ICLG

The International Comparative Legal Guide to:

Vertical Agreements and Dominant Firms 2017

1st Edition

A practical cross-border insight into vertical agreements and dominant firms

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Canada

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1 General

1.1 What authorities or agencies investigate and enforce the laws governing vertical agreements and dominant firm conduct?

The Commissioner of Competition (Commissioner) is responsible for the administration and enforcement of the *Competition Act*, R.S.C. 1985, c. C-34 (Act) and is the head of the Canadian Competition Bureau (Bureau), an independent agency within the Ministry of Innovation, Science and Economic Development. The Commissioner investigates and enforces the provisions of the Act related to vertical agreements and dominant firm conduct.

1.2 What investigative powers do the responsible competition authorities have?

While the Commissioner will often seek the voluntary cooperation of the target(s) of an investigation and third parties (such as competitors, suppliers and customers), the Commissioner has powers under the Act to obtain a court order requiring: a witness to be examined under oath (or solemn affirmation); the delivery of written responses to questions, under oath (or solemn affirmation); and the production of documents or other records.

1.3 Describe the steps in the process from the opening of an investigation to its resolution.

A Bureau investigation is typically initiated following the receipt of a complaint about a party's conduct, and can lead to the commencement of a formal inquiry into the matter (required to invoke the investigatory powers outlined in the response to question 1.2). Launching a formal inquiry is, generally, subject to the Commissioner's discretion, save in rare circumstances (specified in the Act) where an inquiry must be launched.

The Commissioner will, generally, seek voluntary cooperation from the target and third parties at the outset of his investigation, and thereafter may use his formal powers described in the response to question 1.2 should the investigation progress. All stakeholders, notably the target(s) of the investigations, can make submissions to the Commissioner.

Where the Commissioner determines that the relevant provisions of the Act have been engaged, he will, generally, try to resolve the issue(s) with the target on a negotiated basis. Where a negotiated resolution is not possible, the Commissioner may apply to the Competition Tribunal (Tribunal), (a specialised court responsible for adjudicating applications relating to civilly reviewable matters), for an order remedying the conduct.

1.4 What remedies (e.g., fines, damages, injunctions, etc.) are available to enforcers?

The remedies ordered by the Tribunal (and sought by the Commissioner) will depend on the relevant provision(s) of the Act in issue. The Tribunal can generally prohibit a party from engaging in the anti-competitive conduct. Certain provisions contain additional remedies, such as ordering a party to supply customers on usual trade terms (in the case of a refusal to deal), ordering a party to accept a third party as a customer on usual trade terms (in the case of price maintenance), and ordering a party to pay an administrative monetary penalty (AMP) (in the case of an abuse of dominance).

1.5 How are those remedies determined and/or calculated?

The Tribunal will only issue an order where all of the elements of the provision(s) are established, on a balance of probabilities, and only to the extent permissible by the relevant provision(s) and necessary to address the anti-competitive harm.

AMPs cannot be ordered to punish anti-competitive conduct, but only to promote practices that are in conformity with the purposes of the abuse of dominance provisions. In determining the amount of the AMP, the Tribunal must consider: the effect on competition in the relevant market; the gross revenue from sales affected by the practice; any actual or anticipated profits from the practice; the financial position of the target(s); the history of the target(s)' compliance with the Act; and any other relevant factor.

1.6 Describe the process of negotiating commitments or other forms of voluntary resolution.

Where the Commissioner and the target(s) are able to reach a resolution, the Commissioner may accept an undertaking(s) from the target(s), but, generally, the parties will enter into a consent agreement. The consent agreement sets out the target's obligations as regards the relevant conduct and any applicable AMPs or costs payable to the Commissioner; it is filed with the Tribunal and has the same force and effect as an order of the Tribunal.

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1.7 Does the enforcer have to defend its claims in front of a legal tribunal or in other judicial proceedings? If so, what is the legal standard that applies to justify an enforcement action?

Absent a negotiated resolution, the Commissioner must apply to the Tribunal for relief. To be successful in his application, the Commissioner must establish, on a balance of probabilities, that the relevant provision(s) of the Act has been contravened.

1.8 What is the appeals process?

A Tribunal decision can be appealed to the Federal Court of Appeal (with leave on questions of fact and as of right for questions of law). The Federal Court of Appeal's decision can be appealed to the Supreme Court of Canada, with leave.

1.9 Are private rights of action available and, if so, how do they differ from government enforcement actions?

Parties directly affected by certain vertical conduct can, with leave of the Tribunal, apply to the Tribunal for relief concerning another party's contravention of the Act's refusal to deal, price maintenance, and exclusive dealing, tied selling and market restriction provisions. Relief does not include damages and is limited to the relief available on an application by the Commissioner. No such private right of access is available with respect to abuse of dominance.

Private rights of action for damages are not available with respect to the vertical agreements or abuse of dominance provisions of the Act, save where a party has suffered damages as a result of another's breach of a Tribunal order with respect to those provisions. The action can be commenced before a provincial superior court or the Federal Court (not the Tribunal) and can be brought as a class action (where applicable) in a provincial superior court.

1.10 Describe any immunities, exemptions, or safe harbors that apply.

No immunities or safe harbours apply to the Act's vertical agreement or abuse of dominance provisions, but there are 'exemptions' applicable to certain such provisions, for example where:

- the entities are affiliated (price maintenance, exclusive dealing, tied selling and market restriction);
- proceedings have been commenced or an order is being sought relating to the same conduct under other provisions of the Act (price maintenance and abuse of dominance); and
- the conduct is the exercise or enjoyment of an intellectual or industrial property right (abuse of dominance).

1.11 Does enforcement vary between industries or businesses?

Generally, no; however, the Bureau may identify certain industries, or even practices, as enforcement priorities, often determined by their impact on the greatest number of Canadians.

1.12 How do enforcers and courts take into consideration an industry's regulatory context when assessing competition concerns?

The Commissioner and Tribunal will take into account how industry regulations may affect a party's conduct and/or the competitive dynamics in the relevant market. For example, regulations that authorise the conduct, expressly or impliedly, may affect the remedy sought or granted (or whether a remedy will be sought or granted at all) and regulations that limit entry may be important in assessing whether the target(s) has market power, a required element of abuse of dominance.

1.13 Describe how your jurisdiction's political environment may or may not affect antitrust enforcement.

The Commissioner is an independent law enforcement official and the political environment does not generally affect his enforcement of the vertical agreement or abuse of dominance provisions of the Act.

1.14 What are the current enforcement trends and priorities in your jurisdiction?

The Bureau is particularly concerned with industries that impact the greatest number of Canadians. For example, recent Bureau investigations have considered anti-competitive conduct related to residential real estate, securities market data, contracts with Canadian wireless carriers to sell and market smart phones, agreements relating to E-books and catering services at airports.

1.15 Describe any notable case law developments in the past year.

The Commissioner's application before the Tribunal alleging that The Toronto Real Estate Board (TREB) abused its dominant position by restricting its members from using data to offer real estate services over the internet is notable.

Following a Federal Court of Appeal finding that section 79 should not be interpreted so narrowly as to require that the anti-competitive acts be directed at one's competitor, the Tribunal ruled (in the Commissioner's favour) that TREB's restrictions substantially prevented competition for real estate services, especially innovative competition, and were not saved as an exercise of the Board's intellectual property rights in the data. The decision is under appeal. (*The Commissioner of Competition v. The Toronto Real Estate Board*, 2013 Comp. Trib. 9 (CT-2011-003), rev'd 2014 FCA 29, leave to appeal to SCC refused, 35799 (July 24, 2014) and *The Commissioner of Competition v. The Toronto Real Estate Board*, 2016 Comp. Trib. 7 (CT-2011-003).)

2 Vertical Agreements

2.1 At a high level, what is the level of concern over, and scrutiny given to, vertical agreements?

The Commissioner will investigate and may pursue vertical agreements which (or are likely to) substantially lessen or prevent, or have an adverse effect on, competition; however, these provisions of the Act have not been a high enforcement priority for the Commissioner and have not been the subject of recent (public) enforcement action.

2.2 What is the analysis to determine (a) whether there is an agreement, and (b) whether that agreement is vertical?

The Act's focus is not on the existence of a "vertical agreement" but

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on the nature of the vertical (often unilateral) conduct and whether it contravenes the relevant provision(s) of the Act, e.g., by adversely affecting or substantially lessening or preventing competition.

2.3 What are the laws governing vertical agreements?

The main provisions of the Act regulating practices associated with vertical relationships are: refusal to deal (section 75), price maintenance (section 76), exclusive dealing, tied selling, market restriction (section 77) and abuse of dominance (sections 78–79). (See questions 2.16–2.18, 2.22 and section 3 for a discussion of these provisions.)

2.4 Are there any type of vertical agreements or restraints that are absolutely ("*per se*") protected?

No, there are not.

2.5 What is the analytical framework for assessing vertical agreements?

The analytical framework is dependent on the relevant provision(s) of the Act. (See questions 2.16–2.18, 2.22 and section 3.)

2.6 What is the analytical framework for defining a market in vertical agreement cases?

The market has both a product (goods or services) and geographic market dimension.

The product market will include the product(s) associated with the anti-competitive conduct and any close substitutes. Buyer behaviour, product end-use and physical characteristics, switching costs, price relationships/levels are amongst the factors considered in defining the product market.

The geographic market will include the location where the relevant product is sold and any other locations which provide supply substitutes (e.g., the territory where there is competition and in which prices for a product tend toward uniformity). Buyer behaviour, switching costs, transportation costs, shipment patterns and foreign competition are amongst the factors considered in defining the geographic market.

(*Canada (Director of Investigation and Research) v. Tele-Direct (Publications) Inc.* (1997), 73 C.P.R. (3d) 1 (Comp. Trib.) and *Canada (Director of Investigation and Research) v. NutraSweet Co.* (1990), 32 C.P.R. (3d) 1 (Comp. Trib.); *Commissioner of Competition v. Canada Pipe*, 2005 Comp. Trib. 3 (CT-2002-006), aff'd 2006 FCA 236, leave to appeal to SCC refused [2006] S.C.C.A. No. 366 and *Abuse of Dominance Guidelines* (see question 2.15).)

2.7 How are vertical agreements analysed when one of the parties is vertically integrated into the same level as the other party (so called "dual distribution")? Are these treated as vertical or horizontal agreements?

The Commissioner will generally assess agreements between suppliers and distributors in a dual distribution arrangement as vertical agreements under the civil provisions of the Act. However, where the agreements are, effectively, agreements (to restrain competition) amongst competitors, such as by allocating markets, the Bureau can also consider such agreements under the cartel (criminal) or competitor collaboration (civil) provisions of the Act.

2.8 What is the role of market share in reviewing a vertical agreement?

Certain provisions only apply where a target is dominant or is a "major supplier" in a market. Market share will be an important, but not determinative, factor in such cases.

Additionally, the extent of the target's market power will be important in assessing the relevant conduct's effect on competition, and market share will be a factor in that regard.

2.9 What is the role of economic analysis in assessing vertical agreements?

Economic analysis is fundamental to determining the relevant conduct's actual or likely effect on competition.

2.10 What is the role of efficiencies in analysing vertical agreements?

None of the Act's relevant provisions expressly provide for efficiencies to be taken into account; however, the business justification(s) which may be based on efficiencies, may be relevant to the analysis. The promotion of efficient markets is one of the enumerated purposes of the Act and those purposes are to be reflected in the methodology used to assess whether conduct is likely to prevent or lessen competition substantially in abuse of dominance cases (*Canada (Commissioner of Competition) v. Canada Pipe Co.* 2006 FCA 233 at para. 48, leave to appeal to SCC refused [2006] S.C.C.A. No. 366).

2.11 Are there any special rules for vertical agreements relating to intellectual property and, if so, how does the analysis of such rules differ?

Section 32 of the Act empowers the Federal Court, on application by the Attorney General of Canada, to make a remedial order(s) if it finds that a firm has used its IP rights to unduly restrain or injure trade or unduly limit, lessen or prevent competition. Such orders could include declaring any agreement or licence relating to the anti-competitive use void, requiring the licensing of the IP right (except in the case of trademarks), revoking the IP right or directing that other things be done to prevent its anti-competitive use.

Only two such applications have ever been made (in 1969 and 1970), and both cases were settled before proceeding to full hearings with no remedial order being issued.

(See question 3.13 regarding IP rights and the abuse of dominance provisions of the Act.)

2.12 Does the enforcer have to demonstrate anticompetitive effects?

Yes, either an "adverse effect" on competition, a "substantial lessening" or a "substantial lessening or prevention" of competition (depending on the relevant provision of the Act).

2.13 Will enforcers or legal tribunals weigh the harm against potential benefits or efficiencies?

See question 2.10.

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2.14 What other defences are available to allegations that a vertical agreement is anticompetitive?

See question 1.10.

2.15 Have the enforcement authorities issued any formal guidelines regarding vertical agreements?

Yes. The Bureau has issued guidelines relating to price maintenance and abuse of dominance. (See *Enforcement Guidelines on Price Maintenance, Section 76 of the Competition Act* (15 September 2014), available online at *http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03787.html* and *Enforcement Guidelines on the Abuse of Dominance Provisions, Sections 78 and 79 of the Competition Act* (20 September 2012), available online at *www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03497.html* (Abuse of Dominance Guidelines).)

2.16 How is resale price maintenance treated under the law?

Resale price maintenance occurs where a supplier: (a) by "agreement, threat, promise or any like means", influences upward or discourages the reduction of the price at which a customer or other reseller, supplies, offers to supply, or advertises a product within Canada; or (b) refuses to supply a product to, or otherwise discriminates against, any person because of that person's low pricing policy, and results in an adverse effect on competition in a market.

The price maintenance provisions do not apply where the customer and supplier are in a principal/agent relationship, or the customer used the product(s) as a loss leader or to attract customers to buy other products (and not to generate a profit), was making a practice of misleading advertising, or did not provide the level of service that purchasers of the product would reasonably expect.

The Commissioner (or a private party, with leave) may apply to the Tribunal for relief and if successful, the Tribunal can issue an order prohibiting the conduct from continuing or requiring the party to accept another person as a customer on usual trade terms.

2.17 How do enforcers and courts examine exclusive dealing claims?

Exclusive dealing refers to any practice whereby a supplier of a product either as a condition of supply or through an inducement requires a customer to deal only or primarily in certain products, or refrain from dealing with certain products. The practice is only subject to a remedy where:

(a) it is widespread in a market or is engaged in by a major supplier;

(b) it is likely to: (i) impede entry into or expansion of a firm in a market; (ii) impede the introduction of a product into or expansion of sales of a product in a market; or (iii) have any other exclusionary effect in a market; and

(c) competition is or is likely to be lessened substantially.

The Commissioner (or a private party, with leave) may apply to the Tribunal for relief and, if successful, the Tribunal can issue an order prohibiting the conduct from continuing and containing any other requirement that is necessary to restore or stimulate competition in the market. No order will be issued where the practice is carried on for a reasonable time (only) to facilitate entry of a new supplier or a new product.

2.18 How do enforcers and courts examine tying/supplementary obligation claims?

Tied selling refers to any practice whereby a supplier of a product either as a condition of supply or through an inducement requires a customer to acquire a second product from the supplier (or its nominee), or refrain from using or distributing, in conjunction with the tying product, another product that is not of a brand or manufacture designated by the supplier (or its nominee). Tied selling is only subject to a remedy where:

(a) it is widespread in a market or is engaged in by a major supplier;

(b) it is likely to: (i) impede entry into or expansion of a firm in a market; (ii) impede the introduction of a product into or expansion of sales of a product in a market; or (iii) have any other exclusionary effect in a market; and

(c) competition is or is likely to be lessened substantially.

The Commissioner (or a private party, with leave) may apply to the Tribunal for relief and, if successful, the Tribunal can issue an order prohibiting the conduct from continuing and containing any other requirement that is necessary to restore or stimulate competition in the market. No order will be issued where the practice is reasonable, having regard to the relationship between the products.

2.19 How do enforcers and courts examine price discrimination claims?

There is no provision in the Act that expressly deals with price discrimination, but the Commissioner takes the position that such conduct can be considered under the abuse of dominance provisions (see section 3).

2.20 How do enforcers and courts examine loyalty discount claims?

Loyalty discounts are considered under the exclusive dealing (see question 2.17) and abuse of dominance (see section 3) provisions of the Act.

2.21 How do enforcers and courts examine multi-product or "bundled" discount claims?

Multi-product or "bundled" discounts are considered under the tied selling (see question 2.18) and abuse of dominance (see section 3) provisions of the Act.

2.22 What other types of vertical restraints are prohibited by the applicable laws?

Refusal to Deal

Where a supplier refuses to supply a customer with a product, the Tribunal will find a contravention of section 75 warranting a remedy where:

(a) the product is in ample supply;

(b) the customer who is refused supply is:

i. substantially affected in its business or precluded from carrying on its business;

ii. unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market; and

iii. willing and able to meet the usual trade terms; and

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(c) the refusal to deal is having or is likely to have an adverse effect on competition in a market.

The Commissioner (or a private party, with leave) may apply to the Tribunal for relief and, if successful, the Tribunal can issue an order requiring the party to supply the product on usual trade terms.

Market Restriction

Where a party requires a customer to sell a product only in a defined market as a condition of supplying that product, or exacts a penalty from the customer if it supplies the product outside a defined market, the Tribunal will find a contravention of section 77 warranting a remedy where the practice is widespread in a market or is engaged in by a major supplier, and is likely to substantially lessen competition in relation to the product.

The Commissioner (or a private litigant, with leave) may apply to the Tribunal for relief and, if successful, the Tribunal can issue an order prohibiting the conduct from continuing and containing any other requirement that is necessary to restore or stimulate competition in the market.

2.23 How are MFNs treated under the law?

MFNs are typically considered under the abuse of dominance provisions of the Act. (See, e.g., *Canada (Director of Investigation and Research) v. The D & B Companies of Canada Ltd.* (1995), 64 C.P.R. (3d) 216 (Comp. Trib.) and section 3, below.) However, in a recent case dealing with E-books, MFNs were also considered under section 90.1 of the Act, as part of a collaboration between (potential) competitors, with the Commissioner asserting that agreements that included MFN clauses and restricted the ability of E-book retailers to discount the retail price for E-books were contrary to section 90.1.

3 Dominant Firms

3.1 At a high level, what is the level of concern over, and scrutiny given to, unilateral conduct (e.g., abuse of dominance)?

The Commissioner takes seriously conduct which engages the Act's abuse of dominance provisions and will take action to remedy such conduct before the Tribunal. Having said that, the Bureau pursues a limited number of such cases before the Tribunal.

3.2 What are the laws governing dominant firms?

The provisions of the Act applicable to dominant firms are sections 78 and 79, and to a limited extent section 77 (see questions 2.17, 2.18 and 2.22 in that regard).

Under section 79, abuse of dominance occurs where (*Canada (Commissioner of Competition) v. Canada Pipe Co.* 2006 FCA 233, leave to appeal to SCC refused [2006] S.C.C.A. No. 366):

- **Dominance** – One or more firms substantially or completely control(s) a market.
- **Anti-competitive conduct** – The dominant firm(s) has (have) engaged in a practice of anti-competitive acts. A non-exhaustive list of (potentially) "anti-competitive acts" is set out in section 78 and includes margin squeezing, exclusive dealing, predatory pricing, selective introduction of "fighting brands", and other conduct.
- **A substantial prevention or lessening of competition (SPLC)** – The anti-competitive conduct has had, is having or is likely to result in a SPLC in a relevant market.

Where the Tribunal finds that section 79 has been engaged it can issue an order prohibiting the firm(s) from continuing to engage in the anti-competitive conduct or where such an order would not be effective, it can direct the firm(s) to take certain specific actions (such as the divestiture of assets or shares). Additionally, the Tribunal can order the firm(s) to pay AMPs of no more than C$10 million, for a first order, and C$15 million for subsequent orders.

Only the Commissioner can apply to the Tribunal for an order under section 79; there is no private right of access for third parties nor private right of action for damages.

3.3 What is the analytical framework for defining a market in dominant firm cases?

See the response to question 2.6.

3.4 What is the market share threshold for enforcers or a court to consider a firm as dominant or a monopolist?

While the Act does not identify a specific market share threshold that will trigger a finding of dominance, a high market share is generally required. The Bureau's *Abuse of Dominance Guidelines* note that in the case of single firm conduct, a market share of 50% or more will generally prompt review while market shares below 50% (and more than 35%) will "generally only prompt further examination if it appears the firm is likely to increase its market share through the alleged anti-competitive conduct within a reasonable period of time". To date, all of the contested abuse of dominance cases in Canada have involved single firms with market shares in excess of 70%.

In the case of "joint abuse", the *Abuse of Dominance Guidelines* provide that a combined market share equal to or exceeding 65% "will generally prompt further examination".

3.5 In general, what are the consequences of being adjudged "dominant" or a "monopolist"? Is dominance or monopoly illegal *per se* (or subject to regulation), or are there specific types of conduct that are prohibited?

Neither dominance nor monopoly is illegal under the Act. Only conduct engaged in by a dominant party (parties) or monopolist, where all of the elements of section 79 are established, is problematic (see question 3.2).

3.6 What is the role of economic analysis in assessing market dominance?

Economic analysis is fundamental to determining a firm's dominance, as well as assessing the anti-competitive conduct's effect on competition.

3.7 What is the role of market share in assessing market dominance?

Market share will be an important but not determinative factor in assessing dominance. (See question 3.4.)

3.8 What defences are available to allegations that a firm is abusing its dominance or market power?

Section 79 contains only a few limitations on its application, notably:

- Subsection 79(4) provides that the Tribunal must consider whether a firm's practice is a result of superior competitive

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performance and the Bureau's *Abuse of Dominance Guidelines* note that "a firm would not contravene the Act if it attains its market power solely by possessing a superior product or process, by introducing an innovative business practice or by other reasons of exceptional performance"; and

- Subsection 79(5) provides that the exercise or enjoyment of an intellectual or industrial property right is not "an anti-competitive act".

3.9 What is the role of efficiencies in analysing dominant firm behaviour?

Efficiencies are not expressly referenced in section 79 but they are relevant to a consideration of whether the relevant conduct constitutes an "anti-competitive act" or whether it is in furtherance of a legitimate business objective. The latter "must be a credible efficiency or pro-competitive rationale for the conduct in question". (*Canada (Commissioner of Competition) v. Canada Pipe Co.* 2006 FCA 233 at para. 73, leave to appeal to SCC refused [2006] S.C.C.A. No. 366.) The Bureau's *Abuse of Dominance Guidelines* note that business justifications could include "reducing the firm's costs of production or operation, or improvements in technology or production processes that result in innovative new products or improvements in product quality or service".

3.10 Do the governing laws apply to "collective" dominance?

Yes, however, there is currently no Tribunal jurisprudence on what would constitute an abuse of joint dominance (for example, whether co-ordinated behaviour between firms is required or whether conscious parallelism would be sufficient).

3.11 How do the laws in your jurisdiction apply to dominant purchasers?

The Commissioner and Tribunal will undertake the same analysis in determining whether the actions of a dominant firm (or jointly dominant firms) constitute an abuse of dominance, however there is no Tribunal jurisprudence on purchaser dominance.

3.12 What counts as abuse of dominance or exclusionary or anticompetitive conduct?

Section 78 contains a non-exhaustive list of nine acts that could trigger the application of section 79. Examples of acts not found in this list but asserted by the Commissioner to be anti-competitive are: contracting practices requiring or inducing exclusivity; evergreen, meet-or-release or MFN clauses; intimidation through litigation; and tied selling.

3.13 What is the role of intellectual property in analysing dominant firm behaviour?

Subsection 79(5) of the Act provides that the exercise of an IP right will not be considered an anti-competitive act for the purposes of section 79. In its *Intellectual Property Guidelines*, the Bureau takes the position that a mere exercise of an IP right will not be regulated under the general provisions of the Act, but only under section 32. (*Intellectual Property Enforcement Guidelines* (31 March 2016), available online at: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-IPEG-e.pdf/$file/cb-IPEG-e.pdf.) (See question 2.11 for a discussion of section 32.)

3.14 Do enforcers and/or legal tribunals consider "direct effects" evidence of market power?

Yes, direct indicators (e.g., whether profits, pricing policies or customer service indicate market power) will be considered in assessing market power. However, the Bureau has noted in its *Abuse of Dominance Guidelines* that such indicators are not always conclusive. As a result, the Bureau (and the Tribunal) will also consider indirect indicators (such as market share, barriers to entry, countervailing buyer power, etc.) in assessing market power.

3.15 How is "platform dominance" assessed in your jurisdiction?

The Act assesses conduct that would constitute an abuse of dominance irrespective of the industry; the Tribunal has not considered cases where "platform dominance" was an issue.

3.16 Under what circumstances are refusals to deal considered anticompetitive?

See the response to question 2.22.

4 Miscellaneous

4.1 Please describe and comment on anything unique to your jurisdiction (or not covered above) with regards to vertical agreements and dominant firms.

Not applicable.

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