

*(Canada. Combines Investigation Act. Amendments 1984.)*

**Canada**

**COMBINES  
INVESTIGATION ACT  
AMENDMENTS 1984**

**A Schematic  
Presentation of  
the Act and the Bill**



Consumer and  
Corporate Affairs  
Canada

Consommation  
et Corporations  
Canada

HD  
2809  
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1984

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1984

Marginal  
Notes

This column contains  
comments and  
marginal notes  
to the Act as  
submitted by  
the Bill.

PRESBY ACT

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

AMENDMENTS

This column contains all the changes  
proposed by the Bill.

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Ministry of State  
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Investigation of Combinations Sciences et Technologie

AMENDMENTS TO THE COMBINES INVESTIGATION ACT

INTERPRETATION

Definitions

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

A Schematic Presentation of the Act and the Bill

(of money).

(A) 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 series  
of a company;

(B) deeds and instruments giving a right  
to receive or receive property;

(C) tickets or like evidence of right to be  
in attendance at a particular place at a  
particular time or times or of a right to  
transportation; and

(D) 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;

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

"interpretation" includes Minister of Consumer and Corporate Affairs  
The Honourable Judy Erola

President means the Director of the  
Combines Investigation Act;

1984

MINISTRY OF STATE  
MINISTÈRE D'ETAT  
BIBLIOTHÈQUE

JULY 11 1985

SCIENCE AND TECHNOLOGY  
SCIENCES ET TECHNOLOGIE

**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*.

**AMENDMENTS**

This column contains all the changes proposed by the Bill.

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

**SHORT TITLE**

**Short title**

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

"An Act to provide for the general regulation of trade and commerce in respect of combines, mergers and trade practices affecting competition"

**INTERPRETATION**

**Definitions**

"article"  
«article»

**2. In this Act**

"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 or of a right to transportation, and
- (e) energy, however generated;

"business"  
«entreprise»

"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;

"Commission"  
«Commission»

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

"corporation"  
«corporation»

"corporation" includes "company";

"Director"  
«directeur»

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

<p>“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</p>	(repealed)
<ul style="list-style-type: none"> <li>(a) in a trade, industry or profession,</li> <li>(b) among the sources of supply of a trade, industry or profession,</li> <li>(c) among the outlets for sales of a trade, industry or profession, or</li> <li>(d) otherwise than in paragraphs (a), (b) and (c),</li> </ul>	
<p>is or is likely to be lessened to the detriment or against the interest of the public, whether consumers, producers or others;</p>	
<p>“Minister” means the Minister of Consumer and Corporate Affairs;</p>	(repealed)
<p>“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 <i>Patent Act</i>, or any other Act of the Parliament of Canada;</p>	(repealed)
<p>“product”</p>	“produit”
<p>“service”</p>	“service”
<p>“supply”</p>	“fournir”
<p>“supply” means,</p>	
<ul style="list-style-type: none"> <li>(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</li> <li>(b) in relation to a service, sell, rent or otherwise provide a service or offer so to provide a service;</li> </ul>	
<p>“trade, industry or profession”</p>	“trade, industry or profession” includes any class, division or branch of a trade, industry or profession. R.S., c. C-23, s. 2; 1974-75-76, c. 76, s. 1.

Binding on  
agents of Her  
Majesty in  
certain cases

**“2.1** This Act is binding on an agent of Her Majesty in right of Canada or a province that is a corporation, in respect of commercial activities engaged in by the corporation in competition, whether actual or potential, with other persons, but not in respect of commercial activities engaged in by the corporation that are directly associated with its regulatory activities.”

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 bar-  
gaining activi-  
ties

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

- (a) combinations or activities of workmen or employees for their own reasonable protection as such workmen or employees;
- (b) contracts, agreements or arrangements between or among 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 like conditions under which fish will be caught and supplied to such persons by fishermen; or
- (c) contracts, agreements or arrangements between or among two or more employers in a trade, industry or profession whether effected directly between or among such employers or through the instrumentality of a corporation or association of which such employers are members, 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 a contract, agreement or arrangement entered into by an employer to withhold any product from any person, or to refrain from acquiring from any person any product other than the services of workmen or employees. R.S., c. C-23, s. 4; 1974-75-76, c. 76, s. 2.

Underwriters

**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 or between or among such persons and the issuer of a specific security, in the case of a primary distribution, or the vendor of a specific security, in the case of a secondary distribution, where such agreement or arrangement has a reasonable relationship to the underwriting of a specific security.

**Definition of "underwriting"**

(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

- (a) a prospectus is required to be filed, accepted or otherwise approved under or pursuant to a law enacted in Canada for the supervision or regulation of trade in securities, or
- (b) a prospectus would be required to be filed, accepted or otherwise approved but for an express exemption contained in or given pursuant to a law mentioned in paragraph (a). 1974-75-76, c. 76, s. 2.

**Amateur sport**

**4.2** (1) This Act does not apply in respect of agreements or arrangements between or among teams, clubs and leagues pertaining to participation in amateur sport.

**Definition of "amateur sport"**

(2) For the purposes of this section, "amateur sport" means sport in which the participants receive no remuneration for their services as participants. 1974-75-76, c. 76, s. 2.

**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**

(2) The Director shall, before entering upon his duties, take and subscribe, before the Clerk of the Privy Council, an oath or affirmation, which shall be filed in the office of the Clerk, in the following form:

I do solemnly swear (or affirm) 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. (*In the case where an oath is taken add, "So help me God"*).

**Salary**

(3) The Director shall be paid such salary as may be from time to time fixed and allowed by the Governor in Council. R.S., c. C-23, s. 5; 1976-77, c. 28, s. 9.

**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. R.S., c. 314, s. 6.

**Application for inquiry**

**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.

**Material to be submitted**

(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
  - (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

“(a) a person has contravened or failed to comply with an order made pursuant to section 29, 29.1 or 30, or Part IV.1,  
 (b) grounds exist for the making of an order under Part IV.1 or subsection 31.95(6), or”

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. R.S., c. C-23, s. 7; 1974-75-76, c. 76, s. 3.

**Inquiry by Director**

**8. The Director shall**

- (a) on application made under section 7,
- (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.  
 R.S., c. C-23, s. 8; 1974-75-76, c. 76, s. 4.

**Information on inquiry**

**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.

“(i) a person has contravened or failed to comply with an order made pursuant to section 29, 29.1 or 30, or Part IV.1,

(ii) grounds exist for the making of an order under Part IV.1 or subsection 31.95(6), or”

“(2) The Director shall, on the written request of any person whose conduct is being inquired into under this Act, inform that person or cause that person to be informed as to the progress of the inquiry.”

**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. R.S., c. 314, s. 9.

**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. R.S., c. 314, s. 10.

**Information on nature and scope of inquiry**

**Solicitor-client privilege**

**"10.1** Where the Director or his authorized representative, acting under section 10, enters premises on which the Director believes there may be evidence relevant to the matters being inquired into, the Director or his representative shall inform the person in charge of the premises of the nature and scope of the inquiry.

**10.2 (1)** Where the Director or his authorized representative, acting under section 10, is about to examine, copy or take away or is in the course of examining, copying or taking away any book, paper, record or other document and a person appearing to be in authority claims that there exists a solicitor-client privilege in respect thereof, the Director or his representative, unless such person withdraws the claim of privilege or the Director or his representative desists from examining and copying such document and from taking it or a copy thereof away, shall, without examining or further examining it or making a copy or further copy thereof, place it and any copies of it theretofore made by him in a package and seal and identify the package and place it in the custody of

(a) the registrar, prothonotary or other like officer of the Federal Court of Canada, or of a superior court in the province in which the document was found;

(b) a sheriff of the district or county in which the document was found; or

(c) some person agreed on between the Director or his representative and the person appearing to be in authority who makes the claim of privilege.

(2) A judge of the Federal Court of Canada, or of a superior court in the province in which a document placed in custody under subsection (1) was found, sitting *in camera*, may decide the question of privilege in relation to the document on application made in accordance with the rules of the court by the Director or the owner of the document or the person in whose possession it was found within ten days after the document was placed in custody if notice of the application has been given by the applicant to all other persons entitled to make application.

Idem

(3) Where no application is made in accordance with subsection (2) within ten days after the day on which a document is placed in custody under subsection (1), any judge referred to in subsection (2) shall, on *ex parte* application by or on behalf of the Director, order the document to be delivered to the Director.

Authority of  
judge

(4) A judge referred to in subsection (2) may give any directions that he deems necessary to give effect to this section, may order delivery up to him out of custody of any document in respect of which he is asked to decide a question of privilege and may inspect any such document."

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. R.S., c. 314, s. 11; 1960, c. 45, s. 4.

**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 and take and receive affirmations for the purposes of this Act. R.S., c. C-23, s. 12; 1976-77, c. 28, s. 9.

**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. 1960, c. 45, s. 5; 1966-67, c. 25, s. 45.

**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 appli-  
cant**

(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. R.S., c. 314, s. 14.

**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.

**Chairman**

(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.

**“16.** (1) There shall be a Commission to be known as the Restrictive Trade Practices Commission consisting of not more than four full-time members, and not more than three part-time members, appointed by the Governor in Council.

(2) One of the full-time members of the Commission shall be appointed by the Governor in Council to be Chairman of the Commission and as such he shall be the chief executive officer of the Commission and have supervision over and direction of the work and staff of the Commission.

(2.1) One of the full-time members of the Commission 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 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 members**

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

**Termination**

**Continuation for limited purposes**

**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.

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

(3) Subject to subsections (3.1) and (3.2), each member of the Commission holds office during good behaviour for a term specified in the instrument appointing him, not exceeding seven years in the case of a full-time member, or three years in the case of a part-time member, from the date of his appointment, but may be removed at any time by the Governor in Council for cause.

(3.1) Subject to subsection (3.2), a person ceases to be a member of the Commission on attaining the age of seventy years and no one may be appointed as a member after attaining that age.

(3.2) A person may continue to act as a member of the Commission after the expiration of his period of appointment or after attaining the age of seventy years, as the case may be, in respect of any matter in which he became engaged during the term of his appointment.

(4) Subject to subsection (3.1), a member of the Commission on the expiration of his term of office is eligible for re-appointment as a full-time or part-time member."

Quorum	(8) Two members constitute a quorum.	"(8) Three members of the Commission, at least one of whom is a full-time member, constitute a quorum of the Commission."
Rules	(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 or affirmation, which shall be filed in the office of the Clerk, in the following form:	
	I do solemnly swear (or affirm) 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. ( <i>In the case where an oath is taken add, "So help me God".</i> )	
	(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; R.S., c. 10(1st Supp.), s. 34; 1974-75-76, c. 76, s. 5; 1976-77, c. 28, s. 9.	(repealed)
Principal office and sittings		" <b>16.1</b> The principal office of the Commission shall be in the National Capital Region described in the schedule to the <i>National Capital Act</i> , but sittings of the Commission may be held at such other places as the Commission may decide.
Panels		<b>16.2</b> The Chairman of the Commission may designate any three or more members of the Commission, at least one of whom is a full-time member, to sit as a panel of the Commission and may appoint a full-time member so designated to be chairman of the panel, and any such panel may, in respect of any matter assigned to it by the Chairman of the Commission, exercise all of the powers and perform all of the duties of the Commission."
Oral examination	<b>17.</b> (1) On <i>ex parte</i> 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 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). R.S., c. C-23, s. 18; 1974-75-76, c. 76, s. 6.

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, 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. R.S., c. C-23, s. 19; 1974-75-76, c. 76, s. 7.

**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 or a prosecution under section 122 or 124 of the *Criminal Code* in respect of such evidence. R.S., c. C-23, s. 20; 1974-75-76, c. 76, s. 8.

Powers of Com-  
mission

**21.** The Commission or any member thereof has all the powers of a commissioner appointed under Part I of the *Inquiries Act*. R.S., c. 314, s. 21.

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) applicable**

(5) Subsections 19(5) and (6) apply to an interim report and an annual report made pursuant to this section. R.S., c. 314, s. 22; 1960, c. 45, s. 10.

## 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. R.S., c. 314, s. 24.

**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. R.S., c. 314, s. 25; 1966-67, c. 25, s. 45.

**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. R.S., c. 314, s. 26.

**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. R.S., c. 314, s. 27.

**Inquiries to be in private**

**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.

**Proceedings  
under Part IV.1**

(2) All proceedings before the Commission, other than proceedings in relation to an inquiry, shall be conducted in public, except that the Chairman of the Commission may order that all or any portion of such proceedings be conducted in private. R.S., c. C-23, s. 27; 1974-75-76, c. 76, s. 9.

**Confidentiality**

"(3) No person performing duties or functions in the administration or enforcement of this Act shall communicate or allow to be communicated to any other person except to a Canadian law enforcement agency or for the purposes of the administration or enforcement of this Act

- (a) the identity of any person from whom information was obtained pursuant to this Act;
- (b) any information obtained pursuant to section 9, 10, 12, 17, 31.81, 31.84 or 31.85 or paragraph 22(2)(d); or
- (c) whether notice has been given or information supplied in respect of a particular proposed transaction under section 31.81, 31.84 or 31.85."

**Representations  
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 Parliament 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. 1974-75-76, c. 76, s. 9.

## 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.

**Powers of Federal Court where patents used to restrain trade**

**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 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;

**"28.** Whenever, as a result of an inquiry under this Act, a judgment of a court or a decision of the Commission, it appears to the satisfaction of the Governor in Council that

(a) competition in respect of any article has been prevented or lessened significantly, and

(b) the prevention or lessening of competition is facilitated by duties of customs imposed on the article, or on any like article, or can be reduced by a removal or reduction of duties of customs so imposed,

the Governor in Council may, by order, remove or reduce any such duties of customs."

(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. R.S., c. 314, s. 30.

**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)

- (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.

**Extension or cancellation of injunction**

(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.

**Duty of applicant**

(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.

**Punishment for disobedience**

(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.

**Definition of "court"**

(8) In this section, "court" means the Federal Court of Canada or a superior court of criminal jurisdiction as defined in the *Criminal Code*, 1974-75-76, c. 76, s. 10.

**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.

"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."

## 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,
- (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.

"(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."

**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*. R.S., c. C-23, s. 30; 1974-75-76, c. 76, s. 11.

**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. 1960, c. 45, s. 13.

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 proceed-  
ings

(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. 1974-75-76, c. 76, s. 12.

## PART IV.1

### MATTERS REVIEWABLE BY COMMISSION

### "MATTERS REVIEWABLE BY COURT

#### *Interpretation*

**31.11** For the purposes of this Part, "court" means the Federal Court—Trial Division or

- (a) in the Provinces of Ontario, Nova Scotia, British Columbia, Prince Edward Island and Newfoundland, the Yukon Territory and the Northwest Territories, the Supreme Court,
- (b) in the Province of Quebec, the Superior Court, and
- (c) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench;

"prescribed" means prescribed by regulation made by the Governor in Council under this Act.

#### *Refusal to Deal*

Jurisdiction of  
court where  
refusal to deal

**31.2** (1) Where, on application by the Director, and after affording every supplier against whom an order is sought a reasonable opportunity to be heard, the Commission finds that

- (a) a person is substantially 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,

"31.2 (1) Where, on application by the Director, the court finds that"

(b) the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,

(c) 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, and

(d) the product is in ample supply,

the Commission may,

(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 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, who have been afforded a reasonable opportunity to be heard, accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any duties of customs on the article are removed, reduced or remitted and the effect of such removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

"the court may 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 unless, within the specified time, in the case of an article, any duties of customs on the article are removed, reduced or remitted and the effect of such removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada."

*When article is a separate product*

(2) For the purposes of this section, an article is not a separate product in a market only because it is differentiated from other articles in its class by a trade mark, proprietary name or the like, unless the article so differentiated occupies such a dominant position in that market as to substantially affect the ability of a person to carry on business in that class of articles unless he has access to the article so differentiated.

*Definition of "trade terms"*

(3) For the purposes of this section, the expression "trade terms" means terms in respect of payment, units of purchase and reasonable technical and servicing requirements. 1974-75-76, c. 76, s. 12.

*"Consignment Selling"*

**Consignment selling**

**31.3** Where, on application by the Director, and after affording the supplier against whom an order is sought a reasonable opportunity to be heard, 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 order the supplier to cease to carry on the practice of consignment selling of the product. 1974-75-76, c. 76, s. 12.

**31.3** Where, on application by the Director, the court 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 court may order the supplier to cease to carry on the practice of consignment selling of the product."

*"Exclusive Dealing, Tied Selling and Market Restriction"*

**Definitions**

**"exclusive dealing"**

**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 or primarily 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 subparagraphs;

**"market restriction"**

"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 any product only in a defined market, or exacts a penalty of any kind from the customer if he supplies any product outside a defined market;

"tied selling"

"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
- (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.

**Exclusive dealing and tied selling**

(2) Where, on application by the Director, and after affording every supplier against whom an order is sought a reasonable opportunity to be heard, 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) have any other exclusionary effect in the market,

with the result that competition is or is likely to be lessened substantially, the Commission may 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.

"(2) Where, on application by the Director, the court 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) have any other exclusionary effect in the market,

with the result that competition is or is likely to be lessened substantially, the court may 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, and after affording every supplier against whom an order is sought a reasonable opportunity to be heard, 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 make an order directed to all or any of those suppliers prohibiting them from continuing to engage in market restriction and containing any other requirement 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 is reasonably necessary for such purpose,

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;

(3) Where, on application by the Director, the court 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 court may make an order directed to all or any of those suppliers prohibiting them from continuing to engage in market restriction and containing any other requirement that, in its opinion, is necessary to restore or stimulate competition in relation to the product."

"(4) The court shall not make an order under this section where, in its opinion,"

(b) a partnership or sole proprietorship is affiliated with another partnership, sole proprietorship or a company if both are controlled by the same person; and

(c) a company, partnership or sole proprietorship is affiliated with another company, partnership or sole proprietorship in respect of any agreement between them whereby one party grants to the other party the right to use a trade mark or trade name to identify the business of the grantee, provided

(i) such business is related to the sale or distribution, pursuant to a marketing plan or system prescribed substantially by the grantor, of a multiplicity of products obtained from competing sources of supply and a multiplicity of suppliers, and

(ii) no one product dominates such business.

**Control**

(6) For the purposes of this section, a company is deemed to be controlled by a person if shares of the company carrying voting rights sufficient to elect a majority of the directors of the company are held, other than by way of security only, by or on behalf of that person.

**When persons  
deemed to be  
affiliated**

(7) For the purposes of subsection (4) in its application to market restriction, where there is an agreement whereby one person (the "first" person) supplies or causes to be supplied to another person (the "second" person) an ingredient or ingredients that the second person processes by the addition of labour and material into an article of food or drink that he then sells in association with a trade mark that the first person owns or in respect of which the first person is a registered user, the first person and the second person are deemed, in respect of such agreement, to be affiliated. 1974-75-76, c. 76, s. 12.

"(6) For the purposes of this section, a company is controlled by a person if

(a) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, directly or indirectly, whether through one or more subsidiaries or otherwise, otherwise than by way of security only, by or for the benefit of that person; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company."

*"Abuse of Dominant Position"*

**Prohibition where abuse of dominant position**

**31.41** (1) Where, on application by the Director, the court finds that one or more persons

- (a) substantially or completely control, throughout Canada or any area thereof, a class or species of business, and
  - (b) have engaged in or are engaging in a practice of anti-competitive acts that has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market,
- the court may make an order prohibiting all or any of such persons from engaging in such practice.

**Additional or alternative order**

(2) Where, on an application under subsection (1) the court finds that a practice of anti-competitive acts has had or is having the effect of preventing or lessening competition substantially in a market and that an order under subsection (1) is not likely to restore competition in that market, the court may, in addition to or in lieu of making an order under subsection (1), make an order directing any or all the persons against whom an order is sought to take such actions, including the divestiture of assets or shares, as are reasonable and as are necessary to overcome the effects of the practice in that market.

**Definition of "anti-competitive act"**

(3) For the purposes of subsections (1) and (2), without restricting the generality of the expression, "anti-competitive act" includes any of the following acts:

- (a) squeezing, by a vertically integrated supplier, of the margin available to an un-integrated customer who competes with the supplier, for the purpose of impeding or preventing the customer's entry into, or expansion in, a market;
- (b) acquisition by a supplier of a customer who would otherwise be available to a competitor of the supplier, or acquisition by a customer of a supplier who would otherwise be available to a competitor of the customer, for the purpose of impeding or preventing the competitor's entry into, or eliminating him from, a market;

- (c) freight equalization on the plant of a competitor for the purpose of impeding or preventing his entry into, or eliminating him from, a market;
- (d) use of fighting brands introduced selectively on a temporary basis to discipline or eliminate a competitor;
- (e) pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market;
- (f) buying up of products to prevent the erosion of existing price levels;
- (g) adoption of product specifications that are incompatible with products produced by any other person and are designed to prevent his entry into, or to eliminate him from, a market; and
- (h) requiring or inducing a supplier to sell only or primarily to certain customers, or to refrain from selling to a competitor, with the object of preventing a competitor's entry into, or expansion in, a market.

**Superior economic efficiency**

(4) No order shall be made under this section where competition has been, is being, or is likely to be prevented or lessened substantially in a market as a result of the superior economic efficiency of the person or persons against whom the order is sought.

**Exception**

(5) For the purpose of this section, an act engaged in pursuant only to the exercise of any right or enjoyment of any interest derived under the *Copyright Act*, *Industrial Design Act*, *Patent Act*, *Trade Mark Act* or any other Act of Parliament is not an anti-competitive act.

**Limitation period**

(6) No application may be made under this section in respect of a practice of anti-competitive acts more than three years after the practice has ceased.

*Delivered Pricing*

**Definition of  
“delivered  
pricing”**

**Delivered  
pricing**

**31.42** (1) For the purposes of this section, “delivered pricing” means the practice of refusing a customer, or a person seeking to become a customer, delivery of an article at any locality at which the supplier makes delivery of the article to any other of his customers on the same terms and conditions that would be available to the first-mentioned customer if his place of business were located in that locality.

(2) Where, on application by the Director, the court finds that delivered pricing is engaged in by a major supplier of an article in a market or is widespread in a market with the result that a customer, or a person seeking to become a customer, is denied an advantage that would otherwise be available to him, the court may make an order prohibiting all or any of such suppliers from engaging in delivered pricing.”

**Foreign  
judgments, etc.**

**31.5** Where, on application by the Director, and after affording a reasonable opportunity to be heard to all persons and companies to whom an order hereinafter referred to would apply, 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,

**“31.5** Where, on application by the Director, the court finds that”

*“Foreign Judgments and Laws”*

the Commission may, 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). 1974-75-76, c. 76, s. 12.

"the court may order that"

**Foreign laws and directives**

**31.6** (1) Where, on application by the Director, and after affording to the person or company, hereinafter referred to, a reasonable opportunity to be heard, 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 that 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,

**"31.6 (1) Where, on application by the Director, the court 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"**

the Commission may, 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).

"the court may order that"

"(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 court 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. 1974-75-76, c. 76, s. 12.

**Refusal to supply by foreign supplier**

**31.7** Where, on application by the Director, and after affording every person against whom an order is sought a reasonable opportunity to be heard, the Commission finds that a supplier outside Canada has refused to supply a product or otherwise discriminated in the supply of a product to a person in Canada (the "first" person) at the instance of and by reason of the exertion of buying power outside Canada by another person, the Commission may order any person in Canada (the "second" person) by whom or on whose behalf or for whose benefit the buying power was exerted

(a) to sell any such product of the supplier that the second person has obtained or obtains to the first person at the laid-down cost in Canada to the second person of such product and on the same terms and conditions as the second person obtained or obtains from the supplier; or

(b) not to deal or to cease to deal, in Canada, in such product of the supplier.

1974-75-76, c. 76, s. 12.

*"Foreign Suppliers"*

**"31.7** Where, on application by the Director, the court finds that a supplier outside Canada has refused to supply a product or otherwise discriminated in the supply of a product to a person in Canada (the "first" person) at the instance of and by reason of the exertion of buying power outside Canada by another person, the court may order any person in Canada (the "second" person) by whom or on whose behalf or for whose benefit the buying power was exerted"

**31.8** (1) For the purposes of this Part, the Commission is a court of record.

(repealed)

(2) In all applications to the Commission under this Part, the burden of proof is upon the person making the application.

(3) In all applications to the Commission under this Part for an order, any person against whom the order is sought is entitled to cross-examine witnesses called by the Director and to call and examine witnesses and produce documents on his own behalf.  
1974-75-76, c. 76, s. 12.

**31.9** Where, on application by the Director, or a person against whom an order has been made under this Part and after affording the Director and that person a reasonable opportunity to be heard, the Commission finds that at the time of the application the circumstances that led to the making of the order have changed and in the circumstances that exist at that time the order would not have been made or is ineffective to achieve its intended purpose, the Commission may rescind or vary the order accordingly. 1974-75-76, c. 76, s. 12.

(repealed)

Definition of  
"merger"

Order where  
merger lessens  
competition

#### *"Mergers*

**31.71** In sections 31.72 to 31.78, "merger" means the acquisition or establishment, direct or indirect, by one or more persons, whether by purchase or lease of shares or assets or by amalgamation or otherwise, of any control over or interest in the whole or any part of a business of a competitor, supplier, customer or other person.

**31.72** Where, on application by the Director, the court finds that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition significantly

- (a) in a trade, industry or profession,
- (b) among the sources from which a trade, industry or profession obtains a product,

- (c) among the outlets through which a trade, industry or profession disposes of a product, or
- (d) otherwise than as described in paragraphs (a) to (c),  
the court may, subject to sections 31.73, 31.75 and 31.76,
  - (e) in the case of a completed merger, order any party to the merger or any other person
    - (i) to dissolve the merger in such manner as the court directs,
    - (ii) to dispose of assets or shares designated by the court in such manner as the court directs, or
    - (iii) in addition to or in lieu of the action referred to in subparagraph (i) or (ii), with the consent of the person against whom the order is directed and the Director, to take any other action, or
  - (f) in the case of a proposed merger, make an order directed against any party to the proposed merger or any other person
    - (i) ordering the person against whom the order is directed not to proceed with the merger,
    - (ii) ordering the person against whom the order is directed not to proceed with a part of the merger, or
    - (iii) in addition to or in lieu of the order referred to in subparagraph (ii), either or both
      - (A) prohibiting the person against whom the order is directed, if the merger is completed, from doing any act or thing the prohibition of which the court determines to be necessary to ensure that the merger does not prevent or lessen competition significantly, or
      - (B) with the consent of the person against whom the order is directed and the Director, ordering the person to take any other action.

Where no order  
to be made in  
respect of  
merger

- 31.73** The court shall not make an order under section 31.72
- (a) in respect of a merger completed before the coming into force of this section;

(b) in respect of an amalgamation or proposed amalgamation under section 255 of the *Bank Act*, in respect of which the Minister of Finance has certified to the Director the names of the parties thereto and that the amalgamation is desirable in the interest of the financial system; or

(c) where it finds that the merger or proposed merger has brought about or is likely to bring about gains in efficiency that will result in a substantial real net saving of resources for the Canadian economy and that the gains in efficiency could not reasonably be expected to be attained if the order were made.

Factors to be considered regarding significant lessening of competition

**31.74** (1) In determining, for the purpose of section 31.72, whether or not a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition significantly, the court shall have regard to the following factors:

(a) whether the business, or a part of the business, of a party to the merger or proposed merger has failed or is likely to fail;

(b) the degree to which acceptable substitutes, whether produced in Canada or imported, for products supplied by the parties to the merger or proposed merger are or are likely to be available;

(c) the size differentials between the relevant businesses of the parties to the merger or proposed merger and their competitors;

(d) any barriers to entry into a market and the effect of the merger or proposed merger on such barriers;

(e) any history of anti-competitive behaviour on the part of any party to the merger or proposed merger;

(f) any likelihood that the merger or proposed merger will result in the removal of a vigorous and effective competitor;

(g) any evidence of intent on the part of a party to the merger or proposed merger to prevent or lessen competition or to control a market;

(h) any likelihood that the merger or proposed merger will result in a substantial foreclosure of sources from which a trade, industry or profession obtains a product or outlets through which a trade, industry or profession disposes of a product;

<b>Deemed not to lessen or prevent competition</b>	<ul style="list-style-type: none"> <li>(i) the nature and extent of change and innovation in a relevant market;</li> <li>(j) any likelihood that the merger or proposed merger will stimulate competition;</li> <li>(k) whether effective competition exists in a market that is or would be affected by the merger or proposed merger; and</li> <li>(l) any other factor that is relevant to competition in a market that is or would be affected by the merger or proposed merger.</li> </ul>
<b>Limitation period</b>	<p>(2) For the purpose of section 31.72, the court shall not find that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition significantly unless it finds that the merger or proposed merger has, or is likely to have, a major and not insubstantial effect on competition.</p>
<b>Where proceedings commenced under section 32</b>	<p><b>31.75</b> No application may be made under section 31.72 in respect of a merger more than three years after the merger has been completed.</p>
<b>Conditional orders directing dissolution of a merger</b>	<p><b>31.76</b> No application may be made under section 31.72 against a particular person where proceedings have been commenced under section 32 against that person based on the same or substantially the same facts as would be alleged in the application under this section.</p>
	<p><b>31.77</b> (1) The court may provide, in an order made under section 31.72 directing a person to dissolve a merger or to dispose of assets or shares, that the order may be rescinded or varied if, within a reasonable period of time specified in the order,</p> <ul style="list-style-type: none"> <li>(a) there has occurred <ul style="list-style-type: none"> <li>(i) a reduction, removal or remission, specified in the order, of any relevant duties of customs, or</li> <li>(ii) a reduction or removal, specified in the order, of prohibitions, controls or regulations imposed by or pursuant to any Act of Parliament on the importation into Canada of an article specified in the order, or</li> </ul> </li> <li>(b) that person or any other person has taken any action specified in the order that will, in the opinion of the court, prevent the merger from preventing or lessening competition significantly.</li> </ul>

When  
conditional  
order may be  
rescinded or  
varied

Interim order  
where no  
application  
under section  
31.72

Notice of  
application

(2) Where, on application by any person against whom an order under section 31.72 is directed, the court is satisfied that

(a) a reduction, removal or remission specified in the order pursuant to paragraph (1)(a) has occurred, or

(b) the action specified in the order pursuant to paragraph (1)(b) has been taken,

the court may rescind or vary the order accordingly.

**31.78** (1) Where, on application by the Director, the court finds, in respect of a proposed merger in respect of which an application has not been made under section 31.72 or previously under this section, that

(a) the proposed merger is reasonably likely to prevent or lessen competition significantly and, in the opinion of the court, in the absence of an interim order a party to the proposed merger or any other person is likely to take an action that would substantially impair the ability of the court to remedy the effect of the proposed merger on competition under section 31.72 because that action would be difficult to reverse, or

(b) there has been a failure to comply with section 31.81, 31.84 or 31.85 in respect of the proposed merger,

the court may issue an interim order 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 completion or implementation of the merger.

(2) Subject to subsection (3), at least forty-eight hours notice of an application for an interim order under subsection (1) shall be given by or on behalf of the Director to each person against whom the order 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*.

Terms of  
interim order

(4) An interim order issued under subsection (1)

(a) shall be on such terms as the court considers necessary and sufficient to meet the circumstances of the case; and

(b) subject to subsection (5), shall have effect for such period of time as is specified therein.

Maximum  
duration of  
interim order

(5) An interim order issued under subsection (1) in respect of a proposed merger shall cease to have effect

(a) in the case of an interim order issued on *ex parte* application, no later than ten days, or

(b) in any other case, no later than twenty-one days,

after the interim order comes into effect or, in the circumstances referred to in paragraph (1)(b), after section 31.81, 31.84 or 31.85, as the case may be, is complied with.

Duty of  
Director

(6) Where an interim order is issued under paragraph (1)(a), the Director shall proceed as expeditiously as possible to commence and complete proceedings under section 31.72 in respect of the proposed merger.

Punishment for  
disobedience

(7) A court may punish any person who contravenes or fails to comply with an interim order 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.

Right of  
intervention

**31.79** The attorney general of a province may intervene in any proceedings before the court under section 31.72 for the purpose of making representations on behalf of the province.

Advance ruling  
certificates

No application  
under section  
31.72

Definitions

“operating  
business”  
\*entreprise...\*

“person”  
\*personne\*

“voting share”  
\*actions...\*

**31.791** (1) Where the Director is satisfied by a party or parties to a proposed transaction that he would not have sufficient grounds on which to apply to the court under section 31.72, he may issue a certificate to the effect that he is so satisfied.

(2) Where the Director issues a certificate under subsection (1), he shall not, if the transaction to which the certificate relates is completed within one year after the certificate is issued, apply to the court under section 31.72 in respect of the transaction solely on the basis of information that is the same or substantially the same as the information on the basis of which the certificate was issued.

### *Notifiable Transactions*

**31.8** (1) In sections 31.81 to 31.894, “operating business” means a business undertaking in Canada to which employees employed in connection with the undertaking ordinarily report for work that

(a) has assets in Canada that exceed ten million dollars, or such greater amount as may be prescribed, in aggregate value, determined as of such time and in such manner as may be prescribed, or

(b) had gross revenues from sales in or from Canada that exceed ten million dollars, or such greater amount as may be prescribed, in aggregate value, determined for such annual period and in such manner as may be prescribed;

“person” means an individual, body corporate, unincorporated syndicate, unincorporated organization, trustee, executor, administrator or other legal representative, but does not include a bare trustee;

“voting share” means any share that carries voting rights under all circumstances or by reason of an event that has occurred and is continuing.

Affiliated corporation	(2) For the purposes of sections 31.81 to 31.894, <ul style="list-style-type: none"> <li>(a) one corporation is affiliated with another corporation if one of them is the subsidiary of the other or both are subsidiaries of the same corporation or each of them is controlled by the same person; and</li> <li>(b) if two corporations are affiliated with the same corporation at the same time, they are deemed to be affiliated with each other.</li> </ul>
Subsidiary corporation	(3) For the purposes of this section and sections 31.81 to 31.894, a corporation is a subsidiary of another corporation if it is controlled by that other corporation.
Control	(4) For the purposes of this section and sections 31.81 to 31.894, a corporation is controlled by a person if <ul style="list-style-type: none"> <li>(a) securities of the corporation to which are attached more than fifty per cent of the votes that may be cast to elect directors of the corporation are held, directly or indirectly, whether through one or more subsidiaries or otherwise, otherwise than by way of security only, by or for the benefit of that person; and</li> <li>(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.</li> </ul>
Wholly-owned affiliate	(5) For the purposes of paragraphs 31.892(c) and (d) and section 31.894, one corporation is the wholly-owned affiliate of another corporation if all its outstanding voting shares, other than shares necessary to qualify persons as directors, are beneficially owned by that other corporation directly, or indirectly through one or more affiliates where all the outstanding voting shares of the affiliates, other than shares necessary to qualify persons as directors, are beneficially owned by that other corporation or each other.
Wholly-owning affiliate	(6) For the purposes of paragraphs 31.892(c) and (d) and section 31.894, one corporation is the wholly-owning affiliate of another corporation if it beneficially owns all the outstanding voting shares of that other corporation directly, or indirectly through one or more affiliates where all the outstanding voting shares of the affiliates are beneficially owned by the corporation or each other.

Notice of  
proposed  
acquisition

**31.81** Subject to sections 31.82, 31.86 and 31.87, where a person, or two or more persons acting jointly or in concert pursuant to an agreement or arrangement, propose to acquire

- (a) voting shares of a corporation that operates an operating business or controls a corporation that operates an operating business, or
- (b) assets that form all or part of the assets of an operating business,

the person or persons who are proposing to acquire the shares or assets shall, before doing so, whenever a limit set out in section 31.82 or 31.83 would be exceeded, notify the Director that the acquisition is proposed and supply the Director with information in accordance with section 31.89.

Limit for share  
acquisitions

**31.82** (1) For the purpose of paragraph 31.81(a), a limit would be exceeded whenever, as a result of a proposed acquisition of voting shares, the person or persons acquiring the shares, together with their affiliates, would own voting shares of a corporation that in the aggregate carry more than

- (a) twenty per cent or fifty per cent of the votes attached to all outstanding voting shares of the corporation, in the case of the acquisition of voting shares of a corporation any of the voting shares of which are publicly traded; or
- (b) thirty-five per cent or fifty per cent of the votes attached to all outstanding voting shares of the corporation, in the case of the acquisition of voting shares of a corporation none of the voting shares of which are publicly traded.

Exemption

(2) It is not necessary to comply with paragraph 31.81(a) where a limit set out in subsection (1) would be exceeded as a result of a proposed acquisition within three years immediately following a previous compliance with paragraph 31.81(a) required in relation to the same limit.

**Notice of future acquisition**

(3) Where a person or persons who propose to acquire voting shares are required to comply with paragraph 31.81(a) because the twenty or thirty-five per cent limit set out in subsection (1) would be exceeded as a result of the acquisition, the person or persons may, at the time of such compliance, give notice to the Director of a proposed further acquisition of voting shares that would result in a fifty per cent limit set out in that subsection being exceeded, and supply the Director with a detailed description in writing of the steps to be carried out in the further acquisition.

**Exemption**

(4) It is not necessary to comply with paragraph 31.81(a) in respect of a proposed further acquisition referred to in subsection (3) if

(a) notice of the further acquisition is given to the Director under subsection (3) and it is carried out in accordance with the description supplied under that subsection; and

(b) an additional notice of the further acquisition is given to the Director in writing at the time of the further acquisition.

**Limitation**

(5) Subsection (4) does not apply in respect of a further acquisition unless the further acquisition is completed within one year after notice of it is given under subsection (3).

**Limit for asset acquisitions**

**31.83** For the purpose of paragraph 31.81(b), a limit would be exceeded if the aggregate value of the assets to be acquired, determined as of such time and in such manner as may be prescribed, or the gross revenues from sales generated from the assets to be acquired, determined for such annual period and in such manner as may be prescribed, would exceed thirty-five million dollars, or such greater amount as may be prescribed.

Notice of  
amalgamation

Limits

Notice of  
combination

**31.84** (1) Subject to sections 31.86 and 31.87, where two or more corporations propose to amalgamate and one or more of those corporations operates an operating business or controls a corporation that operates an operating business, each corporation that proposes to amalgamate shall, before doing so, whenever a limit set out in subsection (2) would be exceeded, notify the Director that the amalgamation is proposed and supply the Director with information in accordance with section 31.89.

(2) For the purpose of subsection (1), a limit would be exceeded if

- (a) the aggregate value of the assets in Canada that would be owned by the continuing corporation that would result from the amalgamation or, to the extent of the interest of the continuing corporation therein, by corporations controlled by the continuing corporation, determined as of such time and in such manner as may be prescribed, would exceed seventy million dollars, or such greater amount as may be prescribed; or
- (b) the gross revenues from sales in or from Canada generated from the assets referred to in paragraph (a), determined for such annual period and in such manner as may be prescribed, would exceed seventy million dollars, or such greater amount as may be prescribed.

**31.85** (1) Subject to sections 31.86 and 31.87, where two or more persons propose to form a combination to carry on business otherwise than through a corporation and one or more of those persons propose to contribute to the combination assets of an operating business, each person who proposes to form the combination shall, before doing so, whenever a limit set out in subsection (2) would be exceeded, notify the Director that the combination is proposed and supply the Director with information in accordance with section 31.89.

## Limits

(2) For the purpose of subsection (1), a limit would be exceeded if

(a) the aggregate value of the assets in Canada that are the subject-matter of the combination, determined as of such time and in such manner as may be prescribed, would exceed thirty-five million dollars, or such greater amount as may be prescribed; or

(b) the gross revenues from sales in or from Canada generated from the assets referred to in paragraph (a), determined for such annual period and in such manner as may be prescribed, would exceed thirty-five million dollars, or such greater amount as may be prescribed.

## Exemption for joint ventures

(3) Subsection (1) does not apply in respect of a combination if

(a) all the persons who propose to form the combination are parties to an agreement in writing or intended to be put in writing that imposes on them an obligation to contribute assets and governs a continuing relationship between those parties;

(b) no change in control over any party to the combination would result from the combination; and

(c) the agreement referred to in paragraph (a) restricts the range of activities that may be carried on pursuant to the combination, and contains provisions that would allow for its orderly termination.

## Application of sections 31.81, 31.84 and 31.85

**31.86** (1) Sections 31.81, 31.84 and 31.85 do not apply in respect of a proposed transaction unless the parties thereto, together with their affiliates,

(a) have assets in Canada that exceed five hundred million dollars in aggregate value, determined as of such time and in such manner as may be prescribed, or such greater amount as may be prescribed; or

(b) had gross revenues from sales in, from or into Canada, determined for such annual period and in such manner as may be prescribed, that exceed five hundred million dollars in aggregate value, or such greater amount as may be prescribed.

Parties to  
acquisition of  
shares

Exemptions

(2) For the purpose of subsection (1), with respect to a proposed acquisition of shares, the parties to the transaction are the person or persons who propose to acquire the shares and the corporation the shares of which are to be acquired.

**31.87** The following classes of transactions are exempt from the application of sections 31.81, 31.84 and 31.85:

- (a) an acquisition of voting shares of a corporation if the aggregate value of all the outstanding shares of the corporation, determined as of such time and in such manner as may be prescribed, does not exceed seventy million dollars or such greater amount as may be prescribed;
- (b) an acquisition of real property or goods in the ordinary course of business if the person or persons who propose to acquire the assets would not, as a result of the acquisition, hold all or substantially all of the assets of a business or of an operating segment of a business;
- (c) an acquisition of voting shares solely for the purpose of underwriting the shares, within the meaning of subsection 4.1(2);
- (d) an acquisition of voting shares or assets that would result from a gift, intestate succession or testamentary disposition;
- (e) an acquisition of collateral or receivables, or an acquisition resulting from a foreclosure or default or forming part of a debt work-out, made by a creditor in or pursuant to a credit transaction entered into in good faith in the ordinary course of business;
- (f) a transaction all the parties to which are affiliates of each other;
- (g) a transaction in respect of which the Director has issued a certificate under subsection 31.791(1);
- (h) a transaction pursuant to an agreement entered into before this section comes into force but completed within one year after this section comes into force; and
- (i) such other classes of transactions as may be prescribed.

Who may give  
notice and  
supply  
information

**31.88** Where more than one person is required to give notice and supply information under section 31.81, 31.84 or 31.85 in respect of the same transaction, any of those persons who is duly authorized to do so may give notice or supply information on behalf of and in lieu of any of the others, and any of those persons may give notice and supply information jointly.

Information  
required

**31.89** (1) The information required under section 31.81, 31.84 or 31.85 is, at the option of the person supplying the information,

- (a) the information set out in section 31.891, or
- (b) the information set out in section 31.892,

but, where the person supplying the information chooses to supply the Director with the information referred to in paragraph (a) and the Director notifies that person within seven days after he receives the information that he requires the information referred to in paragraph (b), the information referred to in paragraph (b) is required as well.

Time within  
which  
transaction  
cannot proceed

(2) A proposed transaction referred to in section 31.81, 31.84 or 31.85 shall not be completed before the expiration of

- (a) seven days after the day on which the information required under section 31.81, 31.84 or 31.85, as the case may be, certified under section 31.895, has been received by the Director, where the person supplying the information has chosen to supply the Director with the information referred to in paragraph (1)(a) and the Director has not, within that time, required the information referred to in paragraph (1)(b),
- (b) except as provided in paragraph (c), twenty-one days after the day on which the information required under section 31.81, 31.84 or 31.85, as the case may be, certified under section 31.895, has been received by the Director, where the person supplying the information has chosen, or is required, to supply the Director with the information referred to in paragraph (1)(b), or

(c) where the proposed transaction is an acquisition of voting shares that is to be effected through the facilities of a stock exchange in Canada and the information supplied is the information referred to in paragraph (1)(b), ten trading days, or such longer period of time, not exceeding twenty-one days, as may be allowed by the rules of the stock exchange before shares must be taken up, after the day on which the information required under section 31.81, certified under section 31.895, has been received by the Director,

unless the Director, before the expiration of that time, notifies the persons who are required to give notice and supply information that he does not, at that time, intend to make an application under section 31.72 in respect of the proposed transaction.

Information  
referred to in  
paragraph  
31.89(1)(a)

**31.891** The information referred to in paragraph 31.89(1)(a) is

(a) a description of the proposed transaction and the business objectives intended to be achieved as a result thereof;

(b) copies of the legal documents, or the most recent drafts thereof if the documents have not been executed, that are to be used to implement the proposed transaction; and

(c) in respect of each person who is required to supply the information and, in the case of information required under section 31.81, the corporation the shares of which or the person the assets of whom are proposed to be acquired,

(i) their full names,

(ii) the addresses of their principal offices and, in the case of a corporation, the jurisdiction under which it was incorporated,

(iii) a list of their affiliates that have significant assets in Canada or significant gross revenues from sales in, from or into Canada and a chart describing the relationships between themselves and those affiliates;

- (iv) a summary description of their principal businesses and the principal businesses of their affiliates referred to in subparagraph (iii), including statements identifying the current principal suppliers and customers of those principal businesses and the annual volume of purchases from and sales to such suppliers and customers,
- (v) statements of
  - (A) their gross and net assets as of the end of their most recently completed fiscal year, and
  - (B) their gross revenues from sales for that year,
- (vi) in so far as the information is known, or reasonably available, a copy of every proxy solicitation circular, prospectus and other information form filed with a securities commission, stock exchange or other similar authority in Canada or elsewhere or sent or otherwise made available to shareholders within the previous two years, and
- (vii) to the extent available, financial statements of
  - (A) the acquiring party, in the case of a proposed transaction referred to in section 31.81,
  - (B) the continuing corporation, in the case of a proposed transaction referred to in section 31.84, or
  - (C) the combination, in the case of a proposed transaction referred to in section 31.85,

prepared on a *pro forma* basis as if the proposed transaction had occurred previously.

Information  
referred to in  
paragraph  
31.89(1)(b)

**31.892** The information referred to in paragraph 31.89(1)(b) is

- (a) a description of the proposed transaction and the business objectives intended to be achieved as a result thereof;
- (b) copies of the legal documents, or the most recent drafts thereof if the documents have not been executed, that are to be used to implement the proposed transaction;

- (c) in respect of each person who is required to supply the information, each of their wholly-owned affiliates or wholly-owning affiliates that has significant assets in Canada or significant sales in, from or into Canada and, in the case of information required under section 31.81, the corporation the shares of which or the person the assets of whom are proposed to be acquired,
- (i) their full names,
  - (ii) the addresses of their principal offices and, in the case of a corporation, the jurisdiction under which it was incorporated,
  - (iii) the names and business addresses of their directors and officers,
  - (iv) a summary description of their principal businesses including
    - (A) to the extent available, financial statements relating to their principal businesses for their most recently completed fiscal year and subsequent interim periods, and
    - (B) statements identifying the principal current suppliers and customers of their principal businesses and the annual volume of purchases from and sales to such suppliers and customers,
  - (v) statements of
    - (A) their gross and net assets as of the end of their most recently completed fiscal year, and
    - (B) their gross revenues from sales for that year,
  - (vi) the principal categories of products produced, supplied or distributed by each of them and their gross sales for each principal category of product, for their most recently completed fiscal year,
  - (vii) the principal categories of products purchased or acquired by each of them and their total expenditures for each principal category of product, for their most recently completed fiscal year,
  - (viii) the number of votes attached to voting shares held, directly or indirectly through one or more affiliates or otherwise, by each of them in any corporation carrying on an operating business, whether through one or more subsidiaries or otherwise, where the total of all votes attached to shares so held exceeds twenty per cent of the votes attached to all outstanding voting shares of the corporation,

- (ix) a copy of every proxy solicitation circular, prospectus and other information form filed with a securities commission, stock exchange or other similar authority in Canada or elsewhere or sent or otherwise made available to shareholders within the previous two years,
  - (x) financial or statistical data prepared to assist the board of directors or senior officers of any of them in analyzing the proposed transaction, including, to the extent that opinions or judgments are not contained therein, any such data that is contained in any part of a study or report,
  - (xi) to the extent available, financial statements of
    - (A) the acquiring party, in the case of a proposed transaction referred to in section 31.81,
    - (B) the continuing corporation, in the case of a proposed transaction referred to in section 31.84, or
    - (C) the combination, in the case of a proposed transaction referred to in section 31.85,
  - prepared on a *pro forma* basis as if the proposed transaction had occurred previously, and
  - (xii) if any of them have taken a decision or entered into a commitment or undertaking to make significant changes in any business to which the proposed transaction relates, a summary description of that decision, commitment or undertaking; and
- (d) in respect of any affiliate of each person who is required to supply the information, other than a wholly-owned affiliate or wholly-owning affiliate of such person, that has significant assets in, or significant gross revenues from sales in, from or into Canada, the information set out in subparagraphs (c)(v) to (xii).

Where  
information  
cannot be  
certified

**31.893** (1) If any of the information required under section 31.81, 31.84 or 31.85 is not known or reasonably obtainable, or cannot be obtained without breaching a confidentiality requirement established by law or without creating a significant risk that confidential information will be used for an improper purpose or that information that should, for commercial reasons, be kept confidential will be disclosed to the public, the person who is supplying the information may, in lieu of supplying the information, inform the Director under oath or affirmation of the matters in respect of which information has not been supplied and why it has not been obtained.

Where  
information not  
relevant

(2) If any of the information required under section 31.81, 31.84 or 31.85 could not, on any reasonable basis, be considered to be relevant to an assessment by the Director as to whether the proposed transaction would or would be likely to prevent or lessen competition significantly, the person who is supplying the information may, in lieu of supplying the information, inform the Director under oath or affirmation of the matters in respect of which information has not been supplied and why the information was not considered relevant.

Saving

**31.894** Nothing in sections 31.89 to 31.892 requires any person who is a director of a corporation to supply information that is known to that person by virtue only of his position as a director of an affiliate of the corporation that is neither a wholly-owned affiliate nor a wholly-owning affiliate of the corporation.

Information to  
be certified

**31.895** The information supplied to the Director under section 31.81, 31.84 or 31.85 shall be certified under oath or affirmation

- (a) in the case of a corporation supplying the information, by an officer thereof or other person duly authorized by the board of directors or other governing body of the corporation, or
- (b) in the case of any other person supplying the information, by that person, as having been examined by that person and as being, to the best of his knowledge and belief, correct and complete in all material respects.

Where  
transaction not  
completed

**31.896** Where notice is given and information supplied in respect of a proposed transaction under section 31.81, 31.84 or 31.85 but the transaction is not completed within one year thereafter or such longer period as the Director may specify in any particular case, section 31.81, 31.84 or 31.85, as the case may be, applies as if no notice were given or information supplied.

Application

#### *General*

**31.9** An application to the court under this Part may be made by originating notice of motion, writ of summons, statement of claim or otherwise as the rules of court provide.

Interim order

**31.91** (1) Where an application has been made for an order under this Part, other than an interim order under section 31.78, the court, on application by the Director, may issue such interim order as it considers appropriate, having regard to the principles ordinarily considered when granting interlocutory or injunctive relief.

Terms of  
interim order

(2) An interim order issued under subsection (1) shall be on such terms, and shall have effect for such period of time, as the court considers necessary and sufficient to meet the circumstances of the case.

Duty of director

(3) Where an interim order issued under subsection (1) is in effect, the Director shall proceed as expeditiously as possible to complete proceedings under this Part arising out of the conduct in respect of which the order was issued.

Punishment for  
disobedience

(4) A court may punish any person who contravenes or fails to comply with an interim order 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.

Rescission or  
variation of  
order

**31.92** Where, on application by the Director or a person against whom an order has been made under this Part, the court finds that

(a) the circumstances that led to the making of the order have changed and, in the circumstances that exist at the time the application is made under this section, the order would not have been made or would have been ineffective to achieve its intended purpose, or

(b) the Director and the person against whom an order has been made have consented to an alternative order,

the court may rescind or vary the order accordingly.

Evidence

**31.93** In determining whether or not to make an order under this Part, the court shall not exclude from consideration any evidence by reason only that it might be evidence in respect of an offence under this Act or in respect of which another order could be made by a court or the Commission under this Act.

Regulations

**31.94** (1) The Governor in Council may make regulations

(a) regulating the practice and procedure in respect of applications under this Part; and

(b) prescribing anything that is by this Part to be prescribed.

(2) Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make under subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.

Publication of  
proposed  
regulations

Exception

(3) No proposed regulation need be published under subsection (2) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

Rules of court

(4) Nothing in this Part restricts the authority of a court or of the judges of a court to make rules and orders not inconsistent with this Part and regulations made pursuant to paragraph (1)(a).

Definitions

“article”  
«article»

“specialization  
agreement”  
«accord...»

Order directing  
registration

## PART IV.2

### MATTERS REVIEWABLE BY COMMISSION

#### *Specialization Agreements*

**31.95** (1) For the purposes of this section and section 31.96,

“article” includes each separate type, size, weight and quality in which an article, within the meaning assigned by section 2, is produced;

“specialization agreement” means an agreement under which each party thereto agrees to discontinue producing an article that he is engaged in producing at the time the agreement is entered into on the condition that each other party to the agreement agrees to discontinue producing an article that he is engaged in producing at the time the agreement is entered into, and includes any such agreement under which the parties also agree to buy exclusively from each other the articles that are the subject of the agreement.

(2) Where, on application by any person, and after affording the Director a reasonable opportunity to be heard, the Commission finds that an agreement that the person who has made the application has entered into or is about to enter into is a specialization agreement and that

(a) the implementation of the agreement is likely to bring about gains in efficiency that will result in a substantial real net saving of resources for the Canadian economy and the gains in efficiency could not reasonably be expected to be attained if the agreement were not implemented, and

Factors to be considered

(b) no attempt has been made by the persons who have entered or are about to enter into the agreement to coerce any person to become a party to the agreement,

the Commission may, subject to subsection (4), make an order directing that the agreement be registered in the register maintained pursuant to subsection (7) for a period specified in the order.

Conditional orders

(3) In considering whether an agreement is likely to bring about gains in efficiency described in paragraph (2)(a), the Commission shall consider whether such gains will result in

- (a) a significant increase in the real value of exports; or
- (b) a significant substitution of domestic products for imported products.

Registration of modifications

(4) Where, on an application under subsection (2), the Commission finds that an agreement meets the conditions prescribed by paragraphs (a) and (b) of that subsection but also finds that, as a result of the implementation of the agreement, there is not likely to be substantial competition remaining in the market or markets to which the agreement relates, the Commission may provide, in an order made under subsection (2), that the order shall take effect only if, within a reasonable period of time specified in the order, there has occurred any of the following events, specified in the order:

- (a) the divestiture of particular assets, specified in the order;
- (b) a wider licensing of patents;
- (c) a reduction in tariffs;
- (d) the making of an order in council under section 17 of the *Financial Administration Act* effecting a remission or remissions specified in the order of the Commission of any duties of customs on an article that is a subject of the agreement; or
- (e) the removal of import quotas or import licensing requirements.

(5) On application by the parties to a specialization agreement registered under this section, and after affording the Director a reasonable opportunity to be heard, the Commission may make an order directing that a modification of the agreement be registered in the register maintained pursuant to subsection (7).

Order to  
remove from  
register

Register of  
specialization  
agreements

Public access to  
register

Non-applica-  
tion of sections  
32 and 31.4

Consent orders

Court of record

(6) Where, on application by the Director, and after affording the parties to a specialization agreement registered under this section a reasonable opportunity to be heard, the Commission finds that the agreement or a modification thereof registered under this section

(a) has ceased to meet the conditions prescribed by paragraph (2)(a) or (b), or

(b) is not being implemented, the Commission may make an order directing that the agreement or modification thereof, and any order relating thereto, be removed from the register maintained pursuant to subsection (7).

(7) The Commission shall cause to be maintained at its principal office a register of specialization agreements, and modifications thereof, that the Commission has under this section, or that the Governor in Council has under subsection 31.991(1), directed be registered, and any such agreements and modifications thereof and any orders of the Commission or the Governor in Council made in respect thereof shall be included in the register for the periods specified in the orders.

(8) A register maintained under subsection (7) shall be kept open to inspection by any person during normal business hours of the Commission.

**31.96** Section 32, and section 31.4 as it applies to exclusive dealing, do not apply in respect of a specialization agreement or any modification thereof, if the specialization agreement, or modification thereof, is registered under section 31.95.

**31.97** Where an application is made to the Commission under this Part for an order and the Director and the person in respect of whom the order is sought agree on the terms of the order, the Commission may make the order on those terms without hearing such evidence as would ordinarily be placed before the Commission had the application been contested or further contested.

**31.98** (1) For the purposes of this Part, the Commission is a court of record and shall have an official seal, which shall be judicially noticed.

**Hearings****Inadmissible evidence****Reasons****Burden of proof****Right of intervention****Rescission or variation of order by Commission****Review by Governor in Council relating to specialization agreements**

(2) Notwithstanding subsection (1), the Commission is not bound by any legal or technical rules of evidence in conducting a hearing and all proceedings before the Commission shall be dealt with by the Commission as informally and expeditiously as the circumstances and considerations of fairness will permit.

(3) Nothing in this Act shall be interpreted as permitting the admission in evidence in proceedings before the Commission of anything that would be inadmissible in a court by reason of any privilege under the law of evidence.

(4) The Commission shall give written reasons for making or refusing to make any order under this Part.

(5) In all applications to the Commission under this Part, the burden of proof is on the person making the application.

(6) The Attorney General of a province may intervene in any proceedings before the Commission under this Part for the purpose of making representations on behalf of the province.

**31.99** Where, on application by the Director or a person in respect of whom an order has been made under this Part, and after affording the Director and that person a reasonable opportunity to be heard, the Commission finds that the circumstances that led to the making of the order have changed and that, in the circumstances that exist at the time the application is made under this section, the order would not have been made or would have been ineffective to achieve its intended purpose, the Commission may rescind or vary the order accordingly.

**31.991 (1)** Where the Commission, after hearing an application under section 31.95 in respect of a specialization agreement, as defined in subsection 31.95(1), or a modification thereof, refuses to make an order directing that it be registered under that section, the Governor in Council may, at any time within sixty days after the Commission gives written reasons for refusing to make the order, make an order directing that the specialization agreement or modification thereof be registered in the register maintained pursuant to subsection 31.95(7) for a period specified in the order.

Subsection  
31.95(4)  
applies

Filed by the  
Commission

(2) Subsection 31.95(4) applies, with such modifications as the circumstances require, in respect of orders made by the Governor in Council under subsection (1).

(3) Every order made by the Governor in Council under this section shall be communicated forthwith to the Director and to the Commission and shall be filed by the Commission in its record of the matter in respect of which the order was made and in the register maintained pursuant to subsection 31.95(7)."

## PART V

### OFFENCES IN RELATION TO COMPETITION [1974-75-76, c. 76, s. 13]

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 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 five years or a fine of one million dollars or to both.

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.

"is guilty of an indictable offence and is liable to imprisonment for five years or a fine of two million dollars or to both."

Evidence of  
conspiracy

"(1.2) In a prosecution under subsection (1), the court may infer the existence of a conspiracy, combination, agreement or arrangement from all the surrounding circumstances, with or without evidence of communication between or among the alleged parties thereto, but, for greater certainty, the conspiracy, combination, agreement or arrangement must be proved beyond a reasonable doubt.

Proof of intent

(1.3) For greater certainty, in establishing that a conspiracy, combination, agreement or arrangement is in contravention of subsection (1), it is necessary to prove that the parties thereto intended to and did enter into the conspiracy, combination, agreement or arrangement, but it is not necessary to prove that the parties intended that the conspiracy, combination, agreement or arrangement have an effect listed in subsection (1)."

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) the definition of terminology used in a trade, industry or profession,
- (e) cooperation in research and development,
- (f) the restriction of advertising or promotion, other than a discriminatory restriction directed against a member of the mass media,
- (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:

- (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 products from Canada.

“(4) Subject to subsections (4.1) and (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

## 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 a product;

(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 products from Canada; or

(d) has lessened or is likely to lessen competition unduly in relation to a product in the domestic market.

“(a) has resulted in or is likely to result in a reduction or limitation of the real value of exports of a product;”

“or”

(repealed)

## Defences

(6) In a prosecution under subsection (1), the court shall not convict the accused if it finds that the conspiracy, combination, agreement or arrangement relates only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public

(a) in the practice of a trade or profession relating to such service; or

(b) in the collection and dissemination of information relating to such service.

“(6.1) Subsection (1) does not apply in respect of an agreement or arrangement between banks that is described in subsection 33(1).”

## Exception

**Exception**

(7) Subsection (1) does not apply in respect of a conspiracy, combination, agreement or arrangement that is entered into only by companies each of which is, in respect of every one of the others, an affiliate as that relationship is defined in subsections 38(7) and (7.1). R.S., c. C-23, s. 32; 1974-75-76, c. 76, s. 14.

**Where application made under section 31.72**

**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. 1974-75-76, c. 76, s. 15.

**"32.01** No proceedings may be commenced under subsection 32(1) against a person against whom an order is sought under section 31.72 on the basis of the same or substantially the same facts as would be alleged in proceedings under that subsection."

**Definition of "bid-rigging"**

**32.2 (1)** In this section, "bid-rigging" means

- (a) an agreement or arrangement between or among 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 agreement or arrangement between or among two or more bidders or tenderers,

where the agreement or arrangement is not made known to the person calling for or requesting the bids or tenders at or before the time when any bid or tender is made by any person who is a party to the agreement or arrangement.

**Bid-rigging**

**(2)** Every one who is a party to bid-rigging is guilty of an indictable offence and is liable on conviction to a fine in the discretion of the court or to imprisonment for five years or to both.

**Exception**

**(3)** This section does not apply in respect of an agreement or arrangement that is entered into or a submission that is arrived at only by companies each of which is, in respect of every one of the others, an affiliate as that relationship is defined in subsections 38(7) and (7.1). 1974-75-76, c. 76, s. 15.

**Conspiracy relating to professional 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 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 league

is guilty of an indictable offence and is liable on conviction to a fine in the discretion of the court or to imprisonment for five years or to both.

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 professional 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. 1974-75-76, c. 76, s. 15.

Agreements or arrangements of banks

**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. 1960, c. 45, s. 13.

**“33. (1)** Subject to subsection (2), every bank that makes an agreement or arrangement with another bank with respect to

- (a) the rate of interest on a deposit,
  - (b) the rate of interest or the charges on a loan,
  - (c) the amount of any charge for a service provided to a customer,
  - (d) the amount or kind of a loan to a customer,
  - (e) the kind of service to be provided to a customer, or
  - (f) the person or classes of persons to whom a loan or other service will be made or provided or from whom a loan or other service will be withheld,
- and every director, officer or employee of the bank who knowingly makes such an agreement or arrangement on behalf of the bank is guilty of an indictable offence and liable to a fine of two million dollars or to imprisonment for five years or to both.

(2) Subsection (1) does not apply to an agreement or arrangement

- (a) with respect to a deposit or loan made or payable outside Canada;
- (b) applicable only to the dealings of or the services rendered between banks or by two or more banks as regards a customer of each of such banks where the customer has knowledge of the agreement or by a bank as regards a customer thereof, on behalf of that customer's customers;
- (c) with respect to a bid for or purchase, sale or underwriting of securities by banks or a group including banks;
- (d) 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;
- (e) with respect to reasonable terms and conditions of participation in guaranteed or insured loan programs authorized pursuant to an Act of Parliament or of the legislature of a province;
- (f) with respect to the amount of any charge for a service or with respect to the kind of service provided to a customer outside Canada, payable or performed outside Canada, or payable or performed in Canada on behalf of a person who is outside Canada;
- (g) with respect to the persons or classes of persons to whom a loan or other service will be made or provided outside Canada; or
- (h) in respect of which the Minister of Finance has certified to the Director the names of the parties thereto and that he has requested or approved the agreement or arrangement for the purposes of financial policy.

(3) In this section, "bank" means a bank as defined in subsection 2(1) of the *Bank Act*."

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;
- (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,

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 except-  
ed

(3) Paragraph (1)(a) shall not be construed to prohibit a cooperative association, credit union, caisse populaire or cooperative credit society from returning to its members, suppliers or customers, the whole or any part of the net surplus made in its operations in proportion to the acquisition or supply of articles from or to such members, suppliers or customers. R.S., c. C-23, s. 34; 1974-75-76, c. 76, s. 16.

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 products but is not applied directly to the selling price.

Grant of allowance 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
- (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. R.S., c. C-23, s. 35; 1974-75-76, c. 76, s. 17.

Misleading advertising

**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 at which the product has been sold by sellers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold by the person by whom or on whose behalf the representation is made.

**Deemed representation to public**

- (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 a person as ultimate user, or
  - (e) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatever made available to a member of the public,
- shall be deemed to be made to the public by and only by the person who caused the representation to be so expressed, made or contained 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) Subject to subsection (2), 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.

**General impression to be considered** (4) 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.

**Punishment** (5) Any person who violates subsection (1) is guilty of an offence and is liable  
 (a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for five years or to both; or  
 (b) on summary conviction, to a fine of twenty-five thousand dollars or to imprisonment for one year or to both. R.S., c. C-23, s. 36; 1974-75-76, c. 76, s. 18.

**Representation as to reasonable test and publication of testimonials** **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 to the product,

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,

and the representation or testimonial accords with the representation or testimonial previously made, published or approved.

Punishment (2) Any person who violates subsection (1) is guilty of an offence and is liable  
 (a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for five years, or to both; or  
 (b) on summary conviction, to a fine of twenty-five thousand dollars or to imprisonment for one year or to both. 1974-75-76, c. 76, s. 18.

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; or  
 (c) on an in-store or other point-of-purchase display or advertisement.

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. 1974-75-76, c. 76, s. 18.

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 participate 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.

**Pyramid selling** (2) No person shall induce or invite another person to participate in a scheme of pyramid selling.

**Punishment** (3) Any person who violates subsection (2) is guilty of an offence and is liable

- (a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for five years or to both; or
- (b) on summary conviction, to a fine of twenty-five thousand dollars or to imprisonment for one year or to both.

**Where pyramid selling permitted by province** (4) This section does not apply in respect of a scheme of pyramid selling that is licensed or otherwise permitted by or pursuant to an Act of the legislature of a province. 1974-75-76, c. 76, s. 18.

**Definition of "scheme of referral selling"** **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, other than by the second person, to other persons whose names are supplied by the second person.

**Referral selling** (2) No person shall induce or invite another person to participate in a scheme of referral selling.

Punishment	<p>(3) Any person who violates subsection (2) is guilty of an offence and is liable</p> <ul style="list-style-type: none"> <li>(a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for five years or to both; or</li> <li>(b) on summary conviction, to a fine of twenty-five thousand dollars or to imprisonment for one year or to both.</li> </ul>
Where referral selling permitted by a province	<p>(4) This section does not apply in respect of a scheme of referral selling that is licensed or otherwise permitted by or pursuant to an Act of the legislature of a province. 1974-75-76, c. 76, s. 18.</p>
Definition of "bargain price"	<p><b>37.</b> (1) For the purposes of this section, "bargain price" means</p> <ul style="list-style-type: none"> <li>(a) a price that is represented in an advertisement to be a bargain price, by reference to an ordinary price or otherwise; or</li> <li>(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.</li> </ul>
Bait and switch selling	<p>(2) No person shall advertise at a bargain price a product that he does not 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.</p>
Defence	<p>(3) Subsection (2) does not apply to a person who establishes that</p> <ul style="list-style-type: none"> <li>(a) he took reasonable steps to obtain in adequate time a quantity of the product that would have been reasonable having regard to the nature of the advertisement, but was unable to obtain such a quantity by reason of events beyond his control that he could not reasonably have anticipated;</li> <li>(b) he obtained a quantity of the product that was reasonable having regard to the nature of the advertisement, but was unable to meet the demand therefor because that demand surpassed his reasonable expectations; or</li> </ul>

(c) 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.

**Punishment**

(4) Any person who violates subsection (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars or to imprisonment for one year or to both. R.S., c. C-23, s. 37; 1974-75-76, c. 76, s. 18.

**Sale above  
advertised price**

**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.

**Punishment**

(2) Any person who violates subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars or to imprisonment for one year or to both.

**Saving**

(3) This section does not apply

- (a) in respect of an advertisement that appears in a catalogue in which it is prominently stated that the prices contained therein are subject to error if the person establishes that the price advertised is in error;
- (b) in respect of an advertisement that is immediately followed by another advertisement correcting the price mentioned in the first advertisement; or
- (c) in respect of the sale of a security obtained on the open market during a period when the prospectus relating to that security is still current.

**Application**

(4) For the purpose of this section, the market to which an advertisement relates shall be deemed to be the market to which the advertisement could reasonably be expected to reach, unless the advertisement defines the market more narrowly by reference to a geographical area, store, department of a store, sale by catalogue or otherwise. 1974-75-76, c. 76, s. 18.

Promotional  
contests

**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 such contest, lottery, game or disposal would be lawful except for this section and unless

- (a) there is adequate and fair disclosure of the number and approximate value of the prizes, of the area or areas to which they relate and of any fact within the knowledge of the advertiser that affects materially the chances of winning;
- (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 a fine in the discretion of the court or to imprisonment for five years or to both; or
- (b) on summary conviction, to a fine of twenty-five thousand dollars or to imprisonment for one year or to both. 1974-75-76, c. 76, s. 18.

## Defence

**37.3** (1) Sections 36 to 37.2 do not apply to a person who prints or publishes or otherwise distributes a representation or an advertisement on behalf of another person in Canada, 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.

- Limitation**      (2) No person shall be convicted of an offence under section 36 or 36.1, if he establishes that,
- (a) the act or omission giving rise to the offence with which he is charged was the result of error;
  - (b) he took reasonable precautions and exercised due diligence to prevent the occurrence of such error;
  - (c) he, or another person, took reasonable measures to bring the error to the attention of the class of persons likely to have been reached by the representation or testimonial; and
  - (d) the measures referred to in paragraph (c), except where the representation or testimonial related to a security, were taken forthwith after the representation was made or the testimonial was published.
- Exception**      (3) Subsection (2) does not apply in respect of a person who, in Canada, on behalf of a person outside Canada, makes a representation to the public or publishes a testimonial.  
1974-75-76, c. 76, s. 18.
- Price maintenance**      **38.** (1) No person who is engaged in the business of producing or supplying a product, or who extends credit by way of credit cards or is otherwise engaged in a business that relates to credit cards, or who has the exclusive rights and privileges conferred by a patent, trade mark, copyright or registered industrial design shall, directly or indirectly,
  - (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 low pricing policy of that other person.
- Exception**      (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,
or where the person attempting to influence the conduct of another person and that other person are principal and agent.

**Suggested retail price** (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 proof 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 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.

**Idem** (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.

**Exception** (5) Subsections (3) and (4) do not apply to a price that is affixed or applied to a product or its package or container.

**Refusal to supply** (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 because of the low pricing policy of that person or class of persons.

**Where company, partnership or sole proprietorship affiliated** (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.

## Control

(7.1) For the purposes of this section, a company is deemed to be controlled by a person if shares of the company carrying voting rights sufficient to elect a majority of the directors of the company are held, other than by way of security only, by or on behalf of that person.

"(7.1) For the purposes of this section, a company is controlled by a person if

- (a) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, directly or indirectly, whether through one or more subsidiaries or otherwise, otherwise than by way of security only, by or for the benefit of that person; and
- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company."

## Punishment

(8) Every person who violates subsection (1) or (6) is guilty of an indictable offence and is liable on conviction to a fine in the discretion of the court or to imprisonment for five years or to both.

## Where no unfavourable inference to be drawn

(9) Where, in a prosecution under paragraph (1)(b), it is proved that the person charged refused or counselled the refusal to supply a product 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 products 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 products supplied by the person charged not for the purpose of selling such products at a profit but for the purpose of attracting customers to his store in the hope of selling them other products;
- (c) that the other person was making a practice of engaging in misleading advertising in respect of products 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 products might reasonably expect from such other person. R.S., c. C-23, s. 38; 1974-75-76, c. 76, s. 18.

## Civil rights not affected

**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. R.S. c. C-23, s. 39; 1974-75-76, c. 76, s. 18.

**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. R.S., c. 314, s. 36.

**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. R.S., c. 314, s. 37.

**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.

**Punishment for failure to make return or supply information**

(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.

“(2) Every person who, without good and sufficient cause, the proof of which lies on him, fails to comply with section 31.81, 31.84 or 31.85 or with a notice 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 assent-  
ing 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. R.S., c. 314, s. 38.

**Penalty for fail-  
ure 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. R.S., c. 314, s. 39.

### *Procedure*

**Procedure for  
enforcing penal-  
ties**

**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, 32.1, 32.2, 32.3 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.

**Proceedings**

(5) Proceedings in respect of an offence that is declared by this Act to be punishable on summary conviction may be instituted at any time within two years after the subject-matter of the proceedings arose. R.S., c. C-23, s. 44; 1974-75-76, c. 76, s. 19.

**Venue of prosecutions**

**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.

1974-75-76, c. 76, s. 20.

**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.

**Evidence against a participant**

**(2)** In any proceedings before the Commission or in any prosecution or proceedings before a court under or pursuant to this Act,

(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. R.S., c. C-23, s. 45; 1974-75-76, c. 76, s. 21.

**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 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. 1974-75-76, c. 76, s. 22.

Statistics collected by sampling methods

**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. 1974-75-76, c. 76, s. 22.

## Notice

**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 45.2, together with the names and qualifications of those persons who participated in the preparation thereof.

## Attendance of statistician

(2) Any person against whom a record or report of statistics referred to in section 45.1 is produced may require, for the purposes of cross-examination, the attendance of any person under whose supervision the record or report was prepared.

## Idem

(3) Any person against whom a record or report of statistics referred to in section 45.2 is produced may require, for the purposes of cross-examination, the attendance of any person who participated in the preparation of the record or report. 1974-75-76, c. 76, s. 22.

## 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, any of sections 32 to 35 and section 38 or, where the proceedings are on indictment, under section 36, 36.1, 36.3, 36.4, 37.2 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.

## No jury

(2) The trial of an offence under Part V or section 46.1 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 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.

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 or section 46.1 without the consent of the individual. R.S., c. C-23, s. 46; R.S., c. 10(2nd Supp.), s. 65; 1974-75-76, c. 76, s. 23.

Failure to  
comply with  
certain orders

**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 a fine in the discretion of the court or to imprisonment for five years or to both; or
- (b) on summary conviction, to a fine of twenty-five thousand dollars or to imprisonment for one year or to both. 1974-75-76, c. 76, s. 24.

“**46.1** Any person who contravenes or fails to comply with an order of the court under Part IV.1 is guilty of an offence and is liable”

## PART VII

### *Investigation of Monopolistic Situations*

General in-  
quiries

**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.

Consideration  
and report

(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 19. R.S., c. C-23, s. 47; 1974-75-76, c. 76, s. 25.

*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. R.S., c. 314, s. 43.

**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. R.S., c. 314, s. 44.

## CONSEQUENTIAL AMENDMENTS

1980-81-82-83,  
c. 111, Sch. I

*Access to Information Act*

Schedule II to the *Access to Information Act* is amended by adding thereto, immediately after the reference to

“Canadian Ownership and Control Determination Act

*Loi sur la détermination de la participation et du contrôle canadien*”

a reference to

“Combines Investigation Act

*Loi relative aux enquêtes sur les coalitions*”

and by adding a corresponding reference in respect of that Act to “subsection 27(3)”.

1980-81-82-83,  
c. 40

*Bank Act*

Subsection 255(5) of the *Bank Act* is repealed and the following substituted therefor:

Provisions of  
certain Acts not  
to apply

“(5) The provisions of this Act relating to amalgamations under this section apply in lieu of provisions relating to amalgamations in the *Trust Companies Act* and the *Loan Companies Act* and paragraph 184(1)(c) of the *Canada Business Corporations Act* and the provisions of that Act relating to amalgamations.”

The heading preceding section 309 and section 309 of the said Act are repealed.

R.S., c. N-17

*National Transportation Act*

Section 27 of the *National Transportation Act* is amended by adding thereto the following subsection:

Effect on  
operation of  
other Acts

“(6) Nothing in this section affects the operation of any other Act of Parliament that applies to or in respect of any acquisition of an interest in the business, or any part of the business, of any company.”

**TRANSITIONAL**

Pending  
proceeding  
before the  
Commission

Any proceedings instituted before the Commission under sections 31.2 to 31.7 prior to the coming into force of this Act shall be continued and completed as if this Act had not come into force.

**COMING INTO FORCE**

Coming into  
force

This Act or any provision thereof, or any provision of the *Combines Investigation Act* as amended or enacted by this Act, shall come into force on a day or days to be fixed by proclamation.

HC  
2809  
A431  
1984

34882

**DATE DUE**  
**DATE DE RETOUR**

LOWE-MARTIN No. 1137

INDUSTRY CANADA/INDUSTRIE CANADA



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