



# Competition Tribunal

For the  
period ending  
March 31, 1997



Improved Reporting to Parliament —  
Pilot Document

Canada

©Minister of Public Works and Government Services Canada – 1997

Available in Canada through your local bookseller or by

mail from Canadian Government Publishing – PWGSC

Ottawa, Canada K1A 0S9

Catalogue No. BT31-4/34-1997

ISBN 0-660-60320-9



## Foreword

On April 24, 1997, the House of Commons passed a motion dividing what was known as the *Part III of the Estimates* document for each department or agency into two documents, a *Report on Plans and Priorities* and a *Departmental Performance Report*. It also required 78 departments and agencies to table these reports on a pilot basis.

This decision grew out of work by Treasury Board Secretariat and 16 pilot departments to fulfil the government's commitments to improve the expenditure management information provided to Parliament and to modernize the preparation of this information. These undertakings, aimed at sharpening the focus on results and increasing the transparency of information provided to Parliament, are part of a broader initiative known as "Getting Government Right".

This *Departmental Performance Report* responds to the government's commitments and reflects the goals set by Parliament to improve accountability for results. It covers the period ending March 31, 1997 and reports performance against the plans presented in the department's *Part III of the Main Estimates* for 1996-97.

Accounting and managing for results will involve sustained work across government. Fulfilling the various requirements of results-based management – specifying expected program outcomes, developing meaningful indicators to demonstrate performance, perfecting the capacity to generate information and report on achievements – is a building block process. Government programs operate in continually changing environments. With the increase in partnering, third party delivery of services and other alliances, challenges of attribution in reporting results will have to be addressed. The performance reports and their preparation must be monitored to make sure that they remain credible and useful.

This report represents one more step in this continuing process. The government intends to refine and develop both managing for results and the reporting of the results. The refinement will come from the experience acquired over the next few years and as users make their information needs more precisely known. For example, the capacity to report results against costs is limited at this time; but doing this remains a goal.

This report is accessible electronically from the Treasury Board Secretariat Internet site:  
<http://www.tbs-sct.gc.ca/tb/key.html>

Comments or questions can be directed to the TBS Internet site or to:

Government Review and Quality Services  
Treasury Board Secretariat  
L'Esplanade Laurier  
Ottawa, Ontario, Canada  
K1A 0R5  
Tel: (613) 957-7042  
Fax (613) 957-7044

# **Competition Tribunal**

## **Performance Report**

**For the  
period ending  
March 31, 1997**

---

John Manley  
Minister of Industry

---

## Table of Contents

---

<b>I</b>	<b>The Minister's Message</b> .....	3
<b>II</b>	<b>Departmental Overview</b>	
	Mandate, Role and Responsibility .....	5
	Mission .....	5
	Objectives and Priorities .....	6
	Organization Composition .....	6
	Operating Context .....	7
<b>III</b>	<b>Departmental Performance</b>	
	<b>A. Performance Expectations</b>	
	Comparison of Total Planned Spending to Actual Expenditures, 1996-97 by Business Line .....	9
	Planned versus Actual Spending by Business Line .....	9
	Summary of Performance Expectations .....	10
	<b>B. Performance Accomplishments</b>	
	Summary of Departmental Accomplishments .....	10
	Disposition of Applications .....	11
	Performance Measurement .....	12
	Details by Business Line and Service Line .....	13
<b>IV</b>	<b>Supplementary Information</b>	
	<b>A. Financial Summary</b> .....	20
	<b>B. Enabling Legislation</b> .....	20
	<b>C. Contacts</b> .....	20
	<b>D. Cases Filed 1986-97</b> .....	21

---

## Section I The Minister's Message

---

The Industry Portfolio brings together under the Minister of Industry 13 departments and agencies (see box) with responsibilities for science and technology (S&T), regional development, marketplace services and micro-economic policy. With many of the micro-economic levers available to government, as well as 41% of the S&T funding in the federal government, the Industry Portfolio offers a versatile tool kit for meeting the challenges of the knowledge-based economy as Canada moves into the 21st century.

*The Industry Portfolio is ...*

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

*\* Not required to submit Performance Reports*

The establishment of the Portfolio has also created a new capacity for partnership and innovation, both among its members and with stakeholders in the private and public sectors. This capacity can be exploited in every region of the country, since the Industry Portfolio provides programs and services to businesses and consumers with about 15,000 staff, over 500 points of service in every province and territory, and numerous sites in cyberspace.

As Minister responsible for the Industry Portfolio, I have directed the Portfolio members to actively seek opportunities to exploit the synergies available to them as members of a team of organizations with similar objectives and complementary programs. This

continuing emphasis on improving collaboration and partnership has helped to ensure that limited resources are focused more effectively on the priority areas identified for the Portfolio: promoting S&T, encouraging trade and investment, and helping small and medium-sized enterprises (SMEs) to grow. Working in partnership in these areas has enabled the Portfolio to make a significant contribution to meeting government objectives.

Of the 13 members of the Portfolio, all except the two crown corporations (the Business Development Bank of Canada and the Standards Council of Canada) are required to provide annual Performance Reports. Reporting on performance is an important element of program management in the Portfolio. Identifying concrete objectives for programs and

services, and measuring and reporting on progress over time, provides an accountability framework that enables Portfolio members to assess their effectiveness. As the 11 individual Performance Reports demonstrate, the Portfolio members have solid results to report for 1996-97.

Taken together, these reports provide a comprehensive picture of the Industry Portfolio's performance. I would particularly like to highlight the following key Portfolio achievements:

- ▶ the 29 very successful SME Conferences and InfoFairs held across the country, attended by almost 51,000 Canadians;
- ▶ the publication of *Your Guide to Government of Canada Services and Support for Small Business 1996-1997*, a compendium of all the services and support available to small businesses from the federal government (over 250,000 copies in circulation);
- ▶ the strengthening of the Regional Trade Networks and Regional Trade Plans, which bring federal and provincial governments and the private sector together at the regional level to generate new international opportunities for local businesses;
- ▶ the coordinated approach to S&T across the Portfolio as reflected in the Portfolio S&T Action Plan—the Portfolio members have taken action on 45 of its 49 initiatives;
- ▶ the S&T Forum, which brought together, for the first time, the members of all the boards and councils providing expert advice to the Portfolio departments and agencies; and
- ▶ innovative approaches to service delivery building heavily on partnerships, such as the Canada Business Service Centres.

The highlights for the Competition Tribunal over this period include: the completion and rendering of decisions in three cases; and continuing proceedings in four matters. These activities were carried out with respect to hearing and determining applications under Part VIII of the *Competition Act* with respect to mergers, abuse of dominant position and a number of other business practices that have an adverse effect on the competition in the Canadian marketplace.

Over the coming year, the Industry Portfolio will continue to build on its synergies and to improve the services and support provided to its wide array of clients.

---

The Honourable John Manley

---

## **Section II**

### **Departmental Overview**

---

#### **Mandate, Role and Responsibility**

The Competition Tribunal (“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* as informally and expeditiously as circumstances and considerations of fairness permit. 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*, who heads the Competition Bureau in Industry Canada, is responsible for the administration of the Act. With the minor exception of specialization agreements, only the Director of Investigation and Research can bring applications before the Tribunal. Private parties may apply for the registration of a specialization agreement; to date no such applications have been received.

Expansion of the Tribunal’s mandate has been actively considered since June 1995. When Bill C-67, *An Act to Amend the Competition Act and another Act in consequence*, introduced on November 7, 1996, comes into force, the Tribunal will also hear and determine applications under Part VII.I of the *Competition Act* with respect to misleading advertising and deceptive marketing practices. As of March 31, 1997, the Bill had not received second reading.

*The Competition Tribunal Act* also provides for a Registry to provide the administrative infrastructure for the Tribunal to hold its hearings anywhere in Canada as is necessary or desirable for the proper conduct of the Tribunal’s business.

#### **Mission**

At the Competition Tribunal we are committed to providing an efficient and expeditious adjudicative process before an independent forum to litigants involved in civil reviewable matters under Part VIII of the *Competition Act*. We strive to improve the disposition of cases by adapting to new approaches and technologies.



## Objectives and Priorities

- The Tribunal's objective is to provide 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 Registry's objective 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 issue of decisions.

## Organization Composition

The program consists of one business line, the Competition Tribunal, and one service line, its Registry.

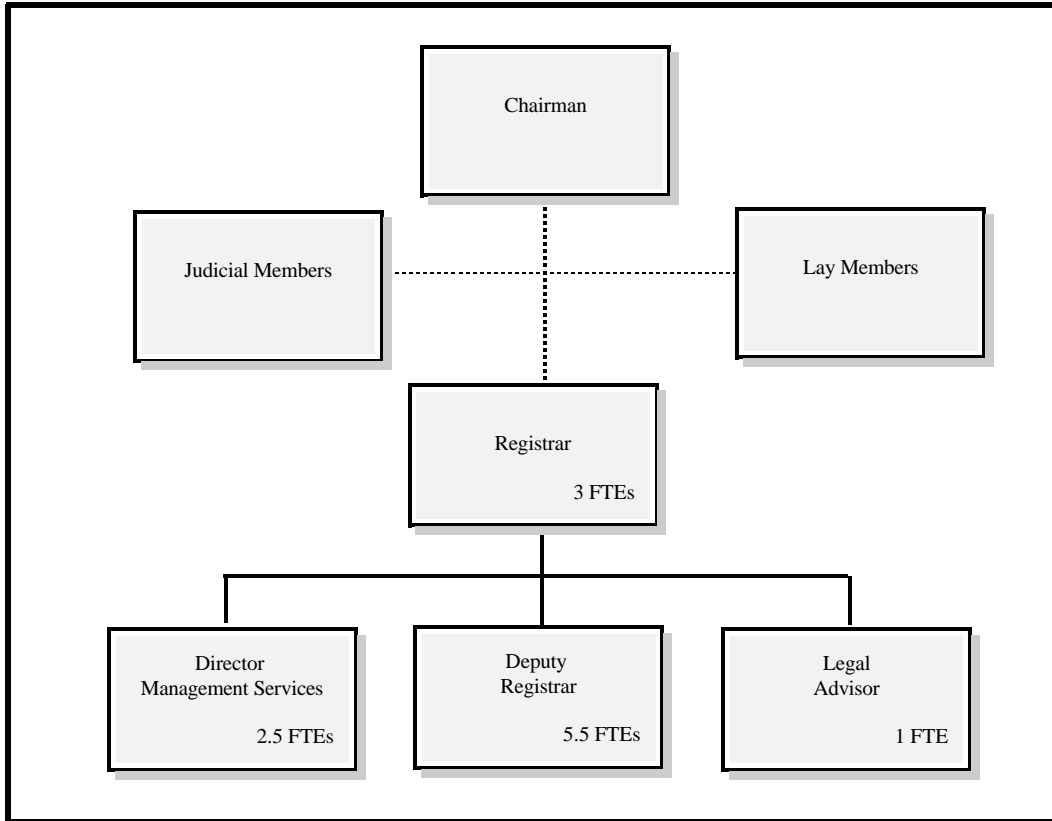
The Tribunal is composed of not more than four judicial members and not more than eight lay members. The judicial members are appointed, on the recommendation of the Minister of Justice, by the Governor in Council from among the judges of the Federal Court, Trial Division. The Governor in Council designates 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; at March 31, 1997, there were one full-time and five part-time 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 if required by the circumstances of a particular application. Decisions 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 are the Registrar, Deputy Registrar, Director of Management Services, and the Legal Advisor.

### Organization Chart



### Operating Context

Although the Tribunal does not receive advance notice of applications, it 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.

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 *Competition Tribunal Rules* aim for simplicity and clarity, leaving the Tribunal flexibility to direct proceedings to avoid delay.

---

**Section III**  
**Departmental Performance**

---

**A. Performance Expectations**

**Comparison of Total Planned Spending to Actual Expenditures, 1996-97  
by Business Line**

(\$ millions)

<b>Business Line</b>	<b>F.T.E.'s</b>	<b>Operating*</b>	<b>Total Net Expenditures</b>
Competition Tribunal	12	1.3	1.3
	12	1.0	1.0
<b>Totals</b>	<b>12</b>	<b>1.3</b>	<b>1.3</b>
	12	1.0	1.0
Cost of services provided by other departments			.5
<b>Net Cost of the Program</b>			<b>1.5</b>

**Note:** Shaded numbers denote actual expenditures in 1996-97

\* Operating includes contributions to employee benefit plans

**Planned versus Actual Spending by Business Line**

(\$ millions)

<b>Business Line</b>	<b>Actual 1993-94</b>	<b>Actual 1994-95</b>	<b>Actual 1995-96</b>	<b>Total Planned 1996-97</b>	<b>Actual 1996-97</b>
Competition Tribunal	1.0	1.0	1.1	1.3	1.0
<b>Total</b>	<b>1.0</b>	<b>1.0</b>	<b>1.1</b>	<b>1.3</b>	<b>1.0</b>

## Comparative Financial Details by Business Line

**Explanation:** The difference between the planned and actual spending in 1996-97 is mainly due to the fact that the cost for two legal notices out of the four new applications filed was covered in 1996-97. One application did not require a legal notice and the fourth legal notice was published after March 31, 1997. Also a hearing in Vancouver was expected to last 10 weeks but the case was settled and the hearing lasted only 1 day. Requirement for simultaneous interpretation at hearings was minimal. There was a total of 35 hearing days in 1996-97.

## Summary of Performance Expectations

The following figure illustrates the key performance information measures.

<b>The Competition Tribunal had a budget of \$1,267,000 in 1996-97</b>	
<b>to provide Canadians with:</b>	<b>to be demonstrated by:</b>
<p>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.</p>	<ul style="list-style-type: none"> <li>• Rules of practice and procedure to effect timely disposition of applications.</li> <li>• Pre-hearing procedures and hearings marked by no unwarranted delay.</li> <li>• Client satisfaction with registry services to litigants on practice and procedure.</li> <li>• Public access to information on the Tribunal, case records and decisions.</li> </ul>

## B. Performance Accomplishments

### Summary of Departmental Accomplishments

- During 1996-97, the Tribunal handed down the decision in *Director of Investigation and Research v. Tele-Direct Publications Inc.* (“Tele-Direct”); heard and decided *Director of Investigation and Research v. Bank of Montreal* (“Interac”) and *Director of Investigation and Research v. Dennis Washington* (“Seaspan”); received contested applications in *Director of Investigation and Research v. Canadian Pacific Limited* (“Cast”) and *TELUS Advertising Services Inc. v. Director of Investigation and Research* (“TELUS”); and received the first applications that proceeded under the new

procedural code for consent proceedings, i.e., *Director of Investigation and Research v. Canadian Waste Services Inc.* (“Canadian Waste”) and *Director of Investigation and Research v. ADM Agri-Industries Ltd.* (“ADM Agri-Industries”). The Supreme Court of Canada upheld the Tribunal’s decision in *Director of Investigation and Research v. Southam Inc.* (“Southam”) and set aside the Federal Court of Appeal’s order that returned the matter to the Tribunal for a re-hearing.

- The amendments to the *Competition Tribunal Rules*, establishing a separate procedural code for consent proceedings, came into effect on July 10, 1996.
- The Competition Tribunal website on the Internet was launched in September 1996.

### Disposition of Applications 1986-97\*

Since the creation of the Tribunal in June 1986, the Director of Investigation and Research has filed a total of 24 applications. Also, in 10 instances after final decisions had been issued, proceedings were reopened to modify, rescind, interpret or enforce orders. During 1996-97, the Tribunal received four new applications. The following table illustrates the annual caseflow since 1986.

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	0	1	3
1996-97	3	4	0	3	4
Total	n/a	24	10	30	n/a

\* As at March 31, 1997

\*\* Application to vary *Air Canada* included in 1992-93, and to vary *AGT Directory* included in 1996-97.

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

## Performance Measurement

The *Competition Tribunal Rules* set the framework for informal, expeditious proceedings, allowing the Tribunal to actively manage the progress of pre-hearing procedures towards a hearing date with the flexibility to respond to the wide range of variables that affect expediency and considerations of fairness in a particular case. However, the extent to which the Tribunal meets the objective of providing an expeditious adjudicative process for the civil reviewable matters under Part VIII of the *Competition Act* cannot be measured in quantifiable terms. The Tribunal is still a relatively new institution working with complex economic legislation; trends in recourse to the Tribunal and its caseload are still evolving.

Debate on the role of the Tribunal and comments by stakeholders on the efficacy of the rules of practice and procedure provide some means of assessment. 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 two contested applications that proceeded before the Tribunal during 1996-97 illustrate the impact of case-particular variables on the application of case management time-lines envisaged by the rules.

In *Tele-Direct*, pre-hearing proceedings were completed within eight months. The hearing commenced on the scheduled date. Counsel had estimated a duration of six to eight weeks but evidence was not completed when the hearing had to adjourn after nine weeks. The hearing was only completed after a further five weeks. The Tribunal's decision was reserved and only handed down eleven months later. In its reasons, the Tribunal offered an explanation for the unusual delay in rendering its decision, pointing out that "there is no doubt that this has been the most complex case presented to the Tribunal since its inception" consisting in fact of five cases, each involving a multitude of sub-issues; the record tallied almost 15,000 pages of transcript taken over 70 days, over 600 pages of written argument were submitted and oral argument took 11 days.

In *Seaspan*, pre-hearing proceedings were completed over nine months. On the day the ten-week hearing was to commence, the parties announced that they had arrived at a settlement and sought approval of a draft consent order setting out the terms of their agreement. The one-day consent order hearing was held two weeks later, the order approved and released with reasons two days later.

As for expeditiousness in consent order proceedings, although consent order applications have been heard and approved in less than 60 days, the *Interac* consent order was only approved eight months after filing of the application. The vigorous participation of a number of intervenors was a significant factor in the scope of the proceedings. The intervenor insurance companies, retailers and independent investment companies called evidence and presented argument in opposition to the consent order. The Tribunal's dispatch in dealing with this complex, opposed consent proceeding was favourably commented on in discussions at meetings of the competition Bar.

*Canadian Waste* and *ADM Agri-Industries*, filed during March 1997, are the first consent order applications that are proceeding under the streamlined regime of the revised consent order rules. It is anticipated that these matters will be determined significantly more expeditiously than under the previous rules of procedure.

During 1996-97, Consulting and Audit Canada carried out an audit to provide senior management of the Registry with an independent assessment of the efficiency, economy and effectiveness of the Registry's management practices, procedures and controls. The comprehensive audit examined registry services, financial services, safeguarding of assets and general security, administration (including training, travel, professional and legal services) and administration of the library. The audit report found the internal management practices, procedures and controls in all areas appropriate and well managed and concluded that no essential recommendations were required. In view of positive feedback from litigants regarding case processing and hearing assistance (most recently a written acknowledgement from counsel in the *Seaspan* case) and from users regarding accessibility to case documents and decisions, the Registry has not conducted any formal surveys on client satisfaction.

### **Details by Business Line and Service Line**

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

- **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) Inc. and Tele-Direct (Services) Inc., the two subsidiaries that publish telephone directories for Bell Canada.

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. The hearing commenced on September 5, 1995, continued for a total of 70 days and the Tribunal reserved its decision on March 1, 1996.

The Tribunal handed down its 371- page reasons and order on February 26, 1997. The Tribunal ordered Tele-Direct to cease engaging in the practice of tying space and services for regional advertisers and to cease its practice of discriminatory anti-competitive acts against consultants and Tele-Direct customers that choose to use consultants. The Tribunal dismissed the allegations that Tele-Direct engaged in a practice of anti-competitive acts against independent publishers and against agents. The Tribunal also dismissed the allegation that Tele-Direct's refusal to license its trade marks to certain competitors was anti-competitive.

The Tribunal's decision was not appealed.

- **Southam Inc.:** On August 8, 1995, the Federal Court of Appeal set aside the Tribunal's decision of June 2, 1992 that ordered Southam Inc. to sell one of two community newspapers that it had purchased in British Columbia. The Federal Court held that the Tribunal had applied the wrong legal test in its analysis of the product market and ordered the matter returned to the Tribunal for a rehearing in a manner consistent with the Court's finding regarding the product market. 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. On March 20, 1997, the Supreme Court unanimously reversed the Federal Court's decision and restored the Tribunal's decision. The Court set a high standard for overruling decisions of the Tribunal on questions such as market definition; since the Tribunal is composed of legal, economic and commercial expertise, its findings on questions of "mixed fact and law" can only be reversed if unreasonable or clearly wrong.

- **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* for approval of a draft consent order on which the Director and the respondents, the nine major Canadian banks, trust companies, credit union societies, and a company wholly owned by them, had agreed.



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 Interac network of shared banking services, 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 lawyer, bank and association of retailers. Representatives of insurance companies, retailers and a group of independent investment companies submitted both comments and sought and were granted leave to intervene in the proceedings.

Although this was a consent order proceeding, the intervenors played an active role at the hearing, which commenced the week of March 4, 1996, calling evidence and presenting argument in opposition to the consent order. The hearing 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 the procedure for approving new network services. In its extensive reasons, the Tribunal recognized the valid concerns of the intervenors but concluded that the consent order met the appropriate legal test.

- **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. As result of the two mergers Mr. Washington controlled Seaspan International Ltd., the largest tug and barge company in Canada whose business include ship berthing and barging, and Norsk Pacific Steamship Company Limited, which is in the business of ship barging. Mr. Washington already owned C.H. Cates and Sons Ltd., a provider of ship berthing services in Burrard Inlet. The application alleged that the mergers resulted in substantial lessening of competition in the ship berthing markets in Burrard Inlet and Roberts Bank and the British Columbia barging market.

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. A ten-week hearing was scheduled to commence on January 13, 1997 in Vancouver, B.C. However, on the eve of the hearing the parties arrived at a settlement and on

January 13th requested the Tribunal to approve a consent order setting out the terms of their agreement. The Tribunal set a schedule for questions, comments and requests to intervene before the hearing on the proposed consent order held on January 29, 1997. The consent order was approved and released, with reasons, on January 31, 1997. Except for the volume of assets involved, the remedy obtained by the Director of Investigation and Research in the consent order, divestiture of assets, did not differ significantly from the remedy originally sought in the contested application.

- **Canadian Pacific Limited (“Cast”)**: On December 20, 1996, the Acting Director of Investigation and Research filed an application under the merger provisions of the *Competition Act* 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. In late March 1997, the Port of Montreal was granted leave to intervene. Due to the special difficulties created by the massive volume of documents involved in the case, the Tribunal extended time for initial pre-hearing procedures and set April 1, 1997 for the Chairman’s consultation with the parties on the schedule for pre-hearing procedures and the hearing date.
- **TELUS Advertising Services Inc. (“TELUS”)**: On January 15, 1997, the successor companies to AGT Directory Ltd. and Edmonton Telephones Corporation filed an application seeking certain modifications to the consent order granted by the Tribunal on November 18, 1994 in *Director of Investigation and Research v. AGT Directory Ltd.* TELUS Corporation which owned AGT Directory Ltd. at the time of the original order, subsequently acquired Edmonton Telephones Corporation. As result of corporate restructuring the businesses of the two subsidiaries are now carried on by TELUS Advertising Services Inc. and TELUS Advertising Services (Edmonton) Inc. The application seeks to substitute the TELUS companies for their predecessors in the consent order. It also seeks removal of certain prohibitions in the consent order which applied when the applicants were unaffiliated. The Director of Investigation and Research is opposing the application. At March 31, 1997, the parties were proposing a hearing in early June, 1997.
- **Canadian Waste Services Inc. (“Canadian Waste”)**: On March 5, 1997, the Director filed an application for approval of a draft consent order under the merger provisions of the *Competition Act*. The application arises from the acquisition by Canadian Waste Services Inc. of the solid waste management business of Laidlaw throughout Canada.

The application alleges that the acquisition resulted in substantial lessening of competition with respect to commercial waste management services in four local markets: Sarnia, Brantford, Ottawa and the Outaouais. Canadian Waste agrees to the terms of the order which would require it to divest certain assets in each of the four markets in order to restore the pre-merger market structure and eliminate the substantial lessening of competition resulting from the acquisition of the Laidlaw business in each of these local markets. If Canadian Waste cannot sell the businesses within six months, a trustee will have a further three months to effect a sale. The sales will be subject to approval by the Director.

This is the first consent order application proceeding under the Tribunal's new procedural code for consent proceedings. Accordingly, within seven days after the filing of the application, the Chairman consulted with the parties and issued a scheduling order for pre-hearing procedures and the hearing. If there are no requests by third parties to intervene, the hearing will be held on April 14, 1997; if there are intervenors, the hearing will be held on April 22, 1997.

- **ADM Agri-Industries, Ltd. (“ADM Agri-Industries”)**: On March 21, 1997, the Director of Investigation and Research filed an application for approval of a draft consent order under the merger provisions of the *Competition Act*. The consent order arises from the acquisition by ADM Agri-Industries, Ltd. of the Canadian flour milling assets of Maple Leaf Mills. It reflects the agreement arrived at by the parties to cure the substantial lessening of competition identified by the Director as likely to result from the merger in the supply of bulk hard wheat bakery flour in the Quebec/Atlantic Canada market. The draft consent order requires ADM Agri-Industries, Ltd. to sell the Oak Street mill in Montreal with a supply agreement that entitle the purchaser to buy a specified amount of bulk hard wheat bakery flour from ADM Agri-Industries, Ltd. for a specified period. If the mill is not sold within 15 months, a trustee will have a further three months to effect a sale. If the trustee is unsuccessful, ADM Agri-Industries, Ltd. will be subject to a “backstop” remedy set out in a confidential schedule to the order. If and when the alternative remedy takes effect, the details will become public.

Within seven days after the filing of the application and after consultation with the parties, the Chairman issued a scheduling order for pre-hearing procedures and the hearing. If there are no requests to intervene by third parties, the hearing will be held on May 8, 1997; if there are intervenors, the hearing will be held on May 15, 1997.

- **Amendments to the *Competition Tribunal Rules*** came into effect 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 bring an application 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 litigants 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 more 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.

### *Registry*

- **Case Processing and Hearing Management:** During 1996-97, the Registry provided a full spectrum of support services to the Tribunal and litigants in seven applications. The *Tele-Direct* decision had been reserved when the hearing concluded on March 1, 1996. Preparation of the 371-page reasons and order ensued over the subsequent eleven months; the decision was issued on February 26, 1997. The *Interac* hearing concluded on April 26, 1996. The consent order and 69-page reasons were issued in both official languages on June 20, 1996. These lengthy documents were available within 24 hours after issue in QuickLaw databases, by fax-on-demand and, since September 1996, on the Tribunal's Internet website. The *Seaspan* application was filed on March 1, 1996. Over the following nine months eight pre-hearing conferences and motion hearings were held in Ottawa, Vancouver and Toronto and by conference call. Arrangements were put in place for a ten-week hearing to commence in Vancouver, B.C. on January 13, 1997. However, after a half-day hearing, the case was adjourned for two weeks to allow for documentary and other procedures before the hearing on the proposed consent order on January 29th. The consent order, with reasons, was issued in both official languages on January 31, 1997. While a Registry team attended on the *Seaspan* hearing in Vancouver, a team in Ottawa was responsible for the initial case processing stages of four new applications (i.e., *Cast*, *TELUS*, *Canadian Waste* and *ADM Agri-Industries*). The schedules for the pre-hearing procedures and hearings in these cases were to be set after March 31, 1997. The *Cast* application is

proceeding in both official languages; difficulties between the parties regarding exchange of relevant documents which run into hundreds of thousands have already required five pre-hearing conferences.

During 1996-97 all the applications involved multiple parties and tight time constraints. A total of 23 pre-hearings and motion hearings were held in and outside Ottawa; 119 notices, directions and orders were issued.

- **Educational Seminar for Members:** A bi-annual seminar was held in October 1996 as part of the ongoing program to review and discuss economic principles underlying competition law, the Tribunal's case law and other matters of interest to Tribunal members. The seminar was also an occasion to welcome a newly-appointed lay member.
- **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 has become 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. During the period April 1995 - March 1997, users obtained 2,262 documents (29,928 pages).

In response to user demand, a Tribunal website was launched on the Internet in September 1996. The site provides information on the Tribunal and its members, on the enabling legislation and current applications before the Tribunal, as well as the text of orders issued by the Tribunal. Members of the competition law Bar have commended the launch of the website and its content. The address of the Competition Tribunal homepage is: <http://www.ct.gc.ca>.

- **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. During 1996-97, eight other departments and agencies also reserved the hearing room facilities. As on previous occasions when the Tribunal held hearings in Vancouver, B.C., the Registry obtained use of a Federal Court of Canada hearing room, panel offices and administrative space for the *Seaspan* hearing that was to be held from mid-January to mid-April 1997.

---

**Section IV**  
**Supplementary Information**

---

**A. Financial Summary**

**Authorities for 1996-97 - Part II of the Estimates**

**Financial Requirements by Authority**

<b>Vote</b>	<b>(millions of dollars)</b>	<b>1996-97 Main Estimates</b>	<b>1996-97 Actual</b>
<hr/>			
<b>Competition Tribunal</b>			
45	Program expenditures	1.2	.9
(S)	Contributions to employee benefit plans	.1	.1
<hr/>			
<b>Total Agency</b>		<b>1.3</b>	<b>1.0</b>

---

**B. Enabling Legislation**

*Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.)  
Part VIII, *Competition Act*, R.S.C. 1985, c. C-34

**C. Contacts for Further Information**

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

Telephone: (613) 957-3172

World Wide Web: <http://www.ct.gc.ca>

Fax-on-demand (dial 819-956-7139 from a fax machine)

**D. Cases Filed 1986-97\*\***

	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	96/97
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	96/97
21	Canadian Pacific Limited	(Merger)	96/97	ongoing
22	AGT Directory Limited (TELUS) (Abuse of dominance - Variation)		96/97	ongoing
23	Canadian Waste Services Inc.	(Merger)	96/97	ongoing
24	ADM Agri-Industries Ltd.	(Merger)	96/97	ongoing

\* Withdrawn

\*\* March 31, 1997