

Cassels

Cassels on Competition: June/July 2023

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In this edition: Canada's new criminal no-poach and wage-fixing prohibitions are now in effect, the Bureau publishes its market study report "Canada Needs More Grocery Competition" and makes recommendations in connection with the ongoing legislative review of the federal *Cannabis Act*, and more...

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News You Need to Know

- Canada's new criminal no-poach and wage-fixing prohibitions are now in effect. See our commentary on the implications of the new prohibitions for business (and especially deal) lawyers [here](#) and for franchisors [here](#).
- The Competition Bureau has issued a position statement summarizing its investigation of and the terms of a consent agreement with Isologic Innovative Radiopharmaceuticals Inc. (Isologic). The consent agreement followed an investigation by the Bureau into allegations of abuse of dominance related to Isologic's contracting practices in the supply of radiopharmaceuticals in Canada. More particularly, the Bureau took issue with Isologic's exclusivity arrangements and minimum purchase, automatic renewal, and termination fee clauses which it concluded "impeded the ability of actual or potential competitors to enter or expand in the [single-photon emission computed tomography] radiopharmaceutical market in Canada."
- Canada Bread Company, Limited has pleaded guilty and was fined \$50 million in connection with a criminal conspiracy to fix the wholesale price of fresh commercial bread. According to the Bureau, it continues to investigate alleged price-fixing by certain other companies.

Bureau Business

- The Bureau has entered into a consent agreement with Superior Plus Corp. to address competition concerns with Superior's acquisition of Certarus Ltd. The Bureau concluded that the proposed transaction would likely result in a substantial lessening of competition for the retail supply of portable heating fuels for industrial customers in Northern Ontario. To resolve these issues, Superior

has agreed to sell eight propane distribution hubs in Northern Ontario to an independent purchaser to be approved by the Commissioner of Competition.

- The Bureau has provided submissions to the Canadian Radio-television and Telecommunications Commission (CRTC) in connection with the CRTC's review of the wholesale high-speed access service framework. Among other things, the Bureau:
 - recommends how to analyze the state of competition in the internet industry in Canada;
 - provides considerations for the design of the framework; and
 - identifies ways to boost competition, including how to reduce switching costs for consumers wishing to change internet providers.
- The Bureau has published its market study report – Canada Needs More Grocery Competition – which “recommends that all levels of Canadian government act to increase competition in the grocery industry.” The Report includes four specific recommendations:
 - create a whole-of-government strategy to support the emergence of new types of grocery businesses;
 - encourage the growth of independent grocers and the entry of international grocers;
 - introduce accessible and harmonized unit pricing requirements to empower consumer choice; and
 - limit the use of property controls that make it difficult for new grocery stores to open.
- The Bureau has made recommendations in connection with the ongoing legislative review of the federal *Cannabis Act*, namely:
 - review the cannabis licensing process and related regulatory compliance costs to ensure policies are minimally intrusive to competition, where possible;
 - review and consider adjusting THC limits on edible cannabis products, as appropriate, to allow legal cannabis producers to meet consumer demand and better compete with the illicit market; and
 - review and consider easing restrictions on cannabis promotion, packaging and labelling, as appropriate, to help consumers make informed purchasing decisions and to provide cannabis producers with more flexibility to compete and innovate.
- The Bureau, the CRTC, and the Office of the Privacy Commissioner have established the Canadian Digital Regulators Forum. The Forum is said to be aimed at strengthening information sharing and collaboration on matters that relate to digital markets and platforms. More particularly, through the Forum, the “three agencies will exchange best practices, conduct research, and collaborate on matters of common interest, such as artificial intelligence and data portability.”