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SPEAKING NOTES

for

**Sheridan Scott
Commissioner of Competition**

COMPETITION BUREAU

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(Check against delivery)

I want to begin by saying how pleased I am to meet with the members of the American Bar Association here in Canada. Our Bars, like our countries, have long and enriching histories of cooperation and your decision to venture north in the middle of our winter demonstrates both a commitment to continuing this relationship, and a considerable spirit of adventure.

Of course, you are not the first Americans to think of venturing north. One John Adams had aspirations some 230 years ago. While serving as a delegate to the Continental Congress, he commented:

“The Unanimous Voice of the Continent is “Canada must be ours; Quebec must be taken.””

I don’t know where we would be meeting if he had realized this ambition, but the fact is, he did not, and the result is that Canada and the United States benefit from dialogues such as the one here today.

We are meeting in a unique building, the product of an amazing construction achievement. Let me quote from the official history: “In February 1930, the site where Fairmont Le Château Montebello now stands was just a clearing in the woods. Four months later, the massive cedar chateau was erected ... Craftsmen used 10,000 giant cedar logs to build the resort's three main buildings, all cut and set by hand.”

This feat represented the translation of the dream of an individual into the coordinated efforts of many. They managed this without email, cellphones, and the internet. And while they had no Blackberries they did have black flies to distract them.

Despite such challenges, they formed the necessary partnerships and relationships to, as Captain Picard would say, ‘make it so’.

We should be inspired by this feat; the rapidly changing and challenging business environment requires that we work together in our competition agencies, amongst our agencies, with other law enforcement bodies, and with the Bar, business, and consumer groups.

So today, I am going to focus on areas where we are working on partnerships for more effective enforcement of our *Competition Act*.

In fact, the timing and location of this meeting seem particularly propitious for me to talk about one recent development in Canada, and a new direction we are taking in our work.

This whole region of Canada was, of course, first the home of aboriginal North Americans. But with the arrival of the Europeans, it was exploited first as a source of fur - the famous traders, the *coureurs du bois*, passed by and probably camped and trapped on this very site. But the second stage of economic development was based on wood. Even today, this region features a range of major timber and paper manufacturers, and the industry as a whole contributes about 4% of Canada's GNP.

As a result, the announcement two weeks ago of a major cartel decision involving the paper industry made headlines across the country. Cascades Fine Papers Group Inc., Domtar Inc. and Unisource Canada, Inc. each pled guilty in the Superior Court of Justice in Toronto to two counts of conspiring to lessen competition unduly contrary to section 45 of the *Competition Act*. Each company was sentenced to record fines of \$12.5 million for their part in the domestic conspiracy of carbonless sheets. A prohibition order was issued against the companies.

I want to draw special attention to an important element of the decision: key personnel involved in the conspiracy will be removed from their positions in the paper merchant business and are to be demoted, if still employed at all. Each of the companies will undertake a program to ensure

that all of its officers and directors, and employees in this line are aware of the company's commitment to the *Competition Act*, are aware of the Act itself, and know of the consequences to their colleagues from this breach. For three years, each company must provide written proof of compliance with the prohibition order. For five years, each company must also provide any additional information or records requested by the Commissioner for the purpose of monitoring compliance.

This decision clearly puts corporate executives and employees on notice that they are personally accountable for their actions. Yes, companies must be held responsible for the actions of their employees. They have a duty to take all steps to ensure compliance with the law. But that cannot replace the responsibility of individuals in decision making positions for their own actions. They have assumed positions of authority - they must accept with this a degree of corporate and personal accountability.

This decision was important in another way - it demonstrates that we are going to take domestic cartels very seriously.

Now for the US, success in prosecuting domestic cartels may be old hat. But in Canada, we have recently had much greater success dealing with international cartels than domestic ones. It's time to balance that equation. Last year, I made the pursuit of domestic cartels one of the Bureau's priorities along with an issue that you may have heard me discuss before - mass marketing fraud.

So what does this have to do with partnerships? Well, domestic cartels and mass marketing fraud are different in some respects, but they are similar in that to detect and fight them, you often need excellent intelligence which can come from local contacts and partnerships. This requires what we in the Competition Bureau call our *feet-on-the-street*.

In a country as broad and diverse as Canada, you cannot sit in Ottawa and pretend to know what's happening in markets across the land. So we are now in the process of re-focussing the activities of our regional offices on these two priorities. This of course means some reallocation of resources and operations to begin with. And training is a key ingredient.

But even more critically, in these offices we will be reaching out to the communities, cultivating broader contacts, and most importantly, nurturing our on-site relationships with local law enforcement officials, the business community and other levels of government. In particular, local partnerships with local law enforcement agencies are essential to build trust and cooperation in pursuing cases, to ensure our credibility with local officials, and to leverage our combined resources to the greatest effect possible.

While we are putting feet on the street, we are not losing sight of the bigger picture. A few years ago, the business paradigm was to act local but think global. But that is inadequate for dealing with mass marketing crime and cartels which, as often as not, cross not just regions but borders and continents. So we are going to continue to think global, act local, and partner everywhere.

Which of course leads me to the subject of international cooperation, a critical issue for all competition agencies.

I covered the range of partnerships we are pursuing in the international arena in a speech last year, including our efforts at cooperation, which includes our international agreements for enforcement. I also spoke about our commitment to coordination and the cornerstone questions of comity in this regard. And finally, I talked about our efforts to obtain convergence in international practices and legal approaches to facilitate improved enforcement and international

trade and investment.¹

I won't repeat that speech today, you may be relieved to hear. But I do want to draw your attention to a few recent developments that highlight forms of cooperation and partnership that make for effective law enforcement.

The first is indeed a first - in November of this year, we held the inaugural trilateral meeting of Canadian, US and Mexican competition authorities pursuant to our respective bilateral antitrust cooperation agreements. This meeting is just one example of how we are reaching out to form specific alliances with key partners. In fact, last year we also signed a cooperation agreement with our Japanese counterparts, and we are currently in discussions with South Korea.

We are also partnering 'on the ground' for better enforcement. For example, fraudulent mass marketing is a serious problem, which undermines consumer confidence and drains billions from legitimate markets around the world. It cannot be solved by law enforcement alone. Consumers must be educated so that they are less likely to be fooled.

So we are partnering to reach consumers through the Fraud Prevention Forum (FPF), which is chaired by the Bureau. The Fraud Prevention Forum is a group of leading businesses, consumer and volunteer groups, government and law enforcement agencies, who are committed to fighting fraud through prevention. I am very pleased that our counterparts in the U.S. Department of Justice and the Federal Trade Commission have been active members in the FPF, since its inception.

¹**“C” is for Competition: How we get things done in a globalized business world”**

Speaking Notes for Sheridan Scott, Commissioner of Competition, Insight Conference, Montreal, Quebec, June 17 2005: http://www.competitionbureau.gc.ca/PDFs/insight%20speech_eng.pdf

This partnership, which has grown to almost 70 members, is on the move internationally. In February 2005, 17 members of the International Consumer Protection and Enforcement Network (ICPEN) promoted “Fraud Awareness Month” in their own countries. ICPEN members have recently agreed to participate on an annual basis and this year’s public awareness campaign will take place in March. Partners will use various channels to educate millions of consumers about the dangers of fraud, how to “Recognize it, Report it and Stop it.”

The FTC, US Postal Service, the Office of Fair Trading, along with the RCMP, local police, the Competition Bureau and others such as Provincial consumer ministries, are also engaged in enforcement partnerships aimed at fraudulent telemarketing. These partnerships have been very successful. As Steve Baker of Chicago, director of the FTC's Midwest region noted in a recent article: "The Canadian experience is kind of our laboratory. It's teaching us lessons that we are now using all over the world." He cited the Toronto Strategic Partnership as particularly successful. According to the story, the FTC has filed civil or criminal actions in 18 large fraud cases involving hundreds of thousands of American consumers and businesses and tens of millions of dollars.

The challenge of the internet is being tackled directly. The FairWeb Project is the Bureau’s first dedicated program aimed at combatting deceptive and misleading advertising on the Internet - health related claims are a particular concern. Because many web sites are registered in the United States, we ensure that the FTC is notified when we have concerns about a claim. In turn, the FTC sends an information letter to the targets. In a number of cases, targets located in the United States have responded and/or removed the questionable claims from their web sites.

This can go beyond voluntary compliance. In a recent enforcement action, acting on information obtained under the “Button Pusher Spam Sweep” from the U.S. Federal Trade Commission (FTC), the Bureau commenced an inquiry into the marketing practices of, and filed four consent agreements against several individuals involved in the sale and promotion of a bogus product

called Fuel Saver Pro, which claims to increase fuel efficiency and reduce emissions.

Clearly, cooperation pays off in better enforcement.

That, of course, is part of the *raison d'être* of the ICN. The ICN is making a real difference in the way the world thinks about and enforces competition policy. And its work is evolving along lines which focus on issues of practical enforcement questions, sector specific issues and more complex, and at times contentious policy areas.

The enforcement related work has been progressing along key lines, beginning with mergers and then moving on to Cartels. And the work is very practical. For example, the ICN Cartel Working Group, Subgroup 2 helped organize cartel workshops in Sydney and South Korea which brought together cartel investigators from more than 30 jurisdictions to discuss investigative techniques, including immunity, search and seizure, electronic evidence gathering and interviewing. Workshops have also explored more general issues relevant to cartel investigations, such as obstruction, calculation of fines and alternatives to fines, and effective institutions and training.

The ICN is now beginning discussions of the difficult and at times divisive issues related to monopolization or abuse of dominance. As you know, this is the subject of considerable differences across the anti-trust world, and the EU has launched a major review of its practices. I expect the work of this group to be both challenging and productive.

Enforcement aside, the ICN is also able to take on sector specific issues. I have been pleased to be co-chairing a Working Group on telecommunications - a key sector for all economies which is in most cases emerging from a fairly staid, tightly regulated natural monopoly into a competitive market with rapid innovation and new entrants and products. The working group is

looking at the state of competition in the sector in developing jurisdictions and will provide some guidance to assist members in their work.

Finally, I want to highlight the work the ICN is doing to promote more effective outreach to consumers and now businesses. This has been particularly useful for competition agencies in developing or transition countries, where the competition and regulatory framework is relatively young. In 2003, an “advocacy toolkit” was produced, including elements on promotion mechanisms, educating decision makers, media relations, plain language, internal communications, web sites, and research and consultation.

As an aside, I should say that I am very impressed with the work that the ABA is doing in helping to reach out to the business community, especially in the context of compliance training. Spreading an understanding of anti-trust law and the importance of compliance is a very valuable function. As Don (Klawiter) said in a recent e-mail, you are on the “front lines” of ensuring compliance with the law, and believe me, compliance is far better than enforcement any day.

Creating and maintaining such constructive partnerships among law enforcement agencies, whether domestically or internationally, is not unlike the challenge of fostering a relationship amongst members of the same family - yes, there will be differences of views and occasional spats, but the common interests usually bring all back together.

But establishing relationships with the business community is another question entirely. This will never be a familial type of relationship - unless you are thinking of a very distant family member - but I believe we can improve our relationship to one of greater mutual understanding and respect.

When I arrived at the Bureau, I recognized that the staff are an extraordinary resource, with

individual knowledge and understanding of many sectors of the economy based on past enforcement and advocacy work. But there were causes for concern as we faced the inevitable challenges of staff turnover, changing business environments and ensuring consistency in our efforts.

As part of our response, we have created a set of ten sector teams, covering broad swatches of the economy and drawing membership from across the enforcement and analytical units of the Bureau. These teams are tasked with developing and maintaining an understanding of the sectors and awareness of factors affecting the marketplaces they serve. This work will serve to ensure that our enforcement and advocacy work is based on a broader understanding of market conditions and business factors, and that we know who the key players are across the economy.

We are also meeting with business people in what we call sector days. Sector Days are designed to allow a structured interaction between the Bureau and business groups to discuss key issues, and especially how the forces of globalization, technology and regulation are shaping their businesses. We craft each day to meet the needs and potential engagement of each sector.

To date, we have met with life insurance, telecom and cable, e-commerce, and forestry sectors, and additional meetings will be held in the coming months.

Of course, we cannot stop with business groups. We also have regular meetings with the key consumer groups in Canada to hear about their concerns and to insure they are well informed about the Bureau and competition policy generally. These groups can also play a crucial role in enabling us to reach out to, and educate the public - and this is essential because an informed and alert consumer is the ultimate, and perhaps only safeguard against mass market fraud.

I know I have covered a lot ground here today - or as the fur traders would have said, shot a lot

of rapids.

But let me leave you with one more historic fact about this site. Before the fur traders came up the Ottawa River, they were preceded by other intrepid types, including Samuel de Champlain. He came seeking, amongst other things, a North-west passage to China.

Today, we live in a world where we no longer seek China - it has found us. And one of the reasons I am so committed to ensuring that competition remains strong in Canada is that competition will power the innovation and investment that ensures that we are able to meet the challenges from China and other countries.

We need effective, informed and modern competition policy and enforcement if we are to succeed. And that brings up the last partnership I want to mention today... the partnership among our competition Bars and our Agencies.

I have greatly enjoyed and benefited from the links we have with the Bars in both countries. Despite John Adam's continental ambitions, this is typical of Canada/US relations. As President Truman noted in a speech to the Canadian Parliament:

Canadian-American relations for many years did not develop spontaneously. The example of accord provided by our two countries did not come about merely through the happy circumstance of geography. It is compounded of one part proximity and nine parts good will and common sense.²

He may well have been talking about the relationships we are enjoying here today - we certainly

² President Harry S. Truman, 1947, Address to Canadian Parliament.

have the proximity, good will and common sense that he observed almost 60 years ago. And I know it will serve us well into the future.

Thank you.