Government Response to the
Report of the House of Commons Standing Committee
on Industry, Science and Technology
"A Plan to Modernize Canada's Competition Regime"

Introduction

On April 23, 2002, the Standing Committee on Industry, Science and Technology released a report entitled *A Plan to Modernize Canada's Competition Regime.* The report concludes a review started by the Committee in November 1999 and follows an *Interim Report on the Competition Act* released by the Committee in June 2000.

The Committee made twenty-nine recommendations relating to the *Competition Act* and the *Competition Tribunal Act*, which are listed in Attachment 1. Where appropriate, the Government Response groups and summarizes the recommendations by subject category.

The Government believes that true innovation cannot take place without a strong competition policy. More than one hundred years ago, in response to the industrial revolution's sweeping changes, Canada became one of the first countries to enact competition legislation. Once again, the forces of globalization, deregulation and rapid technological change are reshaping the environment in which Canada and the world conducts business. We must develop new and innovative ways to align ourselves with the current reality: new business models need to replace the 19th century models that shaped the old provisions. The *Competition Act* will respond to this changing climate by putting in place a framework that encourages a competitive business climate conducive to innovation, and strengthens efficient enforcement of the Act.

In summary, the Government of Canada believes that the Committee's final report represents an important step in an ongoing effort to amend the *Competition Act* and the *Competition Tribunal Act*. The report contains valuable insights and lays out a wide range of recommendations for consideration.

The Government's strategy for legislative development in the area of competition law is to advance specific proposals through a discussion paper distributed for consultation with a wide range of stakeholders. The Government believes an incremental approach is better than attempting to change the *Competition Act* through a single amendments package containing a large number of proposed changes. Past experience has shown that this approach increases the likelihood of important amendments becoming law, allows for extensive, meaningful consultation on a limited number of specific proposals, and is ideally suited to a rapidly changing competition law environment.

Approximately one third of the Committee's recommendations concern the *Competition Act's* conspiracy provisions which can target agreements ranging from anti-competitive price fixing to pro-competitive strategic alliances. The Government agrees with the general thrust of these recommendations, including that the conspiracy provisions need to be changed and that enforcement of the conspiracy provisions should be one of the Competition Bureau's highest priorities. The

Government undertakes to make amendments to the *Competition Act's* conspiracy provisions a core part of the consultation process for the next round of amendments.

The Government further believes that additional recommendations by the Committee should be part of the consultation process for the next round of amendments. These additional recommendations include administrative monetary penalties, price discrimination, predatory pricing and abuse of dominance.

The Government does not believe that all recommendations can be part of the next legislative package. It suggests that certain recommendations be considered once experience with recent amendments to the *Competition Act* has been gained. Additional details are outlined below.

Conspiracy and Price Maintenance (Recommendations #1, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 22)

The Committee's report recommends that the conspiracy provisions of the *Competition Act* be designated one of the Competition Bureau's highest priorities, and that the law targeting agreements between competitors be amended by creating a two-track approach.

The first track would retain the current criminal sanctions contained in section 45 of the Act; would no longer require that competition be "unduly" limited; and would only apply to agreements "devised to restrict competition directly through raising prices or indirectly through output restrictions or market sharing, such as customer or territorial assignments, as well as both group customer or supplier boycotts." The report further proposes that agreements which might meet the criteria of prohibited conduct be excluded if certain conditions are met including: "(1) the restraint is part of a broader agreement that is likely to generate efficiencies or foster innovation: and (2) the restraint is reasonably necessary to achieve these efficiencies or cultivate innovation." The Committee also recommends a voluntary pre-clearance system to screen out competitively benign or pro-competitive agreements from criminal liability.

The second track would apply to all other types of agreements between competitors "in which restrictions on competition are ancillary to the agreement's main or broader purpose." A new "strategic alliance" section, that allows for reviewing agreements as a civil matter, would be added to the Act. Under this provision, horizontal agreements would be analysed the way mergers are. The Commissioner of Competition would be able to apply to the Competition Tribunal for a remedial order if it was concluded that the agreement had or was likely to prevent or lessen competition substantially.

The Committee also recommended that the price maintenance provisions of the *Competition Act* be repealed. It recommended that horizontal price maintenance be added to the new criminal section 45, and that vertical price maintenance be added to revised abuse of dominance provisions.

Government Response

The Government understands that enforcement of the conspiracy provisions of the *Competition Act* currently represents a high priority for the Competition Bureau. The Government recognizes that effective enforcement is important to the conspiracy provisions and will ensure that adequate resources are allocated to the Bureau for the detection and investigation of these offences.

The Government supports the need to amend section 45 and indeed believes that such amendments are essential for effective enforcement of the provision.

The Government further endorses the basic principle of a two-track approach for conspiracies under which hard core cartel behaviour, such as agreements to fix prices, allocate markets or restrict supplies, would be criminal offences without a competition test or an efficiency defence. Other types of agreements between competitors would be subject to a civil review. The Government also believes that a two-track approach will have to include adequate deterrents to anti-competitive conduct and adequate incentives to encourage compliance with the Act.

Proposed amendments to create a two-track approach were part of national consultations held by the Public Policy Forum in 2000. In its final report the Public Policy Forum concluded that there was substantial support for a two-track approach but, because of the importance of the issues involved, more discussion, analysis and consultation was required.

In response to the suggestion that more analysis and consultation was required, the Competition Bureau contracted three independent studies. While all three recommended a two-track approach, their reports emphasized the complexity of the issues which must be considered in drafting amendments. Some of the issues specifically identified by the Committee, including pre-clearance, exceptions to a revised section 45, and the types of competitors subject to the provision, were also identified by stakeholders and experts as requiring careful consideration.

In summary, the Government intends to include revisions to section 45 in the next set of amendments to the *Competition Act*. The Government will release a discussion paper with specific proposals and is committed to undertaking extensive consultations with a wide range of stakeholders before bringing the proposals forward in a Government Bill.

The Government believes that the Committee's recommendations regarding the price maintenance provisions of the Act should be deferred for later consideration. As there is a close relationship between section 45 (the principal provision used to address issues related to horizontal price-fixing) and section 61 (the principal tool used to address issues related to vertical price-fixing), the Government believes that it would be more appropriate to wait until the consultation process on section 45 is completed. This will provide an opportunity to assess the impact of changes made to the conspiracy provisions of the Act, and to learn from enforcement experience.

Enforcement Guidelines (Recommendations #2, 18, 25 and 29)

The Committee recommended that the Competition Bureau review its enforcement guidelines, policies and practices to ensure appropriate emphasis is placed on dynamic efficiency considerations in light of new challenges posed by the knowledge-based economy, including factors such as: (1) high rates of innovation; (2) declining or zero marginal costs on additional units of output; (3) the possible desirability of market dominance by a firm where it sets a new industry standard: and (4) the increasing fragility of dominance. The Committee also recommended that new guidelines be issued to reflect its proposed amendments to the conspiracy, price discrimination, predatory pricing, price maintenance and abuse of dominance provisions of the *Competition Act*.

Government Response

The Government recognizes that it is important to keep enforcement guidelines, policies and practices up-to-date and consistent with changes in jurisprudence, economic thought and the Canadian economy. The Competition Bureau, for example, has recently issued Guidelines on abuse of dominant position, draft guidelines for consultation on unreasonably low pricing, and guidelines relating specifically to the airline and grocery industries.

The Government, however, does not believe it is necessary or appropriate to consider factors such as "the possible desirability of market dominance by a firm where it sets a new industry standard" and "the increasing fragility of dominance" in its enforcement guidelines, policies and practices. In part, this is because the factors to be considered will vary from industry to industry. Any analysis of behaviour concerning abuse, potential abuse or creation of dominance has to consider the facts and circumstances involved in each case.

Administrative Monetary Penalties and Damage Awards (Recommendations 3 and 8)

The Committee proposed allowing the Competition Tribunal to: (1) impose administrative monetary penalties in cases involving sections 75 (refusal to deal), 76 (consignment selling), 77 (tied selling, market restriction and exclusive dealing), 79 (abuse of dominant position) and 81 (delivered pricing); and (2) award damages in private action proceedings involving sections 75, 76, 77 and 79.

Government Response

The Government agrees in principle with the recommendation that administrative monetary penalties be allowed with respect to sections 75, 76, 77, 79 and 81. These provisions can cover serious anti-competitive behaviour. The availability of monetary penalties will help to deter such anti-competitive behaviour and encourage compliance with the *Competition Act*. The Government undertakes to address this issue in the discussion paper outlining the next round of amendments and to consult on this issue with a broad range of stakeholders.

The Government believes that it would be inappropriate at this time to consider damages as well as administrative monetary penalties. The Government will revisit the issue of damages after it has gained some experience with administrative monetary penalties.

Airlines (Recommendation #4)

The Committee also recommends that the Government repeal all special provisions in the *Competition Act* regarding the airline industry and possible abuse of dominant position.

Government Response

As a result of Air Canada's acquisition of Canadian Airlines, a special regime for domestic airlines was put into the *Competition Act* in July 2000. In addition, specific airline amendments were recently added to build on the elements of this regime. The most recent amendments received all party support in the House of Commons.

The Committee acknowledges in its Report that it supports Bill C-23, now an *Act to Amend the Competition Act and the Competition Tribunal Act*, S.C. 2002, c. 16, ("c. 16"), and its airline provisions. It states that the repeal of these airline provisions is dependent on all of its recommendations being implemented, including those provisions that deal with administrative monetary penalties and damages. This was reiterated by the Chair of the Committee who appeared on April 25, 2002 before the Senate Committee on Banking, Trade and Commerce during its review of Bill C-23, now c. 16.

The Government believes that the *Competition Act* currently needs specific airline provisions for several reasons. The industry is characterized by: (a) regulatory barriers to foreign competition; (b) highly mobile assets which facilitate targeting; (c) transparent pricing; and (d) a low variable cost structure which is conducive to predatory pricing. This gives a dominant carrier the incentive and ability to engage in various forms of predatory behaviour to exclude, discipline or eliminate competitors. New entrants into the airline industry are especially vulnerable to predation. This is because carriers have high fixed costs. If the new entrant's revenues come under attack from predation it can quickly result in an exit from the market.

A review of the experience of enforcing the provisions relating to the airline industry will take place two years after c.16 comes into force. At that time, the Government will be in a better position to assess whether these provisions are still necessary.

Resources (Recommendation #5)

The Committee also recommended that the Government of Canada provide the Competition Bureau with the resources necessary to ensure the effective enforcement of the *Competition Act*.

Government Response

The Government recognizes the increasing cost of effective enforcement. Globalization and increased cross border anti-competitive activity result in more international cartels, complex multi-jurisdictional mergers, and cross border telemarketing and internet schemes.

In today's global economy it is more important than ever to foster a competitive marketplace. To that end, the Government recognizes the importance of effective enforcement of the *Competition Act* and will ensure that the Competition Bureau is adequately funded.

Tribunal Proceedings (Recommendations #6, 7, 9, 10 and 11)

The Committee made several distinct recommendations with respect to proceedings of the Competition Tribunal.

Recommendation #6

The Committee recommended that the Tribunal develop a policy that allocates costs in a fair and equitable manner and that considers the resources available to the parties to the proceeding. It also recommended that such a policy consider the merits of exempting small businesses from liability for costs in Tribunal proceedings.

Government Response

This recommendation relates to the new provisions found in c. 16 which allow private parties to file applications involving alleged anti-competitive behaviour under sections 75 (refusal to deal) and 77 (tied selling, market restriction and exclusive dealing) directly with the Competition Tribunal. Prior to the enactment of c.16, only the Commissioner had the authority to make applications to the Competition Tribunal in these matters. The private access provisions contain special safeguards against strategic litigation and represent the balanced approach developed by the Committee in its review of Bill C-23, now c. 16.

In those amendments, the Government allows the Tribunal to award costs in accordance with Federal Court Rules which contain principles to guide the courts in allocating costs. The Government believes the Federal Court Rules should continue to apply equally to all parties involved.

The Government views the Tribunal's ability to award costs as an important safeguard against strategic litigation. It encourages litigants to act in good faith and to only contest matters that genuinely need to be contested. The Committee's recommendation, therefore, would undermine one of the safeguards recently put in place by c. 16.

A review of the amendments relating to private access in c.16 will take place two years after it comes into force. At that time, the Government will be in a better position to assess all the provisions relating to private access.

Recommendation #7

The Committee recommended that the Competition Tribunal continue its ongoing review of Tribunal procedures, the cost to parties, and the length of time required to bring contested cases to a conclusion. The review will look at ways to reduce costs and time while ensuring that due consideration is given to principles of procedural fairness and the appearance of justice.

Government Response

The Government notes the Tribunal's ongoing review of procedures in consultation with the Tribunal-Bar Liaison Committee and its implementation of case management procedures that maintain the proper balance between efficient and timely decisions and procedural fairness. A review of Tribunal rules related to civil matters has recently been completed, a review of rules related to mergers is underway, and a review of the rules needed for the new provisions in c. 16 is planned.

Recommendation #9

The Committee recommended that the Government amend section 124.2 of the *Competition Act* so that private parties, not just the Commissioner, can refer a question of law, jurisdiction, practice or procedure to the Tribunal.

Government Response

Subsection 124.2(2), which allows the Commissioner alone to refer a matter to the Tribunal, reflects the Commissioner's position as a public policy official. The section is intended to address general issues relating to law, jurisdiction, practice or procedure. However, the Government will consider implementing measures to ensure that all sides of an issue are properly argued before the Tribunal in such reference proceedings.

The Commissioner cannot make a direct reference to the Tribunal on his own on questions of mixed law and fact, in other words questions that relate to a specific case. Under subsection 124.2(1) references of this nature require prior agreement by both parties on what the reference

should be. The Government further notes that nothing prevents both parties from agreeing on references related to questions of law, jurisdiction, practice or procedure.

Recommendation # 10

The Committee recommended that the Government amend section 12 of the *Competition Tribunal Act* to allow questions of law to be considered by all the members sitting in a proceeding. (Currently questions of law can only be determined by the judicial members.)

Government Response

The Government endorses Recommendation #10. It will seek to amend the *Competition Tribunal Act* in a manner that ensures the full participation of all members of a panel in a hearing. It will preserve the efficiency of pre-hearing procedures by allowing the Chairperson of a panel to dispose of interlocutory proceedings, motions for summary dispositions and similar rulings without the participation of the full panel. The Government will consult with stakeholders, including the Tribunal-Bar Liaison Committee, on this matter.

Recommendation #11

The Committee recommended that the Government should amend section 13 of the *Competition Tribunal Act* so that an appeal of any Tribunal order or decision may only be brought with leave of the Federal Court of Appeal. (Currently there is an automatic right of appeal excluding appeals based on questions of fact alone.)

Government Response

The Government recognizes that the Competition Tribunal has specialized expertise on competition matters. The Government also supports Tribunal procedures which ensure a proper balance between efficient and timely decisions and procedural fairness. The Government will consult with stakeholders, including the Tribunal-Bar Liaison Committee, on this issue.

Private Right of Access (Recommendation #8)

Bill C-23, now c. 16, contains amendments that allow private parties to file applications under sections 75 (refusal to deal) and 77 (tied selling, market restriction and exclusive dealing) directly with the Competition Tribunal. The Committee also recommended extending the right of private access to section 79 (the abuse of dominant position provisions).

Government Response

The Committee and its witnesses have recently debated the new provisions in c.16 dealing with private access. Some stakeholders expressed considerable concern with regard to the potential for strategic litigation. The provisions, which are specifically limited to sections 75 and 77 and contain special safeguards against strategic litigation, represent a balanced approach supported by the Government.

A review of the amendments relating to private access in c. 16 will take place two years after it comes into force. At that time, the Government will be in a better position to assess whether rights of private access should be extended to section 79.

Price Discrimination, Predatory Pricing and Abuse of Dominant Position (Recommendations #21, 23, 24 and 25)

The Committee recommends that sections 50(1)(a) [price discrimination], 50(1)(b) [regional predatory pricing], 50(1)(c) [predatory pricing], and 51 [disproportionate advertising allowances] be repealed and replaced with amendments that would add price discrimination and predatory pricing to the abuse of dominance provisions of the *Competition Act*. The Committee further recommends deleting subsection 79(1)(a), which requires establishing that "one or more persons substantially or completely control" a relevant market, from the abuse of dominance provisions.

Government Response

The Government is mindful that amendments to the conspiracy and abuse of dominance provisions may have significant consequences on other pricing provisions in the *Competition Act*. Consequently it will be crucial for the Government to carefully study the proposed amendments in order to ensure the overall cohesion of the Act's pricing provisions.

The Government of Canada will consider the Committee's recommendations concerning sections 50(1)(a), (b) and (c) and 51 in the consultation process for the next round of amendments. The possibility of adding these provisions to the abuse of dominance provisions will necessarily also address the desirability of amending 79(1)(a).

Merger Review (Recommendations #26, 27)

The Committee recommends that the transaction threshold level at which parties to a merger must notify the Commissioner of Competition be increased and that the threshold levels be subject to parliamentary review every five years.

Government Response

The Government supports increasing transaction threshold levels with a coinciding rise in

application fees. The Government, however, does not believe it is necessary to amend section 110 of the *Competition Act* to achieve these objectives. While section 110 contains a specific threshold level, it also stipulates that a greater amount may be prescribed. Such a change can be implemented through regulations. The Government is currently studying the most appropriate way to implement these changes.

The process of determining appropriate threshold levels and corresponding application fees is an exercise which requires regular stakeholder consultations. Indeed, such consultations are currently taking place.

Efficiency Study (Recommendation #28)

The Committee also recommends that the Government of Canada immediately establish an independent task force of experts to study the role that efficiencies should play in all civilly reviewable sections of the *Competition Act*, and that the report of the task force be submitted to a parliamentary committee for further study within six months of the tabling of the Committee's report.

Government Response

The interpretation of the efficiency exception under the merger provisions of the Act is the subject of ongoing litigation as well as debate on Private Members' Bill C-248, *An Act to amend the Competition Act*. The Government believes that it may be helpful to the ongoing debate of this issue to examine the treatment of efficiencies in merger cases in other jurisdictions. Therefore, it will commission a study on the treatment of efficiencies in merger review internationally and submit the findings of this benchmarking exercise to a parliamentary committee.

Refusal to Deal (Recommendation #29)

Finally, the Committee recommends that the Competition Bureau issue an interpretation guideline clarifying whether section 75, or the refusal to deal provisions of the *Competition Act*, applies to the circumstance where a supplier in a market characterized by supply shortages selectively rations its available supply in such a manner as to discriminate against independent retailers.

Government Response

The Government believes that the issue of supply during times of shortage will depend on a variety of factors including the following: the contractual relationships between the two parties; the nature of contracts in the relevant industry; and the business and economic rationale for the refusal. Consequently, the issuance of an interpretation guideline is not considered appropriate. It does note, however, that section 75 specifically stipulates that the provision will only apply when the product is in ample supply.

Nevertheless, if firms engage in this type of conduct for anti-competitive purposes, the Competition Bureau believes the behaviour could be examined under other provisions of the *Competition Act*. Which provision would depend on the facts of the case.

Amendments made to the *Competition Act* in c. 16 also allow private parties to apply directly to the Competition Tribunal on matters concerning section 75. If companies believe they have been subject to conduct that falls under this provision, they can now bring their own case to the Tribunal.

Attachment 1

RECOMMENDATIONS CONTAINED IN REPORT OF THE HOUSE OF COMMONS STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY
"A PLAN TO MODERNIZE CANADA'S COMPETITION REGIME"

CHAPTER 1: CANADA'S COMPETITION REGIME IN CONTEXT

1. That the Competition Bureau designate conspiracies as one of its highest priorities and that it allocate enforcement resources consistent with this ranking. That the Competition Bureau continue implementing existing enforcement strategies that target domestic and international conspiracies against the public, independently and jointly with competition authorities of other jurisdictions. As a matter of routine, that the Competition Bureau review its tactics of crime detection with a view to improving its current record of success.

CHAPTER 2: COMPETITION LAW ENFORCEMENT

2. That the Competition Bureau review its enforcement guidelines, policies and practices to ensure appropriate emphasis is placed on dynamic efficiency considerations in light of new challenges posed by the knowledge-based economy, including factors such as: (1) high rates of innovation; (2) declining or zero marginal costs on additional units of output; (3) the possible desirability of market dominance by a firm where it sets a new industry standard; and (4) the increasing fragility of dominance.

3. That the Government of Canada empower the Competition Tribunal with the right to impose administrative penalties on anyone found in breach of sections 75, 76, 77, 79 and 81 of the Competition Act. Such a penalty would be set at the discretion of the Competition Tribunal.

4. That the Government of Canada repeal all provisions in the Competition Act that deal specifically with the airline industry (subsections 79(3.1) through 79(3.3) and sections 79.1 and 104.1).

5. That the Government of Canada provide the Competition Bureau with the resources necessary to ensure the effective enforcement of the Competition Act.

CHAPTER 3: COMPETITION TRIBUNAL

6. That the Competition Tribunal develop and articulate a policy to allocate costs in a fair and equitable manner having regard to the resources available to the parties to the proceeding.

That such a policy consider the merits of exempting small businesses from liability for costs in Tribunal proceedings.

7. That the Competition Tribunal, in consultation with the Tribunal-Bar Liaison Committee, continue its ongoing review of procedures with the aim of creating an adjudicative system that will ensure "just results" in an expeditious and timely manner. Such procedures should aim at reducing parties' costs, as well as the time required, in bringing contested cases to a conclusion while, at the same time, continuing to ensure that due consideration is given to principles of procedural fairness and the appearance of justice.

8. That the Government of Canada amend the Competition Act and the Competition Tribunal Act to extend the private right of action in the case of abuse of dominant position (section 79) and to permit the Competition Tribunal to award damages in private action proceedings (sections 75, 77 and 79).

9. That the Government of Canada amend section 124.2 of the Competition Act to permit a party to a contested proceeding under Part VII.1 or VIII to refer to the Tribunal a question of law, jurisdiction, practice or procedure in relation to the application or interpretation of Part VII.1 or VIII.

10. That the Government of Canada amend section 12 of the Competition Tribunal Act to permit questions of law to be considered by all the members sitting in a proceeding.

11. That the Government of Canada amend section 13 of the Competition Tribunal Act to require that an appeal from any order or decision of the Tribunal may only be brought with leave of the Federal Court of Appeal.

CHAPTER 4: CONSPIRACIES AND OTHER HORIZONTAL AGREEMENTS

12. That the Government of Canada amend the Competition Act to create a two-track approach for agreements between competitors. The first track would retain the conspiracy provision (section 45) for agreements that are strictly devised to restrict competition directly through raising prices or indirectly through output restrictions or market sharing, such as customer or territorial assignments, as well as both group customer or supplier boycotts. The second track would deal with any other type of agreement between competitors in which restrictions on competition are ancillary to the agreement's main or broader purpose.

13. That the Government of Canada repeal the term "unduly" from the conspiracy provision (section 45) of the Competition Act.

14. That the Government of Canada amend the Competition Act by adding paragraphs to section 45 that would provide for exceptions based on factors such as: (1) the restraint is part of a broader agreement that is likely to generate efficiencies or foster innovation; and (2) the restraint is reasonably necessary to achieve these efficiencies or cultivate innovation. The onus of proof, based on the "beyond a reasonable doubt" standard, for such an exception would be placed on the proponents of the agreement.

15. That the Government of Canada amend the Competition Act to add a paragraph to section 45 that would prohibit any proceedings under subsection 45(1) against any person who is subject to an order sought under any of the relevant reviewable sections of the Competition Act covering essentially the same conduct.

16. That the Government of Canada amend the civilly reviewable section of the Competition Act to add a new strategic alliance section for the review of a horizontal agreement between competitors. Such a section should, as much as possible, afford the same treatment as the merger review provisions (sections 92 through 96), and should authorize the Commissioner of Competition to apply to the Competition Tribunal with respect to such agreements that have or are likely to have the effect of "preventing or lessening competition substantially" in a market.

17. That the Government of Canada ensure that its newly proposed civilly reviewable section dealing with strategic alliances, as found in recommendation 16, apply to agreements between competing buyers and sellers, but not to vertical agreements such as those subject to review under sections 61 and 77 of the Competition Act.

18. That the Competition Bureau establish, publish and disseminate enforcement guidelines on conspiracies, strategic alliances and other horizontal agreements between competitors that are consistent with recommendations 12 through 17 that would amend the Competition Act.

19. That the Government of Canada amend the Competition Act to allow for a voluntary pre-clearance system that would screen out competitively benign or pro-competitive horizontal agreements between competitors from criminal liability pursuant to subsection 45(1) of the Act. That the Competition Bureau levy a fee on application for a pre-clearance certificate that would be based on cost-recovery principles similar to that of a merger review. That a reasonable time limit upon application for a certificate be imposed on the Commissioner of Competition, failing which the applicant is deemed to have been granted a certificate.

20. That the Government of Canada amend the Competition Act to allow individuals who have been refused a pre-clearance certificate for a horizontal agreement between competitors by the Commissioner of Competition be given standing before the Competition Tribunal for a fair hearing on the proposed agreement. That such standing be granted only if the agreement remains

proposed and has not been completed.

CHAPTER 5: THE ANTICOMPETITIVE PRICING PROVISIONS

21. That the Government of Canada repeal paragraphs 50(1)(b) and 50(1)(c) of the Competition Act and amend the Act to include predatory pricing as an anticompetitive act within the abuse of dominant position provision (section 79).

22. That the Government of Canada repeal the price maintenance provision (section 61) of the Competition Act. In order to distinguish between those practices that are anticompetitive and those that are competitively benign or pro-competitive, that the Government of Canada amend the Competition Act so that: (1) price maintenance practices among competitors (i.e., horizontal price maintenance), whether manufacturers or distributors, be added to the conspiracy provision (section 45); and (2) price maintenance agreements between a manufacturer and its distributors (i.e., vertical price maintenance) be reviewed under the abuse of dominant position provision (section 79).

23. That the Government of Canada repeal the price discrimination provisions (paragraph 50(1)(a) and section 51) of the Competition Act and include these prohibitions under the abuse of dominant position provision (section 79). This prohibition should govern all types of products, including articles and services, and all types of transactions, not just sales.

CHAPTER 6: ABUSE OF DOMINANCE

24. That the Government of Canada amend the Competition Act by deleting paragraph 79(1)(a).

25. That the Competition Bureau revise its Enforcement Guidelines on the Abuse of Dominance Provisions in order to be consistent with the addition of the anticompetitive pricing practices (paragraphs 50(1)(a) and 50(1)(c) and section 61) to section 79 of the Competition Act.

CHAPTER 7: MERGER REVIEW

26. That the Government of Canada amend section 110 of the Competition Act to require parties to any merger (i.e., asset or share acquisitions) involving gross revenues from sales of $50 million in or from Canada to notify the Commissioner of Competition of the transaction.

27. That the Government of Canada amend the Competition Act to have a parliamentary review of the notification thresholds contained in sections 109 and 110 within five years and every five years thereafter to ensure optimal enforcement of the Competition Act.

28. That the Government of Canada immediately establish an independent task force of experts to study the role that efficiencies should play in all civilly reviewable sections of the Competition Act, and that the report of the task force be submitted to a parliamentary committee for further study within six months of the tabling of this report.

CHAPTER 8: REFUSAL TO DEAL

29. That the Competition Bureau issue an interpretation guideline clarifying whether section 75 would apply to the circumstance where a supplier in a market characterized by supply shortages could selectively ration its available supply in such a manner as to discriminate against independent retailers.