



# ANNUAL REPORT OF THE COMMISSIONER OF COMPETITION

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FOR THE YEAR ENDING MARCH 31, 2004

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 David Emerson, 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, 2004.

A handwritten signature in black ink that reads "Sheridan Scott". The signature is written in a cursive, slightly slanted style.

Sheridan Scott  
Commissioner of Competition

# Message from the Commissioner



I am very pleased to be the new Commissioner of Competition at this exciting and challenging time. I believe that significant changes are taking place in our environment and that the Bureau has a critical role to play in creating the best framework to respond to the impact of these changes on our economy.

During my first three months as Commissioner, I travelled through the 10 provinces, meeting with a wide variety of Canadians — representatives of the business community, consumer groups, law enforcement agencies and the legal and academic communities. While you would think that the individuals in such a disparate group would be at odds on many issues, I found, in fact, a surprising degree of consensus on several of the fundamental forces at work in our economy, namely, the global economy, the accelerating pace of technological change and the continued trend toward deregulation.

Increasingly, Canadian businesses operate in a world in which markets extend beyond national boundaries. While this presents exciting new opportunities for us all, it also brings the Bureau some unique challenges, such as dealing with sophisticated cross-border scams and international cartels that engage in global price-fixing.

Technological changes are transforming markets, driven by computerization and the Internet. The accelerating pace of these changes is having a significant impact on businesses and consumers alike.

Movement by countries around the world towards deregulation and an increased reliance on market forces has been observed by many, including the International Competition Network, which brings together competition authorities in business and government from 75 countries (see chapter 5).

What does all this mean for the Bureau and the work we do? Primarily, it means we must work to understand and keep on top of these changes in the marketplace if we want to avoid creating unnecessary imbalances. To do this we must focus on three areas.

- ▶ We must broaden our dialogue with Canadians to improve our mutual understanding of how market developments may affect companies and individuals. With this in mind, we are creating one-day workshops on the impact on specific industry sectors of the challenges I described above, and are improving our outreach programs.
- ▶ We must increase Bureau transparency to heighten our accountability. On this front, we hope to make the best use of our scarce resources to both carry out and explain our enforcement activities.
- ▶ We must continue to retain high-quality staff and to recruit new employees to ensure the optimal mix of knowledge and skills for the future. To do this, we have appointed a champion to focus on recruitment and to work with universities to help identify top Canadian talent.

We launched all of these initiatives in 2003–2004, and they promise to keep the Bureau busy and productive for years to come. I have been supported in every regard by a hard-working, dedicated staff, without whom nothing would be possible. I look forward to the continuing challenges of the year ahead with enthusiasm and commitment.

A handwritten signature in black ink that reads "Sheridan Scott". The signature is written in a cursive, flowing style.

*Sheridan Scott*

Commissioner of Competition

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## Chapter 1

# Introduction

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

The Bureau administers four pieces of federal legislation that help encourage and maintain competition in Canada: the *Competition Act*, the *Consumer Packaging and Labelling Act* (non-food products), the *Precious Metals Marking Act* and the *Textile Labelling Act*. A competitive marketplace promotes the efficiency of the economy, expands opportunities for Canadian enterprises in world markets, ensures that small and medium-sized businesses have equal opportunities, and provides consumers with competitive prices, competitive product choice and accurate product information.

This report summarizes the Bureau's activities under these statutes for the fiscal year ended March 31, 2004. It is organized to mirror the Conformity Continuum, the approach the Bureau uses to promote and maintain competition in Canada. The Continuum operates on the assumption that most businesses compete using law abiding activities. Consequently, most want to comply with the law and support marketplace framework legislation. Strong communication and advocacy efforts are the Bureau's primary vehicles for achieving this compliance. As a result, the Bureau devotes a portion of its scarce resources to informing businesses and other stakeholders about the laws. Through its advocacy program, the Bureau plays an active role in promoting a pro-competitive

marketplace and developing competition policy and legislation in Canada and internationally.

The Bureau's commitment to educating the players in the marketplace is complemented by the availability and promotion of several forms of voluntary compliance. These range from written opinions, which help businesses who want to avoid coming into conflict with the law, to alternative case resolutions, which correct anti-competitive behaviour in a timely and cost-effective fashion. Businesses and individuals who disregard the law or fail to take advantage of the opportunities for voluntary compliance are subject to adversarial action. This may mean prosecution by the Attorney General in criminal court or civil litigation by the Bureau before the Competition Tribunal or in civil court.

This report deals with its activities in the following areas:

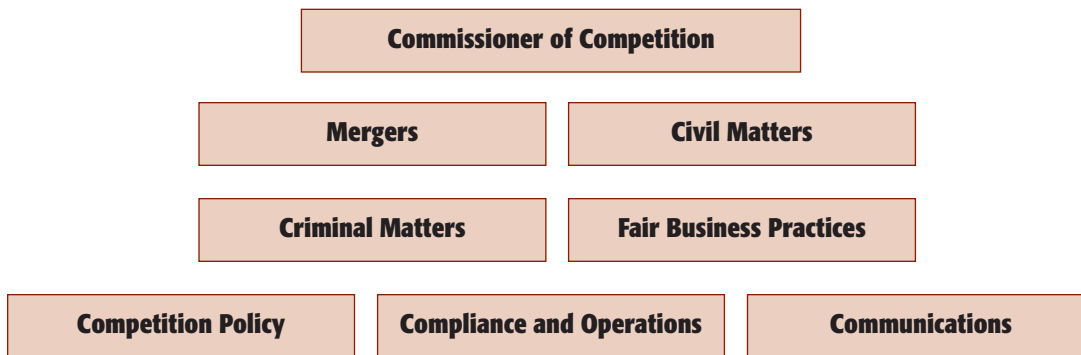
- ▶ Policing Criminal Activities (chapter 2);
- ▶ Promoting Compliance With the Civil Provisions (chapter 3);
- ▶ Reviewing Mergers (chapter 4);
- ▶ Advocating for Competition and for International Coordination (chapter 5);
- ▶ Modernizing Competition Law (chapter 6); and
- ▶ How We Do It All (chapter 7).

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

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## Organizational Structure

In 2003–2004, the Bureau employed 355 people in the National Capital Region and 85 in seven regional offices. The regional offices are located in Halifax, Montréal, Toronto, Hamilton, Winnipeg, Calgary and Vancouver. 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 *Precious Metals Marking Act* and the *Textile Labelling 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** administers and enforces criminal provisions of the *Competition Act*, including those covering conspiracies that unduly lessen competition, bid-rigging, price discrimination, predatory pricing and price maintenance. The Branch carries out its enforcement activities through its National Capital Region office and the regional 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, multi-level 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 *Precious Metals Marking Act* and the *Textile Labelling Act*, collectively known as the standards-based statutes. The Branch carries out its investigations through its National Capital Region office and the regional 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 co-operation, negotiations and policy development. It provides economic advice and expertise as well as enforcement support to the Bureau, and ensures that the provisions of the *Competition Act* and standards-based statutes remain relevant through regular review and amendment.

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

**Communications Branch** ensures that Canadian consumers, businesses and government agencies, and the international community are aware of the Bureau's crucial contribution to competition in the marketplace and to 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 2

# *Policing Criminal Activities*

The Competition Bureau administers and enforces provisions of the *Competition Act* prohibiting conspiracy, bid-rigging, price discrimination, predatory pricing and price maintenance.

- ▶ The conspiracy provisions cover agreements among two or more competitors to unduly lessen competition.
- ▶ The bid-rigging provisions deal with agreements to thwart the competitive tendering process used to acquire products or services.
- ▶ The price discrimination provisions help to ensure that small and medium-sized businesses have an equal opportunity to participate in the economy by requiring suppliers to make discounts, price concessions and advertising allowances available to competing customers on fair terms.
- ▶ The predatory pricing provisions address situations in which a firm engages in a policy of selling products below cost for a sufficiently long period of time to eliminate or deter rivals as competitors, and subsequently raises prices or otherwise harms the competitive process.
- ▶ The price maintenance provisions are designed to provide resellers of products with the freedom to set their own prices and to protect suppliers from customer-led boycotts because they supply firms with low-pricing policies.

The Act also contains criminal and civil provisions to address false or misleading representations and deceptive marketing practices in promoting the supply or use of a product or any business interest. Under the criminal regime, the general provision prohibits all materially false or misleading representations made knowingly or recklessly. Other provisions specifically prohibit deceptive telemarketing, deceptive prize

notices, double ticketing and pyramid schemes. These provisions also define the responsibilities of operators and participants in multi-level marketing plans.

The *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act* prohibit false and misleading representations in specific sectors (non-food, pre-packaged consumer products; precious metal articles; and textiles and apparel). In addition, this legislation prescribes basic, standardized labelling information, such as bilingual product descriptions, metric measurement declarations and dealer identity, which allows consumers to make informed choices.

The Competition Bureau has a range of tools at its disposal to enforce these laws. The Bureau refers the most serious matters to the Attorney General of Canada and recommends prosecution. Offenders may receive heavy fines, prison terms or both.

In 2003–2004, the Bureau and the Attorney General secured six convictions against five accused parties, who pleaded guilty to conspiracy and price maintenance charges, with the courts imposing fines totalling \$5 870 000. In addition, one preliminary hearing in a bid-rigging matter was held in Toronto and charges were filed by the Attorney General in another domestic conspiracy matter. In one deceptive telemarketing matter, an investigation resulted in a guilty plea from a corporation, which was then fined \$125 000 and received a four-year prohibition order. Several corporations and individuals were charged after Bureau investigations into other alleged deceptive telemarketing practices.

These responses to non-conformity during 2003–2004 are described in the first section of this chapter. The Bureau may also work with firms to eliminate anti-competitive behaviour through alternative case resolutions. Examples are provided in the second section of this chapter. Finally, under the *Competition Act*, parties may request written opinions, some of which are summarized in the third section of this chapter.

For more information on these cases and others, including information notices, news releases and backgrounders, please visit the Bureau's Web site ([www.cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/h\\_ct02003e.html](http://www.cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/h_ct02003e.html)).



## 1. Prosecutions

### Conspiracy

The conspiracy provisions of the *Competition Act* prohibit agreements between two or more persons to prevent or unduly lessen competition or to unreasonably enhance the price of a product. Agreements between competitors to fix prices, to allocate customers or geographic markets, or to restrict production of a product by setting quotas among competitors or other means are considered to be “hard-core” cartel activities, with no socially redeeming features. Anti-competitive agreements harm both consumers and businesses, and enforcing the conspiracy provisions is an important priority for the Bureau. Much of the Bureau's work in this area involves investigating and prosecuting international cartels, which is a crucial activity for competition agencies around the world.

### *Monochloroacetic Acid/Monochloroacetate*

In August 2003, Akzo Nobel Chemicals BV pleaded guilty in the Federal Court of Canada to a conspiracy that affected the sale and supply of monochloroacetic acid/monochloroacetate, a chemical ingredient used in numerous commercial and consumer products, such as herbicides, pulp and paper, and plastics. The company was fined \$1.9 million for its part in the conspiracy.

### *Choline Chloride*

In August 2003, Akzo Nobel Chemicals BV and Bioproducts Incorporated pleaded guilty in the Federal Court of Canada for their part in an international conspiracy that affected the sale and supply of choline chloride, an additive widely used in the animal feed industry. Netherlands-based Akzo Nobel Chemicals BV was fined \$1 million, and U.S.-based Bioproducts Incorporated was fined \$600 000. A significant proportion of the Canadian market was affected by this conspiracy.

### *Polyester Staple Fibre*

In August 2003, Artega Specialties Sarl, a Luxembourg-based company also known as KoSa, pleaded guilty and was fined \$1.5 million in the Federal Court of Canada for its part in a conspiracy that affected the sale of polyester staple fibre. This product is widely used by textile manufacturers in fabrics, sheets, shirts and other clothing, and home furnishings. The investigation is continuing into the alleged involvement of other companies in this conspiracy.

### *Graphite Electrodes*

In September 2003, Robert P. Krass, former head of UCAR International Inc., pleaded guilty in the Federal Court of Canada to fixing the price of graphite electrodes. These are used primarily for steel production in electric arc furnaces and for steel refining in ladle furnaces. He was fined \$70 000 by the Federal Court of Canada for his direct involvement in an international conspiracy, which affected the production of Canadian steel. Mr. Krass is the fourth person to plead guilty in Canada in relation to the graphite electrode cartel. Previously, UCAR's Canadian subsidiary, UCAR Inc., the German corporation SGL Carbon Aktiengesellschaft and the Japanese company Tokai Carbon Co., Ltd. were convicted for their roles in this conspiracy, and fined a total of \$23.25 million.

### *Anthraquinone*

In September 2003, charges were laid in the Provincial Court of British Columbia against Chanoix Trading Ltd. and two of its executives concerning an alleged conspiracy to unduly lessen competition in the supply of anthraquinone (a chemical used in the pulp and paper industry) in Canada. A preliminary hearing is scheduled for January 2005.

### **Bid-rigging**

The *Competition Act* prohibits agreements between two or more persons, usually competitors, to not submit a bid in response to a tender and agreements that set the bids various parties will submit. However, the bid-rigging provisions do not apply when the parties make the agreement known to the

tendering authority before they submit their bids. This allows the tendering authority to cancel the tendering process or modify it in a way that keeps it competitive. Bid-rigging often targets government agencies and ultimately is a drain on the taxpayer. The Bureau has a well-developed program to help purchasing officials prevent and detect bid-rigging. The program also provides tendering authorities who suspect they are a victim of bid-rigging with guidance on how to help the Bureau with its investigation. In 2003–2004, the Bureau's seven regional offices took on greater responsibility for criminal competition investigations, particularly those related to bid-rigging.

### *Packaged Liquid Chlorine*

On May 30, 2002, the Competition Bureau laid bid-rigging and conspiracy charges against Welland Chemical Ltd., Brenntag Canada Inc., Vopak Canada Ltd. (now Univar Canada Inc.) and two individuals. These charges were laid following an investigation into the sale and supply of packaged liquid chlorine purchased by the City of Toronto for its water purification needs between 1992 and 1998.

Welland Chemical, Vopak and the two individuals were committed to trial after the preliminary hearing in June 2003. The defendants moved to quash the committal on the basis that no offence exists under section 47 of the *Competition Act* for withdrawing a bid. The Attorney General of Canada filed a cross-application.

On December 29, 2003, a judge granted the defendants' motion and dismissed the Attorney General's cross-application.

Although the charges have not been proven, it is noteworthy that the price the City of Toronto pays for packaged liquid chlorine has dropped by approximately 50 percent in the years since the investigation began.

### **Price Maintenance**

The *Competition Act* prohibits attempts by agreement, threat, promise or any like means to influence upward the prices of a reseller's products or to discourage the reduction of those prices. Refusal to supply or discrimination in the supply of products to resellers with low-pricing policies are also illegal under the Act. These provisions, known as the price maintenance provisions, are designed to ensure that resellers, notably retailers, are free to set their own prices for their products. These provisions also protect suppliers from customer-led boycotts because they have decided to supply resellers with low prices.

#### *Isostatic Graphite*

A Bureau investigation revealed that Toyo Tanso USA Inc., an indirect subsidiary of Toyo Tanso Co., Ltd. of Osaka, Japan, met with its independent distributor, Electrodes Canada Inc., in an attempt to raise the price of unmachined and semi-machined isostatic graphite in Canada. The product is used to make moulds and dies for various industries, including the auto parts and semi-conductor industries. In April 2003, Toyo Tanso USA pleaded guilty in the Federal Court of Canada to charges of attempting to maintain the price of isostatic graphite, and was fined \$200 000.

Toyo Tanso is the second corporation to be convicted as a result of the Bureau's investigation into the supply and sale of isostatic graphite in Canada. In 2001, Carbone of America Industries Corp. pleaded guilty for its role in the price maintenance scheme.

### **Deceptive Telemarketing**

The *Competition Act* prohibits telemarketers from making materially false or misleading representations when promoting the supply of a product or a business interest during telephone calls. Telemarketers are also prohibited from asking for payment in advance as a condition of receiving a prize that has been, or supposedly has been, won in a contest or game, failing to provide adequate and fair disclosure of the number and value of the prizes, offering a gift as an inducement to buy another product (without fairly disclosing the value of the gift), and offering a product at a grossly inflated price and requiring the consumer to pay for it in advance. The Act also requires that telemarketers disclose the name of the company or person for whom they are working, the type of product or business interest they are promoting, the purpose of the call, the price of any product being sold, and any restrictions or conditions the consumer must meet before the product is delivered.

### **Partnerships and Outside Initiatives to Enforce Criminal Provisions**

Unfortunately, Canada's reputation has been tarnished internationally because of the large number of deceptive telemarketers who bilk consumers around the world from their

Canadian-based operations. The Bureau has partnered with a number of other law enforcement agencies to combat these criminals.

#### *Toronto Strategic Partnership*

The Toronto Strategic Partnership is a law enforcement partnership established to combat deceptive marketing practices across North America. The following are the members of the partnership: Competition Bureau, Toronto Police Service, Ontario Provincial Police, Ontario Ministry of Consumer and Business Services, PhoneBusters (the Canadian anti-fraud call centre), U.S. Federal Trade Commission, U.S. Postal Inspection Service, Attorney General of Ohio and York Regional Police.

#### *Alberta Partnership Against Cross-Border Fraud*

The Bureau, along with Alberta Government Services, Royal Canadian Mounted Police (RCMP) “K” Division, the Calgary Police Service, the Edmonton Police Service, the U.S. Federal Trade Commission and the U.S. Postal Inspection Service, announced the formation of the Alberta Partnership Against Cross-Border Fraud in September 2003. Partnership members coordinate and provide reciprocal support for their respective law enforcement activities, identify fraudulent, misleading and deceptive marketing practices with an Alberta connection, and share information.

#### *Co-operation Arrangement with the United Kingdom*

In October 2003, the Bureau signed a co-operation arrangement with two agencies in the United Kingdom — the Office of Fair Trading and the Department of Trade and Industry — to improve competition law enforcement in areas such as

deceptive marketing and criminal cartel activity. The arrangement sets out a framework for notification of law enforcement activities, coordination of and co-operation in those activities, information exchanges and conflict avoidance. It also builds on the Organisation for Economic Co-operation and Development’s (OECD) June 2003 *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders*.

#### *National Deceptive Telemarketing Outreach*

In January 2004, the Bureau wrote to provincial government departments of development and to economic development agencies across Canada to inform them about the risk of inadvertently funding the establishment of deceptive telemarketing operations. Since these organizations are actively involved in financing call centres, the Bureau hopes that providing this information will encourage the organizations to take the necessary steps to properly screen all applications for economic support. The Bureau also provided these organizations with tools to help them in the screening process.

#### *Fraud Prevention Forum*

The Fraud Prevention Forum comprises a group of concerned private sector firms, consumer and volunteer groups, government agencies and law enforcement organizations committed to fighting fraud aimed at consumers and businesses. Its mandate is to prevent Canadians, through awareness and education, from becoming victims of fraud, as well as to increase reporting when incidents occur to improve the effectiveness of law enforcement.

On March 2, 2004, then Industry Minister Lucienne Robillard launched the Forum's national awareness campaign at a news conference in Toronto. The Minister was joined by the Commissioner of Competition, campaign spokespersons from the Ontario Provincial Police and the Royal Canadian Mounted Police and other Forum members.

The following are members of the Fraud Prevention Forum: Competition Bureau (chair and founding member), Bell Canada, Canada Post, CARP — Canada's Association for the Fifty-Plus, Canadian Bankers Association, Canadian Council of Better Business Bureaus, Canadian Marketing Association, Canadian Survey Research Council, Consumers Council of Canada, eBay Canada, Industry Canada (Office of Consumer Affairs), MasterCard Canada, Ontario Ministry of Consumer and Business Services, Ontario Provincial Police, Public Safety and Emergency Preparedness Canada, Royal Canadian Mounted Police, Toronto Police Service, U.S. Federal Trade Commission, Vancouver Police Department, Visa Canada, Volunteer Centre of Toronto — ABCs of Fraud and Western Union.

The following cases were prosecuted in 2003–2004.

#### *Office Toner Products*

On September 23, 2003, the Bureau announced that it had laid criminal charges against two Toronto-based companies engaged in telemarketing office toner products. This telemarketing operation was alleged to have targeted businesses,

not-for-profit organizations and government agencies in Canada and the United States. The telemarketing companies invoiced these organizations for toner products they neither ordered nor wanted.

The charges stemmed from a Bureau investigation into Lexcan International Corp. and H&P Communications, which also operated as the Calcom Business Centre, Lexam International Corp. and MPL. The owner and office manager were arrested and also charged with offences under the *Competition Act* and the *Criminal Code*.

#### *Health Care Discount Programs*

On March 9, 2004, Medical Discount Inc. (Canada) of Toronto was fined \$125 000 and prohibited for four years from engaging, participating or assisting others in any activity involving the sale or offer for sale of health care discount plans.

Medical Discount had been associated with nine Ontario corporations, which are also subject to the prohibition order, in promoting discount cards under the names MedPlan and Global. Between March 2001 and January 2003, telemarketers from these corporations used high-pressure sales techniques to induce potential clients from the United States to buy medical discount plans going by the names MedPlan and Global and to release bank account information. The corporations then withdrew funds from these accounts without consumers' authorization.

The Bureau received more than 500 complaints about Medical Discount's activities from law enforcement and government agencies across the U.S., and developed its case in co-operation with the Toronto Strategic Partnership. The U.S. Federal Trade Commission filed a separate consumer protection action against Medical Discount in the U.S.

#### *Boiler-Room Takedown*

In June 2003, a Toronto Strategic Partnership investigation led to charges under the *Competition Act* and the *Criminal Code* against individuals involved in a telemarketing operation. Telemarketers allegedly misled businesses into donating money for advertising space in fraudulent magazines devoted to police services, fire safety and children's issues.

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## **2. Alternative Case Resolutions**

The Bureau chooses the best and most efficient means of restoring competition in the marketplace. It resorts to an adversarial approach only when all other avenues to correct anti-competitive behaviour have failed or the activities constitute a flagrant disregard for the law. Some matters may be resolved quickly and easily, without a full inquiry or judicial proceeding. This reduces uncertainty, saves time and avoids lengthy court actions.

### **Conspiracy**

#### *Septic Haulers*

In February and March 2003, the Bureau received numerous complaints that three septic haulers had fixed the price of septic removal in a county in southern Ontario. Following interviews with the parties involved, Bureau officers made information visits to the three companies. They all agreed that their actions were inappropriate and that they would not meet again to discuss prices, costs or customers. The matter was closed in October 2003.

### **Bid-Rigging**

#### *Supply of Paper Products*

In June 2003, the Bureau received information that three suppliers of paper products had rigged their bids on three tenders for two Ontario school boards. After a thorough analysis of the tender documents, a representative of the Bureau met with the three suppliers in August 2003 to discuss the allegations. Subsequently, the companies agreed to stop bid-rigging and to ensure that officers, employees, agents and assigners did not agree to arrange any future bids. In addition, the school boards removed the names of the three suppliers from their lists of approved suppliers.

## **Price Maintenance**

### *Incense Burners*

In November 2002, the Bureau received a complaint regarding a supplier of incense burners, who had allegedly told the complainant to increase his prices if he wanted to continue to receive the burners. In June 2003, the Bureau informed the supplier that such behaviour likely contravened the price maintenance provision of the *Competition Act*. Following a meeting with Bureau representatives, the supplier assured the Bureau that it would take the necessary measures to comply with the Act.

### *Natural Food and Products Retailer*

In July 2003, the Bureau received a complaint from a natural food and products retailer who had been told that he would have to increase the selling price of some products supplied by a Canadian natural products manufacturer and distributor if he wanted to continue to receive them. The Bureau informed the supplier that such behaviour likely contravened the price maintenance provision of the *Competition Act*. Following discussions with Bureau representatives, the supplier assured the Bureau that it would take the necessary measures to comply with the Act, informing its salesperson about the *Competition Act* and its price maintenance provision.

### *Funeral Homes*

In December 2003, a funeral home owner contacted the Bureau regarding an advertising regulation issued by a professional association representing numerous members of the

Quebec funeral industry. One of the provisions of the regulation was ambiguous and could have created problems under paragraph 61(1)(a) of the *Competition Act*. Bureau representatives contacted the professional association's lawyer, who agreed to take the necessary measures to ensure that the regulation complied with the Act.

## **Misleading Representations and Deceptive Marketing Practices and the Standards-Based Statutes**

In 2003–2004, the Bureau used alternative case resolutions to settle 47 matters under the criminal and civil misleading representations and deceptive marketing practices provisions of the *Competition Act*, and 10 matters under the three standards-based statutes.

The Bureau may examine certain matters under the criminal and civil provisions of the *Competition Act* and the standards-based statutes. The following is an example of such as case.

### *Electronics Liquidator: Warranty Claims and Mandatory Labelling Information*

A complaint alleging that an electronics liquidator was making misleading warranty claims and that its products were missing mandatory labelling information led to an examination by the Bureau under the misleading representations provisions of the *Competition Act* and the mandatory labelling provisions of the *Consumer Packaging and Labelling Act* and regulations. Following a meeting between a Bureau officer and the company's president, the company provided written

assurance that it would ensure the accuracy of warranty claims. It also agreed to add the required information to products that did not meet mandatory labelling provisions.



### 3. Written Opinions

The Bureau provides legally binding written opinions to businesses seeking to comply with the *Competition Act* and the standards-based statutes. Company officials, lawyers and others may request a written opinion on whether a proposed business plan or practice would raise concerns under any of these laws. The Bureau's written opinions take into account jurisprudence, previous written opinions and current policies. Written opinions remain binding for as long as the material facts remain substantially unchanged and the conduct or practice is carried out substantially as proposed.

To promote compliance with and foster transparency in the administration and enforcement of the Act, the Bureau publishes detailed summaries of its written opinions on its Web site ([www.cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/h\\_ct01272e.html](http://www.cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/h_ct01272e.html)). Here are some examples of the written opinions the Bureau issued in 2003–2004.

### Misleading Representations and Deceptive Marketing Practices

The Bureau issued 23 written opinions concerning the criminal and civil misleading representations and deceptive marketing practices provisions of the Act.<sup>1</sup> Twenty-two of these opinions dealt with the criminal provisions of the Act, specifically the multi-level marketing and pyramid selling provisions.

The written opinions covered plans for marketing a wide variety of products and services, such as health and lifestyle products, clothing, hobby supplies, travel and vacation plans, and computer software and services. Under sections 55 and 55.1 of the *Competition Act*, an operator or participant in a multi-level marketing plan cannot make representations about compensation unless they disclose the compensation a typical participant receives. Further, a multi-level marketing plan that features recruitment bonuses, a required volume of purchases by participants as a condition of entry or inventory loading, or that lacks a buy-back guarantee on reasonable commercial terms constitutes a prohibited pyramid scheme. More details about these written opinions can be found on the Bureau's Web site ([www.cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/ct02789e.html](http://www.cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/ct02789e.html)).

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1. See page 16 for a general description of the criminal misleading representations and deceptive marketing practices provisions of the *Competition Act*. See Chapter 3 (page 23) for a general description of the civil misleading representations and deceptive marketing practices provisions of the *Competition Act*.

## **Conspiracy, Refusal to Deal, Exclusive Dealing, Tied Selling, Market Restriction and Abuse of Dominant Position**

### *Proposed Outsourcing of Processing*

A supplier of a product sought a written opinion in September 2003 to determine whether a proposed service arrangement with a processing company would raise concerns under the *Competition Act*. The supplier had previously processed the product at its own facility but had decided to close that facility and outsource its processing requirements.

The Bureau examined the proposal under the criminal and civil provisions of the Act, specifically those on conspiracy (section 45), refusal to deal (section 75), exclusive dealing, tied selling and market restriction (section 77) and abuse of dominant position (section 79). Based on its understanding of the facts, the Bureau determined that should the parties implement the arrangement as proposed, the Bureau would not have sufficient grounds to launch an inquiry for the following reasons.

- ▶ The proposed arrangement related specifically to providing processing services to the supplier and did not affect any existing arrangements the processor might have had with its customers, nor did it preclude the processor from taking on new customers.
- ▶ The supplier's decision to close its processing facility was a unilateral decision and not the result of an agreement with the processor.

- ▶ The processor took measures to ensure the proposed service arrangement would not affect output.
- ▶ There were other processors in the market.

## **Conspiracy**

### *Agreement to Reduce Samples*

A non-profit organization sought a written opinion in October 2003 on whether a proposed agreement to reduce the number of samples four major suppliers of a product provide to the organization would raise concerns under the *Competition Act*. As part of the arrangement, the suppliers agreed to provide funding to the organization to enable it to meet its objectives, including conducting research and providing education to specific groups of consumers. The proposed agreement, which follows a similar arrangement that ended in December 2003, was to begin in January 2004 and end in December 2006.

The Bureau examined the proposal under the criminal conspiracy provision of the Act, with particular reference to the statutory defence for agreements restricting advertising and promotion under paragraph 45(3)(f) and the exceptions to this defence under sub-section 45(4). Based on its understanding of the facts, the Bureau determined that if the parties were to implement the proposed agreement as presented, the Bureau would not have sufficient grounds to launch an inquiry under the criminal provisions of the Act for the following reasons.

- ▶ The retail price of the product was regulated, with little price variation between brands offered by suppliers.
- ▶ Historical data from 1999 to 2002 showed that a reduction in samples had little effect on the number of units consumers purchased.
- ▶ The agreement likely would not have an impact on the quantity or quality of production of the product.

- ▶ Data on the growth of the market and the volatility of market shares between the suppliers over the past several years indicated that there was a competitive marketplace.

For the above reasons, the Bureau concluded that the proposal fell under the statutory defence in paragraph 45(3) (f) of the Act, as an agreement relating only to the restriction of advertising or promotion, and that it was unlikely to unduly lessen competition.

#### **Breakdown of Written Opinions, 2003–2004**

<i>Section of the Competition Act</i>	<i>Fee</i>	<i>Service Standard</i>	<i>Complexity</i>	<i>Number of Transactions</i>	<i>% Service Standard Met</i>
55 (multi-level marketing)	\$1000	2 weeks	Non-complex	22	59%
55.1 (pyramid selling)		6 weeks	Complex	1	100%
74.06 (promotional contests)					
45 to 51 (offences in relation to competition)	\$15 000	6 weeks	Non-complex	1	100%
79 (prohibition where abuse of dominant position)		10 weeks	Complex	1	100%

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## Chapter 3

# Promoting Compliance with the Civil Provisions

The Competition Bureau acts as a referee in the marketplace to address disputes that arise between businesses or between consumers and businesses. It investigates possible 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 Bureau also investigates cases of false or misleading representations and other deceptive marketing practices, such as representations that are not based on adequate and proper tests, misleading ordinary price representations, and contests, lotteries, games of chance, skill, or mixed chance and skill that do not disclose the required information.

When appropriate, the Commissioner opens discussions to try to obtain voluntary compliance with the law; sometimes, this is all the action needed to correct the situation. A more formal solution involves registering a consent agreement with the Competition Tribunal, when all parties agree on a solution that will restore competition to the marketplace. If voluntary compliance cannot be achieved, the Commissioner may file an application with the Competition Tribunal for an order to remedy the situation. Depending on the issue, the Commissioner may register the consent agreement or file the application with the Federal Court or a superior court of a province.

The following illustrate the Bureau's response to instances of non-conformity in civil matters over the past year. For more information on these cases and others, including information notices, news releases and backgrounders, please visit the Bureau's Web site ([www.cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/h\\_ct02003e.html](http://www.cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/h_ct02003e.html)).



## 1. Enforcement Actions

### Airline Industry

#### *Competition Tribunal Hearing: Commissioner of Competition v. Air Canada*

On March 5, 2001, the Bureau asked the Competition Tribunal for an order prohibiting Air Canada from engaging in anti-competitive practices directed against low-cost carriers WestJet and CanJet. The Tribunal decided to hear the case in two phases, the first dealing with the definition of *avoidable cost*. On July 22, 2003, the Competition Tribunal released its decision on this matter. The Tribunal found that Air Canada had “operated or increased capacity at fares that did not cover the avoidable costs of providing the service” on the Toronto–Moncton route, between April 1, 2000, and March 5, 2001, and on the Halifax–Montréal route, between July 1, 2000, and March 5, 2001. In reaching its findings, the Tribunal generally adopted the Bureau's approach on the following:

- ▶ the categories of costs that were avoidable;
- ▶ the relevant period of time to be examined;
- ▶ the relevant unit of capacity to consider; and
- ▶ the treatment of “beyond revenues” in applying the test.

This interim finding did not deal with the question of whether Air Canada had abused its dominant position in an anti-competitive manner, contrary to section 79 of the *Competition Act*. This issue will be resolved during the second phase of the hearing, which will examine whether Air Canada was the

dominant player on the routes in question, whether its below-cost operations constituted a “practice of anti-competitive acts” and whether that resulted in competition on those routes being prevented or substantially lessened.

In light of Air Canada filing for protection under the *Companies’ Creditors Arrangement Act* on April 1, 2003, the Tribunal stayed its decision on phase one and the appeal period until Air Canada emerges from bankruptcy protection.

#### *Authority to Issue Temporary Orders*

On August 14, 2003, the Supreme Court of Canada granted the Attorney General of Canada leave to appeal a decision of the Quebec Court of Appeal striking down section 104.1 of the *Competition Act*. This provision gives the Bureau the authority to issue temporary cease and desist orders during inquiries into the airline industry.<sup>1</sup>

#### *Distribution of Airline Services*

Some industry participants raised concerns with the Bureau about certain airlines making discount or “web-fares” available only through their Web sites, which meant that they were not available through the computer reservation systems. The Bureau found that this greater reliance on the Internet was consistent with the worldwide practice of embracing new technology to lower distribution costs. The Bureau did not find that competition had been prevented or lessened substantially as a result of this practice, and concluded that further analysis was

unnecessary. The Bureau also helped Transport Canada review the computer reservation systems regulations.

#### *Other Airlines Examinations*

During 2003–2004, the Bureau ended its examination of the following three airline matters.

- ▶ An allegation of predatory pricing in western Canada. The complainant failed to respond to requests for further information, so the matter was closed in September 2003.
- ▶ Allegations by six persons resident in Canada that a major carrier was engaging in predatory conduct in operating discount brand flights on certain routes in eastern Canada. The complainants subsequently declined to respond to requests for further information to substantiate their allegations. Since the Bureau’s information on fares and capacity on the routes in question did not provide grounds for an application to the Competition Tribunal, the Bureau discontinued the inquiry in September 2003.
- ▶ The complaint of a carrier operating in northern British Columbia about its inability to get fuel at a small airport in northern British Columbia. The information the Bureau gathered was insufficient to establish whether the complainant had been substantially affected or precluded from conducting business, or whether competition had been substantially lessened. The Bureau closed the matter in February 2004.

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1. On June 3, 2004, the Government withdrew its appeal.

### **Abuse of Dominant Position**

Abuse of dominant position occurs when a dominant firm in a market or a dominant group of firms engages in conduct intended to eliminate or discipline a competitor or to deter future entry by new competitors into the market, with the result that competition is prevented or substantially lessened. The Bureau considers market dominance to be synonymous with market power. The most straightforward indication of the existence of market power is the ability of a firm or group of firms to raise prices above competitive levels for a considerable period of time.

#### *Competition Tribunal Hearing: Commissioner of Competition v. Canada Pipe Company Ltd.*

In October 2002, the 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 was the first abuse of dominant position case to be heard under the amended *Competition Tribunal Rules* (February 2002), which changed the documentary disclosure standard from one of relevance to one of reliance. The application alleged that Bibby Ste-Croix 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 prevented competitors from accessing the distribution network. The Bureau asked the Tribunal to do the following:

- ▶ order Canada Pipe to stop the alleged conduct;

- ▶ prohibit the company from acquiring cast iron drain, waste and vent businesses in Canada for the subsequent three years; and
- ▶ order Canada Pipe to notify the Bureau of any such acquisitions for the subsequent three years.

Canada Pipe responded by filing a motion challenging the amended *Competition Tribunal Rules* on the grounds that they were against the guarantee in the *Canadian Bill of Rights* of the right to a fair hearing. The Tribunal dismissed this argument as well as Canada Pipe's subsequent request for further disclosure by the Bureau. The Federal Court of Appeal upheld the latter decision.

The hearing of the Bureau's application began on March 1, 2004 and should be completed in early September 2004.

### **Exclusive Dealing**

Exclusive dealing takes place in three instances:

- ▶ when a supplier requires or induces a customer to deal only, or mostly, in certain products;
- ▶ when a supplier requires or induces a customer to buy a second product as a condition of supplying a particular product; and
- ▶ when a supplier requires a customer to sell specified products in a defined geographic market.

On December 18, 2003, the Bureau announced the conclusion of its examination of the distribution agreement between Best Buy Canada Ltd. and TGA Entertainment Ltd. for the Rolling Stones DVD, *Four Flicks*.

HMV Canada Inc. alleged that this exclusive agreement breached the *Competition Act* by denying access to the supply of a product and reducing retail competition. However, the Bureau's examination concluded that an exclusive agreement for one DVD released by a single artist for a limited period did not constitute an anti-competitive practice. Furthermore, the examination did not establish that the necessary exclusionary effects had occurred for there to have been an offence under the Act.

### **Refusal to Supply**

When someone is substantially affected in his or her business, or is unable to carry on business, because he or she cannot obtain adequate supplies of a product on usual trade terms, this is considered refusal to supply under section 75 of the *Competition Act*.

In 2003–2004, the Bureau did not have any open inquiries under section 75; however, two cases were filed privately with the Competition Tribunal, under the new private access provisions of the Act that came into force in June 2002.

On January 15, 2004, the Competition Tribunal granted leave to Barcode Systems Inc. to make an application against Symbol Technologies Canada ULC, resulting from Symbol Technologies refusing to supply Barcode Systems with barcode scanners. On January 26, 2004, Symbol Technologies appealed the Tribunal's decision to the Federal Court of Appeal. The appeal is pending. This is the first case in which leave has been granted since private access rights were introduced. For more

information on this case, see the Tribunal's Web site ([www.ct-tc.gc.ca/english/CaseDetails.asp?x=68&CaseID=149#198](http://www.ct-tc.gc.ca/english/CaseDetails.asp?x=68&CaseID=149#198)).

On February 5, 2004, the Competition Tribunal granted leave to Allan Morgan and Sons Ltd. to make an application against La-Z-Boy Canada Limited, resulting from La-Z-Boy refusing to supply Allan Morgan and Sons Ltd. On March 3, 2004, La-Z-Boy Canada Limited appealed the Tribunal's decision to the Federal Court of Appeal. For more information on this case, see the Tribunal's Web site ([www.ct-tc.gc.ca/english/CaseDetails.asp?x=68&CaseID=145#329](http://www.ct-tc.gc.ca/english/CaseDetails.asp?x=68&CaseID=145#329)).

### **Misleading Representations and Deceptive Marketing Practices**

The *Competition Act* contains civil and criminal provisions to address false or misleading representations and deceptive marketing practices when promoting the supply or use of a product or any business interest. The general civil provision prohibits all representations made to the public that are false or misleading in a material respect. Other provisions specifically prohibit the following:

- ▶ making representations that are not based on adequate and proper tests;
- ▶ advertising misleading warranties and guarantees;
- ▶ making misleading ordinary price representations;
- ▶ making untrue, misleading or unauthorized use of tests and testimonials;
- ▶ offering products at bargain prices that are not available in reasonable quantities;
- ▶ selling products above the advertised price; and

- ▶ conducting any contest, lottery, game of chance, skill, or mixed chance and skill without disclosing the required information.

In 2003–2004, the matters described below were before the courts or resolved through consent agreements.

#### *Sears*

In July 2002, the Bureau filed its first application with the Competition Tribunal under the ordinary selling price provisions of the *Competition Act*, claiming that Sears Canada Inc. quoted inflated regular prices when promoting certain tires to consumers at so-called sale prices. In the application, the Bureau asked the Tribunal to issue an order requiring Sears to stop the alleged conduct for 10 years, to publish a notice outlining the Tribunal's findings and to pay an administrative monetary penalty. Sears challenged the constitutionality of the relevant section of the *Competition Act*. The Tribunal has heard evidence in the matter, written final arguments have been filed, and final oral arguments on the constitutionality of the ordinary selling price provisions have been heard. Pending the outcome of a motion by Sears to re-open the evidentiary portion of the hearing, the final oral arguments with respect to the alleged conduct have been postponed.

#### *Suzy Shier*

On June 13, 2003, the Bureau announced that it had reached a settlement with the women's clothing retailer Suzy Shier Inc., which had misrepresented its regular or ordinary selling prices. Bureau investigators found that the retailer had placed price tags on clothes indicating regular and sale prices, when,

in fact, the items had not been sold at the regular price in significant quantities or for a reasonable period of time.

Under the terms of the consent agreement filed with the Competition Tribunal, Suzy Shier Inc. agreed to do the following:

- ▶ pay an administrative monetary penalty of \$1 million;
- ▶ ensure all future representations of the regular price would comply with the ordinary selling price provisions of the *Competition Act*;
- ▶ implement a corporate program to ensure compliance with these provisions; and
- ▶ publish corrective notices in newspapers across Canada.

#### *Goldline*

On March 16, 2004, the Bureau announced that it had settled a case with Teleresolve Inc., an affiliate of Goldline Tele-management Inc., a seller of prepaid long-distance phone cards. The Bureau had investigated reports of the company charging hidden fees, and charging higher per minute rates and fewer minutes than advertised.

Under the terms of the consent agreement filed with the Competition Tribunal, Teleresolve agreed to do the following:

- ▶ pay an administrative monetary penalty of \$750 000;
- ▶ provide a credit of 50 percent of the value of all WOW and LILLY prepaid calling cards with proof of purchase; and
- ▶ not make representations in Canada or to Canadians, including on the Internet, that are false or misleading.

Teleresolve has since withdrawn the WOW and LILLY cards from the market.

### *Tristar*

On December 2, 2003, the Bureau announced that it had reached a settlement with Tristar Distribution Centre of Woodstock, Ontario, and its president, Trevor Brisebois, concerning the vacuum cleaner distributor's marketing practices. Bureau investigators discovered that Tristar and its distributors had used scratch-and-win promotional flyers that implied recipients had won a prize, when, in fact, this was conditional on their agreeing to participate in an in-home product demonstration.

Under the terms of the consent agreement filed with the Competition Tribunal, Tristar and its president agreed to do the following:

- ▶ pay an administrative monetary penalty of \$75 000;
- ▶ publish a corrective notice in Ontario newspapers;
- ▶ administer a new corporate compliance policy that covers marketing practices; and
- ▶ not make false or misleading representations in future promotional material.

### *The Gold Factory and R. Pye & Sons Jewellers*

On April 24, 2003, the Bureau announced that it had settled a case against The Gold Factory and R. Pye & Sons Jewellers of St. John's, Newfoundland and Labrador. The consent agreement filed with the Competition Tribunal required the corporation and the officers who operated the jewellery retail chain to stop using deceptive pricing practices when promoting jewellery sales. Specifically, a Bureau investigation revealed that the jewellery retailers misrepresented the value of savings

to consumers by continuously offering significant discounts on their inflated regular price of gold jewellery. Under the terms of the consent agreement, the corporation's officers agreed to only make written and verbal representations about the regular selling price of their products in the following circumstances:

- ▶ when 50 percent of the products had been sold at the stated regular price within the 12 months prior to the claim; and
- ▶ when the products had been offered for sale at the stated price or higher within the 12 months prior to the claim.

### *Para*

On May 7, 2003, the Bureau settled a case that concerned the marketing practices of Para Inc. of Brampton, Ontario. The consent agreement filed with the Competition Tribunal concerned Para's claim that a certain paint would generate energy savings. Following tests by the Bureau and Para, Para agreed to limit these performance claims, as follows.

- ▶ It would not claim energy savings greater than five percent in an average residential house.
- ▶ It would say that energy savings vary according to climate and the construction quality of the building, among other factors.
- ▶ It would not describe the heat transference qualities of the paint without identifying the energy-saving qualities as agreed to above.



## 2. Alternative Case Resolutions

The Bureau chooses the best and most efficient means of restoring competition in the marketplace. It resorts to an adversarial approach only when all other avenues to correct anti-competitive behaviour have failed or the activities constitute a flagrant disregard for the law. Some matters may be resolved quickly and easily, without full inquiry or judicial proceeding. This reduces uncertainty, saves time and avoids lengthy court actions.

### Abuse of Dominant Position

On October 1, 2003, the Bureau discontinued an investigation it had begun in April 2002 under section 79 of the *Competition Act* concerning commercial waste disposal contracting practices in the Winnipeg area. According to complainants, competition in these markets was being restricted by long-term contracts and right-of-first-refusal clauses in them. Following discussions with the Bureau, the companies in question agreed that they would limit the initial and subsequent renewal terms for standard form contracts to three years and would not include right-of-first-refusal clauses.

### Misleading Representations and Deceptive Marketing Practices

In 2003–2004, the Bureau used alternative case resolutions to settle 47 matters under the criminal and civil misleading representations and deceptive marketing practices provisions of the *Competition Act* and 10 matters under the three standards-based statutes.<sup>2</sup>

The Bureau may examine certain matters under the criminal and civil provisions of the *Competition Act* and the standards-based statutes. The following are examples of cases in which issues were raised under the civil misleading representations and deceptive marketing practices provisions of the *Competition Act*.

#### *Telecommunications Provider: Misleading Representation*

The Bureau received a complaint about advertisements on the Internet claiming that a telecommunications provider's pay-per-view movies were the "latest and greatest hit Hollywood movies." The Bureau's examination under the deceptive marketing practices provision of the *Competition Act* revealed that this was not the case, since pay-per-view movies are regularly released approximately two months after their release in video rental stores. Following discussions with the Bureau, the company agreed to use the phrase "latest and greatest pay-per-view releases" in its Internet advertisements.

2. See Chapter 2 (page 16) for a general description of the criminal misleading representations and deceptive marketing practices provisions of the *Competition Act*, and a general description of the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act*, and the *Textile Labelling Act*. See page 23 for a general description of the civil misleading representations and deceptive marketing practices provisions of the *Competition Act*.

### *Fitness Equipment: Ordinary Selling Price*

A complaint about a Toronto-area fitness equipment retailer's pricing policies alleged that while newspaper advertisements promoting the sale of treadmills included both a regular price and a discounted price, the retailer never sold the product at the regular price. After discussions with the Bureau, the head of the retail chain agreed to undertake a number of corrective measures, and to inform all officers, employees and agents of the chain about them.

### *Building Supply Retailer: Low-Price Guarantee*

The Bureau received complaints about a large retail building supply chain's advertised low-price guarantee, promising customers that the retailer would beat by 10 percent the price of identical products sold by a competitor at a lower price. The complainants alleged that the retailer was not honouring the guarantee on certain building supplies, such as lumber and drywall. Following discussions with the Bureau, the company provided written assurance that the corporate policy for the price guarantee did not exclude building supplies such as lumber and drywall. The company undertook to advise all stores and store employees of the policy and to prepare a training bulletin for their benefit.

### *Store Policy for a Low-Price Guarantee:*

#### *Misleading Representation*

A complaint alleged that a national retailer's "10% low price guarantee" was potentially misleading. The retailer claimed in its flyers that it would match any competitor's lower price

and cut an additional 10 percent. However, the complainant alleged that when he advised the manager of a franchise that a competitor had a lower price, the manager refused to give him the discount, arguing that his store did not compete with the other retailer.

In response to Bureau concerns, a company official agreed the incident was a breach of the policy contract the independently owned franchises were expected to follow. The company then assured the Bureau in writing that it would take the necessary measures to prevent the situation from recurring.

### *Telecommunications Retailer: Promotional Contest*

The Bureau received a complaint alleging that a telecommunications retailer's promotional contest did not comply with the *Competition Act*, since the disclosure requirements were not met and the advertised prize was not awarded. A Bureau examination revealed that the contest did not provide adequate and fair disclosure of the approximate value of the prize and other information about the chances of winning. In addition, the distribution of the prize was unduly delayed.

As a result of the Bureau's intervention, the company agreed to satisfy all of the information disclosure requirements in future promotional contests and to distribute prizes without undue delay.

### *Medical Device: Performance Claims*

A complaint about a retailer of medical devices alleged that a manufacturer's product performance claims were false and misleading. In the Bureau's view, the claims at issue could

mislead consumers into purchasing the company's products rather than those of its competitors.

Following discussions with the Bureau, company officials agreed to do the following:

- ▶ destroy all company brochures making reference to these claims;
- ▶ notify national sales representatives of the error;
- ▶ distribute a corrective notice to customers who received a copy of the brochure; and
- ▶ include the quality control manager in the approval of advertising for their products.

#### *Lawn Care Services: False or Misleading Representations*

On April 28, 2003, following a negotiated settlement, the Bureau discontinued an inquiry it had launched on August 16, 2000, under paragraphs 74.01(1)(a) and (b) of the *Competition Act* into environmental claims made by a lawn care service company. A complaint filed by six persons resident in Canada alleged that the company was making environmental claims that suggested that the chemical pesticides it used were safe and not harmful to the environment.

The Bureau discussed the issue with company officials who agreed to distinguish between services using chemical pesticides and pesticide-free services, and to refrain from implying that pesticides were not harmful or that services were pesticide-free when they were not.

#### *Jewellery Store: Ordinary Price Claims*

On September 18, 2003, following a negotiated settlement, the Bureau discontinued an inquiry it had launched on May 3, 2002, under sub-section 74.01(3) of the *Competition Act* into the marketing practices of a jewellery retailer with stores in Regina and Vancouver. The inquiry was part of a Bureau initiative in the retail jewellery industry to curb the use of false or misleading ordinary price representations to lure potential customers away from competitors. Over 18 months, Bureau officers observed that, in apparent contravention of the ordinary price claims provision of the Act, the retailer advertised goods as being on sale or offered large discounts for long periods, and that staff regularly offered customers discounts from the marked prices. Bureau officials spoke with the retailer and, subsequently, the Vancouver store closed and the Regina outlet agreed to bring its practices in line with the Act.

On December 2, 2003, the Bureau discontinued an inquiry it had launched on May 3, 2002, in response to allegations that a jewellery retailer had made false or misleading representations to the public about its prices for various articles of jewellery. Under sub-section 74.01(3) of the *Competition Act*, it is reviewable conduct to represent a price as the seller's own ordinary selling price when the seller has not sold a substantial volume of the product at that price or offered the product for sale at that price in good faith for a substantial period of time. This kind of advertising can influence consumers' purchasing decisions and lure them away from legitimate competitors.

The company in question stopped these representations shortly after it was made aware of the Bureau's concerns and also provided a written assurance of compliance regarding all future marketing practices. The Commissioner decided against pursuing the matter further, given the size and scope of the operation, among other things.

#### *Lottery Corporation: Misleading Representation*

On February 16, 2004, the Bureau discontinued an inquiry it had launched on November 2, 1999, into the marketing practices of a lottery and game of chance corporation. An application filed by six persons resident in Canada alleged that in promoting its lottery games, the corporation made false and misleading statements to potential ticket purchasers and failed to disclose certain facts that could affect the purchaser's chance of winning. The Bureau discussed the issue with the corporation, which agreed to make changes to its practices to ensure that adequate information was provided to its retailers and, in turn, to consumers, including complete, up-to-date information about game prize structures, odds of winning and the number of claimed and unclaimed prizes.

#### *Electronics Liquidator: Warranty Claims and Mandatory Labelling Information*

A summary of this case is available on page 16.



### **3. Written Opinions**

The Bureau provides legally binding written opinions to businesses seeking to comply with the *Competition Act* and the standards-based statutes. Company officials, lawyers and others may request a written opinion on whether a proposed business plan or practice would raise concerns under any of these laws. The Bureau's written opinions take into account jurisprudence, previous written opinions and its current policies. Written opinions remain binding for as long as the material facts remain substantially unchanged and the conduct or practice is carried out substantially as proposed.

To promote compliance with and foster transparency in the administration and enforcement of the Act, the Bureau publishes detailed summaries of its written opinions on its Web site ([www.cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/h\\_ct01272e.html](http://www.cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/h_ct01272e.html)). Here is an example of the written opinions the Bureau issued in 2003–2004.

#### **Misleading Representations and Deceptive Marketing Practices**

The Bureau issued 23 written opinions concerning the civil and criminal misleading representations and deceptive marketing practices provisions of the Act.<sup>3</sup> Only one dealt with the civil provisions of the Act, specifically, section 74.06.

3. See page 23 for a general description of the civil misleading representations and deceptive marketing practices provisions of the *Competition Act*. See Chapter 2 (page 16) for a general description of the criminal misleading representations and deceptive marketing practices provisions of the *Competition Act*.

Section 74.06 of the Act prohibits any promotional contest that does not disclose the number and approximate value of prizes, the geographic area or areas in which the prizes may be awarded and any important information relating to the chances of winning, such as the odds. The Act also stipulates that the distribution of prizes must not be unduly delayed and that participants must be selected or prizes distributed

randomly or on the basis of skill. The Bureau issued a written opinion in response to a request from an advertising agency on behalf of a tour bus operator/travel agency about whether a proposed promotional contest would raise concerns under the Act. The Bureau concluded that if the company implemented the plan as proposed, the Bureau would not have sufficient grounds to launch an inquiry.

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## Chapter 4

# Reviewing Mergers

The Bureau reviews merger transactions under section 92 of the *Competition Act* to assess whether a proposed merger is likely to prevent or substantially lessen competition. At the end of an investigation in which the Bureau finds a transaction to be anti-competitive, the Commissioner will ask the merging parties to restructure the merger or suggest remedies to solve particular competition issues. When such problems cannot be resolved by negotiation, the Commissioner may decide to bring an application to the Competition Tribunal, asking it to block the transaction.

The number of mergers the Bureau reviewed decreased in 2003–2004 from the previous year, partially due to the April 1, 2003, increase in thresholds at which the Bureau must be notified of proposed mergers. However, the size and scope of the mergers remained significant, as did the complexity of the competition issues raised.

Transactions are notifiable when the size of the transaction exceeds a certain dollar amount and the size of the parties to the transaction exceeds \$400 million. On April 1, 2003, the revised *Fee and Service Standards Handbook* (see page 55) introduced changes in notifiable merger transactions thresholds, with an increase in the size of transaction threshold from \$35 million to \$50 million and a fee increase for merger notifications and advance ruling certificate requests from \$25 000 to \$50 000. The party-size threshold remained the same.

International co-operation is critical in merger review of multi-jurisdictional transactions. To the extent possible under the law, the Bureau shares views and information about mergers

with other reviewing jurisdictions, coordinates the timing of the review process, and seeks consistent remedies.

In 2003–2004, the Bureau continued to co-operate with foreign agencies, the International Competition Network (see chapter 5) and the Organisation for Economic Co-operation and Development (OECD). The Bureau is working with the OECD's Competition Committee to promote international co-operation in competition enforcement in the area of merger review procedures. In addition, the Bureau also contributed significantly to the International Competition Network's Mergers Working Group.

This chapter contains summaries of some of the major merger cases that were new or ongoing during 2003–2004. In addition, there is an update on the Bureau's review of its merger enforcement guidelines, as well as comprehensive tables of total merger examinations concluded during the year and the current service standards.



## Major Merger Cases

### **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, the

Competition Tribunal ruled in favour of the Bureau and ordered Canadian Waste to sell the landfill. In March 2003, the Federal Court of Appeal dismissed Canadian Waste's appeal, ruling that the Tribunal had specialized expertise in making its findings. The Tribunal's divestiture order went into effect on March 12, 2003. In May 2003, Canadian Waste applied to the Supreme Court of Canada for leave to appeal the appeal court judgment. On January 8, 2004, the Supreme Court of Canada dismissed Canadian Waste's application.

Also in May 2003, Canadian Waste applied to the Tribunal under section 106 of the *Competition Act* to have the divestiture order varied or rescinded, alleging that circumstances had changed since the order was made. The Tribunal granted a stay of the order until the outcome of a hearing that was held in October and December 2003.<sup>1</sup>

### **General Electric Medical Systems and Instrumentarium Corporation**

In March 2003, General Electric Company (GE) sought the Bureau's approval for its acquisition of Instrumentarium Corporation. Both GE and Instrumentarium are major manufacturers and suppliers of patient monitoring equipment. After an extensive examination, the Bureau concluded that the proposed transaction would likely result in significant competition concerns in the market for patient monitors used in high acuity areas of hospitals and other health care facilities in Canada.

To resolve competition concerns in Europe and the United States, GE agreed to divest Instrumentarium's worldwide Spacelabs business, an important supplier of patient monitoring equipment in Canada. GE also provided a formal commitment to the European Commission that it would maintain existing and future interfaces on patient monitors, therapy devices and clinical information systems to ensure that equipment from third-party suppliers could effectively connect with GE equipment. At the Bureau's request, GE confirmed that the European interface agreement applied globally and was available to third-party suppliers in Canada and elsewhere.

These commitments by GE satisfied the Bureau's concerns, and the Bureau issued a no-action letter. In the event that GE fails to adhere to its commitments, the Bureau has the right to make an application to the Competition Tribunal within three years of the merger's substantial completion.

### **RONA Inc. and Réno-Dépôt Inc.**

On April 23, 2003, RONA announced that it had entered into an agreement with Kingfisher plc and its affiliates that would enable it to acquire Réno-Dépôt. Subsequently, the Bureau launched an investigation into this transaction and found that it would likely substantially lessen competition in the consumer home improvement and renovation products market in Sherbrooke, Quebec.

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1. On June 28, 2004, the Tribunal dismissed Canadian Waste's application, with costs to the Commissioner. On July 21, 2004, Canadian Waste commenced an appeal in the Federal Court of Appeal. It also sought a stay of the divestiture order, pending determination of the appeal.

On September 4, 2003, the Bureau filed a consent agreement with the Competition Tribunal to address the competition problems. The consent agreement provides for the divestiture of the Réno-Dépôt store in Sherbrooke, subject both to Bureau approval and the store being sold to a buyer who intends to operate it principally for the retail sale of renovation and home improvement products and who has the financial and operational capability to manage the business.

At the end of February 2004, RONA had not sold the Sherbrooke store, and a trustee was appointed to carry out the sale. The agreement stipulated that, in the meantime, the Réno-Dépôt store would continue to operate as a distinct entity from RONA.

#### **Alcan Inc. and Pechiney**

In July 2003, Alcan Inc., a global leader in aluminium and fabricated aluminium, as well as in flexible and specialty packaging, proposed acquiring France's Pechiney, S.A., the world's fifth largest aluminium and packaging group. In October 2003, after a thorough review, the Bureau concluded that the acquisition of Pechiney by Alcan, combined with certain commitments made by Alcan, would not likely prevent or substantially lessen competition. In its review, the Bureau primarily examined the North American market, but also looked at the global market for aluminium production technology. While Alcan had extensive assets in Canada, Pechiney did not control any physical assets in Canada that overlapped with Alcan's.

The Bureau co-operated closely with the U.S. Department of Justice and the Merger Task Force of the European Commission in its review of this transaction. To resolve international competition concerns, Alcan agreed to divest Pechiney's aluminium rolling facility in Ravenswood, West Virginia, and other rolling mills in Europe. Alcan also made commitments to the European Commission about alumina refining technology, aluminium smelter cell technology and anode baking furnace designs. The Bureau determined that these measures would preserve competition in Canada as well.

#### **Maple Leaf Foods Inc. and Schneider Corporation**

On September 25, 2003, Maple Leaf Foods announced its intention to acquire the shares of Smithfield Canada Limited and its subsidiary Schneider Corporation. At the time of the announcement, Maple Leaf and Schneider were among the largest meat processors in Canada. After a thorough review, the Bureau announced on March 30, 2004, that it would not challenge the acquisition before the Competition Tribunal.

The Bureau carefully examined the merger's impact on various aspects of the food processing business, focussing particularly on hog procurement and primary pork processing in western Canada as well as processed meats (bacon, wieners and sliced meats). While the Bureau identified some concerns in the wiener market, it concluded that the evidence at this time did not support a challenge before the Competition Tribunal.

### **Canadian National Railway Company and the British Columbia Rail Limited**

On November 25, 2003, Canadian National Railway Company (CN) and the Government of British Columbia announced that CN would be acquiring the outstanding shares of British Columbia Rail Limited (BC Rail), along with a very long-term lease to operate on BC Rail's roadbed. BC Rail, Canada's third largest railway, operates more than 2315 km of main line within British Columbia, from North Vancouver in the south to Fort Nelson in the north. CN's British Columbia rail network, which consists of approximately 2000 km of track, connects with the BC Rail network at North Vancouver and Prince George.

As of March 31, 2004, the Bureau's examination of this proposed transaction was ongoing.<sup>2</sup>

### **Canfor Corporation and Slocan Forest Products Ltd.**

On March 31, 2004, the Bureau filed a consent agreement with the Competition Tribunal resolving competition concerns arising from Canfor Corporation's acquisition of Slocan Forest Products Ltd. The agreement requires Canfor, the largest softwood lumber producer in Canada, to divest its Fort St. James, British Columbia, sawmill, located north of Prince George.

The Bureau concluded that the transaction would have resulted in less choice for log sellers, wood re-manufacturers and wood-chip sellers in the Prince George area.

The consent agreement provides that should Canfor be unable to divest the Fort St. James sawmill, a trustee would be appointed to do so.

### **Transcontinental Inc. and Optipress Inc.**

Transcontinental Inc., one of the major publishing and printing houses in North America, proposed acquiring Optipress Inc., one of the major community and weekly newspaper publishing and printing enterprises in Atlantic Canada. Transcontinental, which has a strong presence in the Atlantic provinces through a chain of daily newspapers and printing plants, argued that Optipress's community papers and printing assets would complement Transcontinental's operations. Following a thorough review, the Bureau announced on January 16, 2004, that it found no significant competitive overlap and consequently did not challenge the transaction.

### **Sherritt et al. and Fording Inc.**

In January 2003, Sherritt Coal Partnership II and Fording Inc. announced a multi-party agreement to combine certain assets of Fording Inc., Teck Cominco Limited, Luscar Ltd. and CONSOL Energy Inc. in the thermal coal, metallurgical coal and coal terminal port businesses in Canada.

The Bureau announced on April 15, 2003, that it would not challenge this combination of assets. After carefully examining the merger's impact on various aspects of the coal industry and obtaining input from customers, competitors and an

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2. On July 2, 2004, the Competition Bureau filed a consent agreement with the Competition Tribunal that addressed the Bureau's concerns.

independent industry expert, the Bureau concluded that the consolidation would not likely prevent or substantially lessen competition in the relevant markets.

### **Great-West Lifeco Inc. and Canada Life Financial Corporation**

On February 17, 2003, Great-West Lifeco Inc. announced it had entered into an agreement with Canada Life Financial Corporation to acquire 100 percent of the latter's outstanding common shares. The Bureau focussed its analysis of the proposed merger on six areas: individual life insurance, individual health insurance, group life and health insurance, wealth management, group pensions, and commercial mortgages. Through its investigation, the Bureau determined that the transaction was not likely to prevent or substantially lessen competition in any relevant market.

### **Manulife Financial Corporation and John Hancock Financial Services Inc.**

On September 28, 2003, Manulife Financial Corporation announced its acquisition of John Hancock Financial Services Inc. The Bureau focussed its analysis of the proposed merger on four areas: individual health insurance, group life and health insurance, individual wealth management and group pensions. Through its investigation, the Bureau determined that the transaction was not likely to prevent or substantially lessen competition in any relevant market.

### **Sobeys Inc. and Comisso's**

In December 2003, Sobeys, the second largest food wholesaler-retailer in Canada after Loblaw Companies Limited, proposed acquiring Comisso's, a regional chain of 16 grocery stores with a wholesale division, located primarily in the Niagara Peninsula. The Bureau's review found that the proposed transaction would not prevent or substantially lessen competition in any relevant market.



## **Merger Enforcement Guidelines**

Since their release in 1991, the *Merger Enforcement Guidelines* (MEGs) have been a useful tool, outlining the basic analytical framework for merger review in Canada. Given legal and economic developments since 1991, an update was required to ensure the MEGs remain current and as useful as possible. Consequently, in early 2004, the Bureau re-drafted the MEGs and in March 2004, released a draft revised version for public comment. The Bureau will issue the MEGs in final form after consultation with members of the legal community, the academic community, foreign competition authorities and other interested parties.

### **Bank Merger Enforcement Guidelines**

Published in 1998, the *Bank Merger Enforcement Guidelines* (BMEGs) set out the Bureau's analytical framework for assessing the competitive effects of a merger involving two or more banks. In June 2003, the Government issued its response to

two House of Commons and Senate Committee reports, *Large Banks Mergers in Canada: Safeguarding the Public Interest for Canadians and Canadian Businesses* and *Competition in the Public Interest: Large Bank Mergers in Canada*, respectively, with the following recommendation, among others: “In light of the work of the two committees and developments in recent years in Canada and abroad, the Government is asking the Competition Bureau to review the BMEGs.”

As a result, the Bureau consulted stakeholders in the fall of 2003 and sought public comment on the revised BMEGs in February 2004. All submissions were made available to the public and posted on the Bureau’s Web site ([www.cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/ct02796e.html](http://www.cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/ct02796e.html)), except when confidentiality was specifically requested. The Bureau will review the comments received and publish the revised document in 2004.

## Service Standards

### Merger Examinations, 2003–2004

<b>Examinations Commenced<sup>1</sup></b>	<b>202</b>
Notifiable Transactions	53
Advance Ruling Certificate Requests <sup>2</sup>	159

1. Includes notifiable transactions, advance ruling certificates and examinations commenced for other reasons, but not ongoing examinations from the previous fiscal year.
2. Total number of notifiable transactions with advance ruling certificate requests exceeds 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.

<b>Examinations Concluded<sup>1</sup></b>	<b>215</b>
No Issue Under the Act	202
Advance Ruling Certificates Issued <sup>2</sup>	138
Agreed Remedies	6
Consent Orders/Registered Consent Agreements <sup>3</sup>	3
Contested Proceedings <sup>4</sup> (A)	1
Parties Abandoned Proposed Mergers in Whole or in Part as a Direct Result of the Commissioner's Position	1
Proposed Mergers Abandoned for Other Reasons	5

1. If a transaction has a notification as well as an advance ruling certificate, it is only counted once. This number also includes advance ruling certificates and matters that have been concluded or withdrawn before the Competition Tribunal.
  2. *Advance Ruling Certificates Issued* are a subset of the *Posing No Issue Under the Act* category and have only been counted once in *Examinations Concluded*.
  3. Consent Orders and Registered Consent Agreements are a subset of the *With Agreed Remedies* category and have only been counted once in *Total Examinations Concluded*.
  4. Year completed.
- (A) Canadian Waste Services and Browning-Ferris: Supreme Court dismissed Canadian Waste Services' leave to appeal with costs (January 2004).

<b>Total Examinations During the Year</b>	<b>229</b>
Total Examinations Concluded	215
Examinations Ongoing at Year-End	14

<b>Advisory Opinions Issued</b>	<b>0</b>
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<b>Section 92 Matters Before the Tribunal and the Courts<sup>1</sup></b>	<b>4</b>
Ongoing at Year-End	0
Concluded <sup>2</sup> or Withdrawn (B)	4

1. Includes applications for consent orders and consent agreements.
2. "Concluded" means that the Competition Tribunal or the courts issued an order or decision, and there were no further appeals.

(B) Cases concluded: Canadian Waste/Browning-Ferris, Pfizer/Pharmacia, Rona/Réno-Dépôt, Canfor/Slocan.

<b>Other Tribunal Proceedings<sup>1</sup></b>	<b>1</b>
Ongoing at Year-End (C)	1
Concluded <sup>2</sup> or Withdrawn	0

1. Includes section 106 applications.
2. "Concluded" means that the Competition Tribunal or the courts issued an order or decision, and there were no further appeals.

(C) Waste: section 106 application.

### Breakdown of Mergers by Year, 2000–2004

Business Line	2000–2001	2001–2002	2002–2003	2003–2004
Pre-merger Notification Filings*	73	59	28	22
Advance Ruling Certificate Requests	255	243	224	159
Other Examinations	45	26	27	21
<b>Total Mergers</b>	<b>373</b>	<b>328</b>	<b>279</b>	<b>202</b>

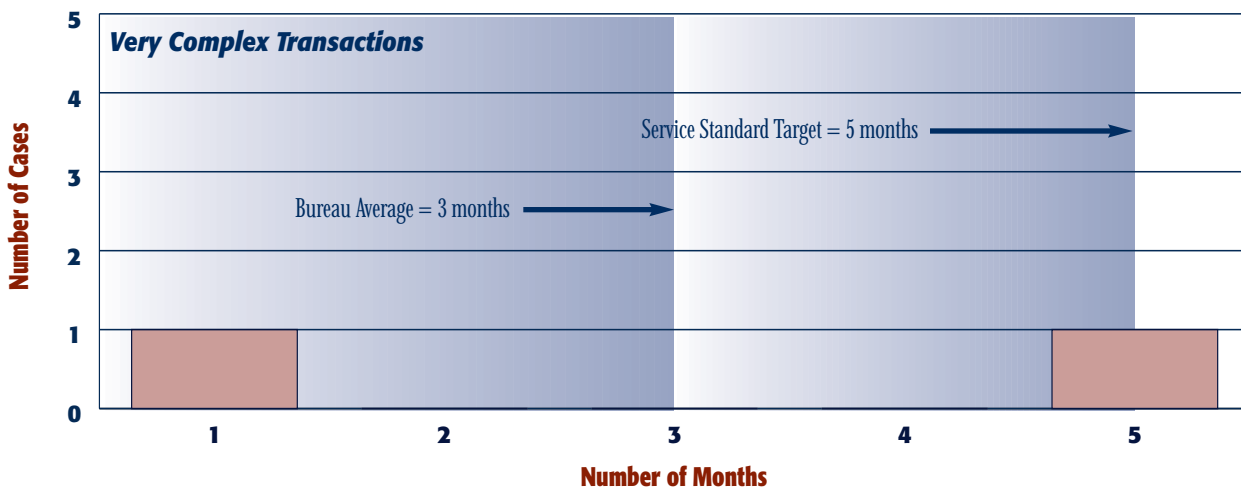
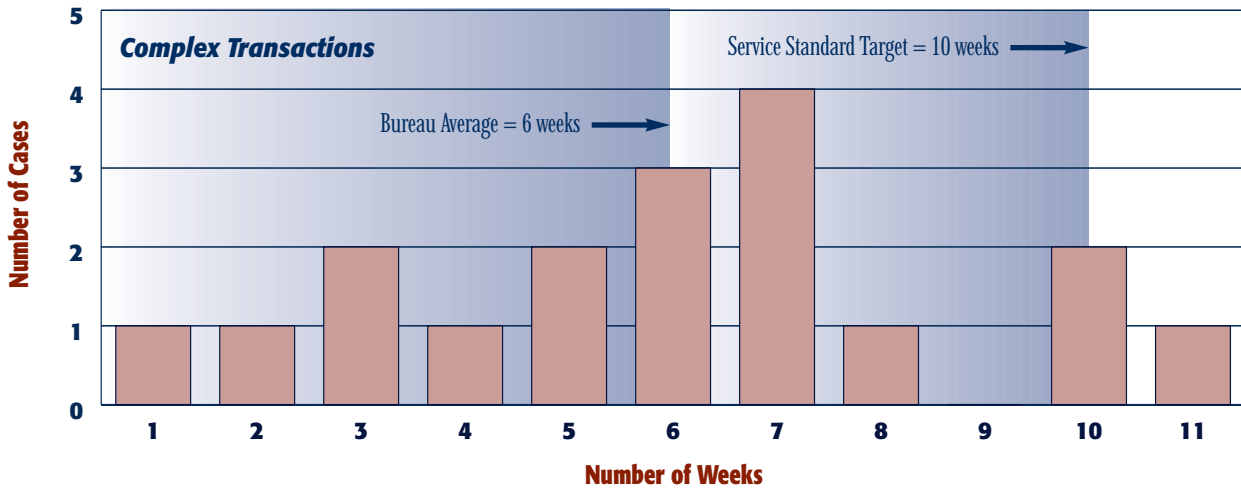
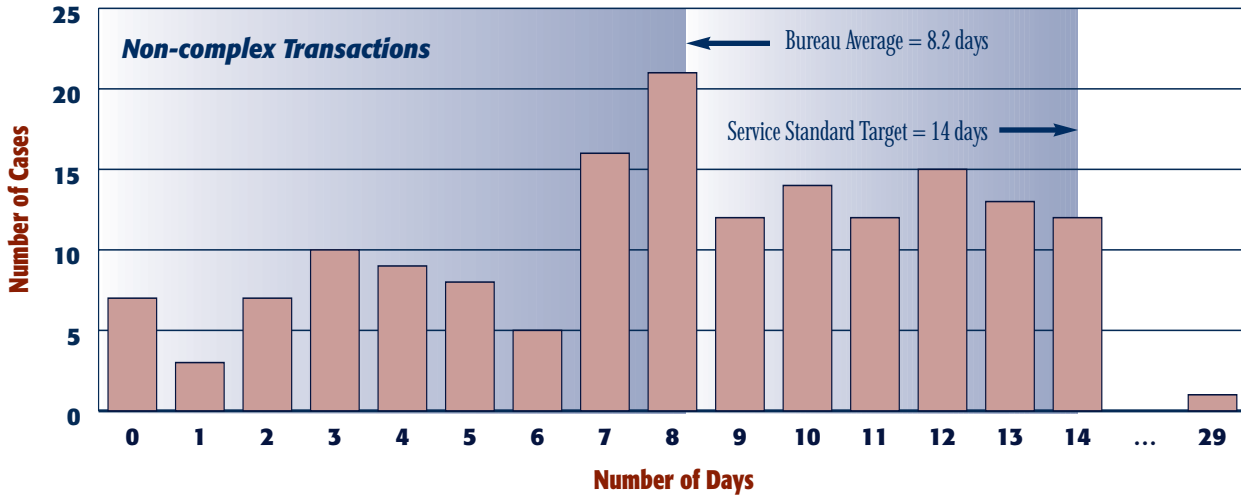
\* Excludes notification filings for which advance ruling certificates were also requested. The figure in the Total Mergers row represents the total number of examinations commenced during the fiscal year.

Note: On April 1, 2003, the size of transaction threshold was increased from \$35 million to \$50 million. This resulted in fewer filings. As a result, the 2003–04 year is not directly comparable to prior years.

### Merger Review: Meeting Service Standards

Complexity	Service Standard	Number of Transactions	
		April 2003 to March 2004	Service Standard Met
Non-complex	14 days	165	164 (99.4%)
Complex	10 weeks	18	17 (94.4%)
Very Complex	5 months	2	2 (100%)
<b>Total</b>		<b>185</b>	<b>183 (98.9%)</b>

**Meeting Service Standard Targets, April 1, 2003 to March 31, 2004**



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## Chapter 5

# *Advocating for Competition and for International Coordination*

This chapter covers the wide range of activities the Competition Bureau pursues to promote competition. Domestically, Bureau officials appear before federal and provincial government agencies and regulatory bodies, and also participate in departmental and interdepartmental policy-making. Internationally, the Bureau plays a leadership role in the International Competition Network, the Organisation for Economic Co-operation and Development and various trade bodies.

The Bureau's officials also contribute to debates on competition issues through publications, speeches and seminars (see chapter 7 and appendices II and III).



## **Domestic Activities**

### **Marine and Rail Transportation**

#### *Submission to the Canada Marine Act Review Panel*

In November 2002, the Bureau made a submission to the Canada Marine Act Review Panel that addressed three areas of marine services: Canada Port Authorities, pilotage and ferry services, and shipping in domestic waters (coasting trade). Details of the submission were described in last year's annual report.

The panel accepted the Bureau's recommendations in a number of areas: implementing a competitive selection process for the boards of directors of all Canada Port Authorities, eliminating regulatory constraints that restrict Canada Port Authorities from borrowing money and that prevent them from

merging, and continuing the commercialization of ferries. The panel's acceptance of the view that Canadian ports compete directly or indirectly with U.S. ports and that ports contribute to Canada's economy and competitiveness is important, since it supports the Bureau's view that certain ports compete among themselves. The Minister of Transport indicated that Transport Canada will carefully review the panel's recommendations and observations, which will likely lead to amendments to the *Canada Marine Act*.

#### *Submission to the Canadian Transportation Agency*

On December 10, 2003, the Bureau filed a letter of intervention in response to a request for comments from the Canadian Transportation Agency on the *Railway Interswitching Regulations*.

The letter included three comments.

- ▶ First, the Bureau supported the proposed amendments to the *Railway Interswitching Regulations*, since the interswitching provision in the regulations is a critical competitive access tool, creating opportunities for competitive service in situations in which natural monopolies occur.
- ▶ Second, lowering the current interswitching rates by more than 10 percent would undoubtedly benefit shippers and encourage them to use this competitive provision. The interswitching provision could be made more competitive if the number of car block sizes were extended from the current two to three or more.
- ▶ Third, this would have the effect of lowering rates and encouraging efficiencies in developing unit trains,

reflecting current industry practices. In addition, the competitive process could be enhanced by converting the interswitching rates to maximum rates under the *Canada Transportation Act*. This would allow the shipper and railway to negotiate rates below those prescribed.

The Canadian Transportation Agency has not concluded its review of the matter and will be gathering further evidence.

## **Telecommunications**

### *Review of Price Floor Safeguards for Retail Tariffed Services and Related Issues (Telecom Public Notice CRTC 2003-10)*

The Canadian Radio-television and Telecommunications Commission (CRTC) invited public submissions on proposed modifications to rules governing the pricing of bundled services by dominant local telephone companies, including Bell Canada, Telus, Aliant and SaskTel. These rules restrict the bundling of monopoly local residential telephone services with competitive services, such as Internet, long distance, wireless and video.

In its June 2003 submission, the Bureau cautioned the CRTC that prematurely removing these restrictions would create barriers to entry and stifle competition. Maintaining the bundling restrictions until local telephone markets are competitive will allow new entrants to grow and provide consumers with greater choice of local telephone service providers. The Bureau, therefore, recommended that the CRTC maintain the ban on the bundling of monopoly local residential telecom-

munications services with competitive services until there is effective competition in the local telephone market.

As of March 31, 2004, this proceeding was ongoing and a decision pending.

### *Application to the CRTC by Call-Net Enterprises Inc. (Telecom Decision CRTC 2003-49)*

On January 17, 2003, Call-Net applied to the CRTC for an order directing Bell Canada, Telus and the other dominant local telephone companies to provide high-speed Internet service to residential customers choosing a competitor's local telephone service. At the time of the application, the policy of the dominant companies 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.

On February 26, 2003, the Bureau filed a submission supporting Call-Net's application, urging the CRTC to recognize that the existing policies of the dominant companies make it more difficult for new entrants to compete in the local residential telephone market.

On July 21, 2003, the CRTC issued its decision in this matter, directing the dominant local telephone companies to provide high-speed Internet services to the customers of competitive local telephone service providers, such as Call-Net. As a result, residential phone customers will have more choice of local telephone service providers.

*Testimony to the House of Commons Standing  
Committee on Industry, Science and Technology*

On February 24, 2003, the former Commissioner appeared before the committee to speak about foreign investment restrictions that apply to telecommunications common carriers.

The former Commissioner described his responsibilities and role as an advocate of competition and stated the Bureau's views on access to capital, the benefits of foreign capital, the lack of distinction between telephone signals and broadcast signals, and foreign ownership requirements. On this last matter, the former Commissioner said that foreign ownership restrictions are not necessary to achieve a healthy and vigorous telecommunications industry.

The committee issued its report, *Opening Canadian Communications to the World*, on April 28, 2003. Two of the committee's four recommendations directly addressed the issue of foreign ownership restrictions and echoed the Commissioner's position on other matters. The committee recommended that the Government of Canada remove the minimum Canadian ownership requirements for telecommunications common carriers, including the requirement of Canadian control, and that the Government of Canada ensure that any changes to these ownership and control requirements apply equally to broadcasting distribution undertakings.

**Broadcasting**

*Remarks to the House of Commons Standing  
Committee on Canadian Heritage*

The former Commissioner appeared twice in 2002 before the committee to present his views on the future of broadcasting. Details of the submissions were described in last year's annual report. The Bureau subsequently made three main recommendations: include efficiency and increased reliance on market forces in the broadcasting and regulatory policy; clarify the CRTC's mandate; and ensure the foreign investment levels for broadcasting distribution undertakings parallel those for telecommunications carriers. The committee issued its report, *Our Cultural Sovereignty. The Second Century of Canadian Broadcasting*, on June 11, 2003.

The committee recommended reviewing the mandate of the CRTC and clarifying the respective roles and responsibilities of the CRTC and the Competition Bureau regarding broadcasting. It also recommended that the House of Commons Standing Committee on Industry, Science and Technology review the role and resource requirements of the Competition Bureau in the area of broadcasting. The committee agreed with the former Commissioner's observation that the CRTC should not review broadcasting transactions for commercial viability; rather, it should focus solely on the impact any proposed merger would have on the production and distribution of Canadian content.

*Testimony to the Standing Senate Committee on  
Transport and Communications*

On September 23, 2003, the Acting Commissioner appeared before the committee to present the Bureau's views on the state of the Canadian news media.

The Acting Commissioner described the character of media markets as somewhat different from that of other markets. Media markets are advertising markets. From an economic perspective, the advertiser buys exposure of advertisements to readers, listeners or viewers. Television, radio and newspapers generally serve different advertising markets, with the first two being national and the last local. Finally, the Acting Commissioner emphasized that the Bureau favours increased consumer choice. He noted that having diverse owners as well as diverse forms of ownership (resulting in different incentives) may help increase product choice, which may indirectly benefit the diversity of voices. He encouraged the committee to consider other ways of promoting diversity, including liberalizing foreign ownership restrictions. He noted, however, that the issue of diversity of voices was more cultural than economic in nature, and thus a natural adjunct to the CRTC's mandate to maintain and enhance Canadian culture.

The committee has yet to release its report.

## **Energy**

*Ontario Energy Board Hearing on Ontario Power  
Generation Inc.'s Leasing Arrangement With Bruce  
Power LP*

In January 2003, the Ontario Energy Board invited the Bureau to testify at its hearing on whether a leasing arrangement of nuclear generation assets between Bruce Power and Ontario Power Generation resulted in their being separate entities. In November 2000, the Bureau provided an advance ruling certificate on this arrangement that did not address the issue of independence. In its testimony, the Bureau advised the Ontario Energy Board on how to determine independence and clarified that the earlier advance ruling certificate had not addressed that issue.

The Ontario Energy Board's decision of April 4, 2003, indicates that it agrees with the Bureau's approach and determined that the lease arrangement would result in an independent competitor. As a consequence, Ontario electricity consumers are assured of the benefits of a new competitive supplier of electricity for the province.

## **Trade**

*Jarred Baby Foods: An Application to the Federal  
Court of Appeal*

On April 28, 2003, the Canadian International Trade Tribunal (CITT) issued a decision removing all tariffs on the import of certain prepared jarred baby foods. The CITT found that

any injury to Heinz Canada due to the removal of tariffs would likely be the result of renewed competition and not of dumping. 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.

On June 18, 2003, Heinz Canada applied to the Federal Court of Appeal, seeking an order to reverse the CITT's decision. The Bureau opposed Heinz Canada's application.<sup>1</sup>

## **Agriculture**

### *Remarks to the House of Commons Standing Committee on Agriculture and Agri-Food*

On February 16, 2004, the Commissioner appeared before the committee as part of its study of the price of beef at the slaughter, wholesale and retail levels as a result of the BSE crisis. The Commissioner said that the Bureau is closely following developments in the beef industry and that, based on information available to date, there is no reason to believe that the *Competition Act* has been or is about to be contravened. The Commissioner noted that the Act does not authorize the conduct of general inquiries into competition in a particular industry; however, when information is uncovered that points to a potential breach of the Act, the Bureau takes appropriate action. The committee released its report in April 2004.<sup>2</sup>

## **Merger Review: Efficiencies**

### *Remarks to the Standing Senate Committee on Banking, Trade and Commerce*

On November 5, 2003, the Acting Commissioner appeared before the committee to present his remarks on Bill C-249: An Act to amend the *Competition Act*. He supported the bill because efficiencies would be given due consideration during merger review, while ensuring that this was done in the context of the overall purpose of the Act.



## **International Activities**

Bureau officials have assumed leadership roles in a number of international organizations, including the International Competition Network, the Competition Committee of the Organisation for Economic Co-operation and Development and the Asia-Pacific Economic Cooperation Competition Policy and Deregulation Group. These activities foster greater cooperation among competition authorities around the world, which is critical for law enforcement. They also provide an opportunity to disseminate information about Canada's competition policy system and domestic marketplace framework to potential investors, and promote coherence between Canada's approach to competition law and that of foreign counterparts for the benefit of Canadian business.

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1. This matter was heard by the Federal Court of Appeal on May 26, 2004. The court dismissed the application by Heinz Canada, awarding costs in favour of the Commissioner of Competition, Gerber Products Company and Novartis Consumer Health Canada Inc.  
2. *Canadian Livestock and Beef Pricing in the Aftermath of the BSE Crisis, Report of the Standing Committee on Agriculture and Agri-Food*, April 2004.

The Bureau also leads Canada's free trade negotiations in the area of competition policy.

### **Empagran**

In February 2004, the Minister of Justice, acting in close collaboration with the Bureau, Foreign Affairs Canada and International Trade Canada, filed an *amicus curiae* brief with the Supreme Court of the United States, outlining Canada's concerns with the decision of the United States Court of Appeals for the District of Columbia Circuit in the matter of *F. Hoffman-La Roche, Ltd., et al. v. Empagran, SA, et al.* The case was a class action lawsuit in which non-U.S. residents sought compensation through U.S. courts for financial harm they suffered outside the U.S. as a result of a worldwide price-fixing conspiracy among vitamin producers and distributors.

The Bureau's intervention concerned the following:

- ▶ principles of international law and comity;
- ▶ implications of the lower court's decision on international co-operation in the detection, investigation and prosecution of international cartels;
- ▶ the efficacy of the Bureau's Immunity Program;
- ▶ the development of domestic civil jurisprudence on damages arising from cartel activity;
- ▶ the global development of effective anti-cartel enforcement regimes; and
- ▶ the potential for unreasonable interference with Canadian competition policy.<sup>3</sup>

### **Falconbridge**

An important Ontario Court of Appeal decision was rendered in May 2003 in the matter of the *Commissioner of Competition v. Falconbridge Limited, et al.* This decision ensures that Canada and the U.S. can continue to assist one another in investigating criminal antitrust matters under the *Mutual Legal Assistance in Criminal Matters Act* and the *Mutual Legal Assistance Treaty*. In particular, the decision held that offences under the *Sherman Act* (the U.S. antitrust law) were offences within the meaning of the treaty and that an offence need not be a reciprocal offence in both countries for assistance to be given. On January 22, 2004, the Supreme Court denied Falconbridge et al. leave to appeal the decision.

### **International Competition Network**

Founded in October 2001, the International Competition Network (ICN) is a network of private and public sector competition practitioners from around the world. In the past year, it has grown to include 85 member agencies from 75 countries. The ICN serves the following purposes:

- ▶ providing antitrust agencies from developed and developing countries with a forum to address practical antitrust enforcement and policy issues of common concern;
- ▶ facilitating procedural and substantive convergence in antitrust enforcement through a results-oriented agenda and an informal, project-driven organization;

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3. In June 2004, the United States Supreme Court ruled against the non-U.S. resident plaintiffs but remanded the matter to the United States Court of Appeals for the District of Columbia Circuit for further consideration.

- ▶ promoting more efficient, effective antitrust enforcement worldwide by enhancing convergence and co-operation; and
- ▶ encouraging consistency in enforcement policy and elimination of unnecessary or duplicate procedural burdens for the benefit of consumers and businesses around the world.

The ICN's second annual conference was held in Mérida, Mexico, in June 2003. During the two-day conference, members confirmed Canada's Commissioner of Competition as chair of the ICN Steering Group and the Assistant Commissioner, Communications, as co-chair of the advocacy sub-group.

The ICN's three working groups had a productive year. The Advocacy Working Group undertook studies on the telecommunications, air transportation, legal and energy sectors. It launched the Advocacy Information Centre for the benefit of members, and developed the online *Toolkit for Effective Advocacy*, which provides practical techniques for promoting competition. The Working Group also investigated existing provisions to promote competition in member countries, with a view to developing a set of model provisions or best practices.

The Capacity Building and Competition Policy Implementation Working Group produced a report, *Capacity Building and Technical Assistance: Building Credible Competition Authorities in Developing and Transition Economies*.

The Mergers Working Group produced a variety of materials, including the following:

- ▶ four new recommended practices to add to its initial set of eight Recommended Practices for Merger Notification Procedures;
- ▶ tools for more efficient merger review procedures, including links to templates with answers to frequently asked questions;
- ▶ three reports: *Developing Reliable Evidence in Merger Cases*, *The Role of Economists and Economic Evidence in Merger Analysis*, and *Report on Investigative Techniques Employed by Member Agencies in the Area of Merger Review*; and
- ▶ a series of papers analyzing merger enforcement guidelines in 12 jurisdictions, authored by non-governmental advisors.

All of these documents, as well as contact information for ICN members and links to information about the merger laws of many member countries, are available on the ICN Web site ([www.internationalcompetitionnetwork.org](http://www.internationalcompetitionnetwork.org)).

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

The Bureau is Canada's lead representative on the Competition Committee of the Organisation for Economic Co-operation and Development (OECD). The OECD and its working parties have examined various competition issues associated with the following:

- ▶ mergers: information sharing, media mergers and merger remedies;

- ▶ cartels: information sharing during international investigations and sanctions against individuals;
- ▶ co-operative relationships;
- ▶ the consumer-competition interface; and
- ▶ stock-taking of the regulatory reform process.

The two-day Global Forum on Competition, which was attended by representatives of OECD countries and others from the developed and developing world, was held February 12–13, 2004, in Paris. The Forum focussed on the link between economic development and competition policy and law.

The Asia-Pacific Economic Cooperation organization and the OECD forged an agreement on joint work on regulatory reform. Workshops were the focus of the first phase. The second phase, currently under way, focusses on developing an integrated checklist for self-assessment on regulatory, competition and market-openness policies.

The Bureau also participates in the OECD Committee on Consumer Policy. Part of the committee's mandate is to examine questions relating to consumer policy and law in member countries and within international and regional organizations. The United States currently chairs the committee. The Office of Consumer Affairs leads Canada's participation, with one of its employees serving as one of the vice-chairs. The Competition Bureau participates in its capacity as a Canadian law enforcement agency.

The committee's current focus is the implementation of the *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders*.

The OECD adopted these guidelines in June 2003 with a view to fostering international co-operation in the fight against fraudulent and deceptive commercial practices. The Competition Bureau, in collaboration with the Office of Consumer Affairs and provincial and territorial consumer authorities, is responsible for implementing these guidelines in Canada.

Other areas of interest to committee members include the potential role the committee could have in combatting deceptive unsolicited bulk e-mail, also known as spam. The committee held a spam workshop in February 2004. Committee members also participate in joint meetings with the OECD Competition Committee to determine what links exist between consumer policy and competition law and what benefits can be drawn from them.

### **International Consumer Protection and Enforcement Network**

In October 2003 and March 2004, Bureau representatives participated in the biannual meetings of the International Consumer Protection and Enforcement Network (ICPEN), held in Helsinki and Saariselkä, Finland. ICPEN is a voluntary organization of the trade practices law enforcement authorities of 29 countries, most of which are OECD members. Its mandate is to share information about cross-border commercial activities that may affect consumer interests and to encourage international co-operation among law enforcement agencies.

At the Helsinki meeting, Bureau representatives delivered a presentation on best practices for combatting international deceptive mail scams. At the Saariselkä meeting, participants discussed the role ICPEN can play in implementing the *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders*, as well as future work or possible collaboration on fighting spam. ICPEN members are committed to achieving greater co-operation in the area of cross-border law enforcement.

### **Asia-Pacific Economic Cooperation**

Canada has been active in providing technical assistance and co-operation to other Asia-Pacific Economic Cooperation (APEC) countries. Each member economy submits an individual action plan or annual report to monitor progress toward the targets APEC nations set in 1994 for freer and more open trade and investment in the Asia-Pacific region.

The Bureau participated in the preparation of Canada's 2003 individual action plan. For additional information, see the competition policy chapter of Canada's individual action plan on the APEC Web site ([www.apec-iap.org/document/CDA\\_2003\\_IAP.htm](http://www.apec-iap.org/document/CDA_2003_IAP.htm)).

### **Technical Assistance**

This year, the Bureau provided technical assistance to a number of countries that are in the process of drafting or implementing their own competition laws, including Ukraine, Vietnam and China. Such assistance included the following:

- ▶ 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 particular types of investigations.

### **International Cartels**

Jurisdictions that co-operated with the Bureau on international cartel cases in 2003–2004 included the United States, the United Kingdom, the European Union, Japan and Germany. Noteworthy cases involved graphite electrodes, polyester staple fibre, choline chloride and monochloroacetic acid/monochloroacetate (see chapter 2 for information on these cases).

### **Deceptive Telemarketing and Deceptive Marketing Practices**

The Bureau is showing strong leadership in the fight against deceptive telemarketing and mail solicitation through a number of new initiatives, including the following:

- ▶ support for international guidelines for increased co-operation in investigations of cross-border fraud and deceptive commercial practices;
- ▶ an anti-fraud education campaign that has been adopted for use in the U.S. and the U.K.; and
- ▶ increased co-operation with other international enforcement agencies in investigations.

On October 14, 2003, an inter-agency co-operation arrangement was also established between the Competition Bureau, the U.K. Office of Fair Trading and the U.K. Department of Trade and Industry. The arrangement will enhance enforcement co-operation between Canadian and U.K. authorities in areas such as deceptive marketing (including cross-border scams) and criminal cartel activity.

Further to its current information sharing protocol with the U.S. Federal Trade Commission, the Competition Bureau signed two protocols with the Australian Consumer and Competition Commission and the U.K. Office of Fair Trading in March 2004. These protocols formalize how the Competition Bureau and its partners share complaint and investigation data to combat cross-border fraud faster and more efficiently.

### **Competition Law**

Negotiations are continuing between Canada and Japan on a co-operation agreement for competition law. The proposed agreement is expected to provide a framework for coordination and co-operation to deal effectively with anti-competitive business activities affecting both countries.

On April 11, 2003, Canada's co-operation agreement with Mexico regarding competition law enforcement came into effect, following its approval by the Mexican Senate.

### **Trade Negotiations**

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

In partnership with Foreign Affairs Canada and International Trade Canada, the Bureau continued to contribute to the development of a regional framework for competition policy in the Americas. A copy of the most recent draft chapter on competition policy is available on the Free Trade Area of the Americas Web site ([www.alca-ftaa.org/FTAADraft03/ChapterXIX\\_e.asp](http://www.alca-ftaa.org/FTAADraft03/ChapterXIX_e.asp)).

#### *United Parcel Service of America, Inc. v. Government of Canada*

The Bureau continued to help the Canadians litigating a claim by United Parcel Service of America, Inc. under a North American Free Trade Agreement (NAFTA) Chapter 11 (i.e. investor state dispute settlement) arbitration that Canada Post Corporation engages in discriminatory practices by providing advantages to its courier products that are not available to those of United Parcel Service Canada. United Parcel Service also alleges that Canada Post has engaged in anti-competitive conduct, such as cross-subsidization and predatory practices. In a preliminary motion, the NAFTA Tribunal found that competition matters are beyond its jurisdiction.

#### *World Trade Organization*

In 2003, the World Trade Organization Working Group on the Interaction Between Trade and Competition continued to address issues related to a potential multilateral framework

on competition. The discussions focussed on the mandate set out in the Doha Ministerial Declaration, including clarifying core principles (transparency, non-discrimination and procedural fairness), drafting provisions on hard-core cartels, encouraging voluntary co-operation and supporting the progressive reinforcement of competition institutions in developing countries. The Bureau worked actively to promote a constructive dialogue and, in particular, encouraged discussion of issues facing developing countries.

The Doha Declaration provided for a decision to be taken at the next ministerial meeting, which was held in Cancún in September 2003, on whether to launch trade and competition

negotiations. While considerable progress was made, members continued to differ on how to proceed on trade and competition policy, and a number of countries stated that they were not ready to negotiate. As of March 2004, no agreement had been reached on a new mandate for the Working Group.

#### *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.

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## Chapter 6

# Modernizing Competition Law

The Competition Bureau is committed to ensuring that Canadian consumers and businesses receive the full benefit of an innovative and competitive marketplace, and to regularly reviewing the *Competition Act* and the Bureau's policies and enforcement guidelines for consistency with developing jurisprudence and economic thought. A modern, up-to-date legislative framework fosters economic growth, wealth creation, investment and innovation in Canada.

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.

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### Review of and Proposed Amendments to the *Competition Act*

As reported in the Competition Bureau's 2002–2003 annual report, the House of Commons Standing Committee on Industry, Science and Technology reviewed the *Competition Act* and tabled its final report in April 2002. The Government of Canada tabled its response to the committee's report in October 2002. In June 2003, the Government launched a discussion paper entitled *Options for Amending the Competition Act: Fostering a Competitive Marketplace* to fulfill its commitment to consult widely with stakeholders on proposed amendments to the Act.

The discussion paper included four major proposals.

1. Strengthening the civil provisions of the Act with the following:

- administrative monetary penalties for civil reviewable matters (except mergers);
  - restitution to consumers in certain cases of deceptive marketing practices; and
  - a civil cause of action making it possible to recover damages resulting from non-criminal anti-competitive conduct.
2. Reforming the conspiracy provisions with the inclusion of the following in the Act:
- a criminal provision that would explicitly define clearly egregious anti-competitive agreements;
  - a civil provision that would review all other agreements among competitors or potential competitors that may substantially lessen competition; and
  - a clearance certificate to provide certainty and predictability to businesses.
3. Reforming the pricing provisions by doing the following:
- repealing the criminal price discrimination, promotional allowances, geographic price discrimination and predatory pricing provisions of the Act; and
  - dealing with those behaviours under the civil provisions using a competition test.
4. Allowing an independent and impartial body to inquire into the functioning of Canadian markets.

The Public Policy Forum held consultations and invited interested stakeholders to submit written comments on the discussion paper. It received more than 100 submissions from a wide range of stakeholders. These are available on the Public Policy Forum Web site ([www.ppforum.ca/competitionact/submissions\\_e.htm](http://www.ppforum.ca/competitionact/submissions_e.htm)).

Based on comments received, the Public Policy Forum organized 11 round tables in various cities across Canada in November and December 2003. More than 100 stakeholders (legal and economic experts, academics, and representatives of small and medium-sized enterprises, large businesses and interest groups, including consumer associations) participated in the round tables. At the close of the fiscal year, the Public Policy Forum was in the process of finalizing a report to the Commissioner of Competition. The Commissioner will analyze the report to determine whether additional discussions and analyses are required.



## Private Members' Bills

As adopted by the House of Commons Standing Committee on Industry, Science and Technology, Bill C-249, An Act to amend the *Competition Act*, sought to amend section 96 of the Act and make efficiencies a factor in the competition analysis of a proposed merger. Bill C-249 also required that gains in efficiency that benefit consumers be considered (for example, in the form of competitive prices and product choice). Bill C-249 would have eliminated the efficiencies defence under the existing law, replacing it with a single, fully integrated competition test. Consequently, efficiencies would be considered as part of the overall assessment of the effects of a merger on competition.

Bill C-249 was passed by the House of Commons on May 13, 2003, and sent to the Senate for approval. In the Senate, it

received first reading on May 13, 2003, and second reading on September 17, 2003, and was referred to the Standing Committee on Banking, Trade and Commerce on September 17, 2003. Committee hearings were held from October 30 to November 6, 2003. Following prorogation of Parliament on November 12, 2003, the Bill was reinstated when a new session of Parliament began. It received first reading in the Senate on February 3, 2004.<sup>1</sup>

Other private members' bills related to the work of the Bureau included the following:

- ▶ Bill C-353: an Act to establish an Energy Price Commission;
- ▶ Bill C-379: an Act to establish an Oil and Gas Ombudsman to investigate complaints relating to the business practices of suppliers of oil or gas;
- ▶ Bill C-381: an Act to prevent major vertically integrated gasoline suppliers from selling at the retail level; and
- ▶ Bill C-461: an Act requiring the Commissioner of Competition to launch an inquiry upon receiving 100 or more applications reflecting similar circumstances and allowing the initiation of class proceedings under the *Competition Act*.

Following the prorogation of Parliament, Bill C-353 and Bill C-461 were reinstated but did not pass first reading. Bill C-379 and Bill C-381 were not reinstated because their sponsor was nominated to the Senate.

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1. Second reading took place on April 1, 2004, and the bill was then referred to the Standing Committee on Banking, Trade and Commerce on April 1, 2004. Bill C-249 died on the order paper on May 23, 2004, when Parliament was dissolved.

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## Chapter 7

# *How We Do It All*

Communications helps to ensure that Canadian consumers, businesses, government agencies and the international community are aware of the Bureau's crucial contribution to competition in the marketplace and to the growth of the Canadian economy.

As described below, the Bureau communicates with Canadians in a variety of ways: through the media, publications such as information bulletins, guidelines, handbooks and pamphlets, warnings to consumers, the Web site, the Information Centre, stakeholder consultations, speeches and seminars, and other initiatives.

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### Media Relations

The media play an important role in the democratic process, and the Bureau increasingly reaches Canadians through the media. In 2003–2004, the Bureau issued 20 news releases and 25 information notices, describing the benefits of its activities for Canadians and the economy. Staff also responded to hundreds of enquiries from journalists in Canada and abroad. Senior managers at the Bureau were accessible to the media and acted as spokespeople on key issues. This resulted in 2069 stories mentioning the Bureau, an increase of 78 percent from the previous year.

An independent analysis of the media coverage revealed that the Bureau is portrayed as a multi-faceted organization and is being covered by more media outlets. In addition to stories about merger review, stories appeared about Bureau

investigations into various anti-competitive practices by businesses. Coverage also focussed on consumer issues, moving Bureau stories from the national businesses pages into other sections of the newspaper. The amount of radio and television coverage also increased from previous years. Broadcast stories reached small, regional communities, where people may not previously have been exposed to Bureau messages.

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### Information Bulletins, Guidelines, Handbooks and Pamphlets

The Bureau views publications as an important tool to promote competition activities. From time to time, it publishes information bulletins, guidelines, handbooks and pamphlets to clarify its position on issues that raise questions among members of the public and on matters in which the interpretation of the *Competition Act* is not easily understood.

#### Information Bulletin on Private Access to the Competition Tribunal

On September 18, 2003, the Bureau released the *Information Bulletin on Private Access to the Competition Tribunal*. This bulletin outlines and clarifies the Bureau's role in private access matters and discusses the circumstances in which the Bureau intervenes in these proceedings. Private access was made possible by the amendments to the *Competition Act* that came into force in June 2002. Private parties are now allowed to apply for leave to bring a matter before the Competition

Tribunal when they are directly and substantially affected by the conduct of another party. Private access is available only for conduct reviewable under the refusal to deal, exclusive dealing, tied selling and market restriction provisions of the *Competition Act* (i.e. sections 75 and 77). The private access provisions were added to complement the Bureau's enforcement role and increase the deterrent effect of the Act.

When a private party applies for leave to bring a matter before the Competition Tribunal, the Bureau must be notified. The Bureau certifies to the Tribunal whether the matter is currently under inquiry or whether it was the subject of an inquiry that was discontinued following a settlement. Once the Tribunal receives the Bureau's certification, it notifies the applicant and any person against whom the order is sought whether it can hear the application. Before the Tribunal makes its decision, parties to the application and the Bureau may make written representations to the Tribunal. It is unlikely that the Bureau will make a written representation at this stage, except in exceptional circumstances, when the intervention can have a significant impact on the Tribunal's decision to grant leave. If leave is granted<sup>1</sup> and an application filed with the Tribunal, the Bureau could intervene at any stage of the proceedings. It could also intervene in a private proceeding, when a consent agreement is reached between private parties.

When deciding whether to intervene, the Bureau considers a variety of factors, including, most importantly, whether the matter gives rise to significant competition concerns and

whether intervention is in the public interest. The Bureau may also consider whether the impact on competition is circumscribed by the private and local character of a dispute, or whether it applies to a wider geographical area. The impact on consumers, the business community and the Canadian economy also affects the decision.

### **Draft Guidelines: Deceptive Notice of Winning a Prize Provision**

On August 26, 2003, the Bureau released the *Draft Guidelines on the Deceptive Notice of Winning a Prize Provision (Section 53 of the Competition Act)* and invited the public to submit comments and suggestions. The guidelines were released to provide a better understanding of the Bureau's approach to enforcing section 53 and on elaborating the various elements of the provision. Comments and suggestions received in the course of the consultations have been reviewed and will be considered when finalizing the guidelines.

### **Canadian Guidelines with Respect to the Sale and Marketing of Diamonds, Coloured Gemstones and Pearls: Revised Edition 2003**

On August 11, 2003, the Bureau endorsed a set of guidelines to help the Canadian jewellery industry provide consumers with consistent, accurate and meaningful product information. The guidelines were first developed in 1994 by a Jewellers Vigilance Canada special committee that included industry

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1. Leave has been granted in two cases (see chapter 3, page 23).

members and a Bureau representative. The guidelines were revised in 2003 to reflect amendments to the *Competition Act*, as well as changes to Canadian jewellery definitions, to ensure they remain consistent with international standards.

### **International Guidelines for Co-operation Against Cross-border Fraud and Deceptive Commercial Practices**

On June 17, 2003, the Bureau announced its participation in the adoption of the Organisation for Economic Co-operation and Development's (OECD) *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders*.

For years, cross-border scammers have hidden behind national boundaries to evade law enforcement authorities. These guidelines provide OECD member countries with a list of recommendations, including broad principles for international co-operation as well as specific provisions covering notification, information sharing and assistance with investigations. The guidelines also cover issues regarding the authority of law enforcement agencies, encourage private-sector co-operation and set the stage for future work on consumer redress.

The guidelines were prepared by the Committee on Consumer Policy of the OECD. The Bureau, along with the Office of Consumer Affairs, represents Canada on the committee. The Bureau is involved in implementing the guidelines in Canada.

### **Fee and Service Standards Handbook**

The Bureau made a number of changes early in 2003–2004 to enhance client service and reduce the regulatory burden for merging parties involved in small transactions. The *Fee and Service Standards Policy* and the *Fee and Service Standards Handbook*, which came into force on April 1, 2003, can be found on the Bureau's Web site ([www.cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/ct01249e.html](http://www.cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/ct01249e.html)).

In December 2003, the Bureau made minor revisions to the handbook as a result of stakeholder feedback and Bureau experience during the first six months of the revised policy. These amendments include the following:

- ▶ clarifying the definition of a very complex merger;
- ▶ clarifying when and how the Bureau seeks consent from parties to publish a written opinion on its Web site;
- ▶ clarifying when the Bureau may exercise its discretion not to provide an opinion with respect to certain multi-level marketing plans;
- ▶ clarifying the information requirements for requesting a written opinion under paragraph 74.01 (1)(b) (representations not based on adequate and proper tests); and
- ▶ removing the following from section 74.06 (promotional contests) as an information requirement for requesting a written opinion: "The legality of the promotion under other applicable legislation such as the *Criminal Code*."

The handbook applies to merger notification filings and advance ruling certificate requests related to merger review, written opinion requests and photocopies of documents.

## **Pamphlets**

On October 28, 2003, the Bureau published updated pamphlets on refusal to supply, exclusivity and abuse of dominant position. These pamphlets provide an overview of the respective provisions of the Act and set out the tests the Bureau uses when determining whether concerns arise under the Act. The new information reflects recent amendments to the Act (Bills C-23 and C-26).

## **Other Publications**

In addition to the Bureau's official publications, Bureau staff published academic papers related to competition policy or sectors in which competition policy is a concern (see Appendix II).



## **Warnings to Consumers**

The Bureau periodically issues warnings to alert consumers to potentially illegal or misleading activities in the marketplace. In 2003–2004, the Bureau warned consumers on four occasions, as described below.

### **Lawn Care Services**

On May 16, 2003, consumers were urged to do their homework before purchasing lawn care services that claimed to be green, environmentally friendly, ecologically friendly, organic or safe. With the public's mounting concerns about pesticide use, the market for safe lawn care services is expanding. Many companies offer exclusively chemical-pesticide-free services,

while others have added chemical-pesticide-free or "organic" services to their list of offerings. However, since services differ from company to company and from program to program, the advertising can be confusing and potentially misleading. The Bureau has developed a list of questions consumers should ask before signing a contract.

### **Invention Promotion Firms**

On November 7, 2003, the Bureau issued a warning about "all-in-one" invention promotion firms that promise to evaluate, develop, promote, patent and market inventions. The Bureau cautioned that, while most invention promotion firms are legitimate, some unscrupulous firms can prey on an inventor's enthusiasm and make false or exaggerated claims about the market potential of an invention. Once hired, these firms often do little or nothing to earn their fees. To protect against such exploitation, the Bureau suggested taking various precautions.

### **Bait and Switch Advertising**

On November 27, 2003, the Bureau issued a warning to consumers and businesses to look out for "bait and switch" advertising, particularly over the holiday season. The warning was the result of the significant increase in the number of complaints the Bureau received about advertisers and retailers promoting a variety of products — including computers, home electronics, hardware and small appliances — and services, especially those sold in conjunction with consumer products. Under the *Competition Act*, companies are prohibited from advertising bargain prices for products that they do not

have available in reasonable quantities. Retailers that contravene the law may be ordered by the Competition Tribunal to stop the conduct, publish a corrective notice, and/or pay a significant administrative monetary penalty.

### **Bogus Jewellery Appraisal Values**

On February 5, 2004, the Bureau warned consumers to watch out for jewellery retailers using inflated appraisal values as a selling tool around Valentine's Day. Consumers are often deceived into believing that they are getting a bargain by purchasing items at a price significantly lower than the appraised value, and subsequently finding that the discounted cost of their purchase is actually the price other retailers charge.

### **The Web Site**

The Bureau's Web site ([www.cb-bc.gc.ca](http://www.cb-bc.gc.ca)) continues to be a valuable source of information. The site features an automatic e-mail distribution list that sends subscribers information updates. More than 2300 people have subscribed to this service.

Information notices, news releases, speeches, warnings and the most recent versions of all publications are available on the site. Consumers and businesses also have access to electronic commerce applications, such as the CA Number Database.

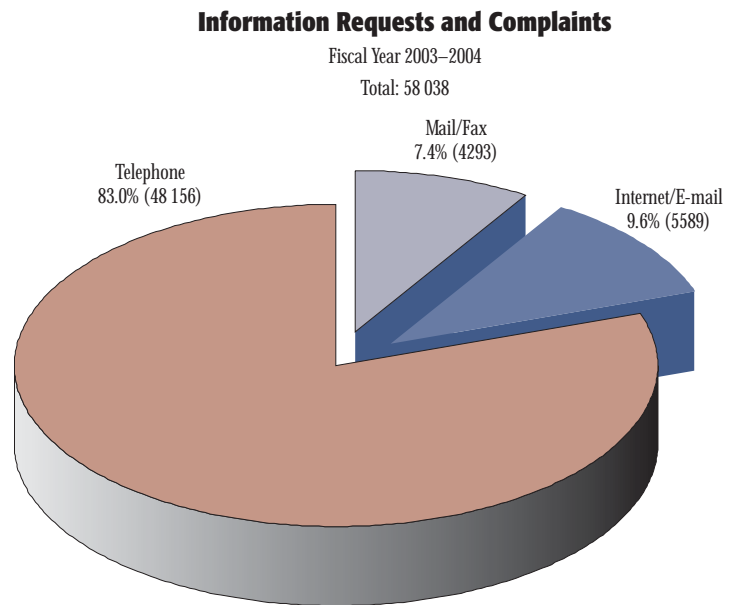
Over the past year, the site has been updated to embrace the latest technology and now includes a new and powerful search engine, allowing stakeholders to easily access valuable information. Features include a search function in each section of

the Web site, percentages to represent the compatibility of results with the keywords entered, and a detailed description of the content of these results.

The Bureau also conducted an online poll to find out about users' experience browsing the site. The site will be redesigned to reflect those comments as well as information gathered during personal interviews with key stakeholders.

### **Information Centre**

The Information Centre is the primary gateway into the Bureau for Canadian and international consumers, businesses and other organizations. In 2003–2004, eight employees at headquarters handled 58 038 requests for information and complaints — four percent more than in the previous year (see the following chart for additional information).



The information gathered by the Centre is essential to helping the Bureau shape its public awareness and enforcement activities.

The public can contact the Centre in several ways:

- ▶ through its toll-free line (1 800 348-5358) from 7:30 a.m. to 8:00 p.m. (EST);
- ▶ by e-mail ([compbureau@cb-bc.gc.ca](mailto:compbureau@cb-bc.gc.ca));
- ▶ through an electronic complaint form available on the Bureau's Web site ([www.cb-bc.gc.ca](http://www.cb-bc.gc.ca));
- ▶ by facsimile (819-997-0324); and
- ▶ by mail (Competition Bureau, 50 Victoria Street, Gatineau QC K1A 0C9).

With the growth of electronic commerce and the Bureau's increased accessibility and profile through media coverage and Government On-Line, the Centre has seen a 5.9 percent increase in contacts via the Internet over last fiscal year (2002-2003) in addition to the 53 percent increase since 2001-2002.



## **Stakeholder Consultations**

The Bureau's new Commissioner has made it a top priority to hear the views of stakeholders across Canada to ensure that Canadians continue to enjoy the benefits of a fair and competitive economy, competitive prices, product choice and quality service. Consequently, between January and March 2004, the Commissioner held consultations in every province with consumer and public interest groups, private sector organizations, members of the legal and academic communities and provincial government and law enforcement officials.

## **Feedback Cards**

The Bureau encourages stakeholders to comment on service provided for merger notification filings, requests for advance ruling certificates and written opinions through feedback cards, which were revised this year. It is anticipated that the new forms, which target specific services and provide more space for comments, will encourage more clients to respond. Ninety-one percent of those who have responded indicated that service from the Bureau was either good or excellent.



## Speeches and Seminars

Speeches and seminars have become an increasingly important mechanism for promoting competition. These key communication tools are strong pillars of the Bureau's Conformity Continuum in support of its advocacy and education efforts. Speeches and seminars are primary vehicles for promoting a pro-competitive marketplace and developing competition policy and legislation. They also enable the Bureau to inform consumers and businesses about how the Bureau enforces the law and the actions it takes to promote and preserve competition in the Canadian marketplace. The Commissioner is often invited to speak at and participate in conferences and other events both within Canada and abroad. In addition, the Bureau regularly invites experts in the antitrust field to present their latest findings and to review the most recent developments in antitrust literature relevant to the Bureau's work. See Appendix III for more information.



## Other Initiatives

### Special Constable Status for Competition Law Officers

Special constable status was granted to 10 competition law officers from the Bureau's Ontario Region and eight from its Prairie and Northern Region, allowing them to serve summonses and subpoenas while fulfilling their duties under the *Competition Act*, the standards-based statutes and the *Criminal Code*. The Bureau now has officers with special constable status in Nova Scotia, Prince Edward Island, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia.

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## Appendix I

# *Discontinued Cases*

On April 1, 2003, the Bureau discontinued an inquiry it had launched under paragraph 74.01(1)(a) of the *Competition Act* on February 21, 2002, following an application filed by six persons resident in Canada. The applicants alleged that a real estate developer had made materially false and misleading statements that affected its customers' purchasing decisions. Specifically, they claimed that the developer had repeatedly advertised that a condominium complex would be built with electronic security gates, but that these had not materialized. After investigating, the Bureau determined that the company remained committed to building the gates and that the delay resulted from a disagreement between the condominium board and owners about the gates' features, rather than from bad faith on the part of the company.

On April 1, 2003, the Bureau discontinued an inquiry it had launched on March 19, 2002, following an application filed by six persons resident in Canada. The applicants alleged that Nova Scotia automobile insurance companies had conspired to increase automobile insurance premiums and to discriminate against certain communities and age groups. The Bureau looked at this issue under section 45 (conspiracy) and section 49 (agreements or arrangements among federal financial institutions) of the *Competition Act*. The Bureau concluded that, while automobile insurance premiums had increased, there was no evidence that the companies had reached an agreement or arrangement to increase insurance premiums or to discriminate between communities and/or age groups.

On April 15, 2003, the Bureau discontinued an inquiry it had launched under section 61 (price maintenance) of the

*Competition Act* concerning a complaint from a consumer electronics retailer. The retailer alleged that a supplier had discriminated against him and had ultimately refused to supply him because of his low-pricing policy. Following an investigation, the Bureau determined there was insufficient evidence to support the complainant's allegations.

On April 29, 2003, the Bureau discontinued an inquiry it had launched into the Quebec beer industry in August 2000 under section 77 (exclusive agreements) and section 79 (abuse of dominant position) of the *Competition Act*. Several Quebec microbreweries complained that they had suffered significant losses in product sales due to the business practices of Molson and Labatt, two major breweries. Specifically, the microbreweries criticized these breweries for exclusive dealing and for abusing their dominant position by engaging in various anti-competitive acts. Following an investigation, the Bureau determined that there was insufficient evidence to confirm that the breweries' practices substantially lessened competition. However, it noted that the beer industry, in which the two major breweries account for nearly 90 percent of sales and in which a number of clients are bound by potentially anti-competitive contract clauses, could still raise concerns under the *Competition Act*. Therefore, as the market evolves, the Bureau could decide to re-examine the industry and intervene, if necessary.

In April 2002, the Bureau received information concerning an alleged price-fixing agreement among building supply wholesalers in a local market in British Columbia. Following interviews with the wholesalers, Bureau officers concluded that insufficient evidence existed to show that competition had been

lessened unduly, a requirement under section 45. Customers had relatively easy access to other sources of supply outside the local market, and the economic effect of such an agreement in this market would be small. Given these and other considerations, the Bureau elected to resolve the matter informally. In May 2003, Bureau officials met individually with the people alleged to have been parties to the agreement, reviewed the allegations and provided information on the relevant provision of the *Competition Act*.

On July 23, 2003, the Bureau discontinued an inquiry it had launched on February 7, 2003, under sub-section 52(1) (deceptive telemarketing) and sub-section 52.1(3) (deceptive representations) of the *Competition Act*, following complaints the Bureau received that a business opportunity start-up company and its representatives had engaged in misleading marketing and deceptive telemarketing concerning a vending machine business opportunity. During its investigation, the Bureau discovered that the Royal Canadian Mounted Police (RCMP) had already issued a warrant for the arrest of the company's director for his involvement in two previous business opportunity schemes. On February 24, 2003, Bureau officers and the RCMP executed a search warrant under the *Criminal Code*, uncovering enough evidence for the RCMP to lay additional charges concerning the scheme under investigation by the Bureau. The Bureau concluded it was not in the public interest to conduct a parallel investigation under the *Competition Act*.

In September 2003, the Bureau received a complaint concerning an alleged conspiracy to reduce competition and fix prices

among certain members of a provincial association of agricultural drainage service companies. Following interviews and an analysis of the facts of the case, Bureau officers determined that insufficient evidence existed to show either undue lessening of competition under section 45 or resale price maintenance contrary to section 61 of the *Competition Act*. To educate the executive members of the association, Bureau officers attended a meeting in December 2003 and gave a presentation on the conspiracy and price maintenance provisions of the Act.

On September 22, 2003, the Bureau discontinued an inquiry it had begun on July 16, 2003, into certain pre-paid meal plan programs that allowed university students to eat at various restaurants and campus cafeterias. It had been alleged that the fees paid by off-campus restaurants were anti-competitive because small businesses could not afford them. The Bureau reviewed this matter under section 77 (exclusive dealing) and section 79 (abuse of dominant position) of the *Competition Act*. Because the number of students participating in this program was negligible compared to the overall population in the market and because there were no barriers to entry in the restaurant business, the Bureau did not find that competition would be substantially lessened.

On October 1, 2003, the Bureau discontinued an inquiry it had launched on August 27, 2001, under section 45 (conspiracy) of the *Competition Act* into allegations that a number of seafood processors in New Brunswick and Nova Scotia had conspired to fix the shore price paid to fish harvesters for snow crab caught in Nova Scotia in 2001. The Bureau found that

the seafood processors did not possess sufficient control over the market to implement an agreement that would unduly lessen competition.

On October 24, 2003, the Bureau discontinued an inquiry it had launched on May 3, 2003, under section 45 (conspiracy) of the *Competition Act* into allegations that certain lobster processors had conspired to fix the price paid for lobster caught in and around Prince Edward Island between January 2001 and the spring of 2002. Following an investigation, the Bureau determined that there was insufficient evidence to support these allegations.

On December 2, 2003, the Bureau discontinued an inquiry it had launched on May 3, 2002, in response to allegations that a jewellery retailer had made false or misleading representations to the public about its prices for various articles of jewellery. It is contrary to sub-section 74.01(3) of the *Competition Act* for a seller to represent a price as the ordinary selling price when the seller has not sold a substantial volume of the product at that price or offered the product for sale at that price in good faith for a substantial period of time. This kind of advertising can influence consumers' purchasing decisions and lure them away from legitimate competitors. The company in question stopped these representations shortly after the Bureau made it aware of its concerns. The company also provided written assurance that all future marketing practices would comply with the Act. The Commissioner decided against pursuing this matter further, given the size and scope of the operation, among other things.

On January 8, 2004, the Bureau discontinued an inquiry that it had launched on August 1, 2002, under paragraph 74.01(1)(a) (misleading advertising) of the *Competition Act*, after receiving complaints that a major consumer electronics retailer had engaged in misleading marketing practices. The complaints alleged that the retailer did not adequately disclose the out-of-pocket costs to consumers for products for which rebates and/or credits were advertised; in many cases, prominently featured after-rebate prices proved to be artificial and impossible for consumers to obtain. During the course of its inquiry, the Bureau realized that the retailer had begun to prominently display relevant information to consumers, resulting in greater consumer awareness and fewer complaints. The Bureau decided it would not be in the public interest to continue the inquiry.

On January 8, 2004, the Bureau discontinued an inquiry it had initiated into complaints that a manufacturer of printers and copiers was using restrictive licensing terms to lessen and prevent competition in the relevant market. The Bureau reviewed the matter under section 79 (abuse of dominant position) of the *Competition Act*, finding that while some firms might have been affected by the restrictive licensing terms, they were a legitimate exercise of the company's copyright. Complaints were also made that the manufacturer was tying services to the sale of its products. Following its review under section 77 of the Act (tied selling), the Bureau determined that a tie could not be established. Since the requirements under sections 77 and 79 had not been met, the matter was closed.

On January 16, 2004, the Bureau discontinued an inquiry it had launched on June 28, 2001, under section 45 (conspiracy) of the *Competition Act* into the activities of a number of firms in the commercial tissue paper industry. Bureau officers determined that there was insufficient evidence for the Commissioner to refer the matter to the Attorney General of Canada for prosecution.

On February 27, 2004, the Bureau discontinued an inquiry it had launched in June 2003 into an alleged misuse of Canada's drug patent rules, following a complaint from the National Union of Public and General Employees and other national organizations representing seniors, pensioners, patient advocates and health care activists. These groups alleged that brand name pharmaceutical companies were engaging in a practice of "evergreening," whereby new patents are added to the patent register for a given medicine simply to delay generic versions from entering the Canadian market. The Bureau recognized that this process could delay the introduction of a generic drug, but concluded that the Act was not the appropriate vehicle for resolving what was essentially a patent dispute between two firms. From a competition policy perspective, however, the Bureau stated that the Government may wish to review the current rules to ensure that an appropriate balance is maintained between protecting intellectual property rights and facilitating a competitive supply of pharmaceutical products for Canadian consumers.

On March 3, 2004, the Bureau discontinued an inquiry it had launched on December 17, 2002, into game prize structures, under paragraph 50(1)(b) of the *Competition Act*. The Bureau was responding to a complaint by six persons resident in Canada that a major publisher, through 10 of its community newspapers, had engaged in regional price discrimination in the sale of advertising in a Quebec region. As part of its inquiry, the Bureau conducted a survey and held consultations with representatives of various community newspapers. It found that, while some firms were affected by the pricing strategy, sufficient competition remained in the market.

On March 5, 2004, the Bureau discontinued an inquiry it had launched in response to an application filed by six persons resident in Canada alleging that a real estate board had engaged in anti-competitive practices contrary to section 45 (conspiracy) and section 79 (abuse of dominant position) of the *Competition Act*. The inquiry failed to uncover evidence of a conspiracy under section 45. In addition, changes in the real estate board's conduct alleviated the potential for competition to be prevented or substantially lessened in the relevant market; therefore, grounds did not exist to pursue the matter.

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## Appendix II

# Reports, Speeches and Papers

Boyce, John R. and Aidan Hollis, *Novelty, Non-Obviousness and Optimal Patent Policy*, paper prepared for the 2003 meetings of the Canadian Law and Economics Association, Toronto, September 19–20, 2003.

Finckenstein, Konrad von, *Recent Increases in the Price of Gasoline*, speaking notes for an appearance before the House of Commons Standing Committee on Industry, Science and Technology, May 5, 2003.

Finckenstein, Konrad von, “International Antitrust Policy and the International Competition Network,” *International Antitrust Law & Policy*, Fordham University School of Law, 2002, pp. 37–46.

Jorré, Gaston, Bill C-249 — *An Act to Amend the Competition Act*, speaking notes for remarks to the Standing Senate Committee on Banking, Trade and Commerce, November 5, 2003.

Lu, Denis, et al., *Empirical Investigation on Foreign Entry into the Canadian Banking Sector*, paper prepared for the Statistics Canada Economic Conference 2003, Ottawa, May 12–13, 2003.

Monteiro, Joseph, “Bus Transportation: Towards Regulatory Reform in Intercity Busing?” in *Canadian Transportation Research Forum, Proceedings of the 2003 Annual Conference*, 38th Annual Conference, Ottawa, May 11–14, 2003, pp. 736–752.

Monteiro, Joseph, “The Canadian Courier Services Industry” in *Canadian Transportation Research Forum, Proceedings of the 2003 Annual Conference*, 38th Annual Conference, Ottawa, May 11–14, 2003, pp. 625–641.

Monteiro, Joseph, David Krause and Melanie Nera, “The Canadian Air Cargo Business” in *Canadian Transportation Research Forum, Proceedings of the 2003 Annual Conference*, 38th Annual Conference, Ottawa, May 11–14, 2003, pp. 642–658.

Monteiro, Joseph and Gerald Robertson, “Intermodal Transport in Canada” in *Canadian Transportation Research Forum, Proceedings of the 2003 Annual Conference*, 38th Annual Conference, Ottawa, May 11–14, 2003, pp. 198–212.

Scott, Sheridan, *Remarks to the Standing Committee on Agriculture and Agri-Food*, regarding a study of the price of beef at the slaughter, wholesale and retail levels in the context of the BSE crisis in Canada, Ottawa, February 16, 2004.

Sullivan, Michael, *The Pricing Provisions of the Competition Act — Recent Developments*, paper presented at the Canadian Bar Association’s Annual Fall Conference on Competition Law, Gatineau, October 2–3, 2003.

Sullivan, Michael and Josée Fillion, *The Basics of International Cartel Enforcement in Canada*, paper prepared for the Osgoode Hall Continuing Legal Education Program, Canada’s Competition Regime: Thinking Strategically — A Practical Guide for Business, Osgoode Hall Law School, York University, January 14, 2004.

Taylor, Richard, *Proposed Amendments to the Conspiracy Provisions*, paper presented at the Canadian Bar Association’s Annual Fall Conference on Competition Law, Gatineau, October 2–3, 2003.

Townley, Peter G. C., “The CRTC-Competition Bureau Interface: An Alternative to Blakney and Bushell,” *Canadian Competition Record* 21(3), Summer 2003, pp. 88–95.

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## Appendix III

# Conferences and Seminars

### Conferences

On May 1, 2003, senior Bureau officials gave speeches at the 2003 Competition Law Invitational Forum at Langdon Hall in Cambridge, Ontario. The conference covered a number of the major issues facing Canadian competition law. The presentations reviewed several topics, including the challenges the Bureau faces in the future.

On May 5, 2003, a senior Bureau official attended the Imaging Supplies Coalition conference in Miami Beach to present information on North American telemarketing fraud enforcement and other initiatives.

From May 11 to 14, 2003, a Bureau representative presented several papers to the 38th Annual Conference of the Canadian Transportation Research Forum in Ottawa. A broad spectrum of topics was covered, including air cargo, air express, intermodal transportation and intercity busing. One of the papers was ranked among the top 10 of the more than 50 papers presented.

On May 12 and 13, 2003, a Bureau representative presented a paper at the Statistics Canada Economic Conference 2003 in Ottawa on empirical investigation of foreign entry into the Canadian banking sector. The conference covered themes such as trade and commerce, social comparisons, the economy and the environment, governance and the information economy.

On May 28, 2003, Bureau representatives gave a presentation on bid-rigging and the *Competition Act* at the Material Management National Workshop in Ottawa.

On May 29, 2003, a Bureau representative gave a presentation to the Canadian Federation of Independent Business in Toronto on unfair competition and business practices.

On May 30 and June 1, 2003, Bureau representatives presented two papers at the 37th Annual Meeting of the Canadian Economics Association in Ottawa. One was on auction participation and market uncertainty, using evidence from the Bank of Canada's auctions. The other was on rebates as incentives to exclusivity. Bureau members also participated in a debate on electricity, and chaired or served as panel members in other sessions.

On June 10, 2003, a Bureau representative delivered a presentation to the members of the Club Richelieu in Ottawa on the Bureau's enforcement activities.

From June 28 to July 4, 2003, a Bureau representative attended and presented a paper at the 10th Annual Conference of the Multinational Finance Society in Montréal. The subjects discussed included international asset market structures, financial and international regulation and corporate ownership.

On August 10, 2003, Bureau representatives gave a presentation to enforcement officers at a jewellery anti-smuggling workshop hosted by the Royal Canadian Mounted Police in Toronto about the *Precious Metals Marking Act* and the *Competition Act*.

The Bureau had an information kiosk at jewellery shows in Toronto (August 10–12, 2003), Edmonton (August 15–17, 2003) and Montréal (August 24–26, 2003).

On August 14 and 15, 2003, a senior Bureau official spoke on cross-border deceptive marketing practices at the Leadership Conference of the American Bar Association's antitrust law section in Vancouver.

From August 18 to 20, 2003, two Bureau representatives attended the North American Consumer Protection Investigators' 26th Annual Business and Training Conference in Richmond, Virginia. The conference focussed on training and education in the area of civil and criminal consumer fraud. The conference included presentations and break-out sessions and provided an opportunity for members to network, exchange information and co-operate in matters involving consumer protection investigation, education and litigation.

On August 28, 2003, Bureau representatives gave a presentation to procurement officers from Public Works and Government Services Canada in Gatineau on bid-rigging and the *Competition Act*.

On September 9, 2003, a Bureau representative gave a presentation on the Bureau's role and mandate to the St. Boniface, Manitoba, chamber of commerce.

In September 2003, Bureau representatives spoke to municipal government representatives in New Brunswick about bid-rigging and the *Competition Act*.

On September 16, 2003, a Bureau representative gave a presentation on the Bureau's role and mandate to the competition law class of the University of Ottawa's Faculty of Law.

On September 18, 2003, Bureau representatives were invited to Toronto by the Consul General of Japan to discuss competition law and practices.

On September 19 and 20, 2003, a Bureau representative attended the 2003 meetings of the Canadian Law and Economics Association in Toronto, presenting a paper entitled *Novelty, Non-Obviousness and Optimal Patent Policy*. Subjects discussed at the meetings included intellectual property, competition policy enforcement in the U.S., competition policy and regulation and regulatory policy.

From September 19 to 21, 2003, a Bureau representative attended and presented a paper at the North Financial Association 2003 Conference in Quebec City.

On September 28, 2003, Bureau representatives gave a presentation to the Purchasing Managers Association of Canada in Brampton, Ontario, on bid-rigging and the *Competition Act*.

On October 1, 2003, a Bureau representative spoke on decision making related to corporate fines at the annual Cartel Conference, hosted by the European Commission in Brussels.

On October 7, 2003, a Bureau representative spoke about proposed amendments to the *Competition Act* at the 7th Annual Pricing Conference, hosted by Insight Conferences in Toronto.

On October 14, 2003, a Bureau representative gave a presentation to the U.K. Office of Fair Trading on investigating misleading advertising and deceptive marketing practices.

On October 28, 2003, a senior Bureau official attended the AARP (American Association of Retired People)/National Consumers League Forum to present information on Canada's efforts to fight cross-border fraud.

On October 30 and 31, 2003, Bureau representatives attended the Air Policy Forum of the Canadian Airports Council in Toronto, and participated in discussions about various aspects of the changing airline industry. Subjects covered included air travel post-September 11, SARS, passenger services, the Canada-U.S. border in a single aviation market, and the way ahead. A senior Bureau officer made a presentation about liberalizing foreign ownership limits and opening up the Canadian market to more foreign competition.

On November 12, 2003, a Bureau representative gave a presentation on telecommunications to students in the industrial organization course at Queen's University, Kingston.

On November 13, 2003, a senior Bureau official attended the Canadian Institute's 7th Annual In-House Counsel Congress to provide an update on Bureau activities.

On November 13, 2003, a Bureau representative made a presentation on the Bureau's role and mandate at a seminar on competition law hosted by the Barreau du Québec (continuing education section).

On November 17, 2003, a Bureau representative gave a presentation and participated in panel discussions on strengthening the civil provisions of the *Competition Act* at the 2003

Competition Invitational Forum, presented by the Institute for Professional Development in Toronto.

On November 19, 2003, a Bureau representative gave a presentation on bank mergers to the Treasury Management Association of Canada in Ottawa.

On November 20, 2003, a Bureau representative gave a presentation on the Competition Bureau as part of the Legal Aspects of International Trade course at the World Trade Centre in Halifax.

On November 26, 2003, a Bureau representative gave a presentation on the airline industry to students in the industrial organization course at Queen's University, Kingston.

From December 2 to 4, 2003, in Miami, the Bureau participated in Organisation for Economic Co-operation and Development seminars, presentations and panel discussions on selecting, preparing and winning competition cases. One senior officer gave a presentation on the Bureau's airline litigation, offering practical experience and examples of the steps taken to bring the case before the Competition Tribunal.

On December 5, 2003, a Bureau representative gave a presentation on the Competition Bureau to the staff of the Canada-Nova Scotia Business Service Centre in Halifax.

On January 19, 2004, representatives of the Bureau spoke on deceptive telemarketing and other deceptive marketing practices to the Canadian Auto Workers' Retirees Association in New Westminster, B.C. The audience comprised primarily

senior citizens interested in tips on avoiding deceptive tele-marketing and protecting personal information.

On January 20, 2004, Bureau officials attended the Insight Competition Law Conference in Montréal and gave a presentation on recent and proposed amendments to the misleading advertising provisions of the *Competition Act*.

On January 22, 2004, a senior Bureau official attended the Canadian Institute Conference in Toronto, and gave a presentation on recent and proposed amendments to the misleading advertising provisions of the *Competition Act*.

On February 27, 2004, a senior Bureau official gave a presentation in London, England, at a seminar on mass marketing scams, hosted by the U.K.'s Office of Fair Trading. The audience included local and national law enforcement authorities in Britain concerned with fighting scams and fraud.

On February 27, 2004, Bureau representatives attended the 2004 Competition Law Roundtable at the University of Toronto's Faculty of Law, and delivered comments on papers concerning abuse of dominant position in network industries, the interface between intellectual property law and competition law, and payment cards.

On March 4, 2004, a senior Bureau official addressed an audience of approximately 350 people at the Better Business Bureau's Scam Jam in Vancouver to introduce the Fraud Prevention Forum's "Recognize It. Report It. Stop It." awareness campaign.

On March 5, 2004, a Bureau representative gave a presentation on the Competition Bureau to students in the MBA program at Saint Mary's University in Halifax.

On March 8, 2004, Bureau representatives gave a presentation to the British Columbia Government Retired Employees' Association in Vancouver. The presentation (Falling for Fraud — Anyone Can Do It!) emphasized the messages of the Fraud Prevention Forum's awareness campaign: "Recognize It. Report It. Stop It."

On March 25, 2004, a Bureau representative gave a presentation to jewellery design students at Georgian College in Barrie on the *Precious Metals Marking Act* and the *Competition Act*.

## **Seminars**

Bureau staff held several seminars over the year. The following experts presented their findings.

On May 20 and 21, 2003, Gregory J. Werden, Antitrust Division, U.S. Department of Justice, and Luke Froeb, Vanderbilt University, presented a two-day course at the Competition Bureau entitled Unilateral Effects, Hypothetical Monopolist, which covered the findings in several cases.

On October 3, 2003, Anindya Sen from the University of Waterloo gave a seminar entitled Inferring Collusion from Tax Incidence: Some Empirical Evidence from Canadian Gasoline Markets.

On January 16, 2004, Andrew Ching from Ohio State University gave a seminar entitled *Consumer Learning and Heterogeneity: Dynamics of Demand for Prescription Drugs After Patent Expiration*.

On January 19, 2004, Xiaoting Wang from the Department of Economics, Queen's University, presented a paper entitled *Road to Efficiency: Exploring the Deregulated Electricity Market*.

On January 29, 2004, Andy He from the Department of Economics, Carleton University, presented a paper entitled *Monopolist's Strategies Under Market Power: Mitigation Agreement in a Static Context*.

On February 9, 2004, Lester Kwong from the Department of Economics, University of British Columbia, presented a paper entitled *Nonlinear Pricing with Collusive Consumers*.

On February 19, 2004, Guofu Tan from the University of Southern California presented a seminar on bidding rings.

In October and November 2003 and March 2004, Aidan Hollis, the T.D. MacDonald Chair in Industrial Economics at the Competition Bureau, addressed the departments of economics at Carleton University, the University of Ottawa, Queen's University, the University of Western Ontario, Wilfrid Laurier University and McGill University as part of each university's seminar series. The presentations were entitled *Novelty and Non-Obviousness in Optimal Patent Policy*, *Preliminary Injunctions and Damages in Patent Suits*, and *AIDS, Africa, and the Problem of Patents*.

On January 22, 2004, Aidan Hollis presented a paper to Industry Canada staff entitled *Preliminary Injunctions and Damage Rules in Patent Law*, as the inaugural lecture in a series organized by the department's Industrial Analysis Centre.