CANADA

(1 April 1998 - 31 March 1999)

Introduction

1. This report describes the competition law and policy developments in Canada and summarises the enforcement activities of the Canadian Competition Bureau ("the Bureau") for the fiscal year period April 1, 1998, through March 31, 1999 "FY 98-99").

I. Changes in law and policies proposed or adopted

A. Summary of new legal provisions in competition law and related legislation

2. Amendments clarifying the law in certain areas, streamline legal processes and give the courts more flexibility in dealing with anti-competitive conduct. Provisions creating a new deceptive telemarketing offence, permitting the Bureau to use wiretapping to investigate telephone fraud and other anticompetitive offences, improving the merger pre- notification process and allowing the Bureau to apply to the Competition Tribunal ("the Tribunal") in misleading advertising cases are the most important changes introduced by the *Act to amend the Competition Act and to make consequential amendments to other Acts* (Bill C-20 -- assented to March 11, 1999; in force [except for merger pre-notification amendments] March 18, 1999).

3. Under the new provisions, deceptive telemarketing is an hybrid criminal offence punishable by a maximum of five years in prison and a fine at the discretion of the court. Telemarketers are under a statutory obligation to make certain disclosures to their potential customers which would distinguish legitimate telemarketers from illegitimate ones. The specified information includes the name of the employer, the purpose of the call, the type and cost of the products being promoted and any restrictions or conditions that must be met prior to delivery.

4. By virtue of an amendment to the definition of "offence" under s. 183 of the *Criminal Code*, and with the approval of the Solicitor General, the Bureau may apply for judicial authorisation to use wiretaps to investigate the most serious cases involving price fixing and market sharing, bid rigging and deceptive telemarketing.

5. The amendments establish an alternative non-criminal process which enables the Bureau to seek a court order to stop misleading advertising and deceptive marketing practices quickly. In certain circumstances, a person found to have engaged in deceptive conduct can be ordered to publish an information notice directed to the affected parties and/or pay a substantial administrative penalty (maximum of $200,000). Deliberate or reckless misrepresentation in advertising is retained as a criminal offence, along with an increase in the potential fine.

6. Additionally, the amendments revise and clarify the law concerning ordinary price claims, applicable to retailers' comparisons between two prices. The new provision sets out two alternative tests. Advertisers can base their regular price claims on either volume or time. In the event that a particular representation meets neither test, it is open to the advertiser to establish that the representation is, nevertheless, not misleading.

7. The merger review provisions were amended to streamline the merger pre-notification process, thereby reducing the burden on business while ensuring that the most relevant information for merger assessment is available to the Bureau.

8. The pre-notification regime will now expressly apply to acquisitions of interest in combinations as well as to share acquisitions, asset acquisitions, amalgamations and the formation of combinations. The new provisions clarify which parties to the proposed transaction must notify the Bureau and supply information. The requirements pertaining to the information to be supplied to the Bureau were deleted from the *Competition Act* ("the Act") and are now included in the *Notifiable Transaction Regulations*. This will make it easier to amend the requirements in response to an ever-changing marketplace. In the proposed changes to the Regulations, which have been released for public comment, the short and long form information will be updated. This information will provide a better basis for the assessment of the likely impact of a proposed merger, and the process will be more predictable and faster. The proposed *Regulations Amending the Notifiable Transaction Regulations* will also contain new provisions which exempt from the application of Part IX of the Act (relating to notifiable transactions) asset securitisation transactions, a category of transaction that often meets the threshold for notification, but does not generally raise any competition issues. The proposals, also specify the basis for converting assets and revenues reported in foreign currency into Canadian dollars.

9. The applicable waiting periods for the Bureau's response to a merger pre-notification have doubled. A transaction subject to notification may not be completed for fourteen days where information has been filed in ?short form', provided the Bureau does not within that period require ?long form' information. Secondly, a transaction subject to notification may not be completed for forty-two days, where the "long form" information is supplied. However, the Bureau can waive these periods if it does not intend to contest the transaction before the Competition Tribunal.

10. Failure to notify is no longer punishable by imprisonment, but the fine has been raised to a maximum of $50,000. Additionally, under the new provisions, when businesses have already submitted the required information in the context of a previous transaction, they will not have to submit it again; and when a request for an advance ruling certificate has been denied, the Bureau may exempt parties from the obligation to notify and wait the required period. The changes relating to merger prenotification will come into force at the same time as the proposed amendments to the Regulations.

11. The Bureau will be able to obtain orders to delay potentially problematic transactions more easily. Pursuant to the amendments, where the Bureau has certified that an inquiry has been initiated and that more time is needed for its completion, and it appears that, in the absence of an interim order, anyone is likely to take a step relating to the proposed transaction that will be difficult to reverse, the Bureau can apply to the Tribunal for an interim order delaying the transaction. These provisions are now in effect.

12. The amendments have also provided the courts with enhanced powers to make orders requiring persons convicted or suspected of engaging in criminal misconduct under the Act to take positive steps to promote compliance and prevent future occurrences.

13. The amendments further provide for the protection of the identity of persons ("whistleblowers") who report criminal offences under the Act to the Bureau. This protection does not extend to persons

giving information relating to an act or practice under the reviewable matters provisions of the Act. The protection is given to individuals who ask for -- and receive -- the Bureau's assurance that their identities will be kept confidential. The provisions also make it illegal for employers to take reprisals against employees (including "independent contractors") who, acting in good faith, report what they reasonably believe constitutes a criminal offence under the Act. Employers who violate these provisions could be charged under the *Criminal Code*.

14. Finally, the amendments change the title of the head of the Bureau from Director of Investigation and Research to Commissioner of Competition ("the Commissioner") to fully reflect the law enforcement and policy functions of the position. They also establish, statutorily, the Commissioner's authority for the administration and enforcement of the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*.

15. The coming into force of Bill C-20 activates a provision of Bill C-51 which is an amendment to the *Criminal Code* targeting the proceeds of deceptive telemarketing fraud for seizure and forfeiture on the same basis as the proceeds of other types of fraud.

B. Guidelines

16. In FY 98-99, the Bureau released a number of guidelines designed to enable businesses and consumers to understand the requirements of the Act and the other labelling statutes it administers. On July 15, 1998, the Bureau released the *Merger Enforcement Guidelines as Applied to a Bank*[1] following extensive public consultation. In general, the principles articulated in the 1991 *Merger Enforcement Guidelines* were adopted as applicable to financial institutions with some modest refinements. Appendix I to the Guidelines sets out the interaction between the Minister of Finance and the Bureau. These are the first industry-specific guidelines released by the Bureau, emphasising the importance of the financial services sector. The approach outlined in the guidelines is equally applicable to other financial and non-financial institutions (*e.g.*, trust companies, co-operative unions) since its focus is on what such institutions do rather than what they are.

17. The Bureau released for public consultation a number of draft guidelines explaining its proposed approach regarding the implementation of the amendments to the Act effected by Bill C-20. In this regard, the Bureau published draft guidelines pertaining to the following: the interception of private communications (wiretapping), the choice of the criminal or non-criminal track in cases of misleading advertising and deceptive marketing practices, the new telemarketing provisions and ordinary price claims.

18. The proposed guidelines on interception of private communications (without consent) emphasise that this new power will only be used under exceptional circumstances. Mergers or strategic alliances will not be covered by this power unless there is compelling evidence that such transactions are intended as a cover for covert criminal conduct. The guidelines also list the particulars that must be set out in order to obtain judicial authorisation for the interception. These include details about the offence and the type of communications to be intercepted, names and addresses of the targets of the investigation, the manner of interception, the time period this will cover, what other types of investigative procedures have been tried and why they have been inadequate.

19. Under the proposed guidelines on the choice of track in cases of misleading advertising cases, the civil track will generally be pursued unless there is compelling evidence that the advertiser made the misrepresentation knowingly or recklessly. For a criminal prosecution, the Commissioner must additionally be satisfied that a prosecution will accord with the public interest in the circumstances. Factors that will determine the public interest include a consideration of the seriousness of the offence (i.e., the

degree of harm to consumers or competitors, the vulnerability of the target audience, the attitude of the advertiser on becoming aware of the offence and any recalcitrance or recidivism shown by the advertiser) and mitigating factors present in the situation (i.e., the appropriateness of prosecution relative to the crime committed and whether the advertiser has in place an effective compliance program). Where the Commissioner feels that a criminal prosecution is warranted, a recommendation will be made to the Attorney General of Canada who will make the ultimate decision on whether to proceed.

20. In the guidelines on the new telemarketing provisions, "interactive telephone communications", the expression is restricted to live telephone communications between two or more people. The provision will not be applied to communications made by fax, the Internet or through pre-recorded messages. Certain types of telephone communications between business and customers will not generally be considered telemarketing (e.g., a customer-initiated call to a customer relations line when that call is insignificant to the primary marketing drive; and responses made to unprompted customer questions in a customer-initiated call). The proposed guidelines also set out the applicability of the new telemarketing provision to contests and games.

21. The draft guidelines on ordinary price claims seek to expand upon such important terms as "substantial volume" and "reasonable period of time".

22. Further to the amendments to Part IX of the Act, a draft Procedures Guide was issued by the Commissioner for public comment. This Guide provides an overview of the relevant provisions of Part IX, the proposed *Regulations Amending the Notifiable Transactions Regulations* and ss. 102 and 103 of the Act relating to the issuance of Advance Ruling Certificates ("ARCs"). This Guide sets out the general approach taken by the Bureau with respect to prenotification and ARC procedures. Additionally, draft "Interpretation Guidelines" relating to various matters under Part IX were issued for public comment. These guidelines address frequently posed questions and are designed to assist parties and their respective counsel in interpreting and applying the provisions of the Act relating to notifiable transactions.

23. In recent years, there has been an increasing appreciation of the competitive advantages which arise when businesses innovate. For competition authorities, the challenge is to safeguard the benefits of competition without jeopardising business arrangements that work to stimulate innovation. For some time now, the Bureau has been working to articulate clearly its policy in dealing with transactions involving both intellectual property and competition law issues. Throughout FY 98-99, the Bureau worked on Draft Intellectual Property Guidelines, which were released for public comment in June 1999. Details of the Guidelines will be discussed in next year's Report.

C. International antitrust co-operation developments

24. On June 4, 1998, the final text of An Agreement between the Government of Canada and the European Union Regarding the Application of their Competition Laws was initialled. The agreement is similar to The Agreement Between the Government of Canada and the Government of the United States of America Regarding the Application of their Competition and Deceptive Marketing Practices Laws (1995) and provides tools to improve the enforcement of competition laws in relation to cross-border anti-competitive activities.

25. During FY 98-99, Bureau officials and their Chilean counterparts explored the possibility of closer co-operation in the enforcement of their competition laws. Furthermore, on October 9, 1998, the Bureau took part in a meeting of the heads of antitrust agencies from 9 of the 12 Western Hemisphere countries with competition laws in Panama City to discuss competition law issues of common interest.

26. The Bureau and the United States' antitrust agencies, the Department of Justice, Antitrust Division and the Federal Trade Commission, enjoy a close working relationship.[2] Deepening this relationship is a high priority for the Bureau. To this end, the Bureau is looking at the following:

- expanding positive comity commitments;
- organising more co-ordinated or parallel investigations;
- co-ordinating searches, where appropriate;
- sharing information within the limits set by national laws;
- timing activities to ensure maximum results; and
- assisting each other in obtaining necessary evidence (e.g., through the use of mutual legal assistance treaties).

D. Proposals for new legislation

27. As part of its broader mandate to ensure that Canada's competition law is modern and responsive to current business trends and enforcement requirements, the Bureau undertakes ongoing review of the Act. During the period covered by this report, no new legislative proposals were made by the Bureau.

II. Enforcement of competition laws and policies

1. Action against anti-competitive practices by competition authorities and the courts

a. Summary of enforcement activities for FY 98-99[3]

28. The types of behaviour the Bureau addresses are set out in four separate statutes: the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*. The Bureau works with businesses to assist them to avoid conduct that might breach these statutes. Because the Bureau observes a range of conformity with the requirements of these statutes, the Bureau uses a continuum of diverse tools and resources to address instances of non-conformance.. Such mechanisms include seminars, the release of guidelines, advisory opinions, information contacts, assisting firms in establishing voluntary codes, ongoing monitoring of the marketplace. However, the emphasis on conformity does not mean that the Bureau will tolerate serious breaches. The more serious instances of non-conformance can result in some form of legal proceedings either on consent or, where warranted in the most serious matters, on a contested basis.

b. Significant cases for FY 98-99

29. The following examples of significant cases in the areas of alternative case resolutions and enforcement demonstrate the range of issues addressed by the Bureau involving both criminal and non-criminal matters (for mergers matters, please see the Mergers section below).

i) Alternative case resolutions (domestic activities)

30. **Auto parts** (**price fixing)**: After it came to the Bureau's attention that several auto parts outlets had been collectively setting prices, staff visited the outlets to ensure that they fully understood the legal

ramifications of this type of anti-competitive activity. Following the Bureau's intervention, the industry distributed a circular outlining what types of pricing arrangements were lawful to more than 100 outlets.

31. **Regional building contracts** (**bid rigging)**: In October 1998, the Bureau investigated allegations of bid-rigging among a group of civil engineering firms in a Quebec municipality. In collectively refusing to bid on a small construction job in the area, the engineers effectively forced the bid requesting organisation to accept a higher than competitive tariff for professional fees. This case was resolved after a series of information sessions on the Act and its prohibitions against bid-rigging.

32. **Jewellery Manufacturer** (**misleading advertising)**: On December 7, 1998, the Federal Court issued a Prohibition Order on consent against A&A Jewellers Limited, Summit Retail Services Inc. and 1012795 Ontario Limited, formerly known as Silverman Jewellers Consultants. Investigation had determined that advertised claims and store signs indicating "going out of business" and price reductions were misleading. The order prohibited the companies from making any misrepresentations as to sales being conducted or price reductions.

33. **Camera parts and repair** (**refusal to deal)**: The exclusive distributor of a well-known brand of cameras in Canada refused to continue to supply parts to a complainant. As a result, the complainant could no longer provide competitive repair services. The supply of camera parts was restored after the distributor was advised of the refusal to deal provision of the Act.

34. **Children and juniors' clothing** (**inadequate labelling)**: As part of ongoing monitoring under the Bureau's *Children and Junior Care Performance* textile program, performance tests demonstrated that labelling for care and cleaning on 24,000 units of children's and junior clothing was inadequate. The estimated retail value of the clothing was $500,000. The Bureau negotiated the voluntary removal from sale of all items in violation of the *Textile Labelling Act* and *Regulations* for re-labelling. As a result, potential problems relating to care and cleaning were averted.

35. **Manufacturers of paint and related products** (**inadequate labelling)**: Inspections conducted across Canada as part of ongoing monitoring under the *Consumer Packaging and Labelling Act* revealed that more than 25% of products tested did not contain the net quantity declared on the label. The Bureau solicited the co-operation of manufacturers to put controls in place to prevent a recurrence of this problem.

ii) Criminal enforcement

36. **Bicycle Sales** (**misleading advertising)**: On May 4, 1998, Hudson's Bay Company (HBC), carrying on business as *The Bay*, plead guilty to one offence contrary to the misleading advertising provisions of the Act. The Bay had misled consumers by representing that its bicycles would be offered at a sale price for a certain limited period when in fact the sale continued for much longer. A fine of $600,000 was levied.

37. **Rehabilitation Products** (**misleading advertising)**: On June 12, 1998, Medi-Man Rehabilitation Products Inc., a medical products manufacturer and distributor, and senior officials pled guilty to offences contrary to the misleading advertising provisions of the Act. The charges related to Medi-Man's marketing practices regarding two of its patient lifts during the period January 1988 to January 1994. During this period, two of Medi- Man's patient lifts were marketed as having been "Made in Canada". Medi-Man imported the two lifts unassembled and modified them in Canada. They were not, however, manufactured in Canada. The company and officials were fined $200,000.

38. **Snow Removal** (**conspiracy)**: In January 1999, eight snow removal companies were fined nearly $3 million following guilty pleas to conspiracy charges. The accused conspired to share the market and

unduly lessen competition in snow clearing, removal and transportation in the Quebec City area. During the period under investigation, snow removal service cost the affected towns, municipalities and the Ministry of Transport in excess of $16 million. Once the investigation began, snow removal contract prices started to decline by as much as 20 per cent, resulting in substantial savings to metropolitan Quebec City taxpayers. A Prohibition Order was also issued by the court.

39. **The National Clearing House** (**deceptive telemarketing)**: On February 1, 1999, 3076784 Canada Inc., carrying on business as National Clearing House-Nation-wide Clearing House and The National Clearing House, and company president Jack Stroll, pled guilty to the highest fine ever imposed against a telemarketing firm under the misleading advertising provisions of the Act. The charges related to deceptive telemarketing and direct mail practices carried out by the Montréal area operation during the period of November 1, 1994, to October 31, 1995. The accused were alleged to have mailed out "Official Claims Certificates" to consumers in every province of Canada except for Québec, which stated that the consumer had been selected to receive at least one of five valuable awards. In order to be eligible to claim the award, the consumer had to call the firm within 72 hours. The odds of receiving the award and a provision for conditional purchase before delivery of the award were disclosed in small print on the reverse side of the mail piece. Consumers responding to the mail piece were told that, to be eligible to receive the awards, they had to purchase promotional items which were grossly overpriced. Investigators did not uncover one winner of any of the valuable awards and two of the less valuable awards actually received by consumers came with so many terms and conditions attached that they essentially had no value. A fine of $290,000 against the corporate entity and a fine of $10,000 against the company's president were imposed by the Québec Superior Court. The Court additionally imposed a Prohibition Order to prevent the repetition of the anti-competitive conduct against the corporate entity, its president, officers and employees.[4]

40. **The Integrity Group (Canada) Inc.** (**multi-level marketing)**: On February 12, 1999, Charles Barrie Press, a co-founder of The Integrity Group (Canada) Inc., was found guilty of seven charges under the Act. The court determined that Mr. Press (who was the controlling mind of this Calgary-based multi-level marketing firm which sold telephone services, satellite dishes, training programs and food products) had held meetings to recruit potential salespeople in Quebec, Ontario and Manitoba. The Bureau's investigation found that the company made false claims about potential compensation to salespeople contrary to s. 55(2). The compensation plan was also promoted on the Internet, where no proper disclosure of rewards to be received was made. Mr. Press was fined $50,000 on four charges. Integrity Group (Canada) Inc. had previously been found guilty under s. 55 and fined $150,000.

iii) Cases having international implications

41. The ongoing trend towards globalisation of the world economy has created a network of interdependent national economies where anti-competitive activities of firms in one country can readily have cross-border effects. At the end of 1998-99, the Bureau was investigating 11 cases involving alleged price-fixing and market sharing on three continents and in a number of countries.

International conspiracies

42. **Archer Daniels Midland Company**: After pleading guilty in May 1998 to participating in price-fixing and market-sharing conspiracies, Archer Daniels Midland Company (ADM) of Decatur, Illinois, was fined a total of $16 million for three offences under the conspiracy provision of the Act, the largest penalty ever imposed under the Act against a single firm. ADM was charged with being party to a scheme to fix prices and allocate market shares among producers of lysine, a livestock feed additive, and citric

acid, a food additive, between 1992 and 1995. ADM also agreed to cooperate with the Bureau in ongoing investigations into these and other food and feed additives.

43. **Ajinomoto Co. Inc. of Japan and Sewon America Inc.**: Two additional lysine price- fixing convictions rounded out the restoration of competition in this part of the feed additives sector. Ajinomoto Co. Inc. of Japan was convicted of one count of conspiracy under s. 45 of the Act and fined $3.5 million in July 1998. Sewon America Inc. also pled guilty to conspiracy charges and was fined $70,000. Prohibition orders were imposed on both companies. During the conspiracy, Canadian sales of lysine were approximately $89 million.

44. **Jungbunzlauer International A.G. and Haarmann & Reimer Corp.**: Following an October 1998 guilty plea on conspiring to fix prices and allocate market shares, two foreign-owned corporations -- Swiss-based Jungbunzlauer International A.G. and Haarmann & Reimer Corp., a United States subsidiary of Bayer Corporation – were fined a total of $6.7 million. The charges followed extensive investigation by the Bureau into conspiracies relating to citric acid and sodium gluconate (a cleansing and metal treatment agent and a means of controlling the setting of concrete).

45. **Fujisawa Pharmaceutical Co. Ltd.**: In February 1999, Fujisawa Pharmaceutical Co. Ltd., a Japanese corporation, pled guilty to conspiracy and was fined $360,000. The conspiracy involved American, European and Japanese producers of sodium gluconate who met in Canada and abroad on a continuing basis during the period of the offence to fix prices and allocate market shares world-wide. Additionally, the Federal Court imposed a Prohibition Order on Fujisawa.

46. **UCAR Inc.**: On March 18, 1999, UCAR Inc. (UCAR) of Welland, Ontario, pled guilty to implementing pricing directives from its foreign parent, giving effect in Canada to a scheme to co-ordinate world-wide prices for graphite electrodes. Graphite electrodes are used primarily in the production of steel in electric arc furnaces, the steelmaking technology used by all ?mini-mills', and for steel refining in ladle furnaces. Since the onset of the conspiracy in 1992, prices for this commodity in Canada had almost doubled. UCAR, which is a subsidiary of Nashville, Tennessee-based UCAR International Inc., was fined $11 million, the largest penalty ever imposed under the Act for a single offence. Separately, UCAR had also agreed to provide in excess of $19 million in restitution to Canadian victims of this scheme.

iv) Discontinued cases

47. Under the Act, the Commissioner can discontinue an investigation if he is of the view that further inquiries are unnecessary. This may occur for a variety of reasons: where there is insufficient evidence to support enforcement action, exercise of intellectual property rights, public interest considerations, undertaking by business to cease impugned practice, etc. A sampling of cases discontinued during the reporting period follows.

48. **Sale of Cuban Cigars** (**refusal to deal and exclusive dealing)**: An inquiry was commenced in July 1997, following the receipt of an application under s. 9 of the Act by six residents of Canada alleging exclusive dealing and refusal to deal in relation to the sale of Cuban cigars in Canada. The inquiry disclosed that the company against which the accusations were made was the legal owner of the trademarks in Canada of the cigars in question. Moreover, cigars from other countries compete with those from Cuba in the Canadian market for cigars. The practice alleged, therefore, did not lessen competition substantially. The inquiry was discontinued in May 1998.

49. **Leather Products** (**misleading advertising)**: An inquiry was started on September 15, 1997, after a complaint was received that a Canadian leather goods importer and manufacturer had allegedly removed "Made in China" labels on imported handbags after the products had cleared Canada Customs,

replacing them with “Made in Canada” labels. It was also alleged that the company was misrepresenting the Canadian content of certain lines of products produced in Canada since the skins, the major cost component of the products, were imported from the United States and Italy. Upon contact by the Bureau, the leather goods manufacturer undertook to cease the labelling practice in question and publish corrective notices in various newspapers across Canada. The inquiry was subsequently discontinued on June 25, 1998.

50. **Promotional Contest** (**misleading advertising)**: An inquiry was initiated on December 10, 1996, into a soft drink producer’s promotional contest which was based on a popular game. It was alleged that the rules and instructions pertaining to the contest were contradictory to the rules of the original game, thus potentially confusing the public. After a thorough review of the facts and the wording of the allegedly misleading representations, it was determined that there was insufficient evidence to establish an offence. Moreover, since the contest had taken place more than two years earlier and had not been repeated, the Bureau concluded that prosecution would not serve the public interest. Accordingly, the inquiry was discontinued on July 28, 1998.

51. **Videocassette Rentals** (**predatory pricing)**: This inquiry was opened in response to a s. 9 application alleging that a videocassette rental company in a major Quebec city had adopted a policy of renting videocassettes at unreasonably low prices for the purpose of forcing its competitors out of the market. The inquiry determined that rental of videocassettes in the market in question was very competitive and that the alleged predator did not have sufficient market power to successfully engage in the alleged pricing strategy. The inquiry was discontinued on October 5, 1998.

52. **Regina Real Estate (refusal to deal)**: On September 22, 1998, the Bureau discontinued its inquiry into real estate brokerage services in Regina. The inquiry, commenced in February 1996, centred on allegations that certain members of the Association of Regina Realtors participated in an unlawful boycott of a real estate publication, and that the Association violated a 1988 Prohibition Order (which applies directly or indirectly to all real estate boards and associations in Canada) by discouraging its members from co- operating with a realty firm that was not a member of the Association. The Bureau’s decision was based on information gathered in the course of the inquiry, and on the willingness of the Association to provide written undertakings which would ameliorate concerns that co-operation between members and non-members may have been adversely affected by the application of the Association’s rule restricting access to MLS (Multiple Listing Services) industry information.

53. **Municipal Transport Systems** (**conspiracy)**: This inquiry was commenced on March 17, 1997, following receipt of information indicating that the setting of taxi fares by one western Canadian municipality might be contrary to s. 45. While many municipalities regulate taxi fares, this activity must be specifically authorised by valid provincial legislation. Unless the regulation of taxi fares by municipalities is so authorised, it is not protected from the application of the Act. The Bureau contacted the municipality and the relevant provincial government. The matter was resolved with an amendment to the relevant provincial legislation authorising the activity in question. The inquiry was discontinued on November 20, 1998.

54. **High-speed Residential Internet Access** (**abuse of dominance)**: This inquiry was commenced on August 20, 1998, following receipt of a s. 9 application. The complaint alleged abuse of dominance and ?below-cost’ selling against subsidiaries of Bell Canada. Evidence demonstrated that Bell’s share of the retail Internet market was significantly below the 35 percent threshold (the minimum generally required to establish market dominance). Furthermore, evidence indicated that Bell’s ?below-cost’ pricing policy for ADSL-based residential Internet service -- as part of the introduction of a new technology and the need to meet market prices -- was a legitimate business strategy. Cable companies had greater market penetration than Bell for high-speed residential service. Their high level of market penetration was the result of

aggressively marketed cable modem service at prices which were comparable to, or below, those charged by Bell for similar service. The inquiry was discontinued on March 12, 1999.

2. Mergers and acquisitions

i) Statistics on proposed mergers notified and/or controlled under the Act (see Appendix 1).

55. Examples of mergers and acquisitions reviewed by the Bureau follow.

ii) Summary of significant cases

56. **Royal Bank of Canada/Bank of Montreal; Canadian Imperial Bank of Commerce/Toronto Dominion Bank**: These proposed mergers triggered the two single most extensive, exhaustive and publicised merger reviews ever conducted by the Bureau. The combined Canadian assets of the four merging banks totalled approximately $590 billion. The Bureau found that the proposed mergers would have substantially lessened or prevented competition in three broadly defined lines of business: branch banking, credit cards and the securities industry. In his assessment to the four bank chairs and to the Minister of Finance, the Commissioner determined that the proposed mergers would likely lead to higher prices and lower levels of services and choice for these key banking services. Citing the Bureau's analysis as a key factor in his decision, the Minister of Finance (whose permission was also required for the merger to proceed) announced in December 1998 that the two mergers would not be allowed.

57. **Petro-Canada and Ultramar Diamond Shamrock (Shamrock)**: On June 22, 1998, the Bureau announced that Petro-Canada and Ultramar Diamond (Ultramar) had decided to discontinue their joint venture arrangement. This proposed $8 billion deal would have resulted in Petro-Canada merging its five refineries and 3,517 service stations with Ultramar's two refineries and 1,713 service stations in Eastern Canada, as well as some assets in the Northeastern United States. As a result of an intensive five-month investigation, the Commissioner had serious concerns that the transaction would likely cause a substantial lessening or prevention of competition in the wholesale and retail petroleum markets in Quebec and Atlantic Canada.

58. **Southam Inc. and The Financial Post**: On September 2, 1998, the Bureau announced that it would not oppose Southam Inc.'s acquisition of *The Financial Post* from the Sun Media Corporation in exchange for $150 million and four Ontario dailies: *The Hamilton Spectator*, *The Daily Mercury* in Guelph, Kitchener-Waterloo's *The Record* and *The Cambridge Reporter*. The Bureau's focus when examining proposed mergers in the print media is with preserving competition in advertising. The Bureau concluded that combining *The Financial Post* with the new daily (now known as the *National Post*) would not prevent or lessen competition substantially in the marketplace. Moreover, it was felt that the introduction of the new, merged daily newspaper would drastically alter the newspaper landscape and that it could well result in even more vigorous competition.

59. **Sun Media Corporation, Torstar Corporation and Quebecor Inc.**: In the period October 1998 to January 1999 the Bureau reviewed three transactions involving Sun Media Corporation and its assets:

1. Torstar's bid for all outstanding shares of Sun Media.
2. A subsequent bid by Quebecor Inc. for all outstanding shares of Sun Media, and;

3. Torstar's proposed acquisition from Quebecor of *The Hamilton Spectator*, *The Cambridge Reporter*, Guelph's *The Daily Mercury* and *The Record* in Kitchener- Waterloo.

In the first instance, the Bureau concluded that Torstar's proposed acquisition of Sun Media could lead to a substantial lessening of competition in the Greater Toronto Area. The two companies were vigorous competitors for retail and classified advertising. However, the second case -- Quebecor's acquisition of Sun Media -- raised no issue under the Act. The two companies had no overlapping operations and did not compete for advertising. The Bureau did not identify any anti-competitive effects resulting from Torstar's proposed acquisition of Sun Media's newspaper holdings outside Toronto. Therefore it did not oppose Quebecor's sale to Torstar of the four Sun Media publications it had recently acquired in Hamilton, Cambridge, Guelph and Kitchener-Waterloo.

60. **Canadian Waste Services and WMI Waste Management of Canada, Inc.**: In October 1998, the Bureau announced that it would not challenge the acquisition by Canadian Waste Services of certain non-hazardous solid waste assets belonging to WMI Waste Management of Canada, Inc. Nonetheless, as a result of serious competition concerns identified by the Bureau in the commercial ?front-end' business, CWS agreed to divest WMI's commercial collection assets in certain markets.

III. The role of the Bureau in the formulation and implementation of other policies (regulatory and trade policy matters)

A. Regulatory policies

61. Pursuant to its mandate under ss. 125 and 126 of the Act, the Bureau frequently intervenes at hearings of federal and provincial regulatory boards and tribunals in Canada, the following examples detail the impact of the Bureau's interventions in various regulated sectors of the Canadian economy during FY 98-99.

i) Broadcasting, Telecommunications and New Media (Internet)

62. Fixed Satellite Services (Telesat Forbearance Canadian Radio-Television and Telecommunications Commission: CRTC PN 98-8 and Decision 98-4): On July 3, 1998, the Bureau filed submissions in response to a CRTC inquiry into the extent to which Telesat Canada's satellite services should be deregulated during the transition to competitive markets. The Bureau advocated that Telesat should continue to be regulated until such time as the CRTC was satisfied that the company would no longer be able to exercise market power. On January 18, 1999, the CRTC accepted the Bureau's relevant market definition and competitive analysis in determining the extent to which it would continue to regulate Telesat.

63. **Local telephone (Local competition start-up costs CRTC PN 98-10)**: On November 18, 1998, the Bureau provided comments to the CRTC in proceedings which considered the allocation of local telephone start-up costs between incumbents and new entrants. The Bureau argued that the CRTC should use principles of economically efficient pricing in determining the allocation of costs associated with providing access and interconnection arrangements for competition in local exchange services. The Bureau further expressed concern that existing local telephone companies, in an effort to limit competition, would attempt to pass on their costs to competitors. The CRTC issued its decision on March 12, 1999, adopting most of the Bureau's recommendations.

ii) Food

64. **Dairy Products Blends**: In December 1997, the Governor-in-Council directed the Canadian International Trade Tribunal (CITT) to inquire into imports of dairy blends outside the coverage of Canada's tariff rate quotas. Imports of dairy products blends, particularly butter oil/sugar blends, had become a matter of increasing concern, with some interveners recommending import tariffs of 300 percent. In March 1998, the Bureau submitted comments which argued that an examination of the domestic market for imports of dairy blends should take into account the positive competitive impact those imports would likely have on food processors in terms of choice, the cost of inputs, the efficiency of operations and sales. Moreover, the Bureau submitted that imposing tariffs would only delay adjustments the dairy industry would eventually have to make to an open trade environment. At the conclusion of the hearings, the CITT put forward several options to the Governor-in-Council. In its closing submission, the Bureau supported only one of these options -- special class pricing -- because it is welfare-enhancing, allows consumers and processors the benefits of import competition and is consistent with a gradual transition to a competitive market.

65. **Jarred Baby Food (Material Injury Intervention)**: In April 1998, the CITT determined that dumping of jarred baby food in Canada by Gerber Canada Inc., as found by Revenue Canada, had caused material injury to H.J. Heinz Company of Canada Ltd.'s domestic production of jarred baby food products. During its intervention, the Bureau had argued that other events, such as trade restrictive practices, had caused injury to Heinz. Duties averaging 30 cents per jar were imposed on Gerber baby food products. A consequence of this decision was the exit of Gerber from the Canadian market in April 1998, leaving Heinz as the sole marketer of jarred baby food in Canada. Gerber and the Bureau have sought to have the decision reviewed by a Bi-National Panel as provided by NAFTA's dispute settlement provisions. Heinz's subsequent challenge to the standing of the Bureau to seek a Bi-national Panel review was dismissed. The panel review is still pending.

66. **Jarred Baby Food (Public Interest Inquiry)**: Following the decision of the CITT in the Gerber baby food products inquiry, the Bureau, Gerber Canada Inc., and numerous public interest advocates sought and obtained a public interest inquiry into whether the CITT should recommend to the Minister of Finance that the duties on baby food sold in jars be reduced or eliminated. In November 1998, the CITT recommended that the duties be reduced by about two-thirds. According to the CITT, this recommendation recognised the interests of Canadian infants and caregivers in a competitive market. This recommendation to the Minister of Finance was accepted and implemented.

iii) Energy

67. **Ontario Electricity Sector Restructuring**: Ontario's *Energy Act*, adopted in the Fall of 1998, implements the restructuring of the province's electricity market (to be opened up to both retail and generation competition during 2000). The legislation incorporates many key market and regulatory elements advocated by the Bureau. In May and August of 1998, the Bureau provided submissions on restructuring the sector for a competitive environment to Ontario's Market Design Committee and to the legislative committee established to review electricity restructuring legislation. The focus of the intervention was to support the move to competition in Ontario's electricity generation and retail markets and to ensure that the roles of the Bureau and the industry regulator are appropriate to effectively deal with any competition issues that may arise and avoid unnecessary overlap and duplication between the two organisations.

68. **Ontario Natural Gas**: To promote deregulation and competition in the Ontario natural gas market, the Ontario government started consultations on revising regulatory legislation, including

legislation outlining the role and powers of the Ontario Energy Board (OEB). Pursuant to this review, the Bureau in the fall of 1997 filed submissions and appeared before the OEB to provide advice on the changes that would be necessary for deregulation. During the reporting period, the Bureau provided comments to an Ontario legislative committee on proposed amendments to the gas sector regulatory structure and on proposed licensing requirements for gas marketers. The Bureau's interventions advocated market structure changes to allow consumers to enjoy the benefits of a more competitive and efficient natural gas supplies.

69. **Alberta Electricity Market Restructuring**: Pursuant to the continued restructuring and opening up of the Alberta electricity market, the Provincial government sought to have clarified the appropriate roles and responsibilities for the Alberta electricity regulators and the Bureau, and also to provide Alberta market participants with information on Canadian competition law and policy. During FY 98-99, the Bureau made a presentation to the Market Surveillance Workshop on Competition Law in Alberta. The Bureau also contributed to the Alberta government's Electricity Market Surveillance Regulation, which was adopted in December 1998. As a result, clear lines of authority have been drawn between Alberta's Market Surveillance administrator and the Bureau. Thus, the surveillance authority will refer any business behaviour which may contravene the Act directly to the Bureau for investigation and possible action.

iv) Miscellaneous

70. **Draft Ontario Franchise Disclosure Legislation**: In August 1998, the Bureau made a submission on Ontario's proposed Franchise Disclosure Legislation. In light of a number of complaints from franchisees about alleged misrepresentations by franchisers, the Bureau expressed its support for the proposed disclosure requirements. The Bureau also cautioned against legislation that would lead to common pricing; market or customer allocation; joint action to prevent entry; preventing franchisees from setting prices lower than those suggested by their franchisers; and any conduct that could lessen competition within the industry or for Canadians. While the proposed legislation lapsed on the Order Paper, there are plans to re-introduce it.

B. Trade and industrial policies

71. In an increasingly interconnected world in-which anti-competitive business behaviour tends to have cross-border effects, no enforcement agency can afford to solely focus on its domestic market. Therefore, the Bureau is actively involved in promoting co-operation among national enforcement agencies and the development of sound competition, trade, and industrial laws and policies both domestically and internationally.

72. **Organisation for Economic Co-operation and Development**: The Bureau is an active and enthusiastic participant in the activities of the OECD Competition law and Policy Committee and its working parties, the Joint Group on Trade and Competition and the Consumer Policy Committee.

73. **Internationalisation of Competition Policy**: The Bureau is currently actively involved in a working group at the World Trade Organisation (WTO) examining the interaction between Trade and Competition Policy. Rather than continue with the *ad hoc* approach to competition policy reflected in recent WTO agreements, the Bureau has been active in examining the viability of establishing a sound multi-lateral competition framework at the WTO which will advance competition policy internationally.

74. F**ree Trade Negotiations**: Bureau officials were active in ongoing negotiations of competition policy chapters in the context of free trade discussions at the FTAA (Free Trade Area of the Americas) and with the European Free Trade Association (EFTA).

75. **X-ray Fluorescence Analysis for Jewellery**: Bureau staff have been working with colleagues at home and abroad to find new ways to assess the precious metal content of jewellery without having to dismantle or break it. To broaden the Bureau's network, it participated in the June 1998 meeting of the International Conference of the Association of European Assay Offices held in Prague, the Czech Republic.

76. **Voluntary Codes of Conduct**: In September 1998, the Bureau addressed delegates to the Canadian Real Estate Association's national conference and trade show, setting out its vision for replacing the ten-year-old Prohibition Order with an effective Voluntary Code of Conduct. (The Prohibition Order is effectively a mandatory code of conduct for the industry in regard to competition matters.) The Bureau is a strong advocate for the adoption of voluntary codes of conduct -- promoting best competition practices rather than minimal compliance with the law -- across Canadian trade and industrial sectors. Towards this end, Bureau staff are consulting with stakeholders in the real estate sector to develop a Code of Conduct which will build on the achievements engendered by the Prohibition Order.

77. **Labelling, Accreditation and General Competition Issues**: Bureau staff were involved, as well, with industry and other government agencies to promote awareness of labelling, accreditation and general competition issues involving jewellery appraisers, software manufacturers and the labelling of pet food products.

IV. Resources of the Bureau

78. In FY 98-99, the operating budget of the Bureau was $29.8 million including carry forward. A substantial proportion of the budget, $19.9 million, was allocated to salaries for 352 full time staff consisting of 20 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 cost for 13 lawyers employed by the Department of Justice who are assigned to Industry Canada's Legal Services Unit.

79. The Bureau has administrative responsibility for collecting fines imposed by the courts. During the reporting period, approximately $42 million was levied in fines, out of which approximately $39 million became due immediately. Over $38 million of the amount due has been collected.

V. New studies related to competition policy

80. In October 1998, the Bureau in partnership with other sectors of Industry Canada published a research volume entitled *Competition Policy and Intellectual Property Rights in the Knowledge-based Economy.* One of its general editors, Robert Anderson, was chief of economic policy at the Bureau prior to joining the WTO. The publication analyses competition policy as well as intellectual property rights in Canada.

Appendix 1

Selected activities of the Competition Bureau	1995-96	1996-97	1997-98	1998-99
Total complaints/information requests	**1.424**	**2.04**	**6.939**	**10.009**
Examinations (two or more days of review)	**83**	**77**	**870**	**601**
Applications for inquiries under section 9	**6**	**10**	**11**	**11**
Inquiries in progress at year end	**37**	**45**	**40**	**48**
Written advisory opinions	**240**	**170**	**235**	**75**
Inquiries formally discontinued	**29**	**9**	**29**	**21**
Matters referred to the Attorney General of Canada	**4**	**0**	**8**	**8**
Matters referred -- further action not warranted	**1**	**0**	**2**	**0**
Prosecutions or other proceedings commenced	**4**	**1**	**6**	**8**
Applications to the Competition Tribunal (Mergers)	**1**	**3**	**4**	**5**
Applications to the Tribunal (other matters)	**3**	**0**	**4**	**0**
Representatives before regulatory bodies	**10**	**11**	**14**	**15**

Civil Matters - selected activities	1995-96	1996-97	1997-98	1998-99
Total complaints/information contacts	**456**	**561**	**503**	**819**
Examinations commenced (two or more days of review)	**28**	**31**	**41**	**29**
Applications for inquiries under s. 9	**4**	**2**	**3**	**4**
Inquiries in progress at year end	**13**	**16**	**5**	**8**
Written advisory opinions	**4**	**1**	**0**	**0**
Inquiries resolved by alternative case resolution	**3**	**4**	**4**	**3**
Inquiry Discontinuances	**2**	**4**	**11**	**6**
Interventions				
CRTC	**5**	**2**	**9**	**8**
Provincial	**1**	**3**	**3**	**5**
CITT	**2**	**-**	**2**	**1**
Policy work	**2**	**6**	**2**	**1**

Criminal matters -- selected activities	1995-96	1996-97	1997-98	1998-99
Total complaints/information requests	**968**	**1.479**	**1.285**	**937**
Examinations commenced	**55**	**46**	**39**	**49**
Applications for inquiries under s. 9	**2**	**8**	**4**	**7**
Inquiries in progress at year end	**24**	**29**	**20**	**26**
Matters referred to the Attorney General of Canada	**4**	**0**	**3**	**7**
Matters where charges were laid	**4**	**1**	**3**	**6**
Matters where Attorney General declined to proceed or withdrew charges	**1**	**0**	**1**	**0**
Matters before the Courts	**14**	**10**	**8**	**6**
Prosecutions concluded	**8**	**22**	**48**	**16**
Examinations resolved by information contacts	**16**	**32**	**13**	**11**
Written advisory opinions	**14**	**14**	**12**	**8**
Mutual Legal Assistance Treaty (MLAT) requests	**3**	**1**	**0**	**0**
Searches	**4**	**0**	**1**	**5**

Mergers	1995-96	1996-97	1997-98	1998-99
Examinations commenced (includes notifiable transactions and ARCs)	**228**	**319**	**393**	**360**
Notifiable transactions	**100**	**140**	**195**	**192**
Advance ruling certificates requests	**142**	**224**	**284**	**222**
Examinations concluded				
As posing no issue under the Act	**204**	**296**	**398**	**337**
With monitoring only	**4**	**2**	**2**	**0**
With pre-closing restructuring	**0**	**1**	**0**	**0**
With post-closing restructuring/undertakings	**0**	**0**	**3**	**0**
With consent orders	**0**	**1**	**0**	**2**
Through contested proceedings	**0**	**0**	**0**	**2**
Where parties abandoned proposed mergers in whole or part as a result of Commissioner's position	**3**	**0**	**0**	**1**
Total examinations concluded (includes Tribunal matters but not ARCs and advisory opinions)	**84**	**116**	**163**	**153**
Advance ruling certificates issued	**121**	**188**	**236**	**192**
Advisory opinions issued	**10**	**2**	**4**	**6**
Examinations ongoing at year end	**52**	**65**	**55**	**50**
Total examinations during the year	**267**	**371**	**458**	**401**

Mergers (cont'd) -- Applications and Notices of Application before the Tribunal				
Concluded or withdrawn	**1**	**1**	**2**	**4**
Ongoing	**2**	**2**	**2**	**1**

Fair Business Practices -- selected activities	1995-96	1996-97	1997-98	1998-99
Total complaints received	**6.752**	**6.277**	**5.148**	**8.253**
Applications for inquiries under section 9	**5**	**2**	**4**	**0**
Inquiries commenced	**8**	**18**	**9**	**4**
Completed examinations/inquiries	**278**	**383**	**397**	**163**
Information contacts (includes only written contacts)	**86**	**246**	**208**	**137**
Inquiries formally discontinued				
Cases involving undertakings (discontinued inquiries involving undertakings are reported for the FY in which they were discontinued; accordingly, these may not coincide with the actual number of undertakings received in any given FY)	**9**	**8**	**2**	**3**
Other cases	**10**	**17**	**7**	**4**
Undertakings received	**4**	**4**	**2**	**3**
Matters referred to the Attorney General of Canada	**7**	**3**	**5**	**1**
Matters where further action is not warranted (may include matters referred during previous years)	**3**	**0**	**1**	**0**
Prosecutions commenced (may include matters referred during previous years)	**7**	**4**	**3**	**2**
Prohibition orders without conviction	**1**	**0**	**0**	**1**
				Prosecutions concluded
Convictions	**14**	**8**	**7**	**5**
Non-convictions (includes discharges, withdrawals, stays of proceedings, etc. Charges against some accused are often withdrawn after other accused in the same case have pleaded guilty. Accordingly, there is some overlap.)	**4**	**2**	**0**	**0**
Total Fines	**$879.850**	**$241.500**	**$573.300**	**$1.402.500**

NOTES

1. See the section on Mergers, below, for more details on the proposed bank mergers.

2. For examples of the results of this relationship, see cases infra.

3. For statistical information, please see Appendix 1.

4. On March 11, 1999, the Bureau's investigation into a Montreal-based telemarketing firm resulted in the first prison terms ever imposed by a Canadian court against deceptive telemarketers under the Act. American Family Publishers, Publishers Central and First Canadian Publishers bilked hundreds of vulnerable Canadians out of their savings by promising valuable prizes if they purchased various items at what turned out to be grossly inflated prices. Upon pleading guilty, Vijay Sharma (president) and telemarketers Donald Dubois, Maxime Julien, Adrian Rewjakin and André Zouvi were fined, given jail terms and ordered to carry out community work.