

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CANADA**

(April 1<sup>st</sup>, 1999, through March 31<sup>st</sup>, 2000)

**Introduction**

1. This report describes competition law and policy developments in Canada and summarises the enforcement activities of the Canadian Competition Bureau (“the Bureau”) for the fiscal year April 1, 1999, through March 31, 2000 (“FY 99-00”).

**I Changes in law and policies proposed or adopted****A. Summary of new legal provisions in competition law and related legislation**

2. Amendments to the notifiable transactions provisions of the *Competition Act* (“Act”) and related amendments to the *Notifiable Transaction Regulations* (“Regulations”) came into force December 27, 1999. The notifiable transactions provisions of the Act require that parties to certain transactions which exceed prescribed thresholds notify the Bureau and provide specified information. The amendments contain provisions that allow for an exemption from the notification provisions for a category of transactions known as asset securitisations. In addition, new provisions that specify the basis for converting assets or revenues reported in foreign currency into Canadian dollars were added. Also, the information required for short and long form filings is now set out in the Regulations, instead of the Act, and has been revised to be more relevant.<sup>1</sup>

3. Finally, sections 44 to 53 of the *Miscellaneous Statute Law Amendment Act*, (Bill C-84, assented to June 17, 1999) contain a number of housekeeping amendments to the Act.

**B. Guidelines**

4. In recent years, there has been an increasing appreciation of the competitive advantages which arise when businesses innovate. For the Bureau, the challenge is to safeguard the benefits of competition without jeopardising business arrangements that work to stimulate innovation. On June 11, 1999, the Bureau released for public consultation draft *Intellectual Property Enforcement Guidelines* which outline the Bureau’s views on the interface between intellectual property (“IP”) law and competition law. The guidelines discuss the circumstances in which the Bureau may apply the Act to conduct involving IP or IP rights. The analytical framework used is sufficiently flexible to apply to IP despite important characteristics that distinguish it from other forms of property. The guidelines also describe the rare circumstances when conduct involving an IP right warrants a special remedy under section 32 of the Act.

5. A draft information bulletin for the Immunity Program under the *Competition Act* was distributed for review and comment on February, 17, 2000. The draft bulletin establishes the requirements for granting immunity requests. It discusses the issues of timing as well as corporate versus individual immunity. It also outlines the steps involved in the process. Issues such as transnational criminal activity, confidentiality, and failure to comply with the requirements of an immunity agreement are also discussed. Only the Attorney General has the authority to grant immunity to a party implicated in an offence under the Act. If the party does not qualify for immunity, the Commissioner of Competition (“Commissioner”) may recommend another form of leniency.

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6. In FY 99-00, the Bureau released a number of guidelines designed to enable businesses and consumers to understand the requirements of the legislation it administers. Under the information bulletin on the choice of track in cases of misleading advertising, 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 to be recommended, 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.

7. The Bureau also issued an information bulletin on the application of section 74.06 of the Act which deals with promotional contests. Section 74.06 is a civil provision. It prohibits any promotional contest that does not disclose the number and approximate value of prizes, the area or areas to which they relate and any important information relating to the chances of winning such as the odds of winning. It also stipulates that the distribution of prizes cannot be unduly delayed and that participants be selected or prizes distributed on the basis of skill or on a random basis.

8. The Bureau also released an information bulletin on ordinary price claims and subsections 74.01(2) and (3) of the Act.<sup>2</sup> Such claims are reviewable matters. However, where there is evidence of the requisite criminal intent, false or misleading ordinary price claims may also be subject to the general criminal prohibition against materially false or misleading representations under subsection 52(1) of the Act. The bulletin expands on important new terms such as “reasonable period of time” and “substantial volume”. It outlines how the reference price should be determined, the characteristics that determine the nature of the product, and the factors that determine its geographic market.

9. In the information bulletin on the new telemarketing provisions, the expression “interactive telephone communications” is restricted to live telephone communications between two or more people. The provision will not be applied to communications by fax, email or 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 bulletin also sets out the applicability of the new telemarketing provision to contests and games.

### ***C. International antitrust co-operation developments***

10. On June 17, 1999, Canada and the European Union (“EU”) signed a new agreement regarding the application of their competition laws. The agreement is designed to enhance economic relations between Canada and the EU and, by increasing co-operation and co-ordination in the enforcement of competition laws, to combat anti-competitive activities in both jurisdictions. This new agreement replaces previous informal arrangements between the Bureau and the European Commission Directorate-General for Competition.<sup>3</sup>

11. The Australian Competition and Consumer Commission approached the Bureau with regard to negotiating a co-operation agreement in 1999. An agency-based agreement awaits signature.

12. Canada is also in the process of negotiating a positive comity agreement with the US. Such an agreement would allow one jurisdiction to request that the competition authorities in the other initiate enforcement proceedings under their competition laws to address conduct that harms its important interests. Deferral mechanisms and progress reports would also be addressed.

13. In support of Canadian foreign and economic policy objectives and obligations under various free trade and co-operation agreements, and international organisations (e.g. OECD, WTO), the Bureau has provided technical assistance to countries without competition laws or which are in the process of drafting and implementing them. The Bureau has welcomed foreign competition authorities and has also participated in international seminars, workshops and conferences to share information on Canadian policy, law, and practices.

14. The Bureau is also a member of the International Marketing Supervision Network (“IMSN”) which aims to facilitate practical action to prevent and redress deceptive marketing practices with an international component. A survey on enforcement activities in member countries was undertaken to promote understanding of each member’s legislation and practices.

#### ***D Proposals for new legislation***

15. 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 reviews the Act on an ongoing basis. During the period covered by this report, three Members of Parliament were in the process of drafting Private Members’ bills that seek to amend the *Competition Act*. The Government is supportive of the principles set out in the Private Members’ bills and awaits the results of public consultation to initiate government legislation that reflects these principles, where consensus exists.

16. Bill C-438 addresses deceptive contests sent through the mail and would introduce an enforcement approach similar to the Act’s provisions against deceptive telemarketing. This bill contributes to the government’s agenda of improving information to consumers as the basis of informed market decision-making.

17. Bill C-402 seeks to amend section 78 of the Act. It expands the definition of “anti-competitive act” with particular reference to the grocery and other retail markets where market restructuring has resulted in concerns from consumers and small businesses that a few large players dominate these sectors. Specific examples of anti-competitive acts towards a competitor or a supplier would be added to provide an illustrative list in section 78.

18. Bill C-471 would provide for a regime for international mutual co-operation in civil matters to facilitate enforcement of competition laws, and to enhance the role of the Competition Tribunal. The amendment would create new provisions to enable the Minister of Industry to enter into agreements relating to international mutual legal assistance in civil matters. It would also provide a new reference mechanism by which specific questions could be referred to the Tribunal, without filing a full case, to facilitate a more timely resolution of competition questions.

19. Bill C-472 seeks to amend the *Competition Act*, the *Competition Tribunal Act* and the *Criminal Code*. To respond to the changing business and enforcement environment, the amendment would adopt a new approach to agreements between competitors, by broadening access to the Competition Tribunal and by providing it with new powers. More specifically, it seeks to:

- modernize the provisions on conspiracy to avoid discouraging pro-competitive strategic alliances;

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- enable individuals to apply to the Tribunal in cases of refusal to deal, exclusive dealing, tied selling and market restriction;
- provide new powers to the Commissioner to make temporary orders halting anti-competitive acts; and
- broaden the power of the Tribunal to include cost awards and summary dispositions.

20. On February 17, 2000, the Minister of Transport introduced in the House of Commons Bill C-26, an Act to amend the *Canada Transportation Act*, the *Competition Act*, the *Competition Tribunal Act* and the *Air Canada Public Participation Act*. This legislative initiative is the final step in a four-step process of which the first took place on August 13, 1999, when the Governor in Council issued an order pursuant to section 47 of the *Canada Transportation Act* to establish a 90-day process to facilitate the orderly restructuring of Canada's airline industry, thereby suspending the *Competition Act*. The amendments seek to ensure that Air Canada does not abuse its position of dominance and that adequate legislative and administrative procedures and mechanisms exist to deal with any potential anti-competitive behaviour.

## 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 99-00<sup>4</sup>

21. 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 various degrees of compliance with the requirements of these statutes, the Bureau uses a continuum of diverse tools and resources to address instances of non-conformity. Such mechanisms include seminars, the release of guidelines, advisory opinions, information contacts, assisting firms in establishing voluntary codes and ongoing monitoring of the marketplace. However, the emphasis on alternative tools does not mean that the Bureau will tolerate serious breaches. The more serious instances of non-conformity 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 99-00

22. 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

23. **Mycom Canada Ltd. (exclusive dealing, obstruction):** The inquiry involved section 64, the obstruction provision of the *Competition Act*, and stems from a previous inquiry into Mycom involving the exclusive dealing and abuse provisions of the Act. The Bureau requested that Mycom provide, under oath, a voluntary return of information both written and in the form of company records with respect to an inquiry under the exclusive dealing and abuse provisions. The Bureau felt that the response to this request was insufficient and misleading and, consequently, it initiated an obstruction inquiry. To satisfy the Bureau's concerns, Mycom wrote a letter of apology to the Bureau with regard to the insufficiency of its voluntary return of information and remedied the alleged non-compliance to the Bureau's satisfaction.

Mycom also agreed to co-operate with the Bureau in any possible future inquiries. In addition, it instituted a disciplinary policy for employees who fail to comply with the Act and has had its employees take a course on compliance with the Act. Finally, the Bureau's concerns regarding the original civil inquiry, concerning exclusive dealing and abuse of dominant position, which began in March, 1995, were alleviated when, in the course of this matter, Mycom altered its sales policy.

24. **Agricultural Herbicide (tied selling, exclusive dealing, abuse of dominance):** An inquiry was initiated in October, 1998, in response to the Bureau's concerns about Monsanto's marketing program for Roundup, a brand of glyphosate herbicide and herbicide-tolerant seeds. In September, 1999 Monsanto voluntarily revised its marketing and distribution programs as a result of new marketing practices which alleviated the Bureau's concerns.

25. **Travel Agents (conspiracy):** As a result of a decrease in commission fees, travel agencies have introduced service fees. When 15 travel agencies met to discuss the deteriorating financial situation, concerns were raised that service fees may be set by the group instead of individually. The Bureau contacted a participant of this meeting and subsequently explained the conspiracy provisions of the Act. Bureau pamphlets were also sent as part of an information package. No agreement was reached on service fees.

26. **The Insurance Corporation of British Columbia (abuse of dominant position):** The Insurance Corporation of British Columbia ("ICBC") instituted a "Most Favoured Customer" clause that discouraged selective discounting by repair shops. The Bureau was concerned that the clause substantially lessened competition and raised rivals' costs in the insured auto body repair services market. The Bureau announced on November 2, 1999 that these concerns were alleviated when ICBC agreed to withdraw the clause from agreements it had with auto body shops that participated in the corporation's Alternative Transportation Program.

27. **Engineer Consultants (bid-rigging):** The Bureau became aware of an agreement between consulting engineers to refuse to submit bids in response to a call for tenders for the construction of a building. It was alleged that the consulting engineers had agreed not to submit bids and to force the organisation responsible for the call for tenders to adopt a certain rate for their professional fees. The Bureau staff held compliance meetings with the parties involved to explain their responsibilities under the Act. The situation was resolved when the professionals agreed to comply with the Act.

28. **Vacation Packages (misleading advertising):** Pursuant to a 1996 agreement, the Competition Bureau and the Federal Trade Commission ("FTC") share information under certain circumstances relating to cross border deceptive marketing practices investigations. The FTC has advised the Bureau that many Canadians have been victimised by these firms. Without admitting any wrongdoing, the companies, National Travel Service, Plaza Resorts Inc., Florida Travel Network Inc. and Crown Plaza Resorts, agreed to provide refunds to consumers, including Canadian consumers.

29. **Automotive advertising (misleading advertising):** An automobile manufacturer promoted the sale of its automobiles in various magazine advertisements that stated a particular type and brand of its vehicles had attained a 5 star safety rating from the National Highway and Traffic Safety Administration in the US. Investigation revealed that the rating was received after the advertisements were published. To satisfy the Commissioner's concerns, the company gave an undertaking on May 28, 1999, to avoid repetition of the representations and the use of representations that may mislead the public; to avoid the omission of relevant information; and to publish 4 corrective notices in a national newspaper and all major provincial newspapers. The company also undertook to inform its staff and advertising company of the contents of the undertaking.

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30. **Plumbing Products (misleading representation):** A plumbing products supplier, in promoting its products, used survey results that, upon further investigation, were found to be inaccurate. To satisfy the Commissioner's concerns, the company undertook to avoid: repeating the representation, using any survey or statistical information in future advertising without disclosing material criteria, and making any misleading representation about the company's products. It also distributed a corrective letter and a revised survey chart, in addition to informing staff about the undertaking and providing to the Bureau evidence of the company's compliance review of advertising.

31. **Air cleaning products (misleading representation):** Representations on an air disinfectant's environmental and efficacy claims were made in pamphlets and technical documents. Upon investigation, it was found that the claims were not based on adequate and proper testing, contrary to the *Competition Act* and the *Consumer Packaging and Labelling Act*. To satisfy the Commissioner's concerns, the company gave an undertaking on March 8, 2000, to avoid repetition of the representations and also agreed to publish corrective notices in national newspapers and to inform its staff and advertising agency of the contents of the undertaking. Finally, it also agreed to establish a formal company policy on executive review of advertisements.

32. **Software (misleading representation):** In the promotion of its personal financial planning software, the manufacturer claimed that its product would allow easy exporting of financial and other relevant information into tax preparation software sold by other firms in Canada. Upon examination, it was found that the claim was not relevant for all existing tax preparation software in Canada. In August, 1999, the company gave an undertaking to modify the claim on its web site and to apply corrective stickers on existing products in addition to offering a full refund to customers who were unable to export financial data from this product.

33. **Towing service (misleading representation):** A towing service supplier, in advertising its services in various telephone directories, stated the number of trucks available for the service and the price at which the service can be obtained. Upon investigation, it was found that the low rates were subject to certain conditions and the number of trucks available for service was fewer than advertised. To satisfy the Commissioner's concerns, the company gave an undertaking on May 9, 1999, to avoid repetition of the representations and to avoid the omission of relevant information that may mislead the public.

### ii) Civil Remedies

34. **Payphone Systems (misleading representations):** On September 15, 1999, the Bureau filed an application for an interim order with the Competition Tribunal. The Tribunal issued the interim order on September 24, 1999, requiring Universal Payphone Systems Inc. ("Universal") of Mississauga, Ontario, to cease marketing its payphone business using misleading representations relating to matters such as: the type and quality of payphone the investor could expect to receive, the income potential for investors, the "turn key" nature of the investment, and its membership in any consumer protection agency or bureau that is not a recognised and fully independent consumer protection agency. This was the first time, under new civil provisions, that such an interim order has been granted. A further order was sought on November 25, 1999 to prohibit Universal from engaging in certain reviewable conduct for a period of ten years. Under the terms of the Consent Order, Universal and Mr. Katsoulakis, its president, are prohibited from carrying out any and all marketing activities in Canada regarding their payphone business for a period of ten years. The order further prevents the company and its president from engaging in the marketing of any business in Canada by using similar techniques as those used by Universal.

## iii) Criminal enforcement

35. **Electrical contract services (bid-rigging):** Ampere-Edko Limited, a Toronto area electrical contracting company, pleaded guilty to one count of bid-rigging under the *Competition Act* and was fined \$20,000 by the Ontario Superior Court of Justice. In addition, Standard Electric (Toronto 1985) Inc., VanJohn Ltd. and King Pape Holdings Limited (carrying on business as Rae Brothers Inc.) were fined \$65,000, \$300,000 and \$12,500 respectively for bid-rigging. Six individuals were also charged with offences under the *Competition Act* and the *Criminal Code of Canada* on March 9, 1999, and paid fines totalling \$2.67 million after pleading guilty to the offences. The scheme permitted these electrical contractors to determine amongst themselves who would be the successful bidder on numerous contracts for the renovation of commercial office space in the Metropolitan Toronto area between 1988 to 1993.

36. **Scratch and Win Contests (misleading advertising):** Cave Promotions Ltd. pleaded guilty to one offence under the misleading advertising provisions of the *Competition Act* and was fined \$75,000 by the Court of Quebec. A Prohibition Order was also issued to require the company, its officers, and its directors to refrain from engaging in such conduct in the future. The conviction is related to a mail scratch and win promotion, held between April 1997 and September 1998, when consumers were led to believe that they had won a significant prize and were directed to call a 1-900 number to claim this prize. Upon calling, many consumers found that they had not won a prize at all, or had won a much smaller prize. Consumers who called the number were charged twenty dollars or more, a portion of which went to Cave Promotions Ltd.

37. **Aztec Industries Inc. (misleading representations):** Aztec Industries Inc. ("Aztec"), a distributor of water treatment systems in Western Canada, was charged with making representations to the public which failed to fully disclose, prior to the sale and supply of the products, the terms and conditions under which the product would be supplied and under which a refund would be provided. The company also failed to disclose the true amount of the refund and other costs associated with the sale and supply of the products. False and misleading representations were also made concerning the price and the availability of special discounts. On March 31, 2000, following a guilty plea, a Prohibition Order was imposed and the company was fined \$65,000.

38. **Telemarketers (deceptive telemarketing):** Following hundreds of complaints by consumers who bought products after being promised they would receive what turned out to be non-existent or less valuable prizes, charges were laid against 18 individuals for conducting deceptive telemarketing activities in Canada. Record fines of \$1 million and prison terms of 2-6 months were imposed.

## iv) Cases having international implications

39. 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 have cross-border effects.

40. **Food and Feed Additives (conspiracy):** After pleading guilty to participating in an international conspiracy involving vitamin C and biotin, between 1991 and 1995, Merck KGaA of Germany was fined \$1 million on March 9, 2000, for conspiracies to fix prices and to allocate market shares for vitamin products sold in Canada. Takeda Chemical Industries, Ltd. of Japan also pleaded guilty and was convicted and fined \$5.2 million for participating in international conspiracies involving vitamin B2, also known as riboflavin, and vitamin C, between 1991 and 1995. The conspiracies involved all of the principal producers of these vitamins for the world market. In addition to the fines, the Federal Court also imposed an order prohibiting the commission or repetition of these offences for a period of ten years in Canada.

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41. Hoechst AG (“Hoechst”) of Germany pleaded guilty and was convicted for having participated in an international price fixing and market sharing conspiracy involving sorbates. The conspiracy spanned 17 years -- from 1979 until 1996. Hoechst was fined \$3.28 million by the Federal Court of Canada. Eastman Chemical Company of the United States also pleaded guilty and was convicted for price fixing in the same conspiracy for the years 1995 to 1997. Hoechst will pay a fine of \$2.5 million and Eastman a fine of \$780,000. Orders were also imposed on each firm prohibiting them from committing or repeating these offences in Canada. Sorbates are chemical preservatives used primarily as mould inhibitors in high moisture and high-sugar foods such as cheese and other dairy products. Total sales of sorbates in Canada were approximately \$37 million for the period. A co-conspirator was granted immunity from prosecution in exchange for evidence in furtherance of the Commissioner's investigation.

42. The Federal Court of Canada fined Roquette Frères, a corporation based in Lestrem, France, \$700,000, and fined Akzo Nobel Chemicals B.V. and Glucona B.V., both Dutch companies, each \$350,000 for participating in an international conspiracy to fix prices and share markets for sodium gluconate. An order was imposed on the three companies to prohibit any repetition of this offence. The conspiracy involved American, European and Japanese producers of sodium gluconate who met on a continuing basis between 1987 and 1995 to fix prices and allocate market shares world-wide.

43. F. Hoffmann-La Roche Ltd. of Switzerland, BASF AG of Germany, Rhône-Poulenc S.A., of France and two Japanese corporations, Eisai Co. Ltd. and Daichi Pharmaceutical Co., Ltd., pleaded guilty to having participated in international conspiracies from January 1990 to February 1999 in breach of the *Competition Act*. Fines of over \$80 million<sup>5</sup> were imposed for multiple conspiracies to fix prices and to allocate market shares for ten vitamin and food additive products sold in Canada. In addition, the court imposed an order on each firm prohibiting the commission or repetition of these offences for a period of ten years.

44. Chinook Group Ltd., based in Toronto, Ontario, was fined \$2.25 million for its participation in an international conspiracy to fix prices and share markets for choline chloride from 1988 to 1998. The amount of the fine reflects a reduced sentence due to Chinook's early and valuable co-operation with the Bureau's investigation and the difficult financial circumstances it was in at the time of sentencing. Choline chloride, also known as vitamin B4, is an important additive widely used in the animal feed industry, primarily for chickens and pigs. A company executive<sup>6</sup> was also sentenced on September 17, 1999 to 9 months imprisonment, to be served in the community, and 50 hours of community service.

45. On October 15, 1999, Roussel Canada Inc., a subsidiary of Hoechst Marion Roussel S.A., was convicted for implementing a foreign-directed conspiracy. The conspiracy involved an agreement to fix prices and allocate customers for pharma-grade vitamin B12 between 1990 and 1997. Roussel was fined \$370,000 by the Federal Court, which also imposed an order prohibiting it from committing or repeating the offence.

46. In total, eight international and Canadian vitamin producers have been convicted and fined close to \$100 million for their participation in conspiracies to fix prices and allocate market shares for a number of vitamin products. In addition, three senior executives<sup>7</sup> have been sentenced to severe fines and/or custodial sentences for their role in the conspiracies. Inquiries into cartels in bulk vitamins and other food and feed additives are ongoing.

### v) Discontinued cases

47. Under the Act, the Commissioner can discontinue an investigation if he is of the view that further inquiry is unnecessary. This may occur for a variety of reasons: where there is insufficient evidence to

support enforcement action, public interest considerations, an undertaking by the business concerned to cease impugned practices, etc. A sampling of cases discontinued during the reporting period follows.

48. **Seal Meat Inquiry (conspiracy):** On May 20, 1998, the Bureau began an inquiry, following a complaint by six Canadian residents, into a possible agreement between certain seal meat processors not to compete with each other on price and/or not to contest existing markets. No evidence was found to support the allegation and the inquiry was discontinued in May 1999.

49. **Commission Rates Paid to Travel Agents on International Flights (conspiracy):** Following complaints from travel agents in late 1997 that air carriers conspired to fix commission rates paid to travel agents for international flights, the Bureau launched an investigation on July 5, 1998. It found that commission rates on international flights were determined by competitive market pressures and not by any agreement among international airline companies and closed its investigation in late 1999.

50. **Nitrogen Fertiliser (conspiracy, predatory pricing, and abuse of dominant position):** Following a six-resident application for an inquiry into a manufacturer of fertilisers and its vertically integrated distributor, the Bureau launched an investigation in July, 1998. It concluded that the product was not sold at unreasonably low retail prices. The manufacturer priced its fertiliser and set the terms and conditions of sale in response to market forces. The inquiry was subsequently closed.

51. **Clothing Products (price maintenance):** Following a complaint from a retailer that a Canadian supplier of an exclusive brand of jeans refused to supply and prevented the retailer from obtaining supply elsewhere as a result of sales at low prices, the Bureau launched an investigation. In February 1999, the Bureau obtained written assurances from the supplier to comply with the provisions of the Act in the future and, consequently, closed its inquiry.

52. **Provincial Water and Sewer Pipe (conspiracy):** In February 1998, the Bureau began an inquiry following a request from the US government to look into allegations that Canadian pipe manufacturers were pressuring distributors to refuse to deal with US manufacturers. Although evidence obtained was insufficient to establish a violation, the alleged anti-competitive conduct stopped after the launch of the inquiry. Canadian manufacturers, in light of these developments, undertook through compliance programs to ensure that they comply with the provisions of the Act.

53. **Distribution of Video Cassette Products (conspiracy, price discrimination, promotional advertising, and price maintenance):** Following a six-resident application alleging that certain cassette distribution policies in Canada violated the *Competition Act*, the Bureau launched an investigation on November, 24, 1998. As no evidence substantiating the claim was found, the inquiry was discontinued March 31, 2000.

54. **Cemetery Monuments (conspiracy, price discrimination, and abuse of dominant position):** A complaint filed on July 14, 1998, alleged that an agreement between a municipality and a monument firm resulted in an unfair advantage for the firm and contravened the *Competition Act*. Investigation revealed that the agreement was the result of a public tendering process and the inquiry was discontinued.

55. **Gasoline (abuse of dominance, predatory pricing, price maintenance):** The Bureau concluded detailed examinations in the gasoline markets of Chatham, Ontario, and Saskatchewan. Having reviewed pricing data and other relevant market information, the Bureau determined that there was no evidence to support allegations of anti-competitive behaviour in either market.

56. **Auto Glass (predatory pricing, conspiracy):** The Bureau received complaints that auto insurance companies and auto glass networks held policies that favoured auto glass chains and conspired to

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reduce competition unduly in the auto glass market. In addition, prices at these chains were alleged to be below cost for the purpose of forcing independent glass shops to exit the market. Following investigation, the Bureau announced on May 7, 1999, that it concluded that the auto glass market is highly competitive and the behaviour of insurance companies and auto glass networks were market-driven.

57. **Auto Body Repair (tied selling, exclusive dealing):** The complainants claimed that the practice by auto insurance companies of directing insured vehicle owners to preferred auto body shops resulted in reduced business for non-preferred, or independent, auto body shops and lessened competition in auto body repair services. The Bureau, after completing an extensive examination of a major market in the Canadian auto body repair industry between September 1997 and June 1999 concluded that the practice of directing insured vehicle owners to preferred auto body repair shops had not substantially lessened competition. Therefore, there were no grounds to warrant an application to the Competition Tribunal for a remedial order.

58. **Milk (exclusive dealing):** The Bureau initiated an inquiry on March 16, 1999, following a complaint that a milk producer in Quebec used exclusive contracts to require retail merchants to buy liquid products from only the supplier in question. The inquiry was discontinued on April 28, 1999, after investigation indicated that the producer had not used exclusive contracts.

### 2. *Mergers and acquisitions*

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

Examples of mergers and acquisitions reviewed by the Bureau follow.

ii) *Summary of significant cases*

59. **Air Canada and Canadian Airlines Corporation:** Provisions of the *Competition Act* were suspended for 90 days under the authority of the Ministers of Transport and Industry to allow Air Canada and Canadian Airlines Corporation (“Canadian”) to discuss the potential restructuring of the airlines industry. The financial difficulties of Canadian created the possibility of a single dominant airline through an Air Canada-Canadian merger or the failure of Canadian. Following extensive consultations, the Bureau provided a set of recommendations in October 1999 to alleviate competition concerns in a single dominant carrier environment. These recommendations included: surrender of take-off and landing slots at Toronto’s Pearson International Airport, surrender of certain facilities across various airports within Canada, etc. Policy changes regarding foreign ownership and the operation of foreign-owned carriers in Canada were also proposed. The Bureau undertook a two-stage review process after merger plans were announced by the two airlines in November 1999. Having established that Canadian was indeed facing imminent financial failure and having explored potential alternatives to the merger, the Bureau approved the merger, provided that the new airline abided by certain commitments or “Undertakings” that included some of the recommendations first set forth in October 1999. The Bureau concluded that a merger together with the “Undertakings” was preferable to the failure of Canadian. To promote competition, new legislation governing the airline industry and a Bill containing amendments to the *Competition Act* to allow for greater substantive and injunctive powers against anti-competitive conduct was introduced in Parliament in February 2000.

60. **Canadian National Railways Corporation and the Burlington Northern and Santa Fe Railway Company:** On December 20, 1999, Burlington Northern and Santa Fe Railway (“BNSF”) and Canadian National Railway (“CN”), both with operations in Canada and the US announced their intention to merge. The transaction was subject to review by the US Surface Transportation Board (“STB”) and the

Competition Bureau in Canada. The industry was undergoing restructuring as a result of previous mergers. Following extensive consultations with industry and various stakeholders, the STB announced a 15 month moratorium on rail merger announcements.<sup>8</sup>

61. **Toronto-Dominion Bank and Canada Trust:** On January 28, 2000, the Bureau delivered the results of its competition analysis of the proposed merger between the Toronto-Dominion Bank (“TD”) and CT Financial Services Inc., parent of Canada Trust, to the principals of these financial institutions and to the Minister of Finance. The Bureau assessed the proposed merger in the traditional manner, according to the analytical framework contained in the *Merger Enforcement Guidelines as Applied to a Bank Merger* issued by it in July 1998. On the basis of the Bureau’s analysis, it advised the Minister of Finance to approve the merger on condition that there be divestitures in three local markets and the sale of Canada Trust’s MasterCard portfolio or the conversion of TD’s Visa portfolio to MasterCard, so as to address the competition issues outlined by the Bureau. The merger was ultimately approved on January 31, 2000.

62. **British American Tobacco and Rothmans International:** On January 11, 1999, British American Tobacco (BAT), a major shareholder in Imasco, announced that it was buying Rothmans International for \$11.4 billion. Together the two firms accounted for 88% of manufactured cigarette sales and 81% of fine cut products in Canada. The Bureau concluded that the merger would result in a substantial lessening or prevention of competition from a lack of effective alternatives or import competition, high levels of concentration and high barriers to entry. As a result, BAT sold all of the assets acquired in Rothmans in Canada by February 2000.

63. **Loblaw-Provigo, Loblaw-Oshawa, Sobeys-Oshawa and Métro-Richelieu-Loch:** Four transactions took place between November 1998, and December 1999, that led to a significant restructuring of the grocery industry in Canada.

- The acquisition by Loblaw Companies Inc. (“Loblaw”) of Provigo Inc. (“Provigo”);
- The acquisition by Métro-Richelieu from Loblaw of certain Provigo assets in Ontario;
- The acquisition by Loblaw of the retail and wholesale grocery business of the Oshawa Group Ltd. in Atlantic Canada;
- The acquisition by Sobeys’s Inc. of the Oshawa Group’s retail and wholesale operations across the country, with the exception of Atlantic Canada, and of a coast-to-coast food service distribution business, operating as SERCA Food Service Inc.

64. Competitive concerns were raised in Ontario following Loblaw’s acquisition of Provigo in Quebec. As a result, Loblaw, in addition to other divestitures, had to divest 24 retail markets in eastern and northern Ontario to Métro-Richelieu. Loblaw also had to divest another 8 markets by December 31, 2000. The Bureau also found anti-competitive effects in four markets in eastern Canada where Loblaw subsequently divested its interests. Anti-competitive effects were also found in Sobeys’ acquisitions in 6 retail markets in Quebec and Ontario and in the food distribution market in the Maritimes. Divestitures will be completed by December 31, 2000.

65. **The Coca-Cola Company of Canada and Cadbury Beverages Canada Inc.:** The proposed merger between Coca-Cola Company (Coke) and the carbonated soft-drink business of Cadbury Schweppes (Cadbury) in all markets except the US and France was initially valued at \$1.85 billion US. Cadbury does not own any bottling operations in Canada but licences its trademark brands to Coke or Pepsi on a national basis for Crush and C-Plus and on a regional basis for Canada Dry and Schweppes. The Bureau had concerns with the transaction because of the “portfolio effect” where, without a ‘full line’ of recognised brands, it is difficult to compete effectively with other ‘full line’ companies. In addition, it is possible that, post-merger, under current Cadbury licensing agreements, Coke would become one of

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Pepsi's major suppliers. Finally, the nature and degree of entry barriers for the industry also raised concerns. The Bureau is continuing its examination of the case at the end of FY99-00.<sup>9</sup>

66. **Superior Propane and ICG Propane:** In July 1998, Superior and ICG Propane, the two largest propane suppliers in Canada, announced their intention to merge. Following an extensive, cross-country investigation, the Bureau concluded that this would substantially lessen or prevent competition for the supply and delivery of propane to retail and wholesale customers in both the national and local markets. This conclusion was based on a number of factors, including high post-merger market shares, barriers to entry and limited or no effective remaining competition in many markets. Consequently, the Bureau filed an application with the Competition Tribunal in December 1998, contesting the merger. The hearings began on September 23, 1999, and continued until February 9, 2000. As of the end of FY99-00, a decision in this case was pending.<sup>10</sup>

67. **Pearson plc and Viacom International Inc.:** On November 30, 1998, Pearson plc, a British company focussing on information, education and entertainment acquired the educational and reference publishing affiliates of US-based Viacom International Inc. ("Viacom"). In Canada, this transaction added Viacom's Prentice Hall Canada to Pearson's existing publishing lineup of Copp Clark Limited, Addison-Wesley Longman and Les Éditions du Renouveau Pédagogique. At the end of its review in August, 1999, the Bureau took the position that the transaction would likely substantially lessen competition for textbooks in French as a second language for elementary and high school grades and in mathematics for elementary grades. To address these concerns, Pearson plc agreed to divest titles in French as a second language and in mathematics, thereby introducing new competitors into these educational markets.

68. **Canadian Waste Services and Browning-Ferris Industries Ltd.:** In May, 1999, Canadian Waste Services, the largest waste management company in Canada, announced its intention to merge with the second largest company, Browning-Ferris Industries Ltd. ("Browning"). The Bureau concluded that the merger would result in a substantial lessening or prevention of competition in the provision of commercial collection services and in several markets where their operations overlapped. The parties subsequently restructured the merger to reduce the businesses to be acquired. At the end of March 2000, the Bureau approved the acquisition by Canadian Waste Services of certain collection and disposal businesses of Browning which did not raise competition concerns. The acquisition of a landfill owned by Browning is pending the resolution of competition concerns through proceedings before the Tribunal.

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

#### A. ***Regulatory policies***

69. 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 99-00.

##### i) *Broadcasting, Telecommunications and New Media (Internet)*

70. The Bureau has been quite active intervening before the Canadian Radio-Television and Telecommunications Commission ("CRTC") to advocate the opening of telecommunications and broadcasting markets to competition and, where market forces are effective, the deregulation of these industries.

71. **Radio Broadcasting (CRTC PN 1999-55, 1999-176):** The Bureau reiterated its earlier submission that the CRTC should evaluate local management agreements in the context of the cultural objectives of the *Broadcasting Act*. The Bureau advocated that the CRTC should rely on the *Competition Act* to address effects on competition in the local radio advertising markets. On November 1, 1999, the CRTC issued its decision, and declined to adopt the Bureau's recommendations.
72. **Canadian TV broadcasting industry (CRTC PN 98-44 and Decision 99-97):** The Bureau focussed its submission on the desirability of eliminating market entry tests for licensing new local broadcasting undertakings and whether existing ownership restrictions should be relaxed in the examination of TV broadcasting mergers. On June 11, 1999, the CRTC decided to continue its existing policy of limiting ownership to one over-the-air station in one language in a given market.
73. **Television Broadcasting (CRTC PN 1999-83):** The Bureau supported the CRTC proposal that the *Pay Television Regulations* should be amended to ensure that pay television licensees do not acquire rights to pay-per-view programs on an exclusive or other preferential basis to ensure effective competition with cable television firms. This would also facilitate new entry into broadcast distribution by wireline, wireless and satellite firms who wish to compete with cable television programs. A decision was still pending at end of FY 99-00.
74. **International telecommunications services (CRTC PN 1999-97):** The Bureau supported Teleglobe's request to the CRTC for complete and unconditional deregulation of its wholesale Canada-overseas telephone services. Because of recent CRTC decisions, changes in government policy and technological advances, barriers to entry have been substantially reduced to effectively remove Teleglobe's monopoly position. This has allowed competitors to compete with Teleglobe in the wholesale market for Canada-overseas telephone services. The CRTC agreed with the Bureau's analysis and issued a decision on September 28, 1999, stating that it would abstain from regulating Teleglobe's pricing agreements and other aspects of its operations. The CRTC continues to retain regulatory power over confidential customer information.
75. **Licencing framework (CRTC PN 1999-19):** The Bureau submitted that the CRTC should let competition and market forces play a greater role in the objectives of the *Broadcasting Act*. The Bureau felt the new framework should be based on an open entry licensing model, clear criteria for a license, and maximum reliance on competition among programmers. Financial and competitive considerations should not be a consideration in licensing. The CRTC's one licence per genre approach, and its tiering, packaging and linkage rules should be greatly eased or eliminated. The CRTC declined to adopt some of the Bureau's recommendations, and chose to license two different classes of new services based primarily on the amount of Canadian content which would restrict the competitive opportunities available to new speciality and pay television services.
76. **Television satellite signals (CRTC PN 1999-72):** The Bureau's submission advocated releasing the restrictions that limit Canadian broadcast distributors (cable companies) from accessing programming from US satellites. The CRTC decided on April 26, 1999, to deny a proposal that would authorise the broadcasting distributors to receive the US television network signals directly from US satellite service providers.
77. **Non-traditional broadcasting services, including the Internet and on-line new media services (CRTC PN 1999-84\Telecom PN 99-14):** In determining the extent of regulation for the Internet and on-line new media under the *Broadcasting Act*, the Bureau argued that the CRTC should begin a process of transition from the way traditional media was regulated. It is also important that voluntary codes of the new media industry are in compliance with the *Competition Act*. The CRTC announced on May 17,

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1999, that it would not regulate new media services on the Internet to avoid the possibility of placing Canadian new media at a competitive disadvantage in the global marketplace.

### ii) *Food*

78. **Processor Allocation Policy in the Ontario Poultry Industry:** The Bureau addressed the allocation policy that limited the choice of large chicken purchasers and froze market shares among existing processors in addition to raising barriers to entry for new entrants into the market. To restore competition, the Bureau suggested a bottom-up system or a system where the Chicken Farmers of Ontario (“CFO”) would continue to manage, but competition would allocate the supply. A true bottom-up system would focus on the market rather than the individual processor requirements and give producers an incentive to respond to potential competition. At the same time, it would give purchasers more flexibility in choosing among processors and allow for easier entry by new processors. On December 1, 1999, the Ontario Farm Products Marketing Commission decided to set up a formula approach to price-setting and to allow supply to be determined by a bottom-up process, while the CFO establishes policies that govern export, price, volume and allocation.

79. **Baby Food (Material Injury Inquiry):** As a result of a decision by the Canadian International Trade Tribunal (“CITT”) that H.J. Heinz Company of Canada Ltd. (“Heinz”) suffered material injury from the dumping of jarred baby food in the Canadian market by Gerber Canada Inc. (“Gerber”), duties were imposed on Gerber baby food products that resulted in the exit of Gerber from the Canadian market. Gerber and the Bureau sought to have the decision reviewed by a Bi-National Panel as provided by NAFTA’s dispute settlement mechanism. Heinz’s challenge to the standing of the Bureau to seek a Binational review was dismissed. The NAFTA Binational Panel, in November 1999, upheld the CITT’s decision that material injury had been caused by Gerber to Heinz.<sup>11</sup>

### iii) *Energy*

80. **Ontario Electricity Standard Supply Service:** Under the *Ontario Electricity Act*, Standard Supply Service is the default service provided to customers when the Ontario electricity market is opened to competition. The Bureau supported measures that would achieve the potential benefits of competition for consumers in Ontario and advocated the use of budget billing to protect consumers from price volatility. The Ontario Energy Board adopted positions largely consistent with the Bureau’s recommendations.

81. **New Brunswick Natural Gas:** In preparation for the sale of natural gas, a regulatory framework would need to be established to regulate the conduct of natural gas distributors. The Bureau’s submission included a discussion of the competition laws and policies as well as appropriate roles and responsibilities for the Board and the Bureau. Comments were made on specific code of conduct matters in addition to a presentation on competition principles. The Board decided to adopt some of the Bureau’s recommendations and referred others to an industry working group.

## B. *Trade and industrial policies*

82. In an increasingly interconnected world in which anti-competitive business behaviour tends to have cross-border effects, no enforcement agency can afford to focus solely 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.

83. **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 Committee on Consumer Policy.

84. **Internationalisation of Competition Policy:** The Bureau is currently 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 multilateral competition framework at the WTO which will advance competition policy internationally. Roundtable discussions with domestic stakeholders on the internationalisation of competition policy were conducted by the Economics and International Affairs Branch of the Bureau.

85. **Free Trade Negotiations:** The Bureau actively participated in the Free Trade Area of the Americas (“FTAA”) *Negotiating Group on Competition Policy* (“NGCP”), which held meetings in May, July and October 1999 and January 2000. The Bureau has also played an important role in this phase of the negotiations, focused predominantly on the preparation of draft text for a chapter on competition policy, through its written submissions and interventions at meetings. Furthermore, the Bureau also participated in discussions on the interaction between trade and competition policy, and in technical assistance sessions to provide guidance and advice to delegations within the FTAA on the drafting, implementation and enforcement of competition policies.

86. The Bureau also engaged in negotiations with the European Free Trade Association states (“EFTA”) on the competition chapter of a proposed free trade agreement. Negotiations on the competition policy chapter took place in April, June and October of 1999. Agreement was reached on the competition policy chapter. Other issues in relation to the agreement, however, remain to be resolved.

87. **Labelling:** Following the mandate under the NAFTA Subcommittee on Labelling of Textile and Apparel Goods, the Bureau, with other government departments, industry and consumer representatives, has been working to harmonise labelling requirements to facilitate trade in textile and apparel goods. New common care symbols are in the final stages of development to provide more care information and to better reflect modern cleaning methods. The Bureau has asked the Canadian General Standards Board to review the current Canadian care labelling standard as well as associated test methods and test criteria to ensure that they are appropriate for the current marketplace.

88. Since 1994, the Bureau has participated in the International Standards Organisation (ISO) to assist in the development of environmental labelling standards under the ISO 14000 environmental management series. The Bureau also assisted the Canadian Standards Association to adopt ISO 14021, Self Declared Environmental Claims, as a National Standard of Canada. This standard reflects what will be accepted in most industrialised countries as the basic guidance on the use of environmental terms and symbols. After consultations in early 2000, the Bureau may adopt this new National Standard to replace the current *Principles and Guidelines for Environmental Labelling and Advertising*. Bureau staff continue to be involved with industry and other government agencies to promote awareness of labelling, accreditation and general competition issues involving matters such as jewellery marketing and the labelling of pet food products.

#### IV. Resources of the Bureau

89. In FY 99-00, the operating budget of the Bureau was \$25.8 million including carry forward. In addition, \$3.993 million in supplementary estimates was provided for the airline restructuring review. The

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Bureau also received \$7.5 million in fees. A major portion of the budget, \$21 million, was allocated to salaries for 382 authorised full time staff, consisting of 22 executives, 13 economists, 227 commerce officers and 120 other employees carrying out informatics, administrative services and support functions.

90. The Bureau has administrative responsibility for collecting fines imposed by the courts. During the reporting period, approximately \$103,977,500 in fines was imposed and \$101,198,961 was collected and credited to the government's Consolidated Revenue Fund.

### **V. New studies related to competition policy**

- Report on the pricing provisions in the *Competition Act*, J. Anthony VanDuzer, Gilles Paquet, Ottawa University, October 1999.
- International comparative analysis of private rights of access, R. Jack Roberts, 1999.
- Comparative analysis of legal frameworks pertaining to information and mutual assistance between Canada and United States authorities, Byers Casgrain, 1999.
- Price Scanning Report, Competition Bureau, March 2000.

**NOTES**

1. Additional detail on these amendments can be found in the 1999 annual report.
2. These and the next two sets of guidelines discussed are intended to set out the position of the Commissioner on recently enacted provisions. For further information on these provisions, please see last year's annual report.
3. The agreement and related details can be found on the Bureau's website at <http://competition.gc.ca>.
4. For statistical information, please see Appendix 1.
5. F. Hoffman- LaRoche was fined \$50.9 million (\$48 million in respect of the vitamins conspiracy and \$2.9 million in respect of the citric acid conspiracy), BASF AG \$18 million; and Rhône-Poulenc S.A. \$14 million.
6. Mr. Russell Cosburn, former Vice President - Sales for Chinook, was sentenced for his role in fixing prices and allocating or sharing markets for choline chloride.
7. In addition to Mr. Cosburn, Mr. Andreas Hauri, a Swiss national and former Head of Global Marketing for the Vitamins and Fine Chemicals Division of F. Hoffmann-La Roche Ltd., was convicted and fined a total of \$250,000 for his part in two international cartels to fix prices and allocate markets in the bulk vitamins and citric acid industries. Dr. Roland Brönnimann, Mr. Hauri's former supervisor, was convicted and fined \$250,000 for his participation in the bulk vitamins cartel.
8. On July 24, 2000, the merger was abandoned due to regulatory uncertainty in the US and the expected detrimental effects this would have on the two companies.
9. On July 26, 2000, Coca Cola announced that the merger plans had been abandoned in Canada and Mexico because of concerns raised by competition and regulatory authorities.
10. On August 2000, the Competition Tribunal rendered its decision in this matter. The majority concluded that the two companies should be allowed to merge because it was satisfied that the efficiencies presented by Superior would be greater than, and would offset, the effects of any prevention or lessening of competition. The Bureau filed a Notice of Appeal with the Federal Court on September 6, 2000.
11. Following a public interest inquiry, the CITT recommended to the Minister of Finance that the duties on jarred baby food be reduced; the recommendation was implemented in July, 1999.

## Appendix 1

<b>Selected Activities of the Competition Bureau</b>	<b>1996-97</b>	<b>1997-98</b>	<b>1998-99</b>	<b>1999-00</b>
<b>Number of complaints, examinations, inquiries and advisory opinions</b>				
Total complaints/information requests	2 040	6 939	10 009	13 798
Examinations (two or more days of review)	77	870	601	645
Applications for inquiries under section 9	10	11	11	13
Inquiries in progress at year end	45	40	48	48
Written advisory opinions	170	235	75	41
<b>Disposition of inquiries</b>				
Inquiries formally discontinued	9	29	21	17
Matters referred to the Attorney General of Canada	0	8	8	12
Matters referred where further action is not warranted	0	2	0	1
Prosecutions or other proceedings commenced	1	6	8	9
Applications to the Competition Tribunal	3	8	5	4
-Mergers	3	4	5	3
-Other reviewable practices	0	4	0	1
Representatives before regulatory bodies	11	14	15	7
<b>Civil Matters- selected activities</b>				
<b>Number of complaints, examinations and inquiries</b>				
Total complaints/information contacts	561	503	819	613
Examinations commenced (two or more days of review)	31	41	29	43
Applications for inquiries under s. 9 (six resident application to the Commissioner for inquiry)	2	3	4	5
Inquiries in progress at year end	16	5	8	10
Written advisory opinions	1	0	0	0

<b>Civil Matters- selected activities</b>	<b>1996-97</b>	<b>1997-98</b>	<b>1998-99</b>	<b>1999-00</b>
<b>Disposition of inquiries</b>				
Inquiries resolved by alternative case resolution	4	4	3	5
Applications to the Competition Tribunal	0	4	0	0
Discontinuances		11	6	5
<b>Interventions</b>				
CRTC		9	8	2
Provincial		3	5	3
CITT		2	1	1
Policy work		2	1	1
<b>Criminal matters - selected activities</b>				
<b>Number of complaints, examinations and inquiries</b>				
Total complaints/information requests	1 479	1 285	937	1 945
Examinations commenced	46	39	49	37
Applications for inquiries under section 9	8	4	7	4
Inquiries in progress at year end	29	20	26	22
<b>Disposition of inquiries</b>				
Matters referred to the Attorney General of Canada	0	3	7	9
Matters where charges were laid	1	3	6	6
Matters where Attorney General declined to proceed or withdrew charges (may include matters referred during previous years)	0	1	0	1
Matters before the Courts (may include matters referred during previous years)	10	8	6	7
Disposition of prosecutions (findings of guilt, guilty pleas, acquittals, stay of proceedings, orders of prohibition - may include matters referred during previous years)	22	48	16	21

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<b>Criminal matters - selected activities</b>	<b>1996-97</b>	<b>1997-98</b>	<b>1998-99</b>	<b>1999-00</b>
<b>Other activities</b>				
Examinations resolved by information contacts	32	13	11	6
Written advisory opinions	14	12	8	7
Mutual Legal Assistance Treaty (MLAT) requests	1	0	0	1
Searches	0	1	5	5
<b>Mergers</b>				
Examinations commenced (two or more days of review; includes notifiable transactions, advance ruling certificates and examinations commenced for other reasons; some examinations commenced may arise from notifications and advance ruling certificate requests in relation to the same (transactions))	314	392	361	425
Notifiable transactions	141	196	191	198
Advance ruling certificates requests	224	285	226	273
<b>Examinations concluded</b>				
As posing no issue under the Act	299	406	346	392
With monitoring only	1	2	0	0
With pre-closing restructuring	1	0	0	2
With post-closing restructuring/undertakings	0	3	1	6
With consent orders	1	1	2	1
Through contested proceedings	0	0	2	0
Parties abandoned proposed mergers in whole or in part as a result of Commissioner's position	0	0	3	1
Total examinations concluded (includes advance ruling certificates and advisory opinions issued and matters which have been concluded or withdrawn before the Competition Tribunal)	302	412	354	402
-advance ruling certificates issued (included in "Total examinations concluded")	189	238	191	223

<b>Examinations concluded (cont'd)</b>	<b>1996-97</b>	<b>1997-98</b>	<b>1998-99</b>	<b>1999-00</b>
-advisory opinions issued (included in "Total examinations concluded")	2	3	7	3
Examinations ongoing at year end	60	40	47	70
Total examinations during the year	362	452	401	472
<b>Applications and Notices of Application before the Tribunal</b>				
Concluded or withdrawn	1	2	4	1
Ongoing	2	2	1	2
<b>Misleading representations and deceptive marketing practices offences - selected activities</b>				
<b>Number of complaints, examinations and inquiries</b>				
Total complaints received	6 277	5 148	8 253	11 240
Applications for inquiries under section 9	2	4	0	4
Inquiries commenced	18	9	4	13
<b>Disposition of inquiries</b>				
Completed examinations/inquiries	383	397	163	140
Information contacts (includes only written contacts)	246	208	137	110
Undertakings (terms signed off)	4	2	3	9
<b>Inquiries formally discontinued</b>				
- Cases involving undertakings	8	2	3	2
(discontinued inquiries involving undertakings are reported for the fiscal year in which they were discontinued; accordingly, these may not coincide with the actual number of undertakings received in any given fiscal year)				
- Other cases	17	7	4	2
Matters referred to the Attorney General of Canada	3	5	1	3

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<b>Inquiries formally discontinued (cont'd)</b>	<b>1996-97</b>	<b>1997-98</b>	<b>1998-99</b>	<b>1999-00</b>
Matters where further action is not warranted  (may include matters referred during previous years)	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>
Prosecutions commenced (may include matters referred during previous years)	<b>4</b>	<b>3</b>	<b>2</b>	<b>2</b>
<b>Prosecutions concluded (may include matters referred during previous years)</b>				
- convictions	<b>8</b>	<b>7</b>	<b>5</b>	<b>2</b>
- non-convictions (includes conditional and absolute discharges, withdrawals, stays of proceedings, etc. It should be noted that charges against some of the accused are often withdrawn after other accused in the same case have pleaded guilty. Accordingly, there is some overlap.)	<b>2</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>Applications to the Competition Tribunal (Consent Orders Filed)</b>	<b>n.a.</b>	<b>n.a.</b>	<b>n.a.</b>	<b>1</b>
<b>Request advisory opinions (written opinions given)</b>				<b>31</b>
<b>Total Fines</b>	<b>241 500</b>	<b>573 300</b>	<b>1 402 500</b>	<b>1 190 000</b>