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SPEAKING NOTES

for

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Commissioner of Competition

COMPETITION BUREAU

Fuel / Gasoline Prices in Canada

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(Check against delivery)

Thank you Mister Chair and members of the Committee for inviting me here today. I am accompanied by Richard Taylor, Deputy Commissioner for the Civil Matters Branch and Peter Sagar, Deputy Commissioner for the Competition Policy Branch. We welcome this opportunity to discuss the Competition Bureau's role with respect to the issue of gasoline prices.

I am aware of the concerns that Canadians have with record-high prices for gasoline. This Tuesday, I had my regular meeting with eight different consumer groups and this topic was at the top of all their lists of key consumer issues.

In the wake of Hurricane Katrina, the Competition Bureau has closely followed wholesale and retail gasoline prices to ensure they are consistent with current market forces and not the result of anti-competitive acts. In light of the volatility in gas prices, we will continue to follow them closely so we completely understand their causes and can determine whether further action under the *Competition Act* is warranted.

We are doing this in the context of the Bureau's overall objective to ensure an efficient and competitive marketplace which provides consumers with competitive prices and encourages companies to innovate and offer new product choices.

We administer and enforce the *Competition Act*, which includes criminal provisions against price fixing and price maintenance, and civil provisions dealing with mergers and abuse of dominant position, among others.

All of these provisions apply to gasoline and other petroleum product markets.

And they are the basis of many of the complaints we receive. In particular, the Bureau typically receives two types of gasoline price complaints.

High price complaints, usually from consumers, allege collusion or joint abuse of dominance by the major oil companies. Complainants often point to significant price increases, similar prices, synchronized price changes or excessive profits as evidence of these acts. Complaints received from retailers may also relate to high prices where suppliers are forcing retailers to maintain specific prices or to inflate prices in an anti-competitive manner. This is what we consider to be price maintenance.

With respect to high prices, I should add that I have also heard many complaints of price gouging. High prices and profits, including those which occur during volatile market conditions, are not contrary to the *Competition Act*. Only those that are the result of agreements among competitors to artificially fix or raise prices are prohibited under the criminal conspiracy provisions of the Act and this is strictly enforced at all times.

As opposed to high price complaints, we also hear complaints of low prices. These complaints which allege price discrimination, predatory pricing or squeezing, come from independent retailers who feel that the integrated petroleum companies are engaging in activities that do not allow them to compete in the market.

The Bureau reviews all of these complaints that may fall within the *Competition Act* and has always been prepared to investigate and take enforcement action pursuant to the Act whenever appropriate.

And we have acted when warranted. Bureau investigations have led to 13 trials concerning price maintenance cases related to gasoline or heating oil prices. Eight of these trials resulted in convictions.

To assist in this work, we have the tools to investigate anti-competitive conduct that may arise in the petroleum sector or any other sector of the economy. Our investigative tools include:

- the subpoena power;
- the power of search and seizure;
- the ability to wiretap;
- the immunity program; and
- the whistleblowing provisions of the Act.

The Bureau has also dealt with competition problems that could arise from proposed merger transactions.

For example, in 1990 we asked Imperial Oil to divest a refinery, terminals and hundreds of retail gasoline outlets throughout Canada following its merger with Texaco. More recently, in 1998 Petro-Canada and Ultramar abandoned an attempt to form a joint venture following a challenge by the Bureau.

I would note that during the last 20 years there has not been any significant increase in concentration at the refining level in Canada. A number of international mergers have occurred but they did not increase concentration in Canadian markets.

Since 1990, the Competition Bureau has conducted five major investigations related to the gasoline industry and each time issued a comprehensive report describing our findings. In these, we found no evidence to suggest that periodic price increases resulted from a national conspiracy to limit competition in gasoline supply, or from abusive behaviour by dominant firms in the market. Indeed, following each price spike, market forces caused prices to return to historic levels. For example, our latest examination found that increases in retail gasoline prices in the spring and summer of 2004 did not result from a breach of the *Competition Act* but resulted from low inventories of gasoline in North America and worldwide increases in the price of crude oil. We found no evidence to suggest that the rapid rise in retail gasoline prices resulted from a national conspiracy to fix prices.

In fact, based on our experience and recent analysis, we have formulated three general observations about the movements of gasoline prices.

First, crude price has a major effect on gasoline prices as it typically accounts for between 70% to 75% of the ex tax final selling gasoline price. In 2005, crude oil prices per barrel have increased by 44%. **(See slide 1)**

Second, since crude prices are determined internationally, we have observed similar effects on retail prices in Canada and around the world in 2005. **(See slide 2)**

Third, Canadian wholesale prices normally track those in the U.S. closely. **(See slide 3)**

These findings are consistent with the results of numerous studies conducted by our counterparts throughout the world who have generally arrived at the same conclusions.

This is just a sample of our recent activities in relation to the gasoline sector. I have appended to my notes a complete list of actions since 1986. This list is also available on the Bureau's Web site, www.competitionbureau.gc.ca. Consumers can also find a fact sheet about gasoline prices on our home page.

But that is in the past, and you are interested in the present. And for good reason. Retail prices increased from 76.0 cents during the first week of January 2005 to 101.9 cents per litre in the week prior to Hurricane Katrina. Then prices skyrocketed to a new record-high average of $1.26 per litre in Canada during the week of September 6. Since then prices have partially declined. **(See slide 1)**

Such rapid price increases can be caused by a number of factors including increases in the price of crude oil, the major cost component in a litre of gas, shortages of refined product and speculation. So far, publicly available information indicates that the rapid price increases in Canada are the result of serious shortages in the U.S. supply of refined gasoline due to damage to gasoline production facilities caused by the hurricane.

However, in this time of market turmoil, it is important to ensure that prices reflect market forces and not actions contrary to the Act. As a result, the Bureau continues to watch this market closely and to analyse petroleum price movements both in Canada and around the world, particularly in the U.S..

The Bureau’s efforts notwithstanding, it is clear that consumers are not convinced that this market is functioning well. During the meeting I had with the different consumer groups on Tuesday, they told me that their members have difficulty understanding the cyclical gasoline price movements -- for example, why prices rise and fall so much over time and why they are nearly identical across towns but may differ significantly between towns at any one time.

Clearly, there is an opportunity for the industry to provide more relevant information to the public that would allow for greater transparency in how gas prices are set.

And there is some room for improvement in my backyard. As I indicated earlier, the *Competition Act* provides the Bureau with a broad range of tools to investigate anti-competitive conduct. However, room for improvement exists to ensure that the Act provides strong incentives to promote pro-competitive business practices in today's environment. Bill C-19, which is currently under review by this Committee, will strengthen the current law to effectively deter anti-competitive practices in all industries, including the gasoline industry.

In terms of complaints dealing with high gasoline prices, Bill C-19 addresses joint dominance issues. The proposed legislation will increase deterrence by adding an administrative monetary penalty to a maximum of $10 million. This is significant as there are currently no financial consequences for abuse of dominance or joint abuse of dominance cases.

In terms of low price complaints, Bill C-19 will decriminalize the pricing provisions and place them under abuse of dominance where they will be subject to the new administrative monetary penalty provision and a civil burden of proof. The current criminal price discrimination and predatory pricing provisions are complex due, in part, to the economic evidence required under a criminal burden of proof beyond a reasonable doubt.

I would welcome the opportunity to return before this committee and reiterate my support for this vital piece of economic legislation.

In closing, I want to stress that should the Competition Bureau obtain any evidence of conduct contrary to the *Competition Act*, we will not hesitate to take appropriate action.

Again, I appreciate having been asked to appear before you today. I would now be pleased to answer any questions you may have.