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BY EMAIL

Montréal, January 19, 2009

Mr. Glenn Elder
Senior Competition Law Officer
Industry Canada
Competition Bureau - Enforcement Policy
50 Victoria Street
Gatineau, Quebec K1A 0C9

Dear Glenn:

Re: Draft Information Bulletin on Trade Associations (the “Bulletin”)

We commend the Competition Bureau (the “**Bureau**”) for bringing forward the above draft Bulletin, which we believe will be a useful tool for the many trade associations active in the Canadian economy.

Based on feedback received from several of our clients, we wish to bring to your attention an issue regarding section 3.1 dealing with “Information Sharing”. In this section, the Bureau discusses the steps which, in its view, should be taken to reduce the competition risks associated with the exchange of competitively sensitive information; more specifically, the draft Bulletin recommends use of an “independent data collection agency” and states that “[d]ata collected from industry participants should be collected by an independent firm.”

In our experience, many trade associations with which we are familiar employ their own staff to collect data from their members, which is then used in the production of reports distributed to the members and other interested parties. In doing so, these trade associations go to great length to ensure that anonymity of individual members and their data is preserved and that only aggregated data is disseminated. The associations’ own staff are trained to develop the dedicated expertise in the industry concerned which is required to ensure the completeness and accuracy of the collection process and resulting reports.

In that context, some of our clients are concerned that if a totally arm's length collection organization or firm is contemplated by the draft Bulletin as the preferable route to avoid potentially problematic exchanges of competitively sensitive information, a number of difficulties could present themselves. Significant structural changes would be required within certain trade associations, for one thing. And, more importantly, the availability or existence of organizations or firms capable of undertaking this type of work, at least at the required level of expertise, could be, in our experience, doubtful.

We hasten to add that in the cases with which we are familiar, the draft recommendation that "anonymity of individual members and their data should be preserved" is scrupulously followed even where data is collected by the association's own staff and, in most cases, the data is aggregated so that identification of an individual member's data is virtually impossible. Our understanding is that this is usually a requirement of the members themselves for reasons of commercial confidentiality, quite apart from competition law concerns. That is, even in situations where competitively sensitive information is not gathered by an independent data collection agency but by trade associations themselves, appropriate safeguards are usually present to limit if not eliminate competition law risks which could be associated with such exchanges.

We would therefore be grateful if the Bureau could recognize this in the draft Bulletin, clarify the issue and specify that the use of an independent data collection agency is not referred to as a required element to limit the competition risks of information sharing, but rather as one of various avenues to reach that goal.

Yours very truly,



Denis Gascon

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