

## Competition Criminal Enforcement in Canada: 2014 Year in Review

*By: Christopher Naudie, Michelle Lally, Lawrence Ritchie*

Competition regulators pursued another aggressive year of criminal enforcement in Canada. While the Commissioner of Competition did not announce any new large-scale investigations in conjunction with international regulators, the Criminal Matters Branch of the Competition Bureau continued to aggressively prosecute a number of active cases, particularly in the auto-parts and infrastructure sectors. The Commissioner's enforcement activities in 2014 were heavily focused on prosecuting and punishing bid-rigging conduct; the Commissioner secured a number of new guilty pleas with significant fines – totalling roughly C\$17 million – and he made good on his policy statements to prosecute individuals where appropriate. In addition, the Commissioner's enforcement activities continued to be matched – and in some cases, overshadowed – by the enforcement activities of the private class actions bar in Canada. Following the issuance of a trilogy of landmark rulings by the Supreme Court of Canada in late 2013, the class actions bar has pursued another aggressive year of seeking restitution on behalf of class members that had been harmed by criminal conduct, even in cases where the Commissioner has declined to act. Finally, any report on criminal developments in Canada would be incomplete without noting the increased enforcement activities of regulators in Canada in respect of domestic and foreign corruption.

In our annual report on antitrust enforcement in Canada, we have set out the major enforcement developments from 2014 and have examined some of the leading prosecutions and judicial decisions that have been released by the courts in Canada during the past year. We have also identified some of the important enforcement trends and upcoming cases that will be important to companies that conduct business in Canada in 2015. Finally, we have highlighted some of the key developments on foreign corruption in 2014.

**CRIMINAL ENFORCEMENT**

- The Commissioner continues to have an active book of ongoing investigations. Based on the Bureau's reporting at the end of its most recent quarter, the Commissioner had over a hundred active investigations in the criminal and civil spheres, representing a modest increase relative to 2013.<sup>1</sup> More significantly, the Commissioner granted eight immunity markers and eight leniency markers between March 2014 and September 2014, representing a significant jump over the comparable activity for the same period in 2013. In addition, the Bureau reported that it had opened 18 new investigations during the period between March 2014 to September 2014. These trends reflect a long-term trend of vigorous criminal enforcement in Canada – over the past 15 years in Canada there have been more than 80 convictions for cartel offences with fines totalling over C\$300 million.<sup>2</sup>
- While the Bureau does not disclose the identity of its investigations in its quarterly reporting, a significant level of this increased activity is tied to the ongoing global auto-parts investigation. Since 2009, international regulators have been investigating allegations of bid-rigging in respect of the pricing of a number of automotive components, including safety systems such as seat belts, air bags, steering wheels, and antilock brake systems, and critical parts such as anti-vibration rubber, instrument panel clusters, starter motors and wire harnesses. In early 2014, the U.S. Department of Justice secured another record fine against Bridgestone in connection with anti-vibration rubber parts in the amount of US\$425 million. To date, the U.S. Department of Justice has laid charges against 26 corporations and 28 individuals, and has secured more than US\$2 billion in criminal fines.<sup>3</sup>

- 
- 1 See the Competition Bureau, *Quarterly Report for the Period Ending Sept. 30, 2014*. The Bureau does not report the breakdown between criminal and civil investigations. At public competition conference in September 2014, Matthew Boswell, the head of the Criminal Matters branch, stated that the Commissioner had granted 93 immunity markers and 26 leniency markers over the past year. It was not clear whether Mr. Boswell was referring the calendar year or the Bureau's reporting year (which ends in March) or the past year preceding the conference. But these statistics appear to reflect an unusual rise in marker requests in late 2013 and early 2014 that is likely attributable to the auto-parts investigation.
  - 2 Osler Antitrust Advisory, "[Cartels What You Need to Know about Canada's Criminal Cartel Offence](#)" (dated November 20, 2014).
  - 3 Department of Justice Press Release, "Bridgestone corp. agrees to plead guilty to price fixing on automobile parts installed in U.S. cars" (dated February 13, 2014).

- Given the importance of the automotive sector in Canada, the Commissioner is continuing his own aggressive criminal investigation in respect of these same products that may have impacted Canadian consumers. To date, the Commissioner has secured seven guilty pleas and over C\$56 million in fines in respect of a number of different products ever since the Commissioner started investigating the auto-parts sector in 2009. In 2014, the Commissioner secured four additional guilty pleas, and the Commissioner has confirmed that the Bureau benefited extensively from cooperation through the Immunity Program and the Leniency Program.
  - In January 2014, NSK Ltd. (NSK), a Japanese bearings manufacturer, pleaded guilty to two counts of bid-rigging under the *Competition Act* for its participation in an international bid-rigging conspiracy relating to automotive wheel hub unit bearings sold to Toyota for automobiles in Canada. NSK was fined C\$4.5 million.<sup>4</sup>
  - In February 2014, Panasonic Corporation (Panasonic), a large Japanese conglomerate, pleaded guilty to two counts of bid-rigging under the *Competition Act* for its participation in an international bid-rigging conspiracy relating to a number of types of switches and sensors sold to Toyota for automobiles in Canada. Panasonic was fined C\$4.7 million.<sup>5</sup>
  - In August 2014, DENSO Corporation (DENSO), a Japanese supplier of motor vehicle components, pleaded guilty to three counts of bid-rigging under the *Competition Act* for its participation in an international bid-rigging conspiracy relating to body electronic control units sold to Toyota for automobiles in Canada. For its participation in the conspiracy, DENSO was fined C\$2.45 million.<sup>6</sup>
  - In December 2014, Yamashita Rubber Co., Ltd. (Yamashita), a Japanese supplier of motor vehicle components, pleaded guilty today to two counts of bid-rigging under the *Competition Act* for its participation in an international bid-rigging conspiracy relating to anti-vibration components and systems sold to Honda for automobiles in Canada. Yamashita cooperated with the Bureau and was a participant under the Bureau's Leniency Program. Yamashita was fined C\$4.5 million.<sup>7</sup>

---

4 Competition Bureau Press Release, "Japanese Bearings Manufacturer Fined \$4.5 Million" (dated January 30, 2014).

5 Competition Bureau Press Release, "Panasonic fined \$4.7 million for Rigging Bids" (dated February 20, 2014).

6 Competition Bureau Press Release, "Sixth guilty plea in Competition Bureau's investigation involving motor vehicle components" (dated August 20, 2014).

7 Competition Bureau Press Release, "Seventh guilty plea in Competition Bureau's investigation involving motor vehicle components" (dated December 11, 2014).

- The Commissioner also secured additional guilty pleas as part of his investigation in respect of the ocean freight industry. The Commissioner had commenced his investigation in 2009 as a result of information obtained through its Immunity Program that suggests that a number of participants in the ocean freight industry had fixed the price of various surcharges, including surcharges for currency exchange fluctuations and fuel. In April 2014, ECU pleaded guilty to having fixed the price of various surcharges of non-vessel operating common carrier expert consolidation services from Canada to various destinations. As part of the plea, ECU received a fine of C\$1 million and two individuals received conditional sentences – Elvio Lancione received two concurrent conditional sentences of four months coupled with community service, and Michael Teixeira received two concurrent conditional sentences of three months coupled with community service.
- During the past year, the Commissioner continued his ongoing investigative inquiries into the construction and infrastructure sector in Québec, in conjunction with the provincial Unité Permanente Anticorruption (the permanent anti-corruption squad, known as UPAC). Following a joint investigation by the Bureau and UPAC, prosecutors charged a large number of individuals and companies in 2012 for collusion and bid-rigging relating to construction projects in Québec. As a result of continuing revelations relating to bidding and tendering practices in the industry, including revelations during the course of an high-profile public inquiry in Québec (the Charbonneau Commission), the Commissioner charged additional individuals and additional companies in January 2014 as well as December 2014. As a result of these changes, the Commissioner's joint investigation has now resulted in 79 charges against 13 individuals and 11 companies in the construction sector.<sup>8</sup>
- In an unusual case involving allegations of bid-rigging relating to a federal contractor, the Commissioner laid criminal charges against an information technology company and six individuals who provided services to Library and Archives Canada (LAC). The alleged scheme involved certain federal employees of LAC who were separately charged for fraud under the *Financial Administration Act*.<sup>9</sup>
- The Commissioner is also living up to his commitment to actively prosecute individuals and to seek jail time where appropriate. In one of the most significant criminal prosecutions that the Director of Public Prosecutions (DPP) has pursued in

---

8 Competition Bureau Press Release, "UPAC and the Competition Bureau of Canada Lay 77 Charges Against 11 Individuals and 9 Companies" (dated June 21, 2012); Competition Bureau Press Release, "Competition Bureau lays additional criminal charges related to infrastructure projects in Quebec" (dated December 2, 2014).

9 Competition Bureau Press Release, "Criminal Charges Laid Against a Company and Six Individuals Involved in Bid-rigging Scheme" (dated May 2, 2014).

Canada under the *Competition Act*, the DPP is continuing to prosecute two former executives of Nestlé Canada in respect of alleged price-fixing in the chocolate confectionary business. In June 2013, Hershey Canada pleaded guilty to an offence under s. 45 of the *Competition Act* and was fined C\$4 million. At the same time, the DPP laid charges against Nestlé Canada, two former executives of Nestlé Canada, Mars Canada, a wholesale distributor called ITWAL as well as the CEO of ITWAL. The Crown is continuing to deal with disclosure issues and no trial date has been set.<sup>10</sup>

- In a rare conviction involving jail time, the Commissioner secured a conviction under the deceptive telemarketing provisions of the *Competition Act* against an individual who participated in a scheme relating to the telemarketing of business directory listings. The scheme targeted thousands of businesses in Canada and the United States, and the individual was sentenced to 18 months in prison.<sup>11</sup>
- In 2014, the Criminal Matters Branch also concluded a number of significant cases. Most significantly, in January the Commissioner announced that the Bureau was discontinuing its investigation of alleged collusive conduct into the setting of Yen LIBOR rates. The Commissioner had conducted an extensive investigation into Yen LIBOR since early 2011, and had used a range of investigative tools against participants in the industry. However, in its announcement, the Commissioner ultimately concluded that it had insufficient evidence to pursue a prosecution under the *Competition Act*.<sup>12</sup>
- As a reflection of the importance of criminal enforcement to the Commissioner, the Bureau convened its first “Anti-Cartel Day” in March 2014. As part of its announcement, the Bureau issued new guidance on corporate compliance, and underscored that it intends to vigorously pursue criminal enforcement against any companies that engage in cartel activity.<sup>13</sup>
- The Supreme Court also issued some critical guidance relating to the confidentiality and subsequent use of wire-tap evidence collected by the Bureau. As part of its long-standing price-fixing investigation relating to the pricing of retail gasoline in Québec, the Bureau intercepted and recorded over 220,000 private communications and ultimately charged over 50 individuals and businesses during the period from 2008 to 2010. In respect of a number of these accused, the Bureau ultimately reached

---

<sup>10</sup>Competition Bureau Press Release, “Hershey Pleads Guilty to Price-fixing Cartel” (dated June 21, 2013).

<sup>11</sup>Competition Bureau Press Release, “Deceptive telemarketer receives 18-month prison sentence” (May 27, 2014).

<sup>12</sup>Competition Bureau Press Release, “Competition Bureau discontinues its LIBOR Investigation” (dated January 3, 2014).

<sup>13</sup>Competition Bureau Press Release, “Competition Bureau’s First Annual Anti-Cartel Day” (dated March 24, 2014).

guilty pleas and a number of significant fines. Given the seeming value of the wiretap information, class plaintiffs in Québec moved for disclosure of this information by the DPP under the Québec rules governing third-party discovery. The DPP refused disclosure, in part on the basis that such information was protected from disclosure under s. 29 of the *Competition Act*. However, on appeal, a majority of the Supreme Court found that the plaintiff entitled to seek disclosure of the fruits of the Bureau's wire-tapping efforts to advance their class proceeding. The key findings of the majority:

- Class plaintiffs are entitled to seek third-party discovery from the DPP under traditional rules governing third-party discovery.
- Section 29 of the *Competition Act* and related provisions of the Criminal Code do not prohibit the disclosure of intercepted private communications to civil plaintiffs.
- The court nonetheless has the discretion to refuse disclosure or to impose conditions on disclosure to protect the privacy interests of third parties or to ensure that the accused's right to a fair trial is not impaired.

While the decision of the Court was focused on access to wire-tap evidence, the majority's decision arguably lays the foundation for plaintiffs to pursue much broader access to the Bureau's investigative file (and potential to information obtained under the Immunity Program) in support of an ongoing class proceeding that seeks relief in the form of damages under the *Competition Act*.<sup>14</sup>

- In a significant development that will impact federal contractors, Public Works and Government Services Canada (PWGSC) announced this fall that it was examining the impact of a guilty plea by a foreign subsidiary of Hewlett Packard under federal contracting rules. The PWGSC's announcement reflects the first potential application of the debarment regime under the federal government's new integrity rules that were introduced in March 2014. This announcement could have implications for domestic and foreign entities that are under investigation by antitrust regulators, since PWGSC's Integrity Framework provides that a federal contractor may be deemed ineligible to do business with the PWGSC if the contractor is convicted or enters a guilty plea for an offence in Canada or a foreign jurisdiction that involves "corruption, collusion, bid-rigging or any other anti-competitive activity under the *Competition Act*." Given the wording of the Integrity Framework, the antitrust bar in Canada has expressed continuing concerns that these disbarment rules might catch cooperating parties who enter into a guilty plea as part of the Competition Bureau's Leniency Program.

---

<sup>14</sup> *Imperial Oil v. Jacques*, 2014 SCC 66.

- In May 2014, the Commissioner announced that he was implementing a significant “realignment” of the internal structure of the Bureau in order to improve synergies and encourage collaboration, with implications for criminal enforcement. The Bureau has been historically structure-based on eight administrative branches, but only four of those branches are focused on enforcement: Criminal Matters, Civil Matters, Mergers and Fair Business Practices. Under the Commissioner’s realignment, the Criminal Matters Branch and the Fair Business Practices branch will be combined into a single branch, and the Mergers Branch will be combined with the Civil Matters Branch. In his announcement, the Commissioner stated that the goal of his restructuring was to build “a stronger, more flexible and more adaptive agency.” The realignment will be fully implemented in 2015, and the newly combined Criminal Matters Branch will be headed by Matthew Boswell, the existing Senior Deputy Commissioner for Criminal Matters. Given that the leadership of the combined branch will remain unchanged, it is unlikely that this restructuring will result in any significant policy changes. However, it remains to be seen whether this realignment will achieve the synergies that the Commissioner has hoped to achieve, and will result in a more nimble and responsive criminal regulator.
- In September 2014, the Bureau issued an updated draft of its Corporate Compliance Bulletin for a 60-day comment period that will have important implications for criminal sentencing. In addition to providing the Commissioner’s overall views on the components of an effective compliance program, the draft bulletin signalled that a participant in the Bureau’s Leniency Program may receive sentencing credit if it had implemented a pre-existing, credible and effective corporate compliance program prior to the occurrence of the criminal conduct. In the bulletin, the Bureau underscored that the mere pre-existence of a compliance program will not automatically garner a company favourable treatment. However, depending on the circumstances, the Bureau indicated that a credible and effective program may be treated as a mitigating factor in the Bureau’s recommendations to the Public Prosecution Service of Canada under the Leniency Program. However, under the bulletin, a company applying for fine mitigation under the Leniency Program is required to open its internal records to the Bureau’s Chief Compliance Officer in order to demonstrate that its compliance program was credible and effective. In addition to raising important questions about privilege, some companies may be concerned about sharing compliance-related materials with the Bureau, particularly if such materials reflect the recommendation in the Draft Bulletin that the specific risks faced by the business be addressed in detail. Following a period of public comment and consultation, we can expect the issuance of a final bulletin in 2015.<sup>15</sup>

---

<sup>15</sup> Osler Update, [“Competition Bureau Emphasizes Proactive Approach to Fostering a Culture of Compliance and Managing Competition Law Risk”](#) (dated October 16, 2014); Infographic, [“Canadian Competition Law Compliance: Penalties, Risk Factors and Program Components”](#) (dated December 2014).

- In another public announcement in September, the Commissioner issued a formal “white paper” in respect of patent litigation settlement agreement (i.e., “pay-for-delay” settlements between branded and generic pharmaceutical manufacturers). In addition to signalling increased enforcement scrutiny of the pharmaceutical industry, the Commissioner indicated that in certain circumstances, a “pay-for-delay” arrangement may attract enforcement scrutiny under the criminal conspiracy provisions of the *Competition Act*. Given that most international regulators approach such settlements through the lens of civil enforcement, the Commissioner’s statement underscored the significant risks associated with such settlements and the need for careful advice in implementing such arrangements.<sup>16</sup>

#### PRIVATE ENFORCEMENT

- In late 2013, the Supreme Court of Canada issued a landmark set of decisions in respect of three appeals from class certification arising from three separate pending class proceedings in Canada in the *Sun-Rype*, *Microsoft* and *Option Consommateurs* cases.<sup>17</sup> In its decisions, the Court confirmed that class plaintiffs may assert causes of action on behalf of indirect purchasers under the private remedy under the *Competition Act* and may seek to represent a consolidated class of direct and indirect purchasers in respect of certain common issues in spite of the apparent conflicts. In its decisions, the Court also clarified the evidentiary standard for class certification in competition cases. More specifically, the Court signalled that class plaintiffs face a low evidentiary bar for obtaining class certification relative to the standards for class certification that exist in the U.S. federal courts, and class plaintiffs need only demonstrate a “plausible” methodology for demonstrating the existence of common issues of loss and liability.<sup>18</sup>
- As a result of the Court’s decisions, the plaintiffs bar have aggressively sought class certification in respect of a number of new and pending cases in Canada, including

---

<sup>16</sup> Osler Update, “[Competition Bureau Signals Increased Scrutiny of Patent Litigation Settlement Agreement](#)” (dated September 30, 2014).

<sup>17</sup> *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, 2013 SCC 58 (*Sun-Rype*), a proposed horizontal price-fixing class action before the B.C. Courts against manufacturers of high fructose corn syrup on behalf of a combined class of direct and indirect purchasers; *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 (*Microsoft*), a proposed class action before the B.C. Courts asserting vertical price-fixing and other anti-competitive claims on behalf of indirect purchasers of Microsoft software products and *Option Consommateurs c. Infineon*, 2013 SCC 59 (*Option Consommateurs*), a proposed class action in the Québec courts against manufacturers of DRAM on behalf of a combined class of direct and indirect purchasers.

<sup>18</sup> Osler Update, “[Canada’s Supreme Court Reshapes Consumer Class Actions and Clarifies the Test for Certification Across Canada](#)” (dated October 31, 2013).

cases where the Commissioner is continuing to investigate or where the Commissioner has even closed his investigation. For example, in 2014, class plaintiffs commenced the certification process and scheduled certification motions in polyurethane foam, lithium ion batteries, ODD, CRT, wire harnesses, compressors and other pending cases.

- In the past year, the plaintiffs bar were successful in obtaining class certification in the VISA case and the diamonds case. In March 2014, the B.C. Supreme Court certified a proposed class action on behalf of Canadian merchants against VISA and Mastercard as well as a number of national financial institutions. As part of its decision, the B.C. Supreme Court rejected arguments that the B.C. *Class Proceedings Act* imported a pleadings test similar to the test of *Bell Atlantic Corp. v. Twombly*. However, the Court placed limits on the ability of plaintiffs to assert causes of action in restitution and in tort that were predicated breaches of the *Competition Act*.<sup>19</sup> In December 2014, the B.C. Supreme Court also certified a proposed class action on behalf of purchasers of gem grade diamonds against a number of De Beers entities. In its decision, the B.C. Court identified a significant conflict in the jurisprudence between the B.C. Courts and the Supreme Court relating to the ability of plaintiffs to assert causes of action in restitution and in tort based on statutory breaches. In light of this conflict, the Court concluded that certain proposed causes of action based in restitution were not viable – but accepted the proposed causes of action based in tort.<sup>20</sup> This decision will certainly be appealed, and we can expect that in 2015 the courts will be pressed to address the substantive issue as to whether the private remedies in the *Competition Act* constitute a complete code that forecloses the assertion of parallel claims in tort and in restitution that are predicated on a statutory breach. This legal issue is material in many cases, since claims in tort and restitution can be asserted to circumvent the hard two-year limitation period in the *Competition Act* and can be a basis to seek punitive damages and disgorgement of profits.
- In addition to these cases, the plaintiffs bar argued class certification in the air cargo case in November and December 2014. In the air cargo case and the upcoming certification motions in polyurethane foam, lithium ion batteries, ODD, CRT, wire harnesses, compressors in 2015, the plaintiffs bar and the defence bar will continue to press for clarification in respect of the standards for class certification that were set by the Supreme Court in the *Sun-Rype*, *Microsoft* and the *Option Consommateurs* cases. In particular, it remains to be seen whether the proposed certification of a competition class action in Canada will entail a ritual hearing with a foregone conclusion, or whether the courts will breathe real meaning into the Supreme Court's direction that a plaintiff must demonstrate "a realistic prospect of establishing loss on a class-wide basis" in order to obtain class certification of claims under the *Competition Act*.

---

<sup>19</sup> *Watson v. Bank of America*, 2014 BCSC 532.

<sup>20</sup> *Fairhurst v. Anglo American PLC*, 2014 BCSC 2270.

- Given the coming wave of certification hearings, 2015 will be a critical year for private enforcement in Canada – since the courts will issue some well-needed guidance in respect of the meaning of the Supreme Court’s rulings as applied to a number of a high-profile pending cases. Moreover, these cases will test the resolve of the plaintiffs bar and the defence bar in litigating a competition class action through discovery and trial similar to other class proceedings that have been litigated on the merits.

#### ANTI-CORRUPTION

- Over this past year, there has also been substantial activity in respect of anti-corruption enforcement, both in Canada and globally. Governments and regulatory bodies have amplified their efforts to put into practice the robust anti-corruption laws that have been developed in the last several years. This trend of increased enforcement efforts, coupled with greater international coordination of such efforts, has heightened the risks associated with non-compliance of anti-corruption laws and regulations.
- In Canada, there have been a number of significant developments both on the legislative and enforcement front. In May, the Ontario Superior Court sentenced business executive Nazir Karigar, an agent for Ottawa-based Cryptometrics Canada, to three years in prison for conspiracy to bribe a foreign public official to secure a contract.<sup>21</sup> This was both the first trial and the first jail sentence under Canada’s *Corruption of Foreign Public Officials Act* (CFPOA). Canada also for the first time charged non-Canadians under the CFPOA. In June, the RCMP charged three individuals, two U.S. nationals (former Cryptometrics executives) and one U.K. National (Shailesh Govindia, an agent for Cryptometrics). Canada may seek extradition of the three men to face trial in Ontario.<sup>22</sup> In addition, in October a former senior executive of SNC-Lavalin Group was extradited to Canada from Switzerland to face 16 fraud-related charges, including bribery and money laundering.
- Canada has also been working on a new bill that seeks to improve transparency in the extractive sector as part of its 2013 G8 commitment. Bill C-43, which will enact the *Extractive Sector Transparency Measures Act*, was introduced into first reading in the House of Commons in October. The Act contains broad reporting obligations for oil and gas and mining companies with respect to certain payments made to all governments, in Canada and abroad.
- Canada’s increased enforcement efforts are consistent with the recommendations of the Organization for Economic Cooperation and Development (OECD), and Canada has recently been commended for being one of the four OECD countries that is actively

---

<sup>21</sup> *R. v. Karigar*, 2013 ONSC 5199; *R. v. Karigar*, 2014 ONSC 3093.

<sup>22</sup> *Chowdhury v. H.M.Q.*, 2014 ONSC 2635; RCMP Press Release, “RCMP Charge Individuals with Foreign Corruption” (dated June 4, 2014).

investigating and prosecuting companies that bribe foreign officials.<sup>23</sup> Transparency International's annual progress report concluded that Canada had moved from the "limited enforcement" category to "moderate enforcement" of bribery and corruption because of "clear indications that the government is taking foreign corruption seriously and committed resources to fight it." This improvement was attributed to the 2013 amendments to the CFPOA, as well as increased enforcement activity by the RCMP. Transparency International's Report identifies the next step for Canada to be legislation that better protects whistleblowers in the private sector, coupled with a political willingness to hold parties accountable to existing legislation in the public sector. The OECD is now moving on to Phase 4 of the OECD Anti-Bribery Convention, which is focused on detection, enforcement and corporate liability. On December 9, 2014, the OECD hosted a face-to-face consultation with stakeholders in Paris.

- The increased momentum in Canada follows a similar trend to developments in other countries. The United States, in particular, has also devoted more sources and time to anti-bribery enforcement actions. The number of investigations by the United States' Securities and Exchange Commission and the Department of Justice in 2014 was on par with that of 2013. The United States has also increased its focus on targeting companies in the financial sector.
- Foreign regulators abroad have also ramped up their enforcement in 2014. For instance, China has focused more effort into investigating corruption of foreign multinational companies doing business in China. The repercussions of breaching China's anti-corruption laws include up to life in prison. In September, GlaxoSmithKline China (GSK) was fined the equivalent of C\$535 million for paying bribes to doctors to use its drugs. The former head of GSK and four other GSK executives will face jail sentences. This demonstrates that companies doing business in China, and abroad more generally, need to exercise diligence in ensuring compliance with national anti-corruption laws.

## CONCLUSION

The year ahead will prove to be a significant year for the criminal and private enforcement of Canada's competition and anti-corruption laws. On the competition side, given the Commissioner's considerable investment of investigative resources into alleged bid-rigging offences in the automotive and infrastructure sectors, we can expect that the Commissioner's targeted focus on particular industries will translate into new prosecutions and additional pleas that will advance the Commissioner's policy goals in deterring anti-competitive conduct. However, it remains to be seen whether the Commissioner's repeated policy statements that focus on penalties for individuals will actually translate into prosecutions with real threats of jail time. With respect to private

---

<sup>23</sup> Transparency International Canada Press Release, "Transparency International Canada notes Canada's improvement in combatting bribery and corruption but urges the government to take steps to become an active enforcer" (dated October 23, 2014).

enforcement, given the number of pending certification hearings that are in the queue for 2015, we can expect a watershed year of judicial guidance relating to whether class plaintiffs can invoke class proceedings legislation to pursue claims of anti-competitive harm on behalf of diverse classes of direct and indirect purchasers across Canada. Finally, in light of the Crown's success in obtaining the first jail sentence for violation of the *Corruption of Foreign Public Officials Act*, we can expect increased enforcement of Canada's anti-corruption laws in 2015.

This Update was authored by:

Christopher Naudie [cnaudie@osler.com](mailto:cnaudie@osler.com) 416.862.6811

Michelle Lally [mlally@osler.com](mailto:mlally@osler.com) 416.862.5925

Lawrence Ritchie [lritchie@osler.com](mailto:lritchie@osler.com) 416.862.6608

---

This Osler Update is available in the Publications & Resources section of [osler.com](http://osler.com). This memorandum is a general overview of the subject matter and cannot be regarded as legal advice. Subscribe to a full range of updates at [osler.com](http://osler.com). You can unsubscribe at any time at [osler.com](http://osler.com) or <http://unsubscribe.osler.com>. © Osler, Hoskin & Harcourt LLP

[counsel@osler.com](mailto:counsel@osler.com)  
[osler.com](http://osler.com)

Toronto  
Montréal  
Calgary  
Ottawa  
New York