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| COMPETITION LAW SERVICE George N. Addy and William L. Vanveen Release No. 1, February 2024 |
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This publication through regulatory analysis and a comprehensive digest of cases, offers practical insight into what constitutes reasonable competitive practices — and what breaks the law. The publication includes the full text of the *Competition Act*, fully digested and up-to-date, the *Competition Tribunal Act* digested with amendments, the *Competition Tribunal Rules*, information bulletins and enforcement guidelines, new speeches from the Commissioner of Competition, public statements, international agreements, reports and consultation papers.

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Highlights:

- **Bill C-56 *Affordable Housing and Groceries Act*, Part II. Competition Act**—The Bill will amend the *Competition Act*. Removing the efficiencies defence for mergers; introduce new powers for the Competition Bureau to conduct Market Studies, including the power to compel market participants to provide information; and empower the Bureau to challenge agreements even if not between competitors that have the significant purpose of harming competition.
- **Sentencing and Resolutions Table—False or misleading representations**—The Consent Agreement provided that the Respondents shall pay an administrative monetary penalty of \$3,250,000 dollars and \$100,000 dollars for costs incurred by the Commissioner during the course of his investigation into the matter. The Commissioner concluded that the Respondents did not sell a substantial volume of certain Products at the Regular Price (or a higher price) within a reasonable period of time before making the representations to the public. The Commissioner concluded that the Respondents did not offer certain Products at the Regular Price (or a higher price) for a substantial period of time recently before making the representations to the public. The Commissioner concluded that when making Regular Price representations, the Respondents offered certain Products to the public at reduced prices more than half of the time. The Commissioner concluded that the Respondents engaged in reviewable conduct within the meaning of subsection 74.01(3) of the Act with regard to the promotion and sale of certain Products. The Respondents made representations to the public that conveyed the general impression that discounted prices on certain Products would no longer be available after a particular date or time, such as “40% OFF (Sale ends Sep 19 2022)” (an “Urgency Cue”), when that was not in fact the case in certain cases. The Urgency Cue representations were made to the public by various means, including in various Advertising Channels, in-store and on the Websites. The Commissioner concluded that the Respondents’ Urgency Cues were false or misleading in a material respect within the meaning of paragraph 74.01(1)(a) of the Act: *The Commissioner of Competition v. The Dufresne Group Inc.* (Competition Tribunal, Registered Consent Agreement CT-2023-006, dated September 26, 2023).
- **Summary of Procedure—Proceedings Initiated by Commissioner—Introduction - Case Law—Efficiencies Defence** - On appeal, Secure argued that it was denied procedural fairness when the Tribunal, having concluded that

the Merger had not substantially lessened competition in several geographic markets, ordered divestiture of only 29 of the 41 facilities that the Commissioner had proposed. Secure noted that, in closing argument before the Tribunal, it requested in the alternative, the opportunity to lead evidence and make submissions on the issue of remedy. No such opportunity was granted. Justice Locke noted that, generally, an administrative decision-maker is not required to give a warning as to what remedy it is considering granting. Justice Locke noted that Secure was fully aware of the 41 facilities that the Commissioner proposed should be divested, and of the possibility that some subset of those facilities might be ordered divested. Secure had every opportunity during the hearing to submit evidence and make submissions on the question of remedy. In short, Secure knew the case against it and was afforded an opportunity to answer it. Justice Locke concluded that there was no breach of procedural fairness: *Secure Energy Services Inc. v. Canada (Commissioner of Competition)*, 2023 CarswellNat 2840, 2023 FCA 172 (F.C.A.).

- This release also features the addition of Registered Consent Agreement CT-2023-006, dated September 26, 2023, in the matter of a Consent Agreement pursuant to section 74.12 of the *Competition Act* with respect to certain deceptive marketing practices of the Respondents under section 74.01 of the *Competition Act*. This release also includes the addition of the Competition Bureau Performance Measurement & Statistics Report 2022-2023.

ProView Developments

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