



Competition Bureau  
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## **SPEAKING NOTES**

**for**

**Sheridan Scott  
Commissioner of Competition**

**COMPETITION BUREAU**

***Bill C-19, An Act to amend the Competition Act  
and to make consequential amendments to other Acts***

**Standing Committee on Industry, Natural Resources, Science and Technology  
Ottawa**

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**(Check against delivery)**

Thank you Mr. Chair and members of the Committee. Before I begin, I would like to introduce my colleagues. I am accompanied today by David Fransen, Assistant Deputy Minister and Richard Taylor, Suzanne Legault and David McAllister, of the Competition Bureau.

I am very pleased that in my first appearance before you, as Commissioner of Competition, I participate in deliberations on Bill C-19, *An Act to amend the Competition Act and to make consequential amendments to other Acts*.

The *Competition Act* is a vital piece of Canadian legislation affecting virtually all industry sectors. Its purpose is to ensure that all Canadians enjoy the benefits of a competitive economy. By this I mean competitive prices, product choice and quality services.

This legislation will strengthen Canada's competition framework in a global economy to benefit both consumers and businesses.

I am particularly pleased to be here because many of the proposals before us today originated in discussions around this committee table. In particular, the Committee's 2002 Report, *A Plan to Modernize Canada's Competition Regime*, recommended significant changes to the *Competition Act* (Act), including proposals to:

- strengthen the civil provisions;
- repeal the criminal pricing provisions; and
- return the Act to a law of general application by repealing the airline-specific provisions *provided* that we add a general regime with sufficient deterrence to achieve compliance.

Bill C-19 responds directly to these recommendations, Mr. Chair.

This legislation follows extensive consultations conducted by the Public Policy Forum, on behalf of the Government. A wide-range of stakeholders, including large and small businesses, consumers, economists, legal experts and others, took part by providing written submissions or participating in technical roundtables held across Canada.

The input we received in the course of our consultations has helped to ensure that the package you have before you will contribute to a modern Competition regime in Canada, and balance the interests of both consumers and businesses consistent with the objectives of the Act. The proposals include:

- providing authority for the Commissioner of Competition to seek restitution for consumer loss resulting from false or misleading representations;
- introducing a general administrative monetary penalty provision for abuse of dominance in any industry;
- removing the airline-specific provisions from the Act to return it to a law of general application;
- increasing the level of administrative monetary penalties for deceptive marketing practices; and

- decriminalizing the pricing provisions.

Let me speak to each of these proposals in turn:

### **Restitution**

I will begin with restitution.

Consumers require accurate information to make purchasing decisions. Otherwise, they will lose confidence in the marketplace. This proposal will encourage companies to be accurate in their claims. Bill C-19 will enable consumers to get up to the amount paid for a product if they have been duped by false claims.

In today's marketplace, many businesses aggressively promote their products to consumers. The purpose of this amendment is to help to ensure that consumers benefit from accurate information in terms of advertising and that other businesses are not harmed by misleading claims made by their competitors. I would note that consumers could include businesses who may also suffer from misleading representations by their suppliers.

The OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders, which were adopted in June 2003, recommend that Member countries work to develop a framework for closer, faster and more efficient co-operation amongst their consumer protection enforcement agencies. This includes considering how to ensure effective redress for victimized consumers.

Mr. Chair, this proposal addresses this OECD recommendation and will bring our regime into line with those of other countries, such as the United States and Australia, who have a restitution remedy.

In order to preserve the rights of consumers for restitution, a complementary measure included in the Bill is the power to "freeze" assets. This would be used in situations where there is a risk that the assets necessary to repay consumers will disappear.

### **Administrative Monetary Penalties**

I would like to turn now to administrative monetary penalties.

As many of the Committee members will know, the *Competition Act* includes provisions which are intended to prevent companies from abusing dominant market positions to reduce or prevent competition substantially. This is a cornerstone provision of competition policy but, at present, except for airlines, there are no financial penalties when companies abuse their dominant position. Currently, the only consequence for such behaviour is an order from the Competition Tribunal requesting an end to the practise or requiring a structural change, such as a divestiture.

Bill C-19 would introduce an administrative monetary penalty, or AMP, for companies that have abused their dominant market position. AMPs would be applicable to all sectors and industries, without exception. I am convinced that the inclusion of AMPs will encourage businesses to comply with the Act to preserve Canada's competitive marketplace.

This remedy targets one of the most harmful anti-competitive practices for the Canadian economy.

It is also important to note that the introduction of AMPs will bring our competition framework in line with many other countries. At the moment, Canada is one of the few countries that does not provide for financial penalties for companies who abuse their dominant position.

### **Airline-Specific Provisions**

Bill C-19 also proposes to remove the airline-specific provisions from the Act.

The *Competition Act* is a law of general application. Notwithstanding that fact, you will recall, Mr. Chair, that airline-specific provisions were introduced in 2000 and 2002 to address a very particular situation following the merger of Air Canada and Canadian Airlines. As a result of the merger, Air Canada accounted for 90% of domestic passenger revenues and in excess of 80% of domestic passengers carried. As such, the Government concluded that the Act should be strengthened in order to ensure that Air Canada did not abuse its dominant position.

Today the situation is very different. Several changes have arisen since the merger of Air Canada and Canadian Airlines.

Firstly, the domestic market share of Air Canada has greatly declined and consequently competition in the Canadian airline industry has improved significantly. We have recently seen the entry and growth of low cost carriers, with their competing loyalty programs. The growing importance of the Internet as a means of distributing tickets and the changing role of travel agents are also significant changes to the airline industry.

Given these changes and the introduction of AMPs applicable to all industries, I believe that specific airline provisions are no longer required in the Act.

This means the Act will once again be a law of general application, as recommended by the Industry Committee in its 2002 report.

### **AMPs – Deceptive Marketing Practices**

Let me speak next about AMPs for deceptive marketing practices.

Currently, a court may impose an AMP if it finds that a company has engaged in deceptive marketing practices. But the maximum AMP is too low, when considering the potential magnitude of profits that

can result from deceptive marketing practices and the negative impact that misleading information can have on consumers' confidence in the marketplace.

Increasing the maximum AMP for corporations to the same level as that proposed for the abuse of dominance provision, \$10 million, would provide appropriate incentives to comply with the Act and deter deceptive marketing practices.

### **Pricing provisions**

Finally, Mr. Chair, Bill C-19 would decriminalize the pricing provisions dealing with price discrimination, geographic price discrimination, predatory pricing and promotional allowances.

The introduction of AMPs paves the way to decriminalizing the Act's pricing provisions. Repealing the criminal pricing provisions will result in pursuing these matters under a civil regime, the abuse of dominance provision, which will now be reinforced with an AMP.

This amendment was also recommended by the Industry Committee in its 2002 report. As mentioned in the report, treating these criminal pricing practices under the civil abuse of dominance provisions will have these two advantages: (1) the practice will receive a full hearing on its likely economic effects; and (2) the case will be assessed by the Tribunal with a civil burden of proof which has a lower threshold than the criminal burden of proof. The Industry Committee stated that pricing matters would be better dealt with under the abuse of dominance provisions.

### **Other Matters**

Before concluding, let me say a few words about the ongoing work of the Bureau on other issues that were raised by the Industry Committee in 2002. The Bureau is currently working on the conspiracy issue. More discussion and analysis are required on the reform of the conspiracy provisions due to the complexity of the issues and the fact that section 45 is a cornerstone of the Act. As such, a systematic analysis of various legislative models is being undertaken by the Bureau.

In relation to the treatment of efficiencies under the Act, in September 2004, the Competition Bureau launched an extensive consultation process to elicit the views of a broad range of stakeholders. The need for consultation on this complex issue was a recurring theme during parliamentary consideration of Bill C-249 which attempted, in the last Session, to amend this section of the Act, but which died on the Order Paper.

### **Conclusions**

Mr. Chair, Bill C-19 provides a balanced package of amendments that will strengthen the *Competition Act*. These amendments constitute one step in this continuing evolution of Canada's competition regime.

Thank you.

I would be pleased to answer your questions.