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(April 1st 2001 through March 31st 2002)

1. Introduction

1. This report describes recent competition law and policy developments in Canada and summarizes the enforcement activities of the Competition Bureau (the Bureau) for the fiscal year April 1, 2001, through March 31, 2002.

1.1 *Changes to Competition Laws and Policies, Proposed or Adopted*

1.1.1 *Summary of New Legal Provisions of Competition Law and Related Legislation*

1.1.1.1 Bill C-23

2. On April 4, 2001 the Government introduced new legislation, Bill C-23 *An Act to amend the Competition Act and the Competition Tribunal Act*.¹ The purpose of the amendments is to increase Canada's ability to effectively enforce and administer competition policy in the face of a changing global economy so as to build a more efficient and competitive Canadian marketplace. The amendments achieve the following:

- Amendments relating to international assistance, create a new framework to facilitate cooperation between foreign competition authorities. The new framework essentially mirrors existing procedures with respect to mutual legal assistance in criminal matters under the *Mutual Legal Assistance in Criminal Matters Act*. It will allow the gathering of evidence for and from foreign jurisdictions with respect to non-criminal competition matters such as abuse of dominant position.
- Amendments addressing deceptive notice of winning a prize, create a new criminal offence that prohibits the sending of a notice that gives the recipient the general impression he or she has won a "prize" and the recipient is asked or given the option to pay money or incur a cost in order to obtain the prize. The provision applies to notices sent by any means, such as regular or electronic mail. The proposed amendment also sets a "code of conduct" for businesses who wish to use this type of promotion for their commercial activities.
- Amendments to streamline Competition Tribunal processes, provide that where the Commissioner of Competition (the Commissioner) and a person who is the subject of an inquiry agree, they may refer any question of law, mixed law and fact, jurisdiction, practice or procedure to the Competition Tribunal (the Tribunal) for determination. Subject to applicable circumstances, the Commissioner, on his own initiative, may also refer a question to the Tribunal. The Tribunal will also have the authority to award costs in accordance with

¹ *An Act to Amend the Competition Act and the Competition Tribunal Act*, S.C. 2002, c.16., in force since June 21, 2002 except for s. 124.1.

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the *Federal Court Rules* in respect of reviewable matters. The new legislation also grants the Tribunal the authority to dismiss an application in whole or in part in a summary way if it finds that there is no genuine basis for it.

- Amendments to broaden the scope under which the Tribunal may issue temporary orders- prior to the enactment of the Bill, the Commissioner could make an application for an interim order during the period of inquiry only with respect to inquiries into mergers and reviewable deceptive marketing practices. The amendments will allow the Tribunal to issue an order for a maximum period of 80 days with the possibility of extension to complete the inquiry and to determine whether an application should be made before the Tribunal.
- Amendments to allow for a limited right of private access to the Tribunal - individuals and firms can apply to the Tribunal to resolve competition issues falling under sections 75 and 77 of the Act, which are refusal to deal, tied selling, exclusive dealing and market restrictions. Measures to minimize the risk of strategic litigation were also included in the Act.
- Amendments with respect to the Airline Industry include specific measures to strengthen the *Competition Act* to deal with the airline industry and to encourage compliance with the Act. The main amendment allows the Tribunal to impose an administrative monetary penalty of up to \$15 million against an airline when a permanent order has been made under s. 79, the abuse of dominance section of the *Competition Act*.

1.2 Other Relevant Measures, Including New Guidelines

1.2.1 Abuse of Dominance Guidelines

3. On August 1, 2001, the Bureau released *Enforcement Guidelines on the Abuse of Dominance Provisions* to help business understand the Bureau's enforcement policy with respect to the abuse of dominance provisions (sections 78 and 79) of the *Competition Act*. The guidelines define market dominance, discuss abuse of dominance, and outline the Bureau's approach to enforcement and corrective measures designed to ensure a fair and efficient marketplace.

1.2.2 Abuse of Dominance in the Airline Industry

4. From February to May 2001, the Bureau released a draft version for consultations of its *Enforcement Guidelines on the Abuse of Dominance in the Airline Industry*. The draft guidelines cover anti-competitive acts in the airline industry, as defined by legislation and regulations, including:

- operating or increasing capacity at fares below avoidable costs
- exclusionary conduct, such as pre-empting airport take-off and landing spots
- the use of essential facilities and services for anti-competitive purposes
- anti-competitive conducts involving frequent flyer programs
- travel commission overrides and corporate discount programs.

1.2.3 *Abuse of Dominance Provisions as Applied to the Retail Grocery Industry*

5. In December 2001, the Bureau released for public consultations a draft version of its *Enforcement Guidelines: The Abuse of Dominance Provisions (Sections 78-79 of the Competition Act) as Applied to the Retail Grocery Industry*. They aim at clarifying the Bureau's approach to enforcing the abuse of dominance provisions in the Canadian grocery industry.

1.2.4 *Internet Advertising Guidelines*

6. On May 28, 2001, the Bureau released for public comment its draft version of *Staying 'On-side' When Advertising Online: A Guide to Compliance with the Competition Act When Advertising on the Internet*. The guide sets out the approach the Bureau will take in applying the *Competition Act* to online advertising. It is designed to help businesses make sure their online representations are in conformity with the Act. The guide is also intended to remind advertisers that the rules of the game for business practices and advertising also apply to online promotional activities and to clarify the responsibilities of persons who publish representations on the Web.

1.2.5 *Pet Food Labelling Guidelines*

7. On behalf of the Working Group on the Labelling and Advertising of Pet Food in Canada, the Bureau issued a new pet food labelling and advertising guide for dog and cat food in September 2001. The *Guide for the Labelling and Advertising of Pet Food* addresses consumers' concerns about the lack of uniformity and monitoring of pet food labelling and is the result of a broad consultation with the Canadian public and key industry stakeholders. It sets out industry standards for the labelling and advertising of these pre-packaged products and will be used as an enforcement tool when the Bureau evaluates allegations of false and misleading representations under the *Competition Act* and the *Consumer Packaging and Labelling Act*.

1.2.6 *"Made in Canada" diamonds*

8. On November 13, 2001, the Bureau announced a new enforcement policy regarding false or misleading representations relating to the marketing and advertising of Canadian diamonds. The new policy is outlined in the Bureau's *Enforcement Policy on the Marketing of Canadian Diamonds* and in the Bureau's updated *Guide to "Made in Canada" Claims*. It establishes an underlying principle that diamonds, which are mined in Canada, will be considered Canadian, regardless of where they are cut and polished. Diamonds mined outside Canada but cut and polished in Canada will not qualify as Canadian diamonds.

1.2.7 *Environmental Labelling and Advertising Guidelines*

9. On July 17, 2001, the Bureau announced that it is seeking public comments on its intention to adopt new guidelines on environmental labelling and advertising, commonly referred to as "green marketing." The new guidelines will be used by the Bureau when assessing environmental labelling and advertising claims under the provisions of the *Competition Act* and the *Consumer Packaging and Labelling Act*. They aim to help businesses make sure that their representations are not misleading and to help consumers make better-informed decisions when shopping for products or services making environmental claims on their packaging or in their advertising.

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1.3 Proposals to Change Competition Laws, related legislation or policies

10. A Private Member's Bill was introduced in the House of Commons in February 2001 to amend the *Competition Act* with regards to the efficiency exception in merger review. The purpose of the Bill is to ensure that the benefits derived from gains in efficiencies are passed on to consumers and that the efficiency exception is not invoked when the merger would result in the creation or strengthening of a dominant market position. Bill C-248 received second reading and was referred to the House of Commons Standing Committee on Industry for consideration.

1.4 International Co-operation Developments

1.4.1 Co-operation

11. The Bureau participates in international activities to promote the development of coordinated competition policy and to enhance enforcement through cooperation with competition agencies around the world. The Bureau cooperates with its foreign counterparts on a regular basis in, for example, international merger transactions, and shares our national perspectives and experiences through our active participation in international conferences and meetings.

1.4.2 Free Trade Agreements

12. Canada is in the process of on-going free trade negotiations with the Central American Four (El Salvador, Guatemala, Honduras and Nicaragua), Singapore and the Americas (FTAA). Canada is seeking to include competition policy provisions in these agreements.

1.4.3 Co-operation Agreements

13. On November 14, 2001, Canada and Mexico signed a cooperation agreement on competition law enforcement. Once this agreement enters into force, it will provide a framework for notification, coordination and cooperation on law enforcement activities, information exchange and conflict avoidance.

14. On December 17, 2001, the Bureau and Chile's competition agency signed a Memorandum of Understanding formalizing a cooperation arrangement built on commitments under the Canada-Chile Free Trade Agreement. The memorandum sets out a framework for notification, coordination and cooperation on enforcement activities, information exchange and conflict avoidance.

1.4.4 International Competition Network (the ICN)

15. The Commissioner led the ICN's Interim Steering Group this past year in establishing this new forum for competition agencies from around the world to meet and discuss practical policy issues of common concern. The ICN brings together agency representatives and competition experts from the relevant international organizations (OECD, WTO, UNCTAD), associations and practitioners of antitrust law and economics, industry and consumer associations and members of the academic community to develop best practice recommendations to foster convergence in enforcement policy approaches.

1.4.5 *World Trade Organisation*

16. The Bureau led the Canadian delegation to the WTO Working Group on Trade and Competition, which is currently discussing preparations for the Fifth Ministerial Conference scheduled for September 2003 in Cancun, Mexico. Issues being examined include core principles, such as, transparency, non-discrimination and procedural fairness, hard core cartels, mechanisms for voluntary cooperation, and support through capacity building for developing country competition agencies.

1.4.6 *Regulatory Reform Review of Canada*

17. Representatives of the Bureau participated in the OECD's regulatory reform peer review of Canada in 2001. The report offered several policy options for reform in Canada. Recommendations dealt specifically with the administrative and enforcement of the *Competition Act*: the Commissioner's decision-making independence, the processes and procedures of the Tribunal, the conspiracy provisions of the *Competition Act*, and the Bureau's resources.

2. **Enforcement of Competition Laws and Policies**

2.1 ***Action against anticompetitive practices, including agreements and abuses of dominant positions - summary of significant cases***

2.1.1 *Abuse of Dominant Position*

2.1.1.1 Airline Industry

18. In March 2001, the Commissioner filed an application against Air Canada with the Tribunal as the result of investigations into Air Canada's response to WestJet's expansion into eastern Canada and the entry into the market of CanJet, another low-cost carrier. The application alleged that Air Canada was engaged in anti-competitive practice, namely operating or adding capacity at fares that did not cover the avoidable cost of providing the service. The hearing is scheduled to resume on November 25, 2002.

19. In October 2001, the Bureau began an inquiry into allegations that Air Canada had launched its discount carrier Tango to drive Canada 3000 from the market. The Bureau concluded, first that the introduction of Tango could constitute an anti-competitive act, and, second, that Tango was having a detrimental impact on Canada 3000. Although the Bureau was prepared to issue a temporary order under section 104.1 of the *Competition Act*, Canada 3000 ceased operations before it could do so, due to difficulties in addition to the competitive effects of Tango. The Bureau is continuing to monitor Tango and its effects on the market.

2.1.2 *Conspiracy*

2.1.2.1 *Domestic*

20. On September 27th, 2001, the Bureau laid charges against Sherwood Co-operative Association Limited, a supplier of petroleum products, and one of its managers, under the price maintenance provisions

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of the *Competition Act*. The charges alleged that Sherwood and the manager attempted to influence upwards, or discourage the reduction of, the price at which an independent retailer sold gasoline and diesel fuel near the city of Regina.

2.1.2.2 International

21. In July 2001, an investigation by the Bureau into the food industry led to the conviction of Japan-based Ueno Fine Chemicals Industry Ltd. (UFCI) on charges of participating in an international price fixing and volume allocation conspiracy. The company was fined \$1,250,000, while one of its former senior executives was fined \$150,000 for his part in the conspiracy. The investigation revealed that UFCI was involved in an international price fixing and market sharing conspiracy for more than 17 years, affecting price levels of preservatives used in the food industry.

22. In October 2001, an international investigation of the food preservative industry by the Bureau, led to the conviction of U.S. based Pfizer Inc. The company pleaded guilty to a price-fixing charge and was fined \$1.5 million. The Bureau's investigation revealed that Pfizer was involved in an international price fixing conspiracy from 1992 to 1994, whereby prices were fixed for sodium erythorbate, a food preservative agent.

2.1.3 *Alternative Dispute Resolution*

23. Alternative case resolutions, one of the instruments the Bureau has developed to address anti-competitive behaviour, refers to efforts to achieve compliance with the law without contested enforcement measures. The following are examples of cases successfully resolved this past year using alternative dispute resolution:

24. In May 2001, the Bureau initiated an inquiry into complaints about the cost to consumers of exiting the Enbridge Services Inc. natural gas water heater rental program in parts of Ontario. The Bureau concluded that the exit charges and conditions prevented other companies from attracting customers and competing. Enbridge agreed to resolve the Bureau's concerns and in February 2002, the Tribunal issued a consent order to encourage competition in the supply and service of natural gas water heaters in Ontario.

25. In December 2001, the Bureau reached an agreement with the Insurance Corporation of British Columbia (ICBC) about allegations of anti-competitive conduct. The Bureau identified competition concerns arising from a number of ICBC's actions or threats of action allegedly targeting brokers selling insurance for ICBC competitors. The Bureau initiated discussion with ICBC, during which the provincial government undertook a core review of ICBC's status, business and future. It is expected that this review will result in changes to the automobile insurance industry in the province that will promote competition. In this changing context, the Bureau has accepted ICBC's assurances that it has discontinued its alleged anti-competitive conduct.

26. In the fall of 2001, the Bureau received a complaint and related information that a sugar producer may have been engaging in predatory pricing and price discrimination policies in the supply of sugar in Eastern Canada. As part of its examination, the Bureau conducted a compliance interview with the sugar producer under the Conformity Continuum for information concerning the pricing allegations that had been raised under the Criminal provision of the Act. As a consequence, the sugar producer was made aware of the relevant provisions of the Act and reviewed its pricing policies for compliance. Pricing in the market was subsequently monitored and reviewed in relation to the allegations.

27. In October 2001, a Bureau inquiry led to an Order by the Federal Court of Canada prohibiting a supplier of assessment tests from engaging in price-maintenance activities. The Order, made with the consent of the supplier, resolves a complaint that the supplier had refused to supply a retailer because of the low prices the retailer was charging. Assessment tests are used by educators and medical professionals to measure educational skills and, in some cases, to establish psychological profiles of clients.

28. In November 2000, the Bureau received a complaint that a scuba diving shop in western Canada sent letters to its competitors proposing a fixed price for scuba diving lessons and requesting they meet to discuss the proposal. The letter also made reference to an alleged agreement to fix the price of scuba diving lessons in another city. The Bureau consulted the scuba diving shops that received the letters and found that no price-fixing agreement existed. The shop that sent the proposed pricing letter provided a written assurance that it would comply with the provisions of the Act in its future dealings with competitors.

29. In April 2000, the Bureau began investigating a consumer complaint that a foreign sunglass manufacturer threatened to stop supplying four retailers in western Canada if they sold its brand name sunglasses below the suggested retail price. Consultations with the retailers in question confirmed the allegations. Consequently, the Bureau informed the retailers and manufacturer of their rights and obligations under the price maintenance provision. The manufacturer then provided a written assurance that it would comply with the provisions of the Act.

30. In August 2001, the Bureau began investigating an allegation that six major electrical parts distributors in the Calgary area met and agreed to impose a minimum surcharge of \$20 on all shipments of electrical parts, and that notices containing similar wording and dates were sent by the distributors to customers, advising of the price increases. When it became clear that evidence supported this allegation, the Bureau resolved the matter by sending letters to the distributors involved in the price-fixing conspiracy, informing them of their rights and obligations under the conspiracy provision.

2.1.4 *Discontinued Cases*

2.1.4.1 Credit Card Protection Services

31. In October of 1999, the Bureau initiated an inquiry as a result of information provided by the Montreal Urban Community Police Service (Service de police de la Communauté urbaine de Montreal (SPCUM)). It was alleged that telemarketers were contacting American residents for the purpose of offering them credit card protection services and, during the telephone conversations, were making a number of false and misleading statements. The representations at issue occurred over a limited time period and the company discontinued operations. Upon reviewing the information provided by the police, the Bureau discontinued the inquiry.

2.1.4.2 Commercial Space Rental

32. The Bureau initiated an inquiry into allegations that certain commercial terms imposed on tenants of a shopping centre near Sherbrooke, Quebec, contravened the market restriction provisions of the *Competition Act*. The complaint alleged that the radius clauses in the lease agreements were detrimental to competition in the rental of commercial space since they prevented mall tenants from opening other stores in the area. The Bureau concluded that, although the distance in the radius clauses was higher than that usually used in the industry, the clauses were not likely to substantially lessen competition in the area. As

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well, the leasing practices did not prevent a significant number of retailers from locating elsewhere. The Bureau therefore discontinued the inquiry.

2.1.4.3 Greeting Cards

33. The Bureau initiated an inquiry into a complaint that major greeting card suppliers were using exclusive contracts to limit the sales outlets available to competitors. The evidence showed that, while some firms might be affected by the signing of exclusive contracts, sufficient competition remained. The Bureau discontinued the inquiry.

2.1.4.4 Cold Beverages

34. The Bureau launched an inquiry into a complaint that major suppliers of cold beverages were entering into exclusive contracts with private and public venues. The evidence showed that, while some firms might be affected by the signing of exclusive contracts, sufficient competition remained. Consequently, the inquiry was discontinued.

2.1.4.5 Book Retailing and Distribution

35. In July 2000, the Bureau began an inquiry into allegations of anti-competitive acts relating to the retailing, wholesaling and distribution of books in Canada. The allegations included that firms were using their market power to obtain preferential trade terms from publishers, and carrying out exclusionary, predatory and disciplinary practices in the retail book market. As the investigation proceeded, major structural changes occurred in the industry, most significantly the merger of two of the companies, which alleviated many competitive concerns. In April 2001, the Bureau permitted the merger to proceed under certain conditions, which the Tribunal subsequently approved in a consent order. The order included a code of conduct that addressed the publishers concerns about trade terms with the dominant book chain and retailer concerns about exclusive leases. The withdrawal of one of the subsidiary companies from the wholesale book market ended industry concerns about wholesale discounts to this subsidiary. As a consequence, the Bureau discontinued the inquiry.

2.1.4.6 Closed-circuit Television Networks in Hospitals

36. In March 1999, the Bureau initiated an inquiry into alleged anti-competitive acts related to access to closed-circuit television networks in hospitals. The complaint provided reasonable evidence that one company was substantially controlling the market for hospital closed-circuit television networks outside Quebec by using long-term exclusive contracts, and that it was limiting third-party access to an essential facility. In particular, the evidence showed the company was introducing an access fee to its competitor that it was not charging to its affiliate, with the intent of eliminating the competitor. As a result of the inquiry, the company voluntarily agreed to change its business practices. Consequently, the inquiry was discontinued.

2.2 *Mergers and Acquisitions*

2.2.1 *Statistics on number, size, and type of mergers notified and/or controlled under Competition Act*

37. During the 2001-2002 fiscal year, the Bureau's Merger Branch concluded 358 merger investigations, excluding asset securitizations and there were 13 examinations ongoing at year-end. Seven mergers were restructured: 3 with a pre-closing restructuring, 2 with a post-closing restructuring and undertakings and 2 with consent orders. As well, two advisory opinions were issued. Some 338 examinations of which 217 resulted in the issuance of an Advance Ruling Certificate were concluded as posing no issue under the *Act*.

38. At year-end, 5 cases were before the Competition Tribunal and the courts while 2 such cases were concluded during the year.

2.2.2 *Summary of Significant Cases*

2.2.2.1 Case Summaries

39. The following are summaries of some of the major cases the Bureau commenced or that were ongoing during 2001 B2002.

40. *Canadian Waste Services Inc. and Browning-Ferris Industries Ltd.*

41. In March 2000, Canadian Waste Services Inc., which owned six landfills in southern Ontario, acquired the Ridge landfill in Chatham from Browning-Ferris Industries Ltd. On April 26, 2000, the Bureau filed an application with the Competition Tribunal challenging this purchase on the grounds that it would likely result in higher prices for customers of waste disposal services in the Greater Toronto Area and Chatham-Kent.

42. Following a contested hearing in November 2000, the Tribunal ruled in favour of the Bureau's position in March 2001. The Tribunal held a three-day hearing in June 2001 to determine the appropriate remedy and accepted the Bureau's proposed remedy on October 11, 2001, ruling that Canadian Waste must divest itself of the Ridge landfill.

43. Canadian Waste is appealing both the March and June 2001 decisions, and filed a notice of appeal with the Federal Court of Canada in November 2001. The hearing is expected to take place in the fall of 2002.

44. *Superior Propane Inc. and ICG Propane Inc.*

45. In December 1998, the Bureau challenged the acquisition of ICG Propane Inc. by Superior Propane Inc. Hearings were held before the Competition Tribunal in late 1999 and early 2000. In August 2000, the Tribunal found the merger would create a monopoly in many local markets, and would also have negative consequences for consumer choice, service and price throughout Canada. In Atlantic Canada, the Tribunal found the merger would substantially lessen competition. The Tribunal ultimately allowed the merger to proceed as a majority of Tribunal members found that the efficiencies the merger generated would be greater than and offset the anti-competitive effects. The Bureau subsequently appealed the

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Tribunal's decision, asking the Federal Court of Appeal to review the Tribunal's interpretation of the efficiencies exemption.

46. On April 3, 2001, the Court accepted the Bureau's position that the Tribunal interpretation of the *Competition Act* was too narrow in this case, set aside the Tribunal's interpretation of the efficiencies exemption and sent the matter back to the Tribunal. Superior Propane then unsuccessfully applied to the Supreme Court of Canada for leave to appeal the Federal Court's decision.

47. The Tribunal held the re-determination hearing in October 2001.²

48. *Abitibi-Consolidated Inc. and Donohue Inc.*

49. In February 2000, Abitibi-Consolidated Inc. announced its intention to acquire Donohue Inc. for approximately CAN\$7.1 billion, thereby significantly increasing the size of the world's largest newsprint maker. After a thorough review, the Bureau concluded that the proposed merger would likely substantially lessen competition in the supply of newsprint in eastern Canada.

50. In February 2001, Abitibi provided an undertaking to the Bureau that it would divest itself of its Port-Alfred mill in Quebec, along with all the assets necessary for its continued operation. This undertaking gave the Bureau the right to apply to the Competition Tribunal for a consent order to formalize the agreement should the mill not be sold following Abitibi's sale process.

51. Abitibi did not divest the Port-Alfred mill within the sales period specified in the undertaking. Consequently, on December 17, 2001, the Bureau appointed Deloitte & Touche Corporate Finance Canada Inc. to act as the agent for the divestiture. On February 21, 2002, the Tribunal granted the consent order, and the agent is currently performing its mandate under this order.

52. *Chapters Inc. and Trilogy Retail Enterprises L.P.*

53. On April 18, 2001, with the consent of Indigo and Chapters, the Bureau applied to the Competition Tribunal for a consent order concerning the acquisition of Chapters Inc. by Trilogy Retail Enterprises L.P. The purpose of the order was to resolve the competition concerns raised by the proposed merger of Chapters, the dominant book retailer in Canada, with its rival Indigo Book & Music. The Tribunal issued the consent order on June 6, 2001.

54. On April 5, 2001 the Bureau had reached an agreement with Chapters, Trilogy and Indigo on a package of measures addressing its competition concerns. These included offering for sale 13 large-format book super-stores, 10 mall stores, a distribution centre, certain of Indigo's on-line assets, and up to three store brands (Smith Books, Classic Books and Prospero). To facilitate new entry and expansion of competitors, the consent order also limits the use of restrictive covenants that would preclude other book outlets from operating in the same malls and shopping centres and restricts Chapters/Indigo's growth. In addition, Chapters, Indigo and publisher associations agreed to a code of conduct enforceable by arbitration that sets minimum standards of trade between the merged company and publishers for five

² The Tribunal issued its re-determination order on April 4, 2002. The majority of Tribunal members once again found that the merger's efficiencies were greater than and offset the anti-competitive effects. The Bureau filed an appeal with the Federal Court of Appeal on April 17, 2002, stating that the Tribunal's second decision raised fundamental questions about the purpose of the *Competition Act* and how it is interpreted. The Bureau also maintains that the Federal Courts 2001 decision directed the Tribunal to consider other objectives of the Act, such as the impact of the merger on consumers and small and medium-sized businesses, which the Tribunal members did not do.

years. The Competition Tribunal approved these measures and made them part of its June 2001 binding order.

55. The Bureau concluded that without these remedies the proposed merger would prevent or substantially lessen competition in the purchase and retail sale of English-language trade books in Canada for both consumers and publishers.

56. For a variety of reasons, including the economic climate at the time, the stores did not sell. However, other provisions of the order that, for instance, restrict the growth of Chapters/Indigo, will continue to remain in force for five years.

57. *Astral Media Inc. and Telemedia Radio Inc.*

58. On September 3, 2002 the Competition Bureau announced that it had reached an agreement resolving competition concerns in the proposed acquisition by Astral Media inc. of French language radio stations owned and operated by Télémedia Radio inc. in the province of Quebec and of the 50% interest held by Télémedia in Radiomédia inc.

59. As a result of successful negotiations with the parties, the Bureau reached an agreement containing the following key elements:

60. The parties' AM radio stations, in all six relevant markets, must be sold as a network and placed under the immediate Control of an operating trustee. Moreover, Astral's CFOM-FM radio station in Quebec City must be sold to a third party unrelated to Astral or Telemedia. If the parties are unable to sell the designated assets as required, a divestiture trustee will take over and complete the process. A code of conduct will protect advertisers and assist new entry by prohibiting anti-competitive practices such as exclusive sales contracts or tied selling arrangements. The code of conduct provides additional protections to advertisers including a cap on price increases and a dispute settlement mechanism. In the four markets where the Bureau had the greatest competition concerns (Gatineau-Ottawa, Sherbrooke, Trois-Rivières and Chicoutimi-Jonquière), pending new entry, local advertising functions of the Télémedia FM stations will be under the control of a trustee ensuring that these stations will continue to compete for local advertising against the Astral FM stations for up to 42 months.

61. The agreement resolving this matter was filed as a Consent Agreement with the Competition Tribunal. See <http://strategis.ic.gc.ca/pics/ct/consent.pdf>

62. *Lafarge S.A. and Blue Circle Industries PLC*

63. On June 15, 2001, the Bureau applied to the Competition Tribunal for a draft consent order calling for unprecedented divestitures to implement its April 11 agreement with Lafarge S.A.

64. The divestitures were part of a package to resolve competition concerns arising from the proposed acquisition by Lafarge S.A. of Blue Circle Industries PLC. The Canadian subsidiaries of the merging parties are the two largest cement and related construction material suppliers in Canada. The Bureau had concluded that without these divestitures the deal would likely have prevented or substantially lessened competition in certain cement and ready-mix concrete aggregates markets, as well as those in asphalt and related paving, in Ontario.

65. The Bureau's application also required Lafarge to divest its Blue Circle assets quickly, while continuing to ensure they were competitive and viable. On April 11, 2001, the Bureau agreed not to challenge the proposed acquisition after Lafarge contracted to sell the vast majority of its Canadian Blue

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Circle assets and businesses as well as related cement distribution assets in the United States. The Tribunal approved the order on August 21, 2001, and Lafarge sold the Blue Circle cement assets to Votorantim S.A. of Brazil, and undertook to divest the majority of its remaining assets in Ontario by auction. Valued at more than US\$1 billion, the assets the merging parties divested in Canada and the United States represent the largest divestiture package in the history of Canadian competition law.

66. *United Grain Growers Limited and Agricore Cooperative Ltd.*

67. Prior to their merger on November 1, 2001, United Grain Growers Limited (UGG) and Agricore Cooperative Ltd. were two of the largest grain-handling companies in western Canada. On reviewing the proposed merger, the Bureau concluded that, among other factors, the merging companies' increased market shares of terminal grain-handling services at the Port of Vancouver and in certain grain-handling markets in Manitoba and Alberta would substantially lessen competition.

68. Consequently, the Bureau filed an application with the Competition Tribunal on January 2, 2002, challenging the UGG acquisition of port terminal assets held by Agricore at the Port of Vancouver, and asking the Tribunal to order UGG to divest a terminal there. On January 15, 2002, the Tribunal issued an interim order requiring that the merged company, Agricore United, maintain the competitive viability of the UGG and Pacific Elevators Limited grain-handling terminals at the Port of Vancouver, pending a Tribunal hearing. The order also ensured that competitive access would be maintained, and that non-integrated grain companies would not suffer any service interruptions pending the hearing.

69. Prior to this application, on December 17, 2001, the Bureau had filed a separate application with the Tribunal for a consent order requesting Agricore United to divest itself of elevators in Dauphin, Manitoba, and Edmonton and Peace River, Alberta. Agricore agreed to these proposed divestitures prior to the Tribunal hearing on the Bureau's applications. The resulting consent order from the Tribunal specifies that the elevator be divested, a process that is ongoing.

70. As part of the consent order, Agricore United was also required to abide by strict confidentiality provisions concerning its post-merger ownership interests in CanAmera Foods Ltd., a Canadian canola seed processor. The provisions were intended to prevent the sharing of proprietary information with Archer Daniels Midland Company, which is not only a major shareholder in UGG, but also a large domestic seed processor and competitor of CanAmera. On April 1, 2002, Central Soya Company Inc. announced that it had signed a letter of intent to acquire full ownership of CanAmera. This transaction, is expected to be concluded in late May 2002, will completely resolve the Bureau's concerns about CanAmera.

71. *SYSCO Corporation and SERCA Foodservice Inc.*

72. On December 5, 2001, SYSCO Corporation announced its intention to acquire the assets of SERCA Foodservice Inc. and other related food service assets across Canada from Sobeys Inc. At the time of the announcement, SYSCO and SERCA were the two largest food service distributors in British Columbia. SYSCO is North America's largest food service distributor.

73. Food service distribution involves the supply of food and restaurant supplies to restaurants, fast-food chains, hotels, and educational and health care facilities.

74. After its review, the Bureau concluded the proposed merger would likely substantially lessen competition in British Columbia but did not raise competition concerns elsewhere.

75. The Bureau announced on March 21, 2002, that the merger could proceed based on SYSCO's announcement two days earlier that SERCA's assets in British Columbia would be sold to Gordon Food Service, Inc. Both transactions were completed on March 30, 2002.

76. *Canada Bread Company, Limited and Multi-Marques Inc.*

77. On January 22, 2001, Canada Bread Company, Ltd, one of Canada's largest bakers, announced its intention to acquire the remaining 75 percent of Multi-Marques it did not already own.

78. In the Maritimes, Canada Bread owns Eastern Bakeries Ltd., while Multi-Marques controlled Ben's Limited. On October 12, 2001, the Bureau announced that it would require divestitures by Canada Bread to resolve some competition concerns. The Bureau's investigation showed that the proposed merger would likely substantially lessen competition in the supply of fresh bread and rolls to food service customers such as hospitals, restaurants, hotels and other institutional accounts in the Maritimes.

79. The Bureau allowed the transaction based on agreements in principle between Canada Bread and four other bakeries operating in the Maritimes to purchase the assets to be divested. Canada Bread further undertook to complete these divestitures, which represented one third of the merged company's food service business, as quickly as possible. Canada Bread also agreed to make certain assets available, such as trucks and transfer depots used to deliver fresh bread. The undertakings give the Bureau the right to apply to the Competition Tribunal for a consent order to formalize the agreement should the undertakings be breached.

80. *Diageo PLC, Pernod Ricard S.A. and The Seagram Company Ltd.*

81. On December 20, 2000, Diageo PLC and Pernod Ricard S.A. announced their successful bid for the spirits and wine business of The Seagram Company Ltd. The Bureau conducted an extensive review of the proposed merger and concluded that Diageo's purchase of Seagram's Canadian whisky brands, including Crown Royal and Seagram's VO, would likely substantially lessen competition in the supply of premium whisky products in several provinces. At the same time, the Bureau determined that the Pernod Ricard portion of the transaction did not raise competition concerns.

82. The Bureau announced in October 2001 that it had reached a settlement with Diageo to resolve competition concerns arising from the proposed acquisition. Under the terms of the settlement, Diageo agreed to divest its Gibson's Finest brand of Canadian whisky and related assets within a set period of time. The undertaking further provided that if the terms of the undertaking were breached, or if the brand remained unsold by the end of that period, the Bureau would file a consent order with the Competition Tribunal that, if approved, would place the sale in the hands of a trustee. As of March 26, 2002 the brand had not been sold. The Bureau is continuing to monitor the divestiture.

2.3 *Misleading advertising and deceptive Marketing Practices*

2.3.1 *Civil*

2.3.1.1 Antirouilles Électroniques TP

83. On December 13, 2001, the Bureau filed a Consent Order with the Tribunal against the marketing practices of Antirouilles Électroniques TP, Garantie Express Inc. and Mr. Jacques Nadeau, president of the

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companies. The order, pursuant to the *Competition Act*, relates to the promotion of Total Protection, an electronic anticorrosion device for automobiles. The claim made by the parties was that the \$300 device would protect the entire body of a car against rust. However, it was determined that adequate and proper testing of the product had not been carried out. The Bureau is examining other electronic anti-corrosion devices with similar performance claims. Such devices are marketed around the world.

2.3.2 *Criminal*

2.3.2.1 Lifestyles Canada Ltd.

84. On May 18, 2001, Lifestyles Canada Ltd. was fined \$95,000 after pleading guilty to four criminal charges under the *Competition Act*'s multi-level marketing plan provisions. A Prohibition Order was also imposed restricting further anti-competitive conduct. In recruiting participants to their plan, Lifestyles made reference to earnings of up to millions of dollars without disclosing the income of a typical participant (\$399 and \$2,000 per year), contrary to the *Competition Act*.

2.3.2.1 1473253 Ontario Incorporated, carrying on business as YellowBusiness.ca and Mr. Peter Kuryliw

85. In May, 2001, charges under the misleading advertising provisions of the *Competition Act* were laid in Toronto against Peter Kuryliw and 1473253 Ontario Incorporated, carrying on business as YellowBusiness.ca, for allegedly invoicing businesses for unsolicited Internet directory listing services. The charges stem from complaints relating to documents mailed to businesses and charitable organizations across Canada. The mailings asked recipients to send payment for an Internet directory listing containing their business information. The charges allege that the mailings were made to appear as invoices when in fact, they were solicitations, and that recipients were misled to think they were existing customers of the Internet directory service.

2.3.2.2 Gotham Industries Inc.

86. On June 15, 2001, charges were laid against Gotham Industries Inc., a chemical company, and on November 14, 2001, Gotham Industries Inc. pleaded guilty to three charges of false or misleading representation under section 7(1) of the *Consumer Packaging and Labelling Act*. The quantity of product in containers of paint thinner, methyl hydrate and antifreeze was less than the quantity stated on the label. The Court of Quebec imposed a fine of \$500 for each charge, totaling \$1500.

2.3.2.3 Farber Blake Corp., S.D. Prestige Enterprises Ltd., L.A. Premiums, and J.C. & A.

87. On June 27, 2001, criminal charges were laid against four Montreal-based telemarketing companies, their principal directors, and individual telemarketers. The charges stem from alleged misleading representations carried out by Farber Blake Corp., S.D. Prestige Enterprises Ltd., L.A. Premiums, and J.C. & A. The companies allegedly contacted consumers in Canada and New Zealand by phone and informed them they had been selected as prize winners. The consumers were told that in order to claim their prize, they had to buy one of the company's promotional items. The Bureau alleges that the promotional items were sold at substantially inflated prices and that misrepresentations were made regarding the nature, value and quality of both the prizes and promotional items.

2.3.2.4 Laurentide Chemicals Atlantic Ltd.

88. On July 10, 2001, charges were laid against Laurentide Chemicals Atlantic Ltd., a chemical company, and on December 5, 2001, Laurentide Chemicals Atlantic Ltd. pleaded guilty to four charges under section 7(1) of the *Consumer Packaging and Labelling Act* relating to misleading information on the quantity of paint in their containers. The Court of New Brunswick imposed a \$1500 fine for each charge, totaling \$6000.

2.3.2.5 Tamec Inc.

89. On October 25, 2001, seven criminal charges were laid against the telemarketing company Tamec Inc. and its subsidiaries, Commercial Information Bank of Canada and Deev Inc. for allegedly engaging in deceptive telemarketing practices, contrary to the *Competition Act*. The accused parties market various business directories and Web-based advertising services to Canadian businesses, institutions, and non-profit organizations. Complainants alleged that between February 1997 and August 2001, telemarketers misrepresented the purpose of their calls, provided false information with respect to the prior existence of subscriptions to various Tamec products, and did not disclose return restrictions. Complainants also alleged that the telemarketers did not disclose that, by agreeing to accept delivery of one edition of a Tamec product, they were actually entering into a multi-edition subscription.

2.3.2.6 NSV Nutrinautes Inc.

90. On March 8, 2002, a Bureau investigation into a multi-level marketing firm's practices led to 11 charges under the deceptive marketing practices provisions against NSV Nutrinautes Inc. The Quebec company operates a multi-level marketing plan known as Cocooning Club, which promotes and sells computer software on nutrition and other subjects. It has been alleged the Cocooning Club and its participants recruited new participants by exaggerating income expectations without disclosing the income of a typical participant, contrary to the *Competition Act*. Furthermore, Cocooning Club was charged with operating an illegal scheme of pyramid selling and making false or misleading representations on its Web sites.

2.3.2.7 3636135 Canada Inc. carrying on business as Alexis Corporation and 3587932 Canada Inc

91. On March 18, 2002, the Bureau laid criminal charges under the *Competition Act* in relation telemarketing activity undertaken by 3636135 Canada Inc. carrying on business as Alexis Corporation and 3587932 Canada Inc., the administrative affiliate. It is the first case in which the Bureau used wiretaps to obtain evidence following amendments to the *Criminal Code* in 1999. The wiretaps were conducted with the assistance of the RCMP. Consumers in Australia and New Zealand had been targeted by the Canadian-based telemarketers and for payment up-front before receiving prizes.

2.3.3 Voluntary Compliance

2.3.3.1 Labelling Statutes: Ontario Net Quantity Blitz

92. Between November 13th and 30th, 2001, the Bureau carried out a concentrated inspection program, visiting companies in Southern Ontario to determine their level of compliance in net quantity and labelling on non-food consumer pre-packaged products under the *Consumer Packaging and Labelling Act*

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and Regulations. Of the products inspected, 36 percent had labelling violations and 14 percent had net quantity violations (less product in the package than stipulated on the label). The Bureau required all violation to be corrected before shipment from the premises, and sent eighteen letters of undertaking to firms committing significant violations to inform them that they would be subject to a re-inspection.

2.3.4 *International Co-operation*

2.3.4.1 Internet Sweeps: Fairnet and International Marketing Supervision Network

93. In August 2001, the Bureau launched regular Internet sweeps to evaluate Canadian on-line marketing sites for compliance with the *Competition Act* and the three labelling statutes. Sweeps have focussed on sites marketing a variety of products and business opportunities including textile products, precious metals articles and work-at-home business opportunities. The project team also participated in an International Sweep Day which focussed this year on Web sites making deceptive or misleading claims for health products and services. The sweep was conducted by the International Marketing Supervision Network (IMSN), a membership organization consisting of the trade practices authorities from 30 countries, including Canada. As well, the Bureau is planning to conduct on-line transactions as a mystery shopper during the year 2002-2003 to facilitate in-depth investigation of on-line claims and representations.

94. **Partnership Agreement: Project Emptor:** The Bureau and the Royal Canadian Mounted Police (RCMP) in Vancouver, British Columbia, along with law enforcement agencies from the U.S., signed a Memorandum of Understanding (MOU), on September 1, 2001, committing them to work together to curb illegal telemarketing operations in the province of British Columbia and in the north-western U.S. Under the partnership authorities on both sides of the border have taken simultaneous legal action against British Columbia-based telemarketers who target U.S. victims.

95. **Partnership Agreement: Project COLT:** The Bureau joined Project COLT in January 2002 (Centre of Operations Linked to Telemarketing fraud) when it signed an MOU with the RCMP. Project COLT is an investigation task force set up to fight telemarketing fraud in Quebec and the north-eastern U.S. through a multi-jurisdictional approach. In addition to the Bureau and the RCMP, other law enforcement members include Sureté du Quebec, Montreal City Police Department, Canada Customs and Revenue Agency, FBI, United States Customs Service and United States Postal Inspection Service.

3 **The Role of the Bureau in the Formulation and Implementation of other policies**

3.1 *Telecommunications and Broadcasting*

3.1.1 *Telecommunications*

96. The Bureau made a number of interventions advocating competition before the industry regulator, the Canadian Radio-television and Telecommunications Commission (CRTC). The most noteworthy interventions include:

- Price Cap Review for Local Telephone Companies

In October 2001, the Bureau submitted comments to the CRTC in this proceeding. The purpose of the review was to assess the effectiveness of the existing price cap regime for local telephone companies and to determine whether changes were required to ensure the regime would remain effective for the next phase commencing in 2002. The Bureau supported the existing price cap structure with some modifications designed to foster competition in residential and business telecommunications markets in Canada, protect consumers and competitors from abuse of market power by the major local telephone companies, and ensure that market uncertainty is minimized. A decision was pending as of end of March 2002.

- Expansion of Local Calling Areas

In November 2001, the Bureau submitted comments to the CRTC on proposed general principles and criteria for assessing applications for expanding local telephone calling areas. The Bureau identified a number of problems with expanding local calling areas through regulation, including the cost of ongoing regulation, the adverse impact on competition, and the negative effect on consumers. In light of these concerns, the Bureau recommended that local calling areas be determined instead by the interplay of competitive market forces, whereby each service provider has the flexibility to offer a variety of price-geographic coverage plans to consumers, who in turn would be free to choose the plan most appropriate for their requirements. A decision was pending as of end of March 2002.

- Forbearance Outside Traditional Territories

The Bureau filed an intervention in the CRTC's consideration of conditional forbearance from regulation of current and future wireline services offered by the major incumbent telephone companies operating outside their traditional territories. The Bureau supported conditional forbearance and the incumbent companies' view that they lack market power outside their traditional geographic markets, existing competitive safeguards limit their ability to engage in anti-competitive activity in non-traditional areas by leveraging their dominant position within their own territories, and safeguards reduce the likelihood and incentives for cross-subsidization from utility to competitive services. In August 2001, the CRTC granted conditional forbearance, thereby reducing the regulatory burden on incumbent companies and enhancing their ability to compete outside their traditional territories.

3.2 *Broadcasting*

97. On May 10, 2001, the House of Commons Standing Committee on Canadian Heritage announced the launch of an 18-month study on the state of the Canadian Broadcasting system. The Committee has concluded that there is a pressing need to review key aspects of the *Broadcasting Act* of 1991 to determine whether the Act remains an effective instrument to deal with challenges faced by the broadcasting industry and its stakeholders.

98. On April 3, 2002, the Bureau made a submission to the Standing Committee on Canadian Heritage on the Study of the State of the Canadian Broadcasting system. The Standing Committee has identified six themes to be explored in depth: contextual considerations, cultural diversity, broadcasting policy, ownership, the private-public sector mix, and production and distribution. The Bureau considered four of them. These are context, cultural diversity, broadcasting policy and ownership. The Bureau made three recommendations.

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99. First, include, as part of Canada's broadcasting and regulatory policy:

- an objective that regulation, where required, be efficient, effective and directed solely to the realization of the Act's core cultural objectives;
- an objective of increased reliance on market forces for the provision of broadcasting services and programs to all Canadians; and
- an objective of enhanced efficiency and competitiveness, at the local, national and international levels, of Canadian broadcasting services.

100. Second, clarify the mandate of the Canadian Radio and Television and Telecommunications Commission (the CRTC) to:

- specify that the CRTC has a responsibility to preserve a diversity of voices within the broadcasting system; and
- focus, at the same time, the CRTC review of broadcasting transactions solely on the impact that the mergers would have on core cultural values and diversity of voices.

101. Finally, as an additional measure in support of the enhanced operation of market forces, the Bureau recommends that foreign investment levels for Broadcasting Distribution Undertakings remain consistent with those applicable to Telecommunications Carriers.

3.3 *Transportation*

102. On November 17, 2000, the Commissioner submitted a second submission to the Panel. It dealt with air, water and highway transportation. On air transportation, the submission made five recommendations: negotiate unrestricted cabotage rights on a reciprocal basis; create a new class of licensee under the *Canada Transportation Act* to allow 100% foreign ownership of carriers that can fly only within Canada; make legislative changes to the *Canada Transportation Act* to allow modified sixth freedoms, either on a unilateral or reciprocal basis; permit up to 49% of the voting shares of a Canadian carrier to be held by foreigners; and seek the elimination of all foreign ownership restrictions with our trading partners, either on a bilateral or multilateral basis. On water transportation, the submission recommended: ending the exemption to shipping conferences from the competition laws; abolishing the statutory monopoly of the Pilotage Authorities in providing pilotage services; creating an accredited body for licensing pilots; determining tariffs by competitive forces; and applying the present limited liability requirements to all credited pilots. On highway transportation, the submission recommended deregulating extra-provincial and international bus services (i.e. scheduled passenger, charter passenger and express parcel service).

103. On March 30, 2001, a third submission was made addressing issues under consideration by the Panel. It examined the adequacy of the merger review process in rail and provided its views whether there is need to address broad public interest issues. It also addressed whether current regulations distort market forces and whether independent airport authorities are likely to exercise market power. Recommendations were made on each of these matters.

3.4 Electricity

104. The Bureau has continued its active promotion of competitive reforms of provincial electricity markets. In May 2001, the Bureau provided a submission to the Nova Scotia Energy Strategy Review. The purpose of the Review was to examine the status of the energy sector, assess the major trends in the provincial, national, and international energy sectors, and make recommendations on choices to optimize the long term benefits to Nova Scotia. Given the current state of the Nova Scotia market, the Bureau submitted that Nova Scotia adopt an evolutionary approach toward restructuring, beginning with a restructuring of current electricity rates to create a more efficient and equitable framework for emerging gas and electricity competition. The submission also outlined a number of competition principles for further consideration.

105. The Bureau also continued its role in the restructuring process in Alberta. In February 2002, the Bureau provided written comments regarding the Alberta Electricity Industry Structure Review initiated by the Alberta Government to examine the effectiveness of the current structure in providing the benefits of competition five years after the start of deregulation. The written comments continued the Bureau's previous participation through discussion and exchanges during the consultation phase of the Review. The comments provide competition analysis advice to Alberta as it contemplates changes to the current industry structure.

106. In March 2002, the Bureau signed an agreement outlining how it will work with the Ontario Energy Board and the Independent Electricity Market Operator, to ensure effective competition in Ontario's new electricity market which opened May 1, 2002. Under the agreement, the Ontario Energy Board, the Independent Electricity Market Operator, and the Bureau will consult with each other on a regular basis, and form effective working relationships with the aim of avoiding a duplication of efforts.

4. Resources of the Bureau

4.1 Annual Budget

107. In Fiscal Year 2001-2002, the Bureau received \$32.6M in base budget plus \$12.9M in temporary funding for a total of \$ 45.5M.

4.2 Number of Employees (person-years)

- Economists: 14
- Lawyers: 23 hired and paid by the Department of Justice
- Other professionals: 222 Competition Law Officers, 23 Executives Informatics, Administrative Services and Support Functions: 117
- Communications Professionals: 7
- Full Time Authorised Bureau Employees: 383

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4.3 *Application of human resources to Bureau Activities*

- Enforcement against anti-competitive practices: 317
- Merger review and enforcement: 44
- Advocacy efforts: 22