



# Competition Tribunal

1997-98  
Estimates

Part III

Expenditure Plan

## **The Estimates Documents**

The Estimates of the Government of Canada are structured in three 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 Part III documents provide additional detail on each department and its programs primarily in terms of the results expected for the money spent.

Instructions for obtaining each volume can be found on the order form enclosed with Part II.

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# Competition Tribunal

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Expenditure Plan

Approved

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Minister of Industry

## The Minister's Message

### ***The Industry Portfolio Building Jobs and Growth through Partnerships and Innovation***

The Competition Tribunal is a member of the Industry Portfolio. The Tribunal plays a role in maintaining and encouraging competition in the Canadian marketplace. It provides a court of record that hears and determines applications under Part VIII of the Competition Act with respect to mergers, abuse of dominant position and a number of other business practices that affect competition adversely. The Tribunal's mandate is strictly adjudicative; it has no inquiry or investigative powers, nor any advisory function.

Through the coordinated efforts of its member organizations, the Industry Portfolio is playing a vital role in helping to improve economic growth, and employment and income prospects for Canadians. The Industry Portfolio brings together the key departments and agencies responsible for science and technology, regional development, marketplace services and micro-economic policy. In doing so, the Government of Canada has created a new capacity for partnership and innovation, both within the Portfolio itself and externally, with the private sector and other stakeholders.

As Minister responsible for the Industry Portfolio, I am focussing the Portfolio's activities to help Canadians move confidently into the 21st century. Through the Portfolio, I am working to ensure that our businesses and industries have the best tools and the right conditions to innovate, grow, compete and generate jobs.

The technology-driven global economy which has emerged in the 1990s holds much promise, as well as many challenges. To maintain traditional strengths and markets while building new ones, Canadians must innovate. We have to develop and use leading edge technologies and skills needed in the knowledge-based economy. We need to increase the abilities of our firms and industries to export. We must also enlarge Canada's share of international investment.

#### ***The Industry Portfolio Is ...***

- Atlantic Canada Opportunities Agency
- Business Development Bank of Canada
- Canadian Space Agency
- Competition Tribunal
- Copyright Board of Canada
- Federal Office of Regional Development (Quebec)
- Industry Canada
- National Research Council of Canada
- Natural Sciences and Engineering Research Council of Canada
- Social Sciences and Humanities Research Council of Canada
- Statistics Canada
- Standards Council of Canada
- Western Economic Diversification

And we must work to ensure all Canadians, especially our youth, are able to participate fully in the new economy. To achieve these goals, business, governments and individual Canadians have to work together, in partnership.

The Industry Portfolio is playing its part by focussing on three areas of activity -- each crucial for our economic success, now and into the next century:

- promoting innovation through science and technology
- assisting business to grow by providing information, advice and financing support
- ensuring a fair, efficient and competitive marketplace.

Innovation is the key to success in the global economy. Creative thinking and adopting new technologies and processes keep traditional industries competitive while launching new industries for emerging and expanding markets. The Industry Portfolio is taking a new, risk-sharing approach to investing in technology through partnerships with the private sector. We are also making strategic investments to expand Canada's intellectual resources and advance knowledge.

The Portfolio assists Canadian businesses to increase their competitive advantage and their capacity to expand. Our actions are particularly directed at strengthening the backbone of Canada's economy -- small and medium-sized enterprises.

The Industry Portfolio has a vital role to ensure an open and efficient marketplace by setting clear and fair "rules of the game." In this way, we are supporting business activity while protecting consumer and investor interests.

Through its wide range of activities, the Industry Portfolio is contributing to economic growth, increased employment and higher living standards for Canadians in every region, both today and into the new century.

John Manley  
Minister of Industry

## **Preface**

This document is a report to Parliament to indicate how the resources voted by Parliament have or will be spent. As such, it is an accountability document that contains several levels of details to respond to the various needs of its audience.

The Part III for 1997-98 is based on a revised format intended to make a clear separation between planning and performance information, and to focus on the higher level, longer term plans and performance of departments.

The document is divided into three sections:

- Departmental Plans;
- Departmental Performance; and
- Supplementary Information

It should be noted that, in accordance with Operating Budget principles, human resource consumption reported in this document will be measured in terms of employee full-time equivalents (FTEs).

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## **Section I**

### **Departmental Plan**

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#### **A. Summary of Departmental Plans and Priorities**

- The Tribunal will continue to hear and determine all applications under Part VIII of the *Competition Act* filed by the Director of Investigation and Research, an independent office under the *Competition Act*, or by private parties seeking registration of specialization agreements. The Tribunal will deal with proceedings as informally and expeditiously as circumstances and considerations of fairness permit.
- When Bill C-67, *An Act to Amend the Competition Act and another Act in consequence*, comes into force, the Tribunal will hear and dispose of applications brought by the Director of Investigation and Research under Part VII.I of the *Competition Act*, i.e., regarding misleading advertising and deceptive marketing practices.
- The Tribunal will review and, if necessary, amend its rules of practice and procedure to deal specifically with applications under Part VII.I of the *Competition Act*.
- The Registry will continue to provide an efficient administrative infrastructure to assist the Tribunal in carrying out its mandate.

#### **B. Departmental Overview**

##### **Role and Responsibility**

The Tribunal is a quasi-judicial tribunal created in 1986 by the *Competition Tribunal Act* to hear applications and issue orders with respect to the civil reviewable matters set out in Part VIII of the *Competition Act*. Part VIII deals with mergers, abuse of dominant position, specialization agreements, delivered pricing, restrictive trade practices (refusal to supply, consignment selling, exclusive dealing, tied selling and market restriction), foreign judgments, laws and directives that have certain adverse effects on economic activity in Canada, and refusals to supply foreign suppliers.

The mandate of the Tribunal is strictly adjudicative; it has no function other than that associated with the hearing of applications and issuance of orders. It exercises its adjudicative function at arm's length from government and its departments. The Director of Investigation and Research, an independent office under the *Competition Act*, is responsible for the administration and enforcement of the Act. With the exception of specialization agreements, only the Director of Investigation and Research may bring an application to the Tribunal. Private parties may apply for the registration of a specialization agreement.



## **Organization and Program Composition**

The *Competition Tribunal Act* provides for a program composed of two elements, the Tribunal and its Registry.

The Tribunal is composed of not more than four judicial members and not more than eight lay members. The judicial members are appointed by the Governor in Council from among the judges of the Federal Court, Trial Division on the recommendation of the Minister of Justice. The Governor in Council designates one of the judicial members as Chairman of the Tribunal. The lay members are appointed by the Governor in Council on the recommendation of the Minister of Industry. Appointments are for a fixed term not exceeding seven years; members may be re-appointed. The current four judicial members were appointed in 1993; there are presently six lay members.

The Chairman directs the work of the Tribunal and, in particular, allocates case work to the members. The Tribunal must hear applications in panels of three or five members. A judicial member must preside and there must be at least one lay member on a panel. Although the Tribunal holds most of its hearings at its headquarters in Ottawa, a hearing may be held elsewhere in Canada as required by the circumstances of a particular application. Decisions or orders of the Tribunal may be appealed to the Federal Court of Appeal.

The Registry provides registry, research and administrative support services to the Tribunal. The Registry has been designated a department for the purposes of the *Financial Administration Act*, the Minister of Industry as the appropriate minister, and the Registrar as deputy head. All employees of the Registry are appointed in accordance with the *Public Service Employment Act*. The senior staff of the Registry consists of the Registrar, the Deputy Registrar, the Director of Management Services, and the Legal Advisor (see Organization Chart, p. 22).

## **Program Objectives and Priorities**

The Tribunal's objective is to maintain and encourage competition in the Canadian economy by providing a court of record to hear and determine all applications under Part VIII of the *Competition Act* as informally and expeditiously as circumstances and considerations of fairness permit.

The objective of the Registry is to provide efficient, effective registry, research and administrative assistance to the Tribunal for the timely and expeditious conduct of pre-hearing procedures and hearings and issuance of decisions.

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## Spending Authorities

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### Authorities for 1997-98 - Part II of the Estimates

#### Financial Requirements by Authority

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Vote	(thousands of dollars)	1997-98 Main Estimates	1996-97 Main Estimates
<b>Competition Tribunal</b>			
45	Program expenditures	1,160	1,184
(S)	Contributions to employee benefit plans	98	83
<b>Total Agency</b>		<b>1,258</b>	<b>1,267</b>

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#### Votes - Wording and Amounts

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Vote	(dollars)	1997-98 Main Estimates
<b>Competition Tribunal</b>		
45	Competition Tribunal - Program expenditures	1,160,000

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#### Resource Plans

**Human Resources:** The Registry's reduced human resource base of 12 employees constitutes the absolute minimum required to provide efficient support in a specialized law and economics milieu to the four judicial members, eight lay members, panels, litigants, counsel, media and the public. The Registry will fine-tune its teamwork approach and provide staff with career enrichment opportunities through cross-job training for back-up purposes and emergencies. To provide efficient support services to the Tribunal for hearings outside Ottawa while maintaining a core team for headquarters operations, cost-effective arrangements, such as short-term secondments from the Federal Court regional registries, will be pursued. Any staff turnover, whether by resignation or retirement, will be used for reconfiguration of position responsibilities to maximize substitutability in the organization.

**Financial Resources:** As a single program agency supporting a quasi-judicial tribunal, the Registry disposes of very limited discretionary resources. In response to the multi-year reductions introduced by the February 1993 Budget, the Registry first reduced the discretionary operating budget, i.e., materiel,

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supplies, travel, conferences and related discretionary items, to a minimal level. Program Review and reference level reductions were allocated against the non-discretionary operating budget. Since the Registry is precluded from eliminating any activities, the strategy to manage within resource limits during the planning cycle will focus on building on cost-effective initiatives already implemented and on pursuing efficiencies, particularly advances in court and information technologies.

## **Planning Factors**

The Tribunal is still a relatively new institution working with complex economic legislation. Recourse to the Tribunal and hence its caseload are still evolving. (For the annual caseflow since 1986, see *Disposition of Applications*, p. 14). Amendments to the rules regulating the consent order process, in effect since July 1996, may result in more consent order applications by the Director of Investigation and Research.

The Tribunal's workload is non-discretionary. Although it receives no advance notice of applications, the Tribunal must be ready to respond in a timely manner to ensure expeditious proceedings in matters that invariably involve significant financial stakes and an impact on private enterprise and industry.

Expediency in case management is not an absolute criterion for program planning and performance since it is subject to a wide range of case-specific variables.

The judicial members carry on their duties as judges of the Federal Court, Trial Division when not involved in Tribunal matters; all but one of the lay members are part-time appointments.

## **External Factors Influencing the Program**

**Legislative Interpretation:** During the first decade following the revision of Canada's competition law in 1986, challenges regarding the enforceability of key provisions of the *Competition Act* and *Competition Tribunal Act* impacted on the nature and extent of the Tribunal's workload. Early legal challenges that went to the heart of the Tribunal's practice were only settled in 1992 when the Supreme Court of Canada upheld the constitutionality of the Tribunal and the merger provisions of the *Competition Act*, and the power of the Tribunal to enforce its decisions through contempt orders. Currently pending is the Supreme Court's decision in *Southam Inc.* At issue in this appeal is whether the Tribunal's expertise should be deferred to on appeal.

**Enforcement:** The number of applications brought before the Tribunal depends on the enforcement policy and approach adopted by the Director of Investigation and Research, an independent office under the *Competition Act*. The Director of Investigation and Research pursues a compliance approach seeking to resolve matters by agreement rather than recourse to the Tribunal or courts. Furthermore, enforcement capabilities of the Competition Bureau are strained as a result of changes in the business and enforcement environment coupled with budget reductions. While mergers and abuse of dominant position are two of the five enforcement priorities, case screening criteria are used to identify priority cases in terms of economic impact and general deterrence value.

The Director of Investigation and Research has reaffirmed on various occasions a commitment to greater use of the consent order process before the Tribunal. Consent orders are generally recognized as an important mechanism in the administration of competition law that can result in innovative solutions and reduction in costs of lengthy and complex litigation.

### Net Cost of Program by Business Line

(thousands of dollars)

	1997-98 Main Estimates	
	*Operating Expenditures	Total Main Estimates
<b>Business Line</b>		
Competition Tribunal	1,258	1,258
	<b>1,258</b>	<b>1,258</b>
<b>Other Expenditures</b>		
Estimated cost of services by other departments	473	473
<b>Net Cost of the Program</b>	<b>1,731</b>	<b>1,731</b>

\* Contributions to Employee Benefit Plans already included in Business Lines Operating Expenditures

### C. Details by Business Line

#### Business Line Objectives

The Program is composed of two elements, the Tribunal and its Registry.

The **Tribunal** will continue to hear and determine all applications under Part VIII of the *Competition Act* filed by the Director of Investigation and Research, an independent office under the *Competition Act*, or by private parties seeking registration of specialization agreements. The Tribunal will deal with proceedings as informally and as expeditiously as circumstances and considerations of fairness permit. Pre-hearing proceedings will be held in Ottawa, by conference call when appropriate, and elsewhere in Canada when convenient. Hearings will be held in Ottawa or elsewhere in Canada depending on the circumstances of a particular case.

When Bill C-67, *An Act to Amend the Competition Act and another Act in consequence*, comes into force, the Tribunal will also hear and dispose of applications brought by the Director of Investigation and Research under Part VII.I of the *Competition Act*, i.e., regarding misleading advertising and deceptive marketing practices. These applications will be heard and decided by a judicial member of the Tribunal sitting alone. The Tribunal will review and, if necessary, amend its rules of practice and procedure so that applications in these matters can be dealt with in a timely manner whether heard in Ottawa or elsewhere in Canada. Since the proposed amendments would leave the Director of Investigation and Research a choice to bring applications to either the Tribunal, the Federal Court, Trial Division or a provincial superior court, the impact of the extension of the Tribunal's jurisdiction on caseload and resources cannot be anticipated with certainty.

The **Registry** will continue to provide the following services in support of the mandate and objectives of the Tribunal:

- **Case management:** administration of a court-like registry managing the processing of cases and records, applying the *Competition Tribunal Rules of Practice and Procedure*, and editing and issuance of notices, directives, decisions, reasons and orders.
- **Hearing management:** logistical arrangements for pre-hearing conferences and hearings in Ottawa and elsewhere in Canada, and professional support by court registrars, court reporters, and interpreters.
- **Research / Professional support to members and panels:** legal research, library, administrative, and secretarial services, as well as organization of semi-annual educational seminars for members.
- **Service to litigants and counsel / Communications:** publication of legal notices, media relations, information on and access to case records and decisions to litigants, members of the Bar, academics, students, the media and members of the public.
- **Corporate management services / Secretarial, financial, personnel and administrative services:** planning and control of the departmental budget, human resources, administrative and security requirements.

## **Operating Context**

The Tribunal does not receive advance notice of applications. As a rule, applications involve multiple litigants represented by counsel, fast-track scheduling and active management by the Tribunal of the progress of pre-hearing procedures towards a hearing date set by order at an early stage. Once the hearing date has been established, the Tribunal does not allow postponement except in the most unusual circumstances.

To provide a framework for informal and expeditious proceedings consistent with the requirements of a fair and impartial hearing, the Tribunal has developed and keeps under review the set

of rules that regulates its practice and procedure. The rules aim for simplicity and clarity, leaving the Tribunal wide flexibility to direct proceedings to avoid undue delay.

Although the time limits set by the rules for contested applications contemplate that the hearing should commence within six months of filing, a wide range of variables comes into play that are not in the Tribunal's control, such as scope and complexity, number of parties and intervenors, interlocutory appeals, and urgency.

The Registry's workload is non-discretionary and focuses on the documentary, procedural, hearing and research activities required until final disposition of applications. Voluminous documentation, usually including confidential commercial information, is typical. A fully automated case management system enables the Registry to process, track and monitor cases efficiently. Improvements to the system and training are done in-house.

Proceedings may be in either or both official languages. In the latter instance, all notices, directives, decisions, orders and reasons must be issued simultaneously in both official languages. Since they are usually of national interest, final reasons and orders are as a rule issued simultaneously in both official languages. Given the scope and complexity of the cases and precedential significance of the decisions, these documents are lengthy and detailed; technical accuracy and timely preparation of texts are imperative. Editing of all documents in both official languages is done in-house.

The Registry responds to requests for information by the legal community, researchers, the media and public on the status of cases, the Tribunal's rules of practice and procedure and its caselaw.

### **Key Initiatives**

- Study proposed amendments to the *Competition Act* and develop an implementation plan to ensure procedural, resource and operational requirements are in place to enable the Tribunal to hear and decide misleading advertising and deceptive marketing applications expeditiously.
- Maximize efficiencies by sharing common services and facilities with other departments and agencies particularly for pre-hearing conferences and hearings outside Ottawa.
- Participate, in consultation with other departments and agencies, in the selection of the most economical and effective integrated financial system and respond to central agency demands relating to the Financial Information Strategy (FIS) implementation projects, particularly, the implementation of a private sector model of accounting.
- Introduce cost-effective advances in court and information technology, such as video conferencing, and a case management system providing inter-operability to users.

## **Change Management Issues**

- The proposed expansion of the Tribunal's jurisdiction together with the operating budget reductions and Program Review, reinforce the challenge to the Registry to manage resources with maximum effectiveness to meet an unpredictable, non-discretionary workload which is subject to imposed time constraints.
- Responding to the spectrum of government-wide changes in financial management markedly affects the administrative workload in a small agency which has to obtain outside expertise.
- Developing and maintaining a competent, motivated team of employees (12 FTEs), through on-the-job training and job enrichment, to provide professional support to a court-like tribunal adjudicating complex litigation.

## **Business Line Results Expectations**

The extent to which the performance of the program meets the objective of maintaining and encouraging competition in the Canadian economy by providing an expeditious adjudicative process for the civil reviewable matters under Part VIII of the *Competition Act*, cannot be measured in quantifiable terms.

Debate on the role of the Tribunal and comment on the efficiency of its rules of practice and procedure provide some assessment by users. At the 1996 Competition Law Conference organized by the Canadian Bar Association, a session was devoted to the role of the Tribunal. While some argued for rethinking the role of the Tribunal in the competition policy process, others, comparing the Tribunal with its counterparts in other countries, supported the present model and commented favourably on the Tribunal's "very stringent case management procedures" and the expediency with which recent consent order cases had been heard.

The Tribunal's ability to proceed expeditiously in a complex contested case is illustrated by the *Gemini* proceedings in 1992-93. The application was filed on November 5, 1992, pre-hearing procedures completed over eight weeks, the hearing held over five weeks and the decision issued on April 22, 1993. The Director of Investigation and Research remarked in this regard at the second Annual Competition Law Conference of the Canada Bar Association that "...the case demonstrated that matters before the Competition Tribunal can proceed quickly and efficiently even in very complex and hotly contested litigation. Compared to reported waiting times in civil litigation before the regular courts, the *Gemini* proceedings are all that much more remarkable."

### Comparative Financial Plans by Business Line

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(thousands of dollars)	Main Estimates 1996-97	Main Estimates 1997-98	Planned 1998-99	Planned 1999-00
Competition Tribunal	1,184	1,160	1,132	1,132
<b>Total Operating Expenditures</b>	<b>1,184</b>	<b>1,160</b>	<b>1,132</b>	<b>1,132</b>

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**Explanation:** The differences between the 1996-97 Main Estimates and 1997-98 Main Estimates and future years reflect the 1993 Operating Budget and the Program Review reductions. The figures do not include contributions to employee benefit plans.



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## Section II Departmental Performance

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### A. Summary of Departmental Performance

- During 1995-96, the Tribunal heard and decided *Director of Investigation and Research v. D & B Companies of Canada Ltd. ("Nielsen")* and *Director of Investigation and Research v. Bank of Montreal ("Interac")*, heard and reserved its decision in *Director of Investigation and Research v. Tele-Direct Publications Inc. ("Tele-Direct")*, and received the application in *Director of Investigation and Research v. Dennis Washington ("Seaspan")*. A fifth case, *Director of Investigation and Research v. Southam Inc. ("Southam")*, was ordered by the Federal Court of Appeal returned to the Tribunal for re-hearing but the decision has been appealed to the Supreme Court of Canada.
- The amendments to the *Competition Tribunal Rules*, establishing a separate procedural code for consent proceedings, came into effect on July 10, 1996.
- To date during 1996-97\*, the Tribunal completed pre-hearing procedures and commenced the hearing in Vancouver, B.C. in *Seaspan* on January 13, 1997. The Tribunal received the application in *Director of Investigation and Research v. Canadian Pacific Limited* on December 20, 1996.
- The Competition Tribunal website on the Internet was launched in September 1996.

### B. Departmental Overview

Since the creation of the Tribunal in June 1986, the Director of Investigation and Research has filed a total of 21 applications. Also, in 11 instances after final decisions had been issued, proceedings were reopened to modify, rescind, interpret or enforce orders, or the matter was returned on appeal for rehearing. During 1995-96, the Director of Investigation and Research filed 2 new applications; to date, during 1996-97, one new application has been filed. The following table illustrates the annual caseload over the first decade.

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\* January 13, 1997

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## Disposition of Applications 1986-1996

Year	Ongoing at Start of Year	Filed*	Other**	Concluded	Ongoing at End of Year
1986-87	0	1	0	1	0
1987-88	0	2	0	0	2
1988-89	2	3	0	2	3
1989-90	3	4	2	5	4
1990-91	4	3	1	3	5
1991-92	5	0	0	3	2
1992-93	2	1	2	4	1
1993-94	1	0	3	4	0
1994-95	0	4	2	4	2
1995-96	2	2	1	1	3
1996-97***	3	1	0	1	n/a
Total	n/a	21	11	28	n/a

\* Application to vary *Air Canada* included in 1992-93.

\*\* Proceedings reopened to modify, rescind, interpret, enforce orders, or matter returned.

\*\*\* As at January 13, 1997

## Key Responsibilities and Objectives

The objective of the program is to provide an adjudicative process that resolves civil reviewable matters, under Part VIII of the *Competition Act*, as informally and expeditiously as circumstances and considerations of fairness permit.

## Performance Measurement

The *Competition Tribunal Rules* set the framework for informal, expeditious proceedings, leaving the Tribunal flexibility to respond to the wide range of variables that affect expediency and considerations of fairness in a particular case.

The two contested applications heard during 1995-96, *Nielsen* and *Tele-Direct*, illustrate the impact of case-particular variables on case management time-lines aimed at expeditious proceedings.

In *Nielsen*, pre-hearing proceedings were completed within five months following the filing of the application. Uncertainty about the commencement of the hearing on the scheduled date was removed a mere three days before the hearing opened when the Federal Court of Appeal refused Nielsen's request to stay the Tribunal proceedings pending the outcome of an appeal that Nielsen had launched with the Court. The Court subsequently dismissed Nielsen's appeal. Nielsen then sought leave to appeal to the Supreme Court of Canada and obtained a stay of the proceedings before the Tribunal pending determination of the leave application. The Supreme Court denied Nielsen's leave application and the hearing before the Tribunal could then resume after a four-month interruption.

In *Tele-Direct*, pre-hearing proceedings were completed within eight months. The hearing commenced on the scheduled date; counsel estimated a duration of six to eight weeks but evidence was not completed when the Tribunal had to adjourn after nine weeks. The hearing was only completed after a further five weeks. More than 90 witnesses were called to testify.

As for expeditiousness in consent proceedings, under the rules consent proceedings can be disposed of in less than sixty days from the filing of the application. Indeed, in *Asea Brown Boveri Inc.* the draft consent order was approved within 50 days and in *AGT Directory Limited* within 58 days of the filing of the respective applications. The approval of the draft consent order in the Imperial Oil Limited/Texaco merger, on the other hand, took eight months. The participation of 15 intervenors was a significant factor in the latter proceedings. More recently, the draft consent order in the *Interac* abuse of dominance proceedings was approved eight months after the filing of the application. The intervening insurance companies, retailers and independent investment companies played an active role, calling evidence and presenting argument in opposition to the consent order. The Tribunal's dispatch in dealing with this complex, vigorously opposed consent proceeding was favourably commented on.

### C. Details by Business Line

#### *Proceedings before the Tribunal and Amendments to the Competition Tribunal Rules*

- **D & B Companies of Canada Ltd. ("Nielsen"):** On April 5, 1994, the Director of Investigation and Research filed an application under the abuse of dominance provisions of the *Competition Act* against Nielsen. The application alleged that Nielsen had engaged in a practice of anti-competitive acts relating to the purchase of scanner-based sales data from major supermarket and drugstore retail chains and that these acts had the effect of preventing or lessening competition substantially for scanner-based market tracking services.

Pre-hearing procedures were completed over the ensuing six months and the hearing commenced in Ottawa on October 17, 1994.

The hearing was adjourned on November 4th and scheduled to resume on December 7, 1994 for a concluding three weeks. However, Nielsen sought leave to appeal a decision of the Federal Court of Appeal, upholding a Tribunal decision on an interlocutory issue, to the Supreme Court of Canada. The Supreme Court granted a stay of the proceedings before the Tribunal pending determination of the leave application. The Supreme Court denied Nielsen leave to appeal on February 23, 1995. After an interruption of four months, the hearing before the Tribunal resumed on April 3rd and was completed on April 28, 1995.

In its decision, issued on August 30, 1995, the Tribunal found that Nielsen controlled the supply of scanner-based market tracking services throughout Canada and that Nielsen's contractual practices had resulted in a substantial lessening of competition in the Canadian market for the supply of scanner-based market tracking services. In particular, Nielsen's actions had prevented Information Resources, Inc., a company that competed vigorously with Nielsen in the United States, from entering the Canadian market.

The Tribunal ordered that Nielsen can no longer enforce its existing contracts with Canadian grocery and drug retailers for exclusive access to their scanner data. Nor can it enter into future contracts that require or induce retailers to provide Nielsen exclusive access. The Tribunal prohibited Nielsen from entering into long-term contracts with its manufacturer-customers for the sale of its scanner-based market-tracking service, MarketTrack. All existing customer contracts and all contracts entered into within 18 months of the date of the order were made terminable at the option of the customer upon eight-month's notice. Nielsen did not appeal the Tribunal's decision.

- **Tele-Direct (Publications) Inc. ("Tele-Direct"):** On December 22, 1994, the Director of Investigation and Research filed an application under the abuse of dominance, tied selling and refusal to supply provisions of the *Competition Act* against Tele-Direct (Publications) and Tele-Direct (Services), the two subsidiaries that publish telephone directories for Bell Canada Enterprises Inc. (The refusal to supply part of the application was subsequently withdrawn).

The application alleged that the respondents controlled the publication of telephone directories in their respective territories, including the sale of advertising space in the directories and related advertising services. The application sought an order prohibiting the two companies from tying the sale of advertising services to the sale of advertising space in the Yellow Pages and from engaging in other anti-competitive acts towards other participants in the market.

Pre-hearing proceedings were completed over the ensuing eight months and the hearing commenced on September 5, 1995. Counsel originally estimated that the hearing would last six to eight weeks. However, evidence was not completed when the Tribunal had to adjourn on December 8, 1995. The hearing resumed on January 22, 1996 and concluded on March 1, 1996. The Tribunal reserved its decision.

- **Bank of Montreal ("Interac"):** On December 14, 1995, the Director of Investigation and Research filed an application under the abuse of dominance provisions of the *Competition Act* against Interac Inc. and the nine Canadian financial institutions that are Charter members of the Interac Association, namely, Bank of Montreal, The Bank of Nova Scotia, Canada Trustco Mortgage Company, Canadian Imperial Bank of Commerce, La Confédération des caisses populaires et d'économie Desjardins du Québec, Credit Union Central of Canada, National Bank of Canada, Royal Bank of Canada, and The Toronto-Dominion Bank.

The application alleged that the respondents, through their control over Interac and the enactment of exclusionary by-laws governing membership in and operation of the network, were engaging in joint abuse of dominance. The respondents did not admit any anti-competitive conduct but did not dispute the allegations for the purposes of the proceeding.

The consent order process allows for public commentary. Public comments were received from a Montreal lawyer, Amex Bank of Canada and the Retail Merchants' Association of British Columbia. The Retail Council of Canada, the Canadian Life and Health Insurance Association, a group of four investment companies (Midland Walwyn Capital Inc., Richardson Greenshields of Canada Limited, Mackenzie Financial Corporation and Trimark Investment Management Inc.) and TelPay, a division of CTI-Comtel Inc., submitted both comments and sought and were

granted leave to intervene. The hearing commenced the week of March 4, 1996, resumed on April 15th and concluded on April 26, 1996.

On June 20, 1996, the Tribunal issued the consent order, with reasons, as submitted by the parties. The order required the respondents to amend the Interac by-laws to remove restrictions on Interac membership by other financial institutions, to allow indirect access to the network by other commercial entities, to modify the structure of the board of Interac, and to change its pricing practices and procedure for approving new network services.

In its extensive reasons, the Tribunal recognized the valid concerns of the intervening insurance companies, retailers and independent investment companies that had called evidence and presented argument opposing the consent order because it would not allow them to issue cards to their clients that can be used at Interac terminals. The Tribunal concluded that the order allowed entities like the intervenors to enter into an arrangement with a card issuing member of Interac to provide their clients with electronic access to funds held by the intervenors.

The Tribunal recognized that the effectiveness of the provision of the consent order for indirect access to Interac depended upon action by the Canadian Payments Association ("CPA"), the statutory body that runs the system for clearing cheques and other transactions among banks and other deposit-taking institutions. The respondents are members of the CPA. If the CPA choose not to act or to impose restrictions on indirect access to Interac, the provision of the consent order would have no effect and consumers would reap little benefit from the consent order. The Tribunal concluded that it was not inappropriate in the circumstances for the Director of Investigation and Research to place the possible actions of the CPA outside the scope of the application brought before the Tribunal for approval of a draft consent order.

- **Southam Inc.:** On August 8, 1995, the Federal Court of Appeal set aside the Tribunal's decision of June 2, 1992 and ordered the matter returned to the Tribunal for determination by a differently constituted panel in a manner consistent with the Court's finding that the Vancouver dailies and community newspapers acquired by Southam Inc. were in the same product market. The Tribunal had not been convinced that the daily and community newspapers compete with each other for the same advertisers and concluded that each type of paper offers a distinct set of characteristics to advertisers. In its reasons the Court characterized market definition as a "legal construct, not an economic one" and concluded that the Tribunal's expertise therefore need not be deferred to on appeal.

Southam Inc. was granted leave to appeal the Federal Court decision to the Supreme Court of Canada. The Supreme Court heard the appeal on November 25, 1996 and reserved its decision. Whether and, if so, when a re-hearing by the Tribunal will proceed, depends on the outcome of the Supreme Court's decision.

- **Dennis Washington ("Seaspan"):** On March 1, 1996, the Director of Investigation and Research filed an application under the merger provisions of the *Competition Act* contesting two mergers in the British Columbia marine transport industry. First, the application challenges the 1994 merger whereby the respondents Dennis Washington and K & K Enterprises acquired a significant interest and control of Seaspan International Ltd. (the "Seaspan merger"). Second,

the application opposes the 1995 merger whereby Dennis Washington and Norsk Holdings Ltd. acquired control of Norsk Pacific Steamship Company, Limited (the "Norsk merger").

The application alleges that the Seaspan merger prevents or lessens or is likely to prevent or lessen competition substantially in the provision of ship berthing services in the Burrard Inlet and Roberts Bank harbours in the Port of Vancouver, B.C. Both the Seaspan merger and Norsk merger prevent or lessen or are likely to prevent or lessen competition substantially in the provision of barging services in and around the British Columbia coastal waters.

Over the ensuing nine months, a series of pre-hearing conferences and motion hearings were held in Ottawa, Vancouver and Toronto and by conference call. The hearing was scheduled to commence in Vancouver, B.C. on January 13, 1997 and to conclude by mid-April 1997. However, the parties arrived at a settlement and on January 13th requested the Tribunal to approve a draft consent order setting out the terms of their agreement. This Tribunal set a schedule for questions, comments and requests to intervene and will hold the hearing on the proposed consent order on January 29, 1997.

- **Canadian Pacific Limited:** On December 20, 1996, the Acting Director of Investigation and Research filed an application with respect to a merger in the intermodal containerized shipping industry. The Director is challenging the March 31, 1995 acquisition of Cast North America Inc. and related companies by Canadian Pacific Limited, its affiliates and subsidiaries. The merged entities operate fully integrated intermodal containerized shipping services, through the Port of Montreal, between Ontario and Quebec and Northern Continental Europe and the United Kingdom. The respondents in the matter are Canadian Pacific Limited, Canada Maritime Limited, C.P. Containers (Bermuda) Limited, 3041123 Canada Inc., Cast North America Inc. and The Royal Bank of Canada.

The schedule for pre-hearing conferences and the hearing date will be set after preliminary procedures have been completed in early March 1997.

- **Amendments to the *Competition Tribunal Rules*** came into force on publication in the *Canada Gazette* on July 10, 1996. These amendments create a separate procedural code for consent proceedings, i.e., where the parties agree on the terms of an order and come to the Tribunal for approval of the order.

In close consultation with the National Competition Law Section of the Canadian Bar Association, the Tribunal had concluded that the consent order process and particularly third party participation in that process, was a primary concern of persons appearing before it. The Tribunal also sought input from the Director of Investigation and Research, the public official responsible for all applications to the Tribunal to date, and from other interested persons. These views were taken into account and reflected in the proposed amendments that were published for public comment in the *Canada Gazette* on November 25, 1995. Three submissions were received and carefully reviewed.

The amended rules allow the Tribunal to proceed efficiently in considering consent orders by simplifying scheduling and pre-hearing management procedures and by clarifying procedures

for and the timing of public comments or requests to intervene. The rules strike a balance between the opportunity for public participation in the process against the desire of the parties for speedy resolution. Fairness is safeguarded by allowing for public participation and by ensuring adequate opportunity to address the potential effects of the consent order, including an evidentiary hearing if necessary.

### **Registry Services**

- **Pre-hearings and Hearings:** The three contested proceedings and one consent order proceeding before the Tribunal presented the Registry with an almost uninterrupted flow of pre-hearing proceedings and hearings. The *Nielsen* hearing concluded after three final weeks in April 1995; the Tribunal's 130-page reasons and order was issued on August 30, 1995. The *Tele-Direct* hearing commenced on September 5th and was expected to continue until mid-November but continued with a five week adjournment at the end of 1995, until March 1, 1996. During the 74 hearing days over 90 witnesses were called. The *Interac* hearing commenced on March 5th, adjourned for four weeks, resumed April 15th and concluded on April 26, 1996. The order and 69-page reasons were issued on June 20, 1996. The *Seaspan* application was filed on March 1, 1996. The hearing was scheduled to commence on January 13, 1997 in Vancouver, B.C. and continue till mid-April. On January 13th, however, the parties abandoned the contested proceedings and requested the Tribunal to approve a draft consent order. After a half-day hearing, the case was adjourned until January 29, 1997 when the Tribunal will hold a hearing on the proposed consent order. Over the past nine months of pre-hearing proceedings, 8 pre-hearing conferences and motion hearings were held in Ottawa, Toronto and Vancouver. All these cases involved multiple parties and tight time constraints. Over 150 notices, directions and orders were issued. To avoid delay in the *Nielsen* hearing, the Tribunal used video-conferencing for the first time to accommodate examination of a witness that could not appear in Ottawa. The costs were borne by the party that called the witness.
- **Educational Seminar for Members:** Due to the hearing in *Tele-Direct*, the 1995 fall educational seminar for members had to be cancelled. Instead, the Director of Investigation and Research addressed the members on the proposed amendments to the *Competition Act* outlined in a discussion paper released on June 28, 1995.
- **Service to the public:** Savings in staff time and copying and mailing costs realized by the fax-on-demand service were consolidated. Introduced in 1994-95 as a pilot project that allows callers to obtain case documents at their cost via their facsimile machines, the fax-on-demand service proved an unqualified success and is now a permanent service to the public. Increased use marked a monthly record in January 1996 when 654 documents (6,366 pages) were requested by lawyers, academics, students, companies and members of the public. As of October 1st to the end of November 1996, 1,800 documents (23,000 pages) have been requested. In response to user demand, research, consultation and planning were completed for a Tribunal website on the Internet which was launched in September 1996.
- **Sharing common services:** To realize efficiencies and savings, the Registry has continued to actively promote sharing common services with other departments and agencies. An agreement

with Industry Canada ensures certain support services and expert advice in financial and personnel administration. The Canadian Secretariat, located in the same building, continues to have first call as alternative user of the Tribunal's hearing room facilities. Due to prolonged use by the Tribunal itself, other agencies made minimal use of the hearing room facilities during 1995-96.

### **Results Expectation**

- The Registry is expected to maintain a high level of professionalism to provide efficient services to the Tribunal. In 1995-96, at the conclusion of the *Tele-Direct* hearing, counsel stated that “I have certainly appeared in courts all over the Province of Ontario and most of the Federal Courts and I have never seen a staff quite this competent, that has given us this level of service.” The Registry received a citation on the *Merit List 1995-96* by the Official Languages Commissioner as one of the four “federal institutions that made notable progress in the application of the *Official Languages Act* possible.” Members of the Competition Bar have commended the launch of the Competition Tribunal Website on the Internet in September 1996.

### **Change Management Issues**

- Since the discretionary operating budget was already reduced to a minimal level in response to the multi-year reductions announced in the February 1993 Budget, there was no alternative but to apply the 1995/96 reference level review and Program Review reductions to the non-discretionary operating budget. Resource requirements are therefore now based on a revised forecast which allows for a wide range of variables differing from case to case, e.g., publication of legal notices requirements, number of parties and intervenors, number of pre-hearing conferences, official languages requirements, volume of documents, duration and location of hearing, honoraria, travel and accommodation.
- Consultations were held with other agencies, departments and central agencies with respect to government initiatives in the areas of financial and expenditure management and informatics. It was recognized that consideration should be given to the impact of major changes on small agencies, such as the Registry, which have limited discretionary resources. The Registry continues to consult and cooperate with other organizations to find best solutions and to participate in cost effective implementation of shared initiatives in these areas.
- In view of the caseload before the Tribunal, over 95 hearing days in 1995-96, the Registry had to maximize flexibility in the use of human resources (12 FTEs) to provide efficient and timely services to the Tribunal, counsel and the public. Cross training was provided for back-up purposes and in-house seminars on registry procedures finetuned the Registry team's knowledge and skills. Secondment arrangements or short-term contracts were used to provide assistance in specialized areas.



### Planned and Actual Spending

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(thousands of dollars)	Actuals 1993-94	Actuals 1994-95	Main Estimates 1995-96	Actuals 1995-96
<b>Business Line</b>				
Competition Tribunal	912	944	1,204	<b>1,024</b>
<b>Total</b>	<b>912</b>	<b>944</b>	<b>1,204</b>	<b>1,024</b>

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### Comparative Financial Performance by Business Line

**Explanation:** For the Tribunal, the differences between actual spending in the fiscal years 1993-94, 1994-95 and 1995-96 are mainly due to the difference in the number of applications filed and the number of hearing days. In 1993-94, there were no applications filed, no publication of legal notices required and only 9 hearing days held. In 1994-95, the main expenditures were publication of legal notices for 4 applications filed, and expenditures for 31 hearing days. In 1995-96, legal notices were published for 2 applications filed, and expenditures were incurred for 95 days of hearing.

For the Registry, the differences in actual spending in the fiscal years 1993-94, 1994-95, 1995-96 reflect the decrease in salaries following the downsizing exercise that started in 1994-95. In 1995-96, reductions were effected in personnel costs (1 FTE), in printing costs due to introduction of the fax-on-demand service, and by elimination of an informatics maintenance contract and a number of small savings in office supplies.

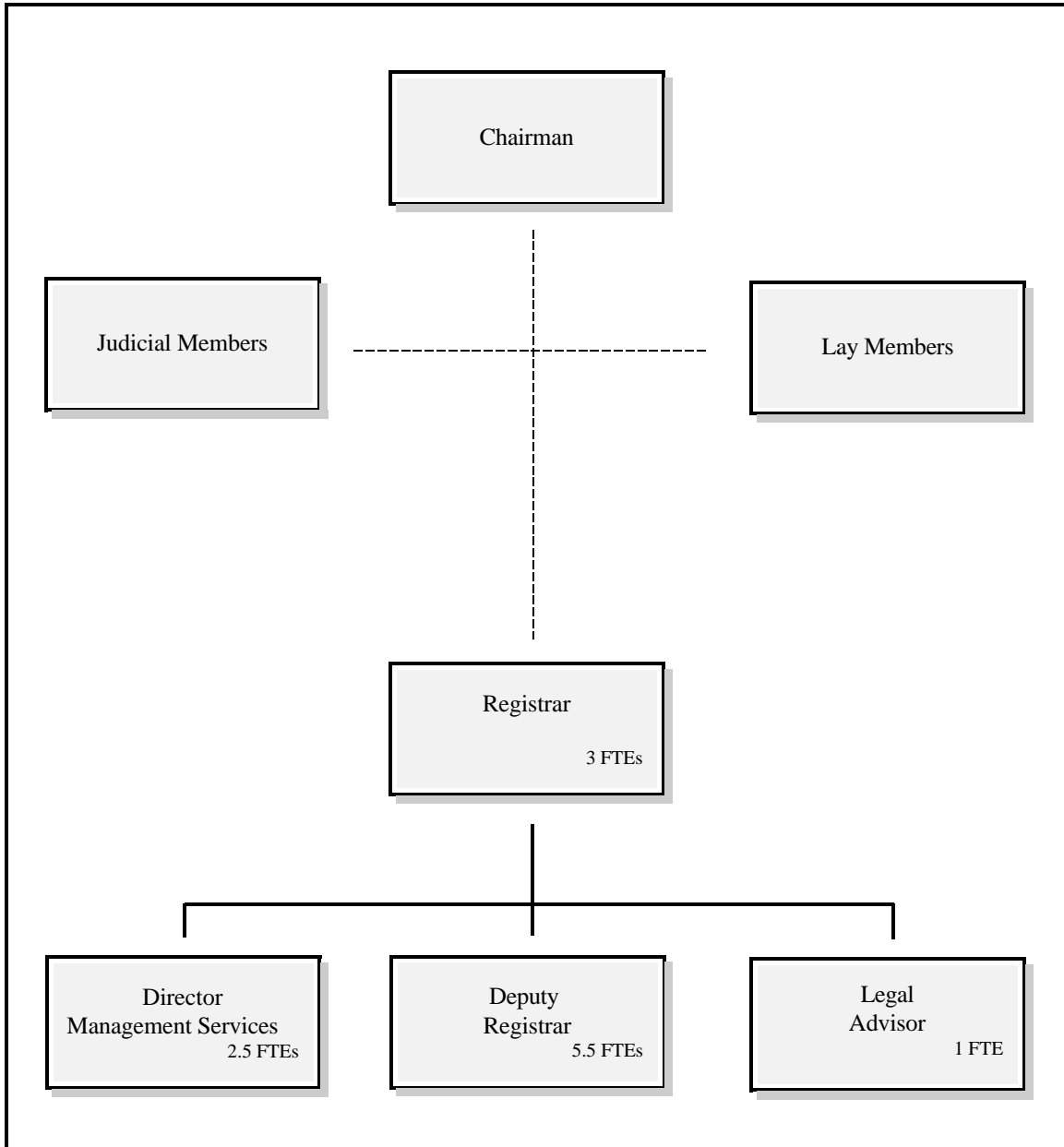
The difference between the 1995-96 Main Estimates and actual spending is mainly due to the fact that legal notices were required for only two new applications, minimal simultaneous interpretation services were required at hearings, and all hearings were held in Ottawa.

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**Section III  
Supplementary Information**

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**1. Organization Chart**



## 2. Personnel Requirements (FTEs)

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	<b>Actuals 1994-95</b>	<b>Actuals 1995-96</b>	<b>Estimates 1996-97</b>	<b>Estimates 1997-98</b>	<b>Planned 1998-99</b>	<b>Planned 1999-00</b>
<b>Business Line</b>						
Tribunal*	13	12	12	12	12	12
<b>Total</b>	<b>13</b>	<b>12</b>	<b>12</b>	<b>12</b>	<b>12</b>	<b>12</b>

<b>Professional Category</b>						
Order-in-Council Appointments*	-	-	-	-	-	-
Executive Group	1	1	1	1	1	1
Scientific and Professional	2	1	1	1	1	1
Administrative and Foreign Services	6	6	6	6	6	6
Administrative Support	4	4	4	4	4	4
<b>Total</b>	<b>13</b>	<b>12</b>	<b>12</b>	<b>12</b>	<b>12</b>	<b>12</b>

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\* Note: The Tribunal members appointed by Governor-in-Council are not considered FTEs.

### 3. Financial Requirements by Object

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(thousands of dollars)	Actuals 1994-95	Actuals 1995-96	Estimates 1996-97	Estimates 1997-98	Planned 1998-99	Planned 1999-00
<b>Personnel</b>						
Salaries and Wages	552	540	574	576	578	578
Contributions to employee benefit plans	80	75	83	98	98	98
	632	615	657	674	676	676
<b>Goods and Services</b>						
Transportation and communications	49	64	100	100	100	100
Information	85	43	60	60	60	60
Professional and special services	173	317	340	314	284	284
Rentals	16	15	30	30	30	30
Purchased repair and upkeep	12	5	15	15	15	15
Utilities, materials and supplies	33	37	40	40	40	40
Construction or acquisitions, machine and equipment	24	3	25	25	25	25
	392	484	610	584	554	554
<b>Total Expenditures</b>	<b>1,024</b>	<b>1,099</b>	<b>1,267</b>	<b>1,258</b>	<b>1,230</b>	<b>1,230</b>

#### 4. Cases Filed 1986 -1996\*\*

	Name	Year Filed	Year Decided
1	Palm Dairies Limited (Merger)	86/87	86/87
2	Sanimal Industries Inc. (Merger)	87/88	92/93*
3	Air Canada (Merger)	87/88	89/90
4	Institut Mérieux S.A. (Merger)	88/89	88/89*
5	Pepsi-Cola Canada Ltd. (Merger)	88/89	88/89*
6	Chrysler Canada Ltd. (Refusal to supply)	88/89	89/90
7	Asea Brown Boveri Inc. (Merger)	89/90	89/90
8	The NutraSweet Company (Abuse of dominant position, exclusive dealing, tied selling)	89/90	90/91
9	Imperial Oil Limited (Merger)	89/90	89/90
10	Xerox Canada Inc. (Refusal to supply)	89/90	90/91
11	Southam Inc. (Merger)	90/91	92/93
12	Hillsdown Holdings (Canada) Limited (Merger)	90/91	91/92
13	Laidlaw Waste Systems Ltd. (Abuse of dominant position)	90/91	91/92
14	Air Canada (Merger-Variation)	92/93	93/94
15	The D & B Companies of Canada Ltd. (Abuse of dominant position)	94/95	95/96
16	AGT Directory Limited (Joint dominance)	94/95	94/95
17	Tele-Direct (Publications) Inc. (Abuse of dominant position; tied-selling, refusal to supply)	94/95	reserved
18	Quebecor Printing Inc. (Merger)	94/95	94/95
19	Bank of Montreal ("Interac") (Joint dominance)	95/96	96/97
20	Dennis Washington ("Seaspan") (Merger)	95/96	ongoing
21	Canadian Pacific Limited (Merger)	96/97	ongoing

\* Withdrawn

\*\* January 13, 1997