



Competition Tribunal

Performance Report

For the period ending
March 31, 2001

Canada

Improved Reporting to Parliament Pilot Document

Each year, the government prepares Estimates in support of its request to Parliament for authority to spend public monies. This request is formalized through the tabling of appropriation bills in Parliament.

The Estimates of the Government of Canada are structured in several parts. Beginning with an overview of total government spending in Part I, the documents become increasingly more specific. Part II outlines spending according to departments, agencies and programs and contains the proposed wording of the conditions governing spending which Parliament will be asked to approve.

The *Report on Plans and Priorities* provides additional detail on each department and its programs primarily in terms of more strategically oriented planning and results information with a focus on outcomes.

The *Departmental Performance Report* provides a focus on results-based accountability by reporting on accomplishments achieved against the performance expectations and results commitments as set out in the spring *Report on Plans and Priorities*.

The Estimates, along with the Minister of Finance's Budget, reflect the government's annual budget planning and resource allocation priorities. In combination with the subsequent reporting of financial results in the Public Accounts and of accomplishments achieved in Departmental Performance Reports, this material helps Parliament hold the government to account for the allocation and management of funds.

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Foreword

In the spring of 2000 the President of the Treasury Board tabled in Parliament the document “Results for Canadians: A Management Framework for the Government of Canada”. This document sets a clear agenda for improving and modernising management practices in federal departments and agencies.

Four key management commitments form the basis for this vision of how the Government will deliver their services and benefits to Canadians in the new millennium. In this vision, departments and agencies recognise that they exist to serve Canadians and that a “citizen focus” shapes all activities, programs and services. This vision commits the government of Canada to manage its business by the highest public service values. Responsible spending means spending wisely on the things that matter to Canadians. And finally, this vision sets a clear focus on results – the impact and effects of programs.

Departmental performance reports play a key role in the cycle of planning, monitoring, evaluating, and reporting of results through ministers to Parliament and citizens. Earlier this year, departments and agencies were encouraged to prepare their reports following certain principles. Based on these principles, an effective report provides a coherent and balanced picture of performance that is brief and to the point. It focuses on results – benefits to Canadians – not on activities. It sets the department’s performance in context and associates performance with earlier commitments, explaining any changes. Supporting the need for responsible spending, it clearly links resources to results. Finally the report is credible because it substantiates the performance information with appropriate methodologies and relevant data.

In performance reports, departments strive to respond to the ongoing and evolving information needs of parliamentarians and Canadians. The input of parliamentarians and other readers can do much to improve these reports over time. The reader is encouraged to assess the performance of the organization according to the principles outlined above, and provide comments to the department or agency that will help it in the next cycle of planning and reporting.

This report is accessible electronically from the Treasury Board of Canada Secretariat Internet site:

<http://www.tbs-sct.gc.ca/rma/dpr/dpre.asp>

Comments or questions can be directed to this Internet site or to:

Results Management and Reporting Directorate

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Ottawa, Ontario, Canada

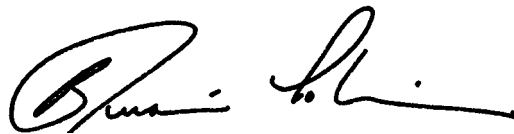
K1A 0R5

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Competition Tribunal

Departmental Performance Report

For the period ending
March 31, 2001

A handwritten signature in black ink, appearing to read 'Brian Tobin', written in a cursive style.

Brian Tobin
Minister of Industry

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Section I

Minister's Portfolio Message

The Government of Canada is committed to making Canada a world leader in the global knowledge-based economy of the 21st century. To meet this goal, the government has set out a very bold vision: to have Canada recognized as one of the most innovative countries in the world.

Why this emphasis on innovation? Innovation is one of the most powerful sources of competitive advantage in modern economies. It fuels productivity and economic growth and that translates into greater prosperity and a better quality of life for all Canadians. Our ability to acquire, adapt, and advance knowledge will determine how well Canadian businesses and Canada as a nation innovate, and in turn, how well Canada competes in the global arena.

Promoting innovation, research and development is a cornerstone of our government's agenda, and we have made progress. Canadian businesses have boosted their research and development (R&D) spending at the second fastest rate among G-7 countries. We have the fastest rate of growth in R&D jobs. And the government is committed to doubling its R&D investments and catapulting Canada into the ranks of the top five countries in the world for research and development performance by 2010.

When it comes to embracing the Internet revolution, or what has come to be known as connectivity, Canada's record is the envy of the world. Our country is one of the most connected countries in the world. We connected all of our schools and libraries to the Internet over two years ago. We have the highest percentage of our population on-line of any country in the world. Furthermore, the National Broadband Task Force has advised the government on how Canadians together can achieve the critical goal of making broadband access widely available to citizens, businesses, public institutions and to all communities in Canada by 2004.

The Industry Portfolio is ...

Atlantic Canada Opportunities Agency
Business Development Bank of Canada*
Canada Economic Development for Quebec
Regions
Canadian Space Agency
Canadian Tourism Commission*
Competition Tribunal
Copyright Board Canada
Enterprise Cape Breton Corporation*
Industry Canada
National Research Council Canada
Natural Sciences and Engineering Research Council
of Canada
Social Sciences and Humanities Research Council
of Canada
Standards Council of Canada*
Statistics Canada
Western Economic Diversification Canada

**Not required to submit Performance Reports*

As Minister of Industry, I am responsible for the Industry Portfolio, which consists of fifteen departments and agencies that play a key role in delivering on the government's agenda. With over 40 percent of federal government spending on science and technology, and a wide range of complementary programs to help businesses both large and small thrive and prosper, the Industry Portfolio has a national reach, regional depth and community presence across the country.

I am pleased to present this Performance Report for the Competition Tribunal, which shows its contribution, during 2000-2001, to the government's agenda. The Competition Tribunal's new e-filing and document management system has sparked lively interest and is leading the way in the quasi-judicial and judicial communities. The Tribunal took advantage of unique opportunities for innovation in developing computer applications and in less than a year, demonstrated that improved service and very significant savings are possible in gathering documentation and conducting hearings electronically. It also clearly demonstrated that the paperless hearing process is a viable end-to-end option from initial filing to Web access of the final results.

The government's strategy has been to strengthen Canada's capacity for innovation by investing in research and knowledge, and by fostering a nation of highly skilled people. We are assisting all Canadians with life-long access to the tools and skills they need for success. We are laying the foundation of a state-of-the-art research environment in which our best and brightest can make their ground-breaking discoveries right here at home. And we are working with our researchers and entrepreneurs to make sure that Canada is the place where new products and processes get to market first and fastest.

The Honourable Brian Tobin

Section II

Departmental Performance

Strategic Context

The Tribunal hears and determines all applications under Parts VII.1 and VIII of the *Competition Act* as informally and expeditiously as circumstances and considerations of fairness permit.

Tribunal cases relate to mergers, abuse of dominant position and various trade practices that involve key players in a number of industries. In 2000–2001 the Tribunal worked on cases in the petroleum, propane, waste management, automobile equipment, air carrier and French-language television industries.

For a list of cases before the Tribunal, click on:

www.ct-tc.gc.ca/english/casetype.html

Most cases brought before the Tribunal, both contested and consent cases, are heard before a panel of one judicial member as chair and two lay members. Proceedings may be in either or both official languages. All final orders and reasons of the Tribunal are issued in both official languages.

The number of applications brought before the Tribunal depends on the enforcement policy adopted by the Commissioner of Competition, the “watchdog” over the marketplace under the *Competition Act*. The Tribunal has no functions other than those associated with the hearing of applications and the issuance of orders; it does not have any investigative powers.

Cases such as *Canadian Waste Services Holdings Inc.* and *Air Canada* can have significant financial stakes, since such decisions also affect other firms in the industry and the Canadian economy in general. For such cases, the chair of the panel will make sure parties abide by procedural time lines, and encourage parties to file earlier when possible. These efforts to fast-track scheduling aim to get cases heard within or more quickly than the six-month average. The chair of the panel also takes charge of the process to resolve concerns early. Such concerns include scheduling of pre-hearing activities, confidentiality and any other procedural issues that may arise. This active case management is a priority of the Tribunal.

The Tribunal’s mandate has further evolved during the last several years. 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 and to amend another in consequence*, received Royal Assent June 29, 2000. The amendments to the legislation

authorize a judicial member, that is, a judge, of the Competition Tribunal sitting alone to hear and dispose of any application for review against a temporary order issued by the Commissioner of Competition. These temporary orders can halt a practice while an investigation is undertaken, thereby protecting the public from possible harm. The process can also go more quickly because it's easier to schedule for one Tribunal member.

Subsection 4.1 (4) of the Act also grants the Tribunal the powers to issue and revoke a certificate. If on application by an airline (that is, not the Commissioner of Competition), the Tribunal finds that the airline and its affiliates account for less than 60 percent of the revenue passenger-kilometres of all domestic services over the 12 months immediately before the application, the Tribunal shall issue a certificate to that effect. If on application by a travel agent, the Tribunal finds that an airline that holds a certificate issued under the above-mentioned and its affiliates account for at least 60 percent of the revenue passenger-kilometres of all domestic services over the 12 months immediately before the application, the Tribunal shall revoke the certificate.

Strategic Outcomes

Tribunal Decisions Keep Canadian Marketplace Competitive

In 2000–2001, the Competition Tribunal kept Canadian industry competitive through its management of cases touching on several sectors of the economy. The matters considered by the Tribunal touched various areas of its mandate including: misleading advertising, mergers, abuse of dominant position, registered consents and variations to earlier decisions. All of the matters considered ensured timely, fair and equitable consideration of the allegations made. The decisions rendered by the Tribunal ensured that the interests of the public and the industries involved were addressed and protected in accordance with the Tribunal's mandate.

Petroleum Industry Merger Rejected

The Tribunal refused to grant a draft consent order related to [Ultramar Ltd.'s](#) proposed purchase of Coastal Canada Petroleum Inc. Coastal is the only wholesale supplier of gasoline and other petroleum products available to independent marketers in the Ottawa region. The consent order, prepared and agreed to by the Commissioner of Competition and Ultramar, listed the steps Ultramar would take to prevent the lessening of competitiveness in the storage and wholesale supply of refined petroleum products in the Ottawa area. The Tribunal was not convinced that the terms of the draft consent order met the objectives of the *Competition Act*. The Tribunal was particularly concerned that the terms dealing with Ultramar's wholesale prices for refined petroleum products and fuel ethanol

www.ct-tc.gc.ca/english/cases/ct-2000-001/ultramar.html

were not set out clearly enough to be enforceable. The Tribunal therefore rejected the consent order as prepared.

Landfill Purchase Put on Hold and Tribunal Subsequently Approves Divestiture Order

The Tribunal accepted the terms of a consent interim order preventing [Canadian Waste Services Holdings Inc.](#) from operating the Ridge landfill site that it purchased until there is a full hearing into this acquisition. The concern is that competitiveness of disposal markets in southern Ontario would be compromised by this transaction. Under the terms of the order, the Ridge landfill will be kept separate from the business operations of Canadian Waste Services until the Tribunal renders a decision on the need for divestiture of the Ridge. An independent manager will manage and operate the Ridge under the supervision of an independent monitor. The flexibility of this type of consent order allows the respondent to hold and operate an entity separate from its other operations pending a decision from the Tribunal.

This was the Tribunal's first electronic filing and hearing case.

Propane Merger Allowed to Proceed

The Tribunal, in a majority decision, allowed the merger of [Superior Propane and ICG Propane](#) to proceed, ruling that the lessening of competition that would be caused by the merger would be balanced by the efficiencies that would result. This case had its origins in December 1998, when the Competition Bureau concluded that the acquisition of ICG Propane Inc. by Superior Propane in Calgary, Alberta, would substantially lessen competition in both local and national markets. At issue was the fact that these companies were Canada's two largest suppliers of propane and propane equipment. The Tribunal's final decision was appealed to the Federal Court of Appeal on September 2, 2000. A decision is still pending.

Interac Association Given Freedom to Manage Affairs in a Flexible and Measured Manner

The Tribunal issued a variation to an existing consent order to give the Board of Canada's [Interac Association](#) the flexibility to levy monetary penalties for non-compliance by its members without being obligated to approach the Tribunal each time for a ruling. In the earlier consent order, the Interac Board could only use expulsion of a member to deal with non-compliance of Association rules (except for monetary penalties for failure to meet the Board's performance policy). The amendment allows the Interac Board to

develop general policies to levy monetary penalties on a range of issues provided the discipline meets rational business objectives and does not discriminate. It is applicable to all members and is without competitive significance. This is in line with the policies and practices of other major North American networks and still keeps this field open to a wide array of participants and to the introduction of new services.

The original consent order was issued on June 25, 1996. It obliged Interac Inc. and nine of the charter members of the Interac Association to expand representation on its Board and change its rules and by-laws to liberalize access to the network. The consent order also eliminated constraints on product innovation and price competition. Under the consent order, a wider array of participants could contribute in an environment that was conducive to the introduction of new services, encouraging competition in a rapidly growing industry.

www.ct-tc.gc.ca/english/cases/interac/interac.html

Sale of Automobile Device Halted

The Tribunal accepted the terms of a consent order to prevent [Professional Consultants \(Electroprotections\) Inc.](#) from further promotion and sale of an electronic anti-corrosion device, the ML-10, or similar devices until their effectiveness is tested adequately. The claims made about the product's ability to resist rust by charging the surface of the vehicle using the car's battery have not been proven under accepted laboratory conditions. The ML-10 was sold primarily in Quebec through certain car and small- and medium-sized truck dealers. The consent order also requires the company to honour its eight-year anti-corrosion insurance for vehicles already equipped with such devices and to individually notify all buyers of the terms of the consent order.

www.ct-tc.gc.ca/english/cases/ct-2000-003/pce-gpe.html

Tribunal to Schedule Hearing Regarding Alleged Marketing Practices Against PVI International Inc.

The application filed by the Commissioner of Competition alleges that certain claims made by [PVI International Inc.](#) about the Platinum Vapor Injector's ability to save fuel and reduce harmful emissions were false or misleading and were not based on adequate and proper tests. The application also says that false or misleading representations were made in the promotion of the fuel saving device, which gave the general impression that it had been approved by various levels of government in Canada and the United States.

www.ct-tc.gc.ca/english/cases/ct-2001-001/pvi.html

The application was filed under the deceptive marketing practices provision of the *Competition Act*, which prohibit making representations to the public that are false or

misleading. The provision also prohibit making statements about products that are not based on adequate and proper tests, and set out specific requirements for the publication of representations that tests have been made.

Discounted Air Fares Put Smaller Firms at a Disadvantage

In the fall of 2000, the Commissioner of Competition issued a temporary order requiring [Air Canada](#) to stop offering discounted fares on routes also served by eastern airline CanJet. Start-up regional airlines believed the air fares aimed to put them out of business,

www.ct-tc.gc.ca/english/cases/ct-2000-004/air-canada.html

thereby giving Air Canada control over the market, which it already dominates.

In November, the Tribunal responded to an application filed by Air Canada by issuing a variation to the Commissioner’s order. The order deleted the reference to “any similar fares” but confirmed the order for a period that is to expire December 31, 2000.

Tribunal Satisfied Consent Order Will Prevent Substantial Lessening of Competition in Quebecor’s Acquisition of Groupe Vidéotron Itée

The Commissioner the Competition filed an application seeking a consent order concerning the divestiture of TQS inc. by [Quebecor Media inc.](#) The Commissioner alleged that the proposed merger would likely lead to a lessening or substantial reduction

www.ct-tc.gc.ca/english/cases/ct-2000-005/quebecor.html

of competition in the sale of advertising time slots for French-language television in the province of Quebec. The

Commissioner also alleged that the merger would restrict access to the market and leave no real or effective competition.

On January 15, 2001, the Tribunal issued a consent order that obliged Quebecor to dispose of its shares in TQS by December 31, 2001, failing which the sale will be carried out by a trustee.

Cases Being Resolved More Quickly

Case Summary Statistics, 2000–2001

Total number of notices, orders and directions	90
Total number of hearing days	37
Total number of applications	10
Location of hearings	Ottawa, Toronto

Aggressive case management led to Tribunal cases being resolved more quickly. For example, the Ultramar case took 50 days from time of application to issue of the decision. Since competitiveness is so dependent on timing, it is important that cases be heard and decided quickly. But fairness

to respondents demands a thorough hearing. The Tribunal balances fairness and speed by continually reviewing and updating its rules of practice and procedures in consultation with the Tribunal/Bar Liaison Committee. This committee is made up of Tribunal members, members of the Canadian Bar Association's National Competition Law Section and the general counsel of the Department of Justice's Competition and Consumer Law Section.

Toward the Paperless Hearing: Electronic Filing and Document Management

The way the Tribunal conducts its business must take into consideration advances in information technology and the inroads the Internet is making into daily living. The Competition Tribunal also supports the initiatives of Government On-Line and Connecting Canadians. The Tribunal aggressively pursued the adoption and development of an electronic filing and document management system by establishing a three-phase pilot project.

The pilot was conducted in November 2000 after the installation of hardware and software that were selected and adapted to meet the needs of the parties and Tribunal Members. The case used for the pilot was a relatively small one — some 500 documents and tens of thousands of pages were involved — and the hearing lasted less than a month.

After the hearing was concluded, an external evaluation report was commissioned to look at the results objectively. The evaluation corroborated the general feeling of all participants that the pilot project was a success on several fronts.

- The participants confirmed that far less effort and cost was required on their part to prepare for the filing and preparation of the required documents.
- With electronic filing, litigants can submit their documents over the Web in PDF format; for voluminous material, documents can be submitted on diskette or CD-ROM.
- Registry staff members authenticate electronic documents, store them in a secure central repository using the document management software developed for the registry and enter summary information into the case management system, also tailored to Tribunal operations, to aid in document retrieval.

Best Practice:

Saving Paper, Time and Money

The pilot project found that electronic filing could save:

- an estimated 75% in labour devoted to paper handling
- up to 33% of the time for the daily hearing process (compared with similar past cases)
- up to \$10,000 per day, taking the time of all participants into consideration
- considerable storage space — the pilot's documentation consists of a few boxes of diskettes, as opposed to numerous binders that occupy several storage shelves

- The electronic document repository not only reduced the volume of paper that the Registry must store but also made document management more efficient.

The pilot project sparked lively interest in the quasi-judicial and judicial communities. The Competition Tribunal clearly demonstrated for the first time in Canada, and possibly internationally, that the paperless hearing process is a viable end-to-end option, from initial filing to Web access of the final results. The pilot improved service delivery by providing:

- convenient yet secure communications using password protection, encryption and digital signatures among the participants;
- an integration of the filing, case management and document management activities of the Tribunal;
- speedy access by all participants to a wide range of information sources, both with the Tribunal and on the Internet;
- electronic creation and completion of standard forms for the filing of documents;

E-filing Lessons Learned

Need for Flexibility: Part of the reason for the pilot's success was that it was kept very, very simple.

Feedback from our clients indicates that full-scale e-filing will need more flexibility. For example, hearing room counsel requested more control of the documents instead of always having the registry officer control the documents for them.

Keep Standards Consistent: The portable document format (PDF) filing standard caused a few problems with parties. The system will be adjusted to allow easier text file conversion.

- an information infrastructure to support electronic hearings while maintaining the integrity of the process — for example, the PDF format maintained the integrity of court records and reassured all parties of the authenticity of the documents;
- improved access to the Tribunal's information holdings as documents were available for immediate call-up on the Tribunal's Web site since they were already provided to the Tribunal in an electronic format;
- reduced costs for filing applications and for participating in hearings because parties were not required to make five copies (as required by the Act) of everything they filed or to pay to deliver all these copies to the Tribunal; and
- hearings reduced up to two hours a day.

The total project cost \$150,000, a very small budget for a project that developed, installed, tested and evaluated hardware and software — in less than a year.

Promoting Staff Development

In the spirit of supporting continuous learning, a government-wide priority, the Registry implemented a learning plan for staff to promote career counselling, succession planning, training and development, and team building. The learning plan contains competencies

that traditionally have been associated with successful on-the-job performance: communication, interpersonal, thinking, organizational, human resources, management, leadership, client service, business, self-management and technical/operational competencies. This is especially important given the need for new skills with the e-filing project.

The Member's Training Manual was also amended in-house to reflect ongoing changes and to add training on conducting an electronic hearing. With the arrival of three new lay members, the Orientation and Training Manual was put to the test. The manual includes modules on: The Overview of the Canadian Judicial System, The History of the Tribunal, The *Competition Tribunal Act*, Competition Tribunal Rules, the Tribunal's Code of Ethics and Administration. Members' feedback on the new manual was very positive.

For professional development of members, the Tribunal sets aside \$45,000. The budget for staff training is \$18,000.

Web Site More Accessible

Transparency is the hallmark of any quasi-judicial entity. To make the work of the Tribunal accessible to Canadians, as well as to respond to the needs of the electronic filing project, the Tribunal has continually improved its Web site. Improvements have aimed to expand the level of service provided to litigants, counsel, the media and the public. Case documents and orders are posted on the Web site within 24 hours of filing or issuance by the Tribunal.

Besides now being more easily navigable and accessible to all, the site includes:

- more complete information about cases brought before the Tribunal;
- speeches and articles written by the Tribunal members;
- quick access to relevant legislative documents;
- links to other useful sites, including the Department of Justice Canada and the Canadian Bar Association; and
- an electronic address for users to give feedback on the site.

The Web site also now enables non-graphical browsers (speech synthesizers) to easily access and navigate the site.

Presentation of Financial Information

Competition Tribunal	
Planned Spending	\$1,500,000
<i>Total Authorities</i>	<i>\$1,594,000</i>
Actuals	\$1,581,000

Appendix I

Financial Summary Tables

The Competition Tribunal is a small single business line organization, and as such, the only pertinent financial tables are as follows:

Table 1: Summary of Voted Appropriations

Table 2: Comparison of Total Planned Spending to Actual Spending

Table 3: Historical Comparison of Total Planned Spending to Actual Spending

The summary financial information presented in the following tables includes three figures. These figures are intended to show:

- what the plan was at the beginning of the fiscal year (Planned Spending);
- what additional spending Parliament has seen fit to approve to reflect changing priorities and unforeseen events (Total Authorities); and
- what was actually spent (2000–2001 Actual).

Financial Table 1: Summary of Voted Appropriations

Financial Requirements by Authority (\$ thousands)				
		2000-2001		
Vote		Planned Spending	Total Authorities	Actual
Competition Tribunal				
45	Operating Expenditures	1,365	1,459	1,462
(S)	Contributions to employee benefit plans	135	135	119
Total Department		1,500	1,594	1,581
Total Authorities are Main Estimates plus Supplementary Estimates and other authorities.				

Financial Table 2: Comparison of Total Planned Spending to Actual Spending

Departmental Planned versus Actual Spending (\$ thousands)			
Competition Tribunal	2000–2001		
	Planned Spending	Total Authorities	Actual
FTEs	14	<i>14</i>	12
Operating ^a	1,500	<i>1,594</i>	1,581
Capital	–	–	–
Grants and Contributions	–	–	–
Total Gross Expenditures	1,500	<i>1,594</i>	1,581
Less:			
Respendable Revenues	–	–	–
Total Net Expenditures	1,500	<i>1,594</i> ^b	1,581
Other Revenues and Expenditures			
Non-Respendable Revenues	–	–	–
Cost of services provided by other departments			434 ^c
Net Cost of the Program	1,500	<i>1,594</i>	2,015
<p>Note: <i>Number in italic</i> denotes Total Authorities for 2000–2001 (Main and Supplementary Estimates and other authorities). Bolded numbers denote actual expenditures in 2000–2001. Due to rounding, figures may not add to totals shown.</p>			

- a. Operating includes contributions to employee benefit plans.
- b. This amount includes the 5% carry-forward of \$57,600 from the budget of 1999–2000, \$28,000 for collective bargaining compensation and \$8,000 for the implementation of the Financial Information Strategy (FIS).
- c. Includes accommodation provided by Public Works and employee benefits covering the employer’s share of insurance premiums and costs paid by Treasury Board Secretariat.

Financial Table 3: Historical Comparison of Total Planned Spending to Actual Spending

Historical Comparison of Planned versus Actual Spending (\$ thousands)					
	Actual 1998-1999	Actual 1999-2000	2000-2001		
			Planned Spending	Total Authorities	Actual
Competition Tribunal	1,118	1,438	1,500	1,594	1,581
Total	1,118	1,438	1,500	1,594	1,581

Appendix II Enabling Legislation

[Competition Tribunal Act](#), R.S.C. 1985 (2nd Supp.), c. 19

[Part VII.1, Competition Act](#), R.S.C. 1985, c. C-34

[Part VIII, Competition Act](#), R.S.C. 1985, c. C-34

Appendix III For Further Information

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