



Competition Bureau  
Canada

Bureau de la concurrence  
Canada

# Annual Report

OF THE COMMISSIONER OF COMPETITION FOR THE YEAR ENDING MARCH 31, 2006

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

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

Canada 

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# Annual Report

OF THE COMMISSIONER OF COMPETITION FOR THE YEAR ENDING MARCH 31, 2006

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)



Gatineau, Quebec

The Honourable Maxime Bernier, PC, MP  
Minister of Industry  
Ottawa, Ontario K1A 0H5

Dear Sir,

I have the honour to submit, pursuant to section 127 of the *Competition Act*, the following report on the operation of the *Competition Act*, the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act* and the *Precious Metals Marking Act* for the fiscal year ending March 31, 2006.

A handwritten signature in black ink, reading "Sheridan Scott". The signature is written in a cursive, flowing style.

Sheridan Scott  
Commissioner of Competition



## MESSAGE FROM THE COMMISSIONER

This year has been exceptionally busy for the Competition Bureau<sup>1</sup> both domestically and internationally. In last year's Annual Report, I outlined our priorities for the year ahead, and I am pleased to report that we have been remarkably successful in achieving them.

The record fines of \$37.5 million and the removal of key personnel from three paper merchants last January attest to the Bureau's success in the prosecution of domestic cartels. Cascades Fine Papers Group Inc., Domtar Inc., and Unisource Canada Inc. pleaded guilty to two counts of conspiring to unduly lessen competition in the carbonless sheet markets in Ontario and Quebec in an outcome that clearly puts corporate executives and employees on notice that they are personally accountable for their actions. The decision also highlights the Bureau's tough stance against domestic cartels.

Another Bureau achievement lies in our investigation of cases relating to mass marketing fraud. A total of 166 charges were laid against companies and individuals over the year for defrauding consumers and businesses via the telephone, the Internet, print media, direct mailings and other means. One of our cases, Alexis Corporation, was concluded this past year with the sentencing of the last of 11 individuals involved in a deceptive telemarketing operation. The other 10 individuals were each sentenced at different times from 2002 to 2005. During our criminal investigation of this matter, wiretaps were used to gather evidence of a prize-pitch scam targeting consumers in Australia.

Another of our cases concerned CSCT Inc., where the Bureau laid charges against two individuals for making false or misleading cancer therapy claims to vulnerable consumers, creating false hope for those in need of serious medical treatment. The claims were made on the company's Web site, at seminars, in alternative health-care magazine articles and advertisements, in direct mailings and in telephone communications.

Helping Canadians protect themselves against fraud is yet another of our achievements. The Bureau and its more than 80 public, private, law enforcement and volunteer sector partners conveyed nearly 75 millions occurrences of fraud prevention messages this year.

This past year we also reviewed a number of important mergers in a wide range of areas, including agriculture, the media and beef processing. As a result of our extensive review of Cineplex Galaxy Limited Partnership's interest in acquiring Famous Players Division of Viacom Canada Inc., 34 theatres in 17 Canadian cities were sold, ensuring that consumers continue to benefit from competitive prices and choice in the exhibition of first-run motion pictures.

We have also been active on the telecommunications front. On August 15 and September 15, 2005, we filed submissions to the Telecommunications Policy Review Panel as part of the Panel's consultation on Canada's telecommunications policy and regulatory framework. Our recommendations advocated a greater role for competition principles in assessing the need for regulation. In March, the Panel issued its report, which made a number of



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<sup>1</sup> Hereinafter called the Bureau.

recommendations to the Minister of Industry consistent with our views.

Finally, we played a leadership role on the international stage in our dealings with a number of organizations, including the International Competition Network, the Competition Committee and the Committee of Consumer Policy of the Organization for Economic Co-operation and Development, the International Consumer Protection and Enforcement Network, and the Asia-Pacific Economic Cooperation Competition Policy and Deregulation Group. In addition, in September 2005, we signed a co-operation agreement with Japan to work together to improve the enforcement of competition laws.

Looking ahead, I see the Bureau continuing to focus on national cartels and local bid-rigging, mass marketing fraud involving vulnerable Canadians and business supply cases, fraudulent and misleading health performance claims in the electronic marketplace, and abusive behaviour by dominant firms in the marketplace. Carrying out this work and meeting our many challenges is possible only because of the dedication of the Bureau's many outstanding employees. I would like to conclude by thanking all of them for their impressive accomplishments this year.

A handwritten signature in black ink, reading "Sheridan Scott". The signature is written in a cursive, flowing style.

Sheridan Scott  
Commissioner of Competition



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## CHAPTER 1 INTRODUCTION

## CHAPTER 1 INTRODUCTION

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

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

The Bureau administers four laws that help encourage and maintain competition in Canada: the *Competition Act*, the *Consumer Packaging and Labelling Act* (for non-food products), the *Precious Metals Marking Act* and the *Textile Labelling Act*. This report summarizes the Bureau's activities under these statutes for the fiscal year that ended on March 31, 2006.

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

The Bureau's commitment to educating the players in the marketplace is complemented by several forms of voluntary compliance. These range from written opinions, which help businesses that want to avoid breaking the law, to alternative case resolution, which corrects anti-competitive behaviour in a timely and cost-effective fashion.

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

This report deals with the Bureau's activities in the following areas:

- Attacking Criminal Activities (Chapter 2);
- Preventing Abuse of Dominance and Other Anti-competitive Business Practices (Chapter 3);
- Eliminating False or Misleading Representations and Deceptive Marketing Practices in the Marketplace (Chapter 4);
- Reviewing Mergers (Chapter 5);
- Advocating for Competition and for International Co-ordination (Chapter 6);
- Modernizing Canada's Approach to Competition Law (Chapter 7); and
- How We Do It All (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 2005-2006, the Bureau employed 368 people in the National Capital Region and 85 in seven regional offices. The regional offices are located in Halifax, Montreal, Toronto, Hamilton, Winnipeg, Calgary and Vancouver. As the organizational chart below shows, the Bureau comprises eight branches.

Commissioner of Competition			
	Mergers	Criminal Matters	
	Civil Matters	Fair Business Practices	
Compliance and Operations	Economic Policy and Enforcement	External Relations and Public Affairs	Legislative and Parliamentary Affairs

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

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

The **Criminal Matters Branch** administers and enforces the criminal provisions of the *Competition Act*, including provisions 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 its National Capital Region office and its regional offices across Canada.

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

The **External Relations and Public Affairs Branch** encompasses the International Affairs and Communications divisions as well as stakeholder relations. The Branch advances 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* that cover false or misleading representations and deceptive marketing practices. Among these provisions are those that deal with deceptive telemarketing, multi-level marketing 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 its National Capital Region office and the regional offices.

The **Legislative and Parliamentary Affairs Branch** is responsible for the ongoing modernization of the *Competition Act*, for managing and co-ordinating all Bureau matters dealing with the parliamentary process and for assisting the Bureau in matters related to policy and advocacy.

The **Mergers Branch** reviews merger transactions to assess whether a merger is likely to prevent or substantially lessen competition.



## CHAPTER 2 ATTACKING CRIMINAL ACTIVITIES

## CHAPTER 2 ATTACKING CRIMINAL ACTIVITIES

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

The conspiracy provisions cover agreements between two or more competitors to unduly lessen competition such as agreements to fix prices or allocate customers and territories.

The bid-rigging provisions deal with agreements to thwart the competitive tendering process used to acquire products or services.

The price discrimination provisions help ensure that small and medium-sized businesses have an equal opportunity to participate in the economy by requiring suppliers to make discounts, price concessions and advertising allowances available to competing customers on fair terms.

The predatory pricing provisions address situations in which a firm engages in a policy of selling products below cost for a sufficiently long period of time to eliminate or deter rivals as competitors and subsequently raises prices or otherwise harms the competitive process.

The price maintenance provisions are designed to provide resellers of products with the freedom to set their own prices and to protect suppliers from customer-led boycotts because they supply firms with low-pricing policies.

The Bureau has a range of tools at its disposal to enforce these laws. It refers the most serious matters to the Attorney General of Canada and recommends prosecution. Offenders may receive heavy fines, prison terms or both.

The first section of this chapter describes the Bureau's responses to non-conformity on the part of businesses in relation to the *Competition Act* during 2005-2006. The Bureau may also work with firms to eliminate anti-competitive behaviour through alternative case resolution. Examples of this are provided in the second section of this chapter. Finally, under the Act, parties may request written opinions, some of which are summarized in the third section of this chapter. For more information on these cases and others, including information notices, news releases and backgrounders, please visit the Bureau's Web site:

<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=137&lg=e>.

### 2.1 PROSECUTIONS

#### 2.1.1 CONSPIRACY

The conspiracy provisions 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. These are universally recognized as among the most harmful forms of anti-competitive conduct. Anti-competitive agreements harm both consumers and businesses, and enforcing the conspiracy provisions is an important priority for the

Bureau. Much of the Bureau's work in this area involves investigating and prosecuting international cartels, which is a crucial activity for competition agencies around the world.

### **Carbonless Paper Sheets**

In January 2006, three paper merchants operating in Canada—Cascades Fine Papers Group Inc. and Domtar Inc. (Canadian corporations) and Unisource Canada Inc. (an American corporation)—pleaded guilty to two counts of conspiring to unduly lessen competition in the carbonless sheet markets in Ontario and Quebec. Commercial printers use carbonless sheets in the manufacturing of forms and receipts. The Superior Court of Justice in Toronto sentenced each company to record fines of \$12.5 million for taking part in the domestic conspiracy and also issued a prohibition order against the companies. Key personnel involved in the conspiracy will be removed from their positions in the paper merchant business.

### **Graphite Electrodes**

In May 2005, Mitsubishi Corporation, a Japanese corporation, was convicted and fined \$1 million for aiding and abetting a foreign-directed conspiracy to fix the price of graphite electrodes in Canada. In December 2005, Nippon Carbon Co. Ltd., also a Japanese corporation, pleaded guilty to participating in the international graphite electrodes cartel and was fined \$100,000. Mitsubishi and Nippon are the sixth and seventh parties to be convicted in Canada for participating in the graphite electrodes cartel. UCAR Inc., SGL Carbon Aktiengesellschaft, Tokai Carbon Co., Mitsubishi Corp., and two former UCAR executives were previously fined a total of nearly \$24 million for their roles in the international conspiracy. Graphite electrodes are used in the production of steel in electric

arc furnaces and for steel refining in ladle furnaces.

### **Nucleotides**

In August 2005, Ajinomoto Co. Inc, a Japanese corporation, and CJ Corp., a Korean corporation, pleaded guilty to participating in a conspiracy to fix prices of nucleotides in Canada. Ajimoto was fined \$1.5 million and CJ Corp. was fined \$175,000. Nucleotides are used as flavour enhancers in soups, sauces, spices and other foods.

### **St. John's Taxi**

In July 2004, the Bureau laid charges against six taxi companies and seven individuals. It alleged that between 1992 and 2004 the taxi companies agreed to not compete with one another for contracts to supply taxi services to institutional and commercial facilities in St. John's, Newfoundland. A preliminary inquiry was held from January 9 to February 4, 2006, in the Provincial Court of Newfoundland and Labrador. Closing arguments are scheduled to take place between May 31, 2006, and June 2, 2006.

## **2.1.2 PRICE MAINTENANCE**

The *Competition Act* prohibits attempts by agreement, threat, promise or any like means to influence upward the prices of a reseller's products or to discourage the reduction of those prices. Refusal to supply or discrimination in the supply of products to resellers with low-pricing policies is also illegal under the Act. These provisions, known as the price maintenance provisions, are designed to ensure that resellers, notably retailers, are free to set their own prices for their products. These provisions also protect suppliers from customer-led boycotts

because they have decided to do business with other suppliers that have low prices.

### Labatt Beer

In November 2005, Labatt Brewing Company Limited pleaded guilty in the Court of Quebec to a charge of price maintenance of the company's discount beer sold by nine independent convenience/grocery retailers in Sherbrooke and elsewhere in Quebec. The Court fined Labatt \$250,000 and issued a prohibition order against the company. Under the prohibition order, Labatt is required to inform all of its Quebec independent convenience/grocery retailers in writing that under section 61 of the Act the company or its representatives cannot by agreement, threat, promise or similar means attempt to influence upward or discourage the reduction of the price of alcoholic beverages.

## 2.2 ALTERNATIVE CASE RESOLUTION

The Bureau chooses the best and most efficient means of restoring competition in the marketplace. Some matters may be resolved quickly and easily, without a full inquiry or judicial proceeding, through alternative case resolution. Matters resolved in this way reduce uncertainty and save time, and lengthy court actions are avoided.

The following are summaries of cases resolved through alternative case resolution.

### 2.2.1 BID-RIGGING

The *Competition Act* prohibits agreements between two or more persons, usually competitors, to not submit a bid in response to a tender, as well as agreements that set the bids various parties will submit. However,

the bid-rigging provisions do not apply when the parties make the agreement known to the tendering authority before they submit their bids. This allows the tendering authority to cancel the tendering process or modify it in a way that keeps it competitive. Bid-rigging often targets government agencies and ultimately is a drain on the taxpayer. The Bureau has a well-developed program to help purchasing officials prevent and detect bid-rigging. The program also provides tendering authorities who suspect they are a victim of bid-rigging with guidance on how to help the Bureau with its investigation.

### School Bus Transportation

On February 2, 2005, the Bureau received a complaint about alleged bid-rigging following a school board's call for tenders for a contract for school bus transportation in the Quebec City region. A review of the bids suggested that four bidders had consulted each other before submitting bids for separate and distinct routes so that they could share the territory. However, the Bureau did not find any evidence of collusion among the four bidders.

In order to encourage these companies to comply with the Act in the future, Bureau officers met with their managers to provide them with information on its provisions. Official written notices and letters of warning about the alleged offence were also sent to the companies.

### 2.2.2 PRICE MAINTENANCE

#### Welding Supplies

In February 2005, the Bureau received a complaint regarding a welding supplies company and its alleged involvement in price maintenance activities. Officers interviewed the complainant and obtained certain



documentation about the alleged offence. In November 2005, the Bureau informed the welding supplier that the alleged behaviour would likely contravene the price maintenance provisions of the *Competition Act*. The supplier assured the Bureau that it would take the necessary measures to ensure compliance with the Act.

## 2.3 WRITTEN OPINIONS

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

To promote compliance with and foster transparency in the administration and enforcement of the Act, the Bureau publishes detailed summaries of its written opinions on its Web site:  
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=782&lg=e>.

The following are examples of the written opinions the Bureau issued in 2005-2006.

### 2.3.1 CONSPIRACY AND PRICE MAINTENANCE

The conspiracy provisions cover agreements between two or more competitors to unduly lessen competition such as agreements to fix prices or allocate customers and territories. The price maintenance provisions are designed to provide resellers of products with the freedom to set their own prices. The

following summaries describe written opinions provided by the Bureau on whether specific conduct raised issues under these provisions.

### 2.3.2 RESIDENTIAL REAL ESTATE LEGAL SERVICES FEES SCHEDULE

In January 2006, the Working Group on Lawyers and Real Estate from Ontario sought a written opinion on whether a plan to develop and institute a suggested fee schedule for residential real estate transaction legal fees would raise concerns under the *Competition Act*.

The Bureau examined the proposed fee schedule under the conspiracy (section 45) and price maintenance (section 61) provisions of the Act and determined that it would not have sufficient grounds to launch an inquiry because:

- the fee schedule explicitly stated that participation was voluntary and that no person would be sanctioned, policed, punished or in any way disadvantaged for not following it; and
- adherence to or departure from the fee schedule was at the option of the parties involved and subject to no adverse consequences.

### 2.3.3 INDUSTRY DEALERS

In July 2005, the Bureau received a request for an advisory opinion on whether a proposed program might raise concern under the *Competition Act*. The program entailed the formation of a committee of industry dealer representatives to develop and implement best practices to maximize customer satisfaction in vehicle sales. The

Bureau examined the request under the price maintenance provisions of section 61 of the Act and determined that the proposed program would not provide it with sufficient grounds to launch an inquiry under section 10 of the Act.



## CHAPTER 3

# PREVENTING ABUSE OF DOMINANCE AND OTHER ANTI-COMPETITIVE BUSINESS MARKETS

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

When appropriate, the Bureau opens discussions to try to obtain voluntary compliance 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. If voluntary compliance cannot be achieved, the Bureau may file an application with the Competition Tribunal for an order to remedy the situation.

The first section of this chapter describes the Bureau's responses to non-conformity on the part of businesses in relation to the *Competition Act* during 2005-2006. The Bureau may also work with firms to eliminate anti-competitive behaviour through alternative case resolutions. Examples of this are provided in the second section of this chapter.

### 3.1 ENFORCEMENT ACTIONS

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 to deter future entry by new competitors into the market, with the result that competition

is prevented or substantially lessened. 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.

#### 3.1.1 CANADA PIPE (BIBBY)

On February 3, 2005, the Competition Tribunal issued a decision dismissing the Bureau's 2002 application for an order prohibiting Canada Pipe Company Ltd./Tuyauteries Canada Ltée from engaging in anti-competitive acts through its Bibby Ste-Croix Division. The Bureau alleged that Bibby was abusing its dominant position in the market for cast iron pipe, fittings and mechanical joint couplings for drain, waste, and vent applications in Canada. The company's loyalty program required its clients to purchase all their drain, waste and vent products exclusively from Bibby in return for substantial rebates. The Bureau argued that the loyalty program locked in Bibby's customers and reduced competition from potential entrants and existing competitors.

The Tribunal concluded that Canada Pipe controlled more than 80 percent of the market but that its loyalty program was not anti-competitive and, based on the evidence, had not substantially lessened or prevented competition.

On March 7, 2005, the Bureau filed a notice of appeal of this decision with the Federal Court of Appeal. Canada Pipe filed a notice of cross-appeal on March 17, 2005. The hearings were held on February 7 and 8, 2006. A decision is pending.<sup>1</sup>

### 3.1.2 GASOLINE SECTOR

#### Gasoline prices in the Aftermath of Hurricane Katrina

On March 30, 2006, the Bureau released its results of an examination of an unprecedented spike in Canadian gasoline prices following Hurricane Katrina. The Bureau launched its examination to determine if increases in wholesale and retail gasoline prices in the fall of 2005 stemmed from a breach of the *Competition Act*. In particular, it focused on whether the price increases resulted from anti-competitive behaviour among the integrated gasoline refiners/retailers or whether the increases were caused by major changes to the North American supply of wholesale gasoline resulting from the hurricane. It found that the latter caused major supply disruptions in the U.S. leading to rapidly rising gasoline prices throughout North America.

<sup>1</sup> On June 23, 2006, the Federal Court of Appeal allowed the Bureau's appeal and dismissed Canada Pipe's cross-appeal. The matter was referred back to the Competition Tribunal for a redetermination.

#### Predation in Gasoline Markets

On March 30, 2006, the Bureau released findings from an examination which stemmed from complaints by independent gasoline retailers, to determine whether refinery-owned gasoline and large independent retailers abused their dominant position to lessen competition. While the Bureau examined each complaint, it focused on retailers from Ontario and New Brunswick, where the majority of complaints originated. It investigated allegations that the national refinery-owned and large independent retailers in these areas dropped gasoline prices below their costs during certain periods in order to eliminate independent retailers (predatory pricing). It also examined complaints that the national refinery-owned gasoline retailers charged higher wholesale prices to independent retailers that competed with their outlets at retail (margin squeezing). It found no evidence to support claims of margin squeezing and predatory pricing by national integrated firms and large-volume independent gasoline retailers.

In conducting its examination, the Bureau gathered information from publicly available resources as well as from direct contact with market participants who provided proprietary data. The Bureau also retained the consulting firm LECG to understand the key determinants of profitability for retail gasoline stations. The independent report *What Determines the Profitability of a Retail Gasoline Outlet? A Study for the Competition Bureau of Canada* found that retailers are relying on higher volumes and ancillary services such as convenience stores and car washes to earn profits.

#### Gasoline Prices in Niagara Falls

In February 2005, the City of Niagara Falls complained to the Bureau that its gasoline prices were the highest in the Niagara Region. Gasoline prices can vary from place

to place because of differences in operating or transportation costs, taxes, and local supply and demand conditions, notably the number, size and type of retailers. The Bureau found that prices in Niagara Falls were not consistently higher than those in the surrounding area. It also did not find any reason to believe that retail gasoline prices in Niagara Falls were the result of anti-competitive conduct.

### 3.1.3 AIRLINE INDUSTRY

During 2005, the Bureau reviewed allegations of predatory pricing by a major airline carrier. The alleged behaviour was said to have caused the bankruptcy of a low-cost airline carrier. Even though the alleged predator appeared to meet the threshold of dominance on certain routes, the Bureau concluded that it was not engaged in predatory behaviour.

### 3.1.4 ANALYSIS OF SCANNER DATA

In January 2006, the Bureau determined that Canada's largest sellers of tracking data and services for retail sales of consumer packaged goods did not engage in practices that substantially lessened competition. As a result, the Bureau concluded that there were no grounds to warrant an application to the Competition Tribunal for a remedial order. The Bureau's inquiry focused largely on third-party provision of scanner data analysis to Canadian manufacturers and retailers that use it to evaluate their marketing activities.

### 3.1.5 CINÉMAS GUZZO

On May 13, 2005, the Federal Court, Trial Division sitting in Montreal, dismissed two applications filed by Cinémas Guzzo. The

applications, filed in October 2002, concerned the Bureau's inquiry into motion picture distribution and exhibition in Canada, which was discontinued in December 2002. In its decision, the Federal Court denied Cinémas Guzzo access to the report produced by the Bureau's economic expert. The Court held that because the Bureau's decision to discontinue an inquiry is purely discretionary and of an administrative nature, the Court should show deference to that decision. Cinémas Guzzo has appealed this decision to the Federal Court of Appeal.

## 3.2 ALTERNATIVE CASE RESOLUTION


The Bureau chooses the best and most efficient means of restoring competition in the marketplace. Some matters may be resolved quickly and easily, without a full inquiry or judicial proceeding, through alternative case resolution. Matters resolved in this way reduce uncertainty and save time, and lengthy court actions are avoided.

### 3.2.1 INTERAC

On June 16, 2005, the Competition Tribunal approved Interac Association's request to vary the Interac case consent order of June 20, 1996. The variation will allow Interac Association to impose a minimum annual fee and to recover costs associated with significant system changes made by members of the Association.

### 3.2.2 MANUFACTURER OF A SPECIALIZED RESIDENTIAL CONSTRUCTION PRODUCT

In the spring of 2005, the Bureau received a complaint from a manufacturer of



specialized residential construction products alleging that a group of competing manufacturers was controlling a standard-setting organization's committee. The standard in question provides prescriptive requirements as opposed to performance criteria. The approval of the standard-setting organization is required by provincial governments before the product in question may be sold commercially. As a result, the complainant is alleging that his firm is being prevented from introducing his innovative technology into the Canadian market.

In this case, the Bureau was concerned about possible manipulation of the standard-setting process by certain competitors on the standard committee and the use of standards to block newcomers and innovation.

Following discussions with the Bureau, the standard-setting organization created a task force mandated to develop a test protocol in order to carry out a performance comparison between the pre-existing products and the innovative design. Furthermore, as part of the Bureau's outreach program, a presentation was made to the standard-setting organization in February 2006 in order to generate dialogue and awareness with respect to the importance of competition and the potential anti-competitive pitfalls of standard setting. The Bureau's examination of this matter is continuing.







## CHAPTER 4

# ELIMINATING FALSE OR MISLEADING REPRESENTATIONS AND DECEPTIVE MARKETING PRACTICES IN THE MARKETPLACE

The 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 representation in the marketing of consumer products, namely, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the

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

Under the criminal regime, the general provision prohibits all materially false or misleading representations made knowingly or recklessly. Other provisions specifically prohibit deceptive telemarketing, deceptive notices of winning a prize, double ticketing and pyramid selling schemes. The multi-level marketing provisions define the responsibilities of operators and participants in multi-level marketing plans.

Under the civil regime, the general provision prohibits all materially false or misleading representations. Other provisions specifically prohibit performance representations not based on adequate and proper tests; misleading warranties and guarantees; false or misleading ordinary selling price representations; untrue, misleading or unauthorized use of tests and testimonials; bait and switch selling; and the sale of a product above its advertised price. The promotional contest provisions set out the requirements for conducting a contest, lottery, or game of chance or skill.

The *Consumer Packaging and Labelling Act*, *Textile Labelling Act* and the *Precious Metals*

*Marking Act* are regulatory statutes. They prohibit false or misleading representations in specific sectors (non-food prepackaged consumer products, precious metal articles, and textiles and apparel). In addition, this legislation prescribes basic, standardized labelling information, such as bilingual product descriptions, metric measurement declarations and dealer identity, which allows consumers to make informed choices.

Under the criminal regime of the *Competition Act* as well as under the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act*, and the *Precious Metals Marking Act*, certain practices may be brought before the criminal courts, requiring proof of each element of the offence beyond a reasonable doubt. If the results of an investigation disclose evidence that, in the opinion of the Commissioner, provides the basis for a criminal prosecution, the matter may be referred to the Attorney General of Canada, who determines whether a prosecution should be undertaken. Under the civil regime of the *Competition Act*, certain practices may be brought for review before the Competition Tribunal, the Federal Court or the superior court of a province. To establish a breach of these provisions, each element of the conduct must be proven on a balance of probabilities.

The first two sections of this chapter describe the Bureau's responses to non-conformity on the part of businesses in relation to the legislation enforced by the Bureau during 2005-2006. The Bureau may also work with firms to eliminate anti-competitive behaviour through alternative case resolution. Examples of this are provided in the third section of this chapter. Finally, under the *Competition Act*, parties may request written opinions, some of which are summarized in the fourth section of this chapter. For more information on these cases and others, including information notices, news releases and backgrounders, please visit the Bureau's Web site:

<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=137&lg=e>.

## **4.1 MASS MARKETING FRAUD CASES PURSUED UNDER THE CRIMINAL REGIME OF THE COMPETITION ACT**

### **4.1.1 FALSE OR MISLEADING REPRESENTATIONS**

The *Competition Act* contains civil and criminal provisions to address false or misleading representations when promoting the supply or use of a product or any business interest. The general criminal provision prohibits all representations made knowingly or recklessly to the public that are false or misleading in a material respect.

#### **CSCT Inc.**

On August 2, 2005, the Bureau laid charges against Michael Reynolds of Toronto, Ontario, and John Armstrong of Penticton, British Columbia, for making false or misleading cancer therapy claims. It was alleged that the accused preyed upon vulnerable consumers,

specifically cancer victims and/or their families, by making unsubstantiated representations on their Web site, at seminars, in alternative health-care magazine articles and advertisements, in direct mailings and in telephone communications. These individuals were charged with ten counts each under the *Competition Act* for knowingly or recklessly making representations to the public that were false or misleading in a material respect and one count each under the *Criminal Code of Canada* for defrauding the public of money exceeding \$5,000.

### **4.1.2 DECEPTIVE TELEMARKETING**

The *Competition Act* prohibits telemarketers from:

- making materially false or misleading representations when promoting the supply of a product or a business interest during telephone calls;
- asking for payment in advance as a condition of 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 the consumer to pay for it in advance.<sup>1</sup>

<sup>1</sup> For the full legal text of the provisions of prohibited practices and disclosure requirements, please refer to the *Competition Act*.

The Act also requires that telemarketers disclose the name of the company or person for whom they are working, 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 the consumer must meet before the product is delivered.

**Alexis Corporation (3636135 Canada Inc.) and 3587932 Canada Inc. and Gerald Goldstein, Scarlet Jove, Armenia Linhares, William Kenwood, Sheldon Cutler, Constantina Athanasopoulos, Jerry Browman, Marcus Miller, Michel Rosenberg, Lawrence Walsh and Doron Kunin**

On June 20, 2005, the last of 11 individuals involved in a deceptive telemarketing operation targeting consumers in Australia was sentenced for his role in a prize-pitch scam over a five-week period. The other 10 individuals were each sentenced at different times from 2002 to 2005. Sentences ranged from a conditional sentence of up to two years less a day, up to two years of probation, up to 150 hours of community service and/or fines up to \$20,000 depending on the individual. All 11 individuals pleaded guilty under section 52.1 of the *Competition Act* following a criminal investigation into the Montreal-based companies of Alexis Corporation (3636135 Canada Inc.) and 3587932 Canada Inc. by the Bureau. Wiretaps were used to gather evidence, and over \$18,000 was returned to victims.

Between May 2000 and June 2001, the Bureau and PhoneBusters (the Canadian Anti-Fraud Call Centre)<sup>2</sup> received numerous complaints alleging that telemarketers were explicitly telling consumers they had won valuable prizes, such as a Toyota Corolla or up to US\$20,000, his and her diamond watches, a washer and dryer set or up to US\$2,500, a tri-coloured gold genuine sapphire bracelet, or a video camera or up to US\$2,000. However, customers were required to make a purchase of a promotional item in order to receive these prizes. The telemarketers allegedly deceived and misled consumers about the quantity and value of these prizes.

**Pacific Liberty**

On September 22, 2005, the Bureau laid charges under section 52.1(3) of the *Competition Act* against Aleksandr Oks and Oleg Oks, directors of a number of Toronto-area corporations, for their role in various telemarketing scams. It was alleged that the accused preyed on vulnerable Americans with poor credit history by offering them Visa® or MasterCard® credit cards for an upfront fee of US\$279 to US\$319 even though the accused had no affiliation with these credit companies. The victims' bank accounts were debited, but they did not receive a credit card. The accused have been charged with one count each under the Act for deceptive telemarketing practices and

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<sup>2</sup> PhoneBusters (the Canadian Anti-Fraud Call Centre) is the central agency in Canada that collects information on telemarketing, advanced fee fraud letters and identify theft complaints. The information is disseminated to the appropriate law enforcement agencies.

one count each under the Criminal Code for defrauding the public of money exceeding \$5,000.

**Commercial Business Supplies,  
Merchant Transaction Supplies,  
Merchant Supply Services, and  
International Business Directories,  
153595 Canada Inc., 162013  
Canada Inc., 162014 Canada Inc.,  
174440 Canada Inc., M.M.  
International Business Directories  
Ltd., and 3350550 Canada Inc.**

On September 30, 2005, Justin Pold of Montreal pleaded guilty under section 52.1 of the *Competition Act* for his role in a telemarketing scam that targeted not-for-profit organizations, businesses and government agencies in Canada, the United States and the United Kingdom. Telemarketers claimed to be the businesses' regular supplier of office products or to be renewing a subscription to a previously ordered business directory when no such supply arrangement or orders had been made. Businesses then received office supplies or directories that they would not have ordered in the absence of these false or misleading representations.

Randolph Misiurak and Stéphane Ouellet, both of Montreal, had pleaded guilty earlier. Mr. Misiurak was sentenced to house arrest as well as to a seven-year prohibition order. Mr. Ouellet received a \$3,400 fine. Charles McCulloch of Toronto received a conditional discharge and a ten-year prohibition order. François Lefort of Montreal received an unconditional discharge, a seven-year probation order and was ordered to make a \$4,000 donation to charity. Mr. Pold, who led the directories scam at International Business Directories, was sentenced to eighteen months in prison. He also received two years of probation, a seven-year

prohibition order under section 34(2.2) of the Act and an order prohibiting him from participating in any telemarketing activity involving the sale of office supplies or business directories. The companies and their president, Michael Mouyal, are awaiting trial, which is scheduled for November 2006.

**Infosearch Publications Inc.**

On December 8, 2005, charges were laid against six persons and one company, Infosearch Publications Inc., for their alleged involvement in deceptive telemarketing activities in Quebec. The individuals accused are: Anderson Ramirez, Heather Romano, Yancy Romano, Efsthios (Steve) Kok(k)inasidis, Maria Kok(k)inasidis and Charalambos (Bobby) Kok(k)inasidis. Additional charges were laid on March 1, 2006, against Charalambos (Bobby) Kok(k)inasidis and three companies, two of which carry on business under the names Corporate Media Services and one of which carries on business under the name Commercial Media Services.

Mr Kok(k)inasidis was charged with nine counts under the *Competition Act* for masterminding the alleged deceptive mail and telemarketing scam. In all, 27 charges were laid pursuant to sections 52(1), 52.1(2)(b) and 52.1(3)(a) of the Act. Bobby and Maria Kok(k)inasidis have also been charged with breach of a June 2002 prohibition order, which prohibits them from engaging in deceptive telemarketing for a period of 10 years.

In these related matters, the alleged victims received invoices from the accused companies demanding payment for listings in one of three Internet-based business directories that had not previously been ordered. It is further alleged that the invoices were often preceded by telephone calls advising the alleged victims that they had previously authorized the listing, which the alleged victims said was untrue. The Bureau

also alleges that at the height of its operation between April 2002 and September 2003, one of these companies, Infosearch, scammed 10,000 Canadian businesses out of more than \$4 million. This investigation was conducted with the assistance of the Montreal Police Service.

**Merchant Supply International (9094-6858 Quebec Inc.)/International Merchant Supplies (3838102 Canada Inc.)**

On March 30, 2006, the Bureau announced that criminal charges under section 52.1(3) of the *Competition Act* had been laid against four persons allegedly involved in deceptive telemarketing activities in Quebec. The four persons are Neil Leventhal, Pierre Richard, Rick Aguino and Mathew Grenia. Two companies, Merchant Supply International and International Merchant Supply, were also charged. Telemarketers from these companies contacted businesses in Canada and the United States claiming to be their regular suppliers of rolls of paper, ink cartridges and cleaning cards for use with electronic payment and credit card devices, and/or claiming that an increase in the price of these supplies was imminent. The telemarketers failed to disclose important information such as the price of the merchandise offered and the terms and conditions for returning it. The businesses subsequently received office supplies, which they would not have ordered in the absence of the allegedly false representations.

**1462986 Ontario Inc. operating as Business Supply Centre and National Supply Centre**

On March 30, 2006, criminal charges were laid against Andrew James Wilson and 1462986 Ontario Inc., also operating as Business Supply Centre and National Supply

Centre in the city of Toronto, in the Toronto Region and elsewhere in Canada.

It is alleged that the accused engaged in deceptive telemarketing while promoting the sale of toner and/or ink jet cartridges for use in office equipment such as photocopiers and printers. The parties allegedly failed to disclose mandatory information in a fair and reasonable manner and made false or misleading representations with respect to price increases, price discounts and pricing errors on invoices. It is further alleged that the parties provided clients with inferior (refilled) toner and generic ink jet cartridges at grossly inflated prices. Lastly, it is alleged that these parties used these deceptive practices to defraud Canadian businesses of an amount in excess of \$5,000.

## **4.2 DECEPTIVE MARKETING PRACTICES CASES PURSUED UNDER THE CIVIL REGIME OF THE COMPETITION ACT**

The *Competition Act* contains civil and criminal provisions to address false or misleading representations and deceptive marketing practices when promoting the supply or use of a product or any business interest. The general civil provision prohibits all representations made to the public that are false or misleading in a material respect. Other provisions specifically prohibit the following:

- making performance representations that are not based on adequate and proper tests;
- advertising misleading warranties and guarantees;
- making false or misleading ordinary price representations;
- making untrue, misleading or unauthorized use of tests and testimonials;

- offering products at bargain prices that are not available in reasonable quantities;
- selling products above the advertised price; and
- conducting any contest, lottery or game of chance, skill, or mixed chance and skill without disclosing the required information.

#### 4.2.1 SEARS CANADA INC.

In January 2005, following a lengthy hearing, the Competition Tribunal ruled that Sears had breached the *Competition Act* by making false or misleading representations when advertising discounts on certain tires. This landmark decision was the first to be handed down by the Tribunal under section 74.01(3), the ordinary selling price provisions of the Act. In its ruling, the Tribunal found that Sears had not sold a substantial volume of the tires at the regular prices featured in the advertisements and could not truly have believed that its regular tire prices were genuine and bona fide prices. The Tribunal also upheld the constitutionality of the relevant provisions of the Act.

In April 2005, the Tribunal ordered Sears Canada Inc. to pay a \$100,000 administrative monetary penalty, as well as \$387,000 toward the Bureau's legal costs. The Tribunal's order also prohibited Sears' automotive business division from engaging in similar conduct for a period of 10 years. The administrative monetary penalty, which Sears agreed to in a joint submission to the Tribunal, was the maximum that could be imposed in these circumstances.

#### 4.2.2 CENTRE DE SANTÉ MINCEUR

On June 28, 2005, the Bureau filed an application for an order under sections 74.01(a) and (b) of the *Competition Act* with the Competition Tribunal to prevent five Quebec companies that operate a chain of weight loss clinics called Centre de Santé Minceur and their president, Sylvain Leblanc, from making misleading representations to the public about a weight-loss method involving a special apparatus and natural products.

The Quebec companies (Gestion Lebski inc., La Société de Financement Vanoit inc., Maigrissimo inc., Gestion Finance Tamalia inc. and 9083-8434 Québec inc.), made the following claims about their products:

- "Cellotherm induces weight-loss in specific areas, produces the effects of liposuction without surgery, and helps dissolve fat";
- "Cure de départ enables people to lose up to nine pounds in seven days";
- "Nocto Slim burns off fat during the night"; and
- "Nopasim reduces excess fat in specific areas".

In the application, the Bureau requested that the Tribunal order the companies and Mr. Leblanc to cease making certain representations about the weight-loss method; to publish a corrective notice in newspapers, in magazines, on Quebec infomercials and on their Web site; and to pay an administrative monetary penalty.

#### 4.2.3 FUEL SAVER PRO

In December 2005 and January 2006, four consent agreements (relating to Mike Stothers, Cory Gratton, Tracy Gratton, Everette Gratton and Joe Walsh) were



registered with the Competition Tribunal under sections 74.01(1)(a) and (b) of the *Competition Act* in relation to the marketing of Fuel Saver Pro, a supposed fuel-saving device. The agreements followed a Bureau investigation revealing that between January 2002 and May 2004, several individuals sent spam containing false or misleading representations about the device's ability to increase fuel efficiency and reduce emissions. The Bureau was acting on information obtained from the United States Federal Trade Commission's (FTC) "Button Pusher Spam Sweep." After extensive testing, the FTC and the United States Environmental Protection Agency both concluded that the claims about the Fuel Saver Pro could not be substantiated.

The consent agreements, which are valid for 10 years, require the parties:

- not to make any false or misleading representations to the public;
- not to make any performance claims to the public without having first provided proof of adequate and proper testing to the Bureau; and
- to pay administrative monetary penalties totalling \$12,000.

#### 4.2.4 STRATEGIC ECOMM INC.

On February 22, 2006, the Bureau registered a consent agreement with the Competition Tribunal regarding an Internet-based job scam. Strategic Ecomm Inc. and its sole principal, Matthew Hovila, operated an on-line résumé distribution scheme offering guaranteed results to people seeking employment either in the oil and gas industry or with U.S. government agencies. For a fee, the company claimed that it would distribute customers' résumés to key employers in each industry. The Bureau's investigation revealed that the company

made misrepresentations regarding the number of companies to which résumés were forwarded, its relationships with potential employers and the effectiveness of its services. Further, it misrepresented the validity of a "money-back risk-free guarantee" and its endorsement by an on-line third-party watchdog. The company and principal also provided phony customer testimonials and misled customers into believing their services were "on sale" for a time-limited special price.

Under the terms of the consent agreement, Strategic Ecomm Inc. and its principal have agreed to:

- admit to having committed reviewable conduct under sections 74.01(1), 74.01(3) and 74.02 of the *Competition Act*;
- pay an administrative monetary penalty of \$100,000 and publish corrective notices; and
- discontinue the offending conduct on the two Web sites: [www.oilcarer.com](http://www.oilcarer.com) and [www.governmentaljobs.com](http://www.governmentaljobs.com).

#### 4.2.5 ECONOCO INC.

On February 23, 2006, the Bureau filed an application for an order with the Competition Tribunal under sections 74.01(1)(a) and (b) of the *Competition Act* prohibiting Econoco Inc. and its directors from making misleading representations to the public about the Econopro, which was marketed as a device that saved fuel and reduced emissions. The Bureau application aims to prohibit Econoco Inc. (President Réal Laroche and former V.P. and Technical Director Claude Tardif) from making representations in the form of a statement, warranty or guarantee of the performance or efficacy of the Econopro or similar device that are not based on adequate or proper tests.



#### 4.2.6 FABUTAN SUN TAN STUDIOS

On February 27, 2006, the Bureau registered a consent agreement pursuant to sections 74.01(1)(a) and (b) of the *Competition Act* with the Competition Tribunal requiring Fabutan Corporation and its president, Douglas Scott McNabb, to refrain from making representations that convey the false or misleading impression that moderate tanning has proven health benefits or that moderate tanning has been shown to be effective in reducing the risk of certain cancers, osteoporosis or other conditions, unless those benefits have been demonstrated through controlled, randomized trials. The Bureau discontinued its original application against The Dosco Group Inc. and Fabutan Studios.

Under the agreement, Fabutan has agreed to do the following:

- ensure that any messages to the public concerning exposure to UV-B and possible health benefits associated with Vitamin D are accompanied by statements that tanning may cause premature aging of the skin and skin cancer, that mild exposure to UV-B is sufficient to generate Vitamin D and that tanning is not required;
- refrain from making statements conveying the impression that tanning has proven health benefits unless such benefits have been scientifically demonstrated;
- establish and maintain a corporate compliance program;
- post a corrective notice on its Web site; and
- pay an administrative monetary penalty of \$62,500.

As well, Douglas Scott McNabb agreed to make a charitable donation of \$12,500.

#### 4.3 ALTERNATIVE CASE RESOLUTION

The Bureau chooses the best and most efficient means of restoring competition in the marketplace. Some matters may be resolved quickly and easily, without a full inquiry or judicial proceeding, through alternative case resolution. Matters resolved in this way reduce uncertainty and save time, and lengthy court actions are avoided.

In 2005-2006, the Bureau used alternative case resolution to settle 17 matters under the false or misleading representations and deceptive marketing practices provisions of the *Competition Act* and the provisions of the three standards-based statutes. The Bureau may examine certain matters under both the criminal and civil provisions of the Act, the provisions of the standards-based statutes, or both. The following are summaries of cases resolved through alternative case resolution.

##### 4.3.1 IMPORTED SUNGLASSES

In May 2005, Bureau officials, acting on information from the Canada Border Services Agency, inspected a shipment of sunglasses from China intended for Edmonton-based wholesaler Gift Cave Corp. The glasses were labelled “Made in Canada” and “UV400 protection.” The Bureau seized the 15,000 pairs of imported sunglasses labelled with the misleading representation that they were “Made in Canada.” The misleading “Made in Canada” claims raised concerns under section 7(1) of the *Consumer Packaging and Labelling Act* (CPLA). Further, when Gift Cave failed to provide documentation substantiating the “UV400 protection,” concerns were also raised under section 74.01(1) of the *Competition Act*. Gift Cave agreed to comply with both laws by removing all the offending labels in question.

The products were re-inspected by Bureau officers and released from seizure. This matter was resolved in July 2005.

### 4.3.2 REAL ESTATE AGENCY

In June 2005, the Bureau resolved a complaint relating to section 74.01 of the *Competition Act* about deceptive marketing practices on the part of a real estate agency. The complaint alleged that a real estate agency advertisement including information on exclusive listings gave the impression that an agent was excluded from dealing on behalf of clients.

A Bureau examination conducted under the deceptive marketing practices provisions of the Act revealed that the advertisement in question could have raised concerns under the Act, as such statements may not be true in all situations. As a result of Bureau contact, the company agreed in writing to refrain from similar advertising in the future.

### 4.3.3 KARAOKE COMPACT DISCS

In July 2005, the Bureau resolved complaints about the absence of mandatory labelling information on karaoke compact discs supplied by four different American manufacturers or distributors and being sold at five major electronic retailers in Canada. The *Consumer Packaging and Labelling Act*, section 10(b)(i), requires that each label show “the identity and principal place of business of the person by or for whom the prepackaged product was manufactured or produced for resale.” As a result of direct communication with Bureau officials, the American suppliers agreed to correct the labelling of current and future manufactured karaoke compact discs by adding complete dealer identification to the labels.

### 4.3.4 IMPORTED CAT FOODS

In October 2005, the Bureau resolved a complaint regarding the labelling of imported cat food products being distributed and sold at retail pet food stores in Ontario. Section 6(2) of the *Consumer Packaging and Labelling Regulations* requires that the mandatory common name and net quantity declaration be shown in both official languages on the label of a prepackaged product. The complaint alleged that the products did not include the common name in Canada’s two official languages.

As a result of Bureau investigations, the American supplier agreed to correct the labelling of all manufactured products by adding the French common name to all pet food labels. The Bureau follow-up in March 2006 confirmed that all lines of cat food products were in full compliance with the requirements of the *Consumer Packaging and Labelling Regulations*.

### 4.3.5 WEIGHT LOSS COACHING

In October 2005, the Bureau resolved an issue regarding a weight loss program that was sending out bulk faxes bearing a logo that closely resembled the Government of Canada’s logo (a Maple Leaf between two bars), and a bilingual name closely resembling that of Health Canada. A Bureau examination was conducted under section 74.01, the false or misleading representations provisions of the *Competition Act*. The examination showed that the logo and written representation could mislead consumers into thinking that the Government of Canada, and more specifically Health Canada, either endorsed or was affiliated with the weight loss coaching program being advertised by the company.

The Bureau contacted an official of the company to discuss the issues raised by the faxes. As a result, the company agreed to ensure that future faxes would not have any representations on them that implied Government of Canada approval or endorsement.

#### **4.3.6 WINDOW RETAIL COMPANY**

In November 2005, the Bureau resolved a complaint alleging that a window retail company made representations concerning product warranties that were misleading to the public. A Bureau investigation found the retailer was claiming it offered the industry's best warranty for certain products, as well as the only transferable lifetime warranty. The Bureau determined that other retailers offered similar warranties.

The Bureau contacted company representatives regarding the concerns that this type of advertising raised under the false or misleading representations provisions of section 74.01 of the *Competition Act*. The company agreed to refrain from stating that it offered the industry's best and only lifetime warranty in future advertising.

#### **4.3.7 DOWN AND FEATHER BEDDING PRODUCTS**

In December 2005, the Bureau resolved complaints alleging that various bedding products sold by a national retailer were labelled and advertised in a potentially misleading manner. A Bureau examination conducted under section 5 of the *Textile Labelling Act* and section 29 of the *Textile Labelling and Advertising Regulations* revealed that various comforters were being advertised on the retailer's Web site and in flyers either as "down" or as "down

alternative" even though they were made of synthetic fibre. The examination also revealed that the fibre content information shown on the packaging of a brand of pillows contradicted the information on the disclosure label. The Bureau contacted an official with the retail company, and as a result, the company made numerous requested changes to the Web site. The retailer also contacted the pillow manufacturer, which agreed to provide new packaging for the approximately 1,900 pillows valued at \$76,000 that were in stock.

#### **4.3.8 CAT LITTER**

In February 2006, the Bureau resolved a complaint regarding the labelling of a brand of cat litter offered for sale at retail stores across Canada. The complaint alleged that the label did not show the net quantity declaration in the minimum required type height for the size of the principal display surface of the container, contrary to section 14(2)(c) of the *Consumer Packaging and Labelling Regulations*. The label also included the claims that the product had "40 percent more litter per kg than the leading national brands" and "same usage as 8.8 kg." The latter claim was printed near the net quantity declaration in twice the print size, giving the false impression that the product was 8.8 kg in net quantity.

In response to Bureau investigations, the manufacturer's innovation centre prepared a report to substantiate the product's performance claims. The manufacturer also corrected the labelling of all cat litters by increasing the net quantity declaration type height to 6.4 mm and removing the phrase "same usage as 8.8 kg" from the labels.

### 4.3.9 MEN'S SUITS

In March 2006, the Bureau resolved a complaint alleging that men's suits sold by a national import/retail company did not comply with the labelling requirements of the *Textile Labelling Act* and the *Textile Labelling and Advertising Regulations*. A Bureau examination revealed that the fibre content disclosure did not meet the requirements of the Act and Regulations. Furthermore, the articles were not labelled with adequate dealer identification.

The Bureau contacted officials with the company, who agreed to resolve the matter by relabelling the suits in accordance with the Act and Regulations. Company officials also agreed to ensure that future shipments were labelled with the required information.

### 4.3.10 MEN'S SHORTS

In March 2006, the Bureau resolved a referral from the Canada Border Services Agency regarding a 78-carton shipment of imported men's shorts that lacked permanent labels containing information on fibre content and dealer identity.

Section 11(1) of the *Textile Labelling and Advertising Regulations* requires that every disclosure label contain the textile fibre content of the article and the name and postal address of the dealer.

As a result of Bureau investigations, the importer added a permanent label with the mandatory information to the textile articles, including the CA number—an identification number assigned to dealers that do business in Canada.

### 4.3.11 MISLEADING FILL DISCLOSURE ON FEATHER AND DOWN PILLOWS

The Bureau received a complaint in January 2006 alleging that fibre content representations for feather and down pillows sold nationally were potentially misleading under the *Textile Labelling Act*. The disclosure label attached to the pillows stated "Feather and Down." However, testing indicated that the article did not meet the composition standards for either feather or down as required under the *Textile Labelling and Advertising Regulations*. In fact, the product was deemed illegal for retail sale in Canada because the fill contained an amount of residue that exceeded the maximum allowed under the Regulations.

As a result of the Bureau's examination, the retailer and the supplier jointly agreed to resolve the matter by:

- removing the product, valued at approximately \$30,000, from sale across the country; and
- returning the product to the supplier to be destroyed.

This matter was resolved in March 2006.

## 4.4 WRITTEN OPINIONS

The Bureau provides legally binding written opinions to businesses seeking to comply with the *Competition Act*. Company officials, lawyers and others may request a written opinion on whether a proposed business plan raises an issue under the *Competition Act*. Written opinions remain binding for as long as the material facts remain substantially unchanged and the conduct or practice is carried out as proposed.

To promote compliance with and foster transparency in the administration and enforcement of the Act, the Bureau publishes detailed summaries of its written opinions on the Web site:  
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=782&lg=e>

The Bureau issued 18 written opinions concerning the criminal and civil false or misleading representations and deceptive marketing practices provisions of the Act. Sixteen of these opinions dealt with the criminal provisions of the Act, specifically sections 52, 55 and 55.1. Three opinions dealt with the civil provisions, specifically, sections 74.01(1)(a) and 74.06. One opinion (4.4.8) dealt with sections 52 and 74.01(1)(a).

- Section 52 of the Act prohibits all representations that are made knowingly or recklessly in any form and are false or misleading in a material respect.
- Under sections 55 and 55.1 of the Act, an operator or participant in a multi-level marketing plan cannot make representations about compensation without disclosing the compensation a typical participant would receive. Further, a multi-level marketing plan that features recruitment bonuses, a required volume of purchases by participants as a condition of entry, inventory loading or one that lacks a buy-back guarantee on reasonable commercial terms constitutes a prohibited pyramid selling scheme.
- Section 74.01(1)(a) of the Act prohibits all representations, in any form whatsoever, that are false or misleading in a material respect.
- Section 74.06 of the Act prohibits any promotional contest that does not disclose the number and approximate value of prizes, the geographic area or areas in which the prizes may be awarded and any important information relating to the

chances of winning, such as the odds. The Act also stipulates that the distribution of prizes must not be unduly delayed, and that participants must be selected, or prizes distributed, randomly or on the basis of skill.

The following are examples of written opinions that dealt with the criminal and civil provisions of the Act.

#### **4.4.1 TRAVEL CERTIFICATE PRODUCTS**

In January 2005, a company that distributes and sells travel certificate products returned to the Bureau for a second opinion on whether a proposed multi-level marketing plan would raise concerns under the *Competition Act*. The company had made changes to its original marketing plan following the Bureau's first negative opinion in November 2004.

The Bureau examined the proposal under section 55 and 55.1, the multi-level marketing and pyramid selling scheme provisions of the Act. In April 2005, it provided a positive opinion on the basis that the revised plan appeared to comply with the requirements of the Act. The Bureau's positive opinion was based on its findings that:

- the company could provide a typical earnings statement since it had previously operated a plan selling the same products;
- the company determined that participants earning between US\$1,600 and US\$3,200 accounted for the largest number of participants in the plan;
- the company assumed responsibility for updating the typical earnings statement when data for the current plan became available within a maximum time frame of one year;

- in this specific case, the \$300 personal business volume sales requirement to become a qualified independent distributor and the \$75/\$50 minimum sales threshold to maintain this status did not create a sufficiently strong inducement to purchase the product and therefore did not create a de facto purchase requirement;
- professional advancement was based on the building of sales volume in individual lines, meaning that increased levels of participation were based on sales volumes and not the recruitment of participants into the plan.

#### 4.4.2 POKER TOURNAMENT

In March 2005, a company sought a written opinion on whether a proposed promotional contest could raise concerns under the *Competition Act*. The company proposed to run a poker tournament that would provide the content for a television series. The contest offered two methods of entry: a skill-based selection method for the preliminary rounds and a random draw for participants to join the winners in the final rounds. The contest did not require the participants to purchase any products, but they were required to go to the tournament venue in Toronto, Ontario. The complete rules and regulations for the contest were to be posted at the tournament site and on the company's Web site.

On May 5, 2005, the Bureau provided its opinion that the contest as proposed would not give it grounds to launch an inquiry under section 74.06 of the Act. In the Bureau's view, the contest would adequately disclose the number and approximate value of prizes, the area or areas to which they would relate, and any important information relating to the chances of winning, such as the odds of winning.

#### 4.4.3 PRIVILEGE CARD DISTRIBUTOR

In May 2005, a business that planned to distribute and sell privilege cards entitling the bearer to discounts at participating merchants and to participation in the compensation plan based on recruitment of new members sought a written opinion on whether the proposed multi-level marketing plan would raise concerns under the *Competition Act*.

In June 2005, the Bureau issued a negative opinion for the following reasons:

- the operator had not made fair, reasonable and timely disclosure of information relating to compensation received by typical participants in the plan, as required by section 55(2) of the Act;
- the proposed arrangement seemed to constitute a pyramid selling scheme, as prohibited by section 55.1 of the Act. There was no way to distinguish between membership in the plan and purchase of the product, meaning the plan contravened sections 55.1(1)(a) and 55.1(1)(b) of the Act. Compensation, in the form of either cash or a premium, was paid to participants for the sale of the product, suggesting that the initial purchase was not made at the cost price or for the purpose of facilitating sales. This practice contravened section 55.1(1)(b) of the Act. Furthermore, since there was a direct link between purchases and recruitment of participants in the plan, the participants were receiving compensation for recruiting new participants, which contravened section 55.1(1)(a) of the Act; and
- the plan made no provision for sales to non-participants. Participants sold cards to new participants, thus recruiting the purchasers as new members. The structure of the compensation plan strongly



encouraged prospective participants to undertake recruitment in order to develop their own networks.

#### 4.4.4 CONSUMER ITEMS

In July 2005, a company that markets consumer items sought a written opinion on whether its proposed multi-level marketing plan would raise concerns under the *Competition Act*. In July 2005, the Bureau provided a negative opinion on the basis that the plan appeared to constitute a pyramid selling scheme for the following reasons:

- participants were compensated for everyone they sponsored who purchased a product package. This would be deemed to be compensation based on the recruitment of participants, thereby meeting the definition of a pyramid selling scheme in section 55.1(1)(a) of the Act;
- the plan did not appear to contain a buy-back policy, raising issues with section 55.1(1)(d) of the Act;
- there did not appear to be a disclosure of earnings of a typical participant, thus raising issues under section 55(2) of the Act; and
- participants in this plan were required to purchase a product package. Under section 55.1(1)(b) of the Act, any required purchase must be for the purpose of facilitating sales and be sold at the seller's cost. However, three of the products in this package were not required in order to facilitate sales, raising issues under the Act.

#### 4.4.5 TELECOMMUNICATIONS SERVICES

In April 2005, a company marketing third-party telecommunications services sought a

written opinion on whether its proposed multi-level marketing plan would raise concerns under the *Competition Act*. Subsequent to the Bureau's negative opinion issued in May 2005, the company revised its marketing plan and sought a second written opinion. In August 2005, the Bureau provided a positive opinion on the basis that the revised plan appeared to comply with the requirements of sections 55 and 55.1 of the Act. The following revisions were reflected in the proposed marketing plan:

- the company agreed to include a disclosure of the earnings of typical participants in the plan at relevant points in the plan in order to avoid potential problems under section 55(2) of the Act;
- participants were required, as a condition of becoming active members, to make a minimum of three sales (including one to a customer other than themselves and one to a customer not in the same domicile);
- movement in the plan was to be based on the personal sales volumes of participants and those of other participants recruited into the plan; and
- participants in the plan would earn bonuses based on their sales volume; and
- the company agreed to eliminate direct monetary payments to participants who recruited and trained new participants. Trainers would be remunerated based on a commission tied to the sales made by the trainee within 90 days of the conclusion of any training session.

#### 4.4.6 MEMBERSHIPS AND TRAINING PRODUCTS

In July 2005, a company distributing memberships and training products sought a written opinion on whether a proposed multi-level marketing plan would raise concerns under the *Competition Act*. In August 2005,

the Bureau provided a negative opinion for the following reasons:

- the operator failed to make reasonable and timely disclosure of the earnings of typical participants, as required by section 55(2) of the Act;
- the plan provided participants who paid to join the plan with the right to receive compensation for recruiting other participants into the plan who had also paid to join. Prospective participants were entitled to participate at the introductory level for free or to pay a fee to participate at a higher level, but significant incentives existed for joining the plan at the higher levels. The Bureau considered this to be compensation related to recruitment and the plan was deemed to constitute a pyramid selling scheme as defined by section 55.1(1)(a) of the Act;
- the plan also rewarded participants who recruited other participants through training bonuses. The Bureau considered these to be compensation related to recruitment, and the plan was deemed to constitute a pyramid selling scheme as defined by section 55.1(1)(a) of the Act;
- the plan required prospective participants to pay for a specified number of products in order to participate in the plan at higher levels. The Bureau deemed this to constitute a prohibited pyramid selling scheme as defined by section 55.1(1)(b) of the Act since compensation should be based on product sales, not on required purchases; and
- the business plan did not contain any information relevant to the compensation that a typical participant could actually or would likely receive, as required by section 55(2) of the Act.

#### 4.4.7 STOCK MARKET TOURNAMENT

In July 2005, a company sought a written opinion on whether a promotional contest could raise concerns under the *Competition Act*. The company made a proposal to run a stock market tournament with a large cash prize for the winner. The rules would allow anyone to enter the tournament upon the payment of a fee, and the contest would be conducted over the Internet. The complete rules and regulations for the contest would be posted on the company's Web site and would also be included in the company magazine. All advertisements would contain a short form of disclosure.


On September 7, 2005, the Bureau provided its opinion that the contest as proposed would not give it grounds to launch an inquiry under section 74.06 of the Act. In the Bureau's view, the contest would adequately disclose the number and approximate value of prizes, the area or areas to which they would relate, and any important information relating to the chances of winning, such as the odds of winning.

#### 4.4.8 CASH BACK INCENTIVE PROGRAM

In July 2005, a company that markets promotional programs to retailers requested a written opinion on an incentive program. Under the proposed program, retailers would offer prospective customers, as an incentive to complete a purchase, a "cash back" certificate redeemable three years from the date of purchase.

In its opinion issued in October 2005, the Bureau stated that the proposed promotional programs could raise concerns under both the criminal and civil false or misleading representations provisions of the *Competition*





Act, sections 52.(1) and 74.01(1)(a). In particular, the Bureau raised concerns that representations made in the marketing materials could cause retailers who bought into the program to make false or misleading representations to the public regarding the “cash back” vouchers, including:

- the length of time before consumers could make a claim;
- the rules to qualify for “cash back”;
- the number and variability of factors affecting the size of “cash back” refunds;
- the extent to which liabilities would be covered by insurance;
- comparisons suggesting that the program would operate “like insurance”; and
- suggestions that the program was based on proven actuarial data and statistics.





## CHAPTER 5 | REVIEWING MERGERS

## CHAPTER 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. If the Bureau finds that a transaction is likely to affect competition, the Commissioner may ask the merging parties to restructure the merger or suggests remedies to resolve particular competition issues. When concerns cannot be resolved by negotiation, the Commissioner may decide to bring an application to the Competition Tribunal.

The number of mergers the Bureau reviewed in 2005-2006 increased from the previous year, continuing an upward trend from 2004-2005. The size and scope of the mergers were also notable, as was the complexity of the competition issues they raised. In fact, there was a significant increase in the number of complex mergers in 2005-2006 compared with the preceding year.

### 5.1 INTERNATIONAL CO-OPERATION

International co-operation is critical when reviewing mergers that involve more than one jurisdiction. To the extent possible, the Bureau shares its views and information about mergers with other reviewing jurisdictions, co-ordinates the timing of the review process and seeks consistent remedies.

In 2005-2006, the Bureau continued to co-operate with international organizations such as the Organization for Economic Co-operation and Development (OECD) and the International Competition Network (ICN).

The Bureau works with the OECD Competition Committee to promote international co-operation in competition enforcement for merger review procedures. In addition, it contributes significantly to the ICN's Mergers Working Group (see Chapter 6).

This chapter summarizes some of the key merger cases that were new or ongoing during 2005-2006 and provides comprehensive tables of merger examinations concluded during the year, along with statistics on service standards.

### 5.2 KEY MERGER CASES

#### 5.2.1 UNITED GRAIN GROWERS LIMITED AND AGRICORE COOPERATIVE LTD.

In July 2001, two of the largest grain-handling companies in western Canada, United Grain Growers Limited (UGG) and Agricore Cooperative Ltd., announced

they would merge to form Agricore United (AU). The Bureau advised the parties that the proposed transaction was likely to substantially lessen competition in certain grain-handling markets in Manitoba and Alberta and in grain-handling services at the Port of Vancouver. In response, AU agreed to divest up to seven primary grain elevators in western Canada to address competition concerns in that market. In February 2002, the Competition Tribunal issued a consent order requiring AU to divest certain primary grain elevator assets in Manitoba and Alberta.

Following a hearing in September 2002, the Tribunal found that UGG's acquisition of Agricore Cooperative's port terminal assets at the Port of Vancouver substantially lessened competition in the market for grain-handling services at the Port of Vancouver. On October 17, 2002, the Bureau announced that it had reached an agreement with AU to divest either the UGG or Pacific grain-handling terminal at the Port. A consent agreement reflecting the settlement was registered with the Tribunal, and AU subsequently selected the UGG Terminal for divestiture. The consent agreement stipulated that if the port terminal was not divested by AU within an initial sale period, the divestiture was to be carried out by a trustee. Subsequently, the Commissioner granted ten extensions of the initial sale period but on August 10, 2005, refused further extensions.

In August 2005, AU filed an application with the Tribunal pursuant to section 106 of the *Competition Act* for an order rescinding the consent agreement. The end of the initial sale period was stayed pending resolution of the section 106 application. AU claimed, among other matters, that the circumstances leading to the agreement had changed so significantly that, had those circumstances existed in October 2002, AU would not have entered into the consent agreement. AU claimed, for example, that the amount of

"uncommitted grain" shipped to the Port of Vancouver by non-integrated grain companies in Western Canada and available to a prospective purchaser of the UGG Terminal had diminished dramatically, such that a purchaser would not be able to secure sufficient volume to operate the terminal on a sustainable basis. The Bureau took the position that the circumstances leading to the consent agreement had not changed; among other matters, the volume of "uncommitted grain" was unchanged.

Hearings before the Competition Tribunal began in March 2006. Shortly after the fiscal year-end, AU discontinued its application. The next day a trustee was appointed with the mandate and sole authority to divest the UGG Terminal by September 12, 2006. The discontinuance and related documents can be found on the Competition Tribunal's Web site: [www.ct-tc.gc.ca](http://www.ct-tc.gc.ca).

### **5.2.2 SASKATCHEWAN WHEAT POOL AND JAMES RICHARDSON INTERNATIONAL LTD.**

On April 6, 2005, Saskatchewan Wheat Pool and James Richardson International Ltd. announced the creation of a joint venture whereby their two port grain terminals in Vancouver would be operated as one combined facility that would market its grain-handling services. Following a thorough review of the proposal, the Bureau concluded that the joint venture would likely result in a substantial lessening of competition in the provision of grain-handling services at Canadian west coast ports. On November 10, 2005, the Bureau filed an application with the Competition Tribunal challenging the joint venture. In December 2005, the Tribunal issued an Interim Hold Separate Order prohibiting the parties in question from jointly engaging in specified marketing activities and from sharing specific marketing

information until the Tribunal had made its final determination on the merits of the Bureau's application.

In February 2006, the parties filed their responses to the Bureau's application, and the Bureau's reply followed in March 2006. The Canadian National Railway Company, the Canadian Pacific Railway Company Limited, the Canadian Wheat Board and the Vancouver Port Authority were granted leave to intervene.

As of March 31, 2006, the timelines for the remainder of the proceedings before the Tribunal had not been scheduled.

### **5.2.3 WEST FRASER TIMBER CO. LTD. AND WELDWOOD OF CANADA LTD.**

On December 7, 2004, the Bureau filed a consent agreement with the Competition Tribunal addressing competition concerns raised by the merger of West Fraser Timber Co. Ltd and Weldwood of Canada Ltd. The consent agreement required the parties to divest two sawmills and related assets including timber tenures and harvesting rights. In February 2005, the Burns Lake Native Development Corporation (BLNDC) et al. filed an application with the Tribunal for an order rescinding or varying the consent agreement to recognize their rights and interests. To resolve the threshold issue of whether BLNDC et al. had standing to challenge the consent agreement, the Bureau filed a reference under section 124.2(2) of the *Competition Act* for a determination of the meaning of the term "directly affected" in the context of section 106 of the Act. Thereafter, BLNDC et al. launched two appeals regarding preliminary rulings by the Competition Tribunal on the procedural propriety of the reference. In a judgment released March 7, 2006, the Federal Court of

Appeal dismissed both appeals. The Tribunal subsequently released its decision on the Bureau's reference dismissing the application by the BLNDC et al. on the threshold issue, finding that they were not "directly affected" parties for the purposes of section 106 of the Act. This decision is currently under appeal by BLNDC et al.

The B.C. Minister of Forests completed the divestiture of the South Line Tenure pursuant to the consent agreement in November 2005, and the Bureau approved the purchase. West Fraser has advised the Bureau about the sale process to be used to divest the assets with respect to which Burns Lake Native Development Corporation et al. objected. At year-end this matter was still ongoing. A copy of the public version of the registered consent agreement can be found on the Competition Tribunal's Web site: [www.ct-tc.gc.ca](http://www.ct-tc.gc.ca).

### **5.2.4 RONA INC. AND RÉNO-DÉPÔT INC.**

On September 4, 2003, in anticipation of a merger between RONA Inc. and Réno-Dépôt Inc., the Bureau registered a consent agreement with the Competition Tribunal, in which RONA agreed to divest itself of the Réno-Dépôt store in Sherbrooke, Quebec. On September 10, 2003, RONA acquired 20 Réno-Dépôt stores in Quebec and Ontario. By late February 2004, RONA still had not sold the Sherbrooke store, and a trustee was appointed to carry out the sale.

On August 30, 2004, the consent agreement was extended to enable the trustee to complete negotiations for the sale of the Sherbrooke store. On November 24, 2004, an Agreement of Purchase and Sale was signed by the trustee and the purchaser.

On January 10, 2005, RONA filed a notice of objection to the proposed sale along with an application under section 106(1) of the *Competition Act*. RONA argued that the sale of the Réno-Dépôt store in Sherbrooke was no longer necessary because a Home Depot was to open in Sherbrooke at the end of 2005, thereby resolving any competition concerns.

On April 29, 2005, following RONA's consent, the Tribunal issued an order approving the sale between the trustee and the purchaser, which would be binding only if the Tribunal dismissed RONA's application. On May 30, 2005, the Competition Tribunal allowed RONA's application under section 106 and rescinded the consent agreement.

The public version of the Tribunal's Reasons for Order is available on the Competition Tribunal's Web site: <http://www.ct-tc.gc.ca>.

### **5.2.5 CINEPLEX GALAXY LIMITED PARTNERSHIP AND FAMOUS PLAYERS**

In late 2004, Cineplex Galaxy Limited Partnership contacted the Bureau about its interest in acquiring the Famous Players Division of Viacom Canada Inc. The Bureau conducted an extensive merger review to determine the competitive effects of the proposed transaction by gathering information from a number of sources, including the parties to the transaction, major Hollywood and Canadian film distributors, other exhibitors and foreign antitrust authorities with recent experience in this industry. Economic and industry experts were also retained.

The Bureau examined the full competitive impact of the merger in each of the cities where Famous Players and Cineplex Galaxy competed. It determined that the transaction

would likely substantially lessen competition in a significant number of geographic areas of overlap in terms of both price and non-price factors (such as theatre quality, film choice and innovation). To resolve these concerns, the Bureau required the divestiture of over 30 theatres in 17 Canadian cities.

In considering the cities in which divestitures would be required, the Bureau examined a number of factors, including pre- and post-merger market shares, theatre locations, the quality and style of theatres and the remaining competition (including recent and pending entry).

The Bureau was satisfied that, with the implementation of the divestitures required by the consent agreement, the proposed transaction would be unlikely to result in a substantial lessening or prevention of competition. Cineplex Galaxy was successful in divesting the Western Canada and Ontario packages of theatres to Empire Theatres Limited, a transaction that closed in September 2005. The theatres located in Quebec were successfully divested to Fortune Cinemas Inc. in March 2006.

The registered consent agreement can be found on the Competition Tribunal's Web site: [www.ct-tc.gc.ca](http://www.ct-tc.gc.ca). For more information on this case, please consult the Technical Backgrounder, which is available on the Bureau's Web site: <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1921&lg=e>.

### **5.2.6 QUEBECOR MEDIA INC. AND SOGIDES LTÉE**

In the fall of 2005, Quebecor Media Inc. contacted the Bureau about its interest in acquiring Sogides Ltée. The Bureau reviewed the proposed merger to determine its effect on competition by gathering information

from a number of sources, including parties to the transaction, French-language book publishers, distributors and retailers, various Quebec book industry associations and government officials responsible for the industry.

Following this review, the Bureau concluded that the merger would not likely result in a substantial lessening or prevention of competition in the publishing and distribution of French-language trade books. However, in the course of reviewing the transaction, the Bureau learned that Sogides' president had an interest in Gestion Renaud-Bray Inc., which competed with Quebecor's Archambault Group Inc. bookstores. To eliminate the possibility of information exchanges between Archambault and Renaud-Bray via Sogides' president, Quebecor and Sogides signed a consent agreement with the Bureau addressing this issue. The Bureau concluded that such an information exchange could have been detrimental to publishers and distributors that had supplier relationships with Archambault and Renaud-Bray bookstores.

The registered consent agreement can be found on the Competition Tribunal's Web site: [www.ct-tc.gc.ca](http://www.ct-tc.gc.ca). For more information on this case, please consult the Technical Backgrounder, which is available on the Bureau's Web site: <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2032&lg=e>.

### **5.2.7 PAPERLINX CANADA LTD. AND CASCADES FINE PAPER GROUP INC.**

On November 17, 2005, PaperLinX Limited of Melbourne, Australia announced that it intended to acquire the paper merchant and distribution business of Cascades Fine Paper

Group Inc. through its Canadian subsidiary, PaperlinX Canada Ltd.

In March 2006, the Bureau filed a consent agreement with the Competition Tribunal addressing competition concerns raised by the acquisition. Under the terms of the agreement, PaperlinX was required to divest all Cascades' assets relating to the fine paper merchants business in British Columbia and Alberta (excluding Cascades' graphics arts business). PaperlinX agreed not to obstruct or object to the supply of fine paper by any fine paper mill to the purchaser of the divested assets. Furthermore, Cascades Fine Paper Group Inc. agreed to supply its fine paper brands to the divested business before and after the divestiture. The agreement also provided for the appointment of a trustee to complete the sales process if PaperlinX was unable to divest Cascades' merchant assets in the two provinces.

The registered consent agreement can be found on the Competition Tribunal's Web site: [www.ct-tc.gc.ca](http://www.ct-tc.gc.ca). For more information on this case, please consult the Technical Backgrounder, which is available on the Bureau's Web site: <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2157&lg=e>.

### **5.2.8 ASTRAL MEDIA INC. AND TELEMEDIA RADIO INC.**

On December 21, 2001, the Bureau challenged the proposed acquisition by Astral Media Inc. of Telemedia Radio's French language radio stations and of a 50 percent interest in Radiomédia (Astral already owned the other 50 percent interest) on the grounds that it would substantially lessen competition in six radio advertising markets in Quebec.



On September 3, 2002, a consent agreement was filed with the Competition Tribunal to resolve Bureau concerns about the merger. The agreement included the requirement that Astral sell its AM radio stations in all six relevant markets and CFOM-FM in Quebec City. Astral's two initial attempts to sell these radio stations failed when the necessary regulatory approval was not granted in the first case and the potential buyers withdrew their application in the second.

Subsequently, Corus Entertainment Inc. proposed exchanging five of its Quebec regional radio stations for the Astral radio stations that were available for sale. On January 21, 2005, the CRTC approved this transaction subject to certain conditions. The transaction between Astral and Corus was completed on May 27, 2005, resolving Bureau concerns.

The consent agreement can be found on the Competition Tribunal's Web site: [www.ct-ct.gc.ca](http://www.ct-ct.gc.ca).

### **5.2.9 THE PROCTER AND GAMBLE COMPANY AND THE GILLETTE COMPANY**

On January 28, 2005, The Procter & Gamble (P&G) Company announced that it intended to acquire The Gillette Company in a merger that would combine two of the world's leading consumer products companies. The Bureau conducted a thorough merger review to determine the competitive effects of the removal of Gillette as a competitor in the oral care, antiperspirant/deodorant and aftershave markets. Over the course of the examination, the Bureau consulted with customers and competitors and co-operated with the Directorate-General for Competition of the European Commission and the United States Federal Trade Commission.

The Bureau identified concerns in the oral care markets for battery-powered toothbrushes and teeth whitening products, which are not manufactured in Canada by either P&G or Gillette. In order to resolve competition concerns, P&G made commitments to the European Commission and the Federal Trade Commission to divest the Spinbrush and Rembrandt oral care lines worldwide. The Bureau was satisfied that these divestitures resolved competition concerns in Canada.

### **5.2.10 CARGILL LIMITED AND BETTER BEEF GROUP OF COMPANIES**

On April 15, 2005, Cargill Limited and the Better Beef Group of Companies, two of the largest beef processors in Canada, announced that Cargill proposed to acquire substantially all of the assets of Better Beef's cattle procurement, beef processing and other businesses. Following a comprehensive review, the Bureau announced on August 30, 2005, that the acquisition was not likely to result in a substantial lessening or prevention of competition.

In the course of its inquiry, the Bureau examined the merger's impact on the Canadian cattle and beef industry, focussing on the purchase of cattle and the sale of boxed beef and case-ready beef. The Bureau had to consider the impact of the bovine spongiform encephalopathy (BSE) crisis. The examination revealed that there was limited direct competitive overlap between Cargill and Better Beef in the purchase of cattle. In addition, the United States border had reopened to the export of live Canadian cattle under 30 months of age during the summer of 2005. Canadian cattle producers thereby regained a viable and competitive market.

The Bureau determined that, even if the border were to close again, the effects of the proposed transaction would not result in a substantial lessening or prevention of competition because of the geographic distance between Cargill's beef processing facility in High River, Alberta and Better Beef's facility in Guelph, Ontario. The Bureau also concluded that Canadian retailers would still have access to sufficient sources of supply for boxed beef following the merger and that large retailers would likely have sufficient countervailing power to offset any exercise of market power by the merged company in the supply of case-ready beef.

For more information on this case, please consult the Technical Backgrounder, which is available on the Bureau's Web site: <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1941&lg=e>.

### **5.2.11 GLAXOSMITHKLINE INC. AND ID BIOMEDICAL CORPORATION**

On September 7, 2005, GlaxoSmithKline Inc. (GSK) announced that it had reached an agreement to acquire ID Biomedical Corporation (IDB), a Vancouver-based biotechnology company developing innovative vaccine products. GSK, headquartered in the United Kingdom, is one of the world's leading research-based pharmaceutical companies. IDB's principal business in Canada is injectable influenza vaccines. In November 2005, the Bureau concluded that the transaction would not likely result in a substantial prevention or lessening of competition.

The Bureau found that the vaccine industry in Canada is unique because of the role that the Canadian federal, provincial and territorial governments play in providing certain vaccine products and because of the long term supply contracts necessary to

ensure security of supply for Canadians. Prior to the acquisition, IDB provided approximately 75 percent of the public requirements of influenza vaccine.

The Pandemic Contract, which expires in 2011, provides for a state of influenza pandemic vaccine production readiness in Canada by providing vaccines to Canadians in the event of a pandemic. This contract must be fulfilled by a pharmaceutical company that has sufficient production facilities in Canada. IDB (now a wholly-owned subsidiary of GSK) is responsible for the contract, which also covers 50 percent of the public requirement of annual influenza vaccine. The remaining 50 percent of the requirement for annual influenza vaccine is provided further to two other contracts, currently split between IDB and Sanofi Pasteur.

The Bureau found that there was no product overlap in Canada between the parties, since GSK never sold influenza vaccine in Canada prior to its acquisition of IDB. In addition, there were no significant issues relating to products under development.

The merger did not change the fact that there would be no competition until the next bidding process, in 2008, for 50 percent of the public requirement of annual influenza vaccine. At that time, there are likely to be a number of pharmaceutical companies, including IDB, capable of competing for that contract. The Bureau also determined that the acquisition would not likely result in any substantial lessening or prevention of competition in the small private market for influenza vaccines in Canada or any other vaccine products under clinical development.

For more information on this case, please consult the Technical Backgrounder, which is available on the Bureau's Web site: <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2139&lg=e>.

### **5.2.12 WHIRLPOOL CORPORATION AND MAYTAG CORPORATION**

In August 2005, Whirlpool Corporation announced its intention to acquire Maytag Corporation. Competition authorities in Canada, as well as in the United States, Brazil, Germany and Mexico, were notified of the transaction shortly thereafter. As the main focus of its analysis of the proposed transaction, the Bureau conducted interviews with industry stakeholders including competitors, major retailers, buying groups and appliance parts distributors. It acquired extensive information from these stakeholders, as well as from the parties, customers and competitors in the industry.

In mid-March 2006, the Bureau completed its review of the transaction. It advised the parties that grounds did not exist to challenge the proposed transaction before the Competition Tribunal in Canada.

The Bureau's analysis revealed that, although post-merger market shares were significant in the laundry segment, effective competition from a combination of North American and foreign competitors would continue, and these competitors would be able to expand their operations.

For more information on this case, please consult the Technical Background, which is available on the Bureau's Web site: <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2113&lg=e>.

### **5.3 OTHER NOTEWORTHY CASES**

The Bureau also reviewed a number of other noteworthy mergers in a variety of industries, including the proposed acquisition of Falconbridge Limited by Inco Limited, two of the world's largest nickel producers. The Bureau found that this merger was not likely to lead to a significant

lessening or prevention of competition in Canada and cleared the transaction in January 2006. As of March 31, 2006, the transaction was still under review by American and European authorities.

The Bureau's review of the acquisition of Riverside Forest Products Ltd. by Tolko Industries Ltd. was still ongoing at year-end.

The Bureau also reviewed the acquisition of Guidant Corporation by Boston Scientific Corporation following the breakdown of an earlier proposed merger between Johnson & Johnson and Guidant Corporation. Over the course of the examination, the Bureau consulted with customers and competitors and co-operated with the Federal Trade Commission (FTC) and the Directorate-General for Competition of the European Commission (EC). The Bureau determined that a consent order between Boston Scientific and the FTC, which included a commitment by Boston Scientific to divest Guidant's vascular intervention and endovascular businesses to Abbott Laboratories, together with commitments made to the EC, would adequately resolve competition concerns in Canada.

In May 2005, the Bureau was notified of an auction to be held by A&P Canada's U.S. parent corporation to divest its Canadian operations, namely, 237 grocery stores in Ontario. After a thorough market-by-market review involving all of A&P's assets in Ontario, the Bureau agreed to the terms of a consent agreement with a potential, ultimately unsuccessful, purchaser. Another purchaser acquired the Canadian operations.

In December 2005, the Bureau was notified of a proposed transaction between Western Forest Products Inc. and Canadian Forest Products Ltd., both integrated forest products companies with operations in the British Columbia Coastal Region. The companies proposed to enter into an

agreement whereby Western Forest would acquire substantially all of the assets of Canadian Forest's Englewood Logging Division. As part of the transaction, the companies also proposed to enter into a long-term fibre supply agreement. Central to this transaction was an agreement by Western Forest to close its Squamish pulp mill and supply all of its pulp logs and wood chips to the Howe Sound pulp mill where Canadian Forest was a partner.

Based on submissions by the parties and information obtained during the course of its review, the Bureau concluded that no grounds existed to challenge the proposed transaction.

## 5.4 DRAFT MERGER REMEDY BULLETIN

During public consultations on the revision of the *Merger Enforcement Guidelines* (MEGs) in 2004, a number of stakeholders raised the prospect of the Bureau releasing guidelines or a policy paper on the issue of remedies in the context of mergers. In response to these requests, the Bureau issued a draft *Information Bulletin on Merger Remedies in Canada* in October 2005. This document resulted from extensive consultations within the Bureau, as well as consultations with authorities in the United States and European Union. It resembles initiatives in other foreign jurisdictions where competition authorities have conducted reviews of their merger remedies policies to ensure that they remained effective.

In general, the Bureau's choice of remedy is based on the unique circumstances of a case. The draft document sets out how the Bureau will generally seek, design and implement remedies to resolve competition concerns arising from a merger. Members of the public were requested to submit written comments and/or suggestions on the draft

information bulletin to the Bureau by January 2006. The consultation process is also expected to include consultations with members of the competition law bar in a number of major Canadian cities, as well as with antitrust authorities in the United States and the European Union.

Once the public consultations and revision process are completed, the Bureau expects to publish a final document, which will provide stakeholders and businesses with more transparency and predictability on the Bureau's approach to merger remedies.

The draft *Information Bulletin on Merger Remedies in Canada* is available on the Bureau's Web site:  
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1982&lg=e>.

## 5.5 TECHNICAL BACKGROUNDEERS

In response to public demand for increased transparency in its investigative work, the Bureau published a policy on technical backgrounders in April 2005. The policy sets out the circumstances in which the Bureau will provide details of its analysis and the reasons behind its conclusions in particular investigations. The Bureau may issue a technical backgrounder:

- where a matter has received substantial publicity;
- when issues are sufficiently important or complex;
- where there is a need to clarify a point of law or policy;
- where there is a significant impact on consumers; or
- where the release will encourage greater compliance with the law through education.

In determining whether or not to publish a technical backgrounder, the Bureau will also be guided by the confidentiality provisions of the *Competition Act* and will consider comments from the parties involved in the case.

In the fiscal year ending March 31, 2006, the Mergers Branch published four technical backgrounders on merger review cases, which were well received by stakeholders. The Bureau is committed to continuing its efforts at transparency by issuing further technical backgrounders in the future. However, technical backgrounders are not intended to set precedents and will not be published when a case goes before the Competition Tribunal or the courts.

For additional information on technical backgrounders, please refer to the “Policy Statement for the Publication of Technical Backgrounders” available on the Bureau’s Web site:  
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1301&lg=e>.

## 5.6 SERVICE STANDARDS

### 5.6.1 MERGER EXAMINATIONS, 2005-2006

<b>Examinations Commenced</b>	285	Includes notifiable transactions, Advance Ruling Certificate (ARC) requests and examinations launched for other reasons (Investment Canada Notices, Heritage Canada Notices, complaints or otherwise). Does not include ongoing examinations from the previous fiscal year.	
		259	Notifications (includes Advance Ruling Certificate requests).
		26	Other (Investment Canada Notices, Heritage Canada Notices, complaints or otherwise).
Notifiable Transactions	62	Includes all notifications where a short form or long form was filed (with or without a request for an Advance Ruling Certificate).	
		45	ARC requests <b>and</b> short form or long form filings.
		17	Short form or long form filings only.
Advance Ruling Certificate Requests	242	Note that the combined total of <i>Notifiable Transactions</i> and <i>Advance Ruling Certificate Requests</i> exceeds the number of <i>Examinations Commenced</i> owing to the fact that in many instances a long form or short form notification was filed along with a request for an Advance Ruling Certificate.	
		197	ARC requests only.
		45	ARC requests <b>and</b> short form or long form filings.
<b>Examinations Concluded</b>	283	If a transaction involved a notification <b>and</b> an Advance Ruling Certificate request, it is counted only once. This number includes matters before the Competition Tribunal that were concluded or withdrawn.	
		277	No issue under the <i>Competition Act</i> .
		6	Concluded with issues.

No Issue Under the <i>Competition Act</i>	277	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 <i>Competition Act</i> .
	166	Advance Ruling Certificates
	85	“No-action” letters.
	26	Other communication indicating no issue under the <i>Competition Act</i> .
Concluded With Issues	6	Examinations where the proposed transaction raised competition concerns.
	3	Consent Agreements Registered with the Competition Tribunal: <i>Quebecor Media inc. and Sogides Ltée; Galaxy Limited Partnership and Famous Players; PaperlinX Canada Ltd. and Cascades Fine Paper Group Inc.</i>
	2	Bureau was satisfied that remedies required by foreign agencies resolved Canadian competition concerns: <i>The Procter and Gamble Company and The Gillette Company; Boston Scientific Corporation and Guidant Corporation.</i>
	1	Proposed merger abandoned in whole or part as a result of Commissioner’s position.
<b>Total Examinations During the Year</b>	303	Includes 18 cases carried over from 2004-2005.
Total Examinations Concluded	283	
Examinations Ongoing at Year-End	20	Includes section 92 matters. Three cases carried over from 2004-2005 and 17 cases carried over from 2005-2006.
<b>Written Opinions Issued</b>	0	
<b>Section 92 Matters Before the Tribunal and the Courts</b>		Excludes applications for consent orders and consent agreements.
Ongoing at Year-End	1	<i>Saskatchewan Wheat Pool and James Richardson International Limited.</i>
Concluded or Withdrawn	0	“Concluded” means that the Competition Tribunal or the courts issued an order or decision and there were no further appeals.
<b>Other Tribunal Proceedings</b>		Includes section 106 applications.
Ongoing at Year End	2	<i>United Grain Growers Limited and Agricore Cooperative Ltd; West Fraser Timber Co. Ltd. and Weldwood of Canada Ltd. (Burns Lake Native Development Corporation et al. litigation).</i>
Concluded or Withdrawn	1	“Concluded” means that the Competition Tribunal or the courts issued an order or decision and there were no further appeals. <i>RONA Inc. and Réno-Dépôt Inc.</i>

## 5.6.2 BREAKDOWN OF MERGERS BY YEAR, 2002-2006

Business Line	2002-03	2003-04	2004-05	2005-06
Pre-Merger Notification Filings*	28	22	31	17
Advance Ruling Certificate Requests	224	159	214	242
Other Examinations	27	21	24	26
<b>Total Mergers</b>	<b>279</b>	<b>202</b>	<b>269</b>	<b>285</b>

\* Excludes notification filings for which Advance Ruling Certificates were also requested.

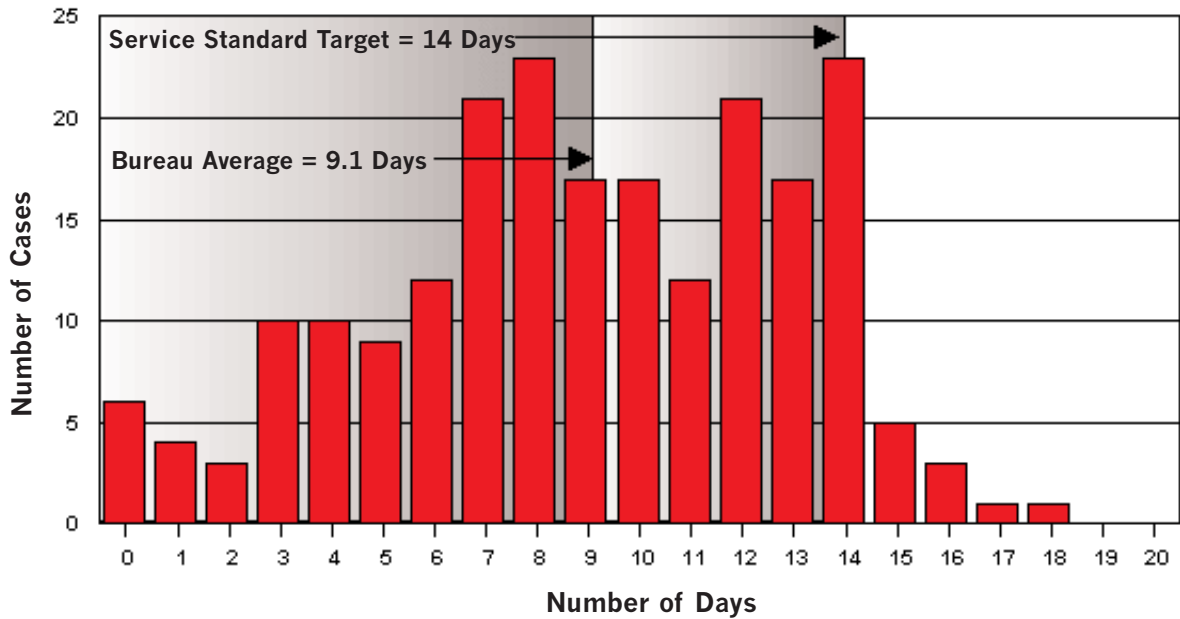
## 5.6.3 MERGER REVIEW: MEETING SERVICE STANDARDS

Complexity	2002-03	2003-04	2004-05	2005-06
Not Complex	215	165	213	216
Complex	21	18	19	36
Very Complex	2	2	8	7
<b>Total</b>	<b>238</b>	<b>185</b>	<b>240</b>	<b>259</b>

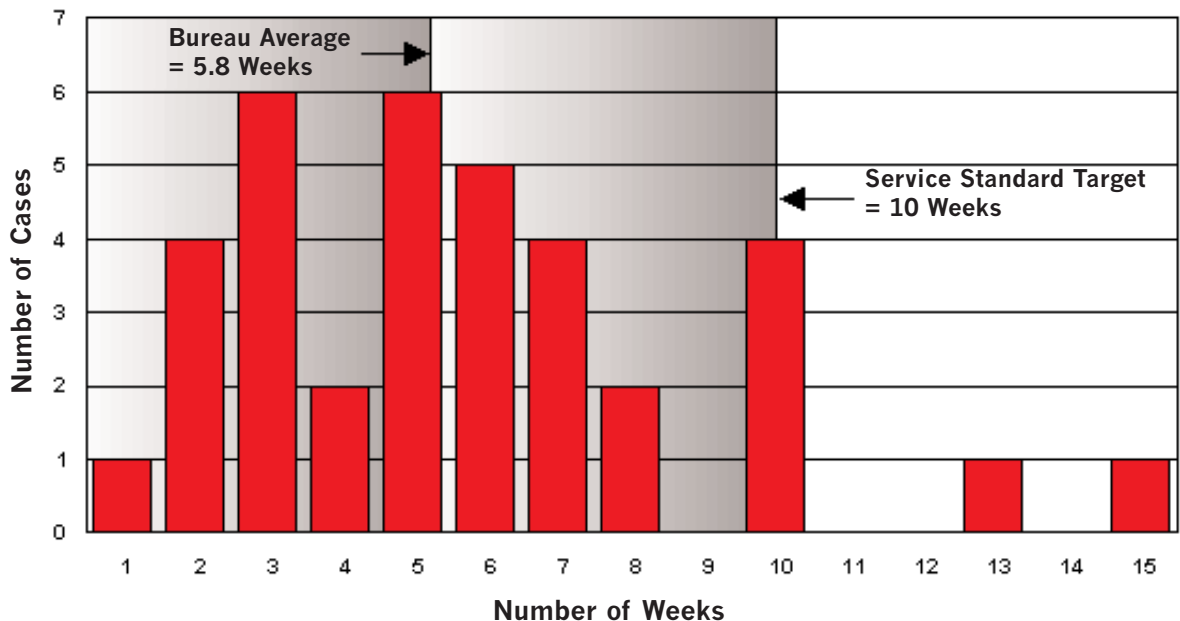
Complexity	Target	2002-03		2003-04		2004-05		2005-06	
Not Complex	14 days	213	99.1%	164	99.4%	208	97.7%	205	94.9%
Complex	10 weeks	20	95.2%	17	94.4%	17	89.5%	34	94.4%
Very Complex	5 months	2	100%	2	100%	7	87.5%	6	85.7%
<b>Total</b>		<b>235</b>	<b>98.7%</b>	<b>183</b>	<b>98.9%</b>	<b>232</b>	<b>96.3%</b>	<b>245</b>	<b>94.6%</b>

## 5.6.4 MEETING SERVICE STANDARD TARGETS, APRIL 1, 2005, TO MARCH 31, 2006

### Non-Complex Transactions

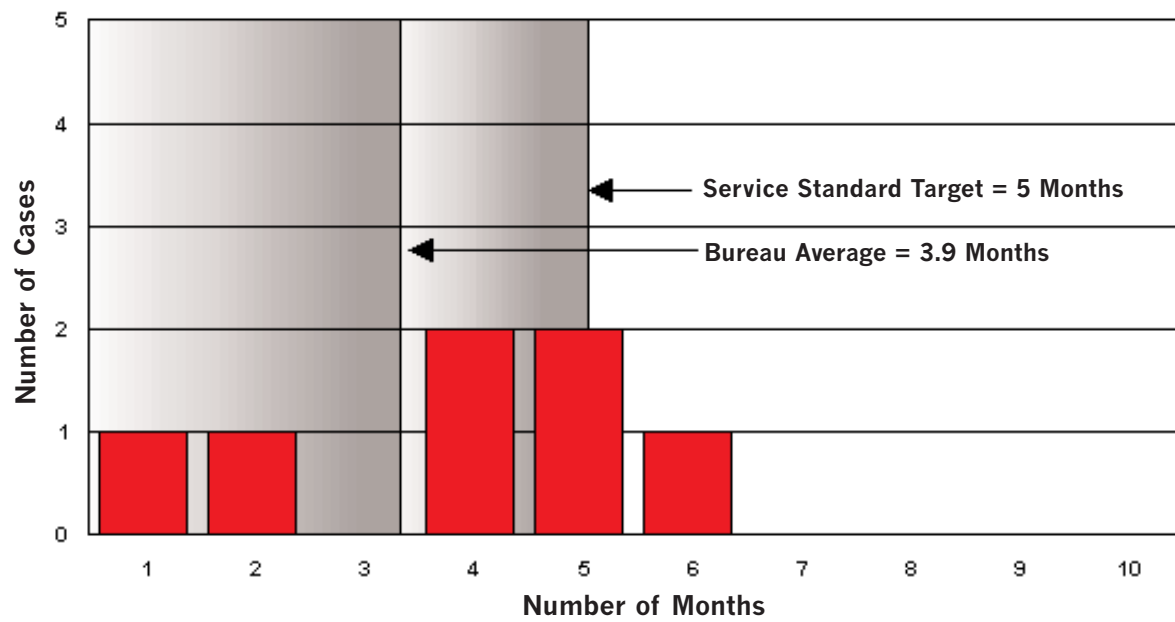


### Complex Transactions





### Very Complex Transactions







## CHAPTER 6

## ADVOCATING FOR COMPETITION AND FOR INTERNATIONAL COORDINATION

This chapter covers the wide range of activities the Bureau pursues to promote competition. Domestically, Bureau officials appear before federal and provincial government agencies and regulatory bodies, and also participate in departmental and interdepartmental policy-making. Internationally, the Bureau plays a leadership role in the International Competition Network and on the Competition Committee of the Organization for Economic Co-operation and Development. Bureau officials also contribute to debates on competition issues through publications, speeches and seminars (see Chapter 8 and appendices II and III).

## **6.1 DOMESTIC ACTIVITIES**

### **6.1.1 COMMITTEE TO ADVISE ON TROPICAL MEDICINE AND TRAVEL**

The Committee to Advise on Tropical Medicine and Travel (CATMAT) provides recommendations on the prevention and treatment of infectious diseases that may be encountered by Canadians while traveling outside Canada. The committee's members include representatives from the Canadian Paediatric Society, the National Advisory Committee on Immunization, the Department of National Defence, the Center for Disease Control and Prevention in Atlanta, and the Workplace Health and Public Safety Program.

On October 28, 2005, a Bureau representative addressed the CATMAT. The address focused on anti-competitive clauses

in pharmaceutical contracts and drew on the Bureau's recent experience in several investigations in this area. This presentation was the first of several the Bureau has since made on the subject. It hopes that by raising awareness of anti-competitive clauses among public purchasers of pharmaceuticals that Canadians will benefit from lower prices for health care.

### **6.1.2 DENTAL HYGIENE**

On March 7, 2006, the Bureau published letters on its Web site that it had sent to the governments of Alberta, Nova Scotia and New Brunswick, supporting provincial initiatives to create independent colleges of dental hygiene and making suggestions for the rules that might govern an effective and efficient college. It encouraged the provinces to use the opportunity to establish meaningful competition in the market for dental hygiene services.

The Bureau suggested that if the provinces believed that public safety measures beyond those maintained by independent colleges of dental hygiene were needed, they should establish those safeguards at as low a cost to consumer welfare as possible. For instance, a legislative scheme that allowed one profession to control patient access to another profession might be inefficient and detrimental to the consumers of each province.

### 6.1.3 AIR LIBERALIZATION

On May 4, 2005, the Commissioner appeared before the House of Commons Standing Committee in support of further liberalization of air travel and cargo within North America and between Canada and off-shore countries. In her remarks, the Commissioner outlined the role and activities of the Bureau in dealing with competition abuses in the air sector and provided her views on questions raised in the Minister of Transport's 2004 reference paper to the Committee on airline market liberalization. Specific recommendations included:

- the reduction and eventual removal of restrictions on the ownership and control of Canadian air carriers;
- allowing rights of establishment, to permit foreign-owned "Canada-only carriers";
- permitting cabotage to further promote competition on routes within Canada but on a reciprocal basis with other countries;
- establishing a U.S.-style open skies agreement with subsequent negotiations at a later date to further liberalize Canada/U.S. air markets;
- allowing co-terminalization enabling U.S. or Canadian carriers to deliver U.S. or Canadian cargo to the other country using routes with more than one destination in the country of destination; and
- initiating negotiations to further liberalize overseas air travel on a bilateral basis.

In November 2005, consistent with the Commissioner's recommendations, the Government of Canada negotiated an expanded open skies agreement with the United States.

### 6.1.4 TELECOMMUNICATIONS

#### Telecommunications Policy Review Panel

On August 15 and September 15, 2005, the Bureau filed its submissions to the Telecommunications Policy Review Panel as part of the Panel's consultation on Canada's telecommunications policy and regulatory framework. The Bureau's recommendations included:

- a greater role for competition principles in assessing the need for regulation;
- increased reliance on market forces, where warranted;
- a review of telecommunications policy objectives;
- improved information sharing between the Bureau and the CRTC and best use of expertise within both agencies; and
- the removal of foreign ownership restrictions in telecommunications.

The full text of the Bureau's submissions is available on the Bureau's Web site:  
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1969&lg=e>

In March 2006, the Telecommunications Policy Review Panel issued its report, which made a number of recommendations to the Minister of Industry that were consistent with Bureau views. In particular, the report:

- endorsed greater reliance on market forces and the broad application of competition law principles;
- recommended a narrowed set of policy objectives and specific guidelines for the CRTC under the *Telecommunications Act*;
- recognized the importance of utilizing the respective expertise in the CRTC and the Bureau in a more coordinated and effective manner; and
- addressed foreign ownership restrictions.

### Local Forbearance

On April 28, 2005, the CRTC initiated Public Notice 2005-2 to determine the framework, including the criteria, for forbearance from regulation of residential and business local telephone services. The Bureau participated fully as it considered this proceeding critical to the development of competitive markets for local telephone services in Canada. Bureau participation included written submissions, interrogatories and a hearing appearance.

The Bureau called for a rigorous competition analysis, such as the one it uses to review mergers, and proposed a forward-looking framework to help the CRTC determine when consumers and businesses would benefit from deregulation of local telephone services. The Bureau submissions also:

- provided a general framework for definition of the relevant product and geographic markets applicable to local residential and business services, as well as for the CRTC's assessment of market power within those markets;
- identified the types of data and evidence required to properly determine the relevant markets and assess market power; and
- provided a practical, analytical approach to assessing the data generated.

### Review of CRTC Commercial Radio Policy

On January 13, 2006, the CRTC initiated a review of its commercial radio policy through Public Notice 2006-1. On March 15, 2006, the Bureau filed a submission to the CRTC to ensure that the review took competitive factors into consideration.

In its submission, the Bureau focused primarily on issues related to radio station mergers, local management agreements (LMAs), and the regulatory approach to activities over new and emerging distribution platforms.

In particular, the Bureau encouraged the CRTC to consider the following points:

- Consistent with the approach taken in other jurisdictions, the Commission should assess the impact of a broadcasting merger on competition for advertising dollars in accordance with well-recognized competition principles, outlined in the Bureau's *Merger Enforcement Guidelines*.
- Where the Commission approves a radio station merger or LMA that would likely result in a significant increase in local advertising rates, but does so with a view to implementing one or more of the objectives of the *Broadcasting Act*, it should clearly explain to stakeholders how it balanced these interests and how permitting such anti-competitive behaviour would be justified in the circumstances.
- The Commission should work toward achieving consistency and neutrality in its regulation of new media technologies, not by regulating new forms of broadcasting but by deregulating traditional ones to help broadcasters adapt to competition with new distribution platforms.

An executive summary of the submission is available on the Bureau's Web site. The complete comments of the Commissioner of

Competition are available on the CRTC's Web site:

[http://support.crtc.gc.ca/applicant/docs.aspx?pn\\_ph\\_no=2006-1&call\\_id=29678&lang=E&defaultName=Competition%20Bureau](http://support.crtc.gc.ca/applicant/docs.aspx?pn_ph_no=2006-1&call_id=29678&lang=E&defaultName=Competition%20Bureau)

## 6.2 INTERNATIONAL ACTIVITIES

Bureau officials have assumed leadership roles and actively participate in a number of international organizations. The work at these organizations fosters greater co-operation among competition authorities around the world, which is critical for law enforcement. It also provides an opportunity to disseminate information to the public about Canada's competition policy system and helps promote coherence between the Bureau's approach to competition law and that of its foreign counterparts. The Bureau also leads Canada's free trade negotiations in the area of competition policy.

### 6.2.1 INTERNATIONAL COMPETITION NETWORK (ICN)

Founded in October 2001, the ICN is a network of competition authorities from around the world with significant private sector involvement. In the past year, it has grown to include 97 member agencies from 85 countries. The ICN:

- provides antitrust agencies from developed and developing countries with a forum to address practical antitrust enforcement and policy issues of common concern;
- facilitates procedural and substantive convergence in antitrust enforcement through a results-oriented agenda and an informal, project-driven organization; and
- promotes more efficient, effective antitrust enforcement worldwide by enhancing convergence and co-operation for the

benefit of consumers and businesses around the world.

The ICN held its fourth annual conference in Bonn, Germany, in June 2005. At the conference, the establishment of the Telecommunications Working Group was announced. Canada's Commissioner of Competition was named one of the three co-chairs of the working group.

The ICN's three established working groups—the Cartel Working Group, the Competition Policy Implementation Working Group and the Mergers Working Group—had a productive year.

The Cartel Working Group issued three reports in 2005-2006: *Obstruction of Justice in Cartel Investigations*, *Interaction of Public and Private Enforcement in Cartel Cases* and *Co-operation Between Competition Agencies in Cartel Investigations: Part 1*. It also continued its work on the Anti-Cartel Enforcement Manual by updating the chapter titled "Drafting and Implementing an Effective Leniency Program" and developing a new chapter titled: "Digital Evidence Gathering."

The 2005 Annual Cartel Workshop, which took place in Seoul, Korea, covered a range of topics, including investigative techniques and analysis, detecting cartels and generating leads, calculating fines, and gathering foreign-based and digital evidence. The group also created Web-linked templates designed to highlight important features of ICN members' anti-cartel systems.<sup>1</sup>

The Mergers Working Group produced a variety of materials, including the following:

<sup>1</sup><http://www.internationalcompetitionnetwork.org/cartels/templates.html>

- two new recommended practices to add to its existing set of eleven Recommended Practices for Merger Notification Procedures;
- the *Report on the Implementation of the Recommended Practices*, the *Comparative Study of Merger Notification Filing Fee Systems* and the *Report on Waivers of Confidentiality in Merger Investigations*;
- a preliminary draft of the Merger Guidelines Workbook and a handbook on investigative techniques (the workbook will help provide a common understanding of the basis for, and content of, merger guidelines as an important tool in improving consistency of analysis and decision-making internationally); and
- a study on merger remedies that outlines key principles and a range of tools that can be used.

In March 2006, the Merger Working Group held a two-day workshop in Washington, D.C., to promote greater understanding and further implementation of the Guiding Principles and Recommended Practices for Merger Notification and Review Procedures. Over 80 delegates, including senior representatives from 35 member agencies as well as non-governmental advisors, attended this interactive program. The workshop addressed a range of topics, including:

- the establishment of notification thresholds;
- the initiation of the merger review process;
- effective use of merger review periods; and
- the interplay among transparency, confidentiality, and procedural fairness in merger review.

The workshop encouraged the exchange of practical experience and advice among delegates regarding implementation of the ICN standards.

The Competition Policy Implementation Working Group focused on business outreach to promote a better understanding of the benefits of competition and build support for a competition authority's mission. The group explored the messages and mechanisms used by competition authorities around the world for business outreach and compiled an on-line business outreach toolkit.<sup>2</sup>

In February 2006, the Bureau hosted an ICN workshop to discuss business outreach practices by competition authorities. Representatives from 18 competition agencies and two private sector firms participated in the workshop.

In addition to the Commissioner's role as co-chair of the Telecommunications Working Group, Bureau senior staff assumed other leadership roles in the ICN as co-chair for the Subgroup on Enforcement Techniques for Cartels; co-chair for the Operational Framework Working Group; and co-chair for Subgroup 2 of the Competition Policy Implementation Working Group on Enhancing the Role of Competition. The Bureau also acts as the de facto Secretariat for the ICN. (International)

## 6.2.2 ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

### Competition Committee

The Bureau is Canada's lead representative on the Competition Committee of the Organization for Economic Co-operation and Development (OECD).

<sup>2</sup><http://www.internationalcompetitionnetwork.org/OutreachToolkit/>



The OECD Competition Committee and its working parties examined a variety of competition issues this year. The Commissioner of Competition remains a member of the Bureau of the Competition Committee (the Committee's steering group).

The mandate of the Competition Committee is to review developments in competition laws and policies, to discuss current issues facing competition authorities and to promote enforcement co-operation between competition authorities. The OECD's Competition Committee conducted roundtables on the merits, evaluation of the actions and resources of competition authorities, barriers to entry and resale below cost. The Committee also conducted a number of peer reviews.

The mandate of Working Party 2<sup>3</sup> is to promote dialogue between competition authorities and regulators that will enable governments to implement policies that minimize market distortions and foster competition. This year, Working Party 2 examined:

- the impact of substitute services on regulation;
- competition to promote efficiency in the provision of hospital services;
- the implementation of regulatory recommendations;
- methods for including competition in regulatory impact analysis; and
- the ensuring of access to key capacity for new entrants.

Working Party 3's mandate is to improve national competition law enforcement efforts and increase international co-operation in

competition law enforcement. Working Party 3 worked on the following topics:

- measurement of the harm caused by hard core cartels and assessment of the benefits of competition enforcement;
- private remedies: discovery and gathering evidence;
- private remedies: passing on defence (i.e. a claim by a defendant that the plaintiff "passed on" at least some of the overcharge to its customers);
- recommended practices for formal exchanges in international cartel investigations;
- co-operation with public prosecutors in criminal cartel investigations; and
- indirect purchaser standing and definition of damages.

The two-day Global Forum on Competition, which was attended by representatives from OECD countries and the developing world, was held in February 2006. The Forum focused on concessions, the prosecution of cartels without direct evidence of agreement, cartel case studies and a peer review of Chinese Taipei.

### **Committee on Consumer Policy**

The Bureau also participates in the OECD Committee on Consumer Policy, which examines questions regarding consumer policy and law. The 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 Committee met in Paris France, in October 2005 and in Jeju, Republic of Korea, in March 2006. The topics discussed included:

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<sup>3</sup> Working Party 1 is defunct.

- the implementation of the OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders (Cross-border Guidelines);
- dispute resolution and redress;
- demand-side economics for consumers;
- consumer information campaigns; and
- new technologies and emerging business models including spam.

Bureau representatives contributed to the work of the committee in 2005-2006 in the areas of dispute resolution and consumer redress, spam, cross-border enforcement, co-operation in deceptive marketing practices, the implementation of the Cross-Border Guidelines, and consumer education and awareness.

The implementation of the Cross-Border Guidelines remained at the core of the committee's work. The Guidelines were adopted in June 2003 with the aim of fostering international co-operation in the fight against fraudulent and deceptive commercial practices. The Bureau has continued its efforts to implement the Guidelines in Canada in collaboration with its various partners. The Bureau also contributed to the implementation report submitted to the Council of the OECD in June 2006.

Bureau officials participated in the committee's Working Group on Dispute Resolution and Redress and are involved in the development of an OECD recommendation that aims "to articulate the elements of an effective and comprehensive dispute resolution and redress system and identify ways to ensure that domestic systems are more responsive to cross-border disputes." In April 2005, Bureau representatives attended a workshop in Washington on the subject of dispute

resolution and redress. A Bureau official gave a presentation on existing and proposed powers (Bill C-19) to obtain redress under the *Competition Act*.

### OECD Spam Task Force

Bureau representatives also contributed to the Canadian delegation to the OECD Spam Task Force. The Task Force produced a *Report of the OECD Task Force on SPAM: Anti-Spam Toolkit of Recommended Policies and Measures*. The Committee on Consumer Policy approved the proposed draft of OECD *Recommendation on Cross-border Spam Enforcement Cooperation*, which included the Bureau's input.

### 6.2.3 INTERNATIONAL CONSUMER PROTECTION AND ENFORCEMENT NETWORK (ICPEN)

In November 2005 and March 2006, Bureau representatives participated in the biannual meetings of the International Consumer Protection and Enforcement Network (ICPEN) held in Seoul and Jeju, Republic of Korea. ICPEN is a voluntary organization of trade practices law enforcement authorities from 34 countries. Most of these countries are members of the OECD. ICPEN's mandate is to share information about cross-border commercial activities that may affect consumer interests and to encourage international co-operation among law enforcement agencies.

At the Seoul meeting, Bureau representatives discussed a study that attempted to measure the detriment to consumers from mass marketing fraud schemes in Canada. A Bureau official also gave a presentation on building effective educational and awareness campaigns for fraud prevention.

At the Jeju meeting, the Bureau, as chair of the ICPEN Fraud Prevention Month Working Group, reported on the 2006 ICPEN Fraud Prevention Month. The ICPEN Fraud Prevention Month Working Group aims at generating interest among ICPEN members to actively participate in the ICPEN Fraud Prevention Month. The Bureau indicated that 24 ICPEN member and observer countries, an increase of 30 percent from 2005, committed to holding a variety of activities aimed at raising awareness and educating consumers about fraud. At the meeting, many countries acknowledged Canada's leadership in fraud prevention and mentioned that Canada's Fraud Prevention Forum was a worthy model to emulate.

In Jeju, a joint meeting between ICPEN and the OECD Committee on Consumer Policy (CCP) took place on the subject of public education and awareness relating to fraud. The meeting was the result of a Bureau proposal made to the CCP and ICPEN as a means to further implement the *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders*. In addition to OECD member countries and ICPEN members, a number of Asian countries were invited to attend as observers. Consequently, Bureau representatives were able to establish contact with officials from India, Malaysia, Taiwan, Thailand and Indonesia.

The Bureau also co-chairs the ICPEN Mass-Marketing Fraud Working Group with the United Kingdom Office of Fair Trading. The purpose of this group is to increase the intelligence-sharing capacity of the network and to undertake joint enforcement action in combating deceptive cross-border marketing practices. A Bureau representative reported on the group's progress.

On March 3, 2006, the Bureau, along with 61 other government agencies worldwide, completed a special three-day Internet

surveillance and enforcement sweep targeting bogus product claims found on the Internet. This year's international sweep was spearheaded by 23 ICPEN agencies. Bureau officers searched for Canadian-based Internet sites making unrealistic performance claims about their products' capability to cure serious diseases and collected spam using e-mail "harvest" accounts. The results of the ICPEN sweep will be analysed, and the Bureau will take follow-up enforcement action as necessary. The Internet Sweep is part of the Bureau's involvement in ICPEN's Fraud Prevention Month campaign, which is intended to provide consumers with the knowledge and skills to recognize, report and stop scams.

#### **6.2.4 ASIA-PACIFIC ECONOMIC COOPERATION (APEC)**

Canada has continued to participate in the Asia-Pacific Economic Cooperation (APEC)-OECD Cooperative Initiative, an agreement between the two organizations on joint work on regulatory reform. The OECD's Group on Regulatory Policy approved the Integrated Checklist for self-assessment on regulatory competition and market openness policies in March 2005. The third phase of this initiative, to be held in September 2006, will focus on encouraging economies to use the APEC-OECD Integrated Checklist for Regulatory Reform as a self-assessment policy tool. These meetings will facilitate dialogue and provide an opportunity to select key issues for future study. It will also provide an opportunity to work on a two-year plan to promote better understanding of structural and regulatory reform issues in APEC and OECD.

#### **6.3 TECHNICAL ASSISTANCE**

The Bureau continues to provide technical assistance to a number of countries. This

service may include providing information on Canadian policy, law and practices; welcoming visitors from foreign competition authorities and governments; helping develop or refine foreign competition laws; and providing advice on specific investigations. This year, the Bureau provided technical assistance to a number of countries, including Costa Rica, Chile and Switzerland.

### 6.3.1 COSTA RICA

In light of commitments in the Canada–Costa Rica Free Trade Agreement, the Bureau—in partnership with the Canadian International Development Agency (CIDA), the Foreign Investment Advisory Services (FIAS), Private Sector Development Vice-Presidency of the World Bank Group, and the Commission for Promotion of Competition (COPROCOM) of the Ministry of Economy, Industry and Trade, Government of Costa Rica—is participating in a two-year technical assistance project entitled “The Role and Importance of Competition Policy in Promoting Investment, Growth, Competitiveness and Poverty Reduction in Costa Rica.”

The main goals of the project are to continue to build a competition culture in Costa Rica and to strengthen the staff and institutional capacity of its competition authority (COPROCOM).

In January 2006, team members attended a one-week fact-finding and needs assessment mission in Costa Rica in order to better understand competition law and policy in Costa Rica and its economy, society and institutions, in addition to setting the agenda for the first year of the project. Phase I of the project will focus mainly on:

- data-collection and analysis relating to specific cases where competition problems have been encountered;

- in-house training on a variety of topics, including data management, collection and understanding of market information, establishment of guidelines, bid-rigging and other issues;
- internships at the Bureau for two COPROCOM staff;
- analysis of two industry sectors from a competition and investment point of view; and
- a national conference in Costa Rica to disseminate diagnostic results, build awareness of the country’s competition policy and strengthen COPROCOM’s advocacy role.

## 6.4 FREE TRADE AGREEMENTS (FTAs)

The Bureau leads Canada’s free trade negotiations in the area of competition policy and the specific development of competition provisions in such agreements.

Canada is currently negotiating or exploring free trade with the following partners: Korea; European Free Trade Association; Central America Four; the Free Trade Area of the Americas (FTAA); Singapore; the Andean Community Countries; the Dominican Republic; and the Caribbean Community and Common Market.

## 6.5 OTHER TRADE ISSUES

### 6.5.1 CANADA–JAPAN ECONOMIC FRAMEWORK

The purpose of the economic framework with Japan is to address strategic economic priorities and emerging opportunities and to help bilateral economic relations reach their full potential. The framework identifies as

one of its priority areas the Canada–Japan Agreement Concerning Co-operation on Anti-Competitive Activities, which was signed and implemented in the fall of 2005.

### **6.5.2 CANADA–EUROPEAN UNION TRADE AND INVESTMENT ENHANCEMENT AGREEMENT (TIEA)**

The Canada–European Union Trade and Investment Enhancement Agreement (TIEA) is aimed at further developing existing co-operation while providing a general framework for bilateral trade and investment relations. The importance of embracing the principles of competition was recognized in the framework, which laid out the scope and objectives of the agreement.

### **6.5.3 NAFTA CHAPTER 11 ARBITRATION: UNITED PARCEL SERVICE OF AMERICA, INC. V. GOVERNMENT OF CANADA**

The Bureau continued to work with Canada's litigation team in preparing to defend Canada's position with respect to a NAFTA Chapter 11 United Parcel Service (UPS) claim. The claim argues that Canada Post was engaging in anti-competitive practices by providing its courier services with advantages that were not extended to UPS Canada services. In December 2005, a hearing was held in Washington, D.C. A decision is pending.

### **6.5.4 EMPAGRAN**

*Empagran v. Hoffman-LaRoche* was a civil action in which non-U.S. residents sought compensation through U.S. courts for

financial harm suffered as a result of a worldwide price-fixing conspiracy among vitamin producers and distributors. On January 9, 2006, the case was brought to a close when the U.S. Supreme Court denied the foreign plaintiffs' petition for certiorari seeking review of the decision by the District of Columbia Court of Appeals (DCCA) on remand. On June 28, 2005, the DCCA had dismissed the foreign plaintiff's appeal and affirmed the District Court's judgment that the claim against Hoffmann-LaRoche lacked subject matter jurisdiction under the *Foreign Trade Antitrust Improvements Act*. The DCCA held that a plaintiff must show that the domestic effects of the anti-competitive conduct are the "proximate cause" of the injury to foreign parties.

The Minister of Justice, acting in close collaboration with, and on the advice of, the Bureau, Foreign Affairs Canada and International Trade Canada, had filed an *amicus curiae* brief with the DCCA concerning the issues remanded in February 2005. Canada's brief focused on the importance of principles of international law and comity in interpreting and applying U.S. antitrust laws and the implications of the court's decision on international co-operation in the investigation and prosecution of international cartels and on the efficacy of the Bureau's immunity program.

## **6.6 COMPETITION LAW**

### **6.6.1 CANADA–JAPAN CO-OPERATION AGREEMENT**

On September 7, 2005, Canada signed a co-operation agreement with Japan. The agreement is designed to contribute to the effective enforcement of each country's competition law by co-operation and, where appropriate, co-ordination.

### **6.6.2 OTHER**

In addition, the Bureau held a number of meetings with its international counterparts. A trilateral meeting to discuss antitrust matters was held with the United States and Mexico, and a bilateral meeting to discuss consumer matters was also held with the United States in November 2005. A bilateral meeting was held with Japan in March 2006.



## CHAPTER 7

## MODERNIZING CANADA'S APPROACH TO COMPETITION LAW

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

### 7.1 BILL C-19

As reported in the 2004-2005 Annual Report, Bill C-19 (*An Act to amend the Competition Act*) was introduced in the House of Commons on November 2, 2004. It was debated in the House of Commons on November 16, 2004, and then referred to the Standing Committee on Industry, Natural Resources, Science and Technology before second reading. The Committee held several meetings on this bill in November and December 2004 as well as in 2005. Officials from the Bureau and Industry Canada, in addition to witnesses such as the Association of Canadian Advertisers, the Canadian Bar Association, the Canadian Council of Chief Executives, the Canadian Chamber of Commerce, and the Retail Council of Canada, appeared before the Committee. Bill C-19 died on the Order Paper upon the dissolution of Parliament on November 28, 2005.

### 7.2 EFFICIENCIES

As reported in the 2004-2005 Annual Report, the Bureau launched a three-phase consultation process on the treatment of efficiencies under the Act in September 2004.

In the first phase, the Bureau issued a consultation paper on the treatment of efficiencies, inviting written submissions that were complemented by roundtable discussions held across Canada. In the second phase, Bureau members met with their counterparts from other member nations of the OECD at an international roundtable to discuss the treatment of efficiencies in other jurisdictions.

The third phase of the consultations centred around the work of an advisory panel on efficiencies, which began meeting in March 2005 and submitted a report in August 2005. The advisory panel was composed of experts with backgrounds in economics, business and international trade. The panel was asked to submit a report about the role



that efficiencies should play in the context of Canada's economy in the 21<sup>st</sup> century. The panel was also asked to consider the relevance of the various types of efficiency, particularly dynamic efficiency, to Canadian competition policy.

The Bureau is taking into consideration all of the information it gathered during this three-phase consultation process and, in particular, is looking closer at dynamic efficiencies.

### **7.3 SECTION 45**

In the fall of 2005, the Bureau struck internal and external working groups of lawyers and economists to help it consider various models to assess potential features of an amended section 45 of the Act.

Members of the working groups agreed on criteria for evaluating the various models and began their systematic assessment of the models in the context of a number of case scenarios, all with a view to determining, among other things, what behaviour the provisions should cover and whether the provisions should be criminal or civil. The working groups continue to meet on a regular basis. The Bureau intends to formulate proposals regarding the reform of section 45 following completion of the working groups' assessments and to hold technical roundtables to discuss them.

### **7.4 PRIVATE MEMBERS' BILLS**

In 2005, there were a small number of private members' bills of relevance to the Bureau. None were passed by Parliament, and all died on the Order Paper upon the dissolution of Parliament on November 28, 2005.

#### **7.4.1 C-229, AN ACT TO ESTABLISH THE ENERGY PRICE COMMISSION**

This bill sought to establish an Energy Price Commission to regulate the wholesale and retail price of motor fuels, including diesel and propane, as well as heating oil and electric power. It also linked the issue of price control to competition.

#### **7.4.2 C-249, AN ACT TO AMEND THE BANK ACT (BANK MERGERS)**

This bill proposed 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 insolvency or informed the Minister that none of the applicants wishing to merge would become insolvent. In these cases, the merger would have to be approved by a resolution of the Senate and House of Commons.

#### **7.4.3 C-321, AN ACT TO ESTABLISH AND MAINTAIN A NATIONAL DO-NOT-CALL REGISTRY**

This bill sought to create a national registry of Canadian residential telephone subscribers who choose not to receive telephone solicitations. The bill would prohibit companies or individuals from soliciting or causing a solicitation to a listed residential telephone subscriber. It was made redundant by the passage of Bill C-37, the Government's "do not call" legislation.

#### **7.4.4 C-387, AN ACT TO AMEND THE Competition Act (INVESTIGATIONS BY COMMISSIONER AND CLASS PROCEEDINGS) AND TO MAKE A RELATED AMENDMENT TO ANOTHER ACT**

This bill proposed to amend the *Competition Act* regarding investigations by the Commissioner and class action suits. It would have caused the Commissioner to conduct an inquiry upon application by 100 or more people who believed that there existed, in any sector of the Canadian economy, an arrangement or relationship that might constitute an offence. The bill also provided for class actions for compensation of individuals who could demonstrate that they had suffered losses due to a contravention of the Act.

#### **7.4.5 S-15, AN ACT TO PREVENT UNSOLICITED MESSAGES ON THE INTERNET (SPAM CONTROL ACT)**

This bill sought to establish a list of Internet users who did not wish to receive commercial solicitation by electronic mail (no-spam list), to create legal obligations for Internet service providers and to allow for a remedy to seek damages from senders of spam.

### **7.5 PRIVATE MEMBERS' MOTIONS**

#### **7.5.1 165: GASOLINE PRICES**

Bloc Quebecois MP Yvon Lévesque introduced this motion in October 2004. The motion read:


*That, in the opinion of this House, the government should take action with regard to gasoline prices by: (a) setting up a petroleum monitoring agency responsible for preparing an annual report on all aspects of the industry, including how prices are set and competition issues, whose director would be independent and appointed for a three-year term after consultation with sector representatives and the Standing Committee on Industry, Natural Resources, Science and Technology, and that the Committee be tasked with considering the report; and (b) by bringing forward amendments to strengthen the Competition Act, including measures to ensure that the Competition Commissioner has the power to launch investigations, summon witnesses and ensure confidentiality.*

This motion was debated in February and April 2005. A vote on the motion took place on April 20, 2005, when it was defeated.

#### **7.5.2 M-177: PETROLEUM MONITORING AGENCY**

New Democratic Party (NDP) MP Brian Masse introduced this motion on October 26, 2004. It was never placed on the Order of Precedence and never debated in Parliament. The motion read:

*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 House of*



*Commons 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.*

## **7.6 IMMUNITY PROGRAM REVIEW**

Throughout 2005, the Bureau continued its review of the Bureau Immunity Program launched by the Commissioner in November 2004. The Bureau issued Responses to Frequently Asked Questions in October 2005 to provide a step-by-step guide for potential immunity applicants on the immunity process, time lines and the types of information required from applicants. In February 2006, the Bureau issued a consultation paper addressing a variety of topics relevant to the Immunity Program, including confidentiality, the oral application process, restitution, revocation of immunity and the possible creation of a formal leniency program.

The Immunity Program is one of the Bureau's most powerful investigatory tools. The goal of the review is to ensure the Program's continued optimum contribution to the detection, investigation and prosecution of criminal offences under the Act.





## CHAPTER 8 HOW WE DO IT ALL

## CHAPTER 8 HOW WE DO IT ALL

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

In 2005-2006, the Bureau issued 29 news releases and 20 information notices describing the benefits of its activities for the economy and for Canadians. Staff also responded to many inquiries from journalists in Canada and abroad. Senior Bureau managers and communications staff were available to the media and acted as spokespersons on key issues.

### 8.1 MEDIA RELATIONS

The Bureau's communications outreach resulted in over 3,000 media stories referring to the Bureau, an increase of almost 22 percent from the previous year. Independent media analysis found the Bureau was successful in communicating its mandate and role through media coverage of pricing investigations, decisions on misleading advertising and product labelling, and reviews of proposed mergers and acquisitions. Broadcast and on-line media coverage combined accounted for more than half of the total media coverage. The three print media outlets that most frequently carried Bureau-related coverage are among the nation's most influential newspapers.

### 8.2 INFORMATION BULLETINS, GUIDELINES, HANDBOOKS AND PAMPHLETS

#### 8.2.1 AUTHENTICATING CANADIAN DIAMOND CLAIMS

The Bureau continues to participate as an observer member of the Canadian Diamond Code Committee. This group administers the Bureau-endorsed *Voluntary Code of Conduct for Authenticating Canadian Diamond Claims*, which was revised in January 2006. For more details, visit:

<http://www.canadiandiamondcodeofconduct.ca>.

#### 8.2.2 FACT SHEET FOR SMALL AND MEDIUM-SIZED ENTERPRISES

On March 31, 2006, the Bureau released a *Fraud Awareness Fact Sheet for Small and Medium-Sized Enterprises*, which can be found on the Bureau's Web site:

<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2051&lg=e>.

### 8.2.3 PAMPHLETS

On March 31, 2006, the Bureau published new pamphlets on the subjects of promotional contests, deceptive prize notices and immunity from prosecution. It also revised the existing pamphlet on deceptive telemarketing. The pamphlets provide an overview of the provisions of the *Competition Act* that cover these anti-competitive practices and explain how they can affect consumers and businesses.

## 8.3 WARNINGS AND INFORMATION NOTICES TO CONSUMERS

The Bureau periodically issues warnings to alert consumers to potentially illegal or misleading activities in the marketplace. In 2005-2006, the Bureau warned consumers on two occasions, as described below.

### 8.3.1 CONTEST BALLOTS

On August 9, 2005, the Bureau issued a warning to consumers to exercise caution when filling out ballots or entry forms for contests or prize draws. The Bureau and other law enforcement agencies received complaints from across the country from people who had attended local summer fairs or trade shows and filled out ballots to enter a draw for a free vacation. They were later contacted by telephone and told that they had won a “free” vacation and only had to pay a promotional fee of about \$900. Complainants reported that the caller used high pressure sales tactics requesting a decision on the spot before asking for a credit card number. At least some consumers who had second thoughts reported they had difficulty getting the transaction cancelled. Other complainants who paid the fee and took the trip reported that the quality and location of the hotels were inferior to what

was represented to them over the phone. The Bureau warning listed tips to recognize illegal contests and steps to take should consumers find themselves in this situation.

### 8.3.2 SCANNER PRICE ACCURACY VOLUNTARY CODE

On November 28, 2005, the Bureau issued a reminder to consumers about some of the key features of the *Scanner Price Accuracy Voluntary Code*. Among the code’s features is the consumer’s right to receive immediate refunds from cashiers on incorrectly priced items. This code, implemented in 2002, applies to all scanned Universal Product Code (UPC) and Price Look Up (PLU) merchandise sold in participating stores, with the exception of price-ticketed items and goods such as prescription drugs. Over 5,000 retailers across Canada are Voluntary Code participants, and participating stores are required to display signs at cash registers and entrances. The Bureau reminder provided detailed contact information for those wanting more information.

## 8.4 THE 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 e-mail distribution list that sends subscribers information updates. To subscribe, visit: <https://www.competitionbureau.gc.ca/interne/index.cfm?itemID=1046&lg=e>.

This year, the Bureau implemented an on-line survey to stay informed about the evolving Web-related needs of its audience. The survey (<http://www.competitionbureau.gc.ca/interne>

[t/index.cfm?itemid=1879&lg=e](http://www.competitionbureau.gc.ca/index.cfm?itemid=1879&lg=e)) is permanently and directly accessible from the site's home page. Its results are consulted on a regular basis and will be helpful for future Web site improvements.

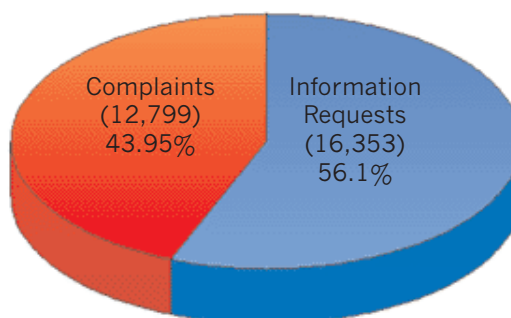
## 8.5 INFORMATION CENTRE

The Information Centre is the primary access point for incoming information requests and complaints concerning anti-competitive activity from Canadians, international consumers, businesses and agencies. The Bureau's clients include businesspeople, chief executive officers, members of Parliament, the media, lawyers, consumers, domestic and foreign corporations, importers, retailers and the general public. Information and complaint specialists provide information to clients, mainly over the telephone, and register complaints on subjects such as the following:

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

The Information Centre is also responsible for providing information related to the four statutes administered by the Bureau and for capturing complaints that may lead to formal Bureau investigations. The information gathered by the Centre is essential to helping the Bureau shape its public awareness and enforcement activities. In 2005-2006, there were 43,013 contacts made to the Centre via telephone, fax, mail and Internet.

**Information Centre Complaints and Information Requests**



During 2005-2006, the Centre implemented a new automated telephone system to filter incoming calls. Before being answered, callers are provided with information on the Bureau's mandate, among other things. This new system has reduced the number of non-issue contacts by almost half since 2003-2004 (from 26,525 in 2003-2004 to 13,861 in 2005-2006).

The public can contact the Centre in several ways:

- through its toll-free line (1 800 348-5358) from 8:30 a.m. to 4:30 p.m. (Eastern Time);
- through an electronic complaint form ([www.competitionbureau.gc.ca/internet/index.cfm?itemID=310&lg=e](http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=310&lg=e));
- by facsimile (819-997-0324); or
- by mail (Competition Bureau, 50 Victoria Street, Gatineau QC K1A 0C9).

## 8.6 CONSUMER AND COMPETITION DIALOGUE

During 2005-2006, the Bureau hosted three meetings (April 25, 2005, September 20, 2005, and January 19, 2006) with representatives from various consumer associations as part of its goal of



maintaining an ongoing, open and constructive dialogue about how to keep Canadian consumers well informed on competition issues. The half-day meetings, chaired by the Commissioner, provided the Bureau with an opportunity to outline its recent work, mandate and benefit to consumers. They further aim to explain the Bureau's approaches to competition law enforcement, and to explore ways to strengthen links between the Bureau and consumer organizations.

The meeting's participants represented eight Canadian consumer associations: Option consommateurs, Public Interest Advocacy Centre, l'Union des consommateurs, Consumers Council of Canada, Automobile Protection Association, Canada's Association for the Fifty Plus, Consumers' Association of Canada, and Canadian Consumer Initiative. Senior Bureau officials and the Director General of Industry Canada's Office of Consumer Affairs also attended. It was agreed that the dialogue would continue with regular meetings.

## **8.7 OTHER INITIATIVES**

### **8.7.1 ATLANTIC PARTNERSHIP – COMBATING CROSS-BORDER FRAUD**

On May 18, 2005, the Bureau signed a memorandum of understanding with law enforcement agencies and prosecution services in Atlantic Canada and the United States to tackle the problem of cross-border fraud. The Atlantic Partnership–Combating Cross-Border Fraud used the signing as an opportunity to outline details of the partnership with the media.

The goal of the partnership is to work together to effectively reduce, identify, investigate and prosecute deceptive marketing practices and fraudulent criminal

activities originating in the Atlantic region and targeting American consumers or originating in the U.S. and targeting Atlantic Canadians.

### **8.7.2 ENVIRONMENTAL ADVERTISING GUIDELINES**

In May 2005, the Bureau entered into a contract with the Canadian Standards Association (CSA) to revise and publish the second edition of a CSA international standard-based guideline for industry on environmental labelling and advertising. The guidelines are expected to be published in late 2006 and will be available on the Bureau's Web site:  
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2051&lg=e>.

### **8.7.3 ETHICAL TRADING ACTION GROUP (ETAG)**

The Bureau finalized its analysis of the Ethical Trading Action Group's proposal to amend the *Textile Labelling Act* to require labels on consumer textile articles to bear the name and address of the manufacturer. ETAG is a coalition of church, labour and non-governmental organizations concerned about sweatshop labour practices in the apparel industry.

On July 22, 2005, the former Minister of Industry, David Emerson, announced his decision not to proceed with ETAG's recommendations.

### **8.7.4 INTERNET WEIGHT LOSS SCAMS**

On September 28, 2005, the Bureau announced its collaboration with the U.S. Federal Trade Commission (FTC) on the FTC's FatFoe Web site. The Bureau registered the Web site ([www.fatfoe.ca](http://www.fatfoe.ca)) and translated it into French.

The aim of the Web site is to inform consumers about weight loss scams on the Internet. FatFoe is composed of a "teaser" site, which exposes seven of the most outrageous weight loss claims found on the Internet. When consumers go on-line to purchase or learn more about the fictitious FatFoe product, an information pop-up warns them of the fraudulent nature of the claims.

The Bureau views this initiative as an educational tool for consumers who increasingly purchase products over the Internet and for businesses that may not be fully aware of their legal obligations under the *Competition Act*. With the FatFoe initiative, the Bureau and FTC's co-operative relationship has now expanded into the areas of outreach and consumer education.

### 8.7.5 WEIGHT LOSS FRAUD

On October 24, 2005, Canada, Mexico and the United States announced that they had taken over 734 collaborative actions over a two-year period to fight weight loss fraud. The three countries targeted companies promoting bogus and misleading weight loss schemes that endanger health, provide false hope and defraud citizens of billions of dollars. Their actions were part of an ongoing aggressive campaign initiated in 2003 by six agencies in the three countries under the Trilateral Cooperation Charter.

### 8.7.6 FRAUD AWARENESS MONTH IN CANADA AND ABROAD


The Bureau chairs the Fraud Prevention Forum, a group of 80 private sector firms, consumer and volunteer groups, government agencies and law enforcement organizations committed to fighting fraud aimed at consumers and businesses.

On March 1, 2006, the Bureau, along with the RCMP, the Ontario Provincial Police and the United States Federal Trade Commission held a news conference in Ottawa to officially launch Fraud Prevention Month and explain how law enforcement partnerships are joining forces to fight fraud. This public education campaign was the largest of its type to date in Canada.

During the month of March, Forum members raised awareness of the dangers of fraud and educated the public on how to "Recognize it, Report it and Stop it." Activities included airing public service announcements on radio and television; distributing brochures, inserts, posters and bookmarks; and publishing newspaper advertisements and Web banners. As a result of this year's campaign efforts, nearly 75 million fraud prevention messages reached Canadians.

On March 25, 2006, the Bureau, in collaboration with Shred-it, local police forces and Better Business Bureaus, participated in the first national community shredding event to be held in 20 cities across Canada. As part of the event, consumers were invited to bring their unwanted personal documents for shredding to Shred-it mobile trucks stationed at specified locations. Local police and other representatives were available at these locations to offer tips on identity theft protection.

The reach of Fraud Prevention Month is international. In addition to Canada, 23 countries from the International Consumer Protection and Enforcement



Network have committed to raising public awareness worldwide with their own Fraud Prevention Month campaigns.

A survey conducted by The Strategic Counsel following Fraud Prevention Month indicated that Canadians continue to feel that public awareness is the most effective tool for combating fraud. The majority of Canadians surveyed recalled exposure to messages relating to fraud in 2006, with most saying that what they saw, read or heard had altered the way in which they would respond to fraudulent solicitations.

### **8.7.7 “SCAM JAM” EVENTS**

In March 2006, during Fraud Prevention Month, the Bureau supported and participated in “Scam Jam” events hosted by Better Business Bureaus in Vancouver, London and Halifax. Representatives from the Bureau provided information to the public through discussion panels, call-in radio shows, displays and distribution of literature regarding the Bureau’s commitment to combating mass marketing fraud.





## APPENDIX I DISCONTINUED INQUIRIES

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### ANTI-CORROSION DEVICE

On May 22, 2002, the Bureau launched an inquiry pursuant to sections 74.01(1)(a) and (b) of the *Competition Act* into complaints about the efficacy and performance of an anti-corrosion device. The Bureau found that the testing provided by the supplier was not sufficient to support the claim that the device could inhibit corrosion on the entire surface of new or used vehicles. As a result, the marketing of the device was terminated, and the inquiry was discontinued on April 26, 2005.

### FIRST NATIONS ARTWORK

On April 29, 2005, the Bureau launched an inquiry under sections 74.01 and 52(1) of the *Competition Act* into a complaint about the marketing practices of an art gallery and one of its owners. It was alleged that representations that were being made about the appraisal, marketing and sales of a particular First Nation's artist's work were false or misleading. Following an investigation into the marketing practices of the gallery and the owner in question, the Bureau determined that the evidence did not justify further inquiry. As a result, the inquiry was discontinued on October 11, 2005.

### DAIRY PRODUCT SUBSTITUTE

On January 25, 2005, the Bureau launched an inquiry pursuant to sections 74.01 and 52(1) into a six-resident complaint pursuant to section 9 of the *Competition Act* about the marketing practices of a producer of a dairy product substitute. It was alleged that false and misleading representations were being made about the fat content of the product compared with one produced and promoted by a target company. The Bureau consulted

with the Canadian Food Inspection Agency, which also received the complaint, and determined that the CFIA was best equipped to look into the matter. As a result, the inquiry was discontinued on October 25, 2005.

### RETAIL JEWELLERY BUSINESS

In October 2003, the Bureau launched an investigation under section 74.01 into a retail jewellery business, with a specific focus on allegations of inflated prices for jewellery made of gold and diamonds, including the total weight of the diamonds set on the jewellery. According to the data compiled, the Bureau had reason to believe that the prices on the products did not reflect the prices of similar products sold by other suppliers in the same geographic market. In the course of its investigation, the Bureau found that the information on the labels and the advertising of the total weight of the diamonds on the jewellery were accurate. The inquiry was discontinued on October 29, 2005, when the company went bankrupt.

### WEIGHT LOSS PRODUCT<sup>1</sup>

In September 2002, the Bureau launched a formal inquiry under section 52(1) of the *Competition Act* concerning a weight loss product. The investigation focused on unsubstantiated weight loss claims made to the public in advertisements contained in newspapers, in magazines and on the Internet. The investigation was discontinued on November 30, 2004, due to the inability to link, beyond a reasonable doubt, the representations in advertisements to the individuals ultimately responsible for making them.

<sup>1</sup> This was inadvertently omitted from the 2004-2005 Annual Report.



## APPENDIX II | SPEECHES AND PAPERS

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### SPEECHES

Sheridan Scott, remarks to the House of Commons Standing Committee on Transport on *Air Liberalization and the Canadian Airports System*. Ottawa, May 4, 2005.

Gaston Jorré, remarks to the Standing Committee on Canadian Heritage on *Study of the Canadian Feature Film Industry*. Ottawa, May 10, 2005.

Chris Martin, remarks to the Insight Conference on *Avoiding Potential Enforcement Clashes in Trans-border Merger and Dominance Cases*. Montreal, June 16, 2005.

Sheridan Scott, remarks on “C” is for Competition: How we get things done in a globalized business world at the Insight Conference. Montreal, June 17, 2005.

Sheridan Scott, remarks to the Standing Committee on Industry, Natural Resources, Science and Technology on *Fuel/Gasoline Prices in Canada*. Ottawa, September 22, 2005.

Sheridan Scott, remarks to the Canadian Marketing Association's Regulatory Affairs Conference. Toronto, September 22, 2005.

Sheridan Scott, remarks to the Canadian Radio-Television and Telecommunications Commission on *Telecom Public Notice CRTC 2005-2, Forbearance from Regulation of Local Exchange Services*. Ottawa, September 27, 2005.

Sheridan Scott, remarks to the Standing Committee on Industry, Natural Resources, Science and Technology on *Bill C-19, An Act to amend the Competition Act and to make consequential amendments to other Acts*. Ottawa, October 27, 2005.

Sheridan Scott, remarks to the Canadian Bar Association Annual Conference on

Competition Law, *Opening Remarks*. Gatineau, November 3, 2005.

Sheridan Scott, remarks to the Canadian Bar Association Annual Conference on Competition Law on *Competition Bureau Progress and Priorities*. Gatineau, November 3, 2005.

Gaston Jorré, remarks to the Standing Committee on Agriculture and Agri-Food on *Current Competition Issues in the Canadian Agricultural Sector*. Ottawa, November 21, 2005.

Gaston Jorré, remarks to the Standing Committee on Agriculture and Agri-Food on *Current Competition Issues Relating to Port Terminal Grain Handling Services*. Ottawa, November 23, 2005.

Sheridan Scott, remarks at the Winter Meeting of the American Bar Association. Chateau Montebello, Quebec, January 23, 2006.

Sheridan Scott, remarks at the American Bar Association's Section of Antitrust Law 2006 Spring Meeting on *Canadian Perspectives on the Role of Comity in Competition Law Enforcement in a Globalized Word: To Defer or Not to Defer? Is that the Question?* Washington, March 29, 2006.

### PAPERS

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Cause?" *Electricity Journal* Vol. 19, No. 4 (May 2006): 42-51.

Brennan, Tim. "Green Preferences as Regulatory Policy Instrument." *Ecological Economics* Vol. 56, No. 1 (2006): 144-54.

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Monteiro, Joseph. "Canadian and US Ports, Port Competition and Cargo Diversion." *Old Foundations, Modern Challenges*. Proceedings of the 2005 Annual Conference of the Canadian Transportation Research Forum, Hamilton, Ontario, May 8-11 (2005): 400-416.

Monteiro, Joseph, Gerald Robertson and Keith Dawson. "The Canadian Shipbuilding Industry and Market Distorting Practices—Mechanisms To Deal With It." *Old Foundations, Modern Challenges*. Proceedings of the 2005 Annual Conference of the Canadian Transportation Research Forum, Hamilton, Ontario, May 8-11 (2005): 432-449.





## APPENDIX III CONFERENCES AND SEMINARS

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### CONFERENCES

On April 13, 2005, a Bureau official delivered a presentation to the Vancouver Competition Policy Roundtable members in Vancouver, British Columbia. The presentation, entitled "Making a Difference," was intended to update Roundtable members on recent case resolutions, outreach efforts and proposed legislative amendments related to the misleading advertising and deceptive telemarketing provisions of the *Competition Act*, the *Textile Labelling Act*, the *Precious Metals Marking Act* and the *Consumer Packaging and Labelling Act*.

From April 14 to 15, 2005, a Bureau representative spoke about the regulatory review of mergers at a Canadian Institute Conference on Mergers and Acquisitions in Toronto, Ontario.

From April 18 to 19, 2005, a Bureau representative attended an Insight Conference on Mergers and Acquisitions in Vancouver, British Columbia, and delivered a presentation entitled "Expediting Merger Approval under the *Competition Act*."

From April 19 to 20, 2005, Bureau officials attended the Organization for Economic Co-operation and Development Workshop on Consumer Dispute Resolution and Redress in the Global Marketplace in Washington, D.C. One of the officials participated in a panel discussion on "Government Facilitated Redress."

On April 21, 2005, two Bureau representatives attended a Conference of the Quebec Bar Association in Montreal, Quebec entitled "Competition Law: Ignore It at Your Own Risk" and delivered presentations on "New Developments in Merger Review."

From April 27 to 29, 2005, a Bureau representative attended the mid-year

meeting of the Mexico, United States and Canada Health (MUCH) Fraud Working Group in Cancun, Mexico, and gave two presentations entitled "Competition Bureau Update" and "Confidential Information Exchange." These presentations exposed current cases such as Project FairWeb and provided the legal framework for sharing information under the *Competition Act*.

From May 4 to 6, 2005, a Bureau representative attended a conference in Santa Fe, New Mexico, entitled "Interchange Fees in Credit and Debit Card Industries: What Role for Public Authorities?" and sponsored by the Federal Reserve Bank of Kansas City. The representative participated in a panel entitled "Interchange fees: Antitrust and Regulatory Perspectives."

From May 4 to 6, 2005, a Bureau representative attended the 2005 Competition Law and Policy Forum at Langdon Hall, Cambridge, Ontario, and delivered a presentation on the developments in cartel enforcement under Canada's *Competition Act*.

On May 9, 2005, a Bureau representative delivered a presentation in Toronto, Ontario, on agreements in "Restraint of Trade, Conspiracy and Price Fixing" to the Ontario Bar Association.

On May 17, 2005, a Bureau official delivered a presentation to the United States Northeastern Weights and Measures Association (NEWMA) in Albany, New York. The purpose of the presentation, entitled "Net Quantity Verification in Canada," was to inform NEWMA of Canadian practices in net quantity verification.

From May 30 to 31, 2005, a Bureau representative attended the Canadian Institute's Competition Law Conference in Toronto, Ontario, and delivered a

presentation entitled “Life After Sears.” The presentation outlined tips for complying with the ordinary selling price provisions of the *Competition Act*.

From May 30 to June 3, 2005, a Bureau representative participated in the Organization for Economic Co-operation and Development International Competition Network meetings in Paris, France.

From June 6 to 8, 2005, a Bureau representative attended and chaired a panel presentation on consumer outreach at the Fourth Annual Conference of the International Competition Network in Bonn, West Germany.

From June 5 to 8 2005, a Bureau representative delivered a presentation on legal privilege and the use of search, raid and inspection powers as part of the International Cartel Network Cartel Working Group presentation to the ICN 4<sup>th</sup> Annual Meeting in Bonn, Germany.

On June 16, 2005, a Bureau representative participated in a conference panel on “Avoiding Potential Enforcement Clashes in Trans-border Merger and Dominance Cases” at the Insight Conference in Montreal, Quebec.

From August 7 to 9, 2005, a Bureau representative attended the Jewellery Anti-Smuggling Workshop, which the RCMP holds annually at the Jewellery World Expo in Toronto, Ontario, and delivered a presentation on the *Precious Metals Marking Act* to 30 police officers.

On September 26, 2005, a Bureau representative delivered a presentation to the Retail Association entitled “Scanner Price Accuracy and the Competition Bureau” during the Scanner Price Accuracy Symposium in Toronto, Ontario. This presentation outlined price accuracy in relation to the *Competition Act*.

On October 26, 2005, a Bureau official delivered a presentation entitled “Canadian Labelling 101” at the 2005 Regulatory Seminar “Regulatory Compliance: What’s New and on the Horizon” in New York, New York. This presentation outlined Canadian practices and requirements in labelling.

From October 17 to 23, 2005, Bureau and Department of Justice representatives delivered presentations addressing the competition law statutory framework, case selection and co-operation between competition authorities and prosecutors in implementing leniency programs as part of the Organization for Economic Co-operation and Development Working Party No. 3’s Program with Public Prosecutors in Cartel Matters.

From October 26 to 28, 2005, Bureau representatives delivered presentations as part of a panel on “International Cartel Enforcement: Co-ordination and Enforcement Actions by Competition Law Enforcement Authorities” to the American Bar Association 2005 Section of International Law in Brussels, Belgium.

On October 27, 2005, a Bureau representative delivered a presentation to the Pet Food Association of Canada entitled “Guide for Labelling and Advertising of Pet Foods–Update” in Toronto, Ontario. This presentation outlined the Pet Food Guide, which focuses on promoting and maintaining fair competition so that Canadians can benefit from competitive prices, product choice and quality services.

From November 3 to 4, 2005, Bureau representatives attended the Canadian Bar Association’s 2005 Annual Fall Conference on Competition Law in Gatineau, Quebec. Bureau representatives delivered several presentations, including a presentation on merger notification issues entitled “The Devil is in the Details,” and a presentation on the

Canadian Immunity Program. Representatives also participated in a panel on a mock international cartel investigation and defence and in a Canadian Bar Association Mergers Subcommittee session.

From November 8 to 10, 2005, Bureau and Department of Justice representatives participated in panels at the 2nd Annual International Cartel Network's Cartel Workshop in Seoul, Korea.

On November 17, 2005, a Bureau representative delivered a presentation to the Direct Sellers Association entitled "Presentation to the DSA Government Affairs Seminar" in Ottawa, Ontario. This presentation outlined the functions of the Fair Business Practices Branch of the Bureau and the application of its relevant statutes.

From December 5 to 6, 2005, a Bureau representative attended and spoke at the Mergers and Acquisitions Insight Conference in Calgary, Alberta.

On January 26, 2006, a Bureau representative delivered a presentation at the 12<sup>th</sup> annual Advertising and Marketing Law Conference of the Canadian Institute entitled "Scams, Shams and Deceptive Plans: Understanding the Nature and Consequences of On-Line Fraud in Canada" in Toronto, Ontario. This presentation outlined the role of the Bureau and governmental responses in regard to on-line fraud.

During the January 28 to 30, 2006 Phonebusters Integrated Policing Workshop in North Bay, Ontario, a Bureau representative delivered a presentation on the development of a national strategy to combat mass marketing fraud.

On February 7, 2006, a Bureau representative hosted the International Cartel Network's Business Outreach Workshop in

Paris, France, during which another Bureau representative made a presentation.

From February 9 to 10, 2006, a Bureau representative attended the ABA 2006 International Cartel Workshop in London, England and participated in a panel on "The Prosecution—Beginning the Cartel Investigation, Five Jurisdictions Devise Their Strategy".

On March 28, 2006, a Bureau representative delivered a presentation at the International Consumer Protection and Enforcement Network/Organization of Economic Co-operation and Development joint meeting on Public Education and Awareness, at Jeju Island, Republic of Korea.

On March 28, 2006, a Bureau representative participated in a panel on merger review periods at the International Cartel Network Merger Notification and Procedures Workshop on Implementing the Recommended Practices in Washington, D.C.

Representatives of the Bureau's Regional Offices undertook more than 40 outreach activities addressing criminal matter offences, and particularly bid-rigging, under the *Competition Act*. More than 1,200 people attended these sessions, which targeted private and public sectors through associations, co-operatives and federations. Bureau representatives gave presentations to, among many others, the Toronto Construction Association, the Annual Symposium of the Ontario Public Buyers Association (Ontario), the Fédération Canadienne de l'Entreprise indépendante (Quebec), and the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter games.



## SEMINARS

On May 9, 2005, a Bureau representative spoke at an Ontario Bar Association seminar on the “Essentials of Competition Law” in Toronto, Ontario.

From June 27 to 29, 2005, representatives from the Mergers Branch provided a series of presentations to visiting delegates from the Chilean Competition Authority, Fiscalía Nacional Economica in Gatineau, Quebec.

On January 25, 2006, the Bureau held a free educational seminar for retailers in Toronto, Ontario entitled “Understanding How the Ordinary Selling Price Provisions of the *Competition Act* Apply to Your Business.” The seminar provided an opportunity for the Bureau to give guidance on the application of the OSP provisions in light of the Sears decision and it also provided retailers with the opportunity to ask the Bureau questions. Approximately 136 participants attended this seminar, and 98 percent of those surveyed said that they had gained a better understanding of how OSP provisions apply to their businesses.