Industry Canada Industrie Canada

Annual Report of the Director of Investigation and Research

Competition Act

for the year ending March 31, 1997

COMPETITION BUREAU

Canada

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The Honourable John Manley, P.C., M.P.
Minister of Industry
Ottawa

Dear Sir,

I have the honour to submit, pursuant to section 127 of the *Competition Act*, the following report of proceedings under the Act for the fiscal year ended March 31, 1997.

Konrad von Finckenstein, Q.C.

Director of Investigation and Research

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Introduction

Despite the fact that significant and rapid changes are taking place in Canadian society and the Canadian economy, with regard to competition issues, Canada's fundamental policy has remained unchanged. As much as we may be impressed or even awed by the exponential growth of the World Wide Web and the seemingly limitless possibilities of contemporary communications media, certain continuities still apply.

The *Competition Act* is still the framework law which governs the Canadian approach to competition issues. Likewise, the mandate of the Competition Bureau remains constant: to obtain compliance with the Act, and foster a climate of competition for the overall benefit of the Canadian economy and marketplace. The guiding principles which govern Bureau activities — transparency, fairness, timeliness and predictability — remain relevant in the age of globalization and the Internet.

The true challenge is how to continue to fulfil the Bureau's mandate in the presence of evolving contemporary realities. To this end, the Bureau is constantly updating its approach and activities; a process reflected in this Annual Report, which provides an overview of Bureau activity from April 1, 1996, to March 31, 1997.

The Bureau crafted and recommended amendments to the *Competition Act,* to keep it relevant and effective in a changing world. Amendments to the *Competition Act* and the *Competition Tribunal Act* were tabled in the House of Commons; the amending process was begun again in a new session of Parliament and continues as this Report goes to press.

The continued growth and evolution of both the national and global economies were reflected in merger activity, which increased for the third consecutive year. Merger examinations begun during 1996-97 increased by 40 percent, to an all-time high of 319.

Burgeoning international commerce caused the number of cross-border cases to increase in number and complexity. The international dimension of Bureau enforcement activities, as it worked with other countries' competition agencies, underlined the continued need for enhanced international cooperation, consultations, coordinated enforcement actions, and dispute avoidance.

Deregulation in key sectors such as telecommunications, energy and finance led to a surge in competitive activity. The Bureau was particularly active in these fields, as the following pages document.

Education activities continued to grow in importance, and programs to encourage compliance with the *Competition Act* continued to be a key Bureau activity. The Bureau's web site has become a major element in its communications strategy, and an increasing number of communications and complaints are received by e-mail. Deceptive marketing, particularly via telecommunications media, was a special focus of Bureau activity.

Toward the end of the reporting period, a new Director of Investigation and Research (DIR) was appointed. Konrad von Finckenstein, Q.C., joined the Bureau on February 4, 1997.

The following pages cover Bureau enforcement activities, as well as its work in the education, administrative and compliance areas. The key to the Competition Bureau's future activity is its continuing desire to obtain compliance with the *Competition Act*, through a wide and flexible array of tools and techniques, in order to foster an environment of competition and confidence in the marketplace.

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Amending the *Competition Act*

On November 7, 1996, Bill C-67, amendments to the *Competition Act* and the *Competition Tribunal Act,* received first reading in Canada's House of Commons. The purpose was to modernize the Act to keep pace with emerging business trends and enforcement requirements, improve enforcement efficiency and clarify the law. The amendments were intended to:

- provide quicker and more effective resolution of instances of misleading advertising and deceptive marketing practices by introducing civil administrative remedies, including temporary orders, cease and desist orders, information notices, administrative monetary penalties and consent orders;
- address the recent proliferation of deceptive telemarketing practices that prey upon consumers and erode the value of telemarketing as a legitimate marketing tool, by requiring telemarketers to make fair disclosure of prescribed information, and by providing for new offences in relation to telemarketing;
- improve the administration of the merger prenotification process, while reducing the regulatory burden for business;
- revise and clarify the law regarding ordinary price claims;
- expand the tools available to the courts to address criminal conduct through consent resolutions and directive orders following conviction;
- make several miscellaneous amendments; and
- generally modernize the language of the Act in those provisions which are otherwise being amended.

These amendments were developed in close consultation with stakeholders. Their views were sought through the circulation of a discussion paper and the creation of a consultative panel.[1]

[1] The Bill died on the Order Paper when the June federal election was called on April 27, 1997. More information is available in our quarterly publication *CompAct*, issue 3. *CompAct,* issues 1 and 2, provides details on the consultation process.

Industries in transition — a continuing priority

Last year's Annual Report noted the continuing evolution from regulation to competition in many major business sectors. As part of this transition, the Bureau played an important role in the development of competition policy. With the broadening of deregulation activity into areas such as finance and energy, the Bureau has expanded its policy development activities in these areas. In addition, there was considerable activity in the telecommunications sector.

Financial institutions

Interac

On April 26, 1996, hearings concluded before the Competition Tribunal in respect of an application under section 79 of the Act that was filed by the Bureau on December 14, 1995. The application was for the Tribunal to issue a consent order under section 105. Four parties were granted leave to intervene and argued that the requested consent order was not sufficient to restore competition.

On June 25, 1996, the Tribunal issued the consent order requested by the Bureau.

The major competition issues addressed in the consent order can be categorized in terms of: access, fees and innovation.

The order requires Interac to open its network to potential participants on a non-discriminatory basis, except that Interac is allowed to stipulate that only regulated financial institutions are entitled to issue cards which access the network. Accordingly, participation will not be limited to members of the Canadian Payments Association (CPA), and others will be able to take advantage of certain privileges currently restricted to charter members; most notably the right to directly connect to the network.

The order prohibits Interac from continuing its practice of levying new member entry fees based on card issuance. Rather, fees will be collected on a user or transaction basis payable by all members.

The order also requires Interac to discontinue its prohibition of surcharging. Accordingly, automated banking machine (ABM) deployers will be able to determine and charge a competitive price for ABM services. The inability of ABM deployers to levy a charge to a cardholder of another Interac member precluded the deployment of ABMs in accordance with market forces.

The order alters the composition of the Interac Board of Directors, removes Interac's prohibition on the use of pass-through accounts, and makes the Interac network software available for new services that require on-line access to demand accounts. The removal of the prohibition on the use of pass-through accounts is to enable entities which do not qualify for CPA membership, such as brokerage firms, to have an ability to provide their customers with Interac access. This would be achieved by means of a "pass-through" arrangement negotiated between the non-CPA member and a CPA/Interac member.

The Interac case was significant in that it identified and addressed competition issues that any dominant shared network is likely to confront. The consent order provides guidance as to how these issues might be addressed.

Telecommunications

The focus of the Bureau's telecommunications activity centered on submissions to the proceedings of the Canadian Radio-television and Telecommunications Commission (CRTC), applications brought before the Competition Tribunal, and participation in hearings before other regulatory bodies.

Teleglobe mandate review

As noted in last year's Annual Report, the Bureau made a submission to the government in December 1995, with respect to its review of Teleglobe Canada's monopoly mandate for international telecommunications services. The Bureau advocated the removal of Teleglobe's monopoly and relaxation of foreign ownership and by-pass restrictions. As part of the World Trade Organization Basic Telecommunications Agreement concluded in February 1997, Canada has agreed to:

- end the Telesat monopoly on fixed satellite services effective March 1, 2000;
- allow the use of any foreign-owned satellite to provide services (other than DTH/DBS) to Canadians, as of March 1, 2000;
- remove traffic routing rules for all international services and all satellite services by March 1, 2000;
- maintain its open, competitive market and existing transparent regulatory regime; and
- remove routing restrictions for most international services as of December 31, 1999.

Local service pricing options (CRTC 95-49)

In February 1996, the Bureau intervened in a proceeding established by the CRTC to examine the question of affordability of Canadian telecommunications services during a transition to cost-based rates or rate rebalancing in which cross-subsidies to basic local service are being reduced and local rates are increased over time (Telecom Public Notice CRTC 95-49).

In written submissions filed in February, March and June 1996, the Bureau urged the Commission to continue its process of rate rebalancing in order to both eliminate the inefficiencies to the economy arising from distortions in the rate structure, and to remove a major obstacle to the development of competition in local telephone service. The Bureau argued that if the Commission were to find that, based on declining penetration rates, there was an affordability problem, from a competition and efficiency standpoint, such problems should be addressed by providing assistance directly to qualified subscribers.

In November 1996, the Commission rendered a decision in which it found that generally, affordability of basic local service is not a significant problem in Canada (Telecom Decision CRTC 96-10). The Commission found that for some subscribers lump sum service and security charges and toll service bills were a problem in terms of affordability. The Commission directed the telephone companies to implement a series of bill management tools to assist subscribers in these areas, and ordered the companies to establish a program to monitor penetration rates on a going forward basis.

Tariff review (CRTC 95-3)

In January 1994, the CRTC issued a public notice with respect to the provision of directory database information. At issue was whether the telephone companies under CRTC jurisdiction should be required to make available non confidential residential and non residential information in an unbundled form, and what the appropriate rates and other terms and conditions for access should be. The Bureau filed for and received intervenor status.

In March 1995, the CRTC issued Decision 95-3, in which it required the telephone companies to provide non-confidential residential and non-residential listing information in an unbundled form. However, privacy

rights considerations led the Commission, in a split decision, to order an opting-out provision as a privacy safeguard in the decision which would have allowed subscribers, simply by calling a 1-800 number, to have their names and numbers withdrawn from the data bases supplied to independent telephone companies, but this number could not be used to withdraw from the directory data bases of the telephone company publishers. Upon research, certain independent publishing companies concluded that the percentage of telephone subscribers who would likely opt out according to a 1-800 procedure would be unacceptably high. This would make their directories less complete than those published by telephone company affiliates or their exclusive contractors, and therefore less valuable. They asked the CRTC to review and vary the decision, which it refused to do in Decision 95-14.

Subsequently, the independent publishers appealed to the Governor-in-Council to vary Decision 95-3 with respect to the opting-out provision. The Bureau supported this application, arguing that, while privacy rights are of vital importance, there are means of protecting them without providing an advantage in the market to the telephone company publishers. In June 1996, the Cabinet concluded that ". . . fair and sustainable competition in the directory publishing market is in the public interest and agrees with the reasons of the minority decision . . . ." It instructed the Commission essentially to substitute the minority decision for the majority.

In July 1996, the CRTC issued Public Notice 96-27 to, among other things, implement the Cabinet's ruling. By the end of the fiscal year, all submissions of the interested parties were in, but the Commission had not concluded its deliberations.

Broadcast distribution (CRTC 1996-69)

In May 1996, the CRTC issued a Public Notice calling for submissions on a number of proposed revisions to the regulations relating to the distribution of television broadcasting. This review was necessary as a result of the development of new means of broadcasting distribution in competition with cable operators. These include direct-to-home (DTH) satellites, local multipoint communications systems (LMCS or "wireless cable") and telephone companies.

The Bureau filed a submission in mid-July and a second stage submission in mid-August. The Bureau's submissions supported the elimination of the exclusive licensing policy and endorsed certain pro-competitive proposals by the Commission. The submission also recommended the adoption of criteria for assessing actual competitive entry before price deregulation of the cable companies. Also, it was submitted that new entrants should have access to Canadian specialty and pay television services on non-discriminatory terms and conditions and that the Commission should consider whether exclusive long term contracts with condominiums and apartment buildings raise significant barriers to entry. The second submission also addressed possible predatory pricing and cross subsidization by incumbent cable operators.

The Commission announced its new regulatory framework on March 11, 1997. The new policies address a transition from a monopoly to a competitive environment for broadcasting distribution, and aim to establish rules that treat all distributors fairly.

Local telecommunications competition (CRTC 95-36)

As indicated in last year's Annual Report, the Bureau intervened in the CRTC proceeding on opening local telecommunications markets to competition (Telecom Public Notice CRTC 95-36). The Bureau participated in the CRTC's public hearing process in August 1996, and in October, filed a detailed written final argument. The Bureau advocated the adoption by the Commission of the following five principles in opening this sector of the market to competition: (1) maximize reliance on competition and market forces; (2) adopt market-based pricing and new mechanisms to address social policy objectives; (3) establish clear rules governing the obligations of the Stentor companies to provide access

and appropriate pricing principles to induce efficient competition; (4) define parameters for network access negotiations and establish timely and effective dispute resolution mechanisms; and (5) minimize regulation.[2]

Regulatory forbearance on long distance services (CRTC 96-26)

In November 1996, the Bureau intervened in a proceeding established by the CRTC to determine if the market for long distance telephone services was sufficiently competitive to warrant forbearance from regulation by the CRTC of the services provided by dominant carriers, principally the members of the Stentor Alliance (Telecom Public Notice CRTC 96-26). Under section 34 of the *Telecommunications Act*, the CRTC is required to forbear from regulation where it finds that a service or class of service is sufficiently competitive to protect the interests of users and forbearance would not unduly impair the development of a competitive market. In written submissions filed in November 1996, and in March 1997,[3] the Bureau submitted that the market for long distance services was sufficiently competitive to warrant broad forbearance of the services of the Stentor companies. The Bureau advocated full deregulation of long distance services, with the exception of ensuring that access to the transmission capacity of the Stentor companies be made available for resale and sharing for a period of two more years. The Commission's decision was expected in the fall of 1997.

Tele-Direct

On February 26, 1997, the Competition Tribunal rendered its decision in the Tele-Direct matter. The application had been filed on December 22, 1994.

The application alleged that Tele-Direct (Publications) Inc. and Tele-Direct (Services) Inc. (Tele-Direct) had tied the sale of advertising services to advertising space in the Yellow Pages. Under the abuse provisions of the *Competition Act* (section 79), the tie as well as a number of other acts were alleged as anti-competitive acts which had had an exclusionary effect on advertising agencies, advertising consultants and competing telephone directory publishers.

The Tribunal found that there was a tie of advertising space and services with respect to large local and regional advertisers. As a remedy it ordered that Tele-Direct must pay a commission on, or sell space and services separately for Yellow Pages advertisements that cover a province-wide region of six markets or more. This will allow advertising agencies to offer their services to a greater number of advertisers, who will benefit from increased competition. With respect to advertising consultants, the Tribunal prohibited Tele-Direct from engaging in discriminatory acts with respect to the consultants or their customers. Again advertisers will benefit from increased competition as consultants will be able to more freely offer their services. The other allegations against Tele-Direct relating to agencies, consultants and competing publishers were dismissed.

CANYPS order variation

On November 18, 1994, the Competition Tribunal issued a consent order with respect to national advertising by members of the Canadian Yellow Pages Service (CANYPS), the industry association of publishers of Yellow Pages directories in Canada, under the abuse of dominance provisions of the *Competition Act*. AGT Directory Limited (AGT) and Edmonton Telephones Corporation (Edtel) were among the respondents to the order. Subsequently, TELUS Corporation, the parent of AGT acquired Edtel.

[2] On May 1, 1997, the CRTC announced a series of decisions which introduced new rules to facilitate the entry of new service providers into the local exchange market; established a price cap regulatory regime for the existing telephone companies; and allowed telephone companies to apply for broadcasting distribution licences. The Commission's decisions adopted many of the Bureau's recommendations including setting out clear rules governing access to the Stentor companies' networks by new entrants, minimizing regulation and maximizing reliance on market forces in local telecommunications markets.

[3] The Bureau also filed a submission in April 1997.

On January 15, 1997, AGT and Edtel filed an application with the Competition Tribunal, under subsection 106 (a) of the *Competition Act,* for an order to vary four provisions of the CANYPS order so that the two companies could operate jointly in certain areas which were prohibited by the provisions of the order. On February 14, 1997, the Bureau filed a response to the application arguing that there had not been a change in circumstances as alleged by the applicants.

At year end, the parties were awaiting the Tribunal hearing and settlement discussions were ongoing.[4]

Electricity

During the past year, the Competition Bureau furthered its participation in the study of possible restructuring of the electricity systems in British Columbia and Ontario. Previously, Bureau submissions and evidence were provided to the 1996 review by the Advisory Committee on Competition in Ontario's Electricity System (the MacDonald Committee) and the 1995 Electricity Market Structure Review by the British Columbia Utilities Commission (BCUC).

In Ontario, further analysis was provided to the government following the release of the MacDonald Committee Report, in May 1996. The recommendations in the report, while generally consistent with the market structure elements recommended by the Bureau, raised a number of potential competition concerns. Further analysis and recommendations on these aspects of the report were prepared and provided to Ontario government officials in September for use in preparing the provincial government's response. As of March 31, 1977, the Ontario government had not yet responded to the MacDonald Committee findings.

On March 10, 1997, as a follow-up to the Bureau's participation in the BCUC Market Structure Review, a submission as well as expert evidence were provided to the Commission's 1997 Hearing into the Issue of Retail Access and Unbundled Tariffs. The submission and evidence deal specifically with the potential benefits from, and structural requirements for, effective and efficient retail competition in the electricity sector.

More specifically, they:

- developed the case for early adoption of retail competition;
- outlined competition principles for restructuring to put such competition in place;
- recommended several key market structure elements including vertical separation of competitive and non-competitive parts of the B.C. electricity key market structure, the development of an independent system operator and open access spot market, and the creation of an open access transmission and distribution system; and
- outlined the role of competition law in helping to guard against anti-competitive abuses in electricity markets.[5]

Natural gas

National Energy Board/Transportation of natural gas liquids

During November 1996, the National Energy Board (NEB) held a hearing to consider the application of PanCanadian Petroleum Limited for an order requiring Interprovincial Pipe Lines Inc. (IPL) to transport PanCanadian's natural gas liquids. Although IPL is a common carrier pipeline regulated by the NEB, Amoco Canada Petroleum Company Limited controls facilities

[4] Subsequently the Bureau and the companies reached a settlement on the matter and on May 30, 1997, the Competition Tribunal issued a consent order under section 106 (b) of the *Competition Act* varying four provisions of the CANYPS order.

[5] The BCUC hearing was subsequently canceled due to the establishment of a government appointed task force to examine electricity market structure reforms in B.C. Submissions to the canceled hearing are being used as inputs to the work of the task force.

required to transport natural gas liquids on the IPL and was the only natural gas liquids shipper on the IPL.

Pursuant to section 125 of the *Competition Act*, the Bureau intervened in the NEB hearing, arguing in favour of open access to common carrier pipelines. The Bureau urged the Board to consider whether restrictions on access were limiting competition in natural gas liquids markets.

In the Bureau's view, the order sought by PanCanadian held out the possibility of competitive benefits in the form of higher prices for producers and lower prices for consumers of natural gas liquids. Moreover, the Bureau argued that measures to provide for more open access over and above the order sought by PanCanadian would be in the public interest should the Board conclude that restrictions on access were limiting competition in natural gas liquids markets.

In its decision released on February 6, 1997, the Board granted PanCanadian's request for an order requiring IPL to transport PanCanadian's natural gas liquids east from Alberta. In addition, the Board instructed IPL to consult with industry participants and report back to the Board by September 2, 1997, on commercial solutions to provide for open access for all potential natural gas liquids shippers. If the Board is not satisfied with the outcome of IPL's consultations, it has undertaken to consider regulatory measures to provide an appropriate solution.

In its decision the Board emphasized that it considers open public access to pipelines under its jurisdiction to be of overriding importance. The Board also noted that while the order sought would alleviate the obstacles faced by PanCanadian, it must also consider the needs of other potential shippers who could compete effectively in natural gas liquids markets.

In summary, the Board's decision holds out the prospect of increased competition in natural gas liquids markets with ensuing benefits for both producers and consumers of natural gas liquids.

Manitoba Public Utilities Board natural gas local distribution companies

Between June 10 and June 12, 1996, the Manitoba Public Utilities Board (MPUB) conducted a review of the structure of the provincial natural gas sector and the role of Centra Gas Manitoba Inc. with respect to the distribution, retailing and storage of natural gas. A key issue in the proceeding was the desire of Centra, a regulated integrated utility, to also compete as an unregulated entity in the retail gas market.

The Bureau, in a presentation to the Board on July 9, 1996, outlined the potential role of competition law in a less regulated natural gas retail market. In addition to describing the interface between competition law and direct economic regulation, the presentation noted that competition law supports deregulation by providing an effective set of disciplines against many types of anti-competitive behaviour.

On November 4, 1996, the MPUB issued Order No. 110/96 containing guidelines for acceptable conduct between Centra Gas Manitoba and its affiliated companies. In its decision, the Board acknowledged the assistance provided by the Bureau, noting that "as the natural gas industry, and other utilities, move towards a greater reliance on competition rather than regulation, the Board will be guided by some of the concepts elucidated upon by (the) presentation."

Other interventions

Canada Post Mandate Review

In April 1996, Bureau staff made a presentation at public hearings conducted by the Mandate Review in Ottawa. The presentation followed a written submission made to the Review in February 1996, in which the Bureau recommended that a study be undertaken to determine whether the current regulatory framework is consistent with the objective of providing cost-effective, quality postal services. It suggested that abating or relinquishing Canada Post's exclusive privilege over first class mail delivery, in order to allow competition where feasible, is the most appropriate means of obtaining these objectives.

The Review's report was released on October 8, 1996. It recommended that Canada Post's activities be restricted to mail delivery.

Beer intervention, Quebec

In July 1996, the Competition Bureau intervened before the Régie des Alcools des Courses et des Jeux du Québec in the application by Lakeport Breweries for a permit to distribute private label beer to retail grocery stores supplied by Hudon et Deaudelin in the province of Quebec. Hudon et Deaudelin supplies over 1,100 stores under franchise (notably IGA) and non-franchise arrangements. This application was opposed by the major brewers, Molson and Labatt.

The Bureau took the position that it would be in the public interest to grant this permit as it would lead to an increase in competition and to lower prices in the Quebec beer market. An expert witness for the Bureau testified that the introduction of private label beer in Metro-Richelieu stores following a similar hearing in 1994 (in which the Bureau had also participated) had resulted in the major brewers introducing low price brands to compete with the Metro private label offering. It was also submitted that so-called price brands accounted for an increasing proportion of the Quebec beer market and that in the result, Quebec consumers had benefited from lower prices and more choice.

The Régie, after hearing the evidence, reserved its findings until an appeal of an earlier decision to grant a permit to Lakeport, had been heard by the Supreme Court of Canada.

In February 1997, after the Supreme Court of Canada ruled that the permit granted in 1994 was valid, the Régie incorporated this decision as well as the Bureau's evidence of 1994 and 1996 and granted Lakeport Breweries its permit to distribute private label beer in Hudon et Deaudelin affiliated stores in the province of Quebec.

The Competition Bureau's submissions and portions thereof were cited in a total of seven legal proceedings and were important motivating factors in the decisions by the Régie to grant both permits. In summary, the sale of private label beer was found to be in the public interest because it enabled Quebec consumers to benefit from greater choice and lower prices.

Review of the *Special Import Measures Act*

The Competition Bureau made a submission to and appeared before the House of Commons' Joint Sub-Committee of the Standing Committees on Finance and on Foreign Affairs and International Trade. The Competition Bureau submission argued for amendments to the *Special Import Measures Act* (SIMA) to achieve a better balance between: (1) providing protection to Canadian producers against injurious dumped or subsidized imports; and, (2) the need to ensure that trade remedy actions (anti-dumping and countervail actions) do not unnecessarily limit competition in Canada or raise prices for consumers and downstream industries which must compete in both Canadian and foreign markets.

The Competition Bureau urged that the public interest provision in the SIMA be made more effective by defining a list of factors for consideration by the Canadian International Trade Tribunal (CITT). Specifically, the Bureau recommended that in assessing the public interest, specific account be taken of the impact that the imposition of duties may have on downstream users, access to inputs, restrictions of competition and restrictions of choice to consumers. It was felt that elaborating a list of relevant factors would give greater guidance to the CITT, whether or not the imposition of dumping duties would be in the public interest, would ensure greater consistency in decision making, and also provide greater transparency regarding Tribunal decisions.

The Bureau also advocated the adoption of a lesser duty test in a separate provision or as part of the public interest provision. It was recommended that consideration should be given to requiring that duties should be no greater than necessary to remove injury done to domestic industry from dumped or subsidized imports. A lesser duty rule is used by a number of Canada's trading partners, including the European Union, Mexico, Australia and New Zealand.

The Committee's report endorsed the approach of the government to work toward the elimination of anti-dumping remedies in the context of free trade areas. The Committee recommended that access to the confidential record be extended to experts representing interested parties to the proceedings before the CITT. It also recommended improvements to the public interest provision and the introduction of a lesser duty rule.

In coming to its conclusion, the Committee stated that it found "this question has been addressed compellingly by the Competition Bureau, as follows: 'The Canadian approach to remedies should reflect the differences between Canadian and U.S. economic realities, viz: (i) trade accounts for a much greater percentage of our national income and, therefore, disruptions of trade flows are likely to be far more costly to Canadian consumers and industrial users than in the U.S.; (ii) Canada has more concentrated production structures and as a consequence, duties are more likely to permit protected producers to exercise market power and raise prices and profits beyond costs with implications for both efficiency and fairness; and, (iii) the high foreign ownership of many Canadian industries implies that the benefits of protectionist actions often accrue to foreign shareholders while the costs are incurred by Canadian consumers and participants in user industries.' "[6]

[6] On April 18, 1997, the government tabled its reply to the Committee and adopted the competition enhancing recommendations of the Committee. The Competition Bureau will continue to participate in the inter-departmental consultations chaired by the Department of Finance as the reply is developed into legislative proposals.

Enforcement of the criminal provisions of the Act continues to be a key Bureau activity

Driving schools

On June 15, 1996, the first trial by jury under the *Competition Act* concluded with verdicts of guilty on all six counts against Mr. Jacques Perreault, who was associated with one of the accused driving schools based in Sherbrooke. The seven-week trial commenced on April 23, 1996, before Mr. Justice Paul Marcel Bellavance of the Quebec Superior Court in Sherbrooke. The accused, Mr. Perreault, had exercised his right to have a separate trial by jury. On September 9, 1996, Mr. Perreault was sentenced to a one-year prison term.

The charges against Mr. Perreault included conspiracy to fix prices, engaging in price maintenance, predatory pricing policies and regional price discrimination policies in the Sherbrooke driving school market in 1987. The accused was also charged for his role in engaging in predatory pricing policies and regional price discrimination policies in the Magog driving school market during the 1988-1991 period.

On November 6, 1996, sentences were imposed against another principal accused in this case, following the Quebec Superior Court's decision to accept guilty pleas on November 1, 1996. Mr. Yves Aubé and his companies, École de conduite Tecnic Aubé Inc., 2172-3572 Québec Inc., and École de conduite Tecnic Estrie Inc. pleaded guilty to all three counts involving price fixing, predatory pricing and regional price discrimination offences under the Act. Groupe Lauzon Inc. also pleaded guilty to the offence of price fixing. The pleas were entered at the end of the first week of trial.

Mr. Justice Réjean Paul sentenced Mr. Aubé to 100 hours of community service and imposed a personal fine of $10,000, payable within 30 days. In default of payment, Mr. Aubé would be subject to a prison term of four months. His company, École de conduite Tecnic Aubé Inc., was fined a total of $40,000, payable within 30 days. The Court also imposed 15 year prohibition orders against the repetition of the offences on the above accused and also on École de conduite Asbestrie Inc. and Mr. André Comeau of Groupe Lauzon Inc.

On January 28, 1997, the last remaining accused in this case, École de conduite Lauzon Sherbrooke, pleaded guilty to breach of a prohibition order and was fined $5,000.

The case was the first trial by jury ever held with respect to a criminal offence under the Act. It resulted in the first prison term and community service sentences ever handed down by the Courts for price related offences under the Act. It also resulted in the first convictions registered for regional price discrimination and breach of a prohibition order under the Act.

Ready-mix concrete

Four companies in the metropolitan Quebec City area were fined a total of $5.8 million on August 19, 1996, after pleading guilty to one count of conspiracy under the *Competition Act*. This was the second highest fine imposed on a group of companies for one count under the Act.

Ciment Québec Inc., Ciment St-Laurent Inc., Lafarge Canada Inc. and Béton Orléans Inc., pleaded guilty to having entered into an agreement and collaborated with other persons to share the sales of ready-mix concrete produced for projects requiring 300 cubic metres of concrete in the Quebec City metropolitan area.

In addition to the fine, a prohibition order of 15 years duration was imposed, requiring the companies to respect the provisions of the Act and obliging them to understand the law and to ensure that their officers and administrators comply with the law. These officials are also required to attend information sessions on the Act, which will be prepared in collaboration with Bureau staff and presented by the president and the legal counsel for each company.

Optical frames

On October 9, 1996, Vilico Optical Inc. agreed to a prohibition order pursuant to subsection 34(2) of the *Competition Act*. In 1995, Vilico Optical Inc. was charged with two counts pursuant to paragraph 61(1)(a) and one count pursuant to paragraph 61(1)(b) of the price maintenance provisions of the Act. Vilico Optical Inc. was charged with influencing upward or discouraging the reduction of the price charged by Le Lunetier by agreement, threat or promise, and with refusing to supply Le Lunetier due to its low pricing policy.

The Attorney General has decided to drop all proceedings against Luxottica Canada Inc. which had been charged with one count each pursuant to paragraph 61(1)(a) and 61(1)(b) of the Act.

Compressed gas

Mr. T. John Tindale, the former President of Canox, was convicted and fined $35,000 under paragraph 45(1)(c) of the *Competition Act* on October 9, 1996, in Ontario Court (General Division) in respect of a price fixing and market sharing agreement regarding various compressed gases. The conspiracy took place from 1989 to 1990. The companies Canox, Union Carbide-Linde Division, Canadian Liquid Air Ltd., Liquid Carbonic Inc., and Air Products Canada, and some of their senior executives, were previously convicted in this matter for the period 1991 to 1993. Mr. Tindale is currently appealing his conviction.[7]

Commercial waste industry

On January 29, 1997, Mr. Pierre Paré, a former senior official with Gestion des rebuts DMP Inc. in Quebec's Mauricie Region, pleaded guilty to one count of conspiracy to unduly lessen competition, and must pay a record fine of $550,000 under the *Competition Act*. The Court also imposed a one-year jail sentence to be served in the community on Mr. Serge Brière and Mr. Robert Caron, both formerly with Gestion des Rebuts DMP Inc.

This matter follows the guilty plea by Gestion des Rebuts DMP Inc., in April 1996, for a related conspiracy offence; the company was fined $1,950,000. The offence involved an agreement between competitors to share the market for the hauling and disposal of commercial waste in the Mauricie region of Quebec between 1989 and 1992. The victims of this conspiracy were businesses such as restaurants, corner stores, garages and shopping centres, which lease commercial waste containers.

Mr. Justice Lévesque of the Quebec Superior Court also sentenced Mr. Paré to perform 100 hours of community service. In addition, a prohibition order was imposed on the three individuals which requires them to comply with the Act for a period of 10 years.

Fax paper

On February 17, 1997, Mitsubishi Paper Mills Ltd. (MPM) pleaded guilty to a section 45 and a section 61 offence before the Federal Court of Canada in Ottawa. MPM was fined $850,000 and a prohibition order was issued against it.

On July 16, 1996, New Oji Paper Co. Ltd., appeared before the Federal Court of Canada and pleaded guilty to a paragraph 45(1)(c) offence. The accused was fined $600,000 and a prohibition order was issued.

[7] Mr. Tindale's appeal was dismissed on October 22, 1997.

These guilty pleas conclude this case which involved firms located in Canada, the United States, Japan and Hong Kong. Total fines amounted to $3.4 million. The case also demonstrated the need for cooperation among competition law agencies in the increasingly global marketplace.

Land surveyors

On March 10, 1997, La Fédération des arpenteurs-géomètres du Québec pleaded guilty to a charge of price maintenance pursuant to paragraph 61(1)(a) of the Act. The Quebec Superior Court imposed a fine of $50,000 on the Fédération as well as a prohibition order, as provided for in subsection 34(1) of the Act, which prohibits the continuation or repetition of the offence. The offence related to an agreement between the members of the Fédération des arpenteurs-géomètres du Québec to maintain the level, or prevent a reduction in fees in the regions of Quebec, Trois-Rivières and the south shore of Montreal. This was the first time in Canada that a professional association pleaded guilty to having an agreement to raise, maintain or prevent a reduction in the professional fees charged by its members.

Deceptive marketing scams a focus of the Marketing Practices Branch

In the Marketing Practices area, the Bureau continued to promote compliance with the misleading advertising and deceptive marketing practices provisions of the *Competition Act* through a variety of means including information contacts, educational seminars, publication of public bulletins, examination of complaints, formal inquiries, and prosecutions.

During this fiscal year, efforts were focussed, among other issues, on the deregulated long-distance telecommunications industry (especially "slamming" complaints), on complaints involving deceptive telemarketing, and on deceptive mail solicitations. In an effort to educate and encourage compliance and to enhance its effectiveness in eliminating deceptive marketing practices, the Bureau participated in several special activities during the fiscal year.

One of the high priorities was to increase the awareness of deceptive telemarketing practices which target thousands of Canadians every year, especially seniors. In May 1996, the Deceptive Telemarketing Prevention Forum was established with other key government, non-government, and private sector organizations. The purpose of this Forum is to maximize resources in order to gather and share intelligence in the area of deceptive and fraudulent telemarketing, to discuss and formulate educational measures that members and other stakeholders may implement to address deceptive and fraudulent telemarketing practices, and, via education, to suggest measures the public should employ to avoid being victimized.

Business practices governed by the *Competition Act* have been affected by the globalization of world markets. In 1992, an alliance of the enforcement agencies of a number of member countries of the Organization for Economic Co-operation and Development (OECD) created the International Marketing Supervision Network (IMSN). Members of the network are responsible in their respective jurisdictions for compliance with legislation and regulations affecting business practices. The mandate of the IMSN is to share information about activities taking place in several countries that affect markets, and to encourage countries to work together to resolve cross-border disputes. The Competition Bureau began a one-year term as chair of the IMSN in September 1996, and held meetings Hull, Quebec in September 1996, and in Paris, France in February 1997. In 1997, IMSN focussed on deceptive telemarketing, misleading postal solicitations and the international sale of lottery tickets.

In May 1996, a comprehensive four-part video entitled "Scam Alert" was released. This video was produced to assist in preventing fraud and deception targeting Canadians and Canadian businesses.

Another initiative was the inclusion of an insert with the March 1997 Canada Pension cheque, warning recipients of the perils of deceptive telemarketing fraud.

In February 1997, Marketing Practices officials attended the first of three OECD meetings dealing with issues related to electronic commerce.

In March 1997, Bureau investigators jointly organized, with members of provincial law enforcement organizations and the US Federal Trade Commission, an intensive search on the Internet, to look for various Internet web sites and user groups related to "Business Opportunities." The purpose of this exercise was to identify potential "business opportunities scams" which could raise an issue under the misleading advertising and deceptive marketing practices provisions of the *Competition Act*.

During the fiscal year, the following cases warranted the laying of criminal charges under the Act:

The Office Supply Centre (841299 Ontario Limited) and Richard Mellon

On May 17, 1996, one charge under paragraph 52(1)(a) was laid against The Office Supply Centre (841299 Ontario Limited) and Mr. Richard Mellon. Four additional charges were laid against The Office Supply Centre (841299 Ontario Limited). The charges relate to a telemarketing scheme involving the sale of photocopier toner that occurred between July 1989, and February 1996. A pre-trial conference was scheduled for September 3, 1997.

Integrity Group (Canada) Inc.

On May 27, 1996, a total of 13 charges were laid in Calgary under section 55 of the *Competition Act* against The Integrity Group (Canada) Inc. The charges relate to earning representations in a multi-level marketing plan without the accompanying disclosure of the amount of income received by a typical participant in the plan. One of the charges related to the use of the Internet, by the company, and earning representations were contained in the Internet promotion with no accompanying disclosure of the amount of income received by a typical participant in the plan. A preliminary trial was scheduled for September 15-17, 1997.

Click Modeling and Talent Agency of Canada c.o.b. as HMI International Model and Talent Agencies and Shannon Hoehn.

On September 27, 1996, nine charges under paragraph 52(1)(a) were laid against Mr. Shannon Hoehn and Click Modeling and Talent Agency of Canada, operating as HMI International Model and Talent Agencies. Six additional charges were laid against both the individual and company. The charges relate to advertisements placed in various newspapers for modeling and acting opportunities, however, the company was in the business of selling courses and photographs. A pretrial hearing was scheduled for April 3, 1997.

Marvin Fine and DFD Telebroadcasting Inc.

On October 3, 1996, Mr. Marvin Fine and DFD Telebroadcasting Inc. each pleaded guilty in the Ontario Court of Justice (General Division) in Toronto, Ontario, to two counts of misleading advertising under paragraph 52(1)(a) of the *Competition Act*.

Mr. Fine and DFD were each fined $11,000 per count for a total fine of $44,000, which was paid immediately following Mr. Fine's conviction. In addition, Mr. Fine agreed to donate two telephone systems to registered charities.

A prohibition order under subsection 34(1) of the Act was also entered against Mr. Fine and DFD, and Mr. Fine was placed on a two-year probation period.

The charges to which Mr. Fine and DFD pleaded guilty concerned advertisements that Mr. Fine had placed in several issues of the Toronto and Hamilton editions of the TV Guide between June 6 and July 11, 1992, and in The Employment News between April 5 and July 5, 1992, in which job opportunities were advertised to the public. These ads invited the reader to call a "976" telephone number in order to obtain additional details about these jobs. There was a $10 charge for phoning the "976" number and the amount of this charge was inadequately disclosed to the reader.

First Canadian Publisher/American Family Publishers (Vijay Sharma)

On March 21, 1997, charges under paragraph 52(1)(a) were laid against a total of 37 individuals and companies who were involved in a telemarketing scheme in which consumers were asked to send money for a prize that never existed. A preliminary inquiry was scheduled for October 16, 1997.

Canadian merger activity at an all-time high

Merger activity in Canada continued to increase for the third consecutive year. As well, merger review before the Competition Tribunal and the Courts is at an all-time high. The total number of merger examinations commenced during the 1996-97 fiscal year increased by 40 percent, from 228 to 319. During this period, 188 Advance Ruling Certificates (ARC) were issued, an increase of 55 percent over the previous period. The number of prenotification filings also increased by 40 percent. There were three applications filed before the Competition Tribunal and one consent order issued by the Tribunal.

Ciba Geigy Limited/Sandoz Ltd.

Pursuant to an agreement dated March 6, 1996, Ciba Geigy Limited and Sandoz Ltd., both Swiss companies, stated their intention to merge and form a new entity, Novartis Ltd. Both companies are competitors in a number of product areas. Following an in-depth review of this matter, the parties were informed that the competition concerns would be remedied by a proposed consent agreement under consideration by the U.S. Federal Trade Commission (FTC), which would require a number of divestitures and licensing arrangements in these markets in both the U.S. and Canada. The FTC granted provisional approval to the agreement, and the transaction proceeded to close.

Kimberly-Clark Corporation/Scott Paper Company

In July 1995, Kimberly-Clark Corporation (Kimberly-Clark) publicly announced its intention to acquire Scott Paper Company. Both companies are major producers of sanitary tissue products, including facial tissue, bathroom tissue, paper towels and baby wipes. As a result of this proposal, Kimberly-Clark acquired a controlling interest in Scott Paper Limited, the principal operating company of Scott Paper Company in Canada.

On September 5, 1995, the Bureau commenced an inquiry into the proposed transaction pursuant to paragraph 10(1)(b) of the *Competition Act*. On December 12, 1995, the parties completed the transaction, after providing a written undertaking to the Bureau to hold the Canadian operations of Kimberly-Clark and Scott Paper Limited separate and apart while the Bureau completed the inquiry into the competitive effects of the merger.

The parties were subsequently informed that it was the Bureau's view that the merger would likely lessen or prevent competition substantially in the consumer markets for baby wipes, facial tissue and paper napkins, and in the commercial markets for facial tissue, paper towels and wiping products. On April 18, 1996, Kimberly-Clark announced its intention to dispose of its controlling interest in Scott Paper Limited. On May 24, 1996, Kimberly-Clark sold the consumer baby wipes business of Scott in the United States and Canada to Procter & Gamble Inc.

Cast/Canada Maritime

In March 1995, the Cast Group was acquired by Canada Maritime Services Limited, a subsidiary of Canadian Pacific Limited, and became part of CP Ships. These were the two container shipping carriers carrying most of the container shipping cargo through the Port of Montreal. A formal inquiry was initiated in January 1995, and led to about two dozen orders under section 11 for the production of records and oral testimony.

The Bureau filed an application under section 92 with the Competition Tribunal on December 20, 1996, opposing this transaction. The application alleged that the merger prevents or lessens, or is likely to prevent or lessen, competition substantially with respect to the provision of intermodal non-refrigerated containerized shipping services operating through the Port of Montreal between Northern Continental Europe/ United Kingdom and Ontario and Quebec.

Hollinger/Southam Inc.

On May 23, 1996, the Bureau issued an Advance Ruling Certificate in respect of the then proposed acquisition by Hollinger Inc. of an additional 21.5 percent of the shares of Southam Inc. Hollinger already held a 19.5 percent interest in Southam at the time of the request. On September 18, 1996, the Council of Canadians, a public policy advocacy group, sought an application for judicial review of the Bureau's decision. Because the Council was outside the 30 day period for seeking such a review, it was compelled to apply to the Federal Court for an extension of time. The matter was heard on December 9, 1996, and on December 16, 1996, the Court ruled that the Council had not justified its delay in bringing its application. In an *obiter* comment, Justice Cullen added that even if it had been within the required 30 day period, the Court did not believe that the applicants had proper standing to seek a judicial review. On December 19, 1996, the Council filed a Notice of Appeal of the Federal Court Trial Division decision.

On March 9, 1997, the Federal Court of Appeal upheld the Federal Court Trial Division's decision to dismiss the application by the Council of Canadians requesting more time to prepare pleadings in which it was alleged that Hollinger's acquisition of control of Southam violated the Canadian Charter of Rights and Freedoms. These decisions affirm that there is very limited scope for the courts to overturn administrative law decisions of the Bureau such as a decision to exercise discretion to initiate inquiries and issue Advance Ruling Certificates.

Dennis Washington and K&K Enterprises/ Seaspan International Ltd. and Dennis Washington/Norsk Pacific Steamship Company, Limited

On March 1, 1996, the Bureau filed an application with the Competition Tribunal with respect to the acquisition by Mr. Dennis Washington, a Montana entrepreneur, of a significant interest in Seaspan International Ltd. in October 1994, as well as the acquisition of Norsk Pacific Steamship Company Limited in June 1995. In June 1996, Mr. Washington acquired control of Seaspan. Both Seaspan and Norsk provide marine transportation services in British Columbia.

Prior to the hearing scheduled to commence in January 1997, the Bureau and the Washington Group negotiated a proposed settlement, and on January 13, 1997, the Bureau filed an application for a draft consent order with the Competition Tribunal. The consent order was approved by the Competition Tribunal on January 29, 1997. The consent order involves the divestiture of three packages of assets, to address the Bureau's competition concerns about ship berthing in Burrard Inlet and Roberts Bank at the Port of Vancouver, as well as about chip and covered barging in B.C. coastal waters. The assets to be divested include five ship berthing tugs and a line boat, six to ten Seaspan chip barges and a tug, as well as two covered Seaspan barges.

If the sales of the divestiture packages are not completed within one year, a Trustee will be empowered to sell C.H. Cates & Sons Ltd. (a Washington ship berthing company operating in Burrard Inlet), and/or the Norsk chip, and/or covered barging assets, as applicable.

Canadian Waste Services Inc./Allied Waste Holdings (Canada) Ltd.

On March 5, 1997, the Bureau filed an application for a consent order with the Competition Tribunal with respect to non-hazardous solid waste collection in the Sarnia, Brantford, Ottawa and Outaouais markets. The consent order relates to the acquisition by Canadian Waste Services Inc. of the non-hazardous solid waste business of Allied Waste Holdings (Canada) Ltd., which had acquired the shares of Laidlaw Waste Systems (Canada) Ltd. in December 1996. The solid waste collection business in these markets includes residential, commercial front-end, industrial roll-off and recycling collection. The consent order also addresses competition concerns resulting from the acquisition of the commercial waste removal operations by Laidlaw Waste Systems in the National Capital Region of Waste Management Inc. (WMI) in September 1996.

The terms of the proposed consent order, which were agreed to by Canadian Waste and the Bureau and which are subject to approval by the Tribunal, involve the divestiture of Allied's waste collection business in Sarnia, the Canadian Waste business in Brantford, and the assets acquired from WMI in the Ottawa and Outaouais markets. In order to facilitate the divestitures in the Sarnia and Ottawa markets, the proposed consent order requires that Canadian Waste provide the prospective buyer(s) access at a preferred price to landfills in these markets. Canadian Waste will not own a landfill or other disposal facility in the Brantford or Outaouais markets.

In the Bureau's view, if the transaction were permitted to proceed, Canadian Waste would be able to significantly raise prices in the Sarnia, Ottawa, Outaouais and Brantford markets. The Bureau did not find that the merger would substantially lessen or prevent competition in other markets examined.

On April 16, 1997, the Competition Tribunal issued the consent order.

Southam Inc./Lower Mainland Publishing Inc.

On November 25, 1996, the Supreme Court of Canada heard Southam's appeal of the Federal Court of Appeal's decision in this matter. The Federal Court of Appeal on August 8, 1995, had decided that the Competition Tribunal had failed to apply the proper test in determining product market. The Federal Court of Appeal had ordered that the matter be remitted back to a differently constituted panel of the Tribunal to consider whether the merger prevented or lessened competition substantially, and to consider the factors set out in section 93. On March 20, 1997, the Supreme Court found that the Federal Court of Appeal should not have overturned the Competition Tribunal's decision as the proper standard for appeal was not "correctness" but reasonableness. The Court decided in favour of Southam and found that the appeal courts owe the Tribunal considerable deference because it is a specialized Tribunal, and that the Tribunal's decision on market definition was not unreasonable.

At the same time, the Supreme Court also heard Southam's appeal of the North Shore print real estate market decision. The Tribunal had concluded that the merger was likely to result in a substantial lessening of competition in this market, and subsequently, in a remedy decision, found the appropriate remedy to be divestiture of either the North Shore News or the entire Real Estate Weekly chain. The Federal Court of Appeal had upheld this decision and the Supreme Court dismissed Southam's appeal from the bench. As a result, Southam must now divest itself of either the North Shore News or the Real Estate Weekly chain within a six month period from the March 20 decision of the Supreme Court of Canada. The Supreme Court's decision supports the principle that the corrected remedy test in a contested merger case is curing the substantial prevention or lessening of competition, not returning the market to the pre-merger state of competition.

ADM/Maple Leaf Mills

Following the announcement in February 1996, that Maple Leaf Mills Inc. (MLM) planned to sell its Canadian flour milling assets, jointly owned by ConAgra Inc. and Maple Leaf Foods, to ADM Agri-Industries Ltd. (ADM), a Canadian subsidiary of Archer-Daniels-Midland of Decatur, Illinois, the Competition Bureau conducted an extensive review of the proposed acquisition. ADM and MLM were the two largest wheat flour millers in Canada. The assets to be acquired comprised wheat flour mills in Calgary, Port Colborne and two mills in Montreal.

The Bureau concluded that the transaction, as originally structured, would likely result in a substantial lessening of competition in the supply of bulk hard wheat flour in the Quebec/Atlantic Canada market (Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland). In the two other geographic markets likely to be affected by the transaction, i.e., the Ontario and Western Canada markets, the Bureau concluded that the merger would not result in a substantial lessening of competition. In Ontario, it was concluded

that the U.S. Milling Company in Buffalo would be a significant competitive presence in the foreseeable future. In Western Canada, it was concluded that the merger would not substantially lessen or prevent competition, in part due to planned or actual expansion by other flour mills in this market.

On February 28, 1997, the Bureau announced that, with the agreement of ADM, it would shortly be filing an application for a consent order before the Competition Tribunal to remedy the substantial lessening of competition it identified as likely to result from the merger. Pending the filing of the application, the parties were permitted to proceed with the merger following the receipt of an undertaking from ADM to hold separate and apart from ADM the Oak Street mill in Montreal, which was to be divested. On March 21, 1997, applications for an interim order and a consent order were filed with the Competition Tribunal. On March 26, 1997, the Tribunal issued an interim order incorporating the terms of the hold separate undertaking. The hearing on the Bureau's applications was scheduled for May 1997.

Bureau economists play an important role in economic and regulatory issues

Bureau economists and visiting academics holding the Bureau's T. D. MacDonald Chair in Industrial Economics provide expert economic advice to the Director on enforcement cases and related research matters. In 1996-1997, the Chair was held by Professor William Stanbury of the University of British Columbia.

Research played an important role in 1996. To commemorate the tenth anniversary of Canada's *Competition Act*, the Bureau sponsored a symposium in May 1996, which addressed such topics as such as regulatory reform and the expanding role of competition policy in the Canadian economy, and conspiracy law in Canada. In the same month, an authors symposium on competition policy, intellectual property rights and international economic integration was held in Aylmer, Quebec.

The Bureau also commissioned research in a number of areas such as telecommunications, health care, regulation, and the *Special Import Measures Act*. This research assessed the effectiveness of the Bureau's intervention before the Canadian Radio-television and Telecommunications Commission, and also appraised health care reform and competition policy and the role of competition law enforcement in health care.

On the policy front, the Bureau provided its opinion on such diverse matters such as the World Trade Organization (WTO) Agreement in Basic Telecommunications and interdepartmental work relating to OECD discussions on agriculture and the maritime sectors. These views were expressed at the intradepartmental and interdepartmental levels.

Growing Bureau involvement on the international front

During the year, the Bureau contributed to the development and advancement of competition policy at a number of multilateral fora, and through bilateral meetings with the U.S. and other important trading partners. It also coordinated joint enforcement activities with foreign competition authorities.

Multilaterally, the Bureau continued to participate actively in the Competition Law and Policy Committee and the Joint Group on Trade and Competition of the OECD, with particular focus on the converging interrelationship between trade and competition policies, on competition and regulation, and on international cooperation.

As a member of the OECD Committee on Consumer Policy, the Bureau participated in an international forum on Gateways to the Global Market: Consumers and Electronic Commerce. The conference covered such diverse issues as cryptography, privacy and consumer fraud as they impact on global electronic commerce. Participants, including government officials, consumer representatives and members of the private sector, are working towards the establishment of principles for consumer protection in the world of cyberspace.

The Bureau is also a participant in the International Marketing Supervision Network (IMSN), which has been chaired by Canada since September 1996. The IMSN is an informal alliance of 29 OECD member countries. Its members regularly exchange information with a view to promoting international co-operation in detecting and fighting unfair and deceptive marketing practices.

In the North American context, the Bureau continued to contribute to the work of the NAFTA Working Group on Trade and Competition, which is discussing the relationship between competition laws and policies and trade in the free trade area. The Bureau has also been involved in western hemisphere competition policy issues as a member of the Working Group on Competition Policy, which is engaged in the discussions aimed at creating the Free Trade Area of the Americas. Finally, the Bureau participated in the second APEC workshop on Competition Policy and Deregulation in Davao City, Phillipines.

At the WTO, the Bureau actively encouraged the establishment of a Working Group on the Interaction between Trade and Competition Policy. The Bureau has also maintained its involvement in the Intergovernmental Group of Experts on Competition Policy of the United Nations Conference on Trade and Development (UNCTAD).

As it has in past years, the Bureau continued to provide technical assistance both bilaterally and in support of UNCTAD and OECD multilateral programs, this year to Burundi, El Salvador, the People's Republic of China, Taiwan and Ukraine.

The growing number and increasing complexity of cross-border cases, especially with the U.S., bring to the forefront the international dimension of the Bureau's enforcement activities and continue to underline the need for enhanced international cooperation, consultations, coordinated enforcement actions and dispute avoidance. During the year, the Bureau also participated in bilateral meetings with competition law authorities from other jurisdictions.

Work also continued towards finalizing a Canada-European Community Agreement by the end of 1997. Once finalized, the Agreement will codify a state-of-the-art approach to bilateral cooperation and coordination in competition law enforcement. It will contribute to ensuring that the benefits of multilateral trade liberalization

are not hindered by private restraints to trade. It will also be reflective of the close cooperation that exists between the competition authorities of Canada and the European Union.

At the case level, there continued to be a substantial number of complex notifications from a variety of foreign competition authorities. During the 1996-1997 fiscal year, the Bureau received 38 notifications from foreign competition authorities and sent 17 notifications to foreign authorities or governments, in compliance with the 1995 Canada-U.S. Cooperation Agreement and the 1995 Revised OECD Recommendation. The majority of these notifications involved contacts with U.S. antitrust enforcement authorities.

Compliance and education activities growing in importance

Bureau programs to encourage compliance with the *Competition Act* continued to be a key activity. The Director and other senior managers undertook a variety of speaking engagements. The new quarterly publication, *CompAct*, which provides timely information on Bureau activities, has been well received by the business and legal communities. In its efforts to improve its ability to disseminate information on a timely basis, the Bureau has begun a review of its Internet presence and the use it is making of its home page on the Industry Canada *Strategis* site.

Development of a fee and service standards policy

In preparation for consultation on a proposal for the introduction of fees for a limited number of Bureau services and activities, comments received during the 1993 consultations on fees and during the 1995 survey about the Program of Advisory Opinions were re-examined. Costing of Bureau activities was updated and the experience of other jurisdictions in this area was studied in preparation for the launch of a further more in-depth round of consultations. Steps were also taken to secure Treasury Board approval for the Bureau to access revenue from fees, in order to enhance service in those areas for which fees are charged. Consultations on the subject of fees were planned for summer 1997, and it was expected that fees will be in place in the fall of 1997.

Bulletin on Corporate Compliance Programs

In February 1996, the Bureau issued a draft bulletin for comment on the subject of Corporate Compliance Programs. The document described the Bureau's view of the benefits that flow from implementing an in-house program and the essential elements that the Bureau believes such a program must contain in order to be considered effective. The Bureau has received a substantial number of comments, many of them comprehensive, on the draft document. These are being considered in the preparation of a final document. Its release was scheduled for early in the 1997-1998 fiscal year.

Looking ahead

The continuing trend towards deregulation in various business sectors will mean an ever-expanding role for the Bureau in fostering the healthy competitive environment that remains key to Canada's economic success.

It is likely that a continuing tight resources picture will result in the Bureau further exploring initiatives such as fees, and increasing its focus on compliance and education.

Cooperative international enforcement efforts, and cross-border initiatives in fields such as telemarketing have been successful, and will likely play an increasingly prominent role in Bureau activities.

The integration of the Consumer Products Directorate of Industry Canada into the Bureau, together with responsibility for the *Textile Labelling Act*, the *Precious Metals Marking Act* and the *Consumer Packaging and Labelling Act* will mean a new focus in the area of marketplace information.

N.B. Statistical data, lists of Proceedings Under the Act, and information on Discontinued inquiries can be found on the Competition Bureau Web site: *http://strategis.ic.gc.ca/competition* under the heading, "Publications."