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Dear Sir/Madam:

Re: Competition Bureau Study of the Professions

I am writing on behalf of the Commissioner of Competition under the *Competition Act*, Sheridan Scott, who recently announced that she has asked her staff in the Competition Bureau to undertake a national study of a number of regulated professional groups in Canada.¹

This study will examine accountants, lawyers, optometrists, opticians, pharmacists, and real estate agents to determine the extent to which these professions may use restrictive practices to control entry into their profession and/or to control the conduct of their members. The purpose of this study is to present a comparison of the legislation, regulations and codes of practices governing a range of professional services offered in all ten provinces and the three territories that affect entry and influence professional conduct. The Bureau will also assess the economic effects on competition of the various types of restrictions. We intend to publish the results within the next year to inform the public and policy makers regarding the use of these practices and, if applicable, the costs to consumers and the economy in terms of reduced competition. This study will also inform the Bureau's advocacy efforts and may be a factor in our enforcement cases under the *Competition Act*.

This letter is to inform you about the Competition Bureau, the nature and scope of the Bureau's study, and to request specific information from your organization which will assist the Commissioner in the completion of this study.

The Competition Bureau

The Commissioner of Competition, Sheridan Scott, is responsible for the administration and enforcement of the *Competition Act*, a federal statute of

¹Ms. Scott made this announcement in a speech she gave to an Insight Conference in Toronto on May 15, 2006 entitled *Competition and Innovation in a Flat World*. A copy of this speech may be found at the Competition Bureau's website at <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2092&lg=e>

general application to all sectors of the Canadian economy. The primary purpose of this legislation, as set out in section 1.1 of the Act, is to maintain and encourage competition in Canada in order to promote the efficiency of the Canadian economy and to provide consumers with competitive prices and product choices. The Act is based on the premise that competition is the best means of ensuring that resources are allocated efficiently, innovation is rewarded, and consumers are offered the widest choice and highest quality of goods and services at the most competitive prices.

The Bureau promotes competition in two ways. First, we are a law enforcement agency. We investigate allegations of anti-competitive conduct seeking judicial and quasi-judicial remedies to stop anti-competitive behaviour. The Act defines a number of practices which are prohibited as criminal offences and other practices which are subject to review by the Competition Tribunal under the civil provisions of the Act. The Act does not provide the Bureau with any authority to decide the law or to compel business to adopt any particular type of conduct.

Secondly, we also act as an advocate for competition. To this end, we make submissions to federal and provincial legislative bodies, commissions, or tribunals on how to implement reforms that encourage competition. This entitles the federal or provincial body to take competitive factors into consideration in the formulation of public policies. We hope that by having the competitive dynamics and implications of proposed regulatory schemes considered in the developmental stage, it will become unnecessary to consider them in the context of future investigations into alleged anti-competitive conduct.

Scope of the Competition Bureau Study

In her speech, Ms. Scott remarked:

“To get the most out of our creative people, we must ensure that their skills are deployed in marketplaces which are competitive - which are unburdened by ineffective, inefficient and unnecessary regulations which may even impede professionals from making full use of their qualifications... we must continually question whether all of our current restrictions are effective? Which ones no longer serve the real purpose for which they were created? Which are having undue costs? Which could be better achieved through market forces alone or via less intrusive approaches? And which are crippling our chances for

success in the Flat World? These are some of the questions we at the Competition Bureau ask when we examine new or existing policies in our advocacy role.

The early evidence, and it is just that, early evidence, is that there are some areas where we may need to look for action. For example, are there too many barriers to the movement and accreditation of service providers across Canada? And this is important to the objective I discussed earlier - attracting and retaining the 'creative class' global citizens.

Our work on professional services will, I believe, make a difference and ensure that Canada not only mobilizes, attracts, and retains creative people, but allows their skills to be developed and exploited in the most effective way possible, free of unnecessary barriers and obstacles.”

The purpose of the Bureau's study is three-fold:

(A) To study and analyse methods and practices affecting competition in the provision of certain professional services in the ten provinces and three territories, with a view to identifying any potential or actual restrictions on competition, whether arising from legal provisions, professional rules or customs, or otherwise, that have an appreciable effect on competition. These restrictions may include:

- restrictions on entry, including accreditation and mobility;
- restrictions on the ability of related professions to offer similar or identical services;
- restrictions on business structure;
- restrictions on advertising; and
- mandatory or suggested fee schedules

(B) To identify and evaluate any consumer benefits claimed for any such restrictions and to consider whether the restrictions are proportionate to the achievement of any such benefits; and

(C) To evaluate the effect of any restrictions on users of professional services.

Information Requested From Your Organization

To complete its examination, the Bureau requires specific information that your organization may possess. In this regard, we would ask that you complete the attached

questionnaire which contains a list of questions related to your profession. I should note that an electronic version of this questionnaire is available upon request.

Participation in this survey is voluntary. The results may be made public but your name will not be used. As noted below, your responses will be kept confidential as required under s. 29 of the *Competition Act*. Should you agree to participate, we would appreciate receiving your responses to this questionnaire by **September 15, 2006**.

Please note that section 29 of the *Competition Act* protects "the identity of any person from whom information was obtained pursuant to the Act," as well as the information voluntarily submitted to the Bureau. It is the Commissioner's practice to strictly maintain the confidentiality of such information. However, this information may be disclosed in limited circumstances for the purpose of the enforcement or administration of the Act.

Should you have specific questions regarding this request, please contact the Bureau officer responsible for your profession:

Accountants	Eric Ferron at (819) 994-6268.
Lawyers	Christine Lambert at (819) 997-1990
Optometrists/Opticians	Murray Hamley at (819) 953-8731
Pharmacists	Dennis Mercan at (819) 953-7742
Real Estate Brokers	Catherine Beauvillier-Turgeon at (819) 956-2831

Other Jurisdictions

The Bureau's study will be similar to those recently carried out by competition policy agencies in other jurisdictions such as the European Commission² and the Irish Competition Authority³.

For example, in January 2003, the European Commission competition authority (the "Commission") published a Report on Competition in the Professions. This report looked at six professions - lawyers, notaries, engineers, architects, pharmacists and accountancy - including tax advisers. In its Executive Summary on the Economic

² The Commission's study may be found at <http://ec.europa.eu/comm/competition/liberalization/conference/libprofconference.html>

³ The Irish Competition Authority Web site is <http://www.tca.ie/> The studies of the professions is listed under "Professions Study".

impact of regulation in the field of liberal professions in different Member States, the Report states:

...the available empirical evidence points in the direction of regulatory induced suboptimal outcomes from the point of view of the whole economy (and from the point of view of consumers in particular) being present in varying degrees in legal, accounting, technical and pharmacy fields in many member states of the European Union, particularly in those countries with restrictively regulated professional services. We are led by this study to the overall conclusion that the lower regulation strategies which work in one Member State might be made to work in another, without decreasing the quality of professional services, and for the ultimate benefit of the consumer.

The Commission invited regulatory authorities in the Member States and professional bodies to review existing rules taking into consideration whether those rules are necessary for the public interest, whether they are proportionate and whether they are justified.

In 2005, the Commission published a working document entitled Progress by Member States in reviewing and eliminating restrictions to Competition in the area of Professional Services. This Report provides a detailed outline of progress made during 2004/05 by Member States in the review and removal of "unjustified restrictions"⁴ on competition in these six professions. For example, five Member States report substantive change to advertising restrictions (France, Ireland, Italy, Lithuania and Portugal). The majority of these changes relate to provisions being relaxed in ethical codes and reflects the fact that a significant number of advertising restrictions are contained in such codes.

The Irish Competition Authority is examining engineers, architects, optometrists, dentists, lawyers, veterinary surgeons, and medical practitioners and to-date has published reports on the first five of these professions at its web site.

I would like to thank you for taking the time to consider our request and we look forward to receiving your responses.

Yours sincerely,

⁴Restrictions applicable to pricing, advertising, number of professionals, exclusive rights, and business structure.

Richard Taylor
Deputy Commissioner
of Competition
(Civil Matters Branch)

Enclosure