



September 15, 2003

Me. Gaston Jorré
Acting Commissioner of Competition
Industry Canada, Competition Bureau
Place du Portage, Phase 1
50 rue Victoria
Gatineau QC K1A 0C9

Dear Me. Jorré,

RE: Bill C-381 - *Competition Act* amendments (vertically integrated gasoline suppliers)

I am writing as Chair of the CBA National Competition Law Section concerning proposed amendments to the *Competition Act* in Bill C-381, a private member's bill introduced by Mr. Harb on February 13, 2003.

The objective of Bill C-381 is to deem any vertically integrated gasoline supplier, as defined in the bill, to be in criminal violation of the *Competition Act*. A "vertically integrated gasoline supplier" is defined as:

- ... a corporation that supplies gasoline at retail
- (a) whose retail sales of gasoline represent more than 5% by value of the total of all retail sales of gasoline
 - (i) in Canada, or
 - (ii) in a province; and
 - (b) who manufactures, or is affiliated with one or more corporations that manufacture, more than 20% of the gasoline that the supplier sells at retail.

In our view, Bill C-381 is wholly without merit for the following principal reasons. Firstly, it attempts to criminalize the simple act or fact of being "a vertically integrated gasoline supplier". This is inconsistent with other provisions of the *Competition Act*, particularly in Part VIII (for example, exclusive dealing), that recognize the potential pro-competitive or, at the very least, competitively neutral implications of most vertical restraints.

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Secondly, with the absence of any competitive impact test, Bill C-381 would render certain corporations that currently satisfy the “vertically integrated gasoline supplier” definition to be in criminal violation of the *Competition Act*. Does this mean that these entities would need to immediately divest themselves of certain businesses or face criminal prosecution under the *Competition Act*? This would be highly prejudicial to such entities.

Thirdly, the parameters contained in Bill C-381 are arbitrary and without grounding in competition law. For example, the definition of “vertically integrated suppliers” is based on one accounting for at least 5% of retail gasoline sales when purchasing more than 20% of one’s gasoline supply from an affiliated wholesaler. What is the basis for these figures?

Finally, it is well accepted that the *Competition Act* is a law of general application and should not be directed at any particular industry. There is no basis for distinguishing vertical integration in the oil and gas industry from vertical integration in any other industry.

To conclude, the National Competition Law Section strongly opposes Bill C-381 in its entirety.

We hope that these observations will be helpful to you in your consideration of Bill C-381 should it proceed further through Parliament.

Yours truly,

original signed by Tamra Thomson for Susan Boughs

Susan Boughs
Chair
National Competition Law Section

cc. Senator Mac Harb