

Frequently Asked Questions

5. **As a wholesale distributor, we have agreements with many retailers. One of our competitors is claiming that our agreements are contrary to competition law. Is the Competition Bureau entitled to review our agreements with our retailers?**

The Competition Bureau cannot review agreements between businesses without having a basis for its request, under the *Competition Act*. However, the Bureau has powers that are equivalent to those of a police force. It can request that businesses voluntarily provide documents, including agreements, in connection with an investigation where it has reason to believe that there has been, or is about to be, a breach of the *Competition Act* or an order made under that law. In addition to requesting voluntary returns of documents, the Bureau may also apply for court orders and warrants, which would require the production of documents and other information within certain time frames.

The Bureau could ask or demand to review an agreement between a wholesaler and its retailers if the retailer or a competitor has complained to the Bureau and the agreement is relevant to the investigation, or where the Bureau had initiated its own investigation. For example, the wholesaler could be alleged to be engaging in an “abuse of a dominant position” (contrary to s. 79) or in “price maintenance” (contrary to s. 76). Each of these is “reviewable conduct” subject to orders of the Competition Tribunal and to administrative monetary penalties of up to \$10 million (s. 79) or orders relating to future conduct (s. 76).

To ensure that your distribution agreements with retailers comply with the *Competition Act*, contact Carol Anne O’Brien at caob@caobrienlaw.com or (416) 640-7270.