



THE CANADIAN CHAMBER OF COMMERCE

LA CHAMBRE DE COMMERCE DU CANADA

Submission to the Competition Bureau
Re: Corporate Compliance Programs

September 22, 2006

The Voice of Canadian Business™
Le porte-parole des entreprises canadiennes™

SUBMISSION CONCERNING THE COMPETITION BUREAU'S CONSULTATION PAPER ON CORPORATE COMPLIANCE PROGRAMS

The Canadian Chamber of Commerce is pleased to provide comment regarding the update that the Competition Bureau is making to its 1997 Bulletin on Corporate Compliance Programs and to respond to the questions posed by the Bureau in its news release dated June 30, 2006.

The Canadian Chamber welcomes the Bureau's efforts to update the 1997 Bulletin. The Canadian Chamber shares the Competition Bureau's objectives in preventing and facilitating early detection of conduct that contravenes the Competition Act. The 1997 Bulletin is a useful tool for business, particularly businesses that are not familiar with what the Bureau might consider to be "best practices" for ensuring competition law compliance programs are effective. But, the tool loses its utility and credibility if it becomes outdated.

In our view, the Bureau's stated focus of the update - to reflect amendments to the Competition Act and new Bureau publications - is appropriate. Absent a significant change in the Commissioner's views about compliance programs (which we believe has not occurred), the 1997 Bulletin does not require a radical re-write.

Below are the Chamber's responses to the specific questions posed by the Competition Bureau.

- 1. The need for corporate compliance tools:** The Canadian Chamber is not aware of any specific need for compliance tools. In our experience, businesses have successfully developed the tools required to promote compliance with the Competition Act. That said, if the Competition Bureau did develop new tools (such as training videos) we would expect that our members would review and consider using the tools to aid in their compliance efforts.

- 2. The need for templates of corporate compliance programs:** The Canadian Chamber is not aware of any specific need for templates of corporate compliance programs. Indeed, every compliance program should be uniquely developed to ensure it is appropriately directed to the employees of a particular business, having regard to the Competition Act provisions most relevant to the business and the employees for whom the program is developed. If the Bureau developed standard templates, there could be a risk that the templates would be adopted and used without due consideration for whether the templates were appropriate in the particular circumstances.

Instead, the Bureau might consider providing "examples" of written guidelines that it considers to be particularly good or effective in specific circumstances, and provide a brief explanation for the Bureau's views. This approach would be consistent with the recognition in the 1997 Bulletin that any compliance program must be tailored to a specific circumstance, yet allow the Bureau to be more transparent with its views about what it believes constitutes good guidelines.



3. The need for the Bureau to monitor and/or audit corporate compliance programs.

The Canadian Chamber is not aware of any specific need for the Bureau to monitor and/or audit corporate compliance programs and suggests this would not be a good use of scarce resources given that such monitoring or auditing may require a significant investment of time in understanding the specific company's business. Indeed, in the view of the Canadian Chamber the Bureau has no proper role in monitoring or auditing corporate compliance programs, except in the context of ensuring a company is complying with its obligations under a prohibition (or other) order that mandates the company provide a compliance program to its employees. Whether to have a formal compliance program and the shape/content of a corporate compliance program is a matter of discretion by every business; the Bureau has no statutory or other authority to monitor what businesses may do voluntarily in this regard.

However, the Canadian Chamber believes that as part of its efforts to promote compliance with the Competition Act the Bureau may be able to provide useful assistance to businesses that wish to seek the Bureau's views on the content of their corporate compliance programs. The Bureau should consider incorporating the idea of review/commenting on corporate compliance programs in its program of Advisory Opinions.

In addition to the responses to the specific questions posed by the Bureau in its information notice dated June 30, 2006, the Canadian Chamber offers the following comments:

1. In light of the recent emphasis on obstruction in Canada and elsewhere, the Bureau may want to consider augmenting the discussion on the benefits of a compliance policy to include the prevention of activities that might amount to obstruction. The Bulletin could perhaps also discuss the Bureau's expectations with respect to the preservation of paper and electronic records, especially after notice of an investigation has been given, in order to provide greater guidance for companies who are developing or updating compliance programs.
2. The Bureau's Bulletin on Corporate Compliance Programs should reflect and be consistent with its current policies regarding alternative case resolution and immunity. The Bulletin would benefit from an expanded discussion of how the Bureau takes into account the existence of a compliance program in determining the approach it will take in the context of both criminal matters and reviewable practices. While we appreciate that the Bureau can only recommend to the Attorney General a resolution in a particular criminal matter, a more detailed discussion of the corporate compliance policy attributes that the Bureau will take into account in making such recommendations, perhaps along the lines of the US Sentencing Guidelines, would provide more guidance to companies. The Bureau may also want to consider evaluating ways to offer more concrete benefits to having a corporate compliance program, which would offer greater incentive for companies to take their implementation seriously. [The Canadian Chamber would be pleased to make further submissions in this regard if that would be helpful.]



3. It would be useful to include in the Bulletin a discussion of the relevance of a compliance program in the Bureau's determination whether to proceed down the criminal or civil track in misleading advertising/deceptive marketing practices cases. It would also provide greater guidance to explain what constitutes an "effective" compliance program as that term is used in the Bureau's guidelines on whether to proceed down the criminal or civil track in cases of alleged misleading representations and deceptive marketing practices.

The Canadian Chamber looks forward to reviewing the Bureau's update of its 1997 Bulletin on Corporate Compliance Programs.

All of which is respectfully submitted by

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