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# Information Bulletin on Transparency

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## Bulletin

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# 1. Introduction

This Information Bulletin on Transparency explains the approach that we usually take to communicate with different groups of people during our investigations at the Competition Bureau. This includes those who are subject to an investigation, the general public, complainants, and industry participants. This Bulletin replaces the *Information Bulletin on Communication during Inquiries* (2014). It reflects the evolution of our practices since that time and is subject to review as circumstances and practices change.

We understand that providing information to Canadians about how we administer and enforce the law is in the public interest. Communication with the public promotes transparency and accountability in our work. It also encourages compliance with the law and promotes awareness of important issues which may impact consumers and businesses. We will try to use plain and accessible language whenever possible.

In this document, we will use a few terms:

- Our “law” refers to the *Competition Act* unless we state otherwise.
- “Court” refers to all levels of the court system. This includes the Competition Tribunal, which often hears the cases related to our law.
- An “investigation” is a situation where Bureau officers take investigative steps because there is a reasonable chance that there could be issues under our law. It is more than just the review of a complaint.
- An “inquiry” is a type of investigation that is described by our law. Being on inquiry allows us to use our law to advance an investigation, for example by seeking court orders to obtain information. More information about inquiries can be found in our law.

- An “Alternative Case Resolution” is a resolution that addresses our concerns without the need for legal action.

We follow the requirements in our law about how to handle information. We only disclose certain types of information, and only in limited circumstances.

The way we communicate can affect our investigations. We need to maintain our ability to decide which cases to investigate and how to investigate them. We also need to protect the legal rights and privileges related to the confidentiality of our investigations, which helps us get information from relevant sources.

This Bulletin is only a guide. It is not a binding statement of how we carry out investigations or when and how we communicate. We aim to follow the processes in this Bulletin, however we may need to change how we communicate depending on the facts of a case, including:

- whether there is ongoing harm;
- whether immediate enforcement action is required;
- the kind of information we have; and
- the nature of the investigation.

Sometimes we may need to take quick enforcement action and prioritize resources to prepare for legal proceedings. This may be the case when we believe there is ongoing harm. We may not follow every step of this Bulletin in these circumstances.

The cooperation of people we communicate with also plays an important role in our ability to be transparent. This is especially true for those who are subject to an investigation. When records that we require are provided to us in a collaborative manner by those under investigation, we are able to

engage more effectively. This is true whether records are requested voluntarily or by court order. We recommend that people discuss producing records with us on an ongoing basis, raise any concerns or challenges as early as possible, and provide records that are relevant or responsive. This will give us more time to discuss any issues and be more transparent.

## 2. Communication with those subject to an investigation

How we communicate with those who are subject to an investigation will depend on whether the investigation is civil or criminal. These differences are discussed later in this section.

If we believe there is a violation of our law, we may seek to discuss a possible resolution with those who are subject to the investigation before going to court. We will only consider this if it will not harm our investigation. If we seek a resolution, we need to preserve the Commissioner of Competition's interests and ability to make decisions about cases. We also need to protect our privileges and legal rights, and fulfill our legal obligations.

### 2.1. Communication with those subject to a merger review or civil investigation

The type of information we share, and when we share it, depends on the circumstances of the matter.

For merger reviews, businesses that want to merge must notify us if the proposed merger is above certain dollar thresholds and isn't exempt from notification. These are called "notifiable merger reviews." We can also review mergers that aren't notifiable for up to one year after the merger has been completed. These are called "non-notifiable merger reviews." For

notifiable merger reviews, we generally aim to provide updates to the merging businesses on how the review is going. We do this according to our service standards. For non-notifiable merger reviews, we often communicate with the merging businesses to gather information. In either type of merger review, we may communicate more frequently during the review. For such communication, our views are not final and may evolve as the merger review progresses.

We often notify the subject of a civil investigation, when it is appropriate to do so. Once those who are subject to an investigation are notified, they can assume that the investigation is ongoing. If we told them about an investigation or they found out because we took investigative steps, we typically let them know when we close the investigation.

Those who are subject to an inquiry are entitled to certain types of information. For example, they can receive information about how the inquiry is progressing. They must send us a request in writing for this information. A type of complaint called a “six-resident” application can be made under our law. We let people who file such complaints know when our inquiry is closed, (for more information see *Competition Act* s.9, s.10 and s.22).

For both merger reviews and civil investigations, we often let those who are subject to an investigation know about the nature of our concerns. This happens at the appropriate time, which may be different for each case. These discussions and any conclusions we may share are not final. Our views may change and evolve as the investigation progresses. The Bureau recognizes that open dialogue may help to reach efficient resolutions. We may share our approach, reasoning, or the results of our work on a case-by-case basis. However, those who are subject to investigation should not expect a detailed explanation of the case or our internal work products.

Once we identify our concerns, we may invite discussions of resolution. These discussions are meant to find a solution and avoid the length and expense of legal proceedings. We will only engage in these discussions if there is a demonstrated commitment to resolving the matter.

We may take steps to administer and enforce our laws without notifying those who are under review in advance. This happens when the Commissioner believes that notice is not in the public interest.

If the Commissioner files an application in court, those subject to the investigation will receive relevant information through legal processes called “discovery” or “disclosure.”

When we close an investigation, or resolve it using an “Alternative Case Resolution,” we may monitor the situation for a period of time. We may reopen the investigation if necessary.

## **2.2. Communication with those subject to a criminal investigation**

We may communicate differently with those who cooperate with a criminal investigation compared to those who do not. We have Immunity and Leniency Programs and a Criminal Cartel Whistleblowing Initiative. We describe how we communicate with applicants and whistleblowers in the guidelines for those programs. This section describes how we usually communicate with those who do not cooperate with criminal investigations under our law.

We usually administer or enforce the law without notifying those subject to a criminal investigation. During an investigation, we only communicate in specific circumstances, such as:

- During Alternative Case Resolution discussions.

- When those subject to the investigation are aware of the investigation and we close it.
- When the Public Prosecution Service of Canada (PPSC) decides not to pursue charges and we end our investigation. We notify those who are cooperating. We may also notify those who are not cooperating.

### **2.3. Communication with those subject to a dual-track investigation**

We can investigate certain kinds of conduct under either the criminal or civil sections of our law. If we are investigating conduct that could be pursued either criminally or civilly, we call this a dual-track investigation. For example, certain false or misleading representations to the public may fall under either the criminal or civil sections of our law. There are also types of agreements between competitors that fall under the criminal sections of our law while other types of agreements fall under civil sections.

We decide to investigate under either the criminal or civil sections based on the facts of each case. We aim to make the decision in a timely way. Until we make the decision, we follow the process for communications outlined in [section 2.2](#).

If the decision is later made to pursue the investigation under only the civil sections of our law, we will follow the process for communications outlined in [section 2.1](#). If we have previously informed someone that criminal sections were being considered, we will generally clarify as early as is appropriate that criminal sections are no longer being considered.

### **2.4. Communication with lawyers**

We may involve lawyers from the Department of Justice or private counsel to assist us during investigations. These lawyers represent the Commissioner and the Bureau. They may participate in meetings and calls, and may prepare communications on our behalf.

We may also involve lawyers from the PPSC or other counsel on investigations of alleged criminal conduct. PPSC lawyers are separate and independent from the Bureau. However, they work cooperatively with us to administer programs such as the Immunity and Leniency Programs.

If we involve lawyers, it can affect how we communicate with people under investigation. Lawyers in Canada follow codes of professional conduct that restrict their ability to communicate directly with people who are represented by a lawyer.

If we let a lawyer for someone subject to an investigation know that we have a lawyer working on a matter, the lawyer should communicate with our lawyer. In such cases, lawyers of those subject to investigation should avoid communicating with the Commissioner or Bureau staff to discuss an investigation. However, these lawyers can communicate with our staff in limited circumstances, like on matters involving the Immunity and Leniency Programs. Our lawyers or staff can also give permission to communicate with us directly. Our staff may also communicate directly with other people's lawyers. When this occurs, lawyers can respond directly unless our lawyers or staff say otherwise.

## **3. Communication with stakeholders**

### **3.1. Complainants**

People who wish to file a complaint can contact us through our Information Centre. They can also file a “six-resident application” under our law, which can be sent to our Information Centre. The requirements for this type of application are set out in our law. If a person files a six-resident application, they can make a request in writing to receive updates about an inquiry which may result from their application.

Because of our confidentiality obligations, we do not usually provide information about ongoing investigations to those who submitted complaints. However, if we end an investigation, we usually inform those who have substantially engaged with us and cooperated in our investigation. For six-resident complaints, the Commissioner informs those that made the complaint that the inquiry has been discontinued and the reasons why.

We may notify the public and people who complained through announcements on our website or documents that give an overview of our position after our investigation. If we go to court, the facts of a case also often become public.

### **3.2. Industry participants**

We may contact people who work in the industry we are investigating to gather information at any stage of an investigation. We treat this information as confidential, except for certain exceptions set out in our law.

Industry participants should not expect to receive information about an investigation. However, in some cases we may share certain information about our investigation with industry participants so they understand the context and can give us relevant information for the purposes of administering or enforcing our law.

## 3.3. The general public

### 3.3.1. Statements regarding active investigations

Sharing information with Canadians about how we administer and enforce our law is important. It helps people understand what we do and how to engage with us. It promotes accountability and predictability. We take these benefits into account when we determine whether to share information with the public. We will also consider our mandate, legal requirements, the fact that court proceedings are open and accessible, and confidentiality requirements under the law.

There are limits in our law that affect our ability to share information about ongoing cases with the general public. We also need to protect legal rights and privileges when we communicate about ongoing investigations.

We may publish statements about active cases on a case-by-case basis. We do this when it will help, and not harm, our ongoing work, and to administer and enforce our law. For example, public statements can help us reach people who have relevant information to share, but were unaware of an investigation.

We may publish statements during a merger review or civil investigation in a number of ways. These include:

- listing ongoing reviews in the Merger Register;
- making “call-outs” to stakeholders for information about specific topics in an industry; and
- publishing a summary of issues that we are examining.

On a case-by-case basis, we may disclose that we have an ongoing investigation or that we received complaints to help gather evidence from sources. We will only do this if it would not potentially harm the

investigation.

We may also disclose that we have an ongoing investigation when the information is publicly available. For example, court orders may be accessible to the public within the court file. Also on a case-by-case basis, we may publish a statement about the court orders so that people know they are available and where to find them.

For merger reviews and civil investigations, we may offer an opportunity to review public statements to people who cooperate with us. Public statements may be reviewed for accuracy and competitively sensitive information. We will make the final decision about the content of all of our public statements, including the use of plain language. We do not usually offer this review for Merger Register listings.

### **3.3.2. Statements regarding completed investigations**

If an investigation results in court proceedings, we usually make this information available to the public through a news release or other means.

We may publish statements describing our analysis and the reasons for our conclusions. We look to do so when we think that such a statement may provide helpful guidance and is appropriate in the circumstances of the particular matter. We may also publish information about warning letters that we send to individuals and companies that outline our concerns. We may also make an announcement when a company completes the terms of an Alternative Case Resolution, if it is in the public interest

We are guided by the confidentiality requirements in our law when we decide to publish a public statement. Before publishing a statement, we consider various factors. These include whether:

- releasing this information will encourage greater compliance with the law;

- there is an opportunity to educate the public;
- clarification of policy or law is needed (for example, where we have taken a new approach);
- there is a high level of public interest; or
- Canadians or other stakeholders are significantly affected by the conduct or practice under investigation.

We may publish inspection reports under our labelling laws without identifying the companies we inspected. We also publish more information in cases where there are major infractions under our labelling laws. Major infractions are when companies make representations about products that are materially false, misleading or likely to create an erroneous impression. Publishing announcements from labelling inspections and Alternative Case Resolutions includes identifying:

- the names of companies involved in major infractions; and
- facts about the inspections and voluntary resolutions.

For merger reviews and civil investigations, we may offer an opportunity to review public statements to those subject to our investigation when they are cooperating with us. Public statements may be reviewed by those subject to our investigation for accuracy and competitively sensitive information. We will make the final decision about the content of all of our public statements, including the use of plain language. We do not usually offer this review for Merger Register listings.

### **3.3.3. Guidelines and bulletins**

We publish guidelines and bulletins that describe how we approach economic analysis and law enforcement. We update these documents to reflect changes to the law, economic thinking, new policies and procedures,

or stakeholder input.

Our guidelines and bulletins promote transparency and consistency because they outline how we do our work. They provide predictability for businesses and consumers. We usually share draft guidelines with stakeholders so they can provide comments.

## 4. How to contact the Bureau

The Information Centre is the primary point of entry for requests from members of the public.

**Business Hours:** Monday to Friday, 8:30 a.m. to: 4:30 p.m. (Eastern Time)

**Online:** Online Forms

**Date modified:**

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