

Unclassified

DAF/COMP(2005)32/04



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

30-Sep-2005

English text only

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

DAF/COMP(2005)32/04
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CANADA

-- April 1, 2004 through March 31, 2005 --

This report is submitted by the Canadian Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 October 2005.

JT00190743

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Executive Summary

1. Due to strong economic activity, the Competition Bureau (Bureau) received an increased number of merger notifications. The most important cases involved the telecommunications, transportation and natural resources sectors.
2. The Bureau actively investigated international cartels and deceptive marketing practices. It successfully obtained a fine of \$9 million against Crompton Corporation for its participation in an international conspiracy. The Bureau also obtained a landmark *Competition Act* ruling against Sears Canada Inc. for making false or misleading representations in advertising discounts on certain tires. This was the first ruling under the "ordinary selling price" provisions of the *Competition Act*.
3. On the international front, the Bureau received delegations from various countries, held international consultations on efficiencies and supported the signing of a Positive Comity agreement between Canada and the US. The Bureau has also contributed to the work of international organisations such as the Organisation for Economic Cooperation and Development, International Competition Network, the Asia-Pacific Economic Cooperation and the International Consumer Protection and Enforcement Network. The Bureau maintained contact with its foreign counterparts to facilitate the enforcement of the Act in the area of mergers and conspiracy.
4. On November 2, 2004, proposed amendments to the *Competition Act* were introduced in the House of Commons. These amendments, would, amongst other things, authorise the Commissioner to seek restitution for consumers, introduce a general administrative monetary penalty for abuse of dominance, and decriminalise the pricing provisions of the *Competition Act*.
5. Public documents, including more detailed descriptions or full texts of many matters referred in this report are available on the Bureau Web site in English at www.competitionbureau.gc.ca and in French at www.bureaudelaconurrence.gc.ca.

Introduction

1. This report describes recent competition law and policy developments in Canada and summarises the enforcement activities of the Competition Bureau ("Bureau") for the fiscal year April 1, 2004, through March 31, 2005.

I. Changes to Competition Laws and Policies

A. Summary of New Legal Provisions of Competition Law and Related Legislation

6. No new legal provisions to the *Competition Act* came into effect during the period covered by this Annual Report.

B. Other Relevant Measures

7. Since their first release in 1991, the Merger Enforcement Guidelines (MEGs) have been a useful tool in outlining the basic analytical framework for merger review in Canada. Given legal and economic developments since 1991, the Bureau felt it was appropriate to review the MEGs to ensure that they remain up-to-date and as useful as possible to merging parties and counsel. The revised guidelines were released in September 2004 and are available on the Bureau Web site.

8. On September 23, 2004, the Bureau clarified its approach to the enforcement of the Competition Act in relation to the airline industry. The Bureau sent an open letter to all major Canadian airlines and outlined changes to the airline industry. In light of these developments and based on the views of various industry stakeholders, the Bureau indicated the policy that it would follow in enforcing the predatory pricing and abuse of dominance provisions of the Act. The major points of this policy are: the principles established by the Competition Tribunal (in Phase 1 of the Air Canada Case) regarding application of the avoidable cost test will be relevant for future cases which may arise in similar circumstances; the avoidable cost test is only one part of the abuse of dominance analysis and the other elements of section 79 (dominance, practice of anti-competitive acts and substantial lessening or prevention of competition) will have to be considered; the purpose of avoidable costs set out in the Airline Regulations (to distinguish predatory actions from vigorous competition) is to focus on actions taken by a dominant domestic carrier against competitors which is only triggered by a significant response by a dominant carrier to competition or new entry; the actions by a dominant carrier that could attract enforcement action include reducing fares to undercut a competitor, adding significant capacity, failing to remove capacity in accordance with its seasonal or other usual practices, or substantially increasing the number of tickets offered at fares which match the lowest fares of a competitor. As a general principle, the Bureau will not take enforcement action against fare matching.

9. The Bureau has concluded a consultation process examining efficiencies, including national and international consultations, and the appointment of an Advisory Panel of experts. In September 2004, the Bureau published a consultation paper entitled Treatment of Efficiencies in the *Competition Act*, which outlined various proposals. The Bureau has hired the Intersol Group to conduct national consultations based on the consultation paper and many submissions were received (<http://www.primestrategies.ca/bureau>). In January 2005, roundtables were held in Vancouver, Toronto and Montreal. In October 2004, an international meeting was held to discuss the role of efficiencies in competition. The participants were Australia, Canada, the European Union, Mexico, the UK, and the US. The focus was on the practical issues arising from the consideration of efficiencies. In particular, merger and non-merger situations, evidentiary rules, and post merger review and monitoring were discussed. Written submissions were submitted by Germany, Japan, Norway, Sweden, and South Africa, and the Bureau published a report of the findings on its Web site. In March 2005, an advisory panel of experts, with backgrounds in business, economic policy and trade, was appointed by the Commissioner to help assess the role that efficiencies should play in the context of Canada's economy in the 21st century. In particular, it considered the economic and business developments since the efficiencies defence was first proposed by the Economic Council of Canada in 1969.

10. On October 29, 2004, the Competition Bureau announced that it has begun consultations on the role of the regulated conduct defence (RCD) in the application of competition law. The RCD raises a number of questions about how sector-specific regulations and competition law overlap. In December 2002, the Bureau published the Information Bulletin on the Regulated Conduct Defence to provide some guidance on the Bureau's approach to this issue. In addition, the recent Supreme Court of Canada's decision in *Garland v. Consumer's Gas* could affect the application of the RCD. The Bureau has decided to consult on this issue and has invited parties to provide comments and suggestions.

11. In 2002, the House of Commons Standing Committee on Industry, Science and Technology released a report recommending a wholesale reform of competition policy in Canada. One third of the recommendations contained in the report focused on the need to amend the conspiracy section of the Act. As a result, the Bureau is currently reviewing this section for possible reform¹. The Act prohibits

¹ The OECD's 2004 Economic Survey of Canada also supported changes to the cartel provisions. The OECD recommended "The Competition Act could be strengthened by permitting ready prosecution of hard-core criminal offences while providing appropriate civil law enforcement for economic conduct that warrants more refined examination, and by converting the prohibitions on predatory and discriminatory

conspiracies that restrain competition or enhance prices that have “undue” anti-competitive effects. Conspiracies are not “per se” illegal in Canada and proof of a violation requires the prosecution to show beyond a reasonable doubt that an agreement existed which had the effect of “unduly” lessening competition. The section has been criticised for failing to deter hard-core cartels adequately because of the complexity of economic evidence required and for not explicitly distinguishing between hard core price fixing conspiracies and other forms of agreements or arrangements between competitors that may otherwise be pro-competitive. The goal is to reform the conspiracy provision in order to deter the most egregious cartel behaviour that has a negative impact on the economy with a new and more effective criminal provision, while encouraging pro-competitive alliances. It is also believed that reform could lead to increased compatibility with other jurisdictions and facilitate increased international investment and cooperation. Public consultations regarding amendment proposals were held in 2000 and 2002. Many legislative models have been put forward. However, all models have generated criticism and no single or obvious solution has emerged. Due to the complexity of the issues and to the fact that section 45 is one of the cornerstones of the Act, more discussion and analysis is required. Accordingly, since the completion of the most recent consultation process, the Bureau has undertaken a systematic analysis of different models and the existing provision. The analysis includes applying each legislative model to a variety of situations in an effort to determine how each model reacts in various circumstances. The models are being measured against criteria including clarity, the ability to capture the most egregious behaviours and the ability to screen out legitimate strategic alliances. Consultations and discussions with stakeholders will also continue while the analysis is ongoing.

C. Government Proposals for New Legislation

Bill C-19

12. On November 2, 2004, Bill C-19, An Act to Amend the *Competition Act* and to make Consequential Amendments to Other Acts, was introduced in the House of Commons. On November 16, 2004, following first reading, Bill C-19 was referred for review to the House of Commons Standing Committee on Industry, Natural Resources Science and Technology. The proposals included in Bill C-19 are firmly rooted in the above-mentioned 2002 report released by the House of Commons Standing Committee on Industry, Science and Technology. The proposed changes also take into account the various viewpoints expressed during the consultation process leading to the tabling of Bill C-19. As a result of the Committee report and a subsequent government response, national consultations were launched in June 2003 with the publication of a Discussion Paper. The Public Policy Forum (PPF), an independent non-profit organisation, conducted the national consultations based on the Discussion Paper. Over 100 written submissions were received and as many stakeholders took part in roundtable discussions held across the country.

13. The proposed amendments included in Bill C-19 are aimed at strengthening Canada’s competition framework in the global economy, while balancing the interests of consumers and businesses, both large and small.

14. The proposed amendments contained in Bill C-19 will benefit Canadian consumers and businesses by:

- providing authority for the Commissioner of Competition to seek restitution for consumer loss resulting from false or misleading representations;

pricing from criminal to civil violations”. The review was released in October 2004 by the Economics and Development Review Committee of the OECD. Similar recommendations were also noted in the OECD Competition Committee’s review of Canada (released in January 2005).

- introducing a general administrative monetary penalty provision for abuse of dominance in any industry;
- removing the airline-specific provisions from the Act to return it to a law of general application;
- increasing the level of administrative monetary penalties for deceptive marketing practices; and
- decriminalising the pricing provisions.

D. *International Cooperation Developments*

15. The OECD Competition Committee and its working parties have, over the years, examined various competition issues dealing with mergers (use of economists in merger control, cross border remedies in merger cases, information sharing and media mergers), cartels (raising awareness of harm caused by cartels, information sharing in international cartel investigations and sanctions against individuals), regulation of market activity by the public sector, intellectual property rights, private enforcement, cooperative relationships, predatory foreclosure and consumer/competition interface. Commissioner Scott was elected to the Bureau of the Competition Committee on June 8, 2004.

16. Canada's competition law and institution were reviewed by both the OECD's Economic and Development Review Committee and Competition Committee during 2004. The Competition Committee review follows up on the Regulatory Reform Review of Canada that was carried out in 2002. The new reports - OECD Competition Committee Review of Canada - Report on Competition Law and Institutions (released January 2005) and Economic Survey Canada 2004 (released October 2004) evaluate how the Bureau has implemented the policy recommendations from the 2002 report and make additional recommendations on how the Bureau can improve competition law in Canada.

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

18. Canada continues to be an active member of the International Competition Network (ICN). Commissioner Scott was named a vice-chair of the ICN Steering Group on April 22, 2004. The Commissioner will also co-chair the new Working Group on telecommunication services. The Bureau also takes other leadership positions in the ICN by co-chairing the subgroup on enforcement techniques for cartels, the Operational Framework Working Group and Subgroup 2 of the Competition Policy Implementation Working Group on Enhancing the Role of Competition.

19. The Bureau also participated in the Mergers Investigative Techniques workshop and Cartels workshop, and is active in the Working Groups on Antitrust Enforcement in the Regulated Sectors, mergers and cartels.

20. Canada has been active in providing technical assistance and cooperation to other APEC Member Economies. Each APEC Member Economy submits an Individual Action Plan (IAP) or annual report to monitor the progress toward the targets set in 1994 in Indonesia for freer and more open trade and investment in the APEC region. The Bureau participated in the preparation of Canada's 2004 IAP. For additional information, see the "Competition Policy" chapter of Canada's IAP on the APEC Web site (<http://www.apec.iap.org>).

21. An APEC-OECD Agreement was developed on joint work on regulatory reform. Workshops were the focus of the first phase. The second phase, currently underway, focuses on the elaboration of an APEC-OECD Integrated Checklist for self-assessment on regulatory, competition and market-openness policies. A conference in November 2004 in Thailand concluded the preparation of the Checklist and elicited the comments and support of Members and stakeholders. The Checklist will be submitted to the respective political bodies of APEC and the OECD for subsequent approval and endorsement in 2005.

22. This year, the Bureau provided assistance to a number of countries, including Vietnam and Mexico. Such assistance included providing information on Canadian competition policy, law and practices; welcoming visitors from foreign governments and competition authorities; helping to develop or refine foreign competition laws; and providing advice on how to deal with particular types of investigations.

23. Jurisdictions that cooperated with the Bureau on ongoing international cartel and merger cases included the US, the EU and Australia.

24. The Bureau has participated in the area of deceptive telemarketing and mail solicitation through a number of new initiatives, including support for international guidelines for increased co-operation against cross-border fraud and deceptive commercial practices; an anti-fraud education campaign that has been adopted for use in the US and the UK; and increased cooperation with other international enforcement agencies in its investigations.

25. On October 5, 2004, Canada and the US signed an agreement on the Application of Positive Comity Principles to the Enforcement of their Competition Laws. The “positive comity” agreement was signed by Canada’s Ambassador to the US, Michael Kergin, US Attorney General John Ashcroft and the Chairman of the US Federal Trade Commission, Deborah Platt Majoras.

26. Positive comity agreements allow one country to request another to investigate and, if warranted, remedy anti-competitive activities that are causing harm to the requesting country’s economy. A request can only be made where the conduct causing harm may violate the requested country’s laws. In addition, the requested country has the sole discretion on whether to act on the request to address the matter under its laws.

27. The positive comity agreement supplements the 1995 agreement between Canada and the US, which sets out a framework for notification, coordination and cooperation on enforcement activities, exchange of information, avoidance of conflict and positive comity. The new agreement describes more specifically the circumstances and procedures for making positive comity requests.

28. Negotiations are continuing between Canada and Japan on a cooperation agreement for competition law. The proposed agreement is expected to provide a framework for coordination and cooperation to deal effectively with anti-competitive business activities affecting both countries.²

29. The Bureau, in partnership with the Department of Foreign Affairs and the Department of International Trade, contributes to the development of competition provisions in bilateral and regional agreements. Canada is currently involved in free trade negotiations with the Central American Four (El Salvador, Guatemala, Honduras and Nicaragua) and Singapore, and is seeking to include competition policy provisions in these agreements. Canada has also begun exploratory discussions with the Republic of Korea on a bilateral Free Trade Agreement, and is seeking to include competition policy provisions. Although formal Free Trade Area of the Americas negotiations have not advanced since February 2004,

² This agreement was signed on September 6, 2005.

the Bureau continues to support the development of a regional framework regarding competition policy within a future FTAA agreement.

30. In October 2004 and March 2005, Bureau representatives participated in bi-annual meetings of the International Consumer Protection and Enforcement Network (ICPEN), held in London and Edinburgh, UK. ICPEN is a voluntary organisation of the trade practices law enforcement authorities of 33 countries, most of which are members of the OECD. Its mandate is to share information about cross-border commercial activities that may affect consumer interests and to encourage international cooperation among law enforcement agencies. At the London meeting, Bureau representatives delivered a presentation on best practices on consumer education and awareness, based on the experience gained through Canada's Fraud Prevention Forum (FPF) chaired by the Bureau. Based on the success of the FPF in Canada, interest expressed by ICPEN members and recognition by ICPEN members of the importance of consumer education in combating deceptive marketing practices, ICPEN decided to hold an ICPEN Fraud Awareness Month (FAM) in February 2005. Seventeen ICPEN members, including the Bureau, participated. At the Edinburgh meeting, a Bureau representative reported back to ICPEN on the FAM in Canada. Given its overall success, ICPEN decided to repeat the initiative in 2006 in the hope that more members may participate. The Edinburgh meeting also offered ICPEN members an opportunity to explore the role ICPEN can play in furthering the implementation of the *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders*. ICPEN members agreed to set up a working group on Mass-Marketing Fraud, as ICPEN member law enforcement agencies are committed to work towards achieving greater cooperation on cross-border law enforcement.

II. Enforcement of Competition Laws and Policies

A. Action against anticompetitive practices, including abuses of dominant positions, price maintenance, conspiracies and bid-rigging

a) Abuse of Dominance

31. On March 5, 2001, the Bureau applied to the Competition Tribunal for an order prohibiting Air Canada from engaging in anti-competitive practices directed against low cost carriers WestJet and Canjet. The Tribunal decided to hear the case in two-phases, first dealing with the definition of avoidable cost. The second phase of the hearing dealt with whether Air Canada was dominant on the routes in question. In September 2004, Air Canada emerged from bankruptcy protection. A month before its emergence, Air Canada made an application to the Minister of Transport to rescind the Undertakings provided by Air Canada to the Commissioner in December 1999. The Minister requested the views of the Commissioner and, on August 17, 2004, pursuant to an Order in Council, the Undertakings were rescinded. On October 29, 2004, the Commissioner decided that it would not be in the public interest to pursue the second part of the case before the Tribunal in light of the passage of time and significant changes in the industry. The Bureau indicated that the principles established by the Tribunal in the application of an avoidable cost test to assess predatory pricing will be relevant for future cases.

32. In March 2004, six Members of Parliament had complained about increases in car, property and commercial insurance premiums in Canada. They alleged that the insurance industry was abusing its dominant position and not providing Canadians with reasonable and competitive rates. The Bureau also received complaints from several members of the public. After reviewing the complaints, the Bureau announced on August 27, 2004, that it had found no evidence to suggest that any insurance company or group of companies had engaged in conduct that violated the *Competition Act*.

33. In August 2004, CBC/Radio-Canada filed a complaint with the Bureau over an arrangement between Bell Globemedia (CTV/TSN/RDS) and Rogers Media Inc. (Sportsnet) to submit a joint bid to the

International Olympic Committee for Canadian broadcasting rights to the 2010 and 2012 Olympics. The complainants were concerned that the combination of CTV's conventional broadcasting capability with the two largest sports specialty channels, TSN/RDS and Sportsnet, would preclude CBC/Radio-Canada from bidding for these games by denying it access to a sports specialty channel. The complainants alleged that the alliance raised issues under the Act's abuse of dominance, mergers, and criminal provisions. On November 19, 2004, the Bureau announced that it had concluded that the bidding process for Canadian broadcasting rights to the 2010 and 2012 Olympics did not violate the *Competition Act*.

34. On February 3, 2005, the Competition Tribunal issued a decision dismissing the Commissioner's application filed in 2002 for an order prohibiting Canada Pipe Company Ltd. /Tuyauteries Canada Ltée from engaging in anti-competitive acts through its Bibby Ste-Croix Division. The application alleged that Bibby was abusing its dominant position in the supply of cast iron pipe, fittings and mechanical joint couplings for drain, waste and vent (DWV) applications in markets across Canada. The company's loyalty program required its clients to purchase all their DWV products exclusively from Bibby in return for substantial rebates the company offered. The Bureau argued that the loyalty program locked in Bibby's customers, reduced competition, and prevented greater competition from existing competitors and potential entrants. The Tribunal concluded that Canada Pipe controlled over 80% of the market but its loyalty program was not an anti-competitive act and, based on the evidence, had not substantially lessened or prevented competition. The Commissioner filed a Notice of Appeal of this decision with the Federal Court of Appeal on March 7, 2005. Canada Pipe filed a Notice of Cross-Appeal on March 17, 2005.

b) *Price Maintenance*

35. In May 2002, the Bureau opened an inquiry dealing with providers of advertising space in Greater Montreal and the surrounding area who refused to publish real estate brokerage commission rates in their advertisements. It was also alleged that certain brokers and real estate agents from the greater Montreal area had pressured the advertising space providers to act accordingly and had also pressured certain brokers and real estate agents to increase their commission rates. In June 2003, the Bureau informed these advertising space providers of the relevant provisions under the *Competition Act* with regard to price maintenance and discriminatory practices. The providers under inquiry assured the Bureau that they would take the necessary steps to comply with the *Competition Act*. The information obtained in the course of subsequent checks on the brokers and real estate agents did not justify pursuing the case or taking any further action and the inquiry was discontinued in May 2004.

36. In the spring of 2004, a company informed one of its retailers that it would reduce its dog food discounts because the retailer was selling the product at lower prices than its competitors. The Bureau met with the company representatives to explain the price maintenance provision of the *Competition Act*. As a result, the company agreed to provide the same discounts to all retailers regardless of the prices charged by its retailers.

37. In the fall of 2004, a bicycle manufacturing company terminated its supply to a Western Canada retailer because of its low prices. The matter was resolved after the Bureau met with company representatives to review the price maintenance rules of the *Competition Act* and the company agreed to re-supply the retailer.

38. In September 2004, the Bureau responded to a complaint concerning a by-law of a professional association regarding advertising. The Bureau's review of the by-law identified provisions on the advertising of prices that raised concerns under the price maintenance provision of the *Competition Act*. The provision stipulated that any advertisement of a price or a price reduction by a member of the association must remain in effect for a minimum period and may have led members to believe that they no

longer had control over their retail price. The association agreed to modify its by-law so that it would not raise any more concerns under the *Competition Act*.

39. In October 2004, the Bureau resolved price maintenance concerns arising from allegations that John Deere Limited was preventing its dealers from selling its Series 100 lawn tractors below a certain price, contrary to section 61 of the *Competition Act*. Following a Bureau investigation, John Deere Limited agreed to terms of a prohibition order, which included an obligation to compensate consumers. The prohibition order required the company to make a 5% voluntary rebate payment to each person who purchased a Series 100 lawn tractor in the period between January 1, 2003 and August 31, 2003, an expected consumer restitution of \$1.2 million. It also required John Deere Limited to develop and implement a competition compliance policy and training program for its dealers and their employees responsible for the pricing, sales, and marketing of the Series 100 tractors in Canada.

40. In November 2004, an East Coast distributor informed retailers who discounted their fine art prints below recommended retail prices that they would be cut off from their supply if they maintained their low price policy. The Bureau discussed the price maintenance provision of the *Competition Act* with company representatives who agreed to inform their retailers of the *Competition Act* and indicate that price discounting was allowed.

41. In November 2004, Royal Group Technologies (Quebec) Inc. ("RGT") pleaded guilty to attempting to influence another company to maintain the price of polyvinyl chloride (PVC) window coverings such as vertical blinds and valances. RGT was fined \$200,000 and, pursuant to a prohibition order, is required to implement a policy to ensure that the company's future business practices comply with the *Competition Act*.

c) *Conspiracy*

42. In January 2004, the Bureau received two similar complaints that members of two separate hotel associations located in different parts of Canada had each agreed to implement a 3% Destination Marketing Fee ("DMF") on room rates to fund increased marketing initiatives in the destination cities. The Bureau met with each association to discuss its concerns about the alleged agreements as well as concerns that the DMF might be misrepresented to the public as a government tax. The Bureau advised both groups that an agreement between competitors to contribute money to a central fund to finance marketing in the destination cities would not, in and of itself, violate the *Competition Act*, provided each hotel independently decided how they would finance their respective contribution. To resolve the Bureau's concerns, the associations implemented training programs to ensure that hotel staff accurately portrayed the nature of the DMF to consumers. One association also agreed to redraft its agreement to make clear that it was up to each member to decide how they would finance their DMF contribution, while the second association delayed its implementation of the DMF pending a review of its membership agreement.

43. In May 2004, Crompton Corporation, a US-based global marketer of specialty chemicals, polymer products and processing equipment, pleaded guilty for its part in an international conspiracy to increase the price of rubber chemicals used in products such as tires, car bumpers and rubber hoses. The company was fined \$9 million.

44. In July 2004, following an investigation by the Bureau, six taxi companies and seven individuals were charged with conspiracy under section 45 of the *Competition Act*. This was further to an inquiry initiated in January 2001 into an alleged agreement to lessen competition in bidding for taxi-service contracts in St. John's, Newfoundland and Labrador. The Bureau alleges that, between 1992 and 2004, the

taxi companies agreed not to compete with each other for contracts to supply taxi services to institutional and commercial facilities in the city of St. John's.³

45. In July 2004, Morganite Canada Corp. of Mississauga, Ontario pleaded guilty and was fined \$450,000 for its part in a price-fixing conspiracy among manufacturers of carbon brushes and current collectors. These products transfer electrical current from wires or rails to vehicles such as subways, streetcars, and light rail trains. During the period in which the conspiracy operated, Morganite Canada Corp., also known as National Electrical Carbon Canada, sold approximately \$2 million worth of carbon brushes and current collectors to transit authorities in Canada. In related proceedings, the Morgan Crucible Company, a holding company based in the United Kingdom, pleaded guilty to obstructing the Bureau's investigation into price fixing of carbon brushes and current collectors. The company was fined \$550,000.

46. In September 2004, VAW Carbon GmbH, a German manufacturer and distributor of carbon and graphite cathodes, pleaded guilty for its role in an international price-fixing conspiracy in respect of cathode blocks and was fined \$500,000. Cathode blocks are used principally in the production of primary aluminium. In November 2004, another conspirator, Nippon Electrodes Company, Ltd. of Japan, pleaded guilty in for its role in the international conspiracy to fix the price of cathode blocks. The company was fined \$225,000.

47. In September 2003, charges were laid in the British Columbia Provincial Court against Chanoix Trading Ltd. and two company executives for an alleged conspiracy to lessen competition in the supply of anthraquinone, a chemical used in the manufacture of pulp. In December 2004, the Attorney General stayed charges in this matter, having determined that it was not in the public interest to proceed.

48. In December 2004, the Bureau discontinued its inquiry into allegations that real estate companies and their common counsel conspired to fix prices charged to telecommunications services providers for access to buildings that the real estate companies owned or managed. After reviewing the evidence obtained under the inquiry, the Bureau determined that the conduct in question did not amount to a violation of the conspiracy provision of the *Competition Act*.

49. In January 2005, the Bureau discontinued its inquiry into allegations that John Deere Limited and a wholesale retailer had unreasonably enhanced the selling price of John Deere Series 100 lawn tractors contrary to section 45 of the *Competition Act*. The Bureau concluded that it did not have sufficient evidence of conspiracy. The price maintenance aspect of the inquiry was resolved without charges by way of a prohibition order on the consent of John Deere Limited.

50. In March 2005, a former senior vice president of UCAR International Inc. [now Graf Tech International Ltd.], pleaded guilty and was fined \$50,000 for his role in a conspiracy to fix the price of graphite electrodes.

d) *Bid-Rigging*

51. In October 2004, a procurement and contracting officer from a government agency contacted the Bureau about a tender issued for two information access specialists with respect to Canada's *Access to Information and Privacy Act*. Two very similar bids were received in response to the tender. The information suggested that the two bid respondents, who were first-time entrepreneurs, had agreed on the bid and were unaware of the bid-rigging provisions of the *Competition Act*. The Bureau met with the

³ The preliminary hearing is scheduled to begin on January 9, 2006.

respondents and explained the bid-rigging provisions. They agreed to comply with the *Competition Act* in any future bid activity.

B. Mergers and Acquisitions

a) *Statistics on Mergers Notified and/or Controlled Under the Competition Act*

52. During the 2004-2005 fiscal year, the Bureau's Mergers Branch concluded 265 merger examinations. 18 merger examinations were ongoing at year-end. With respect to the concluded examinations: three merger examinations were concluded with agreed remedies, including two examinations involving consent agreements; 259 examinations posed no issue under the Competition Act, including 179 examinations that resulted in the issuance of an Advance Ruling Certificate; 1 major transaction was abandoned by the parties due to the Commissioner's position; and 2 were abandoned for other reasons. With respect to cases involving Competition Tribunal or court proceedings at year end: two cases were concluded or abandoned during the year and no cases were ongoing.

b) *Summary of Significant Cases*

53. On November 25, 2003, Canadian National Railway Company ("CN") and the Government of British Columbia announced that CN would be acquiring the outstanding shares of British Columbia Rail Limited ("BC Rail") along with a very long-term lease to operate on BC Rail's railbed. On July 2, 2004, following a comprehensive review of this very complex merger transaction, the Bureau filed a consent agreement with the Competition Tribunal aimed at preserving competition for interline transportation of lumber and other commodities, and maintaining competitive rates and services for grain transportation from the Peace River area.

54. On rail interline traffic, the consent agreement contains an "open gateway" arrangement that should allow shippers to continue to have direct access to competing rail carriers in Vancouver for the long haul transportation of their products to various markets in North America. This is achieved through a set of published rates for the haulage of traffic between BC Rail points and Vancouver, where rail cars could be picked up by competing carriers for transportation to final destinations. In addition, clear standards are set to measure CN's compliance with its commitment to improve the transit times achieved by BC Rail. Safeguards were also introduced to see that shippers are not discriminated against for choosing competing long-haul transportation carriers.

55. As well, the consent agreement includes measures to protect the competitive prices and maintain the frequency of switching service levels offered to grain shippers in the Peace River area. It also contains safeguards aimed at ensuring non-discriminatory supply of covered hopper cars for the transportation of grain.

56. In December 2003, Bertelsmann AG (BMG) and Sony Corporation of America announced their intent to form a global jointly-owned recorded music enterprise to be named Sony BMG. In light of the high degree of concentration in the industry, the Bureau conducted an in-depth review of the proposed joint venture. In particular, it carefully examined the possibility that the transaction would reduce competition by making coordinated behaviour among record companies more likely. The examination did not reveal evidence of previous coordinated behaviour among the major record companies in Canada, nor did it suggest that the transaction would likely create potential for such behaviour. The Bureau cooperated with the Competition Directorate General of the European Commission and the US Federal Trade Commission throughout the review. On July 29, 2004, the Bureau announced that the proposed transaction did not give the Commissioner any grounds on which to challenge the transaction.

57. On September 20, 2004, RWCI, Rogers Communications Inc. ("RCI") and Microcell jointly announced that RWCI and Microcell had entered into an agreement under which RWCI would make an all-cash bid for Microcell securities totalling approximately C\$1.4 billion in value. The Bureau conducted a comprehensive merger review to determine the competitive effects of the removal of Microcell as a competitor in the provision of mobile wireless services in Canada. In addition to the potential exercise of unilateral market power, the Bureau was concerned with the impact of the transaction on co-ordinated behaviour and whether Microcell could be considered a maverick in the mobile wireless market. (A maverick is a firm with a strong incentive to deviate from coordinated behaviour and thereby to provide a strong stimulus to competition in the market).

58. After carefully reviewing the merger's competitive effects on the mobile wireless industry the Bureau concluded that:

- the transaction would not create or enhance market power in the mobile wireless market;
- the merger would not increase the likelihood of coordinated behaviour among the major cellular telephone companies; and
- Microcell would have faced significant challenges in maintaining its position as competitors proceeded with the next generations of cellular service offerings.

59. On November 3, 2004 the Bureau announced that it had cleared the proposed acquisition⁴.

60. On June 28, 2004, following a contested hearing held in late 2003, the Competition Tribunal dismissed with costs the section 106 applications filed by Waste Management of Canada (formerly Canadian Waste Services). The Tribunal found that the circumstances leading to its October 2001 order requiring divestiture of the Ridge Landfill had not changed and therefore Waste Management must comply with the divestiture order. On July 21, 2004, Waste Management filed an appeal in the Federal Court of Appeal and sought a stay of the divestiture order. On November 4, 2004, the Federal Court of Appeal dismissed the appeal from the bench. As a result, Waste Management had 60 days to sell the Ridge Landfill pursuant to the divestiture order. The sale process was conducted by Deutsche Bank on behalf of Waste Management. Following a thorough review of prospective purchasers, the Commissioner approved BFI Canada Inc. as an acceptable purchaser. The acquisition of the Ridge Landfill by BFI Canada Inc. closed on January 4, 2005.

61. On November 18, 2004, the Bureau filed a consent interim agreement with the Competition Tribunal with regard to the acquisition of Riverside Forest Products Ltd. ("Riverside") by Tolko Industries Ltd. ("Tolko"). This agreement and Tribunal order holds separate all of the assets of Riverside in the Okanagan-Shuswap Forest District that give rise to competition concerns and preserves the Tribunal's ability to order appropriate relief pending completion of the Bureau's review of the transaction. The order expired on December 29, 2004. Tolko extended the order through an undertaking that expired on January 31, 2005. Tolko then provided undertakings to hold the Armstrong mill and associated tenures separate while the Commissioner continued her inquiry. At year end, the Bureau's review was ongoing.

62. On December 7, 2004, the Bureau filed a consent agreement with the Competition Tribunal, addressing competition concerns raised by the merger of West Fraser Timber Co. Ltd. ("West Fraser") and Weldwood of Canada Ltd. ("Weldwood"). The agreement allowed the forestry companies to merge while preserving choice for independent timber harvesters, wood re-manufacturers and log sellers in the northern and southern parts of British Columbia. The consent agreement required West Fraser and Weldwood to sell their saw mill interests in Babine Forest Products Limited, in Burns Lake and Decker Lake (Babine Timber

⁴ The Commissioner recused herself of this matter due to conflict of interest guidelines.

Limited), and associated forest tenures. West Fraser also agreed to surrender certain timber harvesting rights in the Williams Lake to 100 Mile House area. The surrender would permit an offering of new forest tenures, thereby removing significant barriers to competition and allowing a new player to enter the market or an existing one to expand its capacity. The agreement provided for the appointment of a trustee to complete the sales if West Fraser was unable to sell the assets as agreed. In February 2005, the Burns Lake Native Development Corporation et al filed an application under s. 106(2) of the *Competition Act* with the Tribunal for an order rescinding or varying the consent agreement to recognise the applicants' rights and interests. This litigation is ongoing.

C. *Misleading Advertising and Deceptive Marketing Practices*

a) *Criminal*

63. In May 2004, James Tetaka of 1473253 Ontario Incorporated was sentenced to a \$60,000 fine and was subject to a five year prohibition order for his role in the Toronto-based Yellowbusiness.ca phoney invoice scam. The invoice mail-outs charged recipients \$85.55 to have their organisation's details listed in an Internet business directory and appeared to come from an existing service provider such as Bell Canada or the Yellow Pages. As part of the investigation, the Bureau and Canada Post seized mail containing an estimated \$700,000 in payments. The Bureau's investigation revealed that the 40,000 businesses and non-profit organisations targeted in this scam had been victimised with similar mail-outs in the year 2000.

64. In June 2004, Daniel Klemann was sentenced to a \$40,000 fine and was subject to a five-year prohibition order for making misleading representations through his company, Internet Registry of Canada (IROC). Over 73,000 businesses and non-profit organisations received deceptive mail informing them that their Internet domain name registration was about to expire and offering several renewal options. The mail piece was designed to mislead recipients into believing they were existing customers of IROC's domain name registration service and gave the impression that IROC was a Government of Canada agency in charge of Internet domain name registration.

65. In June 2004, two directors and three employees at four Toronto-based telemarketing firms pleaded guilty to using deceptive telemarketing practices that targeted Canadian and US consumers. Between May 1999 and September 2002, telemarketers used false and misleading sales techniques to induce US organisations to purchase business directories and credit card paper supplies, and Canadian organisations to purchase photocopier toner cartridges. The telemarketers led potential clients to believe that their organisation had an established business relationship with the telemarketing firms and that the purpose of the call was to confirm product orders and delivery. Hanson Publications Inc., Associated Merchant Paper Supplies Inc., Copier Supply Centre Inc. and OS Networks Inc., were fined a total of \$100,000. Adrian Towning, director of all the firms, and Charles Hamouth, director of both Hanson and Associated Merchant Paper Supplies, received 10-month conditional sentences comprised of six months house arrest, four months curfew, one-year probation and 75 hours community service. Three company managers, Jamie Lynes, Neil Underwood and Sean Beesley, received fines totalling \$25,000 and sentences of 50 hours community service and one-year probation. One other manager, (Russel) Todd Ivison, received a fine of \$20,000 in March 2004. All companies and individuals received a 10-year prohibition order banning them from selling business directories, credit card paper supplies, photocopier and printer toner cartridges, or any other non-durable office supplies and from telemarketing any product without the customer's agreement to purchase the product either in writing or in a face-to-face transaction. The US Federal Trade Commission conducted a parallel investigation, which resulted in a ban prohibiting Charles Hamouth and Adrian Towning from selling directories or non-durable office supplies in the US and requiring them to turn over \$853,000 (US) for consumer redress. The US court also entered an order prohibiting Montreal defendant Albert Mouyal from telemarketing business directories and non-durable

office supplies into the US, and required him to post a \$500,000 (US) bond before telemarketing other products.

66. In July 2004, Anitech Enterprises Inc, also known as PetNet, pleaded guilty in the Federal Court of Canada to a criminal charge of misleading thousands of pet owners through a deceptive mail campaign. PetNet, a Markham, Ontario-based company, was a distributor of microchips used for permanent identification of pets, and owned and operated a National Pet Registry and Recovery Service. From 1991 to September 2002, PetNet advertised and marketed its microchip and recovery service as a one-time, lifetime fee. Over the years it built up its customer base to over 400,000 registrants across Canada, mostly under the direction of Paul Brown. On January 1, 2003, PetNet changed its fee policy, instituting an annual administration fee of \$19.95 for registrants, both new and existing. PetNet's decision to apply this new policy to its pre-2003 registrants raised concerns under the *Competition Act* and caused the Bureau to intervene. PetNet was fined \$150,000. In addition, Paul Brown agreed to abide by a 10-year prohibition order requiring PetNet or any successor to:

- cease making demands from pre-2003 registrants for any fee payment relating to services originally contracted;
- disclose clearly the annual administration fee to all new registrants;
- establish and implement a corporate compliance program; and
- cease making false or misleading representations.

67. Paul Brown was also required to sever all relations with PetNet or any successor, including disposing of all his shares in the company. In acknowledgement of the seriousness of the matter, he made a monetary contribution of \$50,000 to PetNet. This case marks the first use of the Immunity Program in relation to the false or misleading representations provisions of the *Competition Act*.

68. In October 2004, four Toronto-area residents were sentenced for their involvement in the Yellow Business Directory.com phoney invoice scam. The sentences followed a five-week jury trial in the Ontario Superior Court in Toronto, which led to convictions in April 2004. The individuals sentenced sent out solicitations inviting recipients to have their business details appear in Internet-based directories operating under the names Yellow Business Pages.com and Yellow Business Directory.com. The mail pieces sent out, however, appeared to be bills or invoices from Bell Canada or the Yellow Pages. Between May and December 2000, mail was sent to approximately 900,000 businesses and non-profit organisations in Canada, generating sales of over \$1 million. Alan and Elliot Benlolo were sentenced to three years in federal penitentiary and fined \$400,000 each for violating the false or misleading representations provision of the *Competition Act*. Also sentenced for their involvement in the scam were: Victor Serfaty, who received an 18-month conditional jail sentence (including six months house arrest), 100 hours of community service and a \$15,000 fine; and Simon Benlolo, who received a nine-month conditional jail sentence (including three months house arrest) and a \$100,000 fine.

69. In November 2004, Global Online Systems Inc. (GOLS), a Vancouver-based multi-level marketing firm, pleaded guilty under the multi-level marketing and pyramid selling provisions of the *Competition Act*. An investigation by the Bureau revealed that GOLS was operating a scheme of pyramid selling that involved health-related products marketed by Herbalife Canada Ltd. Contrary to the Act, participants were compensated for the recruitment of new participants who had to buy specific quantities of products as a condition of joining the plan. In addition, GOLS and its participants recruited new participants by exaggerating income expectations without disclosing the income of a typical participant. The company was fined \$150,000 and along with its directors, Deborah Jane Stols and Marilyn Thom, was

subject to a prohibition order issued by the Federal Court of Canada in which they agreed to: disclose the average income actually received by all participants in GOLDS; inform existing distributors and participants of the terms of the Order; and not become involved directly or indirectly in any other pyramid selling schemes.

70. In January 2005, Constantina Athanasopoulos was sentenced to a 15-month conditional sentence and two years probation for her role in a price-pitch scam that targeted consumers in Australia. In March 2005, five participants pleaded guilty in the Court of Quebec (Judicial District of Montreal) for their participation in the same scam. One of the individuals, Sheldon Cutler, was fined \$20,000 and received a 20-month conditional sentence and two years probation; William Kenwood received a 6-month conditional sentence, two years probation and 100 hours of community service; and Armenia Linhares received a 6-month conditional sentence, two years probation and 100 hours of community service. Two individuals, Scarlet Jove and Gerald Goldstein had not received their sentences as of March 31, 2005. The guilty pleas followed a criminal investigation that used wiretaps to gather evidence into the deceptive telemarketing activities of Alexis Corporation (3636135 Canada Inc.) and 587932 Canada Inc. Between May 2000 and June 2001, the Bureau and PhoneBusters received numerous complaints alleging that telemarketers were telling consumers they had won valuable prizes, such as a Toyota Corolla, his and her diamond watches, a washer and dryer set, a genuine sapphire bracelet or a video camera.

71. In order to receive these prizes, customers had to purchase a promotional item. The Bureau investigation confirmed allegations that the telemarketers deceived and misled consumers about the quantity and value of these prizes and the value of the promotional items. In late 2002 and early 2003, six other individuals received various penalties including a fine, conditional sentences, probation and community service in relation to this scam.

72. In March 2005, NSV Nutrinautes Inc. and its Vice-President, Richard Arsenault, pleaded guilty in Quebec Court to four charges under the *Competition Act's* multi-level marketing, pyramid selling and general false or misleading representation provisions. The Quebec-based company operated a multi-level marketing plan known as the Cocooning Club. A Bureau investigation found that the Cocooning Club and its participants made representations on Web sites and in a television infomercial that exaggerated income expectations without disclosing the income of a typical participant in the plan. NSV Nutrinautes Inc. was fined \$75,000 and Mr. Arsenault received a conditional jail sentence of two years less a day and a 10-year prohibition order preventing him from being involved in any future multi-level marketing plans. Charges against two other individuals remain outstanding.

b) *Civil*

73. In May 2004, the Federal Court of Appeal upheld a Competition Tribunal ruling that found that claims made to consumers about a fuel-saving device known as the Platinum Vapour Injector (PVI) were false or misleading. The 2002 Tribunal decision ordered the company to stop making fuel-saving and emission reduction claims about the PVI, and ordered the company and individuals to pay an administrative monetary penalty. The Federal Court of Appeal both denied PVI's appeal of the Tribunal decision and found that the Tribunal had erred in not ordering PVI to publish corrective notices.

74. In July 2004, a consent agreement was registered with the Competition Tribunal concerning certain "ordinary selling price" representations made by The Forzani Group Ltd. ("FGL"), Canada's largest sporting goods retailer with approximately 390 stores across Canada. As a result of a Bureau investigation, which included a search of FGL's headquarters in Calgary, the Commissioner had reason to believe that FGL had significantly inflated the "regular" prices of certain products thereby overstating the savings to consumers at the so-called "sale" prices at its Sport Chek and Sport Mart retail locations. In resolving the matter with the Bureau through consent, FGL agreed to:

- pay a record administrative monetary penalty in the amount of \$1.2 million;
- pay all the costs of the Bureau's inquiry in the amount of \$500,000;
- publish corrective notices in Canadian newspapers, in store flyers, on its corporate Web sites and in retail stores across Canada; and
- establish a corporate compliance program.

75. In December 2004, the Bureau registered a consent agreement with the Competition Tribunal in which Performance Marketing agreed, among other things, to refund consumers the full value of two diet patches called "Dyapex" and "Zyapex". Performance Marketing claimed that the patches were a safe and natural weight-loss product giving the false impression that, without performing any physical exercise or dieting, individuals could lose weight, reduce their appetite, control their cravings and speed up their metabolism. The patches were sold through the company's affiliates and advertised on numerous Web sites hosted under a variety of Web addresses. Performance Marketing also failed to enforce its anti-spam policy, which resulted in its affiliates using spam as a means of selling Performance Marketing's products. Pursuant to the consent agreement with Performance Marketing, the company has agreed to: ensure that spam is not used as a means of marketing its products; cease making any performance claims to the public unless the Bureau agrees that they are based on adequate and proper tests; post a corrective notice on its Web site; and provide a full refund to those who purchased the product. This is the Bureau's first case under Project FairWeb, a dedicated Internet surveillance and enforcement program aimed at combating misleading and deceptive advertising found on the Internet.

76. In January 2005, following a lengthy hearing, the Competition Tribunal decided that Sears Canada Inc. had breached the *Competition Act* by making false or misleading representations in advertising discounts on certain tires. This landmark decision is the first to be handed down by the Tribunal under the ordinary selling price provisions of the *Competition Act*. In its ruling, the Tribunal found that Sears Canada Inc. had not sold a substantial volume of the tires at the regular prices featured in the advertisements, and that Sears Canada Inc. could not truly have believed that its regular tire prices were genuine and *bona fide* prices. The Tribunal also upheld the constitutionality of the relevant provisions of the *Competition Act*. The written decision was followed in April by an order for Sears Canada Inc. to pay a \$100,000 administrative monetary penalty, as well as \$387,000 towards the Bureau's legal costs. The Tribunal's order also prohibited Sears Canada Inc.'s automotive business division from engaging in similar conduct for a period of 10 years. The administrative monetary penalty, which was agreed to by Sears Canada Inc. in a joint submission to the Tribunal, was the maximum that could be imposed on a corporation following a finding of reviewable conduct.

77. In February 2005, in a consent agreement filed with the Competition Tribunal, Goodlife Fitness Clubs Inc. (Goodlife) agreed to stop making representations about the price of memberships in its clubs that failed to adequately disclose all the additional fees required to obtain a membership. It also agreed to pay an administrative monetary penalty of \$75,000. Goodlife owns and operates 90 fitness clubs in six Canadian provinces. The consent agreement also required the company to publish a corrective notice on its Web site and in certain Ontario and Quebec newspapers, and to administer a new corporate compliance policy about promotions.

78. In March 2005, the Bureau registered a consent agreement with the Competition Tribunal in which Federal Auction Service and its president, Amir Durrani, agreed not to make representations that the company had been retained, authorised or instructed to sell items on behalf of the Government unless those representations were accurate. The company agreed to pay an administrative monetary penalty in the

amount of \$25,000. The consent agreement also required the company to clearly identify the volume and source of each item for sale at its auctions, to publish corrective notices in newspapers and on its Web site, and to implement a formal company compliance policy regarding the use of promotions.

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

79. In 2004-2005, the Bureau made a number of interventions in sectors including transportation, telecommunications, broadcasting, trade and finance. The following pages summarise these interventions, their outcomes and potential benefits for Canadians.

A. Transportation: Marine and Rail

a) Submission to the Canada Marine Act Review Panel

80. The Panel accepted the Bureau's recommendations on: implementing a competitive selection process for the Boards of Directors of all Canada Port Authorities (CPAs); eliminating regulatory constraints that restrict CPAs from borrowing money and prevent them from merging; and continuing the commercialisation process with regard to ferries. The Panel accepted the view that Canadian ports compete directly or indirectly with US ports, that ports contribute to Canada's economy and that competitiveness is important, and it supported the Bureau's view that certain ports compete among themselves. The Minister of Transport indicated that Transport Canada will carefully review the Panel's recommendations and observations. Amendments are being made to the *Canada Marine Act*.

b) Submission to the Ontario Ministry of Consumer and Business Services

81. In April 2004, a letter was filed on the Release of Draft Regulations on the *Travel Industry Act, 2002*. One of the proposals in the draft regulations sought to increase transparency on how travel services are advertised in Ontario. The Bureau's letter supported the principle of improving the accuracy of information conveyed to consumers. The Bureau also agreed to participate in the *Consumer Measures Committee Working Group on Travel Services* to provide input and advise as needed, to ensure that the working group's initiatives are not at odds with the activities of the Bureau. The regulations will help consumers to evaluate alternative or competing services and make judicious purchasing decisions. Accurate and transparent information will lead to more competitive prices.

B. Telecommunications

Telecommunications: Broadcasting

a) Testimony to the Senate's Standing Committee on Transport and Communications

82. In April 2004, the Senate's Standing Committee on Transport and Communications released an interim report entitled *The Canadian News Media*. The report referred to the Bureau's testimony on the state of the Canadian news media made on September 23, 2003. As the Committee's work was incomplete, its interim report drew no conclusions and made no recommendations. It will conduct hearings across Canada before it issues its final report.

C. Energy

83. The Bureau has participated in several proceedings in this sector. It intervened and provided a submission to the Ontario Energy Board Natural Gas Forum 2004 and provided comments to the Government of Ontario on electricity restructuring.

D. Trade

84. In April 1998, the Canadian International Trade Tribunal (CITT) ruled that dumping by US producers of certain prepared jarred baby foods had led to material injury to Heinz Canada, following which it placed a duty on US imports. In April 2003, the CITT issued a decision removing all tariffs, finding that any injury to Heinz Canada due to the removal of tariffs would likely be the result of renewed competition and not of dumping. In June 2003, Heinz Canada applied to the Federal Court of Appeal seeking an order to reverse the CITT decision, thereby preventing import competition. The Bureau opposed Heinz Canada's application. In June 2004, the Federal Court of Appeal dismissed the application. The court also ordered costs in favour of the Commissioner of Competition, Gerber Products Company and Novartis Consumer Health Canada Inc. As a result, American companies are now free to enter the Canadian market and supply Canadian consumers and retailers, provided they meet Canadian jar and ingredient standards.

E. Agriculture

Remarks to the Standing Committee on Agriculture and Agri-Food

85. On February 16, 2004, the Commissioner appeared before the House of Commons Standing Committee on Agriculture and Agri-Food regarding the Committee's Study of the Pricing of Beef at the Slaughter, Wholesale, and Retail Levels, in the Context of the Bovine spongiform encephalopathy (BSE) Crisis in Canada. The Commissioner indicated that developments in the beef industry are being closely followed and indicated that, based on information available to date, there is no reason to believe that the *Competition Act* has been or is about to be contravened. The Commissioner noted that the Act does not authorise the conduct of general inquiries into issues of competition in industries. However, if information is uncovered that points to a potential breach of the Act, appropriate action will be taken. The Standing Committee on Agriculture and Agri-Food released its report in April 2004 and made two recommendations specifically related to the Commissioner's appearance. First, that the Minister of Industry instruct the Commissioner, under section 10 of the *Competition Act*, to conduct immediately an inquiry into the pricing of slaughter cattle and beef at the wholesale level. Second, that the Bureau monitor the wholesale and retail pricing of beef, as well as the feed and feeder cattle prices, and that the Commissioner report periodically, or at the call of the chair, to the House of Commons Standing Committee on Agriculture and Agri-Food. Elections were called soon after the issuance of the report. Elections were called soon after the issuance of the report and therefore no official Government response to this Report was tabled in the House of Commons.

F. Finance

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

86. On February 10, 2005, the Commissioner and other officials of the Bureau appeared before the Senate Standing Committee on Banking, Trade and Commerce to participate in a study on consumer issues arising in the financial sector. The Commissioner's remarks fell into four categories: merger review; accurate and reliable information in the marketplace; staying informed; and current developments. On mergers, she described the Bureau's approach to bank merger reviews in 1998 and indicated that a detailed competitive analysis was done in three major lines of business: branch banking services to individuals and businesses, credit cards and securities. When the Bureau concludes that a merger would result in a substantial lessening or prevention of competition, it works with the parties to find a remedy. If there is no settlement, then the parties would either abandon the transaction or face litigation. In the case of bank mergers, the Minister of Finance is given the final decision to certify that his actions are "in the best interest of Canada." In 2001, the Department of Finance issued Guidelines for merger review. However,

the Bureau's analytical framework will be the same. On accurate and reliable information in the marketplace, the Commissioner addressed the Bureau's jurisdiction over false and misleading advertising as it relates to the financial sector. To enhance consumer confidence, she explained instruments such as the Conformity Continuum and the Fraud Prevention Forum. On staying informed, she indicated that, to develop an open and constructive dialogue, the Bureau hosted an inaugural meeting in December 2004 with representatives of consumer associations and various consumer groups. She explained the creation of sector teams within the Bureau and sector days involving a series of meetings with industry leaders. On current developments, she described the ongoing consultations with regard to the issue of efficiencies under the *Competition Act*.

IV. Resources of Competition Authorities

A. Resources Overall (current numbers and change over previous year):

a) Annual Budget (in your currency and USD):

87. In fiscal year 2004-2005, the Bureau received \$38.7M (\$30.3 US) in base budget plus \$9.48M (\$7.4 US) in temporary funding for a total of \$48.18M (\$37.7 US).

b) Number of employees (person-years):

- ⇒ economists; 13
- ⇒ lawyers; 23 lawyers, 2 paralegals paid by Department of Justice
- ⇒ other professionals; 23 Executives, 222 Competition Law Officers
- ⇒ support staff; 130
- ⇒ communications professionals; 10
- ⇒ all staff combined. 393

B. Human resources (person-years) applied to:

- a) Enforcement against anticompetitive practices⁵; 217
- b) Merger review and enforcement; 44
- c) Advocacy efforts. 32

C. Period covered by the above information:

April 1, 2004 – March 3, 2005

V. References to New Reports and Studies on Competition Policy Issues

Allen, Gwilym and Townley, Peter G.C. ,“Inter-Media Mergers: An Antitrust Alternative to the Marketplace for Ideas,” Canadian Business Law Journal, Volume 41, Number 1,

⁵ Excluding unfair or misleading practices.

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Monteiro, Joseph, "Pipeline Transportation in the Natural Gas Industry," Canadian Transportation Research Forum Proceedings of the 2004 Annual Conference, Calgary, Alberta, May 9 - May 12th, 2004, pp. 310-325.

Matthews, Susan, Monteiro, Joseph and Gerald, Robertson, "Milestones in Canadian Transportation - The Future," Canadian Research Forum Proceedings of the 2004 Annual Conference, Calgary, Alberta, May 9 - May 12th, 2004, pp. 342-360.

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