

What To Do When You Receive an Unexpected Call or Visit From the Competition Bureau

By Serge Bourque and Larry Markowitz



The Competition Bureau (the “Bureau”) is responsible for the administration and enforcement of the *Competition Act* (the “Act”), including criminal provisions relating to conspiracies to lessen competition, price fixing, market allocation, bid rigging and resale price maintenance, and civil provisions relating to abuse of dominant position, as well as other practices that may lessen competition, such as tied selling, refusal to deal and exclusivity.

In the event of a complaint by consumers or your competitors, the Bureau may contact you or use one or more of the mechanisms available to it under the Act to obtain information. In particular, the Act allows the Bureau to require a company to provide documents. It also allows the Bureau to conduct searches and to question witnesses.

It is natural to be alarmed if you are subject to such procedures. After all, a seizure or examination is sometimes followed by criminal or civil proceedings.

How to Behave When Communicating With the Bureau

There is a correct way to deal with this type of situation – and an incorrect way. The incorrect way is to ignore communications from the Bureau, reply to them late, allow an unstructured seizure or provide documents passively, without any reaction.

The correct way to proceed is as follows:

1. if a representative of the Bureau calls, tell them that you will call back within a day; immediately contact your legal advisor and return the Bureau’s call in the presence of your legal advisor. The presence of a lawyer indicates to the Bureau that, on the one hand, you are taking the call seriously and, on the other hand, you intend to protect your interests;
2. if you receive a request for information under section 11 of the Act (production of documents), contact a law firm with experience in Competition Law so that it can come to an agreement with the Bureau as to the procedure to be followed: e.g., ask for an extension of the filing date if the timeframe for production of documents seems unreasonable; ask for a reduction in the number of documents requested, etc. This type of order is generally very broad in scope;
3. if representatives of the Bureau arrive at your premises with a search warrant (obviously without prior notice), you should meet with the head investigator (the Bureau always appoints one), ask for a copy of the seizure order and ask the representatives of the Bureau to wait for your legal advisor to arrive before they begin their search;
4. send your legal advisor a copy of the order and ask them to be present or to send a member of their firm immediately. On site, the lawyer will ensure that the documents seized correspond to those indicated in the warrant and that any documents covered by solicitor-client privilege (e.g., communications between you and your attorney, legal opinions) are the subject of a protest. Obtain a list or a photocopy of all documents that are seized. If such documents are necessary to carry on your business, ensure that a photocopy is made the same day in order to avoid disrupting your operations. Do not allow the seizure of documents that are not covered by the warrant;
5. according to section 16 of the Act, in the course of a search, the Bureau can access your computers and their contents. Thus, the investigator may obtain any data available on computers located in the premises that are subject to the search;
6. do not destroy any document that is relevant or related to the investigation;



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7. if the investigators wish to speak to company representatives, they should deal with one person only. You should designate that person;
8. no conversation should take place with the investigators, except in relation to the strict needs of the investigation. Any questions that the investigators may have should be put to the attorney who is present.

Following the search, seizure or remittance of documents, the Bureau will decide whether charges are to be laid or legal action taken.

Reduce the Risk of Charges or Lawsuits Against Your Corporate Officers

To avoid charges or proceedings involving upper management or officers of your company, it is important to demonstrate that they have taken precautions to ensure compliance with the Act.

The fact that such precautions have been taken is best demonstrated by the existence of a compliance program. Such a program may take the form of information sessions on the provisions of the Act - at least one per year - for company employees. The goal is to ensure that the company's business practices comply with the Act. In addition, employees should be made aware of a code of ethics covering the relevant provisions of the Act.

We refer you to our bulletin entitled "*Competition Law: The Need for Compliance Programs*" published in July 2002, which is available on our web site at www.laverydebilly.com.

If you are the subject of an investigation by the Bureau, you are not the first. The Bureau proceeds in a professional and reasonable manner. At the end of the investigation, negotiations often take place between the Bureau and the client to arrive at solutions that are acceptable to both parties. There will not necessarily be a lawsuit.

For further information or if you have received a request for information from the Bureau, we invite you to contact *Lavery, de Billy's* Competition Law team.

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