



Blakes Competition, Antitrust & Foreign Investment Group Report from Canada

- Key Trends for 2015
- Enforcement Highlights
- Policy Developments

Blakes
CANADIAN LAWYERS



“For its numbers, clients and caseload, rivals freely admit that Blake Cassels & Graydon houses the top competition practice in Canada.”

Global Competition Review's GCR 100 (15th Edition)

TABLE OF CONTENTS

Preface	1
Key Trends for 2015	3
Highlights from 2014	5
2014 Annual Report	7
Mergers	7
Foreign Investment	13
Cartels	17
Private Actions	21
Conduct and Intellectual Property	23
Advertising and Marketing	27
E-Discovery	31
About Blakes	35
Competition & Antitrust	37
Foreign Investment Review	38
Competition Litigation	39
Recent Awards and Recognition	41
Blakes Lawyers	43

PREFACE

In this report, the Blakes Competition, Antitrust & Foreign Investment group outlines the key Canadian developments in the areas of competition and foreign investment law over the past year and sets out the key trends for 2015.

Among the most notable developments since our last report was the release by the Supreme Court of Canada (SCC) of its first merger decision in nearly two decades: *Canada (Commissioner of Competition) v. Tervita Corp.* This ground-breaking decision will have a significant effect on the merger review process going forward. The SCC confirmed the paramountcy of efficiencies in merger review, placing the burden squarely on the Commissioner of Competition (Commissioner) to demonstrate the anticompetitive effects of a merger.

The decision also provides guidance on the framework for analyzing whether a merger is likely to prevent future competition where the merging parties are not already competing at the time of the merger or proposed merger. In assessing whether a potential competitor would likely have entered the market “but for” the transaction, the time frame for assessing entry must be discernible and there must be evidence of when the entrant is realistically expected to enter the market in the absence of the merger. The further into the future that the Competition Tribunal (Tribunal) must look, the more difficult it will be to show that a prevention of competition is “likely.”

The past year was also notable for increased public awareness by the Competition Bureau (Bureau) on the topic of corporate compliance. In July, Blakes hosted a workshop on competition compliance, which was a collaborative effort of the International Chamber of Commerce, the Canadian Chamber of Commerce, the Canadian Corporate Counsel Association, the Canadian Bar Association and the Bureau. The significant participation from members of the business community,

the bar and the antitrust authorities signalled the importance that companies and their executives should place on building a strong culture of competition compliance.

In support of the policy initiatives in this area, the Bureau released a draft update to its bulletin on *Corporate Compliance Programs*, setting out recommended steps for Canadian businesses to assess and reduce competition risk. We expect this bulletin will be finalized in 2015.

In a departure from current practices in the U.S. and Europe, the bulletin creates a new system under which the Bureau will offer incentives for implementing effective and credible corporate compliance programs. Companies that establish such programs will be eligible for discretionary fine reductions if they should apply for leniency. It is expected that this recent change will spur more Canadian businesses to develop and maintain effective compliance programs. However, it is not anticipated that the shift toward preventive measures will constrain the Bureau's vigorous enforcement efforts. In fact, companies may face harsher penalties if their compliance systems are not credible or effective.

Other notable developments in Canadian competition law from 2014 are discussed in this report along with anticipated key trends and policy changes that are anticipated for 2015.

BLAKES AT THE FOREFRONT

The SCC cited Blakes lawyers some 16 times for propositions that form the basis of the new efficiencies defence for strategic mergers in Canada.



KEY TRENDS FOR 2015

MERGERS

Following the release of the Supreme Court of Canada's (SCC) first mergers decision in nearly two decades, the role of efficiencies will become ever more important to the merger review process for complex cases. The court affirmed the Commissioner's legal burden to quantify the anticompetitive harm from a merger, meaning that merging parties that propose to advance an efficiencies defence will be asked to provide considerably more information and data during the course of a merger review, particularly as part of the supplementary information request (SIR) process.

FOREIGN INVESTMENT

Canada has experienced a significant uptick in foreign investment over the course of the year relative to 2013. Investments that clearly provide a "net benefit" to Canada have met with very little resistance, whereas those without a clear benefit, and especially those with national security implications, remain subject to extended reviews and require extensive undertakings. With the upcoming federal election in 2015, we do not anticipate that the federal government will change its approach materially. Moreover, we do not foresee any changes to the monetary thresholds under the *Investment Canada Act* (ICA), as the government has not given indication that it plans to implement the amendments to the ICA enacted in 2012 that would change the threshold to C\$600-million (from the current C\$369-million threshold).

CARTELS

The Competition Bureau's (Bureau) investigation into the auto parts sector will remain ongoing with additional fines expected in 2015. We also anticipate that the Bureau will continue to issue information requests to Canadian affiliates of foreign companies that may have been implicated in conspiracies in other jurisdictions, as it has done in a number of other cases.

PRIVATE ACTIONS

Certification hearings are scheduled to occur in 2015 in a number of cartel-related class actions. These hearings will apply the new standard set out by the SCC in the indirect purchaser cases. We expect additional clarity from the lower courts on the appropriate role of the expert in defining an appropriate methodology for proving damages and pass-through.

CONDUCT AND INTELLECTUAL PROPERTY

New legislation, if passed before the upcoming federal election, will give the Bureau new inquiry powers to collect records and testimony from companies whose prices are higher in Canada compared to the U.S. Updated guidelines on the intersection between competition law and intellectual property law are also expected to be released this year. The guidelines are expected to include additional guidance related to the Bureau's enforcement policy concerning a number of pharmaceutical matters, including product hopping and reverse payment settlements. As a result, we anticipate increased enforcement efforts with respect to the competition/intellectual property interface in the coming year.

ADVERTISING AND MARKETING

We anticipate more active enforcement in the area of ordinary selling price claims and performance claims. The Bureau will continue to rely on its investigative and enforcement powers, including production orders for documents and data, to promote compliance with the advertising provisions of the *Competition Act*. The Bureau will also continue to focus on online advertising, in particular online promotions, astroturfing and anti-spam.

E-DISCOVERY

As companies generate increasing amounts of data and digital communications, the use of sophisticated review tools is expected to become even more commonplace. In particular, we anticipate that predictive coding will gain greater acceptance and will be used more frequently when responding to information requests from the Bureau. Given the role that documents and communications can play in an investigation or merger review, the importance of ensuring that proper document creation and communications protocols are implemented will become increasingly important.

THRESHOLDS

Investment Canada Act

WTO investor threshold increases to C\$369-million.

Competition Act

Transaction-size threshold increases to C\$86-million, but the party-size threshold remains at C\$400-million.



HIGHLIGHTS FROM 2014

MERGERS

A number of significant developments in merger review occurred in 2014, including a rare hearing by the Supreme Court of Canada (SCC) on a merger challenge that resulted in a precedent-setting decision. In a welcome sign of economic recovery, the Competition Bureau (Bureau) received a significantly higher number of merger notifications this year compared to recent years. Where mergers raised competition concerns, the Bureau showed signs of greater openness towards behavioural remedies as a means of resolving those concerns. At the same time, the Bureau's opposition of two separate mergers was at least partly responsible for each of those transactions being abandoned.

FOREIGN INVESTMENT

The federal government continues to encourage foreign investment into Canada while closely monitoring investments by state-owned enterprises and sovereign wealth funds (SOEs) and investments that potentially raise national security issues. While investments that do not raise political or public attention have continued to take close to, or even more than, the 75-day review period to obtain approval, investors in those cases have been able to make more modest commitments to obtain ICA approval.

CARTELS

The Bureau has continued to focus on the enforcement of the cartel provisions in the *Competition Act*. This past year, five companies and two individuals entered guilty pleas for their involvement in cartel conduct. An additional two companies and four individuals were charged with engaging in bid-rigging. While the Bureau has focused on enforcement, it also emphasized education and prevention, hosting its first annual Anti-cartel Day in March. This new Bureau initiative is designed to raise awareness of the negative consequences that result from cartels and how cartels can be prevented. It is also intended to help businesses realize the benefits of an effective corporate compliance program.

PRIVATE ACTIONS

The law on private actions for competition law claims continued to evolve this year, following the release of the indirect purchaser trilogy in late 2013 (*Pro-Sys Consultants Ltd. v. Microsoft Corporation*, *Sun-Rype Products Limited v. Archer Daniels Midland Company*, and *Infineon Technologies AG v. Option consommateurs*). The two most significant developments this year were the SCC's decision in January that both clarified and narrowed the tort of unlawful means or unlawful interference with economic relations and the British Columbia Court of Appeal's (BCCA) decision in February that held that the *Competition Act* is a complete code and so a breach of the act cannot form the wrongful act necessary to maintain a waiver of tort claim or provide the basis for any form of restitutionary relief.

CONDUCT AND INTELLECTUAL PROPERTY

In 2014, several important developments arising from decisions by the Federal Court of Appeal (FCA), the Competition Tribunal (Tribunal) and the Bureau reshaped the law and policy regarding conduct matters. In many cases, these matters touched upon issues related to intellectual property. These cases involved industries ranging from real estate to e-books to water heaters.

ADVERTISING AND MARKETING

The Bureau has continued to use an enforcement-based approach to advertising and marketing violations. Consistent with its focus on the digital economy, the Bureau's enforcement efforts have been focused on the digital, online and telemarketing spaces in particular. Developments in 2014 also highlighted the Bureau's commitment to cooperation with other competition authorities on advertising and marketing enforcement activities, consistent with its approach in other merger and conduct matters.

E-DISCOVERY

E-discovery continues to be an important issue when responding to requests from the Bureau. Over the last year, a number of legal developments in Canada and the U.S. will affect how companies approach e-discovery matters. In August, the Bureau published draft guidelines regarding the *Production of Electronically Stored Information*. The draft guidelines were prepared with input from the Canadian Bar Association and are designed to standardize the production process for voluntary and involuntary productions of electronic records to the Bureau.



MERGERS

A number of significant developments in merger review occurred in 2014, including a rare hearing by the Supreme Court of Canada (SCC) on a merger challenge. In a welcome sign of economic recovery, the Competition Bureau (Bureau) received a significantly higher number of merger notifications this year compared to recent years.

Where mergers raised competition concerns, the Bureau showed signs of greater openness towards behavioural remedies as a means of resolving those concerns. At the same time, the Bureau's opposition of two separate mergers was at least partly responsible for each of those transactions being abandoned.

SCC Decides Precedent-Setting Merger Case

In January 2015, the SCC released a landmark decision, *Tervita Corp. v. Canada (Commissioner of Competition)*. It is the first merger challenge to be decided by the SCC in nearly 20 years and only the second SCC mergers case since the merger provision's entry into force in 1986. It also represents the first time the SCC has discussed the "prevention of competition" test.

In a 6-1 decision, the SCC overturned decisions by the FCA and the Competition Tribunal (Tribunal). The Tribunal had concluded that Tervita's acquisition of a hazardous waste landfill site in British Columbia was likely to prevent competition substantially in a regional market and ordered the merger to be dissolved. While the SCC agreed that the merger was likely to prevent competition substantially, it found that the merger could not be blocked due to offsetting efficiencies.

The decision has significant implications for Canadian competition law. It reaffirms the paramountcy of Canada's "efficiencies" defence, under which the Tribunal may not block a merger where it is likely to generate efficiencies that will be greater than, and will offset, the merger's likely anticompetitive effects.

The SCC adopted the definition of efficiencies set out in *Competition and Antitrust Laws in Canada: Mergers, Joint Ventures and Competitor Collaborations*, Canada's leading treatise on mergers by Brian A. Facey and Cassandra Brown of Blakes:

"In the context of a merger, efficiencies are pro-competitive benefits. As Brian A. Facey and Cassandra Brown explain, economists' conception of efficiency revolves around the benefit, value or satisfaction that accrues to society due to the actions and choices of its members."

The paramount importance of efficiencies in merger review is a point of distinction between Canadian law and many international merger regimes. The Commissioner bears the burden of proving the anticompetitive effects, and the respondent(s) bear(s) the burden of demonstrating that the likely efficiencies would offset those effects. The balancing exercise to weigh these factors against one another must be as objective as reasonably possible.

To this end, the decision affirms the Commissioner's duty to quantify the anticompetitive effects of a merger where at all possible to do so, and highlights the dramatic consequences of failure to do so. In this case, because the Commissioner failed to meet her burden of quantifying such anticompetitive effects, the limited efficiencies proven by *Tervita* were found to exceed and offset the unquantified anticompetitive effects of the prevention of competition. The decision highlights why merging parties should always consider and assess potential merger efficiencies as part of the planning process for any transaction that will engage Canadian competition law.

The decision also provides guidance on the framework for analyzing whether a merger is likely to prevent future competition substantially where the merging parties are not already competing at the time of the merger or proposed merger.

In assessing whether a potential competitor would likely have entered the market “but for” the transaction, the time frame for assessing entry must be discernible and there must be evidence of when the entrant is realistically expected to enter the market in the absence of the merger. Moreover, the further into the future that the Tribunal must look, the more difficult it will be to show that a prevention of competition is “likely.”

Cooperation in Canada-U.S. Merger Reviews

In March 2014, the Bureau, the U.S. Federal Trade Commission (FTC) and the U.S. Department of Justice Antitrust Division (U.S. DoJ) jointly issued a document setting out best practices for cooperation in merger investigations. These best practices provide guidance for the business and legal counsel by setting out protocols for day-to-day cooperation relating to communication, the coordination of review timetables, the collection and evaluation of evidence, and the consideration and implementation of remedies. Given the already high level of coordination between Bureau and U.S. authorities in cross-border mergers, the best practices provide useful information to businesses on what they can expect from both agencies in respect of transactions that trigger antitrust reviews in both Canada and the U.S. Moreover, parties planning cross-border mergers should expect the best practices to lead to even further enhanced collaboration between Canadian and U.S. antitrust agencies.

Two Mergers Abandoned

In May 2014, Louisiana-Pacific abandoned its proposed acquisition of Ainsworth Lumber as a result of opposition from the Bureau and U.S. DoJ. Each company owned mills that produced oriented strand board (OSB), which is used primarily in the construction and renovation of homes. Working together under their new cooperation framework, the U.S. DoJ and the Bureau concluded that the transaction would have lessened competition substantially for the supply of OSB.

In August 2014, Bragg Communications abandoned its proposed acquisition of Bruce Telecom, which was not notifiable under the *Competition Act* but came to the Bureau’s attention as a result of complaints. Both companies provide telecommunications services in Bruce County, Ontario. The Bureau’s review concluded that the acquisition would have prevented or lessened competition substantially in two towns where the firms were the only providers of wireline telecommunications services. Bruce Telecom operated in only four towns. This transaction highlights the inherent risk of review even where transactions fall below the notification thresholds, particularly where complaints to the Bureau are likely. It also demonstrates the Bureau’s willingness to oppose transactions even where the geographic area affected is likely to be quite limited.

Greater Openness to Behavioural Remedies

In a May 2014 speech, the Commissioner highlighted the Bureau's openness to using behavioural remedies as a means of addressing competitive concerns in connection with certain mergers. Unlike structural remedies, which seek to impose a permanent change in the relevant industry to alleviate competitive concerns, behavioural remedies involve commitments without a change in ownership of the underlying productive assets. This shift continues from last year, when behavioural remedies also were agreed to in the Bell/Astral, Agrium/Glencore and Telus/Public Mobile mergers.

In March 2014, the consent agreement entered into by Loblaw contained behavioural restrictions on its agreements with suppliers for up to five years after closing. The Bureau also obtained a behavioural commitment from Garda-World in connection with its acquisition of G4S Cash Solutions. The commitment will allow customers of Garda-World to switch to alternate service providers without being subject to certain contractual penalties that they otherwise may have applied.

In May 2014, Transcontinental agreed to provide distribution and printing services to any purchaser of the divested newspapers for a defined period of time upon request in connection with its acquisition of certain community newspapers from Quebecor.

Focus on Consumer-Facing Industries

The Bureau has recently completed a series of major merger reviews involving consumer-facing businesses. Notable examples include large transactions in the areas of retail grocery (Loblaw's acquisition of Shoppers Drug Mart in March 2014) and fast food (the sale of Tim Hortons to Burger King in December 2014). The Bureau also released a white paper discussing its approach to retail mergers following the uptick of merger reviews in that sector. Among other things, the white paper discusses the techniques used by the Bureau to define relevant markets and to estimate the competitive effects of a merger.

That said, M&A activity in the North American retail sector has been higher in the past two years, suggesting that the Bureau's increased focus on the industry may reflect a trend in the broader market rather than over-indexing in the retail sector on the part of the Bureau.

Increase in Merger Notifications

Last year saw a sharp increase in merger notifications compared to previous years. As of September 2014, the Bureau had reviewed 135 transactions during its fiscal year, representing a 30 per cent increase over the same period in recent years. While pre-merger notifications consistently averaged approximately 17 filings per month

over the last five years, in 2014 they increased to an average of approximately 24 per month. Despite this, the Bureau indicated in September that it had only issued four supplementary information requests (SIRs) during 2014. While this is in line with the number of SIRs issued in recent years, it represents a decrease in SIRs issued as a percentage of total transactions notified.

However, the rise in merger notifications coupled with the lower percentage of SIRs issued and a lower Bureau budget for enforcement does not necessarily indicate that the Bureau is affording less scrutiny to mergers that raise serious competition issues. In the first two quarters of the Bureau's current fiscal year, the proportion of mergers that the Bureau classified as "complex" decreased slightly from its prior fiscal year (19 per cent vs. 21 per cent), indicating that more of the mergers being notified may not have merited an in-depth review. Parties planning a merger that is likely to raise competition issues should not necessarily expect to receive less Bureau attention simply because the Bureau is reviewing a higher number of mergers.

TIPS TO REMEMBER

Assess, minimize and allocate competition risks early on.

Undertake a competitive effects analysis of the transaction, consider whether there are ways to mitigate existing risks and effectively allocate such risks in the transaction agreements. Up-front buyer agreements and transaction structuring ultimately may provide significant value to merging parties. However, such agreements should resolve any and all possible competition issues in order to minimize the length of the review period.

Consider timing strategies for filing.

Strategies will have different advantages depending on the transaction circumstances. Relevant factors include the complexity of the transaction, whether an SIR is likely and whether remedies may be required.

Employ proper document management practices.

Avoid creating documents that could be misinterpreted by the Bureau or other competition law authorities, which may delay or unnecessarily complicate a review. This is relevant not only to the transaction planning and merger review phases of a deal, but also in the ordinary course of business. The Bureau places significant weight on documents prepared in the ordinary course of business and often reviews such documents during a merger review.



FOREIGN INVESTMENT

The federal government continues to encourage foreign investment into Canada while closely monitoring investments by state-owned enterprises (SOEs) and investments that potentially raise national security issues.

The government continues to reserve a broad scope of discretion to review investments of these types and has not issued further guidance in either respect.

National Security Reviews

Amendments to the *Investment Canada Act* (ICA) entered into force in December 2014 permit increased disclosure of information concerning national security reviews of foreign investments into Canada. Unlike the process of the Committee on Foreign Investment in the United States, the ICA amendments do not require the government to disclose to the public even aggregated information about the national security review process. However, the amendments do authorize the Industry Minister to disclose when different stages of the national security review process have been reached and allow the disclosure of information contained in Cabinet orders regarding a transaction under national security review, except where the minister is satisfied that communication or disclosure of that information would be prejudicial to the investor.

Net Benefit Process

Due to the political nature of the ICA process, companies that propose to make investments in Canadian businesses with identifiable brands have made efforts to communicate their commitments or undertakings to the government upon or shortly after announcement to bolster public and political support for their transactions.

The most recent example of this is the acquisition of the iconic Canadian chain Tim Hortons by Burger King. Burger King chose to publicize its commitments in the transaction agreement and spoke openly and frequently about its commitments to investors and the public at large.

While investments that do not raise political or public attention have continued to take close to, or even more than, the 75-day review period to obtain approval, investors in those cases have been able to make more modest commitments to obtain ICA approval. For example, Berkshire Hathaway's C\$3.2-billion acquisition of Alberta's largest electricity transmission company, Alta-Link, was approved in approximately 84 days. Unlike the Tim Hortons acquisition, however, the commitments were limited to maintaining employment levels, retaining a Canadian headquarters and reinvestment into Alberta.

SOE Transactions

Despite falling oil prices at the end of 2014 and beginning of this year, and declining investment levels in the oil sands, the federal government has not announced any changes to its "oil sands policy" that prohibits the acquisition of controlling investments by SOEs in oil sands businesses save in "exceptional circumstances."

The policy was tested when, in the first half of 2014, PTTEP and Statoil entered into an asset swap with respect to their jointly held oil sands properties. The Industry Minister

approved the transaction under the ICA. However, since the overall level of SOE investment into the oil sands remained unchanged as a result of the transaction, the boundaries of the government's oil sands policy have yet to be fully explored.

Outside of the oil sands, 2014 saw a modest renewal of SOE investments into Canada following a period of inactivity in the wake of the June 2013 ICA amendments that increased ministerial powers with respect to investments made by SOEs. In March, Progress (now owned by Malaysian SOE PETRONAS) received approval under the ICA to acquire Talisman's shale business for C\$1.5-billion. In October, state-owned Kuwait Petroleum Corp. announced its acquisition of a 30 per cent stake in Chevron's Duvernay shale property.

TIPS TO REMEMBER

Minority investments by SOEs can be reviewable.

SOE investors should consider carefully whether their minority investments in a Canadian business will give them control over the business, in which case, they may need ministerial approval under the ICA.

Consider whether to disclose undertakings early.

The early disclosure of undertakings can, in some circumstances, subdue potential criticism of an investment and bolster public and government support.

All politics is local.

Although ultimate transaction approval rests with the federal government, key decision-makers will consider the feedback from provincial and local leaders, as well as other elected and bureaucratic officials.



CARTELS

The Competition Bureau (Bureau) has continued to focus on the enforcement

of the *Competition Act's* cartel provisions. This past year, five companies and two individuals entered guilty pleas for their involvement in cartel conduct. An additional two companies and four individuals were charged with engaging in bid-rigging.

While the Bureau has focused on enforcement, the Bureau also emphasized education and prevention, hosting its first annual Anti-cartel Day in March. This new Bureau initiative is designed to raise awareness of the negative consequences that result from cartels and how cartels can be prevented. It is also intended to help businesses realize the benefits of an effective corporate compliance program.

Convictions in International Auto Parts Cartel

Convictions were obtained against three companies involved in certain international bid-rigging arrangements in the auto parts industry. These convictions resulted in fines totalling over C\$10-million, bringing the total fines imposed by the courts (since April 2013) for guilty pleas arising from the Bureau's investigation involving auto parts to nearly C\$52-million. In connection with these convictions, the Bureau noted that its investigation benefited from the cooperation of participants in the Bureau's immunity and leniency programs.

Convictions in Ocean Freight Cartel

Two companies and two individuals pled guilty to participating in a price-fixing cartel relating to surcharges for the supply of non-vessel operating common carrier export consolidation services from Canada to various foreign destinations. These included surcharges relating to currency exchange rate fluctuations and fuel. The convictions resulted in fines totalling C\$1.675-million. The Bureau noted the cooperation of participants in its immunity and leniency programs.

Charges Laid in Domestic Bid-Rigging Conduct

Three companies and five individuals were charged in connection with their alleged participation in domestic bid-rigging arrangements.

In one arrangement, two companies and two individuals were charged for participating in an agreement to rig bids for contracts involving road construction, water treatment and other infrastructure projects in the province of Quebec. In the second arrangement, one company and three individuals were charged for participating in an agreement to rig bids for federal government contracts for the supply of professional information technology services for Library and Archives Canada (LAC). Three other individuals, who allegedly participated in the bid-rigging while employed at LAC, were charged under the *Financial Administration Act* for making an opportunity for another person to defraud the government.

Two Important Judicial Decisions

Two recent court decisions clarify the use of documentary evidence in the prosecution of *Competition Act* offences and access by third parties to private communications intercepted by the state in the course of a criminal investigation.

In *R. v. Durward*, the Ontario Superior Court of Justice struck down the use of subsection 69(2) of the *Competition Act* in criminal proceedings. This provision created, among other things, an evidentiary presumption that a record found in the possession of an accused or on premises used or occupied by an accused could be admitted into evidence without further proof and was *prima facie* proof that the accused had knowledge of the record and its contents and that anything recorded in the record as having been done, said or agreed on by any accused did in fact occur. (This provision went beyond the common law and statutory rules governing the admissibility of business records.) The Crown has indicated it intends to appeal the court's decision.

In *Imperial Oil v. Jacques*, the Supreme Court of Canada (SCC) allowed the disclosure of records of private communications intercepted by the police under the *Criminal Code* wiretap provisions in the course of a criminal investigation. The SCC noted (at least implicitly) that before third-party records are produced, a court should engage in an analysis to ensure there are no factual or legal impediments that militate against disclosure of the records requested and that a court always has the ability and responsibility to impose conditions on any disclosure as may be appropriate in the circumstances.

Changes to Procurement Process

In 2014, changes were made to the federal government's procurement policy, further limiting the parties that can bid for government contracts and adding a time limit to their exclusion.

Bidders for federal government contracts must comply with the requirements set down by Public Works and Government Services Canada (PWGSC), the department that provides procurement services to the Canadian government. These requirements prohibit any bidder from bidding on a contract where it has (or its affiliates have) been convicted of certain offences, including criminal offences under the *Competition Act* (such as conspiracy and bid-rigging). As a result of a change to PWGSC's policy in 2012, this prohibition also applies to bidders who participated in the Bureau's leniency program.

This past year, PWGSC updated its integrity provisions to establish a time limit of 10 years during which bidders convicted of the stipulated offences would be ineligible to do business with PWGSC (counted from the date of conviction). This includes bidders that pleaded guilty or received a conditional discharge for an offence in Canada or an equivalent offence in another country. At the end of this time period, bidders can participate in the procurement process if they can certify that preventive measures are in place to avoid the re-occurrence of such convictions.

PWGSC also required bidders who use subcontractors to ensure their subcontractors also meet the department's procurement requirements.

As a result of these changes, individuals or companies who have been convicted of conspiracy or bid-rigging under the *Competition Act* will not be indefinitely banned from bidding on federal government contracts. These changes, however, may exclude Canadian subsidiaries that have not been convicted of criminal conduct, where their parent companies have been in foreign jurisdictions.

TIPS TO REMEMBER

Have in place an effective Competition Act compliance program that provides training for company employees, with active support from the company's senior management.

Regularly update your company's compliance program and actively enforce it.

Immediately contact competition counsel if cartel or bid-rigging conduct is discovered.



PRIVATE ACTIONS

The law on private actions for competition law claims continued to evolve this year,

following the release of the indirect purchaser trilogy in late 2013

(Pro-Sys Consultants Ltd. v. Microsoft Corporation, Sun-Rype Products Ltd. v. Archer Daniels Midland Company and Infineon Technologies AG v. Option consommateurs).

The two most significant developments this year were the Supreme Court of Canada's (SCC) decision in January, which both clarified and narrowed the tort of unlawful means or unlawful interference with economic relations, and the British Columbia Court of Appeal's (BCCA) decision in February, which held that the *Competition Act* is a complete code and so a breach of the act cannot form the wrongful act necessary to maintain a waiver of tort claim or provide the basis for any form of restitutionary relief.

Narrowed Scope of the Unlawful Means Tort

In January 2014, the SCC released its decision in *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, which both clarified and narrowed the scope of the previously ambiguous tort of unlawful means or unlawful interference with economic relations. Claims based on this tort are common in class actions, especially those related to competition law.

This decision explains that the tort will only be available where the defendant commits an unlawful act against that third party and the act intentionally causes economic harm to the plaintiff. An act is only “unlawful” if it is actionable by the third party or if it would have been actionable had it caused the third party a loss.

The position taken by the SCC is different than the broad approach to the tort that has been taken under U.S. state law and the *Civil Code of Quebec*. Under those laws, the action does not need to be an actionable wrong but may be otherwise lawful yet undertaken with the intention of causing economic harm to the plaintiff.

Competition Act as a “Complete Code”

In February 2014, the BCCA released a decision that overturned the certification of a medical products class action: *Wakelam v. Wyeth Consumer Healthcare*. The plaintiff had brought a class action against manufacturers of children’s cold medicines in which she alleged that, by marketing the medications for use by children under age six, the manufacturers engaged deceptive practices under the B.C. *Business Practices and Consumer Protection Act* and had made misleading representations in breach of the *Competition Act*. The plaintiff sought statutory, restitutionary and punitive damages although she did not claim there was a link between these illegal acts and any harm.

The BCCA held that a breach of the *Competition Act* cannot be used to establish the element of the wrong for a restitutionary claim. The private right of action is part of the self-contained scheme set out in the *Competition Act* and does not create a private right of action. In order to establish a statutory breach of the *Competition Act*, the plaintiff must prove causation and resulting harm on a class-wide basis.

TIPS TO REMEMBER

Immediately contact counsel.

Class action cases can raise a number of complex substantive and procedural issues, and actions may arise in multiple Canadian provinces.

Implement a records retention policy.

Do not engage in the ad hoc destruction of documents. Rather, have a policy that spells out for employees responsibilities regarding the preservation of internal company correspondence and documents.

Establish a joint defence arrangement.

This will allow co-defendants to discuss joint strategy and exchange without waiving privilege.



CONDUCT AND INTELLECTUAL PROPERTY

In 2014, several important developments

arising from decisions by the Federal Court of Appeal (FCA), the Competition Tribunal (Tribunal) and the Competition Bureau (Bureau) reshaped the law and policy regarding conduct matters. In many cases, these matters touch upon issues related to intellectual property.

Expanded Scope for Abuse of Dominance

In a remarkable reversal of the Tribunal, the FCA expanded the scope of the abuse of dominance providing in *Commissioner of Competition v. The Toronto Real Estate Board*. In a departure from previous case law, the FCA made two key determinations. First, the FCA held that a firm that does not compete in a market can still control that market by, for example, controlling a significant input to competitors in the market or by making rules that effectively control the business conduct of those competitors. Second, the FCA determined that a person could engage in a “practice of anticompetitive acts” even if the alleged conduct was not directed at the person’s own competitor. The FCA’s short decision is significant because it opens the bounds of the abuse of dominance provisions, without prescribing new limiting principles.

In November 2014, the Bureau announced that it had reached resolutions with two water-heater suppliers that were the subject of litigation under the abuse of dominance provisions. Notably, one of the companies agreed to pay a C\$5-million penalty plus C\$500,000 towards the Bureau’s investigative costs. In addition, the company agreed to make it easier for customers to terminate their rental agreements and return their water heaters. This is the first time a Canadian company has agreed to pay a monetary penalty in regards to an allegation of abuse of dominance. The case against the other supplier is continuing. The Bureau is still seeking an order that includes, among other things, a C\$15-million penalty.

Challenge to a Consent Agreement

In February 2014, the Commissioner entered into a registered consent agreement with four Canadian book publishers. The Commissioner alleged that the publishers had engaged in an unlawful competitor collaboration that substantially lessened competition in the retail sale of e-books in Canada.

A third-party e-book retailer, Kobo, challenged the validity of that consent agreement, and in March 2014, the consent agreement was stayed. The Commissioner applied to the Tribunal for a reference decision regarding the scope and nature of the Tribunal’s jurisdiction to vary a consent agreement on the application of a third party. A decision was rendered in September 2014, where the Tribunal laid out a three-part test to determine the jurisdiction of the Tribunal in assessing a consent agreement. Kobo is appealing the decision, and the Tribunal application challenging the consent agreement remains pending.

Resale Price Maintenance

Following a decision by the Tribunal in 2013 dismissing the Commissioner's resale price maintenance claim in the credit cards case (*Commissioner of Competition v. Visa et al.*), the Bureau published its *Price Maintenance Enforcement Guidelines* this past September. These guidelines describe the Bureau's approach to enforcing resale price maintenance under the *Competition Act*.

The guidelines have regard to a number of important economic concepts. For example, the guidelines recognize that the existence of "market power" is a key factor in determining whether conduct is capable of having an adverse effect on competition. By further example, the guidelines recognize that, depending on the circumstances, resale price maintenance and other distribution practices are capable of enhancing inter-brand competition and expanding output. The guidelines also, however, demonstrate an approach that asserts a broad application of the resale price maintenance provisions. For example, the Bureau's approach is that the resale price maintenance provisions can apply even if there is no "agreement" between the supplier and customer; rather, the Bureau need only show the existence of an upward influence on price, whether by "agreement, threat, promise or any like means." Moreover, the guidelines assert that a product that is "repackaged, reapportioned, processed or transformed from the product supplied, or is bundled with products other than the product supplied" could satisfy the resale requirement set out in the statute and applicable case law.

Focus on the Pharmaceutical Sector

The Bureau also had a strong focus on the pharmaceutical sector in 2014 consistent with its focus on the issue of health care generally. The Bureau provided further guidance with respect to two key issues, namely product transition strategies and reverse payment settlements.

In May, the Bureau discontinued its investigation of alleged anticompetitive conduct by an eye-care products supplier related to the supply of its prescription anti-allergy drug. The Bureau had investigated whether the company implemented a strategy to intentionally disrupt the supply of the drug, to limit or prevent meaningful competition from generic drug companies. After the company committed to restoring supply of the drug, and competing generic drug companies entered, the Bureau discontinued its investigation without any finding of anticompetitive conduct.

In September, the Bureau released a white paper setting out how it proposes to enforce Canadian competition law in the context of settlements of litigation between branded and generic pharmaceutical companies that involve payments by the branded pharmaceutical company to the generic (a so-called "reverse-payment"). Most importantly, the white paper states that the Bureau will consider using its criminal enforcement powers to prosecute reverse-payment settlements where (1) the

agreement is with respect to markets or products that are not the focus of the patent litigation or the conduct is beyond the scope of the patent, or (2) there is evidence that the agreement “is not implemented in furtherance of a legitimate collaboration,” such as where “the evidence suggested that a payment was strictly to delay or prevent entry.”

The white paper does not explain what “strictly to delay or prevent entry” means and does not address a number of legal issues that would likely arise in a litigated context (e.g., whether branded and generic firms can be found to be “competitors” under the criminal provision of the *Competition Act* without examining the validity of the underlying patent).

The white paper indicates the Bureau’s intention to advocate for “better information on patent settlements and the need to explore approaches that could be adapted to Canada’s regulatory framework,” and notes that “Canada’s regulatory framework needs to be strengthened to include a settlement notification system.”

Also in September, the Bureau issued an updated version of its *Intellectual Property Enforcement Guidelines* (IPEGs). This updated version is intended to bring the enforcement guidelines into alignment with the 2009 amendments to the *Competition Act*. Like the original iteration, the updated IPEGs distinguish between conduct that involves the “mere exercise” of an intellectual property right and conduct involving an IP right that is something else. We anticipate the Bureau will release a further version of the IPEGs in 2015, which will reflect the Bureau’s enforcement position regarding new IP/competition matters that have emerged from recent cases and investigations.

TIPS TO REMEMBER

Trade associations under the spotlight.

In light of the FCA’s expanded interpretation of the abuse of dominance provisions, trade associations should be mindful of this risk when implementing rules or offering services to members.

Audit ongoing contracts, distribution practices and joint ventures.

When dealing with distributors in Canada, businesses should be conscious that a wide range of common business practices could fall under the reviewable practices provisions of the *Competition Act*, whether or not any actual agreement exists between the supplier and distributor. In addition, market conditions will change, meaning that contracts, distribution practices or joint ventures that previously did not raise competition issues could do so in future.

Abide by document creation protocols.

Avoid creating documents that could be misinterpreted by the authorities that may lead to an unwarranted investigation by antitrust authorities.



ADVERTISING AND MARKETING

The Competition Bureau (Bureau) has continued to use an enforcement-based approach to advertising and marketing violations.

Consistent with its focus on the digital economy, the Bureau's enforcement efforts have been focused on the digital, online and telemarketing spaces, in particular. Developments in 2014 also highlighted the Bureau's commitment to cooperation with other competition authorities on advertising and marketing enforcement activities, consistent with its approach in other merger and conduct matters.

Performance Claims and Comparative Claims

Unsubstantiated performance and comparative advertising claims remain a focus of the Bureau. In February 2014, the Ontario Superior Court of Justice imposed a C\$500,000 penalty on Rogers for failing to conduct “adequate and proper” testing of its “fewest dropped calls” claims prior to introducing those claims in its advertising (*Canada (Commissioner of Competition) v. Chatr Wireless Inc. and Rogers Communications Inc.*). The court issued the penalty despite the fact that Rogers established at trial that the claims were true.

In November 2014, the Bureau and Bauer entered into a consent agreement, in which Bauer agreed to cease making certain performance claims, related to its hockey helmets, that were not supported by adequate and proper testing. Bauer was also required to implement an enhanced corporate compliance program, pay C\$40,000 toward the cost of the Bureau’s investigation and donate C\$500,000 worth of equipment to a charity that supports youth participation in sport.

Deceptive Marketing and Fine-Print Disclaimers

The Bureau continues to use all resources at its disposal to enforce *Competition Act* provisions regarding deceptive marketing practices, including criminal charges. Moreover, consistent with efforts to enhance inter-agency cooperation, the Bureau solicited assistance of the U.S. courts in one of its advertising law cases. In August 2014, the District Court of Maryland compelled Aegis Mobile, a U.S. company contracted by the Canadian Wireless Telecommunications Association, to collect and analyze advertising used to promote digital conduct. The order reflects the Bureau’s ability to reach beyond the Canadian border when enforcing the *Competition Act* and the commitment of U.S. authorities and courts to assist the Bureau in its efforts.

Focus on Online Advertising

The Bureau’s activities in 2014 reflect a commitment to extending its existing enforcement mandate beyond traditional media and into online advertising. Investigations dealing with several aspects of online marketing are underway, including misleading pricing in which consumers are presented with a price for a good or service but do not reveal the full price until later in the transaction, material terms and conditions that are buried in fine print, and online advertisements designed to look like a legitimate news story or legitimate consumer review. The Bureau also released guidance focused on “astroturfing”— the practice of creating online reviews that appear to have been made by or on behalf of legitimate consumers.

In 2014, the Bureau (in partnership with the Canadian Radio-television and Telecommunications Commission) was charged with enforcing Canada’s Anti-Spam

Legislation (CASL), which came into effect on July 1, 2014. CASL imposes obligations on advertising via commercial electronic messages. Advertisers are now required to have at least implied consent before sending electronic messages and have 36 months from the legislation's effective date to obtain express consent from past clients and customers. Additional provisions will come into force in 2015. CASL gives the Bureau new powers to target false or misleading representations and deceptive marketing practices in the electronic marketplace, including injunctive powers. The Bureau is likely to move quickly to address any violations of CASL, and businesses engaged in e-marketing should ensure they are in compliance with its provisions.

TIPS TO REMEMBER

The scope of the advertising provisions in the *Competition Act* extends beyond traditional advertising media to encompass labelling, online ads and telemarketing.

The Bureau will use all tools available to it, including criminal investigations and seeking information from foreign sources, when necessary, in pursuing its mandate to protect consumers from misleading advertising.

The Bureau will use its enforcement powers to investigate online advertising and marketing. Advertisers should ensure that all online marketing is in compliance with the *Competition Act*, CASL and other relevant advertising legislation.



E-DISCOVERY

E-discovery continues to be an important issue

when responding to requests from the Competition Bureau (Bureau). A number of legal developments in Canada and the U.S. from the past year will affect how companies approach e-discovery matters.

Updated Guidelines from the Bureau Regarding the Production of Electronically Stored Information

In August of 2014, the Bureau published draft guidelines regarding the *Production of Electronically Stored Information*. The draft guidelines were prepared with input from the Canadian Bar Association and are designed to standardize the production process for voluntary and involuntary productions of electronic records to the Bureau.

The guidelines are focused on technical aspects related to production such as document format, indexing and document delivery. The guidelines recognize that as technology changes the production process will need to be updated accordingly. In the guidelines, the Bureau encourages producing parties to engage in dialogue regarding the production of electronically stored information. The Bureau continues to require that producing parties identify the specifications in the request for which each document is responsive and to limit the scope of permissible de-duplication to civil matters only (i.e., for criminal matters, all duplicates must be provided).

Section 11 Production Orders

In 2014, the Commissioner actively used his investigative powers to obtain production orders under section 11 of the *Competition Act* for the production of records in the course of several ongoing matters. Most notably, the Commissioner obtained 12 such orders against food suppliers in the context of its investigation into one of Canada's largest grocery chains.

In *Commissioner of Competition v. Pearson Canada Inc.*, the Federal Court issued guidance on the standard for granting section 11 production orders following a legal challenge brought by Pearson to the Commissioner's application in the e-books investigation. The court denied the challenge but reduced the scope of the requested order. In contrast to previous cases, the court determined that it must satisfy itself of four criteria before deciding to issue a section 11 order: (1) that an inquiry is in fact being made, (2) the Commissioner has provided full and frank disclosure, (3) the information or records described in the order being sought are relevant to the inquiry in question, and (4) the scope of such information or records is not excessive, disproportionate or unnecessarily burdensome. The court retains discretion to deny the Commissioner's application.

Privilege Logs

Case law has also clarified the requirements around the descriptions of records over which a party claims legal privilege. In *Canadian Natural Resources Limited v. ShawCor Ltd.*, the Alberta Court of Appeal held that litigants must provide descriptions of otherwise privileged records to assist other parties in assessing the validity of the claimed privilege. The Court of Appeal noted that this new approach is consistent with the approaches being taken in other jurisdictions for the listing of privileged documents in affidavits of documents, including British Columbia, Ontario, Saskatchewan and the Federal Court. While the Bureau does not typically require that merging parties produce privilege logs, the Bureau normally seeks such logs in the context of a production order for records in a civil or criminal investigation.

Documents Stored Outside of Canada

E-discovery decisions in the U.S. are likely to have an impact on how the law in this area will develop in Canada. In particular, *In re Warrant to Search a Certain Email Account Controlled & Maintained by Microsoft Corp.*, the court denied Microsoft's petition to quash a warrant that required the company to turn over data stored overseas. The case touches on many issues, but the court focused on the fact that Microsoft controlled the data in coming to its decision. Microsoft has since appealed to the U.S. Court of Appeals for the Second Circuit.

Sedona Canada

The Sedona Canada Working Group has been working on updating the Second Canada Principles on e-discovery, which were originally published in 2008. The updated version is expected to be released this year and will reflect the significant developments in the case law since the principles were first drafted.

TIPS TO REMEMBER

When reviewing records for privilege, note briefly how they fit within a recognized category such as solicitor-client, litigation or settlement privilege.

Be open to discussing technical challenges or limitations with the Bureau in the context of a production of electronic records.

ABOUT BLAKES

As one of Canada's top business law firms, Blake, Cassels & Graydon LLP (Blakes) provides exceptional legal services to leading businesses in Canada and around the world. We focus on building long-term relationships with clients. We do this by providing unparalleled client service and the highest standard of legal advice, always informed by the business context.

Thanks to our clients, Blakes was ranked as having the leading law firm brand in Acritas' Canadian Law Firm Index 2014, which measures law firm brands most favoured by top companies in Canada and internationally. We were also the only Canadian firm to be named "Canada Law Firm of the Year" for six consecutive years in the Who's Who Legal Awards 2014 and "Law Firm of the Year: Canada" for the fourth time in the Chambers Global Awards 2013. In addition, we also consistently rank as one of the top Canadian firms on the Bloomberg, Thomson Reuters and mergermarket M&A league tables in terms of transactional value or number of deals for Canadian announced transactions.

Serving a diverse national and international client base, our integrated network of 11 offices worldwide provides clients with access to the Firm's full spectrum of capabilities in virtually every area of business law. Whether an issue is local or multi-jurisdictional, practice-area specific or interdisciplinary, Blakes handles transactions of all sizes and levels of complexity.

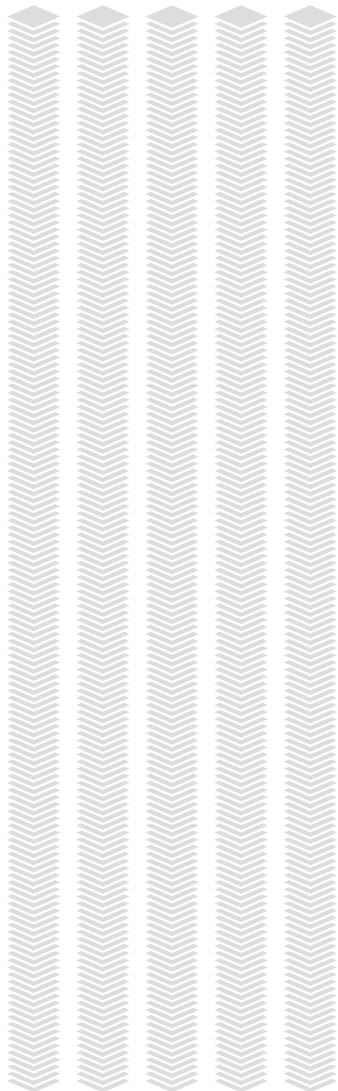
www.blakes.com

Blakes has one of the largest and most active mergers and acquisitions practices in Canada.

PUBLIC AND PRIVATE M&A

Number of transactions we have been involved in over the past five years

700+



GLOBAL EXPERTISE



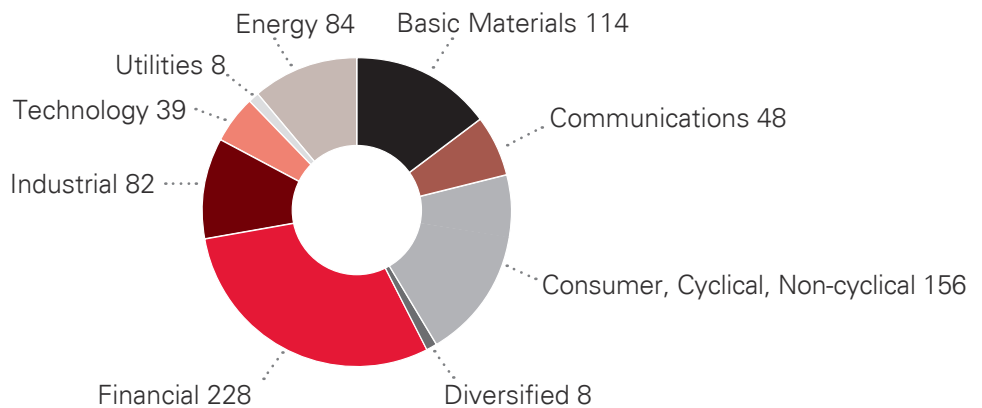
These deals spanned over **40** countries and/or geographical regions

THE AGGREGATE DOLLAR VALUE of these deals is in excess of

US\$588-billion



ACQUIRER INDUSTRY SUMMARY



WIDE EXPERIENCE

These transactions encompass all types of deals, from **ASSET SALE TO VENTURE CAPITAL**

ACCORDING TO BLOOMBERG BLAKES IS THE

#1 CANADIAN LAW FIRM

in both Canadian and global M&A deals by deal value and deal count for the period 2010-2014

COMPETITION & ANTITRUST

“Blake, Cassels & Graydon LLP is ‘unreservedly in the top tier for competition work in Canada’ and fields a ‘deep bench of leading lawyers in this area, with excellent young names coming through.’”

The Legal 500 Canada 2015

The Blakes Competition, Antitrust & Foreign Investment group is repeatedly acknowledged as the leading practice in Canada. We work with clients to facilitate their strategic objectives in compliance with the *Competition Act* and Canada’s rules on foreign investment.

Blakes is frequently retained by major domestic and international companies and by international and domestic law firms to provide strategic counsel and representation in merger reviews, cartel investigations, abuse of dominance cases, distribution practices, advertising matters, antitrust class action defence and other competition issues. Blakes is also a leading firm with respect to securing merger approvals for non-Canadian purchasers under Canada’s foreign investment laws, which are typically required in all transactions where a non-Canadian purchases a Canadian business.

Blakes has a proven track record of success in acting for clients on multinational transactions and investigations where coordination among counsel and agencies in the U.S., Europe and other jurisdictions is a paramount objective. Blakes lawyers understand how competition laws fit within the broader context of complex corporate transactions and business affairs generally. Blakes can draw on the Firm’s vast resources and leading expertise in related practice areas, such as litigation, securities and intellectual property.

PUBLICATIONS

Competition and Antitrust Law: Canada and the United States, Brian A. Facey, Lexis Nexis, Fourth Edition (June 2014)

Competition and Antitrust Laws in Canada: Mergers, Joint Ventures and Competitor Collaborations, Brian A. Facey and Cassandra Brown, LexisNexis Canada (May 2013)

FOREIGN INVESTMENT REVIEW

“Blakes attracts praise as a ‘one-stop-shop for competition and corporate matters’ and lawyers are credited as ‘among the most experienced in the market for complex and strategic issues.’”

The Legal 500 Canada 2014

Blakes has a leading Investment Canada practice, advising both international and Canadian clients on the application of the *Investment Canada Act* (ICA) with respect to securing merger approvals for non-Canadian purchasers under Canada’s foreign investment laws. Blakes lawyers are experienced in navigating the complex maze of regulations governing investments by non-Canadians, including state-owned enterprises and sovereign wealth funds.

The Blakes team has extensive experience in all aspects of foreign investment review under the ICA and has represented numerous clients before the Investment Review Division of Industry Canada and the Cultural Sector Investment Review Branch of Canadian Heritage. Blakes lawyers have successfully cleared a number of high-profile transactions under Canada’s foreign investment review regime, including those that involve industry sectors subject to special consideration and review under the ICA (i.e., cultural businesses and national security). Blakes is experienced with the national security provisions of the ICA and was successful in persuading the minister not to invoke this power in one of Canada’s most high-profile cases.

PUBLICATIONS

Investment Canada Act: Commentary and Annotation, Brian A. Facey and Joshua Krane, LexisNexis Canada (2015)

The Foreign Investment Regulation Review, Second Edition, Editor Brian A. Facey, Law Business Research (2014)

Regulation of Foreign Investment in Canada - The Investment Canada Act - Law, Navin Joneja, Policy and Practice, Thomson Carswell (January 2014)

COMPETITION LITIGATION

“Clearly one of the Canadian powerhouses in the antitrust field.”

“Their roster is deep and it is talented.”

Chambers Global: The World’s Leading Lawyers for Business 2014

Blakes competition litigators play a key role in one of Canada’s largest and most experienced competition law practices. Blakes is frequently at the forefront of high-profile competition litigation matters, including contentious mergers, advertising, abuse of dominance, reviewable trade practices and other civil matters before the Canadian Competition Tribunal and Canadian provincial and federal courts. Our lawyers also routinely appear before Canadian courts on major antitrust criminal matters and class actions.

Much of the Firm’s work in this area involves strategic advice to best position matters for success in the event of litigation as well as preventing problems before they lead to litigation through prudent advice concerning the structuring of business transactions and the conduct of business affairs.

PUBLICATION

Cartel leniency in Canada: Overview, Robert E Kwinter and Evangelia L Kriaris, Practical Law (2014)

RECENT AWARDS AND RECOGNITION

The Legal 500 Canada 2015 (Competition/Antitrust) ranks Blakes in the top tier and describes Brian A. Facey as a Leading Lawyer with a “reputation as a ‘competition powerhouse.’”

Global Competition Review’s GCR 100 (15th Edition) and *Global Competition Review’s Canada Country Survey* ranks the Blakes Competition, Antitrust & Foreign Investment group in the “Elite” category, the review’s highest designation.

The 2015 Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada ranks Brian A. Facey and Robert E. Kwinter as leading lawyers in the area of Competition Law.

The Best Lawyers in Canada 2015 (Competition/Antitrust) recognizes Brian A. Facey, Jason Gudofsky, Navin Joneja, Robert E. Kwinter and Deborah Salzberger as leading lawyers.

Chambers Global: The World’s Leading Lawyers for Business 2014 ranks Blakes in Band 1, its top tier for Competition/Antitrust (including litigation and foreign investment review). Brian A. Facey, Jason Gudofsky, Randall Hofley, Navin Joneja, Robert E. Kwinter, Julie Soloway and Micah Wood are recognized as leading lawyers. With respect to market standing, one client noted: “Clearly one of the Canadian powerhouses in the antitrust field.”

Who’s Who Legal: Canada 2014 ranks Brian A. Facey, Jason Gudofsky, Randall Hofley, Navin Joneja, Robert E. Kwinter and Julie Soloway as leading lawyers. Brian A. Facey “... is once again the ‘most highly nominated’ individual in our research.”

A 2014 Lexpert Zenith Award: Celebrating Practice Area Excellence was awarded to Brian A. Facey in the area of competition law. “Brian was at the epicentre of many of the country’s largest deals...”

The Canadian Legal Lexpert Directory 2014 ranks the Blakes Competition, Antitrust & Foreign Investment group in its top category, “Most Frequently Recommended,” and recognizes Brian A. Facey, Jason Gudofsky, Randall Hofley and Robert E. Kwinter as leading lawyers.

The 2014 Lexpert Guide to the Leading US/Canada Cross-Border Corporate Lawyers in Canada ranks Brian A. Facey, Randall Hofley and Robert E. Kwinter as leading lawyers in the area of Competition Law.

Legal Media Group's Guide to the World's Leading Competition and Antitrust Lawyers 2014 ranks Brian A. Facey, Jason Gudofsky, Randall Hofley, Navin Joneja, Robert E. Kwinter, Deborah Salzberger, Julie Soloway and Micah Wood as leading lawyers.

Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms and Attorneys – 2014 Edition recognizes Partners Brian A. Facey, Randall Hofley and Robert E. Kwinter for their expertise in Competition Litigation.

BTI Consulting Group names Brian A. Facey "BTI Client Service All-Star" for 2014 for delivering exceptional client service in the area of competition/antitrust. He is one of 15 top antitrust lawyers and the only Canadian competition lawyer to receive this distinction.

Global Competition Review's 2013 Edition of Women in Antitrust ranks Julie Soloway as one of the world's leading female lawyers in the field of competition law.

World Finance Legal Awards 2013 names Blakes the "Best Competition & Anti-Trust Firm."

Global Competition Review's 2012 Edition of 40 Under 40 recognizes Navin Joneja and Deborah Salzberger as leading competition lawyers.

Legal Media Group's Guide to Leading Practitioners: China 2011 ranks Brian A. Facey as a leading lawyer in the area of Competition & Antitrust: International.

BLAKES LAWYERS

If you have any questions or comments regarding the developments outlined in this report, please do not hesitate to contact your usual Blakes contact or any member of Blakes Competition, Antitrust & Foreign Investment group.



Brian A. Facey
Chair, Competition,
Antitrust & Foreign
Investment Group | Toronto
416-863-4262
brian.facey@blakes.com



Catherine Beagon Flood
Partner | Toronto
416-863-2269
cathy.beagonflood@blakes.com



Jeff W. Galway
Partner | Toronto Office
416-863-3859
jeff.galway@blakes.com



Ryder L. Gilliland
Partner | Toronto
416-863-5849
ryder.gilliland@blakes.com



Anne Glover
Partner | Toronto
416-863-3266
anne.glover@blakes.com



Jason Gudofsky
Partner | Toronto
416-863-3184
jason.gudofsky@blakes.com



Randall J. Hofley
Partner | Toronto, Ottawa
416-863-2387
613-788-2211
randall.hofley@blakes.com



Navin Joneja
Partner | Toronto
416-863-2352
navin.joneja@blakes.com



Robert E. Kwinter
Partner | Toronto
416-863-3283
robert.kwinter@blakes.com



Claude Marseille
Partner | Montréal
514-982-5089
claudio.marseille@blakes.com



Dalton W. McGrath
Partner | Calgary
403-260-9654
dalton.mcgrath@blakes.com



Mark Morrison
Partner | Calgary
403-260-9726
mark.morrison@blakes.com



Robin Reinertson
Partner | Vancouver
604-631-3323
robin.reinertson@blakes.com



Deborah Salzberger
Partner | Toronto
416-863-4014
debbie.salzberger@blakes.com



Paul B. Schabas
Partner | Toronto
416-863-4274
paul.schabas@blakes.com



Julie Soloway
Partner | Toronto
416-863-3327
julie.soloway@blakes.com



James Sullivan
Partner | Vancouver
604-631-3358
james.sullivan@blakes.com



Robert J. Torralbo
Partner | Montréal
514-982-4014
robert.torralbo@blakes.com



Micah Wood
Partner | Toronto
416-863-4164
micah.wood@blakes.com



Cassandra Brown
Associate | Toronto
416-863-2295
cassandra.brown@blakes.com



Emma Costante
Associate | Toronto
416-863-3154
emma.costante@blakes.com



David Dueck
Associate | Toronto
416-863-2959
david.dueck@blakes.com



Dustin Kenall
Associate | Ottawa
613-788-2245
dustin.kenall@blakes.com



Joshua Krane
Associate | Toronto
416-863-4187
joshua.krane@blakes.com



Litsa Kriaris
Associate | Toronto
416-863-3891
litsa.kriaris@blakes.com



Charles Layton
Associate | Toronto
416-863-4240
charles.layton@blakes.com



Kevin MacDonald
Associate | Toronto
416-863-4023
kevin.macdonald@blakes.com



Kate McNeece
Articling Student | Toronto
416-863-4151
kate.mcneece@blakes.com



Leah Noble
Associate | Toronto
416-863-5283
leah.noble@blakes.com



Julia Potter
Associate | Toronto
416-863-4349
julia.potter@blakes.com



David Rosner
Associate | Toronto
416-863-2216
david.rosner@blakes.com



Zachary Silver
Associate | Toronto
416-863-2970
zachary.silver@blakes.com



Daniel Stern
Associate | Toronto
416-863-2283
daniel.stern@blakes.com

MONTRÉAL
OTTAWA
TORONTO
CALGARY
VANCOUVER
NEW YORK
LONDON
BAHRAIN
AL-KHOBAR*
BEIJING
SHANGHAI*