THE CANADIAN CHAMBER OF COMMERCE
LA CHAMBRE DE COMMERCE DU CANADA

Easing the Burdens, Unleashing our Potential: Fostering Growth and Investment in the New and Changing Global Commercial Environment

Submission to the Competition Policy Review Panel

January 11, 2008

The Voice of Canadian Business ™
Le porte-parole des entreprises canadiennes MD

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January 11, 2008

Mr. Lynton Ronald Wilson, O.C.
Chair, Competition Policy Review Panel
280 Albert Street, 10th Floor
Ottawa, ON K1A 0H5

Office of the President and Chief Executive Officer

Cabinet du président et chef de la direction

Dear Mr. Wilson:

It is my pleasure to present to you and your fellow Review Panel members the submission of the Canadian Chamber of Commerce, Canada's largest and most representative business organization. We are the national leader in public policy advocacy on business issues and *the Voice of Canadian Business*™. The Canadian Chamber of Commerce is a diverse network of 175,000 organizations, including chambers of commerce, boards of trade, business associations and businesses of all sizes, from all sectors of the economy and all regions of Canada.

The Canadian Chamber of Commerce welcomes the Competition Policy Review Panel as a unique opportunity for the federal government to implement an open and competitive policy and regulatory framework that rivals the best of our trading partners and will ensure the standard of living of Canadians by enabling us to create and to attract world class global companies.

We champion both inbound and outbound foreign direct investment (FDI). For inbound FDI, we continue to advocate the need for the federal government to provide an open and attractive investment climate that provides certainty to potential foreign investors. For outbound FDI, the Canadian Chamber urges the Canadian government to push for greater access and certainty for Canadian investors and for Canadian businesses to develop ambitions beyond the domestic, or even North American, market. We also must stress the importance of removing domestic impediments to the growth of Canadian businesses. More often than not, Canada's competitiveness is undermined more by the burden of domestic policies, such as our internal trade barriers, than by barriers erected in foreign markets.

We have consulted extensively with our network through a number of means to arrive at the recommendations in the enclosed submission. This process has included the creation of a Steering Committee made up of members of our Board of Directors and the Chairs of a number of our expert policy committees. In addition, we have reached out to our small and medium-sized enterprise (SME) members to get their input regarding their specific needs.

The Canadian Chamber of Commerce commends the work that you and your Secretariat are doing to advance Canada's competitiveness and productivity in today's global economy. We would be pleased to offer any additional assistance in your endeavours.

Sincerely,

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The Canadian Chamber of Commerce's mission is to foster a strong, competitive and profitable economic environment that benefits not only business, but all Canadians. Our goal and that of the Competition Policy Review Panel is to advise the federal government on what policies are needed "to enhance Canadian productivity and competitiveness" to generate wealth and create jobs and opportunity "in a fast-changing global economic environment."

Actively participating in the global economy, both as recipients of FDI and as international investors, is the most effective blade to sharpen Canada's competitive edge. A November 2007 Statistics Canada report shows that foreign-controlled businesses operating in Canada often have higher rates of productivity and are larger than domestic companies. The report highlights the important contribution that such companies make to the Canadian economy through greater capital intensity, the payment of higher wages, the hiring of more workers, investments in R&D and the growth in head office employment in Canada. Clearly, by encouraging FDI, we fuel the engine of job creation, enabling greater competitiveness and higher living standards.

But attracting foreign investment is only one half of the competitive solution. The Statistics Canada report also notes that there is little difference in productivity between these foreign-controlled businesses and Canadian multinationals. It is exposure to foreign competition, both in its home and in foreign markets, that makes a company more productive and competitive.

The economic evidence shows that Canadian companies continue to invest more abroad than foreign companies invest in Canada. There are some concerns relating to having head offices locate in Canada, as the benefits to the community from these head offices extend beyond the strict employment numbers (due to corporate philanthropy and the cluster effect of high-value services industries that support head offices). We believe, though, that the corporate head office is evolving, with today's globally-oriented companies having multiple offices undertaking roles similar to those traditionally associated with a head office. By making Canada more competitive, the federal government can help establish a climate for investment, both foreign and domestic, that is conducive to having these valuable head office functions located in Canada.

Given the predominance of SMEs in the Canadian economy, the Review Panel needs to consider what specifically needs to be done to help SMEs grow to compete in the global economy so that we can grow the ranks of the Canadian companies that are global champions. However, it is all Canadian companies, not only SMEs that are encumbered by our domestic policy framework. We encourage the Review Panel to consider how the regulatory burden on all Canadian companies can be lessened so that they can focus on growing their business domestically and competing internationally. We reiterate that it is more often domestic policies, rather than foreign barriers, that prevent Canadian companies from growing and competing internationally.

Below, the Canadian Chamber of Commerce will outline our recommendations for enhancing Canadian competitiveness. Many of these recommendations have been made before and will be echoed in other submissions. What is needed now is for the federal government to act on the necessary policy changes. The Canadian Chamber is encouraged by the creation of the Competition Policy Review Panel. We expect the federal government will take advantage of the opportunity presented by the Review Panel to put in place the competitive regulatory framework that will enable continued economic prosperity and a high standard of living for all Canadians.

Summary of Recommendations

Generally

- The federal government must take action now to create a robust climate of investment, both foreign and domestic. Critical components include an open investment regime that provides certainty for foreign investors and the lessening of the regulatory burden on Canadian companies.
- The cumulative negative effect of dissonant domestic federal and provincial policies needs urgent action to eliminate disincentives to growth.

Regarding Canada's Investment Policies

- Establish greater transparency in the *Investment Canada Act*'s (ICA) review process. This review should be the focal point within government for reviews of potential foreign investments in Canada.
- Reform the monetary thresholds for review under the ICA so that fewer transactions, particularly transactions with only a tangential connection to Canada, are subject to review. Once the national security review mechanism is introduced, this might be sufficient to address the concerns about ensuring that Canada benefits from foreign investment and thus allow reform of the more obtrusive ICA regime.
- Reform sectoral investment restrictions. To the extent that these restrictions address legitimate public policy issues, such issues should be addressed directly through less intrusive regulatory measures, rather than broad foreign investment restrictions that impede Canadian competitiveness.
- Work with our trading partners toward the removal of informal barriers to takeovers in their corporate laws and thereby level the playing field for Canadian companies.
- In conjunction with the provinces and territories, review the Canadian corporate and securities legislative framework to remove the rules that create unintended consequences that do not allow a company's board of directors the necessary tools and time to determine what is in the long-term interests of its shareholders.
- Harmonize the varying definitions of "Canadian" found in various legislative schemes.

Regarding Canada's Competition Policies

- Benchmark our competition policies to ensure that they are competitive with our trading partners. Ensure that our competition laws predictably and transparently promote efficiency, encourage competition and protect consumers.
- Amendments to the *Competition Act* to address the conspiracy provision (s. 45) or to deal with the treatment of efficiencies under the Act are not required.
- Do not increase the Administrative Monetary Penalties in respect of deceptive marketing practices and do not make them an available remedy in abuse of dominance cases.
- Changes to the existing conspiracy provisions are not required, but enforcement is.
- Do not provide the Commissioner of Competition with additional powers to conduct market studies, as existing powers are sufficient.
- Competition authorities need to remain vigilant in enforcing the law and ensuring a competitive domestic marketplace.
- Remove industry-specific provisions from the *Competition Act*, as well as provisions relating to price discrimination, promotional allowances and predatory pricing.

- Increase transparency by conducting full and open advance consultations with stakeholders on any legislative, policy or enforcement initiatives, with no policy statements released in final form until such consultation is undertaken.
- In respect of merger review, institute a statutory timeframe (and a "deemed approval" mechanism) for the completion of review by the Commissioner of Competition.
- Eliminate industry-specific rules and duplicative merger reviews.
- Strive for enhancing efficiency as the basis for administration and enforcement of merger policy. However, policies to support Canadian firms in competing internationally should be the purview of other targeted industrial policy, not competition policy.

To Promote Canadian Direct Investment Abroad
- Develop a focused international strategy in consultation with Canadian business and devote the proper resources to this strategy.
- Increase the presence of the Trade Commissioner Service in key markets by opening offices in second and third tier cities, with some officials specifically tasked to fostering increased bilateral foreign investment.
- Create a regulatory environment that is a competitive advantage for Canadian business. Needed measures include the elimination of duplicative regulatory processes and of regulatory processes more burdensome than or not in synch with our trading partners.
- Ensure that Canadian companies are able to access capital at a competitive price. Allow interest deductibility on money borrowed to acquire shares of foreign affiliates.
- Ensure that our defensive interests in negotiating trade and investment agreements do not undermine our offensive interests.
- Regulation, when introduced, should include mandatory periodic reviews to ensure that the costs and benefits associated with economic regulation warrant its continuation.
- Provide greater support to our SMEs through better marketing of the services available to them when seeking to venture abroad, training programs for these companies and the reinstatement of some financial assistance for export market development.
- Increased championing of our Canadian companies that succeed internationally.

To Make Canada a Destination of Choice
- Put in place a competitive domestic policy framework. Key areas include: the removal of internal barriers to a fully functional Canadian market; reform of our taxation policies, with particular reference to capital and personal taxes; ensuring the smooth functioning of the Canada-US border; expansion of our transportation infrastructure; adoption of best practices in our immigration policy to ensure prompt processing of skilled immigrant applications and work on the recognition of foreign credentials; and reform of the SR&ED tax credit program, as well as stronger linkages between the public, private and academic sectors undertaking R&D.
- Consider a big, bold initiative to attract investment, similar to what was done in Ireland.
- Create a pan-Canadian brand, with common logos, images and themes. These efforts must be sustained and continually pursued. Canada's "brand" should focus on our strengths, such as our position within North America.
- Strive to increase Canada's competitiveness so that Canada is consistently viewed by foreign investors as being in the top two or three possible locations for investment.

<u>Canada's Investment Policies</u>

In its consultation paper, the Review Panel focused on the *Investment Canada Act* (ICA) and the sectoral investment regimes. Both of these issues are addressed below. In addition, we have identified two other issues the Review Panel should consider in this area: Canada's corporate laws and the varying definitions of "Canadian" found in Canadian legislative schemes.

<u>The *Investment Canada Act*</u>

Any non-Canadian who acquires control of an existing Canadian business or who wishes to establish a new unrelated Canadian business is subject to the ICA. Depending on the type of business invested in and the value of the investment, all such transactions must be notified to the government, with certain investments being subject to review. The Canadian Chamber believes that this regime is too far-ranging, with the result that too many transactions are subjected to review and that the ICA has a tendency to serve as an unnecessary regulatory impediment. While the ICA may not appear to greatly impede foreign investors from investing in Canada, it does increase the costs of investing in Canada, including the costs attributable to uncertainty as to its application. In addition, the ICA does not appear to be enhancing Canada's attractiveness as an open and welcoming investment locale.

Investments in the uranium, financial services, transportation services and cultural businesses sectors are subject to review if the value of the transaction is over $5 million. Since it is nearly impossible to have an investment below this value, essentially all investments in these sectors are subject to review. The Canadian Chamber believes that reform of this lower threshold is necessary, particularly once a national security review mechanism has been implemented.

Investments in all other sectors are subject to review if the worldwide assets involved are above $281 million (for the year 2007). While this figure is substantially higher, because it accounts for the assets of all a company's entities, not just those located in or related to Canada, many transactions with only a tangential connection to Canada are caught.

The Canadian Chamber recognizes that certain investments may raise national security concerns. The federal government has committed to dealing with this issue early in 2008, possibly by introducing legislation that would establish a national security review mechanism for foreign investment. We have already commented on this initiative in a November 2007 position paper. We recognize that the issue itself is not fully before the Review Panel. Nevertheless, we would recommend that the Review Panel examine the national security review mechanism, once introduced, to ensure this review screen does not inadvertently deter matters which may be of benefit to Canada. Also, the Panel should consider if this review screen is sufficient to address concerns that Canada benefits from foreign investment, thus allowing reform of the more obtrusive ICA regime.

The Canadian Chamber believes that the administration of the ICA, particularly with respect to the review process, could be improved. There are two main issues: transparency and the duplication of reviews. Though a number of guidelines have been issued by the branches that administer the ICA, there is no comprehensive document that explains the details of the review process to foreign investors or sets out timelines for a review. In addition, the guidelines as issued are far less extensive and less informative than those issued by other federal review agencies, such as the Competition Bureau. The guidelines do not contribute significantly to improving transparency and predictability of the ICA process. Similarly, although the Investment Review Division at one time published capsule summaries of Ministerial opinions issued under the ICA, this useful practice has ceased. To many foreign investors, the review process remains opaque at best and more detailed administrative guidance would assist foreign investors through the review process, thereby facilitating foreign investment in Canada. An additional concern is that some potential investments are subject to multiple reviews by different federal agencies in addition to the one under the ICA. The Canadian Chamber believes that the review of potential investments under the ICA should be the focal point within government for public interest, national security and net benefit review. Investments should not be cleared through the ICA process, only to face similar reviews from other administrative agencies, such as reviews for air carriage licenses made under the *Canada Transportation Act*.

Sectoral Investment Regimes

In its Consultation Paper, the Review Panel identified five sectors in the Canadian economy with sector-specific legislation and/or policies on foreign investment: telecommunications, broadcasting, cultural industries, transportation services and uranium production. While the restrictions in the financial services sector are ownership restrictions and not specifically foreign ownership restrictions, they have the same effect.

Nearly all international organizations (including the OECD, WTO and the IMF) examining the Canadian economy have identified reform of our sectoral investment regimes as a key measure that would increase Canada's productivity and competitiveness. In addition, the 2007 G-8 Summit Declaration, in paragraphs 10 and 11, calls for governments to minimize restrictions on open investment regimes. In line with these views, the Canadian Chamber advocates the reform of Canada's sectoral investment regimes in line with the recommendations set out below. (To the extent that either national security interests or preservation of Canadian culture remains an issue, these matters should be addressed directly through less obtrusive regulatory measures, rather than broad foreign investment restrictions that hamper Canadian competitiveness). We support periodic review of regulations and statutory regimes, including in our cultural industries.

In reviewing these sectoral-specific industries, we note that both the Report of the Standing Committee on Industry, Science and Technology (April 2003) on foreign ownership restrictions in the telecommunications industry (the Standing Committee Report), as well as the Telecommunications Policy Review Report (March 2006) (the TPR Report), recognized the need to separate the communications industry into "carriage" (which is the distribution sector) and "content" (which is the cultural sector), thereby permitting the underlying policy issues regarding foreign ownership to be addressed separately. By adopting this approach, we have divided the industrial sectors with sector-specific foreign ownership restrictions as follows:

- distribution sectors: telecommunications carriers, broadcasting distribution undertakings regulated under the *Broadcasting Act* and transportation services
- other: uranium production and financial institutions

Distribution Sectors

The Standing Committee Report concluded that there should be a complete removal of foreign ownership restrictions for both telecommunications common carriers (telephone companies) as well as broadcasting distribution undertakings (cable companies and direct to home satellite distribution entities). We agree that these restrictions should be phased out and that the federal government should work to ensure that reciprocal access is granted in foreign markets.

In respect of the TPR Report, we note that the TPR Panel has advocated liberalizing the *Telecommunications Act* in two stages, with the second phase of liberalization to be undertaken after completion of a review of Canada's broadcasting policy (as recommended by the Panel). In our view, Canada cannot afford the costs and uncertainties associated with two stage amendments to the *Telecommunications Act*. The TPR Panel's tentative approach to reform should be regarded as well meaning, but a recipe for further delay.

In the transportation services sector, the Canadian Chamber endorses the federal government's Blue Sky policy and recommends the establishment of foreign-owned, but Canadian domiciled, air carriers (the "right of establishment") in Canada while working to ensure that reciprocal access is granted in foreign markets. We urge the Review Panel to adopt these recommendations and to stress the need for implementation of these policies without any further delay.

Other

The Canadian Chamber recognizes that uranium production raises national security interests, which are legitimate concerns that could arise as a result of proposed foreign investment. We believe that foreign ownership restrictions on investment in the uranium sector should be withdrawn once an appropriate national security mechanism is in place.

In respect of the financial services sector, we believe that reforms will boost competitiveness. The Bank of Canada recently conducted a study that showed that Canadian banks are less efficient with regard to the scale of their operations and that efficiency benefits would flow through to the Canadian economy if economies of scale can be attained. Therefore, we encourage the removal of political barriers to bank mergers within the next year. Once the barriers to bank mergers have been removed, the federal government should phase out the current percentage ownership restrictions over an appropriate time frame.

Additional Considerations

In addition to the ICA and the sectoral investment restrictions, there are two additional components of Canada's investment policies that deserve scrutiny. The first is Canada's corporate and securities laws and regulations, with particular emphasis on the tools and time available to company boards in takeover bid situations. The important discrepancies between jurisdictions regarding the acceptability and durability of bid repellant mechanisms, as well as the intensity of duties imposed on corporate directors, leave Canada at the head of the pack in terms of takeover-friendly corporate law. While most stock arbitragers want an auction, the mechanisms originally put in place to protect shareholders from management-dominated boards seeking to entrench themselves can now be viewed as having unintended consequences in the Canadian context due to the vast strides made in the area of corporate governance and board independence. The discrepancies in place mean that a Canadian company's Board of Directors cannot fairly determine what is in the best long-term interests of its shareholders.

In general, it is relatively easier to put a company into play in Canada than elsewhere (and once in play, it is almost certain the company will be sold), creating a disadvantage compared to companies from numerous other jurisdictions, potentially including those bidding. This can lead to situations where Canadian companies that are more successful and financially stronger compared to foreign competitors are nevertheless more vulnerable to takeover. While the Canadian Chamber of Commerce is not convinced that the Canadian approach is the wrong one, this area of relevant competitive disadvantage can be said to impair the ability of Canadian companies relative to their competitors in other jurisdictions. The federal government should work to remove these informal barriers in foreign corporate laws and should also work with the provinces and territories to review the corporate and securities legislative framework in Canada to remove these unintended consequences.

A second component to review is the varying definitions of "Canadian" that are found in various Canadian legislative schemes. As an example, the definition of "Canadian" under the *Investment Canada Act* and under the *Income Tax Act* is different. Consequently, a company can be "Canadian" under one legislative scheme, but be "non-Canadian" in another. The result is confusion and uncertainty in some circumstances. Similarly, definitions of "Canadian" are different in the *Telecommunications Act* and the *Canada Transportation Act*. In addition, the regulations promulgated under numerous pieces of legislation differ. These issues add significantly to the burden and costs faced by those seeking to invest in Canada. We recommend that, to the greatest extent possible, the definition of "Canadian" should be harmonized across these legislative schemes, at least within the federal government's sphere of authority.

Canada's Competition Policies

To address the Review Panel's questions in the area of competition policies, our comments reflect the impact of competition policy on competitiveness generally, any necessary changes to Canada's existing competition laws and what our approach to merger review, with particular respect to efficiencies, should be.

Competition Policy Generally

Much like our investment policy, Canada's competition laws and policies have an impact on Canadian competitiveness. Increased free trade and globalization of investment means that Canada competes with other countries for new investment (and to maintain investments that are made in Canada). To enhance Canada's competitiveness, Canada's competition laws, as with our other regulatory regimes, must be "competitive" when compared against other jurisdictions. Our competition laws must predictably and transparently: promote efficiency, encourage competition and protect consumers as well as, or better than, our principal trading partners.

Since the 1990s, globalization of business has led to the globalization of competition laws. Substantively, this has occurred through the coordinated enforcement activities of competition agencies in countries such as Canada, the United States and the European Union, and through the exchange of ideas and best practices amongst competition agencies around the globe, facilitated by organizations such as the OECD and the International Competition Network. Canada plays a leading role in these organizations and other international activities.

While there remain some important substantive differences in the competition laws of some jurisdictions, there is a high degree of consistency. In very few areas do Canada's competition policies lag behind other countries – indeed in some areas Canada is at the forefront of modern economic thinking in the application of its competition laws. Our competition policies are well known and defined and, in the Canadian Chamber's view, there is no aspect of Canada's competition policies that is having a materially negative impact on Canada's ability to attract or maintain investment.

<u>Changes to Canada's Current Competition Regime</u>

There is no need to amend the *Competition Act* as set out in the Consultation Paper. Amendments to address market studies, the conspiracy provision (s. 45) or to deal with the treatment of efficiencies under the Act are not required.

In recent years, there have been a number of amendments to the *Competition Act* considered by the government, Members of Parliament and the Commissioner of Competition. The Canadian Chamber addressed these in a 2006 policy resolution passed by our members. In particular, the Canadian Chamber endorses the Commissioner's efforts to improve predictability and transparency through the issuance of policy statements. We further believe that policy statements on legislative, policy and enforcement initiatives should be the subject of an open consultation process with stakeholders and that no policy statement should be issued in final form unless a full and open advance consultation with stakeholders is undertaken.

The last major package of proposed amendments to the Act, Bill C-19, was tabled in late 2004 (and subsequently died on the order paper). Bill C-19 included: (i) increasing maximum administrative monetary penalties (AMPs) for deceptive marketing practices; (ii) allowing the Competition Tribunal to order restitution and freeze orders in such cases; and (iii) making AMPs available as a remedy for abuse of dominance. The Canadian Chamber opposed each of these proposed amendments for a number of reasons, including that the proposals were not warranted or justified and would increase costs and uncertainty for Canadian business. We also opposed a further amendment that would have allowed the Commissioner to conduct market studies, on the basis that she already possesses sufficient powers to investigate and deal with any and all suspected anti-competitive behaviour. On the other hand, the Canadian Chamber endorsed other features of the proposed amendments – most notably, the removal of the airline-specific provisions from the *Competition Act* and decriminalization of its price discrimination, promotional allowances and predatory pricing provisions. The Canadian Chamber maintains these positions and invites the Review Panel to consider our previous submissions in this regard for further details.

There has been much debate in recent years about the conspiracy provisions of the *Competition Act*, including whether the existing offence sufficiently deters unlawful cartel behaviour and whether the elements of the offence are too vague. Our members do not feel that there is any evidence that the conspiracy offence does not deter unlawful cartels in Canada or that business finds the existing provisions uncertain or unworkable. On the contrary, the current conspiracy offence does deter unlawful cartels in Canada and the business community is able to understand the provisions in question. There has been a notable absence of enforcement activity by the Bureau in this area and failure to enforce the provisions in question do not justify amending the law. The law is well known and clear. In addition, moving to a *per se* type of offence would move Canada further away from, and not closer to, the approach of a majority of its trading partners. We remain convinced that no changes are required to the existing conspiracy provisions of the *Competition Act*. What is needed is enforcement.

The Consultation Paper also raised the question of the evolving role of competition authorities to reflect a "new and changing global commercial environment." As with competitiveness of business generally, it is important that Canada's competition authority remain vigilant in its enforcement of the law in Canada. A competitive domestic marketplace is important to the success of Canadian business abroad. In addition, cooperation among enforcement authorities around the world has been positive. The tools in place today are sufficient to build on that success and deter unlawful anti-competitive conduct on a case-by-case basis, as well as by consistency as between jurisdictions.

Canada's Approach to Merger Review

The Canadian Chamber believes that the current approach to merger review is generally satisfactory from a substantive and a procedural perspective, though there are areas that merit attention. Two particular concerns are the lack of a statutory timeframe within which the Commissioner should be required to be able to complete her review of a merger and the relevance of efficiency gains to merger review. The lack of firm timelines for merger review creates needless uncertainty and increased transaction costs. Including a "deemed approval" mechanism as part of this statutory timeframe would be one way to increase certainty. While the issue of relevance of efficiency gains to merger review was an issue for some time, recent pronouncements by the Commissioner have gone a great way to clarifying the issue. Lastly, the development of special rules within the *Competition Act* for particular industries remains a concern to the Canadian Chamber, as does duplicate reviews (as is currently the case, for example under the new provisions of the *Canada Transportation Act*).

The question posed by the Review Panel in this regard, however, raises a broader issue. The Canadian Chamber believes that a sensible approach to the administration and enforcement of merger policy should have as its primary goal the enhancement of efficiency, and that such an approach will support the creation of a culture of competitiveness. Separate industrial policy goals such as the creation of "national champions" are arguably inconsistent with an efficiency-focused approach to competition policy. While we may wish to support Canadian firms so that they can become strong participants in global markets, this is properly the subject of targeted industrial policy initiatives, such as fiscal or international trade policy, and not competition policy.

Promoting Canadian Direct Investment Abroad

While ultimately it is up to Canadian companies to expand and invest abroad, there is a role for the federal government in encouraging Canadian direct investment abroad. The Canadian Chamber proposes three broad ways the federal government can do this:

- Lead by example in this area by developing a focused international commercial strategy in concert with business – if international engagement is important, then the federal government must reflect this importance by devoting commensurate resources to this endeavour.
- Ensure that Canada's regulatory and policy environment for business is competitive with our trading partners – at worst, this should have a neutral impact and at best should provide a competitive advantage.
- Provide greater support to small and medium-sized enterprises (SMEs) – this support can take many forms, from greater marketing of existing programs and services to training to the reinstatement of programs to provide some financial support for market research and development.

<u>A Focused International Commercial Strategy</u>

It is clear that, in today's global economy, Canadian companies need to think on a bigger scale and be more ambitious. We tend to take an incremental approach, but moving and thinking incrementally no longer works in a world economy that advances by leaps and bounds.

The federal government should lead by example in this area. Until the federal government explicitly demonstrates the importance of a global focus by devoting adequate financial and human resources to Canada's global commercial ambitions, it is unrealistic to expect a large percentage of Canadian companies, particularly our SMEs, to venture into foreign markets. These resources should come from the re-allocation of funds within existing expenditure levels. Sixty million dollars over two years is allocated to Canada's Global Commerce Strategy. This is a great start, but a larger commitment is needed to underpin a successful strategy. Many of our competitors devote substantially greater funds to their international strategy with a single country, let alone the global economy as a whole.

To be clear, the Canadian Chamber fully supports the federal government's efforts to negotiate new bilateral free trade (FTAs) and Foreign Investment Protection and Promotion agreements (FIPAs), as well as other bilateral agreements that encourage activities such as tourism. What we would like to see is a more focused international strategy behind these negotiations that is developed in concert with, and reflects the priorities of, Canadian business. This includes having government leaders travelling frequently to key markets so that they can make the diplomatic decisions needed to assist the facilitation of bilateral trade and investment.

The United States engages its business community on an annual basis regarding its international trade policy and regularly seeks input regarding which countries are of greatest interest and for which sectors. Canada's federal government does consult with business, but this is frequently done on an ad hoc basis and consultations are often undertaken after the decision to negotiate with a particular country has been announced. A formalized consultation process that takes a greater tactical approach to Canada's international strategy is urgently needed.

Given the integration of the Canadian and United States economies and our reliance on access to the US market, a primary concern for any international strategy should be ensuring that Canada can maintain, if not strengthen, our privileged position with the US. In recent years, the US has signed more than a dozen bilateral FTAs, while Canada has signed one. We must assess the impact of these US agreements on Canadian exporters and work to ensure that Canadian companies are not disadvantaged by them, both in the US and in other markets.

A principal means for the government to assist Canadian companies investing abroad is through our Trade Commissioner Service. The dedicated and talented individuals working in our international missions do an excellent job with the resources they have. If Canada is serious about taking advantage of opportunities in key foreign markets, then we must increase the resources available to our Trade Commissioners and increase their presence in key markets, establishing them in second and third tier cities in such markets, with some of these officials being specifically dedicated to fostering increased bilateral investment. The Canadian Chamber acknowledges that the federal government has recognized this need and is looking to address it through the Global Commerce Strategy, but, as mentioned previously, greater resources are necessary for a successful international strategy.

A Regulatory Environment that is a Competitive Advantage

The regulatory environment for business in Canada has an immense impact on the ability of Canadian companies to compete at home and abroad. Resources spent on unnecessary regulation cannot be invested to make businesses more efficient and competitive. Overlap, duplication and fragmentation of regulations negatively affect Canadian businesses by hampering our ability to compete for capital and undermining our competitiveness. Regulatory requirements placed on Canadian businesses that are more onerous than, or not in synch with, processes in other countries can seriously impede our ability to compete. Because of our integrated North American economy, greater regulatory cooperation with the US in particular will yield additional benefits.

A recent example of a Canadian approach that is not in line with our trading partners and consequently puts Canadian businesses at a competitive disadvantage is the proposal in Budget 2007 to broadly disallow interest deductibility on money borrowed to acquire shares of a foreign affiliate. We recognize that the federal government has tabled new proposals on this issue that improve upon the proposal in Budget 2007. However, even the new proposals will increase the after-tax cost of borrowing to invest in foreign affiliates, thus serving as a disincentive to invest abroad. The Canadian Chamber believes that the pre-existing system increased the competitiveness of Canadian businesses, helping them to expand and invest globally.

Maintaining interest deductibility in its current form is part of a larger need to ensure that Canadian companies have access to capital at a competitive cost. Investment and expansion abroad cannot take place without access to capital. If Canadian companies are put in a situation where they face higher costs than their competitors for this capital (whether in the form of a higher regulatory burden, a higher tax liability or other costs), then they are put at a relative disadvantage. In addition, the higher cost of capital to Canadian businesses lowers the relative value of these companies, making them more attractive and easier takeover targets. Clarity, predictability and consistency of our policy will determine our success.

The way we negotiate free trade and investment agreements is another area of concern. The Canadian Chamber applauds the federal government for signing more than 20 FIPAs. Unfortunately, Canada tends to focus on our defensive interests, such as the ability to screen all incoming foreign investment, to the detriment of our offensive interests in these negotiations. The result is agreements full of exemptions that are seen by Canadian companies as providing inadequate protections, particularly when compared to agreements that have been secured by some of our trading partners. The Peru FIPA is one example: Canadian companies are very pleased that the federal government sought this agreement, but are less satisfied with the benefits it offers. The FIPA the Netherlands negotiated with the Peruvians (which is based on the Netherlands' Model FIPA) is seen as being superior to the Canadian one because it contains broad provisions and very few reservations or exemptions. As a result, a number of Canadian companies are routing their investments in Peru through the Netherlands. This development may help to explain why Canadian direct investment abroad tends to be concentrated in a small number of foreign markets.

The Canadian Chamber believes that Canada's regulatory environment as a whole should provide a competitive advantage to Canadian companies, rather than just certain areas or for certain sectors. The Canadian business environment (including tax rates and regulatory burdens) should be conducive to promoting the growth of Canadian businesses domestically and internationally. In addition, in line with best practices recommended by the OECD, the Canadian Chamber advocates that regulation be subjected to mandatory periodic reviews. These reviews can ensure that the benefits of the economic regulation exceed its costs.

The rapid rise of the Canadian dollar has presented Canadian businesses with both opportunities and challenges. The dollar's rise presents opportunities by, for example, making capital equipment relatively cheaper to purchase. Tariffs on certain capital and consumer goods should be reduced to help make such purchases more cost effective. At the same time, a higher dollar puts upward pressure on Canadian unit labour costs. Canada's weak productivity growth is not sufficient to make up for this lost competitiveness. A strong Canadian dollar is likely to be a factor for some time, as the Bank of Canada predicts the dollar will average 98 cents US through 2009. The challenges presented by our strong currency strengthen the need for the federal government to implement those policies, including lightening the burden of regulation and ensuring a competitive tax environment, that will improve Canada's productivity performance.

<u>Greater Support for the Needs of our SMEs</u>

The vast majority of Canadian companies are SMEs. According to recent statistics from the Department of Foreign Affairs and International Trade, only 1.5% of small and 27% of medium-sized enterprises export at all.

As discussed earlier, the Trade Commissioner Service (TCS) does a great job with the resources available to it. The support and assistance offered by the TCS to SMEs is particularly important since many of these companies cannot afford to maintain a physical presence in foreign markets or to be constantly travelling. However, the services, such as the TCS, available to SMEs when they seek to expand abroad need to be better marketed to SMEs. Companies will not avail themselves of services, no matter how useful, of which they are not aware.

Beyond education of the services available to them, SMEs also need to be better prepared and export or investment ready before they venture abroad. Trade Commissioners based in Canada can provide some of this training, but it would not be a good use of these resources to have them do so exclusively. Specializing curriculum offered through organizations like the Forum for International Trade Training (FITT) for the specifics of certain markets could serve to improve SME readiness and knowledge. Similar education programs on the internal operating structures necessary for participation in global value chains, including safety management systems, quality assurance/quality control systems and international (i.e. ISO) certifications, would be beneficial. Our network of local and provincial chambers could play a role here.

SMEs have limited resources, time and expertise to pursue international investment. The federal government used to offer PEMD (Program for Export Market Development) to provide modest financial assistance to industry for market research and development. Other countries maintain similar programs. Italy, for example, has established a €300 million "Go India" fund to assist its SME business community to invest in just one country, India. However, the industry part of PEMD was discontinued in 2004 as part of a government-wide effort to reallocate funds. Those SMEs that have the capacity to invest in other markets often do not venture beyond the US as a result of the costs, gestation time and effort involved in penetrating overseas opportunities. Some form of a new PEMD targeted at certain markets could assist SMEs to venture further afield. Indeed, the House International Trade Committee, in a 2006 report, recommended a revamped PEMD as part of its primary recommendation to improve Canada's trade policy.

Summary

To succeed internationally, we need to be strong domestically. Thus, a successful international strategy begins at home. The federal government needs to evaluate domestic policy to ensure that it facilitates international commerce. Most of all, Canada's international commercial policies need to be intrinsically linked to our domestic policy and be seen as an integral part of Canada's economic strategy. Numerous policy areas (including taxation, regulation, skills development, innovation and R&D, commercialization and consumer product safety) are engaged in facilitating international commerce, so there needs to be a government-wide focus and engagement on our international commercial strategy.

On a final note, we should promote and celebrate our Canadian companies that enjoy international success. This promotion should include large companies, as well as SMEs. Many Canadian companies are world class – the 2007 *Fortune* Global 500 contains 16 Canadian companies, the seventh highest total for any country – and we should not be ashamed to celebrate our economic ambassadors, which is not done nearly enough.

Becoming a Destination for Talent, Capital and Innovation

Canada can become a destination of choice for talent, capital and innovation. To do so, we need to have the proper domestic policy framework and to advertise this with a suitable message through an effective branding of Canada. It should not be surprising that many of the elements comprising this domestic policy framework will also aid the competitiveness of Canadian companies in seeking to expand and invest abroad. Also, while much of the discussion below speaks more to foreign investors, putting in place the right policies and creating an attractive business environment as outlined will also yield results when it comes to domestic companies, as well as attracting talent and innovation.

The Proper Domestic Framework

A number of factors are consistently cited as being critical to creating and attracting investment, including foreign investment, particularly high-value functions in global value chains: good infrastructure (especially transportation and logistics), skilled workers, minimum levels of bureaucracy, low taxes and easy conditions of employment. Canada has many of the fundamentals in place, but there are several measures that can make the Canadian market more productive and, as a result, more attractive. In this submission, we will discuss six specific elements:

- internal trade;
- tax policy;
- the Canada-US border;
- transportation infrastructure;
- immigration and foreign credential recognition; and
- R&D.

Internal Trade

Perhaps the single greatest boost to Canadian productivity and competitiveness would be the removal of internal barriers and the creation of a fully functional domestic market. The Department of Finance recently estimated the cost to the Canadian economy from internal trade barriers to be $3 billion annually, while Alberta's Premier suggests the figure is closer to $14 billion annually. The burdens of our internal barriers fall disproportionately on our SMEs, serving as a disincentive to growth for these companies. A 2007 report by the Canadian Bankers' Association found that Canada's multiple securities regulators has a substantial negative impact on all Canadian firms' attempts to raise capital, with a disproportionate burden falling on SMEs. These regulatory costs limit the number of jurisdictions in which firms seek to raise capital. The present bisection of the Canadian economy prevents firms from growing large enough to compete effectively in foreign markets, artificially raises prices, increases the cost of doing business and, ultimately, often causes foreign investors to look elsewhere.

The *Agreement on Internal Trade* (AIT) was designed to eliminate barriers to trade, investment, and labour mobility within Canada; however, the results have been quite modest (and should be unacceptable to us, as a trading nation). The AIT is simply a commitment to fairer trade with a complex and cumbersome dispute resolution mechanism, lacking any means of enforceability.

The *Trade, Investment and Labour Mobility Agreement* (TILMA), signed by Alberta and British Columbia, addresses the shortcomings of the AIT and creates an environment open to entrepreneurship and economic development. Trade and labour mobility between provinces and territories needs to be improved. Therefore, governments must pursue the development of a Canada-wide agreement. The principles of TILMA will be most helpful in this regard.

We must remember that Canada is a small market for many foreign investors. Unnecessary barriers that further shrink the Canadian market only serve to marginalize our attractiveness to investors. The federal government needs to be more prominent in solving these issues.

Tax Policy

The Canadian Chamber applauds the federal government for bringing down the corporate income tax rate in the recent Economic Statement. Other tax reforms are needed, though, to help make Canada a destination of choice. The first reform would be working with the provinces to eliminate provincial capital taxes and to harmonize provincial retail sales taxes with the GST. These taxes increase the cost of capital, deter business investment and hamper productivity.

Research shows that personal income tax rates play a large role in investment decisions. If Canada wants to attract the valuable head office functions and the associated highly-skilled, highly-paid jobs, then we need to reduce personal income tax rates, particularly at the upper end. Company executives and other highly-skilled workers can locate virtually nearly anywhere – the present personal income tax situation could deter such individuals.

In addition, a recent survey by Deloitte shows that our tax policy stifles venture capital. As this is often a crucial source of capital, particularly for innovation, changes need to be made to attract these investors. Of particular concern are certain lengthy bureaucratic requirements in place that venture capital investors face to avoid having tax withheld on sales of investments, even though the overwhelming majority is not subject to tax.

We encourage the Competition Policy Review Panel, and in turn the federal government, to not shy away from a big, bold initiative. We believe the Review Panel is correct to look to the Irish example for inspiration. Low corporate income tax rates and a focus on education are key components of Ireland's rise. We should ultimately strive, federally, provincially and territorially, to be the most tax competitive jurisdiction in the world.

Canada – US Border

The Canada – US border is the lifeline of our economy and a key component of our attractiveness to foreign investors. Our privileged access to the world's largest market is a strong selling point of investing in Canada. Further, the North American economy is integrated in such a way that input products may cross the border a number of times before the final products are completed. Any measures that thicken the border or make it 'stickier' diminish Canada's attractiveness to foreign investors and impede the growth of our domestic companies. Additional costs and delays associated with the border put domestic producers at a serious disadvantage relative to their offshore competitors.

It is imperative that we recognize the connection between security and commerce in respect of the border. In today's atmosphere, security concerns too often trump economic ones. Even so, there are specific, practical solutions that can be undertaken in the near-term that can help to increase the efficiency and reduce the unpredictability related to the border that will have a beneficial, or at worst neutral, effect on security. The Canadian Chamber of Commerce is presently working with the US Chamber of Commerce to draft a joint Canada-US paper on this issue. We will be pleased to present this document to the Review Panel once it is completed.

A commitment is needed from the federal government to work with industry to significantly reduce border-related compliance costs and to implement the recommendations in the joint Canada-US border paper within the next year.

One practical solution would be expanding participation in low-risk travel programs, such as NEXUS and FAST. Increased participation in these programs should help alleviate congestion at the border, while also strengthening security by allowing customs officials to focus on those deemed to be a higher risk. The federal government can work to increase participation in these programs by enhancing the advantages to those enlisted in them, particularly by ensuring that enrolment brings concrete benefits such as faster border crossing times.

Another urgently needed action to relieve border congestion is investment in border infrastructure. Improvements are needed at many crossings, with a priority on the Windsor-Detroit gateway. Approximately one quarter of all Canada-US truck traffic passes through this gateway. The location of the new Windsor-Detroit crossing needs to be announced immediately and an expedited process must be put in place to allow completion before 2013. This is an issue of national importance where the federal government needs to act.

Finally, the border could be shut down for a number of reasons, including a pandemic, natural disaster or terrorist attack. A border contingency/business resumption strategy, developed in close consultation with industry, along with regular simulations to assess and improve this strategy, is urgently needed.

Transportation Infrastructure

A country's infrastructure is an essential component of its commercial prosperity and a key determinant of potential trade growth and the associated job creation. Without an ability to efficiently move goods, services and people, one's market breaks down and loses its attractiveness to outsiders, regardless of the size of the market.

At present, much of Canada's infrastructure is facing capacity constraints, bottlenecks and regulatory uncertainties. These need to be addressed. Expansion of existing infrastructure is inevitable, particularly as ever larger container vessels are commissioned. Canada's transportation gateways represent economic opportunities not just for those areas that house them, but also for those parts of the country these gateways link to. Efficient and secure gateways with sufficient capacity not only make Canada a more attractive and competitive place to do business, they also increase trade and FDI.

The federal government has a Gateway and Corridors Strategy, with recognized gateways in Western, Eastern and Central Canada. A national logistics strategy to complement this would seem to be in order. The Asia Pacific Gateway and Corridor Initiative (APGCI) reflects a proper approach, but in terms of execution, a more efficient process from announcement of projects to regulatory approval, funding and completion of project development is needed. In addition, the federal government's commitments need to be at an appropriate level – federal funds for infrastructure often pale in comparison to those dispensed by other governments, particularly in some of the rapidly growing Asian economies. We applaud the $1 billion the federal government has already devoted to the APGCI, but continued incentives are needed to support capital and technological developments nationally.

Prior to taking on large investments in developing strategic infrastructure, investors need assurances as to the costs associated with the project and the timelines in which the project will be met. The regulatory approval process for large infrastructure projects in Canada does not provide investors with the needed certainty and clarity. Firm timelines need to be established and the federal government needs to work in collaboration with the provinces and territories to ensure that there are no redundancies in the regulatory and environmental review process. A single window/concurrent approval process is also recommended. The scope of background studies and review requirements should be clarified at the outset, with mid-stream amendments limited to exceptional circumstances. The single office for such projects announced by the federal government in Budget 2007 and the Speech from the Throne should be very helpful in this regard.

Immigration and Foreign Credential Recognition

To be attractive to foreign investors, Canada needs a skilled workforce that meets the needs of industry. We also need to ensure that Canada's labour policies maintain the continuity of services that are essential to Canadian society and our economy. Furthermore, as Canada's population ages, we need to look elsewhere to grow our labour force. Canada is not the only country with an ageing population that is competing to attract these skilled workers. For Canada to be attractive to these individuals, we need to ensure that their applications are processed in a predictable and timely fashion and, once in Canada, they are able to put their skills to work.

On being open to immigrants, Canada does well. In fact, we are one of the few countries where immigration is generally not a sensitive political issue. Indeed, our relative openness to immigration is already yielding results. Microsoft recently chose to locate a new research facility in BC, rather than in the US, largely because of concerns regarding the ability of foreign workers to get work permits in the US.

Our immigration priority tends to be family reunification to the detriment of skilled workers. Citizenship and Immigration Canada figures for 2006 regarding application processing times reflect this discrepancy. Eighty-percent of skilled worker applications are finalized in 69 months (although 80% of those seeking to come to Quebec are finalized in 13 months); by contrast, 80% of applications by spouses and partners are finalized in 5 months. The Government of Canada's goal is to promote and facilitate immigrants with business experience and skills who can contribute to Canada's economic development. But if Canada does not do a good job in providing timely and satisfying outcomes for potential immigrants, we will ultimately lose our attractiveness and undermine our economic growth prospects. We should adopt the best practices of other countries to ensure our immigration system is a competitive advantage.

Once these skilled workers get into Canada, they often face other obstacles. Complex credential assessment recognition requirements keep many foreign-trained professionals and trades people from putting their skills to work. There is a need to develop national and international accreditation standards to evaluate foreign credentials. Setting up Foreign Credential Referral Offices, as recently done in China and India, so that incoming immigrants know which of their credentials will be recognized and how to do so is also urgently needed. Employers report long delays in processing people they have identified for specific jobs. There should be procedures to expedite these applications. Similar fast-track procedures should also be established for foreign students who would like to remain in Canada after graduating, as currently many are prevented from doing so by our immigration policy. Finally, once in the Canadian workplace, many immigrants have difficulty integrating and need greater assistance in the form of better coordinated settlement and integration services.

R&D

Research & development is of critical importance to modern economies and provides an opportunity for a country to distinguish itself. Unfortunately, business investment in R&D in Canada has been relatively lower than in most OECD countries, despite Canada's generous Scientific Research & Experimental Development (SR&ED) tax credit.

To maximize the innovative payback of the SR&ED tax credit, the federal government should expand refundability of this credit to all R&D performers. SR&ED tax credits should be offset against a pre-tax levy, like employer EI premiums. In addition, the administration of the SR&ED tax incentive program needs to be improved by making it less complex, more predictable and improving timelines for processing applications. Less complexity and lower compliance costs, along with a focused and sustained effort to encourage participation, should help lead to increased use of the tax credit by SMEs.

However, companies are not the only organizations that undertake R&D. Often, business R&D is done in conjunction with post-secondary institutions or the government. These relationships and linkages should be strengthened. The federal government has taken many positive steps in recent budgets to strengthen Canada's ability to market commercially useful inventions. We encourage the federal government to continue its initiatives in this area.

<u>Branding Canada</u>

In seeking to attract the best from around the world (be it talent, capital, technology or investment), Canada would benefit from a more consistent look and message, right down to such mundane details as common logos, images and themes for all federal departments and even the provinces. Such efforts must be sustained and continuously pursued.

At present, federal, provincial, territorial and municipal entities present a dissonant, rather than a harmonious, message to the world. It is not clear that the many initiatives at all levels are well coordinated or thought through. There does not appear to be an overall framework or the delivery of consistent messages. All groups seem more intent on advancing their particular interests, rather than working together to mutual benefit. We must understand that our real competitors are not the company or province next door, but international competitors.

Canada's brand must emphasize Canada, not a particular province or municipality. Provinces need to recognize that foreign companies generally choose to invest in Canada on the basis of national considerations and then look for the most attractive locality, not the other way around. By working together from a united and cogent message, everyone can experience results greater than by working separately. From a federal perspective, this is also an optimal route because the budgets for investment promotion in a number of provinces are many times greater than the sums at the federal level (which is substantially less than $1 million). As discussed previously, greater resources are needed at the federal level to underpin a successful international strategy.

The contrast between other countries' successful investment promotion campaigns and the efforts of various Canadian provinces highlight the need for a pan-Canadian front. Compare Ontario's current marketing campaign to the campaigns of, for example, Australia, Ireland, Singapore, Belgium and France.

The Canadian brand needs to emphasize Canada's strengths, including our proximity to the US, abundant resources (natural and otherwise), an educated workforce and generous R&D tax credits. To many investors, Canada's position in North America is paramount.

<u>Summary</u>

Making Canada a competitive economy will provide benefits to Canadian businesses, by providing them the conditions they need to grow and succeed internationally. At the same time, these competitive conditions will make Canada a more attractive locale for foreign investors, skilled workers and innovators. But we also need to promote ourselves and our advantages. This needs to be done with one pan-Canadian voice, rather than the disjointed messages we currently articulate. Canada finds itself in a privileged geographic position, with a generally welcoming and stable regulatory environment. It is time that we make the necessary improvements to our domestic policies to improve Canada's competitiveness and that we brand ourselves properly to improve and strengthen our global image.

As well, we need to develop higher ambitions if we are serious about being a destination of choice. Simply being in the top ten, as we seem to be content with currently, is not adequate. Companies assessing where to locate their investment generally only undertake their due diligence on the top two or three destinations, with the investment being made in one of those fully researched countries. The federal government should strive to increase Canada's competitiveness so that we are consistently viewed by foreign companies as being in the top two or three of possible destinations for investment.