Annual Report of the

DIRECTOR OF INVESTIGATION AND RESEARCH

COMPETITION ACT

FOR THE YEAR ENDING MARCH 31, 1998

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The Honourable John Manley, P.C., M.P.
Minister of Industry
Ottawa

Dear Sir,

I have the honour to submit, pursuant to section 127 of the *Competition Act*, the following report of proceedings under the Act for the fiscal year ended March 31, 1998.

Konrad von Finckenstein, Q.C.

Director of Investigation and Research

How to Contact the Competition Bureau

Information Centre

Anyone wishing to obtain general information or to make a complaint under the provisions of the Act may contact the Information Centre at:

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Message from the Director of Investigation and Research

Upon becoming Director of Investigation and Research of the Competition Bureau in February 1997, one of my first priorities was to establish a renewed sense of direction for the enforcement and administration of the *Competition Act* and Canada's labelling statutes (the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*). I believed then, and still do, that it is important for our stakeholders to understand what we do and how we do it.

During the first several months of my appointment, I met with stakeholders, including members of the Competition Bar, representatives of industry organizations and professional associations, and others interested in competition and labelling. These meetings provided me with a good sense of the concerns of stakeholders in the competition and labelling fields, and gave me the chance to communicate the principles that now govern the Bureau's daily operations: transparency, fairness, timeliness and predictability.

Transparency means that we are as open in our dealings as the law permits; that we will continue to develop appropriate service and performance standards; and that we are prepared to be judged against these standards. *Fairness* governs our decision-making as we try to strike the right balance between compliance and enforcement. *Timeliness* guides us in dealing with issues in a prompt manner. *Predictability* dictates that we provide adequate background and reference material on Bureau decisions and that we make public our position on as many issues as possible. By governing in accordance with these principles, the work of the Bureau becomes more accessible, and businesses are better able to operate in conformity with the law.

The work described in this annual report could not have been accomplished without commitment from the Bureau's staff. I am grateful to have an opportunity to thank them for supporting my leadership and for their unceasing hard work and dedication to maintaining a standard of excellence. I am proud to work alongside this group of professionals committed to quality results.

Canada's economic landscape has continued to shift during the past fiscal year, and the year ahead will hold even more challenges and change. I know, however, that we will succeed in meeting those challenges. We have a strong commitment of cooperation from our stakeholders, the technological and administrative support from Industry Canada, and the shared belief that the Competition Bureau can, and does, make a difference in Canada's marketplace.

Konrad von Finckenstein, Q.C.

Contents

1. Introduction

A First

This annual report offers a general perspective of the Competition Bureau's work for the fiscal year ending March 31, 1998, and outlines our current and future role in the Canadian marketplace.

Rather than reporting cases, programs, policies and projects under the traditional organizational branches and divisions of the Bureau, we have grouped our activities under four themes, which are the operational objectives of the Bureau: informing Canadians, promoting competition, reviewing mergers and fighting anti-competitive activity.

In keeping with our commitment to inform Canadians, the report focusses on the impact our work has had on business and the marketplace, rather than on strictly "legal" reporting. We will continue, however, to make statistical data and legal reference material available electronically on the Bureau's Web site at: http://competition.ic.gc.ca

The Conformity Continuum

The Bureau bases all of its operations on an approach aimed at ensuring maximum conformity with the law. Although important elements of this policy have been in place for many years, they have been integrated into what we now refer to as the conformity continuum. The continuum consists of a variety of compliance and enforcement tools, including: public education in the form of guidelines, pamphlets and conferences; oral and written advisory opinions; information contacts; voluntary codes of conduct; written undertakings; prohibition orders; civil proceedings before the Competition Tribunal; and prosecution in the criminal courts. Our choice of responses depends on a variety of factors, including the gravity of an alleged infraction, previous anti-competitive conduct, the willingness of the parties to resolve the matter, and Bureau priorities. We are mindful of the need to use limited resources wisely; however, we also cannot ignore the need to deter serious and deliberate misconduct.

The Bureau's conformity approach rests on the belief that most businesspeople want to operate within the law, and that the vast majority are willing to comply. We will ensure that the business community continues to enjoy easy access to the Bureau by making public as much of our policies, guidelines and approach to enforcement as the law will permit.

However, this approach is not intended to imply that we will be lenient with those who engage in serious anti-competitive conduct. In civil matters, where reasonable solutions cannot be worked out by consent orders or other means, we will not hesitate to go before the Competition Tribunal. In cases where there appear to be allegations of serious violations of the criminal provisions, the Bureau will refer cases to the Attorney General of Canada for prosecution.

Overview

The following is a brief overview of the information contained in this annual report.

One of the Bureau's key objectives is to keep Canadians informed. In keeping with this goal, the Bureau's Web site has undergone a significant overhaul and provides a new feature. Canadians can now request information or register a complaint on-line via the Information Centre. Using the Internet is now the primary vehicle by which the Bureau informs and educates. See Section 2, "Informing Canadians," for a detailed description of our various communications initiatives.

Under the *Competition Act*, the Bureau, through the Director of Investigation and Research, has the authority to make representations before federal and provincial boards, commissions and tribunals. Invoking this status, the Bureau has intervened in a number of instances during the past fiscal year.

On several occasions, we have appeared before the Canadian Radio-television and Telecommunications Commission to advocate, among other things, deregulating long-distance telephone rates, and opening up the local pay phone market to competition.

As well, we have played a crucial role before the Ontario Energy Board and the Ontario Ministry of Energy, Science and Technology in the proposed restructuring of the province's electricity system to open competition. The Bureau continues to provide advice to Ontario government officials who are revising related regulatory legislation, as Ontario moves towards further deregulation in its natural gas market. For an in-depth look at our intervention work, please see Section 3, "Promoting Competition."

The merger trend that the Bureau faced during the past year is one that continues to impact on the Canadian marketplace. Section 4, "Reviewing Mergers," will explain in detail the review activities undertaken by Bureau staff.

Under the authority of the Director of Investigation and Research, the Bureau administers the misleading advertising and deceptive marketing provisions of the *Competition Act*, as well as the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*. One of the more high-profile projects undertaken using this authority concerned an international collaboration that targeted Internet Web sites that contained potentially misleading descriptions of business opportunities. For information on this and other initiatives, see Section 5, "Fighting Anti-competitive Activity."

Bill C-20, an Act to amend the *Competition Act* and to make consequential and related amendments to other Acts, was tabled in the House of Commons on November 20, 1997. This bill was the reintroduction of the former Bill C-67 (with some modifications), which died on the Order Paper on April 27, 1997, when the federal government called an election.

For a detailed account of the amendments, see Section 6 "Proposed Amendments Seek to Modernize Canada's Competition Legal Framework." The background material that accompanied the tabling of the legislation can be found on the Bureau's Web site.

2. Informing Canadians

Informing and educating Canadians about the *Competition Act* and the labelling statutes is everybody's business in the Competition Bureau, and our efforts over the past year have been extensive: we have developed the Bureau's compliance program, enforcement policy and communications initiatives; we have managed the planning, administration and informatics activities of the Bureau; we have taken the lead in developing, managing and implementing the Fee and Service Standards Policy; we have expanded our public education activities; and we have supported the public outreach program.

As well, in cooperation with private and public sector partners, the Bureau participated in the production of a television documentary called "Scams," which was broadcast in prime time on the public broadcasting networks of several provinces. The Bureau continues to market another video called "Scam Alert!" which targets both deceptive mail solicitation and deceptive telemarketing. The Bureau has distributed over 6000 copies of "Scam Alert!" across the country to a variety of special interest groups, associations and seniors' organizations.

On the publishing front, the Bureau maintains its communications and public education efforts with a pamphlet series that reaches its target audiences via business and trade shows, direct mail, and the Bureau's Information Centre and Web site. During this fiscal year, we reprinted over 60 000 copies of the existing pamphlets and added to the series by addressing topics covered by the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*. The new titles are: *Be a Smart Shopper: Make Sure You Pay the Right Price*; *Be a Smart Shopper: Know Your Software*; and *Reporting Possible Anti-Competitive Practices*. We have also produced a pamphlet explaining the Bureau's new Fee and Service Standards Policy.

Enforcement guidelines, news releases, speeches, bulletins and information documents have been issued on various provisions of the *Competition Act*. The latest information bulletin dealt with corporate compliance programs. Business and advisory notices on the labelling statutes have also been issued on a variety of topics including net quantity issues, jewellery and precious metals markings. These are available on our Web site at: http://competition.ic.gc.ca

On November 18, 1997, we released the findings of an independent study by the Honourable Charles L. Dubin, Q.C., on whistleblowing and the protection of whistleblowers, as this relates to employees who speak out about possible violations of the *Competition Act* by their employers. Mr. Justice Dubin was asked by the Bureau to consider the protection currently available to whistleblowers in the competition law context; to provide examples of whistleblowing legislation in Canada and elsewhere; and to recommend measures to encourage whistleblowers to assist the Bureau in promoting conformity with competition legislation, and in prosecuting offenders. The report concluded that there is no need to amend the *Competition Act* to protect whistleblowers because other processes are in place to provide such protection.

Finally, the Bureau's public education program is being reviewed, and the recently created Communications Unit is working at increasing our target audience base by building on the Web site and refining the information we disseminate.

3. Promoting Competition

The *Competition Act*'s main objective is to encourage and uphold competition in the Canadian marketplace, so that consumers can enjoy lower prices and greater product choice. However, while maintaining a competitive economy is essential to our continued participation in the global market, there are times when direct regulation of marketplace activity is both necessary and warranted. The Bureau makes its interventions in regulated industries while remaining mindful that, in regulating certain industries, the government may want to meet other objectives. This, however, never relieves us of the responsibility to promote competition policy, and to consider the associated costs of economic regulation.

As mentioned earlier, the Bureau has the authority to make representations concerning competition issues before federal and provincial boards, commissions and tribunals to protect the public interest. We also collaborate with other government bodies to develop competition policy and participate in government policy-making initiatives.

Telecommunications

The Bureau has mounted a vigorous program of interventions before the Canadian Radio-television and Telecommunications Commission (CRTC) to advocate the opening of telecommunications and broadcasting markets to competition, and, where market forces are effective, the deregulation of these industries. The success of these interventions is borne out by the substantial benefits that Canadian businesses and consumers enjoy. In telecommunications, all markets from local phone service to long-distance service, overseas international calling, wireless communications and Internet access are now open to competition. In addition, the entry of direct broadcast satellite service providers and the emergence of other wireless and wireline competitors is providing consumers with competitive alternatives to the cable industry.

Local Telecommunications Competition (CRTC 95-36)

Opening up local telecommunications markets to competition will bring about substantial benefits for Canadian businesses and consumers by providing them with new and improved products and services.

In August 1996 the Bureau participated in the CRTC's public hearings concerning opening up the local telecommunications market to competition. The Director filed a final written argument in October of that year. The CRTC's decision (Telecom Decision CRTC 97-8), issued in May 1997, adopted many of the Bureau's submissions with respect to the terms and conditions of interconnection and access required to facilitate competition in local telephone services (including number portability to allow consumers to change local service providers while retaining their existing telephone number). The Bureau advocated no regulation of new entrants, minimized regulation of the incumbent service providers, and the introduction of an economically efficient pricing structure for wholesale and retail prices to enable market forces to be effective. The Commission's decision reflects the competition principles advanced by the Bureau.

Regulatory Forbearance on Long-distance Services (CRTC 96-26)

This intervention advocated the deregulation of long-distance rates charged by the Stentor group of companies.

The thrust of the Bureau's submission was that competition and market forces were sufficient to protect the public interest and that long-distance rates should be deregulated. The intervention was filed in November 1996; the CRTC's decision (Telecom Decision CRTC 97-19), issued on December 18, 1997, deregulated the Stentor member companies' rates for long-distance service. The Commission agreed with the Bureau's submission that competition in long-distance markets, and relatively low barriers to entry, negated the need for regulation of the discount toll and toll-free rates of the Stentor companies. The Commission also agreed that a price floor or imputation test for deregulated services was no longer necessary, given the highly competitive conditions in the long-distance market. In terms of pricing flexibility and the regulatory burden, the effect of this decision is to place the Stentor companies on a closer footing with their unregulated long-distance competitors.

International Telecommunications (CRTC 97-34)

Opening up international markets to competition will bring about substantial benefits for Canadian businesses and consumers who use international voice and data services. Competition will expand product choice, improve service quality, introduce innovative services and lower prices.

A written submission filed by the Bureau in March 1998 targeted the new regulatory framework for competition when Teleglobe Canada loses its monopoly in international calls in October 1998. As part of the World Trade Organization Agreement on Basic Telecommunications signed in February 1997, Canada agreed to open its overseas long-distance market to competition. The purpose of this proceeding was to establish a regulatory framework, including a licensing regime, to facilitate market liberalization in this sector. The Bureau advocated minimal regulation of new entrants, and rapid deregulation of Teleglobe's services as soon as effective competition develops. We also advocated an end to all call routing or bypass restrictions.[1]

NBTel Application for a Broadcast Distribution Licence (Notice of Public Hearing CRTC 1998-1)

NBTel is the first telephone company to apply for a cable licence. Granting NBTel a broadcast distribution licence will provide New Brunswick consumers with a third choice for their broadcasting services (cable and direct broadcast satellite are already available). The Bureau supported the application with a written submission to the CRTC in March 1998; at the end of the fiscal year, the CRTC's decision was pending.[2]

Local Pay Phone Competition (CRTC 97-26)

The Bureau filed a submission with the CRTC in July 1997 concerning the local pay phone market. The Bureau contended that it was time to break up the monopoly of the Stentor group of companies and open up the local pay phone market to competition. The Bureau submitted that competition in the local pay phone market was in the public interest; that apart

[1] On October 1, 1998, the CRTC issued its decision, which provides for minimal conditions of licence for new entrants and eliminates all routing restrictions (Telecom Decision CRTC 98-17). The overseas market for international telephone calls is the last major sector of the Canadian telecommunications industry to be opened to competition.

[2] On June 23, 1998, the CRTC granted NBTel a seven-year licence to provide cable television services to most of Saint John and Moncton (Decision CRTC 98-194). In addition to basic service, NBTel was licensed to provide other services including specialty, pay TV and pay-per-view programming. In August 1996, the government had issued a policy statement that there should be no head starts in terms of the cable and telephone companies entering into each other's markets. In keeping with the Bureau's submission, the CRTC indicated that it was satisfied that sufficient progress on issues related to opening up the local telephone market to competition had been made, to enable the granting of a broadcast distribution licence to NBTel in accordance with the government's no head starts policy.

from minimal consumer safeguards, there should be no regulation of new entrants; and that the rates for local pay phone services should be deregulated when effective competition develops. At the end of the fiscal reporting period, the Commission's decision was pending.[3]

Satellite Relay Distribution Licensing (CRTC 97-14)

This intervention, filed on January 30, 1998, concerns competition against Cancom's monopoly for wholesale distribution of broadcast signals to cable companies via satellite. The Bureau supported competitive licensing of two new national applicants. The CRTC's decision was pending at the end of the fiscal reporting period.[4]

Allocation of Satellite Capacity (CRTC 97-13)

This intervention was directed at ensuring that competitors in the broadcasting and telecommunications industry will have equitable access to Telesat's satellite facilities.

The Director filed a submission in June 1997; in February 1998, the CRTC released its decision, which adopted the recommendations of the Director for greater transparency in the allocation of transponder capacity (Telecom Order CRTC 98-186). The next step in the process will be an intervention concerning forbearance in regulating Telesat's rates when its monopoly mandate ends in 2000.

Joint Marketing and Bundling (CRTC 97-14 and 97-21)

This intervention concerned the removal of regulatory restraints on the telephone companies to jointly market or bundle wireless and wireline services. In a decision issued on March 24, 1998 (Telecom Decision CRTC 98-4), the CRTC agreed with the Bureau's argument to remove restrictions on joint marketing and bundling of competitive services. The Bureau had cautioned that removing restrictions on bundling monopoly and competitive services before the local exchange market is open to competition would entrench the dominant market position of the telephone companies in local services. However, the Commission decided to allow such bundling, subject to certain conditions. This decision will give the telephone companies greater flexibility in offering consumers bundled or packaged services, single billing and common points of sale.

Energy Sector

Ontario Electricity

In the fall of 1997, the Ontario government released a White Paper for restructuring the Ontario electricity sector to open it to wholesale and retail competition in 2000. On January 31, 1998, the Bureau delivered presentations to senior officials of the Ontario Ministry of Energy, Science and Technology and to the Ontario Energy Board outlining our views concerning the White Paper and the requirements for competitive and efficient Ontario electricity markets.

The Bureau supported opening the electricity generation and retail markets to competition. Competitive markets will promote both the efficient use of resources and lower prices. In its presentations, the Bureau stressed the importance of implementing a number

[3] On June 30, 1998, the CRTC determined that it would permit local pay phone competition, which the Commission concluded would provide consumer choice and stimulate service innovation (Telecom Decision CRTC 98-8). Consistent with the Bureau's submission, the CRTC adopted minimal consumer safeguards and found that it was not necessary to regulate rates of new entrants, who would be subject to competitive market forces.

[4] On June 23, 1998, the Commission granted a competitive licence to a direct-to-home satellite service provider (Decision CRTC 98-171). The Commission accepted that competition with Cancom in the provision of satellite relay distribution was desirable, but denied the second application on the grounds that the applicant did not meet the domestic ownership requirement. Competition in the wholesale supply of broadcasting services should bring lower prices for Canadian consumers from their local cable companies.

of market structure elements in order to maximize the benefits of competition for Ontario businesses and consumers. As for any deregulating market, it is important to establish an effective market structure at the outset to avoid market power problems that may arise after deregulation.

Key market structure elements stressed in the presentations included the following:

- Structural remedies (such as divestitures) rather than behavioural remedies (such as price regulation) will provide the most effective mechanism for ensuring competitive and dynamic electricity generation, and will provide the maximum benefits to Ontario businesses and consumers.
- Owners of transmission and distribution facilities should be required to set up separate affiliate companies for their competitive business. This will ensure that they cannot use their monopolies to discriminate against competitors or to gain a competitive advantage in other markets.
- The Ontario Energy Board should regulate the pricing of, and access to, electricity transmission and distribution facilities to prevent monopolistic pricing of the facilities and to ensure all electricity market competitors have non-discriminatory market access.
- There should be a level playing field for public and private sector companies with respect to taxes and financing to ensure that companies succeed or fail in electricity markets based solely on their ability to meet consumer demands at the lowest price, rather than on the basis of preferential tax and financing arrangements.
- The responsibility for ensuring the safe and reliable operation of the Ontario electricity system should be given to a fully independent market operator. This will ensure that all generators have non-discriminatory access to the electricity system through an independent organization.
- There should be parallel regulatory structures for the Ontario natural gas and electricity sectors to create a level playing field for inter-fuel competition.

The Bureau's presentations also focussed on the links between competition law and regulation during the transition to fully open and competitive wholesale and retail electricity markets in Ontario. The presentations stressed that competition law effectively prevents anti-competitive business practices that businesses may use to entrench or enhance their market position. The *Competition Act* should apply to emerging electricity markets unless it can be clearly shown that regulatory oversight would be more effective in preventing a particular type of anti-competitive business practice. To promote the timely transition to competition law oversight, it was further recommended that Ontario electricity legislation include provisions requiring the Ontario Energy Board to abstain from regulation where there is effective competition. We also recommended that the legislation should explicitly state that competition law will apply where the Ontario Energy Board has abstained from regulation.

As of the fiscal year-end, the Competition Bureau was continuing to monitor the restructuring of the Ontario electricity market, particularly the work of the Market Design Committee established by the Ontario government in January 1998. The Bureau will continue to provide input as required to promote the development of competitive and efficient electricity markets, and the appropriate interface between competition law and regulation.

Ontario Natural Gas

With the aim to increase deregulation and competition in the Ontario natural gas market, the Ontario government intends to revise regulatory legislation, including legislation outlining the role and powers of the Ontario Energy Board (OEB). In August and September 1997, the Bureau filed submissions and appeared before the OEB to provide advice on the changes that would be necessary for further deregulation.

Key recommendations made in the intervention included the following:

- The *Ontario Energy Board Act* should have a specific objective to foster competition and economic efficiency in order to ensure that related matters are taken into consideration in regard to all OEB decisions.
- The OEB should have the authority to determine whether and on what terms gas distribution companies should be allowed to supply gas to consumers.
- Ontario natural gas legislation should require the OEB to forbear from regulation where there is effective competition, to promote the orderly and rapid transition to unregulated markets.
- The OEB or another body should be given the authority to order that the necessary structural changes be made to implement competition in other potentially competitive areas of the natural gas sector, such as storage and metering, where net economic benefits are likely.
- The OEB should have the authority to order structural separation between competitive and regulated natural gas sector activities.

As of the fiscal year-end, the Competition Bureau was continuing to monitor the restructuring of the Ontario natural gas market and provide input as required to promote the development of a competitive and efficient natural gas market.

Other Interventions

Columbia House/Warner Music

All Canadians are paying less for compact discs and cassettes as a result of an application filed to the Competition Tribunal in the Columbia House/Warner Music case, which enabled BMG Direct Ltd. (“BMG”) to remain in the mail-order record club business.

In September 1997, an application under the refusal to supply provisions of section 75 of the *Competition Act* was filed with the Tribunal against Warner Music Canada Ltd. and its U.S. affiliates, Warner Music Group Inc. and WEA International Inc. (“the Warner companies”). This application was for an order requiring the Warner companies to supply their music reproduction and sales licences to BMG on usual trade terms. The Tribunal concluded that the *Copyright Act* places no limit on the sole and exclusive right to licence, and that section 75 of the *Competition Act* did not grant the Tribunal the jurisdiction to issue the order sought. Shortly after the Tribunal’s decision, the Warner companies and BMG reached an agreement for supply of the licences in question.

BMG’s substantial entry has provided competitive benefits to the Canadian marketplace in the form of lower prices, increased product choices and a distribution alternative for record companies and recording artists. The market also witnessed further competition from a new entrant, CDHQ, which is owned by Columbia House.

The Bureau’s application was intended to remedy a specific refusal to supply in the mail-order record club business in Canada. Warner companies were supplying licences to the record club Columbia House, of which they are also a 50 percent owner, while refusing to supply the new entrant, BMG. A Tribunal order in this

case would have only affected the Warner companies in their dealings with BMG and would not have provided a general right of supply to other parties from the Warner companies or from other holders of intellectual property rights. Accordingly, the Competition Bureau will continue to investigate and seek remedies to anti-competitive situations, including those cases where the relevant products enjoy some form of intellectual property protection.

Alternate Case Resolutions

The Bureau has developed a wide range of tools to assist in compliance and enforcement. One of these tools is called alternate case resolution, which seeks compliance with the law without having recourse to contested enforcement measures. Given that our investigations and examinations are conducted in private and that the Bureau did not file any pleadings or documents of a "public" nature, the companies or individuals involved as parties in the following examples of alternate case resolutions are not named.

Refusal to Deal (Section 75)

A distributor of video cassettes was cut off by a major supplier, who, according to the complainant, threatened the viability of the business under the refusal to deal provision of the *Competition Act*. The Bureau entered into discussions with legal counsel for the supplier, who eventually resumed supplying the complainant.

In another case, a major manufacturer of specialized plumbing supplies refused to deal with a regional distributor who had been supplied in the past. Given that the product line involved was of a highly specialized nature, the Bureau entered into discussions with the manufacturer; these discussions eventually led to the manufacturer resupplying the complainant.

Exclusive Dealing (Section 77)

A major advertising company concluded an exclusive agreement with a chain of convenience stores to only carry its magazine. A competitor of the magazine, who was being excluded from the convenience stores, filed a complaint. The company involved had already given written undertakings to the Director in 1994 promising not to demand exclusivity clauses from its customers for the following 10 years. In April 1997, after discussions with the Bureau, the company agreed to comply with the original undertakings and the competitor's magazine was reintroduced into the convenience stores.

Conspiracy (Section 45)

In March 1997, the Director began an inquiry into the business conduct of a major Canadian airport and two taxi companies under the conspiracy provision of the *Competition Act*. The two taxi companies were alleged to have agreed on the fares to be charged to taxi passengers for trips originating from the airport.

This pricing agreement was later incorporated into a contract between the taxi companies and the airport for the exclusive right to service the airport taxi stand. The matter was resolved by way of negotiations with the three parties, who promised to terminate all agreements alleged to be contrary to the Act. The Bureau discontinued the inquiry in April 1997.

Financial Markets Policy Review

In 1997-98, the Bureau prepared a comprehensive submission to the Task Force on the Future of the Canadian Financial Services Sector. The task force received a mandate from the Minister of Finance to provide recommendations to the federal government on regulatory reforms needed to ensure that this vital sector of the Canadian economy remains viable. In its

submission, the Bureau advocated relying on competition and market forces to the maximum extent possible. We stressed that the public policy objectives underlying the review of the financial sector would be better achieved this way, rather than through continued or increased regulation. The Bureau also recommended regulatory changes that can increase flexibility and facilitate competition without concurrently compromising the stability of the financial system. Included as an appendix to the submission was a preliminary draft for consultation purposes of the *Merger Enforcement Guidelines: as Applied to Bank Mergers, Consultations and Submissions*.[5]

Competition and the International Agenda

The Bureau is dedicated to promoting competition policy within Canada and abroad, and to supporting the development of cooperation among competition authorities. We exchange notifications pursuant to the 1995 Revised OECD (Organisation for Economic Co-operation and Development) Recommendation on cooperation and the Canada-U.S. Cooperation Agreement regarding the application of their competition and deceptive marketing pratices laws. We are also increasingly involved in coordinating with agencies investigating cross-border anti-competitive activities.

For example, during meetings on April 8 and 9, 1997, in Washington, D.C., U.S. President Bill Clinton and Prime Minister Jean Chrétien directed officials to conduct a joint study examining ways to counter the serious and growing problem of cross-boarder telemarketing fraud. Given the Bureau's important role in combatting deceptive telemarketing, we participated in the resulting working group, which recommended, among other things, further exploration of the legal and technical potential and limits of electronic surveillance (wiretap), as a tool against telemarketing fraud.

On the international front, we have succeeded in finalizing the negotiations of the Draft Agreement between Canada and European Communities regarding the application of their competition laws. The Bureau has also developed a position for the OECD and the World Trade Organization on how we feel competition fits into the trading regime and how it should be adopted, and has participated in issues related to the Free Trade Agreement of the Americas.

What follows are some highlights of our international initiatives.

Free Trade Agreement of the Americas (FTAA)

Canada has played an important role in the identification, development and discussion of competition issues relevant to the FTAA. The Bureau participated in creating the FTAA Working Group on Competition Policy established at the Summit of the Americas, Second Ministerial Trade Meeting in Cartagena, Columbia, on May 21, 1996. Its goal is to promote understanding and development of competition law and policy within the free trade area. The working group has produced inventories of competition laws and international cooperation arrangements, identified areas of commonality and divergence, and sought to promote understanding of the objectives and operation of competition policy.

The working group recommended the creation of a negotiating group on the development of an appropriate framework for the application of competition policy in the FTAA and on the interaction between trade and competition policies.

[5] The task force released its final report on September 15, 1998. Many of its recommendations are consistent with the Bureau's position.

Organisation for Economic Co-operation and Development (OECD)

At the 1997 OECD ministerial meeting, ministers agreed to launch a major regulatory reform project on how governments can improve their regulatory processes. The OECD will begin to review regulatory reform in member countries in 1998. The review process is interdisciplinary and combines self-assessment with peer review. It will focus on whether governments have the necessary instruments to improve their own regulatory processes, and will include an examination of specific sectors.

The Bureau views this project as complementary to its domestic regulatory reform initiatives. From the outset, we have been active in the project by providing advice to the Regulatory Reform Report and to the Competition Law and Policy Committee of the OECD (CLP). As well, we have participated in various activities of the CLP by providing written submissions and making interventions. On March 25, 1998, the Council of the OECD adopted a recommendation concerning action against hard-core cartels. Canada has consistently supported the efforts of the OECD in developing this recommendation. We also contributed to the development of a draft common prenotification framework for transnational mergers. The final framework is expected in the fall of 1998.

World Trade Organization (WTO)

A working group was established to look at the interaction between trade and competition policy. As part of the delegation for Canada, the Bureau has made written submissions and interventions at WTO meetings.

We are pleased with the pace and progress of the Working Group on the Interaction between Trade and Competition Policy. Its discussions have identified issues arising from the interaction between trade and competition policy, and a consensus has been reached on a number of these issues, including the key role competition law can play in ensuring that gains from liberalized trade are not undermined by private anti-competitive conduct.

4. Reviewing Mergers

Primary business sectors, particularly those concerned with telecommunications, energy, petroleum, transportation and financial services, are undergoing a fundamental change and restructuring as part of the merger trend. The Bureau continues to manage the reviews of significant mergers and acquisitions. The number of filings, including prenotifications, Advance Ruling Certificates and securitizations, has increased by approximately 32 percent over last fiscal year. Among other things, we undertook to refine our analytical framework for merger review and to consult on the *Merger Enforcement Guidelines: as Applied to Bank Mergers, Consultations and Submissions*.

Merger considerations played a key role in the development of Bill C-20. A major section of the bill targeted the merger provisions, particularly those dealing with prenotification.

The design and implementation of the Fee and Service Standards Policy also affected merger review. This initiative included a study of the internal processes relating to merger review, the timing of the review of transactions, and the redesign of the structure and procedures. The policy, which came into operation on November 3, 1997, also commits the Bureau to definite turn-around times in providing these services. The Bureau is committed to holding a fee forum to review performance, complaints and service levels. The next Annual Report will cover the highlights of the meeting.

As well, the Bureau began a review of two proposed mergers involving four major Canadian banks, one between the Royal Bank of Canada and the Bank of Montreal and another between the Canadian Imperial Bank of Commerce and the Toronto Dominion Bank. These transactions are among the largest and most complex transactions that the Bureau has reviewed.

On January 27, 1998, we made an announcement in which we detailed the consultation process concerning merger review in the whole of the financial services sector and our work in what was then a draft version of the *Merger Enforcement Guidelines: as Applied to Bank Mergers, Consultations and Submissions*.[6]

Petro-Canada and Ultramar

Another high-profile transaction review concerned the proposed merger between Ultramar and Petro-Canada. In January 1998, the Bureau announced that it would conduct a thorough examination of the proposed merger and the likely effects of the transaction on the supply and pricing of various refined petroleum products.

Competition in the Non-hazardous Solid Waste Sector

On March 6, 1998, the Competition Bureau filed an application for a consent order with the Competition Tribunal in the matter of Canadian Waste Services Inc. to remedy competition issues in the non-hazardous solid waste collection and disposal business in Edmonton.

[6] While we can only account for this project in next year's annual report, the Bureau released the *Merger Enforcement Guidelines: as Applied to Bank Mergers, Consultations and Submissions* on July 15, 1998. The document, available on our Web site, describes in detail how the Competition Bureau will examine the proposed bank mergers between the Royal Bank of Canada and the Bank of Montreal, and between the Canadian Imperial Bank of Commerce and the Toronto Dominion Bank.

The Bureau found that with the purchase of non-hazardous solid waste assets from WMI Waste Management Inc. by Canadian Waste Services in June 1997, there would be a substantial lessening of competition in the Greater Vancouver, Edmonton, Calgary, Kitchener and Barrie markets.

Following initial negotiations between Canadian Waste Services and the Bureau, the company agreed to a voluntary restructuring of the transaction and sold commercial collection assets in these markets to Capital Environmental Resource Inc.

Even after the restructuring, however, a competition issue remained in Edmonton, where the Bureau found that Canadian Waste Services would still have a dominant position in waste disposal. The June 1997 acquisition of the West Edmonton landfill site from WMI Waste Management had given Canadian Waste Services operating control of two (West Edmonton and Ryley) of the three primary landfill sites in the Edmonton market.

After several months of negotiations with the Bureau, Canadian Waste Services agreed to a remedy in which it will offer cost-based access at the Ryley landfill to Capital Environmental Resource Inc. The Bureau concluded that this access arrangement, together with the divestiture of related assets, will ensure that there is no substantial lessening of competition in Edmonton's commercial collection sector. Moreover, the restructuring of these transactions has resulted in the emergence of a new national player in the Canadian waste industry.

The resolution of these two problematic transactions exemplifies how parties to a proposed merger, which would otherwise lead to a substantial lessening of competition, can avoid delays and costly litigation while adhering to competition laws by approaching the Bureau early in the process and meeting with Bureau staff to resolve the issues.

Cast North America Inc. (Cast) and Canadian Pacific (CP) Limited

On December 20, 1996, the Bureau announced that it had filed an application with the Competition Tribunal challenging the merger between Cast and CP Limited. We alleged that the acquisition of Cast by CP Limited would substantially lessen or prevent competition in container shipping between Montréal and Northern Europe. The merged companies operate fully integrated intermodal container shipping services known as Cast and Canada Maritime Services Limited.

On September 17, 1997, with the consent of Canada Maritime and the Royal Bank of Canada, the Competition Tribunal issued an order to stop the process of the Director's challenge of the acquisition.

The order was issued after the Director presented evidence that Maersk Canada Inc., Sea Land Services Inc. and P & O Nedloyd had announced that they would be entering into the market for intermodal non-refrigerated shipping services through the Port of Montréal between Northern Continental Europe/United Kingdom and Ontario/Quebec.

The order also provided that unless the Director moved to lift the order by March 31, 1998, the application would be dismissed. The application was subsequently dismissed after the Bureau concluded that the new entry was likely to resolve its concerns.

Bank of Nova Scotia and National Trust

On June 24, 1997, the Bank of Nova Scotia announced that it would acquire, via a public offer, the shares of National Trusco Inc. The Bureau's review of the transaction concluded that this was not likely to substantially lessen or prevent competition.

Great-West and London Life

On August 19, 1997, Great-West Life Assurance Company and Great-West Lifeco Inc. announced a bid to acquire the London Insurance Group Inc., including the company's London Life Insurance Company subsidiary.

Both Great-West Life and London Insurance are life and health insurance companies. Upon completion of the transaction, the merged entity would rank first in Canada in both individual and group insurance.

Following a thorough assessment, the Bureau concluded that the proposed transaction was not likely to lessen or prevent competition in any market in Canada.

Coopers & Lybrand/Price Waterhouse Canada and Ernst & Young/KPMG

On September 19, 1997, Coopers & Lybrand and Price Waterhouse announced a plan to merge their operations worldwide. In December 1997 the worldwide partners of both firms approved the proposed merger.

On October 20, 1997, Ernst & Young and KPMG announced a proposed merger of their accounting firms. The transaction would have created the largest accounting firm in Canada, with annual revenues of approximately $1 billion dollars, representing almost 40 percent of the Canadian accounting industry.

The Bureau examined these proposed mergers to determine whether either or both would result in substantially lessening or preventing competition in various accounting markets, with particular emphasis on their impact in the provision of auditing services. The Ernst & Young/KPMG transaction was abandoned in February 1998. The Bureau subsequently concluded that it would not oppose the Coopers & Lybrand/Price Waterhouse merger.

DIR v. Washington et al.

On January 29, 1997, the Competition Tribunal issued a consent order with respect to certain acquisitions in the British Columbia marine transportation industry by Mr. Dennis Washington, a Montana-based businessman. The Director had alleged that Mr. Washington's ownership of both Seaspan International Ltd. and C.H. Cates & Sons, the only two providers of ship berthing services in Vancouver, was likely to substantially prevent or lessen competition.

The Director had further alleged that Mr. Washington's ownership of both Seaspan and Norsk Pacific Steamship Company Limited was likely to prevent or lessen competition with respect to chip barging and covered barging in British Columbia coastal waters. The Tribunal order established a 12-month time frame for Mr. Washington to effect certain asset divestitures in three markets: ship berthing in Burrard Inlet of Vancouver; chip barging in British Columbia coastal waters; and covered barging in British Columbia coastal waters.

In September 1997 the covered barging assets to be divested were sold to Gemini Marine Services Ltd. of Garden Bay, British Columbia. In October 1997 the chip barging assets to be divested were sold to a group led by North Arm Transportation Ltd. of Vancouver. On December 1, 1997, Mr. Washington filed an application before the Tribunal to vary the January 29, 1997, Tribunal order, so as to remove his obligation to effect the ship berthing divestiture.

In that application, Mr. Washington asserted that the entry in early October 1997 into the Burrard Inlet ship berthing market by Tiger Tugz Inc., an affiliate of Rivtow Marine Ltd. (the second largest ship berthing and barging operator in British Columbia), is likely to alleviate the competition concerns that were alleged to arise from Mr. Washington's ownership of both Seaspan and Cates. This matter is currently pending before the Tribunal.

Guinness/Grand Metropolitan

On May 13, 1997, Guinness plc (Guinness) and Grand Metropolitan plc (Grand Met) announced their intention to create a new company, called GMG Brands, which would encompass both companies' spirits businesses, thereby creating the world's largest spirits producer. Guinness and Grand Met are active in the spirits industry in Canada through their affiliates United Distillers Canada Inc. and IDV Canada, respectively, and sell such brands as Johnnie Walker Scotch, Smirnoff vodka and Tanqueray gin.

An assessment of the transaction's likely effects in Canada was undertaken, including the analysis of extensive information from competitors and provincial liquor authorities, and consultation with foreign antitrust authorities reviewing the same matter, especially the U.S. Federal Trade Commission (FTC) and the European Commission.

On December 16, 1997, the Bureau advised the parties that the transaction would have the likely effect of substantially lessening competition in all Canadian provincial markets for dry gin and standard Scotch whiskey. The merged entity would own five of the six leading dry gin brands and two of the three leading standard Scotch whiskey brands. This high level of concentration is combined with significant barriers related to brand building and entry into the provincially controlled retail environment. The U.S. Consent Decree agreed to by the parties and the FTC would have the effect of removing the alleged competition concerns in Canada, so no further action was required by the Bureau.

5. Fighting Anti-competitive Activity

Under the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*, the Bureau investigates complaints that could potentially lead to prosecutions.

In 1997, the Competition Bureau's Marketing Practices Branch merged with the Consumer Products Directorate to become the Fair Business Practices Branch. The objective of this new branch is to promote fair competition in the Canadian marketplace by discouraging deceptive business practices and by encouraging the provision of accurate and sufficient information to enable consumers to make informed choices.

We are also working on developing sentencing principles and policies concerning the Bureau's position in relation to parties "coming in early" and offering full cooperation in our investigations.

The following are examples of the Bureau's work in the area of enforcement.

Electrical Contractors and Bid-rigging

The electrical contractors bid-rigging case was a major criminal investigation into the corruption of the electrical contracting industry in the metropolitan Toronto area.

On December 19, 1997, four Toronto electrical contractors, 948099 Ontario Inc. (carrying on business as Plan Electric Co.), Ainsworth Inc., Guild Electric Limited and The State Group Limited, pleaded guilty to bid-rigging and were sentenced to pay fines totalling $2.55 million.

The charges covered the period from 1988 to 1993 and were the result of an extensive investigation conducted by the Bureau into a scheme designed to create the illusion of competitive pricing.

Although the majority of the rigged tenders involved electrical contracts for the renovation of commercial space, including certain leasehold improvements at Pearson Airport's Terminal III, some of the companies were also convicted of rigging tenders related to major construction projects, including the SkyDome Hotel and BCE Place — Phase 2 .

Some of the companies charged received favourable treatment for entering early guilty pleas; others received additional consideration for having cooperated with the investigation. All four companies have taken steps to institute internal compliance programs designed to ensure compliance with the *Competition Act*.

On February 27, 1998, Smith and Long Limited, another electrical contracting firm, pleaded guilty to 10 counts of bid-rigging and was fined $100 000. The Bureau's investigation of this market is ongoing.

Alberta Crown Timber and Bid-rigging

This case involved bid-rigging in a small timber market in Alberta. The inquiry, which included oral examinations, searches and plea negotiations with all but one party, was concluded in less than seven months.

The Attorney General granted favourable treatment to the parties who cooperated with the Bureau's investigation. On February 10, 1998, the court imposed fines ranging from $3000 to $5000, as well as a sentence of community service against some of the accused. Charges against a remaining party are outstanding.

Aban Persian Rugs Inc. and Misleading Advertising

On July 9, 1997, Mr. Hossein Farjami of Aban Persian Rugs Inc. was convicted under the misleading advertising provisions of the *Competition Act*.

Mr. Farjami was the sole shareholder of Aban Persian Rugs of Markham, Ontario, a company importing and selling carpets in Canada through stores and auctions. Aban Persian Rugs' goods were advertised in newspapers and mailings sent to regular customers.

Both cases involved representations in a Montréal-area newspaper describing the urgent need to auction carpets. The ads included phrases such as "Final sale," "This week only," "Last day," "Last phenomenal auction" and "Everything must go," suggesting a false sense of urgency to liquidate stock.

The investigation determined that, contrary to the claims in the advertisements, the business continued to operate and inventory was regularly brought in from other sources.

Click Modeling and Talent Agency of Canada (c.o.b. as HMI International Model and Talent Agencies) and Shannon Hoehn and Misleading Advertising

On June 9, 1997, Mr. Shannon Hoehn and Click Modeling and Talent Agency of Canada, operating as HMI International Model and Talent Agencies (HMI), pleaded guilty to a total of 15 counts of misleading advertising under the *Competition Act*.

The illegal conduct involved representations that specific modeling and acting opportunities were available through HMI. The misrepresentations related to approximately 1000 display and classified advertisements placed in daily newspapers and weekly tabloids in Metro Toronto.

The investigation determined that HMI was not in the business of securing modeling or acting jobs for its customers, but of selling courses and photographs.

Fines totalling $200 000 for the company and $4300 for Mr. Hoehn were imposed. The money was used to reimburse victims named in the case.

In addition to the fines, a prohibition order was imposed on both Mr. Hoehn and the company for five years. The terms of the order require, among other things, that Mr. Hoehn and the company comply with the *Competition Act* by not misrepresenting the nature of modeling and acting opportunities. The order specifically prohibits Mr. Hoehn from incorporating or causing the incorporation of companies for the purpose of continuing or repeating the offence.

The Internet and Deceptive Marketing Practices

In April 1997 the Bureau, the U.S. Federal Trade Commission and members of provincial, territorial and state law enforcement organizations announced that they had collaborated in an initiative to target Internet Web sites that contained potentially misleading descriptions of business opportunities.

This was the first combined sweep to identify potential scams involving false or unsubstantiated earnings claims on the Internet. The sweep was designed to make promoters of business opportunities on the Internet aware of the relevant Canadian and U.S. laws. The Bureau continues to monitor this market.

Integrity Group (Canada) Inc. and Multi-level Marketing

On December 16, 1997, the Integrity Group (Canada) Inc., a national multi-level marketing company, was convicted and fined $150 000 on 11 charges of failing to disclose information in accordance with the multi-level marketing provisions of the *Competition Act*. The undisclosed information was in relation to compensation actually or likely to be received by a typical participant in the multi-level marketing plan.

This case involved the first conviction under the *Competition Act* for an offence committed on the Internet.

VH$ Network Inc. and Multi-level Marketing

On March 20, 1998, VH$ Network Inc. pleaded guilty to two offences contrary to the multi-level marketing provisions of the *Competition Act* and was fined a total of $70 000.

VH$ Network, a Mississauga-based multi-level marketing company, sold various products that were advertised in video cassette catalogues. The charges related to representations made at recruitment meetings, in training manuals, over a fax-on-demand service and in a pre-recorded telephone message with respect to income claims without disclosure of the compensation earned by the majority of participants.

A prohibition order was imposed against the company and its shareholders, including Groupmark Canada Limited, which forbids them from making income claims without disclosing the compensation earned by the majority of participants in the multi-level marketing plan.

GeoForce Inc. and Multi-Level Marketing

On February 12, 1998, GeoForce Inc. of Edmonton, Alberta, pleaded guilty to two offences contrary to the multi-level marketing provisions of the *Competition Act*. The company, which promotes the sale of herbal supplements through a multi-level marketing distribution system, was fined a total of $50 000. A prohibition order was also imposed against GeoForce, Granite Sphere Advertising Ltd. and the principal shareholders of both companies, Mr. Kevin Boyle and Mr. Brian Boyle.

The charges against GeoForce related to representations made in company literature, at recruitment meetings and through personal meetings, whereby potential earnings were discussed without disclosing the compensation earned by typical participants.

Canadelle Ltd. and Labelling

On September 25, 1997, Canadelle Ltd. was fined a total of $15 000 after pleading guilty to three charges of contravening the *Textile Labelling Act*.

The charges related to the company's WonderBra brand brassieres, which had been made in Costa Rica and imported for distribution in Canada. The original labels were replaced with labels stating "Made in Canada," constituting a violation under the Act.

6. Proposed Amendments Seek to Modernize Canada's Competition Legal Framework

Bill C-20, an Act to amend the *Competition Act* and to make consequential and related amendments to other Acts, received second reading on March 17, 1998, and was referred for study to the Standing Committee on Industry. On March 30, the committee held its first hearing and invited both the Honourable John Manley, Minister of Industry, and the Competition Bureau to appear. The Committee called numerous witnesses later, including members of the Canadian Bar Association, academics, and representatives from across Canada of national seniors' groups, telemarketing associations, consumer organizations and the business community. The bill drew a large base of support for modernizing the law on an incremental basis and in a timely fashion.

Once enacted, the amendments will deal with the growing problem of deceptive telemarketing by defining it as a new crime. They will: allow law enforcement officials to use judicially authorized interception of private communications without consent (wiretap) to gather tangible evidence in cases of deceptive telemarketing as well as bid-rigging and conspiracy to fix prices or allocate or share markets; improve the process for resolving misleading advertising and deceptive marketing practices; revise and clarify the law on price claims at the retail level; and improve the administration of the merger prenotification process and related regulations.

In tabling these amendments, the Bureau sought to modernize Canada's competition law framework and to update its investigative and enforcement tools. These updated tools should prove more effective within the conformity continuum approach adopted by the Competition Bureau.

Should these amendments receive Royal Assent and come into force, Canada will have a competition framework legislation that can respond quickly and efficiently to the rapidly changing face of Canadian and other world economies.

Specifically, in the area of deceptive telemarketing, the amendments will:

- create a new criminal offence in a situation where illicit interactive telephone communications are used for promoting the supply of a product or a business interest;
- require telemarketers to disclose certain information during telephone calls with consumers;
- prohibit deceptive practices such as demanding payment prior to the delivery of products that are offered at prices grossly in excess of their market value;
- expand the responsibility of corporations and their officers and directors for ensuring compliance with the law; and
- make it easier for the courts to issue interim injunctions to stop operations of suspected fraudulent telemarketers.

In dealing with misleading advertising and deceptive marketing practices, the amendments seek to remedy the concern that criminal sanctions are an effective method of reducing the incidence of these offences. The proposed addition of a civil option will change the focus from punishment to quick and efficient conformity with the law. However, a criminal sanction will remain in place to deal with serious misleading advertising cases.

The amendments improve the merger prenotification law. Among other things, the new provisions give the Director more flexibility to shorten waiting periods for the completion of merger transactions, and afford easier access to interim orders from the Competition Tribunal. The provisions also provide for authority to define the information requirements on prenotification by way of regulation.

A comprehensive information package issued at the time of tabling, including the speeches that were delivered before the Parliamentary Committee by the Minister and the Director, is available on the Bureau's Web site at: http://competition.ic.gc.ca or by calling the Information Centre toll free at:1-800-348-5358.

Competition Bureau
Annual Report for the year ending
March 31, 1998

Includes statistical tables, Proceedings under the Act and Discontinued Inquiries

Bureau operations

In 1997-1998, the operating budget for the Bureau was $26.5 million including carry forward. In addition, $1.4 million was received from the Department's reserve to meet operational requirements. A major portion of the budget, $18.1 million was allocated to salaries for 353 authorized full time staff, consisting of 21 executives, 12 economists, 138 commerce officers, 93 program officers, and 86 employees carrying out informatics, administrative services and support functions. The Bureau also funds the costs for three lawyers employed by the Department of Justice who are assigned to the Department's Legal Services Unit. The Bureau also collected $2.2 million for user fees implemented in November 1997.

The Bureau has administrative responsibility for collecting fines imposed by the courts. During 1997-1998, $2,985,600 in fines was imposed of which $1,800,000 was imposed and paid during the year in 1 case and $1,185,600 was outstanding in 7 cases. An additional $3,482,992 outstanding from 13 cases in a previous year was paid, giving a total of $5,282,992 paid during the year and credited to the government's Consolidated Revenue Fund. At year end a total of $1,545,133 remained outstanding.

Table 1
Selected activities of the Competition Bureau

	1995-96	1996-97	1997-98
Number of complaints, examinations, inquiries and advisory opinions			
Total complaints/information requests	**1,424**	**2,040**	**6,939**
Examinations (two or more days of review)	**83**	**77**	**870**
Applications for inquiries under section 9	**6**	**10**	**11**
Inquiries in progress at year end	**37**	**45**	**40**
Written advisory opinions	**240**	**170**	**235**
Disposition of inquiries			
Inquiries formally discontinued	**29**	**9**	**29**
Matters referred to the Attorney General of Canada	**4**	**0**	**8**
Matters referred where further action is not warranted	**1**	**0**	**2**
Prosecutions or other proceedings commenced	**4**	**1**	**6**
Applications to the Competition Tribunal	**4**	**3**	**8**
-Mergers	**1**	**3**	**4**
-Other reviewable practices	**3**	**0**	**4**
Representatives before regulatory bodies	**10**	**11**	**14**

Table 2
Civil Matters - selected activities

	1995-96	1996-97	1997-98
Number of complaints, examinations and inquiries			
Total complaints/information contacts	**456**	**561**	**503**
Examinations commenced (two or more days of review)	**28**	**31**	**41**
Applications for inquiries under section 9 (six resident application to the Director for inquiry)	**4**	**2**	**3**
Inquiries in progress at year end	**13**	**16**	**5**
Written advisory opinions	**4**	**1**	**0**
Disposition of inquiries			
Inquiries resolved by alternative case resolution	**3**	**4**	**4**
Applications to the Competition Tribunal	**1**	**0**	**4**
Discontinuances			**11**
Interventions			
CRTC			**9**
Provincial			**3**
CITT			**2**
Policy work			**2**

Table 3
Criminal matters - selected activities

	1995-96	1996-97	1997-98
Number of complaints, examinations and inquiries			
Total complaints/information requests	968	1,479	1,285
Examinations commenced	55	46	39
Application for inquiries under section 9	2	8	4
Inquiries in progress at year end	24	29	20
Disposition of inquiries			
Matters referred to the Attorney General of Canada	4	0	3
Matters where charges were laid	4	1	3
Matters where Attorney General declined to proceed or withdrew charges (may include matters referred during previous years)	1	0	1
Matters before the Courts (may include matters referred during previous years)	14	10	8
Disposition of prosecutions (findings of guilt, guilty pleas, acquittals, stay of proceedings, orders of prohibition - may include maters referred during previous years)	8	22	48
Other activities			
Examinations resolved by information contacts	16	32	13
Written advisory opinions	14	14	12
Mutual Legal Assistance Treaty (MLAT) requests	3	1	0
Searches	4	0	1

Table 4

Merger Examinations

	1995-96	1996-97	1997-98
Examinations commenced (two or more days of review; includes notifiable transactions, advance ruling certificates and examinations commenced for other reasons; some examinations commenced may arise from notifications and advance ruling certificate requests in relation to the same transactions)	**228**	**319**	**393**
Notifiable transactions	**100**	**140**	**195**
Advance ruling certificates requests	**142**	**224**	**284**
Examinations concluded			
As posing no issue under the Act	**204**	**296**	**398**
With monitoring only	**4**	**2**	**2**
With pre-closing restructuring	**0**	**1**	**0**
With post-closing restructuring/undertakings	**0**	**0**	**3**
With consent orders	**0**	**1**	**0**
Through contested proceedings	**0**	**0**	**0**
Parties abandoned proposed mergers in whole or in part as a result of Director's position	**3**	**0**	**0**
Total examinations concluded (includes advance ruling certificates and advisory opinions issued and matters which have been concluded or withdrawn before the Competition Tribunal)	**215**	**306**	**403**
-advance ruling certificates issued (included in "Total examinations concluded")	**121**	**188**	**236**
-advisory opinions issued (included in "Total examinations concluded")	**10**	**2**	**4**
Examinations ongoing at year end	**52**	**65**	**55**
Total examinations during the year	**267**	**371**	**458**
Applications and Notices of Application before the Tribunal			
Concluded or withdrawn	**1**	**1**	**2**
Ongoing	**2**	**2**	**2**

Table 5

Misleading advertising and deceptive marketing practices offences - selected activities

(Competition Bureau regional offices were closed during the 1995-96 fiscal year and all marketing practices activities consolidated at headquarters. Many figures will therefore show a considerable difference from previous years.)

	1995-96	1996-97	1997-98
Number of complaints, examinations and inquiries			
Total complaints received	6,752	6,277	5,148
Applications for inquiries under section 9	5	2	4
Inquiries commenced	8	18	9
Disposition of inquiries			
Completed examinations/inquired	278	383	397
Information contacts (includes only written contacts)	86	246	208
Inquiries formally discontinued			
-cases involving undertakings (discontinued inquiries involving undertakings are reported for the fiscal year in which they were discontinued; accordingly, these may not coincide with the actual number of undertakings received in any given fiscal year)	9	8	2
-other cases	10	17	7
Undertakings received	4	4	2
Matters referred to the Attorney General of Canada	7	3	5
Matters where further action is not warranted (may include matters referred during previous years)	3	0	1
Prosecutions commenced (may include matters referred during previous years)	7	4	3
Prohibition orders without conviction	1	0	0
Prosecutions concluded (may include matters referred during previous years)			
-convictions	14	8	7
-non-convictions (includes conditional and absolute discharges, withdrawals, stays of proceedings, etc. It should be noted that charges against some of the accused are often withdrawn after other accused in the same case have pleaded guilty. Accordingly, there is some overlap.)	4	2	0
Total Fines	$879,850	$241,500	$573,300

Proceedings Under the Act

Fair Business Practices Branch

Proceedings completed
Accused convicted
H. Farjami/Aban Persian Rugs Inc.
JD Marvel Products Inc.
Click Modeling and Talent Agency of Canada operating as HMI Model and Talent Agencies and Shannon Hoehn.
Integrity Group of Network Marketeers Inc.
GeoForce Inc.
VHS Network Inc.

Accused not convicted
J. Dragan (withdrawal)
Granite Sphere Advertising (formerly R.G. Rapid Growth Ltd) (withdrawal)
Kevin Boyle (withdrawal)
Brian Boyle (withdrawal)

Proceeding commenced
Medi-Man Rehabilitation Inc.
GeoForce Inc, Granite Sphere Advertising, Kevin Boyle and Brian Boyle
VHS Network Inc.

Prohibition Orders pursuant to subsection 34(1)
JD Marvel Products Inc.
Click Modeling and Talent Agency of Canada and Shannon Hoehn
GeoForce Inc, Granite Sphere Advertising Ltd, Kevin Boyle and Brian Boyle
VHS Network Inc and Groupmark Canada Limited

Criminal Matters Branch

Proceedings Completed

Accused Convicted - Section 47

948099 Ontario Inc. (Plan Electric Co.)
Ainsworth Inc.
Guild Electric Limited
The State Group Limited
Jennifer Brotzell
George F. Knight
Carmen Douglas Rinke
Blaine Lloyd Whittaker
Smith And Long Limited

Accused Not Convicted

Baerg Surveys Ltd.
George Baerg and Forster, R.S.
Altacan Surveying & Engineering Ltd
John Yeun
Bayda & Associates Surveys Inc.
Bodian Bayda
Brian Doyle Alberta Land Surveyor
CES Surveys Ltd.
Canadian Engineering Surveys Inc.
Rae Sutherland
Gilmore Surveys (Arctic) Ltd.
Duncan Gillmore (Senior)
Hagen Surveys (1982) Ltd.
Jack Hagen
Harland & Higgins Land Surveyors
James Harland
David Higgins
Heacock R.N.
Kiriak & Associates Ltd.
Walter Kiriak
Norram Surveys Inc.
Mohamad Nouraldin
Spartan Surveys Ltd
Harvey Cumming
Universal Surveys Inc.
Michael Porylo
Hélicoptères Abitibi Limitée
Héli Max Limitée
Essor-Transport Inc.
Héli-Transport Inc.
Hélicoptère Nordic Limitée
Héli-Manicouagan Inc.

Hélicoptères Viking Limitée
Héli-Excel Inc.
Héli Express Inc.
Héli Forex Inc.
Air Alma Inc.
L'Association québecoise des transporteurs aériens Inc.

Prohibition Orders Pursuant to Subsection 34(2)
Section 45
Association des notaires du district de St-François

Section 47
Service Sanitaire R.S. Inc.

Proceedings Commenced
Sections 45, 47
Brian Jenner

Sections 61(1)(a), 61(1)(b)

Alternative Case Resolutions
Section 45
Professions

Section 47
Laboratories
Refrigerators

Section 34
Real Estate Brokerage (3)

Section 50(1)(a)
potato chips

Section 61
Western Wear
Furniture (2)
Clothing
Computer
Luggage

Discontinued Inquiries

Fair Business Practices Branch
Undertakings

Industry	**Section of the Act**	**Nature of inquiry and conclusion reached**
Mail advertisement	52(1)(a),(b) & (c)	Consumer Centre Inc. c.o.b. as Small Business Consumer Centre. MAB 1,2,3,4/97 & 1/98
Handbags and Related leather Goods	52(1)(a)	High Fashion Handbags MAB 1,2,3,4/97 & 1/98
Other Reasons		
Centres de conditionnement physique	52(1)(a)	L'enquête a débuté le 13 juin 1997, suite a une demande déposée par six (6) personnes résidant au Canada qui alléguaient que des indications utilisées lors d'une campagne publicitaire donnaient une image inexacte d'un réseau de centres de conditionnement physique. L'enquête a démontré que malgré l'utilisation erronnée d'une expression particulière dans l'annonce publicitaire, cette indication ne portait pas sur un point important et que l'utilisation d'un superlatif dans la même annonce était justifiée. L'enquête a été discontinuée le 3 décembre 1997.
Telecom	52(1)(a)	The inquiry was commenced on October 31, 1996, following receipt of several complaints alleging that the company had made false or misleading oral representation which implied an affiliation with telephone companies. Investigation of this matter determined that while explanations given by the company's representatives regarding its relationship with the local telephone companies may have been confusing to the consumer, they were not false or misleading in a material respect. The inquiry was discontinued on January 20, 1998.

Persian Carpets	52(1)(a)	This inquiry was commenced on May 23, 1996, following receipt of a section 9 application by six Canadian residents. The application alleged that a business was advertising a closing out sale featuring persian carpets, yet the majority of carpets offered for sale were actually brought in from other sources. Investigation into this matter provided insufficient evidence to support the allegation and the inquiry was discontinued on April 28, 1997.
Law Firm Disbursement Tracking Systems	52(1)(a)	This inquiry was commenced on August 18, 1993, following receipt of a six resident application under section 9 of the Act. The application contained over two hundred allegations of misleading misrepresentations, most of which were made orally, by a company promoting law firm disbursement tracking systems for copiers and fax machines. Investigation established that there was insufficient grounds for belief that the representations were being made to the public as most of the representations were made in private law firms. Futhermore, investigation established that there was insufficient grounds for belief that the representations were misleading in a material respect as the purchasing agents for the law firms based their purchase decisions on market research and cost rather than on oral representations. The inquiry was discontinued on May 21, 1997.

Multi-level Marketing/Pyramid Scheme	55 and 55.1	On June 21, 1996, the Bureau commenced an inquiry under sections 55 and 55.1 into the marketing practices of a multi-level marketing company. Investigation of the matter revealed that the company was operating a multi-level marketing system in which earning representations were made without appropriate disclosure of the average income earned by a typical participant in the plan. Furthermore, investigation revealed that a participant was required to pay a monthly fee in order to participate in the plan. The matter was referred to the Attorney General of Canada where it was determined that there was insufficient evidence to prove beyond a reasonable doubt that an offence had occurred. The inquiry was discontinued on October 17, 1997.
Multi-level Marketing/Pyramid Scheme	55 and 55.1	On December 4, 1996, after having been provided with reason to believe that offences had been committed contrary to paragraphs 52 (1)(a), 55 and 55.1 of the Act, the Bureau commenced an inquiry into the marketing practices of a multi-level marketing company. The company was making representations relating to earning claims without adequate disclosure of the average income of a participant; was giving recruitment bonuses; and required participants to make purchases as a condition of participating in the plan. As well, the company used an advisory opinion issued by the Bureau to recruit participants into the plan. On December 13, 1996, the Quebec Securities Commission issued an injunction to cease operations against the company. Subsequently, the Bureau's investigation focused on the company's senior officials but there was insufficient evidence to proceed against them. The inquiry was discontinued on February 6, 1998.

Consumer Electronic Products	52(1)(a)	This inquiry commenced on May 7, 1996, following receipt of a section 9 application by six Canadian residents alleging that an electronics products company did not honour its lowest price guarantee. Investigation into this matter failed to provide sufficient evidence that the lowest price guarantee policy was being deliberately ignored or that the company was negligent in its application of the policy. The inquiry was discontinued on May 1, 1997.

Discontinued Inquiries

Criminal Branch

Services de laboratoire d'essais	47	Cette enquête a été entreprise le 2 août 1996 à partir de renseignements selon lesquels six (6) laboratoires d'essais de la région de Québec de concert avec l'Association canadienne des laboratoires d'essais (ci-dessous ACLE) avaient enfreint la disposition visant le truquage des offres. Au terme d'une série de rencontres entre le personnel du Bureau et les laboratoires visés, ceux-ci se sont engagés par écrit à respecter la Loi. L'ACLE et ses dirigeants ont également été rencontrés et cette dernière s'est engagée à modifier son livret de taux suggérés afin de s'assurer de la conformité et le respect de la Loi. Considérant les engagements écrits, la faible incidence économique et qu'il s'agissait d'un événement isolé, l'enquête a été discontinuée le 15 avril 1997.

Dry Cleaning Services	45	On July 31, 1996, the Director commenced an inquiry into the business conduct of five city of Sudbury dry-cleaning establishments alleged to have contravened section 45, the conspiracy provision of the Act, by agreeing not to compete with each other in the sale and supply of wholesale dry-cleaning services to a new market entrant. The inquiry established, however, that the alleged agreement was of very short duration, did not achieve its intent and, therefore, had no significant economic impact. In view of these circumstances and the fact that the parties to the alleged agreement were operators of small businesses, this matter was resolved by way of an ACR. As required by the terms of the ACR, each of the said parties, while not acknowledging participation in the alleged agreement, made representations to the Director in writing confirming the correctness of the Bureau's understanding of the relevant facts, as being indicative of activities proscribed by section 45 of the Act, and provided an undertaking to take all steps necessary to ensure non-participation in any business activities proscribed by the law.

Septic Tanks	45	On July 31, 1996, the Director commenced an inquiry into the business conduct of four septic tank cleaning firms alleged to have contravened section 45, the conspiracy provision of the Act, by agreeing not to compete with each other in the sale and supply of septic tank cleaning services in terms of price. Given that the parties to the alleged agreement were operators of small businesses and that the economic impact of the case as well as the demonstrable harm to consumers were not significant, this matter was resolved by way of an ACR. As required by the terms of the ACR, each of the said parties, made representations in writing confirming the correctness of the Bureau's understanding of the relevant facts as being indicative of activities proscribed by section 45 of the Act and provided an undertaking to take all steps necessary to ensure their non-participation in any business activities proscribed by the law. In addition, each party agreed to publish and did publish a corrective notice, in the Pembroke Weekend News, advising users of septic tank cleaning services that, further to the Director's concern in relation to their business conduct, they were thereby informing the public that they are competitors of each other and that the price charged by each company would be, in the future, established independently, based on competitive conditions in the market for septic cleaning services.

Taxis	45(1)(c)	On March 17, 1997, the Director commenced an inquiry into the business conduct of two Edmonton taxi companies and the Edmonton Regional Airports Authority ("the Authority"). The two taxi companies were alleged to have contravened section 45, the conspiracy provision of the Competition Act, by agreeing to share the Airport taxi stand market and by agreeing on the fares to be charged for trips from the Airport taxi stand to the City of Edmonton. The agreement on pricing was subsequently formalized in a contract entered into by the two taxi companies with the Authority, for the exclusive right to service the Airport taxi stand. The inquiry revealed that Laidlaw and the Co-op entered into the alleged agreement in the belief that the Authority was encouraging joint proposals from taxi companies for the service of the Airport taxi stand. In addition, the inquiry established that the Authority did not intend to violate the Act in entering into a contract with Laidlaw and the Co-op, but merely sought to obtain an advantageous fare rate for the traveling public. In view of these circumstances, this matter was resolved by way of an ACR. As required by the terms of the ACR, each of the said parties, while not acknowledging participation in the alleged agreement, made representations to the Deputy Director, Criminal Matters, in writing confirming the correctness of the Bureau's understanding of the relevant facts, as being indicative of activities proscribed by section 45 of the Act, and provided an undertaking to take all steps necessary to ensure non-participation in any business activities proscribed by the law. In addition, each of the said parties provided an undertaking to amend the contract by including a provision indicating that the fares identified in the contract are maximum rates only and that both Laidlaw and the Co-op are free to charge lower rates.

Waste Disposal	45(1)(c)	This inquiry commenced on February 1, 1996. It relates to an alleged agreement or arrangement between two waste services to share commercial and industrial waste removal markets in the Province of Saskatchewan between 1989 and 1994 contrary to subsection 45(1)(c) of the Competition Act. Searches and interviews under oath were conducted during the course of the inquiry, however, evidence obtained was insufficient to establish an offence in contravention of the conspiracy provisions of the Act, accordingly the inquiry was discontinued on March 12, 1998.
Abattoirs de porc	45	L'examen de cette affaire a débuté le 24 mai 1996 à la suite d'une demande de la part de neuf résidents canadiens producteurs de porcs au Québec alléguant des pratiques commerciales illégales, interdites par l'article 45 de la Loi. Suite à une décision de la cour d'appel du Québec qui conclut que les agissements des parties visées dans cette affaire sont soustraits à l'application de la Loi sur la concurrence la présente enquête fut discontinuer le 16 octobre 1997.

Vente et installation de gouttières	45(1)(c), 50(1)(c) et 61(1)a)	L’enquête a débuté le 18 février 1997 suite à une demande de la part de six (6) personnes résidant au Canada présentée en conformité avec l'alinéa 9(1)c) de la Loi. Les requérants alléguaient qu’un concurrent de la région de la capitale nationale, par des agissements anticoncurrentiels, enfreignait les dispositions 45(1)(c) et 50(1)(c) de la Loi. L'enquête qui a suivi n’a pas permis de conclure que le Directeur avait des motifs raisonnables de croire qu'une des dispositions de la Loi avaient été enfreintes. L’enquête a donc été discontinuée le 17 octobre 1997.