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ANNUAL REPORT OF THE COMMISSIONER OF COMPETITION

FOR THE YEAR ENDING MARCH 31, 2002

ON THE ENFORCEMENT AND ADMINISTRATION OF THE
COMPETITION ACT
CONSUMER PACKAGING AND LABELLING ACT
TEXTILE LABELLING ACT
PRECIOUS METALS MARKING ACT

Canada

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This publication is also available electronically on the World Wide Web at the following address: www.cb-bc.gc.ca.

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Gatineau, Quebec

The Honourable Allan Rock, PC, MP
Minister of Industry
Ottawa, Ontario
K1A 0H5

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, 2002.

A handwritten signature in blue ink, appearing to read 'Konrad von Finckenstein', written in a cursive style.

Konrad von Finckenstein, QC
Commissioner of Competition

MESSAGE FROM THE COMMISSIONER

This has been a noteworthy year, with competition issues occupying centre stage both nationally and internationally.

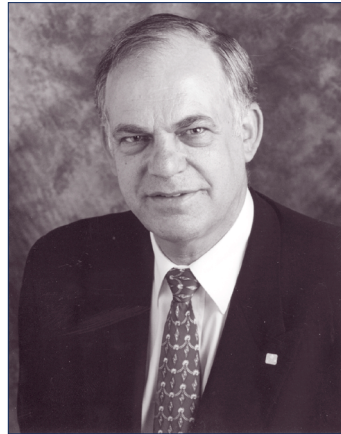
In Canada, competition was one of the key concerns of Parliament during 2001–2002. Both the Senate and the House of Commons held extensive hearings on Bill C-23, now called *An Act to Amend the Competition Act and the Competition Tribunal Act*, S.C. 2002, c.16, which came into force June 21, 2002. The Act includes several ground-breaking amendments to strengthen Canada's competition laws. For example, the new law:

- ◆ prohibits individuals and businesses from sending deceptive notices, including scratch and win cards, that target the most vulnerable members of society
- ◆ enables the Competition Bureau to gain access to evidence in other countries concerning civil competition matters
- ◆ broadens the scope under which the Competition Tribunal may issue temporary orders
- ◆ improves the processes by which the Competition Tribunal manages cases
- ◆ allows individuals and businesses to apply directly to the Competition Tribunal for relief from certain anti-competitive conduct
- ◆ provides additional measures to protect competition in Canada's airline industry.

As well, the House of Commons Standing Committee on Industry, Science and Technology held round-table discussions on the *Competition Act*. These, in turn, led to a comprehensive report, *A Plan to Modernize Canada's Competition Regime*. The report's 29 recommendations touch a wide range of issues, including conspiracies, enforcement, the airline industry, price maintenance and discrimination, abuse of dominance and mergers.

The interest the discussions generated clearly shows that competition has emerged from the shadows into the political limelight.

Internationally, the establishment of the International Competition Network is of key importance. This new organization creates a single forum for more than



80 countries with competition regimes to meet and discuss a wide range of practical and policy issues of common concern. The Network promises to create consistency in enforcement policy and eliminate unnecessary or duplicate procedures, to the advantage of consumers and businesses around the world.

The ongoing turbulence in the airline industry is a good example of a competition concern that crosses national and international boundaries. Chapters 3 and 5 of this report discuss this issue in detail. Until we determine what constitutes predatory pricing in the airline industry, further turbulence can be expected in this important area of economic activity.

The growing interest in and importance of competition ensures that the Bureau will continue to have a critical role to play in Canada and on the international stage. As I begin my second mandate as Commissioner, I look forward to the next five years, which I expect will be as challenging and productive as the first have been. Let me emphasize, too, that none of the Bureau's achievements would have been possible without our dedicated and hardworking staff, who have contributed to all aspects of our activities over the past year.

A handwritten signature in black ink, which appears to read 'K. von Finckenstein'. The signature is fluid and cursive, written in a professional style.

Konrad von Finckenstein, QC

ORGANIZATIONAL STRUCTURE OF THE COMPETITION BUREAU

The Bureau employs 298 people in the National Capital Region and 85 in 12 field offices. As the organizational chart below shows, the Bureau comprises seven 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 *Textile Labelling Act* and the *Precious Metals Marking Act*.

Mergers Branch reviews merger transactions to assess whether a proposed merger is likely to prevent or substantially lessen competition.

Civil Matters Branch reviews anti-competitive behaviour, 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 reviews criminal offences relating to anti-competitive behaviour. These include conspiracies that have an undue impact on competition, bid rigging, price discrimination, predatory pricing and price maintenance.

Fair Business Practices Branch administers and enforces the provisions of the *Competition Act* that cover misleading representations and deceptive marketing practices. Among these are provisions that deal with deceptive telemarketing, multilevel marketing and pyramid selling, as well as misrepresentations such as general misleading statements, misleading ordinary price claims and promotional contests in which

organizers inadequately disclose contest rules. The Branch also administers and enforces the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*, collectively known as the labelling statutes. The Branch's regional responsibilities are carried out by staff in a network of offices located in the Atlantic Region, Quebec Region, Ontario Region, Prairie Region, Pacific Region and the National Capital Region.

Competition Policy Branch encompasses the International Affairs, Economic Policy and Enforcement, and Legislative Affairs divisions. The Branch advances the Bureau's interests in international cooperation, negotiations and policy development. It provides economic advice and expertise, as well as enforcement support, to the Bureau and ensures that the provisions of the *Competition Act* and labelling legislation remain relevant through a continuous amendment process.

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

Communications Branch ensures that the Bureau achieves its overall objective of transparency and that all Canadians recognize the pivotal role the Bureau plays in fostering a competitive marketplace.

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INTRODUCTION

This report summarizes the work of the Competition Bureau for the fiscal year that ended on March 31, 2002, under the four acts the Bureau administers:

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

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

In discussing the Bureau's activities over the past year, this report seeks to show how this work has benefited Canadians. For statistical data and legal references, please visit the Bureau's Web site (www.cb-bc.gc.ca).

The report groups the Bureau's activities as follows:

- ◆ interacting with Canadians (chapter 2)
- ◆ promoting competition (chapter 3)
- ◆ reviewing mergers (chapter 4)
- ◆ preventing anti-competitive activity (chapter 5)
- ◆ maintaining a modern approach to competition law (chapter 6).

INTERACTING WITH CANADIANS

Communicating effectively is very important to the Bureau, and is an essential part of its work. Good communication ensures that Canadians know and understand the Bureau's role, and that businesses receive the information they need to comply with the law. The Bureau routinely monitors the marketplace and regularly visits businesses and stakeholders. It also encourages Canadians to come forward with information they may have about suspected anti-competitive activities. The Communications Branch works with other branches to ensure Bureau communications are coordinated and consistent.

Revitalizing Communications with Stakeholders

In the spring of 2001, the Competition Bureau began building new partnerships with business, legal and consumer associations directly affected by its work. These efforts are focussed on improving relationships and raising awareness of the Bureau's operations, and involve strengthening the Bureau's communications and developing an open dialogue with these stakeholders.

Information Centre

Information requests and complaints to the Bureau's Information Centre continue to provide valuable information that the Bureau uses to target education and enforcement activities. Information Centre staff receive requests through a 1-800 line available from 7:30 a.m. to 8 p.m. (eastern time), as well as via the Internet, fax and regular mail. The volume of complaints and information requests continues to be high: 49 587 complaints and requests in 2001–2002, compared to 54 479 in 2000–2001 and 47 975 in 1999–2000. Internet requests increased from 2542 in 1999–2000 to 4261 in 2000–2001 to 6381 in 2001–2002.

A client service benchmarking study, initiated in 2001–2002 and planned for completion in 2002–2003, will help ensure that processes are efficient, that clients receive excellent service and accurate information, and that the Bureau meets the government's *Results for Canadians* goals, one of which is to improve service by 10 percent by 2004.



The Web Site

The Bureau's main communication tool is its Web site (www.cb-bc.gc.ca), which features news releases, speeches and information notices. The site also provides users with information about Bureau activities and decisions, as well as quick access to consumer information and warnings, legislation, information on international affairs, policies and guidelines.

The Bureau site also provides easy access to electronic commerce applications for all Canadians. Both businesses and consumers can submit enquiries and complaints on-line, and request and pay for an on-line advisory opinion in the Business Services section of the site. Canadian textile retailers, wholesalers, manufacturers and importers can apply and pay for CA numbers, which identify these businesses, through the site.

The site also features multimedia products on bid rigging (see page 3) and multilevel marketing (see page 12). These easy-to-use tools provide information and promote compliance with the *Competition Act*.

Presentation on Bid Rigging

The Bureau has developed a multimedia presentation as an educational tool to help detect bid rigging. The presentation explains how to identify the warning signs of bid rigging, provides viewers with information on what to do when they believe they are victims of this practice, and offers suggestions to help prevent bid rigging from occurring. The presentation also includes details on how the Bureau investigates bid rigging, and information for people who may be involved in this type of illegal conduct.

The presentation is available on the Bureau's Web site (<http://strategis.ic.gc.ca/SSG/ct02296e.html>) and CD-ROM. To obtain a copy of the CD-ROM, contact the Bureau's Information Centre (contact information is at the front of this report).

Frequently Asked Questions About the Immunity Program

In September 2000, the Bureau released *Immunity Program Under the Competition Act*, an information bulletin that outlines the policy on and procedures involved in granting immunity from prosecution for criminal offences under the *Competition Act*. Since that time, a number of questions have been raised about the application of the program in specific circumstances. The Bureau has posted answers to the most frequently asked of these questions on its Web site (<http://strategis.ic.gc.ca/SSG/ct02312e.html>).

Speeches

In 2001–2002, Bureau staff delivered speeches on a wide range of topics, including Bill C-23 (now called *An Act to Amend the Competition Act and the Competition Tribunal Act*), the abuse of dominance provisions of the *Competition Act*, merger issues, competition policy, competition in the Canadian airline industry, cartels and on-line business. A selected list of speeches can be found on the Bureau's Web site (<http://strategis.ic.gc.ca/SSG/ct01266e.html>).

Information and Warnings

The Bureau periodically issues news releases or information notices alerting the public to potentially illegal or misleading activities in the marketplace. It also issues guidelines to help consumers and businesses understand specific issues.

Questionable Invoices for Internet Directory Services

In May 2001, the Bureau warned businesses and non-profit organizations to take precautions before paying bills or invoices from the Internet directory YellowBusiness.ca, following the reappearance of questionable invoices sent to Canadian businesses and organizations for Internet directory services.

The invoices appeared to be a continuation of unsolicited mailings sent in 2000 by YellowBusinessPages.com and Yellow Business Directory.com to businesses and charities for listings in Internet directories. Criminal charges of making false or misleading representations were laid in November 2000, specifically because the mailings looked like invoices when they were in fact solicitations. Criminal charges were laid against YellowBusiness.ca in May 2001 for similar activities.

In July 2001, the Competition Bureau issued a warning to Canadian consumers and businesses to think carefully before paying apparent invoices from the Internet Registry of Canada for the registration or re-registration of their domain names. Complaints received by the Bureau indicated that the mailings from the Internet Registry of Canada implied that it was affiliated with the Government of Canada or had official status as an agency registering domain names in Canada. In fact, the Internet Registry of Canada is not associated with any government agency and has no official status to register domain names.

Draft Guidelines

Environmental Labelling and Advertising

In July 2001, the Bureau published a notice of consultation to seek public comments on its intention to adopt new guidelines on environmental labelling and advertising (green marketing). The Bureau is currently analyzing the submissions received, which are posted on the Bureau's Web site (<http://strategis.ic.gc.ca/SSG/ct02305e.html>).

The Bureau will use the new guidelines when assessing environmental labelling and advertising claims under the *Competition Act* and the *Consumer Packaging and Labelling Act*.

The guidelines will help businesses ensure that their representations are not misleading and conform to the law. The guidelines will also benefit consumers, who will be able to make better informed decisions when shopping for products or services that make environmental claims on their packaging or in their advertising.

Abuse of Dominance in the Airline Industry

In February 2001, the Bureau released a draft version of *Enforcement Guidelines on the Abuse of Dominance in the Airline Industry*. The draft guidelines cover anti-competitive acts in the airline industry, as defined by legislation and regulations, including the following:

- ◆ operating or increasing capacity at fares below avoidable costs
- ◆ exclusionary conduct, such as pre-empting airport take-off and landing slots
- ◆ the use of essential facilities and services for anti-competitive purposes
- ◆ anti-competitive conduct involving frequent flyer programs
- ◆ travel commission overrides and corporate discount programs.

As part of the consultation process, which ran until May 2001, the Bureau received more than 25 submissions, which are posted on the Bureau's Web site (<http://strategis.ic.gc.ca/SSG/ct02196e.html>).

However, since the Commissioner has filed an application against Air Canada with the Competition Tribunal that raises a number of issues affecting the new airline legislation and regulations enacted in 2000 following the restructuring of the Canadian airline industry, the Bureau decided not to finalize the guidelines until after the Tribunal's decision. Once the Tribunal renders its decision, the Bureau will then consider what changes it should make to the proposed guidelines in light of the decision, comments from stakeholders and additional consultations.

Abuse of Dominance Provisions as Applied to the Retail Grocery Industry

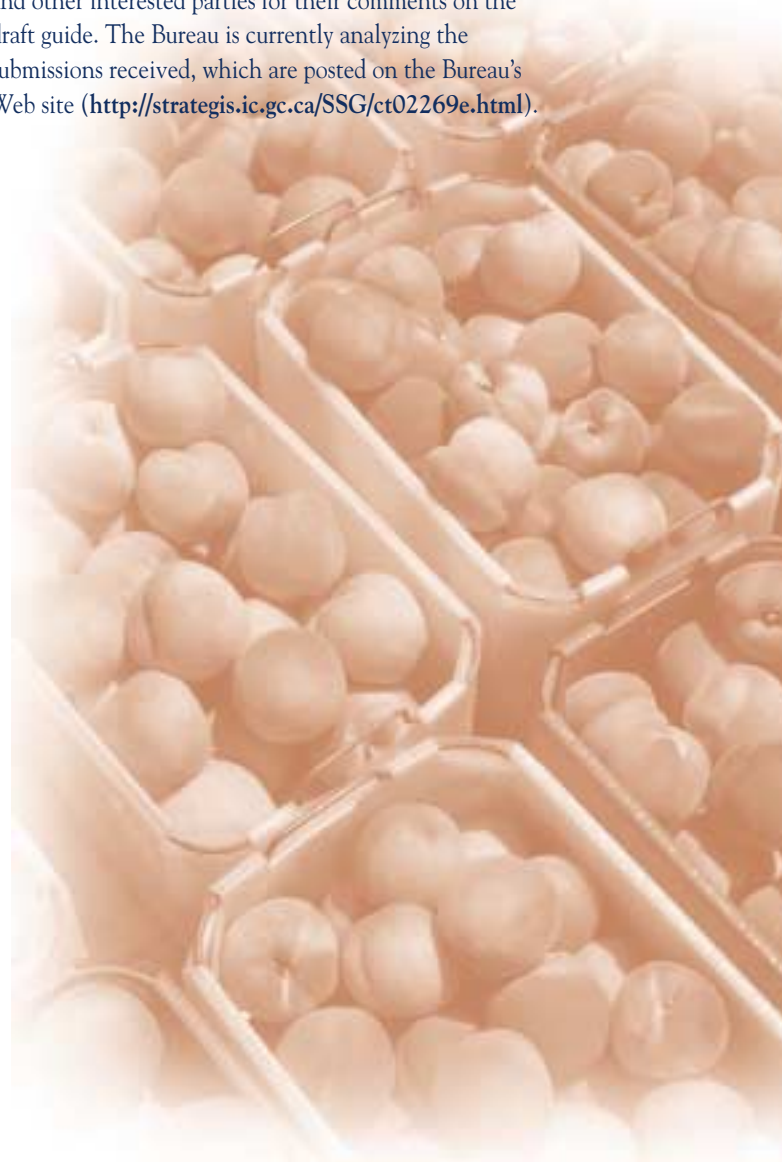
In December 2001, the Bureau released a draft version of *Enforcement Guidelines: The Abuse of Dominance Provisions (Sections 78 and 79 of the Competition Act) as Applied to the Retail Grocery Industry* for public comment and consultation. These draft guidelines were issued to clarify the Bureau's approach to enforcing the abuse of dominance provisions in the Canadian grocery industry. Five interested parties and stakeholders submitted written comments (see <http://strategis.ic.gc.ca/SSG/ct02348e.html>). Following consultations with commentators, the Bureau will release a revised final version of the guidelines.

Illegal Trade Practices

In March 2002, the Bureau released a draft version of *Enforcement Guidelines for Illegal Trade Practices: Unreasonably Low Pricing Policies* for public comment and consultation. These draft guidelines were issued to update the Bureau's approach to investigating unreasonably low pricing policies in Canada. It is intended that, following consultations, these guidelines will replace the *Predatory Pricing Enforcement Guidelines*, first issued in 1992. Comments from interested parties were requested by June 2002.

Draft Guide on Internet Advertising

The Bureau has developed a draft guide to explain its approach to applying the *Competition Act* to on-line advertising. Entitled *Staying "On-side" When Advertising On-line: A Guide to Compliance with the Competition Act When Advertising on the Internet*, the guide is designed to help businesses make sure their on-line representations conform to the *Competition Act*. It is also intended to remind advertisers that the rules for business practices and advertising also apply to on-line promotional activities, and to clarify the responsibilities of people publishing representations on the Internet. On May 28, 2001, the Bureau asked industry stakeholders and other interested parties for their comments on the draft guide. The Bureau is currently analyzing the submissions received, which are posted on the Bureau's Web site (<http://strategis.ic.gc.ca/SSG/ct02269e.html>).



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PROMOTING COMPETITION

The Competition Bureau promotes competition in a number of ways, including the following:

- ◆ making regulatory interventions
- ◆ contributing to departmental and interdepartmental policy making
- ◆ providing comments to policy advisory bodies
- ◆ participating in international organizations such as the Organization for Economic Co-operation and Development and various trade bodies
- ◆ giving speeches and holding seminars.

Interventions

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

Interventions about the deregulation of 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 2001–2002, the Bureau made a number of significant interventions in areas such as electricity, and marine, air and rail transportation. The following pages outline the Bureau's interventions in the past year.

Competition Bureau Interventions, 2001–2002

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<p>Transportation: Water Submission to the House of Commons Standing Committee on Government Operations and Estimates Concerning Bill C-14, <i>An Act Respecting Shipping and Navigation, and to Amend the Shipping Conferences Exemption Act, 1987, and Other Acts</i></p>	<p>On April 24, 2001, the Bureau made a submission to the Standing Committee concerning Bill C-14 and the proposed amendments to the <i>Shipping Conferences Exemption Act</i> (SCEA). The key amendments involved individual service contracts, reduction of the notice period for independent action, removal of tariff filing, and electronic filing of documents.</p> <p>While the Bureau supported the amendments, it expressed its long-standing opposition to SCEA, and called for an end to the exemption for shipping conferences from terms of the <i>Competition Act</i>. However, in the event that the Committee decided to endorse the continuation of the exemption, the Bureau recommended that a sunset clause be introduced, together with additional measures to enhance competition (e.g. the introduction of confidential individual service contracts, reduction of the scope of the exemption, and clarification of certain provisions).</p>	<p>The Act received Royal Assent and went into force on January 30, 2002. The amendments, which address the Bureau's concerns, are expected to create efficiency and introduce competition among members of a shipping conference.</p>
<p>Transportation: Air Submission to Transport Canada on the Policy for International Scheduled Air Services.</p>	<p>On April 20, 2001, the Bureau made a submission to Transport Canada in response to its document <i>Canada's Policy for International Scheduled Air Services: Issues for Discussion</i>, and recommended changes to both the external and internal aspects of the policy.</p> <p>External Policy</p> <ul style="list-style-type: none"> ◆ Canada should use bilateral negotiations to convince countries to adopt as liberal an external policy as possible to encourage competition. ◆ Canada should not automatically adopt a discriminatory approach to foreign carriers when foreign governments maintain a discriminatory approach to Canadian carriers. Rather, Canada should consider all arrangements and select those of greatest benefit to Canadian consumers and air carriers. ◆ A new international air policy should seek reciprocal fifth-freedom rights, which allow carriers to pick up local traffic in one foreign country and carry it to a third country. 	<p>The Bureau believes that adopting a more liberal regime for international air service will give air passengers the benefits of increased competition. Transport Canada is expected to release its new policy for international scheduled air services in the near future.</p>

Competition Bureau Interventions, 2001–2002 (continued)

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
	<ul style="list-style-type: none"> ◆ The policy governing all-cargo rights should focus on significant potential benefits for competition and consumers. The Bureau favours a two-track approach to Canada’s bilateral air transport agreements, one for passenger service and one for all-cargo service. ◆ Rules designed to protect Canadian carriers from price competition by restricting pricing freedom should be eliminated or amended, under minimal regulatory oversight, to allow third-country carriers to implement lower tariffs than those filed by Canadian carriers. ◆ Effective safety oversight, rather than ownership, should be the primary factor when considering the designation of foreign carriers. ◆ Canada should take an active leadership role in the pursuit of greater air liberalization at the World Trade Organization, the Organisation for Economic Co-operation and Development and the Organization of Petroleum Exporting Countries. <p>Internal Policy</p> <ul style="list-style-type: none"> ◆ The new international air policy should give foreign carriers more access to cities in Canada even when Canadian carriers are not interested in serving cities in the domestic markets of the foreign carriers. The new internal policy should eliminate the requirement that Canadian carriers serve these cities, allowing the market to determine the viability of scheduled air services. ◆ Alternatively, the international policy should encourage the entry of new Canadian carriers into the market by significantly reducing from 300 000 the annual number of one-way origin-to-destination passengers a foreign market is required to receive through scheduled air service before qualifying to receive a second Canadian carrier. ◆ The new policy should provide as a rule for the awarding of multiple designations of carriers to a market, or apply the “use-it-or-lose-it” policy (in which the government allows other carriers to apply to serve a 	

Competition Bureau Interventions, 2001–2002 (continued)

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
	<p>market designated to another carrier when that carrier's service is below what it originally proposed) nine months after designation.</p> <ul style="list-style-type: none"> ◆ Multiple carriers should receive liberal access to fifth-freedom rights, including those on a code-share basis. ◆ The Cargo Transshipment Program should be made widely available to create a level playing field among airports. 	
<p>Telephone Companies CRTC Price Cap Review for Local Telephone Companies Public Notice CRTC 2001-37</p>	<p>On March 13, 2001, the Canadian Radio-television and Telecommunications Commission (CRTC) initiated a public proceeding to assess the effectiveness of the price cap regime for local telephone companies and to determine whether changes were required to ensure the regime remained effective when a new phase was introduced in 2002.</p> <p>On October 22, 2001, the Bureau submitted comments to the CRTC designed to ensure the CRTC would take competition issues into consideration when revising the pricing regime for the telecommunications industry.</p>	<p>The Bureau supports the continuation of the existing price cap structure with some modifications that would do the following:</p> <ul style="list-style-type: none"> ◆ foster competition in residential and business markets throughout Canada ◆ protect consumers and competitors from abuse of market power by the major local telephone companies ◆ ensure that market uncertainty is minimized for consumers, firms and investors. <p>As of March 31, 2002, the CRTC's decision was pending.*</p>
<p>Telephone Companies Expansion of Local Calling Areas Public Notice CRTC 2001-47</p>	<p>On April 27, 2001, the CRTC initiated a public proceeding to establish a set of general principles and criteria for assessing applications for expanding local telephone calling areas.</p> <p>On November 15, 2001, the Bureau submitted comments to the CRTC on these general principles and criteria.</p>	<p>The Bureau identified a number of problems with expanding local calling areas through regulation, including the cost of ongoing regulation, the adverse impact on competition, and the negative effect on consumers.</p> <p>In light of these concerns, the Bureau recommended that local calling areas be determined instead by the interplay of competitive market forces. Each service provider should have the flexibility to offer a variety of price-geographic coverage plans to consumers, who would then be free to choose the plan most appropriate to their requirements.</p> <p>As of March 31, 2002, the CRTC's decision was pending.</p>

* The CRTC rendered its decision on May 30, 2002.

Competition Bureau Interventions, 2001–2002 (continued)

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<p>Telephone Companies Forbearance Outside Traditional Territories Decision CRTC 2001-534</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 lacked market power outside 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>On August 31, 2001, the CRTC granted conditional forbearance, thereby reducing the regulatory burden on incumbent telephone companies and enhancing their ability to compete outside their traditional operating territories. This will benefit both residential and business customers.</p>
<p>Alberta Electricity Industry Structure Review</p>	<p>The Competition Bureau provided comments to the Alberta Electricity Industry Structure Review during the fall and winter of 2001–2002, including a written submission to the Alberta Department of Energy in February 2002.</p> <p>The Alberta Department of Energy initiated this review to evaluate how to structure the functions institutions with a primary role in the operation of the electricity industry carry out.</p> <p>The Bureau made a number of recommendations, including that effective market surveillance be established, competition-related principles drafted, and institutional models for market surveillance developed. The Bureau also recommended that generating-capacity control held by the market operator be transferred to private parties, and supported combining certain electricity market and system control functions in a single agency (an independent system operator) as the most effective way to ensure efficient competition.</p>	<p>Many of the Bureau's recommendations are included in the Review's final report. The Bureau is continuing its intervention by working with the Alberta government to implement changes to the Alberta market. It is anticipated the proposed structural changes will improve market oversight, resulting in a more efficient and competitive electricity market in Alberta.</p>

Competition Bureau Interventions, 2001–2002 (continued)

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<p>Nova Scotia Power Incorporated: Energy Solutions Packages Application</p>	<p>A hearing before the Nova Scotia Utility and Review Board concerned an application by Nova Scotia Power Incorporated to make flexible rate and product packages (Energy Solutions Packages) available to consumers.</p> <p>The Bureau's intervention in March and April 2001 provided a competition policy perspective on specific aspects of the application. The Bureau supported Nova Scotia Power's objective of competing more effectively in Nova Scotia electricity markets. At the same time, the Bureau stated that maximizing the benefits for Nova Scotia from its electricity sector and introducing natural gas required competition to take place within an efficient and effective regulatory structure.</p> <p>Consequently, the Bureau recommended seven measures to promote more efficient generation and use of electricity under regulation and, eventually, to facilitate the efficient and orderly transition to competition. It also recommended four measures to address its specific concerns with the application.</p>	<p>In its July 9, 2001, decision, the Board denied Nova Scotia Power's application on the grounds that it did not provide for adequate regulatory oversight. The Board also deferred to future hearings certain matters the Bureau had raised.</p>
<p>Nova Scotia Energy Strategy Review</p>	<p>On May 31, 2001, the Bureau submitted an analysis of competition issues in the Nova Scotia electricity system to the province's energy strategy review. The purpose of the submission was to help the province determine whether and how to restructure the electricity industry to provide more competition.</p> <p>The Bureau recommended that Nova Scotia adopt an evolutionary approach to restructuring, reflecting the specific characteristics of the provincial electricity system. The Bureau recommended several key steps to restructuring, including the following:</p> <ul style="list-style-type: none"> ◆ placing initial emphasis on restructuring the electricity rates of Nova Scotia Power Incorporated ◆ giving subsequent consideration to internal restructuring within Nova Scotia Power to enhance competition ◆ taking further restructuring measures only after carefully analyzing Nova Scotia's options for creating competition ◆ creating an effective interface between competition law and any remaining regulation for monopoly-essential facilities and products subject to competition. 	<p>In its December 12, 2001, report, the provincial government provided a comprehensive energy strategy for Nova Scotia that includes the gradual introduction of competition in electric power generation, as the Bureau had recommended.</p>

Competition Bureau Interventions, 2001–2002 (continued)

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
Ontario Electricity Market Competition Oversight	In March 2002, the Competition Bureau signed an agreement with the Ontario Energy Board and the Independent Electricity Market Operator to work together to ensure effective competition oversight in Ontario's new electricity markets. The agreement outlines each agency's roles and responsibilities in the new markets and provides a framework for cooperation and coordination where overlap exists.	The agreement will help ensure that competition concerns are effectively addressed in the new markets, which will, in turn, help ensure a more certain regulatory framework for businesses, and minimize costs for the Ontario Energy Board and the Independent Electricity Market Operator, as well as for businesses.
Sempra Atlantic Gas: Initial Tariff Application	In January and February 2001, the Bureau intervened before the Nova Scotia Utility and Review Board to support open and effective competition, particularly at the household level, in the emerging Nova Scotia natural gas market. This intervention was discussed in detail in the Bureau's 2000–2001 annual report (http://strategis.ic.gc.ca/SSG/ct01269e.html).	The Board accepted all nine of the Bureau's recommendations in its May 3, 2001, decision.

ID-ROM: Multilevel Marketing and the Competition Act

On June 4, 2001, the Bureau launched *2001 Multi-level Marketing and the Competition Act*, an animated multimedia tool designed to inform Canadian businesses and consumers about the multilevel marketing and pyramid selling provisions of the *Competition Act*.

Available on both ID-ROM and the Web (<http://mmprodnt.ic.gc.ca/competitionbureau/>), the animated presentation tells the story of a Canadian entrepreneur as she learns how to operate a multilevel marketing business that conforms to the law. To obtain a copy of the ID-ROM, contact the Bureau's Information Centre (contact information is at the front of this report).

Internet Sweeps

In August 2001, the Bureau launched regular Internet sweeps to evaluate Canadian on-line marketing sites for compliance with the *Competition Act*, the *Consumer*



Packaging and Labelling Act, the Textile Labelling Act and the Precious Metals Marking Act. Sweeps have focussed on sites marketing a variety of products and business opportunities, including textile products, articles containing precious metals and work-at-home businesses. The project team also participated in International Internet Sweep Day, which focussed this year on Web sites making deceptive or misleading claims about health products and services. The sweep was conducted by the International Marketing Supervision Network, a membership organization consisting of the trade practices authorities from 29 countries, including Canada, and representatives from the European Commission and the Organisation for Economic Co-operation and Development.

Enforcement Guidelines

Abuse of Dominance Guidelines

On August 1, 2001, the Bureau released *Enforcement Guidelines on the Abuse of Dominance Provisions* (<http://strategis.ic.gc.ca/SSG/ct02209e.html>) to help business people understand the Bureau's enforcement policy with respect to the abuse of dominance provisions (sections 78 and 79) of the *Competition Act*. The guidelines define market dominance, discuss abuse of dominance, and outline the Bureau's approach to enforcement and corrective measures designed to ensure a fair and efficient marketplace. The guidelines also contain crucial legal information, including examples of Competition Tribunal decisions on cases of abuse of dominance.

The guidelines are an example of the Bureau's continuing efforts to ensure a more transparent and predictable enforcement policy. When preparing the final document, the Bureau took into account comments provided by stakeholders, academics, lawyers, businesses and the general public during consultations on a draft version.

Guide for the Labelling and Advertising of Pet Foods

On behalf of the Working Group on the Labelling and Advertising of Pet Food in Canada, the Bureau released *Guide for the Labelling and Advertising of Pet Foods* on September 21, 2001. The guide, which was the result

of broad consultations with the Canadian public and key industry stakeholders, addresses consumers' concerns about the lack of uniformity and monitoring of pet food labelling by setting out industry standards for the labelling and advertising of pre-packaged products. The working group comprised industry stakeholders and federal government officials.

"Made in Canada" Claims Relating to Diamonds

On November 13, 2001, the Bureau announced a new enforcement policy on false or misleading representations of Canadian diamonds. The new policy is outlined in the Bureau's *Enforcement Policy on the Marketing of Canadian Diamonds* (<http://strategis.ic.gc.ca/SSG/ct02295e.html>) and its updated *Guide to "Made in Canada" Claims* (<http://strategis.ic.gc.ca/SSG/cp01006e.html>). The latter clarifies what can be advertised as a Canadian diamond, establishing as an underlying principle that goods mined or harvested in Canada are considered to have been made in Canada.

Ontario Net Quantity Blitz

Between November 13 and 30, 2001, the Bureau inspected 51 companies in southern Ontario to determine whether their pre-packaged non-food consumer products comply with the net quantity and labelling provisions of the *Consumer Packaging and Labelling Act* and Regulations.

Of the 230 products inspected, 36 percent had labelling violations and 14 percent had net quantity violations (that is, there was less product in the package than the label indicated). The Bureau required the companies to correct all violations before they could ship the products from their premises, and sent 18 letters to firms committing significant violations to inform them that they would be subject to a second inspection.

Special Constable Status for Competition Law Officers

On February 13, 2002, the Ontario Provincial Police granted special constable status to 10 competition law officers from the Bureau's National Capital Region office.

Competition law officers investigate criminal offences under the *Competition Act*, such as deceptive telemarketing, conspiracy to fix prices and bid rigging, and enforce the Act.

Special constable status allows these officers to serve summonses and subpoenas in Ontario under the *Competition Act* and the *Criminal Code*. The appointments are aimed at improving the criminal investigative process and relieving police agencies from having to serve court documents for anti-competitive offences.

Conferences

The Competition Bureau participates in conferences both at home and abroad to make and maintain contact with academics and professional groups in various industry sectors.

On May 21, 2001, Bureau staff attended the annual Carlson-Wagonlit symposium in Niagara-on-the-Lake, Ontario, recapping for participants the restructuring of the Canadian airline industry and the Bureau's enforcement activity in this sector.

On May 25, 2001, a Bureau representative made a presentation to the *Institut de l'énergie et de l'environnement de la Francophonie* on the need for, and the relationship among, regulation, market surveillance and competition law in emerging electricity markets.

On June 4, 2001, Bureau staff attended the annual general meeting of the Direct Sellers Association in Quebec City. During the conference, Bureau staff introduced 2001 *Multi-level Marketing and the Competition Act* (see page 12).

On June 18, 2001, Bureau staff participated in the U.S. Competitive Telecommunications Association's Spring General Conference in Seattle, Washington, providing an outline of the regulatory landscape for U.S. firms interested in competing in the Canadian telecommunications industry.

On June 19 and 20, 2001, Bureau staff attended a conference in Toronto called Canadian Competition Policy: Preparing for the Future, which the Bureau organized in partnership with the Richard Ivey School of Business at the University of Western Ontario and Industry Canada.

The Bureau contributed a background paper, *Competition Policy in Canada: Past and Future*, that examined the evolution of competition policy in Canada since its origin, and anticipated some of the potential challenges of the 21st century.

On October 12, 2001, Bureau staff attended the 2001 Invitational Forum on Competition Law: Section 45 at the Crossroads, in Toronto. Discussions focussed on possible alternatives to the current conspiracy provisions in the *Competition Act*.

On November 22, 2001, Bureau staff made a presentation on deceptive telemarketing to the annual meeting of the Canadian Survey Research Council, demonstrating how deceptive telemarketers make their calls and persuade consumers and businesses to part with their money.

On December 14, 2001, Bureau staff made a presentation to the board of directors of the Canadian Association of Chain Drug Stores to familiarize directors with the Competition Bureau and the *Competition Act*.

On January 31 and February 1, 2002, Bureau staff attended the American Bar Association's workshop on international cartels. With colleagues from the United States, the European Union and Australia, Bureau staff reviewed hypothetical situations in which members of cartels might seek immunity in the respective jurisdictions.

On February 4, 2002, Bureau staff gave a presentation to an MBA class at McMaster University in Hamilton, entitled *If It's Too Good to be True...*. The presentation, which covered the Competition Bureau, the *Competition Act* and Bill C-23 (now called *An Act to Amend the Competition Act and the Competition Tribunal Act*), gave students a chance to learn about call schemes and see how deceptive telemarketers operate.

In February 2002, Bureau staff gave presentations at the Insight conference on advertising law in Toronto on the draft guide on Internet advertising and the multilevel marketing and pyramid selling provisions of the *Competition Act*.

In February 2002, members of the Bureau attended meetings with PhoneBusters in Ottawa and North Bay. The meetings were held to discuss new partnership

arrangements for management and funding and to discuss the evolution of PhoneBuster's coverage of consumer scams in the areas of telemarketing, deceptive Internet representations and deceptive mail. A system of information sharing was also discussed.

In February 2002, Bureau staff participated in a one-day symposium in Chicago on competition issues in the airline industry, organized by the *DePaul University Business Law Journal*. Bureau staff provided an overview of the Bureau's enforcement activities in the Canadian airline industry and related issues.

On March 13 and 14, 2002, the Competition Bureau and other North American law enforcement agencies participated in the Bureau-sponsored New Partnerships in Law Enforcement conference in Ottawa, held to develop new partnerships and improve existing ones in fighting consumer and business fraud. Bureau staff gave a presentation on deceptive telemarketing and its law enforcement partnerships in this area, namely, the Toronto Strategic Partnership, covering deceptive telemarketing in Ontario and the northeastern and mid-western United States, Project Emptor, covering British Columbia and the northwestern United States, and Project Colt, covering Quebec and the northeastern United States.

On March 22, 2002, Bureau staff participated in the Insight conference on the international dimensions of competition law. The Bureau contributed a paper, *Strengthening a Pillar of Canadian Competition Law: Enforcing and Amending the Abuse of Dominance Provisions of the Competition Act*. Bureau staff also participated on a panel on international cartels.

On March 26, 2002, Bureau staff participated in a symposium held by the *Chaire de Tourisme de l'Université du Québec à Montréal* on the airline and tourism industry in Quebec, providing an overview of the Bureau's enforcement mandate and investigations in the Canadian airline industry.

Bureau staff also gave a number of presentations to private and public sector organizations on bid rigging and other aspects of the *Competition Act*.

International Activities

The Bureau participates in international activities to promote the development of coordinated competition policy in an increasingly global environment and to enhance the effectiveness of enforcement through cooperation with competition agencies around the world.

International Competition Network

On October 25, 2001, senior officials from 14 competition authorities from around the world, including the Competition Bureau, announced the establishment of the International Competition Network (ICN) to provide competition agencies from developed and developing countries with a strong and broad network for addressing practical competition enforcement and policy issues. The Commissioner of the Competition Bureau was the Chair of the Interim Steering Group, which oversaw the development of the ICN leading up to its first annual conference, held in September 2002.

The ICN will focus on improving cooperation around the world in the area of competition policy and law and on enhancing convergence among authorities. The first ICN projects involve multijurisdictional merger control processes and the competition advocacy role of competition agencies.



Cooperation

With the increasing number of complex multijurisdictional competition cases, the need for improved cooperation and coordination grows. During 2001–2002, the Bureau worked closely with its counterparts around the world, primarily in the United States and the European Community, but also in other jurisdictions, including the United Kingdom, Australia and Mexico. This cooperation, which encompassed work on both specific cases and general policy issues, included the exchange of documents, and meetings and other contacts. Case-related cooperation dealt primarily with merger review, and cartel and deceptive marketing practices enforcement, and included notifications of enforcement actions, exchange of information on the parties and markets, the theory of particular cases, and the coordination of enforcement actions, including remedies. Merger cases included those involving Lafarge and Blue Circle, GE and Honeywell, Nestlé and Ralston Purina, and Seagram/Diageo and Pernod Ricard. Cartel investigations included those relating to graphite and carbon products, bulk vitamins and related products, and methylglucamine. There is ongoing communication between the Bureau and foreign, particularly U.S., authorities with respect to deceptive mail and telemarketing cases.

The Bureau held bilateral meetings with the heads of the U.S. Department of Justice and Federal Trade Commission in February 2002, and with officials of the European Community in September 2001. Significant efforts to expand cooperation with the European Community over the past year included meetings between staff in the respective merger and cartel units to discuss issues specific to their areas of enforcement. These meetings served as a catalyst for building closer relations and promoting ongoing dialogue.

As highlighted below, the Bureau also finalized cooperation agreements and arrangements with other jurisdictions and agencies.

Canada and the Central American Four. In November 2001, the Canadian Minister for International Trade announced the launch of free trade negotiations between Canada and four Central American countries: El Salvador, Guatemala, Honduras and Nicaragua. Canada is seeking to include competition policy provisions in the agreement, and the Bureau is

playing a lead role in developing the Canadian position and in the negotiations on competition policy.

Canada and Singapore. In February 2002, Canada and Singapore launched negotiations for a bilateral free trade agreement. One of Canada's objectives is to include competition policy provisions in the agreement. The Bureau is playing a lead role in developing the Canadian position and in the negotiations on competition policy.

Canada and Mexico. On November 14, 2001, in Veracruz, Mexico, the governments of Canada and Mexico signed a cooperation agreement on competition law enforcement. The agreement resembled that signed by Canada and the U.S. in 1995, setting out a framework for notification, coordination and cooperation on enforcement activities, information exchange and conflict avoidance.

The agreement is designed to promote cooperation and coordination between competition authorities in both countries. It will also lessen the possibility and impact of differences in the application of their competition laws in an increasingly globalized economy. Consumers in both countries stand to benefit from enhanced competition in terms of prices and product choices.

The agreement will come into force following Senate approval in Mexico.

Canada and Chile. On December 17, 2001, in Santiago, Chile, the Competition Bureau and Chile's competition agency signed a Memorandum of Understanding formalizing a cooperation arrangement built on commitments under the Canada-Chile Free Trade Agreement. The memorandum sets out a framework for notification, coordination and cooperation on enforcement activities, information exchange and conflict avoidance. It is also part of an ongoing effort to ensure that the Bureau has the tools to deal effectively with increasingly globalized markets.

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, and actively participated in six meetings in 2001–2002.

During this period, the Negotiating Group's work focussed on resolving differences in the draft text on

competition policy as well as on issues relating to competition policy in smaller countries and those without competition regimes. The Bureau participated actively in the negotiation process and worked closely with other delegations to try to bridge gaps. In this way, Canada continued to seek a comprehensive framework on competition policy that included obligations from signatory countries to:

- ◆ adopt or maintain a competition law
- ◆ establish or maintain a competition agency
- ◆ adhere to core principles of transparency, non-discrimination and procedural fairness
- ◆ respect provisions for enforcement cooperation and coordination, consultations and peer review.

Canada also participated in technical sessions aimed at providing technical assistance to, and enhancing the capacity of, smaller countries and those without competition regimes. In particular, the Bureau gave presentations on the role it plays as an advocate for competition in Canada, on the conspiracy provisions of the *Competition Act* and on the road to reform.

World Trade Organization

Important aspects of the interaction between trade and competition policy were delineated in the Ministerial Declaration of the Fourth World Trade Organization Ministerial Conference in Doha, Qatar, in November 2001.

The Declaration sets out topics to be discussed in preparation for the Fifth Ministerial Conference in 2003, including core principles such as transparency, non-discrimination and procedural fairness, hard-core cartels, mechanisms for voluntary cooperation, and support through capacity building for competition institutions in developing countries.

Regulatory Reform Programme

Under the Regulatory Reform Programme, officials of the Organisation for Economic Co-operation and Development (OECD) reviewed Canada's competition law and regulations in 2001 and made recommendations on several key issues. These issues included the scope of the Commissioner's decision-making independence, the processes and procedures of the Competition Tribunal, the conspiracy provisions in the *Competition Act*, and

the Bureau's resources. The recommendations formed the basis of a peer review by the OECD's Competition Law and Policy Committee in October 2001. The final OECD report on Canada's regulatory regime will be published in the fall of 2002.

Other International Activities

Due to the recent dramatic increase in international trade, the Bureau has become increasingly involved in investigating international merger transactions. The Bureau cooperated with foreign counterparts on a number of cases in 2001–2002, sharing information through waivers and meeting jointly with parties, as well as holding unofficial discussions with colleagues from a variety of international agencies on a wide range of topics.

International Conferences

On June 28 and 29, 2001, Bureau staff attended a meeting of the National Association of Consumer Affairs Administrators to accept, along with members of the Toronto Strategic Partnership, the Association's Agency Award for their work dealing with deceptive telemarketing. The Association is a forum for addressing common issues relating to consumer protection.

From August 18 to 22, 2001, Bureau staff attended the North American Consumer Protection Investigators meeting in Baltimore. The conference dealt with enforcement in the area of consumer fraud.

On August 29, 2001, Bureau staff gave a presentation on deceptive telemarketing and its crossborder impact at the International Association of Financial Crime Investigators conference in Milwaukee.

On September 28, 2001, Bureau staff met with members of the private sector, the volunteer sector, law enforcement agencies and the Canadian and U.S. governments at the Deceptive Telemarketing Forum in Toronto to discuss ongoing efforts to expand the work of the Forum.

On October 26, 2001, Bureau staff participated in a panel presentation at a workshop on pet food labelling and regulation, held to compare the Association of American Feed Control Officials' regulations with regulations from other countries.

In November 2001, Bureau staff gave a presentation at a conference sponsored by the American Bar Association in Monterey, Mexico. This forum gave Mexican business people and lawyers the opportunity to hear the views of Canadian, American and Mexican competition authorities on various enforcement approaches to vertical restraints (agreements between suppliers and distributors that constrain their ability to acquire and market goods and services).

On November 8, 2001, a member of the Bureau made a presentation at a workshop on office supply fraud, hosted by the Federal Trade Commission in Washington, D.C. Members of the Bureau and the Department of Justice Canada attended the workshop at which participants discussed the deceptive telemarketing provisions of the *Competition Act* and law enforcement partnerships between Canada and the United States, among other topics.

In November 2001, in an effort to promote and enhance multilateral efforts to combat cartels, the Competition Bureau hosted the third International Cartel Conference, in Ottawa. This conference brought together more than 100 cartel experts from competition authorities in 27 countries and provided a forum for sharing expertise on investigating and prosecuting international cartels. The agenda included discussions about information sharing, and immunity policy and other investigative tools.

On March 18 and 19, 2002, Bureau representatives attended a meeting of the International Marketing Supervision Network (IMSN) in Montreux, Switzerland, to discuss the results of the IMSN "Best Practices" questionnaire and case studies on crossborder enforcement activities, among other topics.

Bureau staff also attended a wide variety of meetings, including the following, to discuss cooperation in the area of fair business practices:

- ◆ the semi-annual conference of the IMSN in New York on April 24, 2001, which featured the launch of a Web site (www.econsumer.gov) allowing consumers to file complaints on the Internet about e-commerce transactions with foreign companies and to obtain information and get practical advice on making safe on-line purchases
- ◆ a meeting with the Bureau's U.S. counterparts in the Federal Trade Commission in February 2002 to discuss crossborder cooperation
- ◆ a meeting in Paris with the Organisation for Economic Co-operation and Development's Consumer Policy Committee in March 2002 to discuss crossborder remedies and other issues
- ◆ a teleconference in March 2002 with the Federal Trade Commission and Latin American consumer protection experts to discuss practical enforcement issues.



REVIEWING MERGERS

Between 1995 and 2001, the mergers the Competition Bureau reviewed increased significantly in number, complexity and international scope. While it was expected that this trend would continue during 2001–2002, the events of September 11 and the subsequent downturn in the economy resulted in a significant decrease in business activity. Consequently, the number of mergers and acquisitions the Bureau analyzed fell significantly in the last half of 2001. While there was some increase in activity in early 2002, the future remains uncertain.

Changes to Competition Tribunal Procedures

Bill C-23, now called *An Act to Amend the Competition Act and the Competition Tribunal Act*, S.C. 2002, c. 16, came into force on June 21, 2002. It contains provisions that improve the Competition Tribunal's merger process. The Bureau and parties to a proposed merger are able to immediately register consent agreements without a hearing, saving costs and time.¹ The provisions are expected to lead to the Bureau relying more on registered consent agreements, resulting in fewer undertakings.

Merger Notification Unit

In October 2000, the Bureau established the Merger Notification Unit to administer Part IX of the *Competition Act*. This unit improves procedural streamlining and merger review for non-complex transactions, ensures more consistent application of the complexity rating and corresponding service standard periods within which a merger review should be completed, and centralizes communications to stakeholders about notification and policy issues.

In January 2001, unit staff met with competition lawyers in Montréal, Ottawa, Toronto, Calgary and Vancouver. As a result of these successful sessions, the two groups plan to meet regularly to discuss policies, procedures and legal developments relating to merger notification.

Further information about the Merger Notification Unit and merger notification can be found on the Bureau's Web site (<http://strategis.ic.gc.ca/SSG/ct02015e.html>).

Merger Forum

On June 28, 2001, the Bureau hosted a forum on mergers for key stakeholders. The forum had two objectives:

- ◆ to present and obtain feedback on a report outlining the Mergers Branch's performance since the previous forum in 1999
- ◆ to obtain the views of stakeholders on the merger benchmarking study and the resulting *Merger Review Benchmarking Report*, which the Bureau released in 2001. (The report is available at <http://strategis.ic.gc.ca/SSG/ct01255e.html>.) The Bureau undertook the study to improve the merger review process by linking the best practices at home with those of stakeholders and competition agencies around the globe. The Bureau received valuable suggestions about process improvements that have been or may be incorporated into the merger review process.

Forum participants provided input that will bring about additional improvements in the merger review process, including the following.

- ◆ Electronic tools and processes are being integrated into the overall review process to streamline operations and improve internal and external information sharing.
- ◆ Training and development needs, key findings of the benchmarking study, will be addressed as part of the Bureau's Learning Continuum, a learning, retention and renewal strategy launched in 2001–2002.

Stakeholder Feedback

Mergers Branch receives stakeholder feedback, not only through the Merger Forum and other meetings, but also on feedback cards that parties return and complete (34 percent of parties in 2001–2002, compared to 18 percent in 2000–2001 and 25 percent between 1997 and 1999).

1. The Bureau also applies these new provisions when enforcing the civil non-merger provisions of the *Competition Act*.

Merger Examinations, 1998–2002

	1998–1999	1999–2000	2000–2001	2001–2002
Examinations Commenced	309	361	373	328
◆ Includes notifiable transactions, advance ruling certificates and examinations commenced for other reasons.				
◆ Total number of notifiable transactions together with advance ruling certificate requests exceed the number of examinations commenced because in many instances a long or short form notification was filed along with a request for an advance ruling certificate.				
Notifiable Transactions	191	198	206	128
Advance Ruling Certificate Requests	174	209	255	243
Examinations Concluded¹				
Posing No Issue Under the Act	346	392	381	338
With Pre-closing Restructuring	0	2	0	3
With Post-closing Restructuring and Undertakings	1	6	5	2
With Consent Orders	2	1	1	2
Through Contested Proceedings ²	2	0	0	0
Parties Abandoned Proposed Mergers in Whole or in Part as a Direct Result of the Commissioner's Position	3	1	2	0
Advisory Opinions Issued (included in Total Examinations Concluded)	7	3	2	2
Total Examinations Concluded	302	338	389	345
◆ Includes advance ruling certificates and advisory opinions issued and matters that have been concluded or withdrawn before the Competition Tribunal.				
Advance Ruling Certificates Issued (included in Total Examinations Concluded)	186	128	215	217
Examinations Ongoing at Year-end	44	67	54	13
Total Examinations During the Year	346	405	443	358
Applications and Notices of Application Before the Tribunal and the Courts				
Ongoing at Year-end ³	1	1	2 ⁴	5
Concluded ⁵ or Withdrawn	4	2	1	2

1. If a transaction has a notification as well as an advance ruling certificate, it is only counted once.

2. Year completed.

3. Includes the merger of United Grain Growers Limited and Agricore Cooperative Ltd. The Bureau filed two applications with the Competition Tribunal, a consent order on the prairie elevator portion of the proposed merger (December 7, 2001) and one on the acquisition of the port terminal assets of Agricore in Vancouver (January 2, 2002). The transaction is only counted once in the Ongoing at Year-end row.

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

5. Concluded means that the Competition Tribunal or the courts issued an order or decision, and there were no further appeals.

Breakdown of Mergers by Year, 1998–2002

BUSINESS LINE	1998–1999	1999–2000	2000–2001	2001–2002
Pre-merger Notification Filing*	109	92	73	59
Advance Ruling Certificate Request	226	273	255	243
Other Examinations	26	60	45	26
Total Mergers	361	425	373	328
Asset Securitizations**	52	64	0	0
Total Minus Securitizations	309	361	373	328

* Excludes notification when an advance ruling certificate was requested.

** In January 2000, an exemption for notification of asset securitization transactions came into force. As a result, asset securitizations have been removed for comparative purposes.

Note: The figures in the Total Mergers row represent the total number of examinations commenced during the fiscal year.

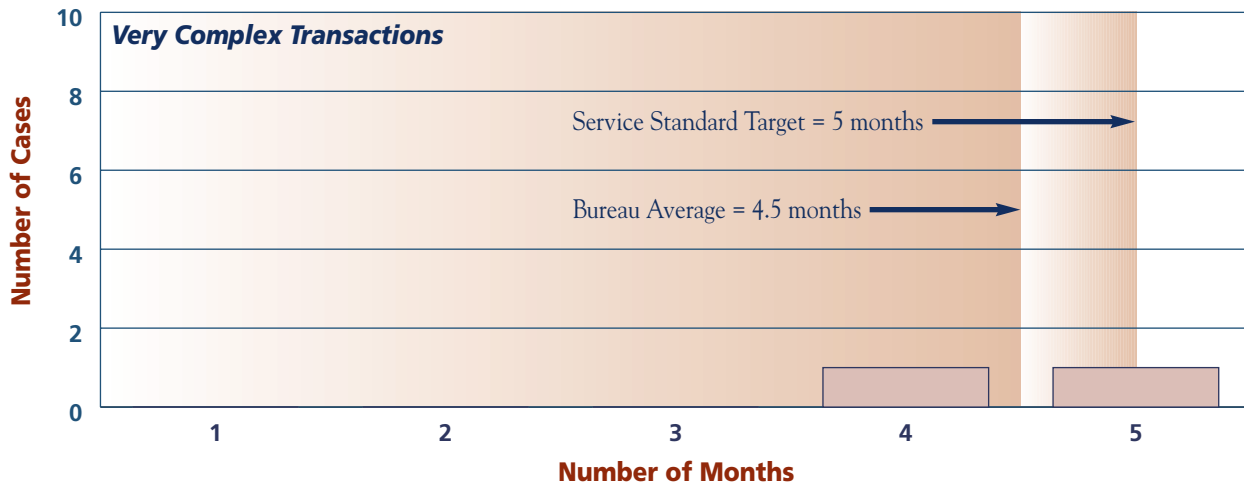
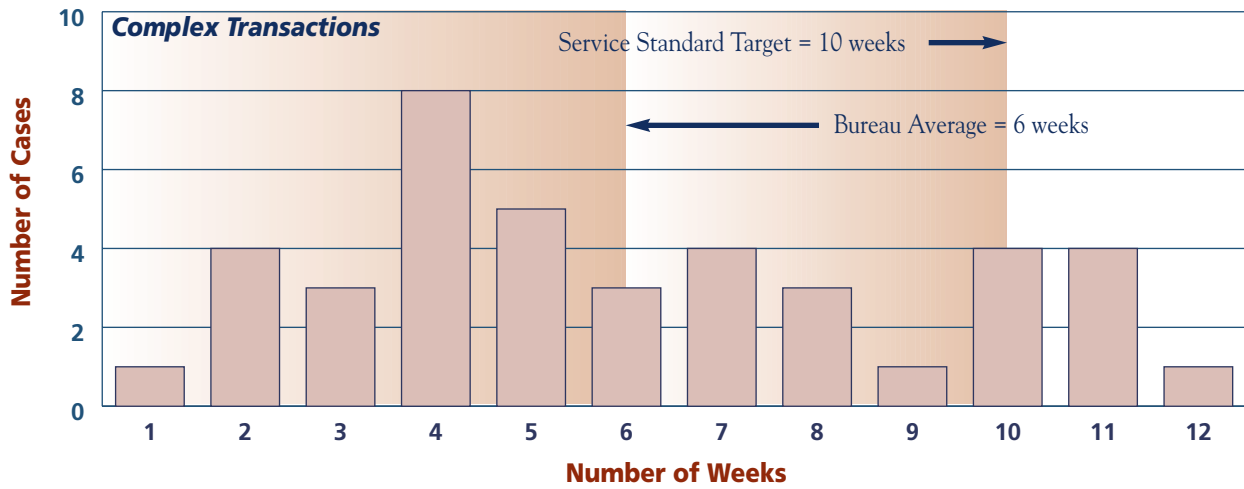
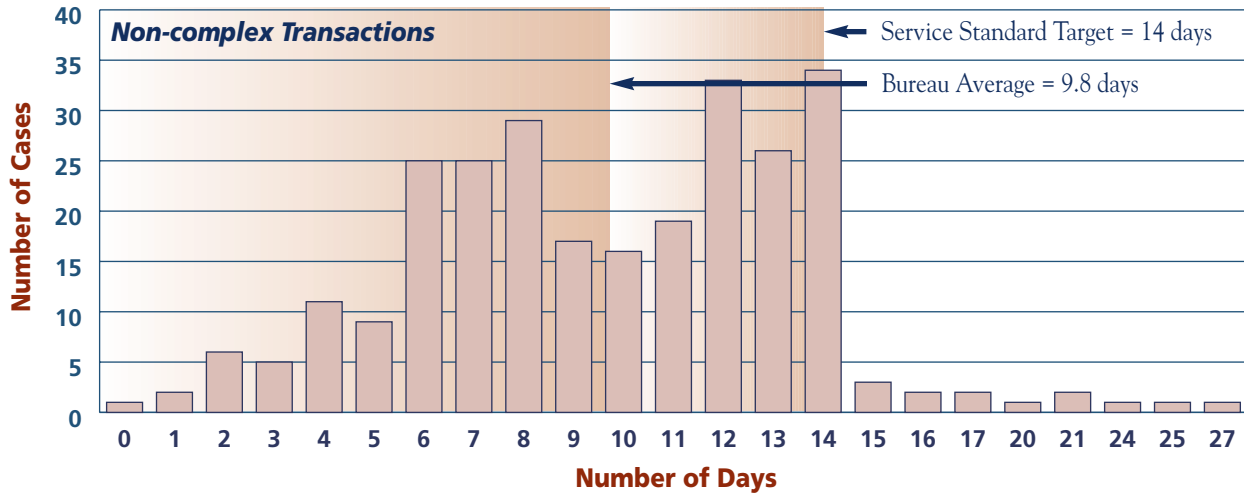
Merger Review: Meeting Service Standards

NUMBER OF TRANSACTIONS					
COMPLEXITY	November 1997 to March 1998	April 1998 to March 1999	April 1999 to March 2000	April 2000 to March 2001	April 2001 to March 2002
Not Complex	68	212	232	282	271
Complex	8	56	49	52	41
Very Complex	—	6	8	14	2
Total	76	274	289	348	314

SERVICE STANDARD											
COMPLEXITY	November 1997 to March 1998		April 1998 to March 1999		April 1999 to March 2000		April 2000 to March 2001		April 2001 to March 2002		
	TARGET	MET									
Not Complex	14 days	57	83.8%	187	88.2%	218	94.0%	270	95.7%	258	95.2%
Complex	10 weeks	8	100.0%	54	96.4%	43	87.6%	48	92.3%	36	87.8%
Very Complex	5 months	—	—	6	100.0%	7	87.5%	14	100.0%	2	100.0%
Total		65	85.5%	247	90.1%	268	92.7%	332	95.4%	296	94.3%

Excludes securitizations and is based on actual end date.

Meeting Service Standard Targets, April 1, 2001 to March 31, 2002



Case Summaries

The following are summaries of some of the major cases the Bureau commenced or that were ongoing during 2001–2002.

Canadian Waste Services Inc. and Browning-Ferris Industries Ltd.

In March 2000, Canadian Waste Services Inc., which owned six landfills in southern Ontario, acquired the Ridge landfill in Chatham from Browning-Ferris Industries Ltd. On April 26, 2000, the Bureau filed an application with the Competition Tribunal challenging this purchase on the grounds that it would likely result in higher prices for customers of waste disposal services in the Greater Toronto Area and Chatham-Kent.

Following a contested hearing in November 2000, the Tribunal ruled in favour of the Bureau's position in March 2001. The Tribunal held a three-day hearing in June 2001 to determine the appropriate remedy, and accepted the Bureau's proposed remedy on October 11, 2001, ruling that Canadian Waste must divest itself of the Ridge landfill.

Canadian Waste is appealing both the March and June 2001 decisions, and filed a notice of appeal with the Federal Court of Canada in November 2001. The hearing is expected to take place in the fall of 2002.

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. In August 2000, the Tribunal found that the merger would create a monopoly in many local markets, and would also have negative consequences for consumer choice, service and price throughout Canada. In Atlantic Canada, the Tribunal found that the merger would substantially lessen competition. The Tribunal ultimately allowed the merger to proceed, however, because a majority of Tribunal members found that the

efficiencies the merger generated would be greater than and offset the anti-competitive effects. The Bureau subsequently appealed the Tribunal's decision, asking the Federal Court of Appeal to review the Tribunal's interpretation of the efficiencies defence.

On April 3, 2001, the Court accepted the Bureau's position that the Tribunal interpretation of the *Competition Act* was too narrow in this case, set aside the Tribunal's interpretation of the efficiencies defence and sent the matter back to the Tribunal. Superior Propane then unsuccessfully applied to the Supreme Court of Canada for leave to appeal the Federal Court's decision.

The Tribunal held the re-determination hearing in October 2001.²

Abitibi-Consolidated Inc. and Donohue Inc.

In February 2000, Abitibi-Consolidated Inc. announced its intention to acquire Donohue Inc. for approximately CAN\$7.1 billion, thereby significantly increasing the size of the world's largest newsprint maker. After a thorough review, the Bureau concluded that the proposed merger would likely substantially lessen competition in the supply of newsprint in eastern Canada.

In February 2001, Abitibi provided an undertaking to the Bureau that it would divest itself of its Port-Alfred mill in Quebec, along with all the assets necessary for its continued operation. This undertaking gave the Bureau the right to apply to the Competition Tribunal for a consent order to formalize the agreement should the mill not be sold following Abitibi's sale process.

Abitibi did not divest the Port-Alfred mill within the sales period specified in the undertaking. Consequently, on December 17, 2001, the Bureau appointed Deloitte & Touche Corporate Finance Canada Inc. to act as the agent for the divestiture. On February 21, 2002, the Tribunal granted the consent order, and the agent is currently performing its mandate under this order.

2. The Tribunal issued its re-determination order on April 4, 2002. The majority of Tribunal members once again found that the merger's efficiencies were greater than and offset the anti-competitive effects. The Bureau filed an appeal with the Federal Court of Appeal on April 17, 2002, stating that the Tribunal's second decision raised fundamental questions about the purpose of the *Competition Act* and how it is interpreted. The Bureau also maintains that the Federal Court's 2001 decision directed the Tribunal to consider other objectives of the Act, such as the impact of the merger on consumers and small and medium-sized businesses, which the Tribunal members did not do.

Chapters Inc. and Trilogy Retail Enterprises L.P.

On April 18, 2001, with the consent of Indigo and Chapters, the Bureau applied to the Competition Tribunal for a consent order concerning the acquisition of Chapters Inc. by Trilogy Retail Enterprises L.P. The purpose of the order was to resolve the competition concerns raised by the proposed merger of Chapters, the dominant book retailer in Canada, with its rival Indigo Books & Music. The Tribunal issued the consent order on June 6, 2001.

On April 5, 2001, the Bureau had reached an agreement with Chapters, Trilogy and Indigo on a package of measures addressing its competition concerns. These included offering for sale 13 large-format book super-stores, 10 mall stores, a distribution centre, certain of Indigo's on-line assets, and up to three store brands (SmithBooks, Classic Books and Prospero). To facilitate new entry and expansion of competitors, the consent order also limits the use of restrictive covenants that would preclude other book outlets from operating in the same malls and shopping centres, and restricts Chapters/Indigo's growth. In addition, Chapters, Indigo and publishers' associations agreed to a code of conduct enforceable by arbitration that sets minimum standards of trade between the merged company and publishers for five years. The Competition Tribunal approved these measures and made them part of its June 2001 binding order.

The Bureau concluded that without these remedies the proposed merger would prevent or substantially lessen competition in the purchase and retail sale of English-language trade books in Canada for both consumers and publishers.

For a variety of reasons, including the economic climate at the time, the stores did not sell. However, other provisions of the order that, for instance, restrict the growth of Chapters/Indigo, will continue to remain in force for five years.

Astral Media Inc. and Telemedia Radio Inc.

On December 21, 2001, the Bureau filed an application with the Competition Tribunal to challenge the proposed acquisition by Astral Media Inc. of eight French-language radio stations owned and operated by

Telemedia Radio Inc. in Quebec, and of the 50 percent interest held by Telemedia in Radiomédia.

After reviewing the issue, the Bureau concluded that the proposed merger would likely prevent or substantially lessen competition in six markets. By acquiring the eight Telemedia stations, Astral would have a near monopoly in French-language radio advertising in four markets (Gatineau–Ottawa, Sherbrooke, Trois-Rivières and Chicoutimi–Jonquière) and substantial control over French-language radio advertising markets in Montréal and Quebec City.

The remaining part of the proposed transaction, primarily Astral's acquisition of Telemedia's radio stations in the Maritimes, did not raise competition concerns.

On April 15, 2002, the Competition Tribunal extended the deadline for response to the Bureau's application because the merging parties filed a motion with the Federal Court of Canada challenging the Bureau's jurisdiction over the proposed transaction. The Federal Court's Trial Division heard this matter on May 13 and 14, 2002, in Montréal.

Lafarge S.A. and Blue Circle Industries PLC

On June 15, 2001, the Bureau applied to the Competition Tribunal for a draft consent order calling for unprecedented divestitures to implement its April 11 agreement with Lafarge S.A.

The divestitures were part of a package to resolve competition concerns arising from the proposed acquisition by Lafarge S.A. of Blue Circle Industries PLC. The Canadian subsidiaries of the merging parties are the two largest cement and related construction material suppliers in Canada. The Bureau had concluded that without these divestitures the deal would likely have prevented or substantially lessened competition in certain cement and ready-mix concrete aggregates markets, as well as those in asphalt and related paving, in Ontario.

The Bureau's application also required Lafarge to divest its Blue Circle assets quickly, while continuing to ensure they were competitive and viable. On April 11, 2001, the Bureau agreed not to challenge the proposed acquisition after Lafarge contracted to sell the vast

majority of its Canadian Blue Circle assets and businesses as well as related cement distribution assets in the United States. The Tribunal approved the order on August 21, 2001, and Lafarge sold the Blue Circle cement assets to Votorantim S.A. of Brazil, and undertook to divest the majority of its remaining assets in Ontario by auction. Valued at more than US\$1 billion, the assets the merging parties divested in Canada and the United States represent the largest divestiture package in the history of Canadian competition law.

***United Grain Growers Limited
and Agricore Cooperative Ltd.***

Prior to their merger on November 1, 2001, United Grain Growers Limited (UGG) and Agricore Cooperative Ltd. were two of the largest grain-handling companies in western Canada. On reviewing the proposed merger, the Bureau concluded that, among other things, the merging companies' increased market shares of terminal grain-handling services at the Port of Vancouver and in certain grain-handling markets in Manitoba and Alberta would substantially lessen competition.

Consequently, the Bureau filed an application with the Competition Tribunal on January 2, 2002, challenging the UGG acquisition of port terminal assets held by Agricore at the Port of Vancouver, and asking the Tribunal to order UGG to divest a terminal there. On January 15, 2002, the Tribunal issued an interim order requiring that the merged company, Agricore United, maintain the competitive viability of the UGG and Pacific Elevators Limited grain-handling terminals at the Port of Vancouver, pending a Tribunal hearing. The order also ensured that competitive access would be maintained, and that non-integrated grain companies would not suffer any service interruptions pending the hearing.

Prior to this application, on December 17, 2001, the Bureau had filed a separate application with the Tribunal for a consent order requesting Agricore United to divest itself of elevators in Dauphin, Manitoba, and Edmonton and Peace River, Alberta. Agricore agreed to these proposed divestitures prior to the Tribunal hearing on the Bureau's applications. The resulting consent order from the Tribunal specifies that the elevators be divested, a process that is ongoing.

As part of the consent order, Agricore United was also required to abide by strict confidentiality provisions concerning its post-merger ownership interests in CanAmera Foods Ltd., a Canadian canola seed processor. The provisions were intended to prevent the sharing of proprietary information with Archer Daniels Midland Company, which is not only a major shareholder in UGG, but also a large domestic seed processor and competitor of CanAmera's. On April 1, 2002, Central Soya Company Inc. announced that it had signed a letter of intent to acquire full ownership of CanAmera. This transaction, which is expected to be concluded in late May 2002, will completely resolve the Bureau's concerns about CanAmera.

***SYSCO Corporation and
SERCA Foodservice Inc.***

On December 5, 2001, SYSCO Corporation announced its intention to acquire the assets of SERCA Foodservice Inc. and other related food service assets across Canada from Sobeys Inc. At the time of the announcement, SYSCO and SERCA were the two largest food service distributors in British Columbia. SYSCO is North America's largest food service distributor.

Food service distribution involves the supply of food and restaurant supplies to restaurants, fast-food chains, hotels, and educational and health care facilities.

After a thorough review, the Bureau concluded that the proposed merger would likely substantially lessen competition in British Columbia but did not raise competition concerns elsewhere.

The Bureau announced on March 21, 2002, that the merger could proceed based on SYSCO's announcement two days earlier that SERCA's assets in British Columbia would be sold to Gordon Food Service, Inc. Both transactions were completed on March 30, 2002.

***Canada Bread Company, Limited
and Multi-Marques Inc.***

On January 22, 2001, Canada Bread Company, Limited, one of Canada's largest bakers, announced its intention to acquire the remaining 75 percent of Multi-Marques it did not already own.

In the Maritimes, Canada Bread owns Eastern Bakeries Ltd., while Multi-Marques controlled Ben's Limited. On October 12, 2001, the Bureau announced that it would require divestitures by Canada Bread to resolve some competition concerns. The Bureau's investigation showed that the proposed merger would likely substantially lessen competition in the supply of fresh bread and rolls to food service customers such as hospitals, restaurants, hotels and other institutional accounts in the Maritimes.

The Bureau allowed the transaction based on agreements in principle between Canada Bread and four other bakeries operating in the Maritimes to purchase the assets to be divested. Canada Bread further undertook to complete these divestitures, which represented one third

of the merged company's food service business, as quickly as possible. Canada Bread also agreed to make certain assets available, such as trucks and transfer depots used to deliver fresh bread. The undertakings give the Bureau the right to apply to the Competition Tribunal for a consent order to formalize the agreement should the undertakings be breached.

***Diageo PLC, Pernod Ricard S.A.
and The Seagram Company Ltd.***

On December 20, 2000, Diageo PLC and Pernod Ricard S.A. announced their successful bid for the spirits and wine business of The Seagram Company Ltd. The Bureau conducted an extensive review of the proposed merger and concluded that Diageo's purchase of Seagram's Canadian whisky brands, including Crown Royal and Seagram's VO, would likely substantially lessen competition in the supply of premium whisky products in several provinces. At the same time, the Bureau determined that the Pernod Ricard portion of the transaction did not raise competition concerns.

The Bureau announced in October 2001 that it had reached a settlement with Diageo to resolve competition concerns arising from the proposed acquisition. Under the terms of the settlement, Diageo agreed to divest its Gibson's Finest brand of Canadian whisky and related assets within a set period of time.

The undertaking further provided that if the terms of the undertaking were breached, or if the brand remained unsold by the end of that period, the Bureau would file a consent order with the Competition Tribunal that, if approved, would place the sale in the hands of a trustee. As of March 26, 2002, the brand had not been sold. The Bureau is continuing to monitor the divestiture process.

The Competition Bureau has a range of interdependent instruments at its disposal to respond to anti-competitive activity. Whenever possible, it works with companies to eliminate anti-competitive behaviour and encourage compliance with the law. However, when anti-competitive conduct prevails and there is evidence that a firm has violated the criminal provisions of the *Competition Act*, the Bureau refers the case to the Attorney General of Canada and recommends prosecution. This can result in heavy fines, prison terms, or both, for offenders. In the past year, prosecutions have led to companies being fined approximately CAN\$3 million. In civil matters, when a solution cannot be reached by consent order or other means, the Bureau applies to the Competition Tribunal or the courts for a remedial order.

The following are examples of the Bureau's response to non-conformity, including cases involving international cartels and ones handled 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 (www.cb-bc.gc.ca).

Airline Industry

The state of competition in the Canadian airline industry continued to be at the forefront of public discussion in 2001–2002. In May 2001, the Commissioner appeared before the House of Commons Standing Committee on Transport and Communications and addressed a number of questions concerning the Bureau's enforcement experience and airline policy.

The past year saw some consolidation among Canadian airlines and the disappearance of a number of competitors. Unquestionably, the events of September 11, 2001, caused serious disruption to the industry. Air Canada struggled through the year with record losses and an increasing debt load, and while the continued growth of WestJet had a beneficial effect on competition, the failure of Canada 3000 had a negative impact. Nationally, Air Canada's market share remained in the 80 to 90 percent range, particularly in eastern Canada and on

transcontinental routes where it faced little or no competition. Even on major routes, such as Montreal–Toronto and Halifax–Toronto, Air Canada became the only service provider. Against this backdrop, the Bureau continued to treat competition in the airline industry as a priority.

Enforcement Cases and Legal Challenges

In March 2001, the Commissioner filed an application against Air Canada with the Competition Tribunal. The application arose as the result of investigations into Air Canada's response to WestJet's expansion into eastern Canada and the entry into the market of CanJet, another low-cost carrier. The application alleged that Air Canada was engaged in anti-competitive practices, namely operating or adding capacity at fares that did not cover the avoidable cost of providing the service.

This is the first case under the new airline regulations, introduced in 2000 to promote airline competition following the merger of Air Canada and Canadian Airlines, that specified that avoidable costs are to be the standard for assessing predatory conduct in the airline industry. Consequently, both Air Canada and the Bureau asked the Tribunal to consider and rule on specific questions related to the application of this test. The hearing, which began in August 2001, was twice adjourned as a result of the events of September 11 and their impact on the airline industry, as well as the illness of a Tribunal member. The hearing is scheduled to resume before a new panel on October 7, 2002.

In October 2000, Air Canada had launched two legal challenges to the Bureau's authority under section 104.1 of the *Competition Act* to issue temporary orders to firms in the airline industry. In July 2001, the Quebec Superior Court upheld the Bureau's authority with respect to the first challenge. Air Canada then appealed the decision to the Quebec Court of Appeal. This appeal is scheduled to be heard in October 2002.

In February 2002, the Federal Court of Appeal dismissed Air Canada's second challenge, which concerned the Competition Tribunal's decision to uphold the temporary order issued by the Bureau in the CanJet case.³

3. Air Canada filed an application with the Supreme Court of Canada for leave to appeal the decision. The matter is pending.

Complaints and Investigations

In October 2001, the Bureau began an inquiry into allegations that Air Canada had launched its discount carrier Tango to drive Canada 3000 from the market.

Following an intensive examination, the Bureau concluded, first, that the introduction of Tango could constitute an anti-competitive act on the part of Air Canada and, second, that Tango was having a detrimental impact on Canada 3000. Although the Bureau was prepared to issue a temporary order under section 104.1 of the *Competition Act*, Canada 3000 ceased operations before it could do so, due to difficulties in addition to the competitive effects of Tango. The Bureau is continuing to monitor Tango and its effects on the market.

During 2001–2002, the Bureau received and investigated a number of complaints, including two from travel agents and their associations, concerning a seat sale that travellers could only take advantage of by booking their reservations over the Internet, and the tendency of airlines to reduce or eliminate commissions paid to travel agents. After examining these complaints, the Bureau concluded they did not provide grounds for a formal inquiry under the *Competition Act*.

Guidelines on the Abuse of Dominance in the Airline Industry

As described in Chapter 2, the Bureau released draft *Enforcement Guidelines on the Abuse of Dominance in the Airline Industry* in February 2001 for public consultation (see page 4).

Amendments to the Competition Act

The Government introduced two airline-related amendments to Bill C-23, now called *An Act to Amend the Competition Act and the Competition Tribunal Act*, S.C. 2002, c. 16, which came into force on June 21, 2002. The first amendment permits the Competition Tribunal to extend a temporary order issued by the Commissioner when the Bureau does not receive information necessary to complete an inquiry in a timely fashion.

The second amendment allows the Competition Tribunal, in certain defined circumstances, to impose

administrative monetary penalties of up to \$15 million when, after a hearing, it finds a breach of the abuse of dominance provisions of the *Competition Act*. These penalties are expected to encourage compliance with the abuse of dominance provisions in the airline industry.

Misleading Representations

On May 18, 2001, Peter Kuryliw, 1473253 Ontario Incorporated and YellowBusiness.ca were charged with committing an offence under the false and misleading representations provisions of the *Competition Act*. The accused are alleged to have mailed what appeared to be invoices to businesses and non-profit organizations in Canada that were not customers of the Internet-based business directory company.

Deceptive Telemarketing

In June 2001, criminal charges were laid against four Montréal telemarketing companies following an investigation into deceptive telemarketing activities aimed at consumers in Canada and New Zealand. The four companies (Farber Blake Corp., S.D. Prestige Enterprises Ltd., L.A. Premiums, and J.C. & A.) allegedly informed consumers by phone that they would receive a prize, provided they bought one of the company's promotional items. The Bureau alleges the companies sold these items at substantially inflated prices and made misrepresentations about the nature, value and quality of both the prizes and the promotional items.

In October 2001, seven criminal charges were laid against the telemarketing company Tamec Inc. and its subsidiaries, the Commercial Information Bank of Canada and Deev Inc., which marketed various business directories as well as Web-based advertising services. The Bureau received hundreds of complaints alleging that the telemarketers misrepresented the purpose of their calls, provided false information about existing subscriptions to various Tamec products, and did not disclose restrictions that applied to returning products. Complainants also alleged that the telemarketers did not disclose that by agreeing to accept delivery of one edition of a Tamec product, they were actually entering into a multi-edition subscription.

In March 2002, criminal charges were laid against individuals, including the directors, two administrators and seven telemarketers, of two Montréal-based telemarketing companies: 3636135 Canada Inc. (Alexis Corporation) and 3587932 Canada Inc., its administrative affiliate. The charges were laid after the Bureau obtained wiretap evidence of deceptive telemarketing activity. Consumers in Australia and New Zealand claimed that telemarketers phoned to tell them they had been chosen to receive valuable prizes but were required to make a payment prior to delivery. In addition, the Bureau alleged that consumers were misled about the nature, value and quality of the prizes and were offered a grossly overpriced product in exchange for pre-payment.

Cooperation Between the RCMP and the Competition Bureau

The RCMP and the Competition Bureau signed an agreement to work together to curb illegal telemarketing operations, thereby formalizing an arrangement under which Bureau investigators work side-by-side with RCMP investigators, and the two agencies exchange information and strategy. The agreement confirms the Bureau's membership in the RCMP Telemarketing Task Force, Project Emptor, which targets fraudulent, deceptive and misleading telemarketing activity in British Columbia and the northwestern United States. The task force has had a number of successes against crossborder operations in the past two years, taking simultaneous legal action on both sides of the border against B.C.-based telemarketers who target U.S. victims. To date, the task force has seized or frozen assets totalling more than CAN\$29.5 million, while securing prison sentences against several individuals.

The Competition Bureau has joined Project Colt (Centre of Operations Linked to Telemarketing fraud), a task force created in 1995 to investigate fraudulent telemarketing operations in Quebec and the northeastern United States. Project Colt comprises representatives from Canadian and American agencies, including the RCMP, the Sûreté du Québec, the Montreal police, the Canada Customs and Revenue Agency, the Federal Bureau of Investigation, the U.S. Customs Service and Postal Service, and the Competition Bureau. The RCMP and the Competition Bureau signed an agreement to formalize the Bureau's membership on the task force.

Multilevel Marketing

In May 2001, Lifestyles Canada Ltd. was fined \$95 000 after pleading guilty to four criminal charges under the *Competition Act's* multilevel marketing provisions. The ruling came as a result of the Bureau's investigation into Lifestyles Canada's recruitment practices. As part of its recruitment efforts, Lifestyles Canada and some of the participants in the multilevel marketing plan used Web sites and recorded telephone messages, distributed promotional material and held meetings to highlight participants who had earned hundreds of thousands or even millions of dollars. However, the company failed to disclose that the income of a typical participant was between \$399 and \$2000 per year. In addition to a fine and prohibition order against Lifestyles Canada, the Ontario Superior Court of Justice also imposed prohibition orders against four participants in the multilevel marketing plan, two in Ontario and two in Alberta. The actions against the individuals were finalized in November 2001.

In March 2002, 11 charges were laid against NSV Nutri-nautes Inc. under the multilevel marketing, pyramid selling and false or misleading representations provisions of the *Competition Act*. The Quebec company operates a multilevel marketing plan known as the Cocooning Club, which promotes and sells computer software on nutrition and other subjects. The Bureau alleged that the firm and its participants, through Web sites and a TV infomercial, recruited new participants by exaggerating income expectations without disclosing the income of a typical participant.

Price Maintenance

On September 27, 2001, the Bureau laid charges against Sherwood Co-operative Association Limited, a supplier of petroleum products, and one of its managers, under the price maintenance provisions of the *Competition Act*. The charges alleged that Sherwood and the manager attempted to influence upwards, or discourage the reduction of, the price at which an independent retailer sold gasoline and diesel fuel near the city of Regina.

Deceptive Marketing Practices

In December 2001, the Bureau filed a consent order with the Competition Tribunal against Antirouilles Electro-techniques TP, and Garantie Express Inc. and its president, about the promotion of an electronic anti-corrosion device known as Total Protection. Marketed primarily in Quebec, the \$300 device was promoted as being able to protect a car's entire body against rust. The Bureau determined that the tests the companies used to substantiate this claim were insufficient.

Under the terms of the consent order, the companies agreed to cease marketing Total Protection and an extended anti-corrosion guarantee. In addition, they agreed not to market similar products in Canada without adequate and proper tests. The order also required the companies to inform the affected consumers in writing that they could choose to keep the two products with the complete eight-year anti-corrosion insurance policy or get their money back. This was the second consent order the Bureau has issued about electronic anti-corrosion devices. It is currently examining other devices with similar performance claims.

Consumer Packaging and Labelling

In November 2001, Gotham Industries Inc., a chemical company based in Sainte-Thérèse, Quebec, pleaded guilty to three counts of false or misleading representation of the quantity of their products. An inspection of packages of paint thinner, methyl hydrate and antifreeze revealed that the labels did not accurately reflect the quantity of product in the packages. The firm was fined \$500 for each charge, for a total of \$1500, under the *Consumer Packaging and Labelling Act*. The Superior Court of Quebec ordered that a Competition Bureau officer inspect the 248 packages that violated the Act before they could be released for sale.

In December 2001, Laurentide Chemicals, Atlantic Ltd., a chemical company based in Richibucto, New Brunswick, pleaded guilty to four counts of false or misleading representations of the quantity of their products. The company was fined \$1500 for each charge, for a total of \$6000, under the *Consumer Packaging and Labelling Act*. An inspection of five lines of Laurentide paint products revealed that the labels did not accurately reflect the amount of paint in the packages.

International Conspiracy

In July 2001, an investigation by the Competition Bureau into the food industry led to the conviction of Japan-based Ueno Fine Chemicals Industry Ltd. on charges of participating in an international price fixing and volume allocation conspiracy. The company was fined CAN\$1.25 million, while one of its former senior executives was fined CAN\$150 000 for his part in the conspiracy. The investigation revealed that Ueno was involved in an international price fixing and market sharing conspiracy for more than 17 years, affecting prices of preservatives used in the food industry. Ueno is the fourth international company to be convicted of such offences in Canada in the past three years.

In October 2001, an international investigation of the food preservative industry by the Competition Bureau, led to the conviction of U.S.-based Pfizer Inc., which pleaded guilty to price fixing and was fined CAN\$1.5 million. The Bureau's investigation revealed that Pfizer was involved in an international price fixing conspiracy from 1992 to 1994, fixing the prices for sodium erythorbate, a food preservative agent.

Alternative Case Resolution

Alternative case resolution, one of the instruments the Bureau uses to address anti-competitive behaviour, involves efforts to achieve compliance with the law without contested enforcement measures. The following are examples of cases the Bureau successfully resolved in this way in the last year.

Predatory Pricing and Price Discrimination

In the fall of 2001, the Bureau received a complaint and related information that a sugar producer may have been engaging in predatory pricing and price discrimination in the supply of sugar in eastern Canada.

As part of its examination, the Bureau conducted a compliance interview with the sugar producer. As a consequence, the sugar producer was made aware of the relevant provisions of the *Competition Act* and reviewed its pricing policies for compliance. The Bureau subsequently monitored pricing in the market and reviewed it in relation to the allegations. The examination is now closed.

Price Maintenance

In October 2001, a Bureau inquiry led to an order by the Federal Court of Canada prohibiting a supplier of assessment tests from engaging in price maintenance activities. The order, made with the consent of the supplier, resolves a complaint that the supplier had refused to supply a retailer because of the low prices that retailer was charging. Assessment tests are used by educators and medical professionals to measure educational skills and, in some cases, to establish psychological profiles of clients.

In November 2000, the Bureau received a complaint that a scuba diving shop in western Canada had sent a letter to its competitors proposing a fixed price for scuba diving lessons and requesting they meet to discuss the proposal. The letter also made reference to an alleged agreement to fix the price of scuba diving lessons in another city. The Bureau consulted the scuba diving shops that received the letter and found that no price-fixing agreement existed. The shop that sent the letter provided written assurance that it would comply with the provisions of the *Competition Act* in its future dealings with competitors. The matter is now closed.

In April 2000, the Bureau began investigating a consumer complaint that a foreign sunglasses manufacturer had threatened to stop supplying four retailers in western Canada should they have sold its brand name sunglasses below the suggested retail price. Consultations with the retailer confirmed the allegations. Consequently, the Bureau informed the retailers and manufacturer of their rights and obligations under the price maintenance provisions of the *Competition Act*. The manufacturer then provided written assurance that it would comply. The matter is now closed.

In August 2001, the Bureau began investigating an allegation that six major electrical parts distributors in the Calgary area had met and agreed to impose a minimum surcharge of \$20 on all shipments of electrical parts, and that the distributors had sent notices containing similar wording and dates to customers advising of the price increases. When it became clear that evidence supported this allegation, the Bureau sent letters to the distributors involved in the price-fixing conspiracy, informing them of their rights and obligations under the conspiracy provisions of the *Competition Act*. The matter was resolved and is now closed.

Abuse of Dominance

In May 2001, the Bureau initiated an inquiry into complaints about the cost to consumers of exiting the Enbridge Services Inc. natural gas water heater rental program in parts of Ontario. The Bureau concluded that the exit charges and conditions prevented other companies from attracting customers and competing. Enbridge agreed to resolve the Bureau's concerns. In February 2002, the Competition Tribunal issued a consent order to encourage competition in the supply and service of natural gas water heaters in Ontario. The order included the following terms.

- ◆ Competitors will no longer be prevented from disconnecting and returning Enbridge's rental water heaters.
- ◆ All customers will be given a clear "buy-out price" option for their Enbridge rental water heater reflecting its price at the time of installation.
- ◆ The period during which rental arrangement exit charges apply is reduced from 11 to 5 years, having the immediate impact of eliminating exit charges for more than 35 percent of Enbridge's current rental customers.
- ◆ While subject to exit charges, Enbridge rental customers will be protected against rental rate increases greater than the rate of inflation.

The consent order gives small and medium-sized businesses the opportunity to compete effectively in Ontario and provides consumers with greater freedom to switch suppliers to take advantage of low prices.

In December 2001, the Bureau reached an agreement with the Insurance Corporation of British Columbia (ICBC) about allegations of anti-competitive conduct. The Bureau identified competition concerns arising from a number of ICBC's actions or threats of action allegedly targeting brokers selling insurance from ICBC competitors. The Bureau initiated discussions with ICBC to resolve the concerns. During the course of those discussions, the provincial government undertook a core review of ICBC's status, business and future. It is expected that this review will result in changes to the automobile insurance industry in the province that will promote competition. In this changing context, the Bureau has accepted ICBC's assurances that it has discontinued its alleged anti-competitive conduct.

Information Contacts

The Bureau may contact individuals during the course of an investigation when it believes that they may be unaware that their conduct raises concerns under the *Competition Act*, *Consumer Packaging and Labelling Act*, *Textile Labelling Act* and *Precious Metals Marking Act*, and that they might comply with the legislation if it were explained to them. The people

contacted are under no obligation to discuss the matter or justify their conduct but, should they decide to take voluntary corrective action, the Bureau would then determine whether to continue the examination, monitor the anti-competitive conduct or close the file. Numerous information contacts were made during 2000–2001 in such areas as transportation, sports equipment, maternity clothing, professional fee setting and retail sales of consumer goods.

6

MAINTAINING A MODERN APPROACH TO COMPETITION LAW

To ensure that Canadian consumers and businesses receive the full benefit of an innovative and competitive marketplace, the Bureau regularly reviews the *Competition Act*, as well as its own policies and enforcement guidelines, to ensure they are consistent with developing jurisprudence and economic thought. A modern, up-to-date legislative framework also enhances Canada's ability to compete internationally and to attract foreign investment.

The *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act* help ensure that companies provide consumers with accurate and adequate information.

When changes are proposed to the legislation or to the Bureau's approach to enforcing it, the Bureau actively seeks the views of its stakeholders and the public.

Immunity

Under the *Competition Act*, the Attorney General of Canada may, at the Commissioner's request, grant individuals immunity from prosecution for criminal offences in exchange for assistance in investigating those offences.

As a result of the increasing integration of the world economy and the globalization of commerce, international cartels are growing both in number and complexity. Consequently, the Bureau is working more and more with agencies from other jurisdictions in its investigations of transnational anti-competitive conduct. Currently, the Bureau is investigating 18 international cartels, and it receives about eight immunity requests each year. In addition, the number of domestic cases involving immunity applicants has increased. The Bureau has posted the most frequently asked questions about the immunity program on its Web site (<http://strategis.ic.gc.ca/SSG/ct02312e.html>).

Section 11 Challenge Function

In 2001–2002, the Bureau introduced an internal challenge function as part of its process for using the formal powers under section 11 of the *Competition Act*. Section 11 gives the Commissioner or an authorized representative the authority to apply to the courts for an order requiring parties to provide records, written returns of information, or oral evidence before a presiding officer.

The section 11 challenge function requires a senior officer in the Bureau's Compliance and Coordination Directorate to approve these applications before they can proceed to court. The officer must ensure that applications and requests for records and information are clear, and that the Bureau is seeking only necessary records and information.

The Bureau sought and obtained section 11 orders in 15 inquiries during 2001–2002. Many of these cases involved multiple orders, sought either simultaneously or at various stages of the inquiry.

International Internet Pilot Project

On April 24, 2001, the Bureau, along with competition agencies from 12 countries, participated in the launch of a Web site (www.econsumer.gov) that allows consumers to file complaints on the Internet about e-commerce transactions with foreign companies. The site also allows users to obtain information and get practical advice on making safe on-line purchases.

House of Commons Committee Review of the *Competition Act*

In 1999–2000, the House of Commons Standing Committee on Industry, Science and Technology began hearings to review the anti-competitive pricing provisions of the *Competition Act*. The hearings continued through 2000–2001 and the committee issued an interim report on June 14, 2000 (available at <http://www.parl.gc.ca/InfoComDoc/36/2/INDU/Studies/Reports/indu01-e.html>). In the fall of 2001, the Committee's chair announced that the Committee would publish a final report, which precipitated two round-table hearings on December 3, 2001, and further hearings on February 5, 2002.⁴

Modernizing the *Competition Act*

On December 10, 2001, the House of Commons passed Bill C-23, *An Act to Amend the Competition Act and the Competition Tribunal Act*. The Bill was subsequently introduced in the Senate and was referred to the Senate Standing Committee on Banking, Trade and Commerce on February 5, 2002, following second reading. Bill C-23, now called *An Act to Amend the Competition Act and the Competition Tribunal Act*, S.C. 2002, c. 16, came into force on June 21, 2002. This vital economic legislation strengthens Canada's competition law in a number of ways.

- ◆ The law prohibits companies from sending out notices that give the recipients the general impression that they have won a prize, and that involve the recipients having to pay money or incur a cost in order to obtain the prize. The provision applies to notices sent by any means such as regular or electronic mail.
- ◆ The Act enables the Competition Bureau to request formal assistance from foreign states to obtain and transmit evidence located abroad in non-criminal competition matters such as abuse of dominance. The Act's new Part III establishes a framework that sets out the basic requirements to be incorporated in any mutual legal assistance agreement negotiated for this purpose.

- ◆ The Competition Tribunal now has the authority to issue interim orders prior to litigation to prevent irreparable harm to a business. This authority applies to all reviewable matters under Part VIII of the *Competition Act*, except mergers and specialization agreements.
- ◆ The law gives the Competition Tribunal the authority to hear references (questions involving a specific aspect of a case or interpretation of the law), to award costs and to make summary dispositions when it finds no merit to the case or no genuine defence.
- ◆ The Act now allows private parties to apply directly to the Tribunal to address matters regarding refusal to deal, tied selling, exclusive dealing and market restrictions (sections 75 and 77 of the *Competition Act*). Private access allows individual businesses, most often small and medium-sized businesses, to deal with private or local matters independently.



4. The Committee tabled its final report, *A Plan to Modernize Canada's Competition Regime*, on April 23, 2002. The report's 29 recommendations touch a wide range of issues, including conspiracies, enforcement, the airline industry, price maintenance and discrimination, abuse of dominance and mergers.

- ◆ The Act includes measures to protect competition in the Canadian airline industry:
 - authority for the Competition Tribunal to grant further extension of a temporary order until the Commissioner has had sufficient time to receive and review information and determine whether to make an application before the Tribunal
 - further authority for the Competition Tribunal to impose an administrative monetary penalty against a dominant airline carrier that it finds to have abused its dominant market position.

These new provisions provide the Bureau with better tools to enhance compliance with the Act, for the benefit of consumers and businesses alike.

Amendments to the Conspiracy Provisions

Possible amendments to the conspiracy provisions of the *Competition Act* (section 45), were an important topic of discussion during extensive national consultations undertaken by the Public Policy Forum in 2000. In its final report, the Forum concluded that substantial support existed for amending section 45 by adopting a two-track approach for agreements among competitors. Under this approach, criminal sanctions would be

limited to the most harmful types of agreements, such as price fixing or market sharing, while other types of agreements would be subject to review under a civil standard.

However, the Forum also indicated that, because of the importance and complexity of the issues involved, most stakeholders felt that more discussion, analysis and consultation were required. Further to this suggestion, the Competition Bureau contracted three independent studies on the conspiracy provisions during 2001–2002. These expert reports are available on the Bureau's Web site (<http://strategis.ic.gc.ca/SSG/ct02277e.html>).

Private Members' Bills

No new Private Members' Bills on competition issues were introduced in the House of Commons during 2001–2002. Only Bill C-248, which proposes to amend the *Competition Act* to clarify when efficiency gains from a proposed merger would offset the merger's competition effects, progressed during that period. On February 25, 2002, the Bill was referred to the House of Commons Standing Committee on Industry, Science and Technology, following second reading.

APPENDIX I: DISCONTINUED CASES

During 2001–2002, the Bureau discontinued a number of the formal inquiries it had initiated into allegations of anti-competitive activity.

Commercial Space Rental

The Bureau initiated an inquiry into allegations that certain commercial terms imposed on tenants of a shopping centre near Sherbrooke, Quebec, contravened the market restriction provisions of the *Competition Act*. The complaint alleged that the radius clauses in the lease agreements were detrimental to competition in the rental of commercial space, since they prevented mall tenants from opening other stores in the area. The Bureau concluded that, although the distance in the radius clauses was higher than that usually used in the industry, the clauses were not likely to substantially lessen competition in the area. As well, the leasing practices did not prevent a significant number of retailers from locating elsewhere. The Bureau therefore discontinued the inquiry.

Greeting Cards

The Bureau initiated an inquiry into a complaint that major greeting card suppliers were using exclusive contracts to limit the sales outlets available to competitors. The evidence showed that, while some firms might be affected by the signing of exclusive contracts, sufficient competition remained. The Bureau discontinued the inquiry.

Cold Beverages

The Bureau launched an inquiry into a complaint that major suppliers of cold beverages were entering into exclusive contracts with private and public venues. The evidence showed that, while some firms might be affected by the signing of exclusive contracts, sufficient competition remained. Consequently, the inquiry was discontinued.

Book Retailing and Distribution

In July 2000, the Bureau began an inquiry into allegations of anti-competitive acts relating to the retailing, wholesaling and distribution of books in Canada. The allegations included that firms were using their market power to obtain preferential trade terms from publishers, and carrying out exclusionary, predatory and disciplinary practices in the retail book market.

As the investigation proceeded, major structural changes occurred in the industry, most significantly the merger of two of the companies, that alleviated many competitive concerns. In April 2001, the Bureau permitted the merger to proceed under certain conditions, which the Competition Tribunal subsequently approved in a consent order. The order included a code of conduct that addressed the publishers' concerns about trade terms with the dominant book chain and retailer concerns about exclusive leases. The withdrawal of one of the subsidiary companies from the wholesale book market ended industry concerns about wholesale discounts to this subsidiary. As a consequence, the Bureau discontinued the inquiry.

Closed-circuit Television Networks in Hospitals

In March 1999, the Bureau initiated an inquiry into alleged anti-competitive acts related to access to closed-circuit television networks in hospitals.

The complaint provided reasonable evidence that one company was substantially controlling the market for hospital closed-circuit television networks outside Quebec by using long-term exclusive contracts, and that it was limiting third-party access to an essential facility. In particular, the evidence showed that the company was introducing an access fee to its competitor that it was not charging to its affiliate, with the intent of eliminating the competitor. As a result of the investigation, the company voluntarily agreed to change its business practices. Consequently, the inquiry was discontinued.

Credit Card Protection Services

In October 1999, the Bureau initiated an inquiry as a result of information provided by the Montreal police alleging that telemarketers were offering American residents credit card protection services and, during the telephone conversations, were making a number of false and misleading statements. The representations at issue occurred over a limited time period and the company discontinued operations. Upon reviewing the information provided by the police, the Bureau discontinued the inquiry.



Mike Finzer Photography

APPENDIX II: PUBLISHED REPORTS, SPEECHES AND PAPERS, 2001–2002

Reports

Gourley, Al, with the assistance of Huy Do, Peter Cho and Viktor Hohots, “A Report on Canada’s Conspiracy Law” (available at <http://strategis.ic.gc.ca/SSG/ct02277e.html>).

McCarthy Tétrault, “Proposed Amendments to Section 45 of the *Competition Act*” (available at <http://strategis.ic.gc.ca/SSG/ct02277e.html>).

Palsson, Halldor P., “Affidavit and Report of Halldor P. Pallson Ph.D.,” December 10, 2001, *Commissioner of Competition v. United Grain Growers Limited*, application for a consent order from the Competition Tribunal (available at <http://www.ct-tc.gc.ca/english/cases/ct-2001-007/ugg.html>).

Palsson, Halldor P., “Affidavit and Report of Halldor P. Pallson Ph.D.,” June 14, 2001, *Commissioner of Competition v. Lafarge S.A.*, application for a consent order from the Competition Tribunal (available at <http://www.ct-tc.gc.ca/english/cases/ct-2001-004/lafarge.html>).

Russell, Robert S., Adam F. Fanaki, Davit D. Akman, “Legislative Framework for Amending Section 45 of the *Competition Act*” (available at <http://strategis.ic.gc.ca/SSG/ct02277e.html>).

Speeches

Burlone, Dominique, “Canada and the Internationalization of Competition Policy,” remarks to the Annual Fall Conference on Competition Law, Canadian Bar Association, Donald B. Houston (ed.).

Downs, André, “Towards an Efficiency Standard for Reviewing Mergers,” remarks to the Annual Fall Conference on Competition Law, Canadian Bar Association.

von Finckenstein, Konrad, “Speaking Notes,” remarks to the Annual Fall Conference on Competition Law, Canadian Bar Association, Donald B. Houston (ed.).

von Finckenstein, Konrad: “Section 45 at the Crossroads,” remarks to the 2001 Invitational Forum on Competition Law.

Papers

McAllister, David W., *An Overview of the Abuse of Dominance Provisions of the Competition Act*, paper prepared for the Annual Fall Conference on Competition Law, Canadian Bar Association (available at <http://strategis.ic.gc.ca/SSG/ct02270e.html>).

Monteiro, Joseph, “Regulatory Reforms in Canadian Transportation Since 1987,” *Canadian Transportation Research Forum: Proceedings of the 2001 Annual Conference*, Vancouver, British Columbia, May 7–9, 2001, pp. 101–120.

Monteiro, Joseph and Andrew Eckert, “The Use of Economic Analyses in Competition Cases (Part II): Analysis of a Conspiracy and a Merger in Transportation Cases,” *Canadian Transportation Research Forum: Proceedings of the 2001 Annual Conference*, Vancouver, British Columbia, May 7–9, 2001, pp. 646–665.

Monteiro, Joseph, Richard Annan and Andrew Eckert, “The Evolution of Airlines in Canada with Emphasis on the Role of the Competition Bureau in the Restructuring of the Airline Industry,” *Canadian Transportation Research Forum: Proceedings of the 2001 Annual Conference*, Vancouver, British Columbia, May 7–9, 2001, pp. 136–155.

Ronayne, Mark, “Canadian Competition Law Roles, Responsibilities and Relations in Emerging Electricity Markets,” paper prepared for the Annual Fall Conference on Competition Law, Canadian Bar Association (available at <http://strategis.ic.gc.ca/SSG/ct02272e.html>).

Sullivan, Michael A. and Mario Brilliant, “A Comparison of Basic Merger Notification Requirements in Canada, the United States and the European Community,” paper prepared for the Annual Fall Conference on Competition Law, Canadian Bar Association (available at <http://strategis.ic.gc.ca/SSG/ct02282e.html>).