
Proposals for a New Competition Policy for Canada

**First Stage
1973**

NOVEMBER

Combines Investigation Act Amendments



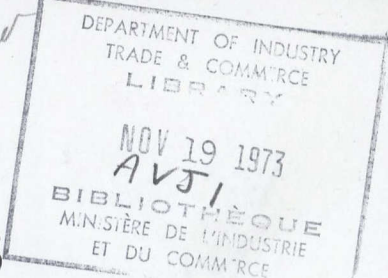
**Consumer and
Corporate Affairs**

**Consommation et
Corporations**

✓ Canada. Dept of Consumer
Corporate Affairs

should be
c. 6

New



Proposals for a New Competition Policy for Canada

First Stage
1973
NOVEMBER

Combines Investigation Act Amendments



Consumer and
Corporate Affairs

Consommation et
Corporations

THE HON. HERB GRAY MINISTER.

TABLE OF CONTENTS

	<u>Page</u>
Competition Policy - Stage 1	1
Approach of the Bill	4
Summary of Contents of the Bill	5
Why the Bill is Important at this Time	11
(A) Consumer Protection Measures	11
(1) Prevention of False Market Information	11
(2) Prevention of Double Ticketing	15
(3) Resale Price Maintenance Provisions	15
(B) Protection of the Public Interest in Competition	18
(1) The Inclusion of Services	19
(2) Bid-rigging	35
(3) Extraterritoriality	38
(4) Abuse of Intellectual Property	41
(C) Protection of Small Business	42
(1) Refusal to Deal	44
(2) Consignment Selling	45
(3) Exclusive Dealing, Market Restriction and Tied Selling	46
(4) Civil Damages	48

	<u>Page</u>
(D) Protection of Athletes	49
(E) Other Measures	52
Description of the Bill, Clause by Clause	54
What Remains for Stage II	93

APPENDIXES

A. Legislative History of the Combines Investigation Act	1A
B. Cases Under the Combines Investigation Act Excluding Misleading Advertising	1B
C. Cases Under the Combines Investigation Act - Misleading Advertising	1C
D. Report of the Task Force on Sport for Canadians, 1969 (Excerpt)	1D
E. Schematic Presentation of the Combines Investigation Act and the Amending Bill	1E

BILL C-

An Act to amend the Combines Investigation Act and the Bank Act and to repeal an Act to amend an Act to amend the Combines Investigation Act and the Criminal Code

COMPETITION POLICY - STAGE I

The purpose of the Combines Investigation Act is to assist in maintaining effective competition as a prime stimulus to the achievement of maximum production, distribution and employment in a mixed system of public and private enterprise. To this end, the legislation seeks to eliminate certain practices in restraint of trade, and to overcome the bad effects of concentration, that tend to prevent the economic resources of Canada from being used most effectively to the advantage of all. The Act also contains provisions against misleading advertising, which were introduced in 1960 and 1969, to utilize the investigative capacity of the Act for the protection of the consumer.

The present Bill is the first stage of implementation of the following passage from the Speech from the Throne, delivered on January 4, 1973:

"The government will introduce legislation establishing a competition policy to preserve and strengthen the market system upon which our economy is based. The new policy will be in harmony with industrial policies in general and foreign investment policy in particular".

The First Report of the Special Committee on Trends in Food Prices, tabled April 2, 1973, made the following recommendation:

"That certain provisions of the proposed Competition Act dealing with consumer protection (e.g., misleading advertising, bait and switch selling) be split off into a separate Bill and enacted immediately, and not be tied in with the provisions relating to monopolies, mergers, etc., requiring reconciliation with broader policy directions relating to industrial strategy and foreign investment".

Both of these aspects were dealt with in a speech by the Minister of Consumer and Corporate Affairs, Hon. Herb Gray, in the House of Commons on April 10, 1973, during debate upon a motion for concurrence in the Food Prices Committee Report adopted a week later after extensive discussion. He stated:

"In its examination of food costs, I was pleased to see that the committee did not overlook the importance of competition as a policy instrument that can have a key role to play in maintaining cost-effective markets for food in Canada. It is clear from the outline of the future workload of the committee that it intends to explore vigorously this aspect of the food situation over the next few months. As the House knows, the government has stated that it will be bringing forward a competition policy which will reflect the consideration that has been given by it to the many comments it has received from the public on the original draft bill. The government will expedite its work in this regard.

"I note that the recommendations in the report concern only those sections of the draft competition act appearing to deal directly with consumer protection, but I think there are other aspects of the proposed bill that are also of concern to the consumer and have a bearing on the issue of food costs. As the interim report notes, factors such as concentration in the food wholesaling, processing, packaging and retailing activities of the food industry and overcapacity in food distribution are areas where further examination is required by the committee. In its work on this recommendation the government will bear in mind what I believe is the main intent of the committee's recommendation, that is, an assurance that competition in the food industry will be improved to the benefit of the consumer".

(Hansard, 3155-56)

Later, on July 18, 1973, in answer to a question in the House, the Minister announced that:

"Instead of bringing forward legislation concerning competition policy in a single complex bill, the government has decided to implement the policy in stages. It is our aim to introduce the first stage during this session of parliament".

(Hansard, 5745)

APPROACH OF THE BILL

The approach of the Bill is to make a number of amendments to the Combines Investigation Act while retaining all the basic machinery of that Act. Numerous consumer protection measures are proposed, including those endorsed by the Committee on Food Price Trends. In respect of competition policy the Bill will strengthen the legislation in respect of certain areas where there has developed a high degree of consensus, such as bringing services in general under the Act. The Restrictive Trade Practices Commission will be authorized to review and make corrective orders in the case of certain situations generally agreed to need careful supervision and yet not in all cases requiring prohibition. This will provide the beginnings of a civil jurisdiction in the field of competition policy. These changes are summarized in the next section.

Consideration of other policy areas of former Bill C-256, the Competition Act, will continue and it is intended to introduce at a later date whatever additional legislation is required to constitute a complete, modern competition policy in harmony with the economic needs of the country. These are summarized below under the heading "What remains for Stage II".

In connection with the addition of services to the prohibitions of the Act, it is to be noted that the Bill provides necessary flexibility in that the ban on restrictive agreements concerning services will only become effective when this provision is proclaimed. This proclamation may be at a different, and later, time than proclamation of the rest of the Bill. This would give the services sector time to adjust its affairs to the new law and for the provincial authorities to arrange for whatever regulation they may deem appropriate.

SUMMARY OF CONTENTS OF THE BILL

Principal amendments to the Combines Investigation Act contained in the Bill are:

- (a) The prohibitions of the Act against combinations, mergers and monopolies, which now are largely restricted to production and trade in articles or commodities, are extended to apply to all services and service industries. There already exists well-established jurisprudence which makes it clear that the prohibitions of the Act do not apply where the restrictive situations and trade practices are authorized specifically under valid federal or provincial legislation;
- (b) It is made clear that in order for a restrictive agreement to qualify as one that violates the Act because it lessens competition unduly, it is not necessary to prove that its effects would be to eliminate competition, completely or virtually.
- (c) A series of prohibitions against particular trade practices harmful to the interests of the consumer are included. These provisions create criminal offences or make desirable amendments to existing prohibitions, as follows:
 - (1) The misleading advertising provisions of the present Bill are consolidated

and clarified so that they apply to all kinds of serious misrepresentation concerning products or services made to the public, rather than merely to published advertisements.

- (2) Untrue or misleading warranties and testimonials are banned.
 - (3) A sale at any price but the lowest of two or more prices is prohibited when goods are double-ticketed.
 - (4) Pyramid selling is conditionally prohibited, and referral selling, as defined, is prohibited.
 - (5) Bait and switch selling is prohibited.
 - (6) Selling at higher than advertised prices is prohibited.
 - (7) Promotional contests are prohibited unless they meet certain rules.
 - (8) The prohibition of resale price maintenance is strengthened;
- (d) The Restrictive Trade Practices Commission, on application of the Director of Investigation and Research, is authorized to:
- (1) Review instances of refusal to sell and, after according full opportunity to be heard, to order a supplier to supply or to recommend tariff changes.

- (2) Review instances where consignment sales are used to control a dealer's prices or so as to discriminate in price between competitors and, after according full opportunity to be heard, to order a supplier to cease the practice.
- (3) Review instances where exclusive dealing practices, i.e., the requirement that a purchaser deal in particular products only, are engaged in by major suppliers so as to lessen competition substantially and, after affording reasonable opportunity to be heard, make the necessary remedial order.
- (4) Review instances where tied selling, i.e., the tying of one product to the sale of another, is engaged in by major suppliers so as to lessen competition substantially and, after affording reasonable opportunity to be heard, make the necessary remedial order.
- (5) Review instances where market restriction, i.e., where the supplier, as a condition of sale, imposes restrictions as to the market in which his customer may trade, is engaged in by major suppliers, so as to lessen competition substantially and, after affording reasonable opportunity to be heard, make the necessary remedial order.

- (6) Review instances where foreign judgments, foreign laws, or directives from foreign managers are contrary to the Canadian public interest and, after according full opportunity to be heard, to make orders forbidding their implementation in Canada;
- (e) It creates the following additional new offences:
 - (1) A company in business in Canada may not implement a foreign directive giving effect to an agreement contrary to the Act.
 - (2) Bid-rigging.
 - (3) Unreasonable agreements concerning participation in amateur and professional sport.
 - (4) Failure to comply with an order of the Restrictive Trade Practices Commission;
- (f) Provision is made for authorizing and facilitating civil suits for recovery of loss or damages resulting from conduct contrary to the Act, up to the full amount incurred plus costs of investigation and proceedings;
- (g) Section 32(2) already provides that a Court shall not convict if an agreement is found to relate only to certain specified matters set out in that clause. The Bill would add

to these matters agreements about the size and shape of containers, the adoption of the metric system and measures to protect the environment;

- (h) The Bill contains new provisions making admissible in evidence official statistics which are not already privileged by reason of other federal or provincial statutes and prescribing the method of their preparation and introduction;
- (i) Provision is also made, under prescribed conditions, for statistics collected by sampling methods to be admissible in evidence;
- (j) The Bill incorporates into the Act the policy towards British Columbia fishermen and associations of buyers from them, which was enacted in a series of annual statutory extensions culminating in the extension of indefinite length found in the Act to amend an Act to amend the Combines Investigation Act, being Chapter 23 of the Statutes of 1966-67. At the same time the Bill extends this policy to all other fishermen and buyers associations throughout Canada;
- (k) The Bill provides that the Minister may order a research inquiry into any matter which he certifies to be related to the policy and objectives of the Act;

- (1) The Bill provides for the Director of Investigation and Research to appear before any federal board to make representations concerning the maintenance of competition, at the request of the board, on his own initiative or upon direction by the Minister;

- (m) Finally, the Bill prohibits, by amendment to the Bank Act, agreements among the chartered banks of Canada to fix the rates of service charges.

WHY THE BILL IS IMPORTANT AT THIS TIME

The current review of the Combines Investigation Act, or more generally national competition policy, has been continuing for several years. The report of the Economic Council of Canada in July 1969 and the introduction of Bill C-256 in June, 1971 were important stages in this process which led to the present decision to implement needed reforms in stages. The Bill continues the trend towards the use of the experience and machinery of the Combines Investigation Act for specific aspects of consumer protection. It also deals with certain important aspects of competition policy requiring immediate attention. Other aspects will be the subject of later stages of competition policy formulation.

(A) Consumer Protection Measures

(1) Prevention of False Market Information

The Combines Investigation Act was first used to protect consumers against false market information in 1960 when the provision prohibiting misleading representations of ordinary price (now section 36) was added to the Act.

A vigorous program of enforcement of this section was developed, which made the Combines organization a natural choice for administration of the general prohibition of misleading advertising which prior to July 1969 had been section 306 of the Criminal

Code. This provision, (now section 37 of the Act) had been in the Code for approximately 50 years before this time but had been virtually inoperative. This was probably the result of there being no specialized body charged with its enforcement and the local Crown attorneys did not have the necessary resources. Consolidation of responsibility in the field of misleading advertising had been recommended in 1967 by the Special Committee of the Senate and the House of Commons on Consumer Credit (Prices) and also by the Economic Council of Canada in its Interim Report on Consumer Affairs.

After its transfer to the Act the section (now section 37) proved to be a very useful instrument in improving the reliability of information made available by sellers to consumers and the realization that an active program existed led to greatly increased public interest. In the fiscal year 1966-67 fifteen complaints alleging misleading representations were received by the Director's office. By the year 1969-70 the number had reached 412 and in the following year it was 2520. In 1972-73 the figure was 3470.

Many of the complaints, however, concerned matters which were not, but clearly ought to have been, covered by the legislation. Accordingly, there were included in Bill C-256 a number of measures designed to bring about a significant extension of consumer protection, not only in respect of misleading advertising but also other unfair trade practices.

These were the sections of the Bill which the Special Committee on Trends in Food Prices recommended for immediate passage

without waiting for the development of a more comprehensive competition policy. The importance attached to the provision of trustworthy market information as a means of combating the upward trend of prices is indicated by the fact that this was one of the Committee's recommendations in its first report.

The Bill strengthens existing provisions by:

- Extension of the general misleading advertising provisions to cover representations of all kinds;
- Extension of the prohibition of misleading representations about the ordinary price of articles to cover services;
- Prohibition of the deceptive use of warranties or guarantees;
- Responsibility for misleading representations placed upon the persons with whom they originate;
- Prohibition of a warranty or guarantee which limits the sellers' ordinary liability unless attention is expressly called to the restriction;

- The general impression created by an advertisement becomes a relevant consideration in determining whether deception exists; and finally
- Provision is made for the choice of proceeding by summary conviction or by indictment so as to permit appropriate enforcement procedure depending upon the gravity of the offence.

New provisions include:

- Safeguards in the use of tests and testimonials;
- Prohibition of deceptive inducement in recruitment to pyramid selling schemes;
- Prohibition of referral selling;
- Prohibition of bait and switch selling;
- Prohibition of sale above advertised price; and
- Safeguards in the use of promotional contests to ensure that participants have a fair idea of the way in which the contests are conducted.

(2) Prevention of Double Ticketing

A practice which has received strong consumer disapproval is that of adding successive price stickers or stamps to goods which have already been priced and placed on the shelves of retail stores for the purpose of increasing their prices. This practice has been condemned because it has been regarded by consumers as an unwarranted taking of extra profit on inventory which has not yet been subjected to higher costs. The Food Prices Review Board in its first report released on August 13, 1973, indicated that it has reached agreement with a number of major food retailers that where two or more prices are marked on an individual item, the consumer will pay the lowest price. The present Bill makes this requirement universal by creating an offence for anyone to charge a price higher than the lowest of two or more prices placed on the product, and by making this applicable to all products including food.

(3) Resale Price maintenance Provisions

The present section has been part of the Combines Investigation Act since 1951 and has helped to maintain competition in the very important sector of the economy represented by distribution, by stimulating competition not only among retailers but also among the manufacturers and wholesalers who supply them. In the administration of these provisions, however, certain deficiencies have been discovered which have permitted some suppliers to evade the intent of the section.

The law forbids a supplier from requiring a reseller to sell at a specified price. However, some suppliers have required retailers to raise their prices, but because they did not specify an exact price were able to avoid a violation of the letter of the Act. Accordingly, it is proposed to amend the section so as to make it an offence to "influence upward" resale prices.

In other cases suppliers have been able to induce resellers to withdraw low price advertising, again without violating the letter of the law. The amendments make it clear that it is an offence to discourage a reseller from advertising at a low price.

It has been found that a suggested price is sometimes taken by a reseller as a price which he is required to adopt. The amendment requires a supplier suggesting a resale price to make it clear to his customers that it is a suggestion only and may be disregarded without penalty.

In a supplier's advertising, when a retail price is used, he is required to make it clear that this is a suggestion only so that consumers will realize that careful shopping may reveal better prices.

Because of the pressure which important customers have been known to exert on suppliers, the amendment would make it an offence for anyone to make it a condition of placing his business that the supplier refuses to supply another person or class of persons.

In the existing section certain defences are provided to the accused in a prosecution for illegal resale price maintenance. The court is instructed not to draw unfavourable inferences from a withdrawal of supply when the accused believed that the articles he supplied were being used as loss leaders, for bait and switch selling, as an instrument of misleading advertising or when the reseller was not providing an adequate level of servicing. These defences are withdrawn by the amending Bill. Those concerning bait and switch advertising and misleading advertising are no longer necessary in view of the new provisions making these practices offences under the Act. The defence concerning the provision of servicing is no longer of importance. It was placed in the Act at a time when servicing was the function of the retailer of appliances, but this function has largely passed to firms specializing in the servicing of appliances in general. The Economic Council of Canada recommended that these three defences be dropped. It was not favourable to the continuation of the loss leader defence, but felt that a separate inquiry should be undertaken and consideration given to the prohibition of the practice of

"loss leaders". It was felt that the Council did not take sufficient account of the thorough inquiry into loss leaders which the Restrictive Trade Practices Commission had already made with negative results. Accordingly, the provision has been dropped in view of the need to avoid discouraging competition tending to erode margins in a period of rising prices. Consideration will be given in the next stage of competition policy formulation to whether the practice of loss leading ought to be subject to restrictive legislation.

(B) Protection of the Public Interest in Competition

From the point of view of competition policy, the principal change in the present Bill is that which brings services in general within the jurisdiction of the Act. As the Economic Council stated in the conclusions to its Interim Report on Competition Policy:

"In the first place, we have taken the view that the general set of competition policy should be one that aims at the achievement of efficient resource use in the Canadian economy. Second, we believe that some form of social control should be exerted over all commercial activities, and that over the greater part of the Canadian economy, efficient resource use will be more readily brought about through policies that maximize the opportunities for the free play of competitive market forces. The use of other forms of social control, namely, government regulation and government ownership, should be brought to bear only on those activities where monopolistic tendencies have all but eliminated competitive market responses, or where the protection of the

consumer interest in matters such as health, safety, fraud, disclosure and standardization, among others, requires the implementation of explicit government regulations".

(p.195)

The other principal changes under this heading are the ban on bid-rigging, the provisions concerning extraterritoriality and the extension of section 39 to copyrights and industrial designs. That section provides for the Federal Court to issue remedial orders when patents or trade marks have been used for restrictive ends contrary to the Act.

(1) The Inclusion of Services

A major feature of the Bill is to reverse the present situation whereby most activities which do not relate to dealings in physical articles are excluded from the scope of the Combines Investigation Act on that basis alone. Under the terms of the Bill, the distinction between pure services and activities relating to goods is removed. As a result, all economic activities will be subject to the Act except those that are exempted either by the Act itself or as a result of other legislation. What is new is that an activity will no longer enjoy an automatic exemption merely because it relates to the provision of a service rather than to dealings in articles.

At the present time, the prohibitions of the Act are applicable only to businesses or persons engaged in activities related to articles, with the following exceptions:

- the prohibition of agreements unduly to prevent or lessen competition in section 32(1)(c) applies also to the price of insurance upon persons or property;
- the prohibition of misleading advertising in section 37(1) applies to the promotion of the sale of property and the promotion of business or commercial interests.

Services like wholesale and retail trade which relate to dealings in articles come under the Act, but activities like laundries which are pure services in the sense that they do not involve dealings in articles are excluded. Financial institutions other than insurance, most professions, real estate transactions, advertising, much of the entertainment world, and a variety of other personal and business services are excluded as pure services. Altogether the types of commercial services which are excluded from the ambit of competition run into the hundreds. A list of examples taken alphabetically is: Accounting Services, Building Cleaning, Cemeteries, Disinfecting, Employment Agencies, Funeral Directors, Guard and Patrol Services, Hair Stylists, Interior Decorators, Janitor Services, Laundries, Micro Filming, Medical Laboratory Services, Parking Services, Rubbish Removal, Snow Removal Services, Travel Services, Upholsterers, and Demolition Services.

While the foregoing describes in general terms the scope of the present Act, there is in fact a fairly wide band of uncertainty as to what is covered and what is

not. The Economic Council referred to the "protracted and socially wasteful litigation which the wording of the present legislation makes necessary". Recent cases have established the applicability of the Act to some previously doubtful areas but have reduced the scope of the Act in others. For example, the services of freight forwarders engaged in assembling small shipments into railway car lots have been ruled as coming under the Act even though the forwarders did not own or operate the transportation facilities (Regina v. J.W. Mills & Son Limited et al.). In another case (Regina v. Canadian Warehousing Association) the contention that the storage of household goods was not under the Act was dismissed even though the privately owned goods were not for sale. There has also been a case (Regina v. Canadian Coat and Apron Supply Limited) where a conviction was obtained against a group of companies in the linen-supply industry whose function was to provide customers with clean and ironed linen owned by the companies.

Distinguishing which activities in construction come within the Act has presented many difficulties. It has been established (Regina v. Electrical Contractors Association of Ontario) that service activities are within the Act in so far as they affect unduly competition in the market for construction materials. In a recent case, (Regina v. J.J. Beamish Construction Co. Limited et al.), however, price collusion and bid rigging by a number of paving companies were held not to come within the Act because they related to the services of work and labour, even though the Court criticized the conduct of the defendants as devoid of business ethics and deserving of the sharpest denunciation. Another difficulty is that land or a completed

building does not appear to fall within the legal definition of an "article" as that word is used in the Act. Aside from its effects upon the applicability of the Act to the Construction Industry itself, this has removed services relating to the assembly and sale of land and houses from the Act.

As another example of the distinctions which are called for by the present Act, its applicability to the professions and trades depends in part upon the extent to which dealings in articles are involved. Retail pharmacists clearly fall within the Act while professional activities less directly related to articles do not.

Under the Bill, the various definitions and prohibitions in the Combines Investigation Act are extended to embrace services. For example, the word "product" replaces the word "article" in a number of places, and is defined to include an article and a service. Also, the definition of the word "article" is extended so as specifically to include money, various kinds of deeds and instruments, tickets and energy. The net effect of the changes is that, as is now the case with dealings in articles, no service activity would be excluded simply because it was a service.

The Economic Council of Canada has estimated that approximately 20 per cent of the gross domestic product consists of activities which would be affected in whole or in part by the extension of the Act to services.

The reasons for the exemption of services have become largely lost in time. The exemption traces back to the original legislation of 1889 which, as with the present law, applied largely to articles or commodities which may be the subject of trade or commerce (although services were included under the Act, but not the Criminal Code, from 1923 to 1935). Then, as now, the legislation went beyond dealings in articles to cover one pure service, namely the price of insurance upon persons or property, probably because the attention of the legislators had been drawn to a combines in insurance.

Whatever the original reasons, the present effect of the exemption is to exempt a substantial and increasing proportion of Canadian economic activity from the legislation, as well as to create a paradoxical and uncertain distinction between what is covered by the Act and what is not. Indeed, Canada is now almost alone among nations with competition policies which do not apply those policies to services. The Economic Council stated in its Interim Report on Competition Policy:

"The present position of services vis-à-vis competition policy in Canada is inconsistent not only with the philosophy of competition policy outlined earlier in this Report, but also with the position taken by other industrial countries. Competition policy in the United States embraces all commercial activities; any exceptions arise either from specific amendments to the legislation or from judicial interpretations as to the authority of federal antitrust laws. In Britain, the Monopolies and Mergers Act of 1965 had the effect of extending the

Monopolies and Restrictive Practices (Inquiry and Control) Act of 1948 to services. Acting under the authority of this new legislation, the Board of Trade has given to the Monopolies Commission references to inquire into practices pertaining to insurance, estate agents' fees and the professions. Of the other OECD countries, only Ireland follows the Canadian practice of limiting the scope of antitrust legislation to activities related to goods or commodities".

(p. 144)

One of the principal conclusions of the Council's report was that services should be brought within the ambit of competition policy. It stated:

"There is, in our view, enough evidence pointing to the existence in the service sector of anti-competitive practices detrimental to the public interest to lead to the conclusion that the continued exemption of parts of this sector from competition policy cannot be justified. We therefore recommend, first, that the per se provisions of the revised Combines Investigation Act be made applicable to all commercial activities, including services provided in connection with the sale or rental of land and buildings and the unregulated activities of 'regulated industries'. The only major exemptions would be those which already exist in respect of bona fide trade union activities, and arrangements between fishermen in British Columbia and their customers. Some de facto exemptions would of course

also continue in respect of activities clearly subject to alternate social control in the form of direct regulation or public ownership.

"One of the effects of the recommended change would be to bring services related to 'articles' immediately and clearly within the scope of the Act, without the protracted and socially wasteful litigation which the wording of the present legislation makes necessary in such cases. Personal services, such as those of hairdressers and travel agencies, would also be included, as would such business services as those provided by advertising agencies, building cleaners and telephone answering firms. The professions, financial institutions, a broad range of communications services, and all recreational services, including professional sports, would also be covered in so far as other types of social control did not apply".

(pp. 147-48)

While others have called for the extension of the Act to services, it remained for the Council to address itself to the general question whether there is anything intrinsic in pure services to justify their present exemption merely on the grounds of being services. After examining the question, the Council concluded:

"...while there are important differences in the nature of the products supplied by goods and service industries respectively, these differences are

not such as to render an efficiency-oriented competition policy less relevant for service industries. On the contrary, it may in some ways be more relevant".

(p. 146)

One difference between goods industries and pure services which the Council noted is that the products of the latter are intangible, a fact which creates special problems for the consumer. He often cannot examine what he is buying, nor can he return it or resell it. Moreover, he may have to purchase the service on the basis of only a rough estimate of final cost. Factors of that kind increase the need for competitive markets.

Another difference noted by the Council is an absence of import competition in many service industries. Indeed the lack of transportability of some services reduces domestic competition as well.

The Council also addressed itself to the question whether competition was already functioning so satisfactorily in the services industry as to render unnecessary the application of competition policy to them. After examining such information as was available to it, including press reports, complaints made to the Department of Consumer and Corporate Affairs, and other sources, the Council concluded:

"Such proof positive could in most cases only be obtained by setting up the formal machinery for investigation and analysis that already exists for

goods industries. But there is, we believe, sufficient information available to support the contention that markets for some services are not functioning satisfactorily, and to justify the setting up of formal machinery".

(p. 147)

A review of the files of the Combines Branch over the years beginning with 1962 discloses many complaints relating to the service sector. There would undoubtedly have been many more had it not been generally known that nothing can be done about such complaints under the present Act.

Under the terms of the Bill, while no activity would continue to enjoy an exemption simply because it was a pure service, a number of services would continue to be wholly or partly exempt for other reasons. Bona fide trade union activities have always been exempt from the Combines Investigation Act and would continue to be so. Another class of exemptions would be service activities covered by regulatory laws. Services such as telephones and other forms of communication, electrical power and the professions would continue to be immune from the legislation to the extent that their activities were regulated or expressly authorized by law. This immunity is not stated in the Bill, but stems from judicial interpretation.

The leading case in this connection was in Re The Farm Products Marketing Act, where the Supreme Court of Canada held that regulatory schemes based upon valid legislation could not be held to be "to the detriment or against the interests of the public" as the then Combines

Investigation Act put it, nor could they be schemes to unduly limit or prevent competition, within the meaning of the then section 411 of the Criminal Code.

The situation at present is that some of the activities of a service industry may be under some form of regulation while its other activities are neither regulated nor subject to the Combines Investigation Act. In some instances, such as in communications, an industry may be partly under regulation, partly subject to the Combines Investigation Act in so far as its unregulated activities relate to articles, and partly immune in so far as its unregulated activities are services. Under the changes proposed, all the unregulated activities of such an industry would come under the Combines Investigation Act.

The Economic Council, in recommending that virtually all unregulated commercial activities be brought within a revised competition act, made specific mention of the need to include the unregulated activities of regulated service industries. Elsewhere in its report the Council commented on those industries as follows:

"...In Chapter 2 of this Report, we noted that competition policy constitutes the most indirect form of social control of industry, obviating or lessening the need for other forms of control. Where competition is weak or moribund, there are likely to be pressures to impose more direct public controls by way of regulation or even public ownership. Such pressures have indeed arisen in service industries,

many of which operate under varying degrees of public regulation. Transportation, broadcasting and other forms of communication, public utilities and financial services spring readily to mind. It cannot simply be concluded, however, that the fact that these industries are regulated makes the application of competition policy unnecessary ... Many industries are regulated only in respect of certain parts of their activities and the regulation may or may not bear directly on such matters as price".

(p. 137)

Many of the professions enjoy extensive powers of self regulation under Provincial statutes, particularly in matters affecting professional standards such as entry requirements. The proposed amendments would not affect those arrangements. However, commercial activities such as the fixing of fees are frequently not covered by the Provincial laws, and in such cases they would henceforth have to be in accordance with the provisions of the Combines Investigation Act, unless covered by valid provincial legislation.

The Council dealt at some length with the special requirements of professional groups as they relate to competition policy. It was clearly of the opinion that fee setting and other economically significant practices of the professions should be subject to some suitable system of checks and balances. Three possible systems are competition policy, collective bargaining where there is an appropriate authority to bargain with, or direct regulation. While leaving open the possibility of any of the three, separately or in combination, the Council gave first place to competition policy. It stated:

"As a general rule, arrangements for determining the remuneration of self-employed professional and other groups should be subject to competition policy. Where, however, a group prefers a collective-bargaining or public-regulatory arrangement, and where conditions are such that this arrangement constitutes an adequate check-and-balance system, it would be in order to grant an exemption from competition policy in respect of those matters specifically covered by the alternative arrangement".

(p. 151)

With regard to financial services, there is a number of special provisions in the Bill to meet particular conditions. The Bill, while exempting banks from the provisions of the Combines Investigation Act relating to agreements and mergers, strengthens the provisions in the Bank Act dealing with restrictive practices and provides specifically for investigation of such practices by the Inspector General of Banks. By this means, the authority of the Minister of Finance over banks will be maintained while control over the restrictive practices of banks will be strengthened. Banks are at present prohibited by the Bank Act from agreeing on interest rates, and bank mergers are subject to approval by the Minister of Finance. Henceforth, banks would also be generally prohibited from agreeing on service charges or on loans or services to be provided to customers or classes of customers.

In 1971 the Prices and Incomes Commission published its report on Bank Service Charges. The study had been commenced following simultaneous increases in service charges by all chartered banks. In its conclusions, the Commission evinced concern about the wide discretionary power enjoyed by the banks. It stated:

"The fact that there is typically such a high degree of uniformity in the scale of bank service charges, and that changes in the scale are typically made at the same time and in the same manner by virtually all banks, is bound to raise questions in the public mind. It is by no means obvious that effective price competition exists in this area of banking business, and there is an apparent absence of any other effective mechanism for ensuring maximum efficiency and minimum cost to the public in the provision of chequing account services.

.....

"Under present circumstances the Commission is not in a position to rule on whether the increase in bank service charges meets the specific pricing criteria which were in effect during 1970, since these lapsed at the end of the year. The Commission has made it clear, however, that the need has not lessened for responsible behavior on the part of all Canadians in determining prices and incomes in 1971. It is difficult to see how this need is to be met if firms in as favourable an underlying

position as the chartered banks raise their prices in areas of their business over which they have a large measure of discretionary control. If both high unemployment and high rates of price and cost increase are unacceptable to the public, increases in income claims by any group - whether in the form of higher prices and profits or higher rates of pay - must expect to receive careful scrutiny and be judged by the public on the basis of exacting standards".

(pp. 25-27)

Another exemption which was found to be required relates to the activities of securities dealers. Bond and stock underwriting and primary distribution are normally carried out by groups of investment houses acting together in order to spread the risk. They would be exempted from the provisions of section 32 of the Combines Investigation Act relating to conspiracies and from section 38 relating to price maintenance.

As in the case of other services, the activities of financial services would also be exempted to the extent that they were under public regulation.

The Economic Council, while taking note of some special administrative problems and of the need for some special exemptions, clearly favoured the extension of competition policy to the financial sector. The Council reported:

"The present Bank Act therefore reflects two different aspects of policy, both of which are designed to protect the public interest

in the activities of the banking system. The primary focus of the legislation is on the need to ensure the stability and solvency of the chartered banks. But as the ban on rate agreements indicates, once this basic requirement is met, then the public is deemed to have a right also to the benefits of effective competition and efficient resource use in the financial system. Nor does there appear to be any reason why the extension of competition policy to all financial institutions cannot be a major factor making for efficiency in this area. Indeed, it is our view that the application of competition policy is as relevant to the provision of financial services as it is to other fields".

(p. 154-55)

Much of the discussion above has particular application to restrictive agreements contrary to section 32. It should be noted, however, that changes in the definitions of section 2 have the effect of broadening the application of section 33 to services. At present this section, which makes it an offence to be a party to an illegal merger or monopoly, applies only to business connected with articles.

There are several specific areas where the dominance of firms in industries within the service sector of the Canadian economy have been a cause for concern with reference to competition questions. In this regard, attention should be drawn to the present government's policy in the communications industry, specifically with regard to the computer service industry.

This policy is to rely on competition in the computer service industry as opposed to giving further consideration to extensive government regulation of this industry. It would therefore be a matter of deep concern if the industry were to continue outside the reach of competition policy.

There are also other areas within the service sector where merger and monopoly issues have raised questions with regard to the possible limitation of competition. For example, the existence of merger and monopoly problems in the motion picture industry in Canada has long been recognized, but the exhibition of motion pictures, which is the area of greatest concern, falls within the service sector of the economy. Merger and monopoly problems may also exist in such industries as film processing, funeral services and automotive repair.

The provision of services often involves the use, sale, or rental of equipment — and the participation of equipment manufacturers in certain service areas gives rise to competitive problems which are often related to monopoly issues. The inclusion of "rent" and "lease" in the definitions of "supply" and "service" in section 2 clarifies the application of the merger and monopoly section to situations where a dominant firm in an industry will not sell but only rent equipment to end-users. The concomitant broadening of the definition of "article" in section 2 would also allow for the application of the merger and monopoly provisions of the Act to areas such as real estate and the rental of dwellings.

As explained above, the services amendment may be proclaimed in effect at a later date than the rest of the Bill, so as to give the affected parties, including the provincial authorities, time to make any necessary adjustments.

(2) Bid-rigging

The Bill makes bid-rigging an indictable offence, and defines bid-rigging either as an agreement to refrain from bidding in response to calls for tenders or to submit tenders arrived at by collusion.

This proposed revision of the Combines Investigation Act would surmount serious difficulties which have been experienced in attempting to prevent collusive bidding practices. In the first place, it would remove the necessity imposed by existing section 32 of showing that dealings in articles are involved, so that services will be subject to the prohibition. The reasons for bringing services under the Act are dealt with elsewhere in this document.

In the second place, the proposed section creates a per se offence, thus relieving the Crown of the onus of proving that competition has been lessened unduly, as is required by section 32. Proof of undueness has rested largely upon a showing of substantial market control, a requirement which frequently cannot be met in cases of bid-rigging. Most situations involving bid-rigging that come to the attention of the Director of Investigation and Research involve local firms with only small shares of the construction market.

The necessity of proving "undueness" with relation to construction bids has prevented the Director of Investigation and Research from proceeding against these practices in many instances. The difficulty

under the existing Act of reaching bid-rigging was well illustrated in the Beamish case. This case arose out of an inquiry which resulted in a report of the Restrictive Trade Practices Commission which was made public in August 1964. The inquiry and report dealt with alleged price collusion and "bid-rigging" on tenders for the surface treatment of roads and highways. The principal customers for this type of work were the Department of Highways of Ontario and municipal bodies such as townships and counties. Subsequent to the Report of the Commission, charges were laid in the Supreme Court of Ontario against 12 companies alleging a combine with respect to the production, manufacture, purchase, barter, sale, transportation or supply of sand, gravel stone chips and asphalt used in the re-surfacing and surface treating of provincial, county, township, and municipal contrary to section 32(2)(c) of the Combines Investigation Act.

The evidence showed that the conspiracy involved an arrangement for the contractors to agree upon who would be the successful bidder on a contract and to ensure that other tenders were submitted by members of the scheme so as to give the impression of competition. The trial judge found that although the alleged agreement was proved, it was not an agreement to lessen competition unduly. He came to this decision largely because the companies in question did not have a virtual monopoly over the supply of asphalt, stone chips, sand and gravel in the province of Ontario and because there were other companies in Ontario engaged in the same kind of work.

On appeal by the Crown, the majority judgment of the Ontario Court of Appeal decided that the contracts in question were predominantly contracts for work and labour, in which the materials were supplied only incidentally. It dismissed the concept of market that the Crown had attempted to develop, that is, that the accused corporations constituted the only relevant market because they were virtually the only contractors to respond to the requests for tenders by the authorities. The Court, however, was extremely critical of the system of rigging tenders and found them to be practices "completely devoid of business ethics". As Mr. Justice Schroeder said:

"...greatly as one must deplore the conduct of the respondents in hoodwinking the Department of Highways and the municipalities with which they dealt, the offence charged has not been proven and, not without some reluctance, I would dismiss the appeal".

The decision in the Beamish case had important consequences for further proceedings against bid-rigging and collusive tendering. In May 1970, the Report of the Restrictive Trade Practices Commission on Road Paving in Ontario was made public. The

Commission found that, from 1959 to 1961, some paving contractors had entered into arrangements to interfere with the public tender systems of the Department of Highways of Ontario and municipalities within the Metropolitan Toronto area through the use of a device known as "cover bidding". The Commission labelled the practice of "cover bidding" as clearly contrary to the public interest, but stated that in the light of jurisprudence it did not have the effect of restraining competition unduly. Accordingly, no action in the Courts could be taken.

The Economic Council of Canada recommended that if "unduly" were retained in section 32, the practice of bid-rigging should be prohibited outright. The present Bill follows this recommendation.

(3) Extraterritoriality

In recent years increasing attention has been given to problems relating to foreign ownership and the structure of Canadian industry. The report on Foreign Direct Investment in Canada, commonly called the Gray Report, was published by the Government in 1972. It found that U.S. antitrust legislation specifically seeks to extend the application of domestic policies against restriction of competition to foreign firms. In doing so the United States courts have paid only limited attention to the effects its decrees may have had on the economies of other countries. The report also notes that U.S. antitrust laws influence U.S. firms in their planning and structuring and that

this influence extends to their Canadian activities. The report states:

"The concerns of United States firms about the application of United States antitrust laws to their dealing in Canada could present difficulties for any efforts which might be made to achieve a joint venture, to pursue some form of international rationalization so that the Canadian-based operation of the multinational structure would have export markets allocated to it, or to have product lines developed in Canada—rather than the United States. This latter scheme would have the express purpose of limiting exports from the United States and allocating some of the market opportunities to the Canadian operation. Similarly, any attempts to replace imports of United States components would displace United States exports. Where an agency of the Canadian government is involved and requires such activity—and no independent Canadian interest participates in a way which would suggest a private conspiracy in respect of United States international trade—this would seem to pose few problems. Joint commercial ventures are less likely to be free of such concerns. In any case, it would be desirable to consider taking whatever steps are reasonably possible to ensure that United States antitrust decrees are not able to frustrate Canadian policy objectives. Canadian policy on competition and on foreign investment could help to fill the void which currently exists in this area. It is the absence of a Canadian policy

on this subject which permits United States courts to direct action in Canada.

"This shortcoming could be remedied by enactment of domestic competition legislation prohibiting compliance in Canada with certain foreign decrees which were incompatible with Canadian interests. As pointed out previously, Canada's ability to effectively assert its sovereignty in this area is consistent with judicial interpretation in the United States, which has recognized the over-riding authority of foreign jurisdictions where it has been exercised to specifically prohibit or require certain actions. Furthermore, the effective implementation of a Canadian competition policy also requires that account be taken of international business structures and activities..."

(pp.273-74)

The new Bill takes account of these considerations by proposing two new sections. One authorizes the Restrictive Trade Practices Commission to forbid the implementation of foreign judgments or court orders purporting to direct the conduct of Canadian companies when they are shown to have adverse effects upon the Canadian trade. A companion section authorizes the Commission to forbid the implementation of a foreign law, considered by a foreign parent company to be binding upon its Canadian subsidiary, in a manner involving adverse effects upon trade and industry in this country.

The report also states:

"While the approach suggested in this discussion of issues relating to competition policy involves a unilateral definition of what Canada considers a fair jurisdictional division to resolve conflicts of law, a bilateral or multi-lateral international approach might prove superior. The provisions in the Competition Act and policy options outlined in this section would not be at all incompatible with such a step and might even hasten the development of such structures or rules. At the same time, such an approach would permit Canada to implement a competition policy which differs in important respects from that in the United States".

(p.279)

This will be considered in connection with later stages of the development of competition policy. In the meantime the safeguards in the present Bill are desirable.

(4) Abuse of Intellectual Property

Section 29 of the present Act is designed to inhibit the holders of a patent or trade mark from extending the rights conferred upon such holders beyond the limits provided by the law. For example, a patent-holder may require purchasers to buy some non-patented product as a condition of being supplied with the patented item. The amended section extends

this provision to include copyright and registered industrial designs, universally considered as rights of the same character as patents and trade marks, the whole being classified as intellectual and industrial property and being the subject of laws granting the holders specified exclusive privileges.

In addition to the extension of the section to intellectual property, the Federal Court is granted greater flexibility in the making of remedial orders, which still extend to the power to revoke a patent or expunge a trade mark. This flexibility lies in the power to vary the terms of licences and contracts. Moreover, the powers granted to the Court are also extended to any Superior Court in which a conviction is registered. This is considered to be an improvement in the quality of the remedy provided.

(C) Protection of Small Business

Certain amendments, while consistent with the main aim of competition policy in promoting efficiency, are designed mainly to assist small businessmen who have been subject to the abuse of economic power by dominant suppliers beyond the reach of the present Act. This comment applies particularly to the new provisions concerning refusal to deal, consignment selling, exclusive dealings, market restriction and tied sales. The provisions introduced to deal with these practices will, for the first time, enable the Restrictive Trade Practices Commission to examine certain practices capable of being either desirable or undesirable depending upon the particular facts of the case and make remedial orders.

This group of changes follows the recommendations made by the Economic Council of Canada. In its report, the Council reviewed the facts concerning the so-called T.B.A. Report which had been made in 1962 by the Restrictive Trade Practices Commission. That Commission recommended that exclusive dealing, tying and market access arrangements be made unlawful when they 'were likely to lessen competition substantially, tend to create a monopoly or exclude competitors' Such prohibitions were considered by the Commission to be necessary for the protection of the service station industry engaged in the distribution of petroleum and related products (Tires, Batteries and Accessories). The Economic Council, which had decided to recommend a civil rather than a criminal approach to such problems, emphasized that these practices were capable of being used constructively and none of them should be regarded as an offence, or banned as such, although they certainly could be used oppressively and should be brought under control. The Council brought the same analysis to the practices of consignment selling and refusal to deal.

Accordingly, the Council recommended that the Board be empowered to review particular situations and where a specified trade practice was found to be detrimental to the public, to issue an injunction prohibiting the practice, or to recommend or negotiate alternative remedies. The approach which has been followed in the present Bill is to empower the Restrictive Trade Practices Commission, on application by the Director, to review situations where these practices exist. If they are found to have specified effects damaging to competition, as set out in the respective sections, the Commission would be empowered to make remedial orders.

(1) Refusal to Deal

Businessmen who have been unable to get supplies needed for their operations on ordinary trade terms have submitted many complaints to the Director in recent years. In some cases, these are comparatively new entrants to a market and in others they are established firms whose supply lines have been disrupted after developing the market for the product involved.

In the majority of cases the firms adversely affected are relatively small although their credit may be good and they are willing to take delivery in acceptable quantity. The industry may be oligopolistic in structure, in which distribution has traditionally been limited to a few established firms among whom price competition is unusual and whose policies reflect an equally stable situation on the supply side. Alternatively, the refusal to supply may reflect the supplier's decision to undertake or increase its own distribution and eliminate competition in the resale of its product.

Unless it can be shown that the refusal to supply arises from an overt agreement among competitors, abuse of a monopoly position or enforcement of an illegal resale price maintenance programme, the present legislation offers no remedy even though the withdrawal of supply may ruin the complaining firm and even though the withdrawal results in a serious reduction of competition in the market.

The amendment does not make refusal to supply an offence in itself. It does, however, empower the Director to bring the matter before the Commission for adjudication. The Commission is empowered to recommend to the Minister of Finance that customs duty be modified so that the complainant can import supplies on competitive terms or it may order that one or more suppliers accept him as a customer on usual trade terms. Substantial safeguards for all concerned are provided, in that it must be shown that the person has been injured in his business by the refusal to supply, that he is willing to meet the usual terms for purchase, that there is no scarcity of the product and that the refusal reflects an inadequate degree of competition in the market. The Commission is, of course, required to provide all parties with the opportunity to be heard.

(2) Consignment Selling

Many retailers have complained that their freedom to make pricing decisions have been taken from them by suppliers who insist upon doing business under a consignment sales contract. In such a situation the title to the goods do not pass to the retailer, who therefore is not reselling the product but only acting as agent of his supplier. Because there is no resale the supplier can then fix the retail price without offending the letter of the resale price maintenance law. Similarly, a supplier who wishes to give one retailer a more favourable price than another in the same market area can avoid risking violation of the price discrimination provisions by placing one or both

retailers on a consignment basis. This practice has been the subject of many bitter complaints by the gasoline service station trade. In other situations the consignment sales contract is a perfectly viable method of doing business which enables the supplier to induce distributors or resellers to push his goods without having to make an initial investment.

The Commission is empowered by the amendment to examine situations brought before him by the Director and, if circumstances warrant, to order that the use of consignment selling as a colourable device be discontinued. Once again, the necessary safeguards are provided to the parties, including the right to be heard.

(3) Exclusive Dealing, Market Restriction and Tied Sales

'Exclusive dealing' takes place when a supplier requires his customer to buy certain products only from him or from someone he nominates or when he induces his customer to do so by giving him more favourable terms. Some major farm implement companies, for example, have required their retail dealers to cease selling the products of competing manufacturers who specialize in a few products not constituting a full line. The tendency of this is to deprive the market of products which are in demand and which would produce needed price competition in the market. It has also been common for the major oil companies to engage in exclusive dealing.

'Market restriction' is the term adopted for the practice in which a supplier requires his customer to sell only in a

prescribed market area or to pay a penalty on sales outside it. This policy was adopted by a European car manufacturer who allotted precisely defined territories to his dealers. If they sold to customers outside their own territories, a substantial part of the margins had to be reimbursed to the dealers in whose territories the customers resided. This would substantially discourage the dealers from seeking business outside the allotted franchise area and would deprive customers of effective price competition for that product.

'Tied Sales' is the term adopted to describe the situation where a supplier requires his customer to purchase a second product as a condition of being supplied with the product he actually wants. It also extends to a requirement that the product be not used in combination with some other product. Finally, it covers the situation where more favourable terms of sale are offered in order to induce the customer to engage in the tying arrangement. An example of this is where film distributors have required exhibitors to rent additional films if they wanted to obtain the film of their choice. The tendency here is to deprive the public of the product choice which would otherwise result from the competitive system. Another example is the case where makers of machinery have made it a condition of rental or sale that supplies used in connection with the machinery be obtained only from them.

The proposed amendment empowers the Commission, upon application of the Director, to review particular situations of exclusive dealing, tied sales and market restriction to determine whether they are either beneficial or detrimental to the public. When exclusive dealing or market restriction or tied sales are widespread or engaged in by a major supplier, and are likely to substantially lessen competition, the Commission may issue an order. The order may prohibit the continuation of the practice or prescribe other corrective measures.

It is made clear in the amendment that an order may not be made if the arrangements are only among companies affiliated by common ownership, as defined in the Bill. The Commission is also under a statutory obligation not to grant an order if it finds that exclusive dealing or market restriction practices have only been adopted for a reasonable time to facilitate entry of a new supplier or product into a market, or when tied sales are reasonable because of the technological relationship involved.

(4) Civil Damages

Under the existing law there is no civil recourse under the Act for persons injured by reason of the fact that others have participated in violations of the Combines Investigation Act. The provision dealing with civil damages, although it is expected to be of particular value to small businessmen who have been hurt by conduct contrary to the Act, will be equally available to consumers and to any other members of the public who have been so damaged.

The amendment provides that anyone who has suffered loss or damage because of such a violation, or because anyone has failed to comply with an order of the Restrictive Trade Practices Commission,

may, within two years, sue for and be awarded damages equal to the actual loss incurred plus the full cost of investigation and court proceedings. Such suits are facilitated by a provision permitting the admission as evidence of the transcript of court proceedings in which a violation or failure to comply with an order has been found.

(D) Protection of Athletes

The Bill brings professional and amateur sports within the ambit of the Combines Investigation Act in the same way as other services, with the exception of specified arrangements among member clubs of the same sporting league. The latter arrangements are exempted from section 32 relating to conspiracy but are subject to special prohibitions which take account of particular relationships among the clubs of a league.

The reasons for bringing professional and amateur sports within the ambit of competition policy are the same as those applying to other services. The Economic Council specifically recommended that all recreational services be brought under competition policy, including professional and amateur sports.

Allegations of restrictive practices in professional and amateur hockey have been the subject of public concern for many years. Indeed, concern about practices in hockey played a significant role in drawing public attention to the fact that services were exempted from the Combines Investigation

Act. Early in 1966 the Government was urged to launch an investigation of hockey under the Act, which it was of course unable to do, because even the research inquiry section (section 47) applies only to commodities. The then President of the Privy Council, replying to a question in the House of Commons, explained the situation, and indicated that the question whether and to what extent services might be brought within the Act was under consideration (Hansard, February 23, 1966, p.1673). Material which was subsequently prepared in the Office of the Director of Investigation and Research was made available to the Economic Council of Canada for its study of competition policy. In the period during which the Council was examining competition policy, there were two separate public inquiries involving sports, where serious concern about restrictive practice in hockey was brought to light. One was the Report on Amateur Hockey in Canada by the Hockey Study Committee of the National Advisory Council on Fitness and Amateur Sports, Ottawa, January, 1967, and the other was the Report of the Task Force on Sports for Canadians, Ottawa, February, 1969.

At least until the recent advent of the World Hockey Association, amateur and professional hockey in North America and beyond was closely regulated by a network of interrelated private agreements which, in Canada at any rate, were under no form of public surveillance. The extent to which the World Hockey Association has disrupted the system remains unclear in view of rumours that the two leagues might merge. The possibility of this, however, has been denied by the President of the NHL.

Many of the complaints about hockey have concerned arrangements among clubs of the National Hockey League regulating the acquisition

and retention of players. There have also been complaints about arrangements between the NHL and the Canadian Amateur Hockey Association as a source of new players.

The Task Force on Sports for Canadians expressed particular concern about Clauses 17 (the "reserve clause") and 18 of a contract which players were then required by the National Hockey League to sign. According to newspaper accounts (Globe and Mail, August 29, 1973) the reserve clause has been replaced by an arbitration clause in post-1972 contracts. The legality of the reserve clause under the United States antitrust laws has been the subject of litigation in the United States for some time. In 1972 a U.S. Federal Court Judge, in granting a preliminary injunction against enforcement of the clause, ruled that, in so far as it operates to exclude the World Hockey Association and its member teams from entering the field of major league professional hockey through player restraints, it is a violation of section 2 of the Sherman Act.

The Report on Amateur Hockey in Canada recommended a greater degree of autonomy for the Canadian Amateur Hockey Association from the National Hockey League. To this end, it stated:

"11. We strongly recommend that the Federal Government of Canada initiate legislation in whatever form it deems most suitable which will achieve the purpose of guaranteeing to amateur hockey freedom from any kind of interference from the National Hockey League or its agents.

It may be that an amendment of the Combines Investigation Act can effect this purpose".

To bring hockey and other amateur and professional sports under the Combines Investigation Act in a realistic manner, it was found necessary to incorporate provisions to take account of the international character of the sport and of the need for clubs to agree on arrangements for maintaining balance among teams in their own league.

(E) Other Measures

Most of the other amendments to the Act are of a technical nature designed to ensure that the substantive amendments are uniformly applicable to all aspects of its administration.

One substantive item is found in revised section 4, which makes it clear that it is intended to refer to both sides of the table in collective bargaining, whether bargaining is done on a national, regional or firm by firm basis. The existing section 4 of the Act exempts from its provisions "combinations of workmen or employees for their own reasonable protection as such workmen or employees".

A second item of this sort is found in the amendment to section 4 which exempts the activities of fishermen and buyers of fish who engage in collective bargaining in terms of the price of catch, since a fisherman is frequently a private businessman, technically speaking, who owns his own gear. The provision arose from an investigation into the activities of the fish industry in British Columbia in which it appeared that technically they were in breach of the law. Parliament dealt with the matter by making a statutory exemption

applicable to the fishing industry in British Columbia. The exemption is widened by the Bill so that this feature is removed and the exemption applies throughout the fishing industry.

DESCRIPTION OF THE BILL, CLAUSE BY CLAUSE

Clause 1 : The main purpose of the amendments made by clause 1 of the Bill to the interpretation section of the Combines Investigation Act is to bring services generally within the application of the Act. This is done by the new or amended definitions of "business", "merger", "product", "service", "supply", and "trade, industry or profession". The other purpose of these amendments is to supply a better and more extensive definition of "article" than is now contained in the Act.

Some services are already expressly covered by the Act: storage, rental and transportation of an article and the price of insurance upon persons and property. Some other services are affected indirectly. Several court cases, e.g., Regina v. Electrical Contractors Association of Ontario and Dent (1961) 27 D.L.R. (2d) 193, have established the rule that service activities are within the Act in so far as they affect unduly competition in the market for various construction materials. In a more recent case, however, Regina v. J.J. Beamish Construction Co. Ltd. (1968) 65 D.L.R. 260, price collusion and rigged tendering on the part of a number of paving companies were held not to come within the Act because they related to work and labour, i.e., to services, although the Court criticized the fictitious tendering scheme as devoid of business ethics and deserving the sharpest denunciation.

"article" - This word is defined in the present Act as "an article or commodity that may be the subject of trade or commerce". The new definition extends expressly to money, certain deeds and instruments, tickets and energy, things which a court might not consider to come within the ordinary connotation of the word "article".

"business" - This word is defined in the present Act as "the business of manufacturing, producing, transporting, purchasing, supplying, selling, storing or dealing in articles". The new definition is extended by an express reference to services generally. The part relating to articles is rounded out by the inclusion of the words "acquiring" and "otherwise". The definition of "business" is relevant to the definition of "merger" (below) and of "monopoly" (as presently defined in the Act).

"merger" - This word is defined in the present Act as "the acquisition by one or more persons, whether by purchase or lease of shares or assets or otherwise, of any control over or interest in the whole or part of the business of a competitor, supplier, customer or any other person, whereby competition

- (a) in a trade or industry,
- (b) among the sources of supply of a trade or industry,
- (c) among the outlets for sales of a trade or industry, or
- (d) otherwise than in paragraphs (a), (b) and (c),

is or is likely to be lessened to the detriment or against the interest of the

public, whether consumers, producers or others". The amended definition includes services by inclusion of the word "profession" and by reason of the new definition of "business" (above) which it incorporates. The words "trade or industry, in their new context, are already wide enough, having regard to the new definition of "business", to include most services but are not apt to include professional services, so the words "or profession" have been added.

"product" - This word does not appear in the interpretation section of the present Act. It is introduced and defined by the amending Bill so that it may be used, as a matter of convenience, in those provisions of the Act which are intended to apply to both articles and services.

"service" - This word is not defined in the interpretation section of the present Act. The definition is introduced now to supply a comprehensive definition of the service sector to which the Act will now generally apply. The definition of "service" is also relevant to the definition of "business" (above).

"supply" - This word is not defined in the interpretation section of the present Act. The definition is introduced now so that the word may be conveniently used in those provisions of the Act which are intended to apply to all the dealings in an article or service which are enumerated in the definition.

"trade, industry or profession" - The words "trade or industry" are defined in the present Act as including "any class, division or branch of a trade or industry". The words

"trade or industry", in their new context, would suffice to include most services but are not apt to include professional services without specific mention. The expression "trade, industry or profession" is relevant to the definition of "merger".

Clause 2 : When Bill C-256 was introduced there was some criticism to the effect that the exemptions in respect of collective bargaining were more favourable to employees than to employers. The same criticism could be applied to section 4 of the present Act which simply provides that "nothing in this Act shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees". The new section 4, as enacted by clause 2 of the Bill, would meet this criticism by paragraph 4(1)(d). At the same time, paragraphs 4(1)(c) and (d) would clarify the law by expressly recognizing and exempting activities that are actually engaged in at the present time and in respect of which the application of section 4 of the present Act is not clear. The new section 4 would also restrict the exemption granted workmen and employees to such as are recognized for bargaining activities by legislation, except for the activities referred to in paragraph 4(1)(c). Paragraph 4(1)(b) would replace and make permanent an exemption relating to fishermen and buyers and processors of fish in British Columbia, which has been carried in the Combines Legislation, on a temporary basis, for quite a few years as a result of an inquiry into the activities of fishermen and of fish packers in that Province; and the paragraph would also extend the exemption to fishermen and buyers and processors of fish throughout Canada. The new subsection 4(2) would make clear that no exemption is being granted in respect of an agreement or arrangement on the part of a group of employers to withhold articles or services

from any person; thus a group of employers could not, under cover of section 4, agree with their employees to withhold supplies from a firm whose employees did not belong to the same union as the employees of the group.

The new section 4.1, which is enacted by clause 2 of the Bill, exempts, from the prohibition against combines (section 32) and the prohibition against resale price maintenance (section 38), agreements and arrangements among persons who ordinarily engage in the business of dealing in securities, but only in so far as such agreements and arrangements relate to underwriting; and this term is carefully defined to exclude from the exemption, the day to day activities of investment dealers which do not relate to the primary distribution of a security or to the distribution of a large individual block of a security which raises the same problems as those of a primary distribution. When an issue of bonds or shares is underwritten, this is ordinarily done by a number of investment dealers who form a syndicate for that purpose, and the formation of such syndicates appears to be a reasonably necessary part of the process of issuing and distributing securities. Such a syndicate, however, may bring the members into conflict with section 32 because it necessarily involves them in agreements and arrangements upon the price they will offer for the issue, the prices at which they will sell the securities, market assignment and related matters, because otherwise they could not work together. Such a syndicate also involves the members, with reasonable necessity, in requiring the dealers to whom they sell, to maintain the market price at which the securities are offered to the investing public for a reasonable period; because otherwise a dealer, in order to make a quick dollar, could unload the securities he had bought at such a low

price as to discourage other dealers from participating in the distribution of that and future issues, or as to downgrade unfairly the general market acceptance of an issue. The exemption is therefore considered reasonably necessary to maintain a healthy climate for the raising of equity and bond capital for the purposes of the Canadian economy.

Clause 3(1) : Subsection 7(1) of the present Act provides that any six persons, Canadian citizens resident in Canada, of the full age of twenty-one years, who are of the opinion that an offence against any of the substantive prohibitions in the Act has been or is about to be committed, may apply to the Director under the Act for an inquiry. The new subsection 7(1) lowers the age to eighteen years in parallel with the change in the voting age for federal elections and with the general tendency to lower the age for civil responsibilities. It also substitutes, for the requirement of Canadian citizenship, the requirement of Canadian residence, which appears to be a better test of eligibility for the purpose of subsection 7(1). Paragraph 7(1)(a) is new and reflects the new authority of the Director to inquire into an alleged contravention of an order made by the Federal Court of Canada or a superior court of criminal jurisdiction under section 29 in respect of the abuse of a patent, trade mark, copyright or industrial design, or of an order made by a court under new section 29.1 relating to interim injunctions, or of an order made by a court under section 30 prohibiting the continuation or repetition of an offence or the doing of any act or thing directed toward the continuation or repetition of an offence or directing the doing of such acts or things as may be necessary to dissolve a merger or monopoly in respect

of which a conviction has been made. Paragraph 7(1)(b) is also new and reflects the new jurisdiction being conferred on the Restrictive Trade Practices Commission to make orders in respect of refusal to deal (new section 31.2), consignment selling (new section 31.3), exclusive dealing, market restriction and tied selling (new section 31.4), foreign judgments etc. (new section 31.5) and foreign laws and directives etc. (new section 31.6). Paragraph 7(1)(c) simply extends the authority of the Director, to inquire into suspected offences, to cover the new section 46.1, which makes it an offence to contravene an order made by the Restrictive Trade Practices Commission, under the new sections 31.2 to 31.6 above mentioned.

Clause 3(2) : Paragraph 7(2)(b) of the present Act provides that where a formal application is made to the Director to commence an inquiry into an alleged offence against the Act, the application must be accompanied by a solemn or statutory declaration showing the nature of the alleged offence and the names of the persons suspected. The new paragraph 7(2)(b) simply expands the paragraph to take into account, in subparagraphs 7(2)(b)(i) and (ii), the new authority of the Director, under the new subparagraphs 8(b)(i) and (ii) (below), to inquire into suspected contraventions of orders made under section 29 (abuse of patents, trade marks, copyright or industrial design), new section 29.1(below) (interim injunctions) and section 30 (prohibitions against continuation or repetition of an offence or directing the dissolution of a merger or monopoly); and to inquire whether grounds exist for the making of an order under new sections 31.2 to 31.6 (below) (exclusive dealing, market restriction and tied selling). The substitute paragraph 7(2)(c) is the same as paragraph 7(2)(c)

of the present Act except for the dropping of the unnecessary and now inappropriate words "that the offence has been or is about to be committed" after the word "opinion".

Clause 4 : The change effected by the new paragraph 8(b) is consequential and simply brings the authority of the Director, to conduct inquiries, into line with the new circumstances in which a complaint may be made under subsection 7(1) i.e., where it is believed that grounds exist for the making of an order by the Restrictive Trade Practices Commission under new Part IV.1 (below) or that there has been a contravention of an order made under section 29, new section 29.1 or section 30 or that an offence has been or is about to be committed under new section 46.1 (below).

The new paragraph 8(c), which is consequential, extends the authority of the Minister, to direct an inquiry, to cover all the new matters in respect of which the Director may, of his own initiative, conduct an inquiry. Paragraph 8(c) of the present Act reads "whenever he is directed by the Minister to inquire whether any provision in Part V has been or is about to be violated", which covers the present matters in respect of which the Director may, of his own initiative, institute an inquiry.

Clause 5(1) : Section 16 of the present Act provides for the appointment of a Chairman of the Restrictive Trade Practices Commission but makes no provision for the formal appointment of a Vice-Chairman. The new subsections 16(2.1) and (2.2) provide both for the appointment of a Vice-Chairman, and of an Acting Chairman when neither Chairman nor Vice-Chairman is available.

Clause 5(2) : The new subsection 16(8) requires the presence of two members of the Restrictive Trade Practices Commission, in order to constitute a quorum, both because of the new and important jurisdiction to make orders, which is conferred upon the Commission by the new Part IV.1 (below), and as a matter of general good practice. Under subsection 16(8) of the present Act, two members constitute a quorum except when there are three vacancies in the Commission, in which case one member constitutes a quorum. The new subsection 16(8) will thus require that a minimum of two members be maintained at all times.

The new subsection 16(9) retains the authority of the Commission to make rules for the regulation of its proceedings and the performance of its duties and functions, but, in line with the new subsection 16(8), omits the words of present subsection 16(9): "including the delegation to a single member of all the powers of the Commission except the power to report to the Minister".

Clause 6 : The new paragraph 18(1)(b), like the present paragraph, authorizes the Minister to direct the preparation and submission of a statement of evidence in any inquiry in which the Director may on his own initiative prepare and submit a statement, i.e., an inquiry into an alleged or suspected offence against the substantive provisions of the Act except new section 46.1 relating to the contravention of an order of the Commission under new Part IV.1. The preparation and submission to the Restrictive Trade Practices Commission of a statement of evidence is not appropriate in the case of an inquiry relating to a matter in respect of which the Commission may make an order under Part IV.1 or in the case of an

inquiry into a suspected contravention of new section 46.1, because an inquiry in respect of these matters, if the circumstances warrant further action, will result directly in an application to the Restrictive Trade Practices Commission for an order, or a prosecution in the courts.

Clause 7 : The new subsection 19(3) is consequential and simply adds the words "or profession" to present subsection 19(3), because of the extension of the Act to cover services and because the words "trade or industry", at the end of the subsection, are not apt for professions.

Clause 8 : The present subsection 20(2) provides that no person shall be excused from giving or producing evidence in an inquiry under the Act on the ground that such evidence may tend to criminate him or subject him to any proceeding or penalty, but that no such oral evidence shall be used against him in any criminal proceedings except a prosecution for perjury in giving such evidence. Section 122 and 124 of the Criminal Code are extensions of the crime of perjury to non-judicial proceedings and cases of conflicting evidence, respectively, and it is logical to include them in the cases in which the oral evidence may be used.

Clause 9 : Inquiries into alleged or suspected contraventions of the Act, or as to whether grounds exist for the making of an order by the Commission under Part IV.1, should in fairness to the persons concerned be conducted generally in private. On the other hand, proceedings before the Commission upon an application for a remedy under Part IV.1, being judicial or quasi-judicial proceedings, should be conducted in public.

Section 27 of the present Act, which relates only to inquiries into alleged or suspected offences, and provides that all such inquiries shall be conducted in private unless the Chairman of the Commission directs otherwise, is therefore broken down, by clause 9, into two subsections to take into account the distinction between an inquiry which may lead to a prosecution or an application for relief under new Part IV.1 and actual proceedings before the Commission upon such an application.

New subsection 27(1) provides that all inquiries under the Act shall be conducted in private, except that the Chairman of the Commission may order that all or any portion of such an inquiry that is held before the Commission or any member thereof shall be conducted in public.

New subsection 27(2), on the other hand, provides that all proceedings before the Commission under new Part IV.1 shall, without exception, be conducted in public.

New section 27.1 empowers the Director to make representations to, or present evidence before, any federal board, commission or other tribunal whenever competition is relevant to a matter before such board, etc. The Director under the Combines Investigation Act is, in a real sense, the legislative proponent of the competition principle: also, this power goes in the direction of assuring that different government agencies, including the Combines Branch, co-ordinate their approach to the issues with which they have to deal.

Clause 10 : The new subsection 29(1) would extend the application of the section to copyright and registered industrial designs, these being logical extensions, and make the section apply in the case of any offence against a substantive prohibition of the Act. Present section 29 provides that where the Federal Court of Canada, on an information of the Attorney General of Canada, finds that use has been made of a patent or trade mark to achieve any of the things which a combine is prohibited from attempting to achieve by section 32, the Court may make various orders to correct such misuse. The new subsection 29(1) also adds to the remedies the court may grant, by providing, in paragraph 29(1)(c), that the Court, in addition to ordering the grant of a licence or other right under a patent, copyright or industrial design, may order the variation of any term or condition of an existing licence; because a trade mark differs in character from a patent, copyright or industrial design in that it relates the article to which it is applied to the reputation of the owner, it would be inappropriate to order the granting of a licence under a trade mark. The new subsection 29(2) confers jurisdiction, under this section, upon a superior court of criminal jurisdiction in the event of a conviction before that court. Under present section 29, jurisdiction is exercised only by the Federal Court of Canada.

New section 29.1 empowers the Federal Court, or any provincial superior court of criminal jurisdiction, to issue an interim injunction to prevent what reasonably appears to be the commission or continuation of an offence under the Combines Investigation Act until such time as the issue is definitively adjudicated in the course of a prosecution, or of proceedings for an order of prohibition, in lieu of prosecution, under subsection 30(2).

Such an interim injunction may only be issued if the court is satisfied that irreparable damage to competition will otherwise ensue or that, on balance, the likelihood of irreparable damage ensuing to an individual from the commission of the offence is greater than the likelihood of any detriment to a party against whom the injunction is sought in the event that he is innocent of the behavior alleged. It is hoped that this provision will help to meet the complaint from time to time received to the effect that, by the time criminal proceedings are successfully concluded, the damage to an individual has been irreparable.

Clause 11 : The amended subsection 30(3) merely removes an anomaly whereby the division of the Federal Court into trial and appeal divisions was overlooked and the present subsection 30(3) might be construed as allowing an appeal direct from the trial division to the Supreme Court of Canada.

Clause 12 : Section 31.1 is entirely new. Subsection 31.1(1) provides a right of recovery of damages and costs for persons who suffer loss or damage as a result of conduct which is an offence under Part V of the Act (which contains the substantive offences except section 46.1) or as a result of the failure of a person to comply with a substantive order of the Restrictive Trade Practices Commission or a court; it is unnecessary to include an express reference to an offence under new section 46.1, because such offence would be a failure to comply with an order of the Commission. Under the anti-trust legislation of the United States private actions lie for treble damages and this has been found to be a considerable aid to enforcement. A provision for single damages and costs, which it is

expected will aid the enforcement of the Combines Legislation, is fairer to the persons against whom the civil actions may be brought. While the constitutionality of new section 31.1 may be challenged as relating to property and civil rights or matters of a local or private nature which, under section 92 of the B.N.A. Act, are within provincial, rather than federal, jurisdiction, it is nevertheless hoped that the section will be upheld as a matter ancillary to the criminal law, or relating to trade and commerce, and therefore within federal jurisdiction under section 91 of that Act. Subsection 31.1(2), for the purpose of facilitating private actions under the section and avoiding unnecessary duplication of court proceedings, makes the court record in any case where a person was convicted for an offence against Part V of the Act, or convicted or punished for failure to comply with an order of the Commission or a court under the Act, evidence in a private action under the section. Subsection 31.1(2) has not been extended to cover a record of proceedings before the Restrictive Trade Practices Commission because such proceedings may be less formal than court proceedings and therefore less suitable for the purposes of a suit under section 31.1.

Section 31.2 is new. It is designed to meet the situation where, by reason of a combine (concerning which there may or may not be sufficient evidence to prosecute) or by reason of an uncompetitive situation in a trade or industry, an entrepreneur or would-be entrepreneur is himself unable to obtain adequate supplies of an article or service which is in adequate supply, on usual trade terms. Refusal to supply, in such circumstances, may result merely from the desire to protect a category of existing customers against competition from a newcomer to the market or it may result from the aggressive or innovative character of the entrepreneur, and the ability to refuse

supplies may be facilitated by the tariff. The justification of this section is the desirability, from the public standpoint, of bringing about economies through new dynamic and innovative methods of production and distribution and the right of an entrepreneur to obtain somewhere in the domestic or import market, the product in which he wishes to trade.

Section 31.3 is new. It is not designed to interfere with the ordinary practice of consignment selling where engaged in without ulterior motives, but only with consignment selling to which a supplier deliberately resorts for the express purpose of circumventing the ban against resale price maintenance or price discrimination. Under the present Act a supplier who wishes to control the selling price of a particular customer may put the customer on consignment and fix, as commission, the mark-up he wishes the customer to maintain; or he may place a favoured customer on consignment and allow him a larger margin of commission than other customers can take as mark-up. Admittedly, it will be difficult to prove motive under this section, so that only those suppliers who are clearly engaging in the practice for one of the above mentioned purposes, need have anything to fear from the application of the section.

Section 31.4 is new and is designed to prevent certain trade practices which may have an adverse effect upon competition when they are engaged in by a major supplier or are widespread in a given market. All three practices are open to the common objection that they prevent the free operation of market forces and consumers' choice. Under the practice of "exclusive dealing" a supplier requires or tries to induce a customer to deal only in products supplied or indicated by the

supplier. Where the supplier is an important one, or the practice is widespread, the practice may unfairly prevent other suppliers from having access to outlets and damage competition accordingly. Under the practice of "market restriction" the supplier requires or attempts to require his customers not to compete with each other in the resale of the product and thus prevents competition which in the absence of the restriction would be likely to occur to the advantage of the users or consumers of the product. Under the practice of "tied selling" the supplier, as a condition of supplying one product to a customer, requires or attempts to require him to take on, exclusively or otherwise, some other product of the supplier, and thus interferes with the free choice of the customer to deal only in the products he believes to be the most profitable to him and the most sought after by the public. Exemptions from the application of section 31.4 are provided where it is found by the Commission that an exclusive dealing or market restriction arrangement is temporary and for the purpose of facilitating the entry or introduction into a market of a new supplier or product and where a tying arrangement has technological justification, as where a piece of equipment handled by a supplier will only work satisfactorily, or will work most satisfactorily, when used in conjunction with a particular other product. An exemption is also provided, in the case of a tying arrangement, where it is imposed for the purpose of better securing a loan, as where a bank might require a borrower to maintain an account at such bank in order to maintain better surveillance over the state of his finances.

Section 31.5 is new. It and the following new section, 31.6, are designed to prevent measures being taken in Canada, which would have adverse trade effects in Canada, as a result of foreign judgments, laws, directives and the like. A judgment and consequent order of a court outside Canada might purport

not only to direct the conduct of a company incorporated in the country where the judgment and order are given but purport also to direct the conduct of a subsidiary in Canada of such foreign company. An example would be where the foreign judgment and order directed a foreign parent company to compel its Canadian subsidiary not to use a particular system of distribution. The extraterritorial effect of the judgment and order might be beneficial to the foreign country but have adverse effects on trade and industry in Canada. In such a case the Restrictive Trade Practices Commission may, by virtue of new section 31.5, forbid the implementation of the judgment and order in Canada or permit it to be implemented in Canada only in a manner that avoids adverse effects in Canada.

The new section 31.6 is a companion section to the new section 31.5. A foreign country might endeavour, by law, to enforce its external trade policy not only upon companies incorporated in the foreign country but, through them, upon their subsidiaries in Canada. An example is where the foreign country has a policy against trading with a certain other foreign country but it is Canada's policy to trade with that other foreign country. The extraterritorial effect of the foreign law might thus have adverse effects on trade and industry in Canada. Or a foreign parent company might issue a directive to its Canadian subsidiary to participate in a combine. In the former case the Restrictive Trade Practices Commission is empowered to order that the foreign law be not implemented in Canada except in a manner that will avoid adverse effects upon trade and industry in Canada; and in the latter case that the foreign directive be not implemented at all. The purpose of subsection 31.6(2) is to avoid any possibility of harassment against a company that is already being prosecuted under new section 32.1 upon the same set of facts.

Clause 13 : This clause enacts a more precise title for the part of the Act which contains all the substantive offences (except section 46.1): "Offences In Relation to Competition" instead of "Offences in Relation to Trade".

Clause 14(1) : These amendments, by substituting the term "product" (as defined in Clause 1) for the term "article", extend the application of section 32 (the "combines" section) to services.

The new paragraph 32(1)(d) substitutes, for the words "to restrain or injure trade or commerce in relation to any article", the words "to otherwise restrain or injure competition unduly", which are more appropriate to bring the paragraph into line with the preceding paragraphs.

Clause 14(2) : In some cases in recent years the expression "unduly" has been interpreted to mean the complete or virtual elimination of competition in the relevant market. In other cases the courts have disagreed with such a demanding interpretation. Cases arise in which competition is lessened to an extent that is obviously detrimental to the public but which might not meet the severity of the test of complete or virtual elimination of competition if it were definitely decided that such is the meaning of the expression "unduly". The purpose of the new subsection 32(1.1) is to ensure that it will not be so decided.

Clause 14(3) : This amendment expands the list of matters upon which a trade or in industry or profession may agree, subject to the qualification in subsection 32(3) that any such agreement must not lessen competition unduly in respect of price and other essential aspects of competition.

The new paragraph 32(2)(d) expresses more correctly the concept expressed in the present paragraph 32(2)(d): "the definition of trade terms"; and it also adds the word "profession" as a result of the policy to include services.

Paragraph 32(2)(f) adds the word "promotion" in order to expand the kind of cost saving agreements into which a trade, industry or profession may enter.

The new paragraph 32(2)(g) adds "the sizes or shapes of the containers in which an article is packaged" to the other matters upon which a trade or industry may legally agree (subject to subsection 32(3)) because such agreements may be cost saving and tend to lower the prices and also tend to the convenience of the shopper.

The new paragraph 32(2)(h), "the adoption of the metric system of weights and measures" is intended to facilitate the general change-over to the metric system.

Paragraph 32(2)(i) is also completely new and speaks for itself.

Clause 14(4) : This subclause simply inserts the word "profession" in subsection 32(3) to complete the application of that subsection to services; and substitutes the word "products" for the word "articles" in subsection 32(4) for the same purpose.

Clause 14(5) : This subclause simply substitutes the word "product" for the word "article" in paragraph 32(5(a) to cover services as well as articles.

Clause 14(6) : This subclause serves the the same purpose as subclause 14(5) above.

Clause 15 : This clause introduces new offences in respect of the implementation of foreign directives relating to combines, and in respect of professional and amateur sport, and it makes "bid-rigging" a per se offence.

The new section 32.1 makes it an offence, in subsection (1), for any company operating in Canada to implement a direction from abroad, given for the purpose of facilitating a combine that, if entered into in Canada, would be an offence under section 32, whether the company was aware of such purpose or not. While this measure may at first glance seem drastic, it is the only effective way of attacking combines formed abroad which are deliberately projected into Canada through Canadian subsidiaries and harmful to the Canadian economy; and it is to be noted that the measure is directed against companies

only and not against individuals. When it is recognized that a firm may be organized either as a holding company with a number of subsidiaries or as a single company with a number of divisions, there no longer appears to be an objection to such a measure. Moreover, a strong precedent for this approach exists in the conspiracy field where, on the basis of the jurisprudence, the better view is that under Canadian law a parent and a subsidiary cannot conspire with each other because, in effect, they are looked upon as a single corporate person.

Section 32.1(2) is for the purpose of avoiding duplicity of proceedings where the Director has already sought an alternative remedy under section 31.6.

The new section 32.2 makes bid-rigging a per se offence. While bid-rigging might usually be caught, as a combine, under section 32, it is a dishonest practice and there is no need for an extended inquiry or examination as to whether it is undue.

The new section 32.3 is designed to reach those practices, in professional and amateur sport, which would appear, upon an objective examination by a court, to limit unreasonably the opportunity for any person to enter a sport or to play for any team that is willing to accept him. Subsection 32.3(2) recognizes the facts of life, in respect of organized sport, and directs the court to have regard to the fact that it may be necessary, if an international sport is to exist in Canada and Canadian amateurs

and professionals are to have excess thereto, to accept certain conditions that emanate from abroad. It also directs the court to have regard to the desirability of maintaining a reasonable balance among teams participating in the same league, because if the affiliation of players to a team were to be determined only by the pocket-books of the teams, the wealthier teams would end up with all the best players and the league would not be viable. The practices which the new section is designed to control are chiefly undue restrictions upon the choice of a player when he graduates from amateur to professional sport and upon his choice of teams to play for when he has been accepted in professional sport. Of particular concern are contracts imposed upon players which are self repeating and bind a player indefinitely to any team to which he may be, from time to time, assigned. Since subsections 32.3(1) and (2) are meant to constitute, for the time being and until future experience otherwise dictates, a code for sports, subsection 32.3(3) exempts, from the general combines provisions in section 32, agreements and arrangements entered into by teams in the same league in regard to the participation and opportunities referred to in subsection 32.3(1).

Clause 16 : Subclause 16(1) simply extends section 34 of the present Act, relating to price discrimination and predatory pricing, to services, by substituting the (defined) word "products" for the word "articles".

Clause 16(2) : Subclause 16(2) creates two exemptions from responsibility in respect of price discrimination. The first relates to newspaper publishers and broadcasters who offer more favourable rates for "local" than for "national" advertisements. The former are said to contain a "news" element which

the latter lack and, therefore, to deserve preferential treatment. The second exemption relates to differential interest rates, and related terms, based on different degrees of risks.

Clause 17 : This clause merely amends section 35 of the present Act, relating to discriminatory promotional allowances, to extend the section to services by substituting the word "products" for the word "articles".

Clause 18(1) : Subclause 18(1) reorganizes and strengthens the sections of the Act dealing with misleading advertising and resale price maintenance and introduces new sections relating to double ticketing, pyramid selling, referral selling, bait and switch selling, selling above advertized prices and promotional contests.

The new sections forbidding misleading advertising (36 and 36.1) strengthen the old sections (36 and 37) in the following respects:

- (1) The new paragraph 36(1)(c) forbids a representation to the public in the form of a warranty or guarantee or a promise to replace, maintain or repair, which is materially misleading or is made without reasonable prospect of being carried out.
- (2) The new subsection 36(2) provides that a representation expressed on or used in the display of, an article offered for sale, or contained in or on anything delivered to members of the public, is deemed to be made to the public, (but only by the person who caused the representation to be made or who imported the article or display into Canada, thus protecting the middleman who acts without knowledge of the misrepresentation.

- (3) The new subsection 36(3) makes it an offence to supply misleading advertising material to a distributor for the purpose of promoting the sale of a product.
- (4) The new paragraph 36(4)(a) provides that a warranty or guarantee, which falls short of the warranty or guarantee that would apply, under the general law, is materially misleading unless this fact is clearly stated therein.
- (5) The new paragraph 36(4)(b) provides that a warranty or guarantee that provides no material advantage is materially misleading.
- (6) In appraising misleading advertising and representations, a factor to be considered is the general impression conveyed by the advertisement or representation (new section 36(5)), which is a broader and more objective test than the "intentionally so worded or arranged" test which is contained in present section 37(1).
- (7) A representation as to a test of performance, efficacy or length of life of a product is not to be made unless the representation was previously made by the testing agency or unless it was approved and permission to make it was given in writing by the testing agency; and a testimonial is not to be published unless previously published by the giver or approved and permission to publish it was given in writing by the giver (new section 36.1(1)). By comparison, subsections 37(4)

and (5) of the present Act provide that a test by the National Research Council of Canada or a Federal Department is a proper test but no reference shall be made thereto unless the advertisement was previously approved, and permission to publish it given, by the Council or Department.

The new section 36.2 is designed to meet a frequent complaint from consumers, during the present period of rising prices, to the effect that some merchants are taking advantage of the demand for some products, by marking-up once or several times the selling price of a product that has been purchased by them prior to the latest increase in the cost to them of such product, thereby taking a greater than usual margin of profit on such product.

The new section 36.3 prohibits the scheme commonly described as "pyramid" selling when it involves misrepresentation of the gains which a participant may reasonably expect to receive. These schemes are often essentially fraudulent because they depend, not upon sales to ultimate consumers, but upon the fees paid to participate. Participants pay these fees in the expectation of receiving benefits from the recruitments made by them, and by persons recruited by them, and by persons recruited by persons recruited by them, and so on, indefinitely. Having regard to the geometric progressions involved, it is obvious that markets become quickly saturated leaving all but the promoters, and perhaps their earliest recruits, stuck with the payment of substantial fees or with unmoveable inventories or both.

The new section 36.4 prohibits the scheme commonly described as "referral" selling (which has something in common with but differs considerably from pyramid selling). Under such a scheme, generally speaking, a householder or other person, is induced to buy an article, sometimes at an inflated price, by the promise that he will receive commissions on sales made to persons whose names he supplies, or whom he solicits to buy, which will substantially reduce the price he has paid or even cover it completely or yield a net profit. As in the case of pyramid selling, it is an ordinary feature of such a scheme to misrepresent the benefits likely to be enjoyed by those who are induced to participate.

The new section 37 is directed against the practice of "bait and switch" selling whereby a customer is lured to a store by the prospect of buying, at a bargain price, an article which the merchant does not have at all or only has in token quantities, in the hope of persuading the customer to buy a much higher priced article. Under new subsection 37(3) the merchant is exonerated if he offers the disappointed customer an equivalent product of equal or better quality at the advertized price, or offers him a "rain-check", i.e. offers to supply the customer with an equivalent product of equal or better quality at the bargain price within a reasonable time, and does so.

The new section 37.1 is directed against the situation in which a merchant, having advertized a product at a particular price, exacts a higher price when a customer comes to buy it.

The new section 37.2 is directed against promotional contests which mislead the public as to their chances of success. The promoter may deliberately mispresent the number and value of the prizes allocated to the contest; or he may continue to refer to the possibility of winning prizes that have already been awarded; or, where skill is not involved he may fail to award the prizes on an objectively random basis; or he may delay unreasonably the distribution of prizes.

The new section 37.3 exempts from the application of sections 36 (misleading advertising), 36.1 (representations as to tests and testimonials), 36.2 (double ticketing), 36.3 (pyramid selling), 36.4 (referral selling), 37 (bait and switch selling), 37.1 (selling above advertized price) and 37.2 (unfair promotional contests), persons who print, publish or distribute advertisements and other material, which they have accepted for printing, publishing or distribution in the ordinary course of their business, provided they obtain and record the name of the person who ordered the printing, publication or distribution.

The new section 38 is a revision of the present section 38 relating to price maintenance. The present section is an effective section but it has weaknesses. One weakness is that it applies only where a supplier tries to maintain resale prices by reference to a specific price, minimum price, mark-up, discount, minimum mark-up or maximum discount; and it applies only to measures taken by a supplier. Experience has shown that price maintenance can be accomplished without these specific references, by exhortations simply "to get

your price up" until it reaches a level satisfactory to the supplier; and experience has also shown that the initiative in price maintenance may come, not only from the supplier, but from other customers who put pressure on him to control the pricing policies of their competitors. The new section 38 attempts to cure these weaknesses by referring, not to a specific price etc., but to an "attempt to influence upward, or to discourage the reduction of" a price, and by referring, not to the supplier who supplies a product for resale, but to any "person engaged in the business of producing or supplying a product". The reach of the new section now also extends to a person who has rights under a patent, trade mark, copyright or registered industrial design although he may not be engaged in the business of producing or supplying the product to which such rights relate. The defences provided in section 38(5) of the present Act have not been continued.

The saving provision, contained in the new subsection 38(2), is now technically necessary, under the new format of the section, to prevent its application to communications between affiliated companies or between officers and employees of the same or affiliated firms. Such communications should be regarded as internal to one economic entity and not within the ban against resale price maintenance.

Subsection 38(3), which is new, makes the suggesting of a resale price, which was conceded to be permissible under the present section 38,

proof of an attempt to influence prices upward, unless accompanied by a clear **indication** that the person receiving the suggestion will not suffer for failing to accept it.

Subsection 38(4), which is new, provides that the advertising of a resale price by a supplier, other than a retailer, is an attempt to influence upward the selling price of any merchant who deals in the product unless the advertisement makes it clear that the product advertised may be sold at lower than the advertised price.

Subsection 38(5), which is new, provides in effect that subsections 38(3) and (4) above, do not make it illegal for a manufacturer or middleman to affix or apply a price to an article or its package or container. One reason for this qualification is that it avoids many small merchants the time consuming and costly necessity of pricing individually the many articles on the shelves. It also places Canadian manufacturers and middlemen on an equal footing with those who affix or apply a resale price outside Canada to an article that is to be exported into Canada, and who are beyond the reach of Canadian law. In particular it permits the publishers in Canada of magazines, newspapers and books to print a retail sale price on their publications, a practice which is widely practised outside Canada on publications coming into Canada. Of course, the merchant in Canada is not bound to the price so affixed or applied.

Subsection 38(6), which is new, makes it an offence for any person, who will usually be a

merchant, to try to induce a manufacturer or other supplier, as a condition of doing business with such supplier, to refuse to supply a product to another person, who will usually be a retailer. This subsection will, e.g., make it an offence for a large retailer to tell a manufacturer or other supplier that he will not buy his product unless he withholds it from another retailer whose competition the first supplier fears because of the low pricing policy of the second merchant or for other reasons.

Subsection 38(7), which is new, merely defines what is to be regarded as affiliation between firms for the purpose of the saving provision contained in subsection 38(2).

Section 39 as set out in the Bill re-enacts section 39 of the present Act word for word except for the qualification "Except as otherwise provided in this Part", to allow for any case in which a civil right of action may be affected incidentally by another section of the Part.

Clause 18(2): This subclause is a transitional measure providing that the new section 37.2 (above) does not apply to a contest, lottery or game that was commenced before the coming into force of the section enacting section 37.2, since it would be unfair to outlaw a contest etc., in which members of the public had already a vested interest and respecting which the promoters of the contest etc., had already made commitments.

Clause 19 : This clause amends subsection 44(2) of the Act only to add new sections 32.1 (implementing foreign combines), 32.2 (bid-rigging) and 32.3 (amateur and professional sport) to the offences that may only be tried by superior courts of criminal jurisdiction. These are the superior courts of the provinces but include also the Trial Division of the Federal Court of Canada by force of section 46 (below).

Clause 20 : Under the Criminal Code the venue or place of prosecution for an offence is ordinarily within the territorial division in which the offence is alleged to have been committed. Prosecutions under the Combines Investigation Act are sometimes peculiar in that a person or firm may commit an offence or a number of related offences in an area where the person or firm is not ordinarily found, as where a firm with a principal place of business in one province carries out a practice of resale price maintenance in different provinces through agents permanently or only temporarily in such provinces. In such cases it may be onerous, both on the prosecution and on the firm charged, to be required to conduct or undergo prosecution in the territorial division in which the offence is alleged to have been committed. The new section 44.1 is designed to meet this situation by permitting a prosecution to be conducted in any territorial division in which a company has its head office or a branch office, or an individual resides or has a place of business.

Clause 21(1): This subclause amends the definition of "participant" in subsection 45(1) of the Act to include a person "against whom proceedings have been instituted" and thus, in conjunction with subclause 21(2), extends the application of this evidentiary section, which in its present form applies only to prosecutions, to all other proceedings under the Act in which an order is sought from a court or the Restrictive Trade Practices Commission.

Clause 21(2): This subclause amends subsection 45(2) of the Act to include a reference to "proceedings" and thus, in conjunction with subclause 21(1), extends the application of this evidentiary section, which in its present form applies only to prosecutions, to all other proceedings under the Act in which an order is sought from a court or the Restrictive Trade Practices Commission.

Clause 22 : This clause adds, to the Act, three new sections relating to statistics. In prosecutions and other proceedings under the Act relating to combines, mergers and monopolies, an important issue, being upon the test of "unduly" lessening competition, or of "to the detriment or against the interest of the public", is the share of the relevant market which is accounted for by the person or persons against whom the proceedings are brought. On this issue, statistics relating to production, sales, purchases etc., are relevant. It is doubtful whether statistics emanating from Statistics Canada or any other federal or provincial statistic-gathering agency are admissible under the ordinary rules of evidence. The new section 45.1 is intended to resolve this doubt. The courts or the Restrictive Trade Practices Commission will, of course, weigh the value of any such statistics in each particular case.

The new section 45.2 is in the nature of an extension of section 45.1, because it makes admissible in evidence statistics that are gathered by a sampling method. In some proceedings different statistics than those collected by the ordinary statistic-gathering agency may be required. An example is the case of a merchant who is suspected of committing an offence by falsely advertising that his prices, generally, are lower than

those of all his competitors. It would be infeasible, for the purpose of a prosecution or other proceedings, to canvass the prices of all the items the merchant carries on the shelves of all his competitors, but a competently conducted sampling, which could be conducted by the merchant as well as the Director, should show whether or not the merchant's claim is justified.

The new section 45.3 provides safeguards in respect of such evidence: the party - Director or merchant - against whom any such statistics are submitted under section 45.2 may require, for purpose of cross-examination, the attendance of any person who participated in the preparation of the statistics, and the party who intends to submit statistics must give the opposite party reasonable notice of such intention and supply him with a copy of the material it is proposed to submit together with the names and qualifications of the persons who participated in the preparation of the material.

Clause 23 : This clause amends section 46(1) of the present Act to add all the new offences which may be tried by indictment to the offences that, subject to subsection 46(4) (below) may be tried in the Federal Court. This is in line with the policy whereby the Attorney General of Canada may, subject to subsection 46(4), institute, by way of indictment in the Trial Division of the Federal Court, prosecutions of all offences under the Act which are triable only upon indictment or are triable both on indictment and by way of summary conviction.

Clause 23 also amends subsection 46(2) to include a reference to the new section 46.1 (contravening an order of the Restrictive Trade Practices Commission) and thus continues the policy by which all prosecutions under the Act in the Federal Court are tried without a jury.

Clause 23 also makes a technical amendment to subsection 46(3) to include new section 46.1 among the sections in respect of appeals lie from the Federal Court - Trial Division to the Federal Court - Appeal Division and thence to the Supreme Court of Canada, since new section 46.1 is among the sections prosecutions under which may be instituted in the Trial Division.

Clause 23 also amends subsection 46(4) of the present Act by substituting, for the provision that no prosecution may be instituted in the Federal Court - Trial Division - without the consent of the accused, a provision whereby no individual may be prosecuted in that court without his consent, thus eliminating the right of an incorporated company to decline to be prosecuted in that court instead of a superior court of criminal jurisdiction of the province. The reason an individual is given the right to decline prosecution in the Federal Court is that the Federal Court has no jury and the individual may prefer jury trial. A prosecution against an incorporated company, however, must always be without a jury, and the Federal Court goes on circuit, so there is no reason to continue the anomaly whereby an incorporated company may not be tried in that court without its consent.

Clause 24 : This clause enacts the new section 46.1 which makes it an offence to contravene an order made by the Restrictive Trade Practices Commission in the exercise of its new jurisdiction to make orders under new sections 31.2 (refusal to deal), 31.3 (consignment selling), 31.4 (trade practices), 31.5 (foreign judgments etc.), and 31.6 (foreign laws, directives, etc.).

Clause 25 : The new subsection 47(1) achieves two things: first, it extends the application of the present section 47 to services (by use of the defined word "product") and second, it broadens the scope of an inquiry that the Minister may direct by employing, in paragraph (1)(b), the words "...into any matter that the Minister certifies...to be related to the policy and objectives of this Act", these words being broader than the words "...concerning the existence and effect of conditions and practices" etc., which are employed in paragraph (1)(a).

Clause 26 : This clause amends section 65 of the Bank Act by inserting therein a new subsection (2.1) which provides that the Minister of Finance, whenever he has reason to believe that an offence against that Act has been or is about to be committed, shall direct the Inspector of Banks to make an inquiry and report the facts to the Minister. Because the Bank Act already provides for surveillance of banks by the Inspector and the Minister, it was considered preferable, in bringing banking services within the application of competition law, to vest part of the additional surveillance thereby required in the Minister of Finance and the Inspector of Banks rather than the Minister of Consumer and Corporate Affairs and the Director of Investigation and Research.

Clause 27: This clause enacts a new section 102.1 of the Bank Act which provides that the provisions of the Act relating to agreements between banks and mergers apply to banks instead of section 32 (combines) and section 33 (mergers and monopolies) and the other provisions relating to agreements and mergers of the Combines Investigation Act.

Clause 28: This clause amends subsection 138(1) of the Bank Act. This subsection already, subject to subsection 138(2) (below), forbids banks and their directors and officers to agree upon the rate of interest on a deposit (paragraph 138(1)(a)) and the rate of interest or the charges on a loan (paragraph 138(1)(b)). The amendment adds to these subjects of agreement the four subjects stated in new paragraphs 138(1)(c), (d), (e) and (f), and substitutes for the penalty of \$10,000 now prescribed in subsection 138(1) a term of imprisonment for two years, which, by virtue of the Criminal Code would mean, in the case of conviction of a director, officer or employee of a bank, a fine in the discretion of the court in lieu of or in addition to imprisonment not exceeding two years, and in the case of conviction of a bank, a fine in the discretion of the court.

Clause 29: This clause adds to the subjects upon which banks are permitted to agree. Subsection 138(2) already provides that the prohibitions contained in subsection 138(1) (above) do not apply to an agreement with respect to a deposit or loan made or payable outside Canada (paragraph 138(2)(a)), an agreement applicable only to the dealings of two or more banks as regards a customer of such banks (paragraph 138(2)(b)), an agreement with respect to a bid for or purchase, sale or underwriting of securities by banks or a group including banks (paragraph 138(2)(c)) or an agreement requested or approved by the Minister of Finance (paragraph 138(2)(d)).

Clause 29 amends paragraph 138(2)(b). The amended paragraph may be broken down as follows:

- (1) subsection 138(1) which forbids agreements among banks (as described above) does not apply to agreements which are applicable only to the dealings of two or more banks as regards a customer of each of such banks (the sense of present paragraph 138(2)(b));
- (2) subsection 138(1) does not apply to agreements which are applicable only to (i) the services rendered between banks or (ii) by two or more banks, as regards a customer of each of such banks (new);

provided, in each of cases (1) and (2) that the customer has knowledge of the agreement (new); and

- (3) subsection 138(1) does not apply to dealings by a bank as regards a customer thereof, on behalf of that customer's customers (new).

The purpose of case (1) above is to permit banks to agree to share a risk in which case agreement upon a common interest rate is a practical necessity, but in case (1) the customer must now be informed of such agreement, a requirement which did not apply to the present paragraph 138(2)(b). The purpose of case (2) above is to permit banks, which have agreed to share a risk at a common rate of interest, to agree also upon the incidental services they will render the customer, again a practical necessity. The purpose of case (3) above is to permit banks to set up a procedure whereby two or more or all of them

will receive payments on behalf of a customer, such as a public utility, from the customers of that customer where again common terms are a practical necessity to the setting up of the procedure.

Clause 29 also inserts in subsection 138(2) a new paragraph, now paragraph (d), which permits banks to agree with respect to the exchange of statistics and credit information, the development and utilization of systems, forms, methods, procedures and standards, the utilization of common facilities and joint research and development in connection therewith, and the restriction of advertising. These are the kind of matters that other companies are permitted to agree upon by subsections 32(2) and (3) if they do not lessen competition unduly in respect of such essential aspects of competition as prices and the determination of markets.

Clause 29 also inserts, in subsection 138(2), a new paragraph, now paragraph (e), which permits banks to agree with respect to reasonable terms and conditions of participation in guaranteed or insured loan programs authorized pursuant to a federal or provincial statute. Here again a common approach by banks to interest rates and other matters is a practical necessity for the participation of banks in such programs.

Clause 29 also inserts in subsection 138(2) a new paragraph (f) which permits banks to agree with respect to the amount of any charge for a service performed or to be paid for outside Canada or performed in Canada on behalf of a non-resident. It is not anticipated that such agreements will affect the Canadian economy and they may increase the returns to the banks for services rendered outside Canada.

Clause 29 also inserts in subsection 138(2) a new paragraph (g) which permits banks to agree with respect to the persons or classes of persons to whom a loan or other service will be made or provided outside Canada. The rationale of this paragraph is the same as that of paragraph 138(2)(f) above.

In summary, paragraph 138(2)(a) remains the same, new paragraph (b) corresponds to present paragraph (b) with modifications, paragraph (c) remains the same, paragraphs (d), (e), (f) and (g) are new and new paragraph (h) is the same as present paragraph (d).

Clause 30 : This clause repeals chapter 23 of the Statutes of 1966-67, providing exemption from the Act for contracts, agreements and arrangements between fishermen or associations of fishermen and persons or associations engaged in the buying or processing of fish, in British Columbia, chapter 23 being no longer necessary because the exemption is contained and extended to all of Canada in the new Section 4 of the Act enacted by clause 2 of the Bill.

Clause 31 : This clause permits the whole Bill to be brought into force by proclamation, thus allowing persons whose activities are affected by the amendments reasonable opportunity to bring such activities into line with the new law. It also makes it possible to delay the application of section 32, relating to combines, to services, thus giving that part of the service sector which has never been subject to section 32, an opportunity to adjust its practices to accord with the inclusion under the Act of services generally.

WHAT REMAINS FOR STAGE II

The government will proceed in Stage II to deal with policy areas relating to industrial structure, specialization agreements, and revisions to the institutions and process under the Act that are consequentially necessary and desirable. These changes will also provide an opportunity to consider faster and more flexible techniques for dealing with undesirable trade practices with a view to securing more effective protection of the consumer in the marketplace within areas of federal jurisdiction.

A principal objective of Stage II will be to decide whether and how to adapt the legislation so that certain restrictive agreements and acquisitions may be subjected to an "efficiency test". Under the present law agreements and mergers that lessen competition unduly are prohibited with criminal sanctions. The Economic Council expressed the view that a given merger, although destructive of competition, could nevertheless be in the public interest if it promoted efficiency. Bill C-256 therefore proposed that the criminal offence approach to mergers be abandoned. Instead a Tribunal would have dealt with any particular merger brought before it by first determining through a set of statutory criteria whether it would result in significantly less competition. It would then have determined by reference to another set of statutory tests if the merger would promote efficiencies. If the merger met these tests, the Tribunal would have indicated its approval provided that part of the resultant benefits were to be passed on to the public. If the tests were not met, the Tribunal would have been empowered to deal with the merger by orders, including the right to prohibit or dissolve it. In respect of agreements that would lessen competition, Bill C-256 would have accorded exemption from criminal prohibition to specialization agreements and export agreements if the Tribunal found that they met statutory tests relating to efficiency and if some of the resultant benefits were to be passed on to the public. A variety of criticisms were directed at these provisions and the role of the Tribunal in connection with them. The review of these continues with the aim of arriving at a suitable solution for Stage II.

Nevertheless it is clear that a high priority will have to be given in stage II to provisions directed towards improving the efficiency of Canadian business and its ability to compete effectively abroad.

Another major objective will be to consider business practices in wide use which, while otherwise unexceptionable, may in some circumstances be used to the detriment of competition. Examples which come immediately to mind are interlocking directorates, freight absorption and quantity discounts. It is difficult to regulate such practices, on a criminal basis, because prohibition would deprive the economy of useful competitive tools. The dependence of the Combines Investigation Act on the federal government's jurisdiction in criminal matters has already been commented upon and is deplored by many. This had led to demands for the development of a civil basis for federal legislation setting national standards of competitive behaviour.

It has often been said that the machinery of the Combines Investigation Act was intended to bring about, in the long run, a workably competitive environment in which private enterprise could flourish. It appears that it was not the design of the framers of the Act to provide prompt relief from restrictive or oppressive trade practices. But this has none the less usually been expected of it by consumers and small businessmen affected by restrictive practices. It was partly to improve performance in this regard that former Bill C-256 proposed the establishment of an enlarged tribunal endowed with wide powers to decide certain competition issues and to make such orders and regulations as would make its decisions effective. Changes were proposed in the duties and powers of the chief enforcement officer in harmony with the enlarged role of the Tribunal. These changes have not been incorporated in Stage I proposals. They can better be considered in Stage II. Therefore a third major objective for Stage II will be the reform of the Restrictive Trade Practices Commission to make it more effective in dealing with the contemporary business environment.

In addition it is anticipated that the amendments proposed for Stage I will eventually require a more flexible, quicker and thoroughly expert investigation and enforcement machinery.

A long standing objective of Canadian competition policy has been to facilitate trade and commerce, both domestic and export. This necessitates the avoidance of a multiplicity of rules and regulations in those aspects of competition policy where uniformity can be assured by federal law. This is one of the reasons why the Combines Investigation Act has been used to enforce several consumer protection measures, starting with the ban of resale price maintenance in 1952 and continuing with the misleading price advertising and other provisions of the 1960 amendments, and false advertising in 1969. Experience with these provisions has demonstrated the desirability of this kind of federal initiative, and the Stage I proposals include a number of additional consumer protection measures. Consideration will be given in Stage II to any other trade practices identified as requiring control. Useful for this purpose will be the Reports of the Special Committee on Trends in Food Prices and the Food Prices Review Board as well as the on-going work of the Department. What is required is to elaborate a technique that will provide effective and timely protection for the consumer while taking full account, firstly, of the value of having the business community know with reasonable certainty what are the ground rules for its conduct and, secondly, of the interests of the community at large in the avoidance of tampering with fundamental elements of the economic system.

In developing Stage II, the government will continue its study of representations made during the discussion of Bill C-256 and review the techniques other countries have adopted. It intends to supplement this knowledge with the experience gained from Stage I legislation and continues to invite the views and recommendations of all interested parties. It is hoped that the result will be a model statute for this purpose. This law will not only be designed to promote

competition among competitors for the broad purpose of promoting efficiency and improving the allocation of resources, but also to control unfair competitive trade practices as a matter of consumer protection in a marketplace characterized by high technology and massive organization of production and distribution.

APPENDIX A

**LEGISLATIVE HISTORY OF THE COMBINES
INVESTIGATION ACT**

LEGISLATIVE HISTORY OF THE
COMBINES INVESTIGATION ACT

The history of this legislation may be divided into seven periods: 1889-1910; 1910-1919; 1919-1923; 1923-1935; 1935-1951; 1951-1960; 1960 to the present date.

The report of the MacQuarrie Committee, which was appointed to study the legislation and make recommendations, was made in March 1952 and it contained the following historical survey.

"(1) 1889-1910

Canadian combines legislation had its origin in the report of a select committee of the House of Commons appointed in 1888 to inquire into the existence of combinations and trusts in Canada and their effect upon the Canadian economy. The Committee found that combinations inimical to the public interest existed in respect of a number of widely used commodities and services and recommended that legislative action be taken to curb such combinations. In 1889 an Act was passed, the parent of the present section 498 of the Criminal Code, making it a misdemeanour to conspire, combine, agree or arrange unlawfully,

(a) To unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity

which may be a subject of trade or commerce; or--

(b) To restrain or injure trade or commerce in relation to any such article or commodity; or--

(c) To unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or--

(d) To unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property.

In the general codification of the criminal law in 1892 the Act of 1889 became a section of the Criminal Code and the offence was made an indictable one. The awkward usage involved by employing the term "unlawfully" as well as 'unduly' and 'unreasonably' to describe the offence led to early difficulties of interpretation, and after various legislative amendments, the word "unlawfully" was eliminated from the section in 1900 and the wording settled in the form it has retained to the present time. (1952)

In its improved wording the

section provided the basis for six prosecutions in the next ten years, four of these resulting in convictions. In addition the courts found agreements brought before them in a number of civil suits to be illegal as contrary to the section and refused the parties to the agreements any rights under them. In most of these instances, however, no criminal prosecution followed. Experience showed increasingly that, in combines cases, the problem of securing evidence was a peculiarly difficult one. In one instance, in this period, it was found necessary to resort to the appointment of a Parliamentary Committee to assemble the facts. It was a task normally beyond the resources of private individuals or the ordinary machinery of criminal investigation.

(2) 1910-1919

The Combines Investigation Act of 1910 sought to supply, for this weakness, special machinery of investigation. Any six persons could apply to a judge for an order directing that an investigation into an alleged combine be held.

A combine was defined by the Act as (a) 'any contract, agreement, arrangement or combination which has, or is designed to have, the effect of increasing or fixing the price or rental of any article of trade or commerce or the cost of the storage or transportation thereof, or of restricting the competition in or of controlling the production, manufacture, transportation, storage,

sale or supply thereof to the detriment of consumers or producers of such article of trade or commerce', including (b) 'the acquisition, leasing, or otherwise taking over, or obtaining by any person to the end aforesaid of any control over or interest in the business, or any portion of the business of any other person'; and (c) 'includes what is known as a trust, monopoly, or merger'.

If, after hearing, the judge found the situation to warrant an inquiry he could issue an order to that effect. The Minister of Labour was then to appoint a board of three commissioners, one selected by the applicants, one by the parties against whom the application was made, and the third, the chairman, who was to be a judge, nominated by the other two members. A board had power to compel the attendance of witnesses, examine them under oath, require the production of documents and general incidental powers to carry out a full inquiry.

A board had wide powers of report; it could make 'such findings and recommendations as, in the opinion of the board, are in accordance with the merits and requirements of the case'. Reports were to be transmitted to the Minister at the conclusion of an inquiry and to be published in the Canada Gazette.

Any person who was found by the board, after inquiry, to have done any of the enumerated acts being the same as those mentioned

in section 498 of the Criminal Code, and who did not cease his activities within ten days after the publication of a report to this effect, made himself, under the Act, liable to a per diem penalty up to one thousand dollars for each day he continued to offend.

The Act of 1910 also carried forward a provision (which had first found place in Canadian legislation in 1897) for the use of tariff action to combat monopolistic practices. The Customs Tariff Act of 1897 had given authority for the government to have an investigation held by a judge into the existence of a trust or combination that unduly enhanced prices or promoted the advantage of manufacturers or dealers at the expense of consumers. If such a trust or combination were found to exist, the duty on the commodity or commodities affected could be lowered or removed by executive action. By the Act of 1910 this action could be taken when a board or a court had found such a combination existed. Furthermore an additional remedy was provided where a board reported that the owner or holder of a patent had made use of the exclusive rights under it to do any of the enumerated acts being the same as those mentioned in section 498 of the Criminal Code. In such cases the Minister of Justice could institute appropriate proceedings in the Exchequer Court to have the patent revoked.

The expectation was that, through its provision for public investigation and report, the Act

would, in considerable measure, deter harmful activities without resort to prosecution; and that this failing, and prosecution becoming necessary, the new procedures for the discovery and marshalling of facts would facilitate the process of prosecution. In fact, the machinery of the Act was only used once before the country was swallowed up in the concerns of the First Great War. The legislation revealed two prime weaknesses. The first was that private citizens, six in number for each application, were reluctant to shoulder the considerable responsibility, by way of expense and publicity, of initiating investigations. Secondly, there was no individual or body to provide continuity in the administration of the legislation. A board was constituted on an ad hoc basis. Upon completion of the investigation and the submission of a report the board ceased to function. There was consequently no machinery to determine whether the recommendations of the report were being carried out or not.

(3) 1919-1923

The rapid rise in the cost of living which was an immediate economic aftermath of the First Great War led to the appointment of a special committee of the House of Commons in 1919. The committee recommended the setting up of a permanent board to administer legislation dealing with trade combinations and monopolies as well as with profiteering and hoarding.

The consequent legislation set up a permanent board--the Board of Commerce--consisting of three commissioners. The Board was charged with the administration of the Combines and Fair Prices Act. Under this Act the function of the Board was two-fold. The first was the investigation and restraining of combinations, monopolies, trusts and mergers constituting a combine and the second, control over the withholding of and the enhancement of prices of, commodities.

Under the First Part of the Act, the Board could begin an inquiry either upon its own initiative or upon a formal application made to it by one person. It had extensive powers of investigation and at the conclusion of its proceedings, could make orders requiring persons to cease and desist from any practices found to be contrary to the Act. The Act defined combine as one which, in the opinion of the Board, operated or was likely to operate to the detriment or against the interest of the public and was deemed to include:

'(a) mergers, trusts and monopolies, so called, and,

(b) the relation resulting from the purchase, lease or other acquisition by any person of any control over or interest in the whole or part of the business of any other person, and,

(c) any actual or tacit contract, agreement, arrangement or combination which has or is designed to have the effect of (1) limiting facilities for transporting, producing, manufacturing, supplying, storing or dealing; or (2) preventing, limiting or lessening manufacture or production; or (3) fixing a common price, or a resale price, or a common rental, or a common cost of storage or transportation, or enhancing the price, rental or cost of article, rental, storage or transportation; or (4) preventing or lessening competition in, or substantially controlling, within any particular district, or generally, production, manufacture, purchase, barter, sale, transportation, insurance or supply; or (5) otherwise restraining of injuring commerce.'

A person who failed to obey an order of the Board was guilty of an indictable offence and the Board might remit a case to the Attorney-General of a province for prosecution.

The Act also carried forward the tariff and patent provisions that had been included in the Combines Investigation Act of 1910.

The Act in its Second Part prohibited hoarding and profiteering. The Board was empowered and

directed to inquire into and to restrain and prohibit any breach or non-observance of the Act, the making of unfair profits, and all such practices with respect to the holding or disposition of the necessities of life, as, in the opinion of the Board, were calculated to enhance their cost or price.

It is to be observed that the legislation overcame two of the principal defects of the Act of 1910, namely the absence of a continuing enforcement authority and the initiation of investigations only on the application of interested private individuals.

The Board entered upon an active life which, however, was cut short when its powers were called in question in a constitutional reference to the courts in 1920. After an equal division of judicial opinion in the Supreme Court of Canada, the Judicial Committee of the Privy Council in 1921, on appeal, held that because of the administrative features of direct control contained in it, the legislation was beyond the competence of the Dominion to enact and it thereupon ceased to operate.

(4) 1923-1935

The Combines Investigation Act of 1923 followed.

The comprehensive definition of "combine"

of the legislation of 1919 was largely retained but no administrative power to order the cessation of activities was provided for. A permanent Registrar was to administer the Act; to him, either upon formal application of six persons, or upon ministerial direction, or whenever he himself had reason to believe that a combine existed or was being formed, was committed the power to hold a preliminary inquiry. If after the preliminary inquiry the Registrar concluded or the Minister decided that a formal investigation was necessary, such investigation was conducted by the Registrar or by a commissioner appointed ad hoc.

At the conclusion of the formal investigation a report was transmitted to the Minister and in the case of a commissioner's report had to be made public within fifteen days of its receipt by the Minister except in those cases where the commissioner had recommended that its publication be withheld, in which event the Minister might exercise his discretion as to publication of the report either in whole or in part.

The Act made it a criminal offence to be a party or privy to or knowingly to assist in the formation or operation of a combine. A person found guilty of an offence was liable to a penalty not exceeding \$10,000 or two years imprisonment, in the case of individuals, and a penalty not exceeding \$25,000 in the case of corporations.

The earlier provisions relating to executive action in respect of tariffs and judicial revocation of patent rights were continued in the new legislation.

The legislation of 1923 after a number of investigations had been held under it in turn came under challenge on constitutional grounds. On a reference as to the validity both of the Combines Investigation Act and section 498 of the Criminal Code, the Judicial Committee of the Privy Council in 1931 held, affirming a judgment to the same effect by the Supreme Court of Canada, the enactments to be within the powers of the Federal Parliament as being legislation in relation to criminal law.

(5) 1935 to 1951

In 1935, consequent upon a review of combines legislation as part of a larger inquiry into price spreads and trade practices generally, the Dominion Trade and Industry Commission Act of that year created a three-man commission (the members of the existing Tariff Board constituted, under the Act, the commission) to which the administration of the Combines Investigation Act, including the power to initiate and conduct investigations, was transferred.

The existing provisions for investigation and report accordingly continued; but the new Act

also empowered the Commission if it found, as the result of an investigation under the Combines Investigation Act, that wasteful or demoralizing competition existed in an industry, and that agreements among persons in the industry to modify competition would not unduly restrain trade or operate against the public interest, to recommend approval of such agreements to the Governor in Council. It could also recommend approval where, in its opinion, existing agreements prevented wasteful or demoralizing competition and did not operate against the public interest. The Governor in Council, if of opinion that the conclusions of the Commission were well founded, could approve the agreements and make regulations requiring the Commission to keep a check on the effect of the agreements.

The Commission had the power to require any persons engaged in the industry subject to an approved agreement to furnish full information relating to the operations of the industry, and, on its own motion and in its absolute discretion, could recommend to the Governor in Council that approval of an agreement should be withdrawn.

Approval of an agreement was a bar to prosecution under the Combines Investigation Act or sections 498 or 498A of the Criminal Code except in cases where the Commission gave its consent to such a prosecution.

The Commission could also . investigate complaints of unfair trade practices and forward the complaint and any evidence in support thereof to the Attorney-General of Canada with a recommendation for prosecution if it appeared that any federal law prohibiting unfair trade practices had been violated. For the purposes of prosecution, a Director of Public Prosecutions, appointed under the Act, had the conduct of federal prosecutions and could assist provincial authorities when they instituted proceedings in trade practice cases, besides being available to assist the Commission with investigations into complaints.

The Commission could in addition hold trade practice conferences attended by persons engaged in a particular industry for the purpose of considering the trade practices in that industry and determining which were unfair or undesirable in the interest of the industry and of the public. Such conferences could be called by the Commission on the direction of the Governor in Council, at the request of representative persons engaged in the industry, or on its own motion. The Commission could make public the general opinion of the conference or of the Commission as to any trade practice considered to be unfair or undesirable.

The Commission was authorized to co-operate with boards of trade and chambers of commerce in connection with any commercial arbitration. On the direction of the Governor in Council it could

conduct general economic studies.

A constitutional reference to the Supreme Court instituted shortly after the Act was passed established that the authority conferred on the Commission by section 14 of the Act to approve agreements limiting competition was beyond federal legislative power. The investigatory provisions were untouched by the decision. Though in form the Board continued to have legal existence until 1949 and from 1937 to 1946 shared jurisdiction over combines with the Commissioner under the Combines Investigation Act, in point of fact the Board did not exercise any functions in respect of the Combines Investigation Act. Since 1946 both legally and in fact the Commissioner has been alone in his position as officer in charge of the Act.

The principal change made by the legislation of 1937 was to restore the administration of the Combines Investigation Act to a single official. The office of the Registrar, which had existed since 1923, was abolished and that of a Commissioner substituted. The machinery for the appointment of special, or ad hoc, commissioners was retained. The provision requiring the publication of reports now included the reports of the permanent Commissioner and he normally conducted most of the investigations under the Act. This was a reversal of the former practice. After 1937 the role of the special commissioner was merely to supplement the staff of the Commission when an immediate

investigation was desirable and the Commissioner was already engaged in other duties."

As the Economic Council of Canada pointed out in its Interim Report on Competition Policy in July 1967, the 1923 Act:

"did in fact appear to include most, if not all, services in the definition of a Combine, but because most prosecutions during this period were based on the section of the Criminal Code prohibiting combinations rather than on the Combines Investigation Act, the position with regard to services was never clarified by the courts. In the process of amending the Act in 1935, the Bennett government originally introduced a bill which contained the same definition of a combine as did the 1923 Act. Following an unrecorded discussion by the Senate Banking and Commerce Committee, however, the Senate returned to the House, and the House eventually accepted, an amended bill which restricted the scope of the Act to activities pertaining to articles and the price of insurance."

This report summarized the history of the legislation in the succeeding period, as shown in the excerpt which follows:

"The MacQuarrie Report and the
Amendments of 1951-52"

A controversy involving publicity and the suspension of anticombinos activity during the Second World War, when production, the allocation of resources, and the setting of prices were subject to direct control, led

to the establishment of the MacQuarrie Committee to review the legislation. In December 1948, the Combines Commissioner, Mr. G.A. McGregor, forwarded to the Minister of Justice the results of his inquiry into the flour-milling industry. In it, Mr. McGregor concluded that the leading milling companies had maintained price-fixing agreements since at least 1936, that these agreements were maintained in force during the war, and that the firms colluded in bidding for government contracts. Despite the requirements of the Act, the Report was still unpublished in October 1949. Mr. McGregor resigned on October 29, calling, in his letter of resignation, for 'an even stronger statute than the Act in its present form, and a clear statement of government policy with respect to its enforcement'. Tabled in the House of Commons on November 7, the flour-milling report raised, among other things, the issue of an industry being condemned for carrying out policies sanctioned by the War-time Prices and Trade Board during the war and tacitly allowed by the government in the subsequent period of decontrol.

Faced with a barrage of criticism for its handling of the matter, the Government in 1950 appointed the MacQuarrie Committee to study the purposes and methods of the Combines Investigation Act and related Canadian statutes as well as those of other countries. The Committee was instructed to recommend any amendments desirable to make the Combines Investigation Act "a more effective instrument for the endouraging and safeguarding of our free economy".

After hearing representations from interested parties and conducting studies of its own, the Committee issued its Report in two parts. In response to the Government's specific request for opinions on resale price maintenance, an Interim Report, dated October 1951, dealt exclusively with this matter. The Committee assessed this practice against two standards: the desirability of a free economy and the need for economic efficiency. It concluded that resale price maintenance on the growing scale then practised was not justified. The Committee recommended that it should be made an offence for a manufacturer or other supplier:

- '1. To recommend or prescribe minimum resale prices for his product;
2. To refuse to sell, to withdraw a franchise or to take any other form of action as a means of enforcing minimum resale prices.'

In connection with its examination of resale price maintenance, the Committee looked also at 'loss-leader' selling. The latter practice, though condemned as monopolistic and not conducive to the general welfare of the public, was not viewed as presenting any immediate danger in the then current period of inflation and relative scarcity.

The Interim Report was considered by Parliament in December

1951, and an amendment to the Combines Investigation Act was passed which made it an offence to fix minimum resale prices, although suggested resale prices were still allowed.

The final Report of the Committee was issued in March 1952. Despite strong statements about the need for public policies in support of competition to be "adaptable to complex and rapidly changing problems", the Committee refrained from recommending any substantial change in the concept or direction of the combines law. One impediment to change was the constitutional problem. The Committee stated that publicity and criminal prosecution had been the principal means used against monopolies, 'mainly because the legislation has been based on the federal power over criminal law and has been upheld by the courts on this ground'. Recognition was given to 'another view' to the effect that the federal power over trade and commerce would give Parliament complete jurisdiction in monopoly situations, at least those involving international and interprovincial trade. But, because neither of these views had been sanctioned by judicial decision, the Committee preferred to leave the question of extending the scope of the legislation to some future time. As the Report stated: 'Our recommendations are directed to the strengthening and improving of the procedures, organization and remedies laid down in the Act rather than to revolutionizing them.'

The chief recommendation of the MacQuarrie Committee was in regard to administration. The Committee proposed that there be a separation

of function between investigation and research on the one hand and appraisal and report on the other. The Committee had received representations from the business community that the existing Commissioner was placed in the position of both prosecutor and judge. To effect a separation, the Committee recommended that the duties of the Commissioner be divided and assigned to two separate agencies: an agency for investigation and research, and a board for appraisal and report. The amendments to the Combines Investigation Act introduced in 1952 provided for a Director of Investigation and Research and for a Restrictive Trade Practices Commission consisting of not more than three members appointed by Governor in Council. The Director could initiate inquiries, but the powers needed to pursue an inquiry effectively -- seizure of documents, oral examination of witnesses, and orders for written returns -- could only be exercised after authorization by a member of the Commission. The Commission was to hear and appraise all evidence presented to it by the investigation and research agency as well as such other evidence as was necessary to ensure that persons under investigation had full opportunity to be heard.

The Committee recommended that the board report to the Minister, that the public report be retained for its deterrent effect, and that the scope of the Report be widened. The Committee was also concerned about the various areas of government policy which impinged on competition policy:

Numerous other aspects of the Federal Government policy may greatly contribute to strengthen or weaken monopoly power. Money lending, currency management, negotiation of international trade agreements, import and export controls, public works, taxation, technological research may all directly or indirectly affect the interests of particular business groups. The way our legislation on banking, insurance companies and corporations is framed and administered may also greatly affect the monopolistic picture of our industry.

To effect the desired co-ordination of government policy, the Committee recommended, first, that administrative procedures be designed to ensure close liaison between the proposed board and other government departments whose activities might affect the competitive structure of the economy, and secondly, that the board should be empowered to recommend any legislative or administrative change within the competence of Parliament if 'such change could be used as an effective remedy to correct an undesirable monopolistic situation or practice'. Although no administrative procedures to ensure a greater degree of liaison were in fact established, the legislation of 1952 did direct that the report of the Restrictive Trade Practices Commission 'review the evidence and material, appraise the effect on the public interest of arrangements and practices disclosed in the evidence and contain recommendations as to the application of remedies provided in this Act or

other remedies'.

With regard to offences, the Committee proposed no new prohibitions to strengthen the merger or monopoly provisions in the Act or to curb discriminatory or injurious monopolistic practices. In the body of the Report, discriminatory practices were defined to include quantitative price discrimination (via unjustified quantity discounts) and spatial forms of price discrimination such as freight equalization and freight allowance, and zoning of basing-point price systems: Other more injurious practices were said to be 'derogatory and harassing practices, price wars, "loss leaders", threats and spreading of false information'. The Government followed the advice of the Committee and, in the legislation of 1952, left the sections dealing with offences virtually unchanged, except that the provision relating to price discrimination was amended so as to prohibit only the systematic practice of price discrimination rather than any single act. The Committee did suggest that the Minister refer the loss-leader practice for review by the proposed new investigation and research agency and by the new board, but the subsequent study by these bodies led to no recommendations for changes in the Act.

The legislation of 1952 also incorporated the Committee's principal recommendation regarding remedies: that existing statutory limits on fines should be abolished and that the fine in each case should be at the discretion of the court. The Committee also suggested further use of supplementary judicial

remedies such as the judicial restraining order. Accordingly, a provision was inserted in the Act authorizing the court to issue an order prohibiting the repetition or continuation of an offence. In a conviction under the merger, trust or monopoly clause, the court was empowered to order dissolution of the merger or monopoly 'in such manner as the court directs'.

The Committee's recommendation that research into monopolistic situations and practices should become 'one of the most important assignments of the investigation and research agency' led to the introduction of a new section in the Act. Section 42 provided that the Director of Investigation and Research, on his own initiative, or on direction from the Minister, or at the instance of the Commission, should carry out an investigation of monopolistic situations or restraint of trade in relation to any commodity that might be the subject of trade or commerce. Such a 'general inquiry' would be dealt with in the same manner as an inquiry involving a possible infraction of the law. In line with the suggestion of the Committee, the publication of the results of such a general inquiry should await subsequent review of the evidence by the Commission which should then forward the report to the Minister for publication. Since 1952, five such reports have been published, relating to: loss-leader selling; discriminatory pricing practices in the grocery trade; automobile insurance; drugs; and tires, batteries and accessories sold through service stations.

The 1960 Amendments

Only in 1960, when further amendments were introduced into the combines law, did the Government follow the MacQuarrie Committee's recommendation that the Criminal Code provision relating to combinations be brought into the Combines Investigation Act. In this process, the definition of 'combine' was dropped, the word 'trust' was eliminated, and separate provisions were enacted defining mergers and monopolies and making them offences only where they were likely to be, or to operate, 'to the detriment or against the interest of the public'.

In addition, Parliament attached certain provisions to the combination or conspiracy section of the Combines Investigation Act. In a rather unusual turn of phrase, one of the new provisions directed that 'the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to one or more' of certain matters, including exchange of statistics, defining of trade terms, co-operation in research and development, or restriction of advertising, or some other unobjectionable activity. Nevertheless, by a second new provision, Parliament made it plain that such an agreement must not be used as a device for breaching the fundamental prohibition of combinations or conspiracies.

A further new provision related to export agreements. Parliament provided that 'the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to the export of articles from Canada'. A qualification was added, however, to the effect that the provision does not apply if the agreement reduces the volume of exports of an article, works to the specific detriment of Canadian exporters or would-be exporters, or lessens competition unduly in the domestic market.

The section banning resale price maintenance was also amended. The law passed in 1952 included a provision making it an offence for a supplier to refuse to sell to a dealer who would not maintain the supplier's prices. In 1960, Parliament provided a group of defences for suppliers charged with refusing to sell. Henceforth no inference unfavourable to the accused could be drawn if he satisfied the court that 'he and any one upon whose report he depended had reasonable cause to believe and did believe' that the buyer was using the goods as loss leaders, was making a practice of misleading advertising in regard to such articles, or was not providing the level of servicing that his customers might reasonably expect. While Parliament in this amendment obviously viewed these practices with disfavour, it did not go so far as to prohibit them directly.

Parliament did, however,

insert in the Act a provision to outlaw misrepresentation of the ordinary price of an article ('misleading price advertising'). Another new prohibition banned discriminatory promotional allowances. This latter provision had the twofold purpose of preventing discrimination in distribution and of limiting promotional expenditures.

Also in 1960, the prohibition of price discrimination on a territorial basis was strengthened by making it illegal for a seller to engage in a policy of selling articles in any area at lower prices than he exacted elsewhere in Canada if the effect or tendency or design was to substantially lessen competition or eliminate a competitor.

A change was also introduced in the procedure for prosecutions under the Act. Although proceedings in any case under the Act could continue to be launched in any superior court of criminal jurisdiction, they could henceforth also be instituted by the Attorney General of Canada in the Exchequer Court of Canada provided that all the accused consented to this. (An exception to this procedure was made for misleading price advertising, which offence was made punishable on summary conviction.) The new procedure had the advantage of by-passing intermediate appeal and of moving cautiously in the direction of a single, specialized court to hear competition policy cases.

In addition, in 1960 the scope of the injunction provision was extended to grant the courts power to dissolve an offending merger or monopoly without the necessity of first obtaining a conviction."

(pp. 56-63)

At the end of 1965 the Minister responsible for the administration of the Combines Investigation Act became the President of the Privy Council, in place of the Minister of Justice, in whom it had been vested since 1946. Then in June, 1966 the Government Organization Act was proclaimed, setting up the Department of the Registrar General and making its Minister responsible for legislation on combines, mergers, monopolies and restraint of trade. The Minister at this time announced that:

"On July 22, 1966 the President of the Privy Council announced that the Government has requested the Economic Council of Canada to undertake a study of certain important aspects of the responsibilities of the Registrar General of Canada and his department under the Government Organization Act, 1966 which at the time was awaiting proclamation.

The terms of reference are as follows:

'...in the light of the Government's long-term economic objectives, to study and advise regarding:

- (a) the interests of the consumer particularly as they relate to the functions of the Department of the Registrar General;
- (b) combines, mergers, monopolies and restraint of trade;
- (c) patents, trade marks, copyrights and registered industrial designs.'

The Minister recalled that on May 24, 1966 on second reading of the Government Organization Bill, the Prime Minister informed the House of the Government's intention to ask the Economic Council of Canada to look at the field of consumer affairs along with some of the other functions now to be undertaken by the Registrar General of Canada under the new legislation with a view to providing advice as to the course of action that seems best suited to meeting the needs of the Canadian people and the Canadian economy in the consumer field.

The Minister stated that the Government has decided that as part of this study, the whole question of combines, mergers, monopolies and restraint of trade should be referred to the Economic Council for a fundamental review in the light of current and prospective needs of the Canadian economy; and furthermore, that another aspect of the work of the new

department, namely, patents, trade marks, copyrights and registered industrial designs, should also be included in the fundamental economic study to be undertaken by the Council.

The Economic Council will be free to make interim reports on such particular aspects of the study as the Council deems appropriate to enable the Government to consider taking initial steps consistent with the general review.

With particular reference to proposals for amendments to the Combines Investigation Act that have been the subject of discussion in Parliament and the press, and of submissions by individuals and groups, the Minister stated that it is most important that this legislation should not be amended piecemeal. Any amendments to the legislation ought to be in keeping with its fundamental philosophy and in furtherance of it. When consideration is being given to reviewing the general structure and philosophy of the Act, it would be very unwise to enact immediate temporary and piecemeal amendments to correct particular situations. At a time when a general review is in contemplation, such particular measures ought to be taken up and considered in the context of the whole review and any revision that may take place in the light of the findings and recommendations of the Economic Council."

On December 21, 1967, the name of the Department was changed to the Department of Consumer and Corporate Affairs, and its Minister continued to have responsibility for combines, mergers, monopolies and restraint of trade. Accordingly it was to this Minister that the task fell of considering and implementing reports of the Economic Council on consumer affairs and competition policy. The first of these reports was published in 1967 and following one of its recommendations, section 306 of the Criminal Code was repealed and re-enacted as section 33D of the Combines Investigation Act by The Criminal Law Amendment Act 1968-69. This new section, dealing with false and misleading advertising was proclaimed in force on July 31, 1969.

The second such report was the Interim Report on Competition Policy, July 1969. It was summarized in its own press release, dated August 7, 1969, which is quoted below.

"The Economic Council of Canada today recommended a revised approach to anticom combines or competition policy, based on a mixture of criminal and civil law and with the single clear objective of furthering the interest of the Canadian consumer in an efficiently working economy.

The Council's proposals would extend the scope of competition policy to all commercial activities including services such as doctors and lawyers, professional sports, and other business and personal services. Also included would be the activities of banks and the 'unregulated activities of "regulated industries"'. . .

Two basic sets of recommendations are made:

1. Retained in the criminal law--but clarified where necessary, well publicized, vigorously enforced, and backed up by fines 'large enough to hurt' as well as by imprisonment--would be prohibitions on five practices judged by the Council to be 'rarely if ever productive of any substantial public benefit':

- collusion between competitors to fix prices (including big-rigging on tenders);
- collusion between competitors to allocate markets (the Council noted that this prohibition might have to be qualified so as to allow such practices as drug stores arranging among themselves for certain stores to open on Sundays);
- collusion between competitors to prevent the entry into markets of new competitors or the expansion of existing competition;
- resale price maintenance (for example, cases in which a supplier of a product tries to force

a retailer to sell it at a specified price or minimum price); and

-- untrue, deceptive or misleading advertising.

2. Other criminal offences now in the Combines Investigation Act-- such as its 'all but inoperative' provisions on mergers and monopolies-- would be replaced by new proposals to create an independent Competitive Practices Tribunal that would operate in a civil law area in deciding on the basis of economic analysis whether certain mergers and other business practices (including some not effectively covered by the present Combines Investigation Act) were in the public interest in the sense that they promoted economic efficiency, higher real incomes and consumer welfare.

The tribunal, with a high calibre membership and staff experienced in economics as well as business and law, would have the power to break up particular mergers or halt harmful business practices by issuing interim and final injunctions. It could also recommend that the government apply other remedies, including the withdrawal of tariff protection, licences to import duty-free or--as a last resort in extreme cases of dominance or monopoly--the application of direct regulations.

In addition to the power of general inquiry, the tribunal would also have the authority to 'register', and thus exempt from the ordinary application of competition policy, intercompany agreements to improve the competitive position of Canadian goods in export markets or--provided such agreements were found to be in the public interest, with savings likely to be passed on to consumers--agreements to specialize in certain products and thus achieve longer production runs and lower unit costs.

In proposing the creation of a civil tribunal, the Economic Council has assumed that it would prove constitutionally possible for the federal government to establish such a body, perhaps under the federal power to regulate trade and commerce. The Council comments:

'There can be no certainty concerning this matter until the courts have had an opportunity to pronounce upon it, but on the basis of highly competent advice, we are sufficiently persuaded both of the need for civil legislation and of the improved prospects for obtaining it that we are prepared to make this assumption'.

In this connection, the Council drew special attention in an Appendix to its report to the high degree of economic interdependence that has developed between different areas in the country's complex, modern economic system.

The Council emphasized that it was not advocating exclusive federal occupancy of the field of competition policy in Canada. A provincial role would be 'a most welcome development'. But the federal presence is 'clearly indispensable' because a large part of Canadian economic activity crosses provincial and international boundaries and would be impossible to subject effectively to any provincial competition policy.

No specific provision is made in the Council's recommendations for dealing with monopoly and dominant-firm situations as such. Thus there would be no specific barrier to achievement of market dominance or monopoly through internal company expansion or superior efficiency. But if it was achieved through mergers or 'exclusionary' trade practices it would be open to examination and the imposition or recommendation of remedies by the tribunal. Also, the tribunal's assessment of particular mergers and trade practices would be affected by whether a monopoly or dominant firm was involved. And the tribunal would have a power of general inquiry to examine any existing monopoly or other undesirable situation and recommend to the government how it could be reduced or ended.

Too little recent information and analysis is available on international cartels and the operations of large international companies to make firm statements or proposals, the Council said, although it added that there is information suggesting the persistence of noteworthy international cartels. It suggested that

the Department of Consumer and Corporate Affairs try to discover as much as possible about the effects on Canada of existing international cartels.

Large international corporations (many of them based in the United States) have potentials for both good and ill, the Council noted. One projection prepared for the Council is that by the latter 1980's the total output of the non-Communist world may be about equally divided between international corporations, other U.S. industry, and industry in all other countries combined. 'This would indeed seem to imply great market power, and if serious abuses of that power took place, this could well be the circumstance that called into being a supranational agency in the field of competition policy', the Council said.

Touchstone of the Council's whole approach to competition policy is the goal of economic efficiency. Such a single objective, clearly stated, would be new to Canadian competition policy. In part at least, existing policies reflect other considerations entertained by legislators in the past such as the desire to redistribute income and diffuse economic power, sympathy for the plight of small business, suspicion of big business, and concern for the fairness of competitive behaviour. The Council believes that a competition policy concentrated solely on the efficiency objective is likely to be applied more consistently and effectively. Such a policy may well

also make some contribution towards the redistribution of income and the diffusion of economic power; but the contribution is likely to be a small one, and there exist more powerful policy instruments, such as tax and transfer payment policies, for attaining such goals to the extent that they are thought to be desirable.

The significance of the economic-efficiency objective for competition policy is indicated in this statement by the Council:

'...it may be explained by way of example that a competition policy that assigned equal importance to maximizing economic efficiency and diffusing economic power would be likely on occasion to run into a conflict of goals. It is a stern reality of a competitive market system that from time to time some competitors go to the wall. If this occurs mainly because of predatory or exclusionary tactics practised by other competitors, there may well be a good case for competition policy to intervene. But if the squeezing out of competitors appears to be part of a process likely to produce increased efficiency and lower costs and prices (if, for instance, a number of small corner stores are being forced out of business by the entry of new, low-cost mass distributors) then a dilemma is faced. The economic efficiency goal might well suggest letting the process work itself out;

the goal of diffusing economic power would call for intervention. By recommending that efficiency be the sole objective of competition policy, we are in effect saying that no individual competitor, corporate or otherwise, has an inherent right to stay in business.'

The Council's proposal to extend competition policy to services--and indeed its whole approach--is based on this view:

'In the first place, we have taken the view that the general set of competition policy should be one that aims at the achievement of efficient resource use in the Canadian economy. Second, we believe that some form of social control should be exerted over all commercial activities, and that over the greater part of the Canadian economy, efficient resource use will be more readily brought about through policies that maximize the opportunities for the free play of competitive market forces. The use of other forms of social control, namely, government regulation and government ownership, should be brought to bear only on those activities where monopolistic tendencies have all but eliminated competitive market responses, or where the protection of the consumer interest in matters such as health, safety, fraud, disclosure and standardization, among others, requires the implementation of explicit government regulations.'

The present Combines Investigation Act is limited largely to goods-producing and goods-distributing activities. In effect it covers industries that account for about half of Canada's total output--forestry, fishing, mining, manufacturing, construction, retailing and wholesaling, insurance, and hotels and restaurants.

Industries largely exempt from the Act are in two groups. In one are agriculture and those industries in which certain activities of interest for competition policy are directly regulated--transportation companies, radio and TV broadcasting, telephones, and power and gas utilities. In the other are banks and other financial institutions together with real estate, personal services (including the medical and legal professions), business management services, and others.

Exclusion of certain services from competition policy is an anomaly, the Council said. Service industries now employ over half the Canadian labour force. Of all 22 nations in the Organization for Economic Co-operation and Development (OECD), only Canada and Ireland confine their competition policy to the goods industries.

'There is, in our view, enough evidence pointing to the existence in the service sector of anti-competitive practices detrimental to the public interest to lead to the conclusion that the continued exemption of parts of this sector

from competition policy cannot be justified,' the Council said.

In recommending that its proposed competition policy apply to 'all commercial activities', including the 'unregulated activities of "regulated industries"', the Council noted that some industries (for example, the telecommunications industry) are regulated only in certain parts of their operations.

Similarly, the banks and other financial institutions are subject to many kinds of legislation and control, but in most cases these are aimed at stability and solvency rather than competition. The Council's recommendations would make it possible, where considerations of monetary policy do not intervene, to 'strike down practices in the financial area that are inimical to the public interest in competition and efficiency'.

Dealing with the professions, the Council suggested that the past reluctance to extend the anti-combines legislation to service industries 'may have stemmed partly from an unwillingness to interfere with the time-honoured custom of allowing professional bodies to fix their own fees and control entry into their professions'.

However, emergence of Medicare and other developments had drawn public attention to fee-setting and other practices of professional

bodies, and 'it has become highly appropriate to consider anew why these practices should not be subject to some suitably structured system of checks and balances'.

The Council said there is a need for such a system, but it could take the form of competition policy, collective bargaining (in cases where was an adequate 'counter-vailing power' across the bargaining table), or direct regulation-- or some combination of these.

In connection with fee-setting, the Council said one solution might be to allow the professions to 'suggest' rates but to make any attempt to enforce these rates subject to the ban on price-fixing. 'Many professions do not now enforce their tariffs; in those that do, there is some reason to believe that many individual members would welcome the freedom to charge below the suggested scale.'

The Council's basic recommendation in this area:

'As a general rule, arrangements for determining the remuneration of self-employed professional and other groups should be subject to competition policy. Where, however, a group prefers a collective-bargaining or public-regulatory arrangement, and where conditions are such that this arrangement constitutes an adequate check-and-balance system, it would be in order

to grant an exemption from competition policy in respect of those matters specifically covered by the alternative arrangement.'

As for licensing, the Council said it is obviously in the public interest to have quality standards in such professions as medicine and law closely watched, and the members of those professions are best able to do the job.

'But there is also a public interest in ensuring that the power to regulate the quality of professional services is not used in an unduly restrictive way, and that the size of likely future needs for professional services be kept in mind. This aspect of the public interest is all the more relevant in an age when a large proportion of the cost of professional training is a charge on the general taxpayer.'

For this purpose the Council recommended that lay members should be appointed to the governing bodies of self-governing professions 'to represent consumers' interests and to check any tendency towards the exercise of power in the interests of the profession rather than that of the public'."

Immediately after the release of the report of the Economic Council of Canada, intensive work was undertaken in the Department of Consumer and Corporate Affairs to produce a bill that would adopt its recommendations and also represent a complete modern competition policy. In June 1971, this work was introduced for first reading by the then Minister, Hon. Ron Basford, as Bill

C-256, the Competition Act. The bill was introduced with a volume of explanatory notes, press briefings and a request to all interested parties to make known their views, and a series of speeches and seminars was inaugurated. The Minister made it clear that he did not intend to proceed with the legislation during the session but wished it to become the subject of a public debate with a view to perfecting the drafting. He also indicated that there would be examination by Parliamentary Committees which he thought would hold hearings and receive representations from all interested parties. A broad summary of the proposed legislation follows.

Bill C-256 set up a series of criminal prohibitions with respect to restrictive practices made illegal per se because they are judged to be seldom, if ever, productive of any substantial public benefit. It proposed the establishment of a Competitive Practices Tribunal which would have power to examine and adjudicate upon mergers, specialization and export agreements, and specified trade practices brought before it by the enforcement authorities and interested parties. This Tribunal would deal with those aspects of trade restrictions deemed to be capable of operating either to the detriment or in the interest of the public depending upon the surrounding facts. It would be required to follow statutory criteria in making its determinations. The basic philosophy of these criteria, as recommended by the Economic Council of Canada is that normally competition will maximize the efficiency of the economy. Where competition has to be sacrificed to bring about a scale of production large enough to ensure efficiency, then the measures required ought to be carefully examined to ensure that the public interest is well served.

The Bill provided for appointment of an official known as the Commissioner who will be charged with responsibility for commencing investigations, of representing the public interest before the Tribunal, and other statutory duties.

Whereas the Combines Investigation Act is generally confined to commodities, Bill C-256 covered services as well, but with a variety of exemptions where valid legislation regulating professions and industries is in effect.

PER SE OFFENCES: Section 16 listed ten types of agreements or arrangements subject to outright criminal prohibition; price fixing; allocation of markets; lessening or limiting production or supply; lessening or limiting quality, grades or kinds of products; lessening or limiting facilities for production or distribution; lessening or limiting channels of distribution; preventing market entry or expansion; causing withdrawal from a market; and boycotts against buyers or sellers. The intent of section 16 was to state, with more certainty than does the current Combines Investigation Act, the law relating to restrictive agreements.

In addition to these prohibited agreements, sections 17 to 26 inclusive prohibited: wilful monopolization; resale price maintenance; agreements unduly limiting opportunities for professional or amateur athletes; misleading advertising; referral selling; bait and switch selling; and selling at higher than an advertised price. In addition they established conditions for: pyramid selling; the use in advertising of performance and related tests, testimonials, games, lotteries and promotions.

The removal of the undue test from section 16 on illegal agreements (which in the Combines Investigation Act determines whether or not a restrictive agreement is illegal) was intended to meet public criticism that the Combines Investigation Act was uncertain. In lieu thereof, the Bill specified numerous exemptions from section 16 for such things as registered specialization and export agreements, industries regulated by public bodies, arrangements between related companies, and so forth.

COMPETITIVE PRACTICES TRIBUNAL: The Bill provided for a Competitive Practices Tribunal with seven members knowledgeable in economics, business, law and public affairs. Its main functions would have been: to review and approve applications for registered export and specialization agreements, and accept registration of franchise agreements; to maintain a register of foreign and domestic mergers, and approve or prohibit such mergers as are challenged according to criteria in the Act; to consider and prohibit certain interlocking directorates; to hear evidence concerning price discrimination, promotional allowances, tied sales, directed selling, exclusive dealing or reciprocal buying, and make orders respecting such trade practices as provided in the Act; to hold hearings (on its own initiative or when requested by the Minister) into any matter within its jurisdiction and subsequently to publish guidance rules for the information of parties concerned giving the Tribunal's views on the matter examined; to conduct general enquiries, when requested by the Minister, into any matter relevant to the policy and objectives of the Act; to give advance rulings on what its position would be concerning a merger or proposed merger, or any other matter within its jurisdiction, at proceedings initiated before the Tribunal by the parties involved or the Commissioner. Such advance rulings would be binding on the Tribunal; to ensure that foreign laws, decrees or government directives will not operate in Canada contrary to Canadian competition policy.

The sections dealing with registered agreements would have required the Tribunal to register a specialization or export agreement which has been filed, unless challenged by the Commissioner, or unless the Tribunal considered that the public interest demands a hearing. It would approve the registration after a hearing unless it decided that the agreement was not in the public interest, as determined by the criteria specified in the Act.

Under the merger provisions a registration would have provided notice that a merger had

taken place or was planned. If the merger were challenged by the Commissioner the Tribunal must hold hearings and make a decision, otherwise there would be no hearing. Only mergers involving companies with gross assets or gross annual revenue of \$5 million or more, and those mergers where effective control of a Canadian company is acquired by foreign-controlled interests, would have been registered with the Tribunal.

The price discrimination section, among other things, would have outlawed "volume discounts".

SERVICES: The Bill would have brought services under the Act and included them in all relevant contexts. However, there were certain exemptions in respect of certain services. Specific exemptions were contained in section 89 for collective bargaining activities authorized under federal or provincial labour laws. Section 92 exempted "regulated industries" from the outright prohibitions of the Act, and from the provisions governing restrictive trade practices to the extent that the activities of the industry were expressly required to be supervised and regulated on a continuing basis by a public body charged with protecting the public interest. Section 92(2) provided a similar exemption to members of a group which is declared in a federal or provincial statute to be a profession or trade for the purposes of this Act, and which is regulated by a body expressly charged with supervising and regulating it in the public interest.

Exemptions were provided to general insurance companies and investment dealers in recognition of circumstances peculiar to these two industries. General insurance companies would have been allowed to agree on certain specified matters, and would have been allowed the advantage of a broader definition of "joint ventures" to allow agreements among companies to share a particular insurance risk designated as a special class of risk by the Tribunal, and to allow the formation of risk-

APPENDIX B

CASES UNDER THE COMBINES INVESTIGATION ACT EXCLUDING MISLEADING ADVERTISING

CASES UNDER THE
COMBINES INVESTIGATION ACT
EXCLUDING MISLEADING ADVERTISING CASES

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
Report concerning the Manufacture, Distribu- tion and Sale of Metal Culverts and Related Products	Alleged Combination	July 24, 1957	<p>(1) That the Western Section of the Metal Culvert Council or group of Western Culvert Representatives be dissolved.</p> <p>(2) That there should be abandonment by manufacturers in the metal culvert industry of discussions between them at meetings or otherwise of prices, terms and conditions of sale or any other aspect of price.</p> <p>(3) That because the long history of uniform pricing in this industry requires a clean break with former practices if competitive conditions are to be restored, particularly in relation to price, none of the manufacturers affected by this inquiry should supply their culvert price lists to other metal culvert manufacturers or follow any other system of exchanging price information.</p> <p>(4) That discussions, communications or other means designed to result in the submission of uniform bids on calls for tenders be terminated, if they have not already been abandoned.</p> <p>(5) That if necessary to secure compliance with these recommendations an injunctive order for that purpose be applied for from a court of competent jurisdiction.</p> <p>(6) The Commission also was of the opinion that the disadvantages to consumers resulting</p>		<p>The following companies were charged under section 411(1)(d) of the Criminal Code and pleaded guilty, a fine as shown opposite the name of each being imposed on November 13, 1959:</p> <p>Armco Drainage & Metal Products of Canada, Limited..... \$20,000</p> <p>Canada Culvert Company, Limited..... 3,000</p> <p>The Pedlar People Limited..... 15,000</p> <p>Rosco Metal & Roofing Products Limited..... 12,000</p> <p>Westeel Products Limited 15,000</p> <p>The Court also granted an order prohibiting the continuation or repetition of the offence.</p>

Report Concerning the Purchase of Pulpwood in Certain Districts in Eastern Canada	Alleged Combination	Mar. 31, 1958	<p>from the delivered price system as it had operated in this industry made it desirable that alternative methods of purchasing culverts should be made available.</p> <p>That there be a definite complete abandonment of arrangements and practices which restrain competition with respect to the purchase price of farmers' pulpwood and that each company should adopt a positive policy to determine independently the prices to be offered and paid for pulpwood.</p>	<p>The following companies were charged under section 498(1)(d) of the Criminal Code and were convicted on June 15, 1960, a fine as shown opposite the name of each company being imposed:</p> <p>Canadian International Paper Co. \$25,000</p> <p>Howard Smith Paper Mills Ltd. 25,000</p> <p>St. Lawrence Corp. Ltd. 20,000</p> <p>The E. B. Eddy Co. 20,000</p> <p>Anglo-Canadian Pulp & Paper Mills Ltd. 20,000</p> <p>Consolidated Paper Corporation Ltd. 20,000</p> <p>Abitibi Power & Paper Company Ltd. 15,000</p> <p>Gaspesia Sulphite Co. Ltd. 15,000</p> <p>St. Anne Power Co. 10,000</p> <p>The Ontario Paper Co. Ltd. 10,000</p> <p>Donnacona Paper Ltd. 10,000</p> <p>The KVP Co. Ltd. 10,000</p> <p>Richmond Pulp & Paper Co. of Canada Ltd. 8,000</p> <p>The James MacLaren Co. Ltd. 8,000</p> <p>Armstrong Forest Co. 8,000</p> <p>Gair Co. of Canada Ltd. 8,000</p> <p>Spruce Falls Power & Paper Co. Ltd. 8,000</p> <p>The Director of Investigation and Research is continuing to keep the situation in this industry under surveillance.</p>
Report Concerning the Manufacture, Distribution and Sale of Yeast	Alleged Merger	May 14, 1958	<p>The Commission was of the opinion that in the absence of evidence of intent on the part of Standard Brands Limited to eliminate Best Yeast Limited as a competitor, the public interest had not been so affected as to justify recommending dissolution of the merger. It recommended, however, that Stand-</p>	

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
Report Concerning the Production, Distribution and Sale of Zinc Oxide	Alleged Combination, Merger, Monopoly, Price Discrimination and Predatory Pricing	July 3, 1958	<p>ard Brands Limited should not be permitted to acquire its presently remaining competitor and, unless the structure of the industry is greatly altered, should not be permitted to acquire any new competitor that may enter the field.</p> <p>(1) That court orders should be sought:</p> <p>(i) To restrain Zinc Oxide Company of Canada Limited from arranging for or accepting any price concession, allowance or other advantage with respect to the price or quality of zinc which is not offered by the supplier to other producers of zinc oxide in Canada.</p> <p>(ii) To restrain Hudson Bay Mining and Smelting Company Limited from offering or granting any concession, allowance or other advantage with respect to the price or quality of zinc to any producer of zinc oxide in Canada which is not offered on the same terms and conditions to other producers of zinc oxide in Canada or to any person or firm seeking to produce zinc oxide in Canada.</p> <p>(iii) To restrain Hudson Bay Mining and Smelting Company Limited from offering or selling zinc to producers of zinc oxide in Canada at prices higher, with due regard to transportation costs, than the prices at which the same grades of zinc are sold by Hudson Bay Mining and</p>	Zinc Oxide Company of Canada Limited; Hudson Bay Mining and Smelting Company Limited	After discussion with Counsel to whom the evidence was referred it was decided that no proceedings would be instituted.

			Smelting Company Limited in the United Kingdom. (2) That consideration be given to the removal of the customs duties on refined zinc.	
Report Concerning the Wholesale Trade in Cigarettes and Confectionery in the Edmonton District	Alleged Predatory Pricing	Sept. 25, 1958	The Commission was of the opinion that the evidence relied on did not establish that prices were unreasonably low as required by section 412(1)(c) of the Criminal Code.	
Report Transmitting a Study of Certain discriminatory Pricing Practices in the Grocery Trade	General Inquiry under section 42 of the Combines Investigation Act	Dec. 9, 1958	While the Commission made no specific recommendations, it transmitted as part of the Report the material collected by the Director of Investigation and Research in the inquiry which suggested that suppliers should review their price structures from time to time to ensure that section 412 of the Criminal Code was not being inadvertently infringed and also to ensure that no unfair and unjustified disadvantages were being imposed unnecessarily and persistently on any type of distributor particularly the smaller distributor; that in respect of special discounts and allowances, it would seem reasonable to expect that suppliers would, in general practice, and insofar as they grant such special discounts and allowances, endeavour to see that they are available on reasonably proportionate terms to all customers; that where value is exacted for such special discounts and allowances in terms of advertising or promotional services, it would seem reasonable to expect that suppliers would take into consideration the different kinds of advertising and promotional services which different types of distributors are capable of providing, and organize their	Amendments to the Combines Investigation Act in 1960 incorporated section 33B prohibiting discriminatory promotional allowances.

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
Report Concerning the Manufacture, Distribu- tion and Sale of Ammu- nition in Canada	Alleged Monopoly	Feb. 3, 1959	<p>special discounts and allowances programmes in such a way that the different types of distributors can all take advantage of them; and that suppliers might also review the desirability of reducing their expenditures for special discounts and allowances and offering in their place lower prices to buyers which would be more apt to be passed on to the consumer.</p> <p>(1) That the continuance of a protective tariff on ammunition should be conditional upon Canadian Industries Limited giving an undertaking that it will abandon the restrictive distribution policy it has followed in limiting the number of direct accounts.</p> <p>(2) That the Company will undertake not to restrict the sale of ammunition to defined classes of distributors.</p> <p>(3) If Canadian Industries Limited refuses to give an undertaking of this nature, either (a) the tariff should be reduced so that traders refused supplies of ammunition by Canadian Industries Limited can import comparable lines of ammunition on a competitive basis with recognized C.I.L. distributors, or (b) traders refused supplies of ammunition by Canadian Industries Limited and importing ammunition should be granted a drawback of customs duties to an extent which will make their</p>	Canadian Industries Limited	In May 1960 Canadian Industries Limited advised the Department of Finance that effective January 1, 1961, it was revising its distribution policy in a manner that met the recommendations of the Commission.

Report Concerning the Distribution and Sale of Electrical Construction Materials and Equipment in Ontario

Alleged Combination

May 1, 1959

landed costs equivalent to the delivered price of C.I.L. ammunition to their competitors.

- (1) The Supplier Relations Program of the Electrical Contractors Association of Ontario should be abandoned.
- (2) The Collective Bargaining Agreement made by union shop contractors with the International Brotherhood of Electrical Workers should be amended in a manner that will prevent it being used to further the purpose of the Supplier Relations Program or to restrict entry into the electrical contracting industry.
- (3) Efforts to restrict entry of competent persons or firms into the electrical contracting industry should be abandoned.
- (4) The Compulsory Registration Plan or any activity directed toward similar ends should be confined to matters connected with technical qualifications, under appropriate public safeguards.

If necessary to secure adherence to these recommendations, it was further recommended that an application be made to a court of competent jurisdiction for an injunctive order to this effect.

Report Concerning the Sale and Distribution of Surgical Rubber Gloves and Certain Other Surgical Supplies

Alleged Resale Price Maintenance

May 19, 1959

The Commission expressed the opinion that actions taken by the Sales Director of Sterling Rubber Company Limited constituted attempts to induce dealers handling the Company's surgeons' gloves to resell such products at prices not less than the suggested resale prices issued by the Company. The Commission also expressed the opinion that the contract system for the sale of surgical blades of

The Electrical Contractors Association of Ontario and Clarence William Dent were charged under section 411(1)(d) of the Criminal Code. The Association was convicted on June 15, 1960, and fined \$7,500. A detailed order prohibiting the continuation or repetition of the offence by the Association was granted by the trial judge. Any member of the Association whom the Crown seeks to bind by the order must be served with a copy of the order by registered post. The conviction and sentence were upheld on appeal by the Ontario Court of Appeal and leave to appeal to the Supreme Court of Canada was refused. The accused, C. W. Dent, elected trial by jury and the trial was traversed to a subsequent assizes. The trial was held on November 27 and 28, 1961, at which time he pleaded guilty and was sentenced to a fine of \$7,500 or six months in jail. The Court also granted an order prohibiting the continuation or repetition of the offence by Mr. Dent.

Cooper Campbell, manufacturer's agent in Canada for Bard-Parker, Inc., a United States Company, was charged in Toronto on September 20, 1961, with being a party to an offence under section 34 of the Combines Investigation Act in that he had aided and abetted Bard-Parker Inc. in the commission of an offence under that section. Trial was held before a County Court Judge in January, 1962. In a judgment delivered on May 15, 1962, the accused was acquitted. An appeal from the acquittal to

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied **	Action Taken on Recommendations and Results***
Report Concerning the Sugar Industry in East- ern Canada	Alleged Combination	Feb. 3, 1960	<p>Bard-Parker Company, Inc. which the Company requires its Canadian dealers to use is an arrangement intended to ensure that dealers of the Company in Canada resell its products at prices specified by the Company and is, therefore, a means intended to secure resale price maintenance.</p> <p>That as revisions are negotiated with respect to trade agreements affecting sugar it would appear desirable that the degree of concentration now existing in the Canadian sugar industry should be kept in mind so that potential or actual competition from external sources will be able to act as an additional factor in situations where the fewness of Canadian suppliers might otherwise contribute to a lack of responsiveness to changes in underlying market conditions.</p>		<p>the Ontario Court of Appeal was heard on May 13 and 14, 1963, and judgment was reserved. On May 25, 1964, judgment was delivered allowing the appeal and convicting the accused, and on June 10, 1964, he was fined \$50 on each count or a total of \$300. The accused has appealed to the Supreme Court of Canada.</p> <p>Prosecution proceedings were instituted in Montreal against Atlantic Sugar Refineries Limited (now Acadia-Atlantic Sugar Company Limited), Canada and Dominion Sugar Company Limited and St. Lawrence Sugar Refineries Limited under section 498(1)(d) of the Criminal Code. The accused companies pleaded guilty on January 15, 1963, and on March 18, 1963, each of the companies was fined \$25,000. The Court also granted an order prohibiting the continuation or repetition of the offence. One company appealed from one paragraph of the Order. The appeal was heard by the Quebec Court of Queen's Bench, Appeal Side, on March 18, 1964, and judgment was delivered on July 30, 1964, allowing the appeal on technical grounds. An application was then made pursuant to section 31 (1)(b) of the Combines Investigation Act for a new Order containing this paragraph relating to the company in question. On December 13, 1965, the Order applied for was granted. The company appealed the granting of the Order to the Quebec Court of Queen's Bench, Appeal Side. The appeal was heard on March 13, 1967 when judgment was reserved. Judgment was delivered on July 21, 1967, dismissing the appeal.</p>

Report Concerning Alleged Attempts at Resale Price Maintenance in the Distribution and Sale of Gasoline in the Toronto Area	Alleged Resale Price Maintenance	Feb. 25, 1960	The Commission expressed the opinion that the actions of The British American Oil Company Limited disclosed in the inquiry exerted an influence upon or created an inducement to the service station operators in question to resell gasoline at not less than the price so designated.		Two charges under section 34(2) of the Combines Investigation Act were laid against the British American Oil Company in Toronto. The Company was acquitted on March 10, 1961.
Report Concerning the Manufacture, Distribution and Sale of Specialty Bags and Related Products	Alleged Combination	Mar. 11, 1960	The Commission concluded that the activities of the specialty bag group were likely to operate to the detriment or against the interest of the public. It pointed out however, that the group was relatively short-lived and whether with a longer life it would have failed in the questionable objectives described could only be conjectured and it was to be hoped therefore that circumstances would not be found in this field which would require that consideration be given in the invoking of the "likely to operate" provisions of the Act.		After discussion with Counsel to whom the evidence was referred it was decided that no proceedings would be instituted.
Report Concerning the Business of Automobile Insurance in Canada	General Inquiry under section 42 of the Combines Investigation Act	May 16, 1960	<p>The Commission expressed the opinion that some of the rules, methods and activities of Board organizations and companies have features which might, in some circumstances, bring them within the kinds of action defined by the Combines Investigation Act or section 411 of the Criminal Code and there was, therefore, the distinct possibility that they might be held to infringe upon the law. It was suggested, therefore, that the Canadian Underwriters' Association and other territorial associations should review the situation and should consider in particular:</p> <p>(1) Abandoning the compulsory feature of their rate structures so that members will be able to offer some competition in rates if their loss and cost position justifies it.</p> <p>(2) The arbitrary cost factor. The existence of the cost factor should not prevent a company whose costs are lower than the</p>	Canadian Underwriters' Association and other territorial associations.	When a suitable time had elapsed to allow the Association and its members to examine the Report carefully and consider their position, the Director made extensive preliminary inquiries to determine whether he is placed upon inquiry under section 8 of the Combines Investigation Act. After assessing all the relevant facts, the Director was of the opinion that the agreements among members of the Canadian Underwriters' Association with respect to premium rates are not such as would at this time be likely to have the effect of preventing or lessening competition unduly contrary to section 32(1) of the Act and, therefore, that formal inquiry is not warranted. The Director, however, will keep the situation under surveillance.

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
Report Concerning the Distribution and Sale of Coal in Sault Ste. Marie, Ontario	Alleged Combination	July 26, 1960	<p>cost factor indicates from making corresponding reductions in its premium rates.</p> <p>(3) That purely as a matter of policy the Associations consider making their rating material available to any non-member company on payment of a fair price. No inference should be drawn from this suggestion that the Associations are under any obligation to do so.</p> <p>(4) That consideration be given by the Associations to removing the fixed character of commissions along with fixed premium rates.</p> <p>(5) That the Associations consider the advisability of abolishing what remains of the "non-intercourse" and "separation" rules, rules limiting re-insurance to Association members, those limiting the location and thereby the number of branch offices, and those limiting the number of agents of certain classifications that may be appointed by a member company.</p> <p>That the profit-sharing arrangement among the coal dealers in Sault Ste. Marie should be abandoned if this has not already happened and that the public interest would be best served if each coal dealer in Sault Ste. Marie followed the policy of preparing tenders for the sale of coal to institutions independently on the basis of his own costs and method of operation. Similarly, the establishment of prices by each dealer for the general trade should be on an independent basis so that differing costs resulting from the purchase of various grades or qualities of coal or economies in operation would have opportunity to be</p>		<p>The following companies were charged under section 411(1)(d) of the Criminal Code and were convicted on September 6, 1961; on October 23, 1961, a fine as shown opposite the name of each was imposed:</p> <p>Lyons Fuel Hardware and Supplies Limited.....\$4,000</p> <p>McMaster Fuels Limited..... 8,000</p> <p>Soo Falls Brewing Company Ltd..... 3,500</p> <p>The Court also granted an order prohibiting the continuation or repetition of the offence.</p>

Report Concerning the
Production and Supply of
Newspapers in the City
of Vancouver and Else-
where in the Province of
British Columbia

Alleged Merger

Aug. 16, 1960

reflected in the dealer's selling prices. In this way the public would secure the benefits of competition in price.

- (1) In view of the absence of a sufficient safeguard to protect the public interest in the continuance of separate newspapers in the Vancouver area, it is considered that steps should be taken to ensure that no changes are made in the existing agreements which would reduce the degree of independence which now exists with respect to the publication of The Province and The Sun and that no action is taken under those agreements which would increase the disadvantage to the public which has resulted from the common ownership of The Province and The Sun.
- (2) What is required is a judicial order which would restrain the parties from making any alteration in the agreements without the approval of a court. In the proceedings for such an order a review could be made of the situation with respect to the requirement that general advertising must be placed in both papers, which requirement, in the Commission's view, operates to the detriment of anyone who desires to place an advertisement in only one paper.

Southam Company Limited; Sun Publishing Company Limited; Pacific Press Limited.

Following publication of the report, the rule requiring national advertisers to buy advertising in both The Province and The Sun was rescinded. The report was referred to counsel for an opinion as to whether the evidence in the inquiry would justify proceedings in the courts. In the meantime the Director of Investigation and Research received a communication from counsel on behalf of the newspapers offering undertakings in the following terms:

- (1) To advise the Director of any intention to depart from the practice of offering national advertising in The Province and The Sun separately without requiring the national advertiser to buy advertising in both papers.
- (2) To advise the Director if any material changes are made in the agreement of May 24, 1957 between Sun Publishing Company Ltd. and The Southam Company Limited as to the operation of The Province and The Sun.
- (3) If, as a result or any such change, the Director wishes information relevant to the operations of the newspapers affected by the change, to let him have such information.

Undertakings in this form now have been furnished by the three companies. Having regard to certain technical legal difficulties in obtaining and administering an appropriate injunction and the desirability from the standpoint of the public of avoiding enforcement

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
Report Concerning the Manufacture, Distribu- tion and Sale of Trans- parent Packaging Pro- ducts and Related Products	Alleged Combination	Dec. 6, 1960	The Commission expressed the opinion that the arrangements and practices developed by the associated bag manufacturers were intended to and did have the effect of restraining competition in the sale of products covered by the arrangements; also that the system developed through these arrangements could be expected to operate to restrict competition in price among associated companies to a degree which would be prejudicial to the public.		proceedings that might cause one of these newspapers to cease publication, it has been decided that no action will be taken in the courts for the time being but, having regard to the undertakings by the parties, to allow matters to continue on the present basis in reliance on such undertakings. The Director will keep the situation under continuous surveillance. After discussion with Counsel to whom the evidence was referred, it was decided that no proceedings would be instituted.
Report Concerning the Manufacture, Supply and Sale of Belts	Alleged Combination	Dec. 16, 1960	That normal competitive conditions would be re-established in the "cut-up" belt industry in Montreal if the restrictive arrangements of The Belt Manufacturers Association of Montreal were abandoned. In order to ensure this result, it may be desirable to take the necessary steps to seek a court order which would restrain the members of the Association from continuing or resuming such practices or arrangements.		Prosecution proceedings were instituted in Montreal against The Belt Manufacturers Association of Montreal under section 411(1) (d) of the Criminal Code. On September 16, 1963, the Association pleaded guilty and was fined \$300. A detailed order prohibiting the continuation or repetition of the offence by the Association was granted by the trial judge. Any member of the Association whom the Crown seeks to bind by the order must be served with a copy of the order by registered post.

Report Concerning the Distribution and Sale of Gasoline in the Toronto Area (The British American Oil Company Limited)	Alleged Price Discrimination	April 12, 1961	<p>It was the opinion of the Commission that the differences in prices which arose from temporary allowances given three dealers to enable them to meet sharp price reductions by competitors in the period covered by the inquiry did not form part of a practice of discriminating as described in former section 412(1)(a) of the Criminal Code. A special arrangement under which a discount was to be granted to one dealer for a five-year period, however, was considered by the Commission to have established a practice of discriminating for the period.</p> <p>With regard to the latter discount, the Commission pointed out that the evidence did not indicate whether it had been continued. It was recommended that, if the situation with respect to the special allowance was then the same as it had been at the time of the inquiry, a judicial order be sought under the provisions of section 31(2) of the Combines Investigation Act to restrain the British American Oil Company Limited from discriminating in price between certain gasoline dealers.</p>	The British American Oil Company Limited	After consultations with Counsel and full consideration of the factual and expert evidence available, it was decided that no proceedings would be instituted.
Report Concerning the Distribution and Sale of Gasoline in the Toronto Area (Supertest Petroleum Corporation, Limited)	Alleged Price Discrimination	April 11, 1961	<p>The Commission found that an allowance granted one dealer in the form of temporary local competitive assistance was not part of the normal pricing of Supertest, but was a temporary expedient to enable one or more of its customers to meet an immediate and local competitive situation of a severe character. It was also the conclusion of the Commission that the temporary allowance would have been available to the competing dealer in this case had he chosen to apply for it in the same way as the dealer who had received</p>	Supertest Petroleum Corporation, Limited	After consultations with Counsel and full consideration of the factual and expert evidence available, it was decided that no proceedings would be instituted.

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
Report Concerning the Distribution and Sale of Gasoline in the Toronto Area (Texaco Canada Limited)	Alleged Price Discrim- ination	April 28, 1961	it. In the circumstances it was not considered that the fact that the dealer who had not applied for this allowance did not receive it gave rise to a practice of discriminating in price between the two customers in question. The Commission was of the opi- nion that the evidence relied on did not establish that an allow- ance had been granted to one dealer over and above any allow- ance available to a competing dealer as part of a practice of discriminating in price.		
Report Concerning Alleged Attempts at Resale Price Maintenance in the Dis- tribution and Sale of Cameras and Related Products (Arrow Photo- graphic Equipment Lim- ited)	Alleged Resale Price Maintenance	July 12, 1961	The Commission expressed the opinion that Arrow Photogra- phic Equipment Limited, the supplier in this case, had been influenced to take the action which gave rise to the inquiry by pressure brought to bear on him by some dealers who ob- jected to the prices at which certain photographic products were being advertised by other dealers. Observing that the supplier might again be sub- jected to such pressure from some of its customers the Com- mission recommended that a court order be sought under the provisions of section 31(2) of the Combines Investigation Act to restrain the supplier from adopt- ing any policy or taking any actions which would be in con- flict with the policy with respect to resale price maintenance set out in section 34 of the Com- bines Investigation Act.	Arrow Photographic Equipment Limited	Proceedings for an order of prohibi- tion pursuant to section 31(2) of the Act were instituted in the Exchequer Court. An order was granted on October 30, 1963.
Report Concerning the Meat Packing Industry and the Acquisition of	Alleged Merger	Aug. 3, 1961	"In the circumstances the Com- mission recommends that the possibility of seeking a court	Canada Packers Limited	The matter was referred to Counsel with instructions to proceed with prosecution or other criminal

Wilsil Limited and Calgary Packers Limited by Canada Packers Limited			order under section 31(2) of the present Combines Investigation Act be fully explored for the purpose of dissolving the mergers of Calgary Packers Limited and Wilsil Limited with Canada Packers. In the event that it is determined that such a remedy can not be sought the Commission would recommend that the possibility of seeking a court order under section 31(2) be fully explored for the purpose of prohibiting Canada Packers from making any further acquisitions which would lessen competition in the meat packing industry."		proceedings unless he comes to the conclusion that the evidence is insufficient. Full consultation took place between Counsel and the departmental officials and the opinion was ultimately received that legal proceedings would be unlikely to succeed. This view was confirmed by an opinion obtained from second leading Counsel. It was decided, therefore, that proceedings would not be instituted.
Report Concerning Alleged Attempts at Resale Price Maintenance in the Distribution and Sale of Cameras and Related Products (Garlick Films Limited)	Alleged Resale Price Maintenance	Oct. 13, 1961	The Commission recommended that in order to ensure that the attitude of some dealer customers would not in future lead Garlick Films Limited to follow distribution policies which would be contrary to public policy with respect to resale price maintenance, a court order be sought under the provisions of section 31(2) of the Combines Investigation Act to restrain Garlick from adopting a policy or taking any actions which would be in conflict with the policy set out in section 34 of the Combines Investigation Act.	Garlick Films Limited	Proceedings for an order of prohibition pursuant to section 31(2) of the Act were instituted in the Exchequer Court. An order was granted on October 30, 1963.
Report on an Inquiry into the Distribution and Sale of Automotive Oils, Greases, Anti-Freeze, Additives, Tires, Batteries, Accessories, and Related Products	General Inquiry under section 42 of the Combines Investigation Act	March 23, 1962	(a) That definitions of exclusive dealing and tying arrangements be included in the Combines Investigation Act which would embrace policies involved in full-line forcing and directed buying as disclosed in the inquiry and that there should be a prohibition of exclusive dealing and tying arrangements, as defined, which are likely to lessen competition substantially, tend to create a monopoly or exclude competitors from the market to a significant degree. (b) That agreements or arrangements which give one or more suppliers exclusive or preferred		On July 22, 1966 the President of the Privy Council, the Minister then responsible for the Combines Investigation Act, in announcing that the Government had requested the Economic Council of Canada to undertake a study of certain important aspects of the responsibilities of the Registrar General of Canada and his department under the Government Organization Act, 1966 stated that the Government was of the opinion that the recommendations of the Commission, if implemented, would be unlikely to give the relief sought by service station dealers if the

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***								
Report Concerning the Manufacture, Distri- bution and Sale of Pa- perboard Shipping Containers and Re- lated Products	Alleged Combination and Alleged Mergers	August 2, 1962	<p>access to a group of outlets in return for a commission on sales to such outlets be prohibited where such agreements or arrangements are likely to lessen competition substantially, tend to create a monopoly or exclude competitors from the market to a significant degree.</p> <p>(1) "In the case of the arrangements which have led to the establishment of common prices of containerboard and of shipping containers we think that under the Combines Investigation Act an application may be made for a court order which would restrain the participants in such arrangements from continuing or resuming them in the same or a modified form in the future. In view of the persistence with which arrangements to secure the maintenance of common prices have been pursued, in one form or another, over such lengthy periods the Commission believes that a restraining order should be sought from the court, under the provisions of the Combines Investigation Act, which would be broad enough to prohibit the participants from using jointly the services of any person or private organization in con-</p>		<p>legislation must be drafted in terms of criminal law as is the case at present. He also said that it was therefore the intention of the Government that these recommendations of the Commission should be taken up and considered as part of any revision of the Act as a whole in the light of both the views of the Economic Council and the constitutional position as it may emerge.</p> <p>Prosecution proceedings were instituted in Toronto against twenty companies under section 498(1)(d) of the Criminal Code and a True Bill was returned by the Grand Jury on September 9, 1963. On March 1, 1965, seventeen accused companies pleaded guilty and the trial of the remaining three companies began. The trial was completed on May 27, 1965. On November 24, 1966 judgment was delivered convicting the above three companies. On December 16, 1966 the following fines totalling \$391,500 were imposed on each of the twenty companies:</p> <table><tr><td>St. Lawrence Corporation Limited.....</td><td>\$ 75,000</td></tr><tr><td>The Corrugated Paper Box Company, Limited</td><td>10,000</td></tr><tr><td>Hinde and Dauch Limited.....</td><td>75,000</td></tr><tr><td>Hinde and Dauch Boxes Limited.....</td><td>3,000</td></tr></table>	St. Lawrence Corporation Limited.....	\$ 75,000	The Corrugated Paper Box Company, Limited	10,000	Hinde and Dauch Limited.....	75,000	Hinde and Dauch Boxes Limited.....	3,000
St. Lawrence Corporation Limited.....	\$ 75,000												
The Corrugated Paper Box Company, Limited	10,000												
Hinde and Dauch Limited.....	75,000												
Hinde and Dauch Boxes Limited.....	3,000												

nection with any matters relating to prices, costs or statistics."

(2) That the most effective way to restore competitive conditions to the board and container levels of the industry from which the public would derive benefit in the form of lower prices would be the removal of customs duties on both board and containers when feasible in the light of the financial situation existing at the time the Report was made.

The Commission was of the opinion that on the basis of existing jurisprudence, none of the mergers constituted an offence against the Combines Investigation Act. It expressed the hope, however, "that in the near future the questions raised by these decisions will be reviewed by appellate tribunals, more particularly by the Supreme Court of Canada, so that they may be definitely settled."

Acme Paper Products Company Limited....	7,000
Bathurst Power & Paper Company Limited....	75,000
Bathurst Containers Limited.....	10,000
Bathurst Containers (Maritimes) Limited..	4,000
Canadian Wirebound Boxes & Shipping Containers Limited.....	10,000
Kraft Containers Limited.....	10,000
Maritime Paper Products Limited.....	4,000
Crown Zellerbach Canada Limited.....	35,000
Canadian Boxes Limited	10,000
Gair Company Canada Limited.....	45,000
Hendershot Paper Products Limited.....	3,000
Hygrade Containers Limited.....	5,000
Martin Paper Products Holdings Limited....	5,000
Sherbrooke Paper Products Limited.....	1,000
Standard Paper Box Manufacturing Limited.....	1,500
Superior Box Company Limited....	3,000

The Court also granted an Order prohibiting the continuation or repetition of the offence. Crown Zellerbach Canada Limited, Canadian Boxes Limited and Sherbrooke Paper Products Limited appealed their convictions. The Crown appealed with respect to the amount of the fines and the deletion of one paragraph of the Order of prohibition applied for against all companies

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
Report Concerning the Acquisition of the Com- mon Shares of Hender- shot Paper Products Limited by Canadian In- ternational Paper Com- pany	Alleged Merger	August 2, 1962	<p>The Commission was of the opinion that on the basis of existing jurisprudence the merger did not constitute an offence against the Combines Investigation Act.</p> <p>"[In the Shipping Containers Report] the Commission recommended certain tariff changes which it considered would protect the public from unnecessarily high prices of containerboard and shipping containers and which would assist in removing the restrictive effects on the supply of containerboard which are inherent in the situation where a predominant part of the containerboard production in Canada is made by integrated companies and is used in their own converting operations. The Commission considers that its recommendations in the inquiry relating to shipping containers are relevant in the present inquiry."</p>		<p>except Martin Paper Products Holdings Limited. The appeal was heard during the week of February 24, 1969 and judgment was delivered on March 26 dismissing the appeals against convictions and the Crown's appeal with respect to the amount of the fines. On the appeal relating to the Order of prohibition the Court did not grant the paragraph asked for by the Crown but did vary the Order granted by the trial Judge.</p>

Report Concerning the Acquisition by Bathurst Power & Paper Company Limited of Wilson Boxes, Limited	Alleged Merger	August 2, 1962	<p>The Commission was of the opinion that on the basis of existing jurisprudence the merger did not constitute an offence against the Combines Investigation Act.</p> <p>"In the shipping containers report the Commission recommended that appropriate tariff changes be made to restore competitive conditions in the supply of containerboard and in the supply of shipping containers. These recommendations would be equally relevant in the present inquiry."</p>		
Report Concerning the Manufacture, Distribution and Sale of Evaporated Milk and Related Products	Alleged Predatory Pricing	August 28, 1962	<p>"It is the conclusion of the Commission that Carnation, in making the substantial reduction in the price of evaporated whole milk in Alberta, was endeavouring to exercise control over the practices of Alpha and Pacific in selling their products in Alberta, and that the effect of the action of Carnation was the likelihood that competition in the sale of evaporated whole milk in Alberta would be substantially lessened.</p> <p>The Commission recommends that a court order be sought under the provisions of the Combines Investigation Act to restrain Carnation from engaging in such a policy in the future."</p>	Carnation Company Limited	<p>Prosecution proceedings were instituted in Calgary under section 412(1)(b) of the Criminal Code. At the conclusion of the trial on December 15, 1966 judgment was delivered acquitting the accused. The Crown appealed the acquittal. In November 1967 a preliminary question as to admissibility of certain evidence was argued before the Appellate Division of the Supreme Court of Alberta and on January 23, 1968 judgment was delivered holding the evidence admissible. The appeal on the merits was heard on September 12-13, 1968 when judgment was reserved. Judgment was delivered on March 7, 1969 dismissing the appeal. (The Crown filed notice of appeal and applied for leave to appeal to the Supreme Court of Canada. On motion of the respondent the appeal was quashed on May 20, 1969. The appeal was therefore abandoned.)</p>
Report Concerning the Distribution and Sale of Electric Appliances, Electric Shavers and Accessory Products (Sunbeam Corporation (Canada) Limited)	Alleged Resale Price Maintenance	October 4, 1962	<p>"The Commission recommends that a court order be sought under the provisions of the Combines Investigation Act to restrain Sunbeam from engaging in the practice of resale price maintenance in the manner disclosed in the present inquiry or in any other manner which would be</p>	Sunbeam Corporation (Canada) Limited	<p>Prosecution proceedings were instituted in Toronto under section 34 of the Combines Investigation Act and a True Bill was returned by the Grand Jury on September 14, 1964. The trial was held during the week of May 3, 1965, and judgment was reserved. On March 18, 1966 judgment was</p>

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
no report*	Resale Price Maintenance..		contrary to public policy with respect to the maintenance of resale prices."	Kralinator Filters Limi- ted	delivered convicting the accused on two counts, a fine of \$1,000 being imposed on each count, and acquitting on two counts. The Crown appealed the acquittals and the accused cross-appealed from the convictions. The Crown also appealed the deletion of one paragraph from the Order of prohibition applied for. The appeal was heard on February 20 and 21, 1967. In the course of the appeal the cross-appeals in re- spect of the convictions were withdrawn. On March 31, 1967 judgment was delivered allowing the appeals from the acquittals on the two counts and in respect of the Order of prohibition. A fine of \$1,000 was imposed on each of these two counts. The accused appealed to the Supreme Court of Canada. The appeal was heard on April 25-26, 1968 when judgment was reserved. Judg- ment was delivered on Novem- ber 1, 1968 allowing the appeal against the two convictions by the Ontario Court of Appeal and dismissing the appeal against the Order of prohibition. Two charges were laid in Winnipeg under Section 34(2) (b) and (3) (b) (i) of the Combines Investigation Act. The accused company was con- victed on November 21, 1962, and fined \$750 on each charge.

1. There should be more stringent regulations under the Food and Drugs Act with respect to the manufacture, promotion and introduction of drugs, in order to give reasonable assurance that all prescription drugs offered for sale in Canada are safe to use and of good quality.
2. The staff of the Food and Drug Directorate should be enlarged considerably to ensure thorough enforcements of the regulations.
3. In the opinion of the Commission, the following changes should be made in the Food and Drug Regulations:
 - (a) All premises in which drugs are manufactured should be subject to inspection by the Food and Drug Directorate.
 - (b) Requirements in connection with new drugs submissions should be extended to include detailed reports of the tests made to establish the therapeutic effectiveness of the drug as well as the present requirement of reports of tests to establish the safety of the drug. Such a change would make mandatory a joint evaluation of toxicity and efficacy before a new drug is put on sale.
 - (c) The Food and Drug Directorate should be given the duty of inspecting and assaying samples from a sufficiently large number of batches of every prescription drug manufactured in Canada or imported from abroad to make it reasonably certain that it meets minimum standards of purity and therapeutic efficacy.
 - (d) All labels, advertisements or other descriptive material relating to single drugs and official compounds should be required to carry the proper name prominently and in type at least as large as that used for the brand name. A study should be made to ascertain if and to what extent a similar requirement would be feasible in respect of compound ethical drugs.

The Department of National Health and Welfare has implemented a number of the recommendations. Action on other recommendations, including those concerning patents relating to drugs, awaited the Report of the Special Committee of the House of Commons on Drug Costs and Prices. That Committee made its Report on April 3, 1967. Its findings were in line with those of the Restrictive Trade Practices Commission and it made twenty-three recommendations. In the budget speech on June 1, 1967 the Minister of Finance announced the removal of the federal sales tax on drugs effective September 1, 1967. It was also announced that the Government would take further steps, the details of which would be announced, as part of a program designed to reduce drug prices. On December 15, 1967 Bill C-190, being An Act to amend the Patent Act and the Trade Marks Act, was introduced by The Registrar General of Canada. Parliament was dissolved, however, before the Bill was passed. On September 23, 1968, Bill C-102, which was essentially the same as Bill C-190, was introduced by the Minister of Consumer and Corporate Affairs. On second reading of the Bill, the Minister stated that it was only one of five measures of a package designed to reduce the costs of patented drugs to the consumer, the first being the removal of the sales tax from drugs, reduction of customs duty on these products from 20 per cent to 15 per cent and narrowing of the application of dumping duty to drug imports and continued as follows:

"The third step in the over-all program is development of an information service to doctors, which was recommended by the special committee.

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
			<p>4. Consideration should be given to the advisability of bringing under the supervision of the Food and Drug Directorate all advertising and promotion activities related to drugs, including the distribution of samples and the content of advertising literature.</p> <p>5. Consideration should be given to the establishment, under the auspices of the federal government, of an authoritative publication giving all necessary particulars concerning new drugs.</p> <p>6. The compulsory licence provision of the Patent Act with respect to drugs has been used infrequently and in the opinion of the Commission cannot be relied upon to achieve the purpose intended by Parliament of ensuring that medicines should be available to the public at the lowest possible price consistent with giving to the inventor due reward for the research leading to the invention. The Commission has considered whether such an objective would be assured if compulsory licences under section 41(3) of the Patent Act were made issuable as of right and has concluded that such a change would make no appreciable difference in the present situation. As the Commission believes that close control exercised by patents has made it possible to maintain prices of certain drugs at levels higher than would have obtained otherwise and that such patent control has produced no benefits to the public of Canada which</p>		<p>...</p> <p>The fourth step in the over-all program is the pharmaceutical industry development assistance program commonly known as PIDA.</p> <p>...</p> <p>The fifth step in the over-all program involves discussions with the provinces, designed to tackle the problem of the high cost of the retail distribution of drugs, important aspects of which are within provincial jurisdiction. The government recognizes, as did the special committee, that it is not sufficient to inject price competition at the manufacturing level only; an important element in the cost of drugs to the consumer lies in distribution and pricing practices at the retail level. This is a matter which, now that the federal government is completing the steps that can be taken within federal jurisdiction, is on our agenda for future federal-provincial conferences."</p> <p>(Hansard, October 17, 1968, pages 1510-11)</p> <p>(Bill C-102 was assented to on June 27, 1969)</p>

Report of an Alleged Combine in the Matter of a Call for Tenders by the Town of Duvernay for the Construction of Sewers and Water Mains

Alleged Combination

Dec. 16,
1963****

would outweigh the disadvantages of the monopoly, the Commission recommends that patents with respect to drugs be abolished. In the opinion of the Commission this is the only effective remedy to reduce the price of drugs in Canada.

7. The retail pharmacists' practice of coding prescriptions to indicate the price charged or quoted should be abandoned and consideration should be given by pharmaceutical associations to removing from their rules any provisions in any way related to the practice."

"... the Commission has indicated that there may be some doubt as to whether the arrangements disclosed by the investigation are illegal. They raise some purely legal issues which do not seem to have been definitely settled by the courts. On each controversial point it would be very useful if the law were to be clarified so as to assure a proper orientation of future investigations. Therefore the Commission recommends that the possibility be studied of seeking clarification in the courts in any case where these issues arise and where, as in the present inquiry, the arrangements are by their nature detrimental and have in fact harmed the public interest."

Prosecution proceedings were instituted in Montreal under section 32(1)(c) of the Combines Investigation Act against five companies in August 1964. The accused pleaded guilty on October 30, 1964, and on November 27, 1964, were fined a total of \$3,000. The Court also granted an Order prohibiting the continuation or repetition of the offence.

Report Concerning the Sale of Plumbing and Heating Supplies and Related Products in the City of Montreal and Elsewhere in the Province of Quebec

Alleged Combination

February 7,
1964

"The Commission considers that the disbanding of The Quebec Plumbing and Heating Council does not necessarily mean that efforts to reactivate the agreements to reduce competition will not recur. The Commission recommends that steps should be taken to seek prohibition of resumption of collusive activities by the wholesalers of plumbing and heating supplies against whom allegations are set forth in the Statement of Evidence, un-

Informations containing five charges under section 32(1)(c) of the Combines Investigation Act and involving fifteen companies and three individuals were laid in Montreal on May 27, 1966. On October 18, 1968, all but one of the companies pleaded guilty in the Quebec Court of Queen's Bench (Crown Side) and on October 31, 1968, fines were imposed in respect of one conspiracy as follows:

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
			der section 31 subsection (2) of the Combines Investigation Act."		<p>Emco Limited.....\$ 5,000 The Garth Company... 5,000 Grinnell Company of Canada Limited..... 5,000 The James Robertson Company (Limited).. 5,000 Lariviere Inc..... 5,000</p> <p>and in respect of a second conspir- acy as follows: Omer De Serres Limi- tée.....\$ 5,000 Emco Limited..... 3,000 The James Robertson Company (Limited).. 3,000 Craig Plumbing & Heat- ing Supplies Co. Ltd.. 3,000 Craig-International Plumbing Supplies Inc. 3,000 Ideal Plumbing Supplies Ltd..... 3,000 Main Plumbing & Heat- ing Supplies Co. (1963) Ltd..... 3,000 Mott Company Limited 3,000 L.N. & J.E. Noiseux Limitée..... 3,000 Lariviere Inc..... 3,000 Deschênes & Fils Limi- tée..... 250 Marcel Drouin Ltée- Ltd..... 250</p> <p>The Court also granted Orders prohibiting the continuation or repetition of the offences. On November 4, 1968, a stay of proceedings was entered to the charges against the three indi- viduals and on December 17, 1968, to the charge against the remaining company, Jamieson- Dansereau Limited, which was in bankruptcy.</p>

Report on the Production, Distribution and Supply of Newspapers in the Sudbury-Copper Cliff Area	Alleged Monopoly	Feb. 26, 1964****	The Commission was of the opinion that the evidence did not demonstrate that the Sault to Sudbury Press Limited had recourse to reprehensible monopolistic practices; that it was not established that the launching of The Sudbury Scene was an expedient devised only to cause the downfall of a competitor; that it had not been shown The Sudbury Scene operated at a loss for the purpose of eliminating a rival. For these reasons the Commission concluded that the Sault to Sudbury Press Limited must not be held responsible for the disappearance of the weekly The Sudbury Sun.	After discussion with Counsel to whom the evidence was referred, it was decided that no proceedings would be instituted.	
no report*	Resale Price Maintenance.....		Irving Oil Company, Limited.	Proceedings by Information of the Attorney General of Canada, pursuant to section 31(2) of the Combines Investigation Act, for an Order prohibiting the commission of offences contrary to section 34(2) of the Act or the doing or continuation of an act or thing directed towards the commission of such offences were instituted in the Exchequer Court of Canada on February 28, 1964. The Order was granted on June 4, 1964.	
'no report*	Combination.....		Ice Cream Manufacturers' and Distributors' Society of British Columbia. Fraser Valley Milk Producers' Association. Hazelwood Creameries, Limited. Jersey Farms, Limited. National Dairies, Limited. Palm Dairies Limited. Peter's Ice Cream Company, Ltd. Richmond Ice Cream Ltd. Shannon Dairies, Ltd. Sno Freze Ice Cream Company Ltd.	Proceedings by Information of the Attorney General of Canada, pursuant to section 31(2) of the Combines Investigation Act, for an Order prohibiting the commission of an offence contrary to section 411(1)(d) of the Criminal Code or the doing or continuation of any act or thing directed towards the commission of the offence were instituted in the Exchequer Court of Canada on April 23, 1964. The Order was granted on May 19, 1964.	
Report Concerning the Distribution, Supply and Sale of Plumbing Supplies and Related Products (Alberta)	Alleged Combination	June 24, 1964****	"The Commission recommends that steps should be taken to seek prohibition of resumption of collusive activities by the wholesalers of plumbing and heating supplies against whom allega-	The J.H. Ashdown Hardware Co. Limited. Bartle & Gibson Co. Ltd. Burgess Building and Plumbing Supplies Limited.	An Information was laid in Calgary on July 13, 1966 charging an offence under section 411(1)(d) of the Criminal Code. On February 26, 1968, the following companies pleaded guilty and were

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
			tions are set forth in the Statement of Evidence, under section 31(2) of The Combines Investigation Act with the exception of Grinnell Company of Canada, Ltd."	Crane Limited. Emco Limited. Engineering & Plumbing Supplies (Edmonton) Ltd. Marshall Wells of Canada Limited. Western Canada Hardware Limited. Western Supplies Limited. Western Supplies (Calgary) Limited. Mr. John Dyer.	<p>fined a total of \$60,000 as follows: The J.H. Ashdown Hardware Company Limited.....\$ 10,000 Bartle & Gibson Co. Ltd..... 2,000 Emco Limited..... 15,000 Engineering & Plumbing Supplies (Edmonton) Ltd..... 4,000 Marshall Wells of Canada Limited continuing as Marshall Wells Limited..... 10,000 Western Supplies Limited and Western Supplies (Calgary) Limited continuing as Western Supplies Limited..... 15,000 Western Canada Hardware Limited..... 4,000</p> <p>On April 29, 1968, Burgess Building and Plumbing Limited pleaded guilty and was fined \$4,000. The Court also granted an Order prohibiting the continuation or repetition of the offence against each of the companies.</p> <p>Six individuals were also charged in the Indictment. Four were employed with two companies, each of which had been amalgamated into a new company and these individuals were therefore charged in the event the new companies resulting from the amalgamations could not be proceeded against. Since the companies pleaded guilty, a stay of proceedings was entered with respect to the charges against these individuals. Two officials</p>

Report Concerning the
Supply and Application
of Road Surfacing Ma-
terials in Ontario

Alleged Combination

July 13, 1964

"The Commission finds that the arrangements and practices disclosed by the evidence in this inquiry constitute both in manner and in extent an undue lessening of competition in the sale, transportation or supply of road surfacing materials contrary to the interests of the public..."

Bray Construction Co. Limited.
Bruell Paving Limited.
Cornell Construction Company Limited.
Grey-Wellington Paving Co. Limited.
H. J. McFarland Construction Company Limited.
K. J. Beamish Construction Co. Limited.
Miller Paving Limited.
Municipal Spraying and Oiling Company Limited.
Riverside Construction Co. Limited.
Roads Resurfacing Company Limited.
W. A. Ryder Paving Limited.
W. S. Fullerton Construction Company Limited.
Woollatt Construction Limited.

of Crane Limited, which surrendered its charter before charges could be laid, were also charged. Since the charges against the other individuals were not proceeded with a stay of proceedings was entered to the charge against these two individuals. However, proceedings were instituted against them under section 31(2) of the Combines Investigation Act and an Order of prohibition was granted by the Court on September 3, 1968.

Prosecution proceedings were instituted in Toronto against all but Roads Resurfacing Company Limited under section 32 (1)(c) of the Combines Investigation Act, and a True Bill was returned by the Grand Jury on April 26, 1965. The trial was completed on May 24, 1966. The charge against Grey-Wellington Paving Co. Limited was dismissed and judgment reserved with respect to the remaining accused. On July 4, 1966, judgment was delivered acquitting the remaining accused. The Crown appealed the acquittals with respect to all companies except Grey-Wellington Paving Co. Limited and Woollatt Construction Limited which was found not to have participated in the conspiracy. On July 17, 1967 the Ontario Court of Appeal, Laskin, J. A. dissenting, delivered judgment dismissing the appeal and upholding the acquittals. The Crown appealed to the Supreme Court of Canada. On motion of the respondents, the appeal was quashed on the ground that the majority in the Court of Appeal upheld the trial judgment acquitting the accused on the ground, *inter alia*, that the evidence was not sufficient to support a conviction, that this was a distinct ground on which the judgment was based and was a ground raising no question of law in the strict sense. The proposed 1973

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
Report of an Alleged Combine in the Matter of the Sale and Dis- tribution of Milk in the Ottawa, Ontario Area	Alleged Combination and Alleged Unreasonably Low Prices	Sept. 2, 1964 ****	<p>The Commission was of the view that the price-cutting of The Producers Dairy Limited constituted the application of a policy of selling at unreasonably low prices to discipline the market and Clark's Dairy Limited particularly and this policy had the tendency to lessen competition substantially. With respect to the response by The Borden Company Limited to the actions of The Producers Dairy Limited, the Commission was of the opinion that the nature of its participation in the price war was purely defensive and self-protecting.</p> <p>With respect to two alleged agreements to end the price war, the Commission did not consider that one related to prices or any lessening of competition and that in the case of the other it was of the view that it was not to set a fixed or definite price for milk but to return to the normal competitive system that existed before the price war and did not constitute an undue lessening of competition in the industry.</p>		<p>amendments bring services under the Act, and prohibit bid-rigging.</p> <p>Prosecution proceedings were instituted in Ottawa against one company in June 1965 under section 33A (1)(c) of the Combines Investigation Act. On March 4, 1966, judgment was delivered by the Magistrate acquitting the accused. The appeal from the acquittal to the Ontario Court of Appeal was dismissed on June 8, 1966.</p>

Report Concerning the
Manufacture, Distribu-
tion and Sale of
Pencils

Alleged Combination

Sept. 23,
1964****

"The Commission finds that between 1956 and 1960 Eagle, Dixon, Faber and Venus acted contrary to the interest of the public by making agreements which eliminated any significant price competition at the whole-sale level in the Canadian market for wood pencils. The public would have benefited from more active competition which would have brought in its train lower prices to all consumers."

The following companies were charged under section 32(1)(c) of the Combines Investigation Act and pleaded guilty, a fine as shown opposite the name of each being imposed on March 28, 1966:

Eagle Pencil Company of Canada Limited.....	\$8,000
Venus Pencil Company Ltd.....	4,000
Eberhard Faber (Canada) Ltd.....	2,000
Dixon Pencil Company Limited.....	2,000

The Court also granted an order prohibiting the continu-ation or repetition of the offence.

Report in Connection
with the Production,
Distribution and Sale
of Propane in British
Columbia

Alleged Merger, Alleged
Monopoly and Alleged
Combination

Feb. 18, 1965

The Commission found that the acquisition of Bibby's Pacific Propane Ltd. had the marked effect of lessening competition in certain market areas of British Columbia and the subsequent acquisition of Duncan Rock Gas Ltd. further lessened competi-tion in one area which had al-ready been lessened unduly through the acquisition of Bibby. It was of the view, however, that other acquisitions did not of themselves give Great Northern Gas Utilities Ltd. (now Great Northern Capital Company Ltd.) and Rockgas Propane Ltd. power to lessen competition sig-nificantly in other market areas.

The Commission also con-sidered Rockgas Propane Ltd. enjoyed monopoly control in particular market areas arising out of the acquisition of Bibby's Pacific Propane Ltd.

With respect to the allegations that Shell Oil Company of Canada Limited agreed with Rockgas: (1) to curtail generally supplies of propane to Western Propane Ltd.; (2) to increase the price at which Western could purchase propane; and (3) to cut off Western's supply entirely until it came to some arrangement with

After discussion with Counsel to whom the evidence was referred it was decided that no proceed-ings would be instituted.

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
Report Relating to the Acquisition in 1962 of the <i>Times-Journal</i> Newspaper, Published in Fort William, Ontario	Alleged Merger and Alleged Monopoly	Mar. 30, 1965****	<p>Rockgas, the Commission was satisfied that as to the first two matters, Shell's actions were not the result of agreement with Rockgas. Concerning the third matter, however, the Commission found that while the agreement had no effect on competition since Western did not raise its prices to conform with those of Rockgas, it must have been intended that it would have the effect of suppressing competition.</p> <p>The Commission was of the opinion that the <i>Times-Journal</i> and the Port Arthur News-Chronicle, both owned by Thomson Newspapers Limited, were not in search of the same readers in Fort William and Port Arthur and while they were rivals for circulation in the rest of the Lakehead market area, they had to meet the competition from Toronto and Winnipeg Newspapers. The Commission found "that no detriment to the public resulted or seemed likely to result from the acquisition of the Fort William <i>Times-Journal</i> by Thomson Newspapers Limited."</p>		In releasing the Report, the Minister of Justice stated that, in view of the findings of the Commission, no further proceedings are contemplated.
A Report in the Matter of an Inquiry under the Combines Investigation Act in Connection with the Transportation of Commodities by Water from and to Ports in Eastern Canada.	Alleged Combination	June 17, 1965****	<p>"Although the member lines lessened competition within the meaning of the Combines Investigation Act, the public interest would not be served by excessive rate competition and instability in the liner trades. The Commission considers therefore that the lines in the Canada-U.K. trades should be allowed to continue such arrangements as are necessary for the efficient handling of Canada's exports and imports, subject to appropriate safeguards for the public interest. Canadian shippers and consignees should be able to bargain with ocean carriers fairly and</p>		On February 9, 1970, Bill C-184 entitled "Shipping Conferences Exemption Act" was introduced in Parliament. Following enactment of this legislation it was proclaimed in force from and after April 1, 1971.

with full knowledge of the tariffs. To this end, it is further desirable that the position of non-conference lines to be strengthened."

"In view of the heavy investment required for provision of up-to-date liner services, all liner operators should be entitled to arrange with shippers for a guaranteed share of certain traffic or revenue. The entry and growth of non-conference operators to trade with Canadian ports should not be precluded by a system of exclusive patronage contracts which penalizes a shipper who wishes to give some of his traffic to carriers who are not members of a conference. Avenues for solicitation of at least some share of any shipper or consignee's traffic should be open to non-conference operators as well as to conference members."

"Shippers who desire to use liner services should not be required to enter into contracts unfairly weighted in favour of the carrier. At the same time, the growth of traffic will best be protected if normal commercial practices of shippers and carriers are interfered with as little as possible. Governmental regulation of rates in ocean transport would not be feasible or conducive to the welfare of the Canadian public. The bargaining strength of Canadian shippers and consignees should, however, be further developed, especially in the interests of smaller shippers, and competition should be fostered in the Canada-U.K. and other trades to the extent consistent with preservation of the advantages of the conference system."

Recommendations

1. All conferences of lines trading in Canadian ports should make their tariffs and amendments thereto available by subscription to any member of the public at reasonable cost. The tariff should disclose the place and manner in which anyone may approach the carrier to obtain further information and to negotiate rates and terms of shipment for his goods.

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
			<p>2. Every patronage contract between a shipper or consignee and any shipping conference or conference member should incorporate certain principles which are indispensable for the protection of the public. The principles which should be embodied in any such contract are:</p> <p>(1) the extent of a shipper or consignee's obligation to ship goods by conference vessels must not exceed 85 per cent of the value of freight charges on the goods that he ships during the currency of the contract or in any one year, whichever is the lesser, exclusive of bulk cargo;</p> <p>(2) a contract may be terminable by either party on 90 days' notice;</p> <p>(3) an increase in a rate shall take effect only after 90 days' notice, and a shipper or consignee shall have 60 days from the date of receipt within which to signify his acceptance of such increase; during this 60 day period, he shall have the right and the opportunity to negotiate for an adjustment of the rate in which he is interested;</p> <p>(4) the spread between non-contract and contract rates may vary from commodity to commodity but in each instance may not exceed a maximum of 15 per cent;</p> <p>(5) in the event that a carrier or conference is unable to name space within a prescribed number of days at any Canadian port served by the conference, the shipper shall be free to seek other</p>		

Report relating to the Supply, Transportation and Application of Asphalt Mixes Used in the Paving and Repair of Municipal Streets in the Cities of Ottawa and Eastview, Ontario and Hull, Quebec

Alleged Combination

August 25,
1965****

The findings of the Commission were that five paving contractors had entered into an unwritten arrangement under which they decided among themselves which one of them should be the successful tenderer on a municipal paving contract for the City of Hull and then put in higher tenders to protect this tenderer. The Commission found that competition among the tenderers had been unduly lessened and that prices had been enhanced.

The Commission also found that two other companies were in-

service, and the goods so shipped shall not be subject to the contract;

(6) a shipper or consignee may not be required to divert goods from a port where the conference carriers do not provide service to one that the conference designates if such diversion is contrary to natural routings or entails unreasonable expenses on the part of the shipper or consignee due to distance or transshipment; the contract may, however, provide that the shipper shall upon the request of the carrier or the conference furnish proof that he has not resorted to this provision to evade the terms of his contract;

(7) a contract may provide, in the event that a shipper or consignee in any period fails to meet his obligation to give a stated share of his shipments to conference carriers for reasonable preliquidated damages.

3. Agreements among shippers or consignees for the purpose of organizing for negotiation with carriers of the rates and terms for the ocean carriage of goods would not be contrary to the public interest. It is in the interest not only of Canada but of the nations with which Canada trades that exports and imports be carried at reasonable cost, under conditions as competitive as are consistent with efficient water transportation."

Deschenes Construction Ltd.
Dibblee Construction Company Limited
H. J. McFarland Construction Company Limited
Hurdman Paving Limited
Interprovincial Paving Company Limited
O'Leary's (1956) Limited
Standard Paving Limited

An information was laid in Hull in April 1966 charging the companies with an offence under section 32(1)(c) of the Combines Investigation Act. All except H. J. McFarland Construction Company Limited were committed for trial. On January 27, 1967 the remaining companies pleaded guilty in the Quebec Court of Queen's Bench (Crown Side) and on March 20, 1967 fines totalling \$9,000 were imposed as follows:

Deschenes Construction Ltd.....	\$1,500
Dibblee Construction Company Limited.....	1,500

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
no report*	Attempt to Impede an Inquiry		<p>volved with the five companies which had tendered on the Hull paving project in a "loose arrangement" which "covered a much wider area than the City of Hull and would include the cities of Ottawa and Eastview". The participation of all seven companies in the wider arrangement was indicated by oral evidence of representatives of several of the contractors.</p>		<p>Hurdman Paving Limited 1,500 O'Leary's (1956) Limited 1,500 Interprovincial Paving Company Limited..... 1,500 Standard Paving Limited 1,500 The Court also granted an Order prohibiting the continuation or repetition of the offence.</p>
Report in the Matter of an Inquiry under the Combines Investigation Act into the Production, Purchase, Sale and Supply of Plumbing, Heating and Air Conditioning Equipment and Related Products in Metropolitan Toronto and Elsewhere in the Province of Ontario.	Alleged Combination	November 29, 1965****	<p>"That the employer and union representatives were correct in their dealings with each other is plain from the evidence. Yet a clause of the type of 7(C) was capable of being used to prevent competition arising from contractors outside the group. It was also capable of depriving labour of its legitimate right to decide independently what parties it would make agreements with."</p> <p>"Although the Commission considers that clause 7(C) of the agreement between the Toronto Labour Bureau and Local 46 was objectionable on its face, the public interest has been adequately served by the deletion of the clause from a new agreement effective April 30, 1965.</p> <p>The Commission finds no agreement or arrangement between individuals connected with Local 46 and the Toronto Labour Bureau to prevent the joint venture of Dynamic Construction and Pressure Concrete Services from undertaking the John Street Pumping Station project in 1962."</p>	K. J. Beamish	<p>One charge was laid at Toronto under section 37(2) of the Combines Investigation Act. The accused pleaded guilty on September 21, 1965, and was fined \$3,500 and in default one year in gaol.</p> <p>After discussion with Counsel to whom the evidence was referred, it was decided that no proceedings would be instituted.</p>

A Report in the Matter of an Inquiry Relating to the Manufacture, Formulation, Distribution and Sale of Weed Killers, Insecticides and Related Products.	Alleged Combination, Monopoly and Resale Price Maintenance	December 30, 1965****	<p>The Commission found that with respect to MH-30, a plant growth regulant, the evidence fell short of establishing agreement on prices and categories of purchasers to lessen competition unduly. In the case of the herbicides M.C.P., 2, 4-D and 2, 4, 5-T the Commission found the parties named had reached agreement on prices but concluded that in the light of the fact they did not exercise sufficient control over the market and the obvious lack of success of their intentions, the existence of an "undue" agreement had not been established.</p>	<p>Proceedings for Orders pursuant to section 30(2) of the Combines Investigation Act were instituted in respect of actions alleged to be contrary to sections 32(1)(c) and 38(2)(a) of the Act, respectively. On September 18, 1972, the Federal Court granted Orders against</p>
			<p>While it found that the refusal of a supplier to sell maleic hydrazide to a particular distributor was an abuse of monopoly derived from patent and trade mark rights, the Commission concluded that because of a lack of market for this product after 1960 the denial of supplies had no appreciable effect on the public interest. The Commission also found that this supplier was also justified in withholding supplies of the fungicide, dichlone, to this distributor until the product had been registered under the Pest Control Products Act as a safe and suitable tobacco pesticide.</p>	<p>Chipman Chemicals Limited and The Sherwin-Williams Company of Canada Limited (re section 32(1)(c)),</p>
			<p>With respect to the refusal of another supplier to sell the fungicide, dilapon, to this distributor, the Commission found that the supplier was neither the sole nor dominant supplier of fungicides of this type and therefore could not be charged with an abuse of monopoly power in withholding the product from the distributor who was receiving supplies from another source.</p>	<p>Chipman Chemicals Limited (re section 38(2)(a)), and</p>
			<p>The Commission found that a supplier by agreement had required or induced its distributor to resell the insecticide, guthion, at prices it established and that another supplier had established prices</p>	<p>The Sherwin-Williams Company of Canada Limited (re section 38(2)(a)).</p>
				<p>Two remaining applications for Orders relating to FMC Machinery and Chemical Ltd. were before the Court at the end of the fiscal year.</p>

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
A Report in the Matter of an Inquiry Relating to the Distribution and Sale of Mary Maxim Knitting Wool, Patterns and Accessories Thereof in Canada	Alleged Price Discrimination and Resale Price Maintenance	March 8 1966****	<p>for its insecticide, thiodan, and by agreement had required or induced its distributor to resell at these prices. In each case the Commission found the agreements were contrary to the public interest. In the case of the herbicides, simazine and atrazine, the Commission found there was no evidence that a supplier sought to force the distributor to abide by suggested prices by policing its sales, by threatening to refuse supply or otherwise, nor was there evidence that the distributor agreed to abide by the suppliers' suggested prices.</p> <p>"The Commission finds that Mary Maxim's general practice of granting discounts to certain purchasers of its products discriminated against other competing purchasers of like quantity from Mary Maxim to whom the discounts were not available, contrary to the public interest. However, the Mary Maxim sales incentive plans in effect in 1959-60, 1960-61 and 1961-62 under which volume rebates were paid to The T. Eaton Co. Limited did not discriminate against other competing purchasers.</p> <p>The Commission further finds that Mary Maxim required or induced Simpsons-Sears and other retailers of its products to resell knitting wool at prices not less than minimum prices specified by Mary Maxim. Also during the period December 1, 1958 to late February 1959, Mary</p>	Miss Mary Maxim Ltd.	Proceedings were instituted in the Exchequer Court of Canada for an Order pursuant to section 31(2) of the Combines Investigation Act. The Order was granted on May 16, 1968.

Report Relating to the
Production, Manufacture,
Sale and Supply of
Ready-Mixed Concrete
in Windsor, Ontario.

Alleged Combination

March 24,
1966****

Maxim refused to sell its products to Simpsons-Sears because Simpsons-Sears had offered knitting wool at prices less than minimum prices specified by Mary Maxim. In both instances Mary Maxim acted contrary to the public interest."

"The agreement by the four ready-mix companies related to a distinct product, concrete delivered at the site of a customer's construction project and prepared for pouring into the customer's forms. The market served by the four Windsor ready-mix companies is limited by the time by which delivery must be completed and by the cost of transport. The effective radius from their Windsor plants within which Ryan, Sterling, Cross and Woollatt could sell ready-mixed concrete was generally under 20 miles, but deliveries could be and were made at more distant points in Essex County in competition with mixing plants located at Leamington, 34 miles from Windsor. In the market as defined by the total sales of mixing plants located at Windsor and Tecumseh, Ryan, Sterling, Cross and Woollatt combined accounted for 94.15 per cent of the sales in 1963."

"The Commission finds that between November 21, 1963 and June 30, 1964, Ryan Builders Supplies (Windsor) Limited, Sterling Building Materials Limited, Cross Supplies & Paving Limited and Woollatt Industries Limited conspired, agreed or arranged to prevent or lessen unduly competition in the sale, transportation or supply of ready-mixed concrete in Windsor and vicinity in the Province of Ontario. The arrangement did not relate to any of the matters

Ryan Builders Supplies
(Windsor) Limited
Sterling Building
Materials Limited
Cross Supplies &
Paving Limited
Woollatt Industries
Limited
M. E. Roberts
R. B. Austen

Prosecution proceedings were instituted in Windsor against the four companies under section 32(1)(c) of the Combines Investigation Act and a True Bill was returned by the Grand Jury on September 7, 1966. On September 15, 1966 the companies pleaded guilty and fines totalling \$13,500 were imposed as follows:

Ryan Builders Supplies (Windsor) Limited.....	\$4,000
Sterling Building Materials Limited.....	3,500
Cross Supplies & Paving Limited.....	3,500
Woollatt Industries Limited.....	2,500

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
no report*	Resale Price Maintenance		<p>specified in subsection (2) of section 32 of the Combines Investigation Act, such as the exchange of credit information, the definition of product standards, or the exchange of statistics.</p> <p>The Commission further finds that Mr. M. E. Roberts, C.A., of Brokenshire, Scarff & Company of Windsor, and Mr. R. B. Austen, C.A., of Arthur S. Fitzgerald & Company of Windsor, were privy to the arrangement among Ryan, Sterling, Cross and Woollatt.</p> <p>The effect of the arrangement among Ryan, Sterling, Cross and Woollatt to eliminate special discounts in their sales of ready-mixed concrete was to enhance the cost of ready-mixed concrete in Windsor and vicinity after January 1, 1964. The Commission finds that the arrangement was detrimental to the public."</p>	Continental Ski Imports Limited	<p>Proceedings by Information of the Attorney General of Canada pursuant to section 31(2) of the Combines Investigation Act for an Order prohibiting the commission of offences contrary to section 34(2) and 34(3) of the Act or the doing of an act or thing directed towards the commission of such offences were instituted in the Exchequer Court of Canada. The Order was granted on April 19, 1966.</p>

Report Relating to the Distribution and Sale of Gasoline in the City of Winnipeg and Elsewhere in the Province of Manitoba

Alleged Resale Price Maintenance

June 27, 1966

"It seems clear, however, that though the letter of the Act is not violated, its spirit and intent are frustrated by the device of consignment.

In its Report on an Inquiry into the Distribution and Sale of Automotive Oils, Greases, Anti-Freeze, Additives, Tires, Batteries, Accessories, and Related Products (1962) (R.T.P.C. No. 18), the Commission recommends that definitions of exclusive dealing and tying arrangements be included in the Act. Moreover, the Commission stated: 'In order to make the definition sufficiently comprehensive, it would appear necessary to include arrangements applying to agencies and consignment sales.'

The Commission finds that the North Star and Shell consignment arrangements do not constitute 'resale' price maintenance within the meaning of section 34 of the Act. Nevertheless, the Commission considers that consignment plans of the type involved in this inquiry, where the primary purpose and obvious consequence are the control of prices and the stifling of competition at the consumer level, are detrimental to the public interest."

After careful consideration of the evidence it was decided that no proceedings would be instituted. The Report of the Commission however was referred to the Economic Council of Canada for its consideration in its study of the anti-combines legislation. This case and related cases are responsible for the proposed amendments relating to consignment selling in the 1973 Bill.

no report*

Combination
(dump truck
owners)

David G. Faith,
George Brennan,
Cecil Shaver,
John McMillan,
Earl Maguire,
Horace Frend alias
James Hamlin,
Brant County Dump Truck
Owners and Operators
Association

Two charges were laid in Brantford under section 32(1)(c) of the Combines Investigation Act. The trial of two of the individuals was held in September 1966 when the jury returned a verdict of not guilty. In view of the verdict, no evidence was offered on the trials of the remaining individuals and the charges against them were dismissed. The Brant County Dump Truck Owners and Operators Association was convicted and fined \$1,000. The Court also granted an Order prohibiting the continuation or repetition of the offence.

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
A Report Concerning the Production, Distribu- tion and Sale of Phos- phates, Other Phos- phorous Chemicals and Sodium Chlorate	Alleged Merger and Mo- nopoly	November 30, 1966 ****	<p data-bbox="790 270 1107 367">"Erco is mainly involved in the business of manufacturing three products; agricultural phosphates, sodium chlorate and industrial phosphates.</p> <p data-bbox="790 391 1107 499">The Canadian market for fertilizers is not protected by tariffs and Erco faces actual competition in the field of agricultural phosphates, from both domestic and foreign manufacturers.</p> <p data-bbox="790 523 1107 969">Since 1959, sodium chlorate has also been manufactured by Standard Chemical and since 1962 by Dryden Paper for its own use. Thus Erco has not been the sole Canadian manufacturer of chlorate for some years. The evidence strongly suggests that Standard and Erco entered into an agreement whereby competition would be restricted to non-price matters and Standard would adopt Erco's prices. During the period from 1958 to 1964, the offerings of French chlorate together with the poised competition from American and other producers, have set a ceiling on prices of chlorate in Canada which appear to have been at a reasonable level. The public interest would, however, be served by unrestricted competition between Erco and Standard.</p> <p data-bbox="790 981 1107 1105">Erco remains the sole Canadian supplier of many industrial phosphates including tripolyphosphate and trisodium phosphate used to manufacture detergents. Colgate-Palmolive, Procter & Gamble and Lever Brothers are</p>	Electric Reduction Com- pany of Canada, Ltd.	<p data-bbox="1345 270 1661 403">Prosecution proceedings were instituted in Toronto against the company under the merger and monopoly provisions of the Combines Investigation Act and a True Bill was returned by the Grand Jury on October 27, 1967.</p> <p data-bbox="1345 427 1661 912">On January 12, 1970, the accused pleaded guilty to the merger charge and two charges of monopoly on industrial phosphates. The Court imposed a fine totaling \$40,000 on these charges and granted an Order which, in addition to prohibiting continuation or repetition of the offences, inter alia, prohibited the accused for a period of twelve years from entering into contracts lasting for a period greater than one year for the supply of sodium tripolyphosphate and established a maximum differential for industrial phosphates between large buyers and others. The latter requirement is to remain in effect for a period of ten years but the accused is given the right to apply for a modification of the Order if the competitive situation changes. The monopoly charges concerning sodium chlorate were dismissed.</p>

protected against monopoly abuse by virtue of their bargaining power as purchasers of 80 per cent of Erco's industrial phosphates production and their easy access to foreign supplies. With respect to the balance of the market for industrial phosphates, consisting of some twenty smaller purchasers, Erco exercised a substantial control and has sought to maintain this control as exemplified by its acquisition of Dominion Fertilizers, a company which posed an immediate threat to Erco's position in the Canadian market.

The Commission considers that the acquisition of Dominion Fertilizers by Erco constitutes a merger whereby Erco maintained its monopoly in the Canadian market for industrial phosphates. In the opinion of the Commission the merger was detrimental to the interest of the public."

no report* Resale Price Maintenance and
Disproportional Promotional Allowances

William E. Coutts Company Limited

Seven charges were laid at Toronto, two under section 34(3)(b)(i), three under section 34(2) (a) and two under section 33B(2) of the Combines Investigation Act. The trial was held on September 13-15, 1966, and on October 17, 1966, the accused was convicted on one charge under section 34(2)(a) and fined \$500. The remaining charges were dismissed. An appeal by the Crown against the acquittals was dismissed on January 15, 1968.

no report* Combination
(mandarin oranges)

Birks Crawford Limited,
Kelly, Douglas & Company,
Limited,
W. H. Malkin Ltd.,
Slade & Stewart Ltd.,
David McNair & Company Limited,
Chess Bros., Limited,
Consolidated Fruit Company
Limited,
Dominion Fruit Limited,
Macdonalds Consolidated Limited,
ed,

One charge was laid in Vancouver under section 32(1) (c) of the Combines Investigation Act. The trial commenced on October 5, 1966, and concluded on November 21, 1966. Judgment was delivered on September 21, 1967, convicting the ten companies and on November 20, 1967, fines totalling \$98,500 were imposed. The Court also granted an Order prohibiting the continuation or repetition of the offence. While appeals were entered by all

APPENDIX I—(Continued)

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
no report*	Combination (supply of clean towels)		Canada Safeway Limited, Leslie F. Burrows	Canadian Coat and Apron Supply Limited, The Montreal League of Linen Supply Owners Company, J. P. Drolet et Fils Ltée, New System Towel Supply Co. Ltd., C. E. Durette Ltée, Roger Laverdure Ltée, Toilet Laundries Limited, New Ideal Uniform & Overall Supply Inc., Hector Jolicoeur Inc., J. N. Jolicoeur Ltée., Canadian Silk Manufacturing Co. (Quebec) Limited, Hygienic Coat & Towel Supply Limited, R. Forget Ltée, Sano-Wrap Towel Service Co. Inc. Royal Cleaners Limited, Sanitary Towel Supply Co. Limited, International Linen Supply Limited, Maple Leaf Coat & Towel Supply Ltd., J. P. Malo, Hyman Seltzer, R. Parent, M. Levine	but one of the companies, Crown Counsel was subsequently advised that these were being abandoned, and on May 13, 1968, the appeals were accordingly dismissed. A <i>nolle prosequi</i> was entered with respect to the individual accused on May 22, 1968. One charge was laid at Montreal under section 32(1)(c) of the Com- bines Investigation Act. The trial was held in December 1966 and on March 9, 1967, the accused were all convicted. On March 14, 1967, the accused were fined a total of \$17,500 and the Court also granted an order prohibiting the contin- uation or repetition of the offence. It was expected that an appeal would be taken by the accused but the Director has since been informed that no appeal will go forward.

no report*	Resale Price Maintenance		Philips Electronics Industries Ltd. and Philips Appliances Ltd.	One charge was laid against Philips Electronics Industries Ltd. and four charges against Philips Appliances Ltd. at Toronto under section 34(2)(a) of the Combines Investigation Act. The trial was held during the week of June 6, 1966, and on September 26, 1966, judgment was delivered acquitting Philips Electronics Industries Ltd. of the one charge against it and convicting Philips Appliances Ltd. on two charges and acquitting on two charges. A fine of \$1,000 was imposed on each of the two charges where there were convictions and the Court also granted an Order prohibiting the continuation or repetition of the offences. The accused appealed the convictions to the Ontario Court of Appeal and the Crown cross-appealed on one acquittal and on the form of the Order of prohibition. The appeal was argued on November 7, 1968. Judgment was delivered on November 26, 1968, allowing the accused's appeal from conviction on one charge, dismissing the Crown's appeal from the acquittal on one charge and allowing the Crown's appeal with respect to the Order of prohibition.
A Report in the Matter of an Inquiry Relating to the Supply and Sale of Eggs in Kingston and Collins Bay, Ontario	Alleged Resale Price Maintenance	February 17, 1967	<p>"The fact that a dealer may refuse with impunity to supply a retailer because of loss-leadering, does not justify his offering to resume supplying on the condition that the retailer maintain a resale price specified by the dealer.</p> <p>In the present case, however, an attempt to make a distinction between Hemco's [Hemlock Park Co-operative Farm Limited] action in refusing supplies because of loss-leadering and its efforts to establish conditions under which supplies would be continued seems to have very little</p>	<p>Proceedings for an Order pursuant to section 31(2) (now 30(2)) of the Combines Investigation Act were instituted in Ottawa in the Exchequer Court of Canada. The case was heard on March 10, 1970. On July 8, 1970 the application was dismissed on jurisdictional grounds. On appeal by the Crown to the Supreme Court of Canada the judgment was reversed and the Court directed that an Order as applied for should be issued.</p>

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
Report in the Matter of an Inquiry Relating to the Production, Manu- facture, Sale and Sup- ply of Laminated Tim- bers in Ontario and Quebec.	Alleged Combination	July 11, 1967	<p>meaning because manifestly Ken & Ray's [Ken & Ray's Collins Bay Supermarket Limited] could not be influenced or prevailed upon to maintain a specified mark-up. Ken & Ray's made it clear to Hemco that it intended to continue selling eggs at below cost to attract customers to its store whenever it wished to do so. In the circumstances Hemco had every right to continue to refuse supplying Ken & Ray's. The intent and purpose of sub-section (5) of section 34 (now section 38) is to resolve in favour of the supplier the question of whether the reseller deprived of supply was cut off because he engaged in one of the practices described, or because he refused to maintain a resale price set by the supplier. If Ken & Ray's had agreed to cease loss-leadering, Hemco's reoffer of supply only if Ken & Ray's sold at a 'normal' markup would take on quite a different aspect.</p> <p>In the opinion of the Commission 'no inference unfavourable' to Hemco may be drawn from its refusal to supply eggs to Ken & Ray's since that refusal arose from Ken & Ray's loss-leadering of Hemco's products.'</p> <p>"The effect of the arrangements among glued-laminated timber firms in both Quebec and Ontario was to establish a general level of prices of glued-laminated timbers on the basis of agreement among the principal suppliers which level of prices had its influence on all classes of business. In addition,</p>		Prosecution proceedings were instituted in Montreal against five companies under section 32(1)(c) of the Act with respect to the arrangements in Quebec and Eastern Ontario. (On April 26, 1968, four companies pleaded guilty and on May 3, 1968, were fined a total of \$12,500 as follows:

			<p>for all classes of business in Quebec and for three classes of structures (educational, recreation and religious) in Ontario the business sharing arrangements were designed to remove competition from tenders submitted by the participants in all cases where competitive bids were sought.</p> <p>.....</p> <p>It is the conclusion of the Commission that the arrangements entered into by the glued-laminated timber firms lessened competition unduly in the supply of glued-laminated timbers in the areas in which the respective arrangements were carried out to the detriment of the public."</p>		<p>Lamco Structures Ltd., Structures Lamco Ltée. \$1,500</p> <p>Laminated Structures Limited, Les Structures Lamellées Limitée (now TPL Industries Limited) 4,000</p> <p>Steel & Timber Structures Ltd. 4,000</p> <p>Foldaway Furniture Limited (Timber Structures Division) 3,000</p> <p>The Court also granted an Order prohibiting the continuation or repetition of the offence. The fifth company, Laminex Products Limited is strictly a manufacturing company not engaged in sales and since its sales agent, Steel & Timber Structures Ltd., was one of the accused, it was decided not to proceed with the charge against it.</p> <p>(After consultation with the Department of Justice, it was decided that no proceedings should be taken with respect to the alleged conspiracy in Ontario).</p>
Report Concerning the Production, Manufacture, Supply and Sale of Cast Iron Soil Pipe and Fittings in the Prairie Provinces and British Columbia.	Alleged Merger, Alleged Monopolies and Alleged Predatory Pricing	October 10, 1967	<p>"Anthes was in 'substantial or complete control' of the business of cast iron soil pipe and fittings manufacture in the market region from the Lakeread in Ontario to Alberta inclusive in the period January 1, 1952, to June 30, 1965. Its position as the supplier of a substantial part of the goods distributed by Dominion, which the latter handled on a very narrow margin, strengthened Anthes' influence over Dominion's policy of closely following Anthes' prices so that, in effect, both companies used a common price schedule. Anthes' representations to the Canadian Pacific Railway to discourage sale of the latter's Ogden Shops to S.P. & F. for use as a foundry site at Calgary constituted an attempt by Anthes to use its market power</p>	Anthes Imperial Limited	<p>Proceedings for an Order pursuant to section 30(2) of the Combines Investigation Act were instituted in respect of actions alleged to be contrary to section 33 of the Act. On February 22, 1973 the Federal Court issued an Order with respect to Anthes Imperial Limited.</p>

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
			<p>to maintain its control of the trade. Whether S.P. & F.'s decision not to establish a foundry in Calgary was or was not affected in any way by Anthes' actions is not material in this connection. Anthes' efforts in the circumstances were clearly an example of its use of its dominant position in an attempt to impede the possible entry of a competitor. While Anthes' monopoly position in the Prairie market was, in part, the result of limited production and sale by other firms, its maintenance of a non-competitive pricing situation through its understandings with and pressure upon Dominion have not been in the public interest.</p> <p>The Director specifically alleges that Anthes abused its monopoly position by its price reduction of July 15, 1963 in that it thus offered cast iron soil pipe fittings at prices unreasonably low with the design or the effect or tendency of lessening competition or eliminating a competitor. The Commission is of the opinion that prices prevailing at the time in the Prairie market region were sufficiently high that Anthes' 15 per cent reduction did not result in its products being sold at unreasonably low prices. Its competitors who were efficient were able to prosper at the reduced prices.</p> <p>The Commission has particularly considered the substantial reductions on two backwater valves, one reduced in price by 37.5 per cent, the other by 36.4</p>		

per cent. These valves were manufactured and sold only at Edmonton and appear to have been sold at a price that permitted an usually high margin. Mr. DiLallo of General testified that "the two items could pay your salary for the year". The Commission is of the opinion that at the reduced prices the valves were not sold at unreasonably low prices.

The Commission has also considered the evidence of the discussions an Anthes' official initiated with several major wholesalers at Edmonton after the price decrease of July 15, 1963. The Commission is of the opinion that this evidence falls short of establishing that at these meetings Anthes sought to use its position as the supplier of the major part of the market for cast iron soil pipe and fittings to prevent General from finding outlets for its products.

The Commission is also of the opinion that the evidence does not establish that Anthes used its patent of the Mechanical Joint it developed to prevent other manufacturers from producing and selling hubless cast iron soil pipe and fittings.

.....
With respect to the British Columbia market, Associated's purchase of S.P. & F. had the effect of eliminating the only other producer offering effective competition and the immediate result of the acquisition in December 1962 was increased prices of soil pipe and fittings in British Columbia. However, with Associated's development of mechanization and S.P. & F.'s inability to proceed along the same lines, in the opinion of the Commission it is likely that Associated was soon destined to become

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
Report in the Matter of an Inquiry Relating to the Distribution, Sale and Supply of Glass- ware and Related Prod- ucts in Canada	Alleged Resale Price Main- tenance	April 1, 1968	<p>the sole supplier of the market in any event.</p> <p>.....</p> <p>Anthes is the sole major supplier of cast iron soil pipe and fittings in the Prairie market region. Its purchase of a 20 per cent share interest in Associated in May 1963 and December 1964, with representation on the Board of Directors of Associated extended Anthes' influence into the British Columbia market and eliminated possible competition between the two companies in British Columbia and in the Prairie market. In the opinion of the Commission, Anthes' purchase of a share interest in Associated was a merger detrimental to the public.</p> <p>The Commission recommends that Anthes be required to divest itself of all interest in Associated and that the two companies refrain from arrangements restrictive of competition in the manufacture and distribution of cast iron soil pipe and fittings."</p> <p>"In a number of instances described in this report, Corning [Corning Glass Works of Canada Ltd.] has attempted to secure the establishment of common prices among competing retailers by securing the acceptance of a specified price or discount by one retailer on the condition that other retailers would accept the same price level. In effect Corning actively followed a policy of seeking to organize among re-</p>		Prosecution proceedings were instituted in Toronto against Corning Glass Works of Canada Ltd. under section 34 (now 38) of the Combines Investigation Act and a True Bill was returned by the Grand Jury on January 28, 1970. Prior to the trial the Crown subpoenaed officers and management officials of the accused and an application was made on behalf of the accused to prohibit the Trial Court from taking any

no report*

Combination
(Transportation-
Freight
forwarding)

tailers of its products a resale price maintenance conspiracy. In some instances representatives of Corning attempted to have a specific day accepted as the time when the adoption of a common price would take place in a particular market area. Arrangements of this nature among competing retailers must be regarded as acts to induce or attempts to induce retailers to resell Corning products at a specified price or at a specified discount contrary to section 34(2) [now 38(2)]. In the instances disclosed in the evidence such attempts appear to have led to the maintenance of uniform prices for short periods but the results of the efforts do not alter the nature of the attempt. In fact, during the period covered by the inquiry, the lack of sustained success from one series of efforts was followed, in certain instances, by repeated efforts of like character.

The efforts made by Corning to secure the maintenance of resale prices by Honest Ed's, Toronto and Topp's, Winnipeg, were not linked in such an evident way with efforts to secure the acceptance of minimum resale prices by other retailers in the respective markets of these two merchandising firms.

All of these instances of resale price maintenance or attempted resale price maintenance constituted a detriment to the public."

J. W. Mills & Son, Limited
Kuehne & Nagel (Canada) Limited
Overland Import Agencies Ltd.
Denning Freight Forwarders Ltd.
Johnston Terminals Limited

proceedings in respect of enforcement of the subpoenas and from hearing the evidence of such persons as Crown witnesses on the ground that such witnesses were not compellable witnesses for the Crown. On May 15, 1970 judgment was delivered refusing the application and finding the witnesses compellable. An appeal to the Ontario Court of Appeal was dismissed on November 20, 1970. An application for leave to appeal to the Supreme Court of Canada was refused on January 26, 1971. On January 18, 1972 the Company pleaded guilty to three charges. The remaining charges were dismissed. On December 6, 1972, the company was fined a total of \$3,250.

An indictment containing two counts alleging offences contrary to section 32(1)(a) and (c) of the Combines Investigation Act and relating to transportation of articles imported from the Orient into British Columbia and transported in railway cars

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
Report in the Matter of an Inquiry Relating to the Production, Dis- tribution and Sale of Skim Milk, Cream and Related Products.	Alleged Combination	May 9, 1968	<p data-bbox="838 888 1132 1020">"The Commission concludes that the allegation is well founded and that accordingly, as of April 28, 1961 or on or about such date and until November 30, 1963, The Montreal Dairies' Association Inc. and Laiterie Bastien,</p> <p data-bbox="838 1045 1132 1135">The Borden Company, Limited, Elmhurst Dairy, Limited, Guaranteed Pure Milk Co., Limited, L. Hope Dairy, Limited, J. J. Joubert, Limitée, Laurel Indus-</p>		<p data-bbox="1399 298 1727 611">to Ontario and Quebec was preferred in the Exchequer Court of Canada in Vancouver. On April 1, 1968, judgment was delivered convicting J. W. Mills & Son, Limited, Kuehne & Nagel (Canada) Limited and Overland Import Agencies Ltd. on both counts and they were fined a total of \$20,000. The Court also granted an Order prohibiting the continuation or repetition of the offences. The remaining two companies were acquitted. The convicted companies appealed to the Supreme Court of Canada which delivered judgment on June 1, 1970, upholding the convictions and dismissing the appeal.</p> <p data-bbox="1381 629 1727 852">An Information which had also been laid in Vancouver containing two counts alleging offences contrary to section 32(1)(a) and (c) of the Act and relating to transportation of articles imported from the Orient into British Columbia and transported by railway to Manitoba was withdrawn. The parties charged were J. W. Mills & Son, Limited, Kuehne & Nagel (Canada) Limited and Johnston Terminals Limited.</p> <p data-bbox="1381 894 1689 1020">Proceedings for an Order pursuant to section 31(2) of the Combines Investigation Act were instituted in Montreal in the Exchequer Court of Canada. The case was heard on April 22, 1970, following which an Order was granted.</p>

tries Limited, Mile-End Dairy, Limited, The Mount Royal Dairies & Company Limited, Perfection Dairy Limited, A. Poupart & Cie, Ltée, Laiterie Saint-Alexandre, Limitée, and La Ferme St-Laurent, Limitée, conspired, combined, agreed or arranged among themselves to prevent, or lessen, unduly, competition in the sale of skim milk and cream to the Department of Veterans Affairs, and more particularly to Queen Mary Hospital, contrary to the provisions of paragraph (c) of subsection (1) of section 32 of the Combines Investigation Act. Manifestly, the arrangement did not relate in any manner to the matters set out in subsection (2) of section 32.

Price competition for products for which minimum prices were set by the Dairy Industry Commission of the Province of Quebec was impossible. Competition was possible within only a narrow range with regard to cream and skim milk for which no minimum sale prices had been set, but which were to be sold at 'current' prices. It is also true that the nature of the Department of Veterans Affairs' invitations to tender which combined commodities with regulated minimum prices and those not subject to fixed minimum prices led to efforts among possible suppliers to seek a method of reconciling the tendering system and the provincial milk controls.

However, neither of these facts justified the establishment of the rotation system. The Department as a consumer was entitled to the benefit of such competition

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
Report in the Matter of an Inquiry Relating to the Supply and Instal- lation of Resilient Flooring and Related Products in Metropoli- tan Toronto.	Alleged Combination	June 19, 1968.	<p>as was possible in the price of products not specifically regulated . . ."</p> <p>"The evidence in the inquiry leaves no question as to the nature of the arrangements among resilient floor laying contractors who constituted 'the group'. The particular features and conduct of the arrangements varied to some extent over the period to which the inquiry relates, that is, from January 1960 to September 1963, but the design of the arrangements remained the same throughout the period. The objectives were the raising of prices of contracts for the laying of resilient floor tiles in the Metropolitan Toronto area, by the allocation of jobs among participating firms, and the protection of bids made by the firms to which jobs were assigned on account of most favourable tenders.</p> <p>These arrangements which the group attempted to carry out involved restraint of competition, raising of prices, and allocation of business in a manner and to an extent which was detrimental to the public interest."</p>		<p>The Report was submitted to the Attorney General of Canada for consideration of the evidence and of what proceedings should be taken. Prosecution proceedings under section 32(1) (c) and (d) of the Combines Investigation Act were instituted in Toronto against twelve companies and one individual, and on March 4, 1969, the Grand Jury returned a True Bill.</p> <p>On September 8, 1969, eleven of the accused companies pleaded guilty to the charge under section 32(1) (c) of the Act and the following fines were imposed:</p> <p>Barnett Floor Coverings Limited.....\$ 2,500 Brooks Marble and Tile Company Limited.... 2,500</p> <p>A. Buchanan Floor Coverings Limited..... 2,500 Knight Bros. Sales and Service Limited..... 2,500 Permanent Floor Laying Company Limited.... 2,500 Semple-Gooder & Company Limited..... 2,500 R. S. C. Bothwell Associates Limited..... 1,000 Connolly Marble, Mosaic and Tile Company</p>

no report*

Resale Price Maintenance

John A. Huston Company Limited

Limited.....	1,000
Montflex Inc.....	1,000
Terrazzo, Mosaic & Tile Company Limited....	1,000
Tri-Tile Limited.....	1,000

An Order prohibiting continuation or repetition of the offence was granted. The charge under section 32(1) (d) of the Act was dismissed. Maple Leaf Floor Covering Limited had been out of business for some time and on May 7, 1969, it was dissolved, the letters patent being cancelled for default in filing annual returns.

On April 27, 1970, Royce Knight pleaded guilty to the charge under section 32(1) (c) of the Act and was fined \$400. The Court granted an Order prohibiting the continuation or repetition of the offence. The charge under section 32(1) (d) of the Act was dismissed.

Three charges were laid at Toronto under section 34(2)(b) of the Combines Investigation Act. On January 28, 1969, the accused pleaded guilty and was fined \$400 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offences, and of actions directed towards such continuation or repetition either by John A. Huston Company Limited or by Lenthéric (Canada) Limited.

no report*

Resale Price Maintenance (Skis
and Ski Poles)

Head Ski Company Inc.

Seven charges were laid at Montreal under section 34(2) and (3) of the Combines Investigation Act. On May 30, 1969, the accused pleaded guilty and on June 19 a fine of \$400 was imposed on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offences.

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
no report*	Combination (Meats)			Burns Foods Limited Canada Packers Limited Swift Canadian Company Limited F. F. Andrews E. R. Coughlan J. E. Lutes L. W. McLeod	Two charges under section 32(1) (c) of the Combines Investigation Act were laid at Fredericton. On June 3, 1969, the accused all pleaded guilty to both charges and each accused company was fined \$2,500 on each charge and each individual accused was fined \$100 on each charge.
Report in the Matter of an Inquiry Relating to the Distribution and Sale of Gasoline and Related Products in the Sudbury Area	Alleged Combination	July 15, 1969	“... The agreement among members of the [Superior Auto Service] Association to increase the retail price of gasoline arose out of efforts by the dealers to remove the control over prices exercised by the petroleum companies. It is clear that prosecution of the parties named in the allegations would not result in the removal of the restraints upon gasoline dealers which led to the actions reviewed in this report and would not correct the underlying conditions which result in non-competitive behaviour in gasoline distribution. In the opinion of the Commission consideration of prosecution of the parties against whom allegations have been made would be inappropriate in the circumstances revealed in this inquiry. At the same time the inquiry has revealed that the actions taken by the Sudbury dealers in the Association have been against the public interest in that the means which they used to attain their objective replaced one form of restriction of competition by another. For the		The Report was submitted to the Attorney General of Canada for consideration of the evidence and of what proceedings should be taken. Following the decision of the Supreme Court of Canada in the Kingston Area Eggs case, in February 1972, the evidence was again reviewed and it was decided that no further action will be taken because of evidentiary and other difficulties.

		<p>protection of the public interest the Commission considers that it would be desirable to apply for a judicial restraining order which would bar the continuation or repetition of concerted action to control the retail price of gasoline.</p> <p>Although the membership of the Association embraced only about one-half of the service stations in the Sudbury area it is evident that the agreement among Association members was sufficient to increase the price level throughout the area. Not only did the agreement have the immediate effect of increasing prices to consumers but it is clear that it gave rise to expectations which were likely to be fulfilled that by similar concerted action dealers could continue to determine the retail price level of gasoline."</p>	
no report*	Resale Price Maintenance (Cosmetics)	Thomas Products Corporation Limited	One charge was laid at Ottawa under section 34(2)(b) of the Combines Investigation Act. On August 27, 1969, the accused pleaded guilty and was fined \$750. The Court granted an Order prohibiting the continuation or repetition of the offence.
no report*	Combination (French Language Books)	<p>Pierre Tisseyre Le Conseil Supérieur du Livre La Société des Editeurs de manuels scolaires du Québec Société des Libraires canadiens André Dussault Victor Martin Robert Tousignant (Frère Clément) F.E.C. André Constantin L. P. Boisseau Raymond Houde Société des Librairies grossistes canadiens</p>	Proceedings under section 31(2) of the Combines Investigation Act for an Order of prohibition were instituted in Montreal on October 14, 1969, in the Court of Queen's Bench (Crown Side). On January 30, 1970, the Order was granted by the Court.

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
				<p>Centre de Psychologie et de Pédagogie Centre éducatif et culturel Les Sœurs de la Congrégation de Notre-Dame Librairie Albert Granger Ltée Librairie Beauchemin Ltée La Corporation des éditions Fides Les Frères des écoles chrétiennes, carrying on business under the names of Librairie des Écoles and Le Centre Pédagogique Enrg. Librairie Dussault Ltée Les Clercs de St-Viateur de l'Abitibi, carrying on business under the names of Librairie St-Viateur and Librairie Querbes Congrégation des frères de l'instruction chrétienne Les Frères du Sacré-Cœur L'Institut des frères de St-Gabriel Congrégation des sœurs des Saints Noms de Jésus et de Marie Les Sœurs de Ste-Anne Le Cercle du livre de France Ltée, carrying on business under the name of Librairie Rosemont Congrégation des petits frères de Marie otherwise known as Frères Maristes, carrying on business under the names of Imagerie St-Antoine and Librairie St-Joseph and Les Éditions Maristes Hachette international Canada Inc. La Librairie Flammarion Paris-Montréal Ltée La Maison Bellarmin, carrying on business under the name of Les Éditions Bellarmin Librairie Leméac Inc., also carrying on business under the name of Mesagerie Franco-Canada Les Éditions du Jour Inc., carrying</p>	

no report*

Combination (French
Language Textbooks)

on business under the name of Li-
brairie du Jour

Pierre Tisseyre
Le Conseil Supérieur du Livre
La Société des Éditeurs de manuels
scolaires du Québec
Société des Libraires canadiens
André Dussault
Victor Martin
Robert Tousignant (Frère Clément)
F.E.C.
André Constantin
L. P. Boisseau

Raymond Houde
Société des Librairies grossistes
canadiens
Centre de Psychologie et de Pédago-
gie
Centre éducatif et culturel
Les Sœurs de la Congrégation de
Notre-Dame
Librairie Albert Granger Ltée
Librairie Beauchemin Ltée
La Corporation des éditions Fides
Les Frères des écoles chrétiennes,
carrying on business under the
names of Librairie des Écoles and
Le Centre Pédagogique Enrg.
Librairie Dussault Ltée
Les Clercs de St-Viateur de l'Abiti-
bi, carrying on business under the
names of Librairie St-Viateur and
Librairie Querbes
Congrégation des frères de l'instruc-
-tion chrétienne
Les Frères du Sacré-Cœur
L'Institut des frères de St-Gabriel
Congrégation des sœurs des Saints
Noms de Jésus et de Marie
Les Sœurs de Ste-Anne
Le Cercle du livre de France Ltée,
carrying on business under the
name of Librairie Rosemont
Congrégation des petits frères de
Marie otherwise known as Frères
Maristes, carrying on business un-
der the names of Imagerie St-An-
toine and Librairie St-Joseph and
Les Éditions Maristes
Hachette international Canada Inc.
La Librairie Flammarion Paris-

Proceedings under section 31(2) of the
Combines Investigation Act for an
Order of prohibition were insti-
tuted in Montreal on October 14,
1969, in the Court of Queen's
Bench (Crown Side). On January
30, 1970, the Order was granted
by the Court.

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
no report*	Patent Licences		Union Carbide Canada Limited	<p>Montréal Itée La Maison Bellarmin, carrying on business under the name of Les Éditions Bellarmin Librairie Leméac Inc, also carrying on business under the name of Mes- sagerie Franco-Canada</p>	<p>An action was instituted in the Ex- chequer Court for an Order under section 30 of the Combines Investi- gation Act declaring void certain restrictive features in licences under specific patents, being methods and apparatus for making thermoplastic film by means of extrusion from polyethylene resin and similar thermoplastics held by the de- fendant Company and directing the circumstances and conditions under which licences for use of extrusion patents shall be granted. Two of the patents subsequently expired and the defendant Company under- took to dedicate the remaining patent to the public and offered each manufacturer licensee in writing to terminate subsisting licence agreements and to grant a royalty free licence under this patent and declared its willingness to offer such royalty free licence to any manufacturer in Canada en- gaged in the business of manufac- turing polyethylene film by extru- sion from resin. The defendant Company also stated that it did not propose to police use of the in-</p>

Report in the Matter of
an Inquiry Relating to
the Supply and Trans-
portation of Asphalt
Paving Materials in the
Province of Ontario.

Alleged Combination

April 9, 1970

"The Commission regards cover bidding practices, which have no other purpose than to deceive the authority calling tenders as to the number of actual competitors on a tender call, as a fraud upon the public and to that extent always detrimental to the public. There have been no specific instances in this inquiry where cover bidding which has not been associated with general agreements to reduce competition, has been shown to result in undue lessening or elimination of competition. Nor is there evidence that the price tendered in the covered bid, i.e., the protected bid price, was itself higher than it should have been. But it is difficult to avoid the conclusion that cover bidding practices enable contractors to take advantage of opportunities to control the bidding.

vention covered by the existing patent nor to seek payment of arrears on any royalty payments outstanding nor to restrict freedom of licensees to import polyethylene film produced by the patented extrusion process nor to control the volume of production and size of operations of any licensees. Minutes of Settlement containing these recitals were accordingly executed and filed in the Court on December 12, 1969, discontinuing the action. The action was also discontinued with respect to licences under certain so-called printing patents without prejudice to the right of the plaintiff to institute a separate action in relation to such licensing agreements. Action in this respect was instituted in the Exchequer Court of Canada on December 15, 1969, and had not yet been disposed of at the end of the fiscal year.

The report and evidence were referred to the Department of Justice who advised that the evidence was not sufficient to warrant prosecution because recent jurisprudence indicated the matter would be held to relate to services rather than to commodities and hence outside the purview of the Combines Investigation Act.

This case indicates the need for the proposed 1973 amendments banning bid-rigging and bringing services under the legislation.

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
no report*	Combination (Plaster and Lath for construction or surfacing of walls, etc., in commercial, industrial and institutional buildings)		From 1959 to 1961, as the result of arrangements between some con- tractors, cover bidding was used on Department of Highways of Ontario and Metropolitan To- ronto municipal tenders. While the evidence does not permit the Commission to determine the immediate effects in the partic- ular instances the practice was clearly contrary to the public interest."	Cesaroni Brothers Limited W. J. Crowe Limited Dixon Construction Enterprises Limited John Nelson and Son, Limited Norman Lathing Limited A. V. Hallam Lathing & Plastering Limited Gambin Brothers Limited C. Strauss Limited O. M. Baird & Co. Limited Hill & Son Plastering Limited Donaldson-Barron Limited	Prosecution proceedings were insti- tuted in Toronto against the com- panies under section 32(1)(c) and (d) of the Combines Investigation Act and True Bills were returned by the Grand Jury on November 2, 1967. Subsequently new proceed- ings were instituted under the above provisions and True Bills were returned by the Grand Jury on April 9, 1969. A stay of proceed- ings was entered on the earlier in- dictments. On November 20, 1969, the accused pleaded guilty to the charges under section 32(1)(c) of the Act and fines totalling \$75,000 were imposed. The Court granted Orders prohibiting continuation or repetition of the offences. The charges under section 32(1) (d) were dismissed.
no report*	Resale Price Maintenance (Perfumes and Cosmetics)			Herdt & Charton Inc.	Two charges were laid at Montreal under sections 34(2)(a) and 34(3)(a) (i) of the Combines Investigation Act. The accused pleaded guilty to both charges on May 1, 1970, and was fined \$500 on each. The Court also granted an Order prohibiting the continuation or repetition of the offences.

Report in the Matter of
an Inquiry Relating to
the Production, Manu-
facture, Sale or Supply
of Printed Forms and
Related Articles

Alleged Combination

May 11, 1970

"The analysis contained in this report of the basis on which independent forms manufacturers accepted the onerous provisions of the Institute agreement and conducted their operations in conformity with the terms of the agreement and the procedures set up for their implementation leads the Commission to conclude that the agreement and price-reporting activities constitute an agreement or arrangement to lessen unduly competition in the business forms industry.

The detrimental nature of the arrangements from the viewpoint of the public interest is obvious regardless of whether they succeeded as well as some participants had hoped when they joined the Institute.

The disclosure of pricing policies and actual prices in the manner required by the Institute agreement can only be construed as evidence of a common understanding to follow mutually acceptable pricing policies on the part of each Institute member. Whether such common understanding was arrived at by express agreement or by the individual acceptance by each manufacturer participating in the arrangements of a mutually acceptable type of behaviour appears to the Commission to be a matter of form and not of substance. The purpose of the arrangements was to reduce substantially competition in price among members of the Institute.

It is the conclusion of the Commission that the members of The Institute of Business Form Manufacturers entered into a scheme involving an open price policy which was used to establish price leadership and price control and that such scheme constitutes an agreement to lessen unduly

Prosecution proceedings were instituted in Toronto under section 32(1) of the Combines Investigation Act against thirteen companies and one individual. A True Bill was returned by the Grand Jury on May 17, 1972. A trial date has not yet been fixed.

The case had not come up for trial at the end of the fiscal year ended March 31, 1973.

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
Report in the Matter of an Inquiry Relating to the Quotations in 1965 to the Province of Quebec on Public Tenders 162 and 163 for the Sale or Supply of Business Forms.	Alleged Combination	May 25, 1970	competition in the trade in business forms in Canada to the detriment of the public." "In the present case the submission of identical tenders by the five firms does not appear to have been related to a scheme for the rotation of tenders but to the elimination of competition in price between them on the particular contract. The manner in which this objective was sought by a collusive arrangement or agreement was clearly undue. One must necessarily rely on the inference of possible competition allowing a lower price than the collusive price. The circumstantial evidence, the required inferences and the conclusions based on facts necessarily lead the Commission to believe that the allegation in the present case is well-founded. Without justification in the light of subsection (2) of section 32 of the Combines Investigation Act, [the five firms] arranged to prevent or lessen unduly competition in the sale or supply of business forms to the Province of Quebec in response to its Request for Quotation—Public Tender No. 163 dated 27 July 1965, contrary to the public interest."	Autographic Business Forms Limited Drummond Business Forms Ltd. Integrated Business Forms Inc. Modern Business Forms Limited Savoy Business Forms Limited	The Report and evidence were referred to the Department of Justice who advised the evidence was not sufficient to warrant prosecution. The proposed 1973 amendment prohibiting bid-rigging would have ensured prosecution in this case.
Report in the Matter of an Inquiry Relating to the Production, Manufacture, Sale and Supply of Corrugated Metal Pipe and Related Products	Alleged Combination	July 6, 1970	"The Robertsteel price list dated December 2, 1963 was regarded in the industry as the expression of an Open Price Policy and became the accepted standard for the ensuing period until another change in prices took place. In view of what had preceded the		The Report was submitted to the Attorney General of Canada for consideration of the evidence and of what proceedings should be taken. A True Bill was returned by the Grand Jury on September 8, 1972. The case had not come up for trial at

development of this situation the Commission has come to the conclusion that the adoption of common prices in the manner described earlier in this report demonstrates a mutuality of action by the producers named in the Director's allegations which amounted to an arrangement within the meaning of the Combines Investigation Act. The effect of the arrangement was to establish uniform prices and conditions of sale for metal culverts by all producers named in the allegations.

Evidence of meetings between representatives of some of the companies supplying metal culverts in the Province of Quebec is considered by the Commission to give clear indication of the manner in which an Open Price Policy was carried out in that province. The Commission believes that such evidence establishes that changes in policy were the subject of agreement on the part of the company representatives attending such meetings.

The Commission does not base its conclusions with respect to mutuality of actions on the part of head office management in Ontario on the actions taken by any representatives in the Province of Quebec. What was done in Ontario by discussions of principles of an Open Price Policy, by the mutuality of expectations supported by behaviour and by tacit arrangements to secure common prices through the announcement of prices by one company which would be followed by all the others, was carried further in Quebec by direct meetings to discuss price changes or matters relating to prices.

the end of the fiscal year ended March 31, 1973.

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
no report*	Combination (Prescription Drugs)		<p>...</p> <p>The evidence as a whole leads the Commission to conclude that smaller manufacturers while acting in what they considered their own best interest in adopting prices announced by the price leader also brought their price policy into full conformity with the Open Price Policy and made clear to their larger competitors that they were giving active support to the maintenance of that policy. In this way they participated in the arrangement which sought to bring about uniformity of prices and conditions of sale on the part of all manufacturers.</p> <p>...</p> <p>The Commission concludes that the arrangements revealed in this inquiry had the effect of restricting competition unduly in the trade in metal culverts in Ontario and Quebec and consequently were against the public interest."</p>	B.C. Professional Pharmacists' Society and The Pharmaceutical Association of the Province of British Columbia	Two charges were laid at Vancouver under section 32(1) (c) and (d) of the Combines Investigation Act. Judgment was delivered on November 27, 1970, acquitting The Pharmaceutical Association of the Province of British Columbia and convicting the B.C. Professional

Report in the Matter of an Inquiry Relating to the Production, Manufacture, Sale and Supply of Electric Lamps and Related Products	Alleged Combination, Monopoly and Resale Price Maintenance	January 14, "1971"	<p>1. Prior to the general adoption of consignment contracts by agents Canadian Westinghouse Company Limited and Sylvania Electric (Canada) Ltd. engaged during a limited period in the practice of resale price maintenance. The number of such instances disclosed in the evidence was small.</p> <p>2. Canadian General Electric Company Limited, Canadian Westinghouse Company Limited and Sylvania Electric (Canada) Ltd. entered into arrangements to prevent or lessen unduly competition in the manufacture, distribution, sale and supply of electric large lamps. Uniform large lamp sales plans made effective simultaneously by the three manufacturers assisted in the maintenance of common prices and conditions of sale. Programmes for uniform prices on tenders and in the commercial and industrial market generally were made more effective by the use of the practice of consignment selling which enabled manufacturers to control the prices charged by their agents.</p> <p>3. The substantial control of the business of large lamps in Canada by Canadian General Electric Company Limited, Canadian Westinghouse Company Limited and Sylvania Electric (Canada) Ltd. resulted in a monopoly situ-</p>	Canadian General Electric Company Limited Canadian Westinghouse Company Limited Sylvania Electric (Canada) Ltd.	Pharmacists' Society on both charges. A fine of \$10,000 was imposed. An appeal by the Society was subsequently abandoned.
					Prosecution proceedings were instituted in Toronto under sections 32(1) and 33 of the Combines Investigation Act against the three companies. A True Bill was returned by the Grand Jury on May 17, 1972. The case had not come up for trial at the end of the fiscal year ended March 31, 1973.

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
			<p>ation and such business has been operated and is likely to be operated to the detriment or against the interest of the public.</p> <p>4. To remedy the detrimental situation resulting from the restrictive arrangements among Canadian General Electric Company Limited, Canadian Westinghouse Company Limited and Sylvania Electric (Canada) Ltd. and the detrimental monopoly situation in which they have participated, the Commission believes that the following changes are necessary:</p> <p>(a) Abandonment of the practice of each manufacturer exactly matching price schedules of the others without regard to the nature or scale of business being offered and, as one step in the restoration of competition, the adoption of the practice of submitting genuinely competitive bids on public or private tenders.</p> <p>(b) Abandonment of the practice of uniformly classifying customers on the basis of definitions common to the three manufacturers. In the place of this system, manufacturers should offer products for sale without discrimination to all direct buyers without restricting types of lamps to particular classes of distributors.</p> <p>(c) Review from time to time of the customs duties on electric lamps to ensure that the tariff is</p>		

		not being used to insulate Canadian manufacturers from the competition of outside suppliers in a way unduly disadvantageous to users in Canada."	
no report*	Monopoly (Diaper Service)	Wee Folks Diaper Service Inc., ABC Diaper Service Inc. and Baby's Diaper Service Reg'd.	Proceedings under section 31(2) of the Combines Investigation Act for an Order of prohibition were instituted in Montreal in the Exchequer Court of Canada. On February 10, 1971, the Order was granted by the Court.
no report*	Combination (Feltpaper, bitu- mine, insulation, gravel and metal or glass fibre flashings for the construction or sur- facing of roofs on industrial, commercial and public or in- stitutional buildings built or to be built under contracts let by public tender)	Master Sheet Metal & Roofing Contractors Association of Bri- tish Columbia, Jackson Sheet Metal and Roofing Co. Ltd., R. Henderson Roofing and Sheet Metal Ltd., Coast-Hudson Roofing and Sheet Metal Ltd., Seaboard Sheet Metal Ltd., Bollman Roofing and Sheet Metal Ltd., Campbell and Grill Limited, Maurice Fox & Associates Ltd., Grafton Sheet Metal and Roofing Ltd., J. K. Campbell and Associates Limited, Thorn and Co. Ltd., Hank's Roofing Insulation Ltd., M & M Insulation Ltd., Western Sheet Metal and Roofing Ltd., T & G Roofing Ltd., Mainland Roofing and Sheet Metal Ltd., Marine Roofing and Sheet Metal Works (1956) Ltd., Skyline Roofing Ltd.	Proceedings under section 31(2) for an Order of prohibition were instituted in Vancouver in the Supreme Court of British Columbia. On May 3, 1971 the Order was granted by the Court.
no report*	Combination (Stove Oil—Sal- mon Arm, B.C.)	C. P. & R. L. Nelson Ltd., Joe Osadchuk, Derek Mitchell, Arnie Taillefer, John Calver, Canoe Co-operatives Association	Proceedings under section 31(2) for an Order of prohibition were instituted in the Exchequer Court of Canada (now the Federal Court of Canada). On June 3, 1971 the Order was granted by the Court.

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
no report*	Patent Licences			Union Carbide Canada Limited, Canada Packaging Ltd., Atinco Paper Products Limited, Gait Paper Products Limited, Subob Paper Products Limited, Phillip and Irving Granovsky, Trustees doing business as a part- nership under the name of Atlan- tic Packaging Company	An action was instituted by the Crown as Plaintiff in the Exchequer Court (now the Federal Court) for an Order under section 30 voiding licence agreements concluded by Union Car- bide Canada Limited (hereinafter referred to as the Company) with two of the defendants for the use of certain patents for treating thermo- plastic structures and products for ink adhesion known as the corona dis- charge process and otherwise known as the printing patents or, in the alter- native, voiding certain parts of the licences. Particular clauses in the licences were alleged to have the effect of unduly limiting production and manufacture of polyethylene film and related thermoplastic products or the facilities therefor or duly pre- venting, limiting or lessening com- petition in the manufacture, sale or supply of such products as specified in the Plaintiff's Information. An Order was also sought directing the grant of licences under the printing patents to such persons as are interested in their use and considered by the Court to be appropriate persons for license under such conditions as the Court deems proper. While the Company did not admit that its actions had been contrary to section 30 of the Act, it was prepared to make an offer in writing to each manufacturer li- censee to terminate existing licence agreements and to offer to such manufacturers within thirty days and to other manufacturers wishing to enter into licence agreements with the company a revised licence which did not contain the restrictions objected to in the Crown's action and to file on a confidential basis with the

			Director of Investigation and Research copies of all future licences. Minutes of Settlement containing these undertakings were executed on behalf of the Crown and of the Company and filed in the Federal Court on June 19, 1971. At the same time a Notice of Discontinuance of the action against the Company and the other Defendants who were licensees under the patents was filed. (For other proceedings in this matter see Report for the year ended March 31, 1970, at page 103.)
no report*	Combination (Gasoline, Petroleum Products other than Gasoline and Motor Vehicle Parts and Accessories)	Retail Gasoline Dealers Association of Nova Scotia	Proceedings under section 31(2) for an Order of prohibition were instituted at Halifax in the Supreme Court of Nova Scotia. On June 30, 1971 the Order was granted by the Court.
no report*	Resale Price Maintenance (Automobiles)	Mazda Motors of Canada Ltd.	Three charges were laid at Burnaby under section 34(2) and (3). On October 14, 1971 following preliminary hearing the accused was discharged.
no report*	Resale Price Maintenance (Stereo Equipment)	Magnasonic Canada Limited	Two charges were laid at Vancouver under section 34. On March 2, 1972 the accused pleaded guilty and was fined \$1,000 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offence.
no report*	Combination (Ready-Mixed Concrete)	Dufferin Materials & Construction Limited S. P. & M. Materials Limited St. Marys Cement Limited Lake Ontario Cement Limited Richvale Ready-Mix Limited Kilmer Van Nostrand Co. Limited King Paving & Materials Limited Teskey Ready-Mix Limited A.B.C. Ready-Mix Limited Custom Concrete Limited General Concrete Limited	One charge was laid at Toronto under section 32(1)(c). A stay of proceedings was entered against Canada Building Materials Limited because that company had been amalgamated with St. Marys Cement Limited. On April 17, 1972, the accused pleading guilty and fines totalling \$245,000 were imposed as follows: Dufferin Materials & Construction Limited \$35,000 S. P. & M. Materials Limited \$35,000 St. Marys Cement Limited \$35,000 Lake Ontario Cement Limited \$30,000 Richvale Ready-Mix Limited \$30,000

	pipe, insulation materials, lathing supplies, vitrified clay flue lining, roofing materials, tiles, brick and other related building materials)			H. Boehmer & Co. Limited Builders' Supplies Limited S. H. Dellow Limited Dominion Coal & Wood, Limited Dufferin Materials & Construction Limited King Paving & Materials Limited Lake Ontario Cement Limited Ramer Builders' Supplies Limited S. P. & M. Materials Limited St. Marys Cement Limited Thornhill Building Supply Limited Webster and Sons, Limited	in the Supreme Court of Ontario. On June 2, 1972, the Order was issued by the Court.
Report in the Matter of an Inquiry Relating to the Sale, Distribution and Supply of Beer in Ontario.	Alleged Combination	June 5, 1972	<p>The Commission considers that the situation disclosed in the present inquiry brings to light the problems created when price and other controls that tend to 'shelter' small businessmen are removed. As Dr. Edwards remarked in his book referred to above: 'Each specific control should be instituted because in the particular case competition would not accomplish one or more important public purposes which control can achieve.'</p> <p>The Commission concludes that in the present case, the allegation is not supported by the evidence. The Commission considers, however, that the present inquiry may have beneficial results in pointing out to business or professional associations their obligation to the public interest in the field of competition."</p>		The Report and evidence were referred to the Department of Justice who advised the evidence was not sufficient to warrant prosecution.
no report*	Resale Price Maintenance (Gasoline)			Arrow Petroleums Limited	One charge was laid at London under section 38(2)(a). On June 21, 1972, the accused was

R.T.P.C. Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which the Recommendations Applied**	Action Taken on Recommendations and Results***
no report*	Resale Price Maintenance (Guthion)			The Sherwin-Williams Company of Canada Limited	convicted and fined \$1,500. Proceedings pursuant to section 30(2) for an Order of prohibition were instituted at Toronto in the Federal Court of Canada—Trial Division. On September 18, 1972, the Order was granted by the Court.
no report*	Resale Price Maintenance (Simazine or antrazine)			Chipman Chemicals Limited	Proceedings pursuant to section 30(2) for an Order of prohibition were instituted at Toronto in the Federal Court of Canada—Trial Division. On September 18, 1972, the Order was granted by the Court.
no report*	Combination (2,4-D, 2, 4, 5-T and MCP and related prod- ucts)			Chipman Chemicals Limited, The Sherwin-Williams Company of Canada Limited	Proceedings pursuant to section 30(2) for an Order of prohibition were instituted at Toronto in the Federal Court of Canada—Trial Division. On September 18, 1972, the Order was granted by the Court.
no report*	Resale Price Maintenance (Humidifiers)			B. D. Wait Co. Limited	One charge was laid at Montreal under section 38(2)(a). On January 30, 1973, at the conclusion of the preliminary hearing in the Court of Sessions of the Peace, judgment was delivered discharging

*Cases referred directly to the Attorney General of Canada pursuant to Section 15 of the Combines Investigation Act. Cases included are those for which proceedings have been completed.

**In many cases the Reports do not specifically name persons or companies to which the recommendations apply since such Reports, while dealing with the allegations contained in the Statement of Evidence which names particular persons or companies, ordinarily do not deal with the extent of involvement of each such person or company in the alleged offence. Unless, therefore, the recommendations in the Report are stated specifically to apply to named persons or companies, nothing is shown under this heading.

***While the Reports of the Restrictive Trade Practices Commission do not contain recommendations in respect of prosecution proceedings, apart from tariff action any action under the Combines Investigation Act arising out of alleged contraventions of the anti-combines legislation can be taken only through the Courts. The comment under this heading, therefore, sets out proceedings in the Courts where they have been taken or are contemplated, together with the outcome of such proceedings where they have been completed.

****This Report bore an earlier date but was transmitted to the Minister under the Combines Investigation Act on the date shown. It was prepared in English but transmitted to the Minister in both English and French. The difference between the date of the Report and date of transmittal is due to translation into French.
Source: Appendix I and II of the Report of the Director of Investigation and Research (from 1961 to 1973)

APPENDIX C

**CASES UNDER THE COMBINES INVESTIGATION
ACT — MISLEADING ADVERTISING**

CASES UNDER THE
COMBINES INVESTIGATION ACT
MISLEADING ADVERTISING

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising...	Eddie Black's Limited.....	Nine charges were laid under section 33C (1) of the Combines Investigation Act. The accused company was convicted on January 23, 1962, and fined a total of \$1,800. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising	Ultra Opti-Kon Limited and Canadian Tire Corporation, Limited	Two charges were laid in Toronto under section 33C(1) of the Combines Investigation Act. Ultra Opti-Kon Limited pleaded guilty on September 11, 1962, and was fined \$350 on the first charge and given a suspended sentence on the second charge. The Court also granted an Order prohibiting the continuation or repetition of the offence. The charges against Canadian Tire were withdrawn since the evidence was to the effect that it had accepted the advertisement by Ultra Opti-Kon Limited in good faith.
Misleading Price Advertising	Frederick's Department Store Limited	One charge was laid in London under section 33C(1) of the Combines Investigation Act. The accused company pleaded guilty on September 20, 1962, and was fined \$100. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising	Mitchell Photo Supply Ltd.	Eighteen charges were laid in Montreal under section 33C(1) of the Combines Investigation Act. The accused company pleaded guilty to four charges on October 11, 1962, and was fined \$50 on one count and costs on the other three. The remaining charges were withdrawn.
Misleading Price Advertising	Ace Liquidators Limited	Two charges were laid in Ottawa under section 33C(1) of the Combines Investigation Act. The accused company was convicted on one charge on September 13, 1962, and on the second on November 7, 1962, and fined \$150 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising	Colonial Furniture Company (Ottawa) Limited	One charge was laid in Ottawa under section 33C(1) of the Combines Investigation Act. The company was acquitted on December 13, 1962.
Misleading Price Advertising.	Morse Jewellers (Sudbury) Limited	Eight charges were laid at Sudbury under section 33C(1) of the Combines Investigation Act. The Company was acquitted on March 8, 1963, on the ground that the charges were void for duplicity. On appeal by the Crown by way of stated case, the appeal was allowed. An appeal by the accused to the Ontario Court of Appeal was dismissed on February 10, 1964, and the case was remitted to the Magistrate to be disposed of on the merits. On July 21, 1964, the accused was convicted and fined a total of \$1,200. The Court also granted an Order prohibiting the continuation or repetition of the offence.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising	Tibor Feurstein	One charge was laid in St. John's, Newfoundland, under section 33C(1) of the Combines Investigation Act. The accused was convicted on March 21, 1963, and fined \$75 plus \$24 costs.
Misleading Price Advertising.	Ben Sweetland Systems Ltd. et al.....	Three charges were laid in Lethbridge on February 23, 1962, against the company and two individuals under section 33C(1) of the Combines Investigation Act. Despite extensive police inquiries, an essential witness could not be located and the charges were withdrawn on November 18, 1963.
Misleading Price Advertising.	William Regan (Interprovincial Auto Financing (Finance)).	Two charges were laid in Ottawa on March 19, 1963, under section 33C(1) of the Combines Investigation Act. The accused individual disappeared before the inquiry was completed and despite extensive police efforts could not be located. The charges were accordingly withdrawn on February 28, 1964.
Misleading Price Advertising.	Imperial Industries Ltd.....	Six charges were laid in Montreal on May 1, 1963, under section 33C(1) of the Combines Investigation Act. The accused company pleaded guilty on July 4, 1963, and was fined a total of \$500 on the first five charges, sentence being suspended on the sixth charge. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising.	William Becker (Becker's T.V. and Appliances).	One charge was laid in Niagara Falls under section 33C(1) of the Combines Investigation Act. The accused was acquitted on September 13, 1963.
Misleading Price Advertising.	Allied Towers Merchants Limited	Three charges were laid in Hamilton on January 16, 1964, against Allied Towers Merchants Limited and Jet Photo Equipment Sales Limited under section 33C(1) of the Combines Investigation Act. During the trial on May 26, 1964, the charges against Jet Photo Equipment Sales Limited were withdrawn when it became apparent that Allied Towers Merchants Limited accepted responsibility for the advertisement. On June 5 and July 2, 1964, the charges were dismissed. An appeal by the Crown to the County Court of the County of Wentworth was dismissed and the acquittal of the accused confirmed on March 17, 1965.
Misleading Price Advertising.	Allied Towers Merchants Limited	Three charges were laid in Toronto on July 1, 1964, against Allied Towers Merchants Limited and Jet Photo Equipment Sales Ltd. under section 33C(1) of the Combines Investigation Act. At the opening of the trial on the second charge on November 19, 1964, the charges against Jet Photo Equipment Sales Ltd. were withdrawn on the undertaking of Counsel that Allied Towers Merchants Limited accepted responsibility for the advertisement. On November 20, 1964, the charge was dismissed on the ground that while the advertisement was misleading the Crown had not established that this fact was known to the accused. On appeal by the Crown by way of stated case, the appeal was allowed on March 19, 1965, and the case remitted to the Magistrate to be

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
		disposed of on its merits. On May 21, 1965, the accused was convicted on this charge and fined \$200. The Court also granted an Order prohibiting the continuation or repetition of the offence. On June 17, 1965, the accused pleaded guilty to the remaining two charges and a suspended sentence was imposed.
Misleading Price Advertising.	Sterling Agencies Inc. carrying on business under the name of Le Syndicat du Bijou Enrg.	One charge was laid at Quebec under section 33C(1) of the Combines Investigation Act. The Company pleaded guilty on April 14, 1965, and was fined \$150.
Misleading Price Advertising.	R. Faucher Ltée	Five charges were laid at Montreal under section 33C(1) of the Combines Investigation Act. The Company pleaded guilty on June 29, 1965, and was fined a total of \$500.
Misleading Price Advertising.	Produits Diamant Ltée	One charge was laid at Ottawa under section 33C(1) of the Combines Investigation Act. The Company was convicted on August 12, 1965, and was fined \$100.
Misleading Price Advertising.	R & A. Cohen Limited	Seven charges were laid at Ottawa under section 33C(1) of the Combines Investigation Act. The Company was convicted on November 15, 1965. A fine of \$100 and costs on the first count and suspended sentence on the remaining six counts were imposed.
Misleading Price Advertising.	J. L. Orme & Sons Limited	Two charges were laid at Ottawa under section 33C(1) of the Combines Investigation Act. The Company pleaded guilty on December 6, 1965. A fine of \$100 and costs on the first count and suspended sentence on the remaining count were imposed.
Misleading Price Advertising	Bernard Trempe (Le Foyer du Cadeau de Québec Enrg.)	One charge was laid at Quebec under section 33C(1) of the Combines Investigation Act. On April 1, 1966, the accused pleaded guilty and was fined \$100 and costs.
Misleading Price Advertising	Mountain Furniture Company Limited	Two charges were laid at Peterborough under section 33C(1) of the Combines Investigation Act. The Company was convicted on one charge on July 19, 1966, and fined \$250 and \$85.50 costs. The second charge was dismissed.
Misleading Price Advertising	Featherweight Mattress Limited	One charge was laid at Peterborough under section 33C(1) of the Combines Investigation Act. The Company was convicted on July 19, 1966, and fined \$250 and \$44.50 costs.
Misleading Price Advertising	F. W. Woolworth Co. Limited carrying on business under the name and style of Woolco Department Store	Two charges were laid at Hamilton under section 33C(1) of the Combines Investigation Act. On October 5, 1966, the Company pleaded guilty and was fined a total of \$400. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising	M. Loeb Limited	One charge was laid at Ottawa under section 33C(1) of the Combines Investigation Act. On December 5, 1966, the accused pleaded guilty and was fined \$500 and costs. An appeal by the accused on sentence was abandoned on June 26, 1967. A similar charge against an I.G.A. retailer was withdrawn.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising	Carmen Jewellery Mfg. Co. Inc.	One charge was laid at Quebec under section 33C(1) of the Combines Investigation Act. The trial was held on October 4, 1966, and on May 16, 1967, the accused was convicted and fined \$200 and costs.
Misleading Price Advertising	B. C. Collateral Loan Brokers Ltd.	One charge was laid at Vancouver under section 33C(1) of the Combines Investigation Act. On June 23, 1967, the accused pleaded guilty and a suspended sentence was imposed.
Misleading Price Advertising	Mother Parker's Tea and Coffee Limited Sandra Instant Coffee Company Limited	One charge was laid at both Ottawa and Eastview under section 33C(1) of the Combines Investigation Act against each company. On September 29, 1967, Mother Parker's Tea and Coffee Limited pleaded guilty to the charge at Ottawa and was fined \$400. The Court also granted an Order prohibiting the continuation or repetition of the offence. The remaining charges against both companies were withdrawn.
Misleading Price Advertising	Trans-Canada Jewelry Importing Co. Ltd.	One charge was laid at Montreal under section 33C(1) of the Combines Investigation Act. The trial was held on March 23, 1966, and on October 24, 1966, judgment was delivered acquitting the accused. The Crown appealed by way of trial <i>de novo</i> . The appeal was heard on May 19, 1967, and, following a motion for non-suit, judgment was delivered on June 12, 1967, convicting the accused and imposing a fine of \$400. The accused appealed and on November 16, 1967, judgment was delivered allowing the appeal and referring the matter back to the Superior Court so that the trial <i>de novo</i> might continue. On December 15, 1967, the accused pleaded guilty and on December 20, 1967, was fined \$200 and costs. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising	G. McGrath and S. O. Smith operating under the name and style of Top Discount Stores	One charge was laid at Ottawa under section 33C(1) of the Combines Investigation Act. The trial was held on October 30, 1967, and November 8, 1967. On December 8, 1967, judgment was delivered convicting the accused and each was fined \$200 and costs. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising	Kiddytown Ltd.	One charge was laid at Ottawa under section 33C(1) of the Combines Investigation Act. On December 8, 1967, the accused pleaded guilty and was fined \$100 and costs. The Court also granted an Order prohibiting the continuation or repetition of the offence.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising	Allied Towers Merchants Limited, E. Baiden	One charge was laid at Ottawa under section 33C (1) of the Combines Investigation Act against Allied Towers Merchants Limited and one charge under section 33C(1) against E. Baiden. The trial of each charge was held on February 16, 1968, following which E. Baiden was acquitted. On February 23, 1968, judgment was delivered convicting Allied Towers Merchants Limited and a fine of \$500 was imposed.
Misleading Price Advertising	Ed. Archambault Incorpor�	Two charges were laid at Montreal under section 33C(1) of the Combines Investigation Act. On April 18, 1968, the accused pleaded guilty and was fined \$150 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising	Podersky's Limited	One charge was laid at Edmonton under section 33C(1) of the Combines Investigation Act. The trial was held on April 25 and April 30, 1968. On June 5, 1968, the accused was acquitted.
Misleading Price Advertising	Anglo-French Carpet Co. Ltd.	Two charges were laid at Ottawa under section 33C(1) of the Combines Investigation Act. On June 20, 1968, the accused pleaded guilty to one charge and was fined \$200 and costs. The Court also granted an Order prohibiting the continuation or repetition of the offence. The remaining charge was withdrawn.
Misleading Price Advertising	Simpsons-Sears Limited	One charge was laid at Ottawa under section 33C(1) of the Combines Investigation Act. On July 11, 1968, the accused pleaded guilty and was fined \$200 and costs.
Misleading Price Advertising	C. P. Kaufmann Ltd.	One charge was laid at Regina under section 33C(1) of the Combines Investigation Act. On August 23, 1968, the accused pleaded guilty and was fined \$50 and \$2.50 costs.
Misleading Price Advertising	Cana (House) Ware Limited	One charge was laid at Powell River under section 33C(1) of the Combines Investigation Act. On September 25, 1968, the accused pleaded guilty and was fined \$200. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising	Miller's T.V. Ltd.	One charge was laid at Winnipeg under section 33C(1) of the Combines Investigation Act. The trial was held on October 23-24, 1968, following which the accused was convicted and fined \$200. The Court also granted an Order prohibiting the continuation or repetition of the offence.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising	Warner Bros. Limited	Three charges were laid at Halifax under section 33C(1) of the Combines Investigation Act. The trial was held on November 5, 1968, following which the accused was convicted and fined \$150 on the first charge and \$100 on each of the other two charges and costs on each charge.
Misleading Price Advertising	Ron Woolf	Six charges were laid at Montreal under section 33C(1) of the Combines Investigation Act. The trial was held during the period August 22 to September 30, 1968. On November 4, 1968, the accused was acquitted.
Misleading Price Advertising	George M. McDonald, Robert A. McDonald, William G. McDonald and John J. McDonald carrying on business under the name and style of Laurentian Trading Post	One charge was laid at Ottawa under section 33C(1) of the Combines Investigation Act. On November 14, 1968, the accused were convicted and a fine of \$50 was imposed.
Misleading Price Advertising	Patton's Place Limited	One charge was laid at London under section 33C(1) of the Combines Investigation Act. The trial was held on November 7, 1968. On November 21, 1968, the accused was convicted and fined \$250 and costs.
Misleading Price Advertising	Michel Bourcier	Three charges were laid at Montreal under section 33C(1) of the Combines Investigation Act. On January 20, 1969, the accused pleaded guilty and was fined \$50, \$25 and \$25 respectively on each of the charges. The Court also granted an Order prohibiting the continuation or repetition of the offences.
Misleading Price Advertising	Colgate-Palmolive Limited	One charge was laid at Ottawa under section 33C(1) of the Combines Investigation Act. On April 8, 1968, the accused was acquitted. The Crown appealed by trial <i>de novo</i> to the County Court. The appeal was heard on December 20, 1968, and on January 21, 1969, judgment was delivered convicting the accused. No penalty was imposed.
Misleading Price Advertising	The Chesterfield Shop Limited	One charge was laid at Toronto under section 33C(1) of the Combines Investigation Act. On February 20, 1969, the accused pleaded guilty and was fined \$300. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising	Advance T.V. & Car Radio Centre Ltd. and Arnold Frieman operating as Advance T.V. & Car Radio Centre, and as Advance T.V. Sales & Service	Two charges were laid against Advance T.V. & Car Radio Centre Ltd. and two charges against Arnold Frieman at Winnipeg under section 33C(1) of the Combines Investigation Act. One charge against Advance T.V. & Car Radio Centre Ltd. was dismissed on the ground the Information was not sufficient. The Crown appealed by way of stated case to the Manitoba Court of Appeal. On October 25, 1968, judgment was delivered allowing

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
		<p>the appeal. Application by the accused for leave to appeal to the Supreme Court of Canada was refused. The trial of the charge on the merits was held on January 2, 3 and 6, 1969. Judgment was delivered on January 9, 1969, convicting the accused and imposing a fine of \$50 and costs. The trial of the remaining charge was held on February 25, 1969, and the accused was acquitted. The charges against Arnold Frieman were withdrawn.</p>
Misleading Price Advertising (Shampoo)	Thomas Sales Agencies Limited (1963)	<p>Two charges were laid at Ottawa under section 33C(1) of the Combines Investigation Act. The accused was convicted on the first charge and acquitted on the second on July 19, 1968, a fine of \$100 being imposed on the former. The Crown appealed the acquittal by trial <i>de novo</i> and on April 30, 1969, the appeal was allowed, a fine of \$400 being imposed on the second charge, and an Order was granted prohibiting the continuation or repetition of the offence.</p>
Misleading Price Advertising (Phonograph Records)	Kellys on Seymour Limited	<p>One charge was laid at Vancouver under section 33C(1) of the Combines Investigation Act. On May 13, 1969, the accused was convicted and fined \$150. The Court also granted an Order prohibiting the continuation or repetition of the offence.</p>
Misleading Price Advertising (Long-playing Records)	Sherman Enterprises Ltd.	<p>Four charges were laid at Ottawa under section 33C(1) of the Combines Investigation Act. On May 22, 1969, the accused pleaded guilty and was fined \$50 on each charge.</p>
Misleading Price Advertising (Television Sets)	F. W. Woolworth Co. Limited carrying on business under the name and style of Woolco Department Stores	<p>Two charges were laid at Regina under section 33C(1) of the Combines Investigation Act. On May 29, 1969, the accused was acquitted on the first charge. An appeal by the Crown by way of trial <i>de novo</i> subsequently was withdrawn. The second charge was dismissed on September 3.</p>
Misleading Price Advertising (Carpets)	United Carpet Limited, Israel Lipovenko and David Tkatch carrying on business under the name and style of Canadian Broadloom Co.	<p>One charge was laid at Montreal under section 33C(1) of the Combines Investigation Act. On June 4, 1969, the accused were convicted and each was fined \$100. The Court also granted an Order prohibiting the continuation or repetition of the offence.</p>
Misleading Price Advertising (Colour Television and Hi-fi Stereophonic Phonographs)	Tape Instructors Company of Canada Ltd. carrying on business under the firm name and style of Tape-Co.	<p>Two charges were laid at Calgary under section 33C(1) of the Combines Investigation Act. On June 11, 1969, the accused pleaded guilty and was fined \$50 on each charge.</p>

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
		The Court also granted an Order prohibiting the continuation or repetition of the offences.
Misleading Price Advertising (Carpets)	Edward Gural and David Segal carrying on business under the name and style of King of Broadloom	One charge was laid at Montreal under section 33C(1) of the Combines Investigation Act. The accused pleaded guilty on June 19, 1969, and each was fined \$100 or, in default, 15 days. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Breach of Order of prohibition (Misleading Price Advertising)	Allied Towers Merchants Limited	One charge was laid at Toronto under section 31(3) of the Combines Investigation Act. On June 24, 1969, the accused was convicted and a fine of \$1,500 imposed.
Misleading Price Advertising (Radios)	C. P. Kaufmann Ltd.	One charge was laid at Regina under section 33C(1) of the Combines Investigation Act. On May 9, 1969, the accused pleaded guilty and was fined \$100 and costs. An appeal by the Crown on the amount of the fine was dismissed on July 23.
Misleading Price Advertising (Stereophonic Radio Phonograph)	MacLeod Stedman Ltd.	Two charges were laid at Regina under section 33C(1) of the Combines Investigation Act. The accused pleaded guilty on May 9, 1969, and was fined \$75 and costs on the first charge and \$1 and costs on the second charge. An appeal by the Crown on the amount of the fines was dismissed on July 23.
False Advertising (Jet Ignition Unit with Transistors)	Jack Anthony	Four charges were laid at Ottawa, three under section 33D(1) and one under section 33D(2) of the Combines Investigation Act. On September 17, 1969, the accused pleaded guilty to the first count under section 33D(1) and was fined \$500 or six months in jail. The Court granted an Order prohibiting the continuation or repetition of the offence. The remaining charges were withdrawn.
Misleading Price Advertising (Shampoo)	The Andrew Jergens Company Limited	One charge was laid at Ottawa under section 33C(1) of the Combines Investigation Act. On September 17, 1969, the accused pleaded guilty and was fined \$750. The Court granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Snow Throwers)	Ed Leroy Limited	Two charges were laid at Ottawa under section 33C(1) of the Combines Investigation Act. On September 23, 1969, the accused pleaded guilty and was sentenced to a fine of \$100 on the first count and suspended sentence on the second count.
Misleading Price Advertising (Washing Machines)	Lopatin Brothers Furniture Limited carrying on business under the name and style of Royal Furniture Company	One charge was laid at Windsor under section 33C(1) of the Combines Investigation Act. On September 24, 1969, the accused pleaded guilty and was fined \$150.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising (Toaster)	La Salle Factories Ltd.	One charge was laid at Ottawa under section 33C(1) of the Combines Investigation Act. On October 1, 1969, the accused pleaded guilty and was fined \$300. The Court granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Toys)	Michael Benes carrying on business under the name and style of Universal Agencies	One charge was laid at Ottawa under section 33C(1) of the Combines Investigation Act. On October 7, 1969, the accused was convicted and a fine of \$100 imposed. The Court granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Television Sets)	Genser & Sons Limited	Two charges were laid at Winnipeg under section 33C(1) of the Combines Investigation Act. On October 27, 1967, the accused was acquitted. The Crown appealed by way of trial <i>de novo</i> . Preliminary objections were taken to the sufficiency of the Notice of Appeal itself and to the authority of the person signing the Notice. It was held that the Notice of Appeal was valid and that the person signing the Notice had authority to do so. The accused appealed to the Manitoba Court of Appeal which on November 29, 1968, dismissed the appeal and referred the matter back to the County Court Judge to proceed with the trial <i>de novo</i> . Application for leave to appeal to the Supreme Court of Canada was refused. The appeal by trial <i>de novo</i> was heard on June 10, 1969, following which judgment was reserved. On October 21, 1969, judgment was delivered convicting the accused on both charges and imposing a fine of \$500 on each.
Misleading Price Advertising (Hair Spray)	Clark's Gamble of Canada Limited	One charge was laid at Winnipeg under section 33C(1) of the Combines Investigation Act. On October 21, 1969, the accused pleaded guilty and a fine of \$150 was imposed.
Misleading Price Advertising (Paint)	Cobert Distributing Company Limited carrying on business under the name and style of Dyna Stores	Three charges were laid at Ottawa under section 33C(1) of the Combines Investigation Act. The accused pleaded guilty on October 29, 1969, to one charge and a fine of \$100 was imposed. The Court also granted an Order prohibiting the continuation or repetition of the offence. The remaining charges were withdrawn. Since the offence occurred when certain corporate and management changes were taking place, an affiliated company and two individuals were also charged and following admission of the offence by Cobert Distributing Company Limited, these charges were withdrawn.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising (Phonograph Records)	Montrose Center Inc.	Five charges were laid at Montreal under section 33C(1) of the Combines Investigation Act. On November 17, 1969, the accused was convicted and a fine of \$100 imposed on the first count and \$15 on each of the remaining counts. The accused was also assessed costs of \$6 and \$86.90 witness fees. The Court granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Furniture)	Ravvin's Ltd.	Fifteen charges were laid at Calgary under section 33C(1) of the Combines Investigation Act. On November 18, 1969, the accused pleaded guilty and a fine of \$50 was imposed on each charge. The Court granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Dolls)	Billbern Drug Limited while carrying on business under the name and style of York Pharmacy	One charge was laid at Toronto under section 33C(1) of the Combines Investigation Act. On December 15, 1969, the accused was acquitted.
Misleading Price Advertising (Mattress Units)	Ameublement Dumouchel Furniture Limited	Two charges were laid at Ottawa under section 33C(1) of the Combines Investigation Act. On February 6, 1970, the accused was convicted and fined \$200 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Carpets)	King's Carpets and Rugs (1968) Ltd.	One charge was laid at Vancouver under section 33C(1) of the Combines Investigation Act. On February 18, 1970, the accused pleaded guilty and a fine of \$200 was imposed. Two affiliated companies were also charged and following admission of the offence by King's Carpets and Rugs (1968) Ltd., the charge was withdrawn.
Misleading Price Advertising (Combination Stereophonic Phonograph and Radio Cabinet)	Furniture Square 62 Ltd.	One charge was laid at Regina under section 33C(1) of the Combines Investigation Act. The accused pleaded guilty on February 25, 1970, and a fine of \$50 was imposed.
Misleading Price Advertising (Laxative)	G. Tamblyn Limited	One charge was laid at Ottawa under section 33C(1) of the Combines Investigation Act. On February 25, 1970, the accused pleaded guilty and a fine of \$300 was imposed. The Court granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Nylon Carpets)	Amalgamated Carpets and Furnishings Ltd.	One charge was laid in Edmonton under section 33C(1) of the Combines Investigation Act. On March 3, 1970, the accused was convicted and was fined \$200 and \$277.50 witness costs. The Court granted an Order prohibiting the continuation or repetition of the offence.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising (Sewing Machines)	John Irwin Sewing Machine Company, Limited	Two charges were laid in Hamilton under section 33C(1) of the Combines Investigation Act. On March 10, 1970, the accused pleaded guilty and was fined \$50 on each count. The Court granted an Order prohibiting the continuation or repetition of the offence. Three affiliated companies were named in the charge but when the John Irwin Sewing Machine Company, Limited accepted responsibility for the advertisements, the charges against the other three companies were withdrawn.
False Advertising (Price of Gasoline)	Harbour Oil Limited carrying on business under the name and style of Fleet Centre Service, and Jack Mantell	One charge was laid at Moose Jaw under section 33D(1) of the Combines Investigation Act. On March 19, 1970, the accused pleaded guilty and each was fined \$50. The Court granted Orders prohibiting the continuation or repetition of the offence. (An appeal by the Crown on the amount of the fines was dismissed on June 3).
Misleading Price Advertising (Phonograph Needles)	American Music Corporation Ltd.	Two charges were laid at Ottawa under section 33C(1) of the Combines Investigation Act. On March 20, 1970, the accused pleaded guilty to one charge and was fined \$200. The Court granted an Order prohibiting the continuation or repetition of the offence. The second charge relating to a catalogue which was then out of date was withdrawn.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising (Ovenware)	Harold Max Bober, Four Corners T.V. and Stereo Ltd., and Charles Szegoe carrying on business under the name and style of Globus Industries	One charge was laid against each of the accused at Oakville under section 33C(1) of the Combines Investigation Act. On March 26, 1970, Four Corners T.V. and Stereo Ltd. was acquitted and Harold Max Bober was convicted and fined \$100. (The trial of Charles Szegoe has been adjourned to November 5.)
Misleading Price Advertising (Television Sets)	The J. H. Ashdown Hardware Company Limited	Two charges were laid at Winnipeg under section 33C(1) of the Combines Investigation Act. On April 13, 1970, the accused pleaded guilty to both charges and was fined \$200 on each.
Misleading Price Advertising (Ring)	Camille Michaud and Les Bijouteries Michaud Inc.	One charge was laid at Montreal under section 33C(1) of the Combines Investigation Act. On April 14, 1970, the accused individual pleaded guilty and was fined \$100. The Court also granted an Order prohibiting the continuation or repetition of the offence. The charge against the company was withdrawn.
Misleading Price Advertising (Pianos)	Bates Electric Ltd. and Ronald T. Whitehouse	Two charges were laid at Edmonton under section 33C(1) of the Combines Investigation Act. On April 17, 1970, the accused company pleaded guilty to both charges and was fined \$10 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offences. An appeal was taken by the Crown on the amount of the fines and on September 29, 1970, the fines were increased to \$150 on each charge. The charges against the accused individual were withdrawn.
Misleading Price Advertising (Paint)	Du-Chem Paint Company Limited	Four charges were laid at Ottawa under section 33C(1) of the Combines Investigation Act. On April 27, 1970, the accused pleaded guilty and was fined \$500 on the first charge and \$50 on each of the remaining three charges. The Court also granted an Order prohibiting the continuation or repetition of the offences.
Misleading Price Advertising (Soup Mix)	Grissol Foods Ltd.	Three charges were laid at Ottawa under section 33C(1) of the Combines Investigation Act. On April 29, 1970, the accused pleaded guilty and was fined \$500 on the first charge and \$250 on each of the remaining two charges.
Misleading Price Advertising (Cosmetics)	Dylex Diversified Limited	One charge was laid at Brockville under section 33C(1) of the Combines Investigation Act. It subsequently was ascertained that the retail store, Valu-Fair Discount Store, was not owned or operated by the accused, and on May 6, 1970, the charge was therefore withdrawn. As the statutory time limit for instituting proceedings had then expired, no further proceedings were instituted.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising (Circular Saw)	Matthews Lumber Company Limited	One charge was laid at Windsor under section 33C(1) of the Combines Investigation Act. On May 14, 1970, the accused pleaded guilty and was fined \$175.
Misleading Price Advertising (Television Set)	Ameublement Leger Inc. and John Ditomasso	One charge was laid at Montreal under section 33C(1) of the Combines Investigation Act. On June 2, 1970, the accused company pleaded guilty and on July 16, 1970, was fined \$200. The Court also granted an Order prohibiting the continuation or repetition of the offence. The charge against the accused individual was withdrawn.
Misleading Price Advertising (Cosmetics)	Dollar Wise Stores Limited (Dollar Wise Discount Store)	One charge was laid at Brockville under section 33C(1) of the Combines Investigation Act. On June 12, 1970, the accused pleaded guilty and was fined \$50. The Court also granted an Order prohibiting the continuation or repetition of the offence. A charge laid against a related company was withdrawn when it was subsequently ascertained that it did not own or operate the retail store and the charge was then laid against Dollar Wise Stores Limited.
Misleading Price Advertising (Television Sets)	R. A. Beamish Stores Company Limited	Four charges were laid at Ottawa under Section 33C(1) of the Combines Investigation Act. On February 20, 1970, judgment was delivered acquitting the accused. The Crown appealed by way of trial <i>de novo</i> . On June 30, 1970, judgment was delivered convicting the accused on three charges and imposing a fine of \$50 on each charge. The acquittal on the fourth charge was upheld.
False Advertising (Margarine)	Monarch Fine Foods Co. Limited	Four charges were laid at Edmonton under section 33D(1) of the Combines Investigation Act. A preliminary hearing was held on July 16, 1970, following which the accused was discharged.
Misleading Price Advertising (Doll)	Lund's Sports and Hobby (Sheridan Mall) Limited	One charge was laid at Mississauga under section 33C(1) of the Combines Investigation Act. On July 22, 1970, the accused pleaded guilty and was fined \$200. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Diamond Ring)	Leon Neima Limited	Four charges were laid at Halifax under section 33C(1) of the Combines Investigation Act. On August 4, 1970, judgment was delivered acquitting the accused on the first three charges and convicting on the fourth. A fine of \$200 was imposed.
Misleading Price Advertising (Circular Saw)	Conklin Lumber Company Limited	One charge was laid at Windsor under Section 33C(1) of the Combines Investigation Act. On August 20, 1970, the accused was acquitted.
False Advertising (Housing Project)	Standard Structural Wood Co. Ltd. and Leon Segal	One charge was laid in Montreal under section 33D(1) of the Combines Investigation Act. On August 25,

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
		1970, the accused company pleaded guilty and on August 26 was fined \$1,000. The charge against the accused individual was withdrawn.
Misleading Price Advertising (Mouthwash)	Alexander M. Seltzer (Seltzer's Drug Store)	One charge was laid at Montreal under section 33C(1) of the Combines Investigation Act. On August 26, 1970, the accused pleaded guilty and was fined \$100.
Misleading Price Advertising (Tape Decks)	Television Accessories and Tubes Limited	One charge was laid at Toronto under section 33C(1) of the Combines Investigation Act. On September 1, 1970, the accused was acquitted.
Misleading Price Advertising (Paint)	Tonecraft Paints Limited	Two charges were laid at Ottawa under section 33C(1) of the Combines Investigation Act. On September 11, 1970, the accused pleaded guilty to the second charge and was fined \$300. The Court also granted an Order prohibiting the continuation or repetition of the offence. The first charge was withdrawn.
Misleading Price Advertising (Rifles)	Top Value Ltd. (Giant Tiger)	One charge was laid at Ottawa under section 33C(1) of the Combines Investigation Act. On September 18, 1970, the accused was acquitted.
Misleading Price Advertising (Carpets)	Capitol Distributors Ltd.	One charge was laid in Vancouver under section 33C(1) of the Combines Investigation Act. On September 25, 1970, the accused pleaded guilty and was fined \$500.
False Advertising (Film)	Centennial Pharmacy Ltd.	One charge was laid at Vancouver under section 33D(1) of the Combines Investigation Act. On September 28, 1970, judgment was delivered convicting the accused and a fine of \$100 was imposed. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Television Sets)	The J. Pascal Hardware Co. Limited	Six charges were laid at Montreal under section 33D(1) of the Combines Investigation Act. On September 29, 1970, the accused pleaded guilty to the charges and was fined \$40 on each charge.
False Advertising (Can Piercer)	Van-Pak Regd. Limited	One charge was laid in Ottawa under section 33D(1) of the Combines Investigation Act. On October 19, 1970, the accused was convicted and fined \$25. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Furniture)	Centre d'Exposition Permanente du Meuble de Montreal Inc.	Two charges were laid at Montreal under section 33D(1) of the Combines Investigation Act. On November 2, 1970, the accused pleaded guilty and was fined \$150 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offences.
False Advertising (Film)	London Drugs (No. 2) Limited	One charge was laid at Vancouver under section 33D(1) of the Combines Investigation Act. On November 6, 1970, judgment was delivered acquitting the accused.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising (Swimming Pool Water Filters)	Convertible Pools Ontario Limited	One charge was laid at Toronto under section 33C(1) of the Combines Investigation Act. On November 17, 1970, the accused was convicted and fined \$300. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Uniforms)	Uniform Boutique Ltd. and White Sister Uniform Inc.	One charge was laid at Montreal under section 33C(1) of the Combines Investigation Act. On November 17, 1970, the accused Uniform Boutique Ltd. was convicted and fined \$100. The charge against White Sister Uniform Inc. was withdrawn.
False Advertising (Men's and Boy's Clothing)	Le Roi des Habits Compagnie Ltée	Two charges were laid at Montreal under section 33D(1) of the Combines Investigation Act. On November 17, 1970, the accused pleaded guilty and was fined \$200 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Puzzle)	Parker Brothers Games Ltd.	One charge was laid at Toronto under section 33D(1) of the Combines Investigation Act. On November 20, 1970, the accused pleaded guilty and was fined \$250. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Men's Socks)	Plymouth Clothing Company Limited	One charge was laid at Ottawa under section 33C(1) of the Combines Investigation Act. On November 20, 1970, the accused pleaded guilty and was fined \$50. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Business Cards)	Frederick A. Kimmerly (Standard Printing)	One charge was laid at Windsor under section 33D(1) of the Combines Investigation Act. A preliminary hearing was held on November 23, 1970, following which the accused was discharged.
False Advertising (Men's Neckties)	Omega Neckware Company Limited	One charge was laid at Toronto under section 33D(1) of the Combines Investigation Act. On November 26, 1970, the accused was acquitted.
Misleading Price Advertising (Camera Kits)	Michael Aychental (Premier Discount)	One charge was laid at Bracebridge under section 33C(1) of the Combines Investigation Act. On December 2, 1970, the accused pleaded guilty at Huntsville and was fined \$100.
Misleading Price Advertising (Speakers and Amplifier Kits)	Miller Electronics Ltd.	Two charges were laid at Vancouver under section 33C(1) of the Combines Investigation Act. On December 8, 1970, the accused pleaded guilty to one charge and was fined \$200. The Court also granted an Order prohibiting the continuation or repetition of the offence. The second charge was withdrawn.
Misleading Price Advertising (Camera Kits)	Economy Fair Limited (Economy Fair Discount Stores)	One charge was laid at Bracebridge under section 33C(1) of the Combines Investigation Act. As it was

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
		subsequently ascertained that ownership of the Economy Fair Discount Stores outlet in Huntsville had been sold to another company prior to commission of the alleged offence, the charge was withdrawn on December 16, 1970. As the statutory time limit for instituting proceedings had then expired, no further proceedings were instituted.
Misleading Price Advertising (Combination Stereo-Phonograph and Television Sets)	McKay's Television & Appliances Limited	One charge was laid at Windsor under section 33C(1) of the Combines Investigation Act. On June 15, 1970, the accused was acquitted. The Crown appealed the acquittal by way of trial <i>de novo</i> and on December 17, 1970, the appeal was allowed and a fine of \$400 was imposed.
Misleading Price Advertising (Doll)	Gaymark Party Services Limited (House of Toys and Gifts)	Two charges were laid at Toronto under section 33C(1) of the Combines Investigation Act. On January 12, 1971, the accused pleaded guilty and was fined \$25 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offences.
Misleading Price Advertising (Ovenware)	Charles Szegoe (Globus Industries)	One charge was laid at Oakville under section 33C(1) of the Combines Investigation Act. On January 14, 1971, the accused was convicted and fined \$100. (For other proceedings in this matter see Report for the year ended March 31, 1970, at page 106).
Misleading Price Advertising (Furniture)	Simpsons-Sears Limited	One charge was laid at Ottawa under section 33C(1) of the Combines Investigation Act. On January 18, 1971, the accused was acquitted.
Misleading Price Advertising (Staplers)	J. Pascal Hardware Company Limited	Two charges were laid at Ottawa under section 33C(1) of the Combines Investigation Act. On January 18, 1971, the accused was convicted on one charge and fined \$150. The remaining charge was withdrawn.
Misleading Price Advertising (Wall Plaques)	Gaycraft Limited	One charge was laid at Toronto under section 33C(1) of the Combines Investigation Act. On January 20, 1971, the accused was convicted and fined \$500. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Electronic T.V. Antenna)	Jean Lanno	Two charges were laid at Montreal, one under section 33D(1) and one under section 33D(2) of the Combines Investigation Act. On January 26, 1971, the accused pleaded guilty to the charge under section 33D(1) and was fined \$200. The Court also granted an Order prohibiting the continuation or repetition of the offence. The charge under section 33D(2) was withdrawn.
False Advertising (Wood Panels)	Easy Tile & Building Supply Stores Limited	One charge was laid at Toronto under section 33D(1) of the Combines

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
		Investigation Act. On January 26, 1971, the accused was convicted and fined \$500.
False Advertising (Tires)	Princess Auto & Machinery Ltd.	Two charges were laid at Winnipeg under section 33D(1) of the Combines Investigation Act. On January 29, 1971, the accused pleaded guilty to one charge and was fined \$300. Proceedings were stayed on the second charge.
Misleading Price Advertising (Chandeliers)	Caneurop Manufacturing Limited	Two charges were laid in Toronto under section 33C(1) of the Combines Investigation Act. On February 18, 1971, the accused was convicted on both charges and fined \$200 on each. The Court also granted an Order prohibiting the continuation or repetition of the offences.
Misleading Price Advertising (Vinyl Flooring)	Beaver Lumber Company Limited	One charge was laid at Hamilton under section 33C(1) of the Combines Investigation Act. On February 25, 1971, the accused pleaded guilty and was fined \$500.
Misleading Price Advertising (Television Sets)	Hudson's Bay Company	One charge was laid at Vancouver under section 33C(1) of the Combines Investigation Act. On March 4, 1971, the accused pleaded guilty and was fined \$200.
False Advertising (Furniture)	Le Père du Meuble Inc.	Two charges were laid at Montreal under section 33D(1) of the Combines Investigation Act. On March 10, 1971, the accused pleaded guilty and was fined \$100 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offences.
False Advertising (Mobile Home)	Joe T. Agius (Sunshine City Homes & Trailers)	One charge was laid at Orillia under section 33D(1) of the Combines Investigation Act. Following a preliminary hearing, the accused was committed for trial. The Grand Jury returned a True Bill at Barrie on March 8, 1971. The trial before a Judge and jury in the Supreme Court of Ontario commenced on March 10 and on March 12 the accused was acquitted.
False Advertising (Carpeting)	L.W.L. Associates Ltd. (Crown Broadloom Corp.)	Two charges were laid at Ottawa under section 33D(1) of the Combines Investigation Act. On March 12, 1971, the accused pleaded guilty and was fined \$100 on each charge.
False advertising (Sewing Machines)	James Losee (Whitby Sewing Centre)	One charge was laid at Whitby under section 33D(1) of the Combines Investigation Act. On March 15, 1971, the accused was convicted and fined \$500. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Mattresses)	The Royal Stores Limited	One charge was laid at St. John's under section 33C(1) of the Combines In-

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
False Advertising (Holiday Promotion)	J. Clark & Son Limited	investigation Act. On March 18, 1971, the accused pleaded guilty and was fined \$75. One charge was laid at Fredericton under section 33D(1) of the Combines Investigation Act. On March 25, 1971, the accused pleaded guilty and was fined \$250.
False Advertising (Used Cars)	Harvac Investments Ltd. and Harvey Solloway	One charge was laid against the company and three charges against the company and the individual in Vancouver under section 33D(1) of the Combines Investigation Act. On March 30, 1971, both accused pleaded guilty and were remanded to April 6 for sentence when the accused company was fined \$100 on each of the four charges and the accused individual \$100 on each of the three charges. The Court also granted an Order prohibiting the continuation or repetition of the offences.
Misleading Price Advertising (Chord Organ Ensemble) and Breach of Order of Prohibition	F. W. Woolworth Co. Limited	One charge was laid at Toronto under section 33C(1) and two charges under section 31(3) of the Combines Investigation Act. On November 26, 1970, the charges under section 31(3) were dismissed. On April 22, 1971, the charge under section 33C(1) was withdrawn.
False Advertising (Furniture)	Murray Viger	Six charges were laid in Burlington under section 33D(1) of the Combines Investigation Act. On June 19, 1970, the accused was convicted and fined \$50 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offence. An appeal by the accused to the Ontario Court of Appeal was dismissed on March 5, 1971. An application for leave to appeal to the Supreme Court of Canada was refused on May 3, 1971.
False Advertising (Doll)	Reliable Toy Co. Ltd.	One charge was laid in Montreal under section 33D(1) of the Combines Investigation Act. On January 25, 1971, the accused pleaded guilty and on May 17, 1971, was fined \$500. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Toothpaste)	Robert Tice carrying on business under the firm name and style of Shop-Eze Discount Store	One charge was laid at Trenton under section 33C(1). On April 14, 1971 the accused pleaded guilty and was fined \$50.
Misleading Price Advertising (Radio)	Trans Electronic Supply Ltd.	One charge was laid at Montreal under section 33C(1). On April 20, 1971 the accused pleaded guilty and was fined \$150.
False Advertising (Frozen Foods)	John Hamilton carrying on business under the firm name and style of Quality Freezer Foods	Three charges were laid at Ottawa under section 33D(1). On April 28, 1971 the accused pleaded guilty to the first charge and was fined \$150. The remaining charges were withdrawn.
False Advertising (Furniture)	Mount Royal Furniture & Television Inc.	One charge was laid at Montreal under section 33D(1). On April 28, 1971 the

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
False Advertising (Furniture)	Ameublement Leger Inc. and John Ditomasso	accused pleaded guilty and was fined \$250. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Promotion—Chocolates)	Smiles n' Chuckles Limited	One charge was laid at Montreal under section 33D(1). On April 28, 1971 the accused company pleaded guilty and was fined \$1000. The Court also granted an Order prohibiting the continuation or repetition of the offence. The charge against the individual accused was withdrawn.
False Advertising (Stereo)	Claramonts Appliances and Gas Heating Sales Limited	Three charges were laid at Kitchener under section 33D(1). On April 29, 1971 the accused pleaded guilty to one charge and was fined \$750. The remaining charges were withdrawn.
False Advertising (Watches)	Top Value Limited carrying on business under the name and style of Giant Tiger	One charge was laid at Vancouver under section 33D(1). On April 30, 1971 the accused was acquitted.
Misleading Price Representation (Ball Point Pens)	James Healy, John McPhee and F. W. Woolworth Co. Limited	One charge was laid at Ottawa under section 33D(1). On May 12, 1971 the charge was withdrawn.
False Advertising (Cosmetics)	Peter Heisler	One charge was laid at Toronto under section 33C(1). On May 17, 1971 the accused were convicted, fines of \$300 against James Healy, \$50 against John McPhee and \$500 against the company being imposed. The Court also granted an Order against James Healy and the company prohibiting the continuation or repetition of the offence. A Notice of Appeal has been filed by the company.
Misleading Price Advertising (Oral Antiseptic and Baby Powder)	Jalna Investments Limited carrying on business under the name and style of Dollard Discount Stores	One charge was laid at Winnipeg under section 33D(1). On May 17, 1971 the accused pleaded guilty and was fined \$150.
Misleading Price Advertising (Hair Set Kits)	Stylerite Department Stores Ltd. carrying on business under the name of Half-Price Stores	Two charges were laid at Toronto under section 33C(1). On May 18, 1971 on motion of counsel for the company the charges were quashed. Further charges were laid and these were withdrawn on June 2, 1971.
False Advertising (Apartment Rentals)	Victoria Park Development Ltd.	One charge was laid at Winnipeg under section 33C(1). On May 19, 1971 the accused pleaded guilty and was fined \$100.
False Advertising (Photographic Enlargements)	Tooton's Limited	Three charges were laid at Winnipeg under section 33D(1). On May 25, 1971 the accused pleaded guilty and was fined \$500 on the first charge and \$250 on each of the second and third charges.
Misleading Price Advertising (Indoor-Outdoor Carpet)	Regal Tile Limited	Three charges were laid at St. John's under section 33D(1). On May 31, 1971 the accused pleaded guilty to one charge and was fined \$75. The remaining charges were withdrawn.
		One charge was laid at Toronto under section 33C(1). On June 7, 1971 the accused was convicted and fined \$200. The Court also granted an Order prohibiting the continuation or repetition of the offence.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Representation (Soap Granules)	Purex Corporation Ltd.	Three charges were laid at Niagara Falls under section 33C(1). On June 16, 1971 the accused was acquitted.
False Advertising (Lingerie)	Holt, Renfrew & Co. Ltd.	One charge was laid at Montreal under section 33D(1). On June 16, 1971 the accused was convicted and on June 30 was fined \$300.
False Advertising (Furniture)	Le Père du Meuble Inc. and Donato Delbusso	One charge was laid at Montreal under section 33D(1). On June 16, 1971 both accused were convicted and on June 17, 1971 each was fined \$250. The Court also granted an Order against each prohibiting the continuation or repetition of the offence.
False Advertising (TV Sets)	Le Roi des Bas Prix de la Region de Montréal Ltée	Three charges were laid at Montreal under section 33D(1). On June 17, 1971 the accused was acquitted.
False Advertising (Christmas Trees)	Ross Almas	One charge was laid at Hamilton under section 33D(1). On June 21, 1971 the accused was convicted and on June 25 was fined \$50. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Shoes)	Simpsons-Sears Limited	One charge was laid at Winnipeg under section 33D(1). On June 28, 1971 the accused pleaded guilty and was fined \$400.
False Advertising (Paint)	The Northern Paint Company Limited	Two charges were laid at Winnipeg under section 33D(1). On June 30, 1971 the accused was convicted and fined \$400 on each count.
Publication of Statement Without Proper Test (Wheel Balancers)	Rojun Industries Limited	One charge was laid at Toronto under section 33D(2). On July 6, 1971 the accused was convicted and fined \$200. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Clothing)	20th Century Developments Limited carrying on business under the name and style of Factory Outlet	One charge was laid at Halifax under section 33C(1). On July 23, 1971 the accused pleaded guilty and was fined \$100.
Misleading Price Advertising (Record Albums)	Opus 69 Sights & Sounds Ltd.	Two charges were laid at Vancouver under section 33C(1). On July 28, 1971 the accused pleaded guilty and was fined \$25 on the first charge and \$50 on the second charge.
False Advertising (Sunglasses)	Sabre Industries Limited	One charge was laid at Winnipeg under section 33D(1). On August 9, 1971 the accused pleaded guilty and was fined \$350.
False Advertising (Cigarettes)	Imperial Tobacco Products Limited	Five charges were laid at Edmonton under section 33D(1). On October 15, 1970 the accused was convicted on the first and third counts and fined \$2500 and \$500 respectively. The Court also granted an Order prohibiting the continuation or repetition of the offences. The remaining charges were dismissed. The accused appealed the convictions and sentence to the Appellate Division of the Supreme Court of Alberta. On August 17, 1971

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
		the Court affirmed the convictions and monetary penalties and varied the Order of prohibition by striking out two of the paragraphs.
False Advertising (Diet Plan)	A. C. Lindgrin Marketing & Advertising Ltd., A. C. Lindgrin and H. B. Hyman	Three charges were laid against each of the accused at Edmonton under section 33D(1). On August 18, 1971 the accused each pleaded guilty to the first charge. The Company was fined \$800, and the individuals were each fined \$600. The Court also granted an Order against the company and both individuals prohibiting the continuation or repetition of the offence. The remaining charges against each accused were withdrawn.
False Advertising (Cartage Rates)	Allan Richard Golden carrying on business under the name of Academy Cartage and Transfer	One charge was laid at Winnipeg under section 33D(1). On August 25, 1971 the accused was acquitted.
Misleading Price Representation (Washing Machine)	A. E. Hickman Company Limited	Two charges were laid at St. John's under section 33C(1). On August 27, 1971 the accused was acquitted.
False Advertising (Clothing)	Jermaine's (1948) Limited	One charge was laid at Vancouver under section 37(1). On September 9, 1971 the accused pleaded guilty and was fined \$1,000.
False Advertising (Used Furniture and Appliances)	Jim John Dorosh and Olga Dorosh trading under the business name of J & P Used Furniture and Appliances	One charge was laid at Winnipeg under section 37(1). Both accused pleaded guilty on September 13, 1971 and were each fined \$150.
False Advertising (Color Television Sets)	Steintron International Electronics Ltd. carrying on business under the name and style of House of Stein Electronics Ltd.	One charge was laid at Vancouver under section 33D(1). On September 16, 1971 the accused was convicted and fined \$250.
False Advertising (Detergent)	Simpsons-Sears Limited	One charge was laid at Hamilton under section 33D(1). On September 23, 1971 the accused was convicted and fined \$1,000.
False Advertising (Cigarettes—Contest)	Les Pétroles C.G. Ltée (Claude Gagnon Gas Bar)	One charge was laid at Alma under section 33D(1). On September 28, 1971 the accused pleaded guilty and was fined \$100. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Magazines)	David Whelpdale carrying on business under the name of Joey Sales Agency	One charge was laid at Toronto under section 33D(1). On September 30, 1971 the charge was withdrawn.
False Advertising (Record Player)	Better Value Furniture (Van) Ltd.	One charge was laid at Vancouver under section 33D(1). On October 4, 1971 the accused was acquitted.
Misleading Price Advertising (Dishwashers)	Freedman Agencies Ltd.	One charge was laid at Vancouver under section 36. On October 7, 1971 the accused pleaded guilty and was fined \$200.
False Advertising (Automobile Gas Saving Device)	Marton Szelyes carrying on business under the name of Canadian Automotive Units	One charge was laid at Toronto under section 33D(1). On January 21, 1971 the accused was convicted and fined \$2,500. The Court also granted an Order prohibiting the continuation or repetition of the offence. The accused appealed. On October 8, 1971 the appeal was dismissed as abandoned.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
False Advertising (Cosmetics)	Kenneth Shinn, Howard Norek, James Humpage and Eugene Bretecher	One charge was laid at Winnipeg under section 33D(1). On October 18, 1971 Messrs. Shinn, Norek, and Humpage pleaded guilty and each was fined \$150. A stay of proceedings was entered to the charge against Eugene Bretecher.
False Advertising (Electrical Appliance—Refrigerator)	Firestone Stores Limited	One charge was laid in Waterloo under section 33D(1). On January 18, 1971 the accused was acquitted. The Crown appealed to the Ontario Court of Appeal. On October 22, 1971 the appeal was allowed and a fine of \$500 was imposed. The Court also directed that an Order be issued prohibiting the continuation or repetition of the offence.
False Advertising (Coffee)	General Foods, Limited	Two charges were laid at Ottawa under section 33D(1). Following preliminary hearing judgment was delivered on October 28, 1971 discharging the accused.
False Advertising (Coffee)	Nestlé (Canada) Ltd.	Two charges were laid at Ottawa under section 33D(1). Following preliminary hearing judgment was delivered on October 28, 1971 discharging the accused.
False Advertising (Coffee)	Standard Brands Limited	Two charges were laid at Ottawa under section 33D(1). Following preliminary hearing judgment was delivered on October 28, 1971 discharging the accused.
False Advertising (Fuel Filter)	Dizard of Canada Limited	Two charges were laid at Montreal under section 33D(1) and 33D(2) respectively. On November 4, 1971 the accused pleaded guilty to the charge under section 33D(1) and was fined \$250. The Court also granted an Order prohibiting the continuation or repetition of the offence. The remaining charge was withdrawn.
Misleading Price Representation (Sewing Machine)	Claude Parent (Centre de Couture Parent)	Two charges were laid at Montreal under section 33C(1). On November 4, 1971 the accused was convicted and fined \$50 on each charge.
False Advertising (Entertainment)	I.M.G. Circus Corporation	Five charges were laid at Halifax under section 33D(1). On November 18, 1971 the accused pleaded guilty and was fined \$100 on each count.
False Advertising (Musical Instruments)	Counterpoint Corporation of Canada Limited	One charge was laid at Brantford under section 33D(1). On November 19, 1971 the accused was convicted and fined \$200. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Blemished Tires)	Canadian Tire Corporation Limited	One charge was laid at Hamilton under section 33D(1). On November 24, 1971 the accused pleaded guilty and was fined \$500. The Court also granted an Order prohibiting the continuation or repetition of the offence. Similar charges against seven Canadian Tire Associate Stores were withdrawn.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising (Fur Coat)	Dupuis Frères Limitée	One charge was laid at Montreal under section 33C(1). On November 26, 1971 the accused pleaded guilty and was fined \$500. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Fur Coat)	Perley Co. Limited	One charge was laid at Montreal under section 33C(1). On November 26, 1971 the accused pleaded guilty and was fined \$500. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Instant Coffee)	Canada Safeway Limited	Two charges were laid at Regina under section 36(1) and four charges under section 37(1). On November 26, 1971 the accused pleaded guilty to the two charges under section 36(1). On December 21 a fine of \$50 on each count was imposed. The remaining charges were withdrawn.
Misleading Price Advertising (Men's Underwear)	Twin Fair Department Stores Limited trading under the name and style of Al Pattenick Department Stores	One charge was laid at Oshawa under section 33C(1). On motion of counsel for the accused the information was quashed on November 30, 1971.
False Advertising (Stereo Album)	James Pannell carrying on business under the name of Canada Wide Tape Service	One charge was laid at Toronto under section 33D(1). On December 1, 1971 the accused pleaded guilty and was fined \$200. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Duty Free Shop)	Yvan Massé and Euclide Masson (Indian Souvenirs)	One charge was laid at Montreal under section 33D(1). On December 3, 1971 Yvan Massé was convicted and fined \$250. The Court also granted an Order prohibiting the continuation or repetition of the offence. Euclide Masson was acquitted.
False Advertising (Dog Food)	Vanco Sales Limited	Two charges were laid at Toronto under section 33D(1). On December 6, 1971 the accused pleaded guilty on one charge and was fined \$200. The Court also granted an Order prohibiting the continuation or repetition of the offence. The second charge was withdrawn. Two charges against an affiliated company were also withdrawn.
Misleading Price Advertising (Stereo)	Fred Mansour carrying on business under the name and style of Fred Mansour's Home Furnishings	Two charges were laid at New Glasgow under section 36(1). On December 6, 1971 the accused pleaded guilty and was fined \$100 on each count.
Misleading Price Advertising (Prefab. Homes)	Mor-Life Homes Limited	Two charges were laid at Ottawa under section 36(1). On December 17, 1971 the accused pleaded guilty and on December 20 was fined \$250 on the first count and \$100 on the second count. Two charges against an affiliated company were withdrawn.
Misleading Price Advertising (Camp Stoves)	Rensam Enterprises Limited carrying on business under the name and style of Danforth Outdoor Stores	One charge was laid at Toronto under section 33C(1). On December 17, 1971 the accused pleaded guilty and was fined \$200. The Court also granted an Order prohibiting the continuation or repetition of the offence.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising (Sundries)	Little John Discount Limited carrying on business under the firm name and style of Little John Discount	One charge was laid at Victoria under section 33C(1). On December 21, 1971 the accused pleaded guilty and was fined \$250.
False Advertising (Detergent)	Dominion Stores Limited	One charge was laid at Winnipeg under section 37(1). On January 4, 1972 the accused pleaded guilty and was fined \$300.
Misleading Price Advertising (Fur Coat)	Labelle Fourrures Limitée	One charge was laid at Montreal under section 33C(1). On January 5, 1972 the accused pleaded guilty and was fined \$200.
False Advertising (Utility Drills)	S. S. Kresge Company Limited	One charge was laid at Calgary under section 33D(1). On January 11, 1972 the accused was convicted and fined \$500.
Misleading Price Advertising (Cosmetic)	Fabergé of Canada Limited	Two charges were laid at Halifax under section 33C(1). On January 24, 1972 the accused pleaded guilty and was fined \$200 on each count.
False Advertising (Apartment Amenities)	Jaclare Construction Ltd.	Two charges were laid at Winnipeg under section 37(1). On January 24, 1972 the accused pleaded guilty to the first charge and was fined \$200. A stay of proceedings was entered on the second count.
False Advertising (Appliance Repairs and Installation)	Paul Dagenais carrying on business under the name and style of P. D. Appliance Service	One charge was laid at Ottawa under section 37(1). On January 24, 1972 the accused was convicted and fined \$100.
False Advertising (Film)	Dewar's Pasqua Drugs Ltd.	One charge was laid at Regina under section 37(1). On February 8, 1972 the charge was withdrawn.
Misleading Price Advertising (Antacid Tablets)	Hamilton Harvey Limited	One charge was laid at Vancouver under section 33C(1). On November 23, 1970 the accused was acquitted. An appeal by the Crown was dismissed on February 18, 1972.
Misleading Price Advertising (Furniture)	Rene Rebiffe trading under the business name of Globe Furniture Co.	One charge was laid at Winnipeg under section 36(1). On February 21, 1972 the accused pleaded guilty and was fined \$100.
False Advertising (Contact Cement)	LePage's Limited	Two charges were laid at Ottawa under section 37(1). On February 22, 1972 at the conclusion of the preliminary hearing judgment was delivered discharging the accused.
False Advertising (Film)	G. Tamblyn Limited	One charge was laid at Toronto under section 33D(1). On September 28, 1971 the accused was acquitted. The Crown appealed to the Ontario Court of Appeal. On February 24, 1972 the appeal was allowed and a fine of \$100 was imposed.
False Advertising (Power Brakes—Motor Vehicle)	Transcona Motors Ltd.	One charge was laid at Winnipeg under section 37(1). On February 28, 1972 a stay of proceedings was entered in respect of the charge.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising (Furniture)	Knob Hill Furniture and Appliances Limited trading under the name and style of the house of viking.	Two charges were laid at Toronto under section 33C(1). On March 3, 1972 the accused pleaded guilty and was fined \$250 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Books—Promotion, Contest)	Sutson Limited	Two charges were laid at Toronto under section 33D(1). On March 3, 1972 the accused was acquitted.
Misleading Price Advertising (Color Television Set)	Zeller's (Western) Limited	One charge was laid at Winnipeg under section 33C(1). On March 8, 1972 the accused was convicted and fined \$300.
Misleading Price Advertising (Toy)	Acme Novelty (B.C.) Ltd.	One charge was laid at Vancouver under section 33C(1). On September 23, 1971 the charge was dismissed. An appeal by the Crown was dismissed on March 15, 1972.
False Advertising (Gym Runners)	The T. Eaton Company Canada Limited	One charge was laid at Winnipeg under section 33D(1). On March 16, 1972 a stay of proceedings was entered in respect of the charge.
False Advertising (Lingerie)	Saba Bros. Limited	One charge was laid at Vancouver under section 37(1). On March 17, 1972 the accused was convicted and fined \$250.
Misleading Price Advertising (Kitchen Suites)	Sidorsky's Furniture Ltd.	One charge was laid at Calgary under section 36(1). On March 22, 1972 the accused pleaded guilty and was fined \$300. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Camera)	Simpsons-Sears Limited	One charge was laid at Winnipeg under section 33D(1). On March 27, 1972 a stay of proceedings was entered.
False Advertising (Gasoline Additive)	Standard Oil Company of British Columbia Limited	Six charges were laid at Vancouver under section 33D(2). On March 29, 1972 the charges were abandoned.
False Advertising (Fur Storage)	Custom Cleaners Ltd. carrying on business under the name of Custom Fabric Care Services	Two charges were laid at Saskatoon under section 37(1). On March 30, 1972 the accused pleaded guilty to the first charge and was fined \$25. The second charge was withdrawn.
False Advertising (Contest)	Shell Canada Limited	One charge was laid at Toronto under section 33D(1). On February 15, 1971 following preliminary hearing the accused was discharged. A Bill of Indictment was presented to the Grand Jury and on May 4, 1971 a True Bill was returned. The trial was held on February 24, 1972 and on March 30 judgment was delivered acquitting the accused.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
False Advertising (Furniture)	Ronald T. Whitehouse	Three charges were laid at Edmonton under section 37(1). On April 7, 1972, the accused was convicted and fined \$100 on one charge and was acquitted on two charges.
False Advertising (Wood Panelling)	The Panel King Limited	One charge was laid at Toronto under section 33D(1). On April 12, 1972, the accused was acquitted.
Misleading Price Representation (Range-Stove)	Northern Holdings Limited operating under the name and style of Famous Furniture City	One charge was laid at Saskatoon under section 36(1). On April 21, 1972 the accused was convicted and fined \$100. An appeal by the accused was subsequently abandoned.
False Advertising (Gasoline)	Davgar Enterprises Limited carrying on business under the name and style of Econo-Majic Car Wash	One charge was laid at Peterborough under section 37(1). On April 24, 1972, the accused pleaded guilty and was fined \$400. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Lighting Fixtures)	Litemor Distributors Ltd.	Two charges were laid at Montreal under section 36(1). On April 25, 1972, the accused pleaded guilty and was fined \$100 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Furniture)	Super Save Unpainted Furniture Limited	One charge was laid at Toronto under section 36(1). On April 27, 1972, the accused pleaded guilty and was fined \$200.
False Advertising (Gasoline)	Bowell McLean Motor Co. Ltd.	One charge was laid at Vancouver under section 33D(1). On April 28, 1972, the accused was convicted and fined \$240.
Misleading Price Representation (Refrigerators)	Simpsons-Sears Limited	One charge was laid at Ottawa under section 33C(1). On May 22, 1969, the accused was acquitted. The Crown appealed by way of trial <i>de novo</i> to the County Court for the Judicial District of Ottawa-Carleton. On January 26, 1971, the appeal was allowed and a fine of \$200 was imposed. The accused appealed to the Ontario Court of Appeal and on April 28, 1972, the appeal was dismissed.
False Advertising (Hooded Terry Towels)	Harvey Woods Limited	One charge was laid at Winnipeg under section 37(1). On May 1, 1972, the accused pleaded guilty and was fined \$100.
Misleading Price Advertising (Carpet)	Phil Givner Carpet Warehouse (Scarborough) Limited	One charge was laid at Toronto under section 36(1) and one charge under section 37(1). On May 10, 1972, the accused pleaded guilty to the charge under section 36(1) and was fined \$500. The Court also granted an

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
		Order prohibiting the continuation or repetition of the offence. The charge under section 37(1) was withdrawn.
False Advertising (Toys)	Danbury Sales Limited	Three charges were laid at Ottawa under section 37(1). On May 19, 1972, the accused was acquitted on two charges and one charge was withdrawn.
False Advertising (Sewing Machines)	Capital Sewing Centres Limited	Three charges were laid at Toronto under section 37(1). On May 23, 1972, the accused pleaded guilty and was fined \$500 on one charge. The remaining charges were withdrawn.
Misleading Price Advertising (Camp Stoves)	J. Pascal Hardware Co. Limited	One charge was laid at Ottawa under section 33C(1). On April 15, 1971, the accused was acquitted. The Crown appealed by way of trial <i>de novo</i> to the County Court for the Judicial District of Ottawa-Carleton. On May 24, 1972, the accused was convicted and fined \$200. An appeal by the accused was subsequently abandoned.
Misleading Price Advertising (Christmas bows)	Bargain Harold's Discount Limited trading under the name and style of Bargain Harold Discount	One charge was laid at Toronto under section 36(1). On May 30, 1972, the accused pleaded guilty and was fined \$100. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Real Estate)	W. R. McKee carrying on business under the name and style of M & W Auction Services	One charge was laid at Toronto under section 33D(1). Following preliminary hearing judgment was delivered on November 25, 1971, discharging the accused. A Bill of Indictment was presented to the Grand Jury and on December 10, 1971, a True Bill was returned. On June 1, 1972, the Indictment was quashed.
False Advertising (Carpet)	Carpet Land Inc., and Carry Ward	One charge was laid against Carpet Land Inc. and one charge against Carry Ward at Montreal under section 37(1). On June 6, 1972, the accused company pleaded guilty and was fined \$100. The charge against the individual accused was withdrawn.
Misleading Price Advertising (Tape Recorder)	Washerama and Appliance Centre Limited	One charge was laid at Kitchener under section 36(1). On June 9, 1972, the accused pleaded guilty and was fined \$200.
False Advertising (Sewing Machines)	John Marten carrying on business under the name and style of Universal Appliance Stores	One charge was laid at Windsor under section 37(1). On June 13, 1972, the accused pleaded guilty and was fined \$300.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Publication of Statement Without Proper Test (Wheel Balancing System)	D. Holmes Industries Ltd.	One charge was laid at Winnipeg under section 37(2). On June 19, 1972, the accused pleaded guilty and was fined \$200.
False Advertising (Paint)	Super Valu Stores Ltd.	One charge was laid at Vancouver under section 37(1). On June 19, 1972, the accused was acquitted.
Misleading Price Advertising (Charcoal Lighter)	Pay'n Save Drugs Ltd.	One charge was laid at Winnipeg under section 36(1). On June 26, 1972, the accused pleaded guilty and was fined \$200.
False Advertising (Towels)	Albert Schmitt carrying on business under the name and style of Belle Manufacturing Agents and Albert Schmitt	Two charges were laid at Winnipeg under section 37(1). On June 28, 1972, the accused pleaded guilty and was fined \$250 on each charge.
False Advertising (Motor Vehicles)	Ralph Williams Motors Ltd. (formerly called Riddell Wiltse (1969) Ltd.)	Eight charges were laid at Burnaby under section 37(1). On June 28, 1972, the accused was convicted and fined \$500 on each of four charges. A stay of proceedings was entered on three charges and one charge was dismissed.
False Advertising (Used Motor Vehicle)	Hillcrest Volkswagen Limited	One charge was laid at Halifax under section 33D(1). On June 29, 1972, the accused was acquitted.
False Advertising (Health Club Services)	Dennis Carl Rumpell	One charge was laid at Vancouver under section 37(1). On June 30, 1972, the accused was convicted and fined \$250.
Misleading Price Advertising (Diamond)	Ben Moss Jewellers Ltd.	One charge was laid at Winnipeg under section 36(1). On June 30, 1972, the accused was convicted and fined \$350.
False Advertising (Stereos)	Unclaimed Freight Sales Ltd.	One charge was laid at Orillia under section 37(1). On June 30, 1972, the accused was convicted and fined \$1000. The Court also granted an Order prohibiting the continuation or repetition of the offence. A charge laid against the accused under section 36(1) was withdrawn.
Publication of Statement Without Proper Test (Electrical Device)	Industrial Hardware Co. Ltd.	One charge was laid at Edmonton under section 37(2). On July 11, 1972, the charge was withdrawn.
False Advertising (Skis)	World of Sports (Calgary) Ltd.	Four charges were laid at Calgary under section 37(1). On July 12, 1972, the accused pleaded guilty and was fined \$500 on one charge. The remaining charges were withdrawn.
False Advertising (Grocery Products)	Centre City Supermarkets Limited (formerly Taylor Brothers Limited)	Three charges were laid at Ottawa under section 37(1). On July 13, 1972, the accused was convicted and fined \$200 on each of the first two charges and \$400 on the third charge. The Court also granted an Order prohibiting the continuation or repetition of the offence.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising (Under-Water Watches)	Fernand St-Germain	One charge was laid at Montreal under section 36(1). On July 20, 1972, the accused pleaded guilty and was fined \$125.
False Advertising (Flying training)	Mel Air Ltd.	One charge was laid at Swift Current under section 37(1). On July 26, 1972, the accused was convicted and fined \$100. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Representation (Facial Cream)	Revlon International Corporation (Canada Branch)	Two charges were laid at Winnipeg under section 36(1). On August 8, 1972, the accused pleaded guilty to one charge and was fined \$250. A stay of proceedings was entered in respect of the second charge.
False Advertising (Furniture)	FurnRite Holdings Limited	Thirty charges were laid at Toronto under section 37(1). On August 9, 1972, the accused pleaded guilty and was fined \$200 on each of nine charges. The remaining charges were withdrawn. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Color Photo Prints)	Abbass Studios Limited	Two charges were laid at Sydney under section 37(1). On August 15, 1972, the accused was convicted and fined \$100 on each charge.
Misleading Price Advertising (Wigs)	Eisze Dikasz	Two charges were laid at Ottawa under section 36(1). On August 25, 1972, the accused pleaded guilty and was fined \$200 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offence.
Misleading Price Advertising (Silverware)	Silver's Jewellery Limited	One charge was laid at St. John's under section 33C(1). On August 29, 1972, the accused was convicted and fined \$50.
False Advertising (Sewing Machine)	The G. W. Robinson Company Limited	One charge was laid at Hamilton under section 37(1). On August 29, 1972, the accused was convicted and fined \$100.
Misleading Price Advertising (Tape Recorder)	Bernard B. Myers and Herbert H. Myers carrying on business under the name of Beau-court Co. Reg'd.	One charge was laid at Montreal under section 36(1). After being committed for trial, the accused pleaded guilty and on August 30, 1972, were fined \$100 each.
False Advertising (Baby Pants)	Bedford Industries Ltd.	One charge was laid at Montreal under section 37(1). On September 13, 1972, the accused pleaded guilty and was fined \$100.
Misleading Price Advertising (Record)	Columbia Records of Canada Ltd. trading under the name and style of A. & A. Record Bar	One charge was laid at Toronto under section 36(1). On September 19, 1972, the charge was withdrawn.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
False Advertising (Sterilized Pressure Dressings—Bandages)	Texpack Limited, Imperial Optical Company Limited carrying on business under the name Safety Supply Company	One charge was laid against each company at Toronto under section 37(1). On September 12, 1972, Texpack Limited pleaded guilty and was fined \$300. The Court also granted an Order prohibiting the continuation or repetition of the offence. On September 20, 1972, Imperial Optical Company Limited was convicted and fined \$300.
False Advertising (Investments "in the cattle business")	Allison Brittain trading under the business name of Western Cattle Ranches Ltd.	One charge was laid at Brandon under section 37(1). On September 29, 1972, the accused pleaded guilty and was fined \$1,000.
False Advertising (Furniture)	Guy Dumais	One charge was laid at Quebec City under section 37(1). On October 2, 1972, the accused pleaded guilty and was fined \$50.
False Advertising (Contest—Food Products)	Kraft Foods Limited	One charge was laid at Montreal under section 33D(1). On October 4, 1972, the accused was convicted and fined \$5,000.
False Advertising (Projector)	Kerwin Photo Ltd.	One charge was laid at Winnipeg under section 37(1). On October 6, 1972, a stay of proceedings was entered in respect of the charge.
False Advertising (Homes)	Engineered Homes Ltd.	One charge was laid at Winnipeg under section 37(1). After being committed for trial, the accused pleaded guilty and on October 11, 1972, was fined \$500.
False Advertising (Automobiles)	Wiley-Mercury Sales Ltd.	One charge was laid at Winnipeg under section 33D(1). After being committed for trial, the accused pleaded guilty and on October 18, 1972, was fined \$100.
False Advertising (Electrical Appliances)	232434 Developments Limited, trading under the name and style of Colour Mutual of Canada	One charge was laid at Toronto under section 33D(1). After being committed for trial, the accused pleaded guilty and on October 19, 1972, was fined \$2,000. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Promotional Material)	O. E. McIntyre Ltd.	One charge was laid at Montreal under section 33D(1). On October 5, 1972, the accused was convicted and fined \$1,000.
False Advertising (Houses)	Victoria Wood Development Corporation Inc., operating under the name and style of Victoria Wood Development Corporation Limited	One charge was laid at Toronto under section 37(1). On October 27, 1972, the accused pleaded guilty and was fined \$1,000.
False Advertising (Reducing Treatments)	Contour Slim Limited and Raymond Roy	Eight charges under section 37(1) and eight charges under section 37(2) were laid against Contour Slim Limited. Eight charges were also laid against Raymond Roy

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
		under section 37(1) and eight charges under section 37(2). On October 2, 1972, Contour Slim Limited was convicted under section 37(1) and a fine of \$1,000 was imposed on the first charge and suspended sentence on six charges, the Crown having withdrawn one charge. On October 31, 1972, the Court granted an Order prohibiting the continuation or repetition of the offence. All the remaining charges against the company and the individual accused were withdrawn.
False Advertising (Souvenirs)	Gérald Corbière (Souvenir Gift Shop)	One charge was laid at St. Bernard de Lacolle under section 33D(1). After being committed for trial, the accused pleaded guilty and on November 14, 1972, was fined \$100.
False Advertising (Souvenirs)	Paul Verdier (Last Chance Gift Shop)	One charge was laid at St. Bernard de Lacolle under section 33D(1). After being committed for trial, the accused pleaded guilty and on November 14, 1972, was fined \$100.
False Advertising (Used Automobile)	J. Clark & Son Limited	Three charges were laid at Fredericton under section 33D(1). On May 31, 1972, the accused was convicted and fined \$300 on one charge. The accused appealed to the Supreme Court of New Brunswick, Appeal Division, and on November 14, 1972, the Court upheld the conviction and dismissed the appeal.
False Advertising (Electronic Equipment)	Augie and Funks Sound House Ltd., carrying on business under the name and style of Augie & Funk	Two charges were laid at Vancouver under section 37(1). On November 15, 1972, the accused was convicted and fined \$300 on the first charge and \$150 on the second charge.
False Advertising (Sunglasses)	Army & Navy Dept. Store Limited	One charge was laid at Regina under section 37(1). On November 22, 1972, the accused pleaded guilty and was fined \$100.
False Advertising (Electric Blankets)	C. P. Kauffman Ltd.	One charge was laid at Regina under section 37(1). On November 22, 1972, the accused pleaded guilty and was fined \$1,000.
False Advertising (Carpets)	Carpet Villa Limited	One charge was laid at Toronto under section 33D(1). On April 24, 1972, the accused was acquitted. The Crown appealed to the Ontario Court of Appeal. On November 24, 1972, the appeal was allowed and a fine of \$50 was imposed.
Misleading Price (Advertising Shirt)	The T. Eaton Company Limited	One charge was laid at Toronto under section 33C(1). On February 19, 1971, the accused was acquitted. The Crown appealed by way of trial <i>de novo</i> to the County Court of the Judicial District of York and on November 27, 1972, the appeal was dismissed.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising (Crystal Chandeliers)	Briske Electric Ltd.	One charge was laid at Edmonton under section 36(1). On November 28, 1972, the accused was convicted and fined \$100.
False Advertising (Electrical Appliances)	Rubicon Distributing Limited trading under the name and style of Seaway Appliances	One charge was laid at Toronto under section 33D(1). After being committed for trial, the accused pleaded guilty and on November 30, 1972, was fined \$2,000. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Motor Vehicle)	Pados Volkswagen Ltd.	One charge was laid at Calgary under section 37(1). On December 4, 1972, the accused was convicted and fined \$500.
Misleading Price Advertising (Ski Boots)	André Lalonde Sports Inc.	One charge was laid at Montreal under section 36(1). On December 6, 1972, the accused was convicted and fined \$100.
False Advertising (Clothing and Accessories)	J. Spadafora & Co. (Canada) Limited	One charge was laid at Peterborough under section 37(1). On December 14, 1972, the accused was convicted and fined \$800. (An appeal by the accused was abandoned in April 1973).
False Advertising (Dental Cream)	Colgate-Palmolive Limited	Two charges were laid at Ottawa under section 33D(1). On December 15, 1972, the accused was convicted and fined \$1,500 on one charge and acquitted on the second charge.
Misleading Price Advertising (Sleeping Bags)	Birch Cove Sporting Goods Limited	One charge was laid at Halifax under section 36(1). On December 28, 1972, the accused pleaded guilty and was fined \$100.
Misleading Price Advertising (Chesterfield Suites)	The T. Eaton Company Limited	One charge was laid at Toronto under section 36(1). On January 5, 1973, the accused pleaded guilty and was fined \$1,000.
False Advertising ("Quit smoking Plan" Booklet)	Walter Savage Anderson & Friends Limited	Four charges were laid at Ottawa under section 33D(1). On January 8, 1973, the accused was convicted and fined \$500 on each of two charges. The remaining two charges were withdrawn at the preliminary hearing.
False Advertising (Gasoline)	John J. Howeroft	One charge was laid at Hamilton under section 37(1). On January 10, 1973, the accused was acquitted.
False Advertising (Employment Offer)	Sat Enterprises Limited	Four charges were laid at Toronto under section 37(1). On January 25, 1973, the accused pleaded guilty and was fined \$500 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offence.

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Misleading Price Advertising (Fur Coats)	The T. Eaton Company Limited	One charge was laid at Toronto under section 33C(1). On October 21, 1971, the accused was convicted and fined \$200. The Court also granted an Order prohibiting the continuation or repetition of the offence. The Order was quashed in proceedings taken by the accused in the Supreme Court of Ontario. The accused also appealed by way of trial <i>de novo</i> to the County Court of the Judicial District of York and on February 15, 1973, was acquitted. (On conviction a charge under section 37 was withdrawn.)
Misleading Price Advertising (Record Player)	André Rivard	One charge was laid at Montreal under section 36(1). On February 21, 1973, the accused was convicted and fined \$100.
False Advertising (Used Motor Vehicles)	Simon Kagan	Five charges were laid at Winnipeg under section 37(1). On February 26, 1973, the accused pleaded guilty and was fined \$500 on each charge. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Motor Vehicle—Truck)	Midway Chrysler Plymouth Ltd.	One charge was laid at Winnipeg under section 37(1). On March 5, 1973, the accused pleaded guilty and was fined \$200.
False Advertising (Household Furniture)	Guy M. Roberts	One charge was laid at Calgary under section 37(1). On March 9, 1973, the accused pleaded guilty and was fined \$100.
Misleading Price Advertising (T.V. Set)	Franklin Arboine carrying on business under the name and style of Express Electric Servicentre	One charge was laid at Sarnia under section 36(1). On March 13, 1973, the accused was convicted and fined \$50. The Court also granted an Order prohibiting the continuation or repetition of the offence.
False Advertising (Contest—Cigarettes)	Benson & Hedges (Canada) Limited	Two charges were laid at Montreal under section 37(1). On March 23, 1973, the accused pleaded guilty and was fined \$2,500 on the first charge and \$25,000 on the second charge.
Misleading Price Advertising (Raincoats)	Manufacture d'habits Lachine Inc.	One charge was laid at Montreal under section 33C(1). On May 17, 1972, the accused was acquitted. The Crown appealed by way of trial <i>de novo</i> to the Court of Queen's Bench (Criminal Side) and on November 10, 1972, the accused was convicted and fined \$100.
False Advertising (Bicycles)	Alberta Giftwares Ltd.	Four charges were laid at Edmonton under section 33D(1). On December 15, 1971, the accused was acquitted. The Crown appealed to the Supreme Court of Alberta, Appellate Division and on May 26, 1972,

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
		the appeal was allowed and the accused was fined \$1,000 on each of three charges. The fourth charge was dismissed. (On appeal to the Supreme Court of Canada the conviction on the three charges was upheld on May 7, 1973).
Misleading Price Advertising (Ski Boots)	Arlington Sports Ltd.	One charge was laid at Montreal under section 36(1). On January 13, 1973, the accused pleaded guilty. (On April 9, 1973, a fine of \$300 was imposed.)
False Advertising (Toy)	Paramount Industries Inc.	One charge was laid at Montreal under section 33D(1). On November 26, 1971, the accused was convicted and fined \$500. The Court also granted an Order prohibiting the continuation or repetition of the offence. (An appeal by the accused to the Quebec Court of Appeal was dismissed on April 27, 1973. The Court, however, modified the Order of prohibition.)
False Advertising and Publication of statement without Proper Test (Reducing Treatment)	Alfred Gregory Gérard Choquette Richard Hébert (Figure Magic)	Two charges were laid at Montreal, one under section 37(1) and one under section 37(2). On February 2, 1973, the three individuals were convicted on the section 37(2) charge. The following fines were imposed: Alfred Gregory \$400 Gérard Choquette \$500 Richard Hébert \$400 The Court also granted an Order against the three individuals prohibiting the continuation or repetition of the offence. (The trial relating to section 37(1) is continuing.)
False Advertising (Household Appliance Service Depot)	Bernard Charles Moore carrying on business under the name and style of Moore Electric Company	One charge was laid at Prince George under section 37(1). On March 12, 1973, the accused was acquitted.

NOTE: Sections 30, 31, 33C, 33D and 34 of the Act became Sections 29, 30, 36, 37 and 38 respectively by R.S.C. 1970, Chap. C-23 which came into force July 15, 1971.

Source: Appendix II of the Report of the Director of Investigation and Research (1961 to 1973)

APENDIX D

**REPORT OF THE TASK FORCE ON SPORT
FOR CANADIANS, 1969 (EXCERPT)**

REPORT OF THE TASK FORCE ON SPORTS

FOR CANADIANS, OTTAWA, 1969

(The Standard Player's Contract in the National Hockey League)

A desultory, occasionally flaring, argument has gone on in Canada for a generation over the contracts in the NHL and professional hockey as a whole. There was the controversy over the "C" form, that now abandoned means by which the pros signed up boys at the age of 16. Recently, the opinions of men like Alan Eagleson, legal representative of certain NHL players and effective leader of the Players' Association, have had wide publicity. In the past, cases have aroused attention over the question of how and whether one could be released from professional contractual obligations and ownership, in order to play amateur hockey or for the national team. And ever since certain rulings by the Supreme Court of the United States in the early '20s, there has been argument about the validity of professional sports players' contracts, particularly the "reserve" clauses.

A sizeable body of evidence and opinion on this issue has been built up in the United States, through congressional hearings by both House and Senate committees. It is peripheral to our task but we do make the following observations about American developments because they have some relevance to Canada. Firstly, the professional sports of baseball, football, basketball and hockey are declared, by specific statutory exemptions, to be outside

the operations of the anti-trust, anti-monopoly, and restraint of trade legislation of the United States. The reasoning behind this legislation was that if these sports were not able to have such practices as "reserve" clauses, "option" clauses, and draft systems, equality of competition would disappear and the wealthiest clubs would dominate the opposition.

Secondly, the professional leadership in these major sports has changed its practices in relation to school and college players in a number of ways, in order to avoid the charge of destroying school and college competition by such practices as signing talented boys before they complete their schooling, or by pre-empting the audience for school and college sport with television coverage of professional games, shown at a time which conflicts with the games of the schools and colleges.

Thirdly, American professional leagues in baseball, football and basketball have all extended their scope and the number of franchises in the past decade. One vital factor encouraging such expansion was the competition or threat of it created by new or contemplated ventures into these sports. The examples are the American Football League, the American Basketball Association and the late Branch Rickey's dream of the Continental Baseball League. Another encouragement to expansion probably came from the keen interest of Congressional politicians. So many U.S. senators and congressmen were determined that cities within their constituencies should have the commercial and cultural fillip of

"big league" franchises.

The records of the hearings of both U.S. Senate and House sub-committees, investigating professional sport, indicate that the President of the NHL, Mr. Clarence Campbell, appeared as witness for examination and to present briefs setting out the history, structure, and contract arrangements of his league.

We cannot prove conclusively that the expansion of the NHL in 1967 into six new American cities only has been an element in the public discontent that has developed in Canada over hockey. So often in our economic enterprises, we find that our rich natural resources are extracted for manufacture and use elsewhere by investment flowing in from abroad. To a very great extent, this is what has occurred with our game of hockey. We process a magnificent raw material up to a semi-finished state, and then it is exported to the United States for the profit of American investors in the sport. And much of our nation, especially the youth, watches and reads vicariously as their models and heroes win acclaim across the line.

We believe that it is the combination of the shift of professional hockey so decidedly to the United States and the definitive triumphs of Russia and other countries in the amateur phase of the game which has brought such a deep pessimism to Canadians about the role of Canada in the future of the sport.

Mr. Campbell of the NHL provided us with copies of the standard Player contract (see Appendix "D") and we had a long session with him, accompanied by our counsel. After this discussion, Mr. Campbell agreed that he would present to the governors of the league at an early date, the points discussed, for their consideration and action. A copy of Mr. Campbell's letter dealing with the subject, dated February 15, 1969 is attached as Appendix "E". We make no further comments on these points.

It did become clear, however, in our discussion with Mr. Campbell, that there were two clauses in particular which are regarded as objectionable by the Players and the players' representative, but which Mr. Campbell supported strongly. These are Clause 17(2) and Clause 18(2).

Clause 17(2) reads: "The Player hereby undertakes that he will at the request of the Club enter into a contract for the following playing season upon the same terms and conditions as this contract, save as to salary which shall be determined by mutual agreement. In the event that the Player and the Club do not agree upon the salary to be paid, the matter shall be referred to the President of the League, and both parties agree to accept his decision as final."

Clause 18(2) reads: "The Club and the Player further agree that in case of a dispute between them, the dispute shall be referred within one year from the date it arose to the President of the League as arbitrator and his decision shall be accepted as final by both parties."

The NHL supports Clause 17 (often referred to as the "reserve clause") on the ground that a Club has invested substantial money in developing a Player and, accordingly, should have the right to require him to give his services indefinitely and wholeheartedly to the Club. It points to the reserve clause in the professional baseball contract as being similar and to the fact that it has been successfully upheld in the courts in the United States.

The Task Force cannot approve of this reserve clause. We recommend that steps be taken, if necessary by legislation, to require its deletion.

An employer, of course, should have the right to restrict his employee from performing for anybody other than himself, but such restriction should be reasonable in its terms. The restriction in the present football contract signed by professional players in the United States and Canada, is much more reasonable than the restriction to

which we take exception. A football player must perform for his employer for the year of his contract and one additional year. The salary for the second year is subject to an appropriate reduction, representing the consideration contracted for, for the option to renew. Thereafter, if he elects, he is a free agent and can sign with whomever he wishes.

This is a reasonable arrangement and in practice it has worked very well. On the other hand, the hockey player who cannot agree on satisfactory salary terms with his employer, has no choice but to retire from hockey. He cannot, under the agreement between the NHL and the CAHA, regain his amateur card until he has remained out of hockey for a period of two years, unless all of the professional teams have consented.

The President of the NHL argues that this is reasonable and fair because the dispute between the Player and the employer can only be as to salary, and under the terms of the contract this difference comes before him as an arbitrator. He, with all of the information in his possession as to Players' salaries, can then deal reasonably and fairly with both parties.

The Task Force does not approve of the President of the National Hockey League being the sole arbiter between the player and the owner. The Task Force recommends that when there

is to be arbitration as to a player's salary, the Board should consist of three persons, (1) a representative of the owner, (2) a representative of the player, and (3) an independent person who is not employed in hockey in any way. It is further recommended that the costs of such arbitration be borne equally by the owner and the Players' Association of which the Player is a member.

We found from interviews with Players that many of them are fined by managers and coaches throughout the season for alleged "indifferent" play. This was discussed with the president of the NHL who told us that such fines were improper and were not recognized by him. Nevertheless, we have evidence that they are imposed.

The spirit of the contract is that the Player offers his hockey skill in consideration of a salary, plus bonuses.

Clause 2 of the contract begins: "The Player agrees to give his services and to play hockey in all league championship, exhibition, playoff and Stanley Cup games to the best of his ability under the direction and control of the Club for the said season in accordance with the

provisions hereof:"

Clause 4 reads: "The Club may from time to time during the continuance of this contract establish rules governing the conduct and conditioning of the Player and such rules shall form part of this contract as fully as if herein written. For violation of any such rules or for any conduct impairing the thorough and faithful discharge of the duties incumbent upon the Player, the Club may impose a reasonable fine upon the Player and deduct the amount thereof from any money due or to become due to the Player. The Club may also suspend the Player for violation of any such rules. When the Player is fined or suspended, he shall be given notice in writing stating the amount of the fine and/or the duration of the suspension and the reason therefor."

We question the justice of a practice which allows the employer to tamper with the salary consideration agreed upon in the contract for "indifferent" play, determined solely by the general manager or the coach. The Standard Player's Contract should be clarified so that there can be no question that such fines for "indifferent play" are improper and, if imposed, need not be paid.

We realize, of course, that the condition and conduct of a Player, both on and off the ice, is a matter of vital importance to the team and its owner. We can see no reason to prevent proper rules relating to these matters being enforced, provided that they are posted prior to the signing of the contract and become a part of the contract. Under the present arrangements, the owner has the sole right at any time to change the rules applicable to the conduct of a Player. This, we believe, is unfair and should be prevented.

APPENDIX E

**SCHEMATIC PRESENTATION OF THE COMBINES
INVESTIGATION ACT AND
THE AMENDING BILL**

Marginal Notes
This column contains the marginal notes to the Act as amended by the Bill.

PRESENT ACT

This column contains the complete text of the present **Combines Investigation Act**.

An Act to provide for the investigation of combines, monopolies, trusts and mergers

1. This Act may be cited as the *Combines Investigation Act*. R.S., c. 314, s. 1.

2. In this Act

"article" means an article or commodity that may be the subject of trade or commerce;

"business" means the business of manufacturing, producing, transporting, purchasing, supplying, selling, storing or dealing in articles;

"Commission" means the Restrictive Trade Practices Commission appointed under this Act;

"corporation" includes "company";

"Director" means the Director of Investigation and Research appointed under this Act;

"merger" means the acquisition by one or more persons, whether by purchase or lease of shares or assets or otherwise, of any control over or interest in the whole or part of the business of a competitor, supplier, customer or any other person, whereby competition

AMENDMENTS

This column contains all the changes proposed by the Bill. Changes are underlined except when the whole of the section is new.

"article" means real and personal property of every description including

- (a) money,
- (b) deeds and instruments relating to or evidencing the title or right to property or an interest, immediate, contingent or otherwise, in a company or in any assets of a company,
- (c) deeds and instruments giving a right to recover or receive property,
- (d) tickets or like evidence of right to be in attendance at a particular place at a particular time or times, and
- (e) energy, however generated;"

"business" includes the business of

- (a) manufacturing, producing, transporting, acquiring, supplying, storing and otherwise dealing in articles, and
- (b) acquiring, supplying and otherwise dealing in services;"

- (a) in a trade or industry,
- (b) among the sources of supply of a trade or industry,
- (c) among the outlets for sales of a trade or industry, or
- (d) otherwise than in paragraphs (a), (b) and (c),

is or is likely to be lessened to the detriment or against the interest of the public, whether consumers, producers or others;

"Minister" "Minister" means the Minister of Consumer and Corporate Affairs;

"monopoly" "monopoly" means a situation where one or more persons either substantially or completely control throughout Canada or any area thereof the class or species of business in which they are engaged and have operated such business or are likely to operate it to the detriment or against the interest of the public, whether consumers, producers or others, but a situation shall not be deemed a monopoly within the meaning of this definition by reason only of the exercise of any right or enjoyment of any interest derived under the *Patent Act*, or any other Act of the Parliament of Canada;

"product"

"product" includes an article and a service;"

"service"

"service" means a service of any description whether industrial, trade, professional or otherwise;"

"supply"

"supply" means,

- (a) in relation to an article, sell, rent, lease or otherwise dispose of an article or an interest therein or a right thereto, or offer so to dispose of an article or interest therein or a right thereto, and
- (b) in relation to a service, sell, rent or otherwise provide a service or offer so to provide a service;"

"trade,
industry or
profession"

"trade or industry" includes any class, division or branch of a trade or industry. R.S., c. 314, s. 2; 1960, c. 45, s. 1; 1966-67, c. 25, s. 38; 1967-68, c. 16, s. 10.

"trade, industry or profession" includes any class, division or branch of a trade, industry or profession."

Defects of form

3. No proceedings under this Act shall be deemed invalid by reason of any defect of form or any technical irregularity. R.S., c. 314, s. 3.

Collective
bargaining
activities

4. Nothing in this Act shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees. R.S., c. 314, s. 4.

"4. (1) Nothing in this Act applies in respect of

(a) activities of persons who are authorized to engage in collective bargaining under an Act of Parliament or of the legislature of a province to the extent that such activities are

(i) authorized by or under such enactment, or

(ii) reasonably necessary for the protection of such persons acting in the capacities in which they are so authorized to engage in collective bargaining;

(b) contracts, agreements or arrangements between fishermen or associations of fishermen and persons or associations of persons engaged in the buying or processing of fish relating to the prices, remuneration or other conditions under which fish will be caught and supplied to such persons by fishermen;

(c) contracts, agreements or arrangements between or among employees of two or more employers in a trade, industry or profession pertaining to collective bargaining with their employers in respect of salary or wages and terms or conditions of employment; or

(d) contracts, agreements or arrangements between or among two or more employers in a trade, industry or profession pertaining to collective bargaining with their employees in respect of salary or wages and terms or conditions of employment.

- (a) in a trade or industry,
- (b) among the sources of supply of a trade or industry,
- (c) among the outlets for sales of a trade or industry, or
- (d) otherwise than in paragraphs (a), (b) and (c),

is or is likely to be lessened to the detriment or against the interest of the public, whether consumers, producers or others;

"Minister" "Minister" means the Minister of Consumer and Corporate Affairs;

"monopoly" "monopoly" means a situation where one or more persons either substantially or completely control throughout Canada or any area thereof the class or species of business in which they are engaged and have operated such business or are likely to operate it to the detriment or against the interest of the public, whether consumers, producers or others, but a situation shall not be deemed a monopoly within the meaning of this definition by reason only of the exercise of any right or enjoyment of any interest derived under the *Patent Act*, or any other Act of the Parliament of Canada;

"product"

"product" includes an article and a service;"

"service"

"service" means a service of any description whether industrial, trade, professional or otherwise;"

"supply"

"supply" means,

- (a) in relation to an article, sell, rent, lease or otherwise dispose of an article or an interest therein or a right thereto, or offer so to dispose of an article or interest therein or a right thereto, and
- (b) in relation to a service, sell, rent or otherwise provide a service or offer so to provide a service;"

"trade,
industry or
profession"

"trade or industry" includes any class, division or branch of a trade or industry. R.S., c. 314, s. 2; 1960, c. 45, s. 1; 1966-67, c. 25, s. 38; 1967-68, c. 16, s. 10.

"trade, industry or profession" includes any class, division or branch of a trade, industry or profession."

Defects of form

3. No proceedings under this Act shall be deemed invalid by reason of any defect of form or any technical irregularity. R.S., c. 314, s. 3.

Collective
bargaining
activities

4. Nothing in this Act shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees. R.S., c. 314, s. 4.

"4. (1) Nothing in this Act applies in respect of

(a) activities of persons who are authorized to engage in collective bargaining under an Act of Parliament or of the legislature of a province to the extent that such activities are

(i) authorized by or under such enactment, or

(ii) reasonably necessary for the protection of such persons acting in the capacities in which they are so authorized to engage in collective bargaining;

(b) contracts, agreements or arrangements between fishermen or associations of fishermen and persons or associations of persons engaged in the buying or processing of fish relating to the prices, remuneration or other conditions under which fish will be caught and supplied to such persons by fishermen;

(c) contracts, agreements or arrangements between or among employees of two or more employers in a trade, industry or profession pertaining to collective bargaining with their employers in respect of salary or wages and terms or conditions of employment; or

(d) contracts, agreements or arrangements between or among two or more employers in a trade, industry or profession pertaining to collective bargaining with their employees in respect of salary or wages and terms or conditions of employment.

Limitation	(2) Nothing in this section exempts from the application of any provision of this Act the activity of a group of employers in agreeing or arranging with any person to withhold products from any person.
Under-writers	4.1 (1) Sections 32 and 38 do not apply in respect of an agreement or arrangement between or among persons who are members of a class of persons who ordinarily engage in the business of dealing in securities that relates only to the underwriting of a security.
Definition of "under-writing of a security"	<p>(2) For the purposes of this section, "underwriting of a security" means the primary or secondary distribution of the security, in respect of which distribution</p> <p>(a) a prospectus has been filed, accepted or otherwise approved, or</p> <p>(b) exemption from the requirement for a prospectus has been expressly given,</p> <p>under, by or pursuant to a law enacted in Canada for the supervision or regulation of trade in securities."</p>

PART I	
INVESTIGATION AND RESEARCH	
Director	5. (1) The Governor in Council may appoint an officer to be known as the Director of Investigation and Research.
Oath of office	<p>(2) The Director shall, before entering upon his duties, take and subscribe, before the Clerk of the Privy Council, an oath, which shall be filed in the office of the Clerk, in the following form :</p> <p>I do solemnly swear that I will faithfully, truly and impartially, and to the best of my judgment, skill and ability, execute the powers and trusts reposed in me as Director of Investigation and Research. So help me God.</p>
Salary	(3) The Director shall be paid such salary as may be from time to time fixed and allowed by the Governor in Council.

Deputy Directors

6. (1) One or more persons may be appointed Deputy Directors of Investigation and Research, in the manner authorized by law.

Powers of Deputy

(2) The Governor in Council may authorize a Deputy Director to exercise the powers and perform the duties of the Director whenever the Director is absent or unable to act or whenever there is a vacancy in the office of Director.

Powers of other persons

(3) The Governor in Council may authorize any person to exercise the powers and perform the duties of the Director whenever the Director and the Deputy Directors are absent or unable to act or, if one or more of those offices are vacant, whenever the holders of the other of such offices are absent or unable to act.

Inquiry by Deputy Director

(4) The Director may authorize a Deputy Director to make inquiry regarding any matter into which the Director has power to inquire, and when so authorized a Deputy Director shall perform the duties and may exercise the powers of the Director in respect of such matter.

Powers of Director unaffected

(5) The exercise, pursuant to this Act, of any of the powers or duties of the Director by a Deputy Director or other person does not in any way limit, restrict or qualify the powers or duties of the Director, either generally or with respect to any particular matter.

Application for inquiry

7. (1) Any six persons, Canadian citizens, resident in Canada, of the full age of twenty-one years, who are of the opinion that an offence under Part V has been or is about to be committed may apply to the Director for an inquiry into such matter.

"7. (1) Any six persons resident in Canada who are not less than eighteen years of age and who are of the opinion that

(a) a person has contravened or failed to comply with an order made pursuant to section 29, 29.1 or 30,

(b) grounds exist for the making of an order by the Commission under Part IV.1, or

(c) an offence under Part V or section 46.1 has been or is about to be committed,

may apply to the Director for an inquiry into such matter."

(2) The application shall be accompanied by a statement in the form of a solemn or statutory declaration showing

(a) the names and addresses of the applicants, and at their election the name and address of any one of their number, or of any attorney, solicitor or counsel, whom they may, for the purpose of receiving any communication to be made pursuant to this Act, have authorized to represent them;

(b) the nature of the alleged offence and the names of the persons believed to be concerned therein and privy thereto; and

(c) a concise statement of the evidence supporting their opinion that the offence has been or is about to be committed.

8. The Director shall

(a) on application made under section 7,

(b) whenever he has reason to believe that any provision in Part V has been or is about to be violated, or

(c) whenever he is directed by the Minister to inquire whether any provision in Part V has been or is about to be violated,

“(b) the nature of

(i) the alleged contravention or failure to comply,

(ii) the grounds alleged to exist for the making of an order, or

(iii) the alleged offence

and the names of the persons believed to be concerned therein and privy thereto; and

(c) a concise statement of the evidence supporting their opinion.”

“(b) whenever he has reason to believe that

(i) a person has contravened or failed to comply with an order made pursuant to section 29, 29.1 or 30,

(ii) grounds exist for the making of an order by the Commission under Part IV.1, or

(iii) an offence under Part V or section 46.1 has been or is about to be committed, or

(c) whenever he is directed by the Minister to inquire whether any of the circumstances described in subparagraphs (b) (i) to (iii) exists,”

cause an inquiry to be made into all such matters as he considers necessary to inquire into with the view of determining the facts.

Notice for
written returns

9. (1) Subject to subsection (2), the Director may at any time in the course of an inquiry, by notice in writing, require any person, and in the case of a corporation any officer of the corporation, to make and deliver to the Director, within a time stated in such notice, or from time to time, a written return under oath or affirmation showing in detail such information with respect to the business of the person named in the notice as is by the notice required, and such person or officer shall make and deliver to the Director, precisely as required a written return under oath or affirmation showing in detail the information required; and, without restricting the generality of the foregoing, the Director may require a full disclosure and production of all contracts or agreements which the person named in the notice may have at any time entered into with any other person, touching or concerning the business of the person named in the notice.

Authority for
notice

(2) The Director shall not issue a notice under subsection (1) unless, on the *ex parte* application of the Director, a member of the Commission certifies, as such member may, that such notice may be issued to the person or officer of a corporation disclosed in the application.

Entry of premises

10. (1) Subject to subsection (3), in any inquiry under this Act the Director or any representative authorized by him may enter any premises on which the Director believes there may be evidence relevant to the matters being inquired into and may examine any thing on the premises and may copy or take away for further examination or copying any book, paper, record or other document that in the opinion of the Director or his authorized representative, as the case may be, may afford such evidence.

Duty of persons
in control of
premises, etc.

(2) Every person who is in possession or control of any premises or things mentioned in subsection (1) shall permit the Director or

his authorized representative to enter the premises, to examine any thing on the premises and to copy or take away any document on the premises.

Authority for
entry

(3) Before exercising the power conferred by subsection (1), the Director or his representative shall produce a certificate from a member of the Commission, which may be granted on the *ex parte* application of the Director, authorizing the exercise of such power.

Return of
documents

(4) Where any document is taken away under this section for examination or copying, the original or a copy thereof shall be delivered to the custody from which the original came within forty days after it is taken away or within such later time as may be directed by the Commission for cause or agreed to by the person from whom it was obtained.

Application to
court

(5) When the Director or his authorized representative acting under this section is refused admission or access to premises or any thing thereon or when the Director has reasonable grounds for believing that such admission or access will be refused, a judge of a superior or county court on the *ex parte* application of the Director may by order direct a police officer or constable to take such steps as to the judge seem necessary to give the Director or his authorized representative such admission or access.

Inspection of
documents

11. (1) All books, papers, records or other documents obtained or received by the Director may be inspected by him and also by such persons as he directs.

Copies

(2) The Director may have copies made (including copies by any process of photographic reproduction) of any books, papers, records or other documents referred to in subsection (1), and such copies, upon proof orally or by affidavit that they are true copies, in any proceedings under this Act are admissible in evidence and have the same probative force as the originals; where such

evidence is offered by affidavit it is not necessary to prove the signature or official character of the deponent if that information is set forth in the affidavit or to prove the signature or official character of the person before whom such affidavit was sworn.

Affidavits

12. (1) The Director may, by notice in writing, require evidence upon affidavit or written affirmation, in every case in which it seems to him proper to do so, but the Director shall not so require unless, on the *ex parte* application of the Director, a member of the Commission certifies, as such member may, that the Director may make such a requirement to the person disclosed in the application.

Administration
of oaths

(2) The following persons, namely,
(a) each member of the Commission,
(b) the Director,
(c) a Deputy Director or other person exercising the powers of the Director under this Act,
(d) any person employed under this Act when so authorized by the Chairman of the Commission, and
(e) all persons authorized to administer oaths in or concerning any proceedings had or to be had in the Supreme Court of Canada, the Federal Court of Canada or any of the superior courts of any province,
may administer oaths to be used for the purposes of this Act.

Counsel

13. Whenever in the opinion of the Commission or the Director the public interest so requires, the Commission or the Director may apply to the Attorney General of Canada to appoint and instruct counsel to assist in an inquiry and upon such application the Attorney General of Canada may appoint and instruct counsel accordingly.

Discontinuance
of inquiry

14. (1) At any stage of the inquiry, if the Director is of the opinion that the matter being inquired into does not justify further inquiry, the Director may discontinue the inquiry, but an inquiry shall not be discontinued without the written concurrence of the Commission in any case in which evidence has been brought before the Commission.

Report

(2) The Director shall thereupon make a report in writing to the Minister showing the information obtained and the reason for discontinuing the inquiry.

Notice to
applicant

(3) In any case where an inquiry made on application under section 7 is discontinued, the Director shall inform the applicant of the decision giving the grounds therefor.

Review of
decision

(4) On written request of the applicants or on his own motion, the Minister may review the decision to discontinue the inquiry, and may, if in his opinion the circumstances warrant, instruct the Director to make further inquiry.

Reference to
Attorney
General of
Canada

15. (1) The Director may, at any stage of an inquiry, and in addition to or in lieu of continuing the inquiry, remit any records, returns or evidence to the Attorney General of Canada for consideration as to whether an offence has been or is about to be committed against this Act, and for such action as the Attorney General of Canada may be pleased to take.

Prosecution by
Attorney
General of
Canada

(2) The Attorney General of Canada may institute and conduct any prosecution or other proceedings under this Act, and for such purposes he may exercise all the powers and functions conferred by the *Criminal Code* on the attorney general of a province. R.S., c. 314, s. 15; 1960, c. 45, s. 6.

PART II

CONSIDERATION AND REPORT

Commission

16. (1) There shall be a Commission to be known as the Restrictive Trade Practices Commission consisting of not more than four members appointed by the Governor in Council.

Membership

(2) One of the members shall be appointed by the Governor in Council to be Chairman of the Commission; the Chairman is the chief executive officer of the Commission and has supervision over and direction of the work of the Commission.

Vice-Chairman

"(2.1) One of the members may be appointed by the Governor in Council to be Vice-Chairman of the Commission and any member so appointed shall, whenever the Chairman is absent or unable to act or whenever there is a vacancy in the office of Chairman, exercise the powers and perform the duties of the Chairman.

Absence, etc. of Chairman and Vice-Chairman

(2.2) The Governor in Council may designate a member to exercise the powers and perform the duties of the Chairman of the Commission whenever the Chairman and any Vice-Chairman are absent or unable to act or whenever the offices of Chairman and Vice-Chairman are vacant."

Tenure of office

(3) Each member holds office during good behaviour for a period of ten years from the date of his appointment.

Re-appointment

(4) A member on the expiration of his term of office is eligible for re-appointment.

Salaries

(5) Each member shall be paid such salary as may be from time to time fixed and allowed by the Governor in Council.

Temporary substitute members

(6) When any member by reason of any temporary incapacity is unable to perform the duties of his office, the Governor in Council may appoint a temporary substitute member, upon such terms and conditions as the Governor in Council may prescribe.

Vacancy

(7) A vacancy in the Commission does not impair the right of the remaining members to act.

Quorum

(8) Two members constitute a quorum except where there are three vacancies in the Commission when one member constitutes a quorum.

"(8) Two members constitute a quorum.

Rules

(9) The Commission may make rules for the regulation of its proceedings and the performance of its duties and functions under this Act, including the delegation to a single member of all the powers of the Commission except the power to report to the Minister.

(9) The Commission may make rules for the regulation of its proceedings and the performance of its duties and functions under this Act."

Oath of office

(10) Each member shall, before entering upon his duties, take and subscribe, before the Clerk of the Privy Council, an oath, which shall be filed in the office of the Clerk, in the following form:

I do solemnly swear that I will faithfully, truly and impartially, and to the best of my judgment, skill and ability, execute the powers and trusts reposed in me as a member of the Restrictive Trade Practices Commission. So help me God.

Headquarters

(11) The office of the Commission shall be in the city of Ottawa in the Province of Ontario, but sittings of the Commission may be held at such other places as the Commission may decide. R.S., c. C-23, s. 16; c. 10(1st Supp.), s. 34.

Oral examination

17. (1) On *ex parte* application of the Director, or on his own motion, a member of the Commission may order that any person resident or present in Canada be examined upon oath before, or make production of books, papers, records or other documents to such member or before or to any other person named for the purpose by the order of such member and may make such orders as seem to him to be proper for securing the attendance of such witness and his examination, and the production by him of books, papers, records or other documents and may otherwise exercise, for the enforcement of such orders or punishment for disobedience thereof, all powers that are exercised by any superior court in Canada for the enforcement of subpoenas to witnesses or punishment of disobedience thereof.

Witness competent

(2) Any person summoned under subsection (1) is competent and may be compelled to give evidence as a witness.

Application to
court

(3) A member of the Commission shall not exercise power to penalize any person pursuant to this Act, whether for contempt or otherwise, unless, on the application of the member, a judge of the Federal Court of Canada or of a superior or county court has certified, as such judge may, that the power may be exercised in the matter disclosed in the application, and the member has given to such person twenty-four hours notice of the hearing of the application or such shorter notice as the judge deems reasonable.

Documents

(4) Any books, papers, records, or other documents produced voluntarily or in pursuance of an order under subsection (1) shall within thirty days thereafter be delivered to the Director, who is thereafter responsible for their custody, and within sixty days after the receipt of such books, papers, records or other documents by him the Director shall deliver the original or a copy thereof to the person from whom such books, papers, records or other documents were received.

Delivery to
Director of
seized articles

(5) A justice before whom any thing seized pursuant to a search warrant issued with reference to an offence against this Act is brought may, on the application of the Director, order that such thing be delivered to the Director, and the Director shall deal with any thing so delivered to him as if delivery of it had been made to him pursuant to subsection (4).

Fees

(6) Every person summoned to attend pursuant to this section is entitled to the like fees and allowances for so doing as if summoned to attend before a superior court of the province in which he is summoned to attend.

Commissions to
take evidence

(7) The Minister may issue commissions to take evidence in another country, and may make all proper orders for the purpose and for the return and use of evidence so obtained.

Orders to be
signed by a
member

(8) Orders to witnesses issued pursuant to this section shall be signed by a member of the Commission. R.S., c. 314, s. 17; 1960, c. 45, s. 7.

Director may submit statement of evidence

18. (1) At any stage of an inquiry,
(a) the Director may, if he is of the opinion that the evidence obtained discloses a situation contrary to any provision in Part V, and
(b) the Director shall, if so required by the Minister,

“(b) the Director shall, if the inquiry relates to an alleged or suspected offence under any provision of Part V and he is so required by the Minister,”

prepare a statement of the evidence obtained in the inquiry which shall be submitted to the Commission and to each person against whom an allegation is made therein.

Time and place of hearing

(2) Upon receipt of the statement referred to in subsection (1), the Commission shall fix a place, time and date at which argument in support of such statement may be submitted by or on behalf of the Director, and at which such persons against whom an allegation has been made in such statement shall be allowed full opportunity to be heard in person or by counsel.

Consideration and report

(3) The Commission shall, in accordance with this Act, consider the statement submitted by the Director under subsection (1) together with such further or other evidence or material as the Commission considers advisable.

Full opportunity to be heard

(4) No report shall be made by the Commission under section 19 or 22 against any person unless such person has been allowed full opportunity to be heard as provided in subsection (2).

Report by Commission

19. (1) The Commission shall, as soon as possible after the conclusion of proceedings taken under section 18, make a report in writing and without delay transmit it to the Minister.

Contents

(2) The report under subsection (1) shall review the evidence and material, appraise the effect on the public interest of arrangements and practices disclosed in the evidence

and contain recommendations as to the application of remedies provided in this Act or other remedies.

Findings to be
included in
report

(3) Where it appears from proceedings taken under section 18 that a conspiracy, combination, agreement or arrangement has existed, the report under subsection (1) of this section shall include a finding whether or not the conspiracy, combination, agreement or arrangement relates only to one or more of the matters specified in subsection 32(2) and, if so, shall include a finding whether or not the conspiracy, combination, agreement or arrangement, has lessened or is likely to lessen competition unduly in respect of one of the matters specified in paragraphs 32(3)(a) to (d), or has restricted or is likely to restrict any person from entering into or expanding a business in a trade or industry.

“(3) Where it appears from proceedings taken under section 18 that a conspiracy, combination, agreement or arrangement has existed, the report under subsection (1) of this section shall include a finding whether or not the conspiracy, combination, agreement or arrangement relates only to one or more of the matters specified in subsection 32(2) and, if so, shall include a finding whether or not the conspiracy, combination, agreement or arrangement, has lessened or is likely to lessen competition unduly in respect of one of the matters specified in paragraphs 32(3)(a) to (d), or has restricted or is likely to restrict any person from entering into or expanding a business in a trade, industry or profession.”

Return of
documents

(4) Within thirty days following the transmission of such report to the Minister, the Director shall cause to be delivered into the custody from which they came, if not already so delivered, all books, papers, records and other documents in his possession as evidence relating to the inquiry, unless the Attorney General of Canada certifies that all or any of such documents shall be retained by the Director for purposes of prosecution.

Publication of
report

(5) Any report of the Commission shall within thirty days after its receipt by the Minister be made public, unless the Commission states in writing to the Minister it believes the public interest would be better served by withholding publication, in which case the Minister may decide whether the report, either in whole or in part, shall be made public.

Copies of report

(6) The Minister may publish and supply copies of a report referred to in subsection (5) in such manner and upon such terms as he deems proper.

Representation
by counsel

20. (1) A member of the Commission may allow any person whose conduct is being inquired into and shall permit any person who is being himself examined under oath to be represented by counsel.

No person
excused from
testifying

(2) No person shall be excused from attending and giving evidence and producing books, papers, records or other documents, in obedience to the order of a member of the Commission, on the ground that the oral evidence or documents required of him may tend to criminate him or subject him to any proceeding or penalty, but no oral evidence so required shall be used or receivable against such person in any criminal proceedings thereafter instituted against him, other than a prosecution for perjury in giving such evidence.

“(2) No person shall be excused from attending and giving evidence and producing books, papers, records or other documents, in obedience to the order of a member of the Commission, on the ground that the oral evidence or documents required of him may tend to criminate him or subject him to any proceeding or penalty, but no oral evidence so required shall be used or receivable against such person in any criminal proceedings thereafter instituted against him, other than a prosecution for perjury in giving such evidence or a prosecution under section 122 or 124 of the Criminal Code in respect of such evidence.”

Powers of
Commission

21. The Commission or any member thereof has all the powers of a commissioner appointed under Part I of the *Inquiries Act*.

Interim report

22. (1) Notwithstanding subsections 19(1) and (2), when, in any inquiry relating to alleged situations contrary to section 32 or 33, the Commission, after reviewing the statement submitted by the Director and receiving argument in support thereof and in reply thereto, is then unable effectively to appraise the effect on the public interest of the arrangements and practices disclosed in the evidence, it shall make an interim report in writing, which shall contain a review of the evidence and a statement of the reasons why the Commission is unable to appraise effectively the effect of such arrangements and practices on the public interest, and without delay, such report shall be transmitted to the Minister.

Further inquiry

(2) In any case where an interim report is made pursuant to subsection (1), the Commission has authority at any time thereafter until a final report as hereinafter provided is made

(a) to exercise the powers conferred on a member by section 17,

(b) to require the Director to make further inquiry, and for such purpose the Director may exercise all the powers conferred on him by this Act with respect to an inquiry under section 8,

(c) to require the Director to submit to the Commission copies of any books, papers, records or other documents obtained in such further inquiry, and

(d) to require by notice in writing any person and in the case of a corporation, any officer of the corporation, to make and deliver to the Commission, within a time stated in such notice, or from time to time, a written return under oath or affirmation showing in detail such information with respect to the business of the person named in the notice as is by the notice required, and such person or officer shall make and deliver to the Commission, precisely as required a written return under oath or affirmation showing in detail the information required; and, without restricting the generality of the foregoing, the Commission may require a full disclosure and production of all contracts or agreements which the person, named in the notice, may have at any time entered into with any other person, touching or concerning the business of the person so named in the notice.

Final report

(3) When the Commission has obtained such further information as it deems necessary to appraise effectively the effect on the public interest of the practices and arrangements referred to in subsection (1), it shall make a final report in writing and without delay transmit it to the Minister, and section 19 applies to such report and to all books, papers, records or other documents obtained in the investigation and subsequent inquiry upon which such report is based.

Annual report

(4) Until the final report is made, the Commission shall, after making an interim report as provided in subsection (1), as soon as possible after the 31st day of March in each year and in any event within three months thereof submit to the Minister an

annual report setting out any further action taken and evidence obtained since such interim report was submitted.

Subsections
19(5), (6) appli-
cable

(5) Subsections 19(5) and (6) apply to an interim report and an annual report made pursuant to this section.

PART III GENERAL

Staff

23. All officers, clerks and employees required for carrying out this Act shall be appointed in accordance with the *Public Service Employment Act*, except that the Director or the Commission may, with the approval of the Governor in Council, employ such temporary, technical and special assistants as may be required to meet the special conditions that may arise in carrying out this Act.

Remuneration of
temporary staff

24. (1) Any temporary, technical and special assistants employed by the Director or the Commission shall be paid for their services and expenses as may be determined by the Governor in Council.

Remuneration
and expenses
payable out of
appropriations

(2) The remuneration and expenses of the Director and of each member of the Commission and of the temporary, technical and special assistants employed by the Director or the Commission, and of any counsel instructed under this Act, shall be paid out of money appropriated by Parliament to defray the cost of administering this Act.

*Public Service
Employment Act*
applies

(3) Except as provided in this section and in sections 5 and 16 of this Act, the *Public Service Employment Act* and other Acts relating to the Public Service, in so far as applicable, apply to each member of the Commission, to the Director and to all other persons employed under this Act.

Authority of
technical or
special assistants

25. Any technical or special assistant or other person employed under this Act, when so authorized or deputed by the Director, has power and authority to exercise any of the powers and duties of the Director under this Act with respect to any particular inquiry, as may be directed by the Director.

Minister may
require interim
report

26. The Minister may at any time require the Director to submit an interim report with respect to any inquiry by him under this Act, and it is the duty of the Director whenever thereunto required by the Minister to render an interim report setting out the action taken, the evidence obtained and the Director's opinion as to the effect of the evidence.

Inquiries to be in
private

27. All inquiries under this Act shall be conducted in private, except that the Chairman of the Commission may order that all or any portion of any proceedings before the Commission or any member thereof be conducted in public.

"27. (1) All inquiries under this Act shall be conducted in private, except that the Chairman of the Commission may order that all or any portion of such an inquiry that is held before the Commission or any member thereof be conducted in public.

(2) All proceedings before the Commission under Part IV.1 of this Act shall be conducted in public.

Representa-
tions to
federal
boards, etc.

27.1 (1) The Director, at the request of any federal board, commission or other tribunal or upon his own initiative, may, and upon direction from the Minister shall, make representations to and call evidence before any such board, commission or other tribunal in respect of the maintenance of competition, whenever such representations or evidence are or is relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining such matter.

Definition of
"federal
board,
commission
or other
tribunal"

(2) For the purposes of this section, "federal board, commission or other tribunal" means any board, commission, tribunal or person who is expressly charged by or pursuant to an enactment of Parlia-

ment with the responsibility of making decisions or recommendations related directly or indirectly to the production, supply, acquisition or distribution of a product and includes an *ad hoc* commission of inquiry charged with any such responsibility but does not include a court."

PART IV SPECIAL REMEDIES

Reduction or
removal of
customs duties

28. Whenever, from or as a result of an inquiry under this Act, or from or as a result of a judgment of the Supreme Court or Federal Court of Canada or of any superior, district or county court in Canada, it appears to the satisfaction of the Governor in Council that with regard to any article there has existed any conspiracy, combination, agreement, arrangement, merger or monopoly to promote unduly the advantage of manufacturers or dealers at the expense of the public, and if it appears to the Governor in Council that such disadvantage to the public is presently being facilitated by the duties of customs imposed on the article, or on any like article, the Governor in Council may direct either that such article be admitted into Canada free of duty, or that the duty thereon be reduced to such amount or rate as will, in the opinion of the Governor in Council, give the public the benefit of reasonable competition. 1960, c. 45, s. 11.

Abuse of
industrial
or intel-
lectual
property

29. In any case where use has been made of the exclusive rights and privileges conferred by one or more patents for invention or by one or more trade marks so as

(a) to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce, or

(b) to restrain or injure, unduly, trade or commerce in relation to any such article or commodity, or

(c) to prevent, limit or lessen, unduly, the manufacture or production of any such

"29. (1) Where the Federal Court of Canada, on an information exhibited by the Attorney General of Canada, finds that use has been made of the exclusive rights and privileges conferred by a patent, trade mark, copyright or registered industrial design to commit or facilitate the commission of an offence under Part V or section 46.1, the Court may, for the purpose of preventing the commission of any further such offence, make one or more of the following orders:

(a) an order declaring void, in whole

article or commodity or unreasonably to enhance the price thereof, or

(d) to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity,

the Federal Court of Canada, on an information exhibited by the Attorney General of Canada, may for the purpose of preventing any use in the manner defined above of the exclusive rights and privileges conferred by any patents or trade marks relating to or affecting the manufacture, use or sale of such article or commodity, make one or more of the following orders:

(e) declaring void, in whole or in part, any agreement, arrangement or licence relating to such use;

(f) restraining any person from carrying out or exercising any or all of the terms or provisions of such agreement, arrangement or licence;

(g) directing the grant of licences under any such patent to such persons and on such terms and conditions as the court may deem proper, or, if such grant and other remedies under this section would appear insufficient to prevent such use, revoking such patent;

(h) directing that the registration of a trade mark in the register of trade marks be expunged or amended; and

(i) directing that such other acts be done or omitted as the Court may deem necessary to prevent any such use;

but no order shall be made under this section that is at variance with any treaty, convention, arrangement or engagement with any other country respecting patents or trade marks to which Canada is a party.

or in part, any agreement, arrangement or licence relating to the patent, trade mark, copyright or industrial design;

(b) an order prohibiting any person from carrying out or exercising any or all of the terms of or rights provided by any agreement, arrangement or licence referred to in paragraph (a);

or
(c) an order requiring the granting, on such terms and conditions as are prescribed in the order, of a licence or other right specified therein, under any such patent, copyright or industrial design to such persons as are specified in the order, or the variation in a manner specified in the order of any term or condition of any outstanding licence or other right under any such patent, trade mark, copyright or industrial design;

or, if orders under any of paragraphs (a) to (c) appear to the Court to be insufficient to prevent the commission of any further such offence, the Court may, by order, direct that any such patent or copyright be revoked or the registration of any such trade mark or industrial design be cancelled or that any act be done or omitted to be done that it considers necessary to prevent the commission of any further such offence.

(2) Where a superior court of criminal jurisdiction by which a person is convicted of an offence under Part V or section 46.1 finds that use has been made of the exclusive rights and privileges conferred by a patent, trade mark, copyright or registered industrial design in order to facilitate the commission of the offence, the court may, in addition to any other penalty imposed, at the time

Orders by
convicting
court

sentence is imposed by it, make any order that the Federal Court of Canada is authorized to make under subsection (1).

Limitation

(3) No order may be made under this section that is at variance with any treaty or convention respecting patents, trade marks, copyright or industrial design between Canada and any other country.

**"Superior
court of
criminal
jurisdiction"**

(4) In this section, "superior court of criminal jurisdiction" means a superior court of criminal jurisdiction as defined in the *Criminal Code*.

**Interim
injunction**

29.1 (1) Where it appears to a court, on an application by or on behalf of the Attorney General of Canada or the attorney general of a province,

(a) that a person named in the application has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under Part V or section 46.1, and

(b) that if the offence is committed or continued

(i) injury to competition that cannot adequately be remedied under any other section of this Act will result, or

(ii) a person is likely to suffer, from the commission of the offence, damage for which he cannot adequately be compensated under any other section of this Act and that will be substantially greater than any damage that a person named in the application is likely to suffer from an injunction issued under this subsection in the event that it is subsequently found that an offence under Part V or section 46.1 has not been committed, was not about to be committed and was not likely to be committed;

the court may, by order, issue an interim injunction forbidding any person named in the application from doing any act or thing that it appears to the court may constitute or be directed toward the commission of an offence, pending the commencement or completion of a prosecution or proceedings under subsection 30(2) against the person.

Notice of
application

(2) Subject to subsection (3), at least forty-eight hours notice of an application for an injunction under subsection (1) shall be given by or on behalf of the Attorney General of Canada or the attorney general of a province, as the case may be, to each person against whom the injunction is sought.

Ex parte
application

(3) Where a court to which an application is made under subsection (1) is satisfied that

(a) subsection (2) cannot reasonably be complied with, or

(b) the urgency of the situation is such that service of notice in accordance with subsection (2) would not be in the public interest,

it may proceed with the application *ex parte* but any injunction issued under subsection (1) by the court on *ex parte* application shall have effect only for such period, not exceeding ten days, as is specified in the order.

Terms of
injunction

(4) An injunction issued under subsection (1)

Extension or
cancellation
of injunction

(a) shall be in such terms as the court that issues it considers necessary and sufficient to meet the circumstances of the case, and

(b) subject to subsection (3), shall have effect for such period of time as is specified therein.

(5) A court that issues an injunction under subsection (1), at any time and from time to time on application by or on behalf of the Attorney General of Canada or the attorney general of a province, as the case may be, or by or on behalf of any person to whom the injunction is directed, notice of which application has been given to all other parties thereto, may by order,

(a) notwithstanding subsections (3) and (4), continue the injunction, with or without modification, for such definite period as is stated in the order, or

(b) revoke the injunction.

(6) Where an injunction is issued under subsection (1), the Attorney General of Canada or the attorney general of a province, as the case may be, shall proceed as expeditiously as possible to institute and conclude any prosecution or proceedings arising out of the actions on the basis of which the injunction was issued.

(7) A court may punish any person who contravenes or fails to comply with an injunction issued by it under subsection (1) by a fine in the discretion of the court, or by imprisonment for a term not exceeding two years.

(8) In this section, "court" means the Federal Court of Canada or a superior court of criminal jurisdiction as defined in the *Criminal Code*."

Duty of
applicant

Punishment
for disobe-
dience

Definition of
"court"

Prohibitions

30. (1) Where a person has been convicted of an offence under Part V

(a) the court may at the time of such conviction, on the application of the Attorney General of Canada or the attorney general of the province, or

(b) a superior court of criminal jurisdiction in the province may at any time within three years thereafter, upon proceedings commenced by information of the Attorney General of Canada or the attorney general of the province for the purposes of this section,

and in addition to any other penalty imposed on the person convicted, prohibit the continuation or repetition of the offence or the doing of any act or thing by the person convicted or any other person directed toward the continuation or repetition of the offence and where the conviction is with respect to a merger or monopoly, direct the person convicted or any other person to do such acts or things as may be necessary to dissolve the merger or monopoly in such manner as the court directs.

Idem

(2) Where it appears to a superior court of criminal jurisdiction in proceedings commenced by information of the Attorney General of Canada or the attorney general of the province for the purposes of this section that a person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under Part V, the court may prohibit the commission of the offence or the doing or continuation of any act or thing by that person or any other person constituting or directed toward the commission of such an offence, and, where the offence is with respect to a merger or monopoly, direct that person or any other person to do such acts or things as may be necessary to dissolve the merger or monopoly in such manner as the court directs.

Appeals

(3) The Attorney General or any person against whom an order of prohibition or dissolution is made may appeal against the order or a refusal to make an order or the quashing of an order

- (a) from a superior court of criminal jurisdiction in the province to the court of appeal of the province, or
- (b) from the court of appeal of the province or the Federal Court of Canada to the Supreme Court of Canada

- “(a) from a superior court of criminal jurisdiction in the province to the court of appeal of the province,
- (b) from the Federal Court—Trial Division to the Federal Court of Appeal, and
- (c) from the court of appeal of the province or the Federal Court of Appeal to the Supreme Court of Canada”

as the case may be, upon any ground that involves a question of law or, if leave to appeal is granted by the court appealed to within twenty-one days after the judgment appealed from is pronounced or within such extended time as the court appealed to or a judge thereof for special reasons allows, on any ground that appears to that court to be a sufficient ground of appeal.

Disposition of appeal

(4) Where the court of appeal or the Supreme Court of Canada allows an appeal, it may quash any order made by the court appealed from, and may make any order that in its opinion the court appealed from could and should have made.

Procedure

(5) Subject to subsections (3) and (4), Part XVIII of the *Criminal Code* applies *mutatis mutandis* to appeals under this section.

Punishment for disobedience

(6) A court may punish any person who contravenes or fails to comply with a prohibition or direction made or given by it under this section by a fine in the discretion of the court, or by imprisonment for a term not exceeding two years.

Procedure

(7) Any proceedings pursuant to an information of the Attorney General of Canada or the attorney general of a province under this section shall be tried by the court without a jury, and the procedure applicable in injunction proceedings in the superior courts of the province shall, in so far as possible, apply.

Application of
section

(8) This section applies in respect of all prosecutions under this Act whether commenced before or after the 1st day of November 1952 and in respect of all acts or things, whether committed or done before or after that date.

"Superior court
of criminal
jurisdiction"

(9) In this section "superior court of criminal jurisdiction" means a superior court of criminal jurisdiction as defined in the *Criminal Code*.

Court may
require returns

31. (1) Notwithstanding anything contained in Part V, where any person is convicted of an offence under Part V, the court before whom such person was convicted and sentenced may, from time to time within three years thereafter, require the convicted person to submit such information with respect to the business of such person as the court deems advisable, and without restricting the generality of the foregoing the court may require a full disclosure of all transactions, operations or activities since the date of the offence under or with respect to any contracts, agreements or arrangements, actual or tacit, that the convicted person may at any time have entered into with any other person touching or concerning the business of the person convicted.

Penalty

(2) The court may punish any failure to comply with an order under this section by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

Recovery
of damages

"31.1 (1) Any person who has suffered loss or damage as a result of

(a) conduct that is contrary to any provision of Part V, or

(b) the failure of any person to comply with an order of the Commission or a court under this Act,

may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

Evidence
of prior
proceedings

(2) In any action under subsection (1) against a person, the record of proceedings in any court in which that person was convicted of an offence under Part V or convicted of or punished for failure to comply with an order of the Commission or a court under this Act is, in the absence of any evidence to the contrary, proof that the person against whom the action is brought engaged in conduct that was contrary to a provision of Part V or failed to comply with an order of the Commission or a court under this Act, as the case may be, and any evidence given in those proceedings as to the effect of such acts or omissions on the person bringing the action is evidence thereof in the action.

Jurisdiction
of Federal
Court

(3) For the purposes of any action under subsection (1), the Federal Court of Canada is a court of competent jurisdiction.

Limitation

(4) No action may be brought under subsection (1),

(a) in the case of an action based on conduct that is contrary to any provision of Part V, after two years from

(i) a day on which the conduct was engaged in, or

(ii) the day on which any criminal proceedings relating thereto were finally disposed of,

whichever is the later; and

(b) in the case of an action based on the failure of any person to comply with an order of the Commission or a court, after two years from

(i) a day on which the order of the Commission or court was violated, or

(ii) the day on which any criminal proceedings relating thereto were finally disposed of,

whichever is the later.

PART IV.1 MATTERS REVIEWABLE BY COMMISSION

31.2 Where, on application by the Director, the Commission finds that

(a) a person is adversely affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,

(b) the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of such product in respect of payment, units of purchase and otherwise,

(c) the product is in ample supply, and

(d) the reason for the inability of the person to obtain adequate supplies of the product is an inadequate degree of competition in the market,

the Commission may, after affording to the supplier or suppliers of such product in the market a reasonable opportunity to be heard,

(e) where the product is an article, recommend to the Minister of Finance that any duties of customs on the article be removed, reduced or remitted

Jurisdiction
of Commission where
refusal to
deal

**Consignment
selling**

with respect to the person to the extent necessary to place him on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada, and

(f) order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms in respect of payment, units of purchase and otherwise unless, within the specified time, in the case of an article, any duties of customs on the article are removed or modified to the extent necessary to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

31.3 Where, on application by the Director, the Commission finds that the practice of consignment selling has been introduced by a supplier of a product who ordinarily sells the product for resale, for the purpose of

(a) controlling the price at which a dealer in the product supplies the product, or

(b) discriminating between consignees or between dealers to whom he sells the product for resale and consignees,

the Commission may, after affording to such supplier a reasonable opportunity to be heard, order the supplier to cease to carry on the practice of consignment selling of the product.

Definitions

“exclusive
dealing”

“market
restriction”

“tied
selling”

31.4 (1) For the purposes of this section,

“exclusive dealing” means

(a) any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to

(i) deal only in products supplied by or designated by the supplier or his nominee, or

(ii) refrain from dealing in a specified class or kind of product except as supplied by the supplier or his nominee, and

(b) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a) (i) or (ii) by offering to supply the product to him on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those paragraphs;

“market restriction” means any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to supply the product only in a defined market, or exacts a penalty of any kind from the customer if he supplies the product outside a defined market;

“tied selling” means

(a) any practice whereby a supplier of a product, as a condition of supplying the product (the “tying” product) to a customer, requires that customer to

(i) acquire some other product from the supplier or his nominee, or

(ii) refrain from using or distributing, in conjunction with the tying product, another product that is not of a brand or manufacture designated by the supplier or his nominee, and

**Exclusive
dealing and
tying
practices**

(b) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a) (i) or (ii) by offering to supply the tying product to him on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs.

(2) Where, on application by the Director, the Commission finds that exclusive dealing or tied selling because it is engaged in by a major supplier of a product in a market or because it is widespread in a market, is likely to

(a) impede entry into or expansion of a firm in the market,

(b) impede introduction of a product into or expansion of sales of a product in the market, or

(c) otherwise substantially lessen competition in the market,

the Commission may, after affording to suppliers against whom an order is sought a reasonable opportunity to be heard, make an order directed to all or any of such suppliers prohibiting them from continuing to engage in such exclusive dealing or tied selling and containing any other requirement that, in its opinion, is necessary to overcome the effects thereof in the market or to restore or stimulate competition in the market.

**Market
restriction**

(3) Where, on application by the Director, the Commission finds that market restriction, because it is engaged in by a major supplier of a product or because it is widespread in relation to a product, is likely to substantially lessen competition in relation to the product, the Commission may, after affording to suppliers against whom an order is sought a reasonable opportunity to be heard, make an order directed to all or any of those suppliers prohibiting them from continuing to engage in market restrictions and containing any other require-

ment that, in its opinion, is necessary to restore or stimulate competition in relation to the product.

Where no
order to be
made and
limitation on
application of
order

(4) The Commission shall not make an order under this section where, in its opinion,

(a) exclusive dealing or market restriction is or will be engaged in only for a reasonable period of time to facilitate entry of a new supplier of a product into a market or of a new product into a market,

(b) tied selling that is engaged in is reasonable having regard to the technological relationship between or among the products to which it applies, or

(c) tied selling that is engaged in by a person in the business of lending money is for the purpose of better securing loans made by him,

and no order made under this section applies in respect of exclusive dealing, market restriction or tied selling between or among companies, partnerships and sole proprietorships that are affiliated.

Where
company,
partnership
or sole proprietorship
affiliated

(5) For the purposes of subsection (4),

(a) a company is affiliated with another company if

(i) one is a subsidiary of the other,

(ii) both are subsidiaries of the same company,

(iii) both are controlled by the same person, or

(iv) each is affiliated with the same company; and

(b) a partnership or sole proprietorship is affiliated with another partnership, sole proprietorship or a company if both are controlled by the same person.

Foreign
judgments,
etc.

31.5 Where, on application by the Director, the Commission finds that

(a) a judgment, decree, order or other process given, made or issued by or out of a court or other body in a country other than Canada can be implemented in whole or in part by persons in Canada, by companies incorporated by or pursuant to an Act of Parliament or of the legislature of a province, or by measures taken in Canada, and

(b) the implementation in whole or in part of the judgment, decree, order or other process in Canada would

(i) adversely affect competition in Canada,

(ii) adversely affect the efficiency of trade or industry in Canada without bringing about or increasing in Canada competition that would restore and improve such efficiency,

(iii) adversely affect the foreign trade of Canada without compensating advantages, or

(iv) otherwise restrain or injure trade or commerce in Canada without compensating advantages,

the Commission may, after affording a reasonable opportunity to be heard to all persons and companies to whom an order hereafter referred to would apply, by order, direct that

(c) no measures be taken in Canada to implement the judgment, decree, order or process, or

(d) no measures be taken in Canada to implement the judgment, decree, order or process except in such manner as the Commission prescribes for the purpose of avoiding an effect referred to in subparagraphs (b) (i) to (iv).

Foreign
laws and
directives

31.6 Where, on application by the Director, the Commission finds that a decision has been or is about to be made by a person in Canada or a company incorporated by or pursuant to an

Act of Parliament or of the legislature of a province

(a) as a result of

(i) a law in force in a country other than Canada, or

(ii) a directive, instruction, intimation of policy or other communication to that person or company or to any other person from

(A) the government of a country other than Canada or of any political subdivision thereof that is in a position to direct or influence the policies of that person or company, or

(B) a person in a country other than Canada who is in a position to direct or influence the policies of that person or company,

where the communication is for the purpose of giving effect to a law in force in a country other than Canada,

and the decision, if implemented, would have or would be likely to have any of the effects mentioned in subparagraphs 31.5(b) (i) to (iv), or

(b) as a result of a directive, instruction, intimation of policy or other communication to that person or company or to any other person, from a person in a country other than Canada who is in a position to direct or influence the policies of that person or company, where the communication is for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in violation of section 32,

the Commission may, after affording to that person or company a reasonable opportunity to be heard, by order, direct that

(c) in a case described in paragraph (a) or (b), no measures be taken by the person or company in Canada to

implement the law, directive, instruction, intimation of policy or other communication, or

(d) in a case described in paragraph (a), no measures be taken by the person or company in Canada to implement the law, directive, instruction, intimation of policy or other communication except in such manner as the Commission prescribes for the purpose of avoiding an effect referred to in subparagraphs 31.5(b)(i) to (iv).

Limitation

(2) No application may be made by the Director for an order under this section against a particular company where proceedings have been commenced under section 32.1 against that company based on the same or substantially the same facts as would be alleged in the application."

PART V

OFFENCES IN RELATION TO TRADE

"OFFENCES IN RELATION TO COMPETITION"

Conspiracy

32. (1) Every one who conspires, combines, agrees or arranges with another person

(a) to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article,

(b) to prevent, limit or lessen, unduly, the manufacture or production of an article, or to enhance unreasonably the price thereof,

(c) to prevent, or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of an article, or in the price of insurance upon persons or property, or

(d) to restrain or injure trade or commerce in relation to any article,

"(a) to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,

(b) to prevent, limit or lessen, unduly the manufacture or production of a product, or to enhance unreasonably the price thereof,

(c) to prevent, or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance upon persons or property, or

(d) to otherwise restrain or injure competition unduly,"

is guilty of an indictable offence and is liable to imprisonment for two years.

Idem

“(1.1) For greater certainty, in establishing that a conspiracy, combination, agreement or arrangement is in violation of subsection (1), it shall not be necessary to prove that the conspiracy, combination, agreement or arrangement, if carried into effect, would or would be likely to eliminate, completely or virtually, competition in the market to which it relates or that it was the object of any or all of the parties thereto to eliminate, completely or virtually, competition in that market.”

Defence

(2) Subject to subsection (3), in a prosecution under subsection (1), the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to one or more of the following:

- (a) the exchange of statistics,
- (b) the defining of product standards,
- (c) the exchange of credit information,
- (d) definition of trade terms,

(e) cooperation in research and development,

(f) restriction of advertising, or

(g) some other matter not enumerated in subsection (3).

“(d) the definition of terminology used in a trade, industry or profession,

(e) cooperation in research and development,

(f) the restriction of advertising or promotion,

(g) the sizes or shapes of the containers in which an article is packaged,

(h) the adoption of the metric system of weights and measures, or

(i) measures to protect the environment.”

Exception

(3) Subsection (2) does not apply if the conspiracy, combination, agreement or arrangement has lessened or is likely to lessen competition unduly in respect of one of the following:

“(3) Subsection (2) does not apply if the conspiracy, combination, agreement or arrangement has lessened or is likely to lessen competition unduly in respect of one of the following:

- (a) prices,
- (b) quantity or quality of production,
- (c) markets or customers, or
- (d) channels or methods of distribution,

or if the conspiracy, combination, agreement or arrangement has restricted or is likely to restrict any person from entering into or expanding a business in a trade or industry.

- (a) prices,
- (b) quantity or quality of production,
- (c) markets or customers, or
- (d) channels or methods of distribution,

or if the conspiracy, combination, agreement or arrangement has restricted or is likely to restrict any person from entering into or expanding a business in a trade, industry or profession.

Defence

(4) Subject to subsection (5), in a prosecution under subsection (1) the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to the export of articles from Canada.

(4) Subject to subsection (5), in a prosecution under subsection (1) the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to the export of products from Canada."

Exception

(5) Subsection (4) does not apply if the conspiracy, combination, agreement or arrangement

(a) has resulted or is likely to result in a reduction or limitation of the volume of exports of an article;

(b) has restrained or injured or is likely to restrain or injure the export business of any domestic competitor who is not a party to the conspiracy, combination, agreement or arrangement;

(c) has restricted or is likely to restrict any person from entering into the business of exporting articles from Canada; or

(d) has lessened or is likely to lessen competition unduly in relation to an article in the domestic market.

"(a) has resulted or is likely to result in a reduction or limitation of the volume of exports of a product;"

"(c) has restricted or is likely to restrict any person from entering into the business of exporting products from Canada; or

(d) has lessened or is likely to lessen competition unduly in relation to a product in the domestic market."

**Foreign
directives**

“32.1 (1) Any company, wherever incorporated, that carries on business in Canada and that implements, in whole or in part in Canada, a directive, instruction, intimation of policy or other communication to the company or any person from a person in a country other than Canada who is in a position to direct or influence the policies of the company, which communication is for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in violation of section 32, is, whether or not any director or officer of the company in Canada has knowledge of the conspiracy, combination, agreement or arrangement, guilty of an indictable offence and is liable on conviction to a fine in the discretion of the court.

Limitation

(2) No proceedings may be commenced under this section against a particular company where an application has been made by the Director under section 31.6 for an order against that company or any other person based on the same or substantially the same facts as would be alleged in proceedings under this section.

**Definition
of “bid-
rigging**

32.2 (1) In this section, “bid-rigging” means

(a) an agreement or arrangement between two or more persons whereby one or more of such persons agrees or undertakes not to submit a bid in response to a call or request for bids or tenders; and

(b) the submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by collusion between or among two or more bidders or tenderers.

Bid-rigging

(2) Every one who conspires, combines, agrees or arranges with another person to engage in bid-rigging is guilty of an indictable offence and is liable to imprisonment for two years.

**Conspiracy
relating to
professional
and amateur
sport**

32.3 (1) Every one who conspires, combines, agrees or arranges with another person

(a) to limit unreasonably the opportunities for any other person to participate, as a player or competitor, in professional or amateur sport or to impose unreasonable terms or conditions on those persons who so participate, or

(b) to limit unreasonably the opportunity for any other person to negotiate with and, if agreement is reached, to play for the team or club of his choice in a professional or amateur league

is guilty of an indictable offence and is liable on conviction to imprisonment for two years.

**Matters
to be
considered**

(2) In determining whether or not an agreement or arrangement violates subsection (1), the court before which such a violation is alleged shall have regard to

(a) whether the sport in relation to which the violation is alleged is organized on an international basis and, if so, whether any limitations, terms or conditions alleged should, for that reason, be accepted in Canada; and

(b) the desirability of maintaining a reasonable balance among the teams or clubs participating in the same league.

Application

(3) This section applies, and section 32 does not apply, to agreements and arrangements and to provisions of agreements and arrangements between or among teams and clubs engaged in pro-

Mergers and
monopolies

33. Every person who is a party or privy to or knowingly assists in, or in the formation of, a merger or monopoly is guilty of an indictable offence and is liable to imprisonment for two years.

Illegal trade
practices

34. (1) Every one engaged in a business who

(a) is a party or privy to, or assists in, any sale that discriminates to his knowledge, directly or indirectly, against competitors of a purchaser of articles from him in that any discount, rebate, allowance, price concession or other advantage is granted to the purchaser over and above any discount, rebate, allowance, price concession or other advantage that, at the time the articles are sold to such purchaser, is available to such competitors in respect of a sale of articles of like quality and quantity;

fessional or amateur sport as members of the same league and between or among directors, officers or employees of such teams and clubs where such agreements, arrangements and provisions relate exclusively to matters described in subsection (1) or to the granting and operation of franchises in the league, and section 32 applies and this section does not apply to all other agreements, arrangements and provisions thereof between or among such teams, clubs and persons."

"(a) is a party or privy to, or assists in, any sale that discriminates to his knowledge, directly or indirectly, against competitors of a purchaser of products from him in that any discount, rebate, allowance, price concession or other advantage is granted to the purchaser over and above any discount, rebate, allowance, price concession or other advantage that, at the time the products are sold to such purchaser, is available to such competitors in respect of a sale of products of like quality and quantity;

(b) engages in a policy of selling articles in any area of Canada at prices lower than those exacted by him elsewhere in Canada, having the effect or tendency of substantially lessening competition or eliminating a competitor in such part of Canada, or designed to have such effect; or

(c) engages in a policy of selling articles at prices unreasonably low, having the effect or tendency of substantially lessening competition or eliminating a competitor, or designed to have such effect,

is guilty of an indictable offence and is liable to imprisonment for two years.

Defence

(2) It is not an offence under paragraph (1)(a) to be a party or privy to, or assist in any sale mentioned therein unless the discount, rebate, allowance, price concession or other advantage was granted as part of a practice of discriminating as described in that paragraph.

Cooperative societies excepted

(3) Paragraph (1)(a) shall not be construed to prohibit a cooperative society from returning to producers or consumers, or a cooperative wholesale society from returning to its constituent retail or wholesale members, the whole or any part of the net surplus made in its trading operations in proportion to purchases made from or sales made to the society.

Exceptions

(b) engages in a policy of selling products in any area of Canada at prices lower than those exacted by him elsewhere in Canada, having the effect or tendency of substantially lessening competition or eliminating a competitor in such part of Canada, or designed to have such effect; or

(c) engages in a policy of selling products at prices unreasonably low, having the effect or tendency of substantially lessening competition or eliminating a competitor, or designed to have such effect,"

"(4) Subsection (1) does not apply in respect of an advantage that is

(a) granted by a person engaged in the business of publishing a newspaper or operating a broadcasting undertaking, within the meaning of the *Broadcasting Act*, where the advantage is in the form of a more favourable rate for advertising, granted to persons who advertise a product for sale at specified premises, than that charged to persons who advertise a product for sale without reference

**Definition of
"allowance"**

35. (1) In this section "allowance" means any discount, rebate, price concession or other advantage that is or purports to be offered or granted for advertising or display purposes and is collateral to a sale or sales of articles but is not applied directly to the selling price.

**Grant of allow-
ance prohibited
except on
proportionate
terms**

(2) Every one engaged in a business who is a party or privy to the granting of an allowance to any purchaser that is not offered on proportionate terms to other purchasers in competition with the first-mentioned purchaser, (which other purchasers are in this section called "competing purchasers"), is guilty of an indictable offence and is liable to imprisonment for two years.

**Definition of
proportionate
terms**

(3) For the purposes of this section, an allowance is offered on proportionate terms only if

(a) the allowance offered to a purchaser is in approximately the same proportion to the value of sales to him as the allowance offered to each competing purchaser is to the total value of sales to such competing purchaser,

(b) in any case where advertising or other expenditures or services are exacted in return therefor, the cost thereof required to be incurred by a purchaser is in approximately the same proportion to the value of sales to him as the cost of such advertising or other expenditures or services required to be incurred by each competing purchaser is to the total value of sales to such competing purchaser, and

to the premises at which the product may be obtained; or

(b) granted by a person engaged in the business of lending money, where the advantage is in the form of more favourable interest rates or other terms to some customers than to others and is based on a reasonable assessment made in good faith of the comparative risks."

"35. (1) In this section, "allowance" means any discount, rebate, price concession or other advantage that is or purports to be offered or granted for advertising or display purposes and is collateral to a sale or sales of products but is not applied directly to the selling price."

(c) in any case where services are exacted in return therefor, the requirements thereof have regard to the kinds of services that competing purchasers at the same or different levels of distribution are ordinarily able to perform or cause to be performed.

**Misleading
advertising**

36. (1) Every one who, for the purpose of promoting the sale or use of an article, makes any materially misleading representation to the public, by any means whatever, concerning the price at which such or like articles have been, are, or will be, ordinarily sold, is guilty of an offence punishable on summary conviction.

"36. (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

(a) make a representation to the public that is false or misleading in a material respect;

(b) make a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies upon the person making the representation;

(c) make a representation to the public in a form that purports to be

(i) a warranty or guarantee of a product, or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result

if such form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out; or

(d) make a materially misleading representation to the public concerning the price at which a product or like products have been, are or will be ordinarily sold; and for the purposes of this paragraph a representation as to price is deemed to refer to the price charged by sellers generally in the relevant market unless it is clearly specified to be the price charged by the person by whom or on whose behalf the representation is made.

Deemed
representa-
tion to
public

(2) Subsection (1) does not apply to a person who publishes an advertisement that he accepts in good faith for publication in the ordinary course of his business. 1960, c. 45, s. 13.

(2) For the purposes of this section and section 36.1, a representation that is

(a) expressed on an article offered or displayed for sale, its wrapper or container,

(b) expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale,

(c) expressed on an in-store or other point-of-purchase display,

(d) made in the course of in-store, door-to-door or telephone selling to persons as ultimate users, or

(e) contained in or on anything that is sold, sent, delivered, transmitted or made available to members of the public,

shall be deemed to be made to the public by the person who caused the representation to be made and, where that person is outside Canada, by

(f) the person who imported the article into Canada, in a case described in paragraph (a), (b) or (e), and

(g) the person who imported the display into Canada, in a case described in paragraph (c).

Idem

(3) Every one who, for the purpose of promoting, directly or indirectly, the supply or use of a product or any business interest, supplies to a wholesaler, retailer or other distributor of a product any material or thing that contains a representation of a nature referred to in subsection (1) shall be deemed to have made that representation to the public.

(4) For the purposes of this section,

(a) a warranty or guarantee that limits in any respect the liability of the person giving it to a standard that is lower than the standard that, but for such warranty or guarantee,

Materially
misleading
warranty or
guarantee

General
impression
to be con-
sidered

Punishment

Representa-
tion as to
reasonable
test and
publication
of testi-
monials

would be imposed on him by any law of general application in a place in Canada where the warranty or guarantee purports to apply, is misleading in a material respect unless that fact is clearly stated in the warranty or guarantee; and

(b) a warranty or guarantee that confers no material advantage on all or a portion of the class of persons to whom it is given is misleading in a material respect.

(5) In any prosecution for a violation of this section, the general impression conveyed by a representation as well as the literal meaning thereof shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

(6) Any person who violates subsection (1) is guilty of an offence and is liable

(a) on conviction on indictment, to imprisonment for two years; or

(b) on summary conviction, to a fine not exceeding two thousand dollars or to imprisonment for one year or to both.

36.1 (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of any product, or for the purpose of promoting, directly or indirectly, any business interest

(a) make a representation to the public that a test as to the performance, efficacy or length of life of the product has been made by any person, or

(b) publish a testimonial with respect thereto,

except where he can establish that

(c) the representation or testimonial was previously made or published by the person by whom the test was made or the testimonial was given, as the case may be, or

(d) the representation or testimonial was, before being made or published,

approved and permission to make or publish it was given in writing by the person by whom the test was made or the testimonial was given, as the case may be.

Punishment

(2) Any person who violates subsection (1) is guilty of an offence and is liable

(a) on conviction on indictment, to imprisonment for two years; or

(b) on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for one year or to both.

**Double
ticketing**

36.2 (1) No person shall supply a product at a price that exceeds the lowest of two or more prices clearly expressed by him or on his behalf, in respect of the product in the quantity in which it is so supplied and at the time at which it is so supplied,

(a) on the product, its wrapper or container,

(b) on anything attached to, inserted in or accompanying the product, its wrapper or container or anything on which the product is mounted for display or sale,

(c) on an in-store or other point of purchase display or advertisement, or

(d) contained in or on anything that is sold, sent, delivered, transmitted or made available on behalf of the supplier to members of the public.

Punishment

(2) Any person who violates subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for one year or to both.

**Definition of
"scheme of
pyramid
selling"**

36.3 (1) For the purposes of this section, "scheme of pyramid selling" means

(a) a scheme for the sale or lease of a product whereby one person (the "first" person) pays a fee to partici-

pate in the scheme and receives the right to receive a fee, commission or other benefit

(i) in respect of the recruitment into the scheme of other persons either by the first person or any other person, or

(ii) in respect of sales or leases made, other than by the first person, to other persons recruited into the scheme by the first person or any other person, and

(b) a scheme for the sale or lease of a product whereby one person sells or leases a product to another person (the "second" person) who receives the right to receive a rebate, commission or other benefit in respect of sales or leases of the same or another product that are not

(i) sales or leases made to the second person,

(ii) sales or leases made by the second person, or

(iii) sales or leases, made to ultimate consumers or users of the same or other product, to which no right of further participation in the scheme, immediate or contingent, is attached.

(2) No person shall

(a) induce or invite another person to participate in a scheme of pyramid selling; and

(b) misrepresent to that person the gain that a participant in the scheme may reasonably expect to receive by reason of the participation of other persons in the scheme.

(3) Any person who violates subsection (2) is guilty of an offence and is liable

(a) on conviction on indictment, to imprisonment for two years; or

(b) on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for one year or to both.

Pyramid
selling

Punishment

Definition of
"scheme of
referral
selling"

Referral
selling

Punishment

Definition of
"bargain
price"

Bait and
switch
selling

37. (1) Every one who publishes or causes to be published an advertisement containing a statement that purports to be a statement of fact but that is untrue, deceptive or misleading or is intentionally so worded or arranged that it is deceptive or misleading, is guilty of an indictable offence and is liable to imprisonment for five years, if the advertisement is published

(a) to promote, directly or indirectly, the sale or disposal of property or any interest therein, or

(b) to promote a business or commercial interest.

(2) Every one who publishes or causes to be published in an advertisement a statement or guarantee of the performance, efficacy or length of life of anything that is not based upon an adequate and proper test of that thing, the proof of which lies upon the accused, is, if the advertisement is published to promote, directly or indirectly, the sale or

36.4 (1) For the purposes of this section, "scheme of referral selling" means a scheme for the sale or lease of a product whereby one person induces another person (the "second" person) to purchase or lease a product and represents that the second person will or may receive a rebate, commission or other benefit based in whole or in part on sales or leases of the same or another product made to other persons whose names are supplied by the second person.

(2) No person shall induce or invite another person to participate in a scheme of referral selling.

(3) Any person who violates subsection (2) is guilty of an offence and is liable

(a) on conviction on indictment, to imprisonment for two years; or

(b) on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for one year or to both.

37. (1) For the purposes of this section, "bargain price" means

(a) a price that is represented in an advertisement to be a bargain price, by reference to an ordinary price or otherwise; or

(b) a price that a person who reads, hears or sees the advertisement would reasonably understand to be a bargain price by reason of the prices at which the product advertised or like products are ordinarily sold.

(2) No person shall advertise at a bargain price a product that he does not or cannot supply in reasonable quantities having regard to the nature of the market in which he carries on business, the nature and size of the business carried on by him and the nature of the advertisement.

disposal of that thing, guilty of an offence punishable on summary conviction.

Defence

(3) Subsections (1) and (2) do not apply to a person who publishes an advertisement that he accepts in good faith for publication in the ordinary course of his business.

Punishment

(4) For the purposes of subsection (2), a test that is made by the National Research Council of Canada or by any other public department is an adequate and proper test, but no reference shall be made in an advertisement to indicate that a test has been made by the National Research Council or other public department unless the advertisement has, before publication, been approved and permission to publish it has been given in writing by the President of the National Research Council or by the deputy head of the public department, as the case may be.

(5) Nothing in subsection (4) shall be deemed to exclude, for the purposes of this section, any other adequate or proper test. 1968-69, c. 38, s. 116.

**Sale above
advertised
price**

Punishment

**Promotional
contests**

(3) Subsection (2) does not apply to a person who establishes that, after he became unable to supply the product in accordance with the advertisement, he undertook to supply the same product or an equivalent product of equal or better quality at the bargain price and within a reasonable time to all persons who requested the product and who were not supplied therewith during the time when the bargain price applied and that he fulfilled the undertaking.

(4) Any person who violates subsection (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for one year or to both.

37.1 (1) No person who advertises a product for sale or rent in a market shall, during the period and in the market to which the advertisement relates, supply the product at a price that is higher than the price advertised.

(2) Any person who violates subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for one year or to both.

37.2 (1) No person shall, for the purpose of promoting, directly or indirectly, the sale of a product, or for the purpose of promoting, directly or indirectly, any business interest, conduct any contest,

lottery, game of chance or skill, or mixed chance and skill, or otherwise dispose of any product or other benefit by any mode of chance, skill or mixed chance and skill whatever unless

(a) there is adequate and fair disclosure of the number and value of the prizes and the chances of winning in any area to which prizes have been allocated;

(b) distribution of the prizes is not unduly delayed; and

(c) selection of participants or distribution of prizes is made on the basis of skill or on a random basis in any area to which prizes have been allocated.

Punishment

(2) Any person who violates subsection (1) is guilty of an offence and is liable

(a) on conviction on indictment, to imprisonment for two years; or

(b) on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for one year or to both.

Defence

37.3 Sections 36 to 37.2 do not apply to a person, other than a person by whom a representation is deemed by subsection 36(2) to be made to the public, who prints or publishes or otherwise distributes a representation or an advertisement on behalf of another person, where he establishes that he obtained and recorded the name and address of that other person and that he accepted the representation or advertisement in good faith for printing, publishing or other distribution in the ordinary course of his business.

Price maintenance

38. (1) In this section "dealer" means a person engaged in the business of manufacturing or supplying or selling any article or commodity.

38. (1) No person who is engaged in the business of producing or supplying a product or who has the exclusive rights and privileges conferred by a patent, trade mark, copyright or registered industrial design shall, directly or indirectly,

Exception

(2) No dealer shall directly or indirectly by agreement, threat, promise or any other means whatever, require or induce or attempt to require or induce any other person to resell an article or commodity

(a) at a price specified by the dealer or established by agreement,

(b) at a price not less than a minimum price specified by the dealer or established by agreement,

(c) at a markup or discount specified by the dealer or established by agreement,

(d) at a markup not less than a minimum markup specified by the dealer or established by agreement, or

(e) at a discount not greater than a maximum discount specified by the dealer or established by agreement,

whether such markup or discount or minimum markup or maximum discount is expressed as a percentage or otherwise.

**Suggested
retail price**

(3) No dealer shall refuse to sell or supply an article or commodity to any other person for the reason that such other person

(a) has refused to resell or to offer for resale the article or commodity

(i) at a price specified by the dealer or established by agreement,

(ii) at a price not less than a minimum price specified by the dealer or established by agreement,

(iii) at a markup or discount specified by the dealer or established by agreement,

(a) by agreement, threat, promise or any like means, attempt to influence upward, or to discourage the reduction of, the price at which any other person engaged in business in Canada supplies or offers to supply or advertises a product within Canada; or

(b) refuse to supply a product to or otherwise discriminate against any other person engaged in business in Canada because of the pricing policy of that other person.

(2) Subsection (1) does not apply where the person attempting to influence the conduct of another person and that other person are affiliated companies or directors, agents, officers or employees of

(a) the same company, partnership or sole proprietorship; or

(b) companies, partnerships or sole proprietorships that are affiliated.

(3) For the purposes of this section, a suggestion by a producer or supplier of a product of a resale price or minimum resale price in respect thereof, however arrived at, is, in the absence of any evidence that the person making the suggestion, in so doing, also made it clear to the person to whom the suggestion was made that he was under no obligation to accept the suggestion and would in no way suffer in his business relations with the person making the suggestion or with

(iv) at a markup not less than a minimum markup specified by the dealer or established by agreement, or

(v) at a discount not greater than a maximum discount specified by the dealer or established by agreement; or

(b) has resold or offered to resell the article or commodity

(i) at a price less than a price or minimum price specified by the dealer or established by agreement,

(ii) at a markup less than a markup or minimum markup specified by the dealer or established by agreement, or

(iii) at a discount greater than a discount or maximum discount specified by the dealer or established by agreement.

Idem

(4) Every person who violates subsection (2) or (3) is guilty of an indictable offence and is liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding two years or to both.

Exception

(5) Where, in a prosecution under this section, it is proved that the person charged refused or counselled the refusal to sell or supply an article to any other person, no inference unfavourable to the person charged shall be drawn from such evidence if he satisfies the court that he and any one upon whose report he depended had reasonable cause to believe and did believe

(a) that the other person was making a practice of using articles supplied by the person charged as loss-leaders, that is to say, not for the purpose of making a profit thereon but for purposes of advertising;

(b) that the other person was making a practice of using articles supplied by the person charged not for the purpose of selling such articles at a profit but for the purpose of attracting customers to his store in the hope of selling them other articles;

any other person if he failed to accept the suggestion, proof of an attempt to influence the person to whom the suggestion is made in accordance with the suggestion.

(4) For the purposes of this section, the publication by a supplier of a product, other than a retailer, of an advertisement that mentions a resale price for the product is an attempt to influence upward the selling price of any person into whose hands the product comes for resale unless the price is so expressed as to make it clear to any person to whose attention the advertisement comes that the product may be sold at a lower price.

(5) Subsections (3) and (4) do not apply to a price that is affixed or applied to a product or its package or container.

(c) that the other person was making a practice of engaging in misleading advertising in respect of articles supplied by the person charged; or

(d) that the other person made a practice of not providing the level of servicing that purchasers of such articles might reasonably expect from such other person.

Refusal to
sell or supply

Where
company,
partnership
or sole proprietorship
affiliated

Punishment

Civil rights not
affected

39. Nothing in this Part shall be construed to deprive any person of any civil right of action.

(6) No person shall, by threat, promise or any like means, attempt to induce a supplier, whether within or without Canada, as a condition of his doing business with the supplier, to refuse to supply a product to a particular person or class of persons.

(7) For the purposes of subsection (2),

(a) a company is affiliated with another company if

(i) one is a subsidiary of the other,

(ii) both are subsidiaries of the same company,

(iii) both are controlled by the same person, or

(iv) each is affiliated with the same company; and

(b) a partnership or sole proprietorship is affiliated with another partnership, sole proprietorship or a company if both are controlled by the same person.

(8) Every person who violates subsection (1) or (6) is guilty of an indictable offence and is liable on conviction to imprisonment for two years.

39. Except as otherwise provided in this Part, nothing in this Part shall be construed to deprive any person of any civil right of action."

(2) Section 37.2 of the *Combines Investigation Act*, as enacted by subsection (1), does not apply to any contest, lottery, game of chance or skill, or of mixed chance and

skill, that commenced before the coming into force of this section.

PART VI

OTHER OFFENCES

Penalty for failure to attend, etc.

40. If any person, who has been duly served with an order, issued by the Commission or any member thereof requiring him to attend or to produce any books, papers, records or other documents, and to whom, at the time of service, payment or tender has been made of his reasonable travelling expenses according to the scale in force with respect to witnesses in civil suits in the superior court of the province in which such person is summoned to attend, fails to attend and give evidence, or to produce any book, paper, record or other document as required by the said order, he is, unless he shows that there was good and sufficient cause for such failure, guilty of an offence and liable upon summary conviction to a fine of not more than one thousand dollars or to imprisonment for a term not exceeding six months or to both.

Obstruction

41. (1) No person shall in any manner impede or prevent or attempt to impede or prevent any inquiry or examination under this Act.

Penalty

(2) Every person who violates subsection (1) is guilty of an offence and is liable on summary conviction or on conviction on indictment to a fine of not more than five thousand dollars or to imprisonment for a term not exceeding two years or to both.

Penalty for violation of ss. 10(2)

42. (1) Every person who violates subsection 10(2) is guilty of an offence and is liable on summary conviction or on conviction on indictment to a fine of not more than five thousand dollars or to imprisonment for a term not exceeding two years or to both.

Penalty for failure to comply with notice under s. 9 or ss. 22(2)

(2) Every person who, without good and sufficient cause, the proof whereof lies on him, refuses, neglects or fails to comply with a notice in writing requiring a written return under oath or affirmation, pursuant to section 9 or subsection 22(2) is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine of not more than five thousand dollars or to imprisonment for a term not exceeding two years or to both.

Liability of directors assenting to offences

(3) Where a corporation commits an offence against subsection (1) or (2) any director or officer of such corporation who assents to or acquiesces in the offence committed by the corporation is guilty of that offence personally and cumulatively with the corporation and with his co-directors or associate officers.

Penalty for failure to comply with notice under ss. 12(1)

43. Every person who, without good and sufficient cause, the proof whereof lies on him, refuses, neglects or fails to comply with a notice in writing requiring evidence upon affidavit or written affirmation, pursuant to subsection 12(1) is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine of not more than five thousand dollars or to imprisonment for a term not exceeding two years or to both.

Procedure

Procedure for enforcing penalties

44. (1) Where an indictment is found against an accused, other than a corporation, for any offence against this Act, the accused may elect to be tried without a jury and where he so elects he shall be tried by the judge presiding at the court at which the indictment is found, or the judge presiding at any subsequent sittings of that court, or at any court where the indictment comes on for trial; and in the event of such election being made the proceedings subsequent to the election shall be regulated in so far as may be applicable by the provisions of the *Criminal Code* relating to the trial of indictable offences by a judge without a jury.

Jurisdiction of
courts

(2) No court other than a superior court of criminal jurisdiction, as defined in the *Criminal Code*, has power to try any offence under section 32 or 33.

Corporations to
be tried without
jury

(3) Notwithstanding anything in the *Criminal Code* or in any other statute or law, a corporation charged with an offence under this Act shall be tried without the intervention of a jury.

Option as to
procedure under
ss. 30(2)

(4) In any case where subsection 30(2) is applicable the Attorney General of Canada or the attorney general of the province may in his discretion institute proceedings either by way of an information under that subsection or by way of prosecution.

Venue of
prosecutions

“(2) No court other than a superior court of criminal jurisdiction, as defined in the *Criminal Code*, has power to try any offence under section 32, 32.1, 32.2, 32.3 or 33.”

“**44.1** Notwithstanding any other Act, a prosecution for an offence under Part V or section 46.1 may be brought, in addition to any place in which such prosecution may be brought by virtue of the *Criminal Code*,

(a) where the accused is a company, in any territorial division in which the company has its head office or a branch office, whether or not such branch office is provided for in any Act or instrument relating to the incorporation or organization of the company; and

(b) where the accused is not a company, in any territorial division in which the accused resides or has a place of business.”

Definitions

45. (1) In this section

“agent of a
participant”

“agent of a participant” means a person who by a document admitted in evidence under this section appears to be or is otherwise proven to be an officer, agent, servant, employee or representative of a participant;

“document”

“document” includes any document appearing to be a carbon, photographic or other copy of a document;

"participant" "participant" means any person against whom proceedings have been instituted under this Act and in the case of a prosecution means any accused and any person who, although not accused, is alleged in the charge or indictment to have been a co-conspirator or otherwise party or privy to the offence charged.

"(2) In any proceedings before the Commission or in any prosecution or proceedings before a court under or pursuant to this Act,"

Evidence against a participant

- (2) In a prosecution under Part V,
- (a) anything done, said or agreed upon by an agent of a participant shall *prima facie* be deemed to have been done, said or agreed upon, as the case may be, with the authority of that participant;
 - (b) a document written or received by an agent of a participant shall *prima facie* be deemed to have been written or received, as the case may be, with the authority of that participant; and
 - (c) a document proved to have been in the possession of a participant or on premises used or occupied by a participant or in the possession of an agent of a participant shall be admitted in evidence without further proof thereof and is *prima facie* proof
 - (i) that the participant had knowledge of the document and its contents,
 - (ii) that anything recorded in or by the document as having been done, said or agreed upon by any participant or by an agent of a participant was done, said or agreed upon as recorded and, where anything is recorded in or by the document as having been done, said or agreed upon by an agent of a participant, that it was done, said or agreed upon with the authority of that participant,
 - (iii) that the document, where it appears to have been written by any participant or by an agent of a participant, was so written and, where it appears to have been written by an agent of a participant, that it was written with the authority of that participant.

Admissibility of statistics

"45.1 (1) A collection, compilation, analysis, abstract or other record or report of statistical information prepared or published under the authority of
(a) the *Statistics Act*, or

(b) any other enactment of Parliament or of the legislature of a province,

is admissible in evidence in any proceedings before the Commission or in any prosecution or proceedings before a court under or pursuant to this Act.

Idem

(2) On request from the Minister, the Commission or the Director,

(a) the Chief Statistician of Canada or an officer of any department or agency of the Government of Canada the functions of which include the gathering of statistics shall, and

(b) an officer of any department or agency of the government of a province the functions of which include the gathering of statistics may,

compile from his or its records a statement of statistics relating to any industry or sector thereof, in accordance with the terms of the request, and any such statement is admissible in evidence in any proceedings before the Commission or in any prosecution or proceedings before a court under or pursuant to this Act.

Privileged
information
not affected

(3) Nothing in this section compels or authorizes the Chief Statistician of Canada or any officer of a department or agency of the Government of Canada to disclose any particulars relating to an individual or business in a manner that is prohibited by any provision of an enactment of Parliament or of a provincial legislature designed for the protection of such particulars.

Certificate

(4) In any proceedings before the Commission, or in any prosecution or proceedings before a court under or pursuant to this Act, a certificate purporting to be signed by the Chief Statistician

Statistics
collected by
sampling
methods

Notice

Attendance
of statis-
tician

of Canada or the officer of the department or agency of the Government of Canada or of a province under whose supervision a record, report or statement of statistics referred to in this section was prepared setting out that the record, report or statement of statistics attached thereto was prepared under his supervision, is evidence of the facts alleged therein without proof of the signature or official character of the person by whom it purports to be signed.

45.2 A collection, compilation, analysis, abstract or other record or report of statistics collected by sampling methods by or on behalf of the Director or any other party to proceedings before the Commission, or to a prosecution or proceedings before a court under or pursuant to this Act, is admissible in evidence in any such prosecution or proceedings.

45.3 (1) No record, report or statement of statistical information or statistics referred to in section 45.1 or 45.2 shall be received in evidence before the Commission or court unless the person intending to produce the record, report or statement in evidence has given to the person against whom it is intended to be produced reasonable notice together with a copy of the record, report or statement and, in the case of a record or report of statistics referred to in section 45.1, together with the names and qualifications of those persons who participated in the preparation thereof.

(2) Any person against whom a record or report of statistics referred to in section 45.2 is produced may, with leave of the Commission or court before which the record or report is produced, require the attendance of any person who participated in the preparation of the record or report for the purposes of cross-examination."

Jurisdiction of
Federal Court

46. (1) Subject to this section, the Attorney General of Canada may institute and conduct any prosecution or other proceedings under section 30 or Part V, except section 36 and subsection 37(2), in the Federal Court—Trial Division, and for the purposes of such prosecution or other proceedings the Federal Court—Trial Division has all the powers and jurisdiction of a superior court of criminal jurisdiction under the *Criminal Code* and under this Act.

No jury

(2) The trial of an offence under Part V in the Federal Court—Trial Division shall be without a jury.

Appeal

(3) An appeal lies from the Federal Court—Trial Division to the Federal Court of Appeal and from the Federal Court of Appeal to the Supreme Court of Canada in any prosecution or proceedings under Part V of this Act as provided in Part XVIII of the *Criminal Code* for appeals from a trial court and from a court of appeal.

Proceedings
optional

(4) Proceedings under subsection 30(2) may in the discretion of the Attorney General be instituted in either the Federal Court—Trial Division or a superior court of criminal jurisdiction in the province but no prosecution shall be instituted in the Federal Court—Trial Division in respect of an offence under Part V without the consent of all the accused.

Failure to
comply
with cer-
tain orders

“46. (1) Subject to this section, the Attorney General of Canada may institute and conduct any prosecution or other proceedings under section 30, any of sections 32 to 35 and section 38 or, where the proceedings are on indictment, under section 36 or 46.1, in the Federal Court—Trial Division, and for the purposes of such prosecution or other proceedings the Federal Court—Trial Division has all the powers and jurisdiction of a superior court of criminal jurisdiction under the *Criminal Code* and under this Act.

(2) The trial of an offence under Part V or section 46.1 in the Federal Court—Trial Division shall be without a jury.

(3) An appeal lies from the Federal Court—Trial Division to the Federal Court of Appeal and from the Federal Court of Appeal to the Supreme Court of Canada in any prosecution or proceedings under Part V or section 46.1 of this Act as provided in Part XVIII of the *Criminal Code* for appeals from a trial court and from a court of appeal.

(4) Proceedings under subsection 30 (2) may in the discretion of the Attorney General be instituted in either the Federal Court—Trial Division or a superior court of criminal jurisdiction in the province but no prosecution shall be instituted against an individual in the Federal Court—Trial Division in respect of an offence under Part V or section 46.1 without the consent of the individual.”

“46.1 Any person who contravenes or fails to comply with an order of the Commission is guilty of an offence and is liable

(a) on conviction on indictment, to imprisonment for two years; or

(b) on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for one year or to both."

PART VII

Investigation of Monopolistic Situations

General
inquiries

47. (1) The Director upon his own initiative may and upon direction from the Minister or at the instance of the Commission shall carry out an inquiry concerning the existence and effect of conditions or practices having relation to any commodity which may be the subject of trade or commerce and which conditions or practices are related to monopolistic situations or restraint of trade, and for the purposes of this Act any such inquiry shall be deemed to be an inquiry under section 8.

"**47.** (1) The Director

(a) upon his own initiative may, and upon direction from the Minister or at the instance of the Commission shall, carry out an inquiry concerning the existence and effect of conditions or practices relating to any product that may be the subject of trade or commerce and which conditions or practices are related to monopolistic situations or restraint of trade, and

(b) upon direction from the Minister shall carry out a general inquiry into any matter that the Minister certifies in the direction to be related to the policy and objectives of this Act,

and for the purposes of this Act, any such inquiry shall be deemed to be an inquiry under section 8."

(2) It is the duty of the Commission to consider any evidence or material brought before it under subsection (1) together with such further evidence or material as the Commission considers advisable and to report thereon in writing to the Minister, and for the purposes of this Act any such report shall be deemed to be a report under section

Regulations and Report to Parliament

Regulations

48. The Governor in Council may make such regulations, not inconsistent with this Act, as to him seem necessary for carrying out this Act and for the efficient administration thereof.

Annual report

49. The Director shall report annually to the Minister the proceedings under this Act, and the Minister shall within thirty days after he receives it lay the report before Parliament, or, if Parliament is not then in session, within the first fifteen days after the commencement of the next ensuing session.

REPEAL AND COMMENCEMENT

*Section 1 of chapter 23
of the Statutes of 1966-67 provides*

Repeal of
1966-67,
c. 23

1. Section 1 of *An Act to amend the Combines Investigation Act and the Criminal Code*, chapter 40 of the Statutes of 1959 as amended by section 1 and the sections referred to in section 1 of *An Act to amend An Act to amend the Combines Investigation Act and the Criminal Code*, chapter 35 of the Statutes of 1964-65, is repealed and the following substituted therefor:

"1. Nothing in the *Combines Investigation Act* or in section 411 of the *Criminal Code* shall be construed to apply to any contract, agreement or arrangement between fishermen or associations of fishermen in British Columbia, and persons or associations of persons engaged in the buying or processing of fish in British Columbia, relating to the prices, remuneration or other conditions under which fish will be caught and supplied to such persons by fishermen between the 1st day of January, 1959 and the later of

(a) the 31st day of December, 1967, or

(b) the thirtieth sitting day of Parliament next after the day on which any resolution of either House of Parliament, based on a notice of motion in that House signed by any ten members thereof and made in accordance with the rules of that House, that this section cease to be in force is concurred in by the other House,

or such sooner day as this section is repealed."

NOTE

*Section 22 of chapter 45
of the Statutes of 1960, provides*

22. Except to the extent that subsection (1) of section 32 of the *Combines Investigation Act* as enacted by this Act is not in substance the same as section 411 of the *Criminal Code* as in force immediately before the coming into force of this Act, the said subsection (1) of section 32 of the *Combines Investigation Act* shall not be held to operate as new law, but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the said section 411 of the *Criminal Code*.

Coming into
force

30. *An Act to amend an Act to amend the Combines Investigation Act and the Criminal Code*, chapter 23 of the Statutes of 1966-67 is repealed.

31. (1) Subject to subsection (2), this Act shall come into force on a day to be fixed by a proclamation issued under this subsection.

(2) For the purpose of applying section 32 of the *Combines Investigation Act*, as

Idem

amended by this Act, to conspiracies, combinations, agreements and arrangements related to services to which that section does not now apply, at a day that is later than the day fixed by a proclamation issued under subsection (1), any provision or provisions of this Act that are specified in a proclamation issued under this subsection, and any provision or provisions of the *Combines Investigation Act* enacted or amended by this Act and specified in such proclamation shall come into force on a day fixed by a proclamation issued under this subsection.

INDUSTRY CANADA/INDUSTRIE CANADA



48706

