



firm profile

McMillan is a modern and ambitious business law firm serving public, private and not-for-profit clients across key industries in Canada, the United States and internationally. With recognized expertise and acknowledged leadership in major business sectors, we provide solutions-oriented legal advice through our offices in Vancouver, Calgary, Toronto, Ottawa, Montréal and Hong Kong. Our firm values – respect, teamwork, commitment, client service and professional excellence – are at the heart of McMillan's commitment to serve our clients, our local communities and the legal profession. For more information, please visit our website at www.mcmillan.ca.

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unilateral conduct and distribution practices

overview

Distribution practices involving exclusivity, conditional discounts and bundling, amongst others are increasingly being used as competitive tools by leading companies across Canada. Ensuring those practices do not attract legal sanctions is a key concern.

Many common distribution practices may constitute "reviewable conduct" under Canada's *Competition Act*. If the activity is likely to have an adverse effect on competition, it may draw the attention of the Competition Commissioner. Exclusive dealing, tied selling, price maintenance, "market restriction" and refusals to supply to an existing or potential customer can all be reviewed. Some of these practices can have common law implications or create private rights of action.

McMillan's Competition and Antitrust Group has the expertise to help manufacturers, wholesalers, franchisors, retailers, distributors and other clients legally create and maintain their business relationships with distributors, sales agents and other representatives. We advise clients on exclusivity or restrictive provisions in supply and other agreements, structuring dealer networks, franchise systems and other distribution practices, and terminating customer relationships.

McMillan professionals help clients lead by:

- Advising on ways to maximize business objectives while reducing legal risks created by the broad provisions of the Competition Act
- Providing representation when responding to Competition Bureau inquiries and seeking to settle matters with unresolved concerns
- Defending practices challenged before the Competition Tribunal and in the courts
- Counseling and defending potentially dominant companies whose distribution practices may be challenged under the abuse of dominance provisions

representative transactions

- Counsel to MasterCard in connection with the Competition Bureau's challenge to its Operating Rules, and counsel in a series of class actions
- Counsel to life insurance industry in *Interac* abuse of dominance proceeding before the Competition Tribunal
- Counsel to Polaroid Canada in *Polaroid Canada Inc. v. Continent-Wide Enterprises Ltd.* market restriction proceeding
- Counsel to The NutraSweet Company in *NutraSweet*, the first abuse of dominance proceeding under the *Competition Act*



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