

CANADIAN CONCRETE MASONRY PRODUCERS ASSOCIATION
-----CCMPA-----

COMPETITION LAW COMPLIANCE POLICY

APRIL 2020

CCMPA COMPETITION LAW COMPLIANCE POLICY

The Board of Directors of the Canadian Concrete Masonry Producers Association (“CCMPA”) has adopted this Competition Law Compliance Policy to ensure that all the activities of the CCMPA, including any and all discussions between members at CCMPA meetings or events, be always in compliance with the letter and spirit of the *Competition Act*,¹ any regulations made thereunder as well as any enforcement guidelines or directives, including the *Competitor Collaboration Guidelines*² from the Competition Bureau (collectively referred to in this Policy as “Competition Law”).

1 INTRODUCTION

1.1 The CCMPA

The CCMPA is a trade association with the vision to have masonry products become the construction material of choice for all building segments, and the mission to improve the quality of life of people through the creation and development of timeless and environmentally friendly masonry structures. As an association of competitors in the masonry industry, the CCMPA must act cautiously to ensure all its activities and operations, and those of its members in their involvement with the CCMPA, are in compliance with Competition Law.

1.2 Purpose

The CCMPA, as a trade association, is a legitimate forum for cooperation among competitors by furthering the objectives of the CCMPA, promoting industry-wide education, public policy advocacy for the benefit of all market participants including consumers, and providing market research, expertise and guidance in the development of industry standards and best practices. However, the CCMPA also has a responsibility to implement strict guidelines to prevent improper actions and/or conduct at any CCMPA meetings or events which may, directly or indirectly, be deemed contrary to Competition Law.

As such, the purpose of this Policy is to provide CCMPA employees and members with a set of guidelines for compliance with Competition Law in all activities and operations of the CCMPA.

¹ RSC 1985, c C-34, as amended from time to time.

² Competition Bureau, “Competitor Collaboration Guideline: Enforcement Guidelines” (23 December 2009), online: <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03177.html>

1.3 Application

This Policy applies to all employees of the CCMPA and to members, prospective members or guest participants at any meetings or events of the CCMPA and otherwise with regard to their involvement with the CCMPA.

1.4 Commitment to Compliance

The CCMPA intends to operate in compliance with Competition Law. This Policy must be strictly followed by CCMPA employees and members in connection with all activities relating to the CCMPA. Failure to comply with this Policy may attract liability for the CCMPA members involved in the infringing conduct, as well as such member's directors, officers or employees, in addition to possible disciplinary action as determined by the CCMPA Board of Directors.

1.5 Interpretation

Acknowledging that Competition Law is complex and that this Policy may not cover all possible scenarios, in case of ambiguity or uncertainty with regard to the guidelines in this Policy or its application, the interpretation that most strictly ensures compliance with Competition Law and minimizes the risk of anti-competitive conduct must be deemed to have been the intention of the CCMPA Board of Directors in drafting this Policy.

2 BACKGROUND

2.1 Competition Law

The *Competition Act* is a federal piece of legislation the stated purpose of which is to maintain and encourage competition in Canada for the benefit of businesses and consumers. The *Competition Act* prescribes various criminal offences such as conspiracy, bid-rigging, criminal misleading advertising and deceptive marketing, and also contains a number of civil sections restricting price maintenance, civil misleading advertising, refusal to deal, abuse of dominance and tied selling, exclusive dealing and market restrictions. It is important to note that some of these activities are strictly prohibited even if there is no negative effect on competition and even when the involved competitors believe their conduct will lead to lower prices or a more competitive marketplace.

Trade associations, by providing a forum where competitors collaborate on association activities, may face competition law compliance issues. Anti-competitive agreements among actual or potential competitors, even where the agreement is not in writing, are amongst the most serious competition criminal offences in Canada.

The Competition Bureau, headed by the Commissioner of Competition, is a federal agency responsible for the administration and enforcement of the *Competition Act*. The Competition Bureau may investigate and take action against any person or entity, including a trade association like the CCMPA or its members, engaged in anti-competitive conduct.

2.2 Penalties and Remedies under the Act

There may be significant legal, financial and reputational consequences for the CCMPA and its employees as a result of breaches of the *Competition Act* or its regulations, including fines of up to \$25 million, restitution or prohibition orders, civil claims for damages, and even imprisonment for up to 14 years.

3 COMPLIANCE GUIDELINES

3.1 Board and Membership Meetings

3.1.1 Agenda

All CCMPA membership or board meetings, including committee meetings, will be carried out in accordance with a formal agenda circulated to all meeting participants prior to the meeting. There may be no meeting of the board of directors or the membership without a formal agenda prepared ahead of the meeting. The items on the agenda will have a clear and legitimate purpose consistent with the objectives of the CCMPA and no discussions will be permitted during the meeting outside the items on the agenda. Where an item on the agenda involves a Sensitive Matter, as described in section 3.1.4, or may introduce a risk of non-compliance with Competition Law or this Policy, the Chair will have the responsibility to either ensure the item is removed from the agenda or seek legal counsel to limit the scope of the discussion as required to remain compliant. Where appropriate, the Chair or Secretary may retain legal counsel to attend the meeting.

The Compliance Officer or a person designated by the Compliance Officer must be in attendance at all meetings of the CCMPA without exception, whether held in person or by any electronic means of communication.

3.1.2 Minutes

Minutes of all meetings will be kept for a period of six (6) years, accurately reflecting the discussions and decisions made in relation to each item on the agenda. CCMPA members eligible to vote at the meetings will be entitled to, through their representatives, comment and propose corrections to the extent that the minutes do not accurately reflect the discussions or decisions made.

3.1.3 Caution

At the beginning of each membership or board meeting, the Chair or Secretary will caution all participants that all discussions must strictly comply with Competition Law and this Policy, and that discussions of Sensitive Matters, as described in section 3.1.4, are prohibited. Participants will also be cautioned that failure to comply with this Policy may result in disciplinary action, which may include expulsion from membership.

3.1.4 No Discussions of Sensitive Matters

Informal commercial discussions of any kind before or after meetings must be avoided. If improper discussions arise during a meeting, participants may ask their objections be recorded in the minutes and, if appropriate, leave the meeting.

The CCMPA may not become a party to or assist in the formation of an agreement between or amongst competitors to fix, maintain, increase or control the price for the supply of the product, to allocate sales, territories, customers or markets for the production or supply of the product; or to fix, maintain, control, prevent, lessen or eliminate the production or supply of the product.

To reduce the risk of non-compliance, the following are to be deemed Sensitive Matters which may never be discussed at a meeting of the CCMPA:

- A CCMPA member's or competitor's pricing structures such as input prices, fees, rates, charges or surcharges, pricing policies or initiatives, terms or conditions of sale, including rebates, discount structures and credit terms, or other competitive terms of sale;
- A CCMPA member's or competitor's cost or revenue information such as current or future profits, profit margins or targets;
- A CCMPA member's or competitor's sales or production-related information such as sales volumes, production capacity, stock levels or supplies;
- A CCMPA member's or competitor's future plans, including plans relating to sales and marketing strategy, production or capital investment plans, including technology, or product or service development plans, business strategy, or strategies or policies, including relating to competitors;

- Any output restrictions regarding fixing, maintaining, controlling, preventing, lessening or eliminating the supply of products or services offered by a CCMPA member or competitor;
- Any allocation of market shares, customers, suppliers, distributors or territories, or potential customers, suppliers, distributors or territories as well as any attempts to prevent any competitor or potential competitor from gaining access to any market, city pair or customer for goods and services, or to prevent any business entity from obtaining a supply of goods or services or otherwise purchasing goods or services freely in the market, including any discussion to collectively discontinue supplying certain customers or dealing with specific suppliers (*i.e.* boycotts);
- Calls for bids or tenders or discussions regarding any aspect of a proposed bid or tender, including whether or not a CCMPA member or competitor intends to submit or withdraw a bid or tender;
- Complaints about a competitor, whether or not such competitor is a CCMPA member or potential member; and
- Any other matters that would reasonably be expected to have a material impact in the marketplace.

3.1.5 Appropriate Topics to Discuss

For clarity, the kinds of topics that **are suitable** for discussion at CCMPA meetings include:

- non-confidential technical and promotional issues relevant to the industry;
- health and safety developments;
- educational activities;
- technical standards and emerging technology;
- compliance with good environmental practices;
- developments in legislation affecting the industry;
- presentations to the government and regulatory authorities with respect to matters of interest to all members of the CCMPA;
- general trends in use of new materials;

- quality control issues; and
- other generic, non-project specific matters, the discussion of which serves a legitimate purpose and is not intended to reduce competition by discriminating or excluding certain participants from the market.

3.1.6 Informal Meetings

CCMPA members are encouraged to conduct all CCMPA business during the appropriate membership or board meeting, in accordance with this Policy. CCMPA members should avoid informal meetings or meetings without a formal agenda amongst competitors. For clarity, the CCMPA may not be used, directly or indirectly, for the purpose of bringing about or attempting to bring about any understanding or agreement, between or among competitors, with regard to Sensitive Matters.

3.2 No Agreements Between Competitors

There may be no agreement or understanding involving the CCMPA, or its members or potential members in connection with their participation in the CCMPA, to either become a party to or assist in the formation of an agreement between or amongst competitors or potential competitors involving Sensitive Matters or that would otherwise be contrary to this Policy or Competition Law.

3.3 Data Sharing

The CCMPA recognizes that information exchanged among competitors who collectively possess market power may have serious adverse effects on competition. As such, the CCMPA will not seek or accept commercially sensitive data concerning Sensitive Matters from any member or potential member. Activities undertaken by the CCMPA that pertain to the collection of data from CCMPA members and/or non-member competitors, as applicable, must be: i) voluntary and only include historical data; ii) collected by an independent third party; iii) presented to the members only in aggregated form, with no individual members identified or identifiable; iv) generally be made available to non-members for a reasonable fee; and v) analyzed separately by each member for the purpose of making independent business decisions based on the data.

3.4 Association By-laws and Policies

The CCMPA by-laws and policies may not allow the CCMPA to either become a party to or assist in the formation of an agreement between or amongst competitors involving Sensitive Matters or that would otherwise be contrary to this Policy or Competition Law. The CCMPA will not institute rules or guidelines that establish or enable agreements on Sensitive Matters as between its members or potential members. The by-laws and policies

of the CCMPA must be interpreted and, where applicable, until revised by the CCMPA Board of Directors, read down to ensure compliance with this Policy and Competition Law in all activities and operations of the CCMPA.

Membership in the CCMPA is voluntary and based on clear, transparent and non-discriminatory criteria. The CCMPA will not adopt membership rules or criteria, including fees or membership dues, which could impair a member's ability to compete. Restrictions on membership should be avoided, but where they must be imposed such restrictions should be based upon objective criteria that serve a legitimate justification. No applicant for membership that meets the qualifications set forth in the by-laws of the CCMPA and pays the applicable membership fees may be denied membership and no member may be excluded from the CCMPA except in accordance with a disciplinary proceeding approved by the members and never to exclude a competitor or a category of competitors from membership.

3.5 Member Independence

Each CCMPA member must exercise its independent business judgment in pricing its products or services, dealing with its customers and suppliers, and choosing the markets in which it will compete. No CCMPA member may seek or accept information regarding Sensitive Matters involving any competitors or potential competitors.

Each CCMPA member is free to adopt or deviate from any standards or best practices developed or recommended by the CCMPA without fear of recrimination or sanction.

3.6 Individual Member Policies

CCMPA members are encouraged to individually and independently develop and maintain their own competition law compliance policies in compliance with Competition Law as applicable to such member. Nothing in this Policy abrogates the independent and individual obligations of each CCMPA member in this regard.

4 ADVERTISING

4.1 No False or Misleading Advertising by CCMPA

The CCMP may not, directly or indirectly, in promoting the supply or use of a product or any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect. Further, the CCMPA may not, directly or indirectly, in promoting the supply or use of a product or any business interest, by any means whatever, make a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, or make a representation

to the public in a form that purports to be a warranty or guarantee of a product, or a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if the form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out.

4.2 No Rules to Restrict Advertising by Members

No advertising or marketing restrictions may be imposed by the CCMPA on its members, except in compliance with Competition Law and this Policy. However, the CCMPA may recommend standards and best practices to its members in order to avoid the use of false or misleading claims in advertisements, product labels or other marketing statements.

5 CCMPA PROPOSED STANDARDS AND BEST PRACTICES

5.1 CCMPA Proposed Standards or Best Practices

The CCMPA is actively involved with standards committees, providing expertise and guidance in the development of industry standards and best practices with regard to technical and operational matters. The CCMPA will not establish standards or best practices with regard to commerce or which would artificially provide some competitors with a competitive advantage over others. To the extent that the CCMPA develops, promulgates, approves, or adopts proposed standards or best practices, adherence to such proposed standards or best practices may not be compelled or required of CCMPA members or prospective members and it is solely a voluntary and unilateral decision on the part of each CCMPA member whether to adhere to or comply with any such proposed standards or best practices.

Any CCMPA proposed standards or best practices may only be based upon relevant considerations, and not upon any effort, intention, purpose or effect contrary to Competition Law or this Policy.

6 COMPLIANCE PROGRAM

6.1 Compliance Officer

To facilitate the implementation of this Policy, the CCMPA will appoint a Compliance Officer who will be responsible for the implementation of this Policy. Unless another individual is appointed as Compliance Officer, the Executive Director will occupy and assume all responsibilities of such role.

6.2 Education and Training Program

The Compliance Officer will develop, establish and maintain an effective education and training program for employees and members (“**Program**”).

The Program will provide ongoing education to CCMPA members on this Policy and Competition Law, identifying the boundaries of permissible conduct and situations where it would be advisable to seek legal advice.

The Program will provide training to CCMPA employees who are in a position to potentially engage in, or be exposed to, conduct in breach of Competition Law or this Policy. The training will take place as soon as practicable after the commencement of employment with the CCMPA. The Compliance Officer will, at periodic intervals, evaluate the effectiveness of competition law compliance training by assessing employees’ knowledge of this Policy and Competition Law.

6.3 Disciplinary Measures

Any CCMPA employee found to have engaged in conduct contrary to this Policy or otherwise contrary to Competition Law may be subject to appropriate disciplinary measures, including dismissal for cause. CCMPA members found to have contravened this policy in their participation in the CCMPA, may be subject to disciplinary measures including expulsion or suspension from membership, in accordance with the governing documents and by-laws of the CCMPA. CCMPA members and employees may further be subject to legal action for civil damages as permitted by law.

6.4 Member Certificate

A copy of this Policy will be distributed to all CCMPA members upon commencement of their membership and prior to participating in any meetings or events of the CCMPA. Each CCMPA member will require its employees participating in any CCMPA meetings or events to acknowledge having read and understood this Policy by signing the certificate at Appendix 1 to this Policy. Each CCMPA member will also ensure that, before its representatives participate at any CCMPA event or meeting, such representatives receive the appropriate competition law compliance training.

6.5 Employee Acknowledgment

A copy of this Policy will be distributed to all CCMPA employees upon commencement of their employment and will always be available from human resources. Each CCMPA employee will be required to acknowledge having read and understood this Policy by signing the form at Appendix 2 to this Policy.

6.6 Monitoring

The Compliance Officer or person designated by the Compliance Officer will monitor all activities of the CCMPA continuously or periodically, as appropriate, to ensure compliance with this Policy and Competition Law.

The Compliance Officer or person designated by the Compliance Officer will review and update the Program and advise the CCMPA Board of Directors of any changes required to this Policy. At a minimum, this Policy should be reviewed once every year.

6.7 Reporting

All CCMPA members and employees have an obligation to report to the Compliance Officer any breach or possible breach of this Policy or Competition Law, immediately upon becoming aware of such breach or possible breach. No employees of the CCMPA may suffer any adverse employment consequences solely for reporting a possible contravention of this Policy or Competition Law. Where possible, the name of the reporting employee will remain confidential.

Any communication received by a CCMPA employee involving any inquiry or investigation from the Competition Bureau or any other federal or provincial government office and regarding the matters covered by this Policy or Competition Law, in general, must be deferred to the Compliance Officer immediately. No CCMPA employee, other than the Compliance Officer or another individual specifically designated by the CCMPA Board of Directors, is authorized to communicate with the Competition Bureau or any other federal or provincial government office on matters covered by this Policy on behalf of the CCMPA.

Upon receiving any reports of possible non-compliance with this Policy or Competition Law, the Compliance Officer will seek legal advice immediately. In the case of inquiries or investigations by the Competition Bureau, specifically, the Compliance Officer must not unduly impede or obstruct the Competition Bureau's work without first obtaining legal advice, including advice regarding the CCMPA's eligibility for immunity or lenience under the relevant programs as well as any protections available to a "whistleblower", if applicable.

APPENDIX 1

CCMPA MEMBER CERTIFICATE

Whereas the Canadian Concrete Masonry Producers Association (“CCMPA”) has established a Competition Law Compliance Policy (“Policy”) and the Policy requires that, prior to any CCMPA meeting or event, all CCMPA members, by their respective representatives participating in such CCMPA meeting or event, execute and deliver to the CCMPA Compliance Officer a copy of this Certificate, now, therefore,

I, _____(name & position), appointed representative of CCMPA member _____, acknowledge that I have read and understood the CCMPA’s Competition Law Compliance Policy (the “Policy”) and that I will comply fully with the Policy and the *Competition Act*.

Further, I understand that compliance with the Policy, including any related CCMPA education program, is a condition of my employer’s continued membership in the CCMPA and that failure to comply with the Policy, in relation to any CCMPA meetings or events, may result in disciplinary action.

CCMPA Member Employee Name:

Witness Name:

Date:

Date:

Please return to the Compliance Officer at:

By Email:

By Mail:

APPENDIX 2

CCMPA EMPLOYEE ACKNOWLEDGMENT

I, _____ of the City of _____, as an employee of the Canadian Concrete Masonry Producers Association (“CCMPA”), in the role of _____, hereby acknowledge that I have read and understood the CCMPA’s Competition Law Compliance Policy (the “Policy”) and that I will comply fully with the Policy and the *Competition Act*.

I understand that compliance with the Policy, including any related CCMPA training is a condition of my continued employment with the CCMPA, and that failure to comply with the Policy may result in disciplinary action, including termination of employment.

CCMPA Employee Name:

Date:

Witness Name:

Date:

Please return to the Compliance Officer at:

By Email:

By Mail:

APPENDIX 3

REFERENCES AND RESOURCES

1. SELECT PROVISIONS OF THE COMPETITION ACT

PART VI – OFFENCES IN RELATION TO COMPETITION

Conspiracies, agreements or arrangements between competitors

45 (1) Every person commits an offence who, with a competitor of that person with respect to a product, conspires, agrees or arranges

- (a) to fix, maintain, increase or control the price for the supply of the product;
- (b) to allocate sales, territories, customers or markets for the production or supply of the product; or
- (c) to fix, maintain, control, prevent, lessen or eliminate the production or supply of the product.

Penalty

(2) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable on conviction to imprisonment for a term not exceeding 14 years or to a fine not exceeding \$25 million, or to both.

Evidence of conspiracy, agreement or arrangement

(3) In a prosecution under subsection (1), the court may infer the existence of a conspiracy, agreement or arrangement from circumstantial evidence, with or without direct evidence of communication between or among the alleged parties to it, but, for greater certainty, the conspiracy, agreement or arrangement must be proved beyond a reasonable doubt.

Defence

(4) No person shall be convicted of an offence under subsection (1) in respect of a conspiracy, agreement or arrangement that would otherwise contravene that subsection if

- (a) that person establishes, on a balance of probabilities, that
 - (i) it is ancillary to a broader or separate agreement or arrangement that includes the same parties, and
 - (ii) it is directly related to, and reasonably necessary for giving effect to, the objective of that broader or separate agreement or arrangement; and
- (b) the broader or separate agreement or arrangement, considered alone, does not contravene that subsection.

Defence

(5) No person shall be convicted of an offence under subsection (1) in respect of a conspiracy, agreement or arrangement that relates only to the export of products from Canada, unless the conspiracy, agreement or arrangement

- (a) has resulted in or is likely to result in a reduction or limitation of the real value of exports of a product;
- (b) has restricted or is likely to restrict any person from entering into or expanding the business of exporting products from Canada; or
- (c) is in respect only of the supply of services that facilitate the export of products from Canada.

[...]

Definitions

(8) The following definitions apply in this section.

“competitor” includes a person who it is reasonable to believe would be likely to compete with respect to a product in the absence of a conspiracy, agreement or arrangement to do anything referred to in paragraphs (1)(a) to (c).

“price” includes any discount, rebate, allowance, price concession or other advantage in relation to the supply of a product.

Where application made under section 76, 79, 90.1 or 92

45.1 No proceedings may be commenced under subsection 45(1) against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which an order against that person is sought by the Commissioner under section 76, 79, 90.1 or 92.

[...]

Definition of bid-rigging

47 (1) In this section, bid-rigging means

(a) an agreement or arrangement between or among two or more persons whereby one or more of those persons agrees or undertakes not to submit a bid or tender in response to a call or request for bids or tenders, or agrees or undertakes to withdraw a bid or tender submitted in response to such a call or request, or

(b) the submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by agreement or arrangement between or among two or more bidders or tenderers, where the agreement or arrangement is not made known to the person calling for or requesting the bids or tenders at or before the time when any bid or tender is submitted or withdrawn, as the case may be, by any person who is a party to the agreement or arrangement.

Bid-rigging

(2) Every person who is a party to bid-rigging is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both.

Exception

(3) This section does not apply to

(a) an agreement or arrangement that is entered into or a submission that is arrived at only by parties each of which is, in respect of every one of the others, an affiliate; or

(b) an agreement or arrangement that is an arrangement, as defined in section 53.7 of the Canada Transportation Act, or a submission that is arrived at under that arrangement, that has been authorized by the Minister of Transport under subsection 53.73(8) of that Act and for which the authorization has not been revoked, if the agreement, arrangement or submission is directly related to, and reasonably necessary for giving effect to, the objective of the arrangement.

[...]

False or misleading representations

52 (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

Proof of certain matters not required

(1.1) For greater certainty, in establishing that subsection (1) was contravened, it is not necessary to prove that

- (a) any person was deceived or misled;
- (b) any member of the public to whom the representation was made was within Canada; or
- (c) the representation was made in a place to which the public had access.

Permitted representations

(1.2) For greater certainty, in this section and in sections 52.01, 52.1, 74.01, 74.011 and 74.02, the making or sending of a representation includes permitting a representation to be made or sent.

Representations accompanying products

(2) For the purposes of this section, a representation that is

- (a) expressed on an article offered or displayed for sale or its wrapper or container,
 - (b) expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale,
 - (c) expressed on an in-store or other point-of-purchase display,
 - (d) made in the course of in-store or door-to-door selling to a person as ultimate user, or by communicating orally by any means of telecommunication to a person as ultimate user, or
 - (e) contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner to a member of the public,
- is deemed to be made to the public by and only by the person who causes the representation to be so expressed, made or contained, subject to subsection (2.1).

[...]

Offence and punishment

(5) Any person who contravenes subsection (1) is guilty of an offence and liable

- (a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both; or
- (b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding one year, or to both.

Reviewable conduct

(6) Nothing in Part VII.1 shall be read as excluding the application of this section to a representation that constitutes reviewable conduct within the meaning of that Part.

Duplication of proceedings

(7) No proceedings may be commenced under this section against a person against whom an order is sought under Part VII.1 on the basis of the same or substantially the same facts as would be alleged in proceedings under this section.

[...]

PART VII.1

DECEPTIVE MARKETING PRACTICES - REVIEWABLE MATTERS

Misrepresentations to public

74.01 (1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

- (a) makes a representation to the public that is false or misleading in a material respect;
- (b) makes a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation; or
- (c) makes a representation to the public in a form that purports to be
 - (i) a warranty or guarantee of a product, or
 - (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if the form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out.

Ordinary price: suppliers generally

(2) Subject to subsection (3), a person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, makes a representation to the public concerning the price at which a product or like products have been, are or will be ordinarily supplied where suppliers generally in the relevant geographic market, having regard to the nature of the product,

- (a) have not sold a substantial volume of the product at that price or a higher price within a reasonable period of time before or after the making of the representation, as the case may be; and
- (b) have not offered the product at that price or a higher price in good faith for a substantial period of time recently before or immediately after the making of the representation, as the case may be.

Ordinary price: supplier's own

(3) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, makes a representation to the public as to price that is clearly specified to be the price at which a product or like products have been, are or will be ordinarily supplied by the person making the representation where that person, having regard to the nature of the product and the relevant geographic market,

- (a) has not sold a substantial volume of the product at that price or a higher price within a reasonable period of time before or after the making of the representation, as the case may be; and
- (b) has not offered the product at that price or a higher price in good faith for a substantial period of time recently before or immediately after the making of the representation, as the case may be.

References to time in subsections (2) and (3)

(4) For greater certainty, whether the period of time to be considered in paragraphs (2)(a) and (b) and (3)(a) and (b) is before or after the making of the representation depends on whether the representation relates to

- (a) the price at which products have been or are supplied; or

(b) the price at which products will be supplied.

Saving

(5) Subsections (2) and (3) do not apply to a person who establishes that, in the circumstances, a representation as to price is not false or misleading in a material respect.

[...]

PART VIII – MATTERS REVIEWABLE BY TRIBUNAL

Agreements or Arrangements that Prevent or Lessen Competition Substantially

Order

90.1 (1) If, on application by the Commissioner, the Tribunal finds that an agreement or arrangement — whether existing or proposed — between persons two or more of whom are competitors prevents or lessens, or is likely to prevent or lessen, competition substantially in a market, the Tribunal may make an order

(a) prohibiting any person — whether or not a party to the agreement or arrangement — from doing anything under the agreement or arrangement; or

(b) requiring any person — whether or not a party to the agreement or arrangement — with the consent of that person and the Commissioner, to take any other action.

Factors to be considered

(2) In deciding whether to make the finding referred to in subsection (1), the Tribunal may have regard to the following factors:

(a) the extent to which foreign products or foreign competitors provide or are likely to provide effective competition to the businesses of the parties to the agreement or arrangement;

(b) the extent to which acceptable substitutes for products supplied by the parties to the agreement or arrangement are or are likely to be available;

(c) any barriers to entry into the market, including

(i) tariff and non-tariff barriers to international trade,

(ii) interprovincial barriers to trade, and

(iii) regulatory control over entry;

(d) any effect of the agreement or arrangement on the barriers referred to in paragraph (c);

(e) the extent to which effective competition remains or would remain in the market;

(f) any removal of a vigorous and effective competitor that resulted from the agreement or arrangement, or any likelihood that the agreement or arrangement will or would result in the removal of such a competitor;

(g) the nature and extent of change and innovation in any relevant market; and

(h) any other factor that is relevant to competition in the market that is or would be affected by the agreement or arrangement.

Evidence

(3) For the purpose of subsections (1) and (2), the Tribunal shall not make the finding solely on the basis of evidence of concentration or market share.

Exception where gains in efficiency

(4) The Tribunal shall not make an order under subsection (1) if it finds that the agreement or arrangement has brought about or is likely to bring about gains in efficiency that will be greater than, and will offset, the effects of any prevention or lessening of competition that will result or is

likely to result from the agreement or arrangement, and that the gains in efficiency would not have been attained if the order had been made or would not likely be attained if the order were made.

Restriction

(5) For the purposes of subsection (4), the Tribunal shall not find that the agreement or arrangement has brought about or is likely to bring about gains in efficiency by reason only of a redistribution of income between two or more persons.

Factors to be considered

(6) In deciding whether the agreement or arrangement is likely to bring about the gains in efficiency described in subsection (4), the Tribunal shall consider whether such gains will result in

- (a) a significant increase in the real value of exports; or
- (b) a significant substitution of domestic products for imported products.

Exception

(7) Subsection (1) does not apply if the agreement or arrangement is entered into, or would be entered into, only by parties each of which is, in respect of every one of the others, an affiliate.

Exception

(8) Subsection (1) does not apply if the agreement or arrangement relates only to the export of products from Canada, unless the agreement or arrangement

- (a) has resulted in or is likely to result in a reduction or limitation of the real value of exports of a product;
- (b) has restricted or is likely to restrict any person from entering into or expanding the business of exporting products from Canada; or
- (c) has prevented or lessened or is likely to prevent or lessen competition substantially in the supply of services that facilitate the export of products from Canada.

[...]

Definition of competitor

(11) In subsection (1), competitor includes a person who it is reasonable to believe would be likely to compete with respect to a product in the absence of the agreement or arrangement.

[...]

2. OTHER RESOURCES FROM THE COMPETITION BUREAU

- Bulletin on Immunity and Leniency Programs under the *Competition Act* (2019)
Link: <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04391.html>
- Trade Associations and the *Competition Act* (pamphlet) (2015)
Link: <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03691.html>
- Bulletin on Corporate Compliance Programs (2015)
Link: <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03927.html>
- Competitor Collaboration Guidelines (2009)
Link: <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03177.html>
- Draft Information Bulletin on Trade Associations (2008)
Link: <https://www.ic.gc.ca/eic/site/cb-bc.nsf/eng/02730.html>