



# Annual Report



## of the Commissioner of Competition for the Year Ending March 31, 2008

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](http://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 Minister,

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, 2008.

***Melanie Aitken***

*Interim Commissioner of Competition*

# MESSAGE FROM THE COMMISSIONER

I am pleased to present the Competition Bureau's Annual Report for 2007-2008. The Bureau, under former commissioner Sheridan Scott, set a number of priorities for the year in the areas of enforcement and advocacy, a process which enables the Bureau to gauge its success in targeted areas. Setting priorities allows us to focus our resources in key areas to achieve maximum effect in the marketplace.

With respect to enforcement priorities, the Bureau focussed on four main areas: domestic cartels and bid-rigging; mass marketing fraud; electronic marketplace; and clarifying policy in the area of mergers and abuse of dominance.

As you will read in Chapter 2, the Bureau enforced the conspiracy provisions of the *Competition Act* in a number of criminal matters, both domestic and international. As for mass marketing fraud, the Bureau targeted a number of schemes exploiting Canadians, particularly in the area of deceptive telemarketing. Bureau investigations led to criminal charges and fines against a number of individuals and companies targeting businesses and consumers with fraudulent business directories, office supplies and other items.

On the subject of the electronic marketplace, we targeted fraudulent and misleading health performance claims with the launch of Project False Hope, an education and enforcement initiative aimed at fighting cancer-related fraud online. As part of this initiative, the Bureau unveiled two interactive Web tools to educate consumers on how to recognize scams.

Clarifying our key enforcement principles in the areas of mergers and abuse of dominance was also a priority in 2007-2008. The Bureau published a number of bulletins and enforcement guidelines, such as the *Bulletin on the Abuse of Dominance Provisions as Applied to the Telecommunications Industry* and the *draft Bulletin on*

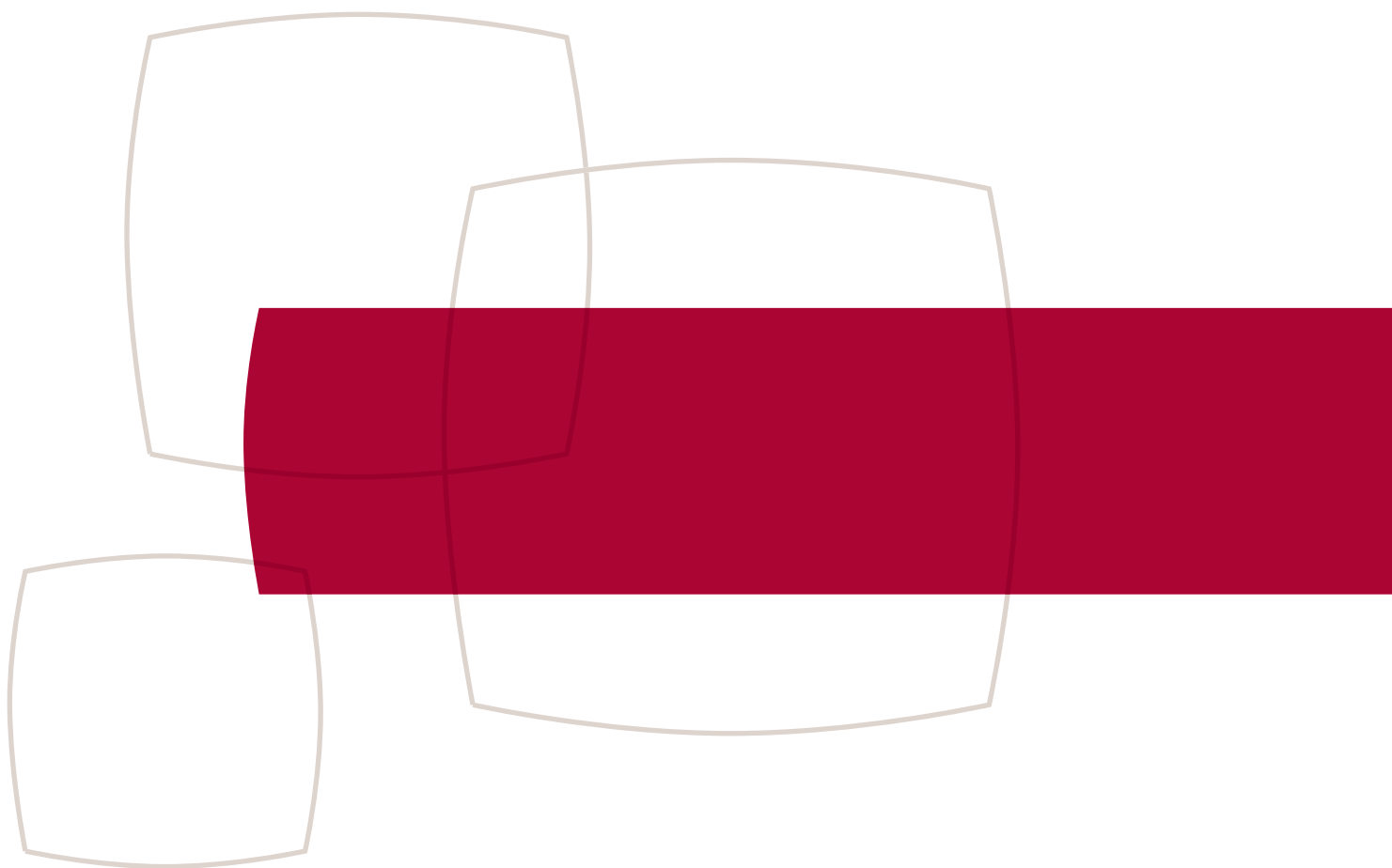
*Efficiencies in Merger Review*.

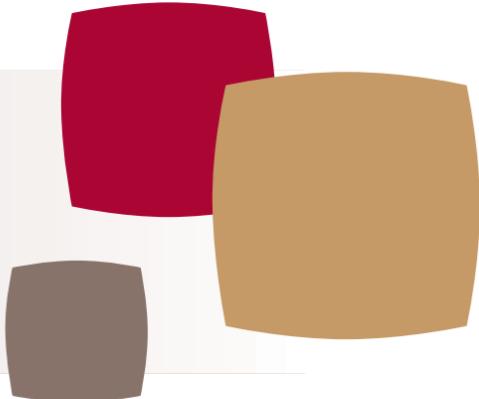
The Bureau works to promote competition in markets across Canada. Over the past year, we focussed our advocacy priorities in four primary areas: competition assessment, health, telecommunications and self-regulated professions. We also encouraged governments to consider the competitive impact of particular regulatory and legislative decisions. Included in this report are examples of our advocacy work, such as the Generic Drug Sector Study.

Throughout this Annual Report, you will find many examples of how we achieved our goals throughout the year. We will continue to build on these successes, in an effort to produce high impact outcomes while meeting the challenges of the marketplace today and in the future.

**Melanie Aitken**

*Interim Commissioner of Competition*





I.  
ABOUT THE COMPETITION  
BUREAU



## I. INTRODUCTION

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The Competition Bureau is an independent agency that contributes to the prosperity of Canadians by protecting and promoting competitive markets and enabling informed consumer choice.

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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. We believe that competition is the foundation of a strong, modern and knowledge-based economy, spurring innovation and productivity growth.

The Bureau administers four laws that help encourage and maintain competition in Canada: the *Competition Act*, the *Consumer Packaging and Labelling Act*, 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, 2008.

The Bureau operates on the assumption that most businesses are law-abiding and, accordingly, 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, consistent with that vision.

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 programs range from written opinions, that

help businesses that want to avoid breaking the law, to alternative case resolutions, that help correct anti-competitive behaviour in a timely and cost-effective fashion, without the need to resort 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, on recommendation by the Bureau or be subject to civil litigation 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, please visit the Bureau's Web site: [www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca)

## 1.1 Organizational Structure

In 2007-2008, the Bureau employed 337 people in the National Capital Region and 98 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 has 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, 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 across Canada.

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*, collectively known as the standards-based statutes. The Branch carries out its investigations through the National Capital Region office and the regional offices.

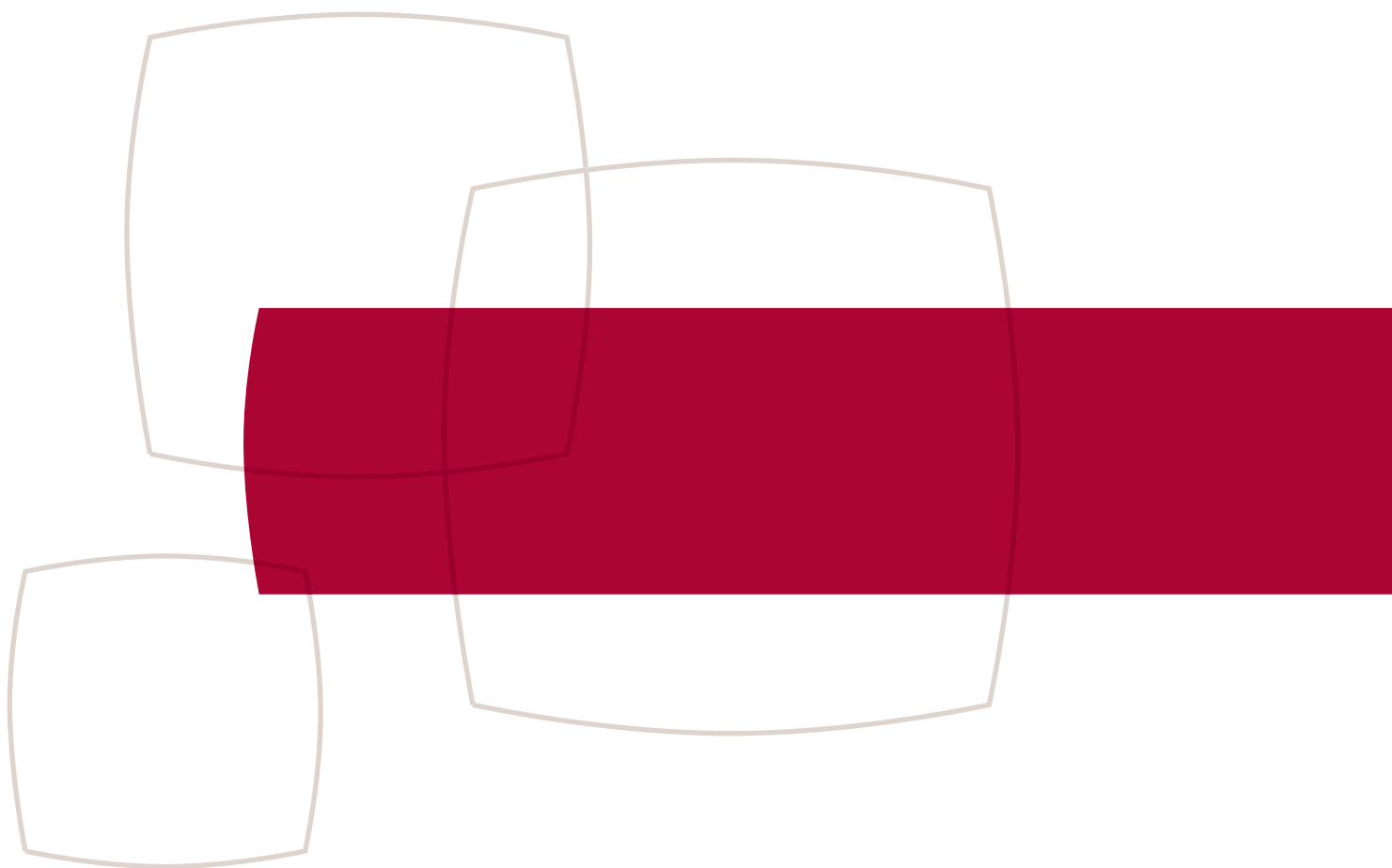
The **Legislative and Parliamentary Affairs Branch** is responsible for the ongoing modernization of the *Competition Act*, manages and co-ordinates the Bureau's issues work within Parliament's law-making process and helps with policy and advocacy matters.

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

## 1.2 Bureau Operations

The operating budget for the Bureau in 2007-2008 was \$47.1 million, including \$10.5 million in user fees. The majority of the budget, \$32.5 million, was allocated to salaries for 435 authorized full time staff, consisting of 25 executives, 15 economists, 240 competition law officers, and 155 employees carrying out informatics, administrative services and support functions.

The Bureau has administrative responsibility for collecting fines imposed by the courts. During 2007-2008, over \$10 million in fines was imposed. This money is remitted to the Government of Canada's Consolidated Revenue Fund.





## 2. PURSUING CRIMINAL MATTERS

## 2. PURSUING CRIMINAL MATTERS

The Competition Bureau administers and enforces the criminal provisions of the *Competition Act*, principally those involving conspiracy and bid-rigging.

The conspiracy provisions, sections 45, 46 and 48 of the *Competition Act*, prohibit agreements between two or more persons to prevent or unduly lessen competition or to unreasonably enhance the price of a product. Agreements between competitors to fix prices, to allocate customers or geographic markets, or to restrict production of a product by setting quotas among competitors or other means are considered to be “hard-core” cartel activities.

Bid-rigging is a criminal offence defined by section 47 of the Act and consists of an agreement where, in response to a call or request for bids or tenders, one or more bidders agree not to submit a bid, or two or more bidders agree to submit bids that have been pre-arranged among themselves. The offence of bid-rigging is committed only if the parties to the agreement do not make the agreement known to the person requesting the bids or tenders before such bids or tenders are made.

Section 61 of the Act prohibits price maintenance, which occurs when a businessperson by making a threat, a promise or an agreement, attempts to influence upward, or to discourage the reduction of, the prices charged by another businessperson, such as a customer or competitor; or when a businessperson refuses to supply a product to, or discriminates against, another businessperson because of that other person's low pricing policy; or when a businessperson attempts to induce a supplier to engage in price maintenance.

The Bureau has a range of tools at its disposal, including the Immunity Program, to enforce these provisions. The most serious matters are referred to the Director of

Public Prosecutions along with a recommendation for prosecution. Offenders may receive heavy fines, prison terms or both. This chapter describes the Bureau's criminal enforcement activity regarding such matters during 2007-2008.

The Bureau also works with firms to eliminate anti-competitive behaviour through alternative case resolution. Examples are provided on the Bureau's Web site at: [www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/00781e.html](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/00781e.html)

Under the Act, parties may request written opinions on business practices they are considering. Examples of some of the written opinions the Bureau issued in 2007-2008 can be found on the Web site at: [www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/00782e.html](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/00782e.html)

For additional information on the cases described in this chapter and others, including information notices, news releases and backgrounders, please visit our Media Centre at: [www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h\\_02766.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_02766.html)

## 2.1 Criminal Enforcement Actions

### 2.1.1 Conspiracy

#### Polychloroprene Rubber

A U.S. company, Du Pont Performance Elastomers L.L.C. (DPE), pleaded guilty and was fined \$4 million on July 19, 2007, for its role in an international criminal conspiracy to fix prices of polychloroprene rubber sold in Canada, a violation of section 45 of the Act. Polychloroprene rubber, a specific type of synthetic rubber, is used in the manufacture of a wide range of consumer products in the automotive, adhesive and construction industries. Between August 1999 and April 2002, DPE and its co-conspirators agreed to fix the prices of polychloroprene rubber sold in the North American market.

#### Isostatic Graphite

Ibiden Company Limited of Japan pleaded guilty on September 19, 2007, to aiding and abetting a conspiracy to fix the price of isostatic graphite, a fine grain carbon product commonly used in electrical discharge machinery to make dyes for the continuous casting of metals and in the manufacture of semi-conductor chips and other mechanical applications. Despite the serious nature of the offence, lenient treatment was recommended owing to Ibiden's significant and early cooperation in connection with the inquiry. The Federal Court of Canada fined the company \$50,000 for its breach of section 45 of the Act.

During the conspiracy, approximately \$300,000 (U.S.) of Ibiden's isostatic graphite block was sold in Canada. Ibiden was the third company to plead guilty in relation to this anti-competitive conduct. In 2003, Toyo Tanso USA Incorporated pleaded guilty to charges of attempting to maintain prices and was fined \$200,000. In 2001, Carbone of America Industries Corporation pleaded guilty to fixing prices and was fined \$300,000. Ibiden's guilty plea concluded the Bureau's investigation into the isostatic graphite conspiracy.

#### Rubber and Chemicals Industry

The Bayer Group pleaded guilty and was fined \$3.645 million on October 30, 2007, for its role in three international price-fixing conspiracies in the rubber and chemicals industry. Bayer AG was fined \$2.9 million for its part in the rubber chemicals conspiracy and \$400,000 for its role in a nitrile rubber conspiracy. Bayer Corporation, the wholly owned U.S. subsidiary of Bayer AG, was fined \$345,000 for participating in a conspiracy to fix the price of aliphatic polyester polyols made from adipic acid. These products are used in an array of consumer products including furniture, synthetic leather and surface coatings. In each matter, Bayer pleaded guilty to violating section 45 of the Act.

#### Graphite Electrodes

The Bureau concluded a lengthy investigation on November 9, 2007, into a conspiracy in the graphite electrodes market, when SEC Carbon Limited of Japan pled guilty to participating in a cartel, contrary to section 45 of the Act, and was fined \$250,000 by the Federal Court of Canada. Graphite electrodes are an essential component in the steel production process. Between 1992 and 1997, the world's major graphite electrode manufacturers, including SEC, agreed to fix prices and volumes sold in various markets, and to divide world markets. SEC supported this international conspiracy by not selling graphite electrodes to Canada during this period.

SEC is the eighth party to be convicted in Canada for participating in the graphite electrodes cartel. Nippon Carbon Company Limited, UCAR Incorporated, SGL Carbon Aktiengesellschaft, Tokai Carbon Company Limited, Mitsubishi Corporation and two former UCAR International Incorporated executives, Robert P. Krass and Robert J. Hart, were previously fined a total of nearly \$25 million for their roles in this international conspiracy.

### 2.1.2 Bid-rigging

#### Light-emitting Diodes Traffic Lights

In October 2007, a preliminary inquiry was held in connection with charges laid against Electromega Limited and its president, Alain Lamoureux, as well as

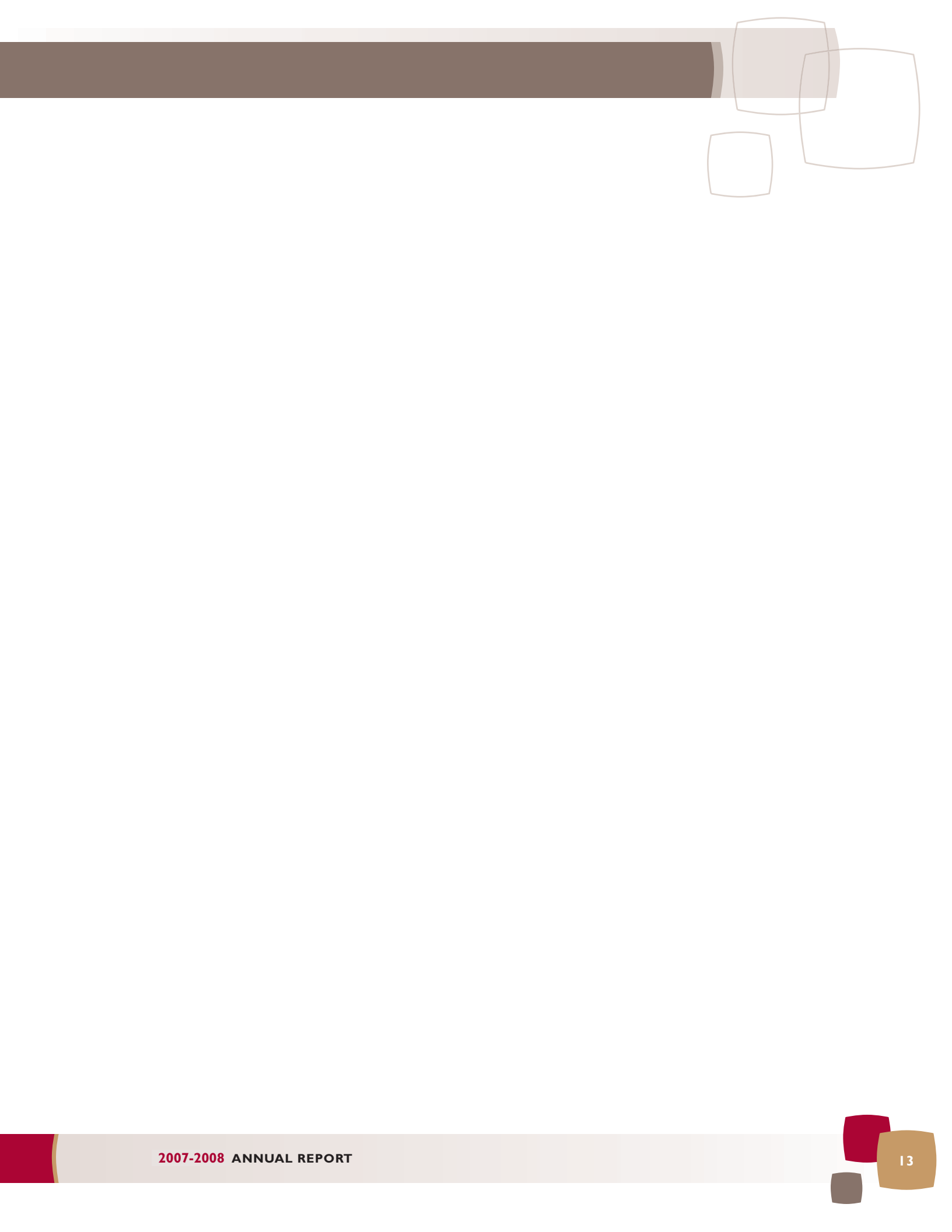


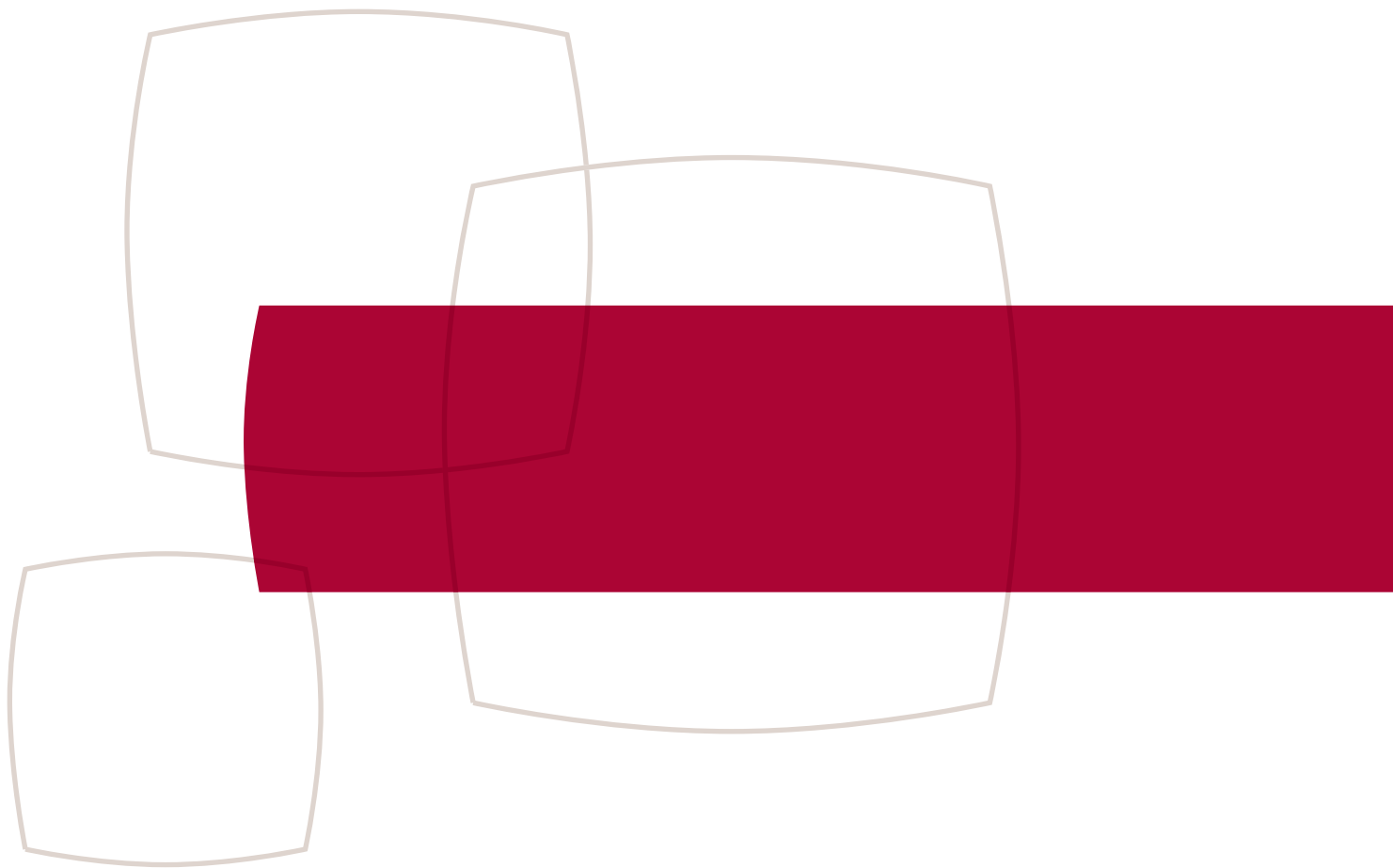
## 2. PURSUING CRIMINAL MATTERS

Les Technologies Tassimco Canada Incorporated and its vice-president, Conrad DiPietro. All were accused of bid-rigging under section 47 of the Act following a tender call from the city of Quebec with respect to supplying material for lighting panels. The tender call from the city took place as part of an energy efficiency global plan initiated by Hydro-Quebec. The purpose of the plan was to replace all incandescent signal lights on public roads with light-emitting diode technology lights. All accused were committed for trial on the charges as laid.

### **Ventilation**

In March 2008, there was a stay of proceedings in the case against Joël Perreault, appraiser for Les Entreprises Promécanic Limited. Mr. Perreault had been charged under sections 64 and 65 of the Act with obstructing the course of an investigation and destroying documents during the execution of a search warrant in the offices of Les Entreprises Promécanic, a ventilation company in Laval, Quebec.







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

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

The Bureau administers and enforces the provisions of the *Competition Act* relating to abuse of dominance, as well as those addressing restraints suppliers impose on customers, such as refusal to supply, exclusive dealing, tied selling and market restriction.

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 or deter the entry of new competitors with the result that competition is substantially lessened or prevented. 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 encourages 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.

This chapter describes the Bureau's enforcement activity with regard to abuse of dominance and other anti-competitive business practices, as well as the Bureau's work on a variety of policy matters, during 2007-2008.

The Bureau also works with firms to eliminate anti-competitive behaviour through alternative case resolutions. Examples are available on the Bureau's Web site at:

[www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/00781e.html](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/00781e.html)

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## 3.1 Enforcement Actions

### 3.1.1 Abuse of Dominance

#### Canada Pipe Company Limited

On December 19, 2007, the Bureau reached a consent agreement with Canada Pipe Company Limited concluding the Bureau's enforcement action in that case. In the consent agreement registered with the Competition Tribunal, Canada Pipe agreed to implement a new rebate program that does not require distributors to purchase cast iron drain, waste and vent products exclusively from Canada Pipe in order to qualify for discounts and rebates.

The Bureau initiated its inquiry following complaints that Canada Pipe was abusing its dominant position in markets across Canada through its loyalty program. Distributors were required to purchase all of their cast iron pipe, cast iron fittings and mechanical joint couplings for drain, waste and vent applications exclusively from Canada Pipe to obtain substantial discounts and rebates.

#### National Hockey League

On March 31, 2008, the Bureau concluded its investigation of the National Hockey League's policies

on ownership transfers and franchise relocations. The Bureau's inquiry focused on whether these policies constituted an anti-competitive practice. The Bureau initiated its inquiry following media reports that raised concerns as to whether the NHL was engaging in anti-competitive conduct regarding Canadian businessman Jim Balsillie's attempted acquisition of the Nashville Predators. The Bureau determined that the NHL's policies do not contravene the Act.

## 3.2 Policy Matters

### 3.2.1 Professional Services

#### **Predatory Pricing Enforcement Guidelines**

The Bureau issued its draft *Predatory Pricing Enforcement Guidelines* for public consultation in October 2007. First published in 1992, the revised guidelines reflect recent jurisprudence and economic theory in outlining when below-cost pricing may raise issues under the Act. The 2007 draft guidelines contain three major policy changes in the Bureau's approach to predatory pricing.

The first is that the Bureau will generally examine predatory pricing under the abuse of dominance provision of the Act (section 79) and will reserve criminal investigations, under section 50, for instances where conduct is egregious, such as pursuant to cartel activity or undertaken by a recidivist. The second is that the Bureau will use an average avoidable cost standard when conducting price-cost analysis. Finally, "meeting competition" has been added as a potentially reasonable business justification for pricing below cost.

#### **Self-regulated Professions**

The Bureau completed its *Study of Self-regulated Professions* on December 11, 2007, which found that rules that limit advertising, set prices for services and restrict who can offer professional services may go further than necessary to protect the public interest. These rules can lead to higher prices, limit choice and restrict access to the type of information consumers need to make decisions. The Bureau's study focused on five professions: accountants, lawyers, optometrists, pharmacists and real estate agents. While the examples contained within the study are based on these five professions, the principles and findings can be applied to self-regulated professions.

Since the report was issued, several professional groups have contacted the Bureau to discuss the study. While some are still studying the recommendations, others have indicated that they are in the process of revising their regulations, while others have already taken responsive action.

#### **Dental Hygienists**

The Bureau continues to monitor progress in the provision of dental hygiene services. As of September 2007, dental hygienists in Ontario have been able to practise without a dentist, subject to certification by their regulatory body. This change in the legislation was in accordance with representations made by the Bureau in the previous year. The Bureau remains interested in the development of the market as these new participants seek entry.

In December 2007, the Bureau published a letter addressed to the Dental Industry Association of Canada expressing the Bureau's hope that dental suppliers were gaining the benefit of increased competition.

Also in December 2007, Nova Scotia passed legislation following representations that had been made publicly by the Bureau, permitting independent practice by dental hygienists. The legislation has yet to be proclaimed and the Bureau continues to monitor the development of this situation with interest.

Since the publication of the *Study of Self-regulated Professions*, the Bureau has assisted various dental hygiene regulators in their attempts to apply the principles of that report.

On March 7, 2008, the Bureau announced that it would be conducting a study of the Canadian dentistry profession, which is self-regulating. Following on the heels of the *Study of Self-regulated Professions*, this study will examine restrictions that impede competition in the market for dentistry and related markets. Like the preceding study, the work will be based on an analysis of legislation, regulations, and codes of practice, as well as responses to a questionnaire and interviews with regulating bodies and associations.

#### 3.2.2 Telecommunications

##### **CRTC Local Forebearance Decision**

On April 4, 2007, the Governor in Council issued its final Order Varying the Canadian Radio-television and Telecommunications Commission (CRTC) Telecom Decision CRTC 2006-15 - Forbearance from the Regulation of Local Exchange Services. In addition to participating in the original proceeding leading to the decision in 2005, the Bureau had participated in the public consultation process relating to the order, recommending amendments to enhance jurisdictional certainty between the CRTC and the Bureau in forborne local telephone markets. The final order contained two sets of criteria for local forbearance, one being the Bureau's proposed criteria from the original proceeding, and the other being a more streamlined test based on the presence of competing facilities-based providers. The CRTC has subsequently forborne from regulating both residential and business local exchange services in most major urban areas in Canada, consistent with the position advocated by the Bureau.

##### **Advanced Wireless Services Spectrum Auction**

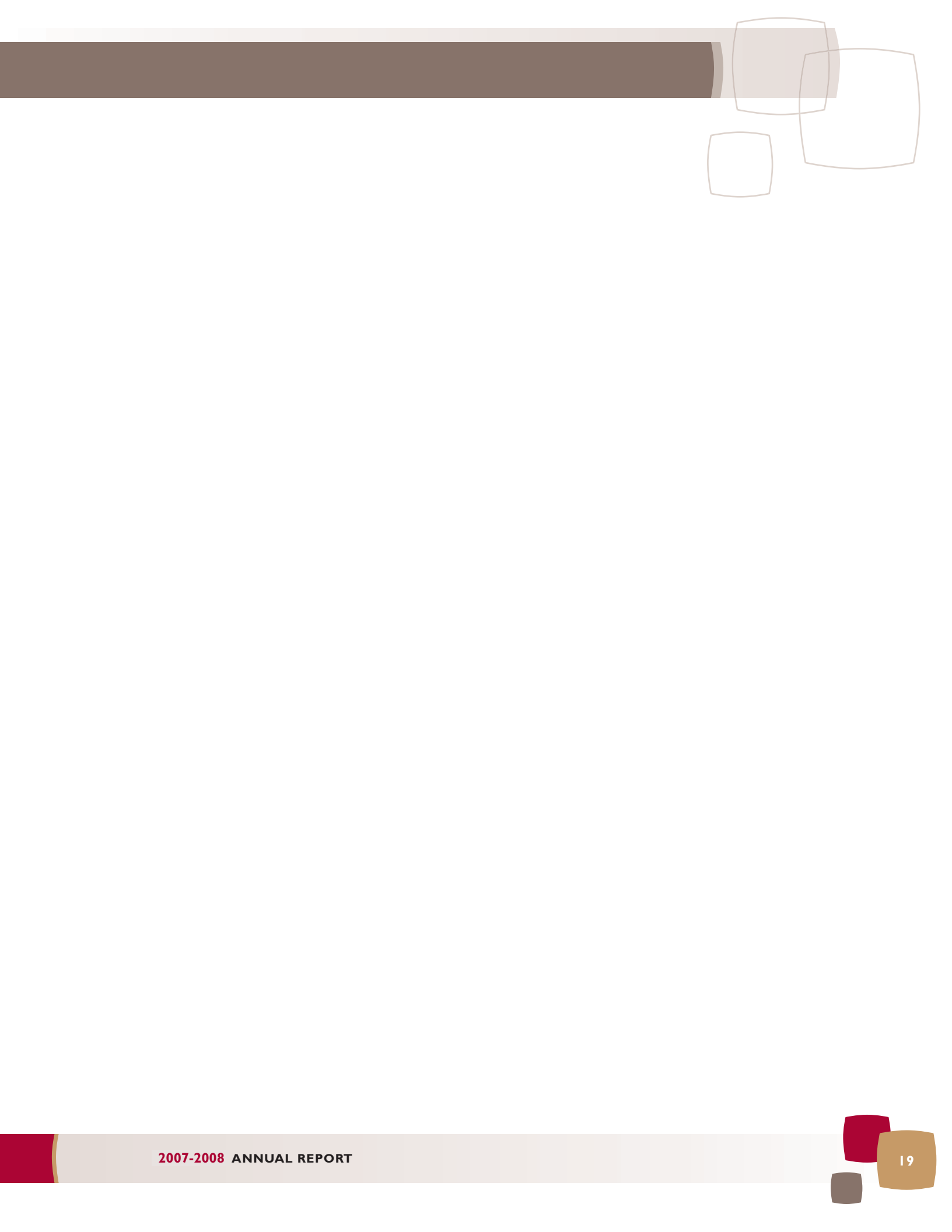
On May 25 and June 27, 2007, the Bureau made public written representations to the Spectrum Management and Telecommunications Branch of Industry Canada concerning the appropriate framework for then pending Advanced Wireless Services Spectrum Auction. Industry Canada had asked whether it was necessary - given the state of the mobile wireless telephony market in Canada with three large incumbent providers - to provide measures to encourage new entrants, such as setting aside spectrum.

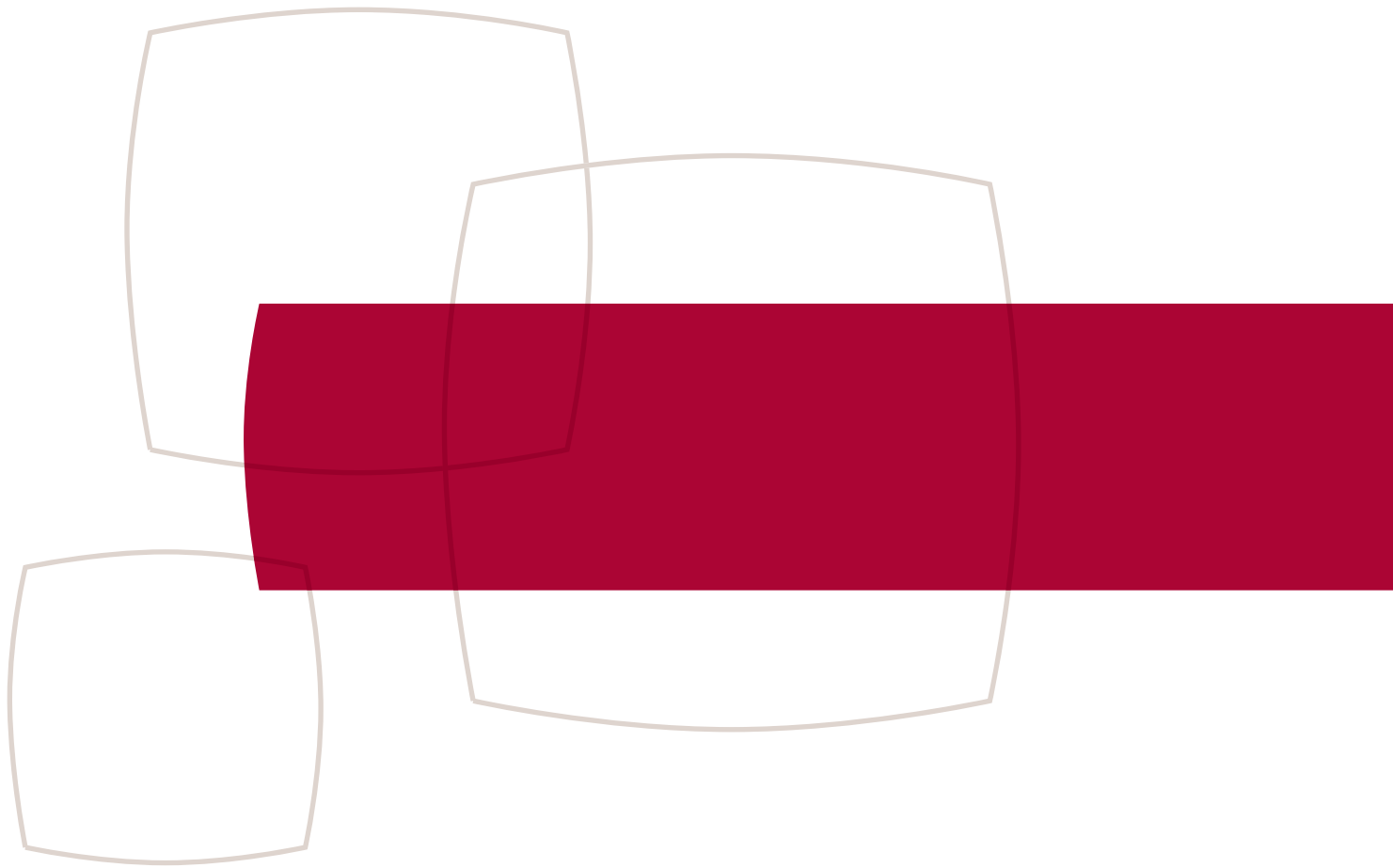
The Bureau's representations focused on identifying market power that might give incumbents the incentive to "hoard" spectrum and noted that, if these conditions existed, a removal of foreign ownership restrictions on telecom carriers to allow large new entrants to compete would be preferable to setting aside spectrum. The final framework set aside 40 MHz nationally for new entrants and the 2008 auction saw two to three new entrants purchase spectrum in most parts of Canada.

##### **CRTC Wholesale Access Framework Proceeding**

Through 2007, the Bureau participated in the CRTC's regulatory framework proceeding for wholesale and "essential" services. The CRTC had initiated a review of its definition of an essential service, to which access by competitors is mandated, based on the Bureau's framework for when denial of access to a facility could raise issues under the Act in its draft *Information Bulletin on the Abuse of Dominance Provisions as Applied to the Telecommunications Industry*.

The Bureau's position in the proceeding was that, given the emergence of facilities-based competition from cable providers in most retail markets, the CRTC's wholesale access regime should have been circumscribed considerably. In its decision of March 3, 2008, the CRTC adopted a modified version of the Bureau's definition of an essential service and subsequently reduced the set of facilities and services to which it mandated wholesale access, although not to the extent the Bureau had recommended.







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*, the *Precious Metals Marking Act* and the *Textile Labelling Act*. (The enforcement of the *Consumer Packaging and Labelling Act* as it relates to food falls under the responsibility of the Canadian Food Inspection Agency.)

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 *Consumer Packaging and Labelling Act*, *Precious Metals Marking Act* and *Textile Labelling Act* are regulatory statutes. They prohibit false or misleading representations in specific sectors, namely pre-packaged consumer products, articles made of precious metals, and textiles and apparel. These laws set out requirements for basic, standardized labelling information, such as bilingual product descriptions, metric measurement declarations and dealer identity, all of which help consumers make informed choices.

Under the criminal regime of the *Competition Act*, as well as under the three regulatory statutes, the government may bring matters before the criminal courts alleging that firms are carrying out certain practices; requiring proof of each element of the offence beyond a reasonable doubt is required. 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.

This chapter describes the Bureau's criminal and civil enforcement activities during 2007-2008, in particular those relating to mass marketing fraud, and misleading advertising and labelling, as well as outreach activities, recognitions and partnership accomplishments.

The Bureau often works with businesses to eliminate anti-competitive behaviour through alternative case resolutions. Examples of these are provided on our Web site at:

[www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/00781e.html](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/00781e.html)

Similarly, under the *Competition Act*, the Commissioner of Competition will discontinue an inquiry if there is insufficient evidence to commence proceedings before the Competition Tribunal or to refer a matter to the Director of Public Prosecutions or if the matter is otherwise concluded through an alternative case resolution. Summaries of these are available on the Bureau's Web site at:

[www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/h\\_00780e.html](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/h_00780e.html)

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For more information on the cases described in this chapter and others, including information notices, news releases and backgrounders, visit our Media Centre at:

[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h\\_02766.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_02766.html)

## 4.1 Enforcement Activities Relating to Mass Marketing Fraud

This section describes the results of the Bureau's major enforcement activities under sections 52 and 52.1 of the *Competition Act*.

### 4.1.1 False or Misleading Representations

Section 52 of the Act prohibits knowingly or recklessly making, or permitting the making of, a representation to the public, in any form whatever, that is false or misleading in a material respect. Proof that any person was deceived or misled is not necessary in order to establish a contravention of this provision.

#### “Secret Shopper” Scam

The Bureau announced in February 2008 that two operators of an alleged “Secret Shopper” scam were arrested following a search conducted with the assistance of one of the Bureau's law enforcement partnerships, the Toronto Strategic Partnership. The Bureau alleged the two individuals operated an alleged counterfeit cheque scam by mailing letters to U.S. residents stating they had won a lottery or were selected to be a secret shopper. The recipients were instructed to deposit enclosed cheques and to wire a portion of the funds back to the operators of the alleged scam. After the victims deposited the counterfeit cheques and sent the funds, the cheques bounced and the victims lost all their money. The two accused had been allegedly operating fraudulent schemes since January 2005.

The Toronto Strategic Partnership is a multi-law enforcement agency task force formed to combat cross-border fraudulent mass marketing schemes. Members include the Competition Bureau, the Ontario Provincial Police, the Toronto Police Service, the RCMP, the Ontario Ministry of Government Services, the U.S. Federal Trade Commission, the U.S. Postal Inspection Service and the U.K's Office of Fair Trading.

### 4.1.2 Deceptive Telemarketing

Section 52.1 of the *Competition Act* prohibits the making, or the permitting of the making, of materially false or misleading representations in promoting the supply of a product or a business interest during person-to-person telephone calls. Telemarketers are also prohibited from engaging in certain practices including: requiring payment in advance as a condition for receiving a prize that has been, or supposedly has been, 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 be met before the product will be delivered. Directors and officers of a corporation may be held liable for offences committed by the corporation under this section.

#### Business Directories and Office Supplies

On May 29, 2007, the Bureau announced that Michael Mouyal, of Montreal, Quebec, was fined \$1 million for his role in a deceptive telemarketing scam that generated over \$136 million in deceptive sales over a six-year period. In addition, Mr. Mouyal received two years probation, 240 hours of community service and a 10-year prohibition order. Mr. Mouyal operated the scam under a number of names, including Commercial Business Supplies, Merchant Transaction Supplies, Merchant Supply Services and International Business Directories.

#### 4. ELIMINATING FALSE OR MISLEADING REPRESENTATIONS AND DECEPTIVE MARKETING PRACTICES

As part of the scam, not-for-profit organizations, businesses and government agencies in Canada, the U.S. and the U.K. were contacted by telemarketers who claimed to be their regular supplier of office supplies or business directories and were calling to renew previous orders from the victims. The scam was based on creating the false and misleading impression that a previous business relationship existed between the telemarketing operation and its victims. Businesses would then receive overpriced office supplies or virtually useless business directories that they would not have ordered were it not for the false and misleading representations.

In February 2008, Albert Mouyal, a director/owner of Hanson Publications Inc. and Associated Merchant Paper Supplies, was convicted of using deceptive telemarketing practices targeting U.S. organizations. In May 2008, Mr. Mouyal received a 15-month conditional sentence and a 10-year prohibition order banning him from telemarketing. Between 1998 and 2002, telemarketers used false and misleading sales techniques to induce U.S. organizations to purchase business directories and credit card paper supplies. The telemarketers led potential clients to believe that their organization had an established business relationship with the telemarketing firms and that the purpose of the call was to confirm product orders and delivery.

In a separate matter, 11 individuals were charged on June 11, 2007, with four counts each under the deceptive telemarketing provisions of the *Competition Act* for their involvement in a Montreal-based operation directed toward businesses in the U.S. On March 7, 2008, the Public Prosecution Service of Canada, having regard to all relevant circumstances, stayed proceedings in this case.

On June 12, 2007, the Bureau announced that criminal charges had been laid against three individuals allegedly involved in deceptive telemarketing activities in Montreal. The scam targeted businesses, not-for-profit organizations and government agencies across Canada, and invoiced them for toner cartridges that they did not order nor want. The accused are Emilio Ciciola, Johanne Marzitelli, and Ronald Macdonald, all of Montreal. Also charged are the companies: Laser Depot, Corporate Supply Center and Marketing Vision Directe Incorporated.

On August 20, 2007, the Bureau announced that a Toronto-based telemarketing operation working under

the names Business Supply Centre and National Supply Centre had been fined \$804,308 for its role in a deceptive telemarketing scam that sold toners to businesses, not-for-profit organizations, churches, schools and government agencies across Canada. Andrew James Wilson, the registered director of the company, pleaded guilty on his own behalf and on behalf of the company to contraventions of the telemarketing provisions of the *Competition Act*. The Ontario Court of Justice handed Wilson a 15-month conditional sentence and both Wilson and the company are prohibited from engaging in any form of telemarketing for a period of 10 years. The scam generated over \$4 million in revenues during a six-year period.

On March 17, 2008, the Bureau announced that criminal charges had been laid against four individuals, working for Global Management Solutions and Commutel and Marketing USA, allegedly involved in deceptive telemarketing activities in Quebec. These activities are estimated to have generated approximately \$9.3 million in revenue during the alleged scam, which targeted small and medium-sized businesses by charging them for compact disk directories that they had not ordered. The Bureau received 720 complaints, through the U.S. Federal Trade Commission, the Better Business Bureau and PhoneBusters, the Canadian Anti-fraud Call Centre.

#### Credit Cards

On September 5, 2007, Oleg Oks and Aleksandr Oks of Richmond Hill, Ontario, pleaded guilty to criminal charges of deceptive telemarketing under the *Competition Act*. Oleg Oks, the principal director behind the pre-approved credit card scam, was sentenced to one year in jail and two years probation. Aleksandr Oks, also a director, received a six-month conditional sentence and 12 months probation. Both accused are prohibited for a 10-year period from engaging in any form of telemarketing. The Oks' schemes involved targeting low-income Americans and advising them that they had been pre-approved for Visa and/or MasterCard credit cards, for an up-front fee varying from \$199 to \$399 (U.S.). Victims provided bank account and other personal information to the telemarketers in order to obtain a credit card. Visa Canada, Visa USA and MasterCard International Inc. confirmed that they had no affiliation with the Oks' companies. Although victims'

bank accounts were debited, no one received a credit card or other promotions offered. The Bureau estimated that the Oks' deceptive telemarketing operations defrauded Americans of more than \$5 million (U.S.).

Between 1999 and 2005, the Oks ran their telemarketing operations in Toronto under a number of business names, including Pacific Liberty, Pacific Liberty Group, Atlantic

One Info Services Group, Liberty Sun Info Services, C&B Communications Group, Liberty Wide Info Services and Nationwide Credit Services.

## 4.2 Enforcement Activities Relating to Misleading Advertising and Labelling

This section describes the results of major enforcement activities undertaken under paragraphs 74.01(1)(a) and 74.01(1)(b) of the *Competition Act*, as well as the *Textile Labelling Act*.

Paragraph 74.01(1)(a) of the *Competition Act* prohibits the making, or the permitting of the making, of a representation to the public, in any form whatever, that is false or misleading in a material respect.

Paragraph 74.01(1)(b) of the *Competition Act* prohibits the making, or the permitting of the making, of a representation to the public, in any form whatever, about the performance, efficacy or length of life of a product, which is not based on an adequate and proper test. The onus is on the person making the representation to prove that the representation is based on an adequate and proper test.

The *Textile Labelling Act* requires that textile articles bear accurate and meaningful labelling information to help consumers make informed purchasing decisions. The *Textile Labelling Act* prohibits the making of false or misleading representations, and sets out specifications for mandatory label information such as the generic name of each fibre present and the dealer's full name and postal address or a CA identification number.

### Hot Tub Dealer

On April 12, 2007, the Federal Court of Canada granted the Bureau a default judgment against Polar Spas, a Calgary-based hot tub dealer, and company president Ken Nickel for breaking their commitments to pay monetary penalties in settling an inquiry under the deceptive marketing provisions of the *Competition Act*.

In 2004 and 2005, Polar Spas had used a "cashable vouchers" program to promote the sale of hot tubs and other home leisure products. In a consent agreement negotiated in August 2006, the company had agreed to stop making false or misleading representations in relation to cash back or rebate offers, and to pay an administrative monetary penalty. The Bureau had hoped to resolve its concerns with the consent agreement, but with the company's failure to pay, the Bureau an application in the Federal Court, requesting payments of \$35,000 from the company and \$10,000 from Mr. Nickel.

### Employment Offers

On May 8, 2007, the Bureau applied to the Competition Tribunal for an order requiring Premier Career Management Group (PCMG) and its president, Minto Roy, to cease engaging in deceptive marketing practices and to pay an administrative monetary penalty. The Bureau alleged that Mr. Roy and PCMG had made representations to prospective clients, which created the false or misleading impression that they had an extensive network of personal contacts or links with senior level executives in the corporate world, and that they would use this network to provide contacts and arrange job interviews for clients. The Bureau also alleged that Mr. Roy and PCMG had misled prospective clients by creating the false or misleading impression that potential clients would almost certainly find work quickly with their help, typically within 90 days, and at a position with salary and benefits equal to or better than their previous job. As of March 31, 2008, this case had not been heard by the Competition Tribunal.

### Cigarette Packaging

On July 31, 2007, the Bureau reached agreements with six cigarette companies to discontinue the use of the descriptors "light" and "mild" on their cigarette packaging by December 31, 2007. These companies include: A.D.L. Tobacco, Similar Tobacco Corp., Kretek

## 4. ELIMINATING FALSE OR MISLEADING REPRESENTATIONS AND DECEPTIVE MARKETING PRACTICES

International Inc., Walking Smoke Distribution Inc., Bastos Du Canada Ltée., and Abenakie Enterprises/Choice Tobacco.

Copies of the agreements are available on our Web site at: [www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02229e.html](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02229e.html)

### Ultraviolet Protective Clothing

On August 1, 2007, the Bureau announced that it had conducted inspections at retail stores, manufacturers and distributors selling ultraviolet (UV) protective clothing across Canada. These inspections revealed that the tags on the majority of garments were accurate and truthful about the UV protection offered. However, the Bureau also identified more than 200,000 garment labels bearing no dealer identification and others bearing improper fibre disclosure or incomplete dealer identification. The dealers dealt with the identified problems to the Bureau's satisfaction by correcting the labels in a timely manner.

As part of this enforcement initiative, the Bureau issued the following two documents:

*Consumer Guidance on UV Protective Clothing and Guidance on the Labelling of Textiles for Businesses.*

Copies of these documents are available at the following links:

[www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02391e.html](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02391e.html) and  
[www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02392e.html](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02392e.html).

### Unsubstantiated Claims on Clothing

On November 16, 2007, the Bureau announced that Vancouver-based Lululemon Athletica Inc. had agreed to remove all claims alleging therapeutic benefits from its VitaSea line of clothing products, which had been marketed throughout its 40 retail store national network. The unsubstantiated claims had included representations suggesting that upon contact with moisture, the fabric would release minerals and vitamins into the skin. Unsubstantiated performance claims on textiles are enforceable by the Bureau pursuant to the *Textile Labelling Act* and the *Competition Act*.

### Fitness Club Chain

The Competition Bureau reached a consent agreement with Premier Fitness Clubs, resolving the Bureau's

concerns over some of the company's advertising practices from 1999 to 2004. The agreement was filed on November 27, 2007 with the Competition Tribunal. During its investigation, the Bureau determined that Premier Fitness Clubs did not adequately disclose in some of its advertising of membership offers on the radio, billboards, storefront signs, and in newspapers and flyers additional fees that consumers would be obliged to pay. Consumers who were induced by free trial offers ultimately had to pay a mandatory "fitness assessment" and/or had to sign up for a one-year contract in order to receive the "free" 30-90 day trial offer. As a result, the actual price of memberships was greater than what the advertisements led consumers to believe. This conduct contravened the civil false or misleading representations provision of the *Competition Act*.

### Chimney Cleaning Products

On February 11, 2008, the Competition Tribunal ordered Imperial Brush Co. Ltd. and Kel Kem Ltd. (carrying on business as Imperial Manufacturing Group) to stop making claims that its chimney cleaning and conditioner products reduce creosote or prevent chimney fires. The Tribunal further dismissed Imperial Manufacturing Group's challenge that the *Competition Act's* adequate and proper testing provision infringes the *Canadian Charter of Rights and Freedoms*. The Bureau argued, and the Tribunal agreed, that the objective of this provision is to protect consumers from the harm caused by unsubstantiated claims about the performance of a product and to promote accuracy of marketplace information. The Tribunal noted that accurate consumer information benefits not only consumers but also businesses selling competing products.

## 4.3 Outreach Activities

### Prepaid Phone Cards

In December 2007, the Bureau undertook an initiative to ensure that consumers receive proper disclosure of any terms and conditions that affect the value and use of prepaid long distance telephone calling cards. The Bureau contacted providers of prepaid telephone calling cards across Canada to promote greater disclosure of information on the cards themselves and in any related advertising material. At a minimum, businesses should:

- disclose the effective rate per minute and the number of minutes available on the card;
- disclose any conditions that might adversely affect the advertised rate per minute and number of minutes near the main body of the representation; and
- discontinue the use of fine print disclaimers that contain information contradicting the main message. The main body of the representation should not be misleading when read alone.

### **Project False Hope**

Since April 2007, MUCH, the Mexico, United States, Canada Health Fraud working group, has focussed its efforts on dealing with fraudulent cancer claims through various enforcement and outreach initiatives. MUCH works collaboratively to combat health fraud and to protect and promote the health and economic well-being of citizens through cooperative initiatives and the continual exchange of information about compliance and enforcement activities in the three countries. The agencies involved in this area of cooperation are:

- Canada: Competition Bureau and Health Canada
- Mexico: Federal Commission for the Protection From Sanitary Risks and Office of the Federal Attorney for Consumer Protection
- United States: Food and Drug Administration and Federal Trade Commission

As a result, on March 12, 2008, the Bureau launched Project False Hope, an education and enforcement initiative aimed at targeting cancer-related health fraud. On the education and outreach side of Project False Hope, the Bureau unveiled two interactive Web tools to educate consumers on how to recognize these scams: the *Anatomy of an Online Health Scam* and a *Health Fraud Awareness Quiz*. On the enforcement side, Project False Hope has uncovered dozens of Canadian targets offering cancer-related products in clinics and stores, or online, that raise concerns under the false or misleading provisions of the *Competition Act*. For more information concerning Project False Hope, please visit: [www.competitionbureau.gc.ca/healthfraud](http://www.competitionbureau.gc.ca/healthfraud)

### **Fraud Awareness for Commercial Targets**

On March 19, 2008, the Bureau launched the Fraud Awareness for Commercial Targets (FACT) Campaign. With its designated section on the Bureau's Web site, this national outreach and education initiative provides practical Web-based tools to businesses and not-for-profit organizations to help them recognize and stop fraud before they are scammed. These tools include Web pages dedicated to scam techniques, telemarketing scripts, victim stories and a downloadable anti-fraud presentation. More information about this initiative can be found at: [www.competitionbureau.gc.ca/fact](http://www.competitionbureau.gc.ca/fact)

## **4.4 Recognitions**

### **Community of Federal Regulators**

On November 7, 2007, the Community of Federal Regulators recognized the outstanding work of the Bureau's Project FairWeb with an award for innovation. Project FairWeb is the Bureau's first dedicated Internet surveillance and enforcement program aimed at combatting misleading and deceptive advertising on the Internet.

### **Canadian Health Care Anti-fraud Association**

In September 2007, the Bureau received the 2007 *Edward Mazak Advancement in Public Awareness Award*, in recognition of the Bureau's efforts to focus consumer attention on important health fraud issues through its Fraud Prevention Forum work. The award, from the Canadian Health Care Anti-fraud Association, is given to an individual or organization that excels in raising public awareness of health-care fraud. The Bureau has been active in fighting health-related fraud, owing to the serious repercussions it can have for the economy and individuals. The Bureau targets a range of health fraud issues, including: bogus weight-loss schemes, cure-all scams and products claiming false health benefits.

## **4.5 Partnership Accomplishments**

The Bureau is involved in a number of regional law enforcement partnerships aimed at combatting mass marketing fraud. These are the Atlantic Partnership

## 4. ELIMINATING FALSE OR MISLEADING REPRESENTATIONS AND DECEPTIVE MARKETING PRACTICES

Combatting Cross-border Fraud; COLT: Centre of Operations Linked to Telemarketing Fraud (Quebec); the Toronto Strategic Partnership; the Alberta Partnership Against Cross-border Fraud; Project Emptor (British Columbia) and the Vancouver Strategic Alliance. Through these partnerships, the Bureau participates in both enforcement and outreach activities. In addition, PhoneBusters, the Canadian Anti-fraud Call Centre, works in close cooperation with all regional law enforcement partnerships. PhoneBusters is the central agency in Canada that collects information on specific fraudulent activities; this information is made available to outside law enforcement agencies. It is managed on a tripartite basis by the Royal Canadian Mounted Police, the Ontario Provincial Police and the Competition Bureau.

By leveraging resources, partnerships reduce harm to consumers and businesses. A description of these partnerships is available on the Bureau's Web site at: [www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h\\_00529.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00529.html)

### 4.5.1 Partnership Enforcement Activities

#### Toronto Strategic Partnership Report

Since its inception in 2000, the Toronto Strategic Partnership has demonstrated its effectiveness in combatting deceptive telemarketing and other fraudulent scams that transcend borders. To highlight its achievements, the Partnership released a report in January 2008 entitled *Accomplishments of the Toronto Strategic Partnership*. Since the creation of the Partnership, 37 significant cases have been brought by Partnership members against large fraudulent enterprises.

The Bureau has been the lead criminal investigation agency in eight of these cases, involving bogus cancer treatments, credit card offers, business directories, office toner cartridges, and discounts on prescription drugs and medical services. In Canada, 656 people were arrested and charged and 515 search warrants were executed. In the U.S., 15 criminal cases were brought and 17 people were convicted of criminal charges. The report can be found at: [www.ftc.gov/os/2008/01/080114canada.pdf](http://www.ftc.gov/os/2008/01/080114canada.pdf)

#### Business Directories

Following an investigation with the Toronto Strategic Partnership, the Bureau announced on October 2,

2007, that Luigi Ariei Rozin, operator of Government Policy Research Group Inc., pleaded guilty to violating the false and misleading representations provision of the *Competition Act*. From March 2006 to March 2007, Rozin solicited Canadians by fax to secure sales of various business directories. Purchasers were promised four quarterly updated editions on CD. In many cases, they either received a guide that was not updated or received a blank CD.

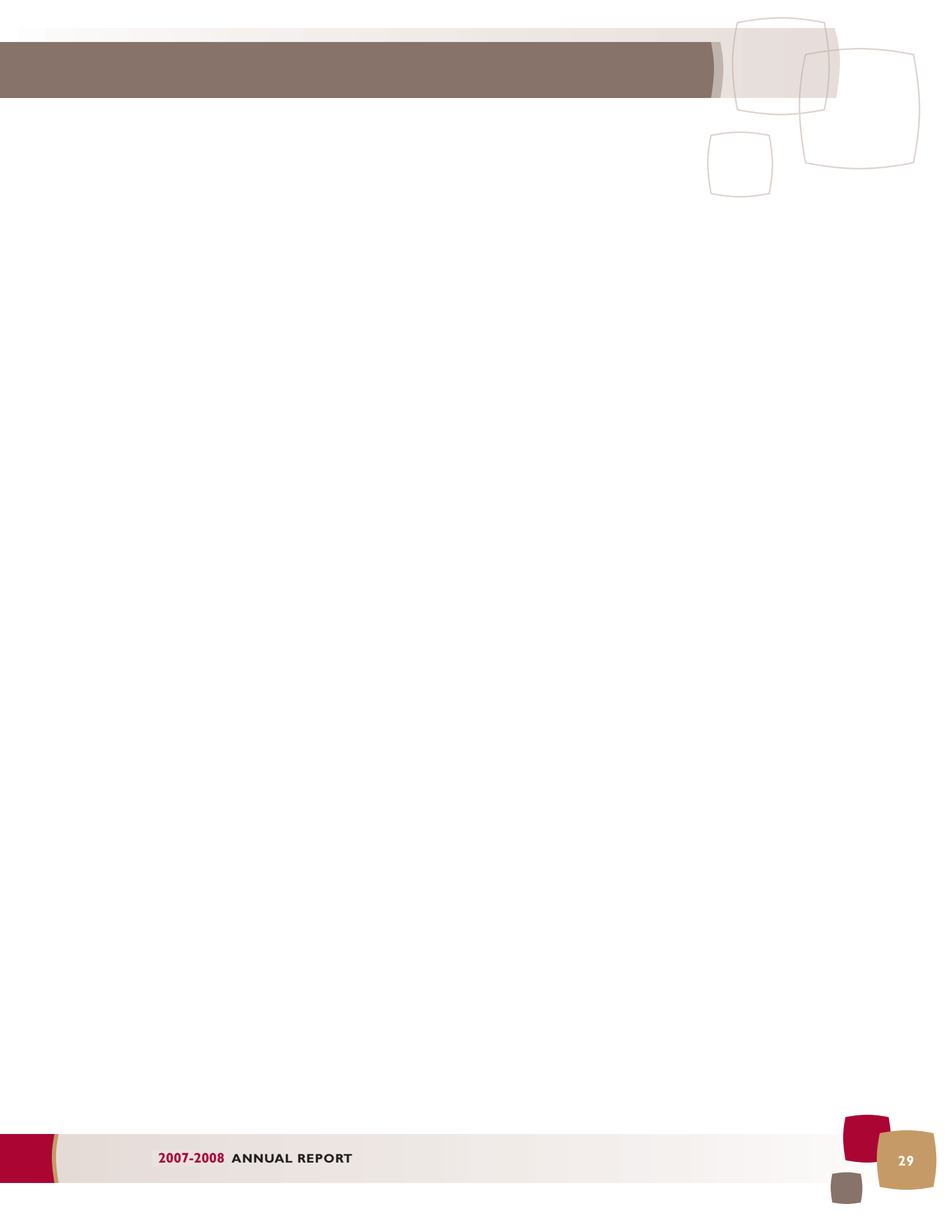
#### Advance Fee Scheme

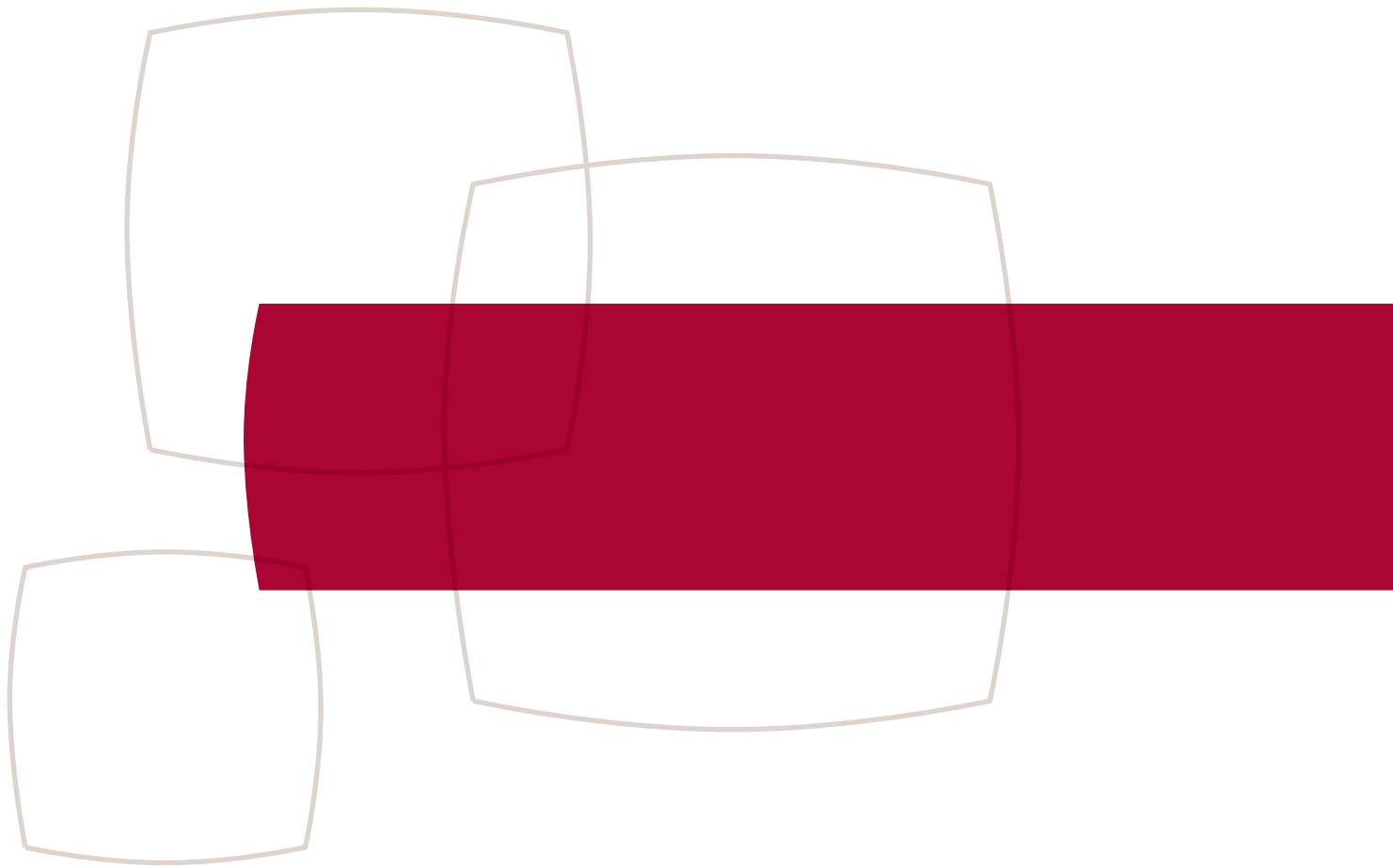
As a result of a Toronto Strategic Partnership investigation, Shane Metcalfe, the manager of a telemarketing operation, was charged on October 25, 2007, with one count under the deceptive telemarketing provisions of the *Competition Act* and one count of fraud over \$5,000 under the *Criminal Code*. Telemarketers for the accused contacted Canadian citizens, who had listed vehicles for sale in various types of media including Auto Trader magazine, newspapers and online classified ads, and represented themselves as financial officers with purchasers for the vehicles. An upfront fee was charged with promises to post the vehicles on the companies' Web sites and to refer the purchasers to the sellers. No seller ever received a call from any potential purchaser. The scheme operated under a number of corporations and entities, including Buy Great Autos Inc., Buy Cars Now, Canada Auto Index, Canada Auto Approved, WK Consulting Inc., and CanTel.

### 4.5.2 Partnership Outreach Activities

#### Awareness Campaign for Students

In February and March 2008, the Bureau collaborated with COLT in a fraud awareness campaign aimed at college and university students in the Montreal area. There are a number of telemarketing companies around Montreal, some of which may be fraudulent operations. Students often work for these companies, unaware that they may in fact be working for a fraudulent operation. As part of the awareness campaign, several presentations were made to students, helping them recognize the signs of a fraudulent boiler room and making them aware of the potential legal consequences if they accept work with these companies.







## 5. REVIEWING MERGERS

## 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 parties to restructure the merger or suggest remedies to resolve particular competition issues. When concerns cannot be addressed by negotiation, the Commissioner may bring an application to the Competition Tribunal.

For a fourth consecutive year, the number of mergers the Bureau reviewed in 2007–2008 increased significantly 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. As appropriate, the Bureau shares its views and information about mergers and benefits from the sophisticated exchange in this and related fora about the most current thinking internationally on best practices and enforcement policy in merger review with other competition authorities, co-ordinates the timing of the review process and the review itself to the extent possible and, when appropriate, seeks consistent (or at least non-conflicting) 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 2007-2008, the Bureau continued to be an active participant in international organizations such as the Organisation 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 Mergers Working Group.

This chapter summarizes some of the key merger cases that were new or ongoing during 2007-2008. It further provides comprehensive tables of merger examinations concluded during the year, along with statistics on service standards.

For more information on the cases described in this chapter and others, including information notices, news releases and backgrounders, visit our Media Center at: [www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h\\_02766.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_02766.html)

### 5.1 Key Merger Cases

#### **Abitibi-Consolidated Incorporated and Bowater Incorporated**

In January 2007, Abitibi-Consolidated Incorporated (ACI) and Bowater Incorporated announced their intention to merge. ACI is a global forest products company headquartered in Montreal, Quebec, and Bowater is a forest products company headquartered in Greenville, South Carolina. Over the course of its review, the Bureau identified potential competition issues in several markets, including the sale of newsprint and certain grades of uncoated groundwood paper. While the Bureau had a number of concerns, it concluded in July 2007 that there were insufficient grounds to support initiating proceedings before the Tribunal under the merger provisions of the Act.

The Bureau issued a technical backgrounder, summarizing the main findings of its review. A copy is available on our Web site at:

[www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02508e.html](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02508e.html)

### **Labatt Brewing Company Limited and Lakeport Brewing Income Fund**

Labatt Brewing Company Limited announced in February 2007 that it intended to acquire Lakeport Brewing Income Fund. Both firms were brewers in the Ontario beer market, with Lakeport being a major influence in the discount segment of the market. In March 2007, the Commissioner brought an application to the Tribunal under section 100 of the Act for an interim order prohibiting the parties from completing the transaction for 30 days in order to determine whether a challenge was appropriate at that time. After a two-day hearing, the Tribunal issued an order dismissing the Commissioner's application, and the parties completed the merger. The Commissioner appealed the Tribunal's decision. The appeal was heard on January 22, 2008 and the Federal Court of Appeal dismissed the Commissioner's appeal.

In November 2007, the Commissioner sought 15 production orders under section 11 of the Act; they were granted by the Federal Court on November 8, 2007. Two respondents subsequently challenged these orders, and the matter was heard on December 6, 2007. On January 28, 2008, Madam Justice Mactavish set aside two of her orders on the basis of her finding that certain material facts were not disclosed to her and, had she known those facts, she would not have issued these orders. This ruling was made without prejudice to the Commissioner's right to bring fresh applications for further orders under section 11 of the Act on notice to the respondents. Following the ruling, the Bureau consented to vacating the orders of the remaining 13 respondents. At year-end, the Bureau's inquiry into this completed merger continued.

### **Schering-Plough Corporation and Organon BioSciences N.V.**

In March 2007, Schering-Plough Corporation announced its intention to acquire Organon BioSciences N.V. from Akzo Nobel N.V. Schering-Plough is a global health care company organized around three business segments: prescription pharmaceuticals, consumer health care

and animal health. Organon is a global pharmaceutical company that develops and markets drugs targeting both human and animal therapeutic uses. Over the course of its three-month review, the Bureau interviewed more than 60 industry stakeholders, and worked in cooperation with other jurisdictions. While the Bureau was initially concerned, further analysis revealed that the proposed transaction was not likely to lead to a substantial lessening or prevention of competition in any relevant market.

The Bureau cooperated closely with other jurisdictions, including the U.S. Federal Trade Commission (FTC) and the European Commission's Competition Directorate. To satisfy its competition concerns, the FTC ordered the divestiture of three vaccines, one of which also raised competition issues in Canada - Organon BioSciences' fowl cholera vaccine. The Bureau was satisfied that this remedy resolved any outstanding concerns identified by the Bureau.

The Bureau issued a technical backgrounder, summarizing the main findings of its review. A copy is available on our Web site at:

[www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02682e.html](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02682e.html)

### **Thomson Corporation and Reuters Group PLC**

In May 2007, Thomson Corporation and Reuters Group PLC announced their plans to merge to create a major global provider of financial market information services. European and American antitrust authorities required the divestiture of copies of historical market data accumulated by the merging parties to enable a competitor to provide comparable services, thereby resolving their competition concerns. The databases to be divested did not discriminate on a national basis and the global scope of the remedy was sufficient to alleviate the Bureau's competition concerns, particularly as the parties provided written commitments (simultaneous with the resolution of issues in the U.S. and the EU) concerning the implementation of the divestitures in Canada. The Bureau announced on February 19, 2008, that it would not challenge Thomson's acquisition of Reuters.

### Grain Handling Industry

On July 5, 2007, the Bureau announced the finalization of a series of remedies to maintain and promote competition in the grain handling industry in Western Canada. Those transactions resolved competition concerns that arose from a series of mergers in the grain industry. The Bureau concluded that the following divestitures were required to eliminate the substantial lessening of competition:

(i) Agricore United (AU) completed the divestiture of its grain-handling terminal in the Port of Vancouver to Alliance Grain Terminal Limited in April 2007. This divestiture was made in accordance with the October 2002 consent agreement between the Commissioner and United Grain Growers Limited (UGG), and had been required by the Commissioner to eliminate the substantial lessening of competition resulting from UGG's acquisition of Agricore Cooperative.

(ii) Saskatchewan Wheat Pool (SWP) completed the sale of nine inland grain elevators and a port terminal elevator in the Port of Vancouver to Cargill Limited in July 2007. This transaction was completed as required by the March 2007 Consent Agreement between the Commissioner and SWP specifically in connection with SWP's acquisition of AU, effected in June 2007. In addition, SWP terminated the Pacific Gateway Terminal Limited, a joint venture with James Richardson International (JRI). As a result of this withdrawal, the Commissioner withdrew the pending application before the Tribunal formally challenging this joint venture.

(iii) Concerning JRI's acquisition of certain AU inland grain elevators from SWP in June 2007, the Commissioner and JRI also entered into a Consent Agreement in July 2007, whereby JRI divested two inland grain elevators in order to eliminate the substantial lessening of competition in local markets resulting from the transaction.

### American Iron & Metal Incorporated and SNF Incorporated

American Iron & Metal Incorporated (AIM) submitted a complete filing on December 20, 2007 pursuant to section 114 of the *Competition Act* with respect to the proposed acquisition of SNF Incorporated. This merger

involved the two leading scrap metals collectors and processors in Eastern Canada. On January 28, 2008, the Bureau applied to the Tribunal pursuant to section 100 of the Act, seeking to prevent the closing and/or implementation of the transaction; the Bureau's concern was asset application. Subsequent to filing the application, the Bureau obtained a consent agreement requiring AIM to preserve the assets of concern for a period of 60 days while the Commissioner completed the review. The proposed transaction closed on February 5, 2008.

## 5.2 Templates and Reports

### Consent Agreement Template for Mergers

On May 1, 2007, the Competition Bureau published an Outline Consent Agreement to complement the *Information Bulletin on Merger Remedies in Canada* (released in September 2006). The Bulletin provides guidance to businesses and legal counsel on the objectives and general principles applied by the Bureau when it seeks, designs, and implements remedies to resolve competition concerns arising from proposed transactions. The Outline Consent Agreement is a generic model from which the Bureau will prepare future consent agreements with merging parties in future. It will serve as a starting point as the terms and conditions of each agreement will be tailored to the specific facts and circumstances of each merger; however, it should provide direction to parties.

### Innovation and Dynamic Efficiencies in Merger Reviews

On August 9, 2007, the Bureau made public an independent report it had commissioned on potential approaches to the assessment of dynamic efficiencies in the merger review context. The report, entitled "Innovation and Dynamic Efficiencies in Merger Reviews", was drafted by CRA International, an economic and financial consulting firm. The report was commissioned as part of the Bureau's ongoing work in the area of efficiencies in merger analysis. The report proposes a framework for incorporating certain innovation arguments into merger review, and elaborates on the authors' suggested analytical approach to the issue of efficiencies generally, and dynamic efficiencies in particular.

To review the report, please visit our Web site at:  
[www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02376e.html](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02376e.html)

### **Ex Post Merger Review**

The Competition Bureau published a post-merger review study in October 2007 that it commissioned from CRA International, an economic and financial consulting firm. Consistent with the Bureau's priority to enhance performance management and transparency, the study evaluates whether the Bureau applied appropriate analytical approaches and took reasonable decisions in certain merger reviews by examining, in particular, whether any of the markets in question in those reviews are substantially less competitive today than they were pre-merger.

CRA found that, in general, the Bureau's analyses accurately assessed market conditions, and reasonably predicted outcomes. In addition, the report identified areas where the Bureau could make incremental improvements. These include a greater use of quantitative analysis, and more critical consideration before accepting claims of 'countervailing power'.

A copy of the report is available at:  
[www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02447e.html](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02447e.html)

### **Merger Remedies Study**

In 2007, the Bureau launched a comprehensive merger remedies study. The main objective of the study is to determine whether past merger remedies sought by the Bureau have been effective in addressing the competition concerns identified in the relevant market(s) at issue. Through an assessment of the effectiveness of past merger remedies, the goal is to gain an understanding of the factors that either contributed to, or detracted from, the efficacy of such remedies. The results of the study will help advance the Bureau's practice with respect to the design and implementation of future merger remedies.

The study considers all 55 cases resulting in a remedy, from 1986, when the current merger provisions came into force, up to 2004, where at least part of the remedy was implemented. The study covers all types of merger remedies - structural, quasi-structural, standalone behavioural and combination remedies. For each case, the Bureau is conducting interviews with a range of market

participants, including the merged entity, purchasers of the divested assets and/or beneficiaries of rights, and customers or third parties.

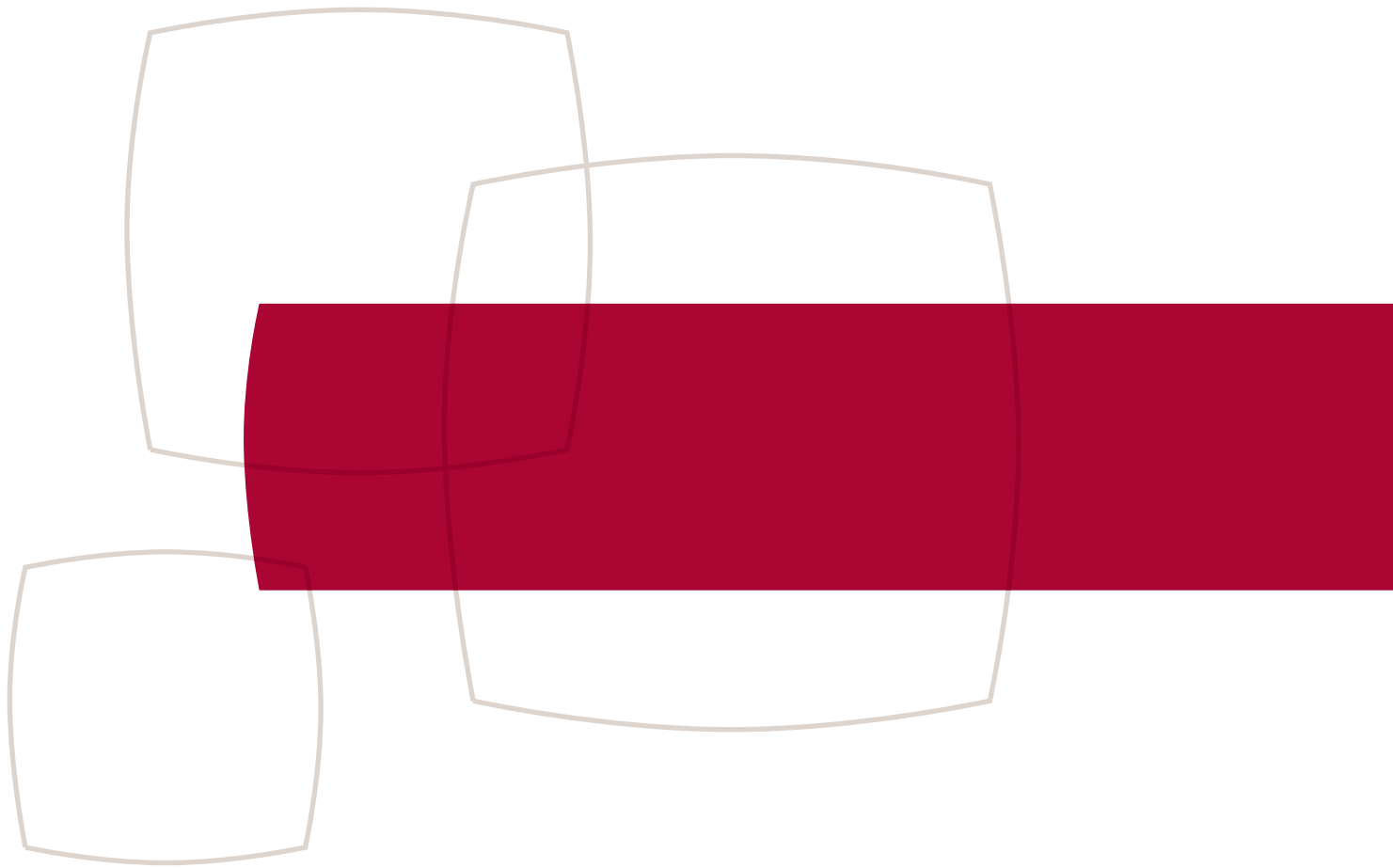
The methodology of the study was finalized in 2007 and the Bureau had begun the interview phase. Once the study is complete, the Bureau intends to publish a report detailing its findings. In addition, the Bureau will aim to compare and contrast its findings with those of similar studies in other jurisdictions, in pursuit of further and more robust insights with respect to the design and implementation of effective merger remedies.

### **Task Force on Collaboration between the Competition Bureau and the Canadian Bar Association's National Competition Law Section**

In the fall of 2006, the Bureau and the Canadian Bar Association's National Competition Law Section identified the opportunity to improve collaboration; a joint task force was created to explore this goal.

Using as a model the effective working relationship between the American Bar Association Section of Antitrust Law and the U.S. Department of Justice and the Federal Trade Commission, the task force developed a series of proposals to promote closer collaboration between the Bureau and the Section. Bureau staff may be invited to serve as Section committee Chairs and Vice-Chairs; task forces, composed of personnel from the Bureau and the Section, will be struck to deal with particular major issues of mutual interest; and ad hoc joint working groups, drawing on the expertise of Section members, may be established by the Commissioner or Section as a need arises.

In July 2007, the Final Report of the *Task Force on Collaboration between the Competition Bureau and the Canadian Bar Association's National Competition Law Section* was released, following which, in October 2007, the Bureau and the Section endorsed the report and associated protocol to promote more effective cooperation. It is hoped that these efforts and developments will lead to a more open and effective relationship between the two organizations. A better understanding of one another's perspectives will allow for the advancement of the shared interest in the sound development of competition policy and practice.





6.

## ADVOCATING FOR COMPETITION AND INTERNATIONAL COORDINATION

## 6. ADVOCATING FOR COMPETITION AND INTERNATIONAL COORDINATION

The Bureau undertakes a wide range of activities to promote competition domestically 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 (ICN) and on the Competition Committee of the Organisation for Economic Co-operation and Development (OECD). Bureau officials further contribute to debates on competition issues by way of publications, speeches and seminars.

### 6.1 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 participated 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 where appropriate, 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 approaches and Canada's law enforcement successes.

#### 6.1.1 International Competition Network

The Bureau continues to be an active member of the ICN. The Commissioner has been Chair of the ICN Steering Group since February 2007.

The Bureau assumes other leadership roles in the ICN including co-chairing the ICN Cartel Working Group, subgroup on Enforcement Techniques and the Operational Framework Working Group, the latter of which develops proposals concerning the structure and operation of the ICN steering group. The Bureau also acts as the de facto secretariat of the ICN.

In 2007-2008, the Bureau contributed to the ICN Cartel Working Group, subgroup on Enforcement Techniques, by assisting in preparations for the ICN Cartel Workshop held in late October 2007 in San Salvador, El Salvador. Bureau representatives moderated the leniency programs panel, spoke at and moderated a breakout session for the interviewing role-play session, and participated in the mock oral submission. The Bureau also participated drafting chapters on investigative strategy, and interviewing for the *Anti-Cartel Enforcement Manual* and running a breakout session at the ICN Annual Conference in Kyoto, Japan.

The Bureau actively participated in the ICN Unilateral Conduct Working Group, which finalized a number of papers to be presented at the ICN Annual Conference in Kyoto in April 2008, including papers on predation, exclusive dealing and single branding. The working group

also continued work on guidance papers on dominance and state-created monopolies.

The Bureau participated in the ICN Merger Workshop on Substantive Issues in Merger Analysis in Dublin in April 2007. The workshop explored substantive issues in the review through the use of a hypothetical merger case in the dairy industry. Such issues included market definition, unilateral and coordinated effects, entry and expansion, evidence and remedies.

Representatives from the Bureau participated in a panel at the March 2008 ICN Merger Workshop in Prague, Czech Republic, on Implementing the Recommended Practices for Merger Notification and Review Procedure. The focus of this panel was inter-agency coordination of merger remedies.

### **6.1.2 Organisation for Economic Co-operation and Development**

#### **Competition Committee**

The Commissioner continues to act as a member of the OECD Competition Committee. This year, the Bureau participated actively in the work of the committee and provided input and submissions on: dynamic efficiencies in merger analysis; evaluation of competition authorities; refusal to deal; restrictions in legal professions; competition assessment toolkit; public procurement; potential pro-competitive and anti-competitive aspects of trade/business associations; antitrust issues involving minority shareholdings and interlocking directorates; and techniques for presenting complex economic theories to judges.

#### **Committee on Consumer Policy**

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

The CCP met in Paris in October 2007 and February 2008. The meetings focused on building consumer confidence in the global economy through work on the economics of consumer policy, including the

development of a toolkit for policy matters, which takes into account research on how consumers make decisions in the marketplace; the 2008 Ministerial Meeting on the Future of the Internet Economy; consumer education; and the examination of consumer policy regimes, which includes work on sustainable consumption and industry-led regulation.

#### **Canada-U.S. Cooperation Arrangement**

On March 28, 2008, the Competition Bureau signed a cooperation arrangement with the United States Postal Inspection Service in Washington, D.C., to improve competition law enforcement in areas such as mass marketing fraud and other deceptive marketing practices with a cross-border component. The Arrangement formalizes the existing cooperative relationship between the agencies by establishing a framework to facilitate enforcement cooperation, coordination and information sharing. In addition, the Arrangement builds on a previous cooperation arrangement between Canada and the U.S., and on recommendations adopted by the OECD in June 2003, which provides international guidelines for cooperation in the fight against cross-border fraudulent and deceptive commercial practices.

### **6.1.3 Free Trade Agreements**

The Bureau, in partnership with the Department of Foreign Affairs and International Trade Canada, develops competition policy and competition provisions in bilateral and regional free trade agreements (FTAs), and assumes the role of lead competition law and policy negotiator for these matters on behalf of the Government of Canada. The Canadian Government continued negotiations with Peru and Columbia and on January 26, 2008, signed an FTA with the European Free Trade Association.

### **6.1.4 International Consumer Protection and Enforcement Network**

In April 2007, Bureau representatives participated in the bi-annual meeting of the International Consumer Protection Enforcement Network (ICPEN), held in Krakow, Poland. ICPEN is a voluntary organization of trade practices law enforcement authorities from 38 countries; and the Bureau is a member of the Advisory Group under the Polish Presidency. A Bureau representative delivered a presentation on Canada's Fraud

Prevention Month; explained how the Bureau decides to enforce cases using a civil or a criminal track; spoke about the Bureau's Targeted

Enforcement Approach to Markets strategy; and provided an update on the development of a national strategy to combat mass marketing fraud originating from Canada.

From September 24 to 28, 2007, the Bureau participated in a joint Internet sweep with members of ICPEN to expose Web sites that make deceptive health claims for products and services. This action is part of the Bureau's enforcement strategy to target health fraud scams owing to the serious harm they can cause to Canadians and legitimate businesses. During the sweep, thousands of Web sites and emails were examined by agencies from over 20 countries. Through ICPEN's coordinated enforcement action, participating agencies searched the Internet to identify potentially deceptive sites, helping to ensure that scam artists do not undermine the credibility of legitimate online retailers.

In November 2007, Bureau representatives participated in the bi-annual meeting and the Best Practices Training session of ICPEN, held in Santiago, Chile. The Bureau is a member of the ICPEN Strategic Planning and Best Practices in Enforcement Working Group. At the best practices training session, a Bureau representative gave a presentation on Internet surveillance techniques, including a demonstration of the software used by the Bureau for Internet monitoring and intelligence gathering.

### 6.1.5 Messaging Anti-Abuse Working Group

In 2007, the Bureau attended the Messaging Anti-Abuse Working Group (MAAWG) meetings in Dublin and Washington. MAAWG is a global partnership bringing together the private sector, academia and law enforcement in an effort to safeguard electronic messaging from online exploits and abuse with the goal of enhancing user trust and confidence. E-commerce related enforcement is a priority for the Bureau. At the root of developing properly equipped e-commerce enforcement teams and strategies are partnerships, competencies and technology. This includes the need for close coordination among law enforcement agencies, the private sector and academia,

and the need for uniformly trained and equipped personnel to gather evidence, investigate, and prosecute these cases. Through its involvement in MAAWG, the Bureau has been able to develop and maintain good partnerships with major companies within the private sector, learn about new technologies and share investigative tips with other law enforcement agencies engaged in Internet investigations.


The Bureau participated in a Steering Committee to develop the MAAWG Law Enforcement Collaborative Workshop, entitled "Cybercrime Investigations for Law Enforcement Agencies", which took place in Dublin.

## 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.

In 2008, the Bureau provided technical assistance to several countries, including India, the Netherlands, Costa Rica and the Russian Federation. Such assistance included the provision of information on the *Competition Act*, welcoming visiting delegations from foreign governments and competition authorities, providing comments on draft policies, and helping to develop and refine foreign competition laws.

In September 2007, the Bureau provided training to representatives from the Costa Rican competition authority. Topics focused on the criminal provisions of the Act, the economic analysis and impact of anti-competitive conduct and treatment of exceptions/exemptions under the Act, merger notifications, the Bureau's advocacy work in the telecommunications sector, and the Bureau's compliance program. The training program is part of the technical assistance project, entitled "The Role and Importance of Competition Policy in Promoting Investment, Growth, Competitiveness and Poverty Reduction in Costa Rica". It is in partnership with the Canadian International Development Agency, the

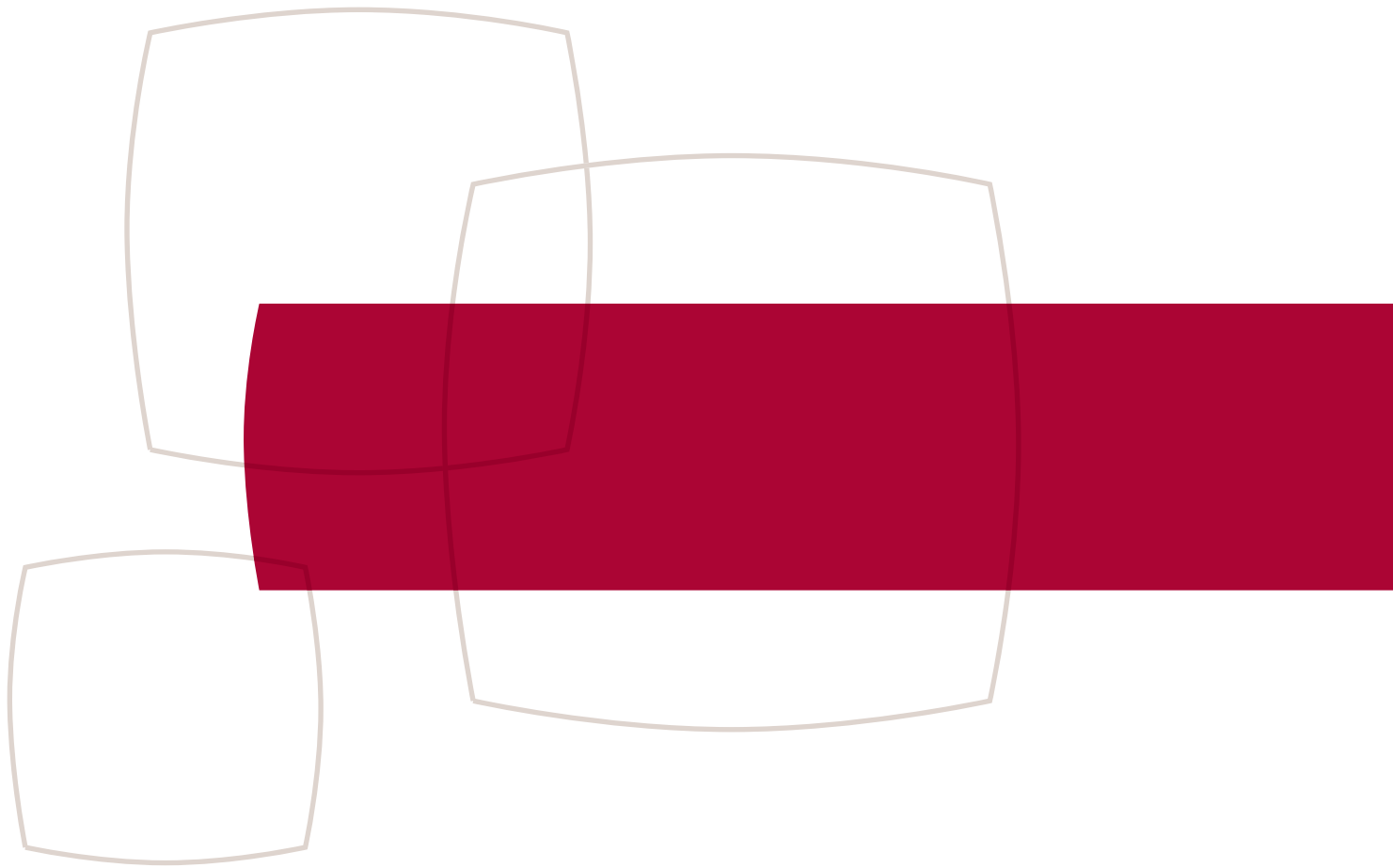


Foreign Investment Advisory Service, the Private Sector Development Vice-Presidency of the World Bank Group and the Costa Rican competition authority.

In December 2007, the Bureau welcomed a visiting delegation from the Federal Antimonopoly Service of the Russian Federation. Presentations focused on the Bureau's expertise and experience in merger review, merger notification and filing, criminal and fair business practices matters, the Bureau's immunity program, economic analysis, and abuse of dominance.

Throughout this fiscal year, the Bureau participated in an ongoing OECD anti-bid-rigging initiative in Latin America (in particular Chile). The project assists competition authorities in developing anti-cartel measures. The project focuses specifically on diminishing corruption and bid-rigging in the public procurement process.

In March 2008, the Bureau provided comments on India's new merger notification and filing system.





## 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 affecting virtually all industry sectors. The goal is to ensure that Canadians enjoy the benefits of a competitive economy, including competitive prices, product choice and quality services.

### 7.1 Bureau Projects

#### 7.1.1 Generic Drug Sector Study

In September 2006, the Bureau announced that it would undertake a study of the generic drug sector as part of its legislated mandate to advocate in favour of market forces. The Bureau initiated this project in response to several studies that found the price of prescription generics to be high in Canada compared to other countries. In conducting the study, the Bureau relied on publicly available information, data purchased from data providers and information obtained from sector participants in interviews conducted between January and April 2007.

The Generic Drug Sector Study, released on October 29, 2007, found that strong competition exists in the supply of many generic drugs, but that the benefits of this competition are not reaching the Canadian public in the form of lower prices. The Bureau found that, to compete for space on pharmacies' shelves, generic manufacturers offer rebates or other payments to pharmacies in most provinces. Under the present system, in most provinces, pharmacies have limited incentive to pass on these cost savings to those who pay for them: public and private plans; people paying out of pocket; and taxpayers.

The study concluded that shifting the focus of generic competition from the pharmacies to public and private

insurers and consumers could offer Canadians large savings. The Bureau is continuing its work in the generic drug sector by examining possible options for obtaining the benefits from competition and the impediments to their adoption. Further research and advocacy will focus on the design of generic drug plans, which has been identified as a major impediment to the realization of the benefits from generic drug sector competition.

To view the Bureau's news release, study and accompanying background, please visit: [www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02506e.html](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02506e.html)

#### 7.1.2 Reform of Section 45 of the Competition Act

The reform of the conspiracy provision (section 45) of the *Competition Act* has been a topic of much debate in recent years. Modernization of the 120-year-old conspiracy provision is necessary as the provision could capture pro-competitive strategic alliances, does not effectively deter blatant hard-core conduct and is out of step with conspiracy laws in other jurisdictions. In 2005, the Bureau formed internal and external working groups of lawyers and economists to consider various models to assess potential features of an amended conspiracy provision. Based on the results of this work, the Bureau drafted a proposal to reform section 45. In

December 2007, the Bureau held workshops with experts from across Canada to consider the text of the Bureau's proposal. The proposal was revised to address issues raised during the technical workshops.

### 7.1.3 Competition Policy Review Panel

On July 12, 2007, the Government of Canada announced the creation of the Competition Policy Review Panel, tasked with reviewing Canada's competition and foreign investment laws and policies, and recommending ways to improve Canada's productivity and competitiveness. The Bureau made a submission to the Panel on January 11, 2008, in which it made three broad recommendations:

- (1) the Government of Canada should establish an independent assessment process responsible for reviewing and identifying the effects of proposed new laws and policies on competition. Such a process would assist legislators and policymakers in identifying alternatives that rely on open markets and harm competition as little as possible and only where necessary;
- (2) the Panel should recommend the reduction or elimination of foreign ownership restrictions in sectors vital to the economy, such as telecommunications and airlines; and,
- (3) the Panel should support the recommendations of the Organisation for Economic Co-operation and Development (OECD) and the 2002 House of Commons Industry Committee Report regarding amendments to the Act, including:
  - (i) the current criminal anti-cartel provision be reformed to ensure that it captures the most harmful types of cartels such as price-fixing conduct and does not chill potentially beneficial alliances or agreements among firms;
  - (ii) predatory pricing and price discrimination be decriminalized; and
  - (iii) meaningful incentives for compliance with the abuse of dominance provisions be introduced through, for example, the introduction of administrative monetary penalties.

The Panel received more than 150 submissions and will release its final report in June 2008. The Bureau's submission can be found at:

[www.ic.gc.ca/epic/site/cprp-gepmc.nsf/vwapj/commissioner\\_competition\\_bureau.pdf/\\$FILE/commissioner\\_competition\\_bureau.pdf](http://www.ic.gc.ca/epic/site/cprp-gepmc.nsf/vwapj/commissioner_competition_bureau.pdf/$FILE/commissioner_competition_bureau.pdf)

### 7.1.4 Competition Assessment Project

Recognizing the importance of competition as a driver of productivity and competitiveness, a number of leading jurisdictions around the world are taking steps to ensure that their competition agencies have modern laws and resources to effectively deal with anti-competitive business practices. Recognizing that government laws and policies have a major impact on the ability of their firms to compete, a number of jurisdictions both:

- integrate competition principles into law and policy development to ensure that they do not unnecessarily restrict competition or harm business' ability to compete; and
- establish mechanisms for reviewing and eliminating existing regulations that harm competition and competitiveness unnecessarily.

The challenge for government legislators and policy makers is to ensure that regulatory measures strike the best possible balance between what they have been designed to achieve and their cost. A number of jurisdictions, including Australia, the United Kingdom, the United States and the European Union, have implemented mechanisms to promote an approach that competition will be limited by government policy or regulation only where warranted. These countries have adopted, to varying degrees, processes that require law and policy makers to rely on market forces whenever possible and that when intervention is necessary, to choose options that are least harmful to competition.

The OECD 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 toolkit to be easily applied during the policy and regulation development process with few administrative resources. The Competition Bureau has developed training material for the toolkit and is currently working on a pilot test against various policy proposals.

## 7.2 Private Members' Business

### 7.2.1 Private Members' Bills

In 2007-2008, eight private members' bills of relevance to the Bureau were introduced. At the time of this report, none had yet received Royal Assent.

#### **Bill C-319: An Act to Establish the Energy Price Commission (Energy Price Commission Act)**

This bill was first introduced on June 6, 2006, and was reintroduced on October 16, 2007. The bill proposes the establishment of an Energy Price Commission to regulate the wholesale and retail price of motor fuels, heating oil and electric power. Under the bill, any investigation of an alleged offence under the Act that is related to energy pricing is referred by the Competition Tribunal to the Commission for investigation. The Commission would report to the Tribunal before a determination or order is made on the matter. As of March 31, 2008, the bill had not yet begun second reading.

#### **Bill C-335: An Act to Amend the Bank Act (Bank Amalgamations)**

This bill was first introduced on June 19, 2006, and was reintroduced on October 16, 2007. 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 advised the Minister of Finance that a merger was necessary to prevent the insolvency, or informed the Minister that none of the applicants wishing to merge would become insolvent. In the latter case, the merger would have to be approved by a resolution of the Senate and the House of Commons. As of March 31, 2008, the bill had not yet 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 first introduced on March 22, 2007, and was reintroduced on October 16, 2007. The bill proposes to expressly restrict advertising and promotion, for

commercial purposes, of products, food, drugs, cosmetics or devices, directly to children under 13 years of age. As of March 31, 2008, the bill had not yet 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 first introduced on March 23, 2007, and was reintroduced on October 16, 2007. The bill would require that telecommunications service providers 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 certain law enforcement agencies, including the Commissioner of Competition. As of March 31, 2008, the bill had not yet begun second reading.

#### **Bill C-425: An Act to Amend the Competition Act and the Canadian Environmental Protection Act 1999 (Right to Repair)**

This bill was first introduced on April 17, 2007, and was reintroduced on October 16, 2007. Among other things, the bill would add a definition of "product" in section 75 of the Act to make it clear that "product" includes technical information that is required by a person in order to provide a service to a customer. This would enable the Tribunal to require a supplier to provide this information to a customer in accordance with section 75 in cases where the supplier has previously refused to do so. As of March 31, 2008, the bill had not yet begun second reading.

#### **Bill C-441: An Act to Amend the Competition Act (Protection of Purchasers from Vertically Integrated Suppliers)**

This bill was first introduced on May 15, 2007, and was reintroduced on October 16, 2007. The bill would amend the Act to provide for the enforcement of fair pricing by a supplier who sells a product at retail (either directly or through an affiliate) and also supplies the

product to a purchaser who competes with the supplier at the retail level. This would give the purchaser a fair opportunity to make a similar profit. The bill also provides that a supplier who coerces or attempts to coerce a customer in relation to the establishment of a retail price or pricing policy may be dealt with as having committed an anti-competitive act. As of March 31, 2008, the bill had not yet begun second reading.

**Bill C-442: An Act to Establish the Office of the Oil and Gas Ombudsman to Investigate Complaints Relating to the Business Practices of Suppliers of Oil or Gas (*Oil and Gas Ombudsman Act*)**

This bill, originally introduced as C-359 in the 37th Parliament, was introduced on May 15, 2007, and was reintroduced on October 16, 2007. The bill would establish the Office of the Oil and Gas Ombudsman, which would receive and investigate complaints about the business practices of oil and gas suppliers, make recommendations, and report to the Minister of Industry if it was not satisfied with the response of the oil or gas supplier. As of March 31, 2008, the bill had not yet begun second reading.

**Bill C-454: An Act to amend the *Competition Act* and Make Consequential Amendments to Other Acts**

This bill, substantially similar to Bill C-19 from the 38th Parliament, was first introduced on June 7, 2007, and was reintroduced on October 16, 2007. The bill would: amend the Act to repeal the airline-specific provisions; decriminalize the price discrimination and predatory pricing provisions; introduce administrative monetary penalties (AMPs), private access to the Tribunal, and damages for abuse of dominance; increase AMPs for deceptive marketing practices and provide for restitution to consumers harmed by those practices; remove the word “unduly” from the anti-cartel provision; confer a broad power on the Commissioner to study sectors of the economy using formal powers; introduce the test of “abusive exploitation of a dominant position” as a condition that must be satisfied when demonstrating that an act is anti-competitive; and increase the notification threshold for certain mergers. As of March 31, 2008, the bill had completed second reading and had been referred

to the House Standing Committee on Industry, Natural Resources, Science and Technology.

## 7.2.2 Private Members’ Motions

In 2007-2008, there were three private members’ motions of relevance to the Bureau. At the time of this report, none had yet been debated in Parliament:

### **M-119: Petroleum Monitoring Agency**

This motion was first introduced on April 4, 2006, and was reintroduced on October 16, 2007. 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**

This motion was first introduced on May 8, 2006, and was reintroduced on October 16, 2007. The motion 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*.”

### **M-435: Food and Product Safety**

This motion was introduced on January 24, 2008. The motion states: “That, in the opinion of the House, the government should address the current import safety crisis by: (a) reviewing and fixing existing trade deals that limit the ability of safety agencies to inspect imported food and products; (b) requiring importers of record to

post a safety bond to ensure accountability for recalls and defective products; (c) giving authority under the *Food and Drug Act* and the *Consumer Packaging and Labelling Act* to examine and approve the regulatory systems of our trading partners as meeting Canadian safety standards before imports from a country can enter the Canadian market, and ensuring that they have the adequate authority to effectively halt imports; (d) implementing country-of-origin labelling (COOL) on meat, fruits and vegetables and requiring COOL on processed foods and ingredients; (e) authorizing mandatory recall authority; (f) improving the collection, analysis, sharing and delivery of all pertinent information with respect to all relevant sources; and (g) imposing meaningful civil penalties for violators.”

## 7.3 Parliamentary Committee Appearances

### 7.3.1 *Canada Transportation Act and the Railway Safety Act*

Bill C-11, An Act to amend the *Canada Transportation Act* and the *Railway Safety Act* and to make consequential amendments to other Acts, was introduced on May 4, 2006. The bill contained provisions that pertain to mergers in the transportation sector. The Bureau expressed concern about language in the legislation that could create an overlap of authority between government departments and ministers when reviewing the effects of mergers. On November 2, 2006, the Bureau wrote a submission to the House Standing Committee on Transportation, Infrastructure and Communities during its review of the bill to express those concerns. On May 14, 2007, a subsequent submission was sent to the Senate Standing Transport and Communications Committee. The bill was amended to direct Transportation Canada to work with the Bureau to develop merger guidelines. The bill received Royal Assent on June 22, 2007. As of March 31, 2008, work on the guidelines was still in progress.

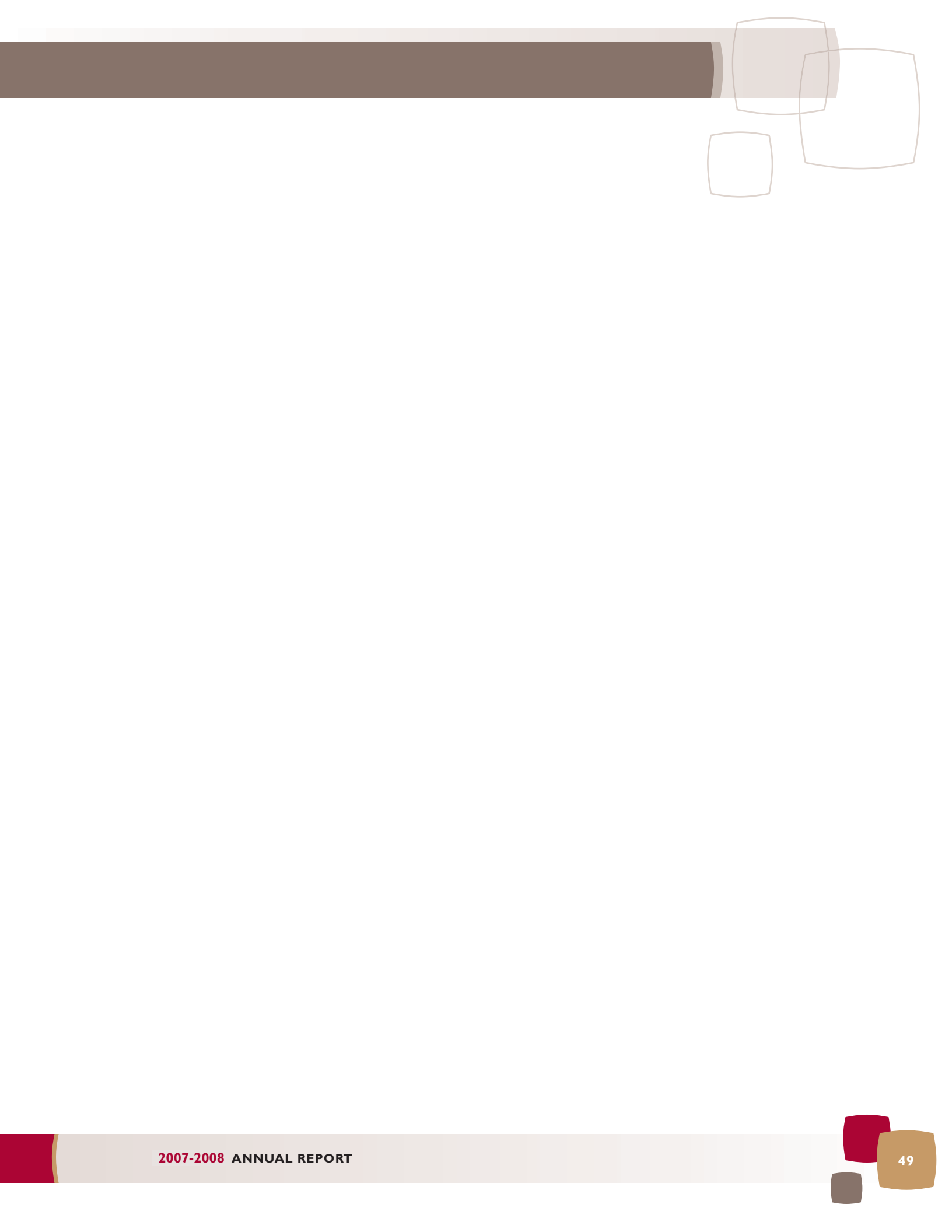
### 7.3.2 *House of Commons Standing Committee on Finance*

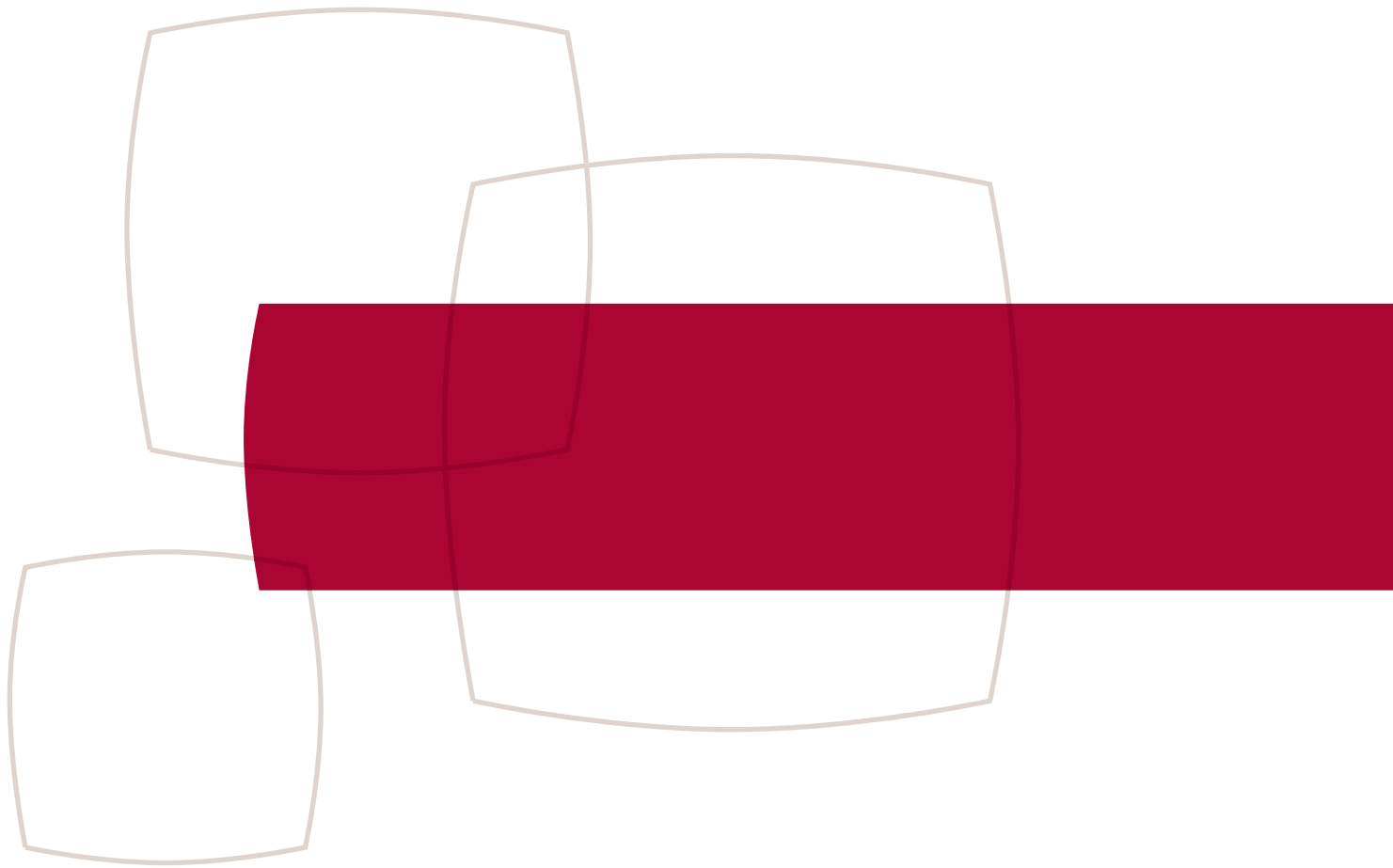
On April 19, 2007, Bureau officials appeared before the House of Commons Standing Committee on

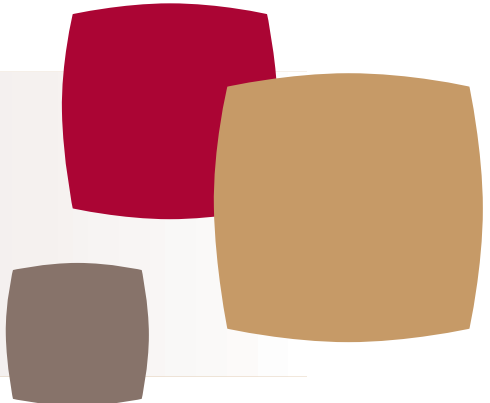
Finance regarding automated teller machines, electronic payments, and the fees charged by financial institutions. The Bureau briefly explained its mandate and role, as well as the purpose of the Act. The Bureau also discussed the 1996 Interac consent order that prohibited certain anti-competitive acts and opened up access to the Interac network to other operators of automated teller machines.

### 7.3.3 *House of Commons Standing Committee on Industry, Science and Technology*

On June 11, 2007, Bureau officials appeared before the House of Commons Standing Committee on Industry, Science and Technology regarding gas prices and refining margins. The Bureau explained its overall mandate, enforcement tools, and support for reliance on market forces to enhance competition and consumer welfare. The Bureau explained that high prices and refining margins are not, in and of themselves, contrary to any provisions of the Act. However, when high prices are the result of anti-competitive conduct that is circumscribed by the Act, the Bureau will take appropriate action.







## 8. COMMUNICATING WITH CONSUMERS AND BUSINESSES

## 8. COMMUNICATING WITH CONSUMERS AND BUSINESSES

Education is essential to the work of the Competition 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.

### 8.1 Media Relations

The Bureau's communications initiatives resulted in a total of 3,671 media news reports of interest to the Competition Bureau during the 2007-2008 fiscal year, of which 2,959 appeared in mainstream media outlets and 712 appeared in trade media outlets. This volume of total coverage represents a 33% increase over the 2006-2007 year total of 2,754. This increase in coverage can be attributed to a substantial increase in the number of news releases sent out by the Bureau as compared to 2006-2007 (43 issued in 2007-2008, 28 during 2006-2007), as well as a number of high-profile media reports driven by external events that generated a significant amount of media coverage.

### 8.2 Warnings and Information Notices

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

In December, the Bureau issued two pre-Christmas warnings for consumers during the holiday season. In the first warning, the Bureau collaborated with the Retail Council of Canada to warn consumers to be on the lookout for offers from scammers posing as well-known retailers. This warning stemmed from an increase in complaints from consumers who had been contacted via

email and through the mail by bogus retailers attempting to fraudulently obtain credit card information and other personal information.

In the second warning, the Bureau alerted consumers about the extra fees they may encounter when shopping for bargains from the U.S. online or by telephone. Such purchases may require the payment of Customs duties and taxes (brokerage fees) when entering Canada.

### 8.3 Web Site

The Bureau's Web site ([www.competitionbureau.gc.ca](http://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 email distribution list that sends subscribers information updates.

To subscribe, visit: [www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/frn-eng/PJSH-6X9J7C](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/frn-eng/PJSH-6X9J7C)

### 8.4 Information Centre

The Information Centre is responsible for providing information to consumers, businesses and stakeholders to assist them in making informed decisions and to help them comply with the four statutes administered by the Bureau. The Centre's staff is also responsible for registering complaints that may lead the Bureau to investigate matters involving false or misleading

representations, deceptive marketing practices, packaging and labelling of consumer products, labelling of textile articles, marking of precious metals, restraints to competition and/or mergers. Such information is important in determining the advocacy and enforcement activities of the Bureau.

In 2007-2008, the Information Centre received 9,534 complaints and 18,496 information requests. Most of these complaints (95%) were related to false or misleading representations and deceptive marketing practices.

The public can communicate with the Competition Bureau Information Centre, Monday through Friday, from 8:30 a.m. to 4:30 p.m. Eastern Time, by:

- phone: 1-800-348-5358
- fax: 819-997-0324
- mail: 50 Victoria Street, Gatineau, Quebec, K1A 0C9
- Internet: [www.competitionbureau.gc.ca/info](http://www.competitionbureau.gc.ca/info)

## 8.5 Public Consultations

Through the year, the Competition Bureau invites the public and interested parties to provide comments on various initiatives as part of its public consultation process. Submissions to the typically 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.

### 8.5.1 Draft Information Bulletin: Sections 15 and 16 of the Competition Act

In April 2007, the Competition Bureau sought public comments on a draft publication, entitled *Draft Information Bulletin: Sections 15 and 16 of the Competition Act*. The purpose of the Bulletin is to provide an overview of sections 15 and 16 of the *Competition Act* and their application. More specifically, it outlines how the Commissioner of Competition obtains and executes search warrants. This Bulletin is part of the Bureau's ongoing commitment to develop enforcement and educational tools with a view to being more transparent and predictable in its application of the laws under its jurisdiction.

### 8.5.2 Predatory Pricing Enforcement Guidelines

The Competition Bureau held public consultations in October 2007, seeking comments on its revised *Predatory Pricing Enforcement Guidelines*. The purpose of the guidelines is to clarify the Bureau's enforcement policy and to ensure that Canadian businesses and the public understand when below cost pricing may result in an investigation under the *Competition Act*. The Bureau first published the guidelines in 1992. The updated document describes the Bureau's enforcement approach to predatory conduct in light of recent jurisprudence and economic thinking.

## 8.6 Bulletins, Guidelines and Surveys

### 8.6.1 Guidelines on the Deceptive Notice of Winning a Prize

In April 2007, the Competition Bureau released its *Guidelines on the Deceptive Notice of Winning a Prize Provision - Section 53 of the Competition Act*. The guidelines outline the approach that the Commissioner of Competition is taking in enforcing the criminal deceptive notice of winning a prize provision of the Act. They are intended to help the general public, business people and their legal advisors better understand the deceptive notice of winning a prize provision and the general approach taken by the Bureau to enforce that provision.

### 8.6.2 Immunity Program under the Competition Act

In October 2007, the Competition Bureau published a new *Information Bulletin on the Immunity Program under the Competition Act*. The Bureau's goal in creating and maintaining the Immunity Program is to uncover and stop criminal anti-competitive activity prohibited by the *Competition Act* and to deter others from engaging in similar behaviour. The Immunity Program is one of the Bureau's most powerful tools for detecting, investigating and prosecuting cartels, and applies to the criminal misleading advertising provisions.

### 8.6.3 Communication of Confidential Information Under the Competition Act

In October 2007, the Competition Bureau issued an information bulletin entitled *Communication of Confidential Information Under the Competition Act*. This bulletin was updated to incorporate amendments to the Act since the original version was issued in 1995. It also provides additional practical information on how confidential information is treated for purposes of the administration or enforcement of the Act, and when confidential information may be communicated to other law enforcement agencies. Confidential information is only communicated outside the Bureau in very limited circumstances. The general policy of the Bureau is to minimize the extent to which such information is communicated to other parties.

### 8.6.4 Canadian Consumer Mass Marketing Fraud Survey

In February 2008, the Competition Bureau released a survey entitled 2007 Canadian Consumer Mass Marketing Fraud Survey. The goal of the survey, conducted by Environics Research Group, was to investigate Canadians' experiences and perceptions related to 12 specific types of consumer mass marketing fraud activity.

A copy of the survey is available at the following link:  
[www.ic.gc.ca/epic/site/ic1.nsf/en/01513e.html](http://www.ic.gc.ca/epic/site/ic1.nsf/en/01513e.html)

## 8.7 Other Initiatives

### 8.7.1 Commissioner's Meetings with Consumer Groups

Through the year, the Commissioner of Competition hosts a number of open dialogue sessions with consumer groups from across Canada. These meetings provide the Bureau with an opportunity to outline its work, mandate and benefit to consumers.

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 among those included in the half-day discussions, in June and October, were gasoline prices, two Bureau studies (on professions and generic drugs), Fraud Prevention Month, telecommunications, and fraudulent health claims.

### 8.7.2 Fraud Prevention Month

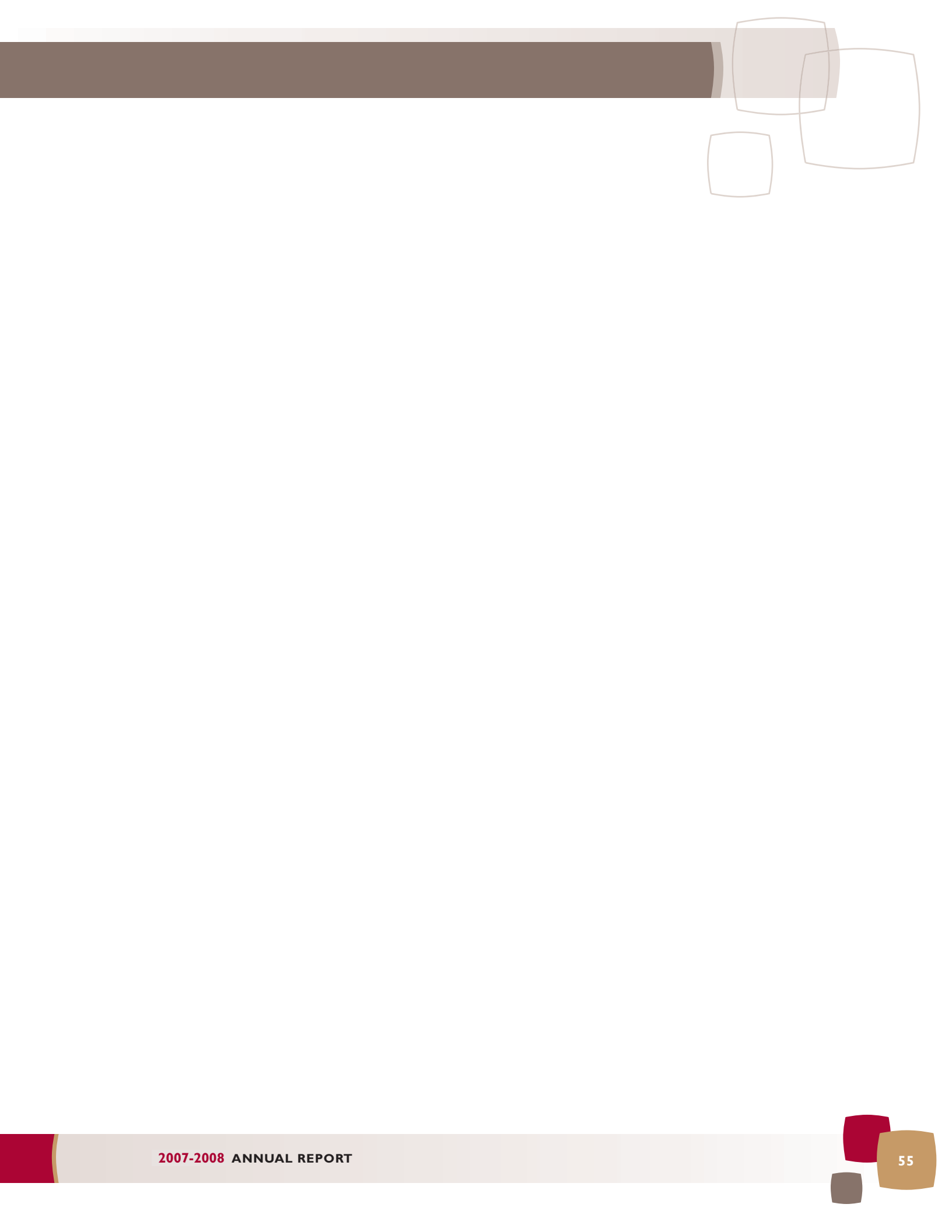
In March 2008, the Fraud Prevention Forum, which is chaired by the Competition Bureau, launched the fifth annual Fraud Prevention Month, a month-long education and awareness campaign which encourages business and consumers to be vigilant in the fight against fraud. There are over 100 members of the Forum, including private sector firms, consumer and volunteer groups, governments and law enforcement agencies.

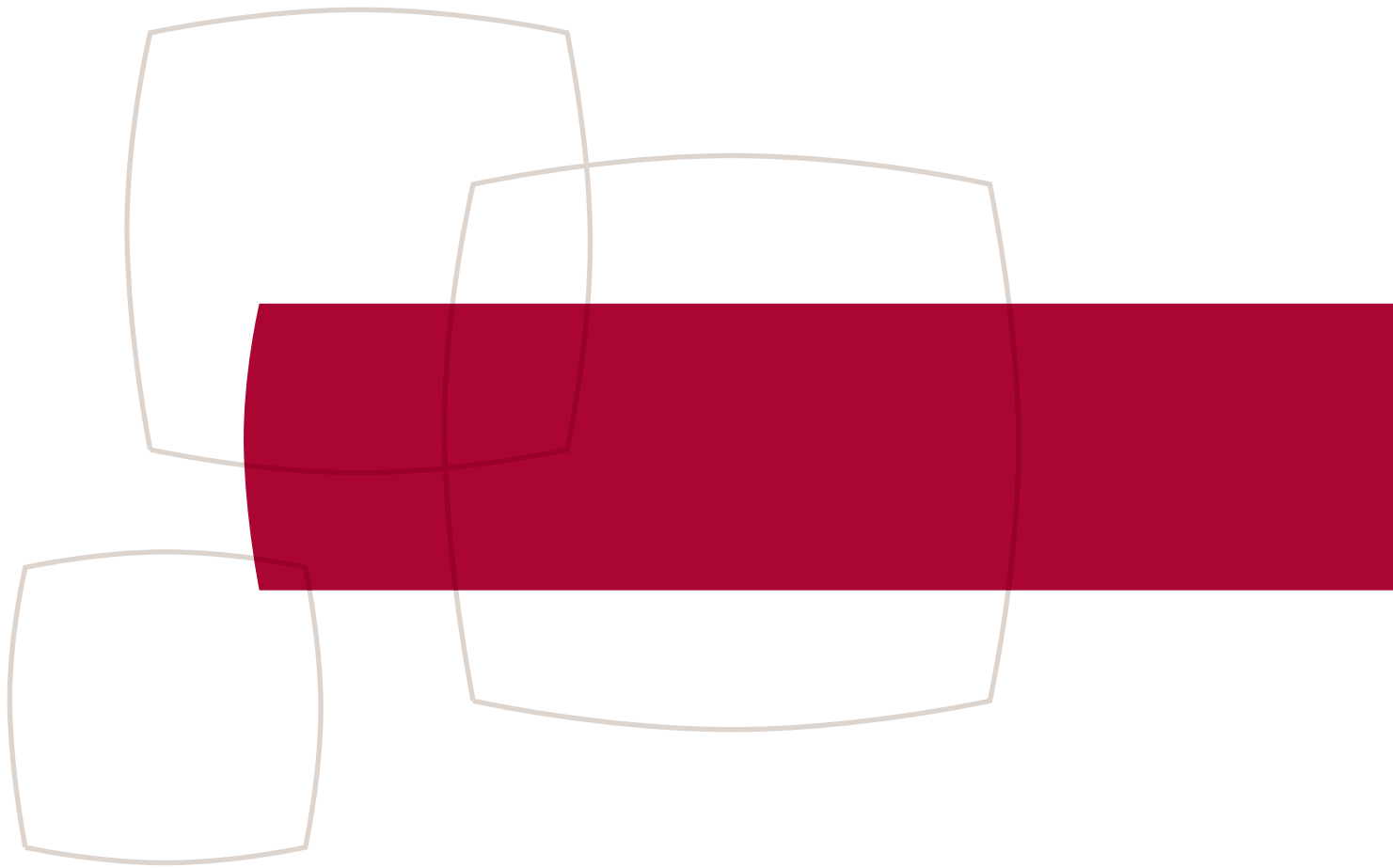
During Fraud Prevention Month, the Bureau featured weekly themes, including fraud targeting youth, health fraud, fraud targeting small business and partners working together in the fight against fraud. In addition, the Bureau launched two education and outreach initiatives: Project False Hope, which targets cancer-related health fraud online; and the FACT Campaign (Fraud Awareness for Commercial Targets), which provides businesses and not-for-profit organizations with the facts necessary to avoid becoming victims of fraud.

Bureau staff participated in several news conferences and gave presentations on fraud prevention to university students at various campuses across the country. In addition, Bureau representatives participated in a number of Scam Jams across the country. These are one-day anti-fraud seminars hosted by local Better Business Bureaus.

More information on the Fraud Prevention Forum and the Fraud Prevention Month campaign are available on the Bureau's Web site at:

[www.competitionbureau.gc.ca/fraud](http://www.competitionbureau.gc.ca/fraud)







## APPENDICES

## APPENDIX I. COMMISSIONER'S SPEECHES

The Commissioner of Competition delivers speeches on a wide range of topics related to the Bureau's mandate and priorities. Themes include the Bureau's key enforcement and advocacy issues, competition policy and legislation, as well as international competition topics. Below is a list of speeches given by Commissioner Sheridan Scott in 2007-2008. Copies are available on the Bureau's Web site at: [www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/h\\_00138e.html](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/h_00138e.html)

### *Sheridan Scott, Commissioner of Competition*

- April 18, 2007 -- 55th Antitrust Law Spring Meeting on Telecommunications: What's Next? Where Will We Be in Five Years?, Washington, D.C.
- May 3 and 4, 2007 -- Looking Forward: The Bureau Priorities for 2007-2008, CBA/IBA Spring Conference, Toronto, Ontario
- May 30, 2007 -- Opening Remarks, 6th Annual Conference of the International Competition Network, Moscow, Russia
- June 13, 2007 -- The 2007 Canadian Telecom Summit, Toronto, Ontario
- June 25-27, 2007 -- 2007 Broadcasting Summit, Jackson Point, Ontario
- August 1, 2007 -- Cartels: Beyond Our Border, Reception hosted by Simpson Grierson, Wellington, New Zealand
- August 10-12, 2007 -- The Canadian Competition Bureau's Approach to Merger Remedies, Trade Practices Workshop, Law Council of Australia, Business Law Section, Queensland, Australia
- September 26-28, 2008 -- Fordham Competition Law Institute Annual Conference, New York
- October 11, 2007 -- Equipping Ourselves to Be Global Leaders: The Competition Perspective, Canadian Bar Association Annual Conference on Competition Law, Hilton Lac Leamy, Gatineau, Quebec
- October 25, 2007 -- Cartels: Detection, Detection, Detection, 2007 Competition Day hosted by the Fiscalía Nacional Económico Hotel Neruda, Santiago, Chili
- October 29, 2007 -- Myths and Realities: Competition in the Telecom and Generic Drug Industries, C.D. Howe Institute Toronto, Ontario
- December 11, 2007 -- Toward Greater Competition in the Self-regulated Professions: A Win for Consumers and the Economy, The Economic Club of Toronto, Toronto, Ontario
- December 13, 2007 -- The Role of the Competition Bureau in a Competitive Canadian Economy, Institut des administrateurs de sociétés, Montreal, Quebec
- March 15, 2008 -- International Conference on India's New Merger Notification Regime, New Delhi

## APPENDIX 2. CONFERENCES AND SEMINARS

Throughout the year, Bureau representatives give presentations and deliver speeches at a number of conferences and venues across the country and around the world on various issues pertaining to the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*.

### April 2007

- A Bureau representative gave a presentation to SeniorBusters, a PhoneBusters volunteer group, on mass marketing fraud and its affects on seniors, North Bay, Ontario. (April 4)
- A Bureau representative gave a presentation on bid-rigging to the Canadian Institute of Internal Auditors, Vancouver. (April 4)
- Bureau representatives gave an outreach presentation on bid-rigging to Contract Management Services in Fredericton, N.B. (April 12)
- Bureau representatives participated in the ABA Antitrust Law Spring Meeting in Washington. (April 18-20)
- Bureau representatives participated in the "Rebate Debate", as part of the U.S. Federal Trade Commission's Misleading Advertising Conference in San Francisco. (April 27)
- A Bureau representative spoke at the Insight Telecom and Broadcasting Conference in Ottawa. (April 30)

### May 2007

- Bureau representatives participated in the Annual Trilateral Cooperation and MUCH Meeting in Ottawa. (May 1-4)
- A Bureau representative gave a presentation in Ottawa on fraud prevention tips to the War Amps of Canada. (May 2)

- A Bureau representative spoke at the Muttart Consultations -- Consultation on Fundraising, in Banff, Alberta. (May 2-4)
- Bureau representatives spoke at the annual CBA/IBA Joint Spring Competition Law Conference in Toronto. (May 3-4)
- Bureau representatives gave a bid-rigging presentation at the Material Management National Workshop in Ottawa. (May 8)
- Bureau representatives spoke at the Insight Conference on Procurement in the Public Sector: Workshop on Bid-rigging. (May 9)
- Bureau representatives spoke at an RCMP Fraud Workshop in Fredericton, N.B. (May 9)
- Bureau representatives participated in the Global Forest and Paper Industry Conference in Vancouver. (May 10)
- A Bureau representative attended a conference on The Role of Competition Analysis in Regulatory Decisions, in Washington. (May 15)
- Bureau representatives spoke at the International Competition Network conference in Moscow, Russia. (May 30 - June 1)

### June 2007

- Bureau representatives spoke at the Organization for Economic Co-operation and Development meeting in Paris. (June 4-8)
- A Bureau representative gave a presentation to the Medical Devices Industry of Canada on the Competition Bureau and the *Competition Act*, in Toronto. (June 5)
- Bureau representatives attended the 2007 Canadian Telecom Summit in Toronto. (June 11)
- Bureau representatives gave a presentation to the City of Toronto on bid-rigging. (June 19)

- Bureau representatives participated in an Information Session on Sustainable Fibres by the Canadian Apparel Federation in Toronto. (June 27)
- A Bureau representative spoke at the ABA Brownbag Session on International Telecom Developments, in Washington. (June 27)
- Bureau representatives spoke at the Mass Marketing Fraud Enablers Conference in Toronto. (October 15-16)
- A Bureau representative participated in the 2007 Canadian Council on International Law Annual Conference in Ottawa. (October 18-20)

### *July 2006*

- A Bureau representative participated in the United Nations Conference on Trade and Development in Geneva. (July 18-19)
- Bureau representatives spoke at an International Symposium on Dental Hygiene in Toronto. (July 19)

### *September 2007*

- Bureau representatives gave a presentation to the City of Toronto on bid-rigging. (September 13)
- A Bureau representative gave an overview of bid-rigging in the construction industry to the Toronto Construction Association. (September 24)
- A Bureau representative spoke at the Georgetown Law Global Antitrust Enforcement Symposium in Washington. (September 25)
- A Bureau representative gave a presentation on bid-rigging to the Vancouver chapter of the Association of Certified Fraud Examiners. September 26)
- Bureau representatives participated in the Osgoode Hall Law School's National Conference on the Charter and Criminal Justice in Canada, Toronto. (September 29)

### *October 2007*

- A Bureau representative participated in the ABA Antitrust Conference on Trial Techniques in Antitrust Claims, Philadelphia. (October 4-5)
- Bureau representatives spoke and participated in the 2007 Canadian Bar Association Fall Conference, in Gatineau, Quebec. (October 11-12)
- Bureau representatives gave a bid-rigging presentation to Fleming College in Peterborough, Ontario. (October 12)

- Bureau representatives spoke at the Medical Devices Industry Association's Legal and Regulatory Affairs Conference on bid-rigging and collusion, in Etobicoke, Ontario. (October 24)
- Bureau representatives gave a presentation to the University of New Brunswick's Law School on misleading advertising and labelling, and deceptive telemarketing, Fredericton, N.B. (October 25)
- Bureau representatives spoke at the International Competition Network Conference in El Salvador. (October 29 - November 1)
- A Bureau representative spoke at the Insurance Bureau of Canada's Conference in Toronto. (October 30)

### *November 2007*

- Bureau representatives gave a presentation on bid-rigging to the South East Regional Health Authority in Moncton, N.B. (November 1)
- Bureau representatives participated in the Public Prosecution Service of Canada Investigators Workshop in Halifax, N.S. (November 6-8)
- A Bureau representative spoke at the Lang Michener Conference on Capturing Advantage in Advertising and Distribution: Using the Rules to Achieve Success, Toronto. (November 19)
- Bureau representatives spoke at the Nova Scotia Government's Regulatory Craft in Nova Scotia Conference, in Halifax. (November 19-21)
- A Bureau representative gave a presentation on bid-rigging to the George Brown College, in Toronto. (November 22)
- Bureau representatives participated in ICPEN's Annual Conference in Santiago, Chile. (November 26-27)



## December 2007

- A Bureau representative spoke at the Toronto Police Service Fraud Squad's 2007 International Fraud Investigators Conference, Toronto. (December 10)

## January 2008

- A Bureau representative spoke at the Canadian Institute's 14th Annual Conference on Advertising and Marketing Law, in Toronto. (January 24-25)
- Bureau representatives spoke at the 2008 International Investigators' Skills Development Workshop, hosted by the Alberta Partnership Against Cross-border Fraud, in Banff, Alberta. (January 29 - February 1)
- Bureau representatives gave a presentation to the City of Toronto on bid-rigging. (January 30)
- Bureau representatives participated in the Canadian Association of Chiefs of Police's Private Sector Liaison Conference on Building Private Security and Public Policing Partnerships, in Toronto. (January 30-31)
- A Bureau representative spoke at the ABA International Cartel Workshop in San Francisco. (January 30 - February 1)

## February 2008

- Bureau representatives spoke at the 2008 Competition and Law Policy Forum, Langdon Hall, in Cambridge, Ontario. (February 6-8)
- A Bureau representative gave a presentation to the Ontario Hospital Association on bid-rigging, Toronto. (February 8)
- A Bureau representative gave a presentation on bid rigging to the Corporation des entrepreneurs généraux du Québec in Mont-Tremblant, Quebec. (February 14)
- A Bureau representative gave a presentation on Fraud Prevention and Youth Employment to the Rosemont Cegep, in Montreal. (February 25)

## March 2008

- Bureau representatives gave a bid-rigging presentation to the Cape Breton Regional Municipality, Sydney, N.S. (March 3)
- Bureau representatives gave a bid-rigging presentation to the Continuing Care Association of Nova Scotia, in Halifax. (March 5)
- A Bureau representative gave a presentation on Fraud Prevention and Job Scams at Dawson College, Montreal. (March 5)
- A Bureau representative gave a presentation on youth and fraud at Ryerson University, Toronto. (March 5)
- A Bureau representative spoke at "Fraud Off", a fraud awareness event hosted by the Bank of Canada, at Dalhousie University, Halifax. (March 6)
- Bureau representatives spoke at the 22nd Annual National Institute on White Collar Crime, in Miami, Florida. (March 6-7)
- Bureau representatives gave a presentation on pricing to the MBA class at the University of Toronto. (March 13)
- Bureau representatives gave bid-rigging presentations to municipal officials with the New Brunswick cities of Moncton, Saint John and Fredericton. (March 17-19)
- A Bureau representative gave a presentation on fraud prevention at the Maisonneuve Cegep, Montréal. (March 25)

## APPENDIX 3. COMPETITION BUREAU STATISTICS

In 2007-2008, the Competition Bureau received over 28,000 requests for services, which include complaints and information requests. Almost 95% of the complaints were related to false or misleading representations and deceptive marketing practices.

The Bureau has administrative responsibility for collecting fines imposed by the courts. During 2007-2008, over \$10.1 million in fines was imposed.

### *Civil Matters - Selected Activities*

2007-2008	
<b>Number of complaints, examinations and inquiries</b>	
<i>Total complaints, information requests</i>	1,196
<i>Examinations commenced</i>	26
<i>Inquiries commenced under section 9</i>	0
<i>Inquiries in progress at year end</i>	6
<i>Written opinions</i>	0
<b>Disposition of inquiries</b>	
<i>Alternative case resolution</i>	0
<i>Applications to the Competition Tribunal</i>	0
<i>Inquiries Discontinued</i>	3
<b>Interventions</b>	
<i>CRTC</i>	1
<i>Provincial</i>	0
<i>CITT</i>	0
<i>Industry Canada</i>	1

Policy work	4
s. 103.1	4

### *Criminal Matters - Selected Activities*

2007-2008	
<b>Number of complaints, examinations and inquiries</b>	
Total complaints, information requests	402
Examinations commenced	23
Inquiries commenced under section 9	0
Inquiries in progress at year end	18
Written opinions	1
<b>Disposition of inquiries</b>	
Matters referred to the Attorney General of Canada	5
Matters where charges were laid	6
Matters where Attorney General declined to proceed or withdrew charges	0
Matters before the Courts	8
Disposition of prosecutions (findings of guilt, guilty pleas, acquittals, stay of proceedings, orders of prohibition)	6
Total fines	\$7,945,000
<b>Other Activities</b>	
Alternative case resolutions	8
Mutual Legal Assistance Treaty requests	0
Searches	5

*Fair Business Practices Branch - Selected Activities***2007-2008****Requests for services**

<i>Total complaints, information requests</i>	15,725
<i>Written opinions</i>	16

**Examinations, inquiries and alternative case resolutions**

<i>Examinations commenced</i>	52
<i>Examinations closed</i>	62
<i>Examinations in progress at year end</i>	72
<i>Inquiries commenced under s. 10</i>	6
<i>Inquiries commenced under s. 9</i>	0
<i>Inquiries discontinued</i>	2
<i>Inquiries in progress at year end</i>	39
<i>Alternative case resolutions</i>	17

**Criminal and regulatory matters**

<i>Matters referred to the Attorney General</i>	2
<i>Matters where charges were laid</i>	4
<i>Charges laid against corporations</i>	15
<i>Charges laid against individuals</i>	70
<i>Extradition orders</i>	3
<i>Convictions against corporations</i>	2
<i>Convictions against individuals</i>	13
<i>Total fines</i>	\$1,834,308
<i>Prohibition orders</i>	4
<i>Other outcomes (includes custodial sentences, community service orders, restitution orders, probation)</i>	9

**Civil matters**

<i>Applications filed to the Competition Bureau (s. 74.1)</i>	1
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Orders issued by the Competition Tribunal under s. 74.1	0
Consent agreements (s. 74.12)	1
Administrative monetary penalties	\$225,000
Corrective notices	1

## Merger Examinations, 2007-2008

<b>Examinations Commenced<sup>1</sup></b>	<b>337</b>
<b>Notification filings and Advance Ruling Certificate requests</b>	<b>309</b>
Short or long form filings only	15
ARC requests only	234
ARC requests and short or long form filings	60
<b>Other examinations</b>	<b>28</b>
<b>Examinations Concluded<sup>2</sup></b>	<b>337</b>
<b>No issues under the Competition Act<sup>3</sup></b>	<b>270</b>
Advance Ruling Certificates issued	222
"No-action" letters <sup>4</sup>	16
Other examinations <sup>5</sup>	32
<b>Concluded with issues under the Competition Act</b>	<b>68</b>
ARC refusals and other communications of concerns	64
Consent agreements registered with the Competition Tribunal <sup>8</sup>	2
Foreign remedies resolved Canadian competition concerns <sup>9</sup>	1
Transactions abandoned due to competition concerns <sup>10</sup>	1
Section 92 applications concluded or withdrawn	0
<b>Transactions abandoned for reasons unrelated to the Commissioner's position<sup>11</sup></b>	<b>2</b>
<b>Total Examinations During the Year<sup>12</sup></b>	<b>358</b>
<b>Examinations Ongoing at Year End</b>	<b>18</b>
<b>Written Opinions Issued</b>	<b>0</b>
<b>Matters Before the Tribunal or the Courts<sup>13</sup></b>	<b>2</b>

## APPENDIX 3. COMPETITION BUREAU STATISTICS

<b>Section 92 matters</b>	<b>0</b>
Ongoing at year end	0
Concluded or withdrawn	0
<b>Other tribunal or court proceedings</b>	<b>2</b>
Ongoing at year end	0
Concluded or withdrawn <sup>14</sup>	2

<sup>1</sup> Includes notifiable transactions, Advance Ruling Certificate requests, and examinations commenced for other reasons (Investment Canada Notices, Heritage Canada Notices, complaints, or otherwise). Does not include ongoing examinations from the previous fiscal year.

<sup>2</sup> Includes matters that were concluded or withdrawn before the Competition Tribunal.

<sup>3</sup> Examinations concluded by the issuance of an Advance Ruling Certificate, a “No-action” letter, or other communication indicating that there was no issue under the Competition Act.

<sup>4</sup> Includes only those No-action letters issued for notification filings not accompanied by an Advance Ruling Certificate request.

<sup>5</sup> Includes Investment Canada and Heritage Canada Notices, complaints, etc. These other examinations were not in conjunction with an Advance Ruling Certificate request or notification filing.

<sup>6</sup> Includes all examinations where the proposed transaction raised competition concerns. This includes examinations of proposed transactions for which the Bureau determined the transaction would, or would likely, lead to a substantial lessening or prevention of competition. This also includes examinations of proposed transactions for which the Bureau determined the transaction would result in possible competition concerns, although to a lesser degree than a substantial lessening or prevention of competition.

<sup>7</sup> Advance Ruling Certificate refusals, No-action letters issued in response to competition concerns, and other letters or communication regarding competition concerns.

<sup>8</sup> James Richardson International Limited / Saskatchewan Wheat Pool Inc; Akzo Nobel N.V. / Imperial Chemical Industries PLC

<sup>9</sup> Bureau was satisfied that the remedies required by foreign agencies would resolve Canadian competition concerns in Thomson Corporation’s acquisition of Reuters PLC.

<sup>10</sup> Proposed transactions abandoned in whole or in part as a result of the Commissioner’s position regarding competition concerns.

<sup>11</sup> Proposed transactions abandoned for reasons unrelated to the Commissioner’s position regarding competition concerns and before the Bureau completed its examination.

<sup>12</sup> Includes 21 cases carried over from 2006-2007 in addition to the number of examinations commenced in 2007-2008.

<sup>13</sup> Includes ongoing, concluded, and withdrawn section 92 matters, and other matters before the Tribunal or courts (such as section 100 and 106 matters). Excludes consent agreements.

<sup>14</sup> Federal Court of Appeal’s decision re section 100 Application in Labatt Brewing Company Ltd. and Lakeport Brewing Income Trust Section 100 order issued in American Iron & Metal Company Inc. / SNF Inc.

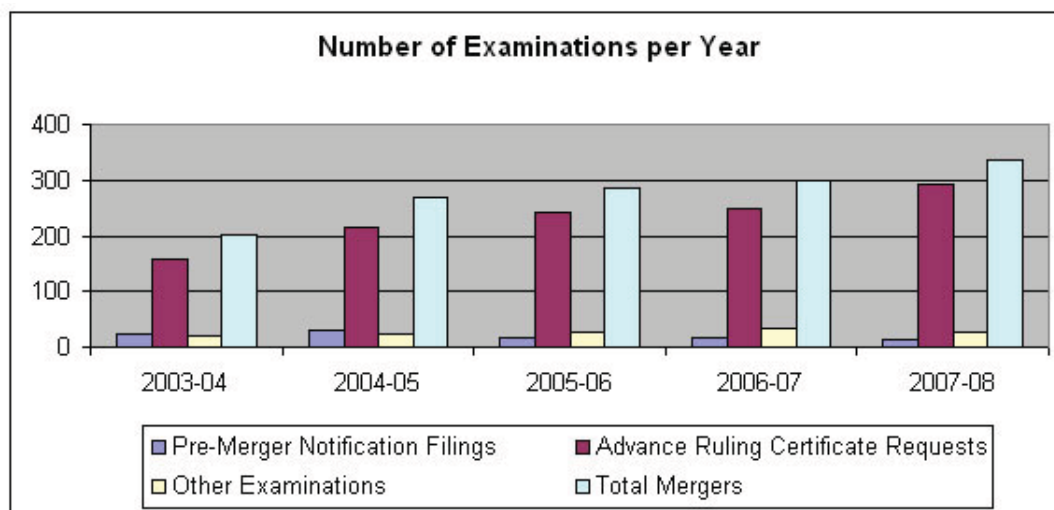
### Breakdown of Mergers by Year, 2003-2008

EXAMINATION TYPE	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008
Pre-merger notification filings*	22	31	17	18	15
Advance ruling certificate requests**	159	214	242	250	294
Other examinations***	21	24	26	32	28
<b>Total</b>	<b>202</b>	<b>269</b>	<b>285</b>	<b>300</b>	<b>337</b>

\* 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.

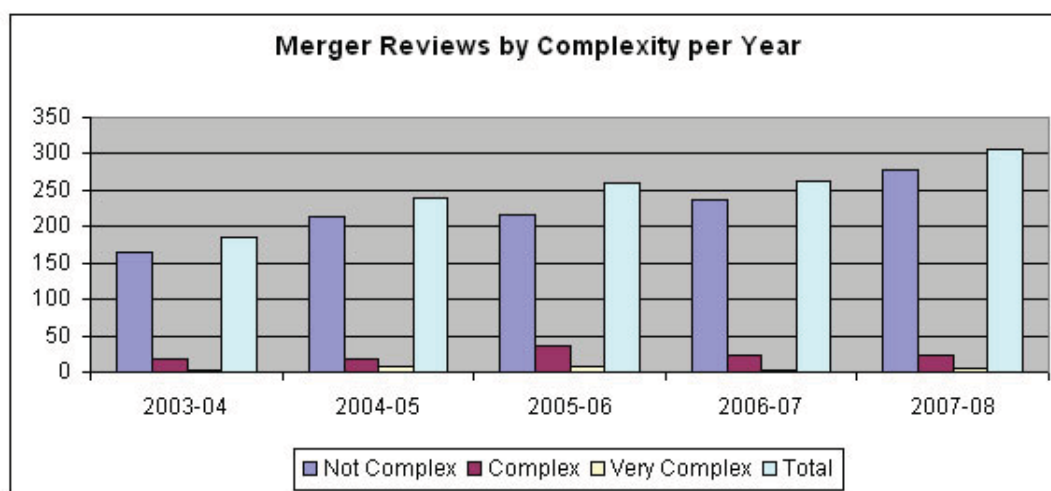
\*\*\* Includes Investment Canada Notices, Heritage Canada Notices, complaints, or otherwise on their own and not in conjunction with an Advanced Ruling Certificate request or notification filing.



*Merger Review: Meeting Service Standards 2003-2008\**

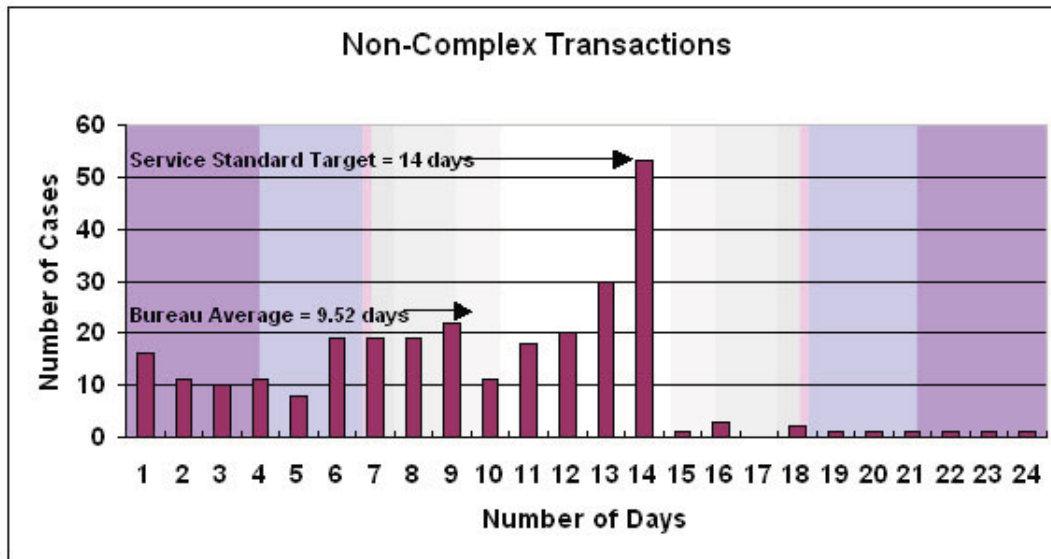
COMPLEXITY	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008
Not complex	165	213	216	238	279
Complex	18	19	36	22	23
Very complex	2	8	7	3	4
Total	185	240	259	263	306

\* Note that service standards only apply to notifiable transactions. Also note that this figure includes only those notifiable transactions for which the service standard ended during the fiscal year.

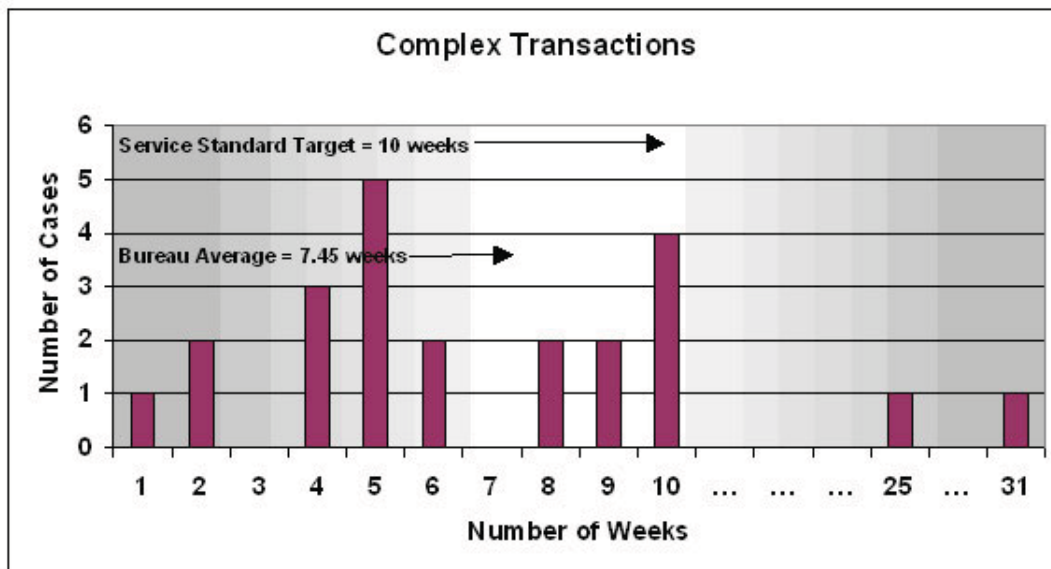


COMPLEXITY	Service Standard Target	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008
		Service Standard Met	Service Standard Met	Service Standard Met	Service Standard Met	Service Standard Met
Not complex	14 days	164 (99.39%)	208 (97.65%)	205 (94.91%)	225 (94.54%)	267 (95.70%)
Complex	10 weeks	18 (94.44%)	19 (89.50%)	36 (94.44%)	22 (90.91%)	23 (91.30%)
Very complex	5 months	2 (100.00%)	8 (87.50%)	7 (85.71%)	3 (66.67%)	4 (100.00%)
Total		183 (98.92%)	232 (96.67%)	245 (94.59%)	247 (93.92%)	292 (95.42%)

## Meeting Service Standard Targets, April 1, 2007 to March 31, 2008

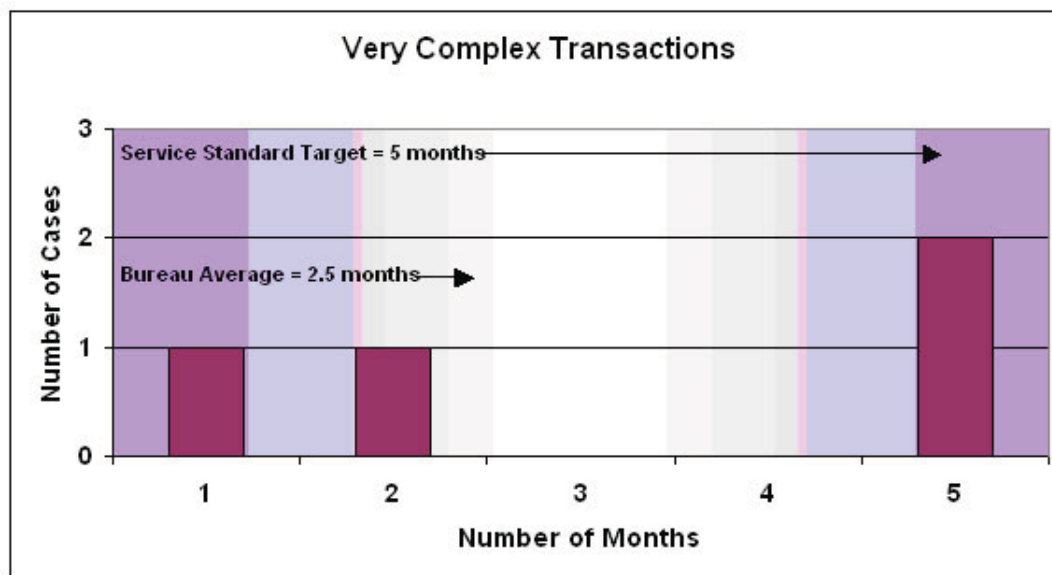


Non-complex Service Standard Target = 14 Days  
 Bureau Average = 9.52 Days  
 Service Standard Met 95.70% of the Time



Complex Service Standard Target = 10 Weeks  
 Bureau Average = 7.45 Weeks  
 Service Standard Met 91.30% of the Time

*Meeting Service Standard Targets, April 1, 2007 to March 31, 2008*



**Complex Service Standard Target = 5 Months**

**Bureau Average = 2.5 Months**

**Service Standard Met 100.00% of the Time**

