Draft Information Bulletin on Sentencing and Leniency in Cartel Cases

NATIONAL COMPETITION LAW SECTION
CANADIAN BAR ASSOCIATION

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PREFACE

The Canadian Bar Association is a national association representing 37,000 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.

This submission was prepared by the National Competition Law Section of the Canadian Bar Association, with assistance from the Legislation and Law Reform Directorate at the National Office. The submission has been reviewed by the Legislation and Law Reform Committee and approved as a public statement of the National Competition Law Section of the Canadian Bar Association.

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I. INTRODUCTION

The National Competition Law Section of the Canadian Bar Association (the CBA Section) welcomes the opportunity to comment on the *Revised Draft Information Bulletin on Sentencing and Leniency in Cartel Cases* (the Revised Bulletin) issued by the Competition Bureau.

The CBA Section appreciates the Bureau's continued efforts to consult with stakeholders on the Revised Bulletin and commends the Bureau for its commitment to the creation of a formal Leniency Program to complement the existing Immunity Program.

The CBA Section represents the unique perspective of its members, who regularly represent clients faced with criminal competition proceedings and concerns. It is the CBA Section's hope that its comments will assist in further fine-tuning elements in the Revised Bulletin, which will enable the Commissioner of Competition to create an attractive and useful Program that will offer a meaningful alternative to protracted litigation.

The CBA Section understands that upon finalizing the Revised Bulletin, a Memorandum of Understanding (MOU) addressing the respective roles, responsibilities and operating principles between the Bureau and the Public Prosecution Service of Canada (PPSC) will be published. The CBA Section would welcome the opportunity to provide comments on this document as well.

II. COMMENTS

i. Introduction

a. Purpose and Scope of the Revised Bulletin

One of the purposes of the Revised Bulletin is to set out strong incentives for leniency applicants in criminal inquiries to come forward and resolve their cases. Predictability and transparency are important aspects of any leniency policy. To date, no Court presiding over a Bureau criminal matter has rejected a joint submission made by PPSC and an accused's counsel following a finding of guilt under the *Competition Act*[1]. However, it overstates the case to say in paragraph 1 of the Revised Bulletin that "[a]pplicants who meet the requirements of the Program may thus **expect** to benefit from a more advantageous resolution with the DPP [PPSC] than would otherwise be possible" (emphasis added). This statement may be construed as suggesting that the PPSC, and ultimately the courts, are required to accept the Bureau's leniency recommendation. This is not the case as (i) PPSC counsel retains full discretion whether to follow the Bureau's sentencing recommendation and (ii) the discretion of Canadian trial courts to impose any particular sentence cannot be fettered at law.[2] To avoid any misperception by potential leniency applicants, the CBA Section suggests that the last sentence of paragraph 1 be deleted.

It is clear from the Revised Bulletin that immunity is not available for single-party offences but only for multi-party crimes such as bid-rigging and conspiracy. The Revised Bulletin generally contemplates leniency as a "follow-on" to immunity for conspiracy and bid-rigging (for the "second-in" and subsequent applicants who are not eligible for immunity). However, footnote 3 of the Revised Bulletin states that leniency may also apply in other criminal, non-cartel offences under the Act. One would expect that in many cases, targets of Bureau inquiries for single party offences (e.g., misleading representation offences) may be given the opportunity to resolve matters on the basis of non-conviction options such as entering into an undertaking or a prohibition order pursuant to subsection 34(2) of the Act.

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1 *R.S.C. 1985, C. 19, C. 19 (2nd Supp)., as amended.*

2 Note that under the Rule 11 plea procedure in the U.S., the parties are free to withdraw from a scenario where the presiding court does not agree to impose the recommended sentence as agreed to between the parties. Such procedure has no counterpart in Canada.

For cases that ultimately result in criminal charges, it would be useful to obtain guidance on how the Bureau and the PPSC will apply leniency policies, since many elements of the Revised Bulletin (e.g., first-in, second-in, etc.) are not transferable to single-party offences.

The CBA Section recommends that the Revised Bulletin address the following questions in outlining its approach to leniency for single-party offences:

- What 'discount' should a leniency applicant expect for these offences?
- By what criteria will the discount be measured and applied? (Some potential criteria come to mind: the timeframe within which an applicant approaches the PPSC after charges are laid; remedial measures undertaken by the applicant, including the implementation of corporate compliance programs, etc.)
- How will individuals be treated? Can an early applicant expect that an implicated individual will not be subject to prosecution, or that existing charges against such an individual for the same offence will be stayed?

To the extent that reduced penalties are available to parties to single-party offences who cooperate in the Bureau's investigation under other Bureau policies (e.g., the Conformity Continuum), the CBA Section recommends that these policies be cross-referenced in this section.

b. Roles of the Commissioner, the Director of Public Prosecution and the Courts

Paragraph 14 of the Revised Bulletin stresses the fact that the Bureau remains an active partner in supporting the prosecution during the plea and sentencing stages, although PPSC counsel has independent carriage of the matter. The CBA Section agrees that the PPSC counsel retains sole authority to engage in plea and sentencing discussions with counsel for an accused. However, the *Federal Prosecution Deskbook* deems it appropriate for PPSC counsel to take into account the views of the investigative agency in considering whether prosecution of regulatory offences is warranted.[3] The CBA Section suggests that this be stated explicitly in the Revised Bulletin. This may presumably be the subject of commentary in the proposed Bureau-PPSC MOU.

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[3] Specifically, see para. 15.3.2.1 of the *Federal Prosecution Service Deskbook*.

ii. Sentencing in Cartel Offences

a. Available Sentences under the Competition Act

This section of the Revised Bulletin sets out the general sentencing principles that the Bureau considers in making sentencing recommendations to the DPP and that courts use in sentencing. Paragraphs 23-25 discuss available sentences under the Act and note only "fines and prison terms". While prohibition orders are discussed at paragraphs 59-61, the CBA Section believes that the prohibition order portion of the Revised Bulletin should form part of this initial outline. This is particularly germane in light of the statement in the *Federal Prosecution Deskbook* as to sentencing in regulatory prosecutions:

> Fines and imprisonment, the usual dispositions in criminal matters, may be only part of a sentence that seeks to deter others, deter the particular offender(s), and to attempt to undo the harm caused. FPS counsel should explore with the investigative agency and/or LS counsel, as appropriate a range of appropriate dispositions that may achieve the agency's goal of compliance and protection of the public where the statutory regime affords scope for such dispositions.[4]

Thus, prosecution policy indicates that the full range of disposition options should be considered in resolving regulatory offences.

b. Sentencing Principles

1. Economic Harm

The Revised Bulletin does not appear to have considered the various difficulties associated with the Bureau's approach to sentencing. In particular, the Revised Bulletin portrays the sentencing process as a fairly straightforward process of measuring indirect commerce of a given product. The reality is that this would be an enormously difficult task, and the Revised Bulletin does not propose a methodology that is workable. In this regard, the Revised Bulletin does not achieve the objectives of transparency and predictability when describing the planned approach to basing a fine on indirect commerce.

An equally significant problem which the Revised Bulletin fails to address is in its discussion of "Economic Harm Arising from Indirect Sales": there is no indication of when indirect commerce may be specifically taken into account, except in paragraph 40 where the

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[4] Para 56.5, *Federal Prosecution Service Deskbook,, supra*.

following appears: "In cases where economic harm arising from indirect sales of a cartelized product into Canada is likely and significant, the Bureau will include it in its overall assessment of economic harm in Canada caused by the cartel". The CBA Section would ask how one goes about measuring "significant and likely"? Also, is it the case that indirect commerce will be considered only if there is not significant direct commerce? If that is so, the Revised Bulletin should state so. Further, it may be double-counting to use the "uptick" from 10% to 20% as a way of measuring for other impacts, yet also purport to fine based on indirect commerce. This discussion does not appear to provide transparency and predictability regarding the Bureau's approach to sentencing.

Paragraph 34 of the Revised Bulletin says that Bureau will "always consider relevant and compelling evidence presented by defendants that demonstrates an overcharge greater or less than the 10% proxy". The CBA Section questions the addition of the phrase "and compelling". If an accused brings forward relevant evidence, the CBA Section believes that no further qualification is necessary for the Bureau to consider it. (For a better approach, see the language in paragraph 36: "unless evidence that rebuts that presumption is brought forward".) Further, the reference to "presented by defendants" is not clear: it would be unusual for an accused to say the overcharge was higher. The CBA Section therefore questions whether this may be referring to an immunity applicant. If so, this wording should be deleted or modified. If not, the language should be similar to that in paragraph 36 or in the last sentence in paragraph 41.

The CBA Section also believes that paragraph 35 should also reference the ability of an accused to rebut the presumption, as in paragraph 41. While paragraph 41 is in the indirect commerce section, the last sentence applies equally to the discussion above and should be expressly stated there.

The Revised Bulletin, in paragraph 42, recognizes that the prospect of double-counting would be taken into account vis-à-vis other jurisdictions. This is a welcome recognition of principles of international comity in cartel regulation.

2. Aggravating and Mitigating Factors

The Revised Bulletin sets out a number of aggravating and mitigating factors that the Bureau will consider in sentencing recommendations. Although the Bureau implemented several of the CBA Section's prior comments into this section of the Revised Bulletin, a number of issues remain.

As a starting point, paragraph 46 of the Revised Bulletin states the following:

> The Bureau will also consider previous convictions for other crimes, particularly those involving financial dishonesty, such as fraud, insider-trading or the payment of secret commissions (kick-backs).

Previous convictions for the indicated offences should not automatically be considered in sentencing an accused for violations of the Act. The crimes described are not necessarily relevant to regulatory offences of the kind set out in sections 45 and 47. Dishonesty is not an element of either section 45 or 47 offences. While there is no rule that only previous convictions for precisely similar offences should be considered as an aggravating factor, regard should be given as to whether the prior convictions truly represent matters that are properly relevant to sentencing of offences under the *Act*.[5]

Prior convictions for crimes that do not involve violations of the *Act* should expressly be given less weight that those involving cartel activity in the Revised Bulletin. Failure to do so is inconsistent with the approach elsewhere in paragraph 46, giving guidance on the weight that will be given to recent convictions in determining an appropriate sentence recommendation. The CBA Section recommends that the words "these convictions, however, will be given less weight" be added to the end of paragraph 46.

The CBA Section agrees with the clarification in paragraph 48 (that having a share of the market "under investigation" will be considered an aggravating factor). Despite this improvement, the heading to paragraph 48 and the reference to this factor in the table in the paragraph 43 continues to refer to "corporate size". Given the changes in the Revised Bulletin, the reference to "corporate size" is misleading. The CBA Section recommends that

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[5] See *R v. Jones* (1991), 64 C.C.C. (3rd) 181 (Sask. C.A.).

the table in paragraph 43 and the heading to paragraph 48 be revised to change "Corporate Size and Sophistication" to "Market Share and Sophistication."

Paragraph 49 of the Revised Bulletin continues to refer to the "Degree of Planning, Covertness and Complexity of the Cartel Activity" as aggravating factors. Forethought, planning, covertness and deliberate evasion of the law are elements of almost any "cartel" that warrants prosecution. It is also unclear how forethought and planning can "aggravate" the offence for sentencing purposes when they constitute elements of the offence. The CBA Section continues to believe that a more logical approach from a policy perspective would be to consider only conduct that is particularly egregious to be an aggravating factor.

The CBA Section disagrees with the inclusion in paragraph 50 of "obstruction" as an aggravating factor in determining the appropriate sentence for cartel activity. Where the Bureau believes that obstruction has occurred, it may recommend that stand-alone criminal charges be brought. If insufficient evidence exists to support prosecutable charges, it is inappropriate for the Bureau to make indirect allegations of obstruction by relying on them as aggravating factors in sentencing submissions.

While paragraph 58 of the Revised Bulletin states that providing restitution to victims is a mitigating factor, the Bureau does not consider "possible future exposure to lawsuits" under section 36 of the *Act* to be a mitigating factor in sentencing. The CBA Section has several comments regarding this paragraph:

i. First, if the last sentence of paragraph 58 is intended to suggest that exposure to damages created by section 36 lawsuits commenced at the time of sentencing will be considered a mitigating factor, it is an improvement from the previous draft of the Revised Bulletin. For greater clarity, the Revised Bulletin should state this more clearly;

ii. Secondly, assuming this interpretation of the last sentence of paragraph 58 is correct, a party's ability to rely on the possibility of damages being awarded under section 36 as a mitigating factor should not depend on the timing of the commencement of that action. The risk of a private action for restitutionary damages alone should be sufficient. The CBA Section therefore submits that the last sentence of paragraph 58 should be deleted;

iii. Lastly, a footnote to paragraph 58 notes that restitution is a listed factor under section 718.21 of the *Criminal Code*.[6] Notably, the *Criminal Code* does not contain an explicit private right of action comparable to section 36 of the Act.

c. Prohibition Orders

While the Revised Bulletin's acknowledgement in paragraph 61 of non-conviction resolution options pursuant to subsection 34(2) of the *Act* is welcomed, the CBA Section believes that the range of possible cases that may qualify for such treatment under the Revised Bulletin's criteria is still narrow. Such factors as the lack of quality evidence to establish a possible offence (including 'borderline' jurisdictional factors), comity concerns arising from punishments imposed upon an accused by other regulators, whether the accused may have been subject to coercion at the hands of other participants, and the accused's willingness to cooperate and assist ongoing investigations are only some criteria for potential non-conviction treatment that could be applied certain parties. By restricting entry into this category to 'exceptional circumstances' the Bureau may be unnecessarily limiting its own flexibility to obtain essential cooperation from parties that otherwise do not find the Revised Bulletin's other enhancements sufficiently attractive to seek leniency. (The Fort McMurray auto body case[7] is an example where a resolution without a conviction may be appropriate. It involved unsophisticated accused who did not appreciate that what they were doing was illegal and who disclosed their agreement to their customers, in this case insurance companies.) The CBA Section therefore recommends that the Revised Bulletin expand its eligibility criteria in this discussion along the foregoing lines.

d. Sentencing Recommendations

The Revised Bulletin sets out the policy with respect to sentencing recommendations for individuals. The CBA Section believes that potentially implicated individuals should not be left to guess if they are likely to be charged, particularly in light of the recent amendments to the *Act* that have increased the potential term of imprisonment to 14 years. The Bureau's policy remains somewhat opaque, however. For example, would individuals in the employ

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6 R.S., c. C-34.

7 See Competition *Bureau Settles Case Involving Auto Body Shops* at http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02280.html

of companies that are second or later in applying for leniency be potentially subject to charges? Clarification of the potential treatment of these individuals would be useful.

iii. Leniency in Sentencing

In the introduction of this section, the Revised Bulletin states that "all communications" from the time a request is made to the point where the plea agreement is in place are protected by certain privileges. Footnote 57 defines "communications" as: "Communications may include, but are not limited to, counsel proffers, witness interviews and any records created for the purpose of the discussion." The word "may" creates uncertainty as it suggests that even though a communication falls within the definition of what is protected the Bureau has the discretion not to treat it as such. The CBA Section recommends that "may" be replaced with "shall". However, the determination of whether a particular communication does, in law, fall within the 'settlement privilege' category is not readily made, and is discussed in more detail below.

Paragraph 72 refers to plea agreements. It would be useful to include, upon consultation with the CBA and other stakeholders, template plea agreements to accompany the Revised Bulletin. We hope that the Bureau-PPSC MOU may contain examples for greater guidance.

In paragraph 79, the Revised Bulletin provides: "where a leniency applicant meets Program requirements, the Bureau may recommend that PPSC counsel" make submissions to a court in support of reductions in sentence. The CBA Section submits that this sentence should be changed to "the Bureau will recommend", to provide greater certainty regarding the leniency program. It would be more consistent with other statements in the Revised Bulletin that the Bureau will recommend sentence reduction where the Program requirements are met.

It is not clear why former employees, directors and officers are not considered in paragraph 81. They are dealt with explicitly in the Immunity Program bulletin, which states in paragraph 20: "Former directors, officers, employees who offer to cooperate with the Bureau's investigation may qualify for immunity". To create incentives for former employees, directors and officers to cooperate, the CBA Section suggests a similar approach

with respect to leniency for the first corporate applicant (i.e., no separate charges against the applicant's former directors, officers and employees if the individuals cooperate).

With respect to the interaction of a leniency application and Immunity Plus status as set out in paragraph 88, footnote 60 outlines the Immunity Plus program. The CBA Section suggests that the end of the first sentence of the footnote be revised to read: "…if it is first to disclose information relating to another criminal competition law offence". This revision would clarify that the new offence is intended to be a competition law offence.

a. The Leniency Process

Section E of the Revised Bulletin, beginning at paragraph 89, discusses procedural aspects of the leniency process.[8]

Under "Step 2: The Proffer", the Revised Bulletin notes that a proffer is to be made on a "without prejudice basis" and that these communications would be covered by settlement privilege.[9] While the CBA Section recognizes the positive spirit underlying the Bureau's position, precision is required. The term "without prejudice" is normally associated with communications that are genuine offers to settle outstanding disputes. It is not clear that the content of every communication or meeting between a party and a responding agency will be sheltered under this protection. Each interaction requires a contextual analysis. This is particularly important where a party may be asked to provide documents or witnesses for interview prior to any agreement with the PPSC. By analogy to the document example, "without prejudice" may not be determinative and the entire content of the document is examined to determine if it contains an offer or refers indirectly to a settlement by inviting a compromise or other approach to resolution.[10] While one would expect that information

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8 See paragraphs 89-125 of the Revised Bulletin.

9 See paragraphs 93 and 113 of the Revised Bulletin.

10 See in this regard, *British Columbia Children's Hospital v. Air Products Canada Ltd*. (2003) 24 C.P.R. (4th) 16 (B.C.C,A.).

imparted through witness interviews and document production following a leniency application would be subject to settlement privilege, there is no clear decision on point.[11]

However, criminal disclosure principles as set out by the Supreme Court in *Stinchcombe*[12] may require production of all communications between the agency and a party relating to that party's settlement, particularly if witnesses from that party are called to testify by the Crown.[13] Thus, entrants into the leniency program should know that the prospect of their being produced as witnesses will likely entail production and disclosure of materials. This is presumably incorporated in the Revised Bulletin's mention of disclosure 'as required by law'[14] but should be made explicit.

There is law to the effect that the settlement privilege lapses once a settlement is entered into between the parties. These cases have most frequently addressed production of the ultimate settlement agreement, although recent judicial views trend toward greater protection.[15]

The Revised Bulletin should recognize the inherent difficulty in attempting to prosecute a party after a "failed" leniency application. Any prosecutorial use by the Bureau of information disclosed by a leniency applicant in a case against that applicant would be subject to challenge under the 'abuse of process' and other doctrines.[16] While the Revised Bulletin hints at a softer stance against these parties where subsequent investigation reveals commission of offences[17], again more precision is needed.

The Bureau should also consider what will occur where information provided by the leniency applicant establishes that the cartel agreement or other conspiracy was more wide-

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11 Some support for a blanket approach may lie in cases addressing subsequent disclosure of information exchanged during a mediated settlement; in one such case, the Ontario Divisional Court maintained protection over such material: *Rudd v. Trossacs Investments Inc*. (2006) 146 A.C.W.S. 224 (Ont. Div. Ct.).

12 [1991] 3 S.C.R. 326

13 See in this regard *R. v. Delorme* (2005), 198 C.C.C. (3rd) 431 (NWT. S.C.) and *R. v. Pabani* (1994), 89 C.C.C. (3d) 437 (Ont. C.A.) (leave to appeal to S.C.C. refused: 91 C.C.C. (3d) vi)

14 Paragraph 119(a) of the Revised Bulletin.

15 *See British Columbia Children's Hospital v. Air Products Canada Ltd., supra*. note 10.

16 *R. v. Jewitt* (1985), 21 C.C.C. (3d) 7 (S.C.C.); *R. v. Keyowski* (1988), 40 C.C.C. (3d) 481 (S.C.C.).

17 See the discussion at paragraph 96 of the Revised Bulletin.

ranging than outlined by the immunity applicant or otherwise available to the Bureau. The U.S Antitrust Division's practice is not to use that evidence against the applicant in calculating its sentence.[18] The CBA Section believes that the Bureau should adopt the same practice.

While the Revised Bulletin does clarify that it will not be necessary for an applicant to produce records or witnesses prior to the Bureau's leniency recommendation, the CBA Section believes that the Revised Bulletin should make clear that all interviews of individuals (whether prior to or after conclusion of the plea agreement) will be premised on a form of "Queen For A Day" letter which would provide the usual use immunity guarantee to cooperating parties.

The requirement of cooperation by parties seeking leniency (normally corporations) sets up a potential tension between the corporation and individual executives or employees who may be implicated in criminal conduct. Disclosure of potentially incriminating information sets up potential impediments and disincentives for later leniency applicants who are not aware whether individuals will be sheltered under a corporate plea agreement. As one U.S. commentator notes, an individual executive "has little say over when or how corporate counsel describes his evidence" and even under corporate sponsorship an executive may find himself disclosing incriminating evidence without any enforceable assurance of immunity, or be foreclosed from the first chance to admit individual involvement in an offence while others secure their places among the immune.[19] The Bureau cannot expect to receive full cooperation from corporate entities (who require information from individuals to provide cooperation) where the individuals from whom information is sought may themselves be subject to prosecution. While this may be of diminishing concern to the Bureau with later entrants, it still represents an impediment to the smooth operation of the leniency program. Thus, the policy should require that the Bureau determine, at the outset of the application,

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[18] *See Cartel Settlements in the U.S. and EU: Similarities, Differences & Remaining Questions*, remarks of Ann O'Brien, Senior Counsel to the Deputy Assistant Attorney General for Criminal Enforcement, Antitrust Division to 13th Annual EU Competition Law and Policy Workshop, Florence, Italy, June 6, 2008:, at pp. 4-5.

[19] *Odd Man Out, The Executive Perspective in Pursuit of Leniency*, article presented at ABA Antitrust Law Spring Meeting, March 25-26, 2009, James Backstrom, at pages 2-3.

whether individuals will be 'carved out' of the ultimate plea agreement and therefore be exposed to criminal prosecution. Separate counsel for those individuals will be warned.

Obtaining the cooperation of individuals will be particularly problematic in circumstances where the leniency applicant discovers a 'new' cartel through its internal investigation, and wishes to come forward for immunity under the Bureau's Immunity Plus program. Often, some or all of the affected individuals will be involved in both the non-immunized and potentially immunized cartel. If those individuals are Bureau targets on the 'non-immunized' cartel (because the corporate entity is not the 'second-in') then it may not be possible for the applicant corporation to obtain cooperation from those individuals to advance its application in conformity with Bureau requirements. It is no answer that "the individuals can seek their own immunity"– that would be counterproductive to the immunity program, since the Bureau would lose the comprehensive investigative assistance obtained through corporate cooperation (e.g. access to databases – including foreign documents potentially beyond reach of the Bureau, production of additional witnesses). In these (perhaps rare) cases, the Bureau should swiftly extend no-carve-out status to all implicated individuals and proceed with both the plea agreement and immunity grant to the applicant corporation.

Under "Step 4: Plea Agreement" the Revised Bulletin might note that the Statement of Admitted Facts must be sufficient to enable a presiding judge to make a finding that the accused has committed the charged offence. This will eliminate any misunderstanding that a party can adopt a *nolo contendere* approach to resolving its case in Canada.

Under "Step 6: The Plea", reference could be made to the availability of pre-trial conferences to review the proposed provisions of settlement.[20] On consent of the parties, counsel may proceed to sentencing proceedings before the judge presiding on the pre-trial conference. While certainty of result is not available under the pre-trial process, it may provide a useful means of reviewing the terms of settlement to obtain an indication of whether it falls outside the general limits of judicial approval.

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[20] See s. 625.1(2) i.

Under "Step 6: The Plea", it could be added that the timing of the guilty plea may be another point of negotiation between the Bureau and the applicant.

Under Part V "Withdrawal from the program", and under paragraph 96 (discussing circumstances where the leniency applicant fails to make out an offence), the Revised Bulletin does not address what the Bureau might do with applicants who may be 'next in the queue'. Will the Bureau reach out to the subsequent applicant and offer to extend the relative "place in line" occupied by the prior party? For 'failed' immunity applications, the Bureau has indicated that it may 'reach out" to second-in parties where the first has failed to perfect its immunity application.[21] This is particularly important in light of the substantial enhancement of no carve-outs of individuals for the "second-in" party.[22] The CBA Section submits that the Bureau should actively seek out the participation of the 'next in the queue' to advance its investigation and foster necessary cooperation in these circumstances.

III. CONCLUSION

The CBA Section thanks the Bureau for the opportunity to submit these comments and trusts they are of assistance. The CBA Section would be pleased to discuss its comments further at the Bureau's convenience.

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21 See paragraph 9 "Proactive Immunity" : *Adjustments to the Immunity Program* publication, October 2007

22 See paragraph 81 of the Revised Bulletin.