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Industry Canada Industrie Canada

Office of
Consumer Affairs Bureau de la
consommation

Ottawa ON K1A 0H5

<http://consumer.ic.gc.ca>

March 15, 2006

Ms. Erica Schumacher
Senior Competition Law Officer
Criminal Matters Branch Division A
Competition Bureau
Industry Canada
50 Victoria Street
Gatineau, Quebec K1A 0C9

Dear Ms. Schumacher:

Thank you for your letter of February 7, 2006, inviting the Office of Consumer Affairs to provide you with our views on your current consultation with respect to the Bureau's Immunity Program. I regret the delay in replying to your letter. Rather than respond to all of the questions in the consultation document, we wish to focus on three issues: provision of immunity to leaders and/or instigators of a crime under the Competition Act; restitution; and overall direction of the Program.

Section 3 of the Consultation Paper asks whether leaders and/or instigators of a crime under the Act should be provided with immunity. It is our view that there should be no blanket immunity. Should a leader or instigator of a crime come forward with vital information that leads to their own conviction, the fact that they came forward can be taken into consideration by the court in sentencing or setting penalties. The deterrent effect of the law should not be further weakened by providing sweeping immunity to those who have knowingly and willfully taken criminal advantage of their customers. The possibility of the enforcement agency recommending reduced penalties to this end could be considered.

With respect to restitution, the Consultation Paper asks three relevant questions: should those granted immunity still be required to provide restitution to their victims; what to do when the victim(s) is not readily identifiable; and what to do when the harm done, in terms of dollar value, cannot be properly assessed?

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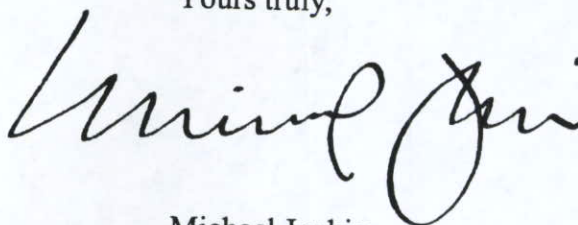
On the first, yes, restitution should continue to be a requirement for obtaining immunity under the Program. This is because the victims may not have the means, either individually or collectively, to seek redress in a subsequent civil proceeding, even though such proceedings are permitted under the Act. Even if such proceedings are undertaken by victims, the court may take into consideration any amounts already disbursed as part of the Immunity Program restitution element if it wishes. This is fair.

With respect to how to handle cases where the victim(s) is not readily identifiable, Canadian courts have directed awards to not-for-profit organizations working in the general interest of the victim group, e.g., consumer organizations, patient organizations, etc. While not perfect, this does serve the interest of those for whom the law has failed to provide protection, and such awards provide a deterrent to others against engaging in similar criminal activity. There may be a role for authoritative government agencies to provide advice to the court with respect to the range of relevant organizations in a given case; this should be considered and explored further.

When a dollar value is not readily placed on harm done by the crime in question, the court has the capacity to set a level that is both punitive and relevant to the size of the market in which the crime took place. Public advice from authoritative federal government agencies (e.g. Statistics Canada) on the relevant markets could be provided to guide the court to that end.

In conclusion, any changes to the Immunity Program following this consultation should be such that it continues to promote, rather than discourage, disclosure of wrongdoing, in order to protect the consumer interest, particularly in cases where law enforcement cannot act either because of ignorance of the crime, or lack of evidence for conviction.

Yours truly,

A handwritten signature in black ink, appearing to read "Michael Jenkin". The signature is fluid and cursive, with a large loop at the end.

Michael Jenkin
Director General