

"Cartels and Amnesty: The State of Play in Canada"

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Introduction

Canada has a very aggressive and effective program in combatting cartels. The Competition Bureau, Canada's antitrust agency, recently released a revised amnesty policy designed to detect and dispatch cartels and other forms of anti-competitive behaviour.

This brief paper summarizes the record of anti-cartel enforcement in Canada and provides highlights of the new Immunity Bulletin.

Canada's Approach to Cartels

Canada is by far the most open of the G-7 industrial countries, with our exports accounting for a third of our gross national product. You may or may not be aware that the United States is our main trading partner, and that we are yours. Our trade, imports plus exports, with the United States has more than doubled over the last decade. At \$564 billion in 1998, more than \$1 million a minute, which is a lot of business for a small country like Canada, it represents 80 per cent of our total trade. It goes without saying that Canada shares the United States' interest in vigorously enforcing competition in the global marketplace, and especially in the North American marketplace.

Like the United States, Canada has taken a particularly aggressive approach to international conspiracies in recent years, following up on leads from the United States and other jurisdictions as well as our own, home grown Canadian sources, to ensure that the activities of criminal cartels are stopped and stringent penalties are levied as a deterrent. Both our countries have been successful in convicting multinational firms and their senior executives for engaging in criminal international conspiracies and our courts, like yours, have imposed huge fines.

Our recent inquiries into price-fixing and market allocation agreements among suppliers in the worldwide food and feed additives industries have resulted in the largest fines ever imposed under Canada's *Competition Act* and the largest criminal fines in Canadian legal history.

The attached table gives a synopsis of recent penalties levied by the courts in Canada for cartel offences. You should know that:

- The Canadian law to combat cartels, contained in the *Competition Act*, is criminal law. In addition to large fines against corporations and individuals, imprisonment is another important penalty available to the courts and it has been applied in recent years.
- While the dollar amount of monetary penalty pales in comparison to the recent fines in the United States, in proportionate terms they are very much of the same order. The standard basis of comparison is the percentage of volume of affected commerce. As to be expected in a smaller economy, sales revenue is lower so the absolute level of the fine is lower.
- There is no statute of limitations in Canada for *Competition Act* offences.
- The Competition Bureau has access, upon judicial authorisation, to a variety of investigative tools including: search warrants, subpoenas for documents, sworn testimony, and the interception of private communications.

Immunity Program

Canada's immunity program for offences under the *Competition Act* is described in the Competition Bureau's Immunity Bulletin which is included in your materials and also available on the Bureau's web

site.

This revised and streamlined policy towards applications for immunity was released in February 2000 for comment. The formal comment period has just ended. Any changes in the final publication of the Bulletin will be editorial in nature to make it even easier to understand and apply. The basic thrust of the policy has been decided and it will not change.

Those of you familiar with the Antitrust Division Leniency Policy will find many similarities. The Competition Bureau Immunity Bulletin is:

- short and simple, to allow self-identification by potential applicants
- centred on the principle of first-in notice in Canada
- clear that parties will not be accorded any special consideration solely because they have been granted leniency in another jurisdiction
- focussed on immunity, although other forms of leniency are available to those who don't qualify for immunity
- a clear roadmap of a four-step, streamlined process to obtain immunity on a timely basis
- careful to protect the confidentiality of an applicant's identity and information

Conclusion

The Competition Bureau's Immunity Bulletin is an important statement of policy with particular significance for combatting international cartels. The recent fines of over \$140 million against corporations and individuals, coupled with a 9 month term of imprisonment for a former employee demonstrate Canada's commitment to deter cartel behaviour.

RECENT CARTEL PENALTIES: CANADA

Amount	Date(s)	Inquiry	Party Convicted	Offence	
\$48,000,000	Sept. 22/99	Bulk Vitamins	F. Hoffmann-LaRoche Ltd. (Switzerland)	Conspiracy (s.45)	
\$18,000,000			BASF Aktiengesellschaft (Germany)		
\$14,000,000			Rhône-Poulenc S.A. (France)		
\$5,200,000	March 1/00		Takeda Chemical Industries, Ltd. (Japan)		
\$2,500,000	Sept. 22/99		Daiichi Pharmaceutical Co. Ltd. (Japan)		
\$2,000,000			Elsal Co., Ltd. (Japan)		
\$1,000,000	March 30/00		Merck KGaA (Germany)		
\$250,000	Oct. 25/99		Dr. Roland Brönnimann (Switzerland)		
\$370,000	Oct. 26/99		Roussel Canada Inc. (Canada)		Foreign Directives (s.46)
\$175,000	Oct. 27/99		Andreas Hauri (Switzerland)		Conspiracy (s.45)
Total: \$91,495,000					
\$14,000,000	May 27/98	Lysine	Archer Daniels Midland Company (United States)	Conspiracy (s.45)	
\$3,500,000	July 23/98		Ajinomoto Co. Inc. (Japan)		
\$70,000			Sewon America Inc. (United States)		
Total: \$17,570,000					
\$2,000,000	May 27/98	Citric Acid	Archer Daniels Midland Company (United States)	Conspiracy (s.45)	
\$1,900,000	Oct. 21/98		Jungbunzlauer International A.G. (Switzerland)		
\$4,700,000			Haarmann & Reimer Corporation (United States)		
\$2,900,000	Sept. 22/99		F. Hoffmann-LaRoche Ltd. (Switzerland)		
\$75,000	Oct. 27/99		Andreas Hauri (Switzerland)		
Total: \$11,575,000					
\$11,000,000	Mar. 18/99	Graphite Electrodes	UCAR Inc. (Canada)	Foreign Directives (s.46)	
Total: \$11,000,000					

\$2,500,000	Oct 26/99	Sorbates	Hoechst AG (Germany)	Conspiracy (s.45)
\$780,000			Eastman Chemical Company (United States)	
Total: \$3,280,000				
\$2,250,000	Sept. 24/99	Choline Chloride	Chinook Group Limited (Canada)	Conspiracy (s.45)
\$1,000,000	Sept. 22/99		BASF Aktiengesellschaft (Germany)	
9 months imprisonment and 50 hours community service	Sept. 17/99		Russell Cosburn (Canada)	
Total: \$3,250,000				
\$700,000	May 25/99	Sodium Gluconate	Roquettes Frères (France)	Conspiracy (s.45)
\$360,000	Feb. 15/99		Fujisawa Pharmaceutical Co. Ltd. (Japan)	
\$350,000	July 23/99		Akzo Nobel Chemicals B.V. (The Netherlands)	
\$350,000			Glucona B.V. (The Netherlands)	
\$100,000	Oct. 21/98		Jungbunzlauer International AG (Switzerland)	
Total: \$1,860,000				

(Fines in Canadian dollars)

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