



Competition Tribunal

Performance Report

For the period ending
March 31, 2002

Canada

The Estimates Documents

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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Available in Canada through your local bookseller or by mail from

Canadian Government Publishing — PWGSC

Ottawa, Canada K1A 0S9

Catalogue No. BT31-4/34-2002

ISBN 0-660-62104-5



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. Departments and agencies are 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 outcomes - benefits to Canadians and Canadian society - and describes the contribution the organisation has made toward those outcomes. It sets the department’s performance in context and discusses risks and challenges faced by the organisation in delivering its commitments. The report also associates performance with earlier commitments as well as achievements realised in partnership with other governmental and non-governmental organisations. Supporting the need for responsible spending, it 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 and agencies 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 organisation 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:

Results-based Management Directorate
Treasury Board of Canada Secretariat
L’Esplanade Laurier
Ottawa, Ontario K1A 0R5

OR to this Internet address: rma-mrr@tbs-sct.gc.ca

Competition Tribunal

Performance Report

**For the period ending
March 31, 2002**

Allan Rock
Minister of Industry

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Section I Minister's Portfolio Message

The dawn of the twenty-first century has seen the development of the global knowledge economy. The Government of Canada has been working for the past decade to create winning conditions for Canadians to ensure that we are ideally positioned - with both the tools and the skills necessary - to seize the opportunities offered in the new economy.

It started with eliminating the deficit and with good fiscal management, followed closely by significant corporate and personal tax cuts and streamlining government. Over the last decade, we also built an impressive research and development (R&D) infrastructure and became one of the world's most connected countries. We are now global leaders in per capita access to information technology and the Internet.

Today we are seeing the benefits of these investments. Our success can be measured in having the fastest rate of growth among the G7 countries in areas such as: private-sector R&D spending; external patent applications; R&D intensity; and the number of workers devoted to R&D.

But in this global race we cannot afford to rest on our laurels. That is why, in February of 2002, our government launched *Canada's Innovation Strategy*. This strategy is designed to foster a culture of innovation in Canada, improve the quality of life for Canadians and to see the maple leaf become the hallmark of excellence for the world.

Canada's Innovation Strategy identifies opportunities in four key areas: creating new knowledge and bringing those ideas to market quickly and effectively; ensuring that Canada has enough highly qualified people with the skills needed to compete globally; modernising our business and regulatory policies to foster entrepreneurship; and supporting innovation at the local level so that our communities continue to be magnets for investment and opportunity.

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*

To develop this strategy, we are talking to Canadians from coast to coast to coast to create an action plan for the next decade. *Canada's Innovation Strategy* is not a government program but a call for all sectors of the economy to work together to achieve ambitious targets for the future. The action plan will identify specific ways that government, business, academia and communities can achieve our national goals.

The Industry Portfolio, consisting of 15 departments and agencies, is an important instrument in fostering innovation in Canada. The Competition Tribunal plays a key role in the Industry Portfolio and I am pleased, therefore, to present their Performance Report for 2001–2002.

In support of Canada's Innovation Strategy, the Tribunal, in cooperation with its stakeholders, will continue examining its regulatory process. The Tribunal/Bar Liaison Committee will carry on with the simplification of the Tribunal's rules of practice and procedures in order to ensure that firms compete fairly and markets operate efficiently.

This is only a highlight. I invite you to explore the Competition Tribunal's Departmental Performance Report to discover the many ways that the Tribunal contributes to Canada's economic progress and growth.

Working together we are making our country a stronger and more prosperous place for all Canadians.

The Honourable Allan Rock
Minister of Industry

Section II Performance Accomplishments

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 2001–2002 the Tribunal worked on a variety of cases including propane, waste management, automobile equipment, air carrier, paper mill, and French-language television industries.

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.

Case Summary Statistics, 2001–2002

Total notices, orders and directions issued	155
Applications filed	12
Location of hearings	Ottawa, Toronto

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.

Strategic Outcomes

To provide a court of record ...

Here are some of the applications filed with the Tribunal in 2001–02, highlighting some of the issues the Tribunal deals with.

Merger Cases

Weighing Efficiencies against Substantial Lessening of Competition

In April 2001, the Federal Court of Appeal directed the Tribunal to reconsider the efficiencies defence raised by the *Superior Propane Inc.* case. The court overruled the Tribunal's decision that the *Competition Act* mandates a 'total surplus approach' to efficiencies. Superior applied unsuccessfully for leave to appeal to the Supreme Court of Canada. The case was returned to the Tribunal and the arguments on efficiencies were reheard in fall of 2001. A decision is pending.

For a list of cases before the Tribunal, click on:
www.ct-tc.gc.ca/english/casetype.html

Assessing the Limits of Remedies in Contested Cases

The Competition Tribunal issued a remedial order in the *Canadian Waste Services Holdings Inc.* (CWS) case on October 3, 2001. The remedial order followed the Tribunal's Reasons and Order of March 28, 2001, where it found that the acquisition of the Ridge landfill by CWS would likely result in a substantial prevention and lessening of competition. CWS is the largest waste management company in Canada, owning or controlling six landfill facilities in Southern Ontario. The Commissioner's position was that if CWS were permitted to keep the Ridge landfill, it would control 70 percent of the landfill capacity for solid, non-hazardous waste, including construction and demolition waste, generated by institutional, commercial and industrial (ICI) customers for the Greater Toronto Area in 2002 and 100 percent of the capacity for ICI waste from the Chatham-Kent region.

The order required the divestiture of the Ridge, which CWS acquired as part of a purchase of shares and assets in the waste disposal business in March 2000. The Tribunal concluded that to remedy the substantial lessening or prevention of competition, divestiture of the Ridge by CWS was required.

Consent Order Maintains Competitiveness in the Cement Industries

The Lafarge S.A. acquisition of Blue Circle Industries' aggregate assets and road-building operations was allowed to proceed subject to a consent order requiring Lafarge to sell Blue Circle's Ontario assets. The original proposed transaction was alleged to likely substantially lessen or prevent competition in the following product markets:

cement; ready-mix concrete; aggregates; and asphalt/paving (road construction). In many of the relevant market areas, Blue Circle has been a vigorous and effective competitor to Lafarge. Post-merger, absent a remedy, Lafarge would hold a significant share of aggregate reserves, and in some geographic areas, significant shares of sales of the product markets. The consent order provided for a divestiture package aimed at resolving competition concerns arising from the Blue Circle acquisition. The order also provided for Lafarge to divest the Blue Circle assets quickly while continuing to maintain these assets as competitive and viable, pending their sale. Canadian subsidiaries of the merging parties are Ontario's two largest suppliers of cement and related construction materials.

Failed Bookstore Divestiture Protected by Code of Conduct

The Tribunal issued a consent order in June 2001 reflecting the agreement arrived at by the parties to eliminate the alleged substantial lessening of competition in Canada's retail book market. This consent order arose because of the acquisition of Chapters Inc. by Trilogy Retail Enterprises L.P. and the proposed merger of Indigo Books & Music Inc. with Chapters and their respective affiliates. Under the consent order, Indigo had until January 8, 2002, to divest itself of 23 of its 266 stores. Since no buyers were found, the stores reverted back to Indigo's control. Indigo, Chapters and publishers' associations agreed, however, to a Code of Conduct that sets minimum standards of trade between the merged company and publishers for five years.

Divestiture of Abitibi-Consolidated Inc. Paper Mill Protects Newsprint Market

In February 2002, the Tribunal issued a consent order requiring the sale of Abitibi-Consolidated Inc.'s Port Alfred Mill in Ville-de-la-Baie, Quebec. To alleviate concerns of a substantial lessening of competition in the supply of newsprint to Eastern Canada, the consent order required the divestiture of all assets owned or operated by Abitibi-Consolidated Inc. that are used in operation of the paper mill at Ville-de-la-Baie. The Tribunal is satisfied that the order would prevent any substantial lessening of competition with respect to newsprint capacity in the market, thereby protecting the competitiveness of this market in Eastern Canada.

Grain Elevator Services Protected in Western Canada

In February 2002, the Tribunal approved a consent order for United Grain Growers Limited to sell a comprehensive package of grain elevator assets in Manitoba and Alberta. United Grain Growers had acquired the assets as part of a merger with Agricore Cooperative Ltd. The Competition Bureau raised concerns about how this merger could affect competitiveness in the grain-handling market in Western Canada. Under the consent order, the parties will offer for sale a minimum of five primary grain elevators in the Edmonton and Peace River regions of Alberta and a primary grain elevator in the Dauphin region of Manitoba.

Reviewable Practices Cases

Competition Bureau Files Abuse of Dominant Position against Air Canada

The Competition Bureau asked the Tribunal for an order prohibiting Air Canada from engaging in anti-competitive practices directed against low-cost carriers WestJet Airlines Ltd. and CanJet Airlines. It requested that the Tribunal issue an order prohibiting Air Canada from operating at fares that did not cover the avoidable cost of providing the services on certain routes in the Eastern Canadian market.

Since the filing of the application, Air Canada has voluntarily withdrawn certain fares from some of the affected routes pending resolution of this central issue. The matter is scheduled to be heard in October 2002.

Enbridge Decision Could Benefit More than One Million Households

In February 2002 the Tribunal approved the Competition Bureau’s settlement with Enbridge Services for abuse of a dominant position. The consent order reduces penalties imposed on consumers for cancelling water heater rental agreements, allows competitors to disconnect rental heaters and return them to Enbridge, and protects Enbridge rental customers from unclear and unreasonable rental increases. Besides benefiting consumers directly, these measures will stimulate competition by providing new opportunities for small and medium-sized businesses in the water heater industry.

Deceptive Marketing Practices Cases

Decision Pending for Platinum Vapor Injectors

An application filed by the Commissioner of Competition alleging that the ability of the Platinum Vapor Injector (PVI) to save fuel and reduce harmful emissions were false and misleading representations and were not based on adequate and proper tests. The application also alleged that false and misleading representations were made in the promotion of the fuel-saving device that gave the impression that the device had been approved by various levels of government in Canada and the United States. The Commissioner asked the Tribunal to order P.V.I. International Inc. to cease making certain representations with respect to the PVI. The Tribunal heard the case in August 2001 and a decision is pending.

Registered Consents

Quebec Motorists Protected from Corrosion as Promised

A registered agreement was filed December 12, 2001 with the Tribunal against the marketing practices of Antirouilles Électroniques TP, Garantie Express Inc. and Jacques Nadeau, president and secretary of these companies, for the promotion of Total

Protection. Marketed primarily in Quebec, the \$300 device was claimed to protect the entire body of a car from rust. The Bureau of Competition determined that the tests submitted by Mr. Nadeau did not demonstrate that the Total Protection device could protect the entire surface of a vehicle against corrosion.

Under terms of the consent order, the two companies and Mr. Nadeau have agreed to cease marketing Total Protection and the extended anticorrosion guarantee. In addition, the parties have agreed not to market similar products in Canada unless adequate and proper tests are carried out.

Competition Act Amendments

In October 2001, the House of Commons Standing Committee on Industry, Science and Technology began to study Bill C-23, *An Act to Amend the Competition Act and the Competition Tribunal Act*. The bill represents an important step forward in the evolution of Canadian competition law by addressing issues of concern both to consumers and business. Some of the proposed amendments include streamlining the Competition Tribunal process by providing the Tribunal with the power to award costs, make summary dispositions, and hear and determine references. The amendments could also broaden the scope under which the Competition Tribunal may issue temporary orders and facilitate the cooperation with foreign competition authorities for the exchange of evidence for civil competition matters. The bill also introduces a private right of action before the Tribunal — under the current law only the Commissioner may bring a case to the Tribunal.

The standing committee expects to produce a final report for the government's consideration in the new fiscal year.

A Registry Service that provides administrative support ...

Cases Being Resolved More Quickly

Aggressive case management led to Tribunal cases being resolved more quickly. For example, the Enbridge and Abitibi-Consolidated Inc. cases took 64 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.

Competition Tribunal Rules Updated

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.

In February 2002, proposed amendments came into effect that simplify the process related to contested reviewable matters other than mergers. The amendments introduced a reciprocal obligation for the parties to deliver (to the other party) a disclosure statement setting out a list of the records on which they intend to rely, the will-say statements of non-expert witnesses and a concise statement summarizing the economic theory in support of the application. Since its inception, the Tribunal found that the original purpose of an expert, which is to assist the Tribunal in understanding the issues before it, has been replaced by experts advocating the position of the party for whom they have been retained. Therefore, the Tribunal proposed a new process for presenting expert evidence through panels of experts. The applicant's and respondent's experts present evidence by questioning each other, making the process more efficient and the questions more relevant.

The Committee is currently reviewing the Tribunal rules for applications filed under the merger provisions of the Act, for electronic filing and hearing, and for Bill C-23. The consultation process is expected to be completed in 2002–2003.

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. The Tribunal aggressively pursued the adoption and development of an electronic filing and document management system by establishing a three-phase pilot project in November 2000.

After the pilot hearing was concluded, an external evaluation report was commissioned to look at the results objectively. The evaluation concluded that the pilot project's success justified full implementation. The Tribunal now offers the e-filing option to litigants in all its cases, a unique end-to-end electronic solution to its clients. Suggestions for improvements, received from the parties regarding the technology were implemented in 2001–2002. Suggestions ranged from greater application of technology in the internal processes of the Registry to greater integration of hardware in the hearing room furniture. A major improvement in 2001–2002 was the introduction of a sophisticated, 67-inch, rear projection interactive whiteboard. This display device makes it even easier to display documentation from the repository and to add information to existing material during hearings.

E-filing Lessons Learned

- Keep the design simple and user friendly.
- Train counsel before the hearing to make the hearing process more efficient.
- Get user feedback and act on recommendations to ensure participant buy-in.
- Use of the portable document format (PDF) or a filing standard facilitates the exchange of documents among the parties.

The Competition Tribunal's new e-filing and Document Management System has sparked lively interest in the quasi-judicial and judicial communities, as well as in the private sector. In November 2001, the project received the Award of Excellence at the Canadian Information Productivity Award (CIPA) Gala. CIPA is the largest business awards program in Canada in the field of information management. The CIPA mission is to find visionary individuals and organizations making the most innovative and effective use of information technology. The Tribunal was honoured to receive this award and is continuing to build on this success to better serve its clients.

Promoting Continuous Learning

In the spirit of supporting a public service learning organization, the Registry continues to enhance its learning curriculum by inviting staff to provide their comments and recommendations. The curriculum has been modified accordingly and continues to be a work in progress as the Tribunal's work requires staff to develop new skills. In 2002–2003, the Registry will begin the second phase of this initiative: preparing individual learning plans to promote career development.

In another initiative, staff suggested that management look into organizing “brown bag” sessions on how to conduct oneself in job interviews and how to prepare a résumé. Management responded by hiring a consultant to work directly with each staff member. This initiative provided staff members with the following two guides: *How To Market Yourself* and *How To Communicate Your Marketable Attributes*. Individual coaching sessions were also held with staff members to help them prepare and update their résumés.

Tribunal members will continue to enhance their skills with a two-day course entitled *Introduction to Antitrust Economics*. This course was developed for the Tribunal by experts in economics and business. The course will be given to all Tribunal members at their fall seminar in 2002.

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;
- 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.

Modern Comptrollership Partnerships

In June 2001, the Secretary of the Treasury Board requested that departments and agencies outline the approach they were going to adopt to integrate Modern Comptrollership, a government priority, into their modern management agenda. The Competition Tribunal assumed a leadership role with this initiative by clustering with three other tribunals — the Copyright Board Canada, the Civil Aviation Tribunal and the Canadian Artists and Producers Professional Relations Tribunal — to establish a modern comptrollership office and manage the funds on behalf of the cluster. Information and training sessions were provided to staff from the four tribunals and a capacity assessment exercise was held with each organization in early March 2002. The results of the capacity assessment check will be developed into an action plan that will be implemented in 2002–2003.

Presentation of Financial Information

Planned Spending	\$1,500,000
<i>Total Authorities</i>	<i>\$1,713,000</i>
Actuals	\$1,689,000

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 (2001–2002 Actual).

Financial Table 1: Summary of Voted Appropriations

Financial Requirements by Authority (\$ millions)				
Vote		2001–2002		
		Planned spending	Total authorities	Actual
	Competition Tribunal			
45	Operating Expenditures	1.5	1.713	1.689
	Total Department	1.5	1.713	1.689

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 (\$ millions)			
Competition Tribunal	2001–2002		
	Planned Spending	Total Authorities	Actual
FTEs	14	<i>14</i>	13
Operating ¹	1.500	<i>1.713</i>	1.689
Capital	–	–	–
Grants and Contributions	–	–	–
Total Gross Expenditures	1.500	<i>1.713</i>	1.689
Less:			
Respendable Revenues	–	–	–
Total Net Expenditures	1.500	<i>1.713</i> ²	1.689
Other Revenues and Expenditures			
Non-Respendable Revenues	–	–	–
Cost of services provided by other departments	0.447	<i>0.453</i>	0.446 ³
Net Cost of the Program	1.947	<i>2.166</i>	2.135
<p>Note: <i>Numbers in italics</i> denote Total Authorities for 2001–2002 (Main and Supplementary Estimates and other authorities).</p> <p>Bolded numbers denote actual expenditures in 2001–2002. Due to rounding, figures may not add to totals shown.</p>			

1. Operating includes contributions to employee benefit plans.

2. This amount includes the 5% carry forward of \$34,713 from the budget of 2000–2001, \$56,000 for collective bargaining compensation and \$110,600 for the achievement of the *Modernization of Comptrollership Initiative in the Government of Canada*. (As the host organization and member of the Cluster Group, the Competition Tribunal administered these funds on behalf of the Canadian Artists and Producers Professional Relations Tribunal, the Copyright Board Canada and the Civil Aviation Tribunal. The funds were used to set up the Project Management Office and for the Capacity Assessment Check.)

3. Includes accommodation provided by Public Works and Government Services Canada 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 (\$ millions)					
			2001–2002		
	Actual 1999–2000	Actual 2000–2001	Planned Spending	Total Authorities	Actual
Competition Tribunal	1.438	1.581	1.500	1.713	1.689
Total	1.438	1.581	1.500	1.713	1.689

Appendix II

Enabling Legislation

Competition Tribunal Act, R.S.C. 1985 (2d 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

Registry of the Competition Tribunal
90 Sparks Street, Suite 600
Ottawa, Ontario K1P 5B4

Telephone: (613) 957-3172

Facsimile: (613) 957-3170

World Wide Web: www.ct-tc.gc.ca