<u>THE COMPETITION BUREAU</u>

ADJUSTMENTS TO THE IMMUNITY PROGRAM

and the Bureau's response to consultation submissions

INTRODUCTION

Originally launched in September 2000, the Competition Bureau's[1] Immunity Program is one of its most effective tools for detecting and investigating criminal activities prohibited by the *Competition Act*. These include conspiracy, bid-rigging, price maintenance, false or misleading representations and deceptive marketing practices. Both business organisations and individuals may apply for immunity under the Program.

The details and procedures of the 2000 Program were set out in an Information Bulletin[2] that covered the Bureau's practices, role in the immunity process, the conditions under which the Bureau would recommend that the Attorney General grant immunity and the responsibilities of the immunity applicant. The Bulletin was further explained, elaborated and clarified in "Responses to Frequently Asked Questions", first published in 2003 and expanded in 2005.[3]

Following extensive internal and external public consultations with stakeholders, including both the Canadian Bar Association and the American Bar Association, and foreign enforcement agencies, the Bureau has made adjustments to certain aspects of the Program. This paper explains these changes, the results of the consultation process leading up to the adjustments and the Bureau's rationale for the changes.

Consultation process in brief

After five years' experience with the Program, the Bureau issued a public consultation paper on February 7, 2006. The Bureau sought input from stakeholders on the topics of confidentiality; oral applications; the applicant's role in the offence; coverage of directors, officers and employees; penalty plus; restitution; revocation of immunity; the creation of a formal leniency program; pro-active immunity, and other aspects of the Program.

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1 Throughout this Background paper, "the Bureau" refers to the Competition Bureau; the "Act" to the *Competition Act*; the "2000 Program" to the Immunity Program as set out in the *Information Bulletin: Immunity Program under the Competition Act*, 2000 (the Bulletin) and elaborated further in the Bureau's "Responses to Frequently Asked Questions" (FAQs).

2 Competition Bureau, *Information Bulletin: Immunity Program under the Competition Act*, 2000, http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1389&lg=e.

3 http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1980&lg=e.

Consultation responses, together with international benchmarking and the Bureau's own experience with the Program, have assisted in identifying areas of the Bulletin and the FAQs that warrant adjustment. The Bureau is making these changes to ensure that the Program is as clear and transparent as possible and that potential applicants have all the relevant information regarding procedures, available protections and related obligations to make a decision to come forward. The Bureau notes that the new Bulletin and the FAQs should be read together for a complete picture of the Program.

An overview of the adjustments

The Bureau wishes to ensure that the Bulletin and FAQs are as accurate, clear and transparent as possible and that they both guide and reflect current Bureau practice. In line with these broad objectives, the Bureau has made two sets of adjustments to the Bulletin and the FAQs so as to streamline procedures and to clarify the substantive elements of the Program.

The most significant *procedural* change is the removal of the provisional guarantee of immunity as a precursor to an applicant's providing full disclosure of information and obtaining final immunity from the Director of Public Prosecutions of Canada.[4] Under the new procedure, an applicant will receive a final (though conditional) immunity agreement when the Bureau and the DPP are satisfied that the entry requirements of the Program are met and that the applicant is capable of subsequently meeting its obligations. This streamlined approach will increase transparency and simplify the international application process.

Substantively, the key modifications are in relation to those applicants who would be ineligible for immunity. In determining which business organizations or individuals should be disqualified from a grant of immunity, the Bureau will henceforth apply a "coercion" test rather than an instigator/leader test. The Bureau is removing the "sole beneficiary" test for all offences other than those involving only one party and eliminating the restitution requirement.

Finally, the Bureau is clarifying its confidentiality commitment to applicants.

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[4]The Public Prosecution Service of Canada (PPSC) was created by the *Director of Public Prosecutions Act* on December 12, 2006, when Part 3 of the *Federal Accountability Act* came into force. Its mandate is to initiate and conduct prosecutions under federal jurisdiction and to intervene in cases affecting prosecutions and investigations. The PPSC is independent of the Department of Justice Canada and reports to Parliament through the Attorney General. The head of the PPSC is the Director of Public Prosecutions of Canada (DPP).

THE ADJUSTMENTS

1. Single-Agreement Process

What's new?

The Bureau has adopted a "single-step" approach to immunity agreements and has eliminated the provisional guarantee of immunity (PGI). The new immunity agreement is a "final" agreement in the sense that once issued, a second agreement would not be contemplated; however, it remains in force only on condition that, and so long as, the applicant remains in compliance with the agreement.

To facilitate the development and use of this new single-agreement process, the DPP has drafted new immunity agreement templates; the amended Bulletin and the FAQs reflect and are consistent with these templates. The DPP intends these templates to form the basis of all immunity agreements. And, the Bureau will recommend that the terms of these agreements be applied consistently to all immunity applicants.[5] The template agreements can be obtained from the office of the DPP.

Why were these changes necessary?

The Bureau's new approach reduces uncertainty on the part of an immunity applicant. It allows for greater convergence of the Bureau's processes with those of partner enforcement authorities in other jurisdictions (thus simplifying matters for foreign applicants). And it reflects the Bureau's and the DPP's prevailing practice.

Until now the Bureau's Immunity Program has formally had two steps: a PGI and a final immunity agreement. The two-step approach required an applicant first to proffer detailed information of the relevant offence together with a statement of the evidence that it expected to be able to provide. Where satisfied that there had been an offence under the Act and that all other requirements of the Program were met, the Bureau would present its assessment of the applicant's information to the Attorney General and recommend that the Attorney General grant the applicant a PGI. The PGI required the applicant to fully disclose all evidence and information it had in relation to the offence and to provide continuous cooperation throughout the investigation and any ensuing prosecution. Where the Bureau was satisfied with the extent of the cooperation, it would make a recommendation that the Attorney General[6] enter into a final immunity agreement with the applicant.

[5] The term "applicant" refers to business organisations or individuals, both before and after the grant of immunity.

[6] And as of 12 December 2006, the DPP.

The recommendation arising out of the consultation process was clear: the Bureau should adopt a "single agreement" approach, eliminating the intermediate PGI step. Of course, the single agreement would remain conditional on the applicant's compliance with the agreement, but it would be final.

The Bureau adjusted the 2000 Program for three reasons:

* **first**, a single-agreement approach simplifies the immunity process and reduces uncertainty on the part of an immunity applicant as to its obligations and assurances in respect of its agreement to co-operate with the Bureau's investigation and any subsequent prosecutions;
* **second**, by bringing the Program more in line with the prevailing practice of partner enforcement authorities in other jurisdictions, the single-agreement approach simplifies matters for foreign counsel seeking protection for their clients throughout North America and globally; and
* **third**, the new approach reflects what had become the practice for both the Bureau and the DPP. The PGI was typically the only document ever issued to an immunity recipient and had become the *de facto* final agreement.

2. Role in the Offence

What's new?

The Bureau will disqualify an applicant from the Program where there is clear and objective evidence that the applicant took steps to coerce otherwise unwilling participants to engage in the cartel. Individuals involved in corporate coercion will also be disqualified on the basis of their coercive activities. This is a change from the 2000 Program, replacing "the instigator" or "the leader" criterion, which will no longer be applied to disqualify applicants from the Program.

Moreover, the Bureau has narrowed the "sole beneficiary" disqualification criterion. Under the new Program, where an applicant is the only party involved in the offence, it is not eligible for immunity. This may occur in offences such as price maintenance and false or misleading representations. However, directors, officers or employees of a business organization that is ineligible for immunity for this reason may nevertheless be eligible for individual immunity.

An alleged cartel participant will no longer be disqualified from the Program on the "sole beneficiary" basis.

Why were these changes necessary?

Under the 2000 Program, an applicant would be disqualified where it was "the instigator or the leader of the illegal activity, [or] the sole beneficiary of the activity in Canada." In the consultations, all stakeholders that addressed the issue considered the leader/instigator test to be vague; they recommended a "coercion" test in its place. As well, most stakeholders recommended the removal or limitation of the "sole beneficiary" disqualification criterion, under which an applicant that was the sole beneficiary of the alleged illegal activity in Canada would be ineligible for immunity.

The Bureau agreed with the recommendations and made the adjustments, for three reasons:

* **first**, the value of the Program is its contribution to the detection, investigation and prosecution of competition law offences. The Bureau's goal, in all but the most egregious of circumstances (such as coercive behaviour), is to encourage applicants to come forward, not to disqualify them. And so, as a general matter, the Bureau opts for a more inclusive Program making it more likely that applicants will come forward;

* **second**, a "coercion" test provides a clearer standard and increased predictability for potential immunity applicants. The Bureau's experience under the Program has demonstrated the difficulty of determining in what circumstances the leader/instigator test may apply. This is because as a cartel progresses, the "leadership" of a cartel may well change. As well, cartels are inherently co-operative ventures premised on self interest; in the absence of coercion, should a party come forward , its role in the offence ought not be used to withdraw the major benefit of being eligible for immunity; and

* **third**, while there may be challenges to prosecuting cartel participants other than the "sole beneficiary" participant in Canada, the benefit to the public interest in detecting and eradicating the cartel in question - by providing the "sole beneficiary" an opportunity to come forward and seek immunity in return for full cooperation - outweighs such potential difficulties.

3. Confidentiality

What's new?

The Bureau's applications to the courts will continue to seek protection of an immunity applicant's identity until charges are laid in the matter. As well, the Bureau will not share information provided by an applicant with foreign law enforcement agencies without an express waiver.

The changes to the Program clarify that where necessary, the Bureau may disclose the identity of an immunity applicant in order to obtain judicial authorization for investigative steps such as search warrants or production orders, or to maintain the validity of such authorizations.

Why were the changes necessary?

The Bureau is conscious of the value of confidentiality for applicants, particularly at the early stages of the investigation. The Bureau has taken, and will continue to take, all reasonable steps to ensure that, subject to limited exceptions, there is no pre-charge disclosure of the applicant's identity. The Bureau will also treat as confidential information obtained from a party requesting immunity, subject only to limited exceptions.

Stakeholders stressed the importance to the Program of a continued Bureau commitment to confidentiality. They did not raise specific complaints regarding current Bureau policy or practice and they agreed that in some instances pre-charge disclosure of an applicant's identity may be necessary. Stakeholders emphasized that the Bureau should be candid in its Program as to when disclosure may occur.

The Bureau appreciates Stakeholders' recognition that there needs to be a balance struck between the interests of the applicants and the integrity of the Bureau's enforcement capacity. The adjustments are made for three reasons:

* **first**, the confidentiality interests of applicants continue to be an important element of the Program. Confidentiality is also critical at the investigation stage, to advance the Bureau's enforcement objectives;
* **second**, the Bureau must have the authority to use the evidence and information provided by an applicant to effectively enforce the Act; and
* **third**, part of an immunity applicant's obligation is to fully cooperate with the Bureau's investigation; this includes, where necessary, disclosure of its identity and role in the offence.

4. Restitution

What's new?

The Bureau has removed the restitution requirement from the Program.

This does not affect the operation of section 36 of the Act, which provides that any person who has suffered loss or damage as a result of a criminal offence under the Act may sue for and recover the amount of those damages together with costs incurred. A person seeking damages in a civil action under section 36 must do so within two years of the last day the conduct was engaged in or the day on which any criminal proceedings were disposed of, whichever is the later.

Why were the adjustments necessary?

The Program has historically provided for restitution as a possible condition of immunity. At the same time, in practice the Bureau has considered that civil actions are the best means for victims of anti-competitive activity to seek recourse for damage caused to them by such activity.

In the consultations with stakeholders, the Bureau noted differing views as to whether restitution should remain part of the Program. Stakeholders reflecting consumer interests supported retention of the restitution requirement. They argued that an applicant's commitment to restitution ought to be linked to whether it deserves the benefits of the Program. Those representing potential applicants proposed leaving the matter to private litigants and the civil courts. Proponents of private legal action argued that Bureau resources are better allocated to detecting and prosecuting criminal violations, and that the Bureau should leave the resolution of complex damage issues to civil courts.

The Bureau considers that restitution for illegal activity under the Act is better dealt with through civil action. In the interests of transparency and predictability, the Bureau has amended the 2000 Program to reflect its developing practice. The Bureau is particularly bolstered in its approach for the following three reasons:

* **first**, under section 36 of the Act, any person who has suffered loss or damage as a result of a criminal offence under the Act may sue for and recover the amount of those damages together with costs incurred;
* **second**, there is an increasingly assertive plaintiffs' bar in Canada with class action claims and developing class action legislation and jurisprudence; and
* **third**, the adjustment is in line with existing practice and allows the Bureau to make the most efficient use of its resources.

5. Penalty Plus

What's new?

The Bureau is not adopting a "penalty plus" program.

The Bulletin has been clarified to the effect that "the party must reveal any and all offences under the *Competition Act* in which it may have been involved". If the Bureau uncovers offences that the party has knowledge of but that the party failed to disclose, the Bureau will recommend that immunity be revoked and increased penalties be imposed in respect of such new offences. The Bureau has modified Response 37 of the FAQs to clarify the Bureau's approach in such circumstances.

Applicants should be aware that the DPP may ask witnesses to disclose any criminal activity, under any legislation, that can reasonably be expected to have an impact on their credibility as a witness.

Why only these, and not other, adjustments?

In the course of the consultations, some stakeholders supported the adoption of a "penalty plus" program similar to that used by the antitrust authorities in the United States. Under a "penalty plus" program, an applicant does not lose its immunity for failure to disclose. Rather, it is subject to heavier penalties for any undisclosed offences. Stakeholders further suggested that

if the Bureau were to adopt a “penalty plus” program, it should clarify the level of increased penalty a defendant may face.

The Bureau has no plans to adopt a formal “penalty plus” program. The Bureau will continue its current policy, which has three components:

* an applicant is required to disclose *all* offences under the Act of which the applicant is aware or ought reasonably to be aware when participating in the Program;
* the Bureau will recommend the revocation of an applicant’s immunity in response to intentional non-disclosure, and will recommend increased penalties in respect of non-disclosed offences; and
* an applicant may seek immunity or leniency for any newly disclosed offence.

The reason for the Bureau’s approach is simple. The grant of immunity is an extraordinary benefit, but it is far from a “free ride”. At the heart of the Program lies a critical balance between an applicant’s freedom from prosecution and the public interest in ensuring that criminal conduct is reported and deterred. Where an applicant intentionally withholds information concerning its role in criminal conduct, the public interest is harmed and the applicant is no longer entitled to the extraordinary benefit of immunity. The Bureau’s recommendation for increased penalties in these circumstances will address the multiple offences as an aggravating factor in sentencing.

6. Revocation

What’s new?

Where the Bureau becomes aware that an applicant does not meet the terms and conditions set out in an immunity agreement, it will discuss the situation with the applicant and provide a reasonable opportunity to the applicant to address any shortfalls in its conduct before making a recommendation to the DPP that the applicant’s immunity be revoked.

Where, in rare circumstances, the DPP revokes immunity, any such revocation only affects those parties that do not co-operate or that otherwise fail to comply with the requirements of the Program. For example, a business organization’s immunity may be revoked while its co-operating employees remain covered. In all circumstances, the DPP will provide fourteen (14) days written notice to the party or to that party’s counsel before revoking the immunity agreement.

The Bureau has modified Response 37 of the FAQs to clarify that failure to disclose other offences under the Act when applying for immunity is cause for revocation only where the non-disclosure is intentional. Where the party, required to undertake due diligence efforts, fails to discover additional offence(s) and these offences are subsequently uncovered by the Bureau, the Bureau may recommend increased penalties in respect of these offences, but will not recommend the revocation of immunity granted.

What is the basis of the Bureau's approach?

The stakeholders have recommended that the Bureau take all reasonable steps to resolve disputes, and that it give formal notice and reasonable opportunity to amend any shortfalls in an application prior to recommending the revocation of immunity. They stressed their view that revocation should be limited to situations where an applicant deliberately and clearly fails to cooperate or gives false information in an intentional and serious manner.

Under the Program, failure to comply with the requirements of an immunity agreement may result in the DPP revoking immunity. Revocation is a serious and rare step; the DPP has never withdrawn corporate immunity, and has withdrawn individual immunity only twice and following repeated and unsuccessful attempts by the Bureau to gain the co-operation owed under the Program by the parties. The Bureau's approach is premised on the following considerations:

* **first**, immunity is not a "free ride", and a grant of immunity is predicated on an applicant's compliance with the terms of the immunity agreement, including active and concerted cooperation with the Bureau and the DPP throughout the investigation and prosecution;
* **second**, the Bureau's commitment to act transparently toward the applicant; and
* **third**, all factors related to the conduct of the applicant should be reviewed before the Bureau recommends revocation to the DPP. The Bureau will not recommend revocation unless it considers a party to be in plain breach of its commitments and to have failed to cure defects and heed warning notices.

7. Coverage of Past Directors, Officers and Employees

What is the Bureau's approach?

A grant of immunity to a business organization also covers each current director, officer and employee (DOEs) of a company, so long as the DOEs admit their involvement in the illegal activity and cooperate fully in accordance with the terms of its immunity agreement. The Bureau will not carve current DOEs out of a corporate immunity agreement for any reason other than failure to cooperate.

The Bureau will consider, on a case by case basis, whether a current or former agent of an immunity applicant who admits his or her involvement in the illegal anti-competitive activity and who provides complete and timely cooperation with the Bureau investigation may be covered under the umbrella of corporate immunity in the same manner as is a DOE.

The Bureau will examine the situation of each past DOE on a case-by-case basis, to determine whether immunity should be offered or granted.

What are the reasons for the Bureau's approach?

The Program provides that all *current* directors, officers and employees of an applicant that qualifies for immunity will qualify for the same recommendation of immunity, subject to two conditions: first, the DOEs must admit their involvement in the illegal anti-competitive activity; and second, they must provide complete, timely and on-going co-operation.

In consultations with the Bureau, most stakeholders indicated that past DOEs should also be eligible under the umbrella of corporate immunity, provided of course that they cooperate with the Bureau's investigation. All stakeholders agreed that it was reasonable to carve out, from a corporate immunity agreement, DOEs who refuse to cooperate with the Bureau investigation.

The Bureau has carefully examined the suggestions of stakeholders. In particular, the Bureau recognizes that the information provided by past DOEs who admit their involvement and who cooperate with the Bureau's investigation may well provide significant value to the investigation. Indeed, the Bureau agrees that in some instances, particularly where an individual has retired, there may be little justification to exclude the individual from the corporate coverage.

The Bureau is not, however, convinced that automatic immunity coverage should be available to past DOEs. Simply put, in respect of past DOEs there remain many unknown factors, including involvement of such individuals in the same or other cartels while with another business organization, that could influence a decision to grant immunity.

Accordingly, the Bureau will continue to examine the situation of each such individual on a case-by-case basis.

8. Oral Applications - the Paperless Process

What is the Bureau's approach?

After placing a marker, an immunity applicant must provide the Bureau with a statement known as a *proffer*. In a proffer, an applicant describes in detail the activity for which it seeks immunity, its effects in Canada and the supporting evidence. Proffers are typically provided by an applicant's legal representative on a hypothetical basis.

Proffers may be made either orally or in writing; oral applications are now more the rule than the exception. The only documents that need be produced to the Bureau are existing documents that provide evidence of the offence in question; the Bureau will not, in the normal course of an investigation, require any documents to be created by an applicant.

What are the reasons for the Bureau's approach?

The Bureau is sensitive to the concerns of applicants about written proffers and other exchanges. In particular, stakeholders consider that written proffers may increase an applicant's litigation exposure and thereby act as a disincentive to participation in the Program. At the same time, special care must be taken with oral proffers and exchanges. Accuracy of information is an on-going and indeed critical concern because the Bureau relies on the information not only to

assess the immunity application, but also to pursue its investigation of other participants in the alleged offence. The Bureau may communicate in writing with the applicant where the Bureau's oral requests and representations fail to elicit a response from an applicant or where an applicant is not meeting its obligations under the Program.

While the Bureau is prepared, to the extent possible, to communicate only in person or by telephone, the Bureau will not agree to conditions that would have the effect of compromising the integrity of its investigation or the Program.

The Bureau will continue to strive for best practices in the area of managing communication practices with applicants, recognizing that this is an area that continues to develop and where the issues are anything but static.

9. Proactive Immunity

What is the Bureau's approach?

An investigating authority engages in "proactive immunity" where it targets potential immunity applicants outside its normal course of enforcement and investigation activities.

The Bureau does not engage in "proactive immunity", in effect to select an optimal candidate. The Bureau does, however, inform actual and potential targets, at appropriate junctures in the course of an investigation, about the Program. The Bureau does not otherwise actively solicit preferred potential immunity applicants.

The Bureau may, nevertheless, contact second-in parties where the first-in applicant has failed to perfect its immunity application.

What are the reasons for the Bureau's approach?

The Bureau considers that actively targeting potential immunity applicants is more likely to lead to perceptions of unfairness than to real investigative benefits.

The Bureau's approach is consistent with the comments received from stakeholders. It is premised on fairness considerations and concerns about the bias that may arise should the Bureau attempt to contact potential immunity applicants outside the normal course of investigation.

10. Other Clarifications

The Bureau has clarified a number of additional points in the revised Bulletin and FAQs. They are set out below:

- Immunity is not available under the Program for obstruction or destruction of records offences. The Bureau will assess each case on its merits and determine whether or not to recommend prosecution.

- The language used to describe offences that are the responsibility of the Fair Business Practices Branch has been updated to more closely reflect current language. This does not represent any change to the offences for which immunity is available.
- The Bureau has updated the list of information that should be provided at the proffer.
- The applicants must be prepared to dedicate the necessary monetary and human resources to cooperating with the Bureau investigation and any subsequent prosecution.
- While the full disclosure process may typically take up to 6 months, the Bureau may require applicants to make key witnesses available very quickly after the initial application is made, as witness information may be critical to investigative steps such as obtaining search warrants.
- Applicants will generally be expected to provide waivers permitting the Bureau to communicate with the other jurisdictions in which the applicant has been granted immunity.

Finally, the Bureau has updated language throughout the two documents to ensure that it reflects current practice. For example, the marker system, which was previously not referred to in the Bulletin, is now included.

11. Creation of a Formal Leniency Program

What do we propose to do?

The Bureau is committed to developing a *formal* and *transparent* leniency program for parties that do not qualify for immunity. The Bureau is considering some of the following factors:

* the Bureau wishes to provide incentives for parties that do not benefit from immunity to make an early cooperative approach to the Bureau. For this reason, a party that applies for consideration under the leniency program ahead of other parties would benefit from a recommendation,[7] by the Bureau, to reduce the severity of any penalty or obligation that would be otherwise recommended in the absence of such early disclosure and co-operation by a party to an offence. Recommended benefits to the first leniency applicant would be comparatively greater than the second or third applicant; and
* in all cases, in considering its leniency recommendations the Bureau would give weight to the value of the evidence provided by the leniency applicant.

Why a formal program?

The Immunity Program already provides for the possibility of some form of leniency where a party does not qualify for immunity. In our consultations, stakeholders recommended that the Bureau adopt a *formal* leniency program that would provide incentives to cooperate with

[7]The Bureau would make sentencing recommendations to the DPP under any proposed new leniency program; the DPP retains the ultimate discretion concerning sentencing submissions presented in court.

the investigation for cartel participants that do not benefit from immunity. In their view, by implementing an escalating series of penalties, premiums associated with timeliness, and differentiated exposure to individual charges, the Bureau may well enhance its ability to secure guilty pleas as well as a high level of cooperation with the investigation and prosecution of the other participants in the illegal activity.

The Bureau has carefully considered these recommendations and agrees that a formal leniency program would be a useful complement to the Program, for three reasons:

* **first,** a *transparent* and *predictable* leniency program would support effective and efficient enforcement of the Act, consistent with public interest;
* **second**, parties are more likely to come forward and cooperate (rather than litigate) if there are high levels of transparency and predictability in leniency conditions; and
* **third**, cooperation provided to the Bureau by a second or a subsequent applicant for leniency can provide investigations with early and sufficient access to evidence to bring all participants to the settlement table, or to successfully prosecute remaining participants.

CONCLUSION

The new Immunity Program provides a more streamlined, focussed, clear and transparent approach.

The Bureau's goal is to uncover criminal activity prohibited by the Act, stop anti-competitive activity and deter other companies and individuals from engaging in similar acts. The move to a single immunity agreement makes the process more easily understood by applicants and more easily administered by the Bureau. While conditional, an applicant's obligations and protections will be clearly established once the applicant qualifies for immunity. In a similar vein, the clarification of the Bureau's approach to confidentiality ensures that applicants are aware of their obligations and potential disclosure risks that may accompany them. Such transparency is tremendously important to the stakeholders. Finally, with the removal of requirements relating to instigation and leadership, sole-beneficiaries and restitution, certainty of qualification for the Program is increased.

The immunity bargain is an extraordinary grant by the Crown to forego prosecution; it is no less a formidable commitment by the applicant to wipe the slate clean to address illegal wrongdoing and to fully support the Bureau and the DPP in investigating and prosecuting criminal activity. Predictability and transparency in Bureau policy and practice must ensure that an applicant appreciates the nature of the immunity bargain. There should be no surprises.

The Program has proven to be the Bureau's single most powerful means of detecting cartel activity. Its contribution to effective enforcement is unmatched. Its continued appeal to those who would otherwise remain undercover is pivotal to our enforcement efforts. Regular reviews and adjustments are essential to ensure that the Program keeps pace with changes that

affect the Program's ability to continue to deliver significant value to the Bureau's detection and prosecution of criminal anti-competitive activity prohibited by the *Competition Act* .

HOW TO CONTACT US

The Bureau encourages the public to take advantage of its policies and programs.

Anyone wishing to apply for immunity may contact:

Senior Deputy Commissioner of Competition
Criminal Matters Branch
(819) 997-1208

Deputy Commissioner of Competition
Fair Business Practices
(819) 997-1231

For further Information, visit the Bureau Website *www.cb-bc.gc.ca* or contact the Bureau toll free at **1 800 348-5358**.