

*Annual Report of the*

**COMMISSIONER OF  
COMPETITION**

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FOR THE YEAR ENDING MARCH 31, 1999

on the enforcement and administration of the

*COMPETITION ACT*  
*CONSUMER PACKAGING AND LABELLING ACT*  
*PRECIOUS METALS MARKING ACT*  
*TEXTILE LABELLING ACT*

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Competition Bureau  
Industry Canada  
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Hull QC K1A 0C9

Tel.: (819) 997-4282  
Toll-free: 1-800-348-5358  
TDD (for hearing impaired): 1-800-642-3844  
Fax: (819) 997-0324

Web site: <http://competition.ic.gc.ca>  
E-mail: [compbureau@ic.gc.ca](mailto:compbureau@ic.gc.ca)

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Mergers Branch  
Competition Bureau  
Industry Canada  
50 Victoria Street  
Hull QC K1A 0C9

Tel.: (819) 953-7092  
Fax: (819) 953-6169

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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, 1999.

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

Konrad von Finckenstein, Q.C.

Commissioner of Competition



# MESSAGE FROM THE COMMISSIONER

This has been a year of unprecedented activity for the Competition Bureau. It has been a challenging and successful year — a year of firsts.

This year we were confronted with more merger proposals than ever before. The Bureau reviewed mergers in sectors ranging from energy and media to retailing, as well as the two largest proposed mergers in Canadian history among four of Canada's major banks: the Royal Bank of Canada and the Bank of Montreal, and the Canadian Imperial Bank of Commerce and the Toronto-Dominion Bank.

The petroleum sector has been, and continues to be, a priority for the Bureau. This past year, the Bureau's concerns about a proposed merger between two petroleum companies, Petro-Canada and Ultramar, resulted in the companies deciding to discontinue their joint venture. The investigation into this proposed merger found that it would have led to a substantial lessening or prevention of competition and harmed consumers in Atlantic Canada and Quebec.

This year, we continued our work based on the approach we call the conformity continuum, a consolidation of resources and tools we use to promote conformity. Using this approach, we have initiated education-based strategies aimed at discouraging anti-competitive behaviour while continuing to use the full force of our Acts in situations of serious non-compliance. On the enforcement side, record fines for conspiracy and the first prison terms ever for deceptive telemarketers resulted from Bureau investigations.

To promote awareness of labelling, accreditation and general competition issues, we issued bulletins and conducted information sessions with industry and consumer groups. Specifically, we consulted the jewellery industry on accreditation programs, the software industry on establishing a code of ethics, and pet food makers on the issue of a voluntary code for labelling their products.

The Bureau made numerous interventions before regulatory bodies, notably before the Canadian International Trade Tribunal in the baby food case, and to the Ontario government concerning electricity deregulation. As well, we continued to uphold our international obligations through the promotion, development and, when necessary, enforcement of tenable competition law and policies.

As part of our effort to provide timely information, our Web site has become our key tool for disseminating information to our industry stakeholders, lawyers, the media and the public. We also solicited feedback via the Web site from our stakeholder community on our legislative and policy changes, as well as on the implementation of our user-fee program.

On the legislative front, the Bureau amendments to the *Competition Act* came into force, giving us more powerful tools to fight anti-competitive behaviour. We also commenced a revamping of our technological infrastructure to streamline our management systems.

In short, we have had a successful year. We have met our challenges, and our accomplishments are thanks to the hard work of a dedicated and professional staff. You will find the activities of the past year detailed in this report.



Konrad von Finckenstein, Q.C.

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## In Memory of Jim Bocking

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This annual report demonstrates the very high level of activity sustained by the Bureau's employees during the 1998-99 fiscal year. Together, staff rose to a series of challenges, lending support across branches where necessary.

In early 1999, however, the Bureau suffered a severe loss. Jim Bocking, a long-time manager, passed away after a long and courageous battle with cancer.

Jim was loved and respected by us all. Many staff had known Jim since he joined the Bureau on leaving Queen's University in 1972. Over the years, he held a number of senior positions, most recently as Assistant Deputy Director of Investigation and Research in the Mergers Branch.

From the outset of his career, Jim believed in the importance of maintaining a thoroughly modern competition framework, and in the value of ensuring compliance through education, mediation and, when necessary, prosecution.

He led many major investigations and merger examinations for the Bureau. They ranged from cases that established the limits for setting fees by law societies, to an inquiry leading to the Report of the Restrictive Trade Practices Commission on the Petroleum Industry, to several major merger reviews. One of Jim's final cases was the proposed merger between Petro-Canada and Ultramar Diamond Shamrock in the summer of 1998.

Beyond his accomplishments as a case officer and manager, Jim Bocking will be remembered by Bureau staff, members of the legal and business communities, his friends and family, for his extraordinary character and charm. He was a professional and a gentleman. His integrity and honesty made him an outstanding representative of the Competition Bureau and the public service.

His presence among us will be sorely missed.

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# 1 INTRODUCTION

This annual report provides an overview for the fiscal year April 1, 1998, to March 31, 1999, of the Competition Bureau's work under the following four Acts it administers:

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

As in last year's report, activities are grouped under the Bureau's four operational objectives:

- ◆ informing Canadians
- ◆ promoting competition
- ◆ reviewing mergers
- ◆ preventing anti-competitive activity.

## *Our raison d'être*

*The Competition Bureau strives to create an environment where Canadians can enjoy the benefits of lower prices, product choice and quality services in a vibrant and healthy marketplace.*

In keeping with the Bureau's commitment to inform Canadians, this report not only explains the Competition Bureau's activities during the 1998-99 fiscal year, but also describes how the Bureau's work benefits Canada and society at large. Material such as statistical data and legal references is available electronically on the Bureau's expanded Web site.

## About the Bureau

The Competition Bureau works on the premise that a vibrant and healthy marketplace is good for both businesses and consumers in Canada.

- ◆ It makes the economy work more efficiently.
- ◆ It strengthens the ability of businesses to adapt and compete in global markets.
- ◆ It gives small and medium-sized enterprises an equitable chance to compete and participate in the overall economy.
- ◆ It provides Canadians with the benefits of competitive prices, product choice and the information they need to make informed purchasing decisions.
- ◆ It balances the interests of consumers and producers, wholesalers and retailers, dominant players and minor players, as well as public and private interests.

## Visit our expanded Web site

<http://competition.ic.gc.ca>



## Prevention is the Best Offence

The Competition Bureau is more than a law enforcement agency. The over-arching philosophy at the Bureau is that the combination of proactive, education-based strategies coupled with vigorous law enforcement activity is the most effective means of discouraging anti-competitive behaviour.

- ◆ By seizing every opportunity to talk directly with Canadians, the Bureau aims to heighten awareness of anti-competitive activities, and thwart the efforts of those who do not respect the law.
- ◆ By making sure that businesses have a good understanding of the law as it relates to them, the Bureau discourages anti-competitive behaviour.
- ◆ By amending legislation on a timely basis, the Bureau ensures that the *Competition Act* and related statutes respond to emerging business trends and current enforcement requirements in Canada and abroad.

This report demonstrates how placing more emphasis on the education side of what the Bureau calls the “conformity continuum,” the expense of often time-consuming investigations and prosecutions can be reduced substantially.

Prosecution or contested cases before the Competition Tribunal is the Bureau’s least preferred option. Investigations can take a long time to bring to court, and the outcomes are often uncertain. Moreover, until there is a conviction, the Bureau has no legal way of removing dubious products or services from the market.

The Bureau’s conformity continuum approach is based on the belief that most businesses want to operate within a competitive marketplace framework, and

that the vast majority are willing to comply once they understand how the legislation relates to their particular activities.

The Bureau’s preference is to choose the best and most efficient means of restoring competition in the marketplace. It resorts to an adversarial approach only when all other avenues to correct anti-competitive behaviour have failed or the activities constitute a flagrant disregard of the law. This annual report demonstrates where more effective alternatives to court proceedings and trials have been pursued, such as when organizations or individuals have been willing to work with the Bureau or provide undertakings to comply with the law.

This does not imply that the Bureau will be lenient with those who engage in serious anti-competitive conduct. Where there is evidence of serious violations of the criminal provisions of the *Competition Act*, cases will be referred to the Attorney General of Canada for prosecution. It will continue to use the full force of the law. This can result in heavy fines and prison terms.

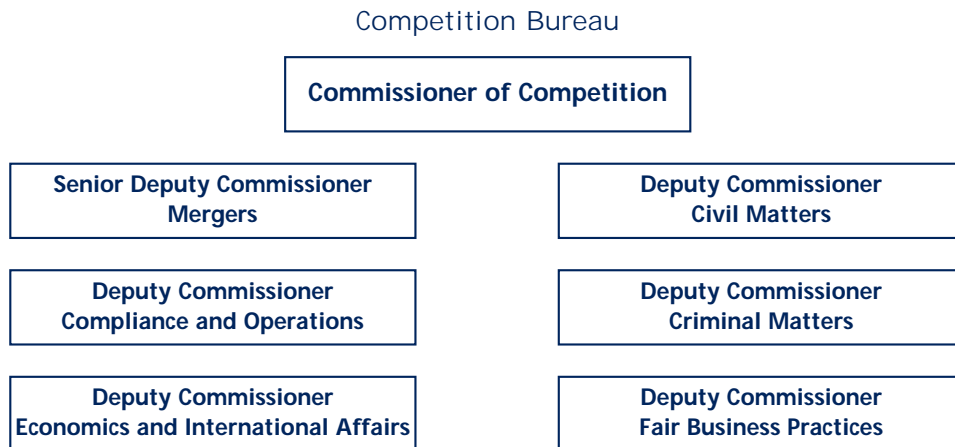
In civil matters, where solutions cannot be worked out by negotiation, consent orders or other means, the Bureau will not hesitate to go before the Competition Tribunal.

### Beyond Law Enforcement: The Bureau’s Conformity Continuum at Work

PROMOTION		MONITORING	NON-CONFORMITY			
Information and Education	Rule Making	Policy	Contacts	Moral Suasion	Consent	Adversarial
Bulletins, guidelines, outreach programs, public speaking and media contacts.	Regulations and voluntary codes.	Advocacy, and liaison with antitrust agencies and trade organizations in Canada and abroad.	Advisory opinions, consultations, prenotification filings, targeted inspections, and industry/client partnerships.	Warning letters, information sessions, and public education visits to businesses.	Undertakings by organizations to change behaviour, consent tribunal orders, consent court orders and guilty pleas.	Product seizures, prosecutions, contested prohibition orders and contested Tribunal proceedings.

## Organizational Structure of the Bureau

As the organizational chart below shows, the Bureau is divided into six branches.



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

**Mergers Branch** is responsible for the review of merger transactions. Mergers in which the parties to the transaction have combined sales or assets in excess of \$400 million, and in which the value of the transaction exceeds \$35 million, require advance filing with the Prenotification Unit of the Mergers Branch.

**Compliance and Operations Branch** is responsible for the development of the Bureau's compliance program, its enforcement policy, public education and communications. It also handles planning, administration and informatics activities.

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

**Civil Matters Branch** investigates possible anti-competitive behaviour, such as the 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 Bureau interventions before federal and provincial regulatory boards and tribunals.

**Criminal Matters Branch** investigates possible criminal offences relating to anti-competitive behaviour. These can include conspiracy to fix prices, bid-rigging, price discrimination, predatory pricing and price maintenance. It is also responsible for the Amendments Unit, which ensures that the provisions of the *Competition Act* and labelling legislation remain relevant.

**Fair Business Practices Branch** promotes fair competition in the marketplace through compliance monitoring, and education programs for industry and consumers. The branch applies the provisions of the *Competition Act* relating to false or misleading advertising and other deceptive practices. It is also responsible for the administration of the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*.

The Competition Bureau works on the premise that the best defence against anti-competitive practices is a proactive strategy of education.

Bureau staff routinely monitor the marketplace, and regularly visit with business, industry and stakeholders. They also rely on Canadians to come forward when they suspect anti-competitive practices.

In 1998-99, the Bureau's Information Centre received 46 000 enquiries. The Bureau hears from Canadians in several ways:

- ◆ through E-mail, telephone, fax or letter;
- ◆ through the Internet, using the Bureau's enquiry/complaint form;
- ◆ through Members of Parliament who forward complaints from their constituents; and
- ◆ through direct contact, for example, when members of the business community meet with Bureau staff.

All enquiries received by the Bureau are treated as confidential, and reports of suspected illegal practices are passed on to the appropriate branch.

A representative selection of cases in 1998-99 for which the Bureau was able to resolve problems through voluntary compliance are set out in Table 1.

### Community Outreach

The year saw the Bureau follow through on a series of important community outreach commitments made in 1997-98.

- ◆ First, the Bureau held nationwide consultations on *The Merger Enforcement Guidelines as Applied to a Bank Merger*. Representatives from banks,

*To make a general enquiry or file a complaint regarding a deceptive business practice, call the Competition Bureau at:*  
**Tel.: (819) 997-4282**  
**Toll-free: 1-800-348-5358**

*Or use the on-line enquiry/complaint form at: <http://competition.ic.gc.ca>*

other financial institutions, the business community, academics, and members of labour and consumer groups were invited to respond to the Bureau's November 1997 submission to the Task Force on the Future of the Canadian Financial Services Sector. More than 600 individuals or institutions were approached for their views. Except where confidentiality was requested, submissions were posted for public view on the Bureau's Web site. The revised guidelines were published in July 1998.

- ◆ In 1998, the Bureau requested feedback from those who use its merger review services. Of those who responded, 75 percent said that the service was "excellent," 23 percent felt that the service was "good," and 2 percent — representing just one case — rated it as "poor" (see Table 2). The Bureau will continue to monitor its progress.
- ◆ One year after adopting fees and service standards, the Bureau hosted a day-long forum for close to 60 senior members of Canada's competition policy community in February 1999. The feedback received was favourable.

**Table 1 Informing Canadians: Highlights 1998-99**

INDUSTRY SECTOR AND ISSUE	COMPETITION BUREAU INTERVENTION	OUTCOME AND POTENTIAL BENEFITS FOR CANADIANS
<b>Monitoring</b>		
<p><b>Major national retailers — ongoing monitoring</b></p> <p>In response to complaints from Canadians and the Consumers' Association of Canada, the Bureau checked a total of 107 stores representing 14 national retailers across the country, that were using computerized bar code scanners to read product prices.</p>	<p>Results of the price accuracy check were shared with the head offices of the 14 retailers. They agreed to improve their scanning systems. The Retail Council of Canada (the main contact for the Price Accuracy Committee) was also advised. Preliminary results of the first in a series of follow-up checks show an increase in price accuracy from a year ago.</p>	<p>Agreement was reached with the Retail Council of Canada, the Consumers' Association of Canada and <i>Option Consommateurs</i> to promote price accuracy information through the Bureau's <i>Be a Smart Shopper: Make Sure You Pay the Right Price</i> pamphlet and via electronic links to the Bureau's Web site. The Retail Council and the Price Accuracy Committee also published a best practices guide.</p>
<b>Public Education Initiatives</b>		
<p><b>The jewellery industry</b></p> <p>Each year the Bureau receives a number of complaints about misleading advertising and deceptive marketing practices related to the jewellery industry.</p>	<p><i>On Guard for Thee</i>, a bulletin explaining the responsibilities of jewellery dealers under the <i>Competition Act</i> and the <i>Precious Metals Marking Act</i> and Regulations, is posted on the Bureau's Web site, used at trade shows and distributed during client visits.</p>	<p>Ongoing public education initiatives such as this one increase awareness within the jewellery industry of the dos and don'ts under the <i>Competition Act</i>.</p>
<p><b>The computer software industry</b></p> <p>Because of the proliferation of computers in Canadian homes and offices, the Bureau began monitoring manufacturers' software claims in 1996. The results of a 1997-98 study showed that, of the 2000 claims made on 140 pieces of software acquired by the Bureau, slightly more than 8 percent were found to be misleading.</p>	<p>The Bureau published <i>Be a Smart Shopper: Know Your Software and Software Claims Survey — Analysis Report</i> in 1998-99. These materials were widely distributed during a national public education campaign, and are available on the Bureau's Web site.</p>	<p>Through active media relations, the Bureau has increased public awareness about claims made by the computer software industry. The results of the Bureau's <i>Software Claims Survey — Analysis Report</i> are shared with software producers, distributors and retailers during routine client visits.</p>

Note: For enforcement policy considerations, some names have been withheld.

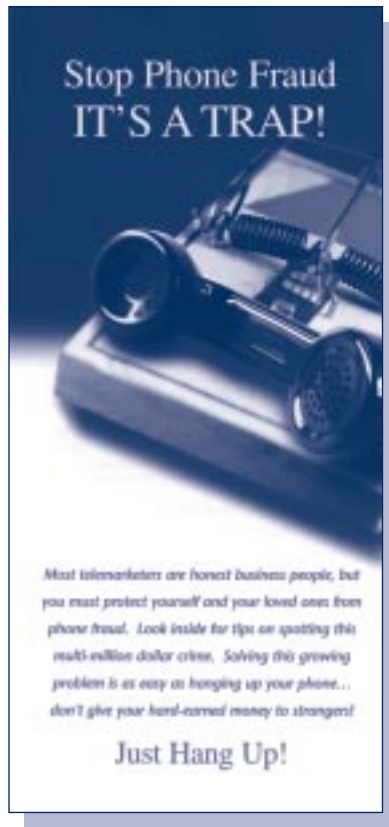
**Table 2 Feedback on Merger Review Services, November 1997 to November 1998**

BUSINESS LINE	NUMBER OF RESPONSES			
	Poor	Fair	Good	Excellent
Merger Review	1	0	6	28
Advisory Opinions	0	0	4	4
<b>Percentage</b>	2%	—	23%	75%

**Partnerships**

The Bureau continues to be very active in seeking partnerships through which to reach its target audiences, and to work with other agencies dedicated to the goals of law enforcement and maintaining a competitive marketplace.

For instance, the pamphlet *Stop Phone Fraud, It's a Trap!* (see page 6) is a joint effort with a wide variety of partners from the public and private sectors, as well as non-profit groups.



The Bureau's partnerships with the public sector are numerous. For example, the Bureau receives legal advice from, and works in close partnership with, a specialized group of lawyers at the federal Department of Justice. It also works with other federal government departments to incorporate sound policy principles into Canada's trade and economic agenda.

Across Canada, the Bureau maintains regular contact with provincial agencies working on consumer protection, law enforcement and justice issues.

In November 1998, the Bureau participated in the launch of Canshare, a state-of-the-art, Internet-based alert network for law enforcement agencies. This early warning system is designed to increase information sharing on a broad range of consumer protection issues. Such intergovernmental cooperation helps the Bureau track deceptive telemarketing and other kinds of scams, and reduce financial losses for Canadians.

## The Internet: A Major Communications Tool

The Internet has become a primary vehicle for informing Canadians, businesses, stakeholders and the media of new developments. In turn, Canadians are increasingly using the Bureau's electronic services to request information and register complaints on-line.

The goal is to ensure round-the-clock service at the click of a mouse button. Current reports, business and consumer alerts, and press releases are available 24 hours a day, 365 days a year.

The most popular of the Bureau's Web pages are those dealing with consumer awareness and labelling, in addition to the Bureau's on-line publications, which address a range of issues, from packaging to precious metals.

However, the Bureau is aware that consultations, the Internet and printed materials cannot meet every need. Individuals may sometimes wish to discuss suspected anti-competitive activities or explore a proposed merger in private. To this end, the Bureau operates on an open door policy, with the Commissioner and individual staff members available to the Bureau's wide range of clients.

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### *Timely Delivery of Information*

*The quality of the Bureau's advice and decision making is only as good as its ability to stay on top of current trends and issues. This is why it continues to place a great deal of emphasis on the library and research services offered by its Resource Centre.*

*The key is not to amass information, but to find the most cost-effective and efficient ways of using the Internet and the sophisticated search tools it offers. The Bureau's goal is to ensure that up-to-the-minute information on antitrust cases is available on every desktop computer.*

*Except where confidentiality provisions must be respected, the Bureau's collection, which is not duplicated anywhere in the country, can be consulted by the general public.*

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## 3 PROMOTING COMPETITION

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The main objective of the *Competition Act* is to create an environment where Canadians can enjoy the benefits of competitive prices, product choice and quality services in a vibrant and healthy marketplace.

To fulfil this objective, the Competition Bureau frequently intervenes at hearings of federal and provincial regulatory boards and tribunals in Canada. It has also taken a leadership role in issues relating to antitrust policy internationally.

### Domestic Markets

#### *Formal Interventions*

The Bureau's interventions relating to the deregulation of certain industries have a dual purpose. First, they sustain and promote a competitive environment. Second, they ensure that if regulation is required, the form of regulation that least distorts competition and efficiency in the affected markets is chosen.

In 1998-99 for example, the Bureau made a number of significant interventions. They ranged from submissions aimed at maintaining choice in the marketplace for baby foods to several interventions aimed at promoting competition in the electricity sectors in Ontario and Alberta. Tables 3 and 4 (pages 8-13) provide an overview of these activities.

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#### *The Bureau's broad partnership role*

*To protect the public interest, the Competition Bureau makes representations on competition issues before federal and provincial boards, commissions and tribunals.*

*The Bureau frequently works with other governments and their agencies in developing competition policy, and is regularly invited to participate in government policy-making initiatives.*

*For instance, interventions on the proposed restructuring of the Ontario and Alberta electricity markets outlined in the following tables demonstrate how the Bureau's resources are used to help protect public interests and consumer choice.*

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**Table 3 Competition Bureau: Interventions 1998-99**

INDUSTRY SECTOR AND ISSUE	COMPETITION BUREAU INTERVENTION	OUTCOME AND POTENTIAL BENEFITS FOR CANADIANS
<b>Broadcasting, Telecommunications and New Media (Internet)</b>		
<p><b>Fixed satellite services</b></p> <p>The extent to which Telesat Canada's satellite rates and services should be deregulated during the transition to competitive markets.</p> <p>(CRTC PN 98-8 and Decision 98-4)</p>	<p>The Competition Bureau said that Telesat should continue to be regulated until such time as the Canadian Radio-television and Telecommunications Commission (CRTC) is satisfied that the company will no longer be able to exercise market power.</p>	<p>The CRTC accepted the Bureau's relevant market definitions and competitive analysis in determining the extent to which it would continue to regulate Telesat.</p> <p>Broadcasters and telecommunications users who rely on Telesat are protected from Telesat's ability to exercise market power during the transition to competitive markets.</p>
<p><b>Television broadcasting</b></p> <p>A broad range of issues relating to the Canadian TV broadcast industry were examined.</p> <p>(CRTC PN 1998-44)</p>	<p>The Bureau's submission focussed on two issues:</p> <ul style="list-style-type: none"> <li>◆ the desirability of eliminating the market entry test (in terms of economic impact) for licensing new local broadcasting undertakings; and</li> <li>◆ the role of the Bureau in examining TV broadcasting mergers, should existing ownership restrictions be relaxed.</li> </ul>	<p>At the end of 1998-99, the CRTC's decision was pending.</p> <p>Greater consumer choice and increased competition in local TV broadcasting markets is being sought.</p> <p>The preservation of competition in local TV markets is being sought.</p>
<p><b>International telecommunications services</b></p> <p>Teleglobe's application to the CRTC for complete and unconditional deregulation of its wholesale Canada-overseas telephone services, which link Canada to 240 destinations.</p>	<p>The Bureau supported the application on the grounds that recent CRTC decisions, changes in government policy, and technological change have combined to substantially reduce barriers to entry, thereby removing Teleglobe's monopoly position. As a result, new competitors can compete with Teleglobe in the wholesale market for Canada-overseas telephone services.</p>	<p>At the end of 1998-99, the CRTC's decision was pending.</p> <p>Increased competition in the wholesale and retail markets for Canada-overseas telephone services is being sought.</p> <p>Lower prices, as well as greater consumer choice and the introduction of innovative services should result.</p>
<p><b>Radio broadcasting</b></p> <p>The regulatory treatment given to joint industry management agreements in local radio broadcast markets.</p> <p>(CRTC PN 1998-42)</p>	<p>The Bureau submitted that radio station management agreements should be examined by the CRTC in the context of content and cultural objectives of the <i>Broadcasting Act</i>, and rely on the provisions of the <i>Competition Act</i> to safeguard competition in local radio advertising markets.</p>	<p>The CRTC issued its decision on March 31, 1999. It proposes to regulate radio industry management agreements through its power to license under the <i>Broadcasting Act</i>. The CRTC is seeking further comments on revisions required to its radio regulations to facilitate the new policy.</p> <p>The CRTC decision does not indicate the extent to which the impact on competition in local advertising markets will be a factor in its review of radio station management agreements.</p>



**Table 3 Competition Bureau: Interventions 1998-99 (cont.)**

INDUSTRY SECTOR AND ISSUE	COMPETITION BUREAU INTERVENTION	OUTCOME AND POTENTIAL BENEFITS FOR CANADIANS
<b>Broadcasting, Telecommunications and New Media (Internet) (cont.)</b>		
<p><b>Local telephone</b></p> <p>The allocation of local telephone start-up costs between incumbents and new entrants.</p> <p>(CRTC PN 98-10)</p>	<p>The Bureau argued that the CRTC should use principles of economically efficient pricing in determining the allocation of costs associated with providing access and interconnection arrangements for competition in local exchange services. The Bureau also expressed concern that existing local telcos, in an effort to limit competition, would attempt to pass on their costs to competitors.</p>	<p>The CRTC issued its decision on March 12, 1999, adopting most of the Bureau's recommendations.</p> <p>The growth of competitive local telephone markets and easier access for new firms entering local markets has been facilitated.</p>
<p><b>Television satellite signals</b></p> <p>The removal of restrictions to TV network signals from U.S. satellites.</p> <p>(CRTC PN 1998-60)</p>	<p>The Bureau argued that restricting the ability of Canadian broadcast distributors (cable companies) to access programming from U.S. satellites should be eliminated.</p>	<p>At the end of 1998-99, the CRTC's decision was pending.</p> <p>With lower costs for acquiring TV programming, competition will be increased among distributors of TV signals to Canadians.</p>
<p><b>Non-traditional broadcasting services, including the Internet and on-line new media services</b></p> <p>The extent to which the Internet and on-line new media should be regulated under the <i>Broadcasting Act</i>.</p> <p>(CRTC PN 98-20/98-82)</p>	<p>The Bureau argued that, given the evolution of the Internet and on-line new media services, the CRTC should begin a process of transition regarding the way the traditional broadcast industry is regulated. It also stressed the importance of ensuring that voluntary industry codes in the new media industry be in compliance with the <i>Competition Act</i>.</p>	<p>At the end of 1998-99, the CRTC's decision was pending.</p> <p>By discouraging unnecessary and costly regulation it will be easier for Canadian Internet, on-line new media and other applications (such as electronic commerce) to develop and remain competitive on a global scale.</p>
<b>Food</b>		
<p><b>Dairy product blends</b></p> <p>Imports of dairy product blends, particularly butteroil/sugar blends, had become a matter of increasing concern, with some interveners recommending import tariffs of 300 percent.</p> <p>In December 1997, the Governor in Council directed the Canadian International Trade Tribunal (CITT) to inquire into imports of dairy blends outside the coverage of Canada's tariff rate quotas.</p>	<p>In March 1998, the Bureau argued that an examination of the domestic market for imported dairy blends should take into account the positive competitive impact those imports are likely to have on food processors in terms of choice, price of inputs, efficient operations and increased sales.</p> <p>Moreover, the Bureau added that imposing tariffs would only delay the adjustments that the dairy industry must eventually make to an open trade environment.</p>	<p>At the conclusion of the hearings, the CITT put forward several options to the Governor in Council. In its closing submission, the Bureau supported only one of these options: special class pricing. This option is welfare enhancing, allows consumers and processors the benefits of import competition, and is consistent with a gradual transition to a competitive market.</p> <p>As a result of a reference from the Deputy Minister of Revenue Canada, the CITT undertook a review of the tariff classification of butteroil blends in January 1999. Since competition issues were not a focus of the hearings, the Bureau did not participate.</p>

**Table 3 Competition Bureau: Interventions 1998-99 (cont.)**

INDUSTRY SECTOR AND ISSUE	COMPETITION BUREAU INTERVENTION	OUTCOME AND POTENTIAL BENEFITS FOR CANADIANS
<b>Food (cont.)</b>		
<p><b>Material injury intervention</b></p> <p>Hearings before the CITT claimed that the dumping of baby food sold in jars by Gerber Canada Inc. had caused material injury to H.J. Heinz Company of Canada Ltd.</p>	<p>Following Revenue Canada's findings that Gerber had been selling U.S.-made baby food cheaper in Canada than in the U.S., the CITT held an inquiry to determine whether this dumping had caused material injury to Heinz's domestic production of jarred baby food.</p> <p>During its intervention, the Bureau argued that other events, trade restrictive practices among them, had caused injury to Heinz.</p> <p>When, in April 1998, the CITT determined that the dumping had caused injury to Heinz, duties averaging 30 cents per jar were imposed on Gerber baby food products. Gerber withdrew from the Canadian market, leaving Heinz as the sole marketer of jarred baby food.</p>	<p>Gerber Canada Inc. has sought to have the decision reviewed by a binational panel.</p> <p>At the time of writing the binational panel review is pending.</p> <p>Since the April 1998 finding of the CITT, Heinz has been the sole supplier of jarred baby food in Canada.</p> <p>Until the conclusion of the binational panel process, a monopoly situation exists in the baby food market in Canada.</p>
<p><b>Public interest inquiry</b></p> <p>Baby food sold in jars.</p>	<p>The Competition Bureau, Gerber Canada Inc., and numerous public interest advocates sought and obtained a public interest inquiry into whether the CITT should recommend to the Minister of Finance that the duties on baby food sold in jars be reduced or eliminated.</p>	<p>Following the most extensive hearing of its type, in November 1998, the CITT recommended that the duties be reduced by about two thirds. This would, the Tribunal said, recognize the interests of Canadian infants and caregivers in a competitive market.</p> <p>At the time of writing, the CITT's recommendation to the Minister of Finance was under consideration.</p>

**Table 3 Competition Bureau: Interventions 1998-99 (cont.)**

INDUSTRY SECTOR AND ISSUE	COMPETITION BUREAU INTERVENTION	OUTCOME AND POTENTIAL BENEFITS FOR CANADIANS
<b>Ontario Electricity Sector Restructuring</b>		
<p><b>Ontario's Energy Competition Act</b></p> <p>Adopted in the fall of 1998, this Act allows the province's electricity market to be opened up to both retail and generation competition during the year 2000.</p>	<p>In 1998-99 the Bureau continued to participate in the restructuring process through:</p> <ul style="list-style-type: none"> <li>◆ two major submissions; and</li> <li>◆ advice to the Ontario government's Market Design Committee on restructuring the sector for a competitive environment.</li> </ul> <p>The Bureau's intervention has two main purposes:</p> <ul style="list-style-type: none"> <li>◆ To support the move to competition in Ontario's electricity generation and retail markets. This should result in more efficient use of resources and lower prices.</li> <li>◆ To ensure that the roles of the Competition Bureau and the industry regulator are appropriately assigned and coordinated so as to deal efficiently and effectively with any competition abuses that may arise, and to avoid unnecessary overlap and duplication between the two organizations.</li> </ul>	<p>Ontario's <i>Energy Competition Act</i> incorporates many key market and regulatory elements advocated by the Bureau in its submissions. For example:</p> <ul style="list-style-type: none"> <li>◆ Householders, if they wish, will have the opportunity to choose among competing energy providers starting in the year 2000.</li> <li>◆ A level playing field with respect to charges and fees will be established for public and private sector companies. This will ensure survival of only those who meet consumer demands at the lowest prices (and not on preferential tax and financing arrangements).</li> <li>◆ Owners of transmission and distribution facilities must set up separate affiliate companies for their competitive business. This will ensure they cannot use their monopolies to gain a competitive advantage in other markets by discriminating against competitors.</li> <li>◆ Regulation will be minimized by a requirement that it will be removed where there is sufficient competition to protect public interests.</li> </ul>
<b>Ontario Natural Gas</b>		
<p><b>Improving the competitive framework in the sale of natural gas in Ontario</b></p> <p>Competition in retailing natural gas is not new in Ontario. However, a pre-existing regulatory and legislative framework limited true competition on pricing and service levels.</p>	<p>The Bureau's interventions promoted market structure changes to allow Ontario consumers to enjoy the full benefits of competitive and efficient natural gas supplies. Interventions included comments to the following:</p> <ul style="list-style-type: none"> <li>◆ the Ontario government on proposed natural gas regulatory amendments in Bill 35, the Energy Competition Act; and</li> <li>◆ the Ontario Energy Board on a proposed licensing scheme for marketers of natural gas to households and other low-volume users.</li> </ul>	<p>The <i>Competition Act</i> and the Ontario Energy Board's authority will protect small-volume customers from anti-competitive and unfair business practices and provide clear rules for natural gas marketers. This will be done by:</p> <ul style="list-style-type: none"> <li>◆ making it an objective of the Board to facilitate competition;</li> <li>◆ removing regulation where there is sufficient competition to protect public interests;</li> <li>◆ having the Board govern relations between regulated natural gas distribution utilities and their competitive market affiliates; and</li> <li>◆ requiring gas marketers to be licenced under the Board's authority.</li> </ul> <p>These and other amendments will pave the way for competitively priced, more innovative gas service offerings, allowing Canadians to benefit fully from a vibrant and healthy marketplace.</p>

**Table 3 Competition Bureau: Interventions 1998-99 (cont.)**

INDUSTRY SECTOR AND ISSUE	COMPETITION BUREAU INTERVENTION	OUTCOME AND POTENTIAL BENEFITS FOR CANADIANS
<b>Alberta Electricity Market Restructuring</b>		
<p><b>The restructuring of the Alberta electricity market</b></p> <p>The promotion of appropriate roles and responsibilities for the Alberta electricity industry regulator and the Competition Bureau in Alberta, and providing Alberta market participants with information on Canadian competition law and policy.</p>	<p>During 1998-99 the Bureau made a presentation to the Market Surveillance Workshop on Competition Law in Alberta. The Bureau also contributed to the Alberta government's electricity Market Surveillance Regulation, which was adopted in December 1998.</p>	<p>By explicitly recognizing the role of competition law in dealing with anti-competitive business practices in the province, clear lines of responsibility have been drawn between Alberta's Market Surveillance Regulation authority and the Competition Bureau. As a result, the surveillance authority will refer any business behaviour that may contravene the <i>Competition Act</i> directly to the Bureau for investigation and possible action.</p> <p>Clarification of federal and provincial roles will result in:</p> <ul style="list-style-type: none"> <li>◆ clear rules for business and lower compliance costs — savings that can be passed on to Canadians; and</li> <li>◆ greater clarity for the regulator and the Bureau, and the elimination of overlapping investigations and interventions — resulting in savings to taxpayers.</li> </ul>
<b>Draft Ontario Franchise Disclosure Legislation</b>		
<p><b>The Competition Bureau's submission on franchise disclosure legislation as set out in a consultation paper issued by the Ontario Ministry of Consumer and Commercial Relations</b></p> <p>This Ministry's paper follows years of effort to establish a franchise law in Ontario.</p>	<p>In light of a number of complaints from franchisees about alleged misrepresentations by franchisers, the Bureau expressed its support for the proposed disclosure requirements.</p> <p>As well, the Bureau alerted the Ministry to potential competition concerns on some aspects of the consultation paper. The Bureau cautioned against legislation that would lead to common pricing, market or customer allocation; joint action to prevent entry; preventing franchisees from setting prices lower than those suggested by their franchisers; or any other conduct that could lessen competition within the industry or for Canadians.</p>	<p>The draft legislation, if passed, would ensure that all parties are bound by clear rules on:</p> <ul style="list-style-type: none"> <li>◆ specific disclosure requirements by franchisers to prospective franchisees;</li> <li>◆ the right of franchisees to associate;</li> <li>◆ definitions of franchise arrangements to be covered by the legislation; and</li> <li>◆ a process for the systematic collection of information on franchise activities.</li> </ul> <p>In short, the disclosure requirements would provide greater transparency and create a more informed marketplace. They could serve as a model for franchise disclosure legislation in other provinces. As of this writing, only Alberta has proclaimed such a law.</p>

**Table 4 Competition Bureau: Enforcement Activities 1998-99**

INDUSTRY SECTOR AND ISSUE	COMPETITION BUREAU INTERVENTION	OUTCOME AND POTENTIAL BENEFITS FOR CANADIANS
<b>Alternative Case Resolution</b>		
<p><b>Airport park-and-ride services</b></p> <p>Among its activities, an airport authority operates various parking and related shuttle bus services for travellers. The operator of an off-site park-and-ride company offered a similar service to travellers in competition with the airport. This operator complained to the Bureau. The complainant claimed that the airport's entrance fees and its access policies were anti-competitive.</p>	<p>The Bureau examined the complaint under the abuse of dominant position provisions of the <i>Competition Act</i>.</p>	<p>During the course of several discussions with the airport, the park-and-ride operator reached a settlement with the airport. In addition, the airport agreed to alter its ground transportation policy to conform with the <i>Competition Act</i>.</p> <p>A valuable competitor was able to remain in the market for consumer choice in park-and-ride services and prices. This case was also important for demonstrating to other airport authorities that if they engage in competition with off-site rivals, then they should ensure that the <i>Competition Act</i> is not violated.</p>
<p><b>Camera parts and the repair of a well-known brand of cameras</b></p> <p>The exclusive distributor for a well-known brand of cameras in Canada refused to continue to supply parts to the complainant. As a result, the complainant could no longer provide competitive repair services.</p>	<p>Bureau staff made several telephone calls to discuss the matter with the distributor.</p>	<p>The supply of camera parts was restored.</p> <p>Consumer repair services for this particular brand of cameras have been reinstated.</p>
<p><b>Distribution of videos in Eastern Canada</b></p> <p>A major producer of videos discontinued the supply of videos to a distributor in Eastern Canada. The distributor claimed that this would substantially affect its business, and that competition would be lessened as a result.</p>	<p>Representations were made by the Bureau regarding the supply of videos.</p>	<p>The supply of videos was restored.</p> <p>The distributor and its clients benefited from the supply of a full line of videos — averting the potential negative effects to the distributor's business and a likely lessening of competition in the marketplace for these products.</p>

## ***Informal Cooperation***

The Bureau is an active participant in the design of voluntary codes of conduct, norms and standards for a host of professional and industry associations. Bureau staff are available to meet with association members, both individually or as a group.

In September 1998, for example, the Bureau was invited to address delegates to the Canadian Real Estate Association national conference and trade show. It took this opportunity to communicate its vision for replacing the 10-year-old prohibition order with an effective voluntary code of conduct.

The issuance of the prohibition order was the result of investigations by the Bureau into alleged anti-competitive conduct by several real estate boards and associations. Because it prohibits specific types of anti-competitive behaviour, the order is effectively a mandatory code of conduct respecting competition matters for the industry.

The Bureau advocates the adoption of a voluntary code of conduct — one that will promote best competition practices, rather than minimal compliance with the law. This will provide a better model for fulfilling the broader competitive objectives of the real estate industry in today's changing world.

Toward this goal, Bureau staff are consulting with stakeholders. The Bureau would like to work in partnership with all of the stakeholders to develop a code of conduct that will not only build on the achievements of the prohibition order, but will also be more efficient, requiring fewer resources to administer.

As well, Bureau staff were involved in consultations with industry and other government agencies to promote awareness of labelling, accreditation and general competition issues.

- ◆ The Jewellery Accreditation Program invited Bureau staff to participate in discussions on an accreditation program for jewellery appraisers that will be recognized industry-wide.
- ◆ The Bureau worked with representatives of the pet food industry and interested stakeholders to explore the usefulness of a voluntary code for the labelling of pet food products.
- ◆ Bureau staff are continuing to conduct regular consultations with textile, upholstery and apparel industry associations.

## **International Activities**

In an increasingly interconnected world, we cannot focus solely on domestic markets. With globalization, the number of businesses operating across borders is growing rapidly. This implies a greater risk that anti-competitive activities may be spread over several jurisdictions.

For this reason, the Bureau is actively involved in the promotion and development of sound competition laws and policies, together with appropriate enforcement, around the world.

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### ***Multinational merger activity***

*The recent proliferation of multinational merger activity implies a certain degree of cooperation among national and regional competition authorities.*

*The Competition Bureau strives to work with its foreign counterparts at an early stage of the merger review process. Discussions range from product market definitions to entry conditions and the coordination of remedies.*

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

In June 1998, the Competition Bureau's Commissioner was elected to chair the working party of the Organisation for Economic Co-operation and Development (OECD) Competition Law and Policy Committee. This working party on enforcement cooperation is an important contributor to the development of concepts and ideas to encourage international harmony among competition authorities. During the fiscal year, the OECD working party finalized a framework for notification, as well as a report form for transnational mergers.

Although the framework is not binding for OECD member countries, it is designed to promote the substantive and procedural convergence of notification forms. The framework can also offer guidance to countries wishing to modify information requirements on a case-by-case basis. This will help to improve efficiency in enforcement cases involving transnational mergers, to the benefit of businesses with operations in several jurisdictions. The framework was approved by the OECD Council in February 1999.

The Bureau is also a member of the OECD Consumer Policy Committee. As such, it is participating in the drafting of the electronic commerce guidelines, including those dealing with on-line investment services.

### ***The Internationalization of Competition Policy***

The Bureau continues to participate in a working group at the World Trade Organization (WTO) examining the interaction between trade and competition policy, and in negotiations directed toward establishing a Free Trade Area of the Americas and a free trade agreement with the members of European Free Trade Association.

Rather than continue the ad hoc approach to competition policy that has been taken in recent WTO agreements, the Bureau has been involved in examining the viability of establishing a sound multilateral competition framework at the WTO to advance competition policy internationally. Some of the key building blocks are now in place and others are being worked out at the OECD.

Through these activities, Canada plays an important role in achieving the goals of competition policy on a multilateral basis.

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### ***X-ray fluorescence analysis for jewellery***

*Bureau staff are working with colleagues in Canada and abroad to find new ways of assessing the precious metal content of jewellery without having to dismantle it or break it apart. To broaden its network, the Bureau participated at the June 1998 meeting of the International Conference of the Association of European Assay Offices held in Prague, in the Czech Republic.*

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### ***Positive Comity***

One tangible example of increased cooperation with other jurisdictions is the expanded use of what is known as "positive comity."

The concept is relatively straightforward. It can be applied to situations where anti-competitive activity in one country harms both Canada's markets and the country's markets. At the same time, the anti-competitive activity in question is remediable through the country's domestic competition legislation.

Positive comity requires the other country to give due consideration to a request from Canada in order for Canada to begin an investigation (or expand an existing investigation), and to seek an appropriate remedy that would address Canada's concerns.

Such an approach ensures that anti-competitive conduct that harms more than one jurisdiction will be addressed by the jurisdiction in the best position to seek a viable remedy. It also eliminates the pitfalls associated with the extraterritorial application of domestic legislation.

### ***Positive Comity at Work***

A general positive comity provision has been present in the antitrust cooperation agreement with the Bureau's U.S. counterparts since the agreement was established in 1995. A positive comity provision is also present in the cooperation agreement with the European Community, which the Bureau hopes will come into effect during the first half of the 1999-2000 fiscal year.

Since positive comity requests flow both ways, Canada must also be ready to consider such requests — in line with its international obligations. The Bureau is also examining the possibility of increasing the specificity of such obligations in relation to its cooperative efforts with its counterparts in the United States.

### ***Strengthening Cross-border Relationships***

Canada's closest trade relationship is with the United States, and it is within this relationship that the Bureau has been able to explore a number of cooperative issues. The following are some of these issues:

- ◆ the organization of more coordinated or parallel investigations;
- ◆ the coordination of searches, where appropriate;
- ◆ the sharing of information within the limits set by national laws;
- ◆ the timing of activities to ensure maximum results; and
- ◆ mutual assistance in obtaining necessary evidence.



## 4 REVIEWING MERGERS

In an era of economic and industry restructuring, the current wave of merger activity around the world could continue well into the next century.

The Competition Bureau dealt with 360 merger cases in 1998-99 (see Table 5).

Several of the mergers examined by the Bureau involved key infrastructure industries, such as banking, national media, and the refining and retailing of gasoline — each of which affects communities across Canada.

### Royal Bank of Canada–Bank of Montreal and Canadian Imperial Bank of Commerce–Toronto-Dominion Bank

These proposed transactions resulted in the two single most extensive and exhaustive merger reviews ever carried out in Canada. The combined Canadian assets of the four merging banks totalled about \$590 billion. (The next largest was the merger between Imperial Oil and Texaco Canada in 1989, where the two companies had combined Canadian assets of \$13.8 billion.)

During the investigations, staff interviewed individuals across Canada, reviewed a total of 1100 boxes of documents from the four banks and created a data base of almost half a million pages. This work was conducted under the close scrutiny of an unprecedented level of public interest throughout the 10-month merger examination period.

In his assessment to the four bank chairs and to the Minister of Finance, the Commissioner determined that the proposed mergers, as they were presented, would likely lead to a substantial lessening or prevention of competition that would cause higher prices and lower levels of service and choice for several key banking services in Canada.

**Table 5 Breakdown of Mergers by Year, 1995-99**

BUSINESS LINE	1995-96	1996-97	1997-98	1998-99
Pre-merger notification filing	64	64	90	112
Advance ruling certificate request	142	224	284	222
Other examinations	22	31	19	26
<b>Total</b>	<b>228</b>	<b>319</b>	<b>393</b>	<b>360</b>

The Bureau found that the proposed mergers would have been likely to lessen or prevent competition in three broadly defined lines of business: branch banking, credit cards and the securities industry. In each case, potentially troublesome geographic markets were identified, and reasons for the Bureau's conclusions were clearly set out in letters to each of the bank chairmen. (The full text of both letters is available on the Bureau's Web site at <http://competition.ic.gc.ca>)

Citing the Bureau's analysis as a key factor in his decision making, the Minister of Finance announced in December 1998 that the two mergers would not be allowed to proceed.

### Superior Propane and ICG Propane

Superior Propane and ICG Propane operate a network of branches and distribution outlets across Canada, selling propane and related equipment to wholesale, commercial, industrial, residential, agricultural and automotive sectors. The companies are the two largest suppliers of propane and related equipment in Canada, with a combined market share of 73 percent on a national basis.

In December 1998, the Bureau's investigators found that the proposed transaction would give the merged entity a monopoly or near monopoly position in 26 local markets, and market shares exceeding 65 percent in 21 additional local markets. This would leave Superior Propane as the only propane firm able to provide nationwide service to major national accounts. The Bureau believed that this would leave many Canadians with limited purchasing options.

However, the Competition Tribunal dismissed the Bureau's application for an injunction to prevent the closing of the transaction, which went ahead as planned in December 1998.

In a separate ruling, the Tribunal accepted the Bureau's subsequent request for a "hold separate" agreement. This means that Superior Propane and ICG Propane must continue to operate as separate entities until the Tribunal has had time to fully consider the serious competition concerns raised by the Bureau. Scheduled to be heard in September 1999, this may be a landmark case on the meaning of efficiencies and the extent to which efficiencies can save an otherwise anti-competitive transaction.

### **Petro-Canada and Ultramar Diamond Shamrock**

This proposed \$8-billion deal would have resulted in Petro-Canada merging its five refineries and 3517 service stations with Ultramar's two refineries and 1713 service stations in Eastern Canada, as well as some assets in the Northeastern United States.

Following a five-month examination of the proposal, the Bureau determined that the proposed merger of two major players in Quebec and Atlantic Canada would lead to a substantial lessening or prevention of competition. Key concerns related to markets in Quebec and Atlantic Canada, where the two companies compete at both wholesale and retail levels. The concerns included the following:

- ◆ the removal of a vigorous and effective competitor such as Ultramar at both the wholesale and retail levels for gasoline and other oil-based products;
- ◆ increased levels of concentration for gasoline and distillate products, and the likelihood that prices could increase; and
- ◆ the fact that costs at the wholesale level inevitably trickle down to consumers over the longer term.

In mergers of this size, there is often room to restructure a deal to alleviate competition concerns. However, in this instance no workable alternatives could be found. After careful consideration of the Bureau's concerns, the parties announced they would not complete the transaction. Today, they continue to compete in the supply of refined petroleum products — a plus for independent gasoline retailers and consumers looking for product choice and competitive pricing.

### **Southam Inc. and *The Financial Post***

The Bureau's focus when examining proposed mergers in the print media is on preserving competition in advertising, not in editorial diversity.

Following a month-long review of Southam's proposed acquisition of *The Financial Post* newspaper from Sun Media Corporation in August 1998, the Bureau did not challenge this transaction.

In its decision, the Bureau concluded that combining *The Financial Post* with the new daily (now known as the *National Post*) would not prevent competition substantially in the marketplace. Moreover, it was felt that the introduction of the new, merged daily newspaper would drastically alter the newspaper landscape and that it could result in even more vigorous competition.

However, the Bureau has undertaken to keep a watchful eye on future market developments, to ensure that advertisers across the country have access to a range of media alternatives. Advertisers can then continue to reach their target audiences at the best possible prices.

**Sun Media Corporation,  
Torstar Corporation and Quebecor Inc.**

In the period from October 1998 to January 1999, the Bureau reviewed the following three transactions involving Sun Media Corporation and its assets:

- ◆ Torstar Corporation’s bid for all outstanding shares of Sun Media Corporation;
- ◆ a subsequent bid by Quebecor Inc. for all outstanding shares of Sun Media Corporation; and
- ◆ Torstar Corporation’s proposed acquisition from Quebecor of *The Hamilton Spectator*, the *Cambridge Reporter*, the *Guelph Mercury* and *The Record* in Kitchener-Waterloo from Sun Media Corporation.

In the first instance, the Bureau concluded that Torstar’s proposed acquisition of Sun Media would lead to a substantial lessening of competition in the Greater Toronto area. The Bureau’s research found that Torstar’s *The Toronto Star* and Sun Media’s *The Toronto Sun* compete vigorously for retail and classified advertising.

The second case — Quebecor’s acquisition of Sun Media — raised no issue under the *Competition Act*. The two companies have no overlapping operations, and do not compete for advertising. Quebecor’s daily newspapers are located in Quebec and Manitoba, while Sun Media’s are in Ontario and Alberta.

In the third proposal, the Bureau did not identify any anti-competitive effects resulting from Torstar’s

proposed acquisition of Sun Media’s newspaper holdings just outside of Toronto. Therefore, it did not oppose Quebecor’s sale to Torstar of the four Sun Media publications it had recently acquired in the Hamilton, Cambridge, Guelph and Kitchener-Waterloo markets.

**Canadian Waste Services and WMI Waste Management of Canada, Inc.**

In October 1998, the Bureau announced that it would not challenge the acquisition by Canadian Waste Services of certain non-hazardous solid waste assets belonging to WMI Waste Management of Canada, Inc.

However, as a result of serious competition concerns identified by the Bureau in the commercial “front-end” business, Canadian Waste Services agreed to sell WMI’s commercial collection assets in certain markets.

Divestitures following an acquisition are common. In previous waste acquisitions, the Bureau has required divestiture to eliminate any possibility of a substantial lessening of competition in markets or services.

Information on these merger reviews and other merger information can be found on the Bureau’s Web site (<http://competition.ic.gc.ca>).

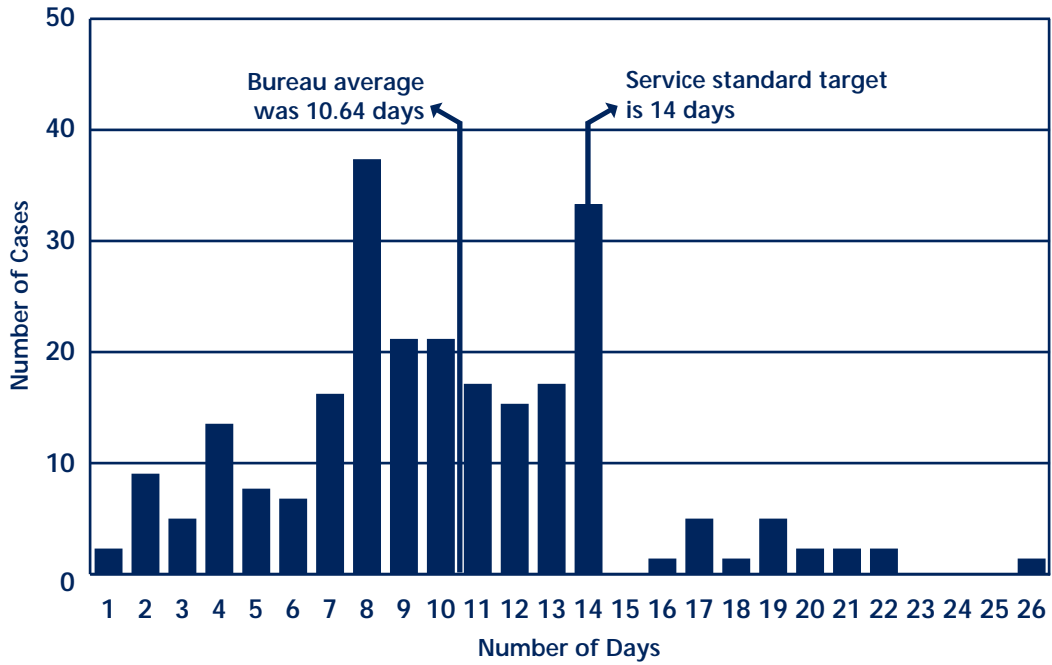
When conducting merger reviews, the Bureau understands that time is of the essence. As a result, the Bureau monitors its performance to ensure that it is meeting prescribed service standards (see Table 6).

**Table 6 Merger Review: Meeting Service Standards, November 1997 to November 1998**

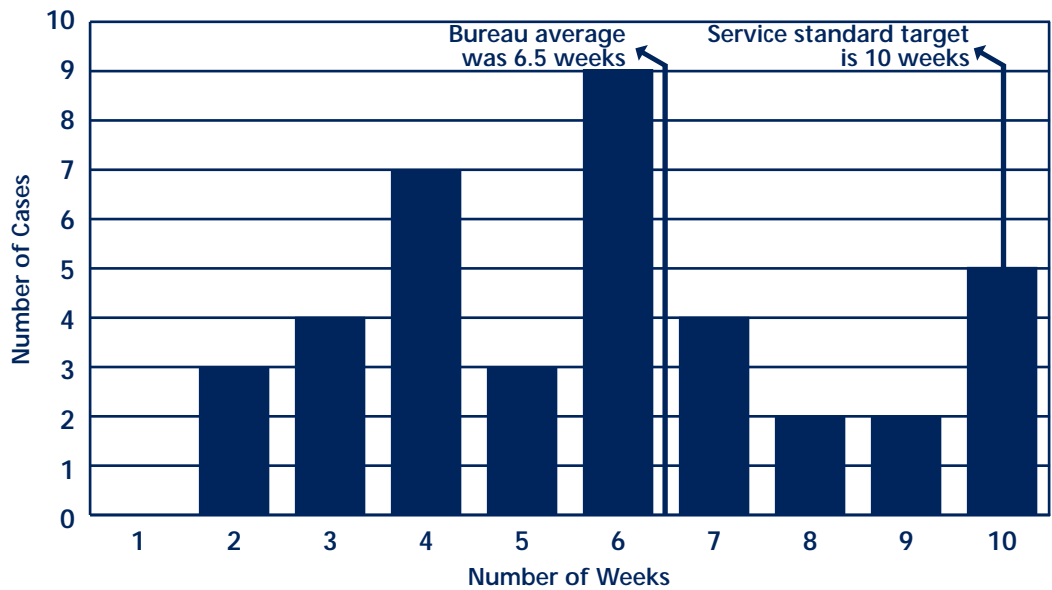
COMPLEXITY	NUMBER OF TRANSACTIONS	SERVICE STANDARD TARGET	MET	
			(#)	(%)
Not Complex	256	14 days	232	91%
Complex	40	10 weeks	39	98%
Very Complex	1	5 months	1	100%
<b>Total</b>	<b>297</b>	—	<b>272</b>	<b>92%</b>

Figures 1 and 2 illustrate that, in the vast majority of cases, the Bureau met or surpassed its service standards during the first year in which these standards were established.

**Figure 1 Service Standard: Meeting our Target Non-complex Transactions, November 1997 to November 1998**



**Figure 2 Service Standard: Meeting our Target Complex Transactions, November 1997 to November 1998**



## 5 PREVENTING ANTI-COMPETITIVE ACTIVITY \_\_\_\_\_

In investigating complaints about possible offences, the Competition Bureau has two courses of action at its disposal.

First, the Bureau works with companies to eliminate anti-competitive behaviour and helps them learn to comply with the law. Based on the conformity continuum, the Bureau engages in a range of activities, including promotional activities, monitoring the marketplace and dealing with non-conformity by individuals or companies. Second, when there is no possibility of cooperation, cases are referred to the Attorney General of Canada for prosecution in the criminal courts or are taken before the Competition Tribunal.

Partly as a result of better detection methods and of granting immunity or favourable treatment to cooperating parties, the Competition Bureau experienced a busy year in 1998-99. More than \$42 million was levied in fines. In addition, a number of cases were discontinued for lack of evidence or for other reasons after formal inquiries were conducted (see Appendix I: Discontinued Cases).

The types of anti-competitive behaviour investigated by the Bureau are defined in four separate Acts: the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act*, and the *Textile Labelling Act*. Information on these Acts can be found on the Bureau's Web site (<http://competition.ic.gc.ca>).

A representative sample of cases pursued by the Bureau appears in Table 7.

**Table 7 Ensuring Marketplace Integrity: Highlights 1998-99**

INDUSTRY SECTOR AND ISSUE	COMPETITION BUREAU INTERVENTION	OUTCOME AND POTENTIAL BENEFITS FOR CANADIANS
<b>Prosecution</b>		
<p><b>Deceptive telemarketing and direct mail activities</b></p> <p>National Clearing House-Nationwide Clearing House and The National Clearing House conducted deceptive telemarketing and direct mail activities in Canada.</p>	<p>After conducting a search of Nationwide premises in March 1997 and completing an investigation of numerous consumer complaints, the Bureau laid charges against these companies and their two principals.</p>	<p>The companies and their president were fined a total of \$300 000 — the highest fine ever for this type of fraudulent activity.</p>
<p><b>Deceptive telemarketing</b></p> <p>American Family Publishers, Publishers Central and First Canadian Publishers bilked hundreds of Canadians out of their savings by promising valuable prizes if they purchased various items at what turned out to be grossly inflated prices. They promised additional purchases would result in even more “valuable” prizes, but none ever materialized.</p>	<p>After following up on numerous complaints, and by working closely with PhoneBusters, the Bureau was able to lay charges against the companies involved.</p>	<p>After pleading guilty, the president of this multi-company (17 in total) scam and 17 telemarketers were fined, sentenced to jail terms and ordered to carry out community work. The jail terms were the first ever imposed by a Canadian court against telemarketers under the <i>Competition Act</i>. Other individuals are still awaiting trial.</p>

**Table 7 Ensuring Marketplace Integrity: Highlights 1998-99 (cont.)**

INDUSTRY SECTOR AND ISSUE	COMPETITION BUREAU INTERVENTION	OUTCOME AND POTENTIAL BENEFITS FOR CANADIANS
<b>Prosecution (cont.)</b>		
<p><b>Multi-level marketing</b></p> <p>Charles Barrie Press, co-founder, The Integrity Group (Canada) Inc.</p> <p>This Calgary-based multi-level marketing firm sold telephone services, a satellite dish, training programs and food products, and held meetings to recruit potential salespeople in Quebec, Ontario and Manitoba.</p>	<p>In response to complaints, the Bureau found that the company made false claims about potential compensation to salespeople. This contravened section 55(2) of the <i>Competition Act</i>. The compensation plan was also promoted on the Internet, where no proper disclosure of rewards to be received was made.</p>	<p>In February 1999, Mr. Press was found guilty of seven charges under the <i>Competition Act</i> and fined \$50 000 on four charges. The fine was the first imposed under the multi-level marketing provision of the Act. The company was also charged.</p>
<p><b>Misrepresentation of gold content in jewellery</b></p> <p>National Jewellery Ltd. in Lower Sackville, Nova Scotia, and Donald Bell Goldsmith of Bedford, Nova Scotia.</p> <p>Jewellery tests revealed a gold content below the declared quantity and below the tolerance set out in the Precious Metals Marking Regulations.</p>	<p>After tests conducted by the Royal Canadian Mint on a custom-ordered pendant revealed a lower gold content than advertised, the Bureau laid charges against the two companies. In this case, the vendor was also the manufacturer and had full control over the gold content of the article.</p>	<p>The company and Mr. Goldsmith were each fined \$350. Prosecutions like this help to ensure that jewellery is properly marked, and that Canadians get value for their dollar. They also help to eliminate this type of unfair competition.</p>
<b>Seizure or Removal from Sale</b>		
<p><b>Inadequate clothing labelling</b></p> <p>Ongoing monitoring under the Competition Bureau's Children and Junior Care Performance textile program.</p> <p>Performance tests carried out by the Bureau demonstrated that labelling on 24 000 units of children's and junior clothing was inadequate.</p>	<p>The Bureau negotiated the voluntary removal from sale of all items in violation of the <i>Textile Labelling Act</i> and Regulations. The estimated retail value of the clothing was \$500 000.</p>	<p>All items were returned to the manufacturer for re-labelling. Potential problems relating to care and cleaning were averted.</p>
<p><b>Domestic jewellery retailer</b></p> <p>Ongoing monitoring under the Competition Bureau's Surveillance of Quality of Gold Marketed in Canada program.</p> <p>On testing 14K gold jewellery from this retailer during routine surveillance, the Bureau found that it was of a lower quality than advertised.</p>	<p>The Bureau negotiated the voluntary destruction of 800 pieces of jewellery having a retail value of \$15 000.</p>	<p>The items were melted down in order that they could not be reintroduced into the market and sold to unsuspecting Canadians.</p>

**Table 7 Ensuring Marketplace Integrity: Highlights 1998-99 (cont.)**

INDUSTRY SECTOR AND ISSUE	COMPETITION BUREAU INTERVENTION	OUTCOME AND POTENTIAL BENEFITS FOR CANADIANS
<b>Consent Prohibition Order</b>		
<p><b>Canadian jewellery manufacturer</b></p> <p>Complaints regarding the marketing practices of A&amp;A Jewellery manufacturer, Summit Retail Services Inc. and 1012795 Ontario Limited.</p>	<p>Investigations conducted by the Competition Bureau determined that advertised claims and store signage alluding to going out of business and price reductions were misleading to Canadians.</p>	<p>In December 1998, the Federal Court of Canada issued a consent prohibition order where the companies agreed not to make any misleading representations as to a sale being conducted or prices being reduced.</p>
<b>Compliance Meetings and Warning Letters</b>		
<p><b>Domestic manufacturers of paint and related products</b></p> <p>Ongoing monitoring under the <i>Consumer Packaging and Labelling Act</i>.</p> <p>Inspections conducted across Canada revealed that more than 25 percent of products tested did not contain the net quantity declared on the label.</p>	<p>The Bureau solicited the cooperation of manufacturers to put sustainable controls in place to prevent a recurrence of this problem. The Bureau will conduct inspections to verify ongoing compliance and take additional corrective actions if necessary.</p>	<p>The Bureau's actions ensure that fair competition is restored to the marketplace, and that Canadians will continue to receive fair value.</p>

***What happens after a complaint is made?***

*Each complaint is examined to determine whether a formal inquiry should be opened.*

*During an inquiry, the Bureau may contact other customers or competitors for more information. In some instances, staff will apply for court authorizations to search premises, examine or seize records, or question witnesses.*

*The Bureau keeps information confidential, disclosing it only to Canadian law enforcement agencies or for the purposes of the administration or enforcement of the Competition Act.*

*When a case cannot be resolved through mediation and cooperation, criminal matters may be referred to the Attorney General of Canada for possible prosecution before the criminal courts. Civil law matters may be referred to the Competition Tribunal for a decision.*

The following are examples of work related to alternative dispute resolution and enforcement that demonstrate the range of issues brought to the Bureau's attention. Some names have been withheld for enforcement policy considerations.

**Domestic Activities**

***Auto Parts: Information Sessions***

After it came to the Bureau's attention that several companies selling auto parts had been collectively setting prices, staff visited the outlets to ensure that they fully understood the legal ramifications of this type of anti-competitive activity.

Following the Bureau's interventions, the industry distributed a circular to its members, outlining the types of pricing arrangements that fell within and outside of competition law. In total, more than 100 outlets received information on penalties for conspiring to destroy the competitive equilibrium of the marketplace.

This case is a classic example of the Bureau's conformity continuum at work. It demonstrates how information activities can be effective in correcting anti-competitive behaviour.

When incidents of alleged infractions to competition law can be handled through mediation and information sessions, the costs of expensive litigation and lengthy court battles can be eliminated, resulting in tangible benefits to Canadians.

### ***Regional Building Contracts: Bid-rigging***

In October 1998, the Bureau investigated allegations of bid-rigging among a group of civil engineering firms in a Quebec municipality. In collectively refusing to bid on a small construction job in the area, the engineers effectively forced the bid requesting organization to accept a higher than competitive rate for professional fees.

This case was resolved after a series of information sessions on the *Competition Act* and its prohibitions against bid-rigging. On learning of the possible consequences, the engineering firms undertook not to engage in this type of activity.

### ***Snow Removal: Conspiracy***

In January 1999, eight snow removal companies were fined close to \$3 million by the Quebec Superior Court following a guilty plea of conspiracy. The defendants conspired to share the market and unduly lessen competition in snow clearing, removal and transportation in the Québec area.

The offence involved an agreement to share the so-called "private" snow removal contract awarded between November 1994 and October 1995 by metropolitan Québec and towns and municipalities north of the St. Lawrence River. The agreement also encompassed area routes and highways managed by Québec's provincial Ministry of Transport.

During the period under investigation, the private snow removal service cost the affected towns, municipalities and the Ministry of Transport in excess of \$16 million. The moment the investigation began, snow removal contract prices started to decline, resulting in substantial savings to metropolitan Québec taxpayers. For example, in one municipality, once a competitive market had been restored, the cost of snow clearing fell by as much as 20 percent.

### **International Activities**

When international cartels are involved in conspiracy activities abroad, there can be a Canadian link as well. At the end of 1998-99, the Bureau was investigating 11 cases involving alleged price fixing and market sharing in several countries on three continents.

Criminal cartels harm the Canadian economy by forcing Canadians to pay higher prices for products. In such cases, the Bureau aggressively follows up on leads from the United States and other jurisdictions to ensure that the activities of criminal cartels are stopped and stringent penalties are levied as a deterrent. Canada is a leader in promoting coordination and cooperative investigations with international law enforcement agencies.

The following cases are the result of extensive criminal investigations conducted by the Bureau into international arrangements to fix prices and allocate market shares of suppliers of various products in Canada and abroad.

### ***UCAR Inc.: Price Fixing***

On March 18, 1999, UCAR Inc. of Welland, Ontario, pleaded guilty to implementing pricing directives from its foreign parent company. In Canada this was effectively a scheme to coordinate worldwide prices for graphite electrodes.



Graphite electrodes are used primarily in the production of steel in electric arc furnaces, the steelmaking technology used by all “mini-mills,” and for steel refining in ladle furnaces. Since the onset of the conspiracy in 1992, prices for this commodity in Canada had almost doubled.

UCAR, which is a subsidiary of Nashville, Tennessee-based UCAR International Inc. was fined \$11 million, the largest financial penalty ever imposed under the *Competition Act* for a single offence. Separately, UCAR also agreed to provide in excess of \$19 million in restitution to the Canadian victims of this scheme.

This case is yet another example of the Bureau’s conformity continuum at work. The Bureau would have sought even greater penalties if UCAR had not cooperated in the investigation or participated in the restitution plan. The Bureau’s investigation into the graphite electrode market continues.

### ***Archer Daniels Midland Company: A Record \$16 Million in Fines***

After pleading guilty in May 1998 to participating in price-fixing and market-sharing conspiracies, Archer Daniels Midland Company (ADM) of Decatur, Illinois, was fined a total of \$16 million for three offences under the conspiracy provisions of the *Competition Act*, the largest total penalty ever imposed against a single firm under the *Competition Act*.

The charges were the result of extensive criminal investigations into a scheme to fix and allocate market shares among producers of lysine and citric acid between 1992 and 1995. Lysine is one of nine essential amino acids used in the production of feed for hogs and poultry. It promotes the growth of lean tissue. ADM agreed to cooperate with the Bureau in ongoing investigations into these and other food and feed additives.

High penalties like this send a clear message that conspiracy offences will not be tolerated in Canada, and that Canada is not a safe haven for those who would try to exploit Canadian consumers or businesses.

Two additional international lysine price-fixing convictions rounded out the restoration of competition in this part of the feed additives sector.

Ajinomoto Co. Inc. of Japan was convicted on one count of conspiracy under section 45 of the *Competition Act* and fined \$3.5 million in July 1998. Sewon America Inc., a subsidiary of Sewon Company Ltd. of Seoul, South Korea, also pleaded guilty to conspiracy charges and was fined \$70 000. Prohibition orders were also imposed on both companies.

The charges related to the conspiracy period between 1992 and 1995, when Canadian sales of lysine were approximately \$89 million.

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### ***Prohibition orders***

*Prohibition orders issued by the courts do what their name implies: they order companies or individuals to desist from engaging in the activity in question. Usually this information is required to be circulated among officers of an organization. Some prohibition orders also warn company directors and senior managers that they may become personally liable in the event of a repeat offence.*

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### ***Several Price-fixing Cartels: \$7 Million in Fines***

Following an October 1998 guilty plea on conspiring to fix prices and allocate market shares, two foreign-owned corporations — Swiss-based Jungbunzlauer International A.G. and Haarmann & Reimer Corp., a U.S. subsidiary of Bayer Corporation — were fined a total of \$6.7 million.

The charges followed extensive investigations by the Bureau into conspiracies relating to citric acid and sodium gluconate.

Citric acid is a flavour additive and preservative produced from various sugars. It is found in soft drinks, processed foods, detergents, pharmaceuticals and cosmetic products.

It was found that a number of non-Canadian firms participated in fixing prices and allocating market shares among major producers of citric acid for sales in Canada. The parties met in Canada and abroad on a continuing basis between 1991 and 1995. The amount of the fine reflected the fact that the companies accepted responsibility for their activities, and that they provided assistance to the Bureau in its investigation.

In Canada, sodium gluconate is used mainly as a cleansing and metal treatment agent in industry, and as a means of controlling the setting of concrete.

In February 1999, a further \$360 000 in fines were levied in a related case of price fixing and market sharing, involving Fujisawa Pharmaceutical Co. Ltd., a Japanese corporation based in Osaka and Tokyo. The above-mentioned conspirators met numerous times in Canada and abroad between 1987 and 1995. At these meetings, the parties entered into illegal agreements on the amount of each company's sales and pricing. Based on evidence obtained by the Bureau, Fujisawa's sales of sodium gluconate in Canada during the entire period of the offence totalled approximately \$1.8 million.

## 6 MODERNIZING CANADA'S APPROACH TO COMPETITION LAW

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### Adapting to Change

In order for consumers and business to receive full protection under the law, it is important for Canada's *Competition Act* to adapt to the changing times.

To this end, the Competition Bureau set up a permanent Amendments Unit during 1998-99. This will speed up the amendments process and ensure continuity from one round to another.

Over the year, the unit helped to shepherd Bill C-20, an Act to amend the *Competition Act*, through Parliament. First introduced in November 1996 as Bill C-67, and reintroduced a year later as Bill C-20, the revised bill was passed by the Senate on February 18, 1999. It received royal assent on March 11, 1999, and came into effect a week later, on March 18, 1999.

### Staying Relevant: Round I

The amendments contained in Bill C-20 modernize the *Competition Act*. As a result, Canada now has competition framework legislation that makes it easier for the Bureau and law enforcement agencies to deal with emerging business trends and current enforcement requirements in Canada and abroad.

For instance, Bill C-20 improves the Bureau's ability to deal with the following:

- ◆ fraudulent telemarketing;
- ◆ misleading advertising and other deceptive marketing practices, through the creation of a civil process to enable the Bureau to seek court orders to stop misleading advertising and deceptive marketing practices, while retaining criminal law for the most serious cases of deliberate misrepresentation; and

- ◆ ordinary price claims (comparison pricing), through the creation of two alternative tests and a civil process.

Both the Bureau and the business community will also benefit from further refinements to the merger notification process.

During the passage of Bill C-20 through Parliament, the House Standing Committee on Industry recommended some important changes to Bill C-20. They included the following:

- ◆ New provisions for narrowing the use of wiretapping to price-fixing and market-sharing conspiracies, and to the misrepresentation aspects of deceptive telemarketing. Wiretapping will also be available for investigations on bid-rigging. However, it will not be permitted for legitimate situations involving strategic alliances, joint ventures, mergers, benchmarking and other information-sharing arrangements. Any wiretapping arrangements first will require authorization from a superior court judge.
- ◆ The retaining of double-ticketing (whereby vendors must honour the lowest sticker price on store items) as a summary conviction offence.
- ◆ Clarification of what constitutes a business under the *Competition Act*. This will ensure that charities and other non-profit entities can be held responsible for the practices of telemarketers, marketing agents and any other activities carried out on their behalf.

In addition, the Senate and the House concurred on a whistleblowing clause that would apply only to the criminal law provisions of the *Competition Act*. (The maximum penalty for interfering with whistleblowers is two years in prison, as defined in section 126 of the *Criminal Code of Canada*.)

## ***Staying Relevant: Round II***

The amendments that came into force on March 18, 1999, have strengthened the *Competition Act*, but legislative review is a continuous process. Preparations for a second round of amendments to keep pace with enforcement requirements and expanding global markets began this year. The second round is designed to increase the effectiveness and efficiency of the processes used to enforce the Act. Details of the amendments will be developed in consultation with stakeholders.

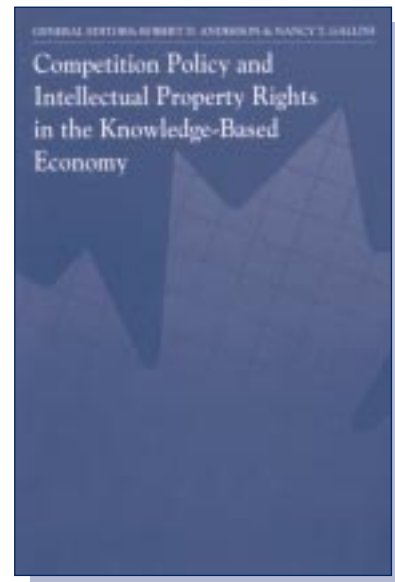
### **Competition Policy and Intellectual Property Rights**

Today's dynamic economy, driven by rapid advancements in information and communication technologies, relies increasingly on knowledge and innovation. The development of new technologies by firms and individuals allows ideas to be put to work in innovative ways that increase productivity and create employment and wealth. The commercialization of new ideas and technologies is facilitated by a well-functioning competitive marketplace that allows firms to enter business arrangements involving the use, assignment and licensing of intellectual property rights. Given the importance of these business arrangements, the Competition Bureau is striving to make the principles governing the enforcement of the *Competition Act* more transparent. This will remove any uncertainty that firms may have about the possibility of certain business practices, particularly the licensing of intellectual property, raising antitrust concerns.

In October 1998, the Competition Bureau joined other sectors of Industry Canada to publish a research volume entitled *Competition Policy and Intellectual Property Rights in the Knowledge-Based Economy*. One of its two general editors, Robert Anderson, was chief of economic policy at the Bureau prior to his joining the World Trade Organization as Counsellor, Intellectual Property.

The publication assesses competition policy as well as intellectual property rights in Canada, and attempts to find an appropriate balance between the two. In examining these complementary instruments of government policy, the authors urge policy makers to look beyond our borders at developments abroad.

Since 1989, the United States, the European Community and Japan have revisited the treatment of intellectual property under their respective competition laws. Subsequently, all three jurisdictions provided guidance regarding enforcement policies in this area.





## APPENDIX I: DISCONTINUED CASES

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The Bureau initiated a number of formal inquiries into allegations of anti-competitive activity. These inquiries were conducted and concluded on a range of civil and criminal matters, including the following cases.

### **Motor Vehicle Supply: Various Provisions, sections 45, 75 and 77**

Inquiries were initiated in April 1986, May 1989, May 1995 and September 1996 by statutory obligation, following the receipt of applications signed by six residents of Canada. The four applications related to the same issue, namely policies enforced by most motor vehicle manufacturers. These policies prohibit franchised dealers in Canada from supplying new vehicles for export, either directly or through third parties.

The Competition Bureau concluded that continuing to pursue these inquiries would not be to the benefit of Canadians. In fact, Canadian consumers would most likely be negatively affected through higher prices. The inquiries were discontinued in May 1998.

### **Sale of Cuban Cigars: Refusal to Deal and Exclusive Dealing, sections 75 and 77**

An inquiry was begun in July 1997, following the receipt of an application under section 9 of the Act signed by six residents of Canada alleging exclusive dealing and refusal to deal in relation to the sale of Cuban cigars in Canada. The inquiry disclosed that the company against which the accusations were made was the legal owner of the trademarks in Canada for the cigars in question. It was also concluded that cigars from a number of other countries compete with those from Cuba in the Canadian market for cigars. Therefore, the practices that were alleged did not lessen competition. The inquiry was discontinued in May 1998.

### **Bidding in the Construction Industry: Abuse of Dominant Position, section 79**

Following the receipt of a number of complaints, this inquiry was begun on July 10, 1997, under section 10(1)(b)(ii) of the Act. The object of the inquiry was to determine whether the parties that had established the bid depository in the province of Quebec had engaged in or were engaging in anti-competitive acts with the effect of substantially lessening competition in the construction market in Quebec. Quebec's legislation respecting two of the founding parties expressly authorized those bodies to establish and operate such a bid depository and regulate the bidding process. Based on the facts obtained in the inquiry and because of the existence of regulation governing this activity, it was concluded that grounds did not exist for an application to the Competition Tribunal. Accordingly, the inquiry was discontinued on December 14, 1998.

### **Sale of Videos: Refusal to Deal, section 75**

An inquiry was begun on September 3, 1997, under section 75 of the *Competition Act*, following the receipt of an application under section 9, signed by six residents of Canada. The application alleged that a major producer of videos had discontinued supply to a distributor in Eastern Canada, with the result that the distributor's business would be substantially affected. The Bureau took the matter up with the video producer and, following discussions, the supply relationship with the complainant was restored. As a result, there were no grounds to pursue the inquiry further and the matter was discontinued on November 17, 1998.

### **Municipal Transportation Systems: Conspiracy, section 45**

This inquiry commenced on March 17, 1997, following the receipt of information indicating that the setting of taxi fares by one western Canadian municipality might be contrary to section 45, the conspiracy provision of the *Competition Act*. Although many municipalities regulate taxi fares, this activity must be specifically authorized by valid provincial legislation; otherwise, it is not protected from the application of the Act.

The Competition Bureau contacted the municipality and its provincial government. The matter was resolved through an amendment to the relevant provincial legislation authorizing the activity in question. The inquiry was discontinued on November 20, 1998.

### **Medical Specialists: Conspiracy, section 45**

This inquiry was begun on May 20, 1998, following the receipt of a complaint alleging that doctors specializing in a particular medical field in one province had agreed to fix the fees they would charge for the provision of medical services to patients not covered under the provincial health insurance plan. The doctors were alleged to have entered into the agreement pursuant to their activities as members of the provincial medical society's section representing their specialty.

After the Bureau contacted the provincial medical society, the specialist section involved undertook to take all steps necessary to comply with the law. The inquiry was discontinued on October 22, 1998.

### **Chemical Colouring Agents: Conspiracy, section 45**

This inquiry, concerning the sale in Canada of certain colouring agents used by manufacturers of various construction materials, was initiated on December 23, 1997. The inquiry followed allegations that producers of the colouring agents had agreed to fix their prices and to divide among themselves the market for the agents, which contravenes the conspiracy provisions of section 45 of the *Competition Act*.

Information obtained during the course of the inquiry was insufficient to establish the existence of the alleged conspiracy. The inquiry was discontinued on March 17, 1999.

### **Bar Services: Conspiracy, section 45, and Price Maintenance, section 61**

This inquiry was opened on December 18, 1997, following the receipt of a complaint alleging that, in order to terminate a price war, the majority of owners of bars and restaurant-bars in a small town in the province of Quebec had agreed to set floor prices and to prohibit certain promotions related to the sale of alcoholic beverages. Threats were made against some owners to convince them to respect the agreement.

Competition Bureau officers met with the alleged instigators of the agreement. The agreement was subsequently abandoned and competition was re-established in the market. The inquiry was discontinued on June 19, 1998.

### **Compact Refrigerators: Bid-rigging, section 47**

An inquiry was started on September 17, 1997, following the receipt of a complaint alleging that three compact refrigerator rental companies had rigged a tender to supply students in residence at an Ontario university. One of the companies allegedly involved in the activity was granted immunity from prosecution by the Attorney General of Canada in return for providing information on the matter to the Competition Bureau. The second company was contacted by the Bureau, and the matter was resolved after the company provided written undertakings that such behaviour would not occur in the future.

Information obtained during the inquiry indicated that the third company bidding on the tender had not been involved in the alleged bid-rigging. The inquiry was discontinued on March 31, 1999.

### **Burial Vaults: Price Discrimination, section 50, and Abuse of Dominant Position, section 79**

This inquiry was begun on July 8, 1997, upon the receipt of a six-resident application under section 9 of the *Competition Act* alleging that a cemetery in southern Ontario was discriminating against the manufacturers of burial vaults. It was alleged that the cemetery was imposing a service fee to cap and install the burial vaults of all manufacturers, except one with which the cemetery was affiliated. The application also alleged that the imposition of the service fee was an abuse of dominant position by the cemetery, aimed at eliminating competition in the sale of burial vaults.

The inquiry established that the cemetery did not substantially or completely control the burial business in its geographic market, as would be required to bring the provisions of section 79 of the *Competition Act* into play. Less than 10 percent of the vault manufacturer's business was dependent on clients of the cemetery in question. Section 50 of the Act did not apply in this case because the allegations involved the sale of a service and the section applies only to the sale of articles. The inquiry was discontinued on March 29, 1999.

### **Video Cassette Rentals: Predatory Pricing, section 50**

This inquiry was opened on August 17, 1998, following the receipt of a six-resident application under section 9 of the *Competition Act*. The applicants alleged that a video cassette rental company in a major city in the province of Quebec had adopted a policy of renting video cassettes in the retail market at unreasonably low prices for the purpose of forcing its competitors out of the market.

The inquiry determined that the rental of video cassettes in the metropolitan market in question was very competitive and that the alleged predator did

not have sufficient market power to successfully engage in the alleged predatory pricing strategy. The inquiry was discontinued on October 5, 1998.

### **Education Programs: Misleading Advertising, section 52**

This inquiry, which was opened on November 1, 1998, pursuant to section 9 of the *Competition Act*, concerned several representations made to the public by an educational institution relating to its tuition costs, its quality of education and the qualifications of its instructors. This matter was reviewed under section 52 of the *Competition Act*, which makes it a criminal offence for anyone to make a representation to the public that is false or misleading in a material respect.

After a review of the case, it was determined that criminal charges would not be laid as the representations made by the company were not materially misleading, as required for the application of the statute. The inquiry was discontinued on January 6, 1999.

### **Leather Products: Misleading Advertising, section 52**

Inquiries were begun on June 18 and September 12, 1997, after the Competition Bureau received complaints that two leather goods manufacturers were representing their handbags as made in Canada when, in fact, the amount of Canadian content in terms of labour and material was very low. These matters were reviewed under section 52(1)(a) of the *Competition Act*, which makes it a criminal offence for anyone to make a representation to the public that is false or misleading in a material respect.

The Bureau contacted the manufacturers, who indicated a willingness to take corrective action by undertaking to cease the practices in question and to publish corrective notices in various major daily newspapers across Canada, including the national edition of *The Globe and Mail*. These inquiries were subsequently discontinued on May 3 and June 25, 1998.

### **Mail-order Hearing Aids: Misleading Advertising, section 52**

This inquiry was opened on March 17, 1998. It focussed on concerns about performance claims and money-back guarantees used by a Canadian hearing aid company in its national mail-order marketing materials. The company's activities were reviewed under section 52 of the *Competition Act*. This section makes it a criminal offence for anyone to make a representation to the public that is false or misleading and to make representations to the public guaranteeing performance, efficacy or length of life of the product that are not based on adequate and proper testing. The conduct of the president of the company was examined in relation to the provisions of a prohibition order issued in relation to an earlier investigation.

The inquiry was discontinued on November 24, 1998, after the Competition Bureau determined that the company was no longer involved in selling the product to the general public, the advertising practices in question had ceased, the assets of the company had been sold, and the individual accused had reportedly withdrawn from the mail-order business. The provisions of the prohibition order will continue to apply until September 1999, should the individual choose to re-enter the market for hearing aids.

### **Multi-level Marketing Training Courses and Retail Discount Cards: Misleading Advertising, section 52, and Multi-level Marketing and Pyramid Selling, section 55**

This inquiry began on February 21, 1997, after the Competition Bureau received a complaint that a Canadian company selling training courses and retail discount cards was allegedly making false representations and was operating a pyramid selling scheme.

The company's activities were reviewed under a number of sections of the *Competition Act*. It was determined that the company and its co-founders were providing false and misleading information in

the promotion of the supply and use of its products, contrary to section 52(1)(a) of the Act. The investigation also revealed that the company's marketing plan contained representations relating to compensation and the representations did not constitute or include fair, reasonable or timely disclosure of compensation earned by a typical participant, pursuant to section 55 of the Act. In addition, the plan contained a purchase requirement as a condition of joining the plan and there was no stated policy for the return of products on reasonable terms if a participant wished to leave the plan, contrary to section 55.1(1)(b) and (d) of the Act.

The company ceased its multi-level marketing operations in October 1997 and subsequently declared bankruptcy in December 1997. The inquiry was discontinued on July 31, 1998.

### **Promotional Contest: Misleading Advertising, sections 52 and 59**

An inquiry was initiated on December 10, 1996, after a complaint was received that a soft drink producer had run a promotional contest based on a popular game and made several related representations to the public. It was alleged that the rules and instructions pertaining to the contest were contradictory to the rules of the original game, thus potentially confusing the public.

This matter was reviewed under section 52 of the *Competition Act*, which makes it a criminal offence for anyone to make a representation to the public that is false or misleading, and under section 59, which makes it a criminal offence for anyone not to make fair and adequate disclosure of the number and approximate value of the prizes, of the area or areas to which the prizes relate, and of any fact known by the person that affects materially the chances of winning a promotional contest.

After thorough review of the facts of the case and the wording of the allegedly misleading representations, it was determined that the evidence was not



sufficient to lay criminal charges and that it would not serve the public interest to prosecute an alleged offence that had occurred more than two years earlier and had not been repeated. The inquiry was discontinued on July 28, 1998.

### **Real Estate: Misleading Advertising, section 52**

This inquiry began on September 25, 1996, after the Bureau received a complaint that a real estate board made misleading representations to the public in a free weekly publication. It was alleged that the particular wording of the advertisement left the clear impression that only board members were qualified professional real estate agents. This matter was reviewed under section 52(1)(a) of the *Competition Act*, which makes it a criminal offence for any one to make a representation to the public that is false or misleading.

The Competition Bureau contacted the real estate association that had developed the advertising campaign for its member real estate boards. The association indicated a willingness to take corrective action by entering into a formally agreed resolution where it undertook to revise the advertisement to ensure that future publications of the advertisement would not imply that licensed real estate agents who are not members of real estate boards are unqualified or unprofessional. The inquiry was subsequently discontinued on October 28, 1998.

### **Flooring Products: Price Maintenance, section 61**

An inquiry was started on February 21, 1996, after a complaint was received that a Canadian flooring manufacturer had allegedly required its Ontario dealers to adhere to a marketing program that did not allow its flooring products to be sold for less than the manufacturer's suggested retail prices. This stipulation in the company's marketing program may have been illegal under section 61 of the *Competition Act*, which

makes it a criminal offence for anyone to influence upward or discourage the reduction of the price of a product by agreement, threat, promise or any like means. Manufacturers or distributors who make suggestions regarding resale prices should state clearly that their business customers are under no obligation to accept the suggested prices.

The Bureau contacted the flooring manufacturer, who indicated a willingness to take corrective action. The company agreed to change its marketing program and to institute a corporate compliance program to ensure that similar questionable behaviour would not occur in the future. The company's new marketing program made it clear that its dealers were under no obligation to respect the company's suggested retail prices. The inquiry was discontinued on March 30, 1999.

### **High-speed Residential Internet Access: Abuse of Dominant Position, section 79**

This inquiry was begun on August 20, 1998, after allegations of abuse of dominant position and "below-cost" selling against subsidiaries of Bell Canada were reported to the Competition Bureau.

Evidence demonstrated that Bell's share of the retail Internet market was significantly below the 35 percent level — the minimum generally required to establish market dominance. Furthermore, evidence indicated that Bell's below-cost pricing policy for ADSL-based (Asymmetric Digital Subscriber Line) residential Internet service — as part of the introduction of a new technology and the need to meet market prices — was a legitimate business strategy. Cable companies, for instance, have greater market penetration than Bell for high-speed residential service. Their high level of market penetration is the result of aggressively marketed cable modem service at prices that are comparable or below those charged by Bell for similar service. The inquiry was discontinued on March 12, 1999.



## APPENDIX II: PUBLIC INFORMATION

For more information, or for copies of the publications or videos listed here, please contact the Competition Bureau's Information Centre.

Tel.: (819) 997-4282

Toll-free: 1-800-348-5358

TDD (for hearing impaired): 1-800-642-3844

Fax: (819) 997-0324

Web site: <http://competition.ic.gc.ca>

TITLE	YEAR
<b>Bulletins</b>	
Communication of Confidential Information Under the <i>Competition Act</i>	1995
Corporate Compliance Programs, Director of Investigation and Research, <i>Competition Act</i>	1997
Misleading Advertising Bulletin (published four times a year and available since 1976)	–
Misleading Advertising Bulletin (revised reprint from past issues, January 1976 to December 1991)	1992
Misleading Advertising Bulletin (reprint of selected articles from past issues, January 1992 to December 1995)	1995
Program of Compliance, Director of Investigation and Research, <i>Competition Act</i>	1993
Pyramid Schemes: House of Dreams or House of Cards	1999
Information Bulletin: Sections 55 and 55.1 — Multi-level Marketing and Pyramid Selling Provisions of the <i>Competition Act</i>	1998
Section 59 Information Bulletin — Promotional Contests	1994
Strategic Alliances	1995
<b>Guides and Guidelines</b>	
The Average System of Net Quantity Determination	1995
Guidelines with respect to the Sale and Marketing of Diamonds, Coloured Gemstones and Pearls	1995
Guide to the Advertising of Consumer Textile Articles	1996
Guide to the Canadian Care Labelling Program	1996
Guide to the Consumer Packaging and Labelling Act and Regulation	1996
Guide to the Labelling of Down and Feather	1996
Guide to the Precious Metals Marking Act and Regulations	1996
The Merger Enforcement Guidelines as Applied to a Bank Merger	1998
Merger Enforcement Guidelines, Director of Investigation and Research, <i>Competition Act</i>	1991
Misleading Advertising Guidelines	1991
Predatory Pricing Enforcement Guidelines, Director of Investigation and Research, <i>Competition Act</i>	1992
Price Discrimination Enforcement Guidelines, Director of Investigation and Research, <i>Competition Act</i>	1992
Principles and Guidelines for Environmental Labelling and Advertising	1993
Quality Assurance Guide	1996
<b>Videos</b>	
It's in Your Hands	1996
Scam Alert!	1995



## APPENDIX III: COMPETITION BUREAU CONTACTS

**Konrad von Finckenstein**  
Commissioner of Competition  
Tel.: (819) 997-3301  
Fax: (819) 953-5013  
E-mail: [vonfinckenstein.konrad@ic.gc.ca](mailto:vonfinckenstein.konrad@ic.gc.ca)

**Raymond Pierce**  
Acting Deputy Commissioner  
Mergers  
Tel.: (819) 953-4308  
Fax: (819) 953-6169  
E-mail: [pierce.raymond@ic.gc.ca](mailto:pierce.raymond@ic.gc.ca)

**Robert A. Morin**  
Deputy Commissioner  
Compliance and Operations  
Tel.: (819) 953-7942  
Fax: (819) 953-3464  
E-mail: [morin.robort@ic.gc.ca](mailto:morin.robort@ic.gc.ca)

**Patricia Smith**  
Deputy Commissioner  
Economics and International Affairs  
Tel.: (819) 953-3318  
Fax: (819) 953-6400  
E-mail: [smith.patricia@ic.gc.ca](mailto:smith.patricia@ic.gc.ca)

**André Lafond**  
Deputy Commissioner  
Civil Matters  
Tel.: (819) 997-1209  
Fax: (819) 953-8546  
E-mail: [lafond.andre@ic.gc.ca](mailto:lafond.andre@ic.gc.ca)

**Harry Chandler**  
Deputy Commissioner  
Criminal Matters  
Tel.: (819) 997-1208  
Fax: (819) 997-3835  
E-mail: [chandler.harry@ic.gc.ca](mailto:chandler.harry@ic.gc.ca)

**Johanne D'Auray**  
Deputy Commissioner  
Fair Business Practices  
Tel.: (819) 997-1231  
Fax: (819) 953-4792  
E-mail: [dauray.johanne@ic.gc.ca](mailto:dauray.johanne@ic.gc.ca)

**Don Mercer**  
Assistant Deputy Commissioner  
Amendments Unit  
Tel.: (819) 997-2868  
Fax: (819) 953-8535  
E-mail: [mercervon.don@ic.gc.ca](mailto:mercervon.don@ic.gc.ca)

**Sally Southey**  
Director of Communications  
Tel.: (819) 994-4994  
Fax: (819) 953-1877  
E-mail: [southey.sally@ic.gc.ca](mailto:southey.sally@ic.gc.ca)

**Tandy Muir-Warden**  
Director  
Management Policy and Services  
Tel.: (819) 997-1073  
Fax: (819) 994-7588  
E-mail: [muirwarden.tandy@ic.gc.ca](mailto:muirwarden.tandy@ic.gc.ca)





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The Competition Bureau continually seeks to better serve its audiences and stakeholders. Please take a few minutes to answer the following questions and return the form by fax to the Bureau's Information Centre at (819) 997-0324.

Comments	Response				
	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
This report contained useful information on the Competition Bureau and its activities.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The report provided the right level of detail.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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The report was the right length.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The sections that most interested me were:

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