

# Gotcha

## Competition Bureau cases net fines and criminal charges

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**S**EVERAL RECENT COMPETITION Bureau investigations have resulted in convictions and fines for price-fixing and in criminal charges for the obstruction and destruction of documents pertinent to a Bureau investigation.

### Criminal charges laid

In September 2006, the Attorney General of Canada laid criminal charges of obstruction and destruction of documents against a ventilation company employee in Laval, Quebec. Joel Perreault, an appraiser with Les Entreprises Promécanic Ltée., was charged under sections 64 and 65 of the *Competition Act* with obstructing the course of an investigation and destroying documents during the execution of a search warrant at Promécanic.

The Bureau alleges that between February 22 and March 1, 2006, Perreault removed and destroyed pages from his agenda that contained information relevant to the investigation.

At trial on June 12, 2007, the defence presented a motion for dismissal on the grounds of no evidence on one of the grounds of the offence. The judge took the motion under advisement, and will render a decision on October 23.

### Bid-rigging on city tender

Two of Quebec's main suppliers of light-emitting diode (LED) traffic lights and two of their directors were charged in October

2006 with bid-rigging, following an investigation by the Bureau.

Electromega Limited of Candiac and its president, Alain Lamoureux, and Tassimco Technologies Canada Inc. of Terrebonne and its vice president, Conrad Di Pietro, were charged with bid-rigging under section 47 of the *Act* following a call for tenders by Quebec City for the supply of traffic signals.

The Bureau alleged that the parties entered into an illegal agreement to share the Quebec City contract. The City call for tenders was issued under an energy-efficiency plan implemented by Hydro-Québec to replace incandescent traffic lights on public streets with LED signals.

The preliminary enquiry is scheduled for October 25, 2007. No trial date has been set.

### Auto body shops charged

In February 2007, the Competition Bureau<sup>1</sup> announced that it had settle a price-fixing and price-maintenance case involving six auto body repair shops in Fort McMurray, Alberta. The settlement was reached between the Director of Public Prosecutions and Shamrock Maintenance & Hotshot Services Ltd., Pete's Custom Coachwork, Birchwood Auto Body, Alberta Motor Products Ltd., Noral Motors and Lane's Auto Shop.

The parties have agreed to a binding court order issued by the Federal Court of Canada under the *Competition Act*, requiring a change in their conduct regarding the setting of labour rates for auto body repair work. The consent order prohibits the six companies from:

- directly or indirectly engaging in any communication or exchange of informa-

tion of any kind with each other relating to pricing of products or services to customers or insurance companies; and

- entering into any agreement or arrangement of any kind relating to pricing of products or services to customer or insurance companies or with any person engaged in the sale and supply of auto body repair service in Fort McMurray. Under sections 45(1) (c) and 61(1) (a) of the *Act*, it is a criminal offence to agree with competitors to fix prices or engage in price-maintenance activities.


According to the consent order, the companies also agreed to publish a corrective notice outlining key terms of the order in the local newspaper and to implement a compliance program.

### \$4 million fine for price-fixing

In July 2007, the Bureau announced that Du Pont Performance Elastomers L.L.C. (DPE) had pled guilty in the Superior Court of Justice in Ottawa for its role in an international conspiracy to fix prices of polychloroprene rubber. Under section 45 of the *Act*, it is a criminal offence to agree with competitors to fix prices or share markets.

Polychloroprene rubber, a specific type of synthetic rubber, is used in the manufacture of a wide range of consumer products in the automotive, adhesive and construction industries, such as hoses, transmission belts and cables. It is also known as chloroprene rubber, polychloroprene, PCP or neoprene.

From August 1999 to April 2002, DPE and its co-conspirators agreed to fix the prices of polychloroprene rubber sold in the North American market. While it is difficult to quantify the impact of the conspiracy on the Canadian market, the sales of this product were approximately \$50 million for the relevant period, and DPE's share of the market represented about 70 percent.

DPE was fined \$4 million for its role in the conspiracy. 

**Editor's Note:** Price fixing and market sharing practices traditionally seem to be more common in the construction and manufacturing sectors but, as seen above, can be applied to many other markets for goods and services, including non-traditional areas such social services – for example, firms contracted to implement government back to work programs or homecare services. A buyer, public sector or otherwise, needs to know the market very well to spot this type of collusion at the best of times and particularly needs to be aware and sensitive in the non-traditional sectors.

<sup>1</sup> The Competition Bureau is an independent law enforcement agency responsible for the administration and enforcement of the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*. It promotes and maintains fair competition so that Canadians can benefit from competitive prices, product choice and quality services. Headed by the Commissioner of Competition, the organization investigates anti-competitive practices and promotes compliance with the laws under its jurisdiction...The Bureau has the ability to refer criminal matters to the AG of Canada, who then decides whether to prosecute before the courts. The Bureau also has the power to bring civil matters before the Competition Tribunal or other courts depending on the issue. Source: [www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca).