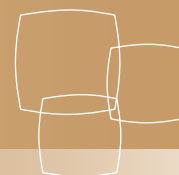




Competition Bureau
Canada

Bureau de la concurrence
Canada



ANNUAL REPORT²⁰⁰⁸

OF THE
COMMISSIONER OF COMPETITION
FOR THE YEAR ENDING
MARCH 31, 2009



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LETTER OF PRESENTATION



Gatineau, Quebec

The Honourable Christian Paradis, PC, MP
Minister of Industry
Ottawa, Ontario K1A 0H5

Dear Minister,

I have the honour to submit, pursuant to section 127 of the *Competition Act*, the following report on the operation of the *Competition Act*, the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act* and the *Precious Metals Marking Act* for the fiscal year ended March 31, 2009.

Melanie Aitken
Commissioner of Competition

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MESSAGE FROM THE COMMISSIONER



I am pleased to present the Competition Bureau's Annual Report for the fiscal year ending March 31, 2009.

It has been an exciting year for the Bureau. In June 2008, the final report of the Competition Policy Review Panel was released. Many of the Panel's recommendations became law as part of the *Budget Implementation Act, 2009*, which received Royal Assent on March 12, 2009. The amendments represent some of the most significant changes to the *Competition Act* (Act) in decades, including amendments in the areas of merger review, cartel enforcement, abuse of dominance, and in respect of certain pricing practices.

The amendments serve to modernize the Act and bring it more closely in line with the competition laws of our country's major trading partners. These new tools will significantly enhance our ability to protect Canadian consumers and businesses from anti-competitive conduct. We will ensure that we get these amendments on the best track possible, by implementing them in the most effective manner. There are two key dimensions to achieving that imperative. We will continue the good work we have started in getting out to our constituencies to explain the changes, and to collect valuable input on implementation. With that input, we will provide

guidance and develop the best possible enforcement policies and practices.

As to our enforcement initiatives, investigating domestic cartels continues to rank among our top priorities. The Bureau has had tremendous success in this area, most notably in uncovering a retail gas cartel in Quebec. We will not hesitate to bring enforcement action where the evidence warrants it, and we are unable to fully resolve our concerns consensually.

The gas cartel is just one of the many examples found in this report of how the Bureau's work contributes to the prosperity of Canadians by protecting and promoting competitive markets and enabling informed consumer choice.

As interim Commissioner of Competition, it has been a distinct privilege to work with such dedicated colleagues, and to experience first-hand the commitment, hard work and enthusiasm of all staff at the Bureau in making Canada's economy more competitive, to the benefit of consumers and businesses.

Melanie Aitken

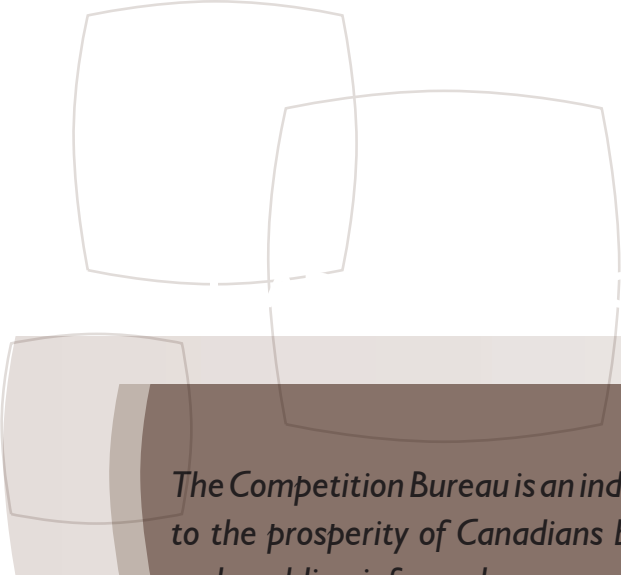
Commissioner of Competition







I. ABOUT THE COMPETITION BUREAU



The Competition Bureau is an independent law enforcement agency that contributes to the prosperity of Canadians by protecting and promoting competitive markets and enabling informed consumer choice.

The Bureau administers four laws that encourage and maintain competition in Canada, and ensure truthful and accurate advertising and representations to consumers in the marketplace: the *Competition Act* (Act), the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*. This report summarizes the Bureau's activities under these statutes for the fiscal year ending March 31, 2009.

It is important to note that major amendments to the Act were passed by Parliament on March 10, 2009, as part of the *Budget Implementation Act, 2009*. The vast majority of the amendments came into force immediately, while others come into force on March 12, 2010. An in-depth look at these changes is provided in the following section: Modernizing Canada's Competition Law. Specific details about these amendments are outlined at the beginning of each of the chapters focusing on the Bureau's enforcement activities: Pursuing Criminal Matters; Preventing Abuse of Dominance and Other Anti-competitive Business Practices; Eliminating False or Misleading Representations and Deceptive Marketing Practices; and Reviewing Mergers.

This report demonstrates how the Bureau's activities over the past year have benefited Canadians. For detailed information on the activities described throughout the report, including information notices, news releases and backgrounders, please visit the Media Centre at: www.competitionbureau.gc.ca.

For statistical data, please refer to the Appendix, which can be found at the end of this report. Legal references and further information about the

Bureau's work can be found on the Bureau's Web site: www.competitionbureau.gc.ca.

1.1 Operational Structure

In 2008-2009, the Bureau employed 436 people. Of that number, 343 are located in the National Capital Region, with 93 in seven regional offices. The regional offices are located in Halifax, Montreal, Toronto, Hamilton, Winnipeg, Calgary and Vancouver.

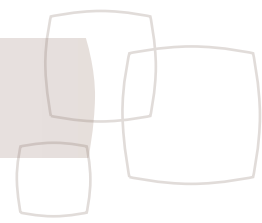
The Commissioner of Competition is the head of the Bureau and is responsible for administering and enforcing the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*.

The Bureau is organized into eight branches.

The **Civil Matters Branch** reviews anti-competitive behaviour, such as abuse of dominance, and restraints imposed by suppliers on customers, such as refusals to supply, exclusive dealing and tied selling.

The **Compliance and Operations Branch** oversees the Bureau's compliance program, training programs and client services. It manages the Bureau's Information Centre, as well as Bureau-wide planning, resource management, administration and informatics activities.

The **Criminal Matters Branch** administers and enforces the criminal provisions of the Act, including those covering conspiracies, such as price-fixing and bid-rigging.



The **Economic Policy and Enforcement Branch** provides economic advice and expertise, as well as enforcement support, to the Bureau's Chief Economist and to the Bureau as a whole.

The **Public Affairs Branch** is the Bureau's communications division. It ensures that Canadian consumers, businesses, parliamentarians and the international community are aware of the Bureau's contributions to competition in the marketplace and to the growth of the Canadian economy.

The **Fair Business Practices Branch** administers and enforces the provisions of the Act on misleading representations and deceptive marketing practices. The Branch also administers and enforces the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*.

The **Legislative and International Affairs Branch** is responsible for the ongoing modernization of the Act, as well as managing and coordinating the Bureau's issues work within Parliament's law-making process, and assists with policy and advocacy matters. The Branch promotes the Bureau's interests in international co-operation, negotiations and policy development.

The **Mergers Branch** reviews merger transactions to assess whether potential mergers are likely to prevent or substantially lessen competition in the marketplace.

I.2 Bureau Operations

The operating budget for the Bureau in 2008-2009 was \$48.3 million, including \$10.5 million collected from user fees. The majority of the budget, \$33 million, was allocated to salaries for 423 authorized full-time staff, consisting of 29 executives, 15 economists, 243 competition law officers, and 136 employees carrying out informatics, administrative services and support functions.

The Bureau has administrative responsibility for collecting fines imposed by the courts. Over \$10 million in fines were imposed in 2008-2009. This money is remitted to the Government of Canada's Consolidated Revenue Fund.

I.3 Priorities

The Bureau identified six priorities for action in 2008-2009.

Competition Bureau Priorities
1. Enforce the conspiracy provisions of the <i>Competition Act</i> against illegal cartel activity.
2. Review mergers and acquisitions, and challenge those few that would result in a substantial lessening of competition.
3. Achieve significant progress in eliminating false health care-related claims, increase public awareness in this area, and, where possible, remove the products entirely from Canadian markets.
4. Influence manufacturing and retail sectors to establish industry-wide best practices for the use of rebate programs, including delayed payment rebates, such as mail-in or online rebates.
5. Focus competition advocacy efforts on key areas where it can make a difference, notably in the health care sector.
6. Build, maintain and leverage relationships with antitrust and other law enforcement organizations in Canada and abroad.

These priorities are demonstrated throughout this report and are reported upon across the Bureau's major lines of business.





2. MODERNIZING CANADA'S COMPETITION LAW

2. MODERNIZING CANADA'S COMPETITION LAW

The Competition Policy Review Panel, chaired by L.R. Wilson, was created in July 2007 with a mandate to review Canada's competition and foreign investment policies, and make recommendations to the federal government on improving Canada's global competitiveness.

The Panel delivered its report, entitled *Compete to Win*, to the Government of Canada on June 26, 2008. The Panel made a series of policy recommendations, including amendments to the *Competition Act* (Act).

As a result of the Panel's work, major amendments to the Act were passed by Parliament on March 12, 2009, as part of the *Budget Implementation Act, 2009*. The vast majority of the amendments came into force immediately, while the cartel and competitor collaboration provisions come into force on March 12, 2010.

These changes modernize the Act in order to bring it more closely in line with the competition laws of Canada's major trading partners.

The amendments will increase the predictability, efficiency and effectiveness of the enforcement and administration of the Act. It is important to ensure that consumers and legitimate businesses do not fall prey to illegal activity, and that, if they do, they have confidence that the law will be enforced effectively and that penalties are tough enough to deter illegal activity in the future.

One of the Bureau's upcoming initiatives is to begin an extensive program of outreach and consultation with the Canadian legal community, business community and consumer groups. In doing so, the Bureau can benefit from the perspectives and experience of these groups in order to implement the amendments in the most transparent and effective manner.

This chapter provides an overview of the most significant amendments to the Act: the new merger review process; cartels and competitor collaborations; administrative monetary penalties for abuse of dominance; deceptive marketing and restitution. The remaining amendments are outlined at the beginning of each chapter focusing on the Bureau's enforcement activities.

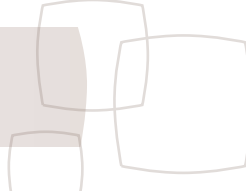
Please visit the Bureau's Web site for more detailed information and guidance on the amendments to the Act at: www.competitionbureau.gc.ca.

2.1 Criminal Provisions

The criminal pricing and price maintenance provisions were repealed as part of the amendments to the Act. This includes provisions concerning price discrimination, predatory pricing, geographic price discrimination and promotional allowances. These activities are now subject to review under the abuse of dominance civil provision of the Act.

"Hard-core" cartel activity, such as price-fixing, market allocation and output restriction, are subject to criminal prosecution and prohibited outright. The maximum fine for conviction for these offences increased from \$10 million to \$25 million, and the maximum term of imprisonment was increased from five years to 14 years.

The definition of bid-rigging was amended to explicitly prohibit the withdrawal of bids by agreement, and



the maximum term of imprisonment was increased from five years to 14 years.

2.2 Civil Provisions

Among the changes to the civil provisions of the Act were amendments that introduced administrative monetary penalties (AMPs) for abuse of dominance: a maximum \$10 million penalty for a first offence, and a maximum \$15 million penalty for subsequent offences.

As previously mentioned, pricing provisions that were previously criminal in nature were either repealed outright or brought under the civil regime. As a result, predatory pricing, price discrimination and promotional allowances will now be reviewed civilly. Decriminalizing these practices promotes innovative pricing programs and increases certainty for Canadian businesses.

Price maintenance is also now a civilly reviewable matter after the criminal provision was repealed. The price maintenance provisions are designed to provide resellers of products with the freedom to set their own prices, and to provide suppliers with the ability to compete through low-pricing policies. Removing the criminal sanction promotes legitimate price competition that, at least in theory, could otherwise be discouraged.

2.3 Agreements Among Competitors

The amendments to the conspiracy provision, section 45 of the Act, will allow for more effective enforcement of “hard-core” cartel activities: price-fixing, market allocation and output restriction. This provision, along with a new, non-criminal provision, will come into force on March 12, 2010.

Previously, in conspiracy cases, the prosecution had to prove not only an agreement between competitors to fix prices, but also an anti-competitive effect. This “effects” has been removed, and these activities will now be prohibited outright. The penalties for section 45 will also increase. Those convicted of conspiracy will face jail terms of up to 14 years (increased from

five years), fines of up to \$25 million (increased from \$10 million), or a combination of both.

Other forms of competitor collaborations, such as joint ventures and strategic alliances, may be subject to review under a new civil provision, section 90.1, which prohibits agreements only where they are likely to substantially lessen or prevent competition. These amendments were designed to create a more effective criminal enforcement regime for the most egregious forms of cartel agreements, while at the same time removing the threat of criminal sanctions for legitimate collaborations between competitors to avoid discouraging firms from engaging in potentially beneficial alliances.

Until this provision comes into force, parties may request a written opinion from the Bureau on the application of the new provision to their existing or proposed agreements. For more information on how to seek a written opinion, please visit the Legal Actions and Opinions section of the Bureau’s Web site: www.competitionbureau.gc.ca.

The Bureau will publish guidelines describing the proposed approach to assessing agreements among competitors under these new provisions. Following consultation with interested parties, the guidelines will be issued in final form to provide predictability to Bureau stakeholders.

2.4 Merger Review Process

Consistent with the recommendation of the Competition Policy Review Panel, the amendments introduced a new two-stage merger review process that replaces the previous short-form and long-form filing processes. This new process now includes:

- An initial 30-day waiting period following notification by parties, during which parties may not complete a notifiable merger. This waiting period is subject to early termination by the Bureau.
- The Bureau’s ability to obtain additional information, if required, from the parties through the issuance of a Supplementary Information Request (SIR). The SIR can be issued at any time during the initial waiting period.

- A second 30-day waiting period, which commences after the Bureau receives from the parties all the information required by the SIR.

The SIR process allows the Bureau to access information required to perform a sufficiently thorough review in a timely and effective manner through a more efficient information-gathering process. The Bureau is committed to minimizing the parties' burden in complying with the SIR by narrowing the issues and requirements for additional data and records to the extent reasonably possible, while ensuring the Bureau's responsibility to collect relevant documents and information is respected.

The Commissioner of Competition may now challenge a completed merger before the Competition Tribunal during only the one-year period after the transaction has been substantially completed. Prior to the amendments to the Act, the Commissioner had three years to challenge a completed merger.

The minimum size of a transaction that requires a mandatory notification to the Bureau was raised to \$70 million, which represents a combined asset/revenue threshold. This threshold is indexed to fluctuations in Canada's gross domestic product (GDP) and subject to a different amount to be prescribed by regulations.

The Bureau issued draft guidelines in connection with the new merger review process for public consultation on March 24, 2009. These guidelines provide a detailed discussion on how, among other things, the Bureau proposes to narrow the scope of SIRs as much as reasonably possible. The draft guidelines are intended to foster a dialogue with the legal and corporate communities to allow the Bureau to benefit from their perspectives and experience to ensure the merger review processes are as clear and efficient as possible.

2.5 False or Misleading Representations and Deceptive Marketing Practices

The Bureau promotes truth in advertising in the marketplace by discouraging deceptive business practices and encouraging the provision of

information to allow consumers to make informed choices.

The amendments to the Act increased administrative monetary penalties (AMPs) for non-criminal deceptive marketing practices. The maximum penalty for individuals increased to \$750,000 for a first-time offence and \$1 million for subsequent offences. The previous maximum penalties were \$50,000 and \$100,000, respectively. Maximum penalties for corporations increased to \$10 million for a first-time offence and \$15 million for subsequent offences. Maximum penalties were formerly \$100,000 and \$200,000, respectively.

For criminal offences under the false and misleading representations provisions of the Act, the maximum jail term was increased from five years to 14 years.

A false or misleading representation is now clearly subject to action under the Act, even when made to the public outside Canada, or in a non-public setting.

2.6 Restitution

This is a new provision in the Act that applies to the non-criminal deceptive marketing practices provisions of the Act. Restitution was previously available for criminal offences, including criminal false or misleading representations, under the *Criminal Code*.

The court or Competition Tribunal may now order the person in violation of paragraph 74.01(1)(a) of the Act to make restitution to purchasers. The amount of restitution may not exceed the total amount paid by purchasers for the products in question.

The court or Tribunal may also issue an injunction to prevent the disposal of property to ensure that there are funds available for restitution to victims.







3. PURSUING CRIMINAL MATTERS

3. PURSUING CRIMINAL MATTERS

The Competition Bureau administers and enforces the criminal cartel provisions of the Competition Act (Act), which prohibit price-fixing, market allocation and output restriction, as well as other forms of collusion among competitors.

On March 12, 2009, a number of amendments were made to the criminal provisions of the Act, the vast majority of which came into force immediately, while the cartel and competitor collaboration provisions come into force on March 12, 2010. For more detailed information on these changes, please consult Section 2: Modernizing Canada's Competition Law.

The conspiracy provision, section 45 of the Act, prohibits agreements between two or more competitors to prevent or unduly lessen competition. Agreements among competitors to fix prices, to allocate customers or geographic markets, or to restrict the supply of a product are the types of "hard-core" cartel activities most likely to raise issues under the conspiracy provision of the Act. As of March 12, 2010, the market effects requirement under section 45 will be removed as the new provision comes into force.

Bid-rigging, a criminal offence prohibited by section 47 of the Act, consists of an agreement where, in response to a call or request for bids or tenders, bidders agree not to submit a bid, or agree to submit bids that have been pre-arranged among themselves. The amendments to the Act also prohibit the withdrawal of bids by agreement or arrangement. The changes to this provision came into force in 2009.

The Bureau has a range of tools at its disposal, including the Immunity Program, to enforce these provisions. The most serious matters are referred to the Director of Public Prosecutions with a recommendation for prosecution. Offenders may

receive heavy fines, prison terms or a combination of both. This chapter describes the Bureau's criminal enforcement activity regarding such matters during 2008-2009.

For more detailed information about the criminal provisions of the Act, please visit the Investigating Cartels section of the Bureau's Web site: www.competitionbureau.gc.ca.

For additional information on the cases described in this chapter and others, including information notices, news releases and backgrounders, please visit the Bureau's Media Centre at: www.competitionbureau.gc.ca.

3.1 Enforcement Actions

The Bureau undertook a number of enforcement actions against cartels in the past year. Three of the Bureau's top enforcement actions are highlighted below.

Gas Price-Fixing Conspiracy in Quebec

On June 12, 2008, criminal charges were laid against 13 individuals and 11 companies accused of fixing the price of retail gasoline in Victoriaville, Thetford Mines, Magog and Sherbrooke, Quebec.

Over the course of the investigation, the Bureau uncovered evidence of agreements between competitors to fix the price of gasoline at the pump. The evidence indicated that participants in the targeted markets carried out the conspiracy primarily by contacting one another by telephone

to agree on the price of gasoline and the timing of price increases, contrary to the conspiracy provision of the Act.

By March 31, 2009, four companies and six individuals had pleaded guilty. The court imposed fines totalling over \$2.6 million, prohibition orders and terms of imprisonment totalling 44 months against those who pleaded guilty. The Bureau's investigation is ongoing.



La Presse, June 13, 2008

Hydrogen Peroxide

On November 21, 2008, the Federal Court of Canada fined Akzo Nobel Chemicals International BV \$3.15 million for price-fixing. The company pleaded guilty to criminal charges for fixing the price of hydrogen peroxide sold in Canada between October 1998 and June 2001.

Hydrogen peroxide is mainly used in the pulp and paper industry as a bleaching agent and chemical oxidant. It is commonly used in households as a disinfectant for minor cuts and wounds, and is also used in the environmental, chemical, textile and food processing industries.

The facts obtained by the Bureau during the course of its investigation revealed that, between October 1998 and June 2001, Akzo Nobel (through one of its affiliates), along with other producers of hydrogen peroxide, coordinated upcoming price increase announcements. Competitors mainly agreed on the price level and the timing of price increases.

The Bureau's investigation benefited from the cooperation of an immunity applicant. This investigation is ongoing.

Bid-Rigging of Government of Canada Contracts for IT Services

In 2005, Public Works and Government Services Canada (PWGSC) officials contacted the Bureau to voice concerns about certain bidding processes. Bureau investigators found evidence of criminal activity in 10 competitive bidding processes dating from 2005. In particular, evidence indicated that several IT services companies in the National Capital Region had secretly coordinated their bids in an illegal scheme to defraud the government by winning and dividing contracts, while blocking out honest competitors. The total value of the contracts was approximately \$67 million. The contracts related to professional IT services provided to Canada Border Services Agency, Public Works and Government Services Canada and Transport Canada.

On February 17, 2009, charges were laid against seven companies and 14 individuals for rigging bids to obtain Government of Canada contracts for the provision of information technology services.

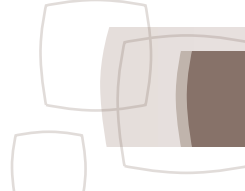
The Bureau secured cooperation from applicants under its Immunity and Leniency Programs, respectively. The case is currently before the courts.

3.2 Anti-Bid-Rigging Program

The Bureau has placed considerable emphasis on preventing and detecting bid-rigging in both the public and private sectors. The Bureau uses a number of different vehicles to raise awareness about the impact of bid-rigging on Canadians, and to educate procurement officials on how to detect this illegal activity.

In 2008-2009, Bureau representatives delivered over 50 outreach presentations across Canada. The majority of these presentations targeted procurement officials in the private sector and various levels of government.

On April 8, 2008, the Bureau launched a new anti-bid-rigging presentation on the Bureau Web site. The presentation provides organizations engaged in procurement with information to help them detect, prevent and report suspected incidences of bid-rigging and, among other things, includes surveillance



video excerpts from actual cartel activities in progress.


On May 9, 2008, the Bureau responded to four recommendations resulting from a Government of Canada Departmental Evaluation regarding the effectiveness of the Bureau's anti-bid-rigging program.

As a result of these recommendations, Bureau management established an action plan for 2008-2009 to:

- examine current bid-rigging research, as well as validate and deepen findings applicable to the Canadian marketplace, with a view to refocusing the Bureau's activities on high-risk sectors and situations;
- revise the Bureau's outreach strategy to move to shared responsibility with stakeholders to combat bid-rigging, with a focus on Federal Government departments;
- ensure that the Bureau's recruitment and training activities address competencies necessary to engage in effective outreach; and,
- develop an annual plan to evaluate, monitor and report on the results of the Bureau's anti-bid-rigging program.







4. PREVENTING ABUSE OF DOMINANCE AND OTHER ANTI-COMPETITIVE BUSINESS PRACTICES

4. PREVENTING ABUSE OF DOMINANCE AND OTHER ANTI-COMPETITIVE BUSINESS PRACTICES

The Bureau administers and enforces provisions of the Competition Act (Act) relating to abuse of dominance, as well as refusals to deal and tied selling, among others. These provisions are often referred to as the civil provisions of the Act.

Abuse of a dominant position occurs when a dominant firm or a dominant group of firms in a market engages in a practice of anti-competitive acts, with the result that competition is prevented or lessened substantially.

In cases where the elements of the offence are satisfied, the Commissioner may file an application with the Competition Tribunal for an order to remedy the situation. As well, the Tribunal may order AMPs for abuse of dominance.

That being said, the Bureau encourages voluntary compliance with the Act. Voluntary compliance includes a broad spectrum of solutions to remedy anti-competitive behaviour, ranging from an informal resolution to the registration of a consent agreement with the Competition Tribunal or contested proceedings. Examples of alternative case resolutions are available on the Bureau's Web site at: www.competitionbureau.gc.ca.

This section describes the Bureau's enforcement activity with regard to abuse of dominance and other anti-competitive business practices during 2008-2009.

4.1 Enforcement Actions

Individual v. Hockey Canada

In July 2008, a complaint was filed with the Bureau against Hockey Canada, the country's national governing body for amateur hockey. The complainant reported potential anti-competitive practices that

included lengthy player suspensions and arena boycotts for participating in, or supporting, leagues that were in competition with those sanctioned by Hockey Canada. These 'outlaw leagues' operate outside the auspices of Hockey Canada and, in that sense, in direct competition with them.

The Bureau's investigation was ongoing at the end of the reporting period.

Waste Management of Canada & Waste Services Inc.

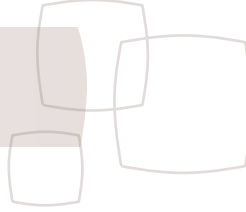
In October 2008, the Bureau began an investigation into allegations that Waste Services Inc. and Waste Management of Canada were engaged in conduct that foreclosed the market to competitors through the use of long-term, exclusive contracts. The Bureau's investigation focused on the companies' contracts for waste collection services in central Vancouver Island in British Columbia.

The contracts also imposed highly restrictive terms and conditions, including automatic renewal clauses, significant penalties for early contract termination and the right of first refusal to match a competitor's offer.

The investigation was ongoing at the end of the reporting period.

Insurance Corporation of British Columbia v. ING

Following receipt of a complaint from six Canadian residents, the Bureau began an inquiry to determine whether certain policies and practices of the



Insurance Corporation of British Columbia (ICBC) constituted an abuse of a dominant position. ICBC is a provincial Crown corporation that provides mandatory basic automobile insurance to all drivers in BC, and competes with other insurance companies in supplying optional auto insurance products. The complaint alleged that ICBC prevented and lessened competition substantially by requiring brokers who sell ICBC insurance and are affiliated with a competing insurance company, not to sell the affiliate's optional auto insurance.

The Bureau discontinued the inquiry in July 2008 after determining that ICBC's alleged anti-competitive practices had no substantial effect on competition. While ICBC's policies place some restrictions on how their competitors conduct business, the Bureau determined that reasonable alternatives are readily available.

4.2 Policy Matters

Enforcement Guidelines

Guidelines are designed and drafted with the objective of improving the transparency and predictability of the Bureau's enforcement approach to the provisions of the Act.

Updated Enforcement Guidelines on The Abuse of Dominance Provisions (Sections 78 and 79 of the Competition Act)

Updated enforcement guidelines on the abuse of dominance provisions were published for public consultation in January 2009. These guidelines articulate the Bureau's approach to evaluating whether conduct raises issues under sections 78 and 79 of the Act. The guidelines also reflect developments in jurisprudence and economic theory since the guidelines were last published in 2001, including, for example, a revised discussion of joint dominance.

Predatory Pricing Enforcement Guidelines

In July 2008, the Bureau published its *Predatory Pricing* Enforcement Guidelines. These guidelines were revised to treat predation as an abuse of a dominant position in most cases instead of a criminal offence. The Act has since been amended to repeal the criminal provision.

While the *Predatory Pricing* Guidelines should be read in conjunction with the Abuse of Dominance Guidelines, they do provide guidance on such issues as the Bureau's use of an average avoidable cost standard when conducting price-cost analysis, and "meeting competition" has been added as a potentially reasonable business justification for pricing below cost.

Telecommunications

Information Bulletin on the Abuse of Dominance Provisions as Applied to the Telecommunications Industry


The Bureau published its *Information Bulletin on the Abuse of Dominance Provisions as Applied to the Telecommunications Industry* in June 2008.

The industry is transitioning from one governed by sector-specific regulation to one subject to laws of general application, resulting in overlapping responsibility between the Canadian Radio-Television and Telecommunications Commission (CRTC) and the Bureau. Moving into a competitive environment from the shelter of regulation will have a profound impact on the industry and will require parties to adjust to the general competition framework of the Act.

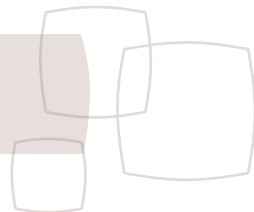
Given the complex relationships that exist within the industry and the history of competitive disputes brought before the CRTC, the Bureau may receive a significant number of complaints within this sector. This bulletin provides transparency to the business community and consumers regarding the Bureau's approach to a wide range of issues relating to the abuse of dominance provisions in the context of the telecommunications sector, such as product market definition, geographic market definition, market power and anti-competitive acts.

International Roundtable on Telecommunications and Antitrust


The Bureau hosted the Second International Roundtable on Telecommunications and Antitrust at the Canadian Museum of Civilization in Gatineau, Quebec, on October 2-3, 2008. This event brought together representatives from the competition authorities of Australia, Brazil, Canada, the European Union, Germany, Japan, Mexico, the United Kingdom and the United States.



Delegates discussed various antitrust enforcement issues in the telecommunications sector, including: technological convergence and the implications for market definition and regulation; abuse of dominance and pricing practices in the sector; and relevant merger enforcement cases. The roundtable also afforded international competition law enforcers specializing in this industry an opportunity to discuss key developments and emerging issues that have developed since the first roundtable, hosted by the U.S. Department of Justice, in 2004.







5. ELIMINATING FALSE OR MISLEADING REPRESENTATIONS AND DECEPTIVE MARKETING PRACTICES

5. ELIMINATING FALSE OR MISLEADING REPRESENTATIONS AND DECEPTIVE MARKETING PRACTICES

The Competition Bureau administers and enforces the civil and criminal false or misleading representations and deceptive marketing practices provisions of the Competition Act (Act), as well as three regulatory statutes promoting fair and truthful representations in the marketing of consumer products; namely, the Consumer Packaging and Labelling Act as it relates to non-food products, the Precious Metals Marking Act and the Textile Labelling Act.

The Bureau promotes truth in advertising in the marketplace by discouraging deceptive business practices and encouraging the provision of information to allow consumers to make informed choices.

In 2008-2009, the Bureau met several of its key priorities in this enforcement area, including:

- achieving significant progress in eliminating false health care-related claims, increase public awareness in this area and, where possible, removing the products entirely from Canadian markets;
- influencing manufacturing and retail sectors to establish industry-wide best practices for the use of rebate programs, including delayed payment rebates, such as mail-in or online rebates; and
- focusing competition advocacy efforts on key areas where it can make a difference, notably in the health care sector.

The Bureau's efforts were not limited to enforcement action, but included an education initiative aimed at targeting health fraud online and partnerships with other investigatory agencies.

For more detailed information on the activities described in this chapter, please visit the Media Centre at: www.competitionbureau.gc.ca.

5.1 Enforcement Actions

First Capital Consumers Group

Lloyd Prudenza, David Dalglish and Leslie Anderson, the principal operators behind First Capital Consumers Group, were arrested in 2002 following an investigation led by the Competition Bureau. They were charged with offences under the Act and the *Criminal Code*, including: deceptive telemarketing; conspiracy to commit an indictable offence; fraud; and possession of property obtained by crime.

Working out of boiler rooms in Toronto in 2001-2002, telemarketers targeted U.S. residents, claiming they had been approved for a MasterCard or Visa credit card. The victims were required to pay a one-time processing fee (approximately \$200 U.S.) prior to receiving one or both cards, but never received a valid credit card. This deceptive telemarketing operation generated approximately \$8 million U.S. and defrauded close to 40,000 American consumers with poor credit histories.

In 2003, the U.S. Department of Justice made a formal request to the Canadian Minister of Justice for the extradition of the accused to stand trial in the United States. In 2007, after exhausting all levels of appeal, Prudenza, Dalglish and Anderson were extradited to the U.S. This was the first time a Competition Bureau investigation resulted in extradition.

Prudenza and Dalglish pleaded guilty while Anderson was found guilty, on charges of conspiracy, mail fraud and wire fraud. Dalglish was sentenced to 19 years and seven months in prison, Prudenza was sentenced to 15 years in prison and Anderson was sentenced to 23 years and four months in prison. In sentencing Prudenza, the U.S. Federal Court in the Southern District of Illinois explained the more lenient penalty was owing to his health problems. The three individuals were jointly ordered to pay over \$5 million U.S. in restitution to the victims.

The Bureau worked on this investigation with other members of the Toronto Strategic Partnership. The partnership is a multi-law-enforcement agency task force formed to combat cross-border fraudulent mass marketing.

Northern Response International Ltd.

On October 21, 2008, the Bureau signed a consent agreement with Toronto-based Northern Response International Ltd., as a result of the company's unsubstantiated claims in the sale and promotion of the Velform Sauna Belt, a purported weight-loss device.

The company agreed to pay \$400,000 in penalties and costs, and to offer full refunds to consumers who purchased the Velform Sauna Belt. The company was also required to broadcast corrective notices on television and to cease using unsubstantiated claims in the sale and promotion of the Velform Sauna Belt.

Project False Hope

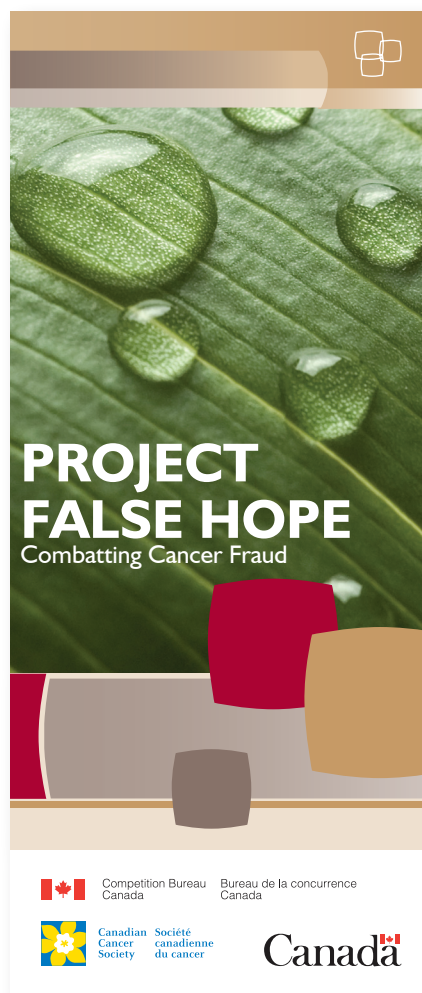
In March 2008, the Bureau launched Project False Hope, an education and enforcement initiative aimed at targeting cancer-related health fraud online.

During the year, on the enforcement component of the initiative and in collaboration with domestic and international partners, including Health Canada, the U.S. Federal Trade Commission and the U.S. Food and Drug Administration, the Bureau successfully took action against almost 100 Canadian-operated Web sites. More than 92 per cent of sites contacted voluntarily complied with the Bureau's demand to modify or remove claims concerning cancer-related products and treatments. The Bureau used a combination of Internet surveillance and adaptive investigative techniques to identify these online scams.

On the education component of the initiative, the Bureau partnered with the Canadian Cancer Society in the launch of an educational pamphlet to provide consumers with information on how to protect themselves from fraudulent health claims.

The Bureau also developed two interactive Web tools to educate consumers on how to recognize scams. A mock online scam was designed to teach the public to identify some of the tactics often used by scammers selling fraudulent cancer cures or treatments online. The second tool, a health fraud quiz, tests readers' knowledge of scammers' tactics and teaches how to avoid becoming a victim.

The Bureau was recognized by the Community of Federal Regulators in December 2008 for its outstanding collaboration with domestic and international partners on Project False Hope.





5.2 Partnerships

Further to Bureau priorities in the area of mass marketing fraud, the following initiatives provide two illustrations of how the Bureau worked with partners.

Cooperation Arrangement with U.S. Postal Inspection Service

The Bureau signed a cooperation arrangement with the United States Postal Inspection Service on April 2, 2008, to improve competition law enforcement in areas such as mass marketing fraud and other deceptive marketing practices with a cross-border component.

The arrangement formalized an existing cooperative relationship between the agencies by establishing a framework to facilitate enforcement cooperation, coordination and information sharing. The arrangement is part of an ongoing effort to ensure that the Bureau has the tools to effectively deal with increasingly globalized markets.

Operation Tele-PHONEY

Beginning on May 20, 2008, law enforcement agencies in the United States and Canada participated in Operation Tele-PHONEY, a cross-border comprehensive attack on telemarketing fraud. The sweep included a range of cases targeting telemarketing fraud, such as pitches for advance-fee loans and credit cards, free gift and prize promotion claims, medical prescription drug plans, tax rebates, magazine subscriptions and low-cost household products. The sweep encompassed more than 180 cases, including both civil and criminal actions in the U.S. and Canada.

These actions showcased the productive enforcement relationship between the Competition Bureau and its American partners: the Federal Trade Commission, the United States Postal Inspection Service, the U.S. Department of Justice and State Attorneys General.

5.3 Policy Matters

In the areas of misleading advertising and labelling, the following guidelines were issued.

Environmental Claims Guidelines

On June 25, 2008, in collaboration with the Canadian Standards Association, the Bureau released *Environmental Claims: A Guide for Industry and Advertisers*. The guidelines provide the business community with tools to ensure that green marketing is not misleading, while providing consumers with greater assurance about the accuracy of environmental claims.

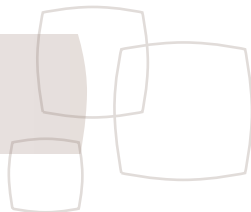
The guidelines provide examples of best practices on how such claims can be used by businesses to comply with the false or misleading provisions of the laws enforced by the Bureau.

Guidance on Labelling Textile Articles Derived from Bamboo

On March 11, 2009, the Bureau publicly called on textile industry participants to comply with the *Textile Labelling Act* and its regulations as they apply to fabric labelled “bamboo”.

While many products are labelled “bamboo”, this is not an acceptable generic name for a textile fibre unless natural bamboo has been mechanically processed. Most of the products currently in the market are, in fact, man-made fibre derived from bamboo using a chemical process, which produces a rayon fibre from bamboo pulp.

Textile dealers were advised that they would be permitted to sell existing stocks of textile articles that were in production, manufactured, labelled or packaged, in the ordinary course of business, prior to March 11, 2009. The Bureau plans to conduct marketplace surveillance to ensure compliance with the *Textile Labelling Act* after August 31, 2009.







6. REVIEWING MERGERS

6. REVIEWING MERGERS

Mergers in Canada are subject to review by the Competition Bureau under the Competition Act (Act) to ensure that they will not result in a substantial lessening or prevention of competition.

When the Bureau finds that a proposed merger is likely to substantially lessen or prevent competition, the Commissioner may ask the parties to restructure the merger or require remedies to resolve particular competition issues. When concerns cannot be addressed by negotiation, the Commissioner may bring an application to the Competition Tribunal to alter or block the proposed transaction.

The overall number of mergers reviewed by the Bureau declined in 2008-2009. The Bureau conducted 258 examinations during this period, down from 337 examinations in the previous year. This decline follows four years of sustained increases in the number of merger examinations in Canada. Last year, the Bureau concluded that more than 90 per cent of transactions reviewed did not pose an issue under the Act. The Bureau secured a consent agreement with the parties in one transaction, while the remedies obtained by foreign agencies in two other transactions resolved Canadian competition concerns. Please refer to the Appendix for more detailed information on merger reviews.

Where mergers involve more than one jurisdiction, international co-operation is critical. Bureau staff work with other competition authorities to coordinate the timing of the review process and the review itself, to the extent possible, and, when appropriate, seek consistent (or at least non-conflicting) remedies. The Bureau communicates most frequently with the U.S. Federal Trade Commission, the U.S. Department of Justice, and the European Commission.

For more detailed information on the merger review process, related guidelines and notification requirements, please visit the Reviewing Mergers Web page: www.competitionbureau.gc.ca.

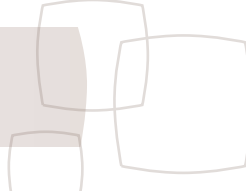
Further information on the cases described in this chapter is available on the Bureau's Web site. Please visit the Media Centre at: www.competitionbureau.gc.ca.

6.1 Key Merger Reviews

Superior Plus LP and Irving Oil

In August 2007, Superior Plus LP contacted the Bureau with respect to its proposed acquisition of certain propane assets in the Central and Western regions of Newfoundland from Irving Oil Limited and Irving Oil Marketing Limited.

Although the parties were not required to notify the Bureau under the provisions of the Act, the Bureau conducted an extensive review, determining that the transaction would likely result in a substantial lessening and/or prevention of competition in the markets for retail propane in the Central and Western regions of Newfoundland. The Bureau was particularly concerned about an insufficient level of remaining competition post-merger and the presence of significant barriers to entry. The parties claimed that efficiencies to be gained from the transaction would outweigh any anti-competitive effects. While the Bureau agreed that efficiency gains would likely arise from the transaction, it appeared unlikely that such gains would be sufficient to offset the substantial lessening or prevention of competition.



To resolve these competition issues, the Bureau and Superior entered into a consent agreement on May 12, 2008. The agreement required Superior to divest bulk propane storage tanks and other related assets located in Corner Brook and Grand Falls-Windsor, Newfoundland and Labrador. The divestiture of the assets to North Atlantic Petroleum was completed on January 23, 2009.

Google and Yahoo!

In June 2008, Yahoo! Inc. and Google Inc. announced a non-exclusive partnership under which Yahoo would outsource certain aspects of its search advertising to Google in Canada and the United States.

The Bureau reviewed the proposed transaction to assess whether the agreement would result in significant competition issues in Canada. As part of its review, the Bureau spoke with advertisers and publishers who raised concerns about the competitive effects of the agreement. The Bureau also cooperated closely with the U.S. Department of Justice throughout its review.

On November 5, 2008, Yahoo and Google abandoned the proposed agreement, effectively resolving the Bureau's concerns.

XL Foods and Lakeside Packers

The Bureau announced on February 27, 2009, that it would not challenge the acquisition by XL Foods Inc. of the beef packing plant operated by Lakeside Packers, the Canadian subsidiary of Tyson Foods, Inc.

The Bureau's review of the transaction included interviews with over 50 industry participants in western Canada. In addition, the Bureau obtained investigatory orders requiring the production of documents and information from all major industry participants. The primary concerns raised by industry participants were not related to the transaction itself, but rather to the possibility that the Lakeside plant in Brooks, Alberta, would close if the transaction did not proceed, and to recent U.S. mandatory country-of-origin labelling legislation (mCOOL). Industry participants confirmed that U.S. packers purchased substantial volumes of slaughter cattle, but they were concerned that U.S. packers might be forced to adopt more rigorous labelling requirements for beef products.

Industry participants anticipate that the final rule of mCOOL could enable U.S. packers to increase purchases of Canadian slaughter cattle. However, if U.S. buyers are required to adopt more rigorous country-of-origin labelling practices for beef products, this could inhibit the sale of Canadian slaughter cattle to the U.S.

The Bureau announced its intention to continue to closely monitor the beef packing industry given the uncertainty surrounding U.S. mCOOL labelling measures, and U.S. packers' response to these measures.

6.2 Policy Matters

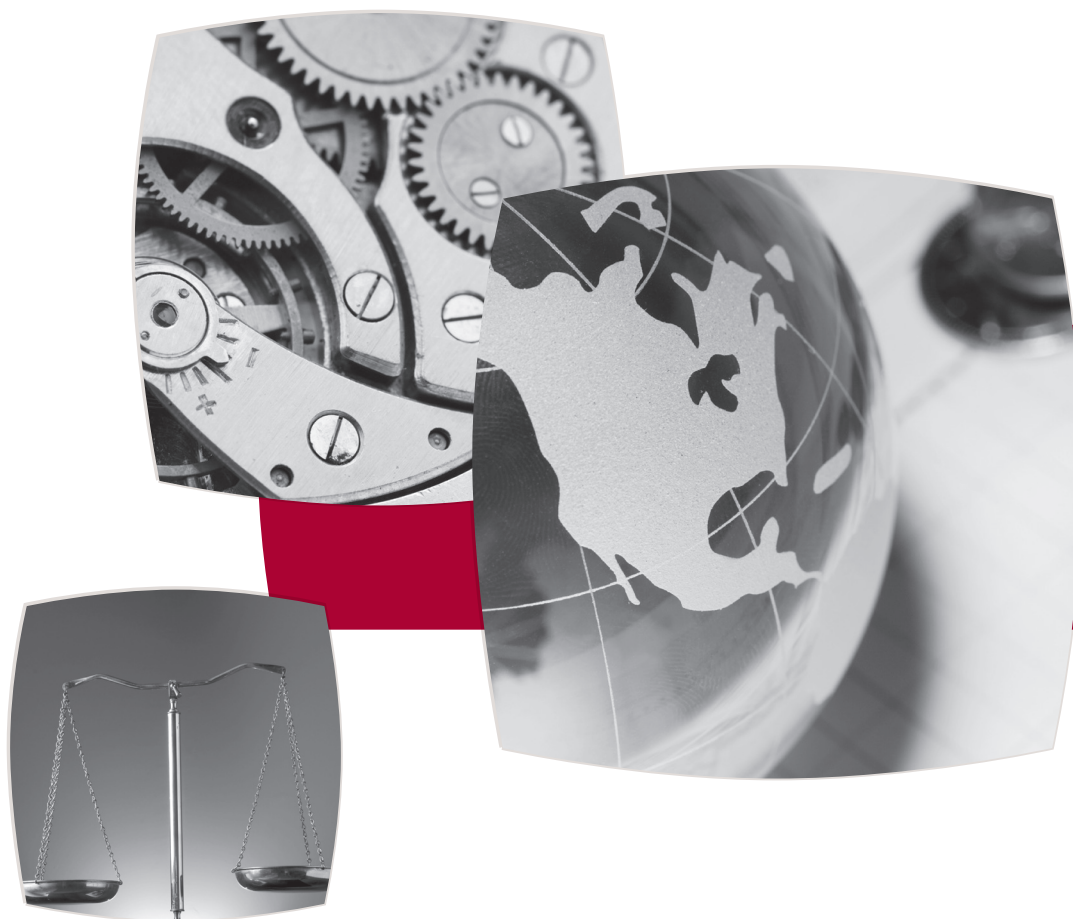
Draft Merger Review Process Guidelines


The Bureau issued its draft *Merger Review Process Guidelines* for public consultation on March 24, 2009. The guidelines present the Bureau's planned approach to implementing the new two-stage merger review process in Canada, including the new supplementary information request (SIR) process and a description of the practices and procedures that the Bureau intends to follow to ensure that the burden on parties in responding to an SIR is no greater than necessary.

During the three-month consultation period, the Commissioner and Bureau staff will seek the business and legal communities' views on the draft guidelines through a variety of means, including written submissions, meetings with the Commissioner and roundtable meetings with key Bureau officials.

Bulletin on Efficiencies in Merger Review

On August 7, 2008, the Bureau published its draft *Bulletin on Efficiencies in Merger Review* for public consultation. A final version of the bulletin followed on March 9, 2009. This bulletin is designed to supplement the Bureau's *Merger Enforcement Guidelines*, and provides practical guidance to assist merging parties in understanding the Bureau's enforcement approach in this area. In particular, the bulletin describes the information that is typically useful to the Bureau in its analysis of efficiency claims made by merging parties. It also clarifies the Bureau's approach to certain enforcement policy issues, such as forgone efficiencies, and gains in efficiency that are likely to be generated outside of Canada.





7. ADVOCATING FOR COMPETITION AND INTERNATIONAL COOPERATION

7. ADVOCATING FOR COMPETITION AND INTERNATIONAL COOPERATION

The Bureau participates in a wide range of activities to promote competition domestically and internationally. In the domestic realm, Bureau officials appear before federal and provincial government agencies and regulatory bodies. The Bureau also participates in departmental and interdepartmental policy-making efforts. Internationally, the Bureau plays a leading role in the International Competition Network (ICN), the International Consumer Protection Enforcement Network (ICPEN), and on the Competition Committee of the Organisation for Economic Co-operation and Development (OECD).

The Bureau's relationships with its Canadian and international counterparts are vitally important in the increasingly globalized world of antitrust enforcement. As such, one of the Bureau's priorities is focused on continuing to build, maintain and foster relationships with antitrust and other law enforcement organizations in Canada and abroad. The list of the Bureau's priorities for 2008-2009 can be found in Section 1: About the Competition Bureau.

7.1 Advocacy work within Canada

Self-Regulated Professions

In 2008-2009, the Bureau continued to monitor progress in the provision of professional services following the release of the *Study of Self-Regulated Professions* in December 2007. As intended, the study initiated dialogue on how to improve competition in the self-regulated professions. Since its completion, several professional groups have contacted the Bureau to discuss the study and its recommendations. Many have indicated that the study has prompted a review of their regulations, with a view to removing or modifying those that unnecessarily restrict competition.

Dental Hygienists

The Bureau continues to build upon its previous work with the dental hygiene profession. Since 2005, the Bureau has: provided comments to numerous provinces on proposed legislative amendments; provided guidance to industry participants on the application of the *Competition Act* (Act); worked with various professional associations and governing bodies regarding the development of regulations; and given numerous presentations to local, provincial and international levels of government.

In 2008-2009, the Bureau monitored dental hygienists' progress in self-regulation, independent practice and competition with dentists within their scope of practice.

The Bureau consulted with several provincial regulators that were in the process of developing regulations, made a submission to the Health Professions Regulatory Advisory Council of Ontario on inter-professional collaboration, and commented on new regulations in Manitoba. The Bureau also conducted outreach to various market participants and to a number of dental hygiene practices.

Generic Drug Study

On November 25, 2008, the Bureau published a report entitled *Benefiting from Generic Drug Competition in Canada: The Way Forward*. This report concluded the second phase of the Bureau's study into the generic drug market in Canada. The report suggests ways to make the generic drug market work better for consumers, businesses and governments in order to get the most value for Canadians' healthcare dollars. The report follows the earlier Generic Drug Sector Study, released in October 2007, which concluded that the design of provincial drug plans in Canada had not resulted in the benefits of competition being passed on to Canadians in the form of lower prices.

7.2 Parliamentary Involvement

No motions directly related to the Bureau's mandate or legislation were introduced in the fiscal year.

Private Member's Bill C-273

Private Member's Bill C-273: *An Act to amend the Competition Act and the Canadian Environmental Protection Act, 1999 (right to repair)* was reintroduced in the 39th Parliament. The Bill proposes to change the definition of "product" in section 75 of the Act (the refusal to deal provision) to require a supplier to provide the technical information required to service a customer's vehicle.

It also proposes to amend the *Canadian Environmental Protection Act* to require automakers to provide access to service and training information, and make available to Canadian vehicle owners and repair facilities the diagnostic tools and capabilities necessary to diagnose, service and repair vehicles.

Private Member's Bill C-454

Private Member's Bill C-454: *An Act to amend the Competition Act and to make consequential amendments to other Acts* authorizes the Commissioner of Competition to inquire into an entire industry sector. It also proposes other amendments to the Act, many of which were subsequently introduced and passed in March of 2009 as part of Bill C-10, the *Budget Implementation Act, 2009*.

Private Member's Bill C-414

Private Member's Bill C-414: *An Act to amend the Competition Act and the Food and Drugs Act (child protection against advertising exploitation)* proposes to amend the Act and the *Food and Drugs Act* to expressly prohibit direct advertising and promotion, for commercial purposes, of products, food, drugs, cosmetics or devices to children under 13 years of age.

Private Member's Bill C-441

Private Member's Bill C-441: *An Act to amend the Competition Act (protection of purchasers from vertically integrated suppliers)* proposes to amend the Act to provide for the enforcement of fair pricing by a supplier who sells a product at the retail level, either directly or through an affiliate, and also supplies the product to a purchaser who competes with the supplier at the retail level, so as to give the purchaser a fair opportunity to make a similar profit.

It also provides that a supplier who coerces or attempts to coerce a customer in relation to the establishment of a retail price or pricing policy may be dealt with as having committed an anti-competitive act.

7.3 Parliamentary Committee Appearances

Bureau officials are called upon to speak to Parliamentary committees about topics related to the Bureau's mandate or areas of interest to the Bureau.

"Product of Canada" and "Made in Canada" Claims

In 2008, the House of Commons Standing Committee on Agriculture and Agri-food conducted consultations on the creation of guidelines related to the labelling of food products grown, processed and manufactured in Canada.

Officials from the Bureau appeared on April 3 and May 8, 2008, to explain the development of the Bureau's Guide to "Made in Canada" Claims, the Bureau's role relating to the labelling of non-food products and the provisions of the Act that require that claims must be truthful and not misleading.



Bill C-10, Budget Implementation Act

An official from the Bureau appeared before the Senate's Standing Committee on National Finance on March 11, 2009, to answer questions on the proposed amendments to the Act contained in Bill C-10, the *Budget Implementation Act, 2009*. The Bureau official spoke about the Bureau's implementation plan for the amendments.

Credit Cards, Debit Cards and Interac

In 2009, the Senate Standing Committee on Banking, Trade and Commerce conducted a study on the credit and debit card systems in Canada and their relative rates and fees, in particular for businesses and consumers.

Bureau officials appeared before the Committee on March 25, 2009, to explain the Bureau's role in Interac's proposed amendment to a consent order that was ordered by the Competition Tribunal, and the Bureau's approach and action with respect to alleged abuse of dominance and anti-competitive practices by major credit card companies.

7.4 International Partnerships and Advocacy

Bureau officials actively participate in a number of international organizations to foster greater cooperation among competition authorities around the world. These activities are considered to be a critical element of law enforcement, as coordination among agencies can lead to improved enforcement efforts.

The Bureau contributes to the development of competitive marketplaces around the world in support of the Bureau's domestic priorities to promote cooperation among competition agencies for more effective enforcement of competition laws, to promote convergence where appropriate, to promote the goal that Canadians who do business abroad benefit from fair and modern competition laws in the countries in which they do business, and to tell the story of both the Canadian approach to competition policy and Canada's law enforcement successes.

OECD Competition Committee

During this fiscal year, the Commissioner continued to act as a member of the OECD Competition Committee. In addition to the Bureau's contribution to the work of the committee, the Bureau was an active participant in the committee's working groups. The Bureau provided input and submissions on the following topics: market studies, monopsony and buyer power, vertical relations in gasoline retailing, bid-rigging and public procurement, direct settlements in cartel cases, cartel jurisdiction issues, and challenges for competition policy in periods of retrenchment.

OECD Committee on Consumer Policy

The Bureau also participated in the OECD Committee on Consumer Policy. Specifically, the Bureau monitored the development of a consumer policy toolkit. The toolkit takes into account research on how consumers make decisions in the marketplace. At the committee's spring meeting, the Bureau participated in a discussion regarding the impact of the financial crisis. The Bureau also provided input to discussions on electronic commerce.

International Competition Network (ICN)

Since its launch in 2001, the Bureau has taken a leadership role in the ICN. The ICN provides competition authorities from around the world with a venue to maintain regular contact and to discuss practical competition concerns. The ICN is the only international body devoted exclusively to competition law enforcement, and its members represent national and multinational competition authorities.

The Bureau has been influential in the evolution of the ICN through its participation in the Steering Group and in working groups on advocacy, competition policy implementation, mergers, cartels and unilateral conduct. The Bureau co-chairs the Cartel Working Group subgroup on Enforcement Techniques, and the Operational Framework Working Group.

During this fiscal year, the Bureau continued to play a pivotal role in the organizational aspects of the ICN by acting as the Secretariat, and through the Bureau's active involvement in the Annual Conference Planning Committee.

International Consumer Protection and Enforcement Network (ICPEN)

The Bureau continued to play a leadership role in the work and direction of ICPEN throughout the year. ICPEN is a voluntary organization of consumer protection authorities from more than 40 countries. ICPEN aims to protect consumers' economic interests around the world, share information about cross-border commercial activities that may affect consumer welfare, and encourage global cooperation among law enforcement agencies.

The Bureau was a member of ICPEN's Advisory Group, and assumed the role of Secretariat in July 2008. Bureau staff actively participated in the bi-annual ICPEN meetings held in Puerto Varas, Chile, and Paris, France. As Chair of the Fraud Prevention Forum, Bureau staff worked with partners to raise awareness among consumers and businesses about the dangers of fraud.

From September 22 to 26, 2008, the Bureau participated in a joint Internet sweep with members of ICPEN to expose Web sites that make deceptive environmental claims, including green claims involving fuel saving/fuel efficiency or conversion. During the sweep, thousands of Web sites and e-mails were examined by agencies from over 20 countries. As a result of ICPEN's coordinated enforcement action, the Bureau helped to deter the activities of scam artists whose conduct undermine the credibility of legitimate online retailers.

7.5 International Cooperation

International cooperation is a very important tool in the development of a global, competitive marketplace and competition enforcement. The Bureau cooperates with the Bureau's international partners on a number of different levels. Jurisdictions that cooperated with the Bureau in 2008-2009 on ongoing international cartel, deceptive marketing and merger cases included: Australia, Brazil, the European Union, Germany, Japan, Mexico, the United Kingdom and the United States.

Cooperation Instruments

In May 2008, the Bureau signed a Cooperation Arrangement with Brazil's three competition agencies: the Council for Economic Defence (CADE);

the Secretariat of Economic Law of the Ministry of Justice; and the Secretariat for Economic Monitoring of the Ministry of Finance of the Government of the Federative Republic of Brazil. This arrangement formalized the existing working relationship among the four agencies, and contains provisions on notification, cooperation and coordination (including technical assistance), exchange of information and avoidance of conflicts.

Free Trade Agreements

The Bureau, in partnership with the Strategic Policy Sector of Industry Canada and the Department of Foreign Affairs and International Trade Canada, develops competition policy provisions in bilateral and regional free trade agreements, and provides substantive input on competition law and policy matters.


During this fiscal year, the Canadian government concluded negotiations for competition law and policy provisions in free trade agreements with Colombia and Jordan, and an agreement was signed with Peru.

Technical Assistance

Beginning in August 2008, the Bureau hosted a six-month study visit from a representative of the University of the West Indies. This visit provided a means to assist in the professional development of a representative from the Caribbean Community (CARICOM) region in competition law enforcement. The internship focused on work in the areas of unilateral conduct and advocacy. The Government of Canada has identified the CARICOM region as a trade development priority.

In November 2008, the Bureau hosted a one-month study visit from a representative from the Council for Economic Defence (CADE), one of Brazil's antitrust agencies. This visit, which included participation in enforcement case work and training, assisted in the professional development of the representative in the area of merger reviews. The visit also provided an opportunity to strengthen an increasingly important relationship between the Bureau and CADE, and to foster greater cooperation between the agencies. The Bureau and CADE have worked closely together in a number of international organizations, such as the ICN and OECD, and we expect to work together in areas of mutual interest in the future.





8. COMMUNICATING WITH CONSUMERS AND BUSINESS

8. COMMUNICATING WITH CONSUMERS AND BUSINESS

Communicating the Bureau's work in the interest of Canadians is an important part of the Bureau's mandate. The Bureau uses a number of different vehicles to draw attention to its enforcement and non-enforcement activities. This chapter describes the ways in which the Bureau communicated results over the past year.

The Bureau released five technical backgrounders and issued 63 news releases and information notices describing the benefits of the Bureau's activities to the economy and to Canadians, representing a significant increase from the 43 issued in 2007-2008.

8.1 Media Relations

The Bureau also responded to enquiries from journalists in Canada and abroad, resulting in approximately 4,000 print, radio, television and online media reports on Bureau-related matters. This is a 9.5 per cent increase in coverage from the previous year.

Independent media analysis found that over 99 per cent of the coverage was either positive or neutral. Total negative coverage reached a four-year low of less than one per cent.

The top five media issues for the Bureau were:

Top five media issues	
1. Gasoline cartel in Quebec	35%
2. Fraud-related issues	11%
3. Gas prices	8%
4. Interac and credit cards	5%
5. False environmental claims	5%

8.2 Press Conferences

The most effective communications activity for the Bureau this past year was the announcement of charges and pleas in the gasoline price-fixing case in four local markets in Quebec. The Commissioner and Bureau officials from the Criminal Matters Branch held a press conference in Montreal on June 12, 2008, to announce the results of the Bureau's investigation.

Following the press conference, Bureau spokespersons conducted numerous interviews with reporters, as well as technical briefings on the role of the Bureau and the criminal provisions of the *Competition Act* (Act).

This event resulted in 1,067 media hits from June 12 to August 1, 2008, across various media, leaving impressions on 51,399,600 readers, viewers and listeners. The issue dominated the Canadian media, with over 773 media reports appearing the day after the announcement. Coverage was strong throughout Canada.

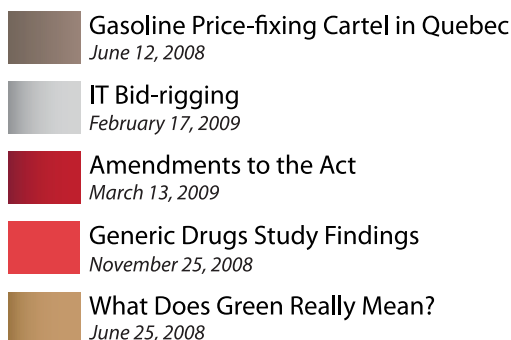
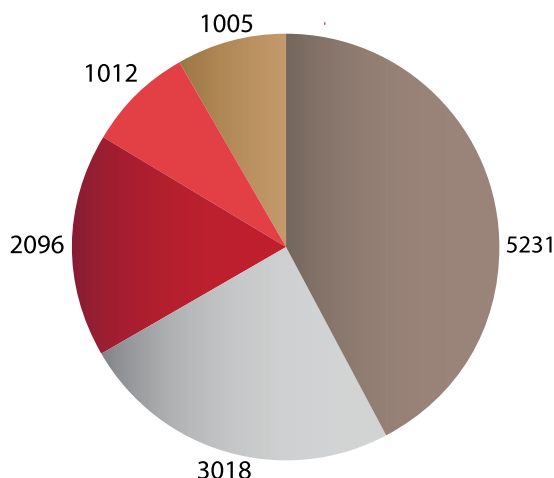
8.3 Bureau Web site

The Bureau launched a redesigned external Web site on December 22, 2008. The revamp was a direct result of consultations carried out with staff and stakeholders. The Bureau also worked with an industry-leading consultant to ensure that best practices were incorporated into its site. Key

improvements included a more intuitive style of navigation and content reorganization.

The revamped Web site benefits users by reducing outdated, redundant or irrelevant information that can slow down research.

THE TOP FIVE BUREAU ANNOUNCEMENTS FOR 2008-2009 BASED ON VISITS TO THE BUREAU WEB SITE



8.4 Information Centre

The Information Centre is the public's primary access point for information requests and complaints. Clients include, among others, businesspeople, lawyers, and consumers from Canada and abroad. Information specialists provide information to clients, mainly over the telephone, and register complaints on a wide range of topics, including:

- false or misleading representations and deceptive marketing practices;
- restraints on competition; and

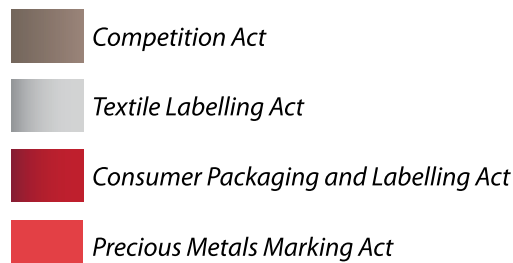
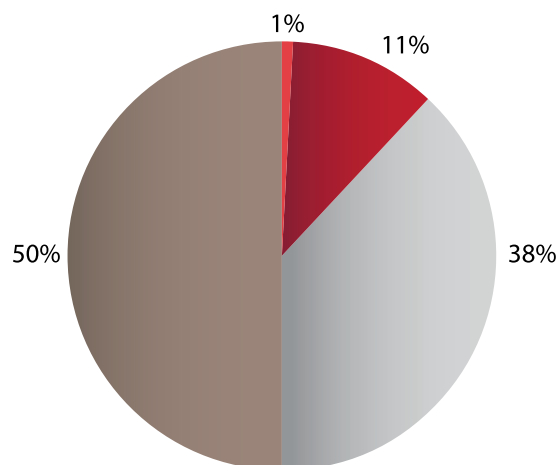
- mergers.

The Information Centre is also responsible for providing information on the laws the Bureau administers and for capturing complaints that may lead to formal Bureau investigations in the future. The information gathered by the Centre is essential to the Bureau's public awareness and enforcement activities. In 2008-09, the Bureau's Information Centre registered 22,316 requests via telephone, fax, mail and Internet.

Top 5 Complaints by Product/Service

1. Contests, Sweepstakes & Lotteries	491
2. Business Directory Listings	433
3. Clothing & Personal Accessories	426
4. Electronics & Digital	275
5. Employment Opportunities	264

INFORMATION REQUESTS



Information Requests	
<i>Competition Act</i>	3,527
<i>Textile Labelling Act (TLA)</i>	2,691
<i>Consumer Packaging and Labelling Act (CPLA)</i>	759
<i>Precious Metals Marking Act (PMMA)</i>	76

The public can contact the Centre in a number of ways:

- Through the toll-free telephone line (1-800-348-5358), from 8:30 a.m. to 4:30 p.m. Eastern Time;
- Via an electronic complaint form on the Bureau's Web site;
- By facsimile (819-997-0324); and,
- By mail (Competition Bureau, 50 Victoria Street, Gatineau, Quebec, K1A 0C9)

8.5 Outreach Initiatives

Fraud Prevention Month

Since 2004, the Fraud Prevention Forum, an organization chaired by the Competition Bureau, has organized Fraud Prevention Month in Canada. Activities coordinated by Forum members throughout the month of March aim to raise awareness and to educate consumers and businesses about the dangers of fraud in the Canadian marketplace. Forum members include public sector agencies, provincial and federal departments, and private sector businesses and groups.

The 2009 Fraud Prevention Month began with an event hosted by the Commissioner of Competition in Ottawa. During the month, members hosted a number of fraud awareness activities, including regional news conferences and fraud seminars, interactive online quizzes and shredding events. Public service announcements were published in French and English language daily newspapers across the country, and regional radio and TV stations also aired similar announcements. Many Better Business Bureaus in communities across Canada hosted Scam Jams, one-day anti-fraud events designed to educate consumers and businesses on how they can protect themselves from fraud.

Commissioner's Meetings with Consumer Groups

Throughout the year, the Commissioner of Competition hosts a number of sessions with consumer groups from across Canada. These meetings provide the Bureau with the opportunity to outline the Bureau's work, mandate and benefits to stakeholders, as well as to solicit perspectives from the consumer groups themselves.

On May 26, 2008, the Commissioner met with representatives from: Canadian Consumer Initiative, Consumers' Association of Canada, Consumer Interest Alliance, Consumers Council of Canada, Option consommateurs, Public Interest Advocacy Centre (PIAC), L'Union des consommateurs, and Industry Canada's Office of Consumer Affairs. Issues covered during the half-day session included telecommunications, the Bureau's professions study, rebate programs and the Bureau's project entitled Project False Hope.

8.6 Bulletins and Guidelines

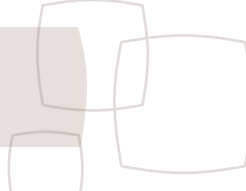
In 2008-2009, the Bureau issued three sets of guidelines to provide information on the Bureau's enforcement approach to various aspects of the legislation under the Bureau's enforcement mandate.

The Bureau also issued 10 bulletins on various aspects of competition law.

8.7 Public Consultations

Throughout the year, the Bureau invites the public and interested parties to comment on various initiatives as part of the Bureau's public consultation process. Submissions are made available via the Bureau's Web site, unless the participants request that their responses remain confidential.

In 2008-2009, the Bureau conducted eight public consultations to garner feedback from the Canadian business community and their legal advisors on proposed enforcement approaches in a number of key areas.



The full list of consultations, consultation documents and submissions are available on the Bureau's Web site: www.competitionbureau.gc.ca.

Draft Information Bulletin on Consumer Rebate Promotions

In March 2009, the Bureau issued a draft bulletin for comment on the approach to interpreting the false or misleading representations provisions of the Act, the *Consumer Packaging and Labelling Act* and the *Textile Labelling Act* in the area of consumer rebate promotions. The draft bulletin also sets out best practices that the Bureau recommends businesses follow when offering rebates, both to comply with the law and to help consumers make informed purchasing decisions.

Revised Draft Information Bulletin on Sentencing and Leniency Recommendations in Cartel Cases

This bulletin and its previous draft were issued in 2008-2009 for public comment. The documents outline the factors the Bureau considers when making sentencing recommendations to the Public Prosecutions Service of Canada and the process for seeking a recommendation for a lenient sentence.

Draft Bulletin on Efficiencies in Merger Review

The Bureau requested comments on the draft *Bulletin on Efficiencies in Merger Review* in August 2008, and subsequently issued the final version of the Bulletin in March 2009.

As a supplement to the *Merger Enforcement Guidelines*, the bulletin provides practical guidance to assist merging parties in understanding the Bureau's enforcement approach in this area.

In particular, the bulletin describes the information that is typically useful to the Bureau in the analysis of efficiency claims. It also clarifies the Bureau's approach to certain enforcement policy issues, such as forgone efficiencies and gains in efficiency that are likely to be generated outside of Canada.

Draft Merger Review Process Guidelines

These draft guidelines were issued in late March 2009, as part of the Bureau's efforts to provide predictability concerning the planned approach to the new information-gathering powers and two-stage review process in the amended Act.

The guidelines include, among other things, a description of the supplementary information request process through which the Bureau may gather information required to carry out a timely review of the few proposed mergers each year that appear likely to raise significant competition issues.

Draft Abuse of Dominance Guidelines

These updated guidelines describe the Bureau's enforcement approach to the abuse of dominance provisions in light of recent jurisprudence and economic thinking. They expand on the Bureau's existing guidelines in a number of areas, including outlining the Bureau's approach to anti-competitive intent and valid business justifications, clarifying the Bureau's approach to joint dominance, and discussing specific forms of anti-competitive conduct.

Draft Bulletin on Trade Associations

The Bureau requested comments on a draft *Bulletin on Trade Associations* in October 2008. The draft bulletin summarizes information contained in other materials published by the Bureau relating to the activities of trade associations.

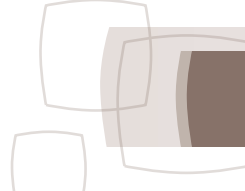
Updated Draft Bulletin on Corporate Compliance Programs

The Bureau requested comments on its updated draft *Bulletin on Corporate Compliance Programs* in April 2008. Comments had previously been requested in June 2006. The final *Bulletin on Corporate Compliance Programs* was published on October 24, 2008.

The bulletin assists businesses in designing their corporate compliance programs. It features tools that can be adapted to the specific needs of businesses in order to put in place a compliance program that is credible and effective, including a corporate compliance program framework, a template certification letter and a due diligence checklist.

Draft Information Bulletin on Multi-level Marketing (MLM) and Schemes of Pyramid Selling

The Bureau sought public comment on the revised draft bulletin in April 2008. The bulletin provides guidance on the Bureau's policies and procedures relating to the administration and enforcement of the multi-level marketing (MLM) and pyramid scheme provisions of the Act.



The revised draft bulletin describes differences between an MLM plan and a scheme of pyramid selling, as outlined in sections 55 and 55.1 of the Act, as well as the general principles and policies applied by the Bureau with respect to these provisions.



HOW TO CONTACT THE COMPETITION BUREAU

Anyone wishing to obtain additional information about the *Competition Act*, the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act*, the *Precious Metals Marking Act* or the program of written opinions, or to file a complaint under any of these acts should contact the Competition Bureau's Information Centre:

Web site

www.competitionbureau.gc.ca

Address

Information Centre
Competition Bureau
50 Victoria Street
Gatineau, Quebec
K1A 0C9

Telephone

Toll-free: 1-800-348-5358
National Capital Region: 819-997-4282
TTY (for hearing impaired) 1-800-642-3844

Facsimile

819-997-0324





APPENDIX: BUREAU STATISTICS

TABLE I: Competition Bureau Statistics

Law Enforcement Activity	FBPB	Civil	Criminal	Mergers
Inquiries commenced (Number of inquiry commenced between April 1 and March 31)	5	4	3	3
Inquiries in progress (Number of inquiries in progress on April 1)	40	6	21	1
Inquiries discontinued (Number of inquiries discontinued between April 1 and March 31)	6	1	5	3
Examinations in progress (Number of examinations in progress on April 1 - Examinations are complaints and information requests that have been assigned for further assessment as well as orders being reviewed)	78	16	53	19
Examinations commenced (Number of examinations commenced between April 1 and March 31)	122	20	27	239
Examinations concluded (Number of examinations concluded between April 1 and March 31)	121	21	42	242
Matters where charges were laid (Number of matters where charges were laid between April 1 and March 31)	0	-	3	-
Matters where applications were filed (Number of matters where applications were filed between April 1 and March 31)	0	0	-	0
Matters with criminal orders (Number of matters where there were orders between April 1 and March 31)	7	-	1	-
Convictions	7	-	3	-
Prohibition Orders without convictions	0	-	4	-
Interim injunctions (Criminal)	0	-	0	-
Matters with civil orders (Number of matters where there were orders between April 1 and March 31)	4	3	0	1
Registered Consent Agreements	3	0	-	1
Final Order in contested proceedings	1	0	-	0
Interim injunctions (Civil)	0	0	-	0
Alternative Case Resolutions (Examinations that raised an issue under the Act but were resolved without resort to the Court or Tribunal, these include undertakings, agreements and voluntary compliance)	8	0	1	3
Compliance Contacts (Information letters and meetings)	42	-	3	-
Information Bulletins and Enforcement Guidelines published (All guidelines published between April 1 and March 31 including those for consultation, new publication and those that have been revised)	4	3	1	2
Total Fines Imposed	\$164,000	-	\$5,839,000	-
Administrative Monetary Penalties	\$485,000	-	-	-

TABLE 2: Advocacy of Competition Principles

Advocacy of Competition Principles	
Advocacy under Sections 125 & 126	1
Representations to regulators outside of formal proceedings	3

TABLE 3: Speeches and Outreach

	FBPB	Civil	Criminal	Mergers
Speeches (Number of times Bureau staff speak to stakeholders. This includes information sessions and outreach activities, not the number of participants)	40	7	53	9
Recruitment Initiatives (Number of presentations made to potential Bureau recruits - this includes seminars)	0	13	1	14 ¹

TABLE 4: Requests made to the Competition Bureau

Requests made to the Competition Bureau	
Total Bureau Requests	22,316
Complaints	6,882
Information requests	7,053
No-Issue ²	8,381
Canadian Anti-Fraud Call Centre (CAFCC) ³	5,139

¹ 13 of these presentations were conducted jointly with the Civil Matters Branch.

² No-Issue includes requests that are not relevant to the Bureau's mandate and/or that were referred to the Bureau in error.

³ Complaints received by the Canadian Anti-Fraud Call Centre (CAFCC), formerly Phonebusters, that are actionable by the Bureau. CAFCC is managed on a tripartite basis by the Competition Bureau, the Ontario Provincial Police (OPP) and the Royal Canadian Mounted Police (RCMP). It is the central agency in Canada that collects information on telemarketing, advanced fee fraud letters (Nigerian letters) and identity theft complaints. The information is then disseminated to the appropriate law enforcement agency(ies).

**TABLE 5: Mergers Examinations**

Examinations Commenced	239
Notification filings and Advance Ruling Certificate requests	207
Notification filings only	12
ARC requests only	161
ARC requests and Notification filings	34
Other examinations	32
Examinations Concluded	242
No issues ⁴ under the <i>Competition Act</i>	230
Advance Ruling Certificates issued	134
“No-action” letters ⁵	72
Other examinations	24
Concluded with issues under the <i>Competition Act</i>	4
Consent Agreements Registered with the Competition Tribunal	1
Foreign remedies resolved Canadian competition concerns	2
Transactions abandoned owing to competition concerns	1
Section 92 applications concluded or withdrawn	0
Transactions abandoned for reasons unrelated to the Commissioner’s position	8
Total Examinations during the year	258
Examinations ongoing at year-end	16

⁴ Examinations resulting in insufficient grounds for challenge at that time.

⁵ Including ARC refusals.

Reviewing Mergers

Number of mergers reviewed where the answer was provided to parties between April 1 and March 31, as well as the number of those provided where the service standard was met.

TABLE 6: Merger Review – Meeting Service Standards

	2006-2007			2007-2008			2008-2009		
	Provided	Met	%	Provided	Met	%	Provided	Met	%
Non-complex	238	225	94.54	279	267	95.07	180	174	96.67
Complex	22	20	90.91	23	21	91.30	23	20	86.96
Very Complex	3	2	66.67	4	4	100	5	3	60
Total:	238	247	93.92	306	292	95.42	208	197	94.71

TABLE 7: Merger Review – Average Completion Time

	2006-2007	2007-2008	2008-2009
Non-complex (days)	10.1	9.5	9.6
Complex (weeks)	6.3	7.5	6.8
Very Complex (months)	3.8	2.5	8.6

Written Opinions

Number of Written Opinions provided between April 1 and March 31, as well as the number provided where the service standard was met.

TABLE 8: Written Opinions – Meeting Service Standards

	2006-2007			2007-2008			2008-2009		
	Provided	Met	%	Provided	Met	%	Provided	Met	%
FBPB									
Complex	2	2	100	1	1	100	0	0	0
Non-complex	18	15	83	15	3	20	8	4	50
Criminal									
Complex	0	0	0	0	0	0	0	0	0
Non-complex	0	0	0	0	0	0	1	0	0
Mergers									
Complex	0	0	0	0	0	0	0	0	0
Non-complex	1	1	100	0	0	0	0	0	0
Total:	21	18	94.3	16	4	60	9	4	50

CHART 1: Written Opinions – Meeting Service Standards

