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Executive Summary

1. On November 10, 2003, the Minister of Industry announced the appointment of Sheridan Scott as the new Commissioner of Competition. Ms. Scott joined the Bureau on January 12, 2004. Commissioner Scott was also named a vice-chair of the International Competition Network Steering Group on April 22, 2004.

2. The Competition Bureau hired the Public Policy Forum, an independent non-profit organization, to conduct national consultations on proposed changes to the Competition Act. More than one hundred written submissions were received; roundtable discussions were held across Canada. Participants included representatives from small, medium and large enterprises, consumer and business associations, the federal, provincial and territorial governments, lawyers and economists.

3. The Bureau was very active in pursuing international cartels and deceptive marketing practices cases.


Introduction

5. This report describes recent competition law and policy developments in Canada and summarizes the enforcement activities of the Bureau for the fiscal year April 1, 2003, through March 31, 2004.

1. Changes to Competition Laws and Policies

1.1 Summary of New Legal Provisions of Competition Law and Related Legislation

6. On April 1, 2003, Regulation SOR/2003-104 and its changes to the Notifiable Transactions Regulations came into force. The amended Regulations increase the merger notification “size-of-transaction” threshold from $35 million to $50 million for the acquisition of assets, voting shares or an interest in a combination, or for the establishment of a combination, pursuant to section 110 of the Competition Act.

7. In conjunction with the increase in the merger notification “size-of-transaction” threshold, the Revised Fee and Service Standards Policy and Handbook were issued on the same date. In addition, fees for merger notification filings and advance ruling certificate requests increased from $25,000 to $50,000 to more accurately reflects the costs of merger review.

1.2 Other Relevant Measures

8. Since their first release in 1991, the Merger Enforcement Guidelines (MEGs) have been a useful tool in outlining the basic analytical framework for merger review in Canada. Given legal and economic developments since 1991, the Bureau felt it was appropriate to review the MEGs to ensure that they remain up to date and as useful to parties as possible. Consequently, in early 2003, the Bureau began a project to update the MEGs and in March 2004, the Bureau released the draft revised Merger Enforcement Guidelines for public comment. A process of public consultation with members of the Bar, the academic community, foreign competition authorities and other interested parties has since been completed, and the Bureau expects to issue the MEGs in final form in the Fall of 2004.
9. Published in 1998, the Bank Merger Enforcement Guidelines (BMEGs) set out the analytical framework as applied by the Bureau when assessing the competitive effects of a merger involving two or more banks. In June 2003, the Government issued its response to two recent House of Commons and Senate Committee Reports, 

**Banks Mergers and the Public Interest and Competition in the Public Interest: Large Bank Mergers in Canada**, 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 undertook consultations with stakeholders during the Fall of 2003. Consistent with the Government’s original timetable of June 2004, the Bureau sought public comment on its bank merger document in February 2004. All submissions were made available to the public and posted on the Bureau’s Web site (www.cb-bc.gc.ca) except where confidentiality was specifically requested. The Bureau has reviewed the comments received and will release the revised document in conjunction with further bank Merger Guidelines to be prepared by the Department of Finance. The Bureau’s document will apply the MEGs in the context of assessing the competitive implications of banks mergers, while the Department of Finance will deal with other public interest issues. Timing of the release of the Guidelines has yet to be finalized.

1.3 Government Proposals for New Legislation

10. In June 2003, the Government released 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 the following four major proposals:

(i) Strengthening the civil provisions of the Act with 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 allowing the possibility of recovering damages resulting from non-criminal anti-competitive conduct.

(ii) Reforming the conspiracy provisions with the inclusion of a criminal provision that would explicitly define anti-competitive agreements that are clearly egregious; 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.

(iii) Reforming the pricing provision by 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.

(iv) Allowing an independent and impartial body to inquire into the functioning of Canadian markets.

11. More than one hundred written submissions from a wide range of stakeholders were received, while 11 roundtables in various cities across Canada were held. At the close of the fiscal year, a report based on comments received was in the process of being drafted. The Commissioner of Competition will analyze the report to determine whether additional discussions and analyses are required.

1.4 International Cooperation Developments

12. Bureau officials have assumed leadership roles in a number of international fora including the International Competition Network (ICN) and the OECD Competition Committee. The Bureau was also an active participant in the work of the APEC Competition Policy and Deregulation Group. These activities foster greater cooperation with competition authorities around the world, which is critical for law enforcement, provides an opportunity to disseminate information about Canada’s competition policy.
system and our domestic marketplace framework and promote consistency between Canada’s approach to competition law and those of our foreign counterparts for the benefit of Canadian stakeholders. The Bureau also leads Canada’s free trade negotiations in the area of competition policy.

13. Canada is still a very active member of the ICN. The Commissioner of Competition was confirmed as a vice-chair of the organization. The Bureau is co-chair, with the Australian Competition and Consumer Commission (ACCC), of the Cartels Working Group - Enforcement Techniques Sub-group. It also co-chairs, with its Italian counterpart, the Operational Framework Working Group as well as the sub-group on enhancing the standing of competition authorities with consumers with the South African Competition Tribunal.

14. An APEC-OECD Agreement was developed on joint work on regulatory reform. Workshops were the focus of the first phase. The second phase, currently underway, focuses on the elaboration of an APEC-OECD Integrated Checklist for self-assessment on regulatory, competition and market-openness policies to implement the APEC-OECD principles and on competition policy aspects of the Checklist.

15. In October 2003 and March 2004, Bureau representatives participated in the bi-annual meetings of the International Consumer Protection and Enforcement Network (ICPEN) held in Helsinki and Saariselkä, Finland respectively. The ICPEN is a voluntary organization of law enforcement authorities of 29 countries, most of which are members of the OECD. Its mandate is to share information about cross-border commercial activities that may affect consumer interests and to encourage international cooperation among law enforcement agencies. At the Helsinki meeting, Bureau representatives delivered a presentation on best practices in combating international deceptive mail scams. At the Saariselkä meeting, participants discussed both 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 on possible collaboration on spam. ICPEN members are committed to achieving greater cooperation on cross-border law enforcement.

16. The Bureau also participates in the OECD Committee on Consumer Policy (CCP). The CCP's mandate is, among other things, to examine questions relating to consumer policy and law in Member countries and within international and regional organizations.

17. Canada has been active in providing technical assistance and cooperation to other APEC Member Economies. Each APEC Member Economy submits an Individual Action Plan (IAP) or annual report to monitor the progress toward the targets set in 1994 in Indonesia for freer and more open trade and investment in the APEC region. The Bureau participated in the preparation of Canada’s 2003 IAP. For additional information, see the “Competition Policy” chapter of Canada’s IAP on the APEC Web site (http://www.apec.iap.org).

18. This year, the Bureau provided technical assistance to a number of countries, including the Ukraine, Vietnam and China, all of which are in the process of drafting or implementing their own competition law. Such assistance included providing information on Canadian competition policy, law and practices; welcoming visitors from foreign governments and competition authorities; helping to develop or refine foreign competition laws; and providing advice on how to deal with particular types of investigations.

19. Jurisdictions that cooperated with the Bureau on international cartel cases 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.
20. The Bureau is showing strong leadership in the area of deceptive telemarketing and mail solicitation through a number of new initiatives including support for international guidelines for increased co-operation against cross-border fraud and deceptive commercial practices; an anti-fraud education campaign that has been adopted for use in the US and the UK; and increased cooperation with other international enforcement agencies in its investigations.

21. In October 2003, the Bureau signed a cooperation arrangement with two agencies in the United Kingdom (OFT/DTI) to improve competition law enforcement in areas such as deceptive marketing and criminal cartel activity. The Arrangement sets out a framework for notification, coordination and cooperation in law enforcement activities, exchanges of information and avoidance of conflict. It also builds on recommendations adopted by the OECD in June 2003 that provide international guidelines for cooperation in the fight against cross-border scams.

22. In addition to its current Information Sharing Protocol with the United States Federal Trade Commission (FTC), the Competition Bureau signed in March 2004 two further protocols with the ACCC and the United Kingdom Office of Fair Trading (OFT). These protocols formalize how the Competition Bureau and partners such as the FTC, ACCC and OFT share complaint and investigation data in order to combat cross-border fraud faster and more efficiently.

23. The Fraud Prevention Forum (FPF) is a concerned group of 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 in order to improve the effectiveness of law enforcement. On March 2, 2004, the Honourable Lucienne Robillard, Minister of Industry, launched the FPF'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 FPF members. The FPF is the first international effort of its kind - an anti-fraud education campaign launched by the Competition Bureau that will be adopted for use in the United States and will be made available to partners in the United Kingdom.

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

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

2. Enforcement of Competition Laws and Policies

2.1 Action Against Anticompetitive Practices

2.1.1 Abuse of Dominance

Airline Industry

26. On March 5, 2001, the Bureau applied 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, first dealing with the definition of avoidable cost. On July 22, 2003, the Competition Tribunal released its decision on Phase I. 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-Montreal route between July 1, 2000, and March 5, 2001. In reaching its findings, the Tribunal generally
adopted the Bureau’s approach on: 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 whether Air Canada had abused its dominant position in an anti-competitive manner contrary to section 79. This issue will be resolved during a second phase of the hearing that examines whether Air Canada was dominant on the routes in question, whether its below cost operations constituted a ‘practice of anti-competitive acts’ and whether the result was a substantial prevention or lessening of competition. In light of Air Canada’s filing for protection under the Companies’ Creditors Arrangement Act (CCAA), on April 1, 2003, the Tribunal stayed its Phase I decision and the appeal period until Air Canada emerges from CCAA protection.

27. On August 14, 2003, the Supreme Court of Canada granted the Attorney General leave to appeal a decision of the Quebec Court of Appeal striking down section 104.1 of the Competition Act. This provision gave the Bureau the authority to issue temporary ‘cease and desist orders’ in the airline industry during the course of an inquiry. On June 3, 2004, the government withdrew its appeal.

28. Some industry participants raised concerns with the Bureau about certain airlines making available discount or “web-fares”, only through their Web site, thereby withholding these fares from computer reservation systems (CRSs). The Bureau found that this greater reliance on the Internet was consistent with the worldwide practice of embracing new technology in order to lower distribution costs. The Bureau did not find that competition had been lessened or prevented substantially as a result of these changes and concluded that further analysis was unnecessary. The Bureau was also involved in assisting Transport Canada in its review of the CRS regulations.

29. Also, during 2003-2004, the Bureau ended its examination of the following three airline matters: (1) there was an allegation of predatory pricing in Western Canada. However, when the complainant failed to respond to requests for further information, the matter was closed in September 2003; (2) there were allegations by six residents 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 inquiry was discontinued in September 2003; (3) there was a complaint from a carrier operating in northern British Columbia about its inability to get fuel supply at a small airport in northern British Columbia. Information gathered by the Bureau was insufficient to establish whether the complainant had been substantially affected or precluded from conducting business, or whether competition had been lessened substantially. Accordingly, the matter was closed in February 2004.

Other Industries

30. 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, the first abuse of dominance case to be heard under the amended Competition Tribunal Rules (February 2002), alleged that Bibby was and is abusing its dominant position in the supply of cast iron pipe, fittings and mechanical joint couplings for drain, waste and vent (“DWV”) applications in markets across Canada. The Bureau alleges Bibby introduced a loyalty program that locked in customers and thereby prevented competitors from accessing the distribution network. The Bureau asked the Tribunal to: order Canada Pipe to stop the alleged conduct; prohibit the company from acquiring cast iron DWV businesses in Canada for the following three years; and, order Canada Pipe to notify the Bureau of any such acquisitions for the three years following this period.

31. Canada Pipe responded by filing a motion challenging the amended Competition Tribunal Rules, which changed the documentary disclosure standard from one of relevance to one of reliance on the
grounds that they were against the Bill of Rights guarantee of the right to a fair hearing. The Tribunal dismissed this argument. Canada Pipe’s subsequent request for further disclosure by the Bureau was also dismissed by the Tribunal, a decision upheld by the Federal Court of Appeal. The hearing of the application began on March 1, 2004 and should be completed in early September 2004.

2.1.2 Conspiracy

Domestic

32. In May 30, 2002, following an investigation into packaged liquid chlorine used in the process of water treatment, Welland Chemical Ltd., Brenntag Canada Inc., Vopak Canada Ltd. (now Univar Canada Inc.), and two individuals were charged with multiple counts of bid-rigging. Brenntag, Welland and one individual were also charged with conspiracy. At a preliminary hearing in June 2003 on two of the bid-rigging counts, Welland, Vopak and the individuals were committed to trial on one count and acquitted on the other. Following appeals by the Crown and the accused, the Court upheld the acquittal and overturned the committal. The remaining charges were subsequently stayed.

International

33. In April 2003, Toyo Tanso USA, Inc. pleaded guilty to attempting to maintain the price of isostatic graphite and was fined $200,000. Isostatic graphite is a product used to make molds and dies for various industries including the auto parts and semi-conductors industries. Earlier, in 2001, Carbone of America Industries Corp. pleaded guilty for its role in an international isostatic graphite price-fixing cartel.

34. In August 2003, Arteva Specialties S.a.r.l., a Luxembourg-based company also known as KoSa, pleaded guilty in the Federal Court of Canada for its part in a conspiracy affecting the sale of polyester staple fibre. Polyester stable fibre is used widely by textile manufacturers in fabrics, sheets, shirts and other clothing, and in home furnishings. The company was fined $1.5 million. The Bureau continues to investigate allegations of the involvement of other companies in this conspiracy.

35. In August 2003, Akzo Nobel Chemicals BV and Bioproducts Inc. pleaded guilty in the Federal Court of Canada for their part in an international conspiracy affecting the sale and supply of choline chloride. Choline Chloride is an additive widely used in the animal feed industry. Akzo Nobel Chemicals BV, a company based in the Netherlands, was fined $1 million, and Bioproducts Inc, a company based in the United States, was fined $600,000.

36. In August 2003, Akzo Nobel Chemicals BV also pleaded guilty in the Federal Court of Canada for its part in a conspiracy affecting the sale and supply of Monochloroacetic Acid/Monochloroacetate, a chemical used in numerous commercial and consumer products such as herbicides, pulp and paper, and plastics. The company was fined $1.9 million.

37. In September 2003, Robert P. Krass, the former head of UCAR International Inc. (UCAR), pleaded guilty in Canada to fixing the price of graphite electrodes used primarily for steel production in electric arc furnaces and for steel refining in ladle furnaces. Mr. Krass was fined $70,000. UCAR’s Canadian subsidiary, UCAR Inc., the German corporation SGL Aktiengesellschaft, and the Japanese company Tokai Carbon Co., Ltd. Had previously pleaded guilty in Canada for their roles in the graphite electrode conspiracy and were fined a total of $23.25 million.

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

39. In November 2002, the Bureau received a complaint about a supplier of incense burners. It was alleged that the supplier told the complainant to increase prices of the incense burner if the complainant wanted to continue to receive supplies. In June 2003, Bureau representatives contacted the supplier and advised that such behaviour contravened the price maintenance provision of the *Competition Act*. The supplier assured the Bureau that it would take the necessary measures to comply with the *Competition Act*.

40. 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 Bureau interviews and information visits with the three septic removal companies, the companies 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.

41. In June 2003, the Bureau received information that three suppliers of paper products had engaged in the bid-rigging of three tenders for two Ontario school boards. Bureau representatives met with the three suppliers in August 2003, following which the companies agreed to ensure that officers, employees, agents or assigners would not agree or arrange any future bids or tenders. In addition, the school boards removed the three suppliers’ names from their lists of approved suppliers.

42. In April 2002, the Bureau received information concerning an alleged price-fixing agreement among building supplies wholesalers in a local market in British Columbia. In May 2003, Bureau representative met individually with persons alleged to have been parties to the price-fixing agreement, reviewed the allegations and provided information on the relevant provision of the *Competition Act*. This matter was not pursued further due to insufficient evidence of undue influence.

43. In July 2003, the Bureau received a complaint from a natural food and products retailer. The retailer advised the Bureau that he was told to increase the selling price of some products supplied by a Canadian natural products manufacturer and distributor if he wanted to continue to receive supplies. Bureau representative contacted the supplier and advised that such behaviour contravened the price maintenance provision of the *Competition Act*. The supplier assured the Bureau that it would take the necessary measures to comply with the *Competition Act*.

44. 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. Bureau officers attended a meeting in December 2003 and gave a presentation to executive members of the association regarding the conspiracy and price maintenance provisions of the Act. This matter was not pursued further due to insufficient evidence of an undue lessening of competition or resale price maintenance.

45. In December 2003, a funeral home owner contacted the Bureau about an advertising regulation issued by a professional corporation representing numerous members of the Quebec funeral sector. One of the provisions of the regulation was ambiguous and could have created problems under the price maintenance provision of the *Competition Act*. Bureau representatives contacted the professional corporation’s legal counsel, who agreed to take the necessary measures to ensure that the advertising regulation complied with the *Competition Act*.

Discontinued Cases

46. On March 19, 2002, following an application filed by six persons resident in Canada, the Bureau launched an inquiry into an alleged conspiracy among Nova Scotia automobile insurance companies to increase insurance premiums and discriminate against certain communities and age groups. On April 1,
2003 the Bureau discontinued this inquiry due to insufficient evidence demonstrating that the companies reached an agreement or arrangement to increase insurance premiums or to discriminate between communities and/or age groups.

47. On April 15, 2003, the Bureau discontinued an inquiry which was commenced by a complaint from a consumer electronics retailer who alleged that a supplier had discriminated against him and had ultimately refused to supply him because of his low pricing policy. The Bureau discontinued this inquiry due to insufficient evidence to support the complainant's allegations.

48. On October 10, 2003 the Bureau discontinued an inquiry into allegations that a number of seafood processors in New Brunswick and Nova Scotia conspired to fix the shore price paid to fishermen for snow crab caught in Nova Scotia during the 2001 fishing season. The Bureau discontinued this inquiry because the evidence demonstrated the alleged participants did not have sufficient control over the market to unduly lessen competition.

2.1.3 Exclusive dealing

49. 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 new 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 competition at the retail level. However, the Bureau’s examination concluded that an exclusive agreement for one DVD released by a single artist over a limited period did not constitute an anti-competitive practice. Furthermore, the examination did not establish the necessary exclusionary effects for there to be an offence under the Act.

2.1.4 Court proceedings

50. Under the new private access provisions of the Act that came into force in June 2002, two cases have been filed privately with the Competition Tribunal this year.

51. On January 15, 2004, following an application for leave filed on November 4, 2003, the Competition Tribunal granted leave to Barcode Systems Inc. to make an application against Symbol Technologies Canada ULC under section 75 of the *Competition Act* because Symbol refused to supply the company with barcode scanners. This is the first case in which leave has been granted since private access rights were introduced to the Act in 2002. (For further details see the Tribunal’s Web site: [http://www.ct-te.gc.ca/english/cases/ct-2003-008/barcode.html](http://www.ct-te.gc.ca/english/cases/ct-2003-008/barcode.html)). On January 26, 2004, Symbol appealed the Tribunal’s decision to the Federal Court of Appeal (A-39-04). The appeal is pending.

52. On February 5, 2004, following an application for leave filed on November 23, 2003, the Competition Tribunal granted leave to Allan Morgan and Sons Ltd. to make an application against La-Z-Boy Canada Limited under section 75 of the *Competition Act* because La-Z-Boy refuses to supply Allan Morgan and Sons Ltd. (For further details see the Tribunal’s Web site: [http://www.ct-te.gc.ca/english/cases/ct-2003-009/morgan.html](http://www.ct-te.gc.ca/english/cases/ct-2003-009/morgan.html)). On March 3, 2004, La-Z-Boy Canada Limited appealed the Tribunal’s decision to the Federal Court of Appeal (A-115-04).

53. In February 2004, the Government of Canada filed an *amicus curiae* brief with the Supreme Court of the United States. The brief outlined Canada’s concerns with the decision of the United States Court of Appeals for the District of Columbia Circuit (DCCA) in the matter of *F. Hoffman-La Roche Ltd., et al v. Empagran, SA. et al* (hereinafter *Empagran*). The *Empagran* case involved a class action law suit by non-United States residents seeking compensation through United States courts for financial harm suffered outside the United States as a result of a worldwide price fixing conspiracy among vitamin producers and distributors. In June 2004, the Supreme Court (8—0) handed down their decision and held
that foreign companies cannot use United States’ courts to sue over alleged antitrust allegations that took place outside the United States.

2.2 Mergers and acquisitions

2.2.1 Statistics on Mergers Notified and/or Controlled Under the Competition Act

54. During the 2003-2004 fiscal year, the Bureau's Mergers Branch concluded 215 merger examinations. 14 merger examinations were ongoing at year-end. With respect to the concluded examinations: six merger examinations were concluded with agreed remedies, including three examinations involving consent orders or consent agreements; 202 examinations posed no issue under the Competition Act, including 138 examinations that resulted in the issuance of an Advance Ruling Certificate; and one examination was resolved following contested proceedings. With respect to cases involving Competition Tribunal or court proceedings at year end: one case was ongoing and four were concluded or abandoned during the year.

2.2.2 Summary of Significant Cases

55. 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 from the judgment of the Federal Court of Appeal. On January 8, 2004, the Supreme Court of Canada dismissed Canadian Waste’s application for leave to appeal. In May 2003, Canadian Waste applied to the Tribunal under section 106 of the Competition Act alleging that circumstances had changed since the making of the divestiture order, and they were seeking a variation or rescission of that order. The Tribunal granted a stay of the order until the outcome of a hearing, which was held in October and December 2003. On June 28, 2004, The Tribunal issued its reasons and order in the s. 106 application and dismissed the Canadian Waste’s application with costs to the Commissioner. On July 21, 2004, Canadian Waste commenced an appeal in the Federal Court of Appeal of the Tribunal’s decision. It also sought a stay of the divestiture order pending determination of the appeal.

56. In March 2003, General Electric Company ("GE") sought the approval of the Commissioner of Competition for its acquisition of the Instrumentarium Company. 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 for patient monitors used in high acuity areas of hospitals and healthcare facilities in Canada. In order to resolve competition concerns in Europe and the United States, GE agreed to divest Instrumentarium's worldwide Spacelabs business, which is 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 that ensured third party suppliers could effectively interconnect with their 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. Based on these commitments by GE, the Bureau resolved its competition concerns and issued a no-action letter. In the event that GE fails to adhere to these commitments, the Bureau has the right to make an application to the Competition Tribunal, within three years after the transaction’s substantial completion.
57. On April 23, 2003, RONA announced that RONA and a wholly owned subsidiary of RONA 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 for consumer sales of home improvement and renovation products in Sherbrooke, Quebec. On September 4, 2003, the Bureau filed a consent agreement with the Competition Tribunal in order 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 to it going 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 as provided for in the agreement, and a trustee was appointed to effect the sale. The agreement stipulated that in the meantime the Réno-Dépôt store would continue to operate as a distinct entity from RONA.

58. In July 2003, Alcan Inc., a global leader in aluminium and fabricated aluminium as well as in flexible and specialty packaging, proposed acquiring Pechiney, Sa of France, 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 result in a substantial lessening or prevention of competition. In its review, the Bureau primarily examined the North American market, but also looked at a 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 cooperated closely with the United States Department of Justice and the Merger Task Force of the European Commission in its review of the transaction. In order to resolve international competition concerns raised by the United States Department of Justice and the European Commission, Alcan agreed to divest Pechiney’s aluminium rolling facility in Ravenswood, West Virginia in the United States 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 competitive options for Canadian customers as well.

59. On September 25, 2003, Maple Leaf Foods announced its intention to acquire the shares of Smithfield Canada and its subsidiary, the 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 different aspects of the food processing business, focusing particularly on hog procurement and primary pork processing in western Canada as well as processed meats (bacon, wiener and sliced meats). While the Bureau identified some concerns in the wiener market, it concluded that the evidence did not support a challenge before the Competition Tribunal.

60. On November 25, 2003, Canadian National Railway Company (CN) and the British Columbia Government publicly announced that CN would be acquiring the outstanding shares of BC Rail Limited (BCR), along with a very long-term lease to operate over BC Rail’s roadbed. The BCR, Canada’s third largest railway, operates over 2,315 kilometres of mainline track 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 kilometres of track, connects with the BCR network at North Vancouver and Prince George. As of March 31, 2004, the Bureau’s examination of this proposed transaction was ongoing. On July 2, 2004, the Competition Bureau filed a consent agreement with the Competition Tribunal which addressed its concerns.

61. On November 25, 2003, Canfor announced that it entered into an agreement with Slocan Forest Products Ltd. The Transaction creates a large forest products company in a market defined around the Prince George area in British Columbia. 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. The agreement requires that Canfor, the largest softwood lumber producer in Canada, divest its Fort St. James sawmill, located near Prince George. Because of high market shares in certain local markets and together with a number of barriers to entry, the Bureau had concluded that the transaction would have resulted in less choice for logs sellers, wood re-manufacturers and wood-chip sellers in the Prince George area. The Agreement provides that if Canfor is unable to divest the Fort St. James sawmill, a trustee will be appointed to complete the sale process.

62. Transcontinental Inc., one of the major publishing-printing houses in North America, proposed acquiring Optipress Inc., one of the major community/weekly newspaper publishing and printing enterprise in Atlantic Canada. Transcontinental, which had a strong presence in the Atlantic through a chain of daily newspapers and printing plants, argued that Optipress’ assets in community papers and printing would complement their 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.

63. In January 2003, Sherritt Coal Partnership and Fording Inc. announced a multi-party agreement to combine certain assets of the coal businesses 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 different aspects of the coal industry and obtaining input from customers, competitors and an independent industry expert, the Bureau concluded that the consolidation will not likely result in a substantial lessening or prevention of competition in the relevant markets.

64. On February 17, 2003, Great-West Lifeco Inc. announced it had entered into a definitive agreement with Canada Life Financial Corporation to acquire all of its outstanding common shares. The Bureau focused its analysis on six particular areas: individual life insurance, individual health insurance, group life and health insurance, wealth management, group pensions, and commercial mortgages, and determined that the transaction was not likely to result in a substantial lessening or prevention of competition in any relevant market. The Government of Canada announced its approval of this acquisition on June 27, 2003.

65. On September 28, 2003, Manulife Financial Corporation announced its acquisition of John Hancock Financial Services Inc. The Bureau focused its analysis on four particular areas: individual health insurance, group life and health insurance, individual wealth management, group and individual pensions. It came to the determination that the transaction was not likely to result in a substantial lessening or prevention of competition in any relevant market.

66. In December 2003, Sobeys, the second largest food wholesaler-retailer in Canada after Loblaw Companies Limited, proposed acquiring Comisso’s, a small 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 lead to a substantial lessening or a prevention of competition in any relevant market.

2.3 Misleading Advertising and Deceptive Marketing Practices

67. In 2003-2004, the Bureau resolved 47 matters under the civil and criminal misleading representations and deceptive marketing practices provisions of the Competition Act and 10 matters under the three standards-based statutes through alternative case resolutions.
2.3.1 Criminal

68. 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. This operation allegedly misled businesses into donating money for advertising space in fraudulent magazines devoted to police, fire safety and children's issues.

69. 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, invoicing them 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. In addition to the corporate charges, the owner and office manager were arrested and charged with offences under the *Competition Act* and the *Criminal Code*.

70. On March 9, 2004, Medical Discount Inc. (Canada) of Toronto, Ontario was fined $125,000 and prohibited from engaging or participating in, or assisting others in any activity involving the sale or offer for sale of, health-care discount programs for a period of four years. Medical Discount had been associated with nine Ontario corporations, also subjected 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 and release bank account information. Funds were then withdrawn from these accounts without authorization. The Bureau received more than 500 complaints from other law enforcement and government agencies across the U.S. It developed this case in cooperation with the Toronto Strategic Partnership including the U.S. Federal Trade Commission, which filed a separate consumer protection action in the U.S.

2.3.2 Civil

71. 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. used inflated “regular” prices when promoting certain tires to consumers at so-called sale prices. The application 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 of the *Act* have been heard. Pending the outcome of a Sears motion to re-open the evidentiary portion of the hearing, the final oral arguments with respect to the alleged conduct have been postponed.

72. 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. The Consent Agreement, filed with the Competition Tribunal, required the corporation and its officers who operated the jewellery retail chain to stop using deceptive pricing practices in promoting jewellery sales. Specifically, a Bureau investigation revealed that the jewellery retailers misrepresented the value of savings to consumers by continuously offering significant discounts from their inflated regular prices of gold jewellery.

73. 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 conducted by both the Bureau and Para, Para agreed to limit these performance claims.

74. On June 13, 2003, the Bureau announced that it had reached a settlement with the women’s clothing retailer Suzy Shier Inc. which 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 they had not been sold at the “regular” price in significant quantities or for a reasonable period of time.

75. 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 & 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.

76. On March 16, 2004, the Bureau announced that it had settled a case with Teleresolve Inc., an affiliate of Goldline Telemanagement Inc., a seller of prepaid long-distance phone cards. The Bureau had investigated reported problems of hidden fees as well as higher per minute rates and fewer minutes than advertised. Teleresolve has since withdrawn the WOW and LILY cards from the market.

3. The Role of Competition Authorities in the Formulation and Implementation of Other Policies

77. In 2003–2004, the Bureau made a number of interventions on sectors ranging from transportation, telecommunications, broadcasting, trade and energy. The following pages summarize these interventions, their outcomes and potential benefits for Canadians.

3.1 Transportation: Marine and Rail

3.1.1 Submission to the Canada Marine Act Review Panel

78. In November 2002, the Bureau made a submission to the Canada Marine Act Review Panel that addressed three areas related to marine services: Canada Port Authorities (CPAs); Pilotage and Ferry Services; and Shipping in Domestic Waters (coasting trade). Details of the submission were described in last year’s Annual Report.

79. The Panel accepted the Bureau’s recommendations on: implementing a competitive selection process for the Boards of Directors of all CPAs; eliminating regulatory constraints that restrict CPAs from borrowing money and prevent them from merging; and continuing the commercialization process with regard to ferries. The Panel accepted the view that Canadian ports compete directly or indirectly with the U.S. ports, that ports contribute to Canada’s economy and that competitiveness is important, and 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. This will likely lead to amendments to the Canada Marine Act.

3.1.2 Submission to the Canadian Transportation Agency

80. On December 10, 2003, the Bureau filed a letter of intervention on Railway Interswitching Regulations in response to a request for comments from the Canadian Transportation Agency. The Bureau supports the proposed amendments to the Railway Interswitching Regulations, as the interswitching provision is a critical competitive access tool creating an opportunity for competitive service in situations where natural monopolies occur. The Bureau did have three comments: (1) lowering the current
interswitching rates by more than ten percent would undoubtedly benefit shippers and encourage them to use this competitive provision; (2) 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, a move that would have the effect of lowering rates and encouraging efficiencies in developing unit trains, reflecting current industry practices; and (3) the competitive process could be enhanced by converting these interswitching rates to maximum rates under the Canada Transportation Act, which would allow the shipper and railway to negotiate rates below those prescribed. The Canadian Transportation Agency has not concluded the matter and will be gathering further evidence.

3.2 Telecommunications

3.2.1 Telecom Public Notice CRTC 2003-10, Review of price floor safeguards for retail tariffed services and related issues

81. The Canadian Radio-television and Telecommunications Commission (CRTC) invited public submissions on proposed modifications to the rule 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.

82. 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 market are competitive will allow new entrants to grow and provide consumers with greater choice of local telephone service providers. Therefore the Bureau recommended that the CRTC maintain the ban on the bundling of monopoly local residential telecommunications 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 was pending.

3.2.2 Application to the CRTC by Call-Net Enterprises Inc. - Telecom Decision CRTC 2003-49

83. 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 this 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.

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

85. On July 21, 2003, the CRTC issued its decision in this matter (Telecom Decision CRTC 2003-49) 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 in selecting their local telephone services provider.
3.3  **Telecommunications: Broadcasting**

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

On February 24, 2003, the Commissioner appeared before the House of Commons Standing Committee on Industry, Science, and Technology on foreign investment restrictions applicable to telecommunications common carriers.

The Commissioner described his responsibilities and role as an advocate of competition and reiterated the Bureau’s views on access to capital; benefits of foreign capital; an absence of distinction between telephone signals and the carriage of broadcasting signals; and, foreign ownership requirements. On this last matter the Commissioner repeated the message that foreign ownership restrictions are not necessary to achieve a healthy and vigorous telecommunications industry.

The House of Commons Standing Committee on Industry, Science and Technology 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 agreed with the Commissioner’s views. The Committee recommended: (1) that the Government of Canada remove entirely the minimum Canadian ownership requirements, including the requirement of Canadian control, applicable to telecommunications common carriers; and, (2) that the Government of Canada ensure that any changes made to the Canadian ownership and control requirements applicable to telecommunications common carriers be applied equally to broadcasting distribution undertakings.

### 3.3.2  Remarks to the Standing Committee on Canadian Heritage on the Study of the State of the Canadian Broadcasting System

The Commissioner appeared twice in 2002 before the Committee to present his views on the future of broadcasting. Details of the submission were described in last year’s Annual Report. The Bureau made three main recommendations: (1) include efficiency and increased reliance on market forces in the broadcasting and regulatory policy; (2) clarify the CRTC mandate; and, (3) ensure the foreign investment levels for Broadcasting Distribution Undertakings parallel those for telecommunications carriers. The House of Commons Standing Committee on Canadian Heritage issued its Report, *Our Cultural Sovereignty. The Second Century of Canadian Broadcasting*, on June 11, 2003.

The Committee recommended that the mandate of the CRTC be reviewed and the respective roles and responsibilities of the CRTC and the Competition Bureau be clarified with respect to broadcasting. Also, it recommended that the Standing Committee on Industry carry out a review of the role and resource requirements of the Competition Bureau as it relates to competition within Canada’s broadcasting system. The Committee agreed with the Commissioner’s observation that the CRTC should not review broadcasting transactions from the perspective of commercial viability and that the CRTC’s review should be focused solely on the impact that the proposed merger would have on the attainment of the core cultural objective - namely production and distribution of Canadian content.

### 3.3.3  Testimony to the Standing Senate Committee on Transport and Communications

On September 23, 2003 the Acting Commissioner appeared before the Senate Standing Committee on Transport and Communications 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 other markets. Media markets are advertising markets. From an economic perspective the advertiser buy exposure of his advertisements to readers, listeners or viewers. Television, radio and newspapers generally serve different advertising markets, with the two former media being national, and the latter local. Finally, the Acting Commissioner emphasized that the Bureau is in favour of 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, and thus a natural adjunct to the CRTC’s mandate to maintain and enhance Canadian culture. The Senate Standing Committee on Transport and Communications has yet to release its report.

3.3.4 Energy

The Ontario Energy Board (OEB) Hearing on Ontario Power Generations Inc's (OPG) Leasing Arrangement with Bruce Power LP

92. In January 2003, the OEB 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 had provided an Advance Ruling Certificate (ARC) on this arrangement which did not address the issue of independence. It its testimony, the Bureau advised the OEB on how to determine independence and clarified that the earlier ARC had not addressed that issue.

93. The OEB’s decision of April 4, 2003 indicates that they have incorporated 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.

3.3.5 Trade

Certain Prepared Jarred Baby Foods: An Application to the Federal Court of Appeal by Heinz Canada for a Judicial Review by the Federal Court of the Canadian International Trade Tribunal’s (CITT) April 28, 2003 decision removing the tariffs

94. On April 28, 2003, the CITT issued a decision removing all tariffs on the importation 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, thereby preventing import competition. The Bureau opposed Heinz Canada’s application

3.3.6 Agriculture

Remarks to the Standing Committee on Agriculture and Agri-Food

95. On February 16, 2004, the Commissioner appeared before the Standing Committee on Agriculture and Agri-Food regarding the Committee's Study of the Pricing of Beef at the Slaughter, Wholesale, and Retail Levels, in the Context of the BSE Crisis in Canada. The Commissioner indicated that developments in the beef industry are being closely followed and indicated 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 issues of competition in industries. However, if information is uncovered that points to a potential breach of the Act, appropriate action will be taken. The Standing Committee released its report in April 2004.
4. **Resources of Competition Authorities**

4.1 **Resources Overall**

4.1.1 **Annual Budget:**

96. In fiscal year 2003-2004, the Bureau received $35.6M ($26.3M US) in base budget plus $8.3M ($6.1M US) in temporary funding for a total of $43.9M ($32.4M US.)

4.1.2 **Number of Employees (Person-Years):**

- Economists: 14
- Lawyers: 22 lawyers, 2 paralegals, 1 articling students paid by Department of Justice
- Other professionals: 221 Competition Law Officers, 24 Executives
- Informatics, Administrative Services and Support Functions: 129
- Communications Professionals: 5
- Total Full Time Authorized Bureau Employees: 393

4.2 **Application of Human Resources to Bureau Activities**

a) Enforcement Against Anticompetitive Practices: 249

b) Merger Review and Enforcement: 44

c) Advocacy Efforts: 32

97. Almost half of the 221 Competition Law Officers employed by the Bureau have formal training or education in either economics or law.

4.3 **Period Covered By the Above Information**


5. **References to New Reports and Studies on Competition Policy Issues**


