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Annual Report of the

COMMISSIONER OF COMPETITION

FOR THE YEAR ENDING MARCH 31, 2000

on the enforcement and administration of the

COMPETITION ACT

CONSUMER PACKAGING AND LABELLING ACT

PRECIOUS METALS MARKING ACT

TEXTILE LABELLING ACT

Canada

COMPETITION BUREAU

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This publication is also available electronically on the World Wide Web at the following address:
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For additional copies of this annual report or specific information on the Bureau's activities, please contact the Competition Bureau Information Centre:

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The Honourable John Manley, PC, MP
Minister of Industry
Ottawa

Dear Sir,

I have the honour to submit, pursuant to section 127 of the *Competition Act*, the following report of proceedings under the Act for the fiscal year ended March 31, 2000.

Konrad von Finckenstein, QC
Commissioner of Competition

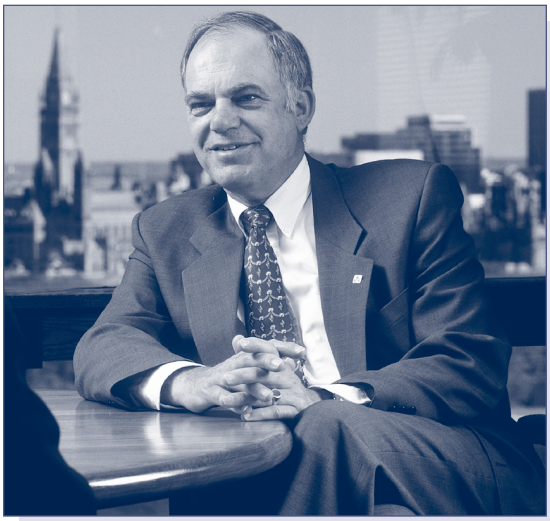
MESSAGE FROM THE COMMISSIONER

The Competition Bureau, as a forward-thinking organization, is always trying to look ahead and around every corner, to be ready for the next challenge. However, the Annual Report is a good opportunity to take a moment to look back at the past year, to reflect on the challenges we faced and the accomplishments we achieved.

This past year, there was a remarkable increase in the Bureau's profile. There are a number of reasons for this. First, the Bureau was required to review a number of highly complicated mergers, which are discussed in detail in Chapter 4 of this report. Chief among these was Air Canada's acquisition of Canadian Airlines. The Bureau concluded that, under the circumstances, the merger was preferable to the bankruptcy of Canadian, provided that Air Canada made several key commitments that would enhance competition. Nevertheless, our work with the airline industry is not done, and I am sure this issue will occupy our time and resources in the year to come.

As well this year, the Bureau intervened to prevent anti-competitive activity in a number of major cases, including several involving large cartels (see Chapter 5). This year, fines related to international cartels totalled more than $100 million: one firm alone was fined $48 million for its role in an international conspiracy to fix prices and allocate market shares for nine vitamin products — the largest fine levied in Canadian criminal law history. In addition, gasoline pricing continued to attract considerable attention over the year, and the Bureau devoted considerable resources to handling related complaints.

This was a year of significant activity for the Bureau in terms of its interaction with Parliament (see Chapter 6). Possible changes to the *Competition Act* continued to attract the attention of members of Parliament, resulting in an unprecedented number of Private Members' Bills. As well, the Bureau appeared before the House of Commons Standing Committee on Industry as part of its hearings on anti-competitive pricing practices and the *Competition Act*.



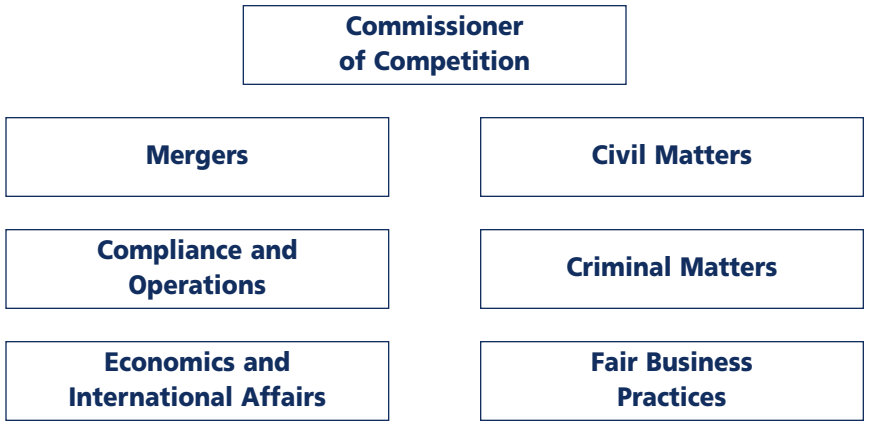
This year, the Bureau continued to work toward increasing awareness of issues relating to the three standards-based acts: the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*. In collaboration with several government and non-government organizations, the Bureau drafted Guidelines for the Labelling and Advertising of Pet Foods. The Bureau continues to partner with other government departments, industry and consumer representatives to harmonize labelling requirements to facilitate trade in the textile and apparel goods markets.

I have touched on only a few of the varied activities undertaken by the Bureau during 1999–2000. Many more are detailed in the pages of this report. All of these achievements are due to the hard work and commitment of the Bureau's staff. Their dedication will be invaluable as we move to meet the changes and new challenges of the year ahead.

Konrad von Finckenstein, QC

ORGANIZATIONAL STRUCTURE OF THE COMPETITION BUREAU

The Bureau employs 296 people in the National Capital Region and 86 in seven regional offices. As the organizational chart below shows, the Bureau comprises six branches.



The **Commissioner of Competition** is head of the Competition Bureau and is responsible for 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 reviews merger transactions. Mergers in which the parties 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 develops the Bureau's compliance program, enforcement policy, public education initiatives and communications programs. It also handles planning, administration and informatics activities.

Economics and International Affairs Branch coordinates international cooperation and policy development in many fora on international competition policy, and liaises with foreign authorities and other government departments and agencies. The Branch provides economic advice and analysis to the enforcement branches on specific cases, on 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 reviews anti-competitive behaviours, such as abuse of dominant position, and restraints imposed by suppliers on customers, such as refusal to supply, exclusive dealing and tied selling. The Branch is also responsible for the Bureau's interventions before federal and provincial regulatory boards and tribunals.

Criminal Matters Branch reviews criminal offences relating to anti-competitive behaviours. These include conspiracies that have an undue impact on competition, bid rigging, price discrimination, predatory pricing and price maintenance. The Branch 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 administers and enforces the misleading representations and deceptive marketing practices provisions of the *Competition Act*. These provisions include deceptive telemarketing, ordinary price claims and promotional contests. The Branch is also responsible for administering and enforcing the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*. The Branch's work is carried out by staff in a network of offices located in the Atlantic Region, Quebec Region, the National Capital Region, Ontario Region, Prairie Region and Pacific Region.

CONTENTS

1 INTRODUCTION

This report reviews the work of the Competition Bureau for the fiscal year ending March 31, 2000, under the four Acts the Bureau administers:

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

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

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

This report groups the Bureau's activities as follows:

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

Approach: Conformity Continuum

The Bureau's approach to the enforcement and administration of its legislation has evolved to reflect ongoing change in the economic and business environments. Expanded responsibilities, this year's legislative amendments and the need to efficiently target financial and human resources are among the factors that have led the Bureau to adopt a comprehensive, balanced approach.

The Conformity Continuum represents the integration of the various education, compliance and enforcement instruments the Bureau has developed over several years. Each of these groups of instruments complements one another and works interdependently toward promoting maximum conformity with the law.

With such an approach, the Bureau is able to select the instrument of choice to address the issues any specific situation raises. Education efforts are designed to ensure that the business community is provided with a knowledge of legislation and an understanding of how it is enforced. The Bureau facilitates conformity using instruments such as prenotification, targeted inspections and consultations, and by providing opportunities for voluntary compliance in the form of such things as advisory opinions, corporate compliance programs and voluntary codes.

The Bureau's available responses to instances of non-conformity include alternative case resolution in the form of suasion and consent. When it is inappropriate or undesirable to resolve a matter through consent, the Bureau will not hesitate to use an adversarial approach. The use of the Conformity Continuum does not imply that the Bureau is lenient with those who engage in serious anti-competitive conduct. When there is evidence of serious violations of the criminal provisions of the *Competition Act*, the Bureau refers cases to the Attorney General of Canada with a recommendation that prosecution be undertaken with the full force of the law. In civil matters, when reasonable solutions cannot be worked out by consent orders or by other means, the Bureau will not hesitate to apply to the Competition Tribunal.

2 INTERACTING WITH CANADIANS

The Competition Bureau routinely monitors the marketplace and regularly visits businesses, industry and stakeholders. It also relies on Canadians to come forward with information about suspected anti-competitive activities.

The Bureau has a highly effective Information Centre, often the first contact many members of the public have with the Bureau. Officers staff a 1-800 line from 8:00 a.m. to 8:00 p.m. (EST), answering questions, recording complaints and directing calls. In 1999–2000, the centre received 47 975 enquiries, 2542 of which came in through the Internet. Staff treat all enquiries as confidential and quickly pass all relevant issues on to the appropriate branch.

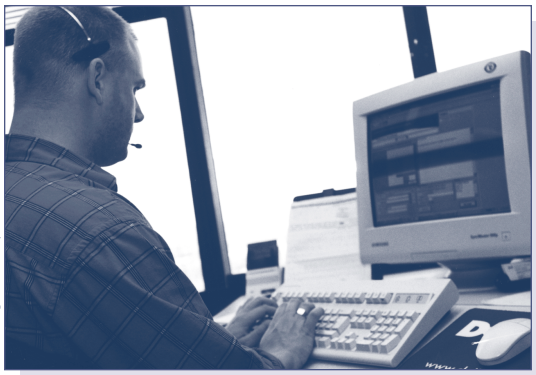


Photo: Eugene Besruky

Communicating with Canadians

Communication continues to be an essential part of the Bureau's work. The Bureau believes that good communication heightens awareness of the Bureau's role and encourages businesses to comply with the law. Within the Bureau, the Communications Directorate works with all branches to ensure a coordinated and consistent approach.

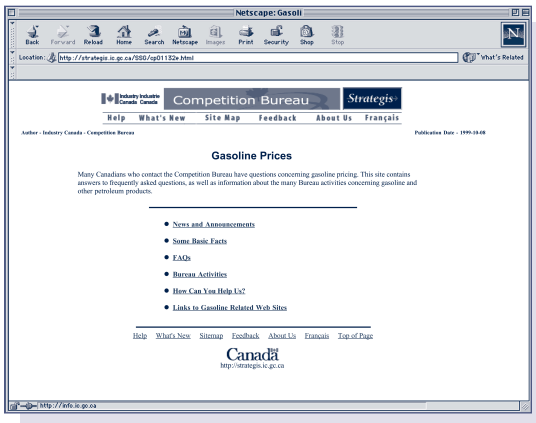
To find out what Canadian businesses and the public think about the way the Bureau communicates with them, the Bureau held focus groups in Toronto and Montréal and conducted a nation-wide survey. The results of this research, carried out in March 2000, will help the Bureau to make its communication efforts more effective and efficient.

The Web Site

The Bureau's Web site is its main communication tool; over the course of 1999, traffic nearly doubled in volume to about 2000 hits per day. The site allows interested stakeholders to be immediately informed of decisions, Bureau activities and news releases, and gives quick access to legislation, Bureau policies and guidelines. More than 1500 people subscribe to the site and are notified immediately of new information. This service is available to anyone, in Canada or abroad, who is interested in the activities of the Competition Bureau.

In October, the Bureau launched a new section of the site on gasoline prices in Canada. It outlines the Bureau's role in this area and details its activities since 1986.

The Bureau is also making it easier for Canadians to access information and apply for certain products through electronic commerce applications. Bureau pamphlets, speeches and other information products are available from the Web site. Consumers and businesses can also make enquiries and complaints using the Bureau's on-line form, apply and pay for Textile CA numbers under the *Textile Labelling Act*, and request and pay for advisory opinions under any provision of the *Competition Act*. As well, the Bureau will soon offer merging firms the ability to make prenotification filings on-line using advanced and secure encryption technologies.



Y2K

This year, the Bureau devoted considerable effort to preparing for the rollover to the Year 2000. Information technology staff ensured that all Bureau hardware and software were Y2K-compliant, and worked through the critical period to ensure a smooth transition. The Bureau was also an active participant in Industry Canada's business continuity planning exercise, which identified critical functions and developed plans to ensure continued delivery of services in the event of disruption. The contingency plans arising from these efforts will also be useful in the event of other emergency-related service disruptions.

Telemarketing Education Initiative

In the past year, the Bureau's Information Centre distributed 3114 pamphlets on deceptive telemarketing practices (1454 *Deceptive Telemarketing* pamphlets and 1660 *Stop Phone Fraud, It's a Trap* pamphlets) and 58 videos (31 *Scam Alert* tapes and 27 *Stop Phone Fraud, It's a Trap* videos). The Bureau also distributed this material through partners who provided educational seminars on deceptive telemarketing practices to various groups and associations. The pamphlets are also posted on the Bureau's Web site and the videos can be obtained free of charge from the Information Centre.

Speeches

Bureau representatives delivered speeches on a variety of topics this past year, including the new provisions of the *Competition Act*, the application of the Act to particular industries, trends in fines, proposed changes to the Bureau's immunity policy, international enforcement cooperation, deceptive telemarketing, and advertising on the Internet. For a complete listing of speeches delivered by Bureau staff, please visit our Web site (**http://competition.ic.gc.ca**). Click on Publications and Speeches.

In addition, Bureau staff published a number of articles in academic journals; examples are listed in Appendix II.

Information and Warnings

The Bureau periodically issues news releases or information notices alerting the public to potential illegal or misleading activities in the marketplace. In 1999–2000, the Bureau warned Canadians about lottery scams, pyramid schemes, jewellery purchases and "scratch-and-win" promotions.

As well, the Bureau published four information bulletins outlining the Commissioner's approach to enforcing key new provisions of the *Competition Act* that came into effect on March 18, 1999, as follows:

- Misleading Representations and Deceptive Marketing Practices: Choice of Criminal or Civil Track Under the *Competition Act*
- Telemarketing Section 52.1 of the *Competition Act*
- Ordinary Price Claims: Subsections 74.01(2) and 74.01(3) of the *Competition Act*
- Interception of Private Communications and the *Competition Act*.

The bulletins include guidelines drafted in consultation with stakeholders and consumer interest groups. Copies may be obtained by calling the Information Centre at 1 800 348-5358 or (819) 997-4282. News releases, information notices and bulletins are available on the Bureau's Web site (**http://competition.ic.gc.ca**).

3 PROMOTING COMPETITION

The Competition Bureau assumes an advocacy role by actively promoting competition in the marketplace. These activities include making interventions and representations before federal and provincial boards, commissions and tribunals, encouraging and facilitating voluntary compliance, and taking a leadership role in issues related to international anti-trust policy.

Interventions

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

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

In 1999–2000, the Bureau made a number of significant interventions on issues ranging from allocation policy in the Ontario poultry industry to retailing of natural gas following deregulation in New Brunswick. The chart on pages 5 to 9 outlines the Bureau's interventions in the past year.

Interventions

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Competition Bureau Interventions, 1999–2000

INDUSTRY SECTOR AND ISSUE	COMPETITION BUREAU INTERVENTION	OUTCOME AND POTENTIAL BENEFITS FOR CANADIANS
Broadcasting, Telecommunications and New Media (Internet)		
Radio Broadcasting Criteria and amendments to radio regulations governing local management agreements among radio broadcasters. CRTC PN 1999-55 CRTC PN 1999-176	The Bureau reiterated its earlier submission that the Canadian Radio-television and Telecommunications Commission (CRTC) should evaluate local management agreements in the context of the content and cultural objectives of the *Broadcasting Act*, and that the Commission should rely on the *Competition Act* to address effects on competition in local radio advertising markets.	The CRTC issued its decision on November 1, 1999. It declined to adopt the Bureau's recommendations and will review and approve local radio management agreements, including their impact on competitors and potential competitors in local radio markets. It will generally limit radio management agreements to the number of stations that can be commonly owned under its ownership policy. The Bureau's concern with this approach is that it creates a regulated conduct defence such that station operators can minimize competition in the radio advertising market.
Licensing Framework for New Digital Pay and Specialty Television Services CRTC PN 1999-19	The Bureau submitted that the CRTC should let competition and market forces play a greater role in the objectives of the *Broadcasting Act*, including bringing diversity of choice. The new framework should be based on an open entry licensing model, clear criteria for a licence, including Canadian content, and maximum reliance on competition among programmers. Financial and competitive considerations should not be factors in licensing. Each licensee should be free to find its own programming niche. The CRTC should abandon its one-licence-per-genre approach. Tiering, packaging and linkage rules should be greatly eased or eliminated.	The CRTC chose to license two classes of new services based primarily on the amount of Canadian content. In this decision, the CRTC chose to restrict the competitive opportunities available to new specialty and pay television services in order to achieve other objectives, specifically ensuring program diversity and the survival of entrants who face high Canadian content requirements, while at the same time protecting existing licensees. This leaves all potential new entrants with the task of finding unique program niches in order to qualify for a licence.
Television Broadcasting The CRTC proposed that the Pay Television Regulations, 1990, should be amended to ensure that pay television licensees do not acquire rights to pay-per-view programs on an exclusive or other preferential basis. CRTC PN 1999-83	The Bureau supported the proposal, stating that it would be an appropriate way to ensure that new entrants into the broadcast distribution market are given equal access to pay-per-view programming so they may compete effectively with cable television firms. As well, this policy would be consistent with the Direct-to-Home (DTH) Satellite Direction by the Governor in Council, which precludes the exclusive or preferential acquisition of pay-per-view programming by DTH pay-per-view television programming undertakings.	At the end of 1999–2000, the CRTC's decision was pending. A favourable decision would facilitate new entry into broadcast distribution by wireline, wireless and satellite firms wishing to compete with cable television companies.

Competition Bureau Interventions, 1999–2000 *(continued)*

INDUSTRY SECTOR AND ISSUE	COMPETITION BUREAU INTERVENTION	OUTCOME AND POTENTIAL BENEFITS FOR CANADIANS
Broadcasting, Telecommunications and New Media: Follow-up on Items in the 1998–1999 Annual Report		
Television Broadcasting Policy A broad range of issues relating to the Canadian television broadcast industry were examined. CRTC PN 1998-44 CRTC PN 1999-97	The Bureau's submission focussed on two issues: a) the desirability of eliminating the market-entry test (in terms of economic impact) for licensing new local broadcasting undertakings b) the role of the Bureau in examining television broadcasting mergers, should existing ownership restrictions be relaxed.	The CRTC issued its decision on June 11, 1999 (*Building on Success — A Policy Framework for Canadian Television*). The Commission decided to continue its current policy of limiting ownership to no more than one over-the-air station in one language in a given market. This policy will mitigate concerns about the possible effects on competition of increased concentration in local television advertising markets. The Commission's decision did not address the issue of criteria for the awarding of additional over-the-air television services.
International Telecommunications Services Teleglobe's application to the CRTC for complete and unconditional deregulation of its wholesale Canada-overseas telephone services, which link Canada to 240 locations. Telecom Decision CRTC 99-14	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.	The CRTC issued its decision on September 28, 1999. It unconditionally forbears from regulating Teleglobe's pricing and agreements with third parties, and other aspects of its operations. The CRTC will retain regulatory power over confidential customer information. The result has been a continuous decrease in the cost of overseas telephone calls for Canadian consumers.
Television Satellite Signals The removal of restrictions to television network signals from U.S. satellites. CRTC PN 1998-60 CRTC PN l999-72	The Bureau submitted that restrictions on the ability of Canadian broadcast distributors (cable companies) to access programming from U.S. satellites should be eliminated.	On April 26, 1999, the CRTC issued its majority decision to not approve a proposal to authorize broadcasting distributors to receive the U.S. television network signals directly from U.S. satellite service providers. There were two separate dissenting opinions to the decision.

Competition Bureau Interventions, 1999–2000 *(continued)*

INDUSTRY SECTOR AND ISSUE	COMPETITION BUREAU INTERVENTION	OUTCOME AND POTENTIAL BENEFITS FOR CANADIANS
Non-traditional Broadcasting Services (including the Internet and on-line new media services) The extent to which the Internet and on-line new media should be regulated under the *Broadcasting Act*. CRTC PN 1998-20/1998-82 CRTC PN 1999-84/Telecom PN 99-14	The Bureau argued that, given the evolution of the Internet and on-line new media services, the CRTC should begin to change the way the traditional broadcast industry is regulated. The Bureau also stressed the importance of ensuring that voluntary codes in the new media industry comply with the *Competition Act*.	On May 17, 1999, the CRTC announced that it will not regulate new media services on the Internet. It expressed concern that any attempt to regulate Canadian new media might put the industry at a competitive disadvantage in the global marketplace. This decision allows market forces to operate freely in new media, thereby enabling Canadian service providers to develop and remain competitive on a global scale.
Energy		
Ontario Electricity Standard Supply Service The pricing and procurement of standard supply and marketing restrictions related to a distributor's obligations under Ontario's *Electricity Act*. Standard Supply Service is the default service that most customers will receive when the Ontario electricity market is opened to competition.	The Bureau intervened in an Ontario Energy Board hearing in support of measures to achieve the potential benefits of competition for all consumers and the Ontario economy. The Bureau favoured a supply service that passes the benefits of competitive wholesale supply directly to consumers, with budget billing allowed to protect consumers from price volatility.	The Board adopted positions largely consistent with the Bureau's recommendations. It adopted a form of the wholesale market price method for Standard Supply Service for residential and small commercial customers, and a direct wholesale market price pass-through method for large customers.
New Brunswick Natural Gas Rules and regulations regarding the conduct of natural gas distributors and marketers in New Brunswick. Establishing the regulatory framework in preparation for the start of natural gas sales in the province.	The Bureau's submission discussed Canadian competition law and policy, as well as the appropriate roles and responsibilities of the New Brunswick Board of Commissioners of Public Utilities and the Competition Bureau in the New Brunswick natural gas market. It also presented competition principles for the Board to consider and commented on specific code-of-conduct matters.	The Board decided some issues and referred others to an industry working group. Among other things, it decided to accept a proposed code of conduct for marketers, to require regular reports from marketers, to require the distribution company to disclose all terms and conditions of any sharing of services with an affiliate, and to permit joint advertising in order to promote a level playing field.

Competition Bureau Interventions, 1999–2000 *(continued)*

INDUSTRY SECTOR AND ISSUE	COMPETITION BUREAU INTERVENTION	OUTCOME AND POTENTIAL BENEFITS FOR CANADIANS
Other Interventions		
Poultry (Ontario) In April 1998, a committee of the Ontario Farm Products Marketing Commission developed an allocation policy for live chickens going to Ontario processors.	The Bureau reviewed the policy and outlined its concerns to the Commission. In its intervention, the Bureau expressed the concern that the allocation policy limits the choice of large chicken purchasers, freezes current market shares among existing processors, and raises barriers to entry to new processors. In the Bureau's view, there are two major ways of making the industry more competitive: a) reintroduce a true bottom-up system b) continue to manage the supply through the Chicken Farmers of Ontario (CFO) but allow competition to allocate it. A true bottom-up system focusses on market rather than individual processor requirements. It gives an incentive to producers to respond to future competition, gives more flexibility to purchasers to choose among processors and allows for entry by new processors.	Following hearings in September and October 1999 to determine a process for allocating live chickens to Ontario processors, the Commission issued its decision on December 1, 1999. The key points of the decision are that a formula approach to chicken pricing will be instituted, supply will be determined by a bottom-up process, new entrants will be allocated supply, and the CFO shall establish an export policy that provides for direct contracting between individual processors and producers on price and volume. These changes will ensure a more market-oriented approach to the supply of chickens, which will ultimately benefit the consumer.
Household Goods Removal Services: Review of Public Works and Government Services Canada (PWGSC) Request for Proposal The Request for Proposal is a tendering document that dictates the conditions to be respected for moving government employees and for allocating contracts for these moves among carriers. Members of the moving industry expressed a number of concerns that their inability to bid for government contracts lessened their ability to do business. Since the PWGSC contract for the movement of goods is the largest such contract in Canada, it has a tremendous effect on the moving industry and the competitive environment.	The Bureau reviewed the Request for Proposal and made a number of recommendations to the Interdepartmental Committee on Household Goods Removal Services (IDC), which sets the moving policy for PWGSC, including the following: ◆ broadening the base standards, as current standards limit the number of eligible bidders ◆ suspending the exclusivity clause for the purpose of the bid, or deleting the "no right of refusal" rule ◆ basing benchmark and input rates (costs associated with providing service) on broad consultation, and having PWGSC set the rates, not bidders ◆ simplifying the Request for Proposal to be more readily understandable to movers.	These recommendations, and others, are under consideration by the IDC.

Competition Bureau Interventions, 1999–2000 *(continued)*

INDUSTRY SECTOR AND ISSUE	COMPETITION BUREAU INTERVENTION	OUTCOME AND POTENTIAL BENEFITS FOR CANADIANS
Public Interest Inquiry Before the Canadian International Trade Tribunal (CITT) Baby food sold in jars.	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. The Bureau recommended to both the CITT and subsequently to the Minister of Finance that the duties be eliminated or set no greater than the level of the injury found by the CITT (i.e. four cents per jar).	Following the most extensive hearing of its type, the CITT recommended that the duties be reduced by about two thirds to about 10 cents per jar. This would, the Tribunal said, recognize the interests of Canadian infants and caregivers in a competitive market. The Minister of Finance accepted the CITT's recommendation and implemented it in July 1999. Heinz continues to be the sole supplier of jarred baby food in Canada.
NAFTA Binational Panel Review of Canadian International Trade Tribunal Material-injury Decision on Jarred Baby Food	Following Canada Customs and Revenue Agency findings that Gerber had been selling U.S.-made baby food for less 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. During its intervention, the Bureau argued that other events, restrictive trade practices among them, had caused injury to Heinz. 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. As a result, Gerber withdrew from the Canadian market, leaving Heinz as the sole marketer of jarred baby food. Gerber Canada Inc. filed a request for Binational Panel review of the decision in June 1998. The Competition Bureau was a party in seeking this review.	Since the April 1998 CITT finding, Heinz has been the sole supplier of jarred baby food in Canada. In April 1999, the NAFTA Binational Panel upheld the Competition Bureau's right to be a full participant in the review of the CITT decision. In November 1999, the Panel also upheld the CITT's decision (i.e. that the injury caused by the dumping was supported rationally by the evidence, and on the appropriate standard for finding injury, the Panel could not find any reviewable error).

Promoting Competition *(continued)*

Competition Bureau and CRTC Interface

The Bureau and the Canadian Radio-television and Telecommunications Commission (CRTC) have agreed on a document that describes the CRTC's authority under the telecommunications and broadcasting Acts and that of the Bureau regarding the telecommunications and broadcasting sectors. This interface document deals with a range of competitive issues, including access, merger review, competitive safeguards and various marketing practices.

The purpose of the document is to provide industry stakeholders, including the general public, with greater clarity and certainty as to the overall regulatory and legal framework governing the telecommunications and broadcasting sectors. These sectors are undergoing rapid change and are moving from detailed regulation to greater reliance on market forces. The document does not deal with matters unrelated to competition to which the CRTC's mandate extends.

The Interface document is available on the Bureau's Web site (**http://competition.ic.gc.ca**; click on News Releases and Notices and then on Backgrounders).

Voluntary Compliance

The Bureau participates 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. Examples of such activities include work with pet food manufacturers, the retail jewellery industry and federal government agencies.

Consulting: Pet Food Guidelines

For the past several years Canadian pet food manufacturers and consumers have expressed the desire to see a more uniform approach to the labelling and advertising of pet food in the Canadian market, as well as more rigorous application of the *Consumer Packaging and Labelling Act* and the *Competition Act* in matters concerning false and misleading representations.

The Competition Bureau has responded to these concerns by preparing draft Guidelines for the Labelling and Advertising of Pet Foods. The Guidelines have been issued for public comment, and will help the industry to provide clear, accurate and meaningful information. They were drafted in collaboration with Bureau stakeholders, such as Health Canada, Agriculture and Agri-Food Canada, the Pet Food Association of Canada, the Canadian Veterinary Medical Association, the Canadian Kennel Club, the Canadian Animal Health Institute and the Pet Industry Joint Advisory Council.

Facilitating Conformity: Retail Jewellery Industry

The Bureau has developed a conformity strategy for the retail jewellery industry in response to concerns from consumers, competitors and industry associations.

The aim of the first component of the strategy, completed in December 1999, was to educate and inform both jewellery retailers and consumers. On December 1, the Bureau sent personalized letters to more than 3000 jewellery retailers in Canada inviting them to review their obligations under the *Competition Act* and the *Precious Metals Marking Act*, and to examine their own advertisements and marketing practices to ensure conformity with the law. As well, the Bureau posted on its Web site a consumer warning that, in addition to alerting consumers to questionable practices by jewellers, invited them to report any suspected misleading activities to the Bureau. The consumer warning was included with the letter sent to jewellery retailers.

The second component provides for the monitoring of jewellers' marketing practices and includes targeted visits to clarify the application of the law and give retailers the opportunity to voluntarily undertake corrective actions to ensure compliance with the legislation.

In the third component of the conformity strategy, retailers showing signs of continued non-compliance will be subject to enforcement actions.

Monitoring and Enforcement: Misleading Representations and Deceptive Marketing Practices on the Internet

The Bureau was involved in two Internet sweeps this year. The first, carried out in December 1999, targeted approximately 30 multilevel marketing plans and related Web sites and found problems with approximately 20 of them. Appropriate follow-up action will be taken in the next fiscal year.

In February 2000, the Bureau participated in an international law enforcement project to address misleading representations on the Internet. The project targeted phony "get-rich-quick" schemes, such as deceptive work-at-home offers, business opportunity scams and illegal lotteries. The Bureau identified 50 national and international problem Web sites, and sent warning e-mails to targeted sites with suspected misleading practices. The Bureau will be monitoring those sites to see which ones make changes to comply with the law. Appropriate enforcement action will be taken in situations of non-compliance.

International Activities

In an increasingly globalized marketplace, it is important for Canada to be actively involved on the world stage in the promotion and development of coordinated competition laws and policies. Therefore, the Competition Bureau participates in a number of international initiatives.

Signing of the Canada-European Union Co-operation Agreement

On June 17, 1999, Canada and the European Union signed a new agreement regarding the application of competition law. The agreement is designed to enhance economic relations between Canada and the European Union by increasing cooperation and coordination in the enforcement of competition laws to combat anti-competitive activities in both jurisdictions.

The new agreement, which replaces earlier informal arrangements between the Competition Bureau and the European Commission Directorate-General for Competition, has increased the effectiveness of enforcement and reduced the risk of inconsistent or incompatible decisions in individual cases for both authorities. This has been achieved through improved communication and the sharing of best practices and experiences in relation to international cartels and, in particular, reviews of transnational mergers.

Organisation for Economic Co-operation and Development

Competition Bureau representatives continue to actively participate in the various initiatives of the Competition Law and Policy Committee (CLP) and working parties of the Organisation for Economic Co-operation and Development (OECD). In his capacity as Chair of Working Party 3 on International Co-operation, the Commissioner of Competition played a leading role in developing the *Report on Positive Comity*, which sets out principles for a country's full and sympathetic consideration of another country's request to initiate or expand a law enforcement action in order to remedy conduct that is affecting that country's interests.

The Working Party also spearheaded the report to the OECD Council entitled *New Initiatives, Old Problems: A Report on Implementing the Hard Core Cartel Recommendation and Improving Co-operation*. The report is significant in that it identifies ways in which competition authorities can work together to better address these unequivocally harmful activities through both enforcement and legislative improvements.

In addition, the OECD released this year its guidelines for consumer protection in the context of electronic commerce. As a member of the OECD, the Bureau has, with the participation of Industry Canada's Office of Consumer Affairs, undertaken to disseminate these guidelines and to encourage businesses, consumers and their representatives to take an active role in promoting their implementation at the international, national and local levels.

International Marketing Supervision Network

The Bureau is a member of the International Marketing Supervision Network, which comprises various international enforcement agencies. The Network's main objective is to facilitate practical action to prevent and redress deceptive marketing practices with an international component. The Network fosters cooperative efforts to tackle consumer problems connected with crossborder transactions in both goods and services. This year, the Network undertook a survey on enforcement activities so member countries could become familiar with each other's jurisdiction and legislation, including confidentiality provisions.

World Trade Organization

This year, the Competition Bureau conducted roundtable discussions with competition policy and trade experts in Toronto, Ottawa and Montréal on the implications for Canada of possible negotiations on competition policy at the World Trade Organization.

The discussions focussed on a background document — *Options for the Internationalization of Competition Policy* — prepared by the Competition Bureau to seek views on a suggested approach to the internationalization of competition policy. The issues raised during the sessions did not result in any major changes to the options.

The Bureau also participated in consultations led by the Department of Foreign Affairs and International Trade.

> ***Technical Assistance***
>
> *The Competition Bureau is increasingly asked for technical assistance from countries without competition laws, those in the process of drafting or implementing them, or those seeking to enhance their institutional capacity.*

Free Trade Area of the Americas

The Competition Bureau led the Canadian delegation and actively participated in meetings of the Free Trade Area of the Americas (FTAA) Negotiating Group on Competition Policy, held in May, July and October 1999 and January 2000.

During these meetings, the Bureau played a lead role in developing an annotated outline of the potential issues for negotiation to conclude a chapter on competition policy in the agreement establishing the FTAA.

As well, the Bureau participated in discussions on the interaction between trade and competition policy, and in technical assistance sessions to provide guidance and advice to delegations on the drafting, implementation and enforcement of competition policies.

In October 1999, the Negotiating Group submitted a progress report, together with the annotated outline, to the Trade Negotiations Committee, which subsequently reported on this work to the meeting of the Trade Ministers for the Free Trade Area of the Americas in Toronto in November 1999. Following this meeting, and in response to directions in the Ministerial Declaration, the Negotiating Group began work on a draft chapter on competition policy, to be submitted to the Trade Negotiations Committee prior to the next Ministerial meeting in Argentina in April 2001.

Technical Assistance

The Competition Bureau is increasingly asked for technical assistance from countries without competition laws, those in the process of drafting or implementing them, or those seeking to enhance their institutional capacity. Subject to the availability of resources, the Bureau has been actively involved in providing technical assistance, both independently and in partnership with the private sector, the academic community and international non-governmental agencies, and with the support of funding agencies such as the Canadian International Development Agency.

In addition, the Bureau has participated in international seminars, workshops and conferences, provided information on Canadian policy, law and practices, and welcomed visitors from foreign governments, competition authorities, economic "think tanks" and academic institutions. Countries that received this assistance this year included Mexico, Thailand, Korea, Vietnam, Taiwan, China, Latvia, Lithuania, Morocco and Jamaica.

The Bureau assists other countries to advance Canadian government foreign and economic policy objectives and obligations under regional free trade and cooperation agreements, and to support Canada's commitment to various international organizations, such as the OECD, the World Trade Organization and the Asia-Pacific Economic Cooperation, and to regional free trade negotiations on competition policy, such as the FTAA negotiations.

Labelling of Textile and Apparel Goods

As part of the mandate of the NAFTA Subcommittee on Labelling of Textile and Apparel Goods, the Competition Bureau, along with other government departments and concerned industry and consumer representatives, has been working to harmonize labelling requirements to facilitate trade in textile and apparel goods. As part of that initiative, NAFTA countries are in the final stages of developing new common care symbols. These symbols will provide more care information than do the current ones, and will better reflect modern cleaning methods. Canadian business, particularly exporters, will also benefit from a system that is recognized in the international community.

In light of the proposed new symbols, the Bureau has asked the Canadian General Standards Board to provide advice on the revision of the current care labelling standard and to review associated test methods and test criteria to ensure that they are appropriate for the current marketplace. The revised standard, which will identify the symbols and their meanings, and describe the presentation of information on the label, performance criteria and test methods, will provide assurance of compliance and will foster a credible image for individual businesses in the marketplace.

Environmental Labelling

Since 1994, the Competition Bureau has provided input to three International Organization for Standardization (ISO) working groups to assist in the development of environmental labelling standards under the ISO 14000 environmental management series. All of these standards have now been published, and the Competition Bureau has worked with CSA International (formerly the Canadian Standards Association) to have one of these standards (ISO 14021: Self-declared Environmental Claims) adopted as a National Standard of Canada.

This standard reflects what will be accepted in most industrialized countries as the basic guidance on the use of environmental symbols such as the mobius loop, terms such as *recyclable*, *recycled*, *biodegradable* and *compostable*, and substance-free claims. The widespread use and application of this standard will give consumers confidence that the environmental claims they see in advertising and labelling are accurate, reliable and verifiable.

The Competition Bureau will be launching a consultation in fiscal year 2000–2001 on its proposal to replace the Bureau's current Principles and Guidelines for Environmental Labelling and Advertising with this new National Standard of Canada.

4 REVIEWING MERGERS

The number of mergers examined by the Competition Bureau has increased dramatically in recent years. This year, the Bureau faced serious challenges meeting its designated service standards, in part, because a significant number of mergers were horizontal (among firms in the same industry), requiring closer examination and thus imposing a heavier workload, and because some potentially problematic mergers involved many local markets, requiring resource-intensive investigations.

Several significant legislative changes were introduced over the year to create a more flexible and efficient review process, as well as to allow for the exemption of certain types of mergers from prenotification (see Chapter 6, page 28, for details).

Merger Benchmarking

In a modern and dynamic economy it is vitally important that merger review remain effective and efficient. In 1999–2000, the Bureau undertook a process-mapping exercise of the merger review process and met with stakeholders and officials of other anti-trust authorities to learn from their experiences and incorporate "best practices" into merger review. Once completed, this comprehensive benchmarking study of the Canadian merger review process should help the Bureau provide stakeholders with a more effective, efficient and timely process.

Case Summaries

The following are summaries of some of the major cases the Bureau reviewed over the past year. Other transactions that raised competition issues came from industries such as telecommunications, financial services, oil and gas, transportation, chemicals, real estate, forestry, broadcasting, retail and pharmaceuticals.

Air Canada and Canadian Airlines

On August 13, 1999, the federal ministers of Transport and Industry jointly announced a 90-day suspension of the provisions of the *Competition Act* to allow Air Canada and Canadian Airlines, Canada's largest and second largest airlines, to discuss the potential restructuring of Canada's airline industry. A key

concern was the survival of Canadian, since it was experiencing financial difficulties. At that time, the Minister of Transport asked the Competition Bureau for advice on how best to promote competition in the event that a single dominant airline should emerge, either through an Air Canada-Canadian merger or through the failure of Canadian.

On October 22, 1999, following extensive industry consultations, the Bureau provided the Minister of Transport with a series of recommendations on how best to alleviate competition concerns in a single-dominant-carrier environment. The recommendations set out terms and conditions that could be imposed upon the dominant carrier, including the following:

- surrender of some take-off and landing slots at Toronto's Pearson International Airport
- surrender of certain facilities at various airports across Canada
- sharing of its frequent flier program with other Canadian carriers
- agreement not to base travel agent commission overrides on market share in the domestic market.

As well, the recommendations laid out a number of policy changes, including the following:

- raising the foreign ownership limit from 25 percent to 49 percent
- allowing foreign carriers to transport passengers from one Canadian city to another via a foreign hub
- allowing foreign-owned "Canada-only" carriers.

Finally, the Bureau recommended strengthening the *Competition Act* to deal more effectively with anti-competitive conduct, particularly predation, in the airline industry.

In November 1999, with the expiry of the 90-day suspension period, the Bureau was notified of Air Canada's proposed acquisition of Canadian. Accordingly, it undertook a two-stage review of the acquisition under the merger provisions of the *Competition Act*. First, it confirmed that Canadian was facing imminent financial failure. Second, it looked at certain commitments that Air Canada was prepared to make if the merger was allowed to proceed, as follows:

- to surrender slots at Pearson Airport
- to surrender gates, loading bridges and counters at a number of airports across Canada
- to delay launching a discount carrier in Eastern Canada to give other Canadian carriers the opportunity to become established
- to offer Canadian Regional Airlines for sale
- to allow other Canadian carriers to participate in its Aeroplan program
- to base its domestic travel agent commission overrides on volume rather than market share
- to enter into interline and joint fare agreements with other Canadian air carriers.

The Bureau concluded that the merger, together with these commitments, was preferable to the bankruptcy and liquidation of Canadian. Consequently, on December 21, 1999, it informed Air Canada that it would not oppose its acquisition of Canadian. The Minister of Transport subsequently approved the merger, noting that the government would introduce new legislation governing the airline industry, including amendments to the *Competition Act* to allow for greater substantive and injunctive powers against anti-competitive conduct. The Bill was introduced in Parliament on February 17, 2000.

Superior Propane and ICG Propane

In July 1998, Superior and ICG Propane, the two largest propane suppliers in Canada, announced their intention to merge. Following an extensive, cross-country investigation, the Competition Bureau concluded that this would substantially lessen or prevent competition for the supply and delivery of propane to retail and wholesale customers in both the national and local markets. This conclusion was based on a number of factors, including high post-merger market shares, barriers to entry and limited or no effective remaining competition in many markets.

Consequently, the Bureau filed an application with the Competition Tribunal in December 1998 contesting the merger. The hearings began in Calgary on September 23, 1999 and continued until February 9, 2000. A decision in this case is pending.

Canadian National Railway Corporation and Burlington Northern Santa Fe Railway Company

On December 20, 1999, Canadian National Railway Corporation (CN) and Burlington Northern Santa Fe Railway Company (BNSF) announced their intention to merge. Since the two companies have rail operations in both the United States and Canada, the transaction is subject to review in both countries — in Canada, under the merger provisions of the *Competition Act*, and in the U.S. by the Surface Transportation Board (STB).

In response to this announcement, the STB held proceedings from March 7–10, 2000 to obtain public views on major rail consolidations and the future structure of the North American rail industry.

On March 16, 2000, the STB announced a 15-month moratorium on U.S. rail merger applications to give it the opportunity to develop new merger review rules applicable to future rail transactions. Both CN and BNSF are appealing this ruling before the U.S. Court of Appeal in Washington, D.C. Should the CN-BNSF transaction proceed, it is the Bureau's intention to undertake a thorough review of its competitive impact.

British American Tobacco and Rothmans International

On January 11, 1999, British American Tobacco (BAT), a major shareholder in Imasco, announced that it was buying Rothmans International for $11.4 billion.

The tobacco industry in Canada is highly concentrated. As a result of the proposed merger, BAT (through its 42 percent share in Imasco) would have an indirect interest in Imperial Tobacco and control of Rothmans in Canada. Together these two firms account for approximately 88 percent of manufactured cigarette sales and 81 percent of the sales of fine-cut or "roll-your-own" products in Canada.

After a thorough review of the proposed transaction, the Competition Bureau concluded that a merger would likely substantially lessen or prevent competition in the Canadian manufactured cigarette and fine-cut tobacco markets, due to a high level of concentration, high barriers to entry, the lack of effective remaining competition, and the virtual absence of import competition.

As a result, BAT agreed to divest its interest in Rothmans in Canada. The Competition Tribunal issued a consent order on August 6, 1999. An interim hold-separate order was in place at year-end, pending completion of the divestiture.

Ultramar Ltd. and Coastal Canada Petroleum Inc.

In July 1999, Ultramar Ltd. entered into an agreement to purchase an Ottawa petroleum product terminal facility and customer accounts from Coastal Canada Petroleum Inc. As a result of competition concerns, the Bureau filed an application for a consent order with the Competition Tribunal on February 15, 2000 to maintain competition in the storage and wholesale supply of gasoline and other petroleum products in the Ottawa region.

The draft consent order provided for a number of measures, including continued access by independent marketers to a competitive source of supply for

seven years, and the refurbishment and reactivation of Ultramar's Ottawa terminal. Ultramar would also have been required to offer the Coastal petroleum terminal for sale at fair market value if it failed to abide by the terms of the consent order.

The application was heard by the Competition Tribunal after March 31, 2000.

Lafarge Corporation and Holnam Inc. (certain assets)

In February 1998, Lafarge Canada Inc. notified the Competition Bureau that it was planning to acquire a cement distribution terminal in New Westminster, British Columbia, and a limestone quarry on Texada Island, British Columbia, from Holnam Materials West Ltd. At the same time, Lafarge Corporation in the United States planned to acquire a cement plant in Seattle, Washington, and related distribution and quarry assets also in Washington from Holnam Inc. The Bureau and the U.S. Federal Trade Commission reviewed these transactions concurrently.

The Bureau's competition concerns were resolved as follows:

- Lafarge undertook to divest the former Holnam cement distribution terminal in New Westminster to an unrelated party who would maintain it as a competing cement supplier in B.C. Terminal operations were held separate and apart from Lafarge, pending completion of the divestiture.

- Lafarge also undertook to allow Holnam to sell cement in the B.C. interior, a region historically supplied by a Holnam plant in Montana or by its distribution terminal in Washington. This undertaking resolved concerns about the excessively restrictive terms of the non-compete provision included in the original asset purchase agreement.

In March 1999, Lafarge completed the divestiture of the New Westminster terminal to a subsidiary of Lone Star Northwest Inc. of Seattle, a cement importer and distributor. Acquisition of the terminal marked this company's first significant entry into the cement industry in Canada.

The inquiry was discontinued in April 1999.

Loblaw-Provigo, Loblaw-Oshawa, Sobeys-Oshawa and Métro-Richelieu-Loeb

The Competition Bureau's review of four transactions between November 1998 and December 1999 led to significant divestitures of assets in relation to grocery industry mergers in Canada. The transactions were as follows:

- the acquisition by Loblaw Companies Inc. of Provigo Inc.
- the acquisition by Métro-Richelieu from Loblaw of certain Provigo assets in Ontario
- the acquisition by Loblaw of the retail and wholesale grocery business of the Oshawa Group Ltd. in Atlantic Canada
- the acquisition by Sobeys Inc. of the Oshawa Group's retail and wholesale operations across the country, with the exception of Atlantic Canada, and of a coast-to-coast food service distribution business, operating as SERCA Foodservice Inc.

In the first instance, the Bureau concluded that by acquiring Provigo, Loblaw became a major grocery retailer in Quebec where previously it had very little market presence. At the same time, the Bureau identified significant competitive concerns in Ontario resulting from the acquisition. Consequently, Loblaw divested Provigo assets to Métro-Richelieu in 24 retail markets in eastern and northern Ontario, as well as two warehouses and the Loeb trademark. It also agreed to divest its interest in an additional eight markets by December 31, 2000.

With regard to the third transaction, the Bureau identified anti-competitive effects in four markets: Dartmouth, Halifax and New Minas, Nova Scotia, and St. John's, Newfoundland. Consequently, Loblaw agreed to divest its interests in a store in each market. The Bureau plans to monitor the impact of the transaction in several other markets.

Finally, the acquisitions by Sobeys resulted in competition concerns in six retail grocery markets, four in Quebec and two in Ontario. Sobeys undertook to divest its interests in a store in each of these markets by December 31, 2000. In addition, the Bureau concluded that the transaction would have serious anti-competitive effects on food service distribution in the Maritimes. As a result, Sobeys divested the SERCA distribution operations in Moncton, New Brunswick, to MFS Foodservices Inc.

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

In a worldwide transaction initially valued at US$1.85 billion, Coca-Cola announced in December 1998 that it intended to acquire the carbonated soft drink business of Cadbury Schweppes in all markets except the U.S. and France. In Canada, Cadbury owns a number of non-cola-based carbonated soft drink products, including Canada Dry, Dr. Pepper, Pure Spring, Crush and C-Plus. Cadbury does not own bottling operations in Canada but, instead, has licensed the use of its trademark brands to Coke or Pepsi.

At the end of 1999–2000, the Bureau was continuing its examination of this proposed transaction.

Canadian Waste Services and Browning-Ferris Industries Ltd.

In May 1999, Canadian Waste Services, the largest waste management company in Canada, announced its intention to merge with Canada's second largest waste management company, Browning-Ferris Industries Ltd. These companies were the primary providers of solid non-hazardous waste collection and disposal services for commercial, industrial, institutional and residential customers in many local markets across the country.

After a thorough investigation, the Bureau concluded that the proposed merger would substantially lessen or prevent competition in the provision of commercial collection services in 17 local markets in which the parties had overlapping operations, as well as in the provision of disposal services for waste generated in Montréal, the Greater Toronto Area and Chatham-Kent in Ontario. In response to competition concerns raised by the Bureau, and after several months of negotiation, the parties restructured the proposed merger by significantly reducing the businesses to be acquired.

At the end of March 2000, the Bureau advised the parties that it would not challenge the acquisition by Canadian Waste of certain collection and disposal businesses of Browning-Ferris that did not raise competition issues. However, Canadian Waste's acquisition of Browning-Ferris' landfill in Southern Ontario continued to raise competition concerns. The Bureau consented to the acquisition of this landfill, subject to the operations of the landfill being held separate from Canadian Waste's operations pending the resolution of competition concerns through a contested proceeding before the Competition Tribunal.

Toronto-Dominion Bank and Canada Trust

In August 1999, Toronto-Dominion Bank announced its intention to merge with CT Financial Services Inc., the parent company of Canada Trust. After a thorough review, the Bureau concluded that the proposed merger would substantially lessen or prevent competition in the provision of branch banking services to individuals in three local markets: Kitchener, Port Hope and Brantford, Ontario, as well as in the credit card network market. Given that Canada Trust had one of the largest credit card portfolios within the MasterCard credit card network and that Toronto-Dominion Bank intended to convert Canada Trust's portfolio to Visa following the merger, the Bureau determined that the removal of Canada Trust from the MasterCard network would have seriously undermined the long-term viability of MasterCard in Canada.

Toronto-Dominion Bank and Canada Trust proposed to remedy the Bureau's competition concerns by agreeing to sell certain branches in the affected markets as well as either selling the Canada Trust MasterCard portfolio or converting TD's Visa portfolio to MasterCard.

The proposed merger also required the approval of the Minister of Finance. On the recommendation of the Commissioner of Competition, the merger between Toronto-Dominion and Canada Trust was ultimately approved by the Minister of Finance on January 31, 2000, provided that the merging parties committed to implementing the proposed remedies to address the competition concerns. These commitments consisted of written undertakings by the Toronto-Dominion Bank and Canada Trust to the Competition Bureau detailing the assets to be sold and the processes to be followed during the divestiture period. As of March 31, 2000, the divestitures had not been completed.

Pearson plc and Viacom International Inc.

On November 30, 1998, Pearson plc acquired the educational and reference publishing affiliates of Viacom International Inc. In Canada, this transaction added Viacom's Prentice Hall Canada to Pearson's existing publishing line-up of Copp Clark Limited, Addison-Wesley Longman and Les Editions du Renouveau Pédagogique. At the end of its review, the Bureau took the position that the transaction would likely substantially lessen competition for textbooks in French-as-a-second-language programs for elementary and high school grades and in mathematics programs for elementary grades. To address these concerns, Pearson plc agreed to divest titles in these two areas, thereby introducing new competitors into these important educational markets.

Merger Examinations*

	1995–1996	1996–1997	1997–1998	1998–1999	1999–2000
Examinations Commenced ◆ two or more days of review ◆ included notifiable transactions, advance ruling certificates and examinations commenced for other reasons ◆ some examinations commenced may arise from notifications and advance ruling certificate requests in relation to the same transaction	227	314	392	361	425
Notifiable Transactions	101	141	196	191	198
Advance Ruling Certificate Requests	147	224	285	226	273
*Examinations Concluded***					
Posing No Issue Under the Act	210	299	406	346	392
With Monitoring Only	1	1	2	0	0
With Pre-closing Restructuring	0	1	0	0	2
With Post-closing Restructuring and Undertakings	0	0	3	1	6
With Consent Orders	0	1	1	2	1
Through Contested Proceedings	0	0	0	2	0
Parties Abandoned Proposed Mergers in Whole or in Part as a Result of the Commissioner's Position	4	0	0	3	1
Total Examinations Concluded (includes advance ruling certificates and advisory opinions issued and matters that have been concluded or withdrawn before the Competition Tribunal)	**215**	**302**	**412**	**354**	**402**
Advance Ruling Certificates Issued (included in Total Examinations Concluded)	122	189	238	191	223
Advisory Opinions Issued (included in Total Examinations Concluded)	3	2	3	7	3
Examinations Ongoing at Year-end	48	60	40	47	70
Total Examinations During the Year	**263**	**362**	**452**	**401**	**472**
Applications and Notices of Application before the Tribunal					
Concluded or Withdrawn	1	1	2	4	1
Ongoing	2	2	2	1	2

* Numbers for previous fiscal years have been revised.

** Note: If a transaction has a notification as well as an advance ruling certificate request, it is only counted once.

Breakdown of Mergers by Year, 1995 to 2000

BUSINESS LINE	1995–1996	1996–1997	1997–1998	1998–1999	1999–2000
Pre-merger Notification Filing*	63	67	90	109	92
Advance Ruling Certificate Request	147	224	285	226	273
Other Examinations	17	23	17	26	60
Total Mergers	227	314	392	361	425
Asset Securitizations	36	52	72	52	64
Total Minus Securitizations	**191**	**262**	**320**	**309**	**361**

* Excludes notification when an advance ruling certificate was requested.

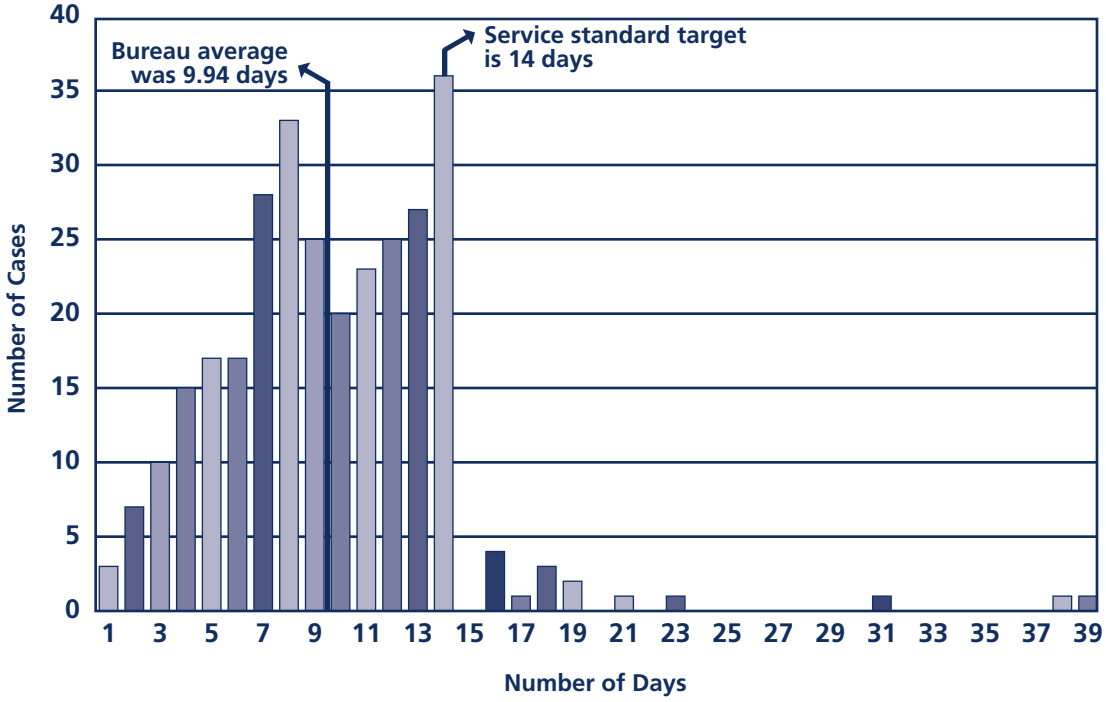
Note: Total Mergers is the total number of examinations commenced during the fiscal year.

Merger Review: Meeting Service Standards

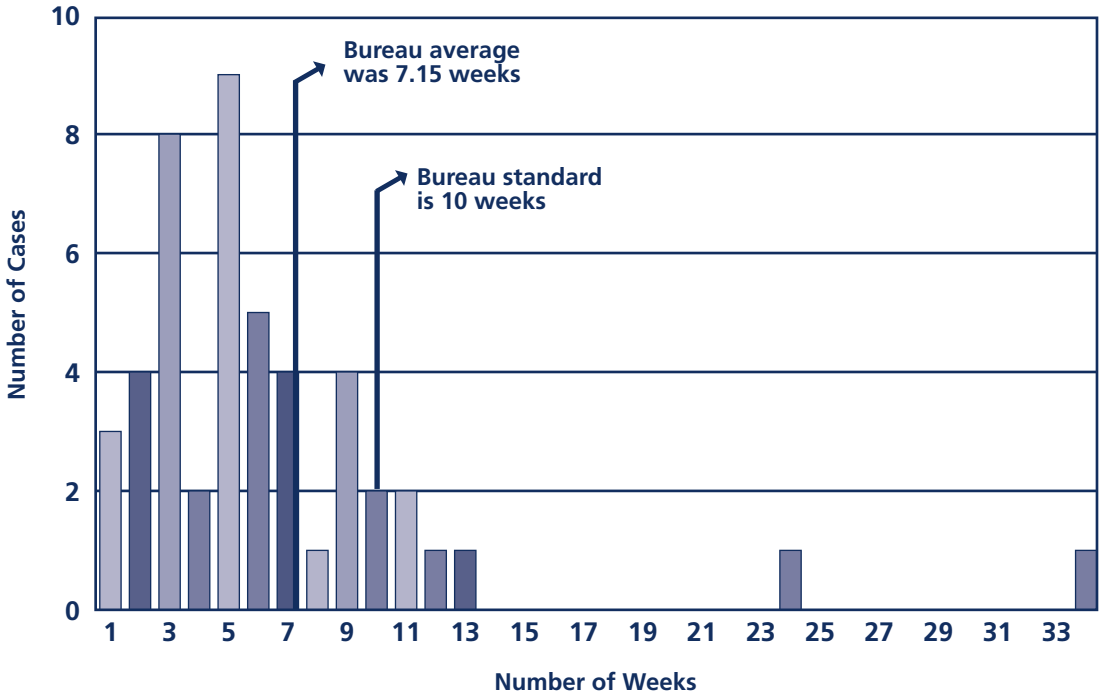
COMPLEXITY	NUMBER OF TRANSACTIONS			SERVICE STANDARD					
				TARGET	MET				
	Nov. 1997–Mar. 1998 N	Apr. 1998–Mar. 1999 N	Apr. 1999–Mar. 2000 N		Nov. 1997–Mar. 1998 N	(%)	Apr. 1998–Mar. 1999 N	(%)	Apr. 1999–Mar. 2000 N	(%)
Not Complex	95	263	303	14 days	86	(90.5)	236	(89.7)	287	(94.7)
Complex	4	56	48	10 weeks	4	(100)	52	(92.9)	42	(87.5)
Very Complex	—	5	7	5 months	—		5	(100)	6	(85.7)
Total	**99**	**324**	**358**		**90**	**(90.9)**	**293**	**(90.4)**	**335**	**(93.6)**

Note: The total number of transactions is based on the service standard predicted end date and not the date the transaction was received. Service standards have not been applied to transactions that are not subject to user fees, namely those not subject to pre-merger notification, and those for which an advance ruling certificate has not been requested.

Meeting Our Service Standard Target: Non-Complex Transactions, April 1, 1999 to March 31, 2000



Meeting Our Service Standard Target: Complex Transactions, April 1, 1999 to March 31, 2000



5 PREVENTING ANTI-COMPETITIVE ACTIVITY

The Competition Bureau has a range of interdependent instruments at its disposal to deal with anti-competitive activity. Whenever possible, it works with companies to eliminate anti-competitive behaviour and encourage compliance with the law. However, when there is evidence of serious violations of the criminal provisions of the *Competition Act*, the Bureau refers cases to the Attorney General of Canada with a recommendation for prosecution, which can result in heavy fines, prison terms or both for offenders. Over the past year, Bureau investigations have led to approximately $102.8 million in fines. In civil matters, when reasonable solutions cannot be worked out by consent orders or other means, the Bureau will apply to the Competition Tribunal.

The following are examples of the Bureau's work in responding to non-conformity, including cases that were resolved through alternative case resolution. Some cases were discontinued for various reasons (see Appendix I). For detailed information, including information notices, press releases and backgrounders, on these cases and others, please visit the Bureau's Web site (**http://competition.ic.gc.ca**).

Gasoline

Gasoline pricing continued to attract considerable attention this year and the Bureau devoted significant resources to handling related complaints. Experience suggests, however, that it is often necessary to explain that, except in the case of a national emergency, the federal government does not have the authority to directly regulate retail gasoline prices. While the provinces have this authority, most have chosen to rely on market forces as the best means to determine appropriate prices.

In general terms, investigations under the *Competition Act* are related to determining whether or not anti-competitive conduct has suppressed these market forces. When there is evidence of anti-competitive conduct concerning gasoline pricing, the Bureau has taken, and will continue to take, appropriate action. In September 1999, for example, charges were laid against a major gasoline supplier, Irving Oil, and two of its gasoline retailers under the price maintenance provision of the *Competition Act* for attempting to influence upwards the prices charged by competing retailers in the Sherbrooke, Quebec, area.

Other significant investigations included an examination of major price increases in many parts of the country during July 1999, allegations of predatory pricing and abuse of dominance in Chatham, Ontario, allegations of anti-competitive conduct in Saskatchewan, and allegations of predatory pricing and abuse of dominance in the Greater Vancouver area. The Bureau concluded that these regions exhibited competitive market forces at work in the retail gasoline sector. Additional information on these investigations, and other gasoline matters, can be found on the Competition Bureau's Web site.

International Cartels: Conspiracy

With globalization, international cartels that affect the Canadian economy have increasingly been the subject of enforcement activity. Canada and the United States have been among the leading countries to aggressively pursue these kinds of cases.

During the year, inquiries into international price-fixing and market allocation agreements resulted in the largest fines ever imposed under the *Competition Act*, as well as the largest criminal fine in Canadian legal history.

Fines related to international cartels totalled more than $100 million. One firm was fined $48 million for its role in an international conspiracy to fix prices and allocate market shares for nine vitamin products used in food, animal feed and pharmaceuticals. Other products involved in international cases successfully pursued during the year included citric acid (used extensively in the food and beverage industry as a flavour enhancer and preservative to prevent food spoilage), sorbates (a food preservative), choline chloride (a Vitamin B complex used in animal feed) and sodium gluconate (an industrial cleaner). Senior corporate executives have also been prosecuted in some of these cases.

Toronto Electrical Contractors: Bid Rigging

A series of prosecutions concerning bid rigging by electrical contractors and one general contractor in the Toronto area were concluded this year with a guilty plea by one firm in July 1999 and three others in March 2000.

The bid-rigging scheme permitted participating electrical contractors to determine among themselves who would be the successful bidder on numerous contracts for renovation of commercial office space between 1990 and 1993. In December 1997 and February 1998, five other electrical contractors were prosecuted by the Attorney General of Canada for bid-rigging offences arising from the same investigation. Total fines in the case were more than $3 million.

Universal Payphones: Misleading Representations

On September 15, 1999, the Bureau applied for its first ever interim civil order to prevent Universal Payphones Systems Inc. from continuing certain misleading marketing practices. Universal was engaged in the sale and promotion of a business opportunity to set up individual payphone businesses. Universal promoted its business through the use of national radio, television and print advertising. The Bureau was successful in its application for an interim order. The case is completed and a consent order was obtained under which the company is prohibited from carrying out any and all marketing activities regarding its payphone business for 10 years.

Cave Promotions Inc.: Misleading Advertising

The Bureau laid charges against Cave Promotions Inc. for a series of misleading advertising promotions it ran between April 1997 and September 1998. Cave Promotions Inc. ran a mail "scratch-and-win" promotion in which consumers were led to believe that they had won a significant prize and were directed to call a 1-900 number to claim this prize. Upon calling the number, many consumers found that they had not won a prize at all, or had won a much smaller prize than they had expected. Consumers who called the number were charged $20 or more, a portion of which went to Cave Promotions. A Quebec court imposed a fine of $75 000 along with a prohibition order forbidding the company to engage in similar conduct in the future.

Water Treatment Systems: Misleading Representations

Aztec Industries Inc., a distributor of water treatment systems in Western Canada, was charged on December 16, 1998, under the *Competition Act* for making representations to the public that failed to fully disclose, prior to the sale and supply of the products, the terms and conditions under which the product would be supplied and under which a refund would be provided. The company also failed to disclose the true amount of the refund and other costs associated with the sale and supply of the products. Further, the company made false and misleading representations concerning the price at which the products were ordinarily sold and the availability of special discounts. The company pleaded guilty, was fined $65 000 and became subject to a prohibition order.

Deceptive Telemarketing and Deceptive Mail

Following consumer complaints, the Bureau conducted a criminal investigation and laid charges against S.S. Viking Industries, S.C. Canadian Clearing Centre Inc., Exclusive Premium Distribution Centre and S.C. Corporation, and against their principal director, two managers and 11 individual telemarketers. In total, 85 criminal charges were laid in this case.

Deceptive Telemarketing

Following receipt of hundreds of complaints from consumers who bought products in order to participate in contests for non-existent prizes, the Bureau laid charges against 17 companies including American Family Publishers, Publishers Central and First Canadian Publishers, and 18 individuals. Record fines of $1 million and prison terms of two to six months were imposed.

Alternative Case Resolution

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

Engineer Consultants: Bid Rigging

The Bureau became aware of an agreement between consulting engineers to refuse to submit bids in response to a call for tenders for the construction of a building. It was alleged that the consulting engineers had agreed not to submit competitive bids and to force the organization responsible for the call for tenders to adopt a certain rate for their professional fees.

As part of the Bureau's examination, Bureau staff held compliance meetings with the parties involved. Bureau staff explained to the professionals their responsibilities under the *Competition Act*. The professionals subsequently agreed to comply with the Act and the situation was thus resolved.

Laser Hair Removal: Conspiracy

The Bureau examined an incident in which a competitor approached a laser hair removal company to set up an agreement to stop competing and raise prices. The Bureau contacted the competitor who was trying to eliminate competition and explained the consequences of the proposed action under the *Competition Act*. The potential agreement was never implemented and prices did not go up.

Travel Agents: Conspiracy

In response to decreases in commission fees from airlines, some travel agencies have introduced service fees. The Bureau was informed that 15 agencies in the same city had met to discuss their deteriorating financial situation. The participants were small business owners and many were not aware of the conspiracy provisions in the *Competition Act*.

Bureau staff contacted the owner of one of the travel agencies in attendance to ensure that the group was not meeting to set common service fees. The Bureau determined that there was no agreement reached on service fees. A letter to the agency emphasized that decisions on service fees must be made independently by each travel agent and the Bureau provided an information package to the agency.

Mycom: Exclusive Dealing and Abuse of Dominance

The inquiry into Mycom Canada Ltd. and a former employee for alleged violation of the *Competition Act* involved a request from the Bureau to the company to provide under oath a voluntary return of company records with respect to a civil inquiry under the exclusive dealing and abuse provisions. The Bureau viewed the response to be insufficient and misleading and consequently initiated an obstruction inquiry.

During the course of the inquiry, the company wrote a letter of apology to the Bureau and remedied the alleged non-compliance. It also agreed to cooperate with the Bureau in future inquiries. As well, it instituted a disciplinary policy for employees who fail to comply with the Act and has had them take a course on compliance with the Act. In addition, the Bureau's concerns regarding the original civil inquiry into exclusive dealing and abuse of dominant position were alleviated when the company altered its sales policy.

Agricultural Herbicide: Tied Selling, Exclusive Dealing and Abuse of Dominance

In October 1998, the Bureau initiated an inquiry under the civil tied-selling, exclusive-dealing and abuse-of-dominance provisions with respect to Monsanto's Roundup brand glyphosate herbicide and herbicide-tolerant seeds marketing program. Under this program, Monsanto tied the sale of the herbicide to the sale of the seed and entered into exclusive contracts with dealers and distributors requiring them to primarily sell Monsanto's herbicide.

In September 1999, Monsanto voluntarily indicated its intention to revise its marketing and distribution programs as a result of new marketing policies. Under Monsanto's new marketing program, there is no restriction on the ability of farmers to use any brand of glyphosate herbicide registered for use with Monsanto's herbicide-tolerant seed.

In addition, Monsanto's volume-based distributors and dealer discounts will increase the opportunity for competitive suppliers of glyphosate to gain access to channels of distribution serving the agricultural industry.

The Insurance Corporation of British Columbia (ICBC): Abuse of Dominance

ICBC is a provincial Crown corporation that provides mandatory basic automobile insurance to all residents of British Columbia and competes with other insurance companies to supply optional auto insurance products. The Bureau became concerned that a "most-favoured customer" clause in contracts between ICBC and certain auto body shops discouraged selective discounting by repair shops, thereby substantially lessening competition in markets for insured auto body repair services. In addition, the Bureau was concerned that by raising the costs of ICBC's rivals, the clause likely lessened competition in the optional auto insurance market in B.C.

Subsequently, ICBC agreed to withdraw the "most-favoured customer" clause from the agreement it has with auto body shops that participate in the Corporation's Alternative Transportation Program. Removing this clause resolved the Bureau's concerns.

Golf Accessories: Refusal to Supply

A retailer of golf accessories informed the Bureau that he was refused supplies because he was a discounter. Bureau staff examined the matter, contacted the supplier and explained the relevant provisions of the *Competition Act*. The supplier subsequently agreed to provide the product and supply to the retailer was restored.

Sporting Goods: Refusal to Supply

A retailer who was advertising and selling sporting goods over the Internet, alleged that he had been cut off because of his low-pricing policy. The Bureau examined the matter and discussed the issue with the supplier. Bureau staff reminded the supplier of his responsibilities under the *Competition Act* and the supplier then agreed to conform with the Act.

Automobile Manufacturer: Misleading Advertising

An automobile manufacturer advertised that a particular type and brand of vehicle had attained a five-star safety rating from the National Highway and Traffic Safety Administration in the United States. Investigation revealed that the five-star rating was not received until after the advertisements were published.

The company undertook to avoid repeating the statement, avoid using statements that may mislead the public or create a false or misleading general impression, avoid omitting relevant information that may materially mislead the public, publish four corrective notices in a national newspaper and in all major provincial newspapers, and inform company staff and its advertising agency of the contents of the undertaking.

Plumbing Products: Misleading Representation

A plumbing products supplier, when promoting the sale of its plumbing products to attendees at a Canadian seminar, said that in survey results the company's products had superior brand awareness compared to those of five competing companies. Investigation revealed that the survey results were not applicable to all plumbing product categories in Canada.

To satisfy the Commissioner's concerns, the company undertook to avoid repeating the representation, using any survey information or statistical results in future advertising without disclosing material criteria, and making any false or misleading representation in a material respect about the company's products.

The company also undertook to distribute a corrective letter to attendees of the seminar, distribute a revised survey chart to all seminar participants, inform company staff of the contents of the undertaking, and provide evidence of the company's compliance review of advertising to the Deputy Commissioner of Competition, Fair Business Practices Branch.

Air-cleaning Products: Misleading Representation

A supplier of air-cleaning products stated in pamphlets and technical documents various environmental and efficacy claims that were false and not based on adequate and proper tests.

The company undertook to avoid repeating the representations, avoid using environmental and efficacy claims that are not based on adequate and proper tests and that may mislead the public or create a false or misleading general impression, publish corrective notices in national newspapers, and inform company staff and its advertising agency of the contents of the undertaking and establish a formal company policy on executive review of advertisements.

Software: Misleading Representation

A software manufacturer stated that certain software allowed the easy exporting of financial and other relevant information into tax preparation software sold by other firms in Canada. Examination showed that this claim was not true for all existing tax preparation software sold in Canada.

The company undertook to modify its Canadian Internet site, which had contained this statement, apply stickers to existing products to correct the statement, and offer a full refund to any customers who raised concerns about the inability to export financial data from this product.

Towing Service: Misleading Advertising

A towing service stated in various telephone directory advertisements that service could be obtained at reduced prices and that more than a specified number of tow trucks were available to provide service. Investigation revealed that the low rates were subject to certain conditions and only applicable after initial use of the service and that, in several markets, there were fewer trucks than the ad stated available to provide service.

The company undertook to avoid repeating the statement, avoid using statements that may mislead the public or create a false or misleading general impression, and avoid omitting relevant information that may materially mislead the public.

6 MAINTAINING A MODERN APPROACH TO COMPETITION LAW

For consumers and businesses to receive the full benefit of effective competition law, it is important for the legislation and the Bureau's policies and enforcement guidelines to be reviewed on a regular basis to maintain their currency with developing jurisprudence and economic thought. A modern, up-to-date approach to the legislation also enhances Canada's ability to compete internationally.

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

Policy Initiative: Draft Immunity Information Bulletin

An important initiative in the Competition Bureau's commitment to keep current and evolve to better detect anti-competitive criminal conduct was the release of a new draft *Immunity Information Bulletin*. The new Bulletin refines the previous draft *Co-operating Parties Bulletin*, draws from recent experiences in investigations of cartel activity, and is consistent with similar policies followed by Canada's trading partners, such as the United States and the European Union.

The Bulletin explains the distinct roles of the Commissioner and the Attorney General and the conditions under which the Commissioner would consider recommending immunity to the Attorney General. The consultation process for providing comments on the draft Bulletin ended after March 31, 2000.

Consultation: Competition Policy and Intellectual Property Rights

Today's economy is based on knowledge and innovation and driven by rapid advancements in information and communications technologies. In this context, intellectual property and intellectual property rights are becoming increasingly important. To provide clarity on how the Bureau will deal with the interface between competition policy and intellectual property rights, the Bureau prepared draft Intellectual Property Enforcement Guidelines. The Guidelines were published for public comment on June 11, 1999 and will be finalized in the next fiscal year.

In the document, the Bureau outlines its guiding principles for dealing with issues involving intellectual property rights and competition law, and explains its analytical approach for determining whether conduct involving intellectual property is anti-competitive. In general, the Bureau takes enforcement action if the conduct involved is proscribed by the *Competition Act* and is something more than the mere exercise of the intellectual property owner's statutory or common-law intellectual property rights.

Bureau Staff: Bridging Program

The Bureau has a dedicated, professional and talented workforce. A vital component of this staff is the support personnel: administrative assistants and clerical workers. This year, the Bureau launched a bridging program to build on these strengths and equip these employees to consider new career opportunities as enforcement support officers. These new positions are designed to complement the work of the Bureau's competition law officers. The duties involve handling evidence, coordinating the administrative and operational

Photo: Eugene Besnuky

Here are some of the "new" and enthusiastic enforcement support officers.

side of team projects and handling routine complaints and inquiries.

Over the past year, 11 specially designed training modules were offered to 43 participants in the program. Towards the end of the year, a number of candidates were appointed to newly created positions.

Amendments to the *Competition Act*

On December 27, 1999, amendments to the notifiable transactions provisions of the *Competition Act* and related amendments to the Notifiable Transactions Regulations came into force. Under the new provisions:

- asset securitization transactions are exempt from the notifiable transactions provisions of the Act (section 15 of the Regulations)
- the information required for short- and long-form filings was moved from the Act to the Regulations and revised to be more relevant (sections 16 and 17 of the Regulations)
- the target of a hostile takeover bid is required to supply short- or long-form information following notification by the Commissioner (subsection 114(3) of the Act)
- the Commissioner, subsequent to denial of a request for an advance ruling certificate, is empowered to exempt parties from the obligation to notify and wait the prescribed period (paragraph 113(c) of the Act)
- waiting periods are 14 days after filing short-form information and 42 days after filing long-form information.

Private Members' Bills

Possible changes to the *Competition Act* continued to attract the attention of both the public and members of Parliament, and significant resources were spent during the past year dealing with Private Members' Bills. Below is a list of these Bills and a brief description of the proposed amendments.

Private Members' Bills, 1999–2000

BILL AND SUBJECT	SOME OF THE PROPOSED AMENDMENTS
Bill C-201 (formerly C-235): Vertically Integrated Suppliers	◆ Requiring vertically integrated suppliers to set retail prices at a level that would cover "marketing costs" and a "reasonable return." ◆ Adding a new civil provision for vertically integrated suppliers similar to paragraph 61(1)(a) of the current criminal provisions.
Bill C-229 (formerly C-409): Deceptive Contests Sent by Mail	◆ Prohibiting any person from posting a letter with a logo similar to a registered government logo. ◆ Prohibiting Canada Post from transmitting a letter, not in an envelope, that is an invitation to participate in a contest and contains a statement that "the delivery of a prize or other benefit to a participant in the contest, lottery or game is, or is represented to be, conditional on the prior payment of any amount by the participant."
Bill C-438 (replacing C-229): Deceptive Contests Sent by Mail	◆ Prohibiting any person from delivering printed material conveying the general impression that the recipient has won a prize or advantage, when the distribution of such prize or advantage, or any request for information regarding the recipient, is conditional on the prior payment of a sum of money or specific telephone charges.
Bill C-458: Deceptive Contests Sent by Mail	◆ Prohibiting any person from distributing printed material that contains a contest, lottery or game of chance whose contents convey the general impression that the recipient has won a prize or advantage, and the distribution of such prize or advantage, or any request for information regarding the recipient, is conditional on the prior payment of a sum of money or specific telephone charges.

Private Members' Bills, 1999–2000 *(continued)*

BILL AND SUBJECT	SOME OF THE PROPOSED AMENDMENTS
	◆ Requiring that a committee of the House of Commons, of the Senate or of both Houses of Parliament, on the expiration of five years after the coming into force of this Act, conduct a comprehensive review of the provisions and operation of this Act.
Bill C-402 (formerly C-472): Abuse of Dominant Position	◆ Adding to the current list of examples of anti-competitive conduct in section 78 of the abuse-of-dominant position provisions: (j) requiring a supplier to pay a fee to a retailer as a condition for selling a product, if the fee is unrelated to, or in excess of, the actual costs incurred by the retailer with respect to the product, for the purpose of impeding or preventing a supplier's entry into or expansion in a market; (k) squeezing, by a vertically integrated retailer, of the margin available to an unintegrated person competing with the retailer, for the purpose of impeding or preventing the person's entry into, or expansion in a market; and (l) unilaterally withholding amounts owing to a supplier for some purported reason without the prior agreement of the supplier, for the purpose of disciplining the supplier.
Bill C-349: Vertically Integrated Gasoline Suppliers	◆ Prohibiting vertically integrated gasoline suppliers from operating in the retail market. A vertically integrated gasoline supplier is defined as a corporation that supplies gasoline at retail and: (a) whose retail sales of gasoline represent more than five percent in value of the total of all retail sales of gasoline, (i) in Canada, or (ii) in a province; and (b) who manufactures, or is affiliated with one or more corporations that manufacture more than 20 percent of the gasoline the supplier sells at retail.
Bill C-276: Negative Option Marketing	◆ Prohibiting a bank to which the *Bank Act* applies, a broadcasting undertaking within the meaning of the *Broadcasting Act*, and a Canadian carrier within the meaning of the *Telecommunications Act*, from charging for the provision or sale of a new service unless: (a) the enterprise gives to the client at least once a month for three consecutive months a notice, by any means of communications, including electronic or digital means of communications, containing: (i) a description of the new service, (ii) the date the new service is to begin, (iii) the cost of the new service calculated monthly and annually, (iv) a statement that the new service is not mandatory, (v) a statement that the client may obtain the new service by responding to the enterprise by the means described in the notice, which may be any means of communications, including electronic or digital means of communication, and (vi) any other matter that may be prescribed; and (b) the enterprise has received by any means of communications including electronic or digital means of communication, the express consent of the client for the purchase or reception of the new service by the client.

Private Members' Bills, 1999–2000 *(continued)*

BILL AND SUBJECT	SOME OF THE PROPOSED AMENDMENTS
Bill C-340: Bank Mergers	◆ Amending the merger approval process under the *Bank Act* allowing the Minister of Finance to approve a merger provided: (d) the Minister is advised, in writing, by the Superintendent of Financial Institutions, whether or not the Superintendent has (i) taken control of any applicant or of the assets of any applicant under subsection 648(1), or (ii) taken control of any applicant or the assets of any applicant under subsection 510(1) of the *Trust and Loan Companies Act*, as the case may be, that, in the opinion of the Superintendent, at least one of the applicants is not financially sound and the amalgamation would prevent the applicant from becoming insolvent; or (e) the Superintendent provides the Minister with a written statement informing the Minister that, in the opinion of the Superintendent, none of the applicants is about to become insolvent, the statement is tabled in the House of Commons by the Minister and the amalgamation is approved by a resolution of the House of Commons supported by a majority of the members of that House and a resolution of the Senate supported by a majority of the members of that House.

VanDuzer Report on Anti-competitive Pricing Practices and the *Competition Act*

Following the review of Bill C-235 (reintroduced as Bill C-201 in October 1999) by the House of Commons Standing Committee on Industry, Committee members voted on April 20, 1999 to "review the anti-competitive pricing practices within the *Competition Act* and any related enforcement guidelines and operations of the Competition Bureau."

In order to inform the debate and facilitate the work of the Committee, the Bureau commissioned Professor J. Anthony VanDuzer, Associate Professor, Common Law Section, University of Ottawa, and his colleague, Professor Gilles Paquet, to undertake a study that would assess the adequacy of the pricing provisions in the *Competition Act*, the appropriateness of the Bureau's interpretation and pricing enforcement guidelines, and the suitability of the Bureau's administrative practices, enforcement policy and case selection criteria.

On November 25, 1999, the Commissioner submitted the report to the Standing Committee on Industry. In summary, major findings or recommendations made by Professor VanDuzer included the following:

- The civil review process would be preferable to the current criminal process for all pricing provisions except horizontal price maintenance.
- Enforcement guidelines for predatory pricing and price discrimination should be revised and new guidelines prepared on how the abuse provisions apply to anti-competitive pricing practices, and on the relationship between the horizontal price maintenance and conspiracy provisions.
- The Bureau should develop more jurisprudence concerning predation cases.

In his testimony before the Committee, the Commissioner noted that the report provided a good survey of the pricing provisions of the *Competition Act* and laid out the complex issues involved in enforcing them. As recognized by Professor VanDuzer, for example, a fundamental difficulty in enforcing provisions related to predatory conduct lies in distinguishing between vigorous price competition and predatory pricing. The Commissioner also observed that the Bureau was in the process of reviewing its predatory pricing guidelines as well as developing new guidelines for the Act's abuse-of-dominant-position provisions. He indicated, however, that he was not in favour of shifting completely away from criminal law to deal with anti-competitive pricing practices for a number of reasons.

The complete report, along with the Commissioner's statement, is available on the Bureau's Web site (**http://competition.ic.gc.ca**). The Industry Committee hearings are ongoing.

APPENDIX I: DISCONTINUED CASES

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

Seal Meat Inquiry: Conspiracy, section 45

On May 20, 1998, the Bureau began a formal inquiry into the eastern Canadian processed seal meat industry, following a complaint from six Canadian residents who alleged that certain seal meat processors had entered into an agreement not to compete with each other on price, nor to contest existing markets.

Following a thorough investigation, the Bureau found no evidence to support these allegations. The inquiry was discontinued on May 26, 1999.

Commission Rates Paid to Travel Agents on International Flights: Conspiracy, section 45

On July 5, 1998, the Competition Bureau launched an investigation into allegations that Canadian scheduled air carriers conspired to fix commission rates paid to travel agents for international flights, following receipt of complaints from travel agents in late 1997.

At the conclusion of a thorough two-year investigation, the Bureau determined that commission rates on international flights did not result from any agreement among international airline companies, but rather from competitive market pressures in an evolving marketplace. Accordingly, it closed its investigation.

Nitrogen Fertilizer: Conspiracy, Predatory Pricing and Abuse of Dominant Position, sections 45, 50 and 79

In July 1998, the Competition Bureau initiated an inquiry into a market for nitrogen fertilizers, following a six-resident application from those engaged in the retailing, application and transportation of such fertilizers. The applicants complained that a manufacturer of fertilizers and its vertically integrated distributor were seeking to drive them out of business, by selling the product at unreasonably low retail prices and refusing to supply it to the applicants. After careful examination, the Bureau concluded that the distributor and manufacturer priced the fertilizer and set the terms and conditions of sale in response to market forces and that the distributer did not abuse its market power. Accordingly, the Bureau determined that there was insufficient evidence to support the allegations and closed the inquiry.

Clothing Products: Price Maintenance, section 61

In February 1999, the Competition Bureau began an inquiry into the retail clothing industry, following a complaint from a retailer that a Canadian supplier of an exclusive brand of jeans refused to supply him with these products because of his low prices, and also prevented him from obtaining them elsewhere. As part of its inquiry, the Bureau held a compliance meeting with the supplier, who subsequently provided written assurances that it would comply with the provisions of the Act in the future and would also consider resupplying the complainant. Consequently, the Bureau closed the inquiry.

Provincial Water and Sewer Pipe: Conspiracy, section 45

In February 1998, the Bureau initiated an inquiry into a provincial water and sewer pipe market, following a request from the U.S. government under Article V of the 1995 Canada–U.S. Competition Agreement. An American manufacturer of water and sewer pipe alleged that three Canadian manufacturers had pressured pipe distributors in the province in question to refuse to deal in pipe imported from the U.S.

The evidence the Bureau obtained during its investigation was insufficient to establish a violation of the *Competition Act*. Further, reports of the alleged anti-competitive conduct ceased with the launch of the Bureau's inquiry. Subsequently, the U.S. manufacturer was able to obtain significant business in the province and prices for the pipe in question fell more than 20 percent. In light of these facts, the Canadian manufacturers undertook to create or reinforce compliance programs to ensure that their companies complied with provisions of the Act in future.

Distribution of Video Cassette Products: Conspiracy, Price Discrimination, Promotional Advertising and Price Maintenance, sections 45, 50, 51 and 61

On November 24, 1998, the Competition Bureau initiated an inquiry into the distribution of video cassette products, following a six-resident application alleging that certain video cassette distribution policies in Canada contravened the *Competition Act*. The inquiry did not produce any evidence substantiating the allegations and, therefore, was discontinued on March 31, 2000.

Cemetery Monuments: Conspiracy, Price Discrimination and Abuse of Dominant Position, sections 45, 50 and 79

On July 14, 1998, the Competition Bureau began a formal inquiry into the sale and display of cemetery monuments, following a six-resident application. The complainants alleged that an agreement between a municipality and a monument firm resulted in an unfair advantage for the latter and a significant decrease in market share for local monument retailers, and contravened the *Competition Act*. However, after a thorough investigation, the Bureau determined that the agreement resulted from a public tendering process. Accordingly, the inquiry was discontinued.

Milk: Exclusive Dealing, section 77

On March 16, 1999, the Bureau initiated an inquiry following receipt of a six-resident application under section 9 of the *Competition Act*. The application alleged that a milk producer in Quebec was using exclusive contracts to require retail merchants to buy liquid milk products only from the producer in question.

Subsequent interviews with the complainants revealed that, despite their concerns, the producer had, in fact, never engaged in the use of exclusive contracts. Consequently, there were no grounds to continue the inquiry and it was discontinued on April 28, 1999.

Mobile Street Sweeper Brushes and Brooms and Grader Blades: Refusal to Deal, Abuse of Dominant Position

The inquiry was initiated on March 29, 1996 following the receipt of an application under the *Competition Act* by six Canadian residents. The application alleged that a distributor of mobile street sweeper brushes and brooms and grader blades had engaged in a number of anti-competitive practices in the Alberta market. The allegations included refusal to deal and abuse of dominant market position. Subsequently, the complainants also alleged criminal infractions of bid rigging and price maintenance.

The evidence obtained in this inquiry did not establish the complainants' allegations and a recent tender for these products showed that there was competition in the relevant market. The inquiry was discontinued.

Other Examinations

Auto Glass Industry

After an extensive examination of the Canadian auto glass industry, the Bureau concluded that there were no grounds to warrant an application to the Competition Tribunal for a remedial order. The complainants had alleged that directing practices by auto insurance companies and auto glass networks to preferred auto glass shops favoured auto glass chains and had anti-competitive effects against independent glass shops. It was also alleged that insurance companies, auto glass networks and auto glass chains conspired to reduce competition unduly in the auto glass market. In addition, complainants claimed that prices established by insurance companies, auto glass networks and auto glass chains were below costs and only for the purpose of forcing independent glass shops to exit the market.

The Bureau found that the market is competitive and the new methods introduced by the insurance industry have benefitted consumers because the prices of auto glass services have declined.

Auto Body Repair Industry

After an extensive examination of a major market in the auto body repair industry, the Bureau concluded that the practice of directing insured vehicle owners to preferred shops has not substantially lessened competition. Therefore, there were no grounds to warrant an application to the Competition Tribunal for a remedial order. The complainants claimed that the practice by auto insurance companies of directing insured vehicle owners to preferred auto body shops resulted in reduced business for non-preferred or independent auto body shops and lessened competition in auto body repair services. It was also claimed that insurance companies did the following:

- limited the number of preferred shops, which precluded qualified independent shops from becoming preferred shops
- required preferred shops to provide a discount on the hourly labour rate and on parts, and to cut costs by only using generic replacement parts
- paid independent shops for vehicle repair only at a predetermined labour rate set by the insurance company.

The Bureau recognized the potential for such business practices to be anti-competitive and raise an issue under the *Competition Act* if they led to a substantial lessening of competition. However, the Bureau concluded that the practices had not resulted in, nor were likely to result in, a substantial lessening of competition, and therefore closed the examination.

APPENDIX II: PUBLISHED ARTICLES, 1999–2000

1. Smith, Patricia M., "A Long and Winding Road: TRIPS and the Evolution of an International Competition Framework," *Journal of International Economic Law*, Vol. 2, No. 3, September 1999, pp. 435–440.

2. Monteiro, Joseph and Gerald Robertson, "Recent Trends in Regulatory Interventions (1991–1998)," *Competition Policy Record*, Vol. 19, No. 3, Winter 1998–1999, pp. 46–63.

3. Monteiro, Joseph and Gerald Robertson, "Shipping Conference Legislation in Canada, EEC, and the USA: Background, Emerging Developments, Trends and a Few Major Issues," *Transportation Law Journal*, Vol. 26, No. 2, Spring 1999, pp. 141–204.

4. Sen, Anindya, "Testing the Offset Hypothesis," *Canadian Transportation Research Forum Proceedings Annual Conference*, Montréal, Quebec, May 1999.

5. Monteiro, Joseph and Gerald Robertson, "Amendments to the U.S. *Shipping Act* 1984. How do these Reforms Compare to the Existing Provisions in the *Shipping Conferences Exemption Act*, 1987? Is There Need for Change?," *Competition Policy Record*, Vol. 19, No. 2, Summer/Autumn 1998, pp. 25–33.

6. Kleit, Andrew N. and H. Palsson, "Horizontal Concentration and Anticompetitive Behaviour in the Central Canadian Cement Industry: Testing Arbitrage Cost Hypothesis," *The International Journal of Industrial Organization*, Vol. 17, 1999, pp. 1189–1202.

7. Monteiro, Joseph and Gerald Robertson, "Canadian Transportation Research Forum Bibliography of Proceedings (1983–1999)," Canadian Transportation Research Forum, February 2000, pp. 1–184.

8. Monteiro, Joseph, "Statistics on Canadian Mergers Examined by the Competition Bureau (1986–1998)," *Competition Policy Record*, Vol. 19, No. 3, Winter 1998–1999, pp. 64–71.

9. Ladouceur, Nicole, "Calibrating the Electronic Scales: Tipping the Balance in Favour of a Vigorous and Competitive Marketplace," *Canada-U.S. Law Journal*, Vol. 25, 1999, pp. 295–321.

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