

Annual Report



of the Commissioner of Competition for the Year Ending March 31, 2007

on the enforcement and administration of the Competition Act
Consumer Packaging and Labelling Act
Precious Metals Marking Act

Textile Labelling Act

www.competitionbureau.gc.ca







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LETTER OF PRESENTATION

Gatineau, Quebec

The Honourable Tony Clement, PC, MP Minister of Industry Ottawa, Ontario K1A 0H5

Dear Sir,

I have the honour to submit, pursuant to section 127 of the *Competition Act*, the following report on the operation of the *Competition Act*, the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act* and the *Precious Metals Marking Act* for the fiscal year ended March 31, 2007.

Sheridan Scott

Commissioner of Competition

MESSAGE FROM THE COMMISSIONER



It gives me great pleasure to present our Annual Report for the year. Our continued commitment to strengthening the Canadian economy has allowed us to realize our enforcement, advocacy and management priorities as outlined in last year's Annual Report. The Bureau continues to be at the forefront of competitive marketplace trends - identifying, investigating and managing competitive issues that have an anti-competitive impact on consumers and businesses.

As I outlined in April 2006, we are intent on focusing our resources in key areas to achieve maximum effect in the marketplace. This past year, we continued to investigate allegations of anti-competitive behaviour in the marketplace and developed specific priorities to address the effects of globalization, deregulation and technological change while reinforcing our domestic enforcement capacity.

As part of our priorities on domestic cartels, the Bureau investigated a number of important Canadian conspiracies in 2006-2007, including alleged price-fixing among gasoline station operators in a number of local markets in Quebec.

There was an increase in the number of merger reviews conducted over the past year. The Bureau reviewed a total of 263 matters, which included 238 non-complex, 22 complex and 3 very complex reviews, namely in the areas of agriculture, paper and forest products, beer and media.

The Bureau continues to view mass marketing fraud as a serious problem. Charges were laid against a number of individuals and companies operating deceptive telemarketing and phoney invoice scams. Regarding civil cases, the Bureau reached agreements with a number of companies, including one of Canada's largest retailers of men's apparel, and a Quebec-based company that operated a chain of weight loss clinics. The total amount for criminal fines and civil administrative monetary penalties for 2006-2007 was approximately \$3.1 million, demon-

strating the Bureau's commitment to fighting fraud while ensuring that consumers benefit from product choice in the marketplace.

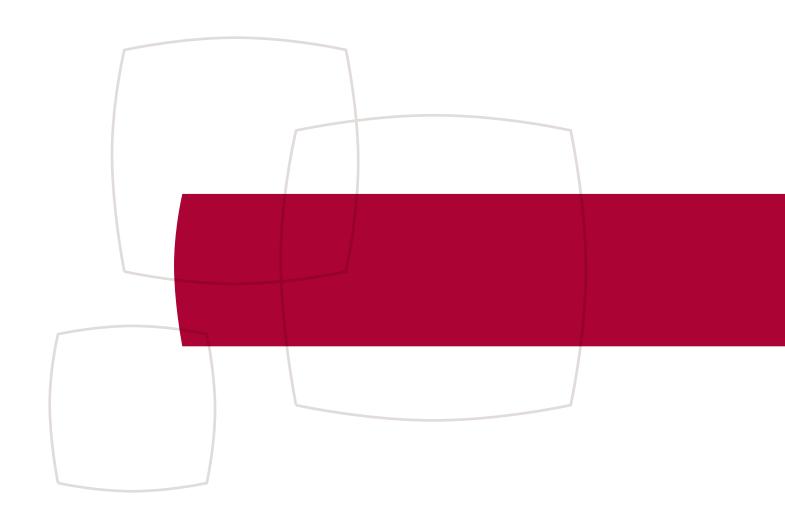
The Bureau continues to broaden its domestic and international partnerships to further advance its ability to monitor and respond to policy, advocacy and enforcement issues. Included in these partnerships is the International Competition Network, a network of competition authorities from around the world.

This year, the Bureau published several bulletins, guidelines and technical backgrounders to ensure that our interpretation of the *Competition Act* is clear. These included a technical bulletin on regulated conduct and an information bulletin on merger remedies in Canada. The Bureau also conducted several consultation sessions, inviting the public and stakeholders to provide comments on various draft publications.

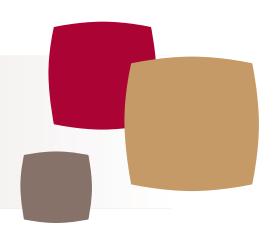
Focussing on the Bureau's current priorities, as well as future areas of enforcement, advocacy and management, I foresee one of the busiest and most successful years in the Bureau's history. We will continue to promote and protect competitive markets and encourage informed consumer choice. Together we have achieved and surpassed expectations, and I am confident our success will continue into the year ahead. This is not an easy task, but one made possible thanks to the shared strengths of the Bureau's team.

Sheridan Scott

Commissioner of Competition



I. INTRODUCTION



I. INTRODUCTION

The Competition Bureau works to support a dynamic, healthy, innovative and competitive marketplace in which Canadians can enjoy the benefits of competitive prices, product choice and quality services. The Bureau accomplishes this by promoting and maintaining competition.

A competitive marketplace promotes the efficiency of the economy, expands opportunities for Canadian enterprises in world markets, ensures that small and medium-sized businesses have equal opportunities and provides consumers with competitive prices, product choice and accurate product information. Competition is the foundation of a strong, modern and knowledge-based economy, spurring innovation, competitiveness and productivity growth.

The Bureau administers four laws that encourage and maintain competition in Canada: the *Competition Act*, the *Consumer Packaging and Labelling Act* (for non-food products), the *Precious Metals Marking Act* and the *Textile Labelling Act*. This report summarizes the Bureau's activities under these statutes for the fiscal year ending March 31, 2007.

The Bureau operates on the assumption that most businesses are law-abiding and, therefore, comply with the Acts and support the need for laws to govern the marketplace. The Bureau sees vigorous communication and advocacy as effective ways to achieve compliance with these laws and, consequently, works to inform businesses and other stakeholders about them. Through its advocacy program, the Bureau actively promotes a competitive marketplace and develops competition policy and legislation in Canada and internationally.

The Bureau's work to educate the players in the marketplace is complemented by several forms of voluntary compliance. The elements of the Bureau's compliance program range from written opinions, which help businesses that want to avoid breaking the law, to alternative case resolutions, which help correct anti-competitive behaviour in a timely and cost-effective fashion, without resorting to legal action.

Businesses and individuals that disregard the law or fail to take advantage of opportunities for voluntary compliance may be prosecuted in criminal court by the Director of Public Prosecutions, or be subject to civil litigation by the Bureau before the Competition Tribunal or in civil court.

This report deals with the Bureau's activities as follows:

- Pursuing criminal matters (Chapter 2);
- Preventing abuse of dominance and other anti-competitive business practices (Chapter 3);
- Eliminating false or misleading representations and deceptive marketing practices (Chapter 4);
- Reviewing mergers (Chapter 5);
- Advocating for competition and international coordination (Chapter 6);
- Modernizing Canada's approach to competition law (Chapter 7); and
- Communicating with consumers and businesses (Chapter 8).

This report seeks to show how the Bureau's activities over the past year have benefited Canadians. For statistical data and legal references, visit the Bureau's Web site (www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/home).

1.1 Organizational structure

In 2006–2007, the Bureau employed 362 people in the National Capital Region and 85 in seven regional offices. The regional offices are located in Halifax, Montreal, Toronto, Hamilton, Winnipeg, Calgary and Vancouver.

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

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

The Compliance and Operations Branch oversees the Bureau's compliance program, enforcement policy, training program and client services. It also manages the Bureau's Information Centre and its planning, resource management, administration and informatics activities.

The **Criminal Matters Branch** administers and enforces the criminal provisions of the *Competition Act*, including those covering conspiracies that unduly lessen competition (such as price fixing) and bid-rigging, price discrimination, predatory pricing and price maintenance. The Branch carries out its enforcement activities through the National Capital Region office and the regional offices.

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

The External Relations and Public Affairs Branch includes the International Affairs and Communications divisions. The Branch furthers the Bureau's interests in international co-operation, negotiations and policy development. It also ensures that Canadian consumers, businesses and the international community are aware of the Bureau's crucial contribution to competition in the marketplace and to the growth of the Canadian economy.

The **Fair Business Practices Branch** administers and enforces the provisions of the *Competition Act* on misleading representations and deceptive marketing practices. Among these provisions are those dealing with deceptive

telemarketing, multi-level marketing plans and pyramid selling schemes, as well as misrepresentations, such as general false or misleading statements, false or misleading ordinary price claims and promotional contests in which organizers inadequately disclose contest rules. The Branch also administers and enforces the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*. The Branch carries out its investigations through the National Capital Region office and the regional offices.

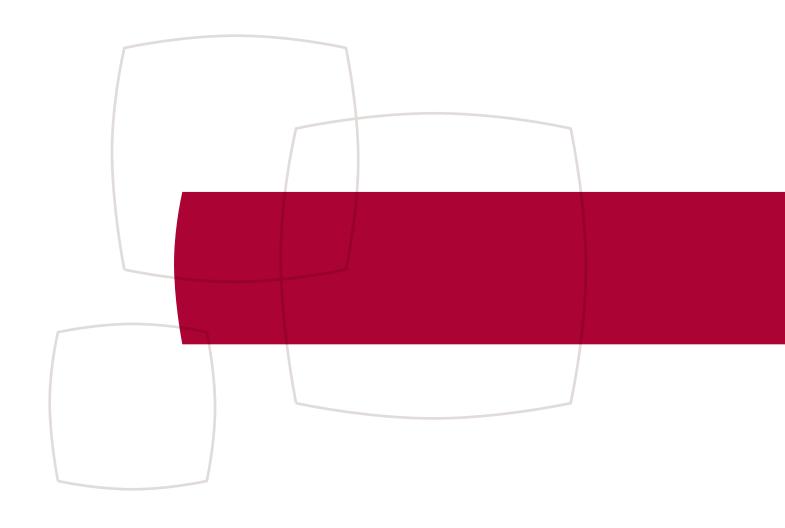
The **Legislative** and **Parliamentary** Affairs Branch is responsible for the ongoing modernization of the *Competition Act*, manages the Bureau's work within Parliament's law-making process and helps with policy and advocacy matters.

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

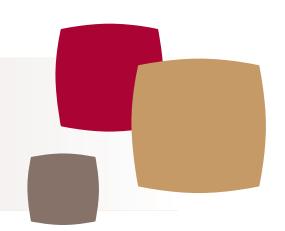
1.2 Operations

In 2006–2007, the Bureau's operating budget was \$40.3 million, including \$10.5 million in user fees. In addition, the Bureau received \$7.7 million to meet additional but temporary operational requirements. A significant portion of the budget—\$32.5 million or 81 per cent—was allocated to salaries for 447 authorized full-time staff, which comprised 26 executives, 11 economists, 270 competition law officers and 140 employees carrying out informatics, administrative services and support functions.

The Bureau is responsible for collecting fines the courts impose in competition law cases (\$4.2 million in 2006–2007). The fines are remitted to the Government of Canada's Receiver General.



2. PURSUING CRIMINAL MATTERS



2. PURSUING CRIMINAL MATTERS

The Bureau administers and enforces the provisions of the *Competition Act* prohibiting conspiracy, bid-rigging, price discrimination, predatory pricing and price maintenance:

- The conspiracy provisions (section 45) cover agreements between two or more competitors to unduly lessen competition, such as agreements to fix prices or allocate customers and territories.
- The bid-rigging provisions (section 47) deal with agreements to thwart the competitive tendering process organizations use to acquire products or services.
- The price discrimination provisions help ensure that small and medium-sized businesses have an opportunity equal to that of large firms to participate in the economy, by requiring suppliers to make discounts, price concessions and advertising allowances available to all competing customers on fair terms.
- The predatory pricing provisions address situations in which firms, in order to eliminate or deter rivals as competitors, make it a policy to sell products below cost for a sufficiently long period of time and then raise prices or otherwise harm the competitive process.
- The price maintenance provisions (section 61) are designed to provide resellers of products with the freedom to set their own prices and to protect suppliers from customer-led boycotts because they supply firms with low-pricing policies.

The Bureau has a range of tools at its disposal to enforce these provisions. It refers the most serious matters to the Director of Public Prosecutions and recommends prosecution. Offenders may receive heavy fines, prison terms or both. The first section of this chapter describes the Bureau's criminal enforcement activity during 2006–2007.

The Bureau also works with firms to eliminate anti-competitive behaviour through alternative case resolutions. Examples are provided in the second section of this chapter.

Finally, under the Act, parties may request written opinions on business practices they are considering. The third section of this chapter summarizes some of the written opinions the Bureau issued in 2006–2007.

For more information on the cases described in this chapter and others, including information notices, news releases and backgrounders, visit the Bureau's Web site (www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/h_00021e.html).

2.1 Criminal enforcement actions

2.1.1 Conspiracy

The conspiracy provisions of the *Competition Act* prohibit agreements between two or more people or organizations to prevent or unduly lessen competition or to unreasonably enhance the price of a product. The Bureau considers agreements between competitors to fix prices, to allocate customers or geographic markets, or to limit the production of a product by setting quotas among competitors or other means to be hard-core cartel activities, among the most egregious forms of anti-competitive conduct, harming both consumers and businesses.

Enforcing the conspiracy provisions is an important priority for the Bureau. Doing so involves investigating and prosecuting domestic and international cartels. On the domestic front, the Bureau continues to strengthen its regional offices, which take the lead in gathering market intelligence in local markets and investigating allegations of criminal cartel activity, as well as carrying out the Bureau's education and advocacy work to promote the principles of the *Competition Act*. The Bureau also works closely with competition agencies around the world in the fight against international cartels.

Retail gasoline industry

The Commissioner of Competition confirmed in June 2006 that the Bureau is investigating alleged price fixing between competitors in the retail gasoline industry in local markets in Quebec. Superior Court of Quebec granted search warrants based on evidence that there were reasonable grounds to believe that price fixing had occurred.

Auction services

In August 2006, the Competition Bureau obtained a prohibition order against Sotheby's, the international auction house, and its Canadian subsidiary, Sotheby's (Canada) Inc. The Bureau's investigation concerned an international conspiracy to suppress and eliminate competition by fixing auction commission rates. In particular, the Bureau looked at the effects this conspiracy may have had on Canadian auction sellers between 1993 and 2000.

Auto body repair

In February 2007, the Bureau settled a price fixing and price maintenance case involving six auto body repair shops in Fort McMurray, Alberta: Shamrock Maintenance & Hotshot Services Ltd., Pete's Custom Coachwork, Birchwood Auto Body, Alberta Motor Products Ltd., Noral Motors and Lane's Auto Shop. The settlement requires these auto body repair shops to set their prices for auto body repair work independently from one another so that consumers benefit from competitive labour rates for these services.

2.1.2 Bid-rigging

Light-emitting diode traffic lights

A Bureau investigation led to charges against two of Quebec's main suppliers of light-emitting diode (LED) traffic lights and two of their directors. In October 2006, Electromega Limited, of Candiac, and its president, Alain Lamoureux, and Tassimco Technologies Canada Inc, of Terrebonne, and its vice-president, Conrad DiPietro, were charged with bid-rigging following a call for tenders by the municipal government in Quebec City for bids to replace incandescent traffic lights with LED signals, under a Hydro-Québec energy efficiency plan. The Bureau alleged that the parties entered into an illegal agreement to share the Quebec City contract.

Taxi services

In July 2004, the Competition Bureau laid charges against six taxi companies and seven individuals alleging that between 1992 and 2004 the taxi companies agreed not to compete with each other for contracts to supply taxi services to institutional and commercial facilities in St. John's. A preliminary inquiry was held in early 2006 in the Provincial Court of Newfoundland and Labrador.

On September 18, 2006, the Court ruled that the Crown failed to prove that there was a conspiracy, combination, arrangement or agreement that contravened the *Competition Act*. The Crown subsequently filed an application in the Supreme Court of Newfoundland and Labrador to have the files of the original case reviewed. A hearing is scheduled for June 2007.

2.2 Alternative case resolutions

The Bureau takes a variety of approaches to help restore competition in the marketplace. The more general approaches include education, monitoring, outreach and advocacy. To resolve specific complaints, the Bureau assesses each case on its own merits and chooses the most appropriate enforcement instrument based on a number of factors, including prior anti-competitive conduct of the company and its willingness to resolve the matter.

Some issues may be resolved quickly and easily, without a full inquiry or judicial proceeding, through alternative case resolution, which includes voluntary undertakings, prohibition orders and the like. Resolving matters in this way reduces uncertainty and maximizes the use of Bureau resources, since alternative case resolutions do not require lengthy court actions.

2.2.1 Price maintenance

Die-cast models

In January 2006, the Bureau received information suggesting that a wholesale distributor of die-cast models had implemented a policy of price maintenance regarding the resale and discounting of these models throughout Canada. The Bureau sent a letter informing the firm that such a policy raised concerns under the *Competition Act*. The firm responded by revising the policy and informing distributors that they are free to set their own prices. This matter was closed in May 2006.

Jewellery

In 2006, the Bureau received a complaint about alleged price maintenance practices of a jewellery retailer. In a letter noting the complaint and providing additional information on the price maintenance provisions of the Act, the Bureau asked the retailer to review its sales and marketing policies to ensure that they did not limit the prices at which retail customers may sell their products or those of its competitors. The Bureau also recommended that the retailer make its staff aware of the price maintenance provisions of the Act and instruct them to fully comply with the law.

Children's footwear

In November 2005, the Bureau received a complaint that a Canadian retailer had threatened to stop supplying children's footwear to the complainant because the latter's resale prices were below those specified by the retailer. The Bureau advised the retailer that resale price maintenance is unlawful under the *Competition Act*. The retailer agreed in writing to implement a compliance program to prevent any future attempts to control the prices at which retailers sell or advertise its products. The Bureau concluded its examination of this matter in July 2006.

Pet food

In August 2006, the Bureau resolved a case involving allegations of price maintenance in the emerging raw dog food industry. A pet food company restored supply to retailers that it had refused to sell to because of their low-pricing policies. It also agreed to make members of the newly formed association of raw pet food producers aware of the price maintenance provisions of Act.

The Bureau resolved a second pet food price maintenance case in August 2006. A pet food company agreed to modify the terms and conditions of its catalogue, to ensure that it is clear that the manufacturers suggested retail price is, in fact, only a guideline. It further agreed to issue a policy letter to all sales staff indicating that retailers are free to sell its pet food at prices different from the suggested retail price.

Farmers market

In June 2006, the Bureau received information that a farmers' market was issuing price controls and penalizing retailers who sold their products below specified prices. To resolve the case, the Bureau had an information meeting with the market's board of directors and provided information on the price maintenance provisions of the Act. The board agreed to remove its price control policy.

Water haulers

In November 2005, the Bureau received a complaint about an alleged agreement between local water haulers on delivery prices. Following an investigation, the Bureau concluded that it could not rule out the possibility that some haulers had communicated with each other about their pricing. The Bureau sent information letters to the haulers to ensure that they understood their obligations under the Act and to encourage full compliance.

2.3 Written opinions

The Bureau provides legally binding written opinions to businesses seeking to comply with the *Competition Act*. Company officials, lawyers and others may request written opinions on whether proposed business plans or practices would raise concerns under the Act. The Bureau's written opinions take into account jurisprudence, previous written opinions and current policies. Written opinions are binding for as long as the material facts of the situation remain substantially unchanged and the firm carries out the business plan or practice substantially as proposed.

The following are examples of written opinions the Bureau issued in 2006–2007 on proposals that touch on the criminal provisions of the *Competition Act*. The Bureau also publishes detailed summaries of its written opinions on its Web site (www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/00782e.html).

2.3.1 Conspiracy

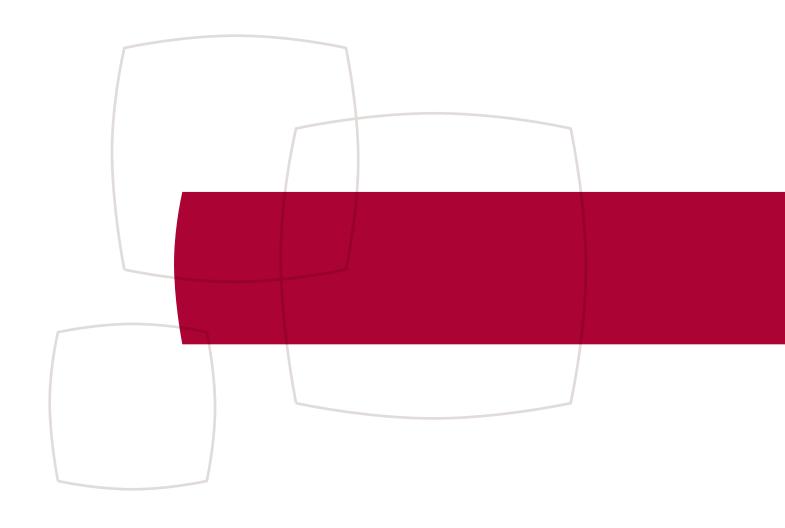
Licensing system

In February 2006, an agency of the Crown sought a written opinion on whether a proposed licensing system would raise concerns under the *Competition Act*. The Bureau examined the matter in the light of Crown immunity and section 2.1 of the Act, which deals with the application of the Act to an agent of the Crown. The Bureau determined that the Act would not apply to the operation of this licensing system and sent a written opinion to this effect.

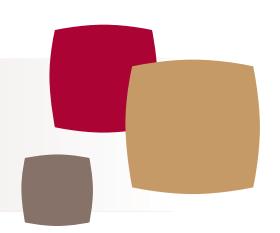
Advertising and promotion

In December 2006, the Bureau received a request for a written opinion from the Society of Obstetricians and Gynaecologists of Canada. The group was considering setting up a three-year agreement with four pharmaceutical companies to limit the number of samples of oral contraceptives the companies would make available to doctors. The Bureau assessed the proposal under the conspiracy provisions of the Act, specifically those that restrict certain types of advertising and promotion. The Bureau also considered the defences that the Act contains that, in essence, allow agreements that affect prices, customers or methods of distribution. The Bureau was initially concerned that with fewer opportunities to try new contraceptive brands customers might be less likely

to switch between brands, which would entrench the market share of these pharmaceutical companies. The Bureau's full analysis showed, however, that the agreement would not likely unduly prevent or lessen competition for oral contraceptives, nor cause a significant change in their price. The Bureau sent a written opinion to this effect in July 2007.



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



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

The Bureau acts as a referee to address competition-related disputes that arise between businesses or between consumers and businesses. It investigates possible anti-competitive behaviour, such as abuse of dominance, as well as restraints suppliers impose on customers, such as refusal to supply, exclusive dealing and tied selling.

Abuse of dominance occurs when a dominant firm in a market or a dominant group of firms engages in conduct intended to eliminate or discipline a competitor. Abuse of dominance can also take the form of deterring the entry of new competitors into the market, which results in competition being substantially lessened or prevented all together. The Bureau considers market dominance to be synonymous with market power. The most straightforward indication of the existence of market power is the ability of a firm or group of firms to raise prices above competitive levels for a considerable period of time.

When appropriate, the Bureau opens discussions to try to get businesses to comply voluntarily with the law. Sometimes, this is all the action needed to correct the situation. A more formal solution involves registering a consent agreement with the Competition Tribunal, whereby all parties agree on a solution that will restore competition to the marketplace. When voluntary compliance cannot be achieved, the Bureau may file an application with the Competition Tribunal for an order to remedy the situation.

The first section of this chapter describes the Bureau's enforcement activity with regard to abuse of dominance and other anti-competitive business practices during 2006–2007.

The Bureau also works with firms to eliminate anti-competitive behaviour through alternative case resolutions. Examples are provided in the second section of this chapter.

The third section of the chapter review the Bureau's work during 2006–2007 on a variety of policy matters.

For more information on the cases described in this chapter and others, including information notices, news releases and backgrounders, visit the Bureau's Web site (www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/h_00021e.html).

3.1 Enforcement actions

3.1.1 Court cases

Cast iron pipes and fittings

In March 2006, the Competition Bureau appealed to the Federal Court of Appeal the Competition Tribunal's 2005 decision that Canada Pipe Company Ltd. had not abused its dominant position in the market for cast iron pipes, fittings and mechanical joint couplings for drain, waste and vent applications in Canada.

On June 23, 2006, the Federal Court of Appeal allowed the Bureau's appeal and dismissed Canada Pipe's crossappeal. The Court of Appeal concluded that the Tribunal had erred in its analysis of two paragraphs of the *Competition Act* and decided that the matter should be returned to the Competition Tribunal for reconsideration with the correct legal tests. Subsequently, Canada Pipe sought leave to appeal that decision to the Supreme Court of Canada.

Motion picture distribution and exhibition

On May 2, 2006, the Federal Court of Appeal dismissed two appeals filed by Cinémas Guzzo of Montreal in response to a 2005 decision of the Federal Court to dismiss

two applications the firm had filed against the Bureau, challenging its decision in December 2002 to discontinue its inquiry into motion picture distribution and exhibition in Canada. The lower court held that because the Bureau may decide on its own to discontinue an inquiry and because this is essentially an administrative decision, the Court should defer to it. Cinémas Guzzo subsequently filed an application for leave to appeal to the Supreme Court of Canada, which the court rejected on November 23, 2006.

Waste management services

On September 7, 2006, Waste Management of Canada Corporation, with the consent of the Commissioner of Competition, applied to the Competition Tribunal for an order to rescind the order it had issued in 1992 in *Director of Investigation and Research v. Laidlaw Waste Systems*. A Tribunal allowed the application on November 21, 2006.

3.1.2 Private access cases

Internet payment services

B-Filer Inc., doing business as *GPay GuaranteedPayment*, and *NPay Inc. v. The Bank of Nova Scotia* was filed with the Competition Tribunal in June 2005. The Tribunal held a full hearing and decided in January 2007 to dismiss B-Filer's case.

3.1.3 Applications for leave

Perfume

On February 23, 2007, Sears Canada Inc. filed an application with the Competition Tribunal for leave to apply for an order requiring Parfums Christian Dior Canada Inc. and Parfums Givenchy Canada Ltd. to continue to supply products to Sears. The Tribunal dismissed the application on March 23, 2007, finding that Sears was unable to show that not being able to sell these products had substantially affected its business.

On March 13, 2007, London Drugs Limited filed an application with the Tribunal for leave to apply for an order requiring Givenchy to continue to supply "prestige" fragrances to London Drugs. This application, which was based on facts roughly similar to those on which Sears based its application, as noted above, was withdrawn.

Audio products

This was the first hearing of a section 75 application brought by a private litigant. On March 22, 2007, Sono Pro Inc. filed an application with the Tribunal for leave to apply for an order requiring Sonotechnique P.J.L. Inc. to supply Sono Pro with Dolby audio products. The application, the first of its kind by a private party, was dismissed, since Sono Pro was unable to show that not being able to sell these products had substantially affected its business.

3.2 Alternative case resolutions

The Bureau takes a variety of approaches to help restore competition in the marketplace. The more general approaches include education, monitoring, outreach and advocacy. To resolve specific complaints, the Bureau assesses each case on its own merits and chooses the most appropriate enforcement instrument based on a number of factors, including prior anti-competitive conduct of the company and its willingness to resolve the matter.

Some issues may be resolved quickly and easily, without a full inquiry or judicial proceeding, through alternative case resolution, which includes voluntary undertakings and prohibition orders. Resolving matters in this way reduces uncertainty and maximizes the use of Bureau resources, since alternative case resolutions do not require lengthy court actions.

3.2.1 Abuse of dominance

Emerging health care profession

In October 2005, the Bureau initiated an inquiry regarding the ability of the members of an emerging health care profession to independently provide services to consumers in Ontario. It was alleged that the professionals were being constrained by anti-competitive acts of a competing and dominant health care profession with an overlapping scope of practice.

At the time, the law required members of the emerging profession to get an order from a member of the dominant profession in order to practise, and it was alleged that the difficulty in obtaining such orders was the result of anti-competitive conduct. The Bureau's investigation revealed that the consequences of providing such an order

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

were perhaps unclear to members of the dominant profession. The Bureau worked with the regulatory body of the dominant profession to ensure it was communicating clearly to its members on this issue. The Bureau discontinued the inquiry in March 2007.

Fees and incentives for real estate brokers

The Competition Bureau initiated an inquiry in September 2005 into rules the Real Estate Council of Alberta was enforcing that prohibited real estate brokers from offering cash incentives and referral fees to non-industry members in the province.

In May 2006, following widespread consultations and discussions with the Bureau, the Council announced amendments to the rules under Alberta's *Real Estate Act*. As a result of the changes, brokers in Alberta are now free to offer cash rebates to buyers as a means of competing for their business. Agents are now also free to offer referral fees, which gives agents greater means to identify prospective buyers and sellers. The amendments came into force on October 1, 2006, and the Bureau concluded that they should make it less likely that competition for broker services would be prevented or lessened substantially. Consequently, the Bureau discontinued the inquiry in November 2006.

3.2 Policy matters

3.2.1 Professional services

Dental hygienists

Following up on advocacy work it had done with dental hygienists in Alberta, Nova Scotia and New Brunswick in 2005–2006, the Bureau sent a letter to dentistry and dental hygiene organizations on January 18, 2007, outlining the Commissioner's support for proposed changes to Ontario legislation that would allow dental hygienists and dentists to compete to provide dental hygiene services. Under the proposed changes hygienists would no longer have to obtain an order from dentists before being allowed to offer certain services.

Professions study

In May 2006, the Commissioner of Competition announced that the Bureau was undertaking a comparative study of self-regulated professions. The study focuses on

accountants, lawyers, optometrists, pharmacists and real estate agents. The purpose of the study is to determine to what extent these professions use anti-competitive restrictions to limit competition in their own or related markets. Anti-competitive restrictions may include barriers to entry in the market, limits on the ability of related professions to offer competing services, requirements regarding business structure and type of practice, mandatory or suggested fee schedules, and advertising restrictions. The study is based on an analysis of legislation, regulations, codes of practice and responses to a voluntary questionnaire the Bureau sent to professional associations, colleges and boards. The Bureau's study will be similar to those recently carried out by competition authorities in other jurisdictions, such as the European Union and Ireland.

3.2.2 Telecommunications

Local residential and business telephone services

On April 6, 2006, the Canadian Radio-television and Telecommunications Commission (CRTC) issued a decision following hearings to determine the framework, including the criteria, for forbearance from regulation of residential and business local telephone services. The CRTC's findings can be summarized as follows:

- The relevant product market includes all local exchange services of incumbent local exchange carriers
 (ILECs), competitive local exchange carriers (CLECs)
 and resellers (including Voice Over Internet Protocol
 services and services offered in bundles) except mobile wireless. Residential and business are separate
 product markets.
- The relevant geographic market can be approximated by local forbearance regions, which are an aggregation of local exchanges based on a Census Metropolitan Area or one or more economic regions.
- The criteria for granting local forbearance include 25
 per cent ILEC market share loss in the relevant market, evidence of competing behaviour and demonstration that Competitor Quality of Service indicators have been met for six months prior to application.
- As a transitional regime, the no-win back period for residential local telephone services is reduced from 12 to 3 months.

Retail local exchange services

In January 2007, the Bureau provided comments on the Governor in Council's proposed order to vary the CRTC's decision on the framework for forbearance from the regulation of local exchange telephone services. In 2005, the Bureau participated in CRTC hearings on this matter, and a number of parties appealed the resulting decision. The Governor in Council responded with a proposed order that would vary the CRTC's decision by changing the criteria for forbearance. The proposed order was published for public consultation and the Bureau participated, recommending amendments to the proposed order to enhance jurisdictional certainty (between the CRTC and the Bureau) in future complaints of anti-competitive behaviour in these markets.

Draft bulletin on abuse of dominance in telecommunications

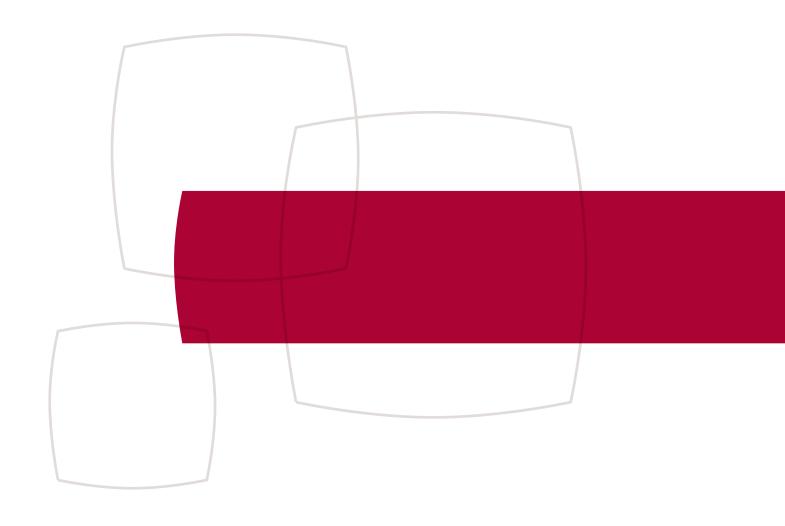
On September 28, 2006, the Competition Bureau issued a draft bulletin for public comment that describes the Bureau's approach to reviewing abuse of dominance complaints in deregulated telecommunications markets. The bulletin supplements the Bureau's *Enforcement Guidelines on the Abuse of Dominance Provisions*, which provides general guidance. The Bureau developed the bulletin to help ensure greater transparency and predictability when dealing with abuse of dominance in telecommunications, as it moves towards greater reliance on the *Competition Act*. When drafting the bulletin, the Bureau consulted with the CRTC to benefit from its expertise in the telecommunications sector.

Commercial radio policy

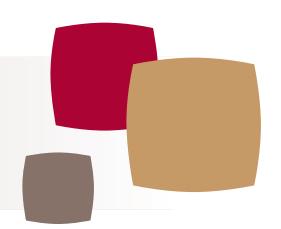
On December 15, 2006, the CRTC issued its revised policy on commercial radio. Among other things, the policy addresses airplay and financial support for Canadian content, cultural diversity, local management and local sales agreements, local programming and infomercials. In particular and contrary to the Bureau's position, the Commission agreed with other intervenors that radio competes with other media for advertising in a given market. However, the Commission remained of the view that local management agreements could have negative consequences. Accordingly, the Commission decided to continue to evaluate proposed agreements on a case-by-case basis. The CRTC's revised policy can be found at www.crtc.gc.ca/archive/ENG/Notices/2006/pb2006-158.htm.

Regulatory framework for wholesale services and the definition of essential service

The Bureau is participating in CRTC hearings to consider whether to adopt the definition of essential facility proposed in the Bureau's draft bulletin on abuse of dominance in telecommunications or another definition. In addition, the CRTC is considering which is the appropriate regulatory framework for allowing access to wholesale telecommunications services. These questions raise significant competition policy issues. This proceeding provides the Bureau with the opportunity to advocate for a definition of essential facilities in the existing regulated context that is as near to the definition that the Bureau would use when pursuing cases under the Competition Act. This may ease the transition of telecommunications markets from relying on regulation to relying on competition principles. In addition, and equally importantly, it may mitigate the potential economic impact and potential effect on competition of the CRTC's ultimate decision on these questions.



4.
ELIMINATING FALSE OR
MISLEADING REPRESENTATIONS
AND DECEPTIVE MARKETING
PRACTICES



4. ELIMINATING FALSE OR MISLEADING REPRESENTATIONS AND DECEPTIVE MARKETING PRACTICES

The Competition Bureau administers and enforces the false or misleading representations and deceptive marketing practices provisions of the *Competition Act*, as well as three laws promoting fair and truthful representations in the marketing of consumer products, namely the *Consumer Packaging and Labelling Act* (for non-food products), the *Precious Metals Marking Act* and the *Textile Labelling Act*.

The *Competition Act* contains criminal and civil provisions to address false or misleading representations and deceptive marketing practices when promoting the supply or use of a product or any business interest.

The general criminal provision prohibits all materially false or misleading representations made knowingly or recklessly. Other provisions specifically forbid deceptive telemarketing, deceptive notices of winning a prize, double ticketing and pyramid selling schemes. Lastly, the multi-level marketing provisions prohibit operators or participants in a multi-level marketing plan from making claims about compensation without disclosing in a fair, reasonable and timely manner the amount of compensation participants receive or are likely to receive.

The general civil provision prohibits all materially false or misleading representations. Other provisions specifically prohibit performance representations that are not based on adequate and proper tests, misleading warranties and guarantees, false or misleading ordinary selling price representations, the untrue, misleading or unauthorized use of tests and testimonials, bait and switch selling, and the sale of a product above its advertised price. The promotional contest provisions prohibit any contest that does not disclose required information.

The Consumer Packaging and Labelling Act, Precious Metals Marking Act and Textile Labelling Act prohibit false or misleading representations in specific sectors (pre-packaged consumer products, articles made of precious metals, and

textiles and apparel). These laws also set out requirements for labelling information, such as bilingual product descriptions, metric measurement declarations and dealer identity, all of which help consumers to make informed choices.

Under the criminal regime of the *Competition Act*, as well as the regulatory provisions of these three laws, the government may bring cases before the criminal courts alleging that firms are carrying out certain practices, requiring proof of each element of the offence beyond a reasonable doubt. If an investigation discloses evidence that, in the opinion of the Commissioner, provides the basis for a criminal prosecution, the Commissioner may refer the matter to the Director of Public Prosecutions to determine whether to prosecute.

Under the civil regime of the *Competition Act*, the Bureau may bring certain practices for review before the Competition Tribunal, the Federal Court or the superior court of a province or territory. To establish a breach of these provisions, the Bureau must prove each element of the conduct on a balance of probabilities.

The first two sections of this chapter describe the Bureau's criminal and civil enforcement activity during 2006–2007.

The Bureau also works with firms to eliminate anti-competitive behaviour through alternative case resolutions. Examples of these are provided in the third section of this chapter.

Finally, parties may request written opinions on business practices they are considering. The fourth section of this chapter summarizes some of the written opinions the Bureau issued in 2006–2007.

For more information on the cases described in this chapter and others, including information notices, news releases and backgrounders, visit the Bureau's Web site (www.competitionbureau.gc.ca/epic/site/ cb-bc.nsf/en/h_00021e.html).

4.1 Criminal enforcement actions

4.1.1 False or misleading representations

Section 52 of the *Competition Act* prohibits anyone from knowingly or recklessly making, or allowing anyone else to make, any representation to the public that is materially false or misleading. Proof that any person was deceived or misled is not necessary in order to establish that an offence took place.

Business and travel directories

On October 12, 2006, Michael Robert Petreikis, a U.S. citizen who operated out of the Toronto area under a number of aliases, received jail time for his involvement in a multimillion dollar advertising scam. As a result of the Bureau investigation, which it coordinated with the Toronto Strategic Partnership (a group of law enforcement agencies that tackle mass marketing fraud), Petreikis pleaded guilty to fraud over \$5,000 under the *Criminal Code*, and false and misleading representations under the *Competition Act*. As part of the scam, Petreikis mailed invoices to more than 10,000 companies in the U.S. and Europe for advertising in business and travel directories that the companies had never bought. Petreikis made a profit of more than \$10 million from the scam.

Lottery schemes

In December 2006, a B.C. man was ordered to pay a record fine of \$225,000 and perform 100 hours of community service for offences under the lottery and gaming provisions of the *Criminal Code*. Tom Taylor's offences related to direct mail lottery schemes that brought in \$47

million to organizations named Canadian Lottery Buyers Association, International Lottery Commission and Transworld Lottery Commission.

Taylor mailed information about the lottery schemes to residents of the U.S., the United Kingdom, Australia and New Zealand from 1995 to 2002. These schemes involved selling shares of lottery tickets. Consumers were led to believe they had better chances of winning significant amounts of money by buying into these schemes. They were also misled into believing that the promotions were affiliated with government.

Meanwhile, David Stucky, a Toronto-area man who was also involved in this scam, was acquitted in November 2006 on all 16 counts of making false or misleading representations. The judge in the case based the decision on the ground that "the public" to whom representations are made, as set out in section 52 of the *Competition Act*, includes only the Canadian public. The judge, however, found all of the promotions misleading, except for those of the so-called International Lottery Commission, and so Stucky would have been found guilty on 6 of the 16 counts but for the ruling on who comprises "the public."

On December 18, 2006, the Attorney General filed an appeal of this acquittal with the Ontario Court of Appeal. As of March 31, 2007, the hearing date had not been set.

4.1.2 Deceptive telemarketing

Section 52.1 of the *Competition Act* prohibits anyone from making, or allowing anyone else to make, any representation that is materially false or misleading when promoting the supply of a product or a business interest during person-to-person telephone calls. Telemarketers are also prohibited from requiring people to pay in advance for prizes they have or supposedly have won in a contest or game, failing to provide adequate and fair disclosure of the number and value of the "prizes," offering a "gift" as an inducement to buy another product, without fairly disclosing the value of the gift, and offering a product at a grossly inflated price and requiring payment in advance.

This provision also requires that telemarketers disclose the name of the company or person they are working for, the type of product or business interest they are promoting, the purpose of the call, the price of any product being sold, and any restrictions or conditions that must

4. ELIMINATING FALSE OR MISLEADING REPRESENTATIONS AND DECEPTIVE MARKETING PRACTICES

be met before the product will be delivered. Directors and officers of a corporation may be held liable for offences committed by the corporation.

Office supplies

Criminal charges under the *Competition Act* and the *Criminal Code* were laid in May 2006, against a Toronto-based telemarketing operation that allegedly targeted businesses and not-for-profit organizations across Canada, invoicing them for toner and ink jet cartridges they did not order.

The accused, Andrew James Wilson and 1462986 Ontario Inc., allegedly convinced customers to accept and pay for toner and ink jet cartridges by leading them to believe they were dealing with their regular supplier. Prices for the products were reportedly two to three times higher than suppliers normally charge. In addition, the accused allegedly refilled toner cartridges and failed to tell prospective customers that the cartridges were recycled.

In a second case, two Toronto-based telemarketing firms and the owner pleaded guilty in March 2007 and were sentenced following a Bureau investigation into a deceptive telemarketing scam involving the sale of office toner products. Edward Leefe was fined \$50,000 and received an 18-month conditional sentence. A fine of \$1.5 million was levied against Lexcan International Corp. and H&P Communications Inc., while seized cheques worth \$78,000 were ordered to be returned to victims in Canada and the United States.

Leefe's telemarketing operation promoted the sale of toner products to businesses, not-for-profit organizations, schools, universities and government agencies in Canada and the U.S. Employees of these organizations were deceived into providing the make and model of their office equipment, supposedly in response to a survey or to receive a catalogue.

As part of the scam, Leefe used a deliberate and scripted series of false and misleading representations designed to convince prospective customers that they had an existing business relationship with the firm. He instructed his telemarketers not to disclose the actual price of the toner products and not to say that the cartridges were recycled.

Business directory listings

In May 2006, a Bureau investigation uncovered a business directory scam that had operated in Montreal and Toronto for 10 years. Five individuals and three companies (Datacom Marketing Inc. and Datacom Direct Inc., which both operated in Ontario, and Datacom Marketing Inc., which operated in Quebec) were charged under both the *Competition Act* and the *Criminal Code*. The Bureau alleges that at the height of its operation in 2002, Datacom scammed more than 50,000 Canadian and American businesses out of more than \$23 million.

As part of the alleged scam, Datacom telemarketers contacted small and medium-sized businesses, claiming they were updating information in their business directory listings. The telemarketers failed to disclose important information, such as which company they represented, the price of the directory, the terms and conditions to return it, the purpose of the call and the nature of the product, as required under the *Competition Act*.

In a second business directory case, seven people involved in a Calgary-based scam were charged in June 2006 following a Bureau investigation into Ambus Registry Inc., a telemarketing operation that allegedly used deceptive techniques to peddle business directories and listings to businesses throughout the United States. The Bureau received more than 170 complaints from American businesses who paid as much as \$399 (U.S.) for the directory.

Between 2000 and 2003, Ambus telemarketers allegedly used an "assumed sale" technique to dupe U.S. businesses and convince them that they had already bought the directory. On January 31, 2007, one of the accused, Sarah Schaefer, pleaded guilty to two counts under the deceptive telemarketing provisions of the *Competition Act* and was fined \$15,000. As of March 31, 2007, the other accused had not yet entered a plea.

Bank machine supplies

As a result of a Competition Bureau investigation, Simon Gouin, a top executive in a corporation operating as Centre d'expédition direct, pleaded guilty in December 2006 to deceptive marketing practices in the promotion of supplies used in bank machines.

As part of the scam, telemarketers gave victims the impression that the firm was their regular supplier of bank machine products. The telemarketers also claimed to be offering preferential prices because price increases were imminent. The telemarketers also said that the purpose of the call was to check the victims' contact information, when it was actually to close a sale. Victims were further misled into thinking that they had previously ordered the firm's products.

The court imposed a \$75,000 fine on Gouin and issued a 10-year prohibition order against him and his company. In addition, they were ordered, for a period of three years, to disclose any representations to the Commissioner that they intend to make to the public to promote the supply of their products.

Credit cards

Charges were laid in January 2007 against two individuals from the Montreal area, Nikolaos Rothos and Stelios Vrontakis, as well as their company, Kinito Inc., for their deceptive telemarketing activities. Kinito telemarketers contacted American residents to offer them a credit card with a pre-authorized limit, in exchange for a payment. However, the company never delivered the credit cards. Instead, victims received a document with a list of banks where they could apply for a card.

4.2 Civil enforcement actions

4.2.1 False or misleading ordinary price representations

Subsections 74.01(2) and 74.01(3) of the *Competition Act* prohibit anyone from making, or allowing anyone else to make, representations to the public that are materially false or misleading about the ordinary selling price of a product. The ordinary selling price is determined by

using one of two tests: the volume test, which involves determining whether a substantial volume of the product was sold at that price or a higher price, within a reasonable period of time, or the time test, which involves determining whether the product was offered for sale, in good faith, for a substantial period of time at that price or a higher price.

Credit card inserts

In June 2006, the Competition Bureau reached an agreement with three companies—New York-based Media Syndication Global, Havas SA, which is headquartered in Paris, and Canadian-based Interactive Marketing Group ULC—with regard to ordinary selling price claims. The three firms were involved in preparing promotional offers for Bushnell binoculars and Mark of Fitness blood pressure monitors that were inserted in monthly CIBC Visa statements between 2002 and 2004. A Bureau investigation revealed that the inserts included overstated regular prices for these products. As a result of the Bureau's investigation, more than 2,000 Canadians received partial refunds.

Menswear

In July 2006, the Bureau reached a settlement with Grafton-Fraser Inc., one of Canada's largest menswear retailers, resolving the Bureau's concerns about the company's pricing practices. The Bureau's investigation stemmed from allegations that Grafton-Fraser had significantly inflated the regular price of certain garments, which resulted in the savings to consumers when these garments were on sale seeming higher than they actually were. The Bureau found that Grafton-Fraser tagged these garments with both a regular and a sale price when, in fact, the garments were not sold in any significant quantity or for any reasonable period of time at the regular price. The registration of the consent agreement, the terms of which required the company, among other things, to pay a \$1.2 million administrative monetary penalty, concluded the Bureau's investigation into the matter.

4.2.2 Representations not based on adequate and proper tests

Paragraph 74.01(1)(a) of the *Competition Act* prohibits anyone from making, or allowing anyone else to make, any representation to the public that is materially false or misleading.

Paragraph 74.01(1)(b) prohibits anyone from making, or allowing anyone else to make, any representation to the public about the performance, efficacy or length of life of a product that is not based on an adequate and proper test. The onus is on the person making the representation to prove that it is based on an adequate and proper test.

Weight-loss method

The Competition Tribunal ruled in September 2006 that Gestion Finance Tamalia Inc. and its president, Sylvain Leblanc, who operated Les Centres de Santé Minceur, a chain of weight-loss clinics, had made numerous false and misleading representations regarding a device called the Cellotherm and natural products known as Cure de départ, Noctoslim and Nopasim, which claimed to produce sensational results. The Bureau filed an application with the Tribunal to prevent Leblanc and a number of companies from making misleading representations about the weight-loss method. The Tribunal issued a 10-year prohibition order against Leblanc and Gestion Tamalia and imposed administrative monetary penalties of \$20,000 and \$50,000, respectively.

Fuel efficiency device

In September 2006, the Competition Bureau filed a consent agreement with the Competition Tribunal to prevent Econoco Inc. and its directors from making misleading representations to the public about the Econopro, a device to save fuel and reduce emissions. Under the terms of the consent agreement, Econoco Inc., president Réal Laroche and former vice-president Claude Tardif, agreed to stop making representations about Econopro or similar products for 10 years unless they carried out adequate and proper tests. They also agreed to inform consumers of the consent agreement through a public notice in newspapers and to pay a \$15,000 administrative monetary penalty.

Chimney cleaning products

The Commissioner filed an application with the Competition Tribunal in September 2006 alleging that certain performance claims made on the packaging and in advertising material for some Imperial Brush Co. Ltd. and Kel Kem Ltd. chimney cleaning products were not supported by adequate and proper tests. These products were sold across Canada at major home improvement retailers and in hardware stores. As of March 31, 2007, the Competition Tribunal had not heard this case.

4.3 Alternative case resolutions

The Bureau takes a variety of approaches to help restore competition in the marketplace. The more general approaches include education, monitoring, outreach and advocacy. To resolve specific complaints, the Bureau assesses each case on its own merits and chooses the most appropriate enforcement instrument based on a number of factors, including prior anti-competitive conduct of the company and its willingness to resolve the matter.

Some issues may be resolved quickly and easily, without a full inquiry or judicial proceeding, through alternative case resolution, which includes voluntary undertakings and prohibition orders. Resolving matters in this way reduces uncertainty and maximizes the use of Bureau resources, since alternative case resolutions do not require lengthy court actions.

In 2006–2007, the Bureau used alternative case resolutions to settle nine matters under the false or misleading representations and deceptive marketing practices provisions of the *Competition Act* and the provisions of the *Consumer Packaging and Labelling Act*, the *Precious Metals Marketing Act* and the *Textile Labelling Act*. The Bureau examines certain matters under the criminal and civil provisions of the *Competition Act*, the provisions of the other three laws, or both.

4.3.1 False or misleading representations

Cigarette packaging

At the request of the Competition Bureau, three major cigarette manufacturers in Canada agreed in November 2006 to accelerate the removal of the descriptors *light* and *mild*, and variations on them, from their cigarette packaging. Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp. phased out these descriptors between December 2006 and July 2007. A total of 79 brands of cigarettes were affected, as well as 18 varieties of fine-cut tobacco. Through this action, Canada joined other countries, such as Australia, in no longer using *light*, *mild* and similar descriptors on cigarette packaging.

Imported textile products

In February 2006, the Competition Bureau received a complaint about imported textile products offered for sale by a major retail chain in Canada that claimed to contain a high percentage of spandex. The complainant was of the opinion that the stated percentage was significantly higher than the actual percentage.

Under subsection 5(1) of the *Textile Labelling Act*, dealers may not label consumer textile products, sell or import them into Canada or advertise them when the label contains any false or misleading claims.

Bureau representatives ordered an analysis of the products' fibre content. The analysis results confirmed that the representation of the fibre content was incorrect. The Bureau consequently discussed the requirements of the *Textile Labelling Act* with company authorities, who made a written commitment to do the following:

- immediately take the product off the Canadian market;
- notify their foreign suppliers about the requirements and sensitize them to those requirements to prevent a recurrence of the situation;
- have new products from foreign suppliers analysed by a recognized source, in order to confirm their compliance with the *Textile Labelling Act* and *Textile Labelling and Advertising Regulations* and the associated regulations; and
- make the proper corrections to non-compliant products before offering them for sale on the Canadian market.

This matter was resolved in April 2006.

Imported clothing

The Competition Bureau received an information request regarding imported clothing that were held at the Calgary International Airport due to insufficient labelling. The clothing was imported for resale at a single location.

The Bureau's examination determined that the articles did not have proper fibre content or dealer identity information as required by the *Textile Labelling Act* and the *Textile Labelling and Advertising Regulations*.

The Bureau negotiated a resolution with the dealer that required the dealer to take responsibility for the label-

ling corrections and ensuring they were made before the items were offered for sale. The dealer also committed to adhering to the labelling requirements in the future, prior to the clothing leaving the country of origin. In turn, the Bureau contacted the Canada Border Services Agency to release the clothing to the importer's premises so the labels could be corrected.

This matter was resolved in May 2006.

Thread counts for bed linens

The Competition Bureau received a number of complaints in 2004 alleging that the thread counts listed on packages of bed linens sold across Canada was misleading under the *Textile Labelling Act*.

The thread counts ranged from 420 to 620 threads per square inch on various brands of imported bed linens. The Bureau tested samples using the procedures set out by the Canadian General Standards Board (CGSB). The results revealed that the actual thread counts were up to 50 per cent less than those declared on the packages.

As a result of the Bureau's investigation, the dealers (retailers and their suppliers) agreed to do the following:

- recall from several national retail stores all unsold bed linens that were incorrectly labelled and re-label them at the supplier's premises;
- send correct label inserts to stores with minimal stock who opted to do the corrections themselves;
- set up an internal auditing program to test imported bed linens labelled with high thread counts;
- verify thread counts with suppliers on all future shipments; and
- purchase articles only from vendors who agree to use testing laboratories that utilize the CGSB testing procedures.

The matter was resolved in June 2006.

Flower bulb growing kits

In October 2006, the Competition Bureau received a complaint alleging that flower growing kits imported from the U.S. did not comply with the labelling requirements of the *Consumer Packaging and Labelling Act*. The kits consisted of a flower bulb, a small vase or pot, and a growing medium.

4. ELIMINATING FALSE OR MISLEADING REPRESENTATIONS AND DECEPTIVE MARKETING PRACTICES

The Bureau's examination revealed that the packaging was not labelled with adequate dealer identification, nor did it display the proper common name for the products. Further, the packages included a misleading country of origin claim, since the bulbs did not all originate from the stated country of origin.

As a result of the Bureau's examination, the company agreed to place a sticker over the country of origin claim that included a proper common name for the product, the name and full postal address of the dealer preceded by the words *imported by* and a list of the kit's contents. The company also took measures to ensure that future shipments would be labelled correctly.

This matter was resolved in October 2006.

Windshield washer antifreeze

In March 2007, the Competition Bureau received a complaint questioning the validity of a claim on labels of a brand of windshield washer antifreeze. A preliminary test revealed that the product would freeze at -26° C, not at the -40° C as was claimed on the labels.

After discussions with the Bureau, the manufacturer agreed to recall the windshield washer antifreeze from retailers and to correct all stock to bring it into compliance with the lower temperature claim. The company also agreed to adjust future manufacturing procedures to ensure that the claim is true and to replace the antifreeze for consumers who had complained about it.

The matter was resolved in March 2007.

4.4 Written opinions

The Bureau provides legally binding written opinions to businesses seeking to comply with the *Competition Act*. Company officials, lawyers and others may request written opinions on whether proposed business plans and practices would raise concerns under the Act. The Bureau's written opinions take into account jurisprudence, previous written opinions and current policies. Written opinions are binding for as long as the facts of the situation remain substantially unchanged and the firm carries out the business plan or practice substantially as proposed.

While the Bureau does not provide written opinions based on provisions of the *Consumer Packaging and Label*-

ling Act, the Precious Metals Marking Act and the Textile Labelling Act, parties may ask for a written opinion on a proposed label under the false or misleading representations and deceptive marketing practices provisions of the Competition Act. During 2006–2007, the Bureau issued 20 such written opinions.

The following are examples of the 20 written opinions the Bureau issued in 2006–2007 on proposals that that touch on the false or misleading representations and deceptive marketing practices provisions of the *Competition Act*. The Bureau also publishes detailed summaries of its written opinions on its Web site (www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/00782e.html).

4.4.1 False and misleading representations

Prepaid long-distance calling cards

In April 2006 and August 2006, a company sought written opinions about proposed marketing representations and promotional plans for one of its prepaid long-distance calling cards. The Bureau examined the proposals under both the criminal and civil false or misleading representations and deceptive marketing practices provisions of the *Competition Act*.

On June 9, 2006 and October 20, 2006, the Bureau provided opinions that there would be sufficient grounds to launch an inquiry into the promotional materials under section 52(1) and paragraph 74.01 of the Act, as follows:

- The materials contained fine print disclosures contradicting the general impression they created about the advertised rates and the telephone minutes available.
- The materials used ambiguous language and complex disclaimers that could mislead consumers when choosing the products.
- In some cases, it appeared to be nearly impossible to use the long-distance minutes advertised.

Specialized publications

In October 2006, a company requested a written opinion about a proposal to telephone potential clients throughout North America to offer them a free 30-day trial of specialized business, environment and occupational health and safety publications.

The company wanted to know the Competition Bureau's position on the sales scripts it intended to use and whether they raised concerns under the *Competition Act*. The Bureau issued a written opinion in November 2006 that it was of the opinion that the scripts did not provide sufficient grounds to commence an inquiry and that they met the requirements of section 52.1(2) of the Act regarding disclosure. The Bureau was not asked, nor did it issue an opinion on any other practices the company might use in the course of its operations, sales and promotional campaigns.

4.4.2 Multi-level marketing plans

Beverages

A company that distributes and sells beverages sought a written opinion on whether its proposed multi-level marketing plan would raise concerns under the *Competition Act*. The proposed plan imposed a monthly sales quota for participants and included cancellation clauses as penalties for failure to meet the quota. For example, failure to make any sales for six consecutive months would result in the agreement to participate in the plan being cancelled.

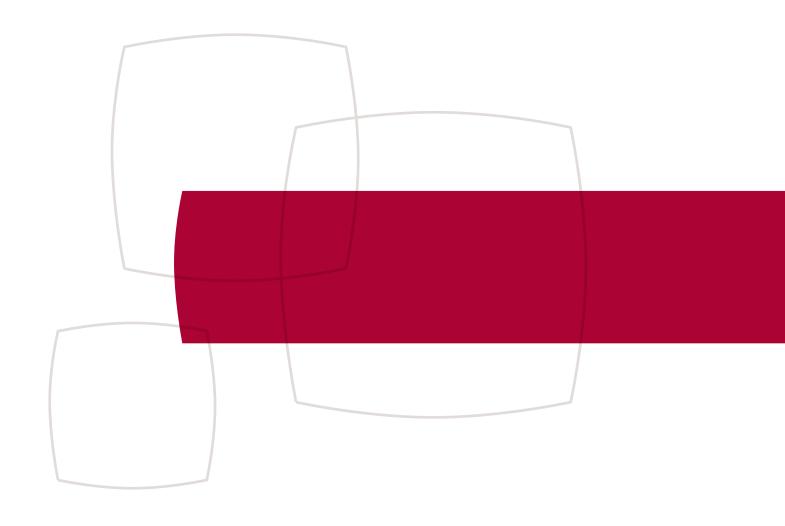
The plan did not impose a purchase requirement on its participants. It permitted sales to individuals who were not participants in the plan, in order to generate personal points and advance to the next level in the plan. In addition, the plan made it possible for participants to purchase the plan's product and receive the personal points associated with the sale of the product provided. The purchase itself was made directly from the seller.

The Bureau examined the proposal under the multi-level marketing and pyramid selling scheme provisions of the *Competition Act*, sections 55 and 55.1, and in August 2006 issued a written opinion that the plan appeared to raise concerns under those provisions. In particular, the written opinion noted that the purchase requirements of the proposed plan might contravene subsection 55.1(2) by creating a pyramid selling scheme. Plans are illegal when participants, before they are allowed to join the plan or advance within it, are required to buy a specific quantity of products at a price other than the cost price.

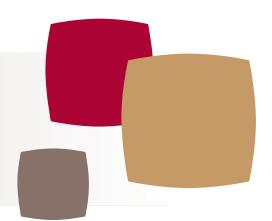
Beverages, supplements and personal care products

A multi-level marketing company that proposed to market beverages, supplements and personal care products sought a written opinion in January 2006 on whether its proposed multi-level marketing plan would raise concerns under the *Competition Act*. On April 5, 2006, the Bureau issued a written opinion that for the following reasons, the plan appeared to be a pyramid selling scheme, as defined in the Act:

- Representations relating to compensation listed typical earnings as an average for the first five levels in
 the plan and not as representative examples of the
 compensation that typical participants could receive.
- The plan gave participants the opportunity to become certified trainers. In addition, they could be paid to train uncertified participants and to mentor trainees. This contradicts the plan's statement of policy and creates a potential de facto condition of compensation for recruitment, which is typical of pyramid selling schemes.
- The plan required participants at certain levels in the plan to receive products automatically, thereby creating a condition of a required product purchase, also typical of pyramid selling schemes.
- Participants who leave the plan would be allowed to return the product for a refund. However, participants who remained in the plan could only make an exchange. The Bureau's view is that participants must be entitled to return a product, receive a refund and continue to participate.
- The requirement for participants to purchase a product every month when they had reached certain levels in the plan, combined with the fact that they were only entitled to a refund if they left the plan, appeared to create the conditions for inventory loading. In this case, the plan provided participants with the incentive to accumulate inventory because the only option available to them to receive a refund while receiving a product automatically was to leave the plan.







5. REVIEWING MERGERS

The Bureau reviews merger transactions under section 92 of the Competition Act and assesses whether a proposed merger is likely to substantially lessen or prevent competition. When the Bureau finds that a proposed merger is likely to substantially and negatively affect competition, the Commissioner may ask the merging parties to restructure the merger or suggest remedies to resolve particular competition issues. When concerns cannot be addressed by negotiation, the Commissioner may decide to bring an application to the Competition Tribunal.

The number of mergers the Bureau reviewed in 2006–2007 increased from the previous year. The size and scope of the mergers were also notable, as was the complexity of the competition issues they raised.

For mergers that involve more than one jurisdiction, international co-operation is critical. The Bureau shares its views and information about mergers with other competition authorities, co-ordinates the timing of the review process to the extent possible and, when appropriate, seeks consistent remedies. The Bureau most frequently communicates with its counterparts at the U.S. Federal Trade Commission and Department of Justice, and the European Commission.

In 2006–2007, the Bureau continued to be an active participant in international organizations such as the Organization for Economic Co-operation and Development (OECD) and the International Competition Network (ICN). In particular, the Bureau works with the OECD Competition Committee to promote international co-operation in competition enforcement for merger review procedures. It also contributes significantly to the ICN's Mergers Working Group. (For more information, see Chapter 6.)

This chapter summarizes some of the key merger cases that were new or ongoing during 2006–2007. It also includes comprehensive tables of merger examinations concluded during the year, along with statistics on service standards.

5.1 Key merger cases

5.1.1 Breweries

Labatt Brewing Company Ltd. and Lakeport Brewing Income Trust

Labatt Brewing Company Ltd. announced in early February 2007 its intention to acquire Lakeport Brewing Income Trust. In response, the Bureau began a review and, subsequently, the Commissioner applied to the Federal Court for production orders requiring various participants in the beer industry to produce records and other information to allow the Bureau to conduct a responsibly informed review.

Owing to the parties' insistence on closing the transaction immediately upon expiry of the mandatory 42-day waiting period, the Commissioner applied to the Competition Tribunal on March 22, 2007, for an order preventing Labatt from completing its acquisition for another 30 days, while the Bureau continued its review. This work included collecting information under outstanding production orders, which were to expire on or about the day the parties intended to complete the merger.

The Tribunal denied the Bureau's application for an extension on March 28, 2007, and the parties closed the merger. As of March 31, 2007, the Commissioner was considering whether to file a notice of appeal with the Federal Court, and the Bureau's review of this merger was ongoing.

5.1.2 Grain-handling companies

United Grain Growers Limited and Agricore Cooperative Ltd.

In July 2001, two of the largest grain-handling companies in Western Canada, United Grain Growers Limited and Agricore Cooperative Ltd., announced they would merge to form Agricore United.

Following a review, the Bureau concluded that the merger would likely substantially lessen or prevent competition in certain grain-handling markets in Manitoba and Alberta, and in grain-handling services at the Port of Vancouver. To resolve these concerns, Agricore United agreed to divest up to seven primary grain elevators in Western Canada and to sell either the United Grain Growers or Pacific terminal in the Port of Vancouver.

The consent agreement stipulated that if Agricore United did not divest the port terminal within four months, a trustee would be asked to find a buyer for it. The Commissioner granted 10 extensions of the initial sale period but, on August 10, 2005, refused to grant any more. Almost immediately, Agricore United filed an application with the Tribunal to rescind the agreement, claiming that the circumstances under which it had been drafted had changed so significantly that, had they existed in October 2002, the company would not have entered into it.

Hearings before the Competition Tribunal began in March 2006, but Agricore United abandoned its application in May 2006, as soon as it finished presenting its case. The Commissioner immediately appointed Grant Thornton LLP as the trustee, and gave the firm four months to complete the sale.

The trustee sale period was later extended, in particular to allow for consultations with the Vancouver Port Authority about a lease with potential purchasers of the terminal. As of March 31, 2007, the trustee sale period continued.

Saskatchewan Wheat Pool Inc. and Agricore United

Saskatchewan Wheat Pool Inc. made an unsolicited bid in November 2006 to acquire Agricore United. The original offer was set to expire in January 2007 and was extended and increased in light of a competing bid by James Richardson International Ltd.

Following an extensive but expedited review, the Bureau found that the proposed acquisition would likely substantially lessen competition in the Port of Vancouver and in certain in-country markets.

In late March 2007, the Commissioner entered into a consent agreement with Saskatchewan Wheat Pool, under which the Wheat Pool agreed to sell Cargill, its port terminal elevator on the North Shore of Burrard Inlet in the Port of Vancouver, and nine in-country elevators. In return, Cargill agreed to transfer to the Wheat Pool its 50 per cent interest in the Cascadia port terminal in Vancouver. As well, the Wheat Pool agreed to terminate a joint venture with James Richardson International that was, at that time, the subject of a pending challenge before the Tribunal (see text below).

Saskatchewan Wheat Pool Inc. and James Richardson International Ltd.

In 2005, Saskatchewan Wheat Pool Inc. and James Richardson International Ltd. operated adjacent grain-handling terminals on the North Shore of the Port of Vancouver. In April 2005, the companies announced a joint venture under which their two grain terminals would operate as one combined facility, which would facilitate joint marketing activities and specialization.

Following an extensive review, the Bureau concluded that the joint venture would likely substantially lessen or prevent competition for grain-handling services at West Coast ports in Canada. In November 2005, the Bureau filed an application with the Competition Tribunal challenging the joint venture. The Bureau continued its investigation of the potential competitive implications of integrating certain marketing efforts and declined the parties' request to implement them. At the same time, the Bureau agreed that the companies could close on the operational elements of the joint venture (involving the joint use of certain rail facilities, with no alteration and no exchange of confidential information), since it was unlikely that any material and lasting harm to competition would result in an interim period from them doing so.

In late March 2007, at the same time as the Commissioner entered into the consent agreement with Saskatchewan Wheat Pool described above the Wheat Pool agreed to terminate the joint venture with James Richardson International.

5.1.3 Paper and forest products

Abitibi-Consolidated Inc. and Bowater Inc.

In late January 2007, Abitibi-Consolidated Inc. and Bowater Inc. announced their intention to merge to create the third largest publicly traded paper and forest products company in North America and the eighth largest in the world. The companies' product lines include newsprint, uncoated and coated mechanical papers, market pulp and wood products. As of March 31, 2007, the Bureau review was ongoing. Over the course of its review, the Bureau communicated extensively with the U.S. Department of Justice, who was also reviewing this proposed transaction.

5.1.4 Broadcast and other media

Bell Globemedia Inc. and CHUM Ltd.

In July 2006, Bell Globemedia Inc. (renamed CTVglobemedia Inc. in January 2007) announced its intention to acquire CHUM Ltd. Bell Globemedia owns and operates the CTV television broadcast network across Canada along with other media assets such as the *Globe and Mail* and TSN. CHUM Ltd. held various assets in television and radio broadcasting, including the A-Channel and Citytv television stations.

As part of its review of the proposed merger, the Bureau obtained information from the parties and from market participants, such as advertising agencies, advertising companies, competing broadcasters, the Canadian Radiotelevision and Telecommunications Commission (CRTC), independent Canadian content producers, cable distributors and industry associations. The Bureau also sought information from economic and industry experts.

The Bureau identified three relevant product markets: English-language conventional television advertising, Canadian content created to meet CRTC broadcast licence requirements, and television programming acquisition. The relevant geographic markets for English-language conventional television advertising were Vancouver, Calgary, Edmonton, Winnipeg and Toronto/Ontario.

The Bureau ultimately concluded that the acquisition did not raise sufficient competition concerns in the relevant markets to warrant a challenge before the Competition Tribunal. More specifically, the Bureau determined that, owing to effective remaining competition, among other factors, it was unlikely that Bell Globemedia would be able to unilaterally raise its prices for television advertising substantially.

Since this transaction involved the transfer of broad-casting licences, which are regulated by the CRTC, that agency's approval was required before the transaction could close. The Bureau completed its review of this matter in February 2007, prior to the CRTC's public hearings into the proposed transaction.

As of March 31, 2007, the Bureau was preparing a technical backgrounder summarizing the main findings of this merger review.

CanWest Global Communications Corp. and Alliance Atlantis Communications Inc.

In January 2007, CanWest Global Communications Corp. and an affiliate of the investment firm Goldman Sachs announced their intention to acquire Alliance Atlantis Communications Inc. CanWest owns and operates the Global Television Network, while Alliance Atlantis had a portfolio of specialty television channels. In contrast to the Bureau's review of Bell Globemedia Inc.'s acquisition of CHUM Ltd., described above, the review of CanWest's acquisition of Alliance Atlantis concentrated on the English-language specialty television advertising market. This transaction was also subject to CRTC approval, but the hearings on it had not been held as of March 31, 2007.

The Bureau began its review of this transaction as it was completing its review of Bell Globemedia's acquisition of CHUM Ltd., and the information gathered for that case helped here.

The Bureau concluded that it was unlikely that the proposed merger would substantially lessen or prevent competition in the sale of advertising space on specialty television channels. Although both CanWest and Alliance Atlantis were competitors in the market for sale of advertising space on specialty television channels, the Bureau determined that there is sufficient effective remaining competition to preclude competition from being harmed.

5.1.5 Other noteworthy cases

Johnson & Johnson's acquisition of Pfizer's consumer healthcare business

In June 2006, Johnson & Johnson announced its intention to purchase Pfizer's consumer healthcare business, which included such brands as Listerine, Nicorette, Rolaids, Sudafed, Benadryl and Visine. The Bureau reviewed this matter, as did other competition authorities, including the U.S. Federal Trade Commission and the Directorate General for Competition of the European Commission.

The Bureau concluded that the proposed acquisition would likely substantially lessen competition in one product market in Canada—diaper rash ointment. To address the competition concern, the Commissioner negotiated a consent agreement with Johnson & Johnson in December 2006 under which it agreed to divest the Zincofax brand of diaper rash ointment and related assets. The registered consent agreement is available on the Competition Tribunals Web site (www.ct-tc.gc.ca/english/CaseDetails.asp?x=219&CaseID=279 - 384).

Proposed acquisition of Sleeman Breweries Inc. by Labatt Brewing Company Ltd.

In February 2006, Labatt Brewing Company Ltd. informed the Bureau of its interest in acquiring Sleeman Breweries Inc. and submitted an application to the Bureau for an advance ruling certificate. Labatt requested that all information be kept confidential and that the Bureau not make any third-party market inquiries, since it had not yet made a formal offer to Sleeman.

At the end of March 2006, the Bureau informed Labatt that it could not formally begin a review until Labatt agreed to allow the Bureau to make market contacts and meet all the Bureau's information requirements. Nonetheless, the Bureau continued to review the matter.

The Bureau received Labatt's long-form filing in August 2006, but shortly thereafter Labatt informed the Bureau that it no longer intended to acquire Sleeman. Throughout the Bureau's review, Labatt made no formal bid for Sleeman. In mid-August 2006, Sapporo Breweries Ltd. made a bid for Sleeman, which was accepted.

Mittal's proposed acquisition of Arcelor

In January 2006, Mittal Steel Company NV, the world's largest steel company, announced its intention to merge with Arcelor SA, the largest steel producer in Europe and Latin America. The Bureau, along with competition authorities in the U.S. and Europe, was notified of the proposed transaction and began a review.

The Bureau focused its review on the impact of the transaction on the flat carbon steel market in North America, having determined that there were no competition concerns with regard to the markets for other forms of carbon steel. The Bureau looked at two types of flat carbon steel: tin mill products, used to create packaging, and automotive exposed steel, used to produce car parts.

The Bureau concluded that there was sufficient remaining competition in North America in the markets for these products: four other manufacturers of tin mill products and five other manufacturers of automotive exposed steel products. In early June 2006, the Bureau concluded its investigation and notified the parties that it would not challenge the merger. A technical backgrounder on this merger review is available on the Bureau's Web site (www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/00550e.html).

Amalgamation of Alderwoods Group Inc. and a wholly owned subsidiary of Service Corporation International

In April 2006, Service Corporation International approached the Competition Bureau about the proposed amalgamation of its subsidiary, Service Corporation International (Canada) Limited and Alderwoods Group, Inc. Service Corporation International was the largest provider of funeral, cemetery and cremation services in North America and Alderwoods the second largest.

The Bureau's review concentrated on the effect of the proposed merger in Ontario and B.C. on funeral products and services, cremation services and burial services. Recent developments in this industry—in particular, legislative changes in Ontario and the recent entry of new players into the market in B.C. and evolving product offerings there—appeared likely to materially lessen the potential for the merger to have anti-competitive effects, despite the merged companies having high market shares.

In September 2006, the Bureau concluded that the amalgamation would not likely substantially lessen or prevent

competition in any of the relevant markets. However, the Commissioner said that the Bureau would reassess the competitive effects of the developments in Ontario and B.C. within three years and take appropriate remedial action if required. A technical backgrounder on this merger review is available on the Bureau's Web site (www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02235e.html).

5.1.6 Technical backgrounders

Technical backgrounders allow the Bureau to provide more details to the public about its approach to merger reviews that meet certain criteria and the conclusions it draws about them. In addition to those listed above, the Bureau published backgrounders on the following cases in 2006–2007:

- Acquisition of Maytag by Whirlpool (May 2006): www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/ en/02113e.html
- Acquisition of ID Biomedical Corporation by Glaxo-SmithKline Inc. (June 2006): www.competition bureau.gc.ca/epic/site/cb-bc.nsf/en/02139e.html
- Acquisition of control of Matériaux Coupal inc. by RONA inc. (August 2006): www.competitionbureau. gc.ca/epic/site/cb-bc.nsf/en/02151e.html
- Asset acquisition by PaperlinX Canada Ltd. from Cascades Resources Fine Papers Group Inc. (August 2006): www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02157e.html

5.2 Bulletins and studies

5.2.1 Bulletins

Merger remedies bulletin

In September 2006, the Competition Bureau published its *Information Bulletin on Merger Remedies in Canada* (www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02170e.html). This bulletin serves as a guideline for businesses and lawyers on the objectives and principles the Bureau follows when it seeks, designs and implements remedies to resolve competition issues resulting from proposed mergers or acquisitions.

In April 2007, as an accompanying document, the Bureau issued a template for consent agreements to provide direction to parties on negotiating these agreements with the Bureau. Necessarily, that template is only a starting point and is intended to evolve. As the Bureau gains experience with consent agreements, it will incorporate changes to the template and issue revised versions, as required.

5.2.2 Studies

Merger remedies study

The Bureau is currently conducting a study to determine whether past merger remedies sought by the Bureau were effective in addressing competition concerns. Through this assessment, the Bureau aims to gain an understanding of the factors that either contributed to, or detracted from, the efficacy of such remedies. This will allow the Bureau to further advance its practice with respect to the design and implementation of effective merger remedies.

Review of past mergers

In October 2006, the Bureau commissioned CRA International, an economic and financial consulting firm, to undertake a review of certain past mergers in which the Bureau identified material competition concerns but ultimately decided not to challenge them before the Competition Tribunal. The purpose of this exercise is to determine whether the Bureau applied appropriate analyses and came to reasonable decisions. The study was ongoing as of March 31, 2007.

5.3 Service standards

5.3.1 Merger examinations, 2006–2007

Examinations commenced	300
Includes notification filings (i.e., short- and long- form filings), advance ruling certificate requests, and examinations commenced commenced for other reasons (e.g., Investment Canada notices, Heritage Canada notices, complaints and other). Does not include ongoing examinations from the previous fiscal year.	
Notification filings	18
Excludes notification filings for which an advance ruling certificate was also requested.	
Advance ruling certificate requests	250
Includes advanced ruling certificate requests on their own or in conjunction with a notification filing.	
Of these advance ruling certificate requests, 56 were in conjunction with a notification filing.	
Other examinations (e.g., Investment Canada notices, Heritage Canada notices, complaints and other)	32
These other examinations were not done in conjunction with an advanced ruling certificate request or notification filing.	

301
237
62
2

No issues under the Competition Act	237
Examinations concluded by issuing an advance ruling certificate, a "no action" letter, or other communication indicating that there was no issue under the Competition Act	
Advance ruling certificates	198
"No action" letters Includes only those "no action" letters issued for notification filings not accompanied by an advanced ruling certificate request.	12
Other examinations (e.g., Investment Canada notices, Heritage Canada notices, complaints and other) These other examinations were not done in conjunction with an advanced ruling certificate request or notification filing.	27

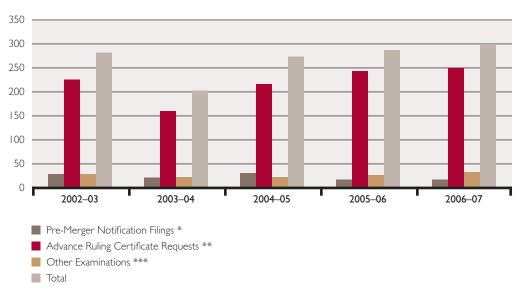
Concluded with issues under the Competition Act	62	Total examinations concluded	301
This includes all examinations of proposed	02	Examinations ongoing at year-end	23
transactions that the Bureau determined would, or would likely, substantially lessen or prevent		Written opinions issued	- 1
competition. This also includes examinations of proposed		Matters before the Competition Tribunal or the courts	5
transactions the Bureau determined would result in possible competition concerns, although not		Includes ongoing, concluded and withdrawn section 92 matters.	
as severe as substantially lessening or preventing competition.		Also includes other matters before the Tribunal or courts that are ongoing or were concluded or withdrawn.	
Advanced ruling certificate refusals,	56	wunarawn.	
"no action" letters issued in response to competition concerns and other		Section 92 matters	I
letters or communication regarding		Other Tribunal or court proceedings	4
competition concerns.	3	Section 92 matters	- 1
Consent agreements registered with the Competition Tribunal: BBM and Nielsen; Saskatchewan Wheat Pool Inc. and Agricore United; Johnson & Johnson and Pfizer Inc.	3	Excludes applications for consent orders and consent agreements	
Bureau was satisfied that the remedies	ı	Ongoing at year-end	0
required by foreign agencies would resolve Canadian competition concerns: Abbott and Guidant		Concluded or withdrawn (note that concluded means that the Tribunal or the courts issued an order or decision and there were no further	I
Proposed transactions abandoned in whole or in part as a result of the Commissioner's position regarding competition concerns	1	appeals): Saskatchewan Wheat Pool Inc. and James Richardson International Ltd., which was withdrawn.	
Section 92 applications concluded or	I	Other Tribunal or court proceedings	4
withdrawn: Saskatchewan Wheat Pool Inc. and James Richardson International Ltd., which was withdrawn		Includes section 100 and 106 applications and other proceedings before the Tribunal or courts.	
Examinations concluded as a result		Ongoing at year-end: appeal of the Tribunal's	I
of the transaction being abandoned Proposed transactions abandoned for reasons	2	decision to dismiss the Commissioner's section 100 application in Labatt Brewing Company Ltd. and Lakeport Brewing Income Trust.	
unrelated to the Commissioner's position regard- ing competition concerns and before the Bureau completed its examination		Concluded or withdrawn (note that concluded means that the Tribunal or the courts issued an order or decision and there were no further	3
Total examinations commenced during the year	300	appeals): the Commissioner's section 100 application in Labatt Brewing Company Ltd. and Lakeport Brewing Income Trust was concluded;	
Examinations carried over from the previous year (2005–2006)	20	the section 106(1) application to the Tribunal in United Grain Growers Limited and Agricore Cooperative Ltd. was withdrawn; the section	
Total examinations during the year	324	106(2) application to the Tribunal in West Fraser	
Includes the 20 carried over from 2005–2006 in addition to the number of examinations commenced.		Timber Co. Ltd and Weldwood of Canada Ltd (Burns Lake Native Development Corporation et al litigation) was concluded.	

5.3.2 Breakdown of Mergers by Year, 2002–2007

Examination type	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007
Pre-merger notification filings*	28	22	31	17	18
Advance ruling certificate requests**	224	159	214	242	250
Other examinations****	27	21	24	26	32
Total	279	202	269	285	300

^{*}Excludes notification filings (i.e., short- or long-form filings) for which an advance ruling certificate was also requested.

Number of Examinations per Year



^{*}Excludes notification filings (i.e., short- or long-form filings) for which advance ruling certificates were also requested.

^{**}Includes advanced ruling certificate requests, on their own or in conjunction with a notification filing.

^{***}Includes Investment Canada notices, Heritage Canada notices, complaints and other, on their own and not in conjunction with an advanced ruling certificate request or notification filing.

^{**}Includes advanced ruling certificate requests, on their own or in conjunction with a notification filing.

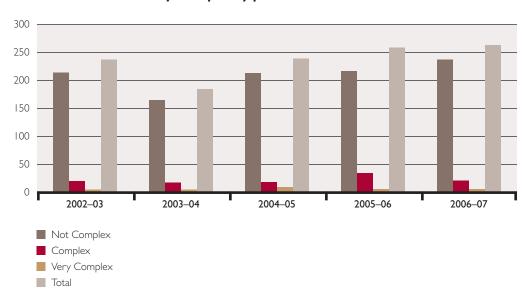
^{***}Includes Investment Canada notices, Heritage Canada notices, complaints and otherwise, on their own and not in conjunction with an advanced ruling certificate request or notification filing.

5.3.3 Meeting merger review service standards, 2002–2007

Complexity	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007
Not complex	215	165	213	216	238
Complex	21	18	19	36	22
Very complex	2	2	8	7	3
Total	238	185	240	259	263*

^{*}Note that service standards only apply to notifiable transactions. Also note that this chart includes only those notifiable transactions for which the service standard period ended during the fiscal year.

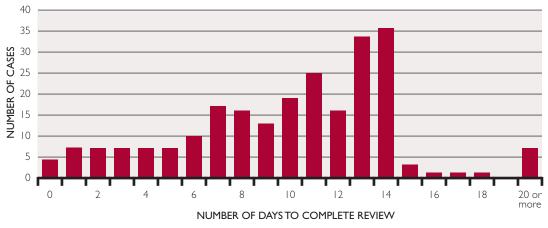
Notifiable Transactions by Complexity per Year



Complexity	Service standard target	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007
		SERVICE STANDARD MET				
Not complex	14 days	213 (99.07%)	164 (99.39%)	208 (97.65%)	205 (94.91%)	225 (94.54%)
Complex	10 weeks	20 (95.24%)	17 (94.44%)	17 (89.47%)	34 (94.44%)	20 (90.91%)
Very complex	5 months	2 (100.00%)	2 (100.00%)	7 (87.50%)	6 (85.71%)	2 (66.67%)
Total		235 (98.74%)	183 (98.92%)	232 (96.67%)	245 (94.59%)	247 (93.92%)

5.3.4 Meeting service standard targets, April 1, 2006, to March 31, 2007

Non-Complex Transactions

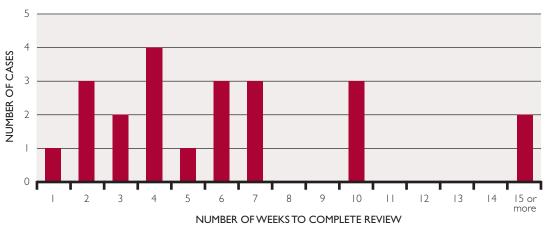


Non-complex service standard target = 14 days

Bureau average = 10.14 days

Service standard met 94.54 per cent of the time

Complex Transactions

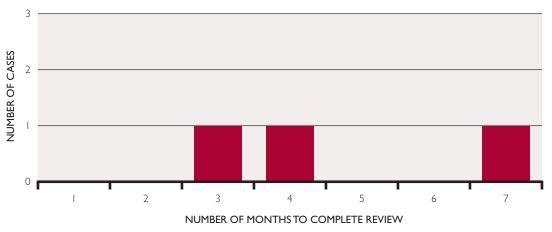


Complex service standard target = 10 weeks

Bureau average = 6.64 weeks

Service standard met 90.91 per cent of the time

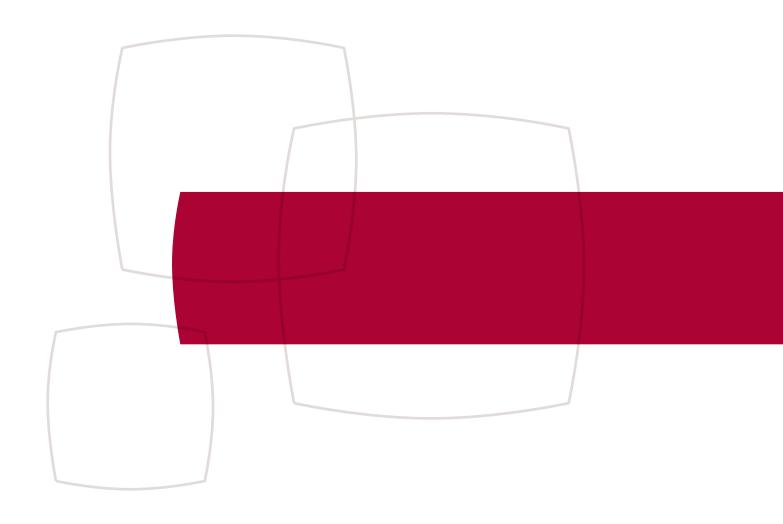
Very Complex Transactions



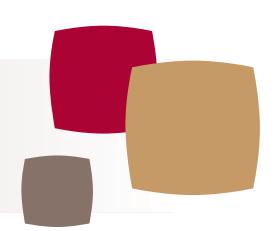
Very complex service standard target = 5 months

Bureau average = 3.8 months

Service standard met 66.67 per cent of the time



6. ADVOCATING FOR COMPETITION AND INTERNATIONAL COORDINATION



2006 - 2007 ANNUAL REPORT

6. ADVOCATING FOR COMPETITION AND INTERNATIONAL COORDINATION

The Bureau undertakes a wide range of activities to promote competition in Canada and internationally. In the domestic realm, Bureau officials appear before federal and provincial government agencies and regulatory bodies. They also participate in departmental and interdepartmental policy-making efforts. Internationally, the Bureau plays a leading role in the International Competition Network and on the Competition Committee of the Organisation for Economic Co-operation and Development. Bureau officials further contribute to debates on competition issues by way of publications, speeches, and seminars (see appendices 2 and 3).

6. I International activities

To foster greater co-operation among competition authorities around the world, which is a critical element of law enforcement, Bureau officials have assumed leadership roles and actively participate in a number of international organizations. The Bureau contributes to the development of competition policy around the world in support of its domestic priorities, to promote co-operation among competition agencies for more effective enforcement of competition laws, to promote convergence, to ensure Canadians doing business abroad benefit from fair and modern competition laws in the countries in which they do business, and to tell the story of both the Canadian approach to competition policy and Canada's law enforcement successes.

6.1.1 International Competition Network

Founded in 2001, the International Competition Network (ICN) is a network of competition authorities from around the world that also features significant involvement by organizations in the private sector. In the past year, it has grown to include 100 member agencies from 88 jurisdictions. The ICN has three main goals:

- to provide antitrust agencies with a focused network to address practical antitrust enforcement and policy issues of common concern.;
- to facilitate improved enforcement and advocacy of competition law to foster open and competitive markets for the benefit of consumers and businesses.; and
- to promotes sound and principled procedural and substantive benchmarks, which allow pro-competitive, efficiency-enhancing conduct to flourish.

The ICN held its fifth annual conference in Cape Town, South Africa, in May 2006.

The ICN has four enforcement-related working groups: the Cartel Working Group, the Competition Policy Implementation Working Group, the Mergers Working Group and the Unilateral Conduct Working Group, which is new group announced at the 2006 conference. The Bureau participates on all of these working groups. The Bureau also acts as the de facto secretariat for the ICN.

The Cartel Working Group issued two reports in 2006–2007: Cooperation Between Competition Agencies in Cartel Investigations and The Interaction of Public and Private Enforcement in Cartel Cases. The Working Group also continued to develop the Anti-Cartel Enforcement Manual by drafting a new chapter on initiating cartel cases,

which highlights some established practices useful when launching these investigations. The chapter is divided into three parts: "Methods of Detecting Cartels and Launching an Investigation," "Case Selection and Prioritization" and "Pre-Investigatory Phase of Cartel Allegations." The chapters look at how the legal environment in each jurisdiction governs the relevance of the practices and how it affects how they are adopted.

The 2006 Annual Cartel Workshop took place in The Hague, Netherlands. At this workshop, participants explored issues related to initiating a case, developing the theory of a case, and developing and implementing an investigative strategy, using a hypothetical case and investigation.

The Bureau's Criminal Matters Branch was a key contributor to work products of the Cartel Working Group Subgroup 1, General Legal Framework, following up on previous work on co-operation and the interaction between public and private enforcement, through its input to draft reports presented at the ICN annual conference and posted on the ICN Web site. Subgroup 1 issued two reports in 2006–2007: Interaction of Public and Private Enforcement in Cartel Cases and Co-operation Between Competition Agencies in Cartel Investigations: Part 2.

The Branch continued to act as co-chair of Subgroup 2, Enforcement Techniques. This involved preparing for and leading conference calls, updating the group's Internet site, steering preparations for The Hague cartel workshop, drafting the chapter on case initiation for the *Anti-Cartel Enforcement Manual*, preparing anti-cartel enforcement templates and organizing and participating in the Cartel Working Group panel on digital evidence gathering at the Cape Town conference.

The Competition Policy Implementation Working Group continued its work on technical assistance. One of the subgroups drafted a report that analyzed the results of a survey of recent technical assistance projects. This report is intended to complement the 2003 ICN report on capacity building and technical assistance. Another subgroup examined the design of the institutional machinery associated with competition policy to gain insight into superior techniques for implementing policy, and also looked at the relationship between the judiciary and competition agencies.

The Mergers Working Group produced a report, *Defining Merger Transactions for the Purpose of Merger Review*. At the 2006 Cape Town conference, the Working Group also finalized the *Merger Guidelines Workbook*, which is designed to be a practical and user-friendly manual that provides detailed insight into the basic framework for substantive assessment of mergers.

The Unilateral Conduct Working Group worked on three reports in 2006–2007. One identified the objectives of unilateral conduct laws. Another addressed dominance as a "filter" for intervention against anti-competitive conduct, when it is presumed that the same conduct engaged in by a non-dominant firm would not harm competition. The final report on state-created monopolies looked at applying unilateral conduct rules to transition economies with state-imposed restraints.

In February 2007, the Commissioner became chair of the ICN, with Bureau senior staff assuming leadership roles as co-chair of the cartels subgroup on enforcement techniques and co-chair of the Operational Framework Working Group.

6.1.2 Organisation for Economic Co-operation and Development

Competition Committee

The Bureau is the lead for Canada's participation in the Organisation for Economic Co-operation and Development's (OECD) Competition Committee. The committee and its working parties meet in February, June and October each year to focus on practical issues facing the world's competition authorities. In the past, several of the products of these efforts have been used to support amendments to Canadian competition laws and to endorse the Bureau's advocacy efforts. The Commissioner is a member of the committee's steering group.

The committee's mandate is to review developments in competition laws and policies, to discuss current issues facing competition authorities and to promote enforcement co-operation among competition authorities.

Over the years, the committee has examined several competition issues, all of them relevant to the Bureau's work. Topics for 2006 included the following:

- cartels, including raising awareness about the harm cartels cause, information sharing in international cartel investigations, settlements and sanctions against individuals;
- intellectual property rights;
- private enforcement;
- co-operative relationships; and
- dominance and monopoly power.

Bureau representatives actively contributed to the work of the committee in areas such as cartels, intellectual property rights and private enforcement. Over the past year, the Bureau has also participated in the committee's work to develop a model framework for competition analysis of the impact of proposed legislation and government policies, based on related learning from OECD member states.

The Competition Committee is the parent committee to Working Party No. 2 on Competition and Regulation, Working Party No. 3 on Co-operation and Enforcement, as well as the Global Forum on Competition.

Working Party 2 promotes dialogue between competition authorities and regulators that will enable governments to implement policies that minimize market distortions and foster competition.

Working Party 3 strives to improve national competition law enforcement efforts and increase international cooperation in enforcement. These activities help to bolster the analytical strengths of many national competition authorities and to increase the coherence of enforcement activities around the world.

In February 2007, Working Party 3 held sessions for public prosecutors on coordination and co-operation between prosecutors and competition authorities in dual enforcement systems (looking at leniency, criteria for referring a case for criminal prosecution, and use of evidence in criminal and administrative/civil proceedings), obstruction of justice, cartel enforcement and responses to other economic crimes. Canada made a brief presentation on co-operation between prosecutors and the competition authority and one on evidentiary issues, in particular on interception of communications. In addition to the oral presentations, a Canadian paper on the pros and cons of citing video link evidence was circulated for discussion.

Committee on Consumer Policy

The Bureau participates in the OECD Committee on Consumer Policy, which examines questions related to consumer policy and law. The Office of Consumer Affairs at Industry Canada leads Canada's participation, with its Director General serving as chair. The Bureau participates in its own capacity as a Canadian law enforcement agency.

The committee met in Paris in October 2006. The meeting focused on building consumer confidence in the global economy in the areas of dispute resolution and redress, mobile commerce, the future of the Internet and consumer policy regimes, including penalties and consumer contracts. The Competition Bureau attended the half-day Roundtable on the Economics of Consumer Policy, which the committee organized.

During 2006–2007, the Bureau contributed to the continued development of a draft recommendation on dispute resolution and consumer redress, which was at the core of the committee's work during this period. The Competition Bureau played an active role with the Working Group on Dispute Resolution and Redress and at the committee level.

6.1.3 Asia-Pacific Economic Cooperation

As a member of Asia-Pacific Economic Cooperation (APEC), Canada submits an annual report, or Individual Action Plan (IAP), that highlights improvements made to Canadian competition law and policy. The Bureau updates the chapter on competition policy for Canada's IAP, updates the information in the APEC database on Canada's competition regime, and provides input into other APEC initiatives. There are many connections between APEC's work and Bureau enforcement and advocacy priorities. There are opportunities to link APEC work with the Bureau's work in the ICN and the OECD, in the area of technical assistance for transition APEC economies, for example.

6.1.4 Free trade agreements

The Bureau leads Canada's free trade negotiations in the area of competition policy and the specific development of competition provisions in such agreements. Canada is currently in negotiations with Korea, Singapore, the Andean Community countries (Bolivia, Colombia, Ecuador and Peru), the Dominican Republic and the Central America Four (El Salvador, Guatemala, Honduras and Nicaragua).

6.1.5 International Consumer Protection and Enforcement Network

In October 2006, Bureau representatives participated in the bi-annual meeting and a training session on best practices of the International Consumer Protection and Enforcement Network (ICPEN), held in Warsaw, Poland. ICPEN is a voluntary organization of trade practices law enforcement authorities from 36 countries. In 2006–2007, the Competition Bureau was a member of the ICPEN advisory group.

At the best practices session, Bureau representatives gave a presentation on investigating an international lottery scam based on the lessons learned in the case against David Stucky (see Chapter 4). This was also an occasion for Bureau officials to discuss furthering cross-border enforcement co-operation among ICPEN members.

The Bureau made a presentation on the development of a national strategy to fight mass marketing fraud, as well as updated attendees on the work of the ICPEN Mass Marketing Fraud Working Group, which aims to foster cross-border enforcement co-operation amongst ICPEN members. The Competition Bureau co-chairs this working group with the United Kingdom's Office of Fair Trading.

At the Warsaw meeting, the Bureau, as chair of the Fraud Prevention Working Group, led a discussion with the Australian Competition and Consumer Commission on expanding the ICPEN Fraud Prevention Month by reaching out to global corporations and international consumer groups. The consensus was that the network could approach international consumer groups but not all members were comfortable with partnering with private international corporations.

6.1.6 Combating diabetes fraud

The Competition Bureau and Health Canada, along with their counterparts in the United States and Mexico, teamed up in October 2006 to announce 117 compliance and enforcement actions against companies promoting and falsely advertising "miracle cures" for diabetes.

6.1.7 Messaging Anti-Abuse Working Group

In 2006–2007, the Competition Bureau attended meetings of the Messaging Anti-Abuse Working Group in Toronto and San Francisco. E-commerce-related enforcement is a priority for the Bureau, and partnerships, competencies and technology are at the root of developing properly equipped e-commerce enforcement teams and strategies. This includes fostering close coordination among law enforcement agencies, the private sector and academia, as well as ensuring that personnel are uniformly trained and equipped to gather evidence, investigate and prosecute these cases. Through its involvement in the Working Group, the Bureau has been able to develop and maintain good partnerships with major private sector companies, to learn about new technologies and to share investigative tips with other law enforcement agencies engaged in Internet investigations. The Working Group is a global organization focusing on safeguarding electronic messaging from online exploits and abuse, with the goal of enhancing user trust and confidence.

6.1.8 Competition law enforcement

On May 4, 2006, the Competition Bureau signed a co-operation arrangement with the Korean Fair Trade Commission to improve competition law enforcement and to effectively address anti-competitive activities with cross-border implications in areas such as cartel investigations and deceptive marketing practices.

6.2 Technical assistance

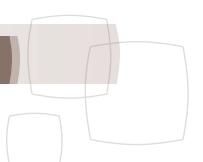
The Bureau continues to provide technical assistance to a number of developed and developing countries. Technical assistance includes providing information on Canadian policy, law and practices, welcoming visitors from foreign competition authorities and governments, helping develop or refine foreign competition laws, attending workshops and seminars, and providing advice on specific investigations.

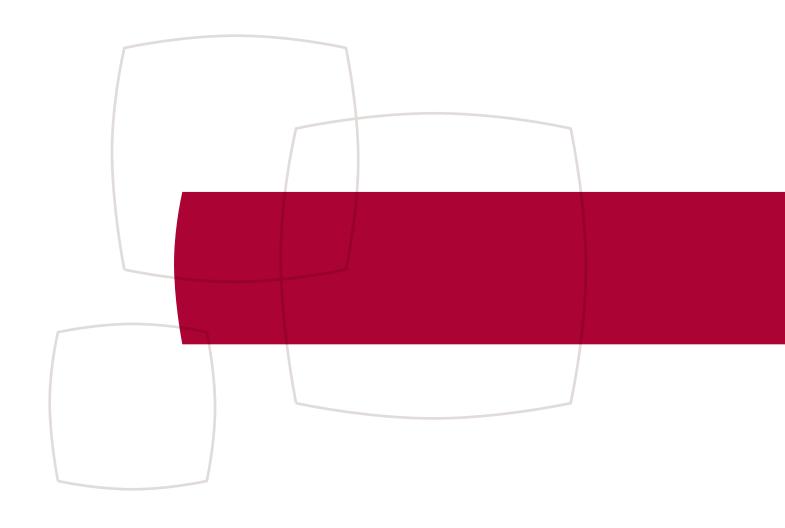
6.2.1 Costa Rica

The Bureau, in partnership with the World Bank and the Canadian International Development Agency, is working on a two-year technical assistance project with the competition authority in Costa Rica, the Commission for Promotion of Competition. In May 2006, two Commission members visited the Bureau for a two-week internship comprising education and training on how to improve competition law enforcement and policy in Costa Rica and build a competition culture. In October 2006, the Bureau met with commissioners in San José, Costa Rica, to discuss a report on the telecommunications sector, the University of Costa Rica training program and the second phase of the technical assistance project, as well as to present expert reports and receive feedback about the internship.

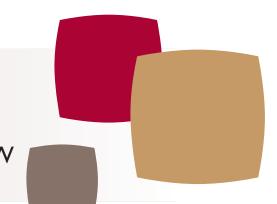
6.2.2 MLAT request

In November 2004, the Bureau received a request under the Mutual Legal Assistance Treaty from the U.S. Department of Justice to search two Canadian fur brokers allegedly involved in bid-rigging at a wild fur pelt auction held in Seattle in February 2004. The Bureau carried out the searches and filed a report to the judge in July 2005, together with an application by the Attorney General for orders to send the seized documents to the United States. The brokers challenged the validity of the search warrants, but they were nonetheless granted. The Ontario Court of Appeal denied the brokers leave to appeal the orders on November 16, 2006.





7. MODERNIZING CANADA'S APPROACH TO COMPETITION LAW



7. MODERNIZING CANADA'S APPROACH TO COMPETITION LAW

The Competition Act is a vital piece of Canadian legislation that affects virtually all industry sectors. Its goal is to ensure that Canadians enjoy the benefits of a competitive economy, including competitive prices, product choice and quality services. To ensure that the Act remains effective in a rapidly changing global environment, the government takes an incremental approach to amendments. The Bureau actively seeks the views of stakeholders and the general public when legislative changes are proposed.

7.1 Legislative amendments

7.1.1 Bill C-41, An Act to Amend the Competition Act

Bill C-41 (An Act to Amend the *Competition Act*) was introduced in the House of Commons and received first reading on December 7, 2006.

Under the proposed amendments, the Competition Tribunal could order telecommunications service providers to pay an administrative monetary penalty of up to \$15 million in cases of abuse of dominance. As the telecommunications industry is deregulated, increased competition law oversight and enforcement is required to ensure that competition eventually replaces regulation as the key source of discipline in those markets.

Second reading of the bill began on February 27, 2007.

7.2 Bureau projects

7.2.1 Generic drug study

At the Canadian Bar Association's annual conference on competition policy in September 2006, the Competition Bureau announced that it would be undertaking a market study of the generic pharmaceuticals sector. Canada's publicly funded health sector comprises and depends on many markets, and it is the Bureau's role to ensure they remain healthy so they can deliver the benefits of competition. Generic drugs play an important role in creating competition in the supply of pharmaceuticals after the period of patent protection has ended. Studies such as the June 2006 report of the Patent Medicine Prices Review Board, which found generic prices to be generally high in relation to comparator countries, suggest that the related Canadian markets may not be providing the benefits that they could.

The study will attempt to assess this matter by providing a market analysis of the generic drug sector, with a focus on regulatory and market structure matters. As part of the study, the Bureau organized a generic market study team, hired two academic experts on pharmaceutical markets, interviewed manufacturers, distributors, pharmacists, insurers, managers of health benefit plans, federal health benefit plans and provincial drug benefit plans, and regulators from Health Canada, and collected and analyzed publicly available information, including data purchased from firms specialized in gathering market intelligence in the pharmaceutical sector.

7.2.2 Discussion paper on section 45

Section 45 of the *Competition Act* makes it a criminal offence for anyone to conspire with anyone else to unduly lessen competition. Agreements between competitors can be anti-competitive, competitively neutral or procompetitive. Section 45 does not adequately make this distinction, and as a result, does not capture certain types of anti-competitive agreements, while possibly inhibiting competitively neutral or pro-competitive agreements out of concern about criminal liability.

Work on proposals for reform of this section had begun prior to the publications in 2002 of the House of Commons Industry, Science and Technology Committee report that suggested that section 45 is difficult to enforce. In 2005, as a result of internal work by the Bureau and in response to this committee report and to public consultations in 2003-2004, the Bureau struck internal and external working groups of lawyers and economists to help it consider various ways to assess potential features of an amended section 45. Members of the working groups agreed on criteria for evaluating the various models and began their systematic assessment of them in the context of a number of case scenarios, all with a view to determining, among other things, what behaviour the provisions should cover and whether the provisions should be criminal or civil. The working groups completed their assessments in 2006.

7.2.3 Competition assessment project

In addition to the benefits that competition provides to consumers, it is increasingly recognized as a key driver of innovation and international competitiveness. As a consequence, a number of jurisdictions, including Australia, the United Kingdom, the United States and the European Union, have found ways to ensure that government policy and regulation only limits competition when warranted. These jurisdictions have adopted, to various extents, processes that require law- and policy-makers to rely on market forces whenever possible or, when intervention is necessary, to choose the options that are the least harmful to competition.

The Organisation for Economic Co-operation and Development incorporated the experience of leading jurisdictions in carrying out a competition assessment of government policy into a competition assessment toolkit. The intention is for the tool kit to be easily applied during the policy and regulation development process with few administrative resources. The Competition Bureau is currently working on adapting this tool kit for application within the federal government, developing training material and launching a pilot project.

7.3 Private members' business

7.3.1 Private members' bills

In 2006–2007, a number of private members' bills of relevance to the Bureau were introduced. As of March 31, 2007, none had received Royal Assent.

Bill C-299, An Act to Amend the Criminal Code and the Competition Act

This Bill, which was introduced April 3, 2006, seeks to protect personal information. The House Standing Committee on Justice and Human Rights removed the clauses that contained amendments to the *Competition Act* and the *Canada Evidence Act*, and a definition of personal information. The Bill is now titled An Act to amend the *Criminal Code*. As of March 31, 2007, the Bill had passed the House and was waiting second reading in the Senate.

Bill C-319, An Act to Establish the Energy Price Commission

This Bill was introduced June 6, 2006, and is the same as Bill C-229, which died on the order paper at the end of the 38th Parliament. The Bill seeks to establish an energy price commission to regulate the wholesale and retail

price of motor fuels, including diesel and propane, as well as heating oil and electric power. The Bill, which had passed second reading by March 31, 2007, also links the issue of price control to competition.

Bill C-335 An Act to Amend the Bank Act (Bank Mergers)

This Bill was introduced June 6, 2006, and is the same as Bill C-249, which died on the order paper at the end of the 38th Parliament. The Bill proposes to amend the merger approval process for bank and trust company mergers. Specifically, it would prevent bank mergers unless the Superintendent of Financial Institutions advises the Minister of Finance that a merger is necessary to prevent insolvency or that none of the applicants wishing to merge would become insolvent. In these cases, the merger would have to be approved by a resolution of the Senate and House of Commons. As of March 31, 2007, the Bill had not begun second reading.

Bill C-414, An Act to Amend the Competition Act and the Food and Drugs Act (child protection against advertising exploitation)

This Bill was introduced March 22, 2007, and proposes to expressly restrict commercial advertising and promotion of products, food, drugs, cosmetics or devices directly to children younger than 13. As of March 31, 2007, the Bill had not begun second reading.

Bill C-416, An Act regulating telecommunications facilities to facilitate the lawful interception of information transmitted by means of those facilities and respecting the provision of telecommunications subscriber information (Modernization of Investigative Techniques Act)

This Bill was introduced March 23, 2007, and is similar to Bill C-74 from the 38th Parliament. The Bill would require telecommunications service providers to put in place and maintain certain capabilities that facilitate the lawful interception of information transmitted by telecommunications and to provide basic information about their subscribers to the Royal Canadian Mounted Police, the Canadian Security Intelligence Service, the Commissioner of Competition and any police service constituted under the laws of a province. As of March 31, 2007, the Bill had not begun second reading.

7.3.2 Private members' motions

In 2006–2007, there were a small number of private members' motions of relevance to the Bureau's work.

M-119, Petroleum Monitoring Agency

Motion 119, introduced on April 4, 2006, is the same as Motion 177, which was introduced in the 38th Parliament but never placed on the Order of Precedence. The motion states, "That, in the opinion of the House, the government should: (a) create a petroleum monitoring agency with a three-year mandate to collect and disseminate, on a timely basis, price data on crude oil, refined petroleum products, and retail gasoline for all relevant North American markets; (b) in consultation with stakeholders from the petroleum sector (the majors, the independents, and consumer groups), appoint a director who would lead this agency; (c) require the agency to report to Parliament on an annual basis on the competitive aspects of the petroleum sector in Canada; and (d) request that the Standing Committee on Industry, Natural Resources, Science and Technology review the agency's performance and the need for an extension of its mandate following the tabling of the agency's third report."

M-160, Gasoline Prices and Petroleum Monitoring Agency

Motion 160 was introduced on May 8, 2006, and states, "That, in the opinion of the House, the government should implement a plan to counter the negative effects of the repeated increases in gas prices, including a surtax on the profits of the big oil companies, the creation of a petroleum monitoring agency and the strengthening of the *Competition Act.*" As of March 31, 2007, this motion was not on the Order of Precedence.

7.4 Parliamentary committee appearances

7.4.1 Deregulation of telecommunications

On February 5, 2007, the Commissioner of Competition appeared before the House of Commons Standing Committee on Industry, Science and Technology to speak on the issue of the deregulation of telecommunications. The hearing focused on questions about the Minister of

Industry's policy direction, the proposed order to vary the Canadian Radio-television and Telecommunications Commission's local forbearance decision and Bill C-41. The committee also discussed whether the Minister's approach was consistent with the Telecommunications Policy Review Panel's report. The Commissioner indicated the Bureau's support for efforts to rely more heavily on market forces in the telecommunications industry, and outlined the steps the Bureau is taking to prepare itself for the coming changes in the telecommunications regulatory environment. The Commissioner's submission can be found on the Bureau's Web site (http://www.competitionbureau .gc.ca/epic/site/cb-bc.nsf/en/02555e.html).

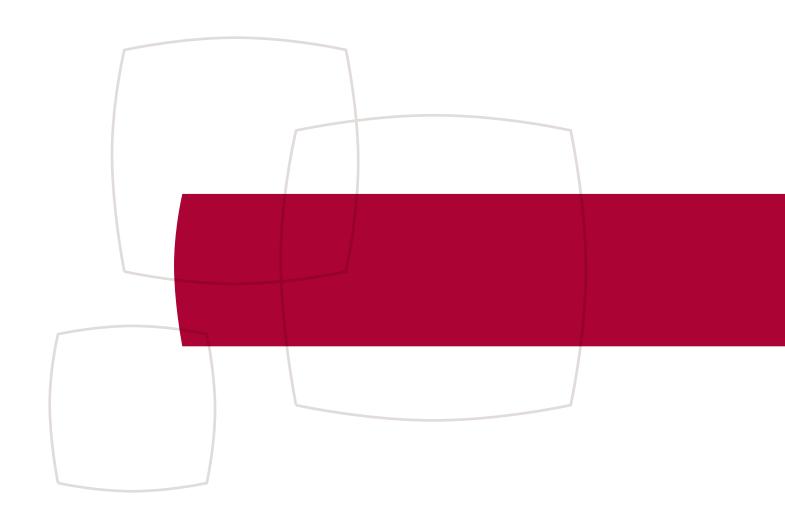
7.4.2 Legislative amendments

Bill C-26, An Act to Amend the Criminal Code (Criminal Interest Rate)

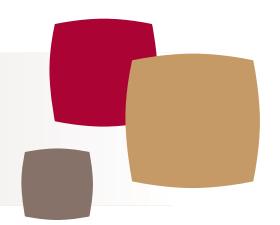
On March 21, 2007, officials from the Competition Bureau appeared before the Senate Standing Committee on Banking, Trade and Commerce to speak on Bill *C-*26, An Act to Amend the *Criminal Code* (Criminal Interest Rate). The Bill responded to concerns in the payday loans sector in Canada. The Bureau addressed possible consumer concerns, federal and provincial jurisdiction, and the powers currently available under the *Competition Act*.

Bill C-II, An Act to Amend the Canada Transportation Act and the Railway Safety Act and to make consequential amendments to other Acts

Bill C-11 was introduced on May 4, 2006, and is similar to Bill C-44 from the 38th Parliament and Bill C-26 from the 37th Parliament. The Bill contained provisions that pertain to mergers in the transportation sector. The Competition Bureau expressed concern about some ambiguity in the language of the legislation, since it may have created an overlapping of authority between government departments and ministers when reviewing the effects of mergers. The Bureau provided a written submission to the House Standing Committee on Transportation, Infrastructure and Communities during its review of the Bill to express those concerns. The Bill was amended to direct Transport Canada to work with the Competition Bureau to develop merger guidelines. As of March 31, 2007, work on developing those guidelines had not been completed.



8.
COMMUNICATING WITH
CONSUMERS AND BUSINESSES



8. COMMUNICATING WITH CONSUMERS AND BUSINESSES

Education is essential to the work of the Bureau. Consumers need truthful and accurate information to make informed purchasing decisions. Similarly, businesses need information about the Bureau and its enforcement approach to ensure they can comply with the law. The Bureau increasingly uses the media to reach Canadians.

In 2006–2007, the Bureau issued 28 news releases and 18 information notices describing the benefits of its activities for Canadians and the economy. Bureau staff responded to countless inquiries from journalists in Canada and abroad. Senior Bureau managers and communications advisors were available to the media and acted as spokespeople on a variety of key issues relating to the Bureau's activities.

8.1 Media relations

The Bureau's communications outreach initiatives resulted in more than 2,700 media stories referring to the Bureau. Independent media analysis found that 98 per cent of the media coverage was either positive or neutral, up eight per cent from 2005–2006. This positive increase is the result of the Bureau's ability to successfully communicate its mandate and role through media coverage of pricing investigations, decisions on misleading advertising and product labelling, and reviews of proposed mergers and acquisitions. Broadcast and online media stories accounted for more than half of the total media coverage.

8.2 Bulletins and guidelines

The Bureau issues various publications such as bulletins and guidelines to inform businesses and consumers about the Bureau's enforcement policies.

8.2.1 Bulletin on merger remedies

On September 22, 2006, the Competition Bureau published an information bulletin, *Merger Remedies in Canada*. The bulletin provides guidance to businesses and legal counsel on the objectives and principles the Bureau uses when it seeks, designs and implements remedies to resolve competition concerns arising from proposed mergers.

8.2.2 Bulletin on regulated conduct

On June 29, 2006, the Competition Bureau published its Technical Bulletin on Regulated Conduct. The aim of the bulletin is to outline the Commissioner of Competition's general approach to the enforcement of the *Competition Act* with respect to conduct that may be regulated by another federal, provincial or municipal law. This includes the Bureau's approach to the regulated conduct doctrine.

In order to fulfill its mandate under the Act, the Bureau will attempt to determine whether Parliament intended that the relevant provisions of the Act apply to conduct that is otherwise regulated and, if so, whether any doctrines or defences protect that conduct. While the Bureau believes that both the Act and any other law said to regulate conduct will generally be able to co-exist, such that the Act will apply as written, the Bureau recognizes that the status of regulated conduct under the Act requires greater clarity. Consequently, the Bureau hopes that case law will clarify the status of the regulated conduct doc-

trine; however, if case law is not forthcoming, the Bureau may explore the possibility of a legislative resolution to this longstanding issue.

8.3 Warnings and information notices

The Bureau periodically issues warnings to alert consumers and businesses of potentially misleading activities in the marketplace.

8.3.1 Fraudulent mail scam

In June 2006, the Competition Bureau collaborated with Canada Post and the U.K.'s Trading Standards Service to warn Canadians who had responded to an alleged mail fraud scam originating from the United Kingdom. As part of the scam, consumers in a number of countries, including Canada, received letters encouraging them to send money to enter a contest or pay a "judging or processing" fee to claim a prize. The Trading Standards Service seized letters from Canada addressed to those perpetrating the fraud containing cheques, money orders and credit card information, and handed them over to the Bureau. In turn, the Bureau and Canada Post ensured that the letters were returned to the senders.

8.3.2 Gas saving devices

The Competition Bureau issued a warning to consumers in August 2006 concerning false claims about so-called gas saving devices that supposedly improve fuel efficiency, reduce harmful emissions and reduce repair costs on a vehicle's engine. These devices, ranging in price from \$100 to \$600, were advertised in garages and accredited installation centres, in newspapers, and on the radio and Internet. Canadians were cautioned against buying these devices, since it was unclear whether the makers could substantiate the claims they were making about them.

8.3.3 Going out of business sales

In August 2006, consumers were warned to beware of potentially misleading advertisements offering huge discounts as a result of bankruptcy, business closure, liquidation, renovation, clearance, retirement, moving and end-of-lease sales. The Bureau had received complaints

from both consumers and competitors about a number of retailers that regularly closed their doors due to renovations, bankruptcy or another reason, only to reopen under a different name with the same merchandise. The *Competition Act* prohibits representations that are materially false or misleading. A true bankruptcy or liquidation sale should only offer merchandise that is affected by a true bankruptcy or liquidation.

8.3.4 Diabetes fraud

In October 2006, the Competition Bureau and its partners in Canada, Mexico and the United States developed various consumer education and awareness products to warn consumers about bogus diabetes products and services. Among other things, the Bureau helped produce and distribute a pamphlet on fraudulent diabetes cures and helped develop an educational teaser Web site.

8.3.5 Prepaid long-distance phone cards

The Bureau issued tips to consumers in December 2006 about prepaid long-distance phone cards and what they should know before buying them. A number of complaints are filed with the Bureau each year about cards that provide fewer minutes than advertised, have hidden fees and have higher per-minute rates than advertised. The Bureau urged consumers to be wary of fine print, vague language and unbelievable deals, to ensure that they purchase cards that deliver the number of minutes advertised.

8.4 The Web site

The Bureau's Web site (www.competitionbureau.gc.ca) continues to provide a wealth of useful information to a wide and varied audience ranging from consumers and businesses to legal and media professionals. The site also features an automatic e-mail distribution list that sends subscribers information updates. To subscribe, visit http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/frm-eng/PJSH-6X9J7C.

8.5 Information Centre

The Information Centre is the primary access point for information requests and complaints. The Bureau's clients include businesspeople, chief executive officers, members of Parliament, the media, lawyers, consumers from Canada and around the world, domestic and foreign corporations, and the general public. Information and complaint specialists provide information to clients, mainly over the telephone, and register complaints on subjects such as the following:

- false or misleading representations and deceptive marketing practices;
- packaging and labelling of consumer products;
- labelling of textile articles and marking of precious metals;
- CA Identification Number applications and searches;
- · restraints to competition; and
- mergers.

The Information Centre is also responsible for providing information on the laws the Bureau administers and for capturing complaints that may lead to formal Bureau investigations. The information the Centre gathers is essential to helping the Bureau shape its public awareness and enforcement activities. In 2006–2007, the Information Centre registered 31,559 requests via telephone, fax, mail and Internet.

The public can contact the Centre in several ways:

- through its toll-free line (1-800-348-5358) from 8:30 a.m. to 4:30 p.m. (Eastern Time);
- through an electronic complaint form on the Bureau Web site (http://www.competitionbureau.gc.ca/ epic/site/cb-bc.nsf/frm-eng/PJSH-6X9KQY);
- by facsimile (819-997-0324); and
- by mail (Competition Bureau, 50 Victoria Street, Gatineau, Quebec, K1A 0C9).

8.6 Other initiatives

8.6.1 Commissioner's meetings with consumer groups

Throughout the year, the Commissioner of Competition hosts a number of open sessions with consumer groups from across Canada. These meetings provide the Bureau with an opportunity to outline its work, mandate and benefit to consumers. On October 31, 2006, the Commissioner met with representatives from the Alberta Council on Aging, the Automobile Protection Association, Canada's Association for the Fifty Plus, the Consumers' Association of Canada, the Consumers Council of Canada, Option consommateurs, the Public Interest Advocacy Centre, l'Union des consommateurs, as well as Industry Canada's Office of Consumer Affairs.

Issues discussed during the half-day session included health fraud, the health-care sector, a national strategy on misleading advertising, and well as ways to improve communications with complainants.

8.6.2 Ordinary selling price provisions

In October 2006, the Competition Bureau conducted half-day seminars in Montreal and Vancouver to educate businesses on the ordinary selling price provisions of the *Competition Act*. These seminars provided participants with an explanation on a number of issues, including the provisions themselves, the time and volume tests the Bureau uses when enforcing the provisions, as well as compliance tips.

8.6.3 Fraud Prevention Month

In March 2007, the Fraud Prevention Forum, which is chaired by the Competition Bureau, launched Fraud Prevention Month, an education and awareness campaign to encourage business and consumers to be vigilant in the fight against fraud. To date, there are more than 80 members of the Forum, including private sector firms, consumer and volunteer groups, governments and law enforcement agencies.

Fraud Prevention Month began with a news conference in Ottawa, along with simultaneous launches in Vancouver, Calgary, Toronto, Montreal and Halifax. Forum partners

hosted a number of activities across Canada throughout March. For example, the Better Business Bureau held Scam Jams in Richmond, B.C., London and Halifax. These are one-day anti-fraud events that combine education and information about consumer protection. Canada Post sponsored fraud prevention public service announcements on radio stations across Canada throughout the month, while Rogers aired announcements on its cable stations across the country. Quebecor included fraud prevention posters in 18 daily newspapers in Canada.

In the final week of the campaign, the Bureau conducted a Consumer Warning Blitz, issuing daily warnings to businesses and consumers about various types of fraud. Topics included business directory scams, office supply scams, phoney lotteries, fraudulent weight loss cures, bogus prize pitches and sweepstake schemes, and fraudulent cheques.

The month concluded with a one-day National Community Shredding Event, organized by the Bureau, Shred-it and Capital One, which took place in more than 25 cities across Canada. Consumers were encouraged to bring their unwanted personal documents to be shred by Shred-it's onsite mobile shredding trucks.

8.6.4 Symposium on competition and intellectual property

In March 2007, the Bureau, in collaboration with other government agencies, hosted a symposium on the interface between competition policy and intellectual property, featuring sessions on authorized generics, the collective management of copyright, extension of intellectual property rights, compulsory licensing and tying and bundling in the context of intellectual property.

Approximately 50 participants, including academics, practitioners and government representatives with responsibility for competition or intellectual property, attended. The symposium was an opportunity for the authors of commissioned research papers to present their findings and for all participants to have an in-depth discussion of the issues.

8.7 Public consultations

Throughout the year, the Competition Bureau invites the public and interested parties to comment on various initiatives as part of its public consultation process. Submissions to the 90-day process are made available to the public and are posted on the Bureau's Web site, unless participants request that their responses remain confidential.

8.7.1 Corporate compliance program

The Competition Bureau requested comments from the business and legal community in June 2006 to update its *Bulletin on Corporate Compliance Programs*. First published in 1997, the bulletin provides the knowledge and tools necessary to understand and comply with the laws under the Bureau's jurisdiction. The bulletin was being updated to reflect amendments to the *Competition Act* and new Bureau publications.

8.7.2 Abuse of dominance in telecommunications

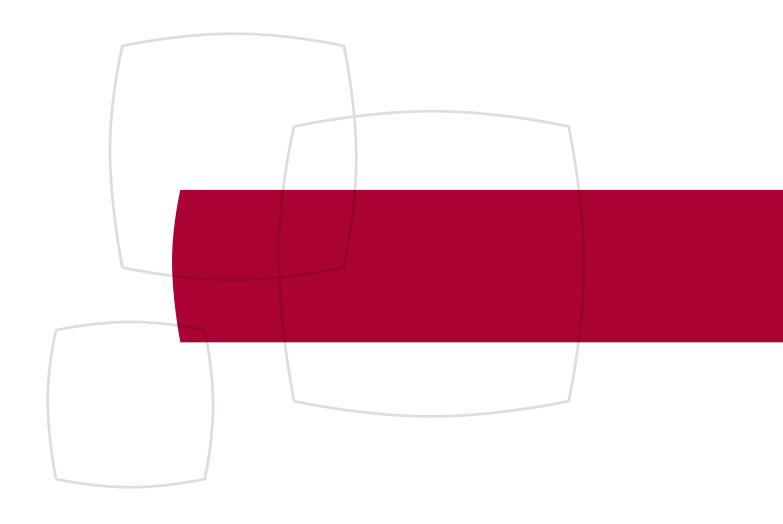
In September 2006, the Bureau issued a draft bulletin for public comment on abuse of dominance in deregulated telecommunications markets. This bulletin is a supplement to the Bureau's *Enforcement Guidelines on the Abuse of Dominance Provisions*, which provide general guidance on its approach to abuse of dominance.

8.7.3 Textile Labelling and Advertising Regulations

In January 2007, the Competition Bureau requested public comments on its discussion paper *Amending the Textile Labelling and Advertising Regulations*. The regulations were created to provide uniformity and accuracy in the marking and advertising of consumer textile articles and textile fibre products sold in Canada.

8.7.4 Environmental claims

In March 2007, the Competition Bureau requested public comments on *Environmental Claims: A Guide for Industry and Advertisers*. The purpose of this guide is to help industry and advertisers comply with the provisions of the *Competition Act*, the *Consumer Packaging and Labelling Act* and the *Textile Labelling Act*.





2006 - 2007 ANNUAL REPORT

APPENDIX I. DISCONTINUED INQUIRIES

Stabilizer compounds

The Bureau initiated an inquiry in February 2003 following allegations of an international price fixing and market allocation agreement among competitors regarding the sale of stabilizer compounds, contrary to subsections 45(1)(b) and 45(1)(c) of the *Competition Act*. The inquiry was discontinued in July 2006 due to insufficient evidence that an offence had occurred.

Impact modifiers

The Bureau initiated an inquiry in February 2003 following allegations of an international price fixing and customer allocation agreement among competitors regarding the sale of impact modifiers and processing aids, contrary to subsections 45(1)(b) and 45(1)(c) of the Act. The inquiry was discontinued in July 2006 due to insufficient evidence that an offence had occurred.

EPDM rubber

The Bureau initiated an inquiry in December 2002 following allegations of an international market sharing agreement among competitors regarding the sale of Ethylene Propylene Diene Monomer rubber, contrary to subsections 45(1)(b) and 45(1)(c) of the Act. The inquiry was discontinued in July 2006 due to insufficient evidence that an offence had occurred.

Poultry processing

The Bureau initiated an inquiry in June 2005 following a six-resident complaint regarding representations related to the processing of poultry. The complainants alleged that consumers were being misled about the ethical treatment of poultry being processed as a result of false or misleading representations in the company's press releases and on its Web site. Subsection 52(1) and paragraph 74.01(1)(a) of the *Competition Act* prohibit making materially false or misleading representations to the public. After examining

the information obtained, the Bureau concluded in July 2006 that there was no point in continuing the inquiry, since the company involved was no longer making these representations and those that they were making did not contravene the Act.

Beer bottles

The Bureau initiated an inquiry in October 2003 following a complaint alleging anti-competitive acts under the Standard Mould Bottle Agreement. The agreement requires that brewers use the Industry Standard Bottle (amber and long-necked) exclusively for domestically produced products in non-metal containers that hold less than 600 ml. The allegations were that dominant firms were using the agreement to entrench their market power in the Canadian beer industry, contrary to section 79 of the *Competition Act*. It was argued that having the ability to bottle beer in both the standard bottles and in non-standard bottles (such as those made of clear or green glass and that are shorter or taller than the standard bottles) is a key way to compete in the beer industry.

To pursue this case, and any other abuse of dominance case, the Bureau must be satisfied that a firm or group of firms that possesses market power is engaging in anti-competitive behaviour that is, or is likely to have, a significant impact on competition. The Bureau did not find any clear evidence of this in this case and discontinued the inquiry in August 2006.

Jewellery pricing and misleading representations

On December 27, 2002, and February 18, 2003, the Competition Bureau initiated separate inquiries into the business practices of companies operating jewellery stores in Montreal, St-Jerome, Terrebonne and Quebec City. These two inquiries resulted from a conformity strategy developed in fall 1999 targeting Canadian jewellery retailers.

Bureau officers observed the business practices of certain jewellery stores belonging to these companies for a number of months, visiting the stores and noting the jewellery items that were on sale. At no point did the officers see that the jewellery was offered at the ordinary price; rather, they only noticed that sale percentage varied.

On the basis of these observations, the Bureau concluded that the retailers failed to comply with the *Competition Act*'s ordinary selling price provision (subsection 74.01(3)). The provision prohibit retailers from making representations about the ordinary price of a product without having sold a substantial volume of the product at that price or a higher price within a reasonable period of time or having offered the product at that price or a higher price in good faith for a substantial period of time.

As a result of the decision to review the enforcement strategy for jewellery retailers, the Bureau decided on August 30, 2006 to discontinue these investigations and to use another approach to bolster competition in this retail sector.

Copper concentrates

The Bureau initiated an inquiry in April 2003 following allegations of an international price fixing and customer allocation agreement among competitors in the sale and supply of copper concentrate, contrary to subsections 45(1)(b) and 45(1)(c) of the Act. The inquiry was discontinued in August 2006 due to insufficient evidence that an offence had occurred.

Spyware

The Bureau initiated an inquiry in December 2005 following a six-resident complaint about the installation and distribution of spyware software on a user's computer.

The complainants alleged that consumers were being led to install unwanted spyware software on their computers as a result of false or misleading representations, which were made at various points during regular online Internet activities. Subsection 52(1) and paragraph 74.01(1)(a) of the *Competition Act* prohibit making materially false or misleading representations to the public.

After examining the information obtained, the Bureau concluded in October 2006 that there was no point in

continuing the inquiry due to insufficient evidence that an offence had occurred

Roofing products

In October 2006, the Bureau discontinued an inquiry it had begun following a request by six residents who alleged that a manufacturer had conspired with another company to unduly lessen competition in the sale of roofing products or to unreasonably enhance the price thereof, had engaged in price maintenance regarding the supply of its roofing products, and had engaged in a refusal to deal. The Bureau concluded that the facts did not support the allegations and that there was insufficient reason to believe that the manufacturer had contravened the *Competition Act*.

Fees and incentives for real estate brokers

The Competition Bureau initiated an inquiry in September 2005 into rules the Real Estate Council of Alberta was enforcing that prohibited real estate brokers from offering cash incentives and referral fees to non-industry members in the province.

In May 2006, following widespread consultations and discussions with the Bureau, the Council announced amendments to the rules under Alberta's *Real Estate Act*. As a result of the changes, brokers in Alberta are now free to offer cash rebates to buyers as a means of competing for their business. Agents are now also free to offer referral fees, which gives agents greater means to identify prospective buyers and sellers. The amendments came into force on October 1, 2006, and the Bureau concluded that they should make it less likely that competition for broker services would be prevented or lessened substantially. Consequently, the Bureau discontinued the inquiry in November 2006.

Advertising by airlines

The Competition Bureau initiated an inquiry in March 2006 following the receipt of a complaint from six persons residing in Canada alleging that Air Canada and Jazz Air LP (collectively Air Canada) had engaged in anticompetitive conduct with regards to advertising flights in and out of the Toronto City Centre Airport, contrary to

sections 52 (false or misleading representations), 74.01 (misrepresentations to the public) and 79 (abuse of dominance) of the *Competition Act*.

In August 2006, the Bureau published an information notice announcing that concerns relating to sections 52 and 74.01 had been resolved, since Air Canada stopped all advertising and bookings for the Toronto City Centre Airport. In addition, the Bureau found no evidence suggesting a violation of section 79 and, as a result, discontinued the inquiry in December 2006.

Software and software hosting services

In September 2006, the Competition Bureau initiated an inquiry as a result of a complaint by six residents concerning the trade practices of a supplier of software and software hosting services. The complaint alleged that the company, which had developed software in accordance with the specifications of one of the complainants, had tied the sale of a licence for that software to use of its hosting services.

The Bureau examined the company's trade practices under sections 77 (exclusive dealing, tied selling and market restriction) and 79 (abuse of dominance) of the *Competition Act*. According to the information gathered, it appeared that the company did not dominate the markets in question, namely, the client management software market and the software hosting and development market.

After examining the information obtained, the Bureau concluded in December 2006 that there was no point in continuing the inquiry based on the evidence.

Aluminum fluoride

The Bureau initiated an inquiry in May 2005 following allegations of an international information-sharing agreement among competitors that affected the sale and supply of aluminum fluoride in Canada and elsewhere, contrary to subsections 45(1)(b) and 45(1)(c) of the Act. The Bureau discontinued the inquiry in February 2007 due to insufficient evidence that an offence had occurred.

Emerging health care profession

In October 2005, the Bureau initiated an inquiry regarding the ability of the members of an emerging health care profession to independently provide services to consumers in Ontario. It was alleged that the professionals were being constrained by anti-competitive acts of a competing and dominant health care profession with an overlapping scope of practice.

The Bureau examined this allegation under section 79 of the *Competition Act*, which prohibits abuse of dominance. At the time, the law required members of the emerging profession to get an order from a member of the dominant profession in order to practise, and it was alleged that the difficulty in obtaining such orders was the result of anti-competitive conduct. The Bureau's investigation revealed that the consequences of providing such an order were perhaps unclear to members of the dominant profession. The Bureau worked with the regulatory body of the dominant profession to ensure it was communicating clearly to its members on this issue. The Bureau discontinued the inquiry in March 2007.

Lottery and sweepstakes promotions

The Bureau initiated an inquiry in July 2003 into the marketing practices of HMS Direct Ltd. with respect to complaints that it had allegedly sent deceptive notices of winning a prize and including materially false or misleading representations in its lottery and sweepstakes promotions, thereby violating sections 53 and 52 of the *Competition Act*, respectively.

In December 2004, the Bureau put the inquiry on hold, pending the outcome of a related matter before the courts. While waiting for the court action to conclude, HMS stopped distributing the lottery and sweepstakes promotions in question. The Bureau subsequently decided not to pursue the matter further and discontinued the inquiry in March 2007

APPENDIX 2. SPEECHES AND PAPERS

Speeches

Sheridan Scott, Commissioner of Competition

- Fédération des Chambres de Commerce du Québec, Montreal, April 5, 2006
- Racobank Group, Montreal, April 5, 2006
- "The Brave New World of Competition," Canadian Corporate Counsel Association's National Spring Conference, Ottawa, April 24, 2006
- "Aristotle and the 'Just Right' Policies," Intellectual Property Institute of Canada's 40th Spring Meeting, Gatineau, April 24, 2006
- "Competition and Innovation in a Flat World,"
 Insight International Competition Law Conference,
 Toronto, May 15, 2006
- "The Challenges of Fighting Fraud in an Internet World," 12th Annual ACFE Canadian Fraud Conference, Toronto, May 24, 2006
- "Mergers in the Morning: Abuse in the Afternoon,"
 Competition Law Spring Conference, Toronto, May 26, 2006
- "Competition Law and Intellectual Property Law: Getting the Balance 'Just Right'," University of Victoria Faculty of Law International Intellectual Property Law Symposium, Victoria, July 15, 2006
- "Abuse of Dominance Under the Competition Act,"
 U.S. Federal Trade Commission and Department of Justice hearings on single-firm conduct, Washington D.C., September 12, 2006
- "Criminal Enforcement of Anti-Trust Laws—The U.S. Model—A Canadian Perspective," Fordham Corporate Law Institute Annual Conference, New York, September 14, 2006
- Canadian Bar Association Annual Fall Conference on Competition Law, Gatineau, September 28, 2006

- "Anti-Trust in the Self-Regulated Professions: An International Perspective," 2006 Annual Fall Conference on Competition Law, Gatineau, September 29, 2006
- UCLA/City Bar of New York, Second Annual Institute on U.S., EU and Canadian Antitrust Aspects of Mergers and Acquisitions, New York, October 25, 2006
- "Regulation and Competition; Moving to a More Productive Future," C.D. Howe Institute Policy Conference, Toronto, November 6, 2006
- "Here to Help You: Healthy Markets for the Health of Canadians," Information Session with National Health Care Organizations on Healthy Markets for the Health of Canadians, Ottawa, November 9, 2006
- "Competition Law Essentials," Continuing Legal Education Society of British Columbia, Vancouver, December 1, 2006
- Competition/IP Symposium, Ottawa, March 29–30, 2007

Richard Taylor, Deputy Commissioner, Civil Matters

- "Abuse of Dominant Position," 2006 Competition Law Forum, Langdon Hall, Cambridge, April 26, 2006
- "The Canadian Approach to Abuse of Dominance,"
 2006 Canadian Bar Association Competition Law
 Spring Conference, Toronto, May 26, 2006
- "The Future Role of the Competition Bureau in the Telecom Sector," 4th Annual Canadian Telecommunications Forum, Ottawa, October 30, 2006

Sheridan Scott and Richard Taylor

"Recent Developments Concerning Regulation in the Telecommunications Sector," House of Commons Standing Committee on Industry, Science and Technology, Ottawa, February 5, 2007

Sally Southey, Deputy Commissioner, External Relations and Public Affairs

 "How Accurate Information Benefits the Tourism Industry," Livingston Chamber of Commerce, Zambia, April 28, 2006

Denyse MacKenzie, Senior Deputy Commissioner, Criminal Matters

 "International Cartel Enforcement Enforcers Sans Frontières," Insight International Competition Law Conference, Toronto, May 15–16, 2006

Chris Martin, Assistant Deputy Commissioner, International Affairs

"ICN/OECD Major Recent Developments and Practical Implications," presentation as part of conference panel, Insight International Competition Law Conference Toronto, May 15–16, 2006

Melanie L.Aitken, Acting Senior Deputy Commissioner, Mergers

Advanced Mergers and Acquisitions,
 December 4, 2007

Papers

MacKenzie, Denyse, *The Bureau's Immunity Program: Fine Tuning or Overhaul*, Canadian Bar Association Annual Conference, Gatineau, September 28–29, 2006

APPENDIX 3. CONFERENCES AND SEMINARS

April 2006

- The Commissioner delivered a presentation at Langdon Hall in Cambridge (April 25).
- A Bureau representative delivered a presentation on how to detect and avoid bid-rigging to more 100 members of the Kitchener & Waterloo Purchasing Cooperative in Waterloo (April 25).
- A Bureau representative delivered a presentation at the Competition Law and Policy Forum at Langdon Hall in Cambridge (April 24–26).
- A Bureau representative spoke at the U.S-Canadian Cross-Border Mergers and Acquisitions Forum in New York (April 27–28).
- A Bureau representative gave a presentation to the 2006 Telecommunications Invitational Forum at Langdon Hall in Cambridge (April 30–May 2).
- A Bureau representative spoke to the Central Weights and Measures Association in Dayton, Ohio (April 30–May 3).

May 2006

- The Commissioner and two representatives spoke at the International Competition Network Annual Conference in South Africa (May 3–5).
- A Bureau representative spoke at the Canadian Bar Association's Evening Joint Meeting of the Business Law Section and Corporate Section of the B.C. Branch in Toronto (May 8).
- A Bureau representative gave a presentation to the North Ontario Fraud Investigator Partnership Initiative in Sault Ste. Marie (May 9–11).
- A Bureau representative spoke to the National Credit and Financial Executives Forum in Toronto regarding the work of the Competition Bureau and its enforcement activities with respect to bid-rigging, conspiracy and mass marketing fraud (May 10).

- A Bureau representative made a presentation to the purchasing and legal departments of the City of Hamilton regarding bid-rigging and conspiracy (May 11).
- Bureau representatives held remedies consultation sessions with lawyers and economists in Vancouver, Calgary, Toronto and Montreal (May 11–30).
- A Bureau representative delivered a presentation on written opinions relating to sections 55 and 55.1 of the *Competition Act* to Service Alberta (May 15).
- Bureau representatives gave presentations at the Insight International Law Conference in Toronto (May 15–16).
- A Bureau representative spoke at the Canadian Bar Association's Evening Joint Meeting of the Business Law Section and Corporate Section of the B.C. Branch in Vancouver (May 17).
- Bureau representatives made a presentation to the Durham Region Purchasing Cooperative in Oshawa on how to detect and avoid bid-rigging (May 31).

June 2006

- A Bureau representative spoke to participants in an ethics course hosted by the Toronto Construction Association in Richmond Hill (June 5).
- A Bureau representative spoke at the 2006 Saskatchewan Commercial Crime Seminar in Regina (June 13–15).
- A Bureau representative delivered a speech at the World Jewellery Conference in Vancouver (June 24–27).
- A Bureau representative delivered a presentation at the Community of Federal Regulators Workshop in Halifax (July 25).

September 2006

- A Bureau representative spoke at the Seoul International Competition Forum 2006 in Seoul (September 5–7).
- A Bureau representative delivered a presentation at the Canadian Marketing Association's Second Annual Regulatory Affairs Conference in Toronto (September 14)
- A Bureau representative delivered a presentation at the Ontario chapter of the Canadian Bar Association in Toronto (September 22).
- A Bureau representative delivered a presentation, "Combating Frauds, Cons and Scams," in Vernon, British Columbia (September 26).
- Bureau representatives attended the Canadian Bar Association's Annual Fall Conference on Competition, Gatineau (September 28–29).
- A Bureau representative delivered a presentation,
 "Opportunities Unlimited," at the Edmonton Chamber of Commerce (September 29).

October 2006

- A Bureau representative delivered a presentation, "Forum 2006, Harvest the Ideas, Reap the Rewards," at the Canadian Forum on Public Procurement in Halifax (October 3).
- Bureau representatives delivered presentations on the ordinary selling price provisions of the *Competition Act* in Montreal at a seminar for businesses (October 5).
- The Commissioner spoke at the Mexican Competition Day Conference (October 9–12).
- A Bureau representative spoke at the Costa Rica Technical Assistance Mission in San José (October 16-21).
- Bureau representatives delivered presentations, "Best Training Practices" and "Raising Consumer Awareness," at the International Consumer Protection and Enforcement Network in Warsaw (October 19–25).
- A Bureau representative spoke at the Cassels Brock Outsourcing Client Seminar in Toronto on bidrigging in procurement processes (October 26).
- A Bureau representative spoke at the Canadian Tele-

- communications Forum in Ottawa (October 30-31).
- A Bureau representative delivered a presentation, "Examining Emerging Exposures for Directors and Officers, Competition and Personal Liability: Best Practices to Minimize Criminal and Civil Exposure," at the Canadian Institute Seminar in Toronto (October 30–31).

November 2006

- Bureau representatives spoke at a Lang Michener Client Seminar Series event in Toronto on the provisions of the *Competition Act* and the enforcement activities of the Bureau (November 2).
- A Bureau representative delivered a presentation, "Protecting Consumers in the Next Tech-Age," at the George Washington University in Washington, D.C. (November 6–9).
- A Bureau representative spoke at a Brown Bag Lunch Presentation for Edmonton Business Link in Edmonton (November 7).
- A Bureau representative delivered a presentation, "Civil Litigation and Administrative Law," at the Public Sector Paralegal Forum in Ottawa (November 7–8).
- The Commissioner delivered a presentation, "Competition Policy: Principles, Rules and Exceptions," at the C.D. Howe Institute Policy Conference (November 13).
- A Bureau representative spoke at the International Competition Network Cartel Workshop in The Hague (November 13–16).
- A Bureau representative presented a paper, "Key
 Competitors and the Domino Effect in a Retail Gasoline Market," at the 53rd Annual North American
 Meetings of the Regional Science Association International in Toronto (November 16–18).
- A Bureau representative delivered a presentation, "Forestry 2006: Industry Challenges and First Nations' Opportunities" at the Pacific Business and Law Institute in Vancouver (November 23–24).
- Bureau representatives made a presentation to the Purchasing Managers Association of Canada (Ontario Institute) in Oshawa on how to detect and avoid bidrigging in procurement processes (November 24).

- Bureau representatives delivered a presentation on bid-rigging to City of Brampton employees (November 28).
- A Bureau representative gave a presentation on the Textile Labelling Act to students in the Design and Fabrication of Clothing course at the Collège Notre-Dame-de-Foy in Quebec (November 29).
- A Bureau representative spoke to the Calgary Regional Health Authority in Calgary (November 30).

December 2006

- Bureau representatives delivered a presentation, "Competition Law Essentials," as part of a panel on misleading advertising and deceptive marketing practices" at the Canadian Bar Association's Continuing Legal Education seminar in Vancouver (December 1).
- A Bureau representative presented a paper, "Key
 Competitors and the Domino Effect in a Retail
 Gasoline Market" at the Inaugural Gasoline and Oil
 Markets Research Conference in Berkeley, California
 (December 1).
- A Bureau representative gave a presentation at a meeting with the Canadian Association of Chiefs of Police Executive Committee in Vancouver (December 2).
- A Bureau representative delivered a presentation on mergers and acquisitions at the Insight Conference in Calgary (December 4–5).
- A Bureau representative spoke at the 2006 International Fraud Investigators Conference in Toronto (December 11).

January 2007

- A Bureau representative delivered a presentation on the ABCs of fraud to seniors at the Canterbury Community Association in Ottawa (January 21).
- A Bureau representative spoke at the Canadian Institute's 13th Annual Advertising and Marketing Law Conference in Toronto (January 25).

February 2007

- A Bureau representative spoke at the 2007 Competition Law and Policy Forum at Langdon Hall in Cambridge (February 11–13).
- A Bureau representative spoke to Northern Alberta Health Authorities in Edmonton (February 13)
- A Bureau representative spoke at the Organisation for Economic Co-operation and Development/European Union in Paris and Brussels (February 19–27).
- Bureau representatives delivered a presentation on the misleading advertising and deceptive telemarketing provisions of the *Competition Act* to law students at the University of New Brunswick in Fredericton (February 21).
- A Bureau representative spoke at the International Quality and Productivity Centre's Anti-Trust Symposium in Washington (February 26–27).
- A Bureau representative delivered a presentation on bid-rigging to Contract Managing Services Limited in Frederiction (February 28).

March 2007

- Bureau representatives participated in Scam Jam, hosted by the Better Business Bureau, in Richmond, British Columbia (March 7).
- A Bureau representative attended a roundtable on financial exploitation of older adults put on by the Nova Scotia Seniors Secretariat in Halifax (March 8).
- A Bureau representative attended a Devon Canada Lunch, "How to Recognize Deceptive Telemarketing Scams and How to Report Them," in Calgary (March 13).
- A Bureau representative delivered a presentation, "The Future of International Law," at the American Society of International Law in Washington (March 28–31).