

**Template pursuant to Section 3 (a) of the
ICN Framework on Competition Agency Procedures
Competition Bureau, Canada**

The following template is submitted by *the Competition Bureau, Canada* pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures ("CAP").

I. Introduction

The Competition Bureau (the "Bureau") is an independent law enforcement agency that supports the Commissioner of Competition (the "Commissioner") in administering and enforcing the *Competition Act*¹ (the "Act"). The Bureau recognizes the importance of carrying out its mandate in a principled and measured manner that promotes confidence and consistency in its enforcement approach.

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

The Act is a law of general application, and with limited exceptions, applies to all persons, including businesses, in Canada. The purpose of the Act is to maintain and encourage competition in order to promote the efficiency and adaptability of the Canadian economy; expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada; to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy; and to provide consumers with competitive prices and product choices.

The Act contains both civil and criminal provisions designed to address anti-competitive activity in Canada. The civil provisions deal with competitor collaborations, abuse of dominance and other restrictive trade practices,² civil deceptive marketing practices and merger review. With the exception of the deceptive marketing practice provisions, the civil provisions are included in Part VIII of the Act. The criminal provisions deal with some deceptive marketing practices, cartel behaviour (price-fixing, market allocation, output restriction) as well as bid-rigging.

Neither the Commissioner nor the Bureau have an adjudicative function. Rather, the courts and the Competition Tribunal (the "Tribunal"), a specialized body comprised of judicial members³ and non-judicial members with expertise in economics and business, have the authority to make a final determination as to whether there has been a violation of the Act and to order remedies that may apply to the activity in question.

The Tribunal has powers to issue interim orders to provide temporary relief in appropriate circumstances as well as prohibition orders.⁴ The Commissioner may also enter into a Consent Agreement with a person in respect of whom the Commissioner has applied or may apply for an

¹ *Competition Act* (R.S.C 1985, c. C-34)

² Other restrictive trade practices include tied selling, exclusive dealing, market restriction, refusal to deal and price maintenance.

³ Judges from the Federal Court.

⁴ The Tribunal's interim relief power includes interlocutory and interim injunctions. A discussion of the Tribunal's order-making powers is beyond the scope of this submission.

order under Part VIII of the Act, where the Consent Agreement is based on terms that could be the subject of an order of the Tribunal against that person.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favourable than Persons of its jurisdiction in like circumstances.

Persons of another jurisdiction are treated no less favourably than Persons of Canada in like circumstances. There is also nothing in the Act that discriminates against either domestic or foreign companies. In addition, once a matter is in front of the court system, there are a number of protections for litigants, including those found in the *Canadian Charter of Rights and Freedoms*⁵. Canada believes it is important for countries to apply their competition laws in a non-discriminatory manner. In fact, Canada has specified in its Free Trade Agreements that the Parties are required to apply their competition laws and policies in a non-discriminatory manner, including not discriminating with regard to the nationality of a firm.

c) Transparency and Predictability

i. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.

While the Commissioner has no express authority to adopt rules, one of the Bureau's key priorities is to build trust by applying Canada's competition laws in a transparent and predictable manner. The Bureau achieves this outcome by publically communicating annual priorities; striving to maintain up-to-date information about activities on our website; developing guidance on investigation and stakeholder communications, outlining the Bureau's commitment to enhance communication with parties of certain enforcement activities about issues and timelines; continuing to consult on important issues such as the development of new bulletins and guidelines; and publishing information about the outcome of inquiries in a manner that balances the public's right to know with legal limitations, the preservation of enforcement discretion and confidentiality concerns.

ii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.

Statutes and regulations that may be applicable to Enforcement Proceedings, such as the Act, the *Competition Tribunal Act*,⁶ and the *Competition Tribunal Rules*⁷ are publically available, including online through Canada's Department of Justice.

⁵ *Canadian Charter of Rights and Freedoms*, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11

⁶ *Competition Tribunal Act* (R.S.C., 1985, c. 19 (2nd Supp.))

⁷ *Competition Tribunal Rules* (SOR/2008-141)

iii. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.

The Commissioner's inquiries and enforcement proceedings are subject to oversight by either federal or provincial courts of competent jurisdiction or the Tribunal, all of which have procedural rules.

All officials at the Bureau follow internal policies and procedures when conducting investigations, including note-taking and search and seizure.

iv. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.

The Bureau endeavours to be transparent. The Bureau uses many means to promote transparency and predictability of its activities to businesses and consumers, primarily through publications (e.g., news releases, information bulletins, enforcement guidelines, and position statements).

Enforcement Guidelines & Bulletins

The Bureau publishes, and regularly updates, enforcement guidelines that articulate the Bureau's enforcement policy and approach with respect to the Act.

The development and publication of guidance on an agency's enforcement approach can be particularly useful on issues that remain unclear or uncertain to stakeholders. In this regard, the Bureau recently published guidance documents on its approach to areas of law and/or policy that stakeholders and/or the Bureau believed could benefit from further clarification, including immunity and leniency in criminal cases, intellectual property enforcement and abuse of dominance enforcement. A comprehensive list of the Bureau's Enforcement Guidelines can be found online.⁸

Position Statements

In an effort to further enhance its communication and transparency with stakeholders, the Bureau will, where possible, publicly communicate the results of certain investigations, inquiries and merger reviews by way of a Position Statement. Position Statements provide transparency to the competition law community and industry stakeholders, as well as the public, by describing the Bureau's analysis and main findings of certain investigations, inquiries and merger reviews conducted under the Act. The Bureau's position statements can be found online.⁹

d) Investigative Process

i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.

The Bureau seeks to provide Parties with timely and predictable opportunities to engage in dialogue to resolve matters in a manner that preserves the Commissioner's discretion and other enforcement interests, including applicable privileges and statutory obligations.

⁸ https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00168.html

⁹ https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00173.html

Provided that doing so could not adversely affect the Commissioner's discretion or compromise an investigation, the Bureau is committed to ensuring that Parties are notified, as early as is appropriate, of the commencement or discontinuance of an inquiry;¹⁰ the provisions of the Act to which inquiries relate; the general nature of the activity or conduct being inquired into; and the Case Officer at the Bureau that may be contacted with respect to the inquiry.

Once the Commissioner has filed an application or action before a court or the Tribunal or a charge has been laid, Parties will obtain information pursuant to applicable discovery and disclosure processes. Parties and other stakeholders may also access information available through the open court system in Canada.

- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.***

In addition to the above obligations, the Bureau recognizes that dialogue with Parties generally facilitates resolutions and helps to avoid protracted litigation. In addition to the aforementioned discovery or disclosure processes, the Bureau prefers to engage in dialogue with Parties who demonstrate a commitment to resolving the matter.

Persons under inquiry have rights to information at various stages of the process. The Act provides that Persons are entitled to certain information, including: to be informed as to the progress of the inquiry, upon written request (subsection 10(2)); and to inspect a record or other thing produced pursuant to section 11, or from whom a record or other thing is seized pursuant to section 15 or 16, at any reasonable time and subject to such reasonable conditions as may be imposed by the Commissioner (subsection 18(2)).

- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.***

The Bureau seeks to provide Parties with timely and predictable opportunities to engage in dialogue to resolve matters in a manner that preserves the Commissioner's discretion and other enforcement interests, including applicable privileges and statutory obligations. The Bureau focuses investigative requests and provides reasonable time for Persons to respond to requests during investigations.

In the context of mergers, the Bureau follows timeframes prescribed by the Act and proactively engages merging parties. The submission of a complete notification to the Bureau triggers an initial 30-day waiting period. During this initial waiting period, the Bureau will work diligently to narrow and refine issues and to determine what, if any, additional information is required from parties to

¹⁰ Section 10(1) of the Act provides the Commissioner to cause an inquiry to be made into all such matters as the Commissioner considers necessary to inquire into with the view of determining the facts. For the purpose of this submission, inquiry and investigation will have the same meaning. Obligations when discontinuing an inquiry are laid out in section 22 of the Act.

assess these issues. If the Bureau requires additional information, such information will generally be sought from the merging parties by way of a Supplementary Information Request (“SIR”). Prior to issuing a SIR, the Bureau will generally provide a draft to the recipient party and, at that party's election, engage in dialogue with the party, its counsel and its business representatives and technical staff, regarding the information requests set out therein. Pursuant to paragraph 123(1)(b) of the Act, the issuance of a SIR to one or more notifying parties triggers a second 30-day waiting period. Once a SIR is issued, the Bureau encourages the recipient party to engage in post-issuance dialogue for the purpose of, among other things: prioritizing information to be supplied by a party; discussing custodians and search terms to be used in conducting electronic searches; and where information has been produced on a rolling basis, confirming whether further information is required by the Bureau in response to a particular specification of the SIR. For more information, see the Bureau’s *Merger Review Process Guidelines* online.¹¹

In order to obtain an order under section 11 of the Act for oral examination, production or written return of information, the Commissioner must satisfy two substantive requirements: (i) that an inquiry under s. 10 has commenced, and (ii) that a person has or is likely to have information that is relevant to the inquiry. Since Section 11 orders are an *ex-parte* process, on all applications, the moving party is under an obligation to make full, frank, and fair disclosure to the Court. In the context of a section 11, this means that the Commissioner should state his or her case for obtaining an order and must inform the Court of any point of fact or law known to the Commissioner why the section 11 order should not be granted.

Where appropriate, the Bureau has engaged Persons against whom a proposed order is sought to have a pre-application dialogue. The Part of the purpose of this dialogue is to hear the concerns raised by the respondent with a view to potentially tailoring the specific requests such that it may reduce the respondent’s burden.

For solely criminal matters, the Bureau’s dialogue with Parties who are cooperating with the Bureau during an inquiry may also be governed by the *Immunity and Leniency Program*, which can be found online.¹²

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavour to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

The Bureau follows service standards for certain types of investigations (mergers) and activities. For example, for mergers, service standards represent the maximum time within which the Bureau will endeavour to advise parties of the Bureau's position in respect of a particular transaction assuming cooperation from the parties.

The Bureau aims to provide a response to notifications, Advance Ruling Certificate (“ARC”) requests and requests for written opinions within the service standard periods, and does so for the vast

¹¹ <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03423.html>

¹² <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04391.html>

majority of matters. The Bureau's obligation to comply with service standards is contingent upon cooperation from the parties during the course of the relevant examination.

For non-complex mergers, the service standard is 14 calendar days, commencing the day a complete notification or ARC request is received by the Commissioner, assuming sufficient information is provided with the notification or ARC request to assign complexity. For complex mergers, the service standard is 45 calendar days,¹³ commencing the day on which a complete notification or ARC request is received by the Commissioner, assuming sufficient information is provided with the notification or ARC request to assign complexity. More information can be found online in the *Competition Bureau Fees and Service Standards Handbook for Mergers and Merger-Related Matters*.¹⁴

The Bureau also follows service standards for written opinions, which apply to a request for a binding written opinion. Pursuant to section 124.1 of the Act, the Commissioner has the discretion, on request from any person, to provide a binding written opinion on the applicability of one or more provisions of the Act or regulations to a proposed practice or conduct. The service standard depends upon, among other things, the complexity of the proposed practice or conduct that is the subject of the request. More information can be found online in the *Competition Bureau Fee and Service Standards Handbook for Written Opinions*.¹⁵

With regard to criminal matters, the Supreme Court of Canada has provided jurisprudence regarding post-charge delay in *R. v. Jordan*, [2016] 1 S.C.R. 631. The Bureau and Public Prosecution Service of Canada are striving to flag and resolve potential issues surrounding disclosure to the accused early in the process to ensure that a prosecution is not unduly delayed by these issues.

f) Confidentiality

i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.

Specific confidentiality obligations are set out in section 29 of the Act. Additionally, subsection 10(3) requires that all inquiries be conducted in private. In practice, the Bureau extends this protection to all preliminary examinations being pursued to determine whether or not grounds exist for the commencement of an inquiry by the Commissioner. More information can be found in the Bureau's *Information Bulletin on the Communication of Confidential Information Under the Competition Act* online.¹⁶

¹³ The service standard for complex mergers is 45 calendar days, except where a SIR is issued, in which case it shall be 30 days. The service standard commences on the day on which sufficient information has been received by the Commissioner to assign complexity; or where a SIR is issued, the day on which the information requested in the SIR has been received by the Commissioner from all SIR recipients.

¹⁴ https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04358.html#s5_0

¹⁵ <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04303.html>

¹⁶ <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03597.html>

ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.

Section 29 effectively draws under its protection nearly all information that is provided to or obtained by the Bureau in the course of executing its mandate under the Act. The Bureau recognizes that maintaining the confidentiality of information and communicating such information only as allowed by law is essential to its integrity as a law enforcement agency. The Bureau is committed to treating confidential information responsibly and in accordance with the law. It remains vigilant to avoid communicating confidential information when dealing with matters under the Act, unless such communication is permitted under section 29 of the Act or other statutory provisions pertaining to confidentiality and, even when permitted, considers whether disclosure is, in the circumstances, advisable or necessary. In other words, the general policy of the Bureau is one of minimizing the extent to which confidential information is communicated to other parties. For more information, see the Bureau's *Information Bulletin on the Communication of Confidential Information Under the Competition Act* online.¹⁷

iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.

As noted above, in addition to the protection provided by section 29, subsection 10(3) of the Act directs that all inquiries be conducted in private. Consistent with that requirement, the Bureau will not normally comment publicly on the existence of an inquiry unless it has become public through another source, through the filing of charges, through an application to the Competition Tribunal or the courts, or, in the case of a completed merger review, through the Merger Register.

When information has been made public or where persons providing information authorize its communication to other parties, subsection 29(2) permits the disclosure of such information.

Additionally, subsection 29(1) provides exceptions for the communication of information to a Canadian law enforcement agency or for the purposes of the administration or enforcement of the Act. The application of these exceptions is at the discretion of persons performing duties or functions under the Act and is exercised where necessary to carry out their responsibilities under the law. The Bureau has practices in place to ensure that confidentiality is protected.

Even in the case of formal proceedings before the Tribunal or the courts, when it is necessary to use confidential information, efforts to protect the information from disclosure will be taken if such action does not hinder the administration or enforcement of the Act. Available measures include sealing orders, confidentiality orders, confidential schedules to public documents and in camera proceedings. These measures are ultimately under the control of the Tribunal or the courts, and necessarily subject to the generally public nature of the proceedings.

¹⁷ <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03597.html>

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Due to the nature of the Bureau activities, all employees are expected to be aware of their responsibilities and expected behaviours in all activities related to their professional duties, including in situations of both apparent and real conflicts of interest. In addition to the *Treasury Board Values and Ethics Code for the Public Sector* and *Policy on Conflict of Interest and Post-Employment*, supplemented by ISED's *Values and Ethics Code*, employees are expected to comply with the *Competition Bureau Guidelines on Conflict of Interest*.¹⁸

Competition Bureau Guidelines on Conflict of Interest describe situations which could give rise to real, apparent or potential conflict of interest situations resulting from (i) the Bureau's access to commercially sensitive information that is not otherwise available to the public; (ii) assets and liabilities held by employees; (iii) outside employment and activities of employees; or (iv) the receipt of gifts, hospitality and other benefits. The Guidelines also describe the compliance measures to be followed should a real, apparent or potential conflict of interest situation arise during the course of employment at the Bureau.

These guidelines are communicated in employees' letter of offer, as well as in annual attestations completed and signed by employees and consultants. These attestations are managed by the Corporate Services Branch.

There is also mandatory training provided on conflicts of interest internally by the Bureau for all new employees supporting the Guidelines. Information on related conflict of interest and communication on confidential information are also communicated through information bulletins or on the Bureau's intranet. Further, the Bureau has a delegated official in the Corporate Services Branch who has delegated authority from the Deputy Minister to administer and enforce these guidelines, and staff indicated they use this official for advice and guidance around potential conflict of interest situations.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.***

Neither the Commissioner nor the Bureau have an adjudicative function and once a matter is before a court or Tribunal, parties have the right of full defense, which includes notice of the matter, its substance and applicable legal processes.

¹⁸ <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04130.html>

In appropriate circumstances, the Bureau will attempt to engage in pre-application dialogue with proposed respondents prior to filing an application for a court order requesting information relevant to an inquiry.

If charges are laid in a criminal matter, the accused receives detailed information on the allegations against them and a disclosure package containing all relevant non-privileged information. More information regarding disclosure in criminal matters can be found in the *Public Prosecution Service of Canada Deskbook*, available online.¹⁹

The Bureau generally provides Parties who are the subject of a formal inquiry and of investigations with an opportunity to present arguments and evidence prior to the filing of a formal application with the Tribunal or the courts to obtain a remedy for the alleged anti-competitive activity or conduct. While these meetings do not always end in a resolution to the particular case, they do assist in understanding each side's position and may help to narrow areas of contention likely to be litigated before the Tribunal or the courts.

- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.** Regarding civil matters, both documentary and oral discovery is required, subject to legal privileges, after an application has been commenced before the Tribunal or a court.

If charges are laid under the criminal provisions of the Act, the Bureau is required to disclose the allegations against the target and to identify and produce all documents in its possession that are relevant to any matter in issue, subject to legal privilege and applicable confidentiality.

- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.**

Civil matters are heard at first instance by the Tribunal, which has its own procedural rules.²⁰ These rules are similar to those that apply in civil cases before Canadian courts. They include procedural fairness protections, such as the right to be heard, to submit evidence and to respond to the other party's arguments and evidence. While the Tribunal's hearings and decisions are public, procedural safeguards also protect the disclosure of confidential information to the public. The Tribunal's decisions are publicly available on its website.²¹

i.) Representation by Counsel and Privilege

¹⁹ See section 2.5 Principles of Disclosure, (<https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/d-g-eng.pdf>)

²⁰ *Competition Tribunal Rules*, SOR/2008-141

²¹ Competition Tribunal website: <http://www.ct-tc.gc.ca>

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.***

Neither the Commissioner nor the Bureau have an adjudicative function. The request of a Person to be represented by counsel is governed by the laws of Canada and the jurisdiction in which the case is heard. Representation by legal counsel is available for any party in any court or Tribunal proceeding related to the Act.

- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.***

Neither the Commissioner nor the Bureau have an adjudicative function. The Bureau recognizes that dialogue with Parties generally facilitates resolutions and helps to avoid protracted litigation. The Bureau prefers to engage in dialogue with Parties who demonstrate a commitment to resolving the matter. For greater certainty, a resolution to a matter could take many forms along a continuum ranging from the discontinuance of an inquiry to a consent or plea agreement, depending upon the circumstances relevant to an Inquiry.

- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.***

The Commissioner recognizes applicable privileges in accordance with Canadian legal norms. The Act specifically deals with legal privilege and provides procedures for solicitor-client privilege claims, the custody of such records, as well as the authority of a judge regarding the determination of claims. The Act also affords a reasonable opportunity to make privilege claims and to access the claimed records that are in custody. For more information see section 19(1) to 19(8) of the Act.²²

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.***

²² <https://laws.justice.gc.ca/eng/acts/C-34/page-4.html>

Neither the Commissioner nor the Bureau have an adjudicative function. Decisions or orders are issued in writing by the Tribunal or a court of competent jurisdiction in accordance with applicable Canadian law.

- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.**

The Commissioner may enter into Consent Agreements with Parties pursuant to section 74.12 and 105 of the Act. In either instance, a Consent Agreement shall be based on terms that could be the subject of an order of the Tribunal. Section 106 of the *Competition Tribunal Rules* (SOR/2008-141) provides that a Consent Agreement shall be made by filing the agreement and that the agreement shall set out the sections of the Act under which it was made; the name and address of each person in respect of whom the agreement is sought and the terms of the agreement.²³

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

The Act grants the Commissioner the power to make certain administrative decisions,²⁴ such as causing an inquiry to be made (section 10) or discontinuing an inquiry (section 22). These types of decisions may be subject to judicial review. In this regard, the courts have stated that they will defer to such discretionary decisions in the absence of bad faith on the part of decision-makers, the exercise of discretion for an improper purpose, or the use of irrelevant considerations.

Beyond these specific decisions of a purely administrative nature, the Bureau has no adjudicative function, and may only secure formal prohibitions, remedies or sanctions through proceedings before the courts or the quasi-judicial Tribunal. In respect of civil matters, the Commissioner conducts investigative and enforcement functions (including acting as a plaintiff in matters where he has filed an application for an order before the Tribunal), while the Tribunal performs the adjudicative function.

For reviewable matters, the Commissioner may advance his case before either the Tribunal or, for certain provisions, the superior court of a province. Decisions of the Tribunal are subject to appeal to the Federal Court of Appeal, with leave to appeal required for questions of fact (see section 13 of the *Competition Tribunal Act*). Decisions of the superior court of a province are subject to appeal according to the rules of the appellate body of the relevant province. Further appeal from decisions

²³ <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2008-141/page-8.html#h-744473>

²⁴ Neither the Commissioner nor the Bureau have an adjudicative function, and neither impose prohibitions, remedies or sanctions on Persons.

of the Federal Court of Appeal and provincial appellate bodies is available to the Supreme Court of Canada, with leave.

For criminal matters, prosecutions are conducted by Canada's Director of Public Prosecutions on behalf of the Attorney General of Canada in the provincial courts or in the Federal Court. Appeals are available to the provincial courts of appeal or, depending on the circumstances, the Federal Court of Appeal, as of right on a question of law and, ultimately, to the Supreme Court of Canada, as of right on a question of law on which a judge of the court of appeal dissents or on any question of law if leave to appeal is granted (see subsection 693(1) of the *Criminal Code*).