

*Annual Report of the*

# COMMISSIONER OF COMPETITION

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FOR THE YEAR ENDING MARCH 31, 2001

**on the enforcement and administration of the**

COMPETITION ACT

CONSUMER PACKAGING AND LABELLING ACT

PRECIOUS METALS MARKING ACT

TEXTILE LABELLING ACT

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Mailing Address:  
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The Honourable Brian Tobin, PC, MP  
Minister of Industry  
Ottawa

Dear Sir,

I have the honour to submit, pursuant to section 127 of the *Competition Act*, the following report of proceedings under the Act for the fiscal year ended March 31, 2001.

A handwritten signature in black ink, appearing to read 'Konrad von Finckenstein', with a long horizontal flourish extending to the right.

Konrad von Finckenstein, QC  
Commissioner of Competition



## MESSAGE FROM THE COMMISSIONER

Unquestionably, 2000–2001 was a period of intense activity and achievement for the Competition Bureau. In addition to our ongoing work, three major issues required our particular attention.

The first of these involved proposed amendments to the *Competition Act* brought forward in four private members' bills. The amendments, designed to ensure the continuing effectiveness of Canada's competition policy in today's rapidly changing global marketplace, dealt with a range of issues, including deceptive mail contests, the dispute resolution process and the powers of the Competition Tribunal. To determine the level of support for the amendments, the Bureau held broad-based consultations, inviting submissions and holding 12 round-table sessions across Canada. The Public Policy Forum analyzed the results of these consultations and published its results in a report released in December 2000. The Minister of Industry examined the report and tabled a bill to amend the *Competition Act* in April 2001 (see page 35 for further details).

The second issue concerned abuse of dominance in the airline industry. During 2000–2001, the Bureau continued its efforts to protect competition in the domestic industry, but serious concerns about abuse of dominance in this area remain. We received numerous complaints, many from consumers concerned about high air fares and deteriorating service (although these do not raise a concern under the Act). As well, nine airlines complained that Air Canada had abused its dominant position through predatory or exclusionary behaviour. Seven of these complaints have been settled or are currently being examined. Two, however, resulted in formal inquiries under the Act, and these led the Bureau to file an application with the Competition Tribunal in March 2001 to prevent Air Canada from engaging in anti-competitive behaviour (see page 28 for further details).

Third, the Bureau was involved in a major test case on mergers — the acquisition of ICG Propane Inc. by Superior Propane Inc. in Atlantic Canada. We view this case seriously because the merger, if successful, would have a significant negative impact on consumers,



contrary to the purpose of the *Competition Act*, namely “to provide consumers with competitive prices and product choices.” The case went before the Competition Tribunal in early 1999 and is still before the courts (see page 21 for further details).

On top of its work on these key issues, the Bureau played a major role on the international stage in 2000–2001, markedly increasing its cooperation with competition agencies in other countries. In addition, the Bureau was involved in a wide range of criminal and civil cases concerning offences under the *Competition Act*, and continued to vigorously promote competition. Last, but by no means least, the Bureau made every effort to inform and assist Canadian consumers through speeches and conferences, and its Web site, information bulletins, news releases and 1-800 number.

None of this impressive activity would have been possible without the hard work and enthusiasm of Bureau staff. Their commitment will continue to be invaluable as we take on the challenges and opportunities of the forthcoming year.

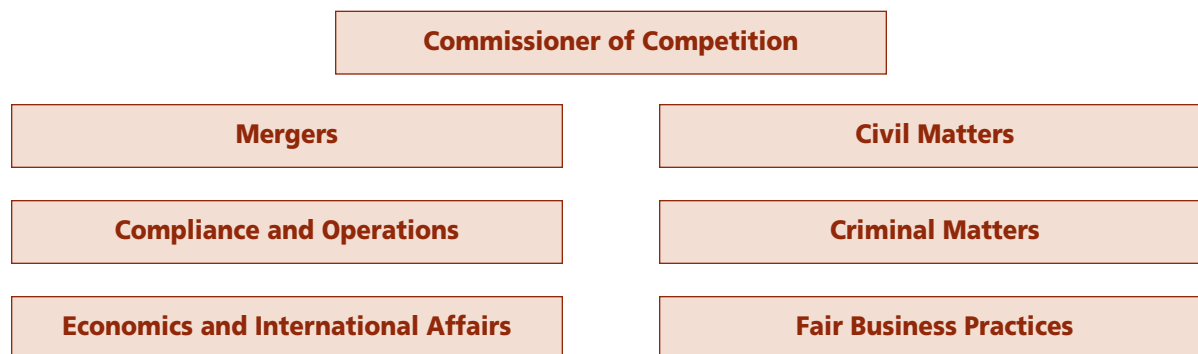
A handwritten signature in blue ink, which appears to read 'K. von Finckenstein'.

Konrad von Finckenstein, QC



# ORGANIZATIONAL STRUCTURE OF THE COMPETITION BUREAU\*

The Bureau employs 297 people in the National Capital Region and 86 in seven regional offices. As the organizational chart below shows, the Bureau comprises six branches.



The **Commissioner of Competition** is head of the Competition Bureau and is responsible for administering and enforcing the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*.

**Mergers Branch** reviews merger transactions to assess whether they are likely to prevent or substantially lessen competition.

**Compliance and Operations Branch** develops the Bureau's compliance program and enforcement policy. It also manages the Call Centre, and the Bureau's planning, resource management, administration and informatics activities.

**Economics and International Affairs Branch** coordinates international cooperation and policy development in many fora, and liaises with foreign authorities and other government departments and agencies. The Branch provides economic advice and analysis to the enforcement branches on specific cases, on economic policy issues, and on legislative changes and policy representations. The Branch also assists other government departments and agencies by providing competition policy advice and recommendations.

**Civil Matters Branch** administers and enforces the civil provisions of the *Competition Act*. In doing so, it

reviews anti-competitive behaviours, such as abuse of dominant position, and restraints imposed by suppliers on customers, such as refusal to supply, exclusive dealing and tied selling. The Branch is also responsible for the Bureau's interventions before federal and provincial regulatory boards and tribunals.

**Criminal Matters Branch** administers and enforces the criminal provisions of the *Competition Act* relating to anti-competitive behaviours. These include conspiracies that have an undue impact on competition, bid rigging, price discrimination, predatory pricing and price maintenance. Until September 2000, the Branch was also responsible for the Amendments Unit.

**Fair Business Practices Branch** administers and enforces the misleading representations and deceptive marketing practices provisions of the *Competition Act*, including those on deceptive telemarketing, ordinary price claims and promotional contests. The Branch also administers and enforces the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*. The Branch's work is carried out by staff in a network of offices located in the National Capital Region, Atlantic Region, Quebec Region, Ontario Region, Prairie Region and Pacific Region.

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\* Some key organizational changes were made within the Competition Bureau at the beginning of the 2001–2002 fiscal year. In particular, the Bureau created a Communications Branch to ensure that the Bureau achieves its overall objective of transparency and that all Canadians recognize the pivotal role the Bureau plays in fostering a fair and competitive marketplace. As well, the Amendments Unit joined the Economics and International Affairs Branch, which became the Competition Policy Branch.





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# INTRODUCTION

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This report summarizes the work of the Competition Bureau for the fiscal year ending March 31, 2001, under the four Acts the Bureau administers:

- ◆ the *Competition Act*
- ◆ the *Consumer Packaging and Labelling Act* (non-food products)
- ◆ the *Precious Metals Marking Act*
- ◆ the *Textile Labelling Act*.

The Competition Bureau works to create an environment in which Canadians can enjoy the benefits of lower prices, product choice and quality services in a vibrant, healthy and competitive marketplace. It does this by promoting and maintaining competition in the Canadian market.

This report discusses the Bureau's activities over the past year and how its work benefits Canadians. For statistical data and legal references, please visit the Bureau's Web site (<http://www.competition.ic.gc.ca>).

The report groups the Bureau's activities as follows:

- ◆ interacting with Canadians
- ◆ promoting competition
- ◆ reviewing mergers
- ◆ preventing anti-competitive activity
- ◆ maintaining a modern approach to competition law.

## **Approach: Conformity Continuum**

The Bureau's approach to enforcing and administering the legislation for which it is responsible continues to evolve in a rapidly changing global economy. The Conformity Continuum provides a framework for a comprehensive, balanced approach to enforcement and administration, given the Bureau's various priorities.

The Conformity Continuum integrates the various education, compliance and enforcement instruments that the Bureau has developed over several years. The instruments complement one another and work interdependently to promote maximum conformity with the law.

With this approach, the Bureau selects the instrument best able to address the concerns raised by a specific situation. Education efforts are undertaken to ensure that the business community knows about competition legislation and understands how it is enforced. The Bureau facilitates conformity using compliance instruments such as pre-merger notification, targeted inspections and consultations, as well as voluntary codes, advisory opinions and corporate compliance programs.

The Bureau responds to instances of non-conformity with alternative case resolution in the form of suasion and consent. The use of the Conformity Continuum does not imply that the Bureau is lenient with those who engage in serious anti-competitive conduct. When there is evidence of serious violations of the criminal provisions of one of the four Acts, the Bureau refers cases to the Attorney General of Canada and recommends that he or she prosecute with the full force of the law. In civil matters, when solutions cannot be worked out by consent orders or other means, the Bureau does not hesitate to apply to the Competition Tribunal for a remedial order.

The Bureau's *Conformity Continuum Information Bulletin* describes the Commissioner's general approach to administering and enforcing legislation. The bulletin is available on the Bureau's Web site (<http://www.competition.ic.gc.ca>) under Publications.

## INTERACTING WITH CANADIANS

With globalization, economic borders are becoming increasingly transparent. Through the Internet, consumers and businesses are more informed, demanding and concerned than ever with acquiring strategic and competitive advantages. The Competition Bureau places high priority on responding to these demands. It routinely monitors the marketplace and regularly visits businesses and stakeholders. It also relies on Canadians to come forward with information about suspected anti-competitive activities.

The Bureau handles complaints and information requests through the Information Centre and the Internet, which are often the first points of contact for consumers and businesses with the Bureau. At the end of 2000–2001, the Centre had recorded 54 479 contacts, an increase of 14 percent from the 47 975 contacts in 1999–2000. This increase can be attributed in part to the higher visibility of the Bureau's 1-800 number, which is staffed from 7:30 a.m. to 8 p.m. (EST). As well, there was a 68 percent increase in complaints and enquiries received via the Internet (from 2542 in 1999–2000 to 4261 in 2000–2001). The data captured on the nature of these enquiries provides valuable information that the Bureau uses to target education and enforcement activities. All enquiries are treated as confidential, and Information Centre employees quickly bring relevant issues to the attention of the appropriate branch.

### Communicating with Canadians

The Bureau views communication with Canadians as an essential part of its work, believing that good communication heightens awareness of the Bureau's role and encourages businesses to comply with the law. Within the Bureau, the Communications Branch works with other branches to ensure a coordinated and consistent approach to external communication.

#### The Web Site

The Bureau's main communication tool is its Web site, which has been improved this year to meet increasing demand. The site now includes a Media Room for one-stop shopping for the Bureau's news releases, speeches,

information notices and calendar of events. As well, a new Compliance and Enforcement page provides users with information on how the Bureau operates by outlining how it concluded recent cases. The International Affairs page outlines how the Bureau cooperates with its counterparts in other countries to counter crossborder anti-competitive practices.

The Bureau is also making it easier for Canadians to access information and request certain products through electronic commerce applications. Consumers and businesses can submit enquiries and complaints, apply and pay for textile CA numbers, and request and pay on-line for an advisory opinion any time, day or night.

In addition, the site continues to provide users with information about Bureau activities and decisions, as well as quick access to legislation, policies and guidelines. More than 2000 people have subscribed to the Web site, and receive e-mail notification of news releases and other Bureau information.

The Bureau site also features two dynamic multimedia products in the areas of multilevel marketing and bid rigging. These user-friendly Web products provide information and promote compliance with the *Competition Act*.





### **Telemarketing Education Initiative**

Over the past year, the Bureau distributed thousands of free pamphlets on deceptive telemarketing practices through its Information Centre, as well as through partners who provide educational seminars on this subject. The pamphlets are also posted on the Bureau's Web site (<http://www.competition.ic.gc.ca>; click on Publications).

### **Speeches**

Bureau staff delivered speeches on a variety of topics during the year, including the internationalization of competition policy, cartels and international conspiracies, and the year's activities in the area of fair business practices. For a complete listing of speeches, please visit the Bureau's Web site (<http://www.competition.ic.gc.ca>) and click on Media Room.

### **Information and Warnings**

The Bureau periodically issues news releases or information notices alerting the public to potential illegal or misleading activities in the marketplace. In 2000–2001, the Bureau warned Canadians about mail solicitations, telemarketing scams and phony invoices.

This past year, the Bureau also issued guidelines on intellectual property enforcement, a draft voluntary code entitled *Guide to the Labelling and Advertising of Pet Foods*, draft enforcement guidelines on the abuse of dominance provisions of the *Competition Act*, as well as guidelines on abuse of dominance in the airline industry. These publications include guidelines drafted in consultation with stakeholders and consumer interest groups.

Copies of news releases, information notices and bulletins are available on the Bureau's Web site (<http://www.competition.ic.gc.ca>) or by calling the Information Centre at 1-800-348-5358 or (819) 997-4282.

## 3 PROMOTING COMPETITION

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The Competition Bureau promotes competition in a variety of ways, including making regulatory interventions, participating in departmental and interdepartmental policy making, providing comments to policy advisory bodies, participating in international bodies (for example, the Organisation for Economic Co-operation and Development and various trade bodies), giving speeches and holding seminars.

### Interventions

As the statutory champion of competition, the Commissioner has the right to intervene before federal bodies and may do so with leave before provincial bodies. The Commissioner's aim with these interventions is to be the objective voice of economic competitive analysis.

Interventions in the area of deregulation of certain industries serve a dual purpose. First, they sustain and promote a competitive environment. Second, they ensure that when regulation is required it takes the form that least distorts competition and efficiency in the affected markets.

In 2000–2001, the Bureau made a number of significant interventions on issues ranging from the dumping in Canada of refined sugar to issues related to air, marine, road and rail transportation. The following pages outline the Bureau's interventions in the past year.



## Competition Bureau Interventions, 2000–2001

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<p>Local Telephone Service New Contribution Regime CRTC Telecom Decision 2000-745</p>	<p>A Canadian Radio-television and Telecommunications Commission (CRTC) decision in November 2000 created a new contribution regime, effective January 1, 2001, for funding local telephone service in high-cost areas in Canada (i.e. rural and remote areas).</p> <p>The Bureau supported the CRTC's decision to broaden the base for collecting contributions.</p>	<p>The Bureau made its recommendations to ensure competitive and technological neutrality, equity, economic efficiency (limiting marketplace distortions) and administrative simplicity.</p> <p>The decision is expected to foster and develop competition in local telecommunications markets so that Canadians will benefit from a greater choice of services and service providers.</p>
<p>Sunset Clause for Near-essential Facilities CRTC Telecom Decision 2000-96</p>	<p>The CRTC initiated a proceeding to consider whether the five-year sunset rule requiring the unbundling of near-essential facilities should be extended, and to decide on the criteria for determining the appropriate extension period.</p> <p>The Competition Bureau recommended the following:</p> <ul style="list-style-type: none"> <li>◆ that the sunset rule be extended until such time as the CRTC determines that sufficient competition exists in the supply of these facilities</li> <li>◆ that the CRTC apply the “sufficient competition” test and procedures that it applies to forbearance applications under the <i>Telecommunications Act</i> when determining the appropriate time period.</li> </ul>	<p>In March 2001, the Commission accepted the Bureau's recommendations. The CRTC concluded that the near-essential facilities were critical inputs new entrants require, and that the incumbent local exchange carriers (ILEC) were the only source of such facilities.</p> <p>The CRTC extended the sunset period for near-essential facilities until such time as the market for these facilities becomes sufficiently competitive (i.e. without specifying a termination date).</p> <p>The CRTC placed the onus on the ILECs to apply for relief from mandated unbundling and pricing by demonstrating that the market was sufficiently competitive within a rate band or geographic area.</p>
<p>Telephone Companies: Forbearance Outside Traditional Territories CRTC Telecom Decision 2000-98</p>	<p>The CRTC initiated a proceeding on conditional forbearance from the regulation of current and future wireline services offered by the major incumbent telephone companies operating outside their traditional territories.</p> <p>The Bureau agreed with the companies that they lack market power outside of their traditional geographic markets. Further, it agreed that existing competitive safeguards limit the companies' ability to engage in anti-competitive activity in other wireline service and geographic markets by leveraging their dominant position within their own territories.</p> <p>The safeguards reduce the likelihood and incentives for cross-subsidization from utility to competitive services, thereby limiting the opportunity and incentive for the major telephone companies to engage in anti-competitive pricing both within and outside their traditional territories.</p>	<p>The Bureau supported conditional forbearance.</p> <p>As of March 31, 2001, the CRTC decision was pending.</p> <p>The granting of conditional forbearance would reduce the regulatory burden on incumbent telephone companies and enhance their ability to compete in geographic areas outside of their traditional operating territories.</p>

**Competition Bureau Interventions, 2000–2001** (continued)

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<p>Ownership of Specialty Programming Services CRTC Public Notice 2000-165</p>	<p>The Canadian Cable Television Association (CCTA) asked the CRTC to change its crossownership rules to permit cable companies to acquire discretionary analog program undertakings.</p> <p>The Bureau supported the CCTA's proposal on competition and economic efficiency grounds. It recommended the following:</p> <ul style="list-style-type: none"> <li>◆ that the CRTC establish safeguards to protect the public's interest in a competitive television broadcasting market by limiting the number of channels that cable companies can acquire</li> <li>◆ that the CRTC review all of its broadcasting distribution undertakings, access rules and rules governing exclusionary behaviour to ensure their consistency and comprehensiveness for both analog and digital programming</li> <li>◆ that CCTA members with an ownership interest in a discretionary programming service publicly adopt the CCTA undertaking</li> <li>◆ that the CCTA be required to broaden its undertaking to include non-affiliated analog programming services</li> <li>◆ that the CRTC initiate a proceeding to review its policies and regulations on access by programming distribution undertakings to analog and digital cable broadcasting distribution undertaking networks.</li> </ul>	<p>The Bureau made these recommendations to enable cable companies to benefit from the economies of scale and scope associated with the ownership of broadcasting distribution undertakings and programming. At the same time, the Bureau recognized that cable companies are dominant firms and that regulations are required to limit their ability to exercise their market power.</p>



**Competition Bureau Interventions, 2000–2001** (continued)

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<p>Canadian International Trade Tribunal Review Related to Refined Sugar</p>	<p>The Canadian International Trade Tribunal (CITT) reviewed its 1995 finding of a threat of material injury to domestic producers due to dumping in Canada of refined sugar from the U.S. and certain European countries, and the subsidizing of refined sugar from the European Union. The review was initiated to determine whether to extend or remove the duties on imports.</p> <p>The Bureau supported the elimination of duties, arguing the following:</p> <ul style="list-style-type: none"> <li>◆ that the industry was well positioned to meet import competition if duties were allowed to expire</li> <li>◆ that the insulated market allowed domestic refiners to exercise market power and set prices above competitive levels</li> <li>◆ that while the removal of duties would have a negative impact on prices, this was not synonymous with material injury or its threat to domestic refiners.</li> </ul>	<p>On November 3, 2000, the CITT issued its decision to continue the finding, concluding that there was likely to be material injury to the domestic industry if the duties were rescinded. As a result, the dumping duties were not eliminated.</p>
<p>Inquiry Under Section 42, <i>Special Import Measures Act</i>, Related to Household Appliances</p>	<p>The CITT launched an inquiry to determine whether the dumping in Canada of certain refrigerators, dishwashers and dryers originating in or exported from the U.S. had caused or was threatening to cause injury to the Canadian industry.</p> <p>The Bureau intervened in the proceeding to determine material injury and made representations in favour of a public interest hearing. In support of its position that no duties be imposed or that proposed duties be reduced, the Bureau submitted the following:</p> <ul style="list-style-type: none"> <li>◆ that any injury caused by the domestic producer's failure to rationalize production or its inability to compete on non-price factors could not be attributed to dumping</li> <li>◆ that there was no material injury with respect to dishwashers and dryers since the domestic producer's production had increased while average prices had remained relatively flat over the inquiry period</li> <li>◆ that goods not produced in Canada should not be subject to duties.</li> </ul>	<p>On August 1, 2000, the CITT issued its finding of material injury with respect to the subject appliances. However, it granted certain exclusions from the imposition of duties largely consistent with the recommendation of the Bureau and other parties. Following receipt of representations by interested persons, the CITT determined that there was no public interest issue that warranted further investigation.</p>

**Competition Bureau Interventions, 2000–2001** (continued)

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
Public Interest Investigation Related to Contrast Media	<p>On May 1, 2000, the CITT found that dumping into Canada of certain iodinated contrast media originating in or exported from the U.S. (including the Commonwealth of Puerto Rico) caused material injury to the domestic industry. Iodinated contrast media are primarily used by hospitals as diagnostic tools.</p> <p>The CITT then initiated a public interest hearing. The Bureau submitted that it would not be in the public interest to impose anti-dumping duties, and that any duties imposed should be no greater than the minimum amount required to avoid material injury to the sole domestic producer. The Bureau argued that the economic costs associated with the duties would outweigh the benefits and would also do the following:</p> <ul style="list-style-type: none"> <li>◆ eliminate competition in the Canadian market by creating a monopoly</li> <li>◆ adversely affect competition in the distribution channels</li> <li>◆ increase prices and increase patients' health and safety risks</li> <li>◆ reduce choice</li> <li>◆ have a negative effect on economic welfare.</li> </ul>	<p>On August 29, 2000, the CITT filed a report to the Minister of Finance recommending that imposing full anti-dumping duties would not be in the public interest. The Minister of Finance accepted the CITT's recommendation and significantly lowered the duties as a result. This should enable import competition to continue.</p>
Nova Scotia Gas Licences Hearing	<p>The Competition Bureau helped establish the general requirements for the issuance of licences to sell natural gas to residential and small commercial customers in Nova Scotia, including a code of conduct for relations between the gas distributor and its competitive affiliates.</p> <p>The goal of the Bureau's submission was to help the Nova Scotia Utility and Review Board (NSURB) promote effective and efficient competition in the marketing and sale of natural gas in Nova Scotia. The submission discussed Canadian competition law and policy, as well as the appropriate roles and responsibilities of the NSURB and the Competition Bureau in the Nova Scotia natural gas market. It also presented competition principles for the Board to consider, and commented on licensing and code-of-conduct matters, including structural separation, cost allocation and the need for effective consumer protection against deceptive marketing practices.</p>	<p>The Board made decisions on September 15, 2000, on some issues and deferred others to an industry working group and subsequent initial tariff hearing. Among other things, the Board adopted core marketer and distribution affiliate code of conduct provisions, which the Bureau supported, and the Bureau's recommendation that marketers obtain written approval from customers to renew contracts for more than one year.</p>

## Competition Bureau Interventions, 2000–2001 (continued)

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
Sempra Atlantic Gas Initial Tariff Application	<p>The Bureau's intervention before the NSURB in this hearing supported open and effective competition in the emerging Nova Scotia natural gas market, particularly at the household level. The hearing covered unresolved issues from the above-noted Nova Scotia gas sales licences hearing as well as additional competition matters pertaining to Sempra's tariff filing.</p> <p>The Bureau made nine recommendations designed to create a level playing field for competition among all gas marketers as well as gas and equipment providers in Nova Scotia. Areas covered by the recommendations included preventing potential cross-subsidization between Sempra and its affiliates, granting promotional allowances in the emerging market and the appropriate approach to cost allocation.</p>	<p>Sempra as well as the key hearing interveners unanimously endorsed all nine of the Bureau's recommendations. The Board's final decision on the hearing was pending as of March 2001.*</p> <p>When adopted, the recommendations will become a key feature of the Nova Scotia natural gas market regulatory framework. By promoting a level playing field and open competition, they will help ensure households receive the benefits of gas competition as well as provide the opportunity for all businesses to succeed in Nova Scotia's gas market based on their ability to meet consumers' needs and tastes at the lowest price.</p>
<p><b>Transportation: Rail, Air, Water and Bus</b> Submission to the <i>Canada Transportation Act</i> Review Panel on Rail Access and Related Issues</p>	<p>The Bureau's October 2000 submission to the Panel examined matters related to rail captive shippers, differential pricing and rail viability, final offer arbitration and competitive access, with particular emphasis on running rights. The Commissioner's submission included six recommendations:</p> <ul style="list-style-type: none"> <li>◆ ensure the effectiveness and application of all of the competitive access provisions</li> <li>◆ repeal the substantial commercial harm test required when applying for extended interswitching and competitive line rates</li> <li>◆ remove the statutory requirement in the competitive line rate provision requiring agreement of rates beyond the interchange point with the connecting carrier</li> <li>◆ amend the running rights provisions to allow any person to apply for running rights upon passing a fitness test</li> <li>◆ eliminate the public interest test for running rights or establish a reverse onus test on the host railway</li> <li>◆ retain the competitive objectives of the national transportation policy together with existing provisions on the level of services, final offer arbitration and regulated interswitching.</li> </ul>	<p>The Bureau made its recommendations to enhance competition among the railways so that shippers would benefit from lower rail rates and improved service. The initiatives could also encourage the development of short-line railways.</p> <p>The Panel made its recommendations to the Minister of Transport before July 1, 2001.</p>

\*The Board adopted the recommendations on May 3, 2001.

**Competition Bureau Interventions, 2000–2001** (continued)

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<p>Submission to the <i>Canada Transportation Act Review Panel on Air, Water and Highway Issues</i></p>	<p>The Commissioner's submission of November 17, 2000, included five recommendations on air transportation:</p> <ul style="list-style-type: none"> <li>◆ negotiate unrestricted cabotage rights on a reciprocal basis</li> <li>◆ create a new class of licences to allow 100 percent foreign ownership of carriers that fly only in Canada</li> <li>◆ make legislative changes to allow modified sixth freedoms on a unilateral or reciprocal basis</li> <li>◆ permit up to 49 percent of the voting shares of a Canadian carrier to be held by foreigners</li> <li>◆ seek the elimination of all foreign ownership restrictions with Canada's trading partners on a bilateral or multilateral basis.</li> </ul> <p>In the area of water transportation, the Bureau recommended the following:</p> <ul style="list-style-type: none"> <li>◆ end the exemption of shipping conferences from competition laws</li> <li>◆ abolish the statutory monopoly of the pilotage authorities to provide pilotage services</li> <li>◆ create an accredited body for licensing pilots</li> <li>◆ determine tariffs by competitive forces</li> <li>◆ apply the current limited liability requirements to all accredited pilots.</li> </ul> <p>In the area of highway transportation, the Bureau recommended deregulating extra-provincial and international bus services (i.e. scheduled passenger, charter passenger and express parcel service).</p>	<p>The Bureau made its recommendations on air transportation to foster and develop competition among airlines in Canada so that Canadian passengers would benefit from cheaper fares and more frequent and improved services.</p> <p>The Bureau made its water transportation recommendations to lower shipping rates through conference carriers charging lower rates once the exemption was removed. This would ultimately benefit the economy and consumers by increasing trade and lowering prices.</p> <p>In the case of pilotage services, lower pilotage tariffs resulting from the introduction of competition could lead to lower transportation costs and increased international trade.</p> <p>The Bureau's recommendations in the area of highway transportation were intended to lower fares, develop more innovative services and stimulate growth in the stagnant bus industry.</p> <p>The Panel made its recommendations to the Minister of Transport before July 1, 2001.</p>

### **Consultation on the *Shipping Conferences Exemption Act, 1987***

In 1999, Transport Canada invited comments on the *Shipping Conferences Exemption Act, 1987*, which exempts shipping conferences from the provisions of the *Competition Act*. In its comments, the Competition Bureau said that instability in rates and services was no longer a valid rationale for the exemption, and recommended that it be revoked. However, in the event that this proposal proved to be unacceptable, the Bureau recommended a number of other changes to the Act. In light of the submissions, Transport Canada prepared a consultation paper in late 1999 containing various options for change, which it provided to the Competition Bureau for comments.

While not endorsing the option Transport Canada proposed, the Bureau indicated that retaining antitrust immunity while introducing pro-competitive options was acceptable. This option provided for a shorter notice period for independent action, the mandatory right of a member of a conference to offer an individual service contract, an end to tariff filing, and electronic filing of documents. The Bureau also addressed a number of issues concerning the definition of a conference, the complaint mechanism, and the need for a sunset provision. Subsequently, Transport Canada introduced Bill C-14, An Act Respecting Shipping and Navigation and to Amend the *Shipping Conferences Exemption Act, 1987* and other Acts, into the House of Commons on March 1, 2001.

### **Consultation on the International Charter Passenger Policy and Air Transport Regulations**

On July 21, 1998, Transport Canada requested the Competition Bureau's views on Canada's policy on international charter passenger air services. The Bureau supported a review of Canada's policy in this area on the grounds that liberalizing the approach to international charter air passenger service could benefit the travelling public through lower prices and more choice. Further, the Bureau held that existing fences, such as pre-booking and minimum-stay requirements, were not appropriate in the current environment. The Bureau also indicated that rules designed to protect Canadian charter carriers

from price competition should be eliminated. On April 4, 2000, the Minister of Transport released a new policy for international charter passenger air service that included a number of the Bureau's proposals.

In response, the Canadian Transportation Agency revised its proposed Air Transport Regulations and submitted them to the Bureau for comment on December 7, 2000. In its comments, the Bureau noted that the Agency had accepted the Bureau's initial proposals and proposed ways of further liberalizing the international charter market.

### **Presentation to the *Canada Transportation Act Review Panel***

On September 7, 2000, the Competition Bureau made a presentation to the *Canada Transportation Act Review Panel*. The presentation reviewed the role of the Commissioner and the interface between the *Competition Act* and regulation, and examined the concerns of the Commissioner with regard to the effectiveness of the competitive access provision pertaining to rail in the *Canada Transportation Act*. The Bureau's concerns about the current restructuring of the airlines were also addressed.





### Participation on the Federal Domestic Emission Trading Working Group

In March 2000, the federal ministers of energy and the environment endorsed continued analytical work to support future international and domestic environmental policy decisions, including crosscutting policy instruments such as emissions trading.

Given Canada's acceptance of a binding greenhouse gas (GHG) reduction target, domestic emissions trading (DET) is being considered as a major economic instrument that would address a substantial portion of the required GHG emissions reductions. DET is a means of pricing GHG emissions in a cost-effective fashion, including encouraging the development of new technology, by combining the requirement that firms submit permits equal to their covered emissions with the provision of a supply of tradeable permits equal to the overall target for covered emissions.

The Bureau has identified certain broad competition policy and antitrust enforcement issues, including economic and competition issues, which would promote developmental work on DET:

- ◆ the initial allocation of tradeable permits
- ◆ the competitiveness (e.g. market concentration and pricing behaviour) and efficiency of the initial permit allocation through an auction mechanism
- ◆ the impact of the initial permit allocation on domestic product market competition and concentration
- ◆ the broad categories of gratis allocations
- ◆ the administration and enforcement of the *Competition Act* in relation to GHG emissions permit markets.

### Canadian Securities Administrators: Submission on Alternative Trading Systems

In July 2000, as part of an initiative to create a framework permitting the competitive operation of traditional stock exchanges and alternative trading systems (ATS), the Canadian Securities Administrators (CSA) republished for comment its revised Alternative Trading System Proposal.

While supporting the initiative, the Competition Bureau submitted a number of comments in response to the proposal about who should provide market regulation for ATS. The Bureau believes that a regulatory environment allowing for competition among stock exchanges and ATS would stimulate innovation and encourage securities markets to be more responsive to the needs of participants.

The Bureau does not, in principle, oppose industry regulation that complements the *Competition Act* in establishing appropriate rules of conduct. However, self-regulation involves particular risks for the competitive process. To take full advantage of the benefits of both industry self-regulation and competition, the Bureau believes that any industry self-regulatory process should espouse the principle of competitive markets, ensure impartiality and transparency of operation, and provide for the handling of formal complaints and for periodic assessment and review.

Allowing for competition between markets will promote the efficient, low-cost and innovative provision of services. The Bureau believes that respecting the above considerations would contribute to the full realization of the benefits of competition in the area of alternative trading systems.

### Intellectual Property Guidelines

The Bureau's *Intellectual Property Enforcement Guidelines*, released in September 2000, promote transparency in the enforcement of the *Competition Act* for intellectual property issues. The guidelines explain how the Bureau determines whether conduct involving intellectual property raises a concern under the *Competition Act*. They also describe how the Bureau distinguishes between those circumstances that warrant a referral to the Attorney General for an examination under the criminal provisions of the *Competition Act* (section 32)

and those that warrant an examination under the general provisions. The Bureau released draft guidelines in June 1999 and again in April 2000 for comment. On both occasions, the Bureau held roundtable discussions across Canada to listen to stakeholders' views. The Bureau took the comments it received at these sessions into account when finalizing the guidelines.

### **Guide for the Labelling and Advertising of Pet Foods**

In May 2000, the Bureau released its draft guide on the labelling and advertising of pet foods and sought public comment. The guide is a voluntary code that incorporates best practices in labelling and advertising in this area. It also reflects the approach the Bureau intends to take when evaluating allegations of false or misleading advertising under the *Consumer Packaging and Labelling Act* and the *Competition Act*.

The guide provides a set of general principles for pet food labelling, guidance on using specific claims, and examples of acceptable claims. The examples illustrate the type of claims manufacturers and importers may wish to use to reduce the likelihood that their labelling or advertising will mislead consumers.

The guide was prepared in collaboration with several governmental and non-governmental organizations, including Health Canada, Agriculture and Agri-Food Canada, the Pet Food Association of Canada, the Canadian Veterinary Medical Association, the Canadian Kennel Club, the Canadian Animal Health Institute and the Pet Industry Joint Advisory Council.

The guide is being revised following consultations and will be issued in final form in the forthcoming fiscal year.

### **"Made in Canada" Claims Relating to Diamonds**

In August 2000, the Competition Bureau sought public comment on how to enforce the *Competition Act* when reviewing claims that diamonds are "Canadian" or "of Canada."

The purpose of this consultation was to determine when "Made in Canada" claims relating to diamonds would cause concern under the misleading advertising and deceptive marketing practices provisions of the Act.

The Bureau received more than 100 written submissions, and will release a final enforcement policy in 2001–2002.



## Consultations on the Draft Abuse of Dominance Guidelines

On May 18, 2000, the Competition Bureau released its draft abuse of dominance guidelines for public consultation and comment. The Bureau developed the guidelines to provide the business and legal communities, as well as the public, with a clear understanding of the enforcement approach the Bureau takes when examining allegations of abuse of dominance in the Canadian marketplace. These draft guidelines, in conjunction with the related consultations, are part of the Bureau's overall commitment to developing enforcement and educational tools through an open and transparent process.

The enforcement approach outlined in these guidelines draws heavily on Competition Tribunal jurisprudence as well as economic theory.

The consultations on the guidelines ended August 31, 2000.\*

## Facilitating Conformity: Retail Jewellery Industry

The Bureau has developed a conformity strategy for the retail jewellery industry in response to concerns from consumers, competitors and industry associations about certain marketing practices of jewellery retailers.

In the Bureau's 1999–2000 annual report, the Commissioner reported on the first component of the strategy, which was designed to educate and inform jewellery retailers and consumers. During 2000–2001, the Bureau concentrated its efforts on the second component of the strategy — monitoring jewellers' marketing practices, including visiting retailers to clarify the application of the law and give them the opportunity to voluntarily undertake corrective actions to ensure compliance with the legislation.

The Bureau completed its monitoring on March 31, 2001, having examined the marketing practices of more than 350 corporate entities representing 1049 jewellery outlets. Concerns under the *Competition Act* were identified in relation to 163 corporate entities representing 946 jewellery outlets. By the end of the fiscal year, the Bureau had resolved 73 files using information letters, 54 corporate entities had committed to correcting their marketing practices to ensure conformity with the law, and

36 corporate entities continued to be subject to examination.

As the same time, the Bureau was identifying the most serious cases of apparent non-conformity. During the third component of the conformity strategy, retailers showing signs of non-compliance will be subject to enforcement actions.

## Labelling Statutes

The Commissioner of Competition administers and enforces three standards-based statutes: the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act*, and the *Precious Metals Marking Act*. These three statutes are intended to ensure the accuracy and adequacy of information provided to consumers.

During 2000–2001, the Bureau conducted 433 inspections under these laws. Actions taken against consumer products that did not comply with the legislation included 245 trader corrections, 38 seizures, 19 voluntary disposals and one prosecution.

Cases resolved through voluntary compliance included the following:

- ◆ An inspection of imported caulking compounds, sealants and adhesives. During the inspection, a total of 30 lots of various caulking compounds and sealants were found to be in violation of the labelling requirements under the *Consumer Packaging and Labelling Act* and regulations. These labelling infractions included the lack of a bilingual common name, and an incorrect declaration of net quantity (the imperial unit of measure was not declared as being in U.S. fluid ounces, and the metric net quantity declaration was shown in brackets). The corrective actions included trader correction of the bilingual common name before these products were shipped to clients, with a commitment by the Canadian wholesaler that all future shipments would be labelled properly and display the correct net quantity declaration.
- ◆ An inspection that revealed that 4 kg packages of cat litter were marked as a product of Canada, when the product did not meet the Bureau's *Made in Canada Guidelines*. Following a meeting with Bureau officials, the company agreed to remove the "Product of Canada" claim and replace it with "Packaged in Canada."

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\*The final guidelines were published in July 2001.



- ◆ An inspection of 10-karat gold bracelets that revealed that the gold content of the items was less than declared, contrary to the *Precious Metals Marking Act* and regulations. The company returned the bracelets in question to the distributor, and the items were destroyed.

## Internet Sweeps

To promote the Organisation for Economic Co-operation and Development's *Guidelines for Consumer Protection in the Context of Electronic Commerce*, the Competition Bureau conducted a domestic Internet sweep to see whether the requirements of the guidelines were being met. The purpose of these guidelines is to encourage businesses to provide sufficient information to consumers so they can make informed choices when buying goods and services on-line. During August 2000, the Bureau assessed 292 Canadian Web sites to see what information was being made easily accessible to consumers before they entered into a transaction. Officers examined various categories of e-commerce sites, such as those selling sport and fitness equipment, books, CDs, clothing, and health and beauty products, and completed a checklist of 18 questions regarding site, contract and transaction information, and the privacy policy.

In February 2001, the Competition Bureau participated in a similar sweep organized by the International Marketing Supervision Network (IMSN). Members include consumer protection authorities from 29 countries and representatives from the European Commission and the Organisation for Economic Co-operation and Development. ISMN's main objective is to help prevent and redress deceptive international marketing practices through knowledge sharing and promotion of fair business practices.

In the sweep, 62 Canadian sites were evaluated. The results show that 80.65 percent of the sites disclosed their physical address, 91.94 percent provided an e-mail address, 88.71 percent provided a telephone number, 70.97 percent gave an itemized cost for goods or services, 62.90 percent specified the applicable currency, 16.13 percent mentioned geographic restrictions on purchases, 4.84 percent mentioned parental approval or minimum age requirements, 45.16 percent provided a policy on, or allowed for, returns, exchange and refunds, and 48.39 percent had a privacy policy.

## Participation in Conferences

Through its participation in conferences, the Bureau has built up a relationship with professional groups in specific industry sectors, and has increased its contacts with academics at universities.

In June 2000, Bureau staff presented papers to the Canadian Economic Association and the Canadian Transportation Research Forum on Marshallian surplus analysis, alliances among competitors, marine pilotage, and analysis involved in certain transportation cases.

In September 2000, Bureau staff presented papers on the *Competition Act's* efficiency defence at the Canadian Law and Economics Association's annual meeting. Lectures on Canadian competition policy and antitrust enforcement were also given at l'Ecole des Hautes Etudes Commerciales in September 2000 and at l'Université Laval in April 2000. During the same month, staff presented papers to the Canadian Bar Association on intellectual property, the new economy and the Microsoft case. A paper was also presented to the Air Transportation Association of Canada in Vancouver.

In February 2001, a member of the staff attended the Agrifood Workshop in Tucson, Arizona, and presented his professional comments on a paper on concentration and market power in Canadian agribusiness. The Bureau's *Immunity Bulletin* was also presented in February 2001 at the American Bar Association Advanced International Cartel Workshop held in New York.

### **International Activities**

As a result of the increasing integration of the world economy and the globalization of international commerce, competition policy, once regarded as purely domestic, is now increasingly global in outlook and orientation. Consequently, the Bureau is actively involved in international initiatives to promote the development of competition policy and to enhance the effectiveness of enforcement through cooperation with competition agencies around the world.

#### **Cooperation**

Legal and practical issues, such as confidentiality and national borders, pose great challenges for the Bureau in its investigation of transnational anti-competitive conduct and, in particular, cartels and mergers. International cooperation is invaluable for overcoming some of these challenges and enhancing the effectiveness of enforcement activities related to transnational anti-competitive conduct. The Bureau and other competition agencies regularly reap the benefits of cooperation, which can result in more timely and effective investigations and reviews, more efficient use of scarce resources and a reduction in potential interagency conflicts.

This fiscal year saw a marked increase in cooperation between the Bureau and other competition agencies, primarily the U.S. Department of Justice and Federal Trade Commission and the European Commission Competition Directorate-General (under bilateral cooperation agreements with the United States and the European Community, respectively) but also with agencies in Australia, Mexico, Japan and the United Kingdom.

For example, significant growth occurred in the number of notifications the Bureau received and sent under its cooperation arrangements as well as under the Organisation for Economic Co-operation and Development's *Recommendation Concerning Cooperation*. Notifications serve to alert a cooperating agency when an investigation, or other activities such as requests for information and visits, may affect its interests, often leading to dialogue between the agencies about their respective investigations.

There was also a significant increase in contact between Bureau officers and their international counterparts. Communication about merger reviews was most common, partly as a result of the willingness of parties to cooperate to expedite the review. For instance, in several merger reviews, officers from the U.S., Europe and Canada participated in three-way conference calls and meetings to discuss analytical issues and possible remedies.

#### **Signing of Cooperation Arrangement Among Canadian, Australian and New Zealand Competition Agencies**

On October 25, 2000, the Canadian, Australian and New Zealand competition agencies signed an inter-agency cooperation arrangement on the application of their competition and consumer laws. This arrangement will allow the Bureau to improve coordination with its counterparts in Australia and New Zealand.

The arrangement sets out a framework for notification, coordination and cooperation on enforcement activities, exchange of information and avoidance of conflict, and fully incorporates measures to counteract deceptive marketing practices.

#### **Free Trade Area of the Americas**

The Bureau continued to lead the Canadian delegation to the Negotiation Group on Competition Policy in negotiations for a Free Trade Area of the Americas (FTAA), and actively participated in the five meetings held in 2000.

During these meetings, Canada worked with other countries to prepare a draft chapter for the FTAA agreement on competition policy. Canada proposed a comprehensive framework on competition policy that

builds and expands on Chapter 15 of the North American Free Trade Agreement to provide for more effective enforcement against anti-competitive activities. The proposed framework includes an obligation from signatory countries to adopt or maintain a competition law and to establish or maintain an independent and impartial competition agency authorized to take appropriate action and to advocate competition in regulated sectors. The framework also includes an obligation for countries to adhere to general principles of transparency, non-discrimination and procedural fairness, as well as mechanisms to promote enforcement cooperation and coordination. Consultation mechanisms and peer review are also part of the proposal.

In addition, the negotiating group considered the topic of competition policy in smaller economies and economies without competition regimes, and concluded terms of reference for further study. In the area of technical assistance, the Bureau participated in technical sessions, including one on competition issues related to the deregulation of the electricity sector, in general as well as in Ontario and Alberta.

The draft chapter on competition policy consolidates all countries' proposals and shows that consensus has yet to be reached on many issues. The draft chapter was considered, along with those from other negotiating groups, at the sixth meeting of the FTAA Trade Ministers held in Buenos Aires, on April 7, 2001. Negotiations will resume in Panama following instructions from the ministers.

### **Organisation for Economic Co-operation and Development**

Bureau representatives continue to actively participate in the various initiatives of the Competition Law and Policy Committee (CLP) and working parties of the Organisation for Economic Co-operation and Development (OECD). In his capacity as Chair of Working Party 3 on International Co-operation, the Commissioner of Competition played a leading role in promoting and encouraging further work following the adoption of the 1998 Hard Core Cartel Recommendation. This work led to the 2000 *Hard Core Cartel Report to the Council* and the setting up of a three-year anti-cartel program. The next phase of the program has already yielded the

completion of the *Leniency Report* and discussions on information sharing.

In Working Party 2 on Competition and Regulation, Bureau representatives played an important role in developing the Recommendation on Structural Separation, which was approved by the CLP and forwarded to the OECD Council for adoption at its meeting in April 2001. The recommendation is intended to provide guidance to countries with regulated firms simultaneously operating a non-competitive activity and a potentially competitive complementary activity.

Representatives from the Bureau participated in the most recent review of the chapters of the OECD *Guidelines for Multinational Enterprises* on consumer interests and competition. These important voluntary guidelines, which embody standards and principles on responsible behaviour by multinational enterprises, were first adopted on 1976 as part of the Declaration on International Investment and Multinational Enterprises. In order to keep the guidelines current in light of economic changes, the OECD has revised them several times, with the last review concluded in June 2000. In addition to competition and consumer interests, the



guidelines include recommendations relating to adequate disclosure of business information to the public, employment and industrial relations, the environment, bribery and corruption, science and technology and taxation.

Canadian law and regulations are being reviewed in 2001 under the OECD's Regulatory Reform Programme, a project that each year reviews several countries' progress on regulatory reform. This multidisciplinary review will include a look at the role of the *Competition Act* and the Bureau in the regulatory reform process. The Bureau is responsible for and has been actively preparing Canada's submission to the OECD on these matters. The review of the competition policy will take place during the October 2001 meeting of the CLP. The Ad Hoc Multi-disciplinary Group on Regulatory Reform will then review the entire report on Canada in April 2002. It is expected the report will be published in June 2002.

### **Canada-Costa Rica Free Trade Agreement**

The Bureau led the Canadian delegation in negotiations on competition policy to the Canada-Costa Rica Free Trade Agreement. Canada was seeking the negotiation of a framework on competition policy similar to that proposed for the World Trade Organization and the FTAA, based on consultations with stakeholders in 1999. Canada also viewed these negotiations as a building block for the conclusion of a competition policy chapter in the FTAA agreement, taking into account that several FTAA countries have yet to adopt a competition law and many others have very limited enforcement experience.

In this context, Canada proposed a chapter on competition policy that builds on previous free trade agreements and that could provide a benchmark for other countries for the design, implementation and application of competition law and policy as well as for enforcement cooperation among competition agencies.

The proposed framework included obligations on the adoption or maintenance of a competition law and the establishment or maintenance of an impartial and independent competition agency. It also included obligations on the general principles of transparency, non-discrimination and procedural fairness, mechanisms to promote enforcement cooperation and coordination, mechanisms for consultation with no dispute settlement and a recognition of the importance of technical assistance.

Negotiations on competition policy were concluded in March 2001, resulting in a chapter of the free trade agreement closely resembling Canada's initial proposed framework. The chapter will promote greater transparency and certainty in both Canada and Costa Rica, and enhance the effectiveness of enforcement activities by competition agencies in both countries through the establishment of a concrete framework for cooperation and consultation.\*

### **World Trade Organization Working Group on Trade and Competition Policy**

Bureau representatives continued to play an influential role in the World Trade Organization Working Group on Trade and Competition Policy. In particular, the Bureau authored two submissions, *Cooperation in a Multilateral Setting* and *Competition Policy Advocacy and Regulatory Reform in the Canadian Telecommunications Industry*. The Bureau continued to encourage negotiations on competition policy in a new round of World Trade Organization negotiations, provided that any future obligations in this area were not subject to dispute settlement.

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\*The entire agreement was signed in April 2001.

## REVIEWING MERGERS

In the past five years, there has been a significant increase in the number of mergers the Competition Bureau has reviewed, and this continued during 2000–2001. In addition, the complexity of many of the reviews also increased due to globalization, deregulation and greater concentration in certain markets.

The Competition Tribunal delivered judgments this year on two litigated merger cases involving propane and waste. These judgments have provided a great deal of insight into a number of issues, including product market, geographic market, barriers to entry and the prevention of competition.

The Tribunal also interpreted the efficiency defence, in a decision that was before the Federal Court of Appeal at year-end. Under section 96(1) of the *Competition Act*, a merger that substantially injures competition can nevertheless be allowed when the efficiency gains it generates are greater than, and offset, its anti-competitive effects. This potential redemption of an otherwise anti-competitive merger is known as the efficiency defence.

### Crossmedia Mergers

The year 2000–2001 was a particularly active one for the Bureau in the area of merger examination of crossmedia amalgamations. Similar activity occurred in the United States, with competition authorities paying particular attention to the AOL-Time Warner merger.

Highlighted below are the Bureau's examinations of the CanWest-Hollinger and Quebecor-Vidéotron mergers. In addition, the Bureau examined BCE Inc.'s acquisition of *The Globe and Mail* and related Internet properties from The Thompson Corporation, which BCE would subsequently combine with its previous acquisition, the CTV network, to form Bell Globemedia Inc. The Bureau's examination of the BCE-*Globe and Mail* transaction addressed similar issues to those reviewed in the CanWest-Hollinger and Quebecor-Vidéotron cases and came to the same conclusions.

The Bureau also looked at vertical issues concerning high-speed Internet access; these were identified as a concern in the AOL-Time Warner merger. The Bureau determined

that high-speed Internet access was not a concern given competitors' access to telephone-based Digital Subscriber Line services and a CRTC decision respecting access to the high-speed Internet network on cable.

### Case Summaries

The following are summaries of some of the major cases the Bureau reviewed over the past year. Other industries with transactions that raised competition concerns included pulp and paper, food services, food processing and broadcasting.

#### ***The Coca-Cola Company of Canada and Cadbury Beverages Canada Inc.***

Last year's annual report noted that the Bureau was reviewing the case of the Coca-Cola Company of Canada and Cadbury Beverages Canada Inc. On July 26, 2000, the two companies announced that they had mutually agreed to no longer pursue the acquisition by Coca-Cola of Cadbury Schweppes' beverage brands in Canada and Mexico. The two parties stated that as a result of competition concerns raised by the regulatory authorities in both countries, they had agreed to end the uncertainty and forgo this aspect of the transaction. As a result, the Bureau closed its file on this matter.

#### ***Canadian Waste Services and Browning-Ferris Industries Ltd.***

On April 26, 2000, the Commissioner filed an application with the Competition Tribunal challenging Canadian Waste Services Inc.'s acquisition of the Ridge landfill in southern Ontario from Browning-Ferris Industries Ltd., a subsidiary of Allied Waste Industries Inc.

The Commissioner made the application following a thorough investigation beginning in 1999 that involved the full merger of Canadian Waste Services and Browning-Ferris Industries, and resulted in a voluntary restructuring of the transaction. While other competition concerns arising from the full merger had been resolved, the effects of the acquisition of the Ridge landfill remained in dispute. Canadian Waste Services, the largest waste management company in Canada,

already owned six landfills in southern Ontario. The Commissioner concluded that the acquisition of the Ridge landfill would likely prevent or substantially lessen competition in the provision of disposal services in the Greater Toronto Area and in the Chatham-Kent area due, in part, to high barriers to entry and a lack of effective remaining competition. Although Canadian Waste Services acquired the Ridge landfill, the Commissioner obtained a consent interim order from the Competition Tribunal to ensure that the operations of the Ridge landfill remained separate from the business operations of Canadian Waste Services pending final resolution of the application.

Prior to commencement of the hearing, Canadian Waste Services and the Commissioner jointly submitted a detailed statement of agreed facts to the Competition Tribunal, which was the first time this approach was used in a contested proceeding. This resulted in a shorter hearing time and the need for fewer witnesses. In addition, the Commissioner and Canadian Waste Services participated in an electronic filing pilot project with the Competition Tribunal, in which the parties presented all the documentary evidence at the Tribunal hearing in electronic format. The hearing took place in November 2000.

The Tribunal rendered its decision on March 28, 2001. The Tribunal allowed the Commissioner's application, ruling that the acquisition of the Ridge landfill by Canadian Waste Services would substantially lessen or prevent competition in both the Greater Toronto Area and in Chatham-Kent. The Tribunal will decide on the appropriate remedy at an upcoming hearing.

### ***Toronto-Dominion Bank and CT Financial Services***

In February 2000, Toronto-Dominion Bank acquired CT Financial Services, the parent company of Canada Trust. The merger was approved by the Competition Bureau and the Minister of Finance in January 2000 on the condition that the merging parties provide written undertakings to divest certain bank branches, as well as Canada Trust's MasterCard credit card portfolio, to acceptable purchasers within a specified time period. The Bureau required these divestitures to remedy competition issues in retail branch banking in the Kitchener, Port Hope and Brantford markets, as well as in the Canadian credit card network market. Following

the merger, the merging parties managed and operated these assets independently from their own operations prior to being divested.

Toronto-Dominion Bank has fulfilled its obligations as specified in the written undertakings. In particular, with prior approval from the Bureau, it sold 11 retail branches in the Kitchener area and one in Port Hope to the Bank of Montreal, and one retail branch in Paris, Ontario, to Laurentian Bank of Canada. In addition, Toronto-Dominion Bank sold the Canada Trust MasterCard issuing portfolio to Citibank Canada and the acquiring portfolio to First Data Acquisition Corp.

These transactions resulted in greater competition in the relevant markets.

### ***Lafarge Canada Inc. and the Warren Paving & Materials Group Limited***

On July 25, 2000, Lafarge Canada Inc. and Kilmer Van Nostrand Co. Limited (KVN) announced the acquisition of KVN's wholly owned subsidiary, the Warren Paving & Materials Group Limited, by Lafarge.

Lafarge is an indirect subsidiary of Lafarge S.A. of France, one of the world's leading producers of construction materials. Lafarge has significant aggregate, paving and asphalt operations throughout Canada. Warren produced aggregates and operated an asphalt business in Ontario, Alberta, Saskatchewan and British Columbia.

After a thorough review of the proposed merger, the Bureau concluded that it would likely substantially lessen or prevent competition in the supply of aggregates to the Edmonton area and in the Fraser Valley in British Columbia. Lafarge provided the Bureau with undertakings to divest a significant portion of Warren's aggregate operations in the Edmonton area and to terminate a marketing agreement between Warren and another competitor. Lafarge also agreed to divest Warren's aggregate business in the Fraser Valley.

These undertakings provided the Bureau with the right to monitor Lafarge's compliance and to apply to the Competition Tribunal for a consent order to formalize the agreement.

### **Superior Propane Inc. and ICG Propane Inc.**

In December 1998, the Bureau challenged the acquisition of ICG Propane Inc. by Superior Propane Inc. Hearings were held before the Competition Tribunal in late 1999 and early 2000, and a hold separate consent order was put into effect.

On August 30, 2000, the Tribunal found that the merger would prevent competition in Atlantic Canada and substantially lessen competition in many local markets across Canada, as well as for national customers. However, while acknowledging that the appropriate remedy would be the total divestiture of ICG Propane, a majority of Tribunal members concluded that the two companies had successfully raised the efficiency defence and, thus, should be allowed to merge. The Tribunal applied what economists refer to as the total surplus standard and concluded that the efficiency gains from the merger could only be compared with the merger's negative impact on the economy's use of resources. Under this standard, other effects of the merger, notably that consumers would pay higher prices greatly to the benefit of the merging parties, could not be considered.

In light of this decision, the merging parties filed a motion with the Tribunal to dissolve the hold separate consent order. The Tribunal agreed, saying that it lacked jurisdiction to uphold the order, and the Bureau failed in its attempt to stay that decision. Subsequently, the Bureau asked the Federal Court of Appeal to review the Tribunal's decision concerning both the efficiency defence and the dissolution of the hold separate consent order. The Bureau also asked that the order be reinstated during the appeal process, but this request was refused.

The appeal was heard in January 2001. At that time, the Federal Court reserved judgment on the efficiency defence and rejected the appeal of the order. \*

### **Dow Chemical Company and Union Carbide Corporation**

In a worldwide transaction announced on August 4, 1999, the Dow Chemical Company entered into an

agreement to buy Union Carbide Corporation, potentially merging two of the largest and most technologically advanced chemical companies in the world, with combined operations in 168 countries. The merger review involved multiple products and geographic markets, and required extensive cooperation among the Bureau, the U.S. Federal Trade Commission and the European Commission.

Following a thorough investigation, the Bureau identified significant anti-competitive effects in a number of product markets, including the following:

- ◆ the technology for the production of new consumer plastic products made from polyethylene
- ◆ ethyleneamines, which are used in a wide variety of applications, including chelating agents, fuel additives, surface-active agents, personal care products and pulp and paper products
- ◆ ethanolamines, whose applications include surface-active agents, personal care products, herbicides, gas purification, pharmaceuticals and fabric softeners.

In February 2001, as a result of these competition concerns, the parties agreed to divest important polyethylene technology assets and intellectual property rights to BP Amoco PLC, Dow's global ethyleneamines business to Huntsman Corporation, and Dow's global ethanolamines business and Dow's methyl-diethanolamine-based gas treating products business to Ineos plc.

### **Lafarge S.A. and Blue Circle Industries PLC**

In February 2000, Lafarge S.A. of France made an unsolicited offer through the London stock exchange to acquire all the shares of Blue Circle Industries PLC of the U.K. Under the terms of the London stock exchange, this bid had to be accepted by the majority of Blue Circle shareholders by May 2000.

Lafarge Canada Inc., the largest cement and related construction materials company in Canada, is controlled by Lafarge Corporation of Virginia, which in turn is controlled by Lafarge S.A. Blue Circle, a U.K.-based cement and related construction materials producer, has operations in Ontario. Both companies sell to Canadian

\*On April 5, 2001, the Federal Court of Appeal accepted the Bureau's appeal on the merits and ordered that the matter be remitted to the Tribunal. The court agreed with the Bureau that the Tribunal had interpreted the *Competition Act* too narrowly. It ruled that the effects against which the efficiency gains had to be contrasted were broad. These effects included the harm to consumers of paying higher prices as well as any other effects that ran counter to the objectives of competition.

customers, and export significant quantities of cement from their Ontario facilities to customers in the northern United States. Both are highly vertically integrated, supplying ready-mix concrete and concrete products, as well as aggregates, to various Ontario markets.

The Bureau worked closely with the U.S. Federal Trade Commission in its investigation of the proposed merger. It concluded that, if the merger went through, it would likely substantially lessen or prevent competition in Ontario for cement and related construction materials. In April 2000, the Bureau announced that Lafarge S.A. had agreed to divest all of Blue Circle's cement business and the vast majority of its related construction materials business in Canada to resolve the Bureau's competition concerns. However, the bid was ultimately opposed by Blue Circle's board of directors and senior management.

In April 2000, in the course of its bid, Lafarge S.A. acquired slightly less than 20 percent of Blue Circle's shares. Simultaneously, Lafarge entered into an option arrangement with a German financial institution, Dresdner Bank AG, to buy its 9.6 percent interest in Blue Circle. As a result of discussions with the Bureau about its competition concerns, Lafarge S.A. announced in June that Lafarge would immediately terminate its option agreement with Dresdner, reduce its shareholdings in Blue Circle to less than 10 percent within a specified time, and not sit on the Blue Circle board of directors. As well, Lafarge agreed to certain limitations to its voting rights: a trustee would vote the shares in excess of 10 percent. In early August, the share divestiture agreement was finalized; in the fall of 2000, a British financial institution, Law Debenture Trust Corporation, was approved to act as a trustee to vote the excess shares; and in early December 2000 the proxy voting agreement was finalized.

In January 2001, Lafarge S.A. announced it had reached an agreement to buy the 77.4 percent of Blue Circle shares that it did not already own. The Bureau and Lafarge S.A. then began concluding the terms of the asset divestitures required under the April 2000 agreement between the Bureau and Lafarge S.A. The remedy will be in the form of a consent order application scheduled to be filed before the Competition Tribunal early in the 2001–2002 fiscal year.\*

### ***Abitibi-Consolidated Inc. and Donohue Inc.***

In February 2000, Abitibi-Consolidated Inc. announced its intention to acquire Donohue Inc. for approximately \$7.1 billion, significantly increasing the size of the world's largest newsprint maker.

After a thorough review, the Bureau concluded that the transaction would likely substantially lessen or prevent competition in the supply of newsprint in eastern Canada. However, the Bureau determined that the merger would not raise serious competition concerns in other Canadian markets where Abitibi and Donohue operate.

In February 2001, Abitibi provided an undertaking to divest its Port-Alfred newsprint mill in Ville-de-la-Baie, Quebec, along with all the assets necessary for the continued and effective operation of the mill. The mill has an annual newsprint production capacity of approximately 400 000 tonnes.

This undertaking also gives the Bureau the right to apply to the Competition Tribunal for a consent order to formalize the agreement if the mill is not sold following Abitibi's sale process. The terms of the consent order would be subject to the Tribunal's approval.

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\*On June 15, 2001, the Commissioner applied to the Competition Tribunal for a consent order calling for unprecedented divestitures, as well as an interim hold separate order pending the divestitures. On June 19, the Competition Tribunal issued the interim order and set August 1 as the date to hear the consent order application. The Commissioner's applications and the interim order are available on the Competition Tribunal's Web site (<http://www.ct-tc.gc.ca>).





### **CanWest Global Communications Corp. and Hollinger Inc.**

In July 2000, CanWest Global Communications Corp. announced its intention to acquire the majority of Hollinger Inc.'s Canadian media interests, including its large metropolitan daily newspapers and community newspapers, a 50 percent share of *The National Post*, and Internet assets such as Canada.com. The Bureau reviewed the proposed transaction and concluded that, since there was no evidence that newspapers, the Internet and television compete directly for retail advertising normally found in newspapers, the transaction would not substantially lessen competition in those markets for advertisers.

However, the Bureau expressed competition concerns about the impact of the resulting connection between Canada's two principal business newspapers, *The Globe and Mail* and *The National Post*, through the business-oriented specialty channel, ROBTv, in which both CanWest (affiliated with *The National Post*) and *The Globe and Mail* had interests.

As a result of these concerns, CanWest agreed to the Bureau's request to place its entire investment in ROBTv in trust, pending resolution of the partnership situation.

As the undertakings took effect at the time of the closing of CanWest's acquisition of Hollinger's assets, CanWest also agreed to ensure that Hollinger did not share confidential information with ROBTv and *The Globe and Mail*. The undertakings further provided the Bureau with the right to monitor CanWest's compliance and to apply to the Competition Tribunal for a consent order to formalize the agreement.

### **Quebecor Inc. and Groupe Vidéotron Ltée**

In a public offer made on September 27, 2000, Quebecor Inc., through its subsidiary Quebecor Média Inc, proposed acquiring all the outstanding shares of Groupe Vidéotron Ltée. This would have given Quebecor control, in viewership terms, of the first and third largest French-language television networks in Quebec, TVA and TQS. As a result, Quebecor would control more than half of all the French-language television advertising revenues in the province.

The Commissioner concluded that this proposed merger would likely prevent or substantially lessen competition in the sale of French-language advertising air time in Quebec for the following reasons:

- ◆ it was unlikely that a new conventional television network would be licensed in the near future under the current regulatory framework
- ◆ French-language specialty channels could only contest a limited share of the television advertising market
- ◆ other media were very poor substitutes for television as far as advertisers are concerned.

On November 10, 2000, the Bureau filed an application for a consent order with the Competition Tribunal to require Quebecor to sell TQS. On January 15, 2001, the Tribunal issued the order, directing Quebecor to sell TQS by December 31, 2001 or via a trustee thereafter if the CRTC approved Quebecor's acquisition of TVA.

On March 13, 2001, the Bureau announced, following its review of other aspects of the transaction, that competition would remain vigorous in the other markets it had examined, including access to high-speed Internet services and the supply of advertising space in magazines, on Internet sites and in other French-language media in Quebec.

### **Trilogy Retail Enterprises L.P. and Chapters Inc.**

In November 2000, Trilogy Retail Enterprises L.P., in a hostile takeover attempt, announced an offer to acquire a majority share of Chapters Inc., with the purpose of merging Chapters with Indigo Books & Music Ltd. In February 2001, Trilogy was successful in this bid.

Chapters is the dominant book retailer in Canada, owning 76 book superstores, the World's Biggest Bookstore in Toronto, and 231 mall-based bookstores operating under the Coles, Smithbooks, Librarie Smith, Classic Books and The Book Company names. Chapters also owns a majority share of Chapters Online Inc., one of the two key Canadian-based book retailing Internet sites.

Indigo is the only other significant owner of book superstores in Canada, with 15 locations in southern Ontario, Alberta, British Columbia and Quebec. It also has the only other significant Canadian-based book retailing site, Indigo.ca.

The Bureau's review determined that the proposed transaction would be problematic for both consumers and publishers and could substantially lessen or prevent competition in both upstream and downstream markets. The Bureau was concerned that the high concentration in book retailing would increase with the merger, as would the ability of the merged entity to impose anti-competitive terms of trade on publishers.

As of March 31, 2001, Bureau negotiations to resolve the competition concerns were continuing.\*

## **Merger Benchmarking**

In 2000–2001, the Competition Bureau completed a benchmarking study of the merger review process in Canada. Through interviews with staff, stakeholders, other antitrust agencies and members of the international competition bar, the Bureau identified best practices in Canada and abroad to ensure that the Canadian merger review process remains efficient, effective, timely and transparent.

The Bureau has taken a number of important steps following the review, and more will follow. The Bureau set up the Merger Notification Unit to ensure consistency and timeliness in merger review and to conserve available resources for those transactions that require in-depth review. Timely reviews are important to allow businesses to proceed with competitive transactions that contribute effectively to the economy.

The *Canadian Merger Review Benchmarking Report* is available on the Bureau's Web site (<http://www.competition.ic.gc.ca>).

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\*In June 2001, the Competition Tribunal confirmed a consent order. The consent order, agreed to by Chapters and Indigo, includes offering for sale 13 large-format book superstores, 10 mall stores, certain of Indigo's on-line assets, and up to three store brands (Smithbooks, Classic Books and Prospero). In addition, Chapters, Indigo and publishers' associations have agreed to a code of conduct setting minimum terms of trade between the merged company and publishers for five years.

## Merger Examinations\*

	1996–1997	1997–1998	1998–1999	1999–2000	2000–2001
<b>Examinations Commenced**</b>	262	320	309	361	373
◆ two or more days of review					
◆ includes notifiable transactions, advance ruling certificates, advisory opinions and examinations commenced for other reasons					
◆ some examinations commenced may arise from notifications and advance ruling certificate requests in relation to the same transaction					
Notifiable Transactions	132	190	191	198	206
Advance Ruling Certificate Requests	181	219	174	209	255
<b>Examinations Concluded***</b>					
Posing No Issue Under the Act	299	406	346	392	381
With Pre-closing Restructuring	1	0	0	2	0
With Post-closing Restructuring and Undertakings	0	3	1	6	5
With Consent Orders	1	1	2	1	1
Through Contested Proceedings	0	0	2	0	0
Parties Abandoned Proposed Mergers in Whole or in Part as a Result of the Commissioner's Position	0	0	3	1	2
<b>Total Examinations Concluded</b> (includes advance ruling certificates and advisory opinions issued and matters that have been concluded or withdrawn before the Competition Tribunal)	253	340	302	338	389
Advance Ruling Certificates Issued (included in Total Examinations Concluded)	151	123	186	128	215
Advisory Opinions Issued (included in Total Examinations Concluded)	2	3	7	3	2
Examinations Ongoing at Year-end	57	37	44	67	54
<b>Total Examinations During the Year</b>	<b>310</b>	<b>377</b>	<b>346</b>	<b>405</b>	<b>443</b>
<b>Applications and Notices of Application Before the Tribunal and the Courts</b>					
Concluded or Withdrawn***	1	2	4	2	1
Ongoing	2	2	1	1	2****

Note: \* This table has been adjusted to exclude asset securitization and, therefore, does not compare with Merger Examinations tables in previous annual reports.

\*\* When a transaction has a notification as well as an advance ruling certificate, it is only counted once.

\*\*\* Concluded means an order or decision of the Competition Tribunal or the courts was issued.

\*\*\*\* *The Commissioner v. Superior Propane Inc. et al.* was concluded in the 1999–2000 fiscal year. In the 2000–2001 fiscal year, the Federal Court of Appeal referred the case back to the Tribunal.

## Breakdown of Mergers by Year, 1996–2001

BUSINESS LINE	1996–1997	1997–1998	1998–1999	1999–2000	2000–2001
Pre-merger Notification Filing*	67	90	109	92	73
Advance Ruling Certificate Request	224	285	226	273	255
Other Examinations	23	17	26	60	45
Total Mergers	314	392	361	425	373
Asset Securitizations	52	72	52	64	0
Total Minus Securitizations	262	320	309	361	373

\* Excludes notification when an advance ruling certificate was requested.

Note: total mergers is the total number of examinations commenced during the fiscal year.

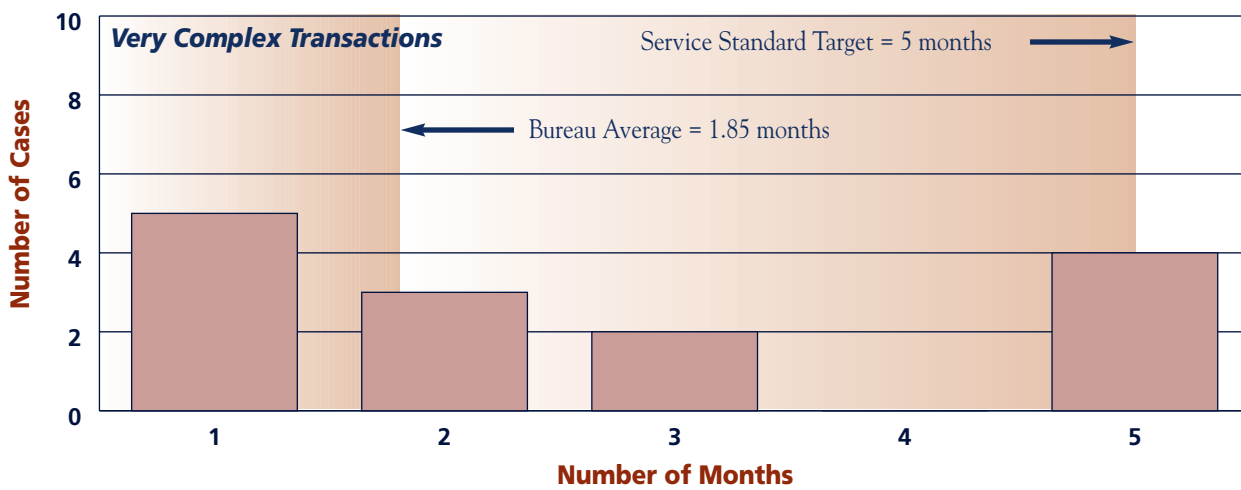
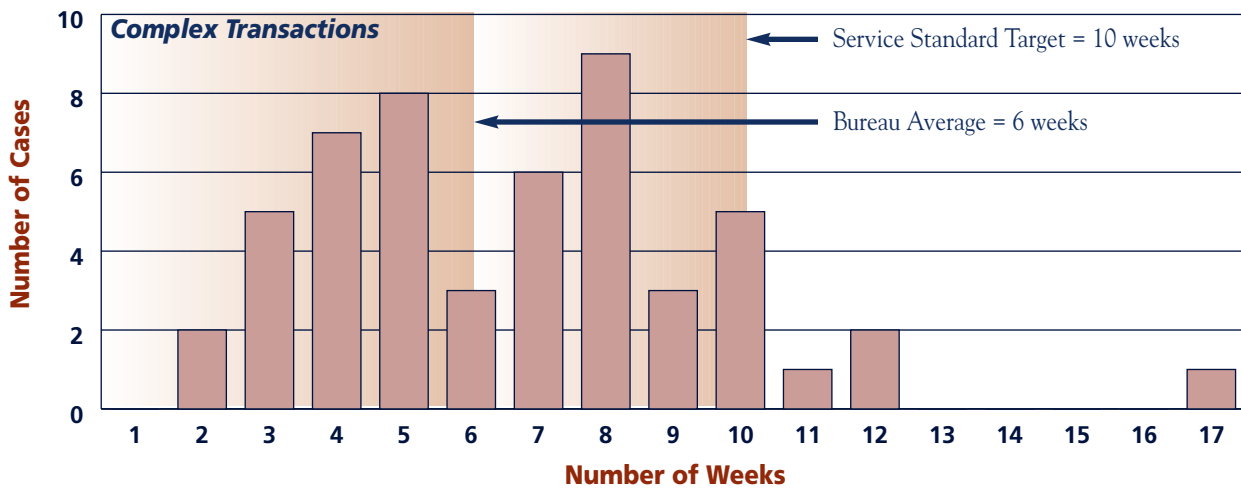
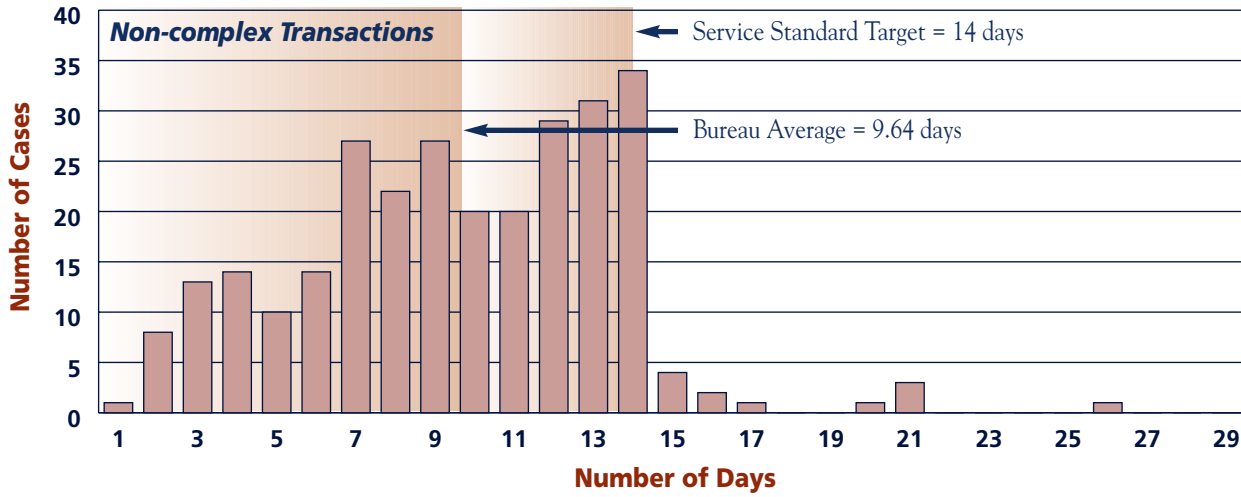
## Merger Review: Meeting Service Standards

NUMBER OF TRANSACTIONS				
COMPLEXITY	November 1997 to March 1998	April 1998 to March 1999	April 1999 to March 2000	April 2000 to March 2001
Not Complex	68	212	232	282
Complex	8	56	49	52
Very Complex	—	6	8	14
Total	76	274	289	348

SERVICE STANDARD									
COMPLEXITY		November 1997 to March 1998		April 1998 to March 1999		April 1999 to March 2000		April 2000 to March 2001	
	TARGET		MET		MET		MET		MET
Not Complex	14 days	57	83.8%	187	88.2%	218	94.0%	270	95.7%
Complex	10 weeks	8	100.0%	54	96.4%	43	87.6%	48	92.3%
Very Complex	5 months	—	—	6	100.0%	7	87.5%	14	100.0%
Total		65	85.5%	247	90.1%	268	92.7%	332	95.4%

Excludes securitizations and is based on actual end date.

**Meeting Our Service Standard Target, April 1, 2000 to March 31, 2001**



## PREVENTING ANTI-COMPETITIVE ACTIVITY

The Competition Bureau has a range of interdependent instruments at its disposal to deal with anti-competitive activity. Whenever possible, it works with companies to eliminate anti-competitive behaviour and encourage compliance with the law. However, when there is evidence of serious violations of the criminal provisions of the *Competition Act*, the Bureau refers cases to the Attorney General of Canada and recommends prosecution. This can result in heavy fines, prison terms or both for offenders. Over the past year, prosecutions have led to companies being fined approximately \$18.7 million. In civil matters, when solutions cannot be reached by consent orders or other means, the Bureau applies to the Competition Tribunal for a remedial order.

The following are examples of the Bureau's response to non-conformity, including cases involving international cartels and ones resolved through alternative case resolution. The Bureau discontinued some cases for various reasons (see Appendix I). For detailed information, including information notices, press releases and back-grounders on these cases and others, please visit the Bureau's Web site (<http://www.competition.ic.gc.ca>).

### Airline Industry

Following the acquisition of Canadian Airlines by Air Canada, the Competition Bureau took on additional responsibilities in order to protect competition in the domestic airline industry. Bill C-26, which passed on July 5, 2000, contained a number of amendments to the *Competition Act* dealing specifically with competition issues in the airline industry. The subsequent enactment of airline regulations under section 78 of the *Competition Act* (August 23, 2000) provided the Bureau with an additional tool to address concerns about the conduct of the dominant carrier. The past year has seen some new players enter the industry, expansion by existing players into new markets, as well as further consolidation. Throughout, the Bureau has been actively involved in responding to complaints and administering the new legislation.

### Temporary Orders

Section 104.1 of the Act allows the Commissioner to issue a temporary order prohibiting a person from

operating a domestic service (as defined by the *Canada Transportation Act*) when parties have met certain preconditions related to concerns about anti-competitive activity. The order is limited to an initial term of 20 days, and may be renewed for two additional periods of 30 days each. Parties subject to an order can challenge it or have it set aside by the Competition Tribunal.

### Consultation on Draft Guidelines on Abuse of Dominance in the Airline Industry

On February 8, 2001, the Bureau released enforcement guidelines on abuse of dominance in the airline industry, which outline the approach the Bureau intends to take when enforcing the new legislation and regulations pertaining to the airline industry. By issuing these guidelines, the Bureau is providing guidance to airline industry participants about the type of conduct the Bureau is likely to challenge, with the intention of facilitating a high degree of compliance. Public consultations ran until May 2001.

### Enforcement Cases and Complaints

Since January, 2000, the Competition Bureau has received approximately 50 complaints about the airline industry. Many, which were from consumers concerned about excessive air fares and deteriorating levels of service, did not raise any concern under the *Competition Act* and were referred to the appropriate authority. However, the Bureau also received and examined complaints from nine airlines that Air Canada abused its dominant market position through predatory or exclusionary behaviour. Three of the complaints did not cause concern under the *Competition Act* or Air Canada's December 21, 1999, undertakings to the Commissioner. In two other instances, Air Canada addressed the concerns through commercial action. Two other complaints are the subject of preliminary examinations by the Bureau.

The two remaining complaints resulted in formal inquiries under the Act. The Bureau launched the first in June 2000, following a complaint from WestJet that Air Canada responded to its entry into the Atlantic

Canada market by adding significant capacity and matching or undercutting WestJet's fares.

The second inquiry concerns CanJet's complaint that Air Canada abused its dominant market position in its pricing response to CanJet's entry in September 2000. On October 12, 2000, the Commissioner issued a temporary order against Air Canada, requiring it to withdraw certain discount fares on five routes in eastern Canada. On October 30, the Commissioner extended the order for an additional 30 days, but limited its scope to three routes.

Air Canada initiated two legal challenges in response to these inquiries. The first, a motion filed on October 12 in Quebec Superior Court, sought a declaratory judgment to the effect that section 104.1 of the *Competition Act*, dealing with the Commissioner's authority to issue temporary orders, was unconstitutional. The hearing on Air Canada's motion took place in May 2001 and a decision is pending. Air Canada filed another motion on October 19, 2000, in Quebec Superior Court seeking a suspension of the Commissioner's temporary order until resolution of the constitutional challenge. On October 24, the Court denied this request.

The second challenge, an application to the Competition Tribunal on November 2, sought to have the order set aside or varied. On November 24, the Tribunal upheld the Commissioner's order, extended it to December 31, and varied it by deleting reference to "similar fares" on the basis that this terminology was too vague. On December 4, Air Canada appealed this decision to the Federal Court of Appeal. The appeal will not be heard until the next fiscal year.\*

As a result of information obtained from the WestJet and CanJet inquiries, the Commissioner filed an application before the Competition Tribunal on March 5, 2001, seeking an order prohibiting Air Canada from operating or increasing capacity at fares that do not cover its avoidable cost of providing the service, and from engaging in a policy of matching fares offered by low-cost carriers under certain circumstances. The Tribunal hearing on the Bureau's application began on August 27, 2001.

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\*In July 2001, the Quebec Superior Court ruled in favour of the Commissioner's power to issue temporary orders under section 104.1 of the *Competition Act*.

## Other Cases

The following are summaries of some of the major criminal cases that were revoked or in which charges were laid or applications filed with the Tribunal in the past fiscal year.

### Misleading Advertising

- ◆ In August 2000, 3181731 Canada Inc., doing business as Direct Health Organization, Columbus Health Centre, New Opportunities Publications and Canadian Shipment Centre, pleaded guilty to misleading advertising and was fined \$500 000. The company had urged consumers through mail samples to purchase various weight-loss products and to get involved in a get-rich-quick program. Subsequent investigation determined that these representations had not been based on adequate or proper tests.
- ◆ In November 2000, three individuals and two companies were charged under the misleading advertising provisions of the *Competition Act* for allegedly invoicing businesses for unsolicited Internet directory listing services. Documents mailed to more than 500 000 businesses and charitable organizations under the names Yellow Business Pages and Yellow Business Directory asked recipients to mail in money for an Internet directory listing. The charges allege that the mailings appeared to be invoices or bills, when they were in fact solicitations, and that recipients were mistakenly led to believe they were existing customers of the Internet directory service. The trial is scheduled for 2001–2002. On February 5, 2001, the Bureau issued a warning to businesses to be careful before paying invoices for products and services.

### Deceptive Telemarketing

- ◆ In September 2000, 35 criminal charges under the telemarketing provisions of the *Competition Act* were laid against F.D.G. Fortune One Group and E.N.G. First National Galleries, their principal director and five telemarketers. The charges allege that the companies' telemarketers, who persuaded consumers to buy promotional products on the understanding they would then receive valuable

prizes, misled those consumers about the value of the prizes and the conditions and restrictions required to collect them. The trial is scheduled for 2001–2002.

- ◆ In December 2000, the director of S.S. Viking Industries, S.C. Canadian Clearing Centre Inc. and Exclusive Premium Distribution Centre S.C. Corporation pleaded guilty to three criminal charges of misleading advertising and was sentenced to pay \$300 000, the highest fine ever imposed against an individual for deceptive telemarketing under the *Competition Act*. The charges related to company promises to consumers that they would receive valuable awards if they bought promotional products the company was selling at what were subsequently determined to be inflated prices.
- ◆ In December 2000, C.S.R.H. Heritage Group Inc. was fined \$700 000, and its manager sentenced to a six-month conditional jail term, for promising consumers valuable awards if they bought promotional products at what were determined to be inflated prices.
- ◆ In December 2000, a charge of misleading advertising was laid against Dial America Teleservice Corporation and its director related to telemarketing activities through which the company sold U.S. consumers credit card protection. The Bureau alleges, first, that consumers were mistakenly led to believe the company was calling on behalf of, or was affiliated with, their credit card issuer, and, second, that the product did not offer any additional credit card protection.

### **Deceptive Marketing Practices**

- ◆ In September 2000, in a civil case, the Bureau registered a consent order with the Competition Tribunal against Gestion Professionnelle (électroprotections) Inc. (GPI) to cease the marketing of the ML-10, an electronic anti-corrosion device. Under the terms of the order, obtained under the deceptive marketing provisions of the *Competition Act*, GPI agreed to stop selling the device and to refrain from marketing it, or any other similar device, until appropriate tests took place.
- ◆ In March 2001, in a civil case, the Bureau filed an application with the Competition Tribunal for an order against P.V.I. International Inc. and two corporate officers with respect to the promotion of a fuel-saving device, the Platinum Vapor Injector.

The application alleges that certain claims about the device's ability to save fuel and reduce harmful emissions were false or misleading and not based on adequate tests. It also alleges that false or misleading representations were made in the promotion of the device that gave the impression it had been approved by the Canadian and U.S. governments.

### **Consumer Packaging and Labelling Act**

- ◆ On December 13, 2000, Gaston Charbonneau Ltée was convicted on three charges under the *Consumer Packaging and Labelling Act*. An inspection of several lots of compost revealed that the product did not contain the net quantity declared on the label. The company was fined \$3000 and the product in question was seized and removed from sale.

### **Price Maintenance**

- ◆ In September 2000, the Competition Bureau laid charges against Les Pétroles Irving/Irving Oil Inc., a major supplier of petroleum products, and two gasoline retailers for having contravened the price maintenance provisions of the *Competition Act*. In October 2000 the case went before the Quebec Court, which decided that there was insufficient evidence to go to trial, since the element of threat as defined by the Act was not demonstrated by the facts. Following this judgment, a *writ of certiorari* was filed in Quebec Superior Court.\*

### **Domestic Conspiracy**

The Competition Bureau regards conspiracies and cartels with particular seriousness, and has been successful in pursuing individuals and corporations involved in these activities with the help of leads provided by other countries, its own information and its immunity policy.

- ◆ In April 2000, the notaries association of Rivière-du-Loup, Quebec, pleaded guilty to conspiracy to fix the prices of real estate services notaries offered in the regions of Rivière-du-Loup and Trois-Pistoles, Quebec, and was fined \$25 000. In addition, a prohibition order was imposed on the association and on 19 notaries in the two regions to prevent and prohibit the commission of similar new offences.

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\*The parties were heard on April 17, 2001, and the decision of the court is pending.



- ◆ In October 2000, five snow removal companies and a consulting firm in the greater Montreal area — La Cie de pavage d'asphalte Beaver, Excavation Loiselle et frères Inc, Giguère et Geoffroy Inc, Nepcon Inc, Roxboro Excavation Inc. and 9014-6135 Québec Inc. — were fined \$1 million for conspiring to share the market and unduly lessen competition in snow clearing, removal and transportation. The offence involved an agreement to share snow removal contracts awarded by the Ministère des Transports du Québec for the 1997–1998 season.

### **Bid Rigging**

In April 2000, Shakemaster Manufacturing Inc., a Calgary-based manufacturer and retailer of pine shakes, pleaded guilty to rigging bids to purchase commercial timber permits at an auction held by the Alberta Land and Forest Service in November 1996. The company was fined \$15 000 and prohibited from agreeing to withhold bids and refrain from competing on purchases of timber from the Alberta Land and Forest Service, and from agreeing on bids without first advising the bidding authority.

Evidence showed that, prior to the auction in question, a manufacturer and retailer of pine shakes met and formed an agreement with other pre-qualified participants in an auction category closed to local manufacturers. Some participants agreed to bid only on designated permits and not to compete with one another.

In February 1998, four other Alberta wood products manufacturers pleaded guilty to charges of bid rigging for their participation in the same scheme. The testimony of two individuals who had previously pleaded guilty, paid fines and performed community service played an instrumental role in the conviction of Shakemaster.

### **Glyphosate-based Herbicides**

The Bureau received a complaint alleging that Monsanto Canada Inc., a major producer of glyphosate-based herbicides, was engaging in tied selling and exclusive dealing. The complaint alleged that Monsanto was tying the sale of its herbicide-tolerant seeds to the sale of its herbicide. The complaint also alleged that Monsanto had entered into exclusive contracts with major distributors.

In the spring of 1999, the Bureau advised Monsanto of its concerns with these practices. As a result, in the fall of 1999 Monsanto introduced a new marketing program that removed restrictions on the ability of farmers to use any brand of glyphosate-based herbicide with the herbicide-tolerant seeds. In addition, Monsanto's revised volume-based distributor and dealer discounts will increase the opportunity for competitive suppliers of glyphosate to gain access to channels of distribution serving the agricultural industry. As these changes resolved the Bureau's concerns, it discontinued the inquiry.

### **International Cartels: Conspiracy**

With globalization, the Bureau has increasingly directed its enforcement activity at international cartels that are affecting the Canadian economy. Canada has been among the leading countries aggressively pursuing these cases.

In 2000–2001, the following international cartels were fined more than \$16 million, including the largest fine ever imposed under section 46 of the *Competition Act*:

- ◆ In July 2000, SGL Carbon Aktiengesellschaft pleaded guilty to participating in an international conspiracy to fix prices and allocate markets for graphite electrodes. Graphite electrodes are used primarily in the production of steel in electric arc furnaces, the steelmaking technology used by all mini-mills, and for steel refining in ladle furnaces. SGL was fined \$12.5 million, the largest single fine ever levied under section 46 of the *Competition Act*. SGL's conviction followed the March 1999 conviction of UCAR Inc. (\$11 million fine) for its participation in the same conspiracy. SGL and the other members of the cartel agreed to restrict their production capacity, to fix the prices they would charge, and to allocate the volumes they would sell of graphite electrodes in world markets. As a result of the international cartel, a regime of uniform pricing existed between the two main suppliers of electrodes to the Canadian market, UCAR and SGL, and alternative supply sources were eliminated. It is estimated that over the course of this conspiracy, from May 1992 until June 1997, graphite electrode prices in Canada increased by more than 90 percent.

- ◆ In February 2001, Tokai Carbon Co. pleaded guilty to helping its competitors implement the graphite electrode conspiracy and was fined \$250 000. It was understood by cartel members that Tokai would not supply product to the Canadian market. This conviction demonstrates that the Bureau will hold even firms with little or no commerce in Canada accountable for illegal conduct affecting Canada.
- ◆ In January 2001, Freyssinet Limitée pleaded guilty to rigging a 1991 tender for a contract to supply and install a system to reinforce the concrete base of the Hibernia oil platform, and was fined \$800 000. Another company was granted immunity in return for being the first to approach the Bureau in this case.
- ◆ In March 2001, Carbone of America Industries Corp. pleaded guilty to fixing the prices of isostatic graphite in semi-machined and non-machined or block form, and was fined \$300 000. Carbone was a member of an international cartel that agreed to fix prices and divide world markets for the product, which is primarily used for electrical discharge machining and in the continuous casting and semi-conductor industries.
- ◆ In September 2000, Daicel Chemical Industries Ltd. pleaded guilty to an international price fixing and market sharing conspiracy involving sorbates that affected prices for 17 years. The company was fined \$2.46 million. Sorbates are chemical preservatives used primarily as mould inhibitors in many high-moisture and high-sugar foods, such as cheese and other dairy products, bakery products, fruit, berry and vegetable products, flavours, spices, syrups and pet foods. Takaysu Miyasaka, a citizen of Japan and former Daicel executive officer and general manager, pleaded guilty and was fined \$250 000 for his role in the conspiracy, which operated from 1979 until 1996.

### Alternative Case Resolution

Among the instruments the Bureau has developed to address anti-competitive behaviour, alternative case resolution refers to efforts to achieve compliance with the law without contested enforcement measures. The following are examples of cases successfully resolved in this way over the past year.

### Price Maintenance

- ◆ In March 2000, the Bureau received a complaint that a giftware supplier had allegedly discontinued supplying one of its customers because of the customer's low-pricing policy. Discontinuing supply is illegal under the price maintenance section of the *Competition Act*. Following a meeting with Bureau officials, the supplier informed the Bureau that it would take all steps necessary to ensure compliance with the Act.
- ◆ During the spring of 2000, the Competition Bureau examined a proposed e-commerce program for dealer automobile sales that appeared to raise price maintenance issues under the *Competition Act*. A key concern was that a "dealer price" was quoted to consumers without an accompanying up-front price disclaimer that "dealers may sell for less." As a result of Bureau interventions, the Web site was revised to include this disclaimer and to notify consumers that the quoted pricing was negotiable.
- ◆ In July 2000, the Bureau examined an allegation that the merchant agreement of a large credit card company contained a binding clause prohibiting businesses from offering discounts to customers who pay by some means other than credit card. On confirming this was the case, Bureau staff met with senior officials of the credit card company to point out how this clause could raise concerns under the price maintenance provisions of the *Competition Act*. As a result of these discussions, the credit card company removed the clause from the merchant agreement and immediately informed its merchants of the change.
- ◆ In October 2000, the Bureau received a complaint that a Quebec coffee machine distributor had discontinued supplying one of its customers because of that customer's low-pricing policy. As any such behaviour is illegal under section 61 of the *Competition Act*, Bureau officials met with the distributor, who subsequently offered to supply his machines to the complainant.
- ◆ In November 2000, the Bureau investigated a complaint that a supplier of quilting fabrics had indicated that the complainant would have to raise prices in order to continue receiving supplies. In December, the Bureau informed the supplier that this alleged conduct is contrary to the price maintenance

provisions of the *Competition Act* and provided documentation.

- ◆ An insurance broker refused to provide project insurance to engineers and architects unless they charged in accordance with a suggested fee schedule issued by the association for engineers and architects. This matter was reviewed with the insurance broker in December 2000 and the broker agreed to take the offending condition out of its policy.

### **Price Discrimination**

- ◆ In September 2000, a local retailer and installer of satellite dishes complained that smaller private installers were able to buy identical products at lower prices from his supplier, even though their volume of purchases was smaller. The Bureau contacted the supplier, who acknowledged that the smaller installers were previous employees who were receiving a special employee discount. The supplier agreed to limit the quantities sold at special prices to previous employees.
- ◆ During the winter of 2001, the Bureau received information that there were significant variations in the promotional discounts on photocopier equipment that a photocopier manufacturer was offering to competing purchasers. As part of its examination, the Bureau conducted information and compliance interviews with the manufacturer to discuss the price discrimination concerns this activity raised. Consequently, the manufacturer agreed to ensure that its corporate promotional discount policy complied with the Act.
- ◆ In March 2001, the Bureau investigated a situation in which a small retailer of wood tools was not receiving the same discount as his competitors from a particular supplier, even though he was buying the same quantity of tools. After the Bureau informed the retailer of the price discrimination guidelines in the *Competition Act*, he contacted the owner of the wood tool company, who agreed to provide him with the same discounts.

### **Abuse of Dominance**

- ◆ In July 1997, the Bureau became concerned about the marketing and selling practices of H.J. Heinz Company of Canada Ltd., a manufacturer of jarred baby food and infant cereal. The Bureau's concerns

focussed specifically on Heinz's anti-competitive practices of making large, lump-sum payments up front to retailers not to stock jarred baby food and infant cereal produced by its competitors, of entering into multiyear contracts for exclusive supply, and of providing discounts conditional upon exclusive supply. In light of the Bureau's concerns, Heinz provided the Bureau with an undertaking under which it agreed to stop these marketing and selling practices. Consequently, the Bureau discontinued its inquiry in August 2000.

### **Market Restrictions**

- ◆ The Competition Bureau examined the competitive impact of a covenant that was part of the sale of the Come By Chance Refinery to its current owners, North Atlantic Refining. The covenant in its original form was part of the sale by Petro Canada of the refinery in the late 1980s and was further modified when North Atlantic Refining purchased the refinery. The Bureau was concerned that the covenant, which specified that sale products from the refinery could not be sold anywhere in Canada except Newfoundland without compensation paid to Petro-Canada, was a market restriction that was or was likely lessening competition substantially. The Bureau presented its concerns to the parties to the covenant, who in turn negotiated a modified covenant that replaced the required compensation clause with a profit-sharing arrangement. This arrangement allows North Atlantic Refining to market the Come By Chance products throughout Canada.

### **Conspiracy**

- In January 2001, an association of insurance adjusters attempted to set the rates at which tow operators would be reimbursed for their services. After the Bureau reviewed the conspiracy provisions of the Act with the relevant parties, the local police department decided to request submissions from individual tow operators and insurance adjusters on what they felt would be a fair schedule of rates. The police department then published a schedule of suggested rates that it felt would be appropriate. Any tow operator willing to provide the service at or below these rates was placed on a rotation schedule.

### **Misleading Advertising and Deceptive Marketing Practices**

- ◆ Following an application filed by six Canadian residents (which is the requirement for this type of inquiry), the Bureau launched an inquiry into the marketing practices of a company that was promoting a special type of spout for the collection of maple sap. The company claimed the spout was a newly patented product. However, the Bureau's examination of the matter revealed that the product was not in fact patented, but that the Canadian Intellectual Property Office was reviewing a patent application. Once contacted by the Bureau, the company signed a formal undertaking to stop making the claim, and to send letters to those persons targeted by the advertisement.
- ◆ A distributor and importer of agricultural irrigation systems promoted its product as having the best warranty coverage in the industry, as well as being comparatively superior in performance to its competitors. The representations were found to be inaccurate. To respond to the Commissioner's concerns about the misleading representation and deceptive marketing practices provisions of the *Competition Act*, the target company voluntarily discontinued the false advertisements, agreed to refrain from similar practices in the future, and advised staff members and distributors to cease using advertising materials the claims in which could not be verified. The U.S. manufacturer also advised all North American distributors to discontinue the use of the representations.
- ◆ The Bureau received a complaint that a beverage company was promoting its product as being the top-selling product in its class, based on statistics from the previous year, contrary to the false or misleading representation provisions of the *Competition Act*. The company submitted a proposed plan of action that included a shipment of new product packaging and the re-labelling of products containing the disputed claim. The steps the company undertook addressed the Bureau's concerns.

### **Variation of Consent Order**

On September 8, 2000, the Competition Tribunal issued a variation of the consent order between the Competition Bureau and the Bank of Montreal et al. that it had originally approved on June 25, 1996.

The amendment means that the Interac Association is no longer obliged to approach the Competition Tribunal on an *ad hoc* basis for non-compliance issues related to association rules. Prior to this change, with the exception of monetary penalties for failure to meet Interac's performance policy, the Interac board could only expel members that did not comply with association rules. The amendment allows the Interac board to levy monetary penalties for a range of offences, provided the discipline meets rational business objectives and does not discriminate. This policy applies to all members, is without competitive significance, and is consistent with policies and practices of other major North American networks.

The variation of the consent order in no way affects the possible application of the *Competition Act* to the activities of the Interac Association or its members. The Competition Bureau consented to this variation and expects that the amendment will permit the Interac board to manage its business affairs in a flexible and measured manner.



## MAINTAINING A MODERN APPROACH TO COMPETITION LAW

The Bureau regularly reviews the *Competition Act* and the Bureau's policies and enforcement guidelines to ensure they remain current with developing jurisprudence and economic thought. In this way, consumers and businesses can be assured of receiving the full benefit of a competitive marketplace. A modern, up-to-date legislative framework also enhances Canada's ability to compete internationally and to attract foreign investment.

In addition, three standards-based statutes, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*, ensure the accuracy and adequacy of information companies provide to consumers.

The Competition Bureau believes strongly in the value of consultation on proposed changes to both the legislation and the Bureau's approach to enforcing it. Consequently, the Bureau actively seeks the opinion of its stakeholders on a wide variety of issues.

### Immunity Information Bulletin

On September 21, 2000, the Bureau released an information bulletin on the immunity program under the *Competition Act*. In the context of the Act, the Attorney General provides immunity from prosecution for criminal offences at the request of the Commissioner in exchange for cooperation or assistance. The bulletin outlines the policy and procedures individuals and companies must follow to be eligible for this immunity, and was designed to provide stakeholders and the public with a clearer and more transparent process at a time when requests for immunity are becoming more complicated.

The Bureau released a draft of the information bulletin for comment on February 17, 2000. In finalizing the bulletin in the summer of 2000, the Bureau took comments and suggestions from interested stakeholders into consideration.

The bulletin reflects current practices employed jointly by the Bureau and the Attorney General. It provides an explanation of the distinct roles of the Commissioner

and the Attorney General, and the conditions under which the Commissioner considers recommending immunity to the Attorney General.

### Public Consultations

On April 17, 2000, the Commissioner, at the request of the Minister of Industry, asked the Public Policy Forum to hold public consultations on proposed initiatives to amend the *Competition Act* and *Competition Tribunal Act*. This process reflects the Competition Bureau's commitment to ongoing legislative renewal to ensure that Canada's competition policy remains effective in a rapidly changing global marketplace.

The purpose of the consultations was to determine the level of support for the underlying principles of proposed amendments to the Acts in four private members' bills. Consultations were based on a discussion paper the Competition Bureau prepared. The proposals set out in the private members' bills do the following:

- ◆ clarify what constitutes anti-competitive behaviour to illustrate abuse of dominance, especially in grocery and other retail markets
- ◆ prohibit deceptive contests sent through the mail
- ◆ provide for international cooperation among competition authorities when enforcing civil competition law

- ◆ improve the dispute resolution process by allowing individuals to take action before the Competition Tribunal on their own behalf for cases involving refusal to deal, exclusive dealing, tied selling and market restriction
- ◆ broaden the powers of the Competition Tribunal to manage cases more effectively (cost awards, summary dispositions and references)
- ◆ introduce new temporary orders
- ◆ modernize the conspiracy provisions to avoid discouraging strategic alliances.

To make the consultation process as open and meaningful as possible, the Competition Bureau employed a novel way of soliciting the public's views: the Public Policy Forum developed an interactive Web site linked to the Competition Bureau home page. A broad range of stakeholders, including small, medium and large businesses, consumer groups, parliamentarians, academics and legal experts, were invited to submit their views electronically or via traditional methods.

Stakeholders were also invited to 12 roundtable sessions held in Halifax, Montréal, Ottawa, Toronto, Winnipeg, Calgary and Vancouver in August and September 2000.

Stakeholders' submissions, along with a discussion paper, reports on the roundtable discussions, and the final report are available on the Public Policy Forum Web site (<http://www.ppforum.com>). Stakeholders welcomed this opportunity to participate and to discuss competition policy.

The Public Policy Forum submitted its final report to the Commissioner of Competition in December 2000. The Forum identified consensus for all proposals, with the exception of two: clarifying the list of anti-competitive behaviours to illustrate abuse of dominance, and modernizing the conspiracy provision. With respect to conspiracy, the Forum concluded that the proposal was attractive to the majority of participants, but more discussion and analysis were needed. Concerning the proposal for private access to the Competition Tribunal, the Forum concluded that a consensus might be possible if some changes were made to the proposal and strategic litigation could be prevented.

The Minister of Industry examined the Public Policy Forum's final report to determine the feasibility of

amending the *Competition Act*. Bill C-23, an Act to Amend the *Competition Act* and the *Competition Tribunal Act*, was introduced in the House of Commons on April 4, 2001, and was referred to the House of Commons Standing Committee on Industry, Science & Technology on May 3, 2001, prior to second reading.

### **House of Commons Standing Committee on Industry: Review of the *Competition Act***

In 1999–2000, the House of Commons Standing Committee on Industry, Science & Technology began hearings to review the anti-competitive pricing provisions of the *Competition Act*. The hearings continued during 2000–2001, and on June 14, 2000, the committee issued an interim report. The report is based in part on a study of the pricing provisions of the *Competition Act* prepared by J. Anthony VanDuzer, an associate professor of common law at the University of Ottawa, and his colleague, Gilles Paquette.

In addition, when finalizing its review of the *Competition Act* in May 2000, the committee took into consideration the principles underlying the four private members' bills that were the subject of the Public Policy Forum consultations.

The committee's preliminary findings are that the government, after consulting with the public, should consider whether to do the following:

- ◆ modify the abuse of dominant position provision (section 79) to deal with predatory pricing and price maintenance
- ◆ introduce guidelines on abuse of dominant position and conspiracies
- ◆ make the price discrimination provisions reviewable
- ◆ permit private individuals to make applications to the Competition Tribunal
- ◆ introduce an interim cease and desist order
- ◆ create a two-track approach for agreements relating to conspiracies (section 45)
- ◆ re-evaluate the minimum thresholds for reviewing a merger.

A full copy of the report is available on the Internet at <http://www.parl.gc.ca/InfoComDoc/36/2/INDU/Studies/Reports/indu01-e.html>.

## Amendments to the *Competition Act*

Following the acquisition of Canadian Airlines by Air Canada, the government adopted new legislation governing the airline industry. Bill C-26, an *Act to Amend the Canada Transportation Act, the Competition Act, the Competition Tribunal Act and the Air Canada Public Participation Act and to Amend Another Act in Consequence*, came into force on July 5, 2000. This Act, along with the subsequent enactment of airline regulations under section 78 of the *Competition Act*, on August 23, 2000, provided the Bureau with new legislative tools to address concerns related to the conduct of a dominant carrier in this industry. Further information about this subject can be found in chapter 5 of this report (see page 28).

## Private Members' Bills

The growing number of private members' bills dealing with competition introduced in the House of Commons is evidence of the continued interest in this area, and reflects the increasing importance of maintaining a modern competition policy so that Canada can compete and prosper in a rapidly changing global economy. The Competition Bureau welcomes the challenge to improve and advance competition law policy in Canada. Listed below are Bills introduced during 2000–2001 — the second session of the 36th Parliament and the first session of the 37th Parliament. These Bills proposed amendments to, or would affect the application of, the *Competition Act* and *Competition Tribunal Act*.

### 2nd Session, 36th Parliament

Bill	Subject
Bill C-471	Proposes to amend the <i>Competition Act</i> to provide for international mutual assistance. Proposes to amend the <i>Competition Tribunal Act</i> to provide a mechanism for references before the Competition Tribunal.
Bill C-472	Proposes to amend the <i>Competition Act</i> to modernize the conspiracy provisions, to give individuals the right to make private applications to the Competition Tribunal for refusal to deal, exclusive dealing, tied selling and market restriction, and to introduce cease and desist powers to allow the Commissioner of Competition to deal with abuse of dominance concerns. Proposes to amend the <i>Competition Tribunal Act</i> to broaden the powers of the Competition Tribunal to include cost awards and summary dispositions.
Bill C-509	Proposes to amend the <i>Competition Act</i> to clarify, in the case of a merger, when gains in efficiency are expected or when the merger would create or strengthen a dominant market position.

### 1st Session, 37th Parliament

Bill	Subject
Bill C-207	Proposes an energy price commission to regulate the wholesale and retail price of motor fuels, heating oil and electric power.
Bill C-226	Proposes to amend the merger approval process under the <i>Bank Act</i> allowing the Minister of Finance to approve a merger in specific circumstances.
Bill C-248	Proposes to amend the <i>Competition Act</i> to clarify, in the case of a merger, when gains in efficiency are expected or when the merger would create or strengthen a dominant market position.
Bill C-276	Proposes to amend the <i>Competition Act</i> to add other items to the current list of examples of anti-competitive conduct contained in section 78 of the abuse of dominant position provisions.
Bill C-283	Proposes to establish an energy price commission to regulate the wholesale and retail price of energy.

# APPENDIX I: DISCONTINUED CASES

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During the year, the Bureau discontinued a number of the formal inquiries it had initiated into allegations of anti-competitive activity. These inquiries dealt with a range of civil and criminal matters, including the following.

## **Dairy Supplies**

On May 18, 1999, the Competition Bureau initiated an inquiry into the business activities of a dairy supply company. Allegations included refusal to deal, abuse of a dominant position and price discrimination in the supply of replacement parts for dispensing equipment for refrigerated liquid products.

During the investigation, the Bureau determined the following:

- ◆ that the complainant was able to get supplies of parts from another source
- ◆ that the period of supply from the company was short
- ◆ that the value of the parts supplied was very small
- ◆ that the refusal to deal seemed to stem from a misunderstanding of the market segment in which the complainant was going to do business
- ◆ that there was vigorous competition in the servicing of this equipment.

Consequently, the Bureau concluded that there was no basis to continue an inquiry under the civil provisions of the Act.

With respect to allegations of price discrimination, the Bureau determined that, as no sales were taking place between the company and the complainant, no price discrimination had occurred. The Bureau discontinued the inquiry.

## **Consumer Credit Information**

On September 22, 2000, the Bureau launched an inquiry into a refusal to supply consumer credit information.

The complainant company, which was involved in the collection and sale of consumer credit information, was competing against two other companies. It received consumer credit information from all the major credit grantor organizations in Canada, either directly or

through an intermediary. The company named in the allegation was one of its suppliers until 1992, when it ceased this arrangement due to technical requirements. The complainant stated that it was unable to convince the company to resume supply, and consequently was substantially affected and unable to carry out its expansion plans across Canada.

The inquiry found that the complainant was not substantially affected by the refusal to supply credit information. The Bureau discontinued the inquiry.

## **Sale of Paint in the Retail Sector**

On December 23, 1999, the Competition Bureau, following receipt of an application under section 9 of the Act, initiated an inquiry into alleged refusal to deal, abuse of a dominant position and exclusive dealing in the sale of paint to the retail sector in Fredericton.

Following a thorough investigation, the Bureau determined that because the supplier had closed some manufacturing plants it was not able to supply all of its customers for a period of time and had to restrict supply until it could again meet market demand. Therefore, although a refusal had occurred, there were no grounds for the Competition Tribunal to make an order under section 75 of the Act since the product was not in ample supply.

With regard to the complaints of exclusive dealing and abuse of dominance, the inquiry found that competition in the market was not lessened substantially. Consequently, the Bureau discontinued the inquiry.

## **Sale of Mobile Railcar Movers**

The Bureau initiated an inquiry on January 21, 2000, into alleged refusal to deal and abuse of dominant position in the sale of mobile railcar movers and the respective replacement parts.

With regard to allegations of refusal to supply, the Bureau found that supply had been resumed through one of the authorized distributors in Canada. However, the complainant further claimed that there had been a significant delay in the resumption of supply. The Bureau



monitored the matter for six months and received no information about further refusal to supply. As well, the Bureau obtained no evidence to substantiate the complaint that other independent parts suppliers were approached about having no further dealings with the complainant.

As to the allegation of anti-competitive action through the use of litigation or the threat of litigation to damage the company, the Bureau found that the criteria under which this would be deemed an anti-competitive act had not been met.

In view of the above, the Bureau discontinued the inquiry.

### **Issuance of Taxi Licences**

In June 1998, the Bureau began an inquiry into an alleged conspiracy to restrict the number of taxi licences issued by the City of Toronto. It was further alleged that the conspiracy was an attempt to maximize the value of taxi plates and to promote, maintain and encourage the leasing and sub-leasing of taxi plates, contrary to city by-laws and regulations.

During its investigation, the Bureau found that the City was authorized to control the number of taxi licences it issued and that there was no evidence to suggest that it had been prevented from effectively exercising its regulatory powers. For these reasons, the Bureau closed the inquiry.

### **Supply of Electricity in Alberta**

In December 1999, the Bureau began an investigation of behaviour that appeared to be criminal rigging of certain bids made by two importers of electricity into Alberta. Following a thorough investigation, the Bureau concluded that the companies were employing independent business strategies and were not colluding on bids. Therefore the Bureau closed the inquiry.

### **High-speed Internet Service**

The Bureau discontinued an examination into a complaint regarding high-speed Internet service. It had received an application for inquiry from six Canadian residents (as is required for this type of inquiry), who alleged that a cable-based Internet service provider made misleading representations about a telephone-based competitor in the high-speed Internet market.

The Bureau initiated a formal inquiry under section 74.01(1) of the *Competition Act*, which prohibits a person or company from making false or misleading representations to the public for the purpose of promoting the supply or use of a product.

The Bureau determined that there was insufficient evidence to suggest a contravention of the *Competition Act*, and, therefore, closed the examination. The Commissioner's examination revealed that the representations at issue appeared in only one newspaper for a single day. Nothing indicated that the claims affected either consumers' perceptions of the benefits of the two types of high-speed Internet service or consumers' choice of Internet service provider.

## APPENDIX II: PUBLISHED ARTICLES, 2000–2001

1. Von Finckenstein, Konrad, “Speaking Notes,” *Annual Fall Conference on Competition Law 1999*, Canadian Bar Association, Glenn F. Leslie (ed.), 2000, pp. 97–111.
2. Von Finckenstein, Konrad, “The Role of Competition Law and Policy Within the General Government Policy Framework: Bank and Airline Mergers as Illustrative Examples,” Eric J. Hanson Memorial Lecture Series, Department of Economics, University of Alberta, Fall 2000.
3. Gunderson, Alan, Joseph Monteiro and Dr. Gerald C. Robertson, “Competition Bureau Advocacy of Competition in the Canadian Telecom Sector,” *Global Competition Review*, June/July 1999, pp. 20–26.
4. Lafond, André, “Evolution of the Regulatory Process: The Impact of Deregulation,” *Adapting to New Realities*, Canadian Telecommunications Policy Conference, 1998, pp. 103–108.
5. Monteiro, Joseph and Gerald Robertson, “The Use of Economic Analyses in Competition Cases — Analysis of an Intervention and Predatory Pricing in Transportation Cases — Part I,” *Canadian Transportation Research Forum: Proceedings of the 2000 Annual Conference*, Charlottetown, P.E.I., June 4–7, 2000, pp. 502–525.
6. Monteiro, Joseph, “Economic Issues in Marine Pilotage — Will the Recent Reforms Succeed?” *Canadian Transportation Research Forum Proceedings of the 2000 Annual Conference*, Charlottetown, P.E.I., June 4–7, 2000, pp. 58–87.
7. West, Doug and Gary Draper, “Evaluating Challenges to Non-price Vertical Restraints,” *Canadian Competition Record*, Vol. 19, No. 3, Winter 1999–2000.
8. Duhamel, Marc, “Essays on Second-Best Economic Policymaking with Price Makers,” PhD dissertation, University of British Columbia, August 2000.
9. Pálsson, Haldor and Joseph Monteiro, “Discussion — Concentration and Market Power in Canadian Agribusiness,” *Policy Options for Facilitating Change and Maintaining Competition Under Conditions of Free Trade with NAFTA*, Proceedings of the Seventh Agricultural and Food Policy Systems Information Workshop, R.M.A. Loyns, Ronald D. Knutson, Karl Meilke and Daniel Sumner (eds.), February 2001.