immunity applicant first disclosed matter to the Bureau
- Four companies have pleaded guilty receiving lenient treatment
- More than \$10 million in fines
- Investigation continues



Case Example: Gasoline

- Investigation of retail gas stations who conspired to fix prices in local communities
- Investigative tools used:
 - Monitoring media, searches, surveillance work, wiretaps, interviews, immunity/leniency programs
- The matter is currently before the courts
 - To date, fines totalling over \$2.7 million, 4 individuals sentenced to terms of imprisonment totalling 44 months



Promoting Competition

- Compliance Strategies
 - Conformity Continuum
 - Bid-rigging Outreach
 - Proactive Intelligence



Promoting Competition (cont'd)

- Work with other agencies
 - Bilateral meetings
 - Employee exchanges/internships
 - Technical assistance
- International Fora
 - ICN



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