



October 31, 2005

Brent Saint Denis, M.P.
Chair, Standing Committee on Industry,
Natural Resources, Science & Technology
House of Commons
Ottawa, ON K1A 0A6

Dear Mr. Saint Denis:

RE: *Competition Act* Amendments - Bill C-19

I am writing as Chair of the Canadian Bar Association National Competition Law Section (CBA Section), to express our concern about significant amendments to Bill C-19, being tabled on short notice at a late stage in the legislative process without the benefit of any public input.

The CBA is a national association representing over 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

On Thursday, October 27, 2005 the Minister of Industry announced substantive amendments to Bill C-19. These proposed amendments are very significant, namely:

- more than doubling the maximum potential fine for a criminal conspiracy offence to \$25 million from \$10 million; and
- providing the Commissioner of Competition with the power to initiate general market studies and to assess the state of competition in any industry or industry subsector.

We understand that these amendments will be moved at the Industry Committee's clause-by-clause review of Bill C-19, scheduled for November 2. As far as we are aware, the Government first indicated its intent to make the amendments in a press release issued on October 6. The actual texts of these amendments were not made public until October 27.

The CBA Section has previously expressed concerns about Bill C-19, most recently in a submission dated December 2004. While the CBA Section has not changed its views with regard to Bill C-19, including opposition to the proposed new Administrative Monetary Penalties (or AMPs), the purpose of this letter is not to reiterate those previous comments.

Rather, we wish to express our concern that these new and very significant amendments to the legislation are to be tabled at a late stage in the process without the benefit of any public input. The *Competition Act* sets out important ground rules for Canadian businesses. Revisions can have significant and unintended consequences for the economy generally and Canadian productivity and efficiency in particular. Changes require careful consideration before implementation.

The CBA Section has not had an opportunity to consult with its members concerning the proposed change to the maximum criminal conspiracy fine. While the CBA Section does not take a position at this time on whether an increase is meritorious, we note that it would significantly change the current balance of incentives under the *Competition Act*. Thus, the proposed change at least raises a serious issue about whether the higher fine will chill lawful conduct. In any event, it would be preferable to consider such a significant proposal in tandem with other proposed amendments to the conspiracy provisions that are under active consideration.

It is particularly surprising that the Government intends to add provisions for market or industry studies at this late stage in the consideration of Bill C-19, when a similar proposal has been the subject of recent and extensive public consultation. The Public Policy Forum reported (at page 23 of its April 2004 report) that a large majority of those who commented were opposed to the proposal for market inquiries. Opposition was based on concerns about the high cost of such studies, that such powers are unnecessary, the need for procedural safeguards, and the risk that such inquiries would become "politically charged". The CBA Section explained why it did not support the re-introduction of a market reference power vested in the Commissioner and the Minister of Industry in comments on the Competition Bureau's Discussion Paper: Options for Amending the Competition Act dated October 2003.

In summary, it is our respectful submission that the market reference proposal should not proceed and that the proposed increase in the maximum potential fine for conspiracy offences should receive the benefit of public consultation and analysis before the *Competition Act* is amended in that regard.

We would be pleased to express our views or amplify on the foregoing before the Committee if that would be helpful.

Yours very truly,

(Original signed by Tamra Thomson on behalf of Madeleine Renaud)

Madeleine Renaud
Chair, National Competition Law Section

cc. Hon David L Emerson, Minister of Industry
Sheridan Scott, Commissioner of Competition