

Competition Bureau Sets its Sights (and its website) on the Construction Industry

By Nikiforos Iatrou and Graham Brown

Since 2012, WeirFoulds LLP has been monitoring and writing about the Competition Bureau's increased focus on Canada's construction industry.¹ The Bureau's intensified scrutiny of construction companies has been spurred along in part due to the *Charbonneau Inquiry* in Quebec and resulting criminal charges. Recent high-profile government procurement cases have also heightened awareness about competition issues in bidding and tendering. Internationally, issues regarding construction and procurement have been front and centre in competition authorities' investigations. Canada is no exception, with the Commissioner of Competition having publicly stated that he will continue to focus on the construction industry because it is "particularly susceptible to cartel activity".

The Competition Bureau's main focus is the prevention and prosecution of bid-rigging and price-fixing. To that end, the Bureau recently published materials on its website to help educate the construction industry on how to avoid attracting the Bureau's attention, and how to respond when illegal activity arises.

The website (<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/O3877.html>) includes information about:

- Cartels
- Bid-rigging
- Conspiracies
- The Bureau's *immunity program*
- The Bureau's *leniency program*
- Tips to avoid contravening the *Competition Act*

¹ *At Phalt? The Road to Compliance in the Paving Industry*: http://www.weirfoulds.com/Client_Update_AtPhalt

Testing the Foundations: *Six Lessons from the Competition Bureau's Investigation into the Construction Industry*: http://www.weirfoulds.com/_WF-Testing-the-Foundations

Hiding in Plain Sight: *The Competition Bureau's Criminal Cartel Whistleblowing Initiative*: http://www.weirfoulds.com/_WF-Hiding-in-Plain-Sight

The online material emphasizes the need for companies to obtain legal advice from competition law experts to stay outside the *Competition Act* and to deal proactively with any illegal activity that may have already occurred.

The Competition Bureau has emphasized repeatedly the need for those involved in the construction industry or trade associations to develop and implement compliance programs. Now is the time for your company to proactively address these issues. These programs not only educate employees and management about how to ensure that business practices comply with the *Competition Act*, but can also act as mitigating factors should a company face charges.

As a leading firm in both construction and competition law, WeirFoulds is well-positioned to assist construction industry participants with the implementation of *Competition Act* compliance programs. The firm is also equipped to defend companies charged under the *Competition Act*, assist with immunity/leniency program applications, and defend “follow-on” civil suits.

For help in understanding your obligations under the *Competition Act*, please contact us.

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Recognized by *Best Lawyers*® and *Chambers Global* as a leader in corporate commercial litigation and competition law, Niki is described by a former Canadian Commissioner of Competition as “someone with terrific common sense, a very good intuition, and wisdom beyond his years” (*Precedent Magazine*, Summer 2014). He recently completed a three-year special appointment as counsel to Canada’s Commissioner of Competition before returning to WeirFoulds to lead its competition group. He is routinely retained by Canadian and multinational companies involved in competition investigations or needing compliance advice.

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