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Introduction to the *CPI Antitrust Chronicle* Canada Issue—2014

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It is once again a great pleasure to serve as guest editor for *CPI Antitrust Chronicle's* special issue devoted to Canadian competition law and policy.

The past year was a very busy one for Canadian competition law developments, the effects of which will continue to be felt in 2014 and beyond.

From an enforcement perspective, the key development was the appointment of John Pecman as Commissioner of Competition, the head of Canada's Competition Bureau. Mr. Pecman's appointment is notable for three reasons: he is a seasoned Bureau veteran (30 years at the Bureau with a wide range of experience and responsibilities); he is the first Commissioner to be appointed from the Bureau's career civil service; and he is an economist, not a lawyer (thankfully).

Since the new Commissioner's appointment in June 2013, he has moved assiduously and with determination to put his own stamp on the Bureau and competition enforcement in Canada. Mr. Pecman has launched a variety of initiatives in this regard, perhaps none more important than placing a renewed emphasis on competition "advocacy," particularly as it relates to the regulated sectors of the Canadian economy. This marks a welcome recognition that the Bureau's impact on promoting competition in Canada can and should extend beyond standard enforcement and litigation.

That said, 2013 was also a very important year for case law developments affecting key areas of Canadian competition law. The Supreme Court of Canada issued a decision upholding the right of indirect plaintiffs to sue for damages in follow-on competition litigation; the Federal Court of Appeal decided cases affecting the *Competition Act's* merger review (*Tervita*) and abuse of dominance provisions (*TREB*); the Competition Tribunal held that the *Competition Act's* price-maintenance provision was **not** broad enough to curtail alleged anticompetitive conduct by Visa and MasterCard affecting merchant fees; and the Ontario Superior Court largely dismissed the Bureau's allegation that one of the country's leading communications companies had made misleading claims in relation to cell phone performance.

In this issue, our authors examine several of these key case law developments. Niki Iatrou & Bronwyn Roe, for example, discuss the implications of the *Tervita* case (now on appeal to the Supreme Court of Canada), which will address the analytical framework to be applied when a merger is alleged to "prevent" competition substantially in a relevant market. For their part,

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Debbie Salzberger & David Rosner assess the impact of the *TREB* and *Visa/MasterCard* cases on the rules governing unilateral conduct in Canada.

Two of our articles then deal with potential developments that could alter and expand the future scope of competition law enforcement in Canada. In their contribution, George Addy & Erika Douglas assess the Competition Bureau's recent foray into a case involving "product hopping" in the pharmaceutical industry and explore what this could mean for future enforcement in the (still) cutting edge intersection of intellectual property and competition law. Marissa Ginn & Marc Van Audenrode then appraise from an economist's perspective the Canadian government's recent proposal to use competition law to combat what many Canadians perceive to be "unjustified" cross-border price discrimination. (Debbie Salzberger & David Rosner also touch on this issue in their article on unilateral conduct.)

Finally, one of the interesting aspects of Canadian competition law is the extent to which it interacts with our rules governing foreign investment. From a certain perspective, Canadian foreign investment law can be seen as competition law's evil alter ego, working at protectionist cross-purposes to competition law's promotion of free and open markets. And yet, sometimes the issues faced by both legal regimes are quite similar. As Sandy Walker points out in her treatment of the issue, one such common question is how to deal with state-owned enterprises ("SOEs"), a subject that has presented unique challenges to both Canadian competition and foreign investment law.

I would like to close by thanking all of our authors for their contributions to this special Canadian colloquium in the *CPI Antitrust Chronicle*. I hope that you find their articles informative and instructive, as I did. I would also like to offer special thanks to Lindsay McSweeney for once again giving me the opportunity to expose CPI readers to a sampling of the varied and interesting developments shaping competition law and policy in Canada.