

**For discussion
on 26 July 2011**

**Bills Committee on
Competition Bill**

**Responses to follow-up questions
arising from the meeting of 5 July 2011**

Purpose

This paper responds to questions raised by Members at the meeting on 5 July 2011.

Competition Act of Canada

Interim order

2. Under the Canadian Competition Act as amended in 2009 (the Act), the competition enforcement agencies may apply to the court or the Competition Tribunal (the Tribunal) for an interim order or injunction forbidding a person from doing any act that may constitute an offence or a contravention relating to competition law, pending the commencement or completion of the relevant criminal proceeding before a court, or the determination of a civil matter by the Tribunal.

3. With respect to the availability of interim orders prior to the commencement of formal proceedings, the powers are provided under section 33 of the Act (relating to offences under Part VI of the Act concerning price fixing, market allocation, output restrictions or bid rigging), section 100 (relating to a proposed merger), and section 103.3 (relating to certain matters reviewable by the Tribunal such as abuse of dominance, but does not include other agreements that prevent or lessen competition substantially which fall within the civil regime under section 90.1 of the Act).

4. Section 104 of the Act also provides for interim orders for matters reviewable by the Tribunal (including the abuse of dominance, mergers, and other agreements under the civil regime in section 90.1), where an application for proceeding before the Tribunal has already been made.

Section 33 provides for similar power of the court to issue interim injunction pending the completion of a prosecution for an offence under Part VI of the Act.

Abuse of dominance provisions

5. Sections 78 and 79 of the Act^{Note (1)} seek to address an abuse of a dominant position that has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market. In its enforcement guidelines, the Canadian Competition Bureau (the Bureau) considers that the element of “substantially or completely control” (as appeared in section 79(1) of the Act), or “dominance” as it is commonly referred to, to be synonymous with market power. The Bureau notes that market share is but one of the indicators to assess market power, and the Bureau considers that a market share of less than 35 percent will normally not give rise to concerns of market power or dominance. If a firm has a 35 percent or higher market share, the Bureau will normally continue its investigation.

Overseas competition cases involving SMEs

6. At Members’ request, we have collated statistics, at **Appendix**, on the number of small and medium enterprises (SMEs) in the EU, Singapore and the UK which had been sanctioned for breaching the competition law in the past three years. The number of cases was extracted from published reports, decisions and judgments of the competition authorities in these jurisdictions. For the purpose of identifying SMEs from these cases, an analysis is made based on public information available in respect of the respondents’ identity, company’s turnover, sum of the agreement/ contract or employee figures, and takes into account the definition of SMEs or the thresholds for *de minimis* agreements adopted by the relevant jurisdictions. All those cases involving SMEs concern hardcore anti-competitive agreements such as price fixing, bid rigging and market sharing to which the *de minimis* exemption does not apply.

^{Note (1)} Section 79 of the Canadian Competition Act provides that the Tribunal may make an order prohibiting any persons from engaging in certain practice or directing any persons to take certain actions, if the Tribunal finds such persons substantially or completely control a class or species of business and have engaged in a practice of anti-competitive acts that has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market. Section 78 provides for a definition of anti-competitive act referred to in section 79.

Advice sought

7. Members are invited to note the contents of the paper.

**Commerce and Economic Development Bureau
July 2011**

Appendix

**Statistics on competition cases substantiated
by competition authorities of the European Commission,
United Kingdom and Singapore involving SMEs
(2008 – 2010)**

	European Commission	United Kingdom	Singapore
2008			
No. of substantiated competition cases	8	1	1
Estimated No. of SMEs which were respondents of the substantiated cases	6 out of 62	0 out of 3	4 out of 6
Types of substantiated cases			
<i>Hardcore (price fixing, market sharing, output restriction, bid rigging)</i>	7	1	1
<i>Others</i>	1	0	0
2009			
No. of substantiated competition cases	7	2	1
Estimated No. of SMEs which were respondents of the substantiated cases	1 out of 41	41 out of 109	15 out of 17
Types of substantiated cases			
<i>Hardcore (price fixing, market sharing, output restriction, bid rigging)</i>	6	2	1
<i>Others</i>	1	0	0
2010			
No. of substantiated competition cases	8	1	1
Estimated No. of SMEs which were respondents of the substantiated cases	5 out of 70	0 out of 12	14 out of 14
Types of substantiated cases			
<i>Hardcore (price fixing, market sharing, output restriction, bid rigging)</i>	7	1	1
<i>Others</i>	1	0	0