ALGORITHMS AND CANADIAN CARTEL LAW ENFORCEMENT

Randall Hofley
General Counsel and Senior Enforcement Advisor
Competition Bureau Legal Services

Anita Banicevic
Partner
Davies Ward Phillips & Vineberg LLP

A. Algorithms and Canadian cartel law

- horizontal coordination of prices charged by competitors (actual and tacit)

- horizontal coordination of downstream pricing of competitors' products (actual and tacit)

- factual elements relevant to prosecution of this conduct

B. Factors that reduce the risk that coordination is occurring

C. Challenges posed by algorithms for cartel law enforcement in Canada, and the implications of these challenges for existing Canadian law

Algorithms and Collusion

1. Do algorithms make collusion easier or more likely?

– Much discussion about impact of algorithms on likelihood of collusion (overt and tacit);

– OECD 2017 background report considers impact of algorithms on factors that may increase likelihood of collusion in a given market: structural characteristics, demand-side characteristics and supply-side characteristics;

– "*although the use of algorithms is widespread in certain industries, the use of complex algorithms based on deep learning principles may still be relatively rare across traditional sectors of the economy. At the moment, there is still no empirical evidence of the effects that algorithms have on the actual level of prices and on the degree of competition in real markets*"

– Evidence of anti-competitive effects vs. pro-competitive effects of algorithms

2. Do algorithms make detection more difficult?

– use of algorithms by agencies to detect bid-rigging; and

– use of algorithms in screening/compliance.

DAVIES

Pricing Algorithms

3. Pricing Algorithms

– Pro-competitive aspects

> demand-side efficiencies, improved information for consumers

> incentives to innovate and compete

– Other potential competition concerns

> facilitate conscious parallelism/tacit collusion

> abuse of dominance

> targeted pricing

> others?

4. Compliance Considerations