



ANNUAL REPORT OF THE COMMISSIONER OF COMPETITION

FOR THE YEAR ENDING MARCH 31, 2003

ON THE ENFORCEMENT AND ADMINISTRATION OF THE

COMPETITION ACT

CONSUMER PACKAGING AND LABELLING ACT

PRECIOUS METALS MARKING ACT

TEXTILE LABELLING ACT



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Gatineau, Quebec

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

Dear Sir,

I have the honour to submit, pursuant to section 127 of the
Competition Act, the following report of proceedings under the Act
for the fiscal year ended March 31, 2003.

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

Konrad von Finckenstein, QC
Commissioner of Competition

Message from the Commissioner



The past year was one of surprises for the Bureau, both pleasant and unpleasant.

On the positive side, the Bureau was extremely pleased with the speedy passage of Bill C-23, which brought in changes to the *Competition Act* and the *Competition Tribunal Act*. This vital economic legislation, which came into force on June 21, 2002, strengthens Canada's competition law and gives the Bureau better tools to ensure individuals and organizations comply with the Act, to the benefit of both consumers and businesses.

Another plus was the immediate success of the International Competition Network (ICN), a network of private and public sector competition practitioners from around the world. The Bureau played a leading role in getting the ICN off the ground. The ICN held its first annual conference in Naples, Italy, in September 2002. More than 200 anti-trust experts from 59 jurisdictions agreed to work to reduce the differences in how countries review mergers and to share best practices for advocating the benefits of competition.

A disappointment for the Bureau came on January 31, 2003, when the Federal Court of Appeal dismissed the Bureau's challenge of the acquisition of ICG Propane Inc. by Superior Propane Inc. The Bureau had challenged this merger on a number of grounds, including that the efficiencies it generated did not justify creating a monopoly. The Bureau has decided not to appeal the Court's decision but will support a

legislative change to ensure that the Competition Tribunal only considers efficiencies created in an anti-competitive merger when they are of benefit to consumers.

Another key Bureau activity in 2002–2003 was its ongoing work to clarify the rules under which a dominant airline must operate. The Bureau is currently awaiting a decision from the Competition Tribunal on this issue.

As I look to the year ahead, I see several challenges. For one, the Bureau will support the Government's consultations on amending the *Competition Act*, particularly key civil sections. This will involve public discussion and roundtables with key stakeholders. As well, the Bureau will continue its fight against hard-core consumer fraud and deception, to ensure that Canada does not become a haven for scam artists and their fraudulent claims. In both these cases, however, the Bureau will only be effective with a stable, adequate and permanent resource base.

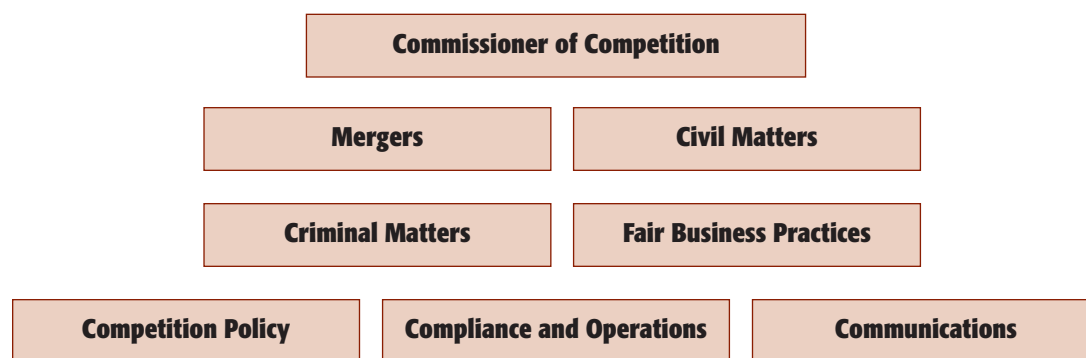
Finally, I would like to pay tribute to the Competition Bureau's staff. Once again their efforts and commitment have made our achievements possible.

A handwritten signature in black ink, reading "Konrad von Finckenstein". The signature is written in a cursive, flowing style.

Konrad von Finckenstein, QC

Organizational Structure of the Competition Bureau

The Bureau employs 298 people in the National Capital Region and 85 in seven field offices. The field offices are located in the Atlantic Region, Quebec Region, Ontario Region, Prairies and Northern Region, and Pacific Region. As the organizational chart below shows, the Bureau comprises seven branches.



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

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

Civil Matters Branch reviews anti-competitive behaviour, such as abuse of dominant position, and restraints imposed by suppliers on customers, such as refusal to supply, exclusive dealing and tied selling. The Branch is also responsible for the Bureau's interventions before federal and provincial regulatory boards and tribunals.

Criminal Matters Branch reviews criminal offences relating to anti-competitive behaviour. These include conspiracies that have an undue impact on competition, bid rigging, price discrimination, predatory pricing and price maintenance. The Branch carries out its investigations through its National Capital Region office and field offices.

Fair Business Practices Branch administers and enforces the provisions of the *Competition Act* that cover misleading representations and deceptive marketing practices. Among these are provisions that deal with deceptive telemarketing, multilevel marketing and pyramid selling, as well as misrepresentations, such as general misleading statements, misleading ordinary price claims and promotional contests in which organizers inadequately disclose contest rules. The Branch also administers and enforces the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*,

collectively known as the standards-based statutes. The Branch carries out its investigations through its National Capital Region office and field offices.

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

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

Communications Branch ensures that Canadian consumers, businesses, other government agencies and the international community appreciate the Bureau's crucial contribution to competition in the marketplace and the growth of the Canadian economy. The Branch manages the Bureau's Web site, stakeholder and media relations, and internal communications.

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Chapter 1

Introduction

This report summarizes the work of the Competition Bureau for the fiscal year that ended on March 31, 2003, under the four Acts the Bureau administers:

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

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

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

The report groups the Bureau's activities as follows:

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

Chapter 2

Interacting With Canadians

The Competition Bureau believes in effective communications, which are essential to its work. Consumers need information if they are to understand the workings of the marketplace and the Bureau's role in monitoring and reporting on it. Similarly, businesses benefit from receiving from the Bureau the information they need to comply with the law.

The Bureau communicates with Canadians in a variety of ways, including publications such as information bulletins, guidelines and warnings to consumers, its Web site and Information Centre, stakeholder consultations and speeches, all of which are described below, and conferences and seminars, which are discussed in chapter 3.

Information Bulletins and Guidelines

The Bureau uses its publications to inform Canadians about its competition activities. Information bulletins and guidelines clarify the Bureau's position on issues that the public and businesses often ask questions about, and on areas in which the interpretation of the *Competition Act* is not easily understood.

Bulletin on Abuse in the Canadian Grocery Sector

On December 2, 2002, the Bureau published its bulletin, *The Abuse of Dominance Provisions (Sections 78 and 79 of the Competition Act) as Applied to the Canadian Grocery Sector*,

to give the grocery industry a better understanding of how the Bureau applies the abuse of dominance provisions, and to help deter anti-competitive conduct in the grocery sector by encouraging compliance with the law. In addition, the Bureau commissioned three background economic papers on the subject, which are available on the Bureau's Web site (<http://strategis.ic.gc.ca/SSG/ct02318e.html#ii>).

The Bureau's work to clarify its approach to enforcing the abuse of dominance provisions in the Canadian grocery industry became necessary because of significant consolidation in the distribution segment of the sector, and because of ongoing complaints about alleged anti-competitive activities in the sector.

Following the publication of the bulletin, the Canadian Council of Grocery Distributors commented in the February 2003 issue of *Canadian Grocer* that "the document that was released by the Bureau, in our opinion, demonstrated that the Bureau has the regulatory tools to deal with any issues that may or may not come up within the industry so there is no need for special provisions related to the grocery industry within the *Competition Act*." The publication of the bulletin also received positive comments from the Canadian Federation of Independent Grocers, which commented in the same issue of *Canadian Grocer* that "the bulletin removed the ambiguities and the case studies are very helpful. . . . The bulletin . . . clearly states what will trigger abuse investigations under the Act."

Bulletin on the Regulated Conduct Defence

On December 17, 2002, the Bureau published an information bulletin on the regulated conduct defence to foster compliance and ensure greater fairness, predictability and transparency.

Broadly speaking, the regulated conduct defence is an interpretive tool the courts developed to resolve apparent conflicts between two laws. The defence is of particular relevance to the Bureau's enforcement of the *Competition Act* because it protects conduct that would otherwise be subject to the Act when that conduct is allowed under other provincial or federal legislation.

The bulletin outlines and clarifies the Bureau's position on the defence, which is that it should only apply in limited circumstances.

Representations on the Internet

On February 18, 2003, the Competition Bureau issued an information bulletin on applying the *Competition Act* to representations on the Internet.

The bulletin outlines and clarifies the Bureau's position in this area to ensure that people making online representations understand their responsibilities under the misleading representations and deceptive marketing provisions of the Act.

Illegal Trade Practices Guidelines

On March 8, 2002, the Bureau released a draft version of *Enforcement Guidelines for Illegal Trade Practices: Unreasonably Low Pricing Policies* for public comment. These draft guidelines, which are intended to promote the transparency of paragraphs 50(1)(b) and 50(1)(c) of the *Competition Act*, update the 1992 *Predatory Pricing Enforcement Guidelines* to reflect changes in economic thinking about low-pricing behaviour.

The draft guidelines propose two key changes to how the Bureau enforces these parts of the Act.

- ▶ Recoupment of losses. The Bureau will continue to include recoupment of losses as a factor in its considerations, but it will no longer use it as the sole screening criterion to determine whether an unreasonably low-pricing policy exists.
- ▶ Avoidable cost. When doing a cost-revenue analysis to determine below-cost selling, the Bureau will now apply the concept of "avoidable cost" rather than "average variable cost," as it had done previously.

The draft guidelines received a mixed response from the public. The Bureau will decide whether to issue revised draft guidelines for further consultation after the Competition Tribunal issues its decision on *Commissioner of Competition v. Air Canada*, and the launch of the consultations on amendments to the *Competition Act* in June 2003.



Warnings to Consumers

“Get Rich” Chain Letter

On April 8, 2002, the Bureau warned 450 Canadians that an international chain letter in which they were participating appeared to contravene the *Competition Act* by making false or misleading representations. The letter attracted the attention of law enforcement officials because it said that the U.S. Federal Trade Commission had endorsed the money-making plan set out in the letter, which was not true.

The Bureau’s warning about the letter was coordinated with Northwest Netforce, an international initiative targeting deceptive spam (unsolicited e-mail) and Internet fraud. Partners in Netforce include the U.S. Federal Trade Commission and law enforcement agencies in a number of U.S. states and Canadian provinces.

Hang Up on Fraud Campaign

On September 3, 2002, the Bureau participated in Hang Up on Fraud, a consumer awareness campaign in Winnipeg to educate consumers about criminal telemarketing activities. Throughout the day, 80 volunteers called Manitoba residents with consumer protection messages, including tips on how to handle a telemarketing call.

The Bureau participated in this campaign with a number of partners, including the RCMP, PhoneBusters, the Manitoba government and the Winnipeg Police Service.

Bait-and-Switch Advertising

On October 18, 2002, the Bureau warned consumers about “bait-and-switch” advertising. This scam involves attracting consumers to a store by advertising a bargain-priced product that turns out to be sold out or not available. A salesperson then “switches” consumers to a higher priced item or induces them to make other purchases.

The Bureau warned that this anti-competitive activity could contravene the *Competition Act*, and asked consumers or competitors who noticed it to report it to the Bureau.

Deceptive Telemarketing of Office Supplies

On November 18, 2002, the Bureau warned businesses and non-profit organizations across Canada and the United States to be careful about giving information to telemarketers about their office equipment or the individuals responsible for purchasing office supplies. The Bureau receives hundreds of complaints about the deceptive telemarketing of office supplies, including toner products, supplies for credit card machines and business directories. The Bureau pointed out that some telemarketers make false or misleading statements about their product and about previous orders to make sales. As well, they fail to disclose pertinent information, such as the price of the product and the terms and conditions of delivery.

Prepaid Long-distance Phone Cards

On November 21, 2002, in the light of the numerous reports it received, the Bureau warned consumers to take precautions

when buying prepaid long-distance phone cards, to avoid such problems as hidden fees and higher per minute rates and fewer minutes provided than advertised.

The Bureau warned consumers that they should ensure all significant information is clearly disclosed before they buy a card. Consumers should also look out for calling time restrictions, an expiry date on the card, minimum charges, connection, service and maintenance fees, and additional charges for calling overseas to a cellular phone.

Renewal of Memberships

On February 19, 2003, the Bureau warned professionals and businesses to be wary of mailings that appear to be from well-known associations requesting payment for membership. These mailings arrive in the form of bills or invoices and use names similar to those of existing associations in which the recipients may be members. Examples of the false names include the Veterinary Association of Canada, Dental Association of Canada, Pharmacists Association of Canada and Convenience Store Association of Canada. The Bureau cautioned businesses and consumers to check carefully before paying any invoice.



The Web Site

The Competition Bureau Web site continues to be a valuable source of information. The site features an automatic e-mail distribution list that allows users to indicate whether they would

like to receive Bureau updates. So far, almost 2000 people have subscribed to this service.

Information notices, news releases, speeches, warnings, a calendar of events and the most recent versions of all publications are available on the site. Consumers and business also have access to electronic commerce applications through the site.

Over the past year, the site changed in several ways. The home page was redesigned to highlight top stories and give users easy access to the latest news and events. The popular Request for Public Comments section was centralized on one page to make it easy to access information about all open and closed consultations. A new section, Documents Endorsed by the Bureau, was added under Publications to highlight industry codes and initiatives the Bureau supports.

The Bureau also conducted an online poll to find out about users' experience browsing the site. The responses received from the poll, as well as from personal interviews with key stakeholders, are being used to redesign the site. The redesign will make the site more user friendly and ensure it meets the needs of Canadians.



The Information Centre

The Information Centre is the primary gateway into the Bureau for Canadian and international consumers, businesses and agencies. Nine employees at headquarters dealt with 55 462 complaints and information requests in 2002–2003, an increase of 10 percent from the previous year. The

information captured and contained in the Bureau's database provides valuable information that the Bureau uses to target education and enforcement activities.

The Centre provides service through a toll-free line available from 7:30 a.m. to 8 p.m. (EST), by e-mail and an electronic complaint form on the Web site, by facsimile and by mail. The Bureau shares relevant information with other enforcement agencies, such as the U.S. Federal Trade Commission and PhoneBusters. With the explosive growth of electronic commerce and the Bureau's increased accessibility and profile through Government On-Line and media coverage, the Centre has seen a more than twofold increase in contacts via the Internet since 2000–2001.

Claims about health-related products, phoney invoices and deceptive mail (lotteries and contests) generated the most contacts in 2002–2003.



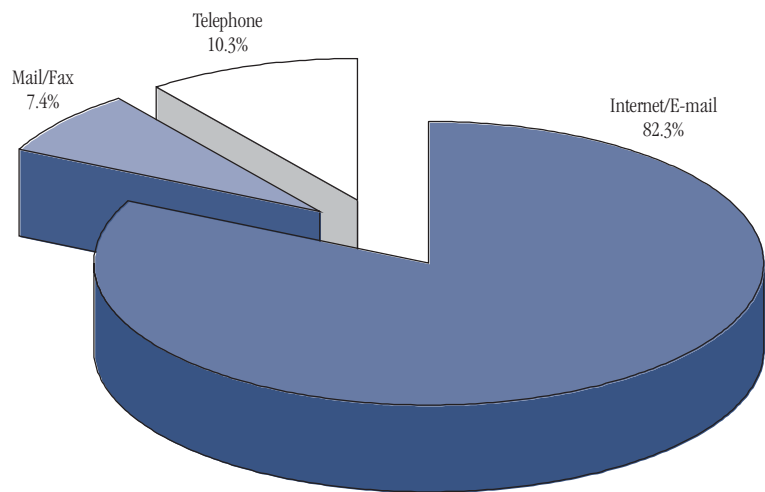
Consultations

Between July and December 2002, the Bureau held consultations with key stakeholders to solicit input about the appropriate fees and thresholds for merger notification, the appropriate fees for written opinions and advance ruling certificates, and its fee and service standards policy and handbook. The Bureau also sought public comments on its Internet guidelines and bulletin on strategic alliances in 2002–2003.

Information Requests and Complaints

Fiscal Year 2002–2003

Total: 55 462



Merger Notification Thresholds

Under the *Competition Act*, acquisitions of assets, acquisitions of voting shares, and combinations must be reported when the total value of the assets, or the acquired party's gross revenues from sales, exceeds a certain threshold. The size-of-transaction threshold for merger notification was raised from \$35 million to \$50 million on April 1, 2003.

The change resulted from recommendations by the House of Commons Standing Committee on Industry in June 2000 and April 2002. The increase reduces the burden for parties involved in smaller transactions, while allowing the Bureau to better focus its resources on mergers that are more likely to raise competition concerns.

Fees for Written Opinions

The enactment of section 124.1 of the Act was delayed until April 1, 2003. This section enables the Commissioner to provide legally binding written opinions. Further information on this issue can be found in Chapter 6.

Fee and Service Standards

The Bureau received many comments during its consultations about its fee and service standards policy and handbook. The resulting changes will enable the Bureau to continue to provide client service in a predictable, timely and transparent manner. On April 1, 2003, the fee for merger notifications and advance ruling certificates was raised from \$25 000 to \$50 000 to cover the increasing costs of merger review.

Guidelines on Internet Representations

A public consultation was held in 2001 to help prepare draft guidelines for online Internet representations. A revised document, based on responses received from the initial consultation as well as from legal and technical advisors, was circulated to the stakeholders in the fall of 2002 for additional feedback and input. The final guidelines were approved by Bureau management in January 2003 and publicly released in February 2003.

Strategic Alliances Bulletin

On September 4, 2002, in response to concerns that the criminal conspiracy provisions of the *Competition Act* may be discouraging potentially beneficial strategic alliances, the Competition Bureau invited suggestions and comments on how the current bulletin on strategic alliances (<http://strategis.ic.gc.ca/SSG/ct02425e.html>) could be clarified. Submissions can be found at <http://strategis.ic.gc.ca/SSG/ct02508e.html>.



Speeches

During 2002–2003, the Commissioner of Competition and Bureau staff delivered speeches on a wide range of topics related to the Bureau's mandate, including legislative changes, advocacy, enforcement issues such as abuse of dominance and mergers, competition policy and developments on the international scene. A list of speeches for 2002–2003 can be found in Appendix II, and copies are available on the Bureau's Web site at <http://strategis.ic.gc.ca/SSG/ct01266e.html>.

Chapter 3

Promoting Competition

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

- ▶ making regulatory interventions;
- ▶ contributing to departmental and interdepartmental policy making;
- ▶ providing comments to policy advisory bodies;
- ▶ giving speeches and holding seminars;
- ▶ conducting research and issuing publications; and
- ▶ participating in international organizations, such as the Organisation for Economic Co-operation and Development and various trade bodies.



Interventions

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

Interventions on the deregulation of certain industries serve a dual purpose. First, they sustain and promote a competitive environment. Second, they ensure that when regulation is required it takes the form that least distorts competition and efficiency in the affected markets.

In 2002–2003, the Bureau made a number of interventions on issues ranging from rail, bus and marine transportation to telecommunications and broadcasting. The following pages summarize these interventions as well as their outcomes and potential benefits for Canadians.

Competition Bureau Interventions, 2002-2003

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<i>Transportation: Rail, Bus and Water</i>		
Submission to the Canadian Transportation Agency	<p>In April 2002, the Competition Bureau sent a letter of intervention to the Canadian Transportation Agency saying the following:</p> <ul style="list-style-type: none"> ▶ that it supported in principle the application of Ferroequus Railway Company Limited for running rights over specified lines of the Canadian National Railway Company (CN) between Camrose, Alberta, and Prince Rupert, British Columbia; ▶ that captive shippers are major exporters of Canadian products and face strong international competition in their markets, so cost-effective transportation systems would be required to maintain current markets and expand into new ones; and ▶ that granting running rights would also be consistent with the recent recommendations of the <i>Canada Transportation Act</i> Review Panel. 	<p>The proposal by Ferroequus could have led to a viable alternative to CN, lower rates for transportation of grain to the Port of Prince Rupert, and more competitive CN rail rates than currently exist.</p> <p>On September 10, 2002, the Canadian Transportation Agency denied Ferroequus' application because there is "no convincing evidence" that there is any public need to improve existing railway rates or services by granting running rights.</p> <p>On October 8, 2002, Ferroequus filed a motion of appeal in the Federal Court, claiming that the ruling was incorrect and misrepresented the section of the <i>Canada Transportation Act</i> on running rights.</p>
Submission to the Senate Standing Committee on Transport and Communications	<p>On May 7, 2002, three members of the Competition Bureau appeared before the Committee and made a submission on the intercity busing industry, as follows:</p> <ul style="list-style-type: none"> ▶ The submission reviewed the Bureau's long-standing interest in and position on intercity busing. ▶ It indicated that the industry had not prospered under regulation, that the regulatory diversity among provinces had increased the administrative burden on all carriers, leading to excess capacity and higher costs, and that the rationale for regulation (i.e. natural monopoly) did not exist. ▶ It recommended that the Committee deregulate extraprovincial and international bus services (i.e. scheduled and charter passenger and express parcel service) by reintroducing amendments proposed in Bill C-77 related to economic deregulation. 	<p>Deregulation could lead to numerous benefits: lower fares, increased service choice and perhaps a reversal or slowing of the decline in demand for scheduled services as a result of increased competition.</p> <p>The Committee released its report in December 2002. It recommended that the economic regulations for extraprovincial bus transportation be amended to require, at most, a reverse-onus test for entry into service, and that after five years a formal review be conducted to determine whether further deregulation might be appropriate. In addition, the Committee recommended that the federal government re-evaluate the need for consensus among all the provinces and players before initiating action on intercity bus policy.</p> <p>The matter has been referred back to the Minister of Transport for further action.</p>

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<i>Transportation: Rail, Bus and Water</i>		
Submission to the Canada Marine Act Review Panel	<p>In November 2002, the Competition Bureau made a submission to the <i>Canada Marine Act</i> Review Panel addressing three areas.</p> <p>1. Canada Port Authorities (CPAs)</p> <p>The Bureau indicated that the existing not-for-profit and governance structure does not benefit the competitive position of Canadian ports compared to U.S. ports, since it does not encourage investment or offer CPAs the freedom to minimize costs. Therefore, the Bureau recommended the following:</p> <ul style="list-style-type: none"> ▶ adopting a for-profit objective for CPAs; ▶ selecting directors for CPA boards either competitively or according to the interests they represent; ▶ removing regulatory constraints that reduce the freedom of CPAs to engage in non-port activities, restrict CPAs' ability to borrow money and prevent CPAs from merging (subject to the merger provisions of the <i>Competition Act</i>); ▶ limiting the Crown's financial liability to current levels; ▶ considering privatizing CPAs in the medium term to maximize profits; ▶ restraining the competitive advantages of CPA subsidiaries when competing for CPA business; and ▶ legislating access to CPAs and ensuring that no exemptions from the <i>Competition Act</i> are introduced for CPAs and marine terminal operators. <p>2. Pilotage and Ferry Services</p> <p>The Bureau was concerned about the absence of competition, cross-subsidization and an adequate mechanism in the <i>Pilotage Act</i> to protect users of pilotage services. It recommended the following:</p> <ul style="list-style-type: none"> ▶ abolishing the statutory monopoly of the Pilotage Authorities in providing pilotage services; ▶ creating an accreditation body for licensing pilots; ▶ considering competitive forces when determining tariffs; ▶ applying the current limited liability requirements to all accredited pilots; and ▶ continuing the commercialization or privatization of ferries, and reducing subsidies. <p>3. Shipping in Domestic Waters</p> <p>To increase competition in this area the Bureau recommended the following:</p> <ul style="list-style-type: none"> ▶ discussing with other countries the reciprocal removal of cabotage laws in domestic waters, where appropriate, so that U.S., Commonwealth and foreign ships would be allowed to trade in Canadian waters freely on a reciprocal basis. 	<p>Recommendations have been made to change the <i>Canada Marine Act</i> to create a more efficient and competitive transportation system. If implemented, these changes should reduce costs, stimulate demand and lead to an increase in trade. This would consolidate and build upon the progress achieved to date and help to further the restructuring process.¹</p>

1. The *Canada Marine Act* Review Panel presented its report, *The Canada Marine Act: Beyond Tomorrow*, to the Minister of Transport, who tabled it in the House of Commons on June 4, 2003.

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<i>Telephone Companies</i>		
Canadian Radio-television and Telecommunications Commission (CRTC) Hearings on Agreements and Consumer Safeguards Pertaining to the 900 Service: Public Notice CRTC 2002-2	<p>In May 2002, the Bureau made a submission to the CRTC in response to its request for public input on proposed changes to agreements between telephone companies and service providers that offer information and entertainment services through 900-service numbers (users are billed by the telephone company or the service provider).</p> <p>The Bureau commented on two issues: “scratch-and-win” scams and “modem hijacking” scams (switching customers’ modem connection from their usual Internet service provider to a foreign and very expensive one).</p> <p>The Bureau recommended that agreements about scratch-and-win promotions should mention that these promotions fall under sections 52, 53 and 74.01 of the <i>Competition Act</i>. This would ensure that a single law enforcement agency would respond to these scams.</p> <p>The Bureau supported the proposed changes in the area of modem hijacking to extend consumer safeguards to people using the Internet to access 900 services. It also recommended that the notice about the switch and rate change be a very short, accurate and clear message, displayed to viewers before the switch occurs. In addition, Internet service providers would allow ample opportunity for users to refuse the new connection.</p>	<p>These recommendations will give more protection to consumers. Participants in scratch-and-win contests will have an independent method of verifying that the offers made in the representation are in fact being fulfilled.</p>
AT&T Canada Inc. Petition About Telecom Decision CRTC 2002-34: Regulatory Framework for the Second Price Cap Period	<p>In August, 2002, AT&T Canada submitted a petition to the Governor in Council to vary Telecom Decision CRTC 2002-34. This Decision provided for a second price cap period to protect the interests of consumers and competitors from potential anti-competitive behaviour by incumbent local telephone companies.</p> <p>The Bureau opposed the petition on the grounds that it would hinder the development of facilities-based competition, encourage uneconomic entry and negatively impair the development of efficient competitive wholesale and retail markets.</p> <p>However, the Bureau noted that the petition raised important competition policy issues that were ruled outside the scope of the CRTC’s review of price caps. It further agreed with AT&T that primary reliance on facilities-based competition did not reflect the policy objective of the <i>Telecommunications Act</i> to foster increased reliance on market forces. The Bureau preferred a hybrid model, balancing facilities and resale competition to ensure most Canadians benefited from local competition. The Bureau, therefore, recommended that the Governor in Council direct the CRTC to come up with complementary policies to facilitate entry into local telecommunications markets in the transition to facilities-based competition.</p>	<p>On March 25, 2003, the Governor in Council rejected Telecom Decision CRTC 2002-34, concluding that the CRTC had shown a commitment in recent months to ensure “real and genuine” competition in the telecommunications industry. The Minister of Industry stated that the Government expected the CRTC to maintain its pro-competitive policies to ensure that competitors thrived and consumers benefited from a competitive local telecommunications environment.</p>

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<i>Telephone Companies</i>		
Application to the CRTC by Call-Net Enterprises Inc.	<p>On January 17, 2003, Call-Net applied to the CRTC for an order directing Bell Canada, Telus and the other incumbent local telephone companies to provide high-speed Internet service to residential customers choosing a competitor's local service. At the time of this application, the policy of the incumbents was to require their high-speed Internet customers to take their local service. Call-Net argued that this policy was a barrier to new entry into the local residential telephone market and denied consumers the benefit of competition.</p> <p>On February 26, 2003, the Bureau filed a submission with the CRTC supporting Call-Net's view that opening up local residential telephone markets to competition was an important priority for the Government.</p> <p>The Bureau argued that the incumbents had a virtual monopoly over local residential telephone service, and that their requirement for high-speed Internet customers to take their service raised barriers to entry into local competition.</p>	<p>A decision by the CRTC in favour of Call-Net's application would make it easier for new entrants to offer local telephone service and provide residential consumers with competitive choices.</p> <p>As of March 31, 2003, the CRTC's decision was pending.</p>
Application by Call-Net Enterprises Inc. in Response to Aspects of Telecom Decision CRTC 2002-34: Regulatory Framework for the Second Price Cap Period	<p>On June 12 and 19, 2002, Call-Net asked the CRTC to clarify and make certain procedural changes in connection with Competitor Digital Network Access (DNA) Service. The CRTC had identified DNA Service as an essential service in its second price cap decision (Telecom Decision CRTC 2002-34). Call-Net's application included broadening the definition of DNA Service.</p> <p>New entrants in local telecommunications markets are required to offer services to customers located outside the downtown core of urban areas.</p> <p>In its application, Call-Net stated that the time frame set out in the Decision for the development and implementation of a Competitor DNA Service was likely to extend well into 2003. Call-Net proposed that the regulatory process be sped up to ensure competitors and consumers benefit as quickly as possible.</p>	<p>On June 27, 2002, the Bureau made a submission to the CRTC supporting Call-Net's request, noting it would allow earlier entry into local telecommunication markets, thereby providing consumers with competitive prices, services and quality.</p> <p>On August 9, 2002, in Telecom Public Notice CRTC 2002-4, the CRTC ruled that Call-Net's application merited further review and initiated a new procedure to address the issues Call-Net had raised.</p>
Expansion of Local Calling Areas: Telecom Decision CRTC 2002-56	<p>On April 27, 2001, the CRTC issued Telecom Public Notice CRTC 2001-47 and initiated a proceeding to establish a set of general principles and criteria for assessing applications for expanding local telephone calling areas (LCAs). On November 15, 2001, the Bureau submitted comments responding to the Public Notice.</p> <p>The Bureau identified a number of problems with expanding local calling areas through regulation, including the cost of ongoing regulation, the adverse impact on competition and the negative effect on consumers.</p> <p>In light of these concerns, the Bureau recommended the following:</p> <ul style="list-style-type: none"> ▶ that local calling areas be determined by the interplay of competitive market forces; and ▶ that each service provider have the flexibility to offer a variety of price-geographic coverage plans to consumers, who would benefit from the freedom of choosing the most appropriate plan for themselves. 	<p>In its September 12, 2002, decision, the CRTC opted to maintain a regulatory approach. In particular, it maintained the existing expanded areas of service criteria where it continued to be appropriate and established a new framework to address changing circumstances, the competitive marketplace and the increased demand to extend toll-free calling areas over multiple exchanges (i.e. as a result of municipal amalgamation).</p> <p>The CTRC found that local telephone companies and competitors should be compensated for foregone toll revenues for expanded LCAs and that customers would be charged a surcharge to cover these costs. The CRTC also proposed that compensation for long-distance carriers be equal to three years of foregone revenues, and initiated a follow-up proceeding through which interested parties will have the opportunity to comment on this preliminary approach.</p>

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<i>Broadcasting</i>		
Submission to the House of Commons Standing Committee on Canadian Heritage on the Study of the State of the Canadian Broadcasting System	<p>On April 3, 2002, the Bureau made a submission to the Committee on its study of the state of the Canadian Broadcasting System, and on May 7, 2002, the Commissioner appeared before the Committee. The Bureau made three recommendations:</p> <p>First, ensure as part of Canada's broadcasting and regulatory policy that regulations:</p> <ul style="list-style-type: none"> ▶ are efficient, effective and directed solely to realizing the <i>Broadcasting Act's</i> core cultural objectives; ▶ include increased reliance on market forces as an objective; and ▶ include enhanced efficiency and competitiveness of Canadian broadcasting services as an objective. <p>Second, clarify the mandate of the CRTC as follows:</p> <ul style="list-style-type: none"> ▶ specify that the CRTC has a responsibility to preserve a diversity of voices within the broadcasting system; and ▶ focus the CRTC's review of broadcasting transactions solely on the impact that the mergers would have on core cultural values and diversity of voices. <p>Finally, ensure that foreign investment levels for broadcasting distribution undertakings parallel those for telecommunications carriers.</p>	<p>The Bureau's submission proposed various measures to reduce the scope of regulation and to increase reliance on market forces, while at the same time facilitating the realization of the <i>Broadcasting Act's</i> core cultural objectives.</p> <p>The benefits flowing from the above measures would be reduced costs both to the industry and the CRTC. Further, the reliance on market forces would lead to more competitive prices and increased product variety.</p>
Remarks to the House of Commons Standing Committee on Canadian Heritage on the Study of the State of the Canadian Broadcasting System	<p>On December 12, 2002, the Commissioner of Competition appeared before the Committee and presented his views on the future of broadcasting.</p> <p>Following a brief overview of the recommendation made during his appearance before the Committee on May 7, 2002, he commented on the issues of cross-media ownership and foreign ownership rules.</p> <p>First, he noted that while the Bureau had not created specific rules concerning cross-media ownership, it would analyze the impact of each proposed transaction on competition in the affected markets. The Commissioner observed that reviewing the effects on cultural objectives, such as diversity of voices, was not part of the Bureau's mandate and that Canadian content levels and other regulatory concerns could be dealt with under the existing or new CRTC rules.</p> <p>Second, with regard to foreign ownership issues, the Commissioner noted that access to capital is essential for a dynamic and efficient industry. He added that squeezing out foreign capital is inconsistent with an effective market, and that access to it would ultimately ensure a stronger Canadian industry.</p> <p>Finally, he said that importing foreign capital to Canada not only involves bringing in cash, but also financial ideas and influence, sources of technology, and management efficiency, which results in more competition and greater choice for consumers.</p>	<p>The expected benefits of removing obstacles preventing access to foreign capital would not only provide the industry with the large investment it needs, but would also ensure greater competition, new sources of technology and more choice for consumers.</p> <p>As of March 31, 2003, the Committee had not released its report.</p>

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<i>Broadcasting</i>		
Testimony to the House of Commons Standing Committee on Industry, Science and Technology	<p>On February 24, 2003, the Commissioner appeared before the House of Commons Standing Committee on Industry, Science and Technology to discuss foreign investment restrictions applicable to telecommunications common carriers. The Commissioner described his responsibilities and his role as an advocate of competition, and reiterated and amplified the views he presented to the House of Commons Standing Committee on Canadian Heritage.</p> <p>First, he noted that access to capital is essential for a dynamic and efficient industry and that squeezing out foreign capital is inconsistent with an effective market. Foreign capital could help long-distance telecommunications and cable companies, together with those planning entry into local telephone markets.</p> <p>Second, he observed that foreign capital involves not only importing cash but also financial ideas and influence, sources of technology and management efficiency.</p> <p>Third, he pointed out that, since there is no difference between carrying telephone signals and broadcasting signals, both should enjoy the same access to capital and be bound by the same ownership rules. The Bureau does not believe that foreign ownership restrictions are necessary to achieve a healthy and vigorous telecommunications industry.</p> <p>Fourth, he noted that if the regulator's powers are insufficient, although he does not agree that this is the case, the <i>Telecommunications Act</i> should be amended.</p> <p>Fifth, with regard to broadcasting and related content issues, he observed that competition should not be ignored. Canada's broadcasting and regulatory policy should reflect greater reliance on market forces, enhanced efficiency and competition.</p>	<p>The expected benefits would not only provide the industry with the large investment it needs, but would also ensure greater competition, new sources of technology and more choice for consumers. It would also have a positive impact on the cable television industry.²</p>

2. The Committee released its report, *Opening Canadian Communications to the World*, in April 2003.

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<i>Nuclear Power</i>		
Ontario Energy Board Hearing on Ontario Power Generations Inc.'s Leasing Arrangement with Bruce Power LP	<p>The Ontario Energy Board invited the Bureau to participate in the hearing on whether Ontario Power Generation's lease with Bruce Power constituted a decontrol measure under the Market Power Mitigation Framework in Ontario Power Generation's transitional generation licence. In particular, the Board wanted the Bureau's opinion on certain competition law and policy issues, namely the following:</p> <ul style="list-style-type: none"> ▶ the reasoning behind the granting of an advance ruling certificate for the Bruce transaction; ▶ the concept of interdependent behaviour under Canadian competition law and policy; and ▶ arrangements that might facilitate interdependent behaviour under the merger provisions, and others, of the <i>Competition Act</i>. <p>The Bureau commented on these issues as follows.</p> <ul style="list-style-type: none"> ▶ It noted that a favourable advance ruling certificate should not be viewed as relevant to the matters before the Board. ▶ It outlined the factors it might consider when examining interdependence and coordination concerns that could raise an issue under the <i>Competition Act</i>. 	<p>The Bureau's participation in the hearing benefits all Ontario electricity consumers by providing an analytical framework for the effective decontrol of assets by Ontario Power Generation, leading in turn to a more competitive and low-cost electricity supply.</p> <p>The Board's decision was pending as of March 31, 2003.</p>

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<i>Electricity</i>		
Alberta Electricity Industry Structure Review	<p>The Alberta Department of Energy initiated this review in 2001 to evaluate how to structure the functions carried out by institutions with a primary role in the operation of the electricity industry.</p> <p>In 2002–2003, the Bureau continued its involvement through comments on a discussion paper on the recommended structure of the Alberta electricity industry and discussions with provincial officials. On March 27, 2003, the Alberta legislature entrenched the Bureau’s key recommendations into legislation, including the following:</p> <ul style="list-style-type: none"> ▶ setting up an independent system operator to control the operation of the Alberta Integrated Electricity System, subject to oversight by the Alberta Energy and Utilities Board; ▶ setting up a separate market surveillance authority with a budget authorized by the Alberta Energy and Utilities Board, and broad authority to examine electricity-related matters; ▶ allowing adjudication by an independent body of matters investigated by the market surveillance authority; and ▶ separating the unit responsible for electricity generation from the independent system operator. 	<p>The implementation of these recommendations will be instrumental to ensuring the benefits of competition in the Alberta markets for households and businesses in the province through the following:</p> <ul style="list-style-type: none"> ▶ establishing effective market surveillance to help guard against competition abuses; and ▶ promoting an efficient supply of electricity based on market signals.
Ontario Electricity Market Joint Statement on Competition Oversight	<p>In March 2002, the Competition Bureau signed an agreement with the Ontario Energy Board and the Independent Electricity Market Operator to work together to ensure effective competition oversight in Ontario’s electricity industry. The agreement outlined each agency’s role and responsibilities in the new markets and provided a framework for cooperation and coordination when overlap exists.</p>	<p>As noted in the agreement, the Bureau maintained regular contact with the Ontario Energy Board and the Independent Electricity Market Operator on competition-related matters. This played an important role in coordinating the agencies’ competition-related actions over the year, such as their respective reviews of the Bruce Power lease referred to above.</p> <p>The result has been more effective and efficient management of competition issues in the Ontario electricity market among agencies, to the benefit of all electricity consumers in the province.</p>

Industry Sector and Issue	Competition Bureau Intervention	Outcome and Potential Benefits for Canadians
<i>Trade</i>		
Canadian International Trade Tribunal Review of the Expiry of Duties on Jarred Baby Food	<p>On February 12, 2003, the Bureau filed a submission with the Canadian International Trade Tribunal (CITT) about its review of its April 1998 findings of dumping of non-organic jarred baby food originating in or exported from the United States. At that time, the CITT concluded that dumping had led to material injury to Heinz Canada (the sole domestic producer), so it placed a duty on U.S. imports, effectively prohibiting foreign competition and protecting Heinz Canada from competition for five years.</p> <p>The CITT subsequently reviewed its findings to determine whether dumping was likely to continue and, if so, whether Heinz Canada would continue to suffer material injury. The review would help determine whether anti-dumping duties would be maintained for another five years or would expire in April 2003.</p> <p>The Bureau, the sole intervener in this proceeding, submitted that the evidence did not indicate a direct link between dumping and material injury. Rather, any economic harm to Heinz would result from the nature of competition in an increasingly segmented baby food market, self-imposed injury resulting from corporate agreements preventing Heinz Canada from competing in the U.S., and the lack of product innovation on Heinz's part. The Bureau also noted that Canadian regulations about jar sizes and food ingredients would prevent American firms from effectively competing in Canada for at least two years. Any injury that Heinz was likely to suffer would be due, for the most part, to the effect of the entry of renewed competition into the market, not to dumping.</p>	<p>On April 28, 2003, the CITT immediately rescinded its April 1998 findings. As a result, American companies are now free to enter the Canadian market and supply Canadian consumers and retailers, provided they meet Canadian jar and ingredient standards.</p> <p>The Bureau expects that American entry over the next two years will benefit consumers by bringing product choice, price competition, improved quality and innovation to the Canadian market.</p>
CITT Safeguard Inquiry Into Imported Steel Goods	<p>On March 25, 2002, the CITT launched a safeguard inquiry into certain imported steel goods. The purpose of the inquiry was to determine whether the increased imports of any of nine steel products since 1996 were the principal cause of serious injury, or a threat of serious injury, to Canadian steel producers. The CITT asked the Bureau to comment on the following:</p> <ul style="list-style-type: none"> ▶ the likely effects of possible trade remedies on competition in the steel industry and downstream users of steel products in Canada; and ▶ how different types of trade remedies might be applied to the steel industry to ensure domestic producers are not injured, while minimizing disruption to other sectors of the Canadian economy. <p>The Bureau made representations in support of free trade in steel products, while noting that the proposed remedies were likely to be very costly to the Canadian economy, particularly the downstream purchasers of steel. The Bureau recommended that, when action was warranted, trade remedies provided for domestic producers be as limited as possible, while still meeting the objective of reducing the injury.</p>	<p>On July 4, 2002, the CITT said that increased imports were a principal cause of serious injury to domestic producers of five of the nine subject goods. On August 19, 2002, the CITT recommended a tariff as well as a tariff rate quota for four of the nine subject goods.</p>



Voluntary Codes

Scanner Price Accuracy

On June 11, 2002, the Bureau endorsed the *Scanner Price Accuracy Voluntary Code*, which provides participating retailers of four major associations with a mechanism to provide redress to consumers when there is a scanner error.

When the scanned price of an item without a price tag is higher than the shelf price, or any other displayed price, the customer is entitled to receive the item free when it is worth less than \$10, or receive a \$10 reduction for more expensive items.

The Bureau regards scanner price accuracy as an important element of maintaining consumer confidence.

Authenticating Canadian Diamond Claims

In 2002, as a result of the Bureau's information bulletin on the marketing of Canadian diamonds, an industry working group developed a voluntary code of conduct that sets a minimum standard for validating Canadian diamond claims, based on documentary evidence and a series of warranties. The non-profit volunteer group comprised representatives from the diamond mining sector, cutters and polishers, diamond traders, jewellery retailers, jewellery manufacturers and industry associations.

Prior to endorsing the voluntary code, the Competition Bureau sought feedback from the jewellery industry, provincial stakeholders and consumer groups. Results of the consultation revealed

that 82 percent of respondents from the industry indicated they would subscribe to the code. In light of this feedback, the Bureau and the Canadian Diamond Code Committee finalized the *Voluntary Code of Conduct for Authenticating Canadian Diamond Claims* and launched it on November 6, 2002.



Targeting Telemarketers

The Bureau worked on an initiative in the Atlantic Region to inform federal, provincial and municipal economic development organizations about the risk of inadvertently funding the establishment of deceptive telemarketing operations. The screening of applications and granting of seed funding for start-up operations is a primary goal for these organizations. The Bureau's initiative was intended to inform them of the legislative requirements of the *Competition Act* when screening applications for economic support, and so to stop government economic assistance to deceptive operations.



Partnerships

Fraud Prevention Forum

The Bureau chairs the Fraud Prevention Forum, a partnership of law enforcement and government agencies, consumer groups, the volunteer sector and private sector firms. The Forum was established to improve the awareness and education of small businesses and individual Canadians about fraudulent and deceptive marketing activities.

In 2002–2003, the Bureau did extensive research and focus group testing to develop new messages about deceptive telemarketing, deceptive mail and deceptive Internet representation, which victimize all segments of society. A new campaign based on this research will be designed to increase consumer vigilance and reduce victimization and loss. The Forum expects to launch the campaign in the fall of 2003.

Award-winning Toronto Strategic Partnership

The Toronto Strategic Partnership, of which the Bureau is a member, won the Bronze Award for Innovative Management at the 2002 National Conference of the Institute of Public Administration in Halifax. The award recognizes public sector excellence and organizational achievement in the private sector. The Toronto Strategic Partnership is effectively combating deceptive telemarketing and other fraudulent cross-border scams.

Northwest Netforce

The Competition Bureau collaborated with Northwest Netforce to warn Canadians participating in an e-mail chain letter that it appeared to contravene the deceptive marketing provisions of the *Competition Act*. Northwest Netforce is an international initiative targeting deceptive spam (unsolicited e-mail) and Internet fraud. Its partners include the U.S. Federal Trade Commission, the Alaska Attorney General, the Alaska State Troopers, Alberta Government Services, the B.C. Securities Commission, the B.C. Solicitor General, the Idaho Attorney General, the Montana Department of Administration, the

Oregon Department of Justice, the Washington Attorney General, the Washington Department of Financial Institutions, the Wyoming Attorney General and the Competition Bureau.



Special Constable Status for Competition Law Officers

Special constable status has now been granted to Competition Bureau competition law officers in six provinces. Competition law officers in Nova Scotia, P.E.I., Quebec, Ontario, Manitoba and B.C. now hold this designation, which allows them to serve summonses and subpoenas as part of their duties under the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act*, the *Precious Metals Marking Act* and the *Criminal Code*.



Regulatory Issues

Precious Metals Marking Regulations

In the summer of 2002, the Bureau launched a preliminary consultation with manufacturers of precious metals, jewellery, hollowware and flatware, and their associations, to identify possible improvements to the Precious Metals Marking Regulations. As a result, several recommendations were made concerning amendments to clarify existing regulations and reduce the regulatory burden. A more extensive consultation will be carried out in 2003–2004.

Textile Labelling and Advertising Regulations

► The Competition Bureau commissioned the Conference Board of Canada to study possible amendments to the Textile Labelling and Advertising Regulations to require that the addresses of manufacturing sites be included on labels of clothing sold in Canada. Several social action groups and some apparel retailers, who believe this amendment would be a major step in helping to curb “sweatshop labour” in the apparel industry, asked the Minister of Industry to look into this issue.

The Conference Board completed its report in March 2003. There will be further consultation under the auspices of the Public Policy Forum to address the concerns raised in the report and to craft strategic recommendations for how the Government should address the issue of fair labour practices in the apparel industry.

► The Standing Joint Committee for the Scrutiny of Regulations made several recommendations to amend the Textile Labelling and Advertising Regulations. The Bureau examined the proposed amendments and agreed to recommend that some of the regulations be changed.

► The Bureau was instrumental in securing agreement among members of the NAFTA Subcommittee on Labeling of Textile and Apparel Goods on harmonized care symbols (voluntary in Canada). It is expected that a formal agreement will be finalized in 2003–2004.



Advisory Opinions

Competition in Airline Services

In December 2002, a new carrier asked the Competition Bureau to review its business plan to use an airport located in Ontario and to provide an advisory opinion on whether the agreement to do so would contravene any elements of the *Competition Act*.

The Bureau reviewed the matter under sections 75, 77 and 79 of the *Competition Act*, concluding that the agreement would not contravene these provisions and that the Commissioner would not have grounds to launch an inquiry.

Proposed Waste Management Program

On January 8, 2003, the Bureau provided an advisory opinion to a corporation seeking guidance on a business proposal. The corporation planned to develop a national program for waste management of certain products in Canada, and asked the Bureau for help ensuring the plan complied with the *Competition Act*.

The Bureau reviewed the matter under sections 79 and 45 of the Act. Section 79 applies to dominant companies exploiting their market power in a way that prevents or substantially lessens competition in the marketplace. The Bureau received no information to suggest that the corporation controlled the product market in question or engaged in activities that impeded entry into the market or had other exclusionary effects. For this reason, and because it was felt that competition

would not be prevented or substantially lessened, the Bureau found that the proposal would not contravene section 79.

Section 45 deals with the criminal provisions of the Act. The information the Bureau received included no evidence that the corporation would restrict a business from entering or continuing to compete in the market. Because of this, the Bureau found that the proposal would not contravene section 45 of the Act.

Misleading Representations and Deceptive Marketing Practices

The Bureau issued 35 advisory opinions about the misleading representations and deceptive marketing practices provisions of the *Competition Act* (e.g. multilevel marketing, false or misleading representations and promotional contests).

Cross-subsidization of Others' Operations

The Bureau provided an advisory opinion to a corporation seeking to expand its service offerings or increase its ownership of existing ones, with plans to make some of its services available at its full-service retail outlets across Canada. Its purpose in so doing was to gain control of or facilitate the service of other corporations in which it had a financial interest.

On reviewing these matters under the civil provisions of the *Competition Act*, the Bureau found no reason to believe that the corporation would cross-subsidize the operations of others, or commit any other acts with a substantial impact on competition.



Policy Making

Policy making plays an important role in the Bureau's overall activities. The Bureau is collaborating more and more in this area with federal departments and agencies. This year, the emphasis was on interdepartmental consultation.

The increase both in consultations between the Bureau and other federal government departments, and in the resources dedicated to this activity, was most evident during 2002–2003 in the transportation sector. The key issue in this sector was the treatment of transportation mergers that would be allowed by the *Canada Transportation Act*. Officials from the Bureau and Transport Canada worked to resolve this issue, as well as to clarify how any exceptions to the *Competition Act* should be worded in the *Canada Transportation Act*.

Other interdepartmental meetings about transportation occurred in such areas as airports, the future of the port divestiture program, vulnerabilities in Canada's marine security, and international shipping.



Conferences and Seminars

Conferences and seminars have become increasingly important methods of promoting compliance with the Act, thereby enhancing competition. From time to time, the Commissioner and Bureau staff are invited to present their views and participate in conferences both within Canada and abroad. In addition, a number of Bureau experts in the anti-trust field are

asked to present the findings and results of some of their most challenging cases, as well as to review the developments in anti-trust literature that are relevant to the work of the Competition Bureau.

Conferences

- ▶ On April 9 and 10, 2002, members of the Bureau attended the 2002 Strategic Alliances Conference in New York.
- ▶ On April 24, 2002, a Bureau representative addressed the Windsor Better Business Bureau's annual general meeting. Presentation topics included deceptive telemarketing scams, the *Competition Act's* dual criminal-civil approach, the Bureau's recent focus on Internet advertising and the new provisions in Bill C-23.
- ▶ On May 9, 2002, a Bureau representative gave a presentation to the Law Invitation Forum at Langdon Hall in Cambridge, Ontario, on the legislative process for reforming competition law in Canada. The speech covered the history of reform, recent initiatives and groundwork being laid for future improvements.
- ▶ On May 9, 2002, the Commissioner addressed the Competition Law International Forum in Cambridge, Ontario, on challenges facing the Bureau, such as changes in the way it delivers services, the interpretation of the efficiency defence in the merger provisions, changes in the amendments process, and the next round of amendments.
- ▶ On May 12 to 15, 2002, members of the Bureau presented papers to the Canadian Transportation Research Forum at its 37th annual conference in Newfoundland and Labrador. Topics included the U.S. Open Skies Agreement and the need for a more liberal agreement, the recent amendments to the *Shipping Conferences Exemption Act* and the status of rotary wing aviation in Canada.
- ▶ On May 31, 2002, a Bureau representative spoke at the Canadian Institute's conference on advertising and marketing law in Toronto on such subjects as civil and criminal misleading advertising and the Bureau's various law enforcement partnerships, providing as well an overview of recent cases the Bureau pursued.
- ▶ On June 13, 2002, a Bureau staff member gave a paper on the Competition Bureau and the airline industry at the 16th annual Insight Conference on Canadian airline investment. The paper discussed the Air Canada-Canadian Airlines merger, amendments to the *Competition Act* and current litigation.
- ▶ At several points during the year, Bureau staff gave lectures on industrial organization and other topics to students at the universities of Calgary and British Columbia. The courses were provided online from boardroom to classroom.
- ▶ On October 3, 2002, Bureau staff gave a presentation on domestic and international bid rigging to certified fraud examiners in Ottawa.
- ▶ On October 3 and 4, 2002, Bureau staff presented papers at the annual fall conference on competition law of the Competition Law Section of the Canadian Bar Association. The papers were on the application of competition law to deregulated industries, the legislative process for amending the *Competition Act* and a review of the reforms proposed for section 45.

- ▶ On October 8, 2002, a Bureau staff member gave a presentation to the Global Forum in Washington, D.C., on the challenges of assuring equal opportunity for access to digital technology.
- ▶ On October 18, 2002, Bureau staff gave a presentation on domestic and international bid rigging to financial auditors at their annual meeting in Niagara Falls.
- ▶ On November 12, 2002, a Bureau staff member spoke at the Competition in Difficult Times Conference in Toronto on unreasonably low pricing policies.
- ▶ On November 25, 2002, a Bureau staff member spoke at the Industry Canada Managers' Leadership Forum in Mont Tremblant, Quebec, on thoughts to consider on becoming an executive in the public service of Canada.
- ▶ A Bureau representative gave a presentation at a conference of fraud investigators in Toronto on December 3, 2002, concerning the provisions of the *Competition Act*, as well as recent Bureau initiatives on public education and partnering with other law enforcement agencies.
- ▶ On December 11, 2002, Bureau staff gave a presentation on bid rigging to the Ontario Regional Office of Public Works and Government Services Canada to heighten the awareness of public procurement officials and enable them to detect and prevent bid rigging on federal and provincial tenders.
- ▶ On January 28, 2003, Bureau staff gave a presentation to, and participated in, a panel discussion at the Conference Board of Canada's Toronto conference, Best Practices in Market Design: A Report Card on North American Electricity Restructuring. Bureau participants spoke about the Bureau's evolving role in newly opened electricity markets in relation to the competition roles of industry regulators.
- ▶ On January 31, 2003, a Bureau representative addressed the Canadian Institute's conference on advertising and marketing law in Toronto. The presentation covered recent Bureau cases involving advertising and marketing complaints, the *Consumer Packaging and Labelling Act*, the ordinary selling price provisions, Bill C-23, deceptive telemarketing, the *Scanner Price Accuracy Voluntary Code* and the information-sharing protocol between the Bureau and the U.S. Federal Trade Commission.
- ▶ At the 5th annual Insight Conference on advertising and marketing law, held February 18, 2003, in Toronto, a Bureau representative gave a presentation on the Bureau's Internet advertising bulletin, examining enforcement tools and relevant issues and challenges.

Seminars

A number of antitrust experts were invited to present their findings to staff in the Competition Bureau:

- ▶ Professors Alan Love and Oral Capps of Texas A&M University (January 2002): "bootstrapping techniques" — new developments in econometrics;
- ▶ Professor Jeff Church of the University of Calgary and Professors Alan Love and Oral Capps of Texas A&M University (January 2002): seminar on specification issues and confidence intervals in unilateral price effects analysis;

- ▶ Marcel Boyer of the University of Montreal and CIRANO (January 2002): abuse of dominant position, a new concept of avoidable cost;
- ▶ Daniel Rubinfeld of the University of California (June 2002): merger simulation, a simplified approach with new applications; and
- ▶ Professor Stephen Ross of the University of Illinois (November 2002): the political economy aspects of the efficiency defence.

On July 18, 2002, members of the Bureau held a seminar in Washington, D.C., for lawyers and economists at the U.S. Federal Trade Commission. The seminar was on the qualification and measurement of efficiencies arising from mergers.

International Activities

In an increasing global market, one of the Bureau's goals is to promote effective international competition enforcement and advocacy. To advance this goal, the Bureau actively participates in a number of international organizations and various trade negotiations.

International Competition Network

The International Competition Network (ICN), a network of private and public sector competition practitioners from around the world, continued to gain momentum this year. Since its launch in October 2001, the network has grown

significantly by promoting inclusiveness, informality and relevance to all competition players. Currently, it includes 77 member agencies from 67 jurisdictions.

The ICN held its first annual conference in Naples, Italy, in September 2002. This highly successful event was hosted by the Italian competition authority and co-chaired by Canada's Commissioner of Competition.³ Representatives from 59 anti-trust agencies attended the two-day conference, during which members confirmed the Commissioner as chair of the ICN Steering Group.

The ICN released four detailed publications at the conference: *Guiding Principles for Merger Notification and Review*, *Recommended Practices for Merger Notification Procedures*, a report on advocacy and competition policy, and a report identifying issues to consider when establishing or amending an analytical framework for merger control. Each of these documents, contact information for ICN members, and links to information about the merger laws of many of the members' jurisdictions are available on the ICN Web site (www.InternationalCompetitionNetwork.org).

Organisation for Economic Co-operation and Development

Representatives of the Competition Bureau actively participate in work by the Organisation for Economic Co-operation and Development (OECD) on competition. The Commissioner of Competition continues to chair the Competition Committee's

3. The second annual ICN conference, to be hosted by the Federal Competition Commission of Mexico and again co-chaired by Commissioner Konrad von Finckenstein, will be held in Mérida, Mexico, in June 2003.

Working Party 3 on International Cooperation. This group has been focussing on international cooperation in the fight against hard-core cartels, as well as examining merger control procedures in OECD member jurisdictions.

The OECD released its final report on Canada's regulatory system, *Maintaining Leadership Through Innovation*, in October 2002. The report made specific recommendations on strengthening the contribution of competition policy to regulatory reform and market openness, including an enhanced advocacy role for the Bureau. The recommendations addressed the scope of the Commissioner's decision-making independence, the processes and procedures of the Competition Tribunal, the conspiracy provisions in the *Competition Act*, and the Bureau's resources. For additional information, see the October 29, 2002, information notice at <http://strategis.ic.gc.ca/SSG/ct02447e.html>.

Asia-Pacific Economic Cooperation

Canada has been active in providing technical assistance and cooperation to other Asia-Pacific Economic Cooperation (APEC) member economies. The Competition Bureau participated in two seminars on regulation and competition organized by Mexico, in the electricity sector in May 2002 and in the transportation sector in September 2002.

In February 2003, APEC members reviewed Canada's 2002 Individual Action Plan. The purpose of the review was to monitor progress towards the targets set in Indonesia in 1994 for freer and more open trade and investment in the APEC region.

The report stemming from the review stated that Canada maintained an effective and adequate competition policy and that the Competition Bureau ensured the transparency of that policy. For additional information, see the February 20, 2003, media release, "Canada has Progressed Substantially Towards Free Trade Goals" at www.apecsec.org.sg/.

International Marketing Supervision Network

Representatives of the Competition Bureau participated in the September 2002 meeting of the International Marketing Supervision Network (IMSN) in Sydney, Australia. The IMSN, which celebrated its 10th anniversary at that meeting, is a voluntary organization of the trade practices law enforcement authorities of more than two dozen countries, most of which are members of the OECD. IMSN's mandate is to share information about cross-border commercial activities that may affect consumer interests and to encourage international cooperation among law enforcement agencies.

At the meeting, the Bureau supported a name change for the IMSN (to International Consumer Protection and Enforcement Network, or ICPEN) and a shift in focus from general policy formulation to greater cooperation on cross-border law enforcement.

ICPEN is a key partnership for the Bureau as it fights telemarketing, mail and Internet scams that annually result in billions of dollars in losses to consumer and business victims, and are increasingly occurring across international borders. The Bureau is a major contributor to ICPEN, which is focussed

on finding ways for agencies to cooperate and deal more effectively with this growing problem. The commitment to ICPEN reflects the Bureau's resolve to take action against illegal operations in Canada and avoid the stigma that Canada is a safe haven for consumer fraud and deception.

Exchange with the Merger Task Force of the European Commission

In recognition of the Bureau's close cooperative relationship with the European Commission's Directorate General for Competition, an exchange of merger review staff took place between July and December 2002. This exchange is a first for the agencies and is considered to be a logical and positive next step in the evolution of Canadian-European enforcement cooperation following the formalization of ties in a 1999 agreement on the application of competition law.

The purpose of the exchange was to expand and enhance cooperation between the respective agencies, to promote a shared understanding of Canadian and European merger control regimes, and to facilitate the sharing of experiences and best practices through firsthand experience.

Technical Assistance

The Competition Bureau provides technical assistance to a number of countries in the process of drafting their own competition laws or in various stages of implementing them. Technical assistance may include providing information on Canadian policy, law and practices, welcoming visitors from

foreign governments and competition authorities, helping develop or refine foreign competition laws, and providing advice on how to deal with specific investigations. This year, the Bureau welcomed visitors from the Congo, Vietnam, China and South Africa.

Cooperation

International cooperation can be seen most prominently in the areas of merger review, international cartels and cross-border deceptive telemarketing and mail solicitation.

Regarding the last, Canadian and U.S. law enforcers announced on June 10, 2002, in Washington, D.C., increased efforts to cooperate in targeting cross-border deceptive telemarketing. The Competition Bureau and the U.S. Federal Trade Commission formalized their sharing of complaint and investigation data to catch cross-border fraud operators faster and more efficiently. This protocol streamlines and enhances cooperation under agreements adopted in 1995 and 1996.

In merger reviews, the Bureau has been involved in many multijurisdictional merger transactions in which it has had to work closely with its foreign counterparts (see chapter 4, Reviewing Mergers).

In international cartel cases, the Bureau has cooperated with the United States, the United Kingdom, the European Union and Japan. Some noteworthy cases involved bulk vitamins and methylglucamine.

The Bureau announced on June 26, 2002, that negotiations were under way between Canada and Japan on a cooperation agreement regarding competition law. The proposed agreement is expected to provide a framework for coordination and cooperation to deal effectively with anti-competitive business activities affecting both countries.

Trade Negotiations

Free Trade Area of the Americas: Negotiating Group on Competition Policy

Substantial progress was achieved in the Free Trade Area of the Americas (FTAA) negotiations on competition policy over the last year, as shown by the draft chapter on competition policy published in November 2002.

Canada, led by the Competition Bureau in partnership with the Department of Foreign Affairs and International Trade, continued to contribute significantly to the development of a framework for the adoption and implementation of competition laws in all FTAA countries. However, several key issues remain, the main ones being to persuade countries without a competition law of the benefits of a sound competition policy and to ensure that the framework takes into account differences in levels of development. In addition, countries bring to the table differing views about what constitutes appropriate national competition law and policy. As a result, Canada has been advocating non-binding processes, such as consultations and peer review, rather than binding dispute settlement, as a

means of facilitating dialogue and promoting convergence and compliance with competition obligations in the FTAA.

A copy of the draft chapter on competition policy can be found at www.ftaa-alca.org/ftaadraft/eng/ngcp_e.doc.

On the domestic front, the Competition Bureau contributed to the Government's environmental assessment of the FTAA chapter on competition policy and participated in multistakeholder consultations organized by the Department of Foreign Affairs and International Trade.

World Trade Organization

The World Trade Organization (WTO) is currently exploring the interaction between trade and competition policies. Discussions are currently in a clarification phase and are focussed on potential elements for a multilateral framework on competition, including such core principles as transparency, non-discrimination and procedural fairness, hard-core cartels as a serious breach of competition law, voluntary cooperation, and ideas for supporting competition institutions in developing countries. The WTO Ministerial Conference scheduled for September 2003 will consider whether to launch competition negotiations.

Other Trade Agreements

Canada is currently involved in free trade negotiations with the Central American Four (El Salvador, Guatemala, Honduras and Nicaragua) and Singapore, and is seeking to include competition policy provisions in these agreements.

Chapter 4

Reviewing Mergers

The sluggish global economy combined with worldwide political uncertainty in 2002–2003 resulted in a decrease in the number of mergers the Competition Bureau reviewed, although the size, scope and complexity of competition issues continued to be significant. Increased international cooperation between the Bureau and other competition agencies helped to strengthen the Bureau’s handling of these mergers.

Merger Enforcement Guidelines

Since their first release in 1991, the *Merger Enforcement Guidelines* have been a useful tool for setting out the basic analytical framework for merger review in Canada. In early 2003, the Bureau began a project to update the Guidelines to reflect changes in case law and other developments that have occurred over the last 10 years. The project will focus on updating all sections of the Guidelines except Part V, which is no longer in effect. Throughout the project the Bureau will seek input from members of the legal community, academics, foreign competition authorities and other interested parties.

Publication of Interpretation Guideline No. 3

On December 20, 2002, following extensive consultations with Bureau staff, experts and stakeholders, the Bureau published the final version of Interpretation Guideline No. 3, *Paragraph 111(a): Exemptions for Acquisitions in the Ordinary Course of Business*. This guideline clarifies the application of

paragraph 111(a) of the *Competition Act*, which exempts from notification to the Bureau transactions involving acquisitions of real property or goods in the ordinary course of business when the person proposing to acquire the assets would not hold all or substantially all of the assets of a business or of an operating segment of a business as a result of the acquisition.

Stakeholder Feedback

The Bureau receives stakeholder feedback on mergers, not only through consultations and meetings, but also via feedback cards that parties complete and return (27 percent of parties responded in 2002–2003, compared to 34 percent in 2001–2002, 18 percent in 2000–2001 and 25 percent between 1997 and 1999).

On January 23, 2003, the Bureau hosted members of the Canadian Bar Association’s mergers sub-committee for discussions on a variety of issues related to the Bureau’s merger review practices and procedures. Discussion topics during this full-day session included the merger notification process, service standards, case complexities, section 11 orders, and voluntary returns of information. The Bureau proposed creating a working group to discuss merger notification issues and to provide further guidance to business in this area. The idea was well received and the working group has since been established. The Bureau also participates in periodic conference calls with the sub-committee.

Merger Examinations, 2002–2003

	2002–2003
Examinations Commenced	279
▶ Includes notifiable transactions, advance ruling certificates and examinations commenced for other reasons, but not ongoing examinations from the previous fiscal year	
▶ Total number of notifiable transactions together with advance ruling certificate requests exceed the number of examinations commenced because in many instances a long- or short-form notification was filed along with a request for an advance ruling certificate	
Notifiable Transactions	85
Advance Ruling Certificate Requests	224
Examinations Concluded¹	
Posing No Issue Under the Act	257
Advance Ruling Certificates Issued	163
With Agreed Remedies ²	6
Consent Orders/Registered Consent Agreements	3
Through Contested Proceedings ³	1
Parties Abandoned Proposed Mergers in Whole or in Part as a Direct Result of the Commissioner's Position	0
Proposed Mergers Abandoned for Other Reasons	3
Total Examinations Concluded⁴	267
▶ Includes advance ruling certificates and matters that have been concluded or withdrawn before the Competition Tribunal	
Examinations Ongoing at Year End	27
Total Examinations During the Year	294
Advisory Opinions Issued	0
Section 92 Matters Before the Tribunal and the Courts	5
▶ Includes applications for consent orders and consent agreements	
Ongoing at Year End	1
Concluded ⁵ or Withdrawn	4
Correction: In the fiscal year 1999–2000, the number of transactions Posing No Issue Under the Act should have been 328 with the removal of asset securitizations, not 392 as reported.	

1. If a transaction has a notification as well as an advance ruling certificate, it is only counted once.
2. This category replaces the With Pre-closing Restructuring and With Post-closing Restructuring and Undertakings categories of previous annual reports.
3. Year completed.
4. Consent Orders/Registered Consent Agreements are a subset of the With Agreed Remedies category and have only been counted once in the Total Examinations Concluded row. Advance Ruling Certificates Issued is a subset of the Posing No Issue Under the Act category, and they have only been counted once in the Total Examinations Concluded row.
5. Concluded means that the Competition Tribunal or the courts issued an order or decision, and there were no further appeals.

Breakdown of Mergers by Year, 1999–2003

BUSINESS LINE	1999–2000	2000–2001	2001–2002	2002–2003
Pre-merger Notification Filing*	92	73	59	28
Advance Ruling Certificate Request	273	255	243	224
Other Examinations	60	45	26	27
Total Mergers	425	373	328	279
Total	361	373	328	279

* Excludes notification when an advance ruling certificate was requested.

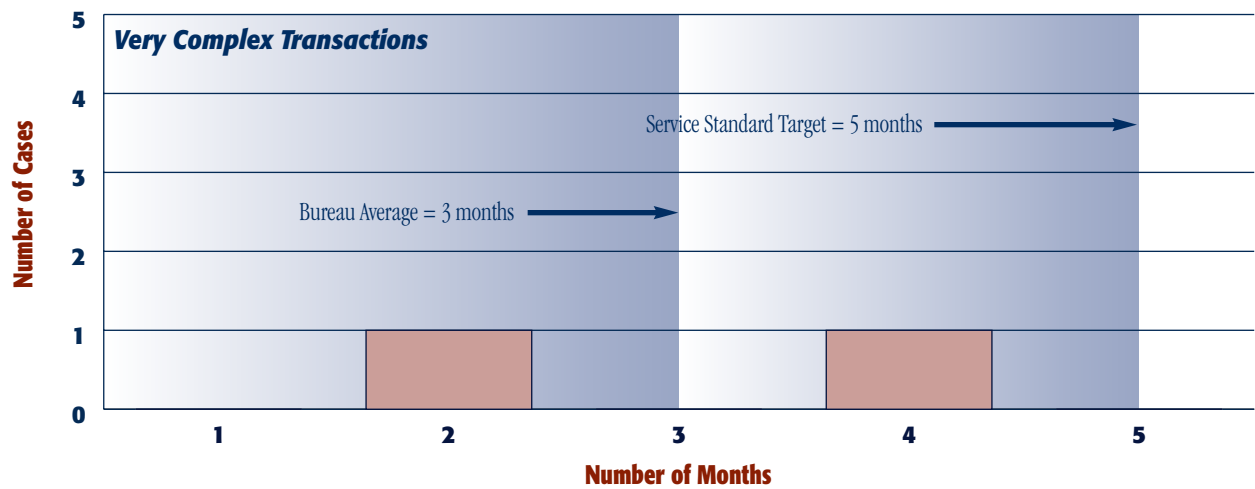
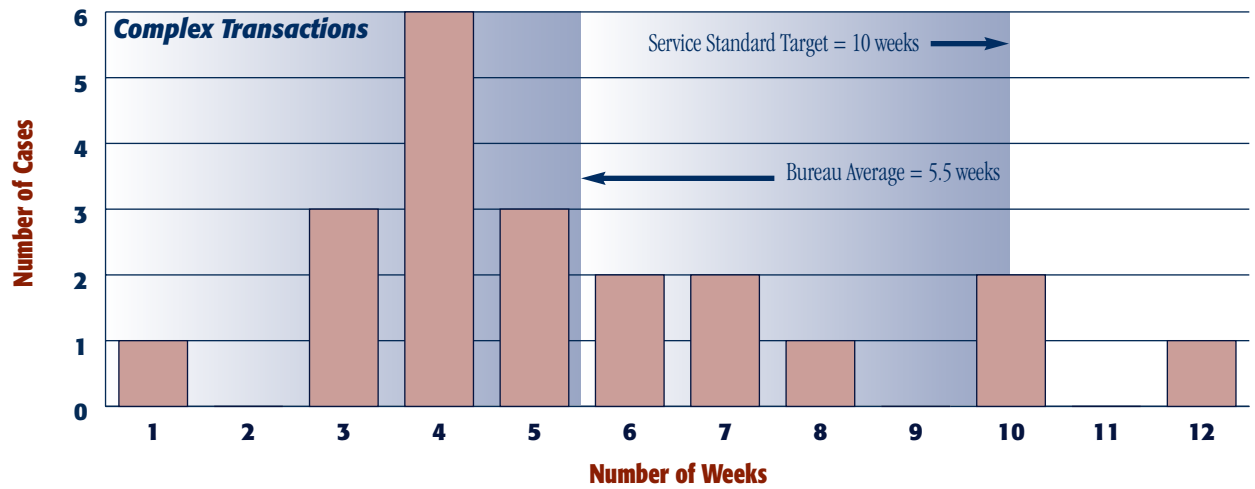
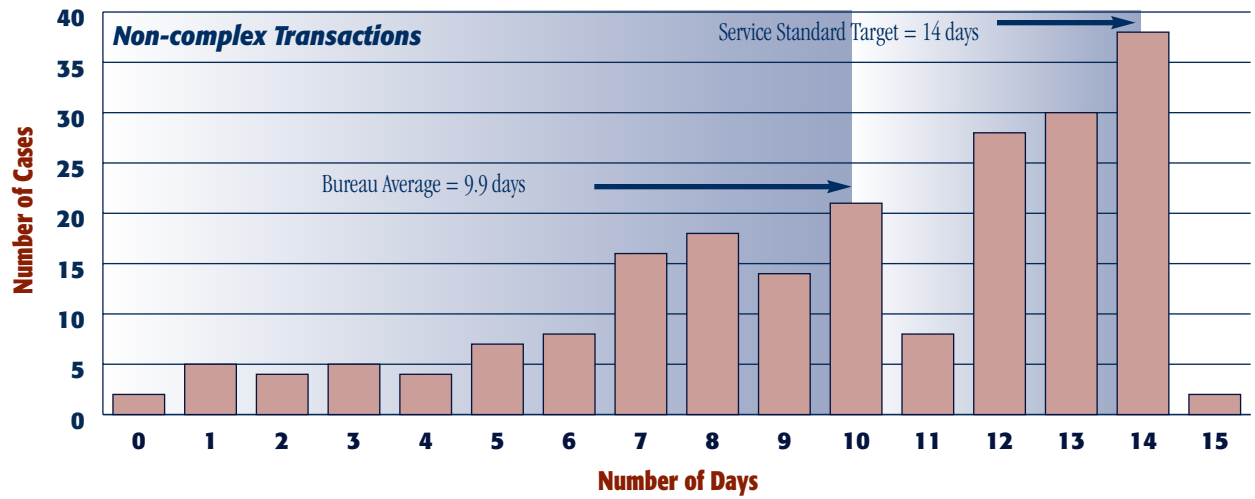
Note: The figure in the Total Mergers row represents the total number of examinations commenced during the fiscal year.

Merger Review: Meeting Service Standards

NUMBER OF TRANSACTIONS					
COMPLEXITY	April 1998 to March 1999	April 1999 to March 2000	April 2000 to March 2001	April 2001 to March 2002	April 2002 to March 2003
Not Complex	212	232	282	271	215
Complex	56	49	52	41	21
Very Complex	6	8	14	2	2
Total	274	289	348	314	238

SERVICE STANDARD											
		April 1998 to March 1999		April 1999 to March 2000		April 2000 to March 2001		April 2001 to March 2002		April 2002 to March 2003	
COMPLEXITY	TARGET	MET									
Not Complex	14 days	187	88.2%	218	94.0%	270	95.7%	258	95.2%	213	99.1%
Complex	10 weeks	854	96.4%	43	87.6%	48	92.3%	36	87.8%	20	95.2%
Very Complex	5 months	6	100.0%	7	87.5%	14	100.0%	2	100.0%	2	100.0%
Total		247	90.1%	268	92.7%	332	95.4%	296	94.3%	235	98.7%

Meeting Service Standard Targets, April 1, 2002 to March 31, 2003





Major Merger Cases

The following are summaries of some of the new and ongoing major merger cases in 2002–2003.

Superior Propane Inc. and ICG Propane Inc.

In December 1998, the Bureau challenged Superior Propane's acquisition of ICG Propane Inc. In August 2000, the Competition Tribunal found that the merger would create a monopoly in many local markets, and would also have negative consequences for consumer choice, service and price throughout Canada. The Tribunal ultimately allowed the merger to proceed because a majority of Tribunal members found that the efficiencies the merger generated would be greater than its anti-competitive effects. The Bureau subsequently appealed the Tribunal's decision, asking the Federal Court of Appeal to review the Tribunal's interpretation of the efficiencies defence.

On April 4, 2001, the Federal Court of Appeal ruled that the Tribunal's interpretation of section 96 should have considered a wider range of effects and had regard for the purposes of the *Competition Act* (set out in section 1.1). The matter was remitted to the Tribunal for a redetermination hearing.

On April 4, 2002, the Competition Tribunal dismissed the Commissioner's application. The Commissioner appealed this decision to the Federal Court of Appeal on the grounds that the Tribunal:

- ▶ erred by not including all the effects of lessening of competition, including the entire wealth transfer;
- ▶ refused to consider the effects from a qualitative perspective;
- ▶ adopted a restrictive view of the effect of the merger on small and medium-sized businesses;
- ▶ did not consider the creation of a monopoly *per se* as an anti-competitive effect in the subsection 96(1) analysis;
- ▶ did not respect the judgment of a higher court; and
- ▶ erred in its allocation of the onus of proof.

On January 31, 2003, the Federal Court of Appeal dismissed the Commissioner's application and accepted the Tribunal's methodology. The dissenting opinion held that subsection 96(1) did not authorize the creation of monopolies. On March 31, 2003, the Bureau announced that it would not appeal the Federal Court's decision.

Astral Media Inc. and Telemedia Radio Inc.

On December 21, 2001, the Bureau challenged Astral Media Inc.'s proposed acquisition of Telemedia Radio Inc.'s French-language radio stations and 50 percent interest in Radiomédia. In its application to the Competition Tribunal, the Bureau argued that this acquisition would substantially lessen competition in six radio advertising markets in Quebec.

The merging parties filed a motion with the Federal Court of Canada challenging the Bureau's jurisdiction over the proposed transaction. The Federal Court's Trial Division heard this matter in May 2002 in Montréal. However, a consent agreement

filed on September 3, 2002, resolved the Commissioner's competition concerns with this merger.

The consent agreement included the following:

- ▶ the divestiture of the parties' AM radio stations in all six relevant markets (these stations were immediately placed under the control of an operating trustee until the completion of the divestitures);
- ▶ the implementation of a code of conduct protecting advertisers in the French-language radio advertising markets of Gatineau–Ottawa, Sherbrooke, Trois-Rivières and Chicoutimi–Jonquière (Ville de Saguenay) until two years after a new FM station begins broadcasting in these markets or 42 months, whichever occurs first, and protecting advertisers in Montréal and Quebec City until the required divestitures are completed; and
- ▶ the appointment of an independent manager to control the local sales force of the Telemedia FM radio stations in Gatineau–Ottawa, Sherbrooke, Trois-Rivières and Ville de Saguenay, until six months after a new FM radio station begins broadcasting in these markets or 42 months, whichever occurs first.

A new French-language FM station began broadcasting in Gatineau–Ottawa on September 23, 2002.

In compliance with the consent agreement, Astral proposed to sell the AM radio stations and CFOM-FM in Quebec City to a company jointly controlled by TVA Inc. (60 percent) and Radio Nord Communications Inc. (40 percent). The Commissioner approved this plan on October 18, 2002.

As of March 31, 2003, the CRTC was still reviewing the application seeking approval for the proposed transfers of licences and the various applications for new licences in Sherbrooke, Trois-Rivières, Ville de Saguenay and Montréal.

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

In April 2000, the Bureau challenged Canadian Waste Services Inc.'s acquisition of a southern Ontario landfill on the grounds that it would likely result in higher prices for customers of waste disposal services in the Greater Toronto Area and Chatham–Kent.

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

In November 2001, Canadian Waste appealed both the March and June 2001 decisions, and the Tribunal's divestiture order was stayed pending the outcome of the appeals.

Following a hearing in March 2003, the Federal Court of Appeal dismissed Canadian Waste's appeals, ruling that the Tribunal had specialized expertise in making its findings. On March 12, 2003, the Tribunal's divestiture order came into effect.

While the divestiture process is taking place, the landfill will be held separately from Canadian Waste's other operations and

will be managed by an independent manager who will be supervised by an independent monitor.

United Grain Growers Limited and Agricore Cooperative Ltd.

In July 2001, two of the largest grain-handling companies in Western Canada, United Grain Growers Limited (UGG) and Agricore Cooperative Ltd. announced they would merge into Agricore United. The Bureau advised the parties that the proposed transaction would substantially lessen competition in grain-handling services at the Port of Vancouver and in certain grain-handling markets in Manitoba and Alberta.

In response to the Bureau's concerns, Agricore United agreed to divest up to seven primary grain handling elevators in western Canada. On December 17, 2001, the Bureau filed an application with the Competition Tribunal for a consent order requesting the divestiture of primary grain elevator assets in the Dauphin, Manitoba, and Edmonton and Peace River, Alberta, areas. In February 2002, the Tribunal issued a consent order, requiring the elevators to be divested, a process that has been substantially completed.

The Bureau also challenged UGG's acquisition of Agricore's port terminal assets at the Port of Vancouver, requiring Agricore United to divest either the Pacific port terminal or the UGG port terminal. Agricore United took the position that a divestiture of only a part of the Pacific terminal was necessary. On January 15, 2002, the Tribunal issued an order requiring Agricore United to maintain the competitive viability of the

grain-handling terminals at the Port of Vancouver pending the outcome of the contested portion of this transaction. After a hearing on September 12, 2002, the Tribunal found that the acquisition did substantially lessen competition.

A contested hearing was scheduled to start on October 21, 2002, in Vancouver to determine the appropriate remedy in the Port of Vancouver. However, on October 17, 2002, the Bureau announced that it had reached an agreement with Agricore United to divest either the UGG or Pacific grain-handling terminal in the Port of Vancouver. A consent agreement reflecting the settlement was registered with the Tribunal thereby terminating the Tribunal remedy proceedings. The Vancouver grain terminal divestiture process is ongoing.

Bayer AG and Aventis CropScience

On July 19, 2002, the Competition Tribunal issued a consent order to remedy competition concerns raised by Bayer AG's acquisition of Aventis CropScience. It required Bayer AG to divest three key agricultural chemical products and to license a fourth in its crop protection division. The Tribunal had issued an interim consent order on June 6, 2002, to ensure that the designated assets were separated and managed independently from Bayer's other business operations.

On January 21, 2003, the Bureau announced that Bayer AG had complied with the provisions of the consent order, and the Bureau approved the following divestitures:

- ▶ Arvesta Corporation would acquire certain assets of the flucarbazone business (including Everest, a spring wheat herbicide);
- ▶ BASF AG would acquire certain assets of the triticonazole business (including Charter, a cereal seed treatment); and
- ▶ Nippon Soda Co. Ltd. would acquire certain assets of the acetamiprid business, including a licence for Iprodione. In partnership with a Canadian licensee, Nippon would then be able to manufacture and develop Assail, a fruit and vegetable insecticide, and Assail ST, a canola seed treatment.

These divestitures ensure competitive prices for distributors and farmers in the Canadian pesticides industry. The consent order was notable for certain “crown jewel” provisions included to ensure the success of the divestitures and to remedy the competition concerns identified by the Bureau.

Close coordination with the U.S. Federal Trade Commission and the Merger Task Force of the European Commission ensured appropriate and consistent remedies.

Abitibi-Consolidated Inc. and Donohue Inc.

Abitibi-Consolidated’s acquisition of Donohue in 2000 raised Bureau concerns that this \$7.1-billion merger would substantially lessen competition in the supply of newsprint in eastern Canada. To address the Bureau’s competition concerns, Abitibi agreed to divest its Port-Alfred newsprint mill in Quebec. Due to a depressed market for newsprint, Abitibi was unable to sell the mill and agreed to a consent order providing for an agent sale of the mill on February 21, 2002. The agent sale

process was handled by Deloitte & Touche Corporate Finance Canada Inc., which was also unable to find a buyer for the mill before the conclusion of the sale period in September 2002. As a result, the mill remained the property of Abitibi.

Famous Players Inc. and Galaxy Entertainment Inc., and Onex Corporation and Loews Cineplex/Cineplex Odeon Corporation

In the course of reviewing Onex Corporation’s proposed restructuring of Loews Cineplex, the Bureau learned that Onex Corporation’s Galaxy Entertainment Inc., with movie theatres in five provinces, had previously merged with Famous Players, Canada’s largest exhibitor. Following discussions in April 2002 about the Bureau’s concerns regarding the links between Famous Players, Cineplex Odeon and Galaxy, Famous Players agreed to divest its interest in Galaxy, end its representation on Galaxy’s board of directors and terminate all ancillary agreements.

Diageo plc, Pernod Ricard SA and The Seagram Company Ltd.

On October 4, 2002, Diageo plc completed the sale of its Gibson’s Finest brand of Canadian whisky and related assets to William Grant & Sons Limited. The divestiture was required as part of an agreement with the Bureau, announced in October 2001, to address competition concerns.

Following a thorough review of the acquisition of Seagram’s spirit and wine business by Diageo and Pernod Richard, the

Bureau concluded that the Diageo purchase of Seagram's Canadian whisky brands, which included Crown Royal and Seagram's VO, would likely have substantially lessened competition in the supply of premium Canadian whisky products in several provinces. The purchase of Gibson's Finest brand by Grant, an international spirits company with no presence in the Canadian whisky market, should help to ensure that the market for premium Canadian whisky remains competitive.

Pfizer Inc. and Pharmacia Canada Inc.

On April 11, 2003, the Bureau registered a consent agreement with the Competition Tribunal to remedy the competition concerns arising from the acquisition of Pharmacia Canada Inc. and its foreign parent by Pfizer Inc.

The Bureau concluded that the transaction would substantially prevent competition in the market for pharmaceutical products used in the treatment of human sexual dysfunction. To remedy these concerns, the parties agreed to terminate a collaboration and licence agreement between Pharmacia and Nastech Pharmaceuticals Inc. involving a developmental intranasal apomorphine, and to divest another pipeline product to Neurocrine Biosciences Inc. These divestitures ensured the continued development of these products for eventual introduction into a Canadian market currently dominated by Pfizer's product, Viagra.

The Bureau also determined that the transaction would substantially prevent competition in the market for pharmaceutical products that treat overactive bladder problems. To

remedy these concerns, the parties agreed to divest Pfizer's developmental product, Darifenacin, to Novartis Pharma AG. The current market leader in Canada is Pharmacia with its products, Detrol and Unidet.

During the review process, the Bureau communicated regularly with the U.S. Federal Trade Commission and the Merger Task Force of the European Commission to ensure consistent remedies.

Reitmans (Canada) Limited and Shirmax Fashions Ltd.

Reitmans (Canada) Limited's acquisition of Shirmax Fashions Ltd., a competitor retailer in plus-size ladies apparel, raised concerns that access to retail space in shopping centres would be negatively affected. In response, Reitmans agreed not to enforce restrictive clauses in more than 100 leases, nor to enter into leases that would exclude competitors during the subsequent three years. With these undertakings, the Bureau concluded that competition would not be substantially lessened as a result of the proposed merger.

Canadian National Railway Company and the Ontario Northland Railway

On October 18, 2002, Canadian National (CN) announced that it had been selected by the Ontario government over three other candidates to acquire Ontario Northland Railway (ONR). Since then, the Ontario Northland Transportation Commission, owner of ONR, and CN have been negotiating the final terms

and conditions associated with this proposed transaction. ONR owns and provides freight and passenger transportation services over approximately 700 miles of rail track in northeastern Ontario. CN's rail network connects with the ONR regional network at Hearst and North Bay, Ontario, and Rouyn-Noranda, Quebec. At the end of 2002–2003, the Bureau was examining this proposed transaction.⁴

Budget Group Inc. and Cendant Corporation

In November 2002, the Bureau announced that it had come to an agreement with Cendant Corporation, the U.S. parent company of Aviscar Inc. (Avis) to resolve competition concerns arising from its acquisition of Budget Rent A Car of Canada Limited. This agreement included a restriction on the sharing of competitively sensitive information between Budget and Avis to preserve competition in Canada's car rental business and to maintain the independence of Budget's Canadian franchisees from Cendant's control.

4. On June 2, 2003, CN announced that it terminated negotiations with the Ontario government to acquire ONR.

Chapter 5

Preventing Anti-Competitive Activity

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

The following are examples of the Bureau's response to instances of non-conformity over the past year. For detailed information, including information notices, press releases and backgrounders on these cases and others, please visit the Bureau's Web site (www.cb-bc.gc.ca).

Airline Industry

The state of competition in the Canadian airline industry continues to be a matter of considerable public interest and concern. General economic conditions and other factors, including the aftermath of the events of September 11, 2001, negatively affected demand and revenues. Air Canada struggled with substantial operating losses and in the winter of 2003 was seeking bankruptcy protection under the *Companies' Creditors Arrangement Act*. Air Canada is not alone in facing these types of problems. Several other full-service network

carriers in the United States and elsewhere were also restructuring their operations in light of changing consumer demand and competition from low-cost carriers.

On the more positive side, WestJet continued with its expansion eastward, including service at Toronto's Pearson Airport. In addition, two other low-cost carriers, CanJet based in Halifax, and Jetsgo based in Montréal, began service. During the year, Air Canada withdrew service from a number of smaller, unprofitable routes. This created some opportunity for small regional carriers to serve the affected communities.

As the fiscal year came to a close, there was considerable uncertainty about the future impact on the market of Air Canada's restructuring and the overall climate for air transportation. Against this backdrop, the Bureau continued to treat competition in the airline industry as a priority.

Competition Tribunal Hearing: Commissioner of Competition v. Air Canada

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

This is the first case under the new airline regulations specifying that avoidable costs are to be the standard for assessing

predatory conduct by dominant airlines. In the first phase of the hearing, the Tribunal agreed to consider and rule on specific questions related to the application of this test. The hearing, which began in August 2001, and was twice adjourned — as a result of the events of September 11, 2001, and the illness of a Tribunal member — recommenced in November 2002. Following 40 days of hearings, including testimony from representatives of CanJet, WestJet and Air Canada, as well as economic, accounting and industry experts, the hearing concluded in early March 2003. At the end of the fiscal year, the Tribunal's decision was pending.

Tango Inquiry

In October 2001, the Bureau began an inquiry into allegations that Air Canada had launched its discount brand Tango to drive Canada 3000 from the market (see the Bureau's **2001–2002 Annual Report** for more information). Following an intensive examination and monitoring of Tango, the Bureau concluded that Tango did not constitute a “fighting brand” within the meaning of section 78. There was also no evidence that Tango was in breach of the new airline regulations relating to the operation of a low-cost second brand carrier. Accordingly, this inquiry was discontinued in March 2003.

In reporting the discontinuance, the Commissioner noted that the pending decision of the Competition Tribunal setting out the rules for the application of the avoidable cost test will have implications for Air Canada and all of its brands, including Tango.

Complaint by Jetsgo

In December 2002, the Bureau announced that it found no grounds to proceed with a complaint filed by Jetsgo regarding an agreement reached between Air Canada and the Government of Quebec. In return for Air Canada providing reduced fares for non-government users on 15 regional routes and continuing service on these routes, the Quebec government agreed to increase its volume of business with Air Canada. The Bureau concluded that this arrangement did not raise an issue under the Act, based on two main considerations. First, contrary to initial allegations, the agreement does not make Air Canada the exclusive provider of provincial government travel. Government employees remain free to choose the carrier best serving their needs in terms of price and schedule. Second, the agreement does not prevent other carriers from competing with Air Canada.

Other Examinations and Inquiries

During 2002–2003, the Bureau received and investigated a number of other complaints. At the end of the fiscal year, three enforcement files in the airline sector remained open. Two of these involve allegations of predatory pricing. The third matter relates to an airline's practice of withholding part of its inventory from the computer reservation system and marketing discount fares directly from its own Internet site or an online travel agency. The Bureau is continuing to examine these matters.

Legal Challenges to Section 104.1

Air Canada had launched two legal challenges to the Bureau's authority under section 104.1 of the Competition Act to issue temporary orders to firms in the airline industry during the course of its investigations (see the Bureau's **2001–2002 Annual Report**).

- ▶ On December 19, 2002, the Supreme Court of Canada denied Air Canada's application for leave to appeal the Federal Court of Appeal's decision related to the CanJet complaint. This decision upheld the Competition Tribunal's decision to uphold the Commissioner's October 12, 2002, temporary order in this matter.
- ▶ On January 16, 2003, the Quebec Court of Appeal ruled section 104.1 of the *Competition Act* to be inoperative because it conflicts with rights to due process of law under the *Canadian Bill of Rights*. In March 2003, the federal government filed an application with the Supreme Court of Canada for leave to appeal this decision. The matter is pending.

Enforcement Cases

Deceptive Mailings

- ▶ In May 2002, Peter Kuryliw, the sole director of 1473253 Ontario Incorporated (Yellowbusiness.ca) pleaded guilty in the Ontario Court of Justice to sending a deceptive mailing for an Internet directory to more than 40 000 businesses

and non-profit organizations. The mailing, which asked recipients to send a payment to a postal box in the Toronto area for an Internet business directory that listed details about their organizations, had the appearance of an invoice from an existing service provider, such as Bell Canada or the Yellow Pages. The investigation included seizure by the Bureau and Canada Post of mail containing an estimated \$700 000 in payments. Mr. Kuryliw was fined \$30 000 and given 90 days to dissolve his company. Further charges were laid in July 2002 against James Tetaka for his role in the scheme.

- ▶ In June 2002, charges were laid against four corporations following an investigation into deceptive mailings aimed at residents of the United States, United Kingdom, Australia and New Zealand. The four companies (HMS Direct Limited, Hallstone Products Ltd., 483775 B.C. Ltd, and Ravenshoe Services Limited) sent out mailings asking recipients to send a payment if they wished to participate in various international lotteries. The Bureau alleged the mailings exaggerated the amount that consumers could win and their chances of winning. The mailings also falsely indicated that consumers had already won substantial sums of money and misrepresented the companies' association with the government body issuing the lottery tickets. In August 2002, charges were laid against five individuals for their role in the deceptive mailings: David Stucky, Sylvia Carbone, Tom Taylor, Norm Pemberton and Janet Swanston.

In March 2003, further charges were laid against HMS Direct, Hallstone Products and four individuals (David Stucky, Sylvia Carbone, Norman Pemberton and Janet Swanston) with regard to different unsolicited mailings that encouraged recipients to send money for a supposedly valuable prize. The Bureau received complaints from consumers in 91 countries over two years about these mailings, which promised recipients \$5000 or an equivalent prize, but, instead, provided predetermined inexpensive pieces of jewellery.

- ▶ In October 2002, the Bureau laid charges against the Internet Registry of Canada and its principals, James Tetaka and Daniel Klemann, under the *Competition Act's* misleading representations provisions. The Bureau claimed that the company, which offered an Internet domain name registration service, marketed its services by sending mail solicitations to individuals and organizations whose domain names were about to expire. The solicitations had the appearance of invoices from the Government of Canada or other officially sanctioned agencies registering domain names.

Deceptive Telemarketing

- ▶ In June 2002, the Competition Bureau laid nine charges against Marvin Redler following a lengthy criminal investigation into the deceptive telemarketing and direct mail practices of a number of Montréal-based telemarketing firms from 1994 to 1999. Marvin Redler was a telemarketer with SS Viking Industries and CSRH Heritage Group

Inc., which were charged with misleading advertising under the *Competition Act* in December 1999 and May 2000. He and other telemarketers informed consumers across Canada that they had been specially selected to win various prizes if they first purchased items such as pens, coins and lithographs at highly inflated prices. Consumers also had to send in additional fees, not disclosed at the time of purchase, to collect their prizes. The Competition Bureau received approximately 3100 consumer complaints about the four companies involved, with reported losses totalling approximately \$1 040 000.

- ▶ In June 2002, the telemarketing company Tamec Inc., and its subsidiaries Commercial Information Bank of Canada and Deev Inc., pleaded guilty to deceptive telemarketing and misleading advertising charges under the *Competition Act*. The pleas followed a Bureau criminal investigation into deceptive telemarketing activities aimed at businesses, government institutions, and religious, educational and non-profit organizations across Canada. The Bureau received hundreds of complaints alleging that the telemarketers misrepresented the purpose of their calls, provided false information about the prior existence of a business relationship with Tamec and did not disclose restrictions that applied to the return of products. Complainants also alleged that the telemarketers did not disclose that, by agreeing to accept delivery of one edition of a Tamec business directory, organizations were actually entering into a multi-edition subscription.

The accused parties pleaded guilty in the Court of Quebec and were fined \$300 000. The Court imposed an order that prohibited the convicted parties and their officers from engaging in similar deceptive marketing practices for 10 years. Tamec also agreed to commit an additional \$180 000 towards a remediation program offering victims up to \$300 each in free goods and services.

- ▶ In July 2002, the Bureau laid charges against three telemarketers, Gerald Goldstein, Doron Kunin and Janice Gold, who allegedly made false or misleading representations to the public under the business names Farber Blake Corp., SD Prestige Enterprises Ltd. and JC & A. These follow similar charges in June 2001 against Farber Blake Corp., SD Prestige Enterprises Ltd., LA Premiums, JC & A, their principal directors and individual telemarketers.

In January 2003, Farber Blake Corp. pleaded guilty to one criminal charge for misleading consumers in Canada and New Zealand. Farber Blake telemarketers told consumers they had won prizes in the form of cash, a boat or a cruise in the Bahamas if they first bought one of the company's promotional items. The Bureau found the company had misrepresented the nature, value and quality of both the prizes and promotional items and sold the latter at highly inflated prices. The company was fined \$300 000.

- ▶ In October 2002, the Bureau worked jointly with the Toronto Strategic Partnership to lay charges against four individuals, David Dalglish, Lloyd Prudenza, Leslie Anderson and Mark Lennox, of First Capital Consumers Group for defrauding close to 100 000 American consumers

of approximately \$20 million during the previous year. This group, working out of boiler rooms in the Toronto area, told consumers with poor credit histories they had been approved for a Mastercard or Visa credit card but that receipt of the card was conditional on a prior payment of a one-time processing fee. The victims never received a valid credit card.

- ▶ In November 2002, the Bureau laid criminal charges against seven companies, 2951-8313 Quebec Inc., 3579573 Canada Inc., 1344667 Ontario Inc., 1319563 Ontario Ltd., 1230704 Ontario Inc., 1018961 Ontario Inc. and 1357280 Ontario Inc., and 10 individuals, Albert Mouyal, Ricardo Aquino, Attila Kristof Jausz, Adrian Towning, Charles Hamouth, Russell Todd Ivison, Jamie Lyons, Neil Underwood, Francis Loo and Sean Beesley, following an investigation into criminal deceptive telemarketing that targeted businesses and not-for-profit organizations across Canada and the U.S. The group of corporations, operating as Hanson Publications, Copier Supply Centre and Associated Merchant Paper Supplies, contacted businesses, with callers posing as suppliers of business directories, "swipe" cards and office toner, and allegedly invoiced consumers for products they had not ordered. The investigation is ongoing and additional charges may be laid.

- ▶ In November 2002, the Bureau laid charges against six companies and seven individuals for allegedly engaging in deceptive telemarketing that targeted businesses and not-for-profit organizations worldwide. Charged were 153595 Canada Inc., 3350550 Canada Inc., 174440

Canada Inc., 162014 Canada Inc., 162013 Canada Inc. and MM International Business Directories Limited, Michael Mouyal, Randy Misurak, Justine Pold, Stéphane Ouellet, Charles McCullough, Charles Picotte and François Lefort. The companies, operating under the names Commercial Business Supplies, Merchant Transaction Supplies, Merchant Supply Services and International Business Directories, sold paper rolls and cleaning cartridges used in debit and credit card machines as well as business directories and listings in those directories. Companies from around the world complained that telemarketers misrepresented themselves as their regular supplier, made false and misleading representations about prices and the renewal and duration of subscriptions, invoiced them for supplies they had not ordered, and charged prices that were significantly greater than the market price.

- ▶ In January 2003, five individuals, Doron Kunin, Jerry Browman, Lawrence Walsh, Marcus Miller and Michel Rosenberg, pleaded guilty and were sentenced by the Court of Quebec following a Bureau investigation into the deceptive telemarketing activities of two Montréal-based companies. In 2000 and 2001, the Bureau and PhoneBusters received numerous complaints that Alexis Corporation telemarketers were telling consumers they would win valuable prizes, ranging from cars and diamond bracelets to substantial cash amounts, if they first purchased a promotional item. The Bureau investigation, which relied on wiretaps to gather information about 3636135 Canada Inc. (Alexis Corporation) and 3587932 Canada Inc., its

administrative affiliate, found that the telemarketers had significantly deceived and misled consumers about the quantity and value of these prizes. This matter is ongoing and a court date for the two companies has been set for the fall of 2003.

- ▶ In February 2003, charges were laid against seven individuals, Allan Shiell, Chris Quilliam, Sean Zaichick, Julian Shiell, Alex Korn, Nicholas Bridges and Cory Darren Besser, who were engaged in an Ontario-based telemarketing operation under the company names of MedPlan, Global and STF Group that grossed US\$8 million the previous year. The telemarketing operation, which primarily targeted seniors living in the U.S., allegedly used high-pressure sales techniques to induce consumers to buy medical discount plans and to release bank account information. Funds were withdrawn without authorization from the victims' bank accounts and promises of a free trial period and refund conditions were not respected.

Multilevel Marketing

- ▶ In July 2002, the Bureau laid charges against Richard Guertin and Richard Arseneault, two directors of NSV Nutrinautes Inc., a Quebec company charged in March 2002 with violating the multilevel-marketing, pyramid-selling and misleading-representations provisions of the Act. The company and its directors operated a multilevel marketing plan known as the Cocooning Club that recruited new participants by exaggerating income expectations. Under the *Competition Act*, it is illegal to

refer to earnings in a multilevel marketing plan without disclosing a typical participant's income. Further charges were laid in November 2002 against Marc Déglise for his role in this matter.

- ▶ In August 2002, the Bureau laid eight charges against All Communications Network of Canada Co. under the multilevel-marketing and pyramid-selling provisions of the Act. The company was charged with having recruited new participants to promote and sell long-distance telecommunication services by exaggerating income expectations without disclosing the income of a typical participant and with allegedly operating an illegal pyramid scheme by offering recruitment bonuses to participants who paid for the right to recruit other participants.

Price Maintenance

- ▶ In September 2001, the Bureau laid charges against Sherwood Co-operative Association Limited and Federated Co-operatives Limited following an investigation and hearings into allegations that the two companies through agreement, threat or promise attempted to maintain the price at which the Tempo gasoline retailer in Pilot Butte, Saskatchewan, sold its gasoline. In a preliminary hearing that took place in November 2002, the judge found that, while Sherwood Co-op and its principal had attempted to influence the price of gasoline sold at the station, this had not been done through agreement, threat or promise, as prohibited under section 61(1)(a) of the *Competition Act*. The charges were dismissed.

- ▶ In December 2001, the Bureau initiated an inquiry into the Quebec automobile repair industry after receiving a complaint under section 9 of the *Competition Act*. The complainants alleged that certain automobile insurance companies, body shops and suppliers of recycled parts were involved in activities contrary to sections 45 and 77 of the Act. The Bureau concluded that this was not the case and discontinued its inquiry on August 12, 2002.

- ▶ In October 2002, the Stroh Brewery Company (Quebec) Ltd. pleaded guilty to charges of price maintenance. The conviction followed a Bureau investigation revealing that Stroh prohibited convenience stores and other retail outlets in Quebec from discounting Stroh's bottled beer of various sizes by the case. The Federal Court of Canada imposed a \$250 000 fine, the largest fine to date in a price maintenance case.

- ▶ In October 2002, Degussa AG of Germany, Lonza AG of Switzerland, and Nepera Inc. and Reilly Industries Inc. of the U.S. pleaded guilty to participating in an international conspiracy to fix prices and allocate market shares of vitamin B₃ sold in bulk in Canada between 1992 and 1998. Dr. Kumo Sommer, a Swiss national and former executive at Hoffmann-La Roche Ltd., a Swiss corporation, also pleaded guilty to participating in a number of conspiracies involving bulk vitamins between 1991 and 1997. The Federal Court of Canada imposed fines totalling CAN\$3.875 million on the companies and CAN\$150 000 on the former executive. Since September 1999, Canadian courts have imposed a total of approximately

CAN\$95.5 million against companies and individuals involved in bulk vitamin conspiracies.

- ▶ In December 2002, Japan-based Nippon Gohsei Industries, Ltd. pleaded guilty to charges of price fixing and market sharing resulting from the Bureau's international investigation into the food preservatives industry. The investigation revealed that Nippon was involved in a conspiracy to fix prices for sorbic acid and potassium sorbate, otherwise known as sorbates. Sorbates are primarily used as mould inhibitors in foods such as dairy and bakery products, flavours and spices, syrups and other processed foods commonly sold in grocery stores. Nippon is the fifth international company to be convicted of such offences in Canada in the last three years. The company was sentenced to pay a \$100 000 fine for its part in the conspiracy.
- ▶ In February 2003, Rhone-Poulenc Biochimie SA, a wholly owned subsidiary of Aventis SA, pleaded guilty in the Federal Court of Canada to a charge of price fixing under the *Competition Act*. The charges followed a Bureau investigation revealing that between 1990 and 1999 Rhone-Poulenc was involved in a price-fixing conspiracy involving methylglucamine, a specialized chemical ingredient primarily used to facilitate the recording of high contrast X-ray images. Under the conspiracy provisions of the *Competition Act*, it is a crime for competitors to agree on the prices they will charge customers when so doing unduly lessens competition or unreasonably raises prices. The court imposed a \$500 000 fine.

Price Maintenance Charges Under Subsection 34(2)

Under subsection 34(2) of the Act, the courts can issue an order prohibiting acts directed toward the commission of an offence without a finding or admission of guilt. The Bureau handled two such cases this year.

- ▶ In February 2003, as a result of an agreement with the Competition Bureau and Re/Max Ontario-Atlantic Inc., Re/Max Western Canada (1998) and Re/Max International Inc., the Federal Court of Canada issued a prohibition order under subsection 34(2) of the *Competition Act* requiring the companies to change certain pricing and advertising policies to address concerns under the price maintenance provisions of the Act. The Re/Max companies involved are in the business of granting franchises for real estate brokerages under the Re/Max brand name.

The prohibition order followed an inquiry by the Bureau into allegations that a policy directive issued by both Re/Max Ontario-Atlantic and Re/Max Western prohibited their franchises and sales associates from advertising commission rates. In a number of instances, non-compliant sales associates were fired.

The settlement will enhance competition for the real estate brokerage industry by allowing Re/Max franchises, brokers and agents to advertise commission rates or fees to the public. The prohibition order also prevents the companies from doing the following:

- prohibiting their franchises or sales associates from setting independent commission rates or advertising such rates;
- attempting to influence commission rates upwards by any means; and
- pressuring independent publishers to refuse advertising from any Re/Max franchise or sales associates because of the commission rates advertised.

The prohibition order further requires the companies to pay the Crown's legal costs.

- ▶ In March 2003, as a result of an agreement between the Competition Bureau and Toyota Canada Inc., the Federal Court of Canada issued a prohibition order under subsection 34(2) of the *Competition Act* requiring Toyota to amend certain aspects of its Access Toyota Program to address concerns under the price maintenance and misleading advertising provision of the Act. The Access Toyota Program started in 2000 in Manitoba and, at the time the prohibition order was issued, was in place in the four western provinces and parts of Quebec.

The prohibition order followed an inquiry by the Bureau into allegations that Toyota was prohibiting dealers participating in the Access Toyota Program from selling vehicles below "Access/Drive-Away" prices. The inquiry also raised an issue under the misleading-representation provisions because the Access Toyota Web site indicated that Access Toyota dealers could sell vehicles for less than Access/Drive-Away prices without being penalized by Toyota.

The settlement will enhance competition because Access Toyota dealers are now free to set their own prices, and consumers have the opportunity to negotiate the purchase of Toyota vehicles. The prohibition order also requires Toyota to amend its contractual relationships with Access Toyota dealers to ensure that dealers do not enter into agreements with each other on prices or discounts for Toyota vehicles, or make statements to the public that Toyota prohibits selling below Access/Drive Away prices.

The prohibition order also requires Toyota advertising to include a disclaimer that Toyota dealers may sell vehicles for less than Access/Drive-Away prices and to pay the \$200 000 cost of the Bureau's investigation. As part of the settlement, Toyota also made voluntary donations totalling \$2.3 million to charitable organizations across Canada.

Deceptive Marketing Practices

- ▶ In May 2002, the Bureau filed a consent agreement with the Competition Tribunal against Phone Directories Company Inc., requiring it to refrain from making false or misleading representations when selling its directories. Business owners in British Columbia had complained that the U.S.-based company, which operates in B.C. under the name Western Phone Directories, had failed to deliver on the terms of promised publication dates, the number of copies to be distributed and the area of distribution. Under the terms of the consent agreement, the company agreed to stop making false or misleading representations about the number of directories to be published, the time period

of publication and distribution, and the geographic area and density of distribution. Phone Directories Company Inc. also paid a \$5000 administrative penalty.

- ▶ In May 2002, the Competition Tribunal found that PVI International Inc., Michael Golka and Darren Golka had made false or misleading representations when promoting a gas savings and emission reduction device called the Platinum Vapor Injector (PVI). The company and its principals enticed consumers into buying gas and diesel versions of the PVI by claiming it could reduce fuel consumption by as much as 22 percent, while also reducing harmful emissions. Expert testimony introduced by the Bureau showed these claims to be false or misleading, as were claims that the U.S. government had approved the PVI. The Tribunal ordered PVI International and its principals to cease making these representations for 10 years, the maximum time allowed under the Act, and ordered the company to pay an administrative penalty of \$75 000. Michael Golka and Darren Golka were each ordered to pay \$25 000.

In July 2002, following an appeal filed in the Federal Court of Canada by PVI International Inc. and others, the Commissioner filed a cross-appeal seeking an order requiring the respondents to publish notices in Canadian newspapers and on the Internet describing the Tribunal's findings about the device.

- ▶ In July 2002, the Competition Bureau filed its first application with the Competition Tribunal under the ordinary selling price provisions of the *Competition Act*. The appli-

cation against Sears Canada Inc. alleged that Sears referred to inflated regular prices when promoting certain tires to consumers at sale prices. The *Competition Act* recognizes that regular prices have a powerful effect on consumers. The Bureau's application requested that the Tribunal issue a prohibition order requiring Sears to stop the alleged conduct for 10 years, to publish a notice setting out the Tribunal's findings, and to pay an administrative penalty. In the course of the proceedings before the Competition Tribunal, Sears indicated that it will challenge the constitutionality of subsection 74.01(3) of the *Competition Act*.

- ▶ On December 13, 2002, Thane Direct Canada Inc. and the Commissioner of Competition filed a consent agreement with the Competition Tribunal concerning the sale and marketing of the Abtronic and the Abtronic Pro, two electronic muscle stimulation devices. The Bureau's inquiry concluded that Thane, through infomercials and its Web site, made representations that could give consumers the false impression that by using these devices they could lose weight, obtain well-defined abdominal muscles, replace the workout benefits of a fully equipped gymnasium and increase their strength, without doing any physical exercise. After being informed that the Bureau had commenced an inquiry, Thane requested a resolution by consent agreement. As a result, Thane agreed to stop selling and marketing the devices and any similar devices that offer weight loss or muscle toning with no exercise required, unless the Commissioner agrees that the claims are based on adequate and proper tests. Thane also agreed to provide refunds to any unsatisfied consumers, to broadcast more

than 1000 corrective notices on major television stations across Canada and to pay a \$75 000 administrative penalty.

- ▶ In December 2002, the Bureau registered a consent agreement with the Competition Tribunal involving the retail chains Fine Gold Jewellery and the Diamond Co. The agreement resulted from a Bureau investigation that found that the retailers deceived consumers by offering 50 percent discounts on gold and diamond jewellery based on supposedly regular prices that had actually been inflated. Under the terms of the consent agreement, the corporations and their officers agreed to stop making written or verbal representations about a regular selling price unless half of those products had been sold at that price in the previous 12 months. The operators of these 19 retail stores, 1376535 Ontario Limited, Tadros & Tadros Limited, Ibrahim & Tadros Inc., and Tadros and Mina Limited, agreed to pay a \$25 000 administrative penalty. The consent agreement will remain in force for 10 years.

Consumer Packaging and Labelling

- ▶ In July 2002, the Bureau laid five charges against Modugno-Hortibec Inc., a company based in Quebec that specializes in packaging and selling garden products such as topsoil and compost. A Bureau inspection found that the quantity of certain compost and marble chips packaged under the names Canadian Garden, Master Gardener and Hortibec was less than indicated on the label. In January 2003, the company pleaded guilty to false or misleading representation. The Court of Quebec imposed

a \$4250 fine under the *Consumer Packaging and Labelling Act*.

Abuse of Dominance

- ▶ In March 2003, the Bureau concluded its investigation of IKO Industries Ltd., Canada's largest manufacturer of asphalt roofing products. The Bureau had received complaints that IKO was abusing its dominant market position and impeding the entry and expansion of competitors through its policy of giving distributors loyalty rebates on sales of residential asphalt roofing shingles. The Bureau had outlined its concerns about the distributor loyalty program, observing that it likely prevented or substantially lessened competition in the supply of low-end asphalt roofing shingles in Canada. In response to the Bureau's concerns, IKO modified its rebate program by giving customers a choice between loyalty and volume-based rebates. In addition, the level of rebate varies in the modified loyalty program with the volume of percentage of shingles purchased from IKO. These modifications diminish the incentive to exclusivity inherent in loyalty rebates.
- ▶ In October 2002, the Competition Bureau filed an application with the Competition Tribunal for an order prohibiting Canada Pipe Company Ltd./Tuyauteries Canada Ltée from engaging in anti-competitive acts through its Bibby Ste-Croix Division. The application followed an inquiry into complaints that Bibby, which was acquired by Canada Pipe in 1997, was abusing its dominant position in the supply of cast-iron pipe, fittings and mechanical joint

couplings for drain, waste and vent applications in markets across Canada by introducing a loyalty program that locked in customers and eliminated competitors. Bibby required that its clients purchase all their drain, waste and vent products exclusively from it in order to obtain substantial rebates.

The application asks the Competition Tribunal to order Canada Pipe to stop the alleged conduct, to ensure that similar conduct will not continue in the future, to prohibit Canada Pipe from being part of any acquisitions of cast-iron drain, waste and vent businesses in Canada for the next three years, and to notify the Bureau of any such acquisitions for the three years following the initial three-year period.

- ▶ In December 2002, a consent agreement between the Bureau and the Charter members of the Interac Association was filed with the Competition Tribunal, replacing the consent order issued in June 1996. (Recent amendments to the *Competition Act* replaced the consent order with a consent agreement filed with the Tribunal, which has the same effect as a consent order.)

The consent agreement expands the range of financial institutions eligible to issue cards that use the Interac network. The additional financial institutions include life insurance companies, securities dealers, money market mutual funds and foreign bank branches. Allowing these additional financial institutions to issue debit cards will promote increased competition in financial services.

This change reflects expanded access to the Canadian Payments Association following pro-competitive changes to

federal financial institutions legislation. The Bureau supported these changes in its 1997 submission to the Task Force on the Future of the Canadian Financial Services Sector.

- ▶ In December 2002, the Bureau announced it was discontinuing its investigation into the Canadian motion picture distribution industry after an extensive inquiry did not identify any anti-competitive activity. The inquiry took place between April 2000 and October 2002. Complainants had alleged that major motion picture distributors, in concert with Famous Players Inc. and Cineplex Odeon Corporation, did not supply commercially valuable motion pictures to other exhibitors. The complainants claimed that this activity substantially lessened and prevented competition for motion picture exhibition in Canada.

The Bureau concluded that there was insufficient evidence that Famous Players and Cineplex Odeon applied pressure to prevent distributors from supplying movies to independent exhibitors. As well, the Bureau found no evidence that distributor licensing preferences, or licensing a movie to only one theatre in a local area, violated the *Competition Act*.

Refusal to Supply

- ▶ In March 2003, the Bureau announced it had found no evidence to proceed against GlaxoSmithKline for blocking Canadian-based Internet pharmacies from exporting its products to the United States. The civil provisions of Canadian competition law pertaining to refusal to supply and market restrictions recognize that suppliers may set

the terms and conditions of sales to businesses, provided they have reasonable business justification. The Bureau was advised by the U.S. Food and Drug Administration that these cross-border sales violated U.S. law, supporting GlaxoSmithKline's position that it had a reasonable business justification for blocking exports while continuing to supply the Canadian market. The Bureau examined this matter with respect to both the criminal and civil provisions of the *Competition Act*, and found no evidence to suggest the Act had been violated.

- ▶ In October 2002, the Bureau examined a complaint from a tour operator who had been denied access to an airport located in Ontario. After being notified by the Bureau of its examination under section 75 of the *Competition Act*, the airport decided to provide access facilities, giving consumers more choices for their travel.



Information Contacts/Visits

The Bureau may contact individuals during the course of an investigation when it believes that they may be unaware that their conduct raises concern under the *Competition Act*, *Consumer Packaging and Labelling Act*, *Textile Labelling Act* or *Precious Metals Marking Act*, and that they might comply with the legislation if it were explained to them. The people contacted are under no obligation to discuss the matter or justify their conduct but, should they decide to take voluntary corrective action, the Bureau would then determine whether to continue the investigation, monitor the anti-competitive conduct or close the file. Numerous information contacts were made during 2002–2003 in such areas as ordinary selling price representations, unsubstantiated performance claims, false and misleading representations, promotional contests, multilevel marketing and pyramid schemes, and labelling, packaging and marketing of consumer goods, textiles and precious metals.



Alternative Case Resolutions: Misleading Representations and Deceptive Marketing Practices

The Bureau resolved 67 matters through alternative case resolution under the misleading representations and deceptive marketing practices provisions of the *Competition Act*, and 104 matters under the three standards-based statutes.

Chapter 6

Maintaining a Modern Approach to Competition Law

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

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



Section 11 Challenge Function

In March 2001, the Bureau implemented an internal challenge function with respect to the use of orders under section 11 of the *Competition Act*. This function continued to be in place in 2002–2003.

Section 11, a key investigative tool under the Act, allows the Commissioner or an authorized representative to apply to specified courts for orders requiring people to appear before a hearing officer to give testimony, produce records or provide written information as specified in the order. The principal objective of the challenge function is to ensure that applications and orders under the provision are consistent and that they seek records and information necessary for an inquiry in as clear and efficient a manner as possible. All section 11 applications are subject to review and approval by the Strategic Policy

Advisor, Compliance and Operations Branch, whose responsibility it is to ensure that requests for records and written returns are clearly worded and seek only necessary information and records. This procedure must be completed before case officers and counsel can bring the matter before the courts.

Since the introduction of the challenge, the quality of applications and orders under section 11 has improved. Consistent procedures are in place and the roles of case staff, legal counsel and review officers have been tailored to their specific expertise. Ongoing development of this function will be carried out through internal training and procedure manuals.

During the year, section 11 orders were obtained in 12 inquiries, many of which involved multiple orders sought either simultaneously or at different stages of the inquiry.



Modernizing the Competition Bureau

On June 21, 2002, Bill C-23 (now C. 16, S.C. 2002) and its changes to the *Competition Act* and the *Competition Tribunal Act* came into force. This vital economic legislation strengthens Canada's competition law in a number of important ways that were discussed in detail in the **2001–2002 Annual Report**. They include the following:

- ▶ prohibiting companies from sending out deceptive notices about prize winning;

- ▶ providing a framework to allow the Bureau to request assistance from foreign states in obtaining evidence from abroad on non-criminal competition matters;
- ▶ allowing the Tribunal to issue interim orders prior to litigation to prevent irreparable harm to a business;
- ▶ giving the Competition Tribunal the authority to hear references, award costs and make summary dispositions;
- ▶ allowing private parties to apply directly to the Tribunal to address matters regarding refusal to deal, tied selling, exclusive dealing and market restrictions (sections 75 and 77 of the *Competition Act*); and
- ▶ providing measures to protect competition in the Canadian airline industry.

As a result of these new provisions, the Bureau now has better tools to enhance compliance with the Act for the benefit of both consumers and businesses.

Section 124.1 of the *Competition Act*, which relates to written opinions (formerly known as advisory opinions), did not come into force until April 1, 2003. This section allows an individual to seek a written opinion from the Commissioner of Competition on the application of any provision or regulation of the *Competition Act*. Written opinions are legally binding on the Commissioner of Competition when all the material facts have been submitted and these facts are accurate. They remain legally binding provided the material facts remain substantially unchanged and conduct is carried out substantially as proposed.

In May 2002, the Senate Standing Committee on Banking, Trade and Commerce reported that it would hold hearings within two years of the passage of the Bill to review the following provisions:

- ▶ those dealing with the airline industry and the powers of the Commissioner of Competition to issue interim orders, namely section 104.1;
- ▶ those dealing with private access to the Competition Tribunal; and
- ▶ those dealing with mutual legal assistance of foreign jurisdictions for civil reviewable matters.



House of Commons Committee Review of the *Competition Act*

In 1999–2000, the House of Commons Standing Committee on Industry, Science and Technology began hearings to review the anti-competitive pricing provisions of the *Competition Act*. The Committee subsequently expanded its review to include the *Competition Act* as a whole. The Committee tabled its final report, *A Plan to Modernize Canada's Competition Regime*, in the House of Commons on April 23, 2002. The committee's 29 recommendations covered a wide range of issues, such as conspiracies, enforcement, the airline industry, price maintenance and discrimination, abuse of dominance and mergers, and include the following:

- ▶ that the Bureau designate conspiracies as one of its highest priorities and that it amend the conspiracy provision to allow for a dual-track approach;

- ▶ that the Government of Canada make changes to the provisions dealing with predatory pricing, price maintenance and price discrimination;
- ▶ that the Government of Canada allow the Competition Tribunal to impose administrative monetary penalties for civil reviewable matters;
- ▶ that the Government establish an independent task force of experts to study the role that efficiencies should play in all civil reviewable sections of the *Competition Act*; and
- ▶ that the Government provide the Competition Bureau with the necessary resources to ensure the effective enforcement of the *Competition Act*.

On October 1, 2002, the Government tabled its response to the Committee's report in the House of Commons. The response recognized that effective competition law enforcement is essential to building a fair, efficient and competitive economy. Highlights of the response include the following:

- ▶ the Government's commitment to issue a discussion paper in 2003–2004 addressing specific proposals for consultation with a wide range of stakeholders on the next round of competition law amendments;
- ▶ proposed amendments to the conspiracy provisions of the *Competition Act* to be made a priority in the next round of amendments;
- ▶ consultations on the next round of amendments to address the proposed changes for administrative monetary penalties, price discrimination and predatory pricing;
- ▶ the Government's commissioning of a study on the treatment of efficiencies in merger review; and

- ▶ the Government's promise to ensure adequate funding of the Competition Bureau.

The consultations on the next round of competition law amendments will take place in 2003–2004.

The Government commissioned an independent study on the treatment of efficiencies in merger review in Australia, the United Kingdom, the European Union and the United States. This study was tabled in Parliament in March 2003 and is available at (<http://strategis.ic.gc.ca/ssg/ct02516e.html>).



Lawful Access

On August 26, 2002, the Government of Canada announced that it would be holding consultations with a broad range of stakeholders about the lawful interception of communications and the search and seizure of information by law enforcement and national security agencies. The Competition Bureau is among the federal partners involved in the lawful access consultations.

Rapid developments in information and communication technologies are posing challenges to conventional lawful access methods. Law enforcement agencies such as the Competition Bureau must often overcome a variety of technical hurdles before they can access the information they are legally authorized to collect. The consultations will provide stakeholders with an opportunity to consider options for policy and legislative changes, including changes to the *Competition Act*.



Private Members Bills

Bill C-249, previously known as Bill C-248, proposes to amend the *Competition Act* to clarify the efficiency defence. The Bill was referred to the House of Commons Standing Committee on Industry, Science and Technology on February 25, 2002.⁵

In addition to Bill C-249, some new private members bills on competition issues were introduced in the House of Commons during 2002–2003. Listed below are those bills introduced in the second session of the 37th Parliament that propose amendments to, or would affect the application of, the *Competition Act*.

Second Session, 37th Parliament

Bill	Subject
Bill C-353	Proposes an commission to regulate the wholesale and retail price of energy (motor fuels including diesel and propane, heating oil and electric power)
Bill C-379	Proposes an oil and gas ombudsman to investigate complaints about the business practices of oil and gas suppliers
Bill C-381	Proposes to prohibit vertically integrated gasoline suppliers from operating in the retail market (vertically integrated gasoline suppliers are corporations that supply more than five percent of total retail gasoline sales in a province or Canada and that manufacture more than 20 percent of the gasoline sold at the retail level)

5. Following its consideration of Bill C-249, the Committee adopted it with amendments on April 28, 2003. On May 13, 2003, Bill C-249 was adopted by the House of Commons and referred to the Senate for consideration.

Appendix I

Discontinued Cases



Bait-and-Switch Selling and Ordinary Price Representations

The Bureau received complaints that a large retailer was engaging in bait-and-switch selling, contrary to the misleading advertising and deceptive marketing practices provisions of the *Competition Act*. The Bureau began an inquiry on May 14, 2001, and expanded it on May 27, 2002, to include reviewable conduct under the ordinary price provisions of the Act.

The Bureau discussed the allegations with company officials, who voluntarily provided a considerable amount of information. After reviewing the information, the Bureau found that the evidence was not sufficiently compelling to warrant further action.

The inquiry was discontinued on February 18, 2003.



Deceptive Marketing Practices

Air Emissions from an Electricity Power Generation Company

Following complaints, the Bureau initiated an inquiry into a misleading environmental claim about the reduction of air emissions by electricity power generation plants. The complainants alleged that the claim was contrary to the deceptive marketing practices provisions of the *Competition Act*, since the company used the all-encompassing term *air*

emissions in its claim of reductions only of emissions of nitrogen oxides and sulphur dioxide. These representations could be open to misinterpretation by consumers. The Bureau discussed the issue with company officials, who agreed to use detailed and specific language to describe emission types in future advertisements, review the company's internal advertisement approval process, and ensure that advertisements are accurate and fair both in specific content and general impression.

The inquiry was discontinued on January 22, 2003.

Aboricultural Services

This inquiry was initiated on August 22, 2002, following an application alleging that a printed advertisement placed by a business to promote its aboricultural services included a false or misleading representation about the qualifications of its staff. Section 74.01 of the *Competition Act* prohibits the making of materially false or misleading representations to the public.

The Bureau investigated the business' marketing practices and obtained information indicating that the representation at issue appeared in one edition of a community directory. Upon request, the company submitted the advertisement planned for the 2002–2003 edition of this directory to the Bureau, which concluded that the revised representation no longer raised an issue under the Act.

The inquiry was discontinued on October 16, 2002.



Deceptive Telemarketing

The Bureau initiated an inquiry on December 10, 2001, following complaints from small and medium-sized business about the telemarketing practices of two office supply companies selling toner cartridges. Complainants alleged that company telemarketers failed to disclose their identities, and the nature and price of the product or business interest being promoted. They further alleged the telemarketers made false or misleading representations that left the impression they had an existing business relationship with the companies, that they had already placed an order, or that there was a special deal on prices.

The Bureau's examination revealed some evidence that the companies' telemarketers had failed to meet disclosure requirements under section 52.1 of the *Competition Act* and had made representations that could raise issues under the Act. However, the inquiry also revealed that one of the companies ceased operations in April 2001 and its successor followed suit in January 2002. While monitoring the principals behind the two companies, the Bureau noted that a third related company generated one similar complaint in August 2002.

Given that the companies under inquiry no longer exist and that the only known related company had generated only one complaint, the Bureau concluded that it would not be in the public interest to pursue the matter further.

The inquiry was discontinued on February 4, 2003.



Unsolicited Game Card Mailings

The Bureau initiated an inquiry on October 12, 1999, after receiving complaints from consumers from all provinces except Quebec about unsolicited game cards they had received in the mail. The complainants alleged that the cards gave them the impression they had won the \$5000 grand prize listed on the cards, when in fact the vast majority of the recipients had actually won the least valuable prize, ostensibly \$45, but in reality much less. The complainants further alleged that the cards encouraged them to call a 1-900 number at a cost of \$24 per call before taxes to learn which prize they had won.

A Bureau examination revealed that the representations in question could have raised an issue under the general misleading representation provisions of the *Competition Act*. However, in the fall of 1999, Bell Canada stopped offering its 1-900 telephone services to companies that were mailing cards for the purpose of generating revenue from calls made to these numbers. As a result, the company under inquiry ceased operations.

Given that the conduct had stopped, the Bureau concluded that it would not be in the public interest to pursue the matter further.

The inquiry was discontinued on April 24, 2002.



Deceptive Marketing Practices and Bait-and-Switch Selling

This inquiry was initiated on February 18, 2000, following an application alleging that a regional home audio and visual retail chain was doing the following:

- ▶ making false and misleading representations regarding product performance;
- ▶ advertising product warranties that were in fact unavailable; and
- ▶ regularly advertising bargain priced products for sale without making a reasonable supply of the products available for purchase.

Section 74.01 of the *Competition Act* prohibits making of a materially false or misleading representation to the public. Subsection 74.04(2) prohibits bait-and-switch advertising.

The marketing practices of the retail chain were investigated and, on reviewing the information gathered, the Bureau's assessment was that there was insufficient evidence to proceed further, either under the bait-and-switch provisions or the misleading representations provisions of the Act.

The inquiry was discontinued on July 25, 2002.

Appendix II

Published Reports, Speeches and Papers, 2002–2003

Duhamel, Marc and Peter G. C. Townley, “An Effective and Enforceable Alternative to the Consumer Surplus Standard,” *World Competition Law and Economics Review*, 26 (1), 2003, pp. 3–24.

Lafond, André, *The Complementary Role of Regulations and Competition Law in Deregulating Industries*, Competition Law Section, Canadian Bar Association, annual fall conference on competition law, October 3–4, 2002, Ottawa, Ontario.

Legault, Suzanne, *Legislative Process for Amending the Competition Act*, Competition Law Section, Canadian Bar Association, annual fall conference on competition law, October 3–4, 2002, Ottawa, Ontario.

McCrone, Robert W., *Reform of Section 45 of the Competition Act: A Bureau Review*, Competition Law Section, Canadian Bar Association, annual fall conference on competition law, October 3–4, 2002, Ottawa, Ontario.

Monteiro, Joseph and Benjamin Atkinson, “Rotary Wing Aviation in Canada,” *Canadian Transportation Research Forum: Proceedings of the 2002 Annual Conference*, St. John’s, Newfoundland and Labrador, May 11–15, 2002, pp. 353–370.

Monteiro, Joseph and Robertson Gerald, “The *Shipping Conferences Exemption Act*: A Step Towards the U.S. Reforms — But Are We Moving in the Right Direction?,” *Canadian Transportation Research Forum: Proceedings of the 2002 Annual Conference*, St. John’s, Newfoundland and Labrador, May 11–15, 2002, pp. 302–318.

Monteiro, Joseph, David Krause and André Downs, “The Open Skies Agreement Between the United States of America and Canada — The Results. Does it Suggest the Need for a Wider Pact and a More Liberal Air Pact?” *Canadian Transportation Research Forum, Proceedings of the 2002 Annual Conference*, St. John’s, Newfoundland and Labrador, May 11–15, 2002, pp. 319–337.

Southey, Sally, *Building a Competition Culture*, speech delivered to the Korea Fair Trade Commission at the Seoul Competition Forum, November 6, 2002.

Southey, Sally, *Enhanced Enforcement Through Strategic Communications*, speech delivered to the Organisation for Economic Co-operation and Development, November 1, 2002.

Sullivan, Michael, “Draft Enforcement Guidelines for Illegal Trade Practices: Unreasonably Low Pricing Policies — The Way Ahead,” *Canadian Competition Record*, Vol. 21, No. 2, Winter 2002–2003, pp. 102–114.

Townley, Peter G. C., “Efficiency Standards: They Also Serve Who Only Sit And Weigh(t),” *Canadian Competition Record*, Vol. 21, No. 2, Winter 2002–2003, pp. 115–132.