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Report
March 31, 1989

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Director of Investigation and Research

Competition Act



Consumer and
Corporate Affairs
Canada

Consommation
et Corporations
Canada

Canada

Annual Report

For the year ended March 31, 1989
to the Hon. Harvie Andre, Acting Minister

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1988/89

Director of Investigation and Research

Competition Act



Consumer and
Corporate Affairs
Canada

Consommation
et Corporations
Canada

Hull, Quebec

Mailing Address:
Ottawa, Ontario
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October 27, 1989

The Honourable Harvie Andre, P.C. M.P.,
Acting Minister of Consumer and Corporate Affairs
Ottawa

Dear Sir:

I have the honour to submit, pursuant to section 127
of the Competition Act, the following report of proceedings under
the Act for the fiscal year ended March 31, 1989.

Yours very truly,

Calvin S. Goldman, Q.C.
Director of Investigation
and Research

“The Director shall report annually to the Minister on the proceedings under this Act, and the Minister shall cause the report to be laid before each House of Parliament on any of the first fifteen days after he receives the report on which that House is sitting.”
(Competition Act, R.S.C. 1985, c. C-34, as amended, section 127.)

Editor's note: All references in this Report to sections of the Competition Act are to that Act as it read on March 31, 1989.

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The Director's Overview

In the period covered by this Report, the Bureau of Competition Policy faced an exceptionally demanding workload which was generated by the continuation of the high volume of significant merger activity as well as precedential cases regarding other sections of the legislation.

This third year of operation of the Competition Act has resulted, in many ways, in solidifying a constructive foundation for the effective administration of Canada's new competition law. This is evident not only from the broad range of case activities undertaken pursuant to various provisions of the Act, but also in the greatly increased public awareness of, and interest in both the role and importance of competition law in Canada.

During 1988-89, one aspect of this broader interest in competition policy focused on the relationship between competition law and trade liberalization. Over the course of the past year, the question has been asked whether, in an environment of trade liberalization, the Competition Act would be able to serve the diverse interests of consumers and business; whether it would be strong enough to protect domestic competition, or be flexible enough to allow businesses in Canada to restructure in order to reap the full benefits of trade liberalization and the globalization of certain markets.

As is demonstrated in this Report, the Competition Act is well suited to the delicate task of balancing the need to ensure a competitive domestic environment and the need for certain industries to reposition themselves to meet increasing global competition. Indeed, the purpose clause of the Act makes it clear that the legislation is designed to achieve a number of objectives. The balancing of these sometimes conflicting objectives is an integral part of the manner in which we approach the administration of various sections of the legislation. This is particularly so in our analysis of certain types of mergers where both domestic and international competition issues arise.

While activity in 1988-89 addressed many aspects of the Act and a wide range of policy issues, most visible has been the activity associated with the major revisions to Canadian competition law in 1986 relating to merger review.

In this regard, there has been, during the fiscal year, a series of high profile mergers in the transportation, steel, petroleum, beer, petrochemical, food and other industries. Each merger is unique, and must be reviewed on a case-by-case basis. A merger cannot be assessed simply on the basis of industry concentration or the

market shares of participants. The Act requires that a wide range of qualitative factors be considered, including, for example, potential foreign competition, tariff and non-tariff barriers to entry and the extent of effective competition remaining in the market. In addition, the Act provides for the consideration of the extent to which efficiency gains offset any lessening of competition. The Bureau must therefore review and assess each merger from a practical, real-world, economic perspective.

The Mergers Branch of the Bureau completed its review of 182 mergers during the 1988-89 fiscal year, a 36 percent increase over 1987-88. This increase is indicative of Canadian businesses' ongoing adjustment to global market forces which is fostering increased international competition. It has continued to be the case that the overwhelming majority of mergers reviewed do not give rise ultimately to significant competition issues. Indeed, in the period since the passage of the Competition Act in 1986, over 85 percent of the mergers examined by the Bureau were concluded as posing no issue under the Act.

A substantial portion of the Bureau's merger examinations resulted from notification filings under the provisions of Part IX of the Act in relation to proposed large-scale mergers or involved the issuance of Advance Ruling Certificates (ARCs). Together, the number of notification filings and ARC requests constituted 79 percent of total merger examinations commenced in fiscal 1988-89, up approximately 17 percent from fiscal 1987-88. In general, it appears that parties to a proposed merger desire as much certainty as possible on the timing, terms and legality of transactions. Thus, in most instances, we have found that parties genuinely seek to ensure compliance with the Act through the use of either required or voluntary notification procedures.

The approach the Bureau is applying generally in the administration of the Act gives businesses every reasonable opportunity to arrange their affairs to ensure compliance with the Act. This is what is termed our compliance-oriented approach. The doors of the Bureau are open to businesses who wish to discuss contemplated merger transactions. We encourage, whenever possible, a "fix-it-first" approach to remove competition concerns before the completion of a transaction. During our review process, the doors are also open to others affected by a proposed merger. This approach has proven to be of great benefit in the resolution of merger cases where businesses are prepared to try to resolve Competition Act issues in a relatively early and expeditious manner in order to proceed with their proposals. These demands necessitate

that the Bureau conduct its merger reviews as thoroughly, professionally and carefully as possible; we strive to meet those objectives at all times. Since we often have to review many different mergers in relatively short time frames, we make extensive use of outside industry and economic expertise to assist the Bureau's professional staff in ensuring there is an accurate and realistic assessment of the likely effects of the merger.

The flexibility inherent in our approach to the resolution of merger cases is particularly well suited to Canada's dynamic market environment and is facilitated by the wide range of remedies available under the Act to address merger issues including: advance ruling certificates; advisory opinions; pre-closing "fix-it-first" resolutions; post-closing restructuring by means of undertakings; monitoring within the three year period provided for under the Act; applications to the Competition Tribunal for consent orders; and, finally, contested applications to the Competition Tribunal. We are using all of these remedies in our ongoing efforts to ensure fair, balanced and effective enforcement of the Competition Act.

While merger review constituted an intense area of activity for the Bureau during 1988-89, other sections of the Competition Act were also the subject of considerable attention during the year. In December 1988, the Bureau's compliance-oriented approach to case resolution led to the issuance of a comprehensive order of prohibition by the Federal Court of Canada affecting the real estate industry across Canada. Consumers and industry members had alleged that impediments to competition existed with respect to commissions, services or practices of nine real estate boards in five provinces. After very extensive negotiations, all parties were able to agree to a resolution through the consent prohibition order procedure that not only addressed competition concerns about the activities of the nine boards in question, but also, through the Canadian Real Estate Association, applied to the remaining 105 member boards across Canada. This case is an important example of the compliance-oriented approach generating effective, certain and immediate protection of competition in a manner that is also considerably less costly than contested litigation.

Also in December 1988, the first application under provisions of the Competition Act relating to refusal to supply was filed before the Competition Tribunal. The application requests the Tribunal to order Chrysler Canada Ltd. to supply Chrysler automotive parts to a Montréal firm for export purposes. In addition, a number of major inquiries under the reviewable practices provisions were commenced during the year, and it is anticipated that several of them may result in applications to the Tribunal during fiscal year 1989-90. Particularly noteworthy in this regard is the application to the Tribunal, after the close of the 1988-89 fiscal year, relating to Nutrasweet's activities in the Canadian aspartame market. The inquiry commenced in October 1988, and the application which is currently before the Tribunal seeks a remedial order under the abuse of dominance provisions. This represents the first Tribunal application under those provisions which were introduced in the 1986 amendments.

Other precedents were established under the criminal sections of the Act. Of significance in this regard is the conviction, in June 1988, under the bid-rigging provisions of the Act, of four companies in the business forms industry. The Saskatchewan Court of Queen's Bench levied fines totalling \$1.6 million (including a \$40 000 fine for a price maintenance offence), the largest total fine ever imposed under any section of either the Competition Act or its predecessor, the Combines Investigation Act. The individual fines assessed also were the largest ever levied under the bid-rigging provision. Two of the firms convicted in Saskatchewan, Moore Corporation Limited and R.L. Crain Inc. had been convicted the previous day in Nova Scotia for similar bid-rigging on government contracts and fined \$200 000 each.

Convictions were also obtained under a number of the other substantive provisions of the Act, some of which resulted in record fines. Significant convictions were obtained in relation to gasoline resale price maintenance by Shell Canada Products Ltd. in Winnipeg in March 1989; in relation to soft drink bottling price-fixing in Manitoba in January 1989 by Coca-Cola Ltd. and others; in relation to resale price maintenance in February 1989 by Toshiba of Canada Limited; and in relation to discriminatory pricing in January 1989 by Commodore Business Machines Limited. The continued vigorous enforcement of the Act in appropriate cases is an essential element of the compliance-oriented approach. In this regard, there are currently underway in the Bureau a number of major inquiries particularly in relation to the price-fixing and bid-rigging sections of the Act.

This Report also details a number of major cases relating to misleading advertising and deceptive marketing practices. Simpsons Ltd. was convicted of misleading representations concerning discount savings and fined \$100 000. A number of companies and individuals including certain entertainment figures were convicted of misleading weight loss representations in Quebec and fined a total of \$75 000. Also during the year, considerable work took place in the inquiry relating to the activities of the Principal Group of Companies which, following the conclusion of the Code Inquiry in Alberta into the collapse of the Group, resulted in charges being laid on July 19, 1989 against a number of persons for misleading representations under paragraph 52(1)(a) of the Act.

Other activities in the misleading advertising area involved an increased use of alternative case resolution. During the year, consent orders under subsection 34(2) of the Act were negotiated with Cummins Diesel of Canada Limited and International Exteriors Ltd. Several other negotiations were under way at year's end.

The greater use of the compliance-oriented approach in both criminal and non-criminal matters has allowed the Bureau to allocate its resources as effectively and efficiently as possible. We try to concentrate our resources on cases of greater potential significance having regard to their economic or deterrent significance.

This review of recent developments would be incomplete without touching briefly on two decisions deli-

vered on April 20, 1989 by the Supreme Court of Canada in the *City National Leasing* and *Rocois Construction* cases. The Court upheld the Combines Investigation Act as valid federal legislation under the general trade and commerce power and in so doing upheld the private right of action provision enacted in 1976. The Court also noted that in numerous cases the Act had already been upheld under the federal criminal law power. These decisions confirm that our federal competition law is constitutionally positioned on very solid ground.

During fiscal 1988-89 we continued to place a high priority on providing information to the public regarding specific aspects of the Competition Act and our approach to its administration. Information on what we do, and how we do it, permits a better appreciation and understanding of the Bureau's approach to enforcement. It also permits businesses to better integrate competition concerns into their planning.

Beginning in fiscal year 1987-88, we instituted the Director's Consultative Forum. These are informal roundtables on competition law in which representatives of various business sectors, the legal profession and consumers groups, get together periodically to exchange views and discuss issues as they emerge. We have had three to date: on the merger review process, on the compliance approach generally, and on measures to more effectively enforce the Act. In the latter Forum in December 1988, the role of private and class actions was discussed, as was the extent to which more prosecutions should be commenced against individuals involved in serious criminal offences under the Act.

In addition to the more formal consultations, a number of smaller scale consultation meetings were held with representatives of specific sectors and industry and other associations. A meeting was held with representatives of the food manufacturing industry to discuss market dynamics and issues of concern to that particular sector. Discussions which had commenced at the first Consultative Forum were pursued with various groups concerning the information that the Bureau can and should provide to the public on case decisions. It was generally acknowledged that we should continue to try to increase the information provided to the public on the resolution of particular cases especially in the merger area. This will assist the public to better understand the Act and its administration, and a better informed public will be able to participate more effectively in the process.

Generally, to assist in meeting our objective of providing more information to the business and legal communities and inform business and the public generally, we initiated the publication of a series of information bulletins. The first of these, released in June 1988, dealt with the merger provisions of the Act. The second, released in December 1988, set out the considerations that may be taken into account in the review of applications for merger-related Advance Ruling Certificates. We also spent considerable time during the fiscal year in consultations with the legal community on our draft bulletin on the Program of Compliance, which was released in June 1989. Additional bulletins are planned in the coming fis-

cal year addressing the factors guiding the Bureau's application of selected merger-related provisions of the Competition Act and in relation to discriminatory pricing. The volume of work within the Bureau has not enabled us to meet our original schedule of bulletins, but we are striving to complete the ones mentioned before the end of the 1989-90 fiscal year.

Over the past couple of years, we have developed a standard operating procedure whereby we release timely information to the media and other members of the public on significant merger case decisions and resolutions through news releases. We do the same for other cases of broad public interest. We also provide accompanying backgrounders in cases of particular significance. We try to make these releases informative within the limits of the confidentiality provisions of the Act. Indeed, the Bureau's information program has been developed in the context of specific statutory provisions which recognize the need for confidentiality in certain business matters. In fact the scope of our news releases and backgrounders has increased considerably over the past year particularly in relation to merger cases. For example, a lengthy backgrounder accompanied the decision not to challenge the PWA-Wardair airline merger in April 1989, which explained various factors considered and particularly the application of the failing-firm factor to the facts of that case.

Regular speaking engagements by myself and senior Bureau staff remain an important part of our communications program. Our goal is to ensure that accurate information is provided to various interested audiences and, accordingly, a rather demanding speaking schedule is maintained. Copies of certain speeches are distributed widely to the business, legal and academic communities.

In addition, with respect to mergers, we have recently adopted a practice of publicly announcing the intention to file an application before the Competition Tribunal where it has been determined that competition would likely be prevented or lessened substantially should a proposed merger transaction proceed. These announcements are made only in cases involving mergers that the parties have already publicly announced. This practice allows all affected parties to have timely information and places investors, both large and small, on an equal information footing. The announcement of an intention to file also provides the opportunity for all affected interests to communicate relevant information to the Bureau prior to the actual filing of an application with the Tribunal, and it tends to expedite the possibility of resolution of the competition issues. In one recent instance involving a dairy acquisition in New Brunswick, the acquiring company decided to abandon the merger following the announcement of an intention to challenge it, in lieu of facing contested proceedings before the Tribunal. In another, the parties resolved the competition issues with this office following the first announcement that the merger would be challenged. The matter thereafter proceeded to the Tribunal on a consent order basis.

Finally, with respect to merger cases, we have confirmed an intention to make greater use of applications to the Competition Tribunal for consent orders in appropri-

ate cases. A consent order will likely be sought in situations where: (i) the case has economic significance; (ii) there is a need to ensure immediate or long-term enforceability; (iii) variation of the order may be required; (iv) the case or proposed resolution is unique; or (v) the order would be of precedential value.

Perhaps the best illustrations of the usefulness and importance of applications to the Tribunal for consent orders occurred in relation to cases which had commenced before but were not completed until after the end of fiscal year 1988-89. In the case of Asea Brown Boveri Inc.'s acquisition of the electric power transmission and distribution business of Westinghouse Canada Inc. (referred to above) and in the case of Gemini, which involved the merger of the airline reservation systems of Air Canada and Canadian Airlines International, consent orders now have been issued. Both cases involved examinations and earlier announcements of a public position by this office against the mergers, but at the same time, both cases were eventually resolved through proposed consent orders which were submitted to the Tribunal for hearings in the first few months of fiscal 1989-90. In the Gemini case, the proposed order followed one year of contested litigation. The issuance of these two orders illustrates that the consent order route is a viable and relatively expeditious option for the resolution of certain merger cases.

At the time of writing this overview, a consent order is also being sought in the case of Imperial Oil Ltd.'s acquisition of Texaco Canada (an interim consent order has been issued governing the hold-separate terms). That case occupied a very extensive amount of the Bureau's time and resources during the latter part of fiscal year 1988-89. The proposed consent order which was filed in June 1989 was accompanied by very detailed background information made available to the public.

The discussion of these large mergers would be incomplete without reference to the Molson-Carling Breweries merger which also occupied a considerable amount of the Bureau's time in the latter part of the fiscal year. We announced early in July 1989 that the Bureau will monitor the effect of the merger on markets across Canada, and particularly in Alberta and Quebec, having specific regard to anticipated changes in barriers to trade and foreign competition during the three year period provided for under the Act.

Competition, properly protected, is highly desirable and effective. It is a force that generates considerable savings and increased consumer disposable income. It keeps Canadian industries sharp and efficient — characteristics which are of great importance in the increasingly global economy. It constrains the unilateral or collusive exercise of market power. It preserves a place for small businesses, provides opportunities for new ones, and rewards innovation. When competition is protected, a propelling mechanism of the Canadian economy is protected.

Developments in the past year, as in the two years preceding it, have enhanced the fundamental compliance-oriented approach we are pursuing to adminis-

ter the Act. The maintenance of an open door policy, the use of extensive consultations, more elaboration on decisions through media information, bulletins and speaking engagements, as well as announcements of intentions to file applications with the Tribunal, and the increased use of consent orders and other modes of resolution in criminal and reviewable matters are all part of an evolving compliance-oriented process.

Protecting competition requires the balancing of a number of goals and interests: balancing business and consumer interests; balancing the maintenance of competitive domestic markets with certain industries' desire to restructure in order to compete internationally; balancing the need for well-informed business and public communities, with the need to respect the sensitivity of certain business plans. In other words, businesses in Canada must have confidence in the fairness, professionalism and confidentiality of their dealings with the Bureau so they can proceed with their plans in a knowledgeable and relatively certain fashion. However, the Canadian public must also have confidence in the impartiality and thoroughness of the operations of the Bureau, which is fostered through the Bureau's willingness to explain its activities to the maximum extent permissible under the provisions of the statute.

The Bureau makes every attempt, in its activities, to recognize and strike the appropriate balance in what are often rather challenging and complex situations. Careful analysis by the Bureau and the considered use of the wide range of remedies available under the Competition Act allow us to address competition issues in an effective and timely manner. Those that reach the courts or the Tribunal reflect our willingness and readiness to proceed, on a contested basis, if necessary, to ensure that threats to competition are resolved.

In conclusion, in terms of both substance and process, the developments over the past fiscal year and the subsequent period up to the time of writing this overview, reflect the Bureau's continuous commitment to apply the statutory provisions in a manner that best fulfills the objectives of the Act.

"An Act for the Prevention and Suppression of Combinations formed in Restraint of Trade", passed by the Parliament of Canada in 1889, was the first national legislation directed at anti-trust infractions anywhere in the world. Thus, calendar year 1989 marks the 100th anniversary of the first enactment of national anti-trust legislation. The activities documented throughout this Annual Report are the continuation of a long tradition and have resulted from the personal commitment and team work of the staff and management of the Bureau of Competition Policy.

Calvin S. Goldman, Q.C.
July 31, 1989

Chapter I

The Competition Act: Its Purpose and Application

Purpose

The Competition Act is a law of general application which establishes basic principles for the conduct of business in Canada. The purpose of the Act, as set out in section 1.1, is to maintain and encourage competition in Canada in order to:

- promote the efficiency and adaptability of the Canadian economy;
- expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada;
- ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy; and
- provide consumers with competitive prices and product choices.

Application

Canada's competition legislation applies to the activities of all sectors of the Canadian economy and consequently affects service, resource, and manufacturing industries. As a result, all business activities in Canada are subject to the law, with the exception of a few activities specifically exempted under the Act, such as collective bargaining activities and amateur sport, or effectively regulated under other legislation. Section 2.1 of the Act expressly provides that the Act is binding on agent Crown corporations in respect of commercial activities engaged in by such corporations in competition with others.

The Competition Act gives the Director of Investigation and Research ("the Director") responsibilities in respect of criminal offences, reviewable matters including mergers, notifiable transactions and representations to regulatory boards.

Part VI of the Act prohibits a number of criminal offences including bid-rigging, conspiracy to lessen competition unduly, price maintenance and misleading advertising.

Part VIII of the Act identifies a number of matters reviewable by the Competition Tribunal including mergers, abuse of dominant position, refusal to deal, tied selling, delivered pricing and specialization agreements. The Competition Tribunal is a specialized tribunal established by the Competition Tribunal Act. It is composed of

judges from the Federal Court of Canada and lay persons appointed by the Governor in Council on the recommendation of the Minister of Consumer and Corporate Affairs. With one exception, the Director is the only person who may bring an application before the Tribunal. Private parties may apply to the Tribunal for an order registering a specialization agreement.

Part IX of the Act outlines the circumstances under which certain merger proposals are required to be notified to the Director. Additional information on notifiable transactions is included in Chapter III.

Under sections 125 and 126 of the Act, the Director is authorized to make representations regarding competition before federal and provincial regulatory boards, commissions and tribunals. The Director's role in such cases is to bring to light considerations in respect of competition which are relevant to matters before such boards and to the factors they are entitled to take into consideration. The Director may intervene before federal regulatory boards on his own initiative, at the request of the board or when directed to do so by the Minister. However, he may intervene before provincial regulatory bodies only at their request, or on his own initiative with their consent.

Chapter II

The Enforcement Process

Each year numerous complaints are received from members of the public concerning conduct that may be subject to the Competition Act. Other matters are brought to the Director's attention by media reports, staff research or, as is frequently the case with proposed mergers, by the parties themselves. In each of these instances Bureau staff carry out a preliminary examination and determine whether further action is warranted.

The Director is required to commence an inquiry whenever he has reason to believe that an offence under Part VI or VII of the Act has been or is about to be committed, that grounds exist for the Tribunal to make an order relating to a reviewable matter under Part VIII of the Act, or that a person has contravened or failed to comply with an order made under the Act. The great majority of inquiries are commenced in this manner. However, the Director is also obliged to commence an inquiry when the Minister of Consumer and Corporate Affairs directs him to do so or when six Canadians residents make an application in accordance with section 9 of the Act.

The Director is required to conduct all inquiries in private. This restriction protects the reputation and information of the persons involved in an inquiry and assists the Director in the conduct of his inquiry. An inquiry in progress may come to the public's attention if, for example, a person whose conduct is being inquired into or an applicant under section 9 makes public the existence of the inquiry. Any person whose conduct is being inquired into or any person who applies for an inquiry under section 9 may write to the Director and request to be informed as to the progress of the inquiry.

Once an inquiry has begun the Director may use a number of investigative tools provided in the legislation. He may apply to a court for authorization to enter and search premises and seize records identified in a warrant. The Director may also obtain a court order requiring any person having or likely to have information relevant to an inquiry to produce records, to provide written information under oath or affirmation, or to appear before a presiding officer appointed under the Act and be examined on oath or affirmation.

If the Director concludes that a matter does not justify further inquiry, he may discontinue an inquiry at any time. For example, an inquiry will be discontinued when it becomes apparent that no offence is disclosed. An inquiry may also be discontinued, in appropriate circumstances, if the Director decides that further inquiry is not warranted because of voluntary corrective conduct, or

because undertakings which remedy the competitive concerns arising from the matter under inquiry have been given and complied with.

The Director is required to make a report in writing to the Minister on any inquiry that is discontinued. If the inquiry was commenced as a result of a six-resident application under section 9, the Director must inform the applicants of the decision and the grounds for the discontinuance. The Minister may, on the written request of applicants under section 9 or on his own motion, review the Director's decision and, if in his opinion the circumstances warrant, instruct the Director to make further inquiry.

In criminal matters, the next step in the enforcement process is the referral of the matter to the Attorney General of Canada. The Attorney General determines whether charges should be laid, and conducts prosecutions of offences under the Act. While most prosecutions are commenced in the courts of criminal jurisdiction in the provinces, prosecutions for certain indictable offences and other proceedings may also be instituted in the Federal Court—Trial Division. Each offence provision of the Act stipulates whether the matter may be prosecuted by way of summary conviction or indictment or either, and sets out the amount of the fine and the term of imprisonment that may be imposed upon conviction.

Subsection 34(1) of the Act provides that in addition to any other penalty imposed on a person convicted of an offence, a court may issue an order prohibiting that person or any other person from continuing or repeating the offence, or from doing any act or thing directed toward the continuation or repetition of the offence.

Prohibition orders may also be issued without securing a conviction in proceedings commenced by information of the Attorney General of Canada or the attorney general of a province pursuant to subsection 34(2). Where it appears that a person has done, is about to do or is likely to do any act or thing constituting or directed towards the commission of an offence under Part VI, an order may be made with or without the consent of the persons against whom the order is sought.

The Director initiates legal proceedings in reviewable matters by filing an application with the Competition Tribunal. The Tribunal may issue a variety of orders as provided by the Act to remedy the effects of the conduct in question. For example, the Tribunal may direct that a completed merger be dissolved in such manner as it directs. In the case of an abuse of dominant position, the

Tribunal may issue an order prohibiting any person subject to it from engaging in a practice of anticompetitive acts or, in certain circumstances, directing such person to take such actions as are necessary and reasonable to overcome the effects of the practice in the market. In the case of a refusal to deal, the Tribunal may order a supplier to accept a particular person as a customer on usual trade terms. The Tribunal may also issue orders upon the consent of the Director and the persons in respect of whom the order is sought.

Only the Director can initiate proceedings before the Tribunal, except in the case of specialization agreements. The parties to such an agreement may make an application to have it registered provided that the Director is given notice.

The Competition Tribunal Act provides that any affected person may apply for leave to intervene in proceedings before the Tribunal to make representations relevant to those proceedings. The Act also provides certain rights of intervention before the Tribunal to provincial attorneys general.

Historically, enforcement of the Competition Act and the deterrence of anticompetitive activity has focussed on the investigation of violations of the Act, with a view to prosecution and the imposition of criminal penalties. This approach will continue to be a primary method of enforcement in various instances. However, it has become clear that in other instances the goals of maintaining and encouraging competition can be pursued with greater effectiveness and certainty, and with less time and expense, through an approach to enforcement which stresses the promotion of continuing voluntary compliance with the Act and relies on a broader range of responses to non-compliant behaviour including, but not limited to, contested proceedings.

For this reason, more emphasis is being placed than in the past on communication and public education as a means of promoting a better understanding of the Act and its application. As well, business persons are encouraged to request advisory opinions, and to discuss proposed conduct or transactions with the Bureau at the earliest possible stage. Finally, alternative case resolution instruments are being utilized increasingly in appropriate circumstances as a means of achieving early and effective remedies for non-compliant behaviour.

Selected Activities of the Bureau of Competition Policy
(Excluding Misleading Advertising and Deceptive Marketing Practices Provisions*)

	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89
Complaints received	N/A	N/A	381	692	839	1 075	1 013	1 028	930	820
Preliminary examinations commenced requiring two or more days of review	N/A	N/A	199	218	223	269	237	237**	328	350
Applications for inquiries under section 9	7	8	9	8	2	2	8	13	9	6
Inquiries in progress at the end of the year	78	69	69**	71	58	54	58	78	80**	56
Inquiries discontinued	21	26	20	19	19	12	11	11	17	32
Matters referred to the Attorney General of Canada	24	21	33**	24	20	27	21	9	15	19
Matters referred where the Attorney General decides no further action warranted	3	5	6	5	6	4	11	4	3	—
Matters in which prosecutions or other proceedings commenced	21	6	24	21	16	17	19	14	12**	14****
Applications to the Competition Tribunal***	2	0	0	1	0	0	1	1	2	3
Interventions before federal regulatory bodies	3	4	6	4	15	17	15	8	7	6
Interventions before provincial regulatory bodies	1	0	9	7	8	6	7	10	9	3

* Comparable statistics for activities under these provisions can be found in Chapter VII.

** Revised.

*** Prior to 1986-87, this figure indicates applications to the Restrictive Trade Practices Commission.

**** Includes 9 matters forming one proceeding.

Chapter III

Mergers

The Director reviews all mergers, proposed or otherwise, which come to his attention to determine whether they prevent or lessen or are likely to prevent or lessen competition substantially in Canada. In the great majority of instances, it is quickly determined that the matter raises no issue under the Act. However, slightly in excess of ten percent of all such matters require a more significant examination, i.e. more than two days of review by at least one officer.

Most cases examined in a significant fashion are ultimately determined to raise no competition issue and are eventually closed. In such cases, when requested by the parties, the Director has provided either an advance ruling certificate or an advisory opinion. In a small number of cases, the Director has concluded that sufficient grounds existed for him to bring an application before the Competition Tribunal for a remedial order. In these situations the parties have chosen to abandon the transaction, to proceed to the Tribunal on the basis of a consent order or on a contested basis or, alternatively, to restructure the transaction before or after closing to alleviate the Director's concerns.

Where an application is made to the Tribunal for a consent order and there is agreement between the Director and the company as to the terms of the order, the Tribunal may make the order on those terms. If an application is made to the Tribunal on a contested basis, and if the Tribunal finds that the merger prevents or lessens, or is likely to prevent or lessen competition substantially, it may issue a variety of orders. For example with respect to proposed mergers, the Tribunal may, among other things, order the parties not to proceed with the merger, or not to proceed with part of the merger. In the case of completed mergers, the Tribunal may issue an order of dissolution and require divestiture of assets or shares. Regardless of whether the merger is proposed or completed, the Tribunal may also, on consent, direct that any other action be taken.

To ensure that both the quantitative and qualitative aspects of a matter are considered, the Act provides a list of factors which the Tribunal may consider in determining whether the merger prevents or lessens or is likely to prevent or lessen competition substantially. Furthermore the Act specifically states that the Tribunal cannot find that a merger or proposed merger prevents or lessens or is likely to prevent or lessen competition substantially solely on the basis of evidence of concentration or market share. The law also provides an exception in situations where the merger brings about or is likely to bring about

gains in efficiency that will be greater than, and will offset, the effects of any prevention or lessening of competition and the gains would not likely be attained if the order of the Tribunal were to be made. Information Bulletin No.1 relating to the merger provisions and merger review was issued in June 1988. Copies of the Bulletin and of speeches relating to the recent experience with merger review are available on request.

The Director is authorized to issue advance ruling certificates with respect to proposed merger transactions where he is satisfied that he would not have sufficient grounds on which to apply to the Tribunal. The issuance of a certificate with respect to a particular proposed merger precludes the Director from bringing an application before the Tribunal with respect to that merger solely on the basis of the same or substantially the same information as that upon which the certificate was based, if the merger is substantially completed within one year after the certificate is issued. In December 1988, Information Bulletin No.2 relating to Advance Ruling Certificates was issued and is available on request.

In certain circumstances the Director may conclude that while he does not have grounds to apply to the Competition Tribunal in respect of a specific transaction, he nonetheless has sufficient concerns about the competitive effects of the transaction that he cannot issue an advance ruling certificate. In such a case the Director may provide an opinion pursuant to his Program of Advisory Opinions. In addition, an advisory opinion would likely be given in situations where a merger proposal raises no immediate concern, but, because of the nature of the market, the potential anticompetitive effect of the merger is less certain. Advisory opinions may be issued subject to the fulfilment of certain undertakings by the parties, for example, in a situation where the parties have indicated a willingness to restructure a proposed merger before closing to alleviate competition concerns that would otherwise arise under the Act. An advisory opinion may indicate that the merger will be monitored by the Bureau during the three-year limitation period provided by the Act.

As the following table illustrates, the Director commenced the examination of 191 merger transactions requiring 2 days or more of examination during the year which included, in part, 92 prenotifications and 70 Advance Ruling Certificate requests. In addition, he continued his examination of 25 matters commenced in the previous year. Of the mergers examined during the year, four were restructured, primarily through divestitures or undertakings

to divest. Two mergers were abandoned and one resulted in an application to the Competition Tribunal. Information on the total number of mergers which have been reported publicly as having taken place in Canada in calendar 1988 is provided in Appendix II. A list of the mergers that were examined by the Director during the fiscal year is found in Appendix III. The list does not include any mergers that have not been made public by the merging parties.

Merger Examinations			
	1986-87 ¹	1987-88	1988-89
Merger examinations commenced ²	40	146	191
Examinations concluded			
As posing no issue under the Act	17	120	166
With monitoring only	5	7	10
With preclosing restructuring	—	2	1
With post-closing restructuring	1	2	3
Parties abandoned proposed merger, in whole or in part as a result of Director's position	3	2	2
Total examinations concluded	26 ³	133 ⁴	182 ⁵
Examinations ongoing at year end	14	25	32
Applications and notice of application before Tribunal			
Concluded or withdrawn ⁶	1	—	2
Ongoing	—	—	2
Intent to file			2

¹ Statistics commence as of June 19, 1986.

² Two or more days of review. Total merger examinations in any year include those commenced during the year and those ongoing at the end of the previous year, e.g. during 1988-89, there were 191 examinations commenced plus 25 ongoing for a total of 216 examinations.

³ Includes 3 Advance Ruling Certificates and 8 Advisory Opinions.

⁴ Includes 26 Advance Ruling Certificates and 21 Advisory Opinions but excludes the 2 ongoing matters before the Competition Tribunal.

⁵ Includes 59 Advance Ruling Certificate and 20 Advisory Opinions but excludes the 2 ongoing matters before the Competition Tribunal.

⁶ Matters are counted under examinations concluded.

Note: For statistics relating to the total number of mergers recorded in the Merger Register during the calendar year, see Appendix II.

Notifiable Transactions

Part IX (sections 108 to 123) of the Competition Act deals with notifiable transactions. It provides that persons proposing a transaction that exceeds certain size thresholds must notify the Director in advance of completion of the transaction. There are two general thresholds which must be met for the requirements to apply. First, the parties to the transaction, together with their affiliates, must have assets in Canada or gross annual revenues from sales, in, from or into Canada that exceed \$400 million. Second, in respect of a proposed acquisition of assets of an operating business, the value of the assets to be acquired, or the annual gross revenues from sales in or from Canada generated by these assets, must exceed \$35 million. In the case of an amalgamation, this second threshold is \$70 million.

Notification is also required with respect to certain acquisitions of voting shares of a corporation that carries on an operating business, or controls a corporation that carries on an operating business. In this regard, in addition to the \$400 million threshold mentioned above, the value of the assets of the operating business or its annual gross revenues from sales in or from Canada must exceed \$35 million and the persons acquiring the shares must acquire an interest in the corporation exceeding either 20 percent in the case of a public corporation, or 35 percent in the case of a private corporation. If the acquiror(s) has, or have collectively, already surpassed either the 20-percent or 35-percent threshold, the applicable threshold for both public and private share acquisitions is 50%. Parties who notify with respect to the lower acquisitions threshold must make a second prenotification with respect to the 50% threshold unless notice of such subsequent acquisition is provided at the time of the crossing of the 20% or 35% threshold, as the case may be.

Once notification has been completed, the transaction cannot be closed before the expiration of seven to twenty-one days, depending on whether the short-form or long-form filing procedure is used. Where the transaction is effected through a stock exchange and a long form is filed, the period is a minimum of ten trading days. The applicable time period may be shortened where the Director is satisfied that he does not have grounds to make an application to the Competition Tribunal in respect of the matter and so informs the notifier. Upon expiration of the designated time period, parties are free to complete the transaction. However where the Director's examination is still ongoing, the parties are so notified and therefore those who complete the transaction do so at the risk of a possible application to the Tribunal by the DIR.

Where there has been failure to prenotify in accordance with Part IX of the Act; or where the transaction is reasonably likely to prevent or lessen competition substantially and would, if completed, substantially impair the ability of the Tribunal to remedy its effect on competition, the Director may bring an application for an interim injunction to prevent the transaction from proceeding.

Proposed transactions involving only affiliated firms or with respect to which an advance ruling certificate has been issued are exempt from notification. In addition, other exemptions are provided in the legislation.

The Director encourages the parties to a proposed transaction to avail themselves of the Program of Advisory Opinions. However, all transactions, whether or not they are subject to prenotification, are subject to review by the Director under the merger provisions and may be brought before the Competition Tribunal within the three-year period allowed by the Act.

Merger Review Process

The approach the Director has adopted in the enforcement of the merger provisions of the Act is to give businesses every reasonable opportunity to arrange their affairs to ensure compliance with the Act. Parties to a proposed merger are encouraged to approach the Director early in the process to determine if there are potential competition concerns, and if there are concerns, to determine whether they can be resolved without resorting to costly litigation.

Parties who voluntarily approach the Director regarding a proposed merger are generally requested to provide information concerning the various criteria listed in section 93. This information will usually be augmented by information gathered from other industry participants such as customers, suppliers and competitors. In addition, it is often the case that the Director's staff will employ outside industry consultants, economists and accountants to assist in the competition assessment of the proposed merger. The Director's staff and the experts hired by him are, of course, bound by the confidentiality provisions of the Act.

The length of the information-gathering and assessment stage depends on a host of factors, such as the number and complexity of the competition issues raised, the nature of the industry and the availability and quality of information. Generally speaking, the information provided with respect to the various section 93 factors and any other factor that may be pertinent, are assessed to determine whether the merger is likely to lessen or prevent competition substantially in a relevant market. Such a finding is likely where it appears that the merger will probably confer upon the merging parties an ability to exercise market power, or to entrench existing market power. (e.g. by raising prices, reducing quality, service or variety, etc.). There have been particularly challenging issues in the post-Free Trade Agreement environment, as an attempt has been made to determine the effect of scheduled tariff reductions on barriers to entry, the likely role of foreign competition and the geographic scope of relevant markets. A further challenge has been to assess the extent to which efficiency gains anticipated to be brought about by mergers are likely to satisfy the new efficiency exception embodied in the Act.

In cases where substantive competition issues are raised, a period of 4 to 8 weeks is typically required for Bureau staff to complete their review. The Director's staff communicate with the parties throughout this period. At the end of their examination the Director's staff prepare an assessment document that includes a recommendation to the Director with respect to the transaction. This recommendation and the principal reasons for it are generally discussed with the parties prior to the Director finalizing his position, thereby providing parties an additional opportunity to present arguments prior to a final decision by the Director.

Where the Director decides that a proposed merger is likely to prevent or lessen competition substantially, he will so inform the parties and, in the case of a publicly announced merger, shortly thereafter issue a press release indicating his intention to file an application before the Tribunal. This practice allows all parties affected by the merger to have timely and relevant information, puts large and small investors on an equal footing, and also provides an additional opportunity for affected persons to communicate to the Director any additional relevant information they may have before the application is actually filed.

It is open to the parties at any stage in the process, up to and including contested proceedings before the Tribunal, to propose changes in the transaction that would address the Director's competition concerns. The Director has a strong preference for proposals which remove the concerns before the transaction closes, sometimes called the "fix-it-first" approach, although he will consider and has accepted post-closing restructuring. Where post-closing solutions are proposed, the Director may insist that such proposals be subject to a consent order application, particularly in cases of broad public interest or where there is a need for certain and long term enforceability. In other cases, simple undertakings without proceeding to the Tribunal may be accepted, but will likely be required to be backed by a signed consent of the parties to an order in the same terms, which would only be sought if the undertakings are not fulfilled.

Since the implementation of the new merger provisions in June, 1986, the Director has attempted to implement procedures for merger review which are fair, effective, efficient and, to every extent possible, open. While many aspects of merger review must of necessity be conducted in private, the Director has in important cases issued press releases and detailed backgrounders to indicate to the public the rationale for his decision. In so doing, the Director has attempted to provide guidance to the business community regarding how he approaches and administers the provisions of the Act. The success of this approach is reflected in the statistics that are set forth in the table.

Merger Reviews Concluded During the Year

A detailed list of the mergers the Director examined during the year can be found in Appendix III. While the list does not include any mergers that have not been made public by the parties, it does include some large and complex mergers which gave rise to extensive press comment but which are not being separately commented on below. These include Bridgestone Acquisition Corporation/Firestone Canada Inc.; Canadian Pacific Limited/Laidlaw Transportation Limited; Central Guaranty Trust Company/Financial Trust Company; General Electric Canada Inc./Borg-Warner (Canada) Limited; Grand Metropolitan PLC/Pillsbury Canada Limited; Lake Ontario Cement Ltd./Miron Inc.; Motorola Canada Limited/MDI Mobile Data International Inc.; Nestle Enterprises Limited/Rowntree MacKintosh Canada Ltd; Oshawa Group Limited/Boots Drug Stores Canada Ltd.; Phillip Morris Companies Inc./Kraft Inc.; Purolator Courier Ltd/Gelco Express Limited; Stone Container Corporation/Consolidated Bathurst Inc.; Télé-Métropole Inc./Pathonic Network Inc.; and Zurich Insurance Company/Travcan Limited.

The following is a brief summary of some of the significant mergers examined by the Director this year.

Hostess Food Products Limited/Frito-Lay Division of Pepsi-Cola Canada Ltd.

In late 1988, Hostess Food Products Limited (Hostess) a wholly-owned subsidiary of General Foods Inc. and Frito-Lay Division of Pepsi-Cola Canada Ltd. (Frito-Lay) announced their proposed partnership.

Hostess and Frito-Lay are primarily engaged in the manufacture and sale of salted snack foods. The principal products in this market are potato chips, tortilla chips, cheese snacks and corn chips.

After extensive examination of the information provided by Hostess, Frito-Lay and numerous industry participants, the Director concluded that the merger, as initially proposed, would likely result in a substantial prevention or lessening of competition in the salted snack food market in Ontario, Quebec and Newfoundland. Accordingly, he advised the parties that he intended to file an application with the Competition Tribunal for an order to prevent them from completing the original transaction.

In order to address the Director's concerns, Hostess and Frito-Lay proposed to divest Frito-Lay's Kitchener plant to Murphy Snack Foods (Murphy's), together with a fleet of trucks, various other equipment and the rights to six brands — O'Grady's (Frito-Lay), Laurentide (Hostess), Adams (Frito-Lay), Ridgies (Hostess), Jacks (Frito-Lay) and Tostitos (Frito-Lay). Other aspects of the proposal included the licensing of the Lays brand (Frito-Lay) to Murphy's for seven years as well as an option to purchase Hostess' plant and equipment in Laval, Quebec, should Hostess decide to divest itself of this plant in the future.

After a thorough assessment of the revised divestiture proposal, the Director decided not to proceed at this time to the Competition Tribunal for an order in respect of the transaction. A principal factor contributing to this decision was that major national and provincial food retailers, wholesalers, and distributors indicated overwhelming support for the revised transaction. They welcomed the opportunity for Murphy's to become a more effective competitor and supported this position with commitments for access to shelf space, promotion and distribution support and opportunities to supply private label brands.

In view of these developments, the Director expects that the overall effect on competition of the Hostess/Frito-Lay merger is likely to be significantly mitigated by the divestitures. Murphy's and other competitors will likely be in a position to effectively prevent the exercise of market power by the merged firm.

The Director informed the parties in November 1988 that the transaction as restructured would not be challenged at that time before the Competition Tribunal. However, in order to determine the actual effects of the revised transaction, the Director has arranged for a comprehensive monitoring program during the three-year period provided by the Act.

Maclean Hunter Limited/Selkirk Communications Limited

On November 23, 1988, the Director announced that he would not be challenging the proposed share acquisition of Selkirk Communications Limited (Selkirk) by Maclean Hunter Limited.

Maclean Hunter and Selkirk are large and diversified communications companies whose holdings include radio and television broadcasting facilities in a number of markets in Canada.

The proposed transaction raised concerns about its potential impact on competition in the Calgary and Lethbridge broadcasting and advertising markets. The acquisition, as originally proposed, would provide Maclean Hunter with control of two major commercial television stations and two AM radio stations in Calgary, and two television stations in Lethbridge. These radio and television stations operate under the call signs CFCN and CFAC in both cities.

To address the Director's preliminary competition concerns, Maclean Hunter undertook to divest itself of an AM radio station and a television station in Calgary and one of the Lethbridge television stations. The undertakings recognize that the acquisition of the voting shares in Selkirk by Maclean Hunter, as well as these divestitures, are subject to the approval of the Canadian Radio-television and Telecommunications Commission. These undertakings are consistent with the position taken by Maclean Hunter in its offer to purchase.

The Director is continuing to monitor the matter for the three-year period permitted by the Act.

Nova Corporation of Alberta/Polysar Energy & Chemical Corporation

Following the announcement by Nova Corporation of Alberta (Nova) that it was acquiring a 25-percent interest in Polysar Energy & Chemical Corporation (Polysar) and intended to participate on Polysar's Board of Directors, an examination of the transaction was commenced.

While Nova and Polysar are major participants in the Canadian petrochemical industry, their only common activity is the production of ethylene. Ethylene is a basic petrochemical feedstock used to manufacture intermediate products such as polyethylene and polystyrene. On May 5, 1988, the Director announced that he would not be applying to the Tribunal for an order prohibiting the acquisition. However, the Director will be carefully monitoring the impact of this transaction on competition in the production and supply of ethylene.

Based on the detailed assessment of the acquisition, the Director's expectation is that two important considerations will ensure that there are no anti-competitive effects of this merger. First, because of the existence of long-term contractual arrangements, the merger is not likely to affect competition in ethylene for many years to come. Second, there is a high degree of competition which exists in the North American petrochemical derivative market and this is expected to become more competitive under the Free Trade Agreement. This downstream competition will make it difficult for Nova to exercise market power in ethylene markets.

The Director intends to closely monitor the status of these contracts, including any early renegotiation of the contracts. Other factors to be monitored include: possible changes in Alberta Government policy regarding the development of the province's petrochemical industry, including the restrictions on shipments of ethylene from Alberta; changes in the economics of transporting ethylene on the Cochin Pipeline; and the possibility for new entry or the expansion of existing ethylene production facilities in Ontario or in Alberta.

Given the number of dynamic variables that exist, the Director concluded that, with the benefit of additional information obtained through the monitoring process, he will be in a better position to assess the effects and likely future effects on competition resulting from this acquisition at a later stage in the three-year period.

The impact of the Free Trade Agreement on this acquisition will also be monitored by the Director. In this regard, the U.S. and Canadian industries have requested that all polyethylene tariffs be removed during 1990.

Dofasco Inc./Algoma Steel Corporation

In July 1988 the Director commenced an examination of the effects of the proposed acquisition by Dofasco Inc. (Dofasco) of Algoma Steel Corporation (Algoma) on competition in Canadian steel markets and particularly on the market in Canadian sheet and strip steel products.

Although Dofasco and Algoma are respectively Canada's second- and third-largest fully integrated steel makers, the two companies have concentrated a large proportion of their production in separate product markets.

However, both Dofasco and Algoma are major producers of hot-rolled sheet and strip steel. Accordingly, this product market was the main focus of the Director's examination. Hot-rolled steel is currently in tight supply worldwide. As a result, a number of Canadian customers, who are now on supply allocation, welcomed Dofasco's announced expansion plans for Algoma's steelworks in Sault Ste-Marie, Ontario, and at its own mills in Hamilton, Ontario.

In reviewing this transaction, the Director considered a number of factors including the extent of present and potential foreign competition in the Canadian market for these types of steel; the likelihood of increased supply as a result of the merger; the countervailing purchasing power of buyers of steel; the extent to which Algoma was an effective competitor in hot-rolled steel; and the extent of effective competition remaining in the market. He also noted that Dofasco expects to achieve significant efficiency benefits because of its acquisition of Algoma. These efficiencies are expected to arise in relation to capital expansion and operating savings, such as rationalization of product lines and reduced freight costs.

In arriving at his decision, the Director extensively analysed the likely effects of the merger on the industry with the assistance of professional economists, legal counsel and industry experts. Information was provided by the parties, other industry participants and a significant cross-section of Canadian steel purchasers. A significant number of steel customers consulted did not express concern that the merger would likely have serious anticompetitive effects in the industry.

As a result of this examination, the Director concluded that he did not have sufficient grounds to proceed to the Competition Tribunal at that time for an order. However, as a result of the significance of the merger, in relation to structure and operation of the Canadian steel industry, the Director will monitor its future effects.

Sunshine Dairies Ltd. /Brookfield Ice Cream Ltd.

On October 7, 1988, the Director announced that he would not be applying to the Competition Tribunal for an order prohibiting the merger of Sunshine Dairies Ltd. and Brookfield Ice Cream Ltd., the second and third largest of Newfoundland's three dairies.

Upon becoming aware of the proposed merger, the Director immediately began an examination to determine its likely effect on competition. In the course of the examination, the Director received considerable information from the parties, customers, and competitors as well as the Newfoundland Milk Marketing Board.

However, after a thorough examination of the matter, the Director concluded that the merger would not likely prevent or lessen competition substantially in the production and sale of dairy products in Newfoundland.

The Director's decision was based on a number of specific factors. Among these was his conclusion that Central Dairies, the remaining processor, would continue to provide effective and vigorous competition in the marketplace. Also, the merger would create a stronger and better-positioned competitor to Central Dairies throughout the province. Therefore, customers and consumers would continue to benefit from competitive sources of supply and variety of choice. In addition, the Director recognized that the merging parties would be further constrained in their activities by the buying power of major customers and the significant role played by the Newfoundland Milk Marketing Board with respect to the processing and pricing of fluid milk, the major product produced by both companies.

Canada Safeway Limited/Woodward Stores Limited

On December 12, 1986, Canada Safeway Limited (Safeway) publicly announced its intention to acquire 23 food outlets of Woodward Stores. A formal inquiry was commenced following receipt of an application by six residents under section 9 of the Act.

Following an extensive inquiry the Director identified six markets in Alberta and British Columbia where, in his view, competition was likely to be prevented or lessened substantially by the transaction. These markets were in the following areas: Edmonton, Lethbridge and Red Deer, Alberta and Vancouver, Port Alberni and Penticton, British Columbia.

Safeway subsequently provided undertakings to the Director to divest 12 stores in these markets within a 24-month period. Safeway also undertook, for a three-year period, to provide certain information to the Director at his request, to enable him to monitor the impact of the acquisition on competition.

These undertakings alleviated the Director's concerns regarding the effects of the transaction. The Director anticipated that the undertakings would facilitate the entry of new firms and/or the expansion of other existing firms through acquisition of the stores to be divested while reducing the level of concentration in the markets of concern. By allowing the merger to proceed in this fashion, the Director attempted to minimize the disruption to customers who will benefit from the ongoing operation of those stores.

The Director informed the parties in May 1987 that the transaction as restructured would not be challenged at that time before the Tribunal but that the situation would be monitored during the three-year period to ensure that a material change in circumstances did not alter this conclusion.

In partial fulfilment of its undertakings with respect to British Columbia, Safeway divested itself of five supermarkets in the province early in 1988. Subsequently in December 1988, Safeway reached agreement to sell nine supermarkets in the Province of Alberta. Four supermarkets were ultimately acquired by Horne and Pitfield Limited, the IGA franchisor for Alberta; three by Bateman

Foods Limited, an IGA franchisee in Edmonton and the remaining two by Hull's Food Ltd. which operates food stores in Winnipeg.

The Director is satisfied that these divestitures will, together with remaining divestitures in Red Deer, address the concerns expressed with respect to the impact on competition of Safeway's acquisition of Woodward's food floors. In particular, in Edmonton the total sales volume and sales areas of the stores being divested exceed those of the Woodward stores acquired.

Notwithstanding these divestitures, the Director intends to monitor the state of competition in these markets for the balance of the three-year period provided under the Act. The divestitures in no way prevent him from applying to the Competition Tribunal during this period to remedy competition problems should this become necessary.

Trailmobile Group of Companies Ltd./Fruehauf Canada Inc.

On January 18, 1988, the Director announced that as a result of specific undertakings given by the Trailmobile Group of Companies Ltd. (Trailmobile), he would not challenge Trailmobile's acquisition of Fruehauf Canada Inc. (Fruehauf). Trailmobile agreed to sell its highway trailer van business on an economically viable basis in a public bidding process and to operate the van business of Trailmobile and Fruehauf separately until the completion of this sale. At that time, Fruehauf and Trailmobile were, respectively, the largest and second-largest manufacturers of highway trailer vans in Canada.

In light of increased entry into Canada by U.S. firms in the leasing of trailers, the Director was requested by Trailmobile to consider a modified merger proposal and to revise the scope of the January undertakings. Trailmobile's revised proposal involved a full merger of the trailer manufacturing operations of the two companies. This would enable Trailmobile to achieve significant efficiency gains and to better compete in a free trade environment. The company also undertook to sell the Trailmobile name and associated intellectual property, including drawings and designs used in the manufacture of vans. In response, and following a further assessment of the highway trailer van market, the Director agreed in July 1988, to revise the original undertakings and accept Trailmobile's undertaking to sell all right to, title to and interest in the Trailmobile name and associated intellectual property, including drawings and designs used in the manufacture of highway trailer vans.

In January 1989, the Director announced that The Brantford Group of Companies Ltd. (formerly Trailmobile) had fulfilled its undertakings by selling the Trailmobile trade name and associated intellectual property to Durabody and Trailer Ltd. of Bond Head, Ontario. Durabody is a manufacturer of truck bodies and trailer vans. Its intention is to use the name and designs to continue the production of Trailmobile trailers in Canada.

The Director will continue to actively monitor developments in the highway trailer van market for a three-year period provided under the Act.

CBR Cement Canada Limited/Revelstoke Concrete Investment Inc.

In July 1988, the Director was informed of the proposed acquisition by CBR Cement Canada Limited (CBR) of Revelstoke Concrete Investment Inc. (Revelstoke). CBR operates ready-mix concrete plants in Western Canada, and Revelstoke operated 22 ready-mix concrete plants in the provinces of British Columbia, Alberta and Saskatchewan. The Director recognized that the relevant market in which to consider the impact of the transaction was limited by the effective constraints on shipping cement over significant distances from individual plants. In only five of these markets did the Director determine that both companies operated ready-mix plants.

Based on an assessment of the factors under the Competition Act, including the extent of concentration and effective competition remaining, the Director concluded that there would not likely be a substantial lessening or prevention of competition in the Saskatoon, Calgary and Edmonton markets. However, in Grande Prairie the transaction involved the merger of the only two ready-mix operations. In Red Deer, the number of competitors would have been reduced from three to two, and raised concerns regarding the effectiveness of the remaining competition. A thorough review of the impact of the transaction included contacts with customers and competitors in Grande Prairie and Red Deer.

As a result of the competition concerns identified by the Bureau, CBR provided unconditional undertakings prior to closing to divest a plant in either or both of these markets in the event that the Director ultimately concluded that competition was likely to be substantially lessened or prevented. CBR subsequently divested one ready-mix plant in Grande Prairie and one in Red Deer to Lafarge, a division of Lafarge Canada Inc.

On February 10, 1989, the Director announced that the sale of these two plants had alleviated concerns regarding competition in these two markets and that he would not seek to challenge the acquisition.

**Provigo Distribution Inc./Steinberg Inc.
(certain assets)**

In August 1988, Provigo informed the Bureau of its intention to purchase seven Steinberg supermarkets in the province of Quebec, (Laval, Québec, Chicoutimi, Jonquière, Thetford Mines, Baie-Comeau and Sept-Îles). After conducting a preliminary examination, the Director informed Provigo that while no major competition concerns arose from the acquisition of five of the supermarkets, he had concerns under the Act regarding the effects on competition which would result from the acquisition of the supermarkets in Baie-Comeau and Sept-Îles.

Subsequently, Provigo announced on October 25, 1988, the purchase of the five supermarkets that presented no competition problems for the Director. In order to

address the Director's concerns with respect to the Baie-Comeau and Sept-Îles acquisitions, Provigo undertook to divest itself of one of its supermarkets in Sept-Îles by selling it to a third party who will continue to operate it as a food store. As well, Provigo undertook to franchise to a third party one of its existing corporate stores in Baie-Comeau. Provigo has undertaken to consent to an Order by the Competition Tribunal if these undertakings are not fulfilled as required. The Director expects these undertakings will mitigate his concerns regarding the impact on competition of the acquisition of these stores by Provigo.

The effects on competition in the two markets affected by the acquisition will be closely monitored for the three-year period during which the Director can make an application to the Competition Tribunal for a remedial order.

**Scott Paper Limited/Sanitary Tissue Division
of E.B. Eddy Forest Products Limited**

During the year, the Director commenced an examination of the announced acquisition by Scott Paper Limited (Scott) of the Sanitary Tissue Division of E.B. Eddy Forest Products Limited (Eddy).

Both Eddy and Scott produce sanitary tissue products, including bathroom and facial tissue paper and paper towels and napkins. These products are sold for consumer and commercial use. Brand names under which Scott's products are sold include Cottonelle, Purex, Viva, Scotties and Scottowel. Scott has production facilities in New Westminster, B.C. and Crabtree and Lennoxville, Quebec. The Sanitary Tissue Division of Eddy is located in Hull, Quebec and produces these products under such brand names as White Swan and Capri.

As part of his examination the Director conducted a thorough analysis of the likely effects of the merger on competition in the consumer and commercial segments of the market. A substantial amount of information was provided by the parties and by a significant cross-section of retailers, commercial sanitary tissue distributors and other industry participants.

On February 10, 1989, the Director announced that he would not apply to the Competition Tribunal for an order.

In reaching his decision, the Director recognized that the transaction would result in the removal of Eddy as an effective competitor and also increase Scott's market share in the various categories within the sanitary tissue market. However, the Director was satisfied that a number of other competitors will continue to provide effective competition in the market.

He also took account of the recent significant entry into the market by certain companies together with announced increases in capacity by others. In addition, the Director recognized the influence of foreign suppliers, many of which are located in proximity to the Canadian border, and some of which have plants with capacity in excess of the total Canadian industry, as well as the fact that under the Free Trade Agreement the current tariff of

10.2 percent would be reduced to zero by the end of 1992. On the basis of these considerations, he was of the opinion that there were no significant barriers to entry into this market facing either domestic or foreign potential competitors. Most retail customers and competitors consulted did not express concern that the merger would likely have significant anticompetitive effects in the industry. Given the foregoing, the Director concluded that he did not, at this time, have grounds to file an application with the Competition Tribunal. Further, the Director took note of the fact that Scott expects to achieve a number of efficiency benefits as a result of the acquisition, for example, operating savings such as reduced freight costs, which are expected to improve the company's domestic and international competitiveness. The Director will, however, closely monitor the actual impact of the transaction on competition in the Canadian sanitary tissue market and particularly in Eastern Canada. He will also monitor the extent to which efficiencies expected by Scott are attained.

Wolverine Tube (Canada) Inc./Noranda Metal Industries Limited

In November 1988, the Director announced that he would not at that time apply to the Competition Tribunal for an order in respect of the acquisition by Wolverine Tube (Canada) Inc. (Wolverine) of substantially all of the assets of Noranda Metal Industries Limited (N.M.I.).

In arriving at this decision, the Director extensively examined the information provided by Wolverine, N.M.I. and other market participants. The views of a significant cross-section of Canadian purchasers of these products were also obtained.

Wolverine and N.M.I. are manufacturers of seamless copper tubing, which is widely used in plumbing, construction and industrial applications. N.M.I. is also a major Canadian producer of copper strip and rod products. However, the acquisition by Wolverine of N.M.I.'s sizeable strip and rod operations did not raise any competition concerns because Wolverine did not compete in this segment of the industry.

The Director had been advised by N.M.I. that it had concluded that its tube mill operations in Montreal, Quebec and New Westminster, B.C., and related activities, were not a sustainable stand-alone business. N.M.I. confirmed that there were no other interested purchasers. Therefore, Noranda Inc., N.M.I.'s parent company, indicated that its only alternative to the merger was to liquidate the business, which would involve the cessation of operations at these two mills. The Director's analysis revealed that liquidation would not likely facilitate future entry into the Canadian market. In these circumstances, it was apparent that the seamless copper tube industry in Canada would become a one-firm industry, whether or not the transaction proceeded.

Accordingly, the Director concluded that he would not, at that time, bring an application to the Tribunal for an order in respect of the merger. In taking

this position, he recognized that the merger should not only ensure that the assets in question will continue in production, but will also enable Wolverine to realize significant efficiency gains, thereby becoming a more effective international competitor. The Director will however, be monitoring market developments, including the extent to which imports of seamless copper tubing into Canada provide effective and vigorous competition to Wolverine. In this regard the Department of Finance has undertaken a consultative process with the industry regarding a more accelerated reduction of tariffs on imports of copper tubing from the U.S. than that under the Free Trade Agreement.

Fraser Valley Milk Producers Co-operative Association/Palm Dairies Limited (certain assets) and Island Farm Dairies Co-operative Association/Palm Dairies Limited (certain assets)

On March 31, 1989, the Director announced that he would not, at that time, file an application with the Competition Tribunal opposing the acquisition by Fraser Milk Producers Co-operative Association (Fraser Valley) and Island Farm Dairies Co-operative Association (Island Farms) of the British Columbia assets of Palm Dairies Limited (Palm). Fraser Valley, Island Farm and Palm are major suppliers of fluid milk and other dairy products within the province of British Columbia. Fraser Valley proposed to acquire all of Palm's assets located on the mainland of British Columbia while Island Farms sought to acquire all of Palm's assets located on Vancouver Island.

In arriving at his decision, the Director obtained a substantial amount of information from the three dairies involved and sought the views of customers, competitors and others knowledgeable about the industry. In addition, the Director retained legal, economic and accounting experts to advise him in this matter.

As a result of his examination of the transaction, the Director had serious concerns with respect to the impact on competition that would result from the acquisition of the Palm assets by its major competitor in the relevant markets within the province of British Columbia. However, as a result of information provided by Palm, the Director was satisfied that the B.C. operations of Palm were in severe financial difficulty. The continuing deteriorating financial condition of the B.C. division of Palm was also of considerable concern to the primary lender to the Palm organization. After receiving the advice of accounting experts, the Director concluded that the B.C. operations of Palm were likely to fail if matters continued as they were.

He was also satisfied that efforts were made to offer the B.C. assets to a number of other parties but that there were no other viable purchasers other than Fraser Valley and Island Farms. He therefore concluded that, given the financial condition of Palm's B.C. operations and that no alternative buyers were identified, liquidation was the only alternative to the sale of the assets to Fraser Valley and Island Farms.

The Director was also of the view that were the assets of Palm to be liquidated, there was not likely to be a purchaser that would continue the operation in British Columbia. As such, he was of the opinion that entry into the B.C. milk market would not be significantly easier if the merger was challenged and liquidation occurred.

Given the particular facts, the Director decided, at that time, not to bring an application before the Competition Tribunal. However, he will be monitoring the market in British Columbia and if facts come to his attention concerning either or both of these transactions that would warrant placing an application before the Competition Tribunal, he will not hesitate to do so within the three year period provided by the Act.

Intent to File Applications with the Competition Tribunal

Asea Brown Boveri Inc./Westinghouse Canada Inc.

On February 13, 1989, the Director announced that, after a thorough review by the Bureau, he had concluded that the proposed acquisition, directly or indirectly of the electric power transmission and distribution business of Westinghouse Canada Inc. (Westinghouse) by Asea Brown Boveri Inc. (ABB) would likely result in a substantial lessening of competition in the market for large power transformers in Canada. The Director therefore advised the companies that he intended to file an application before the Competition Tribunal for a remedial order under the Competition Act.

The transaction involves the manufacture and sale of electric power transmission and distribution equipment. Power transformers are equipment used to step up and step down the voltage for electric power at source and destination so that it can be transmitted efficiently over long distances.

ABB and Westinghouse, through its subsidiary Transelectrix Technology Inc., are the only manufacturers in Canada of very large transformers with a power rating greater than 300 MVA for auto-transformers and 275 MVA for other transformers. If the merger were to proceed, ABB would therefore become the sole manufacturer of these power transformers. In addition, it would also have a dominant position in the Canadian market for large power transformers rated between 50 MVA and 275 MVA and auto-transformers rated between 100 MVA and 300 MVA.

In addition to concentration levels resulting from the proposed merger, the Director's decision was also based on other factors under the Competition Act, including a lack of foreign competition, high entry barriers, the removal of an effective competitor and the reduced effectiveness of remaining competition.

At the end of the year, discussions between the Director and the parties were continuing with respect to the transaction.¹

Imperial Oil Limited/Texaco Canada Inc.

On January 20, 1989, Imperial Oil Limited entered into a Controlling Shareholder's Agreement with Texaco Inc. of the U.S. to acquire 78 percent of the outstanding shares of Texaco Canada Inc. Pursuant to an offering circular dated January 26, 1989, Imperial acquired the balance of the shares of Texaco Canada Inc. The transaction, which was valued at approximately \$4.96 billion, closed on February 23, 1989.

Following discussions with representatives of the Director with respect to the proposed acquisition, Imperial agreed that, until the Director's examination was completed and an application was filed with the Competition Tribunal, Imperial would hold separate, maintain and, subject to the Director's consent, not dispose of any of the downstream assets of Texaco acquired in the transaction. In this regard, on January 20, 1989, Imperial provided certain formal undertakings which were subsequently amended on February 24, 1989.

Imperial also provided unconditional undertakings to the Director to divest itself of any assets necessary to alleviate competition concerns in the downstream sector of the petroleum industry which includes refining, distribution and marketing.

On February 24, 1989, the Director issued a public statement disclosing the substance of the undertakings provided by Imperial. The Director stated that, based upon his examination to date, he believed that divestitures of assets in the downstream would likely be required and in that regard he indicated his intention to place any divestiture package before the Competition Tribunal on a consent order basis. The Director further indicated that he had concluded that there were not likely to be serious competition concerns in the upstream sector, which includes exploration for and production of oil and gas and pipeline transportation.

The Director was continuing his examination of the transaction at the end of the fiscal year and was seeking information and views from a variety of sources including customers, competitors, industry and consumer associations.²

¹ On April 26, 1989, the Director applied to the Tribunal for a consent order which was subsequently issued on June 15, 1989, and is the first consent order issued by the Tribunal. The order contemplates tariff reductions or, alternatively, divestiture and requires ABB to hold separate the power transformer operations which it has acquired until the conditions of the order are met.

² On June 29, 1989, the Director filed an application with the Tribunal for a consent order directing the divestiture of certain assets and requiring certain gasoline supply obligations by Imperial Oil.

Applications to the Competition Tribunal

During the fiscal year two applications for interim orders, which will be discussed below, were filed with the Competition Tribunal under the merger provisions of the Competition Act. In addition, the Tribunal considered the following two matters which were outstanding from previous years.

Alex Couture Inc., Sanimal Industries Inc./Lomex Inc., Paul & Eddy Inc.

Early in 1987 the Director commenced an examination of the acquisition by Alex Couture Inc. (Couture) and Sanimal Industries Inc., owner of Alex Couture Inc., of the Montréal-based waste-rendering firms Lomex Inc. and Paul & Eddy Inc. The waste-rendering industry retrieves non-edible animal by-products and restaurant grease and processes them into products such as tallow and bone meal which are used in the animal feed and cosmetic industries. After an extensive examination, the Director concluded that the merger would prevent or lessen competition substantially in the relevant market. An application was filed with the Tribunal on June 18, 1987, requesting relief by way of dissolution of the merger or divestiture of assets or shares.

The parties to the merger subsequently brought proceedings in the Quebec Superior Court for a declaration that certain provisions of the Competition Act are *ultra vires* the federal government. The application also questioned the validity of several sections of the Competition Act in light of the Charter of Rights. The Superior Court issued an order staying proceedings before the Tribunal pending its hearing on the merits of the constitutional challenge. An appeal by the Crown against the issuance of the order to stay proceedings was dismissed by the Quebec Court of Appeal on September 15, 1987. The Court of Appeal also ordered, however, that the undertakings given to the Director by the parties to hold the two businesses separate pending the outcome of the constitutional challenge be included in the order staying proceedings. The date for the hearing of the constitutional challenge is scheduled for October 2, 1989.

Reservac (Air Canada)/Pegasus (Canadian Airlines International)

Following the Director's examination of this matter, an application was filed with the Tribunal on March 3, 1988, to challenge the merger of the Reservac and Pegasus computer reservation systems (CRS). Computer reservation systems are used by airlines and travel agents for the distribution and sale of airline seats and related travel services. Prior to the merger, Reservac was owned by Air Canada and Pegasus was owned by Canadian Airlines International. The transaction would result in the merger of the two reservation systems which would be operated through the Gemini Group Automated Distribution Systems Inc., a company equally owned by Air Canada and PWA Corporation, parent company of Canadian Airlines International.

In his application, the Director contended that the merger "prevents or lessens, or is likely to prevent or lessen competition substantially in the provision of computer reservation systems services to airlines, travel agents and consumers in Canada." Relief is sought in the form of an order for the dissolution of the merger, or any other order which the Tribunal may deem appropriate.

In June 1988, applications to intervene in the matter were made by Wardair Canada Inc., American Airlines and the Consumers' Association of Canada. Subsequent applications to intervene were received from the Attorney-General of Manitoba, the Alliance of Canadian Travel Associations, Bios Computing Corporation and Air Atonabee Limited. Although these applications were not objected to by the Director, the rôle that the intervenors would have in the proceeding became an issue. By Order dated July 18, 1988, the Competition Tribunal limited the intervenors' participation to the presentation of argument on matters that affect them. American Airlines appealed this Order to the Federal Court of Appeal which, on November 10, 1988, held, "... the Tribunal is not precluded in exercising its inherent discretion from allowing intervenors to fully participate in the proceedings before it, including, if it so determines, the right to discovery, the calling of evidence and the cross-examination of witnesses, and that the specific role of the interviews in this proceeding should be left to the Tribunal to decide in the circumstances of this case, . . .". The decision was confirmed by the Supreme Court of Canada on March 1, 1989.

Notwithstanding the intervenor issue, exchanges of pleadings were completed by May 1988 and the hearing date was tentatively set for November 15, 1988. In September 1988, Air Canada and PWA Corporation announced a second merger between Gemini and a U.S.-based CRS called Pars. At a pre-hearing conference in early November 1988, the Tribunal was advised that the Director had concluded that the Pars merger was likely to lessen competition substantially and that an amended application seeking dissolution of both the Gemini and the Pars mergers would be filed by December 7, 1988 (the Director was subsequently advised that the Pars merger would not proceed). The Tribunal agreed to a revised schedule to allow for the filing of amended pleadings and a new hearing date was set for April 3, 1989. Examinations for discovery were held in January 1989 and affidavits of expert evidence of the Director, the Respondents, and American Airlines were filed with the Tribunal in March 1989.¹

¹ On April 24, 1989, following a proposed settlement by the respondents which removed the concerns of the Director and a request to the Tribunal for an adjournment of the application seeking dissolution of Gemini, an amended application was filed for approval of a consent order. The consent order was subsequently issued on July 7, 1989, along with reasons. This was the second order issued by the Tribunal and consists of two components: the order itself, which contains specific terms relating to the Respondents; and CRS rules, incorporated as Schedule A to the order, which contain detailed rules of general application to all CRS vendors and owning carriers who may be granted a direct link under the order.

Institut Mérieux S.A./CDC Life Sciences Inc.

On April 28, 1988, the Director filed an application under section 100 of the Act before the Competition Tribunal.

The application sought an interim order prohibiting Institut Mérieux S.A. from purchasing any of the approximately 4,369,000 common shares of CDC Life Sciences Inc. under an offer made by Notice to the Montreal Exchange and the Toronto Stock Exchange on April 13, 1988. The grounds for the application were that the proposed acquisition would have been reasonably likely to prevent or lessen competition substantially; that the Tribunal's ability to remedy the effects of the acquisition would have been substantially impaired; and that Institut Mérieux had failed to notify the Director pursuant to the prenotification provision under Part IX of the Act.

Subsequently the Director was informed by Institut Mérieux that it would allow its offer to purchase the shares to expire.¹ Based on this information, the Director withdrew his application to the Tribunal on May 2, 1988.

Hostess Food Products/Frito-Lay

In this matter, which is referred to earlier in this chapter, the Director filed on October 17, 1988, a notice of application before the Competition Tribunal for an interim order under section 100 of the Act prohibiting the closing of the proposed partnership between Pepsi-Cola Canada Ltd. and Hostess Food Products Limited. As a result of the subsequent restructuring of the proposed transaction an application was not filed.

Discontinued Inquiries

Nabisco Brands Canada Ltd./Interbake Foods

Following the completion of the restructured transaction referred to in the 1988 Annual Report, the Director's inquiry into the matter was discontinued in August 1988.

Home Hardware Stores Limited/Revelstoke Companies Ltd.

Following an examination relating to the acquisition of certain assets of Revelstoke Companies Ltd., consisting of 52 rural building stores located in Western Canada, by Home Hardware Stores Limited, the Director concluded that in all but two locations no issues arose with respect to the merger provisions. However, in relation to two specific markets, the Director concluded that he had grounds to commence an inquiry. Following careful monitoring during 1987 and early 1988, the Director

was satisfied that there were in fact no adverse effects on the competitive situation in either market. He therefore discontinued his inquiry in August 1988.

Institut Mérieux S.A./CDC Life Sciences Inc.

The inquiry into this proposed transaction, which is referred to earlier in this chapter, was discontinued in March 1989.

Failure to Notify as Required by Part IX of the Act

In September 1988, press reports indicated that a company involved in the distribution of building materials had increased, from 25 percent to 50 percent, its share holdings in a regional distributor of the same kind of products. Upon verification of the reported transaction, it was determined that the transaction was subject to the prenotification provisions contained in Part IX of the Act. It was also determined that the transaction had, in fact, been completed following the provision of legal advice that the matter was not subject to notification.

Subsequently, the Director referred the matter to the Attorney General of Canada, pursuant to subsection 23(1) of the Act, recommending that proceedings be instituted under subsection 65(2) thereof. Upon review of the matter, the Attorney General concluded that prosecution was not warranted given the circumstances of the particular matter which included the fact that the acquiring company had acted in good faith.

Merger Reviews Ongoing at End of Year

As noted in the preceeding table relating to merger examinations, there were 32 ongoing examinations at the end of the fiscal year. There follows a brief comment on four of these matters in which the examinations were completed shortly after the end of the fiscal year and the Director's decision, in each instance, was publicly announced.

Wardair Inc./PWA Corporation

On January 19, 1989, PWA Corporation the parent of Canadian Airlines International Ltd. (CAIL) announced its proposed acquisition of Wardair Inc. The acquisition would result, with few exceptions, in scheduled domestic airline service in Canada being provided solely by CAIL and Air Canada or their alliance partners. Following the commencement of a comprehensive examination of the proposed acquisition the Director informed Wardair that evidence in support of a search for alternative buyers was required. On March 23, 1989, the Director received an application by six Canadian residents (filed through the Consumers' Association of Canada) and as a result, initiated a formal inquiry under section 10 of the Act.

¹ This resulted primarily from a joint decision rendered by the Ontario Securities and the Commission des Valeurs Mobilières du Québec to cease trading with respect to the offer pending the provision of equal treatment to all shareholders.

The examination of the proposed acquisition was ongoing at the end of the fiscal year.¹

Consumers Packaging Inc./Domglas Inc.

During the year Consumers Packaging Inc. (Consumers) announced its proposed acquisition of the assets of Domglas Inc. (Domglas). Consumers and Domglas are major Canadian manufacturers of glass containers, which are used primarily as packaging in the food and beverage industries. Consumers and Domglas currently account for approximately 90 percent of Canadian glass container sales.

The Bureau's review of the proposed acquisition was continuing at the end of the fiscal year.²

Baxter Foods Limited/McKay's Dairy Limited

The Director became aware in December 1988 of Baxter Foods' intention to acquire McKay's Dairy. Baxter Foods was the largest processor of fluid milk and other dairy products in New Brunswick and McKay's Dairy is an established family business operating out of Moncton. The Bureau immediately commenced an extensive examination of the proposed acquisition. Subsequently, Baxter Foods completed the acquisition of McKay's Dairy on condition that the two firms continue to be operated as separate entities pending the completion of the Bureau's examination which was ongoing as at March 31, 1989.³

**The Molson Companies Limited/Elders
IXL Limited**

On January 18, 1989, Molson and Elders, which controls Carling O'Keefe Breweries, announced their intention to merge their North American brewing operations into a new company to be called Molson Breweries.

¹ On April 24, 1989, the Director announced that the proposed acquisition will not be challenged at this time as he had concluded that the acquisition will not likely substantially lessen competition. This conclusion is largely based on evidence that Wardair is a failing business and that there are no alternatives to the merger that would result in a more competitive environment. It was also announced that the Bureau will monitor the actual effects of the acquisition.

² On April 25, 1989, the Director announced that the proposed acquisition would be allowed to proceed with no challenge at that time. The Bureau's analysis concluded that various alternative rigid-wall packaging materials, notably aluminium and steel cans and rigid plastics, are substitutable for many glass-container end uses. The Director further noted that the parties had formally applied for a more accelerated tariff reduction than that under the Canada-U.S. Free Trade Agreement, and that the parties expected to achieve \$53.9 million annually in efficiency gains within three years which would enhance their ability to meet foreign competition both in Canada and the U.S. It was also announced that the Bureau will monitor the actual effects of the acquisition.

³ On April 20, 1989, the Director announced he had concluded that the merger would likely prevent or lessen competition substantially in the fluid milk market in New Brunswick and that he intended to file an application before the Competition Tribunal for a remedial order. On June 12, 1989, Baxter Foods sold McKay's Dairy to Perfection Foods Limited which alleviated the Director's concerns regarding the impact on competition in the New Brunswick dairy market.

The new company would be the largest brewer in Canada, number six in North America and number twenty world-wide. While the Canadian brewing industry is extensively regulated on a provincial and territorial basis, it is undergoing unique and rapid changes. In this regard tariff and non-tariff barriers to interprovincial and international trade in beer have begun to decline in a number of jurisdictions. Accordingly, the Bureau's extensive examination of the matter, which was ongoing at the end of the fiscal year, involved considerable consultation with industry participants in Canada and the United States, and with provincial regulators and federal officials.¹

¹ On July 6, 1989, the Director announced that the proposed merger would be allowed to proceed with no challenge at that time. The impact of the merger on competition in the brewing industry in Canada will be monitored and will concentrate upon the effects in the provinces of Alberta and Quebec where the merger raises potential competition concerns. In this regard a detailed monitoring program has been arranged. In addition, it is intended that access to Molson's distribution system in Quebec for Canadian-produced beer will be made available (other than to Labatt's Brewery) on a fee-for-service basis.

Chapter IV

Other Reviewable Matters

Part VIII of the Competition Act describes a number of situations or practices which may or may not be anticompetitive depending upon the facts of the particular case. Where the Director concludes that the criteria listed by the Act have been met, he may apply to the Competition Tribunal for a remedial order. The Act sets out the types of orders that may be issued in relation to each of the matters it describes.

The following are reviewable matters under the legislation:

- Refusal to deal, where a person is substantially affected in his or her business by the refusal, the person is willing and able to meet the usual trade terms of the supplier, the product is in ample supply, and the inability to obtain adequate supply is due to insufficient competition among suppliers (section 75);
- Consignment selling, where a supplier who ordinarily sells a product for resale introduces a practice of consignment selling to control dealer prices or discriminate between consignees (section 76);
- Exclusive dealing, where a purchaser is required to deal only or primarily in particular products or refrain from dealing in specific products, the practice is engaged in by a major supplier or is widespread, and competition is or is likely to be lessened substantially (section 77);
- Tied selling, where a supplier as a condition of supplying product A, requires a purchaser to purchase product B, or to refrain from using a particular brand of product in conjunction with product A, the practice is engaged in by a major supplier or is widespread, and competition is or is likely to be lessened substantially (section 77);
- Market restriction, where a supplier as a condition of sale, imposes restrictions as to the market in which his or her customer may deal, the practice is engaged in by a major supplier or is widespread, and competition is or is likely to be lessened substantially (section 77);
- Abuse of dominant position, where one or more persons substantially or completely control a class or species of business, and have engaged in, or are engaging in a practice of anticompetitive acts which have the effect of preventing or

lessening competition substantially; the Act provides a non-exhaustive list of types of conduct which would constitute an anticompetitive act (sections 78 and 79);

- Delivered pricing, where a supplier engages in a practice of refusing delivery of an article at any place where deliveries are made to other customers, the supplier is a major one or the practice is widespread, and the practice has the effect of denying a customer or potential customer an advantage that would otherwise be available in the market (sections 80 and 81);
- Specialization agreements where the Tribunal finds that the implementation of the agreement is likely to bring about gains in efficiency and the Director has been given a reasonable opportunity to be heard; on the application of any party the Tribunal may register an agreement exempting it from the conspiracy and exclusive dealing provisions of the Act (sections 86 to 90).

Other provisions in Part VIII relate to the implementation of foreign laws or directives and refusals to supply by foreign suppliers. Several limitations and exceptions apply to the various reviewable matters provisions. For greater certainty, readers are advised to consult the legislation.

Application to the Competition Tribunal

One reviewable practice case was placed before the Competition Tribunal this year.

Chrysler Canada Ltd.

On December 14, 1988, the Director filed an application with the Competition Tribunal under section 75 in relation to Chrysler Canada Ltd. (Chrysler). The application asks the Tribunal to order Chrysler to supply automobile parts for export purposes to R. Brunet of Montréal. Chrysler had carried on business with the exporter from 1977 until it refused to supply in October 1986. In May 1987, Chrysler published a notice prohibiting its dealers from selling automobile parts for export purposes. The Director's application requests that a remedial order be issued to reinstate Brunet as a customer on the usual trade terms.

At the end of the fiscal year the application had not been heard.

Activities Relating to Inquiries

During the fiscal year, the Bureau initiated five formal inquiries into reviewable matters other than mergers. A number of matters which had been the subject of inquiry or examination were effectively resolved by means of an alternative case resolution instrument or information contact employed by the Director's staff to ensure cessation of the practice in question.

Considerable time is devoted in the course of inquiries to gathering the evidence necessary to establish that grounds exist for an application to the Competition Tribunal. Each year a number of inquiries are discontinued after further investigation demonstrates that no application would be warranted. The Director is required to report to the Minister on the discontinuance of any inquiry. The following paragraphs provide a brief account of three inquiries into reviewable matters that were discontinued during the year.

Video cassettes — Ontario

A six-resident application was received pursuant to section 9 of the Act. The application was made on behalf of a video distributor alleging that it was being substantially affected in its business as a result of the refusal to supply by certain Canadian and American studios. The information obtained during the inquiry did not establish that the video distributor was being substantially affected by its inability to obtain the video products or that there was insufficient competition among the studios for these products. (Services Branch)

Gasoline — Quebec

An application was received from six residents alleging that a major gasoline retailer had introduced "fighting brands" in order to harm its competitors. The inquiry revealed that the company in question did not "completely or substantially control" the gasoline business in the relevant markets. It also found that competition had not been and was not likely to be lessened substantially. (Resources and Manufacturing Branch)

Meat Shipping — Eastern Canada

Complaints received from Eastern Canadian meat importers alleged abuse of dominance on the part of a shipping conference and a non-conference shipping line through the joint imposition of a protective service charge. It was subsequently determined that the charge would likely qualify for the exemption provided in the Shipping Conferences Exemption Act, 1987, and the evidence did not disclose an offence under the Act. (Services Branch)

Chapter V

Criminal Offences in Relation to Competition

Part VI of the Competition Act prohibits under criminal sanction certain specified trade practices, bid-rigging, agreements or arrangements which lessen competition unduly, misleading advertising and deceptive marketing practices. For operational and statistical purposes, those offences found in sections 45 to 51 and section 61, which may be loosely characterized as offences in relation to competition, are treated separately from the misleading advertising and deceptive marketing practices provisions found in sections 52 through 60. The following offences are included in this group:

- Conspiracies, combinations, agreements or arrangements to lessen competition unduly in relation to the supply, manufacture or production of a product (section 45);
- Bid-rigging, where two or more persons agree that one party will refrain from bidding in a call for tenders, or where there is collusion in the submission of bids, unless such actions are made known to the tendering authority (section 47);
- Knowingly engaging in a practice of discriminating against competitors of a purchaser of an article by granting a discount or other advantage to a purchaser that is not available to competitors purchasing articles of like quality and quantity (paragraph 50(1)(a));
- Engaging in a policy of selling products in any area of Canada at prices lower than those exacted elsewhere in Canada, where the effect or design is to lessen competition substantially or eliminate a competitor (paragraph 50(1)(b));
- Engaging in a policy of selling products at unreasonably low prices where the effect or design is to lessen competition substantially or eliminate a competitor (paragraph 50(1)(c));
- Granting to a purchaser an allowance for advertising or display purposes that is not offered on proportionate terms to competing purchasers (section 51);
- Attempting to influence upward or discourage the reduction of the price at which another person supplies or advertises a product or refusing to supply or otherwise discriminating against anyone because of that person's low pricing policy (subsection 61(1));

- Attempting to induce a supplier to refuse to supply a product to a particular person because of that person's low pricing policy (subsection 61(6)).

Other provisions relate to the implementation of foreign directives, agreements relating to participation in professional sport and agreements among banks. A number of exclusions and exceptions are applicable to these provisions, as well as certain defences. For greater certainty, readers are advised to consult the legislation. Information on the penalties applicable for violation of these provisions is provided in Appendix I.

Court Proceedings Concluded

During the year ended March 31, 1989, 43 proceedings were considered by the Courts under the offences against competition provisions. These consisted of seven proceedings commenced during the year and 36 proceedings before the courts from previous years. Twenty-three proceedings were concluded during the year, of which 15 resulted in conviction, 7 resulted in the acquittal of the accused and 1 resulted in the issuance of an order of prohibition without conviction. Fines totalling \$3 029 000 were imposed during the year. In addition, in the 20 proceedings before the courts at the end of the year, \$303 000 in fines was outstanding in three matters that were under appeal or in which proceedings against some accused were still pending.

All court proceedings relating to the disposition of charges following a preliminary inquiry or trial are described in the paragraphs which follow. In addition, a listing of the cases in which all court proceedings were concluded during the year is provided in Appendix IV and an account of all cases in which charges have been laid and court proceedings are pending is provided in Appendix V.

Court Proceedings: 1987 to 1989

Section	Proceedings commenced		Completed Proceedings					
			Conviction		Order of Prohibition		Non-conviction	
	1987-88	1988-89	1987-88	1988-89	1987-88	1988-89	1987-88	1988-89
33*	—	—	1	—	—	—	—	—
45	5	2	2	2	4	1	2	1
47	2	—	—	3	—	—	1	—
50(1)(a)	—	1	—	1	—	—	—	—
51	—	—	—	1	—	—	—	—
61(1)(a)	6	3	2	6	—	—	4	1
61(1)(b)	4	1	2	2	—	—	2	5
61(6)	1	—	—	—	—	—	1	—
Totals	18**	7***	7	15	4	1	10	7

* Combines Investigation Act.

** 18 proceedings arising from 12 court cases relating to violations of the identified offence provisions of the Act.

*** 7 proceedings arising from 6 court cases relating to violations of the identified offence provisions of the Act (one of which combines nine separate matters)

Agreements to Lessen Competition/Bid-rigging

School Buses

On April 27, 1988, the Association du Transport Écolier du Québec pleaded guilty to a charge under section 47, was fined \$23 000 and made subject to an order of prohibition. This inquiry commenced in 1982 following an application under section 9 by six Canadian residents alleging that the Association had engaged in bid-rigging in relation to a request for tenders by the Commission scolaire régionale de Charlevoix. (Services Branch)

Business Forms — Nova Scotia

On June 8, 1988, R.L. Crain Inc. and Moore Corporation Limited each pleaded guilty in the Supreme Court of Nova Scotia to one charge of bid-rigging on tenders submitted to the Nova Scotia Government during the period 1979 to 1982. The offences related to the supply of a large number of orders of business forms to various Nova Scotia government departments and agencies during that period. Each of the firms was fined \$200 000 for a total fine of \$400 000. The Court imposed a comprehensive order of prohibition with the consent of the companies which applies to all of their business forms operations across the country. Among other terms, the order requires the companies to implement an internal education program to inform their employees of the provisions of the order and of the Competition Act. (Services Branch)

Business Forms — Saskatchewan

On June 9, 1988, in Saskatoon, R.L. Crain Inc., Moore Corporation Limited, Lawson Business Forms (Manitoba) Ltd. and Southam Printing Limited,

pleaded guilty in the Court of Queen's Bench to one global charge of bid-rigging on tenders submitted to the Saskatchewan Government and Saskatchewan Government Insurance in the years 1980 and 1981.

The four firms were each fined \$400 000 for a total fine of \$1 600 000, which is the largest total fine ever imposed under the Competition Act or its predecessor, the Combines Investigation Act. Lawson had also pleaded guilty to one count of price maintenance occurring in 1981, and its total fine included a \$40 000 penalty which was levied in respect of that charge. Other outstanding charges against the various corporate accused and against five individual accused were withdrawn.

The Court imposed a comprehensive order of prohibition. As well as directing the companies not to do any act or thing directed towards the commission of bid-rigging or price-fixing offences, the order also requires the companies to implement an internal education program for employees, and publish an account of the terms of the order in certain publications widely read by the business, printing and purchasing communities. (Services Branch)

Real Estate Brokerage Services

On December 20, 1988, an order of prohibition was issued against Chambre d'Immeuble du Saguenay-Lac St. Jean Inc., Chambre d'Immeuble de Québec, Chambre d'Immeuble de Montréal, Chambre d'Immeuble de l'Outaouais Inc., Association of Regina Realtors Inc., Calgary Real Estate Board Co-op Ltd., Fraser Valley Real Estate Board, Windsor-Essex County Real Estate Board, London and St. Thomas Real Estate Board, and the Canadian Real Estate Association. By a condition of membership in the Canadian Real Estate Association,

the Order also applies to all real estate boards and associations in Canada. The order was issued under subsection 34(2) after the named parties consented to the terms of the order and the accompanying statement of facts. The statement of facts describes the various by-laws and practices used by each respondent board to unduly lessen competition in their respective markets and to maintain commission rates or fees charged by brokers.

The order of prohibition is designed to enhance competition in the marketplace by eliminating certain impediments to competition. In particular, the order prohibits the respondents from fixing or controlling commission rates and fees for the Multiple Listing Service (MLS) or other listing services and it prohibits the restriction of the advertisement of rates and fees in any publication. In addition, boards are prohibited from restricting the offering of incentives to homeowners for listing their property. Furthermore, boards cannot refuse board membership and access to the MLS system and other real estate board services to any licensed sales personnel who meet reasonable financial and educational criteria.

In addition, the contents of the order had to be published in local and national newspapers, and once a year in each board's MLS catalogues, and the Canadian Real Estate Association will have to give a yearly seminar for its membership outlining the provisions of the Order and explaining the application of the Competition Act to the real estate industry. Finally, the order contains certain measures that will assist the Director to monitor compliance with the terms of the order. (Services Branch)

Hogs

On January 15, 1988, a decision was rendered by the Alberta Court of Queen's Bench in relation to Canada Packers Inc. in the Alberta hogs case. This case involved allegations that the major meat packers operating in Alberta had agreed to share hogs offered for sale, to purchase hogs at an agreed price and to sell pork products to the distributive market at predetermined prices. Three of the accused — Burns Food Limited, Eschem Canada Inc. and Gainers Limited — pleaded guilty on December 9, 1983, to the charge of conspiring with respect to the purchase of slaughter hogs and were fined \$125 000 each. Canada Packers proceeded to trial and was acquitted on all charges. Intercontinental Packers Ltd. pleaded guilty during the trial and was fined \$100 000 on February 23, 1988. The Crown's appeal of the acquittal of Canada Packers was subsequently abandoned. (Resources and Manufacturing Branch)

Soft Drinks

On September 12, 1988, two accused — Beverage Services Ltd. and Blackwoods Beverages Ltd. — pleaded guilty to one charge under paragraph 45(1)(c), in relation to an agreement to set the price for soft drinks sold in the Brandon trade area. The accused were the franchised bottlers for the major soft drink brands including Coca-Cola, Seven-Up and Pepsi-Cola. The two accused

companies were fined \$50 000 each and their operation was made subject to an order of prohibition under subsection 34(1).

In January 1989, court proceedings were completed on another charge against Blackwoods Beverages Ltd. and Coca-Cola Ltd. under paragraph 45(1)(c). The accused were charged with fixing the prices of soft drinks in the Winnipeg trade area. On September 12, 1988, Blackwoods Beverages Ltd. pleaded guilty to this charge and was fined \$75 000. The order of prohibition noted above also extended to the company's Winnipeg operations. On January 13, 1989, Coca-Cola Ltd. pleaded guilty and was fined \$65 000 and made subject to an order of prohibition under subsection 34(1). (Resources and Manufacturing Branch)

Price Maintenance

Sunglasses

Raymond Lanctôt (1982) Limitée and Diane Lanctôt were both acquitted of one charge under paragraph 61(1)(b) on April 19, 1988. This inquiry commenced following the complaint of a Calgary retailer alleging that the accused had refused to supply product because of the retailer's low pricing policy. (Resources and Manufacturing Branch)

Gasoline — Markham

On June 24, 1986, Sunoco Inc. was convicted under paragraph 61(1)(a) and fined \$200 000. The circumstances surrounding this matter are reported at page 50 of the Director's 1986 Annual Report. On May 25, 1988, on appeal by the accused, the fine was reduced to \$100 000. The Crown's appeal of Sunoco's acquittal under paragraph 61(1)(b) of the Act was dismissed. (Resources and Manufacturing Branch)

Rossignol Ski

On June 20, 1988, Raymond Lanctôt Ltée, subsequently known as Société de Distribution Rossignol du Canada, and as Federal Corporation 49225, pleaded guilty to one count under paragraph 61(1)(a) of the Act and was fined \$12 000. Two remaining counts under paragraph 61(1)(a) and three counts under paragraph 61(1)(b) were withdrawn on the same date. An order of prohibition was also imposed. This inquiry had commenced in April 1982 following receipt of a complaint from a retailer that the company had a policy of discouraging the advertising and sale of Rossignol products at low prices. The prosecution had been held in abeyance pending the outcome of a challenge to the admissibility of evidence obtained under the search order procedure found in the Combines Investigation Act. This issue was resolved on May 13, 1987, when the Federal Court of Appeal overturned an earlier decision quashing the search warrants and ordered the seized documents returned to the Crown. (Services Branch)

Bread — Cornwall

On September 23, 1986, George Lanthier & Fils Limitée was convicted of one count under paragraph 61(1)(a) and fined \$2 000. The accused appealed against the conviction but on October 18, 1988, the appeal was dismissed. This inquiry had commenced following receipt of information from a Cornwall grocer alleging that the accused was enforcing its resale prices on a line of bread and threatening to withhold supply if the complainant did not comply. (Resources and Manufacturing Branch)

Dairy Equipment

On November 15, 1988, Dairy Supplies, Limited pleaded guilty to a charge under paragraph 61(1)(b) and was fined \$5 000. An order of prohibition was issued. This inquiry commenced in October 1982 following receipt of a complaint from an independent operator of a refrigeration equipment repair shop in Winnipeg, Manitoba, alleging that Dairy Supplies, Limited, the exclusive distributor of machines and parts manufactured by Taylor Freezer, discriminated in the sale and supply of parts required to service the Taylor line of equipment.

On February 13, 1985, a charge was laid against Dairy Supplies, Limited under paragraph 61(1)(b). On June 3, 1986, the accused was acquitted after evidence seized under section 10 of the former legislation was excluded because its seizure was held to violate the Charter of Rights. On January 13, 1987, an appeal by the Crown was allowed and a new trial was ordered. On appeal to the Supreme Court of Canada this decision was upheld. (Resources and Manufacturing Branch)

Fire Extinguishers

On November 17, 1988, The Williams Brothers Corporation pleaded guilty to a charge under paragraph 61(1)(b) and was fined \$12 000. The charge under paragraph 61(1)(a) was withdrawn. The inquiry into this matter commenced following the receipt of a complaint from a retailer that the company had attempted to influence upward his prices and subsequently refused to supply him because of his low pricing policy. (Resources and Manufacturing Branch)

Computer Equipment

On January 31, 1989, Commodore Business Machines Limited was convicted under three provisions of the Act in relation to the distribution of computer equipment for home and institutional use. Commodore pleaded guilty to one charge each of granting disproportionate promotional allowances contrary to section 51, and discriminating between competing purchasers in the offering of quantity discounts and promotional monies contrary to section 50. The company was fined \$25 000 and \$40 000 respectively for these two charges. In addition, Commodore pleaded guilty to two charges of attempting to influence a New Brunswick retailer and a Quebec-based electronics buying group to raise their prices for Commodore products, contrary to paragraph 61(1)(a). The company was fined \$15 000 with respect to each of the price maintenance charges. The total fine in this matter was \$95 000. In addition, a prohibition order was imposed by the Court. (Services Branch)

Toshiba Microwave Ovens

On February 17, 1989, Toshiba of Canada Limited pleaded guilty to two charges under paragraph 61(1)(a). The accused was fined \$40 000 on one charge and \$25 000 on the other. Three other charges were stayed. The inquiry in this matter commenced in January 1986 following the receipt of complaints alleging that the accused had attempted to influence upward the price at which retailers in Richmond, B.C. and Kitchener, Ontario were selling Toshiba microwave ovens and had refused to supply the product due to the retailer's low pricing policy. (Resources and Manufacturing Branch)

Gasoline — Winnipeg

On February 27, 1989, Shell Canada Products Limited was convicted of one charge under paragraph 61(1)(a). This inquiry was commenced in September 1986, upon receipt of complaints alleging that Shell Canada Products Limited had attempted to influence upward the price at which Jet Automatic Car Wash sold gasoline in Winnipeg, Manitoba. On March 14, 1989, following argument on sentencing, the accused was fined \$100 000. The accused has appealed the conviction and the Crown has appealed the level of fine. (Resources and Manufacturing Branch)

Court Proceedings Relating to Ongoing Cases

A number of court proceedings take place each year relating to cases that had not, at that time, proceeded to trial. Frequently, the proceedings involve court challenges to the evidence-gathering procedures that were used in the course of the inquiry. A brief description of two decisions of this nature handed down during the year is provided in the paragraphs that follow.

In *Nova Scotia Pharmaceutical Society v. Canada*,¹ Mr. Justice Burchell of the Supreme Court of Nova Scotia delivered the first decision arising from a claim of solicitor-client privilege made pursuant to the search provisions of the Competition Act. Mr. Justice Burchell allowed the claim in part. He held that the mere presence of the claimants' solicitor at a meeting did not spread an umbrella of privilege over the minutes of that meeting; however, he recognized the claim with respect to minutes of meetings reporting discussions of legal advice or relaying the substance of legal advice, whether or not the claimants' solicitor had attended them. Mr. Justice Burchell also held that blank power of attorney and notice of termination forms were an embodiment of legal advice and thus privileged; however, he denied the privilege with respect to forms which had been completed and executed with the intention that their contents be communicated to third parties.

¹ *Nova Scotia Pharmaceutical Society v. Canada*, N.S.S.C., Nov. 23, 1988 (unreported).

In *R. v. Dairy Supplies Ltd.*,² the Supreme Court of Canada, ruling on an appeal from a decision of the Manitoba Court of Appeal, confirmed the admissibility in evidence of documents seized pursuant to the search provisions of the Combines Investigation Act after the proclamation of the Charter of Rights but before any superior court had held that those provisions were unconstitutional. The trial judge had excluded the documents from evidence at the trial of the accused on a charge of price maintenance, by virtue of subsection 24(2) of the Charter of Rights. The Manitoba Court of Appeal, noting that there was no evidence of bad faith on the part of the officers who executed the search and that the documents seized were in existence before the illegal search, concluded that the evidence was not of a kind to require a ruling of inadmissibility by the trial judge, allowed the Crown's appeal from the acquittal of the accused and ordered a new trial. The Supreme Court of Canada found no error in the Court of Appeal's decision to exercise its jurisdiction to review the trial judge's finding under the Charter of Rights and dismissed the accused's appeal from the Court of Appeal decision.

Court proceedings are continuing in several inquiries which have been held in abeyance pending a decision by the Supreme Court of Canada on the status of orders made pursuant to section 17 of the former legislation. Section 17 empowered a member of the Restrictive Trade Practices Commission to order persons resident or present in Canada to be examined under oath or to produce books, papers, records or other documents.

In the matter of *Stelco Inc. v. The Attorney General of Canada*, on October 22, 1987, the Federal Court of Appeal upheld a decision of the Trial Division on the question of whether the provisions relating to oral examinations in section 17 of the Combines Investigation Act violate section 7 of the Charter. The Court of Appeal indicated that it agreed with the reasoning of the Ontario Court of Appeal in *Thomson Newspapers Ltd. et al. v. Director of Investigation and Research et al.* that the oral examination provisions in section 17 do not violate section 7 of the Charter. Additional oral examinations in an inquiry into the flat rolled steel industry were stayed by the Federal Court of Appeal in January 1988 pending the outcome of appeals from the *Thomson* and *Stelco* decisions to the Supreme Court of Canada. Both *Thomson* and *Stelco* were heard by the Supreme Court of Canada in November 1988 and a decision was still pending at the end of the fiscal year.

Activities Relating to Inquiries

During the fiscal year, the Director initiated 11 formal inquiries in relation to sections 45 to 51 and section 61. Search orders issued under section 15 of the Act were employed to obtain additional information relating to three inquiries.

At the close of the last fiscal year, 15 cases which had been referred to the Attorney General for consideration as to whether prosecution or other proceedings ought to be commenced were still under review. An additional 19 cases were referred to the Attorney General during 1988-89.

Considerable time is devoted in the course of inquiries to gathering the evidence necessary to establish that an offence has occurred. Each year, a number of inquiries are discontinued where the Director concludes that further investigation is not warranted. The Director is required to report to the Minister on the discontinuance of any inquiry. Twenty-six inquiries under sections 45 to 51 and section 61 as well as under the former criminal merger and monopoly provision, were discontinued during the year. Discontinuances are described briefly in Appendix VI.

² *R. v. Dairy Supplies Ltd.*, [1988] 1 S.C.R. 665.

Chapter VI

Misleading Advertising and Deceptive Marketing Practices Offences

The misleading advertising and deceptive marketing practices provisions are contained in sections 52 to 60 of the Competition Act. These provisions apply generally to all persons promoting the supply or use of a product or promoting any business interest. However, certain of the provisions apply solely to representations in the form of advertisements. The practices prohibited by this group of offences include the following:

- Representations which are false or misleading in a material respect (paragraph 52(1)(a));
- Misleading representations as to the price at which a product is ordinarily sold (paragraph 52(1)(d));
- Double ticketing, where the product is not supplied at the lower of two or more prices clearly expressed (section 54);
- Advertising a product at a bargain price, where the advertiser does not have the product available in reasonable quantities (section 57);
- Selling a product at a price higher than the price which is currently being advertised by the vendor (section 58); and
- Conducting a promotional contest, unless there is adequate and fair disclosure of the number and approximate value of prizes, and of material information relating to the chances of winning, the distribution of prizes is not unduly delayed, and certain other requirements are met (section 59).

Other provisions relate to performance claims, warranties, tests and testimonials, and pyramid and referral selling. A number of exclusions, limitations and defences are applicable to the provisions. For greater certainty, readers are advised to consult the legislation. Information on the penalties provided by the Act for violations of the provisions is provided in Appendix I.

Court Proceedings

During the year ended March 31, 1989, 232 misleading advertising and deceptive marketing practices cases were considered by the Courts. These consisted of 110 proceedings commenced during the year and 122 proceedings before the Courts from previous years. This includes 23 cases that had received court consideration in previous fiscal years but were under appeal at the start of the year. There were 125 cases concluded during the year, 77 of which resulted in convictions, 45 in acquittals, charges withdrawn and other completions of court proceedings and 3 cases resulted in the issuance of orders of prohibition without conviction. Fines totalling \$812 980 were imposed during the year. In addition, of the 107 cases before the Courts at the end of the year, \$208 000 in fines was outstanding in 11 matters that were under appeal or in which proceedings against some accused were still pending.

Prosecutions completed during the year are listed in Appendix VII showing the products involved, the persons charged, the location of the offence and details of the disposition. Prosecutions still in progress are listed in Appendix VIII. The following paragraphs describe some of the more significant court proceedings that took place during the year.

Roofing Material

On March 3, 1989, the Federal Court of Canada issued an order of prohibition under subsection 34(2) involving International Exteriors Ltd. The order relates to representations made by the respondent concerning the durability and the energy saving and weather resistant attributes of a metal roofing product. The Director was concerned that the representations were not based on adequate and proper tests as required by paragraph 52(1)(b). Following discussion between the respondent and representatives of the Director and the Attorney General, a consent order of prohibition was applied for and granted. The order prohibits the respondent from conduct directed at the repetition of the practice for a period of ten years. The respondent also published corrective advertisements.

Promotional Contest

In October 1985, Simpsons Limited conducted a one-day "mini casino" promotion during which game cards were distributed to customers. Both the cards and related newspaper advertisements stated that "you could save 10%, 15%, 20% or 25% on practically everything in the store." It was not disclosed that there were in fact two kinds of cards printed: 90% of the cards contained the 10% symbol under all four tabs which would not allow for the possibility of achieving the 15%, 20%, or 25% range of savings represented, while the remaining cards contained all four percentage symbols.

The company was charged under paragraph 52(1)(a) and 59(1)(a). Although the conviction registered was pursuant to paragraph 52(1)(a), the judgment as it relates to the contest provisions of the Act is important as it further defines section 59. Judge Sheard of the District Court of Ontario held that the promotion was not a contest, lottery or game of chance. It was, however, a disposal of a benefit (the right to purchase at a discount) by a mode of chance (chance determining the type of card received and the tab lifted), done for the purpose of promoting the sale of products, and accordingly, it fell within the purview of section 59.

The accused was convicted on the charge under paragraph 52(1)(a) and fined \$100 000. A conditional stay was entered on the remaining charges.

Weight Loss

In a number of related cases, Paolo Noël, 14674 Canada Inc., Les Laboratoires Parolan, 2426-8377 Québec Inc., Pierre Hébert, Éditions Multi-Média G.P., Les Laboratoires Produits Français, Lipidex Inc., and Les Distributions Kiloral Inc. were charged with having made false and misleading representations relating to the efficacy of various diet products. It was determined that benefit could only be derived from the products if they were used in conjunction with a diet. The diet alone accounted for all or a large proportion of the weight loss.

On January 17, 1989, the accused each pleaded guilty to charges pursuant to paragraph 52(1)(a) and were fined a total of \$75 000. An order of prohibition was issued against Les Laboratoires Parolan, 2426-8377 Québec Inc., and Éditions Multi-Média G.P.

Insurance

On March 22, 1985, the Independent Order of Foresters (I.O.F.) was charged with making false and misleading statements relating to employment opportunities with their company. On January 13, 1987, Judge Whealy of the District Court of Ontario acquitted I.O.F. of fifteen charges under paragraph 52(1)(a). On February 7, 1989, an appeal by the Crown was dismissed by the Ontario Court of Appeal.

Judge Whealy had acquitted I.O.F. on several grounds. He found that subsection 52(1) referred only to representations made to "the public", which he interpreted to mean the consuming public and not applicants for employment. The Court of Appeal did not agree with this limitation on the application of the section.

The trial judge further relied on the "regulated industries doctrine" as a basis for acquittal as he found that the I.O.F. is subject to provincial control and regulation under Ontario's Insurance Act (R.S.O. 1980, c. 218). The Court of Appeal held that there can be no exemption from the provisions of the Competition Act under this doctrine unless there is a direction or at least an authorization to perform the act prohibited by the Competition Act. As the Insurance Act did not authorize, much less direct, the I.O.F. to give false or misleading representations or to make any representation that might be deemed false to the public, this defence had no application in the circumstances.

The remaining ground for the acquittal related to whether the statements were in fact false or misleading within the meaning of the section. The Court of Appeal concluded that while the trial judge may have been generous in his interpretation of the facts he was entitled to make the inferences he made and therefore the appeal failed on this point.

Activities Relating to Inquiries

During the fiscal year, the Director initiated 90 formal inquiries in relation to sections 52 to 59. Search orders issued under section 15 of the Act were employed to obtain information relating to nine inquiries.

At the close of the 1987-88 fiscal year, 53 cases which had been referred to the Attorney General for consideration as to whether prosecution or other proceedings ought to be commenced were still under review. An additional 75 cases were referred to the Attorney General during 1988-89.

Considerable time is devoted in the course of inquiries to gathering the evidence necessary to establish that an offence has occurred. Each year, a number of inquiries are discontinued where the Director concludes that further investigation is not warranted. The Director is required to report to the Minister on the discontinuance of any inquiry. The three inquiries under sections 52 to 59 which were discontinued during the year are described in Appendix IX.

The following table shows operations under sections 52 to 59 of the Act, beginning with 1984-85.

Operations under the Misleading Advertising and Deceptive Marketing Practices Provisions

	1984-85	1985-86	1986-87	1987-88	1988-89
Total complaints received	10 632	10 668	12 382	13 496	13 237
Number of files opened	9 816	9 809	11 514	12 374	12 043
Applications for inquiries under section 9	1	–	–	1	–
Number of complete examinations/inquiries	2 145	2 151	2 188	2 187	1 937
Inquiries formally discontinued	4	–	–	3	3
Matters referred to the Attorney General of Canada	136	175	151	83**	75
Matters referred where the Attorney General decides no further action warranted	10	19	10	–	5
Proceedings commenced during year	148	158	149	131**	110
Completed cases: convictions	137	109	111	84	77
Prohibition orders without conviction	–	–	–	2	3
Completed cases: non-convictions*	54	33	41	43**	45

* Includes conditional and absolute discharges, stays of proceedings, etc.

** Revised.

Chapter VII

Representations to Boards, Commissions, or Other Tribunals

Under sections 125 and 126 of the Competition Act, the Director of Investigation and Research is authorized to make representations to, and to call evidence before, federal and provincial boards, commissions or other tribunals. In addition, the Minister of Consumer and Corporate Affairs may direct that a representation shall be made by the Director before a federal regulatory board. In the case of provincial regulatory boards, the Director may only make representations at the request of the board or with the board's consent.

A considerable number of the representations made in past years relate to hearings into the communications and transport industries. However, the Director has also appeared before the Canadian Import Tribunal, federal and provincial energy boards, and agricultural products marketing boards. In each case, the Director has focussed his attention on providing a qualitatively sound assessment of the relevant facts and the likely impact on competition of the matter under review.

Director's Representations to Regulatory Boards

Canadian Import Tribunal – Hyundai Motor Company

As reported on page 25 of the 1988 Annual Report, the Director intervened in proceedings before the Canadian Import Tribunal in opposition to complaints of dumping by the Hyundai Motor Company. While the complainants, Ford and General Motors, have given notice of their intention to seek judicial review of the Tribunal's decision to reject their application, no further steps were taken by year end. (Economics and International Affairs Branch)

CRTC Telecom Cost Inquiry – Phase III

Phase III of the CRTC Cost Inquiry commenced on December 15, 1981, with the announcement that public hearings would be held to consider the development of methods of allocating costs for the existing categories of telecommunications carrier services. Since that date, the Director has participated in all aspects of the Inquiry. The background of this matter is described on page 25 of the 1988 Annual Report.

On December 14, 1988, the CRTC issued a public notice inviting comments on the introduction of remedial action and possible amendments to the costing manuals. Some of the key issues under review were mat-

ters that were raised by the Director in his earlier submission. The Director intends to file further comments as a result of the CRTC public notice. (Regulatory Affairs Branch)

Newfoundland Telephone Company Limited (Nfld. Tel) – Terminal Attachment

On June 19, 1986, Corner Brook Pulp and Paper Limited, the Governing Council of the Salvation Army Canada East, and five Newfoundland hospitals filed a complaint with the Newfoundland and Labrador Board of Commissioners of Public Utilities, requesting permission to attach customer-owned telephones to the public-switched network of Nfld. Tel.

The Director filed written submission of two expert witnesses and, in his final oral argument before the Board, maintained that the application was in the public interest and should be approved. In August 1988, the Board released its decision on this matter, approving the applicants' request for liberalization of the regulations pertaining to the attachment of multi-line terminal equipment. As of March 31, 1989, Nfld. Tel was still developing the appropriate tariffs to give effect to the Board's decision. (Regulatory Affairs Branch)

CNCP – Application for Regulatory Forbearance

On September 10, 1986, CNCP Telecommunications applied to the CRTC for orders exempting it from (a) the requirement to file tariffs for their offerings and (b) the requirements of the Cost Inquiry. In support of its request, CNCP argued that it was not a dominant force in the markets that it served, offered no monopoly services and, hence, should be regulated in a manner which reflects its competitive environment.

On July 3, 1987, the Director submitted arguments in favour of granting CNCP's request. In particular, the Director noted that CNCP had no dominant power in any market, had its prices dictated by market forces, and had a limited ability to act in an anticompetitive manner. CNCP's application was granted by the CRTC on September 22, 1987. On March 11, 1988, the Telecommunications Workers Union was granted leave to appeal this decision to the Federal Court of Canada. On October 13, 1988, the Federal Court of Appeal set aside that decision. The Court found that the CRTC's jurisdiction under the Railway Act did not include the authority to relieve a telecommunications carrier under federal jurisdiction from

the requirement to file for approval of any toll to be charged for its services. The Court referred the matter back to the CRTC for reconsideration. The matter is now under appeal. (Regulatory Affairs Branch)

Bell Canada — De-Tariffing

On March 4, 1988, Bell Canada filed an application with the CRTC requesting an order exempting it from the requirement to file tariffs for its competitive network services (other than interconnected voice services). Bell Canada proposed that the exemption be subject to conditions similar to those imposed on CNCP Telecommunications in Telecom Decision CRTC 87-12, except that Bell did not propose that it be exempted from the Phase III costing requirements.

In response to a request for written comments by the CRTC in Public Notice 1988-89, the Director filed a submission recommending that the CRTC deny Bell Canada's application at that time.

The Director agreed in principle that competitive markets operate most efficiently when all firms compete on an equitable basis. In the Director's view, however, this does not require that CNCP and Bell receive identical regulatory treatment, regardless of the substantial differences in size and scope of their operations. The Director submitted that Bell is a dominant carrier and has the ability and incentive to engage in anti-competitive behaviour. As such, Bell's situation is significantly different from that of CNCP. Accordingly, while agreeing with the de-tariffing of CNCP, the Director was of the view that it would be premature to exempt Bell from detailed regulation until such time as there are appropriate regulatory safeguards to prevent anti-competitive behaviour. Such behaviour can include cross-subsidizing competitive services from monopoly services, using excess capacity to control markets and the improper use of competitive information obtained in the course of providing monopoly services.

The CRTC released its decision on this matter on August 4, 1988, in Telecom Decision CRTC 88-10 denying Bell Canada's application at that time. In reaching its conclusion, the CRTC found that the regulatory safeguards currently in place were insufficient to ensure that anti-competitive cross-subsidization would not take place. (Regulatory Affairs Branch)

Bell Canada — Telephone Directory Data Base

With Telecom Decision CRTC 88-16, released on September 30, 1988, the CRTC approved a proposal by Bell Canada to market-test an enhanced videotex service known as ALEX. Bell would operate ALEX as a gateway and transmission service for independent information service providers. In the original proposal, Bell's directory publishing subsidiary, Tele-Direct (Publications) Inc., was to have provided an electronic Yellow Pages service over ALEX. The CRTC refused to allow this on the grounds that it might violate the Bell Canada Act and would be inconsistent with previous telecom decisions.

On November 15, 1988, with Telecom Public Notice 1988-46, the CRTC announced that it would, as a consequence of its decision on ALEX, establish a second procedure to consider whether Bell Canada's directory data base should be made generally available in machine readable form on a tariffed basis. The Director and approximately thirty other parties intervened in the proceeding. As of March 31, 1989, it was at the interrogatory stage. (Services Branch)

Master Antenna Television Systems: Criteria for Exemption from Licensing

In December 1988, in response to CRTC Public Notice 1988-179, the Director filed comments on the subject of revising the criteria for an exemption from licensing for qualified Master Antenna Television Systems (MATV) which are, in effect, miniature cable television systems serving a multi-unit dwelling within a cabled area).

Key points in the Director's submission were: (1) that further liberalization of the CRTC's exemption criteria would play an important role in encouraging "illegal" satellite master antenna television operations to conform to government regulations; (2) that SMATV systems represent an important element of consumer choice for residents of multi-unit dwellings; and (3) that competition between alternative delivery systems, such as MATV, and cable operators, plays a valuable role as a disciplinary force in an otherwise highly regulated marketplace.

The CRTC's decision on this matter is pending. (Regulatory Affairs Branch)

Enhanced Services

On June 10, 1988, the CRTC issued Telecom Public Notice 88-25, requesting comments on the existing regulatory regime governing the provision of enhanced services, and on whether the modified services to be offered by Call-Net Telecommunications Ltd. would conform to a definition of enhanced services.

The Director recommended that the CRTC liberalize the rules constraining enhanced service providers so as to foster a competitive enhanced services market. The Director contended that a vibrant enhanced services market would help precipitate a move to cost-based pricing, which in turn would improve overall efficiency and competitiveness in the telecommunications industry.

By virtue of Telecom Decision 88-11, the CRTC did not initiate any changes to the enhanced services regulations. Call-Net's modified services meanwhile were ruled not in conformance with the existing 1987 definition of an enhanced service.

Though Call-Net subsequently reorganized its business, the CRTC ruled in Telecom Letter Decision 88-9 that its services still contravened CRTC regulations. Call-Net then sought relief through the courts. (Regulatory Affairs Branch)

Resale and Sharing

On January 11, 1989, the CRTC announced its intention to re-examine restrictions placed on the resale and sharing of private-line voice services, designed to shelter the telephone companies from competition in the provision of interconnected, interexchange services. Previously the CRTC had decided that the alleged contribution made by the telephone companies from long-distance service revenues to curb local service charges should not be "eroded" by such competition.

On February 10, 1989, the CRTC was advised of the Director's intent to provide his comments on this matter. The proceeding was to commence on April 10, 1989. (Regulatory Affairs Branch)

NTA Hearings on VIA Rail Proposed Discounts

On May 20, 1988, the National Transportation Agency (NTA) granted Voyageur Colonial Limited leave to appeal two VIA Rail Canada Inc. (VIA) proposed tariffs. VIA had planned to reduce prices, subject to restrictions, for passengers on its Montreal-Ottawa and Montreal-Toronto routes. Voyageur submitted that the fare discounts were prejudicial to the public interest as defined in section 281 of the Railway Act. The Agency convened public hearings to investigate the matter, which were held in June, July and November, 1988.

Voyageur claimed, in part, that the proposed VIA fares constituted unfair market pricing, and that an appropriate standard for judging such discount programs was the predatory pricing provision contemplated in the Competition Act. The Director intervened in the public hearing to make the Agency aware of the relevant factors to be taken into account when examining alleged predatory pricing pursuant to the Competition Act. While elaborating on the law itself, the Director stressed that examination of impugned pricing policies should not stifle legitimate competitive forces, and should differentiate between a price discount designed to stimulate market demand as opposed to eliminate a competitor. In its decision the Agency found VIA tariffs prejudicial to public interest. Furthermore, the Agency recommended that an inquiry into the VIA pricing policy be held pursuant to section 31 of the National Transportation Act. VIA's application for leave to appeal the Agency's decision was dismissed by the Federal Court of Canada. (Regulatory Affairs Branch)

Via Rail Pricing Policy Inquiry

This inquiry resulted from one of the recommendations made by the National Transportation Agency (NTA) referred to above. Specifically, pursuant to section 31 of the National Transportation Act, 1987, the Minister of Transport authorized the Agency to conduct an inquiry "into the pricing policy of VIA Rail Canada Inc. and its impact on the competition for ridership between modes."

The Director notified the NTA on March 23, 1989, that he intended to make a submission at the hearings scheduled for May 1, 1989. (Regulatory Affairs Branch)

Ontario Energy Board – Contract Carriage

The interventions of the Director before the Ontario Energy Board (OEB) in this matter in 1986 and 1987 are described on pages 49 and 27 of the 1987 and 1988 Annual Reports, respectively.

In its decision of May 9, 1988, the OEB recognized the importance of brokers if market-responsive pricing is to be achieved, and decided to issue province-wide certificates of convenience and necessity for the sale and resale of gas. (Resources and Manufacturing Branch)

La Régie de l'électricité et du gaz – contract carriage

The June 1987 intervention of the Director before La Régie de l'électricité et du gaz du Québec is described on page 28 of the 1988 Annual Report. The Director's intervention related to allowing brokers to contract for gas carriage and appropriate rules for the participation of distributor companies.

In its final decision, the Régie prohibited the use of flexible transportation rates by the distributor, who also sells gas, thereby ensuring partial separation of marketing and transportation services on the part of the distributor.

The Régie further pointed out the lack of competition among the producers who were contracted to three main marketer suppliers of gas to Gaz Métropolitain and the lack of competition among the three suppliers themselves. The Régie ordered Gaz Métropolitain to favour producers who are not part of the "cartel". (Resources and Manufacturing Branch)

National Energy Board – Distributor Self-Displacement

On March 3, 1988, the Director intervened before the National Energy Board (NEB) in a hearing dealing with the reconsideration by the NEB of its earlier decision prohibiting distributor self-displacement. Self-displacement refers to the obtaining by the distributor of competing supplies that would displace gas under bundled long-term contracts between the distributor and TransCanada Pipelines (TCPL).

The Director argued that the prohibition of self-displacement was the last federal regulatory barrier to a deregulated gas marketplace, and that a perpetuation of the prohibition would maintain TransCanada's pre-eminent position in the market. Furthermore, the Director submitted that TCPL had presented no strong evidence that its contracted producers would be unable to withstand the increased competition.

In its Decision, the NEB lifted the prohibition effective November 1, 1989, on the grounds that it impeded the achievement of a market-sensitive pricing regime and had contributed to restriction of competition and to higher prices for residential and commercial consumers. (Regulatory Affairs Branch)

**National Energy Board – Northridge
Application for Transportation under
subsection 71(2) of the NEB Act**

On February 13, 1989, the NEB heard an application from Northridge Petroleum Marketing Inc., a natural gas marketer, for transportation from the Alberta border to Emerson, Manitoba by TCPL. From Emerson to its ultimate destination in Ontario, Northridge would have the gas transported via a U.S. route that competed with the TCPL system. TCPL argued against the application on several grounds, the principal one being that if further such applications for the same route were approved, the competition would undermine the integrity of its system. In the alternative, TCPL proposed that the toll from the Alberta border to Emerson, Manitoba, be the eastern zone toll for Ontario and Québec, which in effect would render Northridge's proposal uneconomical. Before final argument, TCPL withdrew this tariff amendment, but still opposed the Northridge application.

The Director argued that permitting Northridge to use the competing transportation route would stimulate competition in the gas market and was therefore consistent with the public policy of encouraging a competitive gas market stated in the October 31, 1985, Agreement on Natural Gas Markets and Prices between the federal government and the governments of the producing provinces. The Board's decision on this issue is pending. (Regulatory Affairs Branch)

Ontario Energy Board – Security of Supply

On May 19, 1988, the Lieutenant Governor in Council, pursuant to section 36 of the Ontario Energy Board Act, directed the OEB to hold a hearing and report on all matters pertaining to the supply of natural gas to meet the current and future needs for gas users, in Ontario.

During the hearing that began on June 27, 1988, the Director argued that the best security of supply for Ontario is competition which would bring the supply and demand for gas to a balance. This approach is in fundamental opposition to regulation that attempts to achieve security of supply through mandating terms for gas supply contracts, especially for residential and small commercial gas users, the "core" market.

In an Interim Decision of August 19, 1988, the OEB agreed with the Director's submission that no long-term contracts should be mandated for the "core" market users. The Board, however, placed a minimum three-year rolling term on all contracts in order to assure that adequate pipeline space was available to transport the gas.

In its final Decision of October 14, 1988, the Board further recommended that the Lieutenant Governor consider commissioning a study on the economic costs and benefits of establishing a strategic reserve of natural gas to cushion domestic users during intervals of supply shortage. (Regulatory Affairs Branch)

L'Office des professions du Québec

On August 3, 1988, l'Office des professions du Québec requested comments on proposed regulations that would allow Quebec surveyors and architects to set minimum suggested rates for their services. The Director filed his comments on this matter with l'Office des professions on September 21, 1988.

It was the Director's opinion that contrary to the industry view, minimum suggested rates did not guarantee superior quality of service nor were they necessary to protect consumers. Minimum suggested rates, it was argued, have a propensity to become the industry minimum rate and thus reduce the incentive and opportunity for discounting by members and result in higher rates for consumers. Moreover, it was the Director's position that granting this power to the members of these two professions would create some ambiguity as to the application of the Competition Act given that the suggested minimum rates would be government-sanctioned. Therefore, any agreement and enforcement by the members to unilaterally impose a minimum suggested rate could fall outside the ambit of the Competition Act, and thereby result in higher prices for these services through an otherwise illegal agreement.

For these reasons, it was the Director's view that the proposed regulations should not be adopted. However, on January 11, 1989, l'Office des professions du Québec recommended that the Quebec government approve the rate-setting regulations. (Services Branch/Regulatory Affairs Branch)

Other Representations

Ontario Paralegals – Submission to Ontario Task Force

On June 15, 1988, the Attorney General of Ontario, Ian Scott, appointed Dr. Ron Ianni, President of the University of Windsor, to act as a one-person Task Force to conduct a study into the current role and possible future roles and regulation, if any, of independent paralegals in Ontario. Dr. Ianni subsequently established an Advisory Committee to assist him in this endeavor. The work of the Task Force is expected to be completed by September 30, 1989.

In response to an invitation by Dr. Ianni, the Deputy Director of Investigation and Research (Services) is currently sitting as a member of the Advisory Committee. In addition, on March 31, 1989, the Deputy Director made a submission to the Task Force with respect to the competition issues of this matter. The essence of this submission was that there exists a need for independent paralegal services in Ontario, and in this regard, market forces should be allowed to govern provision of these services to the extent possible consistent with the requirements of competency and integrity. (Services Branch)

Chapter VIII

Information and Compliance Programs

In many instances, the goals of monitoring and encouraging competition can be pursued with greater effectiveness through measures designed to promote continuing voluntary compliance with the Act. Throughout the year, considerable effort was made to enhance the public's understanding of the Act and its application. The following programs and initiatives comprise the major elements of the Bureau's expanded information and compliance program.

The Speech Program

The Director and many of the senior officials of the Bureau undertook an active speaking program throughout the year on a variety of subjects related to the Act and its administration. In addition, Bureau officials presented seminars to members of associations and other groups on areas of particular concern. Central themes in these addresses included: the increased reliance on compliance initiatives to resolve competition concerns where appropriate; the increasing importance of competition law in those sectors of the economy undergoing regulatory reform; the implications of increasingly liberalized trade and particularly the Free Trade Agreement with the United States; and the Bureau's activities in relation to merger review as Canadian businesses continued to position themselves to participate in increasingly more globalized trade. Information on speeches which are publicly available is provided in Appendix X.

The Director's Consultative Forum

The Director's Consultative Forum was established in 1987 as an informal gathering comprising a small number of academics, business people, lawyers, consumer representatives and others, who are invited to meet with the Director to provide feedback on issues relating to the enforcement of the Competition Act. In order to allow for the broadest cross section of participation, there is no fixed membership for the Forum and an effort is made to involve participants from different regions of the country. While attendance at the Forum is by invitation, those interested in the administration and enforcement of competition law in Canada are welcome to request an invitation to be a participant.

During the year, two meetings of the Forum were held. In April, 1988, participants discussed the overall approach to compliance policy as well as the role of the Competition Act in a more liberalized trading environment. In December 1988, the views of participants were sought on the enforcement policies of prosecuting individuals for contravention of the Act, the use of witness-immunity programs, and the level of fines in competition cases. Consideration was also given to the private enforcement of the competition laws.

To supplement the general exchange of views through the Consultative Forums, the Director and senior officials of the Bureau participated in several consultative meetings on a more specific sectoral basis. Meetings included consultations with representatives of various business sectors, the legal profession, Members of Parliament, and associations representing both business and consumer interests.

The Program of Advisory Opinions

The Program of Advisory Opinions is designed to assist business people who wish to avoid coming into conflict with the Act. Under this program, formerly known as the Program of Compliance, the Director invites company officials, lawyers and others to request an opinion on whether the implementation of a proposed business plan or practice would give him grounds to initiate an inquiry under the Act.

Opinions take into account previous jurisprudence, previous opinions and the stated policies of the Director. Those who seek an opinion are not bound by the advice provided and remain free to adopt the plan or practice in question on the understanding that the matter may be tested before the Competition Tribunal or the courts. Similarly the Director cannot bind himself or his successors by giving an opinion. Advisory opinions are given in relation to a specific set of facts. Should the details of the proposed plan differ when implemented from the plan presented to the Director, or should conditions change in a way that would alter the impact of the proposed plan on the market, the matter could be subject to further examination.

To further facilitate compliance with the merger provisions, the Act authorizes the Director to issue advance ruling certificates in respect of those mergers which

do not raise concerns under the Act. These are described more fully in Chapter III.

Information Bulletins

Throughout the year a high priority has been placed on expanding the information provided to the public about the Act and how it is administered. Publication was commenced on a series of information bulletins. The first bulletin, released in June 1988 addressed the merger provisions and in December 1988, the second discussed Advance Ruling Certificates. Scheduled for release in June 1989, the third bulletin will discuss the Director's enhanced Program of Compliance. Work was also commenced on the first in a series of bulletins which will contain summaries of opinions provided under the Program of Advisory Opinions. The summaries will be written in a manner that protects confidential information such as the parties' identities. The first such bulletin will address the price-discrimination provisions of the Act.

Media Contact

A common thread in the various consultative meetings in which Bureau officials participated was the need to try to increase the information provided to the public on the resolution of particular cases. The need for timely and sufficient information was raised particularly in the context of those mergers already in the public domain and which are of economic significance. To this end, a significant enhancement to the information program was the regular preparation of news releases on case decisions and resolutions. In some of the more significant cases the news release was accompanied by a backgrounder providing greater detail on the transactions and on the considerations giving rise to the particular resolution. To assist members of the media in understanding particular resolutions and the Bureau's administrative processes in general, Bureau officials met with representatives of several Canadian newspapers and business publications.

Information and Compliance

	Misleading Advertising Offences		Remaining Section of Act		Total	
	1987-88	1988-89	1987-88	1988-89	1987-88	1988-89
Requests for Information	21 937	24 983	1 499	1 241	23 436	26 224
Oral Advisory Opinions	1 089	1 007	101	114	1 190	1 121
Written Advisory Opinions	296	377	33	42	329	419
Media Contacts	224	235	182	280	406	515
Speeches/Educational Seminars/Consultative Meetings	188	184	31	40	219	224

Chapter IX

Competition Policy Development and International Affairs

Policy Development

Government policies, whether they relate to specific business activities or the economy as a whole, frequently impact upon competition in the industries affected. In recognition of this fact, the Director participates actively in departmental and interdepartmental policy development work impacting on the market system. This involvement has frequently taken the form of assistance provided in the early stages of the development of legislative proposals. The Director has also been called upon in the past to testify before Parliamentary committees seeking his views on the impact of proposed legislation on competition. In addition, members of the Director's staff are occasionally requested to prepare studies or other submissions on various competition policy-related issues for interdepartmental use. In each case, the Director has endeavoured to ensure that competition policy considerations are taken into full account by policymakers. The following paragraphs describe some of the more significant policy development activities which the Director's staff engaged in during the reporting period.

Intellectual Property Legislative Modernization

Members of the Director's staff collaborated with officials from other Bureaux of Consumer and Corporate Affairs Canada in several projects relating to modernization of Canadian intellectual property legislation. A key aspect of this activity was the provision of support for Parliamentary consideration and passage of competition policy-related aspects of Bill C-60, the recent amendments to the Copyright Act. These amendments received Royal Assent on June 8, 1988.

The amendments in Bill C-60 affect the application of the Competition Act in two major ways. First, the legislation permits the formation of collective societies to administer rights on behalf of creators in new fields of copyright such as photocopying. These societies may enter into collective agreements with users respecting rates and related terms and conditions for the use of copyrighted materials. Upon being filed with the Copyright Board, such agreements are exempt from the conspiracy provisions of the Competition Act. Where the Director considers that an agreement is contrary to the public interest, he is authorized by the amendments to apply to the Board to vary the agreement. These provisions of the amendments were proclaimed in force on February 1, 1989.

Bill C-60 also contained a related amendment to section 32 of the Competition Act (previously section 29). This section provides special remedies in situations where exclusive rights and privileges pertaining to patents or trademarks are used to restrain trade and commerce unduly. The amendment in Bill C-60 expanded section 32 to deal with abuse of exclusive rights and privileges pertaining to copyright as well.

Before being approved, Bill C-60 underwent hearings before committees of both the House of Commons and the Senate. Members of the Director's staff prepared briefing materials for the hearings. The Director's staff also met several times with experts from a joint committee of the Canadian Bar Association and the Patent and Trade Mark Institute to discuss the amendments.

In addition to Bill C-60, members of the Director's staff assisted with other intellectual property legislative development exercises during the year. In particular, input was provided to the development of new legislation to establish a special regime of intellectual property protection for semi-conductor chips. The nature of protection afforded by existing intellectual property statutes is not suitable to the unique requirements of chips. The proposed legislation has an important interface with the Competition Act. The Director's staff also assessed possible competition policy implications of sections of the Free Trade Implementation Act relating to copyright liability for cable retransmission. (Economics and International Affairs Branch)

Implementation of the Shipping Conferences Exemption Act, 1987 (SCEA)

The Director's staff assisted with the implementation of the Shipping Conferences Exemption Act, 1987. As detailed on page 31 of the 1988 Annual Report, this legislation substantially revised the statutory framework for operation of international shipping conferences (cartels) in Canada. Based on the important competition policy interface, members of the Director's staff were extensively involved in the development of this legislation.

Staff members prepared a paper on the legislation for use in its implementation. The paper explains the conceptual basis of the legislation and compares it with the corresponding U.S. legislation, the Shipping Act of 1984. Members of the Director's staff met with officials of the National Transportation Agency and Transport Canada to discuss competition policy-related aspects of the legislation.

The Director's staff also continued to participate in the work of the Interdepartmental Committee on International Shipping Matters. At the request of Transport Canada, staff members provided an analysis of competition policy considerations pertaining to joint ventures in the shipping industry. This analysis was used in preparing the Canadian position in the UNCTAD-sponsored multilateral review conference on the Code of Conduct for Liner Conferences. The latter is the major international legal instrument pertaining to the liner shipping industry. (Economics and International Affairs Branch)

Analysis of Competition Policy as an Aspect of Economic Framework Policy

Competition policy is of growing importance in Canada as an aspect of the legislative and policy framework for the national economy. This derives from: (a) the continuing wave of major mergers in Canada and abroad; (b) substantial progress on deregulation and privatization in key sectors of the economy; and (c) the international trend toward lowering of tariff and non-tariff barriers to trade and capital movements. These developments entail increased reliance on competition policy as a means of ensuring efficient operation of market forces. They also raise complex issues concerning the interface between competition policy and other government policies.

During the year, the Director's staff prepared an overview of emerging issues regarding competition policy as an aspect of economic framework policy. This document provides a review of the objectives and basic elements of competition policy in Canada, an assessment of the changing market and policy environment, and an analysis of issues regarding the role of competition policy in relation to industrial policy and other economic framework and sectoral policies. It also discusses the future evolution of competition policy in Canada. The document is to be used as a vehicle for interdepartmental consultation in the coming year. (Economics and International Affairs Branch)

Canadian Council of Motor Transport Administrators

Members of the Director's staff continue to attend meetings of the Standing Committee on Motor Carriers of the Canadian Council of Motor Transport Administrators (CCMTA). The CCMTA is an organization of motor carrier regulators and transport policy makers in Canada, including representatives of all the provinces, the territories and the Government of Canada. The Standing Committee on Motor Carriers has been charged with implementing a series of pro-competitive reforms in the regulation of extra-provincial trucking embodied in the federal Motor Vehicle Transport Act, 1987 (MVTA, 1987).

During the year the group worked on the development of a set of procedures designed to establish a uniform regulatory process across Canada for the issuance of extra-provincial truck transport licences. The CCMTA

also established a MVTA/NTA Studies Monitoring Committee of which the Bureau is a member. The purpose of this Committee is to oversee the conduct of studies into the working of the regulatory reform in trucking which is subject to statutory reviews under the NTA, 1987 and MVTA, 1987. (Regulatory Affairs Branch)

Airport Management Policy

During the year, the Director's staff continued their participation in various aspects related to the implementation of the federal government's new policy for the management of federal airports in Canada. The Director's involvement was to support the development of a more commercial and competitive orientation to airport operations in Canada.

With respect to the transfer of airports to the private sector, a key element of the policy is a recognition that all air carriers would be allowed to compete openly and freely and to receive equitable treatment in obtaining access to airport facilities and services. In addition, the policy provides explicitly that any new owner or operator would be subject to the Competition Act.

The Director's staff commented on the development of some specific underlying policies. Comments were made on a proposal to review the provisions of the Government Airport Concession Operations Regulations dealing with ground transportation services at federal airports. A submission was also made on the competition policy issues involved in a proposed policy relating to the issuance of new limousine permits at the Lester B. Pearson International Airport. (Regulatory Affairs Branch)

National Telecommunications Policy

During the year, the Director's staff continued their participation in the development of a national telecommunications policy, embracing a wide range of regulatory and policy issues.

One aspect of the staff work in the area of telecommunications policy development was the commissioning of a report which addresses the experience in the United States to date with respect to changes in the pricing structure for telephone services, and the impact of such changes on the universal availability of telephone service in that country. (Regulatory Affairs Branch)

International Relations

The Bureau of Competition Policy maintains bilateral relations with antitrust agencies in several foreign countries. It also participates in the work of multilateral groups such as the Organization for Economic Cooperation and Development (OECD) Committee on Competition Law and Policy, and the United Nations Conference on Trade and Development (UNCTAD) Intergovernmental Group of Experts on Restrictive Business Practices.

Bilateral Relations

The Bureau's bilateral relations are generally carried out within the framework of the 1979 OECD Council Recommendation (revised in 1986) concerning cooperation between member countries on restrictive business practices matters. Under the terms of the Recommendation, countries are to notify and consult with one another whenever the actions of one member concerning a restrictive business practice may affect the important national interests of another.

The bulk of Canada's bilateral antitrust work involves cooperation with United States antitrust agencies. This particular bilateral relationship is governed by the terms of a Memorandum of Understanding, signed in 1984, which provides for notification, consultation and cooperation between the two countries regarding antitrust matters. During the fiscal year Canada gave 16 notifications to, and received 12 notifications from, the U.S. authorities. Canada sent three notifications to other countries and received two notifications from this group. Overall, the most common reason for the contact was a request for third-party information. Most of the notifications related to the review of mergers or joint ventures.

The Bureau, in consultation with other interested departments, reviewed guidelines on international operations which were issued by the U.S. Department of Justice. Subsequently, a letter was sent by the Director to the U.S. Assistant Attorney General expressing the view that no issues are raised regarding competition policy. The guidelines are not seen as altering the existing approach to notification and consultation under the Memorandum of Understanding.

On a less formal basis, officials of the Bureau held meetings in Canada with competition officials from the United Kingdom and Japan, and attended bilateral meetings in the United States, France, the Federal Republic of Germany and the United Kingdom.

Multilateral Relations

For several years the Bureau has been active in the work of the OECD Committee on Competition Law and Policy. The Director has served as a vice-chairman of the Committee since February 1987. The Committee provides a forum for the exchange of information on topics of mutual concern and helps ensure greater uniformity of international antitrust policy among participant countries. In addition to directing the studies carried out by the working parties, the Committee focusses on policy-oriented discussions. Over the course of the year, the Committee approved reports on deregulation in telecommunications, international mergers, and intellectual property. The Committee also recommended to the OECD Council the adoption of a Recommendation based on the intellectual property report. The Bureau made a substantial contribution to this work. Bureau officials also participated in a Steering Group which was formed to organize a Symposium on Competition and Economic Development which is scheduled to take place in October 1989. The Bureau also submitted to the OECD a comprehensive report, prepared

in cooperation with Transport Canada, on developments in the road transport sector. Later in the year a contribution was made to a synthesis report on competition policy and deregulation.

In addition to OECD activities, the Bureau participates in the UNCTAD Intergovernmental Group of Experts on Restrictive Business Practices. This forum focusses on promoting greater consistency in the international competition law environment. The seventh session of the Group of Experts was held in February and March 1989. A delegate from the Bureau submitted Canada's contribution to a Handbook on restrictive business practices legislation.

In June 1988, the Director gave speeches at two conferences which brought together antitrust officials from around the world. The first of these was held in Naples, Italy and sponsored by the Einaudi Foundation, while the second was the Bundeskartellamt conference in Berlin. The Director discussed the Competition Act and its enforcement, particularly with respect to merger review.

The Bureau was also active in the field of multilateral relations through less direct means. Most notably, a Bureau official chaired an interdepartmental working group which was created to study questions related to competition policy and company law in the context of the European Economic Community (EEC) plan to achieve market integration by 1992. The Bureau also participated in the interdepartmental working groups responsible for studying EEC 1992 questions relating to the transportation and telecommunications sectors.

Multilateral Trade Negotiations on Trade-Related Intellectual Property Rights

During the year, members of the Director's staff were asked to assist with ongoing interdepartmental work to support Canada's participation in international negotiations relating to Trade-Related Intellectual Property Rights (TRIPS). These negotiations are an important element of the Uruguay Round of Multilateral Trade Negotiations. The Bureau's role in this work involves the preparation of a study of the use of intellectual property rights to segment international markets, and possible application of the principle of exhaustion of intellectual property rights in international trade. The principle of exhaustion would involve curtailment of existing rights to control importation of materials protected under intellectual property legislation. This matter raises important competition policy issues and draws on staff members' expertise relating to the treatment of vertical market restraints under the Competition Act.

In the course of this project, the Director's staff has analyzed material pertaining to intellectual property and competition legislation in Canada, the U.S., the E.E.C., Japan and the developing countries. The effects of current import control rights have been analyzed with reference to the potential for price discrimination and technology transfer. The Director's staff has continued to provide input to the Canadian position as the negotiations have progressed. (Economics and International Affairs Branch)

Chapter X

Organization of the Bureau

The Director of Investigation and Research, appointed by the Governor in Council, has statutory responsibility for administering and enforcing the provisions of the Competition Act. The Director is the head of the Bureau of Competition Policy, which is part of the federal department of Consumer and Corporate Affairs. The Bureau provides the administrative and enforcement support for the Director's statutory responsibilities.

For a number of years, the Bureau was organized largely along sectoral lines. Passage of the 1986 Competition Act required that this be reassessed to determine the most effective structure to discharge the Director's significantly altered mandate. The new organizational structure which was developed and implemented is shown in the chart at the end of this chapter. Current senior management assignments are also identified.

The Mergers Branch is responsible for the administration of the merger provisions of the Act, including the notifiable transaction requirements, in all sectors of the Canadian economy. The critical importance of the merger review function to the continuing development of a dynamic and competitive economy is recognized in the reporting of this Branch to the Senior Deputy Director of Investigation and Research.

The Resources and Manufacturing Branch and Services Branch, which comprise the Restraints to Competition function, are responsible for the administration of both the criminal offence sections of the Act and the provisions relating to reviewable practices within their respective sectors of the economy. Each Branch has been divided internally into specialized Criminal Matters and Reviewable Practices Divisions. In addition these Branches provide industry sector expertise to the Mergers Branch.

Administration of the misleading advertising and deceptive marketing practices provisions of the Act, in all sectors of the economy, is the responsibility of the Marketing Practices Branch. The Branch operates on a decentralized basis with investigative staff stationed in 12 offices across Canada.

The Economics and International Affairs Branch provides economic analysis and advice regarding enforcement and policy matters to the Director and the Bureau and has a strengthened mandate to provide case support to the enforcement Branches with respect to both inquiries and general industry practices. It participates in departmental and interdepartmental development of government policies and legislation affecting competition. The Branch is also responsible for Canada's contribution to the work of international organizations such as the Organization for

Economic Cooperation and Development in the field of competition policy.

The preparation of interventions before federal and provincial regulatory boards and tribunals in all sectors of the economy is the responsibility of the Regulatory Affairs Branch. The Branch is also responsible for competition policy development in the major regulated sectors.

A Deputy Director of Investigation and Research has overall responsibility for the Economics and Regulatory Affairs functions of the Bureau, reflecting the need to ensure an effective relationship between the administration of the Act and the ongoing development of Canadian economic and regulatory policies and programs.

The Compliance and Coordination Branch promotes proactive compliance and alternative case resolution techniques and pursues public communication/information objectives designed to encourage compliance with the Act.

The Management Systems and Services Branch is responsible for Bureau strategic, operational, and resource planning and reporting, operational review, information systems and support, and financial, administrative and personnel services.

This Branch and the Compliance and Coordination Branch report to the Director General, Compliance Policy and Management Coordination, whose mandate focusses on the development and coordination of general enforcement policies and techniques, and effective resource management, to maximize the application of the Act within the general context of government resource restraint.

Administration

The Bureau of Competition Policy had an authorized strength for 1988-89 of 258 person years. Of these, 198 are located in headquarters, 55 are located in field offices of the Marketing Practices Branch in Vancouver, Edmonton, Calgary, Winnipeg, London, Toronto, Hamilton, Montréal, Québec, Dartmouth and St. John's, and 3 are located in the Vancouver office of Restraints to Competition, which covers those sections of the Act other than mergers and marketing practices.

In mid-fiscal year, the Bureau temporarily located officers in Montréal and Toronto to be responsible for Restraints to Competition and merger issues, and to establish whether such offices outside headquarters would increase program effectiveness and public accessibility. An evaluation will be completed in 1989-90.

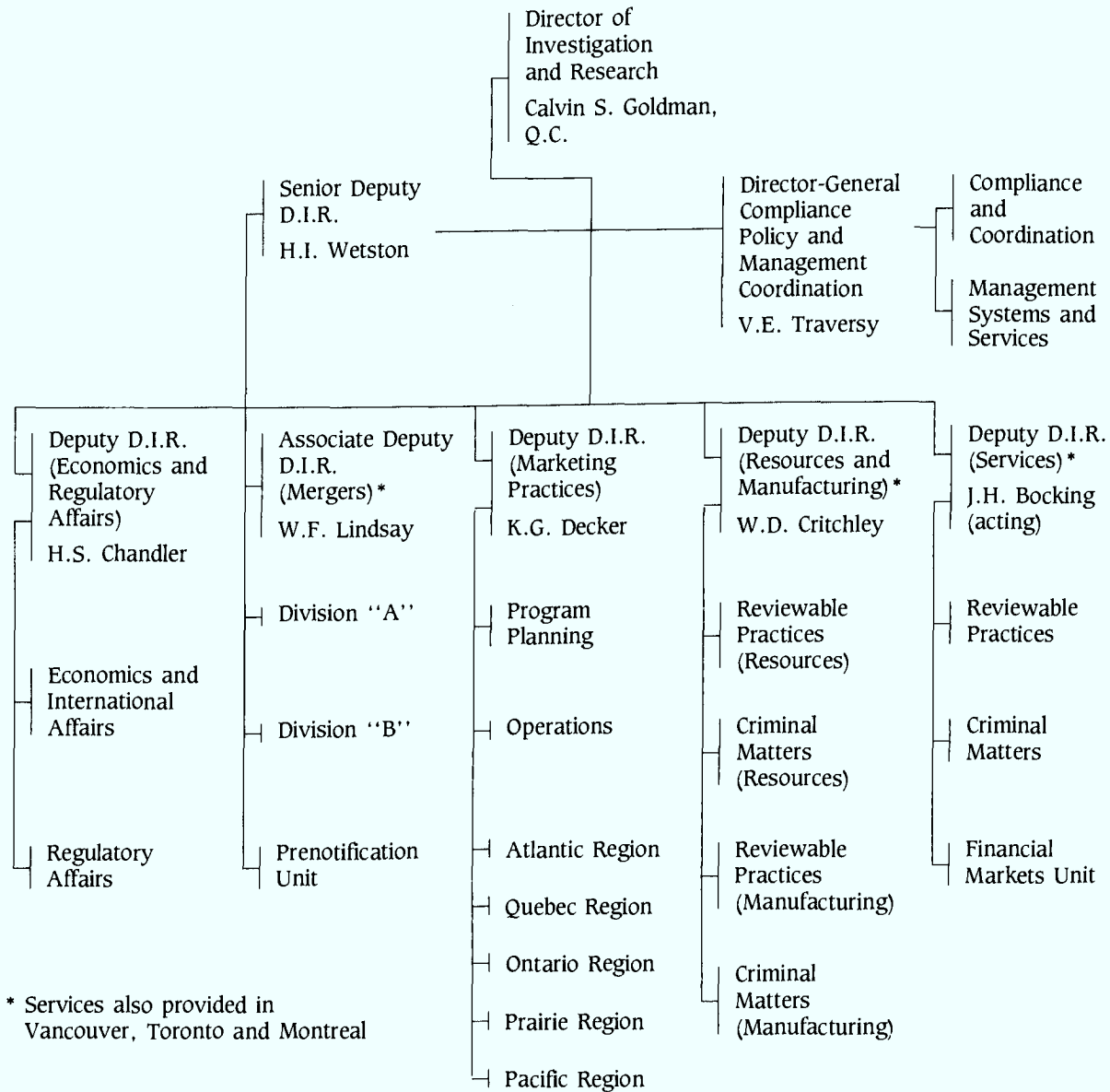
In 1988-89 the operating budget for the administration of the Bureau, apart from staff salaries and benefits, was \$6 028 000, of which \$5 986 470 was spent. The Bureau's major expenditure during the year was \$11 601 998 for staff salaries and benefits, reflecting the fact that the Bureau is highly labour intensive. The Bureau incurred \$2 034 172 in legal fees and disbursements in relation to its activities under the Act.

The total budget included \$671 000 in supplementary funding, and \$185 670 transferred from the rest of the Department, provided to meet the extraordinary needs of the Bureau for legal counsel and industry experts, particularly in the complex processes of merger analysis and assessment. In addition, the Bureau receives and holds considerable information of high commercial sensitivity – for example, details of proposed merger transactions – which must be protected. Steps were taken to enhance this protection through the construction of additional secure office premises; special funds of \$500 000 were provided for this purpose in 1988-89.

The Bureau collects fines imposed by the courts following successful prosecutions under the Act. During 1988-89, the total was \$2 896 400, which was credited to the government's Consolidated Revenue Fund.

As requested by the Treasury Board, the Bureau completed a full cost/benefit analysis of office automation, and developed a long range strategic plan. This Plan will be submitted formally to the Board early in 1989-90.

Bureau of Competition Policy



* Services also provided in Vancouver, Toronto and Montreal

Appendix I

Penalties under the Competition Act

Offence	Section	Class of Offence	Maximum Fine	Maximum Term Imprisonment	
Conspiracy	45	I	\$10 Million	and/or	5 years
Foreign directives	46	I	Discretion of Court		
Bid-rigging	47	I	Discretion of Court	and/or	5 years
Agreements re professional sport	48	I	Discretion of Court		5 years
Bank agreements	49	I	\$5 Million	and/or	5 years
Price discrimination and predation	50	I	Discretion of Court	or	2 years
Promotional allowances	51	I	Discretion of Court	or	2 years
Misleading representations	52	a) I, or b) SC	a) Discretion of Court b) \$25 000	and/or and/or	5 years 1 year
Tests and testimonials	53	a) I, or b) SC	a) Discretion of Court b) \$25 000	and/or and/or	5 years 1 year
Double ticketing	54	SC	\$10 000	and/or	1 year
Pyramid selling	55	a) I, or b) SC	a) Discretion of Court b) \$25 000	and/or and/or	5 years 1 year
Referral selling	56	a) I, or b) SC	a) Discretion of Court b) \$25 000	and/or and/or	5 years 1 year
Nonavailability	57	SC	\$25 000	and/or	1 year
Sale above advertised price	58	SC	\$25 000	and/or	1 year
Promotional contest	59	a) I, or b) SC	a) Discretion of Court b) \$25 000	and/or and/or	5 years 1 year
Price maintenance	61	I	Discretion of Court	and/or	5 years

I = Indictable Offence
 SC = Summary Conviction Offence

Appendix II

Bureau Merger Register

The Bureau Merger Register is compiled from published reports of acquisitions that appear in the financial and daily press and industry and trade publications. The register records reported mergers in industries subject to the Competition Act. Accordingly, until 1976 mergers in most service sectors of the economy were largely excluded. Since the establishment of foreign investment review legislation in 1974, all foreign mergers allowed to proceed have been included in the register.

Year	Foreign*	Domestic**	Total
1960	93	110	203
1961	86	152	238
1962	79	106	185
1963	41	88	129
1964	80	124	204
1965	78	157	235
1966	80	123	203
1967	85	143	228
1968	163	239	402
1969	168	336	504
1970	162	265	427
1971	143	245	388
1972	127	302	429
1973	100	252	352
1974	78	218	296
1975	109	155	264
1976	124	189	313
1977	192	203	395
1978	271	178	449
1979	307	204	511
1980	234	180	414
1981	200	291	491
1982	371	205	576
1983	395	233	628
1984	410	231	641
1985	466	246	712
1986	641	297	938
1987	622	460	1 082
1988	593	460	1 053

* Acquisitions involving a foreign-owned or foreign-controlled acquiring company (the nationality of the controlling interest in the acquired company prior to the merger could have been foreign or Canadian).

** Acquisitions involving an acquiring company not known to be foreign-owned or foreign-controlled (the nationality of the controlling interest in the acquired company prior to the merger could have been foreign or Canadian).

Appendix III

Merger Examinations Concluded 1988-1989

The following table records mergers that have been examined by the Director under the Competition Act, where the Director concluded his examination during fiscal year 1988-89. Only those mergers requiring two or more days of examination are recorded. Any mergers that have not been made public by the merging parties are not listed. The table may include some transactions which did not go forward, or which did not go forward as described.

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
156824 Canada Ltd.	Hill Tire Distributors Ltd.	Automotive tires, distribution and sale	FC	
161883 Canada Inc.	Duracell Inc.	Batteries, lighting products	FC	ARC
162294 Canada Inc.	Cercast Inc., and Cercor Inc.	Aluminium casting	FC	
164477 Canada Ltée	Sherwin Williams Inc. (certain assets)	Paint manufacturing	FC	
164650 Canada Ltée	Domtar Inc. (certain assets)	Laminates	FC	
805955 Ontario Ltd.	Canada's Wonderland Limited	Amusement park	FC	ARC
Agrimont Inc.	Avico Ltée/Lambert Hébert Inc./ Reliable Poultry Packers Inc.	Poultry processors	FC	
Alliance Industrielle	General Trustco	Financial services	FC	
Amtcor Limited	Twinpak Inc.	Packaging materials	FC	ARC
Ball Corporation and Onex Corporation	Onex Packaging Inc.	Packaging products	FC	
Banca Commerciale Italiana S.P.A.	Irving Bank Canada	Financial services	FC	
Bank of Montreal	Province of B.C Second Mortgage Portfolio	Residential mortgages	FC	ARC
Banque Nationale du Canada	Geoffrion Leclerc Inc.	Investment dealers	FC	

FC	File closed; concluded as posing no issue under the Act.
ARC	Transaction processed under advance ruling certificate.
AO	Transaction processed under Program of Advisory Opinions.
MO	The Director will be monitoring the effects of the merger during the three-year limitation period.
RE-A	Transaction to be restructured after closing.
RE-B	Transaction restructured before closing.
CT	Application to the Competition Tribunal.

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
Banque Nationale du Canada	Levesque, Beaubien et Compagnie Inc.	Brokerage services	FC	
Barclays Bank Agricultural Finance Corporation	Deutz-Allis Credit Corporation of Canada	Financial services	FC	
BCE Inc.	Northwestel	Telephone & telecommunications services	FC	
BCE Inc.	Montreal Trustco Inc.	Financial services	FC	ARC
BCE Mobile Communications Inc.	MDI Mobile Data International Inc.	Mobile digital communications equipment	FC	
Beatrice Dairies Limited	Eplett Dairies Ltd.	Dairy products	FC	
Bow Valley Industries Ltd.	Ocelot Industries Ltd. (certain assets)	Oil and gas	FC	ARC
Bow Valley Industries Ltd.	Bonanza Oil & Gas Ltd. (certain assets)	Oil and gas	FC	ARC
Bramalea Limited	Perez Corporation	Real estate develop- ment and management	FC	
Bramalea Limited	Campeau Corporation (certain assets)	Real estate develop- ment and management	FC	ARC
Bridgestone Acquisition Corporation	Firestone Canada Inc.	Tire and rubber products	FC	
Brookfield Ice Cream Ltd.	Sunshine Dairies Ltd.	Dairy products	FC	
C Corp. Inc.	Red Rooster Convenience Stores	Convenience stores	FC	
C.F. Kingsway Inc.	Tri-Line Expressway Ltd.	Truck transport	FC	ARC
Cambridge Leaseholds Limited	Dixie Value Mall Ltd.	Real estate management	FC	ARC
Canadian Pacific Limited	Canadian National Hotels Ltd.	Hotel accommodation	FC	
Canadian Pacific Limited	Laidlaw Transportation Limited	Transportation	FC	
Canadian Pacific Limited	CNCP Telecommunications	Telecommunications	FC	
Canadian Publishers Co. Ltd.	ABF Business Forms Ltd.	Business forms printing	FC	
Canfor Corporation	Weldwood of Canada Limited	Building materials distribution	FC	
Carena Bancorp Inc.	Cineplex Odeon Corporation (certain theatres)	Film exhibition and real estate management	FC	

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
Cargill Limited	Cyanamid Canada Inc. (certain assets)	Farm fertilizers	FC	
CBR Cement Canada Limited	Revelstoke Concrete Investment Inc.	Ready-mix concrete	RE-A	AO
CBR Cement Canada Limited	Rempel Bros. Concrete Ltd.	Ready-mix concrete	FC	
Central Guaranty Trust Company	Financial Trust Company	Financial services	FC	ARC
CFPL Broadcasting Ltd.	Niagara Television Ltd.	Television broadcasting	FC	
Chevron Canada Resources Ltd.	Columbia Gas Development of Canada Ltd.	Oil and gas	FC	ARC
Clayton & Dubilier Private Equity Fund III Limited	Uniroyal Goodrich Canada Inc.	Automotive tire manufacturing	FC	ARC
Clayton & Dubilier Private Equity Fund III Limited	Kendall Canada Division of CKR Inc.	Health care products	FC	ARC
Conagra International (Canada) Ltd.	Pfizer C. & G. Inc.	Herbicide/insecticide distribution and sale	FC	
Connaught Biosciences Inc.	Institut Armand Frappier	Pharmaceuticals and vaccines	FC	
Coopérative fédérée de Québec	Galco Food Products Ltd.	Poultry products	FC	
Corona Corporation	Dickenson Mines Limited & Kam-Kotia Mines Limited	Gold mining	FC	ARC
CYW Holdings, Inc.	Color Your World, Inc.	Paint/wallpaper manufacturing and retailing	FC	ARC
Daishowa Canada Holdings Ltd.	Reed Canadian Holdings Ltd.	Pulp and paper	FC	
Dofasco Inc.	Algoma Steel Corporation	Steel products	MO	AO
Donohue Inc.	Groupe Gérard Saucier	Lumber	FC	
Dylex Limited	Monaco Group Inc.	Clothing and accessories retailing	FC	
Empire Co. Ltd.	Provigo Inc.	Food retailing	FC	ARC
Empire Co. Ltd./ Unigesco Inc.	Provigo Inc.	Food retailing	FC	
Esso Resources Canada Limited	Ocelot Industries Ltd. (certain assets)	Oil and gas	FC	ARC
Esso Resources Canada Limited	United Canso Oil & Gas Ltd. (certain assets)	Oil and gas	FC	ARC
Falconbridge Limited	Placer Dome Inc. (certain assets)	Mining	FC	ARC

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
Falconbridge Limited	McIntyre Mines Limited (certain assets)	Mining	FC	ARC
Federal Industries Ltd.	C.F. Kingsway Inc.	Truck transport	FC	ARC
FH Acquisition Corporation	Fort Howard Corporation	Paper products	FC	
First Boston Inc.	CS Holdings Ltd.	Financial services	FC	ARC
First City Trustco Inc.	Pioneer Lifeco Inc.	Life insurance	FC	
FLPC Acquisition Corporation	Pullman Company	Vehicle seat manufacturing	FC	
Food Market Holdings Limited	Fortinos Supermarkets Ltd.	Food retailing	MO	AO
Fraser Valley Milk Producers Co-operative Association	Palm Dairies Limited (certain assets)	Dairy products	MO	AO
General Electric Canada Inc.	Bombardier Inc. (certain assets)	Locomotive manufacturing	FC	
General Electric Canada Inc.	Borg-Warner (Canada) Limited	Plastics manufacturing	FC	
General Electric Capital Canada Inc.	Woodward Acceptance Co. Ltd.	Credit card services	FC	
Genstar Development Company Eastern Limited	Campeau Corporation (certain assets)	Real estate development and management	FC	ARC
Gestion Financière La Seigneurie	Locam Inc.	Automobile and truck rental	FC	ARC
Gibraltar General Insurance	Home Insurance Company	Insurance	FC	ARC
Grand Metropolitan PLC	Pillsbury Canada Limited	Food processing	FC	ARC
Greyvest Canada Inc.	Manufacturers Hanover Bank of Canada	Financial services	FC	
Greyvest Financial Services Inc.	Manufacturers Hanover Leasing (Canada) Inc.	Financial leasing services	FC	
Groupe Cabano d'Anjou Inc.	Expeditex Inc./ Le Groupe Brazeau Inc.	Truck transport	FC	
Groupe Olympia Ltée	Culinar Inc. (certain assets)	Meat processing and rendering	FC	
Guardian Trust Co.	Guardcor Investment Inc.	Financial services	FC	
Hong Kong Bank of Canada	Midland Bank Canada	Financial services	FC	
Hostess Food Products Limited	Frito-Lay Division of Pepsi-Cola Canada Ltd	Salty snacks	RE-B	AO

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
Husky Oil Limited	Bow Valley Husky (Bermuda) Ltd.	Oil and gas	FC	ARC
Husky Oil Limited	Canterra Energy Ltd.	Oil and gas	FC	ARC
Industrial-Alliance Life Insurance Co.	National Life Assurance Co.	Insurance	FC	
Inland Natural Gas Co. Ltd.	74280 B.C. Ltd.	Natural gas distribution	FC	
Institut Mérieux S.A.	CDC Life Sciences Inc.	Pharmaceutical manufacturing	FC	AO
International Business Machines/Digital Equipment Corporation	Open Software Foundation Inc.	Computer software development	FC	AO
Ipsco Inc.	Western Canada Steel Limited	Steel products	FC	
ISA Canada Inc.	Shaver Poultry Breeding Farms Limited	Poultry breeding	FC	AO
Island Farm Dairies Co-operative Association	Palm Dairies Limited (certain assets)	Dairy products	MO	AO
Itel Rail Corporation	349002 B.C. Ltd.	Rail freight service	FC	
Jim Pattison Industries	Innopac Inc.	Packaging products	FC	ARC
Lacana Petroleum Ltd.	Poco Petroleums Ltd.	Oil and gas	FC	ARC
Lafarge Canada Inc.	Simard Beaudry Inc.	Highway construction	FC	
Laing Property Corporation	Campeau Corporation (certain assets)	Real estate management	FC	ARC
Lake Ontario Cement Ltd. (LOCL)	Miron Inc.	Ready mix concrete	MO	AO
Loblaw Companies Limited	Steinberg Inc.	Food retailing	FC	
Loblaw Companies Limited	Burnac Corporation (Super Carnival)	Food retailing	FC	
LSS Acquisition Corporation/Kidder, Peabody Group Inc.	Lear Siegler Seating Corporation	Automotive parts manufacturing	FC	
Maclean Hunter Limited	Selkirk Communications Limited	Television and radio broadcasting	RE-A	AO
Maersk Company (Canada) Ltd.	Husky Oil Ltd. (certain assets)	Oil and gas drilling	FC	ARC
Mainland Magazine Service Ltd.	Vancouver Magazine Service Ltd.	Magazine and book distribution	FC	

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
Metro-Richelieu Inc./ Provigo Inc.	Steinberg Inc.	Food retailing	FC	
Montreal Trustco Inc.	Roynat Inc.	Financial services	FC	
Morgan Financial Corporation	Canadian General Life Insurance	Financial services	FC	ARC
Motorola Canada Limited	MDI Mobile Data International Inc.	Communications equipment manufacturing	FC	AO
Multi-Marques Inc.	Groupe Purdel Inc.	Bakery products	MO	AO
Nationale-Nederlanden N.V.	Commassur Inc.	Insurance	FC	ARC
Nationale-Nederlanden N.V.	Mony Life Insurance Company of Canada	Insurance	FC	ARC
Nestle Enterprises Limited	Rowntree Mackintosh Canada Ltd.	Confectionery manufacturing	FC	ARC
NHO Acquisition Corporation	Henley Manufacturing Corporation	Chemicals and metal stampings	FC	ARC
Noranda Inc.	Falconbridge Limited	Mining	FC	
Nova Corporation of Alberta	Alberta Gas Chemical Ltd.	Methanol	FC	ARC
Nova Corporation of Alberta	Polysar Energy and Chemical Corporation	Ethylene	MO	AO
Olympia & York Developments Limited	Campeau Corporation	Real estate development and management	FC	AO
Olympia & York Developments Limited	BCE Development Corporation	Real estate development and management	FC	
Oshawa Group Limited	Boots Drug Stores Canada Ltd.	Pharmacy retailing	FC	
PA Holdings Corporation	Abex Industries/Canparts Inc./ Vendret Inc.	Automotive parts	FC	ARC
Pacholder Associates Inc.	Macleod-Stedman Inc.	Retail merchandising	FC	ARC
Pan Canadian Petroleum Ltd.	Canadian Occidental Petroleum Limited (certain assets)	Oil and gas	FC	ARC
Philip Morris Companies Inc.	Kraft Inc.	Food processing	FC	
Placer Dome Inc.	Falconbridge Limited (certain assets)	Mining	FC	ARC
Pleuss-Stauffer AG	Steep Rock Resource Inc.	Mineral exploration and development	MO	AO

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
Poco Petroleum Limited	Lacana Petroleum Limited	Oil and gas	FC	
Provigo Distribution Inc.	Steinberg Inc. (certain assets)	Food retailing	RE-A	AO
Purolator Courier Ltd.	Gelco Express Limited	Courier services	MO	AO
Ro-Na Inc., Le Groupe	Dismat Inc.	Wholesaling and retailing of building materials	FC	
Rodamco N.V.	Hammerson Canada Inc.	Real estate development	FC	
Roman Corporation Limited	Concord Finance Corporation Ltd.	Financial services	FC	ARC
Royal Trust Energy Resources II Corporation	Drummond Oil & Gas Ltd.	Oil and gas	FC	ARC
RP Acquisition Corporation	Staley Continental Inc.	Sugar and other sweeteners	FC	
Ryder Capital Limited	ATG Automotive Transport Group Ltd.	Automotive transport carriers	FC	ARC
Saskatchewan Mining Development Corporation	Eldorado Nuclear Limited	Nuclear industry	FC	
Saskatchewan Oil and Gas Corporation	Saskatchewan Power Corp. (certain assets)	Oil and gas	FC	
SBAE Canada Holdings Limited (Siemens)	Allied Signal Automotive Limited	Automotive parts	FC	ARC
Sceptre Resources Ltd.	Oakwood Petroleum Ltd.	Oil and gas	FC	
Scott Paper Limited	E.B. Eddy Forest Products Limited (certain assets)	Sanitary tissue products	MO	AO
Security Pacific Bank Canada	Burns Fry Corporation	Financial services	FC	
SHL Systemhouse Inc.	Computer Innovation Distribution Inc.	Computer products	FC	
Silcorp Limited	Steinberg Inc. (certain assets)	Convenience stores	FC	ARC
Société d'Entraide Économique du Québec	Caisses d'Établissement du Québec	Financial services	FC	ARC
Southam Newspaper Group Limited	North Shore Free Press Ltd.	Newspaper publishing	FC	
Stone Container Corporation	Consolidated-Bathurst Inc.	Wood and paper products	FC	ARC

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
T.C.C. Beverages Ltd.	Brunswick Bottling Limited	Soft drink bottling, distribution	FC	
Teck Corporation/Rio Algom Ltd.	Lornex Mining Corp. Ltd.	Copper and molybdenum mining	FC	ARC
Télé-Métropole Inc.	Pathonic Network Inc.	Television broadcasting	FC	
Timberjack Inc.	Amca International Limited (certain assets)	Forest harvesting machines	FC	
UAP Inc.	Genuine Parts Holding Ltd.	Automotive parts distribution	FC	ARC
Union Enterprises Ltd.	Enron Canada Ltd.	Natural gas utility	FC	
United Westburne Inc.	Ruddy Electrical Wholesale Co. Ltd.	Electrical equipment distribution	FC	
West Fraser Building Supplies Limited	Revelstoke Companies Ltd.	Building products retailing	FC	
Wilkinson Sword Canada Limited	D.D. Bean & Sons (Canada) Limited	Book matches	FC	AO
Wolverine Tube (Canada) Inc.	Noranda Metal Industries Limited	Copper tube manufacturing	MO	AO
Xerox Canada Holdings Inc.	Canaplan Leasing Company	Automotive leasing	FC	
Zurich Insurance Company	Travcan Limited	Insurance	FC	

Appendix

IV

Criminal Offences in Relation to Competition: Proceedings Concluded

Product, Names of Accused and Location of Offence	Action Taken and Results
Section 45: Conspiracy	
Real estate brokerage services — Canadian Real Estate Association, Chambre d'Immeuble du Saguenay-Lac St.-Jean Inc., Chambre d'Immeuble de Québec, Chambre d'Immeuble de Montréal, Chambre d'Immeuble de l'Outaouais Inc., Association of Regina Realtors Inc., Calgary Real Estate Board Co-op Ltd., Fraser Valley Real Estate Board, Windsor-Essex County Real Estate Board, and London and St. Thomas Real Estate Board (Nation-wide)	Proceedings were commenced for an order of prohibition under subsection 34(2) in relation to conduct directed toward the commission of an offence under section 45. On December 20, 1988, the order was issued. The order applies to all real estate boards and associations in Canada as a condition of their membership in the Canadian Real Estate Association.
Hogs — Burns Food Limited, Canada Packers Inc., Intercontinental Packers Limited, Eschem Canada Inc. (formerly Swift Canadian Co. Ltd.) Gainers Limited and Red Deer Packers Ltd. (Calgary, Alberta)	On February 19, 1982, two charges were laid under paragraph 45(1)(c) against all of the accused except Gainers. On June 24, 1982, a revised information was laid under the same paragraph adding Gainers and deleting Red Deer Packers. On December 9, 1983, Burns, Eschem and Gainers each pleaded guilty to one charge and were convicted and fined \$125 000 each. Intercontinental Packers pleaded guilty to one charge on June 26, 1986 and was sentenced on February 23, 1988, to a fine of \$100 000. On January 15, 1988, Canada Packers was acquitted of both charges. The appeal by the Crown was subsequently abandoned.
Soft drinks — Blackwoods Beverages Ltd., Beverage Services Ltd. and Coca-Cola Ltd. (Winnipeg and Brandon, Manitoba)	On July 20, 1983, one charge was laid under paragraph 45(1)(c) against Blackwoods Beverages and Beverage Services. On August 10, 1983, a further charge was laid under the same paragraph against Blackwoods Beverages and Coca-Cola. On September 12, 1988, the two accused pleaded guilty to the first charge and were each fined \$50 000. On the same date Blackwoods also pleaded guilty to the second charge and was fined \$75 000. Coca-Cola pleaded guilty to the second charge on January 13, 1989, and was fined \$65 000 for a total fine in this case of \$240 000. Orders of Prohibition were issued in respect of the accused.
Building Supplies — Beaver Lumber Company limited, Revelstoke Companies Ltd., Mr. Plywood Enterprises Ltd., Swift Current Building Supplies (1970) Ltd., Pioneer Co-operative Association Limited, and Windsor Plywood (The Plywood People) Ltd., (Swift Current, Saskatchewan)	In June 1985, proceedings were commenced for an order of prohibition under subsection 34(2). The proceedings were subsequently abandoned.

Section 47: Bid-rigging

Business forms —

Lawson Business Forms Manitoba Ltd., Harold K. St. John, Alfred Dean Allen, R.L. Crain Inc., John B. Lynch, George M. Wilson, Moore Corporation Limited, Gordon B. Wainwright, Gordon E. Menuz, James A. Scarsbrook, Paragon Business Forms (Western) Ltd., now part of Southam Printing Limited, and Alfred I. Rein (Saskatoon, Saskatchewan)

On April 11, 1986, eight charges were laid under section 47. All of the accused were jointly charged on four counts, the first ten named accused were jointly charged on two counts, and the first six accused and the last two accused were jointly charged on the two remaining charges. Gordon B. Wainwright, Gordon E. Menuz and George M. Wilson were subsequently discharged at the preliminary inquiry. On June 9, 1988, the corporate accused pleaded guilty to one global charge and were convicted. Crain, Moore and Southam were each fined \$400 000 and Lawson was fined \$360 000, for a total fine of \$1 560 000. All remaining charges were withdrawn. An order of prohibition was issued.

School buses —

Association du Transport Écolier du Québec (St-Jean-sur-Richelieu, Québec)

On December 17, 1987, one charge was laid under section 47. On April 27, 1988, the accused pleaded guilty and was fined \$23 000. An order of prohibition was issued.

Printed forms —

R.L. Crain Inc., and Moore Corporation Limited (Halifax, Nova Scotia)

On March 29, 1988, one charge was laid under section 47. On June 8, 1988, both accused pleaded guilty and were each fined \$200 000, for a total fine of \$400 000. An order of prohibition was issued.

Section 50: Price Discrimination

Computers —

Commodore Business Machines Limited (Toronto, Ontario)

On April 1, 1986, two charges were laid under paragraph 50(1)(a). The accused pleaded guilty to one charge and on January 31, 1989, was fined \$40 000. The remaining charge was withdrawn.

Section 51: Promotional Allowances

Computers —

Commodore Business Machines Limited (Toronto, Ontario)

On April 1, 1986, one charge was laid under section 51. The accused pleaded guilty and on January 31, 1989, was fined \$25 000.

Section 61: Price Maintenance

Skis —

49225 Canada Inc. c.o.b. as Raymond Lanctôt and as Société de Distribution Rossignol du Canada Ltée (Montréal, Quebec)

On August 1, 1984, six charges were laid under paragraphs 61(1)(a) and 61(1)(b). On June 20, 1988, the accused pleaded guilty to one charge under paragraph 61(1)(a) and was fined \$12 000. An order of prohibition was issued. The remaining charges were withdrawn.

Computers —

Commodore Business Machines Limited (Toronto, Ontario)

On April 1, 1986, four charges were laid under paragraph 61(1)(a) and one under paragraph 61(1)(b). The accused pleaded guilty to two charges under paragraph 61(1)(a) and was fined \$15 000 on each charge. The remaining charges were withdrawn.

Product, Names of Accused and Location of Offence	Action Taken and Results
<p>Business forms – Lawson Business Forms Manitoba Ltd., Harold K. St. John, Alfred Dean Allen, R.L. Crain Inc., John B. Lynch, George M. Wilson, Moore Corporation Limited, Gordon B. Wainwright, Gordon E. Menuz, James A. Scarsbrook, Paragon Business Forms (Western) Ltd. now part of Southam Printing Limited, and Alfred I. Rein (Saskatoon, Saskatchewan)</p>	<p>Two charges were laid on April 11, 1986, under paragraph 61(1)(a). All of the accused were jointly charged with respect to one charge, while Lawson Business Forms and H. St. John were jointly charged with respect to the second charge. Gordon B. Wainwright, Gordon E. Menuz, and George M. Wilson were discharged following the preliminary inquiry. On June 9, 1988, Lawson pleaded guilty to one charge and was fined \$40 000. The remaining charges were withdrawn.</p>
<p>Dairy equipment – Dairy Supplies Limited (Winnipeg, Manitoba)</p>	<p>On February 13, 1985, one charge was laid under paragraph 61(1)(b). On June 3, 1986, the accused was acquitted after evidence seized under section 10 of the former legislation was excluded because its seizure was held to violate the Charter of Rights. On January 13, 1987, an appeal by the Crown was allowed and a new trial was ordered. The Supreme Court of Canada subsequently upheld the decision. On November 15, 1988, the accused pleaded guilty and was fined \$5 000. An order of prohibition was imposed.</p>
<p>Gasoline – Sunoco Inc. (Toronto, Ontario)</p>	<p>On May 24, 1985, two charges were laid, one under each of paragraphs 61(1)(a) and 61(1)(b). On June 24, 1986, the company was convicted of the charge under paragraph 61(1)(a) and fined \$200 000. The accused was acquitted on the remaining charge. On May 25, 1988, the fine was reduced on appeal by the accused to \$100 000. The Crown's appeal was dismissed.</p>
<p>Bread – George Lanthier & Fils Limitée (Cornwall, Ontario)</p>	<p>On November 21, 1985, one charge was laid under paragraph 61(1)(a). On September 23, 1986, the accused was convicted and fined \$2 000. The accused appealed the conviction but on October 18, 1988, the appeal was dismissed.</p>
<p>Sunglasses – Raymond Lanctôt (1982) Limitée and Diane Lanctôt (Montréal, Quebec)</p>	<p>On October 17, 1985, one charge was laid under paragraph 61(1)(b). On April 19, 1988, the accused were acquitted.</p>
<p>Fire extinguishers – The Williams Brothers Corporation (Québec, Quebec)</p>	<p>On February 17, 1988, two charges were laid, one under each of paragraphs 61(1)(a) and 61(1)(b). On November 17, 1988, the accused pleaded guilty to the charge under paragraph 61(1)(b) and was fined \$12 000. The remaining charge was withdrawn.</p>
<p>Microwave ovens – Toshiba of Canada Limited (Vancouver, British Columbia)</p>	<p>On May 4, 1988, five charges were laid under paragraph 61(1)(a). On February 17, 1989, the accused pleaded guilty to two charges and was fined \$40 000 on one charge and \$25 000 on the other, for a total fine of \$65 000.</p>

Appendix V

Criminal Offences in Relation to Competition: Proceedings Pending

Product, Names of Accused and Location of Offence	Action Taken and Results
Section 45: Conspiracy	
Pharmacy association – Nova Scotia Pharmaceutical Society, Pharmacy Association of Nova Scotia, Lawton's Drug Stores Limited, William H. Richardson, J. Keith Lawton, Empire Drug Stores Limited, Woodlawn Pharmacy Limited, Nolan Pharmacy Limited, William G. Wilson, Woodside Pharmacy Limited, Frank Forbes (Halifax, Nova Scotia)	On February 24, 1987, two charges were laid under paragraph 45(1)(c). On April 26, 1988, warrants were issued by the Supreme Court of Nova Scotia, pursuant to section 15(1), for the re-seizure of documents originally seized in December 1982, pursuant to section 10 of the former Combines Investigation Act. Earlier in the day the court had ruled that the original seizure was illegal under the Charter and the documents were ordered returned. The preliminary inquiry commenced on January 23, 1989, and the Crown is to file written argument on June 1, 1989; the accused is to reply in writing by July 1, 1989. Oral argument will be heard on September 7 and 8, 1989.
Funeral services – Nova Scotia Licensed Embalmers and Funeral Directors' Association (Halifax, Nova Scotia)	On March 22, 1988, one charge was laid under paragraph 45(1)(c).
Motorcycles and motorcycle consumer shows – The Motorcycle and Moped Industry Council, Honda Canada Ltd., Yamaha Motor Canada Limited, Suzuki Canada Inc., Canadian Kawasaki Motors Limited and Fred Deeley Imports Limited (Toronto, Ontario)	On March 31, 1988, one charge was laid under paragraph 45(1)(c). The preliminary inquiry is scheduled for April 10, 1989.
Asphalt paving – McIntosh Paving Company Limited, E. Bondy Excavating and Trucking Limited, Earl Jones & Sons Limited, Charles Burns McIntosh, Charles Louis Beaudoin, Ernest Donald Bondy, Murray Jones and Ralph Jones (Windsor, Ontario)	On September 12, 1988, one charge was laid under paragraph 45(1)(c). The preliminary inquiry is scheduled for September 6, 1989.
Section 47: Bid-rigging	
Driving schools – École de Conduite Lauzon Saguenay-Lac St-Jean Inc., Michel Larouche, Roubec Auto École de Chicoutimi Enr., École de Conduite Robert Riverin Ltée and Jean-Guy Claveau (Chicoutimi, Quebec)	On May 5, 1986, one charge was laid under section 47. Following a preliminary inquiry, all the accused except Roubec Auto École were ordered to stand trial. On August 24, 1987, the accused were convicted. The two companies were fined \$1 000 each and the two individuals were fined \$500 each. An appeal has been filed by the accused against conviction, and by the Crown against sentence.
Paragraph 50(1)(a): Price Discrimination	
Ski-lift services – Station Mont-Tremblant (St-Jovite, Quebec)	Proceedings for an order of prohibition were commenced on March 30, 1989, in relation to conduct directed toward the commission of an offence under paragraph 50(1)(a).

Product, Names of Accused and Location of Offence	Action Taken and Results
Section 61: Price Maintenance	
Watches — Wenger Ltd. (Chicoutimi, Quebec)	One charge was laid on February 27, 1985, under paragraph 61(1)(b). On February 12, 1988, the accused was ordered to stand trial following a preliminary inquiry.
Computer printers — Epson (Canada) Limited, Maurice LaPalme and Sam Paterson (Toronto, Ontario)	On March 13, 1986, twenty-three charges were laid under paragraph 61(1)(a). On December 11, 1987, the company pleaded guilty to ten charges and was convicted and fined \$20 000 on each charge for a total fine of \$200 000. The remaining charges were withdrawn. The sentence is under appeal by the accused.
Wristwatches — Les Must de Cartier Canada Inc. (Toronto, Ontario)	On January 13, 1987, two charges were laid, one under each of paragraphs 61(1)(a) and 61(a)(b). On December 7, 1987, the accused was committed to trial following a preliminary hearing. The trial was scheduled to commence on May 9, 1989.
Watchbands — Les Industries du Bracelet-Montre Stylecraft Inc. (Montréal, Quebec)	On February 2, 1988, three charges were laid, two under paragraph 61(1)(a) and one under paragraph 61(1)(b).
Power tools — Makita Power Tools Canada Ltd. (Québec, Quebec)	On February 17, 1988, two charges were laid, one under each of paragraphs 61(1)(a) and 61(1)(b). The accused waived its right to a preliminary inquiry and a trial date of April 13, 1989 was set.
Motorcycles and motorcycle consumer shows — The Motorcycle and Moped Industry Council (MMIC), Honda Canada Inc., Yamaha Motor Canada Limited, Suzuki Canada Inc., Canadian Kawasaki Motors Limited and Fred Deeley Imports (Toronto, Ontario)	On March 31, 1988, five charges were laid, three under paragraph 61(1)(a) and two under subsection 61(6). The preliminary inquiry is scheduled for April 10, 1989.
Gasoline — Shell Canada Products Limited (Winnipeg, Manitoba)	On October 15, 1987, two charges were laid, one under each of paragraphs 61(1)(a) and 61(1)(b). The second charge was dismissed at the preliminary inquiry. On February 27, 1989, Shell Canada Products Limited was convicted and on March 14, 1989, the accused was fined \$100 000. Appeals have been filed by the accused against conviction and by the Crown against sentence.
Artificial Christmas trees — Barcana Inc. (Granby, Quebec)	On October 18, 1988, one charge was laid under each of paragraphs 61(1)(a) and 61(1)(b). At the preliminary inquiry on March 13, 1989, the accused filed a motion of non suit. At the end of the year the court had not rendered its decision on the motion.
Vitamins — Hoffmann-LaRoche, Limited (Toronto, Ontario)	On March 23, 1989, one charge was laid under paragraph 61(1)(a).

Appendix VI

Criminal Offences in Relation to Competition: Discontinued Inquiries

Industry	Section of Act	Nature of Inquiry and Conclusion Reached
Food buying group – Nation-wide	45, 50 33*	Complaints were received alleging that a food buying group was exerting concerted pressure upon grocery suppliers to provide more favourable volume discount arrangements. While the information obtained revealed that the buying group had attempted to obtain from suppliers volume discounts that were greater than had previously been offered to the buying group, it also disclosed that the buying group did not encourage those suppliers to discriminate among competing purchasers of like quantity and quality of product. The inquiry also produced no evidence that the buying group's actions constituted an agreement to unduly lessen competition or were to the detriment or against the interest of the public.
Land surveying services – Quebec	45	A complaint was received alleging that all land surveyors in the Outaouais market were adhering to a minimum tariff prepared by the Ordre des arpenteurs-géomètres du Québec. The Ordre does not have any statutory powers to establish a new minimum tariff without the approval of the Government of Quebec. However, in January 1989 the Government of Quebec adopted the minimum tariff.
French language artistic services – Quebec	45	A complaint was received alleging that l'Union des artistes had taken measures to restrict membership in its union and had restricted the opportunity to work in dubbing and commercial advertisements solely to its members. The information obtained did not show that the agreement would lessen competition unduly. Furthermore, in 1988, the Government of Quebec gave specific power to l'Union des artistes to set conditions of admission.
Gasoline – Quebec	45	Six Canadian residents applied for an inquiry alleging that, because gasoline prices in Québec had not fallen by as much as crude oil prices over a certain period, there was a conspiracy among gasoline companies to lessen competition. The inquiry determined that there is no "normal" or "right" relationship between the prices of crude oil and refined products and that, subsequent to the period referred to in the application, gasoline prices fell by more than crude oil prices. No evidence of a conspiracy was obtained.
Gasoline – Quebec	45, 79	An application was received from six Canadian residents for an inquiry into the activities of petroleum refiners operating in Quebec. It was alleged that these refiners had conspired to lessen competition unduly, and, through various acts, had abused their dominant position. However, the information obtained during the course of the inquiry did not support the allegations.

* Refers to section 33 of the
Combines Investigation Act.

Industry	Section of Act	Nature of Inquiry and Conclusion Reached
Industrial equipment manufacturer — Ontario	45, 50 75, 79	An application was received from six Canadian residents concerning a manufacturer's termination of the franchise arrangement of one of its dealers. The applicants alleged that the termination violated sections 45 and 50 and contravened sections 75 and 79 of the Act. No evidence of any criminal offence was found and the requisite elements of each of the relevant non-criminal provisions were found not to be present. In addition, during the course of the inquiry the business was sold and the new owner was able to renew the franchise arrangement with the manufacturer.
Energy sealing contracts — Southwestern Ontario	47	A complaint was received from a contractor alleging that several contractors involved in energy sealing contracts proposed to enter into a bid-rigging arrangement. The information obtained did not clearly disclose a bid-rigging situation or a pattern to the bidding. Further, with the termination of the Federal Government energy sealing program in 1983, the demand for this service had disappeared leaving no real industry in which bid-rigging could continue or competition be restored.
Mechanical contractors — B.C.	47	A complaint was received alleging that three mechanical contractors had rigged their bids on a project in Western Canada. While the evidence obtained appeared to indicate that the three firms had arranged their bids among themselves, it became clear that all three firms were very closely aligned with one individual. A legal opinion indicated that on the facts of the case, the affiliation exemption to bid-rigging would apply.
Home computer entertainment software — Toronto	50	A complaint was received from a wholesale distributor of home computer entertainment software alleging that a competitor was engaged in a policy of selling at unreasonably low prices. The information gathered was reviewed against the requirements of the predatory pricing provisions of the Act but did not provide sufficient grounds for a prosecution.
Memorial monuments — Ontario	50, 51, 77, 79	A six-resident complaint was received alleging that various cemetery companies in Toronto had monopolized or were attempting to monopolize the market for memorial monuments in Toronto by engaging in predatory pricing, tied selling and exclusive dealing to the detriment of independent monument dealers. No evidence was found to substantiate the allegations of the complainants.
Tire chains — Ontario	50(1)(a)	A complaint was received alleging that a major manufacturer of tire chains in Canada was selling tire chains to its distributors in Western Canada at prices which were lower than those charged to the complainant who was located in Ontario. While the evidence substantiated the allegation, it also disclosed that because of the transportation costs for the products in question, distributors in Ontario did not normally compete with those in Western Canada, which was a separate geographic market. Therefore, it could not be established that there was a practice of discriminating against competitors of a purchaser, as required by the Act.

Industry	Section of Act	Nature of Inquiry and Conclusion Reached
Bearings — Ontario	50(1)(a)	A complaint was received alleging a discriminatory pricing structure in the sale of bearings by a major supplier. Shortly after the inquiry commenced, a new pricing structure that conformed to the Act was instituted. The company also gave undertakings to the Director concerning its previous discount policy.
Ready-mix concrete — Quebec	50(1)(c)	Complaints were received alleging that major suppliers in the province of Quebec had adopted a policy of selling ready-mix concrete at unreasonably low prices. After a full inquiry, the Director concluded that it was not possible to show that the policy in question had the effect or tendency of substantially lessening competition or eliminating a competitor.
Video cassettes — Ontario	61(1)(a)	A complaint was received alleging that a supplier had attempted to influence a video distributor's prices upward on the resale of its video cassette products. After a full inquiry, the Director concluded that there was insufficient evidence to support the allegation.
Jeans — Toronto, Ontario	61	A complaint was received from a clothing retailer alleging that a supplier had refused to supply him with a certain brand of jeans because of his low pricing policy. However, subsequent investigation failed to yield any evidence that the supplier had in fact refused to supply the complainant, or that the supplier followed a policy of price maintenance or had refused supply to any other retailer because of a low pricing policy.
Gasoline retailing — London, Ontario	61	A complaint was received alleging that a London, Ontario major supplier of gasoline was attempting to influence upward and to discourage a reduction in the price at which a franchise retailer sold gasoline. A review of the documentary evidence failed to disclose any evidence in support of the allegations.
Motorcycle tires — Ontario	61(1)(b)	A complaint was received from a Ontario prospective distributor of motorcycle tires who was allegedly refused supplies because of his low pricing policy. While the evidence established that the foreign manufacturer of the tires encouraged the maintenance of suggested prices, it did not reveal that the reason for the refusal was the complainant's low pricing policy. In addition, neither the manufacturer nor its Canadian representative were found to have attempted to influence upward the prices charged by their distributors contrary to the Act.
Watches — Toronto, Ontario	61(1)(b)	A complaint was received alleging that the Canadian subsidiary of a major manufacturer had refused to supply a prospective retailer because of his low pricing policy. The evidence subsequently obtained failed to support the allegation and indicated that the watch supplier had a policy of consistently refusing to supply new accounts in areas where it had sufficient market coverage.

Industry	Section of Act	Nature of Inquiry and Conclusion Reached
Swimming pool chemicals – Toronto, Ontario	61(1)(b)	A complaint was received from a retailer of swimming pool chemicals alleging that a wholesaler of certain brands of these chemicals had discontinued supplying the retailer because of the retailer's low pricing policy. The evidence obtained indicated that the wholesaler's refusal to supply arose initially from a shortage of product. The refusal continued because of a dispute with the retailer unrelated to prices. Moreover, the wholesaler willingly supplied other retailers who were known discounters.
Aquariums and aquarium accessories – Ontario	61(1)(b)	Allegations were received from a retailer of aquariums and related products that a wholesale distributor of these products had refused to supply him because of his low pricing policy. The information obtained indicated that the wholesaler subsequently went out of business. Another wholesaler that distributed these products had indicated that it would supply the complainant.
Olympic Souvenirs – Alberta	61(1)(b)	Allegations were received that a prospective distributor of certain Olympic souvenirs was refused supplies because of his low pricing policy. While the evidence disclosed that the supplier of the souvenirs encouraged some of its sub-distributors to resell the product at suggested prices, the evidence was not sufficient to establish that an offence had been committed. The evidence also indicated that the Olympic Organizing Committee had initiated a civil suit against the complainant for violation of copyright and it was for this reason that he was refused supplies of the products.
Propane – Cambridge, Ontario	61	Complaints were received alleging that a representative of a propane wholesaler had made threats to propane retailers in an attempt to have them raise their prices. The inquiry determined that the attempts had not succeeded and that the representative had acted contrary to company policy. Information on the provisions of the Act was provided to senior company executives, following which the Director concluded that further proceedings were not warranted.
Ski equipment – British Columbia	61	A complaint alleging price maintenance by a major ski importer/distributor was received from a retailer in British Columbia. Due to the fact that this occurrence was an isolated incident and since it could not be established that the importer/distributor followed a policy of price maintenance, the Director decided that further proceedings were not warranted. This matter was concluded by way of an investigative visit with the importer/distributor.
Automotive parts – Ontario	61	A complaint was received alleging that a major distributor refused supply of automotive parts to a buying group because of the proposed low pricing policy advocated by that group. The evidence obtained did not disclose a violation of the Act. The distributor had not completed assessment of the buying group's application and was continuing consultation with the buying group which subsequently resulted in the acceptance of the complainant as a customer.

Industry	Section of Act	Nature of Inquiry and Conclusion Reached
Spray paint – Alberta and Ontario	61	A complaint was received alleging that a manufacturer and its agent had by threat attempted to influence upward the price at which a wholesaler/retailer sold spray paint and had refused to supply the wholesaler/retailer because of his low pricing policy. Information obtained indicated that there had been a misunderstanding concerning the complainant's role in the distribution process and that the complainant had subsequently been resupplied and experienced no further pressure on price. In addition, the complainant indicated that he did not wish to further his complaint. This matter was concluded by way of an investigative visit with the manufacturer and its agent.
Air courier services – Nation-Wide	33	A complaint was received alleging that a financial services company was attempting to monopolize the brokerage of air courier services in Canada, to the detriment of a competing broker and of a provider of armoured courier services. After a full inquiry, the Director determined that, while the company had substantial control of the market, there was insufficient evidence of detriment to the public flowing from such control.

* Refers to section 33 of the Combines Investigation Act.

Appendix VII

Misleading Advertising and Deceptive Marketing Practices Provisions: Proceedings Concluded

Product, Names of Accused and Location of Offence	Action Taken and Results
Paragraph 52(1)(a): False or Misleading Representation in a Material Respect	
Gas saving seminar – Thomas James Scott and James Lowry (Calgary, Alberta)	One charge was laid on October 28, 1981. On November 6, 1981, the charge was withdrawn and replaced by another charge. Warrants for the arrest of the accused were issued in July 1982 but have now been cancelled due to the lengthy elapse of time.
Electrical and household appliances, toys – Peter James Bartram c.o.b. as Anglo Canadian Warehouses (Hamilton, Mississauga, Oakville, Bowmanville, Toronto, Ontario)	Seven charges were laid on May 14, 1986. On April 6, 1988, the information and warrant were withdrawn.
Fitness club memberships – David Fisher and Woodlawn Fitness Centre Limited (Dartmouth, Nova Scotia)	On February 2, 1987, four charges were laid against the company, and four charges were laid against the individual. The company pleaded guilty to three charges and on March 9, 1987, was convicted and fined \$1 000 on each charge, for a total fine of \$3 000. The remaining charge against the company was withdrawn. Charges against the individual were subsequently withdrawn.
Mufflers – Zoro Discount Muffler Ltd. c.o.b. as Zoro Discount Muffler (Niagara Falls, Ontario)	Seven charges were laid on January 19, 1987. On April 15, 1988, the accused was convicted and fined \$2 500 on two charges and \$5 000 on one charge for a total fine of \$10 000. The remaining charges were dismissed. An order of prohibition was granted.
Clothing – 275199 Alberta Ltd., 272215 Alberta Ltd., and 275186 Alberta Ltd., c.o.b. as St. Clair Shop and as Francines (Weyburn, Saskatchewan)	Seven charges were laid on May 6, 1987. On February 1, 1988, the accused were convicted on one charge and on April 19, 1988, were each fined \$6 750 for a total fine of \$20 250. The remaining charges were stayed.
School supplies – Zellers Inc. c.o.b. as Zellers (Halifax, Nova Scotia)	One charge was laid on March 2, 1988. On April 18, 1988, the accused was convicted and fined \$10 000.
Jewellery – Larry Gluckstein and Sydney Lanys, c.o.b. as Kenton Liquidators (Toronto, Ontario)	Thirty-seven charges were laid on September 30, 1986. On May 19, 1987, the accused pleaded guilty to three charges each and were convicted and fined \$7 500 on each charge. The accused appealed the sentence and on April 25, 1988, the fine was reduced to \$6 250 for each charge, for a total fine of \$37 500.
Vacuums – Saad Mohammad Attiyat and Marwan Mohammad Attiyat c.o.b. as Corydon Vacuum and Winnipeg Vacuum (Winnipeg, Manitoba)	Five charges were laid on March 9, 1988. On May 4, 1988, the accused pleaded guilty to one charge and were each fined \$1 250, for a total fine of \$2 500. The remaining charges were withdrawn.

Product, Names of Accused and Location of Offence	Action Taken and Results
<p>Fur coats — Caskie Furs (Regina) Ltd. and Earl Alexander Bremner (Regina, Saskatchewan)</p>	<p>Twenty-eight charges were laid on December 9, 1987. The accused pleaded guilty to sixteen charges and on April 25, 1988, were convicted. On May 9, 1988, the corporate accused was fined \$2 500 on each charge and the individual was fined \$500 on each charge, for a total fine of \$48 000. The remaining charges were withdrawn.</p>
<p>Toys — K-Mart Canada Limited/K-Mart Canada Limitée (Sackville, Nova Scotia)</p>	<p>Two charges were laid on May 17, 1988. The accused pleaded guilty to one charge and was convicted and fined \$10 000. The remaining charge was withdrawn.</p>
<p>Hair regrowth product — 132013 Canada Ltd., c.o.b. as Niagara Labs and as Niagara Labs Hair and Scalp Specialists and Dr. Stanley H. Weisberg (Hamilton and St. Catharines, Ontario)</p>	<p>Five charges were laid on April 3, 1987. On May 17, 1988, the charges were withdrawn.</p>
<p>Orange juice — Canada Safeway Limited (Vancouver, British Columbia)</p>	<p>One charge was laid on November 12, 1987. On May 18, 1988, the accused pleaded guilty and was convicted and received a suspended sentence.</p>
<p>Down duvets — The Linen Chest (Phase II) Inc./La Boutique Linen Chest (Phase II) Inc. (Montréal, Quebec)</p>	<p>One charge was laid on April 6, 1988. On May 24, 1988, the accused pleaded guilty and was convicted and fined \$1 000.</p>
<p>Blinds — The Linen Chest (Phase II) Inc./La Boutique Linen Chest (Phase II) Inc. (Montréal, Quebec)</p>	<p>Two charges were laid on February 22, 1988. On May 24, 1988, the accused pleaded guilty and was convicted and fined \$1 000 on each charge for a total fine of \$2 000.</p>
<p>Automobiles — Chrysler Canada Ltd./Chrysler Canada Ltée, Paul Willison Limited, Ontario Chrysler (1977) Ltd., Raceway Plymouth Chrysler Ltd., Craig Hind Dodge Chrysler Ltd., Scarborough Dodge Chrysler Ltd., Agincourt Chrysler Plymouth Motors Inc., Jim Davidson Holdings Limited, Jack Wood's Eastway Plymouth Chrysler Limited, Don Robertson Chrysler-Dodge Limited, Peel Chrysler Plymouth Incorporated, Cooksville Dodge Chrysler Inc., Sorenson Chrysler Plymouth Inc., Sevenview Plymouth Chrysler Ltd., Downsview Chrysler Plymouth (1964) Ltd., Mills and Hadwin Limited, Willowdale Dodge Chrysler Limited, Woodbridge Motors Limited, Active Motors Limited, West End Chrysler Dodge (1971) Limited, 546802 Ontario Inc., Islington Chrysler Plymouth (1963) Limited, Erin Dodge Chrysler Ltd., Georgetown Chrysler Ltd. (Toronto, Ontario)</p>	<p>One charge was laid on October 3, 1985. On June 2, 1986, the charge against all the accused except Chrysler Canada Ltd./Chrysler Canada Ltée and Paul Willison Limited was withdrawn. Paul Willison Limited pleaded not guilty, but on September 24, 1986, was convicted. On January 4, 1987, Paul Willison Limited was fined \$6 000. Chrysler Canada Ltd./Chrysler Canada Ltée pleaded not guilty, but on May 25, 1987, was convicted and fined \$60 000. On May 25, 1988, an appeal by Paul Willison was dismissed. The appeal against conviction of Chrysler Canada Limited was dismissed, however the sentence was reduced to \$25 000.</p>
<p>Fuel-saving device — Vahan Kassabian, c.o.b. as Shieldco (Mississauga, Ontario)</p>	<p>Two charges were laid on August 29, 1985. The accused pleaded not guilty, but on March 31, 1987, was convicted on one charge, and fined \$850. The remaining charge was dismissed. An appeal by the accused was dismissed on June 7, 1988.</p>
<p>Bookcase — Les Meubles Tousignant Inc. (Sherbrooke, Quebec)</p>	<p>Six charges were laid on September 15, 1987. On June 20, 1988, the accused was acquitted.</p>

Product, Names of Accused and Location of Offence	Action Taken and Results
Homes – Greater Gulf Developments Limited, c.o.b. as Great Gulf Homes, and Gulf Lake Realty Ltd. (Markham and Toronto, Ontario)	Eleven charges were laid on April 29, 1987. The accused were charged jointly with respect to eight charges, and Greater Gulf Developments Limited was charged solely with respect to an additional three charges. On June 21, 1988, Greater Gulf Developments pleaded guilty to eight charges and was convicted and fined a total of \$75 000. The remaining charges against Greater Gulf Developments and all charges against Gulf Lake Realty Ltd. were withdrawn.
Jewellery – Stephen William Joseph Holloway and Holloway Jewellers Limited, c.o.b. as Holloway Diamond Merchants (London, Ontario)	Seven charges were laid on August 11, 1986. The corporate accused pleaded guilty to three charges and, on March 6, 1987, was convicted and fined \$3 000 on each of the first two charges and \$4 000 on the other charge, for a total fine of \$10 000. On June 27, 1988, the charges against the individual were withdrawn.
Employment opportunities – Capital Kirby Alberta Inc. (Sherwood Park, Alberta)	Two charges were laid on November 13, 1987. On June 27, 1988, the charges were dismissed.
Sewing machines – Zellers Inc. (Ottawa, Ontario)	One charge was laid on August 18, 1987. On July 4, 1988, the accused pleaded guilty and was convicted and fined \$5 000.
Photo supplies – Westfair Foods Ltd., c.o.b. as Super Valu (Saskatoon, Saskatchewan)	Two charges were laid on August 30, 1983. On February 16, 1984, the accused was acquitted. On January 31, 1985, an appeal by the Crown was dismissed. Leave to appeal to the Court of Appeal was dismissed on July 6, 1988.
Lamps – Sunrise Lighting Distributors (Maritime) Limited (Halifax, Nova Scotia)	One charge was laid on October 16, 1987. On July 14, 1988, the accused pleaded guilty and was convicted and fined \$1 500.
Oriental carpets – A & B Financiers & Liquidators Ltd., Citizen Union Financial Corporation Limited and Azam Khan (Dartmouth, Nova Scotia)	One charge was laid on May 5, 1988. On July 25, 1988, A & B Financiers and Liquidators Ltd., pleaded guilty and was convicted and fined \$5 000. The charge against the other accused was withdrawn.
Weight loss clinic – 597721 Ontario Inc., c.o.b. as Anatomy 2000 Clinic, and George Julius Lucio (London, Ontario)	Four charges were laid on September 10, 1987. The company pleaded guilty to one charge and on August 8, 1988, was convicted and fined \$5 000. The remaining charges against the company and the individual were withdrawn.
Employment opportunities – 33021 Alberta Ltd. and Darrell John McGuire (Edmonton, Alberta)	Two charges were laid on March 11, 1988. On August 9, 1988, the corporate accused pleaded guilty and was fined \$1 200 on each charge for a total fine of \$2 400. The individual accused pleaded guilty to one charge and was fined \$500. The remaining charge was withdrawn. A prohibition order was granted.
Windows – Bagnall's Building Supplies Ltd. (Charlottetown, Prince Edward Island)	One charge was laid on June 28, 1988. On July 19, 1988, the accused pleaded guilty and was convicted. On August 15, 1988, the accused was fined \$1 000.

Product, Names of Accused and Location of Offence	Action Taken and Results
Patio furniture – Centre de Distribution de la Piscine Trans-Canada Ltd. (Montréal, Quebec)	Ten charges were laid on August 24, 1987. The accused pleaded guilty and on August 22, 1988, was convicted and fined \$2 000 on each charge for a total fine of \$20 000.
Land – Timber Ridge Estates Ltd., and Peter Misko (Calgary, Alberta)	Fifteen charges were laid on March 27, 1987. The individual accused pleaded guilty and on August 29, 1988, was convicted and fined \$600 on each charge for a total fine of \$9 000. All charges against the company were withdrawn.
Furniture – MarVel Furnishings & Upholsterers Ltd. c.o.b. as MarVel Furnishings Ltd., and MarVel Furnishings (Winnipeg, Manitoba)	Two charges were laid on January 15, 1988. The accused pleaded guilty and on August 31, 1988, was convicted and fined \$500 on each charge, for a total fine of \$1 000.
Groceries – Atlantic Wholesalers Ltd. (Moncton, New Brunswick)	Three charges were laid on March 13, 1987. These charges were withdrawn and three new charges were laid on April 28, 1987. On April 20, 1988, the accused was convicted on two charges and on May 12, 1988, was fined \$5 000 on each charge for a total fine of \$10 000. The remaining charge was dismissed. On September 6, 1988, the appeals by both the Crown and the defence were abandoned.
Water filters – Canadian Apollo Water Filters Inc. and Robert MacElwain (Calgary, Alberta)	One charge was laid on July 9, 1987. The accused pleaded guilty and on September 13, 1988, were convicted. The corporate accused was fined \$3 000 and the individual was fined \$10 000. An order of prohibition was granted.
Carpets – Salim Khan, A & B Financiers & Liquidators Ltd. and City Wide Liquidators (Vancouver, British Columbia)	Four charges were laid on April 12, 1988. On September 15, 1988, City Wide Liquidators was also charged. On September 20, 1988, City Wide Liquidators pleaded guilty and was convicted and fined \$300 on each charge for a total fine of \$1 200. The charges against Salim Khan and A & B Financiers & Liquidators were withdrawn.
Ladies' watches – Giftware Wholesale Co. Limited, c.o.b. as Jewellery Distributors Co. of Canada and Wholesale Jewellers (Winnipeg, Manitoba)	One charge was laid on October 31, 1985. On November 4, 1987, the information was quashed. An appeal was filed by the Crown and on November 24, 1987, the order quashing the information was quashed. The charge was not relaid under this provision.
Video equipment – A&D Video Inc. c.o.b. as the Video File, and Andrew Darrock McKinlay (London, Ontario)	Five charges were laid on December 11, 1987. On September 23, 1988, the charges were dismissed.
Condominium units – The Harbour Club (Thornbury) Inc. and David Ouellet (Toronto, Ontario)	One charge was laid on August 13, 1986. On February 18, 1987, the accused were acquitted. On September 28, 1988, an appeal by the Crown was dismissed.
Dishwares – Zellers Inc. c.o.b. as Zellers (London, Ontario)	Four charges were laid on November 30, 1987. On June 1, 1988, three charges were withdrawn. On September 30, 1988, the remaining charge was dismissed.
Blinds – William Victor Giesbrecht c.o.b. as All Blinds Designs (Winnipeg, Manitoba)	Sixteen charges were laid on August 30, 1988. The accused pleaded guilty to three charges, and on September 21, 1988, was convicted and fined \$1 400 on each charge, for a total fine of \$4 200. The remaining charges were withdrawn.

Product, Names of Accused and Location of Offence	Action Taken and Results
Mosquito repellents — Jay Norris Canada Inc. (Montréal, Quebec)	One charge was laid on February 22, 1988. The accused pleaded guilty and on October 5, 1988, was convicted and fined \$7 000.
Automobiles — Jack Frame Motors Corp. and Jack Frame (Scarborough, Ontario)	One charge was laid on November 25, 1987. The corporate accused pleaded guilty and on October 5, 1988, was convicted and fined \$7 500. The charge against the individual was withdrawn.
Houses — Les Établissements St-André Ltée and Annette Faucher (St-Constant, Quebec)	Two charges were laid on February 17, 1988. The accused pleaded guilty to one count and on October 6, 1988, was convicted and fined \$2 000. The remaining charge was withdrawn.
Appliances, furniture — The Brick Warehouse Ltd. (Toronto, Ontario)	Eight charges were laid on February 1, 1988. The accused pleaded guilty to four charges and on October 12, 1988, was convicted and fined \$10 000 on each charge for a total fine of \$40 000. The remaining charges were withdrawn.
Water purifiers — Nazeer Rayman c.o.b. as Stream of Success (S.O.S.) (Willowdale, Ontario)	Five charges were laid on February 17, 1988. The accused pleaded guilty to five charges and on September 23, 1988, was convicted and on October 14, 1988, was fined \$3 000.
Tax services — Gary P. Sorenson and Gerhard M. Schneider (Kitchener and Windsor, Ontario)	Three charges were laid on October 9, 1987, against Gerhard M. Schneider and one against Gary P. Sorenson. Three additional charges were laid against Gary P. Sorenson on October 15, 1987. On May 18, 1988, Gerhard M. Schneider pleaded guilty to one charge and received an absolute discharge. The remaining charges were withdrawn. On October 17, 1988, a stay of proceedings for one year was entered against Gary P. Sorenson on the basis of a written undertaking.
Water treatment system — National Safety Associate/N.S.A. Canada Ltée (St-Laurent, Quebec)	One charge was laid on August 14, 1987. The accused pleaded guilty and on October 18, 1988, was convicted and fined \$5 000.
Glass cleaner — Hern Corp. (St. John's, Newfoundland)	One charge was laid on December 6, 1985. The accused pleaded guilty and on May 29, 1986, was convicted and fined \$3 000. On October 24, 1988, an appeal by the accused against sentence was dismissed.
Furniture and appliances — M. Réjean Grégoire, c.o.b. as Meubles Bruno Grégoire, Enrg., and Bruno Grégoire et Fils (Sherbrooke, Quebec)	Six charges were laid on December 14, 1987. Both accused pleaded guilty and on October 24, 1988, were convicted and fined \$750 on each of five counts and \$1 250 on the sixth count for a total fine of \$10 000.
Dishes — Canadian Tire Corporation Limited (Toronto, Ontario)	One charge was laid on January 6, 1988. On October 31, 1988, the charge was withdrawn.
Cars — Beothuck Ford Sales Ltd. (Grand Falls and Lewisporte, Newfoundland)	One charge was laid on May 18, 1988. The accused pleaded guilty on September 26, 1988, and on November 1, 1988, was fined \$1 500.

Product, Names of Accused and Location of Offence	Action Taken and Results
Battery charger package – Home Hardware Stores Limited (London and elsewhere in Ontario)	One charge was laid on June 22, 1987. The accused pleaded not guilty but on May 20, 1988, was convicted and fined \$5 000. On November 2, 1988, an appeal by the accused against the conviction was dismissed.
Furniture – CHF Campbell's Home Furniture Ltd. c.o.b. as Campbell's Furniture (Rocky Mountain House, Alberta)	Five charges were laid on July 19, 1988. On November 7, 1988, these charges were stayed and a new information containing three charges was laid. On November 7, 1988, the accused pleaded guilty and was convicted and fined \$500 on each charge for a total fine of \$1 500.
Jewellery – Dino Music Ltd./Dino Musique Ltée, (Dartmouth, Nova Scotia)	Two charges were laid on May 17, 1988. On November 21, 1988, the accused was convicted on one charge and fined \$2 000. The remaining charge was dismissed.
Ceiling fans – Fandango Ceiling Fans Ltd. (Calgary, Alberta)	One charge was laid on March 17, 1987. On November 13, 1987, the accused was acquitted. An appeal was filed by the Crown on November 28, 1987. On March 4, 1988, the appeal was allowed and a new trial was ordered. On November 28, 1988, the accused was convicted and fined \$2 000.
Furs – Caskie Furs (Edmonton) Ltd. (Edmonton, Alberta)	Seventeen charges were laid on November 6, 1987. On May 12, 1988, the accused was convicted on sixteen charges and fined \$2 000 on each charge for a total fine of \$32 000. The remaining charge was withdrawn. The accused appealed the sentence but on December 2, 1988, the appeal was dismissed.
Motor vehicle repairs – Birchcliff Lincoln Mercury Sales Limited (Scarborough, Ontario)	Three charges were laid on June 20, 1985. The accused pleaded not guilty, but on May 1, 1986, was convicted and given a suspended sentence. The accused appealed the conviction, and the Crown appealed the sentence. On November 13, 1986, the accused's appeal was allowed and the accused was acquitted. On December 6, 1988, a further appeal by the Crown was allowed and the accused was convicted and fined \$10 on each charge for a total fine of \$30.
Weight loss device – Big Mac Investments Ltd., Arla McDonnell and Gary Gordon McDonnell c.o.b. as Slim-Tone Clinique (Winnipeg, Manitoba)	Two charges were laid on May 30, 1986. On December 8, 1987, the charges were dismissed. An appeal was filed by the Crown on January 5, 1988. On December 8, 1988, the appeal was dismissed.
Automobiles – Belisle Automobiles Inc. (Ottawa, Ontario)	One charge was laid on October 26, 1988. The accused pleaded guilty and on December 13, 1988, was convicted and fined \$3 000.
Gas saving device – Platinum Fuel Saver Corporation and Michael J. Bailey (Jarvis, Ontario)	One charge was laid on February 23, 1987. On January 11, 1988, the charge against the company was withdrawn. On December 16, 1988, the charge against the individual was withdrawn.
Diamond rings – Stanley M. Wise c.o.b. as Rings Etc. (Ottawa, Ontario)	One charge was laid on August 18, 1987. On July 26, 1988, the charge was dismissed. The Crown filed an appeal but the appeal was abandoned on January 6, 1989.

Product, Names of Accused and Location of Offence	Action Taken and Results
Miscellaneous items – Simpsons Limited/Simpsons Limitée (Toronto, Ontario)	One charge was laid on June 9, 1987. On October 18, 1988, the accused was convicted and on January 10, 1989, was fined \$100 000.
Furniture – Combined Furniture Warehouse Sales Limited, Robert Young and Joseph Vizzari (Hamilton, Ontario)	Eight charges were laid on July 29, 1985. All the accused were jointly charged with respect to four charges, and the corporate accused and R. Young were jointly charged with respect to four additional charges. R. Young pleaded not guilty but on June 23, 1986, was convicted on five charges and fined \$1 000 on each charge, for a total fine of \$5 000. The charges against J. Vizzari were dismissed and the charges against the corporate accused were withdrawn. On January 11, 1989, an appeal by the accused was dismissed.
Oriental carpets – Bokhara Carpet Palace Ltd., Citizen Union Financial Corp. Ltd. and Asam Khan (alias Azzie Khan and Azie Khan) (Montréal, Quebec)	Six charges were laid on April 14, 1988. On January 18, 1989, Citizen Union pleaded guilty to three charges and was convicted and fined \$5 000 on each charge for a total fine of \$15 000. The remaining charges were withdrawn.
Weight loss – 2426-8377 Québec Inc. c.o.b. as "M.D.P.", Pierre Hébert (D.D.N.), Éditions Multimédia G.P. Inc., Paolo Noël and Les Laboratoires Parolan Inc. (Montréal, Quebec)	Nine charges were laid against 2426-8377 Québec Inc., Pierre Hébert and Paolo Noël. Four charges were laid against Éditions Multimédia G.P. Inc. and five charges were laid against Les Laboratoires Parolan Inc., on April 21, 1988. On January 17, 1989, 2426-8377 Québec Inc. pleaded guilty to two charges and was convicted and fined \$2 500 on each charge; Pierre Hébert pleaded guilty to two charges and was convicted and fined \$10 000 on each charge; Éditions Multimédia G.P. Inc. pleaded guilty to one charge and was convicted and fined \$2 500; Paolo Noël pleaded guilty to two charges and was convicted and fined \$7 500 on each charge; and Les Laboratoires Parolan Inc. pleaded guilty to one charge and was convicted and fined \$2 500, for a total fine of \$45 000. All remaining charges were withdrawn. An order of prohibition was issued against the three companies.
Jewellery – RJP Jewellery Sales Inc., Joe Packman and Irvin Pancer (Oshawa, Ontario)	Twelve charges were laid on December 27, 1987. The company pleaded guilty to two counts and on April 27, 1988, was convicted and fined \$7 500 on each count for a total fine of \$15 000. On January 18, 1989, all remaining charges against the company and individuals were withdrawn.
Waterbeds – Wednesday Enterprises Ltd., Kocohani Holdings Ltd., Lortone Enterprises Inc. c.o.b. as Statewood Waterbeds, and Eric James Buckthorp (Vancouver, British Columbia)	Eight charges were laid on July 14, 1988. On January 20, 1989, Lortone Enterprises pleaded guilty and was convicted and fined \$1 000 on each charge for a total fine of \$8 000. All charges against the other accused were stayed.
Skis – Maritime Leisure Sports Ltd. c.o.b. as Maritime Sports World (Dartmouth, Nova Scotia)	Two charges were laid on July 19, 1988. On January 26, 1989, the accused pleaded guilty to one charge and was convicted and fined \$1 500. The remaining charge was withdrawn.

Product, Names of Accused and Location of Offence	Action Taken and Results
<p>Vacuums — Precision Vacuum Service Ltd. c.o.b. as Dynovac Calgary Sales and Service (Calgary, Alberta)</p>	<p>Two charges were laid on December 21, 1988. On February 1, 1989, the accused pleaded guilty to one charge and was convicted and fined \$1 000. The remaining charge was withdrawn.</p>
<p>Insurance — The Independent Order of Foresters, Frank Dagenaar and Garth Carter (Toronto, Ontario)</p>	<p>Thirteen charges were laid on June 14, 1984. All the accused were charged jointly with respect to two charges. The Independent Order of Foresters and F. Dagenaar were charged jointly with respect to four charges. The Independent Order of Foresters and G. Carter were charged jointly with respect to two charges and the Independent Order of Foresters was charged solely on the remaining five charges. The information was withdrawn and on March 22, 1985, fifteen new charges were laid. All the accused were charged jointly with respect to three charges. The Independent Order of Foresters and G. Carter were charged jointly with respect to three charges. The Independent Order of Foresters and F. Dagenaar were charged jointly with respect to four charges. The Independent Order of Foresters was charged solely with respect to five charges. On June 7, 1985, F. Dagenaar and G. Carter were acquitted of all charges. On January 13, 1987, the Independent Order of Foresters was acquitted of all charges. On February 7, 1989, an appeal by the Crown was dismissed.</p>
<p>Television converters — Krazy Kelly's Limited and John Sisco (London, Ontario)</p>	<p>Seven charges were laid on December 11, 1987. On February 13, 1989, the corporate accused pleaded guilty to two counts and was convicted and fined \$5 000 on each charge for a total fine of \$10 000. All remaining charges against the corporate and individual accused were withdrawn.</p>
<p>Jewellery — Ani Jewellery Limited and Gem Scan International Inc. (Ottawa, Ontario)</p>	<p>Two charges were laid on February 18, 1987. The accused were charged jointly with respect to one charge, and Ani Jewellery Limited was charged solely with respect to an additional charge. On February 22, 1989, all charges were dismissed.</p>
<p>Hair and scalp treatment — Waclaw (Walter) Szczesny, Alicja Szczesny, W.A.S. Trichology Inc., Nickola Samac and N & C Enterprises Inc. c.o.b. as People's Hair and Scalp Specialists and as Wasco Enterprises (Hamilton, Ontario)</p>	<p>Eight charges were laid on June 3, 1987, against W. Szczesny and A. Szczesny. A second information was laid against the same two individuals and W.A.S. Trichology Inc., on March 9, 1988, containing four charges. The first information was withdrawn. On March 17, 1988, four charges were also laid against N. Samac and N & C Enterprises Inc. On December 13, 1988, N & C Enterprises pleaded guilty to one charge and was fined \$2 500. An order of prohibition was granted. On February 23, 1989, W.A.S. Trichology pleaded guilty to one charge and was fined \$125. All remaining charges against the corporate accused and the individuals were withdrawn.</p>

Product, Names of Accused and Location of Offence	Action Taken and Results
Perfume – Trimark Marketing Services Inc. c.o.b. as Canadian Home Innovators (Halifax, Nova Scotia)	Two charges were laid on October 27, 1988. On March 7, 1989, the charges were withdrawn.
Rust protectant – Pro-Tarc Ltd. (Fredericton, New Brunswick)	One charge was laid on November 3, 1988. On March 8, 1989, the accused pleaded guilty and was convicted and fined \$1 000.
Clothing – The Governor and Company of Adventurers of England trading into Hudson's Bay c.o.b. as The Bay (Vancouver, British Columbia)	Two charges were laid on February 12, 1988. On March 20, 1989, the charges were dismissed.
Central air conditioners – Sears Canada Inc. (Peterborough and elsewhere in Ontario)	One charge was laid on April 10, 1987. The accused pleaded not guilty but on February 2, 1989, was convicted and on March 23, 1989, was fined \$15 000.
Clothing – The Young Manufacturers Inc. c.o.b. as "STITCHES" (Edmonton, Alberta)	Three charges were laid on November 14, 1988. On March 23, 1989, the charges were dismissed.
Wall coverings – Color Your World Inc. (Edmonton, Alberta)	Eight charges were laid on August 26, 1988. On March 28, 1989, the accused was acquitted.
Computers – Commodore Business Machines Limited (Toronto, Ontario)	One charge was laid on April 1, 1986. Following a preliminary inquiry, further proceedings were not instituted.

Paragraph 52(1)(b): Representation Without Adequate and Proper Test

Weight loss clinic – 597721 Ontario Inc. c.o.b. as Anatomy 2000 Clinic, and George Julius Lucio (London, Ontario)	Thirty-two charges were laid on September 10, 1987. The company pleaded guilty to one charge and on August 8, 1988, was convicted and fined \$5 000. The remaining charges against the company and individual were withdrawn.
Mineral water – Lee-Roy Enterprise Ltd. c.o.b. as Yellowhead Mobile Homes and Hard Water Solution (Yorkton, Saskatchewan)	One charge was laid on September 9, 1987. On August 26, 1988, the accused was acquitted.
Water filters – Canadian Apollo Water Filters Inc. and Robert MacElwain (Calgary, Alberta)	One charge was laid on July 9, 1987. The accused pleaded guilty and on September 13, 1988, were convicted. The corporate accused was fined \$3 000 and the individual was fined \$10 000. An order of prohibition was granted.
Mosquito repellers – Jay Norris Canada Inc. (Montréal, Quebec)	One charge was laid on February 22, 1988. On October 5, 1988, the charge was withdrawn.

Product, Names of Accused and Location of Offence	Action Taken and Results
Water treatment system – National Safety Associate/N.S.A. Canada Ltée (St-Laurent, Quebec)	One charge was laid on August 14, 1987. On October 18, 1988, the charge was withdrawn.
Weight loss device – Big Mac Investments Ltd., Arla McDonnell and Gary Gordon McDonnell c.o.b. as Slim-Tone Clinique (Winnipeg, Manitoba)	Two charges were laid on March 26, 1985. On December 8, 1987, the charges were dismissed. An appeal was filed by the Crown on January 5, 1988. On December 8, 1988, the appeal was dismissed.
Water softener – Aztec Industries Inc. and Jack F. Harrand (Regina, Saskatchewan)	Twenty-three charges were laid on September 9, 1987. The corporate accused pleaded guilty to five charges and on December 16, 1988, was convicted and fined \$1 000 on each charge for a total fine of \$5 000. The remaining charges against the corporate accused and all charges against the individual accused were withdrawn.
Gas saving device – Platinum Fuel Saver Corporation and Michael J. Bailey (Jarvis, Ontario)	Two charges were laid on February 23, 1987. On January 11, 1988, the corporate accused pleaded guilty to one charge and was convicted and fined \$5 000. The remaining charge was withdrawn. On December 16, 1988, the charges against the individual were withdrawn.
Weight loss – 2426-8377 Québec Inc. c.o.b. as "M.D.P.", Pierre Hébert (D.D.N.), Éditions Multimédia G.P. Inc., Paolo Noël and Les laboratoires Parolan Inc. (Montréal, Quebec)	Nine charges were laid against 2426-8377 Québec Inc., Pierre Hébert and Paolo Noël, five charges against Les Laboratoires Parolan Inc. and four charges against Éditions Multimédia G.P. Inc., on April 21, 1988. On January 17, 1989, all charges were withdrawn.
Diesel engine parts – Cummins Diesel of Canada Limited (Nation-wide)	Proceedings were instituted in the Federal Court on January 17, 1989, under subsection 34(2) for an order of prohibition. On January 17, 1989, the order was granted.
Hair and scalp treatment – Waclaw (Walter) Szczesny, Alicja Szczesny, W.A.S. Trichology Inc., Nickola Samac and N & C Enterprises Inc., c.o.b. as People's Hair and Scalp Specialists and as Wasco Enterprises (Hamilton, Ontario)	Eight charges were laid on June 3, 1987, against W. Szczesny and A. Szczesny. A second information was laid against the same two individuals and W.A.S. Trichology Inc., on March 9, 1988. The first information was withdrawn. On March 17, 1988, four charges were also laid against N. Samac and N & C Enterprises Inc. On December 13, 1988, N & C Enterprises pleaded guilty to one charge and was fined \$2 500. An order of prohibition was granted. On February 23, 1989, W.A.S. Trichology pleaded guilty to one charge and was fined \$125. All remaining charges against the corporate accused and the individuals were withdrawn.
Roofing materials – International Exteriors Ltd. (Nation-wide)	Proceedings were instituted in the Federal Court on March 3, 1989, under subsection 34(2) for an order of prohibition. On March 3, 1989, the order was granted.

Product, Names of Accused and Location of Offence	Action Taken and Results
Paragraph 52(1)(c): Misleading Warranty Representation	
Water filters – Canadian Apollo Water Filters Inc. and Robert MacElwain (Calgary, Alberta)	One charge was laid on July 9, 1987. The accused pleaded guilty and on September 13, 1988, were convicted. The corporate accused was fined \$3 000 and the individual was fined \$10 000. An order of prohibition was granted.
Paragraph 52(1)(d): Misleading Price Representation	
Pens – Zellers Inc. c.o.b. as Zellers (Dartmouth, Nova Scotia)	Three charges were laid on November 26, 1987. The accused pleaded guilty to one charge and on April 18, 1988, was convicted and fined \$5 000. The remaining two charges were withdrawn.
Fur coats – Caskie Furs (Regina) Ltd. and Earl Alexander Bremner (Regina, Saskatchewan)	Twenty-four charges were laid on December 9, 1987. On April 25, 1988, the charges were withdrawn.
Battery charger package – Home Hardware Stores Limited (London and elsewhere in Ontario)	One charge was laid on June 22, 1987. On May 20, 1988, the accused was acquitted.
Down duvets – The Linen Chest (Phase II) Inc./ La Boutique Linen Chest (Phase II) Inc. (Montréal, Quebec)	One charge was laid on April 6, 1988. On May 24, 1988, the accused pleaded guilty and was convicted and fined \$1 000.
Bookcase – Les Meubles Tousignant Inc. (Sherbrooke, Quebec)	Six charges were laid on September 15, 1987. The accused pleaded not guilty but on June 20, 1988, was convicted and fined \$250 on each charge for a total fine of \$1 500. On July 19, 1988, the accused appealed the conviction. The appeal was dismissed on October 6, 1988.
Sewing machines – Zellers Inc. (Ottawa, Ontario)	One charge was laid on August 18, 1987. On July 4, 1988, the charge was withdrawn.
Lamps – Sunrise Lighting Distributors (Maritime) Limited (Halifax, Nova Scotia)	One charge was laid on October 16, 1987. On July 14, 1988, the charge was withdrawn.
Windows – Bagnall's Building Supplies Ltd. (Charlottetown, Prince Edward Island)	One charge was laid on June 28, 1988. On July 19, 1988, the charge was withdrawn.
Skis – La Boutique Vent de Mer Inc. c.o.b. as Oberson (Québec, Quebec)	Three charges were laid on March 17, 1988. The accused pleaded guilty and on August 19, 1988, was convicted and fined \$2 000 on each charge for a total fine of \$6 000.

Product, Names of Accused and Location of Offence	Action Taken and Results
Patio furniture — Centre de Distribution de la Piscine Trans-Canada Ltd. and Piscino Inc. (Montréal, Quebec)	Ten charges were laid against Centre de Distribution de la Piscine Trans-Canada on August 24, 1987 and two charges were laid against Piscino Inc. Centre de Distribution de la Piscine Trans-Canada pleaded guilty and on August 22, 1988, was convicted and fined \$2 000 on each charge for a total fine of \$20 000. The charges against Piscino Inc. were withdrawn.
Furniture — MarVel Furnishings & Upholsters Ltd. c.o.b. as MarVel Furnishings Ltd., and MarVel Furnishings (Winnipeg, Manitoba)	Two charges were laid on January 15, 1988. The accused pleaded guilty and on August 31, 1988, was convicted and fined \$500 on each charge, for a total fine of \$1 000.
Ladies' watches — Giftware Wholesale Co. Limited, c.o.b. as Jewellery Distributors Co. of Canada and Wholesale Jewellers (Winnipeg, Manitoba)	Three charges were laid on October 31, 1985. On November 4, 1987, the information was quashed. An appeal was filed by the Crown and on November 24, 1987, the order quashing the information was quashed. On September 21, 1988, a second information containing two charges was laid. On September 22, 1988, the accused pleaded guilty and was fined \$1 200 on one charge and \$1 600 on the second charge, for a total fine of \$2 800.
Dishwares — Zellers Inc. c.o.b. as Zellers (London, Ontario)	Four charges were laid on November 30, 1987. On June 1, 1988, three charges were withdrawn. On September 30, 1988, the remaining charge was dismissed.
Blinds — Ridoflex Inc. (Candiac, Quebec)	Nine charges were laid on August 8, 1988. The accused pleaded guilty and on October 11, 1988, was convicted and fined \$500 on each charge, for a total fine of \$4 500.
Dishes — Canadian Tire Corporation Limited (Toronto, Ontario)	One charge was laid on January 6, 1988. On October 31, 1988, the charge was withdrawn.
Furniture — CHF Campbell's Home Furniture Ltd. c.o.b. as Campbell's Furniture (Rocky Mountain House, Alberta)	Five charges were laid on July 19, 1988. On November 7, 1988, the charges were stayed.
Automobiles — Campbell Ford Sales Ltd. (Ottawa, Ontario)	One charge was laid on October 20, 1988. On December 20, 1988, the accused pleaded guilty and was convicted and fined \$3 000.
Diamond rings — Stanley M. Wise c.o.b. as Rings Etc. (Ottawa, Ontario)	One charge was laid on August 18, 1987. On July 26, 1988, the charges were dismissed. The Crown filed an appeal on August 16, 1988, but the appeal was abandoned on January 6, 1989.
Skis — Maritime Leisure Sports Ltd. c.o.b. as Maritime Sports World (Dartmouth, Nova Scotia)	Three charges were laid on July 19, 1988. On January 26, 1989, the charges were withdrawn.

Product, Names of Accused and Location of Offence	Action Taken and Results
Jewellery – Ani Jewellery Limited (Ottawa, Ontario)	One charge was laid on February 18, 1987. On February 22, 1989, the charge was dismissed.
Section 55: Pyramid Selling	
Miscellaneous items – CLP Canmarket Lifestyle Products Corporation and R. Hugh Thorsten (Winnipeg, Manitoba)	Two charges were laid on July 4, 1986. On January 9, 1989, the corporate accused was convicted on one charge. All remaining charges were stayed. On January 31, 1989, the accused was fined \$8 000.
Food supplements, cleaning and personal care products – Shaklee Canada Inc. (Edmonton, Alberta)	Proceedings were instituted on November 13, 1980, under subsection 30(2) for an order of prohibition. On February 16, 1981, the order was refused by the Federal Court. On May 9, 1985, an appeal by the Crown was allowed by the Federal Court of Appeal and an order of prohibition was granted. An appeal by the accused to the Supreme Court of Canada was dismissed on April 28, 1988.
Section 57: Nonavailability	
Electrical household appliances, toys – Peter James Bartram, c.o.b. as Anglo Canadian Warehouses (Hamilton, Mississauga, Oakville, Bowmanville, Toronto, Ontario)	Seven charges were laid on May 14, 1986. On April 6, 1988, the information and warrant were withdrawn.
Air transportation – Air Canada (Toronto, Ontario)	Three charges were laid on May 22, 1985. On March 24, 1986, the charges were dismissed. The Crown appealed the dismissal and on August 5, 1987, the accused was found guilty and on September 15, 1987, was fined \$5 000 on each charge, for a total fine of \$15 000. Both the Crown and the accused appealed the decision. On June 21, 1988, the appeals were dismissed.
Video equipment – A & D Video Inc. c.o.b. as the Video File, and Andrew Darrock McKinlay (London, Ontario)	Five charges were laid on December 11, 1987. On September 23, 1988, the corporate accused was convicted on two charges and fined \$500 on each charge for a total fine of \$1 000. All remaining charges were dismissed.
Automobiles – Jack Frame Motors Corp. and Jack Frame (Scarborough, Ontario)	One charge was laid on November 25, 1987. The corporate accused pleaded guilty and on October 5, 1988, was convicted and fined \$7 500. The charge against the individual was withdrawn.
Ceiling fans – Fandango Ceiling Fans Ltd. (Calgary, Alberta)	One charge was laid on March 17, 1987. On November 13, 1987, the accused was acquitted. An appeal was filed by the Crown on November 26, 1987. The appeal was allowed on March 4, 1988, and a new trial was ordered. On November 28, 1988, the charge was dismissed.
Television converters – Krazy Kelly's Limited and John Sisco (London, Ontario)	Two charges were laid on December 11, 1987. On February 13, 1989, the corporate accused pleaded guilty to one charge and was convicted and fined \$5 000. All remaining charges against the corporation and individual accused were withdrawn.

Product, Names of Accused and Location of Offence	Action Taken and Results
Clothing — The Governor and Company of Adventurers of England trading into Hudson's Bay c.o.b. as The Bay (Vancouver, British Columbia)	Two charges were laid on February 12, 1988. On March 20, 1989, the charges were dismissed.

Section 58: Sale Above Advertised Price

Houses — Donald Manson c.o.b. as Caledon Heights Estates Ltd. (Toronto, Ontario)	One charge was laid on February 9, 1988. On June 1, 1988, the charge was withdrawn.
Automobiles — Jack Frame Motors Corp. and Jack Frame (Scarborough, Ontario)	One charge was laid on November 25, 1987. On October 5, 1988, the charge was withdrawn.
Groceries — Deware Enterprises Ltd. and Deware Bros. Ltd. c.o.b. as Dewares Supermarket (Moncton, New Brunswick)	Nine charges were laid on September 23, 1988 against Deware Enterprises Ltd. On November 14, 1988, the charges were withdrawn and a new information containing nine charges was laid against Deware Bros. Ltd. On January 4, 1989, Deware Bros. Ltd. pleaded guilty to one charge and was convicted and fined \$4 500. The remaining charges were withdrawn.

Section 59: Promotional Contests

Audio and electronic equipment — Alpine Electronics of Canada Inc. and Alexander Romanov (Markham, Ontario)	Three charges were laid on August 7, 1986. On September 8, 1988, the charges were dismissed.
Miscellaneous items — Simpsons Limited/Simpsons Limitée (Toronto, Ontario)	Two charges were laid on June 9, 1987. The accused pleaded not guilty and on October 18, 1988, a conditional stay was entered.

Appendix VIII

Misleading Advertising and Deceptive Marketing Practices Provisions: Proceedings Pending

Product, Names of Accused and Location of Offence	Action Taken and Results
Paragraph 52(1)(a): False or Misleading Representation in a Material Respect	
Recreation facilities — Club Mont Ste-Anne Inc. (Ste-Anne-de-Beaupré, Quebec)	Three charges were laid on May 16, 1985. Trial is scheduled for the fall of 1989.
Fitness club memberships — Super Fitness of Rexdale Inc., Super Fitness Centres Inc. c.o.b. as Super Fitness, and Kenneth Reginald Wheeler (Toronto, Ontario)	Twenty-five charges were laid on September 20, 1985. Super Fitness Centres Inc. and Kenneth Reginald Wheeler were jointly charged with respect to twenty-two charges and all three accused were jointly charged with respect to three additional charges. On September 25, 1986, the accused were acquitted. Under appeal by the Crown.
Vacation package — Carousel Travel 1982 Inc., Robert Niddery, Kenneth Gertner, Enrique Avila, Victor Palermo, Dolores Maher, and 506223 Ontario Inc., c.o.b. as Solar Sales & Management Consultants (Toronto, Ontario)	Two charges were laid on July 17, 1985. The accused were jointly charged with respect to one charge and Carousel Travel Inc., 506223 Ontario Inc., Kenneth Gertner, Victor Palermo and Robert Niddery were jointly charged with respect to the additional charge. On September 28, 1987, all charges were quashed. On January 19, 1988, a new information was laid containing the same charges against the accused. On August 31, 1988, a motion by the accused to have the information quashed was dismissed.
Home vacuum system — Beam of Canada Inc. (Oakville, Ontario)	Two charges were laid on November 13, 1985. On May 13, 1988, the accused was convicted of one charge and on August 16, 1988, was fined \$8 000. The remaining charge was withdrawn. On September 12, 1988, the defence filed an appeal against the conviction.
Blinds — Boutique Évolution Décor Inc. (Rimouski, Quebec)	Two charges were laid on May 14, 1986. On March 17, 1988, the accused was acquitted. The Crown has filed an appeal.
Fur coats — Wendelyn Textiles & Properties Limited c.o.b. as Alan Cherry, Alan Cherry Enterprises Limited, and Alan Cherry and Steven LeVine (Toronto, Ontario)	Seven charges were laid on January 3, 1986, against all of the accused except Steven LeVine, who was charged with respect to six of the charges only. On March 13, 1989, Alan Cherry Ent. pleaded guilty to one charge and was convicted and fined \$50 000. Alan Cherry pleaded guilty to one charge and was convicted and fined \$25 000. All charges against Steven LeVine were withdrawn. All other charges remain outstanding.
Stereo products — 471451 Ontario Limited c.o.b. as Dana Trading Company, David Kleiner and David Samuel (Toronto, Ontario)	Twelve charges were laid on March 26, 1986. On December 4, 1987, all charged were dismissed. Under appeal by the Crown.

Product, Names of Accused and Location of Offence	Action Taken and Results
<p>Furniture — Greco-Latino Furniture & Appliances Ltd. c.o.b. as Cross Canada Liquidators, and George Pozios (Hamilton, Ontario)</p>	<p>Six charges were laid on November 28, 1986. On February 29, 1988, the charges were dismissed. An appeal was filed by the Crown on March 29, 1988. On November 18, 1988, the appeal was allowed and a new trial was ordered. On January 9, 1989, the accused filed a notice of appeal.</p>
<p>Books — R.L. Polk & Co. Ltd./R.L. Polk & Cie Ltée c.o.b. as Halbert's, and Douglas Haslinger and Ron Adamson (Nation-wide)</p>	<p>Seven charges were laid on January 28, 1987. On December 1, 1987, the company pleaded guilty to one charge and was convicted and fined \$20 000. A stay of proceedings was entered with respect to the remaining charges against the company and R. Adamson. The charges against D. Haslinger remain outstanding.</p>
<p>Waterbeds — The Waterbed Gallery Ltd. c.o.b. as Waterbed Gallery and Larry Paulson (Vancouver and Victoria, British Columbia)</p>	<p>Twenty-one charges were laid on April 22, 1987. On May 4, 1988, the corporate accused was convicted of two charges and fined \$3 500 on each charge for a total of \$7 000. The remaining charges against The Waterbed Gallery Ltd., and all charges against the individual accused were dismissed. The accused has appealed the conviction.</p>
<p>Window blinds — David W. Klimitz and 573748 Ontario Corporation (Brampton, Ontario)</p>	<p>Two charges were laid on August 26, 1987. On April 5, 1988, both accused were acquitted. Under appeal by the Crown.</p>
<p>Televisions and appliances — Roy's Television & Radio Company Limited (Sudbury, Ontario)</p>	<p>Two charges were laid on September 2, 1987.</p>
<p>Vacation packages — The Wholesale Travel Group Inc. and Colin Chedore (Toronto, Ontario)</p>	<p>Five charges were laid on September 21, 1987. On March 23, 1988, the charges were dismissed. On August 4, 1988, the Crown's appeal was allowed and the matter was remitted to Provincial Court for trial. The accused has appealed this decision.</p>
<p>Rugs — Korhani Import Export Inc., Mohammed Ali Korhani Shirazi, Stephano Cervone, and Tapis Orientaux Amir Ltée c.o.b. as Maison d'Encan Internationale (Lachine and Dorval, Quebec)</p>	<p>Twelve charges, were laid on October 20, 1987, against the first two accused. On September 8, 1988, a <i>nolle prosequi</i> was entered. A new information was laid on October 26, 1988, against Stephano Cervone and Tapis Orientaux Amin Ltée.</p>
<p>Weight-loss program — Patrice Runner and Fabrice Choquet c.o.b. as Centre E.D.P.M. (Montréal, Quebec)</p>	<p>Three charges were laid on December 10, 1987.</p>
<p>Houses — Donald Manson c.o.b. as Caledon Heights Estates Ltd. (Toronto, Ontario)</p>	<p>Three charges were laid on February 9, 1988. On June 1, 1988, the accused pleaded guilty and was fined \$8 000 on the first count, \$4 000 on the second count and \$2 500 on the third count for a total fine on \$14 500. Under appeal by the accused.</p>
<p>Advertising space — James Brown Buchanan and 634008 Ontario Inc. c.o.b. as Ontario Police News (Toronto, Ontario)</p>	<p>Two charges were laid on April 15, 1988.</p>

Product, Names of Accused and Location of Offence	Action Taken and Results
Advertising space – John Sidney Murphy and Robyn Yorke c.o.b. as Canadian Police Review, Canadian Police Review Publishing Inc., Can-Pol Publishing Inc., William Edward McKolskey, Keith A. Gardner and John Sacrey (Toronto, Ontario)	Two charges were laid on April 15, 1988.
Advertising space – Donald Hoyt Smith and Hoyt Smith Publishing Inc. c.o.b. as Canadian Police News Independent (Toronto, Ontario)	Two charges were laid on April 15, 1988. On January 11, 1989, the accused were acquitted. Under appeal by the Crown.
Weight loss – Les Distributions Kiloral Inc. and Guy Pothier (Montréal, Quebec and Toronto, Ontario)	One charge was laid on April 21, 1988. On January 17, 1989, the corporate accused pleaded guilty and was convicted and fined \$10 000. An order of prohibition was granted. The charges against G. Pothier remain outstanding.
Weight loss – Les Laboratoires Parolan Inc., Lipidex Inc., and Guy Pothier (Montréal, Quebec)	Six charges were laid on April 21, 1988. On January 17, 1989, both companies pleaded guilty to one charge and were convicted and fined \$5 000 each. The remaining charges against the companies were withdrawn. An order of prohibition was granted. The charges against G. Pothier remain outstanding.
Weight loss – 155812 Canada Inc. c.o.b. as Centre E.D.P.M. and as Société Internationale D.M.D., and Patrice Runner (Montréal, Quebec)	Thirty-two charges were laid on April 28, 1988.
Weight loss – 155812 Canada Inc. c.o.b. as Centre E.D.P.M. and as Société Internationale D.M.D., and Patrice Runner (Montréal, Quebec)	Thirty charges were laid on April 28, 1988.
Blinds – Keenan Frederick Ginn and 67767 (Manitoba) Limited c.o.b. as Elegant Blinds & Draperies (Winnipeg, Manitoba)	Twelve charges were laid on May 3, 1988.
Weight loss – Les Laboratoires Produits Français Inc., Les Laboratoires Parolan Inc., Guy Pothier (Montréal, Quebec)	Twenty-five charges were laid on May 12, 1988. On January 17, 1989, both corporate accused pleaded guilty to one charge and were convicted and fined \$5 000 each. The remaining charges against corporate accused were withdrawn. The charges against G. Pothier remain outstanding.
Weight loss – 146474 Canada Inc., Louis Luc Roy c.o.b. as Raisinase RR, Shirley Thérout and Raisinase R.R. Inc. (Montréal, Quebec)	Forty-nine charges were laid on May 18, 1988.
Various products – Zellers Inc. c.o.b. as Zellers (Halifax, Nova Scotia)	Two charges were laid on May 25, 1988.
Blinds – Recouvrement des Fenêtres Despins Inc., and Verti Store Inc. c.o.b. as Verti Store (Montréal, Quebec)	Six charges were laid on August 17, 1988.

Product, Names of Accused and Location of Offence	Action Taken and Results
Carburetors – Jacques Pelletier c.o.b. as Articles Publicitaires M.T.L. Enr., and Carburation Econex Canada Inc. (Montréal, Quebec)	Eleven charges were laid on August 25, 1988.
Audio & video equipment – Multitech Warehouse Direct (Ontario) Inc. (Toronto, Ontario)	Two charges were laid on September 2, 1988.
Tires – F.W. Woolworth Co. Limited/F.W. Woolworth Cie Limitée c.o.b. as Woolco (Dartmouth, Nova Scotia)	One charge was laid on September 15, 1988.
Various products – Jay Norris Canada Inc. and Jean-Claude Héroux (Montréal, Quebec)	Thirteen charges were laid on September 21, 1988. On March 31, 1989, the corporate accused was convicted on seven charges and fined \$25 000 on the first charge and \$3 000 on each of the other six charges for a total fine of \$43 000. The remaining charges against the corporate accused were withdrawn. The charges against J.-C. Héroux remain outstanding.
Various products – Amway of Canada Ltd. (Edmonton, Alberta)	Six charges were laid on September 28, 1988.
Stainless steel flatware – William Ashley Ltd. and Alan J. Stark (Toronto, Ontario)	Two charges were laid on October 14, 1988.
Fabrics – Fabricland Distributors Inc. and Warren Kimel (Toronto, Ontario)	Seven charges were laid on October 14, 1988.
Household furnishings – National Clearance Warehouse Ltd. and Oscar Pilpel (Toronto, Ontario)	Eight charges were laid on October 19, 1988.
Kitchenware – 566230 Ontario Limited c.o.b. as C.M.I. and Dynamics Unlimited, and Eric Bresler (Ottawa, Ontario)	One charge was laid on October 26, 1988.
Diet drinks – Stewart Sherwood, and 603022 Ontario Inc. c.o.b. as House of Sherwood (Hamilton, Ontario)	Twenty-one charges were laid on November 3, 1988.
Automobiles – Robert L. Bailly, Ford Motor Company of Canada Limited, Brown Bros. Enterprises Ltd., Hallmark Ford Sales Limited, Fogg Motors Ltd., Richport Ford Sales Limited and Dave Buck Ford Sales Ltd. (Vancouver, British Columbia)	Four charges were laid on November 16, 1988.
Blinds – Despin Holdings Inc. and Verti Store Inc. (Québec, Quebec)	Six charges were laid on December 1, 1988.
Automobiles – Craig Stewart Esplen, Charles Elliott and Humberview Motors Inc. (Toronto, Ontario)	Two charges were laid on December 16, 1988.

Product, Names of Accused and Location of Offence	Action Taken and Results
Business Awards – Amiram Peleg and Peleg Consumer Polls Incorporated (Winnipeg, Manitoba)	Eight charges were laid on December 22, 1988.
Furs – Peter Gaye Furs Limited c.o.b. as Peter Gaye Furs (Winnipeg, Manitoba)	Three charges were laid on December 22, 1988.
Furniture – Barney's Antiques Limited c.o.b. as World-Wide Antiques, and Arthur Aello (Toronto, Ontario)	Fifteen charges were laid on December 23, 1988.
Vacuum cleaners – 632018 Ontario Ltd. c.o.b. as Tri-Star, and Carter Brisebois (Barrie, Ontario)	Three charges were laid on December 23, 1988.
Carpets – Carplta Corporation c.o.b. as Factory Carpet (Ottawa and elsewhere, Ontario)	Five charges were laid on January 11, 1989
Employment opportunities – Pacific West Coast Cobra Wholesale Inc. c.o.b. as Mular Wholesale and Teddy Jacobson (Vancouver, British Columbia)	Two charges were laid on January 20, 1989.
Automobiles – Kern Chevrolet Oldsmobile Ltd. c.o.b. as Kern Chevrolet- Oldsmobile, and Bryan Douglas Kern (Vancouver, British Columbia)	Four charges were laid on January 20, 1989.
Photocopy supplies – 139834 Canada Inc. c.o.b. as Distribution Copie Centrale/ Distribution Copy Central (Montréal, Quebec)	Sixty-one charges were laid on January 25, 1989.
Blinds – Barry Laughren and Designer Blinds of Saskatoon Inc. c.o.b. as Designer Blinds by Stephen (Saskatoon, Saskatchewan)	Four charges were laid on February 3, 1989.
Blinds – Décoration Mont-Bruno Inc. and Michel Hébert (St-Bruno, Quebec)	Four charges were laid on February 6, 1989.
Meat – C & D Beef Enterprises Inc. c.o.b. as Alberta Beef Centre, and Douglas Wright (Edmonton, Alberta)	Six charges were laid on February 15, 1989.
Chinese carpets – Simpsons Limited/Simpsons Limitée c.o.b. as Simpsons (Toronto, Ontario)	One charge was laid on February 21, 1989.
Chinese carpets – T. Eaton Holdings Limited c.o.b. as Eatons (Toronto, Ontario)	One charge was laid on February 21, 1989.
Chinese carpets – Hudson's Bay Company c.o.b. as The Bay (Toronto, Ontario)	One charge was laid on February 21, 1989.

Product, Names of Accused and Location of Offence	Action Taken and Results
Travel savings card – Groupmark Canada Limited c.o.b. as Encore and Elwin D. Cathcart (Toronto and elsewhere in Canada)	Eight charges were laid on February 21, 1989.
Michelin tires – Custom Muffler Service Ltd. (Ottawa Ontario)	Four charges were laid on February 23, 1989.
Potato chips – Pepsi-Cola Canada Ltd. c.o.b. as Frito-Lay Canada (Toronto, Ontario)	One charge was laid on February 27, 1989. The charge was relaid on March 17, 1989.
Air filters – Les Traitements d'Eau Jetpure du Canada Ltée, Lucien Martin, Jacques Serraf and Léo Éthier (Montreal, Quebec)	Four charges were laid on March 3, 1989.
Colour televisions – 279707 Alberta Ltd., and Rean Investments Ltd. c.o.b. as Visions Electronic Superstores (Calgary, Alberta)	On March 7, 1989, fourteen charges were laid against 279707 Alberta Ltd., and sixteen charges were laid against Rean Investments Ltd.
Ceramic tiles – Colour Your World Inc. and Ed Baggaley Ltd. (London, Ontario)	Six charges were laid on March 28, 1989.

Paragraph 52(1)(b): Representation Without Adequate and Proper Test

Fuel saving device – Vahan Kassabian c.o.b. as Shieldco (Mississauga, Ontario)	One charge was laid on August 29, 1985. On March 31, 1987, the accused was convicted and fined \$850. An appeal by the accused against conviction and sentence was allowed on June 7, 1988. Under appeal by the Crown.
Stereo products – 471451 Ontario Limited c.o.b. as Dana Trading Company, David Kleiner and David Samuel (Toronto, Ontario)	Twelve charges were laid on March 26, 1986. On December 4, 1987, all charges were dismissed. Under appeal by the Crown.
Hair regrowth products – 132013 Canada Ltd., c.o.b. as Niagara Labs and as Niagara Labs Hair and Scalp Specialists, and Dr. Stanley H. Weisberg (Hamilton and St. Catharines, Ontario)	Five charges were laid on April 3, 1987. On May 17, 1988, both accused were convicted on three charges and fined \$250 on each charge for a total fine of \$1 500. The remaining charges were withdrawn. The Crown has appealed the sentence and the accused have appealed the conviction.
Weight loss program – Patrice Runner and Fabrice Choquet c.o.b. as Centre E.D.P.M. (Montréal, Quebec)	Three charges were laid on December 10, 1987.
Advertising space – James Brown Buchanan and 634008 Ontario Inc. c.o.b. as Ontario Police News (Toronto, Ontario)	Two charges were laid on April 15, 1988.
Advertising space – John Sidney Murphy and Robyn Yorke c.o.b. as Canadian Police Review, Canadian Police Review Publishing Inc., Can-Pol Publishing Inc., William Edward McKolskey, Keith A. Gardner and John Sacrey (Toronto, Ontario)	One charge was laid on April 15, 1988.

Product, Names of Accused and Location of Offence	Action Taken and Results
Advertising space – Donald Hoyt Smith and Hoyt Smith Publishing Inc. c.o.b. as Canadian Police News Independent (Toronto, Ontario)	Three charges were laid on April 15, 1988. On January 11, 1989, the accused were acquitted. Under appeal by the Crown.
Weight loss – Les Distributions Kiloral and Guy Pothier (Montréal, Quebec and Toronto, Ontario)	One charge was laid on April 21, 1988. On January 17, 1989, a stay of proceedings was entered against the corporate accused. The charges against G. Pothier remain outstanding.
Weight loss – Les Laboratoires Parolan Inc., Lipidex Inc., and Guy Pothier (Montréal, Quebec)	Six charges were laid on April 21, 1988. On January 17, 1989, all charges against the two companies were withdrawn. The charges against G. Pothier remain outstanding.
Weight loss – 155812 Canada Inc. c.o.b. as Centre E.D.P.M. and as Société Internationale D.M.D., and Patrice Runner (Montréal, Quebec)	Thirty-two charges were laid on April 28, 1988.
Weight loss – 155812 Canada Inc. c.o.b. as Centre E.D.P.M. and as Société Internationale D.M.D., and Patrice Runner (Montréal, Quebec)	Thirty charges were laid on April 28, 1988.
Oil fortifiers – Power-up Canada Ltd. (Edmonton, Alberta)	Six charges were laid on May 11, 1988.
Weight loss – Les Laboratoires Produits Français Inc., Les Laboratoires Parolan Inc., and Guy Pothier (Montréal, Quebec)	Twenty-five charges were laid on May 12, 1988. On January 17, 1989, the charges against the corporate accused were withdrawn. The charges against G. Pothier remain outstanding.
Weight loss – 146474 Canada Inc., Louis Luc Roy c.o.b. as Raisinase RR, Shirley Thérout and Raisinase R.R. Inc. (Montréal, Quebec)	Forty-nine charges were laid on May 18, 1988.
Carburetors – Jacques Pelletier c.o.b. as Articles Publicitaires M.T.L. Enr., and Carburation Econex Canada Inc. (Montréal, Quebec)	Eleven charges were laid on August 25, 1988.
Anti-Rust compound – Waxoyl Canada Ltd. (Halifax, Nova Scotia)	One charge was laid on September 19, 1988.
Diet drinks – Stewart Sherwood, and 603022 Ontario Inc. c.o.b. as House of Sherwood (Hamilton, Ontario)	Twenty-one charges were laid on November 3, 1988.
Hair growth products – Michael J. Chater and M.C. Beautician Limited c.o.b. as Michael Chater's School of Cosmetology (Dartmouth, Nova Scotia)	
Air filters – Les Traitements d'Eau Jetpure du Canada Ltée, Lucien Martin, Jacques Serraf and Léo Éthier (Montréal, Quebec)	Four charges were laid on March 3, 1989.

Product, Names of Accused and Location of Offence**Action Taken and Results**

Paragraph 52(1)(d): Misleading Price Representation

Fur coats — Wendelyn Textiles & Properties Limited c.o.b. as Alan Cherry, Alan Cherry Enterprises Limited, Alan Cherry and Steven LeVine (Toronto, Ontario)	One charge was laid on January 3, 1986.
Blinds — Boutique Évolution Décor Inc. (Rimouski, Quebec)	Two charges were laid on May 14, 1986. On March 17, 1988, the accused was acquitted. The Crown has filed an appeal.
Televisions — Roy's Television & Radio Company Limited (Sudbury, Ontario)	One charge was laid on September 2, 1987.
Blinds — Keenan Frederick Ginn and 67767 (Manitoba) Limited c.o.b. as Elegant Blinds & Draperies (Winnipeg, Manitoba)	Twelve charges were laid on May 3, 1988.
Kitchenware — 566230 Ontario Limited c.o.b. as C.M.I. and Dynamics Unlimited, and Eric Bresler (Ottawa, Ontario)	One charge was laid on October 26, 1988.
Blinds — Despin Holdings Inc. and Verti Store Inc. (Québec, Quebec)	Six charges were laid on December 1, 1989.
Automobiles — Craig Stewart Esplen, Charles Elliott and Humberview Motors Inc. (Toronto, Ontario)	Two charges were laid on December 16, 1988.
Furs — Peter Gaye Furs Limited c.o.b. as Peter Gaye Furs (Winnipeg, Manitoba)	One charge was laid on December 22, 1988.
Carpets — Carpita Corporation c.o.b. as Factory Carpet (Ottawa and elsewhere, Ontario)	Eight charges were laid on January 11, 1989.
Blinds — Décoration Mont-Bruno Inc. and Michel Hébert (St-Bruno, Quebec)	Four charges were laid on February 6, 1989.
Chinese carpets — Simpsons Limited/Simpson's Limitée, c.o.b. as Simpsons (Toronto, Ontario)	One charge was laid on February 21, 1989.
Chinese carpets — T. Eaton Holdings Limited c.o.b. as Eatons (Toronto, Ontario)	One charge was laid on February 21, 1989.
Chinese carpets — Hudson's Bay Company c.o.b. as The Bay (Toronto, Ontario)	One charge was laid on February 21, 1989.
Michelin tires — Custom Muffler Service Ltd. (Ottawa, Ontario)	Four charges were laid on February 23, 1989.

Section 56: Referral Selling

Meat —
C & D Beef Enterprises Inc. c.o.b. as Alberta Beef Centre,
and Douglas Wright (Edmonton, Alberta)

Two charges were laid on February 15, 1989.

Section 57: Nonavailability

Automobiles —
Ken Simard Sales Inc. and Kenyon Allen Simard
(Oshawa, Ontario)

One charge was laid on January 15, 1988.

Automobiles —
Mahinder Tandon and Scarsview Motors Ltd.
(Toronto, Ontario)

Sixteen charges were laid on July 12, 1988.

Audio & Video equipment —
Multitech Warehouse Direct (Ontario) Inc.
(Toronto, Ontario)

Six charges were laid on September 2, 1988.

Colour televisions —
279707 Alberta Ltd., and Rean Investments Ltd. c.o.b.
as Visions Electronic Superstores (Calgary, Alberta)

On March 7, 1989, fourteen charges were laid against
279707 Alberta Ltd. and sixteen charges were laid
against Rean Investments Ltd.

Ceramic tiles —
Colour Your World Inc. and Ed Baggaley Ltd.
(London, Ontario)

Six charges were laid on March 28, 1989.

Section 58: Sale Above Advertised Price

Mattresses —
United Buy and Sell Service B.C. Inc., and John Volken
(Coquitlam, British Columbia)

Three charges were laid on January 3, 1988.

Various products —
Zellers Inc. c.o.b. as Zellers (Halifax, Nova Scotia)

Twenty-nine charges were laid on May 25, 1988.

Section 59: Promotional Contests

Fur coats —
Wendelyn Textiles & Properties Limited c.o.b. as
Alan Cherry, Alan Cherry Enterprises Limited,
Alan Cherry and Steven LeVine (Toronto, Ontario)

One charge was laid on January 3, 1986.

Festival —
Tom Kourtesis (Toronto, Ontario)

One charge was laid on October 29, 1986.

Various products —
Jay Norris Canada Inc., and Jean-Claude Héroux
(Montréal, Quebec)

Three charges were laid on September 21, 1988. On
March 31, 1989, the corporate accused was convicted
and fines \$3 000 on each charge for a total fine of
\$9 000. The charges against J.-C. Héroux remain out-
standing.

Product, Names of Accused and Location of Offence	Action Taken and Results
Automobiles — Kern Chervrolet Oldsmobile Ltd. c.o.b. as Kern Chevrolet- Oldsmobile, and Bryan Douglas Kern (Vancouver, British Columbia)	One charge was laid on January 20, 1989.
Vacuum cleaners — 632018 Ontario Ltd. c.o.b. as Tri-Star, and Carter Brisebois (Barrie, Ontario)	Six charges were laid on December 23, 1988.

Appendix IX

Misleading Advertising and Deceptive Marketing Practices Provisions: Discontinued Inquiries

Industry	Section of Act	Nature of Inquiry and Conclusion Reached
Weight Loss	52(1)(a) and 52(1)(b)	A complaint was received from a dietitian-nutritionist concerning promotional claims such as "Sleep Away Your Weight". The company claimed that weight control could be achieved by "... overstimulating the body's natural growth hormones to go into action to eat calories thereby diminishing fatty tissue and relieving water retention." During the course of the inquiry, the company's head office relocated several times, the advertising appeared to stop and the last known addresses were vacated with no forwarding address or phone numbers. In view of the fact that the company was no longer active and the product was no longer being promoted, further inquiry was not justified.
Department Store	52(1)(a)	A complaint was received concerning "daily specials" offered by a department store. The daily sales items were compared to the store's "regular prices." The inquiry disclosed that the special prices were in fact being offered for a longer period than the day of the special and that the comparison prices sometimes exceeded the normal price. Representatives of the Director and the company met to discuss the practice. The Director received assurances that measures had been taken to correct the problem, and that two of the administrators responsible for the practice had since left the company. Since that time the situation has been monitored and the practice has ceased. No further action was therefore necessary.
Clairvoyant	52(1)(a)	Complaints were received from consumers relating to promotions of a clairvoyant who purported to have the ability to predict the future and who would for a fee provide a chart of lucky numbers to be used in lotteries. It subsequently became apparent that the provincial government had already laid charges. As the province had already proceeded on the matter, it was not deemed necessary to continue the inquiry.

Appendix X

Recent Publications of the Bureau of Competition Policy

Misleading Advertising Bulletin (issued quarterly)
Annual Report [of the] Director of Investigation and Research (for previous fiscal years)
News releases (issued periodically)
Information kit on Prenotification
Information Bulletin No. 1: The Merger Provisions
Information Bulletin No. 2: Advance Ruling Certificates

Speeches by the Director of Investigation and Research that are Publicly Available

April 1988	L'Université Laval, The New Competition Law Conference (Québec, Quebec) Topic: Notes for an Address on compliance and Mergers (S-10072)
May 1988	Insight Seminar on the Impact of Competition Policy on Mergers and Acquisitions (Toronto, Ontario) Topic: The Impact of the Competition Policy on Mergers and Acquisitions (S-10086)
June 1988	Einaudi Foundation Conference on Competition Policy in OECD Countries (Naples, Italy) Topic: The Recent Reform of Competition Law in Canada (S-10128)
August 1988	American Bar Association's Annual Meeting (Toronto, Ontario) Topic: Bilateral Aspects of Canadian Competition Policy (S-10132)
October 1988	American Bar Association's Annual Meeting (Toronto, Ontario) Topic: Bilateral Aspects of Canadian Competition Policy (S-10132)
October 1988	McGill University, Faculty of Law, Commercial and Consumer Law Workshop (Montréal, Quebec) Topic: Mergers, Efficiency and the Competition Act (S-10170)
November 1988	Queen's University, Business Environment Today Conference (Kingston, Ontario) Topic: International Business: A Canadian Perspective (S-10148)
March 1989	British Association for Canadian Studies Seminar, Canadian High Commission (London, England) Topic: Competition Law and Free Trade: The Canadian Adaptation (S-10196)
March 1989	Canadian Bar Association-Natural Resources Section (Calgary, Alberta) Topic: The Competition Act: Our Track Record to Date (S-10216)

Speeches By Deputy Director of Investigation and Research that are Publicly Available

May 1988	Insight Seminar on the Impact of Competition Policy on Mergers and Acquisitions (Toronto, Ontario) Speaker: Howard I. Wetston Topic: The Merger Review Process (S-10108)
May 1988	American Bar Association Third Annual Conference on Canada/U.S. Trade in Energy (Montréal, Quebec) Speaker: Howard I. Wetston Topic: Deregulation and the Protection of Competition Implications for Energy Trade (S-10110)

August 1988	Criminal Practice and Procedure Committee of the American Bar Association - Antitrust Law Section (Toronto, Ontario) Speaker: Ian Nielsen-Jones Topic: Canadian Antitrust Enforcement (S-10134)
August 1988	1988 Annual Meeting of the American Bar Association - Antitrust Law Section (Toronto, Ontario) Speaker: Howard I. Wetston Topic: Notifiable Transactions under the Competition Act (S-10136)
October 1988	The Distribution Law Seminar of the B.C. Continuing Legal Education Society (Vancouver, B.C.) Speaker: Ian Nielsen-Jones Topic: Product Distribution and the Competition Act: The Treatment of Reviewable Matters and Price Maintenance (S-10172)
November 1988	Conseil de l'Industrie Laitière du Québec (Québec, Quebec) Speaker: Wayne D. Critchley Topic: The Canadian Competition Act (S-10202)

A number of earlier speeches by the present Director and former Directors are maintained on file and are available to the public.

Appendix XI

How to Contact the Bureau of Competition Policy

Any person wishing to contact the Director or a member of the Bureau to obtain general information, make a complaint, or request an advisory opinion should contact one of the offices listed below.

General Information

Compliance and Coordination Branch (Resource Centre)
Bureau of Competition Policy
Consumer and Corporate Affairs Canada
50 Victoria Street, 21st Floor
Hull, Quebec
K1A 0C9
Telephone: (819) 994-0798
Fax: (819) 953-5013

Vancouver Office - Restraints to Competition
Bureau of Competition Policy
Consumer and Corporate Affairs Canada
1400-800 Burrard Street
Vancouver, British Columbia
V6Z 2H8
Telephone: (604) 668-8645

Toronto Office - Restraints to Competition
Bureau of Competition Policy
Consumer and Corporate Affairs Canada
4900 Yonge Street, 6th Floor
Willowdale, Ontario
M2N 6B8
Telephone: (416) 224-4064

Montréal Office - Restraints to Competition
Bureau of Competition Policy
Consumer and Corporate Affairs Canada
Guy Favreau Complex
200 René Lévesque Blvd. W.
Suite 502, East Tower
Montréal, Quebec
H2Z 1X4
Telephone: (514) 496-1641

Mergers

Anyone wishing to obtain information concerning the application of the merger provisions of the Act, including those relating to notification of proposed transactions, may contact the Mergers Branch directly. Correspondence addressed to the Mergers Branch may be sent to the address noted above. The Branch telephone number is (819) 953-7092; the fax number is (819) 953-6169.

The Bureau recommends that notification filings be hand-delivered to the Prenotification Unit, Mergers Branch, 19th Floor, 50 Victoria Street, Hull, Quebec.

Misleading Advertising and Deceptive Marketing Practices

Anyone wishing to obtain general information or to make a complaint concerning the misleading advertising and deceptive marketing practices provisions of the Act should contact one of the regional or district offices listed below. It is recommended that members of the public telephone or write to the nearest office listed for prompt attention. Alternatively, correspondence or telephone calls may be directed to the Marketing Practices Branch headquarters.

Headquarters National Capital Region

Marketing Practices Branch
50 Victoria Street, 19th Floor
Hull, Quebec
K1A 0C9
Telephone: (819) 997-4282

Pacific Region

1400-800 Burrard Street
Vancouver, British Columbia
V6Z 2H8
Telephone: (604) 666-8659

Prairie Region

Oliver Building
10225 100th Avenue
Edmonton, Alberta
T5J 0A1
Telephone: (403) 495-2489

Sam Livingston Building
510 12th Avenue S.W.
Suite 309
Calgary, Alberta
T2R 0H3
Telephone: (403) 292-5608

260 St. Mary Avenue
Room 345
Winnipeg, Manitoba
R3C 0M6
Telephone: (204) 983-5567

Ontario Region

Federal Building
451 Talbot Street
Suite 300
London, Ontario
N6A 5C9
Telephone: (519) 645-4119

4900 Yonge Street
6th Floor
Willowdale, Ontario
M2N 6B8
Telephone: (416) 224-4065

10 John Street South
Room 600
Hamilton, Ontario
L8N 4A7
Telephone: (416) 572-2873

Quebec Region

Guy-Favreau Complex
200 René Lévesque Blvd. W.
Suite 502, East Tower
Montréal, Quebec
H2Z 1X4
Telephone: (514) 283-7712

112 Dalhousie Street
3rd Floor
Québec, Quebec
G1K 4C1
Telephone: (418) 648-3939

Atlantic Region

Windmill Place
1000 Windmill Road
Suite 1
Dartmouth, Nova Scotia
B3B 1L7
Telephone: (902) 426-6002

Cormack Building
2 Steers Cove
Suite 202
St. John's, Newfoundland
A1C 6J5
Telephone: (709) 772-5519

Appendix XII

Table of Cases

The following is a list of recent court decisions relating to the Competition Act.

- American Airlines Inc. v. Canada* (Competition Tribunal), [1989] 1 S.C.R. 236.
- American Airlines Inc. v. Canada* (Competition Tribunal) (1988), 23 C.P.R. (3d) 178 (F.C.A.).
- Canada* (Director of Investigation and Research) *v. Air Canada* (1988), 23 C.P.R. (3d) 160 (C.T.).
- Canada* (Director of Investigation and Research) *v. Air Canada*, C.T., February 9, 1989 (unreported).
- Director of Investigation and Research v. Irving Equipment*, [1988] 1 F.C. 27, (1986), 39 D.L.R. (4th) 341, 31 C.C.C. (3d) 447, 16 C.P.R. (3d) 26, 27 C.R.R. 78 (T.D.).
- General Motors of Canada Ltd. v. City National Leasing Ltd.* (1989), 93 N.R. 327 (S.C.C.).
- McIntosh Paving Co. v. Canada* (Director of Investigation and Research), Ont. C.A., June 13, 1988 (unreported).
- Nova Scotia Pharmaceutical Association v. R.* (1988), 88 N.S.R. (2d) 70, 225 A.P.R. 70 (N.S.S.C.).
- Nova Scotia Pharmaceutical Association v. R.*, N.S.S.C., April 26, 1988 (unreported).
- Québec Ready Mix Inc. v. Rocois Construction Inc.*, S.C.C., April 20, 1989 (unreported).
- R. v. Atlantic Wholesalers Ltd.*, N.B. Prov. Ct., April 20, 1988 (unreported).
- R. v. Canadian Apollo Water Filter Inc.* (1988), 22 C.P.R. (3d) 61 (Alta. Prov. Ct.).
- R. v. Caskie Furs (Regina) Ltd.*, Sask. Prov. Ct., May 9, 1988 (unreported).
- R. v. Chambre d'Immeuble du Saguenay-Lac-St-Jean Inc.* (1988), 23 C.P.R. (3d) 204 (F.C.T.D.).
- R. v. Dairy Supplies Ltd.*, [1988] 1 S.C.R. 665, 49 D.L.R. (4th) 479, 89 N.R. 321, 53 Man. R. (2d) 240, 40 C.C.C. (3d) 382, 23 C.P.R. (3d) 287.
- R. v. École de conduite Lauzon — Saguenay Lac-St-Jean*, Que. S.C. (Crim.), August 24, 1987 (unreported).
- R. v. Fitopco Inc.*, Ont. Dist. Ct., February 14, 1988 (unreported).
- R. v. George Lanthier & Fils Ltée*, Ont. C.A., October 18, 1988 (unreported).
- R. v. Independent Order of Foresters*, Ont. C.A., February 7, 1989 (unreported).
- R. v. Kassabian*, Ont. Dist. Ct., June 7, 1988 (unreported).
- R. v. McInnis*, B.C. Co. Ct., February 3, 1988 (unreported).
- R. v. R.L. Crain Inc.* (1988), 22 C.P.R. (3d) 462 (N.S.S.C.).
- R. v. R.L. Crain Inc.*, N.S.S.C., June 8, 1988 (unreported).
- R. v. R.L. Crain Inc.*, Sask. Q.B., June 9, 1988 (unreported).
- R. v. Shell Canada Products Ltd.*, Man. Q.B., February 27, 1989 (unreported).
- R. v. Shell Canada Products Ltd.*, Man. Q.B., March 14, 1989 (unreported).
- R. v. Simpsons Ltd.*, Ont. Dist. Ct., October 18, 1988 (unreported).
- R. v. Wholesale Travel Group Inc.* (1988), 22 C.P.R. (3d) 328 (Ont. Prov. Ct.).
- R. v. Wholesale Travel Group Inc.* (1988), 23 C.P.R. (3d) 92 (Ont. H.C.).
- Shaklee Canada Inc. v. Canada* (Attorney General), [1988] 1 S.C.R. 662, 84 N.R. 385, 58 Alta L.R. (2d) 348, 20 C.P.R. (3d) 192.
- Titan Industries Ltd. v. Canada* (Attorney General), B.C.C.A., June 6, 1988 (unreported).
- Titan Industries Ltd. v. Canada* (Attorney General), B.C.S.C., June 9, 1988 (unreported).
- 603022 Ontario Inc. v. Canada* (Director of Investigation and Research), Ont. H.C., February 11, 1988 (unreported).

Index

Editor's note: The listings in this index are arranged alphabetically by industry, product or subject. Anyone familiar with the names of the parties to a court proceeding or the style of cause may also wish to consult the lists of decisions in the appendices.

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INDUSTRY CANADA/INDUSTRIE CANADA

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Canada. Director of Investig
Annual report : Director of

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