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(1 April 1997 - 31 March 1998)

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Preface

A First

1. This Annual Report offers the reader a general perspective of the Competition Bureau's work for the fiscal year ending March 31 1998, and outlines the direction of our current and future role in the Canadian marketplace.
2. Rather than reporting cases, programs, policies and projects under the traditional organisational branches and divisions of the Bureau, we have grouped our activities under four themes, which are the operational objectives for the Bureau. They are: informing Canadians, promoting competition, reviewing mergers, and fighting anti-competitive activity.
3. In keeping with our commitment to inform Canadians, we have focused the report on the impact our work has had on business and the marketplace, rather than concentrate the text on strictly "legal" reporting. We will continue, however, to make statistical data and legal reference material available electronically on the Bureau's web site at: <http://competition.ic.gc.ca>.

Four Guiding Principles

4. Upon becoming Director of the Competition Bureau in February 1997, one of my first priorities was to establish a renewed sense of direction and approach to the enforcement and administration of the Competition Act as well as Canada's labelling statutes (the Consumer Packaging and Labelling Act, the Precious Metals Marking Act and the Textile Labelling Act). I believed then, and still do, that it is important for our stakeholders to understand what we do and how we do it.
5. During the first several months of my appointment, I met with stakeholders, including members of the Competition Bar, representatives of industry organisations, professional associations and others interested in competition and labelling. These meetings provided me with a good sense of the concerns of stakeholders in the competition and labelling fields and gave me the chance to communicate the principles that now govern the Bureau's daily operations. Although I have discussed these principles on several occasions, I would like to talk about them again here. They are: transparency, fairness, timeliness and predictability.
6. Transparency means that we are as open in our dealings as the law permits; that we will continue to develop appropriate service and performance standards; and, that we are prepared to be judged against these standards. Fairness governs our decision-making as we try to strike the right balance between compliance and enforcement. Timeliness guides us in dealing with issues in a prompt manner. We know that to business, time means money. Predictability dictates that we provide adequate background and reference material on Bureau decisions and that we make public our position on as many issues as possible. Governing in accordance with these standards makes the Bureau more predictable and helps business to operate in conformity with the law.

The Conformity Continuum

7. The Bureau bases all of its operations on an approach aimed at ensuring maximum conformity with the law. Although important elements of this policy have been in place for many years, they have

been integrated into what we now refer to as the conformity continuum. The continuum consists of a variety of compliance tools. These include public education in the form of guidelines, pamphlets and participation in conferences. Our toolbox also includes oral and written advisory opinions; information contacts; voluntary codes of conduct; written undertakings; prohibition orders; civil proceedings before the Competition Tribunal; and, of course, prosecution in the criminal courts. Our choice of responses depends on a variety of factors, including the gravity of the alleged infraction; previous anti-competitive conduct; the willingness of the parties to resolve the particular matter; and Bureau priorities. We are mindful of the need to utilise limited resources wisely; however, we also cannot ignore the need to deter serious and deliberate misconduct.

8. The Bureau's conformity approach rests on the solid belief that most business people want to operate within the law and that the vast majority are willing to comply. For our part, we will ensure that the business community continues to enjoy easy access to the Bureau by making public as much of our policies, guidelines and approach to enforcement as the law will permit.

9. However, this approach is not intended to imply that we will be more lenient with those who engage in serious anti-competitive conduct. In civil matters, where reasonable solutions cannot be worked out by consent orders or other means, we will not hesitate to take the matter before the Competition Tribunal. In cases where there appear to be allegations of serious violations of the criminal provisions, the Bureau will not hesitate to refer cases to the Attorney General of Canada for prosecution.

Capsule Review

10. Although the following pages will describe the Bureau's major activities and case load, I would also like to highlight some of the principal projects we have completed during the last year and mention a few of the initiatives we have in progress.

11. Bill C-20, an Act to amend the *Competition Act* and to make consequential and related amendments to other Acts, was tabled in the House of Commons on November 20, 1997. This Bill, with some modifications, was the re-introduction of the former Bill C-67, which died on the Order Paper on April 27, 1997 when the Government of Canada called an election.

12. Among the changes the proposed amendments would bring about are a new crime of deceptive telemarketing and an authority to wiretap (judicially authorised interception of private communications without consent) to gather evidence of deceptive telemarketing offences, as well as bid-rigging and conspiracy to fix prices or share markets. Other changes will improve the process for resolving misleading advertising and deceptive marketing practices; will revise and clarify the law on price claims at the retail level; and, will improve the administration of the merger prenotification process and related regulations.

13. When these amendments receive Royal Assent and come into force, Canada will have a competition framework legislation that can respond quickly and efficiently to the rapidly changing face of Canadian and other world economies.

14. A more detailed account on the amendments appears later in this Report under the title: *Amendments Seek to Modernise Canada's Competition Legal Framework*. The background material that accompanied the tabling of the legislation can be found on the Bureau's web site.

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15. Under the *Competition Act*, I have authority to make representations before federal and provincial Boards, Commissions and Tribunals. Invoking this status, the Bureau has intervened in a number of instances during the last fiscal year.

16. On several occasions, we have appeared before the Canadian Radio Television and Telecommunications Commission to advocate, among other things, the deregulation of telephone long distance rates, the release of the market to competition in international communications concerning satellite capacity, and the opening up of the local pay phone market to competition.

17. We have played a crucial role before the Ontario Energy Board and the Ontario Department of Energy, Science and Technology in the proposed restructuring of the province's electricity system to open competition. The Bureau continues to provide advice to Ontario government officials who are revising related regulatory legislation, as Ontario moves towards further deregulation in its natural gas market. For a more in-depth look at our intervention work, please refer to the section *Promoting Competition*.

18. The *Reviewing Mergers* section will explain in more detail the review activities undertaken by my staff. However, I would be remiss if I did not mention here the merger wave phenomenon which the Bureau faced during the last year, one which continues to assail the Canadian marketplace. I have confirmed publicly that the Bureau is reviewing the proposed mergers between the Royal Bank of Canada and the Bank of Montreal as well as that between the Canadian Imperial Bank of Commerce and the Toronto Dominion Bank. On January 27, 1998 I made an announcement which detailed the consultation process concerning merger review in the whole of the financial services sector and our work in what was then a draft document entitled: *The Merger Enforcement Guidelines as Applied to a Bank Mergers*.*

19. The Bureau also designed and implemented the Fees and Service Standards Policy under which fees are charged for certain services and regulatory processes, and includes Advance Ruling Certificates and Pre-Merger Notification Filing. The policy, which came into operation on November 3, 1997 also commits the Bureau to definite turn-around times in providing these services. The Bureau is also committed to holding a fee forum to review performance, complaints and service levels. The next Annual Report will cover the highlights of the meeting.

20. Under my authority as Director of Investigation and Research, the Bureau also administers the misleading advertising and deceptive marketing provisions of the *Competition Act*, as well as the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*.

**While we can only account for this project in next year's Report, the Bureau released the Bank Merger Guidelines on July 15, 1998. The document, also available on our web site, describes in detail how the Competition Bureau will examine the proposed bank mergers between the Royal Bank of Canada and the Bank of Montreal, as well as between the Canadian Imperial Bank of Commerce and the Toronto Dominion Bank.*

21. One of the more high-profile projects headed by the new Branch concerned an international collaboration that targeted Internet web sites which contained potentially misleading descriptions of business opportunities. This was the first combined Internet sweep to identify potential scams making false earnings claims on the Internet. You can read more about this initiative under the heading: *Prosecuting Anti-Competitive Activity*.

22. The electrical contractors bid-rigging case was a major criminal investigation into the corruption of the electrical contracting industry in the metropolitan Toronto area. To date, five companies have pleaded guilty and the courts have imposed over \$2.65 million in fines. Our investigation into this matter remains ongoing.

23. We are also working on developing sentencing principles as well as policies concerning the Bureau's position in relation to parties "coming in early" and offering full co-operation in our investigations.

24. On the international front, we have succeeded in finalising the negotiations of the Draft Agreement between Canada and European Communities regarding the application of their competition laws. The Bureau has also developed a position for the OECD and the World Trade Organisation (WTO) on how we feel competition fits into the trading regime and how it should be adopted. We continue to support enforcement activities and make interventions before federal and provincial boards and agencies. We have laid the ground work in terms of economic research for new emerging fields, particularly in the area of intellectual property, which we will cover in our next Annual Report.

25. We have developed the Bureau's compliance program, enforcement policy, as well as communications and public education initiatives. We have also managed the planning, administration and informatics activities of the Bureau. During this last year, we have taken the lead in developing and managing the consultations as well as the implementation of the fees and standards policy; have released the bulletin on Corporate Compliance Programs; have expanded our publication education activities and supported the public outreach program.

26. The Bureau's web site has undergone a significant overhaul and provides a new feature. Canadians can now request information or register a complaint online via the Information Centre. Still on the informatics front, the Bureau has migrated to Industry Canada's computer system and network standards. Bureau employees now enjoy technological compatibility with our government colleagues as well as our private sector stakeholders.

27. It may seem cliché to say that this work could not have been accomplished without my staff, but it's true. I am grateful to have an opportunity to thank them for supporting my leadership and for their unceasing hard work and dedication to maintaining a standard of excellence. I am proud to work alongside this group of professionals committed to quality results.

28. This last fiscal year has continued to shift Canada's economic landscape and the year ahead will champion even more challenges and change. I know, however, that we will succeed in meeting those challenges. We have a strong commitment of co-operation from our stakeholders, the technological and administrative support from Industry Canada, and the shared belief that the Competition Bureau can, and does, make a difference in Canada's marketplace.

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Informing Canadians

29. Informing and educating Canadians about the *Competition Act* and the labelling statutes is everybody's business in the Competition Bureau.

30. In co-operation with private and public sector partners, the Bureau participated in the production of a television documentary called "Scams", which was broadcast in prime time on the public broadcasting networks of several provinces. The Bureau continues to market another video called Scam Alert! which targets deceptive mail solicitation in addition to deceptive telemarketing. Since its release, the Bureau has distributed over 6000 copies of Scam Alert! across the country to a variety of special interest groups and associations as well as Canadian seniors' organisations.

31. On the publishing front, the Bureau maintains its communications and public education efforts with a pamphlet series which reaches its target audiences via the Bureau's Information Centre, business and trade shows, direct mail and through our web site. During this fiscal year, we reprinted over 60,000 copies of the existing pamphlets and have added to the series by incorporating topics covered by the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*. The new titles are: Be a Smart Shopper: make sure you pay the right price; Be a Smart Shopper: Know Your Software; Reporting Possible Anti-Competitive Practices, and a pamphlet explaining the Bureau's new Fees and Service Standards Policy.

32. Enforcement Guidelines, news releases, speeches, bulletins and information documents have been issued on various provisions of the *Competition Act*. The latest Information Bulletin dealt with Corporate Compliance Programs. Business and advisory notices on the labelling statutes have also been issued on a variety of topics including: net quantity issues, jewellery and precious metals markings. These are available by visiting our web site at: <http://competition.ic.gc.ca>

33. On November 18, 1997 we released the findings of an independent study by the Honourable Charles L. Dubin, Q. C., on whistleblowing and the protection of whistleblowers, relating to employees who speak out about possible violations of the *Competition Act* by their employers. Mr. Justice Dubin was asked by the Bureau to consider the protections currently available to whistleblowers in the competition law context; to provide examples of whistleblowing legislation in Canada and elsewhere; and to recommend measures to encourage whistleblowers to assist the Bureau in promoting conformity with competition legislation and in prosecuting offenders.

34. The report concluded that there is no need to amend the *Competition Act* to protect whistleblowers as other processes are in place to provide such protection.

35. The public education program is undergoing a fundamental review and the recently created Communications Unit is working at increasing our target audience base by building on the web site venue and refining the information we disseminate.

Promoting Competition

36. In the interests of promoting and encouraging competition in the Canadian market place, the Bureau uses several tools and mechanisms in a variety of venues: we may file a case before the Competition Tribunal for adjudication; intervene before a federal or provincial board or agency; seek to negotiate an alternative case resolution in lieu of pursuing litigation; or collaborate with other competition bodies to develop competition policy.

Telecommunications

37. The Bureau has mounted a vigorous program of interventions before the CRTC advocating the opening of telecommunications and broadcasting markets to competition, and where market forces are effective, deregulating these industries. The success of these initiatives is borne out by the substantial benefits that Canadian business and household consumers are enjoying in terms of competitive prices and expanded service choices.

Local Telecommunications Interconnection and Network Unbundling (CRTC 95-36)

38. Opening up local telecommunications markets to competition will bring about substantial benefits for Canadian business and consumers by providing them with expanded product choice, improved service quality and innovative services.

39. In August 1996 the Bureau participated in the CRTC's public hearings concerning opening up the local telephone market to competition. The Director filed a final written argument in October of that year. The CRTC's decision, issued in May 1997, adopted many of the Bureau's submissions with respect to the terms and conditions of interconnection and access required to facilitate competition in local telephone services.

Long-Distance Forbearance (CRTC 96-26)

40. This intervention advocated the deregulation of long distance rates charged by the Stentor group of companies.

41. The thrust of the Bureau's submission argued that competition and market forces were sufficient to protect the public interest and that long-distance rates should be deregulated. The intervention was filed in November 1996; the CRTC issued its decision on December 18, 1997 deregulating the Stentor member companies rates for long-distance service.

International Telecommunications (CRTC 97-34)

42. Opening up international markets to competition will bring about substantial benefits for Canadian business and consumers who use international voice and data services. Competition will expand product choice, improve service quality, introduce innovative services and lower prices.

43. The written submission filed by the Bureau in March 1998 targets the new regulatory framework for competition when Teleglobe Canada loses its monopoly in international calls in October 1998. The overseas market for international telephone calls is the last major sector of the Canadian telecommunications industry to be opened to competition.

NBTel Application for a Broadcasting Licence

44. NBTel is the first telephone company to apply for a cable licence. Granting NBTel a broadcasting distribution undertaking licence will provide New Brunswick consumers with a third choice for their broadcasting services to compete with cable and direct broadcast satellite. This new competition should result in lower prices and expanded service choice. The Bureau supported the application with a

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written submission to the CRTC in March 1998; at the end of the fiscal year, the CRTC's decision was pending.

Local Pay Phone Competition (CRTC 97-26)

45. The Bureau filed a submission with the CRTC in July 1997 concerning the local pay phone market. The Bureau contended that it was time to break up the monopoly of the Stentor companies and open up the local pay phone market to competition. At the end of the fiscal reporting period, the Commission's decision was pending.

Satellite Relay Distribution Licensing (CRTC 97-14)

46. This intervention, filed on January 30, 1998 concerns competition against Cancon's monopoly for wholesale distribution of broadcast signals to cable companies via satellite. The Bureau supported competitive licensing of two new applicants. The CRTC's decision was pending at the end of the fiscal reporting period. Competition in the wholesale supply of broadcasting services should bring lower prices for Canadian consumers from their local cable companies.

Allocation of Satellite Capacity (CRTC 97-13)

47. This intervention was directed at ensuring that competitors in the broadcasting and telecommunications industry will have equitable access to Telesat's satellite facilities.

48. The Director filed a submission in June 1997; the CRTC released its decision in March 1998 which adopted the recommendations of the Director for greater transparency in the allocation of transponder capacity. The next step in the process will be an intervention concerning the forbearance of Telesat's rates when its monopoly mandate ends in the year 2000.

Joint Marketing and Bundling (CRTC 97-14 and 97-21)

49. This intervention concerned the removal of regulatory restraints on the telephone companies from jointly marketing or bundling wireless and wireline services. The CRTC agreed with the Bureau's argument to remove restrictions on joint marketing and bundling of competitive services. While the Bureau cautioned against removing restrictions on bundling monopoly and competitive services until the local exchange market is open to competition, the Commission decided to allow such bundling, subject to certain conditions.

50. The CRTC decision on this last point is being appealed to Cabinet and we will need to report on this next year.

Energy Sector

Ontario Electricity

51. In the fall of 1997, the Ontario government released a White Paper for restructuring the Ontario electricity market. In January 1998, the Ontario government created a Market Design Committee mandated to recommend a framework for the Ontario electricity market before the end of the year. On January 31, 1998 the Bureau delivered a presentation to senior officials of the Ontario Department of Energy, Science and Technology and the Ontario Energy Board (OEB) outlining our views concerning the White Paper as well as the key elements required for a competitive and efficient Ontario electricity system.

52. Among other issues, the Bureau has provided advice to the government agencies on how to set up the regulatory process; how to introduce competition law in the retail sector of the electricity market; how to keep the consumer informed of changes in the market during the transition stage; and how to deal with unfair marketing practices.

Ontario Natural Gas

53. With the aim to increase deregulation and competition in the Ontario natural gas market, the Ontario government intends to revise regulatory legislation including the roles and powers of the OEB. During August and September 1997, the Bureau filed submissions and appeared before the OEB to provide advice on the changes that would be necessary for further deregulation. Consultations between the Bureau and the Ontario government on this matter are ongoing.

Columbia House/Warner Music

54. All Canadians are paying less for compact discs (CDs) and cassettes as a result of the filing of an application to the Competition Tribunal in the Columbia House/Warner Music case which enabled BMG to remain in the mail-order record club business. It is estimated that some two million Canadians buy approximately \$200 million worth of sound recordings through record clubs each year. Absent BMG's participation in this market, Columbia House Canada would have maintained its dominant position as the only significant mail-order club in Canada, depriving consumers of the benefits of competition in this business.

55. As of the spring of 1998, Canadian consumers are being presented with introductory offers by Columbia House of 11 or 12 CDs for free as compared to their 1994 autumn prices which offered eight CDs for one cent. The market also witnessed further competition from a new entrant CDHQ which is owned by Columbia House.

Alternate Case Resolutions (ACRs)

56. As mentioned in the Preface, the Bureau has developed a wide range of tools to assist in compliance and enforcement. One of these is called alternate case resolution which seeks compliance with the law without having recourse to contested enforcement measures. Given that our investigations and examinations are conducted in private and that the Bureau did not file any pleadings or documents of a

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"public" nature, we will not name the companies or individuals who were involved as parties in the following examples of alternate case resolutions.

Refusal to Deal (Section 75)

57. A distributor of video cassettes was cut off by a major supplier, who, according to the complainant, threatened the viability of the business under the "refusal to deal" provision of the *Competition Act*. The Bureau entered discussions with legal counsel for the supplier who eventually resumed supplying the complainant.

58. Another example was a major manufacturer of specialised plumbing supplies who refused to deal with a regional distributor who had been supplied in the past. Given that the product line involved was of a highly specialised nature, the Bureau entered into discussions with the manufacturer and these led to the eventual resupply of the complainant.

Exclusive Dealing (Section 77)

59. A major advertising magazine concluded an exclusive agreement with a chain of convenience stores which excluded all other advertising magazines. A competitor of the magazine, who was being excluded from the convenience stores, filed a complaint. The magazine involved had already given written undertakings to the Director in 1994 promising not to demand exclusivity clauses from its customers for the next 10 years. In April 1997, after discussions with the Bureau, the magazine agreed to comply with the original undertakings and the competitor's magazine was re-introduced into the convenience stores.

Conspiracy (Section 45)

60. In March 1997, the Director began an inquiry into the business conduct of a major Canadian airport and two taxi companies under the conspiracy provision of the *Competition Act*. The two taxi companies were alleged to have agreed on the fares to be charged to taxi passengers for trips originating from the airport. This pricing agreement was later incorporated into a contract between the taxi companies and the airport for the exclusive right to service the airport taxi stand.

61. The matter was resolved by way of a negotiated resolution with the three parties promising to cease all agreements alleged to be contrary to the Act. The Bureau discontinued the inquiry in April 1997.

Financial Markets Policy Review

62. In 1997-98, the Bureau prepared a comprehensive submission to the Task Force on the Future of the Canadian Financial Services Sector. This Task Force was mandated by the Minister of Finance to provide recommendations to the federal government regarding the appropriate regulatory reform necessary to ensure the continued viability of this vital sector of the Canadian economy. The final report of the Task Force was released on September 15, 1998.

Competition and the International Agenda

63. The Bureau is dedicated to promoting competition policy within Canada and abroad and supporting the development of co-operation among competition authorities. We exchange notifications pursuant to the 1995 OECD Revised Recommendation on co-operation and the Canada-US Agreement regarding the application of their competition and deceptive marketing practices laws. We are also increasingly involved in co-ordinating with agencies investigating cross-border anti-competitive activities.

64. On the international stage, most of our work targeted OECD regulatory reform as well as our participation in the Competition Law and Policy Committee, the World Trade Organisation (WTO) and the Free Trade Area of the Americas (FTAA). What follows are some highlights in our international initiatives.

Free Trade Agreement of the Americas (FTAA)

65. Canada has played an important role in the identification, development and discussion of competition issues relevant to the FTAA. The Bureau participated in creating the FTAA Working Group on Competition Policy established at the Summit of the Americas, Second Ministerial Trade Meeting in Cartagena, Columbia, on May 21, 1996. Its goal is to promote understanding and development of competition law and policy within the free trade area. The Working Group has produced inventories of competition laws and international co-operation arrangements, identified areas of commonality and divergence, and sought to promote understanding of the objectives and operation of competition policy.

66. The Working Group recommended creation of a negotiating group on the development of an appropriate framework for the application of competition policy in the FTAA and on the interaction between trade and competition policies.

Organisation for Economic Co-operation and Development (OECD)

67. At the 1997 OECD Ministerial meeting, Ministers agreed to launch a major regulatory reform project on how governments can improve their regulatory processes. The OECD will begin to review regulatory reform in member countries in 1998. The review process is interdisciplinary and combines self-assessment with peer review. It will focus on whether governments have the necessary instruments to improve their own regulatory processes. It will also include an examination of specific sectors.

68. The Bureau views this process as complementary to its regulatory reform initiatives domestically. From the outset, we have been active in the project by providing advice to the Regulatory Reform Report and to the Competition Law and Policy Committee of the OECD (CLP). As well, we have participated in various activities of the CLP by providing written submissions and making interventions. On March 25, 1998 the Council of the OECD adopted a recommendation concerning action against hard core cartels. Canada has consistently supported the efforts of the OECD in developing this recommendation. We also contributed to the development of a draft common prenotification framework for transnational mergers. The final framework is expected in the fall of 1998.

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The World Trade Organisation (WTO)

69. A Working Group was established to look at the interaction between trade and competition policy. As part of the delegation for Canada, the Bureau has made written submissions and interventions at WTO meetings.

70. We are pleased with the pace and progress of the Working Group on the Interaction between Trade and Competition Policy. The discussions have identified issues arising from the interaction of trade and competition policy and a consensus has been reached on a number of issues. They include the key role competition law can play in ensuring gains from liberalised trade are not undermined by private anti-competitive conduct.

Reviewing Mergers

71. Primary business sectors, particularly those concerned with telecommunications, energy, petroleum, transportation and financial services, are undergoing a fundamental change and restructuring as part of the merger wave trend. The Bureau continues to manage significant mergers and acquisitions. The number of filings, including prenotifications, Advance Ruling Certificates and securitizations, have increased by approximately 32% over those of last fiscal year. Among other things, we undertook to refine our analytical framework for merger review and to consult on the Merger Enforcement Guidelines as applied to banks.

72. Merger considerations played a key role in the development of Bill C-20. A major section of the Bill targeted the merger provisions, particularly those dealing with prenotification.

73. The design and implementation of the fees and standards policy also affected merger review. This initiative included a study of the internal processes relating to merger review, the timing of the review of transactions and the redesign of the structure and procedures, all of which will enable the Bureau to respond effectively to the demand within committed time periods.

74. As mentioned in the Preface, the Bureau began a review of two proposed mergers involving four major Canadian banks, one between the Royal Bank of Canada and the Bank of Montreal as well as the other between the Canadian Imperial Bank of Commerce and the Toronto Dominion Bank. These transactions are among the largest and most complex transactions which the Bureau has reviewed.

Petro-Canada and Ultramar

Another high-profile transaction review concerned the proposed merger between Ultramar and Petro-Canada. In January 1998, the Bureau announced that it would conduct a thorough examination of the proposed merger and the likely effects of the transaction on the supply and pricing of various refined petroleum products.

Competition in the Non-Hazardous Solid Waste Sector

75. On March 6, 1998 the Competition Bureau filed an application for a consent order with the Competition Tribunal in the matter of Canadian Waste Services Inc. to remedy competition issues in the non-hazardous solid waste collection and disposal business in Edmonton.

76. with the purchase of non-hazardous solid waste assets from WMI Waste Management Inc. by Canadian Waste Services in June 1997, the Bureau found that there would be a substantial lessening of competition in the Greater Vancouver, Edmonton, Calgary, Kitchener and Barrie markets.

77. Following initial negotiations between Canadian Waste Services and the Bureau, the company agreed to a voluntary restructuring of the transaction and sold commercial collection assets in these markets to Capital Environmental Resource Inc.

78. However, even after the restructuring, a competition issue remained in Edmonton, where the Bureau found that Canadian Waste Services would still have a dominant position in waste disposal. The June 1997 acquisition of the West Edmonton landfill site from WMI Waste Management had given Canadian Waste Services of Oakville, Ontario, operating control of two (West Edmonton and Ryley) of the three primary landfill sites in the Edmonton market.

79. After several months of negotiation, Canadian Waste Services agreed with the Competition Bureau to a remedy in which it will offer cost-based access at the Ryley landfill to Capital Environmental Resource Inc. The Bureau has concluded that this access arrangement, together with the divestiture of related assets, will ensure that there is no substantial lessening of competition in Edmonton's commercial collection sector. Moreover, the restructuring of these transactions has resulted in the emergence of a new national player in the Canadian waste industry.

80. The resolutions of these two problematic transactions exemplify how parties to a proposed merger, which would otherwise lead to a substantial lessening of competition, can avoid delays and costly litigation while adhering to competition laws by approaching the Bureau early in the process and meeting with Bureau staff to resolve the issues.

Cast North America Inc. (CAST) and Canadian Pacific (CP) Limited

81. On December 22, 1996 the Bureau filed an application with the Competition Tribunal challenging the merger between Cast and C.P. Limited. We alleged that the proposed transaction would substantially lessen or prevent competition in container shipping between Montreal and Northern Europe. The merged companies operate fully integrated intermodal container shipping services known as Cast and Canada Maritime.

82. On September 17, 1997 on application by the Director, with the consent of Canada Maritime Services Limited and the Royal Bank of Canada, the Competition Tribunal issued an order that stopped the Director's challenge of the acquisition of the Cast Group by Canada Maritime.

83. The order was issued after the Director presented evidence that Maersk Canada Inc., Sea Land Services Inc. and P & O Nedlloyd announced that they would be entering into the market for intermodal non-refrigerated shipping services through the Port of Montreal between Northern Continental Europe/United Kingdom and Ontario/Quebec.

84. The order allows the Director to determine whether the new entry is likely to resolve the lessening of competition resulting from the merger. It also states that if the Director does not move to lift the order-to-stop by March 31, 1998 the application will be dismissed.

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Bank of Nova Scotia and National Trust

85. On June 24, 1997 the Bank of Nova Scotia announced that it would acquire, via a public offer, the shares of National Trusco Inc. The transaction was reviewed under the merger provisions of the Act. The Bureau allowed the transaction to proceed because we found that there would not likely be a substantial lessening of competition.

Great-West and London Life

86. On August 19, 1997 Great-West Life Assurance Company and Great-West Lifeco Inc. announced a bid to acquire the London Insurance Group Inc., including the company's London Life Insurance Company subsidiary.

87. Both Great-West Life and London Insurance are life and health insurance companies. Upon completion of the transaction, the merged entity would rank first in Canada in both individual and group insurance.

88. Following a thorough assessment, the Bureau concluded that the proposed transaction was not likely to lessen or prevent competition in any market in Canada.

Coopers & Lybrand/Price Waterhouse Canada and Ernst & Young/KPMG

89. On September 19, 1997 Coopers & Lybrand and Price Waterhouse announced a plan to merge their operations world-wide. In December 1997 the world-wide partners of both firms approved the proposed merger.

90. On October 20, 1997 Ernst & Young and KPMG announced a proposed merger of their accounting firms. The transaction would have created the largest accounting firm in Canada, with annual revenues of approximately one billion dollars, representing almost 40 percent of the Canadian accounting industry.

91. The Bureau examined these proposed mergers to determine whether either or both would result in substantial lessening of competition in various accounting markets, with particular emphasis on their impact in the provision of auditing services. The Ernst & Young and KPMG transaction was abandoned in February 1998. The Bureau allowed the Coopers & Lybrand and Price Waterhouse merger to proceed.

DIR v. Washington et al.

92. On January 29, 1997 the Competition Tribunal issued a consent order with respect to certain acquisitions in the British Columbia marine transportation industry by Mr. Dennis Washington, a Montana-based businessperson. The Director had alleged that Mr. Washington's ownership of both Seaspan International Ltd. and C.H. Cates & Sons, the only two providers of ship berthing services in Vancouver, was likely to prevent or lessen competition substantially.

93. The Director had further alleged that Mr. Washington's ownership of both Seaspan and Norsk Pacific Steamship Company Limited was likely to prevent or lessen competition with respect to chip barging and covered barging in British Columbia coastal waters. The Tribunal order established a 12-month time frame for Mr. Washington to effect certain asset divestitures in three markets: ship berthing in

Burrard Inlet of Vancouver; chip barging in British Columbia coastal waters; and covered barging in British Columbia coastal waters.

94. In September 1997 the covered barging assets required to be divested were sold to Gemini Marine Services Ltd. of Garden Bay, British Columbia. In October 1997 the chip barging assets required to be divested were sold to a group led by North Arm Transportation Ltd. of Vancouver. On December 1, 1997 Mr. Washington filed an application before the Tribunal to vary the January 29, 1997 Tribunal order, so as to remove the obligation on Mr. Washington to effect the ship berthing divestiture.

95. In that application, Mr. Washington asserted that the entry in early October 1997 into the Burrard Inlet ship berthing market by Tiger Tugz Inc., an affiliate of Rivtow Marine Ltd. (the second largest ship berthing and barging operator in British Columbia), is likely to alleviate the competition concerns which were alleged to arise from Mr. Washington's ownership of both Seaspan and Cates. This matter is currently pending before the Tribunal.

Guinness/Grand Metropolitan

96. On May 13, 1997 Guinness plc (Guinness) and Grand Metropolitan plc (Grand Met) announced their intentions to create a new company, called GMG Brands, which would encompass both companies' spirits businesses, thereby creating the world's largest spirits producer. Guinness and Grand Metropolitan are active in the spirits industry in Canada through their affiliates United Distillers Canada Inc. and IDV Canada, respectively, and sell such brands as Johnnie Walker scotch, Smirnoff vodka and Tanqueray gin.

97. An assessment of the likely effects in Canada of the transaction was undertaken, including the analysis of extensive information from competitors and provincial liquor authorities, as well as consultation with foreign antitrust authorities reviewing the same matter, especially the US Federal Trade Commission (FTC) and the European Commission (EC).

98. On December 16, 1997 the Bureau advised the parties that the transaction would have the likely effect of substantially lessening competition in all Canadian provincial markets for dry gin and standard scotch whiskey. The merged entity would own five of the six leading dry gin brands and two of the three leading standard scotch brands. This high level of concentration is combined with significant barriers related to brand building and entry into the provincially controlled retail environment. The US Consent Decree agreed to by the parties and the FTC would have the effect of removing the alleged competition concerns in Canada so no further action was required by the Bureau.

Prosecuting Anti-Competitive Activity

99. Under the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*, the Bureau investigates complaints that could potentially lead to prosecutions.

Electrical Contractors and Bid-Rigging

100. On December 19, 1997, four Toronto electrical contractors, 948099 Ontario Inc. (carrying on business as Plan Electric Co.), Ainsworth Inc., Guild Electric Limited and The State Group Limited, pleaded guilty to bid-rigging and were sentenced to pay fines totalling \$2.55 million.

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101. The charges covered the period from 1988 to 1993 and were the result of an extensive investigation conducted by the Bureau into a scheme designed to create the illusion of competitive pricing.

102. Although the majority of the rigged tenders involved electrical contracts for the renovation of commercial space, including certain leasehold improvements at Pearson Airport's Terminal III, some of the companies were also convicted of rigging tenders related to major construction projects, including the SkyDome Hotel and BCE Place - Phase 2 .

103. Some of the companies charged received favourable treatment for entering early guilty pleas; others received additional consideration for having co-operated with the investigation. All four companies have taken steps to institute internal compliance programs designed to ensure compliance with the *Competition Act*.

104. On February 27, 1998 Smith and Long Limited, another electrical contracting firm, pleaded guilty to 10 counts of bid-rigging and was fined \$100,000. The Bureau's investigation of this market is ongoing.

Bid-Rigging in Alberta Crown Timber

105. This case involved bid-rigging in a small timber market in Alberta. The inquiry, which included oral examinations, searches and plea negotiations with all but one party, was concluded in less than seven months.

106. The Attorney General granted favourable treatment to the parties who co-operated with the Bureau's investigation. On February 10, 1998 the court imposed fines ranging from \$3,000-\$5,000 and also a sentence of community service against some of the accused. Charges against a remaining party are outstanding.

Aban Persian Rugs Inc. and Misleading Advertising

107. On July 9, 1997 Mr. Hossein Farjami of Aban Persian Rugs Inc., was convicted under the misleading advertising and deceptive marketing provisions of the *Competition Act*.

108. Mr. Farjami was the sole shareholder of Aban Persian Rugs of Markham, Ontario, a company importing and selling carpets in Canada through stores and auctions. Aban Persian Rugs' goods were advertised in newspapers or mailings sent to regular customers.

109. Both cases involved representations in a Montreal-area newspaper describing the urgent need to auction carpets. The ads included such phrases as "Final sale", "This week only", "Last day", "Last phenomenal auction" and "Everything must go", suggesting a false sense of urgency to liquidate stock.

110. The investigation determined that, contrary to the claims in the advertisements, the business continued to operate and that inventory was regularly brought in from other sources.

Click Modeling and Talent Agency of Canada c.o.b as HMI International Model and Talent Agencies and Shannon Hoehn and Misleading Advertising

111. On June 9, 1997 Mr. Shannon Hoehn and Click Modeling and Talent Agency of Canada, operating as HMI Model and Talent Agencies (HMI), pleaded guilty to a total of 15 counts of misleading advertising and deceptive marketing under the *Competition Act*.

112. Fines totalling \$200,000 for the company and \$4,300 for Mr. Hoehn were imposed. The money was used to reimburse victims named in the case.

113. The illegal conduct involved representations that specific modeling and acting opportunities were available through HMI. The misrepresentations related to approximately 1000 display and classified advertisements placed in daily newspapers and weekly tabloids in Greater Metropolitan Toronto.

114. The investigation determined that HMI was not in the business of securing modeling or acting jobs for its customers, but was in the business of selling courses or photographs.

115. In addition to the fines, a prohibition order was imposed on both Mr. Hoehn and the company for five years. The terms of the order require, among other things, that Mr. Hoehn and the company comply with the *Competition Act* by not misrepresenting the nature of modeling and acting opportunities. The order specifically prohibits Mr. Hoehn from incorporating or causing the incorporation of companies for the purpose of continuing or repeating the offence.

Deceptive Marketing Practices and the Internet

116. In April 1997 the Bureau, the FTC and members of provincial, territorial and state law enforcement organisations announced that they had collaborated in an initiative to target Internet web sites and user groups which contained potentially misleading descriptions of business opportunities.

117. This activity was the first combined Internet sweep to identify potential scams making false or unsubstantiated earnings claims on the Internet. In addition, the sweep was designed to make promoters of business opportunities on the Internet aware of the relevant Canadian and US laws. The Bureau continues to monitor this market.

Integrity Group (Canada) Inc. and Multi-Level Marketing

118. On December 16, 1997, the Integrity Group (Canada) Inc., a national multi-level marketing company, was convicted and fined \$150,000 on eleven charges of failing to disclose information relating to compensation actually or likely to be received by a typical participant in the multi-level marketing plan in accordance with the multi-level marketing provisions of the *Competition Act*.

119. A fine of \$75,000 was levied in this first conviction under the *Competition Act* for an offence committed on the Internet.

VH\$ Network Inc. Fined \$70,000 and Multi-Level Marketing

120. On March 20, 1998 VH\$ Network Inc. pleaded guilty to two offences contrary to the multi-level marketing provisions of the *Competition Act* and was fined a total of \$70,000.

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121. VH\$ Network, a Mississauga-based multi-level marketing company, sold various products that were advertised in video cassette catalogues. The charges related to representations made at recruitment meetings, in training manuals, over a fax-on-demand service and in a pre-recorded telephone message with respect to income claims without disclosure of the compensation earned by the majority of participants.

122. A prohibition order was imposed against the company and its shareholders, including Groupmark Canada Limited, which forbids them from making income claims without disclosure of compensation earned by the majority of participants in the multi-level marketing plan.

GeoForce Inc. and Multi-Level Marketing

123. On February 12, 1998 GeoForce Inc. of Edmonton, Alberta pleaded guilty to two offences contrary to the multi-level marketing provisions of the *Competition Act*. The company, which promotes the sale of herbal supplements through a multi-level marketing distribution system, was fined a total of \$50,000. A prohibition order was also imposed against GeoForce, Granite Sphere Advertising Ltd. and the principal shareholders of both companies, Mr. Kevin Boyle and Mr. Brian Boyle.

124. The charges against GeoForce related to representations made in company literature, at recruitment meetings and through personal meetings, whereby potential earnings were discussed without disclosing the compensation earned by typical participants.

Canadelle Ltd. and Labelling

125. On September 25, 1997 Canadelle Ltd. was fined a total of \$15,000 after pleading guilty to three charges of contravening the Textile Labelling Act.

126. The charges related to the company's WonderBra brand brassières, which had been made in Costa Rica and imported for distribution in Canada. The original labels were replaced with labels stating "Made in Canada", constituting a violation under the Act.

Proposed Amendments Seek to Modernise Canada's Competition Legal Framework

127. Bill C-20, an Act to amend the *Competition Act* and to make consequential and related amendments to other Acts, received second reading on March 17, 1997 and was referred for study to the Standing Committee on Industry. On March 30, the Committee held its first hearing and invited both the Minister of Industry, the Honourable John Manley, and the Director of Investigation and Research, Mr. Konrad von Finckenstein, Q.C. to appear. The Committee called numerous witnesses later, including members from the Canadian Bar Associations, various national seniors' groups, academics, telemarketing associations, consumer organisations and representatives from the business community from across Canada. The Bill drew a large base of support for modernising the law, for doing so on an incremental basis, and, in a timely fashion.

128. Once enacted, the amendments will define a new crime of deceptive telemarketing; will allow law enforcement officials to use judicially authorised interception of private communications without consent ("wiretap") to gather tangible evidence in cases of deceptive telemarketing as well as bid-rigging and conspiracy to fix prices or share markets; will create a civil law track for resolving misleading

advertising and deceptive marketing practices; will revise and clarify the law on price claims at the retail level; and will improve the administration of the merger prenotification process.

129. In tabling these amendments, the Bureau sought to modernise Canada's competition law framework and to update its investigative and enforcement tools. These new tools should prove more effective within the conformity continuum approach adopted by the Competition Bureau.

130. In the area of deceptive telemarketing, the amendments will:

- create a new criminal offence in a situation where illicit interactive telephone communications are used for promoting the supply of a product or a business interest;
- require telemarketers to disclose certain information during telephone calls with consumers;
- prohibit deceptive practices such as demanding payment prior to delivery of products which are offered at prices grossly in excess of their market value;
- expand the responsibility of corporations, their officers and directors for ensuring compliance with the law; and,
- make it easier for the courts to issue interim injunctions to stop operations of suspected fraudulent telemarketers.

131. The amendments also propose the use of judicially authorised interception, without consent, of private communications in suspected cases of deceptive telemarketing as well as the more serious crimes of price fixing and bid-rigging.

132. In dealing with misleading advertising and deceptive marketing practices, the amendments seek to remedy the concern that criminal sanctions are an effective method of reducing the incidence of these offences. The proposed addition of a civil option will change the focus from punishment to quick and efficient conformity with the law. However, a criminal sanction will remain in place to deal with the most serious misleading advertising cases.

133. The amendments improve the merger prenotification law. Among other things, the new provisions provide the Director with more flexibility to shorten waiting periods for the completion of merger transactions and afford easier access to interim orders from the Competition Tribunal. The provisions also provide for authority to define the information requirements on prenotification by way of regulation.

A comprehensive information package issued at the time of tabling, including the speeches that were delivered before the Parliamentary Committee by the Minister and the Director, is available on the Bureau's web site at: <http://competition.ic.gc.ca> or by contacting the Information Centre's toll free number: 1-800-348-5358.

*Annex***STATISTICAL TABLES****Bureau operations**

1. In 1997-1998, the operating budget for the Bureau was \$26.5 million including carry forward. In addition, \$1.4 million was received from the Department's reserve to meet operational requirements. A major portion of the budget, \$18.1 million was allocated to salaries for 353 authorised full time staff, consisting of 21 executives, 12 economists, 138 commerce officers, 93 program officers, and 86 employees carrying out informatics, administrative services and support functions. The Bureau also funds the costs for three lawyers employed by the Department of Justice who are assigned to the Department's Legal Services Unit. The Bureau also collected \$2.2 million for user fees implemented in November 1997.

2. The Bureau has administrative responsibility for collecting fines imposed by the courts. During 1997-1998, \$2,985,600 in fines was imposed of which \$1,800,000 was imposed and paid during the year in 1 case and \$1,185,600 was outstanding in 7 cases. An additional \$3,482,992 outstanding from 13 cases in a previous year was paid, giving a total of \$5,282,992 paid during the year and credited to the government's Consolidated Revenue Fund. At year end a total of \$5,127,307 remained outstanding.

Table 3
Civil matters - selected activities

	1995-96	1996-97	1997-98
Number of complaints, examinations and inquiries			
Total complaints/information contacts	456	561	503
Examinations commenced (two or more days of review)	28	31	41
Application for inquiries under section 9 (six-resident application to the Director for inquiry)	4	2	3
Inquiries in progress at year end	13	16	5
Written advisory opinions	4	1	0
Disposition of inquiries			
Inquiries resolved by alternative case resolution	3	4	6
Applications to the Competition Tribunal	1	0	4
Discontinuances			11
Interventions			
CRTC			9
Provincial			3
CITT			2
Policy Work*			2

* Financial Markets Policy Review & SIMA

Table 4
Criminal matters - selected activities

	1995-96	1996-97	1997-98
Number of complaints, examinations and inquiries			
Total complaints/information requests	968	1 479	1 285
Examinations commenced	55	46	39
Application for inquiries under section 9	2	8	4
Inquiries in progress at year end	24	29	20
Disposition of inquiries			
Matters referred to the Attorney General of Canada	4	0	3
Matters where charges were laid	4	1	3
Matters where Attorney General declined to proceed or withdrew charges (may include matters referred during previous years)	1	0	1
Matters before the Courts (may include matters referred during previous years)	14	10	8
Disposition of prosecutions (findings of guilt, guilty pleas, acquittals, stay of proceedings, orders of prohibition - may include matters referred during previous years)	8	22	48
Other activities			
Examinations resolved by information contacts	16	32	13
Written advisory opinions	14	14	12
Mutual Legal Assistance Treaty (MLAT) requests	3	1	0
Searches	4	0	1

Table 5
Merger examinations

	1995-96	1996-97	1997-98
Examinations commenced (two or more days of review; includes notifiable transactions, advance ruling certificates and examinations commenced for other reasons; some examinations commenced may arise from notifications and advance ruling certificate requests in relation to the same transactions.	228	319	393
Notifiable transactions	100	140	195
Advance ruling certificate requests	142	224	284
Examinations concluded			
As posing no issue under the Act	204	296	398
With monitoring only	4	2	2
With pre-closing restructuring	0	1	0
With post-closing restructuring/undertakings	0	0	3
With consent orders	0	1	0
Through contested proceedings	0	0	0
Parties abandoned proposed mergers in whole or in part as a result of Director's position	3	0	0
Total examinations concluded (includes advance ruling certificates and advisory opinions issued and matters which have been concluded or withdrawn before the Competition Tribunal)	215	306	403

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	1995-96	1996-97	1997-98
- advance ruling certificates issued (included in "Total examinations concluded")	121	188	236
- advisory opinions issued (included in "Total examinations concluded")	10	2	4
Examinations ongoing at year end	52	65	55
Total examinations during the year	267	371	458
Applications and Notices of Application before the Tribunal			
Concluded or withdrawn	1	1	2
Ongoing	2	2	2

Table 6
Misleading advertising and deceptive marketing practices offences - selected activities
 (Competition Bureau regional offices were closed during 1995-96 fiscal year and all marketing practices activities consolidated at headquarters. Many figures will therefore show a considerable difference from previous years.)

	1995-96	1996-97	1997-98
Number of complaints, examinations and inquiries			
Total complaints received	6 752	6 277	5 148
Applications for inquiries under section 9	5	2	4
Inquiries commenced	8	18	9
Disposition of inquiries			
Completed examinations/inquiries	278	383	397
Information contacts (includes only written contacts)	86	246	208
Inquiries formally discontinued			
- cases involving undertakings (discontinued inquiries involving undertakings are reported for the fiscal year in which they were discontinued; accordingly, these may not coincide with the actual number of undertakings received in any given fiscal year)	9	8	2
- other cases	10	17	7
Undertakings received	4	4	2
Matters referred to the Attorney General of Canada	7	3	5
Matters where further action is not warranted (may include matters referred during previous years)	3	0	1
Prosecutions commenced (may include matters referred during previous years)	7	4	3
Prohibition orders without conviction	1	0	0
Prosecutions concluded (may include matters referred during previous years)			
- convictions	14	8	7
- non-convictions (includes conditional and absolute discharges, withdrawals, stays of proceedings, etc. It should be noted that charges against some of the accused are often withdrawn after other accused in the same case have pleaded guilty. Accordingly, there is some overlap.)	4	2	0
Total fines	\$879 850	\$241 500	\$573 300